

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Edgefield County

Honorable George M. McFaddin, Circuit Court Judge

MAURICE ANTHONY ODOM,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2024-000517

APPENDIX

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VOLUME I OF II
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WITNESSES

JPD

ROBINSON

ARREST WARRANT NUMBER

DIRECT

ACTION OF GRAND JURY

RUE BIL

Foreperson of Grand Jury

Date: 7-31-13

VERDICT

Foreperson of Petit Jury

Date: 6-10-2015

DOCKET NO. 2013-GS-19- 511

The State of South Carolina

County of EDGEFIELD

COURT OF GENERAL SESSIONS

AUGUST TERM 2013

THE STATE

vs.

MAURICE ANTHONY ODOM

CDR#0080

Indictment for

BURGLARY
2ND DEGREE
(Violent)

DONALD V. MYERS, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF EDGEFIELD)

INDICTMENT FOR

BURGLARY
2ND DEGREE
(Violent)

At a Court of General Sessions, convened on July 31, 2013 the Grand Jurors of Edgefield County present upon their oath:

That MAURICE ANTHONY ODOM, did in Edgefield County on or about October 17, 2007, willfully and unlawfully enter, during the nighttime, without consent and with the intent to commit a crime therein, a building, to wit: the IGA Foodstore, Johnston, SC, having previously been convicted on two or more occasions of the crime of burglary, in violation of §16-11-0312(B)(2) and (3), South Carolina Code of Law, as amended, with penalties provided for in §16-11-312(C)(2), South Carolina Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



ASSISTANT SOLICITOR

1 State of South Carolina) In the Court
2 County of Edgefield) Of General Sessions

3 Indictment No.: 2013-GS-19-00511
4

5
6 State of South Carolina,)
Plaintiff.)
7)
8 vs.) Transcript of Record
9)
10 Maurice Anthony Odom,)
Defendant.)

11
12 June 8-10, 2015
Edgefield, South Carolina
13

14 B E F O R E:

15 The Honorable R. Knox McMahon, Judge and a jury.
16

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

18 Ervin J. Maye, Assistant Solicitor
19 H. Franklin Young, Assistant Solicitor
Attorneys for the State

20 Bennett E. Casto, Assistant Public Defender
21 Erik J. Drylie, Assistant Public Defender
Attorney for the Defendant
22

23
24 Brenda J. Sigwald, Circuit Court Reporter
To The Honorable R. Knox McMahon
25 P.O. Box 206, Jackson, South Carolina 29831

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1 MONDAY, JUNE 8, 2015

2 **PRETRIAL MOTIONS**

3 THE COURT: All right. This is 2013-GS-19-511,
4 State vs. Maurice Anthony Odom.

5 Is Mr. Odom present?

6 MR. CASTO: Yes, sir.

7 THE COURT: Thank you. It's an indictment for
8 burglary in the second degree, violent. Are there any
9 jurors in the courtroom?

10 The Court will come to order, please.

11 All right. Mr. Casto, do you represent Mr. Odom?

12 MR. CASTO: Yes, sir. I do, Your Honor.

13 THE COURT: Do you have a motion?

14 MR. CASTO: I do, Your Honor. On behalf of my
15 client, Mr. Odom. He told me as recently as last week,
16 Your Honor, that he would like me to be relieved as his
17 lawyer in this case. Your Honor, I believe that he faxed
18 over a motion to the Clerk's Office. We understand that
19 that's, you know, it's not valid. It's hybrid
20 representation, but we did inform Mr. Odom that I would
21 raise that issue on his behalf at his request and informed
22 him that the Court would likely question Mr. Odom with
23 regard for his reasoning for relieving me as counsel on his
24 case.

25 THE COURT: Thank you. And Mr. Clerk, do you have

1 a copy of that?

2 THE CLERK: I do.

3 THE COURT: All right. Mr. Odom, would you stand
4 for me please.

5 Mr. Clerk, would you place Mr. Odom under oath.

6 MAURICE ANTHONY ODOM,

7 was duly sworn:

8 THE COURT: Now, tell me your full name.

9 THE DEFENDANT: Maurice Anthony Odom.

10 THE COURT: And how old are you, Mr. Odom?

11 THE DEFENDANT: I just turned 42.

12 THE COURT: How much education do you have?

13 THE DEFENDANT: Ten years.

14 THE COURT: And what type of work do you do?

15 THE DEFENDANT: I'm incarcerated right now, sir.

16 THE COURT: Prior to being incarcerated, what type
17 of work did you do?

18 THE DEFENDANT: I worked on the farm and textile.

19 THE COURT: Now, I -- you heard what your lawyer
20 advised the Court, and I've read the motion to relieve
21 counsel. Can you tell me whatever you want to tell the
22 Court as far as this motion to relieve?

23 THE DEFENDANT: Yes, sir. I think sir, you know
24 the Court already know I been going through this for --

25 THE COURT: Let me stop you a minute. Move the

1 microphone over to Mr. Odom.

2 Thank you. Thank you.

3 THE DEFENDANT: Yes, sir. All right, sir. I've
4 been going through this situation right here with the
5 burglary second charge for approximately eight years now.
6 And through the process of eight years, I've been going
7 through a great deal of turmoil and headache and to where
8 my charges -- they got dropped at a preliminary hearing and
9 then picked back up. The charges were picked up on account
10 of them saying that there's some new evidence. There's
11 some new evidence, and new evidence -- well, my brother was
12 saying I was with him. And it wasn't -- that was the same
13 evidence at the hearing when the charges got dropped. And
14 then you know of course, I took a jury trial, like the year
15 before last I think it was. And here I am again, you know.

16 And I asked the attorney right here, I asked him,
17 can you investigate that, why the charges got dropped and
18 they picked them back up. And he was like -- I got
19 ignored, basically they got noted to the full extent. He
20 came and saw me like, maybe like two or three occasions
21 while I was incarcerated and you know I mentioned it to him.
22 I also mentioned to him, but it was nothing, you know. I
23 heard him ignore it.

24 And I also mentioned to him as well about since my
25 last jury trial I took that my brother had been in the

1 psychiatric ward several times and that was over looked as
2 well, as well as, you know --

3 I'm making sure everything is done right here. I
4 asked him to report -- I asked him about that I did a
5 report and I know -- I do know and understand I did a
6 report -- well, actually like the day or day after was
7 that -- around the time this incident happened in Aiken
8 County that I reported my car stolen. And he was telling
9 me that someone said something about there was nothing.
10 And I know that any time you call 9-1-1 dispatch everything
11 is being recorded everything is always recorded. And I
12 asked him to look into that, but there was nothing looking
13 into in that as well, you know. And -- and -- I even
14 mentioned to Mr. Casto as well, about the fact that I was
15 willing to take a plea. I was willing to take a plea but I
16 was constantly -- but I'm saying, you know, I was also
17 saying to him that I was innocent, but I just wanted to get
18 it over because I been going through too much -- through
19 this of eight years of heartaches and money for no reason,
20 something that I know for a fact I can't prove that I
21 didn't do.

22 I just want to get over it. But, you know, he give
23 me all -- all the excuses and everything about this is
24 blah, blah, blah, et cetera. And so I also mentioned to
25 him that I was trying to get these two attorneys on board

1 as of this morning. That's why I did the motion relieve
2 counsel ever since last week.

3 The attorney -- I tried to get my old attorney
4 which he was aware or more familiar with the case. Once I
5 had the mistrial, he was no longer on the case because I
6 didn't have no more money to pay him. Everything was gone
7 and he said he had done his job. But now my family is
8 trying to get the same attorney, Mr. Jerry Screen back on
9 board because he's the one that's familiar with my case.
10 As well as a attorney in Lexington by the name of Hammond
11 Neal, you know. Because I don't feel like from what
12 we've -- you know -- you know I feel like my life is on the
13 line as far as me being -- I'm getting older now and --
14 like I even told him I did a lot of things in my life that
15 I have to pay for and I -- I'm still paying for it -- and I
16 really don't want to go to trial. I really don't, you
17 know, but I have no choice.

18 I'm getting too old and my kids are getting in some
19 things and everything and I explained the situation. What
20 I was trying to figure out with him is something's got to
21 be done because I feel like I'm being tortured -- I'm being
22 tortured, Your Honor. That's because you got guys fighting
23 I saw in the county jail. They got burglary second degree,
24 two or three of them with burglary, first degrees, they got
25 three years concurrent and here I am with a burglary second

1 degree, which I didn't even really do and I'm willing to --
2 it's like in one ear and going out the other. You got some
3 way worst than mine, you know. I did most of my time when
4 I was a teenager, just taking bread and potato chips, you
5 know stuff like that right there and I'm still being hold
6 accountable for it and all that, you know. And this is
7 another -- he came to see me. He told me when I was in --
8 still incarcerated if I pled guilty that these other
9 charges, I received 50 years for it.

10 He told me that they would dismiss the charges. He
11 told me that my charges would be dismissed and that's the
12 only reason I took them other 15 years. Now he's saying he
13 didn't say it like that. You know, I said I have education
14 and I know enough of what he told me if I took this plea,
15 they're going to dismiss it and not going through with it.
16 I had another attorney which is Jerry Screen, when I was
17 in -- facing the other charges and he came to see me and he
18 said he spoke to Ervin Maye. Ervin Maye came to the office
19 for 45 minutes to an hour and he talked to him and he said,
20 well they going to drop the charges. He said they would
21 drop the charges, they want to clear the docket. And I did
22 -- I felt like I was being crucified.

23 Things -- a lot of things that was being done, it
24 wasn't done properly that I felt in my heart. And so I
25 done -- I go to the bar association disciplinary council on

1 the two gentleman right there, you know, out of anger. But
2 he came back to see me -- when Mr. Screen come back to see
3 me and he said, well do you want the disciplinary council
4 on something. I said yes, sir. He said, well they're not
5 going to drop the charges now because you did that. That's
6 what he told me. I told him I was being -- I went to -- I
7 wrote the bar association and I think I wrote them as well
8 and I apologized. I was angry and I apologized. They felt
9 that was going to keep me from getting the charges dropped.
10 And the only reason he sought me 15 years was he told me
11 they were going to drop the charges, dismiss the charges
12 and I ain't feel like that wasn't right, you know. And I
13 feel uncomfortable -- that's why I would rather deal with a
14 lawyer that already familiar with the case. Because this
15 is recently he told me this right here. And I took them
16 other 15 years.

17 That's why I would rather deal with an attorney
18 who's familiar with the case, as well as another attorney
19 out of Lexington, Mr. Hammond Neal, that's -- in my opinion
20 I think he's a experienced with the legal situation, how as
21 in black and white goes and everything, you know, Your
22 Honor. And like I said, my life is on the line and I -- I
23 just feel like I'm getting too old to be -- I been through
24 a lot when I was younger. I been through -- I know I made
25 a lot of mistakes. I'm getting too old. I'm getting too

1 old. I'm in prison now. I'm getting -- because I'm
2 willing -- I'm a target. I got jumped on three times and
3 robbery, I'm a target because I won't fight. I'm getting
4 too old for this thing and I don't need my life behind this
5 right here.

6 I need to get something done. Just last week my
7 head was swelled up and all blacked up all in here. That's
8 why I need to fight. I don't need to just give in because
9 they tell me one thing. And if I would have known what he
10 told me that they was going to drop the charges if I was
11 going to take the other 15 years. I would never had done
12 that. If he would have been -- he would have told me
13 something more specific when he say he didn't mean it like
14 that, that's not what he's telling me -- that's not what
15 he's telling me and everything. I've been through too
16 much, Your Honor.

17 I've been through a whole lot and my brother -- I
18 was explaining the situation to him. My brother -- even I
19 have psychiatric problems at one time. I'm okay now. I
20 say I'm okay, which I know I am, I think and everything.
21 My brother, he's been in the psychiatric ward several times
22 since this incident, as well as -- and what I tried to
23 explain to him is I feel like -- even though my brother may
24 be considered, okay now he's well, but at the time of the
25 crime he wasn't okay. And I think those are some

1 potentials that need to be fought for and that everybody
2 overlooking, as well as a whole lot of other things. And
3 this been going on for eight years and -- in my opinion,
4 and no offense, I don't want them to get angry in mischief
5 and personal.

6 My opinion, some cigarettes that were stolen, about
7 eight years, my family had to go make loans for bond money,
8 loans and everything and the money they didn't have. They
9 lost cars over the thing, over some cigarettes that were
10 stolen for years. When you got people with burglary
11 first-degree getting two and three year sentences and I
12 feel lick it was personal. I been suffering too much on
13 this right here, Your Honor. I been suffering entirely too
14 much. I lost a lot of my family members since I been here
15 that I couldn't be there. I got a lot of -- you know --
16 like I say, I feel like my past -- I feel like not only
17 what I have done, but I feel my past what I have done --
18 what they didn't realize -- all they see is burglary on my
19 past, not realizing I stole, at that time out of being
20 young and dumb and I was hungry. All they see is burglary.
21 If you look at the warrants, you see bread and you see
22 potato chips on the other ones. I was hungry. It was not
23 be doing something in a house. I was really in the woods.
24 I was not going to hurt anybody. It was just out of
25 hunger.

1 That was my past, right. And most of my thing --
2 I'm still -- I got to suffer, I still got to suffer. And I
3 done been through the situation before to where I feel like
4 I don't want anybody to tell me anything just to get me out
5 of the way. Get me out of the way. And God knows in
6 heaven, I would not have taken the other 15 years if you
7 would have told me this right here.

8 And now, in my head, I knew they want to use this
9 against me in which they're doing now. I knew it. I knew
10 it. I'm I knew this in my heart. That's what happened.
11 And like I say my charges got dismissed up in that
12 preliminary hearing.

13 THE COURT: I have made notes on what you told me.
14 If you have something additional that you haven't told me.
15 Don't keep repeating yourself.

16 THE DEFENDANT: Yes, sir. Yes, sir.

17 THE COURT: That's all I'm asking. You told me the
18 timing, eight years. You've told me the preliminary
19 hearing was dismissed.

20 THE DEFENDANT: Yes, sir.

21 THE COURT: You told me that the charges, the year
22 before last you think, I take it, Mr. Screen represented
23 you --

24 THE DEFENDANT: Yes, sir.

25 THE COURT: -- and it was a mistrial.

1 THE DEFENDANT: Yes, sir.

2 THE COURT: That he's come to see you, Mr. Casto,
3 two or three times. That your brother, who is now a
4 witness; is that correct?

5 THE DEFENDANT: Yes, sir. Yes, sir.

6 THE COURT: He's had some psychiatric issues. And
7 you had reported your car stolen. There should be a 9-1-1
8 tape. And I think you told me you would take a plea now
9 because, in your words, you're getting old. Those are not
10 my words, those are you words.

11 THE DEFENDANT: Yes, sir.

12 THE COURT: I've always heard, age is just a state
13 of mind. If I don't matter, it don't matter. It's mind
14 over matter. That's all it is.

15 THE DEFENDANT: Yes, sir.

16 THE COURT: But I understand what you're saying,
17 Mr. Odom. I'm not making light of that, but I guess I have
18 some questions.

19 With this span of time, this eight year span of
20 time -- let me ask you this: What county did you enter
21 that plea where you got fifteen years?

22 THE DEFENDANT: It's um --

23 THE COURT: Do you remember?

24 THE DEFENDANT: Is this the Eleventh Circuit?

25 THE COURT: This is the Eleventh Circuit. It

1 really doesn't matter --

2 THE DEFENDANT: Eighth circuit. Eighth circuit.

3 THE COURT: So you got a fifteen year sentence.

4 Have you filed -- when was that you pled?

5 THE DEFENDANT: Like -- some months ago.

6 THE COURT: Have you filed your PCR?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: You applied for a PCR opinion in that
9 case?

10 THE DEFENDANT: Appeal. Yes, sir.

11 THE COURT: So it's just an appeal right now?

12 THE DEFENDANT: Yes, sir.

13 MR. CASTO: To clarify, Judge. There are two
14 incidents. There was a conviction from trial, I believe
15 last summer.

16 THE DEFENDANT: Yes, sir.

17 MR. CASTO: Then there was an enter -- the entering
18 of a plea that occurred, I believe in January of this
19 year --

20 THE DEFENDANT: Yes, sir. After the hearing.
21 After the hearing.

22 MR. CASTO: -- over in the eighth circuit, Your
23 Honor. One was in Laurens, the other in Newberry, I
24 believe.

25 THE COURT: I think my question was, if he has a

1 fifteen year sentence, if he's talking plea bargain here.
2 And he said, well, I pled, so they are going to drop this.
3 My only -- I'm -- I'm --

4 THE DEFENDANT: Because that's what he --

5 THE COURT: -- not weighing the believability or
6 the non-believability of that. I'm just saying. Has it
7 got to a stage where a PCR are has kicked in on that to
8 determine the voluntariness by a PCR hearing. That's all I
9 was asking --

10 MR. CASTO: Yes, sir.

11 THE COURT: Is it at that stage yet?

12 MR. CASTO: No, sir, Your Honor. I believe one's
13 been filed, but we're not at that stage.

14 THE COURT: Why -- I guess Mr. Odom would have
15 these headaches, this turmoil, and the torturing to you,
16 it's always been there in front of you. Why did you wait
17 until May 27th to file this motion to relieve Mr. Casto?

18 THE DEFENDANT: Because I actually -- I been making
19 this extension. He's standing right here, and I've been
20 telling him all this and everything. And he was like, no
21 you misunderstood or something, blah, blah, blah. And at
22 the time, as of right now, I did it like last week, I think
23 last week, week before last. That's when I filed.
24 Personally I believe I felt like that's something I needed
25 to do. I need something to be done about it, though. I

1 mean, like I said, he's standing right here, and I'm
2 certain he can tell you just what he told me. I don't know
3 what he said -- I guess he's saying I misunderstood.

4 THE COURT: Let's see what he has to say.

5 Enlighten me on this some, Mr. Casto.

6 MR. CASTO: Yes, sir. Specifically with regard to
7 the convictions in the Eighth Circuit, it's my
8 understanding that this charge was always pending and has
9 been since 2007. Ultimately I inherited this case in --
10 well, last summer basically. And it was my understanding
11 that ultimately there were some charges, one in Newberry,
12 burglary in Newberry; a charge in Laurens as well.

13 Ultimately he was tried and convicted on the one
14 charge in Newberry which would give him, as I understand
15 it, a strike. Then he had the pending case in Laurens and
16 here. And it's my understanding, because I communicated
17 with the solicitor up there, that he could resolve that
18 case at the same time.

19 THE COURT: What case?

20 MR. CASTO: Oh, I'm sorry. I'm sorry. His -- the
21 pending remaining case in the Eighth Circuit.

22 THE COURT: The Laurens case?

23 MR. CASTO: Yes, sir. And ultimately I don't think
24 that he wanted to. They were -- they had noticed him for
25 life without parole up there, Your Honor. And I told him,

1 look it's my understanding that they are going to try you
2 first up there in Laurens. And if they do and you get
3 convicted and you get, you know, life without parole up
4 there, I'm pretty sure that what you've got here in
5 Edgefield, you know, would go away, is the conversation
6 that we had. That's -- that's what we spoke about when I
7 came to visit him at Broad River, Your Honor.

8 THE COURT: What about these, I guess you call
9 them, discovery issues? What about investigation as far as
10 the brother and the brother's psychiatric condition and the
11 9-1-1 tape.

12 MR. CASTO: The -- with regard to the issue of his
13 brother --

14 THE COURT: And I don't want you to have to get
15 into details if you're uncomfortable with that. Have you
16 investigated that? Or...

17 MR. CASTO: Yes, sir. And what I mean is, is that
18 the brother, several years ago, was evaluated himself for
19 competency, you know, years ago, and found competent to
20 stand trial. He was charged out of this same incident as
21 well. And, you know, it's my understanding that, you know,
22 stints in -- there's a presumption of competence, I
23 believe, with any witness. And I believe that he's had
24 some stints, Mr. Odom has heard, in, you know, the
25 department of mental health since that time. You know,

1 Your Honor, I don't --

2 THE COURT: Are you prepared to cross-examine his
3 brother when he testifies.

4 MR. CASTO: Yes, sir, Your Honor.

5 THE COURT: And you are fully aware of his
6 psychiatric issues.

7 MR. CASTO: Yes, sir, Your Honor.

8 THE COURT: And what about the report on the
9 automobile.

10 MR. CASTO: Yes, sir, Your Honor. I had --

11 THE COURT: Did you investigate that?

12 MR. CASTO: Yes, sir. I specifically had my
13 private investigator call. It is a report that was said to
14 have originated out of Aiken. And they did a search every
15 way they could with regard to that in the Aiken Public -- I
16 believe it's Aiken Public Safety, down there where that
17 report was said to have been made. And they couldn't find
18 any instance of it. And we had them check for that
19 whole -- that whole month -- that whole time, Judge.

20 THE COURT: And that includes Aiken Public Safety
21 searching the data base of 9-1-1?

22 MR. CASTO: Yes, sir, Your Honor.

23 THE COURT: Are you prepared to go to trial?

24 MR. CASTO: Yes, sir, Your Honor.

25 THE COURT: Have there been any plea offers,

1 presented?

2 MR. CASTO: There have, Your Honor.

3 THE COURT: They were not accepted.

4 MR. CASTO: They have not been accepted at this
5 point, Your Honor. Just to place on the record what the
6 offer extended is ten years on burglary second violent.
7 That would run consecutive to the time that he is currently
8 serving now. It would --

9 THE COURT: Is he serving a fifteen year violent
10 sentence now.

11 MR. CASTO: He is, Your Honor, with credit since
12 2011. I believe that his max out -- his max out date, Your
13 Honor, is sometime in 2019.

14 THE DEFENDANT: At the end -- the end of 2019.

15 THE COURT: How much credit will he get, if any,
16 for this charge?

17 MR. CASTO: Your Honor, the offer extended was,
18 from the Solicitor's Office's wording, said that he would
19 not be given pretrial detention credit, Your Honor.

20 THE COURT: What happened to the pretrial credit.

21 MR. CASTO: I believe that, you know, it's --

22 THE COURT: I'm just asking. I don't know the
23 answer to that question.

24 MR. CASTO: I mean, he's been incarcerated, based
25 on my research, since -- continually since 2011.

1 THE DEFENDANT: Since October, November 2011.

2 MR. CASTO: He was in on this since then in 2007
3 for, you know, some amount of time, not very much. But
4 really the bulk of his sentence starts in 2011.

5 THE COURT: All right. Mr. Odom, just tell me, and
6 be very focused and specific, what are you asking me to do?

7 THE DEFENDANT: Sir, I'm -- because of -- I feel if
8 what he told me, that I got my charges dropped I took
9 that -- I just, I feel uncomfortable. I want him relieved,
10 and I can get Mr. Screen and Mr. Neal on the case and maybe
11 something, you know, I feel somebody can investigate for
12 them and Mr. Hammond Neal because I just, I feel like I'm
13 being tortured. I'm not being treated fairly. I feel like
14 I'm not going to be treated fairly. I believe with them I
15 will be.

16 THE COURT: Mr. Odom, based on the time -- you're
17 talking to me about the time, I'm going to talk to you
18 about the time also.

19 THE DEFENDANT: Yes, sir.

20 THE COURT: I am not going to relieve Mr. Casto.
21 Mr. Casto is an experienced trial lawyer. He's tried cases
22 in front of me and represented clients and done guilty
23 pleas in front of me. And he does a very competent and
24 professional job. He tells me he's ready for trial. He
25 has researched the issues as far as your brother and also

1 as far as the police report to Aiken Public Safety and
2 9-1-1, so I'm going to deny your motion to be relieved.
3 That's number one.

4 Number two, do you want to speak any further with
5 your attorney about --

6 Is that plea offer still on the table, Mr. Casto?

7 THE DEFENDANT: Can I just say one thing to you,
8 sir.

9 MR. CASTO: Potentially, Your Honor.

10 THE COURT: I don't want --

11 MR. CASTO: Yes, sir.

12 MR. MAYE: Your Honor, we offered it with a
13 expiration date last week. He rejected it. We offered it
14 again this morning. He rejected it again this morning,
15 Your Honor.

16 THE COURT: All I'm asking -- I'm going to tell you
17 like I told Mr. Odom, is it on the table right now?

18 MR. MAYE: If he pleas right now, Your Honor, ten
19 years consecutive.

20 THE COURT: Do you want a few moments to speak with
21 your lawyer?

22 THE DEFENDANT: No, sir.

23 THE COURT: All right. Do you want to say
24 something else?

25 THE DEFENDANT: Yes, sir. I understand he said he

1 knew about my brother's psychiatric, but ever since my last
2 charge, he's been in the psychiatric ward at -- after that.
3 That wasn't investigated.

4 THE COURT: I've denied your motion. Do you want a
5 few minutes to speak with your attorney?

6 THE DEFENDANT: No, sir. I don't need to talk with
7 him.

8 THE COURT: Sir?

9 THE DEFENDANT: No, sir.

10 THE COURT: All right. So you want a trial?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: All right. Thank you. Thank you very
13 much.

14 We'll step aside for about ten minutes. And the
15 panel can come back in now.

16 MR. CASTO: Yes, sir.

17 THE COURT: Thank you very much. Court will be in
18 recess ten minutes.

19 (A brief recess was observed for the jury venire
20 panel to re-enter the courtroom.)

21 **JURY VOIR DIRE**

22 THE COURT: All right. The Court would come to
23 order, please.

24 MR. MAYE: May it please the Court, Your Honor.

25 The State calls Indictment 2013-GS-19-511 the State vs.

1 Maurice Anthony Odom, an indictment for burglary in the
2 second degree, violent. It's been true billed by the grand
3 jury of Edgefield County, Your Honor. The State now calls
4 this case for trial. You have the original indictment form
5 in front of you.

6 THE COURT: Thank you. Thank you, Solicitor.

7 Is Mr. Odom present in the courtroom?

8 MR. CASTO: Yes, sir, Your Honor.

9 THE COURT: All right. And Mr. Casto, do you
10 represent him?

11 MR. CASTO: Yes, sir. I do.

12 THE COURT: Is Mr. Odom prepared for trial? Are
13 you ready for trial?

14 MR. CASTO: Yes, sir, Your Honor.

15 THE COURT: Thank you. Thank you very much.

16 Ladies and gentlemen of the jury panel, if you
17 would, please give me your complete and undivided
18 attention. As a matter of first order, I would remind you
19 and advise you that you were put under oath for the
20 purposes of this proceeding now. We don't have to re swear
21 you in. As a qualified jury panel, from that panel we're
22 going to select twelve of you to serve as jurors in the
23 trial of this particular case. Additionally, I will select
24 two to serve as alternates. So you will be fourteen in
25 total number.

1 So this will be the qualifications and/or any
2 disqualifications concerning this particular case. I will
3 ask you certain questions concerning your qualification to
4 serve as jurors in this trial. I would please advise you
5 to make sure your responses are full, complete, and
6 accurate.

7 As part of those questions that I must ask, I will
8 read, or publish to you, the indictment. The indictment,
9 ladies and gentlemen, is not evidence. The indictment is
10 the formal charging document by which an individual is
11 placed on notice of charges that have been brought against
12 him or her. It contains mere allegations, and in no way is
13 it evidence of any of the allegations contained therein.

14 The indictment is 2013-GS-19-511, burglary, second
15 degree. It reads as follows: That Maurice Anthony Odom
16 did, in Edgefield County on or about October 17th, 2007
17 willfully and unlawfully enter during the nighttime,
18 without consent, with the intent to commit a crime therein
19 a building to wit the IGA Food Store, Johnston, South
20 Carolina having -- in violation of --

21 Step up here for me, please just for a moment.

22 MR. CASTO: Yes, sir, Your Honor.

23 THE COURT: -- in violation of the burglary statute
24 of South Carolina.

25 (There was a bench conference out of the hearing of

1 the court reporter and the jury venire.)

2 THE COURT: That Maurice Anthony Odom did in
3 Edgefield County in, on, or about October 17th, 2007,
4 willfully and unlawfully enter during the nighttime -- give
5 me just a moment.

6 The allegations are the burglary occurred or is
7 committed by a person with a prior record of two or more
8 convictions for burglary or house breaking or a combination
9 of both or the entering or remaining occurred in the
10 nighttime, in violation of 16-11-312(B)2 and (B)3 of the
11 Code of Laws of South Carolina. That is an indictment of
12 burglary second degree.

13 The State is represented by Assistant Solicitor
14 Maye.

15 Would you please stand, introduce yourself to the
16 jury panel, and any other member of the solicitor's staff
17 that will assist you in the prosecution.

18 MR. MAYE: My name is Ervin Maye. I'm the
19 assistant solicitor in the Eleventh Judicial Circuit. I
20 work for your elected Solicitor, Mr. Donnie Myers, out of
21 Lexington. I typically help him take care of McCormick,
22 Edgefield, and Saluda Counties.

23 Seated at the table with me here is Assistant
24 Solicitor Frank Young. He also has similar
25 responsibilities.

1 THE COURT: Mr. Odom is present along with his
2 attorney.

3 Mr. Casto, if you would, please stand and introduce
4 yourself to the jury panel, any other individuals that will
5 assist you with the defense of the case, and your client.

6 MR. CASTO: Yes, sir, Your Honor. Good morning.
7 My name is Bennett Casto. I'm a lawyer out in this area.
8 Throughout the trial of the case, I'll be joined by Mr.
9 Erik Drylie, another attorney with my office. And most
10 important, we have the pleasure of representing Mr. Maurice
11 Odom this week at trial. Thank you.

12 THE COURT: Thank you, Mr. Casto.

13 Thank you, Mr. Odom.

14 Is any member of the jury panel related by blood or
15 marriage, a close personal friend, have any personal,
16 business, social, or professional relationship with either
17 Assistant Solicitor Maye, Mr. Young, Attorney Casto, or
18 Attorney Drylie? If so, please stand.

19 (There was no response from the jury venire.)

20 THE COURT: Has any member of the jury panel or any
21 member of your immediate family ever been represented by
22 Assistant Solicitor Maye, Young, Mr. Casto, or Mr. Drylie?
23 Or have you ever been party to a court case in which one of
24 the attorneys represented the opposing party? If so,
25 please stand.

1 Your number and name, please?

2 THE JUROR: I think I'm one-fifty-something. It's
3 Ashlee Tyler.

4 THE COURT: All right. Would you step up here for
5 me, please.

6 THE CLERK: Juror Number 157.

7 (The juror stepped to the bar to speak with the
8 Court on the record.)

9 THE COURT: Good morning. Will you tell me your
10 number again.

11 THE JUROR: I don't know my number, but it's Ashlee
12 Tyler.

13 THE CLERK: 157.

14 THE COURT: 157. Ms. Tyler?

15 THE JUROR: Yes, sir.

16 THE COURT: And tell me your situation.

17 THE JUROR: I was represented by Mr. Maye. I was a
18 victim --

19 THE COURT: What type of case was it? You were a
20 victim in a criminal sexual conduct of the case.

21 THE JUROR: Yes, sir.

22 THE COURT: When was that?

23 THE JUROR: 2012.

24 THE COURT: 2012. Is when it went to trial. It
25 went to 2012 it happened in 2008.

1 Given the fact that you were a victim in a trial in
2 which Mr. Maye was the prosecutor, can you be a fair and
3 impartial juror in the trial of this case for both the
4 State and Mr. Odom?

5 THE JUROR: Could you say that again?

6 THE COURT: Okay.

7 THE JUROR: I'm sorry.

8 THE COURT: No. That's all right.

9 Given the fact that you were a victim in a case in
10 which Mr. Maye was the prosecutor in that case, can you be
11 a fair and impartial juror in the trial of this case for
12 both Mr. Odom and the State.

13 THE JUROR: Yes, sir.

14 THE COURT: Any doubt in your mind?

15 THE JUROR: No. Not at all.

16 THE COURT: Okay. Thank you. I believe you can
17 stay. Thank you, Ms. Tyler.

18 Is any member of the jury panel or any member of
19 your immediate family related by blood or marriage, close
20 personal friends, have any business, social, professional,
21 or know in any way -- any type of relationship with Maurice
22 Anthony Odom that was introduced to you by Mr. Casto? If
23 so, please stand.

24 (There was no response from the jury venire.)

25 THE COURT: The indictment alleges an incident of

1 burglary second degree that occurred October 17th, 2007, at
2 the IGA Food Store in Johnston, South Carolina. Does any
3 member of the jury panel have any knowledge about the case
4 from any source whatsoever? If so, please stand.

5 (There was no response from the jury venire.)

6 THE COURT: Does any member of the jury panel have
7 any bias or prejudice towards the parties, that being
8 either Mr. Odom or the State, or the subject matter
9 involved in the case? If so, please stand.

10 (There was no response from the jury venire.)

11 THE COURT: Has any member of the jury panel heard,
12 or know anything about the case from any source whatsoever?
13 If so, please stand.

14 (There was no response from the jury venire.)

15 THE COURT: Johnston Police Department the Law
16 Enforcement Agency?

17 MR. MAYE: That is correct, Your Honor.

18 THE COURT: Any other -- any other agencies?

19 MR. MAYE: The Saluda County Sheriff's Department
20 provided backup officers for this case, Your Honor. And
21 that would be the two agencies, from my understanding, that
22 would've been primarily responsible in responding.

23 THE COURT: Is any -- Thank you, Solicitor.

24 Is any member of the jury panel related by blood or
25 marriage, close personal friends, have any social,

1 business, or professional relationship with any employee of
2 the Johnston Police Department or the Saluda County
3 Sheriff's Office? If so, please stand.

4 (There was no response from the jury venire.)

5 MR. MAYE: Your Honor, out of an abundance of,
6 caution, the Edgefield Sheriff's Office did provide some
7 assistance after the fact, I'm informed, Your Honor. So we
8 would ask that you extend it to Edgefield County as well.

9 THE COURT: All right. And I would ask that same
10 question -- related by blood or marriage or close personal
11 friends to any employee of the Edgefield County Sheriff's
12 Department? If so, please stand.

13 All right. Yes, ma'am. I'm going to call that
14 color green. Now, I don't know if that's right or not.
15 Tell me your name and number, please.

16 THE JUROR: Shanon Delaughter, 35.

17 THE COURT: All right. And related by blood or
18 marriage?

19 THE JUROR: To Anthony Becker, Sergeant with the
20 Edgefield County Sheriff's Office.

21 THE COURT: And that's relation?

22 THE JUROR: Yes, sir. Brother-in-law.

23 THE COURT: Brother-in-law?

24 THE JUROR: Anthony Becker.

25 THE COURT: Given that fact, can you be a fair and

1 impartial juror in the trial of this case for both Mr. Odom
2 and the State?

3 THE JUROR: Probably not.

4 THE COURT: All right. I'll set you aside for the
5 trial of this case. Thank you. You may be seated.

6 Yes, ma'am. Your number and name, please.

7 THE JUROR: Juror 150, Linda Stone. I am a second
8 cousin to Jimmy Smith, Deputy in the Edgefield County
9 Sheriff's Department.

10 THE COURT: All right. Given that fact, can you be
11 a fair and impartial juror in the trial of this case for
12 both the State and Mr. Odom?

13 THE JUROR: I think I can, Your Honor.

14 THE COURT: And when you say you think you can, it
15 may just be a matter of semantics. If you've never been on
16 a jury before, any doubt in your mind that you can be fair
17 both to Mr. Odom and the State?

18 THE JUROR: No.

19 THE COURT: All right. Thank you. I believe you
20 can stay with us. Thank you very much.

21 Any others?

22 MR. CASTO: What was the number of the female that
23 stood before her?

24 THE CLERK: Number 35.

25 MR. CASTO: Thank you.

1 THE COURT: Of course, I've asked the panel -- I've
2 asked you about Mr. Maye and Mr. Young. Is any member of
3 the jury panel related by blood or marriage, close personal
4 friend of any employee of the Edgefield County or the
5 Eleventh Circuit Solicitor's Office? If so, please stand.

6 (There was no response from the jury venire.)

7 THE COURT: Is there any member of the jury panel
8 who is an employee of, member of, volunteer for,
9 contributor to any group which has as its primary concern
10 the promotion of law enforcement, the care and treatment of
11 victims, or in the care and treatment of individuals with
12 substance abuse problems? These groups include but would
13 not be limited to groups such as MADD, SADD, CAV, CADRA, or
14 Sister Care? If so, please stand.

15 (There was no response from the jury venire.)

16 THE COURT: Has any member of the jury panel or any
17 member of your immediate family ever been a victim of or
18 accused of a crime of burglary? If so, please stand.

19 (There was no response from the jury venire.)

20 THE COURT: I'm going to call a list of names in
21 the case of potential witnesses. I would advise the panel,
22 the witnesses do not have to be present during this
23 proceeding.

24 However, if the witness is present, when your name
25 is called, will you please stand and face the jury panel.

1 Again, the question, ladies and gentlemen, is if
2 you are related by blood or marriage or close personal
3 friends of any of these individuals whose names I call
4 and/or who stand before you, I would ask you to please
5 stand.

6 Twyla Barton, Shawn Campbell, Chris Miller, Chris
7 Aston, Lamaz Robinson.

8 Chief Robinson with the Johnston Police Department.
9 Thank you.

10 Brandon Donaldson, Devin Carter, Rayford Miller,
11 Jessie Dukes, Amy Stephens, Doris Yarbrough, Jan Bryson,
12 Jennifer Clayton, Rhonda McEleven Clerk of Court Barnwell,
13 Patricia K. Thomas, Clerk of Court Bamberg.

14 Again, is any member of the jury panel related by
15 blood or marriage, close personal friends, have a social,
16 business, professional, or other relationship with any of
17 those individuals whose names I called and/or who stood
18 before you? If so, please stand.

19 (There was no response from the jury venire.)

20 THE COURT: And finally, ladies and gentlemen,
21 you've heard the allegations of the indictment of burglary
22 second that occurred October 17th -- allegedly occurred
23 October 17th, 2007 at the IGA Food Store in Johnston, South
24 Carolina.

25 You've been introduced to the attorneys. You've

1 been introduced to Mr. Odom. You've been asked a series of
2 questions.

3 Our purpose is to select a jury that will be fair
4 and impartial in the trial of this case for both Mr. Odom
5 and the State. Each of you know yourselves best. So given
6 that question and that background, does any member of the
7 jury panel know any reason whatsoever why you feel like you
8 could not be a fair and impartial juror in the trial of
9 this case for both Mr. Odom and the State?

10 If it concerns you, it concerns me. If you have a
11 concern about your fairness or your impartiality in the
12 trial of this case, please stand.

13 (There was no response from the jury venire.)

14 THE COURT: Thank you. Yes, sir?

15 MR. MAYE: May it please the Court. I neglected to
16 include one potential witness. I had two clerks of court
17 on there, but I would ask the Court to inquire if anyone is
18 related by blood or marriage to Lynn W. Lancaster who is
19 the Clerk of Court for Laurens County, Your Honor.

20 THE COURT: All right. Madame Clerk Lynn W.
21 Lancaster is the Clerk of Court for Lancaster (sic). If
22 you're related by blood or marriage or close personal
23 friends, please stand.

24 (There was no response from the jury venire.)

25 THE COURT: And I would note for the record that my

1 question prior to that, my general question that I always
2 ask at the end of voir dire, that no one stood.

3 I find our panel is qualified.

4 Strikes, Mr. Casto.

5 MR. CASTO: Ten and five, Your Honor.

6 THE COURT: Is that correct, Solicitor?

7 MR. MAYE: Yes, sir, Your Honor.

8 THE COURT: Ten for the defense, five for the
9 State?

10 MR. CASTO: Yes, sir.

11 THE COURT: Mr. Clerk.

12 It was a lot quicker when we just used a cigar box.

13 Can we get that on the record, Madam Court Reporter?

14 THE COURT REPORTER: I've got this.

15 THE COURT: Mr. Clerk, please give our instructions
16 to our jurors as to what to do when their names are
17 called -- if their names are called.

18 **JURY SELECTION**

19 THE CLERK: If your name is called, I need you to
20 come straight up here to the front. Come through the gate.
21 Stand right here in front of me and turn around and face
22 the doors, the front doors of the courthouse; at which time
23 the defense and the prosecution will make their decision.
24 If they say, you may be seated, please seat you in the jury
25 box, you will turn, and you will go over to the jury box.

1 If they say, you are excused, you will go back and sit back
2 in the gallery.

3 Make sure you bring all of your property up here
4 with you because you may not be going back.

5 THE COURT: Well, you may not be going back for
6 now.

7 THE CLERK: Right now.

8 Jessica Sanders; Juror Number 138, Jessica Sanders.
9 (White Female).

10 What sayeth the State?

11 MR. MAYE: Please present the juror.

12 THE CLERK: What sayeth the defense?

13 MR. CASTO: Please seat Ms. Sanders.

14 THE COURT: That was perfect, Ms. Sanders.

15 THE JUROR: Thank you.

16 THE CLERK: Juror Number 81, Laura Jarvis. (White
17 Female).

18 What sayeth the State?

19 MR. MAYE: Please present the juror.

20 THE CLERK: What sayeth the defense?

21 MR. CASTO: Please excuse Ms. Jarvis from the trial
22 of this case.

23 THE CLERK: You may be seated.

24 Juror Number 12, Michael Bombard. (White Male).

25 What sayeth the State?

1 MR. MAYE: Please present the juror.

2 THE CLERK: What sayeth the defense?

3 MR. CASTO: Please excuse Mr. Bombard from the
4 trial of this case.

5 THE CLERK: Juror Number 89, Claude W. Kelly III.
6 (White Male).

7 What sayeth the State?

8 MR. MAYE: Please present the juror.

9 THE CLERK: What sayeth the defense?

10 MR. CASTO: Please seat Mr. Kelly.

11 THE CLERK: Juror Number 40, Genane Duff. (White
12 Female).

13 What sayeth the State?

14 MR. MAYE: Please present the juror.

15 THE CLERK: What sayeth the defense?

16 MR. CASTO: Please seat Ms. Duff.

17 THE CLERK: Juror Number 153, Leslie A. Thomas.
18 (Black Female).

19 What sayeth the State?

20 MR. MAYE: Please present the juror.

21 THE CLERK: What sayeth the defense?

22 MR. CASTO: Please seat Ms. Thomas.

23 THE CLERK: Juror Number 28, Cory M. Clegg. (White
24 Male).

25 What sayeth the State?

1 MR. MAYE: Please present the juror.
2 THE CLERK: What sayeth the defense?
3 MR. CASTO: Please seat Mr. Clegg.
4 THE CLERK: Juror Number 32, June C. Covar. (White
5 Female).
6 What sayeth the State?
7 MR. MAYE: Please present the juror.
8 THE CLERK: What sayeth the defense?
9 MR. CASTO: Please excuse Ms. Covar.
10 THE CLERK: Juror Number 163, Charles J. Weeks.
11 (White Male).
12 What sayeth the State?
13 MR. MAYE: Please present the juror.
14 THE CLERK: What sayeth the defense?
15 MR. CASTO: Please seat Mr. Weeks.
16 THE CLERK: Juror Number 104, Debra F. Messina.
17 (White Female).
18 What sayeth the State?
19 MR. MAYE: Please present the juror.
20 THE CLERK: What sayeth the defense?
21 MR. CASTO: Please excuse the juror from the trial
22 of this case.
23 THE CLERK: Juror Number 87, Valeria Jones. (Black
24 Female).
25 What sayeth the State?

1 MR. MAYE: Please excuse the juror from the trial
2 of this case.

3 THE CLERK: Juror Number 172, James E. Winn.
4 (White Male).

5 What sayeth the State?

6 MR. MAYE: Please present the juror.

7 THE CLERK: What sayeth the defense?

8 MR. CASTO: Please seat Mr. Winn.

9 THE CLERK: Juror Number 161, Anthony M. Weaver.
10 (Black Male).

11 What sayeth the State?

12 MR. MAYE: Please excuse the juror from the trial
13 of this case.

14 THE CLERK: Juror Number 80, Olga S. James. (White
15 Female).

16 What sayeth the State?

17 MR. MAYE: Please present the juror.

18 THE CLERK: What sayeth the defense?

19 MR. CASTO: Please excuse the juror from the trial
20 of this case.

21 THE CLERK: Juror Number 18, Cynthia C. Bryan.
22 (White Female).

23 What sayeth the State?

24 MR. MAYE: Please present the juror.

25 THE CLERK: What sayeth the defense?

1 MR. CASTO: Please excuse Ms. Bryan.
2 THE CLERK: Juror Number 53, Kimberly B. Fulford.
3 (White Female).
4 What sayeth the State?
5 MR. MAYE: Please present the juror.
6 THE CLERK: What sayeth the defense?
7 MR. CASTO: Please excuse Ms. Fulford.
8 THE CLERK: Juror Number 56, Dale Glanton. (Black
9 Male).
10 What sayeth the State?
11 MR. MAYE: Please present the juror.
12 THE CLERK: What sayeth the defense?
13 MR. CASTO: Please seat Mr. Glanton.
14 THE CLERK: Juror Number 97, Mitchell L. Marshall.
15 (Black Male).
16 What sayeth the State?
17 MR. MAYE: Please excuse the juror from the trial
18 of this case.
19 THE CLERK: Juror Number 154, Ricky W. Thomas.
20 (White Male).
21 What sayeth the State?
22 MR. MAYE: Please present the juror.
23 THE CLERK: What sayeth the defense?
24 MR. CASTO: Please seat the juror.
25 THE CLERK: Juror Number 120, Dedra M. Pixley.

1 (Black Female).

2 What sayeth the State?

3 MR. MAYE: Please excuse the juror from the trial
4 of this case.

5 THE CLERK: Juror Number 63, Angela J. Harper.

6 (White Female).

7 MR. CASTO: That number again, Mr. Clerk?

8 THE CLERK: 63.

9 What sayeth the State?

10 MR. MAYE: Please present the juror.

11 THE CLERK: What sayeth the defense?

12 MR. CASTO: Please excuse the juror from the trial
13 of this case.

14 THE CLERK: Juror Number 24, Shelby J. Carter.

15 (White Female).

16 What sayeth the State?

17 MR. MAYE: Please present the juror.

18 THE CLERK: What sayeth the defense?

19 MR. CASTO: Please excuse Ms. Carter.

20 THE CLERK: Juror Number 60, Sidney Gordon Jr.

21 (Black Male).

22 What sayeth the State?

23 MR. MAYE: Please excuse the juror from the trial
24 of this case.

25 THE CLERK: Juror Number 16, Robert L. Broadwater.

1 (Black Male).

2 What sayeth the State?

3 MR. MAYE: Please present the juror.

4 THE CLERK: What sayeth the defense?

5 MR. CASTO: Please present Mr. Broadwater.

6 THE CLERK: Juror Number 146, Geraldine C. Smith.

7 (Black Female).

8 What sayeth the State?

9 MR. MAYE: Please present the juror.

10 THE CLERK: What sayeth the defense?

11 MR. CASTO: Please seat Ms. Smith.

12 THE CLERK: Juror Number 66, Patsy K. Hatcher.

13 (White Female).

14 What sayeth the State?

15 MR. MAYE: Please present the juror.

16 THE CLERK: What sayeth the defense?

17 MR. CASTO: Please seat Ms. Hatcher.

18 THE CLERK: How many alternates, Judge?

19 THE COURT: Two alternates. Strikes are two and
20 one.

21 THE CLERK: Two and one?

22 THE COURT: Yes.

23 THE CLERK: Juror Number 129, Robert B. Purcell.

24 (White Male).

25 What sayeth the State?

1 MR. MAYE: Please present the juror.

2 THE CLERK: What sayeth the defense?

3 MR. CASTO: Please excuse the juror.

4 THE CLERK: Juror 157, Ashlee L. Tyler. (White
5 Female).

6 What sayeth the State?

7 MR. MAYE: Please present the juror.

8 THE CLERK: What sayeth the defense?

9 MR. CASTO: Please excuse Ms. Tyler.

10 THE CLERK: Juror Number 73, Shelby A. Hudson.
11 (White Female).

12 What sayeth the State?

13 MR. MAYE: Please present the juror.

14 THE CLERK: What sayeth the defense?

15 MR. CASTO: Please seat Ms. Hudson.

16 THE CLERK: Juror Number 20, Emma W. Burton.
17 (Black Female).

18 What sayeth the State?

19 MR. MAYE: Please present the juror.

20 THE CLERK: What sayeth the defense?

21 MR. CASTO: Please seat Ms. Burton.

22 THE COURT: Any motions regarding the jury
23 selection process from the State?

24 MR. MAYE: None from the State, Your Honor.

25 THE COURT: Defense?

1 MR. CASTO: No, sir, Your Honor.

2 THE COURT: Thank you, thank you very much.

3 Ladies and gentlemen of the jury panel that were
4 not fortunate to be selected as jurors for the trial of
5 this first case, please do not give up hope. The week is
6 young. There are many cases to be tried. Momentarily, I'm
7 going to release you from your jury service for the
8 remainder of the day; the remainder of the afternoon. I
9 would advise you to please call back to the juror
10 information number after 6 o'clock, after 6 p.m. tonight.
11 It will prompt you and give you instructions concerning
12 your jury service for the next day and for the remainder of
13 the week. So if you'd please call back after 6 o'clock
14 tonight to the juror information number which is printed on
15 your blue card as the clerk informed you about and showed
16 you also.

17 It has been my pleasure and privilege to be with
18 you in Edgefield County this morning.

19 Also, Juror Number 48, you of course are protected
20 for tomorrow. I would instruct you to please call back
21 after 6 o'clock tomorrow night, Juror Number 48.

22 THE JUROR: Yes, sir.

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

24 Members of the panel not selected for this trial are now
25 excused for the remainder of the day. Thank you very much.

1 (The jury venire left the courtroom.)

2 THE COURT: Ladies and gentlemen of the jury panel,
3 if you would please give me your complete and undivided
4 attention. I'm going to give you certain instructions
5 concerning your jury service, and you must follow these
6 instructions for the remainder of your time, your tenure,
7 on this jury panel.

8 During the time of the trial of this case, you may
9 not discuss this case with others, including your fellow
10 jurors, family, and friends, anyone except as directed by
11 the Court. You may not read, listen to, or watch any news
12 reports about the case should there be any. You may not
13 use a computer, cellular phone, or other electronic device
14 with communication capabilities while in attendance at
15 trial or during deliberations. The devices may be used
16 during luncheon breaks. Obviously, you will have your
17 devices overnight. However, they may not be used to obtain
18 or disclose information about the case that is prohibited.

19 Information about the case which is prohibited
20 includes, but is not limited to the following: Information
21 about a party, a witness, an attorney, or a court officer;
22 news accounts about the case, past, present, if there were
23 or if there are any; information collected through juror
24 research in any topics raised from testimony offered during
25 the case by any witness; or information collected through

1 juror research on any other topic the juror might think
2 would be helpful in deciding the case.

3 Ladies and gentlemen, you decide the case based on
4 the testimony of the witnesses, sworn witnesses testifying
5 before you from the witness stand, any inferences you think
6 may reasonably be drawn from the testimony, and any and all
7 items of physical evidence that may be introduced in the
8 trial of the case, uninfluenced by anything outside of the
9 four walls of this courtroom.

10 It is so easy, as we all know, nowadays with access
11 to information such as we have, to just hit a few little
12 letters and search them out of curiosity, out of
13 information, out of the want for knowledge. The knowledge
14 you get to determine the true and just verdict in this case
15 is based on what you hear in this courtroom, based on the
16 evidence that's presented by the individuals swearing under
17 oath. It's based on any physical items of evidence. And
18 then it's based on your individual and collective common
19 sense and good judgement in determining what the true facts
20 are, applying those facts to the law as I tell you the law
21 is, and deciding a verdict on your facts, our law, and
22 reach that verdict that speaks the truth.

23 These computers are not under oath. Newspapers are
24 not under oath. Radio and television are not under oath.
25 I know there's not a single person on that jury that would

1 believe everything they've seen on the television or
2 believe everything they read. It's like that commercial
3 said, well it must be true if it was on the Internet. And
4 nobody believes that.

5 Do not discuss the case until you've heard it all,
6 you've heard the closing arguments by the attorneys,
7 instructions on the law by the Court, and then directed by
8 the Court to begin your deliberations with your fellow
9 jurors in your juror room.

10 We're going to take a luncheon recess. I'm going
11 to give you a little bit of an extended recess because I
12 have some other motions to hear which is not unusual in a
13 trial; and myself and the attorneys will meet back early
14 and hear those motions so that upon your return, promptly
15 at 2:30 we should be able to start the trial of the case.

16 As I say, that is somewhat of an extended luncheon
17 recess, but I'd rather you not be held captive back there
18 in the jury room. I'd rather you be able to walk and
19 stretch and visit or what have you rather than being locked
20 in the courthouse.

21 Any questions?

22 (There was no response from the jury panel.)

23 THE COURT: Thank you, thank you very much.

24 Yes, ma'am?

25 THE JUROR: May I --

1 THE COURT: Do you want to speak up? Yes, ma'am.

2 You can step up. Certainly.

3 (There was a bench conference with the juror out of
4 the hearing of the jury panel and the court reporter.)

5 THE COURT: Solicitor and Mr. Casto, may I see you
6 momentarily?

7 MR. MAYE: Yes, sir.

8 MR. CASTO: Yes, sir.

9 (There was a bench conference out of the hearing of
10 the court reporter and the jury panel.)

11 THE COURT: All right. Mr. Clerk, will you prepare
12 the names of the alternates and place them in a cup to
13 select one for our jury?

14 Ms. Smith, we're going to excuse you from the trial
15 of this case. All right? Thank you, thank you very much.
16 And you, you do need to call back after 6 o'clock tonight.
17 Okay? Thank you, Ms. Smith.

18 (The Clerk drew a name of one of the alternates to
19 step up to the jury panel.)

20 THE CLERK: Juror Number 20, Ms. Emma Burton.

21 THE COURT: All right. Juror Number 20, Ms.
22 Burton?

23 THE JUROR: Yes, sir.

24 THE COURT: You've been promoted. You've been
25 promoted from alternate to a member of the primary jury.

1 If you would, take your seat among your colleagues. All
2 right.

3 So we have one alternate left. Ms. Hudson; is that
4 correct?

5 THE JUROR: Yes, sir.

6 THE COURT: All right. Thank you.

7 That is the proper procedure you have to use in
8 General Sessions Court is to draw one from the alternates.
9 And you see why I get two. So often they have to be used.

10 All right. Ladies and gentlemen of the jury panel,
11 if you would please follow my instructions. Would you
12 please be back promptly at 2:30. Hopefully the motions
13 will be resolved, and we'll be able to get started promptly
14 at 2:30.

15 Thank you. Thank you very much. The bailiff will
16 now show you out.

17 (The jury left the courtroom at 12:43 p.m.)

18 THE COURT: All right. Do we have any matters
19 before we take our recess from the State?

20 MR. MAYE: Your Honor, one thing I failed to bring
21 up, and I'm not sure if it fits for me to bring this up or
22 not. I know that Mr. Odom was evaluated by the Department
23 of Mental Health. He's had a series of lawyers. He had
24 Mr. Seigler. He had Mr. Screen. I don't know that there's
25 any issue of competency, but given the posture of this

1 case, Your Honor, I have an April 17th, 2013 letter here
2 and a report from Dr. Jeffrey, PhD of the South Carolina
3 Department of Mental Health and a report -- a basic a
4 report of Marla L. Domino, PhD, a licensed clinical
5 psychologist. And her report dated April the 17th, 2013
6 when Mr. Odom was evaluated for competency. He was found
7 to be competent in this case, Your Honor. I don't know if
8 there's any issue as to competency, but I wanted to be
9 sure, pursuant to Blair, that if there were any issues at
10 all -- and I'm handing up to the Court a copy of the report
11 from the Department of Mental Health.

12 I previously spoke with the defense in this case.
13 They said that they would be willing to stipulate to the
14 reports of the Department of Mental Health and I would not
15 have to bring that psychologist here for that purpose. I
16 don't know if there's any issue to his competency, but I
17 leave it to the defense in this case. And I will proffer
18 that report that was done, pursuant to an order. I'm not
19 sure if it was under pursuant of an order in this county or
20 others, but he was evaluated for competency, Your Honor.
21 And we do have the report indicating he is competent to
22 proceed.

23 THE COURT: Thank you, Solicitor.

24 Mr. Casto?

25 MR. CASTO: Just very briefly, Your Honor. Yes,

1 sir, we will stipulate to the findings in the report.

2 THE COURT: In this letter, Mr. Casto, the report
3 appears it was addressed to Assistant Solicitor -- whether
4 it was in this county -- All right. I have it marked as a
5 Court's exhibit. Thank you.

6 Anything further, Solicitor.

7 MR. MAYE: Nothing that I'm aware of, Your Honor.

8 THE COURT: Mr. Casto?

9 MR. CASTO: Yes, sir. I do have some pretrial
10 motions if the Court would take this up at this time or --

11 THE COURT: I'm going to come back early.

12 MR. CASTO: Yes, sir.

13 THE COURT: We'll come back at 2 o'clock and hear
14 the motions.

15 MR. CASTO: Perfect.

16 THE COURT: The jury's going to be coming back
17 2:30.

18 MR. CASTO: Yes, sir.

19 THE COURT: Unless there's something you
20 necessarily needed me to hear?

21 MR. CASTO: No, sir, Your Honor.

22 THE COURT: All right.

23 MR. CASTO: Yes, sir.

24 THE COURT: We'll be back at 2 o'clock.

25 All right. Thank you.

1 MR. CASTO: Thank you.

2 (A recess was observed for lunch.)

3 THE COURT: All right. Mr. Casto, you have some
4 motions?

5 **PRETRIAL MOTIONS**

6 MR. CASTO: Yes, sir, Your Honor. I do.

7 Your Honor, our first motion is perhaps the easiest
8 one, deal with a housekeeping matter, Your Honor. We
9 respectfully request that the witnesses be sequestered
10 throughout the course of the trial under Rule 615.

11 THE COURT: All right. Solicitor?

12 MR. MAYE: No objection to that, Your Honor. I
13 just ask the sequestration extend both directions.

14 THE COURT: Thank you. That's granted.

15 MR. CASTO: Yes, sir, Your Honor. Our second
16 motion, Your Honor, is that we would move for dismissal at
17 this time due to excessive pretrial delay. This, Your
18 Honor, is implicated by the Fifth Amendment due process
19 clause and the Sixth Amendment right to a speedy trial
20 supplied to the states. Under the Fourteenth Amendment, it
21 also implicates South Carolina Constitution Article 1
22 Section 14.

23 Your Honor, the story is that this trial is going
24 to play out before the Court occurs back October 17th,
25 2007. It is now 2015. Your Honor, this is, you know,

1 essentially a situation where we believe it is a case that
2 has existed for eight years with no resolution. Yes, Your
3 Honor, we do know that it was tried in late 2013, however
4 be that as it may, this type of pretrial delay is
5 excessive, Your Honor, in this case. But it's uniquely
6 postured as with regard to myself in that I'm essentially
7 the third lawyer on the case. Ultimately, through no fault
8 of Mr. Odom, it's approved through the Public Defender's
9 Office, and he was represented by the Honorable Judge
10 Seigler. Then Mr. Odom hired Mr. Screen. And ultimately
11 the case went back to the public defender's office prior to
12 me working in the tri-counties here, back to Mr. Seigler,
13 at the conclusion of the trial of the first case. It's not
14 a situation where, you know, there was intentional delay on
15 the part of the defense, certainly since I've had the case,
16 Your Honor.

17 Essentially, Your Honor, in support, we wish to
18 place on the record State vs. -- I recently found in State
19 vs. Langford, Your Honor. The cite is 400 SC 421. And in
20 it, the Court analyzed pretrial delay in that case as well.
21 And ultimately the Court outlined a framework and analysis
22 to use in interpreting these issues. The issue here is
23 that the excessive pretrial delay essentially erodes the
24 ability to mount an adequate defense. And the steps as
25 outlined in Langford, Your Honor, we believe that this case

1 violates fundamental concepts of justice. Essentially
2 what's occurred is fundamentally unfair. It is supported
3 in Langford, a case decided here in Edgefield. And the
4 steps that Langford would have us go through, ultimately
5 with regard to analysis and excessive pretrial delay, we
6 begin the analysis as far as when the clock starts to run.
7 When does it start? And Langford gives us that issue. It
8 says the clock starts running on the defendant's speedy
9 trial right when he is indicted, arrested, or otherwise
10 officially accused.

11 And, therefore, we are to include the time between
12 arrest and indictment. And so our answer is clear in this
13 case. We're starting from 2007, Your Honor. Your Honor,
14 the Langford Court speaks about the amount of time that
15 passes, and since the length is presumptively prejudicial,
16 and triggers remaining Baker inquiry, which are the other
17 three points as well. This is ultimately a case here
18 where, this is a case that's not a complicated murder
19 trial. There are no out-of-state witnesses. It's fairly
20 straightforward factually, as the Court found in looking at
21 the case in Langford.

22 The second item is that different weights should be
23 assigned to the different reasons for the delay. So the
24 question, you know, becomes, is it, you know, do we have to
25 prove that there's a deliberate attempt by the State? No.

1 That would certainly be given the weightiest amount,
2 however neutral reasons which could include over-crowded
3 dockets or negligence, are weighted less heavily but would
4 still count against the State because it bears the ultimate
5 responsibility for these circumstances. And, Your Honor,
6 we see no reason why this case has been pending for this
7 long but for negligence. Is it intentional, Your Honor?
8 Not something that's been intentional, but even though
9 negligence should be assigned less weight, it's still
10 significant, it still, under Langford, should be held
11 against the State.

12 The third factor in the Barker analysis is, did the
13 defendant assert their right to speedy trial. And you
14 would think that that would be something that would be
15 automatic or that the defense would absolutely have to
16 have. In looking at the public index, I know of no speedy
17 trial motions that were filed in this case. However, the
18 failure to assert the right, as Langford says, will make it
19 difficult for a defendant to prove that he was denied a
20 speedy trial. And so the issue is, would it make it
21 difficult, but it would not be impossible. And so that is
22 very much the case here.

23 Finally and just as importantly, the fourth step
24 is, we have to consider the prejudice Langford suffered.
25 But it's not limited to any one thing. The Supreme Court

1 has identified three different types of prejudice the right
2 to a speedy trial seeks to prevent. They would include
3 number one, oppressive pretrial incarceration. Through the
4 Court's questioning and speaking with Mr. Odom before, we
5 can all agree that he was and has been, incarcerated as of
6 2011, so there are four years right there.

7 Number two, anxiety stemming being publicly accused
8 of a crime. Mr. Odom has already stated that, you know,
9 that in the years of the pendency of this case, that his
10 life has been in turmoil, that it's much heartache. And he
11 feels like he's been tortured, and he used the term
12 crucified, with regard to how -- this case being resolved
13 and not knowing what's going to happen, not for a couple of
14 years, but Your Honor, for eight years.

15 The last thing that the Langford Court notes is the
16 possibility that the accused's defense would be impaired
17 due to the death or disappearance of witnesses with a loss
18 of memory with the passage of time, which is a most serious
19 issue, Your Honor. There is a potential witness, Your
20 Honor, that we believe could provide additional
21 information, it's Maurice's half-brother, that died in
22 2008. And, Your Honor, I think that prohibits us from, you
23 know, being able to get that information and then use it to
24 mount a defense for Maurice.

25 And respectfully, Your Honor, this case should be

1 dismissed. He -- as I said, he is still incarcerated on
2 other sentences, and his max out date, best case scenario,
3 is sometime in 2019.

4 THE COURT: Thank you. Thank you, Mr. Casto.
5 Solicitor.

6 MR. MAYE: May it please the Court, Your Honor. I
7 do want to note for the record, Mr. Odom made bond on these
8 charges after the time that he was arrested, Your Honor.
9 He has not been incarcerated any of this time on these
10 charges. He made bond on these cases, then he went to the
11 Eighth Circuit over in Laurens County and other
12 jurisdictions and amassed new charges and was incarcerated
13 on some of those charges. So prior to this date, us trying
14 this case again on a retrial, he has not been incarcerated.
15 We never sought to revoke his bond in this case, Your
16 Honor, or move for any sort of bond revocation. He has
17 been out on these charges continuously, from the standpoint
18 of this hasn't cost him, these charges dating back to the
19 case at hand in this case, have not kept him incarcerated.
20 He went of his own action into other jurisdictions, was
21 arrested, and was detained on those charges, Your Honor.

22 At no time has he ever filed any speedy trial
23 motions in regard to the case at hand that we intend to try
24 for the events of October the 17th of 2007, Your Honor.
25 Additionally, we've tried this case at one point in time.

1 It was called to trial August the 6th of 2013. We did
2 attempt to try it at that point in time. There had been no
3 speedy trial motion filed prior to that time or after that
4 time. A mistrial resulted in that case. They had a hung
5 jury, and it was a mistrial.

6 Some of the delay in this case, Your Honor, we
7 attempted to call this case even prior to 2013. It was
8 initially appointed Greg Seigler. The case was not tried.
9 It was delayed, in large part in that case, because he
10 changed lawyers and retained Mr. Jerry Screen. So we had
11 to go back through the discovery process and all with Mr.
12 Screen. Mr. Screen ultimately was his trial attorney. Mr.
13 Screen was released after the trial. He said that he had
14 only been retained basically to try the case one time.

15 The public defender's office was reappointed to
16 him. In the interim, he was convicted over in Laurens
17 County and got a fifteen year sentence, Your Honor. He had
18 some pretrial confinement there. But he was convicted over
19 in Laurens County and is now under the South Carolina
20 Department of Corrections serving that fifteen year
21 sentence, Your Honor, on that charge.

22 So, Your Honor, the State would respectfully
23 maintain that the delay in this case was on the part of Mr.
24 Odom. He changed lawyers and created some of the delay.
25 He got himself arrested, prosecuted, and convicted in other

1 jurisdictions. And he has never been held on these
2 charges, incarcerated, after the time that he made bond,
3 Your Honor. So we're certainly prepared to proceed to
4 trial at this time, Your Honor.

5 THE COURT: Mr. Casto?

6 MR. CASTO: Yes, sir, Your Honor. In response,
7 Your Honor, this has been, through no fault of Mr. Odom.
8 Also in Langford, they cite Langford pretrial delays.
9 Langford was actually at fault in trying to speak with
10 folks that would gut the State's case. And the Court later
11 found that Langford directly had, you know, proactively
12 tried to, you know, alter the witness testimony before he
13 was brought to trial. So he had some ownership there.

14 This is not the case here. Ultimately, he's placed
15 into custody for sure in 2011. Well, the State knows where
16 to find him. With regard to him switching lawyers, Mr.
17 Jerry Screen doesn't enter the picture until 2013. And
18 ultimately this is a right that Mr. Odom has, and he
19 shouldn't be prejudiced by it.

20 There was, as I understand, I did find a copy in my
21 file, and I inherited this case through a couple of
22 different lawyers, so there's all kinds of paperwork in
23 there. There was, as best I can tell, an attempt to revoke
24 his bond. I believe the date is wrong on this paperwork,
25 but ultimately the Court did not revoke it. However, he

1 was placed on a strict curfew and restricted to the
2 confines of his residence during that curfew and not have
3 any contact with certain witnesses and things.

4 So there have been instances of kind of reactive
5 affect by being out in the pendency of this. But, you
6 know, it's an issue where the State can't point to a good
7 reason as to why it's strung on for eight years. It's the
8 only case that I know of -- of this particular posture.
9 It's unusual, Your Honor. We move that it be dismissed.

10 THE COURT: Nobody's told me when Mr. Odom was
11 arrested for this charge.

12 MR. CASTO: I have that information.

13 MR. MAYE: October 30th of 2007 is what we have,
14 Your Honor.

15 MR. CASTO: Yes, sir, Your Honor.

16 THE COURT: And then he, he made bond; is that
17 correct?

18 MR. MAYE: Yes, Your Honor. He made bond on these
19 charges.

20 THE COURT: How long was he in jail?

21 MR. CASTO: Until February 2008, Your Honor.

22 THE COURT: So he was in jail November, December,
23 January, and February of '08, then he was out -- four
24 months.

25 MR. CASTO: Yes, sir.

1 THE COURT: And then he is arrested when in the
2 Eighth Circuit.

3 MR. CASTO: In October of 2011, Your Honor.

4 THE COURT: October 2011.

5 MR. CASTO: Yes, sir.

6 THE COURT: And those I heard, what, Newberry and
7 Laurens, October of 2011. Has he been indicted in
8 Edgefield County between October the 30th of '07 and
9 October of '11? This indictment is 2013 indictment dated
10 7-31-13 true bill and was tried --

11 MR. MAYE: Your Honor, he was indicted back in
12 2006. He got arrested in Lexington. There was a hearing
13 in front of Judge Keesley on September the 10th of 2006.
14 He got arrested in Lexington County -- excuse me, Your
15 Honor. That's an incorrect date. He got arrested in
16 Lexington County prior to the Laurens charges, Your Honor,
17 and that trooper does attempt to -- I have -- this order
18 was filed by Judge Keesley. It's not an incorrect date on
19 it, but it was filed by -- with -- by Judge -- with the
20 former Clerk of Court on 9/10 of 2008. He got arrested on
21 Lexington County burglary charges even prior to having the
22 charges over in Laurens.

23 At that point in time, he had multiple charges
24 pending in Barnwell County which even predated these
25 charges in Edgefield County. And so he's had charges in

1 multiple jurisdictions. He had charges in Barnwell that
2 predated these that were pending. He then got the
3 Edgefield charges. He got Lexington charges and then
4 subsequently got the charges in the Eighth Circuit as well,
5 Your Honor. And so he had been rearrested as early as
6 2008, and we attempted to apparently revoke his bond in
7 2008 based on his new Lexington County arrest. Judge --
8 Judge Keesley did not revoke his bond. He basically just
9 set a curfew.

10 At that point in time, he was represented by
11 another attorney, Mr. Marion Moses. So I had forgotten, in
12 this case, that he had had an interceding attorney in
13 between Mr. Seigler and Mr. Screen. And the State would
14 also assert that that was part of the delay. We at first
15 thought Mr. Moses would have him on all of this, and he
16 ended up just representing him for the purposes of the bond
17 hearing, Your Honor.

18 THE COURT: Was there a time when he was out on
19 bond and was not reporting in general sessions court in
20 Edgefield County?

21 MR. CASTO: No, sir, Your Honor. I don't have any
22 paperwork to that effect. I beg the Court's indulgence.

23 MR. MAYE: The Clerk of Court has some paperwork in
24 the file. He was initially indicted, it looks like March
25 2008 here, on the Indictment 2008-GS-19-106 for grand

1 larceny and Indictment 2008-GS-19-105, and at some point in
2 time he did not appear, and there were -- these indictments
3 I see are signed off by Solicitor Young as failure to
4 appear on 2/12 of 2009. So there was apparently at least
5 some term of court when we believe he was not appearing on
6 these charges, Your Honor. Some of that may have been his
7 arrest in other counties. I don't know why he was not
8 here, but he got arrested so many times. Like I said, he
9 was out on Barnwell charges, got arrested in Edgefield, was
10 out on the Edgefield and Barnwell charges, got arrested in
11 Lexington. And then, it is my understanding, was out on
12 Barnwell, Edgefield, and Lexington charges and got
13 rearrested over in the Eighth Circuit, was ultimately tried
14 and convicted on those charges, Your Honor.

15 But I think that was the first time that he
16 actually was incarcerated in 2011. I think he for the most
17 part, there was a brief period of time when he was
18 arrested, and then other places he was in for short periods
19 of time.

20 THE COURT: Tell me, Mr. Casto, why the witness
21 that died -- who that witness was and when he died and --
22 '08 did you say?

23 MR. CASTO: Yes, sir, Your Honor.

24 THE COURT: A potential witness died in 2008.

25 MR. CASTO: Yes, sir. The witness's name is

1 Nicholas Jermaine Sapp, Your Honor.

2 THE COURT: Nicholas Sapp.

3 MR. CASTO: Yes, sir. The middle name is Jermaine.

4 THE COURT: Okay.

5 MR. CASTO: As I understand it, he passed in 2008
6 as a result of a car accident.

7 THE COURT: And when did he pass?

8 MR. CASTO: Your Honor, he informs me that he
9 passed away in the months of either June or July of 2008.

10 THE COURT: Now, if I'm tracking him right time
11 wise, from October 30th, '07 until September of '08, he was
12 not in jail. Is that --

13 MR. CASTO: That is our understanding as well, Your
14 Honor.

15 THE COURT: And of course, he was represented at
16 that time by Mr. Seigler.

17 MR. CASTO: Yes, sir. Yes, sir, Your Honor.

18 THE COURT: And of course, Mr. Seigler was assigned
19 to the Edgefield case.

20 MR. CASTO: Yes, sir.

21 THE COURT: He is now Judge Seigler. And then, Mr.
22 Moses represented him on the bond revocation before Judge
23 Keesley in Lexington. Correct?

24 MR. CASTO: Yes, sir. Your Honor, if I may. The
25 one thing the Court said that I thought of, you asked if he

1 had been incarcerated October 30th of '07 until September
2 of '08. Remember he was in custody from, until February
3 2008 and then bonded out.

4 THE COURT: Yes, sir. I have he was bonded
5 February of '08.

6 MR. CASTO: Yes, sir.

7 THE COURT: Okay. So during that time, when he
8 gets out of jail on bond in the Edgefield case and is
9 represented by an attorney. Do you know if Judge Seigler
10 at that time requested an investigator?

11 MR. CASTO: I do know that he did request an
12 investigator. There is an order for funding sometime after
13 that, Your Honor.

14 THE COURT: And there would have been time from
15 October of '07 until June or July of '08 for an
16 investigator to have interviewed Mr. Nicholas Sapp.
17 Correct?

18 MR. MAYE: Yes, sir, Your Honor.

19 THE COURT: And Mr. Odom was not in jail for any of
20 that time, from at least February of '08 until September.

21 MR. CASTO: Yes, sir.

22 THE COURT: And he -- he never makes a motion,
23 during that period of time, for a speedy trial?

24 MR. CASTO: That's correct, Your Honor.

25 THE COURT: Mr. Moses represents him on the bond

1 revocation; is that correct?

2 MR. CASTO: That's my understanding.

3 THE COURT: And his bond's not revoked.

4 MR. CASTO: It is not, Your Honor.

5 THE COURT: And so it's amended on the curfew, but
6 it is not revoked.

7 MR. CASTO: That's correct.

8 THE COURT: So he's back out on bond now on the
9 Edgefield charges, Lexington charges, and maybe some other
10 charges. And he ultimately gets charged over in Newberry
11 and Laurens. Correct?

12 MR. CASTO: Yes, sir.

13 THE COURT: And prior to June -- excuse me. Prior
14 to August of 2013, he's now got a third lawyer, Mr. Screen.

15 MR. CASTO: Yes, sir.

16 THE COURT: And Hammond Neal? Or just Mr. Screen?

17 MR. CASTO: I don't believe that Hammond Neal was
18 ever in the picture. I think mention of his name is --

19 THE COURT: Okay.

20 MR. CASTO: If he was hired --

21 THE COURT: Okay. So he's tried on this case.
22 He's been in custody on other cases now, after -- in this
23 case. And then even in -- what did the solicitor? In '09,
24 February of '09, the '08 indictment from Edgefield County
25 were dismissed because of failure to appeal. He could or

1 could not have been in jail. I don't know the answer to
2 that question, but he wasn't here.

3 MR. CASTO: Yes, sir.

4 THE COURT: So then Mr. Screen gets appointed. And
5 I'm not sure of the time frame there. Was it when Judge
6 Seigler was elected?

7 MR. CASTO: No, sir. Mr. Screen surfaces in the
8 year 2013.

9 THE COURT: Okay.

10 MR. CASTO: And he is hired by Mr. Odom and members
11 of his family.

12 THE COURT: So he's a private attorney.

13 MR. CASTO: Yes, sir.

14 THE COURT: Okay. All right. So Mr. Screen is
15 hired in 2013, and his Edgefield is in trial August 6th of
16 2013, never any motions for a speedy trial.

17 MR. CASTO: No, sir, Your Honor. Not to my
18 knowledge.

19 THE COURT: And in 2013 -- from '07 to 2013 -- it's
20 '08 when Mr. Sapp dies, there's never any motion of
21 prejudice because of Mr. Sapp's nonpresence. Correct? If
22 you know.

23 MR. CASTO: Yes, sire.

24 THE COURT: I'm just trying to track the timeline.

25 MR. CASTO: Yes, sir. That I know of, I'm not

1 aware of any.

2 THE COURT: And so as far as you know, the evidence
3 was presented as such that a jury did not think the State
4 met its burden of proving its case beyond a reasonable
5 doubt as unanimously. And that's why you have a mistrial.

6 MR. CASTO: Yes, sir.

7 THE COURT: And I may be wrong about this. You
8 tell me. I may be wrong about a lot of things. Did Mr.
9 Sapp's name ever come up prior in this case?

10 MR. CASTO: It does. Yes, sir. He does show up in
11 the transcript of the trial from 2013.

12 THE COURT: So he's deceased in 2013, but he's
13 still referenced in the 2013 transcript.

14 MR. CASTO: Yes, sir.

15 THE COURT: So at some point in time, I'm not sure
16 when, he was given this fifteen year sentence conviction in
17 Newberry.

18 MR. CASTO: Yes, sir.

19 THE COURT: Tell me when that was.

20 MR. CASTO: I mixed that on up with the one in
21 Laurens, Your Honor.

22 THE COURT: I thought he got convicted in Newberry
23 and then pled to the concurrent, to the Laurens.

24 MR. CASTO: Yes.

25 THE COURT: In other words, Laurens ran concurrent

1 with the Newberry. He's only serving one fifteen year
2 sentence. Right?

3 MR. MAYE: Yes, sir.

4 MR. CASTO: Yes, sir.

5 THE COURT: And then he got a fifteen year
6 concurrent.

7 MR. CASTO: That conviction in Newberry occurred in
8 June of 2014. He entered a plea in Laurens January 2015.

9 THE COURT: Of this year.

10 MR. CASTO: Yes, sir.

11 THE COURT: And he -- in any of the cases, has he
12 ever made a motion for a speedy trial? In Barnwell,
13 Lexington -- Barnwell. Let's say Barnwell, Lexington,
14 Laurens, or Newberry?

15 MR. CASTO: I mean, I don't have any information in
16 that regard.

17 THE COURT: You know, it seems to me, with him
18 being out on bond and even the State attempting to revoke
19 bond before Judge Keesley in September of '14. He's been
20 always represented by either an appointed or a retained
21 attorney, all of whom have the highest of competency and
22 professional standards; Judge Seigler, Mr. Moses, Mr.
23 Screen, and of course now Mr. Casto. That -- specifically
24 that that motion was never made before the August 6th, '13
25 trial. If you go from August 6th of '13, this is actually

1 a 2013 indictment now. He was indicted 7/31/13 with a
2 trial August 6th of '13. From August 6th, August '13 until
3 now, is only twenty-two months which is less than Langford.

4 Also, I don't know anything about the case. I've
5 only read the indictment. I'm informed it's not a
6 complicated case. It's fairly straightforward and although
7 there are -- I don't know how many witnesses there are on
8 the witness list, it does not appear to be complicated.
9 I'm not -- I'm no top psychologist, but it seems to me he
10 has a lot more to worry about and a lot more to be anxious
11 about than just this Edgefield County case. He has
12 Lexington charges, Barnwell charges, Newberry charges,
13 Laurens charges. Then he has a Newberry conviction, a
14 Laurens plea, and a fifteen year sentence. And he's
15 incarcerated, so when I start weighing those various
16 things, I don't think it meets the standard that Langford
17 indicates is -- indicates should be met.

18 I don't think -- I know the State has the burden of
19 proof in this case beyond a reasonable doubt. But it's
20 almost, I guess, akin to civil laches, it rests back on
21 your lawyers and your rights and then you have an "ah-ha"
22 moment. And I realize he has to have a duty to -- to prove
23 that he's not guilty, he's innocent. I would respectfully
24 deny the motion based on that.

25 MR. CASTO: Yes, sir.

1 THE COURT: All right. Do you have other motions,
2 Mr. Casto?

3 MR. CASTO: I believe that's everything.

4 THE COURT: Solicitor, do you want to do anything
5 on the Lyle issue.

6 MR. MAYE: No, sir, Your Honor. We've got the
7 prior convictions in this case from his burglaries that
8 occurred prior to this time. We've reviewed the Lyle. I
9 don't think -- We're going to decline to chop those lines.

10 THE COURT: That's probably the best ruling I've
11 made all day.

12 MR. CASTO: I'm sorry?

13 THE COURT: That's probably the best ruling I've
14 made all day.

15 MR. MAYE: And the information is well-received.

16 THE COURT: So now -- so I think you're down to
17 suppression?

18 MR. CASTO: You're right.

19 MR. MAYE: That's correct.

20 THE COURT: All right. Tell me about that, Mr.
21 Casto.

22 MR. CASTO: Yes, sir, Your Honor. We -- Your
23 Honor, this is a case where October 17th, it is alleged
24 that there is a burglary at an IGA in Johnston. The alarm
25 goes off sometime around 2 a.m. in the morning. And

1 ultimately three-quarters of a mile away, approximately,
2 there is an automobile found, eventually. And it's by an
3 officer who sees the car, shines the light towards the car,
4 and says that two individuals run off.

5 Your Honor, we would move to suppress these items
6 found in the car because there was not sufficient probable
7 cause to enter the vehicle without a search warrant. Your
8 Honor, it is a situation where we don't have an issue of
9 the vehicle being driven off with someone in it. But we
10 don't have the situation of losing evidence. It was stolen
11 in a car. You know, why not get a warrant?

12 We cased that. I found that in some form or
13 fashion to kind of give some guidance on framework needed
14 is State vs. Weaver. That is 374 SC 313.

15 Your Honor, it's a murder case. And very briefly,
16 it's alleged that there was a shooting at a club and that
17 the person that was alleged to have been the shooter or
18 murderer drove a specific type of car. Well, this vehicle
19 was later located at his cousin's house. Law enforcement
20 received some information that the vehicle was parked at
21 the cousin's house. And they knocked on the door, talked
22 to the cousin. He says, the car is there. The shooter is
23 not; he left about an hour ago. But when he was here, he
24 asked for bleach and some cleaning materials.

25 And based on this information, law enforcement goes

1 out to the vehicle and opens the car door and smells
2 bleach. They also, I believe, find, sitting there by kind
3 of a container of some cleaning agent or what have you just
4 left there. Did the officers have probable cause in that
5 case. Well, absolutely they did. But Your Honor, in our
6 case, they certainly did not. One thing that's very
7 telling, and Mr. Odom already informed the Court, it's my
8 understanding that this case was dismissed in a preliminary
9 hearing for lack of probable cause. And Your Honor, we
10 think that's very telling with regarding to what we have.
11 All the officer knows at that time is that there are two
12 individuals seen, and they just run off. And they just
13 have a vehicle there. There is no search warrant that is
14 obtained, and they went in the vehicle, Your Honor. We
15 move that any and all items found in the vehicle be
16 suppressed.

17 THE COURT: Well, you hadn't told what items found.
18 I take it this is somewhat after 2 a.m. in the morning, the
19 first officer come upon a car on the side of the road. You
20 know, in the location and it raises their suspicion, and
21 the officer gets out and shines his light, and he sees
22 contraband or he sees a body or he sees an illegal weapon
23 or what have you. I don't know what it is you're talking
24 about him seizing.

25 MR. CASTO: Yes, sir. And I apologize. To change

1 the Court's question, certainly in a case like that where
2 the items being a weapon or drugs or something, well that
3 would rise to PC. But in this case what was seized from
4 the car is some clothing, a wallet that contained ID cards
5 for Mr. Odom, two cell phones --

6 THE COURT: A cell phone.

7 MR. CASTO: Two cell phones, two different cell
8 phones, yes, sir. And some jewelry as well, Your Honor. I
9 would -- additionally, there is an insurance card found in
10 the vehicle with Mr. Odom's wife on the card.

11 THE COURT: His what?

12 MR. CASTO: Mr. Odom's wife's name on the card.

13 THE COURT: So his wallet with his ID and the
14 insurance ID with his wife's name on it. Is this just to
15 identify ownership?

16 MR. CASTO: Yes, sir, Your Honor.

17 THE COURT: Does the car have a license tag on it.

18 MR. CASTO: It does, but it is a -- I believe it's
19 a temporary -- temporary tag from, I believe it's Duke Boys
20 Auto Sales.

21 THE COURT: Who is it?

22 MR. CASTO: Duke Boys Auto Sales?

23 THE COURT: Duke --

24 MR. CASTO: Boys.

25 THE COURT: That's D-U-K-E?

1 MR. CASTO: Yes, sir.

2 THE COURT: Auto what?

3 MR. CASTO: Sales.

4 THE COURT: Anything further at this point, Mr.
5 Casto?

6 MR. CASTO: No, sir. The only thing I would add is
7 that the items were found, I believe, in the center --
8 well, except for some shirt and a hat. The remaining items
9 were located in the pocket of the console, Judge.

10 THE COURT: Where was the clothing, the hat and the
11 shirt?

12 MR. CASTO: The shirt's found on top of the hat,
13 and together those items were found in the rear passenger
14 seat.

15 THE COURT: Anything else?

16 MR. CASTO: No, sir, Your Honor.

17 THE COURT: All right. Solicitor?

18 MR. MAYE: Your Honor, the State would call
19 Investigator Lamaz Robinson for purposes of the suppression
20 hearing.

21 THE COURT: All right. Come around and be sworn,
22 please sir.

23 LAMAZ ROBINSON,

24 having been sworn, testified as follows:

25 THE CLERK: Please be seated. State your full

Lamaz Robinson - Direct Examination - In Camera by Mr. Maye

1 name. Spell your last name.

2 THE WITNESS: Lamaz Robinson, R-O-B-I-N-S-O-N.

3 **DIRECT EXAMINATION - IN CAMERA**

4 BY MR. MAYE:

5 Q Investigator Robinson, let me direct your attention
6 to October the 17th of 2007 over in the very early morning
7 hours. Sometime after 2 a.m. but before daylight here in
8 Johnston, did you respond to a crime -- a call for
9 assistance, in relation to your duties working with
10 Johnston Town Police Department?

11 A I did.

12 Q What'd you do? And where did you go?

13 A I responded to 170 Lee Street, which is the IGA
14 Food Store, which is located in town and in Edgefield
15 County.

16 Q What type of crime had occurred there?

17 A A burglary.

18 Q A burglary. How did the individuals gain entry?

19 A They attempted to break out a glass window of the
20 front door. They were unsuccessful on the first attempt.
21 The second attempt, they did success of breaking the glass
22 door out with a cement brick.

23 Q Were you able to review a -- video tape prior to
24 encountering the vehicle that's an issue in this case,
25 that's the result -- that is an issue in regard to this

Lamaz Robinson - Direct Examination - In Camera by Mr. Maye

1 suppression hearing? Were you able to view a video tape of
2 the suspects that went into the store? And how were you
3 able to see any image of them doing so?

4 A I did review the video tape with the store manager,
5 Twyla Barton, at the time. I reviewed the video tape,
6 looked at it, seen two individuals go into the store. One
7 had on a blue in color shirt. One had a black in color
8 shirt. Both had on dark in color pants. It looked like
9 they gloves on. One had a mask over his face type; and
10 there were -- had black trash bags in their hands. Big
11 trash bags.

12 Q Okay. After you investigated the store and
13 reviewed the video tape of how the individuals were dressed
14 and saw the crime, did you go to another location on
15 Highway 191 basically up and basically back up the road and
16 a left turn on 191. Did you make an encounter -- did you
17 have an encounter with individuals that were at a white
18 Cadillac?

19 A I did. I responded to that location, but then
20 Chief of Police Chris Aston was at that location, and I met
21 with him, and he briefed me on what he had there at that
22 scene, which was a white Cadillac. And there were some
23 clothing items and stuff outside of that vehicle that he
24 pointed out to me.

25 Q Okay. Did the information that you gathered from

Lamaz Robinson - Direct Examination - In Camera by Mr. Maye

1 the officer that initially encountered the vehicle, what
2 was that officer's name? The officer?

3 A From my understanding, it was Chris Miller who
4 spotted them at the vehicle.

5 Q Okay. He saw two individuals flee from that
6 vehicle, saw that vehicle on the side of the roadway?

7 A Right. Parked back in the -- it appeared that they
8 were changing clothes, and when he spotted, shined the
9 light on them, is when they took off running.

10 Q So he saw the two individuals changing clothes,
11 shined the spotlight on them on them, in response to --
12 now, this was shortly thereafter the crime that he
13 initially responded for assistance, correct?

14 A That's correct. I can't say what time Deputy
15 Miller arrived there because I was the person that was
16 coming on duty to relieve Officer Campbell who was working
17 day shift the previous day. So I didn't get there until
18 after four.

19 Q Okay. But you collected information that that
20 individual, that officer, had responded shortly thereafter
21 for assistance --

22 A That's correct.

23 Q -- and saw them fleeing?

24 A Right.

25 Q Okay. Let me ask you this. It was on the

Lamaz Robinson - Direct Examination - In Camera by Mr. Maye

1 right-of-way on the roadway, the vehicle, the white
2 Cadillac, correct?

3 A What do you mean by right-of-way?

4 Q It was -- was it at a residence, or was it just off
5 the roadway.

6 A No. It was off the roadway. It wasn't at a
7 residence.

8 Q Okay. It's in a field just off the roadway?

9 A That's correct.

10 Q Okay. And the vehicle had a paper tag on it; I
11 believe that's correct?

12 A That is correct.

13 Q It did not have an official South Carolina or even
14 an official South Carolina dealer tag. It had one of those
15 paper tags on it with the name of a car dealership on it?

16 A That's correct.

17 Q Okay. Let me ask you this. Pursuant to your
18 investigation of this case, when you collected information
19 that you had individuals that had fled and you had
20 individuals with a similar description that had fled from
21 the vehicle upon being illuminated by spotlight. You had
22 that information at that time. Correct?

23 A That is correct.

24 Q Okay. There were items of clothing that were
25 laying outside of the vehicle, when you arrived, that were

Lamaz Robinson - Direct Examination - In Camera by Mr. Maye

1 on the ground, correct?

2 A That is correct.

3 Q As if -- and in fact, they were like fireman's
4 clothes where somebody had their pants down and clothing
5 and items right there in the doorway of that Cadillac,
6 correct?

7 A That's correct. That was on the driver's side
8 between the front door and the rear door.

9 Q Okay. There were also items of clothing in plain
10 view on the back seat of the vehicle at that time, too;
11 were there not?

12 A That is correct.

13 Q Okay. And some of those items of clothing were
14 consistent, or at least some of them on the ground or those
15 that were in plain view in the vehicle, they were
16 consistent with items of clothing that the individuals had
17 been wearing at the time of the burglary that had been
18 freshly committed. Is that correct?

19 A The items that were in the back seat was a shirt
20 and a hat that -- at some point in time, Lieutenant Randy
21 Duran had spoken with the owner of the vehicle, I guess by
22 running the VIN --

23 MR. CASTO: Objection. Hearsay.

24 THE WITNESS: -- and that's how we --

25 THE COURT: Hearsay is admissible in this hearing.

Lamaz Robinson - Direct Examination - In Camera by Mr. Maye

1 MR. MAYE: Okay.

2 MR. CASTO: Yes, sir.

3 BY MR. MAYE:

4 Q Let me ask you this. Given the fact that you had
5 this vehicle on the side of the road, you had individuals
6 that fled from it that matched the description of the
7 individuals on the tape that you had viewed, did you have
8 that vehicle towed away from that location?

9 A I did.

10 Q Prior to having the vehicle towed, did you
11 inventory the vehicle and its contents?

12 A We did.

13 Q Okay. As you inventoried that vehicle that had a
14 paper tag on it, did you inventory it with an eye towards
15 protecting your department from claims that items might
16 have been missing or taken from the vehicle; is that
17 correct?

18 A That is correct. We inventory -- every vehicle
19 that we take into custody is inventoried for the purposes
20 of people false -- false claims against us.

21 Q And so the vehicle was abandoned at that point in
22 time off the side of the roadway, correct?

23 A It was.

24 Q And no one was around asserting any ownership or
25 control over the vehicle?

Lamaz Robinson - Direct Examination - In Camera by Mr. Maye

1 A No.

2 Q You were unable to ascertain the ownership of the
3 vehicle by looking at the paper tag when you arrived at the
4 scene. Y'all couldn't run a South Carolina plate to
5 determine ownership or anything. Could you.

6 A That's correct. It had a paper, Dukes Boys
7 Automotive paper tag.

8 Q Okay. Not even related to this case, but if you
9 found an abandoned vehicle on the side of the roadway with
10 a paper tag, would y'all normally tow it away? If you
11 towed it under those circumstances, would y'all have
12 inventoried it in the regular course of business?

13 A Yes.

14 Q Okay. And did you in fact inventory the contents
15 of this Cadillac automobile that I'm going to show you,
16 let's see, State's 4 for ID at this point in time, A, B, C,
17 and D. Is that the Cadillac automobile that you saw on the
18 side of the roadway?

19 A That is correct.

20 Q Okay. So prior to y'all seizing any items of --
21 that are an issue in this case, cell phones, items inside
22 of the vehicle, or anything else, those items were taken
23 pursuant to inventory of that vehicle prior to being towed,
24 correct?

25 A That's correct.

Lamaz Robinson - Direct Examination - In Camera by Mr. Maye

1 Q Okay. And did you record and retain all of those
2 items that were taken as a part of the inventory of the
3 vehicle?

4 A We did.

5 Q Okay. Could you -- I'm going to ask you to review
6 these photographs and talk to me about the items that you
7 took into evidence or that you took at that point in time
8 pursuant to inventory of that vehicle prior to it being
9 towed. What were the items? And I'll hand you these
10 photographs to refresh your recollection.

11 A While we were inventorying the vehicle, we
12 inventoried the entire vehicle from the inside of the
13 vehicle and the trunk area. In the center console, there
14 was a cell phone, a wallet, some jewelry, some change, some
15 rings, some jewelry --

16 Q Uh-huh.

17 A -- of that magnitude. And then in the passenger
18 floorboard was another cell phone. In the back seat, there
19 were a shirt with some -- a shirt black, white, and red
20 striped shirt, a black hat, and those items was in the back
21 passenger side rear seat.

22 Q But those were in plain view. You could see those
23 from outside the vehicle without y'all even going into it?

24 A That is correct.

25 Q Okay.

Lamaz Robinson - Direct Examination - In Camera by Mr. Maye

1 A I also looked in the -- it's not the console, but
2 the dashboard, and obtained a South Carolina Department of
3 Motor Vehicles Bill of Sale, along with an insurance card
4 and took all those items. At that point in time, we were
5 able to identify the individual off of the bill of sale,
6 and we were able to make contact with that individual.

7 Q Okay. But was it your normal part of the policy to
8 tow a vehicle under these circumstances?

9 A That is correct. And we believed that it was also
10 connected.

11 Q To the crime?

12 A Right.

13 Q Given the fact that the information that you
14 gathered up to that point?

15 A Right. And from the officer who responded and seen
16 them running and then the clothing -- because the clothing
17 was on the outside. Some of the clothing, the blue shirt
18 and everything, was on the outside of the vehicle. And we
19 was able to corroborate that clothing appeared to be the
20 same clothing that was inside on the video when we looked
21 at it.

22 Q Let me ask you this. And this may get into another
23 issue, but did you pick up a -- I guess it's one of those
24 trio size early smart phone phones inside the vehicle?

25 A I did.

Lamaz Robinson - Direct Examination - In Camera by Mr. Maye

1 Q Was it on as if it was -- was the telephone on at
2 that point in time?

3 A It was.

4 Q Okay. When you picked the telephone up, did a home
5 screen come up, and could you see a home screen based on
6 picking up the phone and examining it at that time.

7 A It was. It was a lock screen.

8 Q Okay. And what did it say on that screen as you
9 picked the phone up and looked at it? What was the
10 information that was on it?

11 A If I remember correctly, it said, this device
12 belongs to the ownership of Maurice Anthony Odom. Please
13 enter access code or password, something to that effect.

14 Q Okay. So you didn't conduct any search of the
15 phone or look into the memory or the contents of it. When
16 you picked the phone up, that's the screen that comes up
17 when you pick the phone up?

18 A Right. We couldn't view any results anyway. We --
19 I don't have a password to get into it.

20 Q So you didn't have a passcode, and you couldn't go
21 into the memory of the phone. But when you picked it up,
22 you did see that?

23 A That's correct.

24 Q Okay. And that Odom is the same last name as the
25 individual that is -- that was in for the temporary tag and

Lamaz Robinson - Direct Examination - In Camera by Mr. Maye

1 the bill of sale from the Dukes Auto Sales. That was also
2 a related --

3 A Right. The last names are corresponding together,
4 Odom.

5 Q -- they corresponded together. And again this may
6 be getting ahead, but did you subsequently -- even though
7 you had picked that phone up and looked and the name came
8 up, did you subsequently get a search warrant for that
9 telephone?

10 A I did.

11 Q Okay. From the magistrate here?

12 A I did.

13 Q Okay. Pursuant to that, did you turn that phone
14 over to South Carolina Law Enforcement Division?

15 A Not pursuant to the search warrant. I turned it
16 over to them after I got the search warrant.

17 Q After you got the search warrant --

18 A That's correct.

19 Q -- you turned it over to them.

20 Were they able to go into the memory or retrieve
21 anything or get anything out of the phone?

22 A No, sir.

23 Q Okay. The only information that's ever been
24 gleaned from the phone is that home screen information that
25 gives the name of Mr. Odom as -- it indicates just on its

Lamaz Robinson - Direct Examination - In Camera by Mr. Maye

1 face that the phone belongs to Mr. Maurice Anthony Odom?

2 A That's correct.

3 Q Okay. Have you viewed that same home screen as
4 recently as today?

5 A I have.

6 Q Okay.

7 THE COURT: That battery's still working after
8 seven years?

9 MR. MAYE: Amazingly.

10 THE COURT: Okay.

11 MR. MAYE: Amazingly. The battery's been out of
12 it, and it worked today. And it is has not been charged
13 since 2007. It will power on right now.

14 THE COURT: Wow.

15 MR. MAYE: I want a battery like that is all I can
16 say. It's not been recharged since that time, and it will
17 power on today.

18 BY MR. MAYE:

19 Q Investigator Robinson, all the items that you
20 seized in conjunction with anything you've taken from the
21 vehicle, are those items that were retained as a result of
22 the inventory search of the vehicle; is that correct?

23 A That's correct.

24 Q Okay. Answer any questions that the defense has
25 for you?

Lamaz Robinson - Cross-Examination - In Camera by Mr. Casto

1 THE COURT: All right. Mr. Casto.

2 MR. CASTO: Yes, sir, Your Honor.

3 **CROSS EXAMINATION - IN CAMERA**

4 BY MR. CASTO:

5 Q Officer Robinson, you arrived on scene that night
6 to the store first, is that right?

7 A That is correct.

8 Q And then you went to the car?

9 A That's correct.

10 Q You arrived at the store about 4:46, give or take,
11 4:45 or so in the morning; is that fair to say?

12 A That is correct.

13 Q You were present there for -- well, how long were
14 you present there for?

15 A Approximately fifteen to twenty minutes at the
16 store.

17 Q Okay. And then went to the car, putting you at the
18 car right around ten after 5:00, fair to say?

19 A I think it was 5:01, 5:06 somewhere in there.

20 Q Okay. A few minutes after 5:00. And ultimately
21 when you get there, there's a lot of other officers there,
22 is that right?

23 A That's correct.

24 Q From several different agencies, right?

25 A That's correct.

Lamaz Robinson - Cross-Examination - In Camera by Mr. Casto

1 Q You know, some have gone and looked inside the car,
2 is that right?

3 A I can't testified that some had looked into the
4 car. I'm not aware of that.

5 Q You don't know. That's your testimony?

6 A No. I don't know if anybody looked into the
7 vehicle. The only thing I can tell you is I was briefed by
8 Chief Aston that nobody had touched anything or had moved
9 anything.

10 Q The items of clothing Mr. Maye asked you, you know,
11 did the items of clothing that were seen inside the car
12 appear to be, look like the clothing worn on the video?

13 A Not inside the car. No.

14 Q Okay. Because inside the car, we've got this red
15 and white striped black shirt, right?

16 A That's correct.

17 Q Not seen on the video, correct?

18 A That's correct.

19 Q Okay. And it was believed that this car was
20 somehow connected to this crime, is that right?

21 A Yes, sir.

22 Q And if that was the belief and, you know, there was
23 no danger of the car driving off or going anywhere because
24 there wasn't anybody found inside the car, right?

25 A No. Nobody was found inside the vehicle.

Lamaz Robinson - Cross-Examination - In Camera by Mr. Casto

1 Q At that time, why didn't you seek a search warrant
2 you or any other officer seek a search warrant on the
3 vehicle at that time.

4 A I felt like there was enough probable cause with
5 everything that we corroborated together that we didn't
6 need one at the time. And I think under the law that it
7 states that if there's probable cause, you know, the
8 officers can use it. So we were going to take it into our
9 custody. And prior to taking it into custody, we had to
10 conduct the inventory of that vehicle.

11 Q But prior to doing inventory, there It's your
12 testimony there wasn't a warrant, is that right?

13 A No, sir.

14 Q And you had testified with regard to the cell
15 phones found inside the car, that you powered them on, is
16 that right?

17 A I powered them on?

18 Q You turned them on? I'm sorry.

19 A No, no. I didn't power anything on --

20 Q Okay.

21 A -- at that time. The phone was already on. It's
22 just a lock screen that says, this device belongs to
23 Maurice Anthony Odom, something to that effect.

24 Q And I --

25 A But I have powered them on today.

Lamaz Robinson - Cross-Examination - In Camera by Mr. Casto

1 Q And I misspoke. You not really turned the phone
2 on, but you, you know, operated the phone so that the
3 screen would display, is that right.

4 A There's, yeah, there's a screen that comes up.

5 Q Because the phone was already on?

6 A Right. I'm assuming -- like I said, when we picked
7 up the phone, it just says, this device belongs to Anthony
8 Maurice Odom.

9 Q The other phone that was located, I believe that
10 there was an opportunity for you to look at the call log
11 and saw Mama as an entry?

12 A You talking about the red in color phone?

13 Q Yes, sir.

14 A That's correct.

15 Q And you saw that -- and it's my understanding that
16 you learned that this goes back to Brandon Donaldson's
17 mother, is that right?

18 A That's correct.

19 Q The search warrant for the cell phones was not
20 obtained until, I think, sometime in 2011, is that right?

21 A That's correct. I can't remember the exact date,
22 but it was sometime in 2011.

23 Q But, you know, this is certainly after the period
24 of time when you went through Brandon's phone and found
25 that entry from Mama, is that right?

D. Christopher Aston - Direct Examination - In Camera by Mr. Maye

1 A That's correct.

2 MR. CASTO: I don't have any further questions,

3 Your Honor.

4 THE COURT: Anything on redirect?

5 MR. MAYE: Nothing. Thank you, Your Honor.

6 THE COURT: Thank you. Thank you, Mr. Robinson.

7 THE WITNESS: Yes, sir.

8 THE COURT: Your next witness? You next witness,

9 Solicitor?

10 MR. MAYE: Chris Aston.

11 CHRIS ASTON,

12 having been sworn, testified as follows:

13 THE CLERK: You may be seated. Please state your
14 full name. Spell your last name.

15 THE WITNESS: My full name is David Christopher
16 Aston. Last name, A-S-T-O-N.

17 **DIRECT EXAMINATION - IN CAMERA**

18 BY MR. MAYE:

19 Q Chief Aston, let me ask you this. Did you,
20 pursuant to your previous responsibilities of Chief of the
21 Town of Johnston Police Department, respond to calls
22 regarding your presence being necessary in the town of
23 Johnston for a burglary that was committed October 17th of
24 2007?

25 A Yes, sir.

D. Christopher Aston - Direct Examination - In Camera by Mr. Maye

1 Q Okay. Where was that burglary? Where did that
2 take place?

3 A The IGA grocery store in Johnston on Highway 121.

4 Q All right. When you arrived, was there a sign at
5 the store that a burglary had been freshly committed there?

6 A Yes, sir.

7 Q Okay. Were the windows knocked out of the --
8 basically, the front sliding doors of the IGA?

9 A Yes, sir.

10 Q Okay. Did you view a videotape of individuals
11 breaking out those windows and going in and removing items
12 from the store?

13 A Yes, sir.

14 Q Okay. Did you see the mask on their face, the
15 clothing that they were wearing? And did you review that
16 videotape shortly after you arrived?

17 A Yes, I did.

18 Q Okay. Did you -- after you reviewed the videotape
19 and went out there -- now, you went shortly after the time
20 of the crime. Is that correct? The alarm call was shortly
21 before 2 a.m.; is that correct?

22 A I arrived on scene approximately around 2:30 a.m.

23 Q Okay. So the alarm call, the crime was a little
24 bit before 2 a.m., but you were there approximately thirty
25 minutes after 2:00?

D. Christopher Aston - Direct Examination - In Camera by Mr. Maye

1 A Yeah.

2 Q At that point in time, were you apprised some
3 information that an assisting officer from Saluda had seen
4 a vehicle, and individuals matching the description of the
5 video that you had viewed, had basically fled away from a
6 white Cadillac automobile. Did you receive that
7 information?

8 A Yes, we -- well, I was on scene and received
9 information that a Saluda County spotted a white vehicle on
10 191 a short distance from the store, and two subjects had
11 fled from the scene, from that vehicle into the woods.

12 Q Okay. From the information that you collected,
13 were the individuals -- was it at least consistent with the
14 type -- the individuals that you were looking for in
15 association with the crime there, the individuals that he
16 had seen fleeing when he turned the spotlight on?

17 A Were they the same is what you're asking me?

18 Q Was it consistent? The type consistent?

19 A Yes.

20 Q Okay.

21 A It was.

22 Q All right. How far away -- approximately. If you
23 would, I'm going to show you what's been marked previously
24 as State's 1. Point out if you would for the Court where
25 the IGA store is on this blow up?

D. Christopher Aston - Direct Examination - In Camera by Mr. Maye

1 A That's going to be the IGA right here (indicating).

2 Q Okay. Where was the Cadillac automobile, the white
3 Cadillac automobile, when you went out? Where was it
4 located?

5 A Right here on 191 (indicating).

6 Q It's just around the corner?

7 A Yes. It's just a little over a mile.

8 Q Okay. In a wooded area with really no businesses
9 near --

10 A The business is here.

11 Q Okay.

12 A And the vehicle was located back up in this drive
13 right here.

14 Q Okay. And the -- let me ask you this. Did you
15 have -- pursuant to your departmental policy, prior to
16 y'all towing that vehicle, did you have Officer Robinson
17 inventory the vehicle and the contents of the vehicle prior
18 to having it towed that night?

19 A Yes, sir.

20 Q Is that a part of your regular business policy or
21 departmental policy with the Johnston Town Police
22 Department? Do y'all inventory the contents of vehicles
23 before you tow them?

24 A Yes.

25 Q Okay. When you arrived there -- and you did not

D. Christopher Aston - Direct Examination - In Camera by Mr. Maye

1 allow anyone else, any other officers, to search or go
2 through or go into the vehicle?

3 A No, sir.

4 Q Okay. From the time that you arrived?

5 A That's correct.

6 Q And from the information that you collected, no one
7 had been inside the vehicle. The initial reporting
8 officer, or responding officer, the Saluda deputy had just
9 stayed with the vehicle; is that correct?

10 A That's correct.

11 Q He didn't make any pursuit?

12 A No, sir.

13 Q And no one else had been -- had gone inside the
14 vehicle or anything else at that point?

15 A Nobody's been in the vehicle as far as I'm aware.

16 Q All right. And you, in fact, received direct
17 information that no law enforcement person had been in that
18 vehicle. Hadn't you?

19 A No. Nobody's been in that vehicle.

20 Q Nobody went in the vehicle. Did anybody go in or
21 go into any of the contents of the vehicle or log any of
22 the contents prior to you having Lamaz inventory prior to
23 towing?

24 A No, sir.

25 Q Okay. Some of the items that were taken, the

D. Christopher Aston - Direct Examination - In Camera by Mr. Maye

1 clothing and things that were on the backseat in this case,
2 you could see from outside the vehicle, correct?

3 A That's correct.

4 Q Okay. Outside of the vehicle, would you describe
5 the clothing that was outside, directly outside of the
6 vehicle, how were those items arranged, the items of
7 clothing that were outside of the vehicle?

8 A If I remember correctly, on the driver's side --

9 Q Uh-huh.

10 A -- kind of almost right between the two doors,
11 there was a pair of dark colored jeans like somebody just
12 dropped them down and a pair of boots like they had stepped
13 out of the boots and dropped the jeans.

14 Q Like they had stepped of boots and dropped jeans?

15 A Yes, sir. Just stepped right out of the boots and
16 the clothes right there.

17 Q Okay. From the information that you had collected
18 from the officer, did his report to you indicate that he
19 had basically caught the individuals changing -- appear to
20 be changing clothes, or changing clothes there on the side
21 of the road at that vehicle?

22 A Now, he didn't report to me that. He said he seen
23 two people, said they was running from the vehicles. And I
24 found -- we found the clothes there at the, near the
25 vehicle, and some other clothes at the wood lines.

D. Christopher Aston - Cross-Examination - In Camera by Mr. Casto

1 Q At the wood line?

2 A Uh-huh.

3 Q Where it appeared people were trying to change
4 clothes at the vehicle?

5 A Yes. That's correct.

6 Q Okay. All right. What type of -- there was not a
7 South Carolina vehicle tag on there. It just had a paper
8 tag on it, correct?

9 A Yes, sir. It had a paper tag on it.

10 Q Okay. No other questions. Answer any questions
11 the defense has.

12 THE COURT: Thank you, Solicitor. Mr. Casto?

13 **CROSS EXAMINATION - IN CAMERA**

14 BY MR. CASTO:

15 Q Officer -- is it Aston? Am I pronouncing it right?

16 A Aston. Yes, sir.

17 Q Aston. You were not the first officer to arrive at
18 the car; is that fair to say?

19 A I don't know actually arriving to the vehicle. The
20 officers from Saluda County, you know, spotted the vehicle.
21 I responded there, and then we had bloodhound units come to
22 that scene.

23 Q Yes, sir. Maybe -- in other words, the Saluda
24 officer was there before you were, correct?

25 A Yes. They spotted the vehicle. Yes, sir.

D. Christopher Aston - Cross-Examination - In Camera by Mr. Casto

1 Q All right. And there was some clothing located in
2 the backseat of the vehicle that was in plain view, is that
3 right?

4 A Yes, sir.

5 Q And the two people who had run off, you did not
6 choose to get a search warrant -- I'm sorry. You or any
7 other officer didn't choose to get a search warrant at that
8 time, is that right?

9 A No, sir.

10 Q There's no danger of the vehicle leaving or losing
11 evidence because nobody was in the car at the time, is that
12 right? The two people ran off?

13 A That's correct. Yes, sir.

14 Q And there was some belief the two events were
15 connected, correct? The car and the store?

16 A After we started doing the inventory of the
17 vehicle, that's when it started showing indication that
18 it's probably connected one way or another.

19 Q But at that moment, you nor other officers got a
20 search warrant; is that correct? At that time.

21 A Not at that time. No, sir.

22 Q Were you present -- you were present when the
23 vehicle was opened; is that correct?

24 A Yes, sir.

25 Q And you -- and what other officers assisted you in

D. Christopher Aston - Cross-Examination - In Camera by Mr. Casto

1 going through the vehicle?

2 A I assisted Investigator Robinson when he went
3 through the vehicle. Me and him was the only ones.

4 Q Yes, sir. You went through the cabin. You went
5 through the trunk of the -- truck of the car. Excuse me,
6 is that right?

7 A He popped the trunk open to see what was in there,
8 yes, sir.

9 Q Okay. What, if anything, did y'all find in the
10 trunk?

11 A I think there was a plastic bag in there. I can't
12 remember what it contained, something in there. And there
13 was some residue in the trunk area.

14 Q Okay. All right. You had had the opportunity to
15 see the video from the store, is that right?

16 A That's correct.

17 Q And you were told what that shirt looked like that
18 was laying in plain view inside the car? Do you recall
19 what that looked like?

20 A The shirt that was inside there was a striped
21 shirt, and I think there was a head on it. But that shirt
22 was not in the video.

23 MR. CASTO: I have no further questions at this
24 time. Thank you.

25 THE COURT: Anything on redirect?

1 MR. MAYE: Nothing, Your Honor, thank you.

2 THE COURT: All right. Any other witnesses,
3 Solicitor?

4 MR. MAYE: That's all that the State would have in
5 this case, Your Honor.

6 THE COURT: All right. Any witnesses, Mr. Casto.

7 MR. CASTO: No, sir, Your Honor.

8 THE COURT: All right. Anything in response?

9 MR. CASTO: Yes, sir, Your Honor. The testimony as
10 I heard from each officer is that there was this, you know,
11 potential connection that they knew of at that time. But
12 they did not get a warrant at that time, Your Honor. And
13 there were no exigent circumstances in this case because,
14 you know, like both officers testified that there wasn't
15 anyone found in the car. There's no danger here of losing
16 evidence of any kind. And so ultimately, you know, why not
17 get a warrant in that situation? A warrant was never
18 sought in this case. We move to suppress the items found
19 inside the car.

20 Oh, and, Your Honor, the connection, quote unquote,
21 is debatable at best because one thing elicited to in the
22 hearing was that both officers testified that the shirt --
23 the clothing -- really a shirt and a hat in the back of the
24 car, that's not seen, that's not in the video. So any type
25 of attempt to, you know, link that up as a possible

1 connection as kind of a pathway inside the car, we don't
2 have that. That's not connected to the video.

3 THE COURT: Thank you. Anything further?

4 MR. CASTO: No, sir, Your Honor.

5 THE COURT: Solicitor?

6 MR. MAYE: Your Honor, just briefly, they conducted
7 an inventory search of a vehicle that was abandoned. It
8 had a paper tag on it, but they couldn't otherwise identify
9 ownership of it. Certainly at that point in time they had
10 information of a freshly committed crime. They had
11 information that individuals that had fled from that
12 vehicle matched the description of the individuals they had
13 just viewed on a videotape, Your Honor. There's testimony
14 on the record that they towed the vehicle and that it's
15 departmental policy that prior to towing any vehicle that
16 they conduct an inventory search.

17 The defense has brought up and raised no exigency
18 on the vehicle issue in this case, Your Honor. They didn't
19 conduct a search based on exigent circumstances there.
20 They had an abandoned vehicle. They couldn't otherwise
21 ascertain any information with regard to ownership. They
22 testified that it was their policy to tow vehicles under
23 those circumstances. They did. Anything that was taken
24 out of the vehicle was as a result of the inventory search
25 and not as some search based on some exigency or some

1 vehicle exception, Your Honor. That was a departmental
2 policy. They carried that out.

3 They certainly had a reason to tow the vehicle away
4 from there and not leave it. They had individuals that had
5 basically abandoned and fled a freshly committed crime.
6 There was certainly a circumstance that would make the
7 circumstances of them taking the vehicle away from there
8 and towing it into impound, Your Honor, a reasonable
9 activity or based on sufficient probable cause of the
10 police to do so. It wasn't at somebody's house under a
11 carport or a driveway. Individuals that, when they shine a
12 light on them, bolted and fled. They had items of
13 clothing. It appeared people were changing clothes or were
14 in the process of changing clothes, when the officer
15 startled them with a spotlight, and then fled. They had
16 items of clothing that were consistent with the description
17 that they had garnered of the individuals by looking at
18 that videotape, Your Honor. Those were the very
19 individuals that fled. We would certainly maintain that
20 there is no basis to suppress on their lack of getting a
21 search warrant in this case.

22 THE COURT: Anything in response.

23 MR. CASTO: Very briefly, Judge. The clothing
24 pieces found around the car, Judge, that's on the outside
25 of the car. And the question becomes, you know, if there

1 is this connection, then why not get a warrant, Judge?

2 THE COURT: All right. Thank you. As I
3 understand, the Fourth Amendment reads in substance: A
4 warrantless search is generally reasonable; however, the
5 reasonability of less the expectation of privacy in
6 automobiles endorses an exception to that rule based upon
7 probable cause. The probable cause analysis involves the
8 use of a fact-based, objective perspective that requires
9 more than a reasonable suspicion of criminal activity.
10 Probable cause is a common sense, nontechnical conception.
11 It deals with the factual, practical consideration of
12 everyday life of which reasonable and prudently are not
13 legal issues.

14 Probable cause to search exists for the known facts
15 and circumstances of suspicion to warrant a man of
16 reasonable prudence in the belief of contraband or evidence
17 of a crime will be found in a particular place. The
18 principle component of the determination of probable cause
19 would be whether the events occurred leading up -- whether
20 the events which occurred leading up to the search, viewed
21 from the standpoint of an objectionably reasonable police
22 officer, amount to probable cause.

23 The warrantless search of an automobile as defined
24 by the occupant search and place in which there is probable
25 cause to believe that it may be found. Therefore, if

1 probable cause justifies a warrantless search of a vehicle
2 justifies the search.

3 In my mind, both in State versus Norris, I believe
4 it is, and also the State versus Weaver with the murder car
5 smelling like bleach at Weaver's cousin's house, I find
6 based on the fact you have two officers, one who was then
7 Chief and another who is now Chief, that viewed the
8 videotape of the burglary of the IGA less than -- a short
9 distance I guess I would say, away from where the white
10 Cadillac was observed. As I understand the testimony,
11 Chief Aston put out a description. He looked at the video
12 and put out the description because these individuals had
13 committed a felony.

14 Chief Robinson later by looking at the -- was aware
15 of the description, and a Saluda deputy observed
16 individuals consistent with the description that had been
17 put out by other officers, basically shedding burn-out
18 bunker gear and fleeing a vehicle that hadn't been around.

19 If it was pornography, I know it when I see it. If
20 probable cause, I know it when it's testified to before me.
21 You've got the vehicle, the two men -- two individuals
22 matching the description shedding burglary pants whatever
23 you want to call it, a car with a paper tag on it, night
24 time or morning, freshly committed misdemeanor. I think
25 they surely had probable cause to search and to seize those

1 items that they seized.

2 There may be additional sustaining grounds within
3 the search. And that gets in also to the cell phones
4 themselves. It doesn't appear to me there was ever a
5 search of the cell phone, pre-search. There was a seizure,
6 which was based upon probable cause. But Chief Robinson
7 testified he picked up the phone, and the only thing that
8 showed up, this device belongs to whatever name Odom, you
9 have to have a password to get to the phone. Later on,
10 years later, he got a search warrant, and there's nothing
11 additional to be gleaned.

12 Ultimately if the goal of the State -- the
13 objection of the defendant is to prove owner or a
14 relationship between the burglary and the vehicle, that's
15 almost inevitable in discovery too. I mean, it's just
16 going to take longer with the paper tag and that -- and
17 nobody testified the keys were in the vehicle. When you
18 talk about mobility, the criminals will return to the scene
19 of the crime. Maybe they return to the scene where they
20 left that with which they exit the scene of the crime. I
21 don't know the answer to that question, but many people
22 have more than one view. I think there's probable cause.
23 I think there's inventory.

24 None of these rulings rule that any specific item
25 of evidence is necessarily relevant. It's just that the

1 seizure of the vehicle, the search of the vehicle, is
2 admissible under our constitution and state law. And I
3 think I'd cite both the cases that you cited, State versus
4 Norris, 395 SC 2d.

5 All right. Any other motions, Mr. Casto?

6 MR. CASTO: Yes, sir. One of the main ones is
7 brief.

8 THE COURT: What's the other one.

9 MR. CASTO: With regards to the specific issue of
10 the cell phone that was found inside the car.

11 THE COURT: I've ruled on that, I thought.

12 MR. CASTO: Your, Honor, one issue with regard to
13 that is, that we wish to place on the record, we would move
14 that that be suppressed in light of the U.S. Supreme Court
15 case Riley vs. California, that there's a higher
16 expectation of privacy with regard to --

17 THE COURT: I've got that case right here. I've
18 pulled it up.

19 MR. CASTO: Yes, sir.

20 THE COURT: As I understand it, there was no search
21 of his vehicle prior to the issues presented. I thought
22 the Chief said, I picked it up, and that's what came up. I
23 didn't power it up or anything. I picked it up, and that's
24 what came up.

25 MR. CASTO: It's my understanding that, and our

1 position is that, by doing something on the phone, not
2 turning it on because we agree. I understand what the
3 officer is saying with regard to, that he didn't turn it
4 on. But he caused the screen to display which would
5 show --

6 THE COURT: There's been no testimony -- he didn't
7 testify to that. Or unless I missed it? He said, I picked
8 up the phone and looked. There's no testimony that he
9 punched or hit anything, that I heard. I don't know. Do I
10 need to re listen to it?

11 MR. CASTO: I believe the testimony was that he
12 just caused the screen to display.

13 THE COURT: I thought that -- I'll have to have to
14 ask the court reporter. Let's assume there is that. Was
15 that search.

16 MR. CASTO: I believe, yes, sir, Your Honor. In
17 light of higher scrutiny with regard to cell phones, we
18 move that the information obtained as far as ownership of
19 the cell phone to be suppressed in the case, Your Honor.

20 THE COURT: All right. Well I've looked, and my
21 law clerk pulled up Riley for me. I couldn't quite
22 remember the name.

23 Do you have any position on this, Solicitor?

24 MR. MAYE: Your Honor, we would maintain in this
25 case no matter what was done, a valid search warrant was

1 obtained for the phone. The -- at the time that this case
2 occurred, it was certainly prior to Riley, the officers
3 were acting under basically the state of the law at that
4 time. Riley subsequently -- and I'm trying to think about
5 that case out in Charleston where they talk about the
6 officers that were operating under good faith with the
7 state of law at that point in time. There was a search
8 warrant that was obtained. The officer's already
9 testified, he did get a search warrant in this case.

10 We would maintain that anything that he saw there
11 would be fruit of the poisonous tree. At that point in
12 time, it would've been consistent with the law of the land
13 as law enforcement understood it at that time. But a
14 subsequent search warrant for the phone would reveal
15 exactly the same information that he testified to. He
16 basically said that the phone was powered up. He didn't do
17 anything to go into memory. He looked at the phone, and he
18 could see that information on it.

19 A subsequent search warrant -- that's the only
20 information they were ever able to seize. I think that the
21 officer sent SLED that it was a phone of vintage, they
22 couldn't go in and look at the memory and pull up any
23 information on it. They couldn't do anything with it,
24 so -- But that was obtained as a result of the search
25 warrant.

1 We've shared that with the defense in this case
2 that the thing about, this is Maurice Anthony Odom, was the
3 only information that ever came from that phone or device,
4 but there was no intent -- I mean, there was never any,
5 prior to the search warrant, interrogation of the phone or
6 going into the memory. Our -- what we would maintain, it
7 would be no different, and I have my phone right here. If
8 I had my name written on it, it's apparent on its face.

9 It's no intent to carry out or conduct of the
10 electronic files of the phone, which I think is the crux of
11 Riley. I think it is just, the early cell phones were so
12 dumb, they gave very few, little information other than
13 what numbers you would call and that kind of thing. Now, a
14 cell phone approaches a laptop computer in which, you could
15 get your entire life in that. I think that's the state of
16 Riley.

17 There was never any kind of search that was
18 conducted, but subsequently there was a search and a search
19 warrant. And the officer testified he had looked at the
20 screen as recently as today after that search warrant had
21 been issued, and he gleaned that information.

22 THE COURT: And what was the timeframe -- y'all
23 refresh my memory on when the officer looked at the phone
24 and saw the information on the screen.

25 MR. MAYE: Your Honor, he was there about 4 o'clock

1 in the morning. He picked that phone up and saw that the
2 phone was on. They were obviously inventorying the
3 vehicle. It was a freshly committed crime at that point in
4 time. They had bloodhounds on the ground at that point in
5 time, searching for individuals. If the telephone was on,
6 the officer picked it up and saw that name. He was
7 inventorying the vehicle, and they were looking in the
8 vehicle, and basically as an active pursuit and chase was
9 going, and a search for these two suspects was
10 undergoing -- I mean, was ongoing at that point in time.

11 THE COURT: Yes, sir, Mr. Casto?

12 MR. CASTO: One thing, just to clarify since it's
13 clear, I didn't have it previously, but I was handed a copy
14 today. And there was a search warrant issued for the
15 phone, but it was obtained in 2011. And I see the request
16 to search and all that, but I don't have a return on it.
17 The timing that we're talking about is that evening October
18 17th at 4 a.m. or what have you.

19 And Your Honor, with regard to the heightened
20 scrutiny over -- with regard to the privacy interest in
21 cell phones, you know, there's so much language in Riley
22 where having a phone in your pocket, it's almost a
23 misnomer. They're like minicomputers, rolodexes, and
24 everything else. And searching inside that would reveal
25 even more than a whole home. And so ultimately it's

1 likened to, not powering the phone on as turning it on, but
2 making the screen display and using that information would
3 almost be likened to just peering into the pocket on a
4 person or just briefly just looking, you know, into the
5 pocket in that regard, Your Honor.

6 THE COURT: All right. Just a couple of issues,
7 looking a little closer at Riley vs. California, and the
8 Court says that the mere holding, of course, is not that
9 the information on the cell phone -- let me back up a
10 little. The Court says, We cannot deny that our decision
11 today will have an impact on the ability of law enforcement
12 to combat crime. Now, the whole focus of Riley was on the
13 digital data that was dumped down from the phone and where
14 officers would get a phone, and it was common practice
15 pre-Riley in a case to just put it in one of these packets
16 or whatever and just dump the information. And that's
17 really the focus of Riley.

18 As they state, cell phones have become important
19 tools in facilitating coordination and communication among
20 members of criminal enterprise and can provide valuable
21 incriminating information about dangerous criminals.
22 Privacy comes at a cost. Our holding, of course, is not
23 that the information on the cell phone is immune from the
24 search. It is instead that a warrant is generally required
25 before such a search even when a cell phone is seized

1 incident to an arrest, which it was not seized incident to
2 an arrest in this case.

3 Our cases is that the storage be recognize that the
4 warrant requirement is an important working part of our
5 machinery of government, not merely an inconvenience to be
6 somehow waived against the claims of police efficiency.
7 Even though the search incident to arrest, exception does
8 not apply to cell phones, other case-specific exceptions
9 may still justify a warrantless search of a particular
10 phone. One well-recognized exception applies when the
11 exigencies of the situation make the needs of law
12 enforcement so compelling that a warrantless search is
13 objectively reasonable under the Fourth Amendment.

14 Such exigencies could include the need to prevent
15 the imminent destruction of evidence in individual cases,
16 to pursue a fleeing suspect, and to assist persons who are
17 seriously injured or are threatened with imminent injury.

18 I think given the circumstances, given the length
19 of the scope to where you just identify the owner of the
20 device, even if you had to punch something on the screen --
21 even if you did have to power it up, I don't think that is
22 such a search under Riley. Even if it was, Riley search
23 incident arrest, this is exigent circumstances in pursuing
24 the fleeing suspect. So your motion is denied.

25 MR. CASTO: Yes, sir.

1 THE COURT: Any other motions, Mr. Casto?

2 MR. CASTO: No, sir, Your Honor.

3 THE COURT: And I can't think of the name. I will
4 say there is that good faith exception case. I can't
5 remember the name of it, where officers were acting under
6 what they believe to be a valid procedure at the time and
7 that is now changed since Riley.

8 All right. Let's take about a ten minute recess.

9 MR. CASTO: Yes, sir. Thank you, Your Honor.

10 (A brief recess was observed.)

11 THE COURT: Is there anything before we bring in
12 our jury from the State?

13 MR. MAYE: Judge, very briefly, I just -- in way of
14 planning for tomorrow, Mr. Casto and I talked about this.
15 I would like to put in as Court's Exhibits at this point in
16 time the CSC conviction out of Barnwell County, which is a
17 record under seal. I have a certified true copy of an
18 indictment and a sentence sheet for a criminal sexual
19 conduct with a minor in the second degree, conviction of
20 Mr. Odom, August 12th of 2002, which is one.

21 I have a certified true copy, or a document under
22 seal, a sentence sheet reflecting a Laurens County
23 indictment, conviction, and sentence sheet for Mr. Odom on
24 burglary second violent from a conviction 6/11 of 2014.
25 And I have clocked copies of our notice of intent to seek

1 life without parole that was generated by Mr. Young on
2 August 19th, 2014.

3 I have a certificate of service that is signed and
4 notarized where Devon Carter, an employee with the South
5 Carolina Department of Corrections, served this very notice
6 that was clocked with the clerk's office ahead of time on
7 Mr. Odom and a certificate of service where Mr. Casto was
8 served by our Investigator Paul Taylor here in Edgefield on
9 August the 21st of 2014. Both of those would've been ten
10 days prior to trial.

11 I do want to submit those at this point in time as
12 Court's exhibits in this case and the notice of intent to
13 seek life without parole.

14 I would question the defense. We had talked about
15 earlier not having to bring the clerk of court from
16 Laurens, the clerk of court from Bamberg, and all of those
17 other places. I would submit them as records under seal at
18 this point in time just as, certainly, as Court's exhibits,
19 and would ask that there be inquiry both on Mr. Casto and
20 Mr. Odom as whether or not they've been served to comport
21 with the statute prior to the swearing of the jury in this
22 case.

23 THE COURT: Mr. Casto?

24 MR. CASTO: Yes, sir, Your Honor. We would
25 obviously stipulate to the burglary conviction from the

1 2014, Your Honor. And with regard to the CSC, we
2 understand the State is moving to seek a third strike based
3 on that as well, Your Honor. The others with regard to
4 service, if you want me to speak to that at this time, I
5 will.

6 MR. MAYE: I would rely on, unless I'm Court
7 required -- I've got on them on the witness list in this
8 case, even though I think it's a matter for the Court. Mr.
9 Odom was served with this notice ten days prior to time.
10 Mr. Casto was served prior to ten days. I'd ask for some
11 inquiry, prior to swearing the jury in this case, that they
12 have been served prior to ten days, that they're on notice.
13 It is filed with the clerk of court's office. What I have
14 is a stamped copy. I went down and checked the clerk's
15 file last week. It does reflect that both of them were
16 served. We would maintain that they're valid certificates
17 of service reflecting the service. And I will hand them to
18 the Court, the notice and the two prior convictions, Your
19 Honor. And I would ask that, I guess, that those be made a
20 Court's exhibit at this point in time and there be inquiry
21 as to their --

22 THE COURT: Do you have an objections to that, Mr.
23 Casto?

24 MR. MAYE: I'm putting in the notice that's filed
25 in the clerk's office and the two prior convictions that

1 were for that reason.

2 THE COURT: Let me see them. Now these -- the
3 burglary, marked as Court's 1, fifteen years concurrent.
4 The CSC with a minor second degree, the case out of
5 Barnwell County, so this is for your life without parole.
6 And then you have the life without parole notice.

7 Do you question that, Mr. Casto?

8 MR. CASTO: The only issue that we take, Your
9 Honor, is with regard -- in fighting through -- what I have
10 is a -- what I have is a copy of a burg and criminal sexual
11 conduct with minors is included --

12 THE COURT: We can resolve that issue at the proper
13 time. Do you have any -- in other words, the solicitor --
14 maybe the solicitor will agree that this puts a person on
15 notice to seek life without parole. And then the person
16 convicted does not have the underlying factual basis for
17 seeking life without parole it would go away.

18 MR. CASTO: Oh, I see. Yes, sir.

19 THE COURT: Do you agree with that, Solicitor?

20 MR. MAYE: Yes, sir, Your Honor. I did want to --
21 I just wanted to ensure, those are the documents under seal
22 that I'm relying on, those underlying convictions.
23 Certainly if he's convicted, they could challenge whether
24 or not we've sufficiently done so. I just -- in light of
25 recent experience, I just want to make sure that I was

1 positive that the notices had been served, that they were
2 on file with the clerk's office, and I couldn't think of a
3 better way to do that rather than making them a Court's
4 exhibit at the beginning of the trial in this case, Your
5 Honor.

6 I do have the witnesses on my witness list in this
7 case, although this is not something we have to do outside
8 the presence of the jury. With the exception of my own
9 investigator, which I am not putting on the witness list,
10 Your Honor, but I think as an officer of the court we can
11 proffer Mr. Casto or maybe he would stipulate that he was
12 served with that without me calling him. My own
13 investigator is why I didn't put his name on there.

14 THE COURT: I think the question -- maybe I'm
15 missing the point. Is whether or not -- you're not
16 questioning the notice?

17 MR. CASTO: No, sir, Your Honor.

18 THE COURT: Ample notice to both you and your
19 client?

20 MR. CASTO: I'm not questioning that. And it might
21 be prudent to place -- we weren't together when we were
22 noticed. Mr. Odom was served at the prison. We might need
23 a separate inquiry as to that. In speaking to me, Your
24 Honor, I would say as an officer of the Court was served
25 with Intent to Seek Life Without Parole by Investigator

1 Paul Taylor with the Solicitor's Office here at the
2 Edgefield County courthouse.

3 THE COURT: What are you asking me to do?

4 MR. CASTO: All we're saying is that we concur with
5 the State that I've been put on notice and perhaps make a
6 separate inquiry with regard to Mr. Odom that he's been
7 noticed as well.

8 THE COURT: Call the witness when that comes up,
9 Solicitor.

10 MR. MAYE: Okay. I'll do so. Your Honor, the only
11 other ones I have as to the two previous convictions of
12 burglary, I'm advised by the defense in this case that
13 these are documents under seal. I'm going to ask they be
14 made Court's exhibits at this point in time. But Rhonda
15 McEleven, the Clerk of Court for Barnwell County, it's
16 under her seal.

17 State's 24, which is a burglary conviction,
18 97-GS-06-035 which dates back to -- the date of the
19 conviction in this case, 1997, looks like 10 of 1997. And
20 then what's marked State's 28 for ID at this point in time,
21 an indictment and sentence sheet out of Bamberg County for
22 a prior burglary conviction, a burglary second. Each of
23 these were burglary second, one from Barnwell County and
24 the other from Bamberg County, the Bamberg County being
25 93-GS-05-196.

1 I'd like to make these Court's exhibits at this
2 point in time, certainly moving into evidence at this time.
3 But I would make inquiry as to whether or not they're going
4 to stipulate that those are documents under seal, and I can
5 avoid bringing two clerks of court from wide-ranging areas
6 of the State to prove that those burglaries, convictions
7 are, in fact, valid against Mr. Odom in this case.

8 THE COURT: All right. Mr. Casto?

9 MR. CASTO: And we will stipulate to that, Your
10 Honor.

11 The other thing, Judge, is I thought that, you
12 know, that we'd tackle issues with regard to sentencing at
13 a later portion of the trial. In speaking with my client
14 just now, he doesn't contest that he was served, Judge. So
15 there's, we stipulate to that as well. I wanted to be
16 clear about that. And I apologize for misunderstanding,
17 but I think we're all on the same sheet of music.

18 THE COURT: You don't owe me an apology. I had a
19 little hesitancy about putting an individual under oath
20 that's charged with life without parole notice to defense,
21 and I realize that's not testimonial. It's more
22 administerial, yes I was served with that. And that's why
23 I had hesitance. I wasn't upset with you. I wasn't upset
24 with the solicitor.

25 MR. CASTO: Yes, sir.

1 THE COURT: I had a nagging bit of hesitancy where
2 we needed the DOC officer here. I wasn't upset with you,
3 the solicitor --

4 MR. CASTO: Yes, sir.

5 THE COURT: Or your client, whatsoever. I just
6 thought because of that, now wasn't the appropriate time
7 for the Court to put him under oath.

8 MR. CASTO: Yes, sir.

9 THE COURT: Okay.

10 MR. CASTO: Yes, sir.

11 THE COURT: All right. That was the only issue.
12 So if you're satisfied with the notice, and based on that,
13 if you are, Solicitor, I'm certainly satisfied with Mr.
14 Casto.

15 Did you talk to Madam Clerk in Barnwell and the
16 Clerk in Lancaster (sic), for keeping them up for us.

17 MR. MAYE: We had some discussion about Your Honor
18 with both of those. They asked me who the judge was, and
19 they did -- both of them were very familiar with your
20 clerks. I spoke with them, and he called me by name when
21 I -- certainly with recognition as to having to come to
22 your courts. But they said they would be happy to do so
23 even if so were required because they are --

24 THE COURT: Delighted to have them. They are
25 wonderful folks, as most -- most clerks of courts agree.

1 Isn't that right, Mr. Clerk?

2 THE CLERK: Yes, sir.

3 THE COURT: Both of them and so is the young lady
4 at Bamberg. I'm more familiar with Mr. Petie.

5 All right. Anything before we bring in our jury?

6 MR. MAYE: None from the State, Your Honor.

7 THE COURT: Mr. Casto?

8 MR. CASTO: Nothing from the defense, Your Honor.

9 THE COURT: Witnesses sequestered?

10 MR. MAYE: Yes, just to make sure Mr. Donaldson's
11 in the back. The investigating, chief investigating
12 officer --

13 THE COURT: The chief can stay.

14 MR. MAYE: And that's it. That's all I have. Any
15 of the defense people -- I'll just rely on them to know who
16 they are if they're here.

17 THE COURT: All right. Bring in our jury, please.

18 (The jury entered the courtroom at 4:03 p.m.)

19 THE COURT: All right. Mr. Clerk, would you
20 administer the oath to our jury, please.

21 (Jury was sworn at 4:06 p.m.)

22 THE CLERK: Was there any member of the jury panel
23 unable to take the oath? Please stand.

24 No one stood.

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

OPENING REMARKS BY THE COURT

THE COURT: Good afternoon, ladies and gentlemen. I apologize for the delay. I was -- I will tell you it was not the fault of the parties whatsoever. We reported back early knowing you would be here at 2:30 in hopes of having some matters resolved that I had to hear in order to be in a position to take off, so to speak, at 2:30.

They worked very hard, very diligently. The matters have been resolved and like I said, your time is very valuable to me, and I will try to manage it a little better again.

As you can see, in your absence, I had an election. I appointed Juror Number 138 as our foreperson.

Thank you very much for volunteering for that position. Also, if you would always remain in that seat.

And also our alternate Juror Number 73, if you would always remain in that seat.

All right. Ladies and gentlemen of the jury panel, the case we're about to try is the case of the State versus Maurice Anthony Odom, the defendant seated to my left with his attorneys, Mr. Casto and Mr. Drylie. What I will now say is intended to serve as an introduction to the trial of this case. These remarks are not a charge or instruction on the law. I will instruct you fully and completely on the law after this case, at the end of the trial before you

1 retire to consider your verdict. This is merely an
2 explanation of the procedure that we will follow in the
3 trial of the case so that you may better understand what
4 may be happening.

5 The defendant, as you have heard, is charged with
6 an indictment in this Court with the crime of burglary in
7 the second degree, the elements of which will be explained
8 to you fully and completely later. It's basically entering
9 or remaining in a building of another without consent with
10 the intent to commit a crime therein and in the nighttime
11 and/or by a person who has two or more prior convictions of
12 burglary, house breaking, or similar offenses.

13 Again, the indictment is simply the charge by which
14 the case is brought into this Court and is not in any way,
15 in any sense, evidence of any of the allegations it
16 contains. The defendant has pled not guilty to the
17 indictment. The State, the party to my front right,
18 therefore, has the burden of proving each of the elements
19 of the indictment beyond a reasonable doubt. And it will
20 be your duty, ladies and gentlemen, to decide whether the
21 State has met its burden.

22 Your purpose as jurors is to find and determine the
23 facts. You, ladies and gentlemen, are the sole judges of
24 the facts of the case. If any time I make any comment
25 regarding the facts, you must disregard it. You are to

1 determine the facts, as I've told you previously, from the
2 testimony you hear and any other evidence that is
3 introduced to the Court. It is up to you to determine any
4 inferences which you feel may properly be drawn from the
5 evidence.

6 It is especially important that you perform your
7 duty of determining the facts diligently, conscientiously.
8 Because ordinarily there is no way to correct an erroneous
9 determination of the facts by jury.

10 On the other hand, and with equal emphasis, the
11 same laws that make you the judges of the facts, make me
12 the judge of the law. The law as given by the Court is the
13 only law you may consider. You must accept it. You must
14 follow it even though you may disagree with it. I cannot
15 tell you what the facts are or should be. You cannot
16 disagree with me about what the law is or should be.

17 Your job is to take the law, the standard of the
18 law as I give it to you, and apply it to the facts. And if
19 you find from the testimony of the witnesses and the other
20 evidence that is to be introduced. After doing that, you
21 will render your verdict, a true and just verdict under the
22 solemn oath you have just taken as a juror.

23 It is important that you keep an open mind and not
24 decide any issue in the case until all of the evidence has
25 been presented, the parties have made their closing

1 arguments to you, and I have instructed you on the law in
2 this case. It is your solemn responsibility to determine
3 the guilt or the innocence of Mr. Odom. And your verdict
4 must be based solely on the evidence as it is presented to
5 you in this trial and on the law as I instruct you during
6 and at the close of the trial.

7 In just a moment, the solicitor will make what is
8 called an opening statement in which the solicitor will
9 explain to you the issues of the case, or at least what the
10 solicitor thinks the issues are in the case. Mr. Casto and
11 Mr. Drylie, the attorneys for the defendant, may also make
12 an opening statement although they are not required to do
13 so. A criminal defendant in South Carolina, regardless of
14 the seriousness of the charge or the charges brought, is
15 always, always presumed to be innocent. A criminal
16 defendant has no burden to prove himself or herself
17 innocent. The State always has the burden of proving its
18 case beyond a reasonable doubt. And that burden never
19 shifts.

20 Ladies and gentlemen, what the attorneys tell you
21 during their opening statements is not evidence in this
22 case. What the attorneys tell you during their closing
23 arguments is not evidence in this case. The questions by
24 the attorneys is not evidence in the case; it is a
25 framework by which the evidence, the testimony, is

1 extracted from the witnesses that swear before you to tell
2 the truth, the whole truth, and nothing but the truth. The
3 attorneys are not placed under oath. It's not the
4 questions, it's not the statements, it's not the arguments,
5 it's the testimony coming from the lips of the witnesses
6 sworn before you to tell you the truth. The evidence in
7 the case will be presented in that manner from this
8 witnesses stand and any exhibits that may be introduced in
9 time.

10 From time to time during the trial, you may hear
11 one of the attorneys say something like, Your Honor, I
12 believe we have a question of law or a matter of law to
13 discuss with you, or Your Honor, may we approach the bench.

14 I parenthetically say, I did not write this, so I'm
15 not calling myself Your Honor. It was written by someone
16 else. But that is the decorum that is used in the
17 courtroom. That is certainly not because of me as a
18 person. It's because of this. It's because of the rule of
19 law that we all live under in America.

20 Sometimes I, myself, might find it necessary to
21 excuse you from the courtroom for a short while so the
22 attorneys and I can discuss a matter of law. Why do I do
23 this? The reason is because you are the judges of the
24 facts in the case. And sometimes when I'm discussing
25 matters of law with the attorneys, it may be necessary for

1 me to make some comment as to the facts in connection with
2 ruling whether or not a particular law applies. I am not
3 supposed to tell you what I think of the facts. I do not
4 have or will not have any opinion about the facts in the
5 case. So I will excuse you from the courtroom while these
6 discussions take place so that in no way will you be
7 influenced by anything that I might say or do in connection
8 with the facts. Determining what the true facts are, using
9 your individual and collective good judgement, common
10 sense, you must decide whether or not the testimony of the
11 witnesses is believable. Is it credible?

12 It will be my responsibility to rule as a matter of
13 law as to whether certain testimony is admissible or not.
14 In other words, whether you get to hear it or not. But
15 once the testimony is admitted, whether or not you believe
16 it is solely on you to determine. When deciding whether to
17 believe a witness, you have the right to consider the
18 interest of any witness, the bias of any witness, the
19 prejudice of any witness, the opportunity for the witness
20 to have seen the matters and things about which the witness
21 may testify and the way the witness acts on the witness
22 stand. You have the right to consider anything that is in
23 the record that will help you evaluate the testimony and
24 the believability of the witnesses. That means that it's
25 your duty to pay close attention to the witnesses, to

1 observe, to listen to them, to pay close attention to the
2 attorneys and to the Court. Don't let your thoughts
3 wander, but give strict attention to the testimony in this
4 case so that at the end of all the testimony, after the
5 closing arguments by the attorneys, instruction on the law
6 by the Court, you will then be in a position to determine
7 what the true facts are and to apply the law to those facts
8 and thus render a true and just verdict.

9 It will be your added duty, Madame Forelady, to
10 preside in the jury room and to be the jury spokesperson
11 here in the Court. It will also be your duty to write the
12 verdict, but I will give you further instruction about that
13 at the conclusion of the trial.

14 Ladies and gentlemen, just a few administrative
15 issues. Then we will have the opening statements by the
16 attorneys. If you cannot hear or see a particular witness,
17 please get my attention or the attention of one of our fine
18 bailiffs or the clerk, and we can certainly try to have
19 them speak up. I don't know what may be offered into
20 evidence. Many times, there may be photographs or
21 documents introduced, handed to the foreperson, and passed
22 among the members of the jury. While you're out here in
23 the jury box, you may look at those items all you wish.
24 Please keep in mind if I allow an item into evidence, you
25 will also have it with you in your jury room at the time of

1 your deliberations. So seeing it out here is not the only
2 opportunity, the only time, you will get to view those
3 items. Again, you take as much time as you like, you want
4 to look at them. If that happens, I can't help but say, I
5 don't predict the future, but if that does happen, again,
6 look at them all you wish. But keep in mind, you'll have
7 them in your jury room.

8 From time to time, you may see me on my computer.
9 I don't tweet. I don't repeat. I am faceless. These are
10 good lawyers. I keep up with the case. That's what they
11 deserve. That's what Mr. Odom deserves. That's what the
12 State deserves. I may see a legal issue kind of lurking up
13 on that dusty judicial trail in front of me, and I will do
14 some quote, light, unquote legal research. If it's heavy
15 legal research, that's not happening. I have a law clerk
16 to take care of any heavy research. I had a juror -- the
17 reason I tell you that, said I was ignoring the cases. I
18 can ignore all of the facts, but you can't. But if it
19 bothers you, please let me know.

20 Also, as far as seating arrangements, again I
21 always want the foreperson in this seat and our alternate
22 in that seat. I have measured and studied jurors for many
23 years now, and I have come to believe that most jurors are
24 very territorial. They like to sit in the same seat every
25 time. They like the same view of the witness stand and the

1 same view of the courtroom. Whether it was Calhoun County
2 or wherever. If you want to sit in the same seat, you may
3 certainly do so.

4 So finally, what am I in charge of? Taking breaks.
5 I'm in charge of taking breaks. I have a really simple
6 rule, whenever I want to take a break, we take a break.
7 This is not judicial marathon. If you think you've sat out
8 here too long and you need a break, a restroom break or
9 what have you, please raise your hand. Let me know. As I
10 say, this is not a judicial marathon. We give the parties
11 all the time they need, and they deserve all that time, and
12 they deserve your attention. If you need a break, I
13 guarantee there's somebody else that needs one. But please
14 raise your hand, and let me know. If y'all need a break,
15 we'll take one.

16 Any objections to anything I've told the jury from
17 the State?

18 MR. MAYE: None from the State, Your Honor. Thank
19 you.

20 THE COURT: Defense?

21 MR. CASTO: No, sir, Your Honor.

22 THE COURT: All right. Thank you very much. We
23 will now have our opening statements. If you'll please
24 give the parties your complete and undivided attention.

25 MR. MAYE: May it please the Court, Your Honor?

1 THE COURT: Yes, sir.

2 **OPENING STATEMENTS**

3 MR. MAYE: Ladies and gentlemen, it's now well near
4 the end of the day here, and I'll apologize here when the
5 courtroom has heard this before, but it's no less true now
6 than at all the other times that I have said this. It's my
7 pleasure today, I represent the State of South Carolina.
8 I'm an Assistant Solicitor. I work for your elected
9 Solicitor, Mr. Donnie Myers, who is elected over the
10 Eleventh Judicial Circuit. For about the past twenty-five
11 years, I've been helping him take care of prosecuting cases
12 in McCormick, Edgefield, and Saluda. And I represent the
13 State of South Carolina.

14 This is a criminal case. This is criminal court.
15 Seated over here, at the table over here, all the way far
16 down on the end in blue, is Mr. Maurice Odom. He's charged
17 with burglary in the second degree, and that is a violent
18 burglary that he is charged with. Now, the judge has
19 already told you that at the conclusion of all of the
20 evidence that you're going to hear -- and the evidence is
21 going to come from right up here in the stand in this
22 case -- that he's going to give you what the law is in this
23 case.

24 But I'll tell you, the State has the burden of
25 proof in criminal court. And in this case, we welcome it.

1 I'll tell you upfront, the State's going to prove in this
2 case that Mr. Maurice Odom on October the 17th of 2007,
3 came here to Edgefield County and committed a burglary in
4 the second degree. And I submit to you again, the judge
5 will tell you at the conclusion of all the evidence in this
6 case when he talks to you about the law --

7 Burglary, when you first think about burglary, the
8 first thing most people think about, you know, breaking
9 into somebody's house. But it's also a burglary when you
10 go into a business, when you break into a business.
11 Because I'll tell you upfront, what the State's going to
12 prove beyond all doubt in this case, is Mr. Maurice Odom
13 went in the IGA grocery store down here in Johnston.

14 Now, the one thing that the twelve of you that are
15 going to go back in the jury room and deliberate in this
16 case, all have in common, is that you're from here in
17 Edgefield County. That's the one common thread of all of
18 you. Every one of you, no matter what you do for a living,
19 whether you're in school, whether you work, or you're
20 retired, whatever you do, you're all residents here in
21 Edgefield County.

22 And I submit to you, nobody probably leapt for joy
23 when they went down to the mailbox or the post office box
24 and got a summons from the clerk here, Mr. Reel, who told
25 you that you had to give up whatever you would have been

1 doing this week to come down here and sit as jurors in this
2 case, to serve on jury duty. I don't think anybody was
3 leaping with joy or skipping when you returned from the
4 mailbox or the post office box when you got that letter
5 from Mr. Reel. That is the last compulsory public service
6 that's left.

7 There are monuments here all over town of people
8 that had the ultimate public service, compulsory public
9 service, had to go out and serve on the draft, leaving home
10 sometimes for years at a time. They tell me at one point
11 in time people used to have to out before they had a
12 highway department, and you had to work on the road. You
13 had to get a shovel and a rake and work on the roads and
14 dig ditches. This is the last compulsory public service,
15 and this is vitally important. You're over here in
16 criminal court.

17 As I've already told you, Mr. Odom in this case is
18 charged with burglary in the second degree, and that's a
19 violent burglary. Now, burglary in this case, when we're
20 talking about a business, the IGA grocery store, what the
21 State's going to prove to you in this case, is that during
22 the nighttime, because that's one of the things that we
23 need to prove in this case to make it a burglary second
24 violent, that the entering or remaining was during the
25 nighttime hours. And that's one of the things we're

1 certainly going to prove to you. This was about the hour
2 of 2 o'clock in the morning on October the 17th of 2007.
3 We're certainly, I told you upfront, we welcome the burden
4 of proof. We're going to have witnesses come up here under
5 oath and tell you that it was nighttime when the alarm went
6 off at the IGA store.

7 Another possible thing that we're going to prove to
8 you beyond all doubt in this case, is to make it a burglary
9 second violent, is that the person who commits the
10 burglary, who does the entering, going into a business with
11 the intent to commit a crime once they get inside -- the
12 Judge is going to charge you with that -- that that person
13 at the time that they go in and commit in that offense and
14 go in that business or building, has two or more prior
15 convictions for burglary. And we're going to prove that in
16 this case beyond all doubt; that Mr. Odom at the time that
17 he went in that night already had two prior convictions.
18 The State's going to prove that to you. We're going to
19 prove that on that night, when he came up here from
20 Barnwell County, that he already had two convictions for
21 burglary when he went in to the IGA grocery store.

22 I submit to you, you're going to hear from a number
23 of witnesses in this case. One of the most interesting,
24 I'm going to tell you upfront, is going to be a young man
25 named Brandon Donaldson. Because Mr. Brandon Donaldson and

1 Mr. Odom have a unique connection in this case. There was
2 a man down in Barnwell County, where they're from, had
3 eighteen children, and they're half-brothers. They share a
4 common father in this case; they're half-brothers. He's a
5 good bit younger. And you're going to hear from him.
6 He'll testify. And like I said, you will bring in the
7 courtroom, and you do bring in, the sum total of all of
8 your knowledge and wisdom and life experiences. So you're
9 going to be able to tell, Mr. Donaldson, he's a little bit
10 slow. But he's going to get up here, and he's going to
11 testify against his half-brother, Mr. Odom.

12 And he's going to tell you that earlier on during
13 the night on October the 17th of 2007, that Mr. Donaldson
14 and Mr. Odom got together over in Blackville, which is over
15 in Barnwell County where they're from. They're not from
16 Edgefield County. They don't have any connection here.
17 They're from over in Barnwell County. And Mr. Odom
18 enlisted Mr. Donaldson to come with him over here to
19 Edgefield County where he's going to tell you he'd never
20 even been before. At this point in time, this man was
21 young enough, he didn't have a driver's license. He's
22 going to tell you that Mr. Odom loads him up in the
23 Cadillac automobile, and you'll see pictures of it in this
24 case, about a 1994 white, four-door Cadillac Deville, and
25 that he loads him up over in Barnwell County, and he loads

1 also in the car and brings with him some Barnwell County
2 bricks into Edgefield County limits. But he loads up all
3 that into the automobile, and then they drive all the way
4 down there from Barnwell up here to Edgefield County.

5 As I've already talked about in this, all the
6 twelve of you are from right here in this county, the
7 events -- we'll put in some maps, most of you won't need
8 that -- start at the IGA grocery store on 121 in Johnston.
9 He loaded up Mr. Donaldson, but he didn't park around at
10 the IGA grocery store. If you're coming down 121 out of
11 town there, he took a left there on highway 191; 191 goes
12 to Eureka. You know, the Forest Tire Service is right
13 there, Mr. Forest with Bulldog and he sells tires on 191.
14 He turned left at there. And there's not many houses there
15 for a good little bit once you get out of the edge of town.
16 Once you go by Forest Tires, there's a lot of wooded area.

17 You're going to hear in this case that Mr. Odom got
18 Mr. Donaldson, and he took his Cadillac, and they didn't
19 pull up there in the parking lot in front of IGA, but they
20 went out there where they thought it would be outside of
21 the light of day, just outside, if you're going back
22 towards from by Forest Tire on the left there on 191, on
23 the left-hand side of the road, they pulled off there and
24 backed that Cadillac, that white Cadillac in. They put on
25 ski masks, and they put on gloves and had dark clothes on.

1 It was before the hour of 2 o'clock, about 1:44 you're
2 going to hear in this case, when the alarm went off. But
3 they got themselves all suited-up, and they covered up
4 their faces. Mr. Odom loaded up there with bricks he
5 brought from Barnwell County. And they set out walking.
6 And they go around to the IGA grocery store.

7 And one of the good things about modern technology,
8 you're going to have the benefit of seeing a little video
9 testimony. Now, it's a short clip. It's going to tell you
10 the IGA grocery store manager, Ms. Twyla Barton, she's
11 going to come in and talk to you about the video system
12 that they had there at IGA. But it's short. It only
13 captured -- the cameras are looking all the time and
14 recording, but it really only saves and captures the image
15 when it's actually seeing movement. And so you're going to
16 see the view from the inside of the IGA grocery store,
17 looking out through those automatic doors and all at the
18 front, of two individuals with masks and gloves on come and
19 start slinging bricks up against the bottom portion of
20 those big old windows in the front of the IGA grocery
21 store. And it's going to capture that motion; you'll see
22 that.

23 And you'll see once they've busted out the window,
24 Mr. Odom and Mr. Donaldson that he's brought with him, they
25 go scooting up under that broken out window. Bricks go

1 scattered across here. You'll see where they bust out the
2 window. And they run in there, and they come back out.
3 And what they do is they scoop up an armload of cigarettes,
4 cartons of cigarettes. The manager or IGA, I submit to
5 you, is going to tell you about \$2600.00 worth of
6 cigarettes, ninety-something odd cartons of cigarettes.
7 And they load them up in big old garbage bags, big black
8 garbage bags.

9 What you're going to see is two guys in masks and
10 gloves bust out the window, go in through the bottom
11 portion of it, go into the store. Now it's a short period
12 of time. It's very condensed. Because all the camera was
13 shooting, again, is when they come back out toting two big
14 old grocery bags that the State's going to submit that
15 we're going to prove to you were the cigarettes that they
16 went in to break in and steal from out of the IGA store.

17 You're going to hear in this case that, right when
18 they went in, about 1:44 a.m. that night there in Johnston,
19 that the alarm goes off, it was triggered. You can
20 imagine, a big old grocery store like that. It's got an
21 alarm system with triggers. It's got a camera system. The
22 manager's going to tell you they got a big old safe in
23 there. But all they did was steal cigarettes. The
24 manager's going to tell you they just stocked up. They got
25 a new load of cigarettes. She knew exactly how many were

1 there because they just stocked it up when she left the
2 night before.

3 They leave out of there toting the cigarettes. And
4 they go back out, and remember they're covering their
5 tracks in this case; they've got gloves on, they've got ski
6 masks on, and they've parked this Cadillac outside of the
7 light of day about a mile outside of town there on the
8 left-hand side of the road. They've got that Cadillac back
9 there.

10 Now, you're going to hear that there was a Johnston
11 Town police officer that responded. Shawn Campbell was
12 working that night at 2 o'clock in the morning. And you
13 can imagine there's not a lot of officers working in
14 Johnston at that time of night. And he responds, but he
15 calls out for help because usually at that time of night,
16 Edgefield and Saluda Counties, there's not that many
17 deputies working, just a few. But he calls for help. And
18 you're going to hear in this case that Chris Miller, who
19 was a Saluda County deputy, comes over from Saluda County
20 to kind of back him up and assist because Shawn's there.
21 Now, the windows are busted out of the front of the IGA.
22 He's got to stay there with the store and secure it until
23 the manager can get there.

24 And you're going to hear, you know Ms. Barton, the
25 alarm company contacts her; she's on her way. The alarm

1 company has already notified the Sheriff's Office to come
2 and called out the local law enforcement, and so this
3 Saluda Deputy, Mr. Miller, comes over. And he's smart;
4 it's not his first day. He isn't just hanging out there
5 with the officer there that responded at the IGA. He
6 starts riding around looking to see if he can discover
7 anything that will help him solve this crime because folks
8 are long gone by the time you get there.

9 Now, they were two minutes later, the first
10 officer. Now, the Saluda deputy, he's no time either.
11 He's right over here to help. Well, he's riding around,
12 and it's just enough time for Mr. Odom and Mr. Donaldson to
13 make their way back to the edge of the woods and all and
14 get back down to that Cadillac automobile.

15 So the Saluda deputy in this case has gone in, and
16 he looked to the left on 191, and he's looking along the
17 side of the road to try to see if he can find something.
18 He's got his spotlight out; he's searching around. And
19 just about the time he gets out there to the edge of town,
20 just about a mile and a half, three quarters of a mile on
21 the left-hand side of the road, he sees this nice white
22 Cadillac Deville just off the edge of the side of the road
23 back up in there. And he's an experienced law enforcement
24 officer. And he knows that doesn't look right, 2 o'clock
25 in the morning, a white Cadillac back at the edge of a

1 field there on the edge of town. And so he points his
2 spotlight up in there and looks up at this white Cadillac
3 and catches Mr. Odom and Mr. Donaldson, quite literally,
4 with their pants down, because they're going to cover up
5 their tracks in this case. You're going to hear they had
6 masks over their faces, ski masks. They had gloves on.
7 Just as soon as they get back in their automobile, they're
8 going to change clothes so they don't even have the same
9 clothes on that they get captured on the video with. He
10 catches them literally changing clothes.

11 Now, you're going to see photographs in this case
12 that, just like -- kind of like a fireman right at the foot
13 of his bed where he turns around and sticks his feet down
14 in his fire pants and jams his feet down in his boots,
15 right there at the door jam of the Cadillac, pants pulled
16 down, shoes. They're in the process of changing clothes
17 when the officer puts the spotlight on them. And you can
18 imagine, once the light of day of that spotlight hits Mr.
19 Odom and Mr. Donaldson, they are gone, and they take off
20 into the underbrush just running head on.

21 Now, Mr. Donaldson's going to get up here and tell
22 you, I came with Mr. Odom. I didn't really know where we
23 were. I'd never been to Edgefield before. Mr. Odom knew
24 where we were going. He's the one that got me up here. I
25 didn't have a driver's license. He loaded me up in the

1 Cadillac with bricks in the trunk and brings me up here.
2 So he started running one way, and Mr. Odom goes to run.
3 And Mr. Donaldson's going to tell you in this case, he ran
4 until he was out of breath, and then he stopped to walk.
5 And then he ran until he was out of breath, and then he
6 stopped to walk. And he ran and ran and ran. And he will
7 tell you, he ended up slam over into Aiken County not
8 knowing where he was. And he finally called somebody, some
9 girl he knows, to come up here and get him and carry him
10 away because the officer from Saluda that has found the
11 Cadillac, now he stays with it. He's not going to run into
12 the woods chasing two individuals that bolted away from
13 that vehicle. He stays with the vehicle until he can get
14 backup.

15 And you're going to hear from a variety of officers
16 here. You're going to hear that they called the sheriff's
17 office in this case, and they brought the bloodhounds out.
18 And they started tracking their trail. And the trail went
19 back up to the store, obviously where they had come from.
20 And it goes off into the woods. And they run the dogs, and
21 they run the dogs, and they cannot catch them. That these
22 two, Mr. Odom and Mr. Donaldson, had just headlong running
23 through the woods in a desperate attempt to get away, and
24 they don't catch up with either one of them.

25 But the officers were left there with this white

1 Cadillac automobile. And you're going to hear in this case
2 the Chief of Johnston -- Investigator Lamaz Robinson is the
3 Chief now, but Chris Aston was the former Chief of
4 Johnston. And he responds. The sheriff's office responds.
5 The bloodhound officers respond. They do whatever they can
6 to try catching them with the bloodhounds running away from
7 there, but they don't catch them.

8 But what they do have is the automobile there, the
9 Cadillac automobile. And you're going to hear in this case
10 that this white four-door Deville automobile is one Mr.
11 Odom drove all the time, and that he had gotten it from a
12 guy over there in Barnwell that had a Barnwell County,
13 they've got a car dealership over there called Duke's Auto
14 Sales. Well, there was paper tags on it. The Cadillac
15 didn't have a real plate on it. It just had one of those
16 paper tags on that said, Duke's Auto Sales. And you're
17 going to hear Mr. Donaldson tell you, that's the car Mr.
18 Odom drove. His white Cadillac. What he usually drove.
19 You're going to hear Mr. Dukes come in and say, yes, sir,
20 that car was sold and transferred into his girlfriend or
21 wife's name, a female's name, who was with Mr. Odom. And
22 you're going to hear that was the car he drove.

23 You also will see all the clothing that they
24 gathered up there, even some clothing they got Mr. Odom's
25 DNA off of, because you're going to hear the officers in

1 this case were thorough. But they tried to get
2 fingerprints off the car. They'll tell you they really
3 couldn't raise them; what they had was smudged. They'll
4 tell you they got DNA off some clothing that was in the
5 car. And you're going to hear about all of the items that
6 they seized -- billfold of Mr. Odom's in this case,
7 driver's license, ID cards from North Carolina, a business
8 ID card from a business over in Barnwell County, all of it
9 with Mr. Odom's name on it because it was his automobile.

10 They're even going to tell you they found a cell
11 phone that belonged in this case that was still switched
12 on, that when they looked at it, it had Mr. Odom's name
13 come up on it in this case. His cell phone, still running,
14 all his possessions, because you're going to hear in this
15 case that they got surprised. He ran slam out the clothes
16 that he had on himself. They were taking them off so they
17 wouldn't have on the same thing. All of these items were
18 left that night in the car. Police are going to tell you
19 they popped the trunk open.

20 And they could even see -- they had these bricks,
21 kind of light-colored looking bricks that had been slammed
22 through the window at the IGA. You can even see the flakes
23 of where the bricks were laying in the trunk of this nice
24 Cadillac automobile. You can see the flakes where they've
25 been back there sliding around on their journey from

1 Barnwell County up here to Edgefield County where they've
2 been sliding around in the trunk. You can clearly see, and
3 the cops took the photograph, showing you the same blocks
4 sliding around in the trunk of the car left behind a
5 residue. The very same ones that they picked up out of the
6 floor of the IGA that Mr. Donaldson and Mr. Odom had tossed
7 through the window.

8 As I told you at the outset, the State's got the
9 burden of proof in this case, and we welcome it. We're
10 going to prove not just beyond a reasonable doubt but
11 beyond all doubt that Mr. Odom in this case is guilty of
12 burglary in the second degree. He went into the IGA store
13 here in Edgefield County with the intent to commit a crime
14 inside. That crime is stealing cigarettes. And it was
15 during the nighttime, and at the time that he went in he
16 had two prior convictions for burglary.

17 I appreciate your close attention in this case.
18 We're going to get straight to it. All the evidence and
19 the exhibits that are going to come forward, and it will be
20 right here before you at the witness stand. And at the
21 conclusion of all the evidence in this case, we're going to
22 ask you for a guilty verdict for Mr. Odom in this case for
23 coming up here from Barnwell County with those bricks and
24 breaking out and taking what wasn't his from the IGA store
25 here in Edgefield County in Johnston. I appreciate your

1 close attention.

2 THE COURT: Thank you, Solicitor. Mr. Drylie?

3 MR. DRYLIE: Thank you, Your Honor. May it please
4 the Court?

5 THE COURT: Yes, sir.

6 MR. DRYLIE: Maurice Odom did not burglarize the
7 IGA in Johnston on October 17th, 2007. Up until now, until
8 this moment when I got up to speak to you in this trial,
9 you've only heard one side of this story, and that's the
10 side of the story that the government is trying to present.
11 You know, the State has burden of proving Maurice guilty
12 beyond a reasonable doubt, and they're going to attempt to
13 do that by calling witnesses and having people come testify
14 from that witness stand right there. And it's up to you,
15 each and every one of you, to determine the truth and the
16 credibility of those witnesses and what they say and who
17 you believe.

18 You know, in that sense, a trial is kind of like
19 peeling an onion. When you start to peel an onion, you've
20 got to peel away some layers before you get to the core.
21 Sometimes when you're peeling away that onion, the first
22 couple of layers on the outside are a little green, and
23 there's something just not quite right about them. And
24 you've got to peel those away before you get to the layers
25 that are ripe and ready to use. And then you've got to

1 peel a little more before you get down to the core.

2 Sometimes, people are going to walk into this
3 courtroom, and they're going to say something, and it's
4 going to sound not quite right. You know that's the green
5 layer on that onion that you've got to get through.
6 Something about it doesn't make sense, so we have to dig a
7 little deeper and peel a little more. And when you do
8 that, you can start to see the motivations and the reasons
9 behind what people have to say and why they would come into
10 the courtroom. And I submit to you that there's one person
11 in this case that has more reason to be dishonest than
12 anyone else.

13 Now, the State is going to introduce several pieces
14 of evidence that at first look are going to make Maurice
15 appear to be guilty. Now, in a trial, we're not concerned
16 about appearances. We're concerned about what's fact, what
17 we know and what the truth is. The government is going to
18 tell you that Maurice's wife recently purchased the car.
19 That car was found not far from the IGA in Johnston.
20 They're also going to call Brandon Donaldson, who's
21 Maurice's half-brother, to come in here and testify. Now,
22 I want you to listen to his evidence, hold closely to what
23 he says, and see if you can read the motivation behind
24 that. Blood is thicker than water, except for when you're
25 facing charges.

1 I want to take a few moments and talk to y'all
2 about the trial process. First, I want to let you know
3 that as Maurice sits there right now, as he sits over
4 there, he's an innocent man. And that innocence is like a
5 robe of righteousness, and it surrounds him throughout the
6 course of this trial. The judge is going to tell you that
7 that's not mere legal theory, but that the only way that
8 you can take that innocence away from Maurice is that if
9 each and every one of you unanimously agrees that he is
10 guilty beyond a reasonable doubt.

11 Which brings me to my second point. Each and every
12 one of you are equals. You know, our system of justice, it
13 only works when the twelve of you listen to all of the
14 evidence and hear what is said and hold true to your
15 convictions that you have. No one should be forced to
16 change their opinion about the evidence merely to get along
17 with the others.

18 I want to talk to you for a minute about reasonable
19 doubt because it can be kind of a hard concept to
20 understand. Now, at the conclusion of the case, the judge
21 is going to charge you on the law. He's going to talk to
22 you about reasonable doubt. There are two definitions that
23 I find helpful when I'm trying to understand reasonable
24 doubt. First, it's the kind of doubt that will cause
25 someone to pause or hesitate to act. Another definition,

1 is do you have a doubt, and do you have a reason for that
2 doubt? Now, I submit to you that in this case, there are
3 going to many doubts, and there are going to be many
4 reasons for those doubts.

5 Finally, at times throughout this trial, Mr. Casto,
6 who's seated over there, and myself, we might make
7 objections. We might have to ask some tough questions of
8 people. If we do anything that offends anyone, we just
9 simply ask that you hold it against us and not against our
10 client, Maurice.

11 Ladies and gentlemen, I want to thank you for your
12 service. Nobody wants to come here and sit on jury duty,
13 but this is the only way that we have to resolve this
14 dispute. And that's essentially what a trial is. That's
15 why we're here today. We have a dispute between the State
16 of South Carolina and Mr. Maurice Odom, and you are the
17 only people that can help us resolve that dispute.

18 My name is Erik Drylie, and over there is Mr.
19 Bennett Casto. And we have the honor and privilege of
20 representing Maurice Odom.

21 Maurice, stand up for me.

22 This is his day in court, and it's the most
23 important day of his life.

24 In conclusion, I want to tell you about a show I
25 used to watch when I was growing up. It was called Beyond

1 Belief, Fact or Fiction? And you know, the show would show
2 a series of stories, and the viewers would have to guess
3 which ones were true and which ones were false. I used to
4 love watching that show and trying to guess, you know,
5 what's true and what's false. You know, sometimes I'd
6 swear that something was true, and it wasn't. Other times,
7 I'd swear that something was false, and it turned out to be
8 the true story of the show.

9 You know, it's kind of like what we're doing here,
10 when we need y'all to determine and tell us what the truth
11 is. It is a fact that Maurice Odom's car was found not far
12 from the IGA; however, it is a fiction that he drove it
13 there that night. It is a fact that Mr. Donaldson is going
14 to come in here and testify against his half-brother, but
15 his testimony is littered with fiction. Blood is thicker
16 than water, except for when you're facing a charge.

17 Evaluate this evidence. Test it, and see if it
18 holds true. We believe it will not. At the conclusion of
19 the case, we submit that there's only going to be one
20 reasonable verdict, and that's a verdict of not guilty.
21 And we'd ask you to return that in favor of Maurice Odom.
22 Thank you.

23 THE COURT: Thank you. Thank you, Mr. Drylie.
24 Solicitor, you may call your first witness.

25 MR. MAYE: The State would call Twyla Barton to the

Twyla Barton - Direct Examination by Mr. Maye

1 stand.

2 THE COURT: Ladies and gentlemen, I have ordered
3 that the witnesses would remain sequestered. They are
4 outside of the courtroom except for Chief Robinson.

5 TWYLA BARTON,

6 having been sworn, testified as follows:

7 THE CLERK: Please be seated. State your full
8 name, and spell your last name for the record.

9 THE WITNESS: It's Twyla Barton. Last name,
10 B-A-R-T-O-N.

11 **DIRECT EXAMINATION**

12 BY MR. MAYE:

13 Q Ms. Barton, if you would, introduce yourself to the
14 ladies and gentlemen of the jury. Tell them where you're
15 from?

16 A My name's Twyla Barton, and I live in Johnston.

17 Q Okay. Ms. Barton, let's talk about where you were
18 employed back in October of 2007. What were you doing
19 then? Where were you working?

20 A IGA in Johnston.

21 Q In what capacity were you employed there at IGA in
22 Johnston?

23 A I was the store manager.

24 Q Store manager?

25 A Yes, sir.

Twyla Barton - Direct Examination by Mr. Maye

1 Q If you would, let's talk about October the 17th of
2 2007 just before the hour of 2 o'clock a.m. Tell the
3 ladies and gentlemen of the jury what happened about that
4 time just before 2 o'clock. What happened?

5 A I got a phone call from the alarm company that was
6 over our store's alarm system. And they said that there
7 was an alarm going off, and if I could meet the police
8 there, and I said yes, so I went to the store. The police
9 was already there, and the front door was broke. So there
10 had been an intruder that had busted the front door open.

11 Q Tell me a little bit about the alarm system. How
12 does that thing work? What kind of things trigger the
13 alarm system there at the IGA grocery store?

14 A Motion. It detects motion. That's it.

15 Q Okay. It detects motion?

16 A Uh-huh.

17 Q Okay. If anybody -- or if the camera sees any
18 motion, is that enough to trigger the alarm and set it off?

19 A Yes, sir.

20 Q Okay. So are you the only one that's notified? Or
21 what else does the notification -- once the alarm is
22 triggered, what happens? What goes into effect?

23 A The alarm company gets the signal that it's been
24 motion, or it has been triggered. And they call me, and
25 I'm assuming they call the police too because the police

Twyla Barton - Direct Examination by Mr. Maye

1 don't call me. The alarm company calls me and asks me if I
2 could go to the store that the police would be there.

3 Q Okay.

4 A So...

5 Q Did you get up and get yourself together?

6 A Uh-huh. Yes, sir.

7 Q And go on down there?

8 A Uh-huh.

9 Q Okay. Do you remember what you -- tell the ladies
10 and gentlemen of the jury what you saw and what you
11 observed when you got there to the IGA?

12 A When I got there, there was one officer there that
13 had cleared the store already. And the glass on the bottom
14 part of the double doors had cinder blocks thrown through
15 them. They were in the floor on the inside busted in the
16 glass, and I went in and the office was right there as you
17 turn to the left. So I made sure that all the money and --
18 from the night before was still in the safe, and everything
19 was fine. But on the left wall is where we kept our
20 cigarettes, and they were pretty much wiped clean. They
21 had been -- they were gone.

22 Q Okay. Let me ask you this. When an alarm gets
23 triggered, is it blaring out there locally where the store
24 is? Can you hear an audible alarm there at the store --

25 A Yes.

Twyla Barton - Direct Examination by Mr. Maye

1 Q -- when it gets triggered?

2 A You can hear that, and there's a silent one too
3 that you don't hear. But I have to put my code -- my -- I
4 had a code --

5 Q Uh-huh.

6 A -- of my own to put into the alarm system to stop
7 that, to stop.

8 Q When you got there, was the outside alarm, was the
9 visual, I mean, was the auditory alarm going off? You
10 could hear that?

11 A Yes, sir.

12 Q Okay. And so, did you go inside and enter your
13 code and shut it off?

14 A Yes, sir.

15 Q Okay. Did the police ask you to go through and
16 kind of ascertain what, if anything, was missing inside the
17 store?

18 A Yes, sir.

19 Q Okay. What were you able to determine was missing?
20 And how were you able to know what was gone out of the
21 store there?

22 A The day before, we had a cigarette delivery. I
23 noticed that the cartons were -- pretty much, the whole
24 shelf was wiped out. Marlboro, Marlboro Lights, 100s,
25 Salem -- they were gone. And I took the invoice that I had

Twyla Barton - Direct Examination by Mr. Maye

1 received off my truck the day before. And I went by that
2 amount. And of course, there was still some there from
3 previous, previously. So it was probably about like ninety
4 cartons that were gone.

5 Q About ninety cartons of cigarettes? What's the
6 dollar amount about --

7 A \$26 --

8 Q -- ninety-one cartons?

9 A \$26, \$2800 at the time.

10 Q Between \$26 and \$2800 dollars worth of cigarettes
11 were missing?

12 A Yes, sir.

13 Q And you're positive when the store was closed up
14 that night and the alarm was set, those cigarettes were
15 present and they were in the store?

16 A Yes, sir.

17 Q Certain of that?

18 A Certain.

19 Q Okay. This will sound like a silly question, but
20 I'm going to ask you a couple of things. The IGA grocery
21 store in Johnston, what county's that in?

22 A Edgefield.

23 Q In Edgefield County. At the time that you went
24 there and the alarm was going on, and at the time the alarm
25 was triggered, was it daytime, or was it nighttime outside?

Twyla Barton - Direct Examination by Mr. Maye

1 A It was nightttime.

2 Q Nightttime?

3 A Uh-huh.

4 Q So it was about the hour of 2 o'clock a.m.?

5 A Yes, sir.

6 Q So it was dead dark. It was nightttime. And you're
7 certain of that?

8 A Oh, yes, sir.

9 Q Okay. I'm going to show you what's been marked
10 State's Exhibit Number 2 in this case, and I want you to
11 take a look at it. It's four photographs, and I'll ask
12 you, do those fairly and accurately reflect what you saw
13 there at the store when you got there in regard to the
14 front of the store and the police car there and all?

15 A Yes, sir.

16 Q That's your IGA store in Johnston that was
17 burglarized that night?

18 A Yes, sir.

19 Q Okay.

20 MR. MAYE: At this point in time, I'm going to move
21 to admit this into evidence as a State's Exhibit. It's
22 marked State's 2.

23 THE COURT: Mr. Casto?

24 MR. CASTO: Without objection, Your Honor.

25 (State's Exhibit Number 2 was entered into

Twyla Barton - Direct Examination by Mr. Maye

1 evidence.)

2 BY MR. MAYE:

3 Q I'm going to ask you to come off the stand so you
4 can talk to the ladies and gentlemen of the jury. It's
5 pretty obvious, but point out the photographs on here, and
6 tell them what they show. And it's 2, and it's A, B, C,
7 and D. Tell them, and show them what that shows.

8 A Figure A is the front door of the building
9 (indicating). That's the entryway. And B is the mailbox
10 that sits right by the entryway (indicating). And C is a
11 picture of the two double doors on the front of the store
12 (indicating). And picture D is also the same picture of
13 the -- in the front of the store (indicating).

14 Q From that picture there, what was broken out?
15 Where was the glass broken out?

16 A Right at the bottom part of it (indicating).

17 Q Okay. You can go back and take the stand.

18 A Okay.

19 Q I'm going to show you State's Exhibit Number 3 with
20 four photographs on it as well. Tell me if those four
21 photographs fairly and accurately reflect the inside and
22 some of the scenes of damage from the block being thrown
23 through the window there to gain entry to the store?

24 A Yes, sir. All of them.

25 Q All the pic -- can you come down here and show the

Twyla Barton - Direct Examination by Mr. Maye

1 ladies and gentlemen of the jury where the damage was and
2 where the blocks are in those photographs?

3 THE COURT: Is this without objection?

4 MR. CASTO: Without objection, Your Honor. Yes,
5 sir.

6 THE COURT REPORTER: Speak up.

7 BY MR. MAYE:

8 A Picture A and B, well A and C and B are the very
9 front of the entryway (indicating). There are cinderblocks
10 in the floor from where they went through the glass in the
11 door. And they're like two different cinderblocks
12 (indicating) and they were broken as they were thrown
13 inside.

14 Q Let me ask you this. What other aspects are there
15 to the security system -- I'll let you go back and retake
16 the stand.

17 Other than the alarm that's triggered by motion of
18 somebody breaking in, what other security measures did you
19 have in place at the IGA store there in Johnston to help
20 protect you from this type of crime?

21 A It was just the security system.

22 Q That security system?

23 A Uh-huh.

24 Q Did it have any video capability to film things,
25 you know, as they were taking place inside the store?

Twyla Barton - Direct Examination by Mr. Maye

1 A Yes, sir.

2 Q Okay. Did you go back and review any of the film
3 footage as the result of cameras capturing any motion at
4 the time there that the alarm was triggered? Did you do
5 that?

6 A Yes, sir.

7 Q Okay. Did you show that to the law enforcement
8 officers that were there? The first officer, Chief Aston?
9 Investigator Robinson? Did you access that video
10 recording? And did you show it to the police?

11 A Yes, sir.

12 Q Okay. What did you have to do in order to access
13 that and show it to the police to show them the footage of
14 what had happened at the time that the alarm was triggered?

15 A I have a computer -- I have a computer in my
16 office, and I just pulled up -- You can go back, and it
17 pulls -- it shows the motion, it's how it picks up. I
18 clicked on it, and it went back and showed the, where they
19 were standing before they threw the brick.

20 Q Uh-huh.

21 A It picked that up. And then it picks up when they
22 come -- enter. And then it don't pick up until they leave.

23 Q Okay.

24 A But it's just all -- It's all --

25 Q Okay. So this film's short. It's not real-time?

Twyla Barton - Direct Examination by Mr. Maye

1 A It's short. Yes, sir.

2 Q Okay. So I guess the camera only records things
3 when there's something moving in front of it, is that
4 right?

5 A Yes, sir.

6 Q So it's not like if somebody goes off screaming in
7 movies that the camera just runs and you don't see
8 anything.

9 A Right. Right.

10 Q Okay. So all the footage that you showed to the
11 law enforcement was only when the camera was recording
12 action, right?

13 A Yes, sir.

14 Q Okay. Did the -- Have you had a chance to download
15 and basically burn a copy of that computer file? And did
16 you provide that to law enforcement?

17 A I did.

18 Q Okay. Have you had a chance to review and look at
19 that footage and all?

20 A I have. Yes, sir.

21 Q Does it fairly and accurately show what the camera
22 recorded as happening during the time of the alarm?

23 A Yes, sir.

24 Q Okay. And you're certain, and you've looked at
25 that and reviewed it?

Twyla Barton - Direct Examination by Mr. Maye

1 A Yes, sir.

2 Q Okay.

3 MR. MAYE: Your Honor, this is going to take me
4 just a moment. I'm going to ask that they set it up. And
5 I'm going to ask -- previously, the defense in this case
6 has been provided with a copy of that footage. I'm going
7 to move to admit that footage into evidence. They've got
8 the DVD in the back with that footage on it. And I'm going
9 to ask if there's any objection from the defense to us
10 putting that into evidence and publishing it to the jury in
11 this case. And that's going to be a tape that's marked as
12 State's 16 at this point in time, or a compact disc.

13 THE COURT: Mr. Casto?

14 MR. CASTO: No objection, Your Honor.

15 THE COURT: That will be State's 16 into evidence?

16 THE COURT REPORTER: Yes, sir.

17 THE COURT: Without objection?

18 MR. CASTO: Yes, sir.

19 THE COURT: Thank you so much. And is that a, what
20 you call it, DVD?

21 MR. MAYE: DVD.

22 THE COURT: You didn't know I knew that.

23 (The attorneys were setting up a TV to play the DVD
24 for the jury.)

25 MR. MAYE: Your Honor, I'll be doing this after one

Twyla Barton - Direct Examination by Mr. Maye

1 matter I was going to ask. I have shown to the defense in
2 this case information from the United States Naval
3 Observatory showing for Johnston, South Carolina the times
4 from the 16th to the 17th showing sunrise, or sunset and
5 sunrise the following morning, Your Honor. I'm going to
6 hand up a copy of this. I'm going to ask that the Court
7 take judicial notice of the time of sunset and sunrise with
8 regard to the issue of nighttime in this case. And I've
9 handed and provided it to the defense in this case, and I
10 don't think they have any objection.

11 THE COURT: All right. Mr. Casto?

12 MR. CASTO: Without objection, Your Honor, with
13 regard to that information.

14 THE COURT: Do you have it marked as a exhibit,
15 Solicitor?

16 MR. MAYE: I'm going to move to admit it into
17 evidence, Your Honor, unless there's some objection on the
18 part of defense.

19 THE COURT: All right. I believe he said, without
20 objection.

21 What would be the next number, Madam Court
22 Reporter.

23 MR. MAYE: If you'd like to do it beyond the ones
24 that we already have.

25 THE COURT REPORTER: It's 31, Your Honor.

Twyla Barton - Direct Examination by Mr. Maye

1 THE COURT: State's 31 is in evidence without
2 objection.

3 MR. MAYE: Thank you.

4 Please publish that to the jury.

5 (The video was played for the jurors.)

6 BY MR. MAYE:

7 Q All right. I'm going to ask again. It's going to
8 sound like a silly question, but I'm going to have to ask
9 you. Did you ever give Mr. Odom or Mr. Donaldson or
10 anybody permission to go in that store, go in through the
11 windows, and take or remove any items there from that store
12 on that night?

13 A No, sir.

14 Q Okay. And the items, the cigarettes that were
15 removed, y'all never got anything back. Did you?

16 A No, sir.

17 Q How much damage was done to your store as a result
18 of those big glass windows being broken out? As a result
19 of the blocks being slammed through?

20 A About \$334 to fix the glass.

21 Q About \$334?

22 A Uh-huh.

23 Q So y'all suffered the loss of all those cigarettes
24 and the damage to your store?

25 A Yes, sir.

Twyla Barton - Cross-Examination by Mr. Casto

1 Q Answer any questions the defense has for you.

2 THE COURT: Thank you, Solicitor.

3 Mr. Casto?

4 MR. CASTO: Yes, sir.

5 **CROSS EXAMINATION**

6 BY MR. CASTO:

7 Q Hi, Ms. Barton. How are you?

8 A I'm fine.

9 Q Just a few questions for you. This alarm -- just
10 to be clear, this alarm system is triggered by motion,
11 right?

12 A Yes, sir.

13 Q And it really -- just to flesh out what you said,
14 as I understand it, there are really two alarms in there.
15 One's silent, and one makes a loud sound, right?

16 A Yes, sir.

17 Q Okay. And you received your call to be there from
18 the alarm company, right?

19 A Yes, sir.

20 Q And not law enforcement?

21 A No, sir.

22 Q You received that call sometime after 1:00 a.m.; is
23 that fair to say?

24 A Anywhere between 1:45 to 2:00 in the morning.

25 Q 1:45 to 2?

Twyla Barton - Cross-Examination by Mr. Casto

1 A Yeah. Anywhere between.

2 Q Approximately?

3 A Yeah.

4 Q Okay. And you don't know exactly how long it takes
5 between the time that the two individuals enter the store
6 and the time that you actually get a phone call? You don't
7 know exactly how long that takes. Do you?

8 A No, sir.

9 Q In the same form and fashion, you don't know how
10 long it takes from the time the two individuals go into the
11 store to when law enforcement's contacted. You don't know
12 exactly how long that takes, do you?

13 A No, sir.

14 Q Okay. When this happened in 2007, you lived close
15 to the store; is that right?

16 A Yes, sir.

17 Q About five minutes away?

18 A Yes, sir. If that.

19 Q Okay. The night that this happens, you get the
20 call, you get dressed, you head to the store. Which road
21 do you take to the store?

22 A I took -- I don't know. It's -- I don't know the
23 name. It's a cut-off road from my house to Lee Street.

24 Q Okay.

25 A The store's on Lee Street. It's just one road I

Twyla Barton - Cross-Examination by Mr. Casto

1 had to turn -- and I do not remember the name of the road
2 right now. Yeah, it's right there.

3 Q Okay. No main roads?

4 A (The shook her head.)

5 THE COURT REPORTER: You have to answer yes or no.

6 THE COURT: Could you say that out loud for me?

7 THE WITNESS: Sir?

8 THE COURT: Answer out loud for me.

9 THE WITNESS: Oh, no.

10 BY MR. CASTO:

11 Q And you testified when you had gotten there,
12 there's already an officer there, right?

13 A Yes, sir.

14 Q And that officer's already been inside, right?

15 A Yes, sir.

16 Q Okay. Let me see. I want to speak with you about
17 those video cameras. To be clear, they don't just film all
18 night long. Do they?

19 A No, sir.

20 Q They also, like those alarms, are triggered by
21 motion, right?

22 A Yes, sir.

23 Q And based on that, we don't know exactly how long
24 these individuals were inside the store because they're off
25 camera?

Twyla Barton - Cross-Examination by Mr. Casto

1 A Yes, sir. That's right.

2 Q Right?

3 A Yes, sir.

4 Q Okay. And there's a period of time when they're
5 off camera and there's no motion detected, right?

6 A Right.

7 Q So the -- it's not recording?

8 A Right.

9 Q Okay. And we don't know exactly the length of time
10 based on the video, from when those two individuals left
11 the store to the time it takes law enforcement to arrive
12 because we do see law enforcement, I believe, arrive,
13 right?

14 A Yes, sir.

15 Q We don't know how long that time is exactly?

16 A No, sir.

17 Q When you look at the video specifically, only at
18 the video, you can't tell the identity of the individuals
19 in the video. Can you?

20 A No, sir.

21 Q And also, we can't see in the video, what's inside
22 those bags. Can we?

23 A No, sir. But I'm positive the cigarette -- there
24 were cigarettes in there because my cigarettes were gone.

25 Q Okay. But we don't see cigarettes in the video?

Twyla Barton - Cross-Examination by Mr. Casto

1 A No. No. But I am certain I had cigarettes the
2 night before; and they were gone at that time.

3 Q Okay. But we can't see what's in the bags?

4 A No, sir.

5 Q Okay. That evening, you go into the store, and you
6 enter that store with the law enforcement officers that are
7 there, right?

8 A Yes, sir.

9 Q You see these blocks laying in the floor. From the
10 video -- there's nothing unusual about those. Is there?

11 THE COURT: Rephrase that, please.

12 BY MR. CASTO:

13 Q You see -- well, you see the blocks in the floor of
14 the store that we see on the video, right?

15 A Yes, sir.

16 Q There's nothing unusual about those regular
17 cinderblocks, is there?

18 A They're cinderblocks.

19 Q The -- when you go into the store, you go straight
20 to the office?

21 A I do.

22 Q Is that right?

23 A Yes, sir.

24 Q And the office door, I believe that you found that
25 it's still locked?

Twyla Barton - Cross-Examination by Mr. Casto

1 A Yes, sir.

2 Q Okay. And it's your testimony that nothing has
3 been removed or taken from that office?

4 A No, sir.

5 Q Okay. And you testified that we're dealing with,
6 not ninety packs of cigarettes but actually ninety cartons
7 of cigarettes?

8 A Yes, sir.

9 Q Right?

10 A Yes, sir.

11 Q And that's more than something you'd carry up under
12 your arm, right?

13 A Yes, sir.

14 Q Okay. And there were several different brands
15 taken; is that right?

16 A Yes, sir. We had several different brands on the
17 shelf.

18 Q And this might sound like a silly question, but the
19 carton size for two different brands is, generally
20 speaking, the same, is that right?

21 A Yes, sir.

22 Q Thank you. No further questions.

23 THE COURT: Redirect, Solicitor?

24 MR. MAYE: Just one or two.

25

Twyla Barton - Redirect Examination by Mr. Maye

REDIRECT EXAMINATION

BY MR. MAYE:

Q You were asked something about more cigarettes than you could carry up under one arm. You looked at the tape and saw it, correct?

A Yes, sir.

Q You saw the bags that they were carrying out?

A Yes, sir.

Q Is the bulk and the size of the bulges in the bag that they're carrying out, is that sufficient to account for all of the loss of cigarettes there?

A Yes, sir.

Q Okay. So you could get every one of those cartons of cigarettes in the two bags that you saw based on volume and bulk?

A Yes, sir.

Q You deal with the sale of cigarettes all the time --

A Yes, sir.

Q -- in capacity as the store manager. You know how big the boxes are that they come in for cartons?

A Right.

Q Okay.

A Yes, sir.

Q So the two individuals that carried out the bags,

1 that's consistent with carrying out the loss of the
2 quantity of cigarettes that was missing from your store?

3 A Yes, sir.

4 Q Thanks.

5 THE COURT: Re-cross?

6 MR. CASTO: No, sir, Your Honor.

7 THE COURT: Thank you. Thank you very much, Ms.
8 Barton. You may step down. Thank you for being with us
9 this afternoon.

10 THE WITNESS: Thank you.

11 THE COURT: All right. Perhaps now would be a good
12 time to take our evening recess.

13 Madame Forelady and ladies and gentlemen of the
14 jury, we are going to take an evening recess. I must
15 remind you, you are not to discuss this case with anyone.
16 That includes your fellow jurors, family, friends, or
17 anyone else. Do not watch, read, or listen to any news
18 reports about the case should there be any. Do not do any
19 investigation on the Internet or otherwise as far as
20 prohibited information.

21 Information that is prohibited includes but is not
22 limited to the following: Information about a party, a
23 witness, an attorney, a court officer, present or past news
24 accounts of the case should there have been any,
25 information collected from juror research on any topic

1 raised or testimony offered by any witness, or information
2 on juror research on any other topic that the jurors might
3 think would be helpful in deciding the case. Please
4 remember you must decide the case based on the evidence and
5 the testimony presented before you from the witnesses
6 testifying under oath in the courtroom and the law as I
7 tell you the law is.

8 With that being said, we will be in recess. I
9 would ask you to please be back promptly at 9:30 in the
10 morning. Would you please be back at 9:30. You're now
11 excused. I hope y'all have a pleasant evening. Thank you
12 very much.

13 (The jury left the courtroom at 5:17 p.m.)

14 THE COURT: Anything further from the State?

15 MR. MAYE: Nothing from the State, Your Honor.

16 Thank you.

17 THE COURT: Defense?

18 MR. CASTO: No, sir, Your Honor.

19 THE COURT: Thank you. 9:30 in the morning.

20 MR. MAYE: Thank you, Your Honor.

21 (Court was in recess for the day.)

22 **TUESDAY, JUNE 9, 2015**

23 THE COURT: All right. Is everybody here?

24 THE CLERK: Yes, sir. All the jury's here.

25 THE COURT: Anything from the State before we bring

1 our jury in?

2 MR. MAYE: Nothing from the State, Your Honor.

3 Thank you.

4 THE COURT: Defense?

5 MR. CASTO: Yes, sir, Your Honor. Just very
6 briefly. It seems that yesterday at sometime, there was an
7 article published in the Edgefield Daily with regard to the
8 trial. It speaks about information that was not and likely
9 will not be brought to jurors' attention. I know that this
10 Court told them not to review any media with regard to this
11 case whatsoever, but the title is fairly damaging to my
12 client. What I would ask the Court out of an abundance of
13 caution, speaking about it with Mr. Drylie, if the Court
14 was to instruct them not to go to a specific site, well
15 that kind of piques the curiosity. But perhaps the best
16 course of action is to just encourage them again to not
17 even view or read local media, that type of thing, Judge.

18 THE COURT: All right. Thank you. Thank you for
19 that.

20 MR. CASTO: Yes, sir, Your Honor.

21 THE COURT: All right. Anything further?

22 MR. CASTO: No, sir, Your Honor.

23 THE COURT: Bring us our jury.

24 (The jury entered the courtroom at 9:39 a.m.)

25 THE COURT: Good morning.

1 THE JURORS: Good morning.

2 THE COURT: Welcome back, ladies and gentlemen of
3 the jury panel. I hope y'all had a pleasant evening.
4 Before we begin, I typically ask jurors at random times
5 whether or not during the course of the trial whether or
6 not they have viewed or attempted to view or read any news
7 accounts of the case, whether in the newspaper, on the
8 Internet, or if they've seen, watched, or heard any news
9 accounts of the case. If there is any member of the jury
10 panel that has been exposed to any news media, whether
11 radio, television, newspaper, Internet, I would ask you to
12 please stand.

13 (There was no response from the jury panel.)

14 THE COURT: No one stands.

15 I would further advise you again that you are not
16 to read any news accounts of the case should there be any.
17 That being said, many times you can perhaps go to a
18 particular website or walk by a particular newspaper and be
19 exposed to a headline that might have something to do with
20 a particular case. Kind of like when you get an e-mail
21 from an unknown person, and you click on it, and before you
22 know it you've been exposed to something that you would not
23 have wanted to or would have preferred not to be exposed
24 to. Has anyone had any such exposure? If so, please
25 stand.

1 (There was no response from the jury panel.)

2 THE COURT: Perhaps it would be best during the
3 course of this trial not to watch, listen to any news
4 reports locally. We all keep and maintain an interest in
5 the world around, myself included. I read local news and
6 national news and such like that. Perhaps it would be best
7 if you would not go through local media at least, whether
8 it be news, radio, newspapers, or the Internet.

9 Thank you. Thank you very much. We'll continue
10 with the trial of the case by the presentation of evidence
11 and testimony by the State in its case in chief. Would you
12 please continue to give the parties your complete and
13 undivided attention as you have done throughout the trial
14 of this case.

15 Solicitor, you may call your witness.

16 MR. MAYE: The State would call Deputy Sheriff
17 Shawn Campbell to the stand.

18 THE COURT: All right. If you'll come up and be
19 sworn here please.

20 SHAWN CAMPBELL,

21 having been sworn testified as follows:

22 THE CLERK: You may be seated. Please state your
23 full name. Spell your last name for the record.

24 THE WITNESS: Shawn Campbell, C-A-M-P-B-E-L-L.

25 ///

Shawn Campbell - Direct Examination by Mr. Maye

DIRECT EXAMINATION

BY MR. MAYE:

Q Deputy Campbell, tell the ladies and gentlemen of the jury where you're now employed?

A Chester County.

Q You work in Chester now?

A Yes, sir.

Q Let's talk about back in October of 2007. Where were you working in law enforcement at that time?

A The town of Johnston.

Q Let's talk about October the 17th of 2007. Were you on shift that evening, night?

A Yes, sir. I was.

Q Okay. About what time did you go on shift?

A I believe it was six to six. Six in the night to 6:00 in the morning.

Q Six night, six morning.

Let's talk about the hour about 1:44 a.m. What happened significant to the events of this case?

A I had -- I was dispatched to an alarm call at the IGA.

Q Okay.

A And when I arrived, I walked to the front door.

Q About what time did you get there? The alarm call was 1:44?

Shawn Campbell - Direct Examination by Mr. Maye

1 A 1:46.

2 Q So you were there two minutes later?

3 A Yes, sir.

4 Q Okay. What'd you see when you got there?

5 A When I approached the door, the IGA has two sliding
6 glass doors, and the right sliding glass door at the bottom
7 was busted out and kind of pushed in, and you could see
8 inside on the floor, looked to be pieces of cinderblocks.

9 Q Okay. What'd you do as a result of seeing what was
10 obviously a break-in at the store?

11 A The first thing I do is radio for additional units.

12 Q Uh-huh.

13 A The Town of Edgefield Officer showed up, and we
14 entered the building and cleared the building.

15 Q Okay.

16 A Made sure nobody else was in there.

17 Q Did you see anybody? When you got there, did you
18 see anybody?

19 A No, sir.

20 Q Okay.

21 A After we cleared the building, I called the Chief
22 of Police, Chris Aston --

23 Q Okay.

24 A -- and I called for a key holder.

25 Q Okay. A key holder. What are you talking about?

Shawn Campbell - Direct Examination by Mr. Maye

1 The key holder? Who's that?

2 A Ms. Barton. She was the manager at the time.

3 Q Okay. What was the next thing that happened there?

4 A Ms. Barton entered the store. We went in. She
5 began pulling up the videos from those security cameras at
6 the front door.

7 Q Okay.

8 A And then at that time, Chief arrived, and we
9 watched the video.

10 Q Okay. Did you see the individuals on the video?

11 A Yes, sir.

12 Q Did you view and see that? Okay. What was the
13 next thing you did after y'all looked at the video? What
14 happened next?

15 A By that time, the county officer had arrived, and
16 the shift supervisor called for tracking dogs. And I left
17 and got the perimeter.

18 Q Okay. You left and got on the perimeter?

19 A Yes, sir.

20 Q Okay. Where if anybody else did you go -- did
21 officers from any other jurisdictions come and assist?

22 A Yes, sir. Some Saluda County deputies come to help
23 with the perimeter.

24 Q Okay. What did you do as a result of some of the
25 response of the Saluda County deputies that showed up?

Shawn Campbell - Direct Examination by Mr. Maye

1 A One of the deputies radioed that he had a car in
2 the woods. It's been awhile since I've lived here. I
3 believe it was 191 --

4 Q Okay.

5 A -- the road name?

6 Q Let me ask you this. Let's just do this now. I'm
7 going to show you a large diagram marked State's 1 and ask
8 you, is that a fair and accurate representation of the end
9 of the town of Johnston and the road going out showing the
10 front portion of 191 and Highway 121? Does that fairly and
11 accurately reflect that intersection there?

12 A Yes, sir.

13 Q That part of the town?

14 A Yes, sir.

15 MR. MAYE: I'm going to move to admit this to
16 evidence as State's 1. I don't think there's any objection
17 from the defense.

18 MR. CASTO: Without objection, Your Honor.

19 THE COURT: State's 1 is in evidence without
20 objection.

21 (State's Exhibit No. 1 was entered into evidence.)

22 BY MR. MAYE:

23 Q Deputy, if you would, come off the stand here, and
24 let's talk about locations in this case.

25 Show them where the IGA store is on here, and help

Shawn Campbell - Direct Examination by Mr. Maye

1 them get oriented as to 121 and 191 there on this map.

2 A Okay. This right here's the IGA (indicating).

3 This is 121, and this is 191 (indicating).

4 Q Okay. This is going down towards Eureka

5 (indicating)?

6 A Yes, sir.

7 Q Down here (indicating)?

8 A Yes, sir.

9 Q And that goes towards Trenton? Towards Billy's

10 Super Store at the intersection (indicating)?

11 A (The witness nodded his head.)

12 Q Okay.

13 THE COURT: Turn that around, Solicitor.

14 BY MR. MAYE:

15 Q 191 -- Is this correct? 191, and this goes to

16 Eureka (indicating)?

17 A No, sir. This is 121 (indicating).

18 Q 121. This goes to back uptown in Johnston

19 (indicating)?

20 A Yes, sir.

21 Q This goes back down 121 towards Billy's Super Store

22 down here at this intersection off 19 (indicating)?

23 A Yes, sir.

24 Q Okay. All right. Where is the IGA again?

25 A It's marked right here (indicating).

Shawn Campbell - Direct Examination by Mr. Maye

1 Q How is it marked on that map?

2 A It's got a little X.

3 Q It's got the X here. That's the IGA.

4 Where is the location where you responded where the
5 white Cadillac was? Where the deputy was?

6 A Right here on the left (indicating). They were
7 pulled off here at 191.

8 Q Right here around this wooded area (indicating).
9 That Cadillac is backed up in here (indicating); is that
10 correct?

11 A Yes, sir.

12 Q Okay. You can retake the stand.

13 I'm going to show you State's 2. Does that fairly
14 and accurately, basically show the front of the store when
15 you responded?

16 A Yes, sir.

17 Q Okay. In State's 3 that's already in evidence in
18 this case, does that reflect the damage that you -- is that
19 consistent with the damage you saw where the blocks were
20 thrown through the window at the store when you responded?

21 A Yes, sir.

22 Q Okay. I'm going to show you what's been marked
23 State's 4 and 5 and ask you if that's the Cadillac
24 automobile that was off the side of the road on 191. Does
25 that fairly and accurately -- those two photographs, each

Shawn Campbell - Direct Examination by Mr. Maye

1 with four individual photographs, does that show various
2 views of the Cadillac automobile that was there, the white
3 Cadillac?

4 A Yes, sir.

5 Q Okay.

6 MR. MAYE: I'm going to move to admit these into
7 evidence at this time.

8 MR. DRYLIE: Your Honor, we would just renew our
9 pretrial objection.

10 THE COURT: All right. I'm trying to track whether
11 or not that went to the vehicle itself. However, if they
12 did, you're protected.

13 MR. DRYLIE: I believe some of the pictures have
14 the outside of the vehicle, and some you can kind of see
15 inside. So that's we would renew it at this time.

16 THE COURT: Thank you very much. I haven't had the
17 opportunity to view them to -- I would renew my pretrial
18 orders. They're in evidence subject to previous objection.

19 MR. MAYE: State's 4 and 5 into evidence.

20 (State's Exhibits Number 4 and Number 5 were
21 entered into evidence.)

22 BY MR. MAYE:

23 Q Come off the stand again, and let's talk about
24 this. The first one, 4-A, B, C, and D. That shows the
25 white Cadillac, the '94 Deville four-door that was there on

Shawn Campbell - Direct Examination by Mr. Maye

1 the side of the road; is that correct?

2 A Yes, sir.

3 Q Okay. And you went down -- what was your role when
4 you went down and responded with the Saluda deputy and the
5 officers that were there?

6 A See he called out and he had a car in the woods. I
7 was actually on 121. I went down 191, pulled up to the
8 scene. The Saluda deputy was there. He told us that --

9 MR. CASTO: Objection. Hearsay.

10 BY MR. MAYE:

11 Q Don't go into anything that he said. Let me just
12 ask you this, did you look in this vehicle or did you do
13 anything other than just see it sitting there?

14 A All I did was see it sitting there. I don't
15 remember.

16 Q Okay. That's essentially where it was parked and
17 where you saw it sitting there that night?

18 A Yes, sir.

19 Q Okay. The same thing with 5. Don't go into what
20 anybody else said. Is that four more views of the Cadillac
21 automobile that was there on 191?

22 A Yes, sir.

23 Q Okay. Go back and retake the stand. Thanks.

24 What did you do for the remainder of the shift?

25 Did you just provide support for the other officers that

Shawn Campbell - Direct Examination by Mr. Maye

1 were working?

2 A Yes, sir.

3 Q Were you present when they brought the dog team
4 out --

5 A Yes, sir.

6 Q -- and went searching for the suspects and all?

7 A Yes, sir.

8 Q Did you participate in any of that?

9 A No, sir.

10 Q Okay. Answer any questions the defense has for
11 you. Thank you.

12 A Yes, sir.

13 THE COURT: Thank you, Solicitor.

14 Mr. Drylie.

15 MR. DRYLIE: We have no questions for this witness,
16 Your Honor.

17 THE COURT: Thank you. Thank you very much,
18 Deputy.

19 All right. Thank you. Thank you very much.

20 Anything -- well, there's no redirect. Any reason
21 the officer cannot be excused.

22 MR. MAYE: No, sir, Your Honor. We would ask that
23 he be able to return to Chester. Thank you.

24 THE COURT: Is that where you want to go? Back to
25 Chester?

Chris Miller - Direct Examination by Mr. Maye

1 THE WITNESS: Eventually.

2 THE COURT: Thank you for being with us.

3 MR. MAYE: The State would call Chris Miller with
4 the Saluda County Sheriff's Office.

5 CHRIS MILLER,

6 having been duly sworn, testified as follows:

7 THE CLERK: Please be seated. State your full
8 name. Spell your last name for the record.

9 THE WITNESS: Christian L. Miller, M-I-L-L-E-R.

10 **DIRECT EXAMINATION**

11 BY MR. MAYE:

12 Q Deputy Miller, where are you working now?

13 A Saluda County Sheriff's Office.

14 Q Okay. How long have you been in law enforcement?

15 A Just shy of eleven years.

16 Q About eleven years. Let me ask you this. About
17 the hour of 2:40 a.m. on October the 17th of 2007, did you
18 come in your capacity as a Saluda deputy to act as backup
19 for Edgefield County and Johnston Town police officers in
20 events involving or surrounding a burglary.

21 A Yes, sir. I did.

22 Q Okay. What did you do -- where were you when you
23 initially got the call? And what did you do?

24 A I was in Saluda County when we were dispatched. We
25 went into Edgefield County and met with the deputies there

Chris Miller - Direct Examination by Mr. Maye

1 that were on the scene. They gave us a description of a
2 vehicle that we were looking for, at which time we left
3 there and went out looking for it.

4 Q You went out looking. Okay.

5 Tell the ladies and gentlemen of the jury where you
6 went and what you did?

7 A I left the incident location and went -- it wasn't
8 far, maybe a half a mile, and turned onto 191 where I
9 located the white Cadillac backed into the woods.

10 Q Okay. What attracted your attention to this
11 Cadillac? I mean, how was it parked and what piqued your
12 interest in it and based on your training and experience in
13 law enforcement and working a case like that, what brought
14 your attention to that car?

15 A Well, it was parked in the middle of the woods.
16 There was nothing around, no houses, just didn't fit where
17 it was at. I actually drove past it and stopped and backed
18 up and placed my spotlight on it at which point I could see
19 two people changing clothes beside the vehicle.

20 Q Okay. What happened when you lit them up with your
21 spotlight from your patrol vehicle at these guys that were
22 changing clothes there at that white Cadillac? What'd they
23 do?

24 A They ran into the woods.

25 Q Okay. What'd you do as a result of after you lit

Chris Miller - Direct Examination by Mr. Maye

1 them up with the spotlight of these two guys taking off and
2 running?

3 A I radioed in to Edgefield County for them to send
4 the deputies to where I was at, and then I stood by with
5 the car.

6 Q Okay. Had you already relayed the information
7 involving the video and the description and all of those
8 items from your initial meeting with the deputies?

9 A Correct. When we arrived on the scene at the
10 incident location the first time, we were given a vehicle
11 description and a suspect description.

12 Q Okay. Let me ask you this: Based upon the
13 information that you had and the information on the
14 videotape, did you provide information back to the officers
15 that you had suspects that had fled that were consistent
16 with the description there?

17 A Yes, I did.

18 Q Okay. What was the next thing that you did,
19 Officer Miller?

20 A I stayed and kept watch over the car. They ran
21 into the woods. I didn't approach the vehicle until after
22 Edgefield County was already on scene. I just kind of held
23 the perimeter.

24 Q Okay. Let me ask you this: Did you let them take
25 care of all the searching, looking in the vehicle, and all

Chris Miller - Cross-Examination by Mr. Drylie

1 that stuff? Did you just provide assistance to stay on the
2 perimeter at that point in time?

3 A I did.

4 Q Okay. I'm going to just ask you this briefly. In
5 State's 4 and 5, is that the white Cadillac you're talking
6 about that you encountered?

7 A Yes, sir.

8 Q Okay. Is that the car that the two individuals
9 that matched the description that you had, and from the
10 videotape, fled through the woods from?

11 A Yes, sir.

12 Q Answer any questions that the --

13 MR. MAYE: Beg the Court's indulgence.

14 Answer any questions the defense has for you.

15 THE COURT: Thank you.

16 Mr. Drylie?

17 **CROSS EXAMINATION**

18 BY MR. DRYLIE:

19 Q Good morning, Deputy.

20 A Good morning.

21 Q You saw a white Cadillac parked a little ways off
22 the road?

23 A Correct.

24 Q And there were two people outside of the car?

25 A Yes, sir.

Chris Miller - Redirect Examination by Mr. Maye

1 Q And you don't know how long that car had been
2 there?

3 A I do not.

4 Q Okay. When you shined your spotlight on them, they
5 ran off into the woods?

6 A Yes, sir.

7 Q And they weren't carrying anything?

8 A No, sir.

9 Q You couldn't see them carrying like armloads of
10 cigarettes. Could you?

11 A No, sir.

12 Q And from what you saw, you didn't know the identity
13 of the two people who ran off into the woods. Did you?

14 A No. I did not.

15 MR. DRYLIE: No further questions.

16 THE COURT: Thank you, Mr. Drylie.

17 Redirect.

18 MR. MAYE: Just one or two.

19 **REDIRECT EXAMINATION**

20 BY MR. MAYE:

21 Q You don't know what they had they had placed around
22 that Cadillac, do you?

23 A No, sir. I never approached the vehicle.

24 Q So you were sitting on the road, and you lit them
25 up with a spotlight. And they took off, right?

Chris Miller - Redirect Examination by Mr. Maye

1 A Correct.

2 Q You don't know what, if anything, they picked up or
3 where they had items scattered. Do you?

4 A No, sir.

5 Q Okay. Nothing further. Thank you.

6 THE COURT: Any re-cross?

7 MR. DRYLIE: Nothing, Your Honor.

8 THE COURT: Thank you. Thank you, very much,
9 Deputy Miller.

10 THE WITNESS: Thank you.

11 THE COURT: You may step down.

12 Any objections to the deputy being excused?

13 MR. MAYE: No. Thank you.

14 MR. DRYLIE: No, Your Honor.

15 THE COURT: Thank you, you may be excused.

16 THE WITNESS: Thank you.

17 THE COURT: Uh-huh.

18 All right. Solicitor.

19 MR. MAYE: The State would call former Chief Chris
20 Aston with the Johnston Town Police Department.

21 CHRIS ASTON,

22 having been duly sworn, testified as follows:

23 THE CLERK: Please be seated. State your full
24 name. Spell your last name for the record.

25 THE WITNESS: Yes, sir. David Christopher Aston,

Chris Aston - Direct Examination by Mr. Maye

1 A-S-T-O-N.

2 DIRECT EXAMINATION

3 BY MR. MAYE:

4 Q Chief, tell the ladies and gentlemen about your
5 career in law enforcement and where all you've worked.

6 A My career started at the Johnston Police
7 Department, which I worked there in '91. I was there for
8 approximately three years, and then I came to the Edgefield
9 County Sheriff's Office, which I worked there until
10 approximately 2006, July of 2006. And then I resumed the
11 position of Chief of Police in Johnston until I retired
12 July the 9th of this past year in 2014.

13 Q So you are now retired from law enforcement? And
14 you ended up your career in what position?

15 A Supervisor at Titan Farms.

16 Q Okay. So that's what you're doing now. But your
17 last job in law enforcement was --

18 A Was Chief.

19 Q You were Chief of Police in Johnston?

20 A That's correct.

21 Q And at the time that this happened on October the
22 17th of 2007, you were chief of that department, weren't
23 you?

24 A That's correct, yes.

25 Q Okay. Tell the ladies and gentlemen of the jury

Chris Aston - Direct Examination by Mr. Maye

1 about that night of October the 17th of 2007. Sometime
2 after the officers initially responded to the alarm call
3 there at the IGA, tell them about what you did that night?

4 A I was called from my residence, and I arrived on
5 the scene approximately 2:30, 2:35. I was being told that
6 there was a break-in at the IGA Supermarket in Johnston. I
7 arrived on the scene and met, already on the scene was Ms.
8 Twyla -- I can't remember her last name, the clerk or the
9 manager for IGA. And then Officer Shawn Campbell who was
10 working for our department at that time. Shawn and Ms.
11 Twyla was already -- they come out and met me briefly in
12 going in because she was pulling up video from the incident
13 that took place there.

14 As I pulled up the window in the door was busted
15 out, and there was a couple of concrete blocks inside.

16 Q Did you take a look at how those concrete blocks
17 looked while you were inside the store?

18 A Yes, sir.

19 Q Did you note their color -- the color of the
20 blocks, their consistency and all that? Did you look at
21 them good in there?

22 A They appeared to be normal concrete blocks, what
23 you call cap blocks --

24 Q Uh-huh.

25 A -- about four inches thick, about eight inches

Chris Aston - Direct Examination by Mr. Maye

1 long, or twelve inches long, basically known as a cap
2 block. The other one was -- one was basically the color of
3 concrete, and the other one had kind of a clayish residue
4 color to it on the surface of it, and --

5 Q Okay. I'm going to show you 3 -- State's 3 that's
6 already into evidence in this case. Come down here and
7 show them where the blocks were and what you're talking
8 about. Use that photograph and show them?

9 A Come down there?

10 Q Yes. Come around here right in front of the jury,
11 and if you -- or right on the photograph, tell them the
12 number and the letter.

13 A Okay. You see down A, B, C, and D here. When we
14 arrived, it's apparent you see this -- This is what we were
15 talking about. This is a cap block, the gray one, and they
16 you have the tan with kind of like clay residue on it. And
17 it's broken. It's broken in half.

18 Q Okay. Just step back up here on the stand if you
19 would.

20 Did you have a chance to review with the manager,
21 you and Campbell -- did you watch the video footage of the
22 guys that broke the blocks, that they threw blocks through
23 the window and ducked down and entered and all, did you see
24 all that footage and you watched in closely?

25 A Yes. It was -- you had to watch it a few times

Chris Aston - Direct Examination by Mr. Maye

1 because it only reacts on motion. You could see that they
2 made an attempt to try to break in -- to bust that bottom
3 of the door out. The first time was unsuccessful, and they
4 tried it again to bust through. And then you see another
5 block that finished busting through. That's how you end up
6 with two inside.

7 Q How were the guys dressed that threw blocks through
8 the window and came in through the bottom part?

9 A One was dressed in all dark clothing. He entered
10 first. The second one had a blue shirt on, dark colored
11 pants. You see them enter the store. And like I said, the
12 motion -- it kicks off and on -- and then you see them
13 leaving the store, the one dressed in all black carrying a
14 bag, and then the one in the blue shirt exited behind him
15 carrying a bag, or a trash bag of some type.

16 Q Okay. Dark colored bag?

17 A Yes. Yes, dark colored bags.

18 Q Okay. Did they have anything concealing their
19 faces? Did they have anything on their hands?

20 A They both had gloves and masks on. You couldn't
21 ID -- you couldn't see their face, due to the mask at the
22 time.

23 Q Okay. Who was leading, do you remember, on the
24 video?

25 A The one in dark clothing went in first.

Chris Aston - Direct Examination by Mr. Maye

1 Q Okay.

2 A And the one with the dark clothing exited first.

3 Q So he was in front both directions?

4 A Yes, sir.

5 Q Okay. What was the next thing that you did, Chief,
6 after you looked at all of the evidence there, looked at
7 the blocks, reviewed the videotape? What happened next?

8 A During that period of time, you know, we took some
9 photos of the scene and everything. We had some officers
10 on the perimeter called in from the sheriff's office, and
11 Saluda County came over and kind of started setting up the
12 perimeter in case they were still in the area. Which
13 during that time, we got a call that the Saluda County
14 officer had -- down on 191 not too far from the store, had
15 spotted a white vehicle backed up in the woods and two
16 subjects running from that vehicle.

17 During this time, we went ahead and called out the
18 bloodhound units and asked that they come out. Officer
19 Campbell went out on the perimeter. We stayed there for a
20 while at the store, and then I went on up to the vehicle
21 and stayed back away from the vehicle until the dog team
22 got there, and the dog team started --

23 Q Let me ask you this. Information that you had that
24 was originally collected from the Saluda deputy, the
25 description that you got about the individuals that fled,

Chris Aston - Direct Examination by Mr. Maye

1 was that consistent with what you had seen on the videotape
2 to allow you to connect dots between the two?

3 A I think he told me -- the only thing I remember him
4 saying was he seen two subjects in dark clothing leaving,
5 running through the woods.

6 Q Okay.

7 A That's the only thing that I had from that officer
8 that had come up directly.

9 Q Okay. But you were looking for two guys in dark
10 clothing, correct?

11 A That's correct.

12 Q This is about what time in the morning?

13 A I got there at 2:30. I don't know. It could have
14 been another fifteen, twenty minutes later that this
15 happened.

16 Q So this is between two and three a.m., right?

17 A Yeah.

18 Q Right.

19 A Somewhere along in there.

20 Q Okay.

21 A It's been a while.

22 Q But you're Chief of the Town of Johnston. For a
23 Cadillac automobile to park in the edge of that field at
24 that time of night, would that be suspicious to you?

25 A Yes, sir. That would be suspicious.

Chris Aston - Direct Examination by Mr. Maye

1 Q What was the next thing that you did once you got
2 out there and you responded where the Saluda deputy had
3 seen the guys both run into the woods at that Cadillac?
4 What'd you do next?

5 A I stayed -- I walked up close to the vehicle, and I
6 kind of stayed there, you know, at that point and getting
7 the officers on the perimeter to ride and try to -- if
8 there's somebody in the wood running around, we want to try
9 to keep them in that area. The bloodhounds got there, and
10 we explained to them where the officer seen them run. They
11 took the dogs over there, and they ran into the woods. You
12 don't want to walk up there and disturb if they had a
13 possible trail.

14 So after they went into the wooded area, if you're
15 facing the vehicle, which you're looking from the road, the
16 subjects went in to your right which would be actually the
17 driver's side of the car, but it was facing out. And after
18 the bloodhound units got there and they started tracking, I
19 walked up to the vehicle and started looking around.

20 MR. DRYLIE: Your Honor, at this point we renew the
21 pretrial objection.

22 THE COURT: All right. And I would renew my
23 previous pretrial rulings.

24 BY MR. MAYE:

25 Q Okay, Chief. So you had the two suspects that had

Chris Aston - Direct Examination by Mr. Maye

1 fled from the Cadillac automobile at that point in time --
2 you had that information at that point in time?

3 A Yes.

4 Q Okay. You had -- you had viewed the videotape and
5 description and seen the people with your own eyes on the
6 videotape at the store, correct?

7 A That's correct.

8 Q And you had a description of the individuals that
9 had fled at that point in time, correct?

10 A Yes, sir.

11 Q Okay. Who else did you have with your department
12 that came out with you at that point in time?

13 A I called for Investigator Robinson to come out.

14 Q Was he working as your detective at that time?

15 A Yes. He was working as our investigator at that
16 time.

17 Q All right. Under the circumstances where you had
18 an abandoned vehicle and the probable cause that you had as
19 a result of what you had seen and viewed, the information
20 that you'd collected at that time, did y'all inventory the
21 contents of that vehicle? And did you go into the Cadillac
22 vehicle at that point in time?

23 A After he arrived on scene, we had some clothing
24 outside the vehicle. We observed that. Investigator
25 Robinson collected them, that clothing. He looked in --

Chris Aston - Direct Examination by Mr. Maye

1 looked through the window, and he could see some clothing
2 in there. We started --

3 Q Was that in plain view, the clothing that you saw?
4 Could you see that right through the window of the car
5 without having to go inside?

6 A Yes. It was in the back seat.

7 Q Okay. At this point in time, I'm going to stop you
8 here, and I'm going to ask you -- did you take the
9 photographs up there at the store? The ones that are
10 already in evidence?

11 A I took some photographs, yes, sir.

12 Q Okay. I'm going to show you some more photographs.
13 Chief, let me ask you this. Is it your departmental policy
14 when you have a vehicle that is abandoned and would be
15 subject to investigation involving a crime, was it y'all's
16 policy that y'all towed vehicles like that?

17 A Yes, sir.

18 Q Okay. What do you do every time before you tow a
19 vehicle to protect yourself and your department from claims
20 that you might've removed items or changed or altered
21 something involving a vehicle that y'all towed? What do
22 y'all do?

23 A We make an inventory of the vehicle, go through the
24 vehicle and make an inventory.

25 Q Did y'all inventory this vehicle?

Chris Aston - Direct Examination by Mr. Maye

1 A Yes.

2 Q Okay. But you already had collected information
3 that you believe that was probable cause to go ahead and
4 search that vehicle. Did you not?

5 A Yes, sir.

6 Q Okay. And you had individuals that were in flight
7 and actually were, had fled from that scene. Did you not?

8 A Yes, sir. That's correct.

9 Q You called for the bloodhounds, correct?

10 A Yes, sir.

11 Q Okay. Did the bloodhounds track a trail in this
12 case? Did they go out in the woods and pursue the
13 individuals?

14 A Yes, sir. They went out into the woods, and they
15 ended up going around for some reason or another. They
16 ended up, what they call, they ended up backtracking,
17 circling, they ended up hitting the trail backtracking
18 towards the store. But then --

19 Q So you had a trail going from the car to the store,
20 right?

21 A Yeah.

22 Q Back and forth?

23 A That's what they told me. Yeah.

24 Q Okay. All right. So were the bloodhounds ever
25 able to successfully track -- they had a track back and

Chris Aston - Direct Examination by Mr. Maye

1 forth between the car and the store. Were they ever able
2 to hit and get after anybody in any other directions from
3 there?

4 A My understanding with the winds of the dogs, they
5 started on a trail and made a zigzag to pick up the scent,
6 and they felt like they zigzagged back around and picked up
7 the scent where they probably went and come from the store.
8 But actually where they fled from the scene, the dogs never
9 picked that scent up for some reason.

10 Q So they weren't able to catch the individuals with
11 bloodhounds that night as they fled?

12 A No, sir.

13 Q Okay. Let me show you State's 6 in this case, and
14 the four photographs that are on that, 6. I want to show
15 you State's 4 with four individual photographs. I want to
16 show you State's 8 with four individual photographs, and I
17 want to show you State's 9 with four individual
18 photographs. State's -- what's been marked for ID at this
19 point, State's 10 with four individual photographs and
20 State's 11, a single photograph. Do all of those
21 photographs fairly and accurately reflect views of the '94
22 white Deville that was there on 191 and items that were in
23 and around that vehicle there at 191? All those
24 photographs, do they fairly and accurately reflect that?

25 A Yes, sir.

Chris Aston - Direct Examination by Mr. Maye

1 MR. MAYE: I'm going to move to admit them into
2 evidence at this point in time if there's no objection from
3 the defense.

4 MR. DRYLIE: Your Honor, I would renew our pretrial
5 objection.

6 THE COURT: State's 4 has already been admitted
7 into evidence.

8 And now, there would be the same objection, with my
9 same ruling, that be State's 6, 8, 9, 10, and 11.

10 MR. MAYE: Thank you, Your Honor.

11 THE COURT: All right, now. I've been handed up
12 also State's 7. I didn't hear that mentioned in the
13 record.

14 MR. MAYE: I may have, I may have omitted that one,
15 Your Honor. If I could get 7.

16 THE COURT: I thought maybe it was in and I just
17 didn't write it.

18 BY MR. MAYE:

19 Q I'm going to show you State's 7, and that was my
20 error, with four individual photographs. Does that reflect
21 views of the Cadillac that was there on 191 and the views
22 of various portions of that automobile and clothing outside
23 of that automobile?

24 A Yes, sir.

25 Q That fairly and accurately reflects and you took

Chris Aston - Direct Examination by Mr. Maye

1 that, correct?

2 A I believe I did. Or Investigator Robinson did.

3 Q But you know that's the scene?

4 A Yes, sir.

5 MR. MAYE: Okay. I'm going to move to admit 7,

6 Your Honor. That was my error.

7 THE COURT: Would 7 be the same objection, Mr.

8 Drylie?

9 MR. DRYLIE: Yes, Your Honor.

10 THE COURT: All right. Subject to previous
11 objections, State's 6, 7, 8, 9, 10, photographs - each of
12 those exhibit numbers contains four photographs. And
13 State's 11 contains one photograph, are in evidence subject
14 to the previous objections.

15 MR. MAYE: Thank you, Your Honor.

16 (State's Exhibits Number 6, Number 7, Number 8,
17 Number 9, Number 10, and Number 11 were entered into
18 evidence.)

19 BY MR. MAYE:

20 Q Chief, what I would like you to do is go through
21 these photographs. Talk about what y'all did or what you
22 saw when you conducted your investigation and your
23 subsequent search of the vehicle pursuant to the probable
24 cause that you had and inventorying the vehicle. Tell them
25 what you found and saw and observed there, which you

Chris Aston - Direct Examination by Mr. Maye

1 photographed.

2 A All right. The photographs in Exhibit 6 right
3 here, this is the wooded area that's going to be to the
4 right of the vehicle (indicating). You can see some --
5 it's kind of hard to see since the clothing there is dark
6 clothing. As you walk up to the vehicle and observe on the
7 driver's side, right between the two doors, you see these
8 pants and boots right here. You see all this is in plain
9 view when you walk up and get close to the vehicle and
10 start looking around and observe what's going on.

11 In Exhibit 7 right here, we're still looking
12 outside the vehicle. This gives you a better idea looking
13 at the driver's side. You see these clothes on here where
14 somebody stepped out of their boots and apparently changed
15 or dropped their clothes and changed right there.

16 Q Now how was it arranged? Describe what you're
17 talking about.

18 A The clothing, apparently somebody had had boots --
19 dark colored pants and boots on, stepped out of the boots
20 and pants, apparently they were changing clothes.

21 Q So that's just how it was when y'all walked over
22 there?

23 A Yes.

24 Q Those clothes pulled down --

25 A They were sitting right there.

Chris Aston - Direct Examination by Mr. Maye

1 Q -- and then a heap of shoes right there with them?

2 A That's correct.

3 Q Okay. Is that consistent with the information that
4 you collected regarding the individuals were changing
5 clothes when the officer spotlighted them?

6 A Well, how the information I obtained was, they took
7 off when the officer spotlighted them. They took off
8 running.

9 Q But they were in the process of changing clothes?

10 A I'm not sure. The officer there would be --

11 Q Okay. You don't know. What else -- tell us what
12 else you saw on the ground.

13 A From the wood line, which I said you couldn't see
14 very clearly, as you get a little closer, you'll see the
15 blue shirt that I was talking about.

16 Q If you would, just come off the stand, and come
17 down here in front of the jury. There so small.

18 And Chris, Chief, speak up as much as you can so
19 the court reporter can hear you. You're a little
20 soft-spoken.

21 A All right. Sorry about that. Going back to this,
22 on the right of the car with 6 here, I was explaining
23 earlier, this is the wood line area. You can see -- it's
24 kind of hard to see from the photo here, but as you look at
25 the vehicle here, this is the pants and the shoes we was

Chris Aston - Direct Examination by Mr. Maye

1 talking about. You can clearly see that somebody just
2 changed clothes right there. We took photographs of that,
3 and that's the way that we found that.

4 This photo here in Exhibit 7 is getting closer into
5 the woods. You can see the blue shirt, and that fits the
6 description we was talking about from the video, it fits
7 the description.

8 As for the photos here outside the vehicle, when
9 you take pictures, you're going to have a glare back. Once
10 you look inside the vehicle --

11 Q And what number is that picture that you're looking
12 at?

13 A This is 9 I'm holding up right here.

14 Q Okay.

15 A This here you can see on the side right here, this
16 is where Investigator Robinson was dusting to see if he
17 could get any prints --

18 Q Were y'all ever able to lift any successful prints
19 that weren't smudged or nothing? Did y'all get anything?

20 A Not that I know of, but Investigator Robinson will
21 come and testify to that.

22 Q Okay.

23 A He did all that investigating there.

24 Q All right.

25 A Like I said you couldn't see with the mirror -- the

Chris Aston - Direct Examination by Mr. Maye

1 camera reflecting through the -- you can't see through the
2 window from the photos here. You can look through and see
3 some clothing on the back seat. This a striped there.

4 Started going toward the vehicle, inside the
5 console here you have some cell phones a wallet and some
6 jewelry. Somebody apparently they took it off and put it
7 in the center console. You can see here I opened up the
8 wallet for Investigator Robinson to take a picture inside
9 of it, in which we retrieved and ID from that wallet.

10 You can see the picture of the ID right there.
11 Inventorying the trunk here, you see some residue down in
12 here.

13 Q Why was that significant and where else have you
14 seen residue like that?

15 A Going back to the concrete block with clay looking
16 residue on it, that's the same type residue -- it appears
17 to be the same to me that's what got our attention.

18 Q So you had blocks you've already testified kind of
19 two different colors and you said one had and unusual clay
20 texture to it.

21 A It had an unusual clay texture to it, yes.

22 Q Where that night did you see that residue from
23 those blocks? Where did see that same texture on that
24 night? What location?

25 A Well at the store -- if you look at the store, you

Chris Aston - Direct Examination by Mr. Maye

1 see it on the block and you can kind of see it on the floor
2 right there and we got to inventorying the vehicle, in the
3 trunk of the vehicle you can see that same type residue or
4 appears to be the same type residue in the trunk of this
5 vehicle that we're inventorying.

6 Q In a cleaned up Cadillac, you've got residue from
7 concrete blocks in the trunk.

8 A Yes.

9 Q This isn't a Chevrolet, does it have part with a
10 trunk in it?

11 A Yes, it's got a part with a trunk in it.

12 Q Okay.

13 A And as you can see very well maintained except this
14 bag and this residue as you see right there.

15 Q Okay.

16 A This is going to be a photograph with some clothing
17 in it that investigators found there on the ground
18 including the dark blue shirt here -- they're in front of
19 the vehicle.

20 Like I said, that's the wallet and jewelry inside.
21 There was one cell phone, and they found another cell
22 phone. I don't see a photograph of it. I believe it was
23 red. We pulled the wallet out and got the ID out and then
24 just his name from that.

25 Q Let's go back and take the stand and let's talk a

Chris Aston - Direct Examination by Mr. Maye

1 little more while you're talking about it.

2 A Okay.

3 Q I'm going to show you some small cards here marked
4 States 25, State's 24, State's 23, States 22, and State's
5 21. Take a good look at all four of those -- excuse me,
6 five of those cards right there that I've referenced.

7 A These?

8 Q Are those the identification cards that you removed
9 from the wallet that was there in the center console of
10 that '94 white Cadillac Deville on the side of the road on
11 191?

12 A We took photographs of.

13 Q Hold on a second -- are those the very ones that
14 you took from the wallet?

15 A Yes.

16 MR. MAYE: I move to admit those into evidence,
17 certainly subject to any previous objections.

18 THE COURT: Mr. Drylie?

19 MR. DRYLIE: Simply subject to our previous
20 objections.

21 THE COURT: May I see them please.

22 MR. MAYE: Yes, sir.

23 THE COURT: All right. State's 21, 22, 23, 24, 25
24 is in evidence subject to previous objections.

25 ///

Chris Aston - Direct Examination by Mr. Maye

1 BY MR. MAYE:

2 Q Chief let's talk about these one at the time.

3 State's 22 what did you find in that billfold in the center
4 console of that Cadillac?

5 A It's going to be these driver's license here, a
6 South Carolina Driver's License.

7 Q A South Carolina driver's license. Whose name's on
8 that driver's license?

9 A Maurice Anthony Odom.

10 Q Maurice Anthony Odom.

11 A That's correct.

12 Q Okay. Now, Chief I want you to look at the
13 expiration date. That was a current and valid driver's
14 license for that time period, wasn't it. 2007. When does
15 that license expire?

16 A 2/15/2008.

17 Q So that was a current South Carolina Driver's
18 License for the defendant in this case, Maurice Odom?

19 A That's correct, yes, sir.

20 Q Okay. I want to show you State's 23. Tell the
21 ladies and gentlemen of the jury what that is?

22 A A State of South Carolina --

23 Q What's the date?

24 A -- A North Carolina Identification Card.

25 Q So he's got a North Carolina ID too. Whose name is

Chris Aston - Direct Examination by Mr. Maye

1 it in?

2 A Anthony Odom -- I mean Maurice Anthony Odom.

3 Q Okay. What does it show an address on that at?

4 A I'm sorry. [REDACTED] King Street is that Wilmington --
5 I can't read it, I'm sorry, my eyes --

6 Q Wilmington, North Carolina?

7 A Wilmington, North Carolina.

8 Q Okay. So he's got that ID, a North Carolina one
9 and this one shows where on the ID address?

10 A [REDACTED] Texas Lane Williston, South Carolina.

11 Q Okay. So he's got two different ID's there with
12 two different addresses on them, right?

13 A Yes, sir.

14 Q Okay. I'm going to show you State's 21. What is
15 that?

16 A I guess it's a birth certificate.

17 Q Okay. Whose name is on it?

18 A Maurice Anthony Odom.

19 Q Okay. Another personal identification card with
20 Mr. Odom's name on it?

21 A Yes.

22 Q I show you State's 25. Is that a work ID with his
23 name on it?

24 A It's got Graniteville, South Carolina, Maurice
25 Odom.

Chris Aston - Direct Examination by Mr. Maye

1 Q Okay. And I'm going to show you -- what's 24?

2 A A social security card for Maurice A. Odom.

3 Q So you've got all those forms of identification
4 there and all have the defendant in this case, Maurice
5 Anthony Odom's name on them?

6 A That's correct, yes, sir.

7 Q Okay. As to the items of clothing that you found
8 there in the car, did you collect and take all those into
9 evidence for potential evidence processing that night?

10 A Investigator Robinson took them all into evidence.
11 He collected them and bagged them.

12 Q In your presence?

13 A Yes, sir.

14 Q Okay. At this time, did you or Investigator
15 Robinson in your presence, did you change or alter them in
16 any way other than collecting them and bagging them up?

17 A No, sir. He bagged them and put them into
18 evidence.

19 Q In your presence?

20 A He bagged them in my presence, Bagged and sealed
21 them and took them and placed them into evidence.

22 Q I'm going to show you State's 17 in this case.
23 It's a bag containing items in this case. Look at the
24 items that are in that bag there and review those if you
25 would.

Chris Aston - Direct Examination by Mr. Maye

1 A It's the blue shirt that's described in the
2 photograph.

3 THE COURT: The blue shirt what, Chief?

4 THE WITNESS: That I described in the photograph.

5 And this is the other dark clothing that
6 Investigator Robinson found and photographed there in the
7 area along with some gloves and a ski mask.

8 Q Okay. What else is there? That's it?

9 A That's it. Black shirt, blue shirt --

10 Q Those are the items y'all collected there at the
11 scene at the Cadillac?

12 A Yes, sir.

13 Q And you're positive those are the same ones,
14 correct?

15 A Yes, sir.

16 MR. MAYE: I'd move to admit those items of
17 clothing that are collectively in the bag marked State's 17
18 into evidence at this point in time.

19 THE COURT: Mr. Drylie?

20 MR. DRYLIE: Only subject to our pretrial
21 objection.

22 THE COURT: Let me make sure I'm tracking. All of
23 those were in the vehicle? All of those items were in the
24 vehicle?

25 THE WITNESS: Not -- sir, not in the vehicle.

Chris Aston - Direct Examination by Mr. Maye

1 THE COURT: What was not in the vehicle?

2 THE WITNESS: This bag here definitely was not
3 in -- this clothing was not in the vehicle.

4 THE COURT: What now?

5 THE WITNESS: This clothing that's in this bag that
6 I described, this blue shirt, black shirt, black ski mask
7 and gloves were not in the vehicle.

8 THE COURT: You think those are subject to your
9 previous objection?

10 MR. DRYLIE: I do not.

11 THE COURT: All right. I just wanted to make sure
12 I was tracking. So you have no objection to those items
13 that were outside of the vehicle.

14 MR. DRYLIE: No objection, Your Honor.

15 MR. MAY: Chief, keep that bag with you, if you
16 would. Let me ask you this --

17 THE COURT: State's 17 is in evidence without
18 objection.

19 BY MR. MAYE:

20 Q Did you take and carry those items that are in 17,
21 all those items of clothing to the South Carolina Law
22 Enforcement Division laboratory and drop them off and where
23 you received a form? Did you do that?

24 A Yes, sir, I transported them to the South Carolina
25 Law Enforcement Division, known as SLED laboratory and I

Chris Aston - Direct Examination by Mr. Maye

1 turned them over to them and received them in evidence.

2 Q What date did you take them?

3 A I took them --

4 Q To SLED.

5 A I took them, on -- if I remember correctly -- June
6 30th of --

7 Q If you need the refresh your recollection on the
8 beings and look --

9 A Yeah.

10 Q -- look to refresh your recollection.

11 A Yes. June 30th of 2011. And I received them from
12 the investigator -- I got them from him on the day before,
13 June 29th, 2011. That's correct. I secured them in the
14 trunk of my vehicle and took them the next day to SLED.

15 Q So the 29th, you got them from the investigator.

16 A That's correct.

17 Q And on the 30th, you took them and dropped them at
18 intake at SLED --

19 A That's correct.

20 Q -- correct? Okay.

21 I'm going to show you a bag containing clothing
22 that's collectively marked as State's 18. Talk to me, if
23 you will -- look and review the items that you have there
24 in your hand in that bag indicated as State's 18?

25 A Okay. This here is the shirt I was showing you in

Chris Aston - Direct Examination by Mr. Maye

1 the photograph that was in the backseat. That was in the
2 bag. This is a hat that was found under this shirt in the
3 back seat by Investigator Robinson.

4 And this here is jeans that was on the ground that
5 they stepped out of.

6 THE COURT: Where were the jeans?

7 THE WITNESS: On the ground next to the vehicle.

8 THE COURT: Okay.

9 BY MR. MAYE:

10 Q Okay. You can place them all back in the bag. All
11 the items of clothing that are in State's 18, are those
12 items of clothing that you collected from either the
13 interior of that Cadillac Deville that was on the side of
14 191 in this case, were they either in the back seat or
15 right outside the -- on the edge of the vehicle on the
16 ground there?

17 A Yes, sir.

18 MR. MAYE: Okay. I move to admit these into
19 evidence at this time subject to their previous objections.

20 THE COURT: Mr. Drylie?

21 MR. DRYLIE: Yes, sir. With respect to the black
22 and white striped shirt and the hat.

23 THE COURT: And with respect to the jeans on the
24 ground next to the vehicle there is no objection?

25 MR. DRYLIE: Correct, Your Honor.

Chris Aston - Direct Examination by Mr. Maye

1 THE COURT: All right. They're in evidence. The
2 shirt and the hat, subject to previous objections. And the
3 genes are in evidence without objection. It's all
4 contained in State's 18.

5 (State's Exhibit Number 18 was admitted into
6 evidence.)

7 BY MR. MAYE:

8 Q Chief as to the items that are bagged up in State's
9 18, all those items of clothing, who did you get those from
10 and were did you take those to eventually and for
11 processing as evidence?

12 A I received those from Investigator Robinson. I
13 placed them in my vehicle on the same -- well received them
14 from Investigator Robinson same as this other one on June
15 29th of 2011, and I secured them in my vehicle and took
16 them to SLED the next day on June 30th.

17 Q Okay. Did you change or alter either of those
18 bags, either 17 or 18, the items that you had, did you
19 change or alter them at any point in time during the time
20 that you had them in your custody or that they were in
21 evidence at your department?

22 A No, sir.

23 Q Okay. I'm going to show you what's been marked as
24 12 and 13 in this case and ask are those the cell phones
25 that y'all removed from the vehicle pursuant to your search

Chris Aston - Direct Examination by Mr. Maye

1 based on probable cause and inventorying the vehicle?

2 A , sir.

3 Q Each of those two cell phones were in the vehicle,
4 correct?

5 A Yes, sir.

6 Q State's 12 in the case was actually on at the time,
7 was it not, when y'all seized it? It was on and
8 functioning -- turned on.

9 A That, I can't really remember. I know Investigator
10 Robinson picked it up and was reviewing this phone?

11 Q Okay.

12 A So you'll have to ask him that question.

13 Q Those are the two cell phones that were in the
14 vehicle --

15 A Yes, sir.

16 Q Correct?

17 A Yes, sir.

18 MR. MAYE: Your Honor I don't know if I did, but I
19 move to enter those into evidence at this time, subject to
20 any objection.

21 MR. DRYLIE: On the same objection, Your Honor.

22 THE COURT: All right. State's 12 and 13 is in
23 evidence, subject to previous objections.

24 (State's Exhibit Number 12 and Number 13 were
25 entered into evidence.)

Chris Aston - Direct Examination by Mr. Maye

1 BY MR. MAYE:

2 Q I'm going to show you at this point in time two
3 pieces of paper, the first marked State's 14 and the second
4 marked State's 15. Can you tell me, are those items of
5 paperwork that you removed from the vehicle there that
6 night, October 17th of 2007 in that white Cadillac Deville
7 on the side of Highway 191?

8 A Yes, sir, these are some paperwork that was removed
9 from the vehicle.

10 Q Okay. Tell me what 14 -- what that paperwork is?
11 Could you give me a description of that.

12 A That's a bill of -- a South Carolina Department of
13 Motor Vehicles Bill of Sale.

14 Q Okay. You found that in the car?

15 A Yes.

16 Q Okay. And State's 15, for ID at this point in
17 time, what does that -- what does that reflect?

18 A That is a copy of the insurance information that's
19 on this -- on the 1994 Cadillac.

20 MR. MAYE: I move to admit both of those items of
21 paper into evidence at this time. That would be State's 14
22 and 15, and I'll hand them to Your Honor.

23 THE COURT: Subject to previous objection,
24 Mr. Drylie?

25 MR. DRYLIE: Correct, Your Honor.

Chris Aston - Direct Examination by Mr. Maye

1 THE COURT: All right. State's 14 and 15 is in
2 evidence subject to previous objection.

3 (State's Exhibit Number 14 and 15 was entered into
4 evidence.)

5 BY MR. MAYE:

6 Q Chief, let me ask you this, that Cadillac that
7 y'all saw -- and I want you to refer to State's 5, what
8 kind of tags are on the back of it? Describe what kind of
9 tag that is.

10 A It's a paper tag from a dealership called Dukes
11 Boy's Auto Sales out of Denmark, South Carolina.

12 Q Just one of those paper tags with the name of the
13 dealer, right?

14 A Yes, sir.

15 Q Okay. They got official dealer tags that have got
16 numbers and all that you can run data on them and all,
17 based on your training and experience as a law enforcement
18 officer, don't you?

19 A Yes, sir.

20 Q But sometimes people put tags like these when they
21 buy, especially from small, little dealer?

22 A Yes, sir.

23 Q Okay. You can't run this, though, in your computer
24 data base in order to determine ownership based on this
25 kind of tag, though, can you?

Chris Aston - Direct Examination by Mr. Maye

1 A No, sir.

2 Q Not one thing you can do with your radio by calling
3 to find out when somebody's running a paper tag like this,
4 is there?

5 A No, sir. Not through dispatch, no sir.

6 Q So that basically defeats the whole purpose of the
7 identification aspect of the licence plate, doesn't it?

8 A Yes, sir.

9 Q Who is the bill of sale -- the information in
10 regard to that, what agency does it indicate -- or that you
11 sold it -- what information is contained in that?

12 A The bill of sale, it was sold by Dukes Boys Auto
13 Sales on the 22nd of September 2007. It's the Cadillac
14 Deville, four-door, 1994 and showing the VIN number.

15 Q Okay. What date was that sold?

16 A It's got the date of the 22nd day of September
17 2007.

18 Q The 22nd day of September 2007. It was Duke Boys
19 Auto Sales. Who was it sold to? What was the name that
20 was on it?

21 A Demetrius Odom.

22 Q Demetrius Odom. Okay. Let's talk about State's
23 15, that's already into evidence at this time. What's in
24 State's 15?

25 A This is a insurance identification card for that

Chris Aston - Direct Examination by Mr. Maye

1 vehicle.

2 Q What names are on that?

3 A Demetrius L. Odom.

4 Q You found that with the --

5 A Yes, sir.

6 Q -- Bill of sale?

7 A Yes, sir.

8 Q Now, Chief, once you went out there and assisted
9 them that night with the investigation in this case, who's
10 your investigator at your department at that point in time?

11 A Investigator Lamaz Robinson.

12 Q What capacity does he currently serve? Not back in
13 2007, what's he doing now?

14 A He is now the chief of police of the Johnston
15 Police Department.

16 Q So after you retired, he succeeded and he's now
17 chief?

18 A That's correct.

19 Q But at that time was he your primary and main
20 investigator?

21 A Yes, sir, he was.

22 Q Did you turn over the subsequent investigation of
23 this to Investigator Lamaz Robinson, basically after that
24 night?

25 A Yes.

Chris Aston - Cross-Examination by Mr. Drylie

1 Q Okay. But you did take the items to SLED for him?

2 A I took the items to SLED for him, yes, sir.

3 Q Okay. In assisting him in furthering the
4 investigation?

5 A Yes, sir.

6 Q Okay.

7 MR. MAYE: Beg the Court's indulgence.

8 THE COURT: Yes, sir.

9 MR. MAYE: Answer any questions that the defense
10 has for you, please.

11 THE COURT: Mr. Drylie.

12 **CROSS-EXAMINATION**

13 BY MR. DRYLIE:

14 Q Good morning, Chief.

15 A Good morning.

16 Q Now, I want to be crystal clear on one point. This
17 shirt was found inside the car, correct?

18 A Yes, sir.

19 Q And this hat was found inside the car?

20 A Yes, sir.

21 Q Okay. And these were the only two items of
22 clothing that you have right there, that were found inside
23 the car?

24 A Yes, sir.

25 Q And this shirt, it's in no way connected with the

Chris Aston - Cross-Examination by Mr. Drylie

1 robbery, is it?

2 A No, sir.

3 Q Okay. Now, when you arrive at the IGA that night,
4 Deputy Campbell and Mr. Burton were already there, correct?

5 A Yes, sir.

6 Q And the three of you go back to watch a security
7 video?

8 A Yes, sir.

9 Q Now, from that video you see two men enter the
10 store?

11 A (The witness nodded his head.)

12 Q I need you to respond out loud, please.

13 A Yes, sir.

14 Q But from that video you cannot identify who those
15 two men are, can you?

16 A No, sir.

17 Q Okay. Now, later on that night, you go to where
18 Officer Miller had the white Cadillac?

19 A That's correct.

20 Q And at some point, some bloodhounds come out there?

21 A That's correct.

22 Q Then you guys tracked through the woods -- not you
23 personally, but there's a team that tracks through the
24 woods?

25 A That's correct.

Chris Aston - Cross-Examination by Mr. Drylie

1 Q And at no point did they find any cigarettes?

2 A No, sir, they didn't find any cigarettes.

3 Q Now, in some of the pictures that we looked at, and
4 specifically, I'm referring to what's in State's 7. Now,
5 this was on the driver's-side door of the Cadillac, right?

6 A Where?

7 Q These two right here where the pants and the boots
8 are.

9 A That's correct.

10 Q So it's on the driver's side?

11 A That's correct.

12 Q Okay. Now, the solicitor asked you about a whole
13 bunch of IDs that were found, correct?

14 A Yes, sir.

15 Q And those were found inside Mr. Odom's wallet,
16 right?

17 A Yes, sir.

18 Q So the wallet was in the car. And it's not
19 uncommon to have several forms that say your name on it in
20 your wallet? Several forms of ID or credit cards or
21 anything like that, is it?

22 A No, sir, it's not uncommon.

23 Q Now, I want to talk to you about the clothing that
24 you found outside the car. Did it appear to be wet?

25 A From what I could tell it appeared to be wet.

Chris Aston - Cross-Examination by Mr. Drylie

1 Q Okay. It was almost as if someone had sweated in
2 it a lot, correct?

3 A Yes, sir.

4 Q Okay. And that's because possibly people were
5 running away from the store?

6 A That's a possibility, yes.

7 Q Okay. Now, you stated when you were at the store
8 you noticed some clay residue and you saw clay residue in
9 the trunk. Do you have a scientific test that says it's
10 the same type of clay?

11 A Scientific, no, sir.

12 Q Okay. You're just going off of how it appeared?

13 A Yes, sir.

14 Q All right. Based on what you observed that night,
15 you don't know how long that car was there, do you?

16 A Really, no, sir, I don't know how long that vehicle
17 might have been sitting there prior to when I was called,
18 no, sir.

19 Q And you can't say who drove that car there night,
20 can you?

21 A No, sir, I can't tell who drove that vehicle there.

22 MR. DRYLIE: Beg the Court's indulgence.

23 THE COURT: Yes, sir.

24 MR. DRYLIE: No further questions, Your Honor.

25 THE COURT: Redirect?

Chris Aston - Redirect Examination by Mr. Maye

1 MR. MAYE: Just a couple, Chief.

2 **REDIRECT EXAMINATION**

3 BY MR. MAYE:

4 Q Chief, based on your experience and training in law
5 enforcement, people that are committing crimes, such as
6 burglary, in your experience will go to great lengths to
7 conceal their identity, won't they?

8 A Yes, sir, they will.

9 Q They'll run paper tags on their vehicle, won't
10 they?

11 A Yes, sir, they will.

12 Q If they go to the crime scene and leave a vehicle
13 behind, they won't carry their identification or
14 information on there person, will they?

15 A Very rarely, no, sir.

16 Q The information that you collected at the scene
17 that someone was there and was caught in the process of
18 changing clothes, correct?

19 A Yes, sir.

20 Q If you take off a pair of clothes and your changing
21 clothes, what do you need once you get one pair of clothes
22 off of your body?

23 A Another pair of clothes.

24 Q You mean a separate pair of clothes to change into,
25 isn't that correct?

Chris Aston - Redirect Examination by Mr. Maye

1 A Yes, sir.

2 Q If an individual is in endeavoring to cover up
3 their identity, they will often change clothes immediately
4 after a crime, isn't that correct?

5 A Yes, sir.

6 Q Sometimes people will wear multiple layers of
7 clothing.

8 A Yes, sir, they will.

9 Q So they can pull them off quickly.

10 A Yes, sir.

11 Q But most assuredly if someone is trying to conceal
12 their identity, they will change clothes right after a
13 crime occurred, won't they?

14 A Yes, sir.

15 Q It's especially significant where someone might be
16 video-taped, isn't it?

17 A That's correct, yes, sir.

18 Q Now, you were asked -- you didn't find any
19 cigarettes along the track, correct?

20 A That's correct.

21 Q But the track that the bloodhounds were able to go
22 on, only went back and forth in between the car and the
23 store, correct?

24 A That's correct.

25 Q So you weren't able to get a bloodhound trail any

Chris Aston - Redirect Examination by Mr. Maye

1 other direction, were you?

2 A No, sir.

3 Q So you don't know what, if anything somebody might
4 have just started or thrown or carried away with them when
5 they ran from the scene, do you?

6 A No, sir.

7 Q Chief, based on your experience and training, when
8 somebody steals something worth three grand, are they apt
9 to abandon or leave it? Or they take it with them?

10 A Normally they take it with them.

11 Q If someone's gone to the trouble to break and steal
12 something, it's usual something they want, isn't it?

13 A Yes, sir.

14 Q You were asked is it usual to have two different
15 forms of identification on you, correct? You were asked
16 that?

17 A Yes, sir.

18 Q It's very unusual to have official ID's from two
19 states on you at the same time, isn't it?

20 A It's rare that you see two different states, yes,
21 sir.

22 Q And it's illegal. You can't hold driver's license
23 identification in tow different states --

24 MR. DRYLIE: Objection.

25 THE COURT: You can't go into that at all, no, sir.

Chris Aston - Recross-Examination by Mr. Drylie

1 MR. MAYE: Nothing else.

2 THE COURT: I would strike that from the record,
3 ladies and gentlemen. You may not consider it in any
4 manner whatsoever in your deliberations in your jury room.

5 MR. MAYE: Nothing else, thank you, Your Honor.

6 THE COURT: Recross?

7 **RECROSS-EXAMINATION**

8 BY MR. DRYLIE:

9 Q Chief, when was that car purchased--

10 A Sir?

11 Q -- according to the Bill of Sale?

12 A I'd have to look back on what was the date I
13 entered into the record.

14 Q I believe you testified it was September 22nd,
15 right.

16 A Let me look back at the paper. I believe you're
17 correct. Yes, sir. I was reading from the bill of sale,
18 the purchase.

19 (Mr. Drylie gave the defendant the exhibit.)

20 THE WITNESS: It was dated on the 22nd day of
21 September, 2007.

22 BY MR. DRYLIE:

23 Q And you found this car on October 17th?

24 A (Witness nodded head.)

25 Q That's less than a month, right?

Chris Aston - Recross-Examination by Mr. Drylie

1 A Yes, sir.

2 Q And isn't it correct that you have 30 days.

3 THE COURT: Why are we going -- if the solicitor
4 can't go into two forms of ID, I don't see how we then go
5 into the law on how long you have to register a motor
6 vehicle. I don't understand how you can do that, Mr.
7 Drylie.

8 MR. DRYLIE: Well, Your Honor, on redirect I
9 believe the solicitor went into the paper tags and it being
10 suspicious.

11 THE COURT: The paper tag, not the law itself.

12 MR. DRYLIE: So you have a month?

13 THE COURT: You object to that, Solicitor?

14 MR. MAYE: Your Honor, I object on the basis that
15 it's outside, I guess, the narrowing scope of direct and
16 redirect and recross and outside --

17 THE COURT: I don't limit myself too much on that.
18 At the same time, you have you have 30 days. Okay. Is
19 that what you want in evidence?

20 MR. DRYLIE: Yeah --

21 THE COURT: You have 30 days to register a motor
22 vehicle from the time you bought it, right?

23 MR. DRYLIE: He didn't have time, Your Honor.

24 THE COURT: Well, 30 days to register the tag?

25 MR. DRYLIE: Yes, Your Honor.

1 THE COURT: From the bill of sale date, you have 30
2 days; is that correct.

3 MR. DRYLIE: That's correct Your Honor.

4 THE COURT: I'm going to look it up when I take a
5 break.

6 MR. DRYLIE: Nothing else Your Honor thank you.

7 MR. MAYE: Nothing else, Your Honor, thank you.

8 THE COURT: Thank you, Chief, you may step down.

9 All right. Madame Forelady, ladies and gentlemen
10 of the jury, perhaps now would be a good time to take our
11 morning recess. During this recess do not discuss the case
12 with anyone, including your fellow jurors. We'll take
13 about 15 minutes. About 15 minutes. Thank you. Thank you
14 very much. You may now go with your bailiff.

15 (The jury left the courtroom at 10:55 a.m.)

16 THE COURT: All right. Court will be in recess 15
17 minutes.

18 (A recess was observed.)

19 THE COURT: All right. Anything before we bring in
20 our jury from the State? Anything from the State?

21 MR. MAYE: No, sir.

22 THE COURT: The Defense?

23 MR. CASTO: No, sir, Your Honor.

24 THE COURT: Did you get our message about the
25 photographs?

1 MR. CASTO: Yes, sir, I sure did.

2 THE COURT: And I would like to break for lunch
3 between 12:30 and quarter to 1:00. Because I have a civil
4 matter to address at 2:00.

5 MR. MAYE: Yes, sir.

6 (The Jury entered the courtroom at 11:25 a.m.)

7 THE COURT: All right. Welcome back, ladies and
8 gentlemen. I received your message concerning photographs
9 and I have relayed that to both the State and to the
10 defense. We're continuing the trial of the case by the
11 presentation of testimony of witnesses by the State in its'
12 case in chief; if you would please to continue to give the
13 parties your complete and undivided attention. Thank you
14 very much.

15 Solicitor, you may call your next witness.

16 MR. MAYE: The State calls Brandon Donaldson to the
17 stand.

18 THE COURT: All right. If you'll come around and
19 be sworn please.

20 Brandon Donaldson,
21 having been duly sworn, testified as follows:

22 THE CLERK: All right. Please be seated. State
23 your full name and spell your last name for the record.

24 THE WITNESS: Brandon Don Donaldson. You need me
25 to spell the last name?

Brandon Donaldson - Direct Examination by Mr. Maye

1 THE CLERK: Yes.

2 THE WITNESS: D-O-N-A-L-D-S-O-N.

3 THE COURT: You're going to have to speak up for
4 us, please, Mr. Donaldson.

5 THE WITNESS: D-O-N; does this work.

6 THE COURT: Yes. Spell it for us please.

7 THE WITNESS: D-O-N-A-L-D-S-O-N.

8 THE COURT: All right. Solicitor.

9 **DIRECT EXAMINATION**

10 BY MR. MAYE:

11 Q Mr. Donaldson, if you would speak up as much as you
12 can.

13 Tell the ladies and gentlemen of the jury where
14 you're from, Mr. Donaldson?

15 A Blackville, South Carolina.

16 Q Okay. Did you grow up there?

17 A Yes, sir.

18 Q Okay. How many brothers and sisters do you have,
19 Mr. Donaldson?

20 A Altogether like 17, 18, all of us together.

21 Q All of you together?

22 A Yeah; yes, sir.

23 Q 17 or 18?

24 A Uh-huh (affirmative response).

25 Q Okay. Let me ask you this, you're related to the

Brandon Donaldson - Direct Examination by Mr. Maye

1 Defendant, Mr. Odom, in this case; is that correct?

2 A Yes, sir.

3 Q He's your half-brother; is that right?

4 A Yes, he's my brother.

5 Q Okay. He's your brother?

6 A Uh-huh (affirmative response).

7 Q Y'all got the same dad, but not the same mom; is
8 that right?

9 A Yes, sir.

10 Q Okay. Let me ask you this, have you basically
11 known him all your life?

12 A Yes, sir.

13 Q Okay. Let's talk about specifically October the
14 16th and the 17th, that night of the 16th going into the
15 17th of 2007. When did you first get up with Mr. Odom that
16 night? What happened?

17 A You said what happened?

18 Q What happened when you first caught up with him;
19 where were y'all when you first caught up that night?
20 Would have been the 16th going into the 17th that night.

21 A Blackville.

22 Q In Blackville; is that where you were living at the
23 time?

24 A Yes, sir.

25 Q How old were you back in 2007 -- at that time, Mr.

Brandon Donaldson - Direct Examination by Mr. Maye

1 Donaldson?

2 A I was around about 22 going on 23. 22.

3 Q How old are you now?

4 A I'll be 31 --

5 Q You're 31 --

6 A No, I'll be 31.

7 Q -- so you were in your 20's at that time?

8 A Yes, sir.

9 Q Okay. Let me ask you this, did you at that time --
10 did you have a driver's license?

11 A No, sir.

12 Q Did you drive at that point in time?

13 A I was not -- no, no sir, not really.

14 Q Did you have an automobile at that time?

15 A No, sir.

16 Q Okay. When did you first catch up with Mr. Odom
17 that night?

18 A You mean at what time?

19 Q Yeah, about what time and where were you when you
20 caught up?

21 A Blackville.

22 Q In Blackville. Okay. What was he driving?

23 A You talking about what kind of car it was?

24 Q Yeah, what kind of car was he driving?

25 A A white car.

Brandon Donaldson - Direct Examination by Mr. Maye

- 1 Q A white car?
- 2 A Yeah.
- 3 Q It was a Cadillac, a white Cadillac?
- 4 A Yes, sir.
- 5 Q Okay. What did y'all do once y'all caught up
- 6 there? What happened?
- 7 A You talking about once that --
- 8 Q Exactly -- just start with and we'll take a step at
- 9 the time. Back in Blackville.
- 10 A Got in the car and --
- 11 Q You got in the car?
- 12 A Uh-huh (affirmative response).
- 13 Q Who was driving?
- 14 A My brother.
- 15 Q Whose that? Mr. Odom?
- 16 A Uh-huh (affirmative response).
- 17 Q Is Maurice Odom the man you're referring to, your
- 18 brother, is he present in the courtroom now?
- 19 A Yes, sir.
- 20 Q Could you point him out and tell the ladies and
- 21 gentlemen of the jury what he's wearing and where he's
- 22 seated?
- 23 A A blue long button up with a tie.
- 24 Q There at the end of the table, Mr. Odom?
- 25 A Yes, sir.

Brandon Donaldson - Direct Examination by Mr. Maye

1 MR. MAYE: Just like the record reflect he's
2 identified the defendant, Mr. Maurice Odom in this case?

3 THE COURT: So reflected.

4 BY MR. MAYE:

5 Q All right. So you got in the white car with him.
6 Who was driving?

7 A My brother.

8 Q Mr. Odom was driving? Okay.

9 A Uh-huh (affirmative response).

10 THE COURT REPORTER: Say yes or no please.

11 THE WITNESS: Yes, sir.

12 BY MR. MAYE:

13 Q Okay. He was driving; okay.

14 Did you know where you were going when you got in
15 the car that night?

16 A No, sir.

17 Q Okay. Where did y'all end up and do you know what
18 city or town you ended up at? Describe to me the place
19 where you stopped that car once y'all stopped driving.
20 Y'all started down there and when you stopped driving, what
21 kind of place was it y'all stopped?

22 A What you talking about; where the car was at?

23 Q Yeah.

24 A In some bushes and some trees.

25 Q In some bushes and some trees. Okay.

Brandon Donaldson - Direct Examination by Mr. Maye

1 Did you know what city you were in at that point in
2 time?

3 A No, sir.

4 Q Okay. Did you even know what county you were in at
5 that time?

6 A No, sir.

7 Q Who picked the location where you stopped the car?

8 A My brother did.

9 Q Mr. Odom did?

10 A Yes, sir.

11 Q Did you have anything in selecting where y'all went
12 when y'all left Barnwell County to where you ended up where
13 that car was parked?

14 A No, sir.

15 Q He drove; is that correct?

16 A Yes, sir.

17 Q All right. Once y'all got out of the car there,
18 who carried what and how were y'all dressed?

19 A We had on like kind of dark clothes.

20 Q You had on dark clothes. What color shirt did you
21 have on?

22 A A blue one.

23 Q You had on a blue shirt?

24 A Yes, sir.

25 Q Okay. I'm going to show you a shirt from State's

Brandon Donaldson - Direct Examination by Mr. Maye

1 17; is that the shirt you had on?

2 A Yes, sir.

3 Q That was it. What color clothes did he have on?

4 Did he have on -- what did he have on?

5 A Dark clothes, like black.

6 Q He had on black, dark clothes?

7 A Yes, sir.

8 Q When y'all left the car there, what did y'all take
9 with you and carry from the car? Because y'all left the
10 car when it was parked there on that night.

11 A Some blocks.

12 Q Some blocks. Okay. Who had the blocks before --
13 when y'all -- when you got out of the car you were carrying
14 blocks. Who had put the blocks in the car or who brought
15 the blocks to this occasion?

16 A They was inside the car, yeah.

17 Q They were inside the car?

18 A Yes, sir.

19 Q So when you got in the car and he picked you up in
20 Barnwell, the blocks were already in the trunk of the car;
21 is that correct?

22 A Yes, sir --

23 Q Okay. So --

24 A -- from Blackville.

25 Q From Blackville?

Brandon Donaldson - Direct Examination by Mr. Maye

1 A Uh-huh (affirmative response).

2 Q Okay. Did you have anything over your faces or did
3 you have anything covering your hands?

4 A You talking about --

5 Q The two of you, when y'all got out of the car
6 carrying blocks, you got the blue shirt on and he's got the
7 black clothes on?

8 A Yes, sir.

9 Q Did you have anything over your hands or did you
10 have anything over your faces?

11 A Yes, sir.

12 Q What?

13 A Masks and some gloves.

14 Q You had masks and gloves. Who provided those? Who
15 brought those to this gathering there on 191 where were --
16 y'all were stopped?

17 A My brother did.

18 Q He did; he provided them.

19 When you parked the car and got out of the
20 Cadillac, who directed where it was y'all were going from
21 there?

22 A My brother did.

23 Q Did you follow him?

24 A Yes, sir.

25 Q Where did y'all end up at? Describe, if you don't

Brandon Donaldson - Direct Examination by Mr. Maye

1 where the city was, describe what kind of place it was that
2 y'all walked to carrying blocks, wearing those clothes with
3 the masks and gloves on. Where did y'all go?

4 A To a store.

5 Q A store. What kind of store was it; describe what
6 kind of store it was.

7 A It was -- I guess like a grocery store.

8 Q A grocery store. Okay.

9 I'm going to show you -- what's State's 2? Does
10 that look like the grocery store y'all went to?

11 A Yes, sir.

12 Q Okay. Once you two got to the grocery store with
13 the masks and the gloves on and carrying blocks, what did
14 y'all do?

15 A Excuse me. Say it again?

16 Q Once y'all got there in front of the store with the
17 masks and the gloves on carrying the blocks, what did y'all
18 do?

19 A We got the bricks and hit the glass with it.

20 Q Did y'all each throw bricks at the glass?

21 A Yes, sir.

22 Q Okay. Once y'all threw bricks at the glass, what
23 happened to the window glass when y'all through the bricks
24 at it?

25 A It broke.

Brandon Donaldson - Direct Examination by Mr. Maye

1 Q Broke?

2 A Shattered.

3 Q Who went in first?

4 A I think my brother did.

5 Q Okay. Where did, once y'all got inside the store,
6 what did y'all do after y'all broke the windows out?

7 A You said what did we do?

8 Q Once y'all broke the windows out with the blocks
9 and -- where did y'all go in the store and what did you do?

10 A We got some cigarettes.

11 Q You got cigarettes. Okay.

12 How did you load the cigarettes up or what did you
13 do with the cigarettes once you pulled them out from where
14 they were in the grocery store?

15 A You said where did we put them at?

16 Q Yeah. What did you do with the cigarettes once
17 y'all gathered them up inside the store? You said he
18 directed you to where the cigarettes were. What did y'all
19 do with those cigarettes?

20 A Put them in the bag.

21 Q Did y'all bring the bags with you?

22 A Yes, sir.

23 Q Okay. Who provided the bags?

24 A My brother.

25 Q Okay. So once y'all loaded up the cigarettes, what

Brandon Donaldson - Direct Examination by Mr. Maye

1 did y'all do with them?

2 A You talking about when --

3 Q When you're up inside the store once you loaded
4 them up in those bags that he gave you, what did you do;
5 what was the next thing y'all did?

6 A Went back to the -- where we was parked at.

7 Q Went back. Y'all go out the store; is that
8 correct?

9 A Yes, sir.

10 Q Were each of you carrying a bag?

11 A Yes, sir, I think so.

12 Q Okay. So how did y'all leave? Were you walking or
13 were you running when you left the store carrying the
14 cigarettes once y'all broke the windows out?

15 A Running.

16 Q Y'all were running.

17 Okay. What happens when you get back to where the
18 white Cadillac was?

19 A I think -- I think a minute or two later an officer
20 had rolled by and he stopped --

21 Q And officer rolled by?

22 A Uh-huh (affirmative response).

23 Q Is that right?

24 A Yes, sir.

25 Q What did he do once he rolled by; what was the next

Brandon Donaldson - Direct Examination by Mr. Maye

1 thing that happened?

2 A He had flashed his lights I think.

3 Q He shined the light on you?

4 A Uh-huh (affirmative response).

5 Q Okay. What were y'all in the process of doing when
6 the officer got there?

7 A Well, we was about to leave.

8 Q You were about to leave. What were you doing
9 before you were leaving; what was going on right there when
10 he shined the lights on y'all?

11 A Oh, we had, well it was probably like a minute
12 later from the -- I think like a minute or two later.

13 Q What did you do with the clothes that y'all were
14 wearing? What were y'all doing with the clothes that y'all
15 were wearing when you went to the store and all when the
16 officer --

17 A You talking about after? Taking them off.

18 Q Y'all were taking them off. Okay.

19 Did you throw down the blue shirt that you had on?

20 A Yes, sir.

21 Q Was Mr. Odom in the process of changing the clothes
22 that he had on when y'all broke in, at that point in time?

23 A Yes, sir.

24 Q Okay. When y'all got back to the car, what did you
25 do with the bag that y'all were carrying or the bags you

Brandon Donaldson - Direct Examination by Mr. Maye

1 were carrying with cigarettes in them? What did y'all do
2 when y'all started to change clothes right before the
3 officer spotlighted you? What did you with the cigarettes?

4 A I put them down.

5 Q You put the bag that you were carrying down?

6 A Yes, sir.

7 Q Okay. What did you do when the officer shined the
8 light on you?

9 A I ran.

10 Q You had just broken into a store and you ran,
11 didn't you?

12 A Yes, sir.

13 Q Okay. Did you take or carry away any of those
14 cigarettes with you when you ran?

15 A You said did I take cigarettes?

16 Q Did you carry -- did you take the time to pick up
17 the bag that you had toted out of the store when you left
18 and ran?

19 A No, sir.

20 Q Okay. If the cigarettes were gone when the cops
21 got there, who carried them away?

22 A I guess my brother had to; I didn't carry them.

23 Q You didn't take them?

24 A No, sir.

25 Q So if they were gone, your brother carried them

Brandon Donaldson - Direct Examination by Mr. Maye

1 away; is that correct?

2 A Yes, sir.

3 Q Okay. Once you started running, do you know where
4 you went or what did you do about running?

5 A I just kept running. I mean I just had figured it
6 out and kept going.

7 Q Did you know at all where you were; did you have
8 any idea?

9 A No, sir, I was going by the signs then.

10 Q What did you do -- tell the ladies and gentlemen of
11 the jury once you started running, what process you were
12 going by what was going on when you were running away from
13 there. What did you do? You just ran and then what would
14 happen when you'd stop? How did you try to find any
15 directions?

16 A I just running and hiding and running and kept
17 going and --

18 Q Did you look at street signs on the road or what
19 did you do?

20 A Yeah, I was looking at signs and going from there.

21 Q Okay. Now let me ask you this, when he picked you
22 up back in Blackville over in Barnwell County to begin
23 with, was it daylight or was it dark when he picked you up?

24 A It was dark.

25 Q Okay. When y'all threw them blocks through and

Brandon Donaldson - Direct Examination by Mr. Maye

1 broke in that store and stole them cigarettes together, was
2 it daylight or was it dark?

3 A It was dark.

4 Q It was dark. Okay. Did you run -- was it daylight
5 when you finally stopped running or when was it? What was
6 it, day or night when you finally stopped running?

7 A I stopped and it was still at dark.

8 Q It was still dark when you started, when you
9 stopped running?

10 A Uh-huh (affirmative response).

11 Q How did you get yourself out of this area and back
12 to where you knew where you were; how did you facilitate
13 doing that?

14 A When I got closer to where I knew I was kind of at,
15 I had -- a friend had came and got me.

16 Q Did you call somebody on the telephone?

17 A No, it was like a little -- a little phone, a pay
18 phone.

19 Q You stopped at a pay phone. Okay.

20 Now had you previously had a cell phone?

21 A I had a cell phone at the time.

22 Q What happened with the cell phone? What did you do
23 with it?

24 A Talking about -- it was in the car.

25 Q You left it in the car?

Brandon Donaldson - Direct Examination by Mr. Maye

- 1 A Uh-huh (affirmative response).
- 2 Q Okay. Let me show you State's 13. Was that the
- 3 cell phone that was yours?
- 4 A Yes, sir.
- 5 Q Is that the one you left behind in the car?
- 6 A Yes, sir.
- 7 Q Okay. Let me show you State's 12 in this case.
- 8 Whose phone is that one?
- 9 A My brother.
- 10 Q Mr. Odom, the defendant in this case, that was his
- 11 phone?
- 12 A Yes, sir.
- 13 Q And you're positive about that?
- 14 A Right.
- 15 Q Okay. Now the police took your phone and called
- 16 your momma, didn't they?
- 17 A Yes, sir.
- 18 Q And that's how they caught you because you had your
- 19 momma's name stored over there as momma, didn't you --
- 20 A Yes, sir.
- 21 Q -- on your phone and they called your momma, didn't
- 22 they?
- 23 A Yes, sir.
- 24 Q And that's how they caught you, basically, wasn't
- 25 it; that's how they got on to you, wasn't it?

Brandon Donaldson - Direct Examination by Mr. Maye

1 A Yes, sir.

2 Q Okay. As a result of Mr. Lamaz over here catching
3 up with you, you've been and you talked to him, didn't you?

4 A Yes, sir.

5 Q First thing out of your mouth was you said you
6 didn't do it; isn't that right?

7 A Yes, sir.

8 Q But in that same conversation, did you admit to
9 Lamaz that y'all had done this?

10 A Yes, sir.

11 Q Okay. Now, Mr. Donaldson, you got charged in this
12 case with burglary second, violent, correct?

13 A Yes, sir.

14 Q You got charged with malicious injury to property
15 for breaking out the windows in the store, right?

16 A Yes, sir.

17 Q And you got charged with grand larceny for stealing
18 the cigarettes that y'all took and carried out of the
19 store, didn't you?

20 A Yes, sir.

21 Q Okay. Mr. Donaldson, those charges are still
22 pending against you now, aren't they?

23 A Yes, sir.

24 Q Has anybody ever made you any promises about what's
25 going to definitely happen with your charges as a result of

Brandon Donaldson - Direct Examination by Mr. Maye

1 your cooperation?

2 A No, sir.

3 Q Okay. Is everything that you told the jury up here
4 about your involvement and your brother, Mr. Odom's,
5 involvement; is that the truth?

6 A Yes, sir.

7 Q Has anybody ever asked you to lie or say anything
8 that was not true involved -- involving your involvement in
9 it and your brother, Mr. Odom's, involvement?

10 A No, sir.

11 Q Has anybody ever asked you on part of law
12 enforcement or the State or anybody else to say anything
13 that wasn't true?

14 A No, sir.

15 Q Okay. Mr. Donaldson, let me ask you this, did you
16 ever get any benefit or money out of the cigarettes that
17 y'all stole and took out of the IGA? Did you get any of
18 the proceeds or did you get any of the cigarettes
19 afterwards?

20 A No, sir.

21 Q Answer any questions the defense has for you, Mr.
22 Donaldson, thank you.

23 THE COURT: Mr. Casto.

24 MR. CASTO: Yes, sir.

25 ///

Brandon Donaldson - Cross-Examination by Mr. Casto

CROSS-EXAMINATION

1
2 BY MR. CASTO:

3 Q Brandon, how are you?

4 A Doing all right.

5 Q I need you to speak close to that microphone, okay?

6 A I'll pull it up close.

7 Q Brandon, today you said that Maurice was with you
8 when all this happened, right?

9 A Yes, sir.

10 Q That Maurice was the one that drove down there,
11 right?

12 A Yes, sir.

13 Q A couple of weeks after this happened, you spoke
14 with Officer Lamaz Robinson; is that correct?

15 A I don't remember back how long after the incident I
16 talked to him, but --

17 Q But you talked to him after this incident about
18 what happened, right?

19 A If I talked to him -- I don't remember how long it
20 been, like I -- I think it was the same day that I got
21 arrested.

22 Q Okay. But nonetheless, you spoke to him, right?

23 A Yes, sir.

24 Q And you recall that conversation, right?

25 A Yes, sir.

Brandon Donaldson - Cross-Examination by Mr. Casto

1 Q And at first when you -- well, there was another
2 officer there too, right?

3 A You talking about the -- when I talked to him?

4 Q Yes, sir.

5 A I don't remember talking to him, but I talked to
6 Officer Robinson.

7 Q You talked to Officer Robinson?

8 A Yeah, I can't remember if I talked to anybody else.

9 Q Okay. And when you speak with Officer Robinson,
10 there, you say you weren't aware of this incident, right?

11 A In the beginning.

12 Q Yes, sir.

13 A Yes, sir.

14 Q And there you said at first you that you didn't
15 know what Officer Robinson was talking about, right?

16 A Yes, sir.

17 Q And you kept denying your involvement at first,
18 right?

19 A Yes, sir.

20 Q At some point, you're informed of a -- how much
21 time these charges --

22 MR. MAYE: Judge, now, I'll object to hearsay or
23 being informed about the time --

24 MR. CASTO: Withdrawn.

25 THE COURT: Overruled.

Brandon Donaldson - Cross-Examination by Mr. Casto

1 MR. CASTO: Yes, sir.

2 BY MR. CASTO:

3 Q You were informed then of how much time each charge
4 carries, correct?

5 A I don't remember all that.

6 Q During the course of that conversation, did anyone
7 remind you?

8 A No, sir.

9 Q You don't recall?

10 A No, no, sir.

11 Q You don't recall that?

12 A No, sir.

13 Q Now, in that conversation with you and Officer
14 Robinson, as you recall, it's just y'all two in the room;
15 is that right?

16 A Yes, sir.

17 Q To the best of your knowledge, that interview was
18 not audio recorded was it?

19 A Was it recorded when we were talking?

20 Q Was it audio recorded when y'all were talking?

21 A I don't remember.

22 Q Okay.

23 A I don't know.

24 Q To the best of your knowledge this conversation
25 was -- was not videotaped, was it?

Brandon Donaldson - Cross-Examination by Mr. Casto

1 A I don't know. I don't know if it was or not.

2 Q Now, as I understand, you were -- you say you were
3 in jail when you spoke with Officer Robinson; is that
4 correct?

5 A Yeah, they came to pick me up.

6 Q Okay. Picked you up in, you're picked up from
7 Barnwell?

8 A Blackville.

9 Q You were picked up from Blackville taken to -- and
10 you're in custody at that point, right?

11 A Yes, sir.

12 Q You were taken to the Johnston Police Department,
13 right?

14 A Yes, sir.

15 Q Okay. And there you only make a verbal statement
16 to Officer Robinson, right?

17 A You talking about did I say something about --

18 Q What happened -- you only -- you only made a verbal
19 statement. You didn't write it down, did you?

20 A I don't remember. I don't think I did.

21 Q Okay. Now, do you recall -- you don't remember if
22 you wrote it down or not?

23 A No, I don't remember.

24 Q Do you recall how long this conversation lasted
25 approximately?

Brandon Donaldson - Cross-Examination by Mr. Casto

1 A I really don't remember how long it last.

2 Q Okay. Is it safe to say you don't remember a lot
3 of details about that conversation, right?

4 A It had been many, it had been some years ago so I
5 don't remember everything of what was said that day.

6 Q And since that conversation with Officer Robinson,
7 you've talked to him since that time; is that correct?

8 A No, sir, I don't think -- yeah, coming to Court --
9 I speak to him a little, but I ain't talked to him.

10 Q Okay. And that was after this conversation, right?

11 A You talking about the first time?

12 Q Yes, sir.

13 A Yes, sir.

14 Q Now, as I understand it, you were called to the
15 stand by the solicitor; is that right?

16 A You talking about today?

17 Q Yes, sir.

18 A Yes, sir.

19 Q And as a result of your involvement in all of this,
20 you also were charged with crimes, right?

21 A Yes, sir.

22 Q Even though it's from all the way back in 2007,
23 your charges are still pending here in Edgefield County,
24 right?

25 A Yes, sir.

Brandon Donaldson - Cross-Examination by Mr. Casto

1 Q And your charges are currently being handled by the
2 Edgefield County Solicitor's Office, right?

3 A Yes, sir.

4 Q And to be specific is -- or to be clear, you were
5 charged with malicious injury to real property, right?

6 A Yes, sir.

7 Q And you realize -- well, where the value was less
8 than \$1,000, right?

9 A You talking about for --

10 Q The charge of -- you were charged with -- let me
11 see it again.

12 You were charged with malicious injury to real
13 property where the value was under \$1,000, right?

14 A I don't -- I didn't know the value, but I mean I --

15 Q Backing up, you were charged with malicious injury
16 to real property, right?

17 A Uh-huh (affirmative response).

18 Q Okay. And you were made aware of the fact that
19 that charge carries up to 30 days in jail, right?

20 A No, I didn't know anything about that.

21 Q You didn't know about that. Okay.

22 You know that you could face a fine for that
23 charge?

24 A Where I have to pay money out or something?

25 Q I'm asking did you know. You know that you had to

Brandon Donaldson - Cross-Examination by Mr. Casto

1 pay a fine for that charge?

2 A No, sir, I didn't know any of that at the time.

3 Q Okay. Did you know it was a property offense and
4 you could get in more trouble with more property crime
5 convictions?

6 A No, sir.

7 Q You didn't know any of that?

8 A No, sir.

9 Q Well, let's talk -- you were also charged with
10 grand larceny; isn't that right?

11 A Yes, sir.

12 Q And you were told that's a felony, right?

13 A No, I wasn't told that.

14 Q You knew it was a felony?

15 A No, I didn't. At the time I didn't know any of
16 that.

17 Q Okay. Do you know -- do you know whether that's a
18 felony now?

19 A You talking about with the charge?

20 Q Yes, sir.

21 A Yeah, by you telling me it is.

22 Q Okay. Well, I'm asking if you know, not what I'm
23 telling you.

24 A No, sir.

25 Q And you could face up to 5 years in prison if you

Brandon Donaldson - Cross-Examination by Mr. Casto

1 were convicted on grand larceny, right?

2 A Yes, sir.

3 Q Okay. But it also comes with a possible fine if
4 you were convicted of grand larceny, right?

5 A Yes, sir.

6 Q And it's also a property crime where you'd get in
7 more trouble if you were convicted of other property
8 crimes, right?

9 A Yes, sir. You said -- say it again.

10 Q It's a -- you would get in more trouble if you were
11 convicted of other property crimes, right?

12 A I guess so.

13 Q Now, you were also charged with burglary second
14 degree violent, right?

15 A Yes, sir.

16 Q And that's also a felony, right?

17 A Yes, sir.

18 Q That carries up to 15 years in prison, right?

19 A Yes, sir.

20 Q Okay. And you're charged with these crimes by the
21 Edgefield County Solicitor's Office, right?

22 A Yes, sir.

23 Q And you've met with them on occasion, right?

24 A You talking about the --

25 Q You've talked to them?

Brandon Donaldson - Cross-Examination by Mr. Casto

1 A Yes, sir.

2 Q Okay. And you've talked to them probably more than
3 once, right?

4 A You talking about here?

5 Q Yes, sir.

6 A Yeah, whenever I come to court to roll call or
7 whatever, I see them.

8 Q Okay. And you met with them as recently as last
9 week, right?

10 A You say did I see them last week?

11 Q Yes, sir.

12 A Yes, sir.

13 Q Okay. And to be fair, to sum all of this up,
14 Brandon, you're hoping for a deal, right?

15 A No, sir.

16 Q You're not hoping for a deal at all?

17 A No. No, sir.

18 Q Okay. But in reality, you don't want to go to
19 prison, do you, Brandon?

20 A Nobody wants to go to prison.

21 Q Okay. I mean in prison they take your freedom
22 away, right?

23 A I guess so.

24 Q You know, you can't do what you want to do; you're
25 locked up, right?

Brandon Donaldson - Cross-Examination by Mr. Casto

1 A Yes, sir.

2 Q You have to eat, you know, there are terrible foods
3 in prison, all of that stuff in prison, right?

4 A Yes, sir.

5 Q And it's a dangerous place in prison, right?

6 A Yes, sir.

7 Q And you don't want to go to prison, Brandon, do
8 you?

9 A No, nobody wants to go to prison.

10 Q The solicitor's office here has the power to
11 dismiss your charges, right?

12 A I don't know nothing about that.

13 Q Okay. Your testimony is that you didn't know that
14 they had the power to dismiss your case?

15 A I mean, I don't -- I'm coming in, you know, to get
16 everything straightened out and tell the truth. So I mean,
17 I don't know nothing about they got the power to do
18 anything.

19 Q Okay. They could also, you know that they could
20 also ask the Judge to send you to prison too, right,
21 Brandon?

22 A I mean, I didn't know that either.

23 Q Okay. You have no idea, but you knew that they
24 were handling your charges, right?

25 A I guess, I mean -- I don't know about that.

Brandon Donaldson - Cross-Examination by Mr. Casto

1 Q Okay. And they -- your testimony is that they
2 haven't offered you anything prior to you sitting on the
3 stand and testifying, right?

4 A Yes, sir, they ain't offered me a thing.

5 Q Okay. Now, in that conversation with Officer
6 Robinson back in 2007, the one that we spoke about before,
7 you spoke with him about these cigarettes, right?

8 A You said about the cigarettes?

9 Q Yes, sir?

10 A I don't remember the exact conversation back then.
11 I mean it's been a minute ago. I don't -- I don't remember
12 that conversation we had.

13 Q Okay. Not the exact conversation, but one of the
14 things that you spoke with him about the cigarettes?

15 A I don't remember.

16 Q You don't remember. Okay.

17 Do you admit or deny that you told them that the
18 cigarettes were in the wood line by the car?

19 A You said -- say that again.

20 Q Do you admit or deny that you said that the
21 cigarettes were in the wood line by the car?

22 A No, I didn't say anything about that.

23 Q Didn't say anything about that?

24 A About the cigarettes being at a wood line by the
25 car.

Brandon Donaldson - Cross-Examination by Mr. Casto

1 Q Okay. You even --

2 A Well I did say that there about that's where I
3 dropped them off; that's where I put them at beside the
4 car.

5 Q You said something today, but back then you didn't
6 say anything; is that your testimony?

7 A No, I'm saying that that's what happened back then.
8 That's where I put them at. I laid them down on the ground
9 and that's where I left them at.

10 Q All right. You even took Officer Robinson to the
11 spot where you said these cigarettes would be, right?

12 A I'm sorry, say that again.

13 Q You even took Officer Robinson to the spot where
14 you said these cigarettes would be, right?

15 A No, I mean, the officer that seen us on that night,
16 he, I mean they already knew where to go at so I just, when
17 I told the truth I said that's where I dropped them at.

18 Q Okay. But in other words, wasn't there a time --
19 and correct me if I'm wrong -- that you took Officer
20 Robinson after all this happened to, to show him the spot
21 where these cigarettes should be?

22 A No, I don't remember that.

23 Q You don't remember that?

24 A Huh-huh (negative response).

25 Q All right. And to the best of your knowledge,

Brandon Donaldson - Cross-Examination by Mr. Casto

1 those cigarettes were never found, right?

2 A I guess not. I have -- I didn't -- or I didn't
3 take them anyway.

4 Q In telling your story, Brandon, to Officer
5 Robinson, you stated it was your half-brother, Maurice's,
6 idea, right? All this, this business with breaking in the
7 store, right?

8 A You said, did I tell Officer Robinson that?

9 Q Yes, sir, your -- you're saying, in telling your
10 story about what happened, you're saying that it was all
11 Maurice's idea, right?

12 A About the store, yes, sir.

13 Q Okay. And that -- that he was the mastermind,
14 right?

15 A Yes, sir.

16 Q And that he was the one that drove, right?

17 A Yes, sir.

18 Q He was the one that provided these clothes, right?

19 A The clothes?

20 Q Yes, sir.

21 A No, they was my -- no. He had the gloves and the
22 masks.

23 Q He provided all that stuff is what you're saying,
24 right?

25 A Yes, sir.

Brandon Donaldson - Cross-Examination by Mr. Casto

1 Q Okay. And ultimately you're -- you testified on
2 direct that you got into the car that night and you didn't
3 know where y'all were going, right?

4 A No, I didn't know. I just knew that we was about
5 to make some money.

6 Q Okay. And you didn't know, you didn't know the
7 details, you didn't know where?

8 A No, I didn't know where.

9 Q You didn't know specifically how either?

10 A I knew we was about to do something crazy, but I
11 didn't know where.

12 Q You were along for the ride and you just went,
13 basically?

14 A Yeah, at the time I didn't care. So I just went
15 with him.

16 Q Now you've seen the video of this incident, right?

17 A Yes, sir.

18 Q You've probably seen it several times, right?

19 A Yes, sir.

20 Q And the person in the blue in the video is you,
21 right?

22 A Yes, sir.

23 Q Okay. And you would agree with me that we can't
24 tell that's you just in looking at the video alone, right?

25 A I mean, I can. I mean I know it's me. So I can't

Brandon Donaldson - Cross-Examination by Mr. Casto

1 answer that question.

2 Q Right, but just, again, just in looking at the
3 video, we can't tell that's you?

4 A I don't know. I mean --

5 Q Okay. In the video, you say it's you in the blue
6 and in the video we can't really tell how tall you are for
7 instance, can we?

8 A I really can't say because I'm not the --

9 Q Okay. Well --

10 A -- you got to answer.

11 Q How tall are you?

12 A 6'2".

13 Q Okay. And how much, how much do you weigh?

14 A 224 or 225.

15 Q Is that roughly the same as what you were back in
16 2007?

17 A No, I was a little smaller. I don't know, I think
18 I was a little smaller back then.

19 Q Okay. Now when all this happened, you were picked
20 up in Barnwell County -- I'm sorry in Blackville, right?

21 A You talking about where I got arrested?

22 Q Yes, sir.

23 A Yes, sir.

24 Q Okay. And there were, at the time, there were
25 charges pending over there; is that right?

Brandon Donaldson - Cross-Examination by Mr. Casto

1 A Yes, sir.

2 Q Okay. And the things you had pending over there
3 were just like the charges you have here in Edgefield,
4 right?

5 A Yes, sir.

6 Q Okay. Specifically let's talk about this incident
7 and let's talk about this case, okay.

8 You remember you said walking to the store that
9 evening, right?

10 A What you mean, what store?

11 Q To the -- to the IGA store that night; you remember
12 going to that store, right? Walking to it, right?

13 A Yes, sir.

14 Q Okay. And you admit to going inside the store,
15 right?

16 A Yes, sir.

17 Q You admit to taking things inside the store?

18 A Yes, sir.

19 Q And then leaving in a hurry, right? You said that
20 you were running?

21 A Yes, sir.

22 Q And sweating as you were running back to the car
23 with everything, right?

24 A Yes, sir.

25 Q And you were scared and you didn't want to get

Brandon Donaldson - Cross-Examination by Mr. Casto

1 caught, right?

2 A You talking about that night after --

3 Q Yeah --

4 A Yes, sir.

5 Q -- the time this happened, you were running and you
6 didn't want to get caught, right?

7 A Yes, sir.

8 Q And you tried changing your clothes before getting
9 into the car, right?

10 A Yes, sir.

11 Q Okay. And had some clothes to change into until
12 you see a light shining on you, right?

13 A Excuse me?

14 Q You had some clothing to change into until you saw
15 the light shining on you, right?

16 A No, I didn't have any, no change of clothes.

17 Q All right. And basically this, this light shines
18 up on you and the two of you guys run off; that's your
19 testimony?

20 A Yes, sir.

21 Q Okay. And interrupted taking off the clothing; is
22 that right?

23 A Yes, sir.

24 MR. CASTO: I beg the Court's indulgence?

25 THE COURT: Yes, sir.

Brandon Donaldson - Cross-Examination by Mr. Casto

1 BY MR. CASTO:

2 Q Brandon, just a few more questions.

3 Respectfully around this time and at several
4 periods in your life, you've been diagnosed with some
5 mental health issues in the past; is that fair to say?

6 A Yes, sir.

7 Q All right. And it's fair to say that you receive a
8 check for your mental health disability; is that right?

9 A Yes, sir.

10 Q Okay. And you've been to Aiken/Barnwell Mental
11 Health Center before, right?

12 A Yes, sir.

13 Q You've been to Columbia Hospital for mental health
14 before, right?

15 A Yes, sir.

16 Q And you were evaluated for mental health out of
17 this case sometime in 2008, right?

18 A You said after this case?

19 Q Not after this case, but after sometime in 2008,
20 yes, sir.

21 A Well, I've been going to mental health ever since
22 I've been a young boy.

23 Q Okay. You had been going?

24 A Yes, sir.

25 Q Did you continue to go after this happened in 2007?

Brandon Donaldson - Cross-Examination by Mr. Casto

1 A Did I continue to go to mental health?

2 Q Yes, sir.

3 A Yes, sir.

4 Q All right. And you said during those interviews
5 with mental health professionals that you were hearing
6 voices around the time this happened, right?

7 A Yes, sir.

8 Q And that sometimes you admitted that you would do
9 what the voices told you; is that right?

10 A Yes, sir.

11 Q And even though you knew it was wrong, you'd do
12 what the voices told you, right?

13 A Yes, sir.

14 Q And you said that you could see things that
15 sometimes weren't there and -- that's what you said, right?

16 A Yes, sir.

17 Q And specifically, that you could see family members
18 that had been passed away; is that correct?

19 A Yes, sir.

20 Q All right. And some of these issues and struggles
21 that you were having lasted for several years, right,
22 Brandon?

23 A You talking about --

24 Q Some of the things that I just mentioned that you
25 were wrestling with, some of that lasted for several years,

Brandon Donaldson - Cross-Examination by Mr. Casto

1 right?

2 A Yes, sir.

3 Q All right. And very respectfully, today you are
4 taking mental health medication, right?

5 A Yes, sir.

6 Q Well, back when all this happened in 2007, you
7 weren't on your medication, were you?

8 A No, sir, not then.

9 Q All right. And specifically, what mental health
10 medicine are you on today?

11 A Seroquel.

12 Q Okay. And you weren't on anything back then when
13 all this happened, right; you started on that after --

14 A Not as I recall --

15 THE COURT REPORTER: I didn't get that.

16 THE WITNESS: Not as I recall; I don't remember if
17 I was or not.

18 BY MR. CASTO:

19 Q Okay. And one of the things after this happened,
20 you were asked by mental health professionals about this
21 incident from -- that we're in trial here -- you were asked
22 about this incident that you're here to talk about; you
23 were asked about that by mental health professionals,
24 right?

25 A No, I don't remember that.

Brandon Donaldson - Cross-Examination by Mr. Casto

1 Q You don't even recall talking about it with them?

2 A At mental health?

3 Q Yes, sir.

4 A About this case here.

5 Q About -- about what happened during this case here
6 after 2007?

7 A No, I don't remember.

8 Q You don't recall that at all. All right.

9 And just like you don't recall speaking with
10 Officer Robinson about those cigarettes, right?

11 A I mean yeah, in here we talking about it right now.

12 Q But back in 2007, right?

13 A No, I didn't talk about the cigarettes.

14 MR. CASTO: I beg the Court's indulgence?

15 THE COURT: Yes, sir.

16 MR. CASTO: No further questions.

17 THE COURT: Redirect.

18 MR. MAYE: No, Your Honor. Thank you.

19 THE COURT: Thank you, Mr. Donaldson, you may step
20 down.

21 All right. Solicitor, call your next witness.

22 MR. MAYE: The State would call Lamaz Robinson to
23 the stand.

24 THE COURT: All right. If you'd come around and be
25 sworn for us please.

Lamaz Robinson - Direct Examination by Mr. Maye

1 LAMAZ ROBINSON,

2 having been duly sworn, testified as follows:

3 THE CLERK: Please be seated; state your full name
4 and spell your last name.

5 THE WITNESS: Lamaz Robinson. R-O-B-I-N-S-O-N.

6 **DIRECT EXAMINATION**

7 BY MR. MAYE:

8 Q Chief Robinson, tell the ladies and gentlemen of
9 the jury about your background in law enforcement.

10 A I've been employed in law enforcement for
11 approximately 12 years now. I started out at Saluda County
12 Sheriff's Office as a dispatcher and jailer. Then I came
13 to Johnston Police Department in 2004, September the 17th
14 of 2004, where I rose through the ranks of patrolman, then
15 a corporal, investigator, sergeant, lieutenant, and now I'm
16 the chief of police.

17 Q Chief, you still do a lot of work in
18 investigations, as the chief of police, you are very
19 hands-on in conducting and carrying out investigations?

20 A Yes, sir, our department is a seven man department.
21 So we're kind of small, so everybody has to pitch in.

22 Q Let's talk about October the 17th of 2007. Were
23 you working as a detective? And who was your chief at that
24 time?

25 A I was. The chief was Chris Aston.

Lamaz Robinson - Direct Examination by Mr. Maye

1 Q Okay. Tell us about your involvement in this case
2 and your assistance. Were you called out as an
3 investigator to help them after the call initially came in?

4 A I was. I had received several phone calls
5 throughout the night. However, I was the officer that was
6 responding to come in to relieve Officer Campbell who was
7 on duty. So I was coming in as the day shift officer.
8 When I woke up and seen that I had missed several calls, I
9 called Officer Campbell back and he informed me of what was
10 going on. At that point in time, I got dressed quickly and
11 responded to Johnston.

12 Q You responded to Johnston. Okay.
13 What happened when you got there, what was the
14 first thing that you did?

15 A I got to Johnston and I went to the incident
16 location, which was the IGA Food Store, which is located at
17 170 Lee Street in Johnston being within Edgefield County.
18 At that point in time, I met with Twyla Barton and Officer
19 Campbell did come up and meet me and brief me on what was
20 going on. Myself and Ms. Barton then looked at the video
21 of the break in that had occurred at the location.

22 From that point in time after that I left from the
23 store and went to where Chief Aston was because he had told
24 me and told me where they were on 191 in reference to a
25 vehicle that had found.

Lamaz Robinson - Direct Examination by Mr. Maye

1 Q Okay. Let me, let me ask you -- and now might be a
2 good time for this. State's 2, 5, 4, 6, 7, 8, 9, 10 and 11
3 are all in evidence at this point in time.

4 Now these reflect the various views of the store,
5 the car, the clothing; is that correct?

6 A That is correct.

7 MR. MAYE: At this point in time, Your Honor, I
8 think it might be a good opportunity, I'm going to pass
9 these out to the jury and let them be able to review these
10 and publish these to the jury; let them pass them around
11 among themselves. I have one additional, State's 3.

12 BY MR. MAYE:

13 Q Investigator Robinson, I'm going to go into this in
14 more detail while they're passing those around, but State's
15 25, 24, 23, 22 and 21 all are identification cards of
16 various descriptions already into evidence; those are
17 associated with this case and, in fact, seized from the
18 vehicle, the Cadillac in this case; is that correct?

19 A That is correct.

20 MR. MAYE: I'm going to ask to pass these around
21 and publish these to the jury as well.

22 THE COURT: All right.

23 BY MR. MAYE:

24 Q I keep doing this -- not Investigator Robinson, but
25 Chief Robinson; I don't mean to demote you. Can you tell

Lamaz Robinson - Direct Examination by Mr. Maye

1 us what you did once you got out there at the store again
2 and you viewed the videotape. Tell the ladies and
3 gentlemen of the jury what you saw, observed, and you did
4 to conduct an appropriate investigation on your end as a
5 major -- major crime investigator?

6 A When I got to the store, like I said, me and Ms.
7 Barton looked at the videotape. Upon looking at that
8 videotape, I noticed that there was two individuals that
9 entered the store by throwing a brick-like block towards
10 the window. On the first attempt, it was not successful
11 and the second attempt it was successful where the brick
12 went through the window and then two individuals entered
13 the store. At that point in time, one of the individuals
14 had a blue in color shirt with like some blue in color
15 pants and the other individual had on some black in color
16 shirt like with a black in color pants.

17 Both individuals had what appeared to be ski masks
18 over their face and gloves over their hands. The one in
19 the black shirt entered the store first with the one in the
20 blue shirt in pursuit behind him. They went into the store
21 and then the next caption that comes out on the video is
22 when they're exiting the store. During the time while they
23 was in the store, they, when they was entering into the
24 store, you could see what appeared to be empty, to me
25 looked like black lawn trash bags that was empty at the

Lamaz Robinson - Direct Examination by Mr. Maye

1 time. When they was exiting the store, it appeared that
2 those bags had been filled. With speaking with the manager
3 at the store, it was determined that cigarettes was missing
4 from the store from that location.

5 Like I said, after I watched the video,
6 approximately 15, 20 minutes after that, I responded back
7 to, I responded to Highway 191 to where Chief Aston was.
8 When I got there I was briefed by -- briefed by him that
9 the dog team had been there and the dog team was in the
10 process of conducting a track. At that point in time, he
11 pointed out some items that was around the vehicle that was
12 there which was in particular, the vehicle was facing out
13 towards the roadway. When you're facing the vehicle, when
14 it's facing out to the roadway, I noticed in between the --
15 on the driver's side, in between the two doors, there were
16 some boots and a pair of black pants that was pushed down
17 like, in a firemen's way, you know the firemen step into
18 their boots; they was rolled down like that. On that same
19 site further back was the black shirt and a black ski mask
20 and a pair of gloves. On the left side of the vehicle was
21 a -- to the rear, which is the passenger side, was the blue
22 in color shirt.

23 At that point in time, I was also briefed on the
24 fact that Deputy Miller had spotted two individuals who
25 appeared to be changing clothes and they took off running

Lamaz Robinson - Direct Examination by Mr. Maye

1 when he shined the spotlight on them. At that point in
2 time, I was able to try to corroborate those two things
3 together between the store, the color description that I
4 had reviewed in the videotape and the clothing description
5 that I had subsequently just reviewed in my presence then.
6 At that point in time, we did try to process the vehicle by
7 obtaining fingerprints because there was no one around the
8 vehicle at the time. No one knew who the vehicle belonged
9 to. At that point in time, the fingerprint process yielded
10 negative fingerprints. There appeared to be smudges on the
11 outside of the vehicle and on the trunk area.

12 Q Can you always get fingerprints even if someone has
13 touched something? And what's involved in the variables of
14 being able to print something?

15 A No. I mean you have to have a good print and if
16 someone had on gloves, for instance, you could get smudges
17 from that, but we did not, we were not able to yield a
18 positive fingerprint that we would be able to test.

19 At that point in time, we proceeded and made a
20 decision that the vehicle would need to be towed. At that
21 point in time, we inventoried the vehicle. Upon the
22 inventory of the vehicle, which is done in our normal
23 course of business, anytime that we're towing a vehicle
24 from the scene, at that point in time, we inventory. What
25 we mean by inventory, we took the -- a record of the

Lamaz Robinson - Direct Examination by Mr. Maye

1 contents that was inside of the vehicle.

2 MR. CASTO: Your Honor --

3 THE COURT: Yes, sir.

4 MR. CASTO: We renew the part of the objection that
5 was in our pretrial motion.

6 THE COURT: All right. I renew my previous
7 pretrial rulings.

8 MR. CASTO: Yes, sir.

9 THE COURT: You may continue.

10 THE WITNESS: Yes, sir. Let me back up for a
11 second. The first thing I did was collected those items
12 that I found outside of the vehicle, which was the shirts
13 and the gloves and the ski masks and stuff and the boots
14 and I placed those in some brown evidence bags. I secured
15 those items in the trunk of my patrol vehicle. At that
16 point in time, the only two officers in the police that was
17 assigned a specific vehicle was the detective vehicle and
18 the chief of police had his own vehicle that was assigned
19 to them.

20 So I secured those items in the trunk of my
21 vehicle. Then we went to proceed to process the vehicle
22 with the fingerprints and then inventory the vehicle due to
23 the vehicle being towed. Upon inventory of the vehicle,
24 when we looked in the inside before we did the inventory,
25 we could see that there was a black, white and red striped

Lamaz Robinson - Direct Examination by Mr. Maye

1 shirt and a black hat on the rear passenger side seat. We
2 then went into the vehicle and was inventorying the vehicle
3 where we found the wallet and the identifications and some
4 jewelry, cell phones, in the center console that you lift
5 up where you normally rest your arm at. There was also
6 some -- a red in color cell phone, which is State's Exhibit
7 13 that was in the floorboard of the passenger seat. In
8 the dashboard we were able to obtain some paperwork from
9 the dashboard, which was a bill of sale and a insurance
10 card.

11 Q I show you State's 14 and 15.

12 A Yes, sir, this is what we obtained. During a
13 further investigation when we inventoried the trunk of the
14 vehicle, we discovered that it appeared to be the same type
15 of dirt and stuff that was recovered from the bricks that
16 was at the location of the IGA Food Store. At that point
17 in time, we made a decision that this may be connected and
18 instead of having the vehicle towed fully, we towed the
19 vehicle to our impound lot over here at the Edgefield
20 County Sheriff Office.

21 During the course of that time in doing the
22 investigation, we also was able to obtain further
23 information of who the vehicle was registered to and we
24 spoke with that person.

25 Q Okay. Let me ask you this. Now you had

Lamaz Robinson - Direct Examination by Mr. Maye

1 individuals when you went out there that were in flight and
2 you had the bloodhound team on the ground at that time,
3 correct?

4 A That is correct.

5 Q Okay. Was it important to you to make some sort of
6 identification of the vehicle, who were the potential
7 occupants of the vehicle?

8 A That's correct.

9 Q You had a paper tag on there that you couldn't run
10 initially?

11 A That's correct.

12 Q Okay. Based on the need, given the fact that you
13 had people that were actually running, to assist you
14 further in your investigation, did you look at the cell
15 phones that you saw in the vehicle? Describe the condition
16 of the relevant cell phones. You've already told us that
17 the red one was in the passenger seat --

18 A Right.

19 Q -- which is 13. Let's talk about the other one,
20 the one that is some kind of Palm Trio. Let's talk about
21 that one.

22 A The Palm Trio cell phone was in the arm rest with
23 the wallet and the jewelry and the -- some keys and some
24 other stuff that was in the center armrest. When we picked
25 up that phone, it read that this device belonged -- was

Lamaz Robinson - Direct Examination by Mr. Maye

1 licensed or something to that effect -- to Maurice Anthony
2 Odom, please enter access key which nobody had an access
3 key to enter anything.

4 Q But that was just when you picked the phone up
5 initially, that's what comes up initially?

6 A That is correct.

7 Q Okay. Let me ask you this. We'll try one more
8 time. Did the -- was the phone on, switched on, you know
9 how the cell phone is on and the light blinking and on; was
10 it on at the time that you found it?

11 A It was.

12 Q Okay. You've put the batteries that came out of it
13 that night back in it now; is that correct?

14 A That is correct. And it says this device owned by
15 Maurice Anthony Odom and a password to access this device.

16 Q And that's what you saw that same night?

17 A Yes, sir.

18 Q You recharged that phone since that time?

19 A No, sir.

20 Q Okay. You took the battery out of it. Was it on
21 and it came up with his name on it?

22 A Yes, sir.

23 Q I'm going to shut it down. The red phone you got
24 out of there, how were you able to get tracked back to Mr.
25 Donaldson; you already had Mr. Odom's phone there, all the

Lamaz Robinson - Direct Examination by Mr. Maye

1 ID cards, his cell phone switched on, all that stuff in the
2 car that pointed to him; what got you on Mr. Donaldson?

3 A We -- we did look in the phone and we noticed that
4 there was a contact that says momma, mom, so we --

5 Q On the red phone?

6 A Right.

7 Q Okay.

8 A So we called momma to see who momma was and momma
9 identified herself and told us who her son was.

10 Q Okay. And that's how you caught Mr. Donaldson?

11 A That's correct.

12 Q Now, you brought him in and he initially denied it,
13 correct?

14 A That's correct.

15 Q But in that same conversation, he told you
16 essentially the same version of the facts that he testified
17 to in this case?

18 A That is correct.

19 Q Okay. You brought charges in this case; you
20 initiated charges against Mr. Donaldson for the burglary
21 and the charges at the IGA; did you not?

22 A I did.

23 Q And you also brought the charges again Mr. Odom?

24 A I did.

25 Q Okay. Let me ask you this: Did you get a

Lamaz Robinson - Direct Examination by Mr. Maye

1 Schmerber Order to basically -- as the items -- I'll back
2 up and ask you this: The items in State's 18 and 17, you
3 didn't change or alter those in any way while they were in
4 your custody, right?

5 A No, sir.

6 Q And those were sealed up in the evidence bag; we
7 know they're torn open now, but did you seal them up in
8 evidence bags?

9 A I did. I sealed those evidence bags when I got
10 back to my office and I placed those evidence bags in a
11 evidence locker.

12 Q Okay. And It's already been testified in this
13 case, you didn't take them to SLED, but Chief Aston took
14 them to SLED and delivered them for forensic processing to
15 South Carolina Law Enforcement Division, correct?

16 A That's correct.

17 Q This being a major crime, you had already attempted
18 to lift fingerprints and you could not, correct?

19 A That's correct.

20 Q Did you obtain an order with an eye towards DNA
21 testing to see if you could link any of these items of
22 clothing found there at the crime scene?

23 A I did.

24 Q Did you obtain a Schmerber Order from a judge? An
25 order to allow you to get basically a swab from a living

Lamaz Robinson - Direct Examination by Mr. Maye

1 person, for you to get blood or scraping inside the mouth?

2 Did you obtain a valid order from a circuit judge for that?

3 A I did.

4 Q Okay. Let me ask you this: After you obtained
5 that Schmerber Order -- I'm going to show you State's 20.

6 I'm going to show you State's 20 for ID at this
7 point in time. Tell me what State's 20 is in relation to
8 the buccal swab you collected?

9 A State's 20 would be the swabs that I collected on
10 June the 13th, 2013 at 7:42 p.m. at the Saluda County
11 Detention Center from Mr. Odom.

12 Q Okay.

13 MR. MAYE: I'm going to move to admit the swabs --
14 that's your writing on there and the identification of the
15 swab kit, the buccal swab kit that you did on Mr. Odom?

16 THE WITNESS: It is.

17 THE COURT: Mr. Casto.

18 MR. CASTO: There's no objection, Your Honor.

19 THE COURT: All right. State's 20 is in evidence
20 without objection.

21 (State's Exhibit Number 20 was entered into
22 evidence.)

23 BY MR. MAYE:

24 Q So what do you do, Investigator Robinson, once you
25 get an order allowing you to take the biological sample

Lamaz Robinson - Direct Examination by Mr. Maye

1 from somebody with a buccal swab? How do you conduct and
2 carry that out? What do you do?

3 A I went and met with our crime scene investigator,
4 which is Curtis Morris, and he gave me some buccal swabs
5 that have some caps on the tips of them. I got those, went
6 to Saluda County Detention Center. These are sterilized
7 Q-tip swabs is basically what it is, and spoke with Mr.
8 Odom, showed him the order that I had, provided him a copy
9 of the order from the judge, took those samples by swabbing
10 the inside left cheek of his with one and I swabbed the
11 inside right cheek with the other one. At that point in
12 time, I allowed those to air dry. I placed them back in
13 the capped tubes, snapped the cap back together, placed
14 them into the brown paper bag and I took them to SLED on
15 the next day.

16 Q Did you seal them up once you swabbed the inside of
17 his mouth, that left cheek on the inside?

18 A I did. I sealed them with evidence tape.

19 Q Okay. Did you change or alter them in any way
20 while you had them or taking them?

21 A No, sir.

22 Q And you delivered them to SLED on what day to
23 intake processing at SLED?

24 A Yes, sir, on the 14th if I'm not mistaken, June the
25 14th, 2013.

Lamaz Robinson - Direct Examination by Mr. Maye

1 Q Let me show you State's 19, which is -- and ask
2 you -- let me ask you if you can identify the items in 19?

3 A Yes, sir, those are the boots that we recovered
4 from the inventory in the door.

5 Q Right at the door those are the boots you
6 recovered?

7 A Yes, sir.

8 MR. MAYE: I'm going to move to admit these into
9 evidence too at this time, subject to any objections?

10 MR. CASTO: Without objection, Your Honor.

11 THE COURT: State's 19 is in evidence without
12 objection.

13 (State's Exhibit Number 19 was entered into
14 evidence.)

15 BY MR. MAYE:

16 Q Now, Chief Robinson, you submitted items of
17 clothing and evidence that you recovered -- we have the
18 clothing evidence on the SLED processing with an eye toward
19 specifically if you can extract DNA evidence, right?

20 A That is correct.

21 Q Okay. And you needed a known comparison swab from
22 Mr. Odom in this case to check to see if you could link him
23 to the items of clothing in this case, correct?

24 A That is correct.

25 Q Investigator Robinson, please answer any questions

Lamaz Robinson - Cross-Examination by Mr. Casto

1 that the defense has for you in this case. Thanks.

2 THE COURT: Mr. Casto.

3 MR. CASTO: Your Honor, May we approach?

4 THE COURT: Yes, sir, go ahead.

5 (There was a bench conference out of the hearing of
6 the jury and the court reporter.)

7 MR. CASTO: Thank you.

8 THE COURT: Thank you.

9 MR. CASTO: Yes, sir.

10 **CROSS-EXAMINATION**

11 BY MR. CASTO:

12 Q Officer Robinson, how are you?

13 A How are you doing, sir?

14 Q Good. I want to take you back to your arrival at
15 this incident location at the store, okay?

16 A Uh-huh (affirmative response).

17 Q You had received calls the night of the incident on
18 your cell phone; is that right?

19 A That is correct.

20 Q And ultimately you were called, you woke up and you
21 went to the store that night?

22 A I did.

23 Q Now as far as our timeline of retelling the story,
24 you arrived, you know, 4:45, 4:46, something like that, to
25 the store, right?

Lamaz Robinson - Cross-Examination by Mr. Casto

1 A That is correct.

2 Q I believe that you stayed there, not for a long
3 time, approximately 15 minutes?

4 A 15 to 20 minutes, that's correct.

5 Q 15 to 20 minutes?

6 A That's correct.

7 Q Okay. And then you left and you went to the car,
8 right?

9 A That's correct.

10 Q Giving us, you know, just a few minutes after about
11 5 a.m. when you make it to the car?

12 A Yes, sir, approximately 5:01, 5:06, 15 to 20
13 minutes.

14 Q All right. That's fair to say though, right?

15 A Sure.

16 Q Now just to -- you gave us a lot of information to
17 flush that out. You weren't the one that actually
18 processed the store, right?

19 A No, I did not process the store.

20 Q That was actually Officer Aston, right?

21 A Yes, Chief Aston had been to the store, but --

22 Q Okay.

23 A -- what do you mean by process.

24 Q In other words, he looked, he stayed at the store
25 and basically you were largely responsible for the items

Lamaz Robinson - Cross-Examination by Mr. Casto

1 with regards to the car?

2 A I was at the car, but he didn't stay at the store.
3 There was really nothing to process at the store other than
4 a broken window.

5 Q In -- in other words, you didn't -- you didn't stay
6 at the store and process any -- any of that stuff?

7 A No.

8 Q You focused on the car is all I'm asking?

9 A Right.

10 Q Right?

11 A That's correct.

12 Q And it's -- for instance, I think it's Officer
13 Aston that took pictures at the store, but you took
14 pictures of the car; is that right?

15 A That is correct.

16 Q Okay. Now you had testified that you're not aware
17 of -- well you're not aware of any fingerprints found at
18 the store. Let's get that out of the way.

19 A No.

20 Q And you're not aware of any DNA found at the store?

21 A No.

22 Q Okay. Now you arrived at the car, there's already
23 a good amount of law enforcement out there from several
24 different agencies, right?

25 A That is correct.

Lamaz Robinson - Cross-Examination by Mr. Casto

- 1 Q You've got -- and correct me if I'm wrong here --
2 Edgefield Sheriff's Office, Edgefield Police Department,
3 right?
- 4 A That's correct.
- 5 Q Obviously Johnston officers, right?
- 6 A That's correct.
- 7 Q Even some help from Saluda?
- 8 A That's correct.
- 9 Q The bloodhounds are also out there, right?
- 10 A That's correct; they're part of Edgefield County
11 Sheriff Office.
- 12 Q Okay. And before your arrival, you don't know --
13 because you weren't there -- you don't know for sure if any
14 of the items were moved around prior to your arrival, do
15 you?
- 16 A I know what I was briefed on and that was that
17 nothing had been touched.
- 18 Q Okay. You only know what you were told; is that
19 right?
- 20 A Right. That's correct.
- 21 Q Okay. Now I want to focus on the car and that's
22 really the bulk of what you did; is that fair to say?
- 23 A Sure.
- 24 Q There were items found in that car, there were
25 items found outside of that car, right?

Lamaz Robinson - Cross-Examination by Mr. Casto

1 A That is correct.

2 Q And your role -- well, at first, maybe not first,
3 but one of your roles that evening was you did fingerprints
4 on the outside of the car, right?

5 A That is correct.

6 Q And in those pictures that we see, that you've
7 seen, we see this kind of black cloud of powder around each
8 of the four door handles, right?

9 A Uh-huh (affirmative response). Are you referring
10 to State's 89.

11 Q Okay. And that's, basically we're looking at your
12 work when we see the cloud around the door handle?

13 A Yes, sir.

14 Q You didn't get any fingerprints, only got smudges
15 off of the four door handles, right?

16 A That is correct.

17 Q Didn't fingerprint around the trunk area; is that
18 right, we don't see a smudge there, do we?

19 A No.

20 Q Didn't fingerprint around the top of the trunk area
21 I don't believe?

22 A No.

23 Q Okay. And ultimately that's on the outside of the
24 car. You looked inside the car too, right?

25 A That is correct.

Lamaz Robinson - Cross-Examination by Mr. Casto

1 Q And so there's no confusion whatsoever, there's
2 clothes found outside the car and there's clothes inside
3 the car, right?

4 A That is correct.

5 Q Inside the car, to be clear, we have that red,
6 white and black shirt draped over top of that black -- it's
7 like a baseball cap?

8 A It's a cap.

9 Q Not to be confused with a ski mask or anything like
10 that?

11 A No, sir.

12 Q Now, one thing, I don't know if it's clear. You
13 found those items, the red, white and black striped shirt
14 and the baseball cap, you found those items in the rear
15 passenger seat of that Cadillac, right?

16 A That is correct.

17 Q Okay. There were other items found inside the
18 vehicle such as jewelry, I believe, right?

19 A That is correct.

20 Q And most all that jewelry didn't have any
21 identifying characteristics, did it?

22 A No, sir.

23 Q It -- well --

24 A Well, there's one ring, that's --

25 Q There was -- there was a ring that had the name

Lamaz Robinson - Cross-Examination by Mr. Casto

1 Bradley Cribb on it; is that right?

2 A That is correct.

3 Q You found cell phones and a wallet. There's some
4 \$19 in the wallet you found, right?

5 A That is correct.

6 Q And then we come to the clothing found outside of
7 the car, right?

8 A We came to the clothing before all that.

9 Q Well, right, you see it before, but ultimately in
10 terms of organizing everything, let's talk about the
11 clothing found outside.

12 A Okay.

13 Q You found a blue shirt and found a black shirt,
14 right?

15 A That is correct.

16 Q The dark jeans?

17 A That's correct.

18 Q Now, to be clear, you only found one pair of
19 gloves; is that right?

20 A I would have to look back at it, but yeah, it was
21 one or two pair of gloves.

22 Q You're not sure?

23 A Not without refreshing my memory. I can pull it
24 and tell you exactly how many we found if you want me to.

25 Q Well, all the items that you found, you submitted

Lamaz Robinson - Cross-Examination by Mr. Casto

1 later to DNA testing, right?

2 A Right, we had it submitted for -- yeah.

3 Q Okay. All right. And you recall one pair of
4 gloves found submitted?

5 A Right. Well, once again I can pull it and tell you
6 how many was submitted.

7 Q Sure. Take your time, yes, sir. It's not
8 cheating.

9 A (Looking.) That is correct.

10 Q Okay. And along the same lines, you only found, as
11 I understand it, one ski mask found that evening, right?

12 A That is correct.

13 Q And as you just testified, all these items are
14 tested for DNA, right?

15 A They were.

16 Q And you, in 2013, got a sample of DNA from Maurice;
17 is that right?

18 A That's correct.

19 Q You didn't get a sample from anyone else, right?

20 A I did not.

21 Q When you found this clothing on the outside of the
22 car, it was described as wet or damp but what appeared to
23 be body sweat; is that right?

24 A That's correct.

25 Q There was -- there was that pair of boots, I'm

Lamaz Robinson - Cross-Examination by Mr. Casto

1 sorry, I almost forgot about there was a pair of boots
2 found too, right?

3 A That's correct.

4 Q The dark jeans and the boots are found on the
5 driver's side of the car?

6 A That is correct.

7 Q Right. And those two items are just like we see in
8 the pictures that's how close they were when you saw them?

9 A That's correct.

10 Q Okay. Now just to be clear, those items, cartons
11 of cigarettes were not, you know, found inside or around
12 the car in any way, shape, or form, were they?

13 A That is correct.

14 Q They weren't located by the wood line that evening,
15 right?

16 A No, sir.

17 Q They weren't found by officers, any officer other
18 than you, right?

19 A They were never found, period.

20 Q Okay. And in 8 years this case has been pending,
21 they were never found?

22 A No.

23 Q Described the clothes, the way the jeans fell as
24 almost as if someone had been interrupted in changing; is
25 that a fair statement?

Lamaz Robinson - Cross-Examination by Mr. Casto

1 A I don't know if you can say interrupted in
2 changing. I guess you can with Deputy Miller saying that
3 when he shined the spotlight on them, they were changing
4 and they subsequently took off running.

5 Q Okay. And you personally, you know, never saw
6 anyone in the car that night, right?

7 A No.

8 Q You don't know how long the car had been parked at
9 that location, do you?

10 A I do not.

11 Q You don't know for sure who drove the car that
12 night?

13 A I know what I was informed.

14 Q You only know what you were told personally
15 speaking, right?

16 A That's correct. Not my personal own self seeing.
17 I didn't see who drove the car.

18 Q You don't have personal knowledge of the occupants
19 of the car that night?

20 A I mean, it depends on how you classify personal
21 knowledge; whether it comes from my own way of knowing or
22 whether somebody told me, it's knowledge that I had
23 knowledge that Maurice Odom and Brandon Donaldson was in
24 that vehicle.

25 Q Coming from your own personal knowledge, not what

Lamaz Robinson - Cross-Examination by Mr. Casto

1 somebody told you, but you don't, you know, personally
2 observe anybody in the car?

3 A No, I don't personally observe anybody.

4 Q Okay. And you ultimately, your testimony is, you
5 only know what you were told; is that right?

6 A That is correct.

7 Q A couple of weeks later, you spoke with Brandon
8 Donaldson, right?

9 A That's correct.

10 Q After a couple of weeks, I'm sorry. A couple of
11 weeks after this happened, you spoke with Brandon
12 Donaldson, right?

13 A November the second, to be exact.

14 Q Okay. And this happened the 17th, so not that long
15 after, right?

16 A That's correct.

17 Q And he was placed in jail in Barnwell, I believe,
18 so that you could speak with him; is that right?

19 A Yes, sir. He was placed in Barnwell County's
20 Detention Center.

21 Q Okay.

22 A Not for me to speak with him, for me to go pick him
23 up because he was on NCIC as wanted.

24 Q Okay. But basically he's sent from there down to
25 you all at Johnston Police Department; is that fair to say?

Lamaz Robinson - Cross-Examination by Mr. Casto

1 A That is correct.

2 Q All right. And you met with him -- originally you
3 and I believe it was Officer Shawn Campbell that were in
4 the room, right?

5 A That is correct.

6 Q And there's two, just the two officers and him in
7 this room?

8 A That's correct.

9 Q And he talks to you about all of this, but there's
10 a request made by him to just speak with you in private,
11 right?

12 A He did ask to speak with me alone.

13 Q Okay. And at that point, Officer Campbell leaves
14 and it's just y'all two in there, right?

15 A That is correct.

16 Q Okay. Now he does not make a written statement to
17 you; it's only verbal; is that right?

18 A That's correct.

19 Q Okay. And this interview that takes place of you
20 questioning him, it was not videotaped that you recall,
21 right?

22 A It was not.

23 Q It was not audio recorded as you recall?

24 A It was not.

25 Q Okay. Based on your interview with Brandon

Lamaz Robinson - Cross-Examination by Mr. Casto

1 Donaldson, did -- did -- did you know or have prior
2 knowledge that he had some mental health problems at the
3 time?

4 A I did not and he didn't demonstrate to me that he
5 had any problems. He didn't demonstrate that he was under
6 the influence of anything or anything of that sort.

7 Q Well, did you talk to him about taking any mental
8 health medication or being up under the -- seeing the
9 Department of Mental Health at all; did that come up that
10 you recall?

11 A I can't talk to him about something I don't know
12 about.

13 Q Okay. So you're -- that didn't come up?

14 A No.

15 Q Now, how long, approximately, do you recall that
16 conversation with Brandon Donaldson lasting?

17 A He talked to me maybe 20, 25, 30 minutes.

18 Q Okay. 20, 25, approximately 20, 25, 30 minutes?

19 A That's correct.

20 Q And in that amount of time, he tells you about what
21 happened without any promise of leniency from you; is that
22 right?

23 A That is very correct.

24 Q Prior to that discussion, during that conversation,
25 it was you that reminded him what he was charged with and

Lamaz Robinson - Cross-Examination by Mr. Casto

1 what he could be facing, right?

2 A I don't think I reminded him. I told him because
3 he asked me what was he charged with.

4 Q Okay. But bottom line, those were, you know, you
5 told him what he was charged with, what he was facing,
6 right?

7 A He asked me what was he being charged with and what
8 was the punishment for it and I explained all that to him.

9 Q And you told him?

10 A I did.

11 Q Okay. And eventually he tells you about his
12 involvement in this incident, correct?

13 A He tells me about him and his brother's involvement
14 in this incident.

15 Q With Maurice, right?

16 A That's correct.

17 Q Now he talks to you about it eventually, but he
18 doesn't open up at first; is that fair to say?

19 A That's very fair.

20 Q And it's your testimony, I believe that -- that you
21 stated this, but during your one-on-one conversation, that
22 you didn't detect any type of indications of mental health
23 problems with Brandon Donaldson?

24 A No.

25 Q In your 20, 25, 30 minute conversation?

Lamaz Robinson - Cross-Examination by Mr. Casto

1 A No.

2 Q And you asked him about specifics in this incident.
3 There's a point in time when you asked him about those
4 cigarettes, right?

5 A I did.

6 Q And you asked him obviously where they might be?

7 A Uh-huh (affirmative response).

8 Q And he tells you that they're in the wood line by
9 the car; is that right?

10 A He said that they was left in the wood line near
11 the vehicle, where the vehicle was located, not by the car,
12 but near where the vehicle was located.

13 Q Okay.

14 A Near there.

15 Q Wood line by -- near where the vehicle --

16 A Right, is located.

17 Q That's what he told you?

18 A Right.

19 Q And there was a time, if I'm not mistaken, that
20 he -- that y'all took him out to where he said the
21 cigarettes should be located; is that right?

22 A We went out to where we found the vehicle at and
23 looked for cigarettes where he said that he had dropped his
24 off at. We did not find any cigarettes at that point in
25 time just like we didn't find any cigarettes on the night

1 the bloodhound team was tracking.

2 Q Okay. And Officer Campbell was with you then, it
3 wasn't one on one, right?

4 A That is correct.

5 Q And those cigarettes weren't there; those
6 cigarettes were never found, right?

7 A That's correct.

8 MR. CASTO: I beg the Court's indulgence.

9 Thank you, Officer Robinson.

10 THE WITNESS: You're very welcome.

11 MR. CASTO: That's all the questions I have.

12 THE COURT: Redirect?

13 MR. MAYE: Nothing, Your Honor. Thank you.

14 THE COURT: You may step down.

15 THE WITNESS: Yes, sir.

16 THE COURT: Madam Forelady, ladies and gentlemen of
17 the jury, perhaps now would be a good time to take our
18 luncheon recess. I remind you during this recess, you may
19 not discuss this case with others, fellow jurors, lunch
20 mates, family, friends or anyone else. If anyone tries to
21 talk with you about the case, please report it to me. Do
22 not read, watch, or listen to any news accounts of the
23 case, should there be any. Do not do any independent
24 investigation or any investigation on the internet.

25 You're very familiar with the information that is

1 prohibited although that is not an expansive list, there is
2 limits to just those areas. Do not do any investigations
3 as I have said on numerous occasions on the internet or
4 otherwise. Remember to keep an open mind. Do not begin
5 your deliberations until you have heard all the evidence,
6 the testimony, closing arguments and instruction on the law
7 by the Court and then directed by the Court to begin your
8 deliberations with your fellow jurors.

9 With all that said, I'd ask you to please be back
10 at 2:30. If you'd please be back promptly at 2:30. I hope
11 you all have a pleasant lunch. Thank you very much. You
12 are excused.

13 (The jury left the courtroom at 12:49 p.m.)

14 THE COURT: All right. Court will be in recess
15 until 2:30.

16 (A recess was observed for lunch.)

17 THE COURT: All right. Bring us our jury.

18 (The jury entered the courtroom at 2:38 p.m.)

19 THE COURT: All right. Welcome back, ladies and
20 gentlemen, hope y'all had a pleasant lunch. We now will
21 continue with the trial of the case by the presentation of
22 evidence and testimony by the State in its case in chief.
23 If you would please continue to give the parties your
24 complete and undivided attention.

25 Solicitor, you may call your next witness.

1 MR. MAYE: If it please the Court, Your Honor. We
2 have two items of evidence that I intend to introduce at
3 this time by stipulation. They are marked right now as
4 State's Exhibit No. 29 and State's Exhibit No. 28. I'll
5 hand these to Mr. Casto to review.

6 MR. CASTO: Without objection and we will
7 stipulate.

8 THE COURT: All right. May I see them, please?

9 MR. MAYE: Yes, sir, Your Honor.

10 Your Honor, may we approach.

11 THE COURT: I guess, yes, sir.

12 (There was a bench conference out of the hearing of
13 the court reporter and jury.)

14 THE COURT: All right. State's 28 and 29 is into
15 evidence by stipulation agreement of the parties.

16 (State's Exhibit Number 28 and Number 29 were
17 entered into evidence.)

18 MR. MAYE: Your Honor, at this time, State's
19 Exhibit No. 28 and State's Exhibit No. 29, to avoid calling
20 the Clerk's of Court from Bamberg County, South Carolina
21 and Barnwell County, South Carolina, that I did have listed
22 as witnesses in this case, I submitted these to the defense
23 in this case and we've submitted them to the Court as
24 records under seal as official records of the Clerk of
25 Court of Bamberg County, South Carolina and Barnwell

1 County, South Carolina reflecting the seal and stamp of the
2 Clerk of Court of both Barnwell and Bamberg Counties.

3 Your Honor, they're in by stipulation. If there's
4 no objection from the defense, I intend to publish these to
5 the jury in lieu of having that testimony presented.

6 MR. CASTO: There's no objection.

7 THE COURT: Thank you. 28 and 29 is in evidence by
8 stipulation.

9 MR. MAYE: State's Exhibit No. 28 is a -- an
10 indictment, 93-GS-05-196 that reflects a burglary
11 conviction against the defendant in this case, Maurice Odom
12 out of Bamberg County reflecting a prior conviction for
13 burglary in the second degree. By stipulation that is in
14 evidence.

15 The next one is State's Exhibit No. 29 that
16 reflects the indictment and sentence sheet 97-GS-06-035, a
17 Barnwell County indictment sentence sheet against Maurice
18 Odom reflecting a conviction for burglary in the second
19 degree.

20 Both of these convictions predated the 2007 charge
21 for which he is now currently indicted. So two previous
22 convictions, one from Bamberg County, one from Barnwell
23 County; both for burglary, Your Honor, and those are in
24 evidence at this time.

25 THE COURT: Thank you. Thank you very much.

Jessie James Dukes - Direct Examination by Mr. Maye

1 MR. MAYE: The State would call Jessie Dukes to the
2 stand, Your Honor.

3 THE COURT: All right. Mr. Dukes, if you would
4 please come around and be sworn for us please.

5 JESSIE JAMES DUKES,
6 having been sworn, testified as follows:

7 THE CLERK: Please be seated. State your full name
8 and spell your last name.

9 THE WITNESS: Jessie James Dukes. D-U-K-E-S.

10 **DIRECT EXAMINATION**

11 BY MR. MAYE:

12 Q Mr. Dukes, where are you from?

13 A Blackville, South Carolina.

14 Q And what county is that in?

15 A That's in Barnwell.

16 Q In Barnwell County?

17 A Yes, sir.

18 Q Okay. Mr. Dukes, what kind of business have you
19 been in primarily for the last several years?

20 A That's right. Car sales.

21 Q You're a car salesman?

22 A Yes, sir.

23 Q Okay. Tell me where you now operate a car business
24 and where you previously operated a car dealership?

25 A Right now for the last 3 years, I'm operating in

Jessie James Dukes - Direct Examination by Mr. Maye

1 Blackville, South Carolina.

2 Q Okay.

3 A Previous before that we was in, Bamberg County, but
4 Denmark, South Carolina.

5 Q What did you call your business; what was it
6 called?

7 A Duke's Boys Auto Sales.

8 Q Duke's Boys Auto Sales?

9 A Yes, sir.

10 Q Okay. Let me ask you this. I'm going to show you
11 what's already in evidence as State's Exhibit No. 14 and I
12 ask you is that basically the bill of sale reflecting the
13 sale of '94 Cadillac Deville, white in color, four door?

14 A Yes, sir.

15 Q Okay. Who did you sell that car too?

16 A Ms. Temetrius Odom.

17 Q Temetrius Odom?

18 A Yes, sir.

19 Q Who was with her when you sold her that white
20 Cadillac Deville, four door?

21 A Mr. Maurice Odom.

22 Q Maurice Odom was with her and you remember that?

23 A Yes, sir.

24 Q Okay. Is she a customer that you knew and somebody
25 you knew?

Jessie James Dukes - Direct Examination by Mr. Maye

- 1 A Yeah, she's from my hometown so I knew her.
- 2 Q So you knew her?
- 3 A Yes, sir.
- 4 Q Okay. And you know Mr. Odom, the defendant, don't
- 5 you?
- 6 A I know Mr. Odom.
- 7 Q Is he present here in the courtroom; could you
- 8 point him out?
- 9 A Yes, sir, he is. That's him over there.
- 10 Q You talking about the individual in the blue
- 11 shirt --
- 12 A Yes.
- 13 Q -- seated down at the end of the table?
- 14 A Yes, sir.
- 15 Q That's Maurice Odom?
- 16 A Yes, sir.
- 17 Q Okay. And let me show you State's Exhibit No. 5
- 18 that's already into evidence. Is that a photograph and the
- 19 paper tag for the '94 white Cadillac Deville that you sold
- 20 to Temetrius while Mr. Odom was present?
- 21 A Yes, sir, that's the car.
- 22 Q That's the car and that's the paper tag?
- 23 A That's the paper tag also.
- 24 Q Answer any questions the defense has for you.
- 25 Thank you for coming here, Mr. Dukes.

Doris Yarbrough - Direct Examination by Mr. Young

1 A You're welcome.

2 THE COURT: Mr. Drylie?

3 MR. DRYLIE: No questions, Your Honor.

4 THE COURT: Thank you. Thank you very much, Mr.
5 Drylie.

6 Mr. Dukes. You may step down and you may be
7 excused.

8 THE WITNESS: Okay. Good.

9 THE COURT: Thank you for being with us this
10 afternoon.

11 THE WITNESS: Okay. Thank you.

12 THE COURT: All right. You may call your next
13 witness.

14 MR. YOUNG: The State calls Ms. Doris Yarbrough.

15 Ms. Yarbrough, will you take the stand and be sworn
16 please, ma'am.

17 DORIS YARBROUGH,

18 having been duly sworn, testified as follows:

19 THE CLERK: Please be seated. State your full name
20 and spell your last name for the record please.

21 THE WITNESS: My name is Doris Yarbrough.

22 Y-A-R-B-R-O-U-G-H.

23 **DIRECT EXAMINATION**

24 BY MR. Young:

25 Q Ms. Yarbrough, will you tell the Court where you

Doris Yarbrough - Direct Examination by Mr. Young

1 work and for how long?

2 A I'm employed with the South Carolina Law
3 Enforcement Agency also known as SLED, and I have been
4 there for -- it will be 8 years on the 17th of this month.

5 Q Can you tell the Court what you do for a living
6 with SLED as an occupation?

7 A I'm a forensic technician in the Evidence Control
8 Department, which means we log in evidence throughout the
9 State of South Carolina for all law enforcement agencies.

10 Q All right. So, ma'am, that has to be a busy job,
11 given you handle all law enforcement agencies, correct?

12 A Yes, sir.

13 Q Now, to keep track of matters, do you not have some
14 method that you use to track evidence as it comes in?

15 A The evidence is tracked through a -- our evidence,
16 our computer system and each case is given a unique barcode
17 label that follows that item -- the case throughout the
18 lab.

19 Q So how does the number or whatever is used to
20 generated here, how is it generated? By what means?

21 A Once the case is logged into the computer, the
22 computer signs it -- assigns it a unique barcode which we
23 refer to as a lab number and the lab number as well as the
24 item numbers for the items that are submitted are placed on
25 the package or container and it's tracked throughout the

Doris Yarbrough - Direct Examination by Mr. Young

1 lab as it's scanned and transferred.

2 Q So does that mean that if more than one item on two
3 different dates is submitted, but are waiting for the same
4 investigation, you'll get a basic lab number if it's the
5 same for both or would you get a different lab number?

6 A No, it will be the same lab number.

7 Q So you get one lab number and it would be the same
8 number no matter how many other submissions come along?

9 A Correct.

10 Q Related to that one case?

11 A Correct.

12 Q All right. Let me direct your attention to June
13 30th, 2011 about 11:19 a.m., did you receive submissions
14 from Chief Chris Aston of the Johnston Police Department?

15 A I did.

16 Q Can you describe in generic form just what he came
17 in with?

18 A He came in with packaging containing some clothing
19 items.

20 Q Uh-huh (affirmative response). Okay. And now tell
21 me, tell me what happens when you have clothing items and
22 he comes in with packaging. What happens to that?

23 A We take our items on a said to contain basis, which
24 means we don't actually always see the items that they
25 have, but we take, based on the paperwork and how they have

Doris Yarbrough - Direct Examination by Mr. Young

1 it listed, we take those packaging and those items and
2 they're entered into our computer system. And then once
3 that is logged in, it generates a barcode.

4 In this case I would had taken some bags that had
5 clothing items in it, placed it into a box. I seal all the
6 edges on the box with regular tape, packing tape. Then I
7 seal it again with our SLED evidence tape and the
8 submitting officer then initials and dates that tape for
9 that very day.

10 Q Thank you, ma'am. Now I'd like to refer to a
11 specific lab number, that being L1107497?

12 A Yes, sir.

13 Q Do you reflect some entry from Mr. Aston on that
14 day or Chief Aston on that day?

15 A I do.

16 Q What exactly did he bring to you in terms -- did
17 you -- can you described him, taking I guess what he said
18 he had; did you have items listed for that particular --

19 A He did. He had each item listed out.

20 Q Okay. Briefly tell the Court what they were.

21 A He had a blue long sleeve shirt, a black long
22 sleeve shirt, a black ski mask, one pair of gloves, a red,
23 black and white striped shirt, a pair of black jeans, and a
24 black hat.

25 Q And I believe you said they were in some kind of

Doris Yarbrough - Direct Examination by Mr. Young

1 packaging?

2 A They were -- I -- I'm -- I can't remember exactly
3 the packaging they would have been in at that time, but I
4 would imagine they would have been in paper bags.

5 Q You -- you don't -- you don't accept things that
6 aren't sealed up; is that correct?

7 A No, sir, we do not.

8 Q Okay. So they would have been sealed up?

9 A Yes, sir, they would have.

10 Q All right. And then you placed them in a box you
11 said?

12 A I -- yes, sir, I would have taken those bags and
13 placed them into the box and then sealed the box. Since
14 they're all the same type of items that can go to the same
15 evidence area in our evidence room or to the same,
16 processing, I would put them all together.

17 Q Okay. So I'm just going to go ahead and get to the
18 point here. Would -- would you be able to recognize that
19 box again if you saw it?

20 A I would recognize the barcode and label that would
21 have been placed on that box.

22 Q All right. Let me show you what's been marked --
23 MR. YOUNG: I'm sorry, Your Honor I didn't even
24 look at it.

25 BY MR. YOUNG:

Doris Yarbrough - Direct Examination by Mr. Young

1 Q I'm going to hand you what's been marked as State's
2 Exhibit Number 26. I would like you to examine this and
3 tell me if you can recognize it by sealing, numbers or any
4 other identification.

5 A This yellow barcode label that's on this package
6 and then these letters, this is my handwriting which means
7 it's going to the evidence processing area of our evidence
8 room.

9 Q Okay. Is that the box that you received and or I
10 should say items placed into that box --

11 A I placed them in this box, yes, sir.

12 Q And that's the box?

13 A Yes, sir, it's got my handwriting on it.

14 Q And you're the one that sealed it up?

15 A Yes, sir.

16 Q Are they your initials on there?

17 A I wouldn't have my initials on there, but the
18 submitting officer's initials would have been on this
19 evidence tape.

20 Q Okay.

21 A Like that.

22 Q Now, that box is open, correct?

23 A Yes, sir, it is. Actually that's his initials
24 right there.

25 Q That's you recognized -- you placed it --

Doris Yarbrough - Direct Examination by Mr. Young

1 A Right there.

2 Q -- and the date and time?

3 A Yes, sir.

4 Q Okay. And so once -- once you place it in,
5 these -- these items in there -- tell me how many items
6 were submitted on that day?

7 A Seven.

8 Q Seven. So each one of the items that were in that
9 box were listed?

10 A Correct.

11 Q All right. Placed in the box, sealed and from --
12 where does it go; where, where does it go after that?

13 A Once it's been entered into the computer system it
14 is then in my custody and when I took that box into our
15 secure evidence room, which is within our office, I would
16 have transferred it, I'd have to scan it to a shelf and
17 scan that barcode label to place it on that shelf.

18 Q Yes, ma'am. Now, this may seem trivial, but I'm
19 going to ask a specific -- would you have changed anything
20 in those bags before you placed them in the box?

21 A No, sir, I would not have.

22 Q Did you do such a thing?

23 A No, sir.

24 Q You would have lost your job if you had?

25 A Yes, sir.

Doris Yarbrough - Direct Examination by Mr. Young

1 Q Okay. So once it's in this box sealed up, you say
2 you place it in this evidence locker?

3 A It's in a -- it's a shelf -- it's a secure evidence
4 room in our -- in our office --

5 Q Okay.

6 A -- behind our office and limited access to the four
7 login technicians and part-time evidence person we had at
8 that time.

9 Q How do you go about getting to and from in that,
10 that evidence locker?

11 A It's a secured evidence room. We have an alarm
12 system that has to be disarmed, first thing. Then we have
13 to use our barcoded ID to scan the security scanner, then
14 we have to use a key to get into the evidence room and then
15 parts of our evidence room also have a keyed lock that we
16 have to lock -- unlock in the mornings and lock in the
17 evenings before we leave.

18 Q Now, are you familiar with a person named Pat
19 Crooks?

20 A I am.

21 Q All right. And is she -- what did she do back then
22 in this timeframe we're talking about it?

23 A She was a part-time evidence custodian, which meant
24 she would go to the shelf and retrieve evidence and
25 transfer it to an analyst or a forensic technician; or she

Doris Yarbrough - Direct Examination by Mr. Young

1 would take it from them and put it in the storage or put it
2 in a place maybe to be returned back to the agency.

3 Q Now, this type of evidence here is not the same as
4 some other types of evidence, is it?

5 A No, sir.

6 Q Okay. So this is -- you have places you put things
7 for -- like if you go to the grocery store, if you want to
8 go for milk, you go to a certain area where they have
9 dairy, right? Do you have similar like that with regard to
10 how things operate in there?

11 A We have many areas in our secure evidence room that
12 has -- specifically for those items.

13 Q Okay. And this would go where?

14 A It would belong to a shelf where the boxes for the
15 evidence processing department go.

16 Q All right. Evidence processing, that means
17 somebody is going to do something more to it?

18 A Yes, sir.

19 Q Okay. All right. So how do you, if a person
20 needed to go through evidence processing or a person's
21 going to do something further after evidence processing,
22 how do you know that -- or someone know -- to come and
23 retrieve that?

24 A They send an e-mail to each one of the forensic
25 technicians. We all get to same -- same e-mail requesting

Doris Yarbrough - Direct Examination by Mr. Young

1 that they'd like to pick up a particular package or
2 packaging. Whichever one has the opportunity to go and get
3 it, we'll go and get it and take it off the shelf, scan it
4 to themselves and put it in their custody and then let the
5 person know that needs it that they can come down and pick
6 it up.

7 Q And all of this is tracked to start with?

8 A Yes, sir.

9 Q So there's a way to go back and look at it?

10 A Electronically.

11 Q I mentioned the name Pat Crooks, did Ms. Crooks
12 have anything to do with getting this evidence from one
13 place to another later?

14 A Yes, sir, she did. She is the one who took it off
15 the shelf and transferred it to the evidence processing
16 technician.

17 Q And who is that person you're talking about?

18 A Pat Crooks.

19 Q Pat Crooks, the lady that works in the evidence
20 room; who was the person -- she transmitted or forwarded it
21 to?

22 A She transferred it to Jan Bryson.

23 Q Okay. And she'd be the next person in the process
24 of that evidence collection analysis?

25 A That's correct.

Doris Yarbrough - Direct Examination by Mr. Young

1 Q Okay. All right. Now, at some point down the
2 road, another item in addition to the first seven we talked
3 about which were in that box, and which Ms. Crook
4 transmitted to Ms. Bryson, correct?

5 A Correct.

6 Q There was another item that came in later, correct?

7 A Correct.

8 Q All right. What was that item?

9 A From my chain of custody, it was a buccal swab.

10 Q A buccal swab?

11 A Yes.

12 Q Okay.

13 A It's also known as a DNA standard.

14 Q Okay. And, ma'am, that gets -- you said it had a
15 separate number; what number was that?

16 A It would have been Item Number 8.

17 Q Would you be able to recognize that again if you
18 saw it?

19 A Only by the barcoded label that was on it.

20 Q All right. And what was your job at some point
21 regarding Item Number 8?

22 A Forensic Scientist, Jennifer Clayton, made a
23 request to pick that up.

24 Q And who picked --

25 A And I would have gone to that shelf and got that

Doris Yarbrough - Direct Examination by Mr. Young

1 item and again scanned it to myself and then transferred it
2 to her electronically.

3 Q And you were the person that retrieved it and
4 transferred it to Ms. Clayton?

5 A That would have been me.

6 Q Right. Would you recognize Item 8 again?

7 A By the barcoded label that's on it.

8 Q Would you take a look, that's Item number --
9 State's Exhibit Number 20?

10 A That's Item Number 8.

11 Q And that was what number is on there?

12 A Item Number 8 with a barcoded label.

13 Q And is that the same lab number?

14 A It is.

15 Q And that's the same case this is involved with, the
16 first seven items?

17 A That's correct.

18 Q All right. Did you make any change to the quality,
19 condition or contents of this?

20 A No, sir, I did not.

21 Q Was it in this heat sealed bag?

22 A Yes, sir.

23 MR. YOUNG: Your Honor, we would move into evidence
24 State's Exhibit Number 26?

25 THE COURT: Mr. Casto?

1 MR. CASTO: Without objection.

2 THE COURT: State's 26 is in evidence without
3 objection.

4 (State's Exhibit 26 was entered into evidence.)

5 MR. YOUNG: Your Honor, I have no further
6 questions.

7 Ms. Yarbrough, answer any questions for the defense
8 please.

9 THE COURT: Thank you, Solicitor.

10 Mr. Casto.

11 MR. CASTO: No questions for this witness, Your
12 Honor.

13 THE COURT: Thank you very much, Ms. Yarbrough, for
14 being with us this afternoon. You may step down and you
15 may be excused.

16 THE WITNESS: Thank you.

17 MR. YOUNG: Thank you, Your Honor.

18 Your Honor, at this time, the State's witnesses are
19 basically are on due for tomorrow morning. They will be
20 here at, I told them to be here at 10 o'clock. I can move
21 that up at the Court's direction.

22 THE COURT: 10 o'clock?

23 MR. YOUNG: Yes, sir. The one, the one lady has
24 already been mentioned here. She is coming --

25 THE COURT: She's coming --

1 MR. YOUNG: She's retired and she'll be coming from
2 out of state. I told -- I gave her the time to be here at
3 10 o'clock because she's traveling.

4 THE COURT: You want to start at 10 o'clock then?

5 MR. YOUNG: If we could, Your Honor.

6 THE COURT: All right. I'll get my Law Clerk to
7 come down and cook breakfast or maybe you could -- you and
8 Mr. Casto.

9 MR. YOUNG: I'll be glad to cook.

10 THE COURT: Thank you. Thank you very much.

11 Well y'all saved some time this afternoon not
12 having to call our Clerk from Barnwell, Ms. McElveen.
13 She's a delightful person and Mr. Petie from Bamberg, who
14 is also a delightful person.

15 All right. With that being said, ladies and
16 gentlemen, being that's all -- I'm going to give you --
17 you're going to get off early this afternoon. I -- I'd
18 like to press on; however, the parties, you know, with
19 travel time and stuff like that and the parties have
20 stipulated to State's 28 and 29. So I'm going to release
21 you from your jury service and you can of course sleep in
22 tomorrow and not have to be here until 10 in the morning.

23 Please remember do not discuss this case with
24 anyone, your fellow jurors, family, friends, or anyone
25 else. Do not read or listen to any news reports or

1 accounts of the case. Do not do any independent
2 investigation or any investigation of your own.

3 Remember to keep an open mind. Do not begin your
4 deliberations until you've heard all the evidence, and all
5 the testimony, closing arguments by the parties, and the
6 instruction by the Court on the law and then having been
7 directed by the Court to begin your deliberations with your
8 fellow jurors.

9 With that being said, you may be excused for the
10 afternoon. Please be back promptly at 10 o'clock in the
11 morning. I hope y'all have a pleasant afternoon.

12 (The jury left the courtroom at 3:03 p.m.)

13 THE COURT: All right. Anything else from the
14 State, Solicitor?

15 MR. YOUNG: Not this afternoon, Your Honor.

16 THE COURT: Defense?

17 MR. CASTO: No, sir, Your Honor.

18 THE COURT: All right. Thank you very much. As
19 far as this case is concerned, we will be in recess until
20 10 o'clock in the morning.

21 WEDNESDAY, JUNE 10, 2015

22 THE COURT: Bring our Defendant please.

23 (The jury entered the courtroom at 11:08 a.m.)

24 THE COURT: Good morning.

25 THE JURY: Good morning.

Janice Bryson - Direct Examination by Mr. Young

1 THE COURT: Welcome back. I hope y'all had a
2 pleasant evening. We, of course, are continuing the trial
3 of the case by the presentation of evidence and testimony
4 by the State in its case in chief. If you would, please
5 continue to give the parties your complete and undivided
6 attention as you have throughout the trial of this case.

7 Solicitor, you may call your next witness.

8 MR. YOUNG: The State now calls Ms. Jan Bryson.

9 THE COURT: All right. Please come around and be
10 sworn.

11 JANICE BRYSON,

12 having been sworn, testified as follows:

13 THE CLERK: You may be seated. State your full
14 name and spell your last name for the record.

15 THE WITNESS: My name is Janice Bryson.

16 B-R-Y-S-O-N.D.

17 **DIRECT EXAMINATION**

18 BY MR. YOUNG:

19 Q Ms. Bryson, you currently work -- do you currently
20 work?

21 A No, sir, I'm retired.

22 Q Yes, ma'am. And where did you -- when did you last
23 work and where?

24 A I worked for the South Carolina Law Enforcement
25 Division for 23 years and I retired 3 years ago, this June.

Janice Bryson - Direct Examination by Mr. Young

1 Q Yes, ma'am. And, ma'am, I'm going to, if you can
2 go back with me to 2011 and 2000 -- before that timeframe,
3 what was your job in that timeframe?

4 A While I was employed by SLED, I was a forensic
5 technician in the Evidence Processing Department.

6 Q Now that -- that's a title. What did you actually
7 do?

8 A Whenever items of evidence were submitted to the
9 lab with a request to look for hair, fiber, blood, semen,
10 or possible skin cells, it was my responsibility to process
11 the evidence, collect the evidence and make sure that it's
12 routed to the appropriate department.

13 Q Yes, ma'am. And in doing that job, are you
14 familiar with how they keep track of things by something
15 called a lab number?

16 A Yes, sir.

17 Q All right. And would you be able to tell if you
18 had been involved in a case if I referred to that lab
19 number?

20 A Yes, sir.

21 Q All right. Let me -- let me hand you a little box
22 that's been previously admitted as State's Exhibit Number
23 26? Would you please take a look at that lab and that box,
24 that lab number and that box and tell me if you recognize
25 that?

Janice Bryson - Direct Examination by Mr. Young

1 A Yes, sir, I do.

2 Q You do; all right. How do you recognize this,
3 ma'am?

4 A That's the evidence tape we used to reseal the box
5 and those are my initials.

6 Q Yes, ma'am. All right. Now, you actually sealed
7 this up when?

8 A After I finished processing the evidence.

9 Q Okay. When you receive it though, what condition
10 is it in?

11 A It's a sealed container.

12 Q Was it in -- you got evidence out of this container
13 and processed it?

14 A Yes, sir, I did.

15 Q Do you know what you processed?

16 A Yes, sir.

17 Q Okay. Can you describe what that was?

18 A There were seven items submitted. Do you want me
19 to read each item.

20 Q I tell you what. Let me ask you to do -- first of
21 all, did you get requests to process this evidence?

22 A Yes, sir, I got a request from the DNA Analyst on
23 the case to process Items 3 and 4 -- no, Items 3 and 7.
24 Item 3 was a ski mask and Item 7 was a hat on July the 6th
25 of 2011.

Janice Bryson - Direct Examination by Mr. Young

1 Q Did you get another request too for some other
2 items?

3 A Yes, sir, I did.

4 Q Okay. And was that the rest of the items that were
5 in that box?

6 A Yes, sir; that's correct.

7 Q And so -- and so, just to explain to the jury, you
8 actually are able -- are you able to go back and look at
9 the items to say that these are the items that I processed?

10 A Yes, sir.

11 Q Okay. If I showed you two items or several items
12 like that would you be able to recognize them?

13 A Yes, sir, I would.

14 Q Well, ma'am, I'm going to start with what's been
15 admitted as State's Exhibit Number 17 and I also -- and I'm
16 also going to pass up to you what's been marked as State's
17 Exhibit 18, these bags right here. Can you look at either
18 one of these bags and I'll hold up 17 and show it to you;
19 do you recognize 17?

20 A Yes, sir, I do. These are my initials, the SLED
21 lab number, the item numbers contained in that bag and the
22 day that I processed the evidence or the day that I opened
23 the bag.

24 Q All right. So what item numbers are in this bag
25 according to what you wrote on there?

Janice Bryson - Direct Examination by Mr. Young

1 A Items 1 through 4.

2 Q Okay. And that's State's Exhibit Number 17.

3 Now with regards to State's Exhibit Number 18,
4 which has also been admitted, you should recognize this
5 bag?

6 A Yes, sir, it's the same. My initials, the SLED lab
7 number, the item numbers contained in that bag and the day
8 that I opened the bag.

9 Q Okay. And what item numbers are in this bag?

10 A Items 5 through 7.

11 Q Okay. So you had a total of seven items that you
12 examined on two different days?

13 A That's correct.

14 Q All right. And could you describe what process you
15 went through to examine the contents of these bags and what
16 steps you took to look at and make a determination about
17 what came from or retrieved from those items, out of what
18 process?

19 A Whenever the submitting officer from the law
20 enforcement agency brings the items in, he fills out an
21 evidence request form. He lists the items that he's
22 bringing in to SLED and by each item he puts out to the
23 side what type of exam he's looking for, whether it's
24 blood, semen, hair fiber, or skin cells/DNA ownership.

25 Q Okay. Now I'm going to go back to these bags and

Janice Bryson - Direct Examination by Mr. Young

1 I'm going to pull out an item. I'm going to ask you if you
2 can recognize the actual item itself.

3 Now, this appears to be a blue shirt, for example.
4 Is there any marking or anything on this shirt that
5 demonstrates that you had something to do with it?

6 A Yes, sir.

7 Q Let me get on the other side of you --

8 A Okay.

9 Q -- and point to the jury. Show me what you're
10 talking about.

11 A These are my initials, the SLED lab number and item
12 number and this is the area, the request was made from the
13 submitting officer to process for skin cells. So I sprayed
14 this area of the shirt because it comes in contact and it's
15 constantly rubbing. So I sprayed this area on -- I placed
16 the item on a white butcher block paper and I scrape the
17 item and I try to keep the scrapings concentrated into one
18 area and then I go back and swab that area and sit the swab
19 aside.

20 Q Okay. And that's on -- that's on one side and
21 there's also -- what's on the other side?

22 A This is one area that I tested for I thought maybe
23 was possible blood, but it was negative for the presumptive
24 test of blood.

25 Q Okay. So you were actually looking for a number of

Janice Bryson - Direct Examination by Mr. Young

1 different things at any time and if you see something
2 suspicious or possibly you may try to obtain that evidence?

3 A That's correct.

4 Q You mentioned something about paper, can you sort
5 of take that as an example here, you could look in the
6 bottom of that; what's in the bottom of that?

7 A That's the white butcher block paper that I placed
8 the items in this bag onto. There's a scraper or spatula
9 contained in here that I scraped the shirt with. The
10 scraper or spatula is individually packaged and I scraped
11 the shirt and with this spatula and I keep the white paper
12 after I finish processing it.

13 Q Okay. For example, here's a total of like four
14 scrapers in here?

15 A That's correct.

16 Q So you use one scraper for each item?

17 A Correct.

18 Q Okay. And these are stuck on this glove here.
19 This glove has similar markings on it, does it not?

20 A Yes, sir, my initials, the lab number and item
21 number.

22 Q Is that true for every one of these items here?

23 A Yes, sir, it should be.

24 Q So every one of these items in this bag, if you
25 would please place that back in there, you followed the

Janice Bryson - Direct Examination by Mr. Young

- 1 same procedure?
- 2 A Yes, sir.
- 3 Q You individually scraped?
- 4 A That's correct.
- 5 Q And you went -- here's the gloves, here's a black
- 6 ski mask?
- 7 A That's correct.
- 8 Q That's where you scraped it there too; this is Item
- 9 Number --
- 10 A Three. I scraped the inside of the ski mask and
- 11 then I scraped the outside of the ski mask and I collected
- 12 a swab for the scraping of the inside and a swab for the
- 13 scraping of the outside.
- 14 Q How about this black shirt which I'm holding up?
- 15 A Item Number 7.
- 16 Q I can't tell what that says.
- 17 A 2. I believe it is.
- 18 Q That looks like a 2, yes, ma'am.
- 19 A Yes, sir, I took a swab from the scraping of the
- 20 collar area and the cuff of the sleeves.
- 21 Q Okay. And so those markings appear on here where
- 22 you worked on it to try to obtain some kind of sample?
- 23 A Yes, sir.
- 24 Q Okay. And that's true for this bag?
- 25 A That's right.

Janice Bryson - Direct Examination by Mr. Young

1 Q Each item in this bag, Items 1 through 4.

2 Let's go to Exhibit 17. I'm going to hold up
3 another bag and this has a muti-striped, it looks like red,
4 black and white striped shirt; do you see anything on this
5 where the markings are?

6 A Yes, sir, I do.

7 Q Okay. Which, now there's actually -- there's --
8 there's -- this says on here from reading it, it says 5.0
9 and 5.1; what does that mean?

10 A When the item is submitted, it's given an item
11 number and that's the parent number and then when I take
12 it --

13 Q When you say parent number, you're referring to
14 which one?

15 A 5.0.

16 Q Okay. So that's what it came to you as?

17 A That's correct.

18 Q All right. And then what's 5.1?

19 A 5.1 is the swab I generated in the computer that I
20 collected from the scraping of the collar area of that
21 shirt.

22 Q All right. Is that with regard to all of these
23 items if you developed a swab, it became another .1
24 relationship to whatever the parent you called it was?

25 A That's correct.

Janice Bryson - Direct Examination by Mr. Young

1 Q So 5.0 becomes 5.1?

2 A The swab becomes 5.1.

3 Q Okay. How about with regards to this hat here;
4 this is a -- it says Rocco Wear hat?

5 A Right.

6 Q And there's a marking right there?

7 A That's SLED Item Number 7, my initials, item number
8 and the SLED lab number.

9 Q Okay. And so there were, is there a 7.1 in regard
10 to this?

11 A Yes, sir, the swab from scraping the entire item.

12 Q Okay. So that was great. How about the pair of
13 pants here. This is -- what color do you call this, maybe
14 black. The other -- what is that marking there?

15 A That's the same, my initials, lab number, item
16 number.

17 Q And that's Item 6; is that what that says there?

18 A Yes, sir, that's correct.

19 Q Okay.

20 A And I took a -- a swab from the scraping of the
21 inside jeans and the back waistband of the jeans and that
22 swab became Item Number 6.1.

23 Q Okay. And at the bottom of this is more white
24 paper?

25 A That's correct.

Janice Bryson - Direct Examination by Mr. Young

1 Q And that would have been the white papers and the
2 scrapers for each one of these items?

3 A Yes, sir.

4 Q Okay. That bag is really torn up; I don't know if
5 I can put it all back in there.

6 All right. And then when you finished with that,
7 what did you do with those items in the bags?

8 A I placed the items back into the box that it came
9 in, I sealed the box back up and initial and date it and
10 return it to the technician in the Evidence Control
11 Department.

12 Q So it goes back into its container?

13 A That's correct.

14 Q And that's container what?

15 A Container A.

16 THE COURT REPORTER: Excuse me, I didn't get that.

17 MR. YOUNG: I'm sorry?

18 THE COURT REPORTER: I didn't get that container.

19 MR. YOUNG: Container A.

20 THE COURT REPORTER: I'm sorry.

21 BY MR. YOUNG:

22 Q Now I'm going to try to go at your pace. You tell
23 me what you did with those swabs?

24 A I take each individual swab that I collected, I
25 place that swab in a gold coin envelope, I label the

Janice Bryson - Direct Examination by Mr. Young

1 envelope with the lab number, with the item number and the
2 request on the envelope. I seal it, initial it, and date
3 it and place those items into a heat-sealed pouch and I
4 seal the heat-sealed pouch. And I think in this case, I
5 gave it to Jennifer Clayton, the DNA Analyst on the case.

6 Q Okay. Let me, let me ask you a question regarding
7 the collection of the swabs just for a moment. You said
8 the scraped the item, you called it the parent item?

9 A That's correct.

10 Q And then the swab becomes .1 whatever item number
11 that was?

12 A That's correct.

13 Q Now, when you get these swabs, how do you make a
14 swab? How do you create a swab?

15 A In the --

16 Q In the process of collecting it, what do you do
17 with it? Are you running it over the area? Are you
18 wetting it? What are you doing?

19 A No, sir, when I scrape the item, I try to keep that
20 scraping contained in one area on that butcher block paper
21 and then I go back and swab that area that I scraped.

22 Q Okay. Now these swabs, what do you do with the
23 swab once you put it that area you talked about on that
24 butcher block, what do you do with it then?

25 A I place it in that gold coin envelope, I set it

Janice Bryson - Direct Examination by Mr. Young

1 aside to let it air dry and when all the swabs that I've
2 collected are ready to be sealed, I seal the -- each
3 individual envelope and put those envelopes in a
4 heat-sealed pouch and then forward that to DNA.

5 Q And you said you actually did this -- one -- some
6 items one day and some items another day?

7 A That's correct.

8 Q Okay. So did they go into different containers?

9 A Yes, sir, it did.

10 Q Okay. And would you be able to recognize those
11 containers again if you saw them?

12 A Yes, sir, I would.

13 Q All right. Well, I'm going to pass up to you --
14 I'm going to pass up to you what's been marked as State's
15 Exhibit Number 27. And for the record, I'm going to
16 describe what I'm passing up to you. This is two
17 heat-sealed pouches and there is on the outside a release
18 form. And I would like for you to take a look at State's
19 Exhibit 27, these two heat-sealed pouches, and tell me if
20 you recognize what they are?

21 A Yes, sir, I recognize the items.

22 Q What are they?

23 A This is the heat-sealed pouch that I generated --
24 that I placed the envelopes in. I seal the heat-sealed
25 pouch after I place all the envelopes in there, initial it,

Janice Bryson - Direct Examination by Mr. Young

1 and date it and then I forward it to DNA for further
2 examination.

3 Q And those are in two separate containers?

4 A Yes, sir, because I processed them on two separate
5 days.

6 Q Okay. Any chance these items came in contact one
7 with the other at any time during any of this process?

8 A No, sir.

9 Q Okay. So these individual swabs are from
10 individual pieces of clothing?

11 A That's correct.

12 Q And areas on this clothing?

13 A That's correct.

14 Q Okay. So you kept them entirely separate?

15 A That's correct.

16 Q From the time that you made that swab, actually I'm
17 going to do it this way. From the time you broke the seal
18 on this box and retrieved these items until you actually
19 created the swab, did anybody else come into contact with
20 it?

21 A Anybody, any person.

22 Q Any person come into contact with that clothing or
23 those swabs while you were processing them?

24 A No, sir. We have our own separate processing room.

25 Q Okay. Did you have somebody retrieve it for you in

Janice Bryson - Direct Examination by Mr. Young

1 the process, for example, if you needed that box, could
2 somebody bring you that box?

3 A No, sir, I went up to the Evidence Control
4 Department -- well I sent them an e-mail asking that I get
5 the container to process the evidence and then I'll go up
6 there and get the box.

7 Q Okay.

8 A They deliver -- they hand me the box over.

9 Q That's what I'm saying, do you know who handed it
10 to you?

11 A It was Pat Crooks.

12 Q Okay. And that's true of all these items here?

13 A Yes, sir.

14 Q Okay. And so you got a sealed box and you broke
15 the seal and you went inside it and you processed it and
16 nobody else came in contact with it while you were
17 processing it?

18 A That's correct.

19 Q All right. From the time you created that swab and
20 put it in that sealed envelope, did anybody come in contact
21 with it?

22 A No, sir.

23 Q Just you?

24 A Just me.

25 Q Did you do anything at all at any time any of this

Janice Bryson - Direct Examination by Mr. Young

1 was in your possession to alter, coalesce or bring together
2 these other items one to the other so that the swabs might
3 be tainted in some way?

4 A No, sir, I didn't.

5 Q Now, ma'am, in the process of creating these swabs,
6 when you put them in that sealed envelope, once you sealed
7 it, what did you do with it and I'm talking about Container
8 B and Container C, both those sets of swabs?

9 A Okay. Container C is this heat sealed pouch.

10 Q Yes, ma'am.

11 A I gave that directly to Jennifer Clayton, the DNA
12 Analyst assigned to the case. And Container B, Container B
13 I gave the heat-sealed pouch to Pat Crooks of the Evidence
14 Control Department.

15 Q Okay. And so that went to the Evidence Control
16 Department and do you show recollection or show any record
17 of how it got from her to someone else? Is there a record
18 showing how Ms. Crooks delivered it to anyone else?

19 A Yes, sir, there is.

20 Q What does it show?

21 A According to the chain of custody, it shows that
22 Pat Crooks placed the evidence on the DNA intake Shelf
23 Number 4; that was on July the 7th and then on September
24 the 12th, she retrieved it from Shelf 4 and gave it to
25 Jennifer Clayton, the DNA Analyst assigned in this case.

Janice Bryson - Direct Examination by Mr. Young

1 Q Okay. And this -- do you know anything about this
2 DNA shelf they're talking about?

3 A No, sir, I don't.

4 Q And that's in the Evidence Control Room?

5 A That's correct.

6 Q So whoever is in that Evidence Control Room
7 controls what's in there?

8 A That's correct.

9 Q And it's under lock and key?

10 A That's right.

11 Q Okay. All right. And does SLED have procedures?

12 A Yes, sir, we do.

13 Q If -- if for example, let's say this pouch here has
14 been unsealed in some fashion -- don't y'all report that?

15 A Yes, sir.

16 Q Isn't that something real significant if something
17 is unsealed --

18 A Yes, sir.

19 Q -- when you get it?

20 A Yes, sir.

21 Q Would you have taken this in your custody and
22 examined it if it had been broken?

23 A No, sir.

24 Q Okay. Now, you said that you put this heat seal on
25 the top?

Janice Bryson - Cross-Examination by Mr. Drylie

1 A Yes, sir.

2 Q And it's obvious it's been opened. That was by
3 somebody else, right?

4 A That would be by the DNA Analyst assigned to the
5 case.

6 Q Okay. And they got to do that to make their
7 testing?

8 A Right.

9 Q All right. All right.

10 MR. YOUNG: Your Honor, the State moves at this
11 time to admit State's Exhibit Number 27.

12 MR. CASTO: Without objection.

13 THE COURT: All right. State's 27 is in evidence
14 without objection.

15 (State's Exhibit Number 27 was admitted into
16 evidence.)

17 MR. YOUNG: Ms. Bryson, thank you very much. If
18 you'd please answer any questions the defense has for you.

19 THE WITNESS: Yes, sir.

20 THE COURT: Mr. Drylie?

21 MR. DRYLIE: Yes, Your Honor. Just briefly.

22 **CROSS-EXAMINATION**

23 BY MR. DRYLIE:

24 Q Item 3.1 and 3.2 is the black ski mask, correct?

25 A Item 3 is the black ski mask. Item 3.1 is a swab

Janice Bryson - Cross-Examination by Mr. Drylie

1 from the scraping of the ski mask and 3.2 is a swab from
2 the scraping of the ski mask.

3 Q Okay. I just want to make sure, that's the item
4 you swabbed twice, correct?

5 A Yes, sir.

6 Q I have no questions.

7 THE COURT: Redirect?

8 MR. YOUNG: None, sir.

9 THE COURT: Thank you. Thank you very much, Ms.
10 Bryson. Thank you for being with us.

11 THE WITNESS: Thank you.

12 THE COURT: You can step down and you can be
13 excused.

14 MR. MAYE: Your Honor, I'll go retrieve the next
15 witness.

16 THE COURT: All right.

17 MR. YOUNG: Your Honor, the State now calls Amy
18 Stephens.

19 THE COURT: All right. Ms. Stephens, please come
20 around.

21 AMY ELIZABETH STEPHENS,
22 having been sworn, testified as follows:

23 THE CLERK: You may be seated. State your full
24 name, spell your last name for the record.

25 THE WITNESS: Amy Elizabeth Stephens.

Amy Elizabeth Stephens - Direct Examination by Mr. Young

1 S-T-E-P-H-E-N-S.

2 DIRECT EXAMINATION

3 BY MR. YOUNG:

4 Q Ms. Stephens, what do you do for a living and where
5 do you work?

6 A I'm a present technician in the Evidence Control
7 Department located at the South Carolina Law Enforcement
8 Division. Our basic duties are to login, package, and
9 transfer evidence for forensic analysis.

10 Q And how long have you been doing this job?

11 A Approximately 9 years.

12 Q Okay. So back before 2007 you were working in this
13 timeframe?

14 A That's correct.

15 Q Okay. Ms. Stephens, in the process of handling
16 evidence as it comes in, you're responsible for, just
17 intake or do you do anything else?

18 A I'm just responsible for the intake and we also
19 return the evidence to the submitting agencies as well as
20 stock the evidence in our evidence room.

21 Q Okay. So you kind of make it from -- it's kind
22 of -- you actually take it to and from, but when you're
23 involved in the intake part of it, do you -- are you
24 familiar with the evidence, assigning the numbers or
25 applying if the computer picks up a case?

Amy Elizabeth Stephens - Direct Examination by Mr. Young

1 A Yes, every evidence -- piece of evidence, admitted
2 to our laboratory is assigned a unique lab number as well
3 as an item number or a container number.

4 Q And are you able to track those things, for
5 instance, one case may have multiple submissions, so to
6 speak, and for different periods of time, are you able to
7 track the evidence associated with a case by that number
8 that's assigned to it?

9 A Yes, as I said, every piece of evidence that is
10 submitted to our laboratory receives a unique lab number.
11 So if it's multiple pieces of evidence from the same case,
12 they will all be submitted under that lab number and a
13 barcode will be attached to the package containing that
14 evidence and everything within our laboratory is
15 electronically tracked.

16 Q Yes, ma'am. Now, would you check your records and
17 tell me if you had any connection with lab number L1107497,
18 specifically, an Item Number 8?

19 A Yes, I did.

20 Q All right. What was your role in that?

21 A I received this particular piece of evidence from
22 Investigator Lamaz Robinson of the Johnston Police
23 Department.

24 Q And do you have a record of what it was you
25 received?

Amy Elizabeth Stephens - Direct Examination by Mr. Young

1 A Yes, according to my records, it was a buccal swab
2 from Maurice Odom.

3 Q Okay. Would you look at what I'm going to hand you
4 up that's been entered as State's Exhibit Number 20 and
5 tell me if you recognize what that is?

6 A Yes, the lab number that is affixed to this package
7 corresponds with the chain of custody.

8 Q Is that the item that you received from Lamaz
9 Robinson?

10 A Yes, it is.

11 Q Are those the buccal swabs that were in that
12 package?

13 A Yes, they are.

14 Q Okay. And did you make any change whatsoever in
15 the contents, condition, quality of what is in those
16 plastic -- I should say paper bags that were submitted to
17 you and then placed in this heat sealed bag?

18 A No, I did not.

19 Q Who heat sealed them?

20 A I actually heat sealed it and then I would have
21 transferred the evidence to Lamaz Robinson and had him
22 initial and date the seal as well as sign and date the
23 front and the back.

24 Q Okay.

25 MR. YOUNG: Is there any questions from the

Amy Elizabeth Stephens - Direct Examination by Mr. Young

1 defense?

2 The State moves to admit State's Exhibit Number 20
3 into evidence. It's already admitted, I apologize.

4 THE COURT: Restate that -- it was too much for me
5 to --make sure you --

6 MR. YOUNG: I apologize, Your Honor, I was asking
7 the defense if they had any questions. I got a nod no and
8 then I moved to admit it and it's already been admitted,
9 Your Honor.

10 THE COURT: State's 20 has already been admitted?

11 MR. YOUNG: Yes, sir.

12 THE COURT: When was it admitted, Madam Court
13 Reporter?

14 THE COURT REPORTER: Yesterday, I believe, Your
15 Honor.

16 THE COURT: 20?

17 THE COURT REPORTER: Yes, sir.

18 MR. YOUNG: Investigator Lamaz Robinson, Your
19 Honor, offered it, it was offered through him and it was
20 admitted.

21 THE COURT: All right. State's 20 was admitted
22 with --

23 MR. YOUNG: I believe without objection.

24 THE COURT: All right. It was admitted through
25 Chief Robinson, State's 20, a swab, without objection.

Jennifer Clayton - Direct Examination by Mr. Young

1 Do you agree with that, Mr. Drylie?

2 MR. DRYLIE: We do, Your Honor.

3 THE COURT: Any further questions, Solicitor?

4 MR. YOUNG: I have no further questions, Your
5 Honor.

6 THE COURT: All right. Mr. Drylie?

7 MR. DRYLIE: No questions, Your Honor, thank you.

8 THE COURT: Thank you. Thank you very much, Ms.
9 Stephens. You may step down and you may be excused. Thank
10 you for being with us.

11 THE WITNESS: Thank you.

12 MR. YOUNG: Thank you, Your Honor.

13 THE COURT: The State's next witness --

14 MR. YOUNG: Ms. Clayton, will you go to the stand
15 and be sworn please?

16 JENNIFER CLAYTON,

17 having been sworn, testified as follows:

18 THE CLERK: You may be seated. Please state your
19 full name and spell your last name for the record.

20 THE WITNESS: Jennifer Clayton. C-L-A-Y-T-O-N.

21 **DIRECT EXAMINATION**

22 BY MR. YOUNG:

23 Q Ms. Clayton, where do you work?

24 A I am currently employed by the South Carolina Law
25 Enforcement Division also known as SLED.

Jennifer Clayton - Direct Examination by Mr. Young

1 Q What is your role and your responsibilities there?

2 A I am currently a DNA Analyst.

3 Q What is that?

4 A When evidence is collected from a scene it
5 sometimes contains DNA either in the form of a body fluid
6 such as blood or saliva or as cells that are left behind
7 from skin. As a DNA Analyst I attempt to develop DNA
8 profiles from that DNA and also from known standards, which
9 are samples taken directly from a particular individual and
10 then I do a comparison between the evidence of the those
11 standards if I can make a match.

12 Q And what qualifies you to do this kind of job?

13 A I earned a Bachelor's of Science in Biology from
14 the University of North Carolina at Chapel Hill. I've also
15 taken classes at N.C. State and U.S.C. My coursework
16 includes Molecular Biology, Biochemistry, Genetics and
17 Statistics.

18 I completed an internship with the North Carolina
19 State Bureau of Investigations Molecular Genetics
20 Department, which is the equivalent of South Carolina,
21 SLED. I originally hired on with SLED as a Forensic
22 Technician and I worked as a Forensic Technician for 2
23 years before being hired as a DNA Analyst. Once I was
24 hired as a DNA Analyst, I completed a 1 year training
25 program under the supervision of a qualified analyst and I

Jennifer Clayton - Direct Examination by Mr. Young

1 worked casework under his supervision before I was allowed
2 to do casework on my own.

3 Q Ma'am, do you have to maintain certifications as an
4 analyst?

5 A We are required to be proficiency tested twice a
6 year in DNA analysis and we are also required to receive
7 continuing education every year.

8 Q And in the process of completing an analysis of DNA
9 samples submitted to you, do you have to actually have
10 those results reviewed?

11 A Yes, whenever I obtain results, I write a report
12 based on those results and those results are technically
13 reviewed by another qualified analyst before the report can
14 be released.

15 Q Have you ever testified before in any courts in the
16 State of South Carolina in Federal Court or any other
17 jurisdiction as a DNA expert?

18 A Yes, I have.

19 Q And what are those courts?

20 A I have testified in Federal Court, General Sessions
21 in South Carolina and in Family Court.

22 Q Do you know how many times roughly?

23 A Approximately 40 times.

24 Q Okay.

25 MR. YOUNG: Your Honor, at this time we would

Jennifer Clayton - Direct Examination by Mr. Young

1 submit Ms. Jennifer Clayton as an expert in DNA with
2 qualifications to give statistical results.

3 THE COURT: You're offering as an expert in DNA
4 Analysis and what else, Solicitor?

5 MR. YOUNG: A qualification for giving statistical
6 results.

7 THE COURT: Any questioning as to qualifications,
8 Mr. Drylie, Mr. Casto?

9 MR. CASTO: No, sir, Your Honor.

10 THE COURT: Thank you. Madam Forelady, ladies and
11 gentlemen of the jury, normally when a person testifies,
12 they must testify as to either what they saw, heard, sensed
13 by smell, or something of that nature. However, there is
14 an exception when someone is qualified because of
15 education, experience, training in a particular field, art,
16 science or profession, they are permitted to give their
17 opinion in certain areas. The Court qualifies them that
18 way.

19 This witness, Agent Jennifer Clayton, will be
20 qualified in the area of DNA Analysis and additionally
21 qualified to give statistical results of that analysis.

22 MR. YOUNG: Thank you, Your Honor.

23 THE COURT: It does --

24 MR. YOUNG: I'm sorry.

25 THE COURT: -- it does not mean that you must

Jennifer Clayton - Direct Examination by Mr. Young

1 accept the opinion of Agent Clayton, but it is evidence for
2 you, the jury, to use in any way that you deem appropriate.

3 Thank you, Solicitor, you may continue.

4 MR. YOUNG: Thank you, Your Honor.

5 BY MR. YOUNG:

6 Q Ms. Clayton, if I referred to a specific lab
7 number, could you tell the Court whether or not you had any
8 relationship with that lab number?

9 A Yes, sir.

10 Q L1107497?

11 A Yes, I did.

12 Q What -- what actually did you do?

13 A I did DNA analysis on a number of items that were
14 submitted to SLED in that case.

15 Q Did you have a known standard by which to work
16 from?

17 A Yes, I did. I received a known standard from a
18 Maurice Odom.

19 Q Okay. If I handed you up State -- the exhibits
20 associated with this case that had that, those lab numbers
21 on it, would you be able to identify whether or not these
22 items had any relationship to your analysis?

23 A Yes.

24 Q I'll hand up to you what's been previously marked
25 and admitted as State's Exhibit Number 27 and State's

Jennifer Clayton - Direct Examination by Mr. Young

1 Exhibit Number 20 and ask you to look at those please?

2 A State's Exhibit 20 is the standard that I received
3 from Maurice Odom. I recognize it because the packaging
4 has the lab number that was assigned to the case when it
5 was submitted to SLED, as well as the item number that was
6 assigned to the standard. Additionally, the evidence pouch
7 within the heat-sealed pouch has the lab number and the
8 item number and my initials on it and where I resealed the
9 heat-sealed pouch also has the date that I resealed it and
10 my initials.

11 Q Who did you receive those items from?

12 A May I refer to my notes?

13 Q Absolutely.

14 A I received Item 8 from Doris Yarbrough, which would
15 be State's Exhibit 20.

16 Q Okay.

17 A And State's Exhibit 27, I received from, I received
18 some of those items from Jan Bryson and some of those items
19 from Pat Crooks.

20 Q And at the time you received those items, were they
21 in a heat-sealed container?

22 A Yes, they were.

23 Q Was there any evidence that anyone tampered with
24 the contents at the time you received them?

25 A No, there was not.

Jennifer Clayton - Direct Examination by Mr. Young

1 Q If there had been such, what would you have done?

2 A I would have stopped my analysis. I would not have
3 begun analysis and I would have had to look into the matter
4 to determine the reason and if it made it impossible to
5 analyze the evidence. If there's any indication that the
6 evidence had been tampered with, I would not have been able
7 to do analysis.

8 Q Okay. But you proceeded at that time because there
9 was no evidence of tampering, right?

10 A That's correct.

11 Q Now, ma'am, I'd like for you, if you could please,
12 to tell the Court and the jury when -- when DNA is brought
13 to you, is it always in one form? In other words, does DNA
14 come from a variety of sources; how does, how does it get
15 to you?

16 A Yes, sometimes as I said, sometimes it's a liquid
17 item such as blood or saliva. Sometimes it's skin cells
18 and it can be submitted as a cutting from an item of
19 clothing or a bedsheet. It can be submitted as swabs. The
20 item itself can be submitted directly to me if it's a small
21 item. So I obtain my samples in various forms.

22 Q Right. If there is no blood, for example, taken
23 off of a piece clothing and the scrapings are used and
24 presented to you off the clothing, what do you usually have
25 to work with; what is that; what kind of DNA source is

Jennifer Clayton - Direct Examination by Mr. Young

1 that?

2 A When an item of clothing is scraped for skin cells
3 and then swabbed to collect those cells, it's submitted to
4 me and it's referred to as ownership DNA. They're
5 typically looking for the individual that was wearing an
6 item of clothing. So I attempt to develop DNA profile from
7 the skin cells that are on that item of clothing.

8 Q Now is -- are you always going to get DNA off of a
9 piece of clothing if somebody wore it?

10 A No, not necessarily. We, I develop a wide range of
11 results from clothing. Sometimes I get a very good single
12 source profile; I get all of the information I've tested
13 for. Sometimes I get a mixture; that means more than one
14 individual donated DNA to the item. Sometimes I get a
15 profile which means I was able to develop some information
16 for the item, but not all of the information for the item
17 and sometimes I don't develop any profile at all. That
18 depends on a number of factors; how long an individual wore
19 it, is there another layer of clothing in between the item
20 they were wearing and the other item, are they an
21 individual that typically leaves a lot of DNA behind or
22 not. There are a lot of factors to determine whether or
23 not I'm able to develop a profile.

24 Q So it's just safe to say you may or may not get it?

25 A That's correct.

Jennifer Clayton - Direct Examination by Mr. Young

1 Q With regard to the items that were submitted to
2 you, which were these, these little containers here, B, C
3 and 8 -- and I guess that separate, Item 8. You had those,
4 those items to work with to -- to -- as a resource to
5 obtain the DNA and then you -- what did you do; did you run
6 each one separately, how do you go about that?

7 A Yes, each item is opened separately, a sampling is
8 taken from it and we typically work in small tubes that are
9 about an inch, an inch and a half tall. So I cut a smaller
10 sample from the swabs and place that into the tube and then
11 extract the DNA. That just means that I separate the DNA
12 from the parts of the swab and any other debris that may
13 have been present so that I end up with a tube that has DNA
14 in a liquid. And from that, I use a test kit that's been
15 validated and commonly used across the country and around
16 the world to develop a DNA profile and for the purposes of
17 DNA reporting, DNA profiles are reported as a series of
18 numbers.

19 Q Okay. So that's kind of the results you get, the
20 numbers?

21 A Correct.

22 Q All right. Do you have results for each item that
23 was submitted to you -- and the total of items, I believe,
24 was eight. One was a known standard so you had seven other
25 items to work with?

Jennifer Clayton - Direct Examination by Mr. Young

1 A I had -- I actually had eight items of evidence and
2 one standard. Two of the items of evidence were from the
3 same ski mask.

4 Q Oh, okay. All right. So do you have individual
5 results for those?

6 A Yes, I do.

7 Q To a reasonable degree of scientific certainty, do
8 you have an opinion as to what kind of DNA matching or
9 profile was developed regarding each one of those items?

10 A I was able to match profiles from a couple of the
11 items to someone, but some of the other items do not have a
12 match to anyone based on the standard that I was given.

13 Q Could you speak to each item as they were described
14 given to you and tell me what those results were?

15 A Okay. For item 7.1, that's SLED item 7.1, that is
16 a swab from a black hat. The DNA obtained from item 7.1 is
17 a mixture of at least 2 individuals and the DNA profile
18 developed from the major contributor matches the DNA
19 profile of Maurice Odom and the DNA profile developed from
20 the minor contributor is from an unidentified individual.
21 What that means as I said earlier, sometimes I develop
22 mixture and that means more than one individual contributed
23 DNA to an item and sometimes one individual will contribute
24 more DNA than another individual. The individual that
25 contributes more DNA is considered to be the major

Jennifer Clayton - Direct Examination by Mr. Young

1 contributor and the individual that contributes less DNA is
2 considered to be a minor contributor. In this case the DNA
3 profile developed from the major contributor matches the
4 DNA profile of Maurice Odom.

5 For Item 1.1 which was a swab from a long sleeve
6 blue -- a blue long sleeve shirt. The DNA obtained from
7 Item 1.1 is a mixture of at least two individuals. The DNA
8 profile developed from the major contributor is from an
9 unidentified male individual. Maurice Odom is excluded as
10 a contributor to this mixture.

11 Q That's the blue shirt?

12 A Item 1.1, a blue long sleeve shirt.

13 Q If I could pause at this moment. You said you had
14 a hat, a black hat; is that correct?

15 A The black hat was Item 7, well I received the swab
16 from the black hat, which would have been Item 7 would have
17 been the hat and 7.1 is the swab.

18 Q Does this bear any markings of this hat I'm holding
19 as 7.0?

20 A Yes, it does.

21 Q So that would have been developed from this hat?

22 A That's correct.

23 Q With regard to, you said a blue shirt?

24 A Yes, that's correct.

25 Q What item number was that?

Jennifer Clayton - Direct Examination by Mr. Young

1 A That would be SLED Item 1.1.

2 Q So would that bear a relationship to 1.0?

3 A Yes, that's correct.

4 Q This blue shirt?

5 A Correct.

6 Q There was no contribution to this; he was excluded?

7 A He is excluded as --

8 THE COURT: Hold on, I'm sorry. Say that question
9 again, Solicitor.

10 BY MR. YOUNG:

11 Q There is no contribution by Mr. Odom to this item;
12 he is excluded?

13 A Maurice Odom is excluded as a contributor
14 developed, as a contributor to the mixture developed from
15 that item.

16 Q What was the next item?

17 A The next item was Item 2.1, which is a black long
18 sleeve shirt. A partial DNA profile was developed from
19 Item 2.1 and no conclusive statement can be made as to the
20 inclusion or exclusion of Maurice Odom as a contributor to
21 this item.

22 Q Is that the 2.0?

23 A Yes.

24 Q This is 2.0?

25 A And what that means is as I said, sometimes I'm not

Jennifer Clayton - Direct Examination by Mr. Young

1 able to develop all of the information on an item just
2 because there's not enough DNA present or the quality of
3 the DNA is not good enough and so little information was
4 developed from this particular item that I was not able to
5 make any type of conclusion regarding Maurice Odom as a
6 possible contributor to this item.

7 Q Okay. Now, what was -- what was the next item?

8 A Item 3.1 and 3.2 were both swabs from a black ski
9 mask and no human DNA was obtained from those 2 items.

10 Q So this is the ski mask and there was nothing on
11 this?

12 A I was not able to develop or obtain any DNA from
13 that, no.

14 Q Okay. No. Next item?

15 A Item 4.1 is a swab from gloves.

16 Q Gloves?

17 A A partial DNA profile was developed from item 4.1
18 and again no conclusive statement can be made as to the
19 inclusion or exclusion of Maurice Odom as a contributor to
20 this item.

21 Q What are the items on this right here?

22 THE COURT REPORTER: I can't hear you.

23 BY MR. YOUNG:

24 Q What item is on this item I'm holding up here,
25 these gloves?

Jennifer Clayton - Direct Examination by Mr. Young

1 A 4.0.

2 Q Okay. This would be the number that was the parent
3 item that would have developed the 4.1?

4 A That's correct.

5 Q And this was a partial?

6 A Yes. Again it was a very limited amount of
7 information.

8 Q Okay. What was the next item?

9 A The next item is 5.1. It's a swab from a red,
10 black, white -- and white striped shirt. The DNA obtained
11 from item 5.1 is a mixture of at least two individuals.
12 The partial DNA profile developed from the major
13 contributor also matches the DNA profile of Maurice Odom.

14 Q So this is a -- this is identified with Maurice
15 Odom as a major contributor?

16 A Yes.

17 Q Is this 5.0?

18 A That's correct.

19 Q Okay. And what was the last item?

20 A There are actually 2 items remaining. Item 6.1 is
21 a swab from black jeans. A partial DNA profile was
22 developed from item 6.1 and no conclusive statement can be
23 made as to the inclusion or exclusion as -- of Maurice Odom
24 as a contributor to this item.

25 Q And this is 6.1?

Jennifer Clayton - Direct Examination by Mr. Young

1 A That is item 6.0. Oh, and we already referred to
2 item 7.1 which is the black hat. So you are correct, there
3 is only 1 item remaining.

4 Q That's right. These two items -- these two items
5 have major contributors?

6 A That's correct.

7 Q With Mr. Odom being identified as the person whose
8 DNA was found on them?

9 A The DNA profile developed from the major
10 contributor to those items matched Maurice Odom; that is
11 correct.

12 Q Okay. Now, ma'am, as part of your job, do you look
13 at the population as a whole to determine the statistical
14 likelihood that someone else may have been a contributor to
15 this? In other words, somebody else in the world could
16 have the same DNA?

17 A The statistic that we calculate is to determine the
18 probability of choosing a random individual from the
19 population unrelated to the one that left the sample having
20 a DNA profile matching that item. So basically what that
21 means, is if you were going out and you chose any one
22 person at random, the probability that that individual left
23 the profile, or left the DNA on the item, what is the
24 probability that that could happen just by random chance.

25 Q Okay. And you developed some kind of statistical

Jennifer Clayton - Direct Examination by Mr. Young

1 profile additionally on this, did you not?

2 A Yes, I did.

3 Q Okay. That was based upon what kind of statistical
4 relationship as to a population group?

5 A The -- we use -- in our lab we use, the program is
6 POFFS, referred to as POFFS Stats. It's maintained by the
7 FBI and it uses frequencies calculated by the FBI and
8 those -- the information from the profile is entered into
9 the program and a profile probability is calculated and
10 then reported.

11 Q Okay. And recently did you receive any information
12 to change that probability profile?

13 A Yes, the FBI, approximately two weeks ago reported
14 that they had discovered some minor errors in some of the
15 frequencies in their program. So they released updated
16 frequencies, amended frequencies. At that point, our
17 laboratory looked at the new frequencies and verified that
18 our program was using the new amended frequencies and a new
19 statistics were -- a statistic was calculated for this
20 case.

21 Q Okay. So when you initially calculated it, based
22 upon what the FBI profile was, before you got the updated
23 statistical information, what was your calculation that
24 there was a chance that someone else shared the same DNA
25 with Mr. Odom's DNA; what was your -- the statistical

Jennifer Clayton - Direct Examination by Mr. Young

1 chance?

2 A For the original report the probability of randomly
3 selecting a non-related individual from the population
4 having a DNA profile matching the contributor, the major
5 contributor to item 7.1 is approximately 1 in a 130
6 quadrillion; that was the originally supported statistic.

7 Q I have no idea how many numbers that is. How many
8 zeros we talking about?

9 A That is 140 with 15 zeros behind it.

10 Q Okay. So --

11 THE COURT: That's a quadrillion?

12 THE WITNESS: That's correct.

13 BY MR. YOUNG:

14 Q Okay. And have you -- have you documented all of
15 your findings into your reports, an initial and a
16 supplemental report?

17 A I -- I actually have three reports. The original
18 report did not have the Item 8, so a new report was issued
19 with Item 8 and then a third report was issued.

20 Q With regard to that Item 8 being added, do you have
21 two reports since that time? And I'll show you these --

22 A Yes.

23 Q -- two items here. State's Exhibit Number 30 and
24 32. Would you look at those and tell me what those are.

25 A State's Exhibit 30 is the report that I issued that

Jennifer Clayton - Direct Examination by Mr. Young

1 contains the eight items of evidence as well as the
2 standard for Maurice Odom. Item 32 is the report that was
3 just recently issued with the amended statistic.

4 Q And that statistic is 1 in how many quadrillion?

5 A The new statistic? Or the original?

6 Q The new one.

7 A The new statistic is approximately 1 in 140
8 quadrillion.

9 Q How many people are there on the planet earth?

10 A Currently there are approximately 7 billion people
11 on the earth.

12 Q So how many earths would we have to have to find
13 another match?

14 A Well, statistically to have a 140 quadrillion
15 people, you would need 20 million times the current earth
16 population, I believe. So one in, one in 140 quadrillion
17 makes it very, very unlikely that you would find someone at
18 random that would have that same profile assuming they do
19 not have an identical sibling.

20 Q The State offers State's Exhibit Number 30 and 32.

21 MR. YOUNG: Without objection?

22 MR. CASTO: No objection, Your Honor.

23 THE COURT: May I see it please?

24 All right. State's 30 and State's 32 is in
25 evidence without objection. Thank you, Solicitor.

Jennifer Clayton - Cross-Examination by Mr. Casto

1 Thank you, Mr. Casto.

2 (State's Exhibit Number 30 and Number 32 were
3 entered into evidence.)

4 MR. YOUNG: Ms. Clayton, please answer any
5 questions the defense may have for you.

6 **CROSS-EXAMINATION**

7 BY MR. CASTO:

8 Q Hi, Ms. Clayton, how are you?

9 A Doing well; how are you?

10 Q Good. Just to clarify, you can say 5.1 is a
11 statistical match to Maurice Odom, correct?

12 A I believe 5.1 is the red, black, and white striped
13 shirt.

14 Q 5.1 is a statistical match to Maurice Odom,
15 correct?

16 A The DNA profile developed from the major
17 contributor matches Maurice Odom; that's correct. And a
18 statistic was calculated; that's correct.

19 Q Okay. And the same for Item 7.1, you can say this
20 is a statistical match to Maurice Odom?

21 A The DNA profile developed from the major
22 contributor to the mixture on that item does match Maurice
23 Odom, correct.

24 Q Okay. Now this blue shirt, which is item 1.1, 1.0,
25 the swab that you tested is 1.1, correct?

Jennifer Clayton - Cross-Examination by Mr. Casto

1 A Correct.

2 Q This is not a match and Maurice Odom was excluded
3 as a contributor to this item?

4 A That's correct. Maurice Odom is excluded as to --
5 as a contributor to the mixture developed from that item.

6 Q With regard to these dark jeans, you can't say that
7 Maurice is a contributor to these items, can you?

8 A No, no conclusion could be made; no conclusive
9 statement could be made regarding the inclusion or
10 exclusion of Maurice to that item.

11 Q Inconclusive?

12 A That's correct.

13 Q These gloves, there are 2 gloves here and that is
14 Item 4.1 the swab that you tested, this was also
15 inconclusive, correct?

16 A Again, no conclusion, no conclusive statement can
17 be made; that's correct.

18 Q Okay. This black shirt was, it was also
19 inconclusive and that was Item 2.1 was the swab of this
20 Item 2.0, correct?

21 A That's correct.

22 Q Inconclusive?

23 A Correct, no conclusive statement could be made.

24 Q And lastly with the ski mask, on each swab that you
25 got, no DNA found on it?

1 A That's correct.

2 Q No further questions. Thank you.

3 THE COURT: Redirect, Solicitor?

4 MR. YOUNG: I don't have any further questions of
5 this witness, Your Honor, and I would ask that she be
6 excused.

7 THE COURT: Thank you, Solicitor.

8 Thank you, Ms. Clayton, you may step down and you
9 may be excused. Thank you for being with us today.

10 All right. Solicitor, you may call your next
11 witness.

12 MR. YOUNG: Your Honor, at this time, the State
13 would rest.

14 THE COURT: I'm sorry?

15 MR. YOUNG: We will rest. The State rests.

16 THE COURT: All right. The State would rest.

17 All right. Madam Forelady, ladies and gentlemen of
18 the jury, as you've heard, the State has rested. Perhaps
19 now would be a good time to take our morning recess. I
20 remind you during this recess do not discuss the case with
21 anyone including your fellow jurors. We'll take about a 20
22 minute recess. Thank you very much. You may go to the
23 back.

24 (The jury left the courtroom at 11:08 a.m.)

25 THE COURT: All right. Motions, Mr. Casto? Mr.

1 Drylie?

2 **MID-TRIAL MOTIONS**

3 MR. DRYLIE: Your Honor, at this time we renew our
4 pretrial and trial objections and also move for a directed
5 verdict. Taking all the evidence in the light most
6 favorable to the State, no recent -- there's no evidence to
7 send this case back to the jury.

8 THE COURT: Thank you. Thank you very much. I
9 will renew all my pretrial rulings and also all my trial
10 court rulings both evidentiary and otherwise.

11 I would respectfully deny the motion for directed
12 verdict. Based on the standard, I find there is sufficient
13 direct and substantial circumstantial evidence. There have
14 been a total of eleven witnesses presented both -- many go
15 to the corpus delicti itself, however there are others; the
16 co-defendant, Mr. Donaldson, who testified that he along
17 with his brother committed this offense.

18 Further there is evidence from Deputy Miller with
19 the Saluda County Sheriff's Department observing two
20 individuals, one of which later identified himself as Mr.
21 Donaldson, changing clothes at a location next to the
22 automobile ultimately found to be owned by a relative of
23 the defendant, Mr. Odom, and ultimately testified too that
24 Mr. Odom was with that relative when the vehicle was
25 purchased just weeks prior to the burglary.

1 And it's clear evidence the offense occurred during
2 the nighttime; and there's further clear evidence by
3 stipulation that Mr. Odom has a prior history of burglary
4 on two separate occasions prior to this one. Further there
5 is additional forensic evidence linking Mr. Odom to the
6 vehicle in this regard, and so I would respectfully the
7 motion for directed verdict.

8 Mr. Odom, if you would come around please and be
9 sworn.

10 Stand right there at the microphone.

11 MAURICE ANTHONY ODOM,

12 having been sworn, testified as follows:

13 **QUESTIONING OF THE DEFENDANT BY THE COURT**

14 THE COURT: Tell me your full name, please.

15 THE DEFENDANT: Maurice Anthony Odom.

16 THE COURT: And how old are you, Mr. Odom?

17 THE DEFENDANT: 42.

18 THE COURT: How much education do you have?

19 THE DEFENDANT: GED, sir.

20 THE COURT: All right. I need to go over some
21 things with you. I do this with everyone who is on trial.
22 I need your responses to be under oath. That's why I had
23 our clerk place you under oath.

24 We've reached the stage of the trial where the
25 State has rested and your side, the defense, has the

1 opportunity to present evidence for the jury to consider.

2 Do you understand where we are in the trial of your case.

3 THE DEFENDANT: Yes, sir.

4 THE COURT: In that regard, you may call witnesses
5 to testify on your behalf. If you choose to testify, you
6 also may do so; do you understand?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: No one can force you to testify and you
9 have the absolute right to remain silent and if you choose
10 not to testify, I will tell this jury they cannot hold that
11 silence against you in any way. I will tell them that they
12 are not to even discuss that in the jury room during their
13 deliberations. Do you understand?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: If your side offers no evidence, in
16 other words, neither you nor anyone on your behalf
17 testifies or offers any exhibits or evidence or testimony,
18 then your attorney will get to make the last argument to
19 the jury. Otherwise, if you testify or a witness testifies
20 on your behalf or exhibits are admitted on behalf of the
21 defense, the prosecutor will get to make the last argument;
22 do you understand?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Does the Defendant have a prior
25 criminal record that would subject the Defendant to

1 impeachment under Rule 609?

2 MR. MAYE: Your Honor, we believe he does have
3 crimes involving dishonesty, which -- pursuant to Rule
4 609(a)(2) -- which provide for automatic admission of
5 evidence of prior crimes of dishonesty without a balancing
6 test of probative value versus prejudicial effect, he has a
7 2015 conviction for burglary second violent. He has a 2014
8 conviction for burglary second violent. He has the two
9 prior burglaries that are in my stipulation in this case
10 out of Bamberg and Barnwell counties. He additionally has
11 a '92 and a '93 burglary 3rd conviction.

12 He has a criminal sexual conviction that is also in
13 the record here that is one of the serious offenses for
14 which he potentially faces the life without parole. It's
15 outside the 10 years, Your Honor, and I don't know that it
16 is a crime involving dishonesty. We would not seek to
17 introduce that if he was to testify. We would seek to
18 introduce the burglary convictions that I've placed on the
19 record here, Your Honor, if he was to testify. I don't see
20 anything else on his record that I believe that would
21 potentially subject him to impeachment, Your Honor, other
22 than those burglary crimes which we would maintain involve
23 dishonesty and were outside the balancing test analysis.

24 THE COURT: All right. That would clearly say that
25 the two prior burglaries, which are State's 28 and 29, I

1 believe; State's 28 and 29 introduced by stipulation. I
2 don't even think I have to visit them under 609; they're
3 already in evidence in that regard. So as to the '92,
4 '93 -- 1992, 1993 burglary 3rd's and 2014 and 2015 burglary
5 2nd's, Mr. Casto, do you have a position in that regard.

6 MR. CASTO: Your Honor, I believe that the '92 and
7 '93 burglaries would be too remote. However, you know, we
8 understand that the 2014 and 2015 burglaries may be
9 admitted.

10 THE COURT: All right. As to my ruling '92 and '93
11 are not admissible. 2014 and 2015 under State v. Kopp,
12 however -- I don't know how you pronounce that or any other
13 names, I would allow those to come in only that he has
14 prior felony convictions, not burglary second violent
15 convictions. So he has the two prior that are in evidence,
16 not subject to Rule 609; 2014 would be admissible as a
17 prior felony conviction; 2015 would be admissible as a
18 prior felony conviction; 1992 and 1993 are not admissible
19 and I would agree criminal sexual conduct is not
20 admissible.

21 So in that regard, Mr. Odom, I would advise the
22 jury on your two prior burglary convictions and the
23 prosecutor can question you whether or not you have a
24 prior, you have felony convictions. You may want them to
25 know -- I don't know. The jury can speculate in their mind

1 what they are. They can only ask you that if you were
2 convicted of those offenses; and I would tell the jury that
3 they can only use that evidence if they use it against you
4 at all on the issue of whether your testimony is believable
5 or not and for no other purpose. Do you understand?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: The decision about whether you testify
8 or not is your decision to make and yours alone. I expect
9 that you've conferred with your attorneys and perhaps
10 others whose opinions you value on very important
11 decisions, but the decision about whether you testify or
12 not is your call to make and your decision; do you
13 understand?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Has anyone exercised any undue
16 influence over you to get you to choose to testify or not
17 to testify?

18 THE DEFENDANT: Say it again, sir?

19 THE COURT: Has anyone used any undue influence
20 over you to get you to testify or not to testify; has
21 anyone twisted your arm to make you testify or not to
22 testify.

23 THE DEFENDANT: No, sir, but can I say one thing,
24 please, sir.

25 THE COURT: Excuse me?

1 THE DEFENDANT: Can I say one quick thing?

2 THE COURT: I couldn't understand you.

3 THE DEFENDANT: Can I say one quick thing, sir?

4 THE COURT: Yes, sir. Of course.

5 THE DEFENDANT: After talking to my family members,
6 and you know, and -- and I'm certain, I'm a hundred percent
7 certain, some of the jury looked at the newspaper and seen
8 my name in the newspaper that I'm on trial and have, after
9 my last jury trial you took here back in 2013 said, you
10 know, and I also saw the other paper and it said I had been
11 convicted of six burglaries since then, which I haven't.
12 And something about I attempted to rob Billy Stewart, which
13 I don't know anything about that and that that's going to
14 make me look bad and I'm certain --

15 THE COURT: I have questioned the jury, Mr. Odom,
16 on those issues -- the jurors under oath. None of the
17 jurors have indicated to me that they have read, or seen,
18 or watched, or listened to any news reports about the case.
19 They were properly qualified prior to being selected as
20 jurors in the case, indicating they had not heard, seen,
21 listened to or read any news reports about the case,
22 nothing about the case whatsoever.

23 We'll question them again in that regard. However,
24 I -- I've listened to you say that and I will question. I
25 have not found the jury has had any exposure to any news

1 media.

2 The defendant: I see. Could I ask who's
3 responsible for that getting out; did that come from the
4 Court or something, sir.

5 THE COURT: Excuse me?

6 THE DEFENDANT: Did that come from the Court?
7 Someone responsible for that getting the newspaper?

8 THE COURT: You talking about did it come from me?

9 THE DEFENDANT: No, I mean from the court, being my
10 information is in and it's a falsehood -- falsehood
11 information inside a newspaper about me, I wonder did that
12 come from the courts; where did that come from. I'm
13 thinking it's something that --

14 THE COURT: I don't know where the stuff comes from
15 that's in the newspaper, television, or on the internet.
16 You'd have to ask the newspaper editor or the man doing the
17 internet to determine where that information comes from.

18 Today, Mr. Odom, are you under the influence of
19 drugs, alcohol, medication, or anything that would
20 negatively affect your thinking ability.

21 THE DEFENDANT: No, sir.

22 THE COURT: Do you suffer from any physical or
23 mental problems that would affect your thinking today?

24 THE DEFENDANT: No, sir.

25 THE COURT: Whatever decision you have made about

1 whether to testify or not to testify is your decision made
2 of your own free will and accord?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Do you have any questions that you
5 would like to ask me about your decision to testify or not
6 to testify?

7 THE DEFENDANT: Let me make sure I understand. You
8 said if I did choose to testify, you wouldn't let them
9 bring up my two last prior convictions.

10 THE COURT: Yes, sir. Two are already in evidence;
11 you understand that? Two, one from Bamberg and one from
12 Barnwell are already in evidence; you understand that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Do you understand your right to testify
15 or not testify?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: I find the defendant does understand
18 his right to testify or not testify. He understands it's
19 his decision to be made freely and voluntarily and
20 knowingly and intelligently.

21 Do you need any more time to talk to your lawyers
22 about your right to testify or not testify?

23 THE DEFENDANT: Just a quick second.

24 THE COURT: All right. Yes, sir.

25 (The defendant was conferring with his attorneys.)

1 THE COURT: Have you had the opportunity to speak
2 with your attorney?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Do you need any more time to talk with
5 your attorney?

6 THE DEFENDANT: No, sir.

7 THE COURT: Have you made a decision about whether
8 you want to testify or not testify?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: And what is your decision?

11 THE DEFENDANT: I will not testify, sir.

12 THE COURT: Sir?

13 THE DEFENDANT: I will not testify.

14 THE COURT: You will not testify?

15 THE DEFENDANT: No, sir.

16 THE COURT: And that's your decision?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Of your own free will and accord?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: All right. Thank you. Thank you very
21 much. You may return to your seat, Mr. Odom.

22 I find that the defendant has made his decision to
23 not testify and indicates to the Court that he needs no
24 further time to talk with his attorneys and that the
25 decision is made freely, knowingly and voluntarily.

1 Mr. Casto, does the defense intend to offer any
2 evidence or testimony?

3 MR. CASTO: No, sir, Your Honor.

4 THE COURT: So when the jury comes back out, the
5 defense intends to rest?

6 MR. CASTO: That is correct.

7 THE COURT: All right. Thereafter then we will go
8 into closing arguments by the attorneys. I really can't
9 imagine that closing arguments would take more than 20 or
10 25 minutes per side maximum quite frankly in this specific
11 case. Thereafter I'll charge the jury. So you should be
12 able to have the case to the jury shortly after -- shortly
13 after 1 o'clock I would say, 1 or 1:30 and we'll take a few
14 minutes recess.

15 I'll have the clerk make arrangements to get them
16 lunch during our recess. We'll be back in here say at
17 quarter till 12.

18 Anything further from the defense?

19 MR. CASTO: Nothing, sir, Your Honor, just a
20 housekeeping issue. When we go back on the record, I will
21 rest and then I will at that time, I would just renew all
22 my -- if that is how the Court would like to conduct that.

23 THE COURT: Anything further from the State?

24 MR. MAYE: Nothing from the State.

25 THE COURT: The Court will be recess until 11:45.

1 Y'all got any requests for charge.

2 MR. MAYE: No, sir, Your Honor, the State does not.
3 Thank you.

4 MR. CASTO: No, sir, Your Honor. They can consider
5 the two priors as an element, but they can't use that to
6 say that he has a previous disposition.

7 THE COURT: I think that's in the charge.

8 MR. CASTO: Perfect. Thank you, Your Honor.

9 (A short recess was observed.)

10 THE COURT: All right. As far as -- we're back on
11 the record in State v. Odom.

12 As far as the verdict form, do you have any
13 objections, Solicitor?

14 MR. MAYE: No, sir, no, I don't have any
15 objections.

16 THE COURT: Mr. Casto?

17 MR. CASTO: Yes, sir, Your Honor. We would just
18 prefer that, you know, the -- I guess just a, to simplify
19 matters, Your Honor. You have two blocks to check with
20 regard to guilt on burglary second. There are two ways of
21 achieving that. Your Honor, we just ask that it be
22 consolidated to one so that he could be found guilty or not
23 guilty. It's my understanding that the Court will
24 obviously let -- I'm sure the State would let the jury know
25 exactly what the elements that they are to choose are. And

1 Your Honor, we don't, we would just object to that being on
2 the jury form, Your Honor.

3 THE COURT: All right. I'll take that. That's at
4 the request of the defense.

5 All right. Bring us our jury, please.

6 (The jury entered the courtroom at 11:50 a.m.)

7 THE COURT: All right. It appears our jury is
8 back.

9 As you recall, the State had rested. At this point
10 in the trial, the defense may now present evidence and
11 testimony in its case in chief if the defense chooses to do
12 so. You will recall that I told you at the beginning and
13 throughout the course of the trial that a criminal
14 defendant in South Carolina, regardless of the seriousness
15 of whatever the charge may be, is always presumed to be
16 innocent and never has any requirement whatsoever or any
17 burden whatsoever to prove himself innocent. However, a
18 criminal defendant in South Carolina may present evidence
19 and testimony if the defendant chooses to do so.

20 So we will turn our attention now to Mr. Casto
21 and/or Mr. Drylie and ask, does the defendant intend to
22 present any evidence or testimony, Mr. Casto?

23 MR. CASTO: Your Honor, at this time the defense
24 rests.

25 THE COURT: All right. The defense has rested.

1 Are motions renewed?

2 MR. CASTO: Yes, sir, Your Honor. We renew our
3 motions pretrial, during the trial and directed verdict,
4 yes, sir.

5 THE COURT: Thank you. Thank you very much, Mr.
6 Casto. I renew all my previous pretrial rulings and my
7 trial rulings both.

8 Now, ladies and gentlemen, you have heard the
9 defense has rested, so you have heard all the evidence and
10 all the testimony that you're going to hear in the trial of
11 the case. We're now at the stage of the trial of closing
12 arguments by the attorneys. The closing argument are
13 different from the opening statements. The attorneys may
14 comment on the law, the facts, and reasonable emphasis as
15 may be drawn from the facts and in their closing arguments
16 to you. Again, what the attorneys say is not evidence.
17 However, it's an important part of our jury trial process.

18 The procedure we follow in a case such as this is
19 the solicitor will close -- will close first on behalf of
20 the State. After that closing, the State being the party
21 bearing the burden of proving its case beyond a reasonable
22 doubt, the Solicitor's closing argument will be followed by
23 a closing argument, the closing argument by Mr. Casto
24 and/or Mr. Drylie on behalf of Mr. Odom. After the closing
25 arguments by the attorneys, I will do the instruction on

1 the law that you are to apply to the facts of the case as
2 you find them to be.

3 I would ask you to please give the parties your
4 complete and undivided attention. I will further say, if
5 at any time during closing arguments you do need a break or
6 a recess, any one of you, again please raise your hand and
7 you will be allowed to, of course, to take a brief recess
8 and we will take a recess at the same time.

9 Thank you. Thank you very much and again, please
10 give the parties your complete and undivided attention.

11 I do not allow anyone to go in and out of the
12 courtroom while an attorney is addressing the jury or while
13 I'm addressing the jury. You may most certainly leave if
14 you are authorized to do so between the closing arguments
15 by the attorneys and between the end of closing arguments
16 and my instructions to the jury.

17 Thank you. Thank you very much.

18 Solicitor, you may address the jury.

19 MR. MAYE: If it please the Court, Your Honor.

20 THE COURT: Yes, sir.

21 **CLOSING ARGUMENTS**

22 MR. MAYE: Ladies and gentlemen, again everyone
23 that's involved in this process, we're all completely aware
24 of the fact that you've been taken away from what you would
25 have been doing this week. This is a major imposition.

1 You couldn't go to work, you couldn't be with your
2 families, you couldn't be at home during the day. Whatever
3 you were doing this week, you've been compelled to come up
4 here and sit as judges of the facts in this case, because
5 as surely as Judge McMahon is seated up there with his robe
6 on presiding over this as the Judge; he's going to tell you
7 what the law is, but you twelve that are going to go back
8 in the jury room and deliberate are the judges of the facts
9 in this case. You bring with you when you come up here to
10 the courthouse your common sense, your education, your
11 wisdom.

12 Throughout your daily lives, you're weighing
13 things, weighing credibility, making judgement, all day
14 every day. The collective wisdom of the twelve of you that
15 are going to go back in that jury room and deliberate
16 outstrips that of any one person anywhere; I don't care who
17 they are. By the time that you combine the sum total of
18 all your life experiences, no one is any smarter than the
19 twelve of you collectively in this case.

20 The State's got the burden of proof up here and
21 when I started talking to you, it seems like a long time
22 ago. I told you the State's got the burden of proof and we
23 welcome it. Well, there's certain things that we've got to
24 prove. Mr. Odom got up here to start with and tell you
25 he's charged with burglary and second degree violent. The

1 Judge is going to tell you in great detail what the law is.
2 He's going to give you a very detailed charge. But you
3 don't leave your common sense at home when you come to the
4 courthouse. The only difference is, like I said, when we
5 talk about burglary, most people envision we're talking
6 about going into a house and burglarizing the thing. But
7 we're talking about burglary of a building.

8 The corporates and the businesses here are just as
9 much a part of this community as anybody else. This is not
10 some faceless, nameless entity off somewhere a thousand
11 miles away. IGA, an independent grocery store, a lot of
12 local people work there. A lot of young people get their
13 start working in a place like that who are getting on the
14 right path of doing the right thing. They're a victim in
15 this case as surely as any individual. They might be a
16 corporate entity, but they're part of this community and a
17 part of Edgefield County. The cigarettes that they bought
18 and paid for and were going to distribute and sell out to
19 people were property of IGA Grocery Store and the owner of
20 that grocery store. They certainly didn't belong to Mr.
21 Maurice Odom, as he came up here from Barnwell County to
22 take what wasn't his.

23 Let me talk with you about what the elements are.
24 That's breaking and entering a building with the intent to
25 commit a crime therein. And you can bet when he and Mr.

1 Donaldson were standing there slinging blocks at the bottom
2 of those sliding glass windows, they certainly had the
3 intent; they certainly weren't going in to sweep up and
4 straighten up in there. They were going in to get
5 something that wasn't theirs to make some money; get them
6 cigarettes, something that was very valuable that was
7 light, that was portable, that they could get up and carry
8 away in bags and get away with.

9 As I said, the Judge is gone talk with you about
10 the elements, going in a building with the intent to commit
11 a crime therein. You can bet you, we've proved it to you.

12 There are two other circumstances that make it a
13 violent burglary and it's an either/or situation. It's
14 either one or both. One of those is the breaking or
15 entering occurs during the nighttime. Like I said, you
16 leave your common sense at home when you come up here and I
17 think that there's something in evidence in the United
18 States Naval Reserve that talks about what time the sunrise
19 and the sunset is. Didn't anybody need anything to tell
20 than other at 1:44 when they're hauling off and they busted
21 in there and walked in, at 1:44 on October the 17th, at
22 that time of year, it's nighttime. The State proved that
23 beyond a reasonable doubt. You don't need anything from
24 the Naval observatory to tell you. It was nighttime.

25 Now this is even -- all you got to prove is they

1 went in that building with the intent to commit a crime and
2 it was during the nighttime. That's enough right there on
3 its face. Additionally, the legislature has said and
4 there's a law in South Carolina, and the Judge is going to
5 tell you it's the law, if you go in a building -- doesn't
6 have to be in the nighttime -- if you go in a building and
7 at the time that you go in, you're a person that's been
8 previously convicted of two or more crimes of burglary or
9 the old time housebreaking, that you're in a special class.
10 That in and of itself says that it's burglary, it's
11 violent, or a more serious burglary. Just like that
12 nighttime would depict, it's an either/or. If you've found
13 that we proved it, that it happened during the nighttime,
14 that's enough, find him guilty of burglary second.

15 You can set that aside though. He's in a special
16 class because he's one of those individuals that's got a
17 conviction for second or more crimes of burglary. They
18 stipulated that. We didn't need to bring the Clerk of
19 Court from Barnwell and Bamberg County. You got that; you
20 go look at it. You got second prior convictions. On
21 October the 17th of 2007 when he slung those bricks through
22 the window there and went into the IGA Grocery Store, he
23 was already a person that was in that class of someone that
24 had second or more prior convictions for burglary. We
25 didn't even have to bring the clerk to do that. That's

1 conceded in this case. That's proven and you can take that
2 to the bank. Maurice Odom has got second prior convictions
3 for burglary and he had them the night that he went into
4 the IGA.

5 Those are the elements. That's what the State's
6 got to prove. We talked about we welcome this. It isn't
7 complicated about what happened that night. And you can
8 tell us and the twelve of you in your wisdom and judgment,
9 you got the facts from right here on the stand. Alarm goes
10 off, the lady goes up there, cigarettes are gone. The
11 camera showed them with the blocks throwing in, carrying
12 out cigarettes in this case, that's what was in the bag.
13 That's something easy to get almost like getting money,
14 cigarettes. And it was quick, because you heard from the
15 officer that responded, Officer Campbell, the first one,
16 the alarm goes off at 1:44; 1:46 there's nobody there. He
17 doesn't even see anybody.

18 I want you to think about the plan, the prior
19 criminal history, all the things that bolted together to
20 enable to Mr. Odom and Mr. Donaldson to go in there and get
21 away with something in less than second minutes. They hit
22 a lick and they got almost \$3,000 worth of merchandise and
23 be out of there in less than second minutes. Maurice Odom
24 is somebody that knows what to do in this regard. You can
25 look at all the evidence in this case and think about and

1 put together everything that happened and you know he knows
2 what's going on and how to do this. Because Mr. Odom in
3 this case -- you heard from Mr. Donaldson -- we told you up
4 front. Mr. Donaldson has got some problems; he's got some
5 learning disabilities. Now I'm sure you'll hear from the
6 defense in this case, oh he's crazy, he doesn't know what's
7 going on; he's hearing voices. Were you taking any
8 medicine; were you not taking any medicine.

9 Lamaz Robinson said after he initially, like a kid,
10 said, Oh no, I didn't do it; in the same conversation and
11 moments later, he admitted his own involvement implicating
12 himself and told on Mr. Odom, as if there was not already a
13 mountain of circumstantial evidence implicating Mr. Odom,
14 even without Mr. Donaldson. Mr. Donaldson told Lamaz
15 Robinson what he already knew at this point in time. They
16 knew who was involved in it. They're going to tell you,
17 Oh, he's crazy and doesn't know what he's talking about.

18 Same story then as he told up here on the stand
19 exactly. Yes, I did; yes, my brother, Maurice Odom did
20 this. I want you to think about what he said there. He
21 gets picked up out there at Blackville in Bamberg County.
22 Now what's already taken place at that time because he told
23 you they got in the car and drove straight out to Highway
24 191 and like I said, the one thing that the twelve of you
25 have all got in common in this case is this is you live

1 here in Edgefield. He drives from Barnwell County here to
2 Edgefield County and where does that go in this case, they
3 drive there and back that Cadillac Deville automobile in
4 this spot, of all the spots on the earth, to drive right
5 there and straight to here.

6 He knew good and well where he was going and how to
7 get there. He'd been there before. This wasn't casual.
8 He knew full well what he was going to do; he knew how to
9 get there from down there on Highway 191 through the woods
10 and all back up here to the IGA Store. He knew that before
11 he ever left Barnwell County because Mr. Donaldson told you
12 they drove straight up here and went in here and backed
13 that car in. He said I -- I'd never been there; I didn't
14 know how to get there. I didn't even know what town we
15 were in. I just came with my brother, Mr. Odom, who's
16 obviously the leader in this case.

17 Somebody that can plan, carry out and -- and deal
18 with any contingency that might come up from going in a
19 store that's protected by an alarm in this case. Think
20 about the detail in this. They go right here and he
21 certainly knows how to get to the IGA and he's got some
22 plan. I told you at the outset in this case, he brought
23 with him some Bamberg County blocks or bricks for an
24 Edgefield County window. They're already in the back of
25 that Cadillac and you can look, the good thing about it is

1 you've got all the evidence in this case and you can take
2 your time and look at it.

3 Those blocks there that are on the floor in this
4 case, look at the color and texture of the blocks. Look in
5 the back of this Cadillac automobile that Mr. Dukes said
6 Mr. Odom's wife and he had just bought. The car with the
7 paper tag that you can't run the tag on, planned,
8 preparation, knowing what to do to carry out and commit a
9 burglary in this case. Look in the trunk of the car, in
10 the trunk back there on the carpet on the floor of that
11 Cadillac sedan Deville automobile. Same kind of ground up
12 looking stuff from those blocks. Mr. Donaldson said, is he
13 the person that carried out the plan in this kind of
14 detail; he's got blocks with him. I'm not talking about
15 firearms or big old hammers and things that would be
16 obvious on their face that are burglary tools, but concrete
17 blocks. How do you think about breaking out the window;
18 you can look at that video tape and tell it didn't take but
19 a time or two of slinging them big blocks against the
20 bottom of those big old tempered glass windows and they're
21 shattered and they're in. He knew what he was doing. He
22 brought the right tools for the job that don't necessarily
23 speak on the face that these are burglary tools. He
24 brought blocks with him. If he gets caught or he gets
25 stopped in this case, oh, I got some concrete blocks in

1 there I picked up something I was going to use as a
2 doorstep. Highly effective tool.

3 He provides gloves for them. He provides masks
4 because obviously he knows they've got surveillance cameras
5 in this day and age and they've got to cover up their
6 faces. He's planning, he's scheming, he's thinking.
7 They're going to bring changes of clothes and they're going
8 to change out of their clothes in this case. You notice in
9 this case that the alarms going to go off when he breaks
10 in; they snatch and grab. Going in and getting something
11 that they can quickly get out of there with. It wasn't
12 like they spent any time looking around a grocery store;
13 went straight and got cigarettes. What were they in there
14 for, maybe a minute at most; in, out, grabbed the
15 cigarettes out and flea the store with almost \$3,000 worth
16 of merchandise, very quick. And didn't drive the car up
17 there. Didn't drive the car, throwing the police off in
18 this case because by the time the officer got there second
19 minutes later, he didn't see anything. Why? Because
20 Maurice Odom knew enough about what was going in this area
21 to park his car back down 191. Wearing a hat, wearing a
22 ski mask over their face, wearing gloves on the hands; dash
23 in, dash out before anybody can respond to the alarm; get
24 something that was valuable and be gone because if the
25 police officers are looking around there, they're not going

1 to find anybody riding up and down the roads then.

2 If they'd driven a car up there in the parking lot
3 and wheeled away from there, he might have got captured on
4 camera; they'd have had a description of the vehicle.
5 Huh-uh, they walked. They walked back through the woods.
6 The police are scrambling around trying to set up a
7 perimeter looking at the cameras to try to determine who
8 they're chasing. They're walking through the woods back to
9 this car. They're going to change clothes in this case
10 because Mr. Odom has planned ahead. He knows what to do in
11 this case because if they get stopped then, they're going
12 to have on different clothes than what was shown in the
13 surveillance tape. He knows full well that place is
14 protected by alarms and cameras, a big grocery store like
15 that. That's why they wore the masks and gloves to begin
16 with, not to leave any evidence behind. Planning,
17 planning, scheming, thinking about coming up here to
18 Edgefield County where he had no business to begin with at
19 2 o'clock in the morning. To steal; planing and scheming.

20 But they got interrupted because the officer from
21 Saluda that was driving happened to ride by there and see a
22 white Cadillac parked up in the edge of the field and he
23 looked there and could see up in the edge of a bunch of
24 pine trees; that ain't a typical place for a Cadillac
25 Deville coup Deville or sedan Deville to be parked; it

1 isn't a tractor, it isn't a piece of construction equipment
2 on the side of the road; it's a big old white Cadillac and
3 it's out of place and the officer lights it up with a
4 spotlight and what happens; they start running and they
5 haven't stopped yet.

6 I'm sure you're going to hear in this case, oh,
7 they didn't find any cigarettes. Old Mr. Donaldson in this
8 case, he, he's going to go back and take them to the
9 cigarettes; you think Mr. Odom after coming all the way up
10 here from Bamberg, Barnwell, from that area is going to
11 leave those cigarettes behind; no, he snatched them up and
12 ran with them.

13 Now the bloodhounds confirmed in this case and you
14 heard the officer say that they got a trail when they left
15 there once they bolted and ran, they were able to pick up
16 the trail and they know they went through the woods from
17 the car back and forth to the IGA. They were able to trail
18 that; planning, preparation, on the part of Mr. Odom. He
19 knew how to get there through the woods from the spot where
20 the car was at because that's where the bloodhounds go back
21 and forth.

22 Now they tried to trail them away, but the officer
23 said we, just couldn't pick it up. You think if he carries
24 them cigarettes a quarter of mile and decided he was going
25 to toss them; who knows; only he knows because he's the one

1 that ran and left with them. Mr. Donaldson said I didn't
2 carry one; I didn't take one. Mr. Odom did because they
3 didn't find any cigarettes there and you know full well he
4 said well I didn't do none of this and they've told you in
5 this case Mr. Odom was not the one that did this. The two
6 individuals that were on this camera utilized this Cadillac
7 automobile and all of this to commit this crime; there's no
8 doubt about that. And there's also no doubt of the fact
9 that Mr. Donaldson and Mr. Odom did it because there's a
10 mountain of evidence, direct and circumstantial because the
11 police in that case couldn't catch them with the
12 bloodhounds. So they bring in an experienced investigator,
13 Lamaz Robinson. They start looking through the vehicle in
14 this case because they got surprised; they did not have a
15 chance for this plan to completely come together, for them
16 to be calmly driving down the road in that Cadillac wearing
17 different clothing on their way back to where they came
18 from. They got interrupted and so they bolted because the
19 officer was on top of them. Didn't have time to get in
20 that car and get away and there and there is a mountain of
21 stuff left behind in that car.

22 Now you've got some evidence, you've got to look at
23 it. His cell phone still running. In this day and age,
24 ladies and gentlemen, when you realize you reach for your
25 pants and you realize that you got in your car and you left

1 your billfold at home or you left your pocketbook at home;
2 it's that shocking revelation you have to turn around and
3 go back. The only thing in the modern era that out trumps
4 that is, Oh, Lord, I left my phone at home. You think his
5 phone comes from down there, still running in the center
6 console of that car and he's not with it, absolutely not;
7 absolutely not. All of the trimmings of his life are in
8 here. All his ID cards, billfold, clothing, the receipts
9 where they bought this car he's running with the paper tags
10 on it; all of it, everything, a mountain of evidence
11 linking Maurice Odom, the defendant in this case, to this
12 crime. Scheming, planning, prior preparation. The good
13 thing about it is, you've got all this that you can get up
14 and take a good look at.

15 I want you to take a really good look. Here's the
16 man that is carrying multiple identification cards. North
17 Carolina, you see Maurice Odom from Wilmington; you see
18 Maurice Odom from down there in Barnwell County. See he's
19 got multiple forms of identification and social security
20 cards; he's got these the cards from the State of North
21 Carolina; he's got his current South Carolina driver's
22 license. Take a look at these. Take a real good look at
23 them when you get back in there. The year of his birth is
24 drilled out on every one of these. Take a look at them.
25 South Carolina date of birth, last digits drilled out.

1 State of North Carolina, Maurice Odom that lives up in
2 Wilmington, the last digits of his year of birth drilled
3 out.

4 Even his -- whatever this card is, from
5 Graniteville, South Carolina, same thing; drilled out so
6 you can't tell directly who it is. That's the Maurice Odom
7 that plans and schemes and carries out conducting a
8 burglary up here in Edgefield County. He's got everything
9 covered. He's going to take care of the cameras, he's
10 going to take care of wearing different clothes, he's got
11 ID's in here that the years not present on; a person intent
12 on carrying out a burglary; a leader who led Mr. Donaldson
13 in this case. Nobody makes any excuses for him. What Mr.
14 Donaldson did was wrong; it was just as wrong as what Mr.
15 Odom did. He is not as sophisticated as his own brother in
16 this case though because they want you to believe, Oh, but
17 there's blood in this case, but he's so shaken by all of
18 the time that's hanging over his head, he's going to
19 forsake whatever blood bond they've got and lie on his
20 brother because that's what they want you to believe in
21 this case, because you can make no bones about it, Mr.
22 Donaldson got up here under oath, direct evidence, he was a
23 participant in the crime; he implicated himself, he calmly
24 sat up here and told you the same thing that he told
25 Investigator Robinson. I did it and my brother over here,

1 Mr. Odom did it.

2 You see how that kind of guile and sophistication,
3 oh the defense has got him up here and talked about all the
4 time, 15 years and all the different things that he
5 carried; that's the real thing it is that's why you're
6 going to forsake your brother in this case and tell lies on
7 him. Well he sat there and agreed with the defense lawyer
8 and commented, you know all this. Well yeah, because
9 that's what you're telling me now. Do you think by his,
10 you see the demeanor of the witnesses in this case; do you
11 think he knew the details and the nuances that that lawyer
12 knew about all the crimes in this case? No, he was
13 agreeing with it.

14 All he can do at this point in time, he's talking;
15 is get up here and tell the truth. Where the chips are
16 going to fall for him is just where it is, not his day, not
17 his trial. He got up here, the one thing that he did do,
18 he got up here under oath and told you the truth. Whatever
19 happens to him, is another matter for another day. This is
20 Mr. Maurice Odom's day in this case. This has been going
21 on since 2007. And I told you the collective wisdom of the
22 12 of you is what's going to decide this case, whether or
23 not it's okay for Maurice Odom to come up here from
24 Barnwell and throw blocks through a window at a store in
25 Edgefield and take and carry away what he wants because

1 that's what it comes down to in this case, because there's
2 a certain amount of arrogance that goes along with
3 committing a crime like this, because all of these steps,
4 carrying changes of clothes, carrying bags with you,
5 changing clothes, carrying multiple ID's, driving a car
6 with a tag on it, a paper tag that the cops can't run,
7 walking through the woods, changing clothes, all of those
8 things, there's a certain amount of arrogance that goes
9 along with that because ultimately what he was preparing
10 for was a day just like today. I'm smarter than everybody
11 else involved in this process and I'm going to scheme and
12 wiggle my way out of this even if I get caught because I'm
13 going to beat the security cameras, I'm going to beat any
14 detectives, any attempt to detect that we committed this
15 crime, because I'm smart and I know what I'm doing. That's
16 the kind of arrogance that we're talking about.

17 But it ended up, he wasn't smarter than
18 Investigator Robinson in this case and he's certainly not
19 smarter than the twelve of you because you bring into this
20 courtroom all of your wisdom.

21 The facts in this case are simple. I submit to
22 you, they talk about whether or not it's an advantage to
23 argue first on closing argument or argue last. I tell you
24 up front what you're going to hear in this case about the
25 DNA evidence because the police did their job in this case.

1 They did everything they could. They meticulously went
2 through that car.

3 Now, Mr. Donaldson wasn't very smart; he wasn't
4 like Mr. Odom. Now, the phone here that's still running
5 and got his name that comes up on the home screen; his
6 phone is locked. Mr. Donaldson's wasn't; momma is saved in
7 his phone directory here. What did Investigator Robinson
8 do; not to diminish his intelligence in any regard because
9 he is a smart investigator. He did it for a long time, but
10 it didn't take much to go hmm, momma; hit send and dial and
11 talk to his momma and Ms. Odom was with Mr. Donaldson
12 because his momma's got him up here at that point in time.
13 Yes, that's my son. That's who I am. She held him
14 accountable to it. He got up here and held himself
15 accountable to it in this process because he completely
16 implicated himself with his testimony up here. No question
17 that he did it. He's admitted his part in it. Mr. Odom,
18 he's got his on lock. He's a little more sophisticated.

19 You've got all the evidence in this case, ladies
20 and gentlemen, this is a simple matter in this case. Mr.
21 Odom decided he was going to take something that wasn't
22 his. He came up here to Edgefield County knowing about
23 what he was gone do. He carefully planned it and he
24 prepared for a day just like today. All that I ask of the
25 twelve of you in this case is go back in that jury room and

1 come back with a verdict that speaks the truth.

2 You've got the video evidence. You've got the DNA
3 in this case. Now, the defense is going to tell you, oh,
4 they only found DNA on these clothes that were up inside
5 the car. They going to go through that now with you,
6 because you've heard the facts. What you're going to hear
7 from the defense in this case is an attempt to muddy the
8 waters. Now, if the police had not taken the time to get
9 DNA, they would have said oh, you should have got DNA. If
10 they had not taken the time to get fingerprints, they would
11 have said, oh, you should have got print evidence. Well,
12 Investigator Robinson tried to get fingerprint evidence off
13 the car and he couldn't; it was smudged. Who knows whether
14 that was intentional or not, but in a car that he's driving
15 every day that he brought up here. There's no question
16 that he's associated, if they get print evidence at all
17 because sometimes you do and sometimes you don't. They'll
18 tell you oh, the only DNA evidence they got was off the
19 clothes that was inside the car on the backseat. These
20 other items of clothing, you didn't get it.

21 Now, you heard the DNA expert get up and testify in
22 this case and you think about it, you don't leave your
23 common sense at home when you come up here. They had on
24 multiple layers of clothing; blue shirt and the DNA Analyst
25 got up and told you; that wasn't anything from him; the

1 blue shirt, Mr. Donaldson got up there and told you I was
2 the one following. He was the follower; Mr. Odom was the
3 leader. He had on a blue shirt in this case. His DNA
4 isn't on that -- there's DNA in this case that is not
5 associated with Mr. Odom, this blue shirt, which is totally
6 consistent with what Mr. Donaldson says in this case
7 because they were comparing a sample of Mr. Odom in this
8 case. Unquestionably, that's his hat. Unquestionably
9 that's his shirt. It's laying -- you can look at the
10 picture, just right there laying on the backseat. You
11 leave it to yourself to determine what he was going to do.
12 Was he going to change into those clothes; who knows, but
13 unquestionably, if there wasn't already a mountain of
14 evidence linking him back to that car in this case, he'd
15 been wearing those and he'd worn those up close to his skin
16 enough to leave DNA evidence in this case.

17 Mr. Donaldson told you he was wearing the blue
18 shirt in this case. The DNA Analyst said it's hit or miss.
19 They get this up and look at it; you know full well
20 somebody is wearing this and sweating in it even in October
21 when they're running through the woods and doing this and
22 she told you, it's a hit or miss process. Sometimes you
23 get DNA; sometimes you don't. They don't get anything off
24 of this.

25 Now, they're going to tell you, oh, if he'd been

1 running and sweating and if Mr. Odom had been wearing the
2 black shirt or the black clothing, he'd have left behind
3 some DNA and for that reason and that reason alone, you
4 ought to let him go. If for no other reason, that Mr.
5 Donaldson in this case, he hears voices in this case. Let
6 him go. That's what you'll hear in this case. They don't
7 get anything out of this. Somebody was wearing it; they
8 didn't leave anything behind. It's the random nature of
9 DNA. The black shirt in this case, they get DNA, partial
10 DNA off of all of this and it's over around that driver's
11 side of the car. Mr. Odom is driving; these are the
12 clothes that he was wearing in all likelihood. They say
13 they get partial DNA off of these; they can't include him,
14 but they can't exclude him; it's just an incomplete sample.
15 Make no bones about it, these are the clothes he took off.
16 He's smart enough to wear multiple layers of clothing. If
17 he's smart enough to alter these ID cards and have multiple
18 ID's; if he's smart enough to bring everything he needed
19 from Barnwell County in this case, he's certainly smart
20 enough to wear layers of clothing because that's quick to
21 take off. Even if you're in the woods and you're wearing
22 clothes stacked up on top of each other, he didn't run off
23 naked, he had something on. And you can see there at the
24 back of the driver's side, his pants are down and the boots
25 are there. They just couldn't get any DNA off of it.

1 There's partial that would include but doesn't exclude. He
2 had those on.

3 Now, they'll tell you he should keep running and
4 run away from this because the DNA is not on this clothing
5 outside of the car in this case. That's up to you to
6 decide. If he was planning for this day then he's been
7 running from it ever since October the 17th of 2007. He
8 outran those dogs. He thinks he outwitted everything
9 involved in this process, but he's not smarter than the
10 twelve of you.

11 Come back with a verdict that does justice for
12 everyone that's involved in this case and above all, come
13 back with a verdict that speaks the truth. It's not
14 rewarding anyone; it's not punishing anyone; it's just
15 speaking the truth. That's your obligation and your job as
16 jurors in this case. Y'all are all from here in Edgefield
17 County. We are confident that you'll settle this right
18 there. I appreciate your close attention.

19 THE COURT: Mr. Casto.

20 MR. CASTO: Thank you very much and may it please
21 the Court.

22 When we got up here on Monday and told you that --
23 that blood was thicker than water unless you're facing
24 charges yourself; if blood is thicker than water unless
25 you're facing charges yourself and that's why. You see

1 that -- that presents and describes Brandon Donaldson's
2 role in the heart of this trial. That's his role and
3 that's what he's doing in this case. The idea of you
4 telling anybody, even your own half brother if it buys you
5 time, if it can get you out of the net. That's his role in
6 the world of our trial and you know what; since 2007 when
7 this case has been pending, for the past almost eight
8 years, it's kind of been successful for him. It keeps him
9 out of the net and that's his role in this trial in this
10 particular circumstance. And what we do is this, is we
11 want to match up what he says and we want to, as Mr. Drylie
12 told you when he got up on Monday, what he told you was we
13 want to test what he says with the evidence that we have in
14 the case, evidence that doesn't come through anybody or can
15 be manipulated; does it have a motive, a bias, anything
16 like that. The evidence simply it is what it is.

17 Does it back up what Mr. Donaldson -- Donaldson
18 says; no, it doesn't. In fact it does anything but that.
19 It does not measure up whatsoever and let's wade through
20 that again. Let's wade through -- let's test that evidence
21 and see what it's made of, that evidence that comes from
22 Brandon Donaldson, and let's test it against these items
23 that were left behind and we ask you from -- to get those
24 and reserve judgement to the very end. And I think you'll
25 agree with me that all of this evidence when you test it,

1 speaks towards Maurice's out-and-out innocence at most.
2 And at the very least, at the very least, reasonable doubt
3 is alive and well in our case.

4 Reasonable doubt. Mr. Drylie gave you the
5 definition and there's a kind of a, you know, a lofty,
6 scholarly terms of reasonable doubt, it's the type of doubt
7 that would cause an ordinary person to pause or to hesitate
8 before they act. That's the type of doubt that would cause
9 a reasonable person to pause or to hesitate before they
10 act. That's really what we're talking about. You'll hear
11 that from the Court when -- when the Judge instructs you on
12 the law of the case and how you're measuring this. But one
13 other definition, that the result of scholarly jargon and
14 all of that stuff, reasonable doubt, it looks like this:
15 Do you have a doubt and do you have a reason, a valid
16 reason that you can give for that doubt that you have about
17 Maurice's guilt. Do you have a doubt and do you have a
18 reason for that doubt?

19 Brandon Donaldson, can you trust him? Simply
20 stated, no you cannot and let's wade through and let's test
21 this evidence as we proceed through the world of this
22 problem. We got an awful lot this morning. We asked you
23 deliberately so we'll preserve judgement and hold on to
24 that until we're done and that's why we have this DNA
25 evidence and that doesn't have any type of motive to -- to

1 lie or anything. Let's go back through and see directly
2 what that tells us.

3 This is the most obvious inconsistency with Brandon
4 Donaldson's story that Brandon Donaldson tells us that it
5 was Maurice that had on these dark clothes and just to
6 stack it up so it's humbly clear, this DNA was unable to be
7 matched on this, the black shirt. His DNA was unable to be
8 matched on these pants. His DNA was unable to be matched
9 on these gloves; and his DNA was unable to be matched on
10 this piece. They didn't find any DNA at all on this
11 whatsoever. Remember the ski mask, the last item I had,
12 didn't have any DNA on it and it was tested twice, two
13 different occasions and yet, Maurice's DNA was not a match
14 on any of that stuff whatsoever.

15 And reasonable doubt exists in this case.
16 Reasonable doubt is alive and well. It's the type of doubt
17 that would cause an ordinary person to pause or hesitate
18 before they act. Do you have a doubt about Maurice's
19 involvement and do you have a reason for that doubt. No
20 match on any -- any of these items that Brandon Donaldson
21 said that he had on, nothing at all.

22 What about the boots? One thing that is lost.
23 Look down at these boots. These boots are interesting
24 because these boots are going to remain on the sidelines
25 for us. These boots were never tested for DNA at all.

1 Remember that. That's strange. We're left with, you know,
2 the question of why weren't they tested at all. They were
3 given a voice; they weren't given an opportunity to see
4 what evidence that they had. Those are going to be on the
5 sideline and remember just to lay this out, where were they
6 found? Well, they're found and you see this in the
7 pictures, found right beside these dark jeans and they're
8 found on the driver's side, left there, almost as if
9 interrupted and they were never tested at all. We can't
10 make any conclusions when there are no tests whatsoever.

11 Remember the state that these clothes were all
12 found in. Remember how they were all found. Basically
13 both chiefs, the former chief and the current chief,
14 Officer Robinson or Chief Robinson, and the former chief
15 Chris Aston, both described the clothing as wet or
16 dampened. Let's say that they appeared to be sweaty. Yet,
17 we're unable to have a match of any of that stuff
18 whatsoever.

19 Now, it would be understandable, taking a step back
20 and how to really test this stuff. It would be
21 understandable if we had just one item out of all this
22 stuff that didn't have his DNA on it whatsoever, but on --
23 but on all of it? That's something entirely different
24 where they weren't able to develop a match on all of it;
25 that's a dagger in the heart of what Brandon Donaldson was

1 telling us.

2 Now, we know again that they were described as damp
3 or sweaty and ultimately, you know, sometimes, you know,
4 the State says it's this kind of a luck of the draw type
5 case; sometimes you're able to get DNA off of items;
6 sometimes, you know, sometimes not. Well. Think about
7 what these items, according to Brandon Donaldson have been
8 through. Okay. They weren't merely just worn by a person,
9 right? These were the items -- this was the clothing that
10 the person, he wore them while running away, not just
11 running, but scared to death running in such manner that
12 they wouldn't get caught. Running with the heart beating
13 and also the type of running with, again, their theory of
14 the case, this big bag of cigarettes on your back and
15 running and running and running; no match on any of this
16 stuff whatsoever because Brandon Donaldson is not telling
17 us the truth.

18 Reasonable doubt is the type of doubt that would
19 cause an ordinary person to pause or hesitate before they
20 act. Do you have a doubt about Maurice's guilt? Do you
21 have reason for that doubt?

22 Think about the friction that would go around the
23 collar of the shirt, the waistline of the pants. This is
24 where the DNA scraper made those samples. That's exactly
25 where she tested and we don't have a match at all. Because

1 of the big map that we have that we've referred to just so
2 everybody can see, we also know how far this running took
3 place and it's to scale and you can try and measure it back
4 up, but really we're talking about a distance of 3/4 of a
5 mile. In this case it's unusual because we know just how
6 much running went on with this. They didn't just wear
7 these clothes; they were running and we don't have a match
8 whatsoever at all. This is not dumb luck; this is
9 reasonable doubt. Do you have a doubt? Do you have a
10 reason for that doubt and this is one of the few things the
11 State could use that, Hey man, Donaldson's telling the
12 truth and they can't point to it. It doesn't support their
13 theory; it doesn't support Brandon Donaldson's theory of
14 the case. Just because this clothing here was worn by the
15 person that actually did this and just so you can hear us
16 say it? Well you see this clothing in the video. You see
17 that clothing in the video. This is no fluke; it's not
18 just dumb luck whatsoever.

19 And while we're at it, what don't we see in the
20 video? These are the two items and go back there in the
21 jury room, these are the two items that we do not see in
22 the video. These two items that have Maurice's DNA on them
23 and where are these items found; this is very subjective.
24 Remember these hats and these boots, their theory in the
25 case is Maurice is the driver. These pants and these pants

1 are found on the driver's side; no match. These clothes
2 were found inside Maurice's own car. They have his DNA on
3 it. We find a hat underneath the shirt like that and
4 they're able to find DNA, Maurice's DNA; they're able to
5 get a match with Maurice on it. That's reality. And I'll
6 tell you what else; it's very subtle and it's very hard to,
7 you know, really bring out and this is the proper forum,
8 but think about it like this: Their theory of the case is
9 Maurice is the driver. These items of clothing were found
10 on the driver's side. Where were these items found? Yes,
11 in his car. Where? The rear passenger side. The rear
12 passenger. Their theory in the case was Maurice standing
13 on that side of the car. No evidence is over there; he's
14 on the wrong side. His clothes that he changed into are
15 where? The rear passenger side. This isn't dumb luck.
16 Maurice wasn't there at the time.

17 There were other things. Briefly, it's
18 conclusively stated that he was not a match whatsoever in
19 this. Basically they were able to rule him out. It's not
20 dumb luck. They have all the evidence. They had zero, you
21 should exclude him on this; they included him on this; and
22 we don't have any over here. How -- how -- how, you know,
23 reliable are these DNA tests? You know, we found either
24 this idea they're a kadrillion or quadrillion, and it's
25 impossible to get our mind around it's a billion, it's a

1 billion -- it's just -- it's impossible to get your mind
2 around one quadrillion. And through basic math, here's an
3 example; you take the America one dollar bill, okay, one
4 dollar bill and what you do is if you were to take it and
5 you were to lay it flat and then what you did was took
6 another one dollar bill and put it on top like that and
7 kept stacking them and stacking them and stacking them, one
8 quadrillion of dollars stacked and I mean doing like this,
9 but stacks just like that, one quadrillion would reach from
10 earth all the way to Venus three times. Are these DNA
11 tests reliable; are they precise; they're -- this is not
12 dumb luck; this is reasonable doubt. Do you have a doubt
13 and do you have a reason for that doubt? We had to wait
14 until that evidence came out today, but it came out,
15 nonetheless, and you can consider it and you can look at it
16 as you wade through the evidence in this trial.

17 Another thing that Brandon Donaldson says is that
18 the cigarettes were on the wood -- in the wood line near
19 this car and what do we learn through this testimony
20 basically is this: You're going to lie about the small
21 stuff; you're going to lie about the big stuff. But if
22 you're going to lie about the small stuff and you're going
23 to lie about the big stuff.

24 If you recall when I asked him on the stand about
25 that meeting that Brandon had back in 2007 with Officer

1 Robinson here, November 2nd, 2007. He couldn't -- he said
2 he couldn't remember what he said about the location of the
3 cigarettes in that meeting. That's what he said yesterday
4 on the stand; he couldn't remember what he said. But
5 that's because what he said to Lamaz Robinson wasn't true.
6 He, Lamaz Robinson, Chief Robinson told us what he said.
7 That's not a small detail about the location of the
8 cigarettes; you cannot remember him saying that, why;
9 because it was brought out that Officer Robinson and
10 Officer Campbell both took Brandon Robinson out there to
11 where the car was parked to look and this also escapes his
12 memory as well. He has no memory -- they're not where they
13 said that they should be. He's not being truthful with you
14 about what he's saying; this casts judgement to everything
15 that he's saying.

16 And the interesting thing in addition to that, when
17 he was asked by the State yesterday, well, you know,
18 what -- what, if anything, do you remember about the
19 cigarettes. All of a sudden he remembers then and he said
20 he dropped his bag. He dropped it right there. We know
21 that that's not true. That's what he said right here in
22 court; he dropped his bag. And if that were true and he
23 dropped his bag there, do you remember Officer Robinson
24 told us how many law enforcement officers were out there
25 that night. Law enforcement officers from Edgefield

1 Sheriff's Office, the Police Department, bloodhounds
2 affiliated with the Edgefield County Sheriff's Office,
3 Johnston, Saluda -- and none of them ever found these
4 cigarettes that night. They weren't dropped by the car.
5 He's being dishonest with you about that.

6 Again, this isn't just dumb luck; he's not being
7 truthful with you. Reasonable doubt exists in this case.
8 Do you have a doubt? Do you have a reason for that doubt?
9 Think for a second how that even could be true. According
10 to Brandon Donaldson, Maurice somehow perhaps in the midst
11 of changing clothes, he just swoops over and while he's
12 interrupted changing clothes, swoops over, grabs the bag
13 and then runs them off together. No, I don't think so. We
14 asked Ms. Barton, the Store Manager, you sure it was 90
15 cartons; we wanted to pin her down and she's right; she's
16 out 90 cartons of cigarettes; there's 10 packs in a carton.
17 What are we doing with 90 cartons; we're talking 900 packs
18 of cigarettes and somehow Maurice is able to bring both
19 bags, run out of the woods there, elude all of the law
20 enforcement officers and a team of dogs? No, it did not
21 happen the way that Brandon Donaldson said that it
22 happened. This could not be true.

23 The other thing is this. Brandon Donaldson said he
24 had the bag and then dropped it and then he ran. Well
25 what's the -- what's the obvious thing? We spoke with

1 Officer Chris Miller in Saluda, who was the person who
2 shined his lights on these people. He said there were
3 second people and they were changing clothes. Mr. Drylie
4 asked, Was there anything in your hands; no, there wasn't.
5 Did you see any cigarettes in their hands; no, I did not.
6 The officer doesn't have a reason or a motive to make that
7 up; he saw what he saw and it's not what Brandon Donaldson
8 said. He can't be trusted. A reasonable doubt exists in
9 this case.

10 Brandon Donaldson has every reason to lie about
11 Maurice being there. Remember Brandon Donaldson's charged
12 just like Maurice is in this case. He's charged with three
13 different crimes. He had grand larceny; he had the
14 misdemeanor, which was malicious injury to real property,
15 but then he remembers, he recalls that zero to 15 years
16 felony for burglary in the second degree violent, but you
17 know what; multiply his problems by second because that's
18 what he said. Back in 2007 when he spoke with Lamaz
19 Robinson, well he also had what; the same charges in
20 Barnwell County. This is not his first rodeo. He knows
21 what's going on. He's not just in trouble over here;
22 multiply that by second; that's how much hot water that
23 he's in. And he's in very deep trouble; when did he learn
24 all this?

25 Well, Officer Robinson told us he said in here he

1 didn't recall being told what those penalties were in that
2 meeting with Officer Robinson in 2007, but basically --
3 Officer Robinson comes in and says that yes, he told him
4 what the penalties were and after that interjection of that
5 detail, that's when we get this story, right then. First
6 he denies his involvement; he wasn't aware of the incident,
7 doesn't know what Officer Robinson's talking about.
8 Officer Robinson advised him of the penalties that he's
9 facing and remember, he's got charges in other county -- in
10 other counties. It's a very unfortunate set of
11 circumstances.

12 MR. MAYE: Your Honor, I'm going to object. That's
13 not evidence. There's no reference to other charges or
14 time in other charges and that's outside the scope.

15 THE COURT: Ladies and gentlemen of the jury, the
16 facts as you find them to be, you are the factfinders in
17 the trial of the case and the reasonable emphasis to be
18 drawn therefrom.

19 Thank you. Thank you, Solicitor.

20 Mr. Casto.

21 MR. CASTO: And you recall what Brandon Donaldson
22 said about that. You recall about him having the same
23 charges; that's what he said on the stand and that's what
24 he said.

25 We have a very unfortunate set of facts surrounding

1 what Brandon Donaldson says during that conversation
2 exactly. It's just Brandon Donaldson and Officer Robinson
3 in that room together. It's not audio recorded, it's not
4 video recorded, it's not even written down and that's when
5 after he's advised of all this stuff and the trouble that
6 he's in; that's when he did this story. There's an
7 unfortunate set of facts because it matters with Brandon
8 what the truth -- what they can ask him as far as what the
9 truth is and what all happened. Because that's subject to
10 change and you saw it here in this courtroom; like the
11 cigarettes we can't find. He doesn't recall talking about
12 the cigarettes with Lamaz Robinson, Chief Robinson, he
13 doesn't recall going to where the car was found to look for
14 cigarettes. Says he doesn't recall what he was facing at
15 the time all this went on. And then all of a sudden we get
16 this story about Maurice's involvement and remember he
17 knows the drill; he's been through this before; this is not
18 his first rodeo. He has all the more reason to implicate
19 Maurice.

20 The other thing that he doesn't recall is that that
21 is not -- this whole thing is not in small detail. This is
22 not a small detail at all because why -- you're going to
23 remember that day crystal clear because why? He said that
24 he was in jail at the time. He's talking to an officer at
25 the time and he's reminded of these penalties at the time.

1 That should be crystal clear in his mind and all of a
2 sudden he forgets that. You know blood is thicker than
3 water unless you're facing charges yourself and Brandon
4 Donaldson has all the reason in the world to lie and that's
5 when he exerts Maurice's name in all this.

6 In the past seven, eight years it hasn't worked for
7 him; these charges here an issue; still pending, still
8 pending. This worked very, very well for him all of these
9 years and you -- you can tell. And he could read into that
10 how the State feels about their evidence in their case, but
11 this case is eight years old and it's worked very well for
12 Brandon Donaldson as far as keeping him away from his day
13 in front of the judge to set his punishment. This is his
14 way out; he blames it on Maurice. It's very telling when
15 he -- what Brandon Donaldson says when he talks about his
16 own involvement; what does he say; that Maurice was the
17 mastermind, that Maurice was the driver. It doesn't
18 measure up with the evidence that we have here and he
19 doesn't have any motivation to lie.

20 I didn't know where we were going and -- oh yeah,
21 guess what, Maurice provided the ski masks and gloves and
22 Maurice rounds the bend and says, you know, to the affect,
23 oh yeah, by the way I picked you up some of these things
24 for you to wear to. It's laughable and we don't mean to
25 make light of it; it's very serious, but it doesn't make

1 sense.

2 Reasonable doubt, the type of doubt that would
3 cause an ordinary person to pause or hesitate before they
4 act. Do you have a doubt and do you have a reason for that
5 doubt? It's the same old pattern of him deflecting his
6 involvement, minimizing his role in all of this and pinning
7 it on old Maurice. Of course he said he wasn't the driver.
8 He tells us why I wasn't driving is I didn't have a
9 driver's license. What do you think about that? At that
10 time when we know that he's -- he's stealing around
11 committing these burglaries. It's almost like somebody,
12 for example, somebody's a drug dealer or something like
13 that so you know well, you know that's what I'd do, but
14 guess what, I do not liter and I will not speed. That's
15 the same logic employed there and it doesn't make sense.

16 All the information about who was there, who was in
17 the car, who drove, comes from one source and that's
18 Brandon Donaldson. Time after time, officer after officer
19 gets up and says they don't know for sure the ID of the
20 people in the video; they don't know for sure who was
21 there. They know what they were told, but no one saw who
22 exactly was there. Remember all of that evidence comes
23 from one source and that's Brandon Donaldson, whose
24 testimony can't be trusted; his charges are still pending.
25 He's being prosecuted by the same solicitor's office that

1 he's testifying for and they're saying that he hadn't --
2 they haven't made him a deal prior to him testifying for
3 them. All the more motive, all the more reason for him to
4 distort the truth; Maurice is simply his way out.

5 And again we said it's like a dagger in the heart
6 that Maurice was the driver because he's on the wrong side.
7 There is no way around that and there are too many holes in
8 the case. And what the judge is going to tell you, you
9 cannot fill those holes in if you do not have them, you
10 must find Maurice not guilty.

11 Maurice is basically an easy -- an easy target.
12 He's somebody that's disposable. He's somebody that can be
13 thrown away and we also have the prior, somebody that's
14 been tangled up with the law before. We've got that
15 conviction from '93, his conviction from '97. This
16 happened in 2007. They're talking about things that
17 happened -- his birthdate's on there, things when he was 17
18 or 18 years old and another one when he was 21. If -- if
19 the State's case is so strong, why are we hearing so much
20 about that evidence. They're trying to wash that over you
21 again and again, but it doesn't harmonize with the physical
22 evidence in the case other than the facts that ring, it was
23 very difficult to pick out.

24 You remember we found jewelry in the car; there was
25 that ring that was found, remember that? That ring,

1 Officer Robinson told us, that ring had the name Bradley
2 Cribb on it. There's no mention of his name at all or who
3 this person may well be and all throughout the entire
4 trial, there's your second person.

5 MR. MAYE: Your Honor, objection of a third party
6 guilt. I object to any mention of that.

7 THE COURT: Solicitor, the facts can be drawn from
8 the testimony and evidence and witnesses presented under
9 oath and any reasonable emphasis that can be drawn
10 therefrom. Thank you. Thank you very much.

11 You may continue, Mr. Casto.

12 MR. CASTO: And you remember that ring, that ring
13 that had that name on it, Bradley Cribb, and there's no
14 mention of that at all. There's your second person right
15 there.

16 THE COURT: All right. Move on, Mr. Casto.

17 MR. CASTO: Yes, sir. Finally we see, we come to
18 the fact, who even knows what Brandon Donaldson is really
19 thinking. You know the State came up here in Saluda, we're
20 really going to harp on it -- who really knows what's going
21 on. He was honest enough to tell us, frankly -- but we
22 have the documents. He was also talking about his own
23 mental health problems that it was so much so that he heard
24 voices; and guess what, at times he did what they said,
25 that he was seeing things that were not there. Like what?

1 Like family members that were deceased. It's almost --
2 when looking at his testimony -- it's almost looking
3 through that dark distorted window and you can't make it
4 out. There's motives to lie, there's bias and oh yeah,
5 there's another layer to it, also mental health issues that
6 he tells us about.

7 He's medicated now so he's infinitely, you know,
8 doing infinitely better than he was then because that he
9 wasn't on his medicine back then whatsoever. Who knows
10 what was going on in his mind.

11 Here's what we do know, by trusting him it's simply
12 not enough to convict Maurice Odom. This is his day in
13 court. You're not allowed to fill in the holes. These
14 things, these items that don't have bias and motive or
15 anything like that, it's only our hope that we've given
16 them holes because we cannot sit up there and we cannot
17 testify.

18 What's going on in the world of the trial.
19 Momentarily I'll sit down and I'll finally be quiet, but
20 realistically, what we have is like this. There's an
21 analogy of professional football game and ultimately what
22 happens is the game got along just fine for years. We had
23 these yellow flags involved in the game and you know, when
24 there's a penalty, you'd throw out one of those yellow
25 flags and, you know, the game would go on. Well, insert

1 modern technology, now we have these red flags and if
2 there's a thought by either one of the coaches of the two
3 teams the referees blew the call; did the player step out
4 of bounds; did the player not step out of bounds, you can
5 throw the red flag. You can throw the red flag and the
6 rule in the game of football is the call on the field
7 stands unless there's indisputable evidence that the call
8 should be reversed. That's the rule.

9 The call of the field, the call made by the ref's
10 should just remain unchanged unless there's indisputable
11 evidence the call should be reversed. They look at the
12 videos and all that stuff now. Well guess what; even here
13 in the four walls of this courtroom, the call on the field
14 is not guilty. The judge will talk about that regarding
15 the presumption of innocence. He's going to do a better
16 job than that. He's not going to use a football analogy,
17 but he's going to say, he's going to talk about that robe
18 of righteousness and that robe that sits around the
19 shoulders of the person and that accompanies him throughout
20 this entire trial, even during deliberation. The call on
21 the field is not guilty unless there's indisputable
22 evidence that that's a change. Maurice is not guilty;
23 reasonable doubt. Do you have a doubt? Do you have a
24 reason for that doubt?

25 As you go back to the jury room, you know your job

1 is -- is not unlike King Arthur in his Knights of the Round
2 Table. See for hundreds of years there's some debate as to
3 whether he existed and -- and recently we kind of learned
4 that he did exist. I don't know about the round table, but
5 the swords are like this. For everybody that sat around
6 the table had an equal say; that's kind of like you on the
7 jury. Nobody's say is more than the person beside him.
8 King Arthur in the world of knights and damsels in
9 distress, that's the imagery that we give out. Your job is
10 just like that. If you feel that there's reasonable doubt
11 in this case, speak out; don't hold on to it; don't let
12 anyone steal it from you. A reasonable doubt is also the
13 highest burden that we have in all the court.

14 In our circuit, we practice law and we have a
15 courthouse in Lexington and the first floor is reserved for
16 Family Court matters and the standard of the burden of
17 proof down there is, is really low, but there's some
18 serious things that can happen there; divorces, custody,
19 alimony, things of that nature.

20 Well, the floor above that is Civil Court and the
21 standard of proof is less than it is here. They take your
22 money. When their in the highest -- the highest floor up
23 there is normally where they have criminal court trials and
24 it requires the highest burden of proof that has to be met
25 by the State and that's reasonable doubt. Do you have a

1 doubt? Do you have a reason for that doubt? Reasonable
2 doubt is alive and well in this case.

3 Wade through this evidence. If you have to wade
4 through all of these items, not what you have on; where
5 they were found. Give doubt a voice. They don't have
6 motive to lie, anything like that. And at the conclusion
7 of the trial we'd ask that you find Maurice Odom not
8 guilty.

9 Thank you.

10 THE COURT: Thank you, Mr. Casto.

11 **JURY CHARGE**

12 THE COURT: Madam Forelady and ladies and gentlemen
13 of the jury, it is now my duty and responsibility to
14 instruct you on the law that you're to apply to the facts
15 of the case as you find the facts and the reasonable
16 emphasis to be drawn from the facts to be. The manner in
17 which I instruct the jury, I instruct the general criminal
18 law that applies to all cases in South Carolina. I then
19 will charge you the law as to burglary second degree,
20 violent and finally instruct you on the form of the
21 verdict. Typically I will give you the caption of the
22 subject matter I'm fixing to cover when I go from one
23 subject matter to the next, I will give you that next
24 caption.

25 Charge, arrest, and indictment are not evidence.

1 The indictment charges the defendant with burglary in the
2 second degree. I remind you that the fact that the
3 defendant was arrested, charged, and indicted in this case
4 is not evidence in the case and it cannot be considered by
5 you as evidence of guilt in the case, nor does it create
6 any presumption or inference of guilt. That document, that
7 indictment is simply the formal written instrument which
8 contains the charges made against the defendant that is a
9 formal document by which the case is brought before the
10 Court.

11 Duties of jury and trial judge. I remind you that
12 during the trial, you and I have certain distinct duties to
13 perform. As the trial judge, it is my responsibility to
14 preside over the trial of this case and I also have a duty
15 to rule on the admissibility of the evidence offered during
16 the trial. You are to consider only the competent evidence
17 before you. If there was any testimony ordered stricken
18 from the record during the trial, you must disregard that
19 testimony. You are to consider only the testimony which
20 has been presented from the witness stand, any exhibits
21 that have been made a part of the record in this case and
22 any stipulations by the attorneys. I have the additional
23 duty to charge you the law applicable to this case.

24 As the presiding judge, I am the sole judge of the
25 law in this case and it is your duty as jurors to accept

1 and apply the law as I now state it to you. If you already
2 have any idea what the law is or what the law should be and
3 it does not agree -- it does not agree with what I now tell
4 you the law is, you must abandon it and set aside your idea
5 because you are sworn to accept the law and apply the law
6 exactly as I state it to you.

7 In every case tried in this court before a jury,
8 the jury comes becomes the sole and exclusive judge of the
9 facts of the case. The trial judge cannot intimate, state,
10 comment on, or make any statement to the trial jury about
11 the facts in the case. Since you, the jury, are the sole
12 judge of the facts in this case, you are not to infer from
13 what I have said during the progress of the trial in ruling
14 upon the admissibility of evidence or otherwise from
15 anything that I say now during the course of my
16 instructions to you that I have any opinion about the facts
17 in this case. The law does not allow me to have an opinion
18 about the facts in the case. This is a matter solely for
19 you, the jury, to determine. As jurors, it is your duty to
20 determine the effect, the value, the weight and the truth
21 of the evidence presented during the trial.

22 Presumption of innocence. The defendant pled not
23 guilty to the indictment and that plea puts the burden on
24 the State to prove the defendant guilty. The person
25 charged with a criminal offense in South Carolina is never

1 required to prove himself innocent. I charge you that it
2 is an important rule of the law that the defendant in a
3 criminal trial, no matter what the seriousness of the
4 charge may be, will always be presumed to be innocent of a
5 crime for which the indictment was issued unless guilt has
6 been proven by evidence satisfying you of that guilt beyond
7 a reasonable doubt.

8 This presumption of innocence does not end when you
9 begin your jury deliberations, but it accompanies the
10 defendant throughout the trial until you reach a verdict of
11 guilt based on evidence satisfying you of that guilt beyond
12 a reasonable doubt. The presumption of innocence has been
13 said to be like a robe of righteousness placed about the
14 shoulders of the defendant which remains with the defendant
15 until it has been stripped from the defendant by evidence
16 satisfying you of the defendant's guilt beyond a reasonable
17 doubt.

18 The presumption of innocence is not a mere legal
19 theory. It is not just a legal phrase; it is a substantial
20 right to which every defendant is entitled as you, the
21 jury, are satisfied from the evidence of guilt of the
22 defendant beyond a reasonable doubt.

23 Reasonable doubt. What is a reasonable doubt in
24 the law? A reasonable doubt is the kind of doubt that
25 would cause a reasonable person to hesitate to act. The

1 State has the burden to prove the defendant guilty beyond a
2 reasonable doubt. Some of you may have served as jurors in
3 the past in civil cases where you were told that it was
4 only necessary to prove that the fact was more likely true
5 than not true, such as what is known as the greater weight
6 or the preponderance of the evidence.

7 In criminal cases, the State's proof must be more
8 powerful than that. It must be beyond a reasonable doubt.
9 Proof beyond a reasonable doubt is proof that leaves you
10 firmly convinced of the defendant's guilt. There are very
11 few things in this world that we know with absolute
12 certainty and in criminal cases, the law does not require
13 the proof overcome every possible doubt. Based on your
14 consideration of the evidence, if you are firmly convinced
15 that the defendant is guilty of the crime charged, you must
16 find the defendant guilty. If on the other hand, you think
17 there is a real possibility that the defendant is not
18 guilty, you must give the defendant the benefit of that
19 doubt and find him not guilty.

20 Direct and circumstantial evidence. There are two
21 types of evidence which are generally presented during a
22 trial, direct evidence and circumstantial evidence. Direct
23 evidence is testimony of a person who claims to have actual
24 knowledge of the facts such as an eyewitness, an ear
25 witness. It is evidence that immediately establishes the

1 main fact to be proven.

2 Circumstantial evidence is proof of a chain of
3 facts and circumstances indicating the existence of a fact.
4 It is evidence which immediately establishes collateral
5 facts from which the main fact may be inferred.

6 Circumstantial evidence is based on inference and not
7 personal knowledge or observation. The law, our law, makes
8 absolutely no distinction between the weight or value to be
9 given to either direct or circumstantial evidence, nor is
10 there any greater degree of certainty required of
11 circumstantial evidence than of direct evidence. You
12 should weigh all of the evidence in the case. After
13 weighing all of the evidence, if you are convinced of the
14 guilt of the defendant beyond a reasonable doubt, you must
15 find the defendant not guilty.

16 Credibility of witnesses. Necessarily, you must
17 determine credibility of the witnesses who have testified
18 in this case. As you all know, credibility simply means
19 believability. It becomes your duty as jurors to evaluate
20 and analyze the evidence and determine which evidence
21 convinces you of its truth. In determining believability
22 of the witnesses that have testified in the case, you may
23 believe one witness over several or several witnesses over
24 one. You may believe part of the testimony of a witness
25 and reject the remaining part of the testimony of that same

1 witness. You may believe the testimony of a witness in its
2 entirety or reject the testimony of the witness in its
3 entirety. You may consider whether any witness has
4 exhibited to you any interest, bias, prejudice, or other
5 motive in this case. You may also consider the appearance,
6 the manner, the demeanor of the witness while on the
7 witness stand. Remember, you are the judges of the facts
8 in this case and of the believability of any and all of the
9 witnesses. You may consider any evidence which has a
10 general tendency to throw light on the accuracy and the
11 truthfulness and sincerity of any witness's testimony.

12 Expert witnesses -- and I charged you this during
13 the course of the trial. The rules of evidence ordinarily
14 do not permit a witness or witnesses to testify to opinions
15 or conclusions. An exception to this rule is this: The
16 witnesses that we call expert witnesses. A witness who by
17 education or experience has become an expert in some art,
18 science, profession, or calling, may state an opinion as to
19 relevant and material matters in which the witness claims
20 to be an expert and may also state the underlying reasons
21 for holding such an opinion. You should consider any
22 expert opinion received in evidence in this case and like
23 any other evidence, give it the weight you think it
24 deserves.

25 If you decide the opinion of an expert witness is

1 not based on sufficient education or experience or if you
2 conclude that the reasons given for holding the opinion are
3 not sound and the opinion is outweighed by other evidence,
4 you may disregard the opinion entirely. An expert
5 witness's testimony should be given no greater weight than
6 that of any other simply because the witness is an expert.
7 Further, you are not required to accept an expert's opinion
8 even though it is not contradicted.

9 I instruct you and emphasize the fact that the
10 defendant did not testify is not a fact to be considered by
11 you in any way in your deliberations and in your
12 consideration on the question of the guilt or innocence of
13 the defendant. It must not be considered by you in any
14 manner whatsoever. A defendant has a constitutional right
15 to remain silent and the assertion of this right must not
16 be considered by you in your deliberations. I repeat,
17 under your oath, you are to draw no conclusion whatsoever
18 from the fact that the defendant in this case did not
19 testify. The fact that the defendant did not testify is to
20 not even be discussed in the jury room. The burden of
21 proof, as I have stated to you, is on the State. The
22 defendant is not required to prove his innocence; the
23 burden of proof is on the State and remains on the State to
24 prove guilt beyond a reasonable doubt.

25 Now, ladies and gentlemen if you'd please continue

1 to give me your complete and undivided attention, I assure
2 you the end of my instruction is in sight.

3 Intent. In order to establish criminal liability,
4 criminal intent is required. For example, the mental state
5 for a particular crime might be purpose, intent, knowledge,
6 recklessness or criminal negligence, the mental state. The
7 State is always required to prove intent. Criminal intent
8 must be proven by the State beyond a reasonable doubt.
9 Criminal intent is always a matter that must be determined
10 by a jury from the circumstances surrounding the situation.

11 Now, ladies and gentlemen, there's no way to prove
12 intent to a mathematical certainty. There's no way medical
13 science can dissect a person's brain and determine what the
14 person has in mind -- had in mind. So the law says that
15 criminal intent may be inferred from circumstances shown to
16 have existed. This is how you make your determination of
17 whether or not the element requiring intent was present.
18 It is not necessary to establish intent by direct and
19 positive evidence, but intent may be established by
20 inference in the same way as any other fact taking into
21 consideration the acts of the parties and all the facts and
22 circumstances of the case.

23 Criminal intent is a mental state, a conscious
24 wrongdoing. It is up to you to determine what he intended
25 to do based on the circumstances surrounding the event.

1 That covers, ladies and gentlemen, the general
2 criminal law in the South Carolina. Again the charges and
3 indictment is not evidence, the duties of the trial jury
4 and trial judge, the presumption of innocence, reasonable
5 doubt, direct and circumstantial evidence, and credibility
6 of witnesses, expert witnesses, right to remain silent not
7 to be discussed, and intent.

8 I will now charge you and instruct you on the
9 specific elements of second degree burglar violent. It is
10 a statute in South Carolina 16-11-312. To prove second
11 degree burglary, violent, the State must prove beyond a
12 reasonable doubt that the defendant entered a building
13 without consent, with the intent of committing a crime
14 therein in the building.

15 A building is defined under our statute. A
16 building is any structure where people assemble for the
17 purpose of business or public use or where goods are
18 stored. That is our statutory definition of a building.

19 Finally, the State must prove beyond a reasonable
20 doubt that either the defendant had prior a record of two
21 or more convictions of burglary and/or housebreaking at the
22 time the burglary of which the defendant is being tried
23 occurred. You have a prior record of two or more
24 convictions of burglary and/or housebreaking and/or the
25 burglary was committed by the defendant during the

1 nighttime. Evidence of prior offenses committed by the
2 defendant was not offered and was not in evidence to prove
3 the defendant has a bad character or can prove that the
4 defendant committed a burglary in this case. Prior
5 convictions may be considered by you only for the purpose
6 of determining whether or not it satisfies that element of
7 the offenses that makes a second degree burglary, violent
8 if you enter a building without consent to commit a crime
9 and you have two prior convictions of burglary and/or
10 housebreaking. Before you can even consider the evidence
11 of the defendant's prior burglaries and/or housebreaking
12 convictions, you must first find that the State has proved
13 beyond a reasonable doubt that the burglary was committed
14 by the defendant in this case. If you find that the --
15 beyond a reasonable doubt the burglary was committed by the
16 defendant, then you may consider the evidence of prior
17 convictions as evidence of one of the circumstances which
18 would make this burglary in the second degree burglary,
19 violent.

20 If you do not find beyond a reasonable doubt that
21 the defendant committed these alleged prior offenses, then
22 you cannot determine the verdict of second degree burglary
23 based on these prior offenses.

24 If you find beyond a reasonable doubt that the
25 burglary was committed, you may also find the defendant --

1 the burglary was committed by the defendant, you may also
2 find the defendant guilty of second degree burglary if you
3 find the defendant entered or remained in the building in
4 the nighttime. Nighttime is a period from sunset to
5 sunrise during which there is not enough daylight to
6 recognize the person's face except by artificial light or
7 moonlight. So it is the -- the State must prove beyond a
8 reasonable doubt the defendant entered the building without
9 consent with the intent to commit a crime therein in that
10 building; that's first. If you find that the defendant
11 entered the building without consent, then you may find
12 it's a second degree burglary if at the time he entered
13 that building he was a person that had two or more prior
14 convictions of burglary, housebreaking, or similar offenses
15 and/or it was committed during the nighttime. It does not
16 have to be both; it can be one or the other.

17 That is the elements of the offense of burglary
18 second degree.

19 As to your jury verdict. You will have it with
20 you, ladies and gentlemen, as to the charge of burglary in
21 the second degree, there are two possible verdicts which
22 you may find in this case; guilty of burglary in the second
23 degree or not guilty. You will, should you find --

24 You will have the form of verdict with you in the
25 jury room, Madam Forelady and ladies and gentlemen of the

1 jury. It will list the caption of the case, it lists the
2 indictments and it'll say, We, the jury, unanimously find
3 the defendant guilty of burglary in the second degree or
4 not guilty. The order in which I just stated that; the
5 order in which they are listed has no significance
6 whatsoever; it's only that one must be stated or listed
7 before the other.

8 Ladies and gentlemen, you determine the facts and
9 you apply those to the law as I tell you the law is, told
10 you the law is. If you find the State has proven its case
11 beyond a reasonable doubt your verdict would be guilty.

12 You'll have this form, Madam Forelady, it has a
13 line to the left for guilty and you'll check that line if
14 that be your verdict, circle your checkmarks, circle all
15 those words, guilty of burglary in the second degree
16 violent. If by your determination of the facts that the
17 State has failed to prove beyond a reasonable doubt please
18 check the last of the two words, not guilty and circle your
19 checkmark and those two words not guilty. And there's a
20 place for you to sign, Madam Forelady, presiding juror and
21 the date, you will date it the date of the verdict.

22 Ladies and gentlemen, your verdict must be
23 unanimous. All twelve of you must agree. Your verdict
24 cannot be based on bias, passion, prejudice, any other
25 emotions not in evidence in this case. Once you have

1 reached that unanimous verdict, once that document has been
2 properly executed your foreperson, Madam Forelady, you will
3 please then knock on the jury room door and inform the
4 bailiff that you have reached a verdict. At that time, we
5 will receive you back in the courtroom for your verdict.

6 I have to ask you -- well before I do that, ladies
7 and gentlemen of the jury, during the course of your
8 deliberation, if you have any questions whatsoever, Madam
9 Forelady or members of the jury, if you will please write
10 out a note for me, knock on the jury room door, give it to
11 the bailiff and I will certainly respond in a timely
12 manner.

13 I'm going to ask you to return to your jury room.
14 Do not begin your deliberations. The law requires me to
15 meet with the attorneys one final time outside of your
16 presence in case I have forgotten to instruct you on any
17 matter of the law. If -- if I have not, is there lunch
18 here? If your lunch is here, probably what I would do is
19 you can have your lunch before I advise you to begin your
20 deliberations. Before you begin your deliberations --
21 everybody looks great -- so our alternate will come out of
22 the jury room and then instruct you and of course you'll
23 have all the evidence in the jury room.

24 Thank you. Thank you very much. If you'll now go
25 with your bailiff. Again do not begin your deliberations

1 until you're instructed to do so.

2 (The jury left the courtroom at 1:21 p.m.)

3 THE COURT: Any exceptions or additions from the
4 State?

5 MR. MAYE: None from the State, Your Honor, thank
6 you.

7 THE COURT: Defense?

8 MR. CASTO: No, Your Honor.

9 THE COURT: All right. I'm going to have the first
10 form of verdict marked as a Court's Exhibit and the second
11 form of verdict here. If y'all will check the evidence.
12 I'm going to let them eat first before I submit it to them.

13 I've informed the Clerk to tell them to do not
14 begin their deliberation.

15 (The exhibits were sent back to the jury and the
16 jury instructed to begin deliberations at 2:00 p.m.)

17 (It was reported to the court that the jury had
18 reached a verdict at 3:04 p.m.)

19 (The jury entered the courtroom at 3:10 p.m.)

20 THE COURT: All right. Mr. Clerk.

21 THE CLERK: Madam Foreperson, have you reached a
22 verdict?

23 THE FOREPERSON: We have.

24 THE CLERK: Please hand it to the bailiff.

25 THE COURT: All right. Will you publish that for

1 us, please.

2 Please stand, Mr. Odom.

3 **VERDICT**

4 THE CLERK: In the case of the State of South
5 Carolina v. Maurice Anthony Odom, Indictment Number
6 2013-GS-19-511, to the charge of burglary in the second
7 degree violent, we, the jury, unanimously find the
8 defendant guilty of burglary in the second degree, signed
9 by the jury foreman, June 10th, 2015.

10 THE COURT: Thank you. Thank you Mr. Clerk.

11 You may be seated.

12 THE CLERK: Madam Forelady and ladies and gentlemen
13 of the jury, is that your verdict? Please indicate by
14 raising your right hand.

15 All hands were raised.

16 THE COURT: Anything further for the jury from the
17 State?

18 MR. MAYE: None from the State, Your Honor, thank
19 you.

20 THE COURT: Defense?

21 MR. CASTO: We ask the jury to be polled, Your
22 Honor.

23 THE COURT: All right. Mr. Clerk, will you please
24 explain that process to the jury and conduct the jury
25 polling process?

1 THE CLERK: Yes, sir.

2 POLLING OF THE JURY

3 THE CLERK: I'm going to read out your names,
4 basically a roll call and ask you one at the time if this
5 was your verdict; you'll say yes or no as I state your
6 name.

7 The verdict of --

8 THE COURT: And is it still your verdict.

9 THE CLERK: And is it still your verdict.

10 The verdict of the jury reported to the Court is
11 guilty of burglary in the second degree. Was this your
12 verdict in the jury room and is this still your verdict,
13 Jessica Sanders?

14 THE JUROR: Yes.

15 THE CLERK: Claude Kelly?

16 THE JUROR: Yes.

17 THE CLERK: Genane Duff?

18 THE JURY: Yes.

19 THE CLERK: Leslie Thomas?

20 THE JURY: Yes.

21 THE CLERK: Cory Clegg?

22 THE JURY: Yes.

23 THE CLERK: Charles Weeks?

24 THE JUROR: Yes.

25 THE CLERK: James Winn?

1 THE JUROR: Yes.

2 THE CLERK: Dale Glanton?

3 THE JUROR: Yes.

4 THE CLERK: Ricky Thomas?

5 THE JUROR: Yes.

6 THE CLERK: Robert Broadwater?

7 THE JUROR: Yes.

8 THE CLERK: Patsy Hatcher?

9 THE JUROR: Yes.

10 THE CLERK: Emma Burton?

11 THE JUROR: Yes.

12 THE COURT: All jurors have been polled now, Mr.

13 Clerk?

14 THE CLERK: Yes, sir.

15 THE COURT: Thank you. And all were in the

16 affirmative?

17 THE CLERK: Yes, sir.

18 THE COURT: Thank you, Mr. Clerk.

19 Anything further from the jury from the defense in

20 this case?

21 MR. CASTO: Your Honor, with regard to the jury,

22 no, sir.

23 THE COURT: All right. Thank you. Thank you very

24 much.

25 Well, Madam Forelady, ladies and gentlemen of the

1 jury, momentarily I'm going to release you from your jury
2 service for the remainder of today and the remainder of the
3 week. I never commend or criticize a jury for its verdict
4 because that is the province of the jury itself. I do
5 observe jurors week to week and day to day, throughout the
6 various counties of South Carolina and I'm always impressed
7 by they're being thrust into unfamiliar surroundings and
8 drafted, not being volunteers and have them stand up and
9 perform their civic duties in a focused and attention and
10 good attitudes towards it. I know -- I say I know, I'm not
11 qualified to serve on a jury because I'm employed within
12 the walls of the courthouse, but I know, I imagine -- I can
13 only imagine how difficult it is to be held captive in
14 small unfamiliar surroundings and start off with eleven
15 other strangers perhaps and try to bond and try to make an
16 important decision, both important in your minds and
17 important in the life of our State and the life of the
18 defendant.

19 Y'all have been very attentive, very hardworking,
20 very focused and very patient and patient with the Court.
21 It's very difficult to manage the time, not from the point
22 of view of getting you out here and getting going are very
23 important to the constitution on the statutory principals
24 we as Americans hold very dear.

25 An individual charged with a criminal offense must

1 be protected. As we all know in our society and it is a
2 basic foundation of our country and our culture and we as
3 American people. But we hear people all the time say it's
4 a pleasure and privilege to do this, that or the other and
5 it's clearly my privilege to work with y'all in Edgefield
6 County, individually, this jury and people throughout South
7 Carolina.

8 With that being said, as I said I'm going to
9 release you from your jury service and you do not have to
10 serve on jury service in state circuit court for the
11 remainder of this year. If you were to get another jury
12 summons this year, I would suggest that, I don't condone
13 gambling, but I would suggest you buy a lottery ticket.
14 Your numbers coming up for some reason. Like I say, I
15 don't condone gambling, but I do support our school system.

16 You're now excused from jury service. Thank you.
17 Thank you very much. And you're more than welcome to stay
18 with us if you'd like.

19 (The jury left the courtroom at 3:16 p.m.)

20 THE COURT: All right. Anything further from the
21 defense, Mr. Casto?

22 **POST-TRIAL MOTIONS**

23 MR. CASTO: Yes, sir, Your Honor. At this time, we
24 respectfully renew all of our objections, our motions, both
25 that occurred pretrial, during the trial, including our

1 motions for directed verdict at this time, Your Honor.

2 THE COURT: All right. Thank you. Thank you very
3 much.

4 I would renew all my previous pretrial rulings,
5 trial rulings during the course of the trial and the
6 directed verdict. There was direct and substantial
7 circumstantial evidence. Quite frankly, I think the
8 evidence was overwhelming evidence of guilt in this case.
9 Based on the evidence and testimony presented by the
10 witnesses on behalf of the State as you and Mr. Drylie are
11 competent attorneys.

12 Anything prior to imposition of sentence.

13 MR. CASTO: Briefly, Your Honor, at this time we
14 move for a new trial. I believe the evidence presented, a
15 reasonable jury could not come to this conclusion.

16 THE COURT: Again I would deny that motion. I
17 believe there was overwhelming evidence of guilt that
18 indicates the jury stayed out over an hour and forty
19 minutes, requested equipment to view the video and asked a
20 couple of questions and I think they came to verdict that
21 should have been returned in this case.

22 Anything further, Mr. Casto?

23 MR. CASTO: No, sir, Your Honor.

24 THE COURT: All right. Mr. Odom -- any reason you
25 see that sentence should not be imposed at this time, Mr.

1 Casto or Mr. Drylie?

2 MR. CASTO: No, sir, Your Honor, Mr. Drylie would
3 handle sentencing at this time.

4 THE COURT: All right. Thank you. Thank you very much.
5 If you'll come around please, Mr. Odom, Mr. Drylie.

6 THE COURT: Mr. Casto, does Mr. Odom need more
7 time? If there's something you've got to do -- I can
8 certainly respect that.

9 MR. CASTO: We would ask that, my client has
10 indicated that he did have something to tell me, something
11 that was on his mind before he moved into sentencing.
12 Respectfully, my client's requested and ultimately we would
13 ask that perhaps we just have a few minutes to discuss that
14 perhaps back in the back, Your Honor.

15 THE COURT: All right. Certainly. You may have
16 whatever time you need, Mr. Casto.

17 MR. CASTO: Yes, sir.

18 THURSDAY, JUNE 11, 2015

19 THE COURT: All right. Anything further from the
20 defense?

21 MR. CASTO: No, Your Honor, we just stand by the
22 memorandum that was given to the Court as well as the
23 transcript and we would like to make it a Court's Exhibit,
24 Your Honor.

25 THE COURT: Certainly. We'll do that.

1 THE COURT REPORTER: It would be 11 and 12, Your
2 Honor.

3 THE COURT: Anything additional from the State,
4 Solicitor?

5 MR. MAYE: Yes, sir, Your Honor, in response to
6 what the defense brought up yesterday, I went back and
7 through and reviewed. Our procedure in this case is we
8 served the notice of intent to seek life without parole and
9 I looked at the cases and passed up some to the Court;
10 State v. James, State v. Burdette that addressed the
11 sufficiency --

12 THE COURT: Is that Burdette?

13 MR. MAYE: Burdette. B-U-R-D-E-T-T-E. 335 SC 3499,
14 1999; and then James v. State at 372 SC 247. It basically
15 says that all that the State has to do is notice a
16 defendant in this case of our intent to seek life without
17 parole. Under 17-25-45, at the beginning of this case, we
18 certainly asked the defense's attorney and Mr. Odom, who
19 acknowledged that they were served with notice of intent to
20 seek life without parole. I know that when we typically do
21 a notice of intent to seek life without parole, I have a
22 form, and these cases state that there's no form,
23 specifically that the State is required to comply with. I
24 mean, we don't have to give them certified true copies or
25 there's no specific requirements. It basically says that

1 South Carolina has not historically required the defendant
2 be informed he's gone be punished more severely on the
3 basis of prior convictions other than this notice. But in
4 the case that we have at hand, Your Honor -- and Burdette
5 says basically once an indictment informs the defendant of
6 the charges against him 17-25-45(h) only requires the
7 solicitor inform the defendant the recidivist statute will
8 apply on conviction. We certainly did that in this case.
9 They acknowledged they received it. We have the
10 certificates of service where Mr. Odom was served in the
11 department of corrections.

12 On its face I have looked at the notice that Mr.
13 Young prepared. It does say that we intend to seek
14 sentencing under 17-25-45 if he's convicted. It references
15 this indictment. I note that under James v. State the
16 issue was they indicted a defendant initially, noticed him
17 under that indictment sometime earlier and then
18 subsequently sought a new indictment and didn't serve the
19 subsequent notice. They said under James v. State that
20 that was appropriate. I handed up another published
21 opinion where even the notice it's the case of Massey; it's
22 another published 2012 West Law 108, 3019, where it says
23 even where they left out the language that we intend to
24 seek life without parole, that just merely apprising a
25 defendant that potentially on conviction he will face or

1 that we intend to seek it under 17-25-45 is sufficient.

2 There are a number of cases where we address that.
3 The notice that we have certainly apprised him of that;
4 they acknowledged they received it. We went on in fact and
5 talked about this one. There's some scrivener's errors in
6 it, but we talked about the prior CSC for which Your Honor
7 has. We talked about the burglary second conviction out of
8 Laurens County that's Indictment 2012-GS-30-317, which is a
9 strike in this case, Your Honor. Additionally, I had
10 provided the defense with, we intended to potentially use
11 both the 6/11/2014 conviction out of Laurens County and
12 also a 2015 conviction out of Newberry County, Your Honor,
13 that I handed up the Court a copy of in this case,
14 Indictment Number 2012-GS-36-0156.

15 He also has a conviction for burglary second
16 violent that was handed down on a separate day, January the
17 5th of 2015. He was sentenced. I've handed up the Court a
18 copy of his burglary second conviction, Your Honor, which
19 is also a serious offense.

20 The State would seek life without parole sentencing
21 for Mr. Odom on the basis that he has the Laurens County
22 conviction, which is a serious one in 2014. He has the
23 Newberry County sentence in 2015, Your Honor, that's also a
24 strike and he had not been convicted of the case at hand in
25 this case. He has three strikes just on the 2014, the

1 2015, and this one. We additionally ask that the Court
2 consider an indictment for criminal sexual conduct with a
3 minor, which is a most serious offense, Your Honor, and
4 17-25-45(p) section says that in the event that an
5 individual is convicted of a serious offense like this, if
6 they have any combination of either serious or most
7 serious, if they have three of any of those, they're
8 subject to life without parole sentencing.

9 Our contention in this case is Mr. Odom has the two
10 prior burglaries that are serious which are potential for
11 him to be noticed for life without parole and for us to
12 intend to seek life without parole sentencing, the old
13 criminal sexual conduct charge in this case, Your Honor, is
14 a most serious. We maintain that we've met the
15 requirements for notice, that they acknowledged that we
16 gave them notice. I note that they have written, brought
17 up some issues involving the criminal sexual conduct
18 conviction that is the most serious conviction and brought
19 up issues about the age of the victim and the age of Mr.
20 Odom. At that time, according to the information that we
21 have, the victim in that case was 14 years of age; Mr. Odom
22 was 19. I assume that they're talking about some provision
23 of a later adoptive Romeo statute. Jessie's Law was not
24 even passed until 2006. When he pleaded in 2004, there
25 would have been no way for them to make a determination

1 whether or not it was consensual or not and Jessie's Law
2 wouldn't have applied.

3 I note that they handed up a transcript of the
4 initial time that that plea was taken. It was set aside
5 and he came back with Judge Keesley in 2004 and pleaded.
6 They said that we didn't have a transcript of that and that
7 we should be required to prove that it was not consensual
8 in that case. There would have been no way at that time
9 that a 14 year old could have consented to having sex with
10 a 19 year old or that Jessie's Law would have applied.
11 Even if you looked at it now for Jessie's Law, the
12 perpetrator has to be between 14 and 18 years of age. Here
13 Mr. Odom was clearly 19 at the time that this occurred. I
14 guess they're trying to assert that there should be some
15 retroactive view of the criminal sexual conduct statute and
16 because it's most serious and looking at 17-25-45, the
17 statement in there that it would not have accounted as a
18 most serious if it was consensual. This in no way fits
19 that factual scenario.

20 We looked at the state of the law as it would have
21 been. We went back and looked at a --

22 Mr. Young, where's that version of the code?

23 There's no difference in between the current
24 version of that criminal sexual conduct with a minor in the
25 second degree and the one that would have been in place and

1 in affect back then except for the addition of the Jessie's
2 Law is my understanding and that wasn't passed until 2006.
3 But we would just maintain that in no way would it impact
4 this case, Your Honor, because it's just not applicable
5 given the fact that it wasn't even passed until 2006.
6 There's no way Judge Keesley could have made a finding on
7 the record that it was consensual in that regard.

8 We would maintain respectfully, Your Honor, that
9 the whole purpose of the 17-25-45 is to provide that if a
10 person has convictions of the date of their sentence, which
11 would be today, either two prior serious convictions or a
12 most serious and a serious under 17-25-45(b), the only
13 sentence that could be imposed would be life without
14 parole. In this case we have noticed him that we intended
15 to seek that. We are seeking him to be sentenced to life
16 without parole under 17-25-45(b).

17 We count that these convictions, like I said, he
18 has three convictions; a most serious and two serious with
19 the burglaries in 2014 and 2015 and we respectfully request
20 that he be sentenced to life without parole pursuant to
21 17-25-45. From our reading of the statute in this case, it
22 appears that even if an individual had, for example, during
23 a two-week term of court, if an individual had two pending
24 burglary firsts which are most serious, if we served a
25 notice prior to ten days on one of those two burglaries at

1 the beginning of the two-week term and notice to Mr. Odom
2 or any other defendant that we intended to seek life
3 without parole in the event that they were convicted, I
4 think we could have a trial the first week of the two-week
5 term and someone could be convicted of burglary in the
6 first degree and at the conclusion of the second, at the
7 beginning of the second week of the two-week term, which
8 would be less than ten days or inside of the ten days, if
9 they had a conviction on Friday the first week and we
10 convicted them during the second week, I would think as
11 long as we had noticed them of our intent ten days prior,
12 he wouldn't have even have had those convictions for any
13 length of time or not a conviction at all at the conclusion
14 of the case during the second week, Your Honor, as long as
15 he had it on the day of sentencing.

16 One of the cases that I refer to, Your Honor, talks
17 some about history and this may be State v. Taylor, which
18 is a 2011 case, Your Honor, where it talked about the
19 history of life without parole statute 17-25-45 and talked
20 about the evolution of it. Said it when it was first
21 passed, there was some requirements involved in it that is
22 like the burglary statute here where you have the time if
23 you commit the crime, you already have to have the
24 convictions; it has to be on the day. That provision was
25 taken out of 17-25-45 at some point in time and I've got a

1 copy of State v. Taylor here that I'll hand up to the
2 Court.

3 THE COURT: All right. I don't need to see that.

4 MR. MAYE: Okay. But they changed it and took out
5 that requirement so, and the cases have been pretty clear.
6 They don't, he didn't have to have the two priors at -- at
7 the date he committed the offense, for example, October
8 17th of 2007. We just look at what his convictions are on
9 the day that he is, in fact, convicted and he does have
10 those three prior convictions, Your Honor, on today's date.

11 THE COURT: Anything?

12 MR. DRYLIE: Yes, Your Honor, briefly. We
13 addressed them point by point. As far as the Newberry
14 conviction goes, we were never noticed of that conviction.

15 THE COURT: I'm only going on the two that are
16 listed in the -- look, that's a very narrow question --

17 MR. DRYLIE: Okay.

18 THE COURT: -- whether or not the criminal sexual
19 conduct with a minor second degree qualifies as a strike.

20 MR. DRYLIE: Absolutely.

21 THE COURT: The whole playing field throughout the
22 course of this trial and I'm not -- the playing field is
23 not going to change post-trial. That's -- that's the total
24 focus of my thoughts. That's what's in the notice is the
25 criminal sexual conduct with a minor in the second degree,

1 burglary in the second degree that you have no, brought up
2 no issues. I'm not going outside four corners of the
3 notice that was served on Mr. Odom. I guess I am cutting
4 you off because I don't want you wasting your time arguing
5 about the other charges that was not noticed.

6 MR. DRYLIE: Absolutely, Your Honor, thank you.

7 Your Honor, we would simply stand by the
8 transcript. If you consider that and the memorandum that's
9 been provided to you that said this does not count as a
10 strike. We're not arguing Jessie's Law; we're arguing the
11 plain language of the statute. It says where potential
12 criminal sexual conduct occurred where the victim is
13 younger than the actor, then it's not a most serious
14 offense and we believe that is the case that we have here.

15 THE COURT: All right. Thank you. Thank you very
16 much.

17 As -- as an initial matter, I do agree -- and
18 thank you, Solicitor, for providing me with the hard copies
19 that Jessie's Law was not in effect at the time of his
20 guilty plea before Judge Keesley and...

21 MR. MAYE: Your Honor, I was just trying to follow
22 along. And I apologize. I just did not understand the
23 ruling of the Court in this case. We were not required to
24 give notice of the specificity of the, from my reading of
25 the cases and the Court's respect, I'm certainly not dis --

1 certainly not arguing against anything Your Honor rules. I
2 was just getting it clear in my mind where we were not
3 required to give notice of anything beyond 17-25-45. Is it
4 the Court's position that you are not allowed to consider
5 the Newberry one in 2015 because we weren't required to
6 give them that. This form is one that I just made up for
7 convenience and we would certainly respectfully maintain
8 that the Newberry County conviction could also
9 alternatively be considered by the Court for the purpose of
10 sentencing and would ask that you consider it because we
11 would not have been required to noticed them of that.

12 THE COURT: I'm not going to consider it.

13 MR. MAYE: Okay, Your Honor, I'm just making sure.

14 THE COURT: Thank you. I appreciate you agreeing
15 with that. When you got up here for sentencing, this is
16 what I was informed. On the notice the State was -- and
17 they objected to one of the strikes. That has never been
18 before me during the course of this trial and now after
19 they present their mitigation, then I'm going to change the
20 playing field; I'm not going to do it. I'm not going to do
21 that. Whether you're required or not required, I'm just --
22 I'm not ruling on that whatsoever. I'm ruling on the
23 narrow issue of whether or not the criminal sexual conduct
24 with a minor in the second degree is a prior for the
25 purposes of the recidivist the statute and -- and

1 questioning the likes of that.

2 Now a couple of things, in looking at the matters
3 that have been presented before me by -- by both the State
4 and the defense, both of who have done an outstanding job;
5 looking at 332 SC 288, State v. Payne, the defendant bears
6 the burden of proof in collateral -- prior convictions that
7 the State seeks to use in the sentence enhancement statute.
8 That was a case tried by the Honorable Duane Schuler and
9 it's clear that it lists and goes through the fact that the
10 defendant has the burden in attempting or in viewing the
11 recidivist statute, the statute's words must be given the
12 plain and ordinary means by the construing court, that
13 results to limit or expand the statute's operation.

14 In this case also stands for the proposition that
15 even though the accused has no burden of proof at trial,
16 his constitutional rights are not violated by the burden of
17 proving the circumstances in favor of mitigation at
18 sentencing.

19 So I think the State has adequately on its face
20 presented two, one of which is not before the Court as far
21 as the burglary, having to decide if it's a strike or not;
22 we agree that's a strike, but the State has presented
23 adequate documentation on the second strike, criminal
24 sexual conduct with a minor in the second degree for which
25 the defense would have the burden of mitigation.

1 Now, in that regard, they presented this -- this
2 incident report, which I have reviewed. I have calculated
3 and perhaps I'm wrong, but it appears that the date of
4 birth of Mr. Odom on the incident report is [REDACTED]/75 and the
5 alleged incidents were on 6/1/96. To me that would
6 calculate that Mr. Odom was 21 years of age, the victim was
7 born in 1981, had not yet reached her birthday in '96 so
8 she was 14 years of age. Looking specifically, I also
9 reviewed the transcript and now, of course, the defense has
10 got it kind of both ways; they're saying we can't do
11 anything about the '90, the first -- in other words because
12 it was reversed by our Court. But at the same time, they
13 came up with the statute and -- before I might add -- I
14 think they're late.

15 All right. Now on page 10 of that statute, or of
16 that transcript, Mr. Gibbons, then the Assistant Solicitor,
17 said what happened is I believe Mr. Odom had an ongoing
18 relationship with a 15 year old juvenile. She became
19 pregnant and has since had a child. She indicates that Mr.
20 Odom is the only one who could be the father. I believe he
21 has already admitted to that, has already admitted that to
22 her and the contact they had was in her home. I believe
23 the mother knew about it. Later on she got hold of law
24 enforcement and these warrants were from that incident.
25 And he's currently in prison serving time on a charge. I

1 have reviewed the entire transcript. That was the factual
2 basis. When it goes to mitigation there's some arguments
3 from his attorney at that time, but it was a mistake of
4 fact that she told him she was 19 or something of that
5 nature which is not a defense, as we all know to that
6 particular -- to that -- to that particular crime. But I
7 have reviewed -- I have reviewed that. I have read the
8 memorandum of cases and all that have been provided to me.
9 And when I go also to the document itself, well, before I
10 do that, let me go to 17-25-45(a).

11 The first thing, must be sentenced to life without
12 possibility of parole if that person has either one or more
13 prior convictions for a most serious offense or a
14 federal -- the whole issue is whether or not to me criminal
15 sexual conduct second degree is a prior conviction for a
16 most serious offense. The defense argues that under
17 section c(1), the definition of what most serious offense
18 means and one of those they have enumerated. The second
19 degree, 16-3-655, criminal sexual conduct with a minor
20 except where it is presented at the criminal proceeding and
21 the court after the conviction makes a specific finding on
22 the record that the conviction obtained for this offense
23 resulted from consensual sexual conduct with a victim that
24 was younger than the actor as contained in section
25 16-3-655(b).

1 Now, I take that although 16-3-655(b) was not the
2 law in '96 when it was then heard. The Legislature
3 referred to it and asked and, therefore, if I look at the
4 terms of the 16-3-655(b), I find that Mr. Odom was not fit
5 in that because he was older than 18 at the time although
6 she might at her age; he was not.

7 Now, we don't have a transcript of Judge Keesley,
8 what we do have is we have his sentencing sheet and all of
9 you are familiar with the Honorable Judge William Keesley
10 and his thoroughness and his thoughtfulness and on the
11 sentencing sheet marked Court's Exhibit Number 3 that was
12 presented to me, Judge Keesley sentenced Mr. Odom to, among
13 other things, to the Sex Offender Registry. If you go to
14 the Sex Offender Registry, there are enumerated individuals
15 that are subject to the Sex Offender Registry. Criminal
16 sexual conduct with a minor second degree, 16-3-655(b) must
17 be on the Sex Offender Registry. If evidence is presented
18 at a criminal proceeding, the Court makes a specific
19 finding on the record that the conviction obtained for this
20 offense resulted from consensual sexual conduct as
21 contained in section 16-3-655(b)(2) provided the defendant
22 is 18 years of age or less or consensual sexual conduct
23 between persons under 16 years of age, the convicted person
24 is not an offender and is not required to register pursuant
25 to the provisions.

1 To me by implication, there was no finding. By
2 inference there was no finding from Judge Keesley that this
3 was consensual sexual conduct. Further I find that the
4 proof is not such that if I read again 17-25-45
5 specifically, even if I don't go to Jessie's Law, even if I
6 don't go there, it gives you clear language of consensual
7 sexual conduct and don't look for guidance under Jessie's
8 Law where the victim was younger than the actor. I find
9 that there's not sufficient evidence in the record that the
10 criminal sexual conduct with a minor in the second degree
11 was consensual. I specifically make that finding in the
12 Court's record.

13 Therefore, as to sentencing today, and before I
14 impose sentence, is there anything further in mitigation,
15 Mr. Drylie and Mr. Casto?

16 MR. DRYLIE: Your Honor, just for the record, I'd
17 like to put up that we'd object to sentencing under
18 17-25-45. I believe it's abundantly clear so I just want
19 to make sure it's preserved.

20 THE COURT: Yes, sir.

21 **SENTENCE**

22 THE COURT: Please stand for me, Mr. Odom.

23 2015-GS-19-00511, Maurice Anthony Odom, as I say, I
24 specifically find criminal sexual conduct second degree
25 would constitute a most serious offense. The defendant is

1 committed to the State Department of Corrections for a term
2 of life without parole under the rule 17-25-45.

3 Good luck to you, Mr. Odom.

4 Thank you, Mr. Drylie and Mr. Casto.

5 Thank you, Solicitor.

6 MR. MAYE: Thank you, Your Honor.

7 * * * * * END OF TRANSCRIPT * * * * *

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1 State of South Carolina)
2 County of Aiken) **Certificate of Reporter**

3
4
5
6 I, THE UNDERSIGNED, Brenda J. Sigwald, Official
7 Court Reporter for the Eleventh Judicial Circuit of the
8 State of South Carolina, do hereby certify that I reported
9 the proceedings in the captioned case in the Court of
10 General Sessions in and for the State of South Carolina on
11 8th through 11th days of June 2015.

12 I FURTHER CERTIFY that the foregoing pages
13 constitute a true, accurate and complete transcript of said
14 hearing.

15 I FURTHER CERTIFY that I am neither kin, counsel,
16 nor of interest to any party hereto.

17 IN WITNESS WHEREOF, I have hereunto set my hand and
18 seal at Aiken County, this 21st day of October, 2015.

19
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21
22
23
24
25

Brenda J. Sigwald
Brenda J. Sigwald,
Court Reporter and Notary Public
For the State of South Carolina
My commission expires
January 4, 2020

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

471

COUNTY OF
STATE

Edgefield

VS.

Maurice Anthony Odom

AKA:

Race: Sex: M Age: 38

DOB: 1975 SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip: [REDACTED]

DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Burglary Second Degree Violent
in violation of § 16-11-312 of the S.C. Code of Laws, bearing CDR Code # 0080☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

Attest:

Solicitor

SC Bar# 04808

Defendant

Attorney for Defendant

SC Bar# 76700

WHEREFORE the Defendant is committed to the

☒ State Department of Corrections,☐ County Detention Center,for a determinate term of Life WOP days/months/years or ☐ under the Youthful Offender Act not to exceed yearsand/or to pay a fine of \$; provided that upon the service of days/months/years and/or paymentof \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied

by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient:

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)		\$ <u>3.90</u>
TOTAL		\$ <u>133.90</u>

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

INDICTMENT/CASE#: 2013GS1900511

A/W#: 2013GS1900511

Date of Offense: 7/31/2013

S.C. Code § : 16-11-0312

CDR Code #: 0080

SENTENCE SHEET

CONVICTED OF or ☐ PLEADSThe charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

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SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient:

*Fine:		\$
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TOTAL		\$ <u>133.90</u>

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

PTUP

 days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning \$ paid to Public Defender FundOther: ☐ Appointed PD or appointed other counsel,

§ 47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge

Judge Code: 8145Sentence Date: 11 June 15

FORM 5

STATE OF SOUTH CAROLINA -)

County of Edgefield)MAURICE ODOM #199677)

Full name and prison number (if any) of Applicant)

MAURICE ODOM)
✓)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2020-CP-19-071

2020 MAR -3 AM 9:14

EDGEFIELD COUNTY
CLERK OF COURT
CHARLES L. REEL

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention BROAD RIVER C.I.
4460 BROAD RIVER RD Col. S.C. 29210
2. Name and location of Court which imposed sentence Edgefield County
3. Name(s) of co-defendant(s) (if any) Brandon Donaldson
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2013-GS-1900511
 - (b) _____

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) June 11th 2015 - LWOP
- (b) _____
- (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 "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. granted oral argument but denied.
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. Jan 2017
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Denied
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (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
- (b) Prosecutorial Misconduct
- (c) Denied of Due Process
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) _____
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? Yes
- (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)? Yes
- (d) any other petitions, motions or applications in this or any other Court? Yes
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. Speedy trial rights
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. Court of Appeals
- ii. Writ certiorari
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. Dismissed
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. Jan 23rd, 2020
- ii. Jan 7th, 2016
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. _____
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) BECAUSE IN COURT OF APPEALS CAN ONLY RAISE MOTION OR OBJECTION ISSUES
 (b) THAT WAS PRESENTED DURING TRIAL.
 (c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? No
 (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? Yes
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
Yes

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:
 i. Katherine Hudgins DIVISION OF APPELLATE DEFENSE
P.O. BOX 11589 COLUMBIA, S.C. 29211
 ii. Jerry Screen 1337 Gregg St. Columbia, S.C. 29201
 iii. Bennett M. Casto - 202 - East Main St. Lexington, S.C. 29072
Greg Seigler - P.O. BOX 1852 McCormick, S.C. 29835
 (b) the proceedings at which each such attorney represented you:
 i. Jerry Screen - represented me on 1st Edgefield trial
that resulted in mistrial
 ii. Bennett Casto represented me on 2nd trial that got me life
with out parole
 iii. Katherine Hudgins represented me on my appeal

Greg Seigler represented me on preliminary hearing
that got my charges dropped & thrown out.

Juror 16 Robert Broadwater. He had either a Friend or Family Member there that I met in the Edgefield Facility, that told me his family is straight and he don't know why he convicted me, when I spoke to him on the phone and said he wouldn't. I told the lawyer I needed to speak to him about that, he said to me, that's a PCR matter at this point. I didn't even get a chance to put it on record.

Pg. 1
Pg. 49-51 Judge saying not to be looking or reading newspaper, do not discuss the case, until all the Evidence is in, but there was a newspaper issue, that was concerning.

If I knew before trial had actually started or took off, that they could actually had given me a life sentence, then I would have never jeopardize my life with a trial knowing that I could have lose it, I felt like they should have established that I could have gotten that sentence before trial, not after.

pg. 2

pg. 12-13 reflects the record where I told them about IRVIN MAYE dropping the charges to NEWBERRY Solicitor, to me, if I pled guilty to 15 years and I did, and the charges, still didn't drop after I done just that.

Also at a point and it reflects the record that the presiding judge stated and he replied, that HE DON'T THINK THAT HE COULD DO THAT, as in given me a life sentence....

Pg. 13. Attorney Jerry Screen visited me in Laurens County Detention Center talking about they go drop the charges, when they came to his office for 45-60 minutes in his office saying they were going to clear the docket, but when they found out that ~~it~~ had them under investigation through the disciplinary counsel, then they rejected the deal they gave me.

Pg. 21. charges dropped at preliminary hearing as to said Edgefield charges would go away.

OVER →

pg. 3

My Indictments & warrants are nonviolent, not violent but my conviction sheet says violent.

I told them 2 of my half brothers Brandon & Jermaine committed these crimes when I gave them my car and they said they would be back but considering Lamar Robinson told Brandon that I told on him and said Brandon did it, which made Brandon angry and furious, now out of retaliation Brandon admitted to it but lied and said I was with him. I ask Detective Robinson, why he did that, and lied on me, he stated he gotta do what he have to do, to get the truth even if it means to lie.

Slater gave False and misleading information to the jurors to convict as in pg. 81. The detect. Lamar Robinson stated clothes dark mask, pants shirt and shoes that was used in the burglary, when in fact none of my D.N.A. was on them items but my personal clothes that was in my car. He made them believe they found my D.N.A. on the burglary clothes, which isn't the truth, when my D.N.A. was only on clothes, that I say are my clothes →

pg. 4.

A white, red and black stripe shirt and fitted baseball cap wear hat that had nothing to do with a burglary and they knew this...

- 11 Prosecutorial misconduct prove they wasn't trying to give me 'life or my 1st trial until my 2nd Jury trial and I had charges pending since 2011. When my charges were dropped at a preliminary hearing then a mistrial on the 1st trial as well as several indictments dismissed, shows and the law states that those actions are the same as assault or equivalent and double jeopardy for trying the case again...

pg. 139 - my purpose of not taking the stand was for my priors wasn't brought up and potentially used or looked at against me, also I have a right to exercise my rights but as of pg. 139 line 14 and 15

Solicitor acknowledge Brandon mental health stability on pg. 140 line 9 and 10 saying he's a little bit, then why wasn't he given a psychiatric test, to see if he was competent to stand trial. When

OVER
→

pg. 388 In Fact in Barnwell County, his charges were dropped of his burglary charges there because he was found not competent to stand trial there, which is consistent with the state and county of Edgefield Court. He was also admitted for suicidal thoughts and attempts to kill his children and himself. So how is he credible. He shouldn't have been able to testify with these or under these conditions.

The robbery clothes did not have my DNA on them pg. 231. Forensic technician employed by sled testified and sworn statement that the burglary clothes did not match me. Red, white. Rocawear hat and shirt were mine that were just sitting in the back seat of my my car, and had nothing at all under any circumstances to do with the burglary.

pg. 390: Manipulating the jury saying them and their kids are the victim and local people work there and their kids get there start there, which is an improper and manipulative statement.

line 16

pg. 6.

pg. 404- Him saying I think I'm smarter than people but I'm not smarter than Lamar Robinson or the 12 Jurors...

pg. 407- He stated my DNA is on the robbery clothes...

pg. 408- line 12 "He stated this is the clothes I been wearing in all likely hood and line 28..."

pg. 409- line 9 and 10... He not smarter than the 12 of you and in line 16 you are all from Edgefield, I am confident you will come back with a verdict that does justice...

The CSC strike more serious, that was consensual and should not have been a strike against me and evidence on record supports that...

I was also sent 2 life notices, I wasn't sure which one was valid, I was ordered not to go around Brandon or 3rd party meaning my family, Father, or I

ps. 1.

would be violated, and couldn't be around anything or anyone he was tied to for years and I was living with my father at one point. Mr. Mayer even had me come to court every day, every court term for 2 weeks knowing I was taking a jury trial and stayed until 5, 6, or even 7 or 8 o'clock at night, from morning and roundtrip of 3 to 4 hours back home every day. When my job only paid me like approx 8 dollars an hour. I couldn't survive that with attorney and kids and home. He told me if he gotta be here, so do I. I had to call Donnie Myers office to leave. but he still made me come back the next day....

My indictments kept being dropped, then being re-indicted, edited, like at least several times...

My 1st trial was NV and was offered 3rd Degree Burglary to plead to 5-8 NV years but I rejected it, and my results were a mistrial, but 2nd trial, I received A life sentence....

4-

(B) Prosecutorial Misconduct

My 1st trial was NV and was offered 3rd Degree Burglary to plead to 5-8 NV but I rejected it, and my results were mistrial, but 2nd trial I received a Life sentence.

Pursuant 2nd CDR# code 0080 is nonviolent, not violent and on indictment, warrant

Case in newspaper, day of trial saying I committed these crimes not allegedly...

My warrants and indictment bases the CDR# code #0040 16-11-0312 which is 9th nonviolent offense not violent. State vs. Gerald means Court lack subject matter jurisdiction in the case due to improper amendment of and insufficient indictment state vs. means

p. 56 - Excessive pretrial delay - 5th Amendment - due process clause and 6th Amendment, right to a speedy trial.

State v. Langford ^{the cite 400 S.C. 421} supports my speedy trial rights. Keeps me from putting up an adequate defense. The clock starts running when the defendant is arrested, indicted and/or accused.

Fight the 3 strike amendment by word play ~~data~~ they used against me. Also shows prosecutorial misconduct and Due Process...

Grounds for Dismissal ^{Bar} after in Criminal Case - motion During trial Day S.C. recognizes two types of pleas in Bar of prosecution (1) Double Jeopardy (2) Denial of Speedy Trial

Due Process of Law violated - They told Scott solicitor in Newberry to come to me along with my attorney if I pled guilty to 15 years that they would drop the charges and also told Jerry Screen that they would drop the charges but reneged. They even dropped all Brandon Donaldson charges, my brother.

19. State clearly the relief you seek in filing this application:

VACATE Sentence or Resentence

20. Are you now under sentence from any other court that you have not challenged?

~~No~~ No

STATE OF SOUTH CAROLINA)

County of Edgefield)

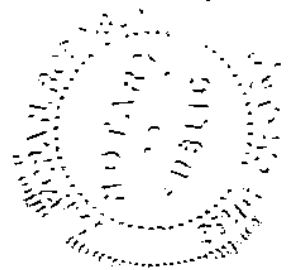
VERIFICATION

x I, MAURICE ODOM, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

x MAURICE ODOM

SWORN to and subscribed before me this 26th
day of February, 2020.
Angela Robinson (L.S.)
Notary Public

My Commission Expires: 8/5/2024



EDGEFIELD COUNTY
CLERK OF COURT
CHARLES L. REEL

2020 MAR -3 AM 9:14

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, Maurice ODom, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

x Maurice ODom
Applicant

SWORN or affirmed to and subscribed before me this

26th day of February, 2020.

Kassara Robinson
Notary Public

My Commission Expires: 8/5/2024

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF EDGEFIELD	)	FOR THE ELEVENTH JUDICIAL CIRCUIT
	)	
	)	
Maurice Anthony Odom, SCDC #199677,	)	Case No. 2020-CP-19-0071
	)	
Applicant,	)	
	)	
v.	)	RETURN, PARTIAL MOTION TO
	)	DISMISS, AND MOTION FOR A
	)	MORE DEFINITE STATEMENT
	)	(COUNSEL APPOINTED)
State of South Carolina,	)	
	)	
Respondent.	)	
	)	
	)	

In response to the post-conviction relief (PCR) action commenced by Maurice Anthony Odom (Applicant) on March 3, 2020, the State makes this return:

I. FACTS & PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Edgefield County Clerk of Court. Applicant was arrested on October 30, 2007, following an investigation into a burglary of the IGA grocery store in Johnson, South Carolina. During its August 2013 term, the Edgefield County Grand Jury indicted Applicant for second-degree burglary (violent) (2013-GS-19-0511).¹ Applicant's case was initially called for

¹ Applicant was first indicted for malicious injury to property (2008-GS-19-0105) and grand larceny (2008-GS-19-0106) in May 2008. R. pp. 66–67. When Applicant failed to appear in February 2009, the solicitor removed the indictments from the docket until Applicant was apprehended. R. p. 67. Applicant was then indicted for second-degree burglary (violent) in August 2010 (2010-GS-19-0475). It is unclear from the record why Applicant was subsequently re-indicted in 2013. In the time leading up to the 2015 trial, however, Applicant picked up multiple charges in other counties at an alarming rate, and was ultimately convicted of the following: second-degree burglary (violent) (2012-GS-30-0311), criminal conspiracy (2012-GS-30-0314), and grand larceny (2012-GS-30-0317) in Laurens County; second-degree burglary (non-violent) (2012-GS-28-0206) and grand larceny (2012-GS-28-0207) in Kershaw County; second-degree burglary (violent) (2012-GS-36-0156) in Newberry County; and third-degree burglary (2015-GS-31-0054) in Lee County.

trial in August 2013, but ended in a mistrial with a hung jury.²

On June 8, 2015, Applicant proceeded to a second jury trial before the Honorable R. Knox McMahon. Assistant Public Defenders Bennett E. Casto and Erik J. Drylie represented Applicant. Assistant Solicitors Ervin J. Maye and H. Franklin Young prosecuted the case.

A. Pre-Trial

On August 20, 2014, the State served Applicant with its notice of intent to seek life without parole (LWOP) under section 17-25-45 of the South Carolina Code. R. pp. 448–49. Applicant's prior convictions of second-degree criminal sexual conduct with a minor (1997-GS-06-365) and second-degree burglary (violent) (2012-GS-53-0311) were cited by the State as predicate offenses.

B. Summary of Evidence Adduced at Trial

On October 17, 2007, Applicant and his half-brother, dressed in dark clothes, gloves, and masks, threw cinder blocks through the glass door of the Johnston IGA and stuffed ninety cartons of cigarettes in lawn bags before fleeing. This was captured on motion-activated video.

Investigator Lamaz Robinsion described what the video depicted as follows:

[T]wo individuals . . . entered the store by throwing a brick-like block towards the window. On the first attempt, it was not successful and the second attempt it was successful where the brick went through the window and then two individuals entered the store. At that point in time, one of the individuals had a blue in color shirt with like some blue in color pants and the other individual had on some black in color shirt like with a black in color pants.

Both individuals had what appeared to be ski masks over their face and gloves over their hands. The one in the black shirt entered the store first with the one in the blue shirt in pursuit behind him. They went into the store and then the next caption that comes out on the video is when they're exiting the store. During the time while they was in the store, they, when they was entering into the store you could see what appeared to be empty . . . black lawn trash bags When they [exited] the store, it appeared that those bags had been filled.

² Jerry Screen, Esquire, represented Applicant at his 2013 trial.

R. p. 258, line 8 – p. 259, line 2.

Tayla Barton, the store manager, received a phone call from the store's alarm company shortly before 2:00 a.m. on October 17, 2007. Law enforcement was already present when she arrived at the store. The glass in the double-door entrance was shattered and cinder blocks lay on the store floor. The shelves for cigarettes were empty – ninety cartons of cigarettes were missing. Barton showed law enforcement the surveillance footage from the action-activated surveillance camera. R. pp. 133-41; p. 146.

Deputy Chris Miller from the Saluda County Sheriff's Office was called into Edgefield County to help set up a perimeter in the vicinity of the Johnstown IGA. He located a white Cadillac backed into the woods off Highway 191. When Deputy Miller shined the spotlight on the car, he saw two people changing out of clothes. Upon being detected, they fled into the woods. Deputy Miller stayed by the Cadillac to wait for more law enforcement to arrive. R. pp. 167-70. The dog tracking team was unable to pick up a scent. R. pp. 174-77; p. 183.

Officers collected the clothing left outside the Cadillac. R. p. 180. During the inventory search of the abandoned Cadillac, law enforcement found two cell phones and a wallet. The wallet contained Applicant's South Carolina Driver's license, his North Carolina Sheriff's identification card, an employer's identification card, Applicant's birth certificate, and his social security card. R. pp. 192-94.

The Cadillac bore only paper dealer tags, so officers could not run a license plate check. However, the search yielded a bill of sale to Demetrius Odom on September 22, 2007, by Duke Boys Auto Sales. R. pp. 201-02. Jesse James Dukes, owner of Duke Boys Auto Sales, testified he sold the Cadillac to Temetrious Odom. Applicant was with her when he sold her the Cadillac. Dukes knew Temetrious because she was from his hometown. He also knew Applicant. R. pp.

290-91. Chief Aston turned the case over to Investigator Lamaz Robinson. R. p. 292.

Chief Lamaz Robinson, Chief Aston's successor, was an investigator at the time of the burglary. Chief Robinson arrived at the scene and examined the video. He then investigated the abandoned Cadillac. Chief Robinson noted clothes outside the car by the door. He also examined one of the cell phones. Chief Robinson discovered the phone was on because it lit up when he held it. The cell phone advised that it was owned by Maurice Odom. The other cell phone contained a contact list with a number for "Momma." The officers called the number, and Co-defendant Brandon Donaldson's mother answered, which is how Donaldson was caught for his part in the burglary. R. p. 231; pp. 255-65. The clothes found outside the Cadillac included a blue shirt, a black shirt, dark jeans, and a pair of gloves. R. p. 276. DNA found on some other clothes discovered inside the Cadillac were a 1 in 140 quadrillion match to Applicant's DNA. R. pp. 346-47.

Donaldson is Applicant's half-brother. Donaldson could not give an exact count on the number of his siblings, seventeen or eighteen. He testified Applicant picked him up and they drove from Blackville in Barnwell County where they lived. R. pp. 220-21. Donaldson did not seem to know the specifics of what they were planning, but he knew they were about to make some money by doing "something crazy." R. p. 247, lines 1-15. They parked the Cadillac in the bushes. They were wearing dark clothes, Donaldson identified the blue shirt that was State's Exhibit 17, and identified himself as the blue-shirted burglar in the store video. They smashed the glass door to the grocery store. They stuffed their bags full of cigarettes. They ran to the Cadillac and were taking off their burglary clothes when a light shined on them. Donaldson testified he left his bag of cigarettes behind and surmised Applicant must have grabbed the bag. They both ran away. Although not expressly stated, it seems they split up. Donaldson called a friend to pick him up. R.

pp. 221-30.

C. Verdict & Subsequent Proceedings

On June 10, 2015, the jury convicted Applicant as indicted. Judge McMahon sentenced Applicant to LWOP as required under § 17-25-45.

Applicant filed a timely notice of appeal. Appellate Defender Kathrine H. Hudgins perfected Applicant's appeal by filing a brief with the Court of Appeals on the following issues:

- I. Did the trial judge erred in sentencing [Applicant] to life without parole, pursuant to S.C. Code §17-25-45, for a burglary second degree conviction when a prior conviction for criminal sexual conduct with a minor second degree should not have been considered a most serious offense pursuant to the statute because there is evidence in the record that the conduct was consensual?
- II. Did the trial judge err in refusing to dismiss the indictment for burglary second degree when the State failed to call the case for trial until August 6, 2013, almost six years after the arrest in October of 2007, and then when the first trial ended in a mistrial, the State failed to call the case again for trial until June 8, 2015, almost eight years after arrest in violation of [Applicant]'s state and federal constitutional right to a speedy trial?

Following briefing and oral argument, the Court of Appeals affirmed Applicant's conviction and sentence. *State v. Odom*, 2018-UP-273 (S.C. Ct. App. filed June 27, 2018). Applicant's petition for rehearing was denied by Order dated August 16, 2018.

Applicant then sought certiorari to the Supreme Court. Certiorari was denied as to Issue I and granted as to Issue II. On January 22, 2020, the Court dismissed the writ of certiorari as improvidently granted. *State v. Odom*, 2020-MO-001 (S.C. Sup. Ct. filed January 22, 2020). The case was remitted back to the circuit court that same day. Applicant commenced this PCR action on March 3, 2020.

II. CURRENT APPLICATION

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on the following (excerpted verbatim):

1. Ineffective assistance [of counsel]
 - a. Juror 16
 - b. Newspaper article
 - c. Did not know he could receive LWOP
2. Prosecutorial misconduct
3. Denied of[sic] due process

Applicant requests relief as follows:

“vacate sentence or resentence”

Attached to this return and incorporated by reference are the Edgefield County Clerk of Court records regarding the subject convictions; Applicant’s records from the South Carolina Department of Corrections; a full and complete record of Applicant’s direct appeal, including the trial transcript; and the records of the current PCR action. The State reserves the right to amend this return upon receipt of any relevant materials.

III. PARTIAL MOTION TO DISMISS

As discussed below, the State requests Applicant, through counsel, provide specific claims and facts to support his vague allegations. However, Applicant’s allegations of trial court error, denial of due process, juror misconduct, and actual innocence should be summarily dismissed for failure to state a cognizable claim under the Uniform Post-Conviction Procedure Act³ (the Act). An applicant may commence a post-conviction relief action on the following grounds:

1. United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;

³ S.C. Code Ann. § 17-27-10 to -160.

4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy....

S.C. Code Ann. § 17-27-20(A).

However, because an application for post-conviction relief is not a substitute for a direct appeal of trial court error, and because of the modern simplification of criminal jurisdiction jurisprudence in South Carolina, the *overwhelming* majority of cognizable claims fall under the broad umbrella of “ineffective assistance of counsel,” a contention under the Sixth Amendment to the Constitution of the United States. *See Roscoe v. State*, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (noting that allegations of trial court error are not cognizable on PCR); *Stepney v. State*, 278 S.C. 47, 292 S.E.2d 41 (1982) (explaining that issues that could have been raised on direct appeal cannot be considered on PCR application absent claims of ineffective assistance of appellate counsel); *State v. Gentry*, 363 S.C. 93, 101, 610 S.E.2d 494 499 (2005) (“Circuit courts obviously have subject matter jurisdiction to try criminal matters.”).

A. Juror Misconduct

Applicant first alleges he spoke to a juror or family member of the juror—presumably after his trial—although it is unclear exactly what they discussed. To the extent Applicant is alleging juror misconduct, post-conviction relief is not the proper forum to pursue this claim. *See McCoy v. State*, 401 S.C. 363, 737 S.E.2d 623 (2013) (“Juror misconduct discovered post-trial is not properly considered “newly discovered evidence, [for purposes of obtaining post-conviction

relief]; rather, it is a separate basis for a new trial.”).

B. Trial Court Error

The State interprets Applicant’s allegation regarding a newspaper article he brought to the trial court’s attention as an allegation of trial court error. The following exchange took place outside the presence of the jury:

DEFENDANT: After talking to my family members and you know, and and I'm certain, I'm a hundred percent certain, some of the jury looked at the newspaper and seen my name in the newspaper that I'm on trial and have, after my last jury trial you took here back in 2013 said, you know, and I also saw the other paper and it said I had been convicted of six burglaries since then, which I haven't. And something about I attempted to rob Billy Stewart, which I don't know anything about that and that that's going to make me look bad and I'm certain --

THE COURT: I have questioned the jury, Mr. Odom on those issues -- the jurors under oath. None of the jurors have indicated to me that they have read, or seen, or watched, or listened to any news reports about the case. They were properly qualified prior to being selected as jurors in the case, indicating they had not heard, seen, listened to or read any news reports about the case, nothing about the case whatsoever. We'll question them again in that regard. However I -- I've listened to you say that and I will question. I have not found the jury has had any exposure to any news media.

DEFENDANT: After I see. Could I ask who's responsible for that getting out; did that come from the Court or something, sir.

THE COURT: Excuse me?

DEFENDANT: Did that come from the Court? Someone responsible for that getting the newspaper?

THE COURT: You talking about did it come from me?

DEFENDANT: No, I mean from the court, being my information is in and it's a falsehood -- falsehood information inside a newspaper about me, I wonder did that come from the courts; where did that come from. I'm thinking it's something that --

THE COURT: I don't know where the stuff comes from that's in the newspaper, television. You'd have to ask the newspaper editor or the man doing the internet to determine where that information comes from.

R. pp. 380–81. Trial court error does not constitute an appropriate basis for a finding of ineffective assistance of counsel, and is not a cognizable claim for post-conviction relief. *Wolfe v. State*, 326 S.C. 158, 162 n.2., 485 S.E.2d 367, 369 n.2 (1997); *See generally Stepney v. State*, 278 S.C. 47, 292 S.E.2d 41 (1982) (explaining that issues that could have been raised on direct appeal cannot be considered on PCR application absent claims of ineffective assistance of appellate counsel)

C. Due Process

Applicant's allegation his due process rights were violated should have been raised on appeal, and is not a cognizable post-conviction relief claim. S.C. Code Ann. § 17-27-20(B); *Simmons v. State*, 264 S.C. 417, 215 S.E.2d 883 (1974). Applicant offers nothing in support of his due process allegation, and does not advance it under the umbrella of ineffective assistance of counsel. As such, the vague allegation that his due process rights were violated should be dismissed.

D. Actual Innocence

Finally, Applicant raises several issues challenging the sufficiency of the evidence and claiming actual innocence. Absent a proper claim of newly discovered evidence, a claim of actual

innocence is not a valid post-conviction relief allegation nor does it support a cognizable claim for relief under any of the statutory grounds. S.C. Code Ann. § 17-27-20; *see Simmons v. State*, 264 S.C. 417, 215 S.E.2d 883 (1975) (finding that alleged trial errors and sufficiency of evidence are direct appeal issues that are not cognizable PCR claims); S.C. Code Ann. § 17-27-20(B) (“This remedy is not a substitute for nor does it affect any remedy incident to the proceedings in the trial court, or of direct review of the sentence or conviction.”).

E. Conclusion and Action Requested

Accordingly, the State moves to dismiss Applicant’s allegations of trial court error, denial of due process, juror misconduct, and actual innocence pursuant to Rule 12(b)(6), SCRCP, for failure to state a cognizable claim. The State further moves for summary dismissal of these claims pursuant to § 17-27-70 because there is no genuine issue of material fact which would necessitate an evidentiary hearing and this allegation should be dismissed as a matter of law.

IV. RESPONSE TO ALLEGATION OF INEFFECTIVE ASSISTANCE OF COUNSEL

A. Ineffective Assistance of Trial Counsel, Generally

The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant—like all other defendants—the right to “assistance by an attorney, whether retained or appointed, who plays the role necessary to ensure that the trial is fair.” *Strickland v. Washington*, 466 U.S. 668, 685 (1984). Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. *See generally* S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in PCR actions). The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right, and raises a question of fact that can only be determined by an evidentiary hearing. *Rogers v. State*, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence. *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in *Strickland* to determine whether counsel's conduct "was so ineffective as to require reversal" of the applicant's conviction. 466 U.S. at 687. To obtain relief, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. *Id.* at 687–88; *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. *Strickland*, 466 U.S. at 700; *see also Bell v. Cone*, 535 U.S. 685, 695 (2002) (explaining that "[w]ithout proof of both deficient performance and prejudice to the defense, . . . it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable" (citation and internal quotation marks omitted)).

The first prong—constitutional deficiency—is "necessarily linked to the practice and expectations of the legal community." *Padilla v. Kentucky*, 559 U.S. 356, 366 (2010). An applicant making a claim of ineffective assistance "must identify the acts or omissions of counsel that are alleged *not* to have been the result of reasonable professional judgment." *Strickland*, 466 U.S. at 690 (emphasis added). The reviewing court must then "determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance" demanded of attorneys in criminal cases. *Id.* Because of the difficulties inherent in making such an evaluation, the reviewing court must indulge in a "strong presumption that counsel's conduct falls within the wide range of reasonably professional assistance." *Butler*, 286 S.C. at 445, 334 S.E.2d at 816. The applicant must overcome this presumption to receive

relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625.

Review of counsel's actions is hallmarked by deference, as “it is all too tempting for a defendant to second-guess counsel’s assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel’s defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable.” *Strickland*, 466 U.S. at 689; *see also Yarborough v. Gentry*, 540 U.S. 1, 6 (2003) (“The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.”). No particular set of detailed rules for counsel’s conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant. *Strickland*, 466 U.S. at 688–89; *see id.* at 691 (“Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another.”). Thus, a fair assessment of attorney performance requires every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel’s challenged conduct, and to evaluate the conduct from counsel’s perspective at the time. *Id.* at 689. The ultimate question is not whether counsel's actions were reasonable, but whether there is any reasonable argument counsel satisfied *Strickland*’s deferential standard.

The second, or “prejudice” prong of *Strickland* is rooted in the very purpose of the Sixth Amendment guarantee of counsel—to ensure a defendant has the assistance necessary to justify reliance on the outcome of the proceeding. 466 U.S. at 691–92. In order to prove prejudice, an applicant must demonstrate counsel’s deficient performance 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. A reasonable probability is a probability “sufficient to undermine confidence in the outcome.”

Strickland, 466 U.S. at 694. *See id.*, at 695 (Where a defendant challenges his conviction, he must show that there exists “a reasonable probability that, absent the errors, the factfinder would have had a reasonable doubt respecting guilt”).

In determining prejudice, the reviewing court must consider the totality of the evidence before the jury. *Id.* at 695. It is not sufficient “to show [counsel’s] errors had some conceivable effect” on the outcome of the proceeding—counsel’s errors must be “so serious as to *deprive the defendant of a fair trial.*” *Id.* at 687 (emphasis added). “An error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment.” *Id.* at 691. Moreover, the South Carolina Supreme Court has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice. *Bannister v. State*, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998).

The *Strickland* standard must be applied with scrupulous care, lest “intrusive post-trial inquiry” threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689-690. Courts must be wary of second guessing counsel’s trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. *Whitehead v. State*, 308 S.C. 119, 417 S.E.2d 529 (1992). The applicant’s burden of proving both *Strickland* components is heavy in light of the strong presumption that counsel’s conduct fell within the range of reasonable professional legal assistance. 466 U.S. at 690. Representation is constitutionally ineffective only if counsel’s conduct “so undermined the proper functioning of the adversarial process” that the defendant was denied a fair proceeding. *Strickland*, 466 U.S. at 686; *see Nix v. Whiteside*, 475 U.S. 157, 175 (1986) (noting that under *Strickland*, the “benchmark” of the right to counsel is the “fairness of the adversary