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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Beaufort County

Honorable Carmen T. Mullen, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

GEORGE HOLMES,

APPELLANT

APPELLATE CASE NO. 2022-000728

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**THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:
STATE’S EXHIBIT NO. 1 (911 CALL RECORDING); STATE’S EXHIBIT NO. 2
(SURVEILLANCE FOOTAGE); STATE’S EXHIBIT NOS. 4-12 AND 14-31
(PHOTOGRAPHS); STATE’S EXHIBIT NO. 38 (DIAGRAM)**

1 STATE OF SOUTH CAROLINA
2 IN THE GENERAL SESSIONS
3 COUNTY OF BEAUFORT

4 State of South Carolina,

5 vs. Transcript of Record
6 2019-GS-07-00039
7 2019-GS-07-00040

8 George Holmes,
9 Defendant.

10 May 16, 2022
11 Beaufort, South Carolina
12 Volume I of II

13 B E F O R E:

14 The HONORABLE CARMEN MULLEN

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

16 Jared Shedd, Prosecutor
17 Samantha Molina, Prosecutor

18 Colin Hamilton, Representing the defendant
19
20
21

22 SHARON G. HARDOON, CSR
23 Official Circuit Court Reporter, III
24
25

1 THE COURT: Bring them in.

2 (Jury enters the courtroom.)

3 THE BAILIFF: All jurors are present.

4 THE COURT: Thank you, Norman. Thank
5 you, Jessica. I appreciate at that.

6 Ladies and gentlemen, welcome back. As you
7 know, I told you I'm going to pull the second trial.
8 We are going to begin this case on Wednesday morning
9 at 9:30. So even if you are chosen for this trial
10 today, after you are excused, we'll see you back on
11 Wednesday. All right?

12 So with that said, ladies and gentlemen,
13 I will tell you that these questions are going to
14 be much shorter because much of what I asked the
15 last time is the same questions. So we will be
16 able to go a little more quickly.

17 All right. So, ladies and gentlemen, at
18 this time, we are about to begin the trial
19 entitled the State of South Carolina vs.
20 George Holmes. Ladies and gentlemen, Mr. Holmes
21 is charged by the bill of indictments in
22 Beaufort County with the offenses of burglary in
23 the 2nd degree and safecracking.

24 Ladies and gentlemen, I'm going to begin
25 again -- I know we have the same State's lawyers

1 STATE OF SOUTH CAROLINA
2 IN THE GENERAL SESSIONS
3 COUNTY OF BEAUFORT

4 State of South Carolina,

5 vs.

Transcript of Record
2019-GS-07-00039
2019-GS-07-00040

6 George Holmes,

7 Defendant.
8
9

10 May 18, 2022
11 Beaufort, South Carolina
12 Volume II of II

13 B E F O R E:

14 The HONORABLE CARMEN MULLEN

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

16 Jared Shedd, Prosecutor
17 Samantha Molina, Prosecutor

18 Colin Hamilton, Representing the defendant
19
20
21

22 SHARON G. HARDOON, CSR
23 Official Circuit Court Reporter, III
24
25

1 percent sure, Your Honor.

2 THE COURT: Okay. So do you have your
3 officer here for that Denno?

4 MR. SHEDD: He is here, Your Honor.

5 THE COURT: Let's call him and put him
6 up.

7 MR. SHEDD: The State calls Kyle
8 Breland.

9 This is the video that I provided to your
10 officer earlier in the week on Monday, the dash
11 cam, and it happens in the first three minutes. I
12 do intend --

13 THE COURT: So you're going to go ahead
14 and cue it up right now, or no? Do you need to or
15 not?

16 MR. SHEDD: Certainly I can.

17 THE COURT: Do you intend on playing it,
18 or are you just going to have the officer testify?

19 MR. SHEDD: I do not.

20 THE COURT: Okay. As long as he can
21 testify to it, that's fine.

22 MR. SHEDD: Okay.

23 THE COURT: Mr. Stephens, why are you on
24 the witness list for this case?

25 MR. STEPHENS: Me, Your Honor?

1 THE COURT: Yes.

2 MR. STEPHENS: I was Mr. Holmes' first --
3 I don't know that I was his first. I was one of
4 his appointed public defenders. I don't know what
5 he may have issues with, but he may have to do
6 with my representation during that time is all I
7 can tell you, Your Honor. We had disagreements
8 during his representation. I don't know anything
9 else.

10 MR. HAMILTON: Conversation between --
11 and really testimony that was elicited, questions
12 and things Mr. Stephens learned from the
13 preliminary hearing in this case that was a little
14 over three years ago at this point.

15 THE COURT: All right. You've sworn him
16 in; is that correct? Come on.

17 THE CLERK: Do you solemnly swear or
18 affirm to answer all question asked of you by the
19 court so help you God?

20 THE WITNESS: I do.

21 THE CLERK: Thank you.

22 THE COURT: Come around, sir. I apologize.
23 What is your rank, sir?

24 THE WITNESS: Deputy.

25 THE COURT: Thank you. Deputy, spell.

Testimony of Kyle Breland

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1 the clerk gives it to you, please say "I do" and
2 have a seat.

3 All right.

4 THE CLERK: Good morning. Do you
5 solemnly swear or affirm that you shall well and
6 truly try and true deliverance make between the
7 State of South Carolina and the accused, and a
8 true verdict give according to evidence so help
9 you God?

10 JURY PANEL: I do.

11 THE COURT: You may be seated.

12 Ladies and gentlemen, what I am now going
13 to say to you is intended to serve as an
14 introduction to the trial of this case. These
15 remarks are not a charge on the law. I am going
16 to charge you on the law that's applicable to this
17 case at the very end when you've heard all the
18 questions and you've heard the closing arguments
19 from the lawyers. This is merely an explanation
20 of the procedure that we're going to follow so you
21 can better understand what's going on.

22 Ladies and gentlemen, the defendant in
23 this case, Mr. George Holmes, has been charged by
24 indictments that have been filed in this court
25 with offenses of burglary in the 2nd degree,

Testimony of Kyle Breland

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1 violent, and safecracking. Again, the elements of
2 which I will explain to you at the end of this
3 case.

4 Now, an indictment is simply a charge by
5 which a case is brought into the courtroom, and it
6 is not, in any sense, evidence of any of the
7 allegations that it contains. Now, in this case,
8 Mr. Holmes has pled not guilty to these
9 indictments. Therefore, the State has the burden
10 of proving each of the elements of the indictments
11 beyond a reasonable doubt, and it's your duty,
12 ladies and gentlemen of the jury, to decide
13 whether or not the State has met that burden.

14 Now, your purpose as jurors is to find
15 and determine the facts. You, the jury, are the
16 sole judge of all facts in this case. If at any
17 time I make any comment regarding the facts of
18 this case, you must disregard it.

19 Ladies and gentlemen, you are to
20 determine the facts of this case from the
21 testimony you hear from the witness stand, as well
22 as any other evidence that's entered into this
23 case. Please understand that it is especially
24 important that you perform your duty of
25 determining the facts diligently and

Testimony of Kyle Breland

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1 conscientiously because ordinarily there is no way
2 to correct an error in the determination of the
3 facts by a jury.

4 On the other hand, and with equal
5 emphasis, the same law that makes you, the jury,
6 the judge of the facts makes me the judge of the
7 law. The law given by the court is the only law
8 you may consider. I cannot tell you what the
9 facts of this case are and you cannot disagree
10 with me about what the law is or what you think
11 the law ought to be. Your job at the end of this
12 trial is to take the law as I give it to you and
13 apply it to the facts as you find them, and from
14 there render a verdict.

15 Now, until I tell you to begin your
16 deliberations, you must not discuss this case with
17 anyone and that includes each other until you've
18 heard all the evidence, the closing arguments, and
19 my charge.

20 I remind you, again, coming and going
21 from the courthouse over today, again, if you
22 happen to see the lawyers, any witnesses, the
23 parties involved, again, they've been instructed
24 not to speak to you. And, again, that's just so I
25 don't have to ask you about it.

Testimony of Kyle Breland

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1 Ladies and gentlemen, I don't think
2 there's going to be anything in the newspaper or
3 the news or the radio or anything about this case.
4 But out of the abundance of caution, if we do
5 break for lunch and you go out, if there's
6 anything out there, you are not to watch it,
7 listen to it, read it. Again, it's not factual,
8 ladies and gentlemen, and it would be
9 inappropriate for you do so.

10 Ladies and gentlemen, it's important too
11 that you keep an open mind and not decide any
12 issue in this case until all of the evidence has
13 been presented, the parties have made their
14 closing arguments, and, again, I've charged you on
15 the law.

16 Now, ladies and gentlemen, in just a
17 moment, the solicitor is going to make an opening
18 statement, and the defense is also going to make
19 an opening statement, although he's not required
20 to do so. I want you to understand something,
21 what these lawyers are telling you in their
22 opening statements is not evidence in the case.
23 Again, it is just out allegations of what they
24 believe that the evidence will show. I remind
25 you, again, the evidence comes from the witness

Testimony of Kyle Breland

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1 stand, as well as any other evidence that's
2 entered into this case.

3 Now, from time to time, you may hear the
4 lawyers say things like, Your Honor, there's a
5 matter of law we need to take up. I may motion
6 them to the bench and we may have a side bar. I
7 want you to understand something. We're not
8 hiding anything from you. Oftentimes, when I have
9 to rule as a matter of law whether or not certain
10 evidence is admitted, I may make a comment on the
11 facts in the case. And because I would never want
12 anything I do to influence you in your
13 determination of the facts, out of an abundance of
14 caution we just do it outside of your presence.

15 Now, in determining what the true facts
16 are in this case, you must decide whether or not
17 the testimony of the witness is believable.
18 Again, it's my responsibility to rule as a matter
19 of law whether or not certain testimony is
20 admitted. But once the testimony is admitted,
21 whether or not you believe it is for you to
22 determine. In deciding whether to believe a
23 witness, you have the right to consider the
24 interest of that witness, the bias of the witness,
25 the prejudice of the witness, and you look at the

Testimony of Kyle Breland

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1 opportunity that witness had to have seen and
2 heard the things about which the witness may
3 testify. You can also look at the way the witness
4 acts on the witness stand.

5 Ladies and gentlemen, you have the right
6 to use anything that is in the record to help you
7 to determine the veracity of that witness.

8 Now, ladies and gentlemen, in order to
9 protect anyone's rights, I'm going to ask the
10 attorneys if there's anything further that they
11 would like me to address you, or exceptions, or
12 additions. If not, we're going to go ahead and
13 begin this case.

14 I also see that the bailiffs have given
15 you-all pads of paper, some of you; is that
16 correct? Very good. Ladies and gentlemen, those
17 are for your own use. Of course, you're not
18 required to take notes. When you come and go from
19 the courtroom on our breaks, I'm going to ask that
20 you leave your note pads in your seats. All
21 right? At the very end of trial, you will have
22 them when you have your deliberations. And at the
23 end, I will instruct you on how you are to use
24 your notes during deliberations. But as you come
25 and go, I'm going to have you keep them in your

Testimony of Kyle Breland

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1 seats.

2 So any exceptions or additions from the
3 State?

4 MR. SHEDD: None from the State, Your
5 Honor.

6 THE COURT: Defense.

7 MR. HAMILTON: Not from the defense, Your
8 Honor.

9 THE COURT: Thank you.

10 Ladies and gentlemen, we're going to go
11 ahead and start the trial.

12 MS. MOLINA: Thank you, Your Honor. May
13 it please the Court?

14 THE COURT: Yes.

15 OPENING STATEMENT

16 MS. MOLINA: When you think of a burglar,
17 you think of somebody wearing a mask and using
18 some kind of tool like a tire iron or a crowbar to
19 break in. That's actually what the defendant did
20 on December 28, 2018, at the Navy Federal ATM on
21 Sea Island Parkway. You've heard he's been
22 charged with burglary in the 2nd degree and
23 safecracking.

24 The State, for burglary in the 2nd
25 degree, has to prove he entered the building

Testimony of Kyle Breland

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1 without consent and with the intent to commit a
2 crime there in.

3 For safecracking, the State has to prove
4 that he used tools in or about the safe used for
5 keeping money with the intent to commit a larceny
6 or any other crime. The last prong of
7 safecracking is very important. It doesn't
8 require the safe actually be cracked open. He
9 just has to have the intent, although, ultimately,
10 he wasn't successful in getting the safe open, not
11 for lack of trying, not for lack of effort.

12 Throughout the trial it's your job to
13 listen all of the witness and look at all the
14 evidence. It's our job to prove this case to you
15 beyond a reasonable doubt. That means you must be
16 firmly convinced that he is guilty.

17 And at the end, after you heard from all
18 of the witnesses and you've seen all of the
19 evidence, we're going to come back up here and ask
20 you to find the defendant guilty of burglary 2nd
21 degree and safecracking.

22 THE COURT: Thank you.

23 Mr. Hamilton.

24 MR. HAMILTON: May it please the Court?

25 THE COURT: Yes, sir.

Testimony of Kyle Breland
OPENING STATEMENT

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1
2 MR. HAMILTON: Good morning, ladies and
3 gentlemen. Judgment day. Today is judgment day.
4 But maybe not really in the way that you would
5 think, because today my client is an innocent man.
6 He is innocent until proven guilty and that's very
7 important. That cloak of innocence, it enshrouds
8 everybody that gets thrust into the legal system,
9 and it's up to the state to prove their case
10 beyond a reasonable doubt in order for you-all to
11 convict my client.

12 So, really, you guys are here to judge
13 them. You're not here to sit in judgment on my
14 client. You're here to judge them and their case
15 and the way that they convey that to you-all.

16 At the end of the day, I'm really only
17 asking that you pay attention to everything,
18 listen to everything that comes out from that
19 witness stand or that's entered into evidence, as
20 you guys will see on the TV screens. At the end
21 of the day, you're going to have to decide if you
22 have any questions that are left unanswered. Did
23 the State do their job? Did they satisfy their
24 burden and pass the threshold needed for all of
25 you guys to convict my client. That's what we're

Testimony of Kyle Breland
1 here to judge today. So keep an open mind.

2 Listen to everything.

3 And, at the end of the day, I'm going to
4 get back up here and ask you if they did fall
5 short and point out where they fell short. And,
6 at that point, it will up to you decide if, even
7 through all that, if it's enough, if that has
8 convinced fully to convict my client.

9 MR. HAMILTON: Thank you.

10 THE COURT: State can call their first
11 witness.

12 MR. SHEDD: State calls Allison Moreira.

13 THE CLERK: Good morning. If you would
14 place your left hand on the Bible and raise your
15 right. Do you solemnly swear or affirm to answer
16 all questions asked of you by this court, so help
17 you God?

18 THE WITNESS: I do.

19 THE CLERK: Thank you. Speak into the
20 microphone and then state your name and spell your
21 last name.

22 THE WITNESS: Allison Moreira,
23 M-o-r-e-i-r-a.

24 WHEREUPON:

25 ALLISON MOREIRA,

Testimony of Allison Moreira

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1 after having been sworn, testified as follows:

2 DIRECT EXAMINATION

3 BY MS. MOLINA:

4 Q Good morning, Miss Moreira. Where do you work?

5 A Beaufort County Sheriff's Office.

6 Q And what is your job with the sheriff's office?

7 A I'm the 911 audio clerk.

8 Q Are calls recorded and saved?

9 A They are.

10 Q And are those kept in the ordinary course of
11 business?

12 A Yes.

13 Q Did you pull a call from December 28, 2018?

14 A Yes.

15 (STATE EXH. 1, 911 call, was marked for
16 identification.)

17 BY MS. MOLINA:

18 Q I'm handing you what is marked as State's Exhibit
19 1. Do you recognize that?

20 A Yes.

21 Q And how do you recognize it?

22 A It has my initials on it.

23 Q And is that fair and accurate copy of the 911
24 call?

25 A It is.

Testimony of Allison Moreira

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1 MS. MOLINA: At this point, State moves
2 State's Exhibit 1 into evidence.

3 THE COURT: Without objection?

4 MR. HAMILTON: No objection, Your Honor.

5 THE COURT: No objection.

6 (STATE EXH. 1, 911 call, was entered into
7 evidence.)

8 MS. MOLINA: Permission to publish.

9 THE COURT: You may.

10 (911 call played.)

11 MS. MOLINA: I have no further questions.
12 Please answer any Mr. Hamilton may have.

13 MR. HAMILTON: I have no questions for
14 this witness, Your Honor.

15 THE COURT: You may be excused. Thank
16 you.

17 Call your next witness.

18 MR. SHEDD: The State calls
19 Jeff Boulware.

20 THE CLERK: If you will place your left
21 hand on the Bible, raise your right hand. Do you
22 solemnly swear or affirm to answer all questions
23 asked of you by this court, so help you God?

24 THE WITNESS: I do.

25 THE CLERK: Thank you. You can have a.

Testimony of Jeffrey Boulware 85

1 seat. If you would, please speak into the microphone
2 and state your name for the record and also spell your
3 last name

4 THE WITNESS: Jeff Boulware,
5 B-o-u-l-w-a-r-e.

6 WHEREUPON:

7 JEFFREY BOULWARE,
8 after having been sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MR. SHEDD:

11 Q Good morning, Mr. Boulware. Can you tell the
12 jury, where do you work?

13 A Navy Federal Credit Union on Parris Island.

14 Q What's your title or role at the Navy Federal
15 Credit Union?

16 A I'm the manager.

17 Q How long have you been in that role?

18 A Since 2007, so about 15 years.

19 Q As part of being a manager at the federal credit
20 union, do you manage any of -- how many locations do
21 you manage?

22 A The branch there and we currently have three
23 remote ATM sites.

24 Q Is one of your -- one of the remote ATM sites that
25 you're responsible for located at 102 Sea Island

Testimony of Jeffrey Boulware
Parkway on Lady's Island.

86

1
2 A It was in 2016. It relocated to that
3 position.

4 Q Does that location there, at 102 Sea Island
5 Parkway, did it -- back in 2018, did it have
6 surveillance cameras?

7 A It did.

8 Q Are those cameras recording all times?

9 A To my knowledge, yes.

10 Q Are those kept in the ordinary course of
11 business?

12 A I believe so.

13 Q Have you reviewed surveillance from December 28th,
14 2018?

15 A Yes.

16 Q You have?

17 MR. SHEDD: May I approach?

18 THE COURT: You may.

19 (STATE EXH. 2, Surveillance video, was
20 marked for identification.)

21 BY MR. SHEDD:

22 Q I'm going to show what has been previously marked
23 for identification as State's Exhibit 2. Can you tell
24 me what that is?

25 A This is the video of that incident I viewed

Testimony of Jeffrey Boulware

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1 today for that day.

2 Q Thank you. How do you recognize the disk? Or how
3 do you know you viewed that today?

4 A I signed and dated it.

5 Q And is that a -- that's a fair and accurate
6 depiction of the surveillance footage from that day.

7 A Yes.

8 MR. SHEDD: At this time, The State moves
9 State's 2 into evidence.

10 MR. HAMILTON: No objection.

11 THE COURT: No objection.

12 (STATE EXH. 2, Surveillance video, was
13 entered into evidence.)

14 MR. SHEDD: Permission to publish.

15 THE COURT: You may.

16 Tom, will be put the lights down a little
17 bit?

18 (Surveillance video played in its entirety.)

19 BY MR. SHEDD:

20 Q Mr. Boulware, how were you made aware of this
21 incident?

22 A I received a call from head of security.

23 Q And was that that night?

24 A Yes.

25 Q What did you do after you received that call?

Testimony of Jeffrey Boulware

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1 A I proceeded to go to the ATM site.

2 Q You went to the ATM site?

3 A Yes, correct.

4 Q Were you able to view the ATM in the building that
5 it's in on scene that night?

6 A Yes.

7 Q And was there damage to the door?

8 A There was. It looked like someone had tried
9 to pry into the outside dead bolt. I believe the
10 door handle was pried open and the ATM was
11 attempted to be dispose pried open.

12 Q Now, as the manager, and, I guess, being
13 responsible for that ATM, do you have to do any checks
14 on it?

15 A We do. We do a monthly remote ATM
16 inspection.

17 Q And at the time of this incident, when was the
18 last time you did a monthly check?

19 A It was actually the day prior.

20 Q The day before?

21 A Yes.

22 Q Did you notice any damage to the door that day?

23 A I did.

24 (STATE EXH. 39, Photo, was marked for
25 identification.)

Testimony of Jeffrey Boulware

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1 BY MR. SHEDD:

2 Q I'm showing you what's been marked as State's
3 Exhibit 39 and ask if you recognize that?

4 A I do.

5 Q What is it?

6 A It's the damage I found to the door.

7 Q From the day before.

8 A From the inspection.

9 Q And is that a fair and accurate depiction from
10 December 27th of 2018?

11 A Yes.

12 Q All right. Thank you.

13 MR. SHEDD: At this time, State moves
14 State's 39 into evidence.

15 MR. HAMILTON: No objection, Your Honor.

16 (STATE EXH. 39, Photo, was entered into
17 evidence.)

18 BY MR. HAMILTON:

19 Q This is the door here on this side?

20 A Yes, that's the exterior.

21 Q And is this the damage that you're referring to
22 that you saw the day before.

23 A Correct.

24 Q I don't have any further questions, Mr. Boulware.
25 Please answer any Mr. Hamilton may have.

Testimony of Jeffrey Boulware
CROSS-EXAMINATION

90

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BY MR. HAMILTON:

Q Good morning, Mr. Boulware. You said you're the manager since about 2007 of the Navy Federals. Is that all the ones in Beaufort County or just the one on Parris Island?

A Just the one on Parris Island.

Q That branch, specifically?

A Yes.

Q I got you. As far as your duties as manager of that branch, can you, kind of, elaborate on those?

A I just oversee the facility we have on Parris Island, the building facility there, and I do -- we are responsible for the remote ATMs. We have one at Parris Island, one at the Navy Hospital, and this one on Lady's Island.

Q This one on Lady's Island, it's not there anymore?

A It's since -- we relocated it.

Q And so you said on the night of this incident that you received a call from the headquarters about this incident?

A I wouldn't say -- it's our corporate security. I don't know exactly, but our security depth.

Testimony of Jeffrey Boulware 91

1 Q And that's not run through your branch though, the
2 security?

3 A Correct.

4 Q And you mentioned that there is a monthly ATM
5 inspection.

6 A Yes, sir.

7 Q As part of that inspection, how long -- you know,
8 you spend five minutes at the ATM looking over it or
9 an hour?

10 A I mean, it probably ranges from 5 to 15
11 minutes. Just an outside visual inspection,
12 inspection of the machines itself. Sometimes
13 inside, some cleaning.

14 Q Okay. And you said that, in general, once you got
15 there and you saw the scene that the ATM itself was
16 not open?

17 A Correct.

18 Q And it was raining that night?

19 A The day of my inspection, it was not raining.

20 Q The night of this incident I'm talking about.

21 A If I remember right, there was some slight
22 drizzle that morning, but, honestly, I don't
23 remember any significant rain.

24 Q About what time was it that you arrived there?

25 A From my recollection, sometime between 2:00

Testimony of Jeffrey Boulware
and 4:00 o'clock that morning.

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Q So this was in the early morning hours of
December 28th. Your inspection, was that during the
day of December 27th, so like 12 hours earlier?

A Correct.

Q Okay.

MR. HAMILTON: I have no further
questions for this witness, Your Honor.

MR. SHEDD: Nothing further.

THE COURT: Any objection to Mr. Boulware
being excused?

MR. HAMILTON: No objection, Your Honor.

MR. SHEDD: No objection.

THE COURT: You're excused. Thank you.

MS. MOLINA: The State calls
Jeff Martin.

THE CLERK: Good morning. Put your left
hand on the Bible, raise your right hand. Do you
solemnly swear or affirm to truthfully answer all
questions asked of you by this court so help you
God?

THE WITNESS: Yes, ma'am.

THE CLERK: Thank you. Please speak
directly into the microphone, and, if you would,
state your name and spell your last name for

1 the.

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Testimony of Jeffrey Martin

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1 record.

2 THE WITNESS: Jeffrey Spence Martin,
3 spelled M-a-r-t-i-n.

4 WHEREUPON:

5 JEFFREY MARTIN,
6 after having been sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MS. MOLINA:

9 Q Good morning, Mr. Martin. Where do you work?

10 A I work for Navy Federal Credit Union located
11 in Winchester in the security department.

12 Q What are your jobs in the security department
13 there?

14 A We monitor all ATMs located within the
15 United States and outside the United States.

16 Q Do they provide security for the Navy Federal ATM
17 at 102 Sea Island Parkway on Lady's Island?

18 A Yes, ma'am.

19 Q How long have you been doing this, working for the
20 security company?

21 A Five years.

22 Q Do your locations have surveillance cameras?

23 A Yes, ma'am.

24 Q Can you monitor those in real time?

25 A Yes, ma'am.

Testimony of Jeffrey Martin

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1 Q Were you working on December 28th, 2018?

2 A Yes, ma'am.

3 Q What were you doing on December 28th?

4 A We were basically standing by monitoring. We
5 received an alarm.

6 Q What happens when you receive an alarm?

7 A We have a video screen that populates and we
8 can monitor live throughout the entire event.

9 Q Did you monitor it live? Did you watch it?

10 A Yes, ma'am.

11 Q And what did you do as this was happening?

12 A Once we identified that it was break-in, we
13 contacted the local police department, provided
14 assist, and then continued live monitoring until
15 the event was closed.

16 Q And the alert and the incident you're referring to
17 is the one that happened at the Sea Island Parkway?

18 A Yes, ma'am.

19 Q When you're talking to dispatch, did you provide
20 them a description?

21 A Yes, ma'am.

22 Q Did you send them any screen shots?

23 A Yes, ma'am.

24 STATE. EXH. 3, Photo, was marked for
25 identification.)

1 STATE. EXH. 4, Photo, was marked for
2 identification.)

3 STATE. EXH. 5, Photo, was marked for
4 identification.)

5 STATE. EXH. 6, Photo, was marked for
6 identification.)

7 STATE. EXH. 7, Photo, was marked for
8 identification.)

9 BY MS. MOLINA:

10 Q I'm showing you what has been previously marked as
11 State's 3 through 11 -- 3 through 7, sorry. Do you
12 know recognize those?

13 A Yes, ma'am.

14 Q How do you recognize them. What are they?

15 A It is the interior of the ATM FC7K.

16 Q Are those pictures from the surveillance?

17 A Yes, ma'am.

18 Q Are they fair and accurate?

19 A Yes, ma'am.

20 MS. MOLINA: At this time, State moves
21 State's 3 through 7 into evidence.

22 THE COURT: Any objection?

23 MR. HAMILTON: Without objection.

24 THE COURT: They are in.

25 STATE. EXH. 3, Photo, was entered into

Testimony of Jeffrey Martin

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1 evidence.)

2 STATE. EXH. 4, Photo, was entered into
3 evidence.)

4 STATE. EXH. 5, Photo, was entered into
5 evidence.)

6 STATE. EXH. 6, Photo, was entered into
7 evidence.)

8 (STATE EXH. 7, Photo, was entered into
9 evidence.)

10 MS. MOLINA: Permission to publish?

11 THE COURT: You may.

12 BY MS. MOLINA:

13 Q What's going on in this picture?

14 A It appears that the subject is looking at the
15 back of the ATM.

16 Q Is this in the beginning of the break-in?

17 A Yes, ma'am.

18 Q And what about in this picture?

19 A Moments after.

20 Q Is he wearing a mask?

21 A No, ma'am.

22 Q What about this picture?

23 A Yes, ma'am. Moments after, no mask?

24 Q Is this the picture you sent to law enforcement?

25 A Yes, ma'am.

Testimony of Jeffrey Martin

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1 Q What about in this picture?

2 A This picture was he had exited the area and
3 then reentered.

4 Q Within a few minute?

5 A Yes, ma'am.

6 Q What about this picture?

7 A That is the subject trying to pry the top of
8 the ATM with the crowbar.

9 Q This is the ATM?

10 A Yes, ma'am.

11 Q I have no further questions. Please answer any
12 that Mr. Hamilton has for you.

13 THE COURT: Mr. Hamilton.

14 CROSS-EXAMINATION

15 BY MR. HAMILTON:

16 Q Good morning, Mr. Martin.

17 A Good morning.

18 Q Which Winchester did you travel from, or are you
19 based out of?

20 A It's Win chester, Virginia.

21 Q Virginia?

22 A Yes, sir.

23 Q So you work for security department with the Navy
24 federal there?

25 A Yes, sir.

Testimony of Jeffrey Martin

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1 Q And you said you manage all the ATMs seemingly
2 worldwide?

3 A Right.

4 Q All nationally and internationally?

5 A Yes, sir.

6 Q Is that specifically you in your office?

7 A It's my office, and then there's an office in
8 Pensacola and headquarters which is located in
9 Vienna, Virginia.

10 Q Okay. And so you monitor the screen in real time
11 because an alarm, you know, comes up. And then when
12 that alarm comes up, is it like a pop-up of a camera
13 that comes up, a video system?

14 A Yes.

15 Q This call started around 1:30, 1:45 in the
16 morning, right?

17 A I believe so, yes.

18 Q What time did your shift start that night?

19 A 1700.

20 Q And so -- that's just fair to say that's
21 five o'clock p.m.?

22 A Right.

23 Q And with that in Washington, you gave a
24 description of the person in the video, right?

25 A Correct.

Testimony of Jeffrey Martin

100

1 Q And in that description, you estimated about
2 six feet 250 pounds?

3 A Estimated correct, with the angle of the
4 camera.

5 Q And also in that, in the pictures we just saw in
6 the surveillance footage, the person has a hood on,
7 right?

8 A Yes, sir.

9 Q And you can't tell any other distinguishing
10 factors or variables as far as, you know, the
11 description of this person whether, you know, hair, a
12 mohawk?

13 A When he returned, correct.

14 Q At no point during the video that you were
15 watching, you couldn't tell more than the description
16 you gave of six feet, 250-pound black man, right?

17 A Like I previously stated, with the angle of
18 the camera, we approximate.

19 Q Okay.

20 MR. HAMILTON: Just a moment of the
21 Court's indulgence, Your Honor.

22 BY MR. SHEDD:

23 Q Mr. Martin, during this event, you were located in
24 Winchester, Virginia?

25 A That is correct.

Testimony of Jeffrey Martin

101

1 Q You were never down here in Beaufort County?

2 A Negative.

3 Q Had you ever visit the ATM site before or since?

4 A No. No, sir.

5 MR. HAMILTON: I have no further

6 questions for this witness, Your Honor.

7 THE COURT: Anything further?

8 MS. MOLINA: Nothing further.

9 THE COURT: Any objection to this witness
10 being excused?

11 MR. HAMILTON: No, Your Honor.

12 MS. MOLINA: No, Your Honor.

13 THE COURT: Mr. Martin, you're excused,
14 sir. Thank you.

15 MR. SHEDD: The State calls Jonathan
16 Hewitt.

17 THE CLERK: Good morning. If you would,
18 put your left hand on Bible, raise your right
19 hand. Do you solemnly swear or affirm to
20 truthfully answer all questions asked of you by
21 this court so help you God?

22 THE WITNESS: I do.

23 THE CLERK: Thank you. Have a seat here.
24 Would you please speak directly into the
25 microphone, and, if you would, please state your

1 Testimony of Jonathan Hewitt 102
2 name for the record and also spell your last name?

3 THE WITNESS: Jonathan Hewitt,
4 H-e-w-i-t-t.

5 WHEREUPON:

6 JONATHAN HEWITT,
7 after having been sworn to tell the truth, testified
8 as follows:

9 DIRECT EXAMINATION

10 BY MR. SHEDD:

11 Q Mr. Hewitt, where do you currently live?

12 A I currently live in Choctaw, Oklahoma.

13 Q Before you lived in Oklahoma, did you work in
14 Beaufort County?

15 A I did. I worked for the sheriff's office.

16 Q And how long did you work for the sheriff's
17 office?

18 A Approximately four years.

19 Q Were you working on December 28th of 2018?

20 A I was.

21 Q And what were your -- were you on patrol? What
22 were your duties that day or that night?

23 A That day I was assigned to the Lady's Island
24 area.

25 Q Were you dispatched to a in progress breaking and
 entering at the Navy Federal Credit Union?

Testimony of Jonathan Hewitt

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- 1 A I was.
- 2 Q Is that located 102 Sea Island Parkway on Lady's
- 3 Island?
- 4 A Yes, sir.
- 5 Q Is that in Beaufort County?
- 6 A It is.
- 7 Q What time did the call come out, do you
- 8 remember?
- 9 A It was approximately 1:29 in the morning on
- 10 the 28th.
- 11 Q So the call comes out and you respond?
- 12 A I do.
- 13 Q Did you cut your lights on?
- 14 A I do believe I responded lights and sirens.
- 15 Q And is that because it was in progress?
- 16 A It was. It's due to the fact that dispatch
- 17 that -- the caller advised that the individual was
- 18 still inside at the time of the call.
- 19 Q Did the caller provide a description, or did you
- 20 hear a description?
- 21 A He did.
- 22 Q Okay. Approximately, how long did it take you
- 23 after the call came out until you arrived?
- 24 A Between five and seven minutes, probably.
- 25 Q Were you the first to arrive?

Testimony of Jonathan Hewitt

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1 A I was.

2 Q What did you do when you first get on scene?

3 A I first pulled into the parking lot and
4 observed the building that the ATM was located
5 inside of. And as I pulled in the parking lot, I
6 went around to the back side where I found a door.
7 Because I was only one there, I just held my
8 position until I could get another unit on
9 scene.

10 (STATE EXH. 8, Photo, was marked for
11 identification.)

12 (STATE EXH. 9, Photo, was marked for
13 identification.)

14 (STATE EXH. 10, Photo, was marked for
15 identification.)

16 Q I'm going to show you what has been previously
17 marked as 8, 9, and 10 and ask if you recognize those.

18 A That is the building, sir.

19 Q Is that a fair and accurate -- are those, State's
20 8, 9, 10 fair and accurate depictions of the building
21 as they appears on December 28, 2018?

22 A Yes, sir.

23 MR. SHEDD: At this time, the State would
24 move 8, 9, and 10 into evidence.

25 THE COURT: Any objection?

Testimony of Jonathan Hewitt
MR. HAMILTON: No objection, Your

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1
2 Honor.

3 THE COURT: They're in evidence.

4 (STATE EXH. 8, Photo, was entered into
5 evidence.)

6 (STATE EXH. 9, Photo, was entered into
7 evidence.)

8 (STATE EXH. 10, Photo, was entered into
9 evidence.)

10 BY MR. SHEDD:

11 Q Take one at a time. Tell us what we're looking at
12 here to the jury?

13 A So on the left side of the ATM would be Seas
14 Island Parkway. And then on the right side would
15 be the shopping center that I believe had like a
16 Dollar Tree. And so the Navy Federal Credit Union
17 you see here faces the south side or toward
18 downtown Beaufort. The other side is on the north
19 side of the rest of Lady's Island. On the front
20 side, you'll find the ATM. And on the right side
21 you'll find the door into the building that houses
22 the ATM.

23 Q And when you say the side that has the door that
24 houses the ATM, is this the side you're referring
25 to?

Testimony of Jonathan Hewitt

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1 A Yes, sir.

2 Q The side with the glass is the front of the ATM?

3 A Yes, sir.

4 Q That's State's 8.

5 State's 9, this is just -- can you tell me
6 what this is a picture of?

7 A That's just a picture of -- I can't really
8 tell because the brightness. I believe the door
9 is ajar in that picture, and that's, kind of, a
10 side angle of that door.

11 Q Does that make it better?

12 A Yes. You can see the door is open.

13 Q Okay. State's 10.

14 A That's directly looking into the building
15 which houses the safe in the area of the ATM.

16 Q When you -- at that point, you said you arrived.
17 The door was ajar and you waited, you held your
18 position and waited for back-up.

19 A Yeah, it wasn't open as much as in those
20 pictures because that was after we already cleared
21 it. Obviously, the pictures were taken, but it
22 was ajar, like it was cracked.

23 Q Okay. When back-up arrived, did you notice
24 anything -- how long approximately were you waiting
25 for back-up?

Testimony of Jonathan Hewitt

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1 A Maybe a minute and a half. Maybe.

2 Q Did you look around? Did you notice anything at
3 that point?

4 A I did. I looked on the ground outside the
5 door of that ATM. There was a crowbar laying on
6 the ground.

7 (STATE EXH. 11, Photo, was marked for
8 identification.)

9 (STATE EXH. 12, Photo, was marked for
10 identification.)

11 BY MR. SHEDD:

12 Q I'm going to show you two more pictures, what's
13 marked as State's Exhibit 11 and 12. Tell me if you
14 recognize those.

15 A I do.

16 Q What is the State's 11?

17 A State's 11 is the crowbar I saw on the ground
18 outside the ATM.

19 Q And is it a fair and accurate depiction of how the
20 crowbar appeared?

21 A It is.

22 Q And as to 12, what is State's 12?

23 A State's 12 is a picture of the back door
24 where you can clearly see the damage, through my
25 training and experience, would be concurrent with

Testimony of Jonathan Hewitt

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1 somebody attempting to gain entry into the
2 building.

3 Q And is that a fair and accurate depiction of how
4 that door looked on that date?

5 A It is.

6 MR. SHEDD: State moves 11 and 12 into
7 evidence.

8 THE COURT: Without objection?

9 MR. HAMILTON: Without objection, Your HOnor.

10 THE COURT: Without objection.

11 (STATE EXH. 11, Photo, was entered into
12 evidence.)

13 (STATE EXH. 12, Photo, was entered into
14 evidence.)

15 BY MR. SHEDD:

16 Q I'm showing you State's 11. And this is the
17 crowbar that you were describing?

18 A Yes, sir.

19 Q And now State's 12 is the picture of the damage to
20 the door, correct?

21 A Yes, sir.

22 Q So when back-up arrived, did you guys clear the
23 building?

24 A We did.

25 Q Was there anybody inside?

Testimony of Jonathan Hewitt

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1 A No, sir, there was not.

2 Q After you cleared the building, what did you do
3 next?

4 A I contacted -- I don't recall if I contacted
5 the complainant or the complainant contacted us.
6 I don't know who made the phone call, but I spoke
7 to a gentleman by the name of Jeff Martin who
8 advised me that he was with the security company
9 and provided still shots of the individual that he
10 witnessed inside the ATM.

11 Q Okay. Did you see those screen shots?

12 A I did.

13 Q Were they shared amongst the officers that were
14 working this case?

15 A It was. It was shared with myself and the
16 tracking team that was later called.

17 Q The bloodhound tracking team was requested?

18 A Yes, sir.

19 Q And why was that? Why was the bloodhounds
20 requested?

21 A At the time, it was -- well, it was common
22 practice on freshly committed crimes where we
23 believed the suspect fled on foot to call the
24 bloodhound tracking team to be called in an
25 attempt to locate the suspect.

Testimony of Jonathan Hewitt 110

1 Q When the -- what did you do next? Did you remain
2 on scene there on by the ATM?

3 A I did not. At the time, Deputy Tafoya had
4 responded with the tracking team, he believed that
5 he had located an individual that matched the
6 description that was given walking on
7 Lady's Island Drive. I proceeded to that
8 location. However, Deputy Breland had already
9 made contact with the individual.

10 Q So when you arrived Breland was already out
11 speaking with the person?

12 A Yes, sir.

13 Q And did you pull up and join that interaction?

14 A I did.

15 Q Did you notice anything about the person?

16 A I just noticed he was a black male at first.
17 When I made contact with him, he identified
18 himself and provided a South Carolina driver's
19 license. It was at that time that I was able to
20 confirm that that individual matched the
21 description with the photograph Sergeant Hovest
22 provided us.

23 Q Was that individual then detained at that point?

24 A He was and in handcuffs.

25 Q What did you do next? Did you stay there with

Testimony of Jonathan Hewitt

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1 that person?

2 A I did not. I was instructed to return to the
3 scene in order to have my scent eliminated from
4 the bloodhounds so they can continue to track.

5 Q And is that because you went into the ATM.

6 A Yes, sir. I don't know -- I can't testify to
7 how they do that. I was just in the area and they
8 had to remove my scent or eliminate it from the
9 bloodhound.

10 Q When you went back to the scene so they could
11 eliminate your scent, where was Breland and who was
12 with him?

13 A He was probably about a quarter of a mile
14 from the McTeer Bridge on Lady's Island.

15 Q Did Breland remain with the individual while you
16 went back to the scene?

17 A Yes, sir, where they found him.

18 Q When you got back to the scene and after your
19 scent was eliminated, what did you do next?

20 A I just remained on scene because an
21 investigator had been called, and I then assisted
22 Sergeant Garst in the collection of the evidence
23 and photographs that he took.

24 Q Was that night the last interaction you had with
25 that individual?

Testimony of Jonathan Hewitt

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1 A No. Following this successful tracking, he
2 was placed under arrest and he was transported to
3 the detention center by Corporal Breland. Just
4 because I did receive a warrant in the morning, I
5 did bond court also. I saw the suspect once
6 again.

7 Q And, at that point, did you speak with him?

8 A I did. I spoke with him, advised him of his
9 rights to refuse, and obtained what's known as an
10 elimination buccal swab from the individual that
11 would be used for further DNA testing.

12 Q When you say buccal swab, what is that?

13 A It's going to be a normal Q-Tip that's
14 sterile and provided to them and Mr. Holmes
15 voluntarily swabbed the interior of his mouth and
16 then we placed it into evidence.

17 Q After you collected the swab, was it sealed?

18 A It was.

19 STATE. EXH. 13, Buccal swab, was marked
20 for identification.)

21 BY MR. SHEDD:

22 Q I'm going to show you what's been previously
23 marked as State's Exhibit Number 13. Can you tell me
24 what that is?

25 A It's going to be the elimination buccal swab

Testimony of Jonathan Hewitt

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1 that I took from George Holmes under item number

2 And after you collected that buccal swab from Mr.

3 Holmes, did you put it in a bag and did you seal

4 it

5 A I did and then signed and dated it on the

6 back of it.

7 Q While it was in your custody and control, did you
8 maintain its integrity?

9 A I did, and I submitted it to the temporary
10 storage located in law enforcement center.

11 Q For later testing?

12 A Yes, sir.

13 Q And do you see the man that you got that DNA
14 sample from in the courtroom?

15 A I do, sir.

16 Q And can you describe something that he's wearing?

17 A He's wearing a white pin stripe shirt.

18 MR. SHEDD: Let the record reflect that
19 the witness has identified the defendant. And I
20 don't have any further questions.

21 CROSS-EXAMINATION

22 BY MR. HAMILTON:

23 Q Good morning, Mr. Hewitt.

24 A Good morning, sir.

25 Q Well, I know you're living in Oklahoma now. What

Testimony of Jonathan Hewitt

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1 are doing out there?

2 A I work for the State of Oklahoma as an
3 administrative assistant in the House of
4 Representatives.

5 Q And I just want to make sure, Mr. Hewitt, that's
6 the right term?

7 A Yes, sir.

8 Q You testified that you were with the sheriff's
9 office in Beaufort County for four years; is that
10 right?

11 A Give or take. I took a year and worked in a
12 different location, and then I returned in
13 02020.

14 Q So as of December 28, 2018, how long had you been
15 with the BCSO, the sheriff's office?

16 A A little over a year and a half.

17 Q Okay. And so when -- you were the first officer
18 that arrived on scene a couple minutes after the call
19 first came in?

20 A Yes, sir.

21 Q And initially when got there, kind of -- you
22 didn't look in the little kiosk, right?

23 A No, sir, I could not see inside of it.

24 Q Okay. And you didn't -- you waited -- like you
25 said, you waited for back-up to get there?

1 A Yes, sir.

2 Q Before you went in, or anything like that?

3 A Yes, sir.

4 Q And at one point, another officer shows up, and
5 then you guys went into the kiosk to inspect the ATM
6 and things like that?

7 A Yes, sir.

8 Q And you noticed that there was some damage to the
9 door frame and the ATM itself.

10 A Yes, sir.

11 Q But you noted in your report that it was
12 attempted -- the console was attempted to be pried
13 open.

14 A That's right. I know the console. To me, it
15 did not appear that entry was made.

16 Q Okay. You said earlier that through your training
17 and experience, I believe, in reference to that tire
18 iron that that is used for trying to gain entry into
19 things, right?

20 A I testified that the damage on the door
21 frame, through my training and experience, was
22 consistent with someone trying to gain entry into
23 the door.

24 Q Okay. And through your training and experience,
25 at this point was a year-and-a-half time?

Testimony of Jonathan Hewitt

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1 A Yes, sir.

2 Q Okay. And then a little while later you said you
3 received a screen shot from, I think you said,
4 Sergeant Hovest?

5 A I did, sir. Sergeant Hovest received it
6 from, I believe, the security system. He provided
7 it to us.

8 Q Okay. And once you had the photo, that's when you
9 then went and reported down towards the McTeer Bridge
10 where Deputy Breland was?

11 A Yes. He obtained an individual he believed
12 matched the description given by the complainant.

13 Q And that description again was black man, six
14 feet, dark clothing?

15 A That's what have on the TLSR in front of
16 it.

17 Q Okay. And so when you showed up in that area by
18 Lady's Island drive and the McTeer Bridge, the
19 subject -- the person that Deputy Breland was talking
20 to, he was not in a black hoodie or black pants?

21 A No, sir. I do not have that.

22 Q Actually, you have written he was in a red shirt
23 and some blue jeans?

24 A Yes, sir.

25 Q At this point, did you have the photo from -- you

Testimony of Jonathan Hewitt

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1 had the photo at this point from the screen shot?

2 A Yes, sir.

3 Q And then later you said, you said that you
4 reported back to the ATM location to go back and
5 eliminate your scent from the dog?

6 A Yes, sir.

7 Q The canine, the bloodhound?

8 A Yes, sir.

9 Q When you got there, at this point, it's still
10 raining, right?

11 A I don't recall, sir. I don't know.

12 Q Was it -- in looking at some of those photos
13 earlier, did it look like it was wet on the ground?

14 A I don't remember, to be honest. I don't
15 remember.

16 Q And you testified that once you went to bond court
17 the next morning, you spoke with Mr. Holmes after that
18 to obtain a buccal swab?

19 A Yes, sir.

20 Q And you told him it was for elimination
21 purposes?

22 A Yes, sir.

23 Q Elimination purposes, right?

24 A Yes, sir.

25 Q And that was because you were -- it was really

Testimony of Jonathan Hewitt

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1 your hope to get a buccal swab from him and it would
2 show that his DNA was not there at all?

3 A No, sir, it's common practice. Anytime
4 there's breaking and entering for a person of
5 interest to provide and opportunity of
6 innocence.

7 Q But when you're telling him, trying to explain to
8 him his rights to refusing stuff, you're calling it an
9 elimination buccal swab. So the purpose of it is to
10 eliminate his swab as any DNA present at the scene,
11 right?

12 A The elimination buccal swab is what it's
13 known throughout the lawsuit community, yes,
14 sir.

15 Q Okay. About how long would you say that you were
16 on scene from the moment you arrived a little after
17 1:30 until finally you-all disbursed?

18 A I'm not sure. I know that it occurred 1:29.
19 I don't know what the report reflected and I don't
20 remember what time the left.

21 Q What time did your shift start earlier that
22 evening?

23 A It started at 6:30.

24 Q 6:30 in the afternoon?

25 A In the evening, yes, sir.

Testimony of Jonathan Hewitt

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1 Q And so just -- at this point time of this call,
2 you were seven hours into your shift?

3 A Yes, sir.

4 MR. SHEDD: Just a moment of the Court's
5 indulgence, Your Honor.

6 THE COURT: Yes.

7 MR. HAMILTON: I have no further
8 questions for this witness, Your Honor. Thank
9 you.

10 THE COURT: Any redirect?

11 MR. SHEDD: No, Your Honor.

12 THE COURT: Any objection to this witness
13 being excused?

14 MR. SHEDD: Not from the State.

15 THE COURT: Mr. Hamilton, any objection
16 to this witness being excused?

17 MR. HAMILTON: No objection, Your Honor.

18 THE COURT: You're excused.

19 THE WITNESS: Thank you, Your Honor.

20 THE COURT: Ladies and gentlemen let's
21 take a brief recess. I need to remind you, ladies
22 and gentlemen, you're to hear me say this
23 repeatedly every time I send you back to your jury
24 room, do not discuss this case. It would not be
25 appropriate to do so until you have all the

Testimony of Jonathan Hewitt
THE COURT: Okay.

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All right. Well, Mr. Holmes, I don't want you leaving the courthouse, okay? I'm not going to take you into custody, but don't leave the courthouse, okay? And I'm going to make your investigator back there, Mr. Hamilton, the person that's going to be responsible for him. Okay, I appreciate it. Thank you.

So you-all don't have to be responsible for him.

MR. HAMILTON: Thank you, Your Honor.

(A break was taken from 11:07 a.m. to 11:15 a.m.)

(Bench conference.)

THE COURT: Was he offered anything in this case?

MR. SHEDD: Thirteen to 18 years.

THE COURT: Okay. And I understand you're client is getting agitated; is that fair to say?

MR. HAMILTON: He also -- I can do a lot better. He wants you to hear a motion to relieve counsel. He indicated he wants to fire me and Courtney.

THE COURT: And represent himself?

MR. HAMILTON: He says --

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1 THE COURT: He would have to represent
2 himself. Not happening.

3 MR. HAMILTON: I'm just asking because
4 he --

5 THE COURT: Absolutely. You can step
6 back. Thank you.

7 (End of bench conference.)

8 THE COURT: All right. Anything before
9 we bring the jury back in?

10 MR. HAMILTON: Yes, Your Honor. My
11 client would like to be heard on a motion to
12 relieve counsel before Your Honor at the right
13 time.

14 THE COURT: Okay. Mr. Holmes?

15 MR. HOLMES: Yes, I have some evidence to
16 present, and this is --

17 THE COURT: What is it?

18 MR. HOLMES: A line under the oath by
19 this officer. It's stamped notarized at my
20 preliminary hearing. He lied in front of
21 Judge Givens under the oath.

22 THE COURT: Have you seen this, what he's
23 referring to, Mr. Hamilton?

24 MR. HOLMES: It's perjury.

25 MR. HAMILTON: I have, Your Honor. It's

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1 a --

2 THE COURT: What is it?

3 MR. HAMILTON: It's a written -- I
4 believe a written note from Mr. Holmes when he was
5 in jail demanding a speedy trial. And the reason
6 being specifically that Mr. Hewitt in Mr. Holmes's
7 preliminary said the safe was cracked open.

8 THE COURT: Uh-huh.

9 MR. HAMILTON: I did elicit testimony
10 that he said it was attempted and had not been
11 breached. But it is not, you know, a notarized
12 statement by Deputy Hewitt in any way.

13 THE COURT: Okay.

14 MR. HOLMES: It's notarized he lied under
15 oath. Stephenson (sic) was representing me at the
16 time. And he lied for no reason. This is what I
17 have. This is evidence. If you play the tape,
18 it's evidence. And they record and they keep
19 everything. So that's my evidence and perjury
20 with him.

21 THE COURT: I believe you asked him the
22 question, is that correct, when he was here, that
23 he said he was -- I think it's obviously from the
24 video that it looks like you were attempting to
25 crack it open and didn't fully get it open. Fair

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1 enough, everyone?

2 MR. HOLMES: That's not fair.

3 THE COURT: That's what it looked like
4 from the video.

5 MR. HOLMES: I asked and he lied in front
6 Judge Givens. That's what he did under oath.

7 MR. HAMILTON: I think he's upset that I
8 didn't ask Deputy Givens -- Hewitt, excuse me, if
9 he lied under oath that Mr. Holmes' preliminary
10 hearing.

11 MR. HOLMES: He lied. Mr. Stephens knew
12 this and I would like to bring him as my witness.
13 He's a witness, so he can lose his part. He's
14 representing me, so I want him to represent as a
15 witness because he wrote that.

16 THE COURT: So you did put Mr. Stephens
17 on the witness list. So do you --

18 MR. HOLMES: I don't think this is right.

19 THE COURT: You can call him and say that
20 he said that.

21 MR. HAMILTON: He's on stand-by, Your
22 Honor.

23 THE COURT: He's on stand-by. Okay. So,
24 obviously, when you're able to call a witness, you
25 can.

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1 MR. HOLMES: The evidence is right there.

2 THE COURT: Okay. Anything else,
3 Mr. Holmes? You can always call Mr. Stephens when
4 it's your turn.

5 MR. HOLMES: I'm not satisfied, no. I'm
6 not satisfied. I'm not even satisfied. It's not
7 looking right at all.

8 THE COURT: Mr. Holmes, are you under the
9 influence of any alcohol or any drugs right now?

10 MR. HOLMES: No, ma'am. No, ma'am. I'm
11 not satisfied with his service. No.

12 THE COURT: Sir, if you want him to be
13 relieved, I can entertain that. But we're still
14 going forward with the trial and you would have to
15 represent yourself.

16 MR. HOLMES: I'll represent myself.
17 Mental health and all -- let's represent myself.
18 And tell the Lord Jesus, I'll represent myself. I
19 don't want his service. I'll represent myself.

20 MR. HAMILTON: It would be against the
21 advice of --

22 THE COURT: Counsel, obviously.

23 Mr. Holmes, we need to go forward. We're in
24 the middle of your trial, sir. You have not been to
25 law school. You don't know the rules of evidence and

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1 you will do better having the assistance of counsel.

2 MR. HOLMES: God is all -- I don't want
3 his service. This is not going right.

4 MR. HAMILTON: I'd like to reserve the
5 right that Mr. Holmes can reraise this motion at a
6 time in the future if he so chooses.

7 THE COURT: That's fine. That's fine.

8 Okay. Let's bring the jury in.

9 THE BAILIFF: Jurors entering the
10 courtroom, Your Honor.

11 THE COURT: Thank you.

12 (Jury enters the courtroom at 11:28 a.m.)

13 THE COURT: Welcome back, ladies and
14 gentlemen. We're going to go ahead and continue
15 to go toward. I will tell you that we usually
16 break around one o'clock for lunch here and I plan
17 on doing that, and we will take a little over a
18 hour for you to go out and grab something.

19 Okay. If you would, call your next
20 witness, sir.

21 MR. SHEDD: Thank you, Your Honor. The
22 State calls Ryan Garst.

23 THE CLERK: Please raise your right hand.
24 Do you solemnly swear or affirm to truthfully
25 answer all questions asked of you by the court so

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1 help you God?

2 THE WITNESS: So help me, God.

3 THE CLERK: If you would, please speak
4 directly into the microphone and say and spell
5 your last name.

6 THE WITNESS: Sergeant Ryan Garst. It's
7 spelled G-A-R-S-T.

8 BY MR. SHEDD:

9 Q Sergeant Garst, where do you work?

10 A The Beaufort County Sheriff's Office.

11 Q How long have you worked for the sheriff's
12 office?

13 A Approximately 22-and-a-half years.

14 Q What are you -- what's your rank and duties?

15 A My current rank is sergeant. And my current
16 duties, I'm assigned to the administrative
17 division of the Beaufort County Sheriff's Office
18 where currently I am -- my main responsibilities
19 are locating persons with outstanding arrest
20 warrants.

21 Q During your -- how long have you -- you said 22
22 years with the Sheriff's office?

23 A Yes, sir.

24 Q And during that time, did you spend any time in
25 investigations?

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- 1 A Approximately half of that time has been in
2 investigations.
- 3 Q Were you in investigations in December of 2018?
- 4 A I was.
- 5 Q And were you working on December 28, 2018?
- 6 A I was working in a duty investigator
7 capacity. Anything that happens after five
8 o'clock that's a major incident, a patrol
9 supervisor will request a duty investigator to
10 come out and assist in a crime scene.
- 11 Q So you were a duty investigator at that time?
- 12 A I was.
- 13 Q Did you receive a call out for -- did you receive
14 a call out that night?
- 15 A I did.
- 16 Q What was the nature of the call?
- 17 A It was a burglary, safecracking at
18 102 Sea Island Parkway, Beaufort County,
19 South Carolina, which is on Lady's Island. It was
20 an ATM machine.
- 21 Q Did you response out there?
- 22 A I did.
- 23 Q Approximately, when did you arrive out there?
- 24 A About 2:30 a.m.
- 25 Q When you got out there, what was going on?

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1 A There were some officers around on the scene
2 and I searched out Staff Sergeant Hovest to be
3 briefed on the incident.

4 Q So Staff Sergeant Hovest got you up to speed on
5 what was going on?

6 A He did.

7 Q Did you process the scene?

8 A I did.

9 Q And by process, what specifically did you do?

10 A Initially, I would take several sets of
11 photographs of the exterior of, in this case, the
12 ATM machine, or the structure that the ATM machine
13 was built into. I would take wide shots and then
14 medium shots and then up-close pictures to
15 document the crime scene. And from there, I would
16 do the same thing on the interior of the structure
17 and collect whatever physical evidence was in or
18 around the crime scene.

19 (STATE EXH. 14, Photo, was marked for
20 identification.)

21 (STATE EXH. 15, Photo, was marked for
22 identification.)

23 (STATE EXH. 16, Photo, was marked for
24 identification.)

25 (STATE EXH. 17, Photo, was marked for

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1 identification.)

2 (STATE EXH. 18, Photo, was marked for
3 identification.)

4 (STATE EXH. 19, Photo, was marked for
5 identification.)

6 (STATE EXH. 20, Photo, was marked for
7 identification.)

8 (STATE EXH. 21, Photo, was marked for
9 identification.)

10 (STATE EXH. 22, Photo, was marked for
11 identification.)

12 (STATE EXH. 23, Photo, was marked for
13 identification.)

14 (STATE EXH. 24, Photo, was marked for
15 identification.)

16 (STATE EXH. 25, Photo, was marked for
17 identification.)

18 (STATE EXH. 26, Photo, was marked for
19 identification.)

20 (STATE EXH. 27, Photo, was marked for
21 identification.)

22 BY MR. SHEDD:

23 Q I'm going to hand you what's been marked as
24 State's Exhibit 14 through 27 and I'm going to ask you
25 to just flip those and I'll ask you a couple of

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1 questions afterwards.

2 A Yes, sir.

3 Q Are those pictures that you took of the ATM at
4 102 Sea Island Parkway on December 28th?

5 A They are.

6 Q And are they a fair and accurate depiction of how
7 it appeared that night?

8 A They are.

9 MR. SHEDD: At this time, the State moves
10 14 through 27 into evidence.

11 THE COURT: Any objection?

12 MR. HAMILTON: No objection, Your
13 Honor.

14 THE COURT: Thank you.

15 (STATE EXH. 14, Photo, was marked for
16 identification.)

17 (STATE EXH. 15, Photo, was entered into
18 evidenceentered into evidence.)

19 (STATE EXH. 16, Photo, was entered into
20 evidence into evidence.)

21 (STATE EXH. 17, Photo, was entered into
22 evidence.)

23 (STATE EXH. 18, Photo, was entered into
24 evidence.)

25 (STATE EXH. 19, Photo, was entered into

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1 evidence.)

2 (STATE EXH. 20, Photo, was entered into
3 evidence.)

4 (STATE EXH. 21, Photo, was entered into
5 evidence.)

6 (STATE EXH. 22, Photo, was entered into
7 evidence.)

8 (STATE EXH. 23, Photo, was entered into
9 evidence.)

10 (STATE EXH. 24, Photo, was entered into
11 evidence.)

12 (STATE EXH. 25, Photo, was entered into
13 evidence.)

14 (STATE EXH. 26, Photo, was entered into
15 evidence.)

16 (STATE EXH. 27, Photo, was entered into
17 evidence.)

18 BY MR. SHEDD:

19 Q Sergeant Garst, I'm going to go through these
20 pictures with you starting with State's 14.

21 MR. HOLMES: (Inaudible.) I'm going to
22 kill myself. Of course, they say I'm going to
23 kill myself.

24 THE COURT: Shh, Mr. Holmes.

25 BY MR. SHEDD:

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1 Q So this is State's 14. Will you tell me what
2 we're looking at.

3 MR. HOLMES: (Inaudible interruption.)

4 THE COURT: Mr. Holmes, please. You're
5 interrupting the solicitor.

6 BY MR. SHEDD:

7 Q Can you tell me what we're seeing here in State's
8 Exhibit 14. I can turn the brightness up bit.

9 A That is what I would consider the rear door
10 of the structure that was housing -- that houses
11 the ATM machine at 102 Sea Island Parkway.

12 Q Is this from the side of the ATM as in this would
13 be the back -- this would be the outside portion of
14 the door?

15 A Correct.

16 Q Now I'm going to show you State's Exhibit 15.
17 What is this a picture of?

18 A I believe that's the interior of that same
19 door.

20 Q State's 16.

21 A Again, like a closer or medium shot of the
22 interior of that same door.

23 Q State's 17.

24 A What I would consider a tight shot with a
25 scale of what appeared to be blood on the interior

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1 of that same door.

2 Q State's 18.

3 A Tight shot of the interior of that same door
4 showing what appeared to be blood on the door.

5 Q This is State's 19.

6 A Tight shot with a scale showing relative size
7 of what appears to be a blood stain on the
8 interior of that same door.

9 Q State's 20.

10 A Same door, just a tighter shot of what
11 appears to be gouge marks and pry marks.

12 Q 21.

13 A Up-close or a tight shot of what appears to
14 be pry marks to the dead bolt.

15 Q 22.

16 A Gouge marks to that same door. It's a
17 tighter shot of the interior of the door -- or
18 exterior of the door.

19 Q This is State's 23.

20 A Side-view of the door with pry marks there on
21 the latch.

22 Q State's 24. What's going on in this picture? Why
23 did you take this picture?

24 A That was the prybar that I believe other
25 witnesses testified to that was found at the scene

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1 and I was -- I had -- I believe that's Officer
2 Hewitt. I asked to position the pry end of the
3 prybar into a gouge mark to see if it was
4 consistent with the damages, and it appears that
5 it was consistent.

6 Q Is this right here the gouge mark from
7 State's 22?

8 A Yes, sir.

9 Q Now I'm going to show you State's 25.

10 A Again, the same prybar that was in the
11 previous photo insert into a pry mark into the
12 interior dead bolt -- or exterior of the dead bolt
13 just to show the stippling was consistent, that
14 the tool could make that damage.

15 Q State's 26.

16 A The locking mechanism heavily damaged by
17 forcible entry.

18 Q So this is the portion of the building where the
19 dead bolt lock would go into? Is that what this is?

20 A It appears to be, yes, sir.

21 Q And then finally State's 27.

22 A It's the tighter shot of pry marks. It looks
23 like to the exterior of the door.

24 Q So we just went through the pictures of the
25 building and the door. Was there damage done to the

1 ATM itself?

2 A Yes, there was.

3 Q Were you aware that there was a camera in that
4 room?

5 A On the interior, I was made aware of that by
6 Staff Sergeant Hovest. He was able to show me
7 pictures of still shots from that video.

8 Q Did you take pictures of the ATM?

9 A I did.

10 (STATE EXH. 28, Photo, was marked for
11 identification.)

12 (STATE EXH. 29, Photo, was marked for
13 identification.)

14 (STATE EXH. 30, Photo, was marked for
15 identification.)

16 (STATE EXH. 31, Photo, was marked for
17 identification.)

18 BY MR. SHEDD:

19 Q I'm now going to show you what is marked as
20 State's Exhibit 28, 29, 30, 31. Do you recognize
21 those?

22 A Yes, sir.

23 Q Are those pictures of the ATM from
24 December 28, 2018?

25 A They are.

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1 Q And are they a fair and accurate depiction?

2 A They are.

3 MR. SHEDD: At this time, the State moves
4 State's 28 through 31 into evidence.

5 THE COURT: Any objection?

6 MR. HAMILTON: No objection.

7 THE COURT: Without objection.

8 (STATE EXH. 28, Photo, was entered into
9 evidence.)

10 (STATE EXH. 29, Photo, was entered into
11 evidence.)

12 (STATE EXH. 30, Photo, was entered into
13 evidence.)

14 (STATE EXH. 31, Photo, was entered into
15 evidence.)

16 BY MR. SHEDD:

17 Q I'll ask you go through these, Sergeant Garst.
18 First, this is State's 28. Can you tell me what we're
19 looking at in this image?

20 A This is an overview photograph of what is
21 the -- I guess the back side or the brain of a ATM
22 machine.

23 Q State's 29.

24 A That is a photograph. I was getting a wide
25 shot of what appeared to be pry marks, not pry

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1 marks -- evidence of prying to a locked cabinet on
2 that same ATM machine.

3 Q Okay. Is this where you're talking about?

4 A Yes, sir. That top edge. I think there's
5 tighter shots.

6 Q Is this the damage that you're referring to that
7 you were photographing?

8 A Yes, sir.

9 Q All right. I'm going to show you State's 30.

10 A That might be inverted. Right.

11 Q And what is this a picture of?

12 A What appears to be the safe being pried away
13 from the locking mechanism of the ATM machine.

14 Q And then State's 31.

15 A That's a wider shot of that same picture
16 showing relation -- size, scope.

17 Q Thank you, Sergeant Garst.

18 After you took the picture, did you do any
19 processing of the scene?

20 A I collected what appeared to be the blood
21 spatter on the interior/exterior of the exterior
22 door. I swabbed that with sterile swabs that were
23 provided to collect such evidence. I processed
24 the ATM, what I call, hood in my report. I didn't
25 know what else to call it, so I called it the

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1 hood. That's the brains of the ATM machine. I
2 processed that entire gray cabinet for
3 fingerprints and DNA. And I processed the crowbar
4 and collected it for DNA.

5 Q When you are collecting -- when you collected the
6 swab of the blood, how did you -- you said you used
7 sterile swab, but how do you actually collect it?

8 A Just take the cotton end of the swab and you
9 want to collect as much of that suspected blood as
10 possible so it gives the lab something to work
11 with. I was able to collect most of that stain
12 from wherever I saw it from. From there, it's
13 packaged and sealed to prevent contamination.

14 Q You did seal that swab?

15 A I did.

16 Q And other than collecting it and submitting it for
17 testing, did you maintain its integrity?

18 A I did until it was submitted into evidence.

19 Q Now, as you also processed the hood, as you
20 referred to, of the ATM for DNA, how do you do that?
21 Is it different than how you collect the blood swab?

22 A Well, that night it was wet. It had rained
23 and the outside of the ATM, that exterior door was
24 damp, so I didn't need any liquid to moisten the
25 cotton tip with. From the inside, it was pretty

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1 dry so I moistened the tip of the swab with a
2 sterile, like, saline solution, sterile water.
3 And then where I believe someone would have
4 deposited DNA by touching it or handling it, I rub
5 the swab over that area where I thought it could
6 have been touched by someone trying to break into
7 it, and then packaged that swab into an envelope
8 and sealed it to prevent contamination.

9 (STATE EXH. 32, Photo, was marked for
10 identification.)

11 (STATE EXH. 33, Photo, was marked for
12 identification.)

13 (STATE EXH. 34, Photo, was marked for
14 identification.)

15 (STATE EXH. 35, Photo, was marked for
16 identification.)

17 BY MR. SHEDD:

18 Q Sergeant Garst, I'm going to show you what has
19 been previously marked State's 32, 33, 34, and 35.
20 I'm going to ask you to take a look at those and tell
21 me if you recognize them.

22 A Yes, sir.

23 Q Let's just start with State's 32. What is
24 State's 32?

25 A 32 is a -- two swabs from interior ATM hood

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1 and safe.

2 Q State's 33.

3 A It's a swab of the interior of the interior
4 of the back door that was pried open as well as
5 the dead bolt.

6 Q State's 34.

7 A This was -- this is a DNA swab from the
8 crowbar collected from the crime scene.

9 Q And in State's 35?

10 A That's a DNA swab of the suspected blood from
11 the exterior of the door and the dead bolt.

12 Q And as to those exhibits, other than collecting
13 them, did you change or alter them in any way?

14 A No, sir.

15 Q While they were in your care and custody, did you
16 maintain their integrity?

17 A I did.

18 Q You submitted them into evidence for testing?

19 A I did.

20 Q All right. Sergeant Garst, you mentioned that
21 State's 34 was a swab -- that you swabbed the crowbar.
22 Did you send the crowbar for testing or did you just
23 send the swabs for testing?

24 A Typically, if I've already swabbed it, I
25 wouldn't be sending it to our lab. I could have

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1 sent it to our lab for them to process it. But
2 that was a pretty simple process for me to do it,
3 so I went ahead and did it.

4 STATE. EXH. 37, Crowbar, was marked for
5 identification.)

6 BY MR. SHEDD:

7 Q Let me show you now what's been marked as State's
8 Exhibit 37 and ask if you recognize that.

9 A I do.

10 Q What is it?

11 A One crowbar that's rusted.

12 Q Is that the crowbar that was collected from the
13 scene on December 28, 2018?

14 A It is.

15 Q And is that the same crowbar that you swabbed for
16 DNA?

17 A It is.

18 MR. SHEDD: At this time, the State would
19 move State's 37 into evidence.

20 THE COURT: Without objection?

21 MR. HAMILTON: No objection.

22 THE COURT: Without objection.

23 (STATE EXH. 37, Crowbar, was entered into
24 evidence.)

25 MR. SHEDD: Court's indulgence.

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1 BY MR. SHEDD:

2 Q Sergeant, did you collect State's 37, the crowbar?

3 Do you remember?

4 A Yes, I collected all the evidence in this
5 case.

6 Q Was that crowbar outside?

7 A It was.

8 Q And you said it was wet that night?

9 A It was.

10 Q Thank you. I don't have any further questions.
11 Please answer any Mr. Hamilton may have.

12 THE COURT: Mr. Hamilton.

13 CROSS-EXAMINATION

14 BY MR. HAMILTON:

15 Q For a couple more minutes, still good morning.

16 A Good morning.

17 Q You said you've been with BCSO, Beaufort County
18 Sheriff's Office, for 22-and-a-half years?

19 A Correct.

20 Q And at this point in your career with BCSO on
21 December 28th, you were acting as an investigator?

22 A Correct.

23 Q Okay. So you said that you showed up on scene and
24 you, kind of, got briefed about the situation by
25 Staff Sergeant Hovest?

1 A Correct.

2 Q And then you started looking around the ATM kiosk,
3 the little structure, and you took the various photos
4 that we went through?

5 A Yes, sir.

6 Q What time had your shift started that evening?

7 A I'm not sure what day of the week that was.
8 If it was Monday through Friday, I worked, at that
9 time, 8:00 to 5:00. And then anything after
10 five o'clock that was a major incident, such as
11 this would have been considered, then I would be
12 responding to that, obviously, 2:30 in the
13 morning. But I was responsible for anything
14 major that happened after five o'clock and before
15 8:00 a.m. the next morning. My shift started at
16 8:00 and ended at 5:00.

17 Q I got you. And so when you got there, you
18 started -- you also started collecting different, you
19 know, swabs of DNA, blood, and things like that,
20 right?

21 A That would have been probably one of the last
22 things I did, because I had to photograph it
23 first.

24 Q Past the photographs. Sorry, I did skip ahead a
25 little bit. But specifically with the DNA swabs, for

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1 the blood that was on -- just so we're clear, there
2 was blood on the exterior and the interior of the
3 door?

4 A I believe that was so, yes.

5 Q And was -- were both sides of the door swabbed
6 separately and submitted separately?

7 A Yes.

8 Q And you said that the ones on the inside, because
9 it was pretty dry, that you had to wet it with a
10 sterile saline solution?

11 A Correct.

12 Q And saline, that's just like clean salt water,
13 correct?

14 A I'm not even sure if it's saline. I think
15 it's sterile water that comes in pre-packaged from
16 the manufacturer.

17 Q Okay.

18 A It comes on blue, like, capsules that you
19 break the tip off of and then squirt it on the
20 swab.

21 Q I got you. But you said, for the outside, you
22 didn't need to do that. You didn't need to wet it?

23 A Right, the door was already wet. And for
24 blood that's dry, you would need to wet the swab.
25 But if the blood is already wet, either freshly

1 deposited or wet with rain, you don't need that
2 extra liquid to lift the blood. You just swipe
3 through it.

4 Q And so because it was wet with the rain that's not
5 the same as the type of water you would use to, kind
6 of, spritz the Q-Tip to do the swab, right?

7 A I couldn't answer that question.

8 Q Is rain sterile?

9 A I would not think it would be.

10 Q Okay. And then also for the -- in collecting the
11 DNA off of the -- specifically off of the tire iron,
12 this crowbar here, it was just the one swab?

13 A I have to look.

14 Q Okay.

15 A I didn't put a two, so it must be just the
16 one.

17 Q Okay. And is that -- when you're swabbing it,
18 what -- can you, kind of, describe it? Is it like a
19 Q-Tip that you shove in your ear, or is more like a
20 pipe cleaner-type thing?

21 A It's probably a little bit larger than your
22 standard -- the cotton end is a little bit larger
23 than your standard Q-Tip.

24 Q So small little, you know, cotton at the end of
25 the little stick?

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1 A I would agree with that.

2 Q Okay. And so for this whole tire iron that's -- I
3 know it's in packaging, but it's roughly from my thumb
4 to my index finger in length, and also, as far we saw
5 pictures of it, it has an angle, right?

6 A Yes.

7 Q So you used in collecting the potential DNA swabs
8 off of that -- or DNA material rather, in this swab,
9 you had slightly larger than a Q-Tip for that whole
10 tire iron.

11 A Yes, sir.

12 Q And then how many swabs did you collect off of the
13 ATM? I think you called it the hood. The ATM
14 itself.

15 A If I could refer to my notes.

16 Q Yes, absolutely.

17 A Two swabs from the interior ATM hood. Two.

18 Q Okay. And I think you testified that one was more
19 towards the locking mechanism portion and one was more
20 from the top?

21 A Where the damage was, typically, I don't
22 process anything in a similar situation.

23 Q Okay. And I noticed back -- sorry. Jumping back
24 now to a couple of the photos.

25 A Sure.

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1 Q Now, I notice in the pictures of the door, the
2 door itself to the kiosk, that there is no door
3 handle?

4 A On the interior.

5 Q Yeah.

6 A It didn't appear. I didn't notice that until
7 the photos. I didn't really make a note of
8 that.

9 Q Okay.

10 A Since I'm --

11 Q So you guys didn't look for a door handle for
12 either the inside or outside, interior, exterior --

13 A I know I didn't.

14 Q Okay.

15 MR. HAMILTON: Just a moment of the
16 Court's indulgence, Your Honor. I don't believe I
17 have any further questions for this witness.
18 Thank you.

19 THE COURT: Anything further?

20 MR. SHEDD: No, Your Honor.

21 THE COURT: Any objection to this witness
22 being excused?

23 MR. SHEDD: Not from the State.

24 MR. HAMILTON: No, Your Honor.

25 THE COURT: Call your next witness.

Testimony of Kyle Breland
MS. MOLINA: The State calls Kyle

150

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Breland.

THE CLERK: Good morning. If you would place your left hand on the Bible, raise your right hand. Do you solemnly swear or affirm to truthfully answer all questions asked of you by the court so help you God?

THE WITNESS: I do.

THE CLERK: Have a seat up there. Please speak directly into the microphone, and, if you would, state your name and spell your last name for the record.

THE WITNESS: Kyle Breland,
B-R-E-L-A-N-D.

WHEREUPON:

KYLE BRELAND,
after having been sworn, testified as follows:

DIRECT EXAMINATION

BY MS. MOLINA:

Q Where do you work, Deputy Breland?

A Colleton County Sheriff's Office.

Q Prior to that, did you work at the Beaufort County Sheriff's Office?

A I did.

Q How long have you been in law enforcement?

Testimony of Kyle Breland

151

1 A Since 2011.

2 Q About 11 years?

3 A About that. Approximately.

4 Q Were you working at the Beaufort County Sheriff's
5 Office in 2018?

6 A I was.

7 Q Were you working on December 28, 2018?

8 A Yes.

9 Q Did you receive a call out?

10 A I did.

11 Q What was the nature of that call out?

12 A It was a burglary that just occurred at an
13 ATM on Lady's Island.

14 Q Were you told to go anywhere?

15 A I was told by my supervisor to establish a
16 perimeter near the incident location.

17 Q Did you receive any information or description
18 about the suspect?

19 A The initial description was a black male,
20 dark-colored clothing.

21 Q Did you receive any information about where he
22 might be?

23 A So after being on perimeter awhile and
24 information was trafficked over the radio, a
25 possible person matching that description was in

Testimony of Kyle Breland

152

1 the area of Lady's Island Drive near the entrance
2 to Cat Island.

3 Q Did you go there?

4 A I did.

5 Q And when you went there, did you see anyone?

6 A I did. I observed a male walking in the
7 direction of the intersection of Lady's Island
8 Drive and Cat Island.

9 Q Did you speak with that man?

10 A I did.

11 Q Was anybody else on scene with you?

12 A Moments after I made initial contact with the
13 subject, Deputy Hewitt turned around and came out
14 also.

15 Q Were you-all able to identify him?

16 A Yes.

17 Q How did you identify him?

18 A There was a surveillance photo taken from
19 inside of the ATM that was sent to our
20 supervisor.

21 Q Did it appear to be the same person?

22 A Yes.

23 Q Were you able to find out who he was?

24 A Yes.

25 Q And how did you do that?

Testimony of Kyle Breland

153

- 1 A It was a South Carolina beginner's permit
2 ID.
- 3 Q So he provided you an identification card?
- 4 A Yes.
- 5 Q At that point, what did you-all do?
- 6 A We detained him.
- 7 Q And after you detained him, what happened?
- 8 A We stood in front of my patrol vehicle until
9 the tracking team tracked up to the subject.
- 10 Q What tracking team?
- 11 A The sheriff's office.
- 12 Q Dog tracking?
- 13 A Yes.
- 14 Q Was Deputy Hewitt still there with you?
- 15 A I believe Deputy Hewitt returned back to the
16 initial incident occasion.
- 17 Q So it was just you and the defendant at the
18 scene?
- 19 A Yes, ma'am.
- 20 Q While you-all were standing there, what happened
21 as it relates to the dog tracking?
- 22 A The dogs tracked right up to the subject.
- 23 Q When you say "right up to the subject," did the
24 dog touch him, did he -- what did he do? What did the
25 dog do?

Testimony of Kyle Breland

154

1 A I'm not a hundred percent if the dog actually
2 put his nose on his leg, but he walked right up to
3 the subject.

4 Q Do you see the man that you detained until the dog
5 walked up or maybe pressed his nose?

6 A Yes.

7 Q In the courtroom today?

8 A Yes.

9 Q And what is that person wearing?

10 A A white striped shirt.

11 MS. MOLINA: Please let the record
12 reflect the witness has identified the defendant.

13 And I have no further questions for this
14 witness.

15 THE COURT: Mr. Hamilton.

16 CROSS-EXAMINATION

17 BY MR. HAMILTON:

18 Q All right. Good afternoon, Deputy Breland?

19 A Good afternoon.

20 Q So you were at BCSO working that night of December
21 -- well, the night of December 27th, I guess, but
22 early morning December 28, right?

23 A Yes, sir.

24 Q And you initially -- you heard the call come in
25 about, you know, a current and active crime scene

Testimony of Kyle Breland

155

1 about a burglary?

2 A Yes, sir.

3 Q Okay. It was raining that night, right?

4 A I don't recall if it was raining.

5 Q Okay. You were dispatched towards the area of
6 Lady's Island Drive towards McTeer Bridge?

7 A Yes, sir.

8 Q I think you said and Cat Island Drive?

9 A Yes, sir.

10 Q About how long after the initial call came in was
11 it before you got dispatched to that area?

12 A From the perimeter or from the initial --

13 Q So you initially showed up onto the scene then --
14 at the ATM then?

15 A No.

16 Q Okay. So you got dispatched towards -- so, your
17 initial contact with this incident was being
18 dispatched towards Lady's Island Drive and Cat
19 Island?

20 A It was to establish a perimeter down from the
21 ATM, was my initial --

22 Q Okay. But then when you -- so how long after that
23 would you estimate was it that you then got dispatched
24 towards McTeer Bridge?

25 A One second. So from leaving the perimeter to

Testimony of Kyle Breland

156

1 Lady's Island Drive, approximately a half hour,
2 maybe.

3 Q Okay. And, at this point, you learned that there
4 was a -- or you had the description at least of the
5 subject that you guys were looking for?

6 A Yes.

7 Q And you didn't have a photograph yet at this
8 point? You specifically.

9 A Correct.

10 Q Okay. And when you're headed down Lady's Island
11 Drive, you got this description in your head that it's
12 a roughly six-feet tall, 250-pound black man in dark
13 clothing, right?

14 A I'd say black male wearing dark clothing.

15 Q And then when you're driving down towards that
16 intersection, I'm assuming you're in your car with the
17 windows up?

18 A I don't recall if the windows were up or
19 down.

20 Q Okay. Either way, you're driving down the road
21 and you see somebody walking on the sidewalk?

22 A Yes.

23 Q Okay. And he is seemingly a black man?

24 A Yes.

25 Q Seemingly not six-feet tall?

Testimony of Kyle Breland

157

1 A I can't say for certain that he was six feet
2 or under six feet. I don't recall.

3 Q But you did notice that he was not wearing black
4 clothing?

5 A At that time, he had on jeans and a --

6 Q A red t-shirt, correct?

7 A Yeah.

8 Q Okay. And so I want to just be clear, it's
9 potentially, at least, drizzling. I think we've heard
10 through testimony that it had been raining that
11 night?

12 A I don't recall that.

13 Q But you're driving down the road sometime around
14 two o'clock in the morning and you see a black man in
15 a red shirt and blue jeans and you decided to detain
16 him. Or to pull over and, at least, talk to him.

17 A Going off the information that I received,
18 while I was on perimeter to head to that area, he
19 was also the only person in that area.

20 Q Okay. Are there houses or anything around this
21 area?

22 A No, sir. Not on that sidewalk. There's
23 marsh.

24 Q Okay. So when you pulled up -- well, did you pull
25 up right in front of this person on the sidewalk, did

Testimony of Kyle Breland

158

1 you pull up on the street?

2 A I pulled up -- I activated by blue lights and
3 pulled into the median.

4 Q Into the median?

5 A Yes, sir.

6 Q So there's a lane of travel in between where you
7 were parked and versus where this person was
8 walking?

9 A Yes, sir.

10 Q Okay. And did you, kind of, yell out from your
11 cruiser? Did you get out of your car?

12 A I got out and asked him to come over and talk
13 with me.

14 Q And so he came over into the median then.

15 A Yes, sir.

16 Q Across that lane of travel?

17 A Yes, sir.

18 Q And you learned that this person was headed
19 towards the hospital.

20 A That's what he advised.

21 Q Due to some medical condition that causes his
22 hands to swell and things like that?

23 A Yes, sir.

24 Q You didn't ask him if they need any sort of
25 medical attention or emergency services?

Testimony of Kyle Breland

159

1 A I don't recall.

2 Q About how long, rough estimate, rough estimate,
3 was it from that point that you initially detained him
4 to when the dogs came up?

5 A Approximately, 25 to 30 minutes.

6 Q Okay. And so for some time, give or take a half
7 hour or so, you're sitting there detained with a man
8 who said he was running -- or heading towards, at
9 least, to the hospital for a medical condition?

10 A Yes.

11 Q With no offer of emergency or medical services?

12 A I don't recall.

13 Q If you had called for any emergency or medical,
14 EMT, or anything, an ambulance that would have been
15 reflected in your report, right?

16 A Yes.

17 Q And it's not in your report.

18 A No.

19 MR. HAMILTON: Just a moment of the
20 Court's indulgence, Your Honor.

21 BY MR. HAMILTON:

22 Q Deputy Breland, I think you testified that you
23 never went to the actual ATM, to the scene itself,
24 during this night?

25 A Not initially. Once Mr. Holmes was advised

Testimony of Kyle Breland

160

1 of his Miranda rights, to pick up the documents
2 needed for the jail, that was the only time I was
3 at the incident location.

4 Q So you did swing past the 102 Sea Island
5 Parkway?

6 A Yes.

7 Q Okay. And did you see, you know, the ATM
8 structure or the ATM itself while you were there?

9 A Yes.

10 Q And you saw that it had not been -- the access to
11 the compartment of the ATM had not been breached?

12 A I did not get out and observe the ATM
13 itself.

14 Q Okay.

15 MR. HAMILTON: I have no further
16 questions for this witness, Your Honor. Thank
17 you.

18 THE COURT: Anything further?

19 REDIRECT EXAMINATION

20 BY MS. MOLINA:

21 Q When you came into contact with the defendant, did
22 he appear to be in medical distress?

23 A No.

24 MS. MOLINA: Nothing further.

25 THE COURT: Anything further,

Testimony of Kyle Breland

161

1 Mr. Hamilton?

2 MR. HAMILTON: Nothing further, Your
3 Honor.

4 THE COURT: All right. Any objection to
5 this witness being excused?

6 MS. MOLINA: Nothing from the State.

7 MR. HAMILTON: No, Your Honor.

8 THE COURT: You're excused.

9 Call your next witness.

10 MS. MOLINA: The State call David Tafoya.

11 THE CLERK: Good morning. If you would,
12 please place your left hand on the Bible and raise
13 your right hand. Do you solemnly swear or affirm
14 to truthfully answer all questions asked of you by
15 this court, so help you God?

16 THE WITNESS: I do.

17 THE CLERK: Speak directly into the
18 microphone. If you would, state your name and
19 also spell your last name for the record.

20 THE WITNESS: Sergeant David Tafoya,
21 T-a-f-o-y-a.

22 WHEREUPON:

23 SERGEANT DAVID TAFOYA,
24 after having been sworn, testified as follows:

25 DIRECT EXAMINATION

Testimony of David Tafoya

162

1 BY MS. MOLINA:

2 Q Sergeant Tafoya, where do you work?

3 A The Beaufort County Sheriff's Office.

4 Q And what are your duties at the Beaufort County
5 Sheriff's Office?

6 A I'm the northern patrol supervisor.

7 Q Are you a member of the bloodhound tracking team?

8 A I am not currently, but I was.

9 Q Were you a member in 2018?

10 A Yes.

11 Q How long were you a member of the tracking team?

12 A Three years.

13 Q Do you have to be trained to be on the tracking
14 team?

15 A Yes, ma'am.

16 Q Do the dogs need to be trained in order to be
17 tracking dogs?

18 A Yes, ma'am.

19 Q Do you-all practice and continue training?

20 A Yes, ma'am.

21 Q How often were you doing that?

22 A Every week, once a week.

23 Q So you and the dog would train weekly?

24 A Yeah. All the dogs and our team members
25 would train.

Testimony of David Tafoya

163

1 Q Okay. Were you working on December 28th, 2018?

2 A Originally, no. I was off duty, but I was
3 called in for a dog call.

4 Q Where were you called for this dog call?

5 A It was the Navy Federal ATM at 102 Sea Island
6 Parkway.

7 Q Is that in Beaufort County?

8 A Yes, on Lady's Island.

9 Q And you were called out to do the track?

10 A That's correct.

11 Q When do you-all typically do tracks? Like, you
12 said you were not working but were called out. When
13 does that happen?

14 A If we have an incident anywhere within the
15 county where they require our bloodhounds come out
16 and conduct a track, they'll call members that are
17 either on duty already or off duty to come in and
18 respond.

19 Q While you were en route to the scene, did you
20 receive any information?

21 A Yes. The initial call was for a burglary or
22 an ATM -- attempted burglary at the ATM, and we
23 requested to respond for a track.

24 Q Okay. While you were en route to the scene, did
25 you see anybody?

Testimony of David Tafoya

164

1 A I did.

2 Q And who did you -- or where did you see somebody?

3 A I saw a black male, heavier set, walking
4 along Lady's Island Drive closest to the Cat
5 Island side walking towards the Island Causeway,
6 which is towards the Cat Island area.

7 Q And was he wearing dark clothing?

8 A From my perspective, yes.

9 Q And, at this point, you still haven't made it to
10 the scene, correct?

11 A Correct.

12 Q Once you arrive on scene, what do you do?

13 A I immediately went to the shift supervisor
14 Staff Sergeant Travis Hovest and asked him what
15 the suspect description was and he provided it was
16 a heavy-set black male. I don't remember the
17 clothing description provided at the time, but
18 with the black male, heavy set, I immediately
19 said, hey, you've got somebody matching a black
20 male, heavy set, walking down Lady's Island Drive
21 right now as I was responding.

22 Q Why did that person on Lady's Island Drive stand
23 out to you?

24 A The time of day. It was nighttime. There
25 was nobody else out. And just responding to the

Testimony of David Tafoya

165

1 calls of that kind of fashion, I'm always looking
2 for vehicles or suspects in that area leaving the
3 area, coming to from -- just so we have that
4 knowledge with the dog.

5 Q You're just alert to the surroundings?

6 A Yes.

7 Q So once you're briefed on scene then what do
8 you?

9 A I let Staff Sergeant Hovest know about the
10 suspect walking that was matching that
11 description.

12 Q Okay.

13 A And then I waited for the dog wagon to arrive
14 with the dogs. And with the team members we
15 corroborated the information. I was chosen to be
16 the handler for the dog.

17 Q And by handler, what does that mean?

18 A That means we are -- the one that has the
19 leash is in control of that dog and watching that
20 dog.

21 Q Okay. What was the dog's name in this case?

22 A Copper.

23 Q Is Copper trained -- what kind of searches does
24 Copper do?

25 A Copper can do two searches. He can do last

Testimony of David Tafoya

166

1 known searches or article searches. So if we have
2 any kind of material we can preserve, we use that
3 as an article. Or we can go off any last known, a
4 certain area that we know where the person was
5 last and instruct him off of either the article or
6 the last known.

7 Q What did Copper use in this case?

8 A We used an article, and it was a crowbar that
9 was bagged.

10 Q Before tracks, do you have to sometimes eliminate
11 people?

12 A Yes.

13 Q And why do you do that?

14 A Just knowing people who are in the area.
15 Officers particularly are within the crime scene.
16 For instance, if we had an armed robbery at a gas
17 station, we would eliminate the cashier or any
18 other witnesses inside that area. But that's why
19 we would eliminate them.

20 Q In case, was anybody eliminated?

21 A Yes.

22 Q Who was eliminated?

23 A PFC, Jonathan Hewitt, I believe he was at the
24 time.

25 Q After, Deputy Hewitt is eliminated, then what do

Testimony of David Tafoya

167

1 you-all do?

2 A We begin the track.

3 (STATE EXH. 38, Diagram of tracks, was
4 marked for identification.)

5 BY MS. MOLINA:

6 Q I'm showing you what's been marked as State's
7 Exhibit 38. Do you recognize that?

8 A I do.

9 Q And how do you recognize that?

10 A This is the tracking photograph that I did
11 after this track.

12 Q It's a diagram of your track?

13 A Yes.

14 Q Is that a fair and accurate depiction?

15 A Yes.

16 MR. SHEDD: At this time, State moves
17 State's 38 into evidence.

18 MR. HAMILTON: No objection, Your
19 Honor.

20 THE COURT: Without objection.

21 (STATE EXH. 38, Diagram of tracks, was
22 entered into evidence.)

23 MS. MOLINA: And I would just ask
24 Sergeant Tafoya off the stand.

25 THE COURT: You may step down.

Testimony of David Tafoya

168

1 BY MS. MOLINA:

2 Q Okay. Sergeant Tafoya, can you just orient the
3 jury to where you-all were and started?

4 A So this is the Lady's Island Center where
5 Dollar Tree, the ATM, the Shell Station is right
6 next door, the antique store, the bicycle store.
7 It's a store front area right there. This is
8 where we started where I marked S. The A is there
9 marked for article, so we know which article we
10 used. And then the yellow dash -- these yellow
11 dashes, kind of, is our dash where we ran.

12 Q What article did you use?

13 A The crowbar.

14 Q The crowbar, okay. Now, take us through your
15 track.

16 A So we started right here by the ATM. The
17 article was already bagged and preserved for us,
18 and we do that for the scent purposes. To keep
19 the scent within that bag. Once we get Copper,
20 exposed him to the scent, we gave him the tracking
21 command, so he locks onto that. And then after
22 that, we immediately began through the parking lot
23 over towards the Circle K.

24 Q Okay. And then where did you go from there?

25 A So we went through the parking lot of

Testimony of David Tafoya

169

1 Circle K. This is Youmans Drive right here, and
2 we started tracking down Youmans Drive.

3 Q Did Copper appear to be motivated?

4 A Yes. He was motivated. His nose was down,
5 and that tells me as a handler he is locked on.
6 He is tracking.

7 Q He is focused?

8 A Yes.

9 Q From there where did you go?

10 A We continued down Youmans Drive. This is the
11 intersection of the back side of the Beaufort High
12 School entrance. Copper immediately made a
13 left-left hand turn down and continued down
14 Youmans Drive. Youmans Drive actually then turns
15 this way, back behind the baseball field. This
16 turns into Caroline Avenue, I believe, or Caroline
17 Drive. This is the Beaufort High School football
18 stadium. So we tracked right down through the
19 middle of the parking lot of the stadium. And
20 then down -- there's a roadway that continues down
21 and around the stadium to this cross street here,
22 which is Rue Du Bois. Immediately, when we come
23 into the intersection of Rue Du Bois, Copper turns
24 left immediately, nose still down.

25 Q Is Copper moving slow throughout this?

Testimony of David Tafoya

170

1 A Towards the beginning he moves a little
2 slower progressive. But when we get down here to
3 Rue Du Bois and make this left, we opened up into
4 the full sprint.

5 Q Is he smelling the freshest scent?

6 A Yes.

7 Q And so he's motivated by the freshest scent?

8 A Yes.

9 Q And once you go back to where you turn down, what
10 happens there?

11 A We go to Rue Du Bois, we come up to Lady's
12 Island Drive and we cross Lady's Island Drive, and
13 then it's an immediately -- I mean, we're bee
14 lining it down Lady's Island Drive.

15 Q You're sprinting.

16 A Yeah, we're running.

17 Q What happens after you're sprinting down that
18 stretch?

19 A So we get down to close to Meridian Road
20 here, and Island Causeway is right here. There's
21 a patrol unit with its lights on in the median.
22 Just from communication, I know they had that
23 subject that I had saw driving to the scene
24 detained there.

25 But Copper immediately walks all the way

Testimony of David Tafoya

171

1 down to the side walk, comes out of the roadway
2 straight up to the defendant and put his nose in
3 his crotch.

4 Q Now, when dogs are tracking, are they looking for
5 a person or are they following a scent?

6 A They're following a scent given by a
7 person.

8 Q Okay, you can go back to the stand.

9 About how long did it take to do this entire
10 track?

11 A Roughly -- I don't have a time log -- 15
12 minutes.

13 Q Okay. Other than being Copper's handler, did you
14 have any other involvement in this case?

15 A No.

16 Q No?

17 A No.

18 Q I have no further questions. Please answer any
19 that Mr. Hamilton has.

20 THE COURT: Mr. Hamilton.

21 CROSS-EXAMINATION

22 BY MR. HAMILTON:

23 Q Good afternoon, Sergeant Tafoya. How are you
24 doing?

25 A Good.

Testimony of David Tafoya

172

1 Q So you were the handler this night. You said
2 handler. You were holding a leash.

3 A Correct.

4 Q You're kind of -- when the dog is on a track, he's
5 kind of leading you, right?

6 A Yes.

7 Q So you said that you were not actually working
8 that night?

9 A Correct.

10 Q So you got called in the middle of the night out
11 of bed --

12 A That's correct.

13 Q -- to come down to this -- to get the dog and come
14 down and do the track?

15 A Yes.

16 Q Okay. You said that there are weekly trainings
17 for the dogs, correct?

18 A Correct.

19 Q What kind of training is that? I know you
20 mentioned article versus freshest scent, things like
21 that. I mean, does your training encompass all that
22 or anything else?

23 A Yes. Weekly, we have different dogs. Some
24 are only last known, some are only article. And
25 we got these dogs that are combination dogs that

Testimony of David Tafoya

173

1 do both last known and article. Each week we
2 decide, make a determination if we're going to use
3 an article or a last known for the dogs that have
4 that combination skill. Obviously, only dogs that
5 have that certain skill will get that skill to
6 use. We pretty much -- we get out early. We lay
7 tracks down personally, ourselves. And then when
8 it's that dog's turn, that person will hide, and
9 we run a track as any normal situation.

10 Q Okay. And then for -- how do you choose which dog
11 is going, you know, do a track at any given time?

12 A Just based on the circumstances of the scene
13 that we're at.

14 Q So for the circumstances of this, you said there
15 was potential for article or last known scent, right?

16 A Correct.

17 Q How many dogs in BCSC, at least at this time?

18 A I'm only aware of three dogs that are
19 currently in service. I know Copper is still in
20 service. He's is a both combination dog.

21 Q Right.

22 A It's his sister Misty I want to say is a
23 last-known dog. And then I'm not sure on Star,
24 but I want to say she is a last-known dog as well.
25 But prior to this -- we've retired dogs since.

Testimony of David Tafoya

174

1 Q So on this night, I guess Copper was chosen
2 because he was the only one available that could do an
3 article search?

4 A I don't recall which other dog we brought.
5 We always bring two with us.

6 Q Okay.

7 A But Copper was chosen because we had an
8 article.

9 Q Okay. And so you went through that track. I
10 know -- and I think it was about just -- you know, shy
11 of two miles but over half a mile, 1.75 miles, is that
12 about right?

13 A Like I said, whatever the distances were.

14 Q Okay. And I know that took a little bit of time
15 to complete. You said somewhere around 15-plus
16 minutes or so. And at one point, I think towards the
17 end, on Lady's Island Drive you said guys were
18 sprinting, correct?

19 A Yes.

20 Q Excuse me. And when you were -- when you're
21 traveling down and conducting this track, it was --
22 everything was wet outside. It had been raining that
23 night?

24 A That's correct.

25 Q When it rains, the impact it has on a dog's

Testimony of David Tafoya

175

1 tracking abilities, is there appreciable, or, you
2 know, any kind of impact?

3 A It increases.

4 Q It increases?

5 A Yes, because the scent will saturate on the
6 vegetation, water, and it will die down.

7 Q Okay. And how long -- I guess, what's -- a rough
8 estimate again, would you say an average or, kind of,
9 the higher end of the length of a track that a single
10 dog could do at one time?

11 A I'm not sure exactly what you're asking.

12 Q I phrased that poorly. I apologize. I'll
13 rephrase. What's about the length of the track that a
14 dog can do without needing to be re-refresed on the
15 scent or dog switched out, or something like that?

16 A When the dog starts showing signs that
17 they're tired, or, you know, they're not working.

18 Q Okay.

19 A In this case, Copper is busting his tail.
20 He's motivated. When he sprints us, we're locked
21 on the track.

22 Q Okay.

23 A We're getting close.

24 Q And you mentioned, so when you were heading
25 towards -- initially towards the ATM, you know, to

Testimony of David Tafoya

176

1 start the dog track, you said that you were driving
2 down and notice a person. Were you driving down
3 Lady's Island Drive?

4 A I was.

5 Q And you notice a person that you said from your
6 perspective seemed like they were in dark clothing.

7 A Uh-huh.

8 Q It was about 2:00-ish in the morning at this
9 point?

10 A Maybe. I don't have the call notes in front
11 of me, but roughly.

12 Q Or middle of the night at least.

13 A Yes.

14 Q So it's dark out.

15 A Fair enough.

16 Q Okay.

17 MR. HAMILTON: Just a moment of the
18 Court's indulgence, Your Honor.

19 THE COURT: Okay. I have no further
20 questions for this witness.

21 THE COURT: Anything further?

22 MS. MOLINA: Nothing from the State.

23 THE COURT: May this witness be excused?

24 MS. MOLINA: Yes, Your Honor.

25 THE COURT: Sir, you're excused.

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1 Thank.

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1 you.

2 THE COURT: Call your next witness.

3 MR. SHEDD: The State calls Andrew
4 Garinger.

5 THE CLERK: Raise your right hand. Do
6 you solemnly swear or affirm to truthfully answer
7 all questions asked of you by this court so help
8 you God?

9 THE WITNESS: I do.

10 THE CLERK: Speak directly into the
11 microphone. State your name for the record and
12 spell your last name.

13 THE WITNESS: My name is Andrew Garinger.
14 It's G-a-r-i-n-g-e-r.

15 WHEREUPON:

16 ANDREW BARINGER,
17 after having been sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY MR. SHEDD:

20 Q Mr. Garinger, where do you work?

21 A I work for the Beaufort County Sheriff's
22 Office forensic services laboratory.

23 Q How long have you been in that position?

24 A I've worked there since January of 2015.

25 Q What are the qualifications that you need for that

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1 position?

2 A Well, you have to have a degree in the
3 natural sciences. Specific coursework in
4 molecular biology, genetics, population of
5 genetics. When they hired me, I had to have some
6 experience already.

7 Q You had prior experience as well?

8 A Yes.

9 Q And what's the total amount of time of your
10 experience doing this type of work?

11 A I started out as a forensic DNA analyst for
12 the Illinois state police in 2006.

13 Q As a DNA analyst, do you have continuing education
14 that you're required to do?

15 A Yes.

16 Q Have you testified as an expert before?

17 A Yes.

18 MR. SHEDD: At this time, the State moves
19 to qualify Andrew Garinger as an expert in
20 forensic DNA analysis.

21 THE COURT: Any voir dire?

22 MR. HAMILTON: No, Your Honor.

23 THE COURT: Ladies and gentlemen, in this
24 case, Mr. Garinger is being qualified as an expert
25 in DNA analysis. That allows him to give his

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1 opinion and the reasons for his opinion. And
2 that's for you to use as you see appropriate and
3 as compared to other evidence in this case.

4 BY MR. SHEDD:

5 Q Mr. Garinger, did you test samples in this case?

6 A Yes, I did.

7 Q Do you pick the samples up yourself?

8 A Not typically. Well, in this case, I believe
9 I did. Our process has changed a few times over
10 the years.

11 Q When you received the samples, are they sealed?

12 A Yes.

13 Q If they were not sealed, would you test them?

14 A No.

15 (STATE. EXH. 13, Sample for DNA testing, was
16 marked for identification.)

17 (STATE. EXH. 32, Sample for DNA testing, was
18 marked for identification.)

19 (STATE. EXH. 33, Sample for DNA testing, was
20 marked for identification.)

21 (STATE. EXH. 34, Sample for DNA testing, was
22 marked for identification.)

23 (STATE. EXH. 35, Sample for DNA testing, was
24 marked for identification.)

25 BY MR. SHEDD:

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1 Q I'm showing what has previously been identified as
2 State's 13, 32, 33, 34, and 35. I'm going to ask if
3 you recognize those.

4 A Yes.

5 Q And are those samples that you tested in this
6 case?

7 A Yes, they are.

8 Q Other than testing, did you alter or change them
9 in any way?

10 A No.

11 Q And while they were in your custody did you
12 maintain the integrity of the items?

13 A Yes, I did.

14 MR. SHEDD: At this time, State moves
15 State's 13, 32, 33, 34, 35 into evidence.

16 THE COURT: Without objection?

17 MR. HAMILTON: No objection.

18 THE COURT: Without objection. Thank
19 you.

20 (STATE EXH. 13, Sample for DNA testing, was
21 entered into evidence.)

22 (STATE EXH. 32, Sample for DNA testing, was
23 entered into evidence.)

24 (STATE EXH. 33, Sample for DNA testing, was
25 entered into evidence.)

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1 (STATE EXH. 34, Sample for DNA testing, was
2 entered into evidence.)

3 (STATE EXH. 35, Sample for DNA testing, was
4 entered into evidence.)

5 BY MR. SHEDD:

6 Q Mr. Garinger, I'm going to start with State's
7 Exhibit number 13. Can you tell the jury what that
8 is?

9 A This one is a buccal standard collected from
10 George Holmes.

11 Q When you say a buccal standard, what do you mean
12 by that?

13 A So it's a sterile swab that swabbed on the
14 inside of your cheek to obtain a known DNA profile
15 from a person in order to compare that profile to
16 your unknown evidence.

17 Q And were you able to develop a profile from that
18 sample?

19 A Yes.

20 Q As to State's Exhibit Number 32, what is that?

21 A So this was a set of two swabs from the
22 interior of an ATM hood and safe.

23 Q And did you process those items for potential
24 DNA?

25 A Yes.

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1 Q What was your conclusion as to State's Exhibit
2 Number 32 as compared to the buccal standard from the
3 defendant?

4 A I'll have to refer to my report directly for
5 that. So for the swabs of the interior of the ATM
6 hood and safe, I determined that a match to
7 George Holmes is 1.34 million times more likely
8 than a coincidental match to an unrelated
9 individual.

10 Q As to your Item Number 2, State's Exhibit
11 Number 33, the swab from the interior of the door,
12 were you able to develop a DNA profile or mixture from
13 that item?

14 A In this case, I was not. There was not
15 enough DNA for me to do further processing for
16 this one.

17 Q As to the Item Number 3, State's Exhibit
18 Number 34, were you able to report a conclusion as
19 to that item? Were you able to come to a
20 conclusion?

21 A I was able to develop a DNA profile from
22 this. It was mixed -- complex mixed DNA profile,
23 but I was unable to come to a reportable
24 conclusion as to George Holmes with respect to
25 that mixture.

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1 Q As to State's Exhibit 35, your item
2 Number 4, the blood sample, is that -- can you tell
3 me, were you able to develop a profile or mixture off
4 that item?

5 A I was able to develop a DNA profile from this
6 item, yes.

7 Q And as it compares to a DNA mixture or DNA
8 profile, is one better than the other as far as
9 comparison purposes?

10 A So, in this case, what I obtained was a
11 single-source profile. It was clear to me that
12 the DNA profile that I generated was from one
13 person and not a mixture of DNA profiles from
14 multiple people. Generally speaking, it's much
15 easier to make a comparison to a profile coming
16 from a single person.

17 Q To be clear, item number 4 was a single profile
18 that you developed.

19 A Correct.

20 Q What was your conclusion as to item number 4 as it
21 relates to the defendant George Holmes?

22 A So a match to George Holmes is 2.46
23 nonillion. Nonillion is a 1 with 30 zeros after
24 it. 2.46 nonillion times more likely than a
25 coincidental match to an unrelated individual.

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1 MR. SHEDD: I don't have any further
2 questions, Mr. Garinger. Please answer any
3 Mr. Hamilton may have.

4 THE COURT: Mr. Hamilton.

5 CROSS-EXAMINATION

6 BY MR. HAMILTON:

7 Q Good afternoon, Mr. Garinger.

8 A Good afternoon.

9 Q So you've been a part of the sheriff's office
10 forensic department for about seven years now, give or
11 take?

12 A Yeah.

13 Q And as part of your duties there, you routinely do
14 a lot of forensic-type testing?

15 A Yeah, my primary duty.

16 Q And so when you test these items and DNA was
17 found -- well, let me back up just a little bit. When
18 the DNA, the genetic material is found anywhere, the
19 results from your lab just tell us the existence of
20 that, right?

21 A Yes.

22 Q It doesn't tell us -- your lab or any lab can't
23 tell us how that material got there, that DNA?

24 A Not typically, no.

25 Q It can't tell us when it got there?

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1 A No.

2 Q Can it tell us whether it's, you know, direct
3 contact or a transfer of contact of DNA?

4 A Not typically, no.

5 Q Okay. So just to clarify, when you did conduct
6 these swabs, the one of the crowbar tire iron
7 specifically, there was no such conclusion that you
8 could come to as far as whose DNA was on it.

9 A Correct.

10 Q And also coupled with what you just testified to,
11 even if you could, you wouldn't have been able to tell
12 when or how it got there?

13 A Correct.

14 MR. HAMILTON: Just a moment of the
15 Court's indulgence, Your Honor. Just briefly.

16 BY MR. HAMILTON:

17 Q Mr. Garinger, as far as -- I mentioned transfer
18 DNA earlier. Is that more so -- for example, if I
19 touch this pen and then I laid it at the end of the
20 table over there, potentially my DNA could have come
21 from this pen and landed on the countertop over there?

22 A Sure, that's one possible outcome.

23 Q Is that kind of -- is that kind of a fair example
24 of how touch DNA or transfer DNA works?

25 A Sure.

1 Q Okay. And like you testified earlier, when you
2 process things and do develop a match, or at least can
3 see there's DNA material on there, again, you can't
4 tell if it's specific direct contact or if it's a
5 transfer of any contact?

6 A There's nothing in my analysis that would
7 indicate one way or the other.

8 Q Okay.

9 MR. HAMILTON: I don't believe I have any
10 further questions for this witness, Your Honor.
11 Thank you.

12 MR. SHEDD: I don't have any further
13 questions.

14 THE COURT: Okay. Any objection to
15 Mr. Garinger being excused?

16 MR. SHEDD: No, Your Honor.

17 MR. HAMILTON: No, Your Honor.

18 MR. SHEDD: Your Honor, at this time, the
19 State rests.

20 THE COURT: All right. Ladies and
21 gentlemen, at this time, the State rests their
22 case. There is a matter of law I need to take up
23 with the attorneys. I'm going to ask you to go
24 back to your jury room. I will bring you back
25 very briefly either to send you to lunch or to see

1 where we're going from here. Do not discuss this
2 case. It wouldn't be appropriate to do so. Leave
3 your pads in your seats, ladies and gentlemen, and
4 we'll be right with you.

5 (Jury exits the courtroom at 12:41 p.m.)

6 THE BAILIFF: Jury is clear, Your
7 Honor.

8 THE COURT: Thank you, Rick.

9 All right. Any motions?

10 MR. HAMILTON: Yes, Your Honor. The
11 defense would -- I apologize. The defense would
12 raise a motion for a directed verdict in this
13 case. The defense, as Your Honor is aware, the
14 standard for a directed verdict is you're looking
15 for the existence of evidence, not necessarily the
16 weight of the evidence. And so as far as the
17 burglary statute -- or the charge of burglary,
18 rather, I have two cases to pass up to Your Honor
19 and also provide a copy for the State.

20 The first one is State v. Clamp. It's
21 from 1954, and the main portion about that -- it's
22 a case of an armed robbery and a burglary. But it
23 goes through -- and the court in this one
24 specifically state's how burglary is a crime --
25 all burglaries are crimes against possession, not

1 property. I'm passing this one up for Your Honor.

2 They're a crime against possession rather
3 than property, meaning that the State has to show
4 that somebody has a possessory right to express
5 control and dominion over this as opposed to just
6 property damage to a structure itself.

7 The second case, Your Honor, is State v.
8 Davis. It's very similar facts as State v. Clamp,
9 and, quite honestly, they're both quoting a case
10 from the 1800s. I believe State v -- I do
11 apologize, Your Honor. I don't have it with me.
12 But another case that just further outlines and
13 explains that burglary is a crime against
14 possession rather than property.

15 Today, the State has not shown that
16 Navy Federal, or otherwise -- the complainant is
17 the security company, doesn't have any possessory,
18 you know, duties towards this. We heard from
19 Mr. Boulware who is the manager of the Navy
20 Federal over on Parris Island and he does nothing
21 more than a once-a-month stop at these ATMs to see
22 -- he says he takes a couple pictures if there's
23 anything. He might do some cleaning and just make
24 sure that it's in operating order.

25 Beyond that, we heard from Jeff Martin

1 who lives in Virginia and they maintain the
2 security and surveillance of every Navy Federal
3 ATM worldwide.

4 Neither of these companies have -- or can
5 show, and the State has not shown today or
6 elicited any testimony for the jury to
7 contemplate, that anybody had a possessory
8 interest to occupy and control that given space.

9 As it relates to burglary for a dwelling,
10 I know burg 2nd does not include in a dwelling,
11 but for a dwelling, the possessory right is in
12 those -- the people that live in it or the people
13 that rent it, or whatever it is. For a business
14 or a building, that right lies with the people
15 that work out of or conduct their business and
16 things there.

17 For this, this enclosure around the ATM,
18 nobody conducts business there. It's the public
19 service access point more than anything. And more
20 so, Your Honor, where I'm also going to pass up
21 two cases. One is State v. Blackman and one is,
22 it's a little longer, Citizen for Quality Rural
23 Living, Incorporated vs. The Greenville County
24 Planning Commission and RMDC, Inc. I'm passing a
25 copy up to Your Honor. These cases both outline

1 and state the importance of reading an entire
2 section of statutory language together.

3 And in this case, Your Honor,
4 specifically related to the building whether or
5 not this structure, this kiosk over the ATM is a
6 building, and read together -- when the statute is
7 read together -- they're both in chapter 16,
8 section 11, and under 16-11-380(f), that's the
9 bank robbery and solicitation of an ATM statute,
10 it gives a specific definition that as it relates
11 to 16-11-380(e), an enclosure over an ATM, a
12 building or structure does not include an
13 enclosure erected solely for the purpose of
14 containing an otherwise outdoor or detached ATM
15 or automated banking device.

16 This is clear, Your Honor. We saw from
17 the pictures and from the testimony today that
18 this is -- it's in the middle of a parking lot.
19 It's not connected with any of the other
20 businesses. It's not connected to any sort of
21 bank. It's a stand-alone structure that has only
22 been erected solely for the purpose of keeping
23 this ATM out of the rain.

24 Beyond that, and as it relates to the
25 safecracking, Your Honor -- well, I'll get to this

1 in just one second, I guess.

2 More so, if I'm going in to use a ATM,
3 such as the one -- the Navy Federal Credit Union
4 one, when I go to use an ATM, it's to get money
5 dispensed to me. It's not for long-term holding.
6 I also have no possessory interest or right to
7 control or express any dominion over that ATM if
8 I'm in there in that kiosk using it. I use it. I
9 get my money. I walk out. The guy in line behind
10 me, he can go in and get his money and everything
11 as well.

12 I have no -- when I'm using an ATM, I
13 have no right to exclude others from the public
14 from using it. I have no possession of it, no
15 interest in it.

16 As far as the safecracking, Your Honor, a
17 safe -- as outlined in the statute, a safe is
18 for -- well, quite honestly, it's not really
19 outlined in the safecracking statute itself. But
20 it's for holding and protecting and preventing
21 from public access. It's supposed to be something
22 where you can put your most prized possessions and
23 valuables, or whatever they are in a place that is
24 not accessible to the public.

25 Like I said, as far as an ATM, it's more

1 so like a vending machine. Those things get
2 stocked for cash, not for protective holding
3 against the public. They are there specifically
4 to give it out to the public. This doesn't fit
5 the definition, Your Honor, for a safe. An ATM
6 cannot be construed as the same thing as a safe.

7 Along with that, as far as the ATM kiosk,
8 it cannot be considered a building, which,
9 therefore, takes it out of the purview of the
10 burglary statute. Like I said, nobody has a
11 possessory interest of that.

12 And then more so, if we look towards
13 what's in the same section and chapter under this
14 statute, you will read the full statutory language
15 of this penal code. It says specifically that a
16 structure erected solely for enclosing an
17 otherwise detached and separate ATM is not a
18 building. Your Honor, if it's not a building, it
19 cannot be a burglary.

20 I believe I'm finished.

21 THE COURT: Okay.

22 MR. SHEDD: If I may just respond
23 briefly, Your Honor. As far as the possessory
24 right of the building, the building is owned by
25 Navy Federal Credit Union. They have a security

1 company that monitors it at all times. They have
2 local managers, Jay Boulware testified
3 specifically, that he's responsible for the
4 security and continuing to do routine checks
5 including the day before this happened. And the
6 reason that they do those checks is because they
7 do have an interest in the money in there. An ATM
8 is certainly not erected just to get out money.
9 That is the bank's money that people are then
10 pulling out of their account. At that point, once
11 they're able to do that, it becomes their money.

12 In addition, as far as the other people
13 using the building. Again, Jay Boulware goes out
14 there. Certainly, Navy Federal -- I mean, the ATM
15 would have to find out around the time they could
16 work if people wanted to go in the back to put
17 more money in it. So, certainly, they're in
18 there. Also, there's also pictures that indicate
19 what appear to be servers in that room as well.
20 There are certainly people that go in and out of
21 that room to do their job.

22 They certainly have a possessory interest
23 in the building. It houses, certainly, other
24 things other than just an ATM. The back side of
25 it, it's designed that way for a reason. The

1 front is the point that, I believe, Mr. Hamilton
2 was alluding to when he was saying when he goes in
3 he doesn't have the right to exclude anybody else.
4 But the owner of the building, Navy Federal Credit
5 Union, certainly has a right to exclude any
6 unauthorized person from going in the back of it
7 where there's -- where all of the brain of the
8 ATM is.

9 THE COURT: I would agree with you,
10 Mr. Shedd. Going into the back and having broken
11 the back door open, I think clearly the bank has a
12 possessory interest in it. So I would deny the
13 motion for a directed verdict as to the burglary.

14 What about -- talk to me about an ATM and
15 is it a safe.

16 MR. SHEDD: Absolutely, Judge. And I'm
17 reading directly from the statute here. The
18 statute prohibits -- it says it's unlawful for a
19 person to use explosive tools or any other
20 implement in or about a safe used for keeping
21 money. This is essentially -- it is a secured
22 box. They have security that monitors it. It is
23 locked up in a way that -- you saw the video and
24 the effort that Mr. Holmes put into trying to
25 break the back of that safe off and certainly --

1 or the ATM off. And I think because the
2 statute -- it would be my position that because
3 the statute specifically references a safe --

4 THE COURT: Used for keeping money.

5 MR. SHEDD: -- used for keeping money,
6 that's exactly what brings it in.

7 THE COURT: Or other valuable things.

8 MR. SHEDD: That's correct, Your Honor.

9 THE COURT: Okay. All right. Well,
10 respectfully, I'm going to deny your motion as to
11 the safecracking too. I do believe it meets -- at
12 least there is evidence it meets the elements and
13 I think it's a jury issue.

14 Are you going to put up any witnesses,
15 Mr. Hamilton?

16 MR. HAMILTON: I'll have a little
17 conversation with my client about it.

18 THE COURT: I guess my question is -- I
19 think I'm going to go ahead and send this jury to
20 lunch and then you-all can talk.

21 So, Rick, let's bring them back out.

22 (Jury enters the courtroom at 12:53 p.m.)

23 THE BAILIFF: Jury is entering the
24 courtroom, Your Honor.

25 THE COURT: Thank you. Ladies and

1 gentlemen, I think now is a good time for us to go
2 ahead and take a lunch break. I need to remind
3 you, don't discuss this case. It wouldn't be
4 appropriate to do so. I also need to ask you-all
5 if you could be back by 2:15. We'll go ahead and
6 finish this case. Can you hear me?

7 JUROR: No, ma'am. Could you speak just
8 a little bit louder?

9 THE COURT: Absolutely, ma'am.

10 Ladies and gentlemen, we're going to go
11 ahead and take a lunch break now. I am going to
12 ask that you be back in your jury room at 2:15
13 when we're going to go ahead and finish up the
14 trial of this case. I will tell you, we will
15 finish it today. I just ask that you go grab a
16 bite to eat. Don't discuss this case with anyone
17 or each other. Don't do any outside research.
18 Just grab a bite to eat. The bailiffs will be
19 happy to tell you anything that's nearby where you
20 can grab a quick bite. Okay? Thank you.

21 (Jury exits the courtroom at 12:55 p.m.)

22 THE BAILIFF: Jury is clear, Your Honor.

23 THE COURT: Thank you, Rick.

24 All right. We're going to go ahead and
25 break until 2:15.

1 Mr. Holmes, I am going to take you into
2 custody because you seem to have been acting out
3 and I want to make sure that you are here when the
4 jury comes back.

5 I trust you will be able to feed him; is
6 that correct?

7 THE DEPUTY: Yes, ma'am.

8 THE COURT: And get him back by 2:15. I
9 appreciate it.

10 THE DEPUTY: Yes, ma'am.

11 THE COURT: Okay. We will break until
12 2:15.

13 Mr. Shedd and Mr. Hamilton, we're going
14 to forward you the jury charge. Obviously, we
15 don't know whether or not the defendant will
16 testify yet, but you put in and then take it out
17 if he isn't.

18 MR. SHEDD: Thank you, Your Honor.

19 (A break was taken from 12:57 p.m. to 2:15
20 p.m.)

21 THE BAILIFF: All right. This court is
22 back in session.

23 THE COURT: Please be seated.

24 Mr. Hamilton, I need to go through your
25 client's rights with him. You've explained that to

1 him; is that correct?

2 MR. HAMILTON: Yes, I have, Your Honor.

3 THE COURT: Mr. Holmes, will you please
4 stand and just raise your right hand. Sir, do you
5 swear or affirm the testimony you give will be the
6 truth, so help you God?

7 MR. HOLMES: Yes, ma'am.

8 THE COURT: Mr. Holmes, we've come to
9 that point in the trial where you are permitted to
10 testify on your own behalf. You can put your hand
11 down now. It's okay. You are permitted to
12 testify on your own behalf. However, whether or
13 not you testify is your choice. But I want to
14 make sure you understand your Fifth Amendent
15 rights state that no person is required to be a
16 witness against themselves in a jury trial. Do
17 you understand that?

18 MR. HOLMES: Yes, ma'am.

19 THE COURT: And understanding that, sir,
20 I also want to make sure that you understand that
21 if you do want to take the stand, the State can
22 ask you any questions that I find relevant to this
23 case, as well as any past conduct in the last 10
24 years.

25 Is there anything for him?

1 MR. SHEDD: The filing of false -- the
2 2013.

3 THE COURT: Filing a false police report.
4 So they could ask you about that if they chose to.

5 Mr. Holmes, at this point, do you want to
6 testify in this trial?

7 MR. HOLMES: No, ma'am.

8 THE COURT: Is that your choice, sir?

9 MR. HOLMES: Yes, ma'am.

10 THE COURT: All right, Mr. Holmes. I
11 understand. You can go ahead and be seated, sir.
12 You too, Mr. Hamilton. I find that you've
13 intelligently made that decision.

14 Are you going put up anyting, Mr. Hamilton?

15 MR. HAMILTON: No.

16 THE COURT: Okay. You both were sent by
17 my law clerk the jury charge. Any exceptions or
18 additions to it?

19 MR. SHEDD: No, Your Honor.

20 MR. HAMILTON: No Your Honor.

21 THE COURT: Rick, show them the verdict
22 form.

23 MR. HAMILTON: That's fine.

24 THE COURT: Are you ready for me to bring
25 the jury out? What I will go ahead and have you

1 do, Mr. Hamilton, is I will have you rest for the
2 record and I will just say that -- you know, when
3 you renew your motions, deny it, based on the same
4 grounds. Okay? That way you've protected your
5 record, okay?

6 All right. Let's bring them.

7 THE BAILIFF: Jury is entering the
8 courtroom, Your Honor.

9 (Jury enters the courtroom at 2:30 p.m.)

10 THE BAILIFF: The jury is seated, Your
11 Honor.

12 THE COURT: Welcome back, ladies and
13 gentlemen. I trust you-all got a bite to eat.

14 Mr. Hamilton, if you want to go ahead and
15 rest.

16 MR. HAMILTON: At this time, the defense
17 rests, Your Honor.

18 THE COURT: Thank you. Ladies and
19 gentlemen, the defense has now rested their case
20 as well. And we will renew your prior motions for
21 the record, sir, and I am going to deny those
22 based on the previous grounds.

23 MR. HAMILTON: Yes, Your Honor.

24 THE COURT: I appreciate it, sir. Thank
25 you.

1 Ladies and gentlemen, what we have left to do
2 now is you need to hear the closing arguments from the
3 attornyes and I need to charge you on the law that's
4 applicable to this case. All right? So we are going
5 to go straight into the closing arguments now. Okay?

6 All right. Whenever you're ready.

7 MR. SHEDD: Thank you, Your Honor. May
8 it please the Court?

9 THE COURT: Yes, sir.

10 CLOSING ARGUMENT

11 MR. SHEDD: At the beginning of this
12 trial, my co-counsel got up in front of you and
13 told you, put an image in your head of a burglar.
14 When you think of a burglar, you think of a person
15 wearing a mask using a tool, trying to break into
16 a safe. And she told you that's what we have
17 here. As the evidence came through that
18 witness -- and we're going to go through it
19 because I know we moved a little bit quickly
20 today, so I'm going to slow it down just to make
21 sure to highlight some specific points.

22 First, you heard from -- they called him
23 dispatch -- Jeff Martin. He was down from
24 Virginia. He was up there. He got alerted.
25 There was an alarm going off at the Lady's Island

1 ATM. And it alerts him, puts it on the screen,
2 and he's watching this in real time. He calls the
3 Beaufort County Sheriff's Office to let them know
4 what's going on, giving them a play-by-play as
5 it's happening.

6 What he's also doing is, he's sending
7 screen shots before when he walks in right before
8 and looks at the camera, realizes there's a camera
9 in there, walks back out. And you guys watched
10 the video. We watched it together. I know that
11 it felt like a long time. It was a seven-minute
12 video that started with the rumbling of the door
13 and ended with law enforcement showing up. He
14 returned with a mask or something covering his
15 face shortly after, and he used that crowbar to,
16 not only work his way into that building -- this
17 is the building, the stand-alone ATM here. The
18 front is over here. This would be the part that
19 we're all familiar with. He walked into this
20 glass area. And you put you card in and get your
21 money out. The back side here is the door that
22 you're seeing pop open on that video.

23 And George Holmes did a real number on
24 that door, and you have a lot of pictures to see.
25 And these are all going to be back there with you.

1 But you can see -- the reason we offered so many
2 pictures is so that you can see the detail of the
3 damage. This is peeled back. This shows
4 everything. You can see the gouges in the door.
5 You can see the blood on the door. The denting of
6 this portion of the door. The peeling back of
7 this metal. The dead bolt is still engaged.

8 Right above that, from the lock, you can
9 see. You saw the pictures as well. There are
10 divits inside -- or on the top of this lock, right
11 below this gouge mark that's indicative -- and you
12 saw the crowbar, the picture of the crowbar that
13 fits nicely in there. We also have the damage --
14 I guess I'll refer to it as the housing, where the
15 dead bolt is supposed to go into the door. This
16 is bent all up. This part is gone. And then you
17 can see the damage on the other side of the door
18 as well. Mr. Holmes did a real number on this
19 door because he was determined to get into that
20 building.

21 And the reason why is because he knew
22 that there was something he could steal in there.
23 There was money. There was an ATM.

24 Now, you heard from Jay Boulware. If
25 you remember early on, he was the -- he's the

1 manager of the Parris Island branch that's
2 responsible for these ATMs. And he told you that
3 he did a monthly check the day before and noticed
4 some damage and he took a picture. He took a
5 picture of that damage. And you can see this is
6 the same lock -- this is the same lock. This is
7 the same portion of the door, and it is just one
8 day before. Coincidentally, he was there for his
9 monthly check the day before. So we know exactly
10 how much damage George Holmes did to that door.

11 Next you heard from former deputy
12 Jonathan Hewitt. He certainly bounced around that
13 night from place to place. He was out there. He
14 was first on scene. He observed the crowbar. And
15 he noticed that the door was open and this was a
16 burglary, an attempt to break into an ATM that was
17 in progress as he came out. He waited for
18 back-up. And while he was waiting for back-up, he
19 sees this crowbar. Back-up gets there. They go
20 in. We see that on video. They check it out to
21 make sure nobody's still in there. But that's
22 because George Holmes has already left. I mean,
23 we saw it on video. It wasn't long before. But
24 he saw it on video that he was gone before that
25 time.

1 Then we heard from Sergeant Garst, and he
2 went through quite a few pictures detailing the
3 damage that was done both to the door, like we've
4 already talked a little bit about, but also to the
5 ATM. You can see on these pictures -- and, again,
6 you'll have these back there with you. Right here
7 along this side, this whole portion is bent up.
8 Right here is bent in. And you can see on the
9 video when that damage was done. He's pushing --
10 you can't see the bar in there, but he walks in
11 with a tire iron and he is working that thing on
12 the other side of the ATM. It's out of view, but
13 he is working to get into that ATM and he makes
14 some real progress.

15 Now, this is an ATM. There's certainly
16 an interest in keeping it secure. And so,
17 luckily, he was not able to get in. But for
18 safecracking -- for George Holmes to be guilty of
19 safecracking, it doesn't require that he actually
20 crack the safe open. And you'll hear the charge
21 on the law. The judge is going to go through and
22 tell you what the elements of those charges are.
23 So, I'll circle back to that.

24 So after is your Sergeant Garst testified
25 regarding the damage to the door, he also

1 testified that he processed the scene. And as
2 part of processing the scene, he collected some
3 DNA samples. State's 35 is the blood, the single
4 source profile, that was a match to George Holmes.
5 He also collected the several touch DNA swabs from
6 the inside of the ATM. One was insufficient. One
7 was -- couldn't report the results or wasn't able
8 to report a result. And then the other was also a
9 match to George Holmes.

10 We also heard from Kyle Breland, the
11 former deputy Breland of Beaufort County and now
12 works in Colleton, and he told you that he's on
13 the perimeter and he hears information that
14 there's someone that matches the description near
15 where he's at on the perimeter. So he goes over
16 there and he sees George Holmes and he calls him
17 over. They wait for Hewitt who arrives shortly
18 after that. And once they confirm -- because
19 Hewitt has the picture and Breland didn't, once
20 they confirm that that man, George Holmes, that
21 they're looking at on the side of the home is the
22 man that matches these pictures from the
23 surveillance, that's when they arrest him and
24 that's when Jonathan Hewitt goes back to the scene
25 because dogs are on the way because they're going

1 to do a dog track.

2 And Copper -- Copper was the dog that was
3 working that night. And you heard from
4 Deputy Tafoya -- Sergeant Tafoya that Copper, he
5 was motivated during that track. He walked you
6 through the whole track. You'll have this back
7 there. I know that the brightness and the
8 contract trying to display this up there, it was
9 hard to see some of these yellow tracks, but
10 you'll have this back there and it shows exactly
11 where this track goes. I want you to remember
12 when -- what did Tafoya say about Copper when they
13 turned on Rue Du Bois? He lit it up. He got in
14 gear. And he turned left, went down to
15 Lady's Island Drive. And then what did he say
16 when he went down Lady's Island Drive? He was
17 busting tail. He is -- they are at a sprint all
18 the way until Copper drags Sergeant Tafoya
19 straight to that man and puts his nose, as
20 Sergeant Tafoya put it, to his crotch. He walks
21 right up and presses his nose to him.

22 Finally, we heard from Andrew Garinger
23 from the forensics lab and he told you about
24 his -- the results of his DNA analysis, and that
25 was that the touch swab from the ATM hood was how

1 Sergeant Garst described it as well as
2 Andrew Garinger, the AMT hood was the mixture of
3 touch DNA that matched George Holmes. But the
4 single source profile was the blood on the door of
5 this ATM that you can see is so damaged up. We
6 know whose blood that is. We know whose blood
7 that is. It's George Holmes's.

8 George Holmes, on December 28, 2018, he
9 was not able to get into that ATM. He was not
10 able to take anything. But what he was able to do
11 was commit two crimes that he is now on trial for.
12 The first is burglary 2nd degree violent, and that
13 requires us to prove that Mr. Holmes entered the
14 building without consent and with the intent to
15 commit crime therein and the entering or remaining
16 happened during the night.

17 What do we have here? All the
18 testimony -- it's undisputed it was at night.
19 There was every -- you heard all the officers from
20 when they got dispatched out to when the video
21 recording started, this happened at night. And
22 you can see the jarring of that room. The camera
23 moves at the beginning. That's not a glitch in
24 the camera. That is the sheer force that
25 George Holmes is applying on the outside of that

1 door to get it open. And the reason he's trying
2 to so hard is because he's got one thing on his
3 mind, steal. Steal.

4 So, we know he went into a building. We
5 know that he had the intent to commit a crime. We
6 know that it happened at night.

7 George Holmes did not have consent to
8 break open the back door and try to bust into the
9 safe.

10 Now, as for safecracking, we have to show
11 that George Holmes used a tool in or about a safe
12 used for keeping money with the intent to commit a
13 larceny. That's exactly what the evidence has
14 shown. It's on video. Ladies and gentlemen, very
15 rarely are crimes committed on video. Rarer still
16 are crimes that are committed on video where the
17 person walked in right before without a mask on
18 and looked at the camera.

19 But you don't have to just rely on the
20 surveillance. The surveillance is good and it
21 shows George Holmes. But what else do you have?
22 You have the dog tracking. You have Copper.
23 Copper was motivated and went right to George
24 Holmes. You also have all of the damage to the
25 door. You have all these pictures. I won't

1 belabor the point. They will be back there with
2 you. They demonstrate, not only his intent to
3 commit a larceny, but his determination to do so.
4 You can see that on the video too. He is cranking
5 that.

6 But finally you have the DNA.

7 All of these things point to one
8 rationale conclusion, and that is that that man,
9 George Holmes, broke into that ATM. Broke into
10 the building first, and then attempted to break
11 into the back of the ATM. And for some reason he
12 stopped because had he tried to work that for a
13 couple more minutes, he would have been caught
14 right in the act.

15 So, ladies and gentlemen, because of the
16 evidence that we presented throughout this case,
17 through the witnesses, through the exhibits, and
18 you'll have this stuff back there, because that
19 evidence all points to his guilt, it is your duty
20 to find him guilty of those charges.

21 Thank you for listening.

22 THE COURT: Thank you.

23 MR. HAMILTON: May it please the Court?

24 THE COURT: Yes, sir.

25 CLOSING ARGUMENT

1 MR. HAMILTON: Good afternoon. Earlier
2 today, I told you my client is innocent until he
3 is proven guilty beyond a reasonable doubt, and I
4 stress upon you guys the need to inspect them and
5 to judge them and their case against my client and
6 whether or not it's enough to convict my client of
7 burglary and safecracking. You're here today to
8 judge the validity and the integrity of the case
9 and whether or not you still have questions that
10 are left unanswered at this point because they're
11 done. That's it. You have been given everything
12 you need, or everything that they think you need
13 to convince you of their case.

14 And so did they? Did they build that
15 case and convey it to you-all in a way that you
16 believe their iteration of these facts, that they
17 are so convincing that there is no other
18 reasonable explanation for anything that happened?
19 Did they leave those questions unanswered? Did
20 they misconstrue any of this evidence to try and
21 make it fit together nicely? Or, did they prove
22 the right case to you guys?

23 At first we heard from -- after the 911
24 call, we heard from Jay Boulware. He's the
25 manager of the credit union and we heard from him

1 that he stops by once a month, usually for five to
2 fifteen minutes maybe depending on if he has to
3 clean a little bit in there or something like
4 that. It's a very brief inspection. And other
5 than that, the ATM is out of his mind. He wasn't
6 there. And when he said that he did get there, he
7 noticed that it had not been cracked open. This
8 ATM had never -- nobody ever gained any access in
9 there to get at these contents.

10 We also heard from Jeff Martin, who
11 traveled down here from Virginia, who manages and
12 oversees the security as part of his department
13 every Navy Federal Credit Union in the world.
14 Every Navy Federal ATM that is in existence today
15 is -- as he told you, is under the purview of his
16 security in his department. But he also told you
17 that he wasn't there and that it also still didn't
18 appear that anybody had cracked the safe.

19 We heard from former Deputy Hewitt and
20 then Deputy Breland as well, and we heard from
21 them that Breland, who didn't have a photo at this
22 point of anybody, of any suspect or anything, we
23 heard from him that, as he's driving down
24 Lady's Island Drive towards the McTeer Bridge,
25 it's raining outside, and then he sees the only

1 person walking on the street. The only person
2 walking out in public and thinks, well, damn, that
3 must be my guy. He kind of matches the
4 description of that six-foot tall, roughly
5 250-pound black man wearing dark clothing, except
6 you can clearly see -- the officer clearly said,
7 he saw him and he was wearing a red shirt and blue
8 jeans. That doesn't match any description.

9 But he pulled him over and detained him,
10 and then he learned from this man that he was
11 headed towards the hospital and then he also --
12 Breland didn't ask if he needed any medical
13 attention. He didn't do his public service of
14 asking if he needed any assistance with what was
15 going on, what he was trying to do in getting to
16 the hospital.

17 And we also heard from deputies Hewitt
18 and Breland that still this ATM had not been
19 cracked open.

20 We also heard from Sergeant Garst who
21 told you about his processing of the scene, and
22 how he goes through and gets these slightly larger
23 than a Q-Tip, one Q-Tip to develop this DNA. He
24 used one Q-Tip on this whole tire iron and
25 crowbar. We also heard from Sergeant Tafoya.

1 And, eventually, we found out through him that he
2 was the source of this reported suspect on Lady's
3 Island Drive that matched the description. He
4 said that it appeared that this guy was a black
5 guy wearing dark clothing. It was also two
6 o'clock in the morning. You could wear a
7 highlighted yellow shirt at two o'clock in the
8 morning, it's going to look pretty damn dark, I
9 think. But he also said that was from his
10 perspective.

11 But we do know that that is the initial
12 moment that this man walking down Lady's Island
13 Drive towards the hospital for a medical condition
14 was the prime suspect and the only suspect that
15 they ever looked into, that they ever tried to
16 investigate into.

17 We also heard and learned a little bit
18 about the DNA. Mr. Garinger, he told you that of
19 all these DNA swabs, it really only proves one
20 thing; that the DNA is present there. But as I
21 kind of showed you, and a little bit of an
22 example, his results don't tell you how that DNA
23 got there and what capacity it got there or when
24 it got there. It doesn't tell you if it was there
25 by direct contact or transferred contact of any

1 DNA. We just know that some sort of genetic
2 material was there, put there at some point,
3 somehow.

4 We heard a lot today about how this
5 person attempted to get to the money inside the
6 ATM. We know that the person tried to get into
7 that compartment. And we know that they didn't.
8 We know that no money was ever taken out of this
9 ATM other than whoever it dispensed cash to
10 earlier that day.

11 We heard the State trying to convince
12 you-all that this ATM kiosk, this little
13 structure, somebody trying to break into that is
14 the same as a doctor's office or a shoe store or
15 law firm or a grocery store. Somebody breaking
16 into that kind of building. They're trying to
17 tell you that a building storefront of business
18 building is the same as this little ATM kiosk
19 that's on a slab of concrete in the middle of a
20 parking lot not connected to anything.

21 And so I think you got to ask yourself,
22 the question starts to become, what was the
23 intention of our legislature when they made that
24 statute. Because the breaking into a business, a
25 building itself, that's burglary. We just had a

1 lecture on that. That's burglary. Doing a little
2 property damage to a kiosk that just is there to
3 keep this ATM safe and dry and out of rain, that's
4 not a building, ladies and gentlemen.

5 We also heard about the safecracking
6 statute. I'll be honest, I do remember on Monday
7 in jury selection when the judge is saying the
8 charges that we're expecting to hear from this
9 case and she says safecracking, some people got at
10 least a little bit excited, maybe just a slightest
11 bit curious because it sounds like it's going to
12 be pretty fun, pretty exciting. Like I said,
13 there's going to be somebody trying to break into
14 like a bank safe or something like that. It's
15 going to be cool.

16 But then the State, they put up this case
17 that they dressed up as a burglary and
18 safecracking of somebody trying to attempt to even
19 get into an ATM. It's property damage. And
20 that's what they've given you to contemplate and
21 deliberate over.

22 And so, really, what's a safe. To me,
23 when I think of a safe, I think of one or two
24 things generally off the top of my head. One is,
25 when you go a hotel, in the closet, the little

1 shoe-box-size thing, that's where you put your
2 diamond earrings, or something like that, your
3 money, your wallet, your prized possessions, and
4 you put it in there because nobody else has access
5 to it. When I go to an ATM, sometimes I check my
6 balance, but, generally, I don't like seeing that,
7 so I'll just dispense money. I try and get what
8 was -- I'm just trying to get money dispensed to
9 me. And then after I'm done, whoever is standing
10 in line behind me, he can go in and get his money
11 dispensed to him because it's his money.

12 What is an ATM? An ATM, to me, is
13 stocked for, like I said, dispensing cash. It
14 sounds a lot more like a vending machine. To me,
15 a vending machines, it's not meant for long-term,
16 you know, holding and preservation of snacks and
17 candy and sodas. It's there to put on the display
18 so you can get your snacks, candy, and sodas here
19 and dispense it out to you. Same way an ATM is a
20 beacon of, hey, come here, dispense your cash.

21 And so I've got to ask again, was that
22 the intention of our State legislature when they
23 drafted this statute about safecracking? Did they
24 want it to apply to a case of a little bit of
25 property damage, ultimately? I think that they

1 were probably hoping that it would be applying to
2 something of breaking into somebody's hotel safe,
3 trying to get secret deed dockets or some sort of
4 scandalous business documents, or something like
5 that. Not a stand-alone, little housing structure
6 in the midding of a parking lot in an ATM. And so
7 that's where we're at. That's where we're left
8 with.

9 At this point, after the judge gives you
10 the law, it will be up to you guys to apply it the
11 way you think it applies to these facts. You have
12 to ask yourself. Did the State satisfy their
13 burden? Did they pass that threshold that makes
14 sense that it's the only reasonable explanation
15 that you can come to that my client is guilty, or
16 did they fall short? Do you still have any
17 questions? Or does it just not make sense? Why
18 did they dress this case up as a super exciting
19 burglary and safecracking when it's a case of some
20 property damage?

21 I asked you to judge them earlier. And,
22 ultimately, that's when this all comes to a head.
23 It's when you're in the deliberation room. That's
24 when you have to judge them and their case. Judge
25 whether you're satisfied with their case and

1 whether or not they've left you wanting more,
2 needing more. Anything short, that's not enough.
3 Anything short, ladies and gentlemen, that means
4 not guilty. That means the State has not
5 satisfied you.

6 I greatly appreciate all of you being
7 here today and being patient with us. Thank you
8 for serving as our juries.

9 Thank you.

10 THE COURT: Thank you.

11 Mr. Foreman, members of the jury, you've
12 listened very apparently and attentively to
13 presentation of the evidence in this case and I want
14 to thank you-all for that. It now becomes the duty of
15 the trial judge to charge and instruct you on the law
16 that's applicable to this case, and it's your duty as
17 jurors to accept and apply the law as I now give it to
18 you.

19 As jurors, it is your exclusive duty to
20 determine all the issues of fact in this case.
21 But the State and the defendant, Mr. Holmes, have
22 the right to expect that you will carefully
23 consider and evaluate the evidence and apply the
24 law of the case to the evidence. And by doing
25 that, both the State and the defendant,

1 Mr. Holmes, will receive a fair and impartial
2 trial in this matter.

3 Now, the State of South Carolina by bills
4 of indictment in this case charge the defendant,
5 George Holmes, with one count of 2nd degree
6 burglary violent as well as one count of
7 safecracking.

8 Now, I remind you, the fact that the
9 defendant was arrested, charged, and indicted in
10 this case is not evidence in this case, and cannot
11 be considered by you as evidence of guilt in this
12 case, nor does it create any presumption or
13 inference of guilt. An indictment is simply the
14 formal written instrument which contains a charge
15 that's made against a defendant. It's the formal
16 document by which this case is brought into this
17 courtroom.

18 Now, in this case, the defendant,
19 Mr. Holmes, has pled not guilty to these two
20 indictments, and that plea puts the burden on the
21 State to prove the defendant guilty beyond a
22 reasonable doubt. A person charged with
23 committing a criminal offense in South Carolina is
24 never required to prove himself innocent. I
25 charge you that it's an important rule of law that

1 the defendant in a criminal trial, no matter what
2 the seriousness of the charge may be, will always
3 be presumed innocent of the crime for which an
4 indictment was issued unless guilt has been proven
5 by evidence satisfying you, the jury, of that
6 guilt beyond a reasonable doubt.

7 Now, this presumption of innocence does
8 not end when you begin your deliberations. It
9 accompanies the defendant throughout the trial
10 until you reach a verdict of guilt based on
11 evidence satisfying you of that guilt beyond a
12 reasonable doubt.

13 The presumption of innocence is like a
14 rope of righteousness that's placed about the
15 shoulders of the defendant and it remains with the
16 defendant until it's been stripped away by
17 evidence satisfying you of the defendant's guilt
18 beyond a reasonable doubt.

19 The presumption of innocence is not a
20 mere legal theory. It's not just a legal phrase
21 we use. It's a substantial right to which every
22 defendant is entitled unless you, the jury, are
23 satisfied from the evidence of the defendant's
24 guilty beyond a reasonable doubt.

25 So what is a reasonable doubt in the law?

1 A reasonable doubt is the kind of doubt that would
2 cause a reasonable person to hesitate to act in
3 their most important decisions. The State has the
4 burden of proving the defendant guilty beyond a
5 reasonable doubt. And the term reasonable doubt
6 must be given it's plain and ordinary meaning.
7 Again, to the extent that I may define it for you,
8 a reasonable doubt is the kind of doubt that would
9 cause a reasonable person to hesitate to act in
10 the most important of their personal decisions.

11 The defendant is entitled to every
12 reasonable doubt arising in this case. If upon
13 any issue of fact essential to a conviction you
14 have a reasonable doubt as to how that issue
15 should be resolved, you must resolve that
16 reasonable doubt in favor of the defendant.

17 Now, some of you may have served as
18 jurors in civil cases where you were told that it
19 was only necessary to prove that a fact more
20 likely true than not true by what we call the
21 greater weight or the preponderance of the
22 evidence. In a criminal cases, the State's proof
23 must be more powerful than that. It must be
24 beyond a reasonable doubt. Suspicion, no matter
25 how strong, is insufficient to convict a person

1 charged with a crime. If the facts and
2 circumstances presented may seem suspicious and
3 the defendant's guilt may seem probable, this is
4 not sufficient in the law to convict. Proof
5 beyond a reasonable doubt is proof that leaves you
6 firmly convinced of the defendant's guilt.

7 Now, there are very few things in this
8 world that we know with absolute certainty. In a
9 criminal case, the law does not require proof that
10 overcomes every possible doubt. If, based on your
11 consideration of the evidence, you are firmly
12 convinced the defendant is guilty of the crime
13 charged, you must find the defendant guilty. If,
14 on the other hand, you think there's a real
15 possibility the defendant is not guilty, you must
16 give the defendant the benefit of the doubt and
17 find him not guilty.

18 I remind you that during this trial, you
19 and I have certain duties to perform. As the
20 judge, it's my responsibility to preside over the
21 trial of this case. I also have the duty to rule
22 on the admisibility of the evidence that's offered
23 during the trial. You are to consider only the
24 competent evidence before you. You are to
25 consider only the testimony which has been

1 presented from the witness stand as well as any
2 exhibits which have been made a part of the record
3 in this case. I have the additional duty to
4 charge you on the law that's applicable to this
5 case. I am the sole judge of the law, and it's
6 your duty as jurors to accept and apply the law as
7 I will now state it to you. If you have any idea
8 as to what the law is or what the law ought to be
9 and it does not agree with what I now tell you the
10 law is, you must abandon this idea because you are
11 sworn to accept and apply the law exactly as I
12 state it to you.

13 In every case tried in this court before
14 a jury, the jury is the sole judge and exclusive
15 judge of the facts. A trial judge cannot
16 intimate, comment on, or make any statement to a
17 trial jury about the facts in a case. And since
18 you, the jury, are the sole judge of the facts in
19 this case, you are not to infer from what I've
20 said during the province of this trial in ruling
21 upon the admisibility of evidence or otherwise, or
22 anything that I say now during the course of this
23 instruction to you that I have an opinion about
24 the facts in this case. The law does not allow me
25 to have an opinion about the facts in this case.

1 This is a matter solely for you, the jury, to
2 determine.

3 Now, there are two types of evidence
4 which are generally presented during a trial;
5 direct evidence and circumstantial evidence.
6 Direct evidence is the testimony of a person who
7 claims to have actual knowledge of a fact, such as
8 an eye witness. It is evidence which immediately
9 establishes a main fact to be proved and does not
10 require deduction.

11 Circumstantial evidence is proof of a
12 chain of facts and circumstances indicating the
13 existence of a fact. It is evidence which
14 immediately establishes collateral facts in which
15 the main fact may be inferred. Circumstantial
16 evidence is based on inference and not on personal
17 knowledge or observation. Crimes may be proven by
18 circumstantial evidence. The law makes no
19 distinction between the weight or the value to be
20 given to either direct or circumstantial evidence.
21 However, to the extent the State relies on
22 circumstantial evidence, all of the circumstances
23 must be consistent with each other and, when taken
24 together, point conclusively to the guilt of the
25 accused beyond a reasonable doubt. If these

1 circumstances merely portray the defendant's
2 behavior as suspicious, the proof has failed. The
3 State has the burden of proving the defendant
4 guilty beyond a reasonable doubt and this burden
5 rests with the State regardless of whether the
6 State relies on direct evidence, circumstantial
7 evidence, or some combination of the two.

8 Now, in this case, I've permitted you to
9 take notes. Your notes should be used only as
10 aids to your memory and should not be allowed to
11 take precedence over your independent memory of
12 facts. The notes you have are only for your
13 personal use in refreshing recollection of the
14 evidence. When in deliberations at the end of the
15 case, do not rely on the recollection of a juror
16 who took notes about the testimony of a witness
17 solely because the juror took notes. And you
18 should not be unduly influenced by the notes of
19 other jurors. As we all know, notes can be wrong.
20 Notes are not entitled to any greater weight than
21 each juror's memory of the evidence. Those jurors
22 who did not take notes should rely on their
23 independent recollection of the evidence and not
24 be influenced by the fact that another juror has
25 taken notes.

1 Now, in this case, it's your duty to
2 determine the credibility of witnesses who have
3 testified in this case. And credibility simply
4 means believability. It becomes your duty as
5 jurors to analyze and to evaluate the evidence and
6 determine which evidence convinces you of its
7 truth. In determining the believability of
8 witnesses who have testified in this case, you may
9 believe one witness over several witnesses, or
10 several witnesses over one witness. You may
11 believe a part of the testimony of a witness and
12 reject the remaining part of the testimony of that
13 same witness. You may believe the testimony of a
14 witness in its entirety or reject the testimony of
15 a witness in its entirety, and you may consider
16 whether any witness has exhibited to you any
17 interest by its prejudice or other motive in this
18 case. And you may also consider the appearance
19 and the manner of the witness while on the witness
20 stand.

21 Now, ladies and gentlemen, normally in a
22 trial a person cannot give what we call opinion
23 testimony. Normally when a person testifies, they
24 must testify as to what they either saw, heard, or
25 sensed by smell, or something of that nature.

1 However, there is an exception when someone is
2 qualified because of education or experience.
3 They are permitted to give their opinion in
4 certain areas if the court qualifies them that way
5 and that evidence is for you to use in any way you
6 see fit and give the weight and credibility you
7 believe is appropriate.

8 Now, I instruct you and emphasize that
9 the fact that the defendant did not testify is not
10 a factor to be considered by you in any way in
11 your deliberation and in your consideration on the
12 question of the guilt or the innocence of the
13 defendant. It must not be considered by you in
14 any manner whatsoever. A defendant has a
15 constitutional right to remain silent. And the
16 assertion of this right must not be considered by
17 you in your deliberations. I repeat, under your
18 oath you are to draw no conclusion whatsoever from
19 the fact the defendant did not testify. The fact
20 that this defendant did not testify should not
21 even be discussed in the jury room. The burden of
22 proof, as I stated to you, is on the State. The
23 defendant is not required to prove his innocence,
24 and the burden of proof remains on the State to
25 prove guilt beyond a reasonable doubt.

1 Now, in this case, members of the jury,
2 there are two indictments. Each indictment
3 charges a separate and distinct offense. You must
4 decide each indictment separately on the evidence
5 and the law that's applicable to it. The
6 defendant may be convicted or acquitted one or
7 both of the offenses charged. Mr. Foreperson, you
8 will be asked to write a separate verdict of
9 guilty or not guilty for each indictment.

10 Now, the first charge in this case, the
11 defendant has been charged with 2nd degree
12 burglary violent. A person is guilty of burglary
13 in the 2nd degree violent if the person enters a
14 building without consent and with intent to commit
15 a crime therein and the entering or remaining
16 occurs in the nighttime.

17 A building is any structure, vehicle,
18 watercraft, or aircraft where any person lodges or
19 lives, or where people assemble for the purpose of
20 business, government, education, religion,
21 entertainment, public transportation or public
22 use, or where goods are stored.

23 In order to prove the defendant entered
24 the building, the State does not have to show that
25 the defendant's entire body entered the building.

1 The smallest entry is sufficient. It may be any
2 part of the body such as a hand or a foot or even
3 an instrument such as a hook.

4 In addition, the State does not have to
5 prove that force was used to gain entry. If a
6 person enters a building by using deception,
7 artifice trick, or misrepresentation to get
8 consent to enter, this is an entry without
9 consent.

10 Now, also to prove the charge of burglary
11 in the 2nd degree violent the State must prove
12 beyond a reasonable doubt that the defendant
13 intended to commit a crime, either a felony or a
14 misdemeanor, at the time of the entry to be guilty
15 of burglary in the 2nd degree. The mere entry
16 into a building without consent is not burglary.
17 If the intent of a crime is formed after the
18 entry, it is not burglary.

19 On the other hand, if the defendant
20 intended to commit a crime at the time of entry,
21 it is a burglary, even if the intent was abandoned
22 after entering. It does not matter that the
23 intended crime was not completed.

24 Ladies and gentlemen, intent may be shown
25 by acts and conduct of a defendant and other

1 circumstances from which he may naturally and
2 reasonably infer intent.

3 Ladies and gentlemen, nighttime is
4 defined as the period between sunset and sunrise
5 during which there is not enough daylight to
6 recognize a person's face except by artificial or
7 moonlight.

8 Now, the defendant is also charged with
9 safecracking. To prove safecracking, the State
10 must prove beyond a reasonable doubt that the
11 defendant used explosives, tools, or any other
12 implement in or about a safe used for keeping
13 money or other valuables with the intent to commit
14 larceny or any other crime. Intent may be shown
15 by acts and conduct of the defendant and other
16 circumstances from which he may naturally and
17 reasonably infer intent.

18 Larceny is the taking and carrying away
19 of goods or personal things of another person with
20 the intent to permanently deprive the owner of
21 property and to confer it to the taker's use. The
22 defendant does not have to succeed in breaking
23 into the safe for the conduct to be safecracking.

24 Mr. Foreman and members of the jury, as
25 you retire to begin your deliberations in this

1 case, I wish to express the hope that each of you
2 understand the importance of your responsibilities
3 here today. You're not called upon to serve as
4 jurors very often, and the proper performance of
5 that duty requires that each of you reach the
6 height of freeing your mind of all improper
7 influences.

8 Please don't get the idea that I'm trying
9 to intimate to you how I think you should decide
10 this case. As I've already told you, under the
11 law of this state, you, the jury, are the sole
12 judge of all questions of fact, and it would be
13 highly improper for me to influence in the
14 performance of that duty.

15 So, again, I'm not trying to tell you
16 what verdict you should find, but, ladies and
17 gentlemen, as the presiding officer of this court,
18 I am vitally concerned that whatever verdict you
19 reach will be the result of you going back into
20 your jury room and then finding your consideration
21 to the evidence and the law that you've heard here
22 in this courtroom weighing fairly and impartially,
23 as I have every confidence that you will.

24 I want to remind you-all, ladies and
25 gentlemen, your verdict must be unanimous. It

1 must be the verdict of all 12 jurors. And to that
2 end, my law clerk has created a verdict form. It
3 has the case caption, State of South Carolina vs.
4 George Holmes, defendant, and it has two
5 questions. The first question is: To the charge
6 of 2nd degree burglary violent, we find the
7 defendant, George Holmes, and it says not
8 guilty or guilty and there's a place for you to
9 check, Mr. Foreperson. The second questions
10 states: As to the charge of safecracking, we find
11 the defendant, George Holmes, not guilty or
12 guilty.

13 Ladies and gentlemen, please don't infer
14 the order that we put guilty or not guilty. Every
15 trial we just reverse that. Under that,
16 Mr. Foreperson, there is a line for you to sign
17 your name to the verdict form, asserting that it
18 is the verdict of all 12 jurors and a place for it
19 to be dated, sir.

20 Ladies and gentlemen, when you have
21 reached a verdict, I need to you to knock on the
22 jury room door and we're going to accept you back
23 in here for -- to take the verdict.

24 Another couple of thing that I need you
25 to know, ladies and gentlemen, first, I know you

1 know my court reporter has been taking down
2 everything that's said, but there is no printed
3 transcript of the trial testimony. If there is
4 testimony that you want played back, what I can do
5 is bring you back into the courtroom and I can
6 play the audio tape, which is what we call back-up
7 tape of the trial testimony. The only thing I
8 need you to know is if you ask me for the certain
9 witness's testimony, I'm required to play that
10 witness's entire testimony. In other words, the
11 direct examination, the cross-examination, any
12 redirect, any re-cross. All right?

13 Also, ladies and gentlemen, I will tell
14 you that all the evidence that has been entered as
15 exhibits in this case will be back with you in the
16 jury room for you to use and reference. I will
17 tell you, if you don't have it back in there,
18 you're not entitled to it. Sometimes we use
19 things as just exemplars, and, if it is not back
20 there, you cannot have it because it was not
21 entered into evidence in the trial of this case.

22 Mr. Foreperson, I will also tell you that
23 the entire jury charge that I just read to you on
24 the law is in printed form and you are going to
25 have that back there with you if you need it. All

1 right? You're certainly welcome to reference it.
2 It has headlines of each portion that I discussed
3 so you can refer back.

4 All right. Ladies and gentlemen, for the
5 very last time I'm going to send you back to your
6 jury room and I'm going to tell you not to begin
7 your deliberations. If there's something further
8 on the law that these lawyers want me to charge,
9 I'm going to bring you back into the courtroom and
10 I'm going to charge you further. If not, you are
11 going to receive both the jury charge, the verdict
12 form, Mr. Foreperson, and all the evidence that
13 was entered into this case, and that's going to be
14 your signal to begin your deliberations.

15 All right. So I appreciate it. I
16 appreciate your attention, ladies and gentlemen.
17 And, again, wait to start your deliberations until
18 you will receive all the evidence and the verdict
19 form. All right, thank you.

20 (Jury exits the courtroom at 3:18 p.m.)

21 THE BAILIFF: Jury is clear, Your
22 Honor.

23 THE COURT: Any exceptions or additions
24 from the State?

25 MR. SHEDD: No, Your Honor.

1 THE COURT: From the defense?

2 MR. HAMILTON: No, Your Honor.

3 THE COURT: Very good. Gentlemen, make
4 sure you go through the evidence and you know
5 what's going back is appropriate. I'm going to go
6 ahead and give the verdict form and the charge to
7 Sharon for her to put on top.

8 We will be at ease until it goes back.

9 I'm going to wait, Rick, for you to bring
10 out the alternates and you take the evidence in.
11 Okay?

12 THE BAILIFF: Yes, ma'am.

13 (Alternates enter the courtroom.)

14 THE COURT: Thank you for serving. I
15 didn't lose anyone, which is the first time since
16 COVID. I'm going to attribute that to you wearing
17 your mask. Thank you.

18 Ladies, at this time, you are permitted
19 to talk about the case. There's nothing wrong
20 with that. Sometimes the attorneys or the
21 investigator may want to ask you your opinion,
22 you're free to speak of it if you want to but you
23 certainly are not required to in any way. If
24 anyone approaches you or wants to talk about it,
25 just say, no, thank you, I'm not interested. If

1 anyone persists, call the clerk of court's office,
2 let me know, and we'll take care of them. All
3 right?

4 Also, if you have become friends with any
5 of these jurors, I will tell you that I don't want
6 you speaking with them until they come to a
7 verdict. In other words, if for some reason they
8 should go overnight -- I doubt they will, but if
9 they were to, again, I want to make sure that you
10 haven't spoken with him since you've all been
11 excused. I will tell you, as far as if you're
12 interested in the verdict, you can call up to the
13 clerk of court's office and ask what it was and
14 they're happy to tell you. I can tell you,
15 oftentimes when there's a conviction, it's
16 published in the newspaper. Typically, when there
17 isn't, you don't see it in the newspaper. So you
18 will likely see it sometime. Maybe not tomorrow,
19 but either tomorrow or the next day if it is a
20 conviction. All right?

21 So, thank you again, ladies. We
22 appreciate it. If you need any kind of work
23 excuse ask Rick and they'll take care of it, or
24 whoever are the powers that be that are doing that
25 these days. But I can also excuse you from the

1 remainder of the week. The two trials that I
2 pulled, as you know, the first one after we pulled
3 the jury, settled yesterday. So this one was the
4 only other one we had left to do.

5 What I'm going to do tomorrow, I do
6 bonds, guilty pleas, I'm going to hear motions in
7 regards to other trials and the same thing on
8 Friday to try to move cases, because we certainly
9 can't try every case that's before us. We just
10 would never get through the docket. So we have to
11 dispose of them by other matters and we do that by
12 pretrial intervention, guilty pleas, or other
13 diversion programs. We have a really good drug
14 court here. It's very helpful for people who are
15 newer offenders, and, really, everything is driven
16 by drugs as opposed to any other violence, or
17 anything along those lines.

18 Anyway, we appreciate it. You-all have
19 been great. I can tell you, we have moved a lot
20 of cases on the docket by the simple fact that we
21 have enough jurors willing to serve. I can tell
22 you, I'm so pleased when our clerk of court says,
23 there's 105 juror here on Monday, because we've
24 been having trouble. We oftentimes had to only
25 pull one jury to be able to put our jurors back in

1 the pot to be able to pull them back out again.

2 We're grateful you're here. We appreciate it.

3 Thank you, ladies.

4 (Alternates excused.)

5 (Deliberations begin at 3:30 p.m.)

6 (Question from the jury.)

7 THE COURT: The jury came back and asked
8 for the surveillance again. I understand we got
9 it cued up.

10 MS. MOLINA: Yes. This is the same one
11 that was published during trial.

12 THE COURT: What one is that?

13 MS. MOLINA: They're the same.

14 MR. SHEDD: We just published --

15 THE COURT: It was just burned.

16 MS. MOLINA: It's just easier to play it
17 from the file than the disk.

18 (Off the record.)

19 THE COURT: Let's bring the jury in.

20 THE BAILIFF: Jury is entering the
21 courtroom, Your Honor.

22 THE COURT: Thank you. Mr. Foreman, if
23 any of you want to slide more that way to be
24 better able to see the video, you're welcome too.
25 Okay? Again, any of you want to get right on top

1 of that screen, you're more than welcome to go
2 back, or you can stay exactly where you are.
3 Whatever you prefer. Okay?

4 All right. Mr. Foreperson, you sent me a
5 note saying that you want to watch the
6 surveillance video again. Is that correct, sir?

7 FOREPERSON: Yes, ma'am.

8 THE COURT: So we're going to go ahead
9 and play that for you. Okay?

10 Go ahead and start.

11 (Exhibit 2, Surveillance video played in full
12 from 4:13 p.m. to 4:20 p.m.)

13 THE COURT: Mr. Foreperson, is that what
14 you wanted to see?

15 FOREPERSON: Yes, ma'am.

16 THE COURT: Anything else?

17 FOREPERSON: No, ma'am.

18 THE COURT: We're going to send you back
19 to the jury room. Thank you.

20 (Jury exits the courtroom at 4:20 p.m.)

21 THE BAILIFF: Jury is clear, Your
22 Honor.

23 THE COURT: Thank you.

24 All right, We'll continue to be at ease
25 until we hear back from them. Okay?

1 MR. SHEDD: Thank you, Judge.

2 MR. HAMILTON: Thank you, Judge.

3 (Deliberations resume at 4:35 p.m.)

4 THE BAILLIFF: All rise.

5 THE COURT: All right. It's my
6 understanding the jury reached a verdict. I'm
7 going to bring them back in.

8 Is the State ready?

9 MR. SHEDD: State is ready.

10 MR. HAMILTON: Defense is ready.

11 THE COURT: Let's bring them back in.

12 THE BAILIFF: Jury is entering the
13 courtroom, Your Honor.

14 THE COURT: Thank you.

15 (Jury enters the courtroom at 4:37 p.m.)

16 THE COURT: Mr. Foreperson, I understand
17 the jury has reached a verdict.

18 FOREPERSON: We have.

19 THE COURT: Would you please hand it to
20 the bailiff.

21 Mr. Hamilton, will you and your client,
22 please.

23 In the case of the State of South
24 Carolina vs. George Holmes, defendant, as to the
25 charge of 2nd degree burglary violent, we find the

1 defendant, George Holmes, guilty.

2 As to the charge of safecracking, we find
3 the defendant, George Holmes, guilty.

4 Signed by foreperson.

5 You may be seated.

6 Mr. Hamilton, would you like me to
7 individually pole this jury?

8 MR. HAMILTON: I would, Your Honor.

9 THE COURT: Ladies and gentlemen, if you
10 will take a look at your badges just to remind
11 yourselves of what your number is, I'm going to
12 call your number. I need you to kind of waive so
13 I know who I'm addressing, and I'm going to ask
14 you two questions. The first question is, is this
15 your verdict? Yes or no. And, is this still your
16 verdict? Okay? So those are the two questions.

17 Juror number 62, ma'am, is this your
18 verdict?

19 JUROR 62: Yes, ma'am.

20 THE COURT: Is it still your verdict?

21 JUROR 62: Yes, ma'am.

22 THE COURT: Thank you.

23 Juror number 99, is this your verdict?

24 JUROR 99: Yes, ma'am.

25 THE COURT: Is this still your verdict?

1 JUROR 99: Yes, ma'am.

2 THE COURT: Juror number 160, is this
3 your verdict?

4 JUROR 160: Yes, ma'am.

5 THE COURT: Is it still your verdict?

6 JUROR 160: Yes, ma'am.

7 THE COURT: Juror number 25. Sir, is
8 this your verdict?

9 JUROR 25: Yes, Your Honor.

10 THE COURT: Is it still your verdict?

11 JUROR 25: Yes, Your Honor.

12 THE COURT: Juror number 95. Sir, is
13 this your verdict?

14 JUROR 92: Yes, Your Honor.

15 THE COURT: Is it still your verdict?

16 JUROR 92: Yes, Your Honor.

17 THE COURT: Juror number 285.

18 JUROR 285: Yes, Your Honor.

19 THE COURT: Ma'am, is this your verdict?

20 JUROR 285: Yes, Your Honor.

21 THE COURT: Is it still your verdict?

22 JUROR 285: Yes, Your Honor.

23 THE COURT: Juror number 190. Sir, is
24 this your verdict?

25 JUROR 190: Yes.

1 THE COURT: Is it still your verdict?

2 JUROR 190: Yes.

3 THE COURT: Juror number 78. Sir, is

4 this your verdict?

5 JUROR 78: Yes, Your Honor.

6 THE COURT: Is it still your verdict?

7 JUROR 78: Yes.

8 THE COURT: Thank you, sir.

9 Juror number 328. Sir, is this your
10 verdict?

11 JUROR 328: Yes, ma'am.

12 THE COURT: Is it still your verdict?

13 JUROR 328: Yes, ma'am.

14 THE COURT: Juror number 293, is this
15 your verdict?

16 JUROR 293: Yes.

17 THE COURT: Is it still your verdict?

18 JUROR 293: Yes.

19 THE COURT: Juror number 168. Sir, is
20 this your verdict?

21 JUROR 168: Yes, Your Honor.

22 THE COURT: Is it still your verdict?

23 JUROR 168: Yes, Your Honor.

24 THE COURT: Thank you, sir.

25 And lastly, juror number 154. Sir, is this

1 your verdict?

2 JUROR 154: Yes, ma'am.

3 THE COURT: Is it still your verdict?

4 JUROR 154: Yes, ma'am.

5 THE COURT: Thank you.

6 Is there anything further required of this
7 jury from the State?

8 MR. SHEDD: No, Your Honor.

9 THE COURT: From the defense?

10 MR. HAMILTON: Not from the defense, Your
11 Honor.

12 THE COURT: Thank you.

13 Mr. Shedd, you're going to prepare
14 sentencing sheets now; is that correct?

15 MR. SHEDD: That's correct, Your Honor.

16 THE COURT: I appreciate it.

17 Ladies and gentlemen, I want to thank you
18 for your service here today. As I always tell
19 juries, your job is to determine whether or not
20 someone is guilty of the offenses charged. It's
21 my job to sentence them, and that is what I'm
22 going to be doing in about another five minutes or
23 so. I will hear his background and his history.
24 We also have sentencing guidelines that we do have
25 to follow to some extent. They are quite large in

1 this range here, but I just want you to know that
2 that's what we're doing here. They're preparing
3 some paperwork for me so I can fill out and
4 sentence Mr. Holmes.

5 You can stay and watch, if you would like
6 to, or you certainly don't have to, ladies and
7 gentlemen. It is completely up to you. Some
8 jurors like to stay and want to know and some just
9 don't. Either way, it's absolutely fine.

10 At this time, I am going to excuse you
11 for any of you that want to go and not be here for
12 sentencing.

13 Also, ladies and gentlemen, when you go
14 home tonight or this afternoon and you run into
15 anyone, you are permitted to discuss this case.
16 You can tell people what you were doing up here.
17 Oftentimes, the attorneys or the investigator
18 wants to know your thoughts about maybe something
19 in the case. If you want to talk to them, you
20 may. You're not required to, ladies and
21 gentlemen. If someone approaches you or asks you
22 something and you don't wish to speak about the
23 case, you just respectfully say, you know, no
24 thank you and keep going. If for any reason
25 anyone were to persist, they won't, but if they

1 did, you need to call up to the clerk's office or
2 go tell someone in the courthouse immediately and
3 I will take care of them.

4 So, ladies and gentlemen, I will tell you
5 as far as the other work that we've done here this
6 week, as you know, I drew a previous jury in a
7 drug trafficking case yesterday. I pulled the
8 case. The jury came back and that case ended up
9 pleading guilty in the morning, so I went ahead
10 and I sentenced that gentleman. He had some other
11 pending charges, so he came in this morning as
12 well and pled guilty to another set of charges
13 that he had to take advantage of running them all
14 concurrently, and also so that he wouldn't invoke
15 an extra strike.

16 In South Carolina if you are convicted of
17 most serious or serious offenses, you have what we
18 call a certain amount of strikes. It's under
19 either the two- or three-strike law. It basically
20 means that the solicitor's office, if they choose
21 to, when you receive a strike, they can ask for
22 life without parole and serve notice of that to
23 the defendant. So that's why it's significant to
24 people who do or have violent offenses, which drug
25 trafficking is a violent offense. They're

1 concerned about it. So I took care of that this
2 morning. I took some other pleas and some other
3 things.

4 I will tell you tomorrow I am scheduled
5 to do guilty pleas, bond motions, a lot of motions
6 for upcoming trials. I have a severance motion
7 where two co-defendants are asking that their jury
8 trials be separated and they're not tried
9 together. Just a number of things to be able to
10 keep our docket moving to get things done here.
11 Same thing all day Friday. That, and we're status
12 conferencing cases. The nice things now, which
13 everyone back at work and back in their offices,
14 the lawyers are able to get together more and talk
15 easier and we can help resolve some of these
16 cases. We absolutely do not have the time or the
17 manpower to try every case that comes in through
18 our circuit. So, again, we have to dispose of
19 them by other means, which means diversion
20 programs, pre-trial intervention, drug court, that
21 kind of thing.

22 So I just wanted to let you-all know that
23 that's what we're doing. You're invited to stay
24 to watch if you'd like. I don't think we're going
25 to do much after the sentencing today, but we will

1 be working all day Thursday and Friday trying to
2 move some cases.

3 So, ladies and gentlemen, again, thank
4 you. Not only were you able to help us resolve
5 this case, but the simple fact that you-all were
6 here Monday morning allowed us to move a number of
7 other cases. Just having the jury ready to hear
8 cases helps them get resolved.

9 I want to thank you again. You certainly
10 have earned your exemption for the next three
11 years. I'm going to excuse you for the remainder
12 of the week from you're service.

13 So, at this time, if you want to stay,
14 I'm going to tell you to just keep your seats and
15 I'm going to sentence Mr. Holmes. But if you like
16 to leave, now is the time to do that.

17 All right. Thank you, ladies and
18 gentlemen. I appreciate it.

19 (Jury excused at 4:45 p.m.)

20 MS. GIBBS: I have a mental evaluation. It's
21 part of mitigation.

22 THE COURT: Yes, please.

23 MR. HAMILTON: Judge, if I may when
24 you're ready?

25 THE COURT: Give me one moment, please.

1 Solicitor, I need to know any prior record he
2 has.

3 MR. SHEDD: Absolutely, Your Honor. I
4 have the sentences sheets.

5 THE COURT: Also, sir, I'd like to know
6 how much dollar damage was done to the structure
7 and to the ATM machine itself.

8 MR. SHEDD: Judge, as to his prior
9 record, Mr. Holmes has a 2001 unlawful use of 911,
10 2002, a burglary 2nd non-violent, two counts for
11 which he received an active YOA.

12 THE COURT: This was an YOA?

13 MR. SHEDD: Eventually, because well into
14 2002, there's a strong-armed robbery and a
15 resisting arrest. Strong-armed robbery, he also
16 got a YOA active that was running concurrent, as
17 well as a grand larceny \$5,000 or more. In 2005,
18 his YOA was revoked. In 2007 his YOA was revoked
19 again. In 2009, he has petty larceny. 2010 he
20 has assault upon a corrections employee.

21 THE COURT: I'm sorry. Say that again.

22 MR. SHEDD: 2010, assault upon a
23 corrections employee.

24 THE COURT: Okay.

25 MR. SHEDD: 2010, possession of less than

1 one gram of meth or cocaine base, possession of a
2 pistol by a person convicted of a crime of
3 violence, and assault -- excuse me. It's same
4 charge. 2013, a filing false police report or
5 felony. 2015, malicious injury to personal
6 property. 2016, indecent exposure. 2017, grand
7 larceny 2,000 to 10,000. 2018, a public
8 disorderly conduct. That is his prior record.

9 Judge, I don't have the answer for the
10 amount of money damages done to the ATM and the
11 building. It's not reflected. We haven't gotten
12 any information regarding restitution. I just
13 don't have that informatoin. I can get it for
14 you, if you would like.

15 THE COURT: Anything else you like to
16 present before I hear from the defense?

17 MR. SHEDD: No, Your Honor. You presided
18 over the trial. We don't need to labor it.

19 THE COURT: Thank you. Mr. Hamilton.

20 MR. SHEDD: State is asking for 18
21 years.

22 MR. HAMILTON: Yes, Your Honor. Just to
23 point out, I would just like to renew and reraise
24 all my prior motions and objections from earlier
25 today. Miss Gibbs is handling mitigation.

1 MS. GIBBS: Thank you, Judge. I'm
2 stepping in because I feel like I've known
3 Mr. Holmes since I've been at the public
4 defender's office. We've known George just
5 because he's somebody who, not from having
6 charges, but he's just somebody who's around in
7 the community. He's basically transient. He
8 rides his bike everywhere. We got this case about
9 a month ago. But prior to that, he was in our
10 office where he was conflicted out and he was
11 evaluated for mental health and just -- he was
12 found competent to stand trial.

13 In looking at his 37 years, he grew up in
14 Beaufort. He basically started out with DDSN in
15 his household, between his mother and himself with
16 DDSN involvement. He's had significant mental
17 history and a diagnosis for schizophrenia and just
18 -- in-patient psychiatric treatment and suicidal
19 ideation.

20 I just feel like he is somebody who -- he
21 struggles. He's had, kind of, tough lot in life.
22 He really struggles. I feel like his record,
23 while, obviously, he does have some serious
24 charges on his record, and this is obviously
25 serious charges, I feel like he's not necessarily

1 a danger to the community as far as violent in any
2 way.

3 He is very mild mannered and soft spoken.
4 And sometimes he does have trouble maintaining his
5 composure, but I think that's related to his
6 mental health diagnosis.

7 Since we got this case back a month ago,
8 he immediately -- I mean, he rode his bike from
9 St. Helena Island to be here. He rides his bike
10 to meet with us and has taken this case very
11 seriously.

12 Mr. Holmes, he has tried to have work
13 history. He worked out on a shrimp boat helping
14 his family. He's worked in different restaraunts,
15 food and beverage. He's actually working right
16 now at Foolish Frog. He worked throughout this
17 whole process in preparation of this trial. We
18 called the restaurant so he can get off work and
19 come meet with us, ride his bike to meet with us.
20 I just have a special place in my heart for
21 Mr. Holmes because I feel like he is somebody who
22 has just had a rough go in life.

23 And I think -- obviously, he does have
24 significant physical health problems. You can see
25 where his hands are swelling. He does suffer from

1 physical ailments, as well as a mental health
2 diagnosis where he is, you know, working on taking
3 his medication and making sure -- which I think
4 it's difficult with not a lot of significant
5 support or family background. But he's somebody
6 who has been in this community a while.

7 Actually, he spent 505 days in jail.

8 THE COURT: How many?

9 MS. GIBBS: 505.

10 THE COURT: Okay.

11 MS. GIBBS: I do not agree with the
12 State's recommendation of 18 years. I think that
13 is excessive, extremely excessive. I would ask
14 that you consider, if not a time-served sentence,
15 a five years sentence, or a split sentence just to
16 ensure that he continues his mental health
17 treatment.

18 But I do know this has never really been
19 an issue of -- I think the issue of going to trial
20 in this case, he just -- the charges were so
21 heavy, safecracking. There's an argument that it
22 could be attempted. So it's just difficult to get
23 across with the recommendation of 18 years,
24 whether or not he pleas guilty or not.

25 He exercised his constitutional right to

1 a trial and I would ask that you not punish him
2 for that and just show him mercy, Judge.

3 THE COURT: Do you have anything else?

4 MR. SHEDD: No.

5 THE COURT: Mr. Holmes, is there anything
6 you want to say?

7 MR. HOLMES: I wanted to say that I just
8 made a mistake. I'm not perfect I got to do
9 better.

10 THE COURT: Mr. Holmes, are you currently
11 taking medicine for schizophrenia?

12 MR. HOLMES: Yes.

13 THE COURT: What are you taking?

14 MR. HOLMES: Restoril.

15 THE COURT: How often are you taking it?

16 MR. HOLMES: I'm supposed to get it Friday.

17 THE COURT: Okay. Do you go to Coastal
18 Mental -- Coastal Empire Mental Health?

19 MR. HOLMES: Yes.

20 THE COURT: I'm go to note for the record
21 that I've read the DMH report. It does find that
22 he was competent and understands right from wrong,
23 could assist his attorneys.

24 I do see in here that he had a diagnosis
25 of schizophrenia with many episodes and some

1 commitments. He also has a substance abuse
2 history. I do see that he does have a medical
3 history of deep vein thrombosis and edema in his
4 legs, and it sounds like he currently does as well
5 in his hands, and all over, potentially.

6 Miss Gibbs, he is out right now. When
7 was he let out and when did he accrue this 505
8 days?

9 MS. GIBBS: When he was first arrested, I
10 believe it was in the summer of 2018, and then he
11 was let out for a COVID bond in May. So it's been
12 since May 2020 he's been out, and there's been no
13 additional charges or trouble or anything since
14 that time.

15 THE COURT: And, correct me if I'm wrong,
16 Solicitor, this is the -- both charges are serious
17 offenses as well as the burglary in the 2nd degree
18 violent is also a violent offense.

19 MR. SHEDD: That's correct, Your Honor.

20 THE COURT: All right. So is he going to
21 do 85 percent of whatever the sentence is?

22 MR. SHEDD: On the burglary.

23 MS. GIBBS: On the safecracking.

24 MR. SHEDD: Yeah.

25 THE COURT: On indictment 2019-GS-740 for

1 safecracking, the sentence of this court is that
2 you be committed to the department of corrections
3 for a period of 20 years. That's suspended upon
4 service of 15 years and probation following for a
5 period of five years. I am giving you credit for
6 505 days time served, and I am ordering that you
7 comply with mental health counseling and mental
8 health medicine regimen as prescribed.

9 On indictment 2019-GS-739 for burglary
10 2nd degree violent, the sentence of this court is
11 that you committed to the department of
12 corrections for a period of 15 years, and, of
13 course, I'm giving you credit and those will
14 concurrent to each other.

15 Good luck to you, sir.

16 MR. SHEDD: Thank you, Your Honor.

17 MR. HAMILTON: Thank you, Your Honor.

18 THE COURT: Will you attach these to the
19 sentencing sheet? I want his evaluation in the
20 file.

21 (Trial concluded.)

22

23

24

25

RECEIVED
MAY 31 2022
SC Court of Appeals

ARREST WARRANT

2018A0710200399

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Beaufort

THE STATE

18S324816

against

George Holmes

Address:

Phone: _____ SSN: _____

Sex: M Race: B Height: 5 Weight: 240

DL State: _____ DL #: _____

DOB: _____ Agency ORI #: SC0070000Prosecuting Agency: Beaufort County Sheriff's OfficeProsecuting Officer: Jonathan M Hewitt - S00393Offense: Burglary / Burglary (Non-Violent) - Second degreeOffense Code: 0080Code/Ordinance Sec: 16-11-0312This warrant is CERTIFIED FOR SERVICE in the☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant George Holmeson 12/28/18Mark K. Fitzgibbons

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Beaufort County General Sessions

PO Box 1128

102 Ribaut Road, Rm. 208

Beaufort, SC 299011128

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Beaufort

AFFIDAVIT

ORIGINAL

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 318Personally appeared before me the affiant Jonathan M Hewitt whobeing duly sworn deposes and says that defendant George Holmesdid within this county and state on or about 12/28/2018State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of

Beaufort

in the following particulars:

DESCRIPTION OF OFFENSE: Burglary / Burglary (Non-Violent) - Second degreeI further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

That on December 28th, 2018, at approximately 0128 hours, the defendant, one George Holmes did knowingly, willingly and unlawfully violate the laws of the State of South Carolina in that he did commit the offense of Burglary in the 2nd Degree. The defendant unlawfully forced into the Navy Federal Credit Union ATM. He did so by using a crow bar to break through the outside door. Upon gaining entry attempted to force entry into the ATM box in an attempt to steal the currency located within. The incident was captured on surveillance footage. Holmes was positively identified and a BCSO Tracking Team was recalled and tracked to the location he was found. This incident did occur at 102 Sea Island Parkway, Beaufort, Beaufort County, South Carolina and within the jurisdiction of the Beaufort County Sheriff's Office. The Affiant and others are witness to the same.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Beaufort

Affiant's Address 2001 Duke StBeaufort, SC 29902-

Affiant's Telephone _____

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 12/28/2018defendant George Holmes

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Beaufort

) as set forth below:

DESCRIPTION OF OFFENSE: Burglary / Burglary (Non-Violent) - Second degree

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on 12/28/2018

(L.S.)

Signature of Issuing Judge

Mark Francis Fitzgibbons

Judge's Code: 7060Judge's Address 104 Ribaut RdBeaufort, SC 29901-2207Judge's Telephone (843)255-5700Issuing Court: ☒ Magistrate☐ Municipal☐ Circuit

Certified - A True Copy

Jerri Ann Roseneau - Clerk of Court
 Beaufort County, SC - Jennifer Petroff

RECEIVED

MAY 31 2022

SC Court of Appeals

ARREST WARRANT

2018A0710200400

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Beaufort

THE STATE
against

18S324618

George Holmes

Address:

Phone: _____ SSN: _____
Sex: M Race: B Height: 5 7 Weight: 240

Dt. State: _____ Dt. #: _____

DOB: _____ C0070000

Prosecuting Agency: Beaufort County Sheriff's Office

Prosecuting Officer: Jonathan M Hewitt - S00393

Offense: Burglary / Safecracking

Offense Code: 0141

Code/Ordinance Sec: 16-11-0390

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality ofThe accused
is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant on _____

Signature of Commissioner/ Law Enforcement Officer

RETURN WARRANT TO:

Beaufort County General Sessions
PO Box 1128
102 Ribaut Road, Rm. 208
Beaufort, SC 299011128

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Beaufort

AFFIDAVIT

ORIGINAL

Form Approved By
S.C. Attorney General
April 21, 2003
SCCA 518Personally appeared before me the affiant Jonathan M Hewitt who
being duly sworn deposes and says that defendant George Holmes
did within this county and state on or about 12/28/2018 violate the criminal laws of the
State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Beaufort)
in the following particulars:

DESCRIPTION OF OFFENSE: Burglary / Safecracking

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:That on December 28th, 2018, at approximately 0128 hours, the defendant, one George Holmes did knowingly, willingly and
unlawfully violate the laws of the State of South Carolina in that he did commit the offense of Safecracking. The defendant
unlawfully broke into the Navy Federal Credit Union ATM. Upon gaining entry attempted to force entry into the ATM box to steal
the currency located within. The incident was captured on surveillance footage, Holmes was positively identified and a BCSO
Tracking Team was recalled and tracked to the location he was found. This incident did occur at 102 Sea Island Parkway, Beaufort,
Beaufort County, South Carolina and within the jurisdiction of the Beaufort County Sheriff's Office. The Affiant and others are
witness to the same.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Beaufort

Affiant's Address 2001 Duke St
Beaufort, SC 29902-

Affiant's Telephone _____

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 12/28/2018 defendant George Holmesdid violate the criminal laws of the State of South Carolina (or ordinance of
☒ County/ ☐ Municipality of Beaufort) as set forth below.

DESCRIPTION OF OFFENSE: Burglary / Safecracking

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable.Sworn to and subscribed before me
on 12/28/2018Mark Francis Fitzgibbons
Judge Code: 7060Judge's Address 104 Ribaut Rd
Beaufort, SC 29901-2207Judge's Telephone (843)255-5700Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

Certified - A True Copy

Jerri Ann Rosejeau - Clerk of Court
Beaufort County, SC - Jennifer Perloff

192

WITNESSES

Hewitt - BCSO

ARREST WARRANT NUMBER

2018A0710200399

ACTION OF GRAND JURY

True Bill

Michelle

Foreperson of Grand Jury

Date: APR 18 2019

VERDICT

GUILTY

A. K. Hall

Foreperson of Petit Jury

Date: 5.18.22

INDICT

DOCKET NO. 2019GS0700039

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

April Term 2019

THE STATE

vs.

GEORGE HOLMES

Indictment For

Burglary 2nd Degree (violent)

SC Code: 16-11-312(B)(3)

CDR Code: 0086

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA

)
)
)

INDICTMENT

COUNTY OF BEAUFORT

2019GS0700039

At a Court of General Sessions, convened on April 18, 2019, the Grand Jurors of Beaufort County present upon their oath:

Burglary 2nd Degree (violent)

That in Beaufort County, South Carolina, on or about December 28, 2018, the Defendant, GEORGE HOLMES, did enter a building without consent and with intent to commit a crime therein and the entering or remaining occurred in the nighttime, all in violation of Section 16-11-312(B)(3), et al. of the Codes of Law of South Carolina.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Solicitor

True Bill

194

WITNESSES

Hewitt - BCSO

DOCKET NO. 2019GS0700040

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

April Term 2019

THE STATE

vs.

GEORGE HOLMES

Indictment For

Safecracking

SC Code: 16-11-390

CDR Code: 0141

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

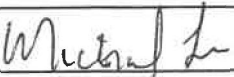
C.C.C. PLS. and G.S.

ARREST WARRANT NUMBER

2018A0710200400

ACTION OF GRAND JURY

True Bill



Foreperson of Grand Jury

Date: APR 18 2019

VERDICT

Guilty



Foreperson of Petit Jury

Date: 5.18.22
INDICT

STATE OF SOUTH CAROLINA

)

INDICTMENT

COUNTY OF BEAUFORT

)

2019GS0700040

At a Court of General Sessions, convened on April 18, 2019, the Grand Jurors of Beaufort County present upon their oath:

Safecracking

That in Beaufort County, South Carolina, on or about December 28, 2018, the Defendant, GEORGE HOLMES, did use explosives, tools, or other implement in or about a safe used for keeping money or other valuables with intent to commit larceny or another crime, all in violation of Section 16-11-390, et al. of the Codes of Law of South Carolina.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Solicitor

True Bill

196
STATE

GEORGE HOLMES

INDICTMENT/CASE#: 2019GS0700039

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF BEAUFORT

STATE

INDICTMENT/CASE#: 2019GS0700039

VS.

GEORGE HOLMES

A/W#: 2018A0710200399

AKA:

Date of Offense: 12/28/2018

Race: Black Sex: Male Age: 34

S.C. Code §: 16-11-312(B)(3)

DOB: [REDACTED] SS#: [REDACTED]

CDR Code #: 0086

Address: [REDACTED] SAMUEL LN, SAINT HELENA IS, SC 29920
5411

City, State, Zip:

DL#* SID#

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the above indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS

TO: Burglary 2nd Degree Violent

In violation of § 16-11-312(B)(3) of the S.C. Code of Laws, bearing CDR Code # 0086

☐ 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:

Solicitor SC Bar # Defendant Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Correction ☐ County Detention Center,

for a determinate term of 15 days/months/years/Time Served ☐ Youthful Offender Act not to exceed 1 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.
503 days/months

☐ To include time spent on monitored house arrest prior to trial and sentencing.

☐ The Defendant Shall be Released from County Detention Center.

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:

☐ 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. -
§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. -
§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: _____

Presiding Judge: _____

Judge Code: _____

Sentence Date: _____

2142
5-18-22

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF BEAUFORT

STATE

INDICTMENT/CASE#: 2019GS0700040

VS.

GEORGE HOLMES

A/W#: 2018A0710200400

AKA:

Date of Offense: 12/28/2018

Race: Black Sex: Male Age: 34

S.C. Code §: 16-11-390

DOB: [REDACTED] SS#: [REDACTED]

CDR Code #: 0141

Address: [REDACTED] SAMUEL LN, SAINT HELENA IS, SC 29920
5411

City, State, Zip:

DL#* SID#

SENTENCE SHEET

*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: SafecrackingIn violation of § 16-11-390 of the S.C. Code of Laws, bearing CDR Code # 0141☐ 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:

Solicitor SC Bar # Defendant Attorney for Defendant SC Bar # WHEREFORE, the Defendant is committed to the ☒ State Department of Correction ☐ County Detention Center,for a determinate term of 20 days/months/0 years/Time Served ☐ Youthful Offender Act not to exceed yearsand/or to pay a fine of \$; provided that upon the service of 15 days/months/0 years/Time Served and or paymentof \$; plus costs and assessments as applicable*; the balance is suspended with **probation** for 5months/0 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.
505 days/months☐ To include time spent on monitored house arrest prior to trial and sentencing.☐ The Defendant Shall be Released from County Detention Center.

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:

☐ 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:

Must comply with mental health counseling and medicine regimen as prescribed.

☐ 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.-
§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.-
§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	\$ 18.75
☐ Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees	\$500	\$ 500.-
☐ § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund	TBD	\$

TOTAL \$ 643.75

Clerk of Court/Deputy Clerk
Court Reporter:

[Signature]

Presiding Judge:
Judge Code:
Sentence Date:

7542
5-18-22

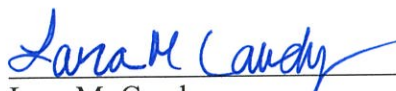
RECEIVED**Oct 25 2023**

CERTIFICATE OF COUNSEL FOR APPELLANT

SC Court of Appeals

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,



Lara M. Caudy
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR APPELLANT

This 25th day of October, 2023.

RECEIVED

Oct 25 2023

SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Beaufort County

Honorable Carmen T. Mullen, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

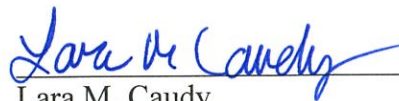
GEORGE HOLMES,

APPELLANT

APPELLATE CASE NO. 2022-000728

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies that a copy of the Record on Appeal in the above referenced case has been served upon Mark R. Farthing, Esquire, at his primary email address listed in the Attorney Information System (AIS), this 25th day of October, 2023.



Lara M. Caudy
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

From: [Bryant, Hannah](#)
To: [Mark Farthing](#); [SC - COLLINS CAROLINE](#); [Caudy, Lara](#)
Subject: George Holmes Appellate Case No. 2022-000728 Amended Record on Appeal
Date: Wednesday, October 25, 2023 9:59:00 AM
Attachments: [George Holmes Appellate Case No. 2022-000728 Record on Appeal.pdf](#)

Dear Mr. Farthing,

Please find attached for service a copy of corrected Record on Appeal in the above referenced case, which will be filed in the Court of Appeals today.

Hannah Bryant

Administrative Assistant
South Carolina Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
(803)-734-1330