

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from York County

John C. Hayes, III, Circuit Court Judge

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S.C. Supreme Court

MASON JOHNSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No. 2012-213721

APPENDIX

WANDA H. CARTER
Deputy Chief Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

J. RUTLEDGE JOHNSON
Assistant Attorney General

P. O. Box 11549
Columbia, SC 29211

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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State of South Carolina) In the General Sessions
) Court of York
)
 County of York) Case No.: 2010-GS-46-00949
) 2010-GS-46-00950

State of South Carolina,,)
)
 Plaintiff.,)
)
 -vs-) Transcript of Record
)
 Mason Johnson.,)
)
 Defendant.)
)

May 24, 25, 26, 2010
 York, South Carolina

B E F O R E:

Honorable Lee S. Alford, Judge, and a jury.

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

Mr. Curtis R. Hutchinson
 Assistant Solicitor
 Sixteenth Judicial Circuit
 Moss Justice Center
 1675-1A York Hwy.
 York, South Carolina 29745-7422
 803-628-3020
 For the Plaintiff

Mr. Kenneth D. Snow
 Attorney at Law
 Coble & Snow, LLP
 407 East Boulevard, Suite 200
 Charlotte, North Carolina 28203
 794-358-0026
 For the Defendant

Wanda Nelson
 Circuit Court Reporter
 Sixteenth Judicial Circuit

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Reporter's Note: All Exhibits were filed with the York County Clerk of Court's Office.

1 (ON THE RECORD MONDAY, MAY 24, 2010 AT 10:30 AM.)

2 (JURY ROLL CALL AND JURY QUALIFICATIONS AT 10:30 AM.)

3 (COURT IN RECESS AT 11:50 AM.)

4 (COURT BACK IN SESSION AT 02:40 PM.)

5 (WHEREUPON: STATE'S EXHIBITS ONE THROUGH TWENTY-THREE
6 PREMARKED FOR IDENTIFICATION.)

7 THE BAILIFF: All rise, come to order, please.

8 THE COURT: Thank you, please be seated.

9 MR. HUTCHINSON: May it please the Court?

10 THE COURT: Yes, sir.

11 We'll get the Defendant out first, please, sir.

12 THE BAILIFF: Who is the Defendant?

13 THE COURT: Mason Johnson.

14 MR. HUTCHINSON: Mason Johnson, yes. I apologize.

15 THE BAILIFF: Mason Johnson.

16 (DEFENDANT ENTERING COURTROOM.)

17 MR. HUTCHINSON: Your Honor, next up for this court is
18 the case of State versus Mason Johnson. I apologize, Your
19 Honor.

20 Mr. Johnson has been indicted for two charges. One,
21 grand larceny, which is Indictment No. 2010-GS-46-0-0-9-5-
22 0. Second is for burglary second degree violent, 2010-GS-
23 46-0-0-9-4-9. Mr. Johnson has pled not guilty and as I
24 understand he wishes to go forward with the trial today.

25 Your Honor; in regard specifically to burglary second

1 degree violent, we do intend to prove the elements as
2 stated in the indictment. Additionally, Mr. Johnson has
3 two prior convictions for burglary second degree. And we
4 can make those court exhibits if the defense prefers that
5 as opposed to later on bringing that in front of the jury.

6 THE COURT: What is your purpose in that?

7 MR. HUTCHINSON: Just as elements of burglary second
8 degree violent, Your Honor.

9 THE COURT: What about burglary first degree? Is
10 there a number to burglary second degree as well?

11 MR. HUTCHINSON: It could be under two theories, Your
12 Honor. It can either be under a dwelling, or it can be
13 under a building at nighttime, or by a person with prior
14 two or more convictions under 16-11-312.

15 THE COURT: Well this is kind of a first for me.
16 Usually, you got two prior burglaries you go for burglary
17 first degree you seek life, but you're not doing that in
18 this case?

19 MR. HUTCHINSON: No, Your Honor.

20 THE COURT: All right, you will admit -- I guess you
21 can submit them at the appropriate time or premark them.
22 You want to show them to Counsel?

23 (DEFENSE COUNSEL REVIEWING INDICTMENTS.)

24 MADAME COURT REPORTER: Court's?

25 MR. HUTCHINSON: Yes, ma'am.

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MADAME COURT REPORTER: Two?

MR. HUTCHINSON: Court One and Two, yes, ma'am.

MADAME COURT REPORTER: Yes, sir. There you go.

MR. HUTCHINSON: Thank you.

MADAME COURT REPORTER: You're welcome.

(WHEREUPON: COURT'S EXHIBITS ONE AND TWO, IDENTIFIED
AND MARKED, RECEIVED INTO EVIDENCE.)

THE COURT: Actually, I think it would be State's
Exhibits because they're obviously the defense. Those are
things you'd have to prove.

MR. HUTCHINSON: Yes, Your Honor, I apologize.

THE COURT: They wouldn't be Court Exhibits, they
would be State Exhibits..

MR. HUTCHINSON: Twenty-four and Twenty-five.

MADAME COURT REPORTER: Yes, sir, Twenty-four and
Twenty-five. Right there, yes, sir.

MR. HUTCHINSON: Thank you.

(WHEREUPON: STATE'S EXHIBITS TWENTY-FOUR AND TWENTY-
FIVE PREMARKED FOR IDENTIFICATION.)

MR. HUTCHINSON: And, Your Honor, the State is ready
to proceed with picking the jury...

(PAUSE.)

THE COURT: Counsel, approach just a minute.

(BENCH CONFERENCE OFF THE RECORD AT 02:50 PM.)

THE COURT: Mr. Snow, is the defense ready to proceed

1 now with the trial?

2 MR. SNOW: Judge, the defense is ready.

3 THE COURT: All right. The Defense -- I'm assuming
4 the Defendant is pleading not guilty to this charge. Is
5 that right?

6 MR. SNOW: Judge, ---

7 THE COURT: These two charges, I'm sorry.

8 MR. SNOW: That's correct.

9 THE COURT: Is that correct? And you're ready for
10 trial, sir?

11 MR. SNOW: Ready to proceed, Judge.

12 THE COURT: All right. Then, let me hear you with
13 regard, you had one pretrial motion, I believe, for
14 sequestration?

15 MR. SNOW: Judge, I would just ask the Court,
16 respectfully, to sequester the witnesses that the State
17 always has.

18 THE COURT: And the defense has handed up only one
19 witness other than the Defendant, and that witness will be
20 sequestered. And the State's witnesses except for the case
21 agent and the victim.

22 MR. HUTCHINSON: Yes, Your Honor.

23 THE COURT: They're allowed to be in the courtroom.
24 All the others will be sequestered once we get to the
25 opening statements. They will be sequestered and can only

1 come in the courtroom after they testify, sit in the
2 courtroom once they testify. And they also cannot discuss
3 their testimony with anybody else. They have to testify.
4 That's what sequestration is.

5 All right, anything else you need to say?

6 MR. HUTCHINSON: Nothing to say, Your Honor.

7 MR. SNOW: Nothing, Your Honor.

8 THE COURT: Gentlemen, strikes will be ten for the
9 Defense and five for the State. We will draw one
10 alternate. And strikes will be two for the Defense and one
11 for the State.

12 All right. Please bring the jury up.

13 (JURY PANEL ENTERS COURTROOM AT 03:00 PM.)

14 THE COURT: Ladies and gentlemen of the jury panel, if
15 you'll give me your attention please. We are about to go
16 into a trial in the matter of the State of South Carolina
17 versus Mason Johnson. The State charges Mr. Johnson with
18 two offenses. They charge him with grand larceny. And
19 they also charge him with burglary second degree. To these
20 charges, the Defendant has pled not guilty. And we are
21 starting a trial as to these two charges.

22 Now, the offenses are alleged to have occurred on or
23 about November the 18th, 2009 at [REDACTED] in
24 Rock Hill, South Carolina. I'm giving you that information
25 in the event it would cause you to know that you had any

1 prior knowledge about this case or the allegations in this
2 case before coming to court.

3 Now, the State is represented in this case by
4 Assistant Solicitors Curtis Hutchinson and Jenny Desch.
5 Counsel, please stand to the jury can see who you are.

6 (SOLICITOR DESCH AND HUTCHINSON STOOD.)

7 THE COURT: Thank you, you may be seated.

8 Is anyone on the jury panel related by blood or
9 marriage; friends with; have any other type social,
10 business, or professional relationship with either Curtis
11 Hutchinson or Jenny Desch? If so, please stand.

12 (NO RESPONSE.)

13 THE COURT: Is anyone on the jury panel related by
14 blood or marriage; friends with; have any other type
15 social, business, or professional relationship with anyone
16 who works in the Sixteenth Circuit Solicitor's Office? If
17 so, please stand.

18 (NO RESPONSE.)

19 THE COURT: Is any member on the jury panel employed
20 by any city, county, state, or federal law enforcement
21 agency, either at the present time or in the past? If so,
22 please stand.

23 Yes, ma'am. Please give us your name and juror
24 number.

25 A. Elaine Duke, Juror 60.

1 ((WHITE FEMALE STOOD.)

2 THE COURT: I'm sorry, your number was?

3 MS. DUKE: Sixty.

4 THE COURT: Yes, ma'am.

5 MS. DUKE: I'm employed with the Winthrop University
6 Police Department. And my husband is retired from the city
7 police department.

8 THE COURT: Okay.

9 MS. DUKE: My husband is retired from the ...

10 THE COURT: Are you currently employed with the police
11 department now?

12 MS. DUKE: I am. I'm seasonal -- However I'm employed
13 in the summer.

14 THE COURT: Ma'am, is there anything about that
15 employment and your experiences in that regard that would
16 interfere in any way with your ability to give both the
17 State and the Defendant a fair and impartial trial in this
18 case?

19 MS. DUKE: No, sir.

20 THE COURT: Thank you, ma'am, you may be seated.

21 Anyone else?

22 (NO RESPONSE.)

23 THE COURT: Is any member on the jury panel employed
24 by any city, county, state, of federal prosecutor's office,
25 either at the present time or in the past? If so, please

1 stand.

2 (NO RESPONSE.)

3 THE COURT: Is any member on the jury panel a member
4 of, or does any money of the jury panel contribute money to
5 any law enforcement organization such as the Fraternal
6 Order of Police, the South Carolina Law Enforcement
7 Officer's Association or the South Carolina Trooper's
8 Association? If so, please stand.

9 Yes, sir, please give us your name and number, sir.

10 A. Juror 147, Robin Roberts.

11 (WHITE MALE STOOD.)

12 THE COURT: Sir, are you actually on the jury or are
13 you -

14 MR. ROBERTS: Actually, I'm not. I'm just a stand-in,
15 excuse me.

16 THE COURT: Please have a seat on the back row, back
17 there, if you will please, sir.

18 MR. ROBERTS: All right, no problem.

19 THE COURT: Yes, sir.

20 Yes, ma'am, please give us your name and your juror
21 number.

22 A. Kathi Mericle, 155.

23 (WHITE FEMALE STOOD.)

24 THE COURT: Yes, ma'am.

25 MS. MERICLE: I do donations to the Sheriff's

1 Association.

2 THE COURT: All right. Ma'am, is there anything about
3 your support of that organization that would interfere in
4 any way with your ability to give both sides a fair and
5 impartial trial in this case?

6 MS. MERICLE: No.

7 THE COURT: Thank you, ma'am, you may be seated.

8 Yes, ma'am?

9 A. Tara Stieffenhofer, Juror 219.

10 (WHITE FEMALE STOOD.)

11 THE COURT: Yes, ma'am.

12 MS. STIEFFENHOFER: I do the same thing.

13 THE COURT: Ma'am, is there anything about your
14 support of those organizations that would interfere in any
15 way with your ability to give both the State and the
16 Defendant a fair and impartial trial in this case?

17 MS. STIEFFENHOFER: No.

18 THE COURT: Thank you, ma'am, you may be seated.

19 Anyone else?

20 Please stand, yes ma'am. Give us your name and
21 number.

22 A. Darlene Hegel, 99.

23 (WHITE FEMALE STOOD.)

24 THE COURT: Yes, ma'am.

25 MS. HEGEL: We have donated, I believe, in 2009.

1 THE COURT: Ma'am, is there anything about that
2 support that would interfere in any way with your ability
3 to give both sides a fair and impartial trial in this case?

4 MS. HEGEL: No.

5 THE COURT: Thank you, ma'am.

6 Anyone else?

7 (NO RESPONSE.)

8 THE COURT: Now, the Defendant Mason Johnson is
9 represented in this case by Attorney Kenneth D. Snow.

10 Mr. Snow, would you please stand? I will also ask Mr.
11 Johnson to stand so the jury can see who he is.

12 (ATTORNEY SNOW AND DEFENDANT STOOD.)

13 THE COURT: Thank you, you may be seated.

14 THE COURT: Is anyone on the jury panel related by
15 blood or marriage; friends with; or have any other type
16 social, business, or professional relationship with Mason
17 Johnson? If so, please stand.

18 (NO RESPONSE.)

19 THE COURT: Is anyone on the jury panel related by
20 blood or marriage; friends with; or have any other type
21 social, business, or professional relationship with
22 Attorney Kenneth D. Snow? If so, please stand.

23 (NO RESPONSE.)

24 THE COURT: Ladies and gentlemen of the jury panel,
25 I'm going to ask this question. If you need to respond to

15

1 this question, I'll get you to stand up. I'd like to take
2 your responses down near the court reporter here if you
3 need to respond. Here's the question. Have you or any of
4 your close relatives been a victim of a burglary, larceny,
5 or any kind of theft? If so, please stand.

6 (JURORS STOOD.)

7 THE COURT: I'm going to get you to come to the center
8 aisle. We'll get you to come down one at a time.

9 Counsel, I invite you.

10 (COURT LEFT BENCH.)

11 THE COURT: Whoa, whoa, whoa.

12 Come on up, please, sir. Give us your name and
13 number, sir.

14 A. James Grossman, Juror 89.

15 (WHITE MALE RESPONDED.)

16 THE COURT: Yes, sir.

17 MR. GROSSMAN: Probably 10 years ago, I had a small
18 break-in, small minor stuff, stolen. Cameras and that's
19 all. It was Indiana though.

20 THE COURT: In Indiana?

21 MR. GROSSMAN: Yeah.

22 THE COURT: Let me ask you whether your experiences in
23 that regard would interfere in any way with your ability to
24 give both the State and the Defendant a fair and impartial
25 trial in this case?

1 MR. GROSSMAN: No, sir.

2 THE COURT: Thank you, sir. You may return to your
3 seat.

4 Yes, sir. Right here please, sir. Give us your name
5 and number for the record.

6 A. Matthew Wilson, 242.

7 (WHITE MALE RESPONDING.)

8 THE COURT: Yes, sir.

9 MR. WILSON: I was burglarized two Thanksgivings ago,
10 actually twice in my apartment complex and into my personal
11 house and vandalized.

12 THE COURT: Sir, is there anything about your
13 experiences in that regard that would interfere in any way
14 with your ability to give both sides a fair and impartial
15 trial in this case?

16 MR. WILSON: I do feel like it would give me a bias.

17 THE COURT: All right, sir. I appreciate your
18 honesty. I'm not going to require you to sit on this
19 particular jury.

20 MR. WILSON: All right.

21 THE COURT: If you will just return to your seat and
22 follow instructions.

23 MR. WILSON: All right, thank you.

24 THE COURT: Give us your name and number, please.

25 A. Kathryn Hannon, 95.

1 (WHITE FEMALE RESPONDED.)

2 THE COURT: Ninety?

3 MS. HANNON: Ninety-five.

4 THE COURT: Ninety-five, yes, ma'am.

5 MS. HANNON: We've had our house broken into three
6 times before, and numerous things of very sentimental value
7 stolen from us.

8 THE COURT: Let me ask you whether there is anything
9 about your experiences in that regard that would interfere
10 in any way with your ability to give both the State and the
11 Defendant a fair and impartial trial in this case?

12 MS. HANNON: No.

13 THE COURT: All right, thank you, ma'am.

14 Give us your name and number, please, ma'am.

15 A. My name is Debra Trull, my number is 228.

16 (WHITE FEMALE RESPONDED.)

17 THE COURT: Yes, ma'am.

18 MS. TRULL: My mom and dad's house was broken into
19 when they were on vacation about ten years ago.

20 THE COURT: Ma'am, is there anything about your
21 experiences in that regard that would interfere in any way
22 with your ability to give both the State and the Defendant
23 a fair and impartial trial in this case?

24 MS. TRULL: No.

25 THE COURT: Okay, you may return to your seat, thank

1 you.

2 Give me your name and number, please, sir.

3 A. David Louttit, 1-4-0.

4 (WHITE MALE RESPONDED.)

5 THE COURT: Yes, sir.

6 MR. LOUTTIT: I had a car broken into about twenty
7 years ago. It was just a kid that had did it and then it
8 was all taken care of, as police officer.

9 THE COURT: Is there anything about your experiences
10 in that regard that would interfere in any way with your
11 ability to give both sides a fair and impartial trial in
12 this case?

13 MR. LOUTTIT: No, sir.

14 THE COURT: Thank you, sir.

15 Come right here please. Please give us your name and
16 number for the record.

17 A. Paul Tennis, Number 222.

18 (WHITE MALE RESPONDING.)

19 THE COURT: Yes, sir.

20 MR. TENNIS: I had a bicycle, my only transportation
21 at the time was stolen. And my parents have been a victim
22 of theft at their home in Columbia, in Columbia.

23 THE COURT: Okay. Is there anything about your
24 experiences in that regard that would interfere in any way
25 with your ability to give both the State and the Defendant

1 a fair and impartial trial in this case?

2 MR. TENNIS: No, no there isn't.

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

4 MR. TENNIS: Thank you.

5 THE COURT: Please give us your name and number.

6 A. Carrie Newman, 172.

7 (WHITE FEMALE RESPONDING.)

8 THE COURT: Yes, ma'am.

9 MS. NEWMAN: I had two different homes broken into,
10 things stolen. And then my husband was -- his car was
11 stolen, and he was robbed at gunpoint before we were
12 married.

13 THE COURT: All right. Let me ask you is there
14 anything about your experiences in that regard that would
15 interfere in any way with your ability to give both the
16 State and the Defendant a fair and impartial trial in this
17 case?

18 MS. NEWMAN: No, sir.

19 THE COURT: Thank you, ma'am.

20 Come on up please, ma'am. Give us your name and
21 number for the record.

22 A. Kathi Mericle, 155.

23 THE COURT: Yes, ma'am.

24 MS. MERICLE: Okay, what do we need to know?

25 THE COURT: If you were a victim or anybody, a

1 relative to you a victim?

2 MS. MERICLE: Yes, just recently I've had somebody
3 that's actually been put in prison for breaking in my home
4 and taking my electronics.

5 THE COURT: Ma'am, is there anything about your
6 experiences in that regard -

7 MS. MERICLE: Yes.

8 THE COURT: --- that would interfere in any way with
9 your ability to give both the State and the Defendant a
10 fair and impartial trial in this case?

11 MS. MERICLE: Probably.

12 THE COURT: Okay. All right, thank you for your
13 honesty. I'm not going to require you to sit as a juror on
14 this case, but just if you'll return to your seat and just
15 follow instructions along with the jurors, okay?

16 MS. MERICLE: Okay.

17 THE COURT: Thank you.

18 Come right here please, ma'am. Give us your name and
19 number for the record.

20 A. Tara Stieffenhofer, 219.

21 (WHITE FEMALE RESPONDED.)

22 THE COURT: Yes, ma'am.

23 MS. STIEFFENHOFER: Just purse -- Just purse burglary,
24 purse snatching. Me and my sister, two different
25 locations.

1 THE COURT: All right. Is there anything about your
2 experiences in that regard that would interfere in any way
3 with your ability to give both the State and the Defendant
4 a fair and impartial trial in this case?

5 MS. STIEFFENHOFER: Uh-huh.

6 THE COURT: Thank you, ma'am.

7 Please give us your name and number for the record.

8 A. Allen Sturgill, Number 2-2-1.

9 THE COURT: Yes, sir.

10 MR. STURGILL: And a year ago, my garage at home was
11 broken into and tools stolen.

12 THE COURT: Is there anything about your experiences
13 in that regard that would interfere in any way with your
14 ability to give both the State and the Defendant a fair and
15 impartial trial in this case?

16 MR. STURGILL: No, no, sir.

17 THE COURT: Thank you, sir.

18 Give us your name and number for the record.

19 A. Krista O'Mara, 175.

20 THE COURT: Yes, ma'am.

21 MS. O'MARA: I was robbed when I was sixteen and then
22 my sister was robbed two months ago.

23 THE COURT: Okay. Is there anything about your
24 experiences in that regard that would interfere in any way
25 with your ability to give both the State and the Defendant

1 a fair and impartial trial in this case?

2 MS. O'MARA: No, sir.

3 THE COURT: Thank you, ma'am.

4 Please give us your name and number for the record.

5 A. Florence Wilkins, 237.

6 THE COURT: Okay. Yes, ma'am.

7 MS. WILKINS: My son is in jail for theft and
8 possession.

9 THE COURT: Okay. Have you been a victim of a crime,
10 yourself?

11 MS. WILKINS: No.

12 THE COURT: All right. Ma'am, would that interfere in
13 any way with your ability to give both the State and the
14 Defendant a fair and impartial trial in this case?

15 MS. WILKINS: No.

16 THE COURT: Thank you, ma'am.

17 Come right here please, ma'am. Please give us your
18 name and number again for the record.

19 A. Darlene Hegel, 99.

20 THE COURT: Yes, ma'am.

21 MS. HEGEL: Many years ago, my parents' business was
22 broken in while they were in it, and a lot of things were
23 stolen while they were in it.

24 THE COURT: Let me ask you whether there anything
25 about your experiences in that regard that would interfere

1 in any way with your ability to give both the State and the
2 Defendant a fair and impartial trial in this case?

3 MS. HEGEL: No.

4 THE COURT: Thank you, ma'am. You may return to your
5 seat.

6 (COURT RETURNED TO BENCH.)

7 THE COURT: Ladies and gentlemen of the jury panel, if
8 you could give me your attention again, please. I'm going
9 to go through a list of potential witnesses in this case.
10 And all of these witnesses may not be called, but they may
11 be called. And what I'm going to ask you to do is when I
12 call the potential witness' name, if you're related by
13 blood or marriage, friends with, or have any other type
14 social, business, or professional relationship with any of
15 these named potential witnesses, when I call their names, I
16 would ask that you please stand.

17 Officer Chris Price, Officer William Andrews, Officer
18 Mac McCarley, Officer Shaun Watson, Detective Tim Ayers,
19 Detective Kathy Harveston, spelled H-a-r-v-e-s-t-o-n.
20 Earnest Gordon, William --

21 (PERSON STOOD.)

22 THE COURT: Is this Mr. Gordon in the back?

23 This is Mr. Gordon back here. Thank you, you may be
24 seated, sir.

25 Yes, ma'am, please stand. How do you know Mr. Gordon?

1 A. I don't. It's was another Gordon.

2 THE COURT: It was a different Gordon. Okay. Thank
3 you. William Jackson.

4 (PERSON STOOD.)

5 THE COURT: This is Mr. Jackson all the way in the
6 back. Thank you, sir.

7 Stephen Avery Robinson, Monalisa MacIntosh, Mark
8 Clyburn, Cheryl Guzman, spelled G-u-z-m-a-n. Yohiji
9 Bryant. I'm going to spell that first name for you. Y-o-
10 h-I-j-I, Bryant.

11 (NO RESPONSE.)

12 THE COURT: Has any member of the jury panel had any
13 prior knowledge about this case from any source before
14 coming here to court today? If so, please stand.

15 (NO RESPONSE.)

16 THE COURT: Has any member of the jury panel formed or
17 expressed an opinion as to the guilt or innocence of the
18 Defendant Mason Johnson? If so, please stand.

19 (NO RESPONSE.)

20 THE COURT: Is any member of the jury panel conscious
21 of any interest, bias, or prejudice for or against the
22 Defendant Mason Johnson? If so, please stand.

23 (NO RESPONSE.)

24 THE COURT: Can each member of the jury panel give
25 both the State and the Defendant Mason Johnson a fair and

1 impartial trial in this case? If not, please stand.

2 (NO RESPONSE.)

3 THE COURT: Does any member of the jury panel know of
4 any reason whatsoever why he or she should not serve as a
5 juror in this particular case? If so, please stand.

6 (NO RESPONSE.)

7 THE COURT: Any additional questions requested from
8 the jury panel from the State?

9 MR. HUTCHINSON: None from the State, Your Honor.

10 THE COURT: From the Defense?

11 MR. SNOW: Nothing, Your Honor.

12 THE COURT: Thank you.

13 THE COURT: Madame Clerk, if you would give us the
14 Jury.

15 MADAME CLERK: When I call your name, if you will
16 please come forward and stand next to the Bailiff. Bring
17 all of your belongings with you.

18 (STRIKING OF THE JURY AT 03:20 PM.)

19 MADAME CLERK: Number 99, Darlene Hegel.

20 (WHITE FEMALE COMING FORWARD.)

21 MADAME CLERK: What say you for the State?

22 MR. HUTCHINSON: Please present the juror.

23 MADAME CLERK: Defense.

24 MR. SNOW: We will excuse this juror, Judge.

25 MADAME CLERK: You are excused from this case, ma'am.

1 Number 167, Shenna Morrison.

2 (BLACK FEMALE COMING FORWARD.)

3 MADAME CLERK: What say you for the State?

4 MR. HUTCHINSON: Please excuse the juror.

5 MADAME CLERK: You are excused from this case, ma'am.

6 Number 237, Florence Wilkins.

7 (BLACK FEMALE COMING FORWARD.)

8 MADAME CLERK: What say you for the State?

9 MR. HUTCHINSON: Please excuse the juror.

10 MADAME CLERK: You are excused from this case, ma'am.

11 Number 200, Derrick Robinson.

12 (BLACK MALE COMING FORWARD.)

13 MADAME CLERK: What say you for the State?

14 MR. HUTCHINSON: Please present the juror.

15 MADAME CLERK: Defense?

16 MR. SNOW: Please present the juror.

17 MADAME CLERK: Please have a seat in the jury box,

18 sir.

19 Number 34, Deborah Chacharon.

20 (WHITE FEMALE COMING FORWARD.)

21 MADAME CLERK: What say you for the State?

22 MR. HUTCHINSON: Please present the juror.

23 MADAME CLERK: Defense?

24 MR. SNOW: Please present the juror.

25 MADAME CLERK: Present?

1 MR. SNOW: Present.

2 MADAME CLERK: Have a seat in the jury box, ma'am.

3 MADAME CLERK: Number 175, Krista O'Mara.

4 (WHITE FEMALE COMING FORWARD.)

5 MADAME CLERK: What say you for the State?

6 MR. HUTCHINSON: Please present the juror.

7 MADAME CLERK: Defense?

8 MR. SNOW: Present the juror.

9 MADAME CLERK: Please have a seat in the jury box,
10 ma'am.

11 Number 48, Kim Cross.

12 (WHITE FEMALE COMING FORWARD.)

13 MADAME CLERK: What say you for the State?

14 MR. HUTCHINSON: Please present the juror.

15 MADAME CLERK: Defense?

16 MR. SNOW: Please excuse the juror.

17 MADAME CLERK: You are excused from this case.

18 Number 176, Sandra Oborokumo.

19 (BLACK FEMALE COMING FORWARD.)

20 MADAME CLERK: What say you for the State?

21 MR. HUTCHINSON: Please present the juror.

22 MADAME CLERK: Defense?

23 MR. SNOW: Present the juror.

24 MADAME CLERK: Please have a seat in the jury box,
25 ma'am.

1 Number 193, Chase Ramsey.

2 (WHITE MALE COMING FORWARD.)

3 MADAME CLERK: What say you for the State?

4 MR. HUTCHINSON: Please excuse the juror.

5 MADAME CLERK: You are excused from this case, sir.

6 Number 204, Tony Sanders.

7 (WHITE MALE COMING FORWARD.)

8 MS. DESCH: What number again, Madame Clerk?

9 MADAME CLERK: 2-0-4.

10 MS. DESCH: Thank you.

11 MADAME CLERK: What say you for the State?

12 MR. HUTCHINSON: Please present the juror.

13 MADAME CLERK: Defense?

14 MR. SNOW: You may excuse the juror.

15 MADAME CLERK: You are excused from this case, sir.

16 Number 17, Theresa Boyd.

17 (WHITE FEMALE COMING FORWARD.)

18 MADAME CLERK: What say you for the State?

19 MR. HUTCHINSON: Please present the juror.

20 MADAME CLERK: Defense?

21 MR. SNOW: Present the juror, please.

22 MADAME CLERK: Please have a seat in the jury box,

23 ma'am.

24 Number 186, Judith Pinner.

25 (WHITE FEMALE COMING FORWARD.)

1 MADAME CLERK: What say you for the State?

2 MR. HUTCHINSON: Please present the juror.

3 MADAME CLERK: Defense?

4 MR. SNOW: Please excuse the juror.

5 MADAME CLERK: You are excused from this case.

6 Number 38, Jamie Cole.

7 (WHITE FEMALE COMING FORWARD.)

8 MADAME CLERK: What say you for the State?

9 MR. HUTCHINSON: Please present the juror.

10 MADAME CLERK: Defense?

11 MR. SNOW: Please seat the juror.

12 MADAME CLERK: Please have a seat in the jury box.

13 Number 53, Virgil Dey.

14 (WHITE MALE COMING FORWARD.)

15 MADAME CLERK: What say you for the State?

16 MR. HUTCHINSON: Please present the juror.

17 MADAME CLERK: Defense?

18 MR. SNOW: Please excuse the juror.

19 MADAME CLERK: You are excused from this case, sir.

20 Sir, you are excused.

21 Three strikes for the State and five for the Defense.

22 Number 219, Tara Stieffenhofer.

23 MR. SNOW: What number?

24 MADAME CLERK: 219.

25 MR SNOW: Thank you.

1 (WHITE FEMALE COMING FORWARD.)

2 MADAME CLERK: What say you for the State?

3 MR. HUTCHINSON: Please present the juror.

4 MADAME CLERK: Defense?

5 MR. SNOW: Please present the juror.

6 MADAME CLERK: Please have a seat in the jury box.

7 Number 29, Clayborne Campbell.

8 (WHITE MALE COMING FORWARD.)

9 MADAME CLERK: What say you for the State?

10 MR. HUTCHINSON: Please excuse the juror.

11 MADAME CLERK: You are excused from this case, sir.

12 Number 151, Lucas McFadden.

13 (WHITE MALE COMING FORWARD.)

14 MS. DESCH: Madame Clerk, what number?

15 MADAME CLERK: 151.

16 MS. DESCH: Thank you.

17 MADAME CLERK: What say you for the State?

18 MR. HUTCHINSON: Please present the juror.

19 MADAME CLERK: Defense?

20 MR. SNOW: You may excuse the juror.

21 (JUROR RETURNED TO SEAT.)

22 MADAME CLERK: Number 168, Chelsea Mullin.

23 (WHITE FEMALE COMING FORWARD.)

24 MADAME CLERK: What say you for the State?

25 MR. HUTCHINSON: Please present the juror.

1 MADAME CLERK: Defense?

2 MR. SNOW: Please seat the juror.

3 MADAME CLERK: Please have a seat in the jury box.
4 Number 140, David Louttit.

5 (WHITE MALE COMING FORWARD.)

6 MADAME CLERK: What say you for the State?

7 MR. HUTCHINSON: Please excuse the juror.

8 MADAME CLERK: You are excused from this case, sir.
9 Number 89, James Grossman.

10 (WHITE MALE COMING FORWARD.)

11 MADAME CLERK: What say you for the State?

12 MR. HUTCHINSON: Please present the juror.

13 MADAME CLERK: Defense?

14 MR. SNOW: Excuse the juror.

15 MADAME CLERK: You are excused from this case, sir.
16 Number 31, James Carson.

17 (WHITE MALE COMING FORWARD.)

18 MADAME CLERK: What say you for the State?

19 MR. HUTCHINSON: Please present the juror.

20 MADAME CLERK: Defense?

21 MR. SNOW: Please seat the juror.

22 MADAME CLERK: Please have a seat in the jury box,
23 sir.

24 Number 60, Elaine Duke.

25 (WHITE FEMALE COMING FORWARD.)

1 MADAME CLERK: What say you for the State?

2 MR. HUTCHINSON: Please present the juror.

3 MADAME CLERK: Defense?

4 MR. SNOW: Please excuse the juror.

5 MADAME CLERK: You are excused from this case.

6 Number 66, Kathy Edwards.

7 (WHITE FEMALE COMING FORWARD.)

8 MADAME CLERK: What say you for the State?

9 MR. HUTCHINSON: Please present the juror.

10 MADAME CLERK: Defense?

11 MR. SNOW: Please seat the juror.

12 MADAME CLERK: Please have a seat in the jury box.

13 Number 226, Lynn Tompkins.

14 (WHITE FEMALE COMING FORWARD.)

15 MADAME CLERK: What say you for the State?

16 MR. HUTCHINSON: Please present the juror.

17 MADAME CLERK: Defense?

18 MR. SNOW: Please seat the juror.

19 MADAME CLERK: Please have a seat in the jury box.

20 Number 9, Joshua Beardsley.

21 (WHITE MALE COMING FORWARD.)

22 MADAME CLERK: What say you for the State?

23 MR. HUTCHINSON: Please present the juror.

24 MADAME CLERK: Defense?

25 MR. SNOW: Please seat the juror.

1 MADAME CLERK: Please have a seat in the jury box,
2 sir.

3 This will be for the alternate.

4 Number 215, Vanessa Stanfield.

5 (BLACK FEMALE COMING FORWARD.)

6 MADAME CLERK: What say you for the State?

7 MR. HUTCHINSON: Please present the juror.

8 MADAME CLERK: Defense?

9 MR. SNOW: Seat the juror.

10 MADAME CLERK: Please have a seat in the jury box.

11 THE COURT: Any questions concerning the selection
12 process from the State?

13 MR. HUTCHINSON: Your Honor, may we approach briefly?

14 THE COURT: Yes, sir.

15 (BENCH CONFERENCE OFF THE RECORD AT 03:40 PM.)

16 THE COURT: Any questions concerning the selection
17 process by the Defense?

18 Mr. Snow, any questions concerning the selection
19 process from the Defense.

20 MR. SNOW: No other questions from the Defense, Judge.

21 THE COURT: Thank you.

22 Ladies and gentlemen of the jury panel who were not
23 selected for this particular case, we're going to excuse
24 you at this time. Madame Clerk, do we need to tell them...

25 MADAME CLERK: Call at 7:00.

1 THE COURT: If you will please call to your voice mail
2 number tonight anytime after Seven o'clock, anytime after
3 7:00. And you'll get instructions as to when to either
4 report back or call back again, as the case may be.

5 Thank you for your patience, ladies and gentlemen.
6 You are free to go at this time.

7 (REMAINING JURY PANEL DISMISSED AT 03:42 PM.)

8 THE COURT: Counsel, I think that I'll give the jury
9 preliminary instructions about the trial, and then we'll
10 take a short break after that since we've been in here for
11 a good little bit.

12 Ladies and gentlemen of the jury panel, if you'll give
13 me your attention. And well, we might as well go ahead and
14 swear in the jury panel.

15 Please, Madame Clerk, if you will could go ahead and
16 do that.

17 MADAME CLERK: Ladies and gentlemen of the jury,
18 please stand and raise your right hand.

19 (WHEREUPON: THE JURY EMPANELED
20 AND DULY SWORN.)

21 MADAME CLERK: Let the record show all affirmed.

22 THE COURT: Thank you. Please be seated, ladies and
23 gentlemen.

24 Ladies and gentlemen of the jury panel, I suspect that
25 most of you have not served on a jury in General Sessions

1 or Circuit Court before. And I'm going to give you what I
2 call Preliminary Instructions about what to expect as the
3 trial goes on, kind of an outline of the trial. And
4 hopefully, this information will be helpful to you in these
5 unfamiliar surroundings and make you a little more
6 comfortable with them.

7 The first thing that will happen after I've completed
8 this instruction to you, and after we take a break that is,
9 is that an attorney for the State who is the assistant
10 solicitor will make an opening statement to you. And then
11 the attorney for the Defendant will have the same
12 opportunity to address you in opening statement. Now the
13 opening statements by the attorneys are not evidence. But
14 you should pay close attention because they're, in essence,
15 going to identify to you what they perceive or say the
16 issues in the case are.

17 After they've made their opening statements to you,
18 then the State will proceed by presenting the testimony and
19 evidence they want you to consider. The reason the State
20 goes first is that the State has the burden of proof in
21 this case. There is no burden of proof upon the Defendant
22 to prove his innocence. The burden of proof is upon the
23 State of South Carolina to prove the charges against this
24 Defendant by evidence that satisfies you, the jury, beyond
25 a reasonable doubt before you can return a verdict of

1 guilty. If the State fails to meet that burden of proof,
2 then your verdict must be not guilty.

3 After the assistant solicitors have presented to you
4 the evidence they want you to consider on behalf of the
5 State, then the same opportunity will be afforded to the
6 Defense. The Defendant may, but it is not required to
7 present any testimony or evidence because the State has the
8 burden of proving the Defendant guilty beyond a reasonable
9 doubt. The Defendant does not have to prove he is
10 innocent; he is presumed innocent, and that presumption
11 stays with him throughout the trial and may be only removed
12 if the State meets its burden of proving the guilt of the
13 Defendant beyond a reasonable doubt.

14 Now, what is evidence? Evidence is sworn testimony
15 you'll hear from the witness stand to my right, exhibits
16 admitted into the record for your consideration by me, the
17 presiding judge, and any stipulation of Counsel. Now
18 exhibits may take many forms such as documents, pictures,
19 videotapes, maps, diagrams, and so forth. Stipulations are
20 agreements of facts by the attorneys. If the attorneys
21 enter into a stipulation or agreement of fact, that will be
22 made known to you, and you can consider that stipulation or
23 agreement of fact along with all the other testimony and
24 evidence, give it such weight as you deem appropriate once
25 you begin your deliberations. Sworn testimony, exhibits,

1 and stipulations are the only evidence you may consider in
2 your deliberation of the innocence or guilt of the
3 Defendant. You may not consider anything you heard from
4 any other source about this case in making your decision
5 because that is not evidence.

6 After you've heard all the evidence, then the
7 attorneys for the State and the Defendant will once again
8 appear before you and make what we call closing arguments.
9 We call them arguments because the attorneys are allowed at
10 that time to argue their positions and will attempt to
11 persuade you as to their position or view as to the facts.

12 When you have heard final arguments from counsel, I
13 will then charge you, which simply means to instruct you as
14 to the law that applies to the issues in this case.

15 You will then retire to the jury room to deliberate
16 and reach your verdict.

17 That's how a case is tried in General Sessions Court
18 whether it be this case or any other case. Some cases take
19 a half a day or a day. Some cases take weeks. But the
20 same format applies in every case.

21 As the trial judge, I have three functions to perform
22 during the trial. I am the presiding officer and therefore
23 see that the trial is run in an orderly manner. I decide
24 based on rules of civil and criminal procedure whether
25 testimony and exhibits are admissible into evidence for

1 your consideration. And at the conclusion of the trial, I
2 instruct you as to the law you must apply to the facts of
3 this case in reaching your verdict.

4 You, ladies and gentlemen, are also judges in this
5 case. You are the judges of the facts. In other words,
6 you determine the truth of the facts in this case. Under
7 our Constitution, I am not permitted as a judge of the law
8 to have an opinion about the facts, so, I do not get into
9 whether I believe a witness or not. That is not my
10 function. I'm not even permitted to express an opinion if
11 I had one as to the facts in this case. So, you the jurors
12 determine what is the truth of the facts.

13 Now, I do not permit jurors to take notes during the
14 trial because my experience is that while writing notes,
15 you may miss something very important for you to hear, and
16 you may fail to observe a witness when testifying. It is
17 important that you pay careful attention to all testimony
18 and introduction of evidence since you must judge the
19 credibility or believability of the witnesses and the
20 weight to give all evidence introduced in this case in
21 determining the truth of the facts.

22 Now, during the trial, the attorneys may object to the
23 admissibility of certain testimony or other evidence. And
24 I will either sustain the objection, which means I agree
25 and the testimony or evidence may not be made part of the

1 record for your consideration. Or I will overrule the
2 objection, which means as the judge of the law, I have
3 determined that it is admissible as part of the record for
4 your consideration. The mere fact that I have admitted it
5 does not mean that you must believe it or disbelieve it. I
6 have simply determined it is admissible under our rules.
7 And it is up to you then to believe it or disbelieve it,
8 and to assign such weight to it as you deem appropriate.

9 At the conclusion of the trial, I'm going to send you
10 to the jury room. Every exhibit that is admitted into
11 evidence will be sent to the jury room for you to examine
12 further and for you to consider. I remind you that one of
13 the most important aspects of your duty as a jury lies
14 essentially in the oath that you have just taken to well
15 and truly try this case and to determine the truth of the
16 facts in this case. That oath, once again in a very
17 essential way, says that you are the sole judges of the
18 facts in this case. As jurors in this case, it will be
19 your exclusive duty to determine the facts in this matter
20 through your evaluation of the evidence that is received
21 during the course of this trial, and to give such evidence
22 whatever value, weight or effect that you deem appropriate
23 with the goal of reaching the truth in this matter. In
24 doing so, you'll have fulfilled your obligations as jurors
25 and that is to give both the State and the Defendant a fair

1 and impartial trial in this matter.

2 Ladies and gentleman, whatever your verdict in this
3 case, it must be your unanimous verdict. All twelve jurors
4 must agree on the verdict which the foreperson will be
5 authorized to write on behalf of the jury.

6 Ladies and gentlemen, you are not to discuss this case
7 at any time during the trial until I tell you and that will
8 not occur until you have received all of the evidence, and
9 I have instructed you upon the law that applies to the
10 issues in this case. You should not discuss the case among
11 yourselves, and you should not discuss it with your family,
12 friends, or anyone else you might see on a recess from
13 court. You might say, "Well what's wrong with our
14 discussing the case as we go along?" "Or, if someone finds
15 out I'm on a jury, they want to know something about the
16 case I'm on, what's wrong with discussing the case with
17 them?" The problem with discussing the case among
18 yourselves or with anyone else is once you start discussing
19 the case, you start forming opinions. And you wouldn't be
20 fair to both sides in this case if you didn't wait until
21 you've heard all the testimony and evidence, and I've
22 instructed you upon the law that applies to the facts in
23 this case before you start forming opinions. Until then,
24 you should wait, keep an open mind, and wait until you have
25 all the information you need before you make your decision.

1 Now, you should not -- If you should overhear the
2 parties, their attorneys, or witnesses talking about the
3 case outside of the courtroom, you should not listen, and
4 move away from them. If anyone should deliberately try to
5 discuss the case with you, do not discuss it with them, but
6 make note of that person. Give the Bailiff or Clerk's
7 Office the best description you can, and they will let me
8 know, and I will deal appropriately with that person. No
9 one should try to discuss the case with you. If they do, I
10 certainly wish to be made aware of it.

11 If there should be any media coverage of this trial,
12 please do not read, listen to, or watch any media account
13 of the trial until after the trial is over. Now, there may
14 not be any news coverage of this trial, media coverage.
15 And I do not know of any, and there may very well not be,
16 but we never know about that. If there should be any media
17 coverage of this trial, please do not read, listen to, or
18 watch any media account of this trial until after the trial
19 is over and the verdict is in. If there should be any
20 media coverage, and someone wanted to save it for you,
21 you're welcome to read or listen to and watch it after the
22 trial is over, but not in the meantime.

23 Along with that, we're well aware that people use
24 computers to get a lot of information of these days. And
25 you are not to go on a computer and try to get any

1 information about this case. You're welcome to go on a
2 computer and do what you normally do. Please do not go on
3 the Internet trying to find out anything about this case or
4 any of the parties to this case or any other information
5 about this case. And that's very important that you not do
6 that. There's no way that we can guarantee any accuracy or
7 any other account or information about this trial. And you
8 need to base your decision solely on the sworn testimony
9 and evidence you hear from the witness stand of the
10 evidence introduced in this case in forming your opinion in
11 this matter and your decisions in this matter.

12 I'm concerned about your comfort and your ability to
13 see and hear the testimony and evidence so you can properly
14 do your job. I try to take a break about every hour and a
15 half. If you need a break before the time a break is
16 taken, please raise your right hand and let me know, and
17 I'll take a break as quickly after that as I can. If you
18 cannot see or hear something you need to hear or see, try
19 to anticipate that. Now some of you are much further away
20 from the witness stand or where the attorneys may be
21 standing than I. And so, if I fail to observe that, and
22 you cannot hear or see something you need to hear or see,
23 please do not hesitate to raise your right hand and let me
24 know. And I'll make sure you are able to hear and see, so
25 you can properly do your job.

1 Now if you wish to communicate with the Court other
2 than needing a break or the inability to see or hear the
3 testimony, please write the message down and give it to the
4 Bailiff. The Bailiff will bring it to me, and I'll either
5 correspond in like manner, or I'll bring you back out in
6 the courtroom and respond as the case need be. That's how
7 we should communicate, you now having been sworn as jurors
8 in this case.

9 Thank you for your kind attention, ladies and
10 gentlemen. I'm going to ask you now -- We're going to take
11 a short break at this time. I will tell you that if you
12 have something to drink back in the jury room, you want to
13 bring it into the jury box with you, I'll allow you to do
14 that. If you've got coke, water, tea, or whatever, coffee,
15 you want to bring it back to the jury box, you're welcomed
16 to. Counsel and myself, we'll be probably sipping water
17 throughout the trial. If you want to bring something back
18 and sip on, you're welcome to do that.

19 Now I'm going to ask you as your first official act
20 when you go back in the jury room, I'm going to ask you to
21 elect a foreperson from your group. The Foreperson: The
22 responsibility of the foreperson is to be spokesperson for
23 the jury back to the Court. So, if there is a matter that
24 needs to come to the attention of the Court from the jury,
25 we ask that the foreperson write the message down on a

1 tablet that will be provided, give that to the Bailiff, and
2 the Bailiff will then bring it to me, and I'll correspond
3 accordingly. We also ask that the foreperson serve as
4 moderator once we reach the deliberation stage in the
5 trial, to maintain order in deliberations, make sure
6 everyone is allowed to participate and be heard in those
7 deliberations. And then finally, once the unanimous
8 verdict is reached by the jury, record those verdicts on
9 verdict forms which will be provided to you and explained
10 to you at the appropriate time at the conclusion of the
11 trial. Of course the primary role of the foreperson is the
12 same as every other juror, and that's to listen carefully
13 to the testimony and the evidence, and be in a position to
14 deliberate and help reach a verdict in this case.

15 Now, the foreperson should come from the first twelve
16 jurors chosen and not the alternate. So, the alternate
17 would not participate in the election of a foreperson and
18 would not be the foreperson. So, if you will -- the first
19 official act, elect a foreperson. Once that person is
20 elected, that person can write their name down along with
21 the juror number and give it to the Bailiff, so the Bailiff
22 can bring it to me.

23 We do ask that the alternate keep that same seat,
24 please, ma'am, throughout the trial. And we have the
25 foreperson sit on the front row in the first seat directly

1 in front of the alternate. All of the other seats are
2 interchangeable, so it really does not matter where you
3 sit. But we would like to keep the foreperson and the
4 alternate in those same seats.

5 Thank you for your kind attention, ladies and
6 gentlemen. We'll take about a ten minute recess. Please
7 retire to the jury room.

8 (JURY PANEL EXITS COURTROOM AT 03:55 PM.)

9 THE COURT: Any matters we need to take up at this
10 time out of the presence of the jury?

11 MR. HUTCHINSON: Nothing from the State, Your Honor.

12 THE COURT: Defense?

13 MR. SNOW: Nothing for the Defense. I would add,
14 though, I appreciate the Court giving the instruction
15 relative to the computer, Judge. I'll ask the Court,
16 respectfully, to as we break, to mention that again, Judge.
17 And the reason why is because I was just in a trial a
18 couple of weeks -- well, a couple of months ago, and at the
19 end of all the evidence, they went back and deliberated,
20 and someone pulled out their cell phone and did some
21 research.

22 THE COURT: Well, I'll ask them specifically about
23 that. I've already given them instructions about cell
24 phones, but I'll -- It's a point well-taken, and I will ask
25 them about that again. Remind me of that again before we

1 break for the day.

2 MR. SNOW: Thank you, Judge.

3 THE COURT: Yes, sir. If there's nothing further
4 then, let's take about a 10 minute recess and then we'll
5 come back and get started.

6 MS. DESCH: Thank you, Your Honor.

7 (COURT IN RECESS AT 04:00 PM.)

8 (COURT RECONVENED AT 04:13 PM.)

9 THE BAILIFF: All rise, court in session.

10 THE COURT: Keep your seat please. Thank you.

11 MS. DESCH: Your honor, for scheduling purposes, what
12 time --

13 THE COURT: Go ahead.

14 MS. DESCH: What time would you like to be done today,
15 and what time would you like to start in the morning?

16 THE COURT: Well, I can quit whenever you want to
17 today. And we can start at around 9:30.

18 MS. DESCH: Thank you, Your Honor.

19 (DEFENDANT REENTERING COURTROOM.)

20 THE COURT: All right, Counsel, the note from the
21 jury, they've elected Theresa Boyd, Number 17 as the
22 foreperson. In looking at my notes, she's got a master's
23 working on a Ph.D. She probably is -- They probably picked
24 a good one as far as education.

25 All right, sir. Bring them in.

1 THE BAILIFF: Bring in the Jury.

2 THE COURT: Counsel, approach just a minute while the
3 jury's coming in.

4 (BENCH CONFERENCE AT 04:15 PM. OFF THE RECORD OUT OF
5 THE HEARING OF THE JURY.)

6 (JURY REENTERS COURTROOM AT 04:15 PM.)

7 MS. DESCH: Your Honor, may I approach?

8 THE COURT: Yes, ma'am.

9 I got information, Counsel, and a note from the Jury
10 that a couple of jurors, who need to be out and leave here
11 no later than 5:30 to pick up their children at 6:00. So,
12 we'll make it a point to be through by twenty after or so
13 by 5:00 today.

14 And I will instruct members of the jury, we may not
15 run any later than that every day, but if you could make
16 some arrangements about the children, I would appreciate
17 it. We'll try to get out every day by 5:30. But we may
18 not be able to do that every single day, although this is
19 not supposed to last all week or anything like that, but we
20 -- So, if you could make some other arrangements, in case
21 you need to. Thank you. We'll definitely get out around
22 twenty after 5:00 or so today.

23 Now, I have your vote indicating you have selected
24 Juror Number 17, Theresa Boyd, as the foreperson of the
25 jury.

OPENING: BY MS. DESCH

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1 That's you Ms. Boyd, correct?

2 MS. BOYD: Yes, sir.

3 THE COURT: Okay, good. So, we're ready to proceed
4 now today with the opening statements. We're to that part
5 of the trial where Counsel will make their opening
6 statements. Please listen attentively now as Counsel
7 address you in opening statement.

8 Counsel, you ready to proceed?

9 MS. DESCH: Yes, may it please the Court, Your Honor.

10 THE COURT: Solicitor.

11 MS. DESCH: Over Christmas I took a break, and I put
12 hardwood floors in my house. And during the time that I
13 was putting the hardwood floors in, I started watching a
14 lot of TV. You'd be surprised how many marathons there are
15 on some of the cable channels, and one of them was NCIS,
16 one of my favorite shows now. I watched a whole lot of it.
17 My favorite part about NCIS, of course, is one of the
18 characters that can find anything out about anything, can
19 test fingerprints, can find DNA, can find a fingerprint and
20 a dog hair. She is great.

21 But I hate to say that, that's not a lot of stuff that
22 we can actually do in the courtroom. And in this case,
23 this case is done the actual old-fashioned way, by
24 witnesses, people.

25 This case, as you heard, is a burglary case and a

OPENING: BY MS. DESCH

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1 grand larceny. Grand larceny just means it's over a
2 Thousand dollars, that basically something stole something
3 over a Thousand dollars. And the burglary is a fancy way
4 of someone saying that they broke into a house. They
5 entered a house to steal something.

6 That's what the State's going to prove. And we don't
7 have forensics evidence. We don't have fingerprints. We
8 don't have all the fancy computer stuff where in five
9 seconds you've got a hit on a fingerprint from across the
10 country. What we have is witnesses.

11 Earnest Gordon lives next door to Mr. William Jackson.
12 You're going to see Mr. Gordon take that stand, and he's
13 going to talk to you about what happened when he came home
14 on November 18th, 2009. See, Mr. Jackson has a house next
15 to Mr. Gordon, but he doesn't live in that house. It's
16 unoccupied right now between renters. Mr. Gordon comes
17 home at about Eight o'clock, and it's November so it's dark
18 at Eight o'clock at night. Comes home, he sees something
19 going on, and he goes to investigate. He has contact with
20 Mr. Jackson. "Mr. Jackson, is there a reason people are in
21 your house?" You're going to hear from Mr. Jackson. He's
22 here with you today as well. When Mr. Gordon discovers
23 that nobody's supposed to be there, he takes a closer look.
24 And he's going to tell you what he did. He left his house.
25 He saw two men. He saw them pushing stuff away from Mr.

OPENING: BY MS. DESCH

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1 Jackson's house, and he followed them.

2 You are going to see a map of Rock Hill. I think it
3 gives a little bit of an idea of perspective.

4 When Mr. Gordon followed, he called the police, or
5 somebody called the police. He had the police called.
6 They gave a description of what he was watching. So, while
7 he's following the two men, the police from Rock Hill get
8 involved. They get out there and in a couple of minutes,
9 ten or fifteen minutes and they catch up to where Mr.
10 Gordon is. And you're going to hear each of the
11 witnesses come through and tell you their part of where
12 they came into this puzzle.

13 So, what you have to decide as finders of facts, is
14 the credibility of the witnesses that are telling you what
15 they saw on that day. You're going to watch each and every
16 witness come on this stand here. And this is the evidence
17 that you take in to consideration when you're finding guilt
18 of the Defendant. This is the evidence as they tell you.

19 And when you're judging credibility, you do it the
20 same way you would do anything else. If you have kids at
21 home, and you gave them a curfew, and they tell you they're
22 one place, and they were actually another place, you know
23 when your child is lying. You know when your spouse is
24 lying. You know when your friends are lying. Use that
25 same common sense to decide what they're telling you on the

OPENING: BY MS. DESCH

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1 stand. And then follow it up. Does it make sense? If you
2 baked cookies one day, and you've got them in there, and
3 your six-year-old comes in and says, "Mommy, Daddy, can I
4 have a cookie?" It's sitting right there, and you've got a
5 dozen cookies right on the counter. And the six-year-old
6 comes running in, "Can I have a cookie?" "No, those are
7 for your school tomorrow. Don't touch them." And you go
8 upstairs, you come back down, and there's one of the
9 cookies missing. And you look over at your child, and
10 there's crumbs just crumbled up. And you say, "Did you
11 just eat that cookie when I told you not to?" If that kid
12 looks up at you and says, "No," use that same common sense
13 when you're listening to the witnesses. You have life
14 experience.

15 So, no, we don't have fingerprints, and computer
16 printouts, and all the fancy stuff. What we have is
17 people. People that saw people. And we're going to put
18 those people on the stand. And we're going to prove that
19 Mason Johnson, this defendant over here, was one of the two
20 men that were in Mr. Jackson's house and took some items
21 that did not belong to them. We also intend to put up
22 Steven Robinson. He's the other of the two. Use your
23 common sense. Listen to what they have to say.

24 When we present all of the evidence, we're going to
25 ask that you deliberate, and you find Mason Johnson guilty

OPENING: BY MS. DESCH

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1 of burglary and of stealing. There's a lot of fancy
2 language, "burglary, second degree"; "grand larceny." It's
3 basically stealing over a Thousand dollars is your grand
4 larceny. And we have to prove that element that they
5 didn't have permission to have it.

6 And burglary, second degree, South Carolina just puts
7 laws in degrees, that's just how they broke it down. And
8 there's certain elements that go with different degrees.
9 And what we need to prove to you beyond a reasonable doubt,
10 is that Mason Johnson entered into a house at night with
11 the intent to commit a crime therein. He went in the house
12 to steal something is what we're going to prove to you
13 today. And what he stole is over a Thousand dollars. It
14 is true, we have to prove that beyond a reasonable doubt.
15 That's not beyond all doubt; it's reasonable doubt. And
16 that will make sense, as you hear the charge, and as you
17 see the evidence. You have to be firmly convinced that
18 Mason Johnson is guilty of entering the house and taking
19 something that did not belong to him. And that's what
20 we're going to do today. We're going to give you those
21 witnesses. And tomorrow. The bulk of everything will be
22 tomorrow.

23 Now after you hear everything from everyone, we're
24 going to ask you to return a guilty verdict against Mason
25 Johnson for burglary, second and for grand larceny.

OPENING: BY MR. SNOW

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1 Thank you for your time.

2 MR. SNOW: May it please the Court.

3 THE COURT: Counsel.

4 MR. SNOW: Members of the jury, Mr. Johnson is not
5 guilty of grand larceny, is not guilty of burglary.

6 Now, the State has done a wonderful job in starting
7 off by talking about cookie crumbs and cookies, and all
8 that. But this case is not about cookies or cookie crumbs.
9 This case is about a very serious matter. The liberty of
10 this man is in balance.

11 And I'll ask you to pay a little close attention to
12 the facts that they will present and the facts that they
13 don't present. And yes, there is certainly a witness and
14 he'll tell you that he saw two men. But what she didn't
15 tell you is, he doesn't identify, the evidence will show
16 he does not identify my client as being in the house or
17 near the house. He sees two men that he identifies at
18 night from a distance, never says my client ever entered
19 the house. But what we do find out when the police
20 investigate, what they find is, the evidence will show,
21 they find Mr. Mason Johnson at his house in the bed.

22 Now, the Defense won't put on a long opening for you.
23 We don't have the burden of proof in this case. And the
24 Judge instructed you earlier, the State has the burden of
25 proving to you beyond a reasonable doubt of my client's

OPENING: BY MR. SNOW

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1 guilt. We don't have to prove anything. He doesn't have
2 to take the stand. And that's what the law is in this
3 country. And I believe that the Judge's instruction is
4 fair and reasonable and that's what the law is. And I ask
5 you and implore you to follow the law. You've taken an
6 oath in this case, and I believe you will follow the law.
7 Don't get caught up in dramatics about cookie crumbs, about
8 marathons, and about all that stuff. This is a very
9 serious matter. I want you to focus on the evidence. I
10 want you be fair to both sides and listen to the evidence
11 in this case. Listen to what you don't hear. And about
12 the puzzle thing, I'm going to ask you, it's not our job,
13 the Defense, to make -- to put the pieces of the puzzle
14 together. They have the burden. So listen, yes. I want
15 you to think about that puzzle that she mentioned.

16 But I also ask that you don't require us to fill in
17 the pieces. That's their job to fill in the missing
18 pieces. It's not a done deal. It's not a case that's
19 already over. There's more to come to the puzzle. Listen
20 intently and I believe at the end of all the evidence that
21 you will find that the State has not met it's burden of
22 proof in this case. Keep in mind, they have a presumption,
23 the presumption is in favor of my client, yes, the
24 presumption of innocence as he sits there. We don't have
25 to prove anything to you. The State has the burden of

OPENING: BY MR. SNOW
EARNEST GORDON: DIRECT BY MR. HUTCHINSON

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1 proof, proof of evidence that's beyond a reasonable doubt.

2 And at the close of the evidence, I ask that you vote
3 not guilty because Mason Johnson is not guilty of burglary,
4 not guilty of grand larceny.

5 Thank you.

6 THE COURT: Call your first witness, please,
7 Solicitor.

8 MR. HUTCHINSON: Your Honor, the State calls Earnest
9 Gordon.

10 Mr. Bailiff, if you could get Earnest Gordon from the
11 hallway.

12 MADAME CLERK: Sir, please raise your right hand,
13 place your left on the Bible.

14 (WHEREUPON: EARNEST GORDON, BEING
15 FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

16 MADAME CLERK: Thank you. You may have a seat.

17 DIRECT EXAMINATION

18 EARNEST GORDON BY MR. HUTCHINSON:

19 Q. Good afternoon, Mr. Gordon. Could you please tell the
20 jury your full name?

21 A. Earnest Gordon, III.

22 MADAME COURT REPORTER: Excuse me. Excuse me, Mr.
23 Solicitor.

24 Sir, if you don't mind speak toward the mic and hold
25 your voice up to a high level. Just speak up so the jury

1 can hear you.

2 A. Earnest Gordon, III.

3 Q. Mr. Gordon, where do you live?

4 A. [REDACTED] -

5 Q. And is that --

6 A. --- Rock Hill, South Carolina.

7 Q. I apologize.

8 A. Rock Hill, South Carolina.

9 Q. And is that in York County?

10 A. Yes.

11 Q. And are you married?

12 A. Yes, sir.

13 Q. And how long have you lived at your current address?

14 A. Four years.

15 Q. And how long have you been married?

16 A. Four years.

17 Q. Do you have a chance to talk to the people that live
18 around you much, your neighbors?

19 A. Yes, sir.

20 Q. How about Mr. William Jackson? Do you know Mr.
21 Jackson?

22 A. Yes, sir.

23 Q. How do you know Mr. Jackson?

24 A. I've known him -- His house is next door to mine.

25 It's directly next door to my house. The property directly

EARNEST GORDON: DIRECT BY MR. HUTCHINSON

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1 next door to that house is also a property of Mr. Jackson.
2 And I frequent that store often. And I talk to him often
3 when he come to check on his property, yes.

4 Q. Now the house next to yours, is that [REDACTED]

5 [REDACTED]

6 A. Yes, sir.

7 Q. And did you say he owns that house?

8 A. Yes, sir.

9 Q. And the building next to it?

10 A. Yes.

11 Q. Now, in November 2009, did he live at that location?

12 A. No.

13 Q. Has he ever lived at that location, that you know of?

14 A. If he's ever lived there, not that I know of, but for
15 the past four years, no.

16 Q. Now having lived in the neighborhood that you have for
17 four years, have you gotten to know the area pretty well?

18 A. Yes.

19 Q. The streets around it?

20 A. Yes, sir.

21 Q. And the houses surrounding you?

22 A. Yes, sir.

23 MR. HUTCHINSON: Your Honor, may I approach the
24 witness?

25 THE COURT: Yes, sir.

1 Q. Mr. Gordon, I'm showing you what's been previously
2 marked as State's Exhibit One and State's Exhibit Two.
3 Could you please familiarize yourself with those?

4 (WITNESS REVIEWING DOCUMENTS.)

5 A. Yes.

6 Q. Now, on the back is which one is each one. State's
7 Exhibit One, could you tell me what that is? First off,
8 what did I hand you right there? Are those pictures?

9 A. These are pictures, yes.

10 Q. And State's Exhibit One, what is that picture of?

11 A. Number One is a -- is a over -- is a overview area of
12 my house, the neighborhood of where I live next door, Mr.
13 Jackson's property.

14 Q. And State's Exhibit Two, is that the same thing?

15 A. Yes, Number Two is pictures of my house; Mr. Jackson's
16 house next to it; his property, which is the store
17 business, yes.

18 Q. And do those fairly and accurately depict your house
19 and the area around it in November 2009?

20 A. Yes, sir.

21 MR. HUTCHINSON: Your Honor, I'd like to move for
22 State's Exhibit One and Two to be placed into evidence.

23 MR. SNOW: No objection.

24 THE COURT: Be admitted without objection.

25 (WHEREUPON: STATE'S EXHIBITS ONE AND TWO, IDENTIFIED

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1 AND MARKED, RECEIVED INTO EVIDENCE.)

2 MR. HUTCHINSON: And, Your Honor, also I'd like at
3 this time to show the jury the pictures on the big screen.

4 THE COURT: All right.

5 MR. HUTCHINSON: Could we dim the lights just a little
6 bit, Madame Clerk?

7 (COURTROOM LIGHTS DIMMED.)

8 (WHEREUPON: STATE'S EXHIBIT NUMBER ONE AND TWO
9 PUBLISHED TO THE JURY.)

10 Q. And, Mr. Gordon, do you have a picture in your hand
11 similar to this one right here?

12 A. Yes, sir.

13 Q. Now can you tell me, the building to the left, what is
14 that building right there?

15 A. Far left?

16 Q. Yes, sir.

17 A. That's the property that Mr. Jackson owns which is
18 Park Grocery Store and a hospice.

19 Q. This building right here is what Mr. Jackson owns?

20 A. Yes, sir.

21 Q. How about the house right next to that?

22 A. That's Mr. Jackson's house. That's the property he
23 own also.

24 Q. William Jackson's house?

25 A. Yes.

1 Q. And do you live right next store to Mr. Jackson?

2 A. Right there, yes, sir.

3 Q. Is this your house right here?

4 (SOLICITOR INDICATING ON OVERHEARD VIEW.)

5 A. Yes, sir.

6 Q. Now what is this across from both yours and Mr.
7 Jackson's house down here?

8 A. That's Park Baptist Church right across the street
9 from my house.

10 Q. And has that been there as long as you can remember?

11 A. Yeah. Yes, sir.

12 Q. Now, State's Exhibit Two, are you also familiar with
13 this area right here?

14 (SOLICITOR INDICATING ON OVERHEAD.)

15 A. Yes, sir.

16 Q. And Mr. Gordon, if I can get you to step down one
17 second.

18 MR. HUTCHINSON: If it's all right, Your Honor.

19 THE COURT: Yes, sir.

20 (WITNESS LEAVES WITNESS STAND.)

21 Q. I'm going to give you this laser pointer right here.
22 Just press this button right here, just pointing it. Could
23 you point out where your house is and where Mr. Jackson's
24 house is?

25 A JUROR: If you could scoot over a bit.

EARNEST GORDON: DIRECT BY MR. HUTCHINSON

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1 MR. HUTCHINSON: If you could -- scoot out of your way
2 right here.

3 A. All right.

4 Okay. Mr. Jackson's property, which is the store, the
5 storefront.

6 (WITNESS INDICATING ON OVERHEAD.)

7 A. His house; my house.

8 Q. And across the street, that's the church you were
9 speaking of.

10 A. And directly across the street here, that's Park
11 Baptist Church right there.

12 Q. Okay, thank you. If you could return to your seat.

13 Thank you, if you could hang on to those for me.

14 (WITNESS RETURNS TO WITNESS STAND.)

15 Q. Now, let's talk about what happened a few months ago.
16 Do you remember November 18th, 2009?

17 A. Yes, I do.

18 Q. Were you working that day?

19 A. Yes, I was.

20 Q. And what time did you get home?

21 A. It was that night about around 8:00-ish, a little
22 after 8:00.

23 Q. And was it dark --

24 A. It was dark, yes.

25 Q. --- at that time? Now was your wife also home when

1 you got home?

2 A. Yes, she was.

3 Q. Now, when you got home, when you arrived home from
4 work that day, did you notice anything out of the ordinary?

5 A. Yes, I did. What I noticed was, as I was backing into
6 my driveway, I caught something on the right side, out of
7 my eye on the right side. And it kind of shook me. And
8 then I pulled up forward a few feet, and I kept looking.
9 And I saw something over there, a shadow. Something caught
10 my attention. And I know that house was empty. And I was
11 like -- something's over there, you know, that shouldn't
12 be. So, I kept looking and that's when I saw -- I'm sorry
13 -- two guys come out from on the side of the house. On,
14 that would be on the far right side.

15 Q. Now, when you saw those two guys, how far away --
16 Would you say it's about as far away as I am right now or a
17 little closer?

18 A. About that distance or so because it was right
19 across -- right across my driveway and across the grass to
20 the driveway, yeah something like that.

21 Q. So, it was on the other side of the house next door?

22 A. Yes.

23 Q. Okay. So, did you get a good enough look at them to
24 see what they were wearing?

25 A. Yes.

1 Q. And what do you remember they were wearing?

2 A. I remember the first guy had -- it was -- it was like
3 a -- like a stripe -- like a stripe-colored shirt. It was
4 like a stripe-colored shirt, different colors, stripes,
5 might have been a pair of jeans. The second guy, I believe
6 he had like a khaki ball cap, like a -- I believe like a
7 khaki and brown-color shirt, sort of a mascot cap like.

8 Q. Would looking at a copy of the statement you gave,
9 refresh your memory as to what exactly he was wearing?

10 A. I'm pretty sure I can remember. I'm pretty sure I
11 remember.

12 Q. Okay, so, could you repeat that one more time?

13 A. Yeah, the first guy, he had it was like a stripe-
14 colored shirt, but the stripes was going down. It was
15 multi-colors, button-up.

16 Q. Okay.

17 A. It was a button-down shirt, long-sleeve. I believe he
18 had a pair of jeans on. And the other guy was dark-
19 skinned, and he had like a khaki-colored ball cap. I
20 believe it was like brown or like a brown sweater or shirt
21 like on top. It was matching the cap, his shirt.

22 Q. Okay. Now, where did you see the guys go after they
23 were beside Mr. Jackson's house?

24 A. Okay. Now, after I saw him, they came out on the side
25 of the house. They just walked out, your know, down the

1 driveway. And then what happened was, they had a
2 lawnmower, they had like an appliance. It could have been
3 a washer machine or a dryer, but it was a big appliance
4 sitting on top of the lawnmower. And they was pushing it
5 right across -- right across past me, right across the
6 street to the parking lot of the church across the street,
7 up Jones to Izzard, Izzard Street.

8 Q. Now on this diagram right here, is Jones -- Is that
9 the street beside the church?

10 A. Yes, sir, yes, sir.

11 Q. And what's the street right in front of your house?

12 A. Right in front of my house is East Main Street.

13 Q. Now after you saw the guys pushing that towards the
14 church and up the street, what did you do next? Did you
15 tell anybody? Did you call anybody?

16 A. Yeah, I told my wife, I said -- I told my wife, call
17 Billy Jackson because I believe they might have, you know,
18 taken something from his house over there. Call Billy
19 Jackson, let him know what's going on.

20 I myself, really concerned I followed the guys up
21 Jones. I myself went up to White Street, all the way down
22 White Street to Stonewall. I come down Stonewall back down
23 Main Street towards my house. And by the time I got back
24 around the block, those guys was walking back down Jones
25 towards Main Street with just the lawnmower. And so, I'm

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1 like, well obviously, they dumped it somewhere.

2 By that time, I got back to my house. I told my wife,
3 okay, well you know what, I'm concerned because is my house
4 next? My neighbors house next? What about my daughter?
5 She comes home from school while we're at work. Is she
6 next? You see what I'm saying? I'm concerned about mine.
7 So what happened next was, I said, "Baby, I need an excuse
8 to go to the store. Let me go see what's going on over at
9 the store because those guys walked back to the parking
10 lot."

11 One sat down at the bottom of -- at the bottom of the
12 tree with the lawnmower. He had pushed the lawnmower back,
13 but he pushed it back on a -- into Mr. Jackson's driveway
14 towards the house. And he sat right there on the bottom of
15 the tree while his partner walked down towards the store.
16 And there was a bunch of people in the parking lot, and
17 they were talking and gathering around.

18 Q. Now, Mr. Gordon, I don't mean to interrupt you, but
19 just for clarification for the jury, which -- You mentioned
20 before what each of the guys were wearing --

21 A. Uh-huh.

22 Q. The guy near the tree, what was he wearing?

23 A. He was wearing a striped shirt, the button-down
24 striped shirt because I kept my eye on him.

25 Q. And what about the other gentleman?

1 A. The other gentleman was the one with the khaki ball
2 cap and like a khaki shirt with, I believe it was like a
3 darker brown shirt on top of it, like, I think it was. But
4 I remember that, though.

5 Then after that, I went into the store. I come out
6 the store. That's when all the police was there.

7 The guy that was sitting on the bottom of the tree, he
8 got up. And he walked through the parking lot towards
9 Keels Avenue on the side of the store, taking off his
10 shirt, you know, taking off his shirt so he wouldn't be
11 recognized. Once he got on the side, he was gone. He was
12 gone. I didn't see him go anywhere else after that. I
13 don't know where he went. He was gone.

14 Q. Now, on November 18th, 2009, did you speak to the
15 police officers at any time?

16 A. Yes.

17 Q. And they arrived about the same time you were at the
18 store?

19 A. Yes.

20 Q. Do you remember them arresting anybody at the store?

21 A. Yes, the other guy with the ball cap. They arrested
22 him right there in the parking lot.

23 Q. At any time, did you identify him as one of the
24 persons that was involved?

25 A. Yes, yes.

EARNEST GORDON: DIRECT BY MR. HUTCHINSON

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1 Q. Now the other gentleman, did you get a chance to see
2 his characteristics, facial, as far as what he looks like?

3 A. Which gentleman?

4 Q. The one with the striped shirt.

5 A. Yes.

6 Q. And had you ever seen that gentleman before?

7 A. Yes, I have. I've seen him before. Actually, I've
8 seen both of them before.

9 Q. Where have you seen them from?

10 A. Around town.

11 Q. And when you say, "around town," around your area?

12 A. My area; across the other side, Green Street area.
13 Just around town, around town, you know. But,
14 specifically, I've seen them in my area around the Main
15 Street area.

16 Q. Now, did you indicate that to the police officers on
17 that day that you had seen --

18 A. Yes, I did. Yes, I did.

19 Q. Now, the gentleman that you said that you recognized
20 before from around the area, and that you say had a striped
21 shirt on, did you get a good enough look at him that you
22 could recognize him today?

23 A. Yes, yes, sir.

24 Q. And do you see him in the court?

25 MR. SNOW: I'm going to object, Judge.

1 THE COURT: Counsel, approach just a minute.

2 (BENCH CONFERENCE OFF THE RECORD OUT OF THE HEARING OF
3 THE JURY AT 04:45 PM.)

4 THE COURT: Madame Clerk, would you get the lights.

5 Madame Forelady, members of the jury panel, I have a
6 matter I need to take up with Counsel at this time out of
7 your presence. I'll ask you to retire to the jury room
8 briefly. We'll have you back in just a moment.

9 (JURY EXITS COURTROOM AT 04:46.)

10 THE COURT: Counsel, there's a question about
11 identification. I think the Court needs to make a
12 determination in camera, out of the presence of the jury as
13 to what the witness's opportunity to observe and what he
14 knew about the Defendant, whether he previously identified
15 him or give him information to identify him. So, I think
16 the State needs to be able to show all the basis and not
17 have as to whether he could identify him or could not
18 identify him in the past. So, let's go forward with that
19 part. But we need to do it out of the presence of the
20 jury.

21 MR. HUTCHINSON: Thank you, Your Honor.

22 Your Honor, would you like me to pick back up where we
23 were discussing before?

24 THE COURT: That's fine. Just keep in mind that --
25 And of course, I'll give Defense Counsel an opportunity to

EARNEST JACKSON: DIRECT BY MR. HUTCHINSON - IN CAMERA

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1 also ask questions, but yeah -- Just, keep in mind, the --
2 what you're required to say. You may proceed.

3 DIRECT EXAMINATION - IN CAMERA

4 EARNEST GORDON: BY MR. HUTCHINSON

5 Q. Now, Mr. Gordon, as we were talking about before, when
6 you spoke with the officers, did you indicate to them that
7 you had seen a gentleman in a striped shirt around before?

8 A. Yes.

9 Q. And did you have a name at that time?

10 A. At that time, I didn't quite have a name, at that
11 time, but I had a face. But I didn't quite have a name
12 until the other arresting officer at the store in the
13 parking lot was talking to the other gentleman and got the
14 name. By that time, me and the other officer was on our
15 way to the police station to do a statement. But that's
16 how we found out the name because it came over the radio in
17 the car.

18 Q. And how many times would you say that you'd seen this
19 gentleman before this time?

20 A. A few times. Quite a few times.

21 Q. And on that date, you were close enough to observe him
22 as the person ---

23 A. Yes, yes.

24 Q. --- that took something from Mr. Jackson?

25 A. Yes, I -- I, yeah, I pretty much can see a face, yes.

EARNEST JACKSON: DIRECT BY MR. HUTCHINSON - IN CAMERA

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1 Q. And also, have you had discussions with me on the
2 phone previously about this case?

3 A. Yes, sir.

4 Q. And did you also indicate to me the same thing that
5 you stated today?

6 A. Yes, sir.

7 MR. HUTCHINSON: And, Your Honor, the reason I bring
8 that up, if I could show Your Honor, I have discovery
9 e-mail where I indicated that to Mr. Snow immediately upon
10 hearing Mr. Gordon indicate that to me, and discovering
11 that, that was not his statement, I indicated that on April
12 29th to Mr. Snow that, that's what Mr. Gordon intended to
13 state. Among other things in that e-mail, Your Honor, I
14 indicated that he did see him, recognize him from the
15 neighborhood. And again, Your Honor, this is -- Mr. Gordon
16 has stated that he is previously familiar with him at that
17 time, that he didn't know his name.

18 And this is the first time that he's had an
19 opportunity to be shown the Defendant, and to show that,
20 that is the person he saw with that striped shirt. And
21 that's why we would look to be able to have Mr. Gordon
22 identify the Defendant today.

23 THE COURT: Mr. Snow?

24 MR. SNOW: Yes, a few questions, Your Honor.

25 CROSS EXAMINATION - IN CAMERA

EARNEST GORDON: CROSS BY MR. SNOW - IN CAMERA

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1 EARNEST GORDON: BY MR. SNOW

2 Q. Mr. Gordon, you gave a statement in this case on or
3 about November 18th, 2009, didn't you?

4 A. Yes, sir.

5 Q. Would you agree with me, that was immediately after
6 this alleged incident on Main Street, East Main Street?

7 A. Yes, sir, same -- same -- same night.

8 Q. So, wouldn't you agree with me that your memory is
9 probably fresh then -- fresher then than it is today?

10 A. Well, at that same exact time, that was exact, yes.

11 Q. Now, you had a -- You had an opportunity to talk with
12 an officer, and you gave him your statement. Correct?

13 A. Yes.

14 Q. And you had an opportunity -- And I imagine the
15 officer was nice and kind to you. Right?

16 A. Yes.

17 Q. All right. And you had an opportunity to sign your
18 name to a statement, do you recall?

19 MR. SNOW: May I approach, Judge?

20 THE COURT: Yes, sir.

21 MR. SNOW: This is the statement.

22 Q. Would you agree with me that, that's the statement
23 that you gave, that I'm showing you now?

24 A. Yeah.

25 Q. You signed your name to it.

1 A. Yeah.

2 Q. And flip over on the back. And I believe it's a sworn
3 statement basically saying it's yours, you testified you --

4 A. Yeah.

5 Q. Okay. And would you look at that statement. Do you
6 see anywhere on there where you said you had met my client
7 before? Had seen my client before?

8 (WITNESS READING STATEMENT.)

9 Q. You never mentioned that you had seen him before in
10 the area. Right?

11 A. I have never mentioned it to who?

12 Q. On that statement, you didn't mention that you had
13 seen him before; did you?

14 A. No, this is -- No, this is exactly what I said. "One
15 of them had a striped buttoned-up shirt and jumped up and
16 took it off.

17 Q. But you didn't say in that statement that you had seen
18 Mr. Mason before in the neighborhood two or three times;
19 did you?

20 A. No, no, it's not in this statement.

21 Q. Not in that statement?

22 A. No.

23 Q. And that was -- Don't you think that was kind of
24 important? That you had seen the guy that allegedly broke
25 into your neighbors --

EARNEST GORDON: CROSS BY MR. SNOW - IN CAMERA

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1 A. Well now, if they'd have asked me at the police
2 station, you know --

3 Q. So, the reason why you didn't mention it is because
4 they didn't ask?

5 A. Well, I'm being asked now.

6 Q. Well --

7 A. And also, at the statement -- at the statement -- At
8 the station, the officer also asked me, "Do I know him.
9 Have I seen him." I said, "I don't know a name. I don't
10 know a name, but I know a face. I don't know a name."

11 Q. Okay. Now, when you got involved with this, when you
12 observed these men at the house ---

13 A. Uh-huh.

14 Q. --- no one asked you to get involved at that point,
15 did they?

16 A. No, no, they didn't.

17 Q. So they didn't have to ask you to get involved?

18 A. No.

19 Q. But you took it upon yourself ---

20 A. Yeah.

21 Q. --- to get involved?

22 A. Yeah.

23 Q. Right?

24 A. Yeah.

25 Q. You didn't think maybe you should take it upon

1 yourself to even mention that you had seen this guy before?

2 A. I mean that -- I mean, by me mentioning that time, at
3 that night, and when it happened, I mentioned to the
4 officer, "I saw what happened. I don't know a name. I saw
5 what happened. I can tell you what he looked like."

6 Q. But you didn't, in fact, you didn't even get a
7 description of my client in -- You didn't say anything
8 about him other than, and I'll give you the statement back
9 if you want, that you saw a man that's 5'10," his
10 complexion -- You didn't say how much he weighed. You
11 didn't say was did he have a beard? Did he have any hair?
12 You didn't say anything in your description of this other
13 suspect; did you?

14 A. Not in that statement, no.

15 Q. Not in this statement.

16 A. No, in that statement, no.

17 Q. Don't you think that was important to mention to the
18 police?

19 A. It was -- It was mentioned.

20 Q. Right, but --

21 A. It was mentioned, but it's not that statement, though.
22 But it was mentioned.

23 Q. Didn't you have an opportunity to read your statement
24 after?

25 A. Yeah, I did.

EARNEST GORDON: CROSS BY MR. SNOW - IN CAMERA

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1 Q. Okay.

2 A. But it wasn't in that statement there, and it was
3 mentioned.

4 Q. Well, let me ask you this question. Did you have an
5 opportunity to read any statement -- any police reports
6 that were made other than this?

7 A. No, I don't have -- I have no access to police
8 reports, no.

9 Q. Well, I'm just asking.

10 A. No, I don't.

11 Q. To your recollection, does any -- To your knowledge,
12 has any police ever mentioned to you that, that's in the
13 report? That you gave a description?

14 A. No, police didn't talk to me about nothing like that,
15 no.

16 Q. Right. Did any police officer mention to you that it
17 was in the report that you had -- that you had seen him
18 four or five times in the neighborhood, to your knowledge?

19 A. No.

20 Q. None?

21 A. I have no idea what police have in their reports.

22 Q. But the question I'm asking you, did anyone tell you?
23 I'm just asking you.

24 A. No.

25 Q. None?

EARNEST GORDON: CROSS BY MR. SNOW - IN CAMERA
REDIRECT BY MR. HUTCHINSON - IN CAMERA

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1 A. No.

2 Q. Did anyone mention to you that they had put in their
3 reports that my client had a beard?

4 A. Did anyone mention to me?

5 Q. That you had put in -- that you had told them that --
6 in the reports that -- any description other than what you
7 have here?

8 A. No, I don't remember none of that. If --

9 Q. Well, didn't you think it was important to have it in
10 your statement all this other things you mentioned?

11 A. I mean, what's in that statement is what me and the
12 officer talked about at that time. That's what's in that
13 statement.

14 Q. Okay.

15 A. Okay, so what you have is what we talked about that
16 night.

17 MR. SNOW: Judge, I would just like to be heard.

18 THE COURT: Any other questions?

19 MR. HUTCHINSON: Just a couple, if I may, Your Honor.

20 REDIRECT EXAMINATION - IN CAMERA

21 EARNEST GORDON: BY MR. HUTCHINSON

22 Q. Now, Mr. Gordon, do you happen to remember the officer
23 that took your statement?

24 A. No, I don't know the officer. I don't know his name.

25 I mean, it was a woman -- It was a woman -- It was a woman.

EARNEST GORDON: REDIRECT BY MR. HUTCHINSON - IN CAMERA

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1 I don't know her. I don't know her name or nothing, no.

2 Q. Okay. Do you remember her being at the scene of the
3 crime?

4 A. She was not at the scene of the crime, no.

5 Q. Okay. And you were never asked affirmatively whether
6 or not you recognized by her; were you?

7 A. Not by her.

8 Q. The person taking the statement?

9 A. The person --

10 Q. Were you ever asked -- The person who took your
11 statement, did they ever ask you, "Have you ever seen this
12 guy before?"

13 A. I'm trying to think back. Yes, I remember -- 'cause I
14 remember sitting in the office talking with the woman. I
15 was talking with the woman. I was telling her what I saw
16 exactly. I remember describing -- I remember describing --
17 I remember describing the guys to her. I remember that.
18 But anything further than that, no. She just took that
19 statement, and that was that. And that was it.

20 Q. Okay.

21 A. You know, so as far as what she had in files or
22 what -- No, I don't know what they have in files, come on.

23 MR. HUTCHINSON: Nothing further right now, Your
24 Honor.

25 THE COURT: Let me ask you this, Mr. Gordon. What was

1 the lighting like that night?

2 MR. GORDON: It was dark and misty.

3 THE COURT: And was there any lighting around the
4 streets or anything like that?

5 MR. GORDON: Other than streetlights.

6 THE COURT: And how good could you see the features of
7 the persons who you say were taking the lawnmower and some
8 appliance from the home there. How good could you see
9 their features out there if it was dark and misty?

10 MR. GORDON: I could see pretty good. I saw pretty
11 good.

12 THE COURT: What allowed you to see then, the
13 features?

14 MR. GORDON: I was close enough. I was close enough.

15 THE COURT: How close were you?

16 MR. GORDON: I'm going to say maybe from here -- They
17 couldn't have been no further than about right there where
18 she is right now.

19 THE COURT: Okay.

20 MR. GORDON: About right there.

21 THE COURT: All right. But for the record, that looks
22 to the Court to be probably about 50 feet, 40 feet at
23 least. Is that right?

24 THE WITNESS: Yeah, yeah. Well, you know. It wasn't
25 way over there, no, it wasn't.

1 THE COURT: But it was dark and misty, you say.

2 MR. GORDON: Uh-huh.

3 THE COURT: Okay. And so what allowed you to be able
4 to see their features out there.

5 MR. GORDON: Because I recognized the face. I
6 recognized the face. I don't too much -- I don't -- I
7 don't -- I don't too fast forget the faces.

8 THE COURT: Well, as far as the lighting out there is
9 concerned, how much lighting was there on the street?

10 MR. GORDON: It was dark. It was dark. You know,
11 street lights were on, misty.

12 THE COURT: What light allowed you to see the persons
13 you saw out there?

14 MR. GORDON: Right across the street in front of the
15 church, there is a streetlight, right there. And it's
16 light enough to see in front of my house, the house next
17 door, going into the parking lot. It's light enough to
18 see, so -- And besides that, as I was in my driveway
19 backing out and I pulled back up, and I looked to the
20 right, right over in that driveway, that was close enough
21 to see also.

22 THE COURT: And how far would you say that was?

23 MR. GORDON: Maybe -- Step back a little bit.

24 Maybe about there. Right across the grass. About
25 right there, so --

1 THE COURT: Roughly, 25 to 30 feet, for the record.
2 All right.

3 Have you been shown any identification of the
4 Defendant here, Mr. Johnson, prior to today?

5 MR. GORDON: I do remember that he had -- his hair --
6 I do remember his hair was shorter than mine now. It was
7 much shorter than mine is right now. That I do remember.
8 I believe he was clean-shaven at the time. I believe he
9 was clean-shaven at the time. But I do remember his hair
10 was shorter than mine now. Pretty much almost bald. I do
11 remember that very well. Like I said, I was close enough
12 to see.

13 THE COURT: Well, let me ask you, have you been show
14 any pictures of this Defendant Mr. Johnson?

15 MR. GORDON: No, I haven't been shown any pictures of
16 him.

17 THE COURT: You identified him as the person you saw
18 prior to the day in court to anyone?

19 MR. GORDON: To anyone?

20 THE COURT: Yes, sir.

21 MR. GORDON: No, other than when I talked to Mr.
22 Hutchinson.

23 THE COURT: Well, have you -- I understand you talked
24 to him, but have you identified him prior to today in
25 court, this particular defendant?

1 MR. GORDON: Have I -- Other than that police officer,
2 that's it. That's it. Mr. Hutchinson, the police officer,
3 that's it.

4 (PAUSE.)

5 THE COURT: Do you have any other testimony on the
6 subject? I mean any other witness, police officer, or any
7 other witness?

8 MR. HUTCHINSON: Your Honor, the one officer that he
9 did mention that to is not scheduled to be in until
10 tomorrow morning. That would be something we would have to
11 ask him at the time. If it was okay with Your Honor, we
12 could come back to that officer first thing in the morning.
13 I hate to break during Mr. Gordon's direct. But we could
14 come back to that officer.

15 THE COURT: All right. What we'll probably do, we'll
16 go ahead and try to finish his testimony, and I'll keep
17 that issue of not asking him about the identification
18 today; not to go further with that today, but wait and
19 perhaps we'll let the officer testify in camera in the
20 morning before we get started; if you can have him here and
21 see what he says about it. But let's don't go further with
22 identification at this point other than clothing and that
23 sort of thing. Okay?

24 MR. HUTCHINSON: Yes, Your Honor.

25 THE COURT: But I will allow him to testify, him

1 finish testifying tomorrow concerning that issue if I think
2 it's discretionary.

3 MR. HUTCHINSON: Oh, I'm sorry. Will we be allowed to
4 bring Mr. Gordon back and testify --

5 THE COURT: Yeah, absolutely.

6 MR. SNOW: Judge, out of the abundance of caution, I
7 would ask the Court, respectfully, to make sure that the
8 Witness knows not to identify my client till your ruling.

9 THE COURT: Well, I mean, he wouldn't do it unless the
10 Solicitor made that mistake. Don't ask him to identify,
11 say do you see the person in the courtroom that you saw
12 that night. I would let you do that if I decide the
13 identification -- that he had the opportunity, sufficient
14 opportunity to view the Defendant as the person who was
15 doing the robbery, committing the robbery. If I make that
16 determination, in court identification let's don't do that
17 until -- I'd like to hear from the officer and see if he
18 can corroborate, and we'll do that. And we'll just leave
19 that subject until in the morning.

20 It's almost time to quit anyway. We'll try to finish
21 up with at least his direct testimony, except for that.

22 MR. HUTCHINSON: Okay.

23 THE COURT: In camera in the morning, I'm putting the
24 officer up by about 9:15, 9:20, we'll put him up.

25 MR. HUTCHINSON: Okay.

EARNEST GORDON: REDIRECT BY MR. HUTCHINSON

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1 THE COURT: And then, by that time make a
2 determination. Okay?

3 MR. HUTCHINSON: Thank you, Your Honor.

4 MR. SNOW: Thank you, Your Honor.

5 THE COURT: All right. Please bring the jury back.

6 (JURY REENTERS COURTROOM AT 05:07 PM.)

7 MR. HUTCHINSON: If I may continue.

8 THE COURT: Yes, sir, please do.

9 REDIRECT EXAMINATION - CON'T

10 EARNEST GORDON: BY MR. HUTCHINSON

11 Q. Mr. Gordon, where we left off, I just want to
12 reiterate. You said before you saw someone take their
13 shirt off. Where did you see him go after that?

14 A. After that, he walked -- he walked across the parking
15 lot, in front of the store towards Keels Avenue. And then
16 he went on the side and that was it. I didn't know where
17 he went from there.

18 Q. Now, Keels Avenue, looking at the map that you have in
19 your hand, and the one up here, is Keels Avenue beside the
20 store, in front of the store, Park Grocery?

21 A. That's on the right side. That street on the right
22 side of the store, that's Keels.

23 Q. Now, at that time, was it still dark? It was dark,
24 obviously, when you saw him?

25 A. Yes.

1 Q. Was there any lighting at the store or around?

2 A. Yes, in the parking lot, you know, store front, lights
3 everywhere around, all in the parking lot, yes.

4 Q. And how far would you say it was to the other side of
5 the store when you saw someone take off their shirt and go
6 the other way?

7 A. Okay.

8 Q. Was it about the same distance that you saw him just a
9 little further?

10 MR. SNOW: Objection, leading.

11 THE COURT: Please avoid leading, Counsel.

12 BY MR. HUTCHINSON:

13 Q. Was it approximately the same distance as you saw him
14 before?

15 A. Approximately -- Maybe a little closer because by that
16 time, I, myself was walking over in the parking lot. I,
17 myself actually I was coming out of the store. I came out
18 of the store walking back towards my house when all the
19 police officers, everything, all of that was going on in
20 the parking lot. I was actually out there in the parking
21 lot. So, I was pretty much closer than 30 feet or so.

22 Q. Now, did you eventually learn that stuff was taken
23 from Mr. Jackson's house?

24 A. When I came home from work, and I --

25 Q. Be careful not -- And I don't mean to interrupt you.

EARNEST GORDON: REDIRECT BY MR. HUTCHINSON

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1 Don't tell us what anybody said, but did you learn that
2 stuff was stolen from Mr. Jackson's house?

3 A. Yes, yes.

4 Q. And did you look at Mr. Jackson's house at anytime
5 that evening?

6 A. Yes, sir, yes, sir.

7 Q. And was there anything out of the ordinary?

8 A. Yes, sir.

9 Q. And can you tell us what that was?

10 A. His appliances were missing. His door was kicked in.
11 The lock was busted. It was actually kicked in, yes.

12 That's how we knew it was broken in 'cause it wasn't like
13 that before that night. So, yeah, I did see something out
14 of the ordinary, yeah.

15 Q. Now, are you aware of the location where those items
16 were eventually found?

17 A. I'm familiar with the location, but I didn't know
18 exactly where the spot was where the items were taken to.

19 Q. Do you know what road?

20 A. Yeah, Izzard Street is where they were taken to.

21 Q. And approximately how far is Izzard Street from where
22 you live? Is it one block, two blocks, three blocks?

23 A. Okay, I'm going to say one block up, to the left.

24 Q. So, a couple of blocks, approximately?

25 A. Not even -- No, just one 'cause you got Main Street,

1 then you have White Street way up top. But Izzard Street
2 is in the middle, so that would be just one block up.

3 Q. Now when the officers arrived, did you then offer to
4 tell them about what you had seen that evening?

5 A. Yes.

6 Q. And did you give a statement about that?

7 A. Yes.

8 Q. Did you do that on the scene or did you go somewhere
9 else for that?

10 A. On the scene and at the police station.

11 MR. HUTCHINSON: I beg the Court's indulgence.

12 (PAUSE.)

13 MR. HUTCHINSON: Nothing further at this time, Your
14 Honor.

15 THE COURT: Counsel, I think we'll just go ahead and
16 recess for the afternoon. Some of the jurors have to leave
17 here by no later than 5:30, so we'll go ahead and recess.
18 It's about almost quarter after Five, so we'll go ahead and
19 recess at this time. I hope some of us got an umbrella
20 because it sounds like it's raining. You may have to wait
21 a few minutes before you leave.

22 Madame Forelady, members of the jury panel, let me
23 remind you about this, this is important. And we not too
24 long ago had new orders by the Chief Justice of the Supreme
25 Court about not going on computers getting any information

1 about these cases. Now, I'll remind you, you're not
2 allowed to have cell phones while you're on the jury.
3 Absolutely not allowed to have cell phones. Nor, can you
4 have computers while you're on it. Now, you can look at a
5 computer during lunch break; you can do it at home. But
6 please do not go on the Internet to try to get any
7 information about anything about this case. It's very
8 important that you not do that and not to have a cell phone
9 with you here while you're here on the jury. And I say
10 that, and I've instructed jurors on that, only to find out
11 somebody had a cell phone, in fact, in the jury room. And
12 when it came to the Court's attention, it causes some
13 problems. So, please, don't do that. Thank you.

14 I'm going to excuse you this afternoon. What I'm
15 going to ask you to do is be back in the jury room in the
16 morning ready to go at 9:30. We'll try to get started
17 promptly at 9:30. And we'll be here a little before that
18 probably doing some things but, we'll try to get started
19 back in the trial right at 9:30. Please have a pleasant
20 night tonight, and be back in the jury room at 9:30. The
21 Bailiff will show you how to get in. Thank you.

22 (JURY EXITS COURTROOM AT 05:17 PM.)

23 THE COURT: Mr. Gordon, you may stand down. Let me
24 give you this instruction before you go. You're into your
25 testimony, and you cannot discuss your testimony with

1 anyone during the overnight recess until you come back on
2 the stand. You can't discuss it with your attorneys, and
3 you can't discuss it with anyone that's any other potential
4 witnesses or anybody else. You can't discuss your
5 testimony. You can talk about anything else, but not about
6 your testimony, please. It's the same as though you were
7 still on the stand as far as on your overnight recess. So
8 please do not discuss the case with anyone.

9 Thank you, you may stand down, sir.

10 (WITNESS LEAVING WITNESS STAND.)

11 THE COURT: Is there any matter we need to take up
12 from either side before we adjourn for the day?

13 MR. HUTCHINSON: Nothing from the State right now,
14 Your Honor.

15 MR. SNOW: Nothing from the Defense, Your Honor.

16 THE COURT: Mr. Johnson's incarcerated? Is he or not?

17 MR. HUTCHINSON: Yes, sir.

18 MR. SNOW: Yes, Judge.

19 THE COURT: All right. We will resume in the morning
20 at -- I tell you, I will, if we could try to get the
21 officer here about 9:15 or so ---

22 MR. HUTCHINSON: Yes, Your Honor.

23 THE COURT: --- we could take that testimony in camera
24 before we actually -- before the jury's even totally here.
25 So, let's have that -- If you can, have the officer here

1 and let's do that before we get started.

2 MR. HUTCHINSON: Yes, Your Honor.

3 MR. SNOW: Your Honor, may I approach the bench?

4 THE COURT: Yes, sir.

5 (BENCH CONFERENCE AT 05:20 PM.)

6 THE COURT: See you in the morning.

7 MR. HUTCHINSON: And just for the record, Your Honor,
8 we just notified Mr. Gordon what time he had to be here in
9 the morning. Nobody discuss anything else with him.

10 THE COURT: We'll try to be -- The foreperson ought to
11 be ready to go at 9:15.

12 (COURT IN RECESS AT 05:20 PM.)

13 (BACK ON THE RECORD TUESDAY, MAY 25, 2010 @09:40 AM.)

14 THE COURT: Thank you. You may be seated.

15 (DEFENDANT REENTERS COURTROOM.)

16 THE COURT: All right, Counsel, I'm ready to rule on
17 the identification issue. But I will point out to you
18 sequestration rule in effect and my ruling and my comments
19 might have any effect on that.

20 (NOTE: OFFICER LEAVING COURTROOM.)

21 THE COURT: He can stay. The witness can stay. He's
22 already testified and we're in the middle of his testimony.

23 MR. HUTCHINSON: I don't know who the other gentlemen
24 is in the courtroom.

25 THE COURT: He's not a witness in the case?

1 MS. DESCH: No, sir, not one of ours. We do have the
2 witnesses in each one of these room right here. I
3 understand they can't hear anything.

4 THE COURT: Sure. All right. Let me -- The issue
5 came up yesterday about Mr. Gordon, the witness's
6 testimony, identification of Mr. Johnson as to the person
7 he saw the night of the alleged burglary and grand larceny.
8 So the Court decided to hold an in camera hearing on the
9 objection by Defense counsel to Mr. Gordon's identification
10 of Mr. Johnson as one of the two men who were there that
11 night and committed the crimes. A number of questions were
12 ask and the Court indicated that it would like to hear from
13 the officer that Mr. Gordon talked to about this incident
14 with regard to any identification he might have made at
15 that time. My understanding is that there were no pretrial
16 identification by Mr. Gordon of Mr. Johnson as one of the
17 two men who were there to the police officers; or to anyone
18 else no pretrial identification. My understanding is
19 Solicitor Hutchinson sent an email to Defense counsel, Mr.
20 Snow, several days ago indicating, Mr. Gordon had indicated
21 he had seen the person before in the neighborhood and could
22 possibly identify him as somebody he had seen previously.
23 Not somebody he knew by name or knew him personally, but
24 somebody he had seen before in the neighborhood and
25 somewhere else. But my understanding is there is no

1 pretrial identification that is going to be testified to by
2 Mr. Gordon or any of the officers or anyone else who
3 testified that Mr. Gordon made a pretrial identification of
4 Mr. Johnson as one of the two people there committing the
5 crime.

6 Is that correct, Solicitor?

7 MR. HUTCHINSON: Yes, Your Honor. Through all the
8 witnesses we've spoken with, we see out of court
9 identification pretrial identification and there would be,
10 Your Honor.

11 THE COURT: Now our Supreme Court, South Carolina
12 Supreme Court, State versus Lewis, decided in 2005, citing
13 363 S.C. 37-609, S.E. 2d 515, our Supreme Court affirmed
14 the Court of Appeals with regard to in court identification
15 and ruled that it's not necessary to have an in camera
16 hearing with regard to an in court identification, only as
17 to pretrial identification which is what Neil versus
18 Biggers implied. That kind of identification is the only
19 case, Neil versus Biggers applies to the majority rule
20 which the South Carolina Supreme Court is that there is no
21 in camera hearing required; nor the five an issue of
22 liability factors to be considered as in Neil versus
23 Biggers an in court identification only, only as to whether
24 that was a pretrial identification. Here is my
25 understanding there is no pretrial identification.

1 Now, to cut it short, in lieu of our Supreme Court
2 said we could include is the majority of the court
3 s have that Neil versus Biggers does not apply to in court
4 identifications and that the remedy of any alleged
5 suggestiveness of an in court examination is across the
6 United States Supreme Court has not extended it's
7 exclusionary rule to in court identification procedures
8 that are suggestive because of the trial setting, cites
9 State versus Smith, a Connecticut case. And the Supreme
10 Court went further and they say according we can conclude
11 Neil versus Biggers does not apply to a first time in court
12 identification because the judge's presently and accurately
13 address relevant problems the jury is present who witnessed
14 the identification rather than merely hearing testimony
15 about it. And cross examination of all defendant's and
16 adequate safe guard a remedy against suggestive
17 examination. And so, likewise, South Carolina Court of
18 Appeals case from 2008 which State versus Rice cited at 385
19 South Carolina 302-652 S.E. 2d 409.

20 The Court again had found that the requirement of the
21 court to review the totality of the circumstances determine
22 whether identification does not apply in the absence of a
23 pretrial identification procedure. In discussing it's
24 reason the court explained these extra safe guards and are
25 applicable to any in court identification because the

1 witness's testimony subject to the same rules of evidence,
2 witness credibility, and cross examination as all testimony
3 in a criminal trial essentially they're saying is's a
4 matter for the jury to determine the credibility and
5 reliability of the in court identification where there is
6 no pretrial identification.

7 Now, I will go on to say Mr. Gordon testified in the
8 in camera part of his hearing that the court held
9 yesterday, he testified it was at night. And it was misty
10 but that there were street lights and there were lights in
11 the parking lot of Mr. Jackson's business which is located
12 next door to the house which is allegedly broken into right
13 beside it. And that, that parking area of the business was
14 lighted. And that there were street lights and that he was
15 able to see the defendant, Mr. Johnson, and it was from
16 about forty to fifty feet initially when he first observed
17 them coming across. But he further testified later after
18 the person I guess had left and come back and were in the
19 parking lot and the police came and he says one of them
20 with the stripe shirt started walking away and pulling up
21 his shirt over his head not to be identified in the shirt
22 he presumed. But that by that time he was walking into the
23 parking lot of the business where the person in the stripe
24 shirt was leaving. By that time he was about -- And I'm
25 estimating. Counsel can disagree with me -- but from where

1 he said I'm estimating about thirty feet, twenty-five to
2 thirty feet, probably thirty feet, but he said that he was
3 able to see him in the light of the business.

4 Now, whether he could identify him or the liability
5 that identification I think that's a matter for the jury
6 and not the Court. And I'm putting it on the record and the
7 Court certainly can say he did not get enough of a view of
8 the person who had committed the robbery to make an
9 identification. And so, he's saying that he can. The
10 Court cannot say from the evidence that he could not. I
11 think that's a question for the jury to determine. His
12 credibility and the factors and the basis of his
13 identification and they can make that decision. All right.
14 I think that's an adequate rule on that issue. What we'll
15 do is we'll put Mr. Gordon back on the stand and you can
16 finish your direct, then we'll go into cross examination.

17 MR. SNOW: Judge, I'd like to make my objection for
18 the record.

19 THE COURT: Your objection is noted. I'm not sure
20 what's the basis of your objection is but whatever it is,
21 it's on the record. We'll have Mr. Gordon back, then we'll
22 bring the jury in.

23 Mr. Gordon, come on up to the stand.

24 (WITNESS EARNEST GORDON RETURNED TO WITNESS STAND.)

25 THE COURT: Now, Mr. Gordon, you were sworn yesterday

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1 and you continue to be sworn and under oath in your
2 testimony.

3 Please bring the jury in, sir.

4 (JURY REENTERS COURTROOM AT 09:50 AM.)

5 THE COURT: Good morning, Madame Forelady, members of
6 the jury panel. I hope you had a pleasant night last
7 night. We're ready now to presume with the trial.

8 Counsel, ready to proceed.

9 MR. HUTCHINSON: Thank you, Your Honor.

10 DIRECT EXAMINATION - CONTINUED

11 EARNEST GORDON BY MR. HUTCHINSON:

12 Q. Good morning, Mr. Gordon.

13 A. Good morning.

14 Q. When we left off yesterday we were talking a little
15 bit about what happened on November 18, 2009. You told us
16 a little bit about you had seen a couple of guys that
17 evening. Did you get one of the guys, did you see one of
18 the guys involved get arrested that evening?

19 A. Yes.

20 Q. And, was there a second person also involved in taking
21 stuff at Mr. Jackson's house?

22 A. Yes, sir.

23 Q. And where did you see that person go?

24 A. There was one person, the first person that was
25 described he walked on the side of the building on Keels.

1 The second person, the officers had him at the car.

2 Q. Okay. Now, the person that the officers didn't
3 arrest, had you seen that person before around the
4 neighborhood?

5 A. Yes, sir.

6 Q. And would you say that evening that you got a pretty
7 good look at him?

8 A. Yes, sir.

9 Q. We discussed before it was night time. Were there
10 lights in the area?

11 A. Yes.

12 Q. Do you believe you got a pretty good profile of his
13 face?

14 A. Yes, sir.

15 Q. Did you know his name at the time?

16 A. No.

17 Q. And were you able to tell the officers his name that
18 evening?

19 A. No.

20 Q. Now, you believe that you could recognize that guy
21 again if you saw him?

22 A. Yes.

23 Q. Do you see, in this courtroom today, the person who
24 was not arrested and got away on that evening?

25 A. Now, I can't say he got away. He was not arrested

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1 because I was in the police car with the officer and we
2 went to the station. What happened to the other guy I
3 don't know. But I do know that they were talking to him at
4 the car and they did place him in the car and me and the
5 other officer we left. So.

6 Q. Did you say that you saw the second guy take his shirt
7 off at one point?

8 A. Yes.

9 Q. That would be --

10 MR. SNOW: Approach, Judge. Clarification.

11 (BENCH CONFERENCE AT 09:55 OFF THE RECORD OUT OF THE
12 HEARING OF THE JURY.)

13 BY MR. HUTCHINSON:

14 Q. Now, Mr. Gordon, did you see, you said before you
15 recognized one of the gentlemen that were involved that
16 evening.

17 A. Yes, sir.

18 Q. And do you believe that you could recognize him today?

19 A. Yes.

20 Q. Do you see one of the persons that were involved that
21 evening in this courtroom today?

22 A. Yes, sir.

23 Q. And where do you see him?

24 A. I see him sitting right here.

25 MR. HUTCHINSON: Your Honor, let the record reflect

EARNEST GORDON: DIRECT BY MR. HUTCHINSON
CROSS BY MR. SNOW

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1 he's pointing to the defendant, Mason Johnson.

2 MR. SNOW: I'm going to object.

3 THE COURT: Over ruled.

4 Proceed.

5 BY MR. HUTCHINSON:

6 Q. Now, were you able, did anyone ask you on that
7 evening, if you had seen the defendant before?

8 A. No. No one didn't ask me that evening. No. Had I
9 seen him before? No. But I -- I were telling the officer
10 -- he didn't ask me, I told him I saw him before.

11 Q. Thank you.

12 MR. HUTCHINSON: No further questions at this time,
13 Your Honor.

14 CROSS EXAMINATION

15 EARNEST GORDON BY MR. SNOW:

16 Q. Mr. Gordon, do you mind if I ask you a few questions
17 this morning?

18 A. Yes.

19 Q. Mr. Gordon, you gave a statement on or about November
20 18, 2009. Correct? To the police?

21 A. Yes.

22 Q. Involving this matter?

23 A. Yes, sir.

24 Q. And I think you indicated at that time that you had
25 thirteen years of college education?

EARNEST GORDON: CROSS BY MR. SNOW

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1 A. No I didn't have thirteen years of college education.

2 Q. Thirteen years of education. You completed high
3 school I would imagine?

4 A. Yes.

5 Q. And you had a year of college?

6 A. Yes.

7 Q. So, you can read and write, have no problem reading
8 and writing?

9 A. Yes.

10 Q. And you gave a statement to the police. Now, --

11 MR. SNOW: May I approach, Judge?

12 THE COURT Yes, sir.

13 Q. I'm gonna show you what I'm gonna mark as Defense
14 Exhibit One.

15 (WHEREUPON: DEFENDANT'S EXHIBIT NUMBER ONE PREMARKED
16 FOR IDENTIFICATION.)

17 Q. Go ahead and take a look at that, Mr. Gordon. Take
18 your time and look at it.

19 (WITNESS REVIEWING EXHIBIT.)

20 Q. Is that your signature on the bottom of it?

21 A. Yes, sir.

22 Q. Is that the statement, the full and complete statement
23 that you gave the police?

24 A. Yes it is.

25 Q. Would you look at the back of that statement. And

1 what does it indicate on the back? Your signature again.
2 Right?

3 A. Yes, sir.

4 Q. Indicated you had read this statement, and you signed
5 it?

6 A. Yes.

7 Q. All right.

8 A. Yeah.

9 Q. I only have one copy at this time, but if you need me
10 to stop I'm gonna ask you a few questions, let me know if
11 you need to look at your statement.

12 Now, Mr. Gordon, you indicated you had lived for four
13 years in the neighborhood. Right?

14 A. Yes.

15 Q. And you indicated it was around Eight o'clock and it
16 was dark wasn't it?

17 A. Yes, sir.

18 Q. You indicated that, on direct rather, that you could
19 identify the other defendant in this case that was
20 arrested. You saw someone arrested that evening?

21 A. Yes.

22 Q. Right. Now, there's no way on here on this statement
23 that you mentioned to the police that you could identify my
24 client is it?

25 A. No.

EARNEST GORDON: CROSS BY MR. SNOW

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1 Q. On this statement you didn't tell them that you had
2 seen my client before had you, did you?

3 A. Yes I did.

4 Q. It's not in your statement though.

5 A. Well, it's not in this statement but I did tell them
6 yeah.

7 Q. Now, would you agree you had ample time to look over
8 your statement?

9 A. Yes.

10 Q. You were not under any pressure?

11 A. No.

12 Q. You weren't threatened at all by the police officers
13 on taking your statement, they were polite to you?

14 A. No.

15 Q. And you looked over your statement?

16 A. Uh-huh, yes.

17 Q. How many times did you indicate to the police you had
18 seen my client?

19 A. How many times?

20 Q. Yeah, how many times had you seen him?

21 A. I don't remember how many times I told them but I do
22 remember telling them. I don't remember exactly how many
23 times.

24 Q. Do you know how many officers you told that to?

25 A. Two.

1 Q. Two. Do you know their names?

2 A. No.

3 Q. Were they male or female?

4 A. One male, one female.

5 Q. So you told two officers, at least two, that you saw
6 my client before?

7 A. Yes.

8 Q. Well, is there anywhere in your statement that you saw
9 my client four times?

10 A. Four times?

11 Q. How many times you saw him? You said you saw him in
12 the neighborhood.

13 A. Yes.

14 Q. Is there anywhere in your statement you had seen him
15 four or five times?

16 A. No it's not in that statement there. No it's not.

17 Q. But what is in your statement, you indicated to him,
18 to the police in your statement of the other guy, was my
19 height and about my complexion. Right?

20 A. Yes.

21 Q. Now, if the other guy was around your age, and he left
22 a lawnmower, and they left the lawnmower did you get any
23 other description? And I want you to look at this, of the
24 second suspect that you say was my client. Take a look at
25 it. Other than that he had the same complexion.

EARNEST GORDON: CROSS BY MR. SNOW

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1 A. This statement here was talking about your client
2 here. That's what this statement is about.

3 Q. Right. I understand that. I only have one client.

4 A. Okay.

5 Q. You said he had - it was your complexion and that's
6 all you mentioned about him in your statement. Right?

7 A. Yes.

8 Q. Okay.

9 A. I also mentioned the clothes he was wearing.

10 Q. I'm talking about physical attributes. Do you
11 remember anything else about his physical? In your
12 statement do you mention anything about his hair, about his
13 beard, about his facial features; anything?

14 A. No it's not in here. It's just saying he was about my
15 height, about my complexion. She didn't put down exactly.
16 Short hair, you know, facial features, no she didn't put
17 that in here.

18 Q. But you're saying you told her, a trained police
19 officer that she didn't put it down?

20 A. Yes, I did. Yes, I did.

21 Q. When you looked over your statement didn't you?

22 A. Yeah.

23 Q. Before you signed it didn't you?

24 A. Yes, sir.

25 Q. You swore on it didn't you?

1 A. Yes.

2 Q. At anytime did you stop the police and say ha, this is
3 not my complete statement? Did you ever do that?

4 A. Well, no. At the time I didn't think about that
5 there. But I did explain; I did describe everything. If
6 she didn't write it down, you know, she didn't write it
7 down. But I did explain it.

8 Q. Mr. Gordon, you would agree that this is an important
9 matter. Right?

10 A. Oh yes.

11 Q. Because you got involved with the case voluntarily as
12 a citizen. Correct?

13 A. Correct.

14 Q. No one ask you to do that?

15 A. Correct.

16 Q. So no one needs to ask you to give a statement about
17 this and you just did so voluntarily?

18 A. Correct.

19 Q. So they didn't have to ask you well have you seen him
20 before. Isn't that something you would tell them anyway?

21 A. No. They did ask me had I seen him. I told them
22 because it was directly next to me to my house. Yes I'm
23 concerned. Yes I spoke up.

24 Q. But after you looked over your statement, you didn't
25 think it was important enough to say ha, ha, something is

EARNEST GORDON: CROSS BY MR. SNOW

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1 missing out of this statement? I seen this guy.

2 A. You know actually at the time I didn't think about
3 that at that particular moment. No I didn't think about
4 that.

5 Q. Let me ask you a few more questions then. And, when
6 you saw this suspect take off his shirt, where did that
7 suspect take his shirt off? Do you recall that?

8 A. Yeah I do.

9 Q. Where was it?

10 A. He stood up right up under that tree, he stood up,
11 starting unbuttoning and taking his shirt off and started
12 walking off.

13 Q. And he dropped it in some way?

14 A. Yeah he dropped it at some point. Must have been
15 around the corner somewhere, yeah.

16 Q. Now, let me ask you this question. You had an
17 opportunity to talk about this case? You haven't talked
18 with anyone about this case?

19 A. Such as?

20 Q. Did you talk with the Solicitor?

21 A. Yeah. I talked to my solicitor, yeah.

22 Q. Mr. Hutchinson. How many times did you speak with him
23 about this case?

24 A. On the phone maybe twice. I think it was twice on the
25 phone we had talked. That's it. I don't know of anybody

1 else.

2 Q. Have you spoken with anyone else in the preparation
3 for this trial?

4 A. Other than the police officers?

5 Q. How many times did you speak with a police officer
6 about this?

7 A. That one night when I was there they took me down to
8 the police station.

9 Q. Did you speak with any other police officers?

10 A. No.

11 Q. Did you give any other statements?

12 A. No.

13 Q. Did you tell Mr. Hutchinson that you had told the
14 police that you had seen my client before?

15 A. I don't remember telling him that directly. I don't
16 remember telling Mr. Hutchinson that directly I'd seen him
17 before.

18 Q. Did you tell him indirectly?

19 A. We didn't directly talk about your client. We talked
20 about me coming into court to testify, testifying about
21 what I saw that night. You know it wasn't directly about
22 your client though.

23 Q. But you talked about the case. Correct?

24 A. As far as me coming in to testify my court date was
25 the 17th and he called me back it's been changed to the

EARNEST GORDON: CROSS BY MR. SNOW.

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1 24th. That's about all we talked about. We didn't get
2 into details.

3 Q. You're not saying -- You didn't talk about your
4 statement. Did you talk about your statement didn't you?

5 A. Me and the solicitor, Mr. Hutchinson?

6 Q. Yeah.

7 A. We talked about the statement? No. No, I don't
8 remember talking about the statement. I don't remember.

9 Q. Now, let me ask you this question about your
10 statement. You indicated they were moving. Did you ever
11 see my client, the alleged second person, push the
12 lawnmower or touch the appliance?

13 A. Yes.

14 Q. Okay. What did you see? What did you see my client
15 do?

16 A. Okay. I saw your client come out on the side of the
17 house, I saw him come out, he went back when I pulled up
18 and I had to take the second look, a real good look to be
19 sure I saw something over there, him and the second guy did
20 come out, both of them had the appliance and the lawnmower
21 and they were wheeling the thing right past me; right past
22 my house, right across the street into the parking lot
23 going up Jones Avenue.

24 Q. Did you ever see my client in the house?

25 A. In the house?

EARNEST GORDON: CROSS BY MR. SNOW
REDIRECT BY MR. HUTCHINSON

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1 Q. Uh-huh.

2 A. No.

3 Q. You never saw him in the house?

4 A. No. I never saw him in the house no.

5 Q. Well, the second suspect, did you see anybody with a
6 stripe shirt on?

7 A. No I never saw him in the house no.

8 Q. And you're absolutely certain that you saw both of
9 them?

10 A. Yes I am.

11 Q. Pushing the lawnmower, touching the lawnmower,
12 touching the appliance?

13 A. Oh yes.

14 Q. Okay. Thank you.

15 MR. HUTCHINSON: If I may, Your Honor.

16 REDIRECT EXAMINATION

17 EARNEST GORDON BY MR. HUTCHINSON:

18 Q. Mr. Gordon, Mr. Snow got into a little bit about what
19 we discussed on the phone. At any time did I tell you what
20 to say today in court?

21 A. No.

22 Q. Did I ever show you a picture - - -

23 A. No.

24 Q. - - - of Mr. Johnson?

25 A. No.

EARNEST GORDON: REDIRECT BY MR. HUTCHINSON

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1 Q. Did you indicate to me on the phone that you had
2 previously seen Mr. Johnson or that you had previously seen
3 one of the person's involved in the crime?

4 A. No. No I don't remember discussing seeing either one
5 of them, them suspects. I don't remember talking to you
6 about a picture of what they looked like or anything like
7 that..

8 Q. Now, was everything -- You got a chance to look at
9 your statement that you gave. Was everything in that
10 statement true?

11 A. Yes, sir.

12 Q. And still today that you remember is true?

13 A. Yes.

14 Q. Now, do you remember the officer that took that
15 statement?

16 A. I know it was a woman. I don't remember her name.
17 I'm quite sure she signed the paper. I don't remember her
18 name.

19 Q. Do you remember if she was actually on the scene
20 initially?

21 A. No she wasn't on the scene. No.

22 Q. No further questions, Your Honor.

23 THE COURT: Anything else?

24 MR. SNOW: Nothing else, Your Honor.

25 THE COURT: Thank you, sir. You may stand down, sir.

1 (WITNESS LEAVING WITNESS STAND.)

2 MR. SNOW: Thank you, Mr. Gordon.

3 MR. HUTCHINSON: Your Honor, I ask that Mr. Gordon be
4 allowed to be excused at this time.

5 THE COURT: Any objection?

6 MR. SNOW: No objection.

7 THE COURT: Thank you for coming, Mr. Gordon. You may
8 be excused if you wish.

9 MS. DESCH: If we could have Officer Chris Price, if we
10 could get Chris Price.

11 Excuse me, Your Honor.

12 (SOLICITOR DESCH LEFT COURTROOM TO GET WITNESS AND
13 RETURNED.)

14 MS. DESCH: Your Honor, Officer Price will be right
15 in. The Court's indulgence.

16 (PAUSE.)

17 (WITNESS ENTERING COURTROOM.)

18 MR. DESCH: Step right up to the Bible.

19 (WHEREUPON: OFFICER
20 CHRISTOPHER PRICE, BEING FIRST CALLED AND DULY SWORN,
21 TESTIFIED AS FOLLOWS)

22 DIRECT EXAMINATION

23 OFFICER CHRISTOPHER PRICE: BY MS. DESCH

24 Q. Good morning.

25 A. Good morning.

CHRISTOPHER PRICE: DIRECT BY MS. DESCH

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1 Q. Could you please state your name and spell your last
2 name for the record.

3 A. My name is Chris, Christopher Price, P-r-I-c-e.

4 Q. And where is it that you work?

5 A. I work with the City of Rock Hill Police Department.

6 Q. So you're a police officer with Rock Hill?

7 A. That's correct, yes.

8 Q. And how long you been a police officer with Rock Hill?

9 A. I been with Rock Hill going on three years.

10 Q. And were you involved in law enforcement prior to
11 coming to Rock Hill?

12 A. I was. I've actually been in law enforcement,
13 uniform, about ten years now. I started off as dispatch
14 for two years, City of Forrest Acres in Richland County.
15 After that I went to the police academy and was a police
16 officer with the City of Columbia, the Capital City Police;
17 I was there for five years where I was promoted to a
18 corporal supervisor and we moved to Rock Hill.

19 Q. So ten years in law enforcement. What kind of
20 training have you had?

21 A. I've had a eight week police academy. I also have a
22 degree in Criminal Justice Associate's Degree. We get
23 recertified in everything twice a year between shooting,
24 driving. We have continuous legal updates on all the law
25 changes so over ten years I've had a large amount of

1 recertification and training and relearning the laws.

2 Q. When you came to Rock Hill two years ago, did you have
3 to get retrained or additional training for Rock Hill?

4 A. Just on the job training. How each department does
5 their reports and their own internal policies and
6 procedures are different. So we go through and got on the
7 job training where we learn how we do our reports and Rock
8 Hill compared to Columbia on how their policies and
9 procedures are and also their local city ordinances.

10 Q. On November 18, 2009 were you working on that date?

11 A. Yes I was.

12 Q. And do you remember what shift you were working on
13 that day?

14 A. I believe I might have been on the mid-shift, the
15 night shift at that time.

16 Q. How does Rock Hill work? Do you work the same shift
17 all the time or do you rotate?

18 A. We rotate. Here recently we rotated every three
19 months. Now we rotate every four months between three
20 shifts. We have a day shift, a mid shift, and then a night
21 shift.

22 Q. So when you're going to work are you looking at your
23 schedule, it changes periodically?

24 A. That's correct. As of now we change every four months
25 between days and nights, but yes, it does change.

CHRISTOPHER PRICE: DIRECT BY MS. DESCH

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1 Q. And you're in uniform today. Is that your uniform you
2 wear when you're out on the street?

3 A. Yes it is.

4 Q. And do you drive? Do you go out with another person
5 or are you by yourself? How does that work?

6 A. We're in single marked patrol units that have a City
7 of Rock Hill Police Department on the side of the cars.
8 And we're in single units about nine officers on the road
9 at any given time.

10 Q. What is your car equipped with as far as
11 communication?

12 A. Our car as far as communication are equipped with
13 what's called CAD or Computer Aided Dispatch Screen,
14 computer almost like having a live - in the car. That's
15 where we get information about the calls that are going on.
16 We also have our radios where dispatch can reach us and
17 tell us where we need to go and where we can contact with
18 dispatch.

19 Q. You said there's about nine officers out there. Do
20 you communicate with each other?

21 A. We communicate with each other either over the radio
22 if we need each other immediately. And we can communicate
23 via car computer or even telephone if we have to.

24 Q. And you mentioned a CAD system. Are you talking and
25 stuff in your own computers or is somebody else monitoring

1 all of the communication?

2 A. Dispatch has the major access to our computer and the
3 dispatch system they're the ones that put the calls that
4 either we give them, we created our own by traffic stops or
5 by observing something or called in by citizens of Rock
6 Hill. Usually the only input we have is if we need to add
7 our own comments to the call, what we saw or what we
8 observed at any time that we need to make an inquiry to
9 somebody's driver's license or vehicle tag information.

10 Q. So there is a system where somebody is keeping track
11 of all of this communication between the officers and
12 between dispatch?

13 A. That's correct.

14 Q. And on November 18, 2009 at about 7:30, Eight o'clock,
15 Eight o'clockish, were you dispatched to anything?

16 A. I was dispatched to at that time it was put out as a
17 suspicious activity where somebody observed something they
18 felt wasn't normal for the neighborhood that they lived in
19 and we were dispatched to the call on Main Street.

20 Q. And are you familiar with the area around East Main
21 Street?

22 A. Yes. Like I said I worked in the City for about three
23 years and spent most of my time on the downtown, south side
24 of town. I was familiar with Main Street, Black Street,
25 and all that area.

CHRISTOPHER PRICE: DIRECT BY MS. DESCH

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1 Q. Can you remember how you were able to get over to that
2 area?

3 A. It was fairly quick. My assigned area at that time is
4 the Hagen's Fuel neighborhood where we worked Hagen's Road,
5 Fuel Street as well as Freedom Road when the dispatch came
6 in to go to East Main Street I was pretty much essentially
7 right around the corner. Didn't take me long at all.

8 Q. While you were in route, did anything else come over
9 the radio as to what you were looking for?

10 A. Initially we were advised an individual had observed
11 two adult suspects, he didn't know who they were at the
12 time, on the side of a house on East Main Street. I
13 believe it was [REDACTED] On the way there we
14 were advised these guys were seen allegedly pushing what
15 appeared to be a lawnmower with a clothes dryer on the top
16 down the road. As I got closer to the area we were told
17 again by dispatch that this gentleman did saw the two
18 alleged subjects come back to the house with just the
19 lawnmower and they were standing kind of in front of the
20 house next to what is called Park Grocery and Beauty and
21 that is when I arrived on the scene there.

22 Q. Did you go to the address on Main or did you go to
23 Parks Grocery?

24 A. I went to the address on Main which is [REDACTED]
25 right next to that house. It's a parking lot for Park

1 Grocery and Beauty in that kind of little small strip mall
2 there.

3 Q. And what did you see when you first pulled up?

4 A. When I first pulled up I observed two gentlemen. We
5 normally -- but two gentlemen, persons that were next to a
6 lawnmower walking away from it toward the door of Park
7 Beauty and Grocery. I followed one of the male subjects
8 who walked into the Park Grocery Store.

9 Q. So you followed one. Where did the other one go? Did
10 you pay any attention to him at all?

11 A. I'm not sure exactly. I kind of focused on the one
12 gentleman who I observed kind of wearing a red burgundy
13 shirt and khaki pants. He was just kind of the main one I
14 focused on too and then followed him into the store. There
15 was a crowd of people around the store at that time either
16 shopping and just kind of hanging out so I tried to
17 concentrate on one and not lose sight of that one
18 gentleman that was walking away from the lawnmower.

19 Q. At some point did you go up to that person you
20 followed?

21 A. I did. He entered the store, I advised as I got on the
22 scene of the other officers that were coming into the area
23 I saw two subjects walking away and I followed one. When
24 he came out of the store that's when I ask him if I could
25 talk to him. We always ask if we can talk to somebody. He

CHRISTOPHER PRICE: DIRECT BY MS. DESCH

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1 said yes and at that time I ask him for his identification
2 and he was identified as Mr. Stephen Robinson.

3 Q. So the person you stayed with at Park's Grocery was
4 Stephen Robinson?

5 A. Yes that's correct.

6 Q. When you went up and talked to him what happened?

7 A. When I went and talked to him I kind of advised him
8 why we were there. We had a call about two guys allegedly
9 being on the side of the house at [REDACTED] and
10 that they were pushing some items away from the house and
11 had returned back. I ask him if he knew what was going on
12 or had any information on it. By that time Mr. Robinson
13 stated he wasn't taking anything, he was just there kind of
14 shopping. He then told me that he's got no reason to steal
15 anything, that he's got his own house that he lives on
16 Izzard Street and then he kind of gave us a little bit more
17 information after that.

18 Q. What information were you given while you were talking
19 to him?

20 A. The main thing is again, initially I read him his
21 Maranda Rights and started asking him more about the
22 situation, what was going on. He advised me that he did
23 observe somebody push what he thought was a clothes dryer
24 down the street. He then told me the name of the person he
25 believed was pushing down the street as a Mason Johnson.

1 And then again he told me --

2 MR. SNOW: Objection.

3 THE COURT: Sustain.

4 MR. SNOW: Move to strike.

5 THE COURT: The jury is instructed to disregard the
6 last name by the officer. Struck from the record.

7 BY MS. DESCH:

8 Q. So while you're talking to Stephen Robinson, he
9 initially says not mean somebody else?

10 A. That he observed somebody else pushing something down
11 the road yes.

12 Q. And he indicated he lived on Izzard Street?

13 A. That's correct.

14 Q. How long did you stay with Stephen Robinson?

15 A. I stayed with Stephen Robinson the whole time the call
16 was going on. At that time after reading him his rights
17 and everything else, my main investigation was with him.

18 We had also talked to a witness who did identify Mr.

19 Robinson as being one of the gentlemen that were on the
20 side of the house. And also they were seen pushing an

21 object from that house down the road so I stayed with him.

22 And then an investigator, Detective Ayers, and another

23 officer that Mr. Robinson states he lives on Izzard Street,

24 that he observed somebody else pushing the clothes dryer

25 down the street and then they went over to Izzard Street

CHRISTOPHER PRICE: DIRECT BY MS. DESCH

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1 where Mr. Robinson lives.

2 Q. And in you're familiarity with the area, do you know
3 where Izzard Street is in comparison to Park's Grocery?

4 A. If you have Main Street, Izzard in a sense, a small
5 kind of one block street, just over one more if you're
6 headed toward White Street between Jones. So if you were
7 to went on Jones Avenue Izzard, you have Izzard and then
8 White Street coming from Main and after White you would
9 have went probably down - and Olivet.

10 Q. If I could draw your attention to this street. Now,
11 what we're looking at, all this green, is a blow up of
12 State's Exhibit One. Are you familiar with that area?

13 A. Yes I am. IN the upper right corner you kind of see
14 the parking lot from Park Grocery. And that would be Keels
15 Avenue and Main Street and then coming down to Jones Avenue
16 by the church on the corner.

17 Q. And for the record we're looking at the right hand
18 corner of the picture, is that Keels Street that we see to
19 the right above the Park's Grocery?

20 A. Correct. The building with the white top and the cars
21 in it, that would be Keels. Actually it's Keels Avenue.
22 It goes off to the right in the right hand corner.

23 Q. And then Main Street is the one that runs between
24 Parks and the church?

25 A. Correct.

1 Q. Do you know what that one at the bottom of the church
2 on the other side of the church parking lot?

3 A. Next to the church you can't go straight across, you
4 have to actually curve, that's Jones Avenue.

5 Q. And where did you indicate that Izzard was?

6 A. Izzard. If you were to come down toward, down toward
7 Park Grocery, and you were then to make your right onto
8 Jones, Izzard is just kind of straight, come straight down
9 over toward the bottom left of the screen.

10 Q. Bottom left? Is this Izzard right here?

11 A. Yes it is.

12 Q. Okay. And this is Jones?

13 A. Yes.

14 Q. And then this between the grocery store and the church
15 is Main Street?

16 A. Yes it is.

17 Q. And then Keels?

18 A. Correct.

19 Q. Okay. At any point did you go after the Izzard Street
20 address?

21 A. No I didn't. Again I stayed in front of the Park
22 Grocery with Mr. Robinson.

23 Q. And do you remember about the time frame with all of
24 this happening? Were you listening to what was going on,
25 on the radio?

CHRISTOPHER PRICE: DIRECT BY MS. DESCH
CROSS BY MR. SNOW

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1 A. As far as paying attention to what Mr. Robinson was
2 saying, and listen to what Detective Ayers and the other
3 officer got on the scene on Izzard, it was mainly just
4 listening for them to tell me what they had found and what
5 else they might have needed from me information wise.

6 Q. Now, when you were talking with Mr. Robinson, he
7 initially denied having any involvement. Correct?

8 A. That's correct, yes.

9 Q. But at some point was he arrested?

10 A. Towards the end of the call I was advised by Detective
11 Ayers once they went to Izzard Street and found some items
12 that belonged to the house on East Main to go ahead and
13 detain him and place him under arrest Mr. Robinson and then
14 take him down to headquarters to be interviewed by him.

15 Q. And you indicated earlier that a witness had
16 identified Mr. Robinson as being involved?

17 A. That's correct. He was a witness who had also called
18 in to police and advised dispatch of what was going on.

19 Q. Thank you. Please answer any questions Mr. Snow might
20 have.

21 MR. SNOW: Yes, sir.

22 CROSS EXAMINATION

23 OFFICER CHRISTOPHER PRICE BY MR. SNOW:

24 Q. Mr. Price, did you do a report in this case?

25 A. Yes, I did.

1 Q. Did you do it?

2 A. Yes.

3 Q. Did you turn one over to the Solicitor's office?

4 A. The report I filed was turned into our records
5 department and then a copy would have been detained by
6 Detective Ayers and he would have turned it over with his
7 information.

8 THE COURT: Mr. Snow, South Carolina is different than
9 North Carolina. When you practice, please be on your feet
10 when you ask questions.

11 MR. SNOW: I apologize, Judge.

12 BY MR. SNOW:

13 Q. So, you turned the report over to the DA's office?

14 A. My report was turned in to records signed by my
15 supervisor and turned into records and then Detective Ayers
16 would have gotten his copy of the report and he would have
17 turned that information over to our solicitor.

18 MR. SNOW: May I approach, Judge?

19 THE COURT: Yes, sir.

20 Q. Just to clarify. Is this your report?

21 A. Yes it is.

22 Q. So, okay, sir, just want to make sure, that's all.

23 A. Yes it is.

24 Q. That's fine. Thank you.

25 At some point on November 18th you had the occasion to

CHRISTOPHER PRICE: CROSS BY MR. SNOW

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1 speak with Mr. Gordon. Right?

2 A. Yes, sir.

3 Q. And he talked with you about the suspect?

4 A. Yes, sir.

5 Q. In fact you would agree with me that he positively
6 identified another suspect, the defendant in this case?

7 A. Positively?

8 Q. Positively identified Mr. Robinson?

9 A. Yes he did. Positively identified Mr. Robinson.

10 Q. Let me just have a minute.

11 (PAUSE.)

12 Q. Now when he talked about the other suspect, he didn't
13 indicate to you that he had seen this other suspect before
14 did he?

15 A. He had indicated he had saw two persons pushing a
16 clothes dryer down the street, yes.

17 Q. Let me ask you a few more questions. You have
18 substantial training and experience I would say. Would
19 that be fair to say?

20 A. Yes, sir.

21 Q. You have four years on the force. Correct?

22 A. Three years.

23 Q. Three years?

24 A. Yes, sir.

25 Q. Five years in Columbia?

1 A Yes, sir.

2 Q. You went to the academy?

3 A. Yes, sir.

4 Q. And I would imagine during your training in the
5 academy did they teach you about things as taking notes and
6 writing reports and things of that nature?

7 A. Yes, sir.

8 Q. And listening to witnesses?

9 A. Yes, sir.

10 Q. I imagine when you listen to witnesses you take
11 reports. You are anticipating the case may go to trial?

12 A. Yes, sir.

13 Q. And then the Solicitor's office will need that during
14 the prosecution of a defendant?

15 A. Yes, sir.

16 Q. Isn't that true? So I would imagine you try to be as
17 accurate as you can when you take reports and take notes?

18 A. Yes, sir.

19 Q. And certainly it's a start. I'm not saying a hundred
20 percent, but I would imagine you take it very seriously
21 doing your job?

22 A. Yes, sir.

23 Q. So you want to make sure you have important
24 information?

25 A. Yes, sir.

CHRISTOPHER PRICE: CROSS BY MR. SNOW.

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1 Q. Now, is it fair to say in your report that Mr. Gordon
2 you never indicated in your report that Mr. Gordon ever
3 mentioned that he had seen this person, this second suspect
4 before in the neighborhood?

5 A. That's correct because I never ask him about it.

6 Q. You never ask him about it?

7 A. That's correct.

8 Q. And certainly if he had said so wouldn't you write it
9 down?

10 A. If he had told me about a second suspect, yes I would.
11 It would have been in the report.

12 Q. And he told you he had seen him four or five times you
13 would write that down wouldn't you?

14 A. Yes, sir.

15 Q. If he had told you he had seen him before and he knew
16 where he lived certainly you would write that down?

17 A. If he had told me that yes, sir.

18 Q. So, he never told you that did he?

19 A. No, sir, because my only interaction was if he could
20 identify Mr. Robinson.

21 Q. But he never told you that he had seen my client
22 before?

23 A. That's right.

24 Q. And through your information from your knowledge about
25 this case, do you know, did he tell any officer that?

1 A. I'm not sure if he did or not, sir.

2 Q. But you don't have any knowledge that he did?

3 A. I have no knowledge of what his interaction was with
4 anybody else after I was done.

5 Q. And, through your indication he had never indicated
6 that he saw someone sitting by a tree did he?

7 A. Not to me no, sir.

8 Q. Not to you. Did he ever indicate that he went in the
9 store?

10 A. Did Mr. Gordon indicate that he went in?

11 MS. DESCH: Your Honor, at this time I'm going to
12 object. He's pitting witness's against each other.
13 Officer Price clearly said he dealt with Stephen Robinson.
14 He didn't deal with Mr. Gordon.

15 MR. SNOW: Well, Judge, --

16 THE COURT: Just confine your questions to whatever
17 are relevant in as far as your client is concerned, Mr.
18 Snow.

19 MR. SNOW: Okay.

20 THE COURT: I'm not trying to limit you there. I'm
21 just saying make it be relevant to your client.

22 BY MR. SNOW:

23 Q. Officer Price, did you speak to Mr. Gordon on that
24 evening?

25 A. Briefly yes, sir.

CHRISTOPHER PRICE: CROSS BY MR. SNOW
REDIRECT BY MS. DESCH

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1 Q. Briefly. So what I'm asking is what he told you
2 during your brief conversation.

3 A. Yes, sir.

4 Q. Is that a fair question?

5 A. Yes, sir.

6 Q. Did he ever tell you in a brief conversation that he
7 saw anyone sitting next to a tree?

8 A. He did not tell me.

9 Q He didn't mention that to you. Did he indicate
10 through his brief conversation that he saw, Mr. Gordon
11 himself, went in the store?

12 A. He didn't tell me.

13 Q. He didn't mention that either.

14 Nothing further, Judge.

15 REDIRECT EXAMINATION

16 OFFICER CHRISTOPHER PRICE BY MS. DESCH:

17 Q. Officer Price, how do you put together an incident
18 report?

19 A. The incident report is put together based on
20 information we obtain from witnesses and victims and then
21 if we're able to obtain information from the suspect we try
22 to put it together as best we can in chronological order or
23 in an order that's easy to read because we know it's gonna
24 be reviewed by the public and news agencies and everybody
25 else.

1 Q. In fact Rock Hill has a policy they do. One report
2 for one reason and then another report for another reason.
3 Is that the difference between this summary and incident
4 report?

5 A. The Incident Report is done by an officer on the scene
6 which is everything that I obtain my information wise; but
7 again, the detective is going to interview witnesses
8 further; he's going to interview suspects further and he's
9 gonna maintain more than likely more information than I was
10 able to obtain in that exact incident. Therefore whatever
11 they write about afterwards in their summary might be more
12 detailed and more informative than what I was able to get
13 at the time.

14 Q. So at the time you write it, if you say your name, I
15 mean you're writing it for everybody on the scene that you
16 know about at that time?

17 A. It's information that's either relayed to me or I
18 observed at the time it needed to be put in the Incident
19 Report, yes.

20 Q. So, in your report when you write Officer McCarley
21 spoke with Sharon Gordon and Earnest Gordon, that's your
22 knowledge of what Officer McCarley did?

23 A. Yes.

24 Q. So, in your report do you recall writing anything
25 about any details of you speaking with Mr. Gordon?

CHRISTOPHER PRICE: REDIRECT BY MS. DESCH

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1 A. The main time I spoke with Mr. Gordon I believe was
2 just to get, to confirm that he identified Mr. Robinson and
3 that was kind of with Mr. McCarley being there as well.

4 Q. So you and Officer McCarley -- Let me rephrase that.
5 If you can go back and tell us, so you go up and you're
6 dealing with Stephen Robinson. Correct?

7 A. Yes.

8 Q. And some what you said you read the rights, the
9 Maranda rights to Stephen Robinson?

10 A. Yes.

11 Q. For those that don't watch many detective shows, what
12 are Maranda rights?

13 A. The Maranda rights are the rights that we read to
14 individuals we're going to interview and reference to a
15 crime. We have a set Maranda warning which is usually five
16 actual statements that we read to a person and afterwards
17 we have two kind of confirmation statements where we make
18 sure they understand what we're -- what we read and they
19 understand.

20 Q. Pull it out. Can you read it for the jury?

21 A. Yes I always carry a copy on me. I never want to try
22 to recite it from memory because I don't want to ever get
23 it wrong. But I always have a card taped to my field
24 notebook. It just states, "You have the right to remain
25 silent, anything you say can and will be used against you

1 in a court of law. You have the right to talk to a lawyer
2 and have him present with you while you're being
3 questioned. If you cannot afford to hire a lawyer one will
4 be appointed to represent you before any questioning if you
5 wish. And you can decide at any time to exercise these
6 rights and not answer any questions or make any
7 statements." After we read that to them we have then what
8 we call "Waiver or Rights" where we ask them two final
9 questions, is, "Do you understand each of these rights as I
10 have explained them to you? And, having those rights in
11 mind do you wish to talk to us now?"

12 Q. And that's what you did with Stephen Robinson?

13 A. That's correct.

14 Q. He was also arrested and this two person?

15 A. Yes.

16 Q. Now, your best recollection, how many officers were at
17 the scene while all of this was going on?

18 A. I believe in the report I had myself, Officer
19 McCarley, Officer Watson, Officer Andrews and Detective
20 Ayers.

21 Q. So all of those people are now involved in this
22 investigation?

23 A. That's correct.

24 Q. Who, if you can describe one person as a handler for
25 Earnest Gordon who would that be?

CHRISTOPHER PRICE: REDIRECT BY MS. DESCH
RECROSS BY MR. SNOW

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1 A. Officer McCarley.

2 Q. So in your interaction with Earnest Gordon, how did it
3 happen and how long did it last?

4 A. My interaction was really brief. It was just me going
5 to Officer McCarley to confirm he did identify Stephen
6 Robinson as one of the gentlemen that was seen pushing the
7 clothes dryer down the street again toward Jones and then
8 returning back with the lawnmower in front of the house.
9 And that was again just to ask can you pick out Mr.
10 Robinson as being one of the subjects. And then Officer
11 McCarley said yes.

12 Q. So there wasn't really any extended period of time you
13 talked to Mr. Gordon?

14 A. There was no extended interaction where he could have
15 told me much more than that.

16 Q. Thank you.

17 MR. SNOW: One more question, Judge, if I may.

18 RECROSS EXAMINATION

19 OFFICER CHRISTOPHER PRICE BY MR SNOW:

20 Q. Officer Price, you're not saying your incident report
21 is not important are you?

22 A. It's not what, sir?

23 Q. Your incident report, it's not important, your not
24 mentioning how important it is are you?

25 A. No, sir.

1 Q. It's a pretty important document?

2 A. Yes, sir, it is.

3 Q. So you want to make sure you have important facts in
4 this document?

5 A. Yes, sir.

6 Q. Now, let me ask you this question.

7 May I approach, Judge?

8 THE COURT: Yes, sir.

9 Q. Have you ever seen this document in preparation for
10 this trial?

11 A. This is the first time I've seen this document that
12 was apparently created by Detective Ayers.

13 Q. First time you've seen it. You haven't looked at it
14 before. So, I won't ask you any questions relative to
15 that.

16 MS. DESCH: Your Honor, I'm going to object. Why,
17 what does it have to do with anything with that, it's not
18 his?

19 THE COURT: He's withdrawing it; he's not asking.

20 MR. SNOW: I'm not going to ask him any questions
21 pertaining to this. He hasn't seen it before. That's
22 fine.

23 Q. Well, from your knowledge of this case, and I imagine
24 you talked with your colleagues, Officer Ayers, Price,
25 Watson, Andrews, McCarley, Harveston. I imagine you had a

CHRISTOPHER PRICE: RECROSS BY MR. SNOW

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1 conversation relative to this investigation or some
2 conversation.

3 A. The day of the call yes.

4 Q. The day of the call. Do you recall any of the
5 officers telling you that Mr. Gordon had seen someone
6 sitting under a tree?

7 A. That was never related to me no, sir.

8 Q. Never related to you. None of the officers told you
9 they had seen him in the store either; that any of your
10 colleagues, the officers told you they had seen Mr. Gordon
11 in the store?

12 A. No, sir. That wasn't past to me.

13 Q. Nothing further.

14 Thank you, Judge.

15 THE COURT: Thank you, sir. You may stand down, sir.

16 (WITNESS LEAVING WITNESS STAND.)

17 MR. HUTCHINSON: Your Honor, the State would call
18 Officer Mac McCarley to the stand.

19 Bailiff, could you get Officer Mac McCarley.

20 (WITNESS ENTERING COURTROOM.)

21 MR. HUTCHINSON: Your Honor, we would also like to ask
22 that Officer Price be excused.

23 MR. SNOW: No objection, Your Honor.

24 THE COURT: Thank you for coming. You may be excused.

25 (WHEREUPON: OFFICER MAC .

MAC MCCARLEY: DIRECT BY MR. HUTCHINSON

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1 MCCARLEY BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS
2 FOLLOWS:)

3 DIRECT EXAMINATION

4 OFFICER MAC MCCARLEY BY MR. HUTCHINSON:

5 Q. Officer McCarley, could you loudly and clearly state
6 your full name for the jury please?

7 A. My name is Officer Mac McCarley.

8 Q. And where are you employed?

9 A. I'm employed with the City of Rock Hill.

10 Q. And how long have you been with the City of Rock Hill?

11 A. I been with the City of Rock Hill since 2003. I been
12 in law enforcement since 1996.

13 Q. And where did you work before?

14 A. I worked for the Tega Cay Police Department where I
15 was assigned to the York County Multi-Jurisdictional Drug
16 Enforcement Unit were I conducted narcotic investigations
17 and did undercover narcotic work.

18 Q. And what type of training have you received for
19 accreditation?

20 A. In 1996 and '97 I went through the basic criminal
21 justice academy for basic law enforcement. And I have
22 endured many training throughout my career. I have
23 instructions through the South Carolina Criminal Justice
24 Academy, Firearms, instructed in the NRA; I've instructions
25 in the tactics, firearms, tazer, and several narcotics

MAC MCCARLEY: DIRECT BY MR. HUTCHINSON

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1 training under cover and other wise.

2 Q. Now, November 18, 2009, had your current position at
3 that time?

4 A. Yes I'm currently assigned to the traffic division.
5 At that date I was on traffic unit which we worked the
6 whole city.

7 Q. And what type of shift were you working?

8 A. We were on mid-shift roughly coming in anywhere from
9 1:00 to 3:00 and work our ten hours.

10 Q. Now, were you dispatched to the area, [REDACTED]

11 [REDACTED]?

12 A. We were in the area yes.

13 Q. And what type of reason were you dispatched to that
14 area?

15 A. If I recall correctly it was a larceny that was taking
16 place. I was responding to assist other officers who were
17 already in that area.

18 Q. Now, where was the first place that you went in that
19 area?

20 A. The first place that I went was what we call Park
21 Grocery. It's a little neighborhood convenient store,
22 grocery store type thing. I pulled up to assist Officer
23 Price who already had one subject detained.

24 Q. Now, on the scene do you remember retrieving any sort
25 of evidence?

MAC MCCARLEY: DIRECT BY MR. HUTCHINSON

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1 A. There was on the side of the building like a loading
2 ramp, there was a striped shirt that was laying there which
3 was told to be worn by one of the subjects we were looking
4 for.

5 MR. HUTCHINSON: Your Honor, may I approach the
6 witness?

7 THE COURT: Yes, sir.

8 Q. Officer McCarley, I'm showing you what's previously
9 been marked State Exhibit Twenty-one for identification.
10 Can you tell me -- Can you open up that bag right there and
11 tell me what that is?

12 A. It's still sealed.

13 Q. Just take a look at that and tell me what it is?

14 A. I'm sorry.

15 Q. If you could just take a look at that and tell the
16 Court what that is. Tell the jury what it is.

17 A. It's the stripe shirt. Excuse me, it's the blue and
18 white shirt that was located on the loading dock on that
19 day.

20 Q. Now, is there a Chain of Evidence Form on the front of
21 that bag?

22 A. There is.

23 Q. Are you listed as the first person who has touched
24 that shirt, who was involved in touching that shirt?

25 A. I am. As you'll see on the front this is where we log

MAC MCCARLEY: DIRECT BY MR. HUTCHINSON

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1 our evidence. You see it's evidence recovered which it's
2 got my name on it. My badge number, then the first person
3 who gets it that's the first name on it where I turned it
4 over to Detective Ayers. That's the next person who had it
5 after that. He does the chain.

6 Q. Now is that shirt in the same substantially similar
7 condition as November the 18th 2009 when you recovered it?

8 A. Yes.

9 MR. HUTCHINSON: Your Honor, I'd like State's Exhibit
10 Number --

11 THE COURT: Admitted without objection.

12 (WHEREUPON: STATE'S EXHIBIT NUMBER TWENTY-ONE
13 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

14 MR. HUTCHINSON: I apologize, Your Honor, it's
15 actually Twenty-one. Its not Twenty-five. I apologize,
16 Your Honor.

17 Q. Now, Officer McCarley, did you also have any contact
18 with a witness to what had occurred?

19 A. I did.

20 Q. And who did you have contact with?

21 A. Mr. Gordon.

22 Q. What was your initial contact with him?

23 A. I believe without referring back to my notes my
24 initial contact with Mr. Gordon, he was able to identify
25 one of the parties. There was confirmation as the

MAC MCCARLEY: DIRECT BY MR. HUTCHINSON

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1 investigation was continued, we had other officers in the
2 area looking for another suspect which was the street over.
3 They advised they had made contact with somebody who
4 matched the description. I ask Mr. Gordon if he would mind
5 going over and making a positive identification on him. At
6 that point he got into my car, we drove over to the other
7 street.

8 MR. SNOW: Objection.

9 THE COURT: Counsel, approach just a minute.

10 (BENCH CONFERENCE AT 10:45 AM OFF THE RECORD OUT OF
11 THE HEARING OF THE JURY..)

12 THE COURT: You withdraw your objection, Counsel?

13 MR. SNOW: I do, Your Honor.

14 THE COURT: All right. Please proceed.

15 BY MR. HUTCHINSON:

16 Q. Now, Officer McCarley, pick back up where we were
17 talking a little bit, did you take Mr. Gordon to possibly
18 identify someone that had been located by other officers?

19 A. Yes.

20 Q. Now, was that person that you took to identify someone
21 that was eventually arrested for this crime?

22 A. No.

23 Q. Was Mr. Gordon able to say whether or not that person
24 was involved?

25 A. Yes. He was taken -- the way that we do what I call

MAC MCCARLEY: DIRECT BY MR. HUTCHINSON

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1 street line up -- just the one person he said that, that
2 was not the person he had seen earlier that day so that
3 person was released.

4 Q. And could you give a description of that person that
5 he eliminated?

6 A. Could I?

7 Q. Yes.

8 A. I don't recall.

9 MR. HUTCHINSON: I apologize, just one moment, Your
10 Honor.

11 (PAUSE.)

12 Q. Now do you know of someone named William Jackson?

13 A. Yes.

14 Q. Do you know of someone named Willie Jackson other than
15 the person who was a victim in this crime?

16 A. Yes. The suspect, excuse me, the person they ID'd was
17 a William Jackson who is not the William Jackson who is
18 involved in this case.

19 Q. So was he just on the street that evening?

20 A. Yes.

21 Q. Now, do you have any other contact with Mr. Gordon to
22 ride with you anywhere?

23 A. The only other contact I had with him he was taken
24 back to his residence. Upon speaking with Detective Ayers
25 they wanted to bring him down to the law center to give a

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1 statement in which I gave him a ride to the law center to
2 give a statement to the detectives that once it was
3 finished they called me back and I gave him a ride back to
4 his residence.

5 Q. Now, were you actually the person in the room that
6 took his statement?

7 A. No I was not.

8 Q. And just for clarification, I know you probably used
9 the word ID as something you do when you're showing
10 someone, Mr. Jackson, was he eliminated as a suspect on
11 that evening?

12 A. Yes he was. When I say ID it's our terminology for
13 identification. But he was ruled out as a suspect that
14 afternoon.

15 Q. Okay.

16 MR. HUTCHINSON: No further questions at this time,
17 Your Honor.

18 CROSS EXAMINATION

19 OFFICER MAC MCCARLEY BY MR. SNOW:

20 Q. Well, you had some reason to believe that Mr. Jackson
21 was someone worth looking at. Correct?

22 A. No, sir, I didn't. I was with Mr. Gordon. There
23 were some other officers over there that had some reason to
24 be -

25 Q. Well, let me clarify, Officer. You had some reason to

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1 take Mr. Gordon there?

2 A. Yes. The other officers ask me if I would bring him
3 over and do an identification.

4 Q. So the identification you obtained, the officers
5 obtained, was certainly enough to make you look at someone?

6 A. Yes.

7 Q. That was in the area?

8 A. Uh-huh.

9 Q. Right. Now, Officer McCarley.
10 May I approach?

11 THE COURT: Yes, sir.

12 Q. Are you familiar with this document here?

13 I'm sorry, Your Honor. This is the document the
14 Solicitor, again, Detective Ayers wrote?

15 A. I understand.

16 Q. Are you familiar with this? Did you look at this?

17 A. Oh yes I've looked at it.

18 Q. So you're familiar with it and you read it. Right?
19 Have you read it?

20 A. Yes.

21 Q. Okay. Hand it back to me. I'm going to ask you a few
22 questions relative to what you read and know about this
23 case and any information. Now you had a conversation with
24 Mr. Gordon. Correct?

25 A. As far as I ask him if he would get in the car and go

1 take a look at a suspect yes.

2 Q. That's what I'm asking. You had contact with Mr.
3 Gordon?

4 A. Yes.

5 Q. Did you give any independent report in this case?

6 A. No I did not.

7 Q. You didn't. Now, from your knowledge of this case and
8 your conversation with Mr. Gordon, had Mr. Gordon ever
9 mentioned that he had seen my client before?

10 A. Not to me no.

11 Q. Not to you. And as far as your information as to this
12 investigation had you ever heard he'd seen my client
13 before?

14 A. No.

15 Q. As to your information as to this report, have you
16 ever seen this report that he identified or said he knew my
17 client before?

18 A. I would have to read over it again.

19 MR. SNOW: Well, may I approach?

20 THE COURT: Yes, sir.

21 Q. Look at it.

22 (WITNESS REVIEWING DOCUMENT.)

23 Q. You can take your time and just read it all and just
24 let me know when you're ready.

25 A. Okay. What was your question again?

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1 Q. From this report, in your review of this report, do
2 you see anywhere in this report that Mr. Gordon had
3 mentioned he had seen my client before?

4 A. No. It just states two black males.

5 Q. Two black males. But also you mentioned in this
6 report that he positively identified Mr. Robinson.

7 A. That's correct.

8 Q. And then this is the gentleman that was stopped and
9 apprehended?

10 A. Yes.

11 Q. If you know Mr. Robinson denied having any
12 involvement in this case at first didn't he?

13 A. I don't recall. He didn't state that to me.

14 Q. Is that not in the report?

15 A. Yes. But you ask me if I knew or had knowledge of it
16 rather than reading this report, no.

17 Q. But from your knowledge of the report is it in there?

18 A. It's in the report yeah it happened. But directly to
19 me, no.

20 Q. Right. I understand. Did Mr. Robinson ever tell --
21 I'm sorry, did Mr. Gordon ever tell you he saw my client
22 under a tree?

23 A. I didn't have that much conversation with Mr. Gordon
24 other than it was two black males. And he identified Mr.
25 Robinson.

1 Q. That's fine, Officer, but is that a yes? Is that a
2 yes or a no?

3 A. Repeat the question, I'm sorry.

4 Q. Did Mr. Gordon ever tell you that he saw my client,
5 or anyone else, under a tree in a yard?

6 A. It says in the report that Mr. Gordon positively
7 identified Mr. Robinson as one of the two subjects pushing
8 the appliances on the lawnmower just a few minutes prior.
9 Not that I can see other than what I stated.

10 Q. So you don't see it in the report where he mentioned
11 he had saw my client in the yard?

12 I'm gonna have this marked, permission of the Court,
13 Defendant's Exhibit Two, just at this point have this
14 marked. This is the copy of the -

15 THE COURT: Wait just a minute.

16 Objection?

17 MR. HUTCHINSON: Yes, Your Honor.

18 MR. SNOW: Just marking it at this point, not to move
19 it into evidence, Your Honor. I'm not moving it into
20 evidence, I'm just marking it. This is a copy, I want to
21 make sure the Officer identifies it as a copy. The exact
22 copy of this.

23 Does it appear to be a copy, Officer?

24 Hang on and let me make sure verbatim on there. I
25 believe that's the one page, take a look at.

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1 A. Okay.

2 Q. I want to mark this as a Defendant's Exhibit Two, not
3 to admit it into evidence.

4 Just to mark it, Judge.

5 THE COURT: Marked for ID only.

6 MR. SNOW: Yes.

7 (WHEREUPON: DEFENDANT'S EXHIBIT NUMBER TWO,
8 IDENTIFIED AND PREMARKED.)

9 BY MR. SNOW:

10 Q. Just a couple of more questions, Officer. Do you
11 recall the amount of time you spent with Mr. Gordon in the
12 vehicle?

13 A. Probably less than thirty minutes.

14 Q. So less than thirty minutes. But in that entire
15 thirty minutes he never mentioned to you anything about
16 seeing my client before any other description other than
17 according to this report, nothing about hair, size;
18 anything?

19 A. Not that I recall, no.

20 Q. Thank you.

21 MR. HUTCHINSON: Just a couple of more questions.

22 REDIRECT EXAMINATION

23 OFFICER MAC MCCARLEY BY MR. HUTCHINSON:

24 Q. Officer McCarley, when you took Mr. Gordon to possibly
25 ID a suspect, was that on the way to or near Izzard Street?

1 A. Yes.

2 Q. And in looking at this map, State's Exhibit Two, where
3 would you say that you ID'd the suspect? I'm sorry.

4 A. I have to come out of the box and actually look at it
5 to see where everything is at.

6 (WITNESS LEFT WITNESS BOX.)

7 Q. If you could take a look at that.

8 A. To make a copy on that.

9 Q. Just familiarize yourself with that.

10 A. Okay. Do you want me to point to?

11 Q. What street would you say that occurred on?

12 A. If I'm not mistaken it's in the report. It occurred
13 on Izzard Street is where we identified, where we did the
14 identification at. And...

15 THE COURT: Let him use the pointer.

16 MR. HUTCHINSON: Yes, Your Honor.

17 THE COURT: He's sticking his finger out but they
18 can't see what he's pointing to. Let him use the pointer.

19 MR. HUTCHINSON: He can use the pointer from right
20 here.

21 A. This is Izzard Street right here if I'm not mistaken.

22 (WITNESS INDICATED TO STATE'S EXHIBIT TWO ON OVER
23 HEAD.)

24 This is the Park Grocery where I stated I got out
25 first.

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1 Q. And Izzard Street is approximately where the ID
2 occurred?

3 A. Yes. This road right here, if I'm not mistaken.

4 Q. Thank you. You can have a seat. Thank you.

5 (WITNESS RETURNED TO WITNESS BOX.)

6 MR. HUTCHINSON: Nothing further, Your Honor.

7 THE COURT: Anything further?

8 MR. SNOW: Just a couple of more, Judge.

9 RE CROSS EXAMINATION

10 OFFICER MAC MCCARLEY BY MR. SNOW:

11 Q. Do you recall, you spoke with Mr. Jackson that
12 evening, do you recall what Mr. Jackson was wearing?

13 Speaking of the gentlemen you had Mr. Gordon take a look
14 at, do you recall what he was wearing?

15 A. No I don't.

16 Q. You don't recall what he was wearing?

17 A. No. There was an officer out with him and I was out
18 with Mr. Gordon, we never got out of my car. Rolled the
19 window down, he makes the ID, he tells me yes or no, I
20 relayed to the other officers what he states and it was not
21 the suspect.

22 Q. Nothing further.

23 MR. SNOW: Thank you, Your Honor.

24 THE COURT: Thank you, sir. You may stand down.

25 MR. HUTCHINSON: thank you, Officer

1 THE COURT: Do you wish to have him excused?

2 MR. HUTCHINSON: Yes, Your Honor, if it's okay.

3 THE COURT: No objection?

4 MR. SNOW: No objection.

5 THE COURT: Thank you for coming, you can be excused.

6 (WITNESS LEAVING WITNESS STAND.)

7 THE COURT: We'll take a short break at this time.

8 Madame Forelady, members of the jury, we'll take about
9 ten minutes or more. You may refresh yourselves. I remind
10 you if you want to bring something back to drink you're
11 welcome to do that. We'll take a break at this time.

12 (JURY EXITS COURTROOM AT 11:00 AM.)

13 THE COURT: Counsel, take a short recess.

14 MR. HUTCHINSON: Thank you, Your Honor.

15 (COURT IN RECESS AT 11:00 AM.)

16 (BACK ON THE RECORD AT 11:15 AM.)

17 (DEFENDANT REENTERING COURTROOM.)

18 THE COURT: Solicitor, you ready?

19 MR. HUTCHINSON: Yes, Your Honor.

20 THE COURT: Please bring the jury in, sir.

21 (JURY REENTERS COURTROOM AT 11:20 AM.)

22 THE COURT: Counsel, ready to proceed.

23 MR. HUTCHINSON: Your Honor, State calls William
24 Jackson to the stand.

25 MADAME CLERK: Raise your right hand, place your left

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1 hand on the Bible..

2 (WHEREUPON: WILLIAM JACKSON,
3 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

4 DIRECT EXAMINATION

5 WILLIAM JACKSON BY MR. HUTCHINSON:

6 Q. Good morning. Could you please tell the jury your
7 full name.

8 A. William Jackson, III.

9 Q. Do some people also call you Billy?

10 A. Billy, yes.

11 Q. Where do you currently live?

12 A. On Bailey Avenue in Rock Hill.

13 Q. Now, is that the only property that you own?

14 A. No. I have a couple of pieces of rental property.

15 Q. Now, do you own property on East Main Street in Rock
16 Hill?

17 A. Yes I do.

18 Q. That's in York County?

19 A. Yes.

20 Q. And do you own a house on [REDACTED]

21 A. That's correct.

22 Q. Is that the only thing you own in that area right
23 there?

24 A. No, there is a commercial building on the corner where
25 I used to have a furniture store and the house is right

1 next to the commercial property.

2 Q. Now, do you know your neighbors around that area? I
3 know you said before that you own that property, I
4 apologize, let me go back. Have you ever lived at that
5 property at [REDACTED]

6 A. I never lived there but I worked for twenty-five years
7 in that building and knew probably fifteen neighbors around
8 there.

9 Q. Did you ever have a chance to speak to a Mr. Gordon?

10 A. Yes.

11 Q. And how often do you think you spoke to Mr. Gordon?

12 A. He actually shopped at my store. He shopped at Park
13 Grocery that was next door. I'd see him through the
14 parking lot, we'd speak in the parking lot. And also
15 whenever I was working on the house next to his, you know,
16 we would meet out in the yard and speak in the yard, yes.
17 So very regular whenever I was there.

18 Q. Now, how often do you drive by [REDACTED],
19 that area?

20 A. Several times a week.

21 Q. And why do you drive by there is you don't live there?

22 A. Just in my usual running errands and also if I'm going
23 that way. If you own a piece of rental property you just
24 like to ride by and make sure everything appears as it
25 should be.

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1 Q. How close would you say your current residence is to
2 that area?

3 A. Five miles. Ten, twelve minute drive.

4 Q. Now let's talk a little bit about there on Main
5 Street. Park Grocery Store, have you been there at night
6 time?

7 A. Yes.

8 Q. And, are there lights in that area?

9 A. Yes. The front of the buildings have of course
10 florescent lights outside the building lighting up the
11 walkway out there. And there is also two security lights
12 in the parking lot and street lights on East Main Street.

13 Q. Now, the house on East Main Street, how many levels is
14 that house?

15 A. When it was built it was a duplex. There is a top
16 level that's at ground level at the front. And the back
17 has an entrance that is entered from ground level on the
18 back. It's built kind of on a hill.

19 Q. Now, of late have you had somebody renting that
20 property?

21 A. There's been someone in there about five months, yes.

22 Q. Was there somebody in there November 2009?

23 A. It was vacant at that time.

24 Q. Now, the first level that you enter from the back,
25 what do you use that for?

1 A. That is separated from the top. It does have some
2 amount of water problems inside so it's been that way ever
3 since we bought the house years ago, so I use it for
4 storage. Washer's, dryers, maybe a little bit of lumber,
5 empty or semi-empty, cake pans, things that I would need to
6 keep up the rental property that I own.

7 Q. And, do you keep that area of the house locked?

8 A. Yes.

9 Q. Now, let's talk a little bit more specifically about a
10 few months ago. How long had it been since someone had
11 lived at that location on [REDACTED]

12 A. It probably been empty about four months. I been
13 working on it, fixing it up. It had been completely
14 remodeled and it was back on the market for rent again at
15 that time.

16 Q. Now on November 18, 2009 did you receive notification
17 that something was going on at that [REDACTED]

18 A. Mr. and Ms. Gordon, I don't remember which one called
19 me at my home and ask me if I would rent it, my house next
20 to them and I said no. They ask me if I was storing any
21 appliances or anything outside the house and I said no.
22 And they said there was something going on. It looked like
23 there was somebody over there.

24 MR. SNOW: Objection.

25 BY MR. HUTCHINSON:

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1 Q. We just got to be careful about what people say.

2 A. Okay.

3 Q. Talk a little bit more about that November 18th day.
4 Did you, after you heard from the Gordon's did you go over
5 to that location?

6 A. I said if you will please call the police I will be
7 right there. Got in my truck went over.

8 Q. Okay. And how long did it take you to get there?

9 A. No more than fifteen minutes.

10 Q. And was it dark when you went over there?

11 A. It was evening, Eight o'clock, 8:30. Yes it was
12 night, dark.

13 Q. Now, when you got to that house at [REDACTED]
14 [REDACTED] did you see anything out of the ordinary?

15 A. I pulled in the parking lot and parked. There was
16 several police cars there already. I took my flashlight
17 went around to the back door that had been forcibly opened
18 and there was a lawnmower sitting in the driveway. I
19 realized later was mine.

20 Q. Did you notice anything missing at that time?

21 A. Yes. Outside the back door there was a washing
22 machine that had been inside. The basement, my part of the
23 house that I use, and when I went in there was several
24 window air conditioner units that were missing as well as a
25 clothes dryer.

1 Q. And what would you say the approximate value of those
2 items are?

3 A. Replacement due value would be a Thousand, Fifteen
4 Hundred Dollars.

5 Q. Now just for clarification, was there something
6 outside when you arrived outside the back door?

7 A. Yes. There was a washing machine that had been inside
8 the house that was already outside, been moved outside the
9 house. And then the lawnmower was up near the driveway
10 near the other street that also had been under the house.

11 Q. Now, had you given anyone permission to go inside or
12 to take anything out on that evening?

13 A. No.

14 Q. Now do you remember speaking to police officers that
15 night?

16 A. I do.

17 Q. Now, without telling us exactly what you said, did you
18 relay to them that things were missing from your house?

19 MR. SNOW: Objection, leading.

20 THE COURT: Over ruled.

21 You may answer.

22 Proceed.

23 Q. And again, did you indicate to police what you were
24 missing from that house?

25 A. Yes. I told them the door it was obvious that the

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1 police had been around. I don't know. They were already
2 there but I told them the door had been kicked in. There
3 was a dryer missing, several window units, air
4 conditioners. And I did not go further under the house to
5 look. There's four small rooms under there; just on a
6 quick glance it was missing those four or five appliances.

7 Q. At any time did the police indicate to you that they
8 possibly found those items?

9 A. When I got there Mr. Gordon was out there talking to
10 the police and of course I pulled up and talked to them
11 also. After I looked under the house. There was a police
12 car in the parking lot there in front of Park's Grocery.
13 They were talking to one of the guys down there. They were
14 talking to someone in the parking lot, they said one of the
15 suspects had gone that way.

16 MR. SNOW: Objection.

17 A. They were talking to somebody.

18 THE COURT: Wait a minute, sir.

19 What's your objection? What's your objection,
20 Counselor?

21 MR. SNOW: Objection to what they said.

22 THE COURT: I don't believe he said what they said.
23 Just what they observed, talking to somebody.

24 All right, proceed.

25 BY MR. HUTCHINSON:

1 Q. If you would just continue.

2 A Everything was over when I got there except everything
3 that was taken had been taken already or was still there.
4 The police were there, they were again talking to someone
5 in the parking lot in front of Park's Grocery. The whole
6 episode probably only took two and a half hours. By 10:30,
7 Eleven o'clock I had already taken my truck over to Izzard
8 Street, identified my merchandise loaded it on my truck and
9 brought it back. And was in the process of securing the
10 back door that had been kicked open.

11 Q. Now when you went over to Izzard Street, did you have
12 any difficulty identifying the items that were yours?

13 A. No, I had no difficulty.

14 Q. And how were you able to positively identify the items
15 that were taken?

16 A. I knew what I was missing and how many. You know I
17 didn't have any serial numbers on anything but its just
18 like if you're missing something out of your house you just
19 recognize it. So there was no way I did not line up any
20 serial numbers with anything. But I did get the same items
21 that were missing that were missing I did get back.

22 Q. Did you take those items back to the house on [REDACTED]
23 [REDACTED]?

24 A. Yes. That was where I met Detective Ayers. He was
25 over there, he might have been at the [REDACTED] and said that he

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1 had found them, the items in the house. But whenever I
2 went over there they were in the process of bringing them
3 out. Some of them had not made it, I believe, the dryer
4 was behind the house. One of the air conditioners was kind
5 of under a little car port on the side or a little covered
6 area. And another air conditioner was actually inside the
7 house. And I'm not sure how they decided which was which.
8 But you know obviously, mine, the ones that I was missing.

9 MR. HUTCHINSON: I beg the Court's indulgence, Your
10 Honor.

11 (PAUSE.)

12 MR. HUTCHINSON: Nothing further at this time, Your
13 Honor.

14 THE COURT: Yes, sir.

15 CROSS EXAMINATION

16 WILLIAM JACKSON BY MR. SNOW:

17 Q. Mr. Jackson, I have a few questions for you if you
18 don't mind.

19 A. Okay.

20 Q. Mr. Jackson, first of all I'm sorry for the incident
21 you went through. Mr. Jackson, can you tell me where your
22 property is located in the house, if you can? Start with
23 the dryer. Where was it initially?

24 A. Like I said, it's kind of -- There's four rooms under
25 the bottom of the house that this was in. The front room,

1 the first room you would have come into after you came in
2 the door.

3 Q. Okay. Through the basement door?

4 A. Yes through the basement door. From the back of the
5 house you have to come in. You have to enter the basement
6 through the back of the house and this the door, the room
7 you would have come into immediately upon entering.

8 Q. Okay. So there was a door there and then you had to
9 go in and that's the room it was in?

10 A. Yes.

11 Q. And where was the lawnmower. You mentioned the
12 lawnmower.

13 A. All the items that were missing were in that room.

14 Q. All of that was in what room? Describe the door to
15 your home, your property?

16 A. It's a solid outside door, no windows, dead bolted.

17 Q. Had a lock on it?

18 A. Yes.

19 Q. That's all. Thank you, Mr. Jackson.

20 MR. HUTCHINSON: Nothing further from the State.

21 THE COURT: Thank you, sir. You may stand down, sir.

22 (WITNESS LEAVING WITNESS STAND.)

23 MR. HUTCHINSON: Your Honor, the State would like to
24 call Monalisa MacIntosh to the stand.

25 MADAME CLERK: Raise your right hand, place your left

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1 hand on the Bible.

2 (WHEREUPON: MONALISA

3 MACINTOSH, BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS
4 FOLLOWS:)

5 MADAME CLERK: Have a seat.

6 DIRECT EXAMINATION

7 MONALISA MACINTOSH BY MR. HUTCHINSON:

8 Q. Good morning, Ms. MacIntosh. Could you state your
9 name for the jury please?

10 A. Monalisa MacIntosh.

11 Q. Now, I know you're a little stiff today. Is your neck
12 bothering you a little bit today?

13 A. Yeah.

14 Q. Are you planning on going somewhere after this?

15 A. After this I'm going to the hospital.

16 Q. Okay. Now, Ms. MacIntosh, have you ever lived in York
17 County?

18 A. Yes.

19 Q. Is it your wish that your current address not be given
20 out?

21 A. Yes.

22 Q. And have you expressed that to me before?

23 A. Yes.

24 Q. Now, at one time did you live on Izzard Street in Rock
25 Hill?

1 A. Yes.

2 Q. And how long did you live at that address for?

3 A. I would say about five months. About five or six
4 months.

5 Q. And where was that exact address?

6 A. [REDACTED]

7 Q. And how long did you stop living there?

8 A. April of this year.

9 Q. Now, did you own that house?

10 A. No.

11 Q. Who owned that house?

12 A. It's rented out. We was staying with somebody.

13 Q. And who else was staying at that house?

14 A. Me, Stephen Robinson and Mason Johnson.

15 Q. Now, how long have you known Mr. Johnson?

16 A. For almost a year.

17 Q. And how long did you know Mr. Johnson?

18 A. I was talking to him just say dating.

19 Q. Now, on November 18, 2009 you were living in the house
20 at that time?

21 A. Yes.

22 Q. Was there anyone else in that house that evening?

23 A. No. It was me, Stephen Robinson and Mason Johnson.

24 Q. And you mentioned Toccoo. Is that a nickname for
25 someone?

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1 A. Yes, Stephen Robinson.

2 Q. Now, I apologize, you said you and Mr. Johnson and Mr.
3 Robinson?

4 A. Yeah.

5 Q Were you the only person there at the house that day?

6 A. No not during the day. Mason's sister had stopped by
7 and a guy they worked with also had stopped by that day.

8 Q. And do you remember what you did that day?

9 A. We basically watched TV. They had a couple of drinks
10 and his sister left. They was working and we was still at
11 the house watching TV.

12 Q. Now, did Mr. Johnson and Mr. Robinson stay at the
13 house the whole evening?

14 A. No. I would say around Seven, 7:30 Mason told me he
15 was going to go to the store and he ask me did I want
16 anything back and I told him I wanted a soda.

17 Q. And did he leave at that time?

18 A. Yes.

19 Q. And how about Mr. Robinson; did he leave as well?

20 A. Yes.

21 Q. Now do you remember what time they came back?

22 A. I want to say about Eight o'clock because I was
23 watching something on TV.

24 Q. Now who came back first?

25 A. Mason came back first.. Toccoo was still at the store.

1 Q. Now, do you remember some officers coming to see you?

2 A. Yes. And that was around Nine, 9:30 that they came to
3 the door.

4 Q. Now that was before or after Mr. Johnson came back?

5 A. That was after he was gone. So they came after Mason
6 was gone.

7 Q. Now when the officers arrived, did they ask if anybody
8 else was in the house?

9 A. Yes.

10 Q. And did you have any problems with them coming in the
11 house?

12 A. No.

13 Q. Did they find anybody else in the house?

14 A. They found Mason in the house and the detective told
15 me that he believed he had snuck into the back door.

16 MR. SNOW: Objection.

17 THE COURT: Please don't say anything anybody might
18 have said to you please, ma'am.

19 A. Okay.

20 MR. HUTCHINSON: I apologize, Your Honor.

21 Q. Did the police find anything else in the house out of
22 the ordinary that evening?

23 A. Yeah. Air conditioning unit.

24 Q. And had that been there before that evening?

25 A. No.

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1 Q. And where was that located at?

2 A. Right in the living room.

3 Q. Now, just describe to us a little bit; is the living
4 room the first room you come in the house or the second
5 room?

6 A. Yeah. No it's the first room when you come through
7 the house.

8 Q. Now, at some point after the officers came in and you
9 said Mr. Johnson was there, did they arrest Mr. Johnson?

10 A. Yeah.

11 Q. Now, did you have any contact, further contact with
12 Mr. Johnson that evening?

13 A. No.

14 Q. Did Mr. Johnson attempt to contact you in any other
15 fashion since then?

16 A. I got a couple of letters from him and I had one
17 letter the rest of them I had told Stephen if they come
18 just get rid of them.

19 Q. Now, do you remember the substance of the letter that
20 you received from Mr. Johnson?

21 A. Yeah. Basically it was telling me that he wanted me
22 to come up.

23 MR. SNOW: Objection.

24 THE COURT: Hold it just a minute, Counsel. If you're
25 going to object, stand and object. State the nature of

MONALISA MACINTOSH: DIRECT BY MR. HUTCHINSON
CROSS BY MR. SNOW

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1 your objection. I can't tell who said what if you just set
2 there.

3 MR. SNOW: Sorry, Judge, I apologize, Your Honor.
4 Your Honor, it's hearsay.

5 MR. HUTCHINSON: Hold on a minute, Your Honor. Mr.
6 Johnson wrote a letter to her.

7 THE COURT: You may proceed. Over ruled.

8 BY MR. HUTCHINSON:

9 Q. I apologize. And let me go back just a little bit as
10 far as the letter is concerned. How did you know it was
11 from Mr. Johnson?

12 A. Because it came from the Moss Justice Center and it
13 had his name on it.

14 Q. And again, could you tell us, do you remember what it
15 said?

16 A. Yes. He basically was asking me to come up to the
17 police station make a statement saying he was with me that
18 day and Stephen was drunk and he would get probation
19 because he doesn't have a record.

20 THE COURT: All right.

21 MR. SNOW: Your Honor, Judge, I'm gonna definitely
22 object to this, Judge. Hearsay.

23 THE COURT: I sustain the objection there. That's as
24 far as you'll go there.

1 MR. HUTCHINSON: Thank you, Your Honor. No further
2 questions at this time.

3 CROSS EXAMINATION

4 MONALISA MACINTOSH BY MR. SNOW:

5 Q. Ms. MacIntosh, what grade level do you read and write?

6 A. Excuse me.

7 Q. What grade level do you read and write?

8 A. Twelfth grade.

9 Q. Twelfth grade?

10 A. Yes.

11 Q. Now you know Mr. Johnson for how long?

12 A. Almost a year.

13 Q. Any indication you helped him with his reading and
14 writing haven't you?

15 A. Yes.

16 Q. So you know he has a deficiency in writing don't you?

17 A. No. Because I've actually seen him write. And I've
18 seen him read.

19 Q. Let me ask the question. Did you help him read and
20 write letters haven't you?

21 A. Not write letters no.

22 q. You helped him read?

23 A. Yeah. He ask me like you know certain words.

24 Q. And you know you testified that you knew, you knew the
25 letter was his because it came from Moss Justice Center?

1 A. Yeah. And it had his name on it.

2 Q. It had his name on it?

3 A. Uh-huh.

4 Q. But not from his handwriting?

5 A. I'm aware of his handwriting and the letter that he
6 did send me that was his handwriting.

7 Q. And you are familiar that he has people to help him
8 write letters?

9 A. I've known some people to help him write letters but
10 he can write.

11 Q. But yo know he's not that educated.

12 A. That's what I've heard.

13 Q. And that's what you know?

14 A. No I don't know because he didn't show that to me.

15 Q. But you've helped him write and read letters?

16 A. Yeah. I mean I've helped a lot of people write and
17 read letters.

18 Q. And, in this did Mr. Johnson ever tell you to lie?

19 A. Yeah. He wanted me to come up to the station and
20 write a statement saying he was with me.

21 Q. Well let me ask you this question. What letter, did
22 you return the letter to the DA, to the Solicitor?

23 A. Excuse me.

24 Q. Did you turn over a letter to the DA in this case?

25 A. Yes.

MONALISA MACINTOSH: CROSS BY MR. SNOW

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1 Q. And in that letter did that letter indicate that you
2 lie?

3 A. Yes.

4 Q. Did you ever give a statement to the police on that
5 night that Mr. Johnson was arrested? Any statements to the
6 police?

7 A. Yeah. They ask me a couple of questions.

8 Q. They did.

9 A. Uh-huh.

10 Q. Do you know what officer that was?

11 A. No I don't. It was a couple of them there that night,
12 you know, when they knocked on the door.

13 Q. Are you sure you gave a statement to them?

14 A. Yeah. He ask me what was going on and I told him what
15 was going on. He told me that he was aware --

16 MR. HUTCHINSON: Objection. May we approach, Your
17 Honor?

18 THE COURT: Yes, sir.

19 (BENCH CONFERENCE AT 11:45 AM OFF THE RECORD OUT OF
20 THE HEARING OF THE JURY.)

21 BY MR. SNOW:

22 Q. Ms. MacIntosh, that night did you ever give a written
23 notes to the police officers?

24 A. No.

25 Q. Did you ever sign anything from them?

1 A. No.

2 Q. And when did you get in contact with Mr. Hutchinson?

3 A. When I received the subpoena.

4 Q. And how long ago was that? When was that? Do you
5 recall?

6 A. Not last week but the week before last. I don't know
7 the exact date but it was on a Friday.

8 Q. And you been in contact with Mr. Hutchinson?

9 A. Uh-huh.

10 Q. How many times have you spoken with him or someone
11 from his office?

12 A. I would say maybe twice.

13 Q. Twice?

14 A. Uh-huh.

15 Q. Have you spoken with any police officers since then?

16 A. No.

17 Q. What is the nature of your relationship with Mr.
18 Robinson?

19 A. Friends.

20 Q. Just friends?

21 A. Uh-huh.

22 Q. Has he ever hit on you?

23 A. No.

24 Q. Never hit on you?

25 A. No.

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REDIRECT BY MR. HUTCHINSON

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1 Q. Never experienced in that he was interested -

2 MR. HUTCHINSON: Your Honor, I'm going to object to
3 relevance.

4 THE COURT: I sustain the objection. You can ask if
5 there is a relationship between them, Counsel. Otherwise I
6 sustain his objection.

7 BY MR. SNOW:

8 Q. Now, when -- After November the 18th you still resided
9 at [REDACTED]?

10 A. Yes.

11 Q. Correct? And you didn't leave there until about a
12 month ago?

13 A. Uh-huh.

14 Q. A month ago. Whose idea, who resided there with you?

15 A. Oh, Stephen Robinson.

16 Q. So Stephen Robinson still resided -

17 A. Uh-huh.

18 Q. Now, Mr. Mason Johnson didn't reside there from that
19 time, from November the 18th till then he didn't live
20 there?

21 A. No.

22 Q. So you resided there by yourself and Mr. Robinson?

23 A. Uh-huh.

24 Q. No further questions.

25

REDIRECT EXAMINATION

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RECROSS BY MR. SNOW

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1 MONALISA MACINTOSH BY MR. HUTCHINSON:

2 Q. And, Ms. MacIntosh, can you tell us why Mr. Johnson
3 didn't live in the house at that time?

4 MR. SNOW: Objection.

5 A. He was incarcerated.

6 THE COURT: Over ruled, Counsel.

7 BY MR. HUTCHINSON:

8 Q. Could you repeat that one more time?

9 A. He got incarcerated.

10 Q. Thank you.

11 MR. HUTCHINSON: No further questions, Your Honor.

12 RECROSS EXAMINATION

13 MONALISA MACINTOSH BY MR. SNOW:

14 Q. Now, wasn't Mr. Robinson also incarcerated at the
15 time? Wasn't Mr. Robinson also incarcerated at some point?

16 A. Yes he was.

17 Q. But he got out and moved back in with you?

18 A. He moved back to his house yes.

19 Q. That's his house?

20 A. Uh-huh.

21 Q. And he allowed you to stay there?

22 A. Yes he did. Because he knew I didn't have anywhere
23 else to go. I don't have family in Rock Hill. I had got
24 laid off from my job.

25 Q. He did you a favor?

MONALISA MACINTOSH: RECROSS BY MR. SNOW
REDIRECT BY MR. HUTCHINSON

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1 A. Yeah.

2 Q. By letting you stay there. Did you pay any rent?

3 A. No. I was waiting for my unemployment to start
4 kicking in.

5 Q. So he let you stay at his house all this time for
6 free?

7 A. Yeah.

8 Q. Not even charge you a penny?

9 A. No.

10 Q. Did he buy food for you?

11 A. No I had food stamps.

12 MR. HUTCHINSON: I'm going to have to object to
13 further questioning. I don't see the relevance at all.

14 THE COURT: I'll allow it. She's answered and I'll
15 allow it.

16 MR. HUTCHINSON: Thank you.

17 MR. SNOW: The Court's indulgence.

18 REDIRECT EXAMINATION

19 MONALISA MACINTOSH BY MR. HUTCHINSON:

20 Q. Just a couple of more questions, Ms. MacIntosh.

21 Now, when Mr. Johnson was staying at the house on
22 Izzard Street, were you dating him at the time?

23 A. Yes.

24 Q. At that time was Mr. Robinson still living at that

MONALISA MACINTOSH: RECROSS BY MR. SNOW

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1 house?

2 A. Yes.

3 Q. Now did Mr. Johnson help in any way with the payments?

4 A. Slightly. He would go back and forth with what he
5 would pay, what he wasn't gonna pay or what he was and
6 wasn't gonna do.

7 MR. HUTCHINSON: No further questions.

8 MR. SNOW: One more question, Judge, if I may?

9 THE COURT: Yes, sir.

10 RECROSS EXAMINATION

11 MONALISA MACINTOSH BY MR. SNOW:

12 Q. You said earlier that you all were drinking the
13 evening -

14 A. I don't drink.

15 Q. You don't drink?

16 A. They drink.

17 Q. Did you have any marijuana?

18 A. No.

19 THE COURT: Thank you, ma'am, you may stand down,
20 ma'am.

21 MR. HUTCHINSON: May I?

22 THE COURT: You may stand down, if you're going to
23 help her.

24 Do you wish to have her excused?

25 MR. HUTCHINSON: Yes, Your Honor.

1 THE COURT: Any objection to this witness, Mr. Snow?

2 MR. SNOW: No objection, Judge.

3 THE COURT: Thank you, ma'am, you may be excused at
4 this time.

5 MR. SNOW: Thank you, Ms. MacIntosh.

6 MR. HUTCHINSON: Your Honor, just one moment, we're
7 trying to confirm the witnesses out in the hallway.

8 (WITNESS LEAVING WITNESS STAND.)

9 (PAUSE.)

10 MR. HUTCHINSON: Your Honor, we have Stephen Robinson
11 next, if we can just grab Gary Lemel from downstairs, his
12 attorney.

13 THE COURT: Okay.

14 (PAUSE.)

15 MADAME CLERK: Raise your right hand, place your left
16 hand on the Bible.

17 (WHEREUPON: STEPHEN

18 ROBINSON, BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS
19 FOLLOWS:)

20 MR. HUTCHINSON: And, Your Honor, just for the Court's
21 clarification, Mr. Robinson is represented by Gary Lemel
22 from the Public Defender's Office.

23 With the Court's indulgence if we can get him up here.

24 THE COURT: He's been here most of the morning. We'll
25 give him -

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1 MR. HUTCHINSON: Your Honor, Mr. Lemel is shortly on
2 his way. I do apologize.

3 (PAUSE.)

4 (ATTORNEY LEMEL ENTERED THE COURTROOM.)

5 DIRECT EXAMINATION

6 STEPHEN ROBINSON BY MS. DESCH:

7 Q. Good afternoon, Mr. Robinson. Would you please state
8 your full name and spell your last name for the record?

9 A. Stephen A. Robinson.

10 Q. And, Mr. Robinson, where do you live?

11 A. [REDACTED]

12 Q. Is that your house or do you rent it?

13 A. Renting it. I'm renting. Yeah, I rent.

14 Q. And did you live at [REDACTED] back in November
15 2009?

16 A. Yes, ma'am.

17 Q. And who lived with you at that time?

18 A. Mr. Johnson.

19 Q. Mr. Johnson. You're indicating here in the courtroom
20 today, this Mr. Johnson?

21 A. Yes, ma'am.

22 Q. So Mason Johnson lived with you back in 2009?

23 A. Yes, ma'am.

24 Q. Did anyone else live there? Did Monalisa live there
25 as well?

STEPHEN ROBINSON: DIRECT BY MS. DESCH

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1 A. Yes, ma'am.

2 Q. And how long have you lived at that Izzard Street
3 address?

4 A. About five years now.

5 Q. How long have you known Mr. Johnson?

6 A. Well, practically all my life.

7 Q. Practically all of your life?

8 A. Yes.

9 Q. Are you related?

10 A. No. Just family, in the family on one side of the
11 family, he's kin on one side of my family, related.

12 Q. Are you all about the same age?

13 A. I'm forty-four.

14 Q. So you've known Mason Johnson practically all of your
15 life?

16 A. Yes, ma'am.

17 Q. How long has he lived with you at the Izzard Street
18 address. How long did he live with you actually?

19 A. I'm not exactly sure. Maybe give or take about eight
20 months.

21 Q. On November 18th, 2009, you and Mason Johnson and
22 Monalisa were in the house at the Izzard Street address?

23 A. Yes.

24 Q. Do you remember that specific day of what you were
25 doing?

1 A. That specific day. Well I went to work got off from
2 work, so just sitting around the house. Maybe had a few
3 drinks or so. Later on that evening me and Mr. Johnson was
4 in the house talking. So me and Mr. Johnson was gonna head
5 out to the store, was headed to the store.

6 Q. When you say store, what store do you mean?

7 A. Park Grocery Store.

8 Q. Can you see that screen at all?

9 THE COURT: Can you deem the lights please, ma'am.

10 (COURTROOM LIGHTS DIMMED.)

11 BY MS. DESCH:

12 Q. Does that help a little bit?

13 A. Okay. Yes.

14 Q. Are you familiar with that area?

15 A. Yes. Very well.

16 Q. Okay. Is that Park's Grocery up on the upper left
17 hand corner of the picture?

18 A. Yes, ma'am.

19 Q. For the record, State's Exhibit Two, picture is up on
20 the screen. Now is that the grocery store you were going
21 to go to when you left your house?

22 A. Yes, ma'am.

23 Q. Now, if you could put on State's Exhibit One on the
24 screen.

25 (STATE'S EXHIBIT ONE DISPLAYED ON OVER HEAD.)

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1 Q. Mr. Robinson, if you can familiarize yourself with
2 that picture, can you see that okay? I have a smaller one
3 that I can hand you. I'll hand you the paper, State's
4 Exhibit One for you to review. It's the same picture.

5 Does that make sense with the grocery store on the
6 right hand side and Park's Baptist Church on the - across
7 the way?

8 A. Yes.

9 Q. Does that familiarize you with the area at this point?

10 A. Yes, ma'am.

11 Q. And can you see where you live on that street, I mean,
12 on that picture? What is that road by Park's Baptist
13 Church?

14 A. I'm not familiar with it.

15 Q. The name of it?

16 A. Not the name.

17 Q. Okay. That's fine. How would you get to the grocery
18 store from your house?

19 A. I go, well, as I walk out my front door I walk down
20 the steps, I will make a left crossing onto the sidewalk.
21 I will get to the end of Izzard and I make a right. I come
22 all the way down to the church then I will cut through the
23 church yard.

24 Q. That parking lot?

25 A. Yes.

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1 Q. Okay.

2 A. And I walk down the sidewalk then I cross over Main
3 Street.

4 Q. Which is in front of the church?

5 A. Which is in front of the church.

6 Q. Now on November 18th, 2009, you said that you and
7 Mason Johnson were going to go to the store; is that
8 correct?

9 A. Yes, ma'am.

10 Q. And what were you going to do?

11 A. Well, me and Mr. Johnson was going to go to the store
12 or Mr. Johnson was going to get his girlfriend a soda. Me
13 and Mr. Johnson, we crossed Main Street, me and Mr. Johnson
14 went behind the house.

15 Q. And when you say the house, what are you referring to?

16 A. Well, as the house in the front, in front of Main
17 Street, it would be to your right. So once I passed the
18 house you can make a right turn to where Mr. Johnson went.
19 So that would be on the right side of the house.

20 Q. Okay. Just to clarify. When you say the house and to
21 the right, do you mean the house to the right of the
22 grocery store?

23 A. Well, in front of the grocery store the house to the
24 left, that's the house.

25 Q. I'm going to get up closer. This is State's Exhibit

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1 Two. With the grocery store -- Does that help a little bit
2 about giving you a bearing about where you were?

3 A. Yes, ma'am.

4 Q. Okay. Now, now that same picture is up for the jury.
5 So that helps you explain things. When you say the house,
6 what are you referring to?

7 A. I understand where the store is. The store is there.
8 Okay. The house to the left that's what I'm referring -

9 Q. Why don't you come down here, Mr. Robinson? I know
10 it's confusing looking at an aerial.

11 (WITNESS LEFT WITNESS STAND.)

12 Here's a little pointer for you. Just tell me, this
13 is the store?

14 A. Yes, ma'am.

15 Q. Okay. Now, tell me what to do, when you say you come
16 down and you went to the side of the house, tell me what
17 you mean.

18 A. Can you back that back to the church?

19 Q. Yes, sir.

20 A. And go in front of the church on the sidewalk.

21 Q. So you came across this parking lot to go to the
22 store.

23 A. Right.

24 Q. So you're saying that house on the left, that's what
25 you referred to?

1 A. Yes.

2 Q. Okay. Thank you. So, for the record, in looking at
3 State's Exhibit One when you describe the house on the
4 left, you're actually referring to Mr. William Jackson's
5 house that I just pointed out with the pointer?

6 A. Yes, ma'am.

7 Q. Thank you. All right, so tell me again, you and Mr.
8 Johnson and Mr. Mason Johnson were walking down and going
9 to the store to get his girlfriend a soda?

10 A. Right.

11 Q. What happens on your walk?

12 A. Me, Mr. Johnson we pass the house where that first oak
13 tree, so we was on our way to the store but me and him took
14 a turn, right turn, beside the house. So me and him got to
15 the back of the house, this house has got a basement.

16 Q. Okay. Then what?

17 A. Okay. So when we entered the back door, well, we was
18 attempting to go inside the house. So I breached -- well,
19 knocked the back door with my right shoulder. Okay. I
20 couldn't open the door. So at that moment Mr. Johnson took
21 and kicked the door in.

22 Q. And did that work?

23 A. Yeah that worked.

24 Q. Okay. So after Mason Johnson kicks the door in, what
25 did you guys do then?

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1 A. So we went on inside. It was kind of dark, you know,
2 so we were looking around inside seeing what we could see.
3 So we seen the dryer, two small air conditioner units and a
4 lawnmower. You want me to go on?

5 Q. Yeah. Then what did you do?

6 A. SO me and Mr. Johnson got the lawn mower pulled it out
7 and on the outside of the door. Me and him grabbed the
8 dryer put the dryer on top of the lawnmower and we took the
9 two air conditioner units and put them on top of each other
10 and we began to leave. Me and Mr. Johnson pushed it on the
11 side of the house to the sidewalk. Mr. Johnson pulled
12 while I pushed. So we come up Main Street to the third
13 house and we crossed over to that road I'm not familiar
14 with.

15 Q. So Main Street. Just to clarify, you're leaving the
16 house here and you come here? That's Main Street.

17 A. Yes.

18 Q. And then what did you do?

19 A. We made that right.

20 Q. So down the street, you're on the street?

21 A. Yeah this street.

22 Q. Okay. And then what?

23 A. Goes on up to Izzard.

24 Q. Which is here?

25 A. Yes.

1 Q. Okay.

2 A. And we make a left.

3 Q. Down Izzard?

4 A. Yes.

5 Q. On the right?

6 A. When we get to where I live at I got a driveway there.

7 Q. Okay.

8 A. So we pushed it up the driveway. So I'm there beside
9 the house where I park where we stop with everything there.
10 So me and Mr. Johnson, who went into my house, he brought
11 the unit in.

12 Q. He brought an AC Unit...

13 A. One AC Unit in. So we put it -- I don't remember
14 where he placed it.

15 Q. Did you go in your house with him or he just took it
16 in?

17 A. Yeah I went in with him. Me and him was headed back
18 to the store pushing the lawnmower. Pushed the lawnmower
19 right there.

20 (WITNESS INDICATED TO EXHIBIT ON OVER HEARD.)

21 A. A little bit between the store yard and the house
22 behind an Oak tree, the first Oak tree.

23 Q. So you and Mr. Johnson pushed the lawnmower back to
24 that Oak tree by the grocery store?

25 A. Right.

STEPHEN ROBINSON: DIRECT BY MS. DESCH

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1 Q. Okay. And what did you do?

2 A. So at that time the store was open, a few friends I
3 knew was in the parking lot and I began to talk with them a
4 little. And so at that particular time an officer come
5 down Main Street passing the store shining lights over
6 toward the four houses. The further he drive to the store
7 some people out there sitting out there was me and Johnson,
8 they flee. They ran around the store. Me, myself I went
9 into the store. So I went to the store, inside the store
10 like if I was going to buy something but I didn't. And I
11 walked back out and the officer was already in the parking
12 lot.

13 Q. In a marked patrol car?

14 A. Yes.

15 Q. What happened then?

16 A. So he had cuffed me and arrest me. So, said I had the
17 right to remain silent. And from that point there I was in
18 the back of a police car. That's it. That's all.

19 Q. So, you see a marked police car come up, Mason Johnson
20 flees around the store, you go in the store?

21 A. I go in the store, yeah.

22 Q. But you didn't buy anything in the store?

23 A. I didn't buy nothing.

24 Q. So when you come back out there is a Rock Hill City
25 police officer in uniform?

1 A. Yes, ma'am.

2 Q. And did he talk to you?

3 A. He read me my rights.

4 Q. And at first you denied being involved in this.
5 Correct?

6 A. Right. I did.

7 Q. So, this is kind of a stupid question. Why did you
8 not come in here and tell this? What was happening at the
9 time?

10 A. At that time I was under the influence of alcohol.

11 Q. How much had you been drinking that night?

12 A. Give or take, maybe eight, nine beers.

13 Q. And do you remember how many Mason had?

14 A. I can't remember.

15 Q. But he had some?

16 A. Yes.

17 Q. So you had eight or nine beers. You guys are walking
18 around town. Now the grocery store police officer is
19 putting handcuffs on you. What were you charged with? Do
20 you remember?

21 A. I was charged with 2d degree burglary and grand
22 larceny.

23 Q. And you have an attorney. Correct?

24 A. Yes, ma'am.

25 Q. And who is your attorney?

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1 A. Gary Lemel.

2 Q. And Mr. Lemel is here in the courtroom here today?

3 A. Yes, ma'am.

4 Q. And those charges have not been completely disposed
5 of. Correct? That's why Mr. Lemel is still here?

6 A. Yes, ma'am.

7 Q. And in fact at some point you did talk to your
8 attorney, Mr. Lemel. Correct?

9 A. Yes, ma'am.

10 Q. And I'm assuming at some point he went over what
11 you're charges were, the seriousness of them?

12 A. Yes, ma'am.

13 Q. And how, you're here today, how did that come about?

14 A. Excuse me.

15 Q. How did you decide to testify today?

16 A. How did I decide it?

17 Q. I mean you understand you're exposing yourself and
18 your charges are still pending. Correct?

19 A. Yes, ma'am.

20 Q. And so, you are aware that what you say on the stand
21 is being recorded?

22 A. Yes, ma'am.

23 Q. And you're under oath to tell the truth?

24 A. Yes, ma'am.

25 Q. And you understand that it's being recorded by the

1 transcriber that's sitting next to you?

2 A. Yes, ma'am.

3 Q. And that's all been explained to you. Correct?

4 A. Correct.

5 Q. And that anything that's said here today can be used
6 against you in your own trial?

7 A. Yes, ma'am.

8 Q. So, why put yourself, what brought you in here today?

9 A. What brought me here is the truth.

10 Q. Now, you haven't talked to me before this. Correct?

11 A. Excuse me.

12 Q. You and I have never met before today?

13 A. Yes, ma'am.

14 Q. Just today, when I introduced myself?

15 A. Yes.

16 Q. But you have talked to my colleague. Correct?

17 A. Right.

18 Q. And of course you have talked to your attorney Mr.
19 Lemel.

20 A. Yes, ma'am.

21 Q. When you talked to somebody in my office was Mr. Lemel
22 with you at all times?

23 A. Yes, ma'am.

24 Q. And you have written a witness statement about what
25 happened that night on November the 18th?

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1 A. Yes, ma'am.

2 Q. And, you also have talked, there's an agreement about
3 you testifying today with our office. Correct?

4 A. Yes, ma'am.

5 Q. And what do you understand that agreement to be?

6 A. Probation. That's what the agreement that I talked
7 about.

8 Q. Based on what? I mean is it probation no matter what?
9 You can come up here later and lie. What is it? What is
10 the agreement with our office?

11 A. Excuse me.

12 Q. I'm sorry. I'm probably not being clear. With my
13 office, with the Solicitor's office, the prosecution and
14 the City, there is an agreement between Mr. Lemel and your
15 attorney and my office?

16 A. Yes.

17 Q. And you are aware that agreement is actually in
18 written form. Correct?

19 A. Yes.

20 Q. And you had a chance to go over that agreement with
21 your attorney?

22 A. Yes.

23 Q. And you in fact signed the agreement?

24 A. Yes, ma'am.

25 Q. And do you recall what that agreement is?

1 A. Recall? That agreement was -- the agreement was that
2 I signed for to possibility for parole. I mean for
3 probation. Excuse me.

4 Q. If I could approach and show you; do you recognize,
5 you do okay with reading?

6 A. Not too good.

7 Q. Okay. All right. So, in this agreement the State and
8 the Defendant, Stephen Avery Robinson, have made the
9 following plea agreement. Does this look familiar, this is
10 something you've seen before?

11 A. Yes.

12 Q. And if I'm go to Page 3 in this plea agreement page,
13 I'm sorry, let me back up. Page 2 at the bottom right hand
14 corner of this plea agreement, do you recognize this
15 signature right there?

16 A. That's my signature.

17 Q. Okay. Now did you sign that? Was this read to you by
18 Gary Lemel?

19 A. Yes.

20 Q. And so he read it to you. And should you testify
21 truthfully that you could possibly get a probationary
22 sentence determined by the Judge?

23 A. Yes, ma'am.

24 Q. Okay. Did he also read to you about what happened if
25 you did not testify truthfully, if you didn't show up at

STEPHEN ROBINSON: DIRECT BY MS. DESCH

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1 all?

2 A. Can you repeat that please.

3 Q. Sure. In part of this agreement at Number 3 of this
4 agreement, there is a part that says should the defendant
5 refuse to testify, and not show up to testify, or not
6 testify truthfully in any trial of co-defendant, Mason
7 Johnson -- the defendant, meaning you -- guilty plea to
8 this charge shall then be considered as being a straight up
9 with full exposure to the maximum penalty of each crime.
10 Do you understand that?

11 A. Yes, ma'am.

12 Q. And that was included in what Mr. Lemel went over the
13 agreement with you?

14 A. Yes, ma'am.

15 Q. Mr. Robinson, I'm going to show you what's been marked
16 State's Exhibit Three and Four for identification. Three
17 is on top and Four underneath. Could you look at both of
18 those and tell me what they are?

19 A. They are mug shots.

20 Q. Okay. Of who?

21 A. Of Stephen Robinson.

22 Q. Is that you?

23 A. That's me.

24 Q. So those are the pictures that were taken the night
25 that you were arrested?

STEPHEN ROBINSON: DIRECT BY MS. DESCH

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1 A. Yes, ma'am.

2 Q. And is that how you appeared? Is that an accurate
3 picture of how you looked that night?

4 A. Yes, ma'am.

5 MS. DESCH: The State would like to move Three and
6 Four into evidence.

7 MR. SNOW: No objection, Your Honor.

8 THE COURT: Be admitted without objection.

9 (WHEREUPON: STATE'S EXHIBITS THREE AND FOUR,
10 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

11 BY MS. DESCH:

12 Q. So those are pictures of you?

13 A. Yes, ma'am.

14 Q. So that's you in the khaki ball cap?

15 A. Yes, ma'am.

16 Q. Okay. Can you tell me if I may,

17 May I publish these to the jury, Your Honor.

18 (STATE'S EXHIBITS THREE AND FOUR PUBLISHED TO JURY AT
19 12:20 PM.)

20 Q. So this is how you looked the night -- Do you remember
21 what Mason Johnson was wearing?

22 A. No. Don't remember.

23 Q. How heavy is that appliance, the dryer? Let me ask it
24 a different way. Could you have lifted that by yourself?

25 A. I could lift it, carried it? No.

STEPHEN ROBINSON: DIRECT BY MS. DESCH

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1 Q. Could you lift it off and put it on top of a lawnmower
2 by yourself?

3 A. I could.

4 Q. Did you lift it up and put it on top of the lawnmower
5 by yourself?

6 A. No, ma'am.

7 Q. Did you know whose house it was that you were going
8 into?

9 A. Mr. Jackson's house.

10 Q. So you knew who it was?

11 A. Yeah. I knew whose house it was. I knew he had the
12 store at first. Then I knew he had a person that was
13 living there. In fact a girl was staying in the house
14 before. I think I spoke to him one day when he had a rent
15 sign up and was cutting his grass. I was on my way back
16 from the store one day. I can't tell you exactly what day
17 it was. I spoke to him, he was out cutting his grass.

18 Q. So you talked to Mr. Jackson and you knew it was his
19 house and you still went in and took some stuff out of his
20 house?

21 A. I didn't know him. Right off then I didn't. You know
22 till someone told me whose it was then. But I knew he did
23 run that store, I didn't know that was his house though.

24 Q. Did Mason Johnson indicate that he knew who owed that
25 house?

STEPHEN ROBINSON: DIRECT BY MS. DESCH

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1 A. No. No, ma'am.

2 Q. How did you know you weren't going to get caught going
3 into the house? Did you guys talk about whether it was
4 vacant or not?

5 A. Well I knew that the house was empty. But I never, I
6 went into that store mostly every other day. I never had
7 the intention, no, ma'am, you know.

8 Q. Until you actually did it you didn't have any
9 intention to go in?

10 A. No.

11 MS. DESCH: The Court's indulgence.

12 (PAUSE.)

13 Q. Okay, so in just going back. You guys walked across
14 the street, took the dryer, the AC Units and the lawnmower
15 to the Izzard Street address and then you turned back and
16 took the lawnmower back to the store?

17 A. Right.

18 Q. Do you remember -- You said Mason took the air
19 conditioner in the house?

20 A. One.

21 Q. One air condition. Where was the other air
22 conditioner?

23 A. The dryer was along side the house where we left them.

24 Q. And both of you walked back to the Park's Grocery
25 Store?

STEPHEN ROBINSON: DIRECT BY MS. DESCH

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1 A. Yes, ma'am.

2 Q. Now, do you know a person named William Jackson, who
3 is not this William Jackson, but an African American man
4 that's named William Jackson? Are you familiar with
5 anybody by that name?

6 A. I don't know her, no, ma'am.

7 Q. Okay. And you don't know of anybody by that name?

8 A. No.

9 Q. So again this might be a stupid question. You weren't
10 that William Jackson that night?

11 A. Excuse me. Say, William Jackson?

12 Q. Yes.

13 A. Yeah I know a William Jackson. Yeah.

14 Q. Were you with William Jackson that night?

15 A. No.

16 Q. So it was Mason Johnson that was with you when you
17 guys broke into the house?

18 A. Just me and him.

19 MR. SNOW: Objection, leading, Judge.

20 THE COURT: Over ruled.

21 Proceed, Counselor.

22 BY MS. DESCH:

23 Q. So it was Mason Johnson with you when you broke in
24 this Jackson's house?

25 A. Yes, ma'am.

STEPHEN ROBINSON: CROSS BY MR. SNOW

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1 Q. Thank you. Please answer any questions Mr. Snow might
2 have.

3 MR. SNOW: Judge, may I have a second, please?

4 THE COURT: Yes, sir.

5 CROSS EXAMINATION

6 STEPHEN ROBINSON: BY MR. SNOW

7 Q. Good afternoon, Mr. Robinson. A few questions for
8 you. Mr. Robinson, you said you were here to tell the
9 truth; is that right?

10 A. Yes, sir.

11 Q. But you don't always tell the truth do you?

12 A. Who do?

13 Q. What I'm asking about you.

14 A. Not all the time.

15 Q. Right. So you lie sometimes don't you?

16 A. Sometimes I do.

17 Q. In fact on November 18th, 2009 you lied to the police
18 when you told them that you had nothing to do with this
19 incident breaking into Mr. Jackson's house; isn't that
20 right?

21 A. Yes I did.

22 Q. You lied then. Right?

23 A. Yes, sir.

24 Q. So you're not just here to tell the truth, you're here
25 because you have a sweet deal, don't you?

STEPHEN ROBINSON: CROSS BY MR. SNOW

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1 A. But today I'm not under the influence of alcohol.
2 either.

3 Q. But let's talk about that. You say you were drunk
4 that night.

5 A. I wasn't drunk. I can't say that but I was pretty
6 good.

7 Q. So what? You had nine beers and you were drunk?

8 A. No. Actually just drunk.

9 Q. How much do you often drink?

10 A. Excuse me.

11 Q. What makes you drunk?

12 A. What makes me drunk?

13 Q. Yeah.

14 A. What ever you drinking will make you drunk.

15 Q. I mean alcohol beverage, how much makes you drunk?

16 A. How much makes me drunk?

17 Q. Yes, sir.

18 A. I can't really tell you that.

19 Q. Nine beers don't make you drunk?

20 A. No don't make me drunk.

21 Q. Did you have any marijuana that night?

22 A. No, sir.

23 Q. Didn't smoke any weed?

24 A. I don't smoke weed.

25 Q. Well, and you're represented by Mr. Lemel, my friend,

1 colleague right here?

2 A. Yes, sir.

3 Q. He's a good attorney isn't he? Wouldn't you say that?

4 A. Yeah.

5 Q. You're happy with what he's done for you?

6 A. I appreciate what he done for me.

7 Q. Right. But lets talk about this deal that you have.

8 MR. SNOW: May I approach, Judge?

9 THE COURT: Yes, sir.

10 Q. If you would just take a look at this and tell me if
11 you recognize that. Look it over and look at the last
12 pages. Is that your signature?

13 A. Yes, sir.

14 Q. And that's signed by, also by the Assistant Solicitor
15 Mr. Hutchinson; is that right?

16 A. Yes, sir.

17 Q. And does that look like the deal you signed up for?

18 A. Yes.

19 Q. Okay. It's the deal your attorney worked out for you.
20 Right? Let's talk about this deal. You know, you -- Let me
21 ask you this first. Do you recall when you gave that
22 statement to the police about this case or the DA's office
23 about this case?

24 A. Excuse me.

25 Q. Do you recall that, the statement that you gave, a

STEPHEN ROBINSON: CROSS BY MR. SNOW

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1 statement that you gave to the DA's office, the Solicitor's
2 office, I'm sorry?

3 A. Do I recall it?

4 Q. Yes. Do you recall the statement?

5 MR. SNOW: May I approach, Judge?

6 THE COURT: Yes, sir.

7 Q. Is that the statement you gave, does it look like it?

8 MS. DESCH: Your Honor, I would just like to clarify.

9 He's already said he had trouble reading. Mr. Lemel
10 actually did everything.

11 THE COURT: If he can respond accordingly, if he's not
12 able to read and understand that he can state that for the
13 record.

14 A. Yeah I signed it.

15 Q. Okay. And I'm not trying to embarrass you, but tell
16 me can you read that well enough? Is that something you
17 can read pretty easily? What you have in your hand right
18 now were you able to understand that at all?

19 A. Not too much.

20 Q. Well, I ask you, do you remember this and you can
21 correct me, I'm going to read a few sentences from your
22 agreement with the Solicitor's office.

23 A. Okay.

24 Q. And correct me if I'm wrong from your memory or if you
25 can understand what you're reading. And I direct your

1 attention to the first paragraph that's labeled No. 1. In
2 the middle of the paragraph it says, "Burglary 2d Degree,
3 Violent, under South Carolina Code of Laws, Sections 16-11-
4 330 (B). A violent offense carrying a maximum punishment
5 of fifteen years in prison."

6 A. Yes, sir.

7 Q. Does that sound right to you?

8 A. Sounds right.

9 Q. The sentence pursuant to this agreement would be
10 deferred until the case against the co-defendant, Mason
11 Johnson, has been completed either by guilty plea, trial or
12 dismissal. Now let's direct your attention to Section 2,
13 the C paragraph in that section. "At sentencing if he's
14 kept his part of this agreement it is agreed that the
15 defendant will receive fifteen years suspended on a
16 probationary sentence the remaining details of which to be
17 decided by the judge." So essentially it means according
18 to your deal you're going to get probation on this.

19 A. I'm not saying for a fact.

20 Q. But it does say in here you keep your part of the deal
21 and the Judge enters it, you get a probationary sentence.
22 You won't do a day in jail for this. Right?

23 A. Right.

24 Q. Right. So you have a huge incentive to be here to
25 testify, wouldn't you agree?

STEPHEN ROBINSON: CROSS BY MR. SNOW

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1 A. Excuse me.

2 Q. You have a reason to be here other than to tell the
3 truth. Right?

4 A. Right.

5 Q. Because you don't want to go to prison.

6 A. No, sir, sure don't.

7 Q. All right. So if you come in here today and you
8 testify as you understand it and the judge accepts it, you
9 will be on probation?

10 A. If the judge accepts it, if he don't, I'm still
11 telling the truth, that's a fact.

12 Q. It's a fact?

13 A. That's a fact.

14 Q. Was it a fact that you told the officer you had
15 nothing to do with this? Was it a fact then?

16 (PAUSE.)

17 Q. I'll repeat the question. Was it a fact that when you
18 told the officers that you had nothing to do with breaking
19 into Mr. Jackson's house, was it a fact then?

20 A. Like I said, again I was under the influence of
21 alcohol.

22 Q. Let me ask the question again. I don't want -- Yes or
23 no, that's all I want. Yes or no.

24 A. No.

25 Q. It was a lie then?

STEPHEN ROBINSON: CROSS BY MR. SNOW

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1 A. It was a lie.

2 Q. All right. You didn't concoct this story until --

3 MS. DESCH: Objection to the concoct.

4 THE COURT: Sustain, Counsel.

5 BY MR. SNOW:

6 Q. You didn't give the Solicitor's office this story
7 until April 28th of this year. Right?

8 A. Right.

9 Q. So, since November 18 of last year you didn't tell the
10 Solicitor's office this story. Right?

11 A. I haven't talked to the Solicitor since then. I
12 haven't talked to the Solicitor since then.

13 Q. But you didn't give this version of what happened
14 until you had a deal. Correct?

15 A. Right.

16 Q. Right. So let's talk about Monalisa. She stayed in
17 your house; she stayed with you from November 18th at least
18 maybe before that until recently until April.

19 A. Right.

20 Q. And she stayed there free or did you charge her
21 anything?

22 A. No I didn't charge her nothing.

23 Q. Because out of the goodness of your heart you let her
24 stay there. Right?

25 A. I didn't charge her. I charged the co-defendant to

STEPHEN ROBINSON: CROSS BY MR. SNOW

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1 stay. He come with her there. I charging him.

2 Q. Well let me ask you this. He was in custody wasn't
3 he? He didn't stay, he wasn't actually at [REDACTED]

4 [REDACTED] [REDACTED]

5 A. I understand what you're saying now.

6 Q. From November 18.

7 A. Since I got out on bond.

8 Q. Since you got out on bond.

9 A. Okay.

10 Q. He didn't stay there with you?

11 A. She did.

12 Q. Mason Johnson didn't stay there?

13 A. No he didn't.

14 Q. Monalisa stayed there with you?

15 A. She stayed there?

16 Q. Ms. MacIntosh.

17 A. Yes.

18 Q. Did you charge her anything?

19 A. No I didn't.

20 Q. You didn't charge her anything to live there?

21 A. She wasn't working no where. She didn't have a job.

22 Q. Well did you buy her any food?

23 A. I had to.

24 Q. So you paid her, she was there free board, free food,
25 and free rent?

1 A. Yes.

2 Q. Had you all talked about this case, you and Monalisa?

3 A. No, sir.

4 Q. So the entire time you were staying with her, her in
5 the house by yourself, you all never talked about this
6 case?

7 A. All she talked about is a letter that he sent her.

8 Q. Well let's talk about that. The question is, so you
9 all did talk about it then.

10 A. The letter, we talked about the letter.

11 Q. Did you talk about this case at all?

12 A. No not the case. Just the letter.

13 Q. So in November after you got out, when did you bond
14 out?

15 A. When I got out?

16 Q. Yes, sir, when did you get out? If you recall.

17 A. I can't remember what date but I think it was that
18 Wednesday. Basically -

19 Q. Was it shortly after you got arrested?

20 A. Yes.

21 Q. When you got arrested and you went home?

22 A. Yes, sir.

23 Q. Was Ms. McIntosh there?

24 A. Yes she was there.

25 Q. Well did you talk about the case then to her?

STEPHEN ROBINSON: CROSS BY MR. SNOW

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1 A. No I did not.

2 Q. You didn't talk about it?

3 A. No.

4 Q. Well was she living with you in December?

5 MS. DESCH: Your Honor, he's ask and answered the same
6 questions four times, they did not talk about the case.
7 That's been established by the witness.

8 THE COURT: I'll allow him a little leeway.

9 Go ahead.

10 BY MR. SNOW:

11 Q. In January when Monalisa was staying there with you,
12 Ms. McIntosh was staying there with you, did you talk about
13 the case at all?

14 A. We just talked about that letter.

15 Q. So, in April -

16 THE COURT: He's answered your question there,
17 Counselor.

18 BY MR. SNOW:

19 Q. Did you prepare this case with her at all?

20 A. Did I prepare?

21 Q. Yeah.

22 A. No, sir.

23 Q. Okay. Have you seen her since she left your
24 residence?

25 A. Yes, sir.

STEPHEN ROBINSON: REDIRECT BY MS. DESCH

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1 Q. When did you see her?

2 A. As a matter of fact, you really want to know?

3 Q. When did you see her?

4 A. I seen her yesterday.

5 Q. All right. No further questions.

6 REDIRECT EXAMINATION

7 STEPHEN ROBINSON BY MS. DESCH:

8 Q. Mr. Robinson, defense counsel wants to make a big
9 deal about all the language in this, but does this mean
10 anything to you when you hear the word violent or criminal
11 code section or any of those words? Does that mean
12 anything to you?

13 A. What do you mean by that?

14 Q. Well is that something you would say or is that
15 something the attorney's worked out? The agreement that's
16 in your hand.

17 A. I don't quite understand.

18 Q. Well, the words that are actually used in this
19 agreement the language the defendant Stephen, Stephen Avery
20 Robinson will plead guilty to charges Burglary 2d degree,
21 violent on Indictment and grand larceny greater than one
22 thousand dollars. Are those words that you used or is that
23 words the attorneys put together? Did you write that?

24 A. No I did not.

25 Q. So having trouble understanding that's why you had Mr.

STEPHEN ROBINSON: REDIRECT BY MS. DESCH

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1 Lemel explain it to you. Right?

2 A. Yes, ma'am.

3 Q. So, just if you read this by yourself does it make any
4 sense to you at all?

5 A. Probably wouldn't.

6 Q. Now, the part about the violent part of it, I mean
7 this cases are getting dismissed. Right?

8 A. Right.

9 Q. So, even if the judge hearing you and hears your plea
10 and he determines and this will be the judge and here is
11 your plea from the sentencing.

12 A. Yes, ma'am.

13 Q. He has seen you here today?

14 A. Yes, ma'am.

15 Q. And he's heard all the evidence of all the other
16 witnesses?

17 A. Yes, ma'am.

18 Q. So he's gonna make a determination on whether you told
19 the truth or not?

20 A. Yes, ma'am.

21 Q. Based on everything that he hears in this trial?

22 A. Yes, ma'am.

23 Q. Now, even if this judge determines that you told the
24 truth based on the totality of everything and all the
25 circumstances?

1 A. Yes, ma'am.

2 Q. You're still, your best offer is you have fifteen
3 years hanging over your head from probation. Right?

4 A. Yes, ma'am.

5 Q. That's not a sweet deal defense counsel pretends it
6 is, is it?

7 A. It's not.

8 Q. Not a sweet deal?

9 A. Not a sweet deal.

10 Q. And in fact you're still gonna have a burglary 2d
11 degree and a grand larceny on your record. Correct?

12 A. Correct.

13 Q. And you know that those are felonies. Right?

14 A. Yes, ma'am.

15 Q. And you don't have anything else on your record that
16 is a felony. Right?

17 A. No, ma'am.

18 Q. So you don't actually even know if you would have
19 gotten probation as an offer without testifying. Right?

20 A. Right.

21 Q. And the reason that you never talked to Curtis or
22 anyone from Mr. Hutchinson's -

23 MR. SNOW: Objection to leading, Judge.

24 THE COURT: Please avoid leading.

25 BY MS. DESCH:

STEPHEN ROBINSON: REDIRECT BY MS. DESCH

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1 Q. Did you understand why it is that you're not allowed
2 to talk to the Solicitor's office if you're represented by
3 counsel?

4 A. No.

5 Q. So, your own knowledge all you do is you have to talk
6 to Gary Lemel?

7 A. Yes.

8 Q. He's the one abdicating for you and helping you?

9 A. Yes.

10 Q. And so do you know that we're not allowed to talk to
11 you if you are represented by somebody?

12 A. I ain't never been here. I don't -

13 Q. So it's Mr. Lemel that's done the talking for you.
14 Correct?

15 A. Yes, ma'am.

16 MR. SNOW: Judge, objection. Leading again.

17 Is this commentary or is she asking a question?

18 THE COURT: Please avoid leading, Counsel.

19 BY MS. DESCH:

20 Q. Who did the talking for you?

21 A. Mr. Gary Lemel.

22 Q. And the deal you're getting, is that enough to make
23 you lie? Or the deal that they say is so sweet that you
24 still have fifteen years hanging over your head, are you
25 lying?

STEPHEN ROBINSON: REDIRECT BY MS. DESCH
RE CROSS BY MR. SNOW

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1 A. No, ma'am.

2 Q. Who was with you the night that you broke into William
3 Jackson's house?

4 A. My co-defendant, Mr. Johnson.

5 Q. And who is that?

6 A. Mason Johnson.

7 Q. So Mason Johnson right here in this courtroom is the
8 one that was with you?

9 A. Yes, ma'am.

10 Q. And he was the one that kicked in the door to get into
11 William Jackson's house?

12 A. Yes, ma'am.

13 Q. And he was the one to take that washer and dryer or
14 that appliance and the AC units back to Izzard -

15 MR. SNOW: Judge, again I'm gonna object to leading.

16 THE COURT: Over ruled.

17 MS. DESCH: I have no further questions.

18 MR. SNOW: Judge, if I may just try to be brief.

19 RECROSS EXAMINATION

20 STEPHEN ROBINSON BY MR. SNOW:

21 Q. Let's talk about this, again, I want to make sure
22 we're real clear. You have the agreement in your hands.
23 Let's look at this paragraph and tell me. I'll read it
24 again. I want to make sure you understand. At Defendant's
25 sentencing if he's kept to his part of this agreement, it

STEPHEN ROBINSON: RECROSS BY MR. SNOW

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1 is agreed that the defendant will receive a fifteen year
2 suspended on a probationary sentence." So you keep your
3 agreement, your part in this in testifying as you
4 understand it, you'll get a probationary sentence if the
5 judge enters it. Correct?

6 A. Yeah. If the judge.

7 Q. Right. And Mr. Lemel, your attorney.

8 A. Yes, sir.

9 Q. He went over this with you?

10 A. Right.

11 Q. And he's a good attorney isn't he as far as you know?

12 A. I would think so.

13 Q. An experienced one?

14 A. I would think so.

15 Q. And he recommended that you sign this didn't he?

16 A. He's more experienced than I am. I don't know.

17 Q. The question is, Mr. Robinson, he recommended that you
18 sign this.

19 A. Yeah I signed it.

20 Q. And you certainly took his recommendation didn't you.
21 Right?

22 A. Right.

23 Q. So you knew based on his recommendation it's probably
24 a pretty good deal. Right? That you'd get it.

25 (PAUSE.)

1 THE COURT: He's asking you for an answer please, sir.

2 You want to repeat the question.

3 Q. Based on his recommendation and you know he's an
4 experienced good attorney, you figured this was a pretty
5 good deal that you would get it.

6 A. I figured it might help me.

7 Q. All right. Help you a whole lot.

8 A. I'm not going to say no whole lot.

9 Q. Well let's talk about this violent. Madame Solicitor
10 brought the fact that violent, violent is, you know what
11 the word violent is don't you?

12 A. Violent or valid?

13 Q. Violent.

14 A. Violent?

15 Q. Yeah you know what that means.

16 A. Yeah.

17 Q. You have any idea what that means?

18 A. You mean like acting violent?

19 Q. Yes, sir.

20 A. Yeah.

21 Q. You know what violent means?

22 A. Yeah.

23 Q. Seems strange to you to hear the word violent?

24 A. Violent.

25 Q. And I'm sure you understand that burglary in the State

STEPHEN ROBINSON: RECROSS BY MR. SNOW
REDIRECT BY MS. DESCH

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1 of South Carolina is a violent, says it's a violent crime.

2 Right?

3 A. Right.

4 Q. Okay. So based on your discussions with Mr. Lemel
5 about this deal that you got, you understood it?

6 A. Yes, sir.

7 Q. And it took time to explain it to you. Right?

8 A. Right.

9 Q. So you had not question about what you were getting?

10 A. No question.

11 Q. Thank you.

12 MS. DESCH: May I briefly.

13 THE COURT: Briefly, yes, ma'am.

14 REDIRECT EXAMINATION

15 STEPHEN ROBINSON BY MS. DESCH:

16 Q. What does violent mean?

17 A. Well I just think when you just boldly go. Violent.
18 What I mean is going and doing something you don't have no
19 business doing. That's what I think it is.

20 Q. That would make sense to people not in the legal
21 environment but violent in the context of that agreement
22 burglary 2d violent, what does that word mean? You have no
23 idea do you, Mr. Robinson?

24 A. No, ma'am.

25 Q. And fifteen years hanging over your head for a

STEPHEN ROBINSON: RE CROSS BY MR. SNOW

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1 probation and it keeps getting thrown at you, does that
2 feel like a good deal to you?

3 A. No, ma'am.

4 Q. Thank you.

5 MR. SNOW: Judge, one other question. I'm sorry,
6 Judge.

7 THE COURT: Briefly.

8 RE CROSS EXAMINATION

9 STEPHEN ROBINSON BY MR. SNOW:

10 Q. Would you rather be out on probation or in prison for
11 fifteen years?

12 A. Let me explain this to you.

13 Q. I prefer you answer the question first and then you
14 can explain.

15 A. Yeah I'd rather be out.

16 Q. Thank you.

17 THE COURT: All right. Thank you, sir, you may stand
18 down, sir.

19 (WITNESS LEAVING WITNESS STAND.)

20 MS. DESCH: We ask that Mr. Robinson be allowed to be
21 excused at this time.

22 MR. SNOW: No objection, Judge.

23 THE COURT: Thank you for coming, sir, you can be
24 excused, sir.

25 MR. ROBINSON: Thank you, sir.

1 MR. HUTCHINSON: Your Honor, may we approach?

2 THE COURT: I'm going to go ahead and take a break for
3 lunch.

4 Madame Forelady, members of the jury panel, it's by
5 the courtroom clock almost ten minutes till One. I have
6 another matter that I have to take up before we resume the
7 trial. And I'm not sure that will not take very long I
8 don't think. Let's resume at 2:15. That will give
9 everybody plenty of lunch. Hopefully I will be through
10 with that other matter before then so we'll resume at 2:15.
11 Please enjoy your lunch and be back in the jury room at
12 2:15.

13 (JURY EXITS COURTROOM FOR LUNCH RECESS AT 12:50 PM.)

14 THE COURT: Anything we need to take up out of the
15 presence of the jury?

16 MR. HUTCHINSON: Nothing from the State, Your Honor.

17 MR. SNOW: Nothing further, Judge.

18 THE COURT: All right, we'll adjourn for lunch. I
19 have a little matter that shouldn't take but a few minutes
20 to take up. And so I'm doing that at 1:45, just resume at
21 2:15.

22 MR. HUTCHINSON: Thank you, Judge.

23 (COURT IN LUNCH RECESS AT 12:50 PM.)

24 (BACK ON THE RECORD AT 02:15 PM.)

25 (COURT BACK IN SESSION AT 02:15 PM.)

WILLIAM ANDREWS: DIRECT BY MS. DESCH

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1 (DEFENDANT REENTERING COURTROOM AT 02:15 PM.)

2 THE COURT: All right, Counsel. You ready to proceed?
3 The State.

4 MR. HUTCHINSON: Yes, sir.

5 THE COURT: The Defense ready, Mr. Snow?

6 THE COURT: Yes, Judge.

7 MR. HUTCHINSON: I apologize, Judge. I just want to
8 confirm the witness's outside if I may. I do apologize.

9 (PAUSE.)

10 MR. HUTCHINSON: Your Honor, if we can have a brief
11 couple of moments. Another witness just pulled up and he's
12 on his way up right now.

13 (PAUSE.)

14 THE COURT: Is this your witness, Counsel?

15 MR. HUTCHINSON: Yes, sir.

16 THE COURT: You all need to speak to him before we
17 start?

18 MR. HUTCHINSON: No, sir.

19 (JURY REENTERS COURTROOM AT 02:20 PM.)

20 THE COURT: Counsel, ready to proceed.

21 MS. DESCH: May it please the Court, Your Honor. Your
22 Honor, the State would call Officer Andrews next.

23 (WHEREUPON: WILLIAM ANDREWS,
24 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

25 DIRECT EXAMINATION

WILLIAM ANDREWS: DIRECT BY MS. DESCH

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1 WILLIAM ANDREWS BY MS. DESCH:

2 Q. Good afternoon, Officer Andrews.

3 A. Good afternoon.

4 Q. Could you please state your full name and spell your
5 last name for the record.

6 A. William Andrews, A-n-d-r-e-w-s.

7 Q. And where is it that you work?

8 A. I work for the Rock Hill Police Department.

9 Q. And how long you been with Rock Hill?

10 A. I been with Rock Hill a year and a half.

11 Q. As a police officer?

12 A. As a police officer.

13 Q. Is that your only law enforcement experience?

14 A. No, ma'am.

15 Q. What other law enforcement experience do you have?

16 A. I worked twelve years in the Pittsburgh, City of
17 Pittsburgh Housing, City of Housing.

18 Q. Pittsburgh, Pennsylvania?

19 A. Yes, ma'am.

20 Q. All right. So you worked in Pennsylvania and came
21 down here about a year and a half ago?

22 A. Yes, ma'am.

23 Q. What kind of training have you had, Officer, in your
24 thirteen and a half years?

25 A. I rode a patrol in Pittsburgh. I also worked on our

1 SWAT, some of our drug enforcement before coming down here
2 in the traffic unit. I came down here just rode patrol in
3 my time here in my short time here riding. At the time I
4 was actually on the phone. I was in the downtown, right
5 downtown.

6 Q. When you say at the time, do you mean November 2009?

7 A. Yes, ma'am.

8 Q. So November 2009 you were working for the City of Rock
9 Hill?

10 A. Yes, ma'am.

11 Q. When you say the downtown area, does that encompass
12 the Main Street area?

13 A. Yes, ma'am.

14 Q. So do you remember what shift you were working on the
15 18th of November?

16 A. We were on the pm shift. We were working Four to Two,
17 4:30 to Two.

18 Q. About Eight o'clock, 8:30, did you get dispatched to
19 an East Main Street investigation?

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

21 Q. What -- When I say dispatch, what does that mean?

22 A. A call came on the radio for me to respond to Main
23 Street. I believe it was Park's Groceries, that area. It
24 was my call but I believe an Officer Price got there before
25 I did and started the investigation. At that time he put

WILLIAM ANDREWS: DIRECT BY MS. DESCH

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1 out over the radio a description and told us just to canvas
2 the area and look for the suspects.

3 Q. So Officer Price beat you to Park's Grocery?

4 A. Yes, ma'am.

5 Q. And then tells you to canvas the area?

6 A. Yes, ma'am.

7 Q. What did you take that to mean?

8 A. He put a description out and that just means ride
9 around, see who's out, try to find the suspects. He was
10 already on scene and talking to the victim and getting the
11 victim information and putting it over the radio as he got
12 it.

13 Q. And are you familiar with that area around Park's
14 Grocery at all?

15 A. Yes, ma'am.

16 Q. And if you could look, can you see that at all?

17 A. Yes, ma'am.

18 Q. Do you want us to dim the lights at all?

19 A. No. That's fine.

20 Q. And what do you see that to mean?

21 A. It's Main Street. That's the grocery store up in the
22 upper left corner there. It looks like the entrance, the
23 two entrances just below the trees.

24 MS. DESCH: I beg the Court's indulgence. I just want
25 to lay the record.

1 Q. For the record, on the screen we're looking at State's
2 Exhibit Two. Okay. So you identified that building that,
3 here that I'm pointing to. That's the grocery store?

4 A. Yes, ma'am.

5 Q. And you said this is Main Street right here?

6 A. Yes, ma'am.

7 Q. When you first get the call to canvas the
8 neighborhood, were you already in this area over here or
9 were you just getting up to that area?

10 A. I was in route coming down Main Street toward
11 downtown.

12 Q. We're gonna switch over to State's Exhibit One.
13 That's a wider view. Does that look familiar? Grocery
14 store over here?

15 A. Yeah.

16 Q. Main Street?

17 A. Yes, ma'am.

18 Q. When you say, did you say towards downtown?

19 A. I was coming from Albright toward town.

20 Q. Where is that? I'm not familiar with the area. Is
21 that this direction up here?

22 A. Yes coming from the top.

23 Q. So you're coming this way?

24 A. Yes, ma'am.

25 Q. All right. Where did you go from there?

WILLIAM ANDREWS: DIRECT BY MS. DESCH

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1 A. Once Officer Price told us to canvas the area, I just
2 began riding around back into the different neighborhoods,
3 Jones, Confederate, just seeing who's out, to see if we
4 could find anybody out.

5 Q. Jones being right here?

6 A. Yes, ma'am.

7 Q. And, did you know what you were looking for?

8 A. I know they said there was a couple of guys, some
9 stolen items and they were out walking and they were
10 pushing something so we were out looking. Actually a
11 couple of guys pushing a washing machine or something like
12 that.

13 Q. And, did anything else happen over the radio to focus
14 your attention on anything in particular?

15 A. Officer Watson came over the radio and said he was out
16 with a suspect --

17 MR. SNOW: I'm gonna object.

18 THE COURT: Sustain.

19 MS. DESCH: Don't do what somebody said.

20 A. Okay.

21 Q. As to something you heard on the radio did you go
22 anywhere in particular?

23 A. Yes. He led me to Izzard Street.

24 Q. Now just to clarify. Izzard is here?

25 A. Right.

1 Q. So from Jones to Izzard, now, you said Officer Watson.
2 Now when you're patrolling you're by yourself?

3 A. Yes, ma'am.

4 Q. Okay. So Officer Watson also by himself?

5 A. Yes, ma'am.

6 Q. So when Officer Watson says he's up with somebody, did
7 you go over to where he was?

8 A. Yes, ma'am.

9 Q. How come?

10 A. It was night the nature of the call had the suspect
11 came over the radio we know him. He's known to be
12 argumentative so once Officer Watson called out on the radio
13 we responded, I responded back to my point of call.

14 Q. And what was the name you heard that you knew?

15 A. William Jackson.

16 Q. Is that the same William Jackson that's here today,
17 the victim, the owner of the house?

18 A. No.

19 Q. So it's a different William Jackson?

20 A. Right.

21 Q. And you're familiar with that name?

22 A. Right.

23 Q. So how quickly were you able to get over to where
24 Officer Watson was?

25 A. I was maybe less than a minute away. As I pulled up

WILLIAM ANDREWS: DIRECT BY MS. DESCH

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1 Officer Watson was actually out speaking and engaging with
2 William Jackson.

3 Q. And when you got there Mr. William Jackson was still
4 there?

5 A. Yes, ma'am.

6 Q. And what did you observe about Mr. Jackson?

7 A. Besides his agitated state his clothing was similar
8 and again he's well known. When the name came out, he's
9 well known. So I got out with Officer Watson, he
10 identified him, found out he wasn't who we were looking
11 for. And we released him at that time.

12 Q. You said his clothing was similar to the description
13 that you were looking for?

14 A. Right.

15 Q. How did you rule him out?

16 A. Officer Watson was over the radio, he called and he
17 knew I guess. He had where William Jackson was at the
18 time. We confirmed he was there the whole time. Obviously
19 we checked him over once and stuff like that and it wasn't
20 him so we ruled him out as being the person we were looking
21 for.

22 Q. Were you present when another witness was brought by a
23 separate officer? Were you aware that the witness was
24 brought by another officer?

25 A. They told us they were gonna do a drive by with him

1 and we stood outside with that William Jackson. Now myself
2 and Officer Watson.

3 Q. And what happened then?

4 A. He was not the person we were looking for and was told
5 he could leave.

6 Q. Okay. So you were are aware that the witness ruled
7 him out and you confirmed for the lack of a better word an
8 alibi by whoever Mr. Jackson was hanging out?

9 A. Right.

10 Q. What did you do at that point?

11 A. At that point, we again went around canvassing the
12 area until we got Detective Ayers came over the radio and
13 ask us to meet him at a location on Izzard Street.

14 Q. And did you go to that address on Izzard Street?

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

16 Q. Do you remember off hand what it was?

17 A. No I don't.

18 Q. Would looking at a report refresh your recollection of
19 the address?

20 A. Yes, ma'am, it would.

21 Q. Now if you could, I'm handing you the Incident Report.
22 This is just the Incident Report by Officer Price. Could
23 you just read that to yourself to recollect your, to
24 refresh your recollection? Let me know when you're ready.

25 (PAUSE.)

WILLIAM ANDREWS: DIRECT BY MS. DESCH

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1 A. Okay.

2 Q. Did that help you remember where the address is?

3 A. Yes, ma'am.

4 Q. If I could just get that from you. Thank you.

5 Now, Officer Andrews, what address did you got to on
6 Izzard Street?

7 A. Mid [REDACTED]

8 Q. At this point when you go to [REDACTED] who
9 else is with you?

10 A. We meet Detective Ayers, Officer Watson.

11 Q. So, essentially you and Officer Watson are doing
12 everything together so you have the same knowledge of what
13 happened that day?

14 A. Yes, ma'am.

15 Q. Now, when you get to the house, is anybody home?

16 A. When we got to the house we did knock on the door.
17 It was dark and raining, the young lady answered the door.
18 Detective Ayers spoke with her, brought to her attention
19 the items as you go through the driveway there was a fence
20 and some type of fence, there was a dryer, some lawnmowers,
21 some old AC units back there and a very large Pit Bull.

22 Q. A dog?

23 A. Yes.

24 Q. A Pit Bull. Okay.

25 A. Yes. When Detective Ayers ask if she had any

1 knowledge of these items on the side of her house at the
2 time she said she didn't. She also stated that she was
3 home by herself. Like I said it was cold, it was raining.
4 She was tending to a little fire she had in a little stove
5 in there. She was burning some logs or whatever there for
6 heat.

7 Q. In the house?

8 A. Yeah.

9 Q. Okay.

10 A. Detective Ayers like I said he initially she said she
11 was home by herself, ask if we could come in and check. We
12 walked in I believe there was another AC unit inside the
13 house. Detective Ayers ask if we could check the house.
14 She said we could. Myself and Officer Watson went through
15 the living room there was another I guess like a dining
16 room area and then there was the bedroom off to the side as
17 I walked into the dining room, I noticed there was a male
18 laying on the bed in the bedroom. It was partially covered
19 with a blanket or a quilt or something like that. His leg
20 was hanging out and we actually called him out of the
21 bedroom into the dining room area where we were at.

22 Q. Did he come out?

23 A. He did.

24 Q. So, just to back up. When you're in the dining room,
25 you can see the bedroom?

WILLIAM ANDREWS: DIRECT BY MS. DESCH

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1 A. I can see the bedroom. The door was open.

2 Q. Now the young lady that let you in the house, have you
3 since come to know who that was?

4 A. I believe her name was Monalisa.

5 Q. So Monalisa is home, she let you in the house, you go
6 through and you see a male in the back bedroom?

7 A. Right.

8 Q. And I'm sorry, just to reiterate, you called him out
9 and he actually does come out?

10 A. Right.

11 Q. What happens when he comes out? What did you observe?

12 A. The male was wearing blue jeans, he had on a black T-
13 shirt but it was like ripped and the bottom of his trousers
14 were wet and muddy. As we called him out the first thing
15 he did when he came out was "what's this about".

16 MR. SNOW: Objection as to what he said.

17 THE COURT: Over ruled. You may ask.

18 BY MS. DESCH:

19 Q. Go ahead.

20 A. The first thing when he uttered "what's this about, I
21 been here all day". It's like he was in the bed the whole
22 time. Again, we brought him out. We noticed maybe a
23 couple of inches below his knees his pants were wet and
24 muddy like he'd just came from outside. On that particular
25 day I know it was raining off and on all day. It was cold

1 and wet out there. At that time he was detained and taken
2 outside and put into a car.

3 Q. Officer Andrews, I'm gonna show you what's been marked
4 for ID as Five and Six on State's Exhibit Five and Six.
5 Five is actually on top, Six is on the bottom, and you look
6 at those and start with Five. What do you recognize those
7 to be?

8 A. This is the individual that was in the bed at the
9 time; the clothing that he had on, and this is the one we
10 detained.

11 Q. So those are photos of the person you got out of the
12 bedroom, 677 Izzard Street?

13 A. Yes, ma'am.

14 Q. And was that what he was wearing when he came out to
15 talk to you?

16 A. When he came out of the bed that's what he had on.

17 Q. Are those photos fair and accurate depictions of how
18 that person looked to you on that day?

19 A. Yes, ma'am.

20 MS. DESCH: State would like to move in Exhibits Five
21 and Six into evidence.

22 MR. SNOW: No objection.

23 THE COURT: Be without objection.

24 (WHEREUPON: STATE'S EXHIBIT NUMBERS FIVE AND SIX,
25 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

WILLIAM ANDREWS: DIRECT BY MS. DESCH
CROSS BY MR. SNOW

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1 BY MS. DESCH:

2 Q. Do you know who that is?

3 (PAUSE.)

4 Q. Okay. So you did have other than picking -- I'm
5 sorry, let me rephrase. So, when you just detained that
6 person out of the bedroom, you did not identify them, you
7 were just there to investigate and that's what you found?

8 A. Right.

9 Q. And, just to reiterate, when you go in and you see him
10 and he comes out the bedroom, he's wearing those clothes;
11 the T-shirt and the jeans?

12 A. Yes, ma'am.

13 Q. Thank you. Please answer any questions Mr. Snow
14 might have.

15 A. Yes, ma'am.

16 CROSS EXAMINATION

17 WILLIAM ANDREWS BY MR. SNOW:

18 Q. I have a few questions for you, Officer Andrews. Did
19 you take a report in this case?

20 A. No, sir.

21 Q. Now, let's talk about November 18, 2009. The night of
22 this incident, you acknowledge it was raining that
23 afternoon?

24 A. Yes, sir.

25 Q. And, how badly was it raining? Do you know?

1 A. It was raining on and off all day pretty much at least
2 during out shift since Four o'clock.

3 Q. So is it fair to say if someone had walked to a store,
4 walked to a store right before you came in or shortly, it
5 stands that they got wet?

6 A. Yes, sir, definitely.

7 Q. You don't know what kind of work Mr. Mason Johnson
8 does?

9 A. What kind of work?

10 Q. You don't know?

11 A. No I don't know.

12 Q. Let's talk about William Jackson you talked with and
13 you questioned and you investigated.

14 A. Yes, sir.

15 Q. How did you confirm that he wasn't the suspect that
16 you were looking for?

17 A. I don't know. I can't recall which officer but
18 someone drove a witness from Park's Grocery around over to
19 Izzard Street.

20 Q. Well, I'm sorry.

21 A. Go ahead.

22 Q. Well how did you confirm Mr. Jackson -- Let me
23 rephrase the question. When you found Mr. Jackson you
24 found him near [REDACTED] didn't you?

25 A. He was on Izzard Street. Izzard Street is a

WILLIAM ANDREWS: CROSS BY MR. SNOW -

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1 relatively short street. He was kind of on the other end
2 house. And I guess that's where Officer Watson seen him at
3 that house.

4 Q. But isn't it fair to say that's near, only a short
5 distance?

6 A. Right, a block.

7 Q. And you had to observe him before you came to Izzard
8 Street personally?

9 A. William Jackson?

10 Q. Yes.

11 A. No I didn't.

12 Q. So you don't know personally where he was do you?

13 A. No.

14 Q. And you can't personally eliminate him from being at
15 the other Mr. Jackson's house can you?

16 A. Well, when we had him detained and questioned him -

17 Q. Keep in mind the question you wrote, Officer. I want
18 you to answer the question.

19 MS. DESCH: Let him answer.

20 THE COURT: Counsel, let him answer.

21 A. Okay. As we had -- The officer brought the witness
22 around and identified him as not being the person we were
23 looking for. That's how I and Officer Watson eliminated
24 him.

25 Q. But as to your personal observation?

1 A. No.

2 Q. Right. Did you speak with anyone else that confirmed
3 Mr. Jackson was always in some location other?

4 A. Just I didn't myself, Officer Watson did.

5 Q. Well I think you mentioned on a matter Solicitor ask
6 you some questions. You said that you were able to confirm
7 that he was at -- always at the location where you found
8 him.

9 A. Right.

10 Q. How were you able to do that?

11 A. By Officer Watson talking to the people that were near
12 the witnesses coming around and identifying.

13 Q. So you didn't actually speak to anyone?

14 A. No.

15 Q. So you don't have any personal knowledge he wasn't
16 somewhere else?

17 A. No, sir.

18 Q. And you don't know the individuals that Officer -- I'm
19 sorry. What officer did you say?

20 A. I wasn't sure which officer brung him around, they
21 just rode by in a car.

22 Q. But you don't know what officers, what the other
23 individual officers spoke with to confirm that Mr. Jackson
24 was always there. Right?

25 A. No, sir, I don't.

WILLIAM ANDREWS: CROSS BY MR. SNOW

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1 Q. When you came to [REDACTED].

2 A. Yes, sir.

3 Q. And you were allowed in the home, in the residence?

4 A. Right.

5 Q. No one told you not to come in?

6 A. No..

7 Q. You came in and you saw Mr. Johnson in the bed.

8 A. Right.

9 Q. The door was open?

10 A. The door was open.

11 Q. He wasn't under the bed was he?

12 A. No.

13 Q. Wasn't in the closet when you called him, he
14 voluntarily got up and came to where you were?

15 A. Right.

16 Q. He didn't try to run?

17 A. No.

18 Q. So, other than the fact that he was there in the
19 house, he didn't resist you at all?

20 A. No there was no resistance.

21 Q. He didn't disobey you, he wasn't disrespectful to you?

22 A. No.

23 MR. SNOW: May I have a moment, Judge.

24 THE COURT: Yes.

25 (PAUSE.)

1 BY MR. SNOW:

2 Q. Could you describe the kind of clothes that William
3 Jackson had on? Do you recall?

4 A. He had on blue jeans. He had on a black jacket, maybe
5 quarter length. Tight jacket. And just some regular -- I
6 think he had on boots.

7 Q. And is Mr. Jackson, if you recall, is he a black male?

8 A. Yes he is.

9 Q. Black male?

10 A. Yes.

11 Q. How tall is he?

12 A. Six, maybe 6,1; 6,2

13 Q. That's a general description of him. Right?

14 A. Right.

15 Q. And you mentioned before that you were familiar with
16 Mr. Jackson?

17 A. Yeah. I'm familiar with Mr. Jackson.

18 Q. How are you familiar with Mr. Jackson?

19 A. He was arrested several times when we went to a couple
20 of calls where he was there. He was belligerent.

21 Q. Belligerent?

22 A. Very belligerent. He's known to be very
23 confrontational with officers. In my short time here, less
24 than two years, I know I dealt with him at least four or
25 five times.

WILLIAM ANDREWS: CROSS BY MR. SNOW
REDIRECT BY MS. DESCH

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1 Q. Have you ever known him to be a suspect in a B&E or
2 burglary?

3 A. No.

4 Q. To your knowledge?

5 A. To my knowledge no.

6 Q. But you've had many encounters with him?

7 A. Oh yes, sir.

8 MR. SNOW: Just one moment, Judge. One second.

9 (PAUSE.)

10 MR. SNOW: Thank you, Officer Andrews. Thank you
11 very much.

12 REDIRECT EXAMINATION

13 OFFICER WILLIAM ANDREWS BY MS. DESCH:

14 Q. Officer Andrews, you described our William Jackson.
15 Correct?

16 A. Correct.

17 Q. Did you say -- I missed the tail end of it, a black
18 jacket, what did you say?

19 A. Three quarter length black jacket and blue jeans.
20 Boots I believe.

21 Q. So a three quarter length black jacket?

22 A. Uh-huh.

23 Q. And what underneath it if you remember?

24 A. It was cold and raining out there. I know Officer
25 Watson patted him down. We didn't have him disrobe or

1 anything like that.

2 Q. Okay. Was it a big enough jacket that it would be
3 tough to have something else over it like another shirt?

4 A. Have something over top of the jacket?

5 Q. Yes.

6 A. No. It was one of those nylon jackets.

7 Q. Like a sports jacket?

8 A. No. A winter coat basically but it was like nylon on
9 the outside. And it was completely wet by the time we got
10 there.

11 Q. When you come across him he's wearing a winter coat
12 and it's wet?

13 A. Right.

14 Q. All right. And you indicated you found him only a
15 short distance from Izzard, on the other end of Izzard?

16 A. Right.

17 Q. But you didn't see him anywhere near Main Street or
18 Park's Grocery?

19 A. No, ma'am.

20 Q. And you said that Officer Watson talked to people to
21 confirm that he had basically been there the whole time and
22 had not gone to the store?

23 A. Right.

24 Q. And that was part -- in your investigation part that
25 gave you the knowledge to rule him out?

WILLIAM ANDREWS: REDIRECT BY MS. DESCH

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1 A. Yes, ma'am.

2 Q. And you said you know him to be combative in your
3 dealings with him. Correct?

4 A. Yes, ma'am.

5 Q. But you don't know him to be suspects in burglaries
6 and breaking and entering and stuff like that?

7 A. No, ma'am.

8 Q. So if we -- when you see Mason Johnson in the Izzard
9 Street house, he's laying on the bed?

10 A. Yes, ma'am.

11 Q. So he's across the bed in his clothes with the
12 bedspread kind of covering him?

13 A. Over him yes, ma'am.

14 Q. And he does come out and talk to you. Right?

15 A. Yes, ma'am.

16 Q. What's the first thing he says when he comes out of
17 there?

18 A. That he's been there all day.

19 Q. So he tells you he's been there all day?

20 A. Yes, ma'am.

21 Q. Even though he's got wet pants, its wet?

22 A. Clothes, wet pants yes, ma'am.

23 Q. So no at any point did he say I just walked to the
24 store?

25 A. Not to me.

WILLIAM ANDREWS: REDIRECT BY MS. DESCH
RECROSS BY MR. SNOW

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1 Q. So he didn't say "I went to go get my girlfriend a
2 soda at Park's Grocery?

3 A. Not to me.

4 Q. But what he does try to say to you, "Ha, I been here
5 all day, don't know nothing"?

6 A. Right.

7 MS. DESCH: Thank you.

8 MR. SNOW: May I, Judge?

9 THE COURT: Yes, sir.

10 RECROSS EXAMINATION

11 OFFICER WILLIAM ANDREWS BY MR. SNOW:

12 Q. Officer Andrews, you did take a report in this case?

13 A. No, sir, I didn't.

14 Q. That's a compliment. You didn't get to take a report
15 in this case and it's fair to say since November last year
16 to now it's impossible to say you have maybe your memories
17 less fresh than it is today? Certainly your memory was
18 better in November.

19 A. Obviously yes, sir.

20 Q. And as you testified, he didn't say anything to you
21 but he could have said it to one of the officers?

22 A. Right, he didn't say it to me.

23 Q. Right. And you don't have any notes?

24 A. No.

WILLIAM ANDREWS: RECROSS BY MR. SNOW

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1 suspects have you talked to since November?

2 A. I cannot say. I don't know.

3 Q. Is it fair to say a lot?

4 A. Quite a few, right.

5 Q. And is it fair to say you're not perfect?

6 A. No one is.

7 Q. So, you may not intentionally but certainly you may
8 not be exactly correct on what you said happened?

9 A. Certain things stick out in your head more than
10 others. Certain cases stick out in your head more than
11 others. I remember this. Like I said, because the call -

12 Q. Sure.

13 A. I know the rain, the dog, the stuff behind there and
14 actually going into the house. Doing this for some time.
15 Most of the time you come in and you ask somebody at the
16 door is anybody else there and they say no one's in there.
17 That's why we check.

18 Q. Sure.

19 A. You know, you come around the corner you see somebody
20 else in there, those are the things that make, you know, in
21 my profession make the hair on the back of your neck stand
22 up so you remember that.

23 Q. Right.

24 A. That brings a lot about a recollection of the
25 incident.

WILLIAM ANDREWS: RECROSS BY MR. SNOW
TIM AYERS: DIRECT BY MR. HUTCHINSON

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1 Q. You also mentioned it was cold in the house?

2 A. It was cold outside. Cold and raining.

3 Q. So it was cold and raining?

4 A. Right.

5 Q. And again, his legs sticking out from the covers so
6 he's not completely covered up?

7 A. Right.

8 Q. Thank you.

9 A. You're very welcome.

10 THE COURT: Thank you, sir. Thank you very much.

11 (WITNESS LEAVING WITNESS STAND.)

12 MR. SNOW: I have no objection, Your Honor, if they
13 want to release him.

14 Thank you, Officer.

15 OFFICER WILLIAMS: Thank you.

16 MR. HUTCHINSON: Your Honor, the State calls Detective
17 Ayers to the stand.

18 (WHEREUPON: DETECTIVE TIM

19 AYERS, BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS
20 FOLLOWS:)

21 DIRECT EXAMINATION

22 DETECTIVE TIM AYERS BY MR. HUTCHINSON:

23 Q. Detective Ayers, tell the jury your full name.

24 A. My name is Tim Ayers. My last name is A-y-e-r-s.

25 Q. And do you work for a police department?

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1 A. I work for the Rock Hill Police Department.

2 Q. And what is your position there?

3 A. I am a person's crime detective. I'm assigned to
4 robberies, assaults, where a person; a victim is involved.

5 Q. Now how long have you held that position?

6 A. I been assigned to the person's crime division for the
7 past four years. And then I been in the detective division
8 for over eleven years.

9 Q. Now were you working for Rock Hill P.D. before you
10 were in the detective division?

11 A. I started my law enforcement career with the Rock Hill
12 Police Department in 1994 and been with Rock Hill ever
13 since. I was on the patrol division for approximately five
14 years, four of those I was a uniform patrol officer,
15 answered the calls as uniform, being the uniform officers
16 have been here today, marked patrol car. And then the
17 final year I was the supervisor on the shift.

18 Q. Now what type of training or certifications have you
19 received?

20 A. Other than the basic law enforcement academy that
21 every police officer in South Carolina must go through, I
22 have got well over a thousand hours of advanced training.
23 Everything from auto theft, worked auto theft, I worked
24 burglaries. Over the years I was assigned commercial
25 burglaries, residential burglaries. I been the gang

1 investigator for the past four years with the Rock Hill
2 Police Department, been qualified in General Sessions Court
3 as an expert witness on gangs. Numerous other
4 certifications as far as training that I had with
5 investigations, auto theft, accident reconstruction, you
6 know there's just numerous classes that I've had over the
7 years.

8 Q. What type of shift do you work on a daily basis?

9 A. Normally I work Eight to Five Monday through Friday in
10 the detective division. During this time of the year at
11 this time I was also on a FBI task force working outlaw
12 motorcycle gangs on Tuesday and Thursdays. And the only
13 time I did not work the normal Eight to Five would be when
14 I was on call, on call status means you're called out after
15 hours for major incidences.

16 Q. Now you say this time of year. Are you talking about
17 November 2009?

18 A. That's correct.

19 Q. And on November 18, were you working that evening or
20 were you on call?

21 A. Yeah I was working second shift and I was on call that
22 evening.

23 Q. Now, let me step back a second. Is East Main Street
24 within the jurisdiction you're dealing with?

25 A. Yes. It's in the city limits of Rock Hill and within

TIM AYERS: DIRECT BY MR. HUTCHINSON

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1 York County.

2 Q. And do you remember receiving a call to go out to that
3 area?

4 A. Yes I was actually at the station at the time working
5 on some other cases I was assigned. And I heard the radio
6 traffic on our dispatch and the officers I could tell the
7 radio traffic had increased and I started listening and I
8 heard that numerous officers were responding to an incident
9 on East Main Street.

10 Q. And are you familiar, pretty familiar with that area
11 around East Main Street?

12 A. Yes.

13 Q. I'm showing you State's Exhibit One. Would you say
14 you're familiar with that and what's been shown to the
15 jury, that area?

16 A. Yes.

17 Q. Now, can you tell us where you were first dispatched
18 to? Where did you first arrive that evening?

19 A. Once I determined they were working a residential
20 burglary, excuse me, and they were circulating the area
21 looking for possible suspects and that one officer was
22 actually on scene, at that time which was Officer Price; I
23 was coming down Black Street with the law enforcement
24 signals at [REDACTED], this is the [REDACTED] block of East
25 Main. Directly behind that is going to be the [REDACTED] block of

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1 East Black Street, so we're talking six blocks from there.
2 As I came down Black Street I'm observing anyone out and
3 about to see if I see anyone and I respond to the actual --
4 I turned left onto Jones Street and then right onto East
5 Main Street which Jones Street is very hard to see. It's
6 almost covered in trees. In the middle of the picture
7 hereon the bottom right, I came up Jones, turned right on
8 East Main Street, pulled into the parking lot of Jackson's
9 Furniture or the Park Grocery into Mr. Jackson's commercial
10 building that's right beside [REDACTED]

11 Q. So would it be fair to say this is Jones right here?

12 A. That's correct.

13 Q. You turn right on East Main Street?

14 A. Yes, sir.

15 Q. And this is the store you're talking about right here?

16 A. There's two large oak trees in front of the property
17 there. I turned in, in between those. into the parking lot
18 there.

19 Q. Now when you first arrived was there anyone already in
20 custody? Any other officers taken anyone into custody?

21 A. When I first arrived Officer Price's car was parked in
22 the parking lot. The other photo is easier to show where
23 he was at. His car, the marked patrol car, was sitting
24 there, there was someone in the back seat which was later
25 determined -- I was informed that it was Mr. Stephen

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1 Robinson.

2 Q. And just for the record, this is Court's Exhibit Two.

3 A. Correct.

4 Q. Let me show you a smaller one. A little easier to
5 describe how that one --

6 A. If the jury could look closely at the left hand side
7 of the building you can see there is almost like a white
8 paneling, the front of the store front there. And then it
9 gets a little dark, a section that is dead center of the
10 building almost. Officer Price's car was almost in that
11 general area. About ten feet away from the building.

12 Q. Could you use the pointer to describe what you're
13 talking about?

14 A. Sure. His car was parked right here, pointing, and
15 the nose was pointing toward the building but it was parked
16 right in this area in the parking lot with his car and it
17 was a black male that was sitting in the rear passenger
18 seat of his car which was Mr. Robinson.

19 Q. Now did you have an opportunity to speak with Mr.
20 Robinson?

21 A. Not at that point. At that point my role as a
22 detective on scene is to survey the situation while we got,
23 while the crime is still in progress. However we're at a
24 point of trying to locate the suspects, find and locate
25 witnesses, secure them for further investigation, those

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1 type things. So just getting basic information from
2 Officer Price, What have you got? You know, what can you
3 tell me about the situation at hand? At this time I
4 believe Mr. Billy Jackson having arrived on scene and was
5 speaking with Mr. Gordon which is a next door neighbor who
6 Mr. Gordon lives in this house here. And he was the one
7 who was initially responding, following the suspects. They
8 were actually coming from the back yard. This door to the
9 basement and this, right about there, on the back corner of
10 the house Mr. Jackson and Mr. Gordon were coming back with
11 a flashlight in their hand through the parking lot or up
12 into the parking lot area of the commercial area. And I
13 started speaking with Mr. Jackson. What have you got
14 missing? Can you tell me? Describe, you know, what kind
15 of property you got and he explained the door had been
16 kicked in and what property was missing. And then I also
17 started speaking with Mr. Gordon.

18 Q. Now, at any time did you discover how many people were
19 involved in this incident?

20 A. Yes.

21 Q. And how many people were involved?

22 A. It was determined that two people were involved with
23 the theft of property for the construction.

24 Q. And did you discover whether the person in custody,
25 Mr. Robinson, lived through your investigation?

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1 A. While I was conducting an investigation I was informed
2 that two people that had stolen the property were observed
3 going through the church parking lot going over toward
4 Izzard Street. And that was when I was informed that Mr.
5 Robinson that was in custody had an address of Izzard
6 Street. So I walked over to the car that Mr. Robinson was
7 sitting in. I knew that he had been marandized at that
8 time given his Maranda rights. I opened the door and I ask
9 him what his address was and he said [REDACTED]

10 Q. Now, at the location of Park Grocery, were you made
11 aware of any physical evidence that was found at that
12 scene?

13 A. While I was informed of the basis of what was going on
14 I was told that there was a lawnmower up near these trees,
15 this front corner, a push mower was in that location. That
16 push mower had been removed from the basement of Mr.
17 Jackson's house. It was the same one that had been seen by
18 the two individuals which was positively identified at that
19 time as Mr. Robinson pushing it back from this direction
20 coming back over toward the house where they left the
21 lawnmower. As officers stated to arrive and started
22 walking to the corner of Park Grocery, in other words, here
23 going across to that area.

24 Q. Now did you actually see that lawnmower?

25 A. It was still there in the same position.

1 Q. Now, after you did some investigations at the initial
2 scene, did you go; where did you go after that?

3 A. Once I spoke with Mr. Robinson I got the address of
4 [REDACTED] [REDACTED] Knowing that it was such a short
5 distance away, I went straight to that address.

6 Q. Now, on State's Exhibit Two, I believe here, State's
7 Exhibit One, I apologize. Do you have -- Can you point out
8 the location of where the house on Izzard Street is on this
9 map for the jury?

10 A. This is Izzard Street. And this third house, right
11 here.

12 Q. So how long would you say it took you to get from the
13 Park Grocery area to there?

14 A. Less than a minute.

15 Q. And if you had to approximate amount of yards, how
16 many yards would you say that is from Park Grocery to
17 there?

18 A. Cross from here to here is five hundred thousand,
19 twelve hundred yards. A block and a half. City block
20 maybe.

21 Q. Would you say it's walking distance between the two?

22 A. Easily.

23 Q. Now when you first arrived at [REDACTED] were
24 you alone when you first arrived?

25 A. When I first pulled up I called on the radio, said I

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1 was in route to [REDACTED] and ask for officers to
2 meet me there. As I pulled up there was no one else was
3 there. As I exited my vehicle the other cars were arriving
4 on the scene.

5 Q. And the point of getting out of your car, what was the
6 first thing you noticed about the location?

7 A. There was -- As I started to park right there in front
8 of the house on the roadway I exited my vehicle at the
9 driveway which I was not directly in front of the house. I
10 was actually just to give myself a little bit of room
11 before I was actually was seen by anyone in the house as I
12 approached somewhat in the driveway I started to walk up
13 the driveway and there is a -- it's not a chain link fence,
14 it's more of the hard fence as I've always called it. The
15 old rectangle barbed type fence, wire, across the yard
16 there. And right behind that was a brand new clean looking
17 dryer. It was obvious it was raining, it's the fall of the
18 year and leaves were falling all around us. As we were
19 standing there, there is a large water oak, acorn tree,
20 right there in the driveway, it was obvious as soon as I
21 saw it that item had not been sitting there for any length
22 of time.

23 MR. HUTCHINSON: Your Honor, may I approach the
24 witness?

25 THE COURT: Yes, sir.

1 BY MR. HUTCHINSON:

2 Q. Detective, I'm showing you what's been previously
3 marked as State's Exhibit Nine, Ten, Nineteen and Twenty.
4 Can you familiarize yourself with those?

5 (WITNESS REVIEWING EXHIBITS.)

6 Q. Could you tell the jury what you're looking at there?

7 A. These are photos of the dryer as we found it in the
8 back yard at [REDACTED]

9 Q. Now you mentioned before that you could -- that it had
10 been raining and you thought that you didn't see anything
11 on that item. Do those pictures show that whether it was
12 raining on that evening?

13 A. If you look closely at all four photos you can
14 actually see rain drops that are actually recorded when the
15 picture was taken. You can see the cleanliness of the
16 dryer that's sitting there. This is just showing the back
17 shot, you know, from behind it. Actually in the back yard.
18 You know another one as well.

19 Q. And are those accurate depictions of how the dryer
20 looked on that evening and the surrounding area?

21 A. Yes it is.

22 MR. HUTCHINSON: Your Honor, I'd like to move State's
23 Exhibit Nineteen and Twenty and Nine and Ten into evidence.

24 MR. SNOW: No objection.

25 THE COURT: Would be without objection.

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1 (WHEREUPON: STATE'S EXHIBITS NUMBER NINE, TEN,
2 NINETEEN AND TWENTY, IDENTIFIED AND MARKED, RECEIVED INTO
3 EVIDENCE.)

4 Q. Now when you first arrived did you go to the front
5 door of the street on Izzard Street?

6 A. Actually I stepped up the drive way area and could
7 directly see there was an air conditioner window, AC unit
8 in the front yard that had been striped out. In other
9 words the copper FAU bolts had been removed from it. And
10 there was a fence line I could see the dryer, at that time
11 I think direct knowledge that Mr. Robinson had been
12 identified that he had been involved in this. This item
13 was one of the items we was looking for and I knew then
14 that we were at the right location. I went around to the
15 front yard and started shining my flashlight through the
16 screen door or storm door and the female that was inside
17 the residence.

18 Q. And did you knock on the door? Did she come to the
19 door? Or how did you speak with her?

20 A. Ignored the flashlight being shined in her face and
21 all from outside the door and until I went all the way up
22 to the door and knocked on it. She was stoking, there was
23 a small one stove or pot bellied stove that's inside the
24 house and she was over there putting a log back on the fire
25 as I approached the door.

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1 Q. Did you later find out the name of that woman that you
2 initially had contact with at that time?

3 A. It was Monalisa MacIntosh.

4 Q. And at some point did you ask if you could come in the
5 house?

6 A. I spoke with her and told her why we was there, what
7 we was investigating and told her what was in her back
8 yard. And ask if she had any direct knowledge of these
9 items before I went any further with questioning her and
10 she had no idea where it came from. She just said she had
11 not been there earlier in the day. And then I ask her
12 permission to enter the residence, if there was anyone else
13 there.

14 Q. Now did you notice anything immediately upon entering
15 that house?

16 A. The living room or den area of the house is very
17 small. The second I walked in the door sitting right
18 inside the door on the floor was a air conditioner unit,
19 window air conditioner unit sitting right there, very
20 clean, not dusty or anything else like it had been sitting
21 there for any time.

22 MR. HUTCHINSON: Your Honor, may I approach the
23 witness?

24 THE COURT: Yes, sir.

25 Q. Now, Detective, I'm showing you what's been previously

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1 THE COURT: Yes, sir.

2 Q. Now, Detective, I'm showing you what's been previously
3 been marked as State's Exhibit Twelve, Thirteen and
4 Fourteen and Fifteen. Can you familiarize yourself with
5 those?

6 (WITNESS REVIEWING EXHIBITS.)

7 A. Yes, these are four photos of the air conditioner unit
8 as it was located inside the residence.

9 Q. And is that an accurate depiction of how it was in
10 the residence when you first saw it?

11 A. Yes, sir.

12 MR. HUTCHINSON: At this time I'd like to move State's
13 Exhibit Twelve, Thirteen, Fourteen and Fifteen into
14 evidence, Your Honor.

15 MR. SNOW: No objection.

16 THE COURT: Be without objection.

17 (WHEREUPON: STATE'S EXHIBITS NUMBER TWELVE THROUGH
18 FIFTEEN IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

19 BY MR. HUTCHINSON:

20 Q. Now, do one of those pictures show the entrance of the
21 home on Izzard Street?

22 A. Exhibit Number Fourteen shows actually from inside of
23 the house. The picture being taken back toward the door.
24 You see here's the door, it would be opened up toward the
25 inside with the air conditioning unit sitting right in the

1 floor.

2 MR. HUTCHINSON: Your Honor, if I could publish that
3 to the jury.

4 (STATE'S EXHIBIT NUMBER FOURTEEN PUBLISHED TO THE JURY
5 AT 03:10 PM.)

6 Q. Now do you remember from this room whether there were
7 surrounding rooms that you could see?

8 A. If you're looking as you come in the door right here
9 facing straight ahead, there was a door back there that ran
10 into a kitchen/dinette area. And you can see the TV
11 sitting here. The wood stove, it's right beside this and
12 then there's actually a doorway that leads into a bedroom.

13 Q. And did you ask Monalisa if you could search the rest
14 of the house?

15 A. At that time I told her, I ask her directly about this
16 air conditioning unit. She said she didn't remember it
17 being there earlier in the day. She had no knowledge of
18 who brought it into the house. She didn't know where it
19 came from. And I ask her is there any other items in the
20 house that she's not aware of being here earlier? At that
21 time she said she didn't know of any. I ask her if she
22 minded if we walked around and looked. She said it was
23 fine.

24 Q. Now, upon walking around, did you locate anyone else?

25 A. At this time I'm standing right here by the coffee

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1 table. And the air conditioner unit with her. I take a
2 step and a half and I observed Mr. Johnson laying across
3 the bed in the bedroom. And that was when Officer Watson
4 and Andrews who were inside the residence also with me, and
5 I told them to take custody of him.

6 Q. Just so we can get a good picture. Were you all in
7 the living room when you saw Mr. Johnson?

8 A. Right. The living room is probably ten by ten or
9 twelve by twelve at the most. It's a very small little
10 room. There's three officers, myself and Monalisa in this
11 little room with the coffee table and the chair and the
12 couch in there so it's pretty tight. So as we're stepping
13 through I moved to allow the two uniform officers to go
14 into the bedroom and detain Mr. Johnson.

15 Q. I'll take them. Thank you.

16 I'm showing you State's Exhibit Five and Six. Do you
17 recognize what's in those pictures?

18 A. Yes. This is the clothing Mr. Johnson was wearing at
19 the time we detained him out of the house. But it does not
20 show that he was also wearing a pair of tan colored boots.
21 I call them work boots. They would have a dark brown
22 padding or something on the top. He had those on as well
23 at the time.

24 MR. HUTCHINSON: Your Honor, if I may approach?

25 THE COURT: Yes, sir.

TIM AYERS: DIRECT BY MR. HUTCHINSON

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1 Q. I'm showing you what's been previously been marked for
2 identification as State Exhibit Eight and Nine. Can you
3 tell me what's in those photos right there?

4 A. This is a picture of the boots Mr. Johnson was wearing
5 when we detained him. As we got him up off the bed he had
6 these boots on along with the same clothing that is there.
7 And they were placed in a property bag, not in an evidence
8 bag. This is actually a property bag in the jail when this
9 picture was taken.

10 Q. If I may publish these to the jury, Your Honor.

11 THE COURT: Yes, sir.

12 (STATE'S EXHIBITS EIGHT AND NINE PUBLISHED TO THE JURY
13 AT 03:17 PM.)

14 BY MR. HUTCHINSON:

15 Q. Did you notice anything unusual about the boots? Did
16 they look like normal boots or anything unusual that you
17 noticed?

18 A. You could see that they were wet along with the bottom
19 of his clothing, his pants and his knees, wet and dirty.

20 MR. HUTCHINSON: I beg the Court's indulgence one
21 second. I'm sorry.

22 (PAUSE.)

23 MR. HUTCHINSON: Your Honor, I do apologize.

24 Q. Detective, is this picture represent the boots as you
25 remember from on that evening?

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1 A. Yes. Once I came back to the station and was trying
2 to work up the case further, I ask one of the other
3 officers to go back and take pictures of the boots. He
4 directly brought me a copy of the photo and ask if that was
5 okay. That's directly what I saw from the jail.

6 MR. HUTCHINSON: And I'd like to move State's Seven
7 and Eight into evidence.

8 THE COURT: Be without objection.

9 (WHEREUPON: STATE'S EXHIBIT SEVEN AND EIGHT
10 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

11 Q. Now at that point, was the defendant eventually
12 arrested on that evening?

13 A. Yes he was arrested.

14 Q. And who handled the arrest?

15 A. The officers that transported him back to the station.
16 Yeah they secured him at the Moss Center but I actually
17 typed the warrants and had them signed by a judge.

18 Q. Now, at some point did Mr. William Jackson come to 677
19 Izzard Street?

20 A. While I was there and as we made the approaches as I
21 said before we can visibly see the dryer right away. Went
22 inside located the air conditioner unit visibly sitting
23 right there inside the door. Spoke with Monalisa, looked
24 at the rest of the residence did not locate anything else.
25 And then we found outside of the driveway either a carport

1 at one time about to fall down leading up behind the oak
2 tree was another one of the air conditioner units. Knowing
3 that these were the items that Mr. Jackson had described as
4 being stolen from his property, I called the officers at
5 the scene and ask them to have Mr. Jackson come over there
6 and identify his property.

7 Q. Detective, I'm showing you what's been previously
8 marked for ID State's Exhibit Eleven, Sixteen, Seventeen
9 and Eighteen. Could you familiarize yourself with those?

10 (WITNESS REVIEWING STATE'S EXHIBITS SIXTEEN, SEVENTEEN
11 AND EIGHTEEN.)

12 Q. Could you tell us what each of those exhibits are?

13 A. Number Eleven is actually the back of the dryer; shows
14 it's an Electrolux major appliance, taking a picture of it.
15 I'm not positive on this one. The coding on the air
16 conditioner on the appliance I cannot directly say. This
17 is a picture of the second air conditioner unit that was
18 out in the back yard or side yard there in the driveway
19 leaning up against the tree. And this is also another
20 picture of the dryer that was in the back yard.

21 Q. Now, do those in your hand, let me hold on to them
22 just one second. Now, do Exhibits Sixteen, Seventeen and
23 Eighteen accurately reflect what you saw in the back yard?

24 A. Yes they do.

25 MR. HUTCHINSON: Your Honor, I'd like to move Sixteen

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1 and Seventeen and Eighteen into evidence.

2 MR. SNOW: No objection, Your Honor.

3 THE COURT: Be admitted without objection.

4 (WHEREUPON: STATE'S EXHIBITS SIXTEEN, SEVENTEEN AND
5 EIGHTEEN, IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

6 Q. And Mr. Jackson came to Izzard Street. Did he also go
7 take a look at the stuff outside and inside the house?

8 A. He did not go inside the house. I had gone through
9 the inside of the house and there was another air
10 conditioner window, air conditioner unit inside the house
11 and it had a pile of cloths on it. You could tell it had
12 been sitting there for a while. I knew that property was
13 not going to be part of Mr. Jackson's. I looked around,
14 didn't appear to be any other appliances inside. When I
15 went outside and met with Mr. Jackson I ask him to step to
16 the backyard and look because there was several push
17 lawnmowers and other items all in the backyard. Just to
18 verify Mr. Jackson looked at the items. I think there was
19 also a air compressor and some ice cycles. He looked
20 around and said no none of that stuff was his. Just the
21 two AC units and the dryer.

22 Q. So even though there was other stuff around, Mr.
23 Jackson was able to immediately identify what was his?

24 A. That's correct.

25 MR. HUTCHINSON: I beg the Court's indulgence just one

TIM AYERS: CROSS BY MR. SNOW

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1 moment.

2 (PAUSE.)

3 MR. HUTCHINSON: No more questions at this time.

4 MR. SNOW: I ask, Mr. Solicitor, can I use your
5 pointer if you don't mind?

6 May I, Judge?

7 THE COURT: Yes, sir.

8 CROSS EXAMINATION

9 DETECTIVE TIM AYERS BY MR. SNOW:

10 Q. Mr. Ayers, you're the case agent in this case.

11 Correct?

12 A. That's correct.

13 Q. And I think you testified that pretty much you're the
14 man. Or a person that is responsible kind of gathering
15 information, compiling it all together.

16 A. Yes.

17 Q. Is that fair to say? And you also want to make sure
18 that you have the witness's that may be pertinent in this
19 case?

20 A. That's correct.

21 Q. Let's go back, on direct. I want to make sure I
22 understood you. YO uindicat4d, how long after the incident
23 how long after the two suspects disbursed? Let me rephrase
24 the question. How long after Mr. Robinson was apprehended
25 or came out of the store do you think you came up?

TIM AYERS: CROSS BY MR. SNOW

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1 A. It would be an estimation probably three to five
2 minutes.

3 Q. Not long?

4 A. Right.

5 Q. And how long after that point were you on Izzard
6 Street?

7 A. I was probably in front of Park Grocery and at the
8 house at 7:22, ten minutes at the most. You know, getting
9 the basics, speaking with the witness, speaking to that
10 witness trying to line people up to take statements. There
11 was another detective on duty that wasn't working the case
12 at all and wasn't involved, trying to talk to those people
13 and get things going so I was there probably eight to ten
14 minutes.

15 Q. Would you say that's an estimate of how long you were
16 there?

17 A. Right.

18 Q And that's also an estimate of how long after Mr.
19 Robinson came out of the store that you pulled up that he
20 came out of the store that you pulled up?

21 A. Yes. Correct.

22 Q. I draw your attention to -- Direct your attention to
23 Court Exhibit, this is the store where we're all talking
24 about. Right?

25 A. That's correct.

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1 Q. And this is Main Street. Correct?

2 A. That's correct.

3 Q. And this is Izzard Street?

4 A. Yes, sir.

5 Q. And this is [REDACTED] right about this area.

6 Can you see? You can step down if the Judge allows it.

7 Is it the third house on the left?

8 A. Right.

9 Q. Is it fair to say right here?

10 A. Yes, sir.

11 Q. Now, the second suspect that was allegedly wearing the
12 stripe shirt. Was -- You say he went down Keels. Keels.

13 Right? Keels.

14 A. He was seen going across the parking lot and then
15 turning the corner onto Keels Street. Keels Avenue, right.

16 Q. And this is Keels. Right. Okay. So you didn't
17 mention that he went this way; isn't that right?

18 A. Correct.

19 Q. Well, but Izzard Street is right here?

20 A. Yes.

21 Q. Let's talk about, you're familiar with the Case
22 Summary?

23 A. Yes, sir.

24 Q. This is I would imagine your report?

25 A. The court case summary is a document that we use to

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1 explain the case for probable cause hearings. For the most
2 part it's used for probable cause hearings, preliminary
3 hearings.

4 Q. I understand.

5 A. They have all the basics in there.

6 Q. But you acknowledge its an important document?

7 A. It holds a lot of the case structure in there.

8 Q. Do you have one there in front of you?

9 A. No, sir, don't believe so.

10 Q. Take a look up there. I don't want to crowd you. If
11 you have one there already, if you don't I have one, get
12 one for you.

13 MR. SNOW: May I approach, Judge, just to show him
14 this?

15 And I'll let you take a good look at that, Officer,
16 and I'll stand back. On that document I know you said you
17 know you done put everything in that document. Officers
18 Andrews testified earlier that Mr. Mason, Mr. Mason Johnson
19 said "I been here all day."

20 A. Correct.

21 Q. Is that anywhere in that report with that in it?

22 A. No.

23 MR. SNOW: May I approach, Judge?

24 THE COURT: Sure.

25 Q. Now, you learned from -- One of the reasons you went

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1 to [REDACTED] is because you had learned you through
2 your investigation that Mr. Robinson had mentioned Mr.
3 Mason as a suspect?

4 A. No, sir.

5 Q. You didn't learn that?

6 A. No, sir, not at that time. When I spoke with Mr.
7 Robinson, he told me that he lives at [REDACTED] so
8 I went to [REDACTED]

9 Q. But at some point you did learn he said Mr. Mason
10 Johnson was involved. Right? From him.

11 A. I'd have to go back and look at the notes on that.
12 But on his actual statement I don't believe it's in the
13 summary. It says that way I would have to look at it and
14 see.

15 Q. Well, you heard Officer -

16 MR. SNOW: May I have a moment, Judge?

17 THE COURT: Yes, sir.

18 (PAUSE.)

19 Q. Officer Price.

20 A. Yes.

21 Q. Indicate to you that Mr. Robinson had mentioned Mason
22 Johnson was involved. Did you hear him testify?

23 A. I heard Officer Price say he had gotten information
24 from Mr. Robinson that Mason Johnson was involved.

25 Q. Right. That's what I'm saying.

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1 A. But I don't have it documented that, that was directly
2 related to me.

3 Q. Well, okay, but you did hear him say that.

4 A. I heard that in court yes.

5 Q. And you don't have any reason to doubt that?

6 A. No, sir.

7 Q. Okay. So officers were aware that Mr. Mason -- that
8 Mr. Robinson had mentioned Mason Johnson as a suspect?

9 A. That's what Officer Price testified to yes.

10 Q. Now, when you get to the [REDACTED] Mr.
11 Johnson is in the bedroom?

12 A. Correct.

13 Q. And does he come out of the bedroom or does he stay in
14 the bed?

15 A. We're walking in, we're talking thirty seconds here,
16 I'm speaking to her twenty, thirty seconds in the den. We
17 step forward, I noticed the headboard is against the wall
18 here which is the front of the house. He's laying at an
19 angle across the bed and has a blanket kind of thrown over
20 him a little bit. There is a guy right here in the
21 bedroom, and they say come on out, the two officers
22 actually step into the bedroom with him because you can't
23 see his hands or anything else for officers safety. They
24 go to him, make contact with him and then bring him out of
25 the bedroom.

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1 Q. So he's laying across the bed?

2 A. Correct.

3 Q. And not in the bed as you're sleeping?

4 A. No.

5 Q. Across the bed?

6 A. Yes.

7 Q. That's usual?

8 A. Uh-huh.

9 Q. You ever done that before; laid across the bed with
10 shoes on?

11 A. Yes. As long as my wife didn't catch me.

12 Q. I understand. So, and he comes out the bedroom or
13 either he's in the bedroom and you take him into custody?

14 A. Correct.

15 Q. It was Officer Andrews. Correct? He was cooperative?

16 A. Yes, sir.

17 Q. Didn't resist, didn't fight, or anything. And on this
18 house on Izzard Street there's a back door isn't there?

19 A. There is.

20 Q. There's a back door. Well, let's talk about --

21 MR. SNOW: If I may approach, Judge, and look at some
22 of the exhibits. Thank you, Judge.

23 Q. I'm going to show you what's been marked State's
24 Exhibit Eighteen. What is that?

25 A. That is the dryer sitting in the back yard.

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1 Q. That was found at the location, Izzard Street?

2 A. That's correct.

3 Q. And this is, to your knowledge, or to your belief, you
4 believe that's the air conditioner that was brought down
5 from Mr. Jackson's house?

6 A. The dryer that was identified by Mr. Jackson as being
7 his property.

8 Q. In looking at that dryer, is it -- does it have smooth
9 surfaces to it?

10 A. Yes.

11 Q. And would you say it's smooth surface, how many sides?

12 A. The three sides, the top, the back, you know it's got
13 galvanized plate, I'd guess you'd say, not quite as smooth.

14 Q. Would you also say that's an air conditioner that has
15 at least some smooth surfaces to it as well?

16 A. That's correct.

17 MR. SNOW: I beg the Court's indulgence. I want to go
18 through this, Judge, and just look at some of the pictures.

19 (PAUSE.)

20 Q. I believe this is another air conditioner.

21 A. That's the one inside; that's correct.

22 Q. Would you indicate that's a very smooth surface as
23 well?

24 A. Yes, sir.

25 Q. Well, these items that the State has presented to you,

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1 and that was taken from Mr. Jackson's house.

2 A. Yes.

3 Q. Were brought from here to there?

4 A. Correct.

5 Q. To your knowledge they were brought there manually.

6 In other words they weren't put in a car or truck or
7 anything?

8 A. By witness statements they were pushed there on a
9 lawnmower.

10 Q. You have extensive training but you're not a finger
11 expert, but you're familiar with your training about
12 fingerprints?

13 A. That's correct.

14 Q. And is it fair to say the fingerprints while not
15 perfect certainly you see here to extract fingerprints off
16 a smooth surface?

17 A. That's correct.

18 Q. Than a rough surface?

19 A. That's correct.

20 Q. Well in this case did you officers or anybody take any
21 fingerprints?

22 A. The rain that was coming down on these items, it's
23 been wet, you can't put the dust on there. So as you put
24 the fingerprint powder on it comes up and destroys the
25 feather duster you use and those type things. I mean it was

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1 just... it's not a process we can go through on items
2 outside.

3 Q. Now is an air conditioner inside?

4 A. That's correct.

5 Q. Of the house. And I think there was testimony it
6 wasn't wet?

7 A. No, sir, sure wasn't.

8 Q. Anybody try to fingerprint that?

9 A. No, sir.

10 Q. Why not?

11 A. At that point in the investigation we had one suspect
12 in custody and we developed basically the second suspect to
13 the identification, through the clothing description that
14 was given other than the stripe shirt that had been
15 discarded. And these items being found at the residence
16 where he was. We did not go through the procedure or
17 fingerprinting.

18 Q. Tell me this. Throughout this investigation Mr.
19 Robinson is a key person that told you it was Mr. Mason?

20 A. He didn't tell me that.

21 Q. Not you personally but you knew he was a key witness
22 in this case didn't you?

23 A. He was a key witness in this case.

24 Q. That's right. And no one bother to get any
25 fingerprints?

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1 A. No, sir.

2 Q. Did anyone bother to go to the house? This man's
3 properties been taken. Did anyone go to the house to get
4 fingerprints?

5 A. That I do not believe they did either.

6 Q. Not on the door?

7 A. No, sir.

8 Q. Not inside?

9 A. No, sir.

10 Q. What about boot prints?

11 A. I don't believe that the officers on scene even took a
12 picture of the door being kicked in.

13 Q. Well certainly if there were fingerprints would that
14 have been strong evidence to support your case?

15 A. Yeah it would be.

16 Q. And certainly if there were fingerprints taken
17 wouldn't it also, could it possibly even excluded or
18 included Mr. Mason, Mr. William Jackson?

19 A. Mr. William Jackson?

20 Q. Not the good Jackson, not this guy. The other guy.

21 A. William Jackson the black male was never any part of
22 the investigation.

23 Q. Well certainly if you had taken fingerprints off of it
24 and it came back and in fact he touched it, wouldn't he be
25 a suspect or at least a victim if his fingerprints were on

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1 it?

2 A. He was never even indicated as being around.

3 Q Well, what I'm asking -

4 A. True. If it was it would eliminate you as well to
5 make sure that you weren't there. But I mean we had direct
6 information that this person and we developed this person.
7 So there was no sense going after Mr. Jackson as well. He
8 had been positively removed as a suspect by the witnesses
9 saying no that's not the guy.

10 Q. Well let's be fair now. There's a difference between
11 me and Mr. Jackson. I wasn't questioned.

12 A. Correct.

13 Q. All right.

14 A. Correct.

15 Q. Even though I need to - that's not the question;
16 right?

17 A. Correct.

18 Q. And certainly it could have included other people we
19 don't know that but it did not have -- but you did do that,
20 no one in the investigation bothered to do that at all?

21 A. No, sir.

22 Q. Would anybody think that this wasn't an important case
23 enough to do that?

24 A. Yes. We had probably five or six officers tied up and
25 the other officers stayed and we only have nine officers

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1 working the whole city of Rock Hill at one time so there
2 was a lot of man power going into it at that point. Now
3 its kind of like organized chaos when you have something
4 like this going on, we're looking at it now over two days.
5 But at the time that the officer arrives on scene and he's
6 got a suspect walking away from him he's putting his hands
7 on him things are happening in seconds. Not in minutes.
8 Things are happening quickly. And my responsibility is to
9 find that evidence. My responsibility is to find those
10 witnesses. My responsibility is to take care of suspects,
11 getting statements from them and that type stuff. Now that
12 number of officers that are on scene and several of them
13 having plenty of experience they know their job as well.
14 It was an over sight and an assumption. Somebody should
15 have taken pictures of a kicked in door. But it's one of
16 those things I look now and say well I should have. But
17 did I have enough evidence with what I had to go forward
18 with my case and I said yes and that's what I presented to
19 a judge.

20 Q. I'm not arguing that you had enough evidence to go
21 forward. What I'm asking, this case is an important case
22 not only to my client but certainly to a man that's been a
23 victim.

24 A. Anytime somebody's freedom is at stake it's an
25 important case. But Mr. Jackson other than the evidence we

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REDIRECT BY MR. HUTCHINSON

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1 received we were able to get his property back.

2 Q. Get it back.

3 A. Released him as a victim but anytime somebody's going
4 to be looking at losing their freedom it is important.

5 Q. But it wasn't important enough to go the next day and
6 take fingerprints, the next day when things calmed down?
7 No one did that?

8 A. No.

9 Q. Do you know why?

10 A. No. No idea. It was just the case was pretty much
11 closed and then you move on to the next case.

12 Q. While there were -- In that store did you find anybody
13 in the store? The store owner, the cashier in the store
14 that testified or gave you a statement that Mr. Mason
15 Johnson was there near the store.

16 A. No.

17 Q. No one else?

18 A. No.

19 Q. Thank you.

20 MR. HUTCHINSON: Just a few more questions, Detective.

21 Mr. Snow, you have the pointer?

22 MR. SNOW: It's right here.

23 MR. HUTCHINSON: Thank you.

24 REDIRECT EXAMINATION

25 DETECTIVE TIM AYERS BY MR. HUTCHINSON:

1 Q. Now, Detective, Mr. Snow ask you initially about one
2 of the suspects going around the corner of the building
3 right here; is that correct?

4 A. Correct.

5 Q. Now, where does this street lead? Does this street
6 intersect with another street back here?

7 A. Yes, sir. If you were to come from Jones Street that
8 you can see right here at the corner of the church
9 property.

10 Q. This little street right here?

11 A. Yes, sir. Go up East Main Street toward Keels Avenue
12 if you considered that one block, that little section of
13 Keels Avenue that you see going off the screen is half a
14 block to Black Street. I mean it's a very short little
15 section. There might be one house or two houses that
16 actually face Keels Avenue. Most of the houses are facing
17 either Main Street or Black Street. All the houses their
18 back yards back up to each other on Black and Main.

19 Q. So would it be safe to say there's other possible ways
20 to get to Izzard Street other than just Main Street? If
21 you're coming down Keel's right here.

22 A. Can you put the other picture up?

23 Q. Sure.

24 A. If you notice across the back of the store there is a
25 little white house; that's actually Keels Avenue.

TIM AYERS: REDIRECT BY MR. HUTCHINSON

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1 Q. This right here?

2 A. Even if there is a fence or anything else I can cut
3 right across the back of that store, I can come right back
4 through these houses over here. I can run right down to
5 Black Street, turn up Jones Street, I can cut down Black
6 Street cut through anybody else that's passed through
7 anybody else's backyard down through there. We have
8 individuals run all the time through those paths and
9 officers have to chase them that lead back to Izzard Street
10 actually.

11 Q. Now, let's talk specifically about when you found Mr.
12 Johnson, when you found him on the bed. Did you notice
13 anything of the ordinary about his appearance other than he
14 was laying on the bed and had a cover on?

15 A. Like I said, his knees, pants, legs were kind of moist
16 and wet. The cuff link area of his pants were wet. His
17 boots were wet. There's one statement that's in this
18 summary that says about non consistent with walking to the
19 store. You know it was a statement that was made. Had
20 walked to the store and back. It was not pouring down rain
21 to where you would be soaking wet. I was not soaking wet
22 from this. It was raining. You would notice the rain was
23 falling but it was not a down pour of any kind. And just
24 to walk down the street on the sidewalk and even if you
25 come through a little bit of grass it might be a little

1 moist but to get your knees wet and those type things it
2 was just not consistent with a walk, casual walk to the
3 store. He's been outside and it's very cool. He's wearing
4 a torn off T-shirt. If you're cool outside you're going to
5 be wearing a layer or jacket or something of that nature.
6 There's nothing indicating that way so it was just not
7 consistent with what was there.

8 Q. Now, thinking back six months later, would there have
9 been things you would have differently if you had the
10 chance in this investigation, could there have been more
11 things that could have been done?

12 A. You can always do more on a case. In looking back
13 fingerprints would have been a nice idea to go after. But
14 when I went with the evidence that I had to present to the
15 judge to have probable cause to have a warrant issued it
16 was sufficient evidence there.

17 Q. Now when you retrieve the property of a victim, what's
18 your first concern in dealing with that property?

19 A. It depends on the evidentiary value. If I've got a
20 victim that's been shot, and he's got a bullet hole in him
21 and it's got blood stains on it that's gonna really be
22 something that's needed in court, then I want to hold that
23 piece of property, put it into evidence, have DNA analysis;
24 the expensive stuff done to process through to determine
25 who actually had it on. Does it match up with the

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1 injuries? A property crime such as this the biggest thing
2 is storage of that space that we could have held, the dryer
3 and the air conditioner units are all in the evidence room.
4 But the purpose of them; what would be the purpose in
5 holding those items to bring into the courtroom when we can
6 document them with a photograph. So we would want to
7 return those items as quickly as we can to the victim to
8 give them their property back. To let them have use of
9 what they've been -- was stolen from them.

10 MR. HUTCHINSON: I beg the Court's indulgence one
11 moment.

12 (PAUSE.)

13 MR. HUTCHINSON: No further questions, Your Honor.

14 MR. SNOW: A few more questions, Judge, if I may.

15 THE COURT: Yes, sir.

16 RE CROSS EXAMINATION

17 DETECTIVE TIM AYERS BY MR. SNOW:

18 Q. Officer Ayers, let me make sure I understood you
19 correctly. You indicated on direct testimony that the
20 pants were wet on the knees.

21 A. Moist on the knees. Not dripping wet. There was
22 moisture there.

23 Q. Doesn't your report say it was wet from the knees
24 down?

25 A. Yes.

1 Q. Wet from the knees down. Not just on the knees?

2 A. Right.

3 Q. Right. So that's a little different wouldn't you say?

4 A. Could be considered that a way yes.

5 Q. Now, just hypothetically. From your experience what
6 happens if you carry an umbrella and it's raining? It's
7 not unusual that your pants on the bottom gets wet?

8 A. Depends on how heavy the rain is falling.

9 Q. Right.

10 A. And how big the umbrella is. I mean which way is the
11 wind blowing. You know you could have. You got a rain
12 coat on and the rain is going to hit you right where the
13 rain coat stops. Same thing with an umbrella.

14 Q. And you would acknowledge because you just said
15 earlier it was wet enough that the appliances were on the
16 outside, got wet, so wet that you couldn't take
17 fingerprints. Right?

18 A. Any moisture that's falling on them you're not going
19 to be able to do fingerprints; that's correct.

20 Q. So they were wet and it was raining?

21 A. Correct.

22 Q. Now, you said he didn't have on, he had on a T-shirt.
23 No one said he went to the store with just a T-shirt on did
24 he?

25 A. No.

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1 Q. You didn't ask him if he had a jacket on?

2 A. I didn't ask him any questions.

3 Q. So he could have had a jacket on and took it off?

4 A. Could have.

5 Q. Okay. I want to make sure you're not saying that,
6 that he didn't have a jacket on.

7 A. What I was ask was, What did you observe? What I
8 observed was not consistent with somebody that just walked
9 to the store.

10 Q. Right. And that's certainly your opinion.

11 A. Correct.

12 Q. Now, you indicated -- I want that pointer back --
13 that the person could a come across here. Now if I recall
14 is there a fence right here?

15 A. I don't know.

16 Q. You don't recall. But in order you would acknowledge
17 that in order to get here on Izzard Street you would have
18 to certainly and you go this way you would have to circle
19 around and come through this area some how.

20 A. It would be doubling back.

21 Q. Doubling back. Doubling back. Well you don't mention
22 you didn't see any grass or anything on Mr. Mason Johnson
23 did you?

24 A. I don't recall any grass on him at all.

25 Q. Any tree leaves?

1 A. I don't recall any.

2 Q. Any straw?

3 A. No, sir.

4 Q. Did you interview anyone that said they saw him
5 running through here, Mason Johnson?

6 A. No, sir.

7 Q. Not one person?

8 A. No, sir.

9 Q. Not one person that said he was running through here.
10 Now, do you know he walks with a limp? Have you ever seen
11 that? Did you know that?

12 A. I don't recall that I ever noticed it.

13 Q. Let's talk about it. One question. Do you know where
14 he works?

15 A. Where he works?

16 Q. Did you learn through this investigation where he
17 works?

18 A. I heard Mr. Robinson say about -- something about he
19 was working construction, maybe they were working at the
20 new Walmart that was being built at the time. I can't
21 remember if Mr. Johnson was also working with him or not.
22 I think he might have been.

23 Q. So doing construction wouldn't you say the boots he
24 was wearing were construction boots?

25 A. Correct.

1 MR. SNOW: Nothing else.

2 THE COURT: Thank you, sir. You can stand down.

3 (WITNESS LEAVING WITNESS STAND.)

4 MR. HUTCHINSON: Your Honor, at this time the State
5 rest.

6 THE COURT: Good time to take a recess I think.

7 Madame Forelady, members of the jury panel, we been at
8 it a little over an hour and a half. Go ahead and take a
9 recess at this time. You may refresh yourselves during the
10 break. Please do not being discussing the case, you are
11 not ready to do that. Thank you.

12 (JURY EXITS COURTROOM AT 03:50 PM.)

13 THE COURT: Any motions you wish to make at this time?
14 The State's rested.

15 MR. SNOW: Judge, we have motions to dismiss at this
16 point. Judge, insufficient evidence on multiple charges.
17 Judge, very briefly. I don't think the State has met the
18 burden, even in the most favorable light to the State. I
19 don't think we have enough evidence on either charge to go
20 forward to the jury.

21 THE COURT: The State wish to be heard on the motion?

22 MR. HUTCHINSON: Yes, Your Honor, just briefly.

23 Just going over the elements in this case. As far as
24 burglary 2d degree, we have shown evidence to the fact this
25 occurred in York County at a building, the hours of

1 darkness without consent, with intent to commit a crime
2 therein. We've had testimony from co-defendant Mr.
3 Robinson that he was with him the whole time, that he did
4 this and we do have evidence that the building was broken
5 into and stuff was stolen.

6 In reference to the grand larceny charge, Mr. Jackson
7 did testify the goods were valued at greater than a
8 thousand dollars. From his knowledge. And we did believe
9 there is sufficient evidence to prove that the defendant in
10 York County did take goods valued at greater than a
11 thousand dollars with the intent to deprive Mr. Jackson of
12 those goods for grand larceny as well.

13 THE COURT: Yeah, I think mr. Jackson testified the
14 goods were worth between one thousand and fifteen hundred
15 dollars so we have testimony on that. Of course in looking
16 essentially, counsel is making a motion for a directed
17 verdict, rather than a motion to dismiss in looking at a
18 motion for a directed verdict the Court's required to look
19 at the evidence most favorable to the party against who the
20 motion is being made. In looking at the evidence in the
21 light most favorable to the state I find there is
22 substantial evidence from which the jury could infer the
23 State had proven the elements of these two offenses beyond
24 a reasonable doubt. The weight of the evidence, the
25 credibility of the witnesses, those are all matters for the

1 jury and not for the Court. And I find there is
2 substantial evidence. You've gone through most of that,
3 Counsel, so I'm not going to go back through it as I
4 usually do for the record but I think there is substantial
5 elements to be submitted to the jury. I will point out one
6 additional thing. And that is in going back to the
7 eyewitness identification in this case by Mr. Gordon. I
8 point out at the time I made my observations at the time I
9 ruled on the motion, with regard to the identification, I
10 did not know Mr. Gordon had been taken to Izzard Street,
11 had observed William Jackson, because they had stopped him
12 there, known to him there at that house and he'd gone there
13 and looked at him and positively said that was not the
14 person who robbed him. And what's the importance of that?
15 The importance is if he can positively say this guy was not
16 one of the robbers, not robbed him or not one of the
17 robbers, obviously he got a good enough look at the person
18 to know who he was looking at because otherwise he can't
19 say if it was him or not. He said absolutely that's not
20 him. So if he can say that he also got a good enough look,
21 it appears to the Court, and certainly you can infer he got
22 a good enough look to do this was not the guy. And he also
23 knew who the guy was or could identify so that's just tends
24 to support the identification of his testimony with regard
25 to the identification of Mr. Johnson at the scene. So in

1 any event that's the Court's ruling. Deny motion for
2 directed verdict. Anything else?

3 MR. SNOW: Nothing further, Judge.

4 MR. HUTCHINSON: Nothing from the State, Your Honor.

5 THE COURT: All right. Have you made a decision on
6 whether the defendant is going to testify?

7 MR. SNOW: Judge, I'd like a moment to speak with him.

8 THE COURT: Give me the offenses with which you intend
9 to impeach him if he were to testify, if he makes his
10 decision.

11 MR. HUTCHINSON: If I can have one brief moment, Your
12 Honor.

13 (PAUSE.)

14 MR. HUTCHINSON: Your Honor, would you just like me to
15 list those?

16 THE COURT: The ones you intend to impeach him yes,
17 sir.

18 MR. HUTCHINSON: Yes, Your Honor.

19 The defendant has a shoplifting, first offense
20 conviction, November 1984. He has a shoplifting 2d offense
21 conviction from January 1986. And, Your Honor, if I may
22 approach briefly, I made a listing of all his convictions.
23 I don't intend to use all of them, but just so you have the
24 list and the different dates -

25 THE COURT: All right.

1 MR. HUTCHINSON: --- as I'm going over this. Again
2 there is a grand larceny from 1986, burglary 2d degree in
3 December of 1986. Burglary 2d degree, violent in 1992.
4 Petit larceny from September 1992. Burglary 2d degree,
5 violent from June of 1995. Petit larceny from June 1995.
6 Shoplifting from March of 1996. October 19, '98 a
7 shoplifting. Those are the only convictions we feel we'd
8 be able to impeach him on, Your Honor, as dealing with
9 dishonesty.

10 THE COURT: All right. Say those again, Counselor.
11 Say those again, which one you're relying on. How about
12 the threatening the life of a public employee?

13 MR. HUTCHINSON: Your Honor, in all honesty we don't
14 have a certified convictions in front of us today. So I
15 wouldn't feel comfortable in impeaching him on those.

16 THE COURT: How about the shoplifting 3d or
17 subsequent?

18 MR. HUTCHINSON: Yes, Your Honor.

19 THE COURT: 2006?

20 MR. HUTCHINSON: Yes, Your Honor.

21 THE COURT: Did he serve any time on any of these? Do
22 you know?

23 MR. HUTCHINSON: I would have to go back ---

24 THE COURT: The burglaries?

25 MR. HUTCHINSON: --- and look at his record. I do

1 believe so, Your Honor. If you'll give me one moment I can
2 take a look.

3 THE COURT: Let's go ahead and take a look at that and
4 we'll go ahead and take a break and give you a chance to
5 look at that. Give everybody a break and come back and
6 we'll discuss which ones you intend to impeach him with if
7 he testifies.

8 MR. HUTCHINSON: All right. Thank you, Your Honor.

9 THE COURT: You all can go over that as well with
10 counsel. Let's take about fifteen minutes.

11 (COURT IN RECESS AT 04:00 PM.)

12 (COURT BACK IN SESSION AT 04:15 PM.)

13 (DEFENDANT REENTERING COURTROOM.)

14 THE COURT: Okay, Counsel, has the defendant made his
15 decision whether he's going to testify or not?

16 MR. SNOW: Judge, I've counseled with my client, he
17 indicated to me he wishes not to testify.

18 THE COURT: I need to question him about that under
19 oath, so if you'll bring him around.

20 (DEFENDANT PUT TO THE BAR.)

21 MADAME CLERK: Raise your right hand, place your left
22 hand on the Bible.

23 (WHEREUPON: MASON JOHNSON,
24 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

25 THE COURT: Sir, for the record you're Mason Johnson;

1 is that right?

2 MR. JOHNSON: Yes, sir.

3 THE COURT: Mr. Johnson, we reached the stage of your
4 trial where you may present your defense. You have a right
5 to testify in your own behalf; however, no one can make you
6 testify. In the event you have any record or a conviction
7 involving dishonesty or a false statement for a crime
8 punishable by imprisonment for more than one year, this
9 court determines the probative value of admitting this
10 evidence outweighs the prejudicial effect to you the
11 Solicitor would be able to introduce this record for
12 impeachment purposes to attack your credibility. If you
13 elect not to take the stand then I would charge the jury
14 that they are not to enter the fact that you did not
15 testify any consideration whatsoever. And there is to be
16 absolutely no prejudice to you because you did not testify.
17 It is left entirely up to you whether or not you testify.
18 You may talk with your attorney, your family, your friends
19 or anyone else but the ultimate decision is left entirely
20 up to you. Do you understand that it is your decision as
21 to whether you will or will not testify in your case?

22 MR. JOHNSON: Yes, sir.

23 THE COURT: Have you discussed with your attorney the
24 advantages and disadvantages of testifying in your case?

25 MR. JOHNSON: Yes, sir.

1 THE COURT: And do you wish to testify, sir?

2 MR. JOHNSON: No, sir.

3 THE COURT: Is that your decision, sir?

4 MR. JOHNSON: Yes, sir.

5 THE COURT: Thank you. You may return to your seat.

6 MR. SNOW: Thank you, Judge.

7 (DEFENDANT AND HIS ATTORNEY RETURNED TO THEIR SEATS.)

8 THE COURT: I don't think we have to get into the
9 impeachable offenses then. We don't have to get into that
10 even though some of these of course they are not
11 impeachable. Some of them would be. All right. Do you
12 plan to put up any testimony, counselor?

13 MR. SNOW: I have, Judge.

14 THE COURT: You will?

15 MR. SNOW: No. I won't, Judge.

16 THE COURT: You will not put up any. All right. Then
17 when we bring the jury back, Counsel, I'll ask you to rest
18 on the record and then I'll go ahead and then send the jury
19 home. We're not going to charge this late in the day. So
20 we'll send them home and start arguing and charging in the
21 morning. So, what I'd like for you to do, dismiss the jury
22 for the day and ask you to meet with me in chambers. I
23 want to run through the charge on the law with you this
24 afternoon while we got a chance to do that. So you'll know
25 what my charge is gonna be per argument. Okay.

1 All right, please bring the jury in, sir.

2 You'll need to do that on the record in front of the
3 jury if you will.

4 MR. SNOW: Yes, sir.

5 (JURY REENTERS COURTROOM AT 04:20 PM.)

6 THE COURT: Counsel, you ready to proceed?

7 MR. SNOW: Yes, Judge.

8 Judge, at this point the Defense rest.

9 THE COURT: All right. Madame Forelady, members of
10 the jury panel, I started to tell you not to get too
11 comfortable in your chairs. This is going to conclude all
12 the taking of testimony and evidence in the case. We have
13 yet to remain final arguments from counsel and my
14 instruction to you with regard to the law that applies to
15 the issues in this case. We don't start arguments and
16 charge after, usually after Four o'clock in the afternoon
17 because that's going to put us into the night for sure, by
18 the time we were able to get it to you to start
19 deliberating. So we'll go ahead and recess for the
20 evening. We will begin arguments and charge in the
21 morning. I'm going to ask you to be in the jury room ready
22 to go at 9:30. At 9:30 we'll try to get started promptly
23 at 9:30. Let me remind you on the over night recess,
24 please do not discuss the case among yourselves or with
25 anyone else including family or friends. You're welcome to

1 do that after the trial is over and the verdict is in.
2 Please do not read, listen to, or watch any media account
3 of the trial. If there should be any media. I do not know
4 of any. There is probably not any but if there should be
5 please do not read, listen to, or watch any media account
6 until after the trial is over. Please do not go on the
7 internet and try to get any information about anything
8 about this case including any reading if there should be
9 any. Thank you. Please have a pleasant night tonight and be
10 back in the jury room at 9:30. Thank you.

11 (JURY EXITS COURTROOM AT 04:23 PM.)

12 THE COURT: All right, Counsel, I'm going to ask you
13 to meet with me, take a few minutes, meet me in chambers
14 and let me run through the charge with you.

15 Mr. Marthers is in the back, you're free to go. I'm
16 not going to keep you here any longer. This concludes your
17 service for the week. You're free to go.

18 MR. MARTHERS: Thank you, sir.

19 MR. HUTCHINSON: Your Honor, there is one matter, if I
20 can address it real quick. It's my understanding that the
21 Defendant entered into evidence as Defense Exhibit One.
22 Mr. Gordon's statement; therefore, --

23 THE COURT: He marked it.

24 MADAME COURT REPORTER: ID. I have it down for ID.
25 only, Judge. I think.

1 MR. HUTCHINSON: It's my understanding it did enter
2 into evidence, Your Honor. I apologize.

3 THE COURT: Now, there was something that was marked
4 for ID. I thought it was offered into evidence. He said
5 it was -- You all agreed to that. I don't know if it's his
6 statement or something.

7 MR. HUTCHINSON: There was something that we agreed on
8 to enter into evidence.

9 MADAME COURT REPORTER: I just have it premarked,
10 Judge, for ID.

11 MR. HUTCHINSON: I apologize.

12 MADAME COURT REPORTER: ID only, Court ID only on
13 Number Two. Number One, ID only, premarked. If it was
14 entered in I don't have it.

15 MR. SNOW: Your Honor, I didn't make that error. I'm
16 sorry the last argument, I know better than that. It was
17 entered into evidence.

18 THE COURT: His statement. When is this alleged to
19 have been?

20 MR. HUTCHINSON: Your Honor, it was Gordon's statement
21 when he was crossing his statement. We'd like to mark this
22 as State. Sorry, not State. Defense Exhibit One. We
23 didn't object to it. He continued to use it in evidence.
24 We did object to the second one. It was made clear by the
25 court it was marked for ID but the first one, it was

1 State's Exhibit One.

2 MR. SNOW: Judge, I never ask any exhibits to be
3 entered into evidence. We were marking it simply to
4 identify it, Judge. I didn't do that.

5 THE COURT: I'm gonna ask the court reporter if she'll
6 go back at the time of cross examination. Mr. Gordon and
7 Mr. Snow's question, see if he offered it.

8 MADAME COURT REPORTER: It was at the very beginning
9 of cross, Judge, when it was brought up.

10 THE COURT: Check that and let's be sure. I did
11 remember it being entered into evidence but may be wrong
12 about that. Check.

13 MADAME COURT REPORTER: Will do, Judge..

14 THE COURT: We'll make a decision on that, okay.

15 MR. HUTCHINSON: Thank you, Your Honor.

16 (COURT IN RECESS AT 04:30 PM.)

17 (COURT BACK IN SESSION ON WEDNESDAY, MAY 26, 2010 AT
18 09:30 AM.)

19 THE COURT: Thank you. Please be seated.

20 MR. HUTCHINSON: I think Mr. Snow's with the
21 defendant, Your Honor.

22 THE COURT: Okay.

23 (ATTORNEY SNOW ENTERS COURTROOM.)

24 MR. SNOW: I apologize, Judge, I was in the back.

25 (DEFENDANT ENTERS COURTROOM.)

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1 THE COURT: Good morning, Counsel. Are we ready to
2 proceed this morning?

3 MR. HUTCHINSON: Yes, Your Honor.

4 MR. SNOW: Judge, we're ready to proceed.

5 THE COURT: We'll bring the jury back in before we get
6 started with our final arguments. Of course the State will
7 go first and the Defense will have the last argument.

8 All right, please bring the jury in, sir.

9 (JURY ENTERS COURTROOM AT 09:43 AM.)

10 THE COURT: Good morning, Madame Forelady, members of
11 the jury panel. I hope you had a pleasant night last night.
12 We are ready to presume the trial. We are to that part of
13 the trial where counsel will make their final arguments to
14 you and I ask that you listen attentively now as Counsel
15 address you in final argument.

16 Counsel, ready to proceed.

17 MR. HUTCHINSON: Thank you, Your Honor.

18 Good ole fashion witnesses coming in here, swearing to
19 tell the truth, the whole truth and nothing but the truth.
20 That's what we've presented to you over the last couple of
21 days. As my colleague told you, you were expecting to come
22 in here to see the next line of the NCIS case, see a taking
23 of that. That's not what we presented. Also good ole
24 fashion common sense is what we're asking you to use in
25 making your decision.

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1 You have a very important decision, only one that you
2 can make. As you may have heard before, the jury is the
3 trier of the facts. Only you can decide what happened on
4 November 18, 2009. Now to compare with that the judge he's
5 the trier of the law. He's made several decisions
6 throughout this case on the law on objections. And he'll
7 let you know what the law is that you need to apply with
8 the facts that you have decided occurred that evening.

9 All I can do today is to try to go over some of that
10 law and some of the evidence that we presented to try to
11 assist you in that process when you go back there and
12 deliberation.

13 First, I want to go over the crimes that the defendant
14 has been charged with. Go over some of the elements, but
15 keep in mind the Judge is going to tell you this as well.
16 Any inconsistencies, of course, go with the judge. The
17 defendant has been charged with grand larceny and burglary
18 2d degree. Now, Ms. Desch told you when we started this
19 trial basically what burglary is. Now I want to get a
20 little more into the legal definitions that you are going
21 to see back in that room -- or what you're gonna hear from
22 the Judge. Burglary 2d degree has a few elements. First
23 it has to occur in York County. The defendant must enter a
24 building without consent and with the intent to commit a
25 crime therein. And in this case since it's a building also

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1 what's called an aggravating circumstance is necessary and
2 this case its that it was dark on that evening.

3 The second charge is grand larceny. As Ms. Desch said
4 basically it's just stealing something and not intending to
5 give it back. But the more technical definition, again, it
6 has to occur in York County, the defendant must take
7 property. Since it's grand larceny it must be valued over
8 a thousand dollars. He must take that without consent, he
9 must actually take it away from the place and not intend to
10 return it.

11 Now let's go over a little bit of what you have seen
12 over the last few days. I'm going to put up a couple of
13 pictures that you've seen throughout the trial that we hope
14 have helped you out a little bit as you've heard testimony.
15 The first person you heard was Earnest Gordon. That
16 evening on November 18th, 2009, he came home from work. It
17 was dark, and he came home to his house located right here.

18 (INDICATING TO EXHIBIT ON OVER HEAD.)

19 MR. HUTCHINSON: Backed into his driveway, thought he
20 saw something next door. So he pulled up a little bit to
21 get a better view where he saw two guys coming out the back
22 yard of the victim, William Jackson. He saw these two guys
23 taking a large appliance on what appeared to be a lawnmower
24 across the street. And again here's that -- here's his
25 house, here's William Jackson's house, saw them take it

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1 across the street, and towards Jones. Told his wife to
2 call William Jackson, see if this is unusual, call the
3 police. After learning that these guys weren't supposed to
4 be there from Mr. Jackson, he got in his car followed those
5 two guys towards Izzard Street. He lost them at some point
6 so he turned around went back to his house where he saw at
7 the Park Grocery Store a couple of guys leaving a lawnmower
8 at the tree. When the police officers arrive, one of those
9 guys went inside the store. The other one took his shirt
10 off, a stripe shirt and went around the building.

11 You also heard from Officer Price, the same thing when
12 he arrived. He arrived to see two gentlemen leaving a
13 lawnmower, one of them run in the store and another one
14 going around the building taking off a stripe shirt.

15 (SOLICITOR DISPLAYED STRIPED SHIRT FROM EXHIBITS.)

16 MR. HUTCHINSON: Now on that evening Mr. Gordon
17 positively identified the guy they arrested right here at
18 Park Grocery. And that was Stephen Robinson. Now as you
19 heard in this trial the second guy, the guy wearing the
20 stripped shirt, it was familiar to him. He couldn't quite
21 get his name but that guy was familiar to him. And as you
22 heard him do here in court, I ask if he was familiar with
23 him and if he felt that he could identify him yesterday and
24 he did. He pointed to the defendant Mason Johnson.

25 You also heard from Mr. Jackson. Mr. Jackson got a

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1 call that something was going on at his house. When he
2 arrived he went to go see, check things out like anybody
3 would. He went to his backyard and saw that his back door
4 that he had locked, dead bolted, had been knocked in.
5 Things were missing. Another appliance was sitting
6 outside. And he got on the stand and told you the
7 approximate value using his exact words of those items was
8 from one thousand to fifteen hundred dollars. You also
9 heard from Officer McCarley, the person who found this
10 shirt on the side of Park Grocery. Mr. McCarley, Officer
11 McCarley -- I apologize, had contact with the witness,
12 Earnest Gordon. Officer McCarley heard over the radio that
13 there was a possible suspect they had. The other William
14 Jackson who was known by officers in the not so good say
15 should we say. He was down the street. So Officer
16 McCarley took Earnest Gordon over there to take a look at
17 this other William Jackson. He ask Mr. Gordon if that was
18 one of the people that was involved. He affirmatively said
19 no. That guy didn't match the description that he gave
20 earlier.

21 You heard from Officer Andrews and Detective Ayers.
22 They found out where Stephen Robinson lived so they went to
23 that house over here on Izzard Street. When they arrived
24 they arrived separately. They saw in the backyard an
25 appliance. They thought it was a little out of the

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1 ordinary because it had been raining, leaves falling,
2 leaves are on the ground, nothing was on the appliance.
3 They go to the front door, Monalisa MacIntosh answers the
4 door. They ask if they can come in, and she does let them.
5 When they first enter -- They see something when they first
6 enter the house. And I apologize. Bear with me one
7 moment.

8 (SOLICITOR SEARCHING EXHIBITS.)

9 MR. HUTCHINSON: They see an air conditioner. A wall
10 air conditioning unit when they first enter that house on
11 Izzard Street when Monalisa MacIntosh let them in. They
12 ask if they could look further and that's where they found
13 the defendant Mason Johnson. The first words out of the
14 defendant's mouth after he came out of that room "well I
15 been here all day." But the detective, the officers, they
16 thought that was unusual since he had wet pant legs, his
17 boots were wet. Not to mention the fact that there was an
18 air conditioning in the middle of the living room which
19 Monalisa said wasn't there earlier.

20 Now you heard a little bit from Monalisa MacIntosh as
21 well. She told you that no the defendant wasn't not there
22 all evening, he left about 7:30 to go to the store. When
23 he came back there was an air conditioning unit right there
24 in the living room that wasn't there before.

25 Mr. Johnson also wrote Ms. MacIntosh a letter that we

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1 heard a little bit about asking her to say that he was
2 there all day. Asking her to get in contact with Mr.
3 Robinson to say that he was there all day. But that wasn't
4 something that she was gonna do. That wasn't something Mr.
5 Robinson was gonna do because that was not the truth.

6 Now let's talk about what we heard from Mr. Robinson.
7 Mr. Robinson also got upon the stand and told you that he
8 and Mason Johnson left the house on Izzard Street, came on
9 down in the direction of Park Grocery where they made a
10 stop, to William Jackson's house. It was nigh time, they
11 went to the back, Mr. Robinson tried with his shoulder to
12 get in and couldn't quite do it. So the defendant kicked
13 open the door and by golly the door's open. They went in
14 there found a lawnmower, found some appliances, took them
15 on back to Izzard Street where the officers found them and
16 found the defendant.

17 Now let's reexamine some of the elements I talked
18 about earlier. Burglary 2d degree, in York County occurred
19 at [REDACTED] Rock Hill. That's not an issue.
20 The defendant entered a building. In this case the
21 defendant entered the building at [REDACTED]
22 without consent. You heard Mr. Jackson come up here and
23 tell you he didn't give anybody consent to go in his house.
24 Of course he didn't give anybody consent to take what was
25 in there, and with the intent to commit a crime therein.

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1 They went at nighttime, an unoccupied house, broke in the
2 door, committed a larceny to steal what was in there.

3 Now grand larceny. Again, in York County. The
4 defendant took property valued at over a thousand dollars.
5 Now as I said earlier the exact words of Mr. Jackson were
6 the value of those items were from one thousand to fifteen
7 hundred dollars. Grand larceny does have to be over one
8 thousand dollars. However, you don't have to check your
9 common sense when you come in here. You don't have to
10 leave your own life experiences. A clothes dryer, air
11 conditioning unit, another air conditioning unit, a
12 lawnmower; easily over a thousand dollars.

13 Now I want to talk to you -- there's a couple -- I
14 apologize, there's a couple of other elements as well.
15 They carried away, the defendant carried away from that
16 location. Doesn't have to be much but in this case it was
17 plenty. They carried it from William Jackson's house over
18 to Izzard Street where the police officers found them. And
19 they intended to permanently deprive Mr. Jackson of those
20 items. Now don't let this fool you. They never intended
21 to give that stuff back until the officer showed up at
22 Izzard Street and got it back. Yes Mr. Jackson did get
23 those items back but that doesn't mean that they didn't
24 intend to permanently deprive him of those items. So
25 please, don't let that confuse you.

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1 Now let's talk a little bit about some points made at
2 different times by the defense counsel. First, when Mr.
3 Gordon was on the stand during question after question
4 after question after question trying to get Mr. Gordon to
5 slip up, tried him to get him to admit that he was here
6 today lying or here yesterday lying to you, that he all of
7 a sudden made up the fact that the defendant Mason Johnson
8 was the person that he had seen around the neighborhood and
9 was the person that he had seen on November 18, 2009. Now
10 what you have to ask yourself with any witness is are they
11 credible. What do they have to gain by coming in here and
12 lying. Mr. Gordon was living his life on a normal evening
13 when he saw a couple of guys breaking into William
14 Jackson's house and he got involved. He didn't have to.
15 He was in fear of his safety and he knew something was
16 going on that wasn't supposed to. He took time out of his
17 own schedule to come in here and testify before you. What
18 does he have to gain by lying to officers, lying to you?
19 As much as anyone he would want to get the true person who
20 was involved. Now also, you heard Mr. Johnson's co-
21 defendant Stephen Robinson on the stand. When Mr. Snow was
22 cross examining you heard that -- and you heard initially
23 in the direct, Mr. Robinson said at first I didn't have
24 anything to do with it when he was first confronted by the
25 police. And yet then he came in here and said yes, yes I

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1 did. And as Mr. Robinson said, no he doesn't always tell
2 the truth. Do we all ever tell the truth? Did Mr. Johnson
3 tell the truth, did the defendant tell the truth when the
4 officers came in and he said he'd been there all day? No.
5 It's human nature.

6 Defense counsel also mentioned this huge unbelievably
7 good deal that Mr. Robinson was getting to come in here to
8 testify. Now let's go over that. First off Mr. Robinson
9 did have an attorney who explained it to him, and who I
10 spoke with throughout the process. There's many times I
11 have to look different legal terms up and have to look up
12 different things to put in documents. Mr. Robinson has
13 trouble reading and isn't often in the legal system. Of
14 course Mr. Lemel had to explain it to him in a way that he
15 could understand. So, what was his end of the bargain?
16 What was Mr. Robinson's end of the bargain coming in here?
17 What did he have to do? He had to come in here and tell
18 the truth. He gave a statement to us, and to be able to
19 get this huge deal he had to testify in accordance with
20 that statement and in accordance with the truth. And
21 that's to be decided by the judge at a later date whether
22 he did so. And if he did so, he gets probation. Makes it
23 sound like this is a big deal to get probation, defense
24 counsel does. You have to check in at numerous times, do
25 numerous things, and he has fifteen years in prison if he

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1 messes up one time. And later on the judge decides that he
2 needs to get that amount of time. Fifteen years. He
3 doesn't have a prior felony and as Mr. Johnson said in his
4 own letter to Monalisa, he could have got probation. You
5 never know.

6 Another argument you may hear is it was somebody else.
7 Somebody else stole those items from Mr. Jackson's house.
8 The mysterious other Mr. Jackson stole them. The problem
9 is the other Mr. Jackson was eliminated as a suspect by Mr.
10 Gordon. And the other Mr. Jackson didn't have the stuff at
11 his house on Izzard Street. The defendant was found at
12 Izzard Street with an air conditioning unit in that house,
13 appliance outside. And as Monalisa said, that stuff hadn't
14 been there before. Only when he returned.

15 Also you heard there weren't fingerprints taken. As
16 Ms. Desch told you earlier, unfortunately we can't do,
17 always do what you see on TV. You can't always do
18 everything in every investigation. The officers main
19 concern is securing the scene, any suspects that are there
20 try to be sure that they don't go anywhere. Be sure that
21 the victims are taken care of. In this case there were
22 supposed to be two suspects and two suspects were found.
23 One was positively ID'd by Mr. Gordon. The other one
24 matched the description and was found in a house where the
25 items were. And at that time, as Detective Ayers told you,

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1 he felt comfortable giving back the items to the victim who
2 had lost these items, Mr. Jackson, instead of taking them
3 away from him any further. And one more thing you heard
4 that was touched on was that the guy in the stripe shirt
5 went down Keels.

6 (INDICATED ON OVERHEAD.)

7 MR. HUTCHINSON: Right here, after the officers
8 arrived. And that's a completely different direction than
9 Izzard Street. You heard Detective Ayers say that there's
10 many yards back here, many other streets that could have
11 led to Izzard Street. There was one way that wasn't a dead
12 end that led to another major road that led to another,
13 there were several yards around as well. It's the State's
14 responsibility to prove charges, to prove the elements
15 beyond a reasonable doubt. Now as you may hear, nothing in
16 life is certain. So the State doesn't have to prove
17 anything beyond all certainty. It's not beyond all doubt,
18 it's not beyond any doubt, it's beyond reasonable doubt.

19 What's reasonable doubt? Well, if this helps you,
20 it's defined that a reasonable doubt is the type of doubt
21 that would make a reasonable person hesitate to act. Now
22 don't confuse hesitation to act with consideration and
23 deliberation. Because you're here today to give all the
24 evidence, everything you hear, careful consideration. And
25 you are here to go back there and deliberate on what you

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BY MR. SNOW

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1 have heard. So don't confuse that with hesitation to act.
2 When you go into that jury room, the State has every
3 confidence that you will fulfill your duty in this judicial
4 process and come back with a verdict that speaks the truth.
5 And after examining all of the evidence, after hearing the
6 law, we're confident that you will be certain, we're
7 confident you'll be certain that the defendant is guilty of
8 burglary 2d degree and grand larceny.

9 THE COURT: Counsel.

10 MR. SNOW: May it please the Court.

11 THE COURT: Counsel.

12 MR. SNOW: Ms. Desch and Mr. Hutchinson, Mr. Mason
13 Johnson is not guilty of burglary 2d degree, not guilty of
14 grand larceny. Not guilty.

15 Members of the jury, the judge will give you a
16 definition and that definition has to do with reasonable
17 doubt. And I believe the judge will tell you that
18 reasonable doubt -- He'll give you certainly a better
19 definition than I will -- but I believe the definition will
20 be a doubt that gives a reasonable person hesitation or
21 cause a reasonable person to be hesitant to act.

22 Now, my job as a defense attorney or as an attorney
23 will sort of give you some facts of the case when I think
24 was presented. And I will tell you I'm not perfect but
25 I'll try to give you the best information as I recall it.

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1 Now if you recall something differently, trust your own
2 judgment. I'm not trying to fool you and I'm not trying to
3 trick you. I just trying to refresh your recollection
4 about things that happened. But let's first talk -- and
5 I'm going to use some notes. I hope you don't mind because
6 this case is too important for me to miss something, and
7 I'm certainly not perfect, so I probably will miss
8 something. Probably won't answer a question that you might
9 have. But guess what? As we said at the beginning of the
10 case that's not our job to fill in, to fill in the pieces
11 of the puzzle. That's the State's burden. That's the
12 State's burden. We don't have a burden. As my client sits
13 there he's presumed to be innocent like any other person.
14 That's our system. The best system I believe in the world.
15 And it works when we follow the law. And the judge will
16 instruct you on what the law is and I believe he will tell
17 you that as well. So I'm gonna look at notes from time to
18 time.

19 But let's talk about the State's case, and the
20 witnesses in this case. And really the State's case is
21 really weighs on, I believe, Mr. Robinson. Remember, he's
22 the only person from November until late April that ever
23 mentions anything to the State about Mr. Mason Johnson.
24 He's the only person. That's the prosecutions - the one
25 that testifies at all that they heard anything else from

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1 any witnesses that identifies my client. Even Monalisa
2 doesn't say it. No involvement whatsoever until late April.
3 Remember that? Late April, just a few weeks ago.

4 Well, the State's case, the theory is essentially
5 there are several people at [REDACTED] [REDACTED] This is the
6 house that's rented by Mr. Robinson, Avery Robinson. He
7 rents this house, he has two room mates. One, Mason
8 Johnson; the other one at the time, his girlfriend
9 Monalisa, at that house and I believe that Monalisa
10 testified there were that night a few other people there
11 drinking. I think Mr. Robinson even acknowledged there
12 were some other people there drinking. There were a couple
13 of other men. Not just Mason Johnson, not just Mr.
14 Robinson, but another man; maybe one or two. They allege
15 that my client leaves, goes to the store, goes to the store
16 with Mr. Robinson and they take these appliances from this
17 good man here, good gentleman here, Mr. William Jackson.
18 Good man, he certainly is a victim in this case.

19 They allege that at some point Mr. Gordon comes out,
20 he spots these two men or two suspects and he sees somebody
21 in there moving some furniture -- some appliances towards
22 Izzard Street. Now let's talk about him a little bit. I'm
23 not saying that Mr. Gordon is a bad person at all. I'm not
24 saying that at all. But remember, in his statement and in
25 his statement and in the police statement -- and that's not

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1 part of the evidence but that was talked about. They
2 haven't admitted it as an exhibit but why didn't they?
3 This statement, the police summary and a statement. Well
4 he says at trial that he sees two suspects, he mentions
5 that he goes into the store. Mr. Gordon goes into the
6 store to buy some cigarettes. He also mentions at trial
7 that he is known or has seen this Mr. Mason Johnson four or
8 five times in the neighborhood. But he doesn't mention
9 that in his statement, the statement that he read, that he
10 wrote or he signed his name on that he swore to that was
11 his statement. After looking at it, it doesn't mention
12 that. None of the officers in this case mention that.
13 Don't you believe that's our common sense. The State says
14 use your common sense. If you see a crime being committed
15 and you know the person or you've seen the person in the
16 neighborhood won't you go tell the officers I've seen this
17 guy before. I've seen him before. And he doesn't have it
18 in his statement. And the police officers not counting the
19 number of years, they have near fifty years of experience,
20 all of these police up there testifying. Not one says he
21 told me that. Well you can't have it both ways. I'm not
22 saying he's a bad guy. I think he's a little bit confused.
23 He says he told these officers that, they said he didn't.
24 You can't have it both ways. Either he's lying or these
25 good officers are lying. And I don't believe it's the good

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1 officers that are lying. Maybe he's confused, maybe he
2 made a mistake. But he didn't tell them that because he
3 didn't see Mr. Mason Johnson. What he says in his
4 statement and on that evening of November the 18th he sees
5 a black male about 5'10", somebody wearing a stripe shirt.
6 That's all he says. He doesn't say he seen him with a
7 beard, he doesn't identify the hair. Listen, my client is
8 a distinguished looking character. Look at his hair.
9 Gray, beard. Doesn't mention any of that. I would submit
10 to you that if anybody was sitting there, if his father was
11 sitting there 5'10", black male, he would say that was the
12 person. Certainly he's sitting next to defense counsel.
13 "That's the person you saw?" "Uh-huh, sure." He doesn't
14 ever mention that and I don't believe these police officers
15 would lie.

16 Now the State wants you to ignore some things.
17 Because you remember they mentioned, Ms. Desch mentioned it
18 in her opening statement, what she said was we don't have
19 forensic science. We don't have fingerprints, we don't
20 have DNA. And there was something mentioned about a letter
21 that Monalisa got. Where is that letter? Where is the
22 DNA? They want you to ignore that. And their right. Yes
23 you can take into consideration of witnesses and you should
24 use your common sense as to witnesses. But what they don't
25 want to tell you is this case is so serious; and you know

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1 of situations where people have messed up, have
2 misidentified. Use your common sense, no one's perfect.
3 And that's why, that's why we use a combination of
4 eyewitnesses and DNA and fingerprints because our system of
5 justice has failed and we want to make sure and certainly
6 we want to make sure the State proves and meets its burden
7 beyond reasonable doubt. This case is too serious. You
8 know this case and you heard it, fifteen years. Fifteen
9 years. Do you just rely on Willie Nillie and not try to
10 get the science? Not even try?

11 So let's talk about the police in this case. Good
12 officers some of them. But the main thing I want to talk
13 about is Officer Andrews. He said that and I think the
14 summary pretty much summarizes it, the fact they left the
15 store, they came to Izzard Street. And they stopped and
16 they brought Mr. Gordon to Izzard Street. Remember they
17 spoke with the other Mr. Jackson, the bad Mr. Jackson who
18 give police officers trouble. Remember that? They brought
19 Mr. Gordon there right on Izzard Street. What do they do?
20 This is the guy? Maybe he wasn't, I don't know. They said
21 they confirmed it was someone else, but what about the
22 other people they confirmed it with? What I do know is
23 they were right down the street from [REDACTED] and they
24 didn't bother to take Mr. Gordon to even exclude him or
25 include him. Right then they had the opportunity, they

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1 didn't do that. Was it a mistake? I don't believe it was,
2 I don't think it was intentional, but they didn't do that -
3 they didn't do that. Their position is they went to the
4 hosue and what did they find?

5 (ATTORNEY SNOW TAPS ON BAR)

6 MR. SNOW: They knock on the door, Monalisa opens the
7 door, comes to the door let them in. She says "oh, well,
8 was the air conditioner -- it wasn't here earlier." She
9 didn't say she saw Mr. - my client brought it in - bring it
10 in. She didn't say that, did she? Who brought it in? I
11 can guess who brought it in. She never mentions that.
12 Small house, she didn't see him do that. If she had seen
13 him bring it in she would have mentioned it but she doesn't
14 do that. The police officer calls my client out. This is
15 their position. He comes, he's lieing on the bed across
16 the bed with his boots on, after a hard days work after
17 drinking a few cold ones and he lays across the bed. Now,
18 Officer Andrews mentions my client says immediately, on
19 direct, that "I've been here all day". Well, he says he
20 didn't take - doesn't take any notes, he's had many arrest,
21 questioning witnesses since then. There are no notes on
22 that. Now the important part about that is Officers Ayers
23 did not say anything about this statement about "I just got
24 here". Was there some confusion? Certainly. He never
25 said that. He went to the store, certainly that's how he

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1 got wet. There's testimony he went to the store. Monalisa
2 says that. But he doesn't resist arrest when they come
3 there. He doesn't try to run through the back door that's
4 there. Someone who is trying to flee and allude police
5 officers they are not gonna just go to the bed and lie
6 down. He doesn't take off his clothes or try to change
7 any other appearance, has on his boots. Now you observed
8 him, you know, you've seen him, and my client, does he
9 appear to be in the best shape? He just allegedly ran
10 around Keels Avenue run through a fence, jumped through
11 fences all bushes, on his knees, all this and he's forty-
12 five or forty-four. Now I'll tell you, forty-four, you
13 know taking someone who forty-five, works out may be in
14 good shape, but I'll tell you running around those streets,
15 running through all that, you'd be huffing and puffing like
16 a train. Did anyone see if he was huffing and puffing?
17 No. No one says that. He's wet, his pants are wet. It's
18 raining that day. Remember the pants are wet from here
19 down. If you have an umbrella, we've all worn slacks, what
20 happens? Your pants get wet when you walk. And they said
21 he went through -- Let me see if I can find that exhibit.

22 Judge, bear with me for just one minute.

23 (PAUSE.)

24 MR. SNOW: He's cut through all those bushes and
25 fences and all that. Do you find even a blade of grass on

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1 his boots? It's in here. You can ask for it. Not a blade
2 of grass. They didn't bother to ask any witnesses did they
3 hear any dogs barking. He's ran through some back yards
4 jumping fence and that's all they notice about my client
5 while he says he doesn't recall. Well, you'd be huffing
6 and puffing let me tell you. You'd find a blade of grass,
7 a twig, or something - something. Did they even mention
8 that? There is a torn shirt and I didn't even see the
9 torn shirt in evidence. But guess what? Did anyone go
10 back behind that house to look, to see if there was a piece
11 of fabric? Did anyone even look? Six officers, two
12 prosecutors on this case but no one does that. "Why didn't
13 you look?" "I don't know."

14 Now, Monalisa says she hasn't seen anything. They're
15 talking to Monalisa. Doesn't see anything. All she knows
16 is at some point there is a air conditioner in that house.
17 But she does say on the stand that my client sent her a
18 letter. Did anyone see a letter? She says she says it in
19 the DA's office. If there is a letter about lieing, if
20 there is a letter about lying, telling her to twist her
21 story, don't you think they would present it? Why wouldn't
22 they? I don't know unless it's not a letter. That would
23 be an option. But they have the duty to do that. They
24 didn't do that did they? You heard testimony; she's lived
25 with him. And I did ask what's going on between you two.

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1 She denied it. But we do know since November 18th she's
2 lived with him free, no rent. She says she pays for food.
3 He gets on the stand and says no I pay for it all. And the
4 important thing to remember is again, they don't get any
5 information out of her that implicates my client. The only
6 thing that happens is around late April she talks to the DA
7 apparently. Solicitor, I'm sorry. She says ha yeah this
8 letter, the letter that we don't have late April. Late
9 April this information comes from Mr. Gordon, some from Mr.
10 Gordon late April. All of this is in late April.

11 Now, I want to talk about Mr. Robinson and he's very
12 important in this case. You remember this is the only
13 person, and this is what the prosecution's case rest on. No
14 one says there's nothing n the evidence other than the
15 testimony from Mr. Gordon that, yeah I did tell the police
16 that I did saw him. But nothing other than that. What did
17 he do? Firs of all he is a convicted felon. Remember the
18 prosecution has ask him questions like well you don't have
19 any felonies. Misdemeanors? What about misdemeanors? Ms.
20 Desch ask any questions about, well you don't have any
21 felonies on your record. Mr. Hutchinson came up here and
22 he gave his closing and said he doesn't have any felonies.
23 Well what does he have? He testified and one of the first
24 things out of his mouth "I'm here to tell the truth.? What
25 the first thing he does when he speaks with the police

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1 officers is he tells them a lie. He tells them a lie and
2 we know he tells them a lie because now he's here saying
3 one thing and he has a sweet deal. Well, but the State
4 wants you to ignore the fact that there is a sweet deal.
5 Go back to what they actually do. Use your common sense.
6 Possible fifteen years probation. Sweet. That's a sweet
7 deal. I don't care how you slice it that's a sweet deal.
8 That's an incentive for anybody to lie. And did you hear
9 what Mr. Hutchinson said? "If he testified consistent with
10 his statement that he gave, the statement he gave around
11 what? April 28th. That was his deal. The statement he
12 gave around April 28th that was his deal. And consistent
13 with that statement. He tells you what? He and Monalisa
14 hadn't talked about this case, lived together since April
15 -- since November of last year to late April and they
16 haven't talked about it once. Is that reasonable? Use
17 your common sense. Is he still lying? Yes. You gonna
18 live together you're gonna talk about that. You're talking
19 about someone, you're going to trial, someone that you're
20 living with, someone who is a witness and you don't talk
21 about it once? All we talked about was the letter. Well
22 then you talked about it at least some. I believe they
23 talked about it more than that. And I ask them, when was
24 the last time you talked to Monalisa? Remember him he was
25 up on the stand and he hesitates and he says, "you want me

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1 to tell you the truth?" Of course I want you to tell me
2 the truth. "Yesterday" he says. I forget to ask him how
3 did he get here. I should have ask him that question how
4 did you get to court? I didn't ask him that but maybe I
5 should have. He testified that he talked to her yesterday.
6 But they didn't mention, they didn't talk about the case at
7 all. Is he still lying? Yes.

8 Throughout this case I had to ask serious, hard
9 questions. When a man's liberty is in the balance you got
10 to believe I'm gonna ask hard questions. That's what we
11 do. And I hope you weren't offended by that. That's just
12 our job. It's our responsibility and we all have as
13 attorneys. That's what we do. I hope you don't hold it
14 against my client. But we have to ask tough questions.

15 As the cornerstone of our system, we have three things
16 that I think are important. Number One: Presumption of
17 Innocence. Number Two: The burden of proof that's on the
18 government, the state and the standard of proof beyond a
19 reasonable doubt. Beyond a reasonable doubt, the doubt
20 that causes a reasonable person to hesitate to act. And
21 something reasonable I think you should consider is well
22 you have six officers, two prosecutors on this case. No
23 one bothered to go into the grocery store and ask the
24 owners, ask any of the customers did you see Mason Johnson
25 that day? No one goes and ask any of the neighbors did you

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1 see someone run through the backyard, did you hear any dogs
2 barking, or did you find a piece of cloth, clothing;
3 anything? Allegedly he's just running around. Did you see
4 any footprints that look suspicious? Any tracks, anything?
5 You know he apparently ran around back yards, probably dogs
6 back there and no one comes forward and says anything. No
7 one. Did they ask? Did anyone see him run toward Izzard
8 Street? Now this is what's in their absolute control. Now
9 they have a responsibility to bring best evidence. Six
10 officers on the case, two prosecutors, no one goes to the
11 house to see the footprints. If they had a matching
12 footprint they would have brought it here. Footprints that
13 allegedly was on the door. Remember, Mr. Robinson said my
14 client kicked in the door, kind of kicked in the door.
15 They had the boots. All you had to do was say hum, match it
16 up. They didn't do that. What about the striped shirt
17 they found? The State wants you to ignore the important
18 evidence that's why they mentioned it. Did they take a
19 hair, a fiber, anything off that shirt that matched my
20 client? Did they do that? No. They didn't do it. That
21 is intentional? No. But these good officers didn't do it
22 and I think Officer Ayers sitting there said yes there was
23 some mistakes made. A man's liberty here is in the balance
24 I would ask you you want the best evidence... That's how our
25 system of justice works. Does that cause you to hesitate

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1 to act? I'll tell you, folks, it does. No boot prints, no
2 grass, no brush, no DNA, no dogs barking. Does that cause
3 you to act? What happens when he gets out? Does he try to
4 run? Is he huffing and puffing? No. That causes you to
5 act - hesitate to act. Nothing. Members of the jury, it's
6 not a perfect case, but that's not the State's -- that's
7 not perfect. I don't know all that happened but I know
8 there's another suspect they let go. We know there were
9 mistakes made. Maybe he was the person who did it but they
10 didn't even match it up. They don't even have -- They
11 didn't even match up his fingerprints that's on the
12 appliances. And we know that the air conditioner was
13 inside the house. That could have excluded Mr. Jackson the
14 bad Mr. Jackson and it could have excluded my client. But
15 they didn't do that. All they had to do is try. They
16 didn't even try. The appliance is outside, they didn't
17 even try to do that. They didn't even try. Six officers,
18 two prosecutors on the case, and no one bothered. I submit
19 to you that, that's not the way we want to do things here
20 in this country. I submit to you that we want some solid
21 evidence, evidence that you certainly could obtain by a
22 little effort. They didn't do that. I submit to you
23 that's reasonable doubt. That's a doubt that's going to
24 cause you to hesitate to act.

25 Members of the jury, thank you so much for being

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1 patient. I appreciate you're listening, your attentive
2 these last couple of days. We went through some evidence,
3 but I appreciate that. And I would submit to you as you go
4 back and deliberate and anybody's opinion is very
5 important. Listen to your fellow jurors, weigh the
6 evidence, be fair to both sides, and if you determine; if
7 you have some reason to act, hesitate to act then my
8 client's not guilty. And I believe that there is reasons
9 to hesitate to act in this case. I would ask you to
10 deliver a verdict of not guilty on grand larceny and on the
11 burglary. Members of the jury, Mason Johnson is not guilty
12 of burglary 2d degree, not guilty of grand larceny. The
13 State simply hasn't met its burden of proof. They failed
14 to prove, to gather all the evidence they should have to
15 convict him on to these serious charges. Thank you.

16 THE COURT: All right, Madame Forelady, members of the
17 jury panel, that concludes final arguments from counsel.
18 It's now time for me to charge you or instruct you with
19 regard to the law that applies to the issues in this case.

20 The State charges Mason Johnson with two offenses.
21 They charge him with grand larceny; they also charge him
22 with burglary 2d degree. To these charges the defendant
23 has pled not guilty which then places upon the State the
24 burden of proving the defendant guilty. A person charged
25 with committing a criminal offense in South Carolina is

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1 never required to prove himself innocent. I charge you
2 that it is a vital important rule of law that a defendant n
3 a criminal trial must always be presumed innocent until his
4 guilt has been proved beyond a reasonable doubt. This
5 presumption of innocence remains with the defendant at all
6 times throughout the trial and is only removed when and if
7 the State has proved guilt beyond a reasonable doubt. For
8 it is your solemn duty, ladies and gentlemen, if not
9 clearly convinced of his guilt beyond every reasonable
10 doubt to the contrary to find the defendant not guilty. So
11 the State has the burden of proving the defendant guilty
12 beyond a reasonable doubt.

13 What is a reasonable doubt? Some of you may have
14 served as jurors in civil cases where you were told that it
15 is only necessary to prove the fact is more likely true
16 than not such as by the greater weight or the preponderance
17 of the evidence. However in criminal cases the State's
18 proof must be more powerful than that, it must be beyond a
19 reasonable doubt.

20 Now ladies and gentlemen, proof beyond a reasonable
21 doubt is proof that leaves you firmly convinced of the
22 defendant's guilt. There are very few things in this world
23 that we know with absolute certainty and in criminal cases
24 the law does not require proof that over comes every
25 possible doubt. A reasonable doubt may also be described

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1 as the kind of doubt that would case a reasonable person to
2 hesitate to act. If you have such a doubt as to the guilt
3 of the defendant, then he would be entitled to a verdict of
4 not guilty. Reasonable doubt may arise from evidence which
5 is in the case or from the absence or lack of evidence in
6 the case. If based on your consideration of the evidence
7 you are firmly convinced that the defendant is guilty of
8 the crimes charged, you must find him guilty. If on the
9 other hand you think there is a real possibility that he is
10 not guilty, you must give him the benefit of the doubt and
11 find him not guilty. You alone must make the determination
12 of whether or not reasonable doubt exist as to the guilt of
13 the defendant.

14 Madame Forelady; and members of the jury panel, I
15 instruct you and emphasize to you that the fact that the
16 defendant did not testify in his own behalf in this trial
17 is not a factor to be considered by you in any way in your
18 deliberations. You must not consider the fact that the
19 defendant has chosen not to testify when you determine the
20 guilt or innocence of the defendant. It must not be
21 considered by you in any manner whatsoever either against
22 or for the defendant. A defendant has the constitutional
23 right to remain silent. The assertion of that
24 constitutional right cannot and must not be considered by
25 you in your deliberations. Under your oath then you are to

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1 reach no inference, draw no conclusion whatsoever from the
2 fact that the defendant did not testify. The fact that the
3 defendant did not testify should not even be discussed in
4 your jury room. The burden of proof as I have stated to
5 you is upon the State, it is not the burden of the accused
6 to prove his innocence. The burden of proof remains upon
7 the State to prove guilt beyond every reasonable doubt.
8 Again, I emphasize the fact that the defendant did not
9 testify is not a factor to be considered by you in
10 determining the guilt or innocence of the defendant or in
11 any other aspect of your deliberations.

12 Madame Forelady, members of the jury panel, there are
13 two types of evidence that you are generally presented
14 during a trial. Direct evidence and circumstantial
15 evidence. Direct evidence is the testimony of a person who
16 asserts or claims to have actual knowledge of a fact such
17 as an eyewitness. Circumstantial evidence is proof of a
18 chain of facts and circumstances indicating the existence
19 of a fact. The law makes absolutely no distinction between
20 the weight or value to be given to either direct or
21 circumstantial evidence, nor is a greater degree of
22 certainty required of circumstantial evidence than of
23 direct evidence. You should weigh all the evidence in the
24 case, after weighing all the evidence if you are not
25 convinced of the guilt of the defendant beyond a reasonable

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1 doubt you must find the defendant not guilty.

2 Ladies and gentlemen of the jury panel, under the
3 constitution of South Carolina you are the finders of the
4 facts in this case. I do not have the right to pass upon
5 the facts or even to express any opinion I might have as to
6 the facts; nor may I suggest in any way what I may think
7 about the innocence or guilt of the defendant. You should
8 form no opinion in that regard from anything I may have
9 said or any ruling I have made during the course of the
10 trial. As the sole judges of the facts in this case, you
11 are also necessarily the sole judges of the credibility or
12 believability of each of the witnesses that have testified
13 during the course of the trial. Now there are a number of
14 factors which you may consider in your arriving at your
15 assessment to a particular witness's credibility or
16 believability. Some factors I'm going to list for you and
17 should you think of other factors that you believe also
18 ought to be considered when you go back into your jury room
19 on the question of credibility, then you should consider
20 those factors as well. But you may consider the demeanor
21 of the witness from the witness stand. What was that
22 witness's manner of appearance? Was the witness straight
23 forward in answering questions or hesitant in responding to
24 questions. Simply put, do you believe the witness is
25 telling the truth or not telling the truth? Do you believe

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1 the witness knew of what that witness testified or did not
2 know of what that witness testified. You may consider
3 whether or not the testimony of the witness is consistent
4 or inconsistent with that witness's own testimony or with
5 other testimony or evidence presented during the course of
6 the trial. You may also consider how the witness came to
7 know the facts to which he or she testified. You may
8 consider the opportunity that a witness had to observe or
9 hear, that is, to perceive the existence of a fact by means
10 of their senses. You may also consider whether or not a
11 witness is biased or prejudice. That simply means do you
12 find a particular witness had some reason to come into
13 court and testify one way or another to help or hurt one
14 side or the other. You may also consider whether or not
15 the testimony of a witness was strengthened or weakened by
16 other testimony or other evidence presented during the
17 course of the trial. Now you as the finders of the facts
18 in this case and you as the judges of the credibility or
19 believability of each of the witnesses that have testified
20 may believe as much or as little of what a witness
21 testified as to as you deem appropriate. You may believe
22 all of what a witness says, you may believe none of what a
23 witness says, or you may believe only part of what a
24 witness says.

25 Madame Forelady, members of the jury panel, the same

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1 constitution that makes you the finders of the facts, makes
2 me the sole and only instructor in the law. You must
3 accept as correct the law that I charge and apply to the
4 law the evidence as you find it and reach your verdict.
5 Put aside any conceptions you may have had as to the law
6 before coming here today and accept the law as I instruct
7 it to be. You for purposes of your duty as jurors today
8 should not be concerned about what the law ought to be, but
9 what I charge you the law is now in this state.

10 Madame Forelady, members of the jury panel, I charge
11 you with regard to criminal intent. Criminal intent is a
12 necessary element of each crime that must be proved by the
13 State beyond a reasonable doubt. Criminal intent is always
14 a matter that must be determined by the jury from the
15 circumstances surrounding the situation. There is no way
16 to prove intent to a mathematical certainty. There is no
17 way medical science can dissect a person's brain and tell
18 what he had in mind. So the law says that criminal intent
19 may be inferred from the circumstances shown to have
20 existed. This is how the jury makes a determination
21 whether or not the element requiring intent is present.
22 Criminal intent is a state of mind which operated jointly
23 with an act is the commission of a crime. Criminal intent
24 is a mental state, a conscious wrong doing, so it is up to
25 you the jury to determine what the defendant intended to do

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1 based on the circumstances shown to have existed. I tell
2 you that the State must prove criminal intent beyond a
3 reasonable doubt just as the State must prove every element
4 beyond a reasonable doubt. It is not necessary to
5 establish intent by direct and positive evidence, but
6 intent may be established by inference in the same way as
7 any other fact by taking into consideration the acts of the
8 parties and all of the facts and circumstances of the case.
9 While the State may prove motive it is unnecessary that the
10 State do so, however, the State must prove intent.

11 Now, Madame Forelady, members of the jury panel, I
12 charge you now with the elements of the offenses with which
13 the defendant is charged today. You will not have these
14 instructions written down for you back in the jury room so
15 you're going to have to recall on your collective memories
16 as to what I instruct you the law is. Although once you
17 begin your deliberations you still have some questions
18 about what the law is upon your request I can read and
19 instruct you on any of these matters that you request me to
20 recharge you on. But what I have ask you to do now is to
21 listen attentively as I go through the elements of these
22 offenses.

23 First of all I charge you with regard to the charge of
24 grand larceny. Now let me explain this, to some of you
25 this may be elementary but the word, why do we say grand

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1 and petit? It's not p-e-t-t-y but pe-t-i-t larceny. Why
2 do we say grand and petit? Grand and petit are taken from
3 the french words wrong and petit which means wrong as large
4 and petit is small. So when you talk about our grand jury,
5 a grand jury is at least sixteen members which makes it
6 larger than a petit jury. You are members of a petit jury
7 p-e-t-i-t which is twelve and in this case with an
8 alternate makes thirteen. A grand jury you have sixteen
9 members. In grand larceny the difference -- and I'm going
10 to instruct you with regard to not only grand larceny but
11 I'm also going to instruct you by the lesser included
12 offense called petit larceny and explain the difference.
13 Grand of course meaning larger than petit which means
14 smaller.

15 Grand larceny is the felonious taking and carrying
16 away by any person of the personal goods or things of
17 another valued at more than one thousand dollars with the
18 intent to appropriate them to one's own use and to deprive
19 the owner permanently of his property. There are five
20 elements that must be present and established beyond a
21 reasonable doubt to constitute or make that a crime of
22 grand larceny. They are as follows: First, there must be a
23 taking. To take means to obtain actual custody or control.
24 Two, the taking must be of a personal property of another
25 valued at more than one thousand dollars. Three, after

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1 being taken the property must be carried away. There must
2 be an asportation. Now a taking away the asportation of
3 stolen property which is an indispensable element of the
4 offense of larceny is ordinarily established by the
5 slightest removal of the property with felonious intent.
6 Forth, the taking and carrying away must be accomplished
7 against the will or without the consent of the owner. And,
8 Fifth, the taking and carrying away of the property must be
9 done with an intent to steal. The intent to steal is the
10 intent to deprive the true owner of his property and
11 converting it to one's own use. Intent is a material
12 element of the offense that must be proved again beyond a
13 reasonable doubt. That's grand larceny.

14 What's petit larceny? Petit larceny is the
15 feloniously taking and carrying away by any person of the
16 personal goods or things of another valued at one thousand
17 dollars or less. A grand larceny is in excess of a
18 thousand dollars, a petit larceny is one thousand dollars
19 or less. And that's taking things of another valued at one
20 thousand dollars or less with the intent to appropriate
21 them to one's own use and to deprive the owner permanently
22 of his property.

23 The defendant is also charged today with burglary 2d
24 degree of a building. Second degree burglary may be
25 committed against a building that is not a dwelling.

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1 Burglary in 2d degree is defined as the entering of a
2 building without consent with the intent to commit a crime
3 during the night time. The night time is described in the
4 law is that period between sun set and sun rise during
5 which the face of a person cannot be discerned by the light
6 of the sun. To prove the defendant guilty of burglary 2d
7 degree the State must prove the following elements of that
8 offense beyond a reasonable doubt. First, there must be a
9 entering. The State must prove that there was an entering.
10 That is the defendant or an accomplice actually went inside
11 the building or some part of it. It is not necessary
12 however that the entire body of the defendant enter the
13 building. The smallest entry is sufficient and it may be
14 of any part of the body as a hand or a foot or even an
15 implement such as a foot or other instrument. No force
16 needs to be used to gain entry. Second: The place entered
17 must be a building. A building means any structure,
18 vehicle, water craft or aircraft where people sojourn
19 purpose for business, government and education, religion,
20 entertainment, public transportation or public uses; or,
21 where goods are stored. Where a building consist of two or
22 more units separately occupied or secured each unit is
23 deemed both a separate building itself and a part of the
24 main building. Third: The entry must be without consent.
25 Aside from the usual and normal understanding of the phrase

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1 without consent the term also means to enter a building by
2 using deception or to trick or misrepresentation to gain
3 consent to enter from the person's involved with
4 possession. Forth: There must be an intent to commit a
5 crime. Mere entry into a building without consent is not a
6 violation of the burglary statute. It is only where there
7 is an intent to commit an intent to commit a crime whether
8 it would be a felony or a misdemeanor that the crime is
9 completed. The proof of intent necessarily rest on the
10 inference from conduct. Fifth: The entering of the
11 building must be during the nighttime.

12 Madame Forelady, member of the jury panel, I instruct
13 you now with regard to the principle of accomplice
14 principle for the hand of one is the hand of all. I charge
15 you that the law is that if a crime is committed by two or
16 more persons who are acting together in the commission of
17 the crime or the offense, the act of one is the act of all.
18 This is true if there are two people or more than two
19 people involved in the act. For example, two people or
20 more than two people can be guilty of killing another that
21 is guilty of murder but only one of the two had a pistol
22 and only one bullet and fired the shot or committed the act
23 that caused the death. If two or more people are together
24 or acting together assisting each other in the commisson of
25 an offense, the law says that under these circumstances the

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1 act of one is the act of all. As it is sometimes said the
2 hand of one is the hand of all.

3 Madame Forelady, members of the jury panel, I'm have
4 charged you with regard to grand larceny, I charge you also
5 with regard to petit larceny which would be a lesser
6 included offense of grand larceny so I've instrutced you on
7 both. If you have reasonable doubt as to whether the
8 defendant is guilty of the lesser offense, petit larceny or
9 the greater offense grand larceny it is your duty to
10 resolve that matter in the defendant's favor and find him
11 guilty of the lesser charge.

12 Madame Forelady, members of the jury, you are to
13 consider each charge separately and make a separate finding
14 as to each of those charges. Nothing I may have said or
15 done during the course of this trial has been in any way
16 intended to express or suggest a view of the case an
17 opinion as to the facts, the weight of the evidence, or the
18 credibility of the witnesses. If any of my actions or
19 words have seemed to so indicate you are to disregard such
20 and form your own opinion as to these matters. You have
21 been selected as fair and impartial jurors, sworn to
22 impartially try and determine the facts of this case and
23 when you comply with your oath to do so no one will have a
24 right to criticize your verdict and you will have fully
25 discharged your duty as jurors. You are to decide this

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1 case according to the testimony you have heard from the
2 lips of the sworn witnesses along with other evidence
3 introduced during the course of the trial. I charge you
4 that as jurors you must decide the issues in this
5 proceeding without bias and without prejudice to any party.
6 You cannot allow yourselves to be governed by sympathy, by
7 prejudice, by passion, by public opinion or by any other
8 arbitray factor. Both the State and the defendant have the
9 right to expect that each of you will carefully and
10 impartially consider all of the evidence in the case and
11 you will follow the law as I have explained it to you.

12 Ladies and gentlemen, Madame Forelady, whatever your
13 verdict in this case it must be a unanimous verdict. All
14 twelve jurors must agree on the verdict that the foreperson
15 will be authorized to write on behalf of the jury.

16 Now, Madame Forelady, I charge you that once you begin
17 your deliberations that all who wish to participate and be
18 heard in those deliberations be allowed to do so. If for
19 any reason any members of the jury panel should take a
20 break from the deliberations all should take a break. By
21 that I mean all twelve jurors should be present
22 deliberating when deliberations are going on. Now, I have
23 prepared for your use in the jury room two verdict forms.
24 I'm going over the verdict forms with you at this time. As
25 to the burglary 2d degree charge there are two possible

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1 verdicts which appear on the verdict forms. They are as
2 follows: We the jury find the defendant, Mason Johnson,
3 guilty of burglary 2d degree. The second possible verdict
4 is we the jury find the defendant, Mason Johnson, not
5 guilty. As to the grand larceny charge there are three
6 possible verdicts you can reach on that verdict form. The
7 first is stated as follows: We the jury find the defendant,
8 Mason Johnson, guilty of grand larceny in the amount more
9 than one thousand but less than five thousand dollars. The
10 second possible verdict on the verdict form is, We the jury
11 find the defendant, Mason Johnson,, guilty of the lesser
12 included offense of petit larceny. And finally the verdict
13 on the verdict form is We the jury find the defendant,
14 Mason Johnson, not guilty.

15 Now in preparing the verdict forms I have to put the
16 possible verdicts on the forms in some order. I do it the
17 same way every time. The order in which the possible
18 verdicts appear on the verdict form means absolutely
19 nothing. What you should do, Madame Forelady, is you should
20 deliberate and once the jury's reached a unanimous verdict
21 as to each of these charges, you will simply go to the
22 verdict form and go to the verdict on the verdict form
23 which corresponds to the unanimous verdict reached by the
24 jury and you will simply put a check mark in the blank
25 beside the particular verdict, sign your name on the line

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1 above the word Foreperson's signature, put the date, and
2 once you've done that for each of these charges just knock
3 on the door let the bailiff know you've reached a verdict.
4 The bailiff will let me know and I'll bring you back out to
5 received those verdicts. You will hang on to the verdict
6 forms until you have come back. Let me tell you that if
7 you should send a note out to the court with regard to
8 deliberations in this case, if you are divided in your
9 deliberations please do not tell me how you are divided.
10 You can tell me you are divided but please do not tell me
11 the numbers. I prefer not to know that. Now I'm going to
12 ask you to retire to the jury room at this time all except
13 the alternate.

14 Ma'am, I'll ask you please do not go into the jury
15 room at this time but to wait just outside the courtroom
16 door for further instructions. Now, please do not begin
17 deliberating however, Madame Forelady, I have to give
18 counsel an opportunity to request additional instructions
19 on the law. If there are additional instructions to be
20 requested and I deem them necessary iwill bring you back
21 out and give those additional instructions. If no
22 additional instructions are necessary I will send to you by
23 means of the bailiff the verdict forms, all the exhibits
24 which have been admitted into evidence and instructions to
25 begin deliberating. Please do not begin deliberating until

1 I give that instruction. Thank you. Please retire to the
2 jury room except the alternate.

3 (JURY OUT TO DELIBERATE AT 11:00 AM.)

4 THE COURT: Any exceptions or additional request to
5 charge from the State?

6 MR. HUTCHINSON: Nothing further from the State, Your
7 Honor.

8 MR. SNOW: Judge, you never mentioned and I'm not sure
9 and I've looked and try to be searching, but last evening a
10 mere presence instruction I would certainly request.

11 THE COURT: You got a problem, defense, there was
12 nothin in your defense that said he was present. And so
13 you know, I think I did say of course you didn't request it
14 and you could have requested it but the problem is I don't
15 recall anything saying that he was present at the scene of
16 the crime. And so -- do you recall that? His story was he
17 came back but he was not there and didn't participate and
18 probably wasn't present when the crime was committed.

19 MR. SNOW: We didn't refute that he was near the area,
20 Judge. Certainly I think even the question that I ask -

21 THE COURT: In the area is not the same as being
22 present at the scene of the crime.

23 MR. SNOW: Well I guess because the close proximity to
24 the store versus house -

25 THE COURT: He wasn't there.

1 MR. SNOW: Well, Judge.

2 THE COURT: He was back there in the bed when they
3 came up. He wasn't there. He had gone to the store and
4 come back as I understand.

5 MR. SNOW: Well, Judge, -

6 THE COURT: I'm hearing you but what other facts
7 support -

8 MR. SNOW: What I would contend, Judge, is they left
9 and went to the store together, that at some point he's at
10 the store what is certainly and probably likely is Mr.
11 Robinson is at the house. I think the jury can certainly
12 infer that he comes back ahead of Mr. Robinson -

13 THE COURT: If he did he wasn't present at the scene
14 of the crime.

15 MR. SNOW: Well we're not sure what time, Judge. I
16 don't think there is a strict time line on the things at
17 the store, what the time was at the store. Certainly I
18 think the jury can infer that he was at the store at some
19 point that Mr. Robinson was at the house. That's just my
20 position, Judge. I respect the court's ruling on that.

21 THE COURT: I really think that's ridiculous but I'm
22 going to bring them back and give it to them.

23 Bring them back please, sir.

24 THE COURT: Any facts to support that that he was in
25 the area or around --

1 MS. DESCH: Your Honor, if we could just note that the
2 State does object to that. I don't know if there is any
3 evidence now and it's prejudicial to the jury to hear now
4 but I understand.

5 THE COURT: Well I'm gonna charge them on that out of
6 the abundance of caution.

7 Bring them on in. I charged them on the hand of one
8 and that's what I'm gonna charge.

9 THE BAILIFF: Bear with us one moment, Judge, we got
10 some in the bathroom.

11 THE COURT: Mr. Snow, let me say, you know I went
12 through the whole charge with you yesterday afternoon, that
13 was the whole idea, you didn't mention that at all.

14 MR. SNOW: Judge, we did, it wasn't intentional, Your
15 Honor.

16 THE COURT: Well I'm just saying if I go through at
17 the time the whole charge and that's when you should make
18 your request --

19 MR. SNOW: You're correct, Judge. I apologize.
20 Certainly I should have.

21 (JURY REENTERS COURTROOM AT 11:05 AM.)

22 THE COURT: Madame Forelady, members of the jury
23 panel, this will be brief. I just have one additional
24 instruction to give you and that is as follows: A defendant
25 cannot be found guilty on any charge solely because he was

1 merely present at the scene of a crime. To be found guilty
2 a person must personally commit the crime or be present at
3 the scene and intentionally take a role in the commission
4 of the crime. That's it. Thank you. You may retire to
5 the jury room.

6 (JURY EXITS COURTROOM AT 11:06 AM.)

7 THE COURT: All right, any other exceptions or
8 additions to the charge requested from the State?

9 MR. HUTCHINSON: Nothing from the State, Your Honor.

10 THE COURT: From the Defense?

11 MR. SNOW: Nothing else, Judge. Thank you, Judge.

12 THE COURT: Please, counsel, check the exhibits and
13 make sure only those that were actually admitted into
14 evidence goes back.

15 (PAUSE.)

16 MADAME COURT REPORTER: All right. That's it, Judge.

17 THE COURT: All right, Mr. Bailiff, if you will take
18 those exhibits and take these back and give them to the
19 jury and tell them they can begin their deliberations.
20 After you've done that ask the alternate to come in.

21 THE BAILIFF: All right, sir.

22 MR. HUTCHINSON: And, Your Honor, I know of anything
23 else...

24 THE COURT: We'll take a break and see if they've got
25 something, just kind of give us a break.

1 Ma'am, you can just stand right there if you will,
2 please. Ms. Stanfield, as it turned out we made it through
3 the trial without an emergency developing with regard to
4 all the other jurors so it will not be necessary for you to
5 participate in the deliberations. We are going to excuse
6 you at this time. This will complete your service for the
7 week. We're not going to start another jury trial this
8 week. We have a lot of work to do, as a matter of fact
9 there is a trial going on in the other court but without a
10 jury. Sometimes we try cases without a jury. There are a
11 number of things that we do but we're not going to start
12 another jury trial this week so this will complete your
13 service and I want to take this opportunity to thank you
14 for your sacrifices you've made this week. We appreciate
15 it and we don't take that for granted. You are free to go
16 at this time. A check will be put in the mail fairly
17 quickly for your service this week. Of course this
18 concludes your service for the week. You can turn our
19 badge in and the bailiff will show you how to get out. You
20 are welcome to stay if you want to or you're free to go,
21 whatever you want to do.

22 MS. STANFIELD: I'll leave.

23 THE COURT: Okay.

24 MS. STANFIELD: Thank you, sir.

25 THE COURT: That's the usual response I get.

1 (ALTERNATE DISMISSED.)

2 THE COURT: All right, we'll be at ease unless we got
3 something.

4 (COURT IN RECESS AT 11:11 AM.)

5 (COURT BACK IN SESSION AT 01:15 PM.)

6 THE COURT: Thank you. Please be seated.

7 Counsel, in this other case, I don't see Mr. Snow,
8 they need testimony replayed at this time.

9 MR. HUTCHINSON: He's right outside.

10 THE COURT: Tell him they got a note back from them
11 saying they do not need the testimony replayed at this
12 time.

13 MR. HUTCHINSON: Thank you very much.

14 THE COURT: We're good to go.

15 (COURT IN RECESS IN THE MATTER OF STATE V. MASON
16 JOHNSON.)

17 (COURT BACK IN SESSION AT 01:35 PM)

18 THE COURT: Madame Clerk, I guess we better check the
19 jury and see if they want to order some lunch.

20 MADAME CLERK: We're good. She's gonna order for all
21 of us.

22 (JURY NOTE RECEIVED BY THE COURT.)

23 MR. HUTCHINSON: They want to hear testimony?

24 THE COURT: They want to hear all the witness's
25 testimony.

1 MR. HUTCHINSON: All of them.

2 THE COURT: Just about.

3 We'll go ahead and do this and then I guess we better
4 break and try to take care of this.

5 MR. HUTCHINSON: Thank you, Your Honor.

6 THE COURT: Wanda, they want Gordon, they also want
7 Detective Ayers and Mr. Robinson.

8 (COURT IN RECESS IN THE MATTER OF STATE V. MASON
9 JOHNSON.)

10 (BACK ON THE RECORD IN THE MATTER OF STATE V. MASON
11 JOHNSON AT 01:15 PM.)

12 THE COURT: See if you can locate --

13 We'll do Mr. Gordon first.

14 (DEFENDANT REENTERS COURTROOM.)

15 (JURY REENTERS COURTROOM AT 01:15 PM.)

16 THE COURT: All right, Madame Forelady, members of the
17 jury panel, I got your note sent out about replaying some
18 testimony. This may set a record for the most testimony
19 played back in a one day trial. We never the less try to
20 accommodate you and play it back. Now the court reporter
21 has discovered her back up tape is not working on some of
22 these so she's just going to have to listen to it and speak
23 it while it plays, the actual witness's testimony. What
24 she will do is and I think on Mr. Gordon's testimony part
25 of it did record, did work, but part of it didn't. The

1 first day it did the second day it didn't. And then with
2 the other two witnesses what she will do is listen to it
3 and speak it back to you as it is on the tape. So Mr.
4 Gordon she will be able to replay some of his that would be
5 testified to in the first.

6 Madame Court Reporter.

7 It's going to be about three hours so just settle
8 back.

9 (TESTIMONY OF WITNESS EARNEST GORDON REPLAYED FOR THE
10 JURY.)

11 MADAME COURT REPORTER: Bench conference, Judge, and
12 you ordered the jury out. And this is the rest of the
13 testimony when they came back in.

14 (TESTIMONY OF WITNESS EARNEST GORDON CONTINUED TO BE
15 PLAYED BACK TO THE JURY.)

16 THE COURT: Stop it just a minute.

17 A couple of jurors indicated maybe that's all they
18 wanted to hear.

19 Do you want to hear more than that, Madame Forelady?

20 MADAME FORELADY: That's one of the parts we wanted to
21 hear.

22 A JUROR: Yeah, it was the first part.

23 THE COURT: So, do you want to hear any more of that
24 one?

25 MADAME FORELADY: No.

1 THE COURT: Anybody on the jury? No. All right,
2 we'll just stop there then and move on to the next witness.

3 MADAME COURT REPORTER: Judge, I have to read the
4 next.

5 It'S going to take time, time consuming for that.

6 MADAME FORELADY: I think we're okay now. Just the
7 first part of that one and then we got clarificatoin after
8 we ask for the second witness.

9 THE COURT: Well let me do this. You requested the
10 testimony of two other persons. Do you want them or do you
11 want to talk about it?

12 MADAME FORELADY: Do you want to talk first and then
13 decide whether to do the other two?

14 A JUROR: Talk first.

15 MADAME FORELADY: May we do that, Your Honor?

16 THE COURT: Yes, ma'am, certainly.

17 MADAME FORELADY: Yes, sir.

18 THE COURT: Let me ask you this. Just go back and if
19 you decide you want to hear some more testimony just send
20 me a note. Okay.

21 (JURY EXITS COURTROOM AT 02:15 PM.)

22 THE COURT: We can -- we can still take a plea if they
23 want to.

24 (COURT IN LUNCH RECESS AT 01:40 PM.)

25 (COURT BACK IN SESSION AT 02:26 PM.)

1 THE COURT: Thank you, please be seated.

2 Counsel, approach just a minute.

3 (BENCH CONFERENCE OFF THE RECORD AT 02:30 PM.)

4 (DEFENDANT REENTERING COURTROOM AT 02:30 PM.)

5 THE COURT: Counsel, let me ask you, we just
6 discussed at the bench to how to answer the jury's
7 question. My thought is I might just go ahead and recharge
8 them on larceny as well since they ask that question,
9 recharge them on larceny as well. Explain that you could
10 have a larceny without a burglary? Do you have any
11 problems with that?

12 MR. SNOW: I don't have problem with that, Judge.

13 THE COURT: I'll do burglary first and then do larceny
14 next.

15 Please bring the jury in.

16 (JURY REENTERS COURTROOM AT 02: 32 PM.)

17 THE BAILIFF: May I approach, Your Honor?

18 THE COURT: Yes, sir.

19 (BAILIFF APPROACHED THE BENCH.)

20 THE COURT: Counsel, the jury requested that they be
21 allowed to deliberate a few more minutes, they may be able
22 to get a verdict. We'll just be at ease a few minutes to
23 see what they do.

24 THE COURT: Just make this a court exhibit.

25 I didn't respond to it.

VERDICT

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1 (WHEREUPON: COURT'S EXHIBIT NUMBER ONE, TWO, THREE,
2 FOUR, FIVE AND SIX IDENTIFIED AND MARKED, RECEIVED INTO
3 EVIDENCE.)

4 (PAUSE AT 02:33 PM.)

5 THE COURT: Counsel, we got a verdict.

6 If they are ready to come in, are they ready?

7 (JURY REENTERS COURTROOM AT 02:35 PM.)

8 THE COURT: Madame Forelady, members of the jury
9 panel, have you reached a unanimous verdict in these cases?

10 MADAME FORELADY: We have, Your Honor.

11 THE COURT: Please, ma'am, if you'll hand the verdict
12 forms up to the bailiff.

13 (VERDICTS RECEIVED UP BY THE COURT.)

14 THE COURT: The Clerk will please publish the
15 verdicts.

16 MADAME CLERK: In the case of Mason Johnson with
17 Indictment 2010-GS-046-9-4-9, for burglary 2d degree, we
18 the jury find the defendant, Mason Johnson, guilty of
19 burglary 2d degree, signed by the foreperson this date.

20 2010-GS-46-9-5-0 for grand larceny, we the jury find
21 the defendant, Mason Johnson, guilty of grand larceny in an
22 amount more than a thousand but less than five thousand,
23 signed by the foreperson this date.

24 If this so be your verdict so say you all by raising
25 your right hand.

1 (All JURORS COMPLIED.)

2 MADAME CLERK: Let the record show all affirmed.

3 THE COURT: Any questions of the jury panel from the
4 State?

5 MR. HUTCHINSON: No, Your Honor.

6 THE COURT: From the Defense?

7 MR. SNOW: No, Your Honor.

8 THE COURT: All right, Madame Forelady, members of the
9 jury panel, this will conclude your services on this case.
10 It will also conclude your service for the week and this
11 will be our last jury trial for the week. We have plenty
12 of other matters to keep us busy but we're not going to
13 start another jury trial this week. As a matter of fact we
14 started getting pretty busy while you all were deliberating
15 and we'll continue to do that.

16 But I'd like to take this opportunity to thank you for
17 your service this week and the sacrifices you've made to
18 serve on the jury this week. As I told you before you can
19 see how important the function of the jury was after you
20 had served on a jury and you can understand the importance
21 of the jury and how important that function is. We deeply
22 appreciate your being here and your sacrifices. We do not
23 take that sacrifice for granted believe me. We appreciate
24 it. Now we're going to free you up at this time. You are
25 welcome to stay if you like of course but you are free to

1 go as this will conclude your service for the week. The
2 Clerk's office will put a check in the mail shortly for
3 your service this week. Does anyone need anything to take
4 to your employer to show them that you were required to be
5 here this week, if you do, raise your hand.

6 You need something. Okay.. Those of you that need
7 something for your employer, if you'll meet just outside
8 the courtroom door when you go out there somebody --

9 Can we do that or do they need to go downstairs?

10 MADAME CLERK: Melissa is still down there in the
11 office.

12 THE COURT: Wait just a minute.

13 Those of you that need something the bailiff will take
14 you down to the clerk's office and they'll give you
15 something down there showing that you were required to be
16 here. Again, thank you very much for your service this
17 week. We appreciate it.

18 Please go to the jury assembly room, they'll meet you
19 down there, those of you that need something.

20 Madame Forelady, if you'll come up please, ma'am, and
21 sign the indictments.

22 (JURY DISMISSED 02:43 PM.)

23 THE COURT: Solicitor, do you have the sentencing
24 sheet?

25 MR. HUTCHINSON: Your Honor, Ms. Desch has quickly

1 gone to get those. I apologize.

2 THE COURT: It's okay.

3 (PAUSE.)

4 THE COURT: Let me, -- Counsel, you didn't get an
5 opportunity for any motions you wish to make.

6 MR. SNOW: Judge, Obviously we ask for a judgment --
7 the jury's verdict.

8 THE COURT: Of course the court finds that there is
9 substantial evidence to support the jury's verdict. I deny
10 that motion.

11 (PAUSE.)

12 THE COURT: Would you please bring the defendant
13 around.

14 (DEFENDANT AND ATTORNEYS APPROACH THE BAR.)

15 THE COURT: Solicitor.

16 MR. HUTCHINSON: Your Honor, I'm just gonna be heard
17 briefly. You're well aware of the facts in this case as
18 well as the defendant's lengthy record. The State would
19 just ask that due to the defendant's lengthy record that
20 the sentence imposed for these charges be consecutive.

21 THE COURT: Counsel.

22 MR. SNOW: May it please the court, Your Honor.
23 Judge, certainly we would ask the court to consider in this
24 case as these are serious charges, we're certainly not
25 disputing that whatsoever. I ask the court not to consider

1 two consecutive sentences, Judge. This is a case where
2 certainly it wasn't an egregious situation, Judge. It does
3 meet the elements clearly and we don't dispute that
4 whatsoever. This is a case where even after my client was
5 taken into -- apprehended he was cooperative. Certainly
6 didn't fight, didn't run, was polite and respectful
7 according to the police officers in this case. He's forty-
8 four years of age, Judge, he was gamefully employed prior
9 to this situation, he has strong family support. So I just
10 ask the court to give him a reasonable sentence and I just
11 ask the court not to consider his second offense in this
12 case.

13 THE COURT: Thank you, sir.

14 Mr. Johnson, anything you wish to say to the Court?

15 MR. JOHNSON: Yes, sir, I reckon anyway possible that
16 you can bear with me and help me as much as possible.

17 THE COURT: Now, Mr. Johnson, I tell people that come
18 up here and they've never been in trouble before, I tell
19 them that goes well for them in the consideration on what
20 to do. On the other hand somebody comes up here with a
21 long criminal record that, that goes not so well for them
22 because they tell me time and time again there are not
23 going to continue to do crimes. This is a list of yours.
24 Its quite an extensive list of crimes that you've been
25 involved in over the years. And so I have to take that

SENTENCING

348

1 into consideration as well. But never the less I am taking
2 into consideration this was not an egregious case as I've
3 seen, burglary 2d is not. These things were taken
4 basically out of storage, a house that nobody was
5 living there, it was taken out of storage and all of the
6 goods were gotten back and things were recovered back, I
7 take that into consideration. I've seen much more egregious
8 cases, and I'm gonna take that into consideration.

9 MR. SNOW: Thank you, Judge.

10 THE COURT: Case No. 2010-GS-46-949 Mason Johnson
11 having pled guilty -- Excuse me, having been found guilty
12 by a jury of burglary 2d degree violent, the sentence of
13 the court is he be committed to the State Department of
14 Corrections for a determinate term of fifteen years, given
15 credit for time served.

16 In Case No. 2010-GS-46-950 Mason Johnson having been
17 found guilty by a jury of grand larceny in an amount
18 between one and five thousand dollars, the sentence of the
19 court is be committed to the State Department of
20 Corrections for a determinate term of ten years, this
21 sentence is concurrent, he's given credit again for any
22 jail time served.

23 Wait just a minute.

24 Counsel, on the CDR Code, Counsel, approach just a
25 minute.

SENTENCING

349

1 (BENCH CONFERENCE OFF THE RECORD.)

2 THE COURT: Lets go back on the record please, ma'am.

3 On Case No. 2010-GS-46-950, Mason Johnson was found
4 guilty by a jury of grand larceny one to five, actually
5 this was not enhanced although it could have been. Seek
6 enhancement, the State did not seek enhancement as noted by
7 the CDR Code so the maximum sentence on that charge then is
8 five years so the Court will sentence him on that charge to
9 five years, again, run concurrent. Thank you.

10 MR. SNOW: Judge, he has ask me to tender a notice of
11 appeal in this matter, Judge.

12 THE COURT: Well, of course you have to file a written
13 notice of appeal. You have ten days to file a written
14 notice of appeal to the Appellate Court. You have ten days
15 to file a written notice of an appeal. Thank you.

16 -- COURT ADJOURNED IN THE MATTER OF STATE V. MASON
17 JOHNSON --

18

19

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21

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CERTIFICATE OF REPORTER

State of South Carolina)
)
County of York)

I, Wanda Nelson, Official Court Reporter for the Sixteenth Judicial Circuit for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for York County, South Carolina, on the 24th, 25th, 26th, days of May, 2010.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

Wanda Nelson

Wanda Nelson, CVR
Certified Verbatim Reporter,
Official Court Reporter,
Notary Public, in and for
The State of South Carolina.

My Commission Expires: 1/21/2021

DATE: 12-24 / 2011

THE BILL RIGHTS (6TH) AMMENDMENT

NOTICE OF APPEAL FROM A SENTENCE IMPOSED BY THE COURT
OF GENERAL SESSIONS

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of General Sessions

Lee Alford, Circuit Court Judge

Case No. 2010-GS-46-00949, 2010-GS-46-00950

The State,		Respondent,
The State of South Carolina	v.	
Mason Johnson		Appellant.

NOTICE OF APPEAL

CERTIFIED TRUE COPY
2010 JUN -7 PM 12:56
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC
X

Mason Johnson appeals his conviction and sentence in this case. The sentence was imposed by the Honorable Alford on May 26, 2010. This appeal is taken from the order of the Honorable Alford, dated May 26, 2010. The Defendant also request that the South Carolina Appellate Defender's represent him in the above and referenced matter.

June 7, 2010



Kenneth D. Snow
Coble & Snow, LLP
1704 East Blvd
Suite 200
(704)358-0026
Attorney for Appellant

Other Counsel of Record:
Curtis Hutchison
Assistant Solicitor
1675 York Hwy
York, SC
(803)628-3020
Attorney for Respondent

*Affidavit of indigency
SC Commission of Indigent Defense
Division of Appellate Defense
P.O. Box 11589 Columbia SC.
29211-1589*

The South Carolina Court of Appeals

The State,

Respondent

RECEIVED

v.

SEP - 9 2010

Mason Johnson,

Appellant.

ATTORNEY GENERALS
OFFICE

The Honorable Lee S. Alford
York County
Trial Court Case No. 2010-GS-46-00949
2010-GS-46-00950

ORDER of DISMISSAL

The above entitled case is pending on appeal in this Court. Due to the failure of Appellant to provide the Court with timely proof of service of the Notice of Appeal, as provided for in Rule 203 of the South Carolina Appellate Court Rules, and as requested by letters from this office dated July 15, 2010 and August 5, 2010.

IT IS ORDERED that the above captioned appeal be and hereby is dismissed. Pursuant to Rule 221(b) of the South Carolina Appellate Court Rules, the remittitur in this case will be sent to the Clerk of Court for York County after fifteen (15) days, exclusive of the date of filing this Order.

JOHN CANNON FEW, CHIEF JUDGE

BY

V. Claire Allen, Deputy
Clerk

Columbia, South Carolina
9/8/2010

cc: Chief Appellate Defender Robert M. Dudek
Kenneth Darwin Snow, Esquire.
Assistant Deputy Attorney General Salley W. Elliott

FILED

Warter 9/8/10

FORM 5

STATE OF SOUTH CAROLINA)

County of)

YORK)

IN THE COURT OF COMMON PLEAS

Mason Johnson # 229145)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

APPLICATION FOR

POST-CONVICTION RELIEF

FILED-RECEIVED
2011 FEB 14 PM 4:23
DAVID HAMILTON
CLERK, C.C.P. & GS
YORK COUNTY, SC

INSTRUCTIONS B READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lieber Conn Inst. P.O. Box 205
Ridgeville, S.C. 29472
2. Name and location of Court which imposed sentence York County Courthouse
York, S.C. 29745 P.O. Box 649
3. Name(s) of co-defendant(s) (if any) Steve A. Robinson
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2010 - GS - 46 - 00949 Burglary 2nd Degree

- (b) 2010 - GS-46 - 00950 Grand Larceny
 (c) _____

5. The date upon which sentence was imposed and the terms of the sentence:

- (a) May 26, 2010 ; 15 years Concurrent
 (b) May 26, 2010 ; 5 years Concurrent
 (c) _____

6. Check whether a finding of guilty was made:

- (a) after a plea of guilty _____
 (b) after a plea of not guilty ☒ _____
 (c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?

yes

8. If you answered Ayes@ to (7), list:

(a) the name of each Court to which you appealed:

- i. N/A
 ii. The S.C. Court of Appeals
 iii. _____

(b) the result in each such Court to which you appealed:

- i. N/A
 ii. Dismissal for failure to timely Proof of service
 iii. _____

(c) the date of each such result:

- i. N/A
 ii. Sep. 9, 2010
 iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

- i. N/A
 ii. Pursuant to SCA CR Rule 221(b)
 iii. _____

9. If you answered Ano@ to (7), state your reasons for not so appealing:

- (a) N/A

- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance of Counsel
- (b) Belated appeal / White hearing requested
- (c) awaiting Trial Transcripts to Amend PCR
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Ineffective Assistance of Trial Counsel
- (b) Belated Appeal / White hearing requested
- (c) awaiting Trial Transcripts to Amend PCR
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered Ayes@ to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. _____
- iii. _____

iv. _____

(c) the disposition thereof:

i. _____ *N/A*

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____ *N/A*

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. _____ *N/A*

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

N/A

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. _____ *N/A*

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. _____ *N/A*

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) N/A
 (b) _____
 (c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? yes
 (b) your trial, if any? yes
 (c) your sentencing? yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? No
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? No

18. If you answered Ayes@ to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. Kenneth D. Snow, Esquire 407 East Blvd.
ste 200 Charlotte, N.C. 28203

ii. _____

 iii. _____

(b) the proceedings at which each such attorney represented you:

i. (a); (b); (c);

ii. _____

 iii. _____

19. State clearly the relief you seek in filing this application:

Belated Appeal ; Grant of a New Trial
Pursuant to White v. State, 208 S.E.2d 35 (1974)
Strickland v. Washington, 466 U.S. 668 (1984)

20. Are you now under sentence from any other court that you have not challenged?

NO

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of York)

VERIFICATION

I, Mason Johnson, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

x Mason Johnson

SWORN to and subscribed before me this 10th
 day of February, 2011.

Sybil Jones (L.S.)
 Notary Public

My Commission Expires: 1/24/2018

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, Mason Johnson, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Mason Johnson
Applicant

SWORN or affirmed to and subscribed before me this

10th day of February, 2011.

Sylvia Jones
Notary Public

My Commission Expires: 1/24/2018

STATE OF SOUTH CAROLINA)

COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

2011-CP-46-0640

Mason Johnson, #229175,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

RETURN

FILED-RECEIVED
2011 AUG 19 AM 8:38
DAVID HAMILTON
C.C.P.E.G.S.
YORK COUNTY, SC

The Respondent, making its Return to the application for post conviction relief (PCR) filed February 14, 2011, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for York County. The Applicant was indicted at the February 2010 term of the York County Grand Jury for Burglary, second degree (2010-GS-46-0949), and Grand Larceny (2010-GS-46-0950). He was represented by Kenneth Snow, Esquire. On May 26, 2010, the Applicant proceeded to a jury trial and was found guilty as indicted of both offenses. The Honorable Lee S. Alford sentenced him fifteen (15) years incarceration for burglary, and five (5) years for grand larceny, concurrent.

A Notice of Appeal was filed on the Applicant's behalf. However, the S. C. Court of Appeals dismissed the appeal for failure to timely provide the Court with proof of service of the Notice of Appeal. The Remittitur was issued on September 24, 2010.

Attached herewith and incorporated herein by reference are the records of the York County Clerk of Court regarding the subject convictions, the Applicant's records from the

Department of Corrections, and the Applicant's appellate records. The trial transcript will be forwarded upon receipt. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his current Application, the Applicant alleges he is being held unlawfully for the following reasons:

1. Ineffective assistance of counsel

a) "Belated appeal/ White hearing requested"

III.

The Applicant alleges he received ineffective assistance of counsel. In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was

deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Each and every allegation contained within the application not hereinbefore expressly admitted, qualified or explained is hereby denied.

V.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

HARRISON D. BRANT
Assistant Attorney General

By: 

ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

August 18, 2011.

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS

2011-CP-46-0640

MASON JOHNSON,

Applicant;

vs

AFFIDAVIT OF SERVICE BY MAIL

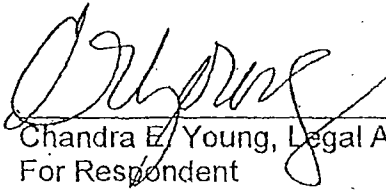
STATE OF SOUTH CAROLINA,

Respondent.

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Bradford A. Rawlinson, Esquire
PO Box 36365
Rock Hill, SC 29732

DATED this 18th day of August, 2011.


Chandra E. Young, Legal Assistant
For Respondent

FILED-RECEIVED
2011 AUG 19 AM 8:38
DAVID HAMILTON
C.C.P. & G.S.
YORK COUNTY, SC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF YORK	)	
MASON JOHNSON,, #229175	)	C/A NO: 2011-CP-46-0640
Applicant	)	
vs,	)	AMENDED APPLICATION FOR POST
	)	CONVICTION AND MEMORANDUM OF
STATE OF SOUTH CAROLINA	)	LAW IN SUPPORT OF APPLICATION
Respondent.	)	FOR (PCR).

Applicant, Mason Johnson, #229175, by and through his attorney, hereby files this amended PCR application and memorandum pursuant to rule 15 (a) SCRCP, with attachments thereto in support of his application for PCR relief. Applicant would respectfully show unto this Court:

Applicant hereby reiterate, reallege, re-plead and do incorporate herein the entire content of the original filed application for post-conviction relief verbatim.

Applicant hereby amends subsection 10 entitled "STATE CONCISELY THE GROUNDS ON WHICH YOU BASE YOUR ALLEGATION THAT YOU ARE BEING HELD IN CUSTODY UNLAWFULLY: Applicant incorporates the following:

- (a) 4th Amendment violation; S.C. Const. Art. 1, section 10
- (b) 6th Amendment violation
- (c) 14th Amendment violation

Respectfully submitted

July__2012

Applicant hereby amends subsection II entitled "STATE CONCISELY AND IN THE SAME ORDER THE FACTS WHICH SUPPORT EACH OF THE GROUNDS SET IN (10);" of the originally filed application to allege, plead and incorporate the following:

- (a) Counsel was ineffective for failing to request a hearing to determine if there was an unlawful search and seizure violation.
- (b) Counsel was ineffective for failing to request a competency hearing to determine if Applicant was competent to stand trial.

FACT (A)

Applicant contends that he is mentally incompetent and his trial counsel was ineffective for failing to request a competency hearing to determine if Applicant was competent to stand trial.

Prior to trial, counsel became aware that Applicant was unable to read or write and had an I.Q. of 60, which registers as "mildly retarded." However, counsel failed to request a competency hearing to determine if Applicant was competent to stand trial.

Counsel's failure to request a competency hearing prejudice Applicant under Jeter Standard because there was, at minimum, a "reasonable probability that Applicant was incompetent at the time of his trial.

RECEIVED

JAN 09 2013

S.C. Supreme Court

MEMORANDUM OF LAW

The law is clear in this field, a defendant may not be criminally prosecuted while incompetent, and state must give him access to procedures for determining his competency. The judge must conduct a competency hearing whenever evidence before him raises a bona fide doubt about the defendant's competency to stand trial, even if the defense does not ask for one. See, Media v California, 505 U.S. 437, 449, 112 S.Ct. 2572 (1992) citing Drope v Missouri, 420 U.S. 162, 172-73, 95 S.Ct. 896 (1975); Pate v Robinson, 383 U.S. 375, 386, 86 S.Ct. 836 (1966).

In this instant case, Applicant's competency is in question as seen from the record, and Applicant's request a competency hearing first to determine if he was competency to stand trial and to determine if he was competency at the time if the alleged crime. Matthews v.State, 358 S.C. 2456, 596 S.E.2d 49 (2004) citing Jeter v State, 303 S.C. 230, 417 S.E.2d 594 (1992).

CONCLUSION

Based on the foregoing, Applicant is entitled to have his sentence and conviction vacated.

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DEC 7 2012

SC Court of Appeals

ISSUE (B) Counsel was ineffective for failing to request a hearing to determine if there was an unlawful search and seizure violation.

Applicant contends that his 4th Amendment and South Carolina Constitution Art. 1, section 10 rights to be free from unreasonable searches and seizures was violated and his trial counsel was ineffective for failing to request a hearing to determine if there was an unlawful search and seizure violation.

At the time of Applicant's warrantless arrest, applicant was never implicated or identified as a suspect in the crime he allegedly committed. As a result, there was no nexus (connection) of the Applicant to the crime for which he was arrested.

In addition, the arrest warrants supporting affidavit was merely an oath of the officer. The state of South Carolina has a higher standard requirement for the issuance of search and arrest warrant providing that they be issued upon a sworn statement.

Applicant was located in a room that he was renting at his alleged co-defendant's house and arrested as a participant in a burglary 2nd and grand larceny.

Applicant contends that the police officers lacked probable cause to arrest him for the crimes charged.

RECEIVED

DEC 4 7 2012

SC Court of Appeals

Counsel was aware of this evidence prior to trial, but failed to request a hearing to determine if there was an unlawful search and seizure violation.

Counsel's failure to request a 4th Amendment and South Carolina Constitution Art. 1, section 10 violation prejudice applicant because there was a "reasonable probability" that the trial Judge would have found that there was a lack of probable cause to arrest applicant, therefore, Applicant's case would have been dismissed and/ or illegal evidence would have been suppressed. U.S. Const. IV and S.C. Const. Art. 1, sec 10.

In this case, probable cause was never established for Applicant's arrest for burglary 2nd and grand larceny. Counsel failed to request a hearing to determine if a S.C. Const. Art 1, sec 10 violation of unlawful search and seizure. S.C. Constitution Article 1, section 10.

Based on the foregoing, Applicant is entitled to have his sentence and conviction vacated.

CONCLUSION

Based on the foregoing, Applicant's conviction and sentence should be vacated with time served.

Respectfully submitted

July__2012

CERTIFICATE OF SERVICE

The undersigned hereby certify that he mail the motion for authorization for payments of expert service and amended PCR application to Counsel of record Bradford A. Rawlinson this ___ day of July 2012, by depositing same in the U.S. mail postage prepaid at Lieber mail-room.

Mason Johnson, 225175

RECEIVED

DEC 27 2012

SC Court of Appeals

Dear Mr. Rawlinson,

Enclosed would you please find for filing, motion for authorization of payment for expert services and amended PCR application. Please file and return a stamp filed copy to me.

Yours truly

Mason Johnson

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF YORK) IN THE COURT OF COMMON PLEAS

3
4 MASON JOHNSON)
5 APPLICANT,) TRANSCRIPT OF RECORD
6 -vs-) 2011-CP-46-00640
7 STATE OF SOUTH) AUGUST 15, 2012
8 CAROLINA,) YORK, SOUTH CAROLINA
9 RESPONDENT.

10
11 B E F O R E:

12 THE HONORABLE JOHN C. HAYES, III, JUDGE.
13
14

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

16 BRAD RAWLINS, ESQUIRE
17 ATTORNEY FOR THE APPLICANT

18 J. RUTLEDGE JOHNSON, ASSISTANT ATTORNEY GENERAL
19 ATTORNEY FOR THE RESPONDENT

20
21 MICHAEL R. WATTS
22 CIRCUIT COURT REPORTER
23
24
25

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EXHIBITS

1	NO.	DESCRIPTION	ID.	EV.
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3		(NO EXHIBITS MARKED)		
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1 (PROCEEDINGS AUGUST 15, 2012)

2 THE COURT: All right.

3 MR. JOHNSON: Yes, Your Honor. May it please
4 court, Your Honor?

5 THE COURT: Yes, sir.

6 MR. JOHNSON: This is the case of Mason Johnson v.
7 The State of South Carolina. It's case number
8 2011-CP-46-0640.

9 Mr. Johnson was indicted the February 2010 term of
10 the York County Grand Jury for burglary second degree and
11 grand larceny.

12 On May 26th, 2010, Mr. Johnson proceeded to a jury
13 trial, pursuant to which he was found guilty as indicted for
14 both offenses. The Honorable Lee S. Alford sentenced him to
15 fifteen years for burglary second and five years for grand
16 larceny.

17 Notice of appeal was filed on his behalf. The
18 South Carolina Court of Appeals dismissed this appeal for
19 failure to timely provide the court with proof of service.

20 Remittitur was issued on September 24th, 2010.

21 He filed a timely PCR on February 14th, 2011.

22 The State filed its return on August 18th, 2011,
23 and he is represented here today by Mr. Brad Rawlinson.

24 THE COURT: All right. Mr. Rawlinson?

25 MR. RAWLINSON: Your Honor, before -- before we

1 begin today I would like to inform the court that Mr.
2 Johnson sent me an amended PCR complaint late last week and
3 we discussed this matter on Monday morning, and he wishes
4 to -- and he wishes to bring -- or discuss with me some
5 additional issues that he -- that he had not raised in
6 his -- in his original PCR application, including --
7 including his competency to stand trial at the -- that was
8 not investigated before the original trial. For that reason
9 we would request -- I would request a continuance so that I
10 may investigate. I obviously have not had enough time to
11 investigate the -- the things that Mr. Johnson would like me
12 to investigate. I just became aware of these -- of these
13 additional issues about Friday of last week and discussed
14 with him on Monday, so I have not had the chance to
15 investigate those issues.

16 But in terms of the one issue that he listed in
17 his application, in terms of Mr. Snow not filing a timely
18 proof of service, we are ready -- or able to go forward on
19 that -- on that ground, and I think the only relief he
20 requested in his original PCR application was to have his
21 appeal reinstated. We are ready to go forward on that -- on
22 that issue, but I would request a continuance so that I may
23 further investigate his other concerns.

24 THE COURT: Well, we can't kind of bifurcate it.
25 Well, I guess in a way we can, but if he is entitled to a

1 belated appeal or the option to ask for a belated appeal,
2 the rule -- as I understand the rules and the case law, I
3 cannot grant him a belated appeal. I can grant him the
4 right to try to obtain a belated appeal by virtue of what
5 the rule -- I don't have the rule number now that outlines
6 how you go about the White v. State situation.

7 I will be glad to hear that issue today, but if
8 that is granted, then the other would be moot, at least at
9 this time, I would say. I mean --

10 MR. RAWLINSON: I believe that -- I believe that's
11 correct, Your Honor. I just wanted to alert the court that
12 we had discussed that issue in particular and we would be
13 ready to go forward, but I believe my client would like to
14 request a continuance to prevent that situation. I believe
15 it's my client's first request for a continuance, and he
16 has -- he has informed me of some substantial issues he
17 wishes for me to investigate.

18 THE COURT: All right. I don't see any reason why
19 we shouldn't go ahead and see what we got, as far as the
20 White v. State issue, and not visit the other issue until
21 later, if it's still a viable issue after the court rules on
22 what we have.

23 MR. JOHNSON: Yes, sir, Your Honor.

24 The State -- we can put Mr. Snow up on the stand
25 and ask him some questions.

1 I would ask that we go ahead with this PCR, as
2 well as the White v. State issue, and see if Mr. Snow's
3 testimony cannot take care of, you know, all of the issues
4 that Mr. Johnson may be bringing up.

5 THE COURT: What are the additional issues?

6 MR. RAWLINSON: Mr. Johnson believes that the
7 trial transcript is defective in a number of issues, one of
8 the issues being that a Detective Ahries (sic) that
9 testified during the course of trial was not actually at the
10 trial. And the trial transcript lists Detective Ahries
11 (sic), who is the head detective on the -- the head
12 detective on the case as testifying, but he did not actually
13 testify.

14 He also informs me that Mr. Snow was aware of a
15 mental defect and that he had been in special education
16 classes and that he had went to Catawba Mental Health and
17 this potential defense was never raised.

18 And to that end -- and to both of those ends he
19 would like for me to subpoena Detective Ahries (sic) to a
20 subsequent PCR hearing; to obtain his high school and
21 Catawba Mental Health records; and also to obtain the tapes
22 from the trial to ascertain as to whether he can prove that
23 certain detectives or other witnesses did, in fact, testify.

24 THE COURT: Well, defects in the transcript are
25 not anything that can be dealt with by on application for

1 post-conviction relief. I don't know how that would be
2 dealt with, other than -- I really don't know, and I'm not
3 going to opine.

4 The issue as to whether or not the officer
5 testified or not, again, is not a post-conviction relief
6 question. You said Ahries. I see an Ayers, A-Y-E-R-S. I
7 believe that's who you are talking about listed as
8 testifying on page 238. It says "Detective Tim Ayers, being
9 first called and duly sworn," and shows direct and cross.
10 But, again, if that's a defect, that's not anything that the
11 court can deal with.

12 Competency issue is a little different.

13 I would like to go ahead and resolve all of this.

14 What do you need for the -- what do you want to
15 obtain various --

16 MR. RAWLINSON: That is correct, Your Honor.

17 My client -- my client informs me that he had told
18 Mr. Snow that he had some concerns about him being competent
19 for the trial, the fact that he had been in special
20 education classes; and that he was under some type of
21 medication that he had received from Catawba Mental Health.
22 He doesn't know what type of medication or doesn't remember
23 what type of medication, and so to that end he wishes for me
24 to go and get his -- his trial -- his Catawba Mental Health
25 records, as well as to ascertain what medication that he was

1 on to prove -- to prove that Mr. Snow knew of those things
2 and that he was, in fact, incompetent to stand trial, and
3 Mr. -- and Mr. Snow did not act on that by alleging that
4 potential defense.

5 THE COURT: Well, we are really spinning on around
6 here, because if he wasn't competent, then we got a real
7 issue, as opposed to whether even any grounds for appeal.
8 If he wasn't competent, everything might be out the window.

9 The problem or reality is that it's got to be -- I
10 would opine, again, that there would have to be more on the
11 record than just school records and those sort of things to
12 support at this stage his position is he lacked competency.
13 This was tried back in 2010.

14 Do you have any -- other than just being as blunt
15 as I can, do you have any concerns about his competency?

16 MR. RAWLINSON: I -- I do not, Your Honor.

17 I will say parenthetically that I obviously cannot
18 discuss his --

19 THE COURT: Right.

20 MR. RAWLINSON: -- or opine as to his competency
21 back in -- during the trial.

22 THE COURT: Well, I understand that, but my point
23 is I'm in a little bit of a dilemma, because if competency
24 is at issue, then we need to have him evaluated. And if --
25 I don't see -- it would be awful hard to get an evaluation

1 as to what his competency was back in 2010.

2 MR. JOHNSON: Your Honor, if I may?

3 THE COURT: Yes.

4 MR. JOHNSON: I guess I'm going to request that
5 this hearing go forward, and, if necessary, take the
6 testimony of Mr. Johnson, take the testimony of Mr. Snow.
7 And if at the end there still is an issue that needs to be
8 resolved, maybe, you know, I don't -- I'm not able to
9 consent to leave the record open, but let's get through the
10 testimony and see if there is an issue. And then if
11 something else needs to be done, then I guess you could take
12 further action.

13 THE COURT: I think that's the best way. Let's go
14 ahead and proceed. And if I -- after hearing --

15 (Off the record)

16 (Back on the record)

17 THE COURT: You know, after the hearing today, if
18 I need to leave the record open and allow, a couple things,
19 one, you to obtain those things that you say that you need;
20 and also reconvene the hearing, if based on the things that
21 you obtain you believe that's a meritorious position to
22 proceed on. So we will go forward today with what we have
23 and see where we are at the end of the day.

24 MR. RAWLINSON: Yes, sir.

25 THE COURT: All right.

1 THE COURT: Call your first witness.

2 MR. RAWLINSON: Mr. Johnson will call Kenneth Snow
3 to the stand.

4 THE COURT: All right. Come on up and be sworn.

5 KENNETH SNOW, ESQUIRE, having been first duly
6 sworn, testified as follows:

7 DIRECT EXAMINATION BY MR. RAWLINSON:

8 Q. How are you doing, Mr. Snow?

9 A. I'm well, thank you.

10 Q. And, of course, you recognize my client Mason Johnson?

11 A. Yes, I do.

12 Q. At the -- during the trial of the case -- we don't --
13 for these purpose we don't have to go into the actual facts
14 of the case, but at the end of the case do you remember
15 being advised of my client's right to appeal?

16 A. I -- repeat your question, I'm sorry.

17 Q. Okay. Do you remember the judge telling you of the
18 time frame in the transcript -- do you remember the judge
19 telling you about the ten day time frame in order to file
20 Mr. Johnson's appeal?

21 A. I don't -- I don't necessarily recall the judge telling
22 me specifically that day, but certainly I understand that's
23 the rule.

24 Q. Okay. And did your office, in fact, file that appeal
25 within that amount of time?

1 A. We did file the appeal. However, there was an issue
2 relative to certificate of service.

3 Q. Okay. And what was that issue?

4 A. Apparently the Court of Appeals didn't have record of
5 certificate of service. And we attempted to do that and my
6 office, without getting into the paralegal situation, we
7 thought we had -- I thought we had perfected that with the
8 Court of Appeals and somehow it did not get perfected, so
9 that was an error on my part.

10 It did appear, however, that we did send -- that the
11 party was served, but my recollection is that we weren't
12 able to provide that evidence convincingly to the Court of
13 Appeals.

14 Q. And on that ground Mr. Johnson's appeal was denied?

15 A. That's correct.

16 Q. Okay. And do you -- do you believe -- were you
17 intending to go forward on that appeal?

18 A. Yes. In fact, we did send Mr. Mason Johnson a PCR
19 application, because we made -- we obviously had made an
20 error, asking him to respond to it. He never responded to
21 it.

22 Q. Okay. Do you remember Mr. Johnson discussing with you
23 some potential issues that he was having understanding what
24 was going on?

25 A. Honestly I can't -- I can't recall. I don't recall any

1 issues of him understanding what I was saying.

2 I can tell you that my recollection he was very, very
3 lively, very engaged in our conversations. I don't recall
4 him having any issues.

5 Q. Did he seem to understand and be involved with the
6 proceedings at the trial and before the trial?

7 A. He was very involved. And, you know, he asked
8 pertinent questions. He corresponded with me via letter on
9 a number of occasions, so there was nothing in our
10 interaction that made me think he did not understand.

11 Q. And did you request to have at any point during -- or
12 at any point before the trial did you request to have him
13 evaluated?

14 A. I don't believe I did.

15 Q. And did you feel a need to have him evaluated?

16 A. I felt no need whatsoever.

17 Q. Were you aware of his time spent at Catawba Mental
18 Health?

19 A. I can't recall whether he mentioned that to me or not,
20 or whether I was aware of that at the time, no.

21 Q. Were you aware of him attending special education
22 classes while in high school?

23 A. I don't recall specifically that he had -- that he
24 would have attended special education classes.

25 I certainly thought that he needed a little more time

1 to process things, but nothing that would make me think that
2 he had any difficulty understanding or appreciating what he
3 was going through the process.

4 Q. Okay. And you said he corresponded with you via
5 letter?

6 A. Uh-huh.

7 Q. Did you know that he could not read or write?

8 A. I don't recall whether he informed me of his
9 inabilities to read and write. He may have, but I know I
10 recall that we had conversations about his ability to
11 understand what we were going through. And I remember
12 spending a great deal of time talking to him about his case,
13 and I am convinced that he wanted to go forward.

14 I remember having several discussions with him relative
15 to the plea offer and if he is sure he wanted to go forward.
16 We even went as far as getting an investigator in this case,
17 so I'm convinced that he completely understood me at the
18 time.

19 Q. And what was the plea offer in this case? Do you have
20 any -- do you have any recollection of that?

21 A. No, I don't.

22 Q. And was that ever -- was there ever a rejection of the
23 plea put in the record at any point in time?

24 A. I don't recall ever putting something on the record.

25 Q. Okay. But he did, in fact, reject the plea offer that

1 was on the table in that case?

2 A. Right.

3 Q. Okay. And do you -- and, finally, there is a Detective
4 Ahries or Ayers that is listed as a witness in the case who
5 the trial transcript purports that testified.

6 A. Yes.

7 Q. And in your recollection did Detective Ayers actually
8 testify at the trial?

9 A. I believe he did. I don't -- I don't have any
10 recollection that he was absent. The name does sound very
11 familiar.

12 Q. Okay.

13 MR. RAWLINSON: No further questions, Your Honor.

14 MR. JOHNSON: Just a few.

15 CROSS EXAMINATION BY MR. JOHNSON:

16 Q. Counselor, are you aware that Mr. Johnson has been in
17 the court system quite a bit in his lifetime?

18 A. Yes, sir.

19 Q. And he had multiple priors?

20 A. I'm aware of that, yes, sir.

21 Q. Okay. And that he would have known the court system
22 more than the average person?

23 A. Yes, he did seem to understand the process better than
24 first time offenders.

25 Q. And you have already testified that he didn't make you

1 aware of his mental health issues?

2 A. I don't recall him making me aware of that. Certainly
3 not -- if he did, it wasn't to the extent that he didn't
4 understand me. In fact, I spent -- if I sense at all that
5 someone doesn't understand or that they appreciate the
6 process, what they are facing, I will ask them or spend time
7 with them to ask them those questions.

8 I never felt at all that he had any deficiencies which
9 would have impaired his ability to participate. Quite the
10 opposite. He was very engaging. He wrote me letters -- or
11 someone wrote me letters. He was very talkative, so -- and
12 he was certainly -- I remember he was -- he was -- he was
13 very adamant about going to trial on this matter, almost
14 from day one.

15 Q. And have you requested the mental competency hearing
16 before in your practice?

17 A. I have.

18 Q. So you are familiar with that process?

19 A. I have. I practice in North Carolina and South
20 Carolina, and I don't recall if I ever filed any in South
21 Carolina, but certainly I have done it I know a number of
22 times in North Carolina.

23 Q. Did he ever give you a reason to have him mentally
24 evaluated?

25 A. No, but I recall having a pretty respectful engaging

1 relationship with Mr. Johnson.

2 Q. And Mr. Rawlinson asked you about whether Mr. Johnson
3 told you he could not read or write. Isn't that termed as
4 illiterate, instead of incompetent?

5 A. That -- that would be illiterate, yes.

6 MR. JOHNSON: No further questions at this time,
7 Your Honor.

8 MR. RAWLINSON: No redirect, Your Honor.

9 THE COURT: You can step down, Mr. Snow. Thank
10 you.

11 THE WITNESS: Thank you.

12 THE COURT: Mr. Rawlinson, any other witnesses?

13 MR. RAWLINSON: I would like to call Mason Johnson
14 to the stand, Your Honor.

15 THE COURT: Mr. Johnson, if you would come up and
16 be sworn.

17 MASON JOHNSON, having been first duly sworn,
18 testified as follows:

19 DIRECT EXAMINATION BY MR. RAWLINSON:

20 Q. Mr. Johnson, did you request that Mr. Snow request an
21 appeal in your case, or file an appeal in your case?

22 A. I -- I believe I asked for an appeal.

23 Q. Okay. And to your knowledge that appeal was denied, is
24 that correct?

25 A. Well, I got some mail from some -- from some court --

1 from the court somewhere. It was speaking on that it was
2 denied.

3 Q. Okay. Now, could you -- could you describe your
4 time -- the time that you spent in Catawba Mental Health?

5 A. I went over there every other week.

6 Q. And what was -- what were those visits for?

7 A. Where I couldn't read and write, and I was -- they put
8 me on medication.

9 Q. Do you remember what that medication was?

10 A. No, I don't.

11 Q. And was there any other -- was there any other reason
12 that you visited Catawba Mental Health, other than reading
13 and writing?

14 A. Yeah, I'm a patient. I am a suicide patient.

15 Q. A suicide patient?

16 A. Yes, sir.

17 Q. Are you on suicide watch at the jail?

18 A. I'm on medication.

19 Q. Okay. And do you know what medication you are
20 currently on?

21 A. No, they -- not right off.

22 Q. Okay. Do you know what symptom it's supposed to treat?

23 A. Well, they give it to me every -- two times a day.

24 Q. Are you in any special unit in the jail?

25 A. Yes, I am.

1 Q. And what's that unit?

2 A. The mental health unit.

3 Q. Okay. Do you remember understanding the charges that
4 were filed against you?

5 A. They say I -- they say I -- they say I broke in a
6 house. They say I broke in a house, and I never -- I never
7 broke in no house.

8 Q. Okay. And you -- you said that detective -- I believe
9 you that you called him Detective Ahries (sic) in our
10 conversation, but it could be said Detective Ayers. Why
11 don't you believe that he testified at the trial?

12 A. Well -- well, I hadn't had the transcript but eighteen
13 days. I just got my transcript from you. And people I had
14 reading the transcript to me where I can get an
15 understanding of it that, you know, and I know Detective
16 Ayers from a previous time of being -- you know, from me
17 being arrested by him, you know, of other occasions, you
18 know, and that's how I know Detective Ayers and I can't -- I
19 can't recall seeing him in the courtroom on the stand.

20 Q. And let me -- let me backtrack a little bit.

21 Did you ever -- did you ever request that your
22 attorney, Mr. Snow, talk to the people at the Catawba Mental
23 Health before the trial?

24 A. Yes, I did.

25 Q. And did he do that?

1 A. I don't -- I don't -- I don't know.

2 Q. Okay. Did you request that -- and were you in any
3 different or specialized classes in high school?

4 A. Yeah, I stayed in the same class for the whole eight
5 hours.

6 Q. Okay.

7 A. In fact, me and other handicapped kids, students.

8 Q. Okay. Did you graduate high school?

9 A. Not as far I know of, no. No, sir, I don't think. No,
10 sir.

11 MR. RAWLINSON: That's all I have at this time,
12 Your Honor.

13 MR. JOHNSON: May it please the court, Your Honor?

14 THE COURT: Yes, sir.

15 CROSS EXAMINATION BY MR. JOHNSON:

16 Q. Mr. Johnson, you say that you don't recall Mr. -- or
17 Detective Ayers testifying, isn't that correct? That's what
18 you just testified to?

19 A. I can't -- I can't remember seeing him. I know him. I
20 be trying to picture him, but I know -- by the time I had
21 other transcripts, you know, and I never -- I never placed
22 him inside the courtroom. Right, I can't -- I never placed
23 him inside the courtroom, because if I would have seen him,
24 I would have knowed him, and I never seen him in the
25 courtroom on the stand.

1 Q. But that doesn't necessarily mean that he didn't
2 testify, right?

3 A. But, that's -- not as I know of. I don't know.

4 Q. Mr. Ayers (sic), let me ask you, you have quite a prior
5 history, don't you, of convictions?

6 A. Yes, sir.

7 Q. And you do realize that you have more than two
8 convictions for burglary second degree?

9 A. Right.

10 Q. And you do realize this if case goes back and you are
11 granted your PCR and it goes back, based on the law in South
12 Carolina you could be charged with burglary first degree,
13 which means you are facing fifteen to life?

14 A. Right.

15 Q. And you are still willing to go forward with this PCR?

16 A. Yes, sir.

17 Q. And you claim that you never broke in the house, isn't
18 that right?

19 A. Right.

20 Q. But actual innocence is not a claim in PCR. Are you
21 aware of that?

22 A. I don't understand -- I don't understand it.

23 Q. You can't claim actual innocence in this procedure.

24 That was -- the jury decided that you were guilty, isn't

25 that right?

1 A. I can't -- I can't be acting innocent. I ain't did
2 nothing. What do you mean? I ain't -- I never broke in no
3 house.

4 Q. But the jury found that you were guilty, isn't that
5 right? Isn't that why you are incarcerated today?

6 A. I guess.

7 Q. And are you aware -- you said that you have had your --
8 you were at the trial, obviously, and you have also had your
9 transcript. Your co-defendant testified against you, didn't
10 he?

11 A. I ain't had no co-defendant.

12 Q. Your roommate and co-defendant, Mr. Steven Robinson,
13 testified that you were with him that night, isn't that
14 right?

15 A. That's what he said.

16 Q. That's what he testified to, isn't that correct?

17 He said that you went down -- you kicked the door in --

18 MR. JOHNSON: And, judge, this is on -- starting
19 on page 174.

20 BY MR. JOHNSON:

21 Q. Stole a dryer, two AC units and a lawnmower. That's
22 what his testimony was at trial, isn't that right?

23 A. I guess. That's what -- I mean, I don't understand. I
24 mean, I -- I hadn't went through the transcript. I don't
25 know. I mean, I hadn't had enough time. I only had the

1 transcript a couple days now. I don't -- you know, and I
2 hadn't understand the transcript.

3 My lawyer, this is my first time seeing him. You know,
4 he's from Washington D.C.. Me and him ain't never went over
5 the transcript together. I don't understand what's really
6 going on at this moment right now.

7 Q. You are also aware that -- I think it's your
8 ex-girlfriend, Mona Lisa McIntosh, testified that there all
9 the sudden she knew there was an AC unit that hadn't been
10 there before inside your house?

11 A. I didn't bring --

12 Q. It was found on the bed?

13 A. It wasn't -- it wasn't in my -- it wasn't in the room
14 that I was, that I -- that I know of..

15 Q. Fully clothed laying on the bed?

16 A. Right. I mean, that's the way I do all the time. I go
17 lay down across the bed. What's that got to do -- I mean,
18 what's that got to do about burglarizing a house? I
19 was at -- I was at home in the bed. I didn't burglarize no
20 house. I was at -- I was at the house.

21 No -- you know, I mean, what -- I mean, that -- I mean,
22 that wasn't -- I -- that you -- what kind of evidence,
23 fingerprints or anything, put me at this house burglarizing,
24 breaking and entering a house? Breaking and entering a
25 house? I mean, I hadn't broke in no house.

1 Q. Your co-defendant testified against you, didn't he?

2 A. Did she say I broke inside a house?

3 Q. He.

4 A. Did he say I broke in?

5 Q. He went in there with you. Absolutely he did.

6 A. No, he -- he couldn't -- how is he going to put me
7 inside this house and I was at home in the bed? How could
8 he put me in the house when I'm at home in the bed?

9 Q. Sir, I'm not going to argue with you. I'm just -- will
10 you agree with me that's the testimony that was presented at
11 trial?

12 A. I -- I don't know. I -- I don't know if that was in
13 this transcript or not, because I hadn't read the
14 transcript.

15 Q. So you just testified that you already -- you have had
16 the transcript for eighteen days.

17 A. Right, but, you see, I never read the transcript
18 because, I -- you know, I have other people reading it and
19 we never -- probably never got that far in the transcript.

20 Q. Sir, in the past twenty years you have been convicted
21 of nothing but stealing, isn't that right? Shoplifting,
22 burglary, petit larceny?

23 A. That don't have nothing to do with burglarizing this
24 house.

25 The day that I got arrested, I did -- I paid my dues

1 for all of that. I paid -- I pleaded guilty. To
2 everything I did I pleaded guilty to it.

3 Q. Just to remind you, again, you do realize that you go
4 back and face life in prison?

5 A. Right. I mean, that's the chance I take, because
6 I'm -- I'm not -- I'm not guilty. I mean, if I was guilty,
7 I would plead guilty to it.

8 MR. JOHNSON: No further questions at this time,
9 Your Honor.

10 MR. RAWLINSON: Nothing further, Your Honor.

11 THE COURT: Let me ask you a couple of questions.
12 When you were going to trial, did you know what
13 you were going to trial for?

14 THE WITNESS: No, sir. The only thing I knew,
15 they say I broke in the house.

16 THE COURT: But you knew they say that you had
17 broken into a house?

18 THE WITNESS: Right, that was -- that was it. I
19 mean, I talked -- I tried to tell my lawyer, you know, I
20 didn't break in no house.

21 THE COURT: But you did talk to your lawyer about
22 what you were charged with?

23 THE WITNESS: Well, where I had -- where -- I had
24 other people to write letters to the lawyer. I never wrote
25 nary a letter to the lawyer. Other people write all my

1 letters. I never wrote nary a letter.

2 THE COURT: Did you meet with him face to face?

3 THE WITNESS: Yeah, I have, but we never -- we
4 never discussed anything about the case, or he never bring
5 the paperwork down to me. I never seen him have any
6 paperwork.

7 THE COURT: When you were being tried, you knew
8 that you were being tried by a court, did you not, for a
9 crime?

10 THE WITNESS: Right, but I -- from my
11 understanding that -- you know, that I was going on for
12 something that I didn't do.

13 THE COURT: But you knew you were being on trial.
14 You were being tried for the State saying that you did
15 something.

16 THE WITNESS: I said I was going -- I said that I
17 was in the courtroom. I was going to court.

18 THE COURT: For what?

19 THE WITNESS: For a -- for a charge of burglary --
20 of burglary.

21 THE COURT: All right. And you knew that the
22 State -- did you know that the State had to prove that you
23 did that before the jury could convict you?

24 THE WITNESS: But it's my understanding --

25 THE COURT: No, just answer my question.

1 Did you understand -- did you understand that you
2 couldn't get sentenced for doing that, unless the jury was
3 convinced you did it?

4 THE WITNESS: No, I -- I thought it was left up to
5 the judge. I didn't know the jurors could find me guilty
6 for something I didn't do. I -- I left it -- it was in the
7 judge's hands and that's the way I left it, you know. I
8 mean, I didn't know. I just been in there this whole -- you
9 know, praying that I would go home, because if I was to
10 burglarize a house, I would have pleaded guilty to it.

11 THE COURT: But you knew when you came into a
12 courtroom why you were coming into a courtroom, didn't you?

13 THE WITNESS: Right.

14 THE COURT: And you knew that you had a charge
15 pending against you and the judge, or somebody, could
16 determine whether you went to jail or not, did you not?

17 THE WITNESS: Right, and that's why I left it all
18 in the judge's hand, but they -- the jury -- the jury -- the
19 jury found me guilty and gave me fifteen years for something
20 I didn't do.

21 THE COURT: And did you talk to your lawyer about
22 the fact that you didn't do it?

23 THE WITNESS: Yes, sir.

24 THE COURT: And you knew that your lawyer was on
25 your side and trying to help you?

1 THE WITNESS: I thought he was..

2 THE COURT: All right. Anything else?

3 MR. RAWLINSON: No further witnesses.

4 THE COURT: You can step down. Thank you.

5 MR. JOHNSON: Your Honor, I recall Mr. Snow to the
6 stand.

7 THE COURT: Mr. Snow, please come back up, sir.
8 You are still under oath.

9 While he's the way up, Mr. Johnson, do you know
10 the rule on the belated appeal, what rule number it is?

11 MR. JOHNSON: It's the White v. State case.

12 THE COURT: I know, but isn't there a rule?
13 Didn't they do away with a rule about --

14 MR. JOHNSON: Let me look. I have to grab my rule
15 book, Your Honor.

16 THE COURT: Well, I can look. Go ahead and ask
17 the questions. I thought you might, as smart as you are,
18 know it off the top of your head.

19 All right, go ahead.

20 RECROSS EXAMINATION BY MR. JOHNSON:

21 Q. Mr. Snow, just some brief few questions for you.

22 You obviously remember being involved in this case?

23 A. Uh-huh.

24 Q. Did you ever discuss this case with Mr. Johnson?

25 A. My recollection is that I discussed it very thoroughly

1 with Mr. Johnson.

2 Again, we had a respectful relationship. I remember
3 being respectful to me, so I had -- I wanted to do the very
4 best I could for him, so I -- I believe I showed him all the
5 evidence. And if he didn't understand something, I
6 explained it to him.

7 Q. Did you have face-to-face meetings with him?

8 A. Yes.

9 Q. Was he in jail or was he out on bond during the time?

10 A. He was in jail, I believe.

11 Q. And you went and visited him?

12 A. Yes.

13 Q. Do you remember how many times?

14 A. I -- I can't recall, but I do recall feeling that I was
15 prepared and that I spent enough time with him.

16 Q. You said you hired a private investigator?

17 A. Uh-huh.

18 Q. And what, if anything, did he find out?

19 A. Well, Ms. -- Ms. Bryant, I don't --

20 Q. Or she, excuse me.

21 A. I think what she -- her main job was to look for any
22 potential witnesses that could support his theory of the
23 case, but she went out and asked -- went out to the crime
24 scene with -- by myself, I believe, and with her. I don't
25 recall what else she found, but she did spend I think about

1 thirty hours on the case, I think.

2 Q. And you had no questions about whether or not Mr.

3 Johnson was competent to stand trial?

4 A. No, I don't -- I don't recall that ever being a concern
5 in my mind. Certainly clients make decisions I wouldn't
6 necessarily make, but I had no reason to question his
7 competency.

8 If I recall correctly, I maybe asked him before if he
9 thought he had any problems about anything growing up, but
10 he didn't indicate he wanted an evaluation or anything. So
11 there was nothing in our conversation that made me think he
12 needed an evaluation.

13 Q. And if you did think that he needed an evaluation,
14 would you have taken those necessary steps?

15 A. I would have done so, especially since he was
16 particularly a court-appointed case and the State would have
17 paid for it, I think. I mean, I had no reason to be
18 concerned.

19 MR. JOHNSON: No further questions, Your Honor.

20 REDIRECT EXAMINATION BY MR. RAWLINSON:

21 Q. Just a few questions, Mr. Snow.

22 Do you remember any other witnesses that you discussed
23 with -- that Mr. Johnson told you about that weren't called
24 in the case?

25 A. I can't recall. It's been two years. I can't

1 remember.

2 Q. And you said -- you said in your earlier testimony that
3 sometimes he would have maybe a longer -- it would take him
4 longer to understand certain things?

5 A. Well, I recall talking to him about his plea, him being
6 very adamant about his plea, and explained the theories to
7 him. He certainly wasn't -- he's not a lawyer, and I
8 remember trying to explain it to him the theory of
9 conspiracy, I believe, or acting in concert, and that he
10 seemed to be -- not like someone who acts in deficiency, but
11 someone -- like someone who was a lay person would have a
12 difficulty understanding that, but nothing unusual beyond
13 that.

14 MR. RAWLINSON: Nothing further.

15 MR. JOHNSON: That's all I have, Your Honor.

16 MR. RAWLINSON: No other witnesses.

17 THE COURT: All right. I found the rule I was
18 looking for.

19 This is sort of hybrid, and I'm going to look at
20 it, but the Rule 243, Appellate Practice Rules, (I), sets
21 forth the procedure where White v. State review was sought
22 and it gives guidelines as to when relief -- the
23 post-conviction relief judge has affirmatively found the
24 right to a direct appeal was not knowingly and intelligently
25 waived. Well, I'm not sure that I can find that it was

1 knowingly and intelligently waived, because he asked for it.

2 The question then becomes whether or not it is a
3 question of ineffective assistance of counsel for neglecting
4 to perfect the appeal. So I'll wrestle with that, but
5 that's --

6 And then as far as the competency issue, I -- I
7 don't see at this point anything that would give rise to
8 that as a viable issue, but if I do not grant a belated
9 appeal, I will leave the record open for -- leave the record
10 open for submission of whatever, Mr. Rawlinson, you believe
11 supports that position, and we may or may not after that
12 have a hearing.

13 My thinking on that is I already heard from Mr.
14 Johnson and he was not evaluated at the time, so I don't
15 know if there would be any witness that could testify as to
16 whether he was competent or incompetent at the time, but
17 there may be something in those records, if we get to that
18 point, that would flag the court and help me reach a
19 decision, if we get there. I don't know whether that makes
20 sense or not, but it's a little unusual situation.

21 So I'm going to take this under advisement and
22 deal first with the White v. State issue. I think I have
23 got enough to do that.

24 All right, anything else, Mr. Rawlinson?

25 MR. RAWLINSON: Nothing further, Your Honor.

1

THE COURT: Anything else?

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MR. JOHNSON: Nothing further, Your Honor.

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THE COURT: All right.

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(END OF REQUESTED TRANSCRIPT OF RECORD)

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CERTIFICATE

I, the undersigned, Michael R. Watts, Official Court Reporter for the Sixteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for YORK County, South Carolina, on the 15th day of August, 2012.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

MARCH 13, 2013



Michael R. Watts
Circuit Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF YORK

Mason Johnson, #229175,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

C.A. No.: 2011-CP-46-0640

ORDER

FILED-RECEIVED
2012 AUG 22 PM 4:51
DAVID HAMILTON
C.C.C.P. & GS
YORK COUNTY, SC

Applicant's application for post-conviction relief (PCR) filed February 14, 2011, was heard by the undersigned August 15, 2012. Applicant was represented by Bradford A. Rawlinson, Esq., the State by J. Rutledge Johnson, Esq.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for York County. The Applicant was indicted at the February 2010 term of the York County Grand Jury for Burglary, second degree (2010-GS-46-0949), and Grand Larceny (2010-GS-46-0950). He was represented by Kenneth Snow, Esquire. On May 26, 2010, the applicant proceeded to a jury trial and was found guilty as indicted of both offenses. The Honorable Lee S. Alford sentenced him fifteen (15) years incarceration for burglary, and five (5) years for grand larceny, concurrent.

A Notice of Appeal was filed on the Applicant's behalf. However, the South Carolina Court of Appeals dismissed the appeal for failure to timely provide the Court with proof of service of the Notice of Appeal. The Remittitur was issued on September 24, 2010.

In his Application, the Applicant alleges he is being held unlawfully for the following reasons:

Jeffrey

1. Ineffective assistance of counsel

(a) "Belated appeal/White hearing requested"

The Applicant alleges he received ineffective assistance of counsel. In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application.

Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, the Court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

In White v. State, 263 S.C. 110, 208 S.E.2d 35 (S.Ct. 1974), our Supreme Court recognized that where a defendant has not knowingly and intelligently waived his or her right to

J.H.H.

appeal, he or she should be accorded the opportunity to seek appellate review of his or her conviction or sentence. This right has been incorporated into the South Carolina Appellate Court Rules as Rule 243(i).

In White, The applicant claimed he was unaware of his right to appeal and trial counsel acknowledged his failure to advise applicant of his right to appeal. Trial counsel testified, in essence, that as White's record warranted an assumption he was familiar with his right to appeal that he, trial counsel, did not advise him of his rights regarding an appeal. The Supreme Court found this to be a reasonable assumption, but concluded that trial counsel should not have rested on the assumption and "made certain that the defendant was fully aware of his rights." 208 S.E.2d at 39.

Applicant's case does not fall squarely under White as the testimony by both Applicant and trial counsel was that Applicant requested trial counsel to file an appeal, which he did. The testimony, and the record before the Court, makes it clear that trial counsel timely filed a Notice of Appeal, but for reasons not specifically enumerated, the Notice was not timely served as required by the South Carolina Appellate Court Rules. (See Rule 203, SCACR). Failure to comply with Rule 203, SCACR results in the Appellate Court being without jurisdiction of the attempted appeal. White, 208 S.E.2d at 39.

The undersigned is faced with something of a hybrid situation¹ based on the testimony and the record. Clearly Applicant was fully aware of his right to appeal his conviction and sentence and so he did not waive the right. In fact, he exercised, to the best of his ability, his right and requested trial counsel appeal. The wrinkle in this case is the admitted failure by trial counsel to see to full compliance with Rule 203, SCACR by failing to either serve or provide

¹ The case here is somewhat analogous, but not on all fours to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (S.Ct. 1991). As did the Court in Austin, the Court here is trying to "craft a remedy to correct the unfairness that has occurred." (305 S.C. at 454).

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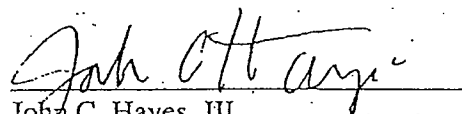
proof of service of the Notice of Appeal. Trial counsel's testimony on this issue acknowledge failure to file proof of service, but was not completely clear as whether service had been accomplished.

Based on the above observations and findings, the undersigned is somewhat conflicted as to whether this is a pure White situation, which it does not appear to be, or an ineffective assistance of counsel situation. I find that under either theory, Applicant should be afforded the opportunity to proceed to seek a belated appeal under the provision of Rule 243(i), SCACR.

Wherefore, I find that Applicant, under either theory set forth above, did not knowingly and intelligently waive his right to an appeal and must be given the opportunity to pursue a belated appeal under the provisions of Rule 243(i), SCACR.

Wherefore, it is Ordered that Applicant may seek appellate review of his conviction and sentence set forth herein above by compliance with Rule 243(i), SCACR.

IT IS SO ORDERED.


John C. Hayes, III
Presiding Judge

August 20th, 2012
York, South Carolina

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

WITNESSES

RHPO \Ayers

The State of South Carolina

County of York

Defendant

hereby appear in my own proper person and plead guilty to the within indictment or to

COURT OF GENERAL SESSIONS

February 18, Term 2010

ARREST WARRANT NUMBER

K-614536

Defendant

Witness:

C.C.C. PLS. AND G.S.

THE STATE

vs.

ACTION OF GRAND JURY

MASON JOHNSON

TRUE BILL

LB Var

Foreperson of Grand Jury 2-18-10
Date:

VERDICT

Guilty

Indictment for

GRAND LARCENY

Theresa Boyd

Foreperson of Petit Jury
Date: 5-26-10

SC Code: 16-13-30
CDR Code: 478

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

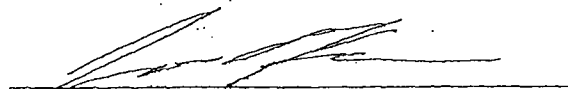
INDICTMENT

At a Court of General Sessions, convened on February 18, 2010, the Grand Jurors of York County present upon their oath:

GRAND LARCENY

The Defendant, Mason Johnson, did in York County, South Carolina, on or about November 18, 2009, feloniously take and carry away from William Jackson, goods valued more than One Thousand Dollars, with intent to deprive William Jackson permanently of such goods, all in violation of Section 16-13-30, Code of Laws of South Carolina, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

WITNESSES

RHPD \Ayers

The State of South Carolina

County of York

Defendant

COURT OF GENERAL SESSIONS

February 18, Term 2010

THE STATE

vs.

MASON JOHNSON

Witness:

C.C.C. PLS. AND G.S.

ARREST WARRANT NUMBER

K-614537

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury 2-18-10

Date:

VERDICT

Guilty

Indictment for

BURGLARY SECOND DEGREE

SC Code: 16-11-312(B)

CDR Code: 0086

Foreperson of Petit Jury

Date: 5-26-10

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

INDICTMENT

At a Court of General Sessions, convened on February 18, 2010, the Grand Jurors of York County present upon their oath:

BURGLARY SECOND DEGREE

The Defendant, Mason Johnson, did in York County, South Carolina, on or about November 18, 2009, willfully and unlawfully enter a residence at _____ in Rock Hill, South Carolina, during the hours of darkness without consent and with the intent to commit a crime therein. All in violation of Section 16-11-312 of the Code of Laws of South Carolina (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



ASSISTANT SOLICITOR