

ORIGINAL

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM BERKELEY COUNTY

R. Markley Dennis, Jr., Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

FRED WOODROW CRIBB,

APPELLANT

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA	)	
	)	
COUNTY OF BERKELEY	)	COURT OF GENERAL SESSIONS
State of South Carolina,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 12-GS-08-0869
	)	
Fred Woodrow Cribb,	)	
	)	
Defendant,	)	

TRANSCRIPT OF JURY TRIAL

The within TRIAL was held in above-captioned action on November 28, 2012, before The Honorable R. Markley Dennis, Jr., in Courtroom E of the Berkeley County Court of General Sessions, 300 California Avenue, Moncks Corner, South Carolina; attended by Counsel, as follows:

APPEARANCES:

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 9th CIRCUIT SOLICITOR'S OFFICE
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 Appearing for State of South Carolina

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1 (DEFENDANT PRESENT)

2 THE COURT: Let the record reflect
3 that the defendant is present.

4 I understand that there are some
5 Motions that have to be heard, Ms. Kennedy.
6 There is a *Jackson v. Denno* and an ID Motion.
7 Is that correct?

8 PATRICIA KENNEDY: Yes, Your Honor.
9 It's the State's Motion, as is the *Biggers*
10 Motion.

11 THE COURT: All right. Why is State
12 worried about the ID?

13 SOLICITOR CORNWELL: Your Honor, just
14 our of an abundance of caution, we would ---

15 THE COURT: He's ---

16 SOLICITOR CORNWELL: He is not
17 objecting to it.

18 THE COURT: He's not requesting it,
19 Ms. Kennedy?

20 PATRICIA KENNEDY: No, Your Honor.
21 I think that -- in terms of an in-court
22 identification, the facts of the case will
23 establish that they are -- that they've had
24 several interactions with Mr. Cribb, they know
25 him by sight. It's not an issue for the in-

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1 court identification.

2 THE COURT: Okay.

3 PATRICIA KENNEDY: I would ask,
4 however, that -- there is an identification that
5 the victims made from a videotape that I would
6 ask not be mentioned until that tape is properly
7 authenticated at the appropriate time.

8 THE COURT: Is there a problem with
9 that?

10 SOLICITOR CORNWELL: The only issue
11 that I have -- the victims will be the first to
12 testify. I believe that they will testify that
13 they -- we wouldn't publish the video or
14 anything until it is properly introduced.

15 THE COURT: As long as you don't
16 mention it in opening statements, then I don't
17 know that there is a problem with it. Not until
18 it is introduced and it has been properly
19 authenticated.

20 PATRICIA KENNEDY: No, Your Honor,
21 I'm not going to mention it in opening
22 statements.

23 THE COURT: No, I am just saying, is
24 your concern that it not be shown or played
25 before it is properly identified?

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1 PATRICIA KENNEDY: (Affirmative
2 nod), and authenticated. Yes, sir.

3 THE COURT: All right, that's fine.

4 PATRICIA KENNEDY: That is the only
5 issue that we have.

6 THE COURT: Then that won't be an
7 issue -- that won't -- you don't need to mention
8 that in opening statements.

9 SOLICITOR CORNWELL: No, Your Honor.

10 THE COURT: All right.

11 SOLICITOR CORNWELL: I am not going
12 to publish it to the jury until the last
13 witness, but I can at least offer it into
14 evidence and talk ---

15 THE COURT: You can authenticate it
16 as long as the jury doesn't see it.

17 SOLICITOR CORNWELL: Thank you, Your
18 Honor.

19 THE COURT: As to the *Jackson v*
20 *Denno*, it's my understanding that it is not
21 required unless they request it. So you're not
22 requesting it.

23 PATRICIA KENNEDY: No, Your Honor.
24 My understanding is that the Motions are defense
25 Motions and we ---

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1 THE COURT: You didn't make them?

2 PATRICIA KENNEDY: No, sir.

3 SOLICITOR CORNWELL: As long as it's
4 on the record, because I believe that it is also
5 the State's responsibility to make sure that he
6 understands ---

7 THE COURT: I believe that you have
8 to raise that, I believe. I think that there is
9 some case law. I may have misread it but I
10 think that there is case law that says that it
11 is not required unless it is requested. And
12 they are not requesting it. Is that correct,
13 Ms. Kennedy?

14 PATRICIA KENNEDY: Yes, Your Honor.

15 THE COURT: Mr. Cribb, do you
16 understand that?

17 DEFENDANT: Not a lick.

18 THE COURT: You don't?

19 DEFENDANT: No, sir. I mean, I ---

20 THE COURT: You don't understand
21 what?

22 DEFENDANT: It lost me between me and
23 here, and I don't know if it is for me or for
24 them.

25 THE COURT: Well, let me ask you a

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1 question, Mr. Cribb. Is this the first time
2 that you've been involved in criminal
3 prosecution or a criminal matter?

4 DEFENDANT: Yes, sir. I've always
5 come before you and said that I'm guilty.

6 THE COURT: Oh, I understand that but
7 I'm talking about, you do have some experience
8 with -- I'm not talking about your first trial.
9 I am talking about whether or not you've been
10 involved in a criminal process.

11 DEFENDANT: Never, sir.

12 THE COURT: You've never been involved
13 -- so you don't consider pleading guilty being
14 involved in a criminal process?

15 DEFENDANT: Oh, yeah, I've pled
16 guilty before.

17 THE COURT: That's what I mean.

18 DEFENDANT: Oh, I thought you meant
19 like ---

20 THE COURT: You've been charged with
21 prior offenses and have been convicted of prior
22 offenses?

23 DEFENDANT: Yes, sir.

24 THE COURT: So this is not the first
25 time that you've been involved in a process

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1 where you understand the burden of proof and
2 what the State has to do?

3 DEFENDANT: No, sir.

4 THE COURT: You don't understand?

5 DEFENDANT: It's not the first time.

6 THE COURT: So you understand that?

7 DEFENDANT: Yes, sir.

8 THE COURT: Okay.

9 DEFENDANT: I misunderstood the
10 question.

11 THE COURT: That's fine.

12 PATRICIA KENNEDY: And, Your Honor,

13 ---

14 THE COURT: And you understand --
15 you've hear the question asked that you have the
16 right to remain silent?

17 DEFENDANT: Yes, sir.

18 THE COURT: And you understand that
19 publishing a statement, that it first has to be
20 voluntary or that you in some way made it, or
21 that you were advised of the consequence of
22 making the statement?

23 DEFENDANT: Yes, sir.

24 THE COURT: And you are not
25 challenging the statement that they propose to

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1 offer?

2 DEFENDANT: No, sir.

3 THE COURT: You are not?

4 DEFENDANT: No, sir.

5 THE COURT: Okay. That takes care
6 of that.

7 PATRICIA KENNEDY: Your Honor, if
8 I may just say, the reason that we are not
9 challenging Mr. Cribb's decision to testify is
10 ---

11 THE COURT: I understand. That's
12 not a problem.

13 PATRICIA KENNEDY: I just want to
14 make sure for the record ---

15 THE COURT: No problem. Mr. Cribb,
16 you understand that you don't have to do that?
17 You don't have to testify?

18 DEFENDANT: Yes, sir.

19 THE COURT: But you apparently --
20 your lawyer has indicated to me in pretrial
21 conferences, at least right now, to take the
22 stand and to testify?

23 DEFENDANT: I was the only other
24 person there, sir.

25 THE COURT: Well, that's your

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1 decision. I understand that. But you
2 understand that you don't have to say anything?

3 DEFENDANT: Yes, sir.

4 THE COURT: In fact, I'm going to
5 tell the jury when we empanel that jury and
6 swear them, in my opening statements I am going
7 to tell them that the only party that has any
8 burden of proof in this matter is the State of
9 South Carolina, that you don't have to prove,
10 disprove anything at all, that you don't have
11 to explain anything, that you certainly do not
12 have to prove your innocence and that they
13 can't use that against you in any fashion. Do
14 you understand that?

15 DEFENDANT: Yes, sir.

16 THE COURT: But you still believe
17 that you should testify?

18 DEFENDANT: (No verbal response).

19 THE COURT: And you will be subject
20 to cross-examination. You understand that?

21 DEFENDANT: Yes, sir. This is after
22 the jury is picked, right?

23 THE COURT: What? Cross-
24 examination?

25 DEFENDANT: My testifying.

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1 THE COURT: Sure.

2 DEFENDANT: Okay.

3 THE COURT: So ---

4 DEFENDANT: If I think before then,
5 I might not need to.

6 THE COURT: I think you ought to
7 think strong and hard about it. I don't know
8 what your advice is, and I don't want to know.
9 That's between you and your lawyer. There are
10 numbers of strategies. The case that we're
11 trying right now that we suspended and we are
12 going to pick it up again at 1:30, throughout I
13 think the defendant suggested and indicated
14 that he may want to but at the end of the case
15 he decided not to. So, I mean, that's --
16 that's always your decision. But I am just --
17 you understand that you have a right to
18 challenge the statement, and the admissibility
19 of the statement. But you're not doing that,
20 is that right?

21 DEFENDANT: At this moment, right.

22 THE COURT: Okay. And you've talked
23 with your lawyer about it?

24 DEFENDANT: (No verbal response/
25 shrug).

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1 THE COURT: What does that mean?

2 DEFENDANT: Yes, sir.

3 THE COURT: Well, ---

4 DEFENDANT: I mean, I was number
5 seven on the docket until Wednesday.

6 THE COURT: You know what? That's
7 what dockets are all about.

8 DEFENDANT: I am just saying that we
9 had ---

10 THE COURT: Mr. Cribb, that's what
11 dockets are all about. I practiced law for
12 twenty-one years. Clients knew that they could
13 be called -- and you knew that, didn't you,
14 sir?

15 DEFENDANT: No, sir.

16 THE COURT: You didn't know what a
17 docket meant?

18 DEFENDANT: Not really.

19 THE COURT: Well, you are here?

20 DEFENDANT: Yes, sir.

21 THE COURT: How much more time do
22 you need to talk with her before we pick our
23 jury?

24 DEFENDANT: I don't think any. I
25 think ---

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1 THE COURT: I don't think so either.

2 Thank you, sir.

3 DEFENDANT: You're welcome, sir.

4 THE COURT: I don't know what that
5 statement was supposed to mean. Can you
6 explain why you even made the statement?

7 DEFENDANT: Yes, sir. I mean, if
8 you want to ---

9 THE COURT: Oh, I do. I want to
10 know what the fact that you were number seven
11 on the docket has got to do with you being here
12 this morning.

13 DEFENDANT: Well, you asked me was I
14 ready to testify and whether ---

15 THE COURT: No, I didn't ask you
16 that. I asked you did you plan to testify.

17 DEFENDANT: And I said yes, sir.

18 THE COURT: And that's fine. I --
19 and you told me that 'I may change my mind.'
20 That's fine.

21 DEFENDANT: Okay.

22 THE COURT: But what has being
23 number seven on the docket got to do with
24 anything?

25 DEFENDANT: I just didn't expect it

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1 to come so quick. I thought that we would have
2 more time to get ready, but it's okay.

3 THE COURT: Well, what do you need
4 to get ready? Ms. Kennedy, you're ready?

5 PATRICIA KENNEDY: Yes, Your
6 Honor.

7 THE COURT: Your lawyer is ready.
8 What do you need to get ready?

9 DEFENDANT: I guess nothing.

10 THE COURT: Well, I am asking. If
11 there is something, tell me. This is your
12 opportunity. What is it that you need to get
13 ready?

14 DEFENDANT: Well, there were some
15 things that I would ask be done between both of
16 the lawyers that I've had, but -- (pause).

17 THE COURT: I see. And that is
18 based on your determination of what your case
19 needs and how your case needs to be handled?

20 DEFENDANT: (No verbal response).

21 THE COURT: I mean, is that what
22 you're asking?

23 DEFENDANT: What would have been my
24 wishes, yeah.

25 THE COURT: And what training and

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1 background -- you said -- you've already said
2 that you've pled guilty, that you've never
3 tried a case. So you don't have any knowledge
4 about trying a case?

5 DEFENDANT: No, sir.

6 THE COURT: Have you ever been to
7 law school?

8 DEFENDANT: No, sir.

9 THE COURT: Have you ever studied
10 law?

11 DEFENDANT: No, sir.

12 THE COURT: Know anything about how
13 to try a case?

14 DEFENDANT: No, sir.

15 THE COURT: So what is it that you
16 think that you can suggest to these
17 accomplished trial lawyers that they need to
18 do?

19 DEFENDANT: Just some things that I
20 have heard, you know.

21 THE COURT: I understand 'that you
22 have heard', but you don't have any skill, that
23 you really want to tell them that 'I think this
24 will work better than something else'?

25 DEFENDANT: No, sir.

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1 THE COURT: Okay. Thank you, sir.

2 DEFENDANT: You're welcome, sir.

3 THE COURT: Okay.

4 SOLICITOR CORNWELL: Your Honor, I
5 apologize if I'm being redundant. This is the
6 first time that -- I've never had anybody
7 challenge the statement. So if he will just
8 stipulate on the record that it's freely and
9 voluntarily -- that the statement is freely and
10 voluntarily made.

11 THE COURT: He doesn't have to
12 stipulate at all. Until he objects to it --
13 the minute that he objects to it, and we
14 haven't had it, then I will excuse the jury and
15 we will have a *Jackson v. Denno* hearing. It
16 doesn't have to be done in the first. As I've
17 said, Solicitor, it's not required every time.
18 It is something done as a matter of course --
19 there is a case on point -- but, anyway, thank
20 you very much. We will deal with that as it
21 comes.

22 SOLICITOR CORNWELL: Thank you, Your
23 Honor.

24 THE COURT: Thank you.

25 SOLICITOR CORNWELL: And ---

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1 THE COURT: How many witnesses do
2 you anticipate calling?

3 SOLICITOR CORNWELL: Five, Your
4 Honor.

5 THE COURT: Length of those
6 witnesses?

7 SOLICITOR CORNWELL: I don't
8 anticipate the State's direct will take more
9 than two and a half hours with all witnesses,
10 total.

11 THE COURT: Thank you.

12 SOLICITOR CORNWELL: And for
13 purposes -- just to go ahead and get into this.
14 I understand that he has the right to testify.
15 He has told us that he may testify, so may I
16 ---

17 THE COURT: Yes, you have -- and
18 he's indicated that he's pled guilty. Do you
19 have some ---

20 SOLICITOR CORNWELL: I do, Your
21 Honor. The only charges that we think would
22 apply to this, insofar as crimes of dishonesty,
23 would be a 1996 possession of stolen goods; a
24 '96 grand larceny; a '97 shoplifting; a 2002
25 petit larceny; a 2003 petit larceny; 2003

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1 fraudulent check; a 2003 breach of trust with
2 fraudulent intent; a 2005 property crime
3 enhancement; a 2007 property crime enhancement;
4 and two separate property crime enhancements in
5 2011.

6 THE COURT: Okay. What is his
7 position on -- obviously there were some over
8 ten years -- was he incarcerated on any of
9 those earlier ones?

10 PATRICIA KENNEDY: Yes, Your
11 Honor. I think he twice received a
12 probationary sentence and there was revocation.

13 THE COURT: I mean, when did they --
14 the charges, obviously, -- I still think the
15 age of some of those cases would ---

16 PATRICIA KENNEDY: Your Honor,
17 that is a point that I was going to make. If
18 we ---

19 THE COURT: Yeah, I ---

20 PATRICIA KENNEDY: --- just limit
21 it to those within the past ten years.

22 THE COURT: I will allow you to --
23 do you want to identify the ones that you will
24 be using, so that we can deal specifically with
25 the ten-year limitation?

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1 SOLICITOR CORNWELL: Yes, sir. With
2 the ten-year limitation, he has:

3 A 2002 petit larceny, that was
4 convicted with the Goose Creek Police
5 Department;

6 A 2003 petit larceny that was
7 convicted with the North Charleston Police
8 Department;

9 A 2003 fraudulent check, which
10 was a City of Charleston charge. I believe
11 that it was an amount that put it in magistrate
12 level.

13 A 2003 breach of trust with
14 fraudulent intent, also with the City of
15 Charleston.

16 A 2005 property crime
17 enhancement, done in Charleston County, North
18 Charleston.

19 A 2007 property crime enhancement
20 in North Charleston, Charleston County.

21 One 2011 ---

22 THE COURT: What was the underlying
23 charge in all of those? The property crime
24 enhancement is a crime that is merely just
25 simply because of prior record.

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1 PATRICIA KENNEDY: Yes, Your
2 Honor, and I don't have that information on the
3 rap sheet.

4 THE COURT: I don't know that I am
5 going to allow that one.

6 SOLICITOR CORNWELL: It looks like
7 it was an underlying -- the 2007 was an
8 underlying shoplifting offense.

9 THE COURT: All right.

10 SOLICITOR CORNWELL: And the 2011 --
11 let me get this in order, (reviewing file). I
12 can have whatever the underlying offense was on
13 that.

14 THE COURT: I don't think that the
15 property crime enhancements -- that may be
16 something that you all may need to think about
17 for strategic purposes. I don't know that that
18 crime necessarily is a crime of dishonesty. It
19 certainly carries more than a year, so -- under
20 the -- we don't have to get into outweighing
21 the prejudice, probative value and honesty,
22 crimes of dishonesty, as I understand the rule.

23 But clearly all the fraudulent checks
24 and those things are clearly permitted by the
25 rule.

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1 My concern with property crime is that
2 we really are using those prior crimes twice,
3 because that's -- some of those crimes form the
4 basis for which the property crime enhancement
5 was issued in the first place.

6 SOLICITOR CORNWELL: Could I use the
7 underlying offense? Because the underlying
8 offense is ---

9 THE COURT: No, you ---

10 SOLICITOR CORNWELL: --- breach of
11 trust with fraudulent intent, so it falls under
12 that.

13 THE COURT: I'm saying you can use
14 the prior offenses. I don't know what -- I --
15 my other concern is that I don't know that --
16 we're getting so many that we are really going
17 beyond the -- the purpose of it is to show
18 truthfulness. I think that it is fine to show
19 -- that you can show that he was charged with
20 shoplifting in those years rather than the
21 property crime enhancement because I think --
22 I think what is important here, insofar as the
23 probative value is concerned, uh, is to show
24 that there is a continued pattern of committing
25 crimes involving dishonesty. I think that may

1 have more weight and bearing than the actual
2 name of the crime. So ---

3 PATRICIA KENNEDY: Your Honor,
4 that was my confusion. I share Ms. Cornwell's
5 issue with that. The rap sheet just says
6 property crime enhancement. I think of all the
7 ones listed that there is only one that says
8 shoplifting and then property crime.

9 THE COURT: The one that is listed,
10 shoplifting, I will allow you to include, one
11 of the property crime enhancements. It just
12 simply -- I think you've getting into a -- it
13 starts to be overkill, in my opinion,
14 especially when I am going to charge them that
15 that doesn't mean that you can't disbelieve his
16 testimony. It is just simply a fact to be
17 weighed.

18 So I -- I understand why you would
19 want it but I think to go to the extreme that
20 you're going, I think that I -- I'd have to
21 limit it. I think certainly the pattern of
22 obviously the petit larcenies, the successive
23 petit larcenies and then the breach of trust,
24 that crime in and of itself requires different
25 things of deceit, dishonesty, and then there

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1 was another one after that -- fraudulent
2 checks. So those crimes, clearly you are
3 entitled to do to.

4 And whatever one, the property crime
5 enhancement based on the shoplifting, I will
6 allow you to ask that one also. Okay?

7 SOLICITOR CORNWELL: Okay, then just
8 for purposes of the record, the 1996 grand
9 larceny -- that is over a year and it is a
10 felony, it's outside the ten-year mark. You're
11 not going to allow that?

12 THE COURT: I am not going to allow
13 that.

14 SOLICITOR CORNWELL: Thank you, Your
15 Honor.

16 THE COURT: Okay.

17 SOLICITOR CORNWELL: And, Your
18 Honor, the only thing with the property crime
19 enhancement, the State indicted one of these
20 charges as a property crime enhancement.
21 Clearly, when we call our case, we will call it
22 and we will simply prove the underlying
23 offense. I don't believe that the enhancement
24 part of that ---

25 THE COURT: Are we going to trial on

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1 all three indictments?

2 SOLICITOR CORNWELL: I believe so,
3 Your Honor, (affirmative nod).

4 PATRICIA KENNEDY: Yes, sir.

5 THE COURT: Then I am not going to
6 allow you to use any of the property crime
7 enhancement.

8 SOLICITOR CORNWELL: Your Honor, I
9 believe the ---

10 THE COURT: I am not -- I don't
11 fault you for asking, I am just telling you
12 that you can't mentioned property crime
13 enhancement.

14 SOLICITOR CORNWELL: And I
15 understand that, Your Honor, and the State
16 didn't intend to introduce it as property crime
17 enhancements but as the shoplifting, as the
18 breach of trust.

19 THE COURT: But they are not.
20 That's the problem.

21 SOLICITOR CORNWELL: Well, in order
22 to convict him of property crime enhancement,
23 you have to find that they committed the
24 property crime that enhances ---

25 THE COURT: I understand the basis

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1 for the conviction. I am just talking about
2 using it for impeachment purposes, Miss
3 Cornwell. Thank you so much.

4 SOLICITOR CORNWELL: Thank you, Your
5 Honor.

6 THE COURT: Aside from that, there
7 is still a ruling that I have to make that the
8 prejudice outweighs the probative value. When
9 you're trying -- you can correct all this
10 problem. You don't go forward on the crime
11 enhancement. Remove that one from the
12 consideration. I don't know what you're
13 worried about, you've got a burglary first.

14 SOLICITOR CORNWELL: Thank you, Your
15 Honor.

16 THE COURT: So whatever you want to
17 do, that's your call. But if you're going
18 forward on the property crime enhancement, I'm
19 not going to allow that to be introduced.
20 Thank you.

21 SOLICITOR CORNWELL: It is my
22 understanding that we can still introduce the
23 petit larceny, the breach of trust with
24 fraudulent intent, the fraudulent checks, ---

25 THE COURT: No question about it.

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1 All those crimes of dishonesty that don't
2 mention the words "property crime enhancement".

3 SOLICITOR CORNWELL: Thank you, Your
4 Honor.

5 THE COURT: Okay. Anything else?

6 PATRICIA KENNEDY: No, Your Honor.

7 THE COURT: As I understand there
8 was an offer on the table, a significant offer
9 made in this case, from what I understand.

10 PATRICIA KENNEDY: Yes, sir,
11 he ---

12 THE COURT: And Mr. Cribb directed you
13 to reject that offer?

14 PATRICIA KENNEDY: He was
15 initially represented by Mr. Schwacke, and he
16 rejected that offer through Mr. Schwacke.

17 THE COURT: You instructed Mr.
18 Schwacke to reject that very significant offer?

19 DEFENDANT: (No verbal response).

20 THE COURT: Is that what -- is that
21 correct, Mr. Cribb?

22 DEFENDANT: Well, I never did get
23 another chance to get back with him because he
24 quit my case.

25 THE COURT: I understand -- you can

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1 talk about that at another proceeding. I am
2 just asking you a question. You directed him,
3 because it was placed on the record, so
4 obviously you're on the record in this
5 proceeding -- not here today -- rejecting that
6 offer?

7 DEFENDANT: Yes, sir.

8 THE COURT: And that is what you did
9 after being advised of the court, because the
10 court explored that with you at that time?

11 DEFENDANT: Yes, sir.

12 THE COURT: You stay by it. You
13 understood what you were doing?

14 DEFENDANT: Yes, sir.

15 THE COURT: You subjected yourself
16 to a potential life sentence.

17 DEFENDANT: Yes, sir.

18 THE COURT: That's what you want to
19 do?

20 DEFENDANT: Yes, sir.

21 THE COURT: Thank you, sir. Just
22 want to be sure of that.

23 DEFENDANT: Yes, sir.

24 THE COURT: Because the last thing
25 that I want to hear is somebody say 'well, I

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1 didn't know I could have gotten life.' You
2 knew that before today?

3 DEFENDANT: Yes, sir.

4 THE COURT: Very good. Thank you,
5 sir.

6 DEFENDANT: Thank you, sir.

7 THE COURT: The case that I --
8 *Wainwright v. Sykes*, which is a Supreme Court
9 case, held basically what I stated, that it's -
10 - it doesn't have -- that there is no automatic
11 right to it, it's only when it is challenged.
12 So. At this point, he is not challenging it.
13 If he does, we will stop and -- now, I
14 understand -- if you're concerned about certain
15 other issues, the State may do that -- if you
16 are concerned about whether or not -- but that
17 always would give me concern as a trial judge,
18 if you feel that there is some problem, because
19 obviously if you can't get the statement and
20 you think that it is necessary -- but from what
21 I understand, I don't know that the statement
22 is merely supportive of other evidence. So.

23 SOLICITOR CORNWELL: Your Honor, the
24 statement is voluntary, it is properly done.
25 My concern is that there were some things in

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1 the statement that I would like Ms. Kennedy
2 would want to redact. There were things where
3 he states that, you know, "all I do is commit
4 is pretty crimes". Things of that nature that
5 -- if we are not having a Jackson v. Denno
6 hearing, I think the entire statement comes in
7 as a whole.

8 THE COURT: It does. Unless he
9 challenges it, that's fine.

10 SOLICITOR CORNWELL: That's what the
11 State's concern was. We don't want to cause a
12 mistrial because they say something that was
13 prejudicial.

14 THE COURT: They haven't challenged
15 it. If they challenge it and your concern is
16 that, we can deal with any redaction on that.
17 I am merely talking about the only -- there
18 have been cases where juries have been sworn
19 and then we had the *Jackson v Denno* and the
20 court kept the statement out. That created a
21 problem for the State in its prosecution.

22 Given that, just from a planning stage
23 or from a strategic point of view, the State --
24 I maybe probably could have that heard. I
25 don't know that there is anything that

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1 prohibits it, per se, but -- but from what I am
2 hearing, you are not going on whether or not he
3 understood his rights. It's a voluntary
4 statement, is what you're saying.

5 SOLICITOR CORNWELL: That is the
6 State's position, Your Honor, that it is a
7 voluntary statement.

8 PATRICIA KENNEDY: And, Your
9 Honor, if you would be kind enough to let me
10 talk -- Mr. Cribb and I have been through this
11 before. So if you would be kind enough to give
12 me a couple of minutes, we can make sure that
13 he understands.

14 THE COURT: Sure. That's no
15 problem. Y'all take as long as you need. We
16 will be at-ease. Thank you, Mr. Cribb. You
17 can talk with your lawyer.

18 (BRIEF RECESS)

19 (DEFENDANT PRESENT)

20 THE COURT: Let the record reflect
21 that the defendant is present.

22 SOLICITOR CORNWELL: Your Honor,
23 there is a jury issue that I'd like to address
24 with you.

25 THE COURT: Okay.

1 SOLICITOR CORNWELL: Ashley Varner
2 is in the jury pool. He worked for our office
3 and ---

4 THE COURT: I am going to excuse me.

5 SOLICITOR CORNWELL: Okay. I just
6 wanted to make sure.

7 THE COURT: He excused himself from
8 the previous one, so he will be excused again.

9 SOLICITOR CORNWELL: Okay.

10 PATRICIA KENNEDY: I have no
11 problem with that, Your Honor.

12 THE COURT: I kept him around for
13 civil stuff but he is not going to participate
14 in General Sessions. If they have completed
15 the civil, you can just tell him -- just let
16 him go. Thank you.

17 PATRICIA KENNEDY: Your Honor, for
18 purpose of the record, Miss Littlejohn and I
19 have had extensive discussion with Mr. Cribb
20 about whether or not to go forward with the
21 Jackson v. Denno hearing. He, I believe, has
22 changed his mind about doing that.

23 THE COURT: That's fine.

24 SOLICITOR CORNWELL: So we will
25 proceed with that, Your Honor.

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1 THE COURT: That will be fine.

2 PATRICIA KENNEDY: I apologize for
3 the delay to the court.

4 THE COURT: That's fine, no problem.
5 All right. Call your first witness.

6 SOLICITOR CORNWELL: Thank you, Your
7 Honor. The State calls Detective Cortte.

8 (WITNESS TAKES STAND)

9 MICHAEL "RICKY" CORTTE, II, being duly
10 sworn to tell the truth, the whole truth and
11 nothing but the truth, testified, as follows:

12 DIRECT EXAMINATION

13 BY SOLICITOR CORNWELL:

14 Q. Detective Cortte, where are you employed?

15 A. Berkeley County Sheriff's Office.

16 Q. How long have you been employed by the
17 Berkeley County Sheriff's Office?

18 A. March of 2007.

19 Q. What is your current position and rank?>

20 A. Detective Corporal.

21 Q. How long have you held that position?

22 A. I have been in the detective division a
23 little over two and a half years now.

24 Q. And were you working in that capacity on
25 February 5th, 2012?

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1 A. Yes, ma'am.

2 Q. Do you recall being involved in an
3 investigation of a burglary that occurred in
4 the Berkeley County?

5 A. Yes, ma'am.

6 Q. Through your investigation of that
7 incident, did you have an occasion to speak
8 with this defendant?

9 A. Yes, ma'am. I did.

10 Q. Where did you meet with this defendant?

11 A. At the Berkeley County Sheriff's Office
12 detective division headquarters.

13 Q. Did you interview him at that time?

14 A. Yes, ma'am, I did.

15 Q. Was the defendant given his Miranda rights
16 prior to you interviewing him?

17 A. Yes, he was.

18 Q. Who gave him those Miranda rights?

19 A. I did.

20 Q. Did you read those -- I'm sorry. Did you
21 read those rights from a card or do you have
22 them memorized?

23 A. I read them to him from a defendant
24 statement form that we provide to our
25 defendants.

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1 Q. And did he understand the rights as you
2 read them to him?

3 A. He did.

4 Q. How do you know that he understood his
5 rights?

6 A. He acknowledged both audibly and by
7 initialing beside each right as it was read to
8 him and then by signing the waiver that he
9 wished to waive the rights, at the bottom.

10 Q. While doing this, did the defendant appear
11 to be under the influence of any alcohol, drugs
12 or mental defect?

13 A. No.

14 Q. Was the defendant threatened, coerced or
15 made any promises regarding this signing the
16 form?

17 A. No, ma'am.

18 SOLICITOR CORNWELL: Your Honor, may
19 I approach?

20 THE COURT: You may.

21 DIRECT EXAMINATION CONTINUED

22 BY SOLICITOR CORNWELL:

23 Q. Detective, I am going to show you what has
24 been previously marked as State's Exhibit 2.

25 Do you recognize this document?

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1 A. (Upon review) yes, ma'am.

2 Q. What is that document -- I'm sorry. What
3 is that document?

4 A. That is the defendant statement form that
5 I referred to that I advised Mr. Cribb his
6 rights from and he acknowledge that he
7 understood and wished to waive them.

8 Q. Can you, for the record, tell the court
9 what those rights are that you read to him
10 were?

11 A. May I read them from ---

12 Q. You may.

13 THE COURT: You may.

14 THE WITNESS: Thank you, Your
15 Honor... Number one, (reading): "That I have
16 the absolute right to remain silent and do not
17 have to answer any questions or give a
18 statement, and this cannot be used against me.

19 Number two, (reading): "That if I do
20 answer questions or give a statement, anything
21 that I say can and will be used against me in a
22 court of law."

23 Number three, (reading): "That I have
24 the right to consult with a lawyer of my choice
25 before I answer questions or give a statement

1 and also to have them present while I am being
2 questioned."

3 Number four, (reading): "That if I
4 wish to talk to a lawyer or have them present
5 but unable to afford a lawyer, to hire a
6 lawyer, one will be appointed to represent me
7 free of charge."

8 Number five, (reading): "That if I
9 decide to answer questions or give a statement
10 without a lawyer present representing me, I
11 have the absolute right during this interview
12 to stop answering questions and to remain
13 silent."

14 DIRECT EXAMINATION CONTINUED

15 BY SOLICITOR CORNWELL:

16 Q. Then at the very bottom, did he also sign
17 that as a waiver?

18 A. Yes, ma'am.

19 Q. What does that waiver say?

20 A. It says, (reading): "I fully understand
21 each of these rights which have been explained
22 to me and having these in mind, I wish to waive
23 these rights and answer questions to the
24 charges of burglary and fraud of which I've
25 been accused of committing. No threats, force

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1 or promise of any kind have been made to me by
2 anyone to induce me to waive these rights and
3 answer questions."

4 Q. So based on that form, he was also
5 informed of the charges that he was facing?

6 A. Yes, ma'am.

7 Q. Did anybody else sign that document?

8 A. Yes, ma'am.

9 Q. Who else signed that document?

10 A. I did.

11 Q. Is that the original document that you and
12 the defendant signed?

13 A. Yes, ma'am.

14 Q. Have there been any changes, alterations,
15 deletions or modifications made to it?

16 A. There is a sticker on it for State's
17 Exhibit ---

18 Q. Other than the sticker, has anything else
19 been changed on that?

20 A. No, ma'am.

21 Q. And after speaking with the defendant and
22 giving him his Miranda rights, did the
23 defendant make any statements to you regarding
24 this incident?

25 A. Yes, ma'am.

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1 Q. What were those statements?

2 A. He did admit to me that he took credit
3 cards within an approximate two-week period
4 prior to my meeting with him, without
5 permission; that he knew that they were not his
6 to use, and that he did use them at the CVS on
7 Red Bank Road in Goose Creek, located in
8 Berkeley County, South Carolina, to purchase
9 cigarettes. That he also used them to purchase
10 gas or fuel at the Exxon and Sunoco, also on
11 Red Bank Road in Goose Creek, Berkeley County.

12 Q. After speaking with the defendant, did you
13 have any further involvement with this
14 defendant?

15 A. I escorted him to the warrant division.
16 From there, I assisted in the transport to the
17 detention center.

18 Q. Did he make any statements to you during
19 transport?

20 A. May I refer to my ---

21 Q. If you will just show me what you are
22 referring to.

23 A. Certainly, yes, ma'am. You were asking
24 about the transport?

25 Q. I just want to show Ms. Kennedy what you

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1 are going to be refreshing your recollection
2 with.

3 A. (Tenders).

4 SOLICITOR CORNWELL: (Tenders to Ms.
5 Kennedy).

6 PATRICIA KENNEDY: (Upon review),
7 thank you.

8 THE WITNESS: During the
9 transport to the detention center, really the
10 only utterings that he made were really of
11 profanity to his disagreement with his being
12 arrested.

13 PATRICIA KENNEDY: Your Honor, ---

14 THE COURT: I'm sorry?

15 PATRICIA KENNEDY: If I may, ---

16 THE COURT: What is it? He
17 disagreed with what?

18 THE WITNESS: His being arrested.

19 PATRICIA KENNEDY: --- Mr. Cribb
20 is a little hard of hearing and he's having a
21 hard time hearing.

22 THE COURT: Speak up, please.

23 THE WITNESS: Yes, sir.

24 THE COURT: I am, too.

25 SOLICITOR CORNWELL: Speak really

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1 loudly into that microphone.

2 THE WITNESS: Yes, ma'am.

3 DIRECT EXAMINATION CONTINUED

4 BY SOLICITOR CORNWELL:

5 Q. Just to backtrack briefly, you said that
6 the only thing that he said during transport,
7 was some obscenities?

8 A. (Affirmative nod).

9 Q. When you were speaking to him, after you
10 had given him his Miranda, was he able to read
11 that form okay? Did he make any statement
12 about glasses or anything like that?

13 A. He did. Initially he mentioned that he
14 did not have his reading glasses. At that
15 point, out of an abundance of caution, I
16 insured and verified with him that, you know,
17 that he could see. That if he needed to move
18 his chair closer so that he could actually see
19 -- and he verified that he could read and
20 understood and was able to see, see close
21 enough, to what I read to him.

22 Q. And he was able to read along with you as
23 you read his rights aloud?

24 A. Yes, ma'am. And he was able to initial
25 and sign the waiver, as well.

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1 Q. Approximately how long did his interview
2 take?

3 A. I would have to say roughly thirty
4 minutes, maybe a half hour.

5 Q. During that time did you furnish him any
6 food or drink?

7 A. Absolutely.

8 SOLICITOR CORNWELL: No further
9 questions, Your Honor.

10 THE COURT: Cross-examine?

11 PATRICIA KENNEDY: Thank you, Your
12 Honor.

13 CROSS EXAMINATION

14 BY PATRICIA KENNEDY:

15 Q. Detective Cortte, how are you this
16 morning?

17 A. I am doing well. How are you, ma'am?

18 Q. I am doing fine. I just have a few
19 questions in terms of the -- you took him to
20 the detectives, the criminal investigative unit
21 for the interrogation?

22 A. I did not. A deputy from the patrol
23 division brought him there.

24 Q. Brought him to you?

25 A. Yes, ma'am.

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1 Q. And they alerted you that they had him in
2 custody and you instructed them to bring him to
3 you?

4 A. Yes, ma'am.

5 Q. Okay. And what time was it when he
6 arrived, if you know? Daytime? Morning?
7 Afternoon?

8 A. It would have been daytime.

9 Q. Daytime?

10 A. (Affirmative nod).

11 Q. But you don't know whether it was morning
12 or afternoon?

13 A. I don't know.

14 Q. And you indicated in your direct
15 examination that he, Mr. Cribb, advised you
16 that he took the credit cards; correct?

17 A. Yes, ma'am.

18 Q. Okay. But then further along in the
19 statement that you say that he gave, he told
20 you where he found the credit cards; correct?

21 A. Yes, ma'am.

22 Q. So those two things are kind of
23 inconsistent. Could you explain that to me?

24 A. Could you rephrase the question? I'm
25 sorry.

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1 Q. Sure. You say that he admitted to you
2 that he took the credit cards. Right?

3 A. Yes, ma'am.

4 Q. Okay. Then at some point he said that he
5 found the credit cards. Correct?

6 A. Yes, ma'am.

7 Q. That he found them on a path in a bag near
8 Sedgefield Middle School?

9 A. Yes, ma'am.

10 Q. Did you ask him for any clarification of
11 the statement that he took (the cards) versus
12 the statement that he -- that he had taken the
13 credit cards versus the fact that he said that
14 he found them?

15 A. May I refer to ---

16 Q. Sure.

17 A. It will be that same supplement from
18 earlier.

19 Q. Right.

20 A. (Upon review of file), yes, ma'am. He had
21 stated that he found the credit cards in a bag
22 with some cigarettes by the power lines near
23 Sedgefield School. At fist that he only took
24 the cigarettes. After he smoked them, he
25 realized that he was hungry and went back to

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1 take the credit cards and use them.

2 Q. The part of the statement where he --
3 where you asked him about the burglary and his
4 response was that he "only does petty stuff
5 that he never broke into anyone's house", was
6 that after he had signed the Miranda?

7 A. Yes, ma'am.

8 Q. Okay. Then he refused to write a
9 statement after that.

10 A. Yes, ma'am. After my speaking with him, I
11 asked if he wished to write a statement ---

12 Q. And it is your testimony that he just
13 spontaneously uttered that he would only get
14 three years or so for credit card fraud?

15 A. He did say that during my post-Miranda
16 interview.

17 Q. Okay. All of this took place over a
18 thirty-minute period?

19 A. Approximately. Yes, ma'am.

20 Q. Let me ask you ---

21 PATRICIA KENNEDY: Court's
22 indulgence.

23 THE COURT: Certainly.

24 CROSS EXAMINATION CONTINUED

25 BY PATRICIA KENNEDY:

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1 Q. Let me ask you -- and this interrogation
2 took place after you had met with the victims,
3 Mr. and Mrs. Kylie; correct?

4 A. Yes, ma'am.

5 PATRICIA KENNEDY: Court's
6 indulgence?

7 THE COURT: Certainly.

8 PATRICIA KENNEDY: (Sidebar with
9 defendant).

10 CROSS EXAMINATION CONTINUED

11 BY PATRICIA KENNEDY:

12 Q. At the detectives unit, you have the
13 ability to videotape interviews with
14 defendants?

15 A. Yes, ma'am. We do.

16 Q. Okay. Can you tell me why you didn't do
17 that with this one?

18 A. I don't know. I --

19 Q. But you have that option?

20 A. We do have the capability to do that. I
21 don't know why I didn't at that point. I can't
22 tell you if the room was in use or if -- if the
23 equipment was inoperable. I don't know.

24 Q. So how many rooms are there for you to
25 videotape an interview?

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1 A. That I am aware of, two.

2 Q. Two?

3 A. (Affirmative nod).

4 Q. So you don't know whether both of them
5 were occupied and you don't know whether the
6 video equipment in either one of those rooms
7 was operable or not?

8 A. Yes, ma'am. I don't know.

9 Q. So you made the decision not to videotape
10 the interview?

11 A. I did.

12 PATRICIA KENNEDY: Thank you.

13 THE COURT: Redirect?

14 SOLICITOR CORNWELL: Nothing more,
15 Your Honor.

16 THE COURT: Thank you, you may come
17 down, sir.

18 (WITNESS STEPS DOWN)

19 THE COURT: Call your next witness.

20 SOLICITOR CORNWELL: The State
21 rests, Your Honor.

22 THE COURT: All right. Do you have
23 any witnesses that you wish to present?

24 PATRICIA KENNEDY: Just a minute?

25 THE COURT: Sure.

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1 PATRICIA KENNEDY: (Sidebar with
2 defendant). I call Mr. Cribb, Your Honor.

3 (WITNESS TAKES STAND)

4 FRED WOODROW CRIBB, being duly sworn
5 to tell the truth, the whole truth and nothing
6 but the truth, testified, as follows:

7 DIRECT EXAMINATION

8 BY SOLICITOR CORNWELL:

9 Q. Mr. Cribb, ---

10 A. Yes, ma'am.

11 Q. --- you just heard Detective Cortte
12 testify about the circumstances under which you
13 made certain admissions to him. How long were
14 you in the detective's office when you gave him
15 those statements?

16 A. I would say anywhere between thirty to
17 forty-five minutes.

18 Q. And he gave you your Miranda warnings?

19 A. Yes, ma'am.

20 Q. And he gave you this sheet of paper to
21 sign?

22 A. Yes, ma'am, I remember it.

23 Q. And that is your signature?

24 A. (Upon review), yes, ma'am.

25 Q. And you understood what he was doing when

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1 he gave you those Miranda warnings?

2 A. Yes, ma'am.

3 Q. So tell me how it is that you came to make
4 these voluntary admissions to Detective Cortte.

5 A. (No verbal response).

6 Q. Telling him what you told him.

7 A. Telling him what I told him?

8 Q. Yes, sir. About finding the credit cards,
9 the statement about the burglary.

10 A. How did I come by doing it?

11 Q. Yes, sir.

12 A. He asked me what had been going on. And
13 he had mentioned something about a burglary.

14 And when he had mentioned the burglary, I told
15 him, I said, 'Look here, I don't -- I have
16 never committed a burglary. I did not do
17 that.' Then he said, 'Well, where did you get
18 the credit cards?' I told him that I was going
19 through -- there is a little path that you cut
20 through to get to a certain place that I go,
21 and it's right by Sedgefield Middle School.

22 When I come upon a bag, a Food Lion bag, -- I
23 had accidentally kicked it -- it had a quart of
24 beer in it that was about three-quarters ---

25 Q. I understand the detail, but did you tell

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1 him that you used those credit cards?

2 A. Yes, sir. Yes, ma'am. I did.

3 Q. All right. Did you tell him that you took
4 those credit cards?

5 A. No, ma'am.

6 Q. And did you tell him that you didn't
7 commit a burglary?

8 A. Yes, ma'am.

9 Q. And did you make the statement that you'd
10 never broke into anybody's house and that you'd
11 maybe only get three years for credit card
12 fraud?

13 A. Yes, ma'am.

14 Q. You did?

15 A. Yes, ma'am.

16 Q. Did you feel like you had to make those
17 admissions?

18 A. No.

19 PATRICIA KENNEDY: Court's indulgence.

20 THE COURT: Okay.

21 PATRICIA KENNEDY: That would be
22 all that we have, Your Honor. Mr. Cribb, you
23 can step down.

24 THE COURT: Do you have any
25 questions?

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1 PATRICIA KENNEDY: I apologize.

2 SOLICITOR CORNWELL: No questions.

3 THE COURT: You now may step down.

4 (WITNESS STEPS DOWN)

5 THE COURT: Anything further, Ms.

6 Kennedy?

7 PATRICIA KENNEDY: No, sir. Thank
8 you.

9 THE COURT: Any reply?

10 SOLICITOR CORNWELL: None.

11 THE COURT: Ms. Kennedy, I will be
12 happy to hear from you.

13 PATRICIA KENNEDY: Your Honor, in
14 terms of the admissibility of the statements,
15 he obviously -- he voluntarily made those
16 statements, in all candor with the court.
17 Therefore, I don't think that there is much
18 that we can say about it. There was no
19 coercion. I feel like I am arguing the State's
20 case but ---

21 THE COURT: I understand.

22 PATRICIA KENNEDY: Just in candor
23 with the court. But obviously it's up to you
24 to determine whether or not it is admissible.

25 THE COURT: Thank you. Anything

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1 from the State?

2 SOLICITOR CORNWELL: Your Honor, the
3 State's position is that it was a statement
4 given knowingly, voluntarily, post-Miranda,
5 that he was given his right. We would just ask
6 that you admit the statement.

7 THE COURT: Thank you. I think
8 based on the testimony that obviously he was
9 advised of his rights, that he fully understood
10 those rights. I'm confident that he was not
11 coerced in any fashion and that the statement
12 was freely and voluntarily given by him. I
13 find that by the preponderance of the evidence
14 that the statement may be presented to the
15 jury.

16 SOLICITOR CORNWELL: Thank you, Your
17 Honor.

18 THE COURT: Okay. Thank you. The
19 statement will be admitted for that purpose,
20 for the jury's consideration. Okay. Let's
21 take about a five-minute break and then we will
22 be ready to go.

23 (BRIEF RECESS)

24 (DEFENDANT PRESENT)

25 THE COURT: Let's bring in the jury

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1 panel. I just want you all to know -- I've
2 always said that the ball is in your court, but
3 we ought to be able to get twelve out of -- if
4 you use all ten, that still leaves us twenty-
5 seven, so that should be enough. But we lost a
6 bunch Monday in the first GS. There were a lot
7 of people that could be -- it was a felony DUI
8 with a death. I don't know. We will see.

9 SOLICITOR CORNWELL: Your Honor,
10 just for purposes of the record, Ms. Kennedy
11 asked about sequestering witnesses. We have
12 stipulated that we will sequester witnesses.
13 They are in the courtroom now for the jury pick
14 just in case the judge calls their name.

15 THE COURT: Any objection to them
16 remaining in the courtroom for the purpose of
17 jury selection?

18 PATRICIA KENNEDY: No, not for the
19 purpose of jury selection.

20 THE COURT: Thank you. They are
21 welcome to be here. Buck (bailiff), when they
22 are ready, we are ready. Thanks. But no rush.

23 Okay, we will have thirty-four, and
24 Mr. Varna is excused.

25 (JURY PANEL IN @ 10:33 A.M.)

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1 THE COURT: Good morning, Ladies and
2 Gentlemen. Thank you for your patience. We
3 won't detain you as long as we did on Monday,
4 for sure.

5 This is the last case with which we
6 are going to need our assistance on criminal
7 disputes. I am advised that Judge Jefferson
8 also will not need you in the civil disputes.
9 I know it's upsetting for you, but for most of
10 you this will be the last time that you have to
11 come this week. I'm sorry to inform you of
12 that. I know that you would probably love to
13 come every day, it's such a wonderful place to
14 visit. I say that somewhat seriously but
15 mostly sarcastically.

16 The one thing about which I will not
17 be sarcastic is how important that you are to
18 this process. As I indicated Monday, thank you
19 for that. We appreciate it every much.

20 In fact, we have some of your brothers
21 and sisters on the jury that are working across
22 the way in a case that we started on Monday.
23 They are coming back at 2:00 to finish that
24 case. We will get started on this one and
25 hopefully get a good ways through it before

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1 that jury returns.

2 The dispute -- as I mentioned Monday,
3 the captain of the dispute is the State verus
4 -- the State will always be the party making
5 the claim in a criminal dispute. The State in
6 these documents -- and they are called
7 indictments. They are not evidence. They
8 merely contain the accusations or allegations
9 against Mr. Fred Woodrow Cribb.

10 Mr. Cribb is seated at the table to my
11 left. Mr. Cribb, good morning, sir. If you
12 would, please stand and face the jury panel for
13 me.

14 DEFENDANT: (Complies).

15 THE COURT: Thank you, sir. You may
16 be seated. Are there any members of the jury
17 panel related by Is there any member of the
18 jury panel who is related blood or marriage,
19 socially or casually connected with Mr. Cribb,
20 or that have any business dealings, any
21 connection whatsoever? If so, please stand.
22 (No response). Thank you. There appear to be
23 none.

24 Mr. Cribb is represented by Ms.
25 Kennedy. If you would, please identify

1 yourself and anyone that will be assisting you,
2 please.

3 PATRICIA KENNEDY: Thank you, Your
4 Honor. My name is Pati Kennedy. I am with the
5 Public Defender's Office. This is Ms. Debi
6 Littlejohn of our office.

7 THE COURT: Are there any members of
8 the jury panel related by blood or marriage,
9 have any business dealings with, socially or
10 casually acquainted with, ever been represented
11 by Ms. Kennedy or Ms. Littlejohn? If so,
12 please stand. (No response). Thank you.
13 There appear to be none.

14 Ms. Kennedy works with the Public
15 Defenders Office or the Ninth Circuit, as does
16 Ms. Littlejohn. The Ninth Circuit Public
17 Defender is Ashley Pennington. Are there any
18 members of the jury panel related by blood or
19 marriage, have any business dealings with, who
20 are socially or casually acquainted with Ashley
21 Pennington? If so, please stand. (No
22 response). Or ever been represented by him?
23 (No response). Thank you. There appear to be
24 none.

25 Are there any members of the jury

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1 panel related by blood or marriage to anyone
2 employed in the office of the public defender,
3 the circuit public defender? He has offices in
4 Charleston and Berkeley County, as I stated.

5 If so, please stand. (No response). There are
6 none.

7 As I mentioned on Monday, the chief
8 prosecuting officer for the Ninth Circuit is
9 Scarlett Wilson. She is our Solicitor. Are
10 there any members of the jury panel who are
11 related by blood or marriage, have any business
12 dealings with, socially or casually acquainted
13 with or ever been represented by Ms. Wilson?

14 If so, please stand. (No response). There are
15 none.

16 Ms. Wilson has a number of assistants
17 to aid her prosecution job or chores. One of
18 those is Ms. Cornwell, who is handling this
19 case. If you would, please identify yourself
20 and anyone that will be assisting you?

21 SOLICITOR CORNWELL: Good morning.
22 My name is Ashley Cornwell. I am an assistant
23 solicitor in Berkeley County, which is part of
24 the Ninth Circuit. Sitting with me today is
25 Assistant Solicitor Michael Patterson. We also

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1 have Investigator David Young.

2 THE COURT: Young? David?

3 SOLICITOR CORNWELL: Yes, sir, David
4 Young.

5 THE COURT: Okay. Are there any
6 members of the jury panel related by blood or
7 marriage, have any business dealings with,
8 socially or casually acquainted with Ms.
9 Cornwell, Mr. Patterson or Mr. Young? Or who
10 have ever been represented by Ms. Cornwell or
11 Mr. Patterson? If so, please stand? (No
12 response). Thank you. There appear to be
13 none.

14 Are there any members of the jury
15 panel related by blood or marriage, have any
16 business dealings with, socially or casually
17 acquainted with anyone employed within the --
18 with the office of the Solicitor? As stated,
19 she has offices in Berkeley County and
20 Charleston County. If so, please stand. (No
21 response). There are none.

22 I am going to identify a number of
23 persons, Ladies and Gentlemen. If you are
24 related by blood or marriage, have any business
25 dealings with, are socially or casually

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1 acquainted with any of these persons, you need
2 to stand and share that information, please,
3 with the Court:

4 Roberta Kiley

5 Raymond Kiley

6 Deputy Frank Thompson

7 Detective Michael Cortte

8 Deputy Dan Wilson -- all of whom

9 work for the Berkeley County Sheriff's Office.

10 Abiyb Coleman

11 Troy Stewart

12 Any of those? (No response). Thank
13 you. There appear to be none.

14 The dispute that brings us here today
15 is, as I mentioned, framed by these documents.
16 I need to share with you what has been alleged
17 so that I can ask you some questions about it.
18 Please understand that what I am sharing with
19 you is not evidence.

20 Mr. Cribb is accused in these
21 documents of the following: he is accused of
22 committing the crime of burglary first in that
23 it alleges that Mr. Cribb did, in Berkeley
24 County, on or about February 5th, 2012, enter
25 the dwelling of Roberta Kiley located at

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1 Avenue during the nighttime hours
2 without consent and with the intent to commit a
3 crime therein, namely larceny; which violated
4 the statute prescribing that conduct, or
5 setting up the crime of burglary first.

6 It is also alleged that on that date,
7 in Berkeley County, that he did take and obtain
8 and withhold financial transaction cards, or
9 numbers, belonging to Roberta Kiley, without
10 her consent, with the intent to use the cards;
11 in violation of the law which sets forth the
12 crime of financial transaction card theft.

13 It is also alleged that on that date,
14 by taking the card, because of his prior record
15 of property crimes that the State has charged
16 him with property crime enhancement; which is
17 another crime prescribed by our Code of Laws.

18 I share that with you to find out if
19 any member of the jury has heard anything, if
20 you have any prior knowledge of that dispute.
21 If so, please stand. (No response).

22 Is there anything about the nature of
23 the crimes alleged, that is burglary first, a
24 property crime enhancement or financial
25 transaction card theft, that you because of

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1 something that has occurred in your life, to
2 your, a family member, some close personal
3 friends, some strong philosophy or feelings
4 that you may have, or anything that has
5 occurred that you think that would affect or
6 influence your ability to fairly and
7 impartially apply your common sense, your sense
8 of logic and reason, and at the appropriate
9 time analyzing the evidence, which consists of
10 the testimony of witnesses and exhibits which
11 were introduced through their testimony,
12 deciding what you believe to be the true facts
13 and then once deciding those facts taking the
14 law as I give it to you and applying that law
15 fairly and impartially to those facts. If you
16 feel that there is something in your history
17 that would cause you -- give you some concern
18 about your ability to perform that task, please
19 stand. (No response). Thank you. There
20 appear to be none.

21 Are there any members of the jury
22 panel who have been involved in -- either
23 you're a member or participated, or you made
24 contributions, to any organizations dealing
25 with victims rights or organizations which

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1 promote law enforcement such as Citizens
2 Against Violent Crimes, known as CAVC; Mothers
3 Against Drunk Driving, MADD; and similar
4 organizations? If so, please stand. Yes?

5 JUROR NUMBER 74: I regularly donate
6 to a lot of those organizations.

7 THE COURT: Would that affect or
8 influence you in this dispute?

9 JUROR NUMBER 74: No.

10 THE COURT: Will you base your
11 decision on the evidence and the law and will
12 that decision be fair to both sides?

13 JUROR NUMBER 74: Yes.

14 THE COURT: Your name and number,
15 please.

16 JUROR NUMBER 74: Cynthia Harrison,
17 Number 74.

18 THE COURT: Thank you, Ms. Harrison.
19 Yes, sir?

20 JUROR NUMBER 64: For a number of
21 years I volunteered at the Coastal Crisis
22 Chapel as a chaplain.

23 THE COURT: Right. Would that
24 affect or influence you in this dispute?

25 JUROR NUMBER 64: I don't believe so.

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1 THE COURT: Will you be able to make
2 a commitment that it would not influence how
3 you viewed the evidence and applied your common
4 sense, your sense of logic and reason in
5 determining the true facts?

6 JUROR NUMBER 64: Yes, sir.

7 THE COURT: Also you would apply the
8 law fairly as well?

9 JUROR NUMBER 64: Yes, sir.

10 THE COURT: And your decision would
11 be fair to both sides?

12 JUROR NUMBER 64: Yes, sir.

13 THE COURT: Thank you so much, you
14 may be seated. Are there any others? (No
15 response). Thank you. There appear to be
16 none.

17 Are there any members of the jury
18 panel that have ever been involved -- either
19 you were accused of or you were -- testified in
20 support of a person who was accused of -- or
21 you were the alleged victim of or testified in
22 support of an alleged victim of a violent
23 crime. If so, please stand. (No response).
24 Thank you, there appear to be none.

25 Part of the law that I would charge to

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1 you -- and of course you must accept and apply
2 fairly and impartially to the facts that you
3 would determine notwithstanding what you
4 thought the law was or what you think that it
5 should be. You would promise to set aside
6 those feelings and take the law as I give it to
7 you.

8 But one of the principles of law that
9 applies in this case, and as far as I know
10 every case of a criminal dispute in the United
11 States, and certain in South Carolina, that
12 persons accused of criminal offenses are
13 presumed innocent. And that doesn't -- those
14 are not just words. The law requires you to
15 actively presume that. That presumption must
16 remain until, in your deliberations, in the
17 deliberative process that you're convinced by
18 the evidence beyond a reasonable doubt that the
19 State has met its burden of proof and
20 established the elements of a particular crime
21 to that level -- beyond a reasonable doubt.
22 Only then may that presumption leave your mind
23 or your thought process.

24 Anybody, because of your philosophy,
25 strong feelings, something that has happened to

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1 you, have any problem applying that law? If
2 so, please stand. (No response). Thank you.
3 There appear to be none.

4 That, of course, would apply to any
5 other principle of law that I may charge you.
6 You have to accept that law notwithstanding
7 your feelings about what you think the law
8 could be, should be, or what you thought that
9 it was. Anybody have any problem because of
10 some strong feelings that you have, philosophy
11 that you have in accepting that or applying
12 that law fairly and impartially as I give it to
13 you? If so, please stand. Thank you. There
14 appear to be none.

15 Any additional questions from the
16 State?

17 SOLICITOR CORNWELL: No, Your Honor.

18 THE COURT: Any additional questions
19 from Mr. Cribb?

20 PATRICIA KENNEDY: No, Your Honor.

21 THE COURT: Thank you. The last
22 question, and you heard me ask this on Monday.
23 Is there anything that you've heard in this
24 dispute that would give you any concern about
25 your ability or cause you to be concerned about

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1 your ability to make a commitment to the State,
2 to Mr. Cribb, and to this court that you will
3 at the appropriate time apply your common
4 sense, your sense of logic and reason, analyze
5 the evidence, decide what you believe to be the
6 true facts. That you will make that decision
7 fairly and impartially. Then once you decide
8 those true facts, you will take the law and
9 fairly and impartially apply that law to those
10 facts so that your decision will speak the
11 truth of this controversy. If you feel that
12 you could make that commitment for any reason,
13 please stand. (No response). Thank you.
14 There are none.

15 As you experienced on Monday, your
16 names will now be presented on a list. The
17 list will be handed to the attorneys. We will
18 go down that list, the names are in random
19 order. You will come forward, bringing with
20 you your personal effects. Stand and face both
21 sides. As I mentioned on Monday, each side has
22 a right to excuse jurors. The State in this
23 case can excuse five, Mr. Cribb has the right
24 to excuse ten. We will go through the process
25 until we have selected our twelve persons and

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1 one alternate.

2 Please, if anyone is excused, don't
3 take that personally. That is part of the
4 process.

5 When they say to seat the juror or
6 sworn the juror, then you would take your seat
7 in the jury box as directed. Thank you very
8 much.

9 Ms. Tucker, I turn it over to you now.

10 CLERK: Strikes are five and ten,
11 right?

12 THE COURT: (Affirmative nod), five
13 and ten.

14 SOLICITOR CORNWELL: Your Honor,
15 while they are getting the list together, may
16 we approach?

17 THE COURT: Sure.

18 (OFF RECORD SIDEBAR)

19 THE COURT: We're ready when you
20 are, Ms. Tucker. Thank you.

21 CLERK: When I call your name,
22 please come forward and bring your personal
23 belongings with you. If I say 'seat the
24 juror', please have a seat in the jury box. If
25 I say excuse the juror, please return to your

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1 original seating.

2 Juror Number 74, Cynthia Harrison.

3 (JUROR, WHITE FEMALE, BEFORE COUNSEL)

4 CLERK: What says the State?

5 SOLICITOR CORNWELL: Seat the juror.

6 CLERK: What says the defense?

7 PATRICIA KENNEDY: Please seat Ms.
8 Harrison.

9 CLERK: Please have a seat in the
10 jury box. You have been selected to serve in
11 the trial of this case.

12 (JUROR NUMBER 74 SEATED)

13 CLERK: Juror Number 120, Carlito
14 Millare.

15 (JUROR, HISPANIC MALE, BEFORE COUNSEL)

16 CLERK: What was the State?

17 SOLICITOR CORNWELL: Please seat Mr.
18 Millare.

19 CLERK: What says the defense?

20 PATRICIA KENNEDY: Please excuse
21 the juror.

22 CLERK: Please have a seat back in
23 the audience. You have been excused from the
24 trial of this case.

25 (JUROR NUMBER 120 EXCUSED)

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1 CLERK: Juror Number 142, Mary
2 Schleier.

3 (JUROR, WHITE FEMALE, BEFORE COUNSEL)

4 CLERK: What says the State?

5 SOLICITOR CORNWELL: Please seat Ms.
6 Schleier.

7 CLERK: What says the defense?

8 PATRICIA KENNEDY: Please excuse
9 the juror from the trial of this case.

10 CLERK: Excuse the juror.

11 (JUROR NUMBER 142 EXCUSED)

12 CLERK: Juror Number 46, Nancy
13 Durgin.

14 (JUROR, WHITE FEMALE, BEFORE COUNSEL)

15 CLERK: What says the State?

16 SOLICITOR CORNWELL: Please seat Ms.
17 Durgin.

18 CLERK: What says the defense?

19 PATRICIA KENNEDY: Please seat Ms.
20 Durgin.

21 CLERK: Seat the juror.

22 (JUROR NUMBER 46 SEATED)

23 CLERK: Juror Number 54, Patricia
24 Ferguson.

25 (JUROR, BLACK FEMALE, BEFORE COUNSEL)

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1 CLERK: What says the State?

2 SOLICITOR CORNWELL: Please seat Ms.
3 Ferguson.

4 CLERK: What says the defense?

5 PATRICIA KENNEDY: Please seat Ms.
6 Ferguson.

7 CLERK: Seat the juror.

8 (JUROR NUMBER 54 SEATED)

9 CLERK: Juror Number 127, Joseph
10 Parker.

11 (JUROR, WHITE MALE, BEFORE COUNSEL)

12 CLERK: What says the State?

13 SOLICITOR CORNWELL: Please seat Mr.
14 Parker.

15 CLERK: What says the Defense?

16 PATRICIA KENNEDY: Court's
17 indulgence -- please seat Mr. Parker.

18 CLERK: Seat the juror.

19 (JUROR NUMBER 127 SEATED)

20 CLERK: Juror Number 161, Jerry

21 Suggs.

22 (JUROR, WHITE MALE, BEFORE COUNSEL)

23 CLERK: What says the State?

24 SOLICITOR CORNWELL: Please seat Mr.

25 Suggs.

1 CLERK: What says the defense?

2 PATRICIA KENNEDY: Please excuse

3 Mr. Suggs from the trial of this case.

4 CLERK: Excuse the juror.

5 (JUROR NUMBER 161 EXCUSED)

6 CLERK: Juror Number 151, Terry

7 Smith.

8 (JUROR, WHITE MALE, BEFORE COUNSEL)

9 CLERK: What says the State?

10 SOLICITOR CORNWELL: Please seat Mr.

11 Smith.

12 CLERK: What says the defense?

13 PATRICIA KENNEDY: Please seat Mr.

14 Smith.

15 CLERK: Seat the juror.

16 (JUROR NUMBER 151 SEATED)

17 CLERK: Juror Number 173, Andrew

18 Wade.

19 (JUROR, BLACK MALE, BEFORE COUNSEL)

20 CLERK: What says the State?

21 SOLICITOR CORNWELL: Please excuse

22 Mr. Wade.

23 CLERK: Excuse the juror.

24 (JUROR NUMBER 173 EXCUSED)

25 CLERK: Juror Number 177, Kierra

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1 Washington.

2 (JUROR, BLACK FEMALE, BEFORE COUNSEL)

3 CLERK: What says the State?

4 SOLICITOR CORNWELL: Please excuse

5 Ms. Washington.

6 CLERK: Excuse the juror.

7 (JUROR NUMBER 177 EXCUSED)

8 CLERK: Juror Number 64, Thomas

9 Glisson.

10 (JUROR, WHITE MALE, BEFORE COUNSEL)

11 CLERK: What says the State?

12 SOLICITOR CORNWELL: Please seat the
13 juror.

14 CLERK: What says the Defense?

15 PATRICIA KENNEDY: Please excuse
16 the juror from the trial of this case.

17 CLERK: Excuse the juror.

18 (JUROR NUMBER 64 EXCUSED)

19 CLERK: Juror Number 189, Shauntae

20 Young.

21 (JUROR, BLACK FEMALE, BEFORE COUNSEL)

22 CLERK: What says the State?

23 SOLICITOR CORNWELL: Please seat Ms.

24 Young.

25 CLERK: What says the defense?

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1 PATRICIA KENNEDY: Please seat the
2 juror.

3 CLERK: Seat the juror.
4 (JUROR NUMBER 189 SEATED)

5 CLERK: Juror Number 154, Jack
6 Stahl.

7 (JUROR, WHITE MALE, BEFORE COUNSEL)

8 CLERK: What says the State?

9 SOLICITOR CORNWELL: Please seat Mr.
10 Stahl.

11 CLERK: What says the Defense?

12 PATRICIA KENNEDY: Please excuse
13 Mr. Stahl from the trial of this case.

14 CLERK: Excuse the juror.
15 (JUROR NUMBER 154 EXCUSED)

16 CLERK: Juror Number 40, Paul David.
17 (JUROR, WHITE MALE, BEFORE COUNSEL)

18 CLERK: What says the State?

19 SOLICITOR CORNWELL: Please seat Mr.
20 David.

21 CLERK: What says the Defense?

22 PATRICIA KENNEDY: Please excuse
23 the juror.

24 CLERK: Excuse the juror.
25 (JUROR NUMBER 40 EXCUSED)

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1 CLERK: Juror Number 1, Michael
2 Ackerman, Jr.

3 (JUROR, WHITE MALE, BEFORE COUNSEL)

4 CLERK: What says the State?

5 SOLICITOR CORNWELL: Please seat Mr.
6 Ackerman.

7 CLERK: What says the Defense?

8 PATRICIA KENNEDY: Please seat Mr.
9 Ackerman.

10 CLERK: Seat the juror.

11 (JUROR NUMBER 1 SEATED)

12 CLERK: Juror Number 100, Barbara
13 Kraemer.

14 (JUROR, WHITE FEMALE, BEFORE COUNSEL)

15 CLERK: What says the State?

16 SOLICITOR CORNWELL: Please seat Ms.
17 Kraemer.

18 CLERK: What says the Defense?

19 PATRICIA KENNEDY: Court's
20 indulgence -- please seat the juror.

21 (JUROR NUMBER 100 SEATED)

22 CLERK: Juror Number 58, Yolanda
23 Gaillard.

24 (JUROR, BLACK FEMALE, BEFORE COUNSEL)

25 CLERK: What says the State?

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1 SOLICITOR CORNWELL: Please seat Ms.
2 Gaillard.

3 CLERK: What says the Defense?

4 PATRICIA KENNEDY: Please seat the
5 juror.

6 CLERK: Seat the juror.

7 (JUROR NUMBER 58 SEATED)

8 CLERK: Juror Number 34, Karen
9 Clontz.

10 (JUROR, WHITE FEMALE, BEFORE COUNSEL)

11 CLERK: What says the State?

12 SOLICITOR CORNWELL: Please seat Ms.,
13 Clontz.

14 CLERK: What says the Defense?

15 PATRICIA KENNEDY: Please seat the
16 juror.

17 CLERK: Seat the juror.

18 (JUROR NUMBER 34 SEATED)

19 CLERK: Juror Number 112, Molina
20 Martin.

21 (JUROR, WHITE FEMALE, BEFORE COUNSEL)

22 CLERK: What says the State?

23 SOLICITOR CORNWELL: Please seat Ms.
24 Martin.

25 CLERK: What says the Defense?

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1 PATRICIA KENNEDY: Please excuse
2 the juror.

3 CLERK: Excuse the juror.

4 (JUROR NUMBER 112 EXCUSED)

5 CLERK: Juror Number 20, Kristi
6 Bright.

7 (JUROR, WHITE FEMALE, BEFORE COUNSEL)

8 CLERK: What says the State?

9 SOLICITOR CORNWELL: Please excuse
10 Ms. Bright.

11 CLERK: Excuse the juror.

12 (JUROR NUMBER 20 EXCUSED)

13 CLERK: Juror Number 15, Richard
14 Bogart.

15 (JUROR, WHITE MALE, BEFORE COUNSEL)

16 CLERK: What says the State?

17 SOLICITOR CORNWELL: Please seat Mr.
18 Bogart.

19 CLERK: What says the Defense?

20 PATRICIA KENNEDY: Please seat Mr.
21 Bogart.

22 CLERK: Seat the juror.

23 (JUROR NUMBER 15 SEATED)

24 CLERK: Juror Number 31, Larry
25 Chatham.

1 (JUROR, WHITE MALE, BEFORE COUNSEL)

2 CLERK: What says the State?

3 SOLICITOR CORNWELL: Please seat Mr.

4 Chatham.

5 CLERK: What says the Defense?

6 PATRICIA KENNEDY: Please seat the

7 juror.

8 CLERK: Seat the juror.

9 (JUROR NUMBER 31 SEATED)

10 THE COURT: Select one alternate.

11 Strikes will be one and two.

12 CLERK: Juror 179, Layne West.

13 (JUROR, WHITE MALE, BEFORE COUNSEL)

14 CLERK: What says the State?

15 SOLICITOR CORNWELL: Please seat Mr.

16 West.

17 CLERK: What says the Defense?

18 PATRICIA KENNEDY: Please seat the

19 juror.

20 CLERK: Seat the juror.

21 (JUROR NUMBER 179 SEATED)

22 CLERK: The jury is seated, Your

23 Honor.

24 (JURY SEATED @ 11:03 A.M.)

25 THE COURT: Thank you very much.

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1 Any Motions from the State regarding the
2 selection?

3 SOLICITOR CORNWELL: None from the
4 State, Your Honor.

5 THE COURT: Any Motions from Mr.
6 Cribb regarding the selection?

7 PATRICIA KENNEDY: Court's
8 indulgence?

9 THE COURT: Certainly.

10 PATRICIA KENNEDY: (Sidebar with
11 Defendant), -- no, Your Honor. Thank you.

12 THE COURT: Ladies and Gentlemen,
13 those of you that were not selected, thank you
14 very much for our assistance this week. I hope
15 that you have a good rest of the week.

16 And I hope you enjoy the small check
17 when you get it. Please, when you receive that
18 check, don't say 'he said how important we were
19 to the process.' Please know that that hasn't
20 been quantified by the check. There is no way
21 to put a value on what you bring to this
22 process. All I can tell you is 'thank you.'
23 It's been an honor to work with each one of
24 you.

25 You've earned an exemption for three

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1 years. If I happen to be holding court here in
2 the next three years and you're selected before
3 that exemption expires and you want to claim
4 it, it will be a privilege to excuse you. On
5 the other hand, if you elect to work and go
6 forward, I look forward to working with you
7 again. I hope that you have a good day. Thank
8 you.

9 You don't have to call the number
10 anymore. Thank you. The check is in the mail.
11 You've heard that one before.

12 (JURY PANEL EXCUSED)

13 THE COURT: Ladies and Gentlemen,
14 those of you that were selected, thank you
15 also. I appreciate your participation as well.

16 Are there any matters that we need to
17 take up before we swear the jury and get
18 started?

19 SOLICITOR CORNWELL: None from the
20 State, Your Honor.

21 THE COURT: Anything from Mr. Cribb?

22 PATRICIA KENNEDY: None from the
23 defense, Your Honor.

24 THE COURT: All right. That being
25 said, Mr. Chatham, you're occupying the seat --

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1 there are two seats that will be assigned. One
2 of them -- one of them actually has two.

3 Mr. West, you have the distinction of
4 having two seats that you may occupy. Either
5 of those seats on that end. You have been
6 selected as an alternate. That really doesn't
7 have any significance other than to give you
8 two seats and to make you ineligible to serve
9 as the presiding juror, as long as you are the
10 alternate. At the end of the trial, if the
11 first twelve are able to continue with the
12 deliberations, you will not participate in the
13 final deliberations. But since neither you nor
14 I know the status of those jurors, please know
15 that you're very much a part of this jury until
16 you're excused. As I stated, while you are the
17 alternate, I would ask you to sit in either of
18 those chairs on that end, sir.

19 The other seat, Mr. Chatham is
20 occupying at this point. He is eligible, as is
21 any of the first twelve of you are eligible, to
22 serve as the presiding juror. The statute
23 allows me to select that person or for you to
24 select that juror. I let the jurors, the jury,
25 pick their presiding juror. It doesn't have to

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1 be done right away. But at some point during
2 the process, if you would select that
3 individual from among the twelve and let us
4 know who that person is -- then once that
5 person has been so selected, I would ask that
6 that individual occupy that seat for the
7 balance of the trial.

8 The presiding juror basically -- they
9 are also called foreman, forelady, foreperson.
10 Someone has to be responsible for signing the
11 verdict form on behalf of the jury. If there
12 are exhibits that are introduced during the
13 trial, then it would be your responsibility to
14 receive those from those from the court and,
15 when the jury has completed its deliberations,
16 returning those exhibits to the court.

17 As I stated, any of you are qualified
18 to serve. Over the years, it has occurred to
19 me that the presiding juror really serves more
20 as a facilitator in facilitating the
21 discussions and deliberations. Some persons
22 have a better knack for that than others. I'll
23 let you pick that person.

24 As I stated, it doesn't have to be
25 done right away. Until then, until the person

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1 is selected, please feel free to occupy any
2 seat that you want as you come into the
3 courtroom, with the exception of Mr. West's two
4 seats on the end.

5 Thank you, Ladies and Gentlemen. If
6 you will, give your attention now to Ms. Tucker
7 to administer the oath.

8 (WHEREUPON JURY SWORN)

9 THE COURT: Thank you very much,
10 Ladies and Gentlemen. As I mentioned to you on
11 Monday, this wonderful system of dispute
12 resolution that we have in this country, uh,
13 has just been put into place now.

14 Now we have our two judges to work
15 together: me, who has the responsibility of
16 being the judge of the law, which means that I
17 have to preside over the trial, which means
18 that I have to make rulings on matters of law
19 which may from time to time arise, and then at
20 the conclusion of this case, in the last
21 portion of this process, the last phase, called
22 the charge portion, give you the law which you
23 have just promised that you will accept and
24 apply fairly and impartially to those facts
25 which you will ultimately determine.

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1 Each one of you, when you came here
2 today -- in fact when you came Monday, as I
3 told you, there is no one more qualified to
4 perform the task that you just accepted than
5 you are. Unless you can convince me that there
6 is somebody in the world that can apply your
7 common sense, your life's experiences, your
8 sense of logic and reasoning better than you
9 can. I don't think that person exists.

10 The great thing about it is, in
11 answering those questions or in not responding
12 to the questions, meaning that you didn't have
13 -- that they didn't apply to you -- you have
14 stated in very, very succinct that -- of
15 course, you brought with you your common sense.
16 But you brought with you something that is
17 equally important to the process. I would urge
18 you to remember that, until you are instructed
19 to begin your deliberations.

20 Mr. Cribb, I am going to ask that you
21 please be quiet just for a minute.

22 PATRICIA KENNEDY: I'm sorry.

23 DEFENDANT: I apologize.

24 THE COURT: That's okay. I'm sorry
25 to interrupt. It's important that you talk but

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1 just wait at this point, if you will.

2 DEFENDANT: Yes, sir.

3 THE COURT: Thank you. But you
4 brought with you an open mind. If you think
5 about it, each one of you said 'I don't know
6 anything about it.' Then that question that
7 followed that very long question -- and I
8 apologize for that -- but is there anything in
9 your history that would cause you basically to
10 not have an open mind, is what we said. In
11 other words, will you predetermine anything.
12 Each one of you said that you have not.

13 You need to maintain that position.
14 It's important to this overall process. As I
15 told the jury on Monday, some persons -- and I
16 confess that I am probably one of those persons
17 sometimes. I am not a detail person. I know
18 some. Me not being one, I get frustrated with
19 a detail person because they will go -- and you
20 may be one. I am not trying to be offensive to
21 you. But persons that want to tell you every
22 little thing. It's important to them. That's
23 why they are detail people. I am a person that
24 gets a little bit and then I want to say 'I
25 know where we are going with this.' In other

1 words, I jump to conclusions sometimes.
2 Sometimes I make -- sometimes I get it right
3 but sometimes I might not.

4 Detail persons very rarely get it
5 wrong for themselves. Why? Because they wait
6 to hear everything, they think about it and
7 then they made their decision. I think that
8 person is who the jury needs to be. If you can
9 think of an example of what you need to be,
10 that's it. You need to be that person, receive
11 the information, process it to some degree, and
12 we will talk about that more in just a moment,
13 but do not make any decisions in this case
14 until you've heard everything.

15 And that's not just hearing the
16 evidence. Of course, it's the evidence that
17 you ultimately will consider. The evidence
18 alone. That will come through the testimony of
19 the witnesses who are here. That certainly --
20 that will be the source of what you determine,
21 from which you will determine the true facts of
22 the dispute.

23 But there are three other very
24 important parts. You will hear from the
25 attorneys twice. In just a moment the

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1 attorneys will have their first opportunity
2 to speak to you in what we call opening
3 statements. Opening statements are before you
4 hear any evidence, and it is really a broad
5 overview of the dispute. I think you will find
6 it helpful as you move through the case, move
7 through the evidentiary portion. It gives you
8 basically a roadmap of the dispute.

9 After you heard the evidence, the
10 attorneys then speak to you a second time. But
11 unlike the opening statement, you've heard the
12 evidence and now it is proper for them to
13 discuss that evidence with you and suggest
14 reasonable inferences that you may draw from
15 that evidence.

16 I am confident that you will find
17 those remarks extremely helpful when you begin
18 the process of deciding this case; that is, in
19 deliberating in this case, making your ultimate
20 decision.

21 Following the closing arguments, you
22 will hear the charge on the law. We will talk
23 about the various principles. It is during
24 that charge that we will talk about, as I
25 mentioned to you, the presumption of innocence

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1 and the burden of proof beyond a reasonable
2 doubt. That is the standard that you will be
3 assigned and that is what you will apply in
4 analyzing the evidence to -- to determine what?
5 To determine whether or not the State has met
6 its burden of prove.

7 Because, you see, in a criminal
8 prosecution the only -- the only party that
9 has any burden of proof is the State of South
10 Carolina.

11 The format that Judge Jefferson is
12 using right now -- and some of you may have
13 participated in that jury selection. It is the
14 same four parts: opening statement, evidentiary
15 portion, closing arguments and charge.
16 Identical.

17 But there are two really major
18 differences. First, in a civil case there are
19 occasions when a defendant has, for limited
20 purposes, a burden of proof. Generally it's an
21 affirmative defense. In criminal cases the
22 burden of the case will rest solely and only on
23 the State.

24 The next area where there is a major
25 distinction, the general burden of proof in a

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1 civil case is called the greater weight or the
2 preponderance of the evidence. That really
3 just says, is it more likely so than not? It's
4 a probability standard.

5 The burden of proof here is much
6 greater than that. It's beyond a reasonable
7 doubt. We will talk about that. But I will
8 tell you that a reasonable doubt is a doubt
9 that would make a conscientious juror who is
10 searching for the truth in a case to hesitate
11 to act or to take some action -- take some
12 action. That's what you will apply when you
13 analyze the evidence.

14 What will you be analyzing? I will
15 define for you each of the charges. By that, I
16 mean simply this. I will give you the elements
17 that the State must prove beyond a reasonable
18 doubt to be entitled to a verdict of guilty as
19 to that particular charge. You will go
20 through the process. You will take them one by
21 one and you will say, 'Am I convinced that the
22 State has met it's burden of proof? That is,
23 am I firmly convinced that the State has
24 established that particular element?' If the
25 answer is yes, then you go to the next element.

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1 So on until you've analyzed that charge.

2 If at any point in there you say, 'No,
3 I am not firmly convinced. It might be, it is
4 possible, it is probable.' That wouldn't be
5 sufficient. It's got to be more than that.
6 As to that particular charge, if you
7 collectively agree that you aren't convinced to
8 that standard, then your verdict must be not
9 guilty.

10 Why? If there were five elements and
11 the State proved four, it doesn't matter. He
12 is not guilty if they fail on one. So that's
13 what a verdict of the jury says in a criminal
14 dispute.

15 A guilty verdict says that jury
16 analyzed it and were firmly convinced as to
17 each of those elements. As I say, I will list
18 them for you and identify them each for you and
19 give that to you.

20 Another thing that we will talk about
21 during the charge is something that that is
22 kinda obvious, because you are going to
23 evaluate the evidence. What does that mean?
24 Well, obviously it means what you are going to
25 find -- that is going to convince you that it

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1 is credible and believable.

2 You and I -- I'd hate to guess how
3 many times a day that we make that decision for
4 ourselves. We do it most of the time
5 subconsciously, but we do it. You are going to
6 apply all of those factors that have assisted
7 you thus far in your life in making that
8 determination.

9 During that deliberative process, you
10 are to talk about why you may disbelieve
11 somebody or why you may firmly believe somebody
12 and what it was about that person. There are a
13 number of factors. We will go over them during
14 the charge, some of them that you may want to
15 consider and apply.

16 You may during the trial notice
17 something about a witness, the way that they
18 held themselves, a facial expression, something
19 that in your history and background you've said
20 "that has always caused me to be suspect" about
21 something. Or just the sheer logic of what
22 they say. I would caution you about this. You
23 certainly are expected, as I said, to start
24 that analytical process. You're expected to
25 make that mental note for yourself.

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1 Just don't go to the next step. Don't
2 say, 'Well, I don't believe that person.' If
3 you do, then you have violated your oath.
4 You've gone too far, you've concluded
5 something.

6 Merely make that notation and when you
7 do begin your deliberations, then you may say,
8 'Well, you know in my life when somebody
9 says...' -- or 'that didn't make any sense to
10 me' -- or, the 'the manner in which they said
11 it, I've been suspect of that.' One of your
12 fellow jurors may give you a logical
13 explanation for that, that may cause you to
14 allay that concern. But -- so that's what I am
15 talking about when I say you've expected to
16 start the analytical process but just don't
17 reach any conclusions.

18 I know that you're anxious to preform
19 the task. We are almost to the part of getting
20 to the evidentiary portion. But I want to
21 thank you for being here and to tell you what
22 an honor it is to serve with each one of you.
23 Thank you for the attention that you have given
24 me. I would ask that you give that same
25 attention to the attorneys as they give their

1 opening statements on behalf of their clients.

2 Solicitor, you may proceed.

3 SOLICITOR CORNWELL: Thank you, Your
4 Honor, may it please the Court?

5 THE COURT: Yes, Ms. Cornwell.

6 SOLICITOR CORNWELL: We've all heard
7 the saying "No good deed goes unpunished."
8 Well, that statement was never more true for
9 Raymond and Roberta Kiley than it was on
10 February 4th of this year when that defendant
11 (indicating Mr. Cribb) took advantage of their
12 generosity and of their charity.

13 Throughout the course of this trial
14 you are going to hear testimony from Mr. Kiley
15 and Ms. Kiley on how they came into contact
16 with this defendant.

17 I believe that you are going to hear
18 that Mr. and Mrs. Kiley have been married for
19 forty-one years. They have lived in the same
20 house in the same neighborhood, with the same
21 neighbors, for the last thirty years.

22 Mr. and Mrs. Kiley, they grew up in a
23 generation where you didn't have to lock your
24 doors at night, where good was expected from
25 people, and that when you could help others

1 that you did. That's exactly how they lived
2 their life. That's what they did in this
3 situation.

4 Because back in early January of this
5 year, the defendant came to Mr. and Mrs.
6 Kiley's home and asked for help. He told them
7 that he was on hard times, that he was looking
8 for money and was there anything that he could
9 do to get some money from them. Mr. and Mrs.
10 Kiley, being the kind people that are, -- and,
11 I apologize, but I believe that Mr. Kiley was
12 the only one that spoke to him at this point.
13 He said, 'Sure, let me give you some yardwork.
14 Let's see if you can help me with the yardwork
15 and I'll give you some money for it.'

16 So Mr. Kiley brought him out, the
17 defendant did some yardwork for him, Mr. Kiley
18 gave him some money and sent him on his way.

19 A few weeks later, the same defendant
20 came up and approached Mrs. Kiley. I believe
21 that Mrs. Kiley is going to testify and she is
22 going to tell you that there was some
23 conversation between her and the defendant
24 about a lawnmower. She wasn't real sure what
25 the defendant was talking to her about. So

1 she called her husband. Her husband came home.
2 They had a discussion. Mr. Kiley, at that
3 time, told the defendant, 'No, sir, I don't
4 know anything about this lawnmower. But do
5 you need a ride somewhere? Can I take you
6 somewhere and help you out?' The defendant
7 asked him to give him a ride, so he did. He
8 dropped him off and, as he was dropping him
9 off, he gave him a little bit more money.
10 Said, 'Let me help you out.' This is a
11 charitable act that most of us would see as a
12 kindness, as one citizen helping out another.

13 Unfortunately the defendant didn't see
14 it as that. The defendant saw Mr. and Mrs.
15 Kiley as an easy mark. Because on February 4th,
16 after Mr. Kiley had come home and given this
17 defendant a ride, had given him money for the
18 second time, at about 2:30 in the morning this
19 defendant decided that wasn't enough. So he
20 went back to Mr. and Mrs. Kiley's home. While
21 Mr. and Mrs. Kiley were asleep in their bed, he
22 entered their home, without permission.

23 What he wasn't expecting was that the
24 dogs would start barking when he entered the
25 home. So as he is in the home, the dogs are

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1 barking, Mrs. Kiley hears the dogs and she does
2 what any self-respecting woman would do, she
3 woke her husband up. She said, 'Hey, go find
4 out why the dogs are barking.'

5 At this point the bathroom light is
6 still on, because at their age they leave the
7 bathroom light on for themselves. They'd
8 fallen asleep with the TV on, so there was some
9 light in the room. As Mr. Kiley got out of bed
10 and opened the bedroom, Mr. and Mrs. Kiley both
11 saw that defendant standing in their doorway.

12 Mr. Kiley, being the man that he is,
13 yelled at him. Said, 'Get out of the house!
14 What are you doing here?' He followed him
15 outside and he left.

16 Mr. Kiley went back to bed that night.
17 Everything seemed as normal. Got up the next
18 morning, went to the flea market with his son.
19 Called his wife and said, 'Would you like to
20 meet me at the American Legion so we can have
21 some breakfast?' She said she would. So she
22 got up and got dressed, got ready, and went to
23 get her purse. Lo and behold, it's not even
24 home. Mrs. Kiley is a good woman and she
25 didn't immediately think the worse. She

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1 thought, 'Silly me, I must have left it
2 somewhere.' She called the American Legion and
3 asked them it was there. They looked around
4 the house. Finally her husband came back home
5 and looked some more. When they couldn't find
6 it, they decided that they needed to call the
7 police.

8 I believe that at some point, Mrs.
9 Kiley will tell you, while they were waiting on
10 the policeman that her credit card company
11 called her and alerted her that there was some
12 suspicious activity on her card, that they just
13 wanted to make sure that she was using her card
14 properly. She was able to tell them, 'No, I
15 don't have my credit card right now.'

16 So when they met with the officer, the
17 officer -- they gave him all the information.
18 The officers did their investigation.

19 I believe that you are going to hear
20 testimony about their investigation, you're
21 going to be able to see the evidence that is
22 presented to you as to what their investigation
23 was. You are going to conclude that this
24 defendant committed several acts against the
25 victims.

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1 He committed what is called a burglary
2 in the first degree. He committed a financial
3 transaction card theft. And then later when
4 you hear about how he used the cards, you will
5 conclude that he has also committed financial
6 transaction card fraud.

7 Now, the judge in his opening
8 statement went over a lot of things with you.
9 He went over things such as reasonable doubt.
10 He also told you that the State has the burden
11 of proving each and every element of each and
12 every crime that we are alleging that this
13 defendant committed. And, that's true. We do
14 have that burden of proof. We will meet that
15 burden of proof.

16 He will tell you each and every
17 element of the crime that we have to prove.
18 Throughout the course of this trial, we will
19 do just that.

20 For a moment, I would like to go over
21 with you some of the law that I believe that
22 you are going to be asked to decide on in this
23 case. If I tell you anything that is different
24 from what the judge tells you -- well, clearly
25 the judge is the authority on this. He knows

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1 a lot more than I do about the law and he is
2 going to tell you exactly what you should be
3 making your decisions on.

4 I would like to ask you for a moment
5 to look at the screen. This is a case where
6 the State is alleging crimes against Mr. Cribb.
7 The first crime is burglary. In the state of
8 South Carolina, I believe the judge is going to
9 tell you, that to convict the defendant of
10 burglary that we must prove that he, one,
11 entered a dwelling; two, that he entered
12 without consent; and, three, that when he
13 entered without consent that it was with the
14 intent to commit a crime. That's the standard
15 for burglary in South Carolina.

16 But the defendant is charged with
17 burglary in the first degree, which I believe
18 that the judge is going to tell you has an
19 extra element. To be convicted of burglary in
20 the first degree, there has to be what's called
21 an aggravating circumstance. In the state of
22 South Carolina there are three types of
23 aggravating circumstances. The State does not
24 have to prove all three aggravating
25 circumstances occurred. We only have to prove

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1 that one of three aggravating circumstances
2 occurred.

3 There is one circumstance where if
4 there is a deadly weapon involved or if there
5 is injury caused to a victim, then that would
6 qualify as burglary in the first degree. I
7 would stipulate to you that you're not going to
8 hear any evidence of that or any testimony.
9 There was no gun involved and nobody got
10 injured in this.

11 There is also an element that if the
12 defendant has been convicted of two or more
13 burglaries, then he can be charged with first
14 degree. I will also submit to you that this
15 defendant has not been convicted of two or more
16 burglaries, so we are not trying to prove that
17 element.

18 The third element for burglary in the
19 first degree is that the entering or remaining
20 occurs in the nighttime hours. The State will
21 prove that element. I believe that you will
22 hear testimony that when the defendant
23 unlawfully entered Mr. and Mrs. Kiley's home
24 without consent and with the intent to commit a
25 crime -- which in this case was to rob them --

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1 he did it during the nighttime hours.

2 The next charge that the defendant is
3 charged with is financial transaction card
4 theft. In the state of South Carolina, to
5 convict a defendant of financial transaction
6 card theft, the State must prove that the
7 defendant either took, obtained, withheld or
8 received a financial transaction card or number
9 from a person's possession, custody or the
10 control of another without the cardholder's
11 consent and with the intent to use the credit
12 card number.

13 In this, the State -- you are going to
14 hear testimony about how Ms. Kylie's purse was
15 stolen. Within her purse she had several
16 items, including her bank card and her credit
17 card. This defendant took those cards. When
18 he took them, he took the financial transaction
19 card itself. He took them from Ms. Kylie's
20 possession, custody and control, without her
21 consent, and that he intended to use those
22 cards without her consent.

23 Finally, the State is going to prove
24 to you a financial transaction card fraud. To
25 convict the defendant of financial transaction

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1 card fraud, the State must prove that the
2 defendant used the financial transaction card
3 which he obtained illegally or received with
4 the knowledge that it was illegally obtained;
5 that he was using it to obtain something of
6 value; and that he did this by misrepresenting
7 that the cardholder had given consent. He
8 presented the financial transaction card
9 without permission or he falsely represented
10 that he was the owner of the car.

11 Now, you did hear the judge talk about
12 a property crime enhancement when he was
13 reading the indictments out. I am going to
14 submit to you that the enhancement portion of
15 the property crimes is for the judge to
16 determine, is for the judge to decide. What
17 you must decide is if a financial transaction
18 card fraud actually occurred. If you determine
19 that a financial transaction card fraud did
20 occur, then the judge will get to determine
21 whether or not the property crime enhancement
22 applies.

23 However, if you find that a financial
24 transaction fraud did not occur, then the judge
25 is not going to be able to find that a property

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1 crime enhancement occurred, because you will
2 have found the defendant not guilty of this
3 charge. I submit to you that I do not believe
4 that this is going to be the case. We intend
5 to prove each and every element of this crime
6 and every other crime.

7 After you have heard the testimony as
8 it is presented to you and have viewed the
9 evidence that has been presented to you, I feel
10 quite certain that you're going to find this
11 defendant guilty of burglary in the first
12 degree, financial transaction card theft, and
13 financial transaction card fraud.

14 THE COURT: Thank you. Ms. Kennedy.

15 PATRICIA KENNEDY: May it please
16 the Court?

17 THE COURT: Yes, ma'am.

18 PATRICIA KENNEDY: Good morning.
19 I guess it is still morning -- I just wanted
20 to say, as Judge Dennis indicated to you, how
21 much we appreciate your service here. For
22 those of you who had the good fortunate or the
23 misfortune to have served earlier this week, I
24 want to thank you twice.

25 This is important. This is Mr.

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1 Cribb's day in court. It is your job to sit in
2 judgment of him.

3 Now, as you just heard, the Assistant
4 Solicitor went through all the elements of
5 burglary, all the elements of financial
6 transaction card theft, all the elements of
7 financial transaction card fraud. I am not
8 going to dwell on the credit card issues,
9 because if you find Mr. Cribb guilty of
10 burglary that will be a given, almost. But
11 I am going to discuss with you, for the third
12 time this morning, the elements of burglary --
13 just as it applies to Mr. Cribb.

14 The elements of burglary are this,
15 that he is accused of entering a dwelling, a
16 house, in the nighttime, with the intent to
17 commit a crime, which the State alleges is the
18 crime of larceny.

19 Now, if I -- having heard the
20 assistant solicitor's opening, having heard now
21 for the third time what the elements of
22 burglary are, if I were you -- but for the fact
23 that you're sitting on the jury -- I would say,
24 'He probably did this.' But what I want you
25 all to do during the course of this trial,

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1 during the course of your deliberations is
2 simply this -- because lawyers complicate
3 things. I'd be the first person to tell you
4 that.

5 But there is what we call the "legal
6 truth" and the "real truth." The legal truth
7 is those things which Ms. Cornwell just
8 explained to you. It is your job to decide what
9 the real truth is after you hear the evidence,
10 after you hear the testimony, after you hear
11 everything that has to be said about this case,
12 after you observe everybody who is involved in
13 this case. Then and only then can you decide
14 the real truth.

15 You have to separate what is true from
16 what is false. You have to separate what may
17 be -- what is fact and what may be fiction
18 because that is the only way that you get to
19 decide what the real truth is.

20 Now, a man is presumed innocent until
21 proven guilty. Jurors are presumed to be, and
22 my experience with the law tells that it is
23 true, sensible and fair. I know that you will
24 be faithful to your sworn oath, I know you will
25 do your duty as jurors. I know that you can

1 separate out the legal truth from the real
2 truth and that when you do, when you've done
3 your deliberations, when you've thought about
4 everything that you've heard and everything
5 that you see that you will decide that Mr.
6 Cribb is not guilty. Thank you.

7 THE COURT: Thank you very much, Ms.
8 Kennedy. You may call your first witness, Ms.
9 Cornwell.

10 SOLICITOR CORNWELL: Thank you, Your
11 Honor. The State calls Roberta Kiley.

12 (WITNESS TAKES STAND)

13 ROBERTA KILEY, being duly sworn to
14 tell the truth, the whole truth and nothing but
15 the truth, testified, as follows:

16 DIRECT EXAMINATION

17 BY SOLICITOR CORNWELL:

18 Q. Good morning, Ms. Kiley.

19 A. Good morning.

20 Q. Ms. Kiley, how old are you?

21 A. Seventy-one.

22 Q. Are you married?

23 A. Yes, ma'am.

24 Q. Who are you married to?

25 A. My husband Raymond Kiley, forty-one years.

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1 Q. And do you have any children of
2 grandchildren?

3 A. I have seven children, a grandchild on the
4 way which will make twenty grandchildren, and
5 about five or six great-grandchildren.

6 Q. Big family?

7 A. Yes.

8 Q. Where do you live?

9 A. Avenue, Goose Creek, South
10 Carolina in Berkeley County.

11 Q. How long have you lived there?

12 A. Thirty years.

13 Q. Who is currently living there with you
14 now?

15 A. My husband, Raymond, and my son Frederick.

16 Q. Were you living at that address on
17 February 5th of 2012?

18 A. Yes, ma'am.

19 Q. Do you recall something happening at your
20 house between February 4th and February 5th of
21 2012?

22 A. Yes, ma'am.

23 Q. Please tell the jury what happened that
24 night, or that day.

25 A. That day.

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1 Q. Yes, ma'am.

2 A. My son and I were home. Mr. Cribb came
3 and knocked on the door. Said he's sold my
4 husband a John Deere lawnmower three or four
5 weeks before. I said I did not know anything
6 about it, but that I would call him and have
7 him come home and talk to him. I called my
8 husband, he came home. He talked to Mr. Cribb.
9 We had never seen a lawnmower, you know, so I
10 wouldn't give him any money, my husband
11 wouldn't give him any money. But he did say
12 that he would take him somewhere. He proceeded
13 to take him to Rut Road, which is off of Howell
14 Hall Road, and that that time he gave him, I
15 believe, twenty dollars. To us that was the
16 end of it.

17 Q. Prior to that day, had you ever seen or
18 spoken to this defendant before?

19 A. No, I had not.

20 Q. Did you know his name or anything about
21 him prior to that day?

22 A. No, ma'am.

23 Q. What happened after your husband dropped
24 him off?

25 A. He proceeded to come back home. We went

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1 around -- we went ahead and did what we did --
2 that we always do on a Saturday. I believe
3 that we went back to Legion and shot some pool,
4 came home, went to bed.

5 About 2:30 in the morning, I heard our
6 dogs barking. Excuse me. I woke my husband
7 up. I said, you know, 'They're raising too
8 much Cain.'

9 About that time our bedroom opened, Mr.
10 Cribb was standing in our doorway. He says,
11 "I thought I heard you tell me to come in."
12 And we said no, my husband told him to get out.
13 He got up out of bed and proceeded to walk him
14 out of the house.

15 Q. Okay. And about what time was this?

16 A. About 2:30 in the morning.

17 Q. And at that time, was it pitch-black dark
18 in your bedroom?

19 A. No, ma'am. Our bathroom light was on and
20 the TV was on.

21 Q. If you could, kinda describe your house
22 for the jury. Where is your bedroom in
23 relation to the front door of the house?

24 A. The front door -- you have to come down a
25 hallway past two bedrooms to get to our

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1 bedroom. The furnace, it's -- probably from
2 the back door to the tables up there is the
3 length of the hallway.

4 Q. And if you're standing outside, would you
5 be able to -- would you have been able to hear
6 somebody say "Come in." From back in the
7 bedroom?

8 A. No, ma'am.

9 Q. And when you saw the defendant standing in
10 the doorway, were you able to immediately
11 recognize him?

12 A. Yes, he was the gentleman that had been
13 there that afternoon.

14 Q. Do you know how the defendant got in your
15 house?

16 A. Unfortunately, through the front door
17 which was unlocked. The only time that our
18 front door at that time had ever been locked is
19 when we went on vacation. The rest of the time
20 it was open.

21 Q. At any time did you give the defendant
22 permission to be in your home?

23 A. No, ma'am.

24 Q. After you saw the defendant in your home,
25 what happened?

1 A. My husband escorted him out. I don't know
2 if he locked the front door after he went out
3 or not. He came back to bed and we went --
4 proceeded to finish the night out.

5 Got up the next morning, he took our son
6 out to the flea market to work, and on his way
7 home he stopped at the Legion, called me and
8 asked me to come join him for breakfast. I
9 said I would. I went to go get breakfast, my
10 purse was gone.

11 Q. Let's go back a little bit. After you saw
12 the defendant in your home at 2:30 in the
13 morning, why didn't you all call the police at
14 that time?

15 A. Didn't even -- didn't even register. When
16 we saw him in the doorway, he said "I found the
17 lawnmower, the guy that loaned me his truck had
18 it." You know, that was the extent of it. We
19 just, you know, -- it never dawned on us that,
20 you know, after we'd given him money that he
21 would take from us.

22 Q. When you got up the next morning to meet
23 your husband, what happened then?

24 A. After I discovered that my purse was
25 missing, I checked my car. I called my

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1 husband, he went back into the Legion and
2 checked with everybody in the Legion and it
3 was not there. He came home and we proceeded
4 to look around the house some more, because
5 normally when I walk in the front door I put my
6 purse right by the front door. We could not
7 find it. That's when we called the police.

8 I don't remember if it was before the
9 police got there or after that got there that
10 the credit card company called me and let me
11 know that my credit card had been used in like
12 four different places.

13 Q. What kind of items did you have in your
14 purse?

15 A. My wallet, my driver's license, my
16 military ID card, my American Legion ribbon
17 with all my pins on it, a necklace that
18 belonged to my youngest daughter, a date book,
19 -- what else was in there? A calendar,
20 checkbook.

21 Q. A lot of personal items?

22 A. Very personal. Some that cannot be
23 replaced.

24 Q. And once the police arrived, what
25 happened?

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1 A. We told them what had happened, pointed
2 out the lawnmower that Mr. Cribb had brought
3 back. It was not a John Deere lawnmower. We
4 looked to see if there were any identifying
5 marks on it. The police officer stated at that
6 time that it was probably stolen also but that
7 he would leave it with us, and that if a police
8 report came in on a stolen lawnmower he would
9 know where it was at and would come and get it.

10 Q. Did you inform the officers about the
11 phone call from the ---

12 A. Yes, I did. I gave them the -- the credit
13 card company had told me where the credit cards
14 had been used. I gave that information to the
15 police officer and -- to my knowledge, he went
16 and proceeded to the -- at least to CVS,
17 because that is where the biggest transaction
18 was used.

19 Q. Okay. At some point in time, did you ever
20 go to the police station?

21 A. Yes, ma'am.

22 Q. When was that?

23 A. Uh, ---

24 Q. Was it the day of the burglary, was it
25 sometime later?

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1 A. It was later. I would say two or three
2 weeks later. They called me, called my husband
3 and I and asked us to come up to Moncks Corner
4 to the police office -- to the police office --
5 and give a written statement, and to view a
6 video.

7 Q. When you viewed that video, were you in
8 the same room as your husband or were y'all in
9 separate rooms?

10 A. We were in separate rooms.

11 Q. Okay.

12 SOLICITOR CORNWELL: May I approach,
13 Your Honor?

14 THE COURT: You may.

15 DIRECT EXAMINATION CONTINUED

16 BY SOLICITOR CORNWELL:

17 Q. Ms. Kiley, I am going to show you what has
18 previously been marked as State's Exhibit 1.

19 Do you recognize that item?

20 A. Yes, ma'am.

21 Q. What is that item?

22 A. It is a CD that we were shown, the tape
23 from CVS.

24 Q. Have you had an opportunity to view that
25 prior to your testimony today?

1 A. Yes, ma'am.

2 Q. How do you know that?

3 A. My initials are right here.

4 Q. Is that a true and accurate depiction of
5 the video that you viewed in the police
6 department that day?

7 A. Yes, ma'am.

8 Q. Have there been any changes, alterations
9 or deletions made to you between the time that
10 you saw it at the police station and the time
11 that you viewed it for your testimony?

12 A. No, ma'am.

13 Q. And when you viewed this video, were you
14 able to recognize anybody in that video?

15 A. Yes, ma'am.

16 Q. Who did you recognize in that video?

17 A. The defendant, Mr. Cribb.

18 Q. And what was Mr. Cribb doing in the video?

19 A. He was purchasing two cartons of
20 cigarettes.

21 Q. And did you let the officer know that's
22 who you thought that was?

23 A. I said that was the gentleman that had
24 been at our house. At that time neither my
25 husband nor I knew his name.

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1 Q. How certain were you when you saw that
2 video that that was the man that ---

3 A. I was positive.

4 Q. Do you see the person that broke into your
5 house and stole your purse sitting in the
6 courtroom today?

7 A. Yes, ma'am.

8 Q. Can you point him out to the jury and
9 describe what he is wearing?

10 A. He's at the defendant's table, wearing a
11 blue/green/white striped shirt.

12 Q. And at any time on the day or the night of
13 February 4th, 2012, into the morning of February
14 5th, 2012, did you give the defendant permission
15 to come into your home?

16 A. No, ma'am.

17 Q. And at any time did you give the defendant
18 permission to use your credit cards?

19 A. No, ma'am.

20 SOLICITOR CORNWELL: Thank you, Ms.
21 Kiley. Please answer any questions that Ms.
22 Kennedy may have for you.

23 THE COURT: You may cross examine.

24 PATRICIA KENNEDY: Thank you.

25 CROSS EXAMINATION

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1 BY PATRICIA KENNEDY:

2 Q. Hey, Ms. Kiley, how are you doing?

3 A. Hey. Fine.

4 Q. Nice to meet you. I'm sorry that it is
5 under these circumstances. You sound like you
6 have a wonderful family.

7 A. (Affirmative nod).

8 Q. I just have a couple of questions if you
9 don't mind.

10 A. No, ma'am.

11 Q. And I'm trying to -- based on your
12 testimony, I am trying to get the sequence of
13 how many times Mr. Cribb had been to your house
14 prior to the night of February 5th.

15 A. To my knowledge, the -- I don't know when
16 it was the first time that he came to the
17 house.

18 Q. Okay.

19 A. Apparently I wasn't at home or I was in
20 the house and my husband went out and talked to
21 him. The first time that I met him was that
22 Saturday when he come by to get some money for
23 the lawnmower that he had supposedly sold to my
24 husband.

25 Q. Okay. So he came to your house, knocked

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1 on your door, said 'I am here about the
2 lawnmower' or 'to collect the money for the
3 lawnmower.'

4 A. Yeah. He said he'd just gotten out --
5 that the reason he hadn't been by earlier was
6 that he had just -- he'd been in jail and had
7 just gotten out.

8 Q. Okay.

9 A. And, you know, he wanted money for the
10 lawnmower. I said, 'What lawnmower?' Because
11 I did not know anything about it.

12 Q. So he -- he came in the door, he -- you
13 called your husband?

14 A. (Affirmative nod), I called my husband.

15 Q. Your husband came home immediately?

16 A. Yes.

17 Q. Your husband then gave him some money?

18 A. Not at the house. When he drove him to
19 Rut Road, that's when he gave him some money.

20 Q. And that's what your husband told you?

21 A. Yes.

22 Q. You don't have personal knowledge of that?

23 A. No.

24 Q. And you don't have any personal knowledge
25 about a lawnmower?

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1 A. No, just what Mr. Cribb had told me.

2 Q. And then when he came back that night he
3 had another lawnmower?

4 A. Yes, ma'am.

5 Q. And he was there, he told you, to sell it
6 to your husband?

7 A. He said that he had found the lawnmower
8 that he had sold my husband. The gentleman
9 that had loaned him the truck had taken the
10 lawnmower. And when he came that afternoon, he
11 told me that it was a John Deere lawnmower that
12 he had sold my husband.

13 Q. Let me stop you. When you say that
14 afternoon, which afternoon are you referring
15 to?

16 A. On Saturday afternoon. The first time
17 that I met him.

18 Q. Okay, I just wanted to get it straight.

19 A. And the next morning -- you know, he
20 showed my husband where he'd put the lawn mower
21 at 2:30 in the morning. When we looked the
22 next morning, it was not a John Deere
23 lawnmower. We still have the lawnmower. The
24 police ---

25 Q. But there was a lawnmower?

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1 A. At 2:30 in the morning, yes.

2 Q. And he said that he was there to bring it
3 to your husband?

4 A. Yes.

5 Q. And as to the conversations that you say
6 that occurred between Mr. Cribb and your
7 husband, were you present for those or are you
8 just ---

9 A. No.

10 Q. So what you're saying is what your husband
11 may have told you?

12 A. Yeah. And what Mr. Cribb had told me.

13 Q. But there was a lawnmower on this ---

14 A. On Sunday morning, when he came back at
15 2:30 in the morning, he brought a lawnmower.

16 Q. Do you have any security on your house?

17 A. No, ma'am.

18 Q. No cameras? Nothing?

19 A. No, ma'am.

20 Q. Okay. It is my understanding that when
21 Mr. Cribb entered the house that he told you
22 all that he thought that he heard somebody say
23 "come in".

24 A. Yes.

25 Q. And when this occurred that night, your

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1 husband sort of shooed him out of the house and
2 he went -- he went quietly, peacefully?

3 A. Yes.

4 Q. And you didn't call the police then?

5 A. No.

6 Q. So all of this -- all of the issues with
7 the credit card occurred afterwards, several
8 hours afterwards?

9 A. Yes.

10 Q. Would it be fair to say 10:00, 10:30 the
11 next morning?

12 A. No, Freddie had to be at the flea market
13 at 8:00. Probably 9:30, 10:00 o'clock.

14 Q. And it was somewhere around in there that
15 the credit card company let you know that the
16 credit card had been used?

17 A. Yes.

18 Q. You didn't call them?

19 A. No, they called me.

20 Q. Now, the assistant solicitor asked you
21 about the CD that has been marked for
22 identification and you indicated that you saw
23 it, I guess, at the detective division of the
24 Sheriff's Office in Moncks Corner?

25 A. Yes, ma'am.

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1 Q. And you viewed it for the first time then?

2 A. Yes, ma'am.

3 Q. When did you view it for the second time?

4 A. Last week. Last Monday. Monday or
5 Tuesday of last week.

6 Q. And when you viewed that video, I assume
7 then that you discussed your testimony with the
8 assistant solicitor.

9 A. A little bit.

10 Q. A little bit?

11 A. (Affirmative nod).

12 Q. In your statement, though, you indicated
13 that -- did you review your statement with her?

14 A. Yes, ma'am.

15 Q. So you indicated and you testified to the
16 fact that you weren't really sure where your
17 purse was?

18 A. No, I knew where my purse was. No, I knew
19 where I had put it, where I thought I had put.

20 Q. You thought that you had put it there?

21 A. Yeah.

22 Q. And then when you discovered it was
23 missing ---

24 A. Well, I checked where I had been the night
25 before, the car and everything. It was not in

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1 any of those places.

2 Q. Tell me how big your purse was? I know
3 it -- it says that it is a Liz Claiborne purse,
4 so I know that it is a nice one.

5 A. Oh, yes. It had been given to me by a
6 friend.

7 Q. Okay.

8 A. It was about that big (gesturing).

9 Q. This wide?

10 A. Yeah. Well, ---

11 Q. How deep?

12 A. Probably about that deep?

13 Q. Guessing, twelve inches?

14 A. Yeah.

15 Q. And then how deep?

16 A. Probably about that deep.

17 Q. And it was full?

18 A. Yes.

19 Q. You had all the things that you just told
20 Ms. Cornwell that you had in the purse?

21 A. Yes.

22 Q. What color was it?

23 A. It was plaid, blue and green.

24 Q. Blue and green plaid?

25 A. Um-humm.

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1 PATRICIA KENNEDY: That would be
2 all that I have, Your Honor. Thank you.

3 THE COURT: Redirect?

4 SOLICITOR CORNWELL: No, Your Honor.
5 Please excuse this witness.

6 THE COURT: You may come down.

7 (WITNESS STEPS DOWN)

8 THE COURT: Call your next witness,
9 please.

10 SOLICITOR CORNWELL: The State calls
11 Raymond Kiley.

12 (WITNESS TAKES STAND)

13 RAYMOND KILEY, being duly sworn to
14 tell the truth, the whole truth and nothing but
15 the truth, testified, as follows:

16 DIRECT EXAMINATION

17 BY SOLICITOR CORNWELL:

18 Q. Mr. Kiley, how old are you?

19 A. Forty-one -- ah! Forty-one. I wish I
20 was! I just turned seventy-one.

21 Q. Are you married?

22 A. Yes, I am.

23 Q. How long have you been married?

24 A. Forty-one years.

25 Q. Who are you married to?

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1 A. Roberta Kiley. She's back behind you
2 there.

3 Q. And I understand that you and Mrs. Kiley
4 have a lot of children and grandchildren, is
5 that right?

6 A. Oh, yeah. We have a herd.

7 Q. Mr. Kiley, where do you live?

8 A. Avenue in Goose Creek,
9 Sedgefield.

10 Q. How long have you lived there?

11 A. Thirty -- between thirty and thirty-two
12 years.

13 Q. And were you living there with your wife
14 on February 5th of 2012?

15 A. Yes.

16 Q. Do you recall something happening at your
17 house between -- actually, let me go back.

18 Have you ever met the defendant before?

19 A. Just before I had him doing the work.

20 Q. When was that? When was the first time
21 that you met the defendant?

22 A. Good Lord, I can't -- my memory is shot.

23 Q. Was it at the very beginning of this year,
24 possibly?

25 A. Not this year. No, he was just -- he was

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1 walking through the neighborhood or something
2 and somebody said that he was looking for a
3 little bit of work. I offered him some. Had
4 no -- no objections to him.

5 Q. Was that a long time before the events at
6 your house occurred, or was it a couple of
7 weeks before? How long before?

8 A. Three or four weeks maybe.

9 Q. And so the defendant came to you, and I
10 believe that you said he was looking for some
11 work.

12 A. Um-humm.

13 Q. Did you give him any work?

14 A. I sure did.

15 Q. Did you give him any money?

16 A. Yes, I did.

17 Q. All right. And after he did the work for
18 you, what happened that day? Did he go about
19 his way?

20 A. I gave him a lift up the road, up toward
21 Blue & Gold Auto Salvage. Dropped him off
22 there. Turned around, came back home.

23 Q. Then I believe that you said a couple of
24 weeks, do you recall getting a phone call from
25 your wife regarding the defendant?

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1 A. Vaguely. I don't -- (pause).

2 Q. Do you recall coming back home and seeing
3 the defendant a second time?

4 A. Yeah, during daylight hours and, uh, --
5 like I say, my memory is all messed up.

6 Q. Did you ever have a conversation with the
7 defendant about a lawnmower?

8 A. He said that he had a lawnmower. I said
9 to bring it on down, let me take a look at it.
10 You know, it's easy to push down the street.
11 He brought it down and looked at it. Or he
12 brought it down for me to look at. I told him
13 that I thought that would probably be a pretty
14 good deal. We were doing a little switch-a-roo
15 there. But, yeah, it was a pretty decent piece
16 of equipment.

17 Q. Did you give him money for that lawnmower?

18 A. I believe I did. I don't remember for
19 sure.

20 Q. Did he leave that lawnmower with you that
21 day?

22 A. (affirmative nod), um-humm.

23 Q. And went about his way?

24 A. (Affirmative nod).

25 THE COURT: You need to answer for

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1 the court reporter, please. Was that a "yes"?

2 THE WITNESS: Yes.

3 THE COURT: Thank you.

4 DIRECT EXAMINATION CONTINUED

5 BY SOLICITOR CORNWELL:

6 Q. The court reporter has to take down
7 everything that you say. Sometimes if you just
8 nod your head it's hard for her to say that.

9 So please answer with a yes or a no.

10 A. I understand.

11 Q. Thank you. I am going to take you now
12 back to February 4th of this year when your wife
13 was home and she gave you a phone call and you
14 met with the defendant that day. Do you
15 remember that day?

16 A. I believe I do.

17 Q. And on that day, did you drive the
18 defendant anywhere?

19 A. I drove him up Rut Road towards Blue &
20 Gold Auto Salvage and dropped him off.

21 Q. Okay. On that day, did you also give him
22 money?

23 A. I don't recall whether I did or not.

24 Q. After you dropped him off, what did you
25 do?

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1 A. I went up to the American Legion and then
2 went back home.

3 Q. Do you recall something happening in the
4 middle of the night that night?

5 A. You mean like somebody standing in the
6 middle of my bedroom?

7 Q. Yes, sir, something like that?

8 A. At the foot of my bed, (affirmative nod).

9 Q. Can you tell the jury what happened when
10 that happened? Were you asleep?

11 A. Yeah, it jarred me awake. I told him to
12 get out of the bedroom and he went out in the
13 living room.

14 Q. Okay.

15 A. Just a ---

16 Q. Did you know who it was standing in your
17 house when you saw him?

18 A. Yeah, I recognized him.

19 Q. And then I believe that you just told him
20 to get out?

21 A. I told him to get out, to go in the living
22 room.

23 Q. Okay. And then did you -- what did you go
24 after that?

25 A. I put my pants on, went out and talked to

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1 him, trying to find out what the heck he was
2 doing there.

3 Q. Okay. What was he doing there?

4 A. I'm just -- I am not really sure.

5 Q. Did you make him leave your house at that
6 time?

7 A. (Affirmative nod), Um-humm.

8 Q. Okay. And did he try to attack you or do
9 anything to you?

10 A. (Negative gesture).

11 THE COURT: Is that a "No."

12 THE WITNESS: I'm sorry. "No."
13 I'm sorry.

14 THE COURT: Thank you.

15 DIRECT EXAMINATION CONTINUED

16 BY SOLICITOR CORNWELL:

17 Q. Mr. Kiley, why didn't you call the police
18 at that time?

19 A. I just wanted to get him out of the house.
20 If he had started anything, I can a little
21 mechanical thing in my pocket that would have
22 took care of that. So.

23 Q. All right. And the next morning after you
24 woke up, what did you do?

25 A. That's when the wife found out that her

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1 purse had been gotten into and that her wallet
2 and stuff was gone.

3 Q. Okay. Did y'all call the police at that
4 time after you found out that the purse was
5 taken?

6 A. I don't remember. Like I say, my memory
7 is not snappy anymore.

8 Q. I understand. My memory is not too snappy
9 all the time either. At some point do you
10 remember going to the police station?

11 A. I probably did but I -- I can't check up
12 on it right now.

13 Q. Okay. That's okay. Do you see the person
14 that was inside your house in the middle of the
15 night in the courtroom today?

16 A. Yes, I do.

17 Q. Can you point him out?

18 A. Right here (indicating defendant).

19 Q. What is he wearing?

20 A. A green, purple and white striped shirt.

21 SOLICITOR CORNWELL: Your Honor, for
22 the record -- let the record reflect that the
23 defendant has been so identified.

24 THE COURT: The record so reflects.

25 DIRECT EXAMINATION CONTINUED

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1 BY SOLICITOR CORNWELL:

2 Q. Now, Mr. Kiley, at any time did you give
3 this defendant permission to be in your home?

4 A. I had given him permission to be in my
5 home before but not that day.

6 Q. At 2:30 in the morning on February 4th,
7 February 5th, did you invite him to be in your
8 home?

9 A. (Negative gesture), that's during my
10 sleeping time.

11 Q. All right. Thank you, Mr. Kiley. Please
12 answer any questions that defense counsel may
13 have.

14 THE COURT: You may cross-examine.

15 CROSS EXAMINATION

16 BY PATRICIA KENNEDY:

17 Q. Hey, Mr. Kiley, how are you?

18 A. I am pretty fair, thank you.

19 Q. Good. Good. I only have a few questions
20 of you. I'm trying to get through this
21 confusion about the lawnmower. The night of
22 February 5th, did Mr. Cribb bring a lawnmower to
23 your house?

24 A. Yeah, he brought a Scotts lawnmower.

25 Q. And the lawnmower was outside?

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1 A. Yeah.

2 Q. Did you go outside and look at the lawn
3 mower?

4 A. Yeah, I've got a blocked off garage door
5 and the lawnmower was sitting parallel to the
6 garage door.

7 Q. When he came in and you -- I don't know
8 what you said to him to get him to leave, but
9 you basically said -- you shooed him out the
10 door, right?

11 A. (Affirmative nod).

12 Q. And then you joined him in the yard?

13 A. Yeah.

14 Q. And he stayed and the two of you talked
15 about the lawnmower for a while?

16 A. (Affirmative nod).

17 Q. When you were shooing him out the door,
18 did he have your wife's purse in his hand?

19 A. No, no. But it was sitting -- this is the
20 doorway and her purse was sitting right at the
21 corner of the door.

22 Q. I understand that. But when you ushered
23 him out the door and he left and went outside,
24 did he have your wife's purse in his hand?

25 A. No.

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1 Q. Okay. And when you were talking to him
2 and you were having this discussion at 2:00 or
3 2:30 in the morning about the lawnmower, did he
4 have your wife's purse in his hand?

5 A. The only thing I know is that he would
6 come in and out of the house and stuff and I
7 had pretty good trust in him. I didn't even
8 think about it.

9 Q. I understand that, sir, because he had
10 been in your house, he'd done some yardwork and
11 you'd paid him.

12 A. (Affirmative nod).

13 Q. But I'm -- the night of February 5th when
14 you shooed him out and you said that you didn't
15 see him with the purse in his hand when you
16 were talking about the lawn mower, that you
17 didn't see it?

18 A. No.

19 Q. So at no time on the night of February 5th
20 when he was at your house, when you were having
21 the conversation, did you see him with her
22 purse?

23 A. No.

24 Q. Okay. That's all that I have. Thank you,
25 sir.

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1 THE COURT: Redirect?

2 SOLICITOR CORNWELL: Just briefly,
3 Your Honor.

4 REDIRECT EXAMINATION

5 BY SOLICITOR CORNWELL:

6 Q. Mr. Kiley, I apologize. I know we are
7 throwing a lot of dates at you and that it can
8 get confusing, especially since it has been a
9 long time. But when you had this discussion
10 about the lawnmower and you bought a lawnmower
11 from him, was that at 2:30 in the morning or
12 was that at a previous time?

13 A. No, no. It was in the daytime, 10:00 or
14 11:00 o'clock in the morning. He said, 'I've
15 got something you'd probably be interested in.'
16 We talked about it and then I think the next
17 day or so he brought it down, we transacted and
18 then he went on his way.

19 Q. So on the night of February 4, February
20 5th, when you shooed him out of the house, did
21 you ever have a conversation with him about the
22 lawnmower at 2:30 in the morning.

23 A. No.

24 THE COURT: Recross?

25 RECROSS EXAMINATION

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1 BY PATRICIA KENNEDY:

2 Q. Let's just forget about the lawnmower.

3 You did walk him out of the house that night?

4 Shooed him out?

5 A. (Affirmative nod)

6 Q. And when you ushered him out, shooed him
7 out, told him that he needed to go on his way,
8 did you see did he have your wife's purse in
9 his hand?

10 A. No, he didn't.

11 PATRICIA KENNEDY: Nothing
12 further, Your Honor.

13 THE COURT: You may step down.
14 Thank you, Mr. Kiley.

15 (WITNESS STEPS DOWN)

16 THE COURT: Call your next witness.

17 SOLICITOR CORNWELL: The State calls
18 Deputy Thompson.

19 (WITNESS TAKES STAND)

20 FRANK THOMPSON, being duly sworn to
21 tell the truth, the whole truth and nothing but
22 the truth, testified, as follows:

23 DIRECT EXAMINATION

24 BY SOLICITOR CORNWELL:

25 Q. Officer, where do you work?

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1 A. I work for the Berkeley County Sheriff's
2 Office.

3 Q. How long have you been employed with the
4 Berkeley County Sheriff's Office?

5 A. Two and half years, ma'am.

6 Q. Prior to working at the Berkeley County
7 Sheriff's Office, did you have any other law
8 enforcement experience?

9 A. Yes, ma'am. Twenty years at the
10 Charleston County Sheriff's Office and three
11 years at the North Charleston Police
12 Department.

13 Q. What is your current position and rank
14 with the Berkeley County Sheriff's Office?

15 A. I am a corporal.

16 Q. How long have you held that position?

17 A. A week. Prior to that I was a patrolman
18 first class for those two and a half years.

19 Q. Congratulations on your promotion.

20 A. Thank you.

21 Q. And were you working with the Berkeley
22 County Sheriff's Office on February 5th, 2012?

23 A. Yes, ma'am, I was.

24 Q. Was that in your capacity as a patrol?

25 A. Yes, it was.

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1 Q. Do you recall being dispatched to
2 Street?

3 A. I do, ma'am.

4 Q. Where is that located?

5 A. That's in Berkeley County.

6 Q. What were you dispatched there in
7 reference to?

8 A. In reference to a burglary.

9 Q. What did you do when you arrived on scene?

10 A. I spoke with the victim in reference to
11 the incident that occurred.

12 Q. Did they tell you what time that this
13 happened?

14 A. It was right at 2:00 a.m.

15 Q. Were you able to observe any signs of
16 forced entry?

17 A. No, ma'am. They even told me that they'd
18 left the door open -- unlocked, rather.

19 Q. And at that time were the victims able to
20 identify the person that broke into their home?

21 A. Yes, they were. Apparently the victim has
22 come by in the recent past to get money from
23 the victims. The monies -- I believe that the
24 victims felt sorry for the defendant, in
25 reference to him being homeless. So they would

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1 loan him money and -- so they knew him by
2 sight.

3 Q. Did they know him by name?

4 A. I don't know, ma'am -- no.

5 Q. Were you able to obtain any additional
6 information regarding that incident and the
7 items that were stolen?

8 A. Yes, ma'am. There was a purse that was
9 stolen, that was side the door (sic). Inside
10 the purse was credit cards and such, so forth.

11 Q. And through your investigation were you
12 able to find out if the credit cards were being
13 used that morning?

14 A. Yes, ma'am. Upon my arrival, the victim
15 had informed me that she was told by the bank
16 not long prior to my arrival that the credit
17 card was used at a CVS store, which was located
18 within about a mile of the victims' house.

19 Q. And did you respond to that store?

20 A. Yes, ma'am. I did.

21 Q. Did you meet with anybody at the store?

22 A. Yes, I did. Both the manager and the
23 clerk. I went there to try to determine
24 exactly who used the credit card.

25 Q. At that CVS, was there surveillance video?

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1 Were you able to find that out?

2 A. Yes, ma'am, there were.

3 Q. And were you able to obtain a copy of the
4 surveillance video from that day?

5 A. Yes, ma'am, I did.

6 Q. I am going to show you what has been
7 previously marked as State's Exhibit 1. Do you
8 recognize this?

9 A. Yes, ma'am, I do.

10 Q. How do you recognize it?

11 A. My initials are on it.

12 Q. Do you know what this is?

13 A. Yes, ma'am.

14 Q. What is it?

15 A. It is a surveillance video.

16 Q. Have you had an opportunity to view this
17 surveillance video prior to your testimony
18 today?

19 A. Yes, ma'am.

20 Q. And is this a true and accurate copy of
21 the video that you obtained from CVS that day?

22 A. It is, ma'am.

23 SOLICITOR CORNWELL: Your Honor,
24 at this time the State would like to move into
25 evidence State's Exhibit 1.

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1 THE COURT: Any objection?

2 PATRICIA KENNEDY: Court's
3 indulgence -- (sidebar with Defendant).
4 No, sir, no objection.

5 THE COURT: Without objection,
6 State's Exhibit 1 is admitted.

7 (SO ENTERED AS STATE'S EXHIBIT 1)

8 DIRECT EXAMINATION CONTINUED

9 BY SOLICITOR CORNWELL:

10 Q. When you viewed that video, were you able
11 to make a determination of anybody using the
12 card?

13 A. Yes, I recognized the person utilizing the
14 card. I watched him make a transaction with
15 the card on the video. I got a good -- at
16 least one good facial shot of him. I
17 recognized him as someone that I've dealt with
18 before.

19 Q. Okay. And after you placed the video into
20 evidence, what did you do next?

21 A. Prior to placing the video into evidence,
22 I filled out a chain of custody sheet, which is
23 nothing more than a receipt, which I gave the
24 store, showing that I did in fact receive a
25 copy of the surveillance video. Then I

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1 completed my police report and, along with the
2 video, I placed it into evidence for a
3 detective to follow up on.

4 Q. And after -- do you normally do the
5 investigation after you've taken the initial
6 report or is that something that someone else
7 does?

8 A. No, ma'am, I do not do that. I pass it
9 along to the detectives once I turn my
10 paperwork in.

11 Q. Okay. So after submitting the evidence
12 and the report, did you have any further
13 involvement in this investigation?

14 A. No, ma'am.

15 SOLICITOR CORNWELL: Thank you,
16 officer. Please answer any questions that the
17 defense may have for you.

18 THE COURT: You may cross-examine.

19 PATRICIA KENNEDY: Thank you.

20 CROSS EXAMINATION

21 BY PATRICIA KENNEDY:

22 Q. Good afternoon, Officer. I just have a
23 few questions. Do you have a copy of your
24 report?

25 A. Yes, I do.

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1 Q. All right. The incident date and the time
2 clocked on there, 2:00 a.m. to 2:05 a.m., that
3 is based on information that you received from
4 Mr. and Mrs. Kiley; correct?

5 A. Yes, ma'am.

6 Q. And then the date of the -- the time of
7 11:22 to the dispatch time, that is when you
8 were sent over to the house?

9 A. That's correct.

10 Q. At that point in time of the dispatch, was
11 the case called in as a burglary?

12 A. (No verbal response).

13 Q. If you remember.

14 A. I believe so.

15 Q. But you don't remember?

16 A. Yes, ma'am, I would believe so.

17 Q. But you're hesitating.

18 A. I can't specifically remember how it was
19 worded.

20 Q. And the information that you have in your
21 police report obviously is based on information
22 that was provided to you by Mr. and Mrs. Kiley
23 concerning the incident the night before, or in
24 the early morning hours?

25 A. That's correct.

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1 Q. Did you have -- I know you indicated that
2 they told you that they left the door open,
3 unlocked. Did they give you any information
4 that perhaps the day had been open?

5 A. No, they just said unlocked. They
6 certainly didn't refer to it as being open.

7 Q. Okay. At what point did you hear about
8 the use of the credit card at the CVS Pharmacy?

9 A. Right about -- her initial statement to me
10 was, 'Someone used my credit card at the CVS
11 pharmacy. I just got off the phone with my
12 bank and they told me that two transactions
13 have happened.'

14 Q. That's when you went to CVS?

15 A. Exactly.

16 Q. And that's when you obtained the video?

17 A. Correct.

18 Q. Then after that you turned the case over
19 to Detective Cortte.

20 A. A -- I didn't know it was Detective Cortte
21 at the time, but yes.

22 Q. To the detective division?

23 A. Yes, ma'am.

24 PATRICIA KENNEDY: Court's indulgence?

25 THE COURT: Yes, ma'am.

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1 PATRICIA KENNEDY: No further
2 questions of the officer.

3 THE COURT: Redirect?

4 SOLICITOR CORNWELL: No redirect,
5 Your Honor.

6 THE COURT: You may step down.

7 (WITNESS STEPS DOWN)

8 THE COURT: Call your next witness.

9 SOLICITOR CORNWELL: Thank you, Your
10 Honor. The State calls Abiyb Coleman.

11 (WITNESS TAKES STAND)

12 ABIYB COLEMAN, being duly sworn to
13 tell the truth, the whole truth and nothing but
14 the truth, testified, as follows:

15 DIRECT EXAMINATION

16 BY SOLICITOR CORNWELL:

17 Q. How are you doing, Mr. Coleman?

18 A. Fine.

19 Q. Mr. Coleman, how old are you?

20 A. Twenty-four.

21 Q. Are you married?

22 A. No.

23 Q. Where do you work?

24 A. CVS.

25 Q. How long have you worked for CVS?

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1 A. A year now.

2 Q. What is your current position at CVS?

3 A. Store clerk.

4 Q. Were you working in that capacity on
5 February 5th, 2012?

6 A. Yes, ma'am.

7 Q. To your knowledge, does CVS have any
8 security cameras on the premises?

9 A. Yes, ma'am.

10 Q. Were those cameras working on February 5th,
11 2012?

12 A. Yes, ma'am.

13 Q. Do you recall seeing the defendant in CVS
14 on that day?

15 A. Yes, ma'am.

16 Q. What was the defendant doing that day?

17 A. He was trying to purchase cigarettes with
18 a VISA card.

19 Q. How was the defendant acting at that time?

20 A. Shifty, suspicious.

21 PATRICIA KENNEDY: Your Honor, I
22 object to the characterization.

23 THE COURT: I will allow it under
24 701, his observation.

25 SOLICITOR CORNWELL: Thank you, Your

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1 Honor.

2 DIRECT EXAMINATION CONTINUED

3 BY SOLICITOR CORNWELL:

4 Q. Did the defendant have any problem with
5 this transaction?

6 A. Yes, ma'am.

7 Q. What were those problems?

8 A. He couldn't make the transaction.

9 Q. Did you try to assist him in any way?

10 A. I tried to make a purchase transaction
11 without our machine. He kinda jerked away
12 when I asked for his card.

13 Q. At that time did you ask if you could see
14 any ID or anything?

15 A. Yes, ma'am.

16 Q. Did he show you any ID?

17 A. No, ma'am.

18 Q. And -- I am going to show you what has
19 been moved into evidence as State's Exhibit 1.
20 Do you recognize this?

21 A. Yes, ma'am.

22 Q. How do you recognize it?

23 A. My initial.

24 Q. What is this?

25 A. That is the security camera.

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1 Q. Have you had an opportunity to view this
2 before your testimony today?

3 A. Yes, ma'am.

4 Q. Is this a true and accurate depiction of
5 the events that occurred on February 5th, 2012?

6 A. Yes, ma'am.

7 Q. Have there been any changes, operations
8 (sic), modifications or deletions?

9 SOLICITOR CORNWELL: Your Honor, the
10 State would like to publish Exhibit 1.

11 THE COURT: How long is it?

12 SOLICITOR CORNWELL: It is about
13 three minutes.

14 THE COURT: How much?

15 SOLICITOR CORNWELL: Three minutes.

16 THE COURT: Any objection to
17 publishing it at this point?

18 PATRICIA KENNEDY: No, sir.

19 THE COURT: You may proceed. It's
20 been admitted.

21 DIRECT EXAMINATION CONTINUED

22 BY SOLICITOR CORNWELL:

23 Q. (Video playing), -- Mr. Coleman, can you
24 tell the jury what this is?

25 A. That's my front store.

1 Q. It appears that this is the just the front
2 door of the store with people coming in and out
3 of the store; is that correct?

4 A. Yes, ma'am.

5 Q. I will let this video finish, (video
6 playing). In coming in and out of that door, do
7 you recall what the defendant was wearing when
8 he was coming in and out of that door?

9 A. Yes, ma'am.

10 Q. What was he wearing?

11 A. Black shirt that had like a deer.

12 Q. And we will show you the second clip,
13 (video playing). What is this?

14 A. That's my post.

15 Q. I believe that there is a pointer right
16 here if you want to show -- this little button
17 right there. Show us which register that you
18 worked?

19 A. (Indicating with laser beam), this one.

20 Q. Is that the register that the defendant
21 came to?

22 A. Yes, ma'am.

23 Q. Is this the person that you recognize as
24 the person trying to make a purchase?

25 A. Yes, ma'am.

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1 Q. How many times did the defendant attempt
2 to make a transaction?

3 A. Multiple times. I don't know how many.

4 Q. (Video playing), what is going on here, if
5 you can just explain to the jury?

6 A. Well, when I asked him -- you know, I gave
7 him the price to everything and he basically
8 was putting numbers in, putting numbers in. I
9 said, you know, 'You got any problems?' He was
10 like, 'No, no, no problems.' That's when I
11 asked 'can I get your credit card' and he kinda
12 jumped away. Then I asked him again, he kinda
13 had his hand over the card, and he was like,
14 'Well, this is my wife's. I'm going to come
15 back and get -- get the number and come back.
16 I've forgot it.' So he left and -- (pause).

17 (Video playing) -- he came back.

18 At first he said, 'I made a mistake, it's my
19 wife's. I know the pin now.' He was saying
20 something about referring to that it was his
21 wife's card. Then he asked for more
22 cigarettes.

23 (Video playing) -- that's when I asked
24 him did he have any ID.

25 Q. Did he ever give you ID?

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1 A. No.

2 Q. But you completed the transaction anyway?

3 A. I completed the transaction.

4 Q. I believe that you stated that he said it
5 was his wife's card. Did you see if it was a
6 male or a female's name on the card?

7 A. It was covered. It was pink, had a female
8 color to it.

9 Q. (Video playing) -- looks like y'all were
10 having a discussion here.

11 A. Um-humm.

12 Q. After he made that purchase, did he come
13 back into your store?

14 A. No, not to my knowledge.

15 SOLICITOR CORNWELL: Your Honor, I
16 believe that's the end of the video for
17 purposes of this matter.

18 THE COURT: You may stop it.

19 DIRECT EXAMINATION CONTINUED

20 BY SOLICITOR CORNWELL:

21 Q. Mr. Coleman, do you recall speaking to the
22 police regarding this incident?

23 A. Yes, ma'am.

24 Q. Did you relate everything to them that you
25 told the jury?

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1 A. Yes, ma'am.

2 Q. At some point did you also watch this
3 video with the officers?

4 A. Yes. I watched it with the officers and
5 my manager, Troy.

6 Q. And do you recall -- after you gave it to
7 your manager, did you see him give it to the
8 police officers?

9 A. Yes, ma'am.

10 Q. After viewing the video with the officers
11 and giving your statement to the police, did
12 you have any further involvement in this case?

13 A. No, ma'am.

14 SOLICITOR CORNWELL: Thank you, Mr.
15 Coleman. Please answer any questions that Ms.
16 Kennedy may have.

17 THE COURT: You may cross-examine.

18 PATRICIA KENNEDY: The Defense has no
19 questions, Your Honor.

20 THE COURT: Very well, you may step
21 down.

22 (WITNESS STEPS DOWN)

23 THE COURT: At this point, Ladies
24 and Gentlemen, we will take a brief recess and
25 let you go to your jury room. Do not discuss

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1 the case, do not begin your deliberations. We
2 will be with you shortly.

3 (JURY OUT @ 12:21 P.M.)

4 THE COURT: Anything before we take
5 our recess?

6 SOLICITOR CORNWELL: No, sir.

7 THE COURT: From the Defense?

8 PATRICIA KENNEDY: Nothing, Your
9 Honor.

10 THE COURT: The witness -- who is
11 next? Is it a short witness or a long witness?

12 SOLICITOR CORNWELL: Your Honor, the
13 final witness for the State is Detective
14 Cortte. I don't believe that he is going to
15 take that long.

16 THE COURT: My problem is that I
17 need to give the court personnel a break, too.
18 The other jury is coming at 1:45. My thought
19 is that we probably need to adjourn this case.
20 I am going to ask the jury what their
21 preference is. They are going to have to come
22 back tomorrow anyway -- well, I don't know, we
23 may finish today.

24 If we started this case back at 3:30,
25 resumed at 3:30, do you expect that we could

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1 finish?

2 SOLICITOR CORNWELL: Your Honor, I
3 don't expect Detective Cortte's testimony to
4 take more than twenty minutes. Basically to
5 bring the statement in is all that we are going
6 to do on that. I don't know how long Ms.
7 Kennedy's cross-examination would take. I
8 think we could be done by 12:45. I think we
9 could get to closing and charge this afternoon.

10 THE COURT: Ms. Kennedy:

11 PATRICIA KENNEDY: Your Honor, I
12 will leave it to the court's discretion. The
13 timeframe, I'm notoriously bad at that.

14 THE COURT: All right, let's take
15 about five minutes.

16 (BRIEF RECESS)

17 (DEFENDANT PRESENT)

18 THE COURT: Let the record reflect
19 that Mr. Cribb is present. Anything before we
20 bring in the jury?

21 SOLICITOR CORNWELL: Nothing from
22 the State, Your Honor.

23 PATRICIA KENNEDY: No, sir, Your
24 Honor.

25 THE COURT: Bring in our jury.

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1 (JURY IN @ 12:29 P.M.)

2 THE COURT: Thank you very much,
3 Ladies and Gentlemen. Mr. Chatham, as I
4 understand, you have been selected as the
5 presiding juror?

6 JUROR NUMBER 31: Yes, Your Honor.

7 THE COURT: Thank you very much,
8 Ladies and Gentlemen. That, of course, will be
9 your seat for the balance of the trial. Thank
10 you, sir.

11 Please give your attention to the next
12 witness, if you would, Ladies and Gentlemen.

13 You may call your next witness.

14 SOLICITOR CORNWELL: Thank you, Your
15 Honor. The State calls Detective Cortte.

16 (WITNESS TAKES STAND)

17 MICHAEL CORTTE, being duly sworn to
18 tell the truth, the whole truth and nothing but
19 the truth, testified, as follows:

20 DIRECT EXAMINATION

21 BY SOLICITOR CORNWELL:

22 Q. Detective Cortte, where are you employed?

23 A. With the Berkeley County Sheriff's Office.

24 Q. How long have you been employed with the
25 Berkeley County Sheriff's Office?

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1 A. Since about March of 2007.

2 Q. What is your current position and rank?

3 A. I am detective corporal.

4 Q. How long have you held that position?

5 A. I'm been in the detective division just a
6 little over two and a half years now.

7 Q. And were you working in the capacity as a
8 detective on February 5th, 2012?

9 A. Yes, I was.

10 Q. Do you recall being involved in the
11 investigation of a burglary that occurred at
12 Street in Goose Creek?

13 A. Yes, ma'am.

14 Q. What was your involvement in that
15 investigation?

16 A. After the initial report was taken by our
17 patrol division, I was assigned as the case
18 detective to that particular case.

19 Q. When you get assigned to a case, what is
20 the -- what did you do with this case?

21 A. I essentially review the report, any
22 witness statements that have already been
23 collected, the list of the evidence, ---

24 Q. In this particular case did you have the
25 opportunity to see any videos or review any

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1 physical evidence?

2 A. I did.

3 Q. I am going to show you what has been moved
4 into evidence as State's Exhibit 1. Do you
5 recognize this?

6 A. I do.

7 Q. What is that?

8 A. That is going to be a copy of the security
9 video surveillance from the CVS store located
10 on Red Bank Road in Goose Creek, which is in
11 Berkeley County, South Carolina.

12 Q. Did you review that video during our
13 investigation?

14 A. I did.

15 Q. And were you able to determine any
16 suspects after reviewing that video?

17 A. I determined actually the defendant seated
18 here, Mr. Fred Woodrow Cribb, also known as
19 Bubba Cribb.

20 Q. After viewing the video and the report,
21 what did you do next?

22 A. I made contact with the victims, Mr. and
23 Mrs. Kiley. I requested them to come to the
24 Sheriff's Office, detective headquarters, to
25 meet with me to have them review the video.

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1 Q. When they reviewed the video, were they
2 able to make any identifications?

3 A. They were.

4 Q. Who did they identify?

5 A. They identified the same defendant, Mr.
6 Cribb.

7 Q. What did they identify him as doing?

8 A. When I interviewed them, to preserve the
9 integrity of my investigation I brought them
10 both into a conference room and then took them
11 into rooms separately from one another. So
12 they viewed the video separate from one
13 another. Both of them, as soon as I played
14 the video and the defendant appeared they
15 uttered, "That's him!" I asked them, 'Could
16 you be a little bit more specific when you say
17 that is him what you mean?' Both of them said
18 "that's the man that was in our house at 2:00",
19 you know, at roughly two in the morning on the
20 night in question.

21 Q. And when you viewed the video, about what
22 time was the defendant making purchases in that
23 video?

24 A. To the best of my recollection, I want to
25 say somewhere around maybe 10:00 or 10:30 in

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1 the morning.

2 Q. And during your investigation, did you
3 have occasion to meet with this defendant
4 regarding this incident?

5 A. I did.

6 Q. And where did you meet with this
7 defendant?

8 A. At the Sheriff's Office, at the
9 headquarters of the detective division.

10 Q. And did you interview him at that time?

11 A. Yes, ma'am. I did.

12 Q. Was the defendant given his Miranda rights
13 prior to you interviewing him?

14 A. He was.

15 Q. Did you give him those rights from a card
16 or do you have them memorized?

17 A. I read his rights to him from a
18 defendant's written statement form that we
19 give to defendants that has got them listed
20 on there.

21 Q. Did the Defendant understand his rights as
22 you gave them to him?

23 A. He did.

24 Q. How do you know that he understood those
25 rights?

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1 A. He acknowledged to me both verbally and I
2 had him initial next to each right. At the end
3 where there was the waiver of rights, he signed
4 his name to that that he wished to waive his
5 rights; that he understood them, wished to
6 waive them, and wished to speak with me
7 regarding the incident.

8 Q. And did the Defendant appear to be under
9 the influence of any drugs, alcohol or mental
10 defect when he initialed the form?

11 A. No.

12 Q. Was he coerced or threatened or made any
13 promises in regards to signing the form?

14 A. No, no.

15 Q. I am going to show you what has been
16 previously marked as State's Exhibit 2. Do you
17 recognize this document?

18 A. Yes, ma'am. I do.

19 Q. What is that document?

20 A. This is going to be the written
21 Defendant's statement form that I referred to,
22 which has the Miranda rights on it.

23 Q. Is that the original form that the
24 Defendant initialed and signed?

25 A. Yes, ma'am.

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1 Q. And did anybody else sign that?

2 A. Yes, ma'am.

3 Q. Who else signed that?

4 A. I did.

5 Q. Have there been any changes, alterations
6 or deletions made to that document since that
7 day?

8 A. There is a State's exhibit sticker that I
9 didn't put on there, and then the two holes
10 that were punched when it was put in the case
11 file.

12 Q. But the substance of the document, has
13 that been changed in any way?

14 A. No.

15 SOLICITOR CORNWELL: Your Honor, at
16 this time the State would like to move State's
17 Exhibit 2 into evidence?

18 PATRICIA KENNEDY: No objection.

19 THE COURT: Without objection, it is
20 admitted; State's Exhibit 2.

21 (SO ENTERED AS STATE'S EXHIBIT 2)

22 DIRECT EXAMINATION CONTINUED

23 BY SOLICITOR CORNWELL:

24 Q. After being read his Miranda, did he make
25 any statements to you regarding this incident?

1 A. Yes, ma'am.

2 Q. What did he tell you regarding this
3 incident?

4 A. He admitted that he did take credit cards
5 and use them -- her credit card -- without
6 permission of the owner. That he knew that it
7 was not his. That he used it to purchase
8 cigarettes at CVS and also to purchase fuel or
9 gas at the Sunoco and the Exxon on Red Bank
10 Road, which is also in the Goose Creek area of
11 Berkeley County, South Carolina.

12 Q. In his statement, did he also indicate to
13 you that he got cash from one of those
14 purchases?

15 A. He did. He indicated that he used the
16 cards at the gas station to purchase fuel for
17 -- he referred to him as "a buddy." He
18 wouldn't go any further than that when I tried
19 to inquire of him as to who. But he said that
20 he -- he said, "I did it. I am not going there
21 with you. I did it, and I split it fifty-fifty
22 and I got cash for the gas purchase."

23 Q. And other than transporting the defendant
24 from the Police Department, did you have any
25 further involvement with this case?

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1 A. No.

2 SOLICITOR CORNWELL: Court's
3 indulgence.

4 THE COURT: Certainly.

5 SOLICITOR CORNWELL: Thank you,
6 Detective Cortte. Please answer any questions
7 that the defense may have.

8 THE COURT: Cross examine?

9 PATRICIA KENNEDY: Thank you, Your
10 Honor.

11 CROSS EXAMINATION

12 BY PATRICIA KENNEDY:

13 Q. Detective Cortte, let me see if I can get
14 this straight. A patrol office goes to
15 somebody's home in response to a dispatch call.
16 Correct?

17 A. Yes, ma'am.

18 Q. Then that patrol officer takes a report
19 and turns it in to whom?

20 A. Typically will be turned in at the end of
21 their shift, to their supervisor.

22 Q. How do you get assigned to the case once a
23 report is made by a patrolman?

24 A. That's through our chair of command,
25 ultimately from the division captain who

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1 assigns the sergeants to go through the cases
2 and assigns them accordingly.

3 Q. And what date were you assigned this case?

4 A. I don't now specifically the date that I
5 was assigned but it would have been after the
6 report had been made.

7 Q. Do you have a copy of your report with
8 you, sir?

9 A. Yes, ma'am, I do.

10 Q. Directing your attention to what is
11 captioned in the supplementary report dated and
12 signed off on by you, I guess, on February 15th,
13 do you have that report with you?

14 A. I'm sorry. You said February 15th?

15 Q. Yes, sir, the supplementary report.

16 A. (Upon review), yes, ma'am.

17 Q. And at that top of that report, at the
18 very beginning up at the top it reflects a date
19 of February 14th, 2020.

20 A. Yes, ma'am.

21 Q. And that is the date that you reviewed
22 Corporal Thompson's report; is that right?

23 A. I don't know if that if necessarily the
24 first date that I reviewed it or not.

25 Q. What would have been the first time that

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1 you did when your chain of command assigned you
2 this case?

3 A. It depends on -- at the time, I was
4 assigned to a particular area, the south end of
5 the county, and was assigned to property crimes
6 in that area, which encompassed the Goose Creek
7 area of Berkeley County. Depending on how it
8 goes, the parole division goes out and
9 responds, takes a lot of reports. Then once we
10 come in, we get assigned as our supervisors are
11 able to go through them, sort them and
12 distribute them to who would be respectively
13 assigned them. Depending on the day of the
14 week, how many actually came in, on when they
15 were actually assigned, we may get a couple
16 left on our desk, we may get a stack of them.
17 In fact, I got a stack of twenty-four new
18 reports just left on my desk the other day.

19 Q. Okay. So let me -- just for
20 clarification, you don't know when you got this
21 case?

22 A. Again, which day that it was actually
23 signed, I don't know.

24 Q. But in any event, you really didn't do
25 anything with it, at least according to -- with

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1 your report to February 14th. That's the only
2 date that we have.

3 A. Well, respectfully, again I say that I do
4 review the reports as they are given to me. So
5 obviously I made a note in my supplement on the
6 14th that I reviewed it, but I don't know if
7 that is the first day that I reviewed the
8 report.

9 Q. But you're a detective, right?

10 A. Yes, ma'am.

11 Q. And it's important for you to get the
12 details right.

13 A. It is.

14 Q. So it is important for you to know what
15 day you actually started the investigation of
16 this case. Wouldn't you agree?

17 A. I can certainly see counselor's point.

18 Q. Thank you. So this incident occurred on
19 February 5th and we next then jump to February
20 14th where your report says that you reviewed
21 the video surveillance and you reviewed Officer
22 Thompson's police report; correct?

23 A. Respectfully, it notes on the 14th having
24 reviewed the ---

25 Q. I understand that but you just conceded

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1 that you don't really know what date it was
2 that you got the case, that you don't really
3 know what date it was that you started the
4 investigation. The actual date.

5 A. Correct.

6 Q. Thank you. So you get the case, you do
7 the -- what else did you do besides review the
8 police report and the videotape.

9 A. I reviewed the witness statement, a copy
10 of the video witness statement from the clerk.
11 Once I reviewed, was able to obtain a copy of
12 the video, and viewed it, the defendant, I made
13 contact with the victims and requested them to
14 come view the video as well. I wanted to see
15 if they might be able to identify anyone.

16 Q. So. We get the police report, we get the
17 video tape, you review Mr. Coleman's statement
18 -- right?

19 A. Correct.

20 Q. Then you call or ask Mr. and Mrs. Kiley to
21 come to your office to talk with you. Right?

22 A. Yes, ma'am.

23 Q. At what point did you -- did you ask them
24 to write their statements first or did you ask
25 them to look at the video first?

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1 A. From what I recall, I had them view the
2 videotape first.

3 Q. And it was after that that they wrote the
4 statements?

5 A. The way that I recall. Yes, ma'am.

6 Q. And you -- how long did all this whole
7 process take?

8 A. Maybe approximately an hour. I can't
9 really say.

10 Q. An hour. They came in. They gave you a
11 statement, individual statement and then you
12 reviewed the videotape and that was it?

13 A. It feasible could have been more than an
14 hour.

15 Q. Ninety minute?

16 A. Maybe.

17 Q. Did you do anything else after that? In
18 terms of investigation.

19 A. I did -- well, I obtained the arrest
20 warrants.

21 Q. What is part of your investigation?

22 A. Yes. Essentially, yes, it's an integral
23 part. If we identify a suspect in a case ---

24 Q. I asked ---

25 A. Sorry, I may not be understanding your

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1 questions.

2 Q. My concept of investigation is -- just
3 like I have to do for a case that we have. I
4 get the information, I look at it, I sort
5 through it, I check on what's there, what
6 problematic, what couple be helpful, what is
7 not helpful. I go through that process. Is it
8 your testimony that the process that you went
9 through for the investigation, not the warrant,
10 because that's just part of your job. Right?
11 Your investigation of this incident took about
12 a hour and a half?

13 A. Is that your specific question, that that
14 is the complete amount of time that I spent on
15 the investigation?

16 Q. Prior to your interview with Mr. Cribb,
17 talking about what you did as a part of your
18 investigation of the case before you took out
19 the warrants. How much time did you spend?

20 A. I don't know. I didn't keep an exact time
21 track of the time.

22 Q. Well, you just testified earlier that when
23 they came to the police station and you looked
24 at the video and you took their statements,
25 that it was about an hour or an hour an a half?

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1 A. Approximately. However, I viewed the
2 initial report prior to that. I had to obtain
3 a copy of the video from our friends at the
4 division so that I could view it. Those items
5 -- if that's what you are specifically asking,
6 I didn't keep track of how much time that ---

7 Q. No, sir, I am specifically asking how much
8 time that you spent with Mr. and Mrs. Kiley and
9 how much work, not the information that flowed
10 into you as a natural consequence of Officer
11 Thompson's report. I am asking you as a
12 detective what you did to investigate this case
13 and how long it took you.

14 A. If you could be a little bit more
15 specific. I don't have ---

16 THE COURT: Move on, please.

17 PATRICIA KENNEDY: Thank you, Your
18 Honor.

19 THE COURT: I don't think he's going
20 to be able to answer your question.

21 THE WITNESS: I don't know how to
22 quantify it in ---

23 PATRICIA KENNEDY: Thank you. All
24 right.

25 CROSS EXAMINATION CONTINUED

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1 BY PATRICIA KENNEDY:

2 Q. So let's get to your interview with Mr.
3 Cribb, all right?

4 A. Yes, ma'am.

5 Q. That occurred, according to your report,
6 on the 16th of February; correct?

7 A. Yes, ma'am.

8 Q. He brought into, he came into the
9 detective division and you interviewed him?

10 A. Correct.

11 Q. And in those interview rooms at the
12 criminal division, y'all have the ability to
13 videotape interviews with defendants?

14 A. We did.

15 Q. Did you tape this interview with Mr.
16 Cribb?

17 A. No, I did not.

18 Q. Can you tell me why?

19 A. No. This has been roughly a year ago. I
20 don't know if those other interview rooms with
21 video capability were occupied. I don't know
22 if they were inoperable.

23 With hindsight being what it is, I can see
24 counselor's point that it would have been
25 beneficial to have done that. But I did make

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1 the decision to interview him post-Miranda
2 without it being recorded.

3 Q. Without the benefit of us being able to
4 see it the way we were able to see the video at
5 CVS?

6 A. That's correct.

7 Q. Okay. What did Mr. Cribb tell you?

8 A. He, again, admitted -- after being advised
9 of his Miranda rights, acknowledging that he
10 understood them, that he wished to waive them,
11 he admitted to me that he did take the credit
12 card and use it to purchase cigarettes and to
13 purchase gas, which he split with a buddy.
14 During the interview, he also uttered that he
15 only does petty stuff and would get maybe three
16 years for the card.

17 Q. He admitted that he used the card. He
18 didn't admit that he took the card, did he?

19 A. I would respectfully disagree.

20 Q. But we don't know. We don't have a tape.

21 A. Based on the totality of the circumstances
22 that I know -- well, if you are asking whether
23 he took it, that's what he said.

24 Q. He said that he used the card. He told
25 you that he used the card?

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1 A. He did.

2 Q. And he also told you how he got the card?

3 A. He did say that he went back and took the
4 card. He gave a different version of where he
5 got it from.

6 Q. Okay. And his version was?

7 SOLICITOR CORNWELL: Objection, Your
8 Honor. Hearsay.

9 THE COURT: The statement is
10 admitted. Overruled.

11 CROSS EXAMINATION CONTINUED

12 BY PATRICIA KENNEDY:

13 Q. His version was that -- and correct me if
14 I am wrong because I don't want to mislead
15 anything. His version was that he found the
16 cards in a bag on a path and he used them.
17 Correct?

18 A. Correct. There were -- he found them in a
19 bag with some cigarettes by the powerlines near
20 the Sedgfield School, which is also in the
21 Goose Creek area of Berkeley County. That at
22 first he only took the cigarettes and after
23 smoking them, realized that he was hungry and
24 went back to take the credit cards and use
25 them.

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1 Q. He took the credit cards from the bag, he
2 didn't take the credit cards from the purse;
3 according to the statement he gave you.
4 Correct?

5 A. That's what he said.

6 Q. Yes, that's what he said.

7 A. Based on the totality of the circum-
8 stances, I didn't believe that portion of his
9 statement.

10 PATRICIA KENNEDY: Your Honor, I
11 would ---

12 THE COURT: He can explain this
13 answer.

14 PATRICIA KENNEDY: All right.

15 THE WITNESS: I'm sorry, Your
16 Honor.

17 CROSS EXAMINATION CONTINUED

18 BY PATRICIA KENNEDY:

19 Q. The totality of the circumstances, that's
20 what you were working on?

21 A. Yes. Am I allowed to continue ---

22 Q. Go ahead.

23 THE COURT: You can explain any
24 answer, that is necessary for explanation.

25 THE WITNESS: Thank you, Your

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1 Honor. Based on the totality of the
2 circumstances, in my experience, my humble
3 experience in law enforcement as a detective
4 and interviewing him, I made a note in my
5 supplement that I noticed Mr. Cribb's posture,
6 demeanor, and types of answers changed. During
7 the interview he was very forthcoming that,
8 yeah, he did use the credit cards. Then again,
9 he uttered that he only does petty things. In
10 my experience, when you start heating up the
11 questions a little bit and start asking about a
12 more serious charge, such as burglary and
13 breaking and entering, he wanted to steer away
14 from that and say that he had nothing to do
15 with that.

16 CROSS EXAMINATION CONTINUED

17 BY PATRICIA KENNEDY:

18 Q. As a matter of fact, he told you that he
19 didn't commit a burglar?

20 A. That's correct.

21 Q. And he told you that he didn't go in that
22 house?

23 A. That's correct. Again, I did not believe
24 that portion of his statement.

25 Q. But sticking to what he said, not what you

1 believe, he told you that he didn't commit a
2 burglary. Right?

3 A. He ---

4 Q. Yes or no, sir?

5 A. He said that ---

6 THE COURT: No, sir, you can answer
7 the question.

8 THE WITNESS: Yes, sir, Your
9 Honor.

10 CROSS EXAMINATION CONTINUED

11 BY PATRICIA KENNEDY:

12 Q. And he also told you that he found the
13 cards?

14 A. Yes, ma'am.

15 Q. And he also told you that after he found
16 the cards that he used the cards?

17 A. Yes, ma'am.

18 PATRICIA KENNEDY: Court's
19 indulgence.

20 THE COURT: All right.

21 CROSS EXAMINATION CONTINUED

22 BY PATRICIA KENNEDY:

23 Q. Did you -- after hearing Mr. Cribb's
24 explanation -- back to this investigation
25 issue. After hearing Mr. Cribb's explanation,

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1 did you do any further investigation?

2 A. (No verbal response).

3 Q. Did you go back, maybe, to see what path
4 he was talking about?

5 A. No, I did not.

6 Q. So you don't know how close the path is to
7 Mr. and Mrs. Kiley's house?

8 A. Just from personal experience, I used to
9 patrol that area when I was on the patrol
10 division. I am familiar that the Sedgefield
11 School is within that same vicinity of the
12 Sedgefield neighborhood where the victims live.

13 Q. But did you walk the path that he told you
14 about?

15 A. No, I did not.

16 PATRICIA KENNEDY: That's all that
17 I have, Your Honor.

18 THE COURT: Redirect, Solicitor?

19 SOLICITOR CORNWELL: Nothing from
20 the State.

21 THE COURT: Thank you, you may come
22 down.

23 (WITNESS STEPS DOWN)

24 THE COURT: Call your next witness.

25 SOLICITOR CORNWELL: Your Honor, at

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1 this time the State rests.

2 THE COURT: All right. Ladies and
3 Gentlemen, there are some matters of law that I
4 must take up at this time out of your presence.
5 I am going to ask you to go to your jury room
6 for just a few moments. Do not begin your
7 deliberations, don't discuss the case.

8 (JURY OUT @ 12:54 P.M.)

9 THE COURT: Any Motion from the
10 State?

11 SOLICITOR CORNWELL: None from the
12 State, Your Honor.

13 THE COURT: Ms. Kennedy?

14 PATRICIA KENNEDY: Thank you, Your
15 Honor. May it please the Court. At this
16 time we would like to make a Motion for a
17 directed verdict. Taking the evidence in the
18 light most favorable to the State, I would
19 submit that there isn't any evidence of
20 larceny.

21 The victim, Mr. Raymond Kiley,
22 testified that he shoed Mr. Cribb out the
23 door. He talked to him after Mr. Cribb had
24 exited the house. He never saw a purse. He
25 never saw Mr. Cribb taking a purse. In order

1 to prove the burglary charge, I think that you
2 have to be able to show that there was a
3 larceny and the evidence doesn't support that.

4 THE COURT: According to my charge,
5 the last time that I charged -- we were talking
6 about -- any movement, it doesn't matter how
7 much, is sufficient to prove taking and intent.
8 We have something even more here
9 circumstantially, and that is the card, that he
10 used the card. If the jury believes that
11 testimony, that becomes moot because that is
12 her property and that pretty much slam-dunks
13 out -- if the jury believes.

14 Obviously there is testimony for the
15 burglary. His statement admits itself his
16 being in the house. Then we have the testimony
17 of two witnesses who identified him, recently
18 had -- who knew who he was. Obviously the jury
19 will ultimately make that determination on the
20 identity.

21 I must respectfully deny your Motion.

22 PATRICIA KENNEDY: Thank you, Your
23 Honor.

24 THE COURT: Now, we were talking
25 before, at the Jackson v. Denno hearing and I

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1 -- Mr. Cribb indicated that he was going to
2 testify. Is he still planning to testify.

3 PATRICIA KENNEDY: Your Honor, I
4 don't now. We will have to talk again. If you
5 will give some opportunity to ---

6 THE COURT: How much time do you
7 need to do that?

8 PATRICIA KENNEDY: My usual
9 answer, Your Honor, would be about five to ten
10 minutes but I am going to ask you for fifteen.

11 THE COURT: All right. Why don't we
12 do this? I am going to excuse this jury. I
13 will have them come back at 3:30. We should be
14 finished with that case by then and we will
15 start -- we may not be able to complete the
16 case but we will see how it goes at 3:30. I
17 would like to know by 3:30.

18 PATRICIA KENNEDY: Yes, sir.
19 Thank you, Your Honor. We appreciate that.

20 THE COURT: Let's bring in the jury,
21 please.

22 SOLICITOR CORNWELL: Your Honor,
23 the State rests except for the certified
24 convictions.

25 THE COURT: We will get to that.

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1 SOLICITOR CORNWELL: That's okay.

2 Since I rested, I just want to make sure that I
3 get all my evidence in.

4 THE COURT: No problem.

5 (JURY IN @ 12:58 P.M.)

6 THE COURT: Thank you, Ladies and
7 Gentlemen. Thank you, Ladies and Gentlemen.
8 It is now one o'clock. You heard me, I think
9 when I qualified you, say that the other jury
10 is coming back at 1:45. You need to have a
11 lunch break, so do the folks seated in the
12 courtroom. They will have less than an hour,
13 but I asked them about that beforehand. I am
14 going to give you a little bit longer for
15 lunch. It's a late lunch, I understand that.
16 I understand it's afternoon, but what do you
17 do? I am going to ask you to return by 3:30.
18 At 3:30 we will resume the trial. I should be
19 finished with the other one by then. If I am
20 not, it won't be too long. We will bring you
21 back in and move forward in this trial.

22 Please understand that while you are
23 out that you are not at liberty, of course, to
24 discuss this case among yourselves or with
25 anyone. Do not allow anyone to talk with you

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1 about the case or to talk with you about it in
2 your presence.

3 Have a good lunch, and I will see you
4 at 3:30. Come directly to your jury room
5 please. Okay? Thank.

6 (JURY OUT @ 1:00 P.M.)

7 THE COURT: Any from the State
8 before we recess -- except for the certified
9 convictions? Have you see the convictions?

10 PATRICIA KENNEDY: Yes, sir, I
11 have.

12 THE COURT: Very well, let's make
13 them collectively Court's Exhibit 1 for the
14 purposes of this proceeding. They are for the
15 court's purposes only and will not be sent to
16 the jury.

17 SOLICITOR CORNWELL: We only got you
18 two, per the statute. If you want more, we can
19 get you more.

20 THE COURT: No problem. I think the
21 third one covers it.

22 SOLICITOR CORNWELL: Thank you, Your
23 Honor.

24 (SO ENTERED AS COURT'S EXHIBIT 1)

25 THE COURT: All right, I will see

1 all of you at 3:30.

2 (LUNCH RECESS)

3 (DEFENDANT PRESENT)

4 SOLICITOR CORNWELL: May I approach,
5 Your Honor.

6 THE COURT: Yes, ma'am.

7 (OFF RECORD SIDEBAR)

8 (BRIEF RECESS)

9 (DEFENDANT PRESENT)

10 THE COURT: Ms. Cornwell advises me
11 that she had a meeting with two jurors -- that
12 two jurors had an inadvertent meeting with the
13 solicitor in the restroom. The topic of
14 conversation was, by Ms. Kramer, "Where did you
15 go to law school?" At that point Miss Cornwell
16 advised, "I can't speak to you." And one
17 juror, Ms. Gaillard said, "I like your shoes."
18 That was the extent of it. I have just
19 explored, examined them as to whether or not
20 that would influence them in any way. They
21 indicated that it would not.

22 Does the State wish anything further?
23 Wish either juror excused?

24 SOLICITOR CORNWELL: No, Your Honor.

25 THE COURT: Does the Defendant wish

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1 anything further or that either juror be
2 excused?

3 PATRICIA KENNEDY: No, Your Honor.

4 THE COURT: Thank you very much. To
5 my observation, it is clear that they have not
6 been influenced by that at all. Thank you.

7 No objection from the Defendant for
8 his not being personally present, is that
9 correct?

10 PATRICIA KENNEDY: Your Honor, I
11 told him that we would be having the
12 conversation.

13 THE COURT: Do you have any
14 objection to that, sir?

15 DEFENDANT: No, sir.

16 THE COURT: Thank you, sir. All
17 right. I think when we last were together, I
18 believe the State had rested and I had asked
19 you whether or not Mr. Cribb desires to
20 testify. You said you needed to talk with him.

21 PATRICIA KENNEDY: Yes, Your
22 Honor. That's correct. After much discussion
23 during the lunch break, he has decided not to
24 testify.

25 THE COURT: All right. Mr. Cribb,

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1 you may stand or you may remain seated,
2 whichever is your pleasure, sir.

3 DEFENDANT: All right, sir.

4 THE COURT: You talked with your
5 lawyer?

6 DEFENDANT: (Affirmative nod).

7 THE COURT: I know that you talked
8 initially that you wanted to testify.

9 DEFENDANT: Yes, sir.

10 THE COURT: Of course, we talked
11 about that a little bit and I just instructed
12 the jury because -- in Mr. Goodman's case, he
13 didn't testify either. That doesn't mean
14 anything, because you hear some testify and
15 some don't. But it is absolutely your right to
16 testify if you want to and it's your right not
17 to testify if you want to. As I instructed a
18 jury (in unrelated case) just a moment ago, the
19 failure to testify can't even be discussed. If
20 they discussed it in the jury room, it would
21 violate their oath. Because you don't have the
22 obligation to say anything, to prove anything,
23 but you still have the right to tell your side
24 of it. Of course, you'd be subject to cross-
25 examination. Your lawyer has explained that to

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1 you.

2 DEFENDANT: Yes, sir.

3 THE COURT: And let me inquire, Ms.

4 Kennedy, are there any additional witnesses
5 other than the defendant?

6 PATRICIA KENNEDY: No, Your Honor.

7 THE COURT: Then you would be
8 resting?

9 PATRICIA KENNEDY: Yes, Your
10 Honor.

11 THE COURT: Then your lawyer has
12 also explained to you have the advantage, from
13 a strategic standpoint, such as Mr. Davis (in
14 unrelated case) had the opportunity to speak to
15 the jury because he didn't present any evidence
16 either, your attorney, Ms. Kennedy, will have
17 the last opportunity to speak to the jury in
18 closing arguments. Do you understand that?

19 DEFENDANT: Yes, sir.

20 THE COURT: You talked with him from
21 a strategic standpoint the advantage or
22 disadvantages?

23 DEFENDANT: Yes, sir.

24 THE COURT: Are you comfortable with
25 that?

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1 DEFENDANT: Yes, sir.

2 THE COURT: Have you had sufficient
3 time to think about it, sir?

4 DEFENDANT: Yes, sir.

5 THE COURT: Are you under the
6 influence of any alcohol or any medication here
7 today?

8 DEFENDANT: No, sir.

9 THE COURT: Have you consumed any in
10 the last twenty-four hours?

11 DEFENDANT: No, sir.

12 THE COURT: Have you been treated
13 for any emotional problems, any mental illness?

14 DEFENDANT: No, sir.

15 THE COURT: Thank you, sir, you may
16 take your seat. I find that Mr. Cribb has had
17 the benefit of very competent counsel. He's
18 indicated that he's had sufficient time to talk
19 with them. Is that true, sir?

20 DEFENDANT: Yes, sir.

21 THE COURT: And he has indicated
22 that he's had sufficient time to talk with them
23 and consider their advice. I find his
24 testimony not to testify to be one that he
25 makes freely, voluntarily, knowingly and

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1 intelligently. We will honor that he
2 understands the benefits and the negatives of
3 it as he has already expressed.

4 If between now -- I guess what we knew
5 to do. You will rest. Are you ready to do
6 your closings?

7 SOLICITOR CORNWELL: We are.

8 THE COURT: Are you ready, Ms.
9 Kennedy?

10 PATRICIA KENNEDY: Yes, Your Honor.

11 THE COURT: Then while we would
12 normally have to send them out -- any Motions
13 from the State at this point?

14 SOLICITOR CORNWELL: None from the
15 State, Your Honor.

16 THE COURT: Ms. Kennedy?

17 PATRICIA KENNEDY: We would just
18 renew our previous Motions.

19 THE COURT: I note that and would
20 respectfully, on the reasons previously stated,
21 deny those Motions. I will prepare the charge.
22 Any specific requests from the State?

23 SOLICITOR CORNWELL: No, Your Honor.

24 THE COURT: Any specific requests
25 from the defense?

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1 PATRICIA KENNEDY: No, Your Honor.

2 THE COURT: All right. Let's take
3 ten minutes and then we will bring them in.
4 Thank you. That will give me a chance to put
5 the charge together.

6 (BRIEF RECESS)

7 (DEFENDANT PRESENT)

8 THE COURT: If y'all are ready, I am
9 ready. Let's invite our jury to come in. I
10 assume you stand by your decision, Mr. Cribb?

11 DEFENDANT: Yes, sir.

12 THE COURT: You can change until
13 your lawyer says 'we rest'. Once she says
14 that, it's done. Okay?

15 DEFENDANT: Okay.

16 (JURY IN @ 3:59 P.M.)

17 THE COURT: Thank you, Ladies and
18 Gentlemen, for indulging us the opportunity to
19 have some lunch and finish the other case.
20 It worked out to be a little over, but we
21 appreciate patience.

22 We are ready now to continue. As you
23 recall when we took our recess, the State had
24 rested. As I mentioned to you, when I gave my
25 opening remarks, Mr. Cribb has nothing to prove

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1 or to disprove but he still has the right to
2 present any additional testimony that he feels
3 you should hear, but that wouldn't happen until
4 the State has completed its case. So at this
5 point, Ms. Kennedy, does Mr. Cribb wish to
6 present any additional witnesses?

7 PATRICIA KENNEDY: No, Your Honor.
8 The defense rests.

9 THE COURT: Very well. That would
10 conclude the evidentiary portion of the
11 proceeding. That means now that we move into
12 the two final portions of the -- and the record
13 reflects all ready -- we had an idea about that
14 and we have already discussed the Motions --
15 we'd normally have to excuse you again but we
16 have already taken care of that. The record is
17 now complete with respect to those Motions.

18 The next phase is the second
19 opportunity for the attorneys to address you.
20 Unlike the first, you have now heard the
21 evidence which they will discuss with you and
22 suggest reasonable inferences that you may draw
23 from that evidence. I am very confident that
24 when you retire to begin your deliberations
25 that you will find those remarks to be very

1 helpful. So please give them your attention.
2 But please remember that while very important
3 and extremely beneficial they should never be
4 considered evidence by you.

5 Following the attorneys closings, I
6 will give you the instruction on the law.
7 Please give the attorneys your complete
8 attention.

9 Ms. Cornwell.

10 SOLICITOR CORNWELL: Thank you, Your
11 Honor, may it please the Court?

12 THE COURT: Yes, ma'am.

13 SOLICITOR CORNWELL: Ms. Littlejohn.
14 At the beginning of this trial, Ms. Kennedy
15 spoke to you about the legal truth versus the
16 real truth. I am not sure about y'all, but the
17 way that I was raised the truth is the truth.
18 There is no differing levels of truth, no
19 difference between a legal truth and a real
20 truth. It's just the truth.

21 You were also told about good deeds
22 going unpunished. This is a trial where Mr.
23 Kiley and Ms. Kiley, who are a great couple,
24 have been married for forty-one years, I believe
25 that they said, have lots of children and

1 grandchildren, have lived in the same home for
2 thirty years, had the same neighbors for thirty
3 years. The type of place that in their homes
4 they felt safe enough that they didn't even
5 lock their doors at night. They offered a
6 helping hand when they could and they gave when
7 they were able to give.

8 This man took advantage of them. He
9 went to them, they gave him money -- not one
10 time but two times. They gave him rides. They
11 even bought a lawnmower from him to help him
12 out. And what does he do to return their
13 favors, their generosity, he comes into their
14 house at 2:30 in the morning, he steals Mrs.
15 Kylie's purse, all of her belongings and then
16 he takes her credit cards and he uses them at
17 an Exxon, at a Sunoco, at CVS. He gets
18 cigarettes, gas, cash, money. That is not what
19 you do to people who have been charitable
20 towards you. That's not how you repay them,
21 thank them for their generosity.

22 Because of this defendant, Mr. and
23 Mrs. Kiley's home will never be that same home
24 again. They've lost their sense of security
25 now. He's taken that from them as well.

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1 We went over the various charges that
2 Mr. Cribb is charged with. I would like to go
3 over those charges with you again at this time.
4 As we got over the elements, I am going to show
5 you how the State has proven each and every
6 element, because that is the State's burden of
7 proof. We have to prove each and every element
8 in order for you to find this defendant guilty.

9 As we talked about in the beginning,
10 Mr. Cribb is charged with burglary. Not only
11 is he charged with burglary but he's charged
12 with burglary in the first degree. In the
13 State of South Carolina to convict the
14 defendant of burglary, we must prove that he
15 entered a dwelling, that he entered that
16 dwelling without consent and that he did it
17 with the intent to commit a crime therein.

18 In addition to those, the State has
19 charged him with burglary in the first degree,
20 which means that there has to be an aggravating
21 circumstances present. We've already spoke to
22 you and told you that there is not a gun
23 involved in this case and that the defendant
24 has not convicted of two or more burglaries, so
25 neither of those should in consideration for

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1 you. The third aggravating circumstances for a
2 burglary in the first degree is if the entering
3 or remaining occurred in the nighttime hours.
4 That meets the remaining aggravating
5 circumstances and does elevate it from a
6 burglary to a burglary in the first degree.
7 We only have to prove one of those three. We
8 don't have to prove all three.

9 Here we talk about entering a
10 dwelling. You heard that there was no forced
11 entry, that the door was unlocked. For the
12 State to prove the entering of a dwelling, this
13 isn't TV. We don't have to prove that he
14 kicked in the door or that he busted out a
15 window. There doesn't have to be a lot of
16 damage. The fact that he opened an unlocked
17 door and walked through without permission,
18 that is enough to meet that element of entering
19 the dwelling.

20 You heard testimony from Mr. and Mrs.
21 Kiley that they saw the defendant inside their
22 home that night. They know that it was the
23 defendant because they had met up with him
24 before, they had been generous to him before,
25 they had given charity before. They were also

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1 able to see him because there was a bathroom
2 light on and the TV was on. So they knew that
3 it was him when he entered their home without
4 consent.

5 Was he allowed in their home? I would
6 stipulate to you that you heard testimony --
7 this happened at 2:30 in the morning. Mr. and
8 Mrs. Kiley were in bed. They both stated to
9 you that the defendant did not have permission
10 to be in their home. They did not invite him
11 in their home at 2:30 in the morning on the
12 night of February 4th, the morning of February
13 5th.

14 You also heard testimony from Mr. and
15 Mrs. Kiley -- and I believe that it might be
16 completely accurate, but Mr. Kiley said that he
17 may have invited the defendant into the home on
18 a prior occasion but you heard testimony that
19 neither one of them invited them into his house
20 on that night at 2:30 in the morning. It was
21 without consent.

22 Now, you heard Ms. Kiley say that the
23 defendant said to her, "I thought I heard you
24 say to come in." You also heard her say that
25 her bedroom door and the front door is pretty

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1 good distance away. They never did hear
2 anybody knocking or anything like that. Just
3 all of a sudden they woke up and he is standing
4 in their doorway. That is not permission.
5 That is not consent. So he has entered the
6 dwelling, and he has entered the dwelling
7 without consent.

8 The third element is to commit the --
9 with the intent to commit a crime therein.
10 Well, you've heard testimony from Mr. and Mrs.
11 Kiley that Ms. Kiley's purse was stolen.
12 That's larceny. That's a crime that was
13 committed therein.

14 You also heard testimony and show
15 videos showing the defendant using the credit
16 card from the purse that was stolen the night
17 of February 4th into February 5th.

18 Finally, the judge is going to tell
19 you that intent can be inferred by actions.
20 You don't have to deliberately say, 'I am
21 coming into this house to commit larceny.'
22 Your actions can be inferred as to what your
23 intent is. I would stipulate to you, why would
24 somebody go into another's person's home at
25 2:30 in the morning for anything other than to

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1 commit a crime.

2 He wants to talk about this lawnmower
3 that he supposedly brought them and that they
4 were discussing. I don't know about you, but
5 if I am going to discuss a lawnmower with
6 somebody, I'm not thinking, 'Oh, it's 2:30 in
7 the morning. It's a great time for me to go
8 and talk to Mr. Kiley about this lawnmower that
9 we'd purchased and exchanged and bartered with
10 earlier in the day.' That's not reasonable.

11 And, finally, that the entry or
12 remaining occurred during the nighttime hours.
13 You heard testimony from both Mr. and Mrs.
14 Kiley that they saw the Defendant in their home
15 at approximately 2:30 in the morning.

16 You also heard testimony from Officer
17 Thompson that said that the victims reported to
18 him that this happened at about 2:00 in the
19 morning. As we all know, 2:00 in the morning
20 is during the nighttime hours.

21 We have to prove all four elements for
22 burglary in the first degree, for you to
23 convict him of burglary in the first degree.
24 The State has proven all four elements of
25 entering a dwelling, without consent, with the

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1 intent to commit a crime therein and that it
2 did occur at night. Mr. Cribb is guilty of
3 burglary in the first degree.

4 The second charge that he has been
5 charged with is financial transaction card
6 theft. Again, to convict the defendant of
7 financial transaction card theft, the State
8 must prove that the Defendant took, obtained,
9 withheld or received a financial transaction
10 card or number from the person, possession,
11 control of another without the cardholder's
12 consent and with the intent to use the card or
13 number.

14 Here you know that the Defendant took
15 the card. You heard testimony from Mrs. Kiley
16 that her bank card was in her purse, that the
17 Defendant stole her purse when he entered into
18 her home at 2:30 in the morning -- unlawfully.

19 A credit card is considered a
20 financial card or number. You hear testimony
21 that it wasn't just the number that was taken
22 in this case, it was the actual card. The card
23 was in the wallet, the wallet was in the purse,
24 and the purse is what was stolen from the home.

25 It was in her possession, custody or

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1 control because it was inside her house. It
2 was without her consent. She told you on the
3 stand that she never gave him her permission to
4 have her credit card. She never gave her
5 permission to him to go to CVS, Exxon or
6 Sunoco. It was without permission or consent.

7 And he had the intent to use the card
8 number. Again, intent can be inferred. Why
9 else would you take someone's bank card if you
10 didn't intend to use it. Not only on this did
11 he intend to use it but actually used it. You
12 saw testimony in video that he actually did use
13 the card.

14 So the State has to prove all five
15 elements for you to convince him of financial
16 transaction card theft and we have proven that
17 he took a financial transaction card, or
18 number, from Mrs. Kiley without her consent and
19 with the intent to use the card.

20 The State has proven each and every
21 element of this charge and Mr. Cribb is guilty
22 of financial transaction card theft.

23 The final one is the property crime
24 enhancement that we talked about and, as I told
25 you before, the enhancement part is something

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1 for the judge to determine on the law. But in
2 order for him to do that, you have to find that
3 Ms. Cribb was guilty of financial transaction
4 card fraud.

5 In order to find him guilty of
6 financial transaction card fraud, the State
7 must prove that Mr. Cribb used a financial
8 transaction card that was illegally obtained or
9 retained or received with the knowledge that it
10 was illegally obtained or retained. That he
11 used that card to obtain something of value,
12 and that the way that he did that was by
13 misrepresenting consent of the cardholder by
14 presenting the financial transaction card
15 without authority or by falsely representing
16 that he is the card owner. He only has to do
17 one of those last three. It's an "or"
18 standard.

19 Here, well, he clearly used the
20 financial transaction card. We saw him on the
21 video using it. You heard from the witness,
22 Mr. Coleman, who stated that he used it. Not
23 only that he used it but that he was acting
24 very peculiar, very suspicious when he was
25 trying to use it. He wouldn't show ID, he

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1 wouldn't show the name on the card, he kept
2 trying to jerk the card away.

3 You have also heard testimony from
4 Detective Cortte, who met with the defendant,
5 who talked with the defendant. The defendant
6 even admitted to him, 'Yeah, I used it. I used
7 the card. I might three years for it.'

8 You know the card was illegally
9 obtained or retained. It was stolen. The
10 reason that we know it is stolen is because you
11 heard Mrs. Kiley say that it was stolen. She
12 didn't give permission for it to be used.

13 In fact, the credit card company had
14 to call and let her know that it was being
15 used.

16 He was trying to obtain something of
17 value. You heard testimony from Mr. Coleman
18 that the defendant used the card to purchase
19 cigarettes. You also heard testimony from
20 Detective Cortte that that defendant told him,
21 'Yeah, I used the credit card. I was hungry.
22 I needed some cash, some money, some
23 cigarettes.'

24 So he went not just to CVS but the
25 also went to the Exxon, to the Sunoco and to

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1 the Food Lion. So he used it not once, not
2 twice, not even just three times but he went to
3 four different places where he used this card
4 illegally and presented it with fraud.

5 And finally he presented the financial
6 transaction card without authority or
7 permission of the cardholder. Ms. Kiley
8 testified to you that she didn't give him
9 permission. She didn't give him permission to
10 take it, she didn't give him permission to come
11 into her home. She definitely didn't give him
12 permission to use it to buy cigarettes or gas
13 or cash or whatever he used it to purchase
14 stuff with.

15 The State has to prove all four
16 elements -- I'm sorry. The misrepresenting.
17 We also heard Mr. Coleman saying, 'It's my
18 wife's credit card. It's my wife's credit
19 card.' That clearly was not true. Again, that
20 is where he was misrepresenting the fact that
21 he was able to use this card.

22 The State has to prove all four
23 elements needs for financial transaction card
24 fraud. We have proven each element: that he
25 used the card illegally obtained to obtain

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1 something of value, and by misrepresenting
2 himself as the cardholder. The State has
3 proven all four of those elements. Mr. Cribb,
4 the Defendant, is guilty of financial
5 transaction card fraud.

6 The State has proven beyond a
7 reasonable doubt every element of every crime
8 that this man committed. He is guilty of
9 burglary in the first degree; he is guilty of
10 financial transaction card theft, and he is
11 guilty of financial transaction card fraud.
12 You have to find that beyond a reasonable
13 doubt.

14 In the beginning, the judge in his
15 opening statement told you what beyond a
16 reasonable doubt was. I feel quite certain
17 that Ms. Kennedy is going to speak to you about
18 reasonable doubt and that the judge will again
19 tell you what reasonable doubt is. He told you
20 that a reasonable doubt is something that
21 causes a person to hesitate to act.

22 When you came into this case, into
23 this trial, into this courtroom, you gave an
24 oath that you knew nothing about this case.
25 By knowing nothing about this case in the

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1 beginning to the point where we are at now, if
2 you think that this defendant is guilty, that's
3 beyond a reasonable doubt. Otherwise, you
4 wouldn't think that he is guilty. Have the
5 courage of your convictions. Find the
6 Defendant guilty of the charges. Bring justice
7 to Mr. and Mrs. Kiley. Guilty on all three
8 counts.

9 THE COURT: Ms. Kennedy.

10 PATRICIA KENNEDY: Thank you, Your
11 Honor. Ms. Cornwell.

12 I am going to have to cheat a little
13 and use the podium, which I really don't like
14 to do but -- because I have notes.

15 What I would like to begin with to
16 start with is that all throughout this whole
17 week you all have been thanked for your
18 service. I am going to thank you once again,
19 because it is -- we couldn't do this without
20 you. Our system wouldn't work without you.
21 You are about to perform one of the most
22 serious duties that a citizen has in our
23 country. It's an one, and I thank you for it.

24 I also want to thank you for your
25 attention and your diligence and -- even though

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1 it was a short trial and we haven't been here
2 very long on this one and you might think it's
3 one where you didn't want to be here, but you
4 have been attentive, you paid attention. The
5 reason I know that is because while you're
6 watching us, we're watching you. I've observed
7 each of you and you've paid strict attention to
8 what we are trying to do here today, and I
9 thank you for that.

10 When we started today I talked to you
11 about real truth versus legal truth. The
12 assistant solicitor referenced that again in
13 her closing. The real truth is what you all
14 decide. It is not what's up on that board.
15 And it's not how each of the elements and the
16 evidence that the State has presented -- how it
17 unfolds. It is what you all decide that it is.
18 Y'all get to decide whether Mr. Cribb entered
19 that house without consent; y'all get to decide
20 whether or not he committed a larceny; y'all --
21 it's not question that it was in the middle of
22 the night, so we don't dispute that. And we
23 aren't going to dispute the fact that Mr. Cribb
24 used the credit cards. That was in the
25 information that he gave Detective Cortte.

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1 Detective Cortte testified to that. So he used
2 the cards, yes. Absolutely. No question about
3 it. The video speaks for itself.

4 Now, the problem with all then is that
5 we are at the point in the trial where y'all
6 have to decide exactly what it is that Mr.
7 Cribb did in that house. What you have heard
8 from Mr. and Mrs. Kiley is that Mrs. Kiley
9 testified that she usually puts her purse by
10 the door when she comes in. That is her usual
11 habit. But when she went to look for it the
12 next morning, she didn't know where it was.
13 She didn't know if she left it in the car, she
14 didn't know if she left it at the American
15 Legion. She didn't know where it was.

16 The other issue is this, Mr. Kiley
17 went outside with Mr. Cribb. Mr. Kiley
18 testified that he shoed him out the door, that
19 he went back out in the yard, talked to him
20 about the lawnmower. He didn't see the purse.
21 Now, I don't know how long that exchange took
22 but it was long enough for Mr. Kiley to have
23 seen the purse if Mr. Cribb had taken it. Mrs.
24 Kiley described the purse, Liz Claiborne, twelve
25 inches, big, plaid. Surely if Mr. Cribb had

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1 had that in his hand, Mr. Kiley would have
2 noticed it.

3 In a few minutes Judge Dennis, as the
4 assistant solicitor alluded to, is going to
5 talk to you about reasonable doubt. In its
6 simplest form, reasonable doubt is a doubt that
7 gives you pause, one that makes you hesitate to
8 act, one that makes you think, stop and think
9 about, what it is that you're about to do,
10 about what it is that you've heard. What it
11 boils down to -- the decision is this for
12 y'all, did Mr. Cribb steal the purse? When he
13 walked in that house, did he walk out with Mrs.
14 Kiley's purse. That's what you have to decide.
15 You have to decide beyond a reasonable doubt
16 that he did that. If you can't determine that
17 he did that, and there is really no evidence
18 that he did, then he is not guilty of a
19 burglary.

20 I will give you and we concede to you,
21 to use Detective Cortte's words, that he had
22 the credit cards. He is guilty of financial
23 transaction card fraud, he is guilty of
24 stealing the credit cards. But doing those two
25 things doesn't make him guilty of a burglary

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1 under any circumstances.

2 So where we are now is -- and one
3 other thing that I forgot to mention, Mr. Kiley
4 testified, as the assistant solicitor said, Mr.
5 Cribb said he thought he heard somebody say
6 "come in". He thought that he had permission
7 to enter that house. Now, there's a big deal
8 about whether or not it was 2:00 o'clock in the
9 morning or 2:30 in the morning. It clearly was
10 at night. But at the time that this incident
11 occurred, nobody thought it was a burglary.
12 Mr. Kiley walked outside with him. They had a
13 conversation in the yard. The door was open.
14 All of those things you have to consider when
15 you decide whether or not Mr. Cribb should be
16 found guilty of burglary in the first degree.

17 Now, you have been entrusted, are
18 being entrusted, with a decision -- the most
19 important decision of Fred Cribb's life. I
20 know that you take that very, very seriously.
21 I want you to take it seriously. I want you to
22 think about both sides of what has been said,
23 consider everything that the assistant
24 solicitor has said in terms of her contention
25 that she has proven the case beyond a

1 reasonable doubt. Consider everything that
2 I say in terms of my contention that they
3 haven't. Those are the two sides. That is the
4 legal truth versus the real truth.

5 The legal truth is the law. Now,
6 whether you decide -- how you decide that Mr.
7 Cribb is guilty or not guilty, that is the real
8 truth of it.

9 Now, this case, it's called the State
10 versus Fred Cribb, the State versus Fred Cribb.
11 I think nobody would disagree, certainly not
12 the solicitor would disagree, that if the law
13 is followed and justice has been done then the
14 State should win the case. On the other hand,
15 if the law hasn't been followed and the facts
16 don't support, and your judgment doesn't
17 support, what the State argues, then you have
18 to find him not guilty and justice is served.

19 And the other thing that I want you to
20 remember is this, I have the last word but
21 yours is the final voice. Yours is the final
22 voice. The voice that is going to determine,
23 as I said, the most important decision in Mr.
24 Cribb's life. When you consider all these
25 things, I would ask you to render a verdict of

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1 Not Guilty.

2 THE COURT: Thank you, Ms. Kennedy.
3 Thank you, Ladies and Gentlemen. If I could
4 have your attention now, we will move into the
5 final portion of this process where it becomes
6 my responsibility to give you the law which
7 you, of course, have promised to accept and
8 apply fairly and impartially to those facts
9 that you will determine in just a few moments
10 when you begin your deliberations in this case.

11 Both the State and Mr. Cribb expect
12 that you will at that time, when you retire,
13 conscientiously consider the evidence and
14 decide what you believe to be the truth. Then
15 take the law that I give to you and apply that
16 law fairly and impartially. To that end, I
17 would suggest that the parties would have
18 obtained a fair and impartial determination.

19 During this instruction, from time to
20 time you may hear me use the word "defendant".
21 Defendant is simply a term that we use to
22 designate the party against whom a claim has
23 been made. That's the sole significance of the
24 term. It means nothing else. It's just
25 another way of identifying Mr. Cribb.

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1 As I mentioned to you when we started,
2 he's been accused by these three documents that
3 I hold in my hand of the crimes of burglary
4 first, financial transaction card theft and
5 then the crime of property crime enhancement --
6 but it is based on a crime of financial
7 transaction card, uh, fraud that will be sent
8 back to you to give the court some guidance.
9 The crime enhancement is not something for your
10 consideration, only the initial crime itself is
11 what you will make a determination on in just a
12 few moments.

13 To these indictments he has rendered a
14 plea of Not Guilty, which as I stated to you
15 when I qualified you, every person in this
16 country accused of criminal offenses, such as
17 Mr. Cribb, are presumed to be innocent. That
18 is an active presumption. A presumption that
19 you have to actively maintain and you may only
20 change or rid your mind of that presumption
21 when after due deliberations you are firmly
22 convinced that the State has met its burden of
23 prove and established each element beyond a
24 reasonable doubt. Then and only then may you
25 set that presumption aside.

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1 The State is the only party that has
2 any burden and it has the burden of proving the
3 guilt of each of the crimes charged.

4 So obviously, Ladies and Gentlemen,
5 persons such as the defendant who do not
6 testify in their behalf, the law is that that
7 cannot be used against them or considered by
8 any jury. The defendants in criminal disputes
9 have no burden to prove or disprove anything.
10 If they choose not to testify, that shouldn't
11 be considered. I would therefore instruct you
12 that Mr. Cribb's right to remain silent should
13 not be discussed by you and the assertion of
14 that right should not be considered. If you in
15 your deliberations even discuss it, you will
16 have violated your oath. You're instructed to
17 reach no inference and to draw no conclusion
18 whatsoever from the fact that he did not
19 testify.

20 Now, what is a reasonable doubt. A
21 reasonable doubt is a doubt that would make a
22 conscientious person hesitate to act. Now,
23 beyond a reasonable doubt is prove that leaves
24 you firmly convinced of a defendant's guilt.

25 There are very few things that we know

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1 in this life and in this world that we know
2 with absolute certainty. The law does not
3 require, in criminal disputes, proof that
4 overcomes every possible doubt. If based on
5 your consideration of the evidence you are
6 firmly convinced of his guilt of one or more of
7 these crimes, then you must return a verdict of
8 guilty. If, on the other hand, you think that
9 there is a real possibility that he is not
10 guilty, then you must give him the benefit of
11 that doubt and return a verdict of not guilty.

12 A reasonable doubt, Ladies and
13 Gentlemen, may arise from the evidence that's
14 in a case or the lack or absence of such
15 evidence. It's up to you to determine whether
16 or nor a reasonable doubt exists as to the
17 guilt of Mr. Cribb.

18 I charge you that he is entitled to
19 every reasonable doubt arising from the whole
20 case. That means simply this, that if upon any
21 issue of fact that would be essential to your
22 returning a verdict of guilty, that is
23 convicting him of that crime, you should have a
24 reasonable doubt as to how that issue should be
25 resolved, I would instruct you that you must

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1 resolve that in his favor.

2 Now, the testimony that you are to
3 consider consists of the testimony of witnesses
4 and the exhibits which have been introduced
5 through their testimony, nothing else. You
6 certainly have participated in the parts where
7 I have spoken to you and the attorneys have
8 spoken to you. If you think anything that I
9 have said has suggested to you how you're to
10 resolve a factual issue, you must disregard my
11 remarks because I have nothing to do with that.
12 Likewise, the comments of the attorneys, if
13 they differ from your recollection of what a
14 witness said or didn't say, you're instructed
15 to disregard their remarks. Why? Because you
16 are the sole judges of the facts in this case.

17 Now, if in your deliberations you have
18 a dispute or a disagreement about witness did
19 or didn't say, please understand that -- that
20 is not uncommon. I wouldn't say that it
21 happens all the time but it is not uncommon.
22 Ms. Garrison is our court reporter and if
23 necessary, if you can't resolve it collectively
24 then we can return you to the courtroom and
25 replay that testimony for your consideration,

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1 should that be necessary.

2 Also if any of the remarks of the
3 attorneys concerning the law differed from what
4 I give to you as the law, you are instructed to
5 disregard their remarks. For the purposes of
6 this proceeding today, I am the sole judge of
7 the law. You have promised to accept the law
8 and apply that law fairly and impartially to
9 the facts as you will determine them to be
10 through your deliberations. That would include
11 if you -- any situation where -- or any legal
12 principle which you felt was another way or
13 that the law wasn't exactly stated as I give it
14 to you, or you feel that the law should be
15 changed, I respect your right to feel that way.
16 In this great country, you have the right to do
17 so -- to follow that through. But for purposes
18 of this proceeding today, you've promised to
19 set that aside, take the law as I give it to
20 you and apply that law fairly and impartially.

21 Now, cases -- when the State has to
22 prove a case as it does in this case, it is not
23 uncommon for the jury to consider two types of
24 evidence. One would be direct evidence. The
25 other would be indirect, the more popular name

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1 for indirect would be circumstantial evidence.

2 Direct evidence, as the name implies,
3 is when a person comes in and testifies to
4 generally a sensory perception, 'I saw
5 something, I heard something, I felt something
6 or the like.' If you're firmly convinced that
7 the credibility of the evidence then it
8 establishes that particular fact.

9 Circumstantial evidence is when one
10 comes in and testifies to a number of facts.
11 If you are firmly convinced to each of those
12 facts and you link them through deductive or
13 inductive reason and it leads you to a logical
14 conclusion, that also is a very proper way of
15 establishing. If you are convinced that it
16 leads to a logical conclusion, then that would
17 establish a particular fact, as well.

18 I would further instruct you that our
19 law makes absolutely no difference in the
20 weight or value to be given to circumstantial
21 evidence nor is any greater degree of certainty
22 required of circumstantial evidence than direct
23 evidence. You are instructed to weigh all of
24 the evidence and determine what you find to be
25 credible and believable.

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1 I would instruct you however that if
2 the facts brought out in a case are strongly
3 suspicious of guilt or the facts or
4 circumstances are such that the guilt of the
5 defendant is probable, that would not be enough
6 to sustain a conviction. It has to be more
7 than somebody being suspicious, suspected of
8 being guilty, might be guilty or probably being
9 guilty. It has to be prove which establishes
10 guilty beyond a reasonable doubt.

11 Now, how do you decide what you find
12 to be credible and believable. We talked a
13 little bit about that. You apply your common
14 sense, your sense of logic. You look for those
15 things that you've used all your life to assist
16 you in making a determination of what you find
17 to be credible and believable. There are many,
18 many factors that one may consider. I am going
19 to discuss some of them with you now, but if I
20 don't mention a method or factor that you've
21 used in your life and you found it to be
22 reliable, please use it very shortly when you
23 begin your deliberations.

24 Some of the factors that you may want
25 to consider would be the appearance of the

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1 witness, the demeanor. How did they appear to
2 you, hesitate or straightforward in answering
3 questions?

4 Was the testimony of witness
5 consistent or was it inconsistent?

6 Was it strengthened or weakened by
7 other evidence in the case?

8 How did the witness come to know the
9 facts that he or she testified to and what was
10 the ability of that witness to know those
11 particular facts or circumstances?

12 Was there a reason for a witness to
13 give testimony which may be helpful or
14 detrimental to one side or the other? In other
15 words was the witness biased or prejudiced in
16 any fashion?

17 In determining the questions and
18 credibility, believability, our law gives you
19 very broad discretions. You have the right to
20 believe all of a witness' testimony, parts of
21 a witness' testimony or none of a witness'
22 testimony.

23 You have the right to believe one
24 witness against many or many against one.

25 You don't exercise these rights,

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1 however, arbitrarily or capriciously but if you
2 do have that conclusion -- reach that
3 conclusion based on the evidence in this case,
4 you have that prerogative, because your
5 objective has been since you were accepted to
6 determine the truth regardless of the source of
7 the evidence.

8 Now, let's look at the law -- the two
9 charges. One is burglary first and I would
10 like to talk with you about that first. The
11 defendant is charged with first degree burglary
12 and the State must prove beyond a reasonable
13 doubt that the Defendant entered a dwelling
14 without consent, but the State does not have to
15 prove that there was force used to gain entry
16 to the dwelling.

17 A dwelling is a building or the
18 portion of a building in which a person
19 ordinarily sleeps.

20 Next, the State must prove beyond a
21 reasonable doubt that the Defendant intended to
22 commit a crime, either a felony or a
23 misdemeanor, at the time of entry. The mere
24 entry into a dwelling without consent and
25 without the intent to commit a crime is not

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1 burglary.

2 If the intent to commit a crime is
3 formed after the entry, it still would not be
4 burglary. On the other hand, if the defendant
5 intended to commit a crime at the time of entry
6 it is burglary even if that intent is abandoned
7 after the entry. It does not matter that the
8 intended crime was not completed.

9 Finally the State must prove at least
10 one of the following -- must prove that the
11 defendant entered or remained in the dwelling
12 in the nighttime. Nighttime is the period
13 between sunset and sunrise, during which there
14 is enough -- not enough daylight to recognize a
15 person's face except by artificial light or
16 moonlight.

17 Also the Defendant has been charged
18 under Section 16-14-20 of our Code of Law,
19 which prescribes the conduct known as financial
20 transaction card theft. The State must prove,
21 in order to obtain a conviction, that Mr. Cribb
22 took, obtained or withheld a financial
23 transaction card from the person, possession,
24 custody or control of another without the
25 cardholder's consent and with the intent to use

1 it.

2 The second crime that you will be
3 considering under 6-14-60 is financial
4 transaction card fraud. That section provides,
5 and the State must prove, that Mr. Cribb, with
6 the intent to defraud the issuer, the person or
7 organization providing money, goods, services
8 or anything else of value, or any other person,
9 he used for the purpose of obtaining money,
10 goods, services, or anything else of value a
11 financial transaction card obtained or retained
12 for which he received knowledge that it was
13 retained or obtained in violation of the
14 section that I just previously mentioned to
15 you. He obtained goods, services or anything
16 else of value by representing without the
17 consent of the specified cardholder that he had
18 permission to use it. Or presented the
19 financial card without the authorized
20 permission of the cardholder.

21 Now, in each of these cases the State
22 must prove, to establish criminal liability,
23 criminal intent. Criminal intent is determined
24 by considering the circumstances surrounding
25 the situation and there's no way to prove

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1 mathematically or with certainty what one
2 intended. The law says that criminal intent
3 may be inferred from the circumstances that
4 have been shown to have existed.

5 This is how one would make a
6 determination as to that. Intent is a mental
7 state of conscious wrongdoing and it is up to
8 you to determine whether or not the defendant
9 -- what the defendant intended to do based on
10 the circumstances shown to exist. Criminal
11 intent may include those acts which represent
12 the very purpose for which something was done
13 or for which one would know would certainly
14 follow -- would be the consequences of what
15 they have done. The State must prove criminal
16 intent beyond a reasonable doubt, as it must
17 prove any other element of the case.

18 Ladies and Gentlemen, you in this case
19 have been selected to be a fair and impartial
20 judge with me. That means that we have to set
21 aside all human emotion - can't be motivated by
22 any type of emotion. It has no place in
23 performing the task of being a judge. That is
24 not always easy to do. We're human. But
25 you've promised that is what you will do, and I

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1 am confident that you will honor that
2 commitment.

3 You don't have any friends to reward,
4 you don't have any enemies to punish. You are
5 here to serve with me, to perform a task. You
6 determine the facts, take the law as I have
7 given it to you and apply that law fairly and
8 impartially to those facts. When you have done
9 that, you will have honored the commitment that
10 you made to the State and to Mr. Cribb. I know
11 that you will do that very shortly when you
12 begin your deliberations in this case.

13 Mr. Presiding Juror, to assist in
14 reporting your verdict, I will be sending back
15 verdict forms -- there will be three. One will
16 deal with burglary in the first degree, the
17 other financial transaction card theft, and the
18 other financial transaction card fraud. They
19 will be really identical with exception that
20 the crime alleged is set forth on the document,
21 so you know that deals with that particular
22 indictment.

23 There are two choices that appear.
24 The order that they appear means absolutely
25 nothing. I had to put them in some order.

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1 You will note that they are captioned.
2 The caption is for my purposes -- well, for the
3 clerk of court's purposes in making sure that
4 it is filed properly, so it means nothing to
5 you.

6 The body reads, "We, the jury,..." --
7 and this one happens to be the burglary first,
8 (reading): "We, the jury, by unanimous consent
9 find the Defendant, Fred Woodrow Cribb, on the
10 change of Burglary, first degree, ..." --
11 Guilty or Not Guilty. You will notice there is
12 a line that precedes the choice and then it
13 draws down and says, Presiding Juror with a
14 line for you to sign.

15 Once you have completed this form,
16 sign it and date it. Then you will have
17 completed that. I would ask you whichever your
18 choice that you simply place a check in the
19 line that precedes your choice and circle it.
20 That way we will know that is your choice.

21 What will you be saying on any of
22 these verdict forms if it is Guilty? You will
23 be saying that you have analyzed the evidence
24 and that you are firmly convinced that the
25 State has met its burden of prove and

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1 established each element of that particular
2 crime and, as instructed, you are returning a
3 verdict of guilty.

4 Not guilty says that you have analyzed
5 the evidence and you are not firmly convinced
6 of one or more elements. If the State fails on
7 one then you must return a verdict of Not
8 Guilty.

9 Whatever your choice, it has to be
10 unanimous. As that term obviously implies,
11 that means that everybody has to agree. Eleven
12 to one won't work. It's take twelve to zero
13 for it to be your verdict.

14 I know your anxious to get started.
15 You are almost to that point. Let me ask if
16 the first twelve feel like they will be able to
17 continue. If anybody feels that they cannot,
18 raise your hand? (No response).

19 Mr. Alternate, at this point it
20 appears that the first twelve will be able to
21 continue. So in just a moment when they excuse
22 the jury, I would ask that you not rejoin them
23 in the jury room. They will put you in another
24 room and I will be very shortly to tell you how
25 much longer you need to remain with us.

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1 I know that you want to get started.

2 I know that I told you that the last thing that
3 I would tell you is when you may. I've got to
4 discuss my charge with the attorneys. It might
5 be necessary to bring you back in to give you
6 some additional instructions. But if there are
7 no directions or additions that need to be
8 given, then we will gather the exhibits and
9 deliver them to you.

10 When you receive the exhibits, then
11 and only then may you begin your deliberations.
12 Once the deliberations start, the only
13 restriction that I place on the deliberations
14 is this, that if any juror leaves the table
15 that you must stop deliberating until all
16 twelve or you are together. Other than that,
17 you may proceed as you deem fit and proper.

18 Also, we probably will not send the CD
19 back that you viewed. If you need to view that
20 again, let me know and we will bring you into
21 the courtroom and accomplish that for you. You
22 will have full access to it but we don't send
23 it back because we'd have to send all the
24 equipment back with it.

25 Thank you for your attention. Please

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1 retire to your jury room and await your
2 exhibits before commencing your deliberations.

3 (JURY OUT @ 4:41 P.M.)

4 THE COURT: Any exceptions or
5 additions from the State?

6 SOLICITOR CORNWELL: No, sir.

7 THE COURT: Any exception or
8 additions from the defense?

9 PATRICIA KENNEDY: Nothing, Your Honor.

10 (EXHIBITS REVIEWED BY COUNSEL)

11 (JURY IN DELIBERATION @ 4:49 P.M.)

12 (NOTIFIED OF JURY QUESTION @ 5:05 P.M.)

13 (DEFENDANT PRESENT)

14 THE COURT: We have a question,
15 please bring in the jury.

16 (JURY IN @ 5:37 P.M.)

17 THE COURT: Mr. Chatham, I have what
18 will now be marked as Court's Exhibit 2. You
19 are requesting the description or definition of
20 the charge on burglary first, the elements of
21 it. I am in the process of printing that for
22 you and will send that back to you with the
23 exhibit attached to it. Please keep that with
24 all the other exhibits. If additional charge
25 is needed, just let me know and I will be happy

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1 to provide that as well.

2 (SO ENTERED AS COURT'S EXHIBIT 2)

3 THE COURT: Then there was also a
4 question of whether the son was present at the
5 time of the burglary charge? That's question
6 of fact. I am not at liberty comment on that.
7 You'll have to decide that -- the importance of
8 that is up to y'all. That has to be decided
9 based on your consideration of the evidence.
10 Thank you very much. All right, I will be
11 sending this back. Forgive me for my delay in
12 getting to you. A jury was listening to some
13 testimony and we had to get to a stopping
14 point. You may retire and begin your
15 deliberation. I will be sending this with the
16 bailiff.

17 (JURY OUT @ 5:40 P.M.)

18 THE COURT: Any exceptions or
19 additions from the State?

20 SOLICITOR CORNWELL: No, sir.

21 THE COURT: Exceptions or additions
22 frm the defense?

23 PATRICIA KENNEDY: No, sir.

24 (COURT'S EXHIBIT 2 PROVIDED @ 5:45 P.M.)

25 (JURY IN DELIBERATION)

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1 (NOTIFIED OF JURY QUESTION @ 6:40 P.M.)

2 (DEFENDANT PRESENT)

3 THE COURT: We have a note from the
4 jury that they can't agree. They have only
5 been deliberating a couple of hours. Do you
6 want me to bring them out and give them an
7 Allen charge?

8 COURT REPORTER: Court's Exhibit 3.

9 (SO ENTERED AS COURT'S EXHIBIT 3)

10 PATRICIA KENNEDY: No, Your Honor.

11 THE COURT: Does the State want an
12 Allen charge?

13 SOLICITOR CORNWELL: No, I'm fine
14 with ---

15 THE COURT: I am going to tell them
16 to continue deliberations. If they say that
17 they are deadlocked again, there is no
18 additional charge. So that's it.

19 PATRICIA KENNEDY: Okay.

20 THE COURT: That triggers it. Judge
21 Ervin unfortunately did that and that was
22 reversed. Can't make them -- without some
23 additional evidence or request for additional
24 instruction. You do not wish an Allen charge?

25 PATRICIA KENNEDY: No, Your Honor.

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1 THE COURT: Do you want to talk to
2 your client about that?

3 PATRICIA KENNEDY: Yes, sir, I
4 will -- (sidebar with Defendant).

5 THE COURT: We will attach this to
6 the note (Court's Exhibit 3) and send it back
7 to the jury, (reading): "Mr. Presiding Juror,
8 thank you for the information. Please continue
9 your deliberations on the burglary charge. If
10 further instruction is needed or if the jury
11 needs to rehear any testimony, please let me
12 know." Signed by me. Any objection from the
13 State?

14 SOLICITOR CORNWELL: No objection.

15 THE COURT: Any objection from Mr.
16 Cribb?

17 PATRICIA KENNEDY: No, Your Honor.

18 THE COURT: Would you like to show
19 that to him, as well?

20 PATRICIA KENNEDY: (Takes note
21 from judge, sidebar with client) -- thank you,
22 Your Honor.

23 THE COURT: Mr. Pontiff, if you
24 would take this to the jury, please.

25 (JURY IN DELIBERATION)

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1 (DEFENDANT PRESENT)

2 THE COURT: I thought that we were
3 going to have a question -- maybe not.

4 Let me ask y'all a question. Other
5 states do it, but they have a rule that allows
6 it but we don't. I do it if it is in agree-
7 ment. I've done twice in criminal cases and I
8 do it frequently in civil cases. If they ask
9 can we stop and come back tomorrow, what is the
10 State's position? Just think about it. What
11 would be the defendant's position. Just think
12 about it.

13 How long would it take us to obtain
14 some food items?

15 CLERK: You want some crackers?

16 THE COURT: All right, New York,
17 calm down. I'll have you know I am going to
18 Kingstree this weekend.

19 CLERK: It'd be a minimum of forty-
20 five minutes.

21 THE COURT: Why don't we inquire
22 from both jurors whether or not they need us
23 to send -- that's a good way to find out if
24 progress is being made, to ask whether or not
25 they need us to order supper. Don't tell them

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1 what we're ordering -- pizza.

2 BAILIFF: Your Honor, the first
3 jury would like for us to order something but
4 this jury indicated they just need a few more
5 minutes.

6 THE COURT: Very good. Just let
7 us know when they are ready.

8 (NOTIFIED OF VERDICT @ 7:20 P.M.)

9 (DEFENDANT PRESENT)

10 THE COURT: State ready to receive
11 the verdict?

12 SOLICITOR CORNWELL: Yes, sir.

13 THE COURT: Defendant ready to
14 receive the verdict?

15 PATRICIA KENNEDY: Yes, Your
16 Honor.

17 (JURY IN @ 7:24 P.M.)

18 THE COURT: Thank you very much,
19 Ladies and Gentlemen. I understand that the
20 jury has reached a verdict?

21 FOREMAN: Yes, sir.

22 THE COURT: Please pass the verdict
23 form to Ms. Wiggins.

24 FOREMAN: (Tenders).

25 MS. WIGGINS: (Tenders to the

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1 Court).

2 THE COURT: (Upon review), the
3 verdict forms have been properly completed.
4 I would ask the Defendant to please rise.

5 DEFENDANT: (Complies).

6 THE COURT: State of South Carolina,
7 County of Berkeley, Docket Number 12-GS-08-871,
8 the State of South Carolina versus Fred Woodrow
9 Cribb, (reading): "We, the jury, by unanimous
10 consent find the Defendant, Fred Woodrow Cribb
11 on the charge of financial transaction card
12 theft Guilty." Signed by Mr. Chatham as the
13 presiding juror, dated November 28th, 2012.

14 "We, the jury, by unanimous consent
15 find the Defendant, Fred Woodrow Cribb, on the
16 charge of Burglary First Guilty." Signed by
17 Mr. Chatham again as the presiding juror, dated
18 November 28th, 2012.

19 "We, the jury, by unanimous consent
20 find the Defendant, Fred Woodrow Cribb, on the
21 charge of financial transaction card fraud
22 Guilty." Signed by Mr. Chatham as the
23 presiding juror. Dated November 28th, 2012.

24 Ms. Garrison (court reporter), for the
25 record, the Burglary charge is 12-869 and the

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1 financial transaction card fraud is 12-GS-08-
2 0870.

3 Ladies and Gentlemen, if I have
4 published your verdicts correctly, please so
5 indicate by raising your right hand -- (jurors
6 unanimously raise right hands).

7 Thank you, each juror raised their
8 right hand in response to the Court's inquiry.
9 Anything further from the State of the jury?

10 SOLICITOR CORNWELL: No, Your Honor.

11 THE COURT: Anything further from
12 Mr. Cribb?

13 PATRICIA KENNEDY: No, Your Honor.
14 With the raised hands, there is no need to poll
15 the jury.

16 THE COURT: Thank you. You may be
17 seated, Mr. Cribb.

18 Ladies and Gentlemen, thank you very
19 much for your assistance and your
20 participation. It has been an honor to serve
21 with each one of you. I am pleased to inform
22 you that you are now discharged from any
23 further service with the jury this week. This
24 concludes your services.

25 You are now free to talk about this

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1 case, if you wish. But you also are free to
2 not talk about it. If somebody should persist
3 in asking you questions and they won't stop,
4 please call Mrs. Brown. She can make that
5 known to me and we will take care of that for
6 you.

7 Have a good evening. You are now free
8 to leave. You are also free to stay if you
9 wish. That's up to you. If anybody wishes to
10 stay, sentence will be imposed in just a few
11 moments. Thank you.

12 (JURY EXCUSED)

13 THE COURT: Anything from the State?

14 SOLICITOR CORNWELL: No, Your Honor.
15 Just may we have a couple minutes? We are
16 bringing the sentencing sheets up now.

17 THE COURT: Anything from the
18 Defendant?

19 PATRICIA KENNEDY: We would
20 reserve until the time of the sentencing, Your
21 Honor.

22 THE COURT: Thank you. We will be
23 at ease for just a few moments.

24 (BRIEF RECESS)

25 (DEFENDANT PRESENT)

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1 THE COURT: Are we ready?

2 SOLICITOR CORNWELL: Yes, sir. Mr.

3 and Mrs. Kiley weren't able to stand for the

4 remainder of the trial but they, of course,

5 want to let you know that they are very, very

6 interested in this matter. It is obviously a

7 very horrific thing that happened for them. He

8 took advantage of their charity, betrayed their

9 trust.

10 For purposes of the record, his prior

11 record:

12 '85 trespassing,

13 '85 disorderly conduct,

14 '95 possession of cocaine,

15 '95 resisting arrest,

16 '96 possession of stolen goods,

17 '96 grand larceny,

18 '97 shoplifting,

19 '98 resisting arrest,

20 '98 contributing to the delinquency of

21 a minor,

22 '02 petty larceny,

23 '03 petty larceny,

24 '03 fraudulent check,

25 '03 malicious injury to property

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1 '03 breach of trust with fraudulent
2 intent,

3 '05 possession of a Schedule II
4 narcotic,

5 '05 shoplifting,

6 '07 trespass after notice,

7 '07 property crime enhancement,

8 '11 property crime enhancement, and

9 '11 property crime enhancement.

10 The State is not making a
11 recommendation on sentencing. We defer to Your
12 Honor. We do believe, due to his prior record,
13 that a minimum sentence is inappropriate and
14 would ask something a little higher in the
15 range.

16 THE COURT: Thank you. Ms. Kennedy,
17 I will be happy to hear from you now.

18 PATRICIA KENNEDY: Thank you, Your
19 Honor, may it please the Court. Your Honor,
20 Mr. Cribb is forty-six years of age. He has
21 spent the past two hundred and eighty-seven
22 (287) days in jail, ever since he got arrested
23 on these charges.

24 He is a lifelong resident of this
25 community. He lived in Goose Creek most of his

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1 life. He has four adult children.

2 We understand, Your Honor, that you
3 have wide discretion in imposing the sentence
4 on Mr. Cribb. He has had considerable
5 difficulty with the law and he acknowledges
6 that and accepts that. In talking with him
7 during the deliberations, he shared with me
8 that he is very sorry and regrets that he had
9 gone into the house that night. He genuinely
10 -- it may sound a bit off, but he genuinely
11 cares for Mr. and Mrs. Kiley. When he saw them
12 this morning, he was shocked at Mr. Kiley's
13 appearance. He is very concerned, notwith-
14 standing what he's been convicted of, about
15 what happened to them and his relationship with
16 them.

17 I understand the solicitor's position,
18 nevertheless what I would ask the court to do
19 is -- and, again, obviously you have wide
20 discretion, is to sentence him to a minimum
21 sentence, taking into account how much time he
22 has served and taking into account his age.

23 I've spoken with his mother several
24 times during the course of my representation of
25 him. We have talked about a number of things,

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1 one of which is that he has to live with his
2 decision to go to trial and rejected the plea.
3 Of course, that is something that she has to
4 live with too.

5 I would ask you to consider the
6 minimum sentence or something above minimum but
7 certainly not a thirty-year or life sentence.

8 THE COURT: Mr. Cribb, is there
9 anything that you wish to add?

10 DEFENDANT: No, sir.

11 THE COURT: Court's Exhibit 1 is the
12 charges ---

13 COURT REPORTER: Certified prior
14 convictions.

15 THE COURT: Based on Court's Exhibit
16 1, and the statements of the solicitor, I find
17 that the conviction on 12-870, the underlying
18 charge, obviously the State has elected to
19 proceed with the property crime enhancement and
20 that's appropriate. He was found guilty of
21 that.

22 The potential sentence for the theft,
23 is that five or one?

24 SOLICITOR CORNWELL: Five, Your
25 Honor.

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1 THE COURT: Five?

2 PATRICIA KENNEDY: Yes, sir.

3 THE COURT: The sentence of the
4 Court, Mr. Cribb, is as follows:

5 On Indictment 12-GS-08-870, the
6 sentence is -- that is the enhancement -- the
7 sentence is eight (8) years, concurrent, with
8 two hundred and eighty-seven (287) days credit
9 for time served.

10 On Indictment 12-GS-08-871, the
11 sentence is five years, concurrent, credit for
12 two hundred eighty-five days of time served.

13 On Indictment 12-GS-08-869, the
14 sentence is twenty-one years. I give you
15 credit for two hundred eighty-seven days time
16 served. It is also concurrent.

17 I considered running one of them
18 consecutive and putting him on probation, but
19 you will have a two-year community supervision
20 and I think that will take care of giving you
21 some supervision to get back in the community.

22 Good luck to you, sir.

23 (TRIAL CONCLUDED)

24

25

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1 CERTIFICATE OF REPORTER

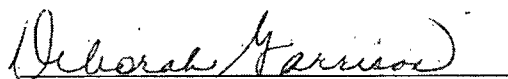
2

3 I, the undersigned, Deborah Garrison,
4 official court reporter for the 9th Judicial
5 Circuit of the State of South Carolina, do
6 hereby certify that the foregoing is a true,
7 accurate and complete transcript of the hearing
8 held before The Honorable R. Markley Dennis,
9 Jr., on November 28, 2012;

10 I further certify that I am neither kin
11 nor counsel to any of the parties and have no
12 interest in the outcome of this action.

13

14



15

Deborah Garrison

16

Circuit Court Reporter

17

9th Judicial Circuit

18

19

20

21

22 Charleston, South Carolina

23 April 30, 2013

COR2012-02-00223

WITNESSES

Berkeley County Sheriff's Office

[Signature]

AGENCY CASE NUMBER

201202005258

ARREST WARRANT NUMBER

N160018

DATE OF ARREST

February 16, 2012

ACTION OF GRAND JURY

True Bill

[Signature]
Foreperson of Grand Jury
Date: 5/16/12

VERDICT

Foreperson of Petit Jury

Date.

INDICT

DOCKET NO. 2012-GS-08-0869

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

May Term 2012

THE STATE

Vs

FRED WOODROW CRIBB

DOB:

W/M

Indictment for

Burglary, First Degree

2012 MAY 16 PM12:59
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY

FILED

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

INDICTMENT

At a Court of General Sessions, convened on May 16, 2012 the Grand Jurors of Berkeley County present upon their oath:

Burglary, First Degree

That Fred Woodrow Cribb did in Berkeley County, South Carolina, on or about February 5, 2012, did enter the dwelling of Roberta Kiley, located at Ave, during night time hours without consent and with the intent to commit a crime therein, to wit: larceny. This is in violation of Section 16-11-311 of the South Carolina Code of Laws (1976) as amended.

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


ASHLEY B. CORNWELL
ASSISTANT SOLICITOR

244

STATE OF SOUTH CAROLINA

COUNTY OF Berkeley
STATE VS.Fred Woodrow Cribb

AKA: _____

Race: WHITE Sex: M Age: 46DOB: SS#: _____Address: d 1City, State, Zip: Ladson, SC 29456DL#: SD#: _____*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Burglary, 1st degreein violation of § 16-11-0311 of the S.C. Code of Laws, bearing CDR Code # 0079☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45 w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ 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:

Cornwell Ashley B SC Bar# _____ Defendant Attorney for Defendant SC Bar# _____WHEREFORE, the Defendant is committed to the: ☒ State Department of Corrections, ☐ County Detention Center.for a determinate term of 22 days/months/years for: ☐ Under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____ provided that upon the service of _____ days/months/years and/or payment

of \$ _____ plus costs and disbursements 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 appliedby the State Department of Corrections. 87 days☐ The Defendant is to be placed on the Central Register of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922(a) 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: ☐ Interred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS

Recipient: _____

*Fine:

§ 14-1-206 (Assaults 1st degree) \$ _____

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

§ 56-5-2995 (DUI Assessment) \$12 \$ _____

§ 56-1-286 (DUI Breath Test) \$23 \$ _____

Proviso 47.9 (Public Def Prob) \$500 \$ _____

§ 14-1-212 (Law Enforcement Fine) \$25 \$ 25.00

§ 14-1-213 (Drug Court Surcharge) \$120 \$ _____

§ 50-21-114(B)(1) (Breath Test Fee) \$50 \$ _____

§ 56-5-2942(J) (Vehicle Assessment) \$400 \$ _____

Proviso 90.5 (SCCA Surcharge) \$5 \$ 5.00

3% to County (if paid in installments) \$ _____

TOTAL: \$ 130.00Clerk of Court/ Deputy Clerk: Linda A. HillCourt Reporter: Deborah Garrison

SCCA/217 (03/2011)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT CASE#: 2012-GS-08-0869A/W#: N160018Date of Offense: 2/5/2012S.C. Code § 16-11-0311CDR Code #: 0079

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

PTUP _____

_____ days/hours Public Service Employment

Obtain 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 Fund

Offer: _____

☐ Appointed PD or appointed other counsel.

§ 47-12 requires \$500 be paid to Clerk

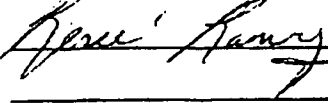
during probation.

Presiding Judge: R. M. [Signature]Judge C.O.S. 2012Sentence Date: 11/28/12Let

COR2012-02-00223

WITNESSES

Berkeley County Sheriff's Office



AGENCY CASE NUMBER

201202005258

ARREST WARRANT NUMBER

N160019

DATE OF ARREST

February 16, 2012

ACTION OF GRAND JURY

True Bill


Foreperson of Grand Jury
Date: 5/16/12

VERDICT

Foreperson of Petit Jury

Date

INDICT

DOCKET NO. 2012-GS-08-0870

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

May Term 2012

THE STATE

Vs

FRED WOODROW CRIBB

DOB:

W/M

Indictment for

Property Crime Enhancement

MARY L. BROWN
CLERK OF COURT
BERKELEY COUNTY

2012 MAY 16 PM 12:59

FILED

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)

INDICTMENT

At a Court of General Sessions, convened on May 16, 2012 the Grand Jurors of Berkeley County present upon their oath:

Property Crime Enhancement

That Fred Woodrow Cribb, did in Berkeley County, on or about February 5, 2012, did knowingly, willfully, unlawfully and feloniously take from victim, Roberta Kiley, a financial transaction card, with the intent to deprive the victim of the value of said items in violation of Section 16-14-0060(A) S.C. Code of Laws, 1976, as amended; such being the defendant's third or subsequent offense for which the penalty is contingent upon the value of the property involved, in violation of Section 16-01-0057, S.C. 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.


ASHLEY B. CORNWELL
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Berkeley
STATE VS.Fred Woodrow Cribb

AKA:

Race: WHITE Sex: M Age: 46DOB: SS#:

Address:

City, State, Zip: Madison, SC 29456DL#: SID#:*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or ☐ PLEADSTO: FinanTC / Financial Transaction Card fraud value \$500 or less in six month period (Enhancement per 16-1-57)in violation of § 16-01-0057 of the S.C. Code of Laws, bearing CDR Code # 3621☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)The 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:

Cornwell, Ashley B

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 3 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. 257 days☐ 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 ☐ Del. Waives Hearing ☐ Ordered PTUPTotal: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 102.5%) \$ § 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ § 56-5-2995 (DUI Assessment) \$12 \$ § 56-1-286 (DUI Breath Test) \$25 \$ Proviso 47.9 (Public Def/Prob) \$500 \$ § 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00§ 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 \$ 5.003% to County (if paid in installments) \$ 3.90TOTAL \$ 133.90

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012-GS-08-0870A/W#: N160019Date of Offense: 2/5/2012S.C. Code §: 16-01-0057CDR Code #: 3621

SENTENCE SHEET

Presiding Judge

Judge Code:

Sentence Date:

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

COR2012-02-00223

WITNESSES

Berkeley County Sheriff's Office

Here: Ramsey

AGENCY CASE NUMBER

201202005258

ARREST WARRANT NUMBER

N160020

DATE OF ARREST

February 16, 2012

ACTION OF GRAND JURY

True Bill

DK Fite
Foreperson of Grand Jury

Date: 5/16/12

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2012-GS-08-0871

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

May Term 2012

THE STATE

Vs

FRED WOODROW CRIBB

DOB:

W/M

Indictment for

Financial Transaction Card Theft

2012 MAY 16 PM 12:59
MASTY, J. J.
CLERK OF COURT
BERKELEY COUNTY, SC

FILED

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)

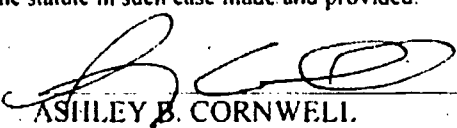
INDICTMENT

At a Court of General Sessions, convened on May 16, 2012 the Grand Jurors of Berkeley County present upon their oath:

Financial Transaction Card Theft

That Fred Woodrow Cribb did in Berkeley County, South Carolina, on or about February 5, 2012, unlawfully did take, obtain or withhold a financial transaction card or number belonging to Roberta Kiley without her consent and with the intent to use said card or number; in violation of Section 16-14-20 of the South Carolina Code of Laws, (1976) as amended.

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


ASHLEY B. CORNWELL
ASSISTANT SOLICITOR

250

STATE OF SOUTH CAROLINA

COUNTY OF Berkeley
STATE VS.Fred Woodrow Cribb

AKA:

Race: WHITE Sex: M Age: 46DOB: SS#:

Address:

City, State, Zip: Ladson, SC 29456DL#: SID#:*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Financial Transaction Card Theft

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012-GS-08-0871A/W#: N160020Date of Offense: 2/5/2012S.C. Code §: 16-14-0020, 0100(b)CDR Code #: 0348

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-14-0020, 0100(b) of the S.C. Code of Laws, bearing CDR Code # 0348☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)The 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:

Cornwell, Ashley B

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference☒ 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 257 day☐ 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 ☐ Det. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 10/13/11)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

Proviso 47.9 (Public Def/Prob)

§ 14-1-212 (Law Enforce Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114 (DUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

Proviso 90.5 (SCCJA Surcharge)

3% to County (if paid in installments)

TOTAL

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PTUP

_____ days/hours Public Service Employment

Obtain 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 Fund

Other: _____

☐ Appointed PD or appointed other counsel.
§ 47.12 requires \$500 be paid to Clerk
during probation.

Presiding Judge

Judge Code: 2560Sentence Date: 11/28/12

Clerk of Court/Deputy Clerk

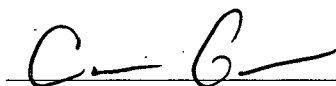
Court Reporter

SCCA/217 (03/2011)

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

November 6th, 2013



Carmen V. Ganjehsani
Appellate Defender

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

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Berkeley County

R. Markley Dennis, Jr., Circuit Court Judge

ORIGINAL

RECEIVED

NOV 06 2013

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

FRED WOODROW CRIBB,

APPELLANT

CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Mr. Fred Cribb this 6th day of November, 2013.

Brandon Hall

Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 6th day of November, 2013.

Mark J. Wood (L.S.)
Notary Public for South Carolina
My Commission Expires: July 3, 2023