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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Laurens County

Honorable J. Derham Cole, Circuit Court Judge

STEPHEN TRASE FINCHER,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-001249

APPENDIX

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State of South Carolina) In the Court of General Sessions
) Eighth Judicial Circuit
County of Laurens) 2016-GS-30-0757
2016-GS-30-0759

State of South Carolina,)
)
Plaintiff,)
)
vs.) Transcript of Record
)
Stephen Trase Fincher,)
)
Defendant.)
)
_____)

March 27-28, 2017
Laurens, South Carolina

B e f o r e:

The Honorable Benjamin H. Culbertson, Judge; and a jury

A p p e a r a n c e s:

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TRIAL DAY 1 - 03/27/17

(Whereupon, the proceedings were commenced at 11:15 a.m.)

THE COURT: All right. Ladies and gentlemen, please listen up. We're getting ready to start the trial of the case of the *State of South Carolina v. Stephen Trase Fincher*, F-i-n-c-h-e-r.

Before we do that, I've got a series of questions to go over with you. It's referred to as *voir dire* questioning. Now, all of you have been qualified to serve as jurors for this term of General Sessions court. However, the next series of questions I have to go over with you are to determine whether or not you're qualified to serve as jurors on this particular case. And it also gives the attorneys some additional information that assists them in the jury-selection process.

So as I told you during qualifications, jurors, just like witnesses, are constantly taking oaths. So if I could please get you to stand and raise your right hand and take the oath to respond to these questions.

(Whereupon, the jury panel was duly sworn at 1:32 p.m.)

THE COURT: Now, is there any member of the jury panel that did not respond to the oath by saying, "I do"?

If so, please stand.

(Whereupon, no potential juror stood.)

THE COURT: Now, ladies and gentlemen, as I said, we're getting ready to start the trial of the case of the *State of South Carolina v. Stephen Trase Fincher*. Now, Mr. Fincher is charged with two counts of burglary in the first degree. The allegations in this case are that on or about May -- March the 9th of 2016, that Mr. Fincher allegedly broke into the dwelling of Teddy Hampton and the dwelling of Brittany Childress and Annette Childress.

Now, is there any member of the jury panel that has heard anything, read anything, discussed anything, or knows anything about this case? If so, please stand.

(Whereupon, no potential juror stood.)

THE COURT: All right. As I said, the defendant is Stephen Trase Fincher. The alleged victims are Teddy Hampton and Brittany Childress and Annette Childress.

Now, is there any member of the jury panel related by blood or marriage, have a close, personal relationship, business relationship, social relationship, or any other type of relationship with either the defendant, Stephen Trase Fincher; or the alleged victims, Teddy Hampton, Brittany Childress, and Annette Childress? If so, please stand.

(Whereupon, no potential juror stood.)

THE COURT: All right. Please listen carefully, as these are potential witnesses who may testify in this case. The potential witnesses are Teddy Hampton, Esther Shell, Indigo Johnson, Xavier Johnson, Annette Childress, Brittany Childress, DH [redacted], David Staton of the Laurens County Sheriff's Office, Robbie Haupfear of the Laurens County Sheriff's Office, Chris Martin of the Laurens County Sheriff's Office, and Jamie Edwards of the Laurens County Sheriff's Office.

Now, is there any member of the jury panel related by blood or marriage, have a close, personal relationship, business relationship, social relationship, or any other type of relationship with any of these potential witnesses? If so, please stand.

(Whereupon, one potential juror stood.)

THE COURT: Yes, ma'am. Your name and number?

POTENTIAL JUROR: Ashley Holliday, No. 92.

THE COURT: All right. Ms. Holliday, who is that you know?

POTENTIAL JUROR: Indigo Johnson on the witness list works at the company I work for, and I do her payroll.

THE COURT: Okay. Now, what company is that?

POTENTIAL JUROR: Teknor Apex in Fountain Inn.

THE COURT: All right. Now, is this a large company where y'all don't have any interaction or do you see her

on a regular basis?

POTENTIAL JUROR: We have 300 people, and I might see her once a week.

THE COURT: Okay. Is -- do you have any other social activity or other type of activity outside of the workplace?

POTENTIAL JUROR: No, sir.

THE COURT: All right. Would your relationship with Ms. Johnson affect your ability to give both the state and the defendant in this case a fair and impartial trial?

POTENTIAL JUROR: No, sir.

THE COURT: Would you be able to disregard the fact that y'all work at the same place in its entirety and base your decision in this case exclusively on the testimony and evidence in this case?

POTENTIAL JUROR: Yes, sir.

THE COURT: Okay. Thank you very much, Ms. Holliday, for bringing that to our attention, okay?

Anyone else have any type of relationship with any of these potential witnesses?

(Whereupon, one potential juror stood.)

THE COURT: Yes, ma'am. Your name and number?

POTENTIAL JUROR: Sandra Westbury, 189. I used to work -- it's been 6 1/2 years ago. I used to work at the

Laurens County Detention Center. But I haven't seen any of them since that time.

THE COURT: All right. I'm assuming, when you say any of them, you're talking about these employees of the sheriff's department?

POTENTIAL JUROR: That's correct.

THE COURT: All right. Would any past relationships or any current relationships with them affect your ability to give both the state and the defendant in this case a fair and impartial trial?

POTENTIAL JUROR: No, sir.

THE COURT: All right. Would you be able to disregard the fact that you worked at the detention center and know these people from that employment in its entirety and base your decision in this case exclusively on the testimony and evidence in this case?

POTENTIAL JUROR: Yes, sir.

THE COURT: All right. Thank you, Ms. Westbury, for bringing that to our attention.

Anyone else?

(Whereupon, no potential juror stood.)

THE COURT: All right. Prosecuting this case on behalf of the state are attorneys Jim Todd and Dale Scott of the Eighth Circuit Solicitor's Office. The attorney for the defendant is attorney Lawrence Crane, attorney at

law here in Laurens, South Carolina. Now, is there any member of the jury panel related by blood or marriage, have a close, personal relationship, business relationship, social relationship, or any other type of relationship with any of these attorneys? If so, please stand.

(Whereupon, no potential juror stood.)

THE COURT: Is any member of the jury panel ever been represented by any of these attorneys? If so, please stand.

(Whereupon, no potential juror stood.)

THE COURT: Is any member of the jury panel ever been involved in any legal action in which any of these attorneys represented another party to that action? If so, please stand.

(Whereupon, no potential juror stood.)

THE COURT: Is there any member of the jury panel who either personally has a family member or close, personal friend employed with the Eighth Circuit Solicitor's Office or the Law Office of Lawrence Crane? If so, please stand.

(Whereupon, no potential juror stood.)

THE COURT: Has any member of the jury panel formed or expressed an opinion about any issue or matter involved in this case? If so, please stand.

(Whereupon, no potential juror stood.)

THE COURT: Is any member of the jury panel aware of any bias or prejudice towards either the state or the defendant in this case? If so, please stand.

(Whereupon, no potential juror stood.)

THE COURT: Is there any member of the jury panel that was a member of the grand jury that issued the indictment in this case? If so, please stand.

(Whereupon, no potential juror stood.)

THE COURT: Is there any member of the jury panel who is a member of or a contributor to any group which has as its primary concern the promotion of law enforcement or victims' rights? Now, some of these organizations are Mothers Against Drunk Drivers, also referred to as MADD; Students Against Drunk Drivers, also referred to as SADD; Citizens Against Violent Crime, also called CAVE; or CASA, Citizens Against Spousal Abuse.

Any member of the jury panel a contributor to or a member of any such organization or similar organization? If so, please stand.

(Whereupon, one potential juror stood.)

THE COURT: Yes, ma'am. Your name and number?

POTENTIAL JUROR: Tori Garner, and I'm not sure of the number.

CLERK OF COURT: Her number is 64.

THE COURT: 64, Ms. Garner. Are you a member of or a contributor to?

POTENTIAL JUROR: I used to be a member of SADD in high school, but I graduated last year.

THE COURT: All right. Would the fact that you were a member in that organization affect your ability to give both the state and the defendant in this case a fair and impartial trial?

POTENTIAL JUROR: No.

THE COURT: Would you be able to disregard your past membership in that organization in its entirety and base your decision in this case exclusively on the testimony and evidence in this case?

POTENTIAL JUROR: Yes.

THE COURT: Thank you for bringing that to our attention. Anyone else?

(Whereupon, no potential juror stood.)

THE COURT: Is there any member of the jury panel who either personally, has a family member, or close, personal friend who has either been charged with a crime or has been the victim of a crime? If so, please stand.

(Whereupon, potential jurors stood.)

THE COURT: Does ---

THE BAILIFF: Your Honor?

THE COURT: Yes, sir. Your name and number?

POTENTIAL JUROR: Jonathan Allen, 2.

THE COURT: All right. Mr. Allen, if you'd come forward, please.

(Whereupon, the potential juror came forward.)

THE COURT: Yes, sir. Come on up. Thank you. All right. Was this you? A family member? Friend? What?

POTENTIAL JUROR: Me.

THE COURT: Okay. You -- were you charged with a crime or the victim of a crime?

POTENTIAL JUROR: Victim.

THE COURT: Okay. And how long ago was this?

POTENTIAL JUROR: Five years.

THE COURT: And what was the crime?

POTENTIAL JUROR: I don't know what you call it, but a trailer from my home was stolen ---

THE COURT: Okay.

POTENTIAL JUROR: --- a thousand dollars' value.

THE COURT: All right. Would that affect your ability to give both the state and the defendant in this case a fair and impartial trial?

POTENTIAL JUROR: No, sir.

THE COURT: All right. Would you be able to disregard all of the facts and circumstances regarding that crime and base your decision in this case exclusively on the testimony and evidence in this case?

POTENTIAL JUROR: Yes, sir.

THE COURT: All right. Thank you for bringing that to our attention. All right.

(Whereupon, the potential juror returned to the jury panel.)

THE COURT: Yes, ma'am. Your -- and I apologize. Since we have to create a record, every time you stand, I'll need you to give me your name and number.

POTENTIAL JUROR: Tori Garner, and I didn't hear the number.

THE BAILIFF: 64.

THE COURT: Okay.

CLERK OF COURT: 64.

THE COURT: Yeah, 64. All right. Ms. Garner, if you'd come forward, please.

(Whereupon, the potential juror came forward.)

THE COURT: All right. Was this you? A family member?

POTENTIAL JUROR: No. It was two close friends.

THE COURT: And were the victims of crimes, or did they commit a crime?

POTENTIAL JUROR: They committed the crime, and the other was a victim of the crime.

THE COURT: Okay. And how long ago was this?

POTENTIAL JUROR: This was about a year ago. It was

a drunk-driving accident.

THE COURT: A drunk-driving accident?

POTENTIAL JUROR: Yeah.

THE COURT: Okay. And one of them was the driver and one was the victim -- injured ---

POTENTIAL JUROR: One passed away. Yeah.

THE COURT: Okay. Would that incident affect your ability to give both the state and the defense in this case a fair and impartial trial?

POTENTIAL JUROR: No.

THE COURT: Would you be able to disregard all of the facts and circumstances surrounding that charge and that crime and base your decision in this case exclusively on the testimony and evidence in this case?

POTENTIAL JUROR: Yes.

THE COURT: Okay. Thank you for bringing that to our attention.

(Whereupon, the potential juror returned to the jury panel.)

THE COURT: All right. Anyone else who has ever been charged with or victim of a crime?

(Whereupon, potential jurors stood.)

THE COURT: Yes, sir. Your name and number?

POTENTIAL JUROR: Chad Rushing, No. 150.

THE COURT: All right. Mr. Rushing, if you would

come forward, please.

(Whereupon, the potential juror came forward.)

POTENTIAL JUROR: All right. This was in the state of Missouri about eight years ago. I was assaulted by a person driving a vehicle. And he struck me and then assaulted me with a knife.

THE COURT: Okay.

POTENTIAL JUROR: And I was placed in witness -- whatever they call it -- protection.

THE COURT: Okay.

POTENTIAL JUROR: And I haven't heard from them since.

THE COURT: All right. Would that incident affect your ability to give both the state and the defendant in this case a fair and impartial trial?

POTENTIAL JUROR: It wouldn't affect my decision. No.

THE COURT: Okay. Would you able to disregard that crime in its entirety and base your decision in this case exclusively on the testimony and evidence in the case?

POTENTIAL JUROR: Yes, sir, I can.

THE COURT: Okay. Thank you for bringing that ---

POTENTIAL JUROR: Yeah.

THE COURT: --- to our attention.

(Whereupon, the potential juror returned to the jury

panel.)

THE COURT: Is there anyone else?

(Whereupon, one potential juror stood.)

THE COURT: Yes, sir. Your name and number?

POTENTIAL JUROR: Anthony Lilly, and I'm not really sure of the number.

THE COURT: I'm sorry. Your name again?

POTENTIAL JUROR: Anthony Lilly.

MR. CRANE: Williams, I think he said.

CLERK OF COURT: Lilly. Okay. He's 109.

THE COURT: Anthony Lilly?

POTENTIAL JUROR: Yes, sir.

THE COURT: All right. Mr. Lilly, if you'd come forward, please.

(Whereupon, the juror came forward.)

THE COURT: Is this you, a family member, or who?

POTENTIAL JUROR: I've been charged with -- with a couple of crimes in the past.

THE COURT: Okay. What have you been charged with and when?

POTENTIAL JUROR: DUI, 2012; and simple possession of marijuana in '13.

THE COURT: Okay. Would the fact that you've been charged with a crime affect your ability to give the state and the defendant a fair and impartial trial?

POTENTIAL JUROR: Absolutely not.

THE COURT: Would you be able to disregard the fact that you've been charged in its entirety and ---

POTENTIAL JUROR: Yes, sir.

THE COURT: --- base your decision in this case exclusively on the testimony and evidence in this case?

POTENTIAL JUROR: Yes, Your Honor.

THE COURT: All right. Thank you, Mr. Lilly, for bringing that to our attention.

(Whereupon, the potential juror returned to the jury panel.)

(Whereupon, a potential juror stood.)

THE COURT: Yes, sir. Your name and number?

POTENTIAL JUROR: I'm Claude Faulkner, 201.

CLERK OF COURT: Faulkner. His last name is Faulkner.

THE COURT: Oh. It is 201. Okay.

CLERK OF COURT: Yeah.

THE COURT: All right. Mr. Faulkner, if you'd come forward, please.

(Whereupon, the potential juror came forward.)

THE COURT: Yes, sir. Was this you, a family member, or ---

POTENTIAL JUROR: Me. I was a victim of a break-in about five/six years ago.

THE COURT: All right. Would that affect your ability to give the state and the defendant ---

POTENTIAL JUROR: I don't ---

THE COURT: --- in this case ---

POTENTIAL JUROR: --- believe so.

THE COURT: Okay. And I appreciate your honesty in saying ---

POTENTIAL JUROR: Uh-huh.

THE COURT: --- you don't believe so. And we're all affected by different influences. But if you think that would affect you in any way ---

POTENTIAL JUROR: No. It was in a covered place, and it wasn't nobody hurt. So ---

THE COURT: Okay. Would you be able to disregard that crime in its entirety?

POTENTIAL JUROR: Yeah.

THE COURT: Okay. Thank you for bringing that to our attention.

(Whereupon, the potential juror returned to the jury panel.)

THE COURT: Anyone else?

(Whereupon, a potential juror stood.)

THE COURT: Yes. Your name and number?

POTENTIAL JUROR: Debra Barnes, 10.

THE COURT: All right. Ms. Barnes, if you would

come forward, please.

(Whereupon, the potential juror came forward.)

THE COURT: Was this you or a family member or ---

POTENTIAL JUROR: No.

THE COURT: --- who?

POTENTIAL JUROR: I'm a -- I was a victim of domestic violence, and my husband was arrested. This was first marriage, and he later ---

THE COURT: How long ago was that?

POTENTIAL JUROR: That was -- well, I was married to him for 26 years. And -- but the latter part happened from '99 till 2008. And this happened on Father's Day.

THE COURT: Okay. Would that affect your ability to give the state and the defendant a fair and impartial trial?

POTENTIAL JUROR: I don't think so.

THE COURT: Okay. And I -- I mean, I appreciate your honesty. But I have to make sure that you're not influenced by any outside occurrence and that you base your decision exclusively on the testimony and ---

POTENTIAL JUROR: I'll be ---

THE COURT: --- evidence in this case.

POTENTIAL JUROR: Yes.

THE COURT: Okay. Could you disregard that incident in its entirety?

POTENTIAL JUROR: Yes.

THE COURT: Okay. Thank you very much ---

POTENTIAL JUROR: Yes.

THE COURT: --- for bringing that to our attention. All right. Thank you.

(Whereupon, the potential juror returned to the jury panel.)

THE COURT: Anyone else?

(Whereupon, a potential juror stood.)

THE COURT: Yes, ma'am. Your name and number?

POTENTIAL JUROR: Katonya Kingsborough, 102.

THE COURT: All right. Ms. Kingsborough, if you'd come forward, please.

(Whereupon, the potential juror came forward.)

THE COURT: Yes, ma'am. Is this you, a family member, or who?

POTENTIAL JUROR: Myself. We were the ---

THE COURT: You what?

POTENTIAL JUROR: I was burglarized.

THE COURT: Okay. How long ago was that?

POTENTIAL JUROR: About four years, 2011 -- May.

THE COURT: Would that incident affect your ability to give the state and the defendant in this case a fair and impartial trial?

POTENTIAL JUROR: Yes, sir.

THE COURT: Okay. Thank you for bringing that. I'll excuse you from this case. Okay? All right.

(Whereupon, the potential juror returned to the jury panel.)

THE COURT: All right. That is Juror 102 as excused from this case.

All right. Is there anyone else?

(Whereupon, a potential juror stood.)

THE COURT: Yes, ma'am. Your name and number?

POTENTIAL JUROR: Sharon Soto, 163.

THE COURT: All right. Ms. Soto, come forward, please.

(Whereupon, the potential juror came forward.)

THE COURT: Hi. Was this you or a family member?

POTENTIAL JUROR: Family member.

THE COURT: Okay. And were they charged with a crime or a victim of a crime?

POTENTIAL JUROR: Charged.

THE COURT: Okay. And how -- who was -- what is the relationship?

POTENTIAL JUROR: My cousin.

THE COURT: Your cousin?

POTENTIAL JUROR: (No audible response.)

THE COURT: And what was your cousin charged with?

POTENTIAL JUROR: He was charged with a crime,

driving with alcohol -- DUI.

THE COURT: Okay. Would the fact that your cousin has been charged with crimes, would that affect your ability to give the state and the defendant in this case a fair and impartial trial?

POTENTIAL JUROR: No.

THE COURT: Would you be able to disregard your cousin's arrest in its entirety and base your decision in this case exclusively on the testimony and evidence in this case?

POTENTIAL JUROR: Yeah.

THE COURT: Okay. Thank you, Ms. Soto, for bringing that to our attention.

(Whereupon, the potential juror returned to the jury panel.)

THE COURT: Anyone else?

(Whereupon, no potential juror stood.)

THE COURT: All right. Does any member of the jury panel know of any reason whatsoever why he or she should not serve as a juror in this case, with particular emphasis being placed on your ability to be fair and impartial to both the state and the defendant? If so, please stand.

(Whereupon, no potential juror stood.)

THE COURT: All right. Any additional questioning

from the state?

MR. TODD: None, Your Honor.

THE COURT: Any from the defense?

MR. CRANE: No, sir, Judge.

THE COURT: All right. Ladies and gentlemen -- will you print out another list or how ---

CLERK OF COURT: Yes, sir.

THE COURT: --- do you do that?

CLERK OF COURT: Yes, sir.

THE COURT: Okay. All right. The way jurors are chosen in general-sessions cases, your names are fed into a computer and generated on a list at random. And the clerk of court will call your names out one at a time. If your name is called, if you would please come, stand forward, turn, and face the attorneys.

Now, the state's attorney is going to look at you a little while and then look back at his notes a little while and then look back at you a little while and make a decision whether or not he wants you as a juror. And if he wants you as a juror, then the defense attorney is going to look at you a little while and look at his notes a little while and look back at you and decide if he wants you as a juror. And we follow this process until we get twelve jurors and one alternate.

So if your name is called, if you would please come

forward, stand in front of this table here, turn, and face the attorneys. Bring with you any pocketbooks, coats, whatever you might have with you.

Now, if you are struck as a juror in this case, please do not take it personally. It just means that, for whatever reason, you do not fit a certain profile that one of the attorneys is looking for in this particular case. I know of many cases where an attorney will strike a juror in one case and then take the juror in the next case -- or will accept a juror in one case and strike them in the next case. So there's really no rhyme or reason as to why you're struck in one particular case and not another one, other than, for whatever reason, you don't fit a certain profile that they're looking for.

So please listen carefully. And if your name is called, come here, stand in front of the table, turn and face the attorneys, and we'll give you some further instructions then.

Okay. This is a five and ten? All right. Five and ten strikes. All right.

CLERK OF COURT: Juror No. 163, Sharon Soto.

(Whereupon, the potential juror came forward.)

CLERK OF COURT: What says the state?

MR. TODD: Please excuse this juror.

(Whereupon, the potential juror returned to the jury panel.)

CLERK OF COURT: Juror No. 63, Christopher D. Gann.

(Whereupon, the potential juror came forward.)

CLERK OF COURT: What says the state?

MR. TODD: Please seat the juror.

CLERK OF COURT: What says the defense?

MR. CRANE: Swear this juror, please.

(Whereupon, the juror came forward into the jury box.)

CLERK OF COURT: Juror No. 82, Kathleen A. Hardy.

(Whereupon, the potential juror came forward.)

CLERK OF COURT: What says the state?

MR. TODD: Please seat the juror.

CLERK OF COURT: What says the defense?

MR. CRANE: Swear this juror, please.

(Whereupon, the juror came forward into the jury box.)

CLERK OF COURT: Juror No. 73, Cynthia D. Gothard.

(Whereupon, the potential juror came forward.)

CLERK OF COURT: What says the state?

MR. TODD: Please seat this juror.

CLERK OF COURT: What says the defense?

MR. CRANE: Swear the juror.

(Whereupon, the juror came forward into the jury

box.)

CLERK OF COURT: Juror No. 91, Kasay L. Holbrook.

(Whereupon, the potential juror came forward.)

CLERK OF COURT: What says the state?

MR. TODD: Please seat this juror.

CLERK OF COURT: What says the defense?

MR. CRANE: Excuse the juror from this trial, please.

(Whereupon, the potential juror returned to the jury panel.)

CLERK OF COURT: Juror No. 88, Elizabeth B. Henley.

(Whereupon, the potential juror came forward.)

CLERK OF COURT: What says the state?

MR. TODD: Please seat -- seat the juror.

CLERK OF COURT: What says the defense?

MR. CRANE: Swear this juror, please.

(Whereupon, the juror came forward into the jury box.)

CLERK OF COURT: Juror No. 95, Laurie -- Laura C. Humphries.

(Whereupon, the potential juror came forward.)

CLERK OF COURT: What says the state?

MR. TODD: Please seat the juror.

CLERK OF COURT: What says the defense?

MR. CRANE: Swear this juror.

(Whereupon, the juror came forward into the jury box.)

CLERK OF COURT: Juror No. 2, Jonathan M. Allen.

(Whereupon, the potential juror came forward.)

CLERK OF COURT: What says the state?

MR. TODD: Please seat the juror.

CLERK OF COURT: What says the defense?

MR. CRANE: Excuse this juror, please.

(Whereupon, the potential juror returned to the jury panel.)

CLERK OF COURT: Juror No. 180, David -- David W. Townsend.

(Whereupon, the potential juror came forward.)

CLERK OF COURT: What says the state?

MR. TODD: Please seat the juror.

CLERK OF COURT: What says the defense?

MR. CRANE: Swear the juror.

(Whereupon, the juror came forward into the jury box.)

CLERK OF COURT: Juror No. 64, Tori L. Garner.

(Whereupon, the potential juror came forward.)

CLERK OF COURT: What says the state?

MR. TODD: Please seat the juror.

CLERK OF COURT: What says the defense?

MR. CRANE: Excuse her, please.

(Whereupon, the potential juror returned to the jury panel.)

CLERK OF COURT: Juror No. 187, Donna K. West.

(Whereupon, the potential juror came forward.)

CLERK OF COURT: What says the state?

MR. TODD: Please seat this juror.

CLERK OF COURT: What says the defense?

MR. CRANE: Swear her.

(Whereupon, the juror came forward into the jury box.)

CLERK OF COURT: Juror No. 103, Mark H. Lambert.

(Whereupon, the potential juror came forward.)

CLERK OF COURT: What says the state?

MR. TODD: Please seat the juror.

CLERK OF COURT: What says the defense?

MR. CRANE: Swear the juror, please.

(Whereupon, the juror came forward into the jury box.)

CLERK OF COURT: Juror No. 59, Viola R. Fielder.

(Whereupon, the potential juror came forward.)

CLERK OF COURT: What says the state?

MR. TODD: Please seat the juror.

CLERK OF COURT: What says the defense?

MR. CRANE: Swear the juror.

(Whereupon, the juror came forward into the jury

box.)

CLERK OF COURT: Juror No. 193, Ida M. Williams.

(Whereupon, the potential juror came forward.)

CLERK OF COURT: What says the state?

MR. TODD: Please seat the juror.

CLERK OF COURT: What says the defense?

MR. CRANE: Swear the juror.

(Whereupon, the juror came forward into the jury box.)

CLERK OF COURT: Juror No. 198, David L. Wright.

(Whereupon, the potential juror came forward.)

CLERK OF COURT: What says the state?

MR. TODD: Please excuse this juror.

(Whereupon, the potential juror returned to the jury panel.)

CLERK OF COURT: Juror No. 120, Mary E. McDowell.

(Whereupon, the potential juror came forward.)

CLERK OF COURT: What says the state?

MR. TODD: Please seat the juror.

CLERK OF COURT: What says the defense?

MR. CRANE: Swear the juror.

(Whereupon, the juror came forward into the jury box.)

CLERK OF COURT: Juror No. 1, David W. Acheson.

(Whereupon, the potential juror came forward.)

CLERK OF COURT: What says the state?

MR. TODD: Please seat the juror.

CLERK OF COURT: What says the defense?

MR. CRANE: Swear the juror.

(Whereupon, the juror came forward into the jury box.)

THE COURT: All right. Let's choose an alternate. The state gets one strike; defense gets two.

CLERK OF COURT: Juror No. 40, Darlene R. Curry.

(Whereupon, the potential juror came forward.)

CLERK OF COURT: What says the state?

MR. TODD: Please seat the juror.

CLERK OF COURT: What says the defense?

MR. CRANE: Excuse this juror, please.

(Whereupon, the potential juror returned to the jury panel.)

CLERK OF COURT: Juror No. 189, Sandra L. Westbury.

(Whereupon, the potential juror came forward.)

CLERK OF COURT: What says the state?

MR. TODD: Please seat the juror.

CLERK OF COURT: What says the defense?

MR. CRANE: Excuse the juror, please.

(Whereupon, the potential juror returned to the jury panel.)

CLERK OF COURT: Juror No. 94, Jamie H. Hudson.

(Whereupon, the potential juror came forward.)

(Whereupon, the potential juror came forward.)

CLERK OF COURT: What says the state?

MR. TODD: Please seat the juror.

CLERK OF COURT: Would the defense challenge for cause?

MR. CRANE: Swear the juror.

(Whereupon, the juror came forward into the jury box.)

CLERK OF COURT: Seat her as alternate.

THE COURT: All right. Ladies and gentlemen, you will be the jury that will preside over this case. I'm going to excuse you back to the jury room for just a few minutes while I release the rest of the jury panel. And I'll give you some instructions in just a minute.

But I'm going to excuse you back to the jury room for just a few minutes, and we'll bring you out shortly. Thank you very much.

(Whereupon, the jury exited the courtroom at 2:03 p.m.)

(Off the record briefly.)

THE COURT: All right. Any challenges to the selection or composition of the jury by the state?

MR. TODD: None, Your Honor.

THE COURT: Any by the defense?

MR. CRANE: No, sir, Judge.

THE COURT: All right. Ladies and gentlemen, those of you who remain in the jury panel, we have our jury for this first case. So I'm going to excuse you for the remainder of the day. Do they have a callback number?

CLERK OF COURT: Yes, sir.

THE COURT: Okay. You should've been given a phone number for -- to call back. If you would please call that number after 6 p.m. tomorrow, and that'll give you some further instructions as to when you need to return or if you need to return. But this case will certainly be going on into tomorrow, so we won't know the schedule until after six o'clock tomorrow.

So please call that number after 6 p.m. tomorrow. And as I told you earlier, even if you do not get selected on a jury, please do not leave here thinking you have not fulfilled your duty as jurors, because you have. The fact that you're here, ready to serve, is of a great assistance to us. And we thank you for that.

So you're free to go for the remainder of the day. You'll have tomorrow pretty much free. So call that number after 6 p.m. tomorrow. Thank you very much.

(Whereupon, the unselected jury panel exited the courtroom at 2:05 p.m.)

(Off the record from 2:05 p.m. until 2:07 p.m.)

THE COURT: All right.

MR. TODD: Judge, at this point, as far as the bench warrant is concerned, we've got a pretty good warrant-division team that can ---

THE COURT: Okay.

MR. TODD: --- lay hands on folks usually, but ---

THE COURT: Any reason why we shouldn't issue a bench warrant?

MR. CRANE: I don't think so, Judge.

THE COURT: Okay. All right. I'll go ahead and authorize the bench warrant ---

MR. TODD: Thank you, Your Honor.

THE COURT: --- to pick him up. Okay?

All right. Anything from the state before we bring the jury back in?

MR. TODD: That's ---

THE COURT: Anything from ---

MR. TODD: --- all, Your Honor.

THE COURT: --- the defense?

MR. CRANE: No, sir, Judge.

THE COURT: All right. Let's go ahead and bring the jury in.

(Off the record briefly.)

(Whereupon, the jury entered the courtroom at 2:09 p.m.)

THE BAILIFF: All jurors present, Your Honor.

THE COURT: Thank you very much.

All right. Ladies and gentlemen, we are getting ready to start trial of the *State of South Carolina v. Stephen Trase Fincher*. But in discussion with the attorney, we're not going to really start the case until tomorrow morning. So I'm getting ready to excuse you for the remainder of the day.

I'm going to ask that you please be back in the jury room at 9:15 tomorrow morning. Do not discuss the case, even among yourselves. Don't discuss it with any family members or friends.

Don't conduct any independent investigation. Don't go looking on the Internet or through the newspapers or try to find out anything about the case. Everything you need to make a decision will be presented to you during the trial of this case.

Now, when you come back tomorrow morning, if I could get you to do me a favor, and that would be to select a foreperson for this jury. You may not be able to. And if you can't select one, don't worry about it.

I can appoint someone to serve as foreperson. Many judges appoint their own foreperson. I like to give the jury the opportunity to select one on their own accord, if they're able to do so.

If you can select a foreperson, just write his or her name on a sheet of paper with the jury number. Give it to the bailiff, and we'll bring you into the courtroom. And you'll do that when you get back at 9:15 tomorrow morning.

Now, the foreperson has absolutely no more authority, no more importance, no more influence than any other juror. The function of the foreperson is to act as a liaison between the Court and the jury. If the jury has a need, the foreperson lets us know. If the jury has a question, the foreperson lets the Court know.

When it's time to deliberate, the foreperson will preside over the deliberations and sign the verdict form. But other than that, the foreperson has no more influence, no more importance, no more authority than any other juror.

The only restriction would be Ms. Hudson. At this point in time, you're the alternate. So you would not be eligible to serve as the foreperson, because you will serve as an alternate, unless something happens with one of the other jurors. Any of the rest of you can serve as foreperson.

Now, when you come back into the courtroom, the foreperson will always occupy the first seat on the front row, closest to the witness stand. The alternate will

always occupy the alternate seat, unless you become a part of the 12-panel jury.

The rest of you are at liberty to sit in whatever seat you like. If you want to sit in the same seat throughout the trial of the case, you can do that. If you want to alternate seats, you can do that as well. The only requirement is that the foreperson occupies the first seat on the front row, and the alternate occupies the alternate seat. Other than that, you're at liberty to sit whatever you want.

I want to thank you for being here. I want to thank you for your service as a jury on this case. I'm going to excuse you for the remainder of the day. But please be back at 9:15 tomorrow morning. Thank you very much.

(Whereupon, the jury exited the courtroom at 2:12 p.m.)

(Off the record briefly.)

THE COURT: All right. Anything from the state before we recess for the evening?

MR. TODD: I think that's all, Your Honor.

THE COURT: All right. Anything from the defense?

MR. CRANE: No, sir, Judge.

THE COURT: All right. We'll be in recess until 9:30 tomorrow morning.

(Whereupon, the proceedings were adjourned at 2:12 p.m.)

TRIAL DAY 2 - 03/28/17

(Whereupon, the proceedings were resumed at 9:41 a.m.)

THE COURT: All right. The jury sent out a note with David Townsend, No. 180, is the selected foreperson. So I'm going to go ahead and mark that as Court's Exhibit 1.

(Whereupon, Court's Exhibit 1 was marked for identification.)

THE COURT: All right. Do we have a defendant or not?

MR. CRANE: No, sir.

THE COURT: Okay. All right. Well, we can just go ahead and we'll bring the jury in. I'll do the opening charge. We got anything before we bring the jury in?

MR. SCOTT: Judge, I -- I appreciate you excusing my absence yesterday. I'm Dale Scott.

THE COURT: Yes, sir.

MR. SCOTT: I'm going to be handling this case.

THE COURT: Okay.

MR. SCOTT: I don't think we've met, but pleasure having you. And ---

THE COURT: Well, thank you.

MR. SCOTT: --- I appreciate you excusing me.

The -- a couple things that -- that come to mind: I've got that the aggravating factor in this burglary-

first are the prior convictions. I've got a total of 14 prior burglary convictions. I don't know how they want to whittle those down.

They're all certified by Lynn Lancaster, the clerk of court here, as true, certified copies. I don't know if your preference is for me to whittle those down to a few to meet the bare minimum or if we introduce all of them or if Mr. Crane has a position on that. But -- but I would ask to go ahead and premark these and let's go ahead and figure out how -- how many of these we're going to use.

THE COURT: Okay. Well, let's -- all right. Well, let's go ahead and get them marked first. Is -- and I don't know if there's any stipulation we can stipulate to. Are you going to stipulate to any prior burglary ---

MR. CRANE: Judge, I think it's an element of the offense that he has to prove. I mean, I don't ---

THE COURT: Okay.

MR. CRANE: --- know how I can stipulate to it. It's up to the jury to determine whether or not he's proven the elements. And if I stipulate ---

THE COURT: And I understand.

MR. CRANE: I don't think ---

THE COURT: That's fine.

MR. CRANE: --- they've done that. So, I mean, I --

I've thought about that overnight. And -- and I think he's going to have to prove them. Unfortunately, they got to go before the jury.

THE COURT: Okay.

MR. SCOTT: I'll -- I'll say they're self-authenticating. I have noticed that what we could do is call an officer to testify to it: that they're true, certified copies, as I said. I would ask to call, if I could, the clerk of court. She is working this case. But she's not on the witness list. I don't know if that'll be an issue. But I -- I would call her to -- to testify to them.

THE COURT: Okay. I ---

MR. CRANE: I don't have a problem with calling ---

THE COURT: Yeah.

MR. CRANE: --- the clerk.

THE COURT: All right. I'll allow that. You can call the clerk. You can do it that way.

MR. SCOTT: Thank you, Your Honor.

THE COURT: And ---

MR. CRANE: She wants to -- she wants to testify, Judge. I can ---

CLERK OF COURT: No, not really.

THE COURT: All right. Well, do we want -- I mean, what is that, the actual -- what have you got?

MR. SCOTT: These -- these are just the indictment attached with the sentencing sheet and the stamp of the clerk of court, stating that it's a true copy of the original.

THE COURT: Okay. And you say you've got 14?

MR. SCOTT: Yes, sir. Well, what I would -- what I could do, just so it's not overly prejudicial: There are three different plea dates. This right here, this specific date of November 18th, 2011, he lodged, I think 10 -- 10 or 11 guilty pleas at the same time.

THE COURT: That's November -- okay.

MR. SCOTT: Yeah. So what I would -- what I would propose: If I could just do one indictment for three different incident dates or -- or three different plea dates, rather: November of 2011; April of 2005; and then, April of 2007. And I would just proffer -- or introduce those for ---

THE COURT: Okay.

MR. SCOTT: --- the priors.

THE COURT: All right. Mr. Crane, any objection or any ---

MR. CRANE: I -- I'd just like to see those. I haven't ---

THE COURT: Okay.

MR. CRANE: --- had the opportunity to see those.

THE COURT: All right. So in other words, you're just putting in one indictment/one sentence for the three different dates ---

MR. SCOTT: Yes, sir.

THE COURT: --- on which he pled guilty?

MR. SCOTT: Yes, sir. Instead of the overkill ---

THE COURT: Okay.

MR. SCOTT: --- of 14 ---

THE COURT: Right.

MR. SCOTT: --- prior convictions.

THE COURT: Now, were all these guilty pleas?

MR. SCOTT: They were, Your Honor.

THE COURT: Okay.

MR. SCOTT: Represented by counsel in each one.

THE COURT: All right.

MR. SCOTT: The -- and -- and just in interest of, you know, covering all our bases, that there is a statement given that -- that we would introduce. It -- it is not -- he's under arrest. And it's -- that -- that's without question.

It -- it's not that he's being interrogated. They're spontaneous statements he's making from the back of the patrol car. We would be prepared to proffer a -- a witness for a *Denno* hearing.

I -- I don't think one's been requested. However

Mr. Crane wants to cover that, if we want to do it just before bringing the jury in or else I could go through all the steps of the *Denno* hearing with that witness.

THE COURT: Well, I think, if it is a statement that can be interpreted as an incriminating statement or a confession or something of that nature, then we're going to have to have a *Jackson v. Denno* hearing.

MR. CRANE: Judge, I have a copy of that DVD. I'm not sure that I would object to that coming in. And I'm not sure -- and I appreciate the solicitor being cautious.

But it's more of a voluntary, spontaneous -- you know, I mean, the guy was on methamphetamine and was blown out of his mind anyway. So he just babbles on and babbles on. But it's not -- it -- it's not an officer questioning him.

THE COURT: Right.

MR. CRANE: So I don't know that -- I -- I'm not going to object to it coming in.

THE COURT: Okay. I've never had this come up before. I don't know. Is a *Jackson v. Denno* required, or can you stipulate where both -- where the state wants to use the statement in the prosecution and the defense wants it in as well?

MR. SCOTT: I -- I think he can stipulate to it. My

only concern would just be a PCR standpoint. But I -- I think it's pretty clear-cut, as Mr. Crane said, that -- that it -- it's not subject to interrogation. He's just sort of ranting. In fact ---

THE COURT: Okay.

MR. SCOTT: --- the officer's not really engaging him at all. He's just sort of babbling on, as -- as -- to use Mr. Crane's words.

THE COURT: Well, I'll do whatever you want to -- anybody wants a *Jackson v. Denno* hearing, we'll do it. If you want to stipulate without one, I'll allow you to do that too. So whatever y'all want to do.

MR. SCOTT: I don't think the *Biggers* has been requested either. That would be probably -- I would request that we do that tomorrow morning. My witness -- the juvenile witness who -- who would -- who made the identification, she's not scheduled to be here till tomorrow morning. So if possible -- and she wouldn't testify until tomorrow morning. If possible, maybe tomorrow morning, before the -- we -- we begin with direct examinations, if we could do the *Neil v. Biggers* then?

THE COURT: All right.

MR. SCOTT: I -- I think we would need to do that. That would be necessary. Otherwise, Your Honor, I -- I

think that's all the issues I think that need to be dealt with.

THE COURT: All right. So the defense is not requiring a *Jackson v. Denno*?

MR. CRANE: No, sir.

THE COURT: And the state doesn't want to do a *Jackson v. Denno* hearing?

MR. SCOTT: Let's do it to be safe, Your Honor. It'd -- it'd just be a quick ---

THE COURT: I'll do whatever y'all want.

MR. SCOTT: Let -- let -- let's ---

THE COURT: Yeah.

MR. SCOTT: --- you know, just the more I think about it, I -- I want to just be ---

THE COURT: Okay.

MR. SCOTT: --- safe about it. And it'll be quick. We won't keep the jury waiting very long.

THE COURT: All right. Do we want to go ahead and do that now?

MR. SCOTT: Yes, sir.

THE COURT: All right. Have we got the ---

MR. SCOTT: Yeah. My investigator has gone to grab him right now.

THE COURT: But now, the statement -- this is a video statement or a ---

MR. SCOTT: It is. It's a -- the -- I guess you'd call them the -- the in-car camera ---

THE COURT: Okay.

MR. SCOTT: --- that shows the cage of the patrol car.

(Off the record briefly.)

MR. SCOTT: Robbie Haupfear, Your Honor.

THE COURT: All right.

(Whereupon, the witness came forward.)

THE COURT: Let's place him under oath, please.

ROBBIE HAUPFEAR, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SCOTT:

Q All right. Robbie, you work for the sheriff's department, correct?

A Yes, sir.

Q And did you have an occasion to respond to a burglary incident March 9th of 2016 in Gray Court?

A Yes, sir.

Q Okay. And you were responding to the [redacted] Road incident ---

A Yes, sir.

Q --- is that right?

Now, tell me -- you know, who were you looking for

or what was the description that given to you of who you were looking for?

A We had a call from a complainant that was in the house; said there was a white male in a white car that she had seen go in building that was on her property. And the vehicle left before I -- I got on scene.

Q Okay. You remember approximately what time it was?

A I think it was around lunchtime, somewhere around there, if I remember correctly. I'm not sure.

Q Okay. And what was the description -- it's a white car. Did you have any further description of what the automobile was?

A I think she said it was a Pontiac, but ---

Q Okay. Did you at some point -- when you responded, did you go to [redacted] Road or where did you respond once you got the ---

A When I ---

Q --- BOLO?

A --- turned on [redacted] Road, that's when our dispatcher told us that the car had left. So I continued down [redacted] Road to try to catch up with the car.

Q Okay. At some point did you find a car fitting that description?

A Yes, sir. I was able to catch up to a white Pontiac on [redacted] Road that was traveling at a high rate of

speed. So I kind of figured that it was it. And then, eventually, we got it stopped on 221.

Q Okay. And -- and the car did stop? It responded to your blue lights and siren?

A Yes, sir.

Q Okay. And did you make contact with the driver?

A Yes, sir.

Q And who was the driver?

A He was identified at Stephen Fincher.

Q Okay. Did you place him under arrest at that point?

A Not at that point. But we did detain him.

Q Okay. Well, what'd you do next after you detained him?

A Myself and Investigator Brewington began talking to him after he was Mirandized. And then he had told us that yeah, he did go to the house. And then we searched the vehicle and found some property that belonged to the -- the resident at -- on [redacted] Road.

Q Okay. So you had a description of some items taken out of the home ---

A Yes, sir.

Q --- on [redacted] Road?

Okay. And what was that description? What ---

A It was, like, a cordless-drill pack and some other items.

Q Okay. So you say you -- you asked him to step out of the car?
A Yes, sir.
Q And did you place him in any kind of investigative detention or anything ---
A Yes, sir.
Q --- at that point?
A Yeah. He was placed in handcuffs and advised he was being detained and then Mirandized.
Q Okay. You immediately Mirandized him after ---
A Yes, sir.
Q --- detaining him?
Okay. And -- and do you read your *Miranda* rights or you just have it memorized or ---
A I read them.
Q Okay. Did you have a car that you read them ---
A Yes, sir.
Q --- the right ---
A I do.
Q --- from?
And -- and tell us the -- what you typically read a defendant once you detain them.
A It's just that they have the right to remain silent; you know, anything they say can be held against them; they have the right to an attorney; if they cannot afford

one, then one will be appointed; and they have the right to stop answering questions at any time.

Q Okay. Did he seem to understand the *Miranda* warnings as you read them to him?

A Yes, sir.

Q Did he appear to you to be under the influence of anything?

A No, sir.

Q Did he ask for a lawyer at any time?

A No, sir.

Q Well, in fact, did you question him about anything?

A Just asked him if he was -- had been at the house on [redacted] Road.

Q Okay. And what did he say?

A He said yeah.

Q Okay. Well, you put him in your patrol -- and -- and then you arrested him, I guess ---

A Yes, sir.

Q --- at some point?

And handcuffed in the back of your patrol car?

A Yes, sir.

Q The -- you have a camera inside that car, don't you?

A Yes, sir, I do.

Q Okay. And does it automatically turn on, or do you turn it on?

A No, sir. It was turned on just from the speed that I had. Whenever my blue lights came on, it activated.

Q Okay. Well, let me show you ---

(Whereupon, Mr. Scott and Mr. Bentley conferred.)

(Whereupon, a portion of video was published in open court.)

Q You -- you recognize what this is?

A Yes, sir.

Q All right.

MR. SCOTT: Pause. I need to get a number for it, I -- I think. Let me have this marked as State's 1. Or no. Rather, we -- what are we at now?

(Whereupon, Mr. Scott and Mr. Bentley conferred.)

MR. SCOTT: State's 22.

THE COURT REPORTER: I don't have anything marked, Your Honor.

THE COURT: Okay.

THE COURT REPORTER: I have no exhibits.

MR. SCOTT: We got them -- if we could have it marked as State's 22, please. We've got ours premarked. We don't have your stickers on them, but we -- we got them numbered.

(Whereupon, State's Exhibit 22 was marked for identification.)

MR. SCOTT: Thank you.

Q Now, this is State's -- what's being called State's No. 22. Do you recognize what it is?
A Yes, sir.
Q And what is it?
A It's the in-car video from my patrol vehicle.
Q Okay. And who is the person you see in this screenshot?
A That's Mr. Fincher, the one that was driving the white Pontiac.
Q Okay. All right. That's you in the driver's seat there?
A Yes, sir.

(Whereupon, a portion of video was published in open court.)

MR. CRANE: Judge, you look perplexed. The sound will start in a moment.

THE COURT: Okay.

MR. BENTLEY: Yeah.

MR. CRANE: I think. It's two or three minutes into the -- there you go.

THE COURT: Okay.

(Whereupon, the video resumed and was published in open court.)

MR. SCOTT: That's it, Your Honor. And we would just -- the argument would be the first statement

initially given that's not caught on camera that Officer Haupfear testified to, it -- no question he is detained at that point. However, he had been Mirandized. At that point he's asked, "Did you go in the house on [redacted] Road -- or were you at the house on [redacted] Road?"

His reply -- I'm paraphrasing -- was, "Yes, I was there, not that I had gone inside."

But that was the first statement. I -- I think *Miranda* clearly covers that. And he -- he was detained. He was interrogated, to some extent. However, he had been properly Mirandized.

As far as State's 22, the in-dash -- or in-car camera video, again, operating under the *Miranda* warnings; however, at this point, he is not interrogated. Pretty much, the whole stream of -- of conversation -- there's one side, and it's Mr. Fincher commenting at length on -- on his whereabouts that day.

So just trying to be safe here, but I -- I think they are covered, Your Honor, under the provisions of *Jackson v. Denno*. But I appreciate you hearing us, Your Honor.

THE COURT: All right. Any questions or challenges of this witness?

MR. CRANE: No, sir, Judge.

THE COURT: All right. You may step down. And I

apologize. Your name again?

THE WITNESS: Robbie Haupfear.

THE COURT: Could you spell your last name?

THE WITNESS: Yes, sir. It's H-a-u-p-f-e-a-r.

THE COURT: Thank you.

THE WITNESS: Yes, sir.

(Whereupon, the witness exited the witness stand.)

THE COURT: Any other witnesses?

MR. SCOTT: No, Your Honor.

THE COURT: All right. Any challenges to the statements?

MR. CRANE: To these statements?

THE COURT: Yes, sir.

MR. CRANE: No, sir, Judge.

THE COURT: All right. I find that they were rendered voluntarily. So assuming you lay the proper foundation at trial, they'll be admissible.

All right. Anything further from the state before we bring the jury in?

MR. SCOTT: No, Your Honor.

THE COURT: Anything from the defense?

MR. CRANE: Judge, I'm just wondering. I know we're way early in the proceedings. But since it is a jury question as to whether or not the elements are met, I would -- I'm going to ask the Court at the end of the

case to charge burglary first-, second-, and third-degree.

The state may not agree that either of those apply. But I think it's up to the jury to determine whether they do. And in opening remarks, I'd like to tell them what burglary first-, second-, and third-degree are.

If they determine that it was a building, then -- if they determine it was a building and, for some reason, don't agree with the prior convictions, then it's a burglary-third. If they agree with the prior convictions, it can be a burglary-second if it's a building. If it's a dwelling, then it can be burglary-first.

So they've got to prove: (1) it was a dwelling; (2) that he's got the priors. If they can't prove it was a dwelling or if the jury just doesn't want to buy that and, in fact, believe that it was a building, then it's not going to be a burglary-first. It'll be burglary-second.

If they don't believe the prior convictions, for some reason -- and it would only be jury nullification, no other reason that I -- I'm aware of -- it would be burglary-third.

THE COURT: Okay. Well, I don't know what I'm going to charge them ---

MR. CRANE: I understand ---

THE COURT: --- because I got ---

MR. CRANE: --- that.

THE COURT: --- to wait and see what evidence is produced. But as far as opening statements, I'll let you argue in your opening statement that they can't prove the elements of burglary-first and why you think they can't.

MR. CRANE: You'll let ---

THE COURT: And you ---

MR. CRANE: --- me put my foot in my mouth, won't you?

THE COURT: Yeah. If you want to do that, I'll allow you to do that.

MR. CRANE: Okay. Thank you, Judge.

THE COURT: All right. Anything further from the defense before we bring the jury in?

MR. CRANE: No, sir, Judge.

THE COURT: All right. So we'll bring the jury in. I'll do opening charges. We'll do opening statements and go right into the trial. Is that agreeable?

MR. CRANE: Yes, sir.

MR. SCOTT: Yes, sir.

THE COURT: All right. Let's go ahead and bring the jury in.

(Off the record from 10:15 a.m. until 10:17 a.m.)

(Whereupon, State's Exhibits 1 through 18 were marked for identification.)

(Whereupon, the jury entered the courtroom at 10:17 a.m.)

THE BAILIFF: All jurors present, Your Honor.

THE COURT: Thank you very much.

Ladies and gentlemen, welcome back. I hope everybody had a good evening. I want to apologize for keeping you in the jury room for so long. But we did have some matters we needed to tend to first.

I understand, Mr. Townsend, you have been selected as foreperson; is that correct?

THE FOREPERSON: Yes, sir, that's correct.

THE COURT: All right. Thank you for serving in that capacity. If you would occupy the seat where you now sit during the trial of this case.

Also, Ms. Hudson, if you'd always occupy your seat, unless you become a member of the 12-panel jury.

As I told the rest of you, you're at liberty to sit in whatever seat you'd like, whether it be in the same seat or alternating seats or whatever the case may be.

Now, we're getting ready to start the case of the *State of South Carolina v. Stephen Trase Fincher*. Before we get started, as I told you during qualifications and *voir dire*, jurors just like witnesses are constantly

taking oaths. So I please need you to stand and raise your right hand while the clerk of court administers the oath for you to preside as jurors on this particular case. Thank you.

(Whereupon, the trial jury was duly sworn at 10:18 a.m.)

THE COURT: Thank you very much. Is there any member of the jury that did not respond to the oath by saying "I will?" If so, please stand.

(Whereupon, no juror stood.)

THE COURT: Very well. Thank you very much.

As the clerk told you, we're getting ready to start the trial of the case of State of South Carolina v. *Stephen Trase Fincher*. Now, before we begin the trial, I want to go over some matters with you.

I know, from watching movies, TV shows, reading books, things for entertainment, trials are often full of a lot of suspense, a lot of action. And while that might be the case in this trial, it probably won't be. The primary function of this trial is that the defendant has been charged with a crime, and the state bears the burden of proving that beyond a reasonable doubt. It'll be up to you to determine whether or not the state has met that burden.

Now, the attorneys -- and that is often a slow,

deliberate, repetitive process, the exact opposite of what you might be accustomed to when you read books or watch movies and things of that nature. I hope you do find the trial entertaining. I hope you do find it educational. And I want to thank you from the outset for serving as jurors on this particular case.

The attorneys appearing before you are advocates for the parties they represent. But first and foremost, they are officers of the Court. They are sworn to uphold the integrity and the fairness of our judicial system and to help you in a search for the truth in this case. You should expect them to be professional, competent, and ethical in the presentation of their clients' interests.

Now, what I now say to you is intended to serve as an introduction to the trial of this case. These remarks are not a charge on the law in this case. I will instruct you on the law applicable to this case at the end of the trial before you retire to consider your verdict. This is merely an explanation of the procedure that we will follow in the trial of this case so that you can better understand what might be happening.

Now, the defendant is charged by two indictments, each charging the defendant with the crime of burglary in the first degree. Now, I'll explain the elements of that charge to you later when I charge you on the law in this

case.

These indictments are simply the charge by which this case is brought into this Court. They are not, in any sense, evidence of any of the allegations contained in them.

The defendant has pled not guilty to these indictments. The state, therefore, has the burden of proving each of the elements of the indictments beyond a reasonable doubt. It will be your duty, ladies and gentlemen, to decide whether or not the state has met that burden.

Your purpose as jurors is to find and determine the facts of this case. You are the sole judge of the facts of this case. If, at any time, I make a comment regarding the facts, you must disregard my comments. You are to determine the facts from the testimony you hear and the other evidence introduced in the trial of this case.

It is up to you to determine the inferences which you feel may properly be drawn from that evidence. It is especially important that you perform your duty of determining the facts diligently and conscientiously. Because ordinarily, there is no way to correct an erroneous determination of the facts by a jury.

On the other hand, and with equal emphasis, the same

law that makes you the judge of the facts makes me the judge of the law. The law, as given by the Court, is the only law that you may consider. You must accept and follow the law as I give it to you, even though you may disagree with it.

Just as I cannot tell you what the facts of this case are, you cannot disagree with me about the law to be applied in this case. Your job is to take the law as I give it to you and apply it to the facts, as you find them to be from the testimony and -- of the witnesses and any other evidence that is introduced during the trial of this case. After doing that, you will render a verdict, a true and just verdict under the solemn oath you just took as jurors.

Now, until I advise you to begin your deliberations, you must not discuss this case with anyone, including your fellow jurors. Do not discuss it with any friends or family members or anyone involved in the case. After the case is submitted to you, you can then discuss the case, but only in the jury room with your fellow jurors.

The attorneys and parties in the case have been instructed that they are not to talk to you as well. So they're not being rude. They're just following the instructions of the Court.

Now, during the trial, you're not to read or listen

to or watch any news reports about the case, if there should be any. This includes anything that could be in the newspaper or on the Internet or the radio or the television. You cannot consider anything you may have read or heard about the case outside of the courtroom, whether that be before or during the trial of this case.

It is important that you keep an open mind and not decide any issue in this case until all of the evidence has been presented to you, the attorneys have made their closing arguments, and I have charged you on the law to be applied in this case. It is your solemn responsibility to determine the guilt or innocence of the defendant. And your verdict must be based solely on the evidence as it is presented to you in this trial and on the law as I instruct you during and at the close of the trial.

Now, in just a moment, the solicitor will make what's called an opening statement in which the solicitor will explain to you the issues in this case, or at least what the solicitor thinks the issues in this case are. The attorney for the defendant may also make an opening statement, although he is not required to do so.

What the attorneys tell you during their opening statements is not evidence in this case. It is only their contention as to what the issues in this case are.

The evidence in this case will be presented to you by testimony of sworn witnesses from the witness stand and any other exhibits that may be introduced into evidence.

Now, in determining what the facts are in this case, you must decide whether or not the testimony of a witness is believable. It will be my responsibility to rule as a matter of law as to whether or not certain testimony is admissible at all or not. However, once testimony is admitted into evidence, whether or not you believe it is solely for you to determine.

In deciding whether to believe a witness, you have the right to consider the interest of any witness, the bias of any witness, the prejudice of any witness, the opportunity for the witness to have seen the matters and things about which the witness may testify and the way the witness acts on the witness stand. You have the right to consider anything that is in the record that will help you evaluate the testimony of the witnesses.

That means that it is your duty to pay close attention to these witnesses, to observe them, to listen to them, and to pay close attention to the attorneys and to the Court. Don't let your thoughts wander, but give strict attention to the testimony in this case. So at the end of all of the testimony, after the arguments of counsel, and a charge on the law by the Court, you will

then be in a position to determine what the true facts are and to apply the law to those facts and thus render a true and just verdict.

All right. Are there any challenges to the opening charges or additional charges from the state?

MR. SCOTT: No, Your Honor.

THE COURT: Any from the defense?

MR. CRANE: No, sir, Judge.

THE COURT: All right. Ladies and gentlemen, we'll begin the trial now with the opening statements by the attorneys. And as I've told you, these opening statements are not evidence. They're just simply the attorneys' contention as to what they feel the issues in this case are.

All right. Mr. Scott?

MR. TODD: May it please the Court?

THE COURT: Yes, sir.

OPENING STATEMENT BY MR. TODD

MR. TODD: Morning.

JURY MEMBERS: Morning.

MR. TODD: My name is Jim Todd, and I'm a lifelong resident here in Laurens County; born and raised here; happy to be back and practicing law in -- in Laurens.

At the table is Dale Scott. He was excused yesterday. But he's here today and will be for the

remainder of the trial. He's the deputy solicitor here in Laurens County and Newberry County. And our investigator for the solicitor's office, Walter Bentley.

Now, what is this case about? This case is about working men and working women. This case is about Annette Childress, who lives on Highway [redacted], getting up, going to work, putting on her clothes, taking a shower, going to her honest job. This is about Teddy Hampton, who lives on [redacted] Road in Gray Court, getting up, taking a shower, putting on his work clothes, and going to work.

Well, let me tell you another working man this is also about. This is about Stephen Fincher, who just heard the judge read off in the indictments. See, he has a work too. But it's not as honest as the two I mentioned earlier. He goes and preys on the working man and the working woman.

On March 9th, 2016, Annette Childress' 16-year-old daughter was home -- she's in online school -- and was asleep at nine o'clock that morning. Closer to ten o'clock that morning, she all of a sudden hears a frantic knocking at the door, ring of the doorbell. She thinks to herself, What's going on? Who is this?

Being the teenager she is, she rolls over and thinks it's Amazon delivering a package or the mailman coming.

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She just says, you know, I'm not interested.

Well, unfortunately, that's not where it ends.

MR. CRANE: Judge, I -- I'm going to object to him testifying to what a witness may or may not say. He can tell the jury what he intends to prove. But to -- to go in what a witness observed, said, heard, or anything, I would submit, is improper opening statements.

THE COURT: All right. Overruled. I'll allow it. Go ahead.

MR. TODD: As I was saying, you'll hear Brittany testify to the fact that she rolls back over, goes to sleep. Next thing she hears, rustling in the cabinet drawers, silverware moving about. She panics. No one's home.

What's she do? Like a teenager, she calls Mama. Mama is at work at the job. Tries her a couple times; can't get her. Finally gets Mom, who then immediately calls 911 and also calls their next-door neighbor, who happens to be her sister, Esther Childress.

You'll hear from Esther Childress and her two -- or -- excuse me -- Esther Shell and her two children, Xavier Johnson and Indigo Johnson. They were home next door to Brittany Childress. They get the call from Brittany's mother.

They run outside, run to the edge of the wood line,

which was right between the two houses. And you'll see a picture of this when we show the geography of the house and the territory. They run to the edge of the house. And you'll hear them testify that they saw a white male in jeans and a T-shirt, baseball cap, and a white car.

Now, some of them say that the car itself is some kind of sports-looking car. It has a wing on the back. For you car people, they're -- they're referring to a spoiler. Okay? And that's important for that description. Keep that car in mind and that description in mind.

So that's bad enough. But it doesn't end there. As soon as he is spotted by Esther and the two children, he takes off in his car. He drives 11 minutes down the road to [redacted] Road.

Situation: DH [redacted] -- DH [redacted] is home, sick with the flu. DH [redacted] is home sick with the flu that day from high school. She's upstairs, sleeping off the flu.

What happens next? Same situation: frantic knock at the door; doorbell ringing; no response. She's terrified. What does she do? Calls 911.

She looks outside. And you'll hear her testify. She sees a white male in a white-colored shirt with a baseball cap, jeans, moving about the house, looking around, in and -- in and out, up and down stairs.

Who is this man? You'll hear that she -- she calls 911. And just as she calls 911, she hears beep, beep, which is a -- which is a door sensor, which means that a door has been opened on the property.

She continues to look out the window. She'll testify, she let the dogs out. She's got some mean-looking dogs and let them down the stairs, but they're still in the house and barking and going -- she's scared. She's alone. She's alone upstairs.

She'll testify that she looks out the window and sees who I submit to you is Ms. -- Mr. Fincher, taking power tools up and down from the bonus room of the house to the car, loadened [sic].

You're going to hear from the first responders at both of these scenes. They're going to testify that they each had the same description -- you're actually going to hear from Officer Staton, who was at the second scene, over his radio, get that description. They put on a "be on the lookout" alert for a white male with a hat, jeans, T-shirt, in a sports car -- looking car, which turns out to be a Pontiac GT -- you'll see a picture of that car as well -- come -- come through the radio.

You're also going to hear Officer Staton testify to the doorframe, where that beep-beep noise came from, where it had been knocked completely off the hinges to

gain entry into that house to take those power tools.

You're also going to hear from Officer Robbie Haupfear. Now, he is an important witness, and I want you guys to pay close attention to when his testimony comes up. Because he is actually the arresting officer who pulls Stephen Fincher over in that white car, in his jeans, in that T-shirt.

Now, he's got a video, an in -- in-camera video of that car. And I want you to listen carefully to what Mr. Fincher says himself in that video. Pay close attention to that, because it's important.

You're also going to hear from Chris Martin from the Laurens County Sheriff's Department. And he's the investigating officer who's going to, more or less, tie all these pieces together and tell about the scene and what he found when he arrived on the scene.

And at the end of the day, I've got a burden to prove. You heard the judge say it. It's beyond a reasonable doubt.

I've got to prove Stephen Fincher, beyond a reasonable doubt, that he is guilty of committing these crimes. And it's a burden I gladly accept. It means that I have got to -- that you have got to be firmly convinced Mr. Fincher committed these crimes.

Now, you heard the judge mention that he's charged

with burglary in the first degree. What is that? And I'm going to touch on it very briefly. You'll get a -- a long -- longer version of this towards the end of the trial.

But it's entering into a dwelling without the consent of another with the intent to commit a crime and the aggravating circumstance, in this case, is that Mr. Fincher had two or more prior convictions for burglary or housebreaking. Now, I ask for your patience. I ask for your attention. And I appreciate your hard work this week. Thank you.

THE COURT: Mr. Crane?

MR. CRANE: Thank you, Judge.

OPENING STATEMENT BY MR. CRANE

MR. CRANE: Mr. Foreman, ladies and gentlemen, I'm Larry Crane. I was introduced yesterday, I believe. If not, that's who I am.

And I want to thank you for helping us with this trial. I know you might want to be elsewhere. I think some of you are retired; some of you work. And you'd rather be elsewhere.

But we need you here. The state needs you. The defendant needs you. Everybody, whether it's you, my client, anybody else, has the right to have a fair and impartial trial. And that's why we have jurors.

The judge told you yesterday, when there was an entire jury panel out there, that just you guys being here got a lot of work done in the courtroom. Because there were some people that, rather than going to trial, would choose to plead guilty.

My client -- by the way, he's not there. So I can't ask him questions. But, you know, that's his right not to be here. That's an additional right that he has, to not be here.

It'll make it a little bit more difficult for me, but not much. He's got places that he wants to be and not be here. And I tell you that and the judge will tell you, you're not to hold that against him.

That's his privilege and prerogative not to be here, just like it's his privilege and prerogative, even if he was here, when it comes time for the defense, if we put up a defense, the judge would ask him whether he wants to testify. And he would be able to decide. If he said no, the judge would charge you in the law that you can't hold that against him, that he doesn't testify.

Because he doesn't have to testify. So he's not here. And he won't testify. But we're going to have a trial anyway.

Now, you heard all the evidence that the state's going to try and prove to you. And listen to it and see

if it's there. But what -- but I want to emphasize more on what the charges are and the elements of those charges.

The state said a little bit about it. And I'm not sure -- you know, trial is kind of an uncertainty because we don't know where the evidence is going to go until we get there. And so until we get to the end of the trial, we're not real sure what law the judge is going to tell you about.

So I may tell you something today that, when you get the charge on the law, the judge may not tell you. And, of course, I will have put my foot in my mouth. But don't hold that against me or Mr. Fincher.

Burglary first-degree is what my client is charged with. As the solicitor said, that means breaking into the dwelling, a place where someone lives and sleeps, of another without consent and with the intent to commit a crime therein. That's burglary-first.

Now, there's some elements for -- to -- to make a burglary-first. In order to be burglary-first, when you break in, you have to be armed with a weapon. Listen to the testimony; see if there's any evidence about that. You won't hear any.

That when you break in, you cause physical injury to someone -- listen to the testimony. You won't hear

anything about that.

When you break in, you threaten to use some type of force against a person. Listen to the testimony. You won't hear that.

That you display what appears to be a knife, pistol, revolver, rifle, shotgun, machine gun, or other firearm. Listen to the testimony. You won't hear that.

Now, or the burglary is committed by a person with two or more prior burglary or housebreaking convictions. I submit to you, the state will present to you some certified indictments that are against my client. They are some -- some of them are more than ten years old. One of them is ten years old, and one of them is about six years old.

Now, you have the right to pay attention to those or not. The -- the judge told you, he's going to give you the law and you can't change the law. But you still have the right to decide whether my client is guilty or not guilty.

And so I'm going to tell you that if they can't prove any of those elements and they can't prove to you that it was a dwelling, then it goes down to burglary-second. And there's a difference in the penalties between burglary-first and burglary-second.

So burglary-second is when a person enters a

dwelling without consent and none of those elements apply. If you go into a dwelling, meaning a house where someone lives and sleeps, in the nighttime, it's burglary-first or with a weapon. If you go in during the daytime, it's burglary-second, unless one of those elements applies.

And it says a burglary is -- a person is guilty of burglary in the second degree if the person enters a building, which would be somewhere where someone doesn't sleep, and one of those elements applies. So here's the thing they got to prove: Number one, they have to prove that my client, Mr. Fincher, went into a dwelling -- entered into without permission into a dwelling and that he's got prior convictions.

Now, the solicitor told you about -- I think he said her name was Brittany -- a teenager asleep in the house, who was awakened by someone ringing the doorbell, by someone knocking on the door, who says she never got out of bed, but yet thought she heard someone rummaging around the house. Let's assume for a moment that that's what she heard and that's what happened. Where is the intent to commit a crime?

Because if you listen to the testimony, you're not going to hear anybody say anything about anybody taking anything from that house. If someone's going to go into

someone's residence and rummage through the silverware drawers and whatever and not take anything, is there an intent to commit a crime?

I'm not saying it's a smart thing to go into someone's house. Because if you go into someone's house, you can get shot and killed. The homeowner can do that. But in this particular case, if, in fact, you're convinced that he went in that house, then you got to decide whether he went in with intent to commit a crime.

The solicitor also told you to listen to Officer -- I forgot his name -- Hoffburn -- what -- Hoffbrand ---

MR. TODD: Haupfear? Haupfear.

MR. CRANE: Hoffman?

MR. TODD: Haupfear.

MR. CRANE: Okay. When he arrested my client -- and there's a videotape, you got this Brittany teenager who won't get out of bed, even though she thinks someone's breaking in her house. And you got my client, who's in custody. And you're going to hear the videotape where he says, "I didn't go in that house." You can believe him or not.

But they got to prove he went in the house. They got to prove that he went in with intent to commit a crime. And that's the one on Highway [redacted].

Let's go to [redacted] Road. Both of these are out

toward Gray Court. I don't know if you know where they are. I didn't have any idea where they are, but I went out there and found the residence and looked at them.

At [redacted] Court [sic] -- and they're going to show you pictures of these places -- let me back up. [redacted] -- excuse me. Highway [redacted] is a residence that has a garage attached to it. All of that's a dwelling.

[redacted] Road is a house with a space and a garage, not attached to the house. You have to determine whether that garage is part of the dwelling. If you determine that garage is not part of the dwelling, then what did he break into, if you're convinced he broke into anything? He broke into a building. Then, it's not burglary-first.

I know it gets confusing. But, you know, at the end of the trial, like I said, the judge may not give you the opportunity to do burglary-second or burglary-third. I don't know. I'm just telling you those -- there's -- it -- it -- it's called lesser-included offenses. Burglary-first, burglary-second, burglary-third, they all carry less punishments than the others. That's why it's so important.

And the -- like the solicitor said, at [redacted] Road, you've got a juvenile who says he saw my client carrying tools back and forth from the garage. Well,

let's listen to the testimony. Listen to the videotape of my client, what he says about those tools and why he had those tools. And listen to determine whether anybody can identify those tools, other than saying, "Yeah, that's looks like my saw."

I -- I'm not going to be -- I'm not going to stereotype here. Some of you women might get out there and help your husbands with their circular saw and you know what a circular saw is. Some of you guys might use your circular saw.

But if I put up two circular saws here and they're both brand new, can you tell which is which and which is yours, unless you got a serial number? So listen to see if they can really identify the tools, other than they're going to say my client had tools in his car.

Listen to the tape. That tape is going to come in. I didn't object to it. But you're going to hear it.

So as the solicitor said, pay attention. At the end of the trial, what you have to do is determine beyond a reasonable doubt -- you have to be firmly convinced that my client is guilty. If you're not firmly convinced, then you have to give him the benefit of the doubt and find him not guilty. Thank you.

THE COURT: All right. Ladies and gentlemen, we will now begin the evidentiary portion of the trial with

the calling of the state's first witness. All right.

MR. SCOTT: Thank you, Your Honor. The state calls Brittany Childress.

THE COURT: All right.

(Off the record briefly.)

(Whereupon, the witness came forward.)

BRITTANY CHILDRESS, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SCOTT:

Q Good morning, Brittany.

A Good morning.

Q How old are you?

A Nineteen.

Q Nineteen years old?

A (Nodded head up and down.)

Q Where do you live?

A In Gray Court.

Q In Gray Court?

A (Nodded head up and down.)

Q Tell me your address, please.

A [redacted] Highway [redacted].

Q Okay.

MR. SCOTT: Maryann, can you hear her?

THE COURT REPORTER: Yes, sir.

MR. SCOTT: Okay.

Q Gray Court, is that in Laurens County?

A Uh-huh.

Q And how long have you lived there?

A As long as I can remember.

Q Oh. Did you grow up there?

A Uh-huh.

Q Okay. So and you would've been living there last March?

A Yes.

Q Or rather, March 9th, 2015 -- '16 -- 2016, so ---

A Yes.

Q --- last March? Sorry.

Do you remember that date, March 9th, 2016?

A Yes.

Q And do you remember that morning around 10 a.m.?

A (Nodded head up and down.)

Q Okay.

A Yes.

Q Tell me what was going on that morning.

A Well, I had been asleep. And I woke up to some noises at the -- in the front of the house. It sounded like someone was trying to get in.

Q Okay. You were 18 at that time, March ---

A Yes.

Q --- 9th, 2016?
A Yes.
Q And were you in school at the time?
A I was. I was home for spring break.
Q Okay. And your parents -- Annette Childress, is that your mother?
A Yes.
Q And where was she that morning?
A She was at work.
Q Okay. So you were home alone?
A Yes.
Q All right. I want to show you -- this is State's No. 4. Do you recognize that?
A Yes.
Q Okay. What is that?
A That's our house.
Q That's your house?
A Uh-huh.
Q At the address you listed as -- what was the address again?
A [redacted] Highway [redacted].
Q Okay. And did you say that was in Laurens County?
A Yes.
Q All right.
MR. SCOTT: Your Honor, the state offers State's No.

4 for admission into evidence.

THE COURT: Any objection?

MR. CRANE: No, sir.

THE COURT: State's Exhibit No. 4 admitted into evidence without objection.

(Whereupon, State's Exhibit 4 was entered into evidence.)

Q Okay. The -- this is your home ---

A Yes.

Q --- here, Brittany?

A Yes.

Q And -- I don't know. Where is your bedroom?

A It's -- well, you can't really see it from that angle. But if you went in the front door right there, look and -- like, if you turn just a little bit this way, you can see it. It's right there.

Q Oh. So the -- on the first floor?

A Yeah. But it's, like, on the backside.

Q On the backside? Okay.

A Over -- over there.

Q But on the first floor?

A (Nodded head up and down.)

Q Okay.

A Uh-huh.

Q And you say around 10 a.m. or so that morning, you

were upstairs and ---

A I'm in my room.

Q You -- oh. I'm sorry. You're downstairs in your room. And you were asleep?

A Uh-huh.

Q And you -- you stated you heard noises coming from the front of the house. Tell me what it sounded like again.

A It -- well, at first, it was the door -- he was knocking on the door.

Q Okay.

A And then it went quiet for a few minutes. That when I just kind of turned over, because I just thought, you know, somebody might've just been just coming to the house. So I -- I didn't think anything of it when the knocking stopped.

But then it sounded like someone was trying to get in. And then noises in the kitchen drawers ---

Q Okay.

A --- and did that.

Q So -- all right. All right. So -- well -- well, slow down. That was important. You hear somebody knocking on the front door. And your testimony is, at first, it wasn't necessarily concerning to you.

A No. Because, I mean, it -- I mean, it was kind of a

-- a pound. But I didn't really, you know, get up because, you know, I'm -- I wasn't expecting a visitor.

Q Okay.

A So I figured if, you know, it was a visitor, they'd just call me or my mom.

Q Okay. Tell me at what point it became of real concern for you.

A Once it sounded like they -- they was trying to get in.

Q Okay. What did you do once it sounded like somebody was trying to get in?

A Well, I just kind of started to panic. I laid there a few minutes, just to -- and kept listening. And then once I heard the noise in the kitchen, I called my aunt.

Q Okay. And the kitchen, how close is that to your bedroom?

A It's very close. It's -- like, nothing is in between it, except for a little space in the living room.

Q Okay. Tell me the noises you heard coming from the kitchen.

A It -- like drawers were opening and closing.

Q Okay.

A And there was some rattling.

Q Okay. And so -- all right. And -- and once you heard the noises coming from inside the home in your

kitchen, what did you do?
A I called my aunt.
Q Say it one more time?
A Called my aunt.
Q Okay. And where does she live?
A Right beside us.
Q Okay. And -- I say "Aunt"; you say "Aunt." But your aunt is Esther Shell?
A Yes.
Q And she lives next door?
A Yes.
Q Did she answer the phone?
A She did.
Q Okay. Did you tell her what your concerns were?
A Yes.
Q I'm going to show you State's No. 5. Do you recognize that?
A Uh-huh.
Q And what is it?
A That's -- well, that's her house and that's ours.
Q Okay. You see your house and your aunt's house?
A Yes.
(Whereupon, Mr. Scott and Mr. Crane conferred.)
MR. SCOTT: Your Honor, the state offers State's No. 5 for admission into evidence.

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THE COURT: Any objection?

MR. CRANE: No, sir, Judge.

THE COURT: State's Exhibit No. 5 admitted into evidence without objection.

(Whereupon, State's Exhibit 5 was entered into evidence.)

(Whereupon, Mr. Scott and Mr. Bentley conferred.)

Q Okay. All right. And so what is this we see at the bottom-right?

A That's our house.

Q That's your house?

A Uh-huh.

Q Okay. And -- all right. I guess, a little bit of a -- a wood line; and then, whose home is this?

A That's my aunt's.

Q Esther?

A Yes.

Q Who lives at that house with Esther?

A Her two children and my grandmother, her mother.

Q Okay. Her two children, Xavier and Indigo?

A Yes.

Q Okay. So do you know Stephen Fincher, by -- by the way?

A No.

Q You don't know him?

A (Shook head from side to side.)
Q Did you tell him he could come in your house that day?
A No.
Q Okay. Did your aunt -- you -- you said you spoke with your aunt.
A Uh-huh.
Q After you spoke with her, what did you do?
A I just stayed in my room.
Q Okay. Do you know if the person inside your home heard you on the phone?
A I don't know. I was whispering.
Q Okay. And you -- you had a little dog with you, didn't you?
A Yeah. He was just a few weeks old. I had just got him.
Q Okay. Was -- was it making any noises?
A Unh-unh. He was asleep.
Q Okay. All right, Brittany. And then, the -- I guess, did you give a statement to officers after they arrived?
A I did.
Q Okay. But you never saw anybody, because you never came out of your room; is that right?
A That's correct.

Q Okay. Brittany, answer any question Mr. Crane has for you, please.

MR. CRANE: Thank you.

CROSS-EXAMINATION

BY MR. CRANE:

Q Brittany, I'm Larry Crane. How are you?

A I'm good.

Q Good. I want to just ask a couple questions about Evidence No. 4. All right. You said -- this being the front door, where -- where is your bedroom?

A It's right back there near where the chimney is.

Q Back here?

A Yes.

Q All right. And ---

A But on this side.

Q And that -- and that side? And ---

A Over ---

Q --- where -- and ---

A --- over on the end.

Q This way?

A The other way.

Q This way?

A Yes.

Q So back in that corner of the house?

A Right there. Yes.

Q All right. Where is the kitchen?
A Right over here.
Q What -- what -- why don't you come down and show us where the kitchen is, please.
(Whereupon, the witness exited the witness stand.)
Q Show is where your room is and the kitchen.
A My room is here. And that corner, there's a room there, and my room is right across. And then, the kitchen is right in this area.
Q Okay. And then, what's -- and so if you went into the front other than house, would you go to the right to go to your bedroom?
A Yes, you would. But ---
Q All right.
A --- like, if you turn -- like, if you -- you walk in the door and you turn just a little, you can see it.
Q Okay. And if you -- and to get to the kitchen, if you go in the front door, what do you do need to do?
A You can either go through the dining room right here ---
Q Yeah.
A --- then it's right here. Or you can go around through the -- the living room. And then, it's ---
Q So the ---
A --- right there.

Q --- kitchen's in the back of the house by this chimney?
A Well, it's this whole area right in there.
Q Okay. Not this area here?
A Yeah. Yeah. But right here is the dining room. The kitchen is right next to it.
Q Okay. Thank you. Please have a seat.
(Whereupon, the witness reentered the witness stand.)
Q Now, did you ever see anybody in that house that day?
A No, sir.
Q Do you know whether or not the doors were locked to the house on that morning?
A I do not know.
Q I'm sorry?
A I don't know. I'm not sure.
Q All right. And you indicated, I think, on direct examination, you heard someone going through the silverware drawers in the kitchen?
A Yes, sir.
Q That's it?
A That's what it sounded like. Yes.
Q Okay. Do you know if anything was taken?
A I don't know. When -- after I finally did leave my

room, I just left the house. I didn't want to be there.
Q Okay. And so let me ask this: When did you leave the house?
A Right when the officer got there.
Q All right. All right. So this incident, according to your testimony, happened. You called your aunt and called your mom. How long after those telephone calls was it that you left the house?
A Well, my aunt called my mom. I didn't call my mom.
Q Okay. And then, when did you leave the house after those calls? How long?
A I'm not sure.
Q Did you see your aunt and your two cousins that day?
A Yes.
Q When did you see them?
A Right when they got to the house.
Q When they got to the house?
A Yes.
Q Did they get there before the officers?
A Yes.
Q So how did you see them?
A Well -- well, when they got there, they told me I could come out of my room. They said -- they yelled out to me that they were there.
Q Okay. So is that when you came out of your room?

A Yeah. Well, that's when I came out of my room. But I didn't leave the house until the officer got there.
Q All right. Did they go into the house?
A They -- yes. They came in to get me.
Q How did they get in the house?
A The front door.
Q So you think it was unlocked?
A I guess.
Q Do you ---
A I'm not sure.
Q Did you hear anybody come in the front door that day?
A I heard someone come in the house.
Q Which door did they come in?
A I guess the front.
Q You guess the front?
A I'm not sure.
Q You're not sure?
A (No audible response.)
Q All right. Did you hear a door open and close that morning, yes or no?
A (No audible response.)
Q Did you hear a door open and close that morning?
A I'm not sure.
Q I'm sorry.

A I'm not sure.
Q You're not sure?
A (No audible response.)
Q Okay. And you didn't hear anybody in any other rooms, except, you're saying, you heard someone in the kitchen going through the silverware drawer; is that right?
A Yes.
Q Okay. What else is in the kitchen?
A I'm sorry?
Q Huh?
A What do you mean?
Q All right. I'll rephrase it. Are there any valuables in the kitchen?
A Maybe a few in the -- in the drawers we ---
THE COURT: I'm sorry, ma'am. You're going to need to speak up loudly and clearly and into the microphone. I can't hear.
A Maybe a few in the drawers by the stove.
Q I'm sorry. The what?
A Maybe a few in the drawers by the stove.
Q Okay. Do you have a microwave there?
A It's, like, on top of a cabinet.
Q All right. Is there a radio in the kitchen?
A Yes.

Q All right. You all have any silver, other than everyday silverware?
A Yes.
Q Okay. Was any of that disturbed?
A I don't know.
Q I'm sorry?
A I'm not sure.
Q All right. Did you hear -- you -- you say you didn't -- you're not sure if you heard anybody come in the house. Did you hear anybody leave the house?
A In the car. I heard ---
Q I understand ---
A --- a car ---
Q --- that ---
A --- leaving the house.
Q You heard a car leaving the house. I understand that. But did you hear anybody go out a door of your house that morning?
A Not sure.
Q I'm sorry?
A Not sure.
Q Not sure?
A (No audible response.)
Q Well, let me ask you this: Are you not sure that you heard someone rummaging through the silverware?

A I did hear a noise?
Q I'm sorry?
A I did hear noise in the ---
Q You did ---
A --- kitchen ---
Q --- hear that?
A Yes.
Q But you didn't get up?
A No.
Q How long did all of this take place, from the time you first say you hear someone knocking on the door?
A Maybe -- I don't know. I'm not sure.

THE COURT: I'm sorry, ma'am. You're going to have to speak up loudly and clearly and into the microphone. I cannot understand a word you're saying. Okay?

I apologize. But you're going to have to speak a little bit more clearly and into the microphone with a little bit more volume. Okay?

THE WITNESS: (Nodded head up and down.)

THE COURT: All right. Ask your question again.

MR. CRANE: Yes, sir.

Q All right. I think my question was: From the time you said you first heard someone knocking on the door, how long did all of this take place?
A I'm not sure.

Q Not sure of that either?
A (No audible response.)
Q All right. Do you know what door you heard someone knocking on?
A The front.
Q The front door?
A (No audible response.)
Q Do you know whether or not the house, at the time this happened a year ago, was either for sale or was going into foreclosure?
A It was not.
Q It was not?
A (No audible response.)
Q Okay. And is this pretty much a good picture of what it looked like at that time?
A Yes.
Q Okay. Do you know who this is here?
A Yes. Those are the ---
Q Excuse me?
A Those were the guys that came to talk to me.
Q Okay. And just so I'm clear, you said your aunt and cousins came into your house, and that's when you came out of your bedroom?
A Yes.
MR. CRANE: Thank you, Judge. Nothing further.

Q Thank you, ma'am.

THE COURT: All right. Redirect?

MR. SCOTT: Just briefly.

REDIRECT EXAMINATION

BY MR. SCOTT:

Q Ready? You're fine. You -- you want a water or tissue or anything? I'll just ask a couple more questions.

A (No audible response.)

Q You didn't see anybody, but you heard somebody in the kitchen?

A Yes.

Q And where, in relation to your bedroom, is the kitchen?

A It's -- well, the only space between it is the living room.

Q Okay. So just one room over?

A (No audible response.)

Q And -- and you testified -- how -- how did you feel when you heard somebody in your house?

A Scared.

Q Okay. Did it ever occur to you to leave your room?

A No. I was too scared.

Q Okay. Did -- is that something you would consider smart to do, if somebody was in your house that ---

MR. CRANE: Judge, I ---

Q --- didn't invite ---

MR. CRANE: --- object. That's ---

A Yes.

MR. CRANE: --- improper question on redirect.

THE COURT: Well, it -- it exceeds the scope of redirect, so I sustain the objection.

Q But defense asked you if you left the room a couple times, and -- and you didn't.

A I never left the room ---

Q Okay.

A --- until my cousins got there.

Q Okay. And explain why you didn't leave the room.

A Because I was scared.

Q Okay. You hadn't invited anybody in the house, had you?

A No.

Q And -- and just to be clear, the -- this picture, what, was taken last Thursday?

A Uh-huh.

Q Okay. And the two people down here, you remember that -- that was me and that's the other lawyer?

A Uh-huh.

Q We were talking with you that day?

A (No audible response.)

Q Okay. And we were out there taking pictures of the scene?

A (No audible response.)

Q But that is how your home looked March 2016?

A Yeah.

Q Is it ---

A I mean, there was maybe a few flowers right there in the front, but ---

Q Okay.

A --- other than that, yeah.

Q All right. Okay. But -- but that -- that's just the main question, Brittany, I had for you, as far as the cross-examination that Mr. Crane was asking. You -- you heard somebody in the house?

A Yes.

Q Okay. And any doubt in your mind that somebody was in your house?

A No.

Q Thank you.

THE COURT: All right. You may step ---

MR. CRANE: Wait ---

THE COURT: --- down.

MR. CRANE: --- Judge.

THE COURT: No.

MR. CRANE: Real quick?

THE COURT: No. Direct, cross, redirect only as to issues that were not addressed on direct that you addressed on cross. No recross.

All right. You may step down.

(Whereupon, the witness exited the witness stand.)

THE COURT: All right. The state can call your next witness.

MR. TODD: The state would like to call Annette Childress.

(Whereupon, the witness came forward.)

ANNETTE CHILDRESS, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. TODD:

Q Morning, Ms. Childress.

A Morning.

Q You are Brittany's mother; is that correct?

A That's correct.

Q Okay. And let's just go ahead and cut right to March 9, 2016. Do you recall that morning?

A Yes.

Q Okay. And where -- where do you work? You work, obviously.

A Baldor Electric ---

Q Okay. How long ---

A --- in Greenville.
Q Where?
A Greenville.
Q And how long have you been there?
A Eighteen years.
Q Okay. And this was your home, correct, at Highway [redacted]?
A Yes.
Q Okay. And do you own the house? Renting it?
A Own.
Q Okay. How long have you lived there?
A Nineteen years.
Q Okay. And going back to March 9th, 2016, you heard your daughter testify that she tried to call you that morning?
A Yes.
Q Okay. Describe that. What time was it?
A It was about 10 a.m. She called me and she was really upset; said that she heard some -- she said first she heard someone banging on the door, like they were trying to get in. And then she said that it had stopped, and later she heard someone in the kitchen. It sounded like they were going through the silverware in the drawers.

She also said that someone knocked on my other door,

this bedroom door. That's what it sounded like.
Q Okay. And Brittany testify there was a -- is Esther your sister?
A Yes.
Q Okay. And she's the next -- she's your next-door neighbor that photo showed, correct?
A Yes.
Q Okay. And what did you do after Brittany called you that morning?
A I told her to hang up and call Esther. And I called 911.
Q Okay. And what was your conversation with 911?
A I told them that my daughter had called me and that someone was in the house.
MR. CRANE: Judge, I object. That's hearsay.
THE COURT: Sustained.
Q Okay. Describe -- let's see. Do you know Stephen Fincher?
A No.
Q Okay. Okay. What time did you call 911?
A Right after my daughter called me. It was probably a few minutes after ten.
Q Okay. Was anyone supposed to be in that house that morning besides ---
A No.

Q --- Brittany?

Okay. No family friends?

A No.

Q Okay. Was the house for sale that day?

A Definitely not.

Q Okay. You've lived there 19 years?

A Yes.

Q Still plan on being there another 19?

A Hopefully.

Q Okay. When -- when you called Esther -- did you call Esther?

A No.

Q Okay. Did you take off of work that day?

A No, I didn't.

Q Okay. What -- what kind of condition was your daughter Brittany in when you got home?

A She was, well, obviously upset. I mean, she was -- but the reason why I didn't leave work is because my -- I knew my sister was there, so ---

Q Okay.

MR. TODD: Beg the Court's indulgence?

THE COURT: All right.

(Whereupon, Mr. Scott and Mr. Todd conferred.)

Q Answer any questions Mr. Crane has.

CROSS-EXAMINATION

BY MR. CRANE:

Q Ms. Childress, good morning.

A Morning.

Q My name is Larry Crane. I only have a couple questions. As a result of whatever happened on that morning, were you able to determine whether there was any damage to the house?

A No.

Q There were no broken doors or busted locks or windows or anything like that?

A Not that I could tell.

Q What time did you leave for work that morning?

A About 7:05.

Q All right. And are you married?

A No.

Q Okay. So is it just you and your daughters that live there?

A Yes.

Q All right. Do you remember which door you left out of?

A The garage door.

Q All right. Do you know if the other doors were locked?

A I assume they were.

Q You assume all the other doors were locked?
A Yes.
Q And would you have put the garage door down when you left?
A Yes. But one of the garage doors doesn't work, and you can let it up and down manually.
Q Okay. To get into the garage, how do you do that, from the kitchen or bonus room or mudroom or what? From the -- from the house into the garage?
A From the -- the kitchen.
Q Okay. Was it -- did you lock that door when you left?
A Yes.
Q So that door was locked. As far as you know, the front door was locked, right?
A I assume.
Q Is there a back door?
A Yes.
Q You think it was locked?
A Probably.
Q All right. How would someone get in unless they broke a window or the lock, if they didn't have a key?
A I don't know, unless ---
Q Did you notice anything missing from the house?
A No.

Q Okay. Thank you.

THE COURT: Redirect?

(Whereupon, Mr. Scott and Mr. Todd conferred.)

REDIRECT EXAMINATION

BY MR. TODD:

Q You mentioned that you did not know if the door was locked or not, the front door; is ---

A That's correct.

Q --- that correct?

Do you know how the police got in the house when they arrived on the scene?

A I do not.

Q Okay. No further questions.

THE COURT: All right. You may step down.

(Whereupon, the witness exited the witness stand.)

THE COURT: All right. The state can call your next witness.

(Off the record briefly.)

MR. TODD: The state would like to call Esther Shell.

THE COURT: All right.

(Off the record briefly.)

(Whereupon, the witness came forward.)

ESTHER SHELL, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. TODD:

Q Good morning.

A Good morning.

Q You are Annette Childress's sister; is that correct?

A That's correct.

Q Okay. So you would be Brittany Childress's aunt?

A Yes.

Q Okay. Where do you live?

A [redacted] Highway [redacted], Gray Court, South Carolina.

Q Okay. And how long have you lived there?

A At -- 34 years.

Q Okay. So your sister's been your next-door neighbor for some time?

A Yes.

Q Okay. Do you have any children?

A Yes. I have two.

Q Okay. What are their names?

A Xavier Johnson and Indigo Sade Johnson.

Q Okay. And are you employed?

A Yes, I am.

Q Where do you work?

A Braswell Painting at ---

Q Okay.

A --- at Rexroth in Simpsonville.

Q Okay. And how long have you worked there?
A Nine years.
Q Nine years?
A (No audible response.)
Q And what hours do you work?
A From three o'clock to eleven o'clock p.m.
Q Three p.m. to 11 p.m.?
A Uh-huh.
Q Okay. Going back to March 9th, 2016, you were at home, correct?
A Correct.
Q Okay. Who all was at the house with you?
A Me, my two children, and my mom.
Q Okay. And obviously, we're here today on a burglary charge. What do you recall from that morning?
A That morning, Brittany called me on the phone. And she was whispering. I couldn't hardly hear her, but she was saying someone was in the house with her.

So I told my son and my daughter to come with me; we were going go next door to see. And we walked outside. And by the time we got to the end of my yard and the edge of the woods, we saw a white male coming across my sister's front yard.

So I hollered at him and asked him what was he doing there. And he told me that he was trying to see if the

house was for sale. So I was trying to get closer to him, you know, to -- to talk to him. And he was running to the car and jumped in the car and took off.

Q Okay. You say he was running to the car and took off?

A Well, walking fast to the -- well, he went -- walked fast to the car, got into the car, and took off.

Q Was trying to have a conversation with you?

A No. He didn't want to talk to me.

Q Okay. And I've got this picture here.

(Whereupon, Mr. Todd and Mr. Bentley conferred.)

Q It's State's Exhibit No. 5. Is this your house over here?

A Yes.

Q Okay. And this is your sister's?

A Yes.

Q Annette?

A (No audible response.)

Q Okay. And describe how you -- let's see. Where -- where did you come in this picture, in other words, to ---

A My front door. I come straight out of my front door. And it's a driveway right there. Yeah. I -- I run down the driveway. And that's where I saw him coming around the house ---

Q Okay.
A --- coming to his car. He was parked in the -- in her driveway.
Q I was about to ask. Where was he parked here?
A He was parked right almost -- put your finger back up -- about -- about right up in there.
Q Right there?
A Uh-huh.
Q Okay. And did you get a make of the car? What did the car look like, a description?
A All I could see was a white car. I don't -- I don't know what kind it was. All I saw was a -- kind of a white car.
Q Okay.
A I think it was kind of like a -- I'm not sure what it was, really. Because I wasn't quite close to it.
Q Let's see. Did you write a statement that day?
A Yes, I did.
Q For law enforcement?
A Yeah.
Q If I provided that statement, would it refresh your memory?
A Uh-huh.
Q That would help?
A (No audible response.)

Q Speaking of the white male out -- coming out of the house, what did he look like? Did you get a description on him?

A No. All I came -- could see was that he had on kind of a light shirt -- colored shirt and a cap.

Q Okay. Baseball cap?

A Uh-huh. Base -- like a baseball cap. Uh-huh.

Q Light-colored ---

A But I couldn't ---

Q --- shirt ---

A --- see his face or anything.

Q Okay. Light-colored hat?

A Yeah.

Q Brittany's testimony was that you and your children came into the house to -- to get her?

A Yes.

Q She was too scared to leave her room?

A Yes.

Q What type of condition was Brittany in when you went to get her?

A She was a nervous wreck. She was crying and hysterical. She didn't want -- like I say, she didn't want to leave or, you know, come out of her room because she was scared. She thought he was still there, but he ---

Q All right.
A --- was gone.
Q And law enforcement arrived. You spoke with them?
A Yes.
Q Did they do any -- what -- what kind of investigation did they do? Did they go through the house?
A Yes. They walked in the house.
Q Did you ---
A Uh-huh.
Q --- did you go with them?
A Uh-huh.
Q Okay. Do you remember how they got into the house?
A Brittany opened the door.
Q Okay. But you said that Fincher was in a white-colored car?
A Yes.
Q Okay.

(Whereupon, Mr. Scott and Mr. Todd conferred.)

Q Answer any questions Mr. Crane has.

MR. CRANE: May it please the Court?

THE COURT: All right.

CROSS-EXAMINATION

BY MR. CRANE:

Q Ms. Shell, my name is Larry Crane. How are you?

A I'm fine. How are you?
Q Now, you didn't say Fincher was in a white-colored car -- car, did you?
A It was a white car. Yeah.
Q I understand. But you didn't say Fincher was in a white car. You said you saw a white male get in a white car, right?
A Correct.
Q Okay. Did you ever look at a photo lineup?
A No, sir.
Q So you couldn't identify the white male, could you?
A No.
Q All right. Matter of fact, in your statement you said (As read): "I couldn't see the type of car because of the distance."
A Correct.
Q Right?
A Uh-huh.
Q Let's go back to the picture here. I wanted to make sure. So you got a phone call. You walked down your driveway out of your house and -- did I do that? Okay. And where did you go? Did you go down the driveway to the street, or did you cut through the woods?
A I was trying to cut through the woods. I went to the edge of the woods when I saw him coming out.

Q All right.
A And I was trying to get around to the drive -- walking down the driveway, trying to get to him. And he -- that's when he got in the car and ---
Q All right.
A --- backed out.
Q Stop my pen when you were about where you were.
A Okay. I could see through the woods right up -- right up in there ---
Q Right up in here ---
A --- you know, where ---
Q --- where you got ---
A --- the clearing ---
Q --- your ---
A is -- yeah.
Q --- little ---
A Where ---
Q --- tree here so ---
A --- the clearing ---
Q --- you were ---
A --- is right there, you can see through the woods. And that's how I saw him down there in ---
Q All right.
A --- the driveway ---
Q So you ---

A --- in the ---
Q --- can see ---
A --- first place.
Q I'm sorry.
A That's how I saw him in the driveway. I -- I was looking through the trees. It's -- through the little woods, it's a clearing.
Q Okay.
A You can see through there.
Q All right. Well, there's trees here, aren't there?
A Uh-huh. Yeah. But you could see through them.
Q I understand.
A Yes, sir.
Q So from here -- and you said -- said the car was ---
A Was there ---
Q --- somewhere about here?
A Uh-huh.
Q Can we get two hands up there or no?
A (No audible response.)
Q Don't know?
A (No audible response.)
Q Okay. I've never played with this before.
All right. So you're about here. Car is here. You know about how far that is?
A Not really.

Q All right.
A It's ---
Q But there are trees between the two of you?
A Uh-huh.
Q You couldn't identify the person?
A No. I couldn't identify ---
Q All right.
A --- him because of the distance. I could ---
Q All right.
A --- see through the trees.
Q I understand that.
A Uh-huh.
Q But you didn't see anybody coming out of the house, did you?
A I saw him come from around the house.
Q I understand -- what do you mean, from around the house? From ---
A He come from ---
Q --- the garage ---
A --- around ---
Q --- or from ---
A --- from around my sister's house on this side, all the -- all the way on the end.
Q From over ---
A Yeah. Down ---

Q --- here?
A --- there. Yeah. He come around through there and come across in front ---
Q Across ---
A --- and ---
Q --- the front?
A --- ran -- and walked real fast to his car and got in. By the time I got to my driveway, trying to get down to her driveway, he had got in his car and backed out.
MR. CRANE: Can you put No. 4 up there for me, please?
MR. BENTLEY: (Complied.)
Q All right. When you first saw him, tell me where he was.
A He was coming from around the side of the house over there.
Q This way?
A Uh-huh. Coming around in front -- in the front. Yeah. He -- and his car ---
Q Was he ---
A --- was parked over here on this side. He walked ---
Q Did he ---
A --- across the front -- front yard and went to his car.

Q Did you see him come from beside the house, or did you see him in front of the house?
A I saw him come from around in front of the house right there on the side, around in front of the house. When I saw him, he was just walking in front -- in straight ---
Q Come use my pen and ---
A Okay.
Q --- show us.
(Whereupon, the witness exited the witness stand.)
A He was coming like he was coming from here, walking from here ---
Q All right.
A --- when I -- when I first saw him. His car was parked over here.
Q Okay. Where is their kitchen?
A Their kitchen is on this end.
Q Show us -- show them where the kitchen was.
A It's on this end right here.
Q Okay. Where is -- where is Brittany's room?
A Brittany's room is over here.
Q Okay. You say Brittany's room is over here?
A Uh-huh.
Q Kitchen is over here?
A Uh-huh.

Q And he's coming this way?
A Well, when I -- like I say, he was coming from right here.
Q Okay. Now, let me ask you this: Were you in here when Brittany testified?
A No.
Q All right. If she testified the kitchen's back here and room's in the back of the house, would she be right or would you be right?
A Well, she'd be right because ---
Q Okay. Go ahead and have a seat, please.
(Whereupon, the witness reentered the witness stand.)
A The kitchen is back there, but it's -- you can go in through the garage to get to the kitchen. That's what I was pointing that way.
Q All right. And what you told the police was that you saw a white male in a light-colored shirt, correct?
A Yes.
Q You didn't say anything about a hat, did you?
A He had a hat on.
Q Did you say anything to the police about him having a hat on?
A I probably did.
Q You got ---

A Uh-huh.
Q --- your statement?
A I might've didn't write it, but I -- I believe I told them that he had a hat on.
Q Is there anything in the statement ---
A No.
Q --- about a hat?
Okay. When you -- and when you went to get Brittany, how did you -- tell us what did you did. Do -- do you have a key to the house?
A No.
Q Okay. Tell us what you did to get Brittany.
A We walked in -- inside the house. She come to the -- to the door when the policeman got there.
Q I'm sorry?
A She came to the door when the policeman got there. And I just walked inside the house with him.
Q She came to which door?
A To the front door.
Q Front door?
A Uh-huh.
Q And did she open the door from the inside?
A Uh-huh.
Q All right. So do you know whether she had to unlock that door to come out or not?

A No. I'm not sure.
Q You're not sure whether she had to unlock that door to come out?
A I'm not sure if she unlocked it or not because I was on the other side of the door, hollering in at her ---
Q Okay.
A --- to ---
Q Well, could -- did you try to go in?
A No.
Q Okay.
A I don't have a key, so . . .
Q Oh. You said, when you got there, Brittany was a nervous wreck?
A Yes.
Q Let me ask about Brittany. Is she kind of a timid person anyway?
A Sort of.
Q Is she a nervous wreck normally?
A No.
Q She seemed kind of quiet on the stand.
A Yeah. We're all quiet.
Q Huh?
A I'm quiet too. Yeah.
Q Okay. Thank you, ma'am.
A Okay.

MR. CRANE: Nothing further, Judge.

THE COURT: Redirect?

MR. TODD: Nothing, Your Honor.

THE COURT: All right. You may step down.

(Whereupon, the witness exited the witness stand.)

THE COURT: The state can call your next witness.

MR. SCOTT: Xavier Johnson, Your Honor.

(Whereupon, the witness came forward.)

XAVIER JOHNSON, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SCOTT:

Q Xavier?

A Yes, sir.

Q How are you this morning?

A I'm fine. And you?

Q I'm -- I'm well. How old are you?

A Twenty-three.

Q Twenty-three?

A (No audible response.)

Q And Esther, who just testified, is your mother?

A Yes.

Q And where you live?

A [redacted] Highway [redacted].

Q Okay. And in State's No. 5, that's the ---

A Correct.
Q --- the house is on the left?
And were you living there March 9th of last year?
A I was.
Q Do you remember that morning?
A I do.
Q Okay. Who all was home with you the morning of March 9th, 2016?
A Me, my sister, my mother, and my grandmother.
Q Okay. Your sister, Indigo; and your mother, Esther?
A Correct.
Q And do you remember getting a phone call that morning?
A I didn't answer the phone. My mother did.
Q Okay. Do you remember a phone call being placed to your home that ---
A Yes.
Q --- morning?
And -- and you said Esther spoke with the caller?
A Yes.
Q Okay. After -- after she hung up the phone, what, if anything, did you do?
A She came and knocked on my door and told me to get dressed because she said someone was in my -- my cousin's house. So we went next door.

Q Okay. We being you ---
A Me, my mother, and my sister.
Q Okay. So you, Esther, and Indigo went to go see what was up next door?
A Correct.
Q And -- and tell us, I guess, the route you took to get next door to your -- your aunt and your cousin's house.
A Well, like she said, we came out the front door and we went to the woods originally, because we were trying to see what was going on. And then once we saw that he was down there, we walked up the driveway and down and around the woods.
Q All right. I'm going to see if I can do this without having you step down. But these are the wood line you're describing that separates your home from Brittany's ---
A Correct.
Q --- and Annette's?
This time it was March -- pretty much about a year ago is when ---
A Uh-huh.
Q --- this took place. And -- and you were out there with me the other day, weren't you?
A Yes.

Q Can you see through these -- this tree line this time of year?
A Yes. There's a footpath, actually, that -- where there's no trees. So you can see pretty clearly.
Q Okay. Okay. So you guys -- that being you, Esther, and Indigo -- you -- you walk out of the front door, you said?
A Yes.
Q And then, did you go this way or did you go down ---
A We came around the back.
Q Okay. Around the back of the home ---
A Because the footpath is the quickest way to get to their house.
Q All right. And the footpath from this particular -- and you can't see it. But is -- is it somewhere right in here?
A It's actually in the middle where the bare trees meet the -- the evergreens.
Q Okay. Right in the middle ---
A Yes.
Q --- here?
That's a footpath y'all -- I guess y'all visit your ---
A Uh-huh.
Q --- aunt and cousin often?

And so is that the route y'all would normally take to get next door?

A Yes.

Q And let me just be clear. I'm -- I'm pointing in the middle of State's Exhibit 5. Is that essentially where that footpath is ---

A Yes.

Q --- where I'm pointing?

Okay. So your testimony is that you three -- you, Esther, and Indigo -- left the front of the house. And is this the general route you took, kind of towards the middle of the screen?

A Yes.

Q Okay. And did you cross into the woods?

A No.

Q Okay. From that -- from that viewpoint, being on your property, looking through the wood line, what -- tell me what you saw.

A Well, I saw the white car. And I saw him getting ready to get into his car.

Q Okay. Did you see the direction he came from?

A No, I didn't. I was behind my mother.

Q Okay. When you say he, describe the person you were looking at.

A He was about average height, somewhere around six

foot. He had on a light- to gray-colored shirt. And he was wearing a baseball cap.

Q Okay. You -- you knew what kind of pants he was wearing?

A He was wearing jeans.

Q Black guy? White guy?

A He was white.

Q And you said -- what kind of car?

A It was a white sports-looking car. And it had a wing on the back of it.

Q Okay. You're talking -- a wing? Some people call it a spoiler?

A Yeah.

Q That what you're talking about?

A (No audible response.)

Q Let me show you State's No. 6 and No. 7. Tell me if you recognize that.

A Yes.

Q And what is that?

A That's the car that he was driving.

(Whereupon, Mr. Scott and Mr. Crane conferred.)

MR. SCOTT: Your Honor, the state offers 6 and 7 for admission into evidence.

THE COURT: Any objection?

MR. CRANE: No, sir.

THE COURT: State's Exhibit 6 and State's Exhibit 7 admitted into evidence without objection.

(Whereupon, State's Exhibits 6 and 7 were entered into evidence.)

MR. SCOTT: Okay. And, Your Honor, I publish State's No. 6. And it's on ---

THE COURT: All right.

MR. SCOTT: --- the screen now.

Q Okay. Tell the jury: What is this that we're looking at?

A That's the car that he was driving.

Q Okay. And did you give a statement to law enforcement that day?

A I did.

Q Okay. And did you describe the car? Did you tell them it was a Pontiac?

A I didn't know the make of it. I just knew that it was an older-model sports-looking car.

Q Okay. You described it as a sports car. And did you ---

A Yeah.

Q --- describe that wing on the back you were ---

A Yes.

Q --- describing?

Okay. And you gave them the description of the male

you saw driving the car?
A Yes.
Q Let me show you State's No. 7. Is this the spoiler, I guess, that -- is that what you were describing as ---
A Yes.
Q --- a wing?
That's what you saw -- that's the car you saw in your cousin and your aunt's home on the morning of March 9th, of 2016?
A Correct.
Q Okay. Did you say anything to the man once you got to the wood line?
A I didn't.
Q Did -- did your mother say anything to him?
A She did.
Q Okay. What, if anything, did -- did he say to you guys?
A Well, she called out and she asked him what he was doing there. And he said that he thought the house was for sale. And after that, he left. He didn't really say anything else.
Q Okay. Just house for sale? Then did -- did he rush to his car? Did he leisurely ---
A He did.
Q --- walk to his car?

A No. He rushed to his car.
Q Okay. And then, how did he exit the driveway?
A He was gone by the time we got to the end of our driveway, which is not a big distance.
Q Okay.
A So he was moving pretty quickly.
Q Okay. So he appeared to be in a hurry to you?
A Yes.
Q When Exhibit got to the end of the driveway, did he take a left or a right? Do ---
A He took ---
Q --- you recall?
A --- a left.
Q Okay.
(Whereupon, Mr. Scott and Mr. Bentley conferred.)
Q Okay. So this is the driveway?
A Correct.
Q And then, the main road up here is Highway [redacted]?
A Uh-huh.
Q So when he got to the end, he took a left, going ---
A Yes.
Q --- back that way out of there?
Okay. All right. Xavier, thank you. Answer any questions Mr. Crane has for you.

CROSS-EXAMINATION

BY MR. CRANE:

Q Good morning, Xavier. My name is Larry Crane. May I ask you just a couple more questions about this right here?

A (No audible response.)

Q So the little pathway is here. And you and your mom and your sister ran to about here and saw the car and the white male over here; is ---

A Correct.

Q --- that correct?

All right. So whereabout in here was the car?

A It was about right in front of the garage, which is ---

Q Over -- over here?

A --- at -- yeah.

Q Right here? Is ---

A Yes.

Q --- that about right?

A Yes, sir.

Q All right. Not here, like your mom said?

A Well, she didn't say the car was there. She said he was coming from around the house there.

Q All right. And where did you see him?

A I saw him when he was getting to his car.

Q Were you with your mom?
A I was.
Q So your -- so your mom -- so you saw him. And you say the car was here. You saw him when he was getting in his car. You were with your mom, looking through the trees. And she's saying she saw him going around -- coming this way?
A Correct.
MR. SCOTT: Your Honor, the only objection -- I -- I don't know that we've gotten there yet. But I -- I would caution against pitting witnesses.
MR. CRANE: Getting what?
THE COURT: Okay.
MR. SCOTT: Pitting witnesses.
THE COURT: Overruled. I'll allow it. Go ahead.
Q Did you see him coming this way?
A I did not.
Q Were you standing next to your mom when you were there?
A I was not.
Q Where were you?
A I was behind her.
Q Behind her?
A (No audible response.)
Q But you saw him when he was getting in his car

somewhere here?
A Yes.
Q All right. And when was it that -- did you say your mom yelled at him?
A Yes.
Q All right. Was that while you were over here in the trees?
A Correct.
Q And what did she yell?
A She asked, "What were you doing here -- what are you doing here?"
Q All right. And he said, "I thought the house was for sale"?
A Correct.
Q And then you guys continued on down to Highway [redacted] and came this way?
A Correct.
Q So you didn't go through the woods?
A No.
Q And by the time you got down and around, he was gone?
A Yes.
Q Okay. Thank you, sir.
MR. SCOTT: Just ---
THE COURT: Redirect?

REDIRECT EXAMINATION

BY MR. SCOTT:

Q Xavier, you remember any for-sale signs right along here this from ---

MR. CRANE: I object, Judge. That's improper for redirect. I didn't ask anything about sale signs of this witness.

MR. SCOTT: He asked him what -- what he said, and he said the house -- he thought the house was for sale.

THE COURT: All right. Overruled. I'll allow it.

MR. SCOTT: All right.

Q Let me ask you again: Were there any for-sale signs along this walkway?

A There were not.

Q Okay. And then, up -- further up the driveway with the -- is there a mailbox up there?

A There's not.

Q Okay. Well, how do you -- there's a mail -- well, how do ---

A They have ---

Q --- they get ---

A --- a P.O. box now.

Q I got you. Well, up at the top of the driveway where it meets Highway [redacted], was there a big for-sale sign right there?

A No.
Q All right. To your knowledge, did Annette at that time -- was she attempting to sell the house?
MR. CRANE: Judge ---
A She ---
MR. CRANE: --- I object.
A --- was not.
MR. CRANE: That would be hearsay.
THE COURT: Sustained.
Q To your knowledge, was the house for sale?
A No.
Q Okay. Do you have any knowledge of it being listed for sale online?
A No.
Q Okay. Thank you, Xavier.
THE COURT: All right. You may step down.
(Whereupon, the witness exited the witness stand.)
THE COURT: All right. Let's -- ladies and gentlemen, we're going to go ahead and take about a ten- or fifteen-minute break, give you an opportunity to stretch your legs, use the restroom, whatever the case may be. Do not discuss the case, even among yourselves, at this point in time. Don't conduct any independent investigation into the case. We'll take about a ten- or fifteen-minute break, and we'll come back in just a

minute. Thank you very much.

(Whereupon, the jury exited the courtroom at 11:35 a.m.)

THE COURT: All right. Anything from the state before we recess?

MR. SCOTT: No, Your Honor.

THE COURT: Anything from the defense?

MR. CRANE: No, sir, Judge.

THE COURT: All right. Let's take about a ten- or fifteen-minute break.

(Off the record from 11:36 a.m. until 12:01 p.m.)

(Whereupon, State's Exhibits 19 through 21 and 23 through 25 were marked for identification while off the record.)

THE COURT: All right. Anything from the state before we bring the jury in?

MR. SCOTT: Nothing from the state, Your Honor.

THE COURT: Anything from the defense?

MR. CRANE: No, sir, Judge.

THE COURT: All right. Let's bring the jury in.

(Off the record briefly.)

(Whereupon, the jury entered the courtroom at 12:03 p.m.)

THE BAILIFF: All jurors present, Your Honor.

THE COURT: Thank you very much.

Ladies and gentlemen, welcome back. We're ready to resume the trial of the case. The state could call your next witness.

MR. SCOTT: Your Honor, the state calls Indigo Johnson.

THE COURT: All right.

(Whereupon, the witness came forward.)

INDIGO JOHNSON, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SCOTT:

Q Indigo, how old are you today?

A Twenty.

Q Okay. March 9th, 2016, I guess you were 19?

A Yes, sir.

Q And where were you living them?

A At the time, [redacted] Highway [redacted] South, Gray Court, South Carolina.

Q Okay. And -- and you were living there with Esther and Xavier?

A Yes, sir.

Q Okay. And Esther is your mother; Xavier ---

A Yes, sir.

Q --- is your brother?

Is this your home -- or was it your home in 2016?

A Yes, sir.
Q Okay. You -- you remember that morning?
A Yes, sir.
Q Okay. Is that something you'll ever forget, probably?
A Probably not.
Q Okay. Tell me what you remember about that morning.
A Well, that morning, my mama had came and knocked on my door and said that somebody was trying ---
MR. CRANE: Judge, I ---
A --- to break ---
MR. CRANE: --- object to hearsay, what the mama said to her out of the presence of my client.
THE COURT: Sustained.
Q The -- okay. Well, without -- so how was your mother? What was her demeanor at the time, without saying what she was talking about?
A She told us we had to go ---
Q Well ---
MR. CRANE: Object, Judge, to what he said.
THE COURT: All right. You can't get into what anybody told you, okay?
Q What was her demeanor? How was she acting, your mother?
A In -- like in a rush.

Q She was ---

A In ---

Q Okay. And did you have -- was there a phone call that morning, that you recall?

A Yes, sir.

Q Okay. Did you talk with the caller?

A No, sir.

Q Okay. Do -- who -- who answered the phone that morning in your house?

A My mother.

Q Okay. And -- and then she came to you in a rushed state, is what ---

A Uh-huh.

Q --- you said?

Okay. What did you do after your mother came to you in that manner?

A We went out the front door.

Q Okay. Who's we?

A Me, my brother, and my mother.

Q All right. You, Xavier, and Esther?

A Uh-huh.

Q All right.

THE COURT: Excuse me. You need to give a verbal response.

A Yes, sir.

THE COURT: Okay.

Q Okay. Yeah. It's got to be "yes" or "no" ---

A Uh-huh.

Q --- or "I don't know."

But you went out the front door, you said?

A Yes, sir.

Q Okay. And then, which direction did you go from there?

A We went out the front door and down to the pathway.

Q Okay. We were talking about it earlier. But did -- is this generally -- this -- the middle of this screen here where I'm pointing my hand, is that kind of where the cut-though is in the woods?

A Yes, sir.

Q Okay. Is that a -- a cut-through that you use often?

A Yeah. We use it often.

Q Okay. To get to the -- your aunt and cousin's house?

A Yes, sir.

Q Okay. So after you guys went out the front door, you -- you went down towards the path, is what you're saying?

A Yes, sir.

Q And did you get to where the edge of the woods are?

A Yeah. We got to the edge of the woods.
Q Okay. And when you got down there, what did you see?
A We saw a male coming around the front door -- front -- from the front.
Q Okay. From the front ---
A To his car.
Q From the front of Annette and Brittany's home?
A Yes, sir.
Q Is this -- kind of where I'm pointing, is that the front door of the home?
A Yes, sir.
Q Bottom-right corner of State's Number 5?
A Yes, sir.
Q Okay. And -- all right. So you guys are here at the edge of the wood line. The male is coming up -- down this walkway or was he already in the driveway?
A He was already in the driveway.
Q When you first saw him?
A When I first saw him.
Q Okay. And -- well, describe the male for us.
A He had a bluish-gray shirt on and a baseball hat.
Q Okay. Can you describe the car he was in?
A It was a white car.
Q Okay. And where was the car parked?

A It was, like, between the walkway and front of the garage.
Q Is that where you're describing, right here?
A Yeah, right there.
Q Kind of at the front corner of the home?
A Uh-huh.
Q Or the front corner of the garage, rather?
A Yes, sir.
Q All right. Okay. Did he say anything?
A He said he thought the house was for sale.
Q And then what did he do?
A He got in the car and left.
Q Okay. How would you describe him leaving? Was he -- was he slowly getting into his car and casually leaving, or was it -- was it a hurry? Or how would you describe it?
A A hurry.
Q Okay. All right. So did you say what -- what race was the man?
A He was a white male.
Q Okay. And you said bluish-gray shirt?
A Yes, sir.
Q You said a hat?
A Yes, sir.
Q Could you tell what kind of pants he was wearing?

A I don't remember.
Q Okay. All right. And then what did you guys do after that, you and Esther and Xavier?
A After he left, we went down the hill to Annette's house.
Q Okay. You went down the hill -- through the pathway?
A No. We walked around.
Q Okay. Back up to the top of the driveway?
A Uh-huh. Yes, sir.
Q And then walked down?
A (No audible response.)
Q What happened when you got back to the house?
A To ---
Q To Annette's house.
A Brittany -- my mother called for Brittany to open the door ---
Q Okay.
A --- to let her know it was us.
Q Okay. Did -- did you know -- do you know if the front door was locked or unlocked?
A No, sir.
Q Okay. But were y'all able to get Brittany out of the house eventually?
A Yes. When the officer got there, Brittany was going

to come out the house.
Q Okay. What was her -- do -- do you know what I mean when I ask what her demeanor was?
A She was scared.
Q Okay. She seemed scared to you?
A Uh-huh.
Q Okay. All right. I think that's all. Indigo, answer any questions Mr. Crane has for you, please.

CROSS-EXAMINATION

BY MR. CRANE:
Q Ms. Johnson, my name is Larry Crane. How are you?
A Good. How are you?
Q I'm fine. Thank you.

I have just a few questions. When you were at the pathway and saw the white individual, the white male -- and -- and I believe the solicitor -- and I couldn't quite see with -- is -- is this about where the car was, right in here?
A Yes, sir.
Q All right.

MR. CRANE: Someone's controlling that. I don't know who's controlling it.
Q And you didn't see him on the sidewalk in front of the house, did you?
A No, sir. I saw him on the driveway.

Q Okay. You were with your mom when you got to the edge of the woods, weren't you?
A Yes, sir.
Q You two were kind of together, weren't you, along with your brother, Xavier?
A Yes, sir.
Q All right. And did you give a statement to the police that day?
A Yes, sir.
Q And you -- you described today a white male in a bluish-gray shirt?
A Yes, sir.
Q What color shirt did you put in your statement?
A A bluish-gray shirt.
Q Okay. All right. Let me show you this; ask if you can identify this. Can you identify that?
A Yes, sir.
Q What is that?
A My statement.
Q What color shirt did you tell the police you saw that day?
A A grayish-white shirt.
Q Grayish-white, not bluish-gray.
A Uh-huh.
Q All right. What else did you tell the police that

that fellow said to you when your mom said, "What are you doing?"

A He thought the house was for sale.

Q And?

A And apologized and drove off.

Q He apologized. I thought the house was for sale, and he apologized, right?

A Yes, sir.

Q Okay. Thank you. No further questions.

THE COURT: Redirect?

REDIRECT EXAMINATION

BY MR. SCOTT:

Q Indigo, do you remember a for-sale sign kind of near this walkway here?

MR. CRANE: Object, Judge.

A No, sir.

MR. CRANE: Object. I didn't ask anything about a for-sale -- or the house.

THE COURT: Okay. I'm going to allow that. Go ahead.

Q Do you remember a for-sale sign right here?

A No, sir.

Q Okay. And then, as you go up the driveway towards Highway [redacted], do you remember a big for-sale sign at the top of the driveway?

A No, sir.
Q All right. To your knowledge -- and if you have any knowledge -- was that house for sale at the time?
A No, sir.
Q Okay. For as long as you know your cousins and aunt to live in that home?
A Yes, sir.
Q Okay. To your knowledge, was it listed online for sale?
A No, sir.
Q All right. Thank you.
THE COURT: All right. You may step down.
(Whereupon, the witness exited the witness stand.)
THE COURT: All right. You can call your next witness.
MR. TODD: The state would like to call Jamie Edwards.
(Whereupon, the witness came forward.)
JAMIE EDWARDS, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. TODD:
Q Hey. Obviously, it's Trooper Edwards now?
A Yes, sir.
Q How long you been working -- a state trooper?

A Since December of last year.
Q Okay. And on March the 9th, 2016, where were you employed?
A Laurens County Sheriff's Office.
Q And what was your title?
A I was a road deputy.
Q Okay. And on March 9th, 2016 -- about how long were you on the road there, by the way?
A Since 2009.
Q Okay. And did you have an opportunity to respond to a call on March 9th?
A Say that again? I'm sorry.
Q On March 9th, 2016, did you have the opportunity to respond to a call on Highway [redacted]?
A Yes, sir.
Q Okay. Do you remember what that location was?
A Yes, sir. It was [redacted] Highway [redacted] [redacted] in Gray Court.
Q Okay. And do you remember what the nature of that call was?
A It was a burglary in progress.
Q A burglary in progress?
A (No audible response.)
Q Okay. And when you got that call, what did you do next? Did you ---

A I ---
Q --- lights and siren?
A --- activated my lights and siren in my patrol vehicle and got there as quick as I could.
Q Okay. Do you recall what time that call came in for the burglary in progress?
A Yes, sir. It was around 10:03 in the morning.
Q Okay. Do you recall what time you got there on scene?
A I arrived 13 minutes later at 10 -- at 10:16.
Q Okay. And when you arrived on scene, what did you find? Who did you see?
A I seen Ms. Brittany Childress and her family that was next door. They were standing right there on the front porch.
Q Okay. And what -- what kind of condition or demeanor was Brittany in when you arrived?
A She was hysterical. She was ready to get off of the property ---
Q Okay.
A --- because she didn't want to be around the house anymore.
Q And what did you do next when you made contact with them?
A I asked her was anybody else in the residence, and

she stated no. So I told her I was going to clear the residence. So I got my gun out and I went room to room inside the house to make sure there was nobody else inside the house.

Q Okay. So when you clear a residence, such as a burglary-in-progress call like this, you draw your gun and, you said, you go from room to room to ensure there's no one else in the house?

A That's correct.

Q Okay. Okay. And as part of your investigation, what -- what did you do next, if anything?

A After I cleared the residence, I spoke with the -- Ms. Childress was inside the residence. I got the information from them. And what I did was I got on the radio and advised our dispatcher of any description that we got of the vehicle that was leaving and the person involved.

Q Okay. When you say Ms. Childress, you mean Brittany Childress, correct, the ---

A Yes, sir.

Q --- young girl ---

A Brittany Childress.

Q --- inside the house?

A Yes, sir.

Q Okay. And did you take statements that morning?

A I did.
Q Okay. Do you recall who you took?
A Um ---
Q There's Esther, Indigo ---
A There was ---
Q --- and Xavier.
A As far as the names, I -- I couldn't tell you their names.
Q The family?
A But -- yes, sir.
Q Okay. And again, as part of your investigation, do you recall if they gave any descriptions ---
A They did ---
Q --- of the ---
A --- give a ---
Q --- vehicle ---
A --- description ---
Q --- or the person?
A They did give a description out of the car and of the person driving the car. So then I got on the radio with dispatch and relayed the information through dispatch and other officers that were listening on the radio.
Q Okay. And did you -- when you say you took that information and entered it into the radio, is there a

terminology -- what -- what do you do when there's someone on the run?

A We basically just give out a BOLO, which is "be on the lookout."

Q Okay. Be on the lookout?

A (No audible response.)

Q And do you recall what your BOLO alert was? Description, maybe, you gave?

A It would've been the description that the -- the witnesses gave me at the time.

Q Okay. And did they give you a description of the car he was in?

A They did.

Q Do you recall what that description was?

A I think it was some type of white, sporty car.

Q Okay. And you gave that as part of your BOLO?

A Yes, sir.

Q Okay. And do you recall if they gave any description of the person that was at the house?

A They did.

Q Okay. And do you recall what you put in that BOLO?

A It was a white -- it was a white male. I don't remember exactly what the clothing description was. But I do remember saying that there was a -- that he was wearing a ball cap.

Q Okay. And where was everyone when you arrived on scene?
A As far as in who?
Q As far as the family.
A They were on the front porch.
Q Okay.
MR. TODD: Beg the Court's indulgence.
THE COURT: All right.
(Whereupon, Mr. Scott and Mr. Todd conferred.)
Q And while you were on scene, still taking statements and just normal course of investigation, do you recall any kind of suspect being apprehended over the radio or what kind of radio chatter?
A As I was on the scene of -- of this call here, there was another break-in in progress going on.
MR. CRANE: Judge, I object. That would have to be hearsay ---
MR. TODD: Judge, this ---
MR. CRANE: --- unless he knows of his own knowledge.
MR. TODD: This -- this was in the furtherance of an investigation. It was an active crime.
THE COURT: Okay. Overruled. I'll allow it.
Q Go ahead. You said that there was chatter going on for a ---

A It was ---

Q --- crime in progress?

A It was dispatch, giving out another call in the county, on [redacted] Road in reference to a break-in in progress as well. The victim that was -- or the complainant that called it in was giving out a description of the car and the person that was on scene at the residence. And when they gave that out is when I gave -- got on the radio with dispatch, stating that the description of that car and that white male was matching the description that was at this residence on the call that I was on.

Q Okay. And through law enforcement training in involving purposes, those two homes are relatively close in proximity?

A Yes, sir. They're not too far apart from each other.

Q Okay. And you stated again that, over the radio, after you put out your BOLO alert, they then came back at a second scene and stated that a white-looking car with the same matching description as you had was also a suspect at that scene, correct?

A That's correct.

Q Okay.

(Whereupon, Mr. Scott and Mr. Todd conferred.)

Q And based on the radio chatter you just described from the second scene, to your knowledge, was there anyone apprehended that matched that description?
A There was.
Q Okay. Do you recall who that person was?
A I -- I didn't catch that. I didn't get the name over the radio, because I was at one scene and they were at the other scene.
Q Okay.
A But I do know somebody was arrested in reference to that -- that case there.
Q Okay. But we -- we're on trial here today and that person arrested was?
A It was Mr. Stephen Fincher.
Q Okay. No further questions. Ask -- answer any Mr. Crane has.

THE COURT: All right. Cross-examination?

CROSS-EXAMINATION

BY MR. CRANE:

Q Officer Edwards, when you got to the [redacted] residence, where was Ms. Childress and the others?
A On the front porch.
Q So Brittany Childress was outside when you got there?
A Yes. They were -- she was with the family.

Q All right. And -- and -- in other words, she -- she did not come out of the house after you arrived?
A No, sir.
Q She was already outside when you got there?
A That's correct.
Q All right. And the solicitor asked you -- and I'll ask you again -- how far apart were these two various locations, [redacted] Road and this one on Highway [redacted]?
A I mean, I don't have it in front of me. I wouldn't be able to tell you exactly the -- the miles between each other. But it -- it's not a far drive if you was to drive from one -- from Point A to Point B.
Q Well, how far -- how far out of Gray Court is the one on Highway [redacted]? Would you say five miles?
A (No audible response.)
Q You're familiar with that part of the county.
A Yeah. I'm -- I'm thinking. It's actually in Barksdale, which is in between Laurens and Gray Court on the [redacted] Road call. So it would probably be just maybe just a little more than five miles, I would say, just guessing.
Q A little more than five miles from where?
A The Highway [redacted].
Q To Gray Court?
A No. To the [redacted] Road ---

Q You're pointing ---
A What are you asking?
Q I'm asking how far apart the two residences are. But I happen to know it's five miles from Gray Court just to that house.
A Okay.
Q You got to go up [redacted] from that house to get to Gray Court, don't you?
A Uh-huh.
Q And you're saying -- how far is that? From that house to Gray Court.
A (No audible response.)
Q Or you don't know?
A Well, I mean, it's not far.
Q Is this five miles or it one mile or is it ---
A I would probably say it's a little less than five miles.
Q All right. And from that house to Barksdale, how far is it? Is it another five miles?
A No, sir.
Q How far is it?
A I mean, just a rough estimate, I'd probably say maybe four miles or so.
Q All right. And how far down [redacted] Road are we going to [redacted], if you know?

A Maybe a mile.
Q So you're talking a total of ten miles, right?
A (No audible response.)
Q How long would it take you to drive that far?
A (No audible response.)
Q You got to go through Gray Court, don't you?
A (No audible response.)
Q Would you say 15 minutes?
A No, sir.
Q You wouldn't? To go ten miles?
A (No audible response.)
Q When you go from that house to Gray Court and you come to Gray Court. You come to where [redacted] turns right. You can't go straight because there's a railroad tracks. You got to go through Gray Court, right?
A (No audible response.)
Q Correct?
A Uh-huh.
Q All right. So how long would it take you to drive that ten miles we were just talking ---

MR. SCOTT: Your Honor, I -- I think the lawyer is testifying. He -- he is the only one who's testified to ---

THE COURT: Sustained.

MR. SCOTT: --- was ten miles.

THE COURT: Just ask your questions.

Q How long would it take you to drive to from that house to the house on [redacted] Road?

A Maybe ten minutes or a little less.

Q All right. So you -- you say you'd do 60 miles an hour from that house to [redacted] Road; is that right?

A No, sir.

Q If you do 60 miles an hour, you're doing a mile a minute, aren't you?

A Yeah.

Q And if it's ten miles, it takes you ten minutes, right?

A (No audible response.)

Q Is that right?

A Could you say that again?

Q If you're ---

A If you ---

Q --- driving 60 miles an hour, it's a mile a minute; isn't it?

A That's correct.

Q And we've already said it's ten miles from one residence to the other. You said it would ---

A Well, we ---

Q --- take ten ---

A --- didn't say exactly it was ten miles. We don't

have it from Point A to Point B to know exactly how many miles it is from the address on [redacted] to [redacted] Road. I was in -- I was guesstimating the distance from Point A to Point B.

Q Okay. No further questions. Thank you.

THE COURT: Redirect?

MR. TODD: Briefly.

REDIRECT EXAMINATION

BY MR. TODD:

Q I -- I'm not going to ask you mileage and how far. How long a drive is it from Highway [redacted], this -- this location, to the [redacted] ---

A I would say ---

Q --- Road ---

A --- ten minutes, at the most.

Q At the most?

A (No audible response.)

Q Okay. No further questions.

THE COURT: All right. You may step down.

(Whereupon, the witness exited the witness stand.)

THE COURT: All right. Ladies and gentlemen, it's about 12:25. I think we're going to go ahead and break for lunch for today. And I'm going to let you go to lunch on your own. I'm going to ask that you please be back in the jury room at two o'clock. That'll give you

an hour and a half to eat lunch and get back.

Do not discuss the case, even among yourselves. Don't conduct any independent investigation into the case. Hope everybody has a good lunch, and we'll see you back at two o'clock. Thank you very much.

(Whereupon, the jury exited the courtroom at 12:25 p.m.)

THE COURT: All right. Anything from the state before we recess for lunch?

MR. SCOTT: No, Your Honor.

THE COURT: Anything from the defense?

MR. CRANE: No, sir, Judge.

THE COURT: All right. We'll be in recess until two o'clock.

MR. CRANE: Thank you, Judge.

THE COURT: All right. Thank you.

(Whereupon, the proceedings were adjourned at 12:26 p.m.)

--- END OF TRANSCRIPT OF RECORD ---

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CERTIFICATE

I, the undersigned Maryann S. Nevers, CVR-M-CM, Official Court Reporter for the Eighth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned cause, relative to appeal, in the Circuit Court for Laurens County, South Carolina, on the 27th and 28th days of March, 2017.

I do further certify that I am neither of kin, counsel, nor interest in any party hereto.



Maryann S. Nevers, CVR-M-CM
Official Court Reporter

Columbia, South Carolina
July 15, 2018

STATE OF SOUTH CAROLINA)
)
COUNTY OF LAURENS)
)
)
)
)
)
STATE OF SOUTH CAROLINA,)
)
)
vs.)
)
STEPHEN TRASE FINCHER,)
DEFENDANT.)
)

COURT OF GENERAL SESSIONS
2016-GS-30-00757
2016-GS-30-00759

TRANSCRIPT OF RECORD

COPY

March 29, 2017
Laurens, South Carolina

B E F O R E:

THE HONORABLE BENJAMIN H. CULBERTSON, JUDGE; and a jury.

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

C. DALE SCOTT, ESQ.
JAMES C. TODD, IV, ESQ.
Assistant Solicitors

LAWRENCE W. CRANE, ESQ.
Attorney for the Defendant

HOLLIE M. JENKINS
Circuit Court Reporter

I N D E X

(SW) - Denotes State's Witness
(DW) - Denotes Defense Witness
(IC) - Denotes In Camera

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All Exhibits were retained by the Clerk of Court for Laurens County.

PROCEEDINGS

THE COURT: Anything from the State before we proceed?

MR. SCOTT: Your Honor, I think we will need to, before the jury comes in, do our Neil v. Biggers hearing.

THE COURT: All right.

MR. SCOTT: We do have a photo lineup.

THE COURT: All right. Anything before they call the first witness?

MR. CRANE: No, sir.

THE COURT: Do you want to put anything on the record?

(WHEREUPON, there was no response.)

THE COURT: All right. Call your first witness.

MR. SCOTT: Your Honor, the State calls Chris Martin.

THE COURT: All right.

WHEREUPON,

CHRIS MARTIN,

after first having been duly sworn, testified as follows:

THE COURT: Sir, I apologize. Your name?

THE WITNESS: Chris Martin.

THE COURT: All right, sir.

DIRECT EXAMINATION

BY MR. SCOTT:

Q Investigator Martin, in March of last year, you were with the sheriff's department; correct?

A Yes, sir.
Q And what were your duties with the sheriff's department at that time?
A Primarily, investigations for Laurens County.
Q Okay. On March 9th, specifically, did you have occasion to respond to a couple of reports of burglaries that particular day in the Gray Court area?
A That's correct.
Q I've got one on Highway [redacted], the other one is a [redacted] Road address. Were those the two you responded to?
A Yes, sir.
Q And -- well, you didn't go to the Highway [redacted] that day, did you?
A Not initially, no, sir. I just went to [redacted] Road and worked with Deputy Edwards in reference to [redacted] South.
Q Okay. And, you know, what did you observe when you got to [redacted] Road?
A I found forced entry to a back door.
Q Okay. Any items reported stolen?
A Yes, sir, tools.
Q Any eyewitnesses that you spoke to?
A Yes, sir.
Q And who was that?
A It was Mr. Hampton's daughter.

Q Was it DH [redacted]?
A Yes, sir.
Q And she indicated to you that she had seen the person who had entered the home?
A Yes, sir. After speaking with her, she indicated that she witnessed this individual, and, also, used her cell phone to take a picture of his vehicle.
Q Okay. Did she give a description of the individual she saw?
A Yes, sir.
Q And what was that description?
A White male wearing a T-shirt, blue jeans. And I think she saw him a couple different times. He made a couple different trips.
Q Okay. Did -- let's see. When you spoke with her, was that before or after Mr. Fincher's arrest, or do you recall?
A I believe it was after.
Q Okay. At some point, did you construct a photo lineup for her to view?
A I did.
Q Okay. When was that?
A I constructed it, I think it was that day, originally. And then between her school schedule and stuff, we couldn't get up. So that lineup was, finally,

done on the 22nd of March.
Q Okay. Did you give her any instructions between March 9th and March 22nd?
A No, sir.
Q As far as don't look this guy up, or anything like that?
A No, sir. I didn't speak with her until, again, the 22nd.
Q Okay. So March 22nd, you met with her again?
A Yes, sir.
Q And where was that?
A At the residence.
Q Okay. So you went back to the [redacted] Road residence?
A Yes, sir.
Q And was anyone else with her?
A Mr. Hampton, her father.
Q Okay. And let me show you State's Exhibit No. 19. What is that?
A That's the photo lineup I created.
Q What, if anything, did you tell her prior to viewing the six-pack lineup?
A Like I do in all photo lineups, you know, I hand them the lineup and say, look over this lineup. This lineup may or may not contain the picture of the person that you

seen that day.

She scanned it. I could kind of see her with her eyes scanning it. She went to number six and said, That's him.

Q Okay. Do you recall how quickly she identified --

A Less than a minute.

Q And what slide is that, the sixth -- sixth slide?

A Sixth, yes, sir. She circled six. I always ask them to circle it and sign it.

Q That's her signature there?

A Yes, sir.

Q And that individual was who?

A Stephen Trase Fincher.

Q Okay. Did she -- did she state the degree of certainty that she had as far as picking that person?

A I can't remember if I asked her -- you know, word for word what she said. But she didn't hesitate, and said, This is him. She circled number six and signed it.

Q So one more time. What are the instructions you give the person once -- before you hand them the lineup?

A I just tell them to take a look at it. This photo lineup may or may not contain a picture of the person. I don't want to mislead them.

Q And the Judge will get to see the lineup. But whenever you put together these things, what are you

looking for as far as filling the six slots?
A Just trying to find similar descriptions of individuals, you know, the same type of physical description.
MR. SCOTT: Chris, answer any questions Mr. Crane has for you.
THE WITNESS: Yes, sir.

CROSS-EXAMINATION

BY MR. CRANE:
Q Deputy Martin, did DH [redacted] give a -- what was the physical description she gave?
A Say that one more time, sir. I'm sorry.
Q What was the physical description of the person she saw?
A White male, T-shirt, blue jeans. I believe that's everything she said.
Q Did she say anything about hair, or color, or anything like that?
A Not that I can remember, sir.
Q All right. In looking at the photo lineup, I noticed that three of these individuals had longer hair and three had short hair. Why didn't you put all of them with crew cuts, short hair? Much like your hair, much like Mr. Fincher's hair.
A Yeah. Most of these people have the same color hair,

so that's what I was going for, with, also, some facial hair as well.

Q I understand that. But none of them have longer hair like me -- or three of them have longer hair like me, and three of them have shorter hair like you and Mr. Fincher. Why didn't you do them all with short hair?

A These are the six I picked. I tried to get them as close physically as I could.

Q You don't have three more people in there that had short hair that you could have picked?

A Sir?

Q There were not three other photographs with short hair you could have picked?

A I'm sure there's a lot of different people, sir, but these are the six I picked.

Q I understand that. Now, does placing -- are you taught at the academy, or wherever, that if you place a picture in a particular spot, the person more than likely can pick it out?

A No, sir. It randomizes it. Once you pick -- just using this as an example. So once you -- if you pick your subject, Mr. Fincher in this case, and you hit randomize in the computer, it randomly puts --

Q So the computer prints the photo lineup?

A Yeah.

Q Okay.
A It's done through our law track system at the sheriff's office.
Q Excuse me?
A It's done through our law track system at the sheriff's office.
Q Okay. And she did that on the 22nd of March?
A Yes, sir.
MR. CRANE: Okay. Thank you.
THE WITNESS: Yes, sir.
THE COURT: Redirect?
MR. SCOTT: None, Your Honor.
THE COURT: Okay. You may step down.
Call your next witness.
MR. SCOTT: DH [redacted], Your Honor.
THE COURT: All right.
MR. CRANE: Judge, I'm going to object to the lineup. I don't know if you want me to do it now or later. But the photographs are not similar. They are different. There's, at least, three of them that have long hair -- or longer hair, three of them that have short hair.
My client had short hair. He had blonde hair. Some of the people don't have blonde hair. It's not a good lineup. I would object to the lineup itself and the identification.

THE COURT: All right. I reviewed Plaintiff's [sic] Exhibit No. 19, I think it's similar enough. So I overrule the objection.

WHEREUPON,

DH [redacted],

after first having been duly sworn, testified as follows:

THE BAILIFF: You have a soft voice, so speak loud and clear. She has to take down everything you say. Okay.

THE WITNESS: Okie dokie.

DIRECT EXAMINATION

BY MR. SCOTT:

Q DH [redacted], how old are you?

A 17.

Q Okay. March 9th of last year, you would have been 16?

A Yeah. It was my birthday.

Q Okay. And you were home that day?

A Yes, sir.

Q What was the address?

A [redacted] Road.

Q Okay. And what were you doing home that -- it was a Wednesday, so what were you doing home on that school day?

A I was sick.

Q Okay. Tell us what you remember around 10:00 a.m.,

or so. What do you remember happening?

A Okay. So my dogs started barking, which, initially, told me that something was wrong. So I was in my room upstairs and I looked out the window. And I noticed there was a car there that I didn't recognize. And there wasn't supposed to be anyone there.

So I kind of looked. And I was a little suspicious. And I went downstairs because they kept barking. And he kind of, like, got out of the car. And I'm looking at him through the window, but I didn't want him to see me, so I was hiding. And he, like, came up on the front porch and was looking in the window and, like, looking in the peephole in the door. And he started knocking.

I didn't do anything, I didn't say anything, or go to the door. And I have big dogs. And they were put up in separate rooms in the house. So I let my dogs out of the room, not out of the house. So they could, like, get in the windows and scare him if he didn't -- so if he thought he could come in, he didn't want to at that point.

And he, like, looked in. And then he didn't come in the house. He kind of stopped after that. He went -- he disappeared behind. So I couldn't see him any more. And I didn't want him to see me. So I tried to stay as hidden as I could.

And he walked away. And I didn't know where he went.

But our alarm system beeps when you open the door. So I had assumed that he went into our garage, which was downstairs. Because I didn't hear him come in the house.

So I didn't go outside. I stayed inside. I called my mom and she called 911. And I was on the phone with her. He pretty much made a couple of trips back and forth from the garage with power tools and boxes of stuff. And he --

Q Let --

A Do you want me to give a description?

Q No. Let me interrupt you just for a second.

MR. SCOTT: I would like to have this marked.

(WHEREUPON, State's Exhibit No. 1 was marked for identification.)

BY MR. SCOTT:

Q Let me show you this. It's been pre-marked as State's Exhibit No. 1. Do you recognize that?

A Yeah. It's my house.

MR. SCOTT: Your Honor, I'm going to publish this just for purposes of this hearing. This is State's Exhibit No. 1. It hasn't been admitted into evidence yet. But she just described it as a picture of her house at [redacted] Road.

Do you have a screen up there, Your Honor, or can you see this?

THE COURT: I can see it.

BY MR. SCOTT:

Q So, DH [redacted], you said this is your home?

A Yes, sir.

Q And you were mentioning a man coming to the front door, and peeking through a peephole and some windows, and everything. And you saw this from where?

A The front window on the porch.

Q All right. So when was the first time you saw him?

A The top left window right there.

Q That's where your bedroom is?

A Yes.

Q So did you look out of this window, or how did you see him at your front door?

A My blinds were closed. So I just pulled the blinds down and I looked. And I can see pretty clearly from my room if there's a car in my driveway.

Q Okay. And where was the driveway -- I mean, where was the car in the driveway?

A About where the car is here, just more in the middle leftish. Yeah, right there.

Q Okay. Somewhere in here?

A Yeah.

Q And what was the car?

A It was a white Pontiac.

Q You could see that very clearly from this window?
A Yes.
Q And then were you able to see the man who was coming back and forth from your house --
A Yes.
Q -- from that window?
A Yes.
Q Okay. And it's daylight hours, I guess?
A Yeah. It was -- it wasn't early morning, but it wasn't afternoon.
Q All right. And so what other vantage points did -- were you able to see the man? Where else were you?
A The front window by the front door.
Q This window right here?
A Yeah. I peeked in there for probably two minutes total, but back and forth each time.
Q All right. You were describing something earlier about looking down your stairwell from the inside of the house?
A Yeah. I was -- if you walk in my house, my stairs are right to the left.
Q Okay. This is your front door and to the left?
A Yes. So they're probably, like, right there. So I was sitting to where he couldn't see me, but I could peek my head around a little bit and see the window.

Q Okay. So that stair --
A And his car.
Q All right. So that stairwell leads up to your bedroom?
A Yes.
Q So you've looked at him through this window. You've look at him from the top of the stairwell you were talking about?
A About halfway down the stairs.
Q And you felt confident he couldn't see you from that angle?
A I knew he could not see me.
Q Were you able to get a good look at the man?
A Uh-huh.
Q And then further, the third vantage point, you were describing looking at him through this window, too?
A Yes, sir.
Q Okay. And did you ever go to the back of the house to look at him from the back of the house?
A No. I thought that if I went to the back of the house that that would have risked him seeing me a whole lot more than at the front.
Q Tell me -- I don't know. What emotions were you feeling at this point?
A I was very scared that he was going to somehow want

to come into my house if he wasn't done in the garage, or anything like that, or he wasn't going to leave. I was crying. I was scared.

Q Okay. Do you know about -- I don't know -- what length of time you were able to see the man?

A I saw him the second -- every single time he was out of the car, I saw him. When he was on the front porch, I saw him. When he was walking back and forth carrying his stuff, I saw. When he left, I saw him. I saw him almost the whole time.

Q Okay. And the description of the man -- what was the description?

A He was taller, kind of muscular. He had red hair, some scruff. He had tattoos on his arms. He was wearing a ball cap, I remember, and then just normal clothes.

Q Okay. And you gave that description to the police officers that day?

A Yes, sir.

Q I'll show you this. I don't have it marked as an exhibit. But do you recognize what that is?

A Yeah. That is my statement.

Q And what was the description you gave officers?

A That he was taller, muscular, red hair, tattoos on his arms.

Q In --

A Oh, in here? He was wearing a blue shirt, white ball cap, jeans. He had a tattoo on his arm. And he had a scruffy beard.
Q Okay. So you were able to view a tattoo on his arm?
A Yes.
Q So what do you think the closest you ever got to him was? Was it when you were at the downstairs window?
A When I was on the stairs and he was on the front porch was when he got the closest to me.
Q Okay. Any idea how -- what that distance would be?
A I'm not good with distance. It was probably --
Q Tell me -- let me back up. Tell me when to stop when I'm about as far away as he was from you.
A Probably there.
Q Somewhere right in here?
A Uh-huh.
Q So 17, 18 feet, something like that?
A Uh-huh.
Q Okay. Do you recall when -- the last officer that testified, do you remember him?
A Yes.
Q Chris Martin?
A Uh-huh.
Q Do you remember speaking with him that day, March 9th?

A Yes, sir.
Q And do you remember speaking with him -- I think he said March 29th?
A 22nd.
Q March 22nd. I'm sorry. Do you recall when he came to visit you that day?
A Yes.
Q Do you remember State's Exhibit No. 19?
A Yes.
Q Tell me how that went down whenever he showed you State's Exhibit No. 19. How was that processed --
A He just told me that he may or may not be on the lineup, that if I see him to just point him out and then circle and sign my name. And he kind of showed it to me. And I immediately knew who it was because I had already gotten a good look at him several times.
Q Are you talking about -- you already got a good look at him when?
A When he broke into my house, this guy.
Q Did you see pictures of him on the news, or anything between March 9th and March 22nd?
A No. I don't even watch the news.
Q Okay. He didn't kind of point to that one picture there at six and say, does this guy look familiar, or anything like that?

A I'm pretty sure he just held it at the top of the paper and handed it to me.

Q And you said, immediately, you were able to identify him?

A I mean, I looked at all of them, but I knew that was him.

Q And then you signed it?

A Yes.

Q Okay. And how certain are you and were you that that was the man you saw on your front porch on March the 9th of 2016?

A I was and am a hundred percent.

MR. SCOTT: Okay. Thank you, DH .

Answer any questions Mr. Crane has for you.

THE WITNESS: Uh-huh.

CROSS-EXAMINATION

BY MR. CRANE:

Q DH , my name is Larry Crane.

How are you?

A Good.

How are you?

Q Good.

Just a few questions for right now. When you were in the upstairs bedroom up here --

A Yes, sir.

Q -- you can't see to the porch, can you?
A No, sir.
Q So you saw the car in about this area right here?
A Uh-huh.
Q All right. And when was it that you first saw the fellow that you saw?
A I saw him immediately when I looked out my front window.
Q Was he at the car?
A Yes.
Q All right. And where did he go?
A He went to the front porch.
Q Over here?
A Yes.
Q You couldn't see him at that time, could you?
A At that point, I had come to the stairs, so I could see him --
Q The stairs that are up here?
A No.
Q Up --
A Yes. But you're pointing way more up than they are.
Q I'm sorry.
A They're more down.
Q I understand. But they're inside and --
A Yes.

Q -- the door is under an overhang of the porch; right?
A Yes.
Q And, certainly, from the top of those steps, you can't see through that door, can you?
A I said I was halfway down the steps, not at the top.
Q Well, tell me how you can see through that door.
A I wasn't looking through the door. I was looking through the window.
Q This window?
A Yes, sir.
Q When -- so when you saw him pass by the window is when you saw him?
A He not only passed by the window, he looked in the window.
Q Okay. So from at the top of the steps -- or halfway down the steps, you could see him looking in the window?
A Yes.
Q Did you ever come all the way down?
A Yes. Eventually, when he started carrying stuff back and forth from his car.
Q So you came down to this window here?
A Yes.
Q All right. Now, you couldn't see him looking through the peephole, could you?
A I mean, no.

Q Didn't you say that in your statement, you saw him looking through the peephole?
A Yes.
Q Well, that was a lie then, wasn't it?
A Well, technically, it wasn't. Because there was a pie safe in my kitchen. And the way that the pie safe was set up, it, like, reflected from the front door. So if I was looking at the pie safe, I could see someone at my front door.
Q I understand that. So you're telling me now you're halfway down the steps looking at a pie safe and see someone looking through your peephole? Is that what you're telling us?
A Yes.
Q Aha, got you. And what color of hair did this fellow have?
A Reddish-orange.
Q Reddish-orange. Would it surprise you to learn that Mr. Fincher has blonde hair?
A I mean, no. You can consider it blonde. I have friends that have red hair that consider it blonde.
Q So you would consider blonde, reddish-orange all about the same?
A No.
Q You would not?

A No. Because he has more red tones in his hair.
Q Okay. Back in March of last year, who all lived in this house with you?
A My mom, my dad, me, and my three sisters, and then all my animals.
Q And who?
A My animals.
Q Okay. No one else from outside your family?
A No, sir.
Q All right. Do y'all -- do you, by chance, know anyone named Shannon Wood?
A No.
Q Okay. And when you saw this fellow taking stuff, do you know from where -- was he coming from the side here, from the side or out the door? Where was --
A He was going through the middle of the house in the garage straight to his car.
Q Right here?
A Yes.
Q Because those two are not connected, are they?
A No.
Q Okay. And I think we have a picture of the back, but it's not up here yet. But about where this window is on the back is a door, isn't it?
A Yes, sir.

Q Is that where you think that he went into the garage?
A That is where I know that he went into the garage. But in the moment, I did not know. Because I did not go outside and I could not see. I just knew that he had went into the door.
Q Yeah. All right. Were there any other doors on the garage?
A Yeah. There's a side door.
Q Over this way?
A Yeah.
Q Over here?
A Yes.
Q On this side?
A Yeah.
MR. CRANE: Okay. Thank you, ma'am.
THE WITNESS: You're very welcome.
THE COURT: Redirect?
MR. SCOTT: No, Your Honor.
THE COURT: All right. You may step down.
Call your next witness.
MR. SCOTT: Your Honor, that's all the witnesses we have for purpose of Neal v. Biggers.
THE COURT: Does the Defense wish to present anything?
MR. CRANE: No, sir, Judge.

THE COURT: All right. Any motions?

MR. SCOTT: No. I have no motions, Your Honor. I just -- I intend to offer the identification.

MR. CRANE: Judge, I've already moved that the lineup be excluded, and the testimony concerning the lineup and the identification be excluded.

THE COURT: All right. I deny the motion. I think it is adequate. It does not show a likelihood of -- I can't think of the terminology, that it unduly identifies the Defendant, that it is enough pictures similar --

MR. CRANE: Totality?

THE COURT: The totality, yes. That's it. That there are enough pictures that it's not unduly suggestive. That's the term.

MR. CRANE: Thank you, Your Honor.

THE COURT: So I'll allow it.

Anything further from the State before we bring the jury in?

MR. SCOTT: No, Your Honor.

THE COURT: Anything from the Defense?

MR. CRANE: No, sir, Judge.

THE COURT: Okay. Let's go ahead and bring the jury in.

(WHEREUPON, the jury came into open court at approximately 10:05 a.m.)

THE BAILIFF: All jurors are present, Your Honor.

THE COURT: Thank you very much.

Ladies and gentlemen, welcome back. I hope everybody had a good evening. I thank you for being prompt, both yesterday and today.

As I told you during qualifications, we don't get to the jury right away. But we can't conduct any of the Court's business without you being here. And I want to thank you for your promptness in returning yesterday and today. We're ready to proceed with the trial of this case.

The State may call your next witness.

MR. SCOTT: The State calls DH [redacted].

THE COURT: All right.

WHEREUPON,

DH [redacted],

after first having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SCOTT:

Q Good morning, DH [redacted].

A Good morning.

Q You are how old?

A 17.

Q March 9th of last year, do you remember that day?

A Yes, sir. It was my birthday. I was turning 16.

Q Okay. And you were living where?

A [redacted] Road with my mom and family.

Q Okay. State's Exhibit No. 1, do you recognize that?

A Yes, sir.

Q And what is it?

A That is my house.

Q The front of your house?

A Uh-huh.

Q State's Exhibit Nos. 2 and 3, what are these?

A That is the back of my house and the side of my garage.

Q Okay. The side of your garage is State's Exhibit No. 3?

A Yes, sir.

MR. SCOTT: Your Honor, the State offers State's Exhibit Nos. 1, 2, and 3 for admission into evidence.

THE COURT: Any objection?

MR. CRANE: I haven't seen them yet, Judge. Just a moment.

(Pause.)

MR. CRANE: No, sir.

THE COURT: All right. State's Exhibit Nos. 1, 2 and 3 are admitted into evidence without objection.

(WHEREUPON, State's Exhibit Nos. 1, 2, and 3 were admitted into evidence.)

BY MR. SCOTT:

Q State's Exhibit No. 1 is what I have up here, DH [redacted]. That's the front of your house you were describing?

A Yes, sir.

Q And your bedroom -- well, let me ask you this. That was a Wednesday. You had just turned 16. What were you doing home that morning?

A I was sick from school.

Q Okay. Was anybody else home with you that day?

A No, sir.

Q Where was your mother?

A She was at work.

Q Okay. And -- okay. Your father was working as well?

A Yes, sir.

Q So what were you doing? Were you in the bed, or were you downstairs watching TV? What were you up to?

A I was in my bed probably watching Netflix.

Q Okay. Which -- can we see your bedroom window in this picture, State's Exhibit No. 1?

A Yeah. It's the top left.

Q So right here?

A Yes, sir.

Q All right. So you're home sick, and watching Netflix, and you're in bed. What do you remember happening that morning?

A My dog started barking, which meant that there was someone there that shouldn't have been there, or someone was going by on a bicycle, or really loud, or something.
Q Did that concern you immediately?
A Yes. I got up and I immediately looked out the window.
Q Tell me where your dogs were.
A I'm pretty sure that one dog was with me. But the other dogs were downstairs in the bottom two rooms, the ones under mine.
Q Okay. Are they closed in that room during the day?
A Yes, sir.
Q These two?
A Yes.
Q What kind of dogs did you have?
A I have a Great Dane, a Chow mix, and the two little dogs.
Q Okay. So two big dogs, two little dogs. But they're in these rooms underneath you. And you keep the door shut to keep them in there?
A Yeah.
Q So you said they began barking, which concerned you. You said you looked out the window?
A Yes, sir.
Q What did you see when you looked out the window?

A I saw a white Pontiac car that I did not recognize.
Q Where was the car?
A And a man -- it was about the location of where their car is by the garage, just a little more in the middle.
Q Okay. Maybe kind of in between these two --
A A little to the left a little bit.
Q Where I'm pointing?
A Huh-uh. Like where the car is, just to the left.
Q Oh, right here?
A Yes.
Q So right next to this car by the garage, a white Pontiac. Did you see anybody in the car?
A I saw someone getting out of the car.
Q What did he look like?
A He was taller. He had kind of like a scruffy beard. He had a tattoo on his arm, and he had, like, reddish hair.
Q What kind of clothes was he wearing?
A He was wearing -- I remember a ball cap. And he was wearing, like, normal jeans, and a T-shirt.
Q Do you remember the color of the T-shirt?
A (Witness shook her head.)
Q The -- so you were able to see him in your driveway out of this window. And where was he headed?
A He headed to the front porch first. And then he was,

like, looking in the window. And he knocked on the door and looked in the peephole. And then he -- I guess he realized -- I had let my dogs out at that point. So they were in the window. And I guess he just decided that he wasn't going to come in. So then he, like, walked down in the middle of my garage and house.

Q Okay. In between here?

A Yes.

Q Well, tell me about -- I want to back up. Tell me about him looking in through the window. Describe how he was doing that?

A He just walked up and was, like, looking in, like, peeping around so he could see in the window and looking at everything.

Q He had his hands like that, face up to the window looking in?

A Yes.

Q Did you recognize the man?

A No.

Q Had you told anybody to come over that day?

A No.

Q Did you even know who Stephen Fincher was?

A No.

Q Now, when he was looking through the window and banging on the door, how were you able to see him? Where

are you looking at him? Where are you?
A I was on my stairs about halfway down behind a wall. So I could, like, see him if I peeked my head around on the porch. I could only see him on the porch then.
Q Are these stairs that lead up to your bedroom?
A Yes. They lead to the upstairs.
Q So you walked out of your bedroom and looked down the stairs is what you're describing?
A (Witness nodded.)
Q And from the top of the stairs, you can see the front porch?
A Halfway down the stairs.
Q Okay. From halfway down the stairs, you could see your front porch?
A Yes.
Q And is it this window that he's looking through?
A Yes.
Q Okay. And so -- all right. When he leaves the porch, you said it looked like he went around the back of your home?
A Yes.
Q What happened next?
A I heard a beep, which meant that he had opened a door. But I didn't -- I knew he hadn't gone in my house because I didn't hear him come in. So I knew he got in my

garage, but I didn't know which door. Because I didn't want to go to the back of house to see because I didn't want to risk him seeing me.

Q Okay. Let me show you -- let's see. State's Exhibit No. 3. Okay. State's Exhibit No. 3. This is the -- okay. Here's your home and here's your detached garage with the bonus room to the left of the home. You didn't go to these back windows you said because you were scared he'd see you?

A Yes, sir.

Q And this door right here, what's behind that door?

A It's my dad's workshop. It has all his power tools and work stuff to build stuff with. I don't really go up there.

Q Okay. You described a beep, though?

A Yeah. All of our doors have an alarm system on them. But the alarm system was deactivated, but the doors still beeped when you open them.

Q So you were in the home and you hear the beep, which indicated to you what?

A That a door had opened. I didn't know which one, but a door.

Q What emotions, if any, are you feeling right then?

A I was on the phone with my mom and 911 at this point. And the second that I heard that, I started crying.

Because I was really scared because there wasn't anything I could do except wait.

Q Okay. And did you see him again after you heard the door beep?

A Yes. He made several trips from his car back to the garage carrying power tools and boxes of stuff that, I guess, he was going to take.

Q Several times you saw him go back and forth?

A Yeah. Two or three times.

Q Okay. And you said you were on the phone with your mother or 911?

A My mom and 911. I called my mom, initially. And she put us on the call with 911, too.

Q Did you give a description of the man you saw?

A Yes.

Q Do you remember giving a statement to law enforcement that day?

A Yes, sir.

Q And did you give a description of the car?

A Yes.

Q And what did you describe the car to be to them?

A A white Pontiac GT.

Q Okay. And you described the man?

A Tall, reddish hair, orange hair, tattoo on his arm.

Q Do you remember today what color of shirt you told

them he was wearing?
A It was a darker color.
Q Let me show you -- just to refresh your memory, do you recognize this, first of all?
A Yes.
Q What is that?
A My statement.
Q Read towards the bottom. You don't have to read it out loud, but just refresh your memory with it.
A Okay.
Q Okay. Did you tell them what shirt?
A Yes.
Q Okay. What color shirt did you tell them?
A Blue.
Q At some point, did you learn that they arrested a man fitting that description?
A Yes, I did.
Q All right. That was March 9th. Do you remember Investigator Chris Martin coming to see you again on March 22nd?
A Yes, sir.
Q Okay. Do you remember why he showed up at your house?
A He showed up so I could do a lineup description of what he looked like.

Q What did he show you?
A He showed me a paper with men on it and told me he may or may not be on the paper, that I was to decide if he was on there. And if I knew who he was to point it out and circle the number.
Q Okay. This is State's Exhibit No. 19. Do you recognize this?
A Yes, sir.
Q What is that?
A The lineup that I chose from.
Q Okay. So he hands it to you and he says he may or may not be on here. Is that what you said?
A Yes, sir.
Q Did you see the man who was at your front door and had -- you saw going back and forth to the Pontiac with the tools?
A Yes.
Q How certain were you that that was the man in the picture?
A A hundred percent.
Q Okay. And did you -- did you mark it on the sheet?
A Yes.
Q Okay. And that's the sheet that you saw that day?
A Yes.
MR. SCOTT: Your Honor, the State would go ahead and

offer State's Exhibit No. 19 for admission into evidence.

THE COURT: Okay. Plaintiff's [sic] Exhibit No. 19 admitted into evidence over Defense's objection.

(WHEREUPON, State's Exhibit No. 19 was admitted into evidence.)

BY MR. SCOTT:

Q Okay. So is this the document you were shown?

A Yes, sir.

Q Here at number six, is that your signature?

A Yes, sir.

Q And is that the man who was at your front door and porch --

A Yes.

Q Let me show you --

MR. SCOTT: Are State's Exhibit Nos. 6 and 7 in?

THE COURT REPORTER: I think so.

BY MR. SCOTT:

Q I'm going to show you State's Exhibit Nos. 6 and 7. These have been admitted into evidence. What are those pictures of?

A His car.

Q That was the car you saw?

A Yeah. It's the car that was in the driveway that he was using. I did take a picture that day, but I deleted it.

Q You what?
A I deleted it.
Q Okay. State's Exhibit No. 6, that's the car you saw?
A Yes.
Q Then State's Exhibit No. 7, I don't know if you got to see the back of it or not?
A I did not.
Q DH [redacted], what county is that home at, [redacted] Road?
A Laurens County.
MR. SCOTT: That's all. Answer any questions Mr. Crane has for you, DH [redacted].
THE WITNESS: Okay.

CROSS-EXAMINATION

BY MR. CRANE:
Q DH [redacted], good morning.
A Good morning.
MR. CRANE: How do we get it back?
MR. SCOTT: What you can do is press that button.
MR. CRANE: This?
MR. SCOTT: Yes.
MR. CRANE: Okay.
BY MR. CRANE:
Q Your testimony, if I heard properly, is that your dogs were barking. You look out a window here, which is your bedroom window?

A Yes.
Q And you saw a car about right here; correct?
A Yes.
Q About that spot?
A Yes.
MR. CRANE: Do you know how to get rid of that?
MR. SCOTT: Just hit somewhere else on the screen.
MR. CRANE: Hit what?
MR. SCOTT: Hit somewhere else on the screen.
MR. CRANE: Okay. Thank you.
BY MR. CRANE:
Q And you said you saw the fellow getting out of his car?
A Yes, sir.
Q And where did he go to?
A He went to the front porch first.
Q He went to over here?
A Yes.
Q Now, there's an overhang. This is a wall, isn't it?
A Yes.
Q From the front of the house to go back, there's an overhang on this porch?
A Yes.
Q So when you were up here, you, certainly, couldn't see him on the porch, could you?

A No. When I was in my room looking out, he was still in the car. And then when he came to the front porch, I went halfway down the stairs.
Q Halfway down the stairs?
A To see what he was doing.
Q I'm sorry?
A To see what he was doing.
Q Which the stairs are somewhere over here inside the house; correct?
A Yes.
Q Do they go straight up, or is it an angle that goes up?
A Straight up.
Q All right. And when you were up here, in your statement, you say he was looking in the peephole. You, certainly, couldn't see him looking in the peephole if you're up here in the stairs, could you?
A No, I could not. But --
Q All right. And is this -- did you see him when he was looking in the windows?
A Yes. I saw him when he was looking in the windows.
Q And that's from the stairs up here?
A Yes.
Q So from the stairs about halfway up here, over to here, you saw him looking in your windows?

A Yes.
Q Did you ever come downstairs?
A Yes.
Q All right. When did you come downstairs?
A After he left the front porch and I heard the door chime, which I knew he wasn't at the front of the house anymore.
Q Do you know if he went around to the side door of the house?
A I'm pretty sure he did, but I didn't look.
Q Do you have a doorbell on this door?
A I have a doorbell on all doors, except for the back door and the garage doors.
Q Where is the side door? Is it right here?
A Yes.
Q Does that have a doorbell?
A Yes.
Q Do you recall in your statement saying that he rang the doorbell on the side door?
A Yes.
Q All right. So that may have happened?
A It did happen.
Q Okay. And when was it that he went back to his car, before or after he rang the doorbell?
A After.

Q So he went back to his car and what happened then?
A Well, he went around the side of the house and he rang the doorbell. And then I heard the door chime, which meant that he had gotten into a door. And then it, like, took, like, a couple of minutes.
And then I saw him come back with handfuls of stuff going to his car that I knew was ours, because it was my dad's.
Q Okay. You said, as far as you know, he never tried to get into the house?
A As far as I know, he never tried to get in the house.
Q All right. And do you know whether any of the doors were locked?
A All the doors were locked.
Q Okay. And I believe you indicated this is the door that the white -- the fellow went into?
A Yes.
Q This is your dad's workshop?
A Yes.
Q Below that is a garage?
A Yes.
Q I assume nobody sleeps there, do they?
A No.
Q There's no connection between the house and the garage, unless you go outside; is that right?

A Yes.
Q Okay. And you're saying that this fellow had red hair?
A Orangeish-blonde, red.
Q Orangeish-blonde, red; is that right?
A I mean, it's not orange. It's not blonde. It wasn't red. It was, like, a mix.
Q Okay. Is the photo lineup up there?
A See, he's blonde here and he's brown-red here.
Q Okay. Let me see that.
Okay. So on the sides, you're saying it looks like it's blonde, and on the top, it might be orangeish-red, blonde?
A Yes. He has no definite hair color, but you could say it was blonde.
Q Okay. And you indicated -- you took a picture of the car on your cell phone?
A Yes, sir.
Q Did you ever get a picture of the individual?
A No. Because I didn't want -- I really didn't want him to see me. So I didn't risk getting a picture of him. I knew that the car would be enough.
Q And you said to the police he was wearing a blue shirt, white ball cap, jeans, and had a tattoo on his arm, scruffy beard?

A Yes.
Q What kind of blue shirt?
A Like a dark blue, navy blue.
Q Navy blue. Now, with your description of colors, orangeish, reddish, blondish --
A Yes.
Q -- navy blue is dark, isn't it? I don't have navy blue, maybe like the color of the shirt right there?
A Yes. A little lighter.
Q A little lighter than that. Certainly, it was not a grayish white shirt, was it?
A No.
Q Certainly, not a white T-shirt?
A No.
Q And, certainly, not a light blue T-shirt?
A No.
Q Was it a T-shirt or was it a regular shirt?
A I didn't get into that much detail. I wasn't staring at him forever. He was moving.
Q All right. But the white male that you saw had on a navy blue type T-shirt?
A Yes.
MR. CRANE: Thank you, ma'am.
THE COURT: Redirect?
MR. SCOTT: Yes, sir. Just briefly.

REDIRECT EXAMINATION

BY MR. SCOTT:

Q The -- there's State's Exhibit No. 3 -- I think -- yeah. State's Exhibit No. 3, this that I'm pointing to the left of the screen is what?

A My garage.

Q Okay. And that's the area that the man went into?

A Yes.

Q You said nobody sleeps up there?

A No.

Q Okay. Is this garage -- this building associated with your home?

A Yes. They were built at the same time with each other.

Q And they're both on the same alarm system as well?

A Yes.

Q And it was deactivated at the time, but there --

A Yes. So, like, when he opened it, it didn't ring off to alert the police, but it chimed.

MR. SCOTT: Thank you, DH [redacted].

THE COURT: All right. You may step down.

The State can call your next witness.

MR. TODD: The State calls Teddy Hampton.

WHEREUPON,

TEDDY HAMPTON,

after first having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. TODD:

Q Good morning, Mr. Hampton.

You're DH's [redacted] father; is that correct?

A I am.

Q And this is your home; correct?

A That's correct.

Q Okay. Where is that home located?

A [redacted] Road in Laurens.

Q Laurens County?

A Yes, sir.

Q Okay. And do you own this home, or do you rent it?

A We own it.

Q Own it. And did you buy it? Build it?

A We had it built.

Q Okay. And when did you build that house?

A It was built in -- at the end of 2007.

Q End of 2007. And you've lived there since then?

A Yes.

Q To this date, I guess. And as far as the garage is concerned, tell me about that. You've got the house and the garage. They were built at the same time?

A Yes.

Q What was up there in that garage?

A That's where I did a lot of woodworking, redoing

furniture and knickknacks.
Q So it's kind of like a bonus room?
A Yes, sir.
Q Did you spend a lot of time up there?
A I did, a couple hours a week.
Q What kind of work did you do up there?
A Woodwork.
Q Woodworking. Okay. And let's go back to March 9th, 2016. I guess -- were you at work?
A Yes. I was at work.
Q Where did you work?
A I worked at Gen III.
Q Where is that located?
A Gen III is in Fountain Inn.
Q What hours did you work?
A I worked from 8:00 in the morning until 3:30 in the afternoon.
Q So you were at work at the time this all occurred?
A Correct.
Q And what about the rest of your family?
A My other three daughters were at school. And my wife was at work.
Q Brittany [sic] was at home sick?
A DH was at home sick.
Q Excuse me. DH was at home sick. As far as

guests, visitors, were you expecting any that day, or was DH ?

A No.

Q Okay. If they were coming, you would have known about it; correct?

A Correct.

Q Okay. And, by the way, do you know who Stephen Fincher is?

A No, sir.

Q Okay. As far as the -- that morning, when did you find out what was going on at your house?

A I got a call from my wife's coworker saying somebody was breaking into the house.

Q Okay. And what did you do at that point?

A I jumped in my truck and went home.

Q So you took off work and went home. Okay. When you got home, what did you find?

A I don't remember if there was already a police officer there or not. My daughter -- the door to the shop area had been kicked in.

Q You said the shop area door -- the bonus room above the garage --

A Yes.

Q -- was kicked in?

A Yes.

Q Okay. Was anything stolen?
A Yes.
Q What all was stolen?
A Several power tools I had. Off the top of my head, I remember a Kobalt air tool, a Dewalt power cordless drill, a sawzall, a bench grinder.
Q I'm going to show you what's been pre-marked as State's Exhibit No. 8. Do you recognize that?
A Yes, sir. That's three -- actually, there's four tools that were taken that day -- five. There was -- they were all powerless drill -- or a cordless drill, the bench grinder, Kobalt air tools, that's a sawzall, and that's a skill saw.
Q I'm going to show you what's been marked as State's Exhibit No. 11. Can you describe that?
A Yes, sir. That would be the bench grinder.
Q State's Exhibit No. 12?
A That's the cordless Dewalt drill.
Q State's Exhibit No. 13?
A That's the Kobalt air tools.
Q State's Exhibit No. 14?
A That would be my sawzall.
Q State's Exhibit No. 15?
A And that would be the skill saw.
MR. TODD: The State would like to move this into

evidence, Your Honor.

MR. CRANE: No objection, Judge.

THE COURT: Okay. Those are State's Exhibits what?

MR. TODD: That's going to be State's Exhibit Nos. 8, 15 --

THE COURT: Wait a minute. State's Exhibit No. 8?

MR. TODD: 15, 14, 13, 12 and 11.

THE COURT: There's no 12?

MR. TODD: 12 was included in that.

THE COURT: Okay. So State's Exhibit Nos. 12, 8, 15, 14, 13, and 11 are admitted into evidence without objection.

MR. TODD: Thank you, Judge.

(WHEREUPON, State's Exhibit Nos. 8, 11, 12, 13, 14, and 15 were admitted into evidence.)

BY MR. TODD:

Q And these are the photos we just reviewed. You said this was --

A Yes. That's a picture of all the tools, I believe.

Q Okay. And this is just a singling out?

A That's a close-up of the bench grinder.

Q Okay.

A The cordless drill, the Kobalt air tool set. And that's the sawzall. And that would be my skill saw.

Q Now, you kept all these tools in that bonus room?

A Correct.
Q And that's where you did your woodworking and general office --
A Correct.
Q And, again, you built that building at the same time as your house; correct?
A Yes, sir.
Q And you consider that a part of your house?
A I do.
Q Okay. We heard about this alarm system. Tell me about that. When was that installed?
A That was installed shortly after we had had the house built, so late '08, or early '09. It had door activation sensors and motion sensors.
Q When you say "door activation sensors," describe that to the jury. In other words, if the door is opened --
A When the door opens, it does an auto chime inside the house to let us know that one of the doors is being opened.
Q And I believe your daughter testified the alarm may have been inactive at the time?
A It was not being monitored.
Q But that doesn't preclude the --
A No, sir. To this day, you open a door at the house, it will chime inside the house.

Q Okay. So you thought enough of that room to include that on the alarm system in the house; correct?
A Correct.
Q Okay. Going back to State's Exhibit No. 2, I believe that is. What would you say the distance of the house and the bonus room is? Let me see if I can get a better picture.
A Between the house and the bonus room, there's about eight feet.
Q Eight feet?
A Enough for a walkway and the stairs coming off the laundry room, which is the side door.
Q So in other words, you come down those back stairs and you can go right up -- let's see. State's Exhibit No. 3, you can come out this back porch and then walk right up to the bonus room?
A Correct.
Q So it's about eight feet --
A You can see right there on the left-hand side of the house, the window, that's the side door. If you come -- yes. If you come out that door, you're probably eight feet away from those stairs.
MR. TODD: Okay. So they're very close to each other.
Answer any questions Mr. Crane has.

THE WITNESS: Okay.

MR. CRANE: Thank you.

CROSS-EXAMINATION

BY MR. CRANE:

Q Mr. Hampton, good morning, sir.

On this -- you said this is the door here on the house?

A Yes, sir.

Q Is there a corresponding door on the side of the garage to go in?

A Yes.

Q That's about eight feet?

A It's about eight feet from that door to the stairwell going up to the bonus room.

Q Oh, eight feet from here to here?

A Yeah.

Q I got you. No one sleeps in here, do they?

A No one sleeps in there.

Q But you use it primarily for your woodworking?

A Correct.

Q And you indicated you don't know my client, Stephen Fincher?

A I do not.

Q Do you know a fellow named Shannon Wood?

A I have no idea who that is.

Q All right. You weren't there that day?
A Not at the time of the break-in, no.
Q And you've been able to identify some photographs here. And let me ask you, on any of your tools, did you have any identifying marks on them?
A I did not put any kind of specialized marking on my tools, no, sir.
Q No little fingernail polish, or initials, or anything?
A No. I just answered that. No, sir, I did not.
Q And did you record any serial numbers of your tools?
A No.
Q Excuse me?
A No.
Q Okay. And -- well, let's see if we can do it this way. You've identified these as being your tools that were apparently a picture taken in the back of a car; is that correct?
A That's correct.
Q We can start with that skill saw. Is that a saw, or the box, or what is that?
A That's the bench grinder.
Q The bench grinder?
A Yes, sir. Six-inch bench grinder.
Q Okay. Is this any different than any other six-inch

bench grinder that you're aware of?
A I would think not.
Q How many of these do you think there are in Laurens County?
A I have no clue.
Q Okay. But you can identify this one as being yours?
A Yes, sir.
Q How?
A The saw dust on it.
Q Okay. How many bench grinders in Laurens County do you think have saw dust on them?
A I have no idea, sir.
Q Okay. Is this your drill?
A Uh-huh.
Q And how can you identify that as being yours?
A Because I know what was taken from my house.
Q So --
A So there's no identifying marks if that's where you're going, sir. There's no identifying marks. I cannot identify them by mark.
Q Okay. So these various pictures that you've been shown all look like many other tools of similar nature that are found in Laurens County?
A That's correct.
Q But you're saying these you know for sure are yours?

A Yes, sir, I do.

MR. CRANE: Nothing further.

Thank you.

THE COURT: Redirect.

REDIRECT EXAMINATION

BY MR. TODD:

Q Mr. Hampton, how familiar are you with your tools?

A I'm very familiar with my tools.

Q Do you use them a lot?

A Yes, sir.

Q And when you got home, you didn't have your tools in your bonus room, did you?

A I did not.

Q And you got your tools back when the police turned them over; correct?

A Yes. Several weeks later, I was able to go down and identify them to the detective.

Q So you were without your tools for two weeks. You couldn't do any work, could you?

A No, sir, I could not.

MR. TODD: No further questions.

THE COURT: You may step down.

The State can call your next witness.

MR. TODD: Your Honor, the State would call David Staton.

WHEREUPON,

DAVID STATON,

after first having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. TODD:

Q Mr. Staton, where are you employed?

A The Laurens County Sheriff's Office.

Q How long have you been there?

A Six years.

Q Okay. And what's your position there?

A Currently, investigator.

Q Okay. On March 9th, 2016, what was your position?

A I was a uniform patrol.

Q Okay. And that, essentially, is?

A Responding to calls.

Q Responding to calls. Okay. Going to March 9th, did you have the opportunity to respond to a call on [redacted] Road?

A Yes, sir, I did.

Q Do you recall what time?

A The call was dispatched at 10:17.

Q Okay. And what time did you respond to the call?

A I arrived on scene at 10:30.

Q When you arrived on scene, what did you find?

A Initially, when I got there, I couldn't get in touch

with anyone. I had to radio into dispatch to ask them to get the complainant that they were on the phone with to, actually, come outside. They had notified me that she was scared to come out. She didn't know it was me out there.

Q And the person on the phone, that was --

A DH [redacted].

Q Okay. And she's right there?

A That's correct.

Q And when you were on scene and spoke with DH [redacted], what did you learn through your investigation?

A She gave me the description of the gentlemen, again, that she had already given us when we were en route. She gave me the description of the car and she, actually, showed me a picture of the car on her phone.

Q And what was the description of the individual?

A The individual was wearing a --

Q Is that your report that you're referring to?

A Yeah. This is my report. He was wearing a blue shirt, white ball cap, and jeans with tattoos on his arms.

Q And, at that point, when you got that description, what did you do next?

A I reiterated it again to the road deputies that were responding after a car they had spotted -- and told them what kind of car it was.

Q Okay. So you got a description on the vehicle as well?
A Originally, it came out as a white car. When I got to the scene and she was able to show me the picture of the car, I recognized it as a Pontiac GT, white. And I gave them a photo -- more descriptive -- description of it.
Q Okay. And when you were investigating the scene, what did you? Where did you go?
A She had told me about the garage door beeping. We were standing on the side porch talking at that time. As I was standing and talking to her, she said that she had heard the garage door beep.

At that time, I decided to clear the garage to make sure that there was nobody left behind, and to see what we had going on.
Q And when you say "clear," what does that mean?
A To make sure that no one was inside the garage, or inside the residence, or outside that maybe had gotten left behind.
Q Were you standing on this porch here? Is that what you're describing?
A We were standing on the porch between the house and the garage. It's a little small porch.
Q Okay. And when she stated that she had heard a beep

on the garage door in the bonus room, what did you do next?

A Well, originally, I didn't know if it was the bonus room or the downstairs garage. I seen the garage door was down, so I knew that wasn't up. So I checked the bottom door and it was locked.

Q Okay.

A At that time, I proceeded around the corner of the building where I noticed the steps going upstairs. I walked up the steps. When I got to the top, I seen the door was open. I pulled my service revolver to clear the room.

And then when I got to the door, that's when I noticed that the door itself had been knocked completely off the frame.

Q And was the door on the ground, or was it --

A No. It was kind of pushed open. But most of the time when you see a door kicked in, the door gives where the lock is. This door didn't. The whole frame itself had come loose and was falling -- had fell in, like, the outside casing --

Q Okay.

A -- had, actually, broken in.

Q So it pretty much split the wood?

A Split the wood, the posts beside it, everything.

Q Okay. And when -- you went inside the bonus room?
A It was one large room. You could see lots of tools all on each side of the room. It was very open. Once I cleared the room and there was nobody in it, I went back downstairs and secured the scene.
Q And then when you radioed in the description of the vehicle and then the individual that DH [redacted] described, were you able to hear any feedback on --
A Yes, sir. When we -- when we first pulled up on [redacted] Road, we were probably 30 seconds out from the residence. Lieutenant Haupfer was in front of me, and I was behind him.

Dispatch had notified us that the vehicle left the residence and had went left out of the driveway. We were coming from Highway 14, that direction, which meant they were going toward the interstate. Lieutenant Haupfer radioed me and said he was going to continue on down [redacted] Road. And I turned into the residence to meet the complainant.

Q And while you were investigating the scene, did you learn any individual that had been pulled over?
A Like I said, Lieutenant Haupfer radioed across the radio that he had spotted a car that had matched the white description, and that he was attempting to catch up with it. When she showed me the phone and I told her what it

was, then he radioed back that that was the car he was behind and attempting to catch up to. It was probably maybe 45 seconds or a minute later, he said he had caught up with it and it hadn't stopped yet.

Q And you say 45 seconds to a minute later, was that from when you arrived on scene?

A After I told him what to look -- the exact description, that it was a Pontiac GT and that it was a four-door white car.

Q And then after you told him the direction of where the car was going?

A And then he knew the direction. And then right after that, he called over the radio and said, this is the car I'm behind.

Q Okay. And do you recall if there was an arrest made that day?

A Yes, sir, I do. Him and a couple other officers had, actually, stopped it on Highway 221. And they placed him under arrest at that scene.

Q And who was that individual?

A Lieutenant Haupfer and Deputy J.C. --

Q Okay. Who was the individual they arrested?

A Oh, that was going to be Mr. Fincher.

MR. TODD: Okay. No further questions. Answer anything that Mr. Crane has for you.

CROSS-EXAMINATION

BY MR. CRANE:

Q Investigator Staton, did you take photographs that day?

A No, sir, I did not. Lieutenant Martin -- or now Captain Martin, he's the one that took photographs.

Q Did you try to do any forensics work that day?

A No, sir. Once I cleared the top of the garage, I stepped back out and secured the scene until investigators could arrive.

Q And you said when you went into the garage, there were a lot of tools still there?

A Yes, sir. You could tell it was a workshop. I mean, there was all different kinds of tools.

MR. CRANE: Thank you.

Nothing further, Judge.

Thank you.

THE COURT: Redirect?

MR. TODD: Nothing, Your Honor.

THE COURT: Thank you.

You may step down.

You can call your next witness.

MR. SCOTT: May we approach?

THE COURT: Yes.

MR. SCOTT: Just a scheduling matter.

THE COURT: All right.

(WHEREUPON, a bench conference was held.)

THE COURT: Ladies and gentlemen, we're going to go ahead and take our morning break. We'll take about a 10 or 15-minute break, give you the opportunity to get something to drink, use the restroom, whatever the case may be.

I caution you again, do not discuss the case. Do not conduct any investigation. We'll take about a 15-minute break. And we'll bring you back shortly.

Thank you very much.

(WHEREUPON, the jury was excused from open court at approximately 10:48 a.m.)

THE COURT: Anything from the State before we recess?

MR. SCOTT: I said two witnesses, it's, actually, three. But regardless, they're very short.

But nothing from the State, Your Honor.

THE COURT: Anything from the Defense?

MR. CRANE: No, sir, Judge.

THE COURT: Let's take about a 15-minute recess.

(WHEREUPON, a break was taken.)

THE COURT: Anything from the State before we bring the jury in?

MR. SCOTT: No, Your Honor.

THE COURT: Anything from the Defense?

MR. CRANE: No, sir, Judge.

THE COURT: All right. Let's bring the jury in.

(WHEREUPON, the jury came into open court at approximately 11:12 a.m.)

THE BAILIFF: All jurors are present, Your Honor.

THE COURT: Thank you very much.

Welcome back, ladies and gentlemen. We're ready to continue with the trial of the case.

The State can call your next witness.

MR. SCOTT: Your Honor, the State calls Robbie Haupfer.

WHEREUPON,

ROBBIE HAUPFER,

after first having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SCOTT:

Q Deputy Haupfer, March 9th, 2016, where were you working?

A I was working at the Laurens County Sheriff's Office.

Q In what capacity?

A I was, actually, a lieutenant on the road then. But I had come in to help the opposite shift that day.

Q Did you have an occasion to respond to [redacted] Road in Gray Court?

A Yes, sir.

Q And what was the purpose of you responding to that location?
A We had gotten a call over the radio of a burglary in progress. Our dispatcher told us that there was a juvenile female inside the house. And she was giving us a description of the male and the car.
Q And approximately what time was that dispatch call?
A It was a little bit before lunch. I don't know exactly.
Q Would it surprise you if I said 10:17?
A No, sir.
Q And then what was the description of the car that you were looking out for?
A We were given a white Pontiac.
Q And the description of the individual driving it?
A It was just a white male.
Q And what, if any, location were you given as far as to respond to?
A It was the [redacted] Road.
Q Okay. So did you go to the actual residence, or did you go down [redacted] Road further, or where did you go?
A Yes. While I was en route to the call, when I turned on [redacted] Road, the dispatcher advised me that our caller told them that the car was leaving the residence. So at that time, I continued down [redacted] Road to try to catch up

with the car.

Q Okay. This is State's Exhibit No. 2. It's in evidence. And it was described as the home at [redacted] Road. This is [redacted] Road right here?

A Yes, sir.

Q So would you have been coming, I guess, from the right?

A It would have been from the right, yes, sir.

Q Okay. So instead of turning in the driveway, the information you got was that the Pontiac had already left?

A Yes. It had left. And it had turned left out of the driveway going towards Highway 221.

Q Okay. So you keep shooting straight down [redacted] Road to pursue it?

A Yes.

Q And at some point, did you locate a car matching that description?

A Yes, sir. After I had gotten past the residence, I could see a white car up ahead of me. It was traveling at a pretty high rate of speed.

Q Did you turn your blue lights on?

A No, sir, not at that time. Because I was still too far back. I did catch up to it right before we got to Highway 221 and activated my blue lights. And he turned out around a car that was at the stop sign onto 221.

Q Okay. About how far was the stop from the [redacted] Road residence?
A Just a guess, probably three or four miles.
Q Okay. Let me show you State's Exhibit No. 6. Is that the car you stopped?
A Yes, sir.
Q And who was the driver?
A Stephen Fincher.
Q Okay. Once -- he complied once you hit the blue lights?
A Yes, sir.
Q So once he pulled over, tell us about the interaction at that point.
A We got him out of the vehicle and were speaking with him. We went ahead and detained him. I read him his Miranda rights.

Then I asked him about the situation on [redacted] Road. And he admitted that, yes, he was at the house and he had went into a building, but he didn't go in the house.

Q Is that the term he used, "building"?
A Something like that, yes, sir.
Q Okay. But he did admit to going in the building?
A Yes, sir.
Q Well, tell us about Miranda -- you said you detained him once you stopped his car?

A Yes, sir.
Q And he's handcuffed behind the back?
A Yes, sir.
Q And you said you Mirandized him?
A Yes, sir.
Q What is the Miranda warnings?
A Basically, what you hear on TV, that you have the right to remain silent. Anything you say can and will be held against you in a court of law. You have the right to an attorney. You have the right to stop answering any questions.
Q If you can't afford an attorney, one will be provided?
A Yes. If you can't afford one, one will be appointed for you.
Q And he seemed to understand those warnings?
A Yes, sir.
Q At least, from your observations, did he appear intoxicated?
A No, sir.
Q Did you threaten him in any way?
A No, sir.
Q After reading him the warnings, did he answer any questions you had?
A Yes. We asked him, at first, if he wanted an

attorney. And he said, No.
Q All right. So after you read him the Miranda rights, what was the question you asked him?
A We asked him if he had been at the house on [redacted] Road.
Q Okay. And he said, I went into a building, but not the house?
A Yes.
Q At that point, what did you do?
A I placed him in my patrol car with my in-car camera running and searched the vehicle from that point.
Q Okay. And so you were able to search his vehicle. This vehicle here in State's Exhibit No. 6?
A Yes, sir.
Q And State's Exhibit No. 8, is that a -- is that the inside of the vehicle, the Pontiac?
A Yes, sir. That's in the backseat.
Q So these items were located in the backseat?
A Yes, sir.
Q Okay. I got a skill saw, a Kobalt box, a Dewalt box, a grinder. Those were all things you observed in the back of that Pontiac?
A Yes, sir.
Q That Stephen Fincher was driving?
A Yes, sir.

Q This is State's Exhibit No. 8 I have on the board. Okay. Did you call any other investigators to the scene once you had the car stopped with that inventory in it?

A Yes, sir. Deputy Staton had went to the house on [redacted] Road. And in speaking with Lieutenant -- Investigator Martin was, also, the investigator on the scene.

Q Did Martin come and photograph the Pontiac?

A I'm not sure who took the pictures.

Q Okay. Do you know who collected the evidence from the Pontiac?

A No, sir. I left with Mr. Fincher and took him to jail.

Q All right. Now, you were talking about an in-car video. Is that standard for your patrol cars to have a camera that operates on the inside of the car?

A Yes, sir. We have one that photographs the backseat where you put the prisoners.

Q Do you turn it on, or does it turn on automatically? How does it work?

A I have to turn the backseat camera on.

Q You turned it on?

A Yes, sir.

Q On March 9th, you turned it on when Mr. Fincher got in there?

A Yes.
Q This is State's Exhibit No. 22. Do you recognize this?
A Yes, sir.
Q What is it?
A The video from my camera that I marked.
Q And it accurately reflects what you observed and what happened in the backseat of your patrol car on March 9th?
A Yes, sir.
MR. SCOTT: Your Honor, the State offers State's Exhibit No. 22 for admission into evidence.
THE COURT: Any objection?
MR. CRANE: No, sir.
THE COURT: All right. State's Exhibit No. 22 is admitted into evidence without objection.
(WHEREUPON, State's Exhibit No. 22 was admitted into evidence.)
(WHEREUPON, State's Exhibit No. 22 was played in open court.)
BY MR. SCOTT:
Q Why aren't we hearing any audio here?
A At the time, I didn't know my -- the in-car mic wasn't turned on.
Q And who is this we see in the video?
A That's Mr. Fincher.

Q Who's this in the front seat?
A That's me.
(WHEREUPON, State's Exhibit No. 22 continued to be played in open court.)
BY MR. SCOTT:
Q Did you notice any tattoos on the man?
A I don't remember.
Q I want you to watch his arms when I play it, and tell me if you recollect this.
(WHEREUPON, State's Exhibit No. 22 continued to be played in open court.)
BY MR. SCOTT:
Q You don't remember seeing the tattoos on his arms?
A Yeah. I remember now.
(WHEREUPON, State's Exhibit No. 22 continued to be played in open court.)
BY MR. SCOTT:
Q That's when y'all arrived at the jail?
A Yes, sir.
Q He was asking you a lot about what he was going to be charged with. Do you know what he was, ultimately, charged with?
A I think it was second degree burglary and larceny charge.
Q Would it surprise you to know it was burglary first?

A (There was no response.)
Q You didn't make the charge?
A No, sir.
Q Let me show you State's Exhibit Nos. 17 and 18. Do you recognize what are those?
A Pictures of him in the backseat of my car.
Q Just still shots from the video we just watched?
A Yes.
MR. SCOTT: Your Honor, the State offers State's Exhibit Nos. 17 and 18 for admission into evidence.
THE COURT: Any objection?
MR. CRANE: No, sir.
THE COURT: State's Exhibit Nos. 17 and 18 are admitted into evidence without objection.
(WHEREUPON, State's Exhibit Nos. 17 and 18 were admitted into evidence.)
BY MR. SCOTT:
Q So then -- this is State's Exhibit No. 17. What are we looking at here on his left arm?
A It's part of a tattoo.
Q Do you recall seeing that?
A Yes, sir.
Q What color shirt is Mr. Fincher wearing here in State's Exhibit Nos. 17 and 18?
A A blue shirt.

Q What kind of pants?
A Blue jeans.
Q Was he wearing a ball cap when you saw him?
A No, sir.
Q What -- I don't know. What kind of hair --
A Like a blondish hair.
Q Okay. Did you see any facial hair on him?
A He had a little bit, I think, on his chin.
MR. SCOTT: Okay. I think that's all. Answer any questions Mr. Crane has for you.
Thank you.
THE COURT: All right. Cross-examination.
MR. CRANE: Thank you, Judge.

CROSS-EXAMINATION

BY MR. CRANE:
Q Investigator Haupfer, let me just ask you about the ride to the police station. Okay.
A Okay.
Q We just listened to the audiotape. Correct me if I'm wrong in anything that I might say. But during the conversations that you had, or the tirade that he had, or whatever -- whatever you want to call it, basically, he says he was buying stuff, that he needed tools for his job?
A Yes, sir.

Q All right. He said that he had his own tools and that he used them for work?
A Yes, sir.
Q He said that he -- I guess when you were talking about [redacted], he indicated that he went into a building?
A Yes, sir.
Q That would be, I suppose, the garage?
A Yes, sir.
Q But he reiterated that he never went in the house, which would be the dwelling; correct?
A Yes, sir.
Q As to the house on Highway [redacted]. He said that he went there, he walked around and he left?
A Yes, sir. Well, I think he, actually, said he knocked on the door.
Q Well, did he say -- and we may be getting confused. But, at one time, he said he knocked on the door and the dogs were barking like hell?
A Yes, sir.
Q Was that at [redacted] or was that at [redacted]? Because, remember, [redacted] is the one where the young lady said she had four dogs in the house.
A Yes, sir. I'm not sure which one he was talking about when he said that.
Q But [redacted] is where Brittany said she had a little puppy

in the bed with her?
A Yes, sir.
Q And so, anyway, he said one of the houses, he knocked on the door and the dogs were barking like hell; right?
A Yes, sir.
Q But at [redacted], he says that I looked around -- I walked around the house. And he said on the tape that it shows up on -- it shows up as a foreclosure on realty.com?
A Yes, sir.
Q That he thought it was for sale?
A Yes, sir.
Q And you heard the witnesses say that's what he told them when he was at [redacted]; correct?
A I wasn't in here --
Q Oh, you weren't in the courtroom?
A (Witness shook his head.)
Q I apologize for that. He says that he was looking for a house to buy, that he didn't go in the house?
A Yes, sir.
Q He, of course, told us he was on parole?
A Yes, sir.
Q For prior burglaries. And that, in his opinion, he had been doing everything right, going to church, owns his own business, and doing everything right?

A Yes, sir.
Q Okay. So, regardless of whether it was a navy blue shirt, grayish white shirt, light blue shirt, or whatever, according to that videotape, he pretty much admits to being at [redacted] and at [redacted]?
A Yes, sir.
Q And he admits to, at [redacted], going into the building, which would be the garage?
A Yes, sir.
Q But he says he didn't take any tools?
A That's what he claimed.
Q I understand. And he says that he was at [redacted], but walked around it and never went in?
A Yes, sir.

MR. CRANE: Okay. Nothing further.

Thank you.

THE COURT: Redirect?

MR. SCOTT: Nothing further, Your Honor.

THE COURT: All right. You may step down.

The State can call your next witness.

MR. SCOTT: Thank you, Your Honor.

The State calls Chris Martin.

WHEREUPON,

CHRIS MARTIN,

after first having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SCOTT:

Q Investigator Martin --

A Yes, sir.

Q -- you're a captain now?

A Yes, sir.

Q On March 9th, 2016, you were an investigator with the sheriff's department; is that right?

A Yes, sir.

Q And how did you get involved in this case we're here for?

A I, originally, heard the call for service at -- on Highway [redacted]. I was, actually, sitting in my office working on another case. So given that that was a break-in in progress, I left the office and started heading to [redacted] South.

Q [redacted] South is the burglary we heard about yesterday. That was the one in this picture, State's Exhibit No. 4?

A Yes, sir.

Q So you made your way towards Highway [redacted]?

A I was working my way there, yes, sir.

Q Then what happened?

A While en route to that address, the call on [redacted] Road came out. So then I diverted to [redacted] Road.

Q Okay. And that's State's Exhibit No. 1. That's [redacted]

[redacted] Road?
A That's correct.
Q So you were on the way to Highway [redacted] when dispatch said, hey, there's another burglary here at [redacted] Road?
A Yes, sir.
Q Was there any indication that those were connected at that time?
A Not at that time. I mean, I -- my personal opinion, maybe possibly, but, at that time, we didn't know.
Q Do you know -- what was the dispatch time to Highway [redacted]?
A Dispatch time to Highway [redacted] was 10:03 a.m.
Q And then what was dispatch time to [redacted] Road?
A [redacted] Road was 10:17 a.m.
Q Okay. And what was the -- have you researched -- what's the distance between the two residences?
A I know it's less than 10 miles, between eight and 10 miles.
Q Between eight and 10 miles?
A Yes, sir.
Q All right. So continue. You end up --
A I started working my way towards [redacted] Road. And I was listening to the radio traffic between the two deputies, Lieutenant Haupfer and, at that time, Deputy Staton. I heard Lieutenant Haupfer say he was going to

continue on [redacted] Road. And I heard Deputy Staton go on scene at [redacted] Road to get out with the complainant. Lieutenant Haupfer stated he was trying to catch up to a white vehicle on [redacted] Road.

At that time, I didn't hear any other radio traffic about anybody heading this way. So I continued with blue lights and sirens towards Lieutenant Haupfer.

Q Okay. But did you speak with any witnesses at [redacted]?

A I did. After I -- I went out -- originally, I was out with Lieutenant Haupfer on the traffic stop and then went out to [redacted].

Q I got you. So you responded to the traffic stop from the video we just saw?

A Yes, sir. Correct.

Q And what was going on once you got there?

A Once I had already arrived on scene, he was detained. He was in handcuffs. And I advised Lieutenant Haupfer -- or Lieutenant Haupfer advised me he was going to take him to Johnson Detention.

I advised they could call for the next wrecker on rotation. And I would obtain a search warrant to thoroughly go through the vehicle. I know they tend to search vehicles prior to towing the vehicle, but I obtained a search warrant to go through it completely.

Q This is State's Exhibit No. 6. What is it?

A That's the vehicle Mr. Fincher was driving.
Q Okay. And so did you inventory it there at the scene, or did you have it towed to the sheriff's department?
A It was towed to our impound lot out there at Johnson Detention Center. I obtained a search warrant and then went back to the vehicle.
Q All right. And what all did you find inside?
A There were a lot of different tools inside. I photographed all those tools. And then I took inventory of everything that was inside so I could take it back to the sheriff's office to determine if those items were stolen or not stolen.
Q State's Exhibit No. 8, is that what you observed in the backseat?
A Yes, sir.
Q Okay. State's Exhibit No. 11, did you confiscate that from the car?
A Yes, sir.
Q A drill in State's Exhibit No. 12?
A Yes, sir.
Q What about the Kobalt tool set there that's State's Exhibit No. 13?
A Yes, sir.
Q And then the sawzall in State's Exhibit No. 14?

A Yes, sir.
Q The jigsaw?
A Jigsaw.
Q State's Exhibit No. 15, did you confiscate that from the car?
A Yes, sir.
Q And all those items, who were they returned to?
A Some of them were returned to Mr. Hampton from [redacted] Road, not all of them, though.
Q Well, all those I just showed, were those returned to Mr. Hampton?
A In the close-up pictures, yes, sir.
Q Okay.
A There were some tools that I recovered out of the vehicle that Mr. Hampton stated were not his. He didn't claim those. So we just put them into evidence.
Q Well, it's not in evidence, but let me show you State's Exhibit No. 9. Just, for example, this is a -- it's like a battery charger in State's Exhibit No. 9?
A Yes, sir.
Q That was confiscated. But you're saying Mr. -- Teddy Hampton said that was not his?
A Correct.
Q All right. But the items I mentioned as far as the skill saw, the drill, the Kobalt set, the sawzall and

jigsaw, those were, in fact, Mr. Hampton's?
A Yes, sir.
Q He did identify those?
A Yes, sir.
Q State's Exhibit No. 16, what is that?
A A picture of some gloves found in the console area next to the driver's seat.
Q All right. Inside the Pontiac that Mr. Fincher was driving?
A Yes, sir.
MR. SCOTT: Your Honor, the State offers State's Exhibit No. 16 for admission into evidence.
THE COURT: Any objection?
MR. CRANE: No, sir, Judge.
THE COURT: All right. State's Exhibit No. 16 is admitted into evidence without objection.
(WHEREUPON, State's Exhibit No. 16 was admitted into evidence.)
BY MR. SCOTT:
Q A pair of hand gloves right in the center console beside the driver's seat of the Pontiac?
A Yes, sir.
Q Why was that noteworthy for you to take that picture?
A Working several burglaries in the past, you never know if the person is wearing gloves or not wearing

gloves. Doing latent fingerprints in different houses, sometimes you get prints and sometimes you don't. Given the fact that at this -- let me back up. I'm sorry.

This inventory was done after I went to [redacted] Road. And while at [redacted] Road, I attempted to do latent prints and couldn't recover anything. So then when I found these gloves, I figured it was possible he could have been wearing those.

Q All right. So [redacted] Road, this is State's Exhibit No. 3. You performed latent prints on the door at the back of the detached building?

A Yes, sir. There, and then that window -- you kind of see the side entrance door to their house.

Q Yeah.

A She had mentioned the doorbell. So I did try to obtain latent prints at both door bells there on the side and the front door.

Q And you were unable to get any fingerprints?

A No, sir, I was not.

Q Did it appear the door had been kicked open?

A The -- yes, sir. There was forced entry to that door right there on top in the garage there.

Q Okay. Did you speak with the young female who was at the home at [redacted] Road on the morning of March 9th?

A Yes, sir.

Q And did she give you a statement, a written statement?
A I know she gave a statement, but I can't remember if that was to me or to Deputy Staton. Let's see. One second.
Do you have it with you?
Q Well, I mean --
A But she did give a statement.
Q She gave a statement?
A Yes, sir.
Q And she gave a description of the person?
A Yes, sir.
Q Okay. At some point -- this happened March 9th, the incident date. March 22nd, did you go back to the home at [redacted] Road and speak with the witness?
A I did.
Q And the witness was DH [redacted]?
A Yes, sir.
Q State's Exhibit No. 19 has been admitted into evidence. And what is it?
A This is a six-person photo lineup.
Q Okay. Tell me, how did you generate that photo lineup.
A We have a system called law tracks at the sheriff's office. It does several different things. But it is,

also, able to do photo lineups for you so you can -- in this case, if you had a subject that you were potentially looking at for these crimes, you can select his name and the computer will randomize five other pictures based upon his physical description that's in the computer.

Q Okay. So what do you look for, somebody who's a white male?

A Yeah. A white male -- well, in this case, yes, white male, age, and weight, and stuff like that.

Q So the same general age, weight, same race?

A Yes, sir.

Q And then what about hair style or hair color?

A I was looking for general hair color, yes, sir.

Q Okay. So this is what you came up with?

A Yes, sir.

Q And what do you tell DH [redacted], the eyewitness, when you show her the photo lineup?

A Well, like I told DH [redacted] and like I'd tell anybody, I would hand them the photo lineup. I don't ever suggest anybody in particular. I just hand them the photo lineup and tell them this photo lineup may or may not contain a photo of the person you have seen on scene.

She scanned over and then pointed to number six. I gave her a pen and asked her to circle the one she's indicated and sign her name.

Q Okay. Did she indicate --
A She indicated number six, which is Stephen Fincher.
Q Okay. And that's her signature, though?
A Yes, sir.
Q Okay. Did it -- how long did it take her to pick it out?
A Less than a minute.
MR. SCOTT: I just want to make sure I've got everything covered before I sit down.
Deputy Martin, thanks.
Answer any questions Mr. Crane has for you.
THE WITNESS: Yes.
THE COURT: Cross-examination.
MR. CRANE: Thank you, Judge.

CROSS-EXAMINATION

BY MR. CRANE:
Q Deputy Martin, did you -- when you talked to -- did you talk to DH [redacted] the day it happened?
A Did you say Mr. or Ms.?
Q DH [redacted].
A Yes, sir.
Q All right. And she gave you a description?
A Sir?
Q She gave you a description of the individual?
A Yes, sir.

Q Did she say anybody was wearing gloves?
A Not that I can remember.
Q Did you talk to anybody at the Highway [redacted] incident?
A No, sir.
Q Did you ever do a forensic follow-up at Highway [redacted]?
A A forensic follow-up, no, sir.
Q So you didn't go to [redacted] to take fingerprints?
A No, sir.
Q DNA samples?
A No, sir.
Q There's nothing that ties Mr. Fincher to the inside of [redacted], is there?
A I wouldn't say that, no, sir.
Q Well, you've got some teenager who's in bed with a puppy who says she thinks she heard someone in the kitchen rustling through silverware?
A Yes, sir.
Q That's the only tie you've got to him?
A Yes, sir.
Q Okay. And did you take any DNA or anything like that from the garage at [redacted]?
A No, sir, not DNA. We did latent prints.
Q All right. Did you do any dusting of the tools?
A No, sir.
Q So you didn't check those to see if they had

Fincher's fingerprints on them?
A No, sir.
Q You didn't check them to see if they had Mr. Hampton's fingerprints on them?
A No, sir.
Q And so -- as far as you know, the folks at [redacted], who say they saw a white male, never said anything about anybody wearing gloves either, did they?
A No, sir, not to my recollection.
Q And I'm not sure. Were these gloves found here, or were they found in the console?
A They were found in the console.
Q So you took them out and laid them there?
A No. That's the console.
Q Is that how they were found?
A Yes, sir.
MR. CRANE: I don't have any other questions. Thank you, Judge.
THE COURT: Redirect?
MR. SCOTT: No, Your Honor.
THE COURT: All right. You may step down.
THE WITNESS: Thank you.
THE COURT: The State may call your next witness.
MR. SCOTT: Thank you, Your Honor.
The State calls Lynn Lancaster.

THE BAILIFF: Judge, do you want to swear her in?

THE COURT: Yes.

Please raise your right hand.

WHEREUPON,

LYNN LANCASTER,

after first having been duly sworn, testified as follows:

THE COURT: Thank you very much.

THE BAILIFF: Step right up here, young lady.

DIRECT EXAMINATION

BY MR. SCOTT:

Q Who are you?

A I'm the Laurens County Clerk of Court.

Q Okay. And what are your duties, Ms. Lancaster?

A My duties?

Q What are your duties?

A I am responsible for all the paperwork that goes through the Court, court cases. I'm the custodian of those records.

Q Okay. We have two indictments today that we're hearing. What are your duties as far as indictments?

A We are supposed to be over those when the Grand Jury meets and they true bill an indictment. And it comes into General Sessions court and the court hearing proceeds, or pleads guilty.

Q And when a solicitor like myself or a defense

attorney like Mr. Crane come in here and pleads guilty, what is the sentencing sheet?

A It's the paperwork that the Judge fills out. And it tells you what -- the sentence the person receives. We fill out the part that has the court cost, and whoever was the court reporter, and the clerk that happens to be here.

Q Okay.

A The court information.

Q And is it fair to say that the sentencing sheet would list the date the plea was taken?

A It would.

Q The name of the Defendant?

A Yes, sir.

Q The name of the Judge?

A Yes, sir.

Q The name of the Defense attorney?

A Yes, sir.

Q The name of the Solicitor?

A Yes, sir.

Q Is it, also, true that it would list the initial charge that the Defendant had lodged against him?

A Yes, sir.

Q And then, ultimately, the charge that they pled guilty to?

A Yes, sir.

Q Okay. And then, finally, wouldn't it list the penalty that they received?
A Yes, sir.
Q Okay. And that is your duty, too, as the record keeper to keep up with all these sentencing sheets, as well as indictments?
A Yes, sir.
Q I want to show you -- all right. Ms. Lancaster, I'm going to show you State's Exhibit No. 24. Just generally, is that a sentencing sheet and an attached indictment?
A Yes, sir.
Q Does the indictment match the sentencing sheet?
A Yes, sir.
Q Okay. The -- okay. Just to cover it. The indictment is State v. Stephen Trase Fincher?
A Yes, sir.
Q And the indictment is for burglary?
A Yes, sir.
Q Okay. And then what is the date that he pled guilty on that charge?
A April 19th, 2005.
Q In 2005, what did he plead guilty to?
A Burglary second degree.
Q I'm sorry. Tell me that date one more time.
A April 19th, 2005.

Q He pled guilty. And was he represented by a lawyer?
A He was. But don't ask me. I can't read the signature.
Q That's the reason I was going to ask you, it's hard to read?
A I know the judge.
Q What judge is it?
A It's Judge William P. Keesley.
Q Okay. Let me show you -- and is that a true certified copy?
A Yes, it is.
Q Okay. You've certified that with your stamp and your name on it as Clerk of Court?
A Yes.
MR. SCOTT: Your Honor, the State offers State's Exhibit No. 24 for admission into evidence.
THE COURT: Any objection?
MR. CRANE: No, sir.
THE COURT: State's Exhibit No. 24 admitted into evidence without objection.
(WHEREUPON, State's Exhibit No. 24 was admitted into evidence.)
BY MR. SCOTT:
Q State's Exhibit No. 23, Ms. Lancaster, do you recognize what that is?

A Yes, sir.
Q Is it not an indictment on Stephen Fincher?
A It is.
Q Is it not for a burglary charge?
A It is.
Q And then the sentencing sheet, what did he plead guilty to on that sentencing sheet?
A Burglary second.
Q And do you have a date?
A It's April 12, 2007.
Q So just about two years after that last burglary, he pled guilty to another burglary second?
A Yes, sir.
Q And was he represented by an attorney?
A He was. Gary Williams.
Q Okay. And can you read what judge took his --
A It looks like Judge Goldsmith.
MR. SCOTT: Okay. And the State offers State's Exhibit No. 23 for admission into evidence, Your Honor.
THE COURT: Any objection?
MR. CRANE: No, sir.
THE COURT: State's Exhibit No. 23 is admitted into evidence without objection.
(WHEREUPON, State's Exhibit No. 23 was admitted into evidence.)

BY MR. SCOTT:

Q Let me show you State's Exhibit No. 25. Again, is that an indictment and a sentencing sheet against Mr. Fincher?

A Yes, sir.

Q What is the indicted charge?

A Burglary.

Q And when was the plea taken?

A November 18th, 2011, it looks like.

Q Okay. So this would be about four years before he got another burglary; is that right?

A That's correct.

Q Was he represented by an attorney this time?

A He was. Chip Howe.

Q Okay. And can you tell what judge took his plea?

A Judge Griffith.

Q Judge Griffith took his guilty plea in 2011. Okay. And what did he plead -- did you say what he pled guilty to?

A I didn't. It's burglary second.

Q Is that a true certified copy of that --

A Yes, sir, it is.

Q All right. So that's State's Exhibit No. 25?

A It is.

MR. SCOTT: Your Honor, the State offers State's

Exhibit No. 25 for admission into evidence.

THE COURT: Any objection?

MR. CRANE: I couldn't hear what he said.

MR. SCOTT: State's Exhibit No. 25 for admission into evidence.

MR. CRANE: No objection.

THE COURT: State's Exhibit No. 25 is admitted into evidence without objection.

(WHEREUPON, State's Exhibit No. 25 was admitted into evidence.)

BY MR. SCOTT:

Q So per your records, in the years 2005, 2007, and 2011, Mr. Stephen Trase Fincher pled guilty in this courtroom to burglary charges?

A Right.

MR. SCOTT: Okay. Thank you.

Nothing further.

THE COURT: Cross-examination.

CROSS-EXAMINATION

BY MR. CRANE:

Q Ms. Lancaster, would you look at the indictments, please, again for me?

A Yes, sir.

Q Do they -- they have other information, either on the sentencing sheet or whatever, do they not? What's the

date of birth?
A Date of birth?
Q Yeah. Is it on there?
A It's on the sentencing sheet. It is [redacted].
Q [redacted]?
A Yes, sir. For some reason on the 2007 case, they've got 1979.
Q That's fine. Now, which one do you have in front of you right now?
A All three.
Q Well, look at the one where he pled on April 19th, 2005.
A Okay.
Q What's the incident date?
A The incident date is March 2nd, 2005.
Q Could I look at that, please?
A Yes.
Q That seemed kind of quick to get to court.
A I didn't read the indictment.
Q That's what it says. What's the incident date on the 2007?
A 2007 is January 15th, 2007.
Q And the last one?
A Is September 9th, 2010.
Q 2010?

A Yes, sir.

MR. CRANE: Thank you.

No further questions.

THE COURT: All right. Redirect?

MR. SCOTT: No, Your Honor.

THE COURT: All right. You may step down.

THE WITNESS: Okay.

THE COURT: The State can call your next witness.

MR. SCOTT: Thank you, Your Honor.

The State would rest.

THE COURT: All right. Ladies and gentlemen, the State has rested their case. So now is the time in the trial where I must address some matters of law with the attorneys.

So I'm going to excuse you back to the jury room. As a matter of fact, with it being 12:00, let's go ahead and break for lunch. I'm going to allow you to go to lunch while I address these legal matters. And I'm going to ask you to, please, be back in the jury room at 1:30. We'll be starting soon after that. Okay.

And I'll tell you why we excuse you. It's not that we're trying to hide anything from you or keep anything from you. But as I told you during my opening charges, you and you alone decide the facts in this case. And you decide the facts based upon the testimony of the

witnesses, and any other exhibits that may be introduced into evidence. I decide the law to be applied in this case.

Well, now is the time in the trial where I must discuss that law with the attorneys. Oftentimes, when we discuss the law to be applied, it requires me, as the Judge, or the attorneys to reference factual issues. What we say is not testimony in this case. And we do not want what we say regarding the facts in this case to influence your decision as to what the facts are. So that's why we excuse you from the jury room.

But given the time of day, it's a good time for us to go ahead and break for lunch. And I'm going to ask that you, please, be back in the jury room at 1:30. Do not discuss the case, even among yourselves. Don't conduct any independent investigations into the case.

I hope everybody has a good lunch. And we'll see you back at 1:30.

Thank you very much.

(WHEREUPON, the jury was excused from open court at approximately 12:04 p.m.)

THE COURT: All right. Any motions at this time?

MR. SCOTT: Nothing from the State, Your Honor.

MOTIONS

MR. CRANE: Judge, I would move for a directed

verdict. Based on the evidence taken in the light most favorable to the State, it does not rise to an issue that should go to the jury.

THE COURT: All right. Motion for directed verdict is noted, but I'm going to deny it.

Anything else?

MR. CRANE: Not from the Defendant.

THE COURT: All right. Are you going to present anything in defense?

MR. CRANE: No, sir.

THE COURT: Okay. Well, let me go ahead -- what I'll do -- I've been up here working on the jury charges. And what I'll do is I'll get y'all a copy of the charge when the jury comes back.

When we start this afternoon, I'll let you go ahead and rest on the record. And then we can go into closing arguments, charges, and deliberations.

Is that agreeable to everybody?

MR. SCOTT: Yes, sir.

THE COURT: All right. Since there's no defense, the State will close in full, then the Defense will close in full. No reply in closing arguments. I'll have you a copy of these charges. I've been working on them. It should only be within the next 30, 45 minutes. But within the hour, I'll definitely have a copy of the charges and

let y'all take a look at them.

Now, I'll give you two opportunities to raise any objections to my charges. Number one is when I first come back in. I don't know if you've had a chance to read over them. And then I'll give you another opportunity to raise any objection after I charge the jury. Because, sometimes, it sounds different. It sounds differently when you hear a charge to the jury, rather than reading it on a sheet of paper. So I always give you two opportunities to raise any objections.

Anything special that you need charged, or that you know of at this time?

MR. SCOTT: There's two different -- there's two different statutory definitions of a dwelling house. Let's see.

THE COURT: I can tell you what I've got for definition of a dwelling.

MR. SCOTT: Okay.

THE COURT: See if that is agreeable. I've got that a dwelling is any building or portion of a building in which a person ordinarily sleeps. A building constructed as a dwelling that has never been occupied cannot be considered a dwelling for purposes of burglary. But a building is a dwelling even if the residents are temporarily absent from the building.

MR. SCOTT: Okay. What we need in this one is the statutory definition that includes a place where somebody sleeps, as well as any other dwelling house, or houses, outhouses, buildings, sheds, and erections which are within 200 yards of it and are pertinent to it.

And, clearly, that's the defense of the [redacted], is that nobody sleeps in that house. And we don't argue that they do. We argue that although it's a detached garage, it is part of a dwelling. Under this definition that's in the statute -- burglary statute, it is, clearly, within 200 yards. I think the testimony was eight feet.

THE COURT: All right. What is that statute?

MR. SCOTT: Judge, I'm sitting here looking at my PowerPoint. And I don't have the statute referenced. But I will provide that to you. It's in the burglary statute.

THE COURT: Oh, okay. It's in the criminal code?

MR. SCOTT: Yes, sir. I wish -- I'm just looking at my PowerPoint right here.

THE COURT: Let me see. Maybe I can bring it up right quick.

MR. SCOTT: Your Honor, the statutory definition is 16-11-10, titled dwelling house defined in case of burglary, arson, and other criminal offenses.

THE COURT: 16-11-10, with respect to the crimes of burglary and arson, all criminal offenses which are

constituted or aggravated by being committed in a dwelling house, any house, outhouse, apartment building, erection, shed or box, which there sleeps a proprietor, tenant, watchman, clerk, laborer, or person who lodges there and viewed to the protection of property shall be deemed a dwelling house. Such a dwelling house or of any other dwelling house or houses, outhouses, buildings, sheds, and erections, which are within 200 yards of it and are appurtenant to it or to the same establishment of which it is an appurtenance shall be deemed parcels. Okay.

MR. SCOTT: So, clearly, that would be important from the State's perspective. And it is the statutory definition.

But, obviously, the Defense is arguing that was not a dwelling house. So that is the statutory definition with regards to burglary.

THE COURT: All right. How about this, a dwelling is any building or portion of a building in which a person ordinarily sleeps, including all houses, outhouses, buildings, sheds, and erections which are within 200 yards of it, and are appurtenant to it or to the same establishment of which it is an appurtenance.

MR. SCOTT: Yes, sir.

THE COURT: The building constructed as a dwelling that has never been occupied cannot be considered a

dwelling for purpose of burglary, but a building is a dwelling even if the residents are temporarily absent from the building.

How does that sound?

MR. SCOTT: That's fine, Your Honor.

THE COURT: All right.

MR. SCOTT: And I guess we'll find out soon enough. But Victor v. Nebraska -- or what reasonable doubt charge do you, typically, give?

THE COURT: I'll tell you my charge on reasonable doubt. A reasonable doubt is the kind of doubt that would cause a reasonable person to hesitate to act. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the Defendant's guilt. We know very few things in this world with absolute certainty. In criminal cases, the law does not require proof that overcomes every possible doubt.

If based on your consideration of the evidence, you are firmly convinced that the Defendant is guilty of the crime charged, you must find the Defendant guilty. If, on the other hand, you think a real possibility exists that the Defendant is not guilty, you must give the Defendant the benefit of that doubt and find him not guilty.

As I said, I'll give you an opportunity to raise any objections after you look over this and after I charge it.

Okay.

MR. SCOTT: We have some judges here who do it and some don't, but do you send the charges back to the jury?

THE COURT: All right. Typically -- I'll do whatever y'all want to. Typically, I do not, except, in this case, I am charging first degree burglary, second degree burglary, and third degree burglary. So when you have multiple charges like that, I tend to send them back, unless both sides agree for me not to.

Does the State have a preference?

MR. SCOTT: I don't. But -- I don't want to -- I know we'll get these in a minute. That does raise one issue. There's going to be two different indictments. I assume on indictment one, it's just all burglary first, that being the Highway [redacted]. Because the testimony as is -- well, it's either he went inside the dwelling home or he did not. So it's either burglary first or not guilty.

I understand the charges on the [redacted] Road. It's all going to be whether they determine that's a building.

THE COURT: Well, what I've got is burglary first degree is entering a dwelling with two prior burglary convictions.

I've got burglary second is if they find that he entered either a dwelling and does not have the two prior

convictions, or that he entered a building.

The burglary third, they have to find that it was a building and not a dwelling and that there's no -- not two prior convictions. So if there's --

MR. SCOTT: It just occurs to me that the aggravating factors, at least, were not in question. They were uncontested. There was nothing to the contrary that he did, in fact, have two or more prior convictions.

It would occur to me that a burglary first on Highway [redacted] would be the only appropriate charge. And then on the [redacted] Road, it would be either burglary first or burglary second violent.

MR. CRANE: He's taking it out of the hands of the jury if you do that. That's why we have a jury. He may have the prior convictions. And they may not have been contested. And they may not find that he has them. It happens all the time. We know it happens, he knows it happens.

For you not to charge burglary third would be inappropriate. It's taking it out of the hands of the jury. That's why we have the jury.

MR. SCOTT: It's just the law. If there's no evidence that --

THE COURT: Well, but, still, the State has the burden of proving all the elements. So I'm going to go

ahead and I'm going to charge them all. If they find -- and you can read the way I've got it worded in my charges.

If they find that there was entrance into a dwelling with two prior convictions, it's burglary first. If they find that it was -- that there were no -- not two prior convictions, it's burglary second, or that if it was entering a building and not a dwelling, then it's burglary second. Or if they find that it was entering a building and that there were not two prior convictions, it's burglary third.

MR. SCOTT: I don't want to belabor the point. But these are uncontested. We have a lesser included if there's any competent evidence, or there's any mitigation to show otherwise. Otherwise, we'd have -- every murder case, we'd have voluntary on down the line.

THE COURT: Well, and I understand that. But by the same token, the burglaries aren't contested. You haven't had anybody here that's -- I mean, the way it sounds right now, the burglary -- the entering the house is not contested. The entering the garage is not contested. The stealing the tools is not contested. None of that has been contested because the Defense has not presented a defense.

MR. SCOTT: Well, through cross-examination, what he's done is, basically -- that's why I think on the

Highway [redacted], it's burglary first or nothing. Because he's saying he didn't go in, period. He's not contesting that's a dwelling. So it's either burglary first or nothing.

On the [redacted] Road, what he's done effectively through cross-examination is state, okay, he did go inside, but that's a building.

THE COURT: But let's say he didn't cross-examine any witness whatsoever, there was no cross-examination of any witness whatsoever.

MR. SCOTT: I think it's either burglary first or nothing. I just -- because in that case -- and, Judge, I'm fine. I feel strongly enough about the case. But my argument is this, same case, it's a murder case. He didn't cross-examine anybody. Would they be entitled to voluntary, involuntary, on down the line? I don't think they would --

THE COURT: All I can tell you is every time I have not charged it, I've been reversed on appeal.

MR. SCOTT: I'm fine. I appreciate you hearing from me.

THE COURT: I understand. But I'm going to go ahead and leave the charge the way it is. But I'll give you an opportunity to look over it. I understand your argument and I understand what you're saying.

MR. SCOTT: Yes, sir.

THE COURT: But I think I'm going to go ahead and leave it the way it is.

MR. SCOTT: Okay.

THE COURT: Anything from the Defense?

MR. CRANE: No, sir, Judge.

Thank you.

THE COURT: Okay. Do y'all want to -- or just when you come back at 1:30, I'll have it ready for you. Or if you want to wait a while, it will take me probably about another 30 minutes.

MR. SCOTT: What we could do, I could leave you my e-mail address, Your Honor.

THE COURT: If you want to do that, I can do that.

MR. SCOTT: Or the clerk can send it.

MR. CRANE: I'll just come back and get it, Judge.

THE COURT: Okay.

MR. CRANE: Thank you.

THE COURT: All right. We'll be in recess until 1:30.

(WHEREUPON, a lunch break was taken.)

THE COURT: Gentlemen, you may or may not have had time to review my proposed jury charges and verdict form. Upon further reflection, I think Mr. Scott is correct since --

MR. CRANE: I'm sorry.

THE COURT: I think Mr. Scott is correct since the two prior convictions are not contested. Then the only possible verdicts at the Childress residence are either guilty in the first degree or not guilty.

And, at the Hampton residence, it's either burglary -- guilty of burglary first degree, guilty of burglary second degree, or not guilty.

I think -- I read some more case law. And upon further reflection, I think he is correct on that point.

Anything you want to place on the record at this time?

MR. CRANE: I have a question. And that would be whether or not the Solicitor sent you an e-mail?

THE COURT: Yes, he did.

MR. CRANE: I would submit that's ex parte communication, Judge, and improper. And that he should be sanctioned.

THE COURT: I saw where he copied you on the e-mail.

MR. CRANE: I didn't get an e-mail. I've got a Smartphone, and I pretty much guarantee it's not there. My office is in Greenville.

THE COURT: Okay.

MR. CRANE: And I would submit, you know, it should have been done in open court. And I wasn't present. I

wasn't able to respond. I just think --

THE COURT: Well, and I'll give you an opportunity to respond now. I understand he should have done it in open court. I agree with that.

MR. CRANE: Well, I think he knows better than to do an ex parte communication. And that's what I would call it. I mean, this has been a really good trial until just now.

THE COURT: Okay.

MR. CRANE: And -- and I don't think justice can tolerate ex parte communications. There's no getting around it. That's what it was.

Maybe you shouldn't have answered it. I'm not throwing it off on you --

THE COURT: I did not answer it. I didn't answer it at all. I did some further research when I got back to my office. And I sent out an e-mail on LISTSERV to other circuit judges asking for some input and some guidance from them.

And after all of that, I came to the conclusion that Mr. Scott was on -- was right on that matter, on that position. But I did not respond to his e-mail.

Let me hear from you, Mr. Scott, on his charge against you that you should be sanctioned for improper and illegal ex parte communication with the Judge.

MR. SCOTT: I find it wholeheartedly foolish. And I find it inappropriate. The Supreme Court requires us to provide information through AIS with our e-mail addresses that should be up-to-date.

You're required to do that by the Supreme Court, you know.

So what I've been doing all throughout the week is communicating with him via e-mail. And he has responded through that e-mail that Your Honor receives a copy on that e-mail thread.

I'm sorry. I don't often get accused of such things. Perhaps, he feels that he's against the ropes. Perhaps, that's why he's doing that. I don't appreciate it. That's not how I operate.

Common practice here, Your Honor, is that once the Judge retires to chambers, we do communicate via e-mail with suggestions, whether it be additions or deletions to charges. That's our common practice here. If he would spend some time down here, he'd know that.

I'd like an apology. I don't expect one. But I'd like one.

THE COURT: All right. Anything in response?

MR. CRANE: I believe he said he's been sending e-mails to me all week and I've been responding. If that's not what he said, then I heard improperly.

But I haven't responded to the first e-mail from him because I haven't gotten any because I haven't been in my office. Because I've been down here for three days trying a day-long long case. I don't come down here very often.

I'm not going to apologize. I think it's an ex parte.

He gave me a case here, which I assume he sent to your office. And you probably didn't read it. But had I had the chance to respond, this is a case which had to do with a murder trial where the solicitor asked for a lesser included offense, and the Supreme Court determined that it shouldn't.

I happen to have tried a murder case in this county several years ago where I asked for an involuntary manslaughter and it wasn't granted. And that was overturned by the Supreme Court because they said it should have been. So there's two -- there's two edges to the sword.

And I wasn't given the opportunity to respond to this. I'm not going to apologize. I think it's improper for him to do what he did.

THE COURT: All right. Well, let me hear from you then on whether or not the charge of the lesser included offenses where the prior burglary convictions are not contested.

MR. CRANE: Judge, whether the prior burglary convictions are contested or not contested, I think, makes no difference when you're dealing with a jury. Because a jury -- there is such a thing as jury nullification, and we know it.

If they determine that they don't want to convict my guy for whatever reason, then they can do that. If they want to disregard the fact that he's got prior convictions, they can do that. But that's their prerogative, not his.

THE COURT: I mean, how does nullification come into that? I mean, they can -- even if I don't charge the lesser included offense, they can still do that.

MR. CRANE: I understand that. That's correct.

THE COURT: Okay. Well, I'm not going to sanction Mr. Scott for any ex parte communications.

I don't know whether you got the e-mail or not. I did not respond to the e-mail. I did read the case that he suggested, as well as did some more research on Westlaw for similar issues as to whether or not I should charge it. And I just came to the conclusion that burglary third is not a lesser included offense in this case.

And that on the Childress residence, it's either burglary first or not guilty since the prior convictions are not contested.

All right. As I said, I'll give you two opportunities to raise an objection, now and after I charge the jury.

Anything further from the State?

MR. SCOTT: No, Your Honor.

And I don't want to beat a dead horse. My ethics aren't often in question, but --

THE COURT: Well, I've already -- I've already made that decision. We've got the record as to what it is. You communicated --

MR. SCOTT: I've got various e-mails from Mr. Crane throughout the week that I'd show Your Honor, if you care to see them.

MR. CRANE: He doesn't have any that were answered by me.

THE COURT: Okay. That -- and I understand. That's --

MR. SCOTT: You wrote me back.

MR. CRANE: I didn't write you anything. I haven't been in the office.

MR. SCOTT: Who's Lawrence Crane?

MR. CRANE: That's me. That's last week. You said this week you sent me stuff. I'm not going argue with you anymore --

THE COURT: All right.

MR. CRANE: -- about this week.

THE COURT: All right. Anything from the State before we bring the jury in?

MR. SCOTT: No, Your Honor.

THE COURT: Anything from the Defense?

MR. CRANE: No, sir, Your Honor.

THE COURT: All right. Let's bring the jury in.

All right. Mr. Crane, when the jury comes in, I'll ask if you want -- that you can present your defense. You can say, the Defense rests. Then we'll go into closing arguments. Okay.

MR. CRANE: Yes, sir.

Thank you.

(WHEREUPON, the jury came into open court at approximately 1:53 p.m.)

THE BAILIFF: All jurors are present, Your Honor.

THE COURT: Thank you very much.

Welcome back, ladies and gentlemen. I hope everybody had a good lunch.

I appreciate, again, everybody's promptness for returning on time. I thank you for that.

We're ready to resume the trial of this case. As I told you before we broke for lunch, the State has presented their case. Now is the time where the Defense can present a case if they choose to.

Mr. Crane.

MR. CRANE: Thank you, Judge.

Respectfully, the Defendant will rest and not present any testimony.

THE COURT: All right. Thank you very much.

MR. CRANE: Yes, sir, Judge.

THE COURT: All right. Ladies and gentlemen, the State has presented their case. The Defense has rested in their case. So all the evidence and testimony to be presented to you has now been presented to you.

Now is the time in the trial where the attorneys will make closing arguments. Now, just like their opening statements, these closing arguments are not evidence in the case. It is simply the attorneys contention as to what they think the evidence has shown in this case and the law to be applied in this case.

If at any time an attorney makes reference to a factual issue that is different from the facts as you find them to be, or references the law that is different from the law as I will instruct you at the close of their arguments, then you're to disregard that portion of their closing arguments.

Because these arguments are not evidence and cannot be used by you as evidence. It's simply the attorneys explanation as to what they think the evidence has shown

in this case, and the law to be applied.

All right. Mr. Scott and Mr. Todd.

MR. SCOTT: Thank you, Your Honor.

May it please the Court.

THE COURT: Yes, sir.

CLOSING ARGUMENTS

MR. SCOTT: This was a quick two-day trial. I know it seemed like a long one to you guys. But as cases go for us, it was really quick.

But as Mr. Todd said at the beginning, this case is about working people. It's kind of a theme in this case. And I think working people is a good theme in this case. Because on March 9th, 2016, that Wednesday morning, Annette Childress, Brittany's mother -- y'all remember Brittany from yesterday?

Annette got up. And she woke up in the bedroom of her home at [redacted] Highway [redacted]. And she probably had breakfast, like a lot of you do before going to work. And she brushed her teeth, took a shower, laced up her shoes, and left the house.

And she was going to her job at Rexroth. It's a hydraulics plant in Fountain Inn. I think she's worked there something like 18 years, I think she testified to. She's a working woman. And she makes an honest living. And when she left her home that morning, she had no idea

that that Wednesday was unlike any other day.

Now, I think --

Teddy, is that how you felt, too, that day?

MR. TEDDY HAMPTON: Yes, sir.

MR. SCOTT: When he gets up, he, too, had his breakfast, took a shower, brushed his teeth, put on his boots. And then he went to Gen III up there in Fountain Inn to make an honest day's living. And when he left his daughter at home, I don't think somebody breaking into the house was anywhere on his mind. Because he had a job to do. He's a working man.

And then, you know, there's the third working man, the other professional, Mr. Fincher. Mr. Fincher gets up that morning. He gets in his white Pontiac GT. He puts on his gloves. He gets all the tools of his trade. And he goes out working, too. But it ain't no honest living he's involved in. He's a predator. He preys on people. He preys on the working man who makes an honest living.

So what he does is he gets in his Pontiac GT with his gloves and makes his way over there to [redacted] Highway [redacted], the home of Brittany Childress, the home of Annette Childress. And while Brittany is upstairs sleeping, he's preying. And he's downstairs. And he's beating on the door. And he's testing it. And he's poking soft spots. If somebody comes to the door, he's gone. But if nobody

answers, that's a good target for him.

So he makes his way in. We don't really know which door he got in through, the front door, the garage door, the back door. But let me tell you, the professional burglar, the working man that Mr. Fincher is, he is going to find a way in. And when in, he did find his way.

I don't know. It's never happened to me. I hope it doesn't. I better knock on wood. But I don't know the feeling Brittany must have had as she laid in her room knowing that nobody is supposed to be there and she hears that pounding all over the front of the door, on the sides of the house, and then the sound of somebody in the kitchen, just two rooms over, rifling through cabinets, pulling drawers open, looking for something.

But the professional working man, Mr. Fincher, didn't find what he wanted there. He didn't find anything that was useful. He sounds like a tool man to me. He sounds like the kind of guy that likes to find electrical tools and stuff he can pawn pretty quick. Because if you're $4,000 in the hole like he said he was, he needs the money. You need quick money.

I guess he didn't find anything in the kitchen. Something spooked him. I think it was Esther, Xavier, Indigo coming up in the yard yelling at the man in the driveway. Something spooked him. But he was out of that

door pretty quick.

And then we hear Brittany's Aunt Esther and her cousins, Indigo and Xavier, talking about him coming from the front. He's in a hurry. He's moving. All right. What are you doing here?

Oh, I thought the house was for sale. I'm sorry.

He gets in his car and takes off. But he's not done because the day is early for the working man. So he's off to his next stop. And that's [redacted] Road.

What are the chances? You know, that was the first thing when I got this case. He just happened to hit two homes with two young girls, who just happened to be home that day. And it's unfortunate to them. And it was fate, really, and very unlucky for Mr. Fincher. Because if nobody had been home, I don't know that we would have been having this case here today. I don't know that he would be held accountable.

But as fate had it, [redacted] Road had [redacted] DH [redacted] home, too. She was sick that day, that Wednesday, so she wasn't in school. DH [redacted], that was her 16th birthday. Okay. And so she, like Brittany, was in bed. And this was some 20 minutes after the Highway [redacted] incident.

Dispatch time, by the time she, finally, got 911 was 10:17. So we can account for a couple minutes prior to

that before she called 911. She hears banging. And, again, it's that frantic banging of a desperate man. And she's home alone. She's 16. She's not expecting anybody to be there. She's never seen this Stephen Fincher man in her life.

So when she looks out of her window and sees him, who is this man and what is he doing? This strawberry-blonde-haired man with tattoos, and a blue shirt, and jeans. What's he doing?

He's up against the windows. He's looking in. He's testing the soft spots. He walks back to his car. And she's flipping out, as I would. He's a grown man, but she's a 16-year-old girl home alone.

She has these big dogs, a Great Dane, another big dog. She let's them out of the room throughout the rest of the house so, hopefully, this crazy man won't come in. Apparently, it did stop him from coming into the main house. But he went into the other house -- the other part of the house, rather. And she watched him as he walked around to the back and up to the bonus room in the other house.

And, again, I don't know the feeling. I hope I never do, you know. The beeping sound she heard, if any of you have alarm systems, that indicates that a door somewhere in the house has been breached. Somebody is in her house

now.

And she's locked her 16-year-old self up in her bedroom. And she's frantically calling her mother. She's frantically calling 911. And she's flipping out because this is the scariest thing she's ever been through in her life. This man she just saw on the porch looking all around, going back and forth, he's in the house. She looks out. And she's watching as he's taking her dad's tools back and forth to that Pontiac GT. She's looking at in the driveway. A working man is working. She's seeing it unfold.

I don't know if -- if there's a worse nightmare for a parent to get that call, there's somebody breaking in your house right now while your daughter is at home by herself. Annette got the call about Brittany. Teddy got the call about DH .

Y'all heard the testimony. And I think it's pretty clear. Y'all remember the pictures. But just to illustrate, I want to just -- I will only hit this one last time.

Two days is short for me, but it probably seems like an eternity for you. This is the last chance y'all are going to hear me, so I want to cover as much as I can as quickly as I can. Because this man is going to get up here and he's going to throw everything I say into

disarray. His job is to create confusion in some respect.

And this picture I put up that makes complete sense -- and the picture, I submit to you, is crystal clear of what happened that day. But he's going to get up here and say this, and that, and everything else. And I won't get to get up and respond to it. So I need to make sure my point is crystal clear at this point. Because this is the last argument I get.

Brittany, this is your house.

And this is the house that Fincher first goes to. Here's the front of the house. Okay. Her room is somewhere on the first floor. The kitchen is over here. And her room is over here.

What she hears and she described perfectly from that stand was somebody in that kitchen rooting through the drawers looking for something. Aunt Esther, Cousin Xavier, Cousin Indigo, they live just right over here. Brittany calls her mother. Her mother calls the aunt, y'all go check on Brittany, somebody is over there.

The aunt and cousins run as quick as they can right over here just in time to see Fincher coming out. He sees them. He hears them yelling at him. He's in that Pontiac. He's gone. He goes to the end of this driveway, takes a left on Highway [redacted]. He's on his way to [redacted] Road.

There's [redacted] Road. 20, 15 -- 20 minutes later, he shows up at this house. Now, that's a working man. From one job to the next just like that.

Here's Brittany's room -- rather, DH's [redacted] room. She is home alone. The dogs are in this room just below hers. She hears the banging, just like Brittany did at the door. She sees him looking through this window, hands cupped seeing if anybody's home. He walks back to his car. She lets the dogs out. And she's watching him through these windows.

And he's in this car. And he's walking from this car through this cut-way up to the bonus room up here where her dad keeps all his tools, and everything. He kicks in the door. That's where the beating sound comes from she hears.

And at that point, as much as he can, he grab as quick as he can. He's loading his car up, making his way back and forth. He's loading his car up. He's a working man.

Up these steps, that's the door he kicked in right there. Y'all are going to have all these pictures back there, by the way, so y'all can examine them as much as you want. To his car, load up, back, grab as much as you can as quick as you can.

I left this out, but you remember Xavier described

the car as having a wing on it. There's a picture of the car they, ultimately, stopped him in down the road. And then, of course, red handed, you know, this man is wanting to say, well, did they get fingerprints on the tools? It's in his backseat. The man has got gloves. We didn't do anything with prints. I don't think so.

But make no mistake about it -- and he wants to ask Mr. Hampton, Teddy Hampton, well, how do you know? Did you record your serial numbers on your tools? Do you have any identifying marks? The man knows his tools. He's got a workshop dedicated to his woodworking. He works hand in hand with those tools every week, daily.

And then at the bottom, you see the gloves, the working man's gloves. He's arrested on March 22nd. DH has to deal with this again. She's further victimized, victimized to this day. She's still having to deal with this a year later.

And, you know, they get cross-examined by the Defense attorney up there, why didn't you do this? Let me tell you, these people are the victims back here. Mr. Fincher is not a victim.

In opening statement, he says, well, Mr. Fincher is not here. He's got other places he'd like to be. I bet they'd like to be other places, too. I don't think either one of them asked for some nut to come beating on their

door, beating on their windows, looking through their windows at them, and then stealing their stuff. I don't think they asked for that. I don't think they deserve that. And this will be the last day they have to deal with this. Let's be clear who the victims are here.

But DH [redacted] has to go back -- rather, investigators have to come back to her house. She's still dealing with this on March 22nd. In no short time -- I mean, she picks just immediately Stephen Fincher. I mean, what more do y'all want? What do y'all want? Do you want a video of him in the back of a car of him rambling about how he did it? I've got that for you, too.

You heard about the stop. They catch him a couple miles from the scene of [redacted] Road. He's got the white Pontiac GT with the wing on the back. He's wearing the blue shirt. He's got the blondish-red hair. He's got the scraggily little beard. He's got tattoos on the arms. He's got jeans on. No question about it. And then he admits to being there.

This is where this case gets interesting. Okay. He fits the description. I mean, there ain't no question about that, he's there. I want y'all to -- I want y'all to listen to some of the things.

(WHEREUPON, a portion of State's Exhibit No. 22 was played in open court.)

MR. SCOTT: It's not clear to y'all why that's relevant right now. I'm fixing to explain it to you. I went into a building. I didn't go in no house. I went into a building. Okay. Remember that. I'm going to circle back around to that in just a second here.

(WHEREUPON, a portion of State's Exhibit No. 22 was played in open court.)

MR. SCOTT: I know what degree burglary it is. That's what he said. Are you going to charge me with second degree? Let me ask you, how many of y'all know the difference between burglary first degree, burglary second degree, burglary third degree? The professional working man does.

You see, there's elements to these crimes. And there's different charges for different buildings. If it's a home, a dwelling, that's a burglary first. All right. If it's a building, that's a burglary second. He's charged with burglary first.

Okay. You don't think the working man knows the difference between burglary second and burglary first? He's a pro. To this day, he's trying to tell you, if you find me guilty of anything, it needs to be burglary second because I went into a building. That ain't true.

First of all, he went into Brittany's home. We know that. We know that for a fact. Burglary first is what

he's charged with, and what I am submitting to you is the only appropriate charge on either one of these burglaries, either one. Here's the law. This is what the law is. This is what the Judge is going to tell you. If you go into somebody's dwelling, their home, the place they sleep at night, you don't have consent to be there, you have an intent to commit a crime, and you have two or more convictions of burglary, that's burglary first.

I had the Clerk of Court get up there and read you three different times this man has been convicted of burglaries. There ain't no question about it. Is there any question in your mind he's been convicted three times when the Clerk of Court got up here and told you that under oath? There ain't no question.

Is there any question Brittany lived in that home? There's absolutely no question that Brittany lived in that home.

The issue with the second home is a little bit different. And this is where we're getting into a very nuanced law. It's something you guys don't know, but something that the professional does know. What is a dwelling house? I didn't write the law, guys. I don't think it was written in the last century. But it was written very long ago if you look at the wording. I'm going to translate it for you, though.

With respect to the crimes of burglary and arson, and to all criminal offenses which are constituted or aggravated by being committed in a dwelling house, any outhouse -- that tells you how old it is -- apartment, building, erection, shed, or box in which there sleeps a proprietor, tenant, watchman, clerk, laborer -- I put in red the things I think are important -- or person who lodges there with a view to the protection of property shall be deemed a dwelling house. And -- okay.

So the first part is talking about a place where you sleep at night is a dwelling house. We know that. We get it. Your home is your dwelling house. And such dwelling house or any other dwelling house, all houses, outhouses, buildings, sheds, and erections which are within 200 yards of the home and are appurtenant to it, and are associated with it. Those are, also, dwellings.

What this man is going to get up here and tell you is that the home at [redacted] Road, the garage and the bonus room were not dwellings. They were simply buildings. Does that make sense to you all? You're going to hear it, I promise you.

But the translation to the burglary, a dwelling house. When the Judge tells you a dwelling house has to be found for a burglary first, it's just a place where a person lives, and they sleep, and they take a shower, and

brush their teeth every morning. But it's, also, all of the buildings associated with that house within a 200-yard radius of the house.

So if you've got a garage, detached or unattached, within 200 yards of your house and that garage is associated with your house, that, too, is part of your dwelling. Okay. Does that make sense?

Because why else would Teddy have wired that workshop and garage with the same security system? Why would he keep those very valuable tools and everything over there eight feet from his house? Why would he have a walkway that led straight to it for such easy access? Because he spent so much time there. That's part of his home. That ain't no building. It's part of his home.

An appurtenance, that's part of that language. It's just something that belongs to or is attached to the home. A garage with a room over it is an appurtenance to a home. That garage is part of his home.

So here's what we're talking about. Again, there's the home. Do you see there's an eight-foot separation? The argument is this, that is not a home. That is a building. The law says any houses or buildings within 200 yards of your dwelling is part of your dwelling. Pay attention when the Judge reads it to you. He's going to instruct that to you. And that's the law.

In closing, you must find -- here are the elements. He entered a dwelling without consent with the intent to commit a crime inside, and he had two or more prior convictions of burglary. We got it. It's crystal clear.

I did this quickly, just right before we came in here. Burglary second, entering a dwelling with the intent to commit a crime therein, but you have no prior convictions. We know it's not that burglary second. He's got three prior convictions for three different instances where he pled guilty to burglaries.

The other way you can be guilty of burglary second, enter a building with the intent to commit a crime therein, but you have two prior convictions. Well, it can't be this one either because that's not a building. That's the argument. That's a part of the dwelling.

Now, as I'm talking in circles now, I know it's time to sit down. But you're going to have that video. Y'all can watch it. It's about 14 minutes. I'm not going to play it in here because y'all have already seen it. You can watch it back there, if you want to.

If you go to about 5:20, five minutes and 20 seconds into that video, you're going to hear Stephen Fincher say, Why'd you do that? Trase, why'd you F-ing do that? And he's talking to himself. The working man isn't sorry for what he's done. He's sorry he got caught.

And then you'll watch him cry because he's sorry he's got caught. And then there will be other times when he stops and he thinks. About the 11-minute mark, he, finally, stops his rambling and he thinks. And he's reflecting for about four minutes. What do I say next? How do I spin this? Six minutes, 35 seconds in, why did I do this? I didn't have to do it.

Mr. Fincher, you didn't have to do it. I wish you hadn't. I wish you hadn't victimized Brittany, DH [redacted], and their families, but you did. You didn't have to do it, but you did, just like you did those other times.

I have to sit down now. But I'm going to ask you, by the reasonable doubt standard that the Judge is going to tell you about that you have to be firmly convinced that he's guilty. Do you have a reasonable doubt that this man did this or didn't do it? If you're firmly convinced he did it, the only verdict that provides any justice for this county, provides any justice for these victims, the only verdict that speaks to the evidence presented is guilty. Both houses, both burglaries for the working man, the Highway [redacted] address and the [redacted] Road address. Burglary first. Justice demands it, and I'm asking that of you.

Thank you.

THE COURT: Mr. Crane.

MR. CRANE: Thank you, Judge.

Mr. Foreman, and, ladies and gentlemen, as the Solicitor said, thank you for helping us.

It's been a relatively short trial. I'm sure he's been in much longer trials, as have I. It's only a two-and-a-half-day trial. But we, certainly, thank you for being here.

Now, like the Solicitor said and like the Judge said when we started the case, he's going to give you the law in the case. And you're not supposed to try and change the law. The legislature makes the law. He tells you what it is and you apply that law to the facts presented during the trial. And you come up with a verdict, a verdict that must be unanimous, the 12 of you must agree. The alternate will be excused. So it has to be a unanimous verdict.

It boils down -- the Solicitor is very correct. This thing boils down to what you determine the facts are, apply them to the elements, and whether or not this is a burglary first, burglary second, not guilty. And there's two different indictments.

The first one is out on Highway [redacted]. And that's the one, I think, they're calling the Childress residence where Brittany testified that she was in her room -- and I don't know -- I don't remember -- that's the wrong

picture. But I don't remember if she said it was her bedroom over the corner, and then a room in between, and the living room. But that's the way I understood her to say.

The only testimony and only evidence that you have that makes that a burglary first degree is that Brittany says while sleeping in her room, I believe with the door closed and her puppy next to her, she claims to have heard someone in the kitchen rustling through silverware. None of the other neighbors, the aunt, the cousins, none of them saw anybody in the house.

As a matter of fact, Brittany didn't see anybody in the house. You don't know who was in the house. Anybody got any -- I mean, who was in the house? Who saw who was in the house? Nobody did. There's no witnesses. There are no fingerprints. There is no DNA.

The Solicitor says that Mr. Fincher got up, and went to work, and put on his gloves. Well, let me ask you this. When he got stopped by the police, did he have gloves on? I didn't hear any testimony to that effect. When he was seen in the Childress yard by the aunt and the two cousins, did he have gloves on? I didn't hear any testimony to that effect.

When he was at [redacted] Road, and the young lady was looking out the -- DH [redacted] was looking out the

window, is there any testimony he had gloves on? I didn't hear any.

So I submit to you that what the Solicitor said to you, of course, is not in evidence because he said he got up and put on his gloves. That's not in evidence, but I didn't object to it. But that's not in evidence. No one knows whether he had gloves on or not. No one knows -- it's kind of like the O.J. Simpson case, no one knows if those gloves even fit Mr. Fincher. But that's not for you to determine.

What you have to determine -- and let's divide it into two burglaries. The burglary at [redacted] -- Highway [redacted] where they claim that he went into the Childress house, and then the other one at [redacted] Road. I'm going to talk about Childress first.

I would submit to you that the Judge is going to tell you and he's going to give you, I believe, his charge on the law. It's numerous pages. He's going to explain to you what he's going to orally tell you on the record. But you're going to have the charging papers. I think that's what the Judge is going to do.

And so you'll be able to look at some of these definitions. What is intent? What is a dwelling? What is burglary first? What is burglary second? You'll be able to look at it and try to figure it out.

Your verdicts are going to be the possibilities of the Highway [redacted] charge of guilty of burglary first degree or not guilty. It's that simple.

Of the [redacted] Road, it's going to be guilty of first degree, guilty -- excuse me, or guilty of second degree, or not guilty. It's got to be one of those three, first degree, second degree, or not guilty. Highway [redacted], guilty of first degree or not guilty. And so when you look at the Highway [redacted] burglary, you have to weigh all the testimony.

Now, it appeared to me -- I think her name was Brittany, the young teenager, when she testified, she seemed a little bit of a quiet person, a timid person. She, obviously, was afraid when it happened. She was afraid when she was testifying. We all saw that. But it's a lot of the things that she didn't say. A lot of questions I asked her, Were the doors locked?

I don't know.

When you got up, did you have to lock the door?

I don't know.

Are you sure he was in the room?

Yeah.

Two rooms away and she's sure. But let -- how did he get in? How did he get in? No broken doors, no broken windows, no locks broken. No one saw him in the house.

No prints, no nothing.

And if you're talking about, as the Solicitor said, a professional thief who went to work to steal things, what did he steal? You have to decide two issues in order to find him guilty of that burglary first. Number one, did he go in the house? And, number two, did he have the intent to commit a crime?

Where is the evidence of any intent to commit a crime? What did he take? The Solicitor said he likes tools. He likes things that are readily pawnable. Do you think silverware is not pawnable? Do you think silverware can be melted down and sold? I mean, certainly, it doesn't make any sense that this professional burglar, as he wants to call him, would go in the house and not take anything.

So we don't know how he got in, or if he even got in. We know he didn't take anything. The Judge will tell you the intent is the conscious thoughts of the brain. Can you determine, if you think he went in, what his intent was? I would submit to you, the only evidence is Ms. Childress saying that she heard something in the kitchen, and then the neighbors that say they saw him go.

Now, I'm not questioning the fact that he was there. I'll make it easy for you. He was at [redacted] Road. You don't have to decide that. He told you on the

videotape he was there when he was in the police car.

What did he say to the aunt and the cousins when he was in the driveway at Highway [redacted]? Do you remember what he said? I thought the house was for sale. I came to look at it. The Solicitor makes slight of that.

But what did he tell the policeman in the car that's on the video? I'm trying to get married. I was going to look at the house to see if it was for sale. I saw online at reality.com that it was a foreclosure. Now, it wasn't. That doesn't mean it wasn't on there. That doesn't mean he didn't look at it. So he was there, but there's no evidence he went in.

You've got concrete evidence where he says he didn't go in. You've got Ms. Brittany that says she heard something in the kitchen. She doesn't say she heard a human being. She doesn't know how anybody got out or got in. I would submit to you he's not guilty of that charge.

So then you go to [redacted] Road. Was he there? Yeah. That lady right there in the blue and green saw him. He told you on the videotape he was there. He said on the tape he didn't steal anything.

Well, you've got pictures of stuff in his car, which Mr. Hampton identified as his. Maybe he can tell all of his tools. I've got a bunch of tools and I don't know that if I saw them in a car if I could tell you those were

mine. But he said they were his tools.

The question does come down to, however -- and I want you to listen to what the Judge tells you. If you determine that he went in that building, and Mr. Fincher said he went in the building, then you have to determine whether he had the intent to commit a crime. If you think he went in that building and stole the tools, then he's guilty of going in a building and stealing tools. So he entered and he had the intent to steal, which is a crime.

The question is, is it a dwelling or a building? There's no question that they're separated. Listen to what the Judge tells you. And I don't know if you'll be able to figure it out or not, but he's going to charge this, too.

And if he sends the paperwork, it's on Page 11. A dwelling is any building or portion of a building in which a person ordinarily sleeps, including all houses, outhouses, buildings, sheds, and erections which are not -- excuse me, which are within 200 yards of it and are appurtenant to it.

So a building, house, outbuilding, outhouse, shed, or erection in which a person sleeps. He's going to read it to you. I'm not making it up. That's what's in the charge. Or to the same establishment of which is an appurtenance. A building constructed as a dwelling that

has never been occupied cannot be considered a dwelling for purposes of burglary.

That garage has never been occupied and no one sleeps in it. I submit to you, it's not a dwelling. I submit to you, it's a building.

And if you find that it's a building and that he stole from that building, he does have two priors. And you could find him guilty of not burglary first degree, but burglary second degree.

Now, if you can determine through your own -- you know, those -- I asked the Clerk about those indictments for burglary. One of them happened about 13 years ago. One of them happened about 11 years ago. And one of them happened about six years ago.

The two that happened 13 and 14 years ago, we know what his birth date was. He would have been in his early 20s, foolish and reckless. The other one, he would have been a little bit older. If you hold that against him, then you could find him guilty. If you don't, then he's not guilty of burglary second.

Let me just look over real -- oh, and the other important thing, I think I said it, but I might not have is the reasonable doubt angle. Here again, it's in the charge if they give it to you. But the Judge will tell you a reasonable doubt is the kind of doubt that causes a

reasonable juror to hesitate to act. And it's a doubt beyond which a juror must be firmly convinced.

If you're not firmly convinced that Mr. Fincher went into the property on Highway [redacted], you have to give him the benefit of the doubt. And if you think that he went into that property, but you're not firmly convinced that he went in with the intent to commit a crime, then you have to give him the benefit of the doubt and find him not guilty.

On the other hand, if you're not firmly convinced that he went in there or that that's a dwelling, you have to give him the benefit of the doubt and either reduce it down to second, or find him not guilty.

I'm going to sit down. I'm agreeing with the Solicitor. That's usually not the case, but today, it is.

Listen to the Judge. Listen to what he says. Take all the evidence and the facts that you've got before you, render a fair and impartial verdict. That's all we can ask you to do.

Thank you very much.

CHARGE ON THE LAW

THE COURT: All right. Ladies and gentlemen, all of the evidence in this case has been presented to you. The attorneys have made their closing arguments. And now is the time of the trial when I charge you with the law to be

applied in this case.

I will give you a copy of these instructions in written form. And during your deliberations, you may refer to the instructions to guide your decision making. You must consider the instructions as a whole and not follow some instructions and ignore others. Please return these written instructions to the Court at the time you return and render your verdict.

Now, the indictments in this case allege two separate crimes against the Defendant. Both indictments allege that the Defendant committed burglary in the first degree. Each indictment charges a separate and distinct offense. You must decide each indictment separately on the evidence and the law applicable to it uninfluenced by your decision as to any other indictment.

The Defendant may be convicted or acquitted on one or both of the offenses charged. You will be asked to write a separate verdict of guilty or not guilty for each indictment.

I remind you that the fact that the Defendant was arrested, charged, and indicted in this case is not evidence in this case and cannot be considered by you as evidence of guilt in this case. Nor does the Defendant's arrest, charge, or indictment create any presumption or inference of guilt.

These indictments are simply the formal written instruments which contain the charges made against the Defendant. They are the formal documents by which this case is brought into this Court.

The Defendant pleads not guilty to these indictments. That plea puts the burden on the State to prove the Defendant guilty. A person charged with committing a criminal offense in South Carolina is never required to prove his innocence.

I charge you that an important rule of the law is that the Defendant in a criminal trial, no matter what the seriousness of a charge may be, will always be presumed to be innocent of the crime for which the indictment was issued, unless guilt has been proven by evidence satisfying you of that guilt beyond a reasonable doubt.

The presumption of innocence does not end when you begin your deliberations. But it accompanies the Defendant throughout the trial until you reach a verdict of guilt, based on evidence satisfying you of that guilt beyond a reasonable doubt.

The presumption of innocence is like a robe of righteousness placed about the shoulders of the Defendant. It remains with the Defendant until it has been stripped from the Defendant by evidence satisfying you of the Defendant's guilt beyond a reasonable doubt.

The presumption of innocence is not a mere legal theory. It is not just a legal phrase. It is a substantial right to which every Defendant is entitled, unless you, the jury, are satisfied from the evidence of the Defendant's guilt beyond a reasonable doubt.

What is a reasonable doubt in the law? A reasonable doubt is the kind of doubt that would cause a reasonable person to hesitate to act. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the Defendant's guilt. We know very few things in this world with absolute certainty. And, in criminal cases, the law does not require proof that overcomes every possible doubt.

If based on your consideration of the evidence, you are firmly convinced that the Defendant is guilty of the crime charged, you must find the Defendant guilty. If, on the other hand, you think a real possibility exists that the Defendant is not guilty, you must give the Defendant the benefit of that doubt and find him not guilty.

I remind you that during this trial, you and I have certain duties to perform. As the trial judge, my responsibility is to preside over the trial of this case. I, also, have the duty to rule on the admissibility of evidence offered during this trial. You are to consider only the competent evidence before you.

If any testimony was ordered stricken from the record in this case during this trial, you must disregard that testimony. You're to consider only the testimony which has been presented from the witness stand, any exhibits which have been made a part of the record in this case, and any stipulations of counsel.

I have the additional duty to charge you the law applicable to this case. As the presiding judge, I am the sole judge of the law in this case. Your duty, as jurors, is to accept and apply the law as I now state it to you.

If you have any idea as to what the law is or what the law ought to be and your idea is different from what I now tell you the law is, you must disregard your idea of what the law is or ought to be. Because you've sworn to accept the law and apply the law exactly as I state it to you.

In every case tried in this court before a jury, the jury is the sole and exclusive judge of the facts in a case. A trial judge cannot intimate, state, comment on, or make any statement to a trial jury about the facts in a case.

Since you, the jury, are the sole judge of the facts, you are not to infer from what I've said during the progress of this trial in ruling upon the admissibility of evidence or otherwise, or anything that I say now during

the course of this instruction to you that I have any opinion about the facts in this case. The law does not allow me to have an opinion about the facts in this case. This is a matter solely for you, the jury, to determine.

As jurors, your duty is to determine the effect, value, weight, and truth of the evidence presented during this trial. Necessarily, you must determine the credibility of witnesses who have testified in this case. Credibility simply means believability. Your duty, as jurors, is to analyze and to evaluate the evidence and determine which evidence convinces you of its truth.

In determining the believability of witnesses who have testified, you may believe one witness over several witnesses, or several witnesses over one witness. You may believe a part of the testimony of a witness and reject the remaining part of the testimony of that same witness. You may believe the testimony of a witness in its entirety, or reject the testimony of a witness in its entirety. You may consider whether any witness has exhibited to you any interest, bias, prejudice, or other motive in this case. You may, also, consider the appearance and the manner of the witness while on the witness stand.

An issue in this case is the identification of the Defendant as the person who committed the crimes charged.

The State has the burden of proving identity beyond a reasonable doubt. You must be satisfied beyond a reasonable doubt of the accuracy of the identification of the Defendant before you may convict the Defendant.

Identification testimony is an expression, or belief, or impression by a witness. You must determine the accuracy of the identification of the Defendant.

You must consider the believability of each identification witness in the same way as any other witness. You may consider whether the witness had an adequate opportunity to observe the offender at the time of the offense. And this will be affected by things like how long or short of time was available, how far or close the witness was, the lighting conditions, and whether the witness had the chance to see or know the person in the past.

Once again, I instruct you the burden of proof is on the State. And that extends to every element of the crime charged. And this, specifically, includes the burden of proving beyond a reasonable doubt the identity of the Defendant as the person who committed the crime. If after examining the testimony, you have a reasonable doubt as to the accuracy of the identification, you must find the Defendant not guilty.

In order to establish criminal liability, criminal

intent is required. For example, the mental state required to be proven by the State for a particular crime might be purpose, intent, knowledge, recklessness, or criminal negligence. Criminal intent must be proven by the State beyond a reasonable doubt.

Criminal intent is always a matter that must be determined by the jury from the circumstances surrounding the situation. Intent cannot be proven to a mathematical certainty. Medical science cannot dissect a person's brain and determine what the person had in mind. So the law says that criminal intent may be inferred from the circumstances shown to have existed. This is how you make a determination of whether or not the element requiring intent is present.

Intent does not have to be established by direct and positive evidence. Intent may be established by inference in the same way as any other fact by taking into consideration the acts of the parties and all the facts and circumstances of the case. Criminal intent is a mental state of conscious wrongdoing. You must determine what the Defendant intended to do based on the circumstances shown to have existed.

Criminal intent can arise from actions or a failure to act. It may arise from negligence, recklessness, or an indifference to duty or to consequences that is considered

by law to be the equivalent of criminal intent.

As I have previously advised you, the Defendant is charged on two separate indictments with two counts of burglary in the first degree. To convict the Defendant of first degree burglary, the State must first prove beyond a reasonable doubt that the Defendant entered a dwelling without consent.

A dwelling is any building or portion of a building in which a person ordinarily sleeps, including all houses, outhouses, buildings, sheds, and erections which are within 200 yards of it and are appurtenant to it or to the same establishment of which it is an appurtenance. A building constructed as a dwelling that has never been occupied cannot be considered a dwelling for the purposes of burglary. But a building is a dwelling even if the residents are temporarily absent from the building.

In order to prove that the Defendant entered the dwelling, the State does not have to show that the Defendant's entire body entered the dwelling. The smallest entry is sufficient. It may be any part of the body, such as a hand, or a foot, or even an instrument, such as a hook or other instrument.

In addition, the State does not have to prove that force was used to gain entry. If a person enters a building by using deception, artifice, trick, or

misrepresentation to get consent to enter, this is an entry without consent.

Next, the State must prove beyond a reasonable doubt that the Defendant intended to commit a crime, either a felony or a misdemeanor, at the time of the entry. The mere entry into a dwelling without consent is not burglary. If the intent to commit a crime was formed after the entry, it is not burglary.

On the other hand, if the Defendant intended to commit a crime at the time of the entry, it is a burglary, even if the intent was abandoned after the entry. It does not matter that the intended crime was not completed. Intent may be shown by acts and conduct of the Defendant and other circumstances from which you may naturally and reasonably infer intent.

Finally, the State must prove beyond a reasonable doubt that the Defendant has a prior record of two or more convictions for burglary and/or housebreaking. Evidence of prior offenses committed by the Defendant is not offered in this case to prove that the Defendant has a bad character, or to prove that the Defendant committed the burglaries for which he is on trial in this case.

The prior convictions may be considered by you only for the purpose of determining whether or not a necessary element that makes these crimes a burglary in the first

degree exists. That element of the offense being that one who enters a dwelling without consent to commit a crime and has two prior convictions for burglary is guilty of burglary in the first degree.

Before you can even consider the evidence of the Defendant's prior burglary convictions, you must, first, find that the State has proven beyond a reasonable doubt that a burglary was committed by the Defendant in this case. If you find beyond a reasonable doubt that the burglary was committed, then you may consider the evidence of the prior convictions as evidence of one of the circumstances which would make the burglaries in this case first degree burglary. If you do not find beyond a reasonable doubt that the Defendant committed these alleged prior offenses, then you cannot return a verdict of guilty for first degree burglary.

If you find that the State has failed to prove beyond a reasonable doubt that the Defendant committed first degree burglary, you may then consider whether the State has proven beyond a reasonable doubt that the Defendant committed second degree burglary.

Second degree burglary is a lesser included offense of first degree burglary. It includes all of the evidence -- elements of first degree burglary, except that the entry was into a -- excuse me, that the entry was into

a building and not a dwelling.

A building is any structure, vehicle, watercraft, or aircraft where any person lodges or lives, or where people assemble for the purpose of business, government, education, religion, entertainment, public use, or public transportation, or where goods are stored.

Under the laws of this state, a Defendant may be tried even if the Defendant does not attend the trial. But the fact that the Defendant is not present may not be considered against the Defendant in any manner whatsoever.

I, also, instruct you and emphasize that the fact that the Defendant did not testify is not a factor to be considered by you in any way in your deliberation and in your consideration on the question of the guilt or the innocence of the Defendant. The Defendant's failure to attend the trial and testify must not be considered by you in any manner whatsoever.

A defendant has the Constitutional right to remain silent. And the assertion of this right must not be considered by you in your deliberations. I repeat, under your oath, you are to draw no conclusion whatsoever from the fact that the Defendant in this case did not appear or testify.

The fact that the Defendant did not testify should

not even be discussed in the jury room. The burden of proof, as I have stated to you, is on the State. The Defendant is not required to prove his innocence. The burden of proof remains on the State to prove the Defendant's guilt beyond a reasonable doubt.

Now, there are three possible verdicts for indictment #2016-GS-30-757, charging the Defendant with burglary at the Hampton residence at [redacted] Road in Laurens, South Carolina.

There are two possible verdicts for indictment #2016-GS-30-759, charging the Defendant with burglary of the Childress residence at [redacted] Highway [redacted] in Gray Court, South Carolina. No significance whatsoever is to be given to the order in which I state these possible verdicts to you. I simply must state one first, one second, and so forth.

The possible verdicts for the alleged burglary at the Hampton residence at [redacted] Road in Laurens, South Carolina, are, one, we, the jury, find the Defendant guilty of burglary in the first degree; or, two, we, the jury, find the Defendant guilty of burglary in the second degree; or the third possible verdict is we, the jury, find the Defendant not guilty.

The possible verdicts for the alleged burglary at the Childress residence at [redacted] Highway [redacted] in Gray

Court, South Carolina, are, one, we, the jury, find the Defendant guilty of burglary in the first degree; or the second possible verdict is we, the jury, find the Defendant not guilty.

Ladies and gentlemen, your verdicts must be unanimous. As stated before, you must decide each indictment separately on the evidence and the law applicable to that indictment uninfluenced by your decision as to the other indictment.

Mr. Townsend, as Foreperson, when the jury agrees on a verdict, you'll check the appropriate verdict for each indictment. Then sign your name at the bottom, knock on the door, and advise the bailiff that the jury has reached a verdict. At that time, we'll bring you back into the courtroom with the verdict form to publish your verdict.

I'm going to excuse you back to the jury room. But, please, do not discuss the case. Do not begin your deliberations at this point in time.

I need to check with the attorneys to see if they have any additional charges or exceptions to the charges that I've given you. If they do and I deem them appropriate, we'll bring you back into the courtroom and I'll make whatever corrections or additional charge is required. If not, we'll send all of the exhibits, the jury charge, and the verdict form back to the jury room.

The bailiff will instruct you to begin your deliberations. And you can begin your deliberations at that time. But, please, do not begin your deliberations until the bailiff has instructed you to do so.

All right. Thank you very much.

(WHEREUPON, the jury was excused from open court at approximately 2:52 p.m.)

THE COURT: All right. Any challenges or exceptions to the charge by the State?

MR. SCOTT: No, Your Honor.

THE COURT: Any by the Defense?

MR. CRANE: I just reiterate and re-ask that burglary third be charged, Judge.

THE COURT: Your motion is noted. I'm going to deny it and let those charges stand as they are.

MR. CRANE: Thank you.

THE COURT: All right. Let's make sure we've got the exhibits that go back. Here is the jury charge and the verdict form.

(Pause.)

THE COURT: Have you got it all?

MR. SCOTT: Yes.

MR. CRANE: Thank you, Judge.

THE COURT: Okay. You can take that back and bring out Ms. Hudson, the alternate. Bring her out.

(WHEREUPON, Juror #94, Jamie Hudson entered the courtroom.)

THE COURT: Ms. Hudson.

JUROR #94, JAMIE HUDSON: Yes, sir.

THE COURT: This is the part of the trial I hate. As the alternate, since we still have our 12 jurors, you will not be allowed to participate in the deliberations. I hate that because we make you sit through the whole trial, but then we don't let you make a decision.

But you were an alternate in case something happened to one of the 12 paneled jurors. So you will not be able to participate in the deliberations.

You will -- you can stay and see the outcome, if you want to. If you want to go ahead and leave for the remainder of the day, you can do that as well.

You should have been given a number for the Clerk of Court's Office. If you leave, you'll need to call that number after 6:00 p.m. today. And that will give you some further instructions as to whether or not you need to return or not. Okay.

JUROR #94, JAMIE HUDSON: Okay.

THE COURT: Do you have anything in the jury room? Did you leave anything in there?

JUROR #94, JAMIE HUDSON: I have it with me.

THE COURT: You've got it.

All right. As I said, you're free to stay, if you want to stay. You're free to go, if you want to go.

Please call that number after 6:00 p.m. today.

I want to thank you for your service in this case.

JUROR #94, JAMIE HUDSON: Thank you.

THE COURT: Thank you very much.

(WHEREUPON, Juror #94, Jamie Hudson, exited the courtroom.)

THE COURT: Anything from the State before we recess while the jury deliberates?

MR. SCOTT: Nothing from the State, Your Honor.

THE COURT: Anything from the Defense?

MR. CRANE: No, sir, Judge.

THE COURT: All right. We'll be at ease until we hear from the jury.

(WHEREUPON, the proceedings were recessed at approximately 3:00 p.m.)

THE COURT: I've got a request from the jury, "We would like to see the video."

So I'm just going to bring them back in and show them the video again.

Here is the note. We'll mark that as Court's Exhibit No. 2.

(WHEREUPON, Court's Exhibit No. 2 was marked for identification and admitted into evidence.)

THE COURT: Anything from the State before we bring the jury back in?

MR. SCOTT: You may ask them whether they want me to fast-forward to the audio part. I think the first three or four minutes are silent. But however you want to do it. I can play it from the beginning.

THE COURT: I would say let's just play the whole thing since it's just three minutes. But they said the video. So let's go ahead and do that.

Anything from the Defense?

MR. CRANE: No, sir, Judge.

Thank you.

THE COURT: All right. Let's bring the jury in.

(WHEREUPON, the jury came into open court at approximately 3:18 p.m.)

THE COURT: Ladies and gentlemen, welcome back.

I understand y'all want to see the video again; is that correct?

JUROR #180, DAVID TOWNSEND: That's correct, sir.

THE COURT: All right. We've got it set up and we're ready to go ahead and play it for you.

(WHEREUPON, State's Exhibit No. 22 was played in open court.)

THE COURT: All right. Ladies and gentlemen, I'm going to ask that you return to the jury room and continue

with your deliberations.

Thank you very much.

(WHEREUPON, the jury was excused from open court at approximately 3:33 p.m.)

THE COURT: All right. Anything from the State before we break?

MR. SCOTT: No, Your Honor.

THE COURT: Anything from the Defense?

MR. CRANE: No, sir, Judge.

THE COURT: All right. We'll stand in recess until we hear back from the jury.

(WHEREUPON, the proceedings were recessed at approximately 3:33 p.m.)

THE COURT: The jury has a verdict.

Anything from the State before we bring the jury in?

MR. SCOTT: No, Your Honor.

THE COURT: Anything from the Defense?

MR. CRANE: No, sir, Judge.

THE COURT: All right. Let's bring the jury in.

(WHEREUPON, the jury came into open court at approximately 4:34 p.m.)

THE COURT: Mr. Townsend, I understand the jury has reached a verdict; is that correct?

JUROR #180, DAVID TOWNSEND: Yes, sir. That's correct.

THE COURT: And have you completed the verdict form?

JUROR #180, DAVID TOWNSEND: Yes, sir, I have.

THE COURT: All right. If you'll, please, hand it to the bailiff.

Thank you.

All right. I'll ask the Clerk to, please, publish the verdict.

VERDICT

THE CLERK: Your Honor, in the case of the State of South Carolina v. Stephen Trase Fincher, as to indictment #2016-GS-30-757, the alleged victim, Teddy Hampton, [redacted] Road, Laurens, South Carolina, we, the jury, find the Defendant guilty of first degree burglary.

As to indictment #2016-GS-30-759, the alleged victim Brittany and Annette Childress, [redacted] Highway [redacted], Laurens, South Carolina, we, the jury, find the Defendant not guilty. It is signed by the Foreperson, David W. Townsend, March 29th, 2017.

Ladies and gentlemen, if that be your verdict, please, indicate by raising your right hand.

(WHEREUPON, all of the jurors raised their right hand.)

THE CLERK: Thank you.

THE COURT: Thank you.

Let the record reflect that all jurors raised their

right hand.

Any polling of the jury by the State?

MR. SCOTT: No, Your Honor.

THE COURT: Any by the Defense?

MR. CRANE: No, sir, Judge.

THE COURT: Ladies and gentlemen, that will conclude your duty as jurors on this case.

And I want to thank you for your service.

You should have been given a phone number to call back to the Clerk of Court's Office. You'll need to call that number after 6:00 p.m. today. We may have another trial we'll need to do this week. We're checking into some scheduling at this time, so I don't know. So if you'll, please, call that number after 6:00 p.m. today.

But I want to thank you for your service on this case.

If we don't have another case this week, I want to thank you for your service this week.

But you're free to go for the remainder of the day. And, please, call that number after 6:00 p.m. today.

Thank you very much.

(WHEREUPON, the jury was excused from open court at approximately 4:37 p.m.)

THE COURT: All right. Any post-trial motions at this time?

MR. CRANE: No, sir, Judge. I'm sorry.

THE COURT: All right. Any reason why we can't go ahead and impose a sentence at this time? It will be a sealed sentence.

MR. SCOTT: Yes, sir. I've got a sentencing sheet for you.

THE COURT: All right.

MR. SCOTT: I don't know if there's any victim impact or if you're inclined to hear it today.

It would probably be the appropriate time today; right?

THE COURT: Yes. I'll go ahead and do it. I'll give them an opportunity.

First, Mr. Crane, anything in mitigation before I impose a sentence in this case?

MR. CRANE: Your Honor, I've been dealing with this Defendant for quite a while. He is 37 years old. He is single and has a stepchild. He graduated from high school. He was working with his own moving company until he got arrested for these.

He does have the bad record that you heard about. In our discussions, he relayed to me that when these occurred, he had a very bad meth problem. I don't know if he still has that meth problem or not. I watched the video. And I think it's apparent to me he was on

something when he was on the video.

We attempted to work out a guilty plea to two counts of burglary first for a negotiated 15-year sentence.

Mr. Fincher has indicated for quite a while that he's very concerned about his momma, who is very ill with cancer. He did not want to be in prison when she died. He wanted to be here. If we had -- if we could have put this off until whatever happened with her, he probably would have pled guilty.

We attempted to do a drug-court-type situation, which the Solicitor chose not to do.

So having said all that, I just -- the sentence range is 15 years to life. I don't know that he would do any good with a life sentence, other than just warehouse him for the rest of his life. I think whatever sentence you give him should probably have an ATU commitment on it. Although, I think the last one did, also, but he must have relapsed.

I have no idea where he is. I sent him a text this morning to the last phone number I had simply asking him to text me to let me know he's okay. Because I'm afraid he's taken his own life, quite honestly.

His daddy is here. His daddy has not heard from him since Sunday. His momma hasn't heard from him. They don't know where he is. I just hope he hasn't done

something really stupid. But that's kind of the situation.

I understand that you will give him a sealed sentence.

THE COURT: All right. Thank you.

Do the victims wish to say anything?

MR. SCOTT: It doesn't look like it, Judge.

Just, as you know, 14 total burglary convictions. On the first set, 15 years suspended to 46 days, five years probation is what he got. Later on, he was sentenced to six years. He has received ATU treatment.

In 2013, two counts of breach of trust, petit larceny. Just an entire lifetime of thievery. No drug offenses whatsoever.

So I don't know if -- that's Mr. Crane's assumption, I assume. He did push me pretty hard for drug court. I just don't see this guy ever quitting.

But I'll tell the jury, this man has 14 prior convictions, seven grand larceny convictions on his record.

When we do find him, Your Honor, you know, he has chosen to take this to a trial and bring the victims here, make them take the stand, subject them to uncomfortable cross-examination. And, yet, he has not had the gall to be here himself.

I don't know that we ever will find him. On the one hand, Mr. Crane says, oh, he might have taken his life. On the other hand, he wants to see his mother live. Those seem to be competing interests to me. I would like to see whenever he is caught up with a sentence that reflects that, the fact that he is on the land, the fact that those prior convictions are significant.

I mean, he's a man, I would say, in a 38-year-old range. And that kind of record just indicates to me he's not going to stop. I mean, he has stood before two other judges and pled to multiple burglary convictions. And I assume he told them he was in the wrong place at the wrong time and would never do it again.

I will say that Mr. Crane got him a bond reduction on these charges. What did he do? He made bond and picked up two more burglaries up in Greenville. And he has another one pending here. He has gotten him out on bond on all those. I understand you can't take those into account. But he still has those fish to fry.

So having said all that, I think a sentence above 15 -- the mandatory minimum 15 years would be appropriate for this individual.

THE COURT: All right. When was his last burglary -- or when was his last conviction, and what was it for?

MR. SCOTT: 2013, I'm thinking --

MR. CRANE: I think it's 2011.

MR. SCOTT: Let's see. Mr. Crane is right. November 2011 is when he lodged this set of burglary pleas in.

THE COURT: All right. And that was for burglary?

MR. SCOTT: Burglary second, Your Honor.

THE COURT: Okay.

MR. CRANE: Judge, may I respond to some of his remarks?

THE COURT: No. I always hear from the State last.

All right. Do we have an envelope?

THE CLERK: That's what I was just saying. I doubt I have any.

(Pause.)

IMPOSITION OF SEALED SENTENCE

THE COURT: All right. I've imposed the sentence. We've sealed it. When he's picked up, then it will be published at that time.

Thank you very much.

MR. SCOTT: Thank you, Your Honor.

MR. CRANE: Judge, I would move -- I don't think I've got anything left for Mr. Fincher in Laurens County. But I can tell the Court, as an officer of the Court, that I've fulfilled my contractual obligation to him. And I'd ask to be relieved from any other further responsibility

for anything that's going on with him in Laurens County.

THE COURT: Well, I don't know. If you're his attorney on another case, you'll need to --

MR. CRANE: The only other one that they may know about is the grand larceny, which they chose not to try.

THE COURT: Well, I'm not going -- I'll put it this way, I'm not willing to relieve you as his attorney not knowing if you're representing him on anything else. Okay.

If you're not representing him, then you're not representing him. If you are, then file your motion and let the administrative judge handle it.

MR. CRANE: Okay.

THE COURT: Because I'm just here for this week in this case. And I don't want to deal with anything other than these two charges.

All right. Thank you very much.

**********END OF TRANSCRIPT OF RECORD**********

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

I, HOLLIE JENKINS, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Laurens County, South Carolina, on the 29th day of March, 2017.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

July 19, 2018

Hollie M. Jenkins

Hollie M. Jenkins, Court Reporter

My Commission Expires: 09/24/20

A TRUE COPY OF ORIGINAL
K. Michelle Simmons
K. Michelle Simmons
Laurens County CCCP & GS

WITNESSES

Chris Martin

Laurens County Sheriff

WARRANT NUMBER

2016A3010100219

True Bill

Louise C. Childs

Foreman of the Grand Jury

Date: 5/20/16

VERDICT

_____

_____

Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

COURT OF GENERAL SESSIONS

May Term, 2016

Indictment # 16GS30- 0757

BW issued 3/27/17

THE STATE

vs.

Stephen Trase Fincher

INDICTMENT FOR

Burglary - First degree

§16-11-0311

CDR: 0079

THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

INDICTMENT FOR

Burglary - First degree
§16-11-0311

At a Court of General Sessions, convened on the 20th day of May, 2016, the Grand Jurors of Laurens County present upon their oath:

That Stephen Trase Fincher did, on or about March 9, 2016, in Laurens County, with a prior record of two or more convictions for burglary and/or housebreaking, willfully and unlawfully enter a dwelling without consent and with intent to commit a crime therein, the said dwelling being owned and/or occupied by Teddy Hampton, 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 cases made and provided.

Assistant Solicitor

A TRUE COPY OF ORIGINAL
K. Michelle Simmons
Laurens County CCCP & GS

WITNESSES

Chris Martin

Laurens County Sheriff

WARRANT NUMBER

2016A3010100217

True Bill

Louise Childs

Foreman of the Grand Jury

Date: 3/20/16

VERDICT

Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

COURT OF GENERAL SESSIONS

May Term, 2016

Indictment # 16GS30- 0759

BW issued 3/27/17

THE STATE

vs.

Stephen Trase Fincher

INDICTMENT FOR

Burglary - First degree

§16-11-0311

CDR: 0079

THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

INDICTMENT FOR

Burglary - First degree
§16-11-0311

At a Court of General Sessions, convened on the 20th day of May, 2016, the Grand Jurors of Laurens County present upon their oath:

That Stephen Trase Fincher did, on or about March 9, 2016, in Laurens County, with a prior record of two or more convictions for burglary and/or housebreaking, willfully and unlawfully enter a dwelling without consent and with intent to commit a crime therein, the said dwelling being owned and/or occupied by Brittney Childress and Annette Childress, 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 cases made and provided.

Assistant Solicitor

A TRUE COPY OF ORIGINAL
K. Michelle Simmons
K. Michelle Simmons
Laurens County CCCP & GS

WITNESSES

Chris Martin

Laurens County Sheriff

WARRANT NUMBER

2016A3010100220

True Bill

Louise Childs

Foreman of the Grand Jury

Date: 5/20/16

VERDICT

Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

COURT OF GENERAL SESSIONS

May Term, 2016

Indictment # 16GS30- 0758

THE STATE

vs.

Stephen Trase Fincher

Nolle Pros

5/25/17

INDICTMENT FOR

Grand Larceny

§16-13-0030

CDR: 3420

THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

INDICTMENT FOR

Grand Larceny
§16-13-0030

At a Court of General Sessions, convened on the 20th day of May, 2016, the Grand Jurors of Laurens County present upon their oath:

That Stephen Trase Fincher did, on or about March 9, 2016, in Laurens County, feloniously take and carry away the personal goods of Teddy Hampton of the value of more than two thousand and NO/100 ($2,000.00) dollars, but less than ten thousand and NO/100 ($10,000.00) dollars described as follows: miscellaneous power tools with intent to deprive the owner permanently of such goods, in violation of Section 16-13-30 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 cases made and provided.

Assistant Solicitor

A TRUE COPY OF ORIGINAL
K. Michelle Simmons
Laurens County CCCP & GS

LAURENS COUNTY
CLERK OF COURT
2017 JUN -2 P 12:49
LYNN W. LANCASTER

STATE OF SOUTH CAROLINA	**IN THE COURT OF GENERAL SESSIONS**
COUNTY OF LAURENS	**EIGHTH JUDICIAL CIRCUIT**
	Indictment No.: 2016-GS-30-757
STATE OF SOUTH CAROLINA	
-vs.-	**MOTION TO DISMISS CHARGES OR IN THE ALTERNATIVE GRANT A NEW TRIAL**
STEPHEN TRASE FINCHER,	
DEFENDANT.	

Defendant above named, through the undersigned attorney, respectfully moves the Court to dismiss the above referenced indictment and charges pending against Defendant or in the alternative grant a new trial based on prosecutorial misconduct by the Assistant Solicitor during said trial. Defendant will show unto the Court as follows:

1) Defendant was tried in his absence on March 27, 28, and 29, 2017 for two counts of Burglary 1st Degree at the Laurens County Judicial Center. The trial Judge was The Honorable Benjamin H. Culbertson. Prosecuting the case for the State of South Carolina was Assistant Solicitor Dale Scott. Defendant was represented by Lawrence W. Crane.
2) Opening Statements and Testimony took place on March 27, 28, and 29, 2017. Just before lunch on March 29th, the State rested its' case and directed verdict motions were raised by Defense Counsel. Said Motions were denied.
3) The Defense did not present any Testimony and Judge Culbertson held a Charge Conference to determine what charges would be given to the Jury. The State requested that only Burglary 1st be charged and the Defendant requested that Burglary 2nd and Burglary 3rd also be charged. At the close of the charge conference Judge Culbertson determined and ruled that Burglary 1st, 2nd, and 3rd, would be charged to the Jury. The trial was recessed for lunch.

4) During the lunch break and unknown to Defendant or Defense Counsel, Assistant Solicitor Scott emailed the Judge on two (2) separate occasions trying to persuade the Judge to change his mind regarding the charges. Assistant Solicitor Scott included a case for the Judge to peruse regarding the charge for the Jury (Copies of emails and the case law is provided). Defendant and Defense Counsel were never told of the emails and the Defense Attorney only learned of them after the lunch break when Assistant Solicitor Scott was overheard asking Judge Culbertson's Law Clerk if the Judge received his emails. Upon return to the bench after lunch Judge Culbertson asked if there were any issues to discuss. Defense Counsel asked if Judge Culbertson had received emails from the Assistant Solicitor during lunch and Judge Culbertson acknowledged that he had. It is unclear to the undersigned attorney whether Judge Culbertson read those emails but Judge Culbertson changed his mind on the charges to be given to the jury and struck Burglary 3rd from the charges pertaining to the above referenced indictment and struck both Burglary 2nd and 3rd from a second indictment, for which Defendant was found not guilty.

5) It is a violation of Rule 18(a), SCRCrimP (attached) for a party to continue to argue after a Judge has made his ruling. It is apparent from the Assistant Solicitor's emails that he violated said rule as evidenced by the email dated March 29, 2017 at 12:50 p.m. which begins, "Judge, I just wanted to argue one more time…". In that email he offered a case (attached).

6) Defendant alleges it is a violation of Rule 20, SCRCrimP not to include Defendant and/or Defense Counsel in discussions regarding the appropriate charges to be given to a jury as Assistant Solicitor Scott attempted to do by sending the emails and the case law to Judge Culbertson.

7) Further, to communicate with a judge via email, or in any fashion, without including the opposition in said discussion is an Ex Parte Communication and is a violation of Rule 3.5, RPC, Rule 407, SCACR.

8) Assistant Solicitor Scott sent a second email to the judge, also ex parte and also in violation of Rule 18(a), SCRCrimP, noted March 29, 2017 at 1:12 p.m. and included more case law.

9) Defense Attorney was not fully aware of the contents of the emails or case law provided to Judge Culbertson until returning to his office in Greenville after the trial.

10) Defendant was sentenced on May 26, 2017, to an active sentence of twenty-five (25) years by the Honorable Donald B. Hocker.

Defendant submits that Assistant Solicitor Scott violated Rules 18(a) and 20, SCRCrimP, and Rule 3.5, RPC, Rule 407, SCACR. Said conduct arises to prosecutorial misconduct and Defendant respectfully moves the Court to dismiss said charge or in the alternative to grant a new trial.

Respectfully submitted,

Lawrence W. Crane

LAWRENCE W. CRANE, ESQ.
ATTORNEY FOR DEFENDANT

Greenville, South Carolina

June 1, 2017

A TRUE COPY OF ORIGINAL
K. Michelle Simmons
K. Michelle Simmons
Laurens County CCCP & GS

Gmail

lawrence crane <lwcesquire@gmail.com>

Lesser Included charges

1 message

Dale Scott <dscott@greenwoodsc.gov> Wed, Mar 29, 2017 at 12:50 PM
To: lawrence crane <lwcesquire@gmail.com>, bculbertsonj@sccourts.org, bculbertsonlc@sccourts.org

Judge,
I just want to argue one more time about the lesser (with case support). I see the Hwy [redacted] incident to be an all or nothing charge. Its either Burg 1st or its not guilty. It is uncontested on this incident that the home was a "dwelling house" and it is uncontested that Fincher has 2 or more priors.

On the [redacted] Rd. incident, the appropriate charges would be Burg 1st or Burg 2nd non-violent. Mr. Crane has raised some issues on whether or not the detached garage is in fact a "dwelling house" but it is still uncontested that Fincher has 2 or more prior burglaries. If they determine it is merely a building then he is guilty of Burg 2 (Violent), but if they agree it is a "dwelling house" then it is Burg 1st. Of course, if they don't find he entered at all or had no intent to commit a crime, he is not guilty.
I offer the following case for the proposition that if there is not a question as to whether the prior convictions exist, then a lesser included is inappropriate and if given as in the case attached (Clarence Cook v. SC

Appellate Case No. 2013-000366) could warrant a reversal

http://www.sccourts.org/opinions/HTMLFiles/SC/27596.pdf

Find Greenwood County on social media:

NOTE: This e-mail is a public record which may be subject to disclosure pursuant to the Freedom of Information Act, S.C. Code Ann. §§ 30-4-10 *et seq.*, to a person or party requesting the same.

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF GENERAL SESSIONS**
	)	
COUNTY OF LAURENS	)	**EIGHTH JUDICIAL CIRCUIT**
	)	
	)	**Indictment No.: 2016-GS-30-757**
STATE OF SOUTH CAROLINA	)	
	)	
-vs.-	)	**AFFIDAVIT OF SERVICE**
	)	
STEPHEN TRASE FINCHER,	)	
	)	
DEFENDANT.	)	

PERSONALLY APPEARED BEFORE ME, the undersigned deponent, who being duly sworn says that (s)he served the Motion To Dismiss Charges Or In The Alternative Grant A New Trial in this action on Lauren's County Solicitor's Office by delivery to Paul Tollison personally, and that deponent knows the person so served, and that deponent is not a party of this action, is not less than eighteen (18) years of age and has no interest therein or connection therewith.

SWORN to before me this 2 day of June, 2017

Rhonda B Cureton
Notary Public for South Carolina

My commission expires: 2/12/2023

Signature of Deponent

LAURENS COUNTY
CLERK OF COURT
2017 JUN -2 P 1:00
TYLER W. LANCASTER

LYNN W. LANCASTER

2017 AUG -1 AM 10: 16

LAURENS COUNTY
CLERK OF COURT

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF LAURENS)
)
STATE OF SOUTH CAROLINA)
vs.) **RESPONSE TO MOTION TO VACATE CONVICTION OR GRANT A NEW TRIAL**
STEPHEN TRASE FINCHER)
DEFENDANT.) Indictment # 2016-GS-30-757
)

The trial court properly instructed the jury on the applicable law in the above-captioned case. In the incident that lead to Mr. Fincher's conviction, he was seen entering a detached garage that was part of a home. At the time of trial, Mr. Fincher had 14 prior convictions for burglaries. The State elected to introduce three of these during its case in chief. During discussions regarding jury charges, Defense counsel asked for Burglary 2nd Degree and Burglary 3rd Degree charges to be given to the jury in addition to the indicted charge of Burglary 1st Degree. The State objected to this and argued such. After some consideration, the Court agreed to charge the jury on all three statutes. The Court then broke for lunch and the State further researched the law. The Burglary 3rd Statute reads:

SECTION 16-11-313. Burglary; third degree.

(A) A person is guilty of burglary in the third degree if the person enters a building without consent and with intent to commit a crime therein.

Burglary 3rd Degree would have been inappropriate in this case and the State had a duty to argue this point as completely and accurately as possible. Burglary 3rd degree is appropriate if a building is involved and no aggravating factors are present. It was undisputed that the Defendant had more than two prior burglary convictions and undisputed that Mr. Fincher entered a "Dwelling", therefore, Burglary 3rd Degree would never have been a charge that the jury should consider. The fact that the garage was part

of a "Dwelling House" and not a "Building" and the aggravating factor of the prior convictions takes this consideration out of play entirely.

With the knowledge that the jury would be given this charge after a lunch break, the State emailed a reiteration of what had previously been argued in court with supportive case law. The email was sent to the Court, the judicial law clerk and defense counsel. The email used for defense counsel was the one that he has provided to the South Carolina Supreme Court's Attorney Information System (AIS). The State and defense counsel had communicated effectively in the past using this very same email. It was a concern of the State that the defense counsel and the Court have time to review the applicable case law during the break instead of being given various citations just before the jury was to come in to receive charges.

In this day, email has become an extremely common form of communication. In the Eighth Circuit, what defense counsel is deeming improper is done on a regular basis. The State finds that the Court typically appreciates having citations sent beforehand so a careful review and analysis may be performed. To argue that an email that is addressed to defense counsel, the trial judge and the trial judge's clerk is ex parte communication is wholly without merit. Mr. Fincher's conviction should remain intact.

Respectfully submitted

C. Dale Scott
Deputy Solicitor
8th Judicial Circuit

A TRUE COPY OF ORIGINAL
K. Michelle Simmons
Laurens County CCCP & GS

STATE OF SOUTH CAROLINA COUNTY OF LAURENS	)	IN THE COURT OF COMMON PLEAS
Stephen Trase Fincher, Applicant, v. State of South Carolina, Respondent.	)	**APPLICATION FOR POST-CONVICTION RELIEF**

LAURENS COUNTY CLERK OF COURT
2021 APR 23 PM 3:49
K. MICHELLE SIMMONS

[This application conforms to the requirements of South Carolina Rules of Criminal Procedure, Form 5]

1. Stephen Trase Fincher is currently incarcerated at Lieber Correctional Institute.

2. He was convicted in the Laurens County Court of General Sessions.

3. Name(s) of co-defendant(s) (if any): N/A

4. (a) 2016-GS-30-757 Burglary in the First Degree
(b) 2016-GS-37-759, Burglary in the First Degree

5. Applicant was found guilty after trial that ended on March 29, 2017 where he was tried in absentia and he was sentenced to 25 years in prison.

6. Applicant was found guilty after trial.

7. Applicant did appeal from the judgment of conviction and imposition of sentence.

8. (a) (i) Applicant appealed to the South Carolina Court of Appeals.
(ii) Applicant did not file a petition for writ of certiorari in the South Carolina Supreme Court.

(b) (i) The Court of Appeals affirmed the conviction and sentence.
(ii) N/A

(c) (i) The Court of Appeals affirmed on May 20, 2020.
(ii) N/A

(d) (i) *State v. Stephen Trase Fincher*, Appellate Case No. 2017-002384.

(ii) N/A.

9. N/A.

10. Applicant alleges the following grounds as the bases upon which he is being held unlawfully:

a) Ineffective assistance of trial counsel

11. Facts in Support of the grounds set out in (10).

a) Trial counsel's performance fell below professional norms in violation of *Strickland v. Washington*, 466 U.S. 668 (1984) because trial counsel did not perform an adequate investigation into the facts and circumstances of the crime. Applicant was prejudiced by his lawyers' inadequate performance.

i. Trial counsel failed to object to Applicant's trial being held in his absence.

ii. Trial counsel failed to argue that a directed verdict was appropriate regarding the [redacted] Road building because the garage was not a dwelling within the meaning of the statute.

12. Prior to this application, petitioner has not any other petitions challenging his convictions other than the petition disclosed above.

13. N/A.

14. No ground set forth above has been previously presented to this or any other Court, State or Federal, in any petition, motion or application.

15. N/A.

16. N/A.

17. Petitioner was represented by an attorney for his trial.

18. (a)(b) (c) Lawrence W. Crane, 101 Whisett Street, Greenville, SC 29601.

(d) Elizabeth Franklin-Best represented Applicant on his direct appeal. 2725 Devine Street, Columbia, South Carolina 29205.

19. Applicant is requesting the court reverse his convictions and remand his case for a new trial.

20. Applicant is not now under sentence from any other court that he has not challenged.

STATE OF SOUTH CAROLINA)
) **VERIFICATION**
County of Dorchester)

I, Stephen T. Fincher, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Stephen Fincher

SWORN to and subscribed before me this 16th day of April, 2021.

Linda K. B

Notary Public

My Commission Expires: 6-20-26

STATE OF SOUTH CAROLINA	)	THE COURT OF COMMON PLEAS
COUNT OF LAURENS	)	CASE NO.: 2021-CP-30-00351
Steven Trase Fincher, #321427,	)	
Applicant,	)	AMENDMENT TO POST CONVICTION RELIEF APPLICATION
Vs.	)	
State of South Carolina,	)	
Respondent.	)	

The applicant above named in the aforementioned matter, through his Attorney Tommy A. Thomas, respectfully re-alleges those allegations as contained in the original application for post-conviction relief and moves to amend his original post-conviction relief application as follows:

FILED 2023 JAN -7 A 11:25 CLERK OF COURT LAURENS COUNTY, SC

1. That trial counsel's performance fell below professional norms in violation of *Strickland v. Washington*, 466 U.S. 668 (1984) because trial counsel did not perform an adequate investigation into the facts and circumstances of the crime, thus leading him to make the below errors in representation. Applicant was prejudiced by his lawyer's inadequate performance.
    a. Trial counsel failed to object to Applicant's trial being held in his absence.
    b. Trial counsel failed to argue that a directed verdict was appropriate regarding the [redacted] Road building because the garage was not a dwelling within the meaning of the statute.
    c. That trial counsel admitted Applicant's guilt and/or guilty conduct without any benefit to Applicant in furtherance of an articulable trial strategy.
    d. That trial counsel failed to engage in meaningful plea negotiations before trial.

2. That Applicant reserves the right to further amend the application as may become necessary.

Respectfully submitted,

Tommy A. Thomas, Esq.
Attorney for Applicant
P.O. Box 88
Irmo, SC 29063

May 23, 2023

STATE OF SOUTH CAROLINA	)	THE COURT OF COMMON PLEAS
	)	
COUNT OF LAURENS	)	CASE NO.: 2021-CP-30-00351
Steven Trase Fincher, #321427,	)	
	)	
Applicant,	)	CERTIFICATE OF SERVICE BY EMAIL
	)	
Vs.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

I, Jacquelyn E. Miller, Paralegal to Tommy A. Thomas, Attorney for the Applicant, hereby certify that I emailed, a copy of the Amendment to Post Conviction Relief Application to the Attorney General's Office, at:

Cruise Mitchell, Esq.
Attorney General's Office
P.O. Box 11549
Columbia, SC 29211-1549
cruisemitchell@scag.gov

MICHELLE SIMMONS
CLERK OF COURT
LAURENS COUNTY
2023 JUN -6 A 11: 25

Jacquelyn E. Miller
Paralegal to Tommy A. Thomas
Attorney for Applicant
P.O. Box 88
Irmo, SC 29063
(803) 732-5507

Irmo, SC
May 23, 2023

STATE OF SOUTH CAROLINA	)	THE COURT OF COMMON PLEAS
	)	
COUNT OF LAURENS	)	CASE NO.: 2021-CP-30-00351
Steven Trase Fincher, #321427,	)	
	)	SECOND
Applicant,	)	AMENDMENT TO POST CONVICTION
	)	RELIEF APPLICATION
Vs.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

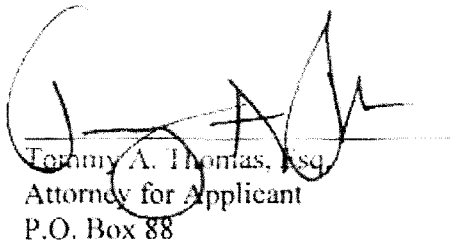
The applicant above named through his Attorney, Tommy A. Thomas, respectfully re-alleges those allegations as contained in the original application for post-conviction relief and the first amendment. Applicant now moves to further amend his application as follows:

1. That defense counsel failed to object to the Solicitor's introduction of sentencing sheets of prior convictions before the Jury (Tra. p. 96, March 29, 2017). Counsel's failure to object allowed improper introduction of prior bad acts and as a result prejudiced the applicant.
2. The Solicitor sent an email to the trial Judge during the Applicant's Trial (Tra. P. 114, March 29, 2017). As a result of this email, the Trial Judge changed his proposed jury charge to the detriment of the Applicant. This contact was an ex parte communication. That Defense Counsel made an objection and Motion for sanctions against the prosecutor. That the proper Motion would have been a Motion for a Mistrial, as the actions of the Solicitor prejudiced the Applicant.
3. That in discussing the proper charges to submit to the Jury (Tra. P. 111, March 29, 2017) both the Court and the Solicitor note that it is not contested by the defense that the Applicant entered a) the Childress residence, and b) the Hampton Garage, and c)

upon entering the Hampton Garage that the Applicant stole tools. Defense Counsel was ineffective for improperly addressing these issues.

4. That Applicant reserves the right to further amend the application as may become necessary.

Respectfully submitted,



Tommy A. Thomas, Esq.
Attorney for Applicant
P.O. Box 88
Irmo, SC 29063

November 21, 2023

STATE OF SOUTH CAROLINA	)	THE COURT OF COMMON PLEAS
	)	
COUNT OF LAURENS	)	CASE NO.: 2021-CP-30-00351
	)	
Steven Trase Fincher, #321427,	)	
	)	
Applicant,	)	CERTIFICATE OF SERVICE BY EMAIL
	)	
Vs.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

I, Jacquelyn E. Miller, Paralegal to Tommy A. Thomas, Attorney for the Applicant, hereby certify that I emailed, a copy of the Second Amendment to Post Conviction Relief Application to the Attorney General's Office, at:

Cruise Mitchell, Esq.
Attorney General's Office
P.O. Box 11549
Columbia, SC 29211-1549
cruisemitchell@scag.gov

Jacquelyn E. Miller
Paralegal to Tommy A. Thomas
Attorney for Applicant
P.O. Box 88
Irmo, SC 29063
(803) 732-5507

Irmo, SC
November 21, 2023

M. MICHELLE SWYGERT
CLERK OF COURT
2023 DEC -4 P 1:06

STATE OF SOUTH CAROLINA COUNTY OF LAURENS	) IN THE COURT OF COMMON PLEAS) FOR THE EIGHTH JUDICIAL CIRCUIT
Stephen Fincher, #321427 Applicant, v. State of South Carolina, Respondent.	) Case No.: 2021-CP-30-00351 **RETURN AND MOTION FOR MORE DEFINITE STATEMENT** (Counsel Retained)

M. MICHELLE SIMMONS
2021 AUG 4 PM 12:27
LAURENS COUNTY
CLERK OF COURT

In response to the post-conviction relief application filed on April 23, 2021, Respondent would show this Court:

I. Procedural History

Applicant is incarcerated with the South Carolina Department of Corrections. In May 2016, the Laurens County Grand Jury indicted Applicant for two counts of burglary, first degree (2016-GS-30-00759, 2016-GS-30-00757), and grand larceny, value more than $2,000 but less than $10,000 (2016-GS-30-00758). Applicant was represented by Lawrence W. Crane, Esquire. Deputy Solicitor C. Dale Scott and Assistant Solicitors A. Lyon Bixler, III, and James Todd, prosecuted the case.

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1 Respondent's return to Applicant's PCR application was originally due on August 1, 2021. *See* Rule 12(a), SCRCP ("[T]he State of South Carolina shall answer or otherwise respond to an application for post-conviction relief within 60 days after service of the application, if it arises out of a guilty plea, and 90 days if it arises out of a trial.") However, having completed the return required in this matter, and in light of no demonstrable prejudice to Applicant as a consequence of the delay, Respondent respectfully asks this Court to accept this return as timely filed. See S.C. Code Ann. § 17-27-70(a) (establishing that the Court may fix the time in which Respondent must respond and that "respondent shall file with its answer the record or portions thereof that are material to the questions raised in the application."); *Guinyard v. State*, 260 S.C. 220, 195 S.E.2d 392 (1973) (holding the trial court may extend the time for filing and that the time limit prescribed by the statute is not mandatory, but discretionary with the trial court.).

Applicant proceeded to a trial before the Honorable Benjamin H. Culbertson and a jury on March 27, 2017. Applicant was tried *in absentia*. At the conclusion of the trial, the jury convicted Applicant of one count of burglary in the first degree and acquitted him of the second count of burglary in the first degree. At the conclusion of the trial, Judge Culbertson sealed Applicant's sentence. During a May 26, 2017, hearing, after Applicant was apprehended, the Honorable Donald B. Hocker unsealed and published Judge Culbertson's sentence. Judge Culbertson ordered Applicant be sentenced to imprisonment for a term of twenty-five years. Applicant, through his counsel, filed a "Motion to Dismiss Charges or In the Alternative Grant a New Trial" on June 1, 2017. Judge Culbertson denied this motion by Order dated November 7, 2017. Following Judge Culbertson's Order, Applicant timely filed a notice of appeal.

Applicant's appeal was perfected by Elizabeth Franklin-Best, Esquire. Applicant raised the following issues on appeal:

1. Did the trial court err in allowing the trial to proceed in Applicant's absence without finding that Applicant voluntarily waived his right to be present;
2. Did the trial court err in denying Applicant's motion for a directed verdict on the [redacted] Road instruction because the garage was not a "dwelling" for purposes of Burglary 1st degree statute because the garage was detached from the house, and was used as a wood-working workshop for the owner?

In an unpublished opinion, the South Carolina Court of Appeals affirmed Applicant's conviction, finding neither of Applicant's issues were properly preserved for appellate review. *State v. Fincher*, 2020-UP-141, (S.C. Ct. App. filed May 20, 2020). The case was remitted back to the circuit court on July 8, 2020.

II. Facts

On March 9, 2016, Brittany Childress woke up to the sound of someone trying to break into her home. ROA p. 80. Childress testified that she was home for Spring Break and was home alone while her mother was at work. ROA p. 81. At first, Childress heard knocking on the door.

ROA p. 83. Childress then stated the knocking stopped; however, shortly thereafter she heard drawers opening and closing in the kitchen. ROA p. 83-84. Childress began to panic and called her aunt, who lived next door to her. ROA p. 84-85. Esther Shell, Brittany's aunt, testified she received a call from Childress where she whispered that someone was in the house with her. ROA p. 109. Shell told her son and daughter to come with her, and they began walking towards Childress's home. ROA p. 108. By the time Shell and her children reached the edge of their yard, they saw a white male walking across Childress's yard. ROA p. 109. Shell confronted the man and asked what he was doing there. ROA p. 108. The man replied he was trying to ascertain if the house was for sale. ROA p. 109. Shell testified the man then ran to his car and "took off." ROA p. 109. Shell stated that the man did not want to talk to her. Shell noticed the man was driving a white car and was wearing a light colored shirt and baseball cap. ROA p. 110-11. Shell's son, Xavier Johnson, described the car as a white sports-looking car with a spoiler on the back. ROA p. 127. Childress noted she was unable to observe the culprit because she was hiding in her bedroom. ROA p. 87.

Also on the morning on March 9, 2016, DH was home sick. ROA p. 191, 193. Ms. Hampton testified she specifically remembers the date because it was her sixteenth birthday. ROA p. 191. DH stated that she spent the morning in bed watching Netflix. ROA p. 193. While she was in bed, DH heard her dog barking, which normally indicated someone was at the house that should not be there. ROA p. 194. Concerned, DH walked to the window and observed a white Pontiac car she did not recognize. ROA p. 194-195. DH observed a man exit the vehicle wearing a baseball cap, a t-shirt, and jeans. ROA p. 196. She described the man as "taller" with reddish hair, a beard, and a tattoo on his arm. ROA p. 195. DH watched the man walk to the front porch and look in the window. ROA p. 196. The man

then knocked on the door and looked through the door's peephole. ROA p. 196. DH let her dogs out of her room, which she believed led the man to decide not to enter the home. ROA p. 196. DH saw the man walk to the back of the home, and she subsequently heard the home's alarm system beep, which indicated the man entered the garage. ROA p. 197. She testified the garage served as a workshop, and it contained all of her father's power tools. ROA p. 198. DH promptly called both 911 and her mother. ROA pp. 198-199. She provided law enforcement with a description of the car as well as the intruder. ROA p. 199. DH observed the individual make several trips from the garage to his car while carrying power tools and boxes of items he intended to take. ROA p. 199. Law enforcement subsequently arrived, and DH provided a statement. ROA p. 200. On March 22, 2016, Investigator Chris Martin of the Laurens County Sheriff's Office showed DH a lineup, and she identified Applicant as the man she observed on her property. ROA p. 200-201.

Teddy Hampton, DH's father, testified he used the garage for woodworking a couple of hours a week. ROA p. 211-212. Mr. Hampton stated the garage was treated as a "bonus" room and that he re-did furniture and worked on knickknacks. ROA p. 212. Mr. Hampton noted the garage, while detached from the house, was only about eight feet away from the house. ROA p. 217. Mr. Hampton testified he worked at Gen III in Fountain Inn, and he was at work at the time of the robbery. ROA p. 212. After being informed there had been a break in at his house, Mr. Hampton jumped in his truck and headed home. ROA p. 212. Upon arriving home, Mr. Hampton noticed the door to the bonus room above the garage was kicked in. ROA p. 213. Mr. Hampton discovered a variety of power tools had been stolen from the room, including a Dewalt drill, a Kobalt air tool, a sawzall, and a power grinder. ROA p. 214.

Deputy Robbie Haupfer of the Laurens County Sheriff's Office responded to a burglary

call at the Hamptons' address. ROA p. 231. While he was en route, the dispatcher advised him that the caller said the culprit's vehicle was leaving the residence. ROA p. 231. Deputy Haupfer then attempted to catch up with the suspect's vehicle. ROA p. 232. Deputy Haupfer eventually caught up with the vehicle, activated his blue lights, and conducted a stop. ROA p. 232. Applicant was driving the vehicle. ROA p. 233. After being Mirandized, Applicant admitted he was at the Hampton residence and went into a building, but he did not go into the house. ROA p. 233. A search of the vehicle revealed a variety of tools in the back seat, including a Skil saw, a Kobalt box, a Dewalt box, and a grinder. ROA p. 235.

III. Allegations in Application and Relief Sought

In his application for post-conviction relief, Applicant alleges he is being detained unlawfully for the following reasons:

1. Trial counsel's performance fell below professional norms in violation of *Strickland v. Washington*, 466 U.S. 668 (1984) because trial counsel did not perform an adequate investigation into the facts and circumstances of the crime. Applicant was prejudiced by his lawyers' inadequate performance.
    a. Trial counsel failed to object to Applicant's trial being held in his absence.
    b. Trial counsel failed to argue that a directed verdict was appropriate regarding the [redacted] Road building because the garage was not a dwelling within the meaning of the statute.

As requested relief, Applicant indicates he is seeking the court reverse his convictions and remand his case for a new trial.

Attached to and incorporated herein are the Laurens County Clerk of Court Records regarding the Applicant's case; the Applicant's records from the South Carolina Department of Corrections; the record on appeal, including the trial transcript; and the current application for relief. Respondent reserves the right to amend this return based upon receipt of additional relevant information.

IV. Response to Allegations of Ineffective Assistance of Counsel

Applicant asserts trial counsel was ineffective for failing to properly investigate Applicant's case. Additionally, Applicant asserts trial counsel was ineffective for failing to object to Applicant's trial being held in his absence and for failing to argue that a directed verdict was appropriate because the garage was not a dwelling within the meaning of the statute.

The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant – like all other defendants – the right to "assistance by an attorney, whether retained or appointed, who plays the role necessary to ensure that the trial is fair." *Strickland v. Washington*, 466 U.S. 668, 685 (1984). Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. *See generally* S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in PCR actions). The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right, and raises a question of fact that can only be determined by an evidentiary hearing. *Rogers v. State*, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence. *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in *Strickland* to determine whether counsel's conduct "was so ineffective as to require reversal" of the applicant's conviction. 466 U.S. at 687. To obtain relief, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. *Id.* at 687–88; *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. *Strickland*, 466 U.S. at 700; *see also Bell v. Cone*, 535

U.S. 685, 695 (2002) (explaining that "[w]ithout proof of both deficient performance and prejudice to the defense, . . . it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable" (citation and internal quotation marks omitted)).

The first prong—constitutional deficiency—is "necessarily linked to the practice and expectations of the legal community." *Padilla v. Kentucky*, 559 U.S. 356, 366 (2010). An applicant making a claim of ineffective assistance "must identify the acts or omissions of counsel that are alleged *not* to have been the result of reasonable professional judgment." *Strickland*, 466 U.S. at 690 (emphasis added). The reviewing court must then "determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance" demanded of attorneys in criminal cases. *Id.* Because of the difficulties inherent in making such an evaluation, the reviewing court must indulge in a "strong presumption that counsel's conduct falls within the wide range of reasonably professional assistance." *Butler*, 286 S.C. at 445, 334 S.E.2d at 816. The applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625.

Review of counsel's actions is hallmarked by deference, as "it is all too tempting for a defendant to second-guess counsel's assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." *Strickland*, 466 U.S. at 689; *see also Yarborough v. Gentry*, 540 U.S. 1, 6 (2003) ("The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight."). No particular set of detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a

criminal defendant. *Strickland*, 466 U.S.at 688–89; *see id.* at 691 ("Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another."). Thus, a fair assessment of attorney performance requires every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. *Id.* at 689. The ultimate question is not whether counsel's actions were reasonable, but whether there is any reasonable argument counsel satisfied *Strickland's* deferential standard.

The second, or "prejudice" prong of *Strickland* is rooted in the very purpose of the Sixth Amendment guarantee of counsel—to ensure a defendant has the assistance necessary to justify reliance on the outcome of the proceeding. 466 U.S. at 691–92. In order to prove prejudice, an applicant must demonstrate counsel's deficient performance prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625. A reasonable probability is a probability "sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694. *See id.* at 695 (Where a defendant challenges his conviction, he must show that there exists "a reasonable probability that, absent the errors, the factfinder would have had a reasonable doubt respecting guilt").

In determining prejudice, the reviewing court must consider the totality of the evidence before the jury. *Id.* at 695. It is not sufficient "to show [counsel's] errors had some conceivable effect" on the outcome of the proceeding—counsel's errors must be "so serious as to *deprive the defendant of a fair trial*." *Id.* at 687 (emphasis added). "An error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment." *Id.* at 691. Moreover, the South Carolina Supreme Court has repeatedly

held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice. *Bannister v. State*, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998).

The *Strickland* standard must be applied with scrupulous care, lest "intrusive post-trial inquiry" threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689-690. Courts must be wary of second guessing counsel's trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. *Whitehead v. State*, 308 S.C. 119, 417 S.E.2d 529 (1992). The applicant's burden of proving both *Strickland* components is heavy in light of the strong presumption that counsel's conduct fell within the range of reasonable professional legal assistance. 466 U.S. at 690. Representation is constitutionally ineffective only if counsel's conduct "so undermined the proper functioning of the adversarial process" that the defendant was denied a fair proceeding. *Strickland*, 466 U.S. at 686; *see Nix v. Whiteside*, 475 U.S. 157, 175 (1986) (noting that under *Strickland*, the "benchmark" of the right to counsel is the "fairness of the adversary proceeding").

A. Failure to Investigate

It is impossible for Respondent to reply specifically to Applicant's claims without more specific facts and detail. Respondent responds to Applicant's general and vague claims below and moves for Applicant, through counsel, to file an amended return.

Applicant contends trial counsel was ineffective for failing to investigate. As discussed below, Respondent is presently without sufficient information to fully respond to this claim because Applicant does not indicate with any specificity what trial counsel should have investigated or how Applicant was prejudiced.

"A criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State." *McKnight v. State*, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008). "[W]hile the scope of a reasonable investigation depends on a number of issues, at a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case." *Ard*, 372 S.C. at 331–32, 642 S.E.2d at 597 (internal quotation marks omitted) (emphasis omitted). However, counsel need only interview potential witnesses "when it is reasonable to do so." *Edwards v. State*, 392 S.C. 449, 457, 710 S.E.2d 60, 65 (2011). "In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." *Strickland*, 466 U.S. at 691.

In order to prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. *Harris*, 377 S.C. at 75–76, 659 S.E.2d at 145–46 (citing *Jackson v. State*, 329 S.C. 345, 353–54, 495 S.E.2d 768, 772 (1998)). Furthermore, an applicant must also present evidence to show how the discoverable matters or defenses would have resulted in a different outcome. *Harris*, 377 S.C. at 75 76, 659 S.E.2d at 145–46. Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. *Id.* at 75, 659 S.E.2d at 145 (citing *Glover v. State*, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

Our Supreme Court has cautioned reviewing courts not to lose sight of the reasonableness standard regarding counsel's duty to investigate. *Ard*, 372 S.C. at 331, 642 S.E.2d at 597 (noting that "this duty is limited to a reasonable investigation"). Reviewing courts "should keep in mind

that counsel's function, as elaborated in prevailing professional norms, is to make the adversarial testing process work in the particular case." *Strickland*, 466 U.S. at 690. Thus, in applying the *Strickland* standard to a claim of failure to investigate, counsel's decision not to undertake a particular investigation must be evaluated with heavy deference to counsel's judgment. *Bagwell v. State*, 410 S.C. 259, 265, 763 S.E.2d 630, 633-34 (Ct. App. 2014).

For the above-reasons, Applicant cannot satisfy either requirement of *Strickland*, nor show trial counsel was ineffective. However, the record likely does not refute or disprove Applicant's allegations of ineffective assistance of trial counsel; therefore, the State requests an evidentiary hearing to fully resolve the issues. *See Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application "alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court").

B. Failure to Object to *Trial in Absentia*

Applicant alleges trial counsel was constitutionally ineffective for failing to object to Applicant being tried in his absence. Respondent contends this allegation is without merit.

Although the Sixth Amendment of the Constitution guarantees the right of an accused to be present at every stage of his trial, this right may be waived. *State v. Bell*, 293 S.C. 391, 401, 360 S.E.2d 706, 711 (1987); *Ellis v. State*, 267 S.C. 257, 260, 227 S.E.2d 304, 305 (1976). Nonetheless, a waiver of such an important right is permitted only in limited circumstances. *City of Aiken v. Koontz*, 368 S.C. 542, 547, 629 S.EW.2d 686, 689 (2006). Therefore, before a defendant may be tried *in absentia*, the trial court must determine a defendant voluntarily waived his right to be present at trial, making findings of fact on the record that the defendant (1) received notice of his right to be present and (2) was warned that the trial would proceed in his absence. *Id.* Notice of

the term of court for which the trial is set constitutes sufficient notice to enable a criminal defendant to make an effective waiver of his right to be present. *Id.* The South Carolina Court of Appeals has ruled that a court may not try a criminal defendant *in absentia* unless it finds that he received notice of the trial and voluntarily chose to be absent. *State v. Wrapp*, 421 S.C. 531, 808 S.E.2d 821 (2017). "The deliberate absence of a defendant who knows that he stands accused in a criminal case and that his trial will begin during a specific period of time indicated nothing less than an intention to obstruct the orderly processes of justice." *State v. Ravenell*, 387 S.C. 449, 456, 692 S.E.2d 554, 558 (Ct. App. 2010). Where a defense counsel is faced with the prospect of proceeding with a trial *in absentia*, he or she may be professionally obliged to both move for a continuance *and* object to proceeding *in absentia*. *See Morris v. State*, 371 S.C. 278, 639 S.E.2d 53 (2006) (finding ineffectiveness where counsel failed to move for a continuance when defendant signed a sentencing sheet to plead guilty to a lesser-included offense and then left the courthouse). To show prejudice from counsel's failure to move for a continuance, an applicant must show the trial court's denial of the motion would have amounted to an abuse of discretion, and that the additional time would have changed the ultimate result. *Wolfe v. State*, 326 S.C. 158, 163, 485 S.E.2d 367, 370 (1997) (in the context of a competency evaluation); *cf Early v. State*, 418 S.C. 255, 266, 792 S.E.2d 226, 232 (2016) (citing *Morris*, 371 S.C. at 283, 639 S.E.2d at 56) ("to prove prejudice resulting from counsel's failure to move for a mistrial, an applicant must demonstrate that, had counsel moved for a mistrial, the trial court's denial of the motion would have amounted to an abuse of discretion.").

Though the record does not reflect the trial court made a determination that Applicant voluntarily waived his right to be present at his trial, Respondent contends Applicant through his actions, made a voluntary waiver of his right to be present at trial. Following jury selection, the

solicitor stated, "Judge, at this point, as far as the bench warrant is concerned, we've got a pretty good warrant division team that can – lay hands on folks usually, but --." ROA p. 35. The trial court replied, "Any reason why we shouldn't issue a bench warrant?" ROA p. 35. To which, Applicant's counsel replied "I don't think so, Judge." ROA p.35. At which point, a bench warrant was issued for Applicant. The following day, prior to the start of Applicant's trial, the trial judge asked, "Do we have a defendant or not?" ROA p. 39. Applicant's counsel replied, "No, sir." ROA p. 39. Additionally, Applicant's counsel, in their opening statement, indicated it is Applicant's right to not be at his trial, stating "My client – by the way, he's not here. So I can't ask him questions. But, you know, that's his right not to be here. That's an additional right that he has, to not be here... He's got places that he wants to be and not be here. And I tell you that and the judge will tell you, you're not to hold that against him." ROA p. 72, l. 6- 23.

Respondent contends Applicant's counsel's decision to not object to Applicant being tried in his absence does not constitute ineffective assistance of counsel. The trial court issued a bench warrant for Applicant prior to the start of his jury trial. However, Applicant was not apprehended prior to the start of his trial. Applicant's counsel indicated his client was exercising his right to not be present at his own trial. Applicant was not apprehended until after the conclusion of his trial, and his sentence was sealed until he was brought to court on May 26, 2017. Based on the fact that a bench warrant was issued for Applicant's arrest prior to the start of his trial, and Applicant was not apprehended and brought in front of the court for a period of months, there is nothing to suggest that additional time would have changed the ultimate result and Applicant would have appeared for his trial. Though the record does not establish that Applicant was advised by his counsel of the date of his trial, Respondent contends Applicant's counsel was not constitutionally ineffective for failing to object to Applicant being tried in his absence.

However, the record likely does not refute or disprove Applicant's allegations of ineffective assistance of trial counsel; therefore, the State requests an evidentiary hearing to fully resolve the issues. *See Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application "alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court").

C. Failure to Move for Directed Verdict

Applicant claims his counsel was ineffective for failing to move for a directed verdict regarding the [redacted] Road building because the garage was not a dwelling within the meaning of the statute. Applicants are not entitled to directed verdicts as a matter of law, and counsel will not be found ineffective for failure to move for a directed verdict if the motion would have been denied when viewed in the light most favorable to the State. *See Teamer v. State*, 416 S.C. 171, 181, 786 S.E.2d 109, 114 (2016) (finding counsel was not ineffective for failing to request a directed verdict when, viewed in the light most favorable to the State, ample evidence of the defendant's guilt was clear). A person is only guilty of first degree burglary if the person enters a "dwelling." S.C. Code Ann. § 16-11-311. In section 16-11-10, "dwelling" is defined as:

> With respect to the crimes of burglary and arson and to all criminal offenses which are constituted or aggravated by being committed in a dwelling house, any house, outhouse, apartment, building, erection, shed or box in which there sleeps a proprietor, tenant, watchman, clerk, laborer or person who lodges there with a view to the protection of property shall be deemed a dwelling house, and of such a dwelling house or of any other dwelling house, all houses, outhouses, buildings, sheds and erections which are within two hundred yards of it and are appurtenant to it or to the same establishment of which it is an appurtenance shall be deemed parcels.

S. C. Code Ann. § 16-11-10.

In *State v. Massey*, 430 S.C. 349, 360-61, 844 S.E.2d 667, 672-73 (2020), this State's Supreme Court held that whether a structure is appurtenant to a dwelling, and thus a dwelling house for purposes of a first-degree burglary charge, is a factual question. Thus, Respondent contends this allegation is likely without merit, because after viewing the evidence in a light most favorable to the State, it is likely a motion for a directed verdict would have been denied.

However, the record likely does not refute or disprove Applicant's allegations of ineffective assistance of trial counsel; therefore, the State requests an evidentiary hearing to fully resolve the issues. *See Sharper v. State*, 279 S.C. at 265, 305 S.E.2d at 248 (1983) (providing an evidentiary hearing shall be held when a PCR application "alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court").

V. Motion for a More Definite Statement

Respondent moves for a more definite statement regarding Applicant's allegations. Applicant alleges that plea counsel was constitutionally ineffective because trial counsel did not perform an adequate investigation into the facts and circumstances of the crime. However, he does not explain exactly what Counsel did that constituted ineffective assistance of counsel. Applicant fails to set forth with specificity any facts and circumstances upon the claim is based. The Uniform Post-Conviction Procedure Act requires that applicants must "specifically set forth the grounds upon which the application is based." Section 17-27-50 of the Code of Laws of South Carolina (1976). In a PCR application, it is incumbent upon applicants to make at least a *prima facie* showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. *Welch v. MacDougall*, 246 S.C. 258, 143 S.E.2d 455 (1965); *Blandshaw v. State*, 245 S.C. 385, 140 S.E.2d 784 (1965). The Supreme Court of South Carolina has provided that:

> [M]ere allegations of incompetency or ineffectiveness of counsel will not ordinarily suffice as grounds for a new trial under the Post-Conviction Procedure Act. The

bare assertion by the appellant that he was deprived of counsel is insufficient.

Coardes v. State, 262 S.C. 493, 497, 206 S.E.2d 264, 265 (1974).

Furthermore, Rule 8(a), SCRCP, requires all civil pleadings include "a short and plain statement of the facts showing that the pleader is entitled to relief." Respondent moves pursuant to Rule 12(e), SCRCP, to require Applicant to provide a more definite statement of his claims. Respondent moves to require Applicant to file an additional amended application well in advance of any evidentiary hearing concerning this matter. If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, Respondent reserves the right to move to dismiss the allegation.

VI. Other Allegations Denied

Each and every other allegation in the Applicant's PCR application not explicitly admitted, qualified, or explain in this Return is hereby denied by the Respondent.

VII. Assertion of Rights to Notice of Amendments, Experts

Applicant should raise any claims he intends to raise at the PCR evidentiary hearing well in advance of the hearing. Here, Applicant's retained attorney is the only individual authorized to file amendments to this application, given his representative capacity, Rule 11(a), SCRCP and *pro se* filings will not be considered at the PCR hearing. *State v. Devore*, 416 S.C. 115, 123, 784 S.E.2d 690, 694 (Ct. App. 2016) (*Pro se* filing is a nullity where person was represented by counsel); *Miller v. State*, 388 S.C. 347, 697 S.E.2d 527 (2010) ("Since there is no right to 'hybrid representation' that is partially *pro se* and partially by counsel, substantive documents, with the exception of motions to relief counsel, filed *pro se* by a person represented by counsel are not to be accepted unless submitted by counsel.").

Respondent reserves the right to request that any amendments withheld until the last minute

be stricken because of undue prejudice to Respondent or, in the alternative, continue the matter to permit adequate time to investigate and address the claims. *See Mangal v. State*, 421 S.C. 85, 805 S.E.2d 568 (2017) ("In most PCR cases . . . we have refused to excuse the pleading and issue-preservation requirements that apply in all civil cases."); *Love v. State*, 428 S.C. 231, 242, 834 S.E.2d 196, 201 (2019) ("When analyzing the substance of a proposed amendment and any prejudice the State might suffer, a PCR court should consider all relevant circumstances, including, but not limited to, the timing of the motion, the complexity of the new issue, the degree of surprise to the State, the need for and availability of necessary witnesses to defend against the claim, and whether the substance of the proposed amendment is readily apparent from the underlying plea or trial record."); *see also* Rules 15(a)-(b), SCRCP (explaining how to amend a pleading). Pursuant to Section 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless the Court grants leave upon good cause shown. Furthermore, Respondent requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits withheld until the last minute resulting in undue prejudice to Respondent.

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VIII. Conclusion

WHEREFORE, Respondent requests the Court require Applicant to provide a more definite statement and then hold an evidentiary hearing regarding Applicant's allegations.

Respectfully submitted,

ALAN WILSON
Attorney General

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August 4, 2021

K. MICHELLE SIMMONS
2021 AUG -6 PM 12:27
LAURENS COUNTY
CLERK OF COURT

STATE OF SOUTH CAROLINA COUNTY OF LAURENS	IN THE COURT OF COMMON PLEAS FOR THE EIGHTH JUDICIAL CIRCUIT
Stephen Fincher, #321427 Applicant, v. State of South Carolina Respondent,	Case No.: 2021-CP-30-00351 Certificate of Service by Mail

1. I am an employee of the Respondent in the above-captioned action.

2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.

3. I have this day served a copy of the Return to the Application for Post-Conviction Relief and Motion for More Definite Statement in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Elizabeth A. Franklin-Best, Esquire
Blume, Norris & Franklin-Best, LLC
900 Elmwood Avenue, Suite 200
Columbia, SC 29201

DATED this 4th day of August, 2021.

Vickie Hall

Vickie Hall, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA * COURT OF COMMON PLEAS
*
COUNTY OF LAURENS * TRANSCRIPT OF RECORD

----------x
STEPHEN TRASE FINCHER, *
*
Applicant, *
*
vs. * Case No. 2021-CP-30-00351
*
STATE OF SOUTH CAROLINA, *
*
Respondent. *
*
----------x

August 20, 2024

POST-CONVICTION RELIEF HEARING

B E F O R E:

The Honorable J. Derham Cole, Presiding Judge

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

Tommy A. Thomas, Esq.
Attorney for the Applicant

Cruise Mitchell, Esq.
Attorney for the Respondent

Recorded by: Court Reporter Tara Scott

Court Transcriber: Bobbi Fisher, RPR
SC Official Court Reporter III

I N D E X

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E X H I B I T S

(None.)

COURT REPORTER/TRANSCRIBER LEGEND

Dash (--)	Indicates an interruption in speech
Ellipses (...)	Indicates trailing off in speech
(ph)	Indicates phonetic word
[sic]	Indicates the word is written as said
(Indiscernible)	Indicates word(s) is not known due to poor audio recording quality

P R O C E E D I N G S

MR. MITCHELL: May it please the Court. This is the Post-Conviction Relief matter of Stephen Fincher v. State, Case No. 2021-CP-30-00351 out of Laurens County.

I'm Cruise Mitchell on behalf of the State of South Carolina. The Applicant is present and represented by counsel Tommy Thomas.

Applicant was indicted at the May 2016 term of the Laurens County Grand Jury for two counts of first-degree burglary and grand larceny. Applicant was represented by Lawrence W. Crane, Esquire.

Deputy Solicitor C. Dale Scott and Assistant Solicitors A. Lyon Bixler, III, and James Todd prosecuted the case.

On March 27th, 2017, Applicant proceeded to a jury trial before the Honorable Benjamin H. Culbertson. Applicant was tried in his absence. The jury found Applicant guilty of one count of first-degree burglary and acquitted him of the second count of burglary in the first degree. Judge Culbertson sentenced Applicant to 25 years' imprisonment.

Applicant filed a Motion to Dismiss charges or, in the alternative, grant a new trial. Judge Culbertson denied this motion by Order dated November 7, 2017.

Applicant filed a timely Notice of Appeal. The appeal was perfected by Elizabeth Franklin Best. In an unpublished opinion, the South Carolina Court of Appeals affirmed

Applicant's convictions and sentences. Applicant petitioned the Supreme Court for a Writ of Certiorari, which was denied on September 21st, 2021. The Remittitur was issued on July 8, 2020 [sic].

And, Your Honor, I have a bail proceeding form that was not included in the original court packet that was sent with the return. I've spoken to Mr. Thomas, and he doesn't have any problem --

MR. THOMAS: No objection.

THE COURT: Okay.

MR. MITCHELL: And, at this time, Your Honor, I'll turn the case over to Mr. Thomas.

MR. THOMAS: May it please the Court.

THE COURT: Yes, sir.

MR. THOMAS: Good afternoon. If I may, I also -- and this may be in the Court's record, but I'd like to present -- I gave a copy of it to the Attorney General. And, actually, what it is, it's just the Court of Appeals' decision on this matter that went up on appeal.

Your Honor, specifically in that it says that the two issues that were presented and argued were not preserved.

THE COURT: All right.

MR. THOMAS: We would call Mr. Fincher to the stand.

THE COURT: All right. Tell me specifically what allegations you're proceeding on.

MR. THOMAS: Your Honor, if it pleases the Court, let me find my amended application on...

THE COURT: I've got a second amended.

MR. THOMAS: Yes, sir. Everything that is -- that we're going to present today is tied to that second amendment.

THE COURT: Okay.

MR. THOMAS: Yes, sir.

Your Honor, if it pleases the Court, we would call Mr. Fincher.

THE COURT: Come forward.

Are you Stephen Trase Fincher?

MR. FINCHER: Yes, sir.

STEPHEN FINCHER,

after having been duly sworn, was examined and testified to as follows:

THE COURT: Thank you. Have a seat.

MR. THOMAS: If it pleases the Court.

THE COURT: Yes, sir.

DIRECT EXAMINATION

BY MR. THOMAS:

Q Mr. Fincher, you are currently serving time in the South Carolina Department of Corrections?

A Yes, sir.

Q All right, sir. And you were arrested -- not the date, but when, roughly, were you arrested?

A August the 25th of 2016.
Q 2016.
And what were you charged with?
A I was charged with two first-degree burglaries and grand larceny.
Q All right, sir. And I want to -- let's kind of keep it concise, but can you give me just a short summary of what the police said that you did, what you were arrested for?
A Well, there was a house on (indiscernible) on Gray Court.
Q Yes, sir.
A I thought it was a foreclosure. I'm looking -- you know, my --
Q Just tell us what the police thought that you did.
A That I broke into a barn and took some tools.
Q Okay. And then how about the other locations?
A They said that I was -- that -- I don't even know where that even come from. I was supposed to have went in the house and was messing around in the kitchen or something and left out. I mean, I don't know.
Q Okay. And the grand larceny was associated with —
A The tools.
Q — the tools. Okay.
Now, you went -- there were two locations?
A Yes, sir.
Q And both of those locations are in your trial transcript?

In other words, the trial included both of those alleged burglaries?
A Yes, sir.
Q And one of them I had as the Childers residence. Which was that?
A That's the one I was found not --
Q The house.
A Yeah.
Q Okay. And there was a trial, and were you found guilty or not guilty?
A Not guilty on that one.
Q All right, sir.
And what you -- what you called [redacted] Road I have as the Hampton garage.
A Yes, sir.
Q Is that -- is also a burglary?
A Yes, sir.
Q Okay. Grand larceny as well?
A It was a grand larceny, yeah.
Q All right. And is that a location that involves the -- the barn —
A Yes, sir.
Q — or the workshop?
A Yes, sir.
Q Okay. Now, you were on bond? Did you make bond?

A Yes, sir.
Q Okay. And you have filed a Post-Conviction Relief action.
A Yes, sir.
Q You understand, by filing this Post-Conviction Relief, you are asking that the Court set aside your conviction?
A Yes, sir.
Q You and I have talked about this. Do you understand that, if the Court grants you relief, that you could be retried?
A Yes, sir.
Q And if you are retried, you potentially could get more time?
A Yes, sir.
Q And we talked about that. All right.
Based upon this information, do you want to go forward today?
A Yes, sir, I do.
Q Okay. All right, sir.
Now, when you were arrested, how long were you in the detention center?
A About three weeks.
Q And then you made bond?
A Well, I went in with no bond, and that's how I met Larry. I hired him to get me a bond.

Q Okay. All right. So you had appointed counsel or retained counsel?
A At that time, I had no counsel.
Q Okay. But then who -- did you retain an attorney?
A Yes, I retained Larry Crane.
Q Okay. And is Mr. Crane the one that tried your case for you?
A Yes, sir.
Q Now, when you hired your attorney, how did he prepare you or your case for -- for trial? Did -- were you able to go to his office, or how did y'all (indiscernible)?
A Well, I mean -- yeah, it come to that, but it was like -- it all happened all of a sudden. I mean, it come on pretty quick. It was within -- it was under a year from the time that I got arrested that I had to go to trial.
Q How many months; do you remember?
A Like 11 months.
Q Okay. All right.
A I got arrested March 25th and went to trial on March 27th. So a year exactly.
Q All right. Do you remember how many times you met with him?
A A couple times. Just -- I went and seen him when I first got out. Took him some money and signed the paperwork. And then I went and seen him again to give him a golf cart or, you

know, to put the payment in and do some woodwork for him. And that's about it. I mean, it wasn't really a whole lot of interaction.

Q Okay. Now, did you talk about -- did you go over your discovery? Did you see the discovery?

A I didn't see nothing. I mean, I ain't seen a motion until -- he called me on -- he called my daddy on a Friday and told my daddy to -- when the -- he'll need to get with him and give him some money because we got to go to trial Monday.

Q Go to trial when?

A That following Monday. And he didn't even have my motion yet. He said he didn't even have my motion. So he had to call the solicitor to get my motion. And we was sitting in his office, and he had -- the solicitor told him he had to go get his motion -- the motion himself out of Greenwood. He said that's the first time he'd ever had to do that.

Q Do you know what the motion for discovery is? Like do you know what it --

A Yeah, I know what -- yeah, I know what a motion is. Yeah, I know.

Q What is that?

A It's the evidence that shows what happened.

Q You say you never received it?

A Yes.

Q All right. Now, did you ever receive that?

A No.
Q We talked about a theory of defense, in other words, how Mr. Crane was going to defend your case. Did you know what your -- what his theory was or how he was going to defend you?
A Not really. I mean, he didn't -- the only thing he knew what was going on with it -- because he didn't get the motion, like I say, until Friday. And I went and then picked up a boat for him that Friday. Took it back to him Saturday. And that's when we talked about it, and he said -- "Well, I mean, this is what they got on you." And I told him, I said, "Well, you know, I don't want to go to trial." I said, "See if you can get me a plea or maybe drug court or something," because I had a drug addiction at the time.
Q What was your addiction?
A Methamphetamines.
Q And was it a mild addiction? A severe addiction?
A Well, it was more like a -- I was a functioning addict. I didn't -- I didn't hang out with a bunch of people doing drugs or nothing. I didn't commit crimes on it. I just done it and worked and hid it from my family. I thought I was -- I could handle it, but, you know, I mean, it's drugs. That's what everybody thinks.
Q Are you drug-free today?
A Yeah. One year exactly.
Q Okay.

A I mean, when I got into SCDC, it only escalated. It got worse. There's more drugs in SCDC than there ever was on the street.
Q Yeah.
A But I'm a year dis- -- I'm a year free now. Since I've been at Perry, I hadn't -- I hadn't done no drugs.
Q Okay. All right. So give me a little bit of an idea about thoughts about a trial or thoughts about a plea. What happened, if anything, with that?
A Well, I don't really know. I know he was supposed to talk with the solicitor. He told me that he had another trial that was scheduled for that week.
Q Which week are we talking about?
A For the following week. The Monday that my trial was supposed to be scheduled.
Q Okay.
A He said he had another trial scheduled for that week and that it was scheduled before this one, so he was going to see if he could get this one put off.
And I was stressing. I said, "Well, look, I ain't even got you no money yet." I said, "Let me go get you some money because I know -- I know that you want to get paid for the job." I said, "I got a job this weekend, but I gotta go to Asheville to do it."
See, I move people for a living. I've done moving help.

Q Yeah.

A And I said I had a job in Asheville, I said, but -- you know, I had to sell my phone to buy that boat. I said I had to sell my golf cart for $2,000 and I had to sell my phone for 700 to buy that boat. I said, "So I don't have a phone."

He said, "Well, can I get ahold of your daddy?"

I said, "Well, I mean, yeah, you talk to him, but I don't have a phone. I don't have a phone until I make a draw off this job and I can go buy one."

I mean, this is 2017, so iPhone 6+ was 700 bucks, and I didn't have -- I didn't even have money to put gas in to get to Asheville. You know what I'm saying? I was broke.

I said, "So I won't be back in town probably until Tuesday or Wednesday." I said, "But, you know, I'll see if I can check in -- I'll check in with -- I'll check in with you or check in with Daddy or something when I get back."

So I was under the assumption that he was going to get the trial put off or try to -- I said, "Look, please get me -- see if you can get me a plea bargain. I mean, I know I committed a crime. I admit to it. It might not even hurt me to go to prison and then get off these drugs. So if you can get me a plea, ten years or something, non-violent, I'll take it, and we'll just wrap this up or whatever."

I said, "Just see what you can do." I said, "Man, because I didn't -- I mean, the burglary, I didn't hurt

nobody. I didn't even know anybody lived there."

I said, "So I wasn't intending to hurt anybody or nothing."

I said, "Just see what you can do for me by this plea or see if you can get me drug court. Tell them to give me 30 years and give me drug court."

Q Interesting -- you and I have talked, and you've been pretty candid with me. I think you're being pretty candid with the Court today about what you did.

A Yes, sir.

Q The one thing was not guilty. So we're looking at the second one, which is the -- and I apologize; I have to look every time -- the [redacted] Road —

A Yes, sir.

Q — residence.

You were saying that you went into an outbuilding?

A Well, I pulled up in the yard, and I started taking pictures of the house. I thought the house was up for foreclosure. Like I say, I had done some foreclosure clean-outs and stuff, and I just made a good, like, $15,000 on a job a couple of days before -- me and my daddy did. And I was a single man, so I was -- I wanted to buy a house and move into it and remodel. You know what I'm saying.

Q Yeah.

A On [redacted] Road, there's nothing but, like, six or seven

houses on [redacted] Road.

Q Yeah.

A So when I seen the post online about the house on [redacted] Road is under foreclosure, I was thinking I'm going to ride down [redacted] Road and check it out.

I just bought a boat the day before. My daddy was -- he was loading up the boat so we could go out to the lake, and I just dropped my girlfriend off at work. She worked at Simpsonville at the hospital as a nurse.

So I come back by just to check it out. You know what I'm saying? I said, "It can't be but one -- couple of these houses on [redacted] Road."

So when I come down [redacted] Road, I pulled into the yard. And like I say, I'm on meth. I've been on meth about 20 years so I don't make good decisions on things. You know what I'm saying? My decisions are kind of dull when it comes to things. I don't think about the consequences of actions, I guess.

But I pulled into the yard and I started taking pictures of the house and pictures of the back of the house. And I mean, it was all red mud in the yard and there was red mud splashed up beside the house, and I'm thinking ain't nobody live there.

I looked off in the window of the house, and it looked like trash and junk furniture, so I was thinking it was a

clean-out. You know what I'm saying? And I was going to figure out who had it, who owned it, and I was going to try to buy it or try to get in on it or something.

So I went into the garage, and I was looking through the trash in the garage, trying to find an address because there wasn't no mailbox on the house. And I was trying to find the address to match it to the address because there wasn't no pictures of it on the -- on the phone. It just said the house was on [redacted] Road.

And I was looking for the -- and I seen an old drill and a SAWZALL and a Skil saw that didn't have no batteries to it. It was just laying there on the floor like in a box -- it was open but the box was in the trash.

So what I do on the weekends is I go to the jockey lot and sell stuff on the weekends for people who will give me stuff for moving. And it's just another side job I had to make money.

So I had batteries to fit the drill and stuff, so I just picked it up. Wasn't thinking. Just picked it up, walked it back out and put it in the back seat of my car. I smoked a cigarette, because my old lady wouldn't let me smoke in the car. You know what I'm saying?

So I was smoking a cigarette and waiting -- just waiting on my daddy, I guess, just messing around. And I got back in my car and left. And when I left, that's when the police

pulled me over down the road and arrested me.

Q Did you ever go in the house?

A No. No, no, no.

And that's the one thing that I was -- I mean, that's -- I was making sure I wouldn't have -- I wouldn't have done that unless the owner was with me.

Q You wouldn't go in the house.

A No, I wouldn't go in the house.

See, the garage -- the door to the garage looked like it had been rammed in and one side of the garage door was just tore up. So, I mean, I just walked right into the garage. You know, there was trash all over the place.

And I was basically just looking around. I took pictures of everything. You know, I had been in the yard almost 30 minutes that I was in the yard. I wasn't trying to do anything crazy. Wasn't -- it was -- they was bird mess all -- I mean, chicken mess all over the front porch, so I didn't even go up on the porch, because I would have got it all over my boots, and my old lady would have killed me if I got it in her car.

Q Yeah.

A So that's just what I was thinking. You know what I'm saying? But my daddy -- I was fixin' to go back home, go get on the pontoon. I just bought a pontoon the day before, so we wanted to test it out. You know what I'm saying? And that's

when I got pulled over down the road.

And I was in the county jail for three days (indiscernible) knew what I was in there for. I know I had -- I had a little bag of marijuana in a bag in the front seat, and I was thinking they got me for simple possession of marijuana. You know what I mean?

When I'm sitting in the back seat of the van or the truck and the guy asked me, he said, "What are you doing at the house back there?" I said -- I said, "Man, I'm just checking it out." I said, "I didn't go in the house." I said, "I didn't mess with the house." I said, "I just went in the barn."

He said, "Where did them tools come from in the back seat?"

I said, "Well, I got them out of the trash at the house back there." I said, "I didn't think anybody lived there, you know."

And that's what got -- that's what they got on the recording.

Q So that -- let me ask you this question: So that was what was motivating your desire to do a plea?

A Well, I know that --

Q Because of the tools?

A Well, no. But -- because, see, I had been in trouble before, and I was told before, if I went to trial and I lost

at trial, that I'd get the max sentence. And so I took a plea then, but I negotiated the plea myself. I went all the way from -- they had me at, like, 13 first-degree burglaries the last time. They didn't have no evidence or nothing. I probably could have beat them if I had'a went to trial, but I didn't have no money, so I didn't have a lawyer.

So I took a -- I asked them for 10 years nonviolent on a second-degree burglary, and that's what they give me, so I went and done time at Tyger River.

Q So you've had -- you've had a problem with your meth addiction and other --

A Yeah, I've been on meth since I was 19. And it's not something I've done -- I didn't steal for it or anything like that because I've always known people who's had it, and I didn't run around with people who done it, so I didn't -- I didn't hang out with big crowds of people or get in trouble behind it, but I just done it like a -- I used it to work, because I would work days on end without going to sleep, you know, two or three days in a row.

I mean, it wasn't always a good decision either because that didn't work out for me by the end of the three days, you know, but...

Q How is your thinking now?

A Oh, it's clear. Yeah, I'm good now. I don't want it -- I don't want it anymore. I'm 46 years old. I'm done with it.

I see where it's got me. Even though it wasn't the drugs that initially got me here, it had something to do with it.
Q What kind of sentence you got?
A 25 years.
Q Is that 85%?
A Yes, sir.
Q What's your max out; do you know?
A Thirty-thirty- -- I mean, 2038.
Q '38?
How old will you be?
A I'll be 60.
Q All right. Now, when you talked to Mr. Crane about a plea, what, if anything, happened with that?
A I don't -- I don't even -- I don't even think -- I mean, I didn't know because I didn't talk to him no more after that Saturday, and he was supposed to --
Q Did you get a plea offer?
A I don't know. I'm not sure.
Q You don't know?
A No, sir.
Q Did you take -- you didn't take a plea?
A No, I didn't take a plea, no.
Q Now, tell me a little bit more about this trial date.
A Well, it was supposed to be -- he told me that they was going to go to trial Monday. He said he wasn't even ready.

He said, "I'm not even ready for it." He said, "They're pushing it on me."

He actually tried to get himself removed from my case because I hadn't paid him his money, I mean, which he had every right to do that because I hadn't paid him no money. So he told them that he wanted to be removed from my case, and they wouldn't let him off of it. They was going to make him try it regardless anyway so I told him, I said, "Look, see if you can get me a plea, man. If you can get me 10 years nonviolent, I'll take it."

But my mama is sick. My mama -- my mama had heart trouble, and she had been in the hospital on and off with a stroke for the last year or so, and she was in the hospital at this time, but I was wanting to see how she would be. You know what I'm saying? Her and my daddy, that's all I've got. So I was wanting to make sure she was going to be okay before I went into jail. If I had to go another five years, I'd go to Tyger River and work like I did last time. You know what I'm saying?

Q Right.

A And I said, "Well, maybe it will help me get off these drugs, and I can kick them this time and stay off of them." But it didn't work out like that. I got sent to one of the worst penitentiaries in the SCDC, and there's a lot of drugs there.

I'm looking at 25 years. My mama died about six months after I went to prison, and I kind of just give up on life and got back on drugs real bad. That's the reason why I'm in yellow now because I was put in Perry Correctional because of it. But I thank God for that because it saved my life. You know?

Q So they tried the case without you?

A Yes, sir.

Q Why weren't you there?

A I was working in Asheville. I was trying to get up some money to pay -- to try my case.

Q Well, did you talk to Mr. Crane, though, about it?

A I didn't talk to him again after Saturday until I got sentenced.

Q Did --

A He called my daddy -- he had my daddy -- my daddy was in the courtroom. My daddy -- he asked my daddy every day did he know where I was at. I mean, Daddy knew -- Daddy knew where I was at, but he didn't have a way to get a hold of me because I was in Asheville, working. You know?

Q So, did you have any conversation with Mr. Crane about what was going to happen at that trial?

A No. No, sir.

Q Did you ask -- you mentioned earlier about some sort of continuance of the trial.

A Well, that's what I thought he was going to do because that's my assumption that he was going to do, was he was going to get a continuance because he didn't -- he had another trial that week lined up. So I'm thinking I'll go get him some money. I want to get him as close to that $30,000 as I can get so he'll try my case. Because I didn't think it was right for him to have to try it without no money. You know what I mean? It just wasn't right.

So I was going to go -- and this is a pretty big job in Asheville. So I was going to make some good money in Asheville and pay him. And then, when I come back, my daddy told me that they done had a trial in my absence, and they found me guilty.

My mama was in the hospital at this time. So I wasn't going to turn myself in immediately until I found out what was going on with her. And then I stayed in Greenville -- stayed around Greenville where she was at.

Q Because she was sick?

A Yeah, because she was sick. And they caught me two months later, and then she died six months later.

Q And so you went to court after that?

A What you mean?

Q For your sentencing?

A Yes, sir. Right here, as a matter of fact.

Q And what happened; do you remember?

A They just walked me in there, and the judge read my sentence and they left and took me straight to SCDC.

I still got a dog -- I got a dog bit in Anderson. So I still had a dog bite, leg -- pant leg tore off and everything. They went straight to Greenville -- I mean, straight to SCDC.

Q Do you know whether Mr. Crane asked for your sealed sentence to be reconsidered by the judge?

A I'm not sure. I mean, like I say, I've been up on drugs at that time. I was real bad. But he told me that -- he was mad because he said that it wasn't right, what they done. And I kept -- I said, "What are you talking about?" He told me -- he did tell me they found the key to the boat, which is a good thing, because I couldn't find the key to the boat when I took it to him.

Q So Mr. Crane was with you when they opened the sentencing?

A Yeah, when they open the sentencing. But he told me that they was -- he was pissed off because they -- excuse my language, but he said that they had done -- they were talking in his absence. The solicitor and the judge was talking about how much time to give me or whatever, and they didn't include him in on it. And he told my mama that he was fixin' to get me one heck of a time cut or out of prison. And this is when I was in R&E. This was about a month after I was in R&E.

So here I am, excited, and I tell my friend girl, I said,

"Look, go take him" -- I had a baseball -- I had Sammy Sosa's signature on it, 1948 San Francisco Giants, signature. I said, "Take him that baseball and tell him I'm going to get him some money for helping me get through this," because I thought he had something in the works to get me out.

And then, two weeks later, I got a letter from him that said that I need to find somebody to do my direct appeal.

Q So you did appeal?

A Yes, sir.

Q And you got somebody to represent you at the appeal?

A Yeah. My mama and daddy -- I sold my truck and everything. I had to pay Elizabeth Best $15,000 to do my direct appeal.

Q Okay. And what happened with the direct appeal; do you know?

A Well, I got a letter on May the 20 -- May 2020 that said that I had been denied because there was no issues raised during the trial. There was no objections raised by my lawyer during the trial so it was denied.

Q Do you remember what those issues were?

A That I wasn't -- that I wasn't in court, I don't think, and that it wasn't a first-degree burglary. I mean, I think he asked -- he asked the Court to consider it as a third degree, and they X'd that or vetoed that, I guess, from what I read in the transcript.

There was never no objections to not being there. They actually -- they actually issued a warrant for my arrest and then was going to, I guess, find me or whatever.
Q Right.
A But they went ahead and went on with the trial anyway. I mean, my opinion -- you know, it's just my opinion, but I think Dale Scott had it in for me at the time. It was election year, so...
Q Mr. Fincher, you and I have talked about this. You've been waiting a long time.
A 7-1/2 years.
Q Through the appeal process.
A $25,000 and everything my daddy had to do this. You know?
Q Right. For Elizabeth Best?
A For Elizabeth and you, yeah.
Q Do you remember -- so this was all pending through COVID-19?
A Yes, sir.
Well, I had a year -- after the appeal was shut down, I had a year to file the motion.
Q File the post-conviction?
A Post-conviction. And Elizabeth Best actually filed it for me because I didn't have -- I didn't have you hired at the time. But then, after she filed it, I had a friend girl of

mine, Beth Griggs (ph), and she helped me get the money together to get you paid.

Q Okay. This is your opportunity -- you've been waiting a long time.

A Yes, sir.

Q -- in court. Is there anything -- I haven't intentionally forgotten anything. I haven't, you know, intentionally not raised something on your behalf. But this is your opportunity to kind of double-check me.

Is there anything else that you feel is important that you would like the judge to know?

A No, sir. I mean -- well, I did ask for help for my drug addiction at the time. I was actually wanting help, and I asked the Court for help and I asked the solicitor for help because I know I had a problem, and I was just looking for a way out of the problem. You know?

I wasn't trying to hurt anybody. I've never -- I've never raised my hands to anybody in anger ever in my life. I've never -- I don't like guns. I don't mess with guns or anything like that.

So I just didn't understand why I was catching -- why I caught so much time for such a mistake. That's all it was, was a mistake. I didn't -- I didn't do it trying to intentionally hurt anybody. You know?

Q Mr. Fincher, I have two more questions. One is --

MR. THOMAS: Beg the Court's indulgence.

BY MR. THOMAS:

Q You weren't at the trial, were you?

A No, sir.

Q So you don't know what -- what transpired during that period of time?

A Not except for what I've read in the transcript.

Q Also, prior to trial, do you feel like your attorney was prepared to try your case?

A I don't feel like he had enough time to get ready for it. So, you know, I mean, I don't feel like he had enough time. I mean, he had two days -- a day and a half to get ready for it. You know what I mean? That's a pretty high-profile case. I mean, first-degree burglary isn't nothing to shake a stick at. You know?

So I felt like we could have -- we should have had enough time. And I don't really blame it on him as much as I do the solicitor because they was pushing for it to happen. You know?

Q Trial?

A Yeah.

MR. THOMAS: Your Honor, I have no further questions.

CROSS-EXAMINATION

BY MR. MITCHELL:

Q Mr. Fincher, you were high on meth during this incident?

A Yes, sir.
Q And -- when you came across a house that you thought was just being foreclosed on?
A Yes, sir.
Q And so you go in the backyard and take some pictures?
A Take pictures of the front and back.
Q See some tools in the garage —
A Yes, sir.
Q — and decide to take them?
A Yes, sir.
Q And then you go back in your car, and then you're arrested almost right after that?
A Well, about three miles down the road.
Q And then you got bond before this -- you were out on bond after you were arrested; correct?
A Yes, sir.
Q And do you remember signing a bail (ph) acknowledgement of your rights form —
A Yes, sir.
Q — which informed you of your right to be present and that, if you didn't show up, you would be tried in your absence?
A Yes, sir. I mean, I know I signed the bond paper.
Q Yeah.

And you also testified that you thought Mr. Crane was going to get a continuance?
A Yes, sir.
Q So you were aware that you were coming up on the trial docket that week?
A That it was -- yeah, it was --
Q And you were in Asheville?
A Yes, sir.
Q And you've had several prior burglaries?
A Well, I had one incident, yes, sir, but it was a lot of burglaries involved in it.
Q Do you know how many burglaries?
A At that time, it was 13 but —
Q Thirteen?
A — they was all dropped down to a nonviolent. I was actually -- like I say, I didn't have a lawyer at the time, so they was case-loaded. Because they didn't have no evidence on me. There were no fingerprints. There was no witnesses. No nothing. But I was sitting in the county jail for over a year, and I knowed I was gonna catch something, but I mean, possession of stolen goods should have been the least of what I got, but they just case-loaded me, put them all on me under a second-degree burglary nonviolent.
Q And, in this case, were you aware that there was an eyewitness?

A Yes, sir. Well, afterwards.
Q A little girl that was home alone that testified that she saw you?
A Yes, sir.
MR. MITCHELL: I have no further questions for this witness, Your Honor.
MR. THOMAS: Your Honor, if I may.

REDIRECT EXAMINATION

BY MR. THOMAS:
Q Mr. Fincher —
A Yes, sir.
Q — when you spoke with your attorney about this case that was coming up, what was your understanding from your conversation with him?
A Well, I mean, I don't really -- I didn't know anything about the case law or anything, so I kind of like just went on what he said.
Q Right. But how -- I'm talking about specifically about the trial date.
A That he was going to get it put off.
Q Okay. Is that what you relied on?
A That's what I -- yeah, that's what I was assuming. I mean -- and I was worried about getting him some money, plus I was worried about not having the key for the boat that I just took him. And I was on meth. I mean, it's kind of like a

jumble when all that's put it on one thing. You know?

So I trusted -- I was trusting the fact that he was a hired attorney and he was a good attorney, from what I know, and I figured that he would get it put off. Just like -- kind of like going -- you know how you go on a -- when you have to show up for court, when your attorney tells you, "Hey, look, don't worry about coming; I got it tooken care of" —

Q Right.

A — that's kind of like what I was thinking.

Q Like a roll call?

A Like a roll call, yeah.

MR. THOMAS: All right. No further questions, Your Honor.

MR. MITCHELL: No recross.

THE COURT: All right. Step down.

MR. THOMAS: Your Honor, if it pleases the Court, since Mr. Fincher was not at the trial, that would be our case. I know that the Attorney General is going to call the trial attorney. The only other questions that I have would be directed towards him.

THE COURT: Okay.

MR. MITCHELL: Your Honor, the State calls Mr. Larry -- Lawrence Crane.

LAWRENCE CRANE,

after having been duly sworn, was examined and testified

to as follows:

THE COURT: Thank you. Be seated.

DIRECT EXAMINATION

BY MR. MITCHELL:

Q Good afternoon, Mr. Crane.

A Good afternoon.

Q Mr. Crane, how long have you been practicing law?

A 47 years.

Q And a lot of the time in criminal law?

A All of it.

Q And how did you come to represent Mr. Fincher?

A I don't remember if his parents or family called me or he got in touch with me, but somehow, someone did, and we got together to represent him on the charges.

Q And do you recall how many times you met with him prior to trial?

A No. Like he said a minute ago, this is 7-1/2 years ago. I really don't. And I've looked through my file; I don't have notes of when we might have gotten together.

Q So do you know whether you would have reviewed the evidence with him in discovery?

A I'm pretty sure that I would not have gone to trial without reviewing the evidence with him and reviewing the discovery.

Q So, it's in your practice that, before you go to trial,

you're going to review the evidence and discovery with your client?
A I would.
Q And coming up to trial -- so he was on the trial docket and then did you contact Mr. Fincher to let him know?
A He knew about it. I don't know if I contacted him or not, but he knew about it. He knew that it was -- as a matter of fact, I think he sent an email to the solicitor basically, like he said, begging to go into drug court. But in that email he says, "I've got two counts of burglary first coming up next week in trial." So he knew about the trial coming up.
Q And do you know why he didn't show up?
A I do not.
Q But you believe he had adequate notice?
A I think he did, yes, sir.
Q And do you remember -- what was your defense strategy going into trial?
A Well, you know, one of them, he's found not guilty of. The problem that he had was, again, like he testified, he had 10 or 12 prior burglaries which added up under this statute, two or more burglaries, which made it a first offense.
And, also, one of them that he went into was a dwelling but it was during the daytime. So it was the prior burglaries that he went into. The only thing we could try and do is convince the jury that it wasn't a burglary first, which is

why we asked for burglary second and burglary third to be charged to the jury.

Q So, basically, your strategy was, on the first one, he didn't do it.

A Right.

Q And then the second one, you were trying to argue that it wasn't a dwelling, for the purposes of burg-first and maybe try to get it down to burg-second?

A I believe that's correct. The one of them -- not that he didn't do it but that -- see, when they change it from burglary first -- excuse me. When they wouldn't charge what we wanted to charge, I think that hurt the State, and the one that he was found not guilty of.

If they had left it alone, he probably would have been found guilty of at least burglary third, but he wasn't.

Q And do you recall the evidence that the State had against Mr. Fincher in regards to the second burglary?

A Well, I'm trying -- I've been trying to remember exactly what went on. And, again, I've got my notes from the trial, and Mr. Fincher would remember better than I when you talk about the -- whatever [redacted] Road or whatever the -- whoever's house -- one of them was a garage, like a workshop, that he went into, and the other one was a house where that's where the eyewitness -- some juvenile female screamed and said she saw him or something.

Quite honestly, I don't know which one he's found not guilty of right now. I don't recall.
Q He was found guilty of that one.
A Okay. Well, the other one was the workshop, which then he --
Q No, the workshop one was the one he was found guilty of.
A Which surprised me.
Although, when we went to argue to the jury, the only evidence they had was the girl saying she screamed and saw someone, and on cross-examination, she really couldn't identify anybody.
Q So I think you're getting the two of them confused.
A Okay. I might be. I haven't seen the transcript in seven years, so I don't know.
Q The first burglary -- if you remember, I believe the State presented evidence that a witness was in her bedroom -- another juvenile —
A Mm-hmm.
Q — and she heard someone rummaging but was never able to identify him.
A Okay.
Q And then he was acquitted of that one. Do you remember all that?
A Yes, sir.
Q The second one was the one on [redacted] Road, I believe,

where he was going back and forth getting tools, and then the juvenile was able to get an out-of-court identification.

A Looked at the window. Right, yes, sir.

Q And do you remember if she was presented a photo lineup?

A I don't. I don't remember.

Q Would you agree that what the transcript reflects is what happened at trial?

A Of course.

Q So you were actually able to get an acquittal on one of the burglaries?

A Yes, sir.

Q And you did argue basically what Mr. Fincher would have wanted you to argue, which is that he didn't think it was a house and it wasn't a dwelling.

A Yes, sir.

Q And do you recall any plea negotiations?

A I do not.

Q So you don't know whether there would have been a plea offer or not?

A I don't have any offer in my file.

Q Would it surprise you that, in mitigation, I believe you discussed with the judge that -- you and the solicitor -- you tried to get him to go to drug court, but the solicitor wasn't having it?

A That would not surprise me if that's in the transcript.

MR. MITCHELL: Beg the Court's indulgence.

BY MR. MITCHELL:

Q Mr. Crane, I believe that's all I have for you.

A Okay. Thank you.

MR. THOMAS: May it please the Court, Your Honor. May I approach, Your Honor?

CROSS-EXAMINATION

BY MR. THOMAS:

Q Mr. Crane, I know it's been a long time. I'm going to let you look at that just to refresh your memory.

MR. THOMAS: Your Honor, I believe that's part of the record. I don't know if I need to introduce it into evidence, but I can.

THE COURT: What is it? The appellate record?

MR. THOMAS: Yeah, the appellate record.

THE COURT: (Indiscernible)?

MR. THOMAS: Yes, sir.

THE COURT: Yeah, that's part of the record.

MR. THOMAS: Okay.

(Witness reviews the document.)

THE WITNESS: Okay.

BY MR. THOMAS:

Q Mr. Crane, can you tell us from that what two issues were raised on appeal?

A It appears from that that it was not raised to not go

forward because he wasn't there, is one of them.

And the other one, I'm not real sure. It says something about denial of directed verdict, issues not raised to the trial court in support of the directed verdict. I think there was a directed verdict motion made.

Q The directed verdict was -- was it made in regards to -- specifically in regards to the issue about the garage? Not the garage but the outbuilding?

A I don't know. I don't remember.

Q Okay.

A I'm sure it would have been raised as to both issues. Why raise a directed verdict to one charge and not the other? I mean, if you're saying that's what I did, then that's what I did, but I don't think so.

Q But you don't remember?

A I don't remember.

Q All right. But the lower court or, actually, the Court of Appeals found that these two issues were not preserved for appeal?

A Not exactly on the directed verdict. That's not the way I read the directed verdict ruling of the Court. But the first one, that's the way I see it. And I don't know if we asked for the continuance or not because he wasn't there.

Q But what we're talking about -- and I'm kind of paraphrasing off of this document -- in order to claim

protection afforded by the rules of law that a criminal defendant may be tried in his absence only upon a trial court's finding that the defendant has received -- received the required notice of his right to be present and advised that the trial would proceed in his absence if he failed to attend, and it says in print -- or in italics, "must object at the first opportunity to do so, and failure to do so or to object constitutes waiver of the issues for appeal."

So, in essence, what we're talking about is the requirement that the Court put on the record that the defendant had notice and had been advised of this trial date and that it has to be put on the record and the Court has to make a decision.

A So the way you're reading that, the Court screwed up by not putting it on the record.

Q Well --

A Wait, wait, wait. And I screwed up by not objecting to him not putting it on the record.

Q Yes, sir.

A Okay.

Q Yes. I think so.

A All right.

Q And I think --

A I don't know if it's on the record or not. I don't have a transcript. You do.

Q And I don't -- I did not see it on the record.
A It must not be there then.
Q So the thing is that we didn't get an opportunity for the Court to make a decision regarding the notice and whether or not he was given notice about being at the hearing and at the trial in his absence because the Court never made that decision on the record. Is that correct?
A That's what the appellate decision says.
Q Okay. So if the Court had -- if it had been preserved, the Court of Appeals could have made a decision in regard to whether or not the defendant was given adequate notice as required?
A That's correct. They could have done that.
Q But they were unable to do that because that issue wasn't preserved for appeal.
A That's correct. And if they had ruled that he did have or did get notice or whatever or didn't get notice and everything was hunky-dory, they would have said it's not prejudicial anyway.
Q Right. But they didn't do that.
A No, they didn't.
Q And the second thing -- the second issue is exactly kind of what we've been talking about. And you did talk to the Court about this.
MR. THOMAS: Your Honor, if it pleases the Court -- I

apologize. I got a little bit off of my...
BY MR. THOMAS:
Q All right. This gets us to the other issue about the directed verdict, which is the [redacted] Road. I mean, he was found not guilty of the other location. So really what we're talking about is just the [redacted] Road location, which had the outbuilding.
A Okay.
Q From the transcript, it appears that you do, in fact, argue with the Court in regards to charging that this is an outbuilding and it is not part of being considered as a residence. Do you remember that?
A Probably. I don't remember that, no. What does the transcript say?
Q The transcript says that you do make that argument and —
MR. THOMAS: And I believe, Your Honor, that this starts in the transcript at page 110.
BY MR. THOMAS:
Q — in which you are trying to make the argument about a burglary third. Do you remember that?
A What is that?
Q Asking the Court to charge burglary first, burglary second, and burglary third. And you talk about it being an outbuilding.
A Okay. But that has nothing to do with the directed

verdict. What does it say about that in the transcript?

Q It says in the -- there is no motion for a directed verdict in regards to this issue.

A On either charge?

Q On either charge.

A That surprises me.

Q I could be wrong on that. I read the transcript, and that's what I have is that directed verdict, [redacted] Road, garage, motion not made.

And the argument was that the garage is not a dwelling.

A Okay.

Q So the Court of Appeals makes a determination that "in reviewing a denial of directed verdict, issues not raised to the trial court in support of the directed verdict motion are not preserved for appellate review."

A Yes, sir.

Q And "a defendant cannot argue on appeal an issue in support of his directed verdict motion when the issue was not prosecuted or presented to the trial court below."

A Yes, sir.

Q And the question or the issue is, as to whether the trial court erred by denying Fincher's motion for a directed verdict regarding the burglary of [redacted] Road because the garage was not a dwelling. So the motion was made but this issue was not included.

A I'm not following you, but...
Q Okay. Well, no, no, no. I want you to -- I certainly want, you know, the right -- not my right answer but your right answer.
What the lower court was saying is that, in the directed verdict motion, this issue about the dwelling, whether the outbuilding was part of the dwelling, was not made and presented to the Court; therefore, was not preserved for appeal.
A Now you've confused me because now you've just said "in the directed verdict motion, this wasn't" -- if there was a directed verdict motion, then, obviously, I made it.
Q You did. You did.
A You said a minute ago I didn't.
Q No. I am sorry that I'm being confusing. What I mean is that this issue was not included -- was not made in the directed verdict -- a directed verdict motion for this issue was not made.
A Okay. Well, you and I know that the appellate court is going to do what they want to do in any case they want to do it, whether it's correct or not. And we've got to go by what they do.
Q I understand. I understand.
And I'm not trying to be argumentative. What I'm trying to ask is that what we don't know, because the Court of

Appeals did not make a decision on it, was the answer to two questions. And the first question is whether or not he had proper notice in regards -- and it was put on the record for the trial to begin in his absence.

The second question is whether or not the outbuilding was a dwelling. And we don't know the answer. And both of those would have had a difference, wouldn't they?

A Are you...

Q I mean, yeah. I'm asking you, wouldn't both of those -- the answers to both of those issues be beneficial?

A Probably. But the Court would probably rule they were not prejudicial to him because the evidence was overwhelming to affirm the conviction anyway.

Q But we don't know that.

A We don't know that.

Q Right. But we do know that they weren't preserved.

A According to the Court, that's correct.

Q And the --

A And if it's not in the transcript, then it obviously wasn't preserved.

Q Correct.

MR. THOMAS: Your Honor, if I can have the Court's indulgence just for a second.

BY MR. THOMAS:

Q Let me ask you about a couple of other things that jumped

out to me when I was looking at this file. The solicitor, in an attempt to show that there were prior burglaries, actually called someone from the Clerk of Court's office. Do you remember that?

A No, I don't remember that.

Q Okay. All right. Do you remember whether or not the clerk read into the records or read into the record the information they had about his convictions -- and the judge and all of that from a prior -- these prior convictions?

A Your question is, do I remember that?

Q Yes, sir.

A No.

Q Okay. All right. How did you and Mr. Fincher actually prepare for this trial?

A We met at the office.

Q Okay. What was your theory of a defense?

A Like we just said, it wasn't -- one of them was not a burglary and that they just didn't have the evidence. You know, like I said, one of them was just a teenage girl saying that she saw someone or heard someone.

Q And that's the one that he was found not guilty of.

A Okay.

Q What about the -- what difference did it make if he went into an outbuilding versus going into a home?

A The degree of burglary.

Q And do you remember what he was convicted of? Was it burglary first?
A Burglary first.
Q So the outbuilding -- if it was not considered as part of the dwelling, it could not have been a burglary first?
A That's correct.
Q What would it have been?
A Probably a burglary third.
Q And what does a burglary third carry?
A They've changed it since I started. I think it's ten years. I'm not sure. It might be five years.
Q Okay. So it would carry less time than the burglary first?
A Right.
Q So it would be an important issue.
A Of course.
Q I looked at the transcript, and one of the things that -- was that was there an admission in regards to the prior burglaries -- admission of taking the tools?
A Admission of what?
Q In other words, did you contest the fact that -- the taking of the tools, taking of a prior burglary being read into the record?
A I don't recall. It will show in the transcript.
Q And you don't recall whether or not the sentencing sheets

were entered into evidence?
A I don't recall.
Q If they had been, is that objectionable?
A I think -- I think anytime you bring out prior offenses it's objectionable. But I think the case law on burglary first is adverse to that so that they can come in.
Q Okay. On a burglary first.
A Right.
Q Would they be admissible on a burglary third?
A It's not -- it's not an element, so they would not.
Q Okay. Let me ask you about the -- you were there at the reading of the verdict -- the unsealing and reading of the verdict?
A Yes, sir.
Q Okay. Do you remember whether or not you made a motion for the Court to reconsider the sentence once it was read?
A I made a motion, but I don't know if it was to reconsider the sentence or not. I know that we made a motion or there was a motion made because of what I thought was an ex parte communication with the solicitor, but I don't know if we made a motion to reconsider the sentence or not.
Q What was that ex parte communication?
A You said what was it?
Q Yes, sir.
A The solicitor -- the judge had told us what he was going

to charge on the law. I had asked for second and third degree. He agreed with us to have second and third degree. When we came back in from lunch recess, he had indicated that he reconsidered. He was only going to do, I think, first and second or something like that. And I had overheard the solicitor asking the clerk whether or not they got his emails, which were not provided to me.

And so there were some discussions on the record as to whether or not that was an ex parte communication. And I think I filed a motion -- a written motion after that and even alleged prosecutorial misconduct.

Q Was that after the motion -- after the unsealing or was that during -- after the trial?

A I don't recall.

Q Okay. But you did file a motion?

A I did.

Q And how did the Court handle it; do you remember?

A I don't.

MR. THOMAS: Your Honor, if I can beg the Court's indulgence; I may ask some other questions.

Your Honor, just for the Court's information, the email that was sent to the judge is page 114. It begins there.

The introduction of the sentencing sheet is page 96 through 100.

And, Your Honor, the discussion about the issue of the --

I apologize, Your Honor, I don't have that one.

Your Honor, if I may beg the Court's indulgence.

Your Honor, I have no further questions.

MR. MITCHELL: Just briefly, Your Honor.

REDIRECT EXAMINATION

BY MR. MITCHELL:

Q Mr. Crane --

MR. MITCHELL: May I approach the witness, Your Honor?

BY MR. MITCHELL:

Q Mr. Crane, would you mind reading line 17 down to 22? That's on page 269 of the record, Your Honor.

MR. THOMAS: Do you want him to read it to himself?

BY MR. MITCHELL:

Q Out loud, if you don't mind.

A "THE COURT: All right. Now about this, a dwelling is any building or portion of a building in which a person originally sleeps, including all houses, outhouses, buildings, sheds, and erections which are within 200 yards of it and are appurtenant to it or to the same establishment of which it is an appurtenance.

"MR. SCOTT: Yes, sir."

Q That's good enough, Mr. Crane.

Will you turn to page 217.

A Okay.

Q And I believe start with line 4.

A "QUESTION: Okay. Going back to State's Exhibit No. 2, I believe that is, what would you say the distance to the house from the bonus room is? Let me see if I can get a better picture.

"ANSWER: Between the house and the bonus room, there's about eight feet.

"QUESTION: Eight feet?

"ANSWER: Enough for a walkway and the stairs coming off the laundry room, which is the side door.

"13 -- Excuse me, QUESTION: So in other words, you come down those back stairs, and you can go right up. Let's see" --

Q That's good enough, Mr. Crane.

So would you agree that eight feet is less than 200 yards?

A I think in most cultures, yes, sir.

Q And the bonus room they're referring to, that would be the room in which Mr. Fincher stole the tools.

A Okay. Thank you.

Q So would you -- if you had properly made a directed verdict motion on this dwelling issue, do you believe that the Court would have ruled that no evidence was presented that this was indeed a dwelling?

A Say again now.

Q If you had made a directed verdict motion on whether this

was a dwelling or not, do you believe the judge would have ruled that the State presented no evidence that this was a dwelling based on --

A No.

Q And you did give Mr. Fincher notice; correct?

A Yes, sir.

Q So he knew about the trial?

A Yes, sir.

Q And he didn't show up?

A That's correct.

Q So if you had made the motion, do you believe the judge easily would have been able to satisfy both those prongs?

A Yes, sir.

Q I believe that's all I have for you, Mr. Crane. Thank you.

MR. THOMAS: Your Honor, two questions.

RECROSS-EXAMINATION

BY MR. THOMAS:

Q Do you know whether it was eight foot or not?

A I don't know.

Q Do you know where the solicitor got the eight foot from?

A I think he was asking one of the witnesses that question.

Q Okay. But you don't know whether it was eight foot or not?

A If I recall correctly -- I don't know, but I think I

actually drove by both residences in preparation for trial, but I'm not exactly sure. But I think I saw the one with the garage building. But, no, I don't know if it was eight feet or not.

MR. THOMAS: Your Honor, I have no further questions.

FURTHER REDIRECT EXAMINATION

BY MR. MITCHELL:

Q Would you dispute the transcript if that was during the direct examination of the person who owns the house?

A If that's -- yeah, whatever the transcript says, that's correct.

MR. MITCHELL: No further questions, Your Honor.

MR. THOMAS: Your Honor, may I have one more?

THE COURT: Of course.

FURTHER RECROSS-EXAMINATION

BY MR. THOMAS:

Q Do you know whether or not anybody was sleeping in that building?

A The one that they said he went into?

Q Well, the workshop -- categorized as a workshop.

A It is my understanding, from what I recall from the trial, that no one was sleeping in that building.

MR. THOMAS: All right. Thank you.

FURTHER REDIRECT EXAMINATION

BY MR. MITCHELL:

Q And the transcript would reflect that you cross-examined the father of whether somebody was sleeping in that building or not?
A I think so because I think it turned out it was his wood shop or something like that.

MR. MITCHELL: No further questions, Your Honor.

MR. THOMAS: Nothing further, Your Honor.

THE COURT: All right. Have a good day.

THE WITNESS: Yes, sir.

MR. MITCHELL: Your Honor, the State rests.

THE COURT: All right. Anything else?

MR. THOMAS: Your Honor, may I summarize?

THE COURT: Well, of course.

CLOSING ARGUMENT ON BEHALF OF THE APPLICANT

MR. THOMAS: If it pleases the Court, Your Honor. This case I have had because of my client's candor in saying that the first one he was not found guilty of because he didn't go in, didn't take anything, and that was found by the jury; the second one being really the issue of whether or not this was a dwelling.

And I think because of the potential consequences of this, that that makes it prejudicial and it's important. We don't know the answer. We don't know what the Court of Appeals would have done, and, you know, we never know what their decision is going to be. But we did have an opportunity

for the Court, because of it not being preserved for appeal, to get a determination in regards to whether this was actually a dwelling or not.

I mean, we surmise that the judge gave this charge and the jury found him, you know, guilty of this or whatever, but we don't know.

THE COURT: What do you mean, you're surmising? It's in the transcript, isn't it?

MR. THOMAS: Well, it's in the transcript, but we don't know what the result of a determination that it was, in fact, not a dwelling would have had on this whole trial and verdict because if it was not a dwelling, it would have been a burglary third, according to counsel's testimony.

And a burglary third doesn't carry the penalty that, of course, a burglary first does, which carries up to life.

And the thing is that it wasn't preserved. This is really and should have been an appellate issue, but it wasn't an appellate issue. It now falls back to being a post-conviction relief issue because it wasn't preserved.

Now, counsel speculates and says that, "Well, they could have found that it was non-prejudicial." We don't know that. We don't know what their opinion would be.

But what my client was deprived of was the right for the appellate court to make a determination in regards to that issue, and he was deprived of that right by trial counsel's

failure to preserve it for appeal. It's prejudicial if it is not a dwelling. But we don't know the answer.

And I would contend that it's ineffective assistance of counsel not to have preserved that issue for the Court of Appeals. We had an appellate lawyer. The attorney presented those issues to the Court, and the Court was unable to make a decision.

The other one is in regards to the requirement that it be put on the record that the client -- the defendant had notice of the hearing and had elected to not be present at that hearing. That wasn't done.

So the Court cannot make a determination in regards to that issue either because it wasn't preserved -- I believe that that is also ineffective assistance of counsel, and it is prejudicial to Mr. Fincher because trial counsel didn't preserve this issue for the Court of Appeals to make a decision.

This case is a little bit different in that, because of the testimony of my client, I believe that the two most important issues in this case are the failure to preserve these issues for the appeal.

THE COURT: Anything else?

MR. THOMAS: No, Your Honor.

THE COURT: All right. The State?

CLOSING ARGUMENT ON BEHALF OF THE STATE

MR. MITCHELL: Your Honor, I'll -- I disagree with Mr. Thomas's assertion that we have to surmise that this is a dwelling. Being a dwelling is an essential element of first-degree burglary.

After hearing all the evidence and testimony, a jury found him guilty of burglary in the first degree, meaning a jury found that it was, in fact, a dwelling.

The dwelling statute clearly defines dwelling as "any building in which a person sleeps or lodges and all other buildings within 200 yards of it."

There's testimony from the owner of the house that the room where he stole the tools from is only eight feet away from the dwelling house, from the house that people slept in, meaning that it clearly fits within the definition and it would clearly pass a directed verdict motion. So there's clearly no prejudice in that regard.

Second, with regard to the notice, even Mr. Fincher's testimony was that he knew that the trial was coming up. He was in Asheville. His attorney told him about the trial, and he didn't appear.

Had Mr. Crane made the motion that the Court needs to put on the record, I think they easily could have done so. And for those reasons, I think both of those allegations should be denied.

THE COURT: I'll review the record and issue an Order.

MR. THOMAS: Thank you, Your Honor.

MR. MITCHELL: Thank you, Your Honor.

(The hearing concluded.)

* * * *

Certificate of Transcriber

CASE NAME: Stephen Fincher v. State

DATE OF HEARING: 8/20/24

RECORDING METHOD: Court Reporter: Tara Scott

I, Bobbi Fisher, do hereby certify that the foregoing transcript is a true and correct record of the recorded proceedings; that I was not present for the live proceeding; and that said proceedings were transcribed to the best of my ability from the audio and/or video recording and supporting information; and that I am neither counsel for, related to, nor employed by any of the parties to this case; and I have no interest, financial or otherwise, in its outcome.

Bobbi Fisher

/s/ Bobbi Fisher_____

Bobbi Fisher, SC Official Court Reporter III, RPR

Transcript Prepared: 8/28/25

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF LAURENS	)	FOR THE EIGHTH JUDICIAL CIRCUIT
Stephen Trase FINCHER, SCDC #321427,	)	
	)	
Applicant,	)	
	)	
v.	)	**ORDER OF DISMISSAL**
	)	
	)	
The STATE of South Carolina,	)	Civil Action No. **2021-CP-30-00351**
	)	
Respondent.	)	
	)	

INTRODUCTION

This matter came before the Court on application for post-conviction relief (PCR) commenced by Stephen Trase Fincher ("Applicant") on March 23, 2021. An evidentiary hearing was held at the Laurens County Courthouse on August 20, 2024. Applicant was present and represented by Tommy A. Thomas, Esq. Assistant Attorney General T. Cruise Mitchell represented the State. Testimony was taken from Applicant and trial counsel Lawrence W. Crane, Esq. ("Counsel").

After a full review and consideration of the record in this case, the Court finds Applicant's allegations regarding ineffective assistance of counsel are without merit. For the reasons discussed below, this Court denies relief and dismisses this action with prejudice.

2025 JUN 10 P 3:36
LAURENS COUNTY
CLERK OF COURT
MICHELLE SIMMONS

PROCEDURAL HISTORY

Applicant is presently incarcerated with the South Carolina Department of Corrections. In May 2016 the Laurens County Grand jury returned indictments against Applicant for two counts of Burglary, First Degree (2016-GS-30-00757, 2016-GS-30-00759), and Grand Larceny value more than $2,000 but less than $10,000 (2016-GS-30-00758). Applicant was represented at trial by Lawrence W. Crane, Esq. Deputy Circuit Solicitor C. Dale Scott and Assistant Circuit Solicitors A. Lyon Bixler, III, and James Todd, prosecuted the case.

Applicant was tried on the two Burglary First Degree indictments before Circuit Judge Benjamin H. Culbertson and a jury on March 27, 2017 *in absentia*. Applicant was found guilty on one and acquitted on the other. Judge Culbertson sealed Applicant's sentence. At a May 26, 2017 hearing after Applicant was apprehended, the Honorable Donald B. Hocker unsealed and published Judge Culbertson's sentence. Applicant was sentenced to imprisonment for a term of twenty-five years. Applicant through counsel filed a "Motion to Dismiss Charges or In the Alternative Grant a New Trial" on June 1, 2017. Judge Culbertson denied this motion by Order dated November 7, 2017. Following Judge Culbertson's Order, Applicant timely filed a notice of appeal.

Applicant's appeal was perfected by Elizabeth Franklin-Best, Esquire. Applicant raised the following issues on appeal:

1. Did the trial court err in allowing the trial to proceed in Applicant's absence without finding that Applicant voluntarily waived his right to be present;
2. Did the trial court err in denying Applicant's motion for a directed verdict on the [redacted] Road instruction because the garage was not a "dwelling" for purposes of Burglary 1st degree statute because the garage was detached from the house, and was used as a wood-working workshop for the owner?

In an unpublished opinion, the South Carolina Court of Appeals affirmed Applicant's conviction, finding neither of Applicant's issues were properly preserved for appellate review. *State v. Fincher*, 2020-UP-141, (S.C. Ct. App. filed May 20, 2020). The case was remitted back to the circuit court on July 8, 2020.

STATEMENT OF FACTS

On March 9, 2016, Brittany Childress woke up to the sound of someone trying to break into her home. (R. p. 80) Childress testified that she was home for Spring Break and was home alone while her mother was at work. (R. p. 81) At first, Childress heard knocking on the door. (R. p. 83) Childress then stated the knocking stopped; however, shortly thereafter she heard drawers opening and closing in the kitchen. (R. pp. 83-84) Childress began to panic and called her aunt, who lived next door to her. (R. pp. 84-85) Esther Shell, Brittany's aunt, testified she received a call from Childress where she whispered that

someone was in the house with her. (R. p. 109) Shell told her son and daughter to come with her and they began walking towards Childress's home. (R. p. 108) By the time Shell and her children reached the edge of their yard, they saw a while male walking across Childress's yard. (R. p. 109) Shell confronted the man and asked what he was doing there. (R. p. 108) The man replied he was trying to ascertain if the house was for sale. (R. p. 109) Shell testified the man then ran to his car and "took off." (R. p. 109) Shell stated that the man did not want to talk to her. Shell noticed that the man was driving a white car and was wearing a light colored shirt and baseball cap. (R. pp. 110-11) Shell's son, Xavier Johnson, described the car as a white sports-looking car with a spoiler on the back. (R. p. 127) Childress noted she was unable to observe the culprit because she was hiding in her bedroom. (R. p. 87)

Also, on the morning on March 9, 2016, DH was home sick. (R. pp. 191, 193) DH testified she specifically remembers the date because it was her sixteenth birthday. (R. p. 191) DH stated that she spent the morning in bed watching Netflix. (R. p. 193) While she was in bed, DH heard her dog barking, which normally indicated someone was at the house that should not be there. (R. p. 194) Concerned DH walked to the window and observed a white Pontiac car she did not recognize. (R. pp. 194-195) DH observed a man exit the vehicle wearing a baseball cap, a t-shirt, and jeans. (R. p. 196) She described the man as "taller" with reddish hair, a beard, and a tattoo on his arm. (R. p. 195) DH watched the man walk to the front porch and look in the window. (R. p. 196) The man then knocked on the door and looked through the door's peephole. (R. p. 196) DH let her dogs out of her room, which she believed led the man to decide not to enter the home. (R. p. 196) DH saw the man walk to the back of the home, and she subsequently heard the home's alarm system beep, which indicated the man entered the garage. (R. p. 197) She testified the garage served as a workshop and it contained all of her father's power tools. (R. p. 198) DH promptly called 911 and her mother. (R. pp. 198-199). She provided law enforcement with a description of the car as well as the intruder. (R. p. 199) DH observed the individual make several trips form the garage to his car while carrying power tools and boxes of items he was intending to take. (R. p. 199) Law enforcement subsequently arrived and DH provided a statement. (R. p. 200) On March 22, 2016, Investigator

Chris Martin of the Laurens County Sheriff's Office showed DH a lineup of individuals and she identified Appellant as the man she observed on her property. (R. pp. 200-201)

Teddy Hampton, DH's father, testified he used the garage for woodworking a couple of hours a week. (R. pp. 211-212) Mr. Hampton stated the garage was treated as a "bonus" room and that he re-did furniture and worked on knickknacks. (R. pp. 212) Mr. Hampton noted the garage, while detached from the house, was only about eight feet away from the house. (R. p. 217) Mr. Hampton testified he worked at Gen III in Fountain Inn and that he was at work at the time of the robbery. (R. p. 212) After being informed there had been a break in at his house, Mr. Hampton jumped in his truck and headed home. (R. p. 212) Upon arriving home, Mr. Hampton noticed the door to the bonus room above the garage was kicked in. (R. p. 213) Mr. Hampton discovered a variety of power tools had been stolen from the room, including a Dewalt drill, a Kobalt air tool, a sawzall, and a power grinder. (R. p. 214)

Deputy Robbie Haupfer of the Laurens County Sheriff's Office responded to a burglary call at the Hampton's address. (R. p. 231) While he was en route, the dispatcher advised him that the caller said the culprit's vehicle was leaving the residence. (R. p. 231) Deputy Haupfer then attempted to catch up with the suspect's vehicle. (R. p. 232) Deputy Haupfer eventually caught up with the vehicle, activated his blue lights, and conducted a stop. (R. p. 232) Appellant was driving the vehicle. (R. p. 233) After being Mirandized, Appellant admitted he was at the Hampton residence and went into a building, but he did not go into the house. (R. p. 233) A search of the vehicle revealed a variety of tools in the back seat, including a Skil saw, a Kobalt box, a Dewalt box, and a grinder. (R. p. 235)

CURRENT APPLICATION

In his application for post-conviction relief, Applicant alleges he is being detained unlawfully for the following reasons:

1. Trial counsel's performance fell below professional norms in violation of *Strickland v. Washington*, 466 U.S. 668 (1984) because trial counsel did not perform an adequate investigation into the facts and circumstances of the crime. Applicant was prejudiced by his lawyers' inadequate performance.
    a. Trial counsel failed to object to Applicant's trial being held in his absence.

b. Trial counsel failed to argue that a directed verdict was appropriate regarding the [redacted] Road building because the garage was not a dwelling within the meaning of the statute.
c. That trial counsel admitted Applicant's guilt and/or guilty conduct without any benefit to Applicant in furtherance of an articulable trial strategy.
d. That trial counsel failed to engage in meaningful plea negotiations before trial.

On November 21, 2023, Applicant filed a second amended application alleging the following additional claims of ineffective assistance of counsel:

1. That defense counsel failed to object to the Solicitor's introduction of sentencing sheets of prior convictions before the Jury (Tra. p. 96, March 29, 2017) Counsel's failure to object allowed improper introduction of prior bad acts and as a result prejudiced the applicant.
2. The Solicitor sent an email to the trial Judge during the Applicant's Trial (Tra. p. 114, March 29, 2017). As a result of this email, the Trial Judge changed his proposed jury charge to the detriment of the Applicant. This contact was an ex parte communication. That Defense Counsel made an objection and Motion for sanctions against the prosecutor. That the proper Motion would have been a Motion for a Mistrial, as the action of the Solicitor prejudiced the Applicant.
3. That in discussing the proper charges to submit to the Jury (Tra. P. 111, March 29, 2017) both the Court and the Solicitor note that it is not contested by the defense that the Applicant entered a) the Childress residence, and b) the Hampton Garage, and c) upon entering the Hampton Garage that the Applicant stole tools. Defense Counsel was ineffective for improperly addressing these issues.

Before this Court are the Laurens County Clerk of Court Records regarding the Applicant's conviction, the Applicant's records from the South Carolina Department of Corrections, the record from Applicant's direct appeal, and the current application for relief.

INEFFECTIVE ASSISTANCE OF COUNSEL, GENERALLY

In a PCR action, Applicant bears the burden of proving the allegations in his application by a preponderance of the evidence. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985); Rule 71.1(e), SCRCP. Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in *Strickland*. First, Applicant must prove that counsel's performance was deficient.

Strickland, 466 U.S. at 687; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Id.* (citing *Strickland*, 466 U.S. at 690). "When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect." *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. *Cullen v. Pinholster*, 563 U.S. 170, 196 (2011); *Harrington v. Richter*, 562 U.S. 86, 109–10 (2011). "[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight." *Yarborough*, 540 U.S. at 6; *see also Murphy v. Davis*, 901 F.3d 578, 592 (5th Cir. 2018) ("[C]ounsel's performance need not be optimal to be reasonable.").

Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117–18, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 694). "This does not require a showing that counsel's actions 'more likely than not altered the outcome,' but the difference between *Strickland*'s prejudice standard and a more-probable-than-not standard is slight and matters 'only in the rarest case.'" *Harrington*, 562 U.S. at 111-12 (quoting *Strickland*, 466 U.S. at 697). "The likelihood of a different result must be substantial, not just conceivable." *Id.* at 112.

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. *Strickland*, 466 U.S. at 696. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness

claim on the ground of lack of sufficient prejudice, that course should be followed. *Id.* at 696-97.

FINDINGS OF FACT & CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the PCR hearing, observed the witnesses, passed upon their credibility, and weighed their testimony. Upon consideration of the evidence presented and legal argument by counsel, as well as the record in this action incorporated by way of the State's return, this Court finds each of the Applicant's claims to be without merit. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings of facts and conclusions of law based upon the probative evidence in the record.

Failure to Object to Applicant's Trial Being Held in His Absence

Applicant alleges Counsel was ineffective for failing to object to Applicant's trial being held in his absence. This Court finds this allegation is without merit. At the evidentiary hearing, Applicant testified he was not present at trial because he was working in Asheville. Applicant explained that neither Counsel or his dad could get in touch with him because he sold his phone for a boat. Applicant testified he believed the trial would be continued, because Counsel had another trial that week. On cross-examination, Applicant testified he signed a bond form which stated he would be tried in his absence. Applicant admitted he was aware the trial was scheduled for that Monday, but he was in Asheville. Applicant testified he explained that he thought it was just a "roll call." Counsel testified that Applicant had notice of his trial date.

This Court finds Applicant has failed to prove he was prejudiced by Counsel's alleged failure to object to a continuance. "A trial judge must determine a criminal defendant voluntarily waived his right to be present at trial in order to try the defendant in his absence, and as such, judge must make findings of fact on the record that the defendant (1) received notice of his right to be present and (2) was warned he would be tried in his absence should he fail to attend." *State v. Ravenell*, 387 S.C. 449, 692 S.E.2d 554 (Ct. App. 2010). "Bond form that provides notice that a defendant can be tried in absentia may serve as the requisite warning that he may be tried in his absence should he fail to appear." *Ravenell*, 387 S.C. 449.

Here, Applicant has failed to show he did not voluntarily waive his right to be present at trial. Applicant admitted that he was aware of his trial date and he signed a bond form stating he would be tried in his absence if he failed to appear. Applicant's own testimony demonstrates he was voluntarily out of the state at the time of trial despite receiving adequate notice of the trial date. Furthermore, Applicant was warned on his bond sheets that he would be tried in his absence if he failed to appear. Counsel credibly testified Applicant had notice of his trial date.

Applicant has failed to establish Counsel was ineffective or that Applicant was prejudiced by Counsel's performance in this regard and therefore relief based upon this allegation is denied.

Failure to Argue the [redacted] Road Garage Was a Dwelling in Directed Verdict Motion

Applicant alleges Counsel was ineffective for failing to argue that a directed verdict was appropriate regarding the [redacted] Road building because the garage was not a dwelling within the meaning of the statute. This Court finds this allegation is without merit. S.C. Code Ann. § 16-11-10 provides, "with respect to the crime[] of burglary... and to all criminal offenses which are constituted or aggravated by being committed in a dwelling house, any house, outhouse, apartment, building, erection, shed or box in which there sleeps a proprietor, tenant, watchman, clerk, laborer or person who lodges there with a view to the protection of property shall be deemed a dwelling house, and of such a dwelling house or of any other dwelling house *all houses, outhouses, buildings, sheds and erections which are within two hundred yards of it and are appurtenant to it* or to the same establishment of which it is an appurtenance shall be deemed parcels." (emphasis added).

Here, the State presented overwhelming evidence Applicant entered a building appurtenant to the victim's residence. Although the detached garage was primarily used as a workshop, the statute is clear that all buildings within two hundred yards of a building in which a person sleeps or lodges is considered a dwelling for the purposes of burglary. *Padgett v. State*, 324 S.C. 22. 29 n. 2, 484 S.E.2d 101, 104 n. 2 (1997). The State presented testimony that the detached garage was only eight feet from the victim's main residence. (R. p. 217). Had Counsel argued a directed verdict would have been appropriate on the basis the detached garage was a dwelling, the motion would have almost certainly been denied. *See State v. Buckmon*,

347 S.C. 316, 555 S.E.2d 402 (2001) ("If there is any direct evidence or substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the appellate court must find the case was properly submitted to the jury").

Applicant has failed to establish Counsel was ineffective or that Applicant was prejudiced by Counsel's performance in this regard and therefore relief based upon this allegation is denied.

Failure to Object to the Introduction of Sentencing Sheets from Applicant's Prior Convictions

Applicant alleges Counsel was ineffective for failing to object to the Solicitor's introduction of sentencing sheets of prior convictions before the Jury. Counsel's failure to object allowed improper introduction of prior bad acts and as a result prejudiced the applicant. This Court finds this allegation is without merit.

"[A] person is guilty of burglary in the first degree if the person enters a dwelling without consent and with intent to commit a crime in the dwelling, and... the burglary is committed by a person with a prior record of two or more convictions for burglary or housebreaking or a combination of both." S.C. Code Ann. § 16-11-311(A)(2). "Introduction of evidence that first-degree burglary defendant had two prior burglary convictions did not violate 'other crimes' rule; prior burglary convictions were offered to prove statutory element of current first-degree burglary charge, not to suggest defendant was bad person or committed present burglary because he had committed prior burglaries." *State v. Benton*, 338 S.C. 151, 526 S.E.2d 228 (2000). Here, the State introduced Applicant's sentencing sheets from his prior convictions to prove an essential element of first-degree burglary not to demonstrate Applicant's propensity to commit crimes. Thus, the sentencing sheets were admissible.

Applicant has failed to establish Counsel was ineffective or that Applicant was prejudiced by Counsel's performance in this regard and therefore relief based upon this allegation is denied.

Failure to Make Motion for Mistrial on Basis of *Ex Parte* Communication

Applicant alleges Counsel should have made a motion for a mistrial after the solicitor allegedly engaged in *ex parte* email communication with the trial court. This Court finds this allegation is without merit. As an initial matter, Counsel raised the issue of the alleged *ex parte* communication at trial. The trial

court found no *ex parte* communication occurred as Counsel was copied on the email in question. This Court agrees. A copy of the email proves Counsel was in fact copied on the email. (R. p. 343). Thus, any motion for mistrial on this basis would have been frivolous.

Furthermore, Counsel was given an opportunity to argue that Applicant should be entitled to a third-degree burglary jury charge following his motion for mistrial. After hearing arguments from Counsel, the trial court ruled a third-degree burglary charge was not warranted in this case. (R. p. 279-280).

Applicant has failed to establish Counsel was ineffective or that Applicant was prejudiced by Counsel's performance in this regard and therefore relief based upon this allegation is denied.

Failure to Engage in Meaningful Plea Negotiations

Applicant alleges Counsel was ineffective for failing to engage in meaningful plea negotiations. This Court finds the record from Applicant's trial and Counsel's credible testimony refute this allegation.

Applicant testified he informed Counsel he wanted a guilty plea in drug court. Counsel testified he communicated this to the Solicitor. Counsel attempted to get them to lower the charge to Burglary 3rd Degree, but the Solicitor refused due to Applicant's criminal history. During Applicant's sentencing Counsel informed the trial court "we attempted to do a drug-court situation, which the Solicitor chose not to do." (R. p. 168). This Court finds Applicant has failed to show what additional actions Counsel should have taken during plea negotiations. Applicant avers he wanted a plea in drug court; however, Counsel credibly testified he made this request to the Solicitor and it was rejected by the Solicitor in the exercise of his discretion.

Applicant has failed to establish Counsel was ineffective or that Applicant was prejudiced by Counsel's performance in this regard and therefore relief based upon this allegation is denied.

Failing to Address Trial Court and Solicitor's Comments Regarding Applicant's Guilty Conduct

Applicant alleges "that in discussing the proper charges to submit to the Jury (Tra. P. 111, March 29, 2017) both the Court and the Solicitor note that it is not contested by the defense that the Applicant entered a) the Childress residence, and b) the Hampton Garage, and c) upon entering the Hampton Garage

that the Applicant stole tools. Defense Counsel was ineffective for improperly addressing these issues." This Court finds this allegation is without merit.

The alleged comments referred by Applicant occurred during the jury charge conference where the Solicitor and Counsel were arguing over the lesser included offenses to be charged. Notably, these arguments occurred outside the presence of the jury. After hearing arguments, the trial court ruled he would charge the jury only on Burglary First Degree regarding the Childress residence, and first- and second-degree burglary regarding the Hampton residence. Applicant has failed to demonstrate how Counsel should have further addressed these comments; thus, this Court finds Counsel was not deficient.

Additionally, Applicant was acquitted of burglary at the Childress residence so he was not prejudiced by any performance of Counsel as it relates to that charge. Regarding the Hampton garage, the State presented overwhelming evidence that Applicant burglarized the residence. Ms. Hampton personally witnessed Applicant stealing the tools from the Hampton garage and identified him in a photo lineup presented by law enforcement. Deputy Haupfer testified he initiated a traffic stop of Applicant's vehicle following the burglary where he found a variety of tools in the back seat. Furthermore, Applicant admitted at the evidentiary hearing that he entered the garage and stole the tools.

Applicant has failed to establish Counsel was ineffective or that Applicant was prejudiced by Counsel's performance in this regard and therefore relief based upon this allegation is denied.

CONCLUSION

This Court finds and concludes Applicant has not established any constitutional violation or deprivation that would entitle him to post-conviction relief. This Court finds Counsel was not deficient in any manner, nor was Applicant prejudiced by Counsel's representation.

Based upon the foregoing, this Court finds the **APPLICATION** for post-conviction relief should be and **IS** therefore **DENIED** and **DISMISSED** with prejudice.

Applicant is noticed that he must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review pursuant to Rule 203, SCACR. Applicant has a right to appellate counsel's assistance in seeking review of the denial of PCR. *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to Rule 243, SCACR, for appropriate procedures for appeal.

AND IT IS SO ORDERED this 4th day of June, 2025.

J. DERHAM COLE, PRESIDING JUDGE
The Eighth Judicial Circuit Court