

RECEIVED

Jun 08 2026

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Newberry County

Honorable S. B. Doby, Circuit Court Judge

JEFFREY GLENN MCCOY,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-001779

APPENDIX

JOANNA K. DELANY
Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ZACHARY W. JONES
Assistant Attorney General
P.O. Box 11629
Columbia, SC 29211
(803) 734-3737

ATTORNEY FOR PETITIONER

DAVID M. STUMBO
Solicitor, Eighth Judicial Circuit
1226 College Street
Newberry, SC 29108
(803) 321-2123

ATTORNEYS FOR RESPONDENT

VOLUME I OF II
PAGES 1-500

INDEX

INDEX	i
PRE-TRIAL TRANSCRIPT DATED APRIL 22, 2013.....	1
TRIAL TRANSCRIPT DATED APRIL 23-24, 2013	120
APPLICATION FOR POST-CONVICTION RELIEF	477
RETURN.....	536
AMENDED APPLICATION FOR POST-CONVICTION RELIEF	540
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED MARCH 31, 2025	542
ORDER OF DISMISSAL.....	605
INDICTMENTS	618
SENTENCING ORDER.....	642
SENTENCE SHEETS	643

STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSIONS
 COUNTY OF NEWBERRY)

ORIGINAL

State of South Carolina,)
)
 PLAINTIFF,)
)
 -VS-)
)
 Jeffrey Glenn McCoy,)
)
 DEFENDANT.)
 _____)

PARTIAL TRANSCRIPT
 SUPPRESSION HEARING
 2012-GS-36-0872; 0873;
 0874; 0876; 0877; 0878;
 0879; 0880; 0881; 0882;
 0883, 0884

BEFORE THE HONORABLE FRANK W. ADDY, JR., JUDGE

APRIL 22, 2013

NEWBERRY, SOUTH CAROLINA

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

C. Dale Scott, Esq.
 Yates Brown, Esq.
 For the State

Charles Verner, Esq.
 For the Defendant

REMA K. GANTT THOMAS
 CIRCUIT COURT REPORTER

I N D E X

	PAGE NO.
Exhibit List	4
Opening remarks.	5
Petit Jury Qualification	8
Jury Selection	8
In-Camera Testimony of Witnesses	
Boris Alvarado	
Direct	21
Cross.	31
Randy Malloy	
Direct	42
Cross.	53
Redirect	61
Desiree Busko	
Direct	63
Cross.	67
Kevin Goodman	
Direct	73
Cross.	83
Redirect	89

Jeffrey Glenn McCoy

Direct	90
Cross.	92
Arguments of Counsel	94
Ruling of the Court.	114
Court Reporter's Certification	119

E X H I B I T S

PAGE NO.

State's Exhibit Number One (EV), Bear Village Diagram.	43
Court's Exhibit Number One (ID), Defense Photo of Inside of Defendant's Vehicle.	90
Court's Exhibit Number Two (ID), Hotel Search Warrant.	77
Court's Exhibit Number Three (ID), Car Search Warrant.	77

1 (The defendant, together
2 with counsel, was personally present in the
3 courtroom.)

4 THE COURT: All right, ladies and
5 gentlemen, we are ready to proceed.

6 Solicitor, if you will call your next
7 case, please, sir.

8 MR. SCOTT: Thank you, Your Honor. The
9 State calls Indictments -- this is a case State
10 versus Jeffrey Glenn McCoy. The State is calling
11 Indictments 12-GS-36-0872 for safecracking;
12 Indictment 12-GS-36-0874, burglary; Indictment 12-
13 GS-36-0877, another burglary; 12-GS-36-0878,
14 burglary; 12-GS-36-0879, petit larceny; 12-GS-36-
15 0880; petit larceny; 12-GS-36-0881, possession of
16 burglary tools; 12-GS-36-0882, burglary; 12-GS-36-
17 0883, burglary; 12-GS-36-0884, grand larceny.

18 Your Honor, these were true billed by
19 Newberry County Grand Jury August 24, 2012.

20 Your Honor, may I approach?

21 THE COURT: Sure.

22 All right, ladies and gentlemen, we're
23 about to begin the case of the State of South
24 Carolina versus Jeffrey Glenn McCoy. And I'll have
25 some questions that I need to ask you in order to

1 determine if you can serve on this particular case.

2 Again, remember that you're still under
3 oath from earlier this morning. And if you need to
4 respond to any question, I'm going to ask you to
5 stand up and give me a response after I ask the
6 question.

7 Now, in this case the State of South
8 Carolina has presented it on several indictments
9 that basically charge Mr. McCoy with the offenses of
10 safecracking, five counts of burglary, two counts of
11 petit larceny, one count of grand larceny, and one
12 count of possession of burglary tools. And I am
13 told by the State that this incident allegedly took
14 place on May the 26th and 27th.

15 Now, before we begin, ladies and
16 gentlemen, let me explain that the fact Mr. McCoy
17 was charged and indicted in this case is of course
18 not evidence in any way, shape, or form of guilt.
19 The indictment is simply the written instrument by
20 which a charge is brought into this court. It's
21 merely a piece of paper, okay, and does not prove in
22 any sense of the word any of the allegations
23 contained in the indictment.

24 Again, an indictment is just a naked
25 accusation, okay? So please do understand that.

1 The State of South Carolina in this case will be
2 represented by Deputy Solicitor Dale Scott and
3 Assistant or Deputy Solicitor Yates Brown.

4 Gentlemen, if you will stand and introduce
5 yourselves and who is sitting at the counsel table
6 with you.

7 MR. SCOTT: Thank you, Judge.

8 I'm Dale Scott. I'm a Deputy Solicitor
9 here in the Eighth Circuit. Primarily, I'll be in
10 Laurens and Newberry County. With me is Yates
11 Brown, Assistant Solicitor with the Eighth Circuit.
12 Mainly, he's out of Abbeville, and I'm kind of
13 taking his place up here in Newberry.

14 Lt. Goodman is here with the Newberry
15 Police Department. Investigator Jason Stuhr, he's
16 an officer with the Newberry Police Department.
17 Desiree Busko is also an officer with the Newberry
18 Police Department. Boris Alvarado, he is an officer
19 here with Newberry Police Department. And, finally,
20 Harold Malloy, also an officer with Newberry Police
21 Department.

22 THE COURT: Thank you, Mr. Scott.

23 The defendant in this case is being
24 represented by Charles Verner.

25 Mr. Verner, if you would stand and

1 introduce yourself and certainly your client to the
2 jury.

3 MR. VERNER: My name is Charles Verner.
4 I'm an attorney, a lawyer here in Newberry. I
5 practice with my father, Jay Verner. We're across
6 the street -- Charles Verner. I'm representing Jeff
7 McCoy -- Jeff McCoy.

8 THE COURT: Thank you, Mr. Verner.

9 (Whereupon, the petit jury
10 was qualified, after which the following proceedings
11 were had:)

12 THE COURT: The way we do this, ladies and
13 gentlemen, is if your name is called, what I need
14 you to do is bring with you any personal belongings,
15 come forward, stand right here where the microphone
16 is, and turn around and face towards the back of the
17 courtroom where our clock is where you came in.

18 And at that point in time, the State will
19 have an opportunity to either seat you or to excuse
20 you. The defense will have a similar opportunity to
21 seat you or excuse you. Again, please just come
22 forward, bring with you any property, purse,
23 belongings that you brought to court. Stand here at
24 the microphone and turn around and face towards the
25 back.

1 I believe it's five and ten, correct?

2 CLERK OF COURT: Sir?

3 THE COURT: Ten and five?

4 MR. SCOTT: It's ten and five, yes, sir.

5 THE COURT: Madam Clerk?

6 CLERK OF COURT: Juror number 120,
7 Jacqueline Ratcliffe. What says the State?

8 MR. SCOTT: Please excuse the juror.

9 CLERK OF COURT: You can have a seat.
10 Thank you, Ms. Ratcliffe.

11 Number 133, Michelle Shealy. What says
12 the State?

13 MR. SCOTT: Please present the juror.

14 CLERK OF COURT: The defense?

15 MR. VERNER: I'm going to excuse this
16 juror.

17 CLERK OF COURT: You can have a seat.
18 Thank you, Ms. Shealy.

19 One thirty-one, Carrie Sexton. What says
20 the State?

21 MR. SCOTT: Please present the juror.

22 CLERK OF COURT: The defense?

23 MR. VERNER: Seat the juror, please.

24 CLERK OF COURT: Have a seat in the jury
25 box.

1 Number 54, Carla Fisher. What says the
2 State?

3 MR. SCOTT: Please present the juror.

4 CLERK OF COURT: The defense?

5 MR. VERNER: Please seat her. I'm sorry,
6 this is who?

7 THE COURT: Ms. Fisher.

8 CLERK OF COURT: Ms. Fisher.

9 MR. VERNER: Number 54, I thought I had
10 seated her. I apologize.

11 CLERK OF COURT: Have a seat in the jury
12 box.

13 Number 79, Sherry Hellams. What says the
14 State?

15 MR. SCOTT: Please present the juror.

16 CLERK OF COURT: The defense?

17 MR. VERNER: Please seat her.

18 CLERK OF COURT: Number 70, Gary Grooms.

19 What says the State?

20 MR. SCOTT: Please present the juror.

21 CLERK OF COURT: The defense?

22 MR. VERNER: Your Honor, I would ask for a
23 cause strike. My understanding is the State is
24 currently representing Mr. Grooms as a victim of a
25 criminal matter.

1 THE COURT: Oh, okay.

2 MR. VERNER: And that case is ongoing now,
3 so I'd ask for a strike for cause.

4 THE COURT: I may have inartfully worded
5 that question earlier. Do you all have a pending
6 case involving Mr. Grooms?

7 MR. SCOTT: I don't immediately recognize
8 his name.

9 MR. VERNER: It's Grooms, Mills I think is
10 the lady.

11 MR. SCOTT: He indicates that we do, Your
12 Honor.

13 THE COURT: Mr. Grooms, thank you so much.
14 I apologize for not being more specific in my
15 earlier question.

16 CLERK OF COURT: Number 138, Bonnie Sims.
17 What says the State?

18 MR. SCOTT: Please present the juror.

19 CLERK OF COURT: The defense?

20 MR. VERNER: Please seat Ms. Sims.

21 CLERK OF COURT: Number 139, Crystal
22 Sligh. What says the State?

23 MR. SCOTT: Please excuse the juror.

24 CLERK OF COURT: You can have a seat.
25 Thank you, Ms. Sligh.

1 Number 39, Princess Cromer. What says the
2 State?

3 MR. SCOTT: Please present the juror.

4 CLERK OF COURT: The defense?

5 MR. VERNER: Please seat Ms. Cromer.

6 CLERK OF COURT: Number 92, Latasha Jones.
7 What says the State?

8 MR. SCOTT: Please excuse the juror.

9 CLERK OF COURT: You can have a seat.
10 Thank you, Ms. Jones.

11 Number 98, Nicholas Linger. What says the
12 State?

13 MR. SCOTT: Please excuse the juror from
14 this trial.

15 CLERK OF COURT: You can have a seat, Mr.
16 Linger. Thank you.

17 Number 74, Mary Harmon. What says the
18 State?

19 MR. SCOTT: Please present the juror.

20 CLERK OF COURT: The defense?

21 MR. VERNER: Please seat Ms. Harmon in the
22 jury.

23 CLERK OF COURT: Number 34, Sammuel
24 Conner. What says the State?

25 MR. SCOTT: Please excuse the juror.

1 CLERK OF COURT: You can have a seat.
2 Thank you, Mr. Conner.
3 Number 21, Sandra Brown. Any challenge
4 for cause by the State?
5 MR. SCOTT: Please present the juror.
6 CLERK OF COURT: The defense?
7 MR. VERNER: I don't seat Ms. Brown.
8 CLERK OF COURT: Please have a seat.
9 Number 136, Barbara Silman. Any challenge
10 for cause by the State?
11 MR. SCOTT: Please present the juror.
12 CLERK OF COURT: What says the defense?
13 MR. VERNER: Please seat Ms. Silman.
14 CLERK OF COURT: Number 26, Ashley Cannon.
15 Any challenge for cause by the State?
16 MR. SCOTT: Please present the juror.
17 CLERK OF COURT: The defense?
18 MR. VERNER: Please seat Ms. Cannon.
19 CLERK OF COURT: Number 58, Chazetaye
20 Gaines. Any challenge for cause by the State?
21 MR. SCOTT: Please present the juror.
22 CLERK OF COURT: The defense?
23 MR. VERNER: Please seat Ms. Gaines.
24 CLERK OF COURT: One twenty-three, Stacy
25 Rikard.

1 THE COURT: Madam Clerk, what number was
2 that?

3 MR. SCOTT: One twenty-three.

4 CLERK OF COURT: One twenty-three.

5 Any challenge for cause by the State?

6 MR. SCOTT: Please present this juror.

7 CLERK OF COURT: The defense?

8 MR. VERNER: Please seat Ms. Rikard.

9 CLERK OF COURT: Number 27, Shakilah
10 Carmichel. Any challenge for cause by the State?

11 MR. SCOTT: Please present this juror.

12 CLERK OF COURT: The defense?

13 MR. VERNER: Please seat Ms. Carmichel.

14 CLERK OF COURT: Number 62, Stefan

15 Glasgow. Any challenge for cause by the State?

16 MR. SCOTT: Please present this juror.

17 CLERK OF COURT: The defense?

18 MR. VERNER: Please seat Mr. Glasgow.

19 THE COURT: We're going to pick one
20 alternate. Strikes would be one and two.

21 CLERK OF COURT: Number 11, Batesi Bates.

22 What says the State?

23 MR. SCOTT: Please present the juror
24 alternate.

25 CLERK OF COURT: The defense?

1 MR. VERNER: Please seat Ms. Bates.

2 THE COURT: All right, any issues
3 concerning the selection or composition of the jury
4 from the State?

5 MR. SCOTT: Not from the State, Your
6 Honor.

7 THE COURT: From the defense?

8 MR. VERNER: No, sir.

9 THE COURT: Very good. Ladies and
10 gentlemen, if you were picked on this jury, I need
11 you to go back in this room very briefly. I'm going
12 to excuse the rest of the jury panel. I'll bring
13 you back, and then I'll give you instructions on
14 when I need you back.

15 (Whereupon, the jury left the courtroom at
16 1:10 p.m., after which the following proceedings
17 were had:)

18 THE COURT: Let the record reflect that
19 the jury is out. Ladies and gentlemen of the jury
20 panel who were not selected on this first case, what
21 I'm going to need you to do is to call back tomorrow
22 night. You should have a number on the back of this
23 card. It's a 321 number, I think -- 321-2110. And
24 call back tomorrow night after 6:00.

25 I'm not sure how long this case is going

1 to last, and I'm not sure what we have behind this
2 for later on this week. So the easiest thing to ask
3 you to do is to call in and simply follow whatever
4 those instructions are.

5 So, again, don't forget to call in to that
6 number tomorrow night after 6:00, okay? If you were
7 protected for later on this week, you won't need to
8 call that number if you're protected. I hope you
9 are protected for the second trial, so consider
10 yourselves protected for the second trial and
11 excused for the week, okay?

12 Otherwise, if I did not tell you that, I
13 need you to call that number tomorrow night after
14 6:00 and follow whatever those instructions are,
15 okay? If you're called back for Wednesday, it would
16 be to report Wednesday. I don't know, but you will
17 find out. If you need a work excuse or an excuse
18 for school --

19 I think you will those to them or
20 something along those lines?

21 CLERK OF COURT: Yes, sir, right.

22 THE COURT: You will get one in the mail
23 if you need a work excuse. You'll get a check, what
24 you get for showing up today. And I just mention
25 that in the event that we don't see each other

1 again. Certainly, I hope we do. But if we don't
2 see each other again, you will get a work excuse
3 with your check or a school excuse with your check.

4 (Whereupon, the petit jury panel was
5 dismissed, after which the following proceedings
6 were had:)

7 THE COURT: Let's have the jury back out.

8 (Whereupon, the jury entered the courtroom
9 at 1:14 p.m., after which the following proceedings
10 were had:)

11 THE COURT: Let the record reflect that
12 the jury is back and seated. Ladies and gentlemen
13 of the jury, we're going to go ahead and take our
14 lunch break at this time. I'm told that there are
15 some other matters that I need to attend to. So I'm
16 going to ask that you be back here at the courthouse
17 at 3:00 today.

18 When you come in, just report downstairs.
19 There's a self-help center that's operated by the
20 local bar. It's right next to Judge Griffith's
21 office. That's where you're going to report to,
22 okay. And we'll let the deputies know downstairs to
23 guide you all in that direction.

24 So if we're still involved with some other
25 cases up here or some other matters, I'll have you

1 report to that self-help center. Otherwise, they'll
2 direct you back into the courtroom, okay. Now, if
3 you have to go to lunch with a friend or a family
4 member or one of your fellow jurors, that's
5 perfectly fine. But please don't discuss the case.

6 I'll give you further instructions on why
7 this is important later. But understand that any
8 time we take a break, it will be very important that
9 you not talk about the case, even with your fellow
10 jurors, until such time as I tell you to start your
11 deliberations, okay. And that's out of fairness to
12 all concerned.

13 So, again, if you go to lunch with a
14 fellow juror, friend, or family member, don't talk
15 about the case. That should be basically an easy
16 way to tell them, because at this point in time, you
17 know absolutely nothing about this case. You have
18 not heard the first witness. You have not received
19 any sort of argument from the attorneys involved, so
20 you know nothing about this case, so there's nothing
21 to talk about, all right.

22 With that, be back at the courthouse if
23 you could around 3:00. We'll start the trial
24 shortly thereafter. I'll look forward to seeing you
25 all then. Have a great lunch, and I'll see back at

1 3:00.

2 (Whereupon, the jury left the courtroom at
3 1:14 p.m.)

4 THE COURT: The record should reflect that
5 the jury is out. Mr. Verner, is your client out on
6 bond?

7 MR. VERNER: He's in custody, Judge.

8 THE COURT: If you could, let's meet back
9 in here around 2:15, 2:30, and then we'll be back
10 with the case.

11 (Court in recess.)

12 THE COURT: Let's go ahead and go back on
13 the record in the State versus Jeffrey McCoy. We
14 have the defendant present with his attorney. The
15 State is present, as well.

16 At this point, Mr. Verner, I'm happy to
17 entertain anything that you might have.

18 MR. VERNER: Your Honor, we would move to
19 suppress the search of the car and the subsequent
20 hotel room --

21 THE COURT: All right.

22 MR. VERNER: -- on Fourth Amendment
23 grounds.

24 THE COURT: Solicitor, do you want to
25 proceed at this point, or can you give me -- it's my

1 understanding from talking to the attorneys in
2 chambers that essentially -- are you talking about
3 merely the trunk of the car, the items that were
4 found in the trunk, Mr. Verner?

5 MR. VERNER: The entire search of the car,
6 Your Honor --

7 THE COURT: Okay.

8 MR. VERNER: -- under any theory whether
9 it's inventory or -- my understanding was there was
10 a search warrant issued at some point. My
11 understanding is that occurred after the car was
12 initially searched, though.

13 THE COURT: All right.

14 Solicitor, do you want to take testimony
15 on this issue?

16 MR. SCOTT: Yes, sir. I think that would
17 probably be the best thing to do.

18 THE COURT: Go ahead and call your first
19 witness.

20 MR. SCOTT: Boris Alvarado.

21 (Whereupon, the witness was sworn, after
22 which the following proceedings were had:)

23 THE COURT: Mr. Scott.

24 MR. SCOTT: Thank you, Your Honor.

25 BORIS ALVARADO, having first been duly

1 sworn, testified as follows:

2 DIRECT EXAMINATION

3 BY MR. SCOTT:

4 Q All right, Mr. Alvarado, were you working
5 with the Newberry Police Department May 27th of last
6 year?

7 A Yes, sir.

8 Q And were you on patrol that night?

9 A Yes, sir.

10 Q Did you have occasion to patrol Bear
11 Village Plaza?

12 A Yes, sir.

13 Q And that's in Newberry County?

14 A Yes, sir.

15 Q And were you aware of an incident, a
16 burglary type crime, that had occurred the night
17 prior?

18 A Yes, sir.

19 Q And where was that?

20 A At the Wilson -- Shoppes on Wilson Road.

21 Q Okay. And is that the one we discussed
22 earlier that's 1335 Wilson with Check Into Cash and
23 Boost Mobile, Regional Finance, Jackson-Hewitt, a
24 Barber Shop--

25 A That is correct, sir.

Boris Alvarado - Direct

22

1 Q Okay. And what was your knowledge of that
2 particular incident?

3 A I was informed by the off-going sheriff
4 that a burglary had occurred, that the person went
5 in through the side through the --

6 Q I apologize. I'm going to ask the officer
7 just speak a little louder. I'm having trouble
8 hearing you.

9 A Sure. I was informed by the off-going
10 sheriff that a burglary had occurred at Shoppes on
11 Wilson at 1335 Wilson Road, that a business -- all
12 those businesses were broken into by an individual.
13 We increased patrols at night.

14 Q All right. And is this where he bored the
15 holes all through the walls to get from one business
16 to another?

17 A Yes. But from my understanding, they made
18 entrance through the barber shop, and they went
19 through the walls adjacent to all the businesses.
20 Jackson-Hewitt was the next, and Boost Mobile being
21 the next business in line, and the Regional Finance.
22 Also, I was told that they were going to attempt to
23 go through the side wall from Regional Finance to
24 the Check Into Cash. But I believe they couldn't
25 make it through, but they then went outside and went

Boris Alvarado - Direct

23

1 in through the back wall.

2 Q All right. Were you aware of any tools or
3 anything like that left behind?

4 A I was told that there were some tools that
5 were left at the Check Into Cash that were left in
6 there. It was a grinder, some blades I believe or
7 grinder wheels, power tools, maybe power tools.

8 Q Were you told any information about a safe
9 that was in Check Into Cash that there was some
10 evidence it was attempted to be broken into?

11 A Yes, I was told that the safe had some
12 markings where they were attempting to break into
13 the safe.

14 Q All right. Now, that would have been May
15 26th?

16 A That would be on May 27th when I was told.
17 I was told May 27th. May 26th is when those
18 businesses were broken into, that Saturday through
19 Sunday morning, the 27th. It was early in the
20 morning hours.

21 Q Okay. Let me clarify. So the one you
22 just described where it goes through the walls, that
23 happens on May 26th?

24 A The late hours of May 26th or early hours
25 of May 27th.

1 Q Got you, okay. And you were on patrol May
2 27th. What day of the week is that?

3 A That's that Sunday evening. My hours were
4 Sunday evening from 6 p.m. to Monday morning at 6
5 a.m.

6 Q Okay. That Sunday evening about 8:45 or
7 so, did you respond to Bear Village Plaza?

8 A I went to the Bear Village Plaza to do a
9 property check.

10 Q Would it be safe to say that maybe the
11 property checks were a little more in earnest after
12 what happened the night before?

13 A Yes, sir. Due to the fact that the
14 properties were in my zone of responsibility, not
15 only from my supervisor we were told to increase
16 patrolling, check all properties throughout the
17 night.

18 Q All right. Tell me what happened when you
19 went to Bear Village that night.

20 A I parked my vehicle behind the Ryan's
21 restaurant in the Bear Village parking lot, and I
22 went on foot around to the back side of the
23 businesses. I checked -- I started checking with
24 the Comcast building back doors to make sure they
25 all had been secured.

Boris Alvarado - Direct

25

1 I'm going my way around to the corner of
2 the businesses, and I notice that one of the storage
3 facilities was open. I checked that facility. When
4 I went around, I encountered the defendant. He was
5 kneeled down behind an air-conditioning unit. As I
6 turned around, he stood up and walked towards me.

7 Q Did that startle you?

8 A In a sense, yes, it did. I was not
9 expecting anyone to be back there.

10 Q What did he say when he saw you?

11 A He asked me what I was doing back there.

12 Q All right. Then what happened?

13 A I told him that this is my duties, and I
14 asked him what he was doing.

15 Q Did he give you his name?

16 A Yes, sir. He gave me his name and date of
17 birth.

18 Q All right. Were you able to run his
19 information?

20 A Yes, sir. I ran it with dispatch, ran his
21 information. It came back to the defendant out of
22 Tennessee.

23 Q Okay. So you told you his name was
24 Jeffrey McCoy, is that right?

25 A Yes, sir.

1 Q And you ran his information, and it came
2 that he was out of Tennessee?

3 A Yes, sir.

4 Q Okay. At that point, did you request any
5 backup?

6 A Yes, sir, I surely did.

7 Q Did Desiree Busko show up?

8 A Officer Busko showed up to assist me as a
9 backup officer. And I also requested that Sgt.
10 Malloy come by, as well.

11 Q Okay. And was Mr. McCoy under arrest at
12 this point?

13 A No, sir.

14 Q Okay. What did Ms. Busko do when she
15 arrived?

16 A As soon as she arrived, I asked her to go
17 back through the businesses and check to make sure
18 that nothing was tampered as of where Mr. McCoy was
19 first -- where we first saw Mr. McCoy.

20 Q Where you had him, I guess it would be an
21 investigative detention type situation?

22 A After we found the tools that he had in
23 the business, we did put him under investigative
24 detention.

25 Q Okay, let's back up. You're still at the

Boris Alvarado - Direct

27

1 point where you're getting his name, and you're
2 running his information, finding out he's from
3 Tennessee.

4 A Yes.

5 Q You testified that you had Busko search
6 the area where he had been, where you had initially
7 seen him?

8 A Yes, sir.

9 Q Okay. Because whenever he approached you,
10 you were some distance away from where he had
11 initially been?

12 A Yes, sir. He walked up towards me, and we
13 both met halfway at that point.

14 Q Well, you couldn't see whoever he was?

15 A I had no view of him where he was standing
16 initially.

17 Q Okay. Did Ms. Busko go over there where
18 he had been?

19 A Yes, sir.

20 Q And what happened next?

21 A She informed me that there were some
22 tools.

23 Q Okay.

24 A And at that time when Sgt. Malloy arrived,
25 after having another officer as a backup, I placed

Boris Alvarado - Direct

28

1 the defendant, Mr. McCoy, into an investigative
2 detection.

3 Q All right. Did you read him his Miranda
4 rights?

5 A Not at that point.

6 Q Okay. At what point was he under arrest?

7 A He was under arrest when we confirmed that
8 those were burglary tools and after I searched his
9 person and found the other tools, as well. He was
10 then -- he said that he would cooperate any longer.
11 And at that point, he was placed in the vehicle and
12 he was read his Miranda rights. That's when we
13 arrested him for attempted break-in.

14 Q Okay. Let me just make sure I understood
15 right. You're speaking with him, and Ms. Busko
16 finds a number of tools in a bag. Is that what you
17 said?

18 A Yes, sir.

19 Q Where he had been?

20 A Yes, sir.

21 Q Okay. And what does he say when y'all
22 find those tools?

23 A At that point, he did request to be taken
24 downtown, and he stated that he would not cooperate
25 with us. And we made the decision to place him

Boris Alvarado - Direct

29

1 under arrest for attempted break-in. And his
2 Miranda rights were read, and we removed all the
3 items from his person.

4 Q What did he have on his person?

5 A He had a ratchet type of socket or a
6 wrench with a socket. I can't recall what it's
7 called. Also, he had four sets of adapters for that
8 tool. And he had his wallet with a certain amount
9 of money. I can't recall the total amount, but it's
10 notated in the report. Also, he had a pair of
11 gloves, work gloves when he was carried out. They
12 were on his hands.

13 Q Okay. So based on the stuff that was
14 found where he had been, then you said you searched
15 him for officer safety. Is that what you said?

16 A We patted him down for officer safety for
17 any type of weapons.

18 Q That's when you found his other tool?

19 A That's when I found the tool, yes, sir. I
20 would not have -- I didn't -- once we pat him down,
21 it was through the clothes, on top of the clothes.
22 And I didn't remove any items.

23 Q And at that point, you put him under
24 arrest?

25 A At that point, he was put under arrest.

1 And he sat down, and he stated that he didn't want
2 to cooperate with us any longer, and he wanted to go
3 downtown and speak with the investigator.

4 Q Okay. And then at that point, Randy
5 Malloy arrived on the scene?

6 A Randy Malloy was there, yes.

7 Q All right. Is that everything that you
8 did that particular night?

9 A Until he was transported, yes, sir.

10 Q What did you do after he was transported?

11 A After he was transported, I stayed with
12 Investigator Kevin Goodman, and that's when we went
13 through all the businesses in there to check
14 everything and document it and also photograph that
15 area.

16 Q Everything was okay in those buildings
17 that night, right?

18 A Yes, sir. And I believe the exception of
19 the initial location where he was seen, I believe
20 some phone lines were cut, but I cannot recall that.

21 Q There's no evidence he had gotten inside
22 of those, right?

23 A No -- no, sir.

24 Q Thank you. Please answer any questions
25 Mr. Verner may have.

Boris Alvarado - Direct

31

1 THE COURT: Mr. Verner?

2 CROSS-EXAMINATION

3 BY MR. VERNER:

4 Q Officer Alvarado, when you encountered Mr.
5 McCoy, he was behind the Bear Village shopping strip
6 mall area?

7 A Yes, sir.

8 Q Do you remember specifically behind which?

9 A I believe it was 2844, 2840, if I'm
10 correct on those numbers.

11 Q Which store would that be?

12 A I believe it's the Citi Financial.

13 Q Okay.

14 A If I'm not mistaken.

15 Q Now, Bear Village is a large parking lot
16 that's kind of a strip mall that's off the road --

17 A Yes.

18 Q -- in the back?

19 A Yes, sir.

20 Q And I think at some point -- I don't know
21 if it's still that way -- but the Subway restaurant
22 would be on the far left corner?

23 A At the far left corner, yes, sir.

24 Q And on the far right, it's kind of a
25 pawnshop?

1 A The pawnshop would be immediately beside
2 the Subway.

3 Q But those two would be the two basically
4 ends of the block, the Subway and the pawnshop?

5 A Yes, sir.

6 Q Okay.

7 A It's in an L shape, reverse L shape,
8 looking from the pawnshop to the other side, and
9 Comcast would be the first as you come into it.

10 Q But the turn is on the side furthest away
11 from the Subway store, the L? It bends on the side
12 furthest --

13 A Yes, sir.

14 Q Okay. And he was behind the -- would Citi
15 Financial be closer to the Subway side of the block?

16 A No, sir, it would be closer to the
17 pawnshop.

18 Q Okay. Which would be on the far right --

19 A Yes, sir.

20 Q -- as you're looking at the strip mall?

21 A Yes, sir.

22 Q And then I think there is a -- when he was
23 taken into custody or investigative detention by
24 you, was he in possession of a vehicle?

25 A No, sir.

Boris Alvarado - Cross

33

1 Q Did you have anything to do with the
2 securing of the vehicle?

3 A I was present when we performed an
4 inventory of the vehicle before it was towed.

5 Q Okay. Describe just basically what the
6 vehicle was.

7 A The vehicle is an olive in color or green
8 in color Ford Taurus --

9 Q Okay.

10 A -- with Tennessee license plates that were
11 checked with the Department of Motor Vehicles, and
12 it returned the vehicle owner to Mr. McCoy.

13 Q Okay. Now, again, approximately what time
14 of the evening did you come across Mr. McCoy?

15 A I believe it was between the hours of
16 2047, if I remember correctly.

17 Q Okay. About almost 9:00, 8:30 to 9:00?

18 A Yes, sir.

19 Q Okay. And the report seemed to indicate
20 that Officer Malloy is the actual officer who
21 discovered the vehicle?

22 A Yes, sir.

23 Q Okay. When he was looking for the
24 vehicle, you remained with Mr. McCoy?

25 A Mr. McCoy was already transported to the

1 police department --

2 Q Okay.

3 A -- as he requested.

4 Q Okay. But were you still at the Bear
5 Village location?

6 A I was at the Bear Village with
7 Investigator Goodman.

8 Q Where was the car located when you went to
9 it?

10 A The vehicle was parked at the Bi-Lo
11 parking lot.

12 Q Okay. Was it lawfully parked?

13 A Yes, sir.

14 Q Okay. And was it locked?

15 A Yes, sir.

16 Q Okay. And there was nobody else in it?

17 A Nobody, no, sir.

18 Q Was it in close proximity to where Mr.
19 McCoy was taken into custody by you?

20 A In the parking lot that's closest to the -
21 - in the big parking lot for the other shopping
22 center, which Bi-Lo is included, the vehicle was
23 parked closest to the Bear Village side.

24 Q Okay. But Bi-Lo is not in the same
25 parking lot area as the Bear Village?

Boris Alvarado - Cross

35

1 A No, sir.

2 Q That's an entirely different block of
3 Wilson Road?

4 A Yes, sir.

5 Q Okay. And was the tag proper --

6 A Yes, sir.

7 Q -- on the vehicle? The only reason the
8 vehicle was of interest was that it was the
9 Tennessee tags registered back to the defendant, Mr.
10 McCoy?

11 A We towed the vehicle as we had custody of
12 him, and he was placed under arrest at that time.
13 And we took custody of the vehicle, as well.

14 Q But my question, I guess, before we get to
15 it is, except for the fact that the tag registered
16 to Mr. McCoy --

17 A Yes, sir.

18 Q -- you wouldn't have had any other
19 interest in the vehicle. It was legally parked in a
20 place where it was entitled to be?

21 A Yes, sir.

22 Q And it was not in his possession or
23 running at the time he was arrested?

24 A Yes, sir.

25 Q Okay. About what time did you get to the

1 gray Taurus?

2 A The green Taurus, I arrived after we
3 secured from the Bear Village.

4 Q Okay.

5 A I moved to the parking lot.

6 Q About how long after you had arrested Mr.
7 McCoy did you get to the vehicle? You can ballpark
8 it, just estimate.

9 A I'd estimate it 45 minutes to an hour.

10 Q Okay. So maybe around 10:00 at night?

11 A More close to it I believe that night,
12 close to 10:00 if we're going to be put a ballpark
13 on it.

14 Q Okay. And Officer Malloy had already --
15 he was already stationed at that vehicle?

16 A When I arrived, yes, sir.

17 Q Okay. Now, the report indicates that for
18 some period of time that law enforcement kind of
19 kept an eye on it but didn't approach it. Were you
20 part of the surveilling?

21 A No, sir.

22 Q Was it already opened at the time that you
23 came to the green car, or was it still locked up and
24 secured?

25 A It was still secured.

Boris Alvarado - Cross

37

1 Q Okay. Roughly what time did y'all make
2 the decision to go ahead and take the vehicle into
3 custody?

4 A Once we knew that the big Bi-Lo shopping
5 center was closed and there was nobody else that
6 would approach the vehicle.

7 Q Okay. So that would have been about?

8 A A little after 10:00 --

9 Q Okay.

10 A -- which would be after the business
11 closed.

12 Q Okay. Then how was the vehicle opened?
13 And you were there when the vehicle was opened?

14 A I was present.

15 Q You may not have done all of it, but you
16 were certainly on the scene and saw it being
17 searched?

18 A We inventoried the vehicle. Sgt. Malloy
19 inventoried the vehicle.

20 Q Okay.

21 A The keys were brought back from Mr. McCoy.

22 Q Okay. So you didn't have to break into it
23 because --

24 A No, sir.

25 Q -- you had the keys from Mr. McCoy?

1 A Yes, sir.

2 Q And then the car was inventoried out in
3 the Bi-Lo parking lot?

4 A It was inventoried in the Bi-Lo parking
5 lot before the towing service arrived.

6 Q Okay. By Officer Malloy or by the tow
7 truck driver?

8 A By Officer Malloy.

9 Q Okay. Does the Newberry City Police
10 Department have written guidelines about inventory
11 searches?

12 A Yes, sir.

13 Q Under what circumstances are y'all
14 authorized to do an inventory search?

15 A We do an inventory every time we take
16 custody of a vehicle and have the vehicle towed.

17 Q Okay. The only reason this vehicle was
18 being taken into custody was that it was registered
19 to the man that you were arresting for the burglary?

20 A Well, the vehicle was taken after the
21 incident, yes, sir.

22 Q Okay. But it was also inventoried because
23 it was being towed?

24 A It was inventoried by policy. Under our
25 policy it's inventoried.

Boris Alvarado - Cross

39

1 Q So basically law enforcement was taking it
2 was seized incident to the arrest of McCoy, but
3 prior to it being delivered to the impound, you were
4 going to inventory it to secure the contents?

5 A Yes, sir.

6 Q And that was done by Officer Malloy?

7 A None of the items were taken. All we do
8 is do a visual inventory of what's in there and
9 document it into the towing report as to what was
10 seen in the vehicle.

11 Q Okay. Would there have been a written --
12 as part of an inventory report, are you required to
13 do an inventory report where you fill in the items
14 that you were taking?

15 A When the vehicle is not towed, yes, sir.
16 There's a section under inventory.

17 Q Okay. Are you aware of whether there's an
18 inventory produced in this case?

19 A I would have to look in the report, and I
20 believe so. There is a list of what --

21 Q But the policy is if you do inventory a
22 car, you need to record the contents of it on a
23 written form?

24 A It's got to be written on the incident
25 report.

1 Q But what about a separate inventory form?

2 A It has this area where you can report or
3 list -- you don't have to list the items, or you can
4 see the incident report if it's listed in the
5 incident report.

6 Q Okay. So you would testify that your
7 policy lets you record it either on a separate form
8 or on the incident report --

9 A Yes, sir.

10 Q -- if you're doing the incident report?

11 A Yes -- as long as it's listed that
12 somewhere the items were listed.

13 Q Okay. Do you recall any other officers
14 being present for the search of the car?

15 A I recall I believe Lt. Stuhr being present
16 there.

17 Q Okay. Did you look in the car at all, or
18 were you just --

19 A I did see the vehicle. I didn't see the
20 contents inside.

21 Q Okay. So you kept an eye on the vehicle.
22 But as far as the actual contents, you would not
23 have not have done that?

24 A No. I seen what was in plain view, but I
25 did not look into the vehicle.

Boris Alvarado - Cross

41

1 Q By plain view, you mean able to see
2 through the windows?

3 A Able to see through the windows, yes, sir.

4 Q Possibly with a flashlight because it was
5 nightttime?

6 A It had started to get dark, yes, sir.

7 Q Okay. Did you see anything that was
8 immediately apparent as contraband? I understand
9 that they're saying they saw tools and what not.
10 I'm talking about contraband being guns or --

11 A No, not that I know as contraband. No, I
12 didn't see any.

13 Q And that search was sometime late in the
14 evening, 9:00, 10:00, 11:00?

15 A Yes, sir.

16 Q On the night of the arrest, okay. Did you
17 participate at all in the search of the motel room?

18 A No, sir.

19 Q Okay. Thank you, Officer.

20 MR. SCOTT: Nothing further from this
21 witness, Your Honor.

22 THE COURT: Thank you, sir. You may step
23 down.

24 MR. SCOTT: Let me call Randy Malloy.

25 (Whereupon, the witness was sworn, after

1 which the following proceedings were had:)

2 RANDY MALLOY, having first been duly
3 sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. SCOTT:

6 Q All right, Officer Malloy, that day, May
7 27th I guess into the early morning hours of May
8 28th, you were working at the police department at
9 that time?

10 A Yes.

11 Q In this case we're talking about, how did
12 you become to be involved with it?

13 A Cpl. Alvarado called me by radio to the
14 scene. I serve as the shift patrol investigator,
15 and he found the suspect as well as the tools behind
16 the business. That's when he radioed for me to
17 come.

18 Q All right. So when you showed up, he was
19 still back behind Bear Village with Mr. McCoy?

20 A Yes.

21 Q And was Ms. Busko back there, as well?

22 A Yes, sir.

23 Q And at that point, had they learned Mr.
24 McCoy's identity?

25 A Yes.

Randy Malloy - Direct

43

1 Q And did they relay that to you?

2 A They told me that once I arrived.

3 Q What else did they tell you about him?

4 A Basically, that he was from Tennessee I
5 think was one of the things they mentioned and that
6 they actually looked at the tools as well, which is
7 over by the power block.

8 Q Okay. So you were able to observe them?

9 A Yes, sir.

10 Q All right. What did you do next?

11 A Well, I then conferred with Lt. Stuhr
12 about the suspect, which Alvarado had already done,
13 talked to Lt. Stuhr about seeing the suspect,
14 finding the suspect. We determined now at this time
15 to try to look at the vehicle since there wasn't one
16 in the parking lot of Bear Village or in the area
17 that we could see behind the store.

18 I then proceeded over to the Bi-Lo
19 shopping center and was looking for the vehicle and
20 found a vehicle with a Tennessee tag on it. We ran
21 the tag through the DMV, and the vehicle came back
22 to Jeff McCoy.

23 Q All right, sir.

24 COURT REPORTER: Mark it for ID only?

25 MR. SCOTT: Yes.

Randy Malloy - Direct

44

1 THE COURT: You can go ahead and mark it
2 into evidence, if you want to.

3 MR. SCOTT: Oh, I can, okay.

4 (State's Exhibit Number One, Bear Village
5 Diagram, was entered in evidence.)

6 COURT REPORTER: State's Number One
7 without objection.

8 THE COURT: It's admitted without
9 objection.

10 Q All right, let me show you what's been
11 marked State's Number One.

12 A Okay.

13 Q Do you recognize what you're looking at
14 there?

15 A Yes, sir. This is the Bear Village
16 shopping center. This is the Mexican restaurant.
17 This is the Bi-Lo shopping center.

18 Q All right. Show me approximately -- in
19 Bear Village approximately where Boris Alvarado and
20 Jeffrey McCoy were when you arrived.

21 A I assume it's in this area right here,
22 sir.

23 Q All right. That building, that's the L
24 shape --

25 A Uh-huh.

Randy Malloy - Direct

45

1 Q -- that somebody talked about earlier?

2 A That would be the northern end of the
3 building, the right side of the building if you're
4 facing the building.

5 Q Okay. Now, you talked about learning that
6 he was from Tennessee --

7 A Uh-huh.

8 Q -- and you didn't see any cars or
9 anything?

10 A No, sir. This parking lot did not contain
11 any vehicles from Tennessee. I came down and
12 expanded my search into this parking lot, which
13 would be the Bi-Lo parking lot. I don't recall any
14 vehicles being in the Mexican restaurant parking
15 lot.

16 Q Show me approximately where you located --
17 you already testified, did you find a car?

18 A Yes, sir, I did find a car.

19 Q And what about that car drew your
20 attention?

21 A The Tennessee tag on it. And after
22 running the Tennessee tag through DMV, it came back
23 registered to Mr. McCoy.

24 Q Show me about where it was in the Bi-Lo
25 parking center.

1 A I want to say it was in this row of
2 parking area right in here, sir.

3 Q Second row --

4 A Uh-huh.

5 Q -- right off Bear Village?

6 A Right. It would be the north end of the
7 Bi-Lo exit door closest to Bear Village.

8 Q All right. I'm sorry if I've already
9 asked you this. Describe the car.

10 A Yes, sir. It was a green -- light green -
11 - Ford Taurus.

12 Q Okay. Besides the tag, what else did you
13 observe regarding the Taurus?

14 A Well, I walked around the vehicle to just
15 check and see if there was anybody else. That was
16 one of our main concerns too, to make sure there
17 wasn't another participant in this crime. I walked
18 around the vehicle and could clearly see inside bags
19 of tools or tool items such as saw blades, power
20 tools, those type items.

21 Q Okay. What was it, like a bag or
22 something?

23 A Yes, sir. Some of it was in a bag, and I
24 think some were just in the back seat. It was some
25 throughout the car.

Randy Malloy - Direct

47

1 Q Okay. At that point, were you able to
2 look at the center console area there?

3 A Yes, sir. I could see clearly inside the
4 entire vehicle. If I remember correctly, there was
5 in the center console like a mixture of change,
6 coins in the center console.

7 Q Okay. And you just testified that
8 whenever you arrived and saw Mr. Alvarado and Mr.
9 McCoy, you were able to observe some tools that were
10 in the general vicinity where Mr. McCoy was located?

11 A Yes, sir.

12 Q All right. Were you aware of the burglary
13 that had occurred the night before?

14 A Yes. The on-going shift made us all aware
15 of it. We all heightened our awareness when it was
16 time to check property.

17 Q And you knew some of the general facts
18 regarding the crime that occurred --

19 A Yes.

20 Q -- is that right? After you observed the
21 car and you see the items that you say were in plain
22 view, you run the tag, and it comes back to Jeffrey
23 McCoy, what did you do next?

24 A Lt. Stuhr and I again conversed, and we
25 decided to watch the car and sit back and do a

Randy Malloy - Direct

48

1 surveillance on the car to see if there was another
2 participant in the situation with him.

3 Q Did anybody ever show up --

4 A No, sir.

5 Q -- while y'all were there?

6 A No, sir. We waited till after the Bi-Lo
7 shopping center or the Bi-Lo store closed, which
8 means we were just basically hoping that if anyone
9 is inside that it would be time for them to have to
10 come out.

11 Q All right. So at some point, you felt
12 comfortable that there was no other person coming to
13 get in that car?

14 A Yes, sir.

15 Q What did you do then?

16 A We then took an inventory of the car
17 because we had already placed Mr. McCoy under
18 arrest. And per policy, we went over to seize the
19 vehicle and inventory the vehicle.

20 Q All right. Now, talking about
21 inventorying a vehicle, what's the purpose of doing
22 that?

23 A To protect the police department as well
24 as the citizen's property.

25 Q Okay. What are you protecting the police

Randy Malloy - Direct

49

1 department from?

2 A Accusations to where someone may say they
3 had valuables in the car at the time or the vehicle
4 at the time. And it's just basically an inventory
5 to show what was present in the vehicle compared to
6 what they may say was in there later.

7 Q And is this a well-established practice
8 for the Newberry Police Department?

9 A Yes, sir.

10 Q This is something you do in every
11 situation like this?

12 A Yes, sir, once we make a custodial arrest
13 and we know that the person has a vehicle.

14 Q Okay. And who towed it?

15 A Can I refer to my notes?

16 Q Sure.

17 A I want to say Livingston's. Yes, sir,
18 Livingston's Towing Service did secure the vehicle.

19 Q And we were talking about an inventory, a
20 list of the items that were inventoried. Did you
21 take that list?

22 A Yes, sir.

23 Q And tell us what you listed in I guess
24 your documentation at the time of inventory.

25 A Okay. Again, I need to refer to my notes.

Randy Malloy - Direct

50

1 In the trunk a pair of tan size 10 Wolverine boots;
2 one orange-handled tin snips; one black and yellow
3 handled Stanley straight tip screwdriver; one set of
4 jumper cables; 11 music CDs; one container of 10
5 revival -- something CDs; three phone books, one
6 from Phoenix, Arizona, one from Brinkley, Arkansas,
7 and one from the Jefferson City, Tennessee, area.

8 In the driver's side area of the vehicle,
9 the rear driver's side of the vehicle, I found a
10 black and gray tool bag containing several saw
11 blades, a grinding wheel, an orange extension cord,
12 a Phillips screwdriver, a reciprocating saw, a black
13 grinder, and other miscellaneous tools.

14 In the driver's seat pocket, an empty ring
15 holder and one gray glove was found in the driver's
16 pocket. The rear passenger side of the vehicle, I
17 found one bed pillow on the back seat. One black-
18 handled small pry tool was found in the rear
19 passenger door pocket.

20 The center console under the arm rest --
21 this is where you would have to raise it up to get
22 into the center console -- one plastic bag
23 containing a Tootsie Roll container, and the Tootsie
24 Roll container was about probably six to eight
25 inches long maybe, plastic. It had its own top to

Randy Malloy - Direct

51

1 it. And inside that container was an undetermined
2 amount of coins, mostly pennies.

3 I also found eight rolled coin wrappers
4 containing unknown amounts of money due to the
5 wrappers not matching the coins that were inside the
6 wrappers. In the center console itself, a large
7 undetermined amount of quarters and gold dollars,
8 one GPS system, and one red hotel key with the room
9 number 125. The glove compartment contained two
10 closed rolls of stamps, one partial roll of stamps,
11 one pocket watch, one wrist watch and several
12 chargers, and miscellaneous papers.

13 Q All right. So after you inventory all
14 those items, then you release it to the towing
15 company?

16 A Yes, sir.

17 Q And they tow it away with all the items
18 inside?

19 A Yes, sir.

20 Q But you got this document. So if he comes
21 back later and says "I had \$5,000 in there. Where
22 is it now?" you can say, "It was not in there. I
23 documented it."

24 A Yes, sir, it was not in there at the time.

25 Q Did you get in touch -- well, let me ask

Randy Malloy - Direct

52

1 you this. How did you get in the trunk and in the
2 car?

3 A I don't recall if we just used the trunk
4 release button or the keys. I don't recall.

5 Q Now, were keys taken off McCoy?

6 A I think the keys did come to the area. I
7 don't recall if the car was locked or unlocked.

8 Q Okay, all right. Speaking of keys, when
9 you see the hotel room key, did you tell anybody
10 else about that?

11 A Yes, sir, I informed Lt. Stuhr, who
12 actually came to the scene and photographed
13 everything that was in the vehicle as well.

14 Q All right. Were you able to tell what
15 hotel those keys came from?

16 A Eventually we did, because we sent other
17 officers out to check and see which -- by Mr.
18 McCoy's name whether he was registered at in any of
19 our local hotels.

20 Q Okay. Do you remember who that was, what
21 officer that was?

22 A I believe it was Officer Busko.

23 Q Please answer any questions Mr. Verner may
24 have.

25 A Yes, sir.

Randy Malloy - Direct

53

1 THE COURT: Mr. Verner.

2 CROSS-EXAMINATION

3 BY MR. VERNER:

4 Q Officer Malloy, you inventoried certain
5 items in the trunk of the car, correct?

6 A Yes, sir.

7 Q Okay. You would agree with me that none
8 of the items in the trunk of the car would have been
9 in plain view at the time that you approached the
10 vehicle?

11 A That's correct.

12 Q Okay. In the rear passenger side, I
13 believe you reported that you found a small black-
14 handled pry tool in the rear passenger door pocket?

15 A Yes, sir.

16 Q Was that item in plain view, or that was
17 in the console area of the door?

18 A That item was actually in the door pocket.

19 Q Okay. And in the center console, you
20 don't list any tool type items, right?

21 A Under the arm rest?

22 Q In the center console under the arm rest,
23 there are no tools of crime, burglary tool type
24 items?

25 A No, sir.

1 Q Okay. And in the center console, the
2 same, there would be no burglary tool type items?

3 A No, sir.

4 Q Okay. And how would just -- not counting
5 up the money, if it was an inventory search, why
6 wouldn't you actually count the exact amount of
7 money in the car? Wouldn't you have a problem with
8 a defendant if you just listed that there was money
9 in a car and didn't say specifically how much if you
10 got in a dispute about money being taken?

11 A Yes, sir, there could be a dispute about
12 it.

13 Q Okay. So it probably would have been more
14 procedure to actually have counted the money for an
15 inventory search?

16 A Yes, sir. But it being scattered like it
17 was, it was an undetermined amount.

18 Q Okay. And you would agree with me
19 anything found in the glove box would not have been
20 in plain view from outside the car?

21 A That's correct.

22 Q Okay. Which leads basically there was a
23 black or gray tool bag on the back behind the
24 driver's seat?

25 A Yes, sir.

Randy Malloy - Cross

55

1 Q Was that bag open --

2 A Yes, sir --

3 Q -- or closed?

4 A -- it was. It was open.

5 Q Okay. And these items, from your report,
6 these seem to be the only items of what could
7 possibly be burglary tools that would have been
8 evident in plain view from outside the car?

9 A Yes, sir, that's correct.

10 Q Okay. And your testimony is that you
11 remember the bag being open?

12 A Yes, sir.

13 Q And that you could see at least some of
14 these tools inside the bag?

15 A Yes, sir.

16 Q Okay. So there wouldn't be any tools I
17 think you characterized as burglary tools that were
18 scattered throughout, but the report --

19 A Miscellaneous tools were scattered
20 throughout the vehicle such as screwdrivers, pliers,
21 those type small handle type tools.

22 Q But you would not have included those?

23 A I think I just put them down as
24 miscellaneous tools.

25 Q Okay, just small-value items?

1 A Yes, sir, small hand tools type.

2 Q Okay. But your testimony today is that
3 there would be other tools in the car too that just
4 didn't make it into the report because they were --

5 A These were common tools.

6 Q Okay. What was the purpose of you taking
7 the vehicle into custody?

8 A The purpose was Mr. McCoy, it being his
9 vehicle --

10 Q Right.

11 A -- and he no longer being around the scene
12 of the vehicle or around the area. We've already
13 taken him into custody under arrest. So now the
14 vehicle is under the police department's
15 responsibility.

16 Q That's my question. But basically it was
17 incident to his arrest that the vehicle was taken --

18 A Yes.

19 Q -- in control?

20 A Yes.

21 Q Okay. It wasn't because it was an
22 abandoned vehicle?

23 A No, sir. It was tied into Mr. McCoy.

24 Q Right.

25 A We had a positive identification of Mr.

Randy Malloy - Cross

57

1 McCoy, and we had a positive identification who the
2 vehicle belonged to.

3 Q I understand. And the vehicle was
4 lawfully parked?

5 A Yes, sir.

6 Q It was not at the time it was taken
7 impeding traffic or creating a safety hazard?

8 A That's right.

9 Q If a vehicle -- just a regular vehicle --
10 were left in the Bi-Lo parking lot --

11 A Uh-huh.

12 Q -- after closing hours, does the police
13 department have a policy of taking those vehicles
14 into control?

15 A No, sir, we do not. What we normally do
16 with those is just log them in, the description, the
17 tag. In case something does happen --

18 Q Right.

19 A -- and we have a record of that vehicle
20 being--

21 Q You might come up close to it and examine
22 it from the outside but --

23 A Right, to make sure that it's not a stolen
24 vehicle or anything --

25 Q Right.

1 A -- and there's nothing out of the ordinary
2 about that vehicle. But this particular vehicle,
3 when I walked around and saw the same type of items
4 that I saw --

5 Q Oh, I understand that. I understand that.
6 But my point is that had the vehicle otherwise just
7 been left in the parking lot at least for one night,
8 the city police would not ordinarily have taken
9 control of that vehicle?

10 A If we had no reason to take the person
11 that owned the vehicle, right.

12 Q But the only reason it was taken into
13 custody was that Mr. McCoy was under arrest --

14 A Yes.

15 Q -- it was his vehicle?

16 A And that the in plain view items that were
17 seen --

18 Q Okay.

19 A -- you know, would be considered tools of
20 a crime or tools of burglary.

21 Q At the time you did the inventory search
22 of the vehicle, did you have a search warrant?

23 A No, sir.

24 Q Okay. But there's no question that law
25 enforcement in Newberry had control of the vehicle,

Randy Malloy - Cross

59

1 right?

2 A That's correct.

3 Q So at the point you had control of the
4 vehicle, you had the right to exclude other people
5 from getting into it or taking it?

6 A Right.

7 Q Okay. And your testimony is when the
8 vehicle was towed, all of the items were taken with
9 the vehicle?

10 A With the vehicle, yes, sir.

11 Q Okay. Does Livingston's have a fence
12 around their towing area, or do you know?

13 A I'm not familiar with it.

14 Q Okay. So you don't know if they have a
15 secure tow area?

16 A No, sir. They did have Wayne Turner's
17 area out on 76. They did have that building at one
18 time, which is a fenced-in area where you store
19 vehicles, but I'm not sure.

20 Q Whether this one was secure?

21 A Yes, sir, I'm not sure.

22 Q Did you find the key, the hotel room key,
23 or was that another officer who found the hotel room
24 key?

25 A It was in plain view in the console along

Randy Malloy - Cross

60

1 with the other change.

2 Q Okay. And that was found during your
3 inventory search?

4 A Yes, sir.

5 Q Okay. And one of the officers, either you
6 or somebody else, recognized that as the Budget Inn
7 or possibly --

8 A We recognized it as a hotel room key but
9 not necessarily which hotel.

10 Q Okay. Did you take that key -- did Ms.
11 Busko take that key?

12 A No, sir, nothing was taken out of that
13 vehicle.

14 Q Okay. So the hotel key was still left in
15 the vehicle?

16 A Yes, sir.

17 Q Did you have evidence that Mr. McCoy was
18 staying at a hotel room prior to being tipped off
19 that he might be in a hotel room because of the key?

20 A Just seeing that key in the console would
21 make us think that he was in a hotel room.

22 Q And I guess the fact that it was an out-
23 of-town vehicle?

24 A Yes, sir.

25 Q Okay. And there's no question at the time

Randy Malloy - Cross

61

1 the search was performed Mr. McCoy was already in
2 custody, had already been either taken to Louis
3 Ridge or Nantz Street, but he had already been
4 apprehended?

5 A To my knowledge, Mr. McCoy was away from
6 this area.

7 Q Okay, thank you. If Mr. Scott has any
8 follow-up.

9 MR. SCOTT: Just a couple.

10 REDIRECT EXAMINATION

11 BY MR. SCOTT:

12 Q You said the hotel key was in plain view?

13 A Yes, sir. It was in the center console
14 with the change.

15 Q But you talked about reaching up under a
16 console, the arm rest console?

17 A Yes, sir.

18 Q You've got two different console areas,
19 right?

20 A Yes, sir. You had where you would rest
21 your arm, which would have a release button to raise
22 up and expose the center console area, which is more
23 of a hidden area. And then you have the center
24 console area that's in plain view where you could
25 have maybe a drink holder and those type of items.

1 Q All right. And you went in the trunk?

2 A Yes, sir.

3 Q So you would agree with me the glove box,
4 trunk, and the area under the arm rest, those are
5 not plain view?

6 A That's correct.

7 Q But you did look in those areas as part of
8 your inventory search?

9 A Yes, sir.

10 Q And is that y'all's practice?

11 A That's commonly where valuables are kept.
12 If you think about a glove box or you think about a
13 center console, you think about the trunk, that's
14 where most people keep their valuables.

15 Q But is that y'all's common Newberry Police
16 Department policy? As part of y'all's inventory, as
17 part of impoundment, is that what y'all do?

18 A Yes, sir.

19 Q Okay, thank you. That's all.

20 MR. VERNER: Nothing further.

21 THE COURT: Thank you, sir. You may step
22 down.

23 Mr. Scott?

24 MR. SCOTT: Desiree Busko, Your Honor.

25 (Whereupon, the witness was sworn, after

Randy Malloy - Redirect

63

1 which the following proceedings were had:)

2 DESIREE BUSKO, having first been duly
3 sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. SCOTT:

6 Q Officer Busko, were you working with
7 Newberry Police Department the night of May 27th and
8 the early morning hours of May 28th of last year?

9 A Yes.

10 Q And did you have occasion to respond to
11 Bear Village in Newberry County?

12 A Yes.

13 Q And did you meet up with Boris Alvarado
14 there?

15 A Yes.

16 Q Who was he with when you arrived?

17 A Mr. McCoy.

18 Q Pull the microphone just a little bit
19 closer. And what did Officer Alvarado direct you to
20 do?

21 A To go through all of the businesses, the
22 back of the businesses, to see anything out of the
23 ordinary.

24 Q I'll show you State's Number One real
25 quick. Do you recognize that?

1 A Yes, that's a drawing for the Bear
2 Village.

3 Q Okay. About where was Officer Alvarado
4 and Mr. McCoy?

5 A They were here when I arrived, that area.

6 Q Okay. Is that the L shape?

7 THE COURT: Do it one more time --

8 MS. BUSKO: Yes, sir.

9 THE COURT: -- so Mr. Verner can see.

10 A In this area over here.

11 Q Okay. And you mentioned that he asked you
12 to go to another area. Where did you go?

13 A I started walking around.

14 Q Okay. Did you find anything?

15 A I did. I found I think it was a black bag
16 and some tools on the ground near the power blocks
17 and the AC unit.

18 Q Whereabouts was that?

19 A I think it was here.

20 Q Okay. Just as an estimate, how far were
21 those tools and things from where Alvarado and McCoy
22 were?

23 A Maybe five feet.

24 Q Okay. Did you go to the area where
25 Officer Alvarado directed you to go?

Desiree Busco - Direct

65

1 A Correct. He just told me to walk on the
2 back side of the building, and I just started
3 walking.

4 Q Okay.

5 A That's what I did.

6 Q All right. Did you ever go to the car
7 over in the Bi-Lo parking lot?

8 A No.

9 Q Did you take Mr. McCoy to the jail?

10 A I did.

11 Q What did you do after that?

12 A Well, first, I went to the police
13 department to meet Investigator Goodman.

14 Q All right. What did you do after that?

15 A Sgt. Malloy advised me to start checking
16 all local hotels to see if Mr. McCoy had registered.

17 Q Are you aware they found a hotel key in
18 the Taurus at Bi-Lo?

19 A Not the car at the time, but they had said
20 they found a hotel key and it possibly was one of
21 our hotels.

22 Q All right. Now, did you just randomly
23 call all of the hotels around, or did you call --

24 A Well, I got a list of hotels from the
25 phone book and started checking. I actually went to

Desiree Busco - Direct

66

1 the locations.

2 Q Okay. So you didn't just call on the
3 phone. You went to the --

4 A I actually went to the location.

5 Q Did you find a hotel that said, "Yes, Jeff
6 McCoy is staying here"?

7 A Yes.

8 Q Which one was that?

9 A The Budget Inn.

10 Q All right. What did they tell you?

11 A She stated that he was checked in at
12 11:25. She did not have a copy of the office but
13 another paper.

14 Q All right. Did she show you some kind of
15 documentation of him checking in?

16 A She just showed some kind of paper card
17 that said Room 125 on it.

18 Q All right. Did she tell you she had a
19 key?

20 A She did.

21 Q Did you go in and start searching right
22 then?

23 A No.

24 Q What did you do?

25 A Lt. Stuhr advised me and the officer to

Desiree Busco - Direct

67

1 watch the room.

2 Q Okay. Was a search warrant eventually
3 obtained?

4 A Yes.

5 Q Who brought it to you?

6 A Investigator Goodman.

7 Q All right. Then did y'all begin
8 searching?

9 A We did.

10 Q Okay. And did you find the items at that
11 point?

12 A We did.

13 Q Did you look at that and sign anything
14 that you talked about what the innkeeper showed you?

15 A Yes.

16 Q And did it have Mr. McCoy's name?

17 A Yes, it was signed.

18 Q Okay, thank you. Please answer any
19 questions Mr. Verner may have.

20 CROSS-EXAMINATION

21 BY MR. VERNER:

22 Q Officer Busko, did you go to where the car
23 was parked in the Bi-Lo parking lot?

24 A No.

25 Q Okay. Who sent you to go check hotel

1 rooms?

2 A I believe it was Sgt. Malloy.

3 Q Malloy? But he was at the scene where the
4 car was, so it must have been by radio?

5 A Correct.

6 Q Okay. Do you know if Investigator Goodman
7 was also at the scene, either the Bi-Lo or the Bear
8 Village, that night?

9 A I'm not sure of that, no.

10 Q Okay. You would have been riding a single
11 -- you would have been the sole occupant of your
12 police cruiser at that time?

13 A Correct.

14 Q Was there an Officer Vincent out that
15 night as well?

16 A Correct. He was at the hotel room.

17 Q Okay. Were y'all sent together or
18 individually, or do you know what his
19 responsibilities were?

20 A I was sent first, and I believe he was
21 sent as a backup officer for me.

22 Q Okay. Was Lt. Stuhr out that night?

23 A Somewhere, I'm not sure where. I couldn't
24 say where he was at because I was at the jail. I
25 was transporting Mr. McCoy.

Desiree Busko - Cross

69

1 Q But first you took Mr. McCoy to the
2 detention center --

3 A No.

4 Q -- before you started doing any of the --

5 A First, I took him to the police
6 department.

7 Q Well, yes, but you took him to the
8 detention. He was both at Nantz Street and Louis
9 Ridge.

10 A Correct.

11 Q But before you started going to hotel
12 rooms, you had taken him into custody?

13 A Correct.

14 Q And then way after that, then you had--

15 A I carried him to the jail after that.

16 Q Right. Did Lt. Stuhr indicate to you that
17 you should start the search at the Budget Inn?

18 A No, I didn't start the search at Budget
19 Inn.

20 Q Did you go anywhere else prior to Budget
21 Inn?

22 A Yes. I think at first I went to the Econo
23 Lodge, was the first one.

24 Q Okay. Where is the Budget Inn in
25 relationship to the Bi-Lo parking lot?

1 A It's on the Prosperity side.

2 Q Okay. It's on Wilson Road?

3 A Not Wilson Road. It's just --

4 Q Okay. But it's --

5 A -- in the opposite direction.

6 Q -- just in the Prosperity direction?

7 A Uh-huh.

8 Q Okay. Is that the one just past the CVS,
9 kind of on the opposite side at the right?

10 A No.

11 Q It would be even further, okay.

12 THE COURT: Which one is it?

13 MS. BUSKO: By the Columbia Villas.

14 THE COURT: Okay.

15 Q And as far as the search of the car, you
16 didn't have any involvement in the car itself?

17 A No.

18 Q Okay. And as far as the hotel room, did
19 you participate in the search of the hotel room?

20 A I participated in the clearing of the
21 hotel room. When we opened the door, a lot of the
22 items were in plain view. And Goodman took the
23 pictures.

24 Q Okay. And then they made you inventory it
25 on -- it appears to be you're the one who actually

Desiree Busko - Cross

71

1 had to manually write in all of the items that were
2 taken and the serial numbers. Is that not your --

3 A No, I didn't do that.

4 Q Am I wrong?

5 THE COURT: What was the question?

6 MR. VERNER: I thought this officer was
7 the one who actually performed the return of the
8 hotel room. Oh, I'm sorry, that's Officer -- well,
9 it says, "I received the attached search warrant,
10 Desiree Busko."

11 Q What is this? What does that mean?

12 A Oh, this was after, when we had -- Officer
13 Goodman or Investigator Goodman back had taken all
14 this.

15 Q So whose handwriting is that?

16 A Vincent.

17 Q That's not yours?

18 A No, that's not my handwriting.

19 Q Okay.

20 A But I was there.

21 Q So your name on the report just indicates
22 that it was done in your presence --

23 A Correct.

24 Q -- to your understanding?

25 A Uh-huh.

Desiree Busko - Cross

72

1 Q Okay. But it would have been Officer
2 McCoy who would have done this?

3 A Goodman.

4 Q Goodman, okay.

5 A Investigator Goodman.

6 Q Oh, I'm sorry. Mr. McCoy is not an
7 officer.

8 A Yes.

9 Q Okay. But it was either Officer Vincent
10 or Goodman --

11 A Yes.

12 Q -- who actually did the inventory for the
13 return, okay. How did you get into the hotel room?

14 A The innkeeper gave us a key.

15 Q Okay. You used the master key, okay.
16 Thank you.

17 MR. SCOTT: Nothing further from the
18 State, Your Honor.

19 THE COURT: Thank you, ma'am. You may
20 step down.

21 Solicitor?

22 MR. SCOTT: Kevin Goodman, Your Honor.

23 THE COURT: Are we ready?

24 MR. SCOTT: Thank you, Your Honor. Your
25 Honor, may I ask that these uniformed officers that

Desiree Busko - Cross

73

1 have already testified be excused? They work the
2 night shift.

3 THE COURT: Certainly. Why don't you all
4 get out of here and get some rest, okay?

5 MR. MALLOY: Thank you, Judge.

6 MR. SCOTT: Except for Weaver and Stuhr.

7 MR. VERNER: Stuhr is going to testify.

8 MR. SCOTT: No.

9 THE COURT: All right, Investigator, you
10 want to come on back up?

11 (Whereupon, the witness was sworn, after
12 which the following proceedings were had:)

13 THE COURT: If you would, state your name
14 into the record, please.

15 MR. GOODMAN: Investigator Kevin Goodman.

16 KEVIN GOODMAN, having first been duly
17 sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY MR. SCOTT:

20 Q Investigator Goodman, you were working
21 with the police department May 27th and 28th of last
22 year?

23 A Yes, sir.

24 Q And what was your title then? Were you an
25 investigator?

1 A Yes, sir, I was.

2 Q And we were talking about an incident that
3 at the time was under investigation that had
4 occurred at 1335 Wilson Road.

5 A That's right.

6 Q And that was I believe May 27th?

7 A It was that Saturday.

8 Q That Saturday?

9 A In the morning, I was called out from my
10 shift at 8:30.

11 Q Okay. But it's the one we're talking
12 Check Into Cash and all those other businesses?

13 A The Shoppes on Wilson.

14 Q And did you do a walk-through of that
15 incident location?

16 A Yes, sir.

17 Q What did you observe?

18 A The first thing I observed was Check Into
19 Cash. There was a large hole in the back center
20 block wall. Inside the building, inside of Check
21 Into Cash, there were several tools, burglary tools,
22 grinders, pry bars, random blades, wire snips. I
23 remember a hammer being there, different things like
24 that.

25 Q All right. And what other businesses were

Kevin Goodman - Direct

75

1 there in that mall?

2 A Ellamine, which is a barbershop, Jackson-
3 Hewitt, Regional Finance, and some more.

4 Q Okay. So you were the investigator
5 assigned to that case, as well?

6 A Yes, sir.

7 Q All right. Then what we were just talking
8 about, the night after that, at Bear Village --

9 A Right.

10 Q -- did you have an occasion to get
11 involved with that scene?

12 A Yes, sir, I was contacted by Lt. Stuhr,
13 who advised me that they had in custody a young man
14 who had been caught behind Bear Village, and they
15 believed him to be attempting to break into the
16 businesses there.

17 Q What was your involvement from there?

18 A From there, Lt. Stuhr informed me that Mr.
19 McCoy, he gave his name and said that he didn't want
20 to speak to anybody on the scene. He wanted to talk
21 to an investigator. So I immediately got dressed
22 and responded to the police department to meet with
23 Mr. McCoy. But once I got there, he was brought
24 into the office by Officer Busko, and he immediately
25 -- Mr. McCoy immediately said that he didn't want to

1 speak to me.

2 And I responded by saying "Well, I thought
3 they told me you wanted to talk to an investigator,
4 and I'm the investigator for the night." And he
5 said, "No, that's not what I told them. I told him
6 I was ready to go downtown," which he clarified he
7 was ready to go to jail.

8 Q Okay. All right, let me direct you to --
9 Randy Malloy was talking about a green Ford Taurus
10 in the Bi-Lo parking lot.

11 A Right.

12 Q And he indicated that was a parking lot
13 that's nearby to Bear Village.

14 A Right.

15 Q Is that your understanding?

16 A Yes, sir.

17 Q And did you respond to the scene where the
18 Ford Taurus was?

19 A Yes, sir, I did. Once Mr. McCoy decided
20 he didn't want to speak to me, he was transported by
21 Officer Busko to the jail. And I responded to the
22 actual Bear Village to meet with Boris Alvarado, the
23 officer there, to see if he needed any help with
24 anything there.

25 We actually re-walked the crime scene if

Kevin Goodman - Direct

77

1 they had missed anything or overlooked anything.
2 From there, we went to -- I went over to the Bi-Lo
3 parking lot to see if they needed anything there.

4 Q Did you observe the inventory of that
5 automobile?

6 A I observed some of it. When I got there,
7 they were inventorying the vehicle. I didn't stay
8 for the entire thing. There was some gold coins and
9 some quarters in the vehicle.

10 Q Were those gold coins significant to you?

11 A Yes, sir. That Saturday, what was
12 reported stolen out of Regional Finance was a bunch
13 of gold dollar coins and some quarters, some
14 independent amounts of quarters. That's what was in
15 the center console. Also reported stolen was some
16 stamps that they had -- in the inventory, they had
17 documented some stamps were in the car somewhere.

18 At that point, I didn't know whether there
19 was some other stamps in the car. At that point, I
20 decided that -- also a grinder, burglary tools.
21 Somebody had seen burglary tools on the back seat in
22 front there. I found that to be too much of a
23 coincidence with the burglary the night before.

24 At that point, I told them to continue to
25 do their inventory the way they basically have told

1 us to do that, as we're told to inventory the
2 vehicle. I went back and spoke with a judge about
3 getting a search warrant for the vehicle and for --
4 at that time, it was known to be a hotel room. But
5 at the time, I didn't know until they confirmed
6 which hotel room it was.

7 Q So timing wise, do you get the search
8 warrants for the hotel and the car at the same time?

9 A I do.

10 Q Okay. When you went to get the search
11 warrant for the car, it had already been impounded
12 at Livingston's?

13 A Yes, sir. I executed the search warrant
14 at the Budget Inn first.

15 THE COURT: I'm sorry, say that again.
16 You executed the search warrant --

17 MR. GOODMAN: At the Budget Inn.

18 THE COURT: Okay.

19 MR. GOODMAN: The hotel room.

20 THE COURT: Thank you.

21 A We executed that -- Officer Busko and
22 Patrolman Vincent were first. And the next day, I -
23 - at the hotel room was so much stuff. By the time
24 we finished at the hotel room, the car was already
25 impounded and locked in the fence behind

Kevin Goodman - Direct

79

1 Livingston's Towing Service on Wilson Road.

2 Q Give me one second here.

3 THE COURT: I guess that would be as a
4 Court exhibit first.

5 MR. SCOTT: Yes.

6 (Court's Exhibit Number Two, Hotel Search
7 Warrant; and Court's Exhibit Number Three, Car
8 Search Warrant, were marked for identification
9 purposes.)

10 Q I'm going to show you Court's Exhibit
11 Number Two. Do you recognize that?

12 A I do.

13 Q And what is it?

14 A This is the search warrant that I applied
15 for. Actually, it's a search warrant for Room 125
16 at Budget Inn.

17 Q What was your probable cause at the time
18 that you went to the magistrate to get the search
19 warrant for that hotel room?

20 A Again, I had just worked the crime scene
21 out at the Shoppes on Wilson that Saturday. And I
22 was familiar with the burglary tools that were found
23 inside the Check Into Cash store. I was also
24 familiar with a bunch of gold dollar coins and some
25 quarters that had just been stolen out of the

1 Regional Finance.

2 Upon arriving at the car that night, that
3 Sunday night, sitting there in plain view was an
4 amount of gold dollar coins and quarters, which was
5 consistent with the Regional Finance theft. And
6 there was also the grinders, and the wire snips, and
7 the burglary tools that was there present that
8 Sunday was also consistent with the burglary tools
9 that was found in Check Into Cash on that Saturday.

10 Q Okay. Are you talking about the stuff
11 that was found in the Taurus?

12 A In the Taurus and the things that were
13 found behind Bear Village on the ground.

14 Q It's your testimony those were consistent
15 with the items that were left behind at the Village
16 at Wilson?

17 A At the Check Into Cash, right.

18 Q Those are called the Shoppes at Wilson, is
19 that what they're called?

20 A The Check Into Cash at the strip mall that
21 I processed that Saturday is called Shoppes on
22 Wilson.

23 Q Okay.

24 A And Sunday night was Bear Village.

25 Q All right. You had this sworn out before

Kevin Goodman - Direct

81

1 a judge?

2 A Yes, sir.

3 Q What judge was it?

4 A Judge Partridge.

5 Q All right. And when was the return
6 executed on that hotel room? Was it that night?

7 A It was that night, I'm pretty sure that it
8 was.

9 Q It was in your presence?

10 A Yes, sir.

11 Q All right. Let me show you Court's Number
12 Three. Do you recognize that?

13 A Yes, I do. It's the search warrant for
14 the gray Ford Taurus, 2004 Ford Taurus.

15 Q Did you say "gray" or "green"? It's gray?

16 A It was gray.

17 Q Okay. And you were the affiant on that?

18 A Yes, sir.

19 Q Tell me, what was the probable cause for
20 getting the search warrant for the car?

21 A Again, the items that were found inside
22 the car, the gold coins, the quarters, the stamps
23 that were inventoried, the burglary tools. I used
24 all of that as just asked for.

25 Q You knew that that car was linked to Mr.

1 McCoy?

2 A Yes, sir, the car was registered to
3 Jeffrey McCoy, the person that they had in custody.

4 Q And you found items in that car you
5 thought to be from the Village at Wilson --

6 A Yes, sir.

7 Q -- or the Shoppes at Wilson Road.

8 A Shoppes on Wilson.

9 Q And you swore this warrant out before
10 Judge Partridge, as well?

11 A Yes, sir.

12 Q At the same time you did the hotel
13 warrant?

14 A Yes, sir.

15 Q And when was this search warrant executed
16 on the car?

17 A This warrant was done the next Saturday
18 morning. I want to say it was around 5:00 or so
19 that next Saturday morning, that Sunday afternoon --
20 or I'd say late on that afternoon.

21 Q Now, there's testimony there had already
22 been an inventory I guess search of the car. But is
23 it your testimony that none of the items were seized
24 out of that automobile until had that warrant in
25 hand?

Kevin Goodman - Direct

83

1 A That's right.

2 Q And there was no search whatsoever of the
3 hotel room until you had the hotel search warrant,
4 is that correct?

5 A That's right.

6 Q Thank you. Please answer any questions
7 Mr. Verner might have.

8 A Yes, sir.

9 THE COURT: Mr. Verner.

10 CROSS-EXAMINATION

11 BY MR. VERNER:

12 Q Investigator Goodman, you were basically
13 in charge as the investigator for this case, at
14 least the night of the arrest?

15 A I was in charge once I was called out,
16 yes, sir.

17 Q Okay. So once you got involved in it, you
18 were the primary -- they would have reported to you,
19 or you would have called the shots about who does
20 what?

21 A Basically, yes, sir.

22 Q Okay. When you got to the car at Bi-Lo --

23 A Okay.

24 Q -- was it still secured, or had it already
25 been inventoried?

1 A They had already started the inventory.

2 Q Okay. Were they in the process of doing
3 that when you arrived, or they had already done
4 that?

5 A They were in the process. They had not
6 completed it. They were in the process.

7 Q So when you got to the car at Bi-Lo, the
8 doors were already open, and the officers were
9 already in the car doing their report?

10 A Yes, sir.

11 Q Okay. And then you issued a report I
12 guess on the night of May 27th?

13 A Say that again?

14 Q You issued an incident report,
15 supplemental report, that night, that evening?

16 A Yes, sir.

17 Q As far as the key goes, there was a key
18 that looked like a hotel room key on a red key
19 holder containing the number 125?

20 A Yes, sir.

21 Q And it indicates that Lt. Stuhr told you
22 at the time that that looked a Budget Inn key?

23 A He did.

24 Q Okay. And at that point, you assigned to
25 the officers to start the search at the Budget Inn,

Kevin Goodman - Cross

85

1 which would be the -- did you tell the officers as
2 part of the hotel room where to go?

3 A I did not, no, sir. When I get called out
4 in the morning, I don't have a walkie-talkie with
5 me. So I just told Lt. Stuhr to have them start
6 checking hotel rooms, checking the Budget Inn, they
7 could start there --

8 Q Okay.

9 A -- or start with the city hotels. They
10 could do that.

11 Q Had they already started searching the
12 hotel room prior to your arrival?

13 A No, sir.

14 Q Okay. Was that decision based on finding
15 the hotel room key in the console of the car?

16 A Yes, sir.

17 Q Okay. There's no question that when law
18 enforcement found the car in Bi-Lo that law
19 enforcement was in constant control of that vehicle
20 from that point on?

21 A That's right.

22 Q From the time Mr. Malloy got to the car
23 until the time it was towed by Livingston's, it was
24 city property basically?

25 A That's correct.

1 Q And you weren't advised that they had gone
2 ahead and inventoried the car?

3 A Say that again?

4 Q You weren't asked about whether or not
5 they should go in the car or not prior to the
6 inventory being performed? They had already done
7 that prior and told you --

8 A That's part of their procedure. They
9 don't have --

10 Q Yes, but --

11 A -- to be instructed. I don't have to
12 instruct them to do an inventory --

13 Q Right.

14 A -- as long as they've made an arrest.

15 Q But that was done without your
16 participation prior?

17 A Right. I had nothing to do with the
18 inventory.

19 Q Okay. So your search warrant was
20 primarily so you could go ahead and see the items
21 that were in the car?

22 A Yes, sir.

23 Q The black bag in the back seat, did you
24 look at that? The car was already open at the time
25 you arrived, so you would not know personally

Kevin Goodman - Cross

87

1 whether that bag was closed or open prior to law
2 enforcement?

3 A It was open when I got there. I didn't go
4 through it. I just saw it sitting on the back seat
5 open.

6 Q But at the time you got there, officers
7 were already in the car too at that point?

8 A Yes, sir.

9 Q Okay. And they would have opened it
10 during the inventory search?

11 A Say that again?

12 Q They would have already opened the black
13 bag as part of the inventory search?

14 A They would have to have opened it at some
15 point, yes, sir.

16 Q Does your written inventory policy
17 authorize city police to open closed containers?

18 A Yes, sir, they have to inventory the
19 entire car.

20 Q What about the contents of the car? Does
21 the policy address the contents of the car?

22 A They have to inventory all the contents of
23 the car to make sure that --

24 Q But does it specifically say that they
25 should open closed containers -- or does it not

1 address that issue at all, or you don't know?

2 A I'm pretty sure that it addresses all open
3 and closed containers.

4 Q But to the best of your knowledge, the
5 written policy says if y'all find closed containers
6 in the car, y'all should open them?

7 A To the best of my knowledge, it covers all
8 containers.

9 Q And there's no question you had already
10 met with Mr. McCoy at the police station prior to
11 the search; there's no question he had already been
12 apprehended and was in custody at the time the car
13 was searched?

14 A At the time that I did the execution of
15 the search warrant?

16 Q No, no, no. I think Ms. Busko brought you
17 Mr. McCoy to meet?

18 A That's the first thing I did when I came
19 out that Sunday night.

20 Q So there's no question he had already been
21 put into a squad car and taken from the crime scene
22 prior to the search occurring of the car?

23 A Absolutely, yes, sir.

24 Q Are you aware of anything that made the
25 car -- other than the fact that it was registered to

Kevin Goodman - Cross

89

1 Mr. McCoy, was there anything else that would have
2 authorized law enforcement to take control of that
3 vehicle but for the fact that it was registered to
4 Jeff McCoy?

5 A No, sir.

6 Q Okay, thank you.

7 THE COURT: Thank you, sir. You can step
8 down.

9 I'm sorry, Mr. Scott, go ahead.

10 MR. SCOTT: Okay, just briefly, Your
11 Honor.

12 REDIRECT EXAMINATION

13 BY MR. SCOTT:

14 Q You did talk about there was a -- you
15 personally observed in plain sight an open bag of
16 tools in the car?

17 A Yes.

18 Q Is that correct?

19 A Yes.

20 Q Personally observed gold coins in the
21 middle console, a key -- personally observed that --
22 is that correct?

23 A Right.

24 Q At the time you got the -- I think that's
25 all, I'm sorry. That was probably pointless.

1 THE COURT: All right, thank you, sir.

2 You can step down.

3 MR. SCOTT: That's all the witnesses I
4 have to proffer.

5 THE COURT: All right.

6 Mr. Verner, anyone that you need to call?

7 MR. VERNER: Your Honor, for purposes of
8 this motion, I would call Mr. Jeffrey McCoy.

9 THE COURT: All right, come forward,
10 please.

11 (Whereupon, the witness was sworn, after
12 which the following proceedings were had:)

13 THE COURT: Mr. Verner.

14 JEFFREY GLENN MCCOY, having first been
15 duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MR. VERNER:

18 Q Tell me your name, please.

19 A Jeffrey McCoy.

20 Q Okay. Was that your green car that was
21 registered in the Bi-Lo parking lot?

22 A Yes, it is.

23 Q There was a black bag on the back seat?

24 A Yes.

25 Q I'll ask you if you can identify this

Jeffrey McCoy - Direct

91

1 photograph that was taken by one of the law
2 enforcement officers.

3 A Yes.

4 Q What is that?

5 A Black bag with tools.

6 Q Okay.

7 And I'd offer that as Court's Exhibit for
8 the Defense One, Your Honor.

9 Q The photograph shows a bag that's open?

10 A Yes, sir.

11 Q Was the bag open?

12 A No, sir.

13 Q Was the car locked?

14 A Yes, it was.

15 Q How does that bag close?

16 A It zips shut.

17 Q There's a zipper on it?

18 A Yes, sir.

19 THE COURT: Speak up a little bit. The
20 Court Reporter is having trouble hearing you, okay,
21 sir?

22 MR. McCOY: Yes, sir.

23 THE COURT: Go ahead, Mr. Verner.

24 Q I think he answered it, just one time.
25 Was that bag left open?

Jeffrey McCoy - Direct

92

1 A No, it wasn't.

2 Q Okay. If Mr. Scott has any questions.

3 THE COURT: Mr. Scott?

4 CROSS EXAMINATION

5 BY MR. SCOTT:

6 Q The windows aren't tinted in your car, are
7 they?

8 A No, sir.

9 Q You left it in the Bi-Lo parking lot?

10 A Yes, sir.

11 MR. SCOTT: That's all. Nothing further
12 from the State.

13 COURT REPORTER: Mr. Scott, your Exhibits
14 Two and Three, are they --

15 MR. SCOTT: They were just Court's
16 exhibits.

17 COURT REPORTER: -- for identification?

18 MR. SCOTT: Yes, ma'am.

19 THE COURT: Madam Court Reporter, if
20 you'll mark that as I guess as Court's Defense One.

21 MR. VERNER: Defendant Court's Exhibit
22 One.

23 (Court's Exhibit Number One, Photo of
24 Inside of Defendant's Vehicle, was entered in
25 evidence.)

1 THE COURT: Mr. Verner, let me hear from
2 you, sir.

3 MR. VERNER: Your Honor, my understanding
4 is the State -- the burden is on the State to prove
5 that -- when there is not a warrant executed, the
6 burden falls on the State to justify a warrantless
7 search. There's no question that the car was
8 searched prior to the search warrants.

9 There are basically three exceptions when
10 it involves motor vehicles to the Fourth Amendment
11 requirement that they get a search warrant before
12 they search private property. It is a search
13 incident to arrest, which clearly would not apply in
14 this case, because the courts have universally held
15 that once a defendant has been apprehended in
16 custody, then a search of a vehicle is no longer
17 incident to arrest.

18 So it would either be the inventory
19 exception or the more generic automobile exception,
20 Your Honor. Most of the exceptions to the search
21 warrant are mutually exclusive, but the automobile
22 exception would kind of -- it could possibly include
23 several of them. You couldn't have an inventory
24 search and a search incident to arrest, but you
25 could have a search incident to arrest and the

1 automobile exception as the same grounds.

2 For there to be a proper inventory search
3 that the State would have the burden of showing that
4 the city had usually written, but they had strong
5 policy indications. But my concern is that they
6 would have to -- before you even get into the
7 inventory search, they have to have lawful reason to
8 take the vehicle into custody.

9 My concern in this case is that the
10 defendant -- that the vehicle was not in the
11 immediate possession of the defendant. It was some
12 distance away. It was lawfully parked. This was
13 not an arrest incident to a driving violation or a
14 driving stop, Your Honor.

15 This is where you stop a defendant, and
16 then on that basis alone you go and search other
17 property of the defendant. And I guess my question
18 is how far you can extenuate the search. If he left
19 somebody at an apartment complex involved in the
20 crime, at what distance can you then go find the car
21 or other property here and take it into custody and
22 search it.

23 I would argue that it's not a proper
24 inventory search because the vehicle was not part of
25 the arrest. There was no lawful reason for the

1 police to take separate custody of his property,
2 other than the fact that they had put him under
3 arrest himself. The car was not behind the crime
4 scenes. The car was lawfully parked.

5 If the car was parked back at the hotel
6 room, could they have searched it under an inventory
7 search then? The mere fact that it was out several
8 blocks away from him and it was his car, they
9 basically justify it was his, therefore we can
10 search it.

11 But if it was just further away, could
12 they still search it? If it was at the hotel room,
13 could they still search it subject to an inventory
14 search? The inventory search presupposes that they
15 have taken a car into custody. Usually, that's a
16 driving offense or an abandoned property, or the car
17 is interflowing with traffic. But it means that law
18 enforcement has to take -- the car is left in a
19 location it shouldn't be, and they know nobody is
20 going to come pick it up.

21 THE COURT: That's kind of the point I was
22 thinking about just a moment ago. Part of the
23 automobile exceptions -- and I'm just thinking
24 through this. Part of the aegis of the automobile
25 exception in the first place is the relative or the

1 immediate mobility that an automobile has.

2 Obviously, apparently when they came into
3 contact with your client, certainly they didn't know
4 whether he was alone. There could have been
5 somebody else with him. And so your point about the
6 overlap between the automobile exception and sort of
7 the inventory exception, I think that's particularly
8 relevant here because you have to ask, "Well, did
9 they think that maybe somebody would come by later
10 and pick up the car?"

11 And then clearly they've got items in the
12 car that they found suspicious for the reasons that
13 they testified to. But there's no indication that
14 law enforcement didn't believe that maybe somebody
15 could come by later and pick it up later.

16 MR. VERNER: Your Honor, I appreciate the
17 point, because I think the Court is on track that
18 none of that would be relevant to an inventory
19 search. The Court is looking more at the general,
20 at the broadest, which is the automobile exception,
21 which is just based on the mobility of a car, the
22 exigent circumstances mean that it could be
23 searched.

24 Of course, in this case the car was
25 already in law enforcement -- as several of them

1 testified to, was in the control of law enforcement.
2 And they would not have let a third party come and
3 take the car once they found it anyway. The courts
4 have said that's basically a two-prong test.

5 It's also the diminished rights to privacy
6 in a vehicle, Your Honor. I guess here is the linch
7 pin, which I think my client can win on. When you
8 use the automobile exception, you have to have
9 probable cause to search the car. And I understand
10 that the police officer is saying that he saw tools
11 of the crime.

12 The only ones that would have been
13 identified would be the items in the bag as all the
14 other items, I think he indicated, were -- or
15 smaller, were not seen. For the State to justify --
16 it's either an inventory search, which I think they
17 have problems with because, as they testified, this
18 would be a vehicle that in and of itself would not
19 have been a vehicle they would have taken into
20 custody except for the arrest of the defendant.

21 For the automobile exception to apply, it
22 is very broad, but it does require probable cause to
23 search the vehicle. And I think the inventory
24 search, this is a more of a stretching area. But
25 the courts have warned the judges don't let

1 inventory searches substitute for a ruse. When the
2 officer knows he's going to search the car or has
3 suspicion to search the car, he can't just claim
4 inventory to get around that.

5 The reason the car was searched was it
6 belonged to the defendant, Your Honor. The reason
7 it was taken into custody was that it belonged to
8 the defendant. Those facts should have been
9 submitted to a magistrate that the State has the
10 automobile exception, but that requires a probable
11 cause to justify the search at that time.

12 THE COURT: Let's touch on that. The
13 testimony is that the investigator obtained a
14 warrant to search the car and the hotel prior to his
15 arrival at the scene. And when they got there,
16 they're doing an inventory search.

17 At least that's what some of the testimony
18 is. Would inevitable discovery come into play here,
19 Mr. Verner? Can you point me to a case that
20 addresses any of what you're asserting or anything -
21 -

22 MR. VERNER: I appreciate the Court
23 pointing out that the search of the hotel room would
24 be fruit of the poisonous tree type. But for the
25 finding of the hotel key after the search of the car

1 that they would not have had the evidence of that
2 key.

3 The cases I've looked up, Your Honor, are
4 United States versus McCullough, that is a Fourth
5 Circuit U.S. Court of Appeals decision which deals
6 primarily with inventory searches, Your Honor. The
7 exclusionary rule provides that evidence obtained in
8 violation of the Fourth Amendment cannot be used in
9 a criminal proceeding against the victim of an
10 illegal search and seizure.

11 The government bears the burden to prove
12 by the greater weight of the evidence that the
13 evidence would have inevitably been found other than
14 their illegal search in the first place. For an
15 inventory search to be valid, the search must have
16 been conducted according to standardized criteria
17 such as a uniform department policy, also performed
18 in good faith.

19 THE COURT: Here's something, Mr. Verner,
20 that the Court is kind of looking to in that good
21 faith, to rest that good faith question. After they
22 apprehended Mr. McCoy, it's not like they instantly
23 located his car, and as soon as they located the
24 car, they started doing an inventory search. They
25 waited until the Bi-Lo had closed and the other

1 stores had closed.

2 They waited for what sounds to me like a
3 pretty significant period of time, just keeping an
4 eye on the vehicle to see if anybody else was going
5 to show up and drive the vehicle off, innocent owner
6 type of a situation. So it's not like they clearly
7 rushed into it.

8 MR. VERNER: Well, that supports my
9 contention, Your Honor, and the second case I
10 actually printed out is United States versus
11 McIlwain, which is a District Court appeal from Rock
12 Hill, whereas an inventory search may not be a ruse
13 for the general rummaging in order to discover
14 incriminating evidence.

15 If the police really suspect there's
16 evidence of a crime there, they can't just inventory
17 search as a way to avoid getting a warrant for the
18 car, which is why they require pretty much strict
19 compliance with standardized.

20 And also the McIlwain case is that the
21 care had to be lawfully seized -- that it's not just
22 that's it a valid inventory search, but it's also
23 that the car was lawfully seized. And in this case,
24 Your Honor, I guess his best defense is that the car
25 was not in his proximity when he was arrested. I

1 understand it's in the same --

2 THE COURT: It wasn't that far away
3 either, though.

4 MR. VERNER: In a different parking lot
5 but in the adjacent parking lot, I understand that,
6 but not immediately in the scene, not in itself
7 containing anything, any contraband, other than
8 there was in plain view evidence consistent with
9 burglary tools. My position is just basically they
10 apprehended him, and then they took it as a matter
11 of right that they also had the right to take into
12 custody anything of his that they found, even if it
13 was distant from him.

14 If his car was at the hotel room, could
15 they have performed the same search? I think they
16 probably would have. If you're arrested for a crime
17 that does not in and of itself intrinsically involve
18 the use of a vehicle, does law enforcement get to
19 seize your vehicle, as well?

20 That's my question, Your Honor, because
21 it's clear I guess that they felt that he had come
22 out there in a vehicle. But he was not in any way
23 connected to the vehicle. "It was seized just
24 because we knew it was his, registered to him. And
25 we could see some evidence that supported our

1 suspicion that he had burglary tools in the car.

2 I acknowledge it was in one parking lot
3 over, separated by just a few stores. But it was a
4 lawfully parked vehicle, and it would have been
5 unconnected to the crime he was charged with. Thank
6 you, Your Honor, for listening.

7 THE COURT: Thank you.

8 Mr. Scott, Mr. Verner wants you to speak
9 to this question.

10 MR. SCOTT: Your Honor, I think just an
11 inventory search first and they're conducted after a
12 car is legally impounded, and they're conducted
13 pursuant to lawful impoundment procedures. The road
14 officers, those being the ones in uniform, testified
15 to the procedures they followed any time there is an
16 impoundment of a vehicle.

17 And that includes searching the trunk, the
18 glove box, the arm rest console, Your Honor. And
19 the reason we have these inventory searches, and the
20 reason they've been upheld, and the reason the
21 police department uses that, as they testified, is
22 protection of the owner's property.

23 MR. VERNER: Your Honor, I'm not
24 challenging the inventory search, the procedures
25 being followed, other than whether this vehicle was

1 lawfully impounded. How they did it, I think they
2 made a satisfactory case for. It's just whether
3 they had the lawful grounds to seize the vehicle in
4 the first place under the inventory search.

5 THE COURT: What he's getting at, Mr.
6 Scott, is in most inventory searches, a person's
7 driving, the officer arrests them for DUI or maybe
8 he smells marijuana or something like that. You
9 have the vehicle in motion. The vehicle is more
10 connected to the underlying criminal offense, or the
11 person has -- it's either connected to the
12 underlying offense, the person has done something
13 illegal.

14 The officer is driving down the street,
15 and a car comes the other way. He recognizes the
16 other drive as somebody who has a bench warrant.
17 The officer turns around, stops them, no other
18 person in the vehicle, takes them into custody
19 because of a bench warrant.

20 The car is then seized, and an inventory
21 is done for the reasons that the witnesses have
22 explained on the record. In this case, can you
23 point me to any law or how would you argue that the
24 seizure of the car was proper and the subsequent
25 inventory search was therefore appropriate when

1 admittedly we don't have this defendant clearly
2 walking to his car?

3 We don't have him getting out of the car.
4 The car is not close to him as would be the case
5 where you have a traffic stop obviously. Explain to
6 me, if you could, the State's position on that.

7 MR. SCOTT: I don't know, Your Honor. I
8 don't have anything on point other than I guess when
9 I think through it in my head, it comes back to him.
10 There are items in plain view. And this might be an
11 automobile exception argument, and these might be
12 kind of blending together, because I tend to blend
13 them together when I go over it in my head.

14 THE COURT: May I suggest this? It sounds
15 like you're still arguing about this. My clerk has
16 found a case that I'd like to review a little bit
17 more. I know that the jury is downstairs and
18 waiting on us, and it's 4:30.

19 So the only thing that we would have time
20 for today with regard to the jury would be opening
21 instructions and maybe -- maybe -- arguments before
22 5:00. Unless anybody feels terribly strongly about
23 it, let me just bring them up and tell them we're
24 still working and I need them to come back in the
25 morning. Is that acceptable to everybody?

1 MR. SCOTT: That's fine, Your Honor.

2 THE COURT: Because I think we're running
3 a little bit longer than I had anticipated.

4 CLERK OF COURT: I'll call and ask Jackie
5 to bring them up.

6 THE COURT: All right, ask Ms. Jackie to
7 bring them up, if you don't mind. They don't need
8 to go back there. They can come straight out here.

9 (Whereupon, the jury entered the courtroom
10 at 4:30 p.m., after which the following proceedings
11 were had:)

12 THE COURT: Let the record reflect that
13 the jury is back. Ladies and gentlemen of the jury,
14 first, thank you, thank you, thank you for patience.
15 I apologize for keeping for you down there. The
16 reason that I asked for you to come on up, in all
17 candor, I was expecting that the matters that we
18 started hearing about, that I started at 2:30, I was
19 not expecting to take too long.

20 We're now two hours into this. I
21 understand that there are some matters that I have
22 to take up with the parties before we can proceed
23 with the trial, okay? We're not done yet. And
24 instead of keeping you locked down there for another
25 30 minutes just so that you can hear my opening

1 instructions and the opening argument, I don't think
2 it's fair for you and it's not fair for your time.

3 Understand, ladies and gentlemen, the one
4 thing I hate in life is visiting the doctor. And
5 the reason I hate it is not so much what they do to
6 you when you get there. It's the fact that you get
7 there, you're on time for your appointment. You
8 wait 30 minutes. They call your name. They take
9 you back into the exam room.

10 They give you one of those embarrassing
11 robes. You put that on, and you're waiting there
12 for about an hour while you're waiting for the
13 doctor to see you. All I can assure you is that
14 we're actually working, and we are working on this
15 case. It's just taking longer than I had
16 anticipated, okay?

17 It's nobody's fault except for mine. So
18 what I'm telling you is I'm going to go ahead and
19 excuse you in the next few moments so that you can
20 go home. I'm going to ask that you come back and go
21 straight to the jury room tomorrow and if you'll be
22 in there, if you could, by 10:00.

23 We're going to start the case at 10:00.
24 I'm not going to keep you waiting, okay? When you
25 go home tonight, it's fine to tell your husband,

1 your wife, your significant other, or whoever it is
2 that you share the house with that you've been
3 selected on a jury. But, again, don't tell them
4 anything about the case that you've been chosen on.

5 The reason for this is very simple.
6 Ultimately when this case gets to you, when you get
7 a chance to make a decision, it's going to be your
8 decision and your decision alone. And it wouldn't
9 be fair to anyone to have your decision affected by
10 -- no matter how well-intentioned it might, it
11 wouldn't be fair to have that decision affected by
12 something that somebody may tell you inadvertently,
13 okay?

14 Additionally, tonight when you go home,
15 please do not perform any sort of independent
16 investigation of this case, okay? Don't do any sort
17 of search on the computer. Don't do any sort of
18 Internet search of anyone's names involving this
19 case. That would be a violation of the oath that
20 you're going to take tomorrow morning as jurors.

21 So I would tell you that in those cases
22 where the trial judge later found out that a juror
23 had kind of disregarded their instructions and took
24 it upon themselves to Google some names or Google
25 the allegations, that judge was not too happy. And

1 that juror was definitely not a happy person after
2 the Court found out, okay?

3 I don't want to be put in that sort of
4 situation. I've never had to be put in that kind of
5 situation. And the reason for this, again -- I'll
6 tell you the reason for this rule -- as you know, a
7 stuff that's on-line and a lot of the stuff that's
8 on the Internet is not reliable, okay? It's
9 garbage.

10 It's simply what somebody says, and they
11 can post it up there. And nobody has tested it, and
12 nobody has examined it. There aren't any rules.
13 You can put anything on-line that you want to, all
14 right? In this Court, we use different standards.
15 We use the rules of evidence, and the rules of
16 evidence are designed to try and give you the best
17 information that we possibly can give you.

18 The Internet, newspapers, all media, are
19 not subject to those rules. And that's the reason
20 it would not be fair to anybody involved if you were
21 to do that kind of searching. Hopefully, your lives
22 are more interesting than this case. Enjoy your
23 evening without worrying about this, and be back in
24 the jury room tomorrow morning at 10:00, okay?

25 Again, I apologize so badly for keeping

1 you waiting. But you are free to go at this point
2 in time, and I'll see you tomorrow morning, okay?

3 (Whereupon, the jury left the courtroom at
4 4:34 p.m.)

5 THE COURT: The jury is out.

6 Mr. Verner, one thing that occurred me to
7 while I was talking to the jury -- and I understand
8 your point entirely about this car being perhaps
9 more remotely connected than the situation where you
10 have somebody pulled over for DUI.

11 In this case, though, you have a person
12 who is arrested who's from out of state. You have
13 the automobile parked somewhere kind of close to
14 where the crime took place. Where he's staying is
15 ultimately not within walking distance.

16 I could certainly see where the police
17 have reasonable suspicions to take a look at that
18 car and to glance in that car, because based on what
19 they've observed so far, more likely than not the
20 car was involved with bringing the individual to
21 that location and possibly exportation of any items
22 that may have been stolen.

23 And, again, they're on the lookout in this
24 particular area because of the prior burglary of
25 this area. How does that factor into the Court's

1 analysis, or can you speak to that?

2 MR. VERNER: I think that's correct, and
3 the local thinking is that the vehicle is being used
4 to transport or possibly transport goods or not
5 stolen goods, Your Honor. I think that's the
6 correct line of thinking.

7 It's just my problem and, again, the other
8 case I've cited, my argument just stands for the
9 police have to have lawful reason to take the car
10 into custody for the automobile exception or the
11 inventory exception to apply. Just because it's an
12 automobile does not mean that it automatically can
13 get searched because it is owned by the defendant.

14 THE COURT: And I would agree a hundred
15 percent with you if they searched that car and it
16 was back at the hotel room a mile and a half away or
17 if it was parked some other place. Its proximity,
18 though, to the crime scene could give them
19 reasonable or a suspicion and in my mind probable
20 cause to seize that item. I'm not married to that,
21 however.

22 MR. VERNER: That's I think both the
23 State's argument. I think the Court had it correct,
24 Your Honor. It's the proximity of the car to the
25 crime scene or the lack of proximity. But just,

1 again, my concern is the mere fact that the car
2 would concededly not have been seized by law
3 enforcement other than it was registered to him does
4 not automatically give the police carte blanche to
5 take the car into its custody or control.

6 They would not have done this, as they
7 testified, for any other reason but that it was
8 registered to the defendant and I guess its location
9 was on the Wilson Road.

10 THE COURT: And the items that they
11 maintained were in plain view.

12 MR. VERNER: Yes, sir. But I guess it's a
13 -- type argument or an extenuating circumstances,
14 but it's clear they took the vehicle because it was
15 registered to his name. And I understand the
16 Court's argument that it could be used to transport
17 items from the crime scene or crime items to the
18 scene.

19 But they were going to search it
20 regardless once they identified it as his. And just
21 the mere fact that it was his and it was a car does
22 not mean it automatically it gets taken out of the
23 search warrant department.

24 THE COURT: I understand.
25 Solicitor?

1 MR. SCOTT: Your Honor, I guess just
2 moving on from the inventory search argument,
3 because I don't know the answer to the proximity
4 issue. I certainly would argue that you see the
5 aerial map. From what I understand, it's a strong
6 sand wedge from here to where his car was found.

7 In the alternative, if you do go with the
8 automobile exception, I think there's a case of
9 State v. Weaver, and Your Honor probably has that in
10 front of him. It's 374 S.C. 313. That stands for
11 the proposition if there's PC to search a vehicle, a
12 warrant is not necessary so long as the search is
13 based on facts that would justify the issuance of a
14 warrant, even though a warrant has not actually been
15 obtained. The officers have testified that they
16 knew Mr. McCoy was -- and, again, I'm going to blend
17 like the mobility of the car and the lessened
18 expectation of privacy here.

19 THE COURT: It's almost the totality of
20 the circumstances sort of and the guy's from
21 Tennessee.

22 MR. SCOTT: This is a very dynamic
23 situation. They know he's from Tennessee. They
24 talk about staking out the Bi-Lo. Nobody came out
25 of the Bi-Lo, but who's to say they're not hiding in

1 the woods. And they see evidence in that car in
2 plain view that links him to these prior burglaries,
3 that links him back to Bear Village.

4 I'm sorry for getting these shopping
5 centers mixed up. So, Your Honor, if you look at
6 the warrant -- I have them down here -- and you look
7 at what was sworn to the magistrate, nothing that
8 was gained from what we'll call the inventory search
9 is even referenced in his affidavit.

10 It's all based on like the totality of the
11 circumstances and the plain-view evidence that's
12 observed through the glass of the car. Your Honor,
13 I guess just after that -- and I think Mr. Verner
14 touched on it -- I think the inevitable discovery of
15 all this evidence would come into play.

16 It occurs to me, as I said, all this
17 information that was gained just from observing the
18 car on the outside without even having to open a
19 door was enough to get the PC that ultimately gained
20 the search warrant.

21 So I know I've thrown a couple of
22 different scenarios at you, Your Honor, but I think
23 that all taken in whole -- I think it's fine just
24 from the automobile exception. But certainly
25 inevitable discovery would come into play if somehow

1 State v. Weaver wasn't on point as far as there
2 being PC to search the vehicle. There certainly was
3 that.

4 RULING OF THE COURT

5 THE COURT: I've had a chance to review
6 the Weaver decision, and my clerk also found the
7 U.S. v. Whitebourne (PH) case, 813 Second 646. The
8 Whitebourne relates to the inevitable discovery
9 doctrine. It does, however, cite the Supreme Court
10 decision in Segura -- S-E-G-U-R-A -- at 468 U.S.
11 795.

12 Reading those cases together -- Weaver,
13 Whitebourne, and Segura -- my understanding is that
14 the current state of the law is that if there's
15 probable cause to search the car and the car is due
16 to its ready ability and there's probable cause to
17 look into the car, there's no problem with the
18 initial search.

19 I am really having to read all three of
20 those cases together. And I think here is a
21 reasonable conclusion based on all of these cases.
22 You have numerous items in plain view. Part of
23 securing the vehicle involves impounding it. If
24 you're impounding the automobile, pursuant to the
25 testimony that we've heard today, an inventory

1 search is part of impounding it.

2 Clearly, the police had authority to
3 secure this vehicle for the reasons that we've
4 already discussed and the reasons we've already
5 explained. I believe that they also clearly had
6 probable cause to search the vehicle independent of
7 any impounding of the car because of the facts that
8 have been put on the record.

9 The defendant is from Tennessee. That is
10 known to them. The only car with Tennessee tags is
11 located in a parking lot at a stone's throw of the
12 incident location. When they find the car with
13 Tennessee tags, they check in the windows, they look
14 around in the windows, and they can plainly see in
15 plain view burglary tools.

16 That is my conclusion that the bag in the
17 back was open. They see other things in the car
18 which gives them reasonable, articulable suspicion
19 to search the car. Apparently at the time the
20 inventory search was taking place or shortly before
21 it began, the lead investigator went to the
22 magistrate and sworn out an affidavit for a search
23 warrant with the magistrate to search the car.

24 In the affidavit, none of the items which
25 were not in plain view were listed. In short, only

1 the items that were in plain view were included in
2 the affidavit for that search warrant.

3 Accordingly, the inevitable discovery
4 doctrine may very well apply, but it's also entirely
5 possible that at the time that warrant had been
6 signed, I doubt that that search had even taken
7 place yet.

8 And the warrant is part of the record I
9 believe in this case. You have as a part of the
10 record the warrant and the affidavit, right? That
11 is State's One at this point just for ID?

12 MR. SCOTT: It is Court's Two and Three,
13 Your Honor.

14 THE COURT: Court's Two and Three. So for
15 the forgoing reasons, I would conclude that the
16 search was proper and within the bounds of both the
17 State and Federal Constitution. That would be my
18 ruling on that issue. Any other issues that we need
19 to take up pre-trial?

20 MR. VERNER: No, Your Honor. Tomorrow
21 morning I'm going to have a better -- I think the
22 State believes that Mr. McCoy has an out-of-state
23 criminal rap sheet. I'll double-check tomorrow and
24 see which crimes I think would be impeachable type.

25 THE COURT: All right.

1 MR. VERNER: And I think we can briefly
2 address that probably better tomorrow.

3 THE COURT: Very good. While we have 10
4 minutes tonight, are you all going to be able to
5 stipulate some exhibits, or could we at the very
6 least get those marked?

7 MR. VERNER: I will meet with them. If
8 there's anything else they haven't shown me, I'd
9 like to see it tonight. But my understanding is
10 I've seen everything, but I'll double-check tonight.

11 THE COURT: If we could handle it this
12 way. Well, actually, it would probably be best if
13 you don't mark the exhibits because we've got a new
14 Court Reporter coming tomorrow. Mary Ann Douglas is
15 coming tomorrow.

16 Can you give them just some blank
17 stickies, and we can agree to some numbers? And
18 then we'll let Mary Ann actually take those into
19 evidence. I guess you'll have to hang onto these.
20 You don't?

21 COURT REPORTER: I just had them sign it.
22 I left it for them.

23 THE COURT: Okay. Keep those so we can
24 keep them all together.

25 COURT REPORTER: Oh, yes, you'll have it

1 all. I have it ready to go for you.

2 THE COURT: Okay. All right, we'll keep
3 the stuff that's already been introduced. You all
4 take a look and at least mark the things. I intend
5 to get here about 9:30 tomorrow. And whatever you
6 agree to, that's fine. And then we can hit the
7 ground running with the jury when they get here at
8 9:00, okay?

9 MR. VERNER: Thank you, Judge.

10 THE COURT: Gentlemen, thank you very
11 much.

12 MR. SCOTT: Thank you, Your Honor.

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

COURT REPORTER'S CERTIFICATION

I, REMA K. GANTT THOMAS, OFFICIAL COURT
REPORTER, AND NOTARY PUBLIC IN AND FOR THE STATE OF
SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING
IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF
RECORD OF THE PROCEEDINGS HAD AND EVIDENCE
INTRODUCED IN THE ABOVE-CAPTIONED CASE ON APRIL 22,
2013, IN NEWBERRY, SOUTH CAROLINA.

I FURTHER CERTIFY THAT I AM NEITHER OF COUNSEL
NOR KIN TO ANY OF THE PARTIES TO THIS CAUSE OF
ACTION, NOR AM I INTERESTED IN ANY MANNER IN ITS
OUTCOME.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND
AND SEAL AT CHAPIN, SOUTH CAROLINA, THIS THE TWELFTH
DAY OF DECEMBER, 2013.


REMA K. GANTT THOMAS
OFFICIAL COURT REPORTER
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES 11/21/2014

State of South Carolina	)	In the Court of General Sessions
	)	Eighth Judicial Circuit
County of Newberry	)	2012-GS-36-0872
		2012-GS-36-0874
		2012-GS-36-0877
		2012-GS-36-0878
		2012-GS-36-0882
		2012-GS-36-0883

State of South Carolina,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Transcript of Record
	)	
Jeffrey Glenn McCoy,	)	
	)	
Defendant.	)	
	)	
	)	

April 23 - 24, 2013
Newberry, South Carolina

B e f o r e:

The Honorable Frank R. Addy, Jr., Judge; and a jury

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

C. Dale Scott, Deputy Solicitor
C. Yates Brown, Jr., Assistant Solicitor
Attorneys for the Plaintiff

Charles V. Verner, Esquire
Attorney for the Defendant

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

I N D E X

1		
2		
3	Opening Statement by Mr. Scott	40
4	Opening Statement by Mr. Verner	48
5	TRIAL TESTIMONY - WITNESS	
6	Justin Weaver,	
7	Direct Examination by Mr. Scott	50
8	Cross-Examination by Mr. Verner	74
9	Boris Alvarado,	
10	Direct Examination by Mr. Brown	77
11	Cross-Examination by Mr. Verner	97
12	Harold Malloy,	
13	Direct Examination by Mr. Brown	100
14	Desiree Busko,	
15	Direct Examination by Mr. Scott	119
16	Ela Patel,	
17	Direct Examination by Mr. Scott	135
18	Cross-Examination by Mr. Verner	142
19	Kevin Goodman,	
20	Direct Examination by Mr. Scott	144
21	Cross-Examination by Mr. Verner	161
22	Redirect Examination by Mr. Scott	164
23	Allison Hawkins,	
24	Direct Examination by Mr. Scott	167
25	Cross-Examination by Mr. Verner	172

I N D E X

PROFFER TESTIMONY - WITNESS

Sherwin Jessie,

Direct Examination by Mr. Scott 177

Examination by the Court 180

TRIAL TESTIMONY - WITNESS

Sherwin Jessie,

Direct Examination by Mr. Scott 186

Cross-Examination by Mr. Verner 192

Redirect Examination by Mr. Scott 200

James Marshall,

Direct Examination by Mr. Brown 207

Cross-Examination by Mr. Verner 212

Shirley Long,

Direct Examination by Mr. Brown 213

Cross-Examination by Mr. Verner 218

Redirect Examination by Mr. Brown 224

Recross-Examination by Mr. Verner 226

Sarah Hoffman,

Direct Examination by Mr. Brown 227

Cross-Examination by Mr. Verner 232

Marie Henry,

Direct Examination by Mr. Brown 233

Cross-Examination by Mr. Verner 241

1 TRIAL TESTIMONY - WITNESS

2 Charles Counts,

3 Direct Examination by Mr. Scott 243

4 Cross-Examination by Mr. Verner 247

5 Redirect Examination by Mr. Brown 249

6 Recross-Examination by Mr. Verner 260

7 Motion by Defendant 278

8 Motion by Defendant 280

9 Closing Argument by Mr. Scott 295

10 Closing Argument by Mr. Verner 312

11 Charge of the Court 315

12 Verdict of the Jury 339

13 Sentence of the Court 353

14 Certificate Page 357

15

16

17

18

19

20

21

22

23

24

25

E X H I B I T S

	<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EVID.</u>
1				
2				
3				
4	S-1	Aerial Photo	49	72
5	S-2 (A-K)	Photographs (11)	53	55
6	S-3 (A-H)	Photographs (9)	60	61
7	S-4 (A-F)	Photographs (7)	62	63
8	S-5 (A-G)	Photographs (8)	64	66
9	S-6 (A-G)	Photographs (8)	68	70
10	S-7	Aerial Photo	80	82
11	S-8	Aerial Photo	84	85
12	S-9 (A-N)	Photographs (15)	87	94
13	S-10 (A-R)	Photographs (18)	99	116
14	S-11	Aerial Photo	124	124
15	S-12 (A-M)	Photographs (14)	128	134
16	S-13	Photograph	135	141
17	S-14	Bin with Contents (WITHDRAWN)	150	
18	S-15	Photograph	160	167
19	S-16	Photograph	206	210
20	S-17	Mounted Photograph	242	257
21	S-18	Mounted Photograph	242	250
22	S-19	Mounted Photograph	242	259
23	S-20	Pair of Shoes	255	256
24	C-1	Jury Note	344	
25	C-2	Jury Note	344	

1 TRIAL DAY 1 - 04/23/13

2 (Whereupon, the proceedings were commenced at 10:19 a.m.)

3 THE COURT: Solicitor, you want to proceed, sir?

4 MR. SCOTT: Yes, sir. Your Honor, before you is
5 Jeffrey McCoy. He has decided to tender a plea today.
6 He's pleading straight-up to Indictment No. 2012-GS-36-
7 0872; that is for safecracking. Burglary second-violent,
8 that is Indictment 12-GS-36-0874; another burglary second-
9 violent, 12-GS-36-0877; another burglary second-violent,
10 12-GS-36-0878; another burglary second-violent, 12-GS-36-
11 0882; and another burglary second-violent, 12-GS-36-0883.

12 This plea is straight-up. The state is dismissing a
13 -- two petty larcenies ---

14 (Whereupon, Mr. Verner and the defendant conferred.)

15 MR. SCOTT: --- a grand larceny, and a ---

16 THE COURT: --- burglary tools?

17 MR. SCOTT: --- burglary tools. Thank you, Your
18 Honor.

19 THE COURT: All right.

20 MR. SCOTT: And the -- of course, the attempted -- we
21 didn't call them for this trial, but there was an attempted
22 burglary and another possession of a -- burglary tools that
23 we're dropping as well.

24 THE COURT: All right. Mr. Verner, you're
25 representing Mr. McCoy?

1 MR. VERNER: I am, Your Honor.

2 THE COURT: I'm told that he wants to plead guilty,
3 apparently, to five burglary-second-degree-violent charges;
4 is that accurate?

5 MR. VERNER: Yes, Your Honor.

6 THE COURT: As well as one safecracking charge; is
7 that correct?

8 MR. VERNER: Yes, Your Honor.

9 THE COURT: All right. Mr. Scott, if you don't mind,
10 while I double-check something, would you sign off on those
11 sentencing sheets for me, please?

12 MR. SCOTT: Sure.

13 THE COURT: Thank you.

14 MR. SCOTT: I -- I had those. It was attached to the
15 guilty-plea sheet.

16 THE COURT: All right. Yes. All right. Mr. Verner,
17 you, of course, are representing Mr. McCoy. And I assume
18 that you have reviewed with him all his constitutional
19 rights, including his right to a jury trial?

20 MR. VERNER: I have, Your Honor.

21 THE COURT: And from your review of the facts and
22 circumstances in this case, do you believe that the state
23 has sufficient credible evidence to prove Mr. McCoy's guilt
24 beyond a reasonable doubt; and if he were to proceed to
25 trial, his conviction would be likely?

1 MR. VERNER: Yes, Your Honor.

2 THE COURT: All right. You've reviewed with him the
3 penalties involved with these offenses: Burglary second-
4 degree-violent, the five counts would carry up to 15 years
5 is my understanding; is that right?

6 MR. VERNER: It is.

7 THE COURT: I believe that's also a violent offense,
8 and it's a serious offense; is that your understanding ---

9 MR. VERNER: It is ---

10 THE COURT: --- as well?

11 MR. VERNER: --- Your Honor.

12 THE COURT: All right. The safecracking charge, I
13 believe, carries up to 30 years; is that accurate?

14 MR. VERNER: That's correct, Your Honor.

15 THE COURT: That's what's reflected on the -- or the
16 guilty-plea information sheet. That would also be an 85
17 percent offense, since it carries up to 30, correct?

18 MR. VERNER: It -- it's an 85 percent offense, Your
19 Honor.

20 THE COURT: All right. Is that classified as well as
21 serious?

22 MR. VERNER: It is a serious -- it's -- I would've
23 thought it to be most serious, but it's actually serious.
24 Mr. Brown -- so -- and -- and I explained to him the three-
25 strikes laws that South Carolina has, Your Honor.

1 THE COURT: All right.

2 THE DEFENDANT: Your Honor, can I ask a question? Are
3 -- is that an 85 percent on the burglaries?

4 MR. VERNER: The safe -- no, not the burglaries.

5 THE COURT: I think burglaries are not 85 percent.

6 No, sir. But the ---

7 THE DEFENDANT: That's ---

8 THE COURT: -- safecracking ---

9 THE DEFENDANT: --- all right. I just wanted to clear
10 that up.

11 THE COURT: My understanding is that the burglaries
12 are not 85 percent offenses. And Mr. Brown is nodding his
13 head in agreement. And that would be the case.

14 THE DEFENDANT: Okay.

15 MR. VERNER: I have informed him and he's basing on --
16 his plea on my recommendation that the burglaries -- he
17 could do day for day the full sentence that the Court
18 imposes, but they would be treated in the ordinary manner
19 of a -- of any other sentence -- of -- of a non-85 percent
20 -- offenses are either non-85 percent or they're 85
21 percent. Safecracking ---

22 THE COURT: Correct.

23 MR. VERNER: --- is the 85 percent. The burglaries
24 would be -- the -- they're violent for the purposes of they
25 put a strike on his record. And that would also affect

1 where SCDC would house him as an inmate.

2 THE COURT: Okay.

3 JEFFREY MCCOY, having been first duly sworn,
4 testified as follows:

5 THE COURT: You are Jeffrey Glenn McCoy?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Mr. McCoy, I'm told that you want to plead
8 guilty to five counts of burglary second-degree-violent; is
9 that right?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Do you understand that each of those
12 charges carries up to 15 years?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: You understand?

15 Additionally, the safecracking charge carries up to 30
16 years. It is classified as a serious offense, and it would
17 be an 85 percent offense. Do you understand?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: So if I decided to give you 30 years on
20 that safecracking charge, you'd have to serve 85 percent of
21 that. Do you understand, sir?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: I seriously doubt I'm going to do that.
24 As Mr. Verner has probably explained to you ---

25 THE DEFENDANT: Yes, sir.

1 THE COURT: --- I tend to give people the benefit of a
2 more lenient sentence when they're more willing to admit
3 their -- their culpability in a particular case. I think
4 that's appropriate. So you understand that you're probably
5 not going to get 30 years on that; that whatever ---

6 THE DEFENDANT: Yeah.

7 THE COURT: --- you get ---

8 THE DEFENDANT: Yeah.

9 THE COURT: --- is up to me and ---

10 THE DEFENDANT: But ---

11 THE COURT: --- I haven't really ---

12 THE DEFENDANT: --- it ---

13 THE COURT: --- had a chance to review your criminal

14 ---

15 THE DEFENDANT: It's still ---

16 THE COURT: --- record.

17 THE DEFENDANT: --- scary, though.

18 THE COURT: I'm sorry?

19 THE DEFENDANT: I said it's still scary, though.

20 THE COURT: I understand that. You realize, Mr.

21 McCoy, that being serious offenses, you're -- you're
22 pleading guilty to a total of six serious offenses and if
23 you were to be released at a later point in time, when you
24 were released from prison, if you were to get involved with
25 another serious offense or a couple of other burglaries,

1 you understand that -- that a state could seek life without
2 the possibility of parole against you?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Additionally, these crimes are classified
5 as violent; they would be strikes against you for those
6 purposes as well and obviously would affect where you are
7 placed in the Department of Corrections. You understand
8 that, sir?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Now, I know that there is a provision of
11 law under the two-strikes/three-strikes wherein one crime
12 committed -- or multiple crimes committed out of one course
13 of conduct would only count as one strike. It is
14 understood is there any discussions about how I should
15 treat this or ---

16 MR. VERNER: They -- well, yeah. Again, the -- the
17 state has not charged him with life without parole under
18 that -- he's got no prior strikes on his record from the --
19 from the out of state, Judge. I -- I'm satisfied -- pleas
20 for events that happened in one day count as one strike.
21 The ---

22 THE COURT: I would ---

23 MR. VERNER: --- the -- this ---

24 THE COURT: --- be inclined, Solicitor, to find that
25 basically this is one event for purposes of a strike. I

1 think that that's probably a fair assessment, even though
2 there are separate victims.

3 MR. SCOTT: That's how I'd review it. If Dale Scott,
4 ten years from now, looked back at this particular plea, I
5 -- that's how I would interpret it, Your Honor.

6 MR. VERNER: I -- I think we had an occasion to visit
7 that same issue not long ago, where a fella pled guilty to
8 multiple burglaries at one time.

9 THE COURT: Correct.

10 MR. VERNER: But they spanned a course of several
11 months. And the state did add that -- add them as separate
12 burglaries. And -- and I think the Court upheld -- I -- I
13 think a court would likely this is one strike, Your Honor.
14 Hopefully, he's not going to test the -- in the future.

15 THE COURT: And -- and that's my hope as well. I'll
16 enter an order reflecting that all of these incidents arose
17 out of the same course of conduct, the same offense; and
18 that for purposes of strikes, this would only constitute
19 his first.

20 All right. Mr. McCoy, again, I'm told that you want
21 to plead guilty to all this. You understand there are no
22 negotiations or recommendations and this sentence is
23 entirely left up to me? You understand that?

24 THE DEFENDANT: Yes, sir, I do.

25 THE COURT: Mr. McCoy, in the last 24 hours, have you

1 taken any medication or any substance that affects ---

2 THE DEFENDANT: No.

3 THE COURT: --- your thinking?

4 THE DEFENDANT: No, sir.

5 THE COURT: And you -- have you ever been treated for
6 any mental illness or mental problems or nervousness?

7 THE DEFENDANT: No, sir.

8 THE COURT: Okay. So you're clearheaded and you
9 understand ---

10 THE DEFENDANT: Yes.

11 THE COURT: --- what's ---

12 THE DEFENDANT: I ---

13 THE COURT: --- going on?

14 THE DEFENDANT: --- understand every -- what's going
15 on.

16 THE COURT: Mr. McCoy, are you guilty of these crimes?

17 THE DEFENDANT: Yes, I am.

18 THE COURT: Mr. McCoy, I'm going to need you to listen
19 up. I know that yesterday you heard the testimony from the
20 officers in that hearing that we had. But I want the
21 benefit of -- for future record and the benefit of my court
22 reporter and we have a different court reporter here today,
23 I'll let the solicitor go ahead and read into the record
24 the basis for the charges against you. All right? When
25 he's done reading this or when he's done speaking, I'll

1 then ask if that's what you did. Okay, Mr. McCoy?

2 THE DEFENDANT: (Nodded head up and down.)

3 THE COURT: You understand?

4 THE DEFENDANT: Yes, I understand.

5 THE COURT: So please do listen up, okay?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Mr. Scott?

8 MR. SCOTT: Thank you, Your Honor. These pleas today
9 arise out of what we discussed yesterday. That would be
10 the burglary that occurred at the -- I -- Shops on Wilson.
11 I think it's 1335 Wilson Road here in Newberry.
12 Essentially, as we -- we talked about yesterday, Officer
13 Weaver, who -- who sits here in the front row with the
14 moustache, he was on routine patrol and noticed a hole in
15 the back of the building; went in to check -- (To Mr.
16 Weaver) What time was it: early the next morning; is that
17 right?

18 MR. WEAVER: It was about around 6 a.m.

19 MR. SCOTT: --- 6 a.m. or so; tells me he could still
20 smell burning metal. Immediately noticed that the walls
21 had been busted through from the partitions between the
22 individual stores. There's a El-Amin Barbershop; a Boost
23 Mobile store; Jackson Hewitt; a Regional Finance; and then,
24 a Check Into Cash. Your Honor, what I -- what I had drawn
25 today, just so I could keep it straight, is this diagram

1 here that kind of outlines the -- the stores with Wilson
2 Road here.

3 Essentially, he pulled some sheet metal back at the
4 El-Amin; went through -- broke through the Sheetrock; stole
5 a -- a bunch of cell phones from Boost Mobile, which were
6 located in his hotel room. Went to Jackson Hewitt; broke
7 through that wall. Got into Regional Finance, where I
8 think he -- that's where he took the gold coins and
9 quarters and loose change and stuff like that.

10 For whatever reason, he couldn't get through this
11 final wall. So he goes out -- out to the back of Check
12 Into Cash and -- and breaks through the cinder block. And
13 we've got these pictures of the nice holes in the exterior
14 walls.

15 Your Honor, the officers were looking for a suspect;
16 had no leads at that time, but were extra vigilant that
17 night. Officer Alvarado over here testified yesterday he
18 was on his routine property checks. And as we talked about
19 yesterday, he just sort of stumbled upon the defendant as
20 he was behind Bear Creek Village, which is about eight-
21 tenths of a mile up Wilson Road from 1335 Wilson Road.

22 Your Honor, when Officer Busko arrives, he did find
23 various tools to include wire snips, wire cutters. From
24 the night before, they had found where he had disarmed a
25 bunch of security devices -- alarms and cameras and whatnot

1 -- by snipping the cords on them.

2 Your Honor, as we talked about yesterday, the -- he
3 did give his name and date of birth, which they ran;
4 discovered he was from Tennessee. Then that -- that leads
5 us to Officer Malloy going to the BI-LO, which an adjacent
6 parking lot; finding the Taurus that was registered to Mr.
7 McCoy, finding tools and stuff that are -- were consistent
8 with what they had observed at the 1335 Wilson Road
9 incident location.

10 They did find the key to his hotel room at the Budget
11 Inn. They went there. The innkeeper showed them a
12 receipt. It had his name on it, where he had checked in
13 for two nights. Once inside, Your Honor, they found,
14 again, just a cache of cell phones. Kevin, how -- how many
15 -- I mean, there was -- we've got pictures, Your Honor.
16 But it -- it's -- he cleared them out, the display case in
17 the Boost -- they -- they don't have any phones left.

18 Judge, the -- his rap sheet is in front of Your Honor
19 for Your Honor's consideration. It -- it is fairly
20 lengthy. They're out-of-state charges. There's Tennessee
21 charges and Florida charges, which are traditionally
22 difficult for me to read. But I -- I do recognize property
23 crimes consistently throughout his rap sheet.

24 THE DEFENDANT: Your -- Your Honor, can I say
25 something when ---

1 MR. VERNER: When he's through.

2 THE DEFENDANT: Oh, I'm sorry.

3 THE COURT: Sure. Just -- just one moment, please,
4 Mr. McCoy. Go ahead, Mr. McCoy.

5 MR. SCOTT: Thank you, Your Honor. Told he is -- he's
6 got charges pending out of Mississippi. Judge, I have
7 really been at -- Yates had this case before me and worked
8 with Charles on it. And Charles has asked me for offers
9 and I -- I have not really given him an offer that was
10 particularly palatable. And that was because speaking with
11 law enforcement and -- and their feelings on it, Your
12 Honor, I think this is the kind of defendant that -- that
13 deserves probably a -- a substantial sentence.

14 This would not have come in at trial, Your Honor. But
15 when they went to his hotel room, there were stacks of
16 notes. I'm happy to pass them up for Your Honor to review.
17 What he has here -- or what -- what it appears are maps of
18 various homes, businesses -- details like dogs' names in
19 the backs of people's yards, where the bedrooms are in
20 these homes, the disposition of -- of -- of -- or -- or --
21 I -- I guess the temperament of -- of these animals. I'm
22 holding one up where he says: "There may be one black lab
23 in the backyard; mace with saffron; it'll take its breath
24 away."

25 That scares me, Your Honor. To be frank, I always

1 kind of look at the people who deserve jail time as not
2 necessarily people you don't like, but the people you're
3 afraid of. The -- the -- I think he falls in that
4 category. You -- and I don't know if you care to see
5 these. But these are -- these are things that -- that were
6 shown to me that were recovered from his hotel room. That,
7 taken with his record, taken with the fact that he -- he is
8 out of town -- or he lives out of town -- he's from
9 Tennessee -- what I'm -- that's what I understand. It
10 appears he traveled to Newberry with one purpose in mind,
11 and that -- and that was to rob businesses.

12 (To Mr. Goodman) Kevin, is there anything you wanted
13 ---

14 MR. GOODMAN: Yeah. That's ---

15 MR. SCOTT: --- to say?

16 MR. GOODMAN: No. That's good. That's good.

17 MR. SCOTT: Judge, I think that's about it. That --
18 those are -- those are my feelings on this particular case.
19 But, of course, they are straight-up pleas and would be in
20 Your Honor's discretion, whatever sentence he gets.

21 THE COURT: I -- I do understand your position,
22 Solicitor. All right. Mr. McCoy, I know you wanted to say
23 something. But let me ask you a question first; then I'll
24 let you say what you need to say, okay, sir? Well, before
25 I turn to you, the -- the safecracking charge, what's the

1 factual basis on that?

2 MR. SCOTT: Judge, at the Check Into Cash ---

3 THE COURT: Is that where the gold coins ---

4 MR. SCOTT: No.

5 THE COURT: --- came from?

6 MR. SCOTT: That was a Regional Finance next door.

7 The Check Into Cash, there was a -- a -- a pretty large
8 safe, where he -- he had managed to saw off the -- I guess,
9 an exterior sheet of metal. He was unable to gain access
10 to the contents. But he had left a -- let's see. There
11 was a grinder and some ---

12 (Whereupon, Mr. Scott and Mr. Brown conferred.)

13 MR. SCOTT: --- a grinder and hammers and various
14 other tools. There are tool markings on the safe where you
15 can tell he had -- he had attempted to get in. What would
16 probably have come out in the trial was he left a shoe
17 print on the sheet of metal he was able to cut away from
18 the safe, which ultimately matched a pair of shoes that
19 were recovered in his hotel room.

20 And we've got so many pictures. I -- I don't -- I
21 don't know if we'll be able to find it. But it -- it -- I
22 think that pretty much covers his safecracking charge.

23 MR. VERNER: (To Mr. Scott) Can I see that first
24 before you hand it to the ---

25 MR. SCOTT: Oh, I'm sorry. Here you go.

1 THE COURT: Mr. McCoy, you've heard what the state
2 alleges with regard to these five burglaries of these
3 businesses and the attempt to enter the safe. Are you, in
4 fact, guilty of these offenses, sir?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: You are?

7 THE DEFENDANT: Yes.

8 THE COURT: All right. Do you want to say something
9 to me? When the solicitor was reading your record, you --
10 you ---

11 THE DEFENDANT: Well, I was ---

12 THE COURT: --- appeared ---

13 THE DEFENDANT: --- just wanting to say this: It's --
14 it's really not as bad as it looks.

15 THE COURT: I'm sorry?

16 THE DEFENDANT: I just -- it's -- it's really not as
17 bad as it looks, my record.

18 THE COURT: I -- I understand that, sir. I -- a lot --
19 -- things look pretty bad on paper sometimes and -- and I
20 understand how that is. I'm sure your lawyer will address
21 that, okay?

22 THE DEFENDANT: Well -- and they also withheld
23 adjudication on -- on them two burglaries from '93. I was
24 just 19 years old at the time.

25 THE COURT: I understand.

1 Now, Mr. McCoy, I -- I've got to review with you some
2 rights that you have, okay? If you have any question about
3 anything I'm discussing with you, I want you to stop me and
4 either ask me or you can ask Mr. Verner and we can clarify
5 what's going on, okay, and what rights it is that you're --
6 what rights it is that you're waiving, okay, sir?

7 THE DEFENDANT: Well, can -- can -- can I ask you one
8 more question?

9 THE COURT: Sure ---

10 THE DEFENDANT: Can I ---

11 THE COURT: --- please.

12 THE DEFENDANT: --- back out of this right now?

13 THE COURT: I'm sorry?

14 THE DEFENDANT: Can I back out of this right now?

15 THE COURT: Yes, sir.

16 THE DEFENDANT: I can?

17 THE COURT: Yes, sir.

18 THE DEFENDANT: At -- at any time?

19 THE COURT: Yes, sir. At --

20 MR. VERNER: Up until ---

21 THE COURT: -- any time ---

22 MR. VERNER: --- he take the plea.

23 THE COURT: --- until such time as I accept your
24 guilty plea.

25 THE DEFENDANT: Okay.

1 THE COURT: Yes, sir.

2 THE DEFENDANT: Okay.

3 THE COURT: And I have not accepted your guilty plea
4 yet. Do you want to back out or do you ---

5 THE DEFENDANT: No.

6 THE COURT: --- want ---

7 THE DEFENDANT: I'm -- I'm still -- I'm -- I'm still
8 listening to you. But ---

9 THE COURT: Okay.

10 MR. VERNER: He ---

11 THE DEFENDANT: --- I'm ---

12 MR. VERNER: --- he is ---

13 THE DEFENDANT: --- really getting nervous.

14 MR. VERNER: The -- there's no question he's -- that
15 he's scared, Your Honor. The Court ---

16 THE DEFENDANT: I'm scared ---

17 MR. VERNER: --- can understand ---

18 THE DEFENDANT: --- to death.

19 MR. VERNER: --- that.

20 THE COURT: Mr. McCoy, that's totally understandable,
21 okay, sir?

22 THE DEFENDANT: But I'm -- I'm trying to, you know --
23 I'm ---

24 THE COURT: At any time you want to withdraw that
25 plea, just let me know or tell Mr. Verner and he'll let me

1 know, okay? And again, I'll give you all the time that you
2 need to talk ---

3 THE DEFENDANT: Well, can I ---

4 THE COURT: --- to him ---

5 THE DEFENDANT: --- talk with him, then?

6 THE COURT: If you want to talk to him right now, go

7 ---

8 THE DEFENDANT: Please.

9 THE COURT: --- right ahead ---

10 MR. VERNER: Just one ---

11 THE COURT: --- Mr. McCoy.

12 MR. VERNER: --- question.

13 THE COURT: Sure.

14 (Off the record from 10:40 a.m. until 11:05 a.m.)

15 THE COURT: All right. We're back on the record. Mr.
16 Verner ---

17 MR. VERNER: May it please ---

18 THE COURT: --- we ready to proceed?

19 MR. VERNER: --- the Court?

20 THE COURT: Yes, sir.

21 MR. VERNER: The -- well, Judge, I -- I -- I think he
22 wants to ask Your Honor for a little bit more time to think
23 about it. I -- I think the gravity of the situation is --
24 is getting the better of him, in terms of important
25 decisions and -- and not a lot of time now to think about

1 it. But I -- I think he's asking the Court for a little
2 bit more time to think about what -- what he needs to do.

3 THE COURT: I -- I -- as much as I would very much
4 like to afford him some more time, Mr. Verner, my concern
5 is that we have the jury back there, waiting. And they've
6 been waiting since ten o'clock this morning. I mean, at
7 this point, Mr. McCoy, in all candor, sir, I -- I would
8 like to afford you some more time. But at this point ---

9 THE DEFENDANT: We ---

10 THE COURT: --- we can either proceed with the jury
11 trial or ---

12 THE DEFENDANT: Well ---

13 THE COURT: --- we can ---

14 THE DEFENDANT: --- Your Honor ---

15 THE COURT: --- go forward ---

16 THE DEFENDANT: --- I'm -- I'm willing to make a plea.
17 But I -- I -- I want a -- a guideline on that, a -- a
18 number.

19 THE COURT: I'm sorry?

20 THE DEFENDANT: I want a number of how much time I'm
21 going to get to agree -- agree to.

22 THE COURT: Well, I ---

23 THE DEFENDANT: I don't want to just go in there zero
24 to 30 and then you -- you know, you -- I don't want to put
25 it in your hands that in that perspective. I'm -- I'm

1 willing to plea, though.

2 THE COURT: Well, Mr. McCoy, I -- I understand. The
3 thing is that it's hard for me to give you an exact number,
4 okay? This is a straight-up plea. So technically, under
5 the law you're looking at 70 years on the burglary charges;
6 you're looking at 30 years -- you're looking at about a
7 total, I guess, of a hundred years. You've talked with Mr.
8 Verner; he's practiced in front of me for years. I'm not
9 going to give you a hundred years ---

10 THE DEFENDANT: Well, I ---

11 THE COURT: --- okay? I'm not going to max ---

12 THE DEFENDANT: But -- but ---

13 THE COURT: --- you out.

14 THE DEFENDANT: --- can -- can -- can -- all this
15 you're saying is scaring me to death, and I need more time
16 to think about this.

17 THE COURT: Okay. In that ---

18 THE DEFENDANT: I mean ---

19 THE COURT: --- case, we'll ---

20 THE DEFENDANT: --- I'm not thinking clearly at all
21 right now.

22 THE COURT: Okay. In that case, Mr. McCoy, we're
23 going to need to go forward with the jury trial, because I
24 cannot keep that jury waiting indefinitely, sir. Your case
25 has been called. We're already in the jury trial. We just

1 need to move forward with ---

2 THE DEFENDANT: Well ---

3 THE COURT: --- opening statements. And that's where
4 we are, unless you want to plead ---

5 THE DEFENDANT: We can't ---

6 THE COURT: --- guilty ---

7 THE DEFENDANT: --- we can't repick another jury later
8 on?

9 THE COURT: No, sir.

10 THE DEFENDANT: Why? Because this is new information
11 coming to me that I didn't know before.

12 THE COURT: What new ---

13 THE DEFENDANT: But now you're ---

14 THE COURT: --- information?

15 THE DEFENDANT: --- telling me that if I go to trial
16 -- because I'm -- I'm scared to take a 30 -- that you're
17 going give me a -- I -- I'm -- could get a hundred-and-
18 something years.

19 THE COURT: Mr. McCoy ---

20 THE DEFENDANT: I'm going ---

21 THE COURT: --- you -- you need to listen to me for a
22 second, okay, sir? All I can do is reassure you that my --
23 my general policy -- and I -- I follow it, because I think
24 it -- it makes sense. But my policy is not to give a
25 maximum sentence for somebody that pleads guilty. All

1 right? That's just my general policy. I'm not saying I
2 would punish you for going to trial. I certainly would
3 never do that. But there is a difference between somebody
4 who is willing to admit their guilt, and I find that that
5 is a -- admission of guilt is a good thing, okay? And
6 that's a positive thing, because it's the first step
7 towards rehabilitation. So I ---

8 THE DEFENDANT: Well ---

9 THE COURT: --- tend to ---

10 THE DEFENDANT: --- well ---

11 THE COURT: --- reward that.

12 THE DEFENDANT: --- can you ask the jury to come back
13 tomorrow and give me 24 hours to get my thoughts straight
14 on this and have a -- a little more conversation with Mr.
15 Verner over there?

16 THE COURT: Mr. McCoy ---

17 THE DEFENDANT: Because I'm ---

18 THE COURT: --- I ---

19 THE DEFENDANT: --- not thinking clearly at all right
20 now.

21 THE COURT: As old as these charges are and since we
22 have already picked a jury ---

23 THE DEFENDANT: But another ---

24 THE COURT: --- under ---

25 THE DEFENDANT: --- 20 -- another 24 hours? I mean

1 ---

2 THE COURT: Let me explain it like this, Mr. McCoy:

3 It's my decision on whether ---

4 THE DEFENDANT: I understand.

5 THE COURT: --- we proceed.

6 THE DEFENDANT: I understand.

7 THE COURT: We're not going to do that. So we need to
8 get him clothes ASAP so that I can bring this jury out. If
9 he is not ---

10 (Whereupon, Mr. Verner and the defendant conferred.)

11 THE COURT: --- ready to proceed with the guilty plea
12 at this point in trial -- this point in time, we will
13 continue with the trial right now. So we need him in some
14 clothes in the next five minutes.

15 (Off the record from 11:09 a.m. until 11:20 a.m.)

16 THE COURT: We're going back on the record in the
17 *State v. Mr. McCoy*. Just a few housekeeping matters:
18 First of all, one of the jurors -- I'm not quite sure which
19 one -- but one of the jurors became very ill last night and
20 has called in sick. So the alternate will take that
21 juror's place. Additionally, another juror had a brief
22 logistical problem with her power. I let her use the
23 telephone that's in the office back there for a few minutes
24 so that she can try and get that squared away. But she's
25 -- she's going to try and get that squared away over lunch,

1 is -- is what she reported to me and to the clerk.

2 So with that, the record, of course, should reflect
3 that the defendant is present with his attorney; the state
4 is present. We will be bring the jury out at this point in
5 time. I'll appoint a foreperson, and we'll go straight
6 into -- into opening arguments and the taking of testimony.

7 So if I may, let's go ahead and have the jury out,
8 please.

9 MR. VERNER: Just for ---

10 THE COURT: All right.

11 MR. VERNER: --- procedure ---

12 THE COURT: (To the bailiff) Hold on ---

13 MR. VERNER: --- Your Honor ---

14 THE COURT: --- one second.

15 MR. VERNER: --- the ---

16 THE COURT: Yes, sir.

17 MR. VERNER: --- I -- I think the state has consented
18 to -- I -- I was intending to move to sequester witnesses.
19 And I believe the state's consented to sequester witnesses.
20 And I just -- that should be the -- what we're operating
21 on.

22 THE COURT: All right. Very good. That's correct,
23 Solicitor?

24 MR. SCOTT: That's -- that's correct, Your Honor.

25 THE COURT: All right. Obviously, you've got your

1 investigator sitting with you. He can remain here per
2 South Carolina law. (To the bailiff) Let's have the jury,
3 please.

4 (Whereupon, the jury entered the courtroom at 11:22
5 a.m.)

6 THE COURT: All right. Let the record reflect that
7 the jury is back and seated. Ladies and gentlemen of the
8 jury, let me apologize for -- again, for the delay in
9 getting you out here this morning. You'll simply have to
10 take my word for it that the delay was unavoidable and
11 there was nothing that I could do about it. And I do
12 apologize, again, for keeping y'all back here, because I
13 know that y'all were here at ten o'clock.

14 Unfortunately, one of the jurors became ill last
15 evening, so the alternate in this case, Ms. Bates --
16 where's Ms. Bates? Raise your hand.

17 JUROR: (Complied.)

18 THE COURT: Ms. Bates, you are now a full juror, okay?
19 So you'll serve with the other 12 -- or the other 11 jurors
20 on this particular case. Who is Ms. Silman?

21 JUROR: (Raised hand.)

22 THE COURT: Ms. Silman, I'm going to appoint you as
23 the foreperson of the jury, if that's okay with you. Your
24 -- your vote, of course, counts no more and no less than
25 any other juror's vote. You're basically first among

1 equals, and your main job will be to make sure that once
2 the deliberations begin, everyone has a chance to have
3 their fair say, okay, Ms. Silman?

4 JUROR: (Nodded head up and down.)

5 THE COURT: When you come back out after we take a
6 break, if you'll have a seat in this chair that's closest
7 -- the front chair that's closest to this screen, where the
8 lady in the blue or whatever color shirt that is -- I'm
9 horrible with colors. So wherever she's sitting, that's
10 where I need you to sit throughout the trial. The rest of
11 you can feel free to move about, if you need to.

12 The front-row seats -- if anyone's having trouble
13 hearing, the front-row seats are typically best for being
14 able to hear stuff. If it comes to your attention that's
15 anyone's having trouble hearing, Ms. Silman, just maybe
16 offer up one of those front-row seats for that person.

17 If, at any time during the testimony being taken in
18 this case -- if, at any time, any juror has trouble
19 hearing, just raise your hand. And that'll be my cue to
20 ask the witness to speak up or the attorneys to speak up,
21 okay? So if you have trouble hearing anything that's being
22 said, hand goes up; I'll tell them to speak louder. All
23 right?

24 Now, ladies and gentlemen, we're about to begin the
25 case of the *State of South Carolina v. Mr. McCoy* -- Jeffrey

1 McCoy. And before we begin the case, I'm going to tell you
2 that this case is probably different from what you've come
3 to expect from seeing cases depicted on TV or in the movies
4 or reading about them in books. From what we see on TV, we
5 -- we get the impression that cases are always filled with
6 riveting drama and intense circumstances. Sometimes that's
7 true in actual case.

8 However, more often than not, these cases do take a
9 lot of time. And that's because the rules of evidence and
10 the procedure that the Court has to use is somewhat of a
11 time-consuming process, as you've already come to know from
12 the delays that have been occasioned by this case, okay?

13 I want to thank you for your service here this week to
14 the people of Newberry County and to the State of South
15 Carolina. I can only tell you that it's absolutely
16 essential that we have jurors willing to obey a summons,
17 come into court, and listen to the testimony. So I want to
18 thank you at the very beginning for your service and your
19 willingness to come in here and assist us this week.

20 Now, with that, I'm going to ask that you all stand
21 where you are and raise your right hand so that the clerk
22 of court can administer her oath -- or your oath to you,
23 please.

24 JURORS: (All stood.)

25 (Whereupon, the jury was duly sworn at 11:26 a.m.)

1 THE COURT: All right. You may have a seat.

2 JURORS: (All sat.)

3 THE COURT: All right. Now, ladies and gentlemen,
4 what I now say to you is intended to serve as an
5 introduction of this case. And these remarks are not a
6 charge on the law that applies. I'll instruct you on the
7 law that applies at the conclusion of the trial before you
8 retire to deliberate your verdict. This is merely an
9 explanation of the procedure that we'll use so that you can
10 better understand what's going on and you can more easily
11 follow the trial as the trial takes place.

12 Now, ladies and gentlemen, the defendant in this case,
13 Mr. McCoy, is charged with indictments filed in this Court
14 with the following offenses: five counts of burglary; one
15 count of grand larceny; two counts of petit larceny; one
16 count of possession of burglary tools; and one count of
17 safecracking. And I'll explain to you the elements of
18 these offenses at a later point in time.

19 I instruct you that an indictment -- or these
20 indictments that charge Mr. McCoy with these offenses are
21 merely the charges which -- by which the case is brought
22 into this Court. And, of course, the indictments are not,
23 in any sense of the word, evidence of any of the
24 allegations contained in the indictments. Mr. McCoy has
25 pled not guilty to the indictments. The state, therefore,

1 has the burden of proving each and every element of the
2 indictments beyond a reasonable doubt. It'll be your duty,
3 ladies and gentlemen, to determine whether the state has me
4 this burden.

5 Now, your purpose as jurors is to find and determine
6 the facts in this case. You are the sole judge of the
7 facts in this case. So if, at any time, I make any
8 comments concerning the facts, you must disregard those
9 comments. Because, again, you are the sole judges of the
10 facts in this particular case.

11 You are to determine the facts from the testimony you
12 hear and the other evidence which is presented in court.
13 It's up to you to determine the inferences which you feel
14 may properly be drawn from the evidence presented. Now,
15 it's especially important that you perform your duty of
16 determining the facts diligently and conscientiously,
17 because ordinarily, there is no way to correct an erroneous
18 determination of the facts by a trial jury.

19 On the other hand and with equal emphasis, the same
20 law that makes you the judge of the facts in this case
21 makes me the judge of the law. The law as given by the
22 Court is the only law that you may consider. You have to
23 accept it and follow it, even though you may disagree with
24 it. Again, I cannot tell you what the facts are, and you
25 are not permitted to disagree with me about what the law is

1 or what the law ought to be. Your job will be to take the
2 law as I give it to you; apply it to the facts, as you find
3 them to be from the testimony of the witnesses and the
4 other evidence which is presented; and after doing that,
5 you'll render your verdict, a true and just verdict under
6 the oath that you took a few moments ago.

7 Now, until I advise you to begin your deliberations,
8 please don't discuss this case with anyone, including your
9 fellow jurors, friends, family members, or anyone involved
10 in this case. After the case is submitted to you, you can
11 discuss it only in the jury room in the presence of all 12
12 of your fellow jurors.

13 The attorneys and the parties in this case have been
14 told that they're to have no contact with you and they're
15 not to talk to you at all. So if you happen to see one of
16 them coming or going from the courthouse and they don't say
17 hello to you, understand, they're not being rude. They're
18 simply following my instructions to have no contact with
19 you while the case is going on. And the reason for this,
20 ladies and gentlemen, is that obviously, innocent
21 conversations can -- can sometimes be misinterpreted by the
22 other side as an effort at jury tampering. And so the
23 easiest way to prevent that perception is to simply have a
24 blanket rule saying: No one has any contact with the
25 jurors while the case is going on.

1 Now, as I mentioned last night, don't -- during this
2 trial don't read, listen, or watch any news reports about
3 the case. This includes anything that's on the Internet or
4 in the newspapers, on radio, or TV. Again, you must not
5 consider anything you may have read or heard about this
6 case outside the courtroom, whether before or during the
7 trial.

8 Again, you're not to perform any sort of independent
9 investigation of the facts: no Internet searches. As I
10 explained yesterday, the reasons for that are crystal-
11 clear: The stuff that's posted online, nobody filters it.
12 Nobody guarantees it's trustworthiness. The rules of
13 evidence in this Court help assure that the information you
14 get is the best information available.

15 Now, ladies and gentlemen, it's important that you
16 keep an open mind and not decide any issue in this case
17 until all the evidence has been presented, the parties have
18 made their closing arguments to you, and I've instructed
19 you on the law that applies. It'll be your solemn
20 responsibility to determine the guilt or the innocence of
21 the verdict, and your verdict must be based solely on the
22 evidence as it is presented to you in this trial and on the
23 law as I instruct you at the end of the trial.

24 Now, in just a moment, the solicitor will make his
25 opening statement in which he'll explain to you what the

1 issues are in this case, or at least what he contends the
2 issues are. The attorney for the defendant, Mr. Verner,
3 may also make an opening statement, although he's not
4 required to do so.

5 I instruct you that what the lawyers say during their
6 opening statements is not evidence in this case. It's only
7 their contention as to what the issues are or what will be
8 proven or what will not be proven. Again, the evidence in
9 this case will be presented you by the testimony of sworn
10 witnesses from the witness stand, as well as any exhibits
11 that may be introduced into evidence.

12 Now, ladies and gentlemen, from time to time during
13 the trial, you may hear one of the lawyers say something
14 like, "Your Honor, I've got a question or law"; or, "I
15 think we have a question of law for the Court"; or, "Your
16 Honor, can we approach the bench?" And sometimes it might
17 be necessary that I ask that you leave us here in the -- in
18 the courtroom while I take up an issue of law with the
19 attorneys and the parties involved.

20 The -- the reason that I ask you to leave the
21 courtroom is that sometimes, in ruling on an issue of law,
22 it's necessary for me to make a comment on what facts have
23 been testified to or have not been testified to. And I
24 don't want anything that I say concerning those facts to
25 have any bearing or any effect on what you ultimately

1 determine the true facts to be. So I ask that you leave us
2 during those times so that I can have a discussion on the
3 record with the attorneys and be sure that what I say
4 doesn't affect what you find the facts to ultimately be.

5 At the -- during those breaks, of course, please don't
6 speculate as to what we're doing out here. It's usually
7 questions of law that -- that, in all candor, just don't
8 concern you at this particular point in time.

9 Now, ladies and gentlemen, in determining what the
10 true facts are in this case, you must decide whether or not
11 the testimony of witnesses is believable or not. It'll be
12 my responsibility to rule as a matter of law as to whether
13 certain testimony is admissible. But once that testimony
14 is admitted, whether or not you believe it is solely for
15 you to determine.

16 In deciding whether to believe a witness, you have a
17 right to consider the interest of any witness, the bias of
18 any witness, the prejudice of any witness, the opportunity
19 for the witness to have seen the matters and things about
20 which the witness may testify, and the way the witness acts
21 on the witness stand. You have the right to consider
22 anything that's in the record in this case that'll help you
23 evaluate the testimony of the witnesses. That means that
24 your duty and your responsibility to pay close attention to
25 the witnesses, listen to them, observe them, and pay close

1 attention to the lawyers and the Court. Try to keep your
2 thoughts from wandering, but give strict attention to the
3 testimony so at the close of the trial, after the argument
4 of counsel and the charge of -- on the law by the Court,
5 you'll be in a position to determine what the true facts
6 are, apply the law to those facts, and thus render a true
7 and just verdict.

8 Now, in order to preserve everyone's rights, I'll give
9 the -- the lawyers an opportunity to object to anything that
10 I've said to you during these opening remarks.

11 Any objections to my comments from the state?

12 MR. SCOTT: None, Your Honor.

13 THE COURT: From the defense?

14 MR. VERNER: No, Your Honor.

15 THE COURT: All right. We'll now begin the trial.

16 You are recognized, Solicitor, for your opening, sir.

17 MR. SCOTT: Thank you, Your Honor. May it please the
18 Court?

19 THE COURT: Yes, sir.

20 OPENING STATEMENT BY MR. SCOTT

21 MR. SCOTT: Ladies and gentlemen of the jury, if
22 you're going to do a job and you're going to do it right,
23 you got to have the right tools. Because, really, there's
24 no job that's too hard if you got the right tools. May of
25 last year, the defendant, Jeffrey McCoy, came to town to do

1 a job. And he brought some tools.

2 I don't know why Mr. McCoy, who's from Tennessee, came
3 to Newberry to do his job, but to Newberry he came. What
4 was the job that Mr. McCoy was here to do? Jeffrey McCoy,
5 the state is alleging, came to Newberry County in order to
6 break into businesses, tear up other people's property, and
7 take things that didn't belong to him.

8 He came with a plan; he came with a purpose. And he
9 came equipped with the right tools to do his job.

10 Let's go back to May 26th of last year. The people at
11 the Shops on Wilson Road went about their day. They worked
12 out of their shops there. There's a set of five stores.
13 You're going to hear them referenced quite a bit during the
14 trial.

15 What you have -- and you'll see aerials and maps and
16 pictures and -- but what you have is a strip mall,
17 essentially, five stores. And there's an El-Amin
18 Barbershop; Boost Mobile cellular phone store; Jackson
19 Hewitt -- I believe they -- they are tax services --
20 Regional Finance; and Check Into Cash. The folks who
21 shopped and worked in these stores on the 26th would've
22 gone about their day; not noticed anything out of the
23 ordinary.

24 But when they went home that night, Mr. McCoy came to
25 their businesses. He came to do the job I was talking

1 about. I submit to you, the evidence is going to show that
2 it started at El-Amin, the back of the barbershop there.
3 And he pried open some sheet metal and entered the store
4 through the rear.

5 From there, equipped with tools, he busted through the
6 wall and into Boost Mobile. Inside Boost Mobile he took a
7 store's worth of cell phones. After that he broke through
8 the wall to Jackson Hewitt; tore the store up; broke
9 through that wall and into Regional Finance. He took some
10 coins, some stamps, whatever they had left behind that he
11 could get his hands on.

12 For whatever reason, he couldn't get through the wall
13 into the final store, so he exited the building; went back
14 outside; used his tools to break through the cinder block
15 wall and enter into the rear of Check Into Cash. Check
16 Into Cash, he stole some food items; found a safe; went to
17 work with his tools.

18 You're going to see pictures where he's left a number
19 of these items behind. It's very clear that he was
20 attempting to get into that safe. Ultimately, he was
21 unsuccessful.

22 The next morning a officer with the police department
23 here in Newberry, doing his property check sometime in the
24 early-morning hours of the 27th, noticed the damage to the
25 rear of the building and the hole in the back of Check Into

1 Cash, the sheet metal peeled back from the barbershop. So
2 he went through; noticed the damage to the inside; called
3 the property owners, who came; alerted officers what was
4 missing.

5 At that point the officers have no suspect. They
6 don't catch him that night.

7 Now shift your focus to another location, about eight-
8 tenths of a mile down Wilson Road. It's called the "Stores
9 at Bear Village." I know there's a pawnshop. And there's
10 a Ronnie's maybe -- there's a restaurant out in front of
11 it. It's still in the city limits here of Newberry.

12 This is the next night. This is the night of May
13 27th. Officers are on alert. They had been had the night
14 before. Somebody had broken into these strip malls, and
15 they're on the lookout for a burglar with a lot of tools.

16 There's an Officer Boris Alvarado, who we will call --
17 and you'll hear testify -- who was doing his routine
18 property checks. Comes around the rear of the village --
19 Bear Village Shopping -- another strip mall -- Shopping
20 Center. And who does he see? Jeffrey McCoy, crouched down
21 in the dark behind air condition units.

22 Mr. McCoy begins approaching the officer, and the
23 officers ask him, "What are you doing here? You don't
24 belong back here."

25 He gives the officer his name and date of birth. The

1 officer runs his information; discovers Mr. McCoy is from
2 Tennessee. Continues to question him; calls for backup.
3 Asks Officer Busko, who you'll hear from, to go over to --
4 to go over to that area over there -- that's where McCoy
5 was when I came back here -- see what's going on back
6 there.

7 Officer Busko goes there; finds tools. There is a
8 ratchet set. There's some snips, wire cutters. At that
9 point officers are a little bit concerned. They have an
10 Officer Malloy come to the scene and try to see if he can
11 find the car this guy pulled up in, because there's no cars
12 in the shopping center at Bear Village.

13 There's a BI-LO next door some of you may be familiar
14 with. Malloy goes to the BI-LO; sees a green or gray Ford
15 Taurus with Tennessee license tags. So he's looking
16 through the window; finds a bag sitting in the backseat
17 that's open: more tools -- grinders, electric cords, work
18 gloves -- very similar to the ones that they had found the
19 night before at the Shops on Wilson Road, these shops that
20 I -- that I've diagramed here in this picture.

21 They arrest Mr. McCoy at this point. In his car they
22 find a hotel key with Room 125 on it. They start calling
23 around to the local hotels: "Do you guys have a Jeff McCoy
24 who checked in?" The Budget Inn on Wilson Road says,
25 "Yeah. We got a Jeff McCoy who checked in last night, paid

1 \$90, staying in Room 125."

2 They get a search warrant for Room 125. What do you
3 think they find when they go in Room 125? Well, they find
4 all those cell phones. And they find more tools. Because
5 if you're going to do a job right, you got to have the
6 right tools.

7 They find the paperwork with Mr. McCoy's name on it.
8 They find shoes -- there's a pair of shoes they find in
9 there. You'll -- you'll see those, and you'll hear about
10 them later. The safe that he had cut open at the Check
11 Into Cash, he had gotten some of the veneer off of it, the
12 metal veneer. And he had stepped on it and left a shoe
13 print. I submit to you, the evidence will show that shoes
14 found in his hotel room match that print that was on that
15 piece of metal.

16 So ladies and gentlemen, at that point the officers
17 charged him with the burglary of those five stores there.
18 It starts with the burglary at Check Into Cash; burglary at
19 Regional Finance; burglary at Jackson Hewitt; Boost Mobile;
20 and El-Amin Barbershop. And he was also charged with the
21 possession of tools for the purpose of burglary and
22 safecracking for that safe that he had used those tools on
23 and tried to get inside.

24 Burglary, ladies and gentlemen, it's -- in South
25 Carolina it is the entry into -- at least the flavor of the

1 burglary we're talking about is entry into a building --
2 I'm not talking about somebody's home here; we're talking
3 about a building; that's what these stores would be
4 classified as -- without consent and with the intent to
5 commit a crime inside. Again, the variety of burglary
6 second that we're talking about here, Subsection (b), you
7 have to have an aggravating factor. You got to have the
8 entry without consent and with the intent to commit a crime
9 therein. Additionally, you have to have an aggravating
10 factor.

11 In this case our statute provides for a burglary that
12 occurs during the nighttime to be an aggravating factor.
13 And that's what the state's alleging here: He broke in --
14 into a building; he entered without consent with intent to
15 commit a crime. And he did it in the nighttime. And those
16 are what we have to prove.

17 I introduced myself yesterday. I -- I'm Dale Scott.
18 I am one of the solicitors here in this circuit. Yates
19 Brown is another solicitor here who's going to help me. I
20 blocked him out with my picture, but this is the
21 investigator, Detective Goodman, with the Newberry Police
22 Department. He's the lead investigator on this case.

23 We represent the state. What that means is we're
24 bringing these charges against Mr. McCoy. I think the way
25 I see my job is to give him a fair trial and to attempt to

1 enforce the laws as they're written in this state and
2 enforce the burglary statute. I've got to do it beyond a
3 reasonable doubt. And that's the burden the state has in
4 every criminal case.

5 Every criminal case that a -- a conviction is gained
6 through a trial by jury, that prosecutor had to prove his
7 case to a jury of 12 like you guys, a fair and impartial
8 jury, beyond a reasonable doubt. That doesn't mean beyond
9 any doubt. We're going talking about this a lot later. It
10 means beyond a reasonable doubt. It means I've got to have
11 you guys to be firmly convinced McCoy is guilty of what I'm
12 telling you he's guilty of.

13 Now, we got a bunch of pictures. We got a lot of
14 physical evidence we're going show you. I got to prove
15 these things I just told you I was going to prove to you.
16 I hadn't proven anything yet. I've just told y'all a bunch
17 of stuff. I got to prove it through evidence, and I've got
18 to prove it through witnesses.

19 I submit to you, I'm going be able to do that. If
20 you'll be patient, we're going try to get the thing -- this
21 thing as quickly as possible. But again, I -- I -- we got
22 to dot our i's and cross our t's. At the end of this
23 thing, I'm going to ask you guys to find him guilty of
24 those five burglary charges. And I'm going to prove it to
25 you, element by element, beyond a reasonable doubt. And

1 I'm going to prove to you he's guilty of safecracking, and
2 I'm going prove that to you beyond a reasonable doubt.

3 Finally, I'm going prove to you he's guilty of those
4 larceny and petit larcenies, which is the taking away of
5 goods of another. That would be the food and the coins and
6 the phones that he stole. I'm going prove that to you
7 beyond a reasonable doubt.

8 Ladies and gentlemen, I thank you for your service.

9 THE COURT: Thank you, Mr. Scott. Mr. Verner, you're
10 recognized, sir.

11 MR. VERNER: May it please the Court, Your Honor?

12 THE COURT: Yes, sir.

13 OPENING STATEMENT BY MR. VERNER

14 MR. VERNER: Ms. Forelady, members of the jury: That
15 was an effective speech. I -- I've been here 15 years, and
16 -- and I understand. But that still -- his proposal,
17 planned out what he's going to prove to you, I still ask
18 that you actually hear the evidence. The -- it's a
19 criminal trial. Criminal trial, it -- it's not an academic
20 debate today. It -- it's crime and punishment.

21 The jury system -- it -- it's not here to -- there's
22 no way we can find the exact truth of what happened
23 yesterday if we weren't there. Any benefit of the doubt --
24 and -- and being in suspicious circumstances when you're
25 arrested does not support a conviction. It requires firm

1 proof that he actually went in himself and committed these
2 crimes.

3 The jury system is not put in to work hand in hand
4 with the government. It was put in to protect the citizens
5 from the government. Before the government can get to a
6 individual citizen here in Newberry, they have to get
7 beyond 12 members of that man's community. That's the
8 Constitution. It -- we're not put in here to -- to work
9 hand in hand and find the truth. Your -- your role is to
10 protect Jeff McCoy, even if he's in suspicious
11 circumstances, unless you know for a fact he is the one who
12 went in that night.

13 And -- and I would just ask that you hear the actual
14 testimony come in. I understand it was a riveting speech.
15 He's in the business of giving riveting speeches. You're
16 in the business of actually seeing and -- and hearing the
17 sworn testimony. And that's all we're asking: that you
18 just keep an open mind until you hear everybody.

19 THE COURT: Thank you, Mr. Verner. Mr. Scott, if
20 you'll call your first witness, please.

21 MR. SCOTT: The state calls Justin Weaver.

22 (Whereupon, the witness came forward.)

23 (Off the record briefly.)

24 (Whereupon, State's Exhibit 1 was marked for
25 identification.

DIRECT EXAMINATION BY MR. SCOTT - JUSTIN WEAVER

50

1 JUSTIN WEAVER, having been first duly sworn,
2 testified as follows:

3 THE COURT: Mr. Scott?

4 MR. SCOTT: Thank you, Your Honor.

5 DIRECT EXAMINATION

6 BY MR. SCOTT:

7 Q Mr. Weaver, where are you employed?

8 A City of Newberry Police Department.

9 Q How long have you been with that agency?

10 A Seven and a half years.

11 Q Did you work anywhere in law enforcement before that?

12 A No, sir.

13 Q What do you do?

14 A I -- I'm sorry. I couldn't hear you.

15 Q I'm -- what are your duties with that agency?

16 A I'm assigned to the patrol division. We monitor
17 traffic flow, check properties, and respond to calls of
18 service.

19 Q On May -- let's see -- May 26th the night hours and
20 the morning hours of May 27th, were you working in that
21 capacity?

22 A I came on the day shift on the morning of May 27th.

23 Q Where was the first place you went that day?

24 A I began checking property on Wilson Road and went to
25 the Shops on Wilson Shopping Center.

1 Q Okay. And that's -- what is that address? Is it 1335
2 Wilson Road?

3 A That is correct. That would be the Check Into Cash.

4 Q Is that in Newberry County?

5 A That is within the City of Newberry.

6 Q All right. Of course, the City of Newberry is in the
7 county, correct?

8 A Yes, sir.

9 Q Now, what happened when you got there?

10 A As I was checking the business to see -- to make sure
11 the property was secure, I located a hole in the cinder
12 block on the back of the Check Into Cash building.

13 Q Okay. What'd you do after that?

14 A I got out and checked to the door to the Check Into
15 Cash, which was unsecure. And I called for my backup
16 officer to come over and assist me so that we could go in
17 and check the property.

18 Q Did you go into the building?

19 A Yes, sir. Once my backup officer arrived, we entered
20 the building; immediately smelled a strong smell of what
21 seemed to be burning metal. Thought -- I thought somebody
22 may be in there; began checking through; didn't locate
23 anybody inside the business. But this safe had several cut
24 marks on the front of it.

25 There were numerous tools lying around on the floor

1 near the safe. I know there were two grinders on the floor
2 next to the safe. And I believe a couple of pry bars were
3 located somewhere close by. And the handle had been
4 knocked off of the safe.

5 Q Did you go to the adjacent business, which would be --
6 it's Regional Finance?

7 A Yes, sir. After we notified the investigator to come
8 out and process the crime scene, I checked the other
9 businesses in the shopping center. The other four
10 businesses, the back doors were unsecure on all four of
11 them.

12 And upon clearing those buildings, we realized that a
13 hole had been knocked in the wall from El-Amin Barbershop,
14 which is on the opposite end of this shopping center from
15 the Check Into Cash, from El-Amin Barbershop into the Boost
16 Mobile cell phone store. Another hole had been knocked
17 from Boost Mobile into the Jackson Hewitt Tax Service; and
18 then, another hole from Jackson Hewitt Tax Service into
19 Regional Finance. And all the businesses had been gone
20 through and had been left unsecured.

21 Q Okay. Did you call the property owners?

22 A Yes, sir. We contacted property owners; had them come
23 -- come to the businesses so that they could give us a list
24 of what was missing out of the businesses and -- and -- and
25 so we could see what all damage had been done.

1 (Whereupon, State's Exhibit 2(A-K) was marked for
2 identification.)

3 Q I'm going to show you what's been marked as State's
4 No. 2. Can you take a look at those and tell me if you
5 recognize them.

6 A Yes, sir. These are photographs that were taken of
7 the crime scene. The first one actually shows the hole in
8 the wall in the back of the Check Into Cash building. And
9 an air filter had actually been pushed into the hole to
10 attempt to conceal it. There -- there's a photo here of
11 the -- the inside of the building where, on -- on the
12 inside of the hole that had been knocked in the wall,
13 showing that there was a lot of debris in the floor in the
14 bathroom area.

15 There was -- the third photo is a picture of a pry bar
16 that had been left in the corner of the bathroom where the
17 suspect made entry into the building. And also, at all of
18 the businesses, the -- the wiring near the rear doors of
19 the store had been cut, I -- I'm assuming in an attempt to
20 disable the alarm systems and telephone systems and things
21 of that nature.

22 There's a photo of the safe in Check Into Cash here
23 with the -- the cut marks in the front. And there's
24 pictures of the -- the grinders and a hammer and pry bar
25 laying beside the safe in Check Into Cash.

DIRECT EXAMINATION BY MR. SCOTT - JUSTIN WEAVER

54

1 And there's a -- a picture of a metal plate that had
2 been cut from the front of the safe in an attempt to gain
3 entry into the safe and photographs of the tools that were
4 used.

5 Q Those fairly and accurately represent what you
6 personally observed May 27th of last year?

7 A Yes, sir.

8 MR. SCOTT: The state offers State's 2 for admission,
9 Your Honor.

10 THE COURT: Any objection?

11 MR. VERNER: How many photographs is that?

12 MR. SCOTT: Eleven.

13 MR. VERNER: No objection.

14 THE COURT: To all 11? Are they marked individually
15 as ---

16 MR. SCOTT: We had ---

17 THE COURT: --- exhibits?

18 MR. SCOTT: --- them marked, Your Honor, as one ---

19 THE COURT: All right.

20 MR. SCOTT: --- exhibit.

21 MR. VERNER: Are all of the -- I don't mind -- I --
22 them coming in. Probably, at some point, on -- on the back
23 of them, the assistant solicitor or somebody could maybe
24 numerically put 1 through 11 in case we do refer to
25 individual photographs. But I -- I don't have any

1 objection to them coming in.

2 THE COURT: All right. If somebody has a Sharpie,
3 maybe that could be done here in the next few moments.

4 MR. SCOTT: Yeah.

5 THE COURT: Mr. Brown has ---

6 MR. VERNER: Mr. Brown ---

7 THE COURT: --- a Sharpie, so let ---

8 MR. VERNER: --- is holding up ---

9 THE COURT: --- him go ahead and do that.

10 MR. BROWN: Judge, would it be appropriate to do 2 --
11 2A, -B, -C?

12 THE COURT: Please. That way, we can be sure when
13 we're talking to the witness that the record reflects which
14 photo he is looking at.

15 MR. SCOTT: Your Honor, I'm going to ask for
16 permission to publish them as soon as we have them marked.

17 THE COURT: No objection?

18 MR. VERNER: He's entitled.

19 (Whereupon, State's Exhibit 2(A-K) was entered into
20 evidence.)

21 Q All right. Can you see this screen, Officer Weaver?

22 A Yes, sir.

23 Q All right. This is State's 2K. What are we looking
24 at here?

25 A That is the hole that had been punched into the rear

1 wall of the building of Check Into Cash. And someone had
2 pushed an air filter in there, I -- I'm -- I'm guessing to
3 attempt to somewhat conceal the hole in the wall.

4 Q Okay. And that's at the rear of the Check Into Cash?
5 In other words, the -- the side furthest away from Wilson
6 Road?

7 A Yes, sir. That -- that would be on the backside of
8 the building. I -- I came off of Wilson Road into the
9 parking lot and went around the El-Amin Barbershop, around
10 behind the businesses. So this hole would've been on the
11 driver's side of my vehicle when I pulled up beside the --
12 beside the rear of the building.

13 Q Somewhere back in here?

14 A Correct.

15 Q All right. Okay. Now, let me show you State's 2F and
16 2G. What are these -- what are these pictures of?

17 A That is photographs of all the electrical wiring that
18 is in the rear of the building. And someone had cut
19 majority of the wiring, if not all of the wiring. Again, I
20 believe they were attempting to -- to -- to disable the
21 alarm and the camera systems.

22 Q 2I?

23 A That is the bathroom, which is located in the rear of
24 the business. That is where the hole had been knocked in
25 the wall. Up at -- at the top of the photograph, you can

1 actually see the blue air filter covering the hole in the
2 wall.

3 Q Okay.

4 A And there was a lot of debris in the floor.

5 Q This is 2J.

6 A That -- that is facing the rear wall of the business.
7 All of the electrical wiring and things were right beside
8 the bathroom where the suspect had gained entry.

9 Q 2H, is this the yellow crowbar you were ---

10 A Yes, sir.

11 Q --- talking about?

12 A That's the yellow crowbar. It was in the bathroom,
13 propped against the wall beside the toilet.

14 Q Okay. And talking about a safe, this is State's 2D.
15 Is that what you observed?

16 A Yes, sir. Someone had used the grinders to attempt to
17 gain entry into the safe ---

18 Q All right.

19 A --- and had ---

20 Q I'm looking at -- looks like two grinders here at the
21 base of the safe?

22 A Yes, sir. That's two grinders. Just to -- to your
23 right of the grinders is a hammer and a pry bar that were
24 laying on the floor.

25 Q Okay. And those were there ---

1 A Yes, sir.

2 Q --- whenever you went in there?

3 A Yes, sir.

4 Q You talked -- okay. You talked about a plate that was
5 laying on the ground?

6 A Yes, sir. I believe it's just to the left of that --
7 the top-most ---

8 Q Right here?

9 A --- grinder. I believe it is a metal plate that was
10 lying on the floor, which is the -- it -- the metal plate
11 on the front of the safe; actually went all the way across
12 the safe. And they had actually cut that one portion off
13 of it. And it was lying in the floor beside the grinders.

14 Q What are these black marks here?

15 A Those black marks are actually areas where the safe
16 had been cut with the grinder. And -- and some of the --
17 the marks were actually relatively deep into the safe.

18 Q This is State's 2E. Is that what we're looking at
19 here?

20 A Yes, sir.

21 Q It's just a closer picture?

22 A Yes, sir. That's just a closer picture where the
23 grinder had been used to attempt to cut into the safe.

24 Q I'll show you State's 2C. What's that sitting beside
25 the grinder?

1 A That is the metal plate that had been cut off of the
2 front of the safe.

3 Q Okay. This -- that was found just in front of -- of
4 the safe that you ---

5 A Yes, sir.

6 q --- observed in there?

7 A Yes, sir.

8 Q Tell me what -- tell me what these pictures are all
9 about. This is State's 2B. Why'd you photograph a food
10 shelf -- or why was that photographed?

11 A I believe at the scene we found some food items that
12 had been consumed, lying around. I believe there was a can
13 of Vienna sausages located right outside the back door.
14 And also, I believe in the -- let me see. I believe it was
15 in Jackson Hewitt; there was a water bottle located that
16 had been somewhat consumed.

17 Q But we're still in Check Into Cash right here, though;
18 is that right?

19 A Yes, sir. But we -- we believe that the food items
20 may have been taken from that food shelf at ---

21 Q Okay.

22 A --- Check Into Cash.

23 Q And then, that probably answers my question: 2A, I
24 think I ---

25 A Yes, sir. That -- those -- that -- those Vienna

DIRECT EXAMINATION BY MR. SCOTT - JUSTIN WEAVER

60

1 sausages were laying on the -- the driveway behind the
2 businesses.

3 Q Okay.

4 (Whereupon, State's Exhibit 3(A-H) was marked for
5 identification.)

6 Q Let me show you -- this is another series of pictures,
7 marked as State's 3.

8 A Yes, sir. These are the -- the photos from the
9 Regional Finance, where it had been broken into. It shows
10 that the wiring had also been cut in that business. And
11 the suspect had punched a hole in the wall to gain access
12 to the business. And it -- it also shows where the suspect
13 had attempted to punch a hole in the wall from Regional
14 Finance into Check Into Cash but was unable to gain entry
15 that way. And also several of the filing cabinets in the
16 business had been pried open and gone through.

17 Q Do these fairly and accurately represent what you
18 observed May 27th?

19 A Yes, sir.

20 MR. SCOTT: The state would offer -- this is State's
21 Exhibit 3. This is a series of photos -- one, two, three,
22 four, five, six -- series of nine photographs.

23 THE COURT: All right. If you could, mark those
24 separately the same way we did Exhibit 2, please. Any
25 objection to State's 3, Mr. Verner?

1 MR. VERNER: No, Your Honor.

2 THE COURT: Very good.

3 MR. SCOTT: These are, for the record, Your Honor,
4 State's 3, 3A, 3B, 3C, 3D, 3E, 3F, 3G, 3H.

5 THE COURT: All right. They will be in evidence
6 without objection.

7 (Whereupon, State's Exhibit 3(A-H) was entered into
8 evidence.)

9 MR. SCOTT: And I'm going to publish those now, Your
10 Honor.

11 THE COURT: Yes, sir.

12 Q Okay. Let me show you State's 3B, 3C. What are these
13 depicting?

14 A Those are photographs of all the electrical wiring at
15 the rear of the business, which had been cut, again, I'm --
16 I believe in attempt to disable any alarm system or
17 anything of that nature.

18 Q And again, we're in Regional Finance. This is the
19 store adjacent to Check Into Cash? Is that what we're
20 talking about right now?

21 A Yes, sir.

22 Q State's 3E?

23 A That is a photograph of the wall that separates
24 Regional Finance from Check Into Cash, where the suspect
25 had attempted to punch a hole through the wall to gain

1 access into Check Into Cash but obviously did not make it
2 through.

3 Q Okay. I've got a -- well, 3G, is that what that is
4 too?

5 A I believe so. I believe that was just in a different
6 location on the wall.

7 Q Okay. 3F, 3H?

8 A Those are photographs of some of -- of where the
9 suspect had pried open some of the filing cabinets and
10 things and gone through everything.

11 Q All right. Did you get to view Jackson Hewitt?

12 A I -- I'm sorry?

13 Q Did you get to view the inside of Jackson Hewitt?

14 A I believe so. Yes, sir.

15 Q More of the same?

16 A Yes, sir. Again, I believe the alarms had -- the
17 wiring had been cut at the rear of the building, a hole
18 from Boost Mobile into Jackson Hewitt and from Jackson
19 Hewitt into Regional Finance.

20 (Whereupon, State's Exhibit 4(A-F) was marked for
21 identification.)

22 Q I'll show you State's 4, 4A, 4B, 4C, 4D, 4E, 4F. And
23 I'll ask you if you recognize those.

24 A Yes, sir. These are photos from inside the Jackson
25 Hewitt business. Again, they -- the wiring had been cut.

1 And holes had been busted into the wall to gain access from
2 Boost Mobile into Jackson Hewitt and from Jackson Hewitt
3 into Regional Finance.

4 MR. SCOTT: The state offers State's Series 4
5 admission -- that would be State's 4; then, State's 4A
6 through 4F -- for admission into evidence, Your Honor.

7 THE COURT: No objection, Mr. Verner?

8 MR. VERNER: No, Your Honor.

9 THE COURT: In evidence without objection. You may
10 publish.

11 MR. SCOTT: All right.

12 (Whereupon, State's Exhibit 4(A-F) was entered into
13 evidence.)

14 Q This is going to be 4A and 4B. Well, I'll do -- let's
15 see. That's 4A. What's that?

16 A That is a photograph of the electrical wiring that
17 had, again, been cut. I believe that's just to the --
18 right beside the rear door of the business.

19 Q 4B?

20 A That's some more electrical wiring that had been cut.

21 Q Okay. This is 4C right here. Why was that picture
22 taken?

23 A To show that the suspect had pried open the filing
24 cabinets and had gone through a majority of the items in
25 the business.

DIRECT EXAMINATION BY MR. SCOTT - JUSTIN WEAVER

64

1 Q I've got a 4D. Is that why that picture was taken as
2 well?

3 A Yes, sir. Again, he had pried the filing cabinets
4 open.

5 Q Same with 4E?

6 A Yes, sir.

7 Q All right. Here's 4F. What's that?

8 A That is a picture of one of the holes in the wall.
9 That was either on one side or the other of the business.
10 I'm not exactly sure which side of the business that --
11 that the restroom was on. But he had punched a hole
12 through the wall to gain entry into the building.

13 Q Okay. Jackson Hewitt it -- you're telling -- is it
14 your testimony that there was holes in both partitions on
15 either side?

16 A Yes, sir.

17 (Whereupon, State's Exhibit 5(A-G) was marked for
18 identification.)

19 Q All right. Officer Weaver, did you get to go into the
20 Boost Mobile?

21 A Yes, sir.

22 Q What'd you observe in there?

23 A Again, I believe the wiring had been cut at the rear
24 of the business. Holes had been punched through both
25 dividing walls between Boost Mobile and Jackson Hewitt, as

1 well as Boost Mobile and El-Amin Barbershop. Also, the
2 cell phone cases were empty in the business. And I -- I
3 believe that's -- that was all from that business.

4 Q Okay. I'm going to show you State's 5. It's State's
5 5; and then, 5A, -B, -C, -D, -E, -F, and -G. Do you
6 recognize those?

7 A Yes, sir. These are the -- the photos that were taken
8 from the Boost Mobile store; shows, again, that the wiring
9 had been cut. And this photo you -- the -- the entire
10 electrical box had actually been knocked off of the wall.
11 There were -- there's -- in this photo there are some shoe
12 prints and a chair that we believe -- I -- I'm -- I'm
13 believing he used to gain access to the electrical box,
14 because I believe it was located a little higher off the
15 ground than the others.

16 There's also a picture of the holes that had been
17 punched in the wall on each side of the business to gain
18 access to the other businesses; and a photo of the empty
19 display case where the cell phones were missing.

20 Q All right. Do those fairly and accurately represent
21 what you observed May 27th last year?

22 A Yes, sir.

23 MR. SCOTT: The state offers State's Series 5 for
24 admission into evidence. That would be 5; and then, 5A
25 through 5G, Your Honor.

DIRECT EXAMINATION BY MR. SCOTT - JUSTIN WEAVER

66

1 THE COURT: No objection, Mr. Verner?

2 MR. VERNER: No objection. That's seven photographs?

3 MR. SCOTT: One, two -- yes, sir.

4 THE COURT: All right. State's 5 will be in evidence.
5 You may publish.

6 (Whereupon, State's Exhibit 5(A-G) was admitted into
7 evidence.)

8 Q All right. Officer Weaver, I -- I want to show you
9 real quick again -- now, this is 5B.

10 A Yes, sir. That's a photograph of the wiring that had
11 been cut.

12 Q What about 5C?

13 A That is where the electrical box had actually been
14 knocked away from the wall.

15 Q Here's 5D.

16 A That is a photograph of the chair with the shoe prints
17 in it. I believe, again, like I say, that the suspect used
18 that chair to gain access to the electrical box. If you'll
19 remove that photo one second, the previous photo, that is
20 actually the same chair there, showing it in reference to
21 the electrical box.

22 Q Okay. And then, if you look at the seat of the chair,
23 you see footprints in -- in it? Is that ---

24 A Yes, sir.

25 Q --- that what you observed?

1 All right. I've got -- let's see. This is 5F.

2 A Yes, sir. That's -- that's showing a hole that had
3 been knocked in the wall. I believe -- I -- again, I'm not
4 100 percent sure as to which side of the business that is
5 on. But I believe that is on the Jackson Hewitt side of
6 the business.

7 Q Did you notice, in that last series of photos with the
8 Jackson Hewitt, there was a table leaned up against it?

9 A I did not notice.

10 Q That was a hole in one of the walls, though? Is --
11 that's your testimony?

12 A Yes, sir.

13 Q All right. Here's 5E. What's that?

14 A That is a hole in the wall on the opposite side of the
15 business.

16 Q It's a hole on one side and hole on the other?

17 A Yes, sir.

18 Q And then, 5A, what is this here?

19 A That is some insulation. I -- I'm not 100 percent
20 sure where that insulation came from. It may have been in
21 the wall. I'm not sure.

22 Q All right. 5G, what's that?

23 A That is a photo of the display case, showing that all
24 of the cell phones were missing out of the display case.

25 MR. SCOTT: (To the court reporter) This is 6A

DIRECT EXAMINATION BY MR. SCOTT - JUSTIN WEAVER

68

1 through 6G.

2 (Whereupon, State's Exhibit 6(A-G) was marked for
3 identification.)

4 Q Let me show you State's 6, 6A through 6G. I think
5 that's eight photos. Could you take a minute to look at
6 those.

7 A Yes, sir. These are the photos from the El-Amin
8 Barbershop. This first photo I'm looking at here depicts
9 -- the suspect had actually taken screws out of the sheet-
10 metal siding on the exterior of the building.

11 MR. VERNER: Your Honor, respectfully, I'm going to --
12 I -- I didn't object before, but probably should have. The
13 witness is actually narrating answers. The -- the proper
14 thing would be to identify the pictures as fair and
15 accurate. And because the prosecutor has been publishing
16 them individually and showing them to the jury, it -- it's
17 actually improper for the witness to narrate what's on the
18 pictures, which is not a -- responsive to a question. He's
19 just narrating an answer. I didn't object before. But
20 because the prosecutor has been both doing it -- narration
21 and individually ---

22 THE COURT: I ---

23 MR. VERNER: --- showing, he needs to probably do it
24 the proper way, which is just by showing the pictures
25 individually.

1 THE COURT: I understand your position. Your
2 objection is sustained. Go ahead, Solicitor.

3 THE WITNESS: Okay.

4 MR. SCOTT: Well, let -- I think I agree with Charles
5 on this one.

6 Q Let -- do you recognize these? Do they fairly ---

7 A Yes, sir.

8 Q --- and accurately represent ---

9 MR. SCOTT: I'm going to offer, Your Honor, State's 6
10 -- and then, 6A through 6G -- for admission and permission
11 to publish them, Your Honor.

12 THE COURT: All right. Any objection, Mr. Verner?

13 MR. VERNER: No, Your Honor. The -- and I thought he
14 said there were eight pictures earlier. But if it's
15 through G, it would be 7.

16 THE COURT: Double-check ---

17 MR. VERNER: And -- and he may have just misspoke.
18 But if it's A through G, it should be seven. I just want
19 to -- when it goes to the jury, just make sure we have the
20 right count.

21 MR. SCOTT: I've got -- I've got -- I've got eight.

22 MR. VERNER: But -- well, it's not G if it's eight.

23 MR. SCOTT: There's 6; and then, 6A, -B, -C ---

24 MR. VERNER: Oh, okay.

25 MR. SCOTT: --- -D, -E, ---

DIRECT EXAMINATION BY MR. SCOTT - JUSTIN WEAVER

70

1 MR. VERNER: Okay.

2 MR. SCOTT: --- -F, -G.

3 MR. VERNER: Yeah. Okay. The ---

4 THE COURT: All right. They will be in evidence
5 without objection. You may publish.

6 MR. SCOTT: All right.

7 (Whereupon, State's Exhibit 6(A-G) was entered into
8 evidence.)

9 Q You started to talk about some sheet metal. This is
10 6A. Is that what you were talking about?

11 A Yes, sir.

12 Q Okay. And that's in the rear of the barbershop?

13 A That is in the rear of the barbershop.

14 Q All right. Now, this is 6B. What -- what is that?

15 A That is a photo of the electrical wiring in the
16 business that had, again, been either cut or disabled in
17 some way.

18 Q Okay. This is 6E.

19 A That is actually a hole in an interior door into El-
20 Amin Barbershop that had been knocked in there to gain
21 entry into one of the offices.

22 Q I have 6C here. What is that?

23 A That is a hole, I believe, on the rear of the business
24 just inside of the sheet metal that you saw in the first
25 photograph.

1 Q Okay. Because El-Amin is on the end, correct?

2 A Yes, sir.

3 Q So there -- you -- you got a hole coming in through
4 the back; and then -- and then, I've got 6D. What is that?
5 Is that a hole that goes into Boost Mobile?

6 A Yes, sir. That is a hole from El-Amin Barbershop into
7 Boost Mobile.

8 Q Okay. 6G?

9 A That is a photograph of one ---

10 Q Wait.

11 A --- of the filing cabinets that had been pried open

12 ---

13 Q I'm sorry. I'm sorry. 6G -- they were stuck
14 together. This is 6G. What's that?

15 A That is a photo showing that the desk drawers in one
16 of the desks had been opened.

17 Q Okay. And 6F?

18 A That is a filing cabinet that had been pried open.

19 Q All right. Okay. So, now -- now -- now, is it -- was
20 it your observation that sheet metal we just talked about,
21 that was in the back of El-Amin?

22 A Yes, sir.

23 Q And then, essentially, you have holes going through
24 the Sheetrock walls up until you get into Check Into Cash?

25 A Correct.

DIRECT EXAMINATION BY MR. SCOTT - JUSTIN WEAVER

72

1 Q And whoever did this was unable to get through that
2 partition. Is that -- that was your observation?

3 A That -- that was my observation. Yes, sir.

4 Q But they were able to gain entry through the rear, and
5 that was the hole in the cinder block that we saw; is that
6 right?

7 A Yes, sir.

8 Q All right.

9 MR. VERNER: Is that 1? It's already in evidence,
10 Your Honor.

11 (Whereupon, Mr. Scott and Mr. Verner conferred.)

12 THE COURT: All right. Which exhibit is it?

13 MR. SCOTT: One.

14 THE COURT: One? State's 1 in evidence.

15 (Whereupon, State's Exhibit 1 was entered into
16 evidence.)

17 Q All right. This is State's 1. You recognize what
18 that is?

19 A That is an aerial photograph of the Shops on Wilson
20 Shopping Center.

21 Q Okay.

22 MR. SCOTT: The state's going to offer 1 for admission
23 into evidence.

24 THE COURT: All right. It's already in evidence, I
25 believe.

1 MR. VERNER: I ---

2 THE COURT: So ---

3 MR. VERNER: --- Your Honor, I thought we had
4 premarked it as 1. But -- but if -- that -- there's no
5 objection if it's now coming.

6 THE COURT: One will be in evidence.

7 Q All right. Do you recognize which side that the Check
8 Into Cash is on and which side the -- if this is Wilson
9 Road here, which side the El-Amin is on?

10 A Yes, sir. This would be El-Amin Barbershop on this
11 end of the shopping center. And this would be the Check
12 Into Cash on the opposite end of the shopping center.

13 Q All right. I think you were describing earlier -- was
14 it your testimony you -- you drove this way, I guess?

15 A I -- I entered into the parking lot and drove along
16 the front of the businesses to make sure that none of the
17 front glasses were broken. I then went around the El-Amin
18 Barbershop and came up this way along the rear of the
19 business and noticed the hole in the rear of Check Into
20 Cash somewhere in this area here.

21 Q Okay. And the sheet metal we talking about was back
22 here?

23 A Yes, sir. The sheet metal was back here. I did not
24 notice it until later on after we got into the
25 investigation.

CROSS-EXAMINATION BY MR. VERNER - JUSTIN WEAVER

74

1 Q What's that? Is that a restaurant right there?

2 A That is the Hong Kong Chinese Buffet.

3 Q Okay. All right. So I guess you called in the
4 investigators after this; is that right?

5 A Yes, sir. That's correct.

6 Q And Kevin Goodman? Did he get involved at that point?

7 A Yes, sir. Investigator Goodman was the investigator
8 on call that morning.

9 Q Okay.

10 A And we called him in to process the scene.

11 Q All right. Did you have any other involvement that
12 particular day?

13 A I stood by with Mr. Goodman while he was processing
14 the scene, assisting him in any way possible.

15 Q Okay. But essentially, you just turned it over to
16 investigations after ---

17 A Yes.

18 Q --- that point?

19 MR. SCOTT: All right. Thank you. Please answer any
20 questions Mr. Verner may have for you.

21 THE WITNESS: Okay.

22 THE COURT: Mr. Verner?

23 CROSS-EXAMINATION

24 BY MR. VERNER:

25 Q Officer Weaver, did you do any fingerprinting inside

1 the store?

2 A I did not.

3 Q Okay. The -- there were shoe prints, at least on the
4 chair that was -- I -- I think you indicated earlier, there
5 was a chair that somebody must've stood on to get ---

6 A Yes, sir.

7 Q --- access to the power box?

8 A Yes, sir.

9 Q Okay. Did you do any kind of photographs of the
10 footprints?

11 A No, sir. Investigator ---

12 Q Okay.

13 A --- Goodman handled all the photographs.

14 Q Okay. The fairly extensive amount of damage or work
15 in these buildings, did it suggest that there could've been
16 more than one person involved to you?

17 A That's a possibility.

18 Q Okay. The -- and what time did you come on shift?

19 A I -- I would've been coming in at 6 a.m., so I
20 would've been on shift approximately 10 to 15 minutes
21 before ---

22 Q Okay.

23 A --- 6 a.m.

24 Q And this would've been May 27th?

25 A That is correct.

CROSS-EXAMINATION BY MR. VERNER - JUSTIN WEAVER 76

1 Q Was the sun up at the time that you came on shift?

2 A I -- I don't recall.

3 Q Okay. Who -- who was your backup officer? I think
4 you indicated that you had called a backup to assist you?

5 A That's Officer Jacob Huffstetler.

6 Q The -- Officer Huffstetler? Okay.

7 A Yes, sir.

8 MR. VERNER: All right. Thank you, sir.

9 THE COURT: Thank you, sir. You can step down.

10 THE WITNESS: Thank you.

11 (Whereupon, the witness exited the witness stand.)

12 MR. SCOTT: The state calls Officer -- next witness,
13 Your Honor?

14 THE COURT: Yes, sir.

15 MR. SCOTT: --- Officer Boris Alvarado. And I would

16 ---

17 THE COURT: (To the bailiff) Would you ask ---

18 MR. SCOTT: --- ask, Your Honor ---

19 THE COURT: --- Mr. Alvarado to come out, please?

20 MR. SCOTT: Yeah. Your Honor, we -- we would ask that
21 Weaver be released.

22 THE COURT: Without objection.

23 MR. VERNER: (To the bailiff) Tell Officer Weaver
24 he's ---

25 THE BAILIFF: Weaver?

DIRECT EXAMINATION BY MR. BROWN - BORIS ALVARADO

77

1 MR. VERNER: --- free to go too.

2 (Whereupon, the witness came forward.)

3 BORIS ALVARADO, having been first duly sworn,
4 testified as follows:

5 THE WITNESS: My name is Officer Boris Alvarado,
6 Newberry Police Department.

7 DIRECT EXAMINATION

8 BY MR. BROWN:

9 Q Officer Alvarado, you work for the Newberry P.D.,
10 correct?

11 A Yes, sir.

12 Q How long have you worked with the Newberry Police
13 Department?

14 A Working on my fifth year ---

15 Q Okay.

16 A --- with the Newberry Police Department.

17 Q What's your rank there?

18 A I am at corporal.

19 Q And what are your duties in the ---

20 A My duties ---

21 Q --- police department?

22 A --- are normal -- normal patrol activity through the
23 city. I'm where the -- whatever zone I'm assigned to, I
24 answer calls; traffic division; and whatever is needed to
25 get the city safe.

1 Q Officer Alvarado, were you working last May 27th,
2 2012?

3 A Yes, sir.

4 Q And what were you doing while you were on -- or on
5 duty?

6 A I was -- we patrol -- I was patrolling the east side
7 of the -- of the city, which would be the Wilson Road at --
8 area. At -- at that -- that time I was patrolling --
9 businesses from Main Street all the way to Smith Road on
10 Wilson Road, all the way to Glenn Street, which is the zone
11 that I was assigned that night.

12 Q And what was your shift? Was it nighttime shift?

13 A Yes, sir. My night shift -- my shift started at 6
14 p.m. in the evening and ended at 6 a.m. in the morning.

15 Q Now, while you were patrolling, what do you do while
16 you patrol?

17 A I -- first, when we coming on duty, I like to patrol
18 all the businesses, all the residential areas, and get a
19 kind of mental picture to see what -- what's there in the
20 -- as with the business has been -- especially when they
21 start closing, the end of closing business day. The -- I
22 like to patrol the areas to check on it, make sure that
23 they're closing and everything so safe.

24 Q On that -- on that night did you patrol the Bear
25 Village pawnshops?

1 A Yes, sir.

2 Q What time of night was that?

3 A It was 8:43 in the evening, around 8:40.

4 Q What happened or what'd you see when you were
5 patrolling the Bear Village shopping area?

6 A Well, after -- I -- actually, the Bear -- Bear Village
7 area, I parked my vehicle behind Ronnie's restaurant. I
8 exited my vehicle, and I was on foot behind the back road
9 of the businesses. I started with the Comcast building. I
10 check all the doors; make sure they're all secure.

11 And as I -- I work my way out -- all around the
12 business. As I was walking to the corner of the
13 businesses, I noticed the storage units that are -- are
14 beside it, that one of the storage business was open.

15 Q So a ---

16 A I ---

17 Q --- a storage room behind the business was open?

18 A Yes, sir. And which it is out -- it -- it's out of
19 place because most of the -- even if it's vacant, they all
20 closed at that -- so I walked towards it to inspect; make
21 sure everything was still there, which is a vacant storage
22 facility. So as I turned around, I noticed the -- Mr.
23 McCoy at -- at that time.

24 Q Where was Mr. McCoy?

25 A Mr. McCoy was kneeling down behind an air-condition

DIRECT EXAMINATION BY MR. BROWN - BORIS ALVARADO 80

1 unit when I first saw him. When I turn around, he stood up
2 from behind the air-condition unit.

3 Q Now, to be clear, this air-conditioning unit wasn't on
4 the front side of the store; it was on the back side ---

5 A In the ---

6 Q --- of the store?

7 A --- in the back side of the store.

8 Q Okay. And you said Mr. McCoy was sitting down. How'd
9 you know it was Mr. McCoy?

10 A Mr. -- Mr. McCoy, when I -- when he saw me, he started
11 walking towards me as I started walking towards him. And
12 the -- we interacted, and I asked him for an
13 identification. And he did not have any identification on
14 him. He gave me a -- his name and date of birth.

15 Q And is the same man you approached that night -- is he
16 in the courtroom?

17 A Yes, sir.

18 Q Can you identify him for me?

19 A Yes, sir. It's Mr. McCoy sitting in that yellow shirt
20 at the defendant's desk.

21 Q All right.

22 THE COURT: All right. Let the record reflect that
23 the witness has identified Mr. McCoy.

24 (Whereupon, State's Exhibit No. 7 was marked for
25 identification.)

1 Q And I want to show you -- Officer Alvarado, I want to
2 show you what's been marked as State's -- for ID purposes,
3 State's Exhibit No. 7. What does this show -- or ---

4 A That's ---

5 Q --- what's this?

6 A --- an -- that's an aerial picture of -- of the Bear
7 Village Shopping Center.

8 Q Okay. Now, where is actually the -- where -- where
9 did you patrol that night? How did you come behind the
10 building?

11 A I came up Wilson Road, heading north on Wilson Road,
12 heading towards Smith Road. I entered the Bear Village
13 through the Ronnie's parking lot, the north side of the
14 parking lot.

15 Q And where is Ronnie's?

16 A Ronnie's is located in this area, sir. That's is the
17 Ronnie's Restaurant.

18 Q All right.

19 A And as I parked my vehicle between Ronnie's and
20 Comcast, I exited my vehicle and I went -- I started
21 walking in the back of the businesses on the -- in the side
22 road.

23 Q So you're -- you're very familiar with this aerial of
24 what businesses are here?

25 A Yes, sir.

DIRECT EXAMINATION BY MR. BROWN - BORIS ALVARADO

82

1 Q Does it clearly and accurately reflect the way that
2 business looked or the way it's laid out ---

3 A Yeah ---

4 Q --- right there?

5 A Yes, sir.

6 MR. BROWN: Judge, the state moves State's -- for ID
7 purposes, State's Exhibit No. 7 into evidence at this time.

8 MR. VERNER: No objection.

9 THE COURT: Without objection, State's 7 will be in
10 evidence.

11 (Whereupon, State's Exhibit No. 7 was entered into
12 evidence.)

13 Q Now, Officer Alvarado, after you patrolled the back of
14 Bear Village Pawnshops, where did you first come in contact
15 with Mr. McCoy?

16 A We were in the north section at the back. We were in
17 this general -- I was in this corner at my initial point.
18 Mr. McCoy was in this general area here, kneel -- bent down
19 on -- behind a air condition unit. And we met halfway
20 through in the back section.

21 Q Now, after you both approached each other, what did
22 you do?

23 A I asked for -- once I asked for identification and he
24 couldn't produce an -- a state identification, he gave me a
25 name and date of birth, which I radioed that with

1 communications for a record check and also let him know who
2 the person I was out with.

3 Q And that night on May 27th, did you already know the
4 -- the prior burglaries the night before?

5 A Yes, sir.

6 Q Was -- your patrolling that night, was it kind of
7 heightened because of the burglary?

8 A Yes, sir.

9 Q Now, after you learned his name and date of birth,
10 what did you do?

11 A Our -- our -- our protocol is when we do -- have
12 someone out with a certain person on night shift or in --
13 during the shift, we also have -- the other officer comes
14 in as a backup. And also, due to the nature of the -- his
15 being in back of the business during almost closing time,
16 it -- it gave me a little more sense and I contact our Sgt.
17 Malloy to come over the scene as well.

18 Q Did -- what -- after -- did any other officers show up
19 as well?

20 A Yes, sir. Officer Desiree Busko arrived as a backup
21 officer.

22 Q And, Officer Alvarado, did you learn where Mr. McCoy
23 was from?

24 A Yes, sir. Communications returned a -- the name, date
25 of birth, from Mr. Jeffrey McCoy being out of Tennessee.

DIRECT EXAMINATION BY MR. BROWN - BORIS ALVARADO

84

1 Q Now, after Officer Malloy and Busko arrived to assist
2 you, what did you do?

3 A When Officer Busko arrived first, I asked her to go
4 down the businesses; check, make sure all the businesses
5 were not tampered by. As she work her way out, she found
6 some tools that were laid on the -- on the ground beside
7 the air condition unit where Mr. McCoy stood up from.

8 (Whereupon, Mr. Scott and Mr. Brown conferred.)

9 (Whereupon, State's Exhibit No. 8 was marked for
10 identification.)

11 Q Officer Alvarado, before we get back to more of the --
12 what happened that night, I'm going to show you what's been
13 marked for state's identification purposes as State's
14 Exhibit No. 8. Will you take a look at this and tell me
15 what this is.

16 A This is an overview of the city on -- it's from the
17 Wilson Road being the main road, cutting across the -- the
18 map.

19 Q Okay. And where is Bear Village Pawnshop?

20 A The Bear Village will be up there -- off of -- left in
21 the corner here, sir.

22 Q Okay. And where is the Shops on Wilson Road?

23 A Shop on Wilson would be the south or right side of
24 this, which is in this area, sir.

25 Q How far away did -- you know, between those two

1 buildings, roughly?

2 A Roughly, say, a little bit less than a mile, maybe.

3 Q Does that accurately reflect what you understand is
4 where Bear Village and Wilson -- Shops on Wilson Road are
5 during your normal patrolling?

6 A Yes, sir.

7 MR. BROWN: Your Honor, the state moves State's
8 Exhibit No. 8 into evidence.

9 MR. VERNER: No objection.

10 THE COURT: Without objection State's 8 will be in
11 evidence.

12 (Whereupon, State's Exhibit No. 8 was entered into
13 evidence.)

14 Q Now, Officer Alvarado, getting back to Officer Busko
15 and Malloy coming to assist you that night, after -- now,
16 while Officer Busko was looking behind Bear Village -- the
17 shops -- the Bear Village Pawnshop, where was Mr. McCoy?

18 A Mr. McCoy was -- we both were standing about a couple
19 arm lengths apart at the time we were at -- like, when we
20 met halfway at the point, that's where we were at together.

21 Q Was he detained at that time?

22 A No, sir.

23 Q Did he become detained at that time?

24 A No, sir.

25 (Whereupon, Mr. Scott and Mr. Brown conferred.)

DIRECT EXAMINATION BY MR. BROWN - BORIS ALVARADO

86

1 Q Where did Mr. McCoy have his hands while y'all were
2 standing there together?

3 A I -- he had his hands on his -- on his hands.

4 Q And while y'all were standing there together, what did
5 he have in his hands?

6 A He had a -- a pair of working -- brown gloves. If I
7 could refer to my notes, if it's okay. Yes, sir. Yeah.
8 He -- he was holding a -- a pair of brown work gloves.

9 Q And after you learned of Mr. McCoy's name and where he
10 was from and Officer Busko went to do a little
11 investigative work, what happened at that point?

12 A At that point she informed me that there were some
13 tools that were found where Mr. McCoy was first seen. And
14 shortly after Sgt. Malloy had arrived, at that time I had
15 -- I asked Mr. McCoy to put his hands on -- on a wall and I
16 was going to pat him down for weapons for his safety and my
17 safety.

18 Q Did you pat him down?

19 A Yes, sir.

20 Q Did you find any weapons on him?

21 A No, sir, I didn't find any weapons. But I did found a
22 tool on his pocket.

23 Q What type of tool was in his pocket?

24 A It was, like, a -- I believe it's a ratchet type of --
25 of wrench that is used ---

1 Q Did he have anything else in his pockets?

2 A Yes, sir. He had a four sets or adapters for those
3 ratchets or the -- if I'm not mistaken, there was a
4 phillips -- a -- a type of devices that you could switch
5 out to for different ---

6 Q And after you checked his pockets and found the
7 ratchet set or the -- the adapters for a ratchet, what did
8 you do?

9 A At that time I placed Mr. McCoy under investigative
10 detention.

11 Q Now, was he technically under arrest at that time?

12 A No, sir. He was handcuffed, but he was not under
13 arrest.

14 Q And what's the purpose of doing that?

15 A It -- it's more safety, as for safety precautions for
16 him and for us as well.

17 Q All right. And at that point yourself, Officer Busko,
18 and Malloy were there on scene?

19 A Yes, sir.

20 (Whereupon, Mr. Scott and the court reporter
21 conferred.)

22 (Whereupon, State's Exhibit No. 9(A-N) was marked for
23 identification.)

24 Q Officer Alvarado, I'll show you what's been marked as
25 State's -- for ID purposes as State's Exhibit No. 9.

DIRECT EXAMINATION BY MR. BROWN - BORIS ALVARADO

88

1 (Whereupon, Mr. Brown and Mr. Verner conferred.)

2 Q Could you take a look at these and tell me what these
3 are?

4 A These are the photographs from the case that was taken
5 by Lt. Stuhr. This first picture is the ---

6 Q Just tell me -- tell me if you recognize those
7 pictures and -- and what they -- or where they are taken.

8 A These pictures are -- these pictures are the location
9 where Mr. -- I found Mr. McCoy. This is the back side of
10 the Bear Village, the businesses located -- that was
11 located where he was first seen by me.

12 Q Do those clearly and accurately represent what the
13 back of Bear Village looked like ---

14 A Yes, sir.

15 Q --- on May 27th?

16 A Yes, sir.

17 Q Have you looked through all of them?

18 A (No audible response.)

19 MR. BROWN: Your Honor, the state moves to move
20 State's Exhibit No. 9 into evidence at this time.

21 THE COURT: Any objection? How many photos do you
22 have there?

23 MR. BROWN: This would be 9; and then, 9A through 9N.

24 THE COURT: All right. Any objection, Mr. Verner?

25 MR. VERNER: Through what?

DIRECT EXAMINATION BY MR. BROWN - BORIS ALVARADO

89

1 THE COURT: N.

2 MR. VERNER: N? Can I look at them just one quick
3 second?

4 THE COURT: Sure.

5 (Whereupon, Mr. Brown and Mr. Verner conferred.)

6 THE COURT: No objection at this point, Mr. Verner?

7 MR. VERNER: Your Honor, I've ask the solicitor just
8 to go ahead and get him to identify the pictures
9 individually ---

10 THE COURT: Okay.

11 MR. VERNER: --- and -- and ---

12 THE COURT: Very good.

13 MR. VERNER: --- put them in. The -- the ---

14 THE COURT: Certainly.

15 MR. VERNER: --- they're incorrectly marked 7 on the
16 back, but Mr. Yates has -- Brown has indicated he's going
17 to change it to 9.

18 THE COURT: All right. Very good.

19 MR. BROWN: That's correct, Your Honor.

20 THE COURT: Go ahead, Mr. Brown.

21 MR. BROWN: All right.

22 MR. VERNER: You may ---

23 Q I'm showing ---

24 MR. VERNER: --- want to look ---

25 Q --- you what's marked as 9A. Tell me what that

DIRECT EXAMINATION BY MR. BROWN - BORIS ALVARADO

90

1 picture is.

2 A This is a picture of a back -- back side of the
3 business of Bear Village.

4 (Whereupon, Mr. Scott and Mr. Verner conferred.)

5 Q And 9B?

6 A 9B, this is the back business of 2040 -- or Bear
7 Village business.

8 MR. BROWN: Judge, I have -- publish as we -- as he
9 has identifying them?

10 THE COURT: Go ahead.

11 Q This was 7A [sic]. You said that was the back of Bear
12 Village Pawnshop?

13 A Yes, sir.

14 Q And 9 -- 9B?

15 A That is also, as I say, the back side of Bear Village.

16 Q 9C?

17 A That is the back -- this is back side -- the back side
18 of Bear Village, the -- one of the businesses where Mr.
19 McCoy was seen kneeled down.

20 Q And what does that show there?

21 A Those are the phone boxes or phone lines. It's a
22 phone box, I believe, on all ---

23 Q Was there something particular about that box that ---

24 A Yeah. The boxes never stayed open. And that's one
25 thing that there was out of place at that time. And we

1 noticed that the boxes were tampered, because it's ---

2 Q Was anything inside the box tampered with?

3 A From my knowledge, not that I know, sir.

4 Q And this is Picture 9D.

5 A Those are the tools that Officer Busko described to me
6 that was found where Mr. McCoy was first seen. It's also
7 in the back side of Bear Village.

8 Q This is Image 9E.

9 A This is a further view of the same back side of the
10 Bear Village.

11 Q This will be 9F.

12 A It's -- it's a closer look at the over -- overview of
13 the air condition unit to -- beside of where I seen Mr.
14 McCoy in the back side of the Bear Village.

15 Q This one's 9G.

16 A Those are the brown gloves that Mr. McCoy had on his
17 person. And that's the ratchet set that I removed from his
18 person. And the -- also, then, you can see in the picture
19 the adapters that he had on his pocket as well.

20 Q Now, are these the -- the adapters that, when you
21 patted him down, they were found on him?

22 A Yes, sir. The reason what I -- drawn my attention to
23 is when I pat him down, the ratchets -- the -- the sockets
24 that was on his -- inside of his pocket, and I wasn't sure
25 what it was at -- if it was a weapon on -- on him.

DIRECT EXAMINATION BY MR. BROWN - BORIS ALVARADO

92

1 Q Yes, sir. I'm showing you what is 9H, and I think
2 you've already identified that.

3 A It's -- it's the same -- a -- a closer picture of the
4 brown gloves and the ratchet and adapter sets.

5 Q This would be 9I.

6 A That's a pair -- that's a cell phone and a -- two
7 lighters that also were on his person.

8 Q Were those found in his pocket?

9 A Yes, sir.

10 Q All right. This is Image 9J.

11 A That is the money that he had on his pocket.

12 Q It was found in his pocket?

13 A Yes, sir.

14 Q And again, this is 9K.

15 A That's the back -- that's a wallet that was found on
16 his person and the money that was inside of it.

17 Q And just a couple more pictures. This would be 9L.

18 A That is the -- part of view of the back side of the
19 businesses in the Bear Village.

20 Q 9M, what is ---

21 A That is a ---

22 Q --- that depicting?

23 A What appears to me that's a sign -- or more -- the
24 Internet or -- or phone cables or alarm system. I'm not
25 for sure, though.

1 Q Are those normally open you patrol these ---

2 A No, sir. No, sir.

3 Q And that night the box was open?

4 A The -- the box -- that's what's found -- the -- the --
5 that's how it was found.

6 Q And lastly, this would be 9N.

7 A They're the same telephone-line pictures that we saw
8 earlier. It's a closer. As you see, somewhat, the wires
9 were -- seen -- appear to -- were cut but ---

10 Q Now, are all these pictures clearly and accurately
11 represent or depict what you witnessed on May 27th, 2012,
12 behind the Bear Village Pawnshops?

13 A Yes, sir.

14 MR. BROWN: Your Honor, the state moves State's
15 Exhibit No. 9 into evidence at this point.

16 MR. VERNER: I -- I object on relevance under 403,
17 Your Honor.

18 THE COURT: All right. May I see State's 9?

19 MR. BROWN: Yes, Your Honor.

20 THE COURT: Thank you. Mr. Verner, your objection
21 under 403 is to all of 9 or ---

22 MR. VERNER: Specifically, to the ones of the -- the
23 wires and the money photographs, Your Honor.

24 THE COURT: All right. Solicitor, you want to speak
25 to this -- this ---

DIRECT EXAMINATION BY MR. BROWN - BORIS ALVARADO

94

1 MR. BROWN: Judge, it's -- it's what they observed
2 that night and where they found him. And based on the
3 prior night, I believe it's relevant to show what his
4 intent was for that night as well.

5 THE COURT: All right. Objection under 403 is noted;
6 overruled. State's 9 will be in evidence collectively.

7 MR. BROWN: Thank you, Your Honor.

8 THE COURT: Thank you.

9 (Whereupon, State's Exhibit No. 9(A-N) was entered
10 into evidence.)

11 Q Just to be clear: Bear Village is -- what city is
12 that in and county?

13 A Bear Village is located in the -- within the city
14 limits of City of Newberry and in Newberry County.

15 Q All right. And after you had Mr. McCoy in custody or
16 investigative detention, what did you do? What did you do
17 with him ---

18 A What I ---

19 Q --- after ---

20 A --- what I -- okay. Mr. McCoy was informed that we --
21 once we found the -- the items that was found, at the -- at
22 that time Mr. McCoy ---

23 MR. VERNER: Your Honor, I -- I ---

24 THE COURT: All right. Ladies and gentlemen of the
25 jury, there's a matter I need to take up with the attorneys

1 involved in this case. If you would, adjourn briefly.
2 I'll have you back out here. And hopefully, we'll be
3 taking a lunch break very shortly, okay?

4 So don't discuss the case yet. I'll let you know
5 when. And, Madam Forelady, if you'll sit in the correct
6 chair when you come back out, please.

7 (Whereupon, the jury exited the courtroom at 12:54
8 p.m.)

9 THE COURT: The record should reflect that the jury is
10 out. I assume, Mr. Verner, you were concerned that we were
11 getting into Fifth Amendment territory.

12 MR. VERNER: What the defendant would've said or been
13 asked. Yes, sir. Absolutely.

14 THE COURT: All right.

15 MR. BROWN: Judge, I would rephrase. I'm --
16 basically, was he placed under arrest at that point.

17 THE COURT: Okay. Officer, of -- you're -- you're
18 probably aware -- and I'm -- maybe the -- the question
19 needs to be rephrased. But obviously, we can't get into --
20 obviously, we can't get into any discussion concerning his
21 invoking his Fifth Amendment rights ---

22 MR. VERNER: Miranda or any ---

23 THE WITNESS: Okay.

24 THE COURT: Yeah.

25 MR. VERNER: --- statements he made.

DIRECT EXAMINATION BY MR. BROWN - BORIS ALVARADO

96

1 THE COURT: Right.

2 THE WITNESS: Okay.

3 THE COURT: So don't talk about that ---

4 THE WITNESS: I -- I sure ---

5 THE COURT: --- if you ---

6 THE WITNESS: --- won't.

7 THE COURT: --- would. He'll ask a direct question.

8 Maybe lead a little bit, just so that we can be sure we
9 don't touch on it.

10 MR. VERNER: Two -- two minutes, Your Honor ---

11 THE COURT: Sure.

12 MR. VERNER: --- just quickly to -- bathroom break and
13 I'll rush right back out.

14 THE COURT: That's fine. We'll be at ease for two
15 minutes.

16 (Off the record from 12:55 p.m. until 12:58 p.m.)

17 THE COURT: All right. Let's continue, if we could,
18 with Officer Alvarado. (To the bailiff) Let's go ahead
19 and have the jury out, please. Bring the jury on back out.

20 (Off the record briefly.)

21 (Whereupon, the jury entered the courtroom at 1:03
22 p.m.)

23 THE COURT: All right. We're back on the record.

24 We're still in Officer Alvarado's case -- or -- sorry --
25 testimony. Go ahead, Mr. Brown.

1 MR. BROWN: Thank you.

2 Q Officer Alvarado, at some point after you had Mr.
3 McCoy in investigative detention, you placed him under
4 arrest, correct?

5 A Yes, sir.

6 MR. BROWN: No further questions, Your Honor.

7 THE COURT: All right. Mr. Verner?

8 CROSS-EXAMINATION

9 BY MR. VERNER:

10 Q The -- Officer Alvarado, the -- when -- when you
11 encountered Mr. McCoy, this -- this was not the night of
12 the burglaries at the Shops on Wilson Road?

13 A The burglaries happened on -- between Saturday and the
14 Sunday morning. I encountered Mr. McCoy that Sunday
15 evening.

16 Q Okay. The -- and he indicated to you that he had been
17 at Subway; is that correct?

18 A Yes, sir. He -- he -- he -- he stated that he was
19 waiting for a -- a girlfriend that worked at Subway.

20 Q Okay. And the Subway was still open at that time?

21 A No, sir.

22 Q Okay.

23 A Not to my -- not that ---

24 Q At ---

25 A --- I recall.

1 Q --- 8:40 it would've closed -- on 8 ---

2 A At a -- not that I recall at that time. That -- on
3 that Sunday night, I'm not -- I cannot recall if it was
4 open or closed.

5 Q Okay. Thank you, Officer.

6 A Uh-huh.

7 MR. BROWN: No redirect.

8 THE COURT: All right. (To the witness) Thank you,
9 sir. You can step down.

10 THE WITNESS: Thank you, Your Honor.

11 (Whereupon, the witness exited the witness stand.)

12 THE COURT: All right. Ladies and gentlemen, we've
13 reached a good point in the trial where it'd probably be
14 best for us to go ahead and take a lunch break. I -- I've
15 been informed that at least one of the jurors -- probably a
16 couple others -- have some personal matters to attend to.
17 So I'm going to ask that you be back in the jury room at
18 2:30. So that should afford everybody, hopefully, enough
19 time to get -- get what -- get done what they need to get
20 done. So be back in the jury room at 2:30.

21 Again, if you go to lunch with one of your fellow
22 jurors or a friend or family member, don't talk about the
23 case. I'll let you know when you can. Hope you have a
24 great lunch, and I'll see you back in the jury room at
25 2:30. Thank you.

1 (Whereupon, the jury exited the courtroom at 1:05
2 p.m.)

3 THE COURT: All right. The record should reflect that
4 the jury is out and we are at ease. See y'all at 2:30.

5 (Off the record from 1:06 p.m. until 2:41 p.m.)

6 (Whereupon, State's Exhibit 10(A-R) was marked for
7 identification during the recess off the record.)

8 THE COURT: All right. If we may, let's go ahead and
9 go back on the record on the *State v. Mr. McCoy*. Mr. McCoy
10 is present with Mr. Verner. We are still in the state's
11 case-in-chief. (To the bailiff) If we could, let's go
12 ahead and have the jury out, please.

13 (Whereupon, the jury entered the courtroom at 2:41
14 p.m.)

15 THE COURT: All right. Ladies and gentlemen, I trust
16 y'all had a pleasant lunch. We're back on the record in
17 the case of the *State v. Mr. McCoy*. We're still in the
18 state's case-in-chief. So at this point, Mr. Scott, if
19 you'll call your next witness, please.

20 MR. SCOTT: Thank you, Your Honor.

21 MR. BROWN: The state calls Harold Malloy.

22 (Off the record briefly.)

23 (Whereupon, the witness came forward.)

24 HAROLD MALLOY, having been first duly sworn,
25 testified as follows:

DIRECT EXAMINATION BY MR. BROWN - HAROLD MALLOY 100

DIRECT EXAMINATION

BY MR. BROWN:

Q Officer Malloy, you work for the Newberry Police Department, correct?

A Yes, sir.

Q And how long have you been with the Newberry P.D.?

A Next month will be nine years.

Q Nine years?

And what is your -- your rank there with the police department?

A I'm a sergeant.

Q And, Sgt. Malloy, what -- what are your duties?

A I assist the lieutenant with the supervision of the younger officers or -- or more subordinate officers. I serve in many capacities. I'm the police department's field-training manager, which is the FTO manager, which trains all the police officers that would come into our department.

I'm also the on-shift investigator for our particular shift. Each shift has an investigator -- on-call investigator.

Q What shift do you usually work?

A I'm on the C shift. We -- an A/B/C/D shift, but I'm on C shift. But we rotate -- every 14 days, we rotate.

Q All right. Now, last year, May 27th, 2012, were you

1 working that night?

2 A Yes, sir, I was.

3 Q Were you working the night shift?

4 A Yes, sir.

5 Q Did you get a call to respond to Bear Village Pawnshop
6 or Village Shops here in the city of Newberry?

7 A Yes, I did.

8 Q And what time of night did you get a call?

9 A Was about between 8 and 9.

10 Q And did you respond?

11 A Yes, I did.

12 Q When you responded, what did you learn -- what did you
13 learn about the call?

14 A Officer Alvarado requested that I respond to his
15 location; he had found someone behind the shopping center
16 -- Bear Village Shopping Center. And that person had -- he
17 had said over the radio that he may've had a suspect that
18 had possibly been going into -- try to go into -- attempt
19 to go into one of the buildings.

20 Q And when you got there, what did you see?

21 A I saw Officer Alvarado and -- and Patrolman Busko.
22 They were there with Mr. McCoy. And they had him, I think,
23 already in handcuffs. And Officer Alvarado instructed me
24 that -- to go over and look behind a particular unit -- air
25 conditioning unit. And at that time I saw where the panel

DIRECT EXAMINATION BY MR. BROWN - HAROLD MALLOY 102

1 had been taken off; the wires were exposed; and there were
2 tools on the ground underneath the -- the panel.

3 Q And after you noticed these tools, what did you do
4 with your investigation?

5 A After talking with Cpl. Alvarado and Patrolman Busko,
6 I learned that his name was Jeff McCoy and that he was from
7 the Tennessee area. I started then looking for a potential
8 -- possible vehicle that he could be traveling in, possible
9 other suspects. And I began searching the parking lots
10 until I found the -- a car with Tennessee tags.

11 Q Now, you say you searched different parking lots.
12 Which parking lots did you search that night?

13 A The Bear Village parking lot, which is a -- a very big
14 parking lot -- the front portion of the building that they
15 were behind. And then I moved down to the -- Mexican
16 restaurant would be the next place. And then I actually
17 found the vehicle in the BI-LO -- in front of BI-LO
18 shopping center.

19 Q All right. I want to show you what's been entered
20 into evidence as State's Exhibit No. 1. I want to stand
21 next to you so you can take a look and also the jury can
22 see.

23 THE COURT: (To the witness) If you ---

24 Q Can you ---

25 THE COURT: --- need to step down, go ahead and step

1 down, officer.

2 THE WITNESS: Okay. Thank you.

3 Q Can you show me where the Bear Village Pawnshops are

4 ---

5 A Yes, sir.

6 Q --- or shops?

7 A This is the Shops -- Bear Village Shops right here,
8 sir.

9 Q Okay. And when you responded, where was Alvarado and
10 McCoy located?

11 A They were a couple businesses down from the -- the
12 corner of the building ---

13 Q Okay.

14 A --- in this area right here.

15 Q Okay. And where were the -- the tools found -- or
16 that you witnessed?

17 A They were -- by the time I arrived, they were -- the
18 tools were in this area. Corporal Alvarado stepped down,
19 and he had Mr. McCoy in custody a little closer toward the
20 end of the building.

21 Q So a few steps away from the tools?

22 A Yes, sir. He was away from the tools at that time.

23 Q Okay. And you mentioned just a few moments ago that
24 you -- you then started looking in parking lots to see if
25 there was a car and you'd already learned that his name was

DIRECT EXAMINATION BY MR. BROWN - HAROLD MALLOY 104

1 Jeff McCoy ---

2 A Yes, sir.

3 Q --- and he's from Tennessee?

4 Now, can you show me on this aerial what parking lots
5 you looked in?

6 A Okay. This is the front parking lot of Bear Village.
7 I then -- didn't find any vehicles with any Tennessee tags
8 in that particular parking lot. So I come down to the next
9 parking lot, which was San Jose restaurant. There were no
10 vehicles in that parking lot with Tennessee tags. Then I
11 came down to the next parking lot, which would be the BI-LO
12 shopping center -- or BI-LO grocery store parking lot.

13 Q All right. You said there were no -- that there were
14 no cars here with Tennessee tags. Now, you said there were
15 no cars in the Mexican restaurant. Why were there no cars
16 there?

17 A At that time that -- that building just wasn't open at
18 that time.

19 Q Okay. And were there other cars in the parking lot at
20 BI-LO?

21 A Yes, sir. Yes, sir, there were.

22 Q Okay. Now, after you located a car with a Tennessee
23 tag, what did you do?

24 A Well, first, I ran the tag on the -- on the vehicle,
25 and it came back -- once they ran the tag, I ran it through

1 DMV to get a owner's information on the vehicle. And it
2 came back registered to Jeffrey McCoy out of Tennessee.

3 I then got out of my patrol and -- and walked around
4 that vehicle, and I could clearly see in that vehicle a
5 tool bag behind the driver's seat in the backseat, a -- a
6 gray and black, I think it was, tool bag that contained a
7 drill -- excuse me -- a grinder, saw blades, extension
8 cord, and other -- just other little tools that you could
9 see in -- in the back.

10 Q Did you see anything else in the car by looking around
11 the car?

12 A Again, I -- I looked around the car. And in -- in the
13 console -- center console, you could see loose change, like
14 a -- like a lot -- large amount of -- of quarters, gold
15 dollars. And I did notice a hotel key -- or a red-plastic
16 hotel key that was inside the console.

17 Q Okay.

18 A And all this was in plain view of the -- just me
19 walking around the car.

20 Q After you noticed these items there, what did you do
21 at that point? Did you -- did you -- did you call anybody
22 else?

23 A Yes. I -- I radioed to my servicer, Lt. Stewart, that
24 I had found the vehicle and that we then discussed setting
25 up surveillance where we could watch the vehicle to see if

DIRECT EXAMINATION BY MR. BROWN - HAROLD MALLOY 106

1 anyone else -- if he had any other accomplices or anyone
2 else was going come to that vehicle. And I sit at the
3 Stokes-Trainor parking lot, where I could have a clear view
4 of the vehicle, and waited. And -- and no one else ever
5 comes to that vehicle.

6 Q How long did you wait? How long did you wait,
7 watching that car?

8 A Say, approximately an hour. I waited until the BI-LO
9 grocery store was closed. And that was the only other
10 business that was open at that time. I waited until it was
11 closed and all the employees had left, except for the night
12 stockers that had -- that were coming in. I could see them
13 clearly coming in as the people were leaving, as far as the
14 shift that was working was leaving.

15 Q So after the -- after the folks had left BI-LO, were
16 there any other cars in the parking lot after ---

17 A There may have been for the night stockers, the one
18 that come in and stock during the night once the store is
19 closed.

20 Q But other than that, there were no other cars?

21 A No, sir.

22 Q After you got done watching the vehicle from Stokes-
23 Trainor parking lot, what did you do?

24 A Well, after we were sure that no one else is coming to
25 the vehicle, we took the car -- Mr. McCoy was gone from the

1 scene. He was already placed in custody; he was no longer
2 in the area.

3 So once he left the scene, we're responsible for his
4 vehicle. So what we did is we went over and called for a
5 tow service to tow his vehicle. And we inventoried the
6 vehicle, which is part of our policies that we do and --
7 and protocol that we do whenever we take a vehicle that
8 belongs to someone.

9 Q Now, you said you called a tow service. What tow
10 service was that?

11 A Can I refer to my notes, sir? I -- excuse me.
12 Livingston's Tow Service.

13 Q All right. Now, you said it's department policy to --
14 you know, to take an inventory of the car. Does that
15 include just items found on the seat, or does that also
16 include glove boxes or ---

17 A That includes ---

18 Q --- enclosed places?

19 A That includes the entire car. Because when you
20 mentioned glove boxes, when people have valuables, a lot of
21 times they'll put them in their glove box, their center
22 console, under the armrest, or they'll put them in the
23 trunk.

24 Q And why do -- again, why do you inventory a car?

25 A We're taking -- we're taking possession of the car.

DIRECT EXAMINATION BY MR. BROWN - HAROLD MALLOY 108

1 When I saw "we," the city of Newberry is taking possession
2 of that car. And we're responsible for everything that's
3 in the car. So number one, we -- we inventory it to
4 protect Mr. McCoy or -- or protect the person that we're
5 towing the car for. We inventory it to make sure that all
6 their personal items are in there. We have a inventory
7 list of it.

8 And then, we also do it to protect the police
9 department so they can't come back at a later time and say
10 they had something of value in there that wasn't in there.

11 Q During this inventory did you follow department
12 policy?

13 A Yes, sir.

14 Q And do you have a -- do you have a list of what you
15 inventoried ---

16 A Yes, sir, I do.

17 Q --- from the car?

18 What did you inventory that night from the -- and just
19 so we know, what color was that car?

20 A It was a light-green ---

21 Q Green ---

22 A I'm sorry. Ford Taurus, if you're asking me.

23 Q Okay. And -- well, what did you -- what did you
24 inventory? What was found in that car?

25 MR. VERNER: Your Honor, subject to my objection that

1 we argued on the Fourth Amendment ---

2 THE COURT: (To the witness) Subject to the earlier
3 ruling, you can answer.

4 THE WITNESS: Okay. Thank you, Your Honor.

5 A Again, may I refer to my notes?

6 Q Yeah.

7 A In the trunk I found a pair of size 10 Wolverine
8 boots; one orange-handled tin snips; one black-and-yellow-
9 handled Stanley straight-tip screwdriver; one set of jumper
10 cables; 11 music CDs; one container -- plastic container
11 that contained 10 rewritable CDs; three phonebooks, one
12 from the Phoenix, Arizona, area; one from Brinkley,
13 Arkansas; and one from the Jefferson City, Tennessee, area.

14 After -- after inventorying the trunk, I then went
15 behind the driver's seat. And I found the black -- the
16 black and gray bag that I seen earlier by walking around
17 the vehicle. It contained several saw blades; a grinding
18 wheel; an orange extension cord; a phillips screwdriver; a
19 reciprocating saw; a black grinder; and other miscellaneous
20 tools.

21 In the driver's pocket of -- I found a empty ring and
22 a -- one glove -- one gray glove was just found in the
23 driver's door pocket.

24 The driver's -- excuse me -- the rear-passenger's
25 side, I found one bed pillow on the backseat; one black-

DIRECT EXAMINATION BY MR. BROWN - HAROLD MALLOY 110

1 handled pry -- a small pry tool was found in the door
2 pocket on the passenger's side -- rear side of the vehicle.

3 The center console in the front, I saw a plastic
4 Baggie containing a Tootsie Roll container. And it -- it
5 had a undetermined amount of coins in that were mostly
6 pennies.

7 I also found nine rolled coin wrappers containing
8 unknown amounts of money due to the coins being inside not
9 matching what the wrappers were.

10 In the center console I found a large amount of --
11 undetermined amount of quarters and gold dollars; one GPS
12 system; and one road -- red hotel key with the number 125
13 on it.

14 In the glove compartment I found two closed rolls of
15 stamps; one partial roll of -- open roll of stamps; one
16 pocket watch; one wristwatch; and several chargers and
17 miscellaneous papers.

18 And that was basically what we found in ---

19 Q That ---

20 A --- the vehicle.

21 Q --- was it?

22 (Whereupon, Mr. Brown and Mr. Verner conferred.)

23 Q Officer Malloy -- Sgt. Malloy, I want to show you
24 what's been previously marked for ID purposes as State's
25 Exhibit -- State's Exhibit No. 10. And it's Pictures A

1 through R. Take ---

2 MR. VERNER: A through what?

3 MR. BROWN: R.

4 MR. VERNER: R?

5 Q Take a look at those; see if you recognize those
6 images.

7 A Yes, sir. That would be the vehicle that we're -- in
8 question, the green Ford Taurus. Shows -- the second photo
9 shows the Tennessee tag, which come back registered to Mr.
10 McCoy. The third -- the third photograph shows the other
11 side of the same vehicle. This is actually the driver's
12 side I'm looking at now. The first photograph showed the
13 passenger's side, that -- outside the car.

14 Fourth photograph shows basically the center-console
15 area, where the quarters and silver dollars are located, as
16 well as the red key, looks like. The next photograph shows
17 the trunk area. The next photograph also shows the trunk
18 area, where it shows the pair of boots, the -- one of the
19 -- excuse me -- one of the phonebooks, and the pliers that
20 I mentioned earlier -- the orange pliers, and the
21 screwdriver.

22 Q Let me stop you right there, if ---

23 A Yes, sir.

24 Q --- I may.

25 MR. BROWN: Judge, while he's looking at them and

DIRECT EXAMINATION BY MR. BROWN - HAROLD MALLOY 112

1 identifying them, I just want to publish them so they can
2 see what he ---

3 MR. VERNER: You might --- just put them on the Elmo
4 and let him identify them off the Elmo.

5 THE WITNESS: Okay.

6 THE COURT: Sure. That'll be fine.

7 Q Again, this is State's ID 10D. Can you tell me what
8 that is? Sgt. Malloy, can you tell me what that picture
9 is?

10 A Yes, sir. That's the center console. And again,
11 that's the quarters and -- gold dollars that were found in
12 there.

13 Q And this is Exhibit 10E.

14 A Okay. That's the trunk area, just when you first open
15 the trunk.

16 Q Exhibit 10F?

17 A Okay. This is to the right side. This is standing on
18 the driver's side of the truck, taking the photograph into
19 the trunk. This is the phonebook -- I don't know from
20 which city this particular phonebook is -- the boots, the
21 orange tin snips, and the phillips screwdriver.

22 Q This is Image -- or State's Exhibit 10G.

23 A This is the gray and black bag that was just behind
24 the driver's seat. And you can clearly see inside the bag.
25 The bag hasn't been opened at that time. The items in that

DIRECT EXAMINATION BY MR. BROWN - HAROLD MALLOY 113

1 bag were saw blades, a grinder, a drop cord -- extension
2 cord, and other miscellaneous tools were in that bag.

3 Q Just to be clear: Before y'all even entered or opened
4 up the door, was that bag open?

5 A Yes, sir.

6 Q This is Image -- or State's Exhibit 10H.

7 A That's a more up-close view of the bag and the
8 contents of the bag.

9 Q And what's inside that bag?

10 A Again, the -- the blue packaging that you see there
11 are the saw blades. You can see the white blade protruding
12 out the center of the bag. You see the grinder in there as
13 well. You can also -- also see the orange drop cord
14 underneath the -- the grinder. And I'm not certain what
15 that is in the top corner at the -- center top corner.

16 Q This is State's Exhibit 10I.

17 A This is the passenger's side of the car of the
18 backseat as well. And this is a pillow that was behind the
19 -- the passenger's seat.

20 Q This is 10J -- State's Exhibit 10J.

21 A That looks like -- I can't really see it clearly from
22 there, sir. Could I see it ---

23 Q Just let me ---

24 A --- up close?

25 I want to say that may be the pry bar that was in that

DIRECT EXAMINATION BY MR. BROWN - HAROLD MALLOY 114

1 door pocket. That's in the backseat of the -- that's
2 actually in the backseat -- the pocket of the passenger's
3 seat.

4 Q That's 10J. I have a close-up, which is marked as
5 State's Exhibit 10K.

6 A Again, I don't know what I'm looking at, sir, from
7 that angle.

8 Q Okay.

9 A Okay. This is -- these are the gloves that were found
10 also in that -- in the pocket.

11 Q And which pocket was that -- what pocket was that?

12 A I want to say it -- the driver -- behind the driver's
13 pocket, I believe.

14 Q I'm showing you State's Exhibit 10L.

15 A Can I step down, sir?

16 Q Yes, sir.

17 A Okay. That is the -- the passenger's front seat.
18 Again, you can see the center-console area. From here it's
19 the center-console area; the glove compartment's here. And
20 the other items that were found were under this -- kind of
21 under the armrest here.

22 Q All right. Show you what's State's Exhibit 10M.

23 A Okay. This is a up-close angle -- or shot of the --
24 the center console. Here you see the quarters, the gold
25 dollars, as well as the hotel key right here.

DIRECT EXAMINATION BY MR. BROWN - HAROLD MALLOY 115

1 Q And I know some of these are images of the same, just
2 different angles. But this is State's Exhibit 10N.

3 A Yes, sir. That's the -- the same -- same setup with
4 the quarters, strung out the -- it's gold dollars. And
5 again, the -- the red hotel key.

6 Q And State's Exhibit 100.

7 A The same area again: This was the GPS system that was
8 in -- in there that I described earlier; the hotel key with
9 Room 125. And again, you could still see the quarters and
10 the gold dollars inside the console.

11 Q 10T?

12 A This is under the armrest of the -- of the console.
13 This is the armrest here. And this is the contents of the
14 armrest. This is the -- the Tootsie Roll container that I
15 was referring to earlier. This is the Tootsie Roll
16 container that was found there.

17 Q And we're just about to the end. 10Q -- State's
18 Exhibit 10Q?

19 A This is the glove box -- in the glove box, which we
20 have different chargers -- plug-in chargers. And these are
21 the stamps that I -- I referred to earlier: two complete
22 rolls; and then, one partial roll.

23 Q And lastly, 10R -- State's Exhibit 10R?

24 A Again, it's a close-up of the glove box. You can see
25 the watch band here -- one of the watches that I described;

DIRECT EXAMINATION BY MR. BROWN - HAROLD MALLOY 116

1 another cord for one of the chargers; the two full rolls of
2 stamps; and then, the -- again, the partial roll of stamps.

3 Q All right. Thank you, officer.

4 MR. BROWN: Judge, one of these -- before I move them
5 into -- move them to be admitted into evidence, one of them
6 does have Exhibit 80 instead of 100. That's just a
7 mismarking. I was ---

8 THE COURT: All right. Just ---

9 MR. BROWN: --- going to make that reflect ---

10 THE COURT: If you want to just scratch through that,
11 that'll be fine.

12 Q Now, do these photograph clearly and accurately
13 reflect what the automobile looked like that night?

14 A Yes, sir.

15 MR. BROWN: Your Honor, the state moves State's
16 Exhibit 10A through 10R into evidence at this time.

17 THE COURT: Any objection?

18 MR. VERNER: Subject to objection about the lack of a
19 warrant.

20 THE COURT: Subject to the earlier ruling, they are in
21 evidence.

22 (Whereupon, State's Exhibit No. 10(A-R) was entered
23 into evidence.)

24 MR. BROWN: Thank you, Your Honor.

25 Q Now, Sgt. Malloy, when you inventoried that car at

1 that time, were any of these items taken out of the car at
2 that point?

3 A No, sir. None of the items were removed from that
4 vehicle.

5 Q During the inventory -- what's the purpose of doing
6 the inventory at that point? Is it to make sure items --
7 to account the items that are in the car?

8 A The purpose of doing inventory is to document what was
9 in the car, as far as -- again, if -- to protect Mr. McCoy,
10 as well as the police department, if there were any -- said
11 any valuables that were taken or missing from that
12 particular vehicle.

13 Q And was there a search warrant ever -- did you -- did
14 -- did the police department get a search warrant for the
15 car?

16 A Yes. But I was no part of that, sir. I think that
17 was at a later time.

18 Q Well, after the inventory you said you called -- I
19 believe it was Livingston's Tow Service?

20 A Yes, sir.

21 Q Did Livingston's Tow Service eventually come to that
22 BI-LO parking lot?

23 A Yes, sir.

24 Q What did they do with the car?

25 A They took control of the car and -- and towed it back

DIRECT EXAMINATION BY MR. BROWN - HAROLD MALLOY 118

1 to their tow -- tow shop.

2 Q And when they take it back to the tow shop, was
3 Livingston -- is it just out in the open or where is the
4 car placed at that point?

5 A Livingston's Towing Service, at -- at one time, was in
6 Wayne Turner's -- I don't know if you ladies and gentlemen
7 are familiar with Wayne Turner's Towing Service, where it
8 was out just past Memorial Gardens Cemetery out on the
9 left. Livingston Tow Service had that area at one time
10 right after Mr. Turner's passing. And he did have a locked
11 gate there. But I do not know where they took this
12 vehicle.

13 Q But it was taken to Livingston's tow yard?

14 A Yes, sir.

15 Q Now, Sgt. Malloy, did you see Mr. McCoy that night
16 when you responded?

17 A Yes, sir, I did.

18 Q And is Mr. McCoy in this courtroom?

19 A Yes, sir, he is.

20 Q Can you describe him for me?

21 A Mr. McCoy is wearing a yellow shirt with stripes
22 across the chest, sitting beside Mr. Verner.

23 MR. BROWN: No further questions.

24 THE COURT: Mr. Verner?

25 MR. VERNER: No questions, Your Honor.

DIRECT EXAMINATION BY MR. SCOTT - DESIREE BUSKO 119

1 THE COURT: All right. Thank you, sir. You can step
2 down.

3 THE WITNESS: Thank you, Your Honor.

4 (Whereupon, the witness exited the witness stand.)

5 THE COURT: All right. Call your next witness,
6 please, Mr. Scott.

7 MR. SCOTT: Thank you, Your Honor. The state calls
8 Officer Desiree Busko.

9 (Off the record briefly.)

10 (Whereupon, the witness came forward.)

11 DESIREE BUSKO, having been first duly sworn,
12 testified as follows:

13 DIRECT EXAMINATION

14 BY MR. SCOTT:

15 Q Thank you, Officer Busko. How long have you been with
16 Newberry Solicitor's Office?

17 A A little ---

18 Q Sorry. Newberry ---

19 A I knew what ---

20 Q -- Police Department.

21 A --- you mean. I knew what you mean. A little over a
22 year.

23 Q Where'd you work before that?

24 A Cayce Public Safety.

25 Q Okay. And so you were here May 26th and 27th of last

DIRECT EXAMINATION BY MR. SCOTT - DESIREE BUSKO 120

1 year?

2 A Yes.

3 Q And did you have an occasion to respond to -- is it
4 the Shops at Bear Village or Bear Village -- what's the
5 name of that strip center?

6 A We call it "Bear Village."

7 Q Okay. Did you have an occasion to go back there that
8 night ---

9 A I ---

10 Q --- on the 27th?

11 A I responded to back up Officer Alvarado.

12 Q Okay. What'd you see when you got there?

13 A He was talking to the defendant.

14 Q Alvarado was talking to McCoy?

15 A Correct. He was talking with him behind the building.
16 That's what I saw when I arrived.

17 Q Okay. And the building -- show you my aerial to keep
18 referencing here. I'll show you State's No. 1. I think
19 it'd probably be easy if you ---

20 A Stand up?

21 Q --- step down.

22 A Okay.

23 Q Yeah. Show me Bear Village.

24 A It's right here.

25 Q Okay. All right. Where was Alvarado and Jeffrey

1 McCoy when you arrived?

2 A Approximately in this area right here.

3 Q Okay. Did you ---

4 THE COURT: Can you ---

5 THE COURT REPORTER: I can't hear.

6 THE COURT: One second. She needs to speak up a
7 little bit. The court reporter is having difficulty ---

8 THE WITNESS: Sorry.

9 THE COURT: --- picking up what she's saying.

10 A Alvarado and McCoy were in this area up here.

11 Q Okay. And at some point did you walk along the back
12 of the building?

13 A Yes. Alvarado had advised me to check the back doors
14 all along the backside of this -- the strip mall back here
15 to make sure nothing looked out of the ordinary. There's
16 several doors, trash cans, and A/C units along the
17 backside.

18 Q All right. At some point did you have an ---

19 THE COURT: All right.

20 Q --- occasion ---

21 THE COURT: I think one of the jurors is having
22 difficulty hearing. Perhaps speak up just a little bit if
23 you could, ma'am. I'm sorry.

24 THE WITNESS: Oh, that's okay. Sorry.

25 THE COURT: Thank you.

DIRECT EXAMINATION BY MR. SCOTT - DESIREE BUSKO 122

1 Q All right. So you show up ---

2 THE COURT: Oh.

3 Q --- at Bear ---

4 THE COURT: Hold it -- hold it one second. You --
5 you're having ---

6 JUROR: I needed to step out.

7 THE COURT: I couldn't hear you, ma'am.

8 JUROR: I needed to step out.

9 THE COURT: You need to step out for a moment?

10 JUROR: Yeah.

11 THE COURT: Okay. We'll take a brief, five-minute
12 break. Go ahead, ma'am. Don't discuss the case yet. The
13 rest of the jurors can go with her, please.

14 (Whereupon, the jury exited the courtroom at 3:10
15 p.m.)

16 (Off the record from 3:10 p.m. until 3:19 p.m.)

17 THE COURT: Bring them out.

18 (Whereupon, the jury entered the courtroom at 3:19
19 p.m.)

20 THE COURT: All right. The jury is back. We are
21 still in the state's case-in-chief in the examination of
22 Officer Busko. Solicitor, you may continue, please.

23 MR. SCOTT: Thank you, Your Honor. What'd I do with
24 my file?

25 THE WITNESS: She has it right there, I think. Is

DIRECT EXAMINATION BY MR. SCOTT - DESIREE BUSKO 123

1 that another copy of it?

2 MR. SCOTT: All right.

3 (Whereupon, Mr. Scott and the court reporter
4 conferred.)

5 Q Let me show you State's Exhibit 1. Do you recognize
6 that?

7 A Yes.

8 Q And what is it?

9 A Bear Village Court.

10 Q Okay.

11 MR. SCOTT: The state moves State's No. 1 for
12 admission into evidence.

13 THE COURT: I have ---

14 MR. VERNER: I think ---

15 THE COURT: --- Number 1 ---

16 MR. VERNER: --- it's been ---

17 THE COURT: I think No. 1 is already in evidence.

18 THE COURT REPORTER: This is from yesterday ---

19 THE COURT: Oh, okay.

20 THE COURT REPORTER: --- hearing.

21 THE COURT: All right. Let's relabel that, then ---

22 MR. VERNER: It's not No. 1, then.

23 THE COURT: Right. We have No. 1 already in evidence
24 from today. So if we could relabel ---

25 MR. VERNER: It should be ---

DIRECT EXAMINATION BY MR. SCOTT - DESIREE BUSKO 124

1 THE COURT: --- that maybe ---

2 MR. VERNER: --- State's 11. That's the easiest thing
3 to pick, just because it's ---

4 THE COURT: Let's make that 11.

5 THE COURT REPORTER: And it's in evidence?

6 THE COURT: It'll be in evidence. Yes. Without
7 objection.

8 (Whereupon, State's Exhibit No. 11 was marked and
9 entered into evidence.)

10 Q All right. We were talking about State's 11. If I --
11 just step down one more time, please, if you don't mind.

12 A (Complied.)

13 Q And show everybody where Bear Village is.

14 A This is Bear Village.

15 Q We talked about the BI-LO. Where's the BI-LO?

16 A Here.

17 Q Point to it.

18 A (Complied.)

19 Q Okay. And show me again where Officer Alvarado and
20 Jeffrey McCoy where when you came around to Bear Village.

21 A When I came around the side, they were in this area up
22 here.

23 Q This is just sort of an approximate area?

24 A Right.

25 Q Now, you -- you said you walked out and did, I guess,

1 a property check?

2 A (No audible response.)

3 Q And did you locate anything?

4 A Yes. I located a blue bag; some tools; like, a pry
5 bar on -- next to a A/C unit with a -- a power box that was
6 opened.

7 Q Okay. Roundabouts, where was that?

8 A It was down through this area.

9 Q Thank you. You can sit back in your seat.

10 A (Complied.)

11 Q These are some pictures that are already in evidence.
12 This is State's 9C. Can you see it from your seat?

13 A Uh-huh.

14 Q Is that the box you just mentioned?

15 A Yes. That's the power box that was open, where the
16 rest of them were closed ---

17 Q You ---

18 A --- shut?

19 Q You didn't open that door? It ---

20 A No.

21 Q --- was like that?

22 A It was like that when I found it.

23 Q All right. This is State's 9D. What's that?

24 A That's the pry bar and the open bag, the black
25 toolbox. I don't remember exactly what the red item was.

DIRECT EXAMINATION BY MR. SCOTT - DESIREE BUSKO 126

1 But it -- they were all bags and tool bags and -- and
2 tools.

3 Q Okay. All right. After you located those items, were
4 you instructed by a supervisor to -- to call around to some
5 hotels?

6 A After I took Mr. McCoy to the jail, Sgt. Malloy had
7 asked me to start checking local hotels to see if Mr. McCoy
8 was staying at any of those -- in any of our local hotels.

9 Q All right. What were you -- what were you calling --
10 what were you asking these innkeepers when you'd call?

11 A Actually, I went to two locations. The first
12 location, I asked if they had a subject by this name
13 checked in, in Room 125, which was supposedly the number
14 that was on the key, which was told to me by my supervisor.
15 The first place I went to told me no.

16 The second was the Budget Inn. And the lady there
17 stated yes, he had, in fact, checked in; that he had paid
18 \$90 cash for two nights.

19 Q All right. So you never saw the key?

20 A No. She didn't give me a key. And I never saw the
21 key, wherever they located it.

22 Q At that point did you -- was a search warrant obtained
23 for that hotel room?

24 A It was.

25 Q Okay. Did you go inside the hotel room before the

1 search warrant was in hand?

2 A I'm sorry. Repeat the question.

3 Q Did you enter the hotel room before the search warrant
4 was obtained?

5 A No.

6 Q And once the search warrant was obtained, did you go
7 into the hotel room?

8 A Yes.

9 Q Who'd you go in with?

10 A Investigator Goodman.

11 Q Investigator Goodman, who's sitting here at counsel
12 table?

13 A Correct. And also, an -- an officer that no longer
14 works for the department, Jason Vincent.

15 Q Tell me some of the things you observed inside the
16 hotel room.

17 A Numerous amounts of cell phones ---

18 MR. VERNER: Your Honor, I -- subject to my previous
19 objection about ---

20 THE COURT: Subject to the earlier objection, same
21 grounds as the earlier objection, Mr. Verner?

22 MR. VERNER: Yes, sir.

23 THE COURT: Same grounds? Okay.

24 MR. VERNER: Yes, sir.

25 THE COURT: Same ruling. (To the witness) You can

DIRECT EXAMINATION BY MR. SCOTT - DESIREE BUSKO 128

1 answer, ma'am.

2 THE WITNESS: I can answer?

3 THE COURT: Yeah. If you'd need to repeat the
4 question -- if you need the question repeated, though, ask
5 ---

6 THE WITNESS: No. I ---

7 THE COURT: --- Scott to ---

8 THE COURT: --- understand it.

9 A There were numerous amounts of cell phones that were
10 located. I remember there being some new clothes, liquor
11 bottles. And off the top of my head, that's all I can
12 remember at this moment.

13 (Whereupon, Mr. Scott and Mr. Verner conferred.)

14 (Whereupon, Mr. Scott and the court reporter
15 conferred.)

16 (Whereupon, State's Exhibit No. 12(A-M) was marked for
17 identification.)

18 Q All right. I'm going to show you State's 12; and
19 then, 12A through 12M. Just if you thumb through them
20 really quick and just let me know if you recognize those.

21 A Yes. These were from inside the hotel room: the cell
22 phones, the liquor bottles, the clothes, the tools that
23 were found in a duffel bag. These were the -- the cell
24 phones out -- out at the police department after we had
25 seized them from the room. You can see there's probably 70

1 phones, I would guess.

2 Q All those pictures depict things you saw in the hotel
3 room?

4 A Correct.

5 Q All right. Let me just go over them with you on the
6 monitor. All right. That -- pretty self-explanatory,
7 that's the door ---

8 A The door.

9 Q --- of 125?

10 And this is the Budget Inn?

11 A Correct.

12 Q Of course, this is in Newberry County, to your ---

13 A Uh-huh.

14 Q --- knowledge?

15 A Uh-huh.

16 Q What is this?

17 A I don't know what kind of tool that's called. But
18 it's a tool.

19 MR. SCOTT: For the record, the first picture was 12.
20 And this is 12A.

21 Q Did -- did you observe that in the hotel room?

22 A Yes. I don't know what you call it, but yes.

23 Q Okay. What about that, 12B?

24 A I don't recall that specific item. But yeah. I mean,
25 there's some of the clothes that were found all over.

DIRECT EXAMINATION BY MR. SCOTT - DESIREE BUSKO 130

1 Q 12C?

2 A That's more of the cell phones.

3 Q Those are cell phones in that bag?

4 A I believe so. Some of those smaller ones, I think,
5 were cell phones.

6 Q Okay.

7 A There was -- it's just the whole room was filled with
8 items.

9 Q This is 12D.

10 A Yeah. Duffel bag that had some of the tools in it.
11 And some of the liquor bottles, you can see, are unopened.
12 There were several in the ---

13 Q Would you speak -- what was that? That was a duffel
14 bag with what?

15 A Full of tools. I believe you can see the gloves that
16 are right on top of it.

17 Q Okay. I think that goes along with 12E. Do you ---

18 A Yeah.

19 Q --- recognize that?

20 A Yeah. Those are the gloves. And you can see other
21 miscellaneous tools inside.

22 Q Okay. Let me -- this appears to be -- this is 12F.
23 What -- what is 12F, the one down at the bottom?

24 A Just the bag that's emptied out and laid out so you
25 could see everything that was inside of it.

1 Q And those are the contents of that bag?

2 A Correct. The gloves and that -- whatever kind of
3 little saw that is and the discs that go on it, some kind
4 of grinder, and looks like filing tools that were all
5 inside the duffel bag.

6 Q Okay. This is 12G.

7 A That's where we took all the cell phones back to the
8 police department and laid them out on -- on the table.

9 Q That was ---

10 A So ---

11 Q --- what was in the white bags we just showed a minute
12 ago?

13 A Yes.

14 Q Those are the contents?

15 A Right.

16 Q 12H?

17 A More tools that were found in room with batteries,
18 ratchet, box cutter, wrench, pliers.

19 Q Okay. That looks like the same picture from earlier.

20 Is ---

21 A Correct.

22 Q --- that what you observed in the hotel room?

23 A Correct.

24 Q And then -- I'm sorry. That was 12I. 12J, those are
25 saw blades that you mentioned ---

DIRECT EXAMINATION BY MR. SCOTT - DESIREE BUSKO 132

- 1 A Yeah. More ---
- 2 MR. VERNER: Your Honor, that's a ---
- 3 A --- some filing ---
- 4 MR. VERNER: --- leading question.
- 5 THE COURT: All right. Sustained as to leading.
- 6 Q 12J, what is that?
- 7 A Saw blades, file blades, what -- what you call them.
- 8 Q All right. This is State's 12L. What is that?
- 9 A A pair of Fila tennis shoes that were found inside the
- 10 room.
- 11 Q 125?
- 12 A Yes.
- 13 Q Okay.
- 14 A Of Budget Inn Hotel.
- 15 Q 12K, what is that?
- 16 A The bottom of the shoe print to match it, possibly,
- 17 with any footprints around the scene.
- 18 Q 12M?
- 19 A More cutters -- wire cutters, I guess, or ---
- 20 Q Okay.
- 21 A --- bolt cutters or some kind of cutters.
- 22 Q All right. All of these items which we've -- I guess
- 23 we'll call State's 12, the -- 12 series, those were all
- 24 items you observed in the hotel room?
- 25 A Correct.

DIRECT EXAMINATION BY MR. SCOTT - DESIREE BUSKO 133

1 Q I meant to ask you this earlier. But did you -- when
2 you were behind Bear Village, before you got to the hotel
3 room, you mentioned observing some tools and items that you
4 found?

5 A Right. When I walked down the backside of Bear
6 Village, that's when I saw what you -- you put a picture of
7 it -- like, a black toolbox and a pry bar and, like, a blue
8 bag and some kind of red item. I'm not sure what it was.
9 But there were more tools and items found near that power
10 box that was open.

11 Q Were you present when any items were taken from Mr.
12 McCoy himself?

13 A No.

14 Q Okay.

15 MR. SCOTT: All right. The state offers State's 12
16 and the -- and the accompanying lettered photos for
17 admission into evidence ---

18 THE COURT: All right.

19 MR. SCOTT: --- Your Honor.

20 THE COURT: It's lettered A through what?

21 MR. SCOTT: 12A through M.

22 THE COURT: A through M? Subject to your earlier
23 objection, Mr. Verner?

24 MR. VERNER: Please, Your Honor.

25 THE COURT: All right. Over objection, they are in

DIRECT EXAMINATION BY MR. SCOTT - DESIREE BUSKO 134

1 evidence.

2 (Whereupon, State's Exhibit No. 12(A-M) was entered
3 into evidence.)

4 Q Did you -- did you speak with the innkeeper that night
5 there?

6 A At the Budget Inn? Yes.

7 Q Did she give you anything?

8 A She -- after I asked her if Mr. McCoy had checked in,
9 into Room 125, she said yes. And she showed me, I guess,
10 some kind of receipt card that they keep on file. And it
11 had his name and that he paid \$90 cash for two nights.

12 MR. VERNER: Your -- Your Honor, respectfully, I'll
13 ask that to be stricken. That -- that would hearsay
14 offered for the truth of the matter. That -- there's a
15 different witness who's the appropriate witness for that to
16 come into.

17 THE COURT: All right. Do you have an exception that
18 you would claim? I would tend to agree.

19 MR. SCOTT: No, Your Honor.

20 THE COURT: All right. So that last response is
21 stricken. The jury will disregard. Continue.

22 Q Nothing further. Please answer any questions Mr.
23 Verner may have.

24 THE COURT: Mr. Verner?

25 MR. VERNER: No questions, officer.

DIRECT EXAMINATION BY MR. BROWN - ELA PATEL

135

1 THE COURT: Thank you, ma'am. You can step down.

2 THE WITNESS: Thank you.

3 THE COURT: No objection to excusing Officer Busko,
4 Mr. Verner?

5 MR. VERNER: Not my witness.

6 THE COURT: Thank you. You're free to go.

7 THE WITNESS: Thank you.

8 (Whereupon, the witness exited the witness stand.)

9 THE COURT: If you'll call your next witness, please,
10 Mr. Scott.

11 MR. SCOTT: The state calls Ela Patel.

12 (Whereupon, Mr. Scott and the court reporter
13 conferred.)

14 (Whereupon, State's Exhibit No. 13 was marked for
15 identification.)

16 (Off the record briefly.)

17 (Whereupon, the witness came forward.)

18 ELA PATEL, having been first duly sworn,
19 testified as follows:

20 DIRECT EXAMINATION

21 BY MR. SCOTT:

22 Q Ms. Patel, where do you work?

23 A I work in Budget Inn Motel -- Motel.

24 Q Budget Inn in Newberry?

25 A Yeah. 384 Wilson Road address.

DIRECT EXAMINATION BY MR. BROWN - ELA PATEL

136

- 1 Q I -- I'm sorry?
- 2 A On the 384 Wilson Road.
- 3 Q Oh, okay.
- 4 A Budget Inn.
- 5 Q 384 Wilson?
- 6 A Uh-huh.
- 7 Q All right. And are you the owner?
- 8 A Yes.
- 9 Q And how long have you owned that motel?
- 10 A I think 20 years. That's ---
- 11 Q Oh.
- 12 A Uh-huh.
- 13 Q Twenty years. Okay.
- 14 Were you working May 26th last year?
- 15 A Yes.
- 16 Q Okay. When somebody checks into your hotel, do they
- 17 have to fill out any paperwork?
- 18 A Uh-huh.
- 19 Q What do they have to do?
- 20 A They give me for one night and next day they give me
- 21 for one week.
- 22 Q And he can pay by the night or by the week?
- 23 A Yes.
- 24 Q And do they sign anything when they ---
- 25 A Yes.

- 1 Q --- check in?
- 2 A Yes.
- 3 Q What do they sign?
- 4 A I don't remember. And I don't remember a face too.
- 5 Q No. If I came to your hotel ---
- 6 A Yes.
- 7 Q --- today ---
- 8 A Yes.
- 9 Q --- how much would one room cost me for one night?
- 10 A Forty-five.
- 11 Q Forty-five?
- 12 A Uh-huh.
- 13 Q So two nights would be \$90?
- 14 A Yes. And one week is 200.
- 15 Q Okay.
- 16 A One people, 175; sometime 200.
- 17 Q Would I have to give you my name?
- 18 A Yes.
- 19 Q And would I get a receipt?
- 20 A Uh-huh. When people check out, I give him receipt.
- 21 Q And ---
- 22 A They give me my key, I give receipt.
- 23 Q Okay. After I pay, do you make me sign anything?
- 24 A Uh-huh.
- 25 Q You do?

1 A Yes.

2 Q What's that called?

3 A It's bottom, sign, who stay here. And I take a -- a
4 driver license. And then I put address and town,
5 everything.

6 Q Okay. So if I checked in ---

7 A Uh-huh.

8 Q --- you would put my name?

9 A Uh-huh.

10 Q You would take the information from my driver's
11 license?

12 A Uh-huh.

13 Q You put the amount of money I paid?

14 A Yes.

15 Q You say you put my address on there ---

16 A Uh-huh.

17 Q --- my home address?

18 A Uh-huh.

19 Q And my room number?

20 A Uh-huh.

21 Q Okay.

22 THE COURT: And if you could, ma'am -- ma'am, if you
23 could, say "yes" or "no," please ---

24 THE WITNESS: Yes. Yes.

25 THE COURT: --- okay?

1 THE WITNESS: Yes.

2 THE COURT: She has to write down everything that's

3 ---

4 THE WITNESS: Okay.

5 THE COURT: --- said.

6 THE WITNESS: Okay. Yes.

7 THE COURT: Thank you.

8 THE WITNESS: Uh-huh. You are welcome.

9 Q All right. I want to show you something I'm calling
10 State's No. 13. Okay. All I want you to tell me is do you
11 recognize this? Don't tell me what it is. Just do you
12 recognize it?

13 A Yeah. Yeah. Yeah.

14 Q Okay.

15 A Uh-huh.

16 Q That's something you're familiar with?

17 A Uh-huh.

18 Q How do you recognize that?

19 A I think -- this my registration card.

20 Q That's your registration ---

21 A Yes.

22 Q --- card?

23 A Yes.

24 Q How can you tell?

25 A Huh?

1 Q How can you tell it's your registration card?

2 A Because the address and everything here.

3 Q What does it say right here?

4 A 125 and they come Saturday and it's Sunday; it's two
5 night.

6 Q Okay.

7 A Oh, I don't remember. He took me two night.

8 Q Okay. But how do you recognize this to be from your
9 hotel?

10 A Yeah. And the people check out, and then his receipt;
11 I give this one.

12 Q Okay.

13 A Uh-huh.

14 Q Well ---

15 A And I ---

16 Q --- how do we know this didn't come from Holiday Inn?

17 A Holiday Inn?

18 Q How do we know this didn't come from another hotel?

19 A I don't know. I don't know.

20 Q Okay. This came from your hotel?

21 A Yeah. I remember someone. This my registration card.

22 Q All right. Does that say "Budget Inn" right there?

23 A Uh-huh.

24 Q Then, what else does it say?

25 A Huh?

1 Q Okay.

2 MR. VERNER: Your Honor, presumably, the document
3 would speak for itself printed out. I think ---

4 THE COURT: I think we have sufficient authentication,
5 and I think Mr. Verner agrees with you.

6 MR. SCOTT: Thank you. Your Honor, the state offers
7 13 for admission into evidence.

8 THE COURT: No objection, Mr. Verner?

9 MR. VERNER: No good ones, Judge ---

10 THE COURT: All right.

11 MR. VERNER: --- that we offer.

12 THE COURT: Very good. State's 13 will be in evidence
13 without objection. You may publish.

14 MR. SCOTT: Thank you.

15 (Whereupon, State's Exhibit No. 13 was entered into
16 evidence.)

17 Q All right. So that's your registration card? That's
18 what you call it?

19 A Yeah.

20 Q You don't remember writing that one, do you?

21 A No.

22 Q All right. Do you remember May of last year when the
23 police came and they were -- they were ---

24 A Yes.

25 Q --- interested in Room 125?

CROSS-EXAMINATION BY MR. VERNER - ELA PATEL

142

1 A Yeah.

2 Q You remember that?

3 A (Nodded head up and down.)

4 Q Thank you.

5 A Yeah. Because cop come here ---

6 Q What -- what ---

7 A --- and give me ---

8 Q You remember it?

9 A Yeah. But I don't remember ---

10 Q Okay.

11 A --- this face, you know, who's ---

12 Q Okay.

13 A --- that guy.

14 Q You don't remember his face? That's fine.

15 A Yes.

16 MR. SCOTT: Nothing further, Your Honor.

17 THE WITNESS: Uh-huh.

18 CROSS-EXAMINATION

19 BY MR. VERNER:

20 Q The -- Ms. Patel ---

21 A Yes.

22 Q --- the -- did -- were you working ---

23 A Hi.

24 Q Do you work every night at the front desk or ---

25 A Yes.

1 Q --- or there's ---

2 A Yes.

3 Q --- some other people too?

4 A Yeah. My husband and my -- my son sometime.

5 Q Okay. But ---

6 A Uh-huh.

7 Q --- but generally there, one of three people typically

8 ---

9 A Yeah.

10 Q --- work -- okay.

11 A Yeah.

12 Q The Budget Inn does not have just one single entrance
13 to get to the rooms? The -- the -- the -- every hotel room
14 has its own entrance to the outside, right?

15 A Uh-huh.

16 Q Okay. The -- and when somebody checks into a room,
17 you don't take the occupants of everybody who checks in,
18 just the one who's paying for the room, right?

19 A Uh-huh.

20 Q Okay.

21 A Yes.

22 Q Okay. Thank you.

23 A You're welcome.

24 MR. SCOTT: Nothing further.

25 THE COURT: Thank you, Ms. Patel.

DIRECT EXAMINATION BY MR. SCOTT - KEVIN GOODMAN 144

1 THE WITNESS: Okay.

2 THE COURT: You can step down.

3 THE WITNESS: You're welcome.

4 THE COURT: Thank you for coming, ma'am.

5 THE WITNESS: Okay. Thank you.

6 (Whereupon, the witness exited the witness stand.)

7 MR. SCOTT: We've excused this ---

8 THE COURT: Certainly.

9 MR. SCOTT: --- witness as well.

10 THE COURT: All right. Call your next witness,
11 please, Mr. Scott.

12 MR. SCOTT: The state calls Investigator Kevin
13 Goodman.

14 (Whereupon, the witness came forward.)

15 KEVIN GOODMAN, having been first duly sworn,
16 testified as follows:

17 DIRECT EXAMINATION

18 BY MR. SCOTT:

19 Q All right. Investigator Goodman?

20 A Yes, sir.

21 Q You're with Newberry Police Department?

22 A I am.

23 Q How long have you been with that agency?

24 A Eighteen years.

25 Q And tell me about May -- the early-morning hours of

1 May 27th. Do you remember that date last year?

2 A Yes, sir. I was called out by the shift lieutenant,
3 shift supervisor, to 1335 Wilson Road, which is in the city
4 limits of Newberry, South Carolina, in reference -- that's
5 Check Into Cash -- in reference to a burglary that had
6 taken place sometime over in the night or early-morning
7 hours.

8 Q All right. What'd you observe when you got there?

9 A Upon arriving, I spoke with Patrolman Weaver, and he
10 kind of showed me the Check Into Cash building. There was
11 a large hole in the back cinder block wall of Check Into
12 Cash. The side door was standing open.

13 We kind of -- normally, when I get there, I'll get a
14 -- a -- a brief description of what's going on, what was
15 found. Then I'll walk through the scene to kind of see
16 what's going on. Then I'll kind of back out to kind of see
17 what I need to -- to get out of my car to process the
18 scene. And at that point I'll start photographing the
19 scene.

20 Q All right. We've gone through -- you've sat out here.
21 You're the lead investigating officer. Have you been here
22 with all the photographs we've gone through?

23 A Yes, sir.

24 Q And just sort of describe what you observed yourself
25 when you went through the Shops at Wilson Road.

DIRECT EXAMINATION BY MR. SCOTT - KEVIN GOODMAN 146

1 A Okay. If you can bring that chart around, let me see
2 that.

3 MR. SCOTT: Your Honor, can he step down?

4 THE COURT: Certainly. If you need to step down,
5 Investigator, go ahead.

6 A I started with Check Into Cash because that's where I
7 was initially called to. It was a large hole in the cinder
8 block wall back here. I parked my vehicle here. There's a
9 side door here that was open that I started -- I
10 photographed the back part, kind of worked my way in and
11 photographed. As you walk in, the bathroom is to the left.
12 And part of photographing is kind of you -- you're trying
13 to create the picture, obviously. So when you're looking
14 at the pictures, you're seeing it as I walk into it.

15 So as I walk into this door, I'm starting to take
16 pictures. And then I immediately go left. And you could
17 see inside the bathroom, the large hole from inside looking
18 out, all of the debris and stuff that was in this back
19 corner in that bathroom.

20 I think the next thing I came across was the -- every
21 building has a -- like, a VCR-type thing back in the back
22 -- not every building, but most building; this particular
23 building did -- back area where the alarm system is tied
24 into the phone line and all that. So you see wires cut
25 back there; took pictures of that.

1 Immediately to the right as you walk into the actual
2 business part of -- because this is, like, a back-room area
3 when you first walk in. You walk into, like, the back-room
4 area. To the right, coming back toward the front of the
5 building, when you're walking into the actual business part
6 of it, immediately in front of the door is a safe with
7 numerous amount of tools/grinders on the floor. There are
8 marks all over the -- the safe.

9 And sitting there you can see -- I don't know how you
10 describe it. But, like, the -- when you're grinding
11 something, that little metal flake that flakes off all over
12 the floor, you can tell there'd been kind of grinding on
13 metal all over the floor. There was -- there was a piece
14 of the safe laying on the floor, kind of to the left of the
15 -- of the -- of the safe.

16 Obviously, I photographed all that. You could tell
17 where they had -- whomever had been in the place had gone
18 through -- right beside the safe is, like, a little snack
19 area. I guess during they day they -- everybody bring a
20 little snacks and put back there so if they get hungry,
21 they can go back and snack on stuff, is what I'm assuming.
22 That was in there.

23 As I am photographing this, Officer Weaver -- we just
24 kind of got to talking. I said, "Well, just kind of walk
25 and make sure everything else is okay while we're here."

DIRECT EXAMINATION BY MR. SCOTT - KEVIN GOODMAN 148

1 So he walks down the front. And when he gets back
2 here, he calls my name and I step out. And he said, "Yes.
3 You're not going believe this." And the door is open in
4 every business.

5 So I stopped photographing to go down here. And --
6 and we walk into the -- the back of El-Amin. Immediately,
7 as you go into the back of El-Amin is -- is a bathroom to
8 the right. And there's a huge hole in the wall. And you
9 kind of -- I kind of stooped down to look, and you're
10 looking straight through almost into the next business.

11 At that point kind of back out -- I tell him to just
12 kind of back out; start calling -- "key-holders" is what we
13 call them. Those are people that, if we found an open
14 door, we call in the middle of the night so they can come
15 and lock up their business; come in; kind of walk through;
16 make sure everything is okay; if it's -- it's the way they
17 left it that afternoon.

18 They started contacting people to come out. I
19 finished this. And when I finished this store, I -- I came
20 down and kind of just went in order so my pictures would be
21 in order so I wouldn't have to try to remember everything
22 that day.

23 So I started here. I started taking pictures and once
24 I finished with El-Amin, Boost, Jackson Hewitt, and
25 Regional Finance.

1 Q And you called all the -- were you able to contact all
2 the key-holders?

3 A Me personally, no. Officer Weaver was able to contact
4 all of the key-holders. And everyone -- somebody
5 represented from every business actually came out.

6 Q Did you learn of anything that was missing from any of
7 these stores?

8 A El-Amin -- only one barber came out. The owner was
9 out of town or out of state somewhere. To the best of his
10 recollection, nothing was missing out of El-Amin.

11 Boost Mobile was completely -- every phone that was in
12 the store was gone.

13 Jackson Hewitt -- a bottle of water, I think, was
14 taken out of Jackson Hewitt.

15 Regional Finance, there was some gold-dollar coins and
16 some quarters of stamps -- rolls of stamps -- new rolls and
17 partial rolls of stamps that was taken out of Regional.

18 Check Into Cash -- we determined that the Vienna
19 sausages were taken out of there. Obviously, I think in
20 both of these businesses, they had opened up some snacks.

21 Q Okay. All right. You can take your seat.

22 A (Complied.)

23 Q So was it your understanding that consent was not
24 given for whoever to do this?

25 A Obviously. And one thing I didn't add, if I may, if I

DIRECT EXAMINATION BY MR. SCOTT - KEVIN GOODMAN 150

1 go back. In El-Amin there was the back portion of the --
2 the metal building, the siding, was peeled back. And there
3 was a hole cut out of there where the insulation was busted
4 in. And that was obvious the -- the point of entry for El-
5 Amin.

6 Q Okay. All right. So these holes in the back and the
7 holes through the walls -- you've been an investigator for
8 18 years -- what kind of crime are you investigating?

9 A In this particular -- a burglary.

10 Q All right.

11 (Whereupon, Mr. Scott and Mr. Verner conferred.)

12 MR. SCOTT: Beg the Court's indulgence.

13 THE COURT: Yes, sir.

14 (Whereupon, Mr. Scott and the court reporter
15 conferred.)

16 (Whereupon, State's Exhibit No. 14 was marked for
17 identification.)

18 Q All right. Investigator Goodman, this is a box full
19 of items marked State's ID -- for ID purposes, No. 14.

20 A Right.

21 Q These are the contents of it. What is this, and why
22 is it relevant?

23 A That is the yellow crowbar that was found inside of
24 Check Into Cash. If you remember me talking about that
25 bathroom immediately to the left as you're coming in, that

1 was found right under the point of entry, the -- the big
2 hole in the cinder block wall beside -- in the corner
3 beside the -- the commode.

4 Q What is this -- or these?

5 A Those are the -- the tools that I -- I talked about
6 that was laying out on the floor in front of the safe.

7 Q Okay. How about these?

8 A More -- more tools that were laying out in front of
9 the safe.

10 Q What are these?

11 A Those also are tools laying out in front of the safe.
12 And this particular item at the bottom is the -- the handle
13 to the safe.

14 Q What is this?

15 A That's the metal plate that I spoke of that had fallen
16 off of the safe where the -- where the grind marks were --
17 had fallen off the safe. And it was laying on the floor,
18 kind of to the left of the -- of the safe.

19 Q These were all items depicted in the pictures we had
20 shown earlier?

21 A Yes -- yes, sir.

22 Q These all were observed in Check Into Cash?

23 A Yes.

24 Q It's your understanding that these did not belong to
25 the key-holder of Check Into Cash?

DIRECT EXAMINATION BY MR. SCOTT - KEVIN GOODMAN 152

1 A That's right.

2 Q So these were left behind by someone?

3 A That's right. And that's another reason for having
4 the key-holders come out: to be able to identify what
5 belongs to them, what doesn't belong to them, what was in
6 their building when they left and what's in there now that
7 does not belong to -- to them.

8 Q Did you go to the -- the car that we've been talking
9 about? Did you go to the BI-LO parking lot to view that
10 car?

11 A Later that night I was called out. I went by there.
12 During that time when I went by, the officers were -- they
13 were inventorying the car. I was there for a brief moment,
14 and I left.

15 Q To your knowledge, was there a search warrant obtained
16 for the contents of that car?

17 A Yes, sir. That particular night there were gold coins
18 -- gold -- gold-dollar coins and quarters and -- to kind of
19 backtrack some, I was called out that night to come to the
20 police department to speak to a Mr. McCoy, who officers
21 advised they had in custody. And he wanted to speak to an
22 investigator, so I went directly to the police department.

23 Q Let -- let me you stop you ---

24 A Okay.

25 Q --- and let me back up a little bit. I think I kind

1 of went out of order in this.

2 A That's okay.

3 Q Instead of the car, let's go to Bear Village.

4 A Right.

5 Q This is the night of the 27th; is that correct?

6 A That's right.

7 Q And did you have an occasion to respond to the rear of
8 Bear Village?

9 A I did. I was called out by the shift lieutenant that
10 night.

11 Q What did you observe at the rear of Bear Village?

12 A When I got to the rear -- the -- of Bear Village,
13 again, when I first came out, I went directly to the police
14 department. Mr. McCoy didn't want to speak to me, so I
15 left and responded to the scene to see if the officers
16 needed any help processing anything.

17 By the time I got there, basically, everything was
18 done. Photographs had been taken. Evidence had been
19 collected. There was a phone-power-box-type deal where --
20 where the phone wires and cable wires and all that stuff
21 run into. And right above it was 2040, so I'm assuming
22 that that was 2040 Wilson Road, that business address. And
23 that box was open, and there were several wires in there
24 that had been cut.

25 Q Okay.

DIRECT EXAMINATION BY MR. SCOTT - KEVIN GOODMAN 154

1 A We walked the back of the business and -- to make --
2 just to make sure that nothing was overlooked, nothing was
3 out of the -- anything else was out of the ordinary.

4 Q All right. And you mentioned you did briefly see the
5 car that night?

6 A Right. When I got through there, I rode over to
7 BI-LO.

8 Q You did see the car?

9 A Yes, sir.

10 Q Okay. And did you learn of a hotel room key found in
11 the car?

12 A I did.

13 Q And did you instruct Officer Busko to call the local
14 hotels?

15 A Through her supervisor I instructed her and the
16 supervisor to -- her supervisor to have them start checking
17 the local hotels, not necessarily call, but to start
18 checking the local hotels.

19 Q All right. And you had a name at that point; is that
20 correct?

21 A I did.

22 Q Who was it?

23 A Jeffrey McCoy.

24 Q Did you find a hotel room registered to Jeffrey McCoy?

25 A It was found out -- it was later learned that the

1 hotel room key went to the Budget Inn.

2 Q All right. Were you able to obtain a search warrant
3 for Room 125 of the Budget Inn?

4 A I was.

5 Q All right. And were you able to go inside?

6 A Yes, sir.

7 Q Were you able to obtain a search warrant for Ford
8 Taurus that was found in the BI-LO shopping center?

9 A I was.

10 Q All right. And were you able to seize items out of
11 that automobile?

12 A Yes, sir.

13 Q There was testimony that there were gold coins and
14 other various coins found in the console?

15 A That's right.

16 Q Was that -- was that evidence significant to you?

17 A Yes, sir, it was.

18 Q Why was that evidence significant to you?

19 A Earlier that morning I had worked the -- the crime
20 scene at Shops on Wilson, and that -- gold coins and
21 quarters were reported stolen from Regional Finance.

22 Q There was testimony there were stamps -- a couple
23 coils of stamps found in the glove compartment. Was that
24 significant to you in any way?

25 A Yes, sir. Those also was consistent with what was

DIRECT EXAMINATION BY MR. SCOTT - KEVIN GOODMAN

156

1 reported stolen from Regional Finance.

2 Q There were -- there was a bag of tools in the Ford
3 Taurus. Was that significant to you at that time?

4 A It was because of the -- the grinders that were found
5 at Check Into Cash earlier that -- that morning, the -- the
6 box that we just went through.

7 Q Okay. Now, did you get to go inside Room 125 at the
8 Budget Inn once the search warrant was obtained?

9 A Yes, sir, I did.

10 Q And what did you observe in there?

11 A Numerous -- as you first walk in to the -- to the left
12 behind the door was numerous white plastic bags, like you
13 get at the grocery stores or somewhere. There's plastic
14 bags full of cell phones. There were unopened liquor
15 bottles.

16 MR. VERNER: Same objection, different witness.

17 THE COURT: Yeah. All right. Subject to the same
18 objection, overruled. (To the witness) You can continue,
19 sir.

20 Q The -- I'm sorry.

21 A Go ahead.

22 Q Let me interrupt one second. The cell phones that you
23 found, were those significant to you in any way?

24 A They were significant because they had been reported
25 -- Boost Mobile had reported a lot of cell phones, their

1 entire display, was completely gone earlier that morning.

2 And I -- the -- the bags were white plastic bags that you
3 could see through. You could see "Boost Mobile" written on
4 the boxes that were inside the bag -- could see that.

5 Q These were new phones? used phone? What kind of
6 phones were these?

7 A Both: Some were new, and some were used.

8 Q All right. Were they in boxes?

9 A Some were. Yes, sir.

10 Q What else did you find in the hotel room? Did you
11 find a bag? Was there a bag in there on the dresser?

12 A Yes, sir.

13 Q What was in that bag?

14 A Can we go back to the pictures? It's -- I think
15 that's them right there.

16 Q All right. This is State's 12E.

17 A May I step down?

18 Q Yeah.

19 A Okay.

20 THE COURT: (To the witness) You can step down,
21 please.

22 A This is the bag that was on the little desk as you
23 come in. These gloves were consistent with some gloves
24 that were shown to be that Alvarado had found with Mr.
25 McCoy at Bear Village that night. And obviously, the

DIRECT EXAMINATION BY MR. SCOTT - KEVIN GOODMAN 158

1 grinder to grind some stuff, which is consistent with items
2 found at Check Into Cash.

3 Q I -- I'm sorry. Would you speak up because you're
4 away from your microphone?

5 A I'm sorry.

6 Q What'd you say about the grinder?

7 A The grinder's consistent with the grinders and stuff
8 that we found at the Check Into Cash.

9 Q Okay. What -- while you're there, let me just show
10 you State's 12F. What's that?

11 A That's the contents of the bag, once we get to the
12 police department, laid out, just so I could photograph the
13 entire thing.

14 Q Okay. And 12G?

15 A These are the cell phones that were found in those
16 clear plastic bags that I was talking about.

17 Q What's that? That's 12C.

18 A Items ---

19 Q Okay. Were ---

20 A --- behind the door as you walk in.

21 Q All right. Finally, let me just show you 12L -- 12L.

22 A Those are shoes that were found inside the -- the
23 hotel room.

24 Q 125, the Budget Inn?

1 A 125, Budget Inn.

2 Q All right. This is a -- 12K. What's that?

3 A This is to show the footwear impression. During
4 processing the scene, there were footwear impressions
5 consistent with this -- these, especially these outlines
6 here, that ---

7 Q And processing ---

8 A --- was consistent ---

9 Q --- what scene?

10 A That would be at Shops on Wilson. There were footwear
11 impressions as the subject was going from the walls that --
12 that the white, powdery stuff -- I guess, from the
13 Sheetrock -- as he stepped in it. There was a -- there
14 were footwear impressions as you go through the businesses
15 consistent with every business -- every business there,
16 except El-Amin.

17 Q Okay.

18 A I didn't -- it wasn't any footwear impression that I
19 can remember, without going through the -- the pictures, in
20 El-Amin. But there were this-type footwear impressions in
21 every other business.

22 Q All right. What kind of footwear impressions did you
23 note in Check Into Cash?

24 A There was another footwear impression with the same
25 characteristics on that piece of metal that came off of the

DIRECT EXAMINATION BY MR. SCOTT - KEVIN GOODMAN

160

1 -- the -- the safe in the ---

2 Q Okay.

3 A --- Check Into Cash on the inner part of it.

4 Q That plate we held up ---

5 A That plate ---

6 Q --- earlier?

7 A --- that we held up earlier.

8 Q Okay.

9 (Whereupon, Mr. Scott and Mr. Brown conferred.)

10 (Whereupon, Mr. Scott and Mr. Verner conferred.)

11 (Whereupon, State's Exhibit No. 15 was marked for
12 identification.)

13 Q Let me show you State's 15. You had testified about
14 something like this earlier. What is that?

15 A That would be the markings that's on the safe.

16 Q Okay. All right. Let's see. We're dealing with
17 three different locations, because we're talking about the
18 Shops at Wilson?

19 A Right.

20 Q And then, we're talking about Bear Village?

21 A Right.

22 Q And then, we're talking about Budget Inn?

23 A Right.

24 Q Those were all -- actually, four, because the car is
25 the BI-LO parking lot.

CROSS-EXAMINATION BY MR. VERNER - KEVIN GOODMAN 161

1 A Right.

2 Q Were all four of those locations in the -- in Newberry
3 County?

4 A They all are located on Wilson Road in the city limits
5 of Newberry, South Carolina.

6 Q All right. So they're in the city limits. Sometimes
7 -- seems like there's some cities and towns in South
8 Carolina that'll cross county borders. To your knowledge,
9 is this all in Newberry County?

10 A It's all in Newberry County.

11 Q All right. All right. Please answer any question Mr.
12 Verner may have for you.

13 THE COURT: All right.

14 CROSS-EXAMINATION

15 BY MR. VERNER:

16 Q Investigator Goodman, did you do a fingerprint search
17 of the stores?

18 A Yes, sir, I did.

19 Q Did -- did you find any fingerprints?

20 A What I found, sir, was markings that, in 18 years,
21 consistent with -- I refer to them as, like, "fiber marks."
22 You can see where something was rubbed; somebody's hand or
23 something was there; but there is nothing legible ---

24 Q Okay.

25 A --- as if they may have something on their hands.

CROSS-EXAMINATION BY MR. VERNER - KEVIN GOODMAN 162

1 Q Yeah. So you're saying you found fingerprints, but
2 you couldn't -- they weren't in the condition to identify
3 them?

4 A I wouldn't say fingerprints. I would say hand
5 impressions maybe.

6 Q Okay. But did you take them from each shop?

7 A There was nothing to lift. I took ---

8 Q Okay.

9 A --- a -- I tried in every shop. Yes ---

10 Q Okay.

11 A --- sir.

12 Q The -- including the safe?

13 A Including the safe.

14 Q The -- wasn't there, like, a water bottle that y'all
15 are prosecuting as part of this case, a -- a ---

16 A Yes, sir. There ---

17 Q --- water ---

18 A --- was a ---

19 Q --- bottle that was stolen?

20 A There was a water bottle taken.

21 Q Okay. The -- did you process that for fingerprints?

22 A I didn't process that in particular. No, sir.

23 Q The -- all right. Do you -- recall the photograph of
24 it appears to have, like, black stuff all over it? That --
25 that ---

1 A Right.

2 Q --- that wouldn't ---

3 A Oh.

4 Q --- be the ---

5 A That was -- it was so much evidence. And it's hard to
6 -- to properly do a lot of that stuff at the scene. So
7 everything was taken back to our lab to be processed. That
8 water bottle in particular -- I'm pretty sure Capt. Counts
9 ---

10 Q Okay.

11 A --- processed that. So there very well could be some
12 -- something on it. But it -- it wouldn't have been me
13 that would've processed that one.

14 Q Okay. But -- but to the best of your knowledge, there
15 were no fingerprints of anybody determined when you
16 processed the scene?

17 A No legible prints ---

18 Q Okay.

19 A --- to the best of my knowledge were ---

20 Q The ---

21 A --- developed.

22 Q And sometimes when you have food items, you take DNA
23 impressions, don't you?

24 A Yes, sir, sometimes.

25 Q The -- if -- if somebody's been drinking water, it --

REDIRECT EXAMINATION BY MR. SCOTT - KEVIN GOODMAN 164

1 it's likely their DNA or saliva will be in the water
2 bottle?

3 A Likely. Yes, sir.

4 Q Okay. And you can usually just take a cotton swab and
5 match it?

6 A Yes, sir. Sometimes you can do that.

7 Q And -- and there were also -- the -- what -- there
8 appeared to be multiple sets of footprints in the stores?

9 A Throughout the -- the Shops on Wilson. Yes, sir.

10 Q Okay. The -- did you determine how many people were
11 staying in the hotel room at Budget Inn?

12 A It was brought to my attention that only one person
13 came in to sign for the room.

14 Q Okay. The -- well, you were -- we -- we heard Ms.
15 Patel say -- testify that only person signs.

16 A Right.

17 Q Did you talk to any of the neighbors in the next -- in
18 -- in the hotel room to the left or right about who had
19 been in that?

20 A No, sir.

21 Q Okay. Thank you, Investigator.

22 REDIRECT EXAMINATION

23 BY MR. SCOTT:

24 Q In 18 years as an investigator, how many fingerprint
25 -- how many times have you dusted for fingerprints, rather?

REDIRECT EXAMINATION BY MR. SCOTT - KEVIN GOODMAN 165

1 A A lot. And I -- I -- I couldn't even put a number on
2 it. A lot. We -- we normally try to develop latent prints
3 at every crime scene that we go to.

4 Q All right. But do you always lift fingerprints?

5 A Here of late -- when I first started off, you almost
6 got fingerprints all the time. Here of late very seldom do
7 you get a legible print but ---

8 Q Why is that?

9 A Only speculation. But I can only imagine ---

10 MR. VERNER: Well -- yeah. Your Honor, he's
11 respectfully not allowed to do that now.

12 THE COURT: All right. If you can answer without
13 speculating, that's fine. Otherwise, sustained.

14 Q Let me -- I just want to show you State's 12E. What
15 is that?

16 A Those are gloves.

17 Q And where was that found?

18 A That was found in his room ---

19 Q Okay.

20 A --- in Mr. McCoy's room.

21 Q And so sometimes you don't get fingerprints when you
22 dust for them; is that fair?

23 A That's true. And we later learned that they've had
24 gloves on ---

25 Q Well, let me show you ---

REDIRECT EXAMINATION BY MR. SCOTT - KEVIN GOODMAN 166

1 A --- or something.

2 Q --- State's 9G. Do you recognize that?

3 A Yes, sir. Those are the gloves that Officer Alvarado
4 had gotten from Mr. McCoy behind Bear Village.

5 Q Okay. Thank you.

6 MR. SCOTT: Nothing further from this witness.

7 THE COURT: All right. Solicitor, were you seeking
8 introduction of State's 15?

9 MR. SCOTT: Thank you, Your Honor. I -- I had
10 neglected -- I published it and had neglected to formally
11 enter it into evidence. It is a photo of the safe. We
12 have other ones in there. This was just slightly closer-up
13 version. We would offer 15 for admission.

14 MR. VERNER: It's without admission [sic]. I thought
15 it was already in, Your Honor. I would ask -- what was 14
16 -- exhibit ---

17 THE COURT: Fourteen was the box full of the stuff
18 over there that was just marked for ID. It was not
19 introduced.

20 MR. VERNER: The ---

21 (Whereupon, Mr. Scott and Mr. Verner conferred.)

22 THE COURT: All right. He's moving 15 in; no
23 objection from the defense?

24 MR. VERNER: Yes, sir. No objection to ---

25 THE COURT: Very good. Fifteen is in evidence without

DIRECT EXAMINATION BY MR. SCOTT - ALLISON HAWKINS 167

1 objection.

2 (Whereupon, State's Exhibit No. 15 was entered into
3 evidence.)

4 THE COURT: (To the witness) All right. You can step
5 down. Thank you.

6 THE WITNESS: Thank you.

7 (Whereupon, the witness exited the witness stand.)

8 MR. SCOTT: One second, Your Honor?

9 THE COURT: Yes, sir.

10 MR. SCOTT: The state calls Allison Hawkins.

11 (Whereupon, Mr. Scott and Mr. Verner conferred.)

12 (Off the record briefly.)

13 (Whereupon, the witness came forward.)

14 ALLISON HAWKINS, having been first duly sworn,
15 testified as follows:

16 DIRECT EXAMINATION

17 BY MR. SCOTT:

18 Q Ms. Hawkins, where are you employed?

19 A Regional Finance.

20 Q Where is that?

21 A 1337 Wilson Road.

22 Q Were you working there in May of last year?

23 A Yes, sir.

24 Q Is May 27th of last year significant to you?

25 A Yes, sir.

DIRECT EXAMINATION BY MR. SCOTT - ALLISON HAWKINS 168

1 Q Why is that?

2 A That's the day that we were broken into.

3 Q Did -- I think -- yeah. Move the thing a little bit
4 -- the microphone a little bit closer than that, or else
5 lean forward.

6 THE COURT: (To the witness) You -- you may need to
7 scooch that chair up forward just a bit, Ms. Hawkins.
8 Thank you, ma'am.

9 THE WITNESS: Yes, sir.

10 THE COURT: Go ahead, Mr. Scott.

11 MR. SCOTT: Thank you, Your Honor.

12 Q All right. May 27th, why was that significant to you?

13 A We were broken into.

14 Q Okay. Had you been there that day?

15 A I was there the previous day, cleaning, that evening.

16 Q How late were you cleaning?

17 A I was there probably 9 till 10 or 11.

18 Q All right. When did you learn that Regional Finance
19 had been broken into?

20 A The next morning when I received the call to come out
21 ---

22 Q All right.

23 A --- as the ---

24 Q So that ---

25 A --- key-holder.

1 Q --- would be the morning of the 27th. You say you
2 worked the night of the 26th?

3 A The night before is when I was cleaning.

4 Q Okay. Tell me: How late were you there?

5 A Between 9 and approximately 11 or so. I had taken my
6 daughter skating, and I had left to come back and pick her
7 up.

8 Q Okay. So you're there until 9 cleaning. And then you
9 leave to take your daughter somewhere?

10 A And then I came back.

11 Q Approximately what time did you come back?

12 A Before 11, because she had to be picked up by 11.

13 Q All right. Is 11 p.m. 11 at night?

14 A Eleven p.m. Yes, sir.

15 Q All right. So on the night of May 26th, you're in
16 Regional Finance. This is a -- I guess what we call
17 "demonstrative evidence." It's obviously not to scale.
18 But can you see that from there?

19 A Yes, sir.

20 Q As far as the lineup of buildings on the Shops on
21 Wilson, is Regional in between Check Into Cash and Jackson
22 Hewitt?

23 A Yes, sir.

24 Q Okay. And when you were in Regional the night of the
25 26th, you said it was -- approximately eleven o'clock at

DIRECT EXAMINATION BY MR. SCOTT - ALLISON HAWKINS 170

1 night was the last time you were there?

2 A Yes.

3 Q How did things appear?

4 A The same as normal.

5 Q Okay. You didn't notice anything out of the ordinary?

6 A No, sir.

7 Q All right. Where'd you park?

8 A In the back.

9 Q You parked ---

10 A At our back door. Yes, sir.

11 Q All right. Do you come ---

12 A Yes, sir.

13 Q You come this way?

14 A Yes, sir.

15 Q All right. So you would probably make your way to the
16 back on the side closest to Check Into Cash?

17 A Yes, sir.

18 Q Did you notice anything out of the ordinary about the
19 building in general?

20 A No, sir.

21 Q The next morning when officers called you and you went
22 back to Regional, what did you observe?

23 A As entering the back of the building, there was a
24 large hole in the back of Check Into Cash. As I proceeded
25 to our office, there's wiring hanging out of the inside of

DIRECT EXAMINATION BY MR. SCOTT - ALLISON HAWKINS 171

1 the office at the back door, which is our control panel for
2 our computer systems and phones. It was cut or ripped out.
3 And the office was in disarray.

4 (Whereupon, Mr. Scott and Mr. Brown conferred.)

5 Q Holes in the wall and the ---

6 A Upon entering ---

7 Q --- cords cut ---

8 A --- the back door, you could see the restroom, which
9 was to the side. That's the point of entry into our
10 building. The mirror and the light fixture were down; it's
11 a big hole there. The adjacent wall, there was places
12 where it was attempted holes in the back room.

13 Q Yeah. The attempted holes, is that in the wall
14 between ---

15 A Yes, sir.

16 Q Between what?

17 A The -- our office and the Check Into Cash.

18 Q Okay.

19 A And then, out in our main lobby of the office, there's
20 also holes into the side of the building as well.

21 Q All right. Anything that you noted that was missing?

22 A In the cash drawers, there was some gold dollars that
23 were wrapped in one drawer. That was missing, as well as
24 some other loose coins and ---

25 Q All right.

CROSS-EXAMINATION BY MR. VERNER - ALLISON HAWKINS 172

1 A --- stamps out of another drawer.

2 Q Stamps?

3 A Postage stamps.

4 Q Was it a book of stamps?

5 A No, sir. The rolls.

6 Q Rolls, like coils?

7 A Yes, sir.

8 Q Do you know Jeffrey McCoy?

9 A No, sir.

10 Q Did you give him consent to go into Regional Finance?

11 A No, sir.

12 Q Okay. Thank you. Please answer any questions Mr.
13 Verner may have.

14 THE COURT: Mr. Verner?

15 CROSS-EXAMINATION

16 BY MR. VERNER:

17 Q But you don't know who went into Regional Finance; is
18 that right?

19 A No, sir.

20 Q Okay. Or how many people?

21 A No, sir.

22 Q Okay. Thank you.

23 THE COURT: All right. Thank you, ma'am. You can
24 step down. You're free to go, Ms. Hawkins.

25 (Whereupon, the witness exited the witness stand.)

1 THE COURT: Call your next witness. Well, does anyone
2 need a brief break before we continue? Anyone on the jury,
3 just raise your hand if you do. Looks like we're good.

4 Okay. Call your next witness, please.

5 MR. SCOTT: Okay. Your Honor, we will call Sherwin
6 Jessie.

7 (Off the record briefly.)

8 (Whereupon, the witness came forward.

9 MR. VERNER: Your Honor, I think this one, we need to
10 be heard on prior to -- prior to his testimony.

11 THE COURT: All right. Have a seat real quick, Mr.
12 Jessie.

13 THE WITNESS: (Complied.)

14 THE COURT: Ladies and gentlemen of the jury, we are
15 going to take a brief break after all. Go back to the back
16 in the jury room, if you would, for just a few moments. I
17 hope to have you back out here. Don't talk about the case
18 yet. Thank you.

19 (Whereupon, the jury exited the courtroom at 4:21
20 p.m.)

21 THE COURT: All right. The record should reflect that
22 the jury is out. Mr. Verner, your concerns?

23 MR. VERNER: My understanding, Your Honor, is this is
24 a jailhouse informant who's going to testify about an
25 alleged confession made by my client.

1 MR. SCOTT: Judge, we may be able to proffer -- I --
2 let me explain. I -- I -- from what I understand, I met
3 Mr. Jessie yesterday. And he -- he is actually a -- an
4 assistant manager over at Regional. Sometime within the
5 past year, he ran into a little bit of trouble, as far as
6 child support; came to our county jail. At that point,
7 it's my understanding, he met Mr. McCoy, who learned where
8 Mr. Jessie was employed. Mr. McCoy spontaneously said, "Do
9 you remember your shop getting robbed?" Mr. Jessie says,
10 "Of course." And he says, "I'm the guy that did it."

11 Now, we learned this yesterday. I spoke with Mr.
12 Verner yesterday about it. The connection in the -- the
13 evidence is -- is just -- it's pretty powerful. And I'll
14 -- and I'll -- and I'll -- doing a balancing test, I'm not
15 sure, as far as prejudice versus probative value, where it
16 -- where it would lie.

17 But that is the defendant himself making a statement
18 to somebody connected to the case: "I'm the guy that
19 robbed your store." That would probably be what Mr. Jessie
20 would testify to, Your Honor.

21 THE COURT: All right. Mr. Verner, specifically, what
22 are your concerns?

23 MR. VERNER: Your Honor, I was notified about him
24 prior to the trial, but just the week prior to the case
25 coming up. The -- it -- it obviously raises some Fifth

1 Amendment concerns. I understand he's not a law
2 enforcement or representative of the state, but -- but
3 certainly, it would be placing him with the defendant.

4 It's likely that he's going to say he was in the
5 pretrial, which is an open-bay-type thing. But the --
6 highly prejudicial in -- in a case where -- where, quite
7 frankly, they really don't need it at this point, Your
8 Honor. The -- from -- from the state's own side, this --
9 this -- this might be opening an issue that -- that they
10 don't really need to address.

11 But from my side I -- I wasn't provided his
12 information I -- prior to trial, but just a week prior to
13 trial. The -- and the fact that it is at -- an admission
14 by my client would be ordinarily part of the Rule 5
15 discovery. And I -- I don't dispute it just came recently
16 to the state's attention as well. But I do make a 403
17 argument. The ---

18 THE COURT: And the prior -- the -- the primary
19 prejudice that you're saying, the improper prejudice,
20 relates to the fact that they met in the detention center?

21 MR. VERNER: That -- that the unfairness would be a
22 jailhouse informant, where he -- that they're placed
23 together in the detention center. Yes. The ---

24 THE COURT: All right.

25 MR. VERNER: I -- I -- whether it's unfair, that would

1 be the unfairness. Obviously, any evidence that comes in
2 is going to be prejudicial. It's the unfairness that's the
3 lynchpin. It's a -- a little bit late in the case, where
4 he's been sitting in prison for about year. And -- and
5 then this comes to light a week before trial, Your Honor.
6 It -- it's a -- a little bit late in the game. The ---

7 THE COURT: If I may, Solicitor, how -- how did this
8 information come to y'all's attention?

9 MR. SCOTT: Your Honor, when I met with Mr. Jessie, he
10 informed me. Really, we were trying to collect the key-
11 holders and people who would basically testify consent was
12 not given; the house -- or the business didn't look like
13 that last time they saw it.

14 THE COURT: So you were meeting with him because he's
15 an assistant manager of one of the ---

16 MR. SCOTT: Yes, sir.

17 THE COURT: --- institutions that was burglarized, not
18 because ---

19 MR. SCOTT: That's correct. We had no knowledge of
20 this. Your Honor, it's my understanding that this exchange
21 happened fairly recently. Perhaps we'd have to ask Mr.
22 Jessie that. I -- I don't know for sure. But I think this
23 meeting between McCoy and Jessie occurred fairly recently.
24 I don't think it was ---

25 MR. VERNER: Well, you ---

DIRECT EXAMINATION BY MR. SCOTT - SHERWIN JESSIE 177

1 MR. SCOTT: --- like it ---

2 MR. VERNER: --- can proffer ---

3 MR. SCOTT: --- happened ---

4 MR. VERNER: --- it right now. You can find out.

5 MR. SCOTT: Yeah. We can find out about -- Mr. Jessie

6 ---

7 THE COURT: All right.

8 MR. SCOTT: --- when did this happen?

9 THE COURT: Let -- let me ---

10 MR. SCOTT: Okay.

11 THE COURT: --- put him ---

12 MR. SCOTT: Sorry.

13 THE COURT: --- under oath first real quick.

14 SHERWIN JESSIE, having been first duly sworn,
15 testified as follows:

16 THE COURT: Go ahead, Solicitor.

17 MR. SCOTT: Sorry, Your Honor.

18 DIRECT EXAMINATION

19 BY MR. SCOTT:

20 Q Mr. Jessie, tell me: When was it that you went to the
21 county jail?

22 A It was mid-January.

23 Q Okay. And that was a -- was it a child-support-
24 payment issue?

25 A Well, yes, sir.

DIRECT EXAMINATION BY MR. SCOTT - SHERWIN JESSIE 178

1 Q Okay.

2 A I was paying child support. But for some reason, they
3 issued a warrant. I don't know -- you know, I had -- I
4 didn't receive my papers and everything to -- to show it.
5 But it was for failure to appear.

6 Q All right. And how long were you in the jail?

7 A Just overnight.

8 Q Oh, just one night?

9 A Yes, sir.

10 Q And how'd you come to meet Jeffrey McCoy?

11 A Well, after I had gotten back to -- back -- you know,
12 up in the jail, I was just sitting around, talking with
13 some guys that I knew, and we were just kind of, like,
14 catching up. And they were asking me what was I doing --
15 you know, what was my profession at the time. And I told
16 them what I was doing.

17 And right after that he asked me, "How much money do
18 y'all keep overnight out there?"

19 And I replied with, "We don't." And he was -- and I
20 asked him immediately after that, "Why are you asking me
21 these questions about my job?"

22 And he was, like, "Do you remember everything out
23 there in that -- in that shopping plaza getting broke into
24 last year?"

25 And I said, "Yeah. I -- I remember riding by, seeing

1 the building taped off and everything."

2 He was, like, "Well, I'm the guy that did it."

3 Q And this was not -- you were having a conversation
4 with other folks and ---

5 A Yes, sir.

6 Q --- he overheard you; is that ---

7 A Yes.

8 Q --- accurate?

9 A Yes.

10 Q So you weren't asking him questions. He was asking
11 you questions?

12 A Right.

13 Q And he volunteers that he was the guy that did it,
14 meaning broke into the Shops at Wilson?

15 A Correct.

16 Q Okay. And you say this was January of this year?

17 A Yes, sir.

18 Q Early January or late January?

19 A I think it was mid-January. I'm not certain about the
20 date. I don't think it was early January.

21 Q All right. About three months ago or so?

22 A Right. Yeah.

23 Q All right.

24 MR. SCOTT: That's all, Your Honor. That -- that is
25 probably what we would offer him for.

EXAMINATION BY THE COURT - SHERWIN JESSIE

180

1 THE COURT: All right. Mr. Jessie -- I'll -- I'll
2 give you a chance in a minute, Mr. Verner.

3 EXAMINATION

4 BY THE COURT:

5 Q But did the police ask you to approach Mr. McCoy?

6 A No, sir.

7 Q All right. So you just happened to be in the same
8 area of the detention center. Were y'all housed together
9 at the same ---

10 A Yes, sir ---

11 Q --- area?

12 A --- we were. Yes.

13 Q Okay. And it's kind of, I guess, like a general
14 population where people can ---

15 A Yeah.

16 Q --- mill about freely?

17 A Yes, sir.

18 Q All right. And, Mr. Jessie, after this incident took
19 place, did the police contact you and inform you of the
20 individual's name who allegedly broke into y'all's
21 business?

22 A I had no idea what his name was.

23 Q Okay.

24 A Even when I spoke with him in jail, I -- I didn't even
25 get his name.

1 Q Okay.

2 THE COURT: Mr. Verner?

3 MR. VERNER: Nothing, Your Honor.

4 THE COURT: Very good. All right. Let me take five
5 minutes for myself and think about this, okay, gentlemen?
6 (To the witness) You can stay where you are. You can step
7 down if you need to, Mr. Jessie, but we'll back in a
8 minute. Don't go anywhere ---

9 THE WITNESS: All right.

10 THE COURT: --- though, okay?

11 (Off the record from 4:30 p.m. until 4:41 p.m.)

12 MR. VERNER: If -- if I could just briefly be heard,
13 Judge?

14 THE COURT: Go right ahead, please, Mr. Verner.

15 MR. VERNER: The -- my third trip to Westlaw Mr. Scott
16 drove me to today: The brief look, Your Honor, the three
17 cases I could find right off the bat were *Quattlebaum*,
18 *Cheeseboro*, and *Caldwell*. The ---

19 THE COURT: *Quattlebaum* is the death penalty one,
20 right, out of somewhere?

21 MR. VERNER: I -- it was a murder case. But I -- I
22 don't recall the -- whether it was a death penalty. I just
23 looked to that specific paragraph on the -- there was a
24 cell -- cell mate statement, Judge.

1 THE COURT: Yes, sir.

2 MR. VERNER: The -- under Rule 804, if this is a
3 hearsay statement, the -- a -- a statement against the --
4 the penal interest of a party is only available when the
5 defendant is unavailable to testify. The invocation of the
6 Fifth Amendment right not to testify does not mean that he
7 is unavailable to testify. The -- so it would not come in
8 under Rule 804, the -- as a statement against penal
9 interests. It -- the only other way it comes in is Rule
10 801, which is an admission by a party opponent.

11 The -- *State v. Caldwell* -- and -- and I -- I was
12 reading that as I was summoned back to court, Your Honor.
13 But *State v. Caldwell*, from where I got it, seemed to
14 indicate that where -- the -- the -- they only let the cell
15 mate testify where the defendant had testified in -- in
16 that case, Your Honor.

17 The -- if -- if it's an admission that's not hearsay
18 and -- and you wouldn't go by the hearsay rules. But the
19 *Caldwell* case seemed to put -- put it more as a -- a Rule
20 804 that the -- analysis that it would be a statement
21 against penal interest. And in -- in that case it would be
22 hearsay, which means the state has to prove that my
23 client's unavailable to testify. And invoking a Fifth
24 Amendment right does not raise the unavailability issue,

1 Judge.

2 In -- in candor I did not get to read through --
3 completely *Caldwell*. And I think *Cheeseboro* got exactly to
4 where the Court was ruling that the Sixth Amendment would
5 not be harmed unless the state had some kind of hand in
6 setting up the encounter.

7 THE COURT: *Caldwell* is the one -- that doesn't --
8 *Caldwell*, you agree, doesn't apply or *Caldwell* ---

9 MR. VERNER: I don't ---

10 THE COURT: --- does it?

11 MR. VERNER: --- Judge, in *Caldwell* -- in -- in -- in
12 -- in fairness, all I got to were the keynotes in *Caldwell*.
13 But *Caldwell* is -- basically, the keynotes were saying that
14 a cell mate was not allowed to testify or -- or was it
15 allowed to testify but that was because the defendant also
16 testified. In -- in candor, I -- I didn't get to -- beyond
17 the -- the keynote citations on them.

18 The -- and I do think it's primarily more of a Sixth
19 Amendment issue than a . . .

20 THE COURT: Explain that.

21 MR. VERNER: Well, the -- the Court's already ruled on
22 the -- well, I don't know if the Court's ruled on the Sixth
23 Amendment issue or not. But that would be primarily
24 concern, whether it's a state action.

1 THE COURT: It doesn't ---

2 MR. VERNER: But it ---

3 THE COURT: --- sound like it's a state action,
4 because there's no ---

5 MR. VERNER: I -- I -- I heard him testify ---

6 THE COURT: Right.

7 MR. VERNER: --- Judge, that the -- and the -- I -- I
8 -- just I would argue at -- 804 clearly precludes it; 801
9 is the only door to get in. And then, of course, 403 is
10 the back end to -- I -- I've still got my *Caldwell* case up
11 on my computer, which I can go try to ---

12 THE COURT: If you want to go grab that, go ahead ---

13 MR. VERNER: The ---

14 THE COURT: --- while I'm looking at this.

15 MR. VERNER: And I'll do it real quickly, Judge.

16 THE COURT: Not a problem.

17 (Off the record from 4:47 p.m. until 4:54 p.m.)

18 MR. VERNER: Judge, I'm going to say it -- it probably
19 comes in under 801 unless the Court rules it out under 403.

20 THE COURT: Under 801 the cases I have found -- and I
21 would tend to concur; feel free to disagree with me or jump
22 in, Solicitor -- but it's *State v. Gilchrist*, reported at
23 342 S.C. 369; *Tucker* at 334 S.C. 1; and *Needs* -- *State v.*
24 *Needs* at 333 S.C. 134. Under 801 I believe it would

1 constitute an admission by party opponent.

2 We then turn to the 403 balancing question -- or the
3 403, rather, prejudice-versus-probative-value question. In
4 -- in this instance -- and, of course, we've got a -- kind
5 of a Rule 5 sort of question as well. But in this instance
6 it's apparent to me that this information did not come to
7 light until such time as the solicitor was working this
8 case up for trial. And circumstances being what they are,
9 he interviewed this witness and this witness related the
10 information, which the solicitor then timely related to Mr.
11 Verner.

12 So I -- I -- I don't find that there's any violation
13 of Rule 5 concerning this particular testimony. The
14 prejudice versus probative value, obviously, the probative
15 value in this is -- is very, very strong. The direct
16 prejudice that I see -- and I think that Mr. Verner is
17 raising -- is the fact, of course, that the defendant was
18 in jail at the time that this alleged statement was made.

19 I -- I do find that that's not a sufficient reason to
20 exclude the statement. Clearly, this witness's
21 relationship to the business that was burglarized, that can
22 be probed on cross-examination. That can be discussed at
23 length. And if there's any contradictory evidence, Mr.
24 Verner, that you've been able to uncover which would
25 indicate that this gentleman -- the witness was not housed

DIRECT EXAMINATION BY MR. SCOTT - SHERWIN JESSIE 186

1 in the same area as your client, then, certainly, that's
2 something, I would think, would've been brought to my
3 attention a little bit earlier. But certainly, that's
4 something that can be gone into cross -- can be gone into
5 on cross as well.

6 So I do find that it's admissible under Rule 403. The
7 probative value of this information clearly outweighs the
8 prejudicial effect to the defendant. And I'll permit this
9 witness to testify. That's where we are, subject, of
10 course, Mr. Verner, to your objection.

11 Let's have the jury back out here, please.

12 (Off the record briefly.)

13 (Whereupon, the jury entered the courtroom at 4:57
14 p.m.)

15 THE COURT: All right. Ladies and gentlemen, we're
16 still in the state's case-in-chief. The next witness, Mr.
17 Jessie, has been called. Madam clerk, if you'll place the
18 witness under ---

19 DEPUTY CLERK OF COURT: Yes, sir.

20 THE COURT: --- oath, please.

21 SHERWIN JESSIE, having been first duly sworn,
22 testified as follows:

23 DIRECT EXAMINATION

24 BY MR. SCOTT:

25 Q Mr. Jessie, are you familiar with the Regional Finance

1 at the Shops on Wilson Road?

2 A Yes.

3 Q How are you familiar with that particular business?

4 A That's where I'm employed currently.

5 Q What's your title?

6 A I'm assistant manager.

7 Q What does Regional Finance do?

8 A Well, we loan -- personal loan -- we make personal
9 loan and car loans.

10 Q Okay.

11 A So we loan money.

12 Q All right. And you -- you're employed there now?

13 A Yes.

14 Q Do you recall a time last year -- on May 27th of last
15 year, when Regional Finance and some other stores in that
16 shopping center were broken into?

17 A Yes, sir.

18 Q Okay. Did you get -- go in and look around or -- how
19 do you remember that?

20 A Well, at that time I wasn't working at Regional. I
21 was -- had -- I -- the job I had at that time was I -- I
22 was a driver. I was a transporter. And I remember riding
23 by, and I saw that the entire building was taped off. And
24 I knew something had taken place over there.

25 Q Okay. Do you remember that to be May of last year?

DIRECT EXAMINATION BY MR. SCOTT - SHERWIN JESSIE 188

1 A Yes.

2 Q All right. Let me ask you this: Have -- have you
3 ever been to the Newberry County Jail?

4 A Yes.

5 Q You had a little bit of -- or an incident that
6 occurred in relation to some child support payments?

7 A Yes, sir.

8 Q All right. How long did you spend in the jail?

9 A I spent one night.

10 Q Okay. Did you meet Mr. Jeffrey McCoy while you were
11 there?

12 A I did.

13 Q Just in that one night you were there, you met him?

14 A Yes.

15 Q Were you housed in the same -- what do you call them
16 -- pods?

17 A I ---

18 Q The same area that he ---

19 A We ---

20 Q --- was in?

21 A --- were. Yes.

22 Q Tell me about your meeting with him. How did it take
23 place?

24 A Well, I was -- after I had gotten in, I ran into some
25 friends, some guys that I had went to school with, hadn't

1 saw in a long time. And they were just asking -- you know,
2 we were catching up and asking what I -- what was I doing
3 at the present time, as far as work. I told them where I
4 worked at: that I was at Regional Finance; I was assistant
5 manager.

6 And that's when he approached me and asked me, you
7 know -- he asked me ---

8 MR. VERNER: Subject to ---

9 A --- how much ---

10 MR. VERNER: --- my objection, Your Honor.

11 THE COURT: Subject to the earlier objection, your
12 objection is noted and overruled.

13 Q Who's he? He asked you. Who's he?

14 A Mr. McCoy.

15 Q Do you see Mr. McCoy here?

16 A Yes, I do.

17 Q Where is he?

18 A He's right over there.

19 Q Did you point to the fella with the yellow shirt?

20 A Yes.

21 Q All right. Now, did you strike up a conversation with
22 him, or were you talking to your friends from school?

23 A I was -- I was talking from friend -- to -- I was
24 talking to friends from school.

25 Q All right. And then, you say McCoy got involved in

DIRECT EXAMINATION BY MR. SCOTT - SHERWIN JESSIE 190

1 the conversation. How'd ---

2 A Right.

3 Q --- that happen?

4 A Well, after I -- after he overheard me say where I
5 worked, he came over to me. And he asked me how much money
6 do we keep in the building overnight. And I told him, "We
7 don't." And then I turned around and I asked him -- I
8 said, "Why are you -- why are you asking me questions about
9 my job?"

10 And he said, "Well, you remember that break-in that
11 took place last year?"

12 I said, "Yeah, I do."

13 And he said, "Well, I did it."

14 Q He said, "I did it"?

15 A Yes, sir.

16 Q Did you have a response or anything further after ---

17 A Well ---

18 Q --- that?

19 A --- I -- I said, "So the -- the big wall in the back,
20 back there, you did that?"

21 And he said, "Yeah. That was me."

22 Q All right. Now, timing-wise, this was May of 2012.
23 When did this meeting between you and -- and Jeffrey McCoy
24 take place?

25 A About mid-January.

1 Q January of 2013?

2 A Yes, sir.

3 Q Sometime after that had occurred?

4 A Uh-huh.

5 Q Now, did anybody tell you to go into the jail and --
6 and talk about being employed by Regional Finance?

7 A No.

8 Q Were you asked to initiate conversation with Mr.
9 McCoy?

10 A No.

11 Q Do you know what agency picked you up and took you to
12 jail?

13 A Well, it was Newberry -- it was Newberry County.

14 Q The sheriff -- or county ---

15 A Yes, sir.

16 Q --- sheriff's department?

17 Okay. And you didn't initiate the conversation; Mr.
18 McCoy, he is the one who initiated with you?

19 A Right.

20 Q And it's your understanding that it was after you had
21 mentioned you were a manager at Regional Finance that that
22 occurred?

23 A Yes.

24 Q Okay. All right. Thank you.

25 A Uh-huh.

CROSS-EXAMINATION BY MR. VERNER - SHERWIN JESSIE 192

1 THE COURT: Mr. Verner?

2 CROSS-EXAMINATION

3 BY MR. VERNER:

4 Q Mr. Jessie, when did you get put in jail in Newberry
5 County?

6 A It was mid-January.

7 Q Sometime of this year?

8 A Yes, sir.

9 Q The -- and you're testifying that was for a child
10 support issue?

11 A Correct.

12 Q The -- when did you start working for Regional
13 Finance?

14 A September 5th of 2012.

15 Q Okay. So -- but that was about five months after the
16 store had been broken into?

17 A Yeah. Roundabout.

18 Q What were you doing during May of last year?

19 A I was a transporter for Newberry County Council on
20 Aging. I was a van driver.

21 Q Okay. The -- and when you were arrested for the child
22 support in January, they would have booked you in and given
23 you a jail uniform?

24 A Yes, sir.

25 Q What color?

1 A I think it was orange.

2 Q Okay. The -- and how long were you in jail at the
3 Newberry Detention Center?

4 A I was there overnight.

5 Q Overnight?

6 A Yes, sir. Almost a whole day.

7 Q Doesn't the jail typically keep people in the holding
8 cell the first night they're in jail?

9 A Well, I -- I wasn't. I -- it -- it was a bench
10 warrant for my arrest. And so I was in minimum security.

11 Q The -- so which part of the jail did they take you to?

12 A From my understanding, it was minimum security.

13 Q Well, I mean, physically, the -- you would leave the
14 booking area?

15 A Uh-huh.

16 Q And you would go into what part of the jail?

17 A Minimum security. I -- I mean, I don't know -- I
18 don't know a whole lot about the jail.

19 Q And how many people were assigned to your room?

20 A Oh, it was at least 20.

21 Q Okay. The ---

22 A There was two sides.

23 Q All right. Who were your friends you were talking to?

24 A I was talking to one particular friend. His name was
25 Rick Gray.

CROSS-EXAMINATION BY MR. VERNER - SHERWIN JESSIE 194

- 1 Q Ricky Gray?
- 2 A Yes.
- 3 Q And he's currently still in jail, isn't he?
- 4 A I have no idea.
- 5 Q Okay.
- 6 A Haven't seen him.
- 7 Q The -- but Ricky was in the jail back in early January
- 8 or mid-January when you were there?
- 9 A Yes.
- 10 Q Who else was there that you recall seeing in the
- 11 pretrial?
- 12 A There were a couple of other guys that I knew by face
- 13 ---
- 14 Q Okay.
- 15 A --- that I recognized. I did -- I'm not too familiar
- 16 with ---
- 17 Q Okay.
- 18 A --- their names.
- 19 Q Well, I -- I thought you told Mr. Scott you had some
- 20 school friends.
- 21 A Rick Gray. Rick ---
- 22 Q So ---
- 23 A --- Gray was ---
- 24 Q --- so it's ---
- 25 A --- my school ---

1 Q --- just one friend you were actually talking to,
2 Ricky Gray?

3 A One in particular. Yes, sir.

4 Q Okay. The -- this happened in January?

5 A Yes.

6 Q And you had already been working at Regional Finance
7 at that time?

8 A Yes, sir.

9 Q Did you tell anybody in January that -- about these
10 alleged statements?

11 A Yeah.

12 Q Who?

13 A I had went back to work and talked to them about it.

14 Q Well, who is them?

15 A I talked to my coworkers.

16 Q Who -- who are your coworkers?

17 A You want names?

18 Q Yes, sir.

19 A Allison Hawkins.

20 Q Okay. And she just testified a -- a few minutes ago
21 here in court?

22 A Uh-huh.

23 Q Okay. And -- and so your testimony is you told her
24 back in January that -- that the man working -- that
25 somebody in the jail at the place you were working for

CROSS-EXAMINATION BY MR. VERNER - SHERWIN JESSIE 196

1 admitted in -- in front of you that he had gone into it?

2 A Yes.

3 Q And you told some coworkers?

4 A Yes.

5 Q Did you tell any law enforcement officers?

6 A I did not.

7 Q The -- did Allison recommend that you contact law
8 enforcement and say hey, that this guy admitted ---

9 A No, sir.

10 Q When is the first time you told somebody of -- of --
11 of authority about this supposed admission?

12 A It was probably sometime in February when I talked to
13 someone.

14 Q Well, who'd you talk to in February?

15 A I can't remember the officer's name.

16 Q You -- you spoke to a police officer in February?

17 A Well, I think it was an investigator.

18 Q Mr. Goodman?

19 A Yes.

20 Q All right. You told him in February?

21 A Well, I didn't tell him. He had came by and we were
22 going to talk.

23 Q Okay.

24 A We never talked about it.

25 Q Well, you just told me you did tell him in February.

1 Did you or did you not tell him in February about the ---

2 A I ---

3 Q --- admission?

4 A --- I -- I did not.

5 Q Again, the question's pretty simple: When is the
6 first time you told a police officer or -- officer or
7 somebody in authority about this supposed statement?

8 A It was sometime in February. I don't remember exactly
9 what day it was. But it was sometime in February ---

10 Q Okay. And ---

11 A --- when I ---

12 Q --- you said ---

13 A --- talked ---

14 Q --- you met ---

15 A --- to someone.

16 Q --- with the investigator?

17 A He came by my job. We did not talk.

18 Q Well, then, how did you convey the message to the
19 investigator?

20 A We were going to talk. We -- we were supposed to
21 talk, but we never did talk.

22 Q Mr. Goodman?

23 A Next thing I know, I got a summons to be here.

24 Q Okay. So you didn't tell a police officer in February
25 about this statement?

CROSS-EXAMINATION BY MR. VERNER - SHERWIN JESSIE 198

1 A I did not.

2 Q Okay. Again, my question is: When is the first time
3 you told a police officer about this supposed statement?

4 A Like I said, it was sometime in February. I don't --
5 I don't know exactly when it was.

6 Q That you told a police officer about this statement?

7 A Yes.

8 Q But it wasn't Mr. Goodman sitting there?

9 A No, it was not.

10 Q Was it a white police officer or a black man?

11 A It was a white man.

12 Q Do you recall who he was?

13 A Yes, I do.

14 Q Okay. What was his name?

15 A His name was Mike Hawkins.

16 Q Investigator Hawkins?

17 A He's a police officer.

18 Q Okay. And you told him in February about this
19 statement?

20 A Yes.

21 Q Why were you talking to Mr. Hawkins?

22 A Because I knew Mr. Hawkins prior. And to be honest
23 with you, he's -- he's -- he -- he's Allison's husband.

24 Q Okay. The -- so I -- I guess that you would've
25 happened to see him at the store when he came by to see

1 her?

2 A Yes.

3 Q And you would've mentioned it to him?

4 A Yes.

5 Q Okay. The -- do you know if he was connected to this
6 case or not?

7 A I have no idea.

8 Q Do you know if he conveyed that to any -- to his
9 investigator, Mr. Goodman?

10 A I don't know that.

11 Q Okay. Other than Mr. Hawkins, who did you convey this
12 statement ---

13 A No one.

14 Q Okay. What -- who is the next police officer or
15 person of authority that you told about this statement?

16 A I told no one in -- in police ---

17 Q Prior to ---

18 A --- enforcement.

19 Q --- today.

20 A No one.

21 Q Well, you met with the prosecutors, didn't you?

22 A That's -- I mean, it -- is that law -- I mean, he's
23 not a cop. But yeah. I talked with him yesterday.

24 Q Yesterday was ---

25 A Yesterday.

REDIRECT EXAMINATION BY MR. SCOTT - SHERWIN JESSIE 200

1 Q --- the first time that you admitted ---

2 A First time ---

3 Q --- that you ---

4 A --- I met him ---

5 Q --- talked about this statement?

6 A Yes. Yes.

7 Q But you had -- you said it happened about three months
8 ago or -- or more?

9 A What -- what happened three ---

10 Q But you ---

11 A --- months ago?

12 Q --- said the statement was about three months ago, in
13 mid-January?

14 A Yes.

15 Q Okay.

16 MR. VERNER: No further questions.

17 MR. SCOTT: Thank you.

18 REDIRECT EXAMINATION

19 BY MR. SCOTT:

20 Q We spoke yesterday?

21 A Yes.

22 Q Was that the first time you ever seen me?

23 A Yes.

24 Q Have we ever spoken on the phone?

25 A No.

REDIRECT EXAMINATION BY MR. SCOTT - SHERWIN JESSIE 201

1 Q Have you ever heard my name before?

2 A No.

3 Q Thank you. That's all I have.

4 MR. VERNER: Nothing for redirect [sic], Your Honor.

5 THE COURT: (To the witness) Thank you, sir. You can
6 step down.

7 THE WITNESS: All right.

8 (Whereupon, the witness exited the witness stand.)

9 THE COURT: All right. Ladies and gentlemen of the
10 jury, we've probably reached a good breaking point for the
11 evening. I'm going to be -- ask that you be back in the
12 jury room tomorrow morning again at ten o'clock.

13 I will let you know that tomorrow afternoon, I have a
14 -- a -- a matter in Greenwood; it's another hearing that I
15 have to do at four o'clock. So I imagine that we'll be
16 breaking -- if we're not already done with the case, we'll
17 probably be taking a break around three o'clock tomorrow
18 afternoon, okay? Just wanted to let y'all know that for
19 planning purposes.

20 Again, tonight don't discuss this case with anyone:
21 friends, family member, whoever it is that you share a roof
22 with. I'll see you back in the jury room tomorrow morning
23 around ten o'clock. Hope y'all have a pleasant evening.

24 Hope nothing happens to you, because we only have 12
25 jurors here and we've run out of alternates. So be safe

1 tonight. Don't get sick; don't get ill. And I'll see
2 y'all tomorrow morning at ten o'clock, okay? Thank you
3 very much.

4 (Whereupon, the jury exited the courtroom at 5:11
5 p.m.)

6 THE COURT: All right. Let the record reflect that
7 the jury has left the courtroom. One thing that I did
8 mention -- or did intend to mention when I was discussing
9 the last witness's testimony and the -- the analysis under
10 403, the -- the one thing that -- that also weighed in
11 favor of the testimony's admission was that this was a
12 little bit different from a situation where you have a
13 purported confession being made to a fellow inmate and that
14 inmate is continuing to face charges being prosecuted by
15 the same solicitor's office.

16 Obviously, in this case the witness was in jail for a
17 very brief period of time on a child support matter. And
18 so the usual concerns that the Court might have with a
19 purported snitch testifying in order to gain an advantage
20 in his own case, those -- those concerns, obviously, are
21 not present in this particular case. It is what it is.
22 And I do think that it was proper under 403 and 801.

23 All right. We'll be at ease till tomorrow morning
24 around ten o'clock. Did you have something, Mr. ---

25 MR. SCOTT: Just housekeeping, Your Honor ---

1 THE COURT: Yes, sir.

2 MR. SCOTT: --- just while I'm thinking of it: This
3 was a State's ID 14. I don't know if I need to withdraw it
4 or what. I -- I certainly -- the reason I did all the
5 pictures and not this stuff, so Ms. Jackie wouldn't ---

6 MR. VERNER: I don't ---

7 MR. SCOTT: --- strangle me.

8 MR. VERNER: The -- Your Honor, I -- I'll -- the --
9 that's probably my mistake. I indicated -- and maybe I was
10 confused -- that he had made it a Court's exhibit. I think
11 if he marked it just for identification purposes, it would
12 not be part of the record ---

13 THE COURT: I would ---

14 MR. VERNER: --- or ---

15 THE COURT: --- tend to ---

16 MR. VERNER: --- or ---

17 THE COURT: --- agree.

18 MR. VERNER: --- Court record.

19 MR. SCOTT: Okay.

20 THE COURT: We'll -- we'll allow you to withdraw it at
21 a later point in time. Leave it as 14 for now ---

22 MR. VERNER: I -- I don't ---

23 THE COURT: --- and then ---

24 MR. VERNER: --- think he has to withdraw it.

25 THE COURT: Right.

1 MR. VERNER: But I certainly -- he reserves the right
2 to ---

3 THE COURT REPORTER: Your Honor, once an exhibit is
4 marked, it becomes under the custody and control of the --
5 myself and the clerk of court, unless he wants ---

6 MR. VERNER: I -- I ---

7 THE COURT REPORTER: --- to withdraw it.

8 MR. VERNER: --- have no -- she -- the court reporter
9 is saying she has it as part of her record. So you're
10 moving to withdraw it?

11 MR. SCOTT: That's correct. We documented through
12 pictures, Your Honor, just ---

13 MR. VERNER: Well, I ---

14 MR. SCOTT: --- it's kind ---

15 MR. VERNER: --- I have ---

16 MR. SCOTT: --- of impressive ---

17 MR. VERNER: --- no ---

18 MR. SCOTT: --- to see in person. That's the only
19 reason I did it. I -- I don't want it in evidence, though
20 ---

21 MR. VERNER: No objection, Your Honor.

22 MR. SCOTT: --- or stored here at the clerk's office.

23 THE COURT: All right. I'll allow you to withdraw it.
24 And that way we don't have to worry about a very large box
25 of tools being stored indefinitely. So, Ms. Nevers, you

1 are protected. Should anyone complain about your skill,
2 you may blame me.

3 THE COURT REPORTER: Thank you, Your Honor.

4 MR. VERNER: Just about this one matter?

5 THE COURT: Correct.

6 THE COURT REPORTER: You can complain about everything
7 else.

8 THE COURT: All right. We'll be at ease till tomorrow
9 morning.

10 (Whereupon, the proceedings were adjourned at 5:14 p.m.)
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 TRIAL DAY 2 - 04/24/13

2 (Whereupon, the proceedings resumed at 10:16 a.m.)

3 THE COURT: Okay. Well, we are -- if we could, let's
4 go ahead and go back on the record in the *State v. Jeffrey*
5 *Glenn McCoy*. The state is present; the defendant is
6 present with his attorney. We're still on the state's
7 case-in-chief. Anything before we bring the jury in? I'm
8 told they're now all here.

9 MR. BROWN: No, Your Honor.

10 MR. VERNER: We're ready.

11 THE COURT: (To the bailiff) Let's have them in,
12 please.

13 (Whereupon, the jury entered the courtroom at 10:16
14 a.m.)

15 THE COURT: All right. Thanks. Ladies and gentlemen
16 of the jury, I'm hoping that y'all had a pleasant evening
17 last night. We're still involved in the trial of the *State*
18 *v. Mr. McCoy*, and we're still on the state's case-in-chief.
19 So at this point, Solicitor, if you will call your next
20 witness, please.

21 MR. BROWN: The state calls James Marshall to the
22 stand.

23 (Off the record briefly.)

24 (Whereupon, State's Exhibit 16 was marked for
25 identification.)

1 (Whereupon, the witness came forward.)

2 JAMES MARSHALL, having been first duly sworn,
3 testified as follows:

4 DIRECT EXAMINATION

5 BY MR. BROWN:

6 Q Good morning, Mr. Marshall.

7 A How's it going?

8 Q Mr. Marshall, where do you work?

9 A El-Amin's Barbershop.

10 Q And where is that located?

11 A On Wilson Road, straight across the street from the
12 bank, Allsouth Bank.

13 Q And what city is that in?

14 A Newberry.

15 Q What county is that in?

16 A Newberry.

17 Q And what state?

18 A South Carolina.

19 Q All right. And, Mr. Marshall, how long have you
20 worked at the barbershop?

21 A Six years.

22 Q So generally, if you've worked six years, you were
23 working last year on the dates of May 26th and May 27th?

24 A Yes.

25 Q May 26th, 2012, was a Saturday. Do you remember

DIRECT EXAMINATION BY MR. BROWN - JAMES MARSHALL 208

1 working on May 26th?

2 A Yes.

3 Q And what were your hours there?

4 A It was from 6 a.m. till 6:30 p.m.

5 Q And, Mr. Marshall, how many folks worked there with
6 you?

7 A Four.

8 Q Four?

9 And y'all have a bathroom in y'all's barbershop?

10 A Yes, sir.

11 Q And while you were working there on May 26th, 2012,
12 did you use that restroom that day?

13 A Several times.

14 Q Was there a hole or anything in the -- in the wall of
15 the bathroom?

16 A No, sir.

17 Q And when you got off work, was the barbershop in order
18 when you left that day?

19 A Yes.

20 Q Now, did -- did you or someone you work with get a
21 call about a burglary that took place at the El-Amin
22 Barbershop?

23 A No, actually we didn't. That Sunday morning I had to
24 go to the barbershop to shave because I was tired Saturday.
25 And when I got there, all the polices and everybody was

1 there.

2 Q Okay. Did you go back in the barbershop to -- to look
3 -- look around?

4 A Yes.

5 Q And what'd you see?

6 A I saw that the bathroom had a hole in the wall. And
7 it's one other room had a -- a hole cut in the wall too.

8 Q And the other room was a -- where was that hole? What
9 ---

10 A It was ---

11 Q --- was it leading to?

12 A Was going to the Boost Mobile.

13 Q Okay.

14 A It goes right into the Boost Mobile.

15 Q And so there's a hole in the bathroom wall?

16 A Uh-huh.

17 Q And then, there's a hole towards the back of your
18 building?

19 A Yes. The -- the bathroom -- the -- the tin was pulled
20 back. And it had all the -- all the -- the insulation was
21 out the way; trash can knocked over and everything.

22 Q Okay.

23 A And the other room had a big hole in the wall.

24 Q Now, all that -- there was no holes in your wall
25 before you left on Saturday, right?

DIRECT EXAMINATION BY MR. BROWN - JAMES MARSHALL 210

1 A No. No, sir.

2 Q And you left work at six o'clock Saturday evening?

3 A Six-thirty.

4 Q Six-thirty ---

5 A Yeah.

6 Q --- Saturday evening?

7 All right. I'm going to show you what's been marked

8 State's Exhibit, for ID purposes, as 16. Take a look at

9 that; see if you identify that.

10 A Oh, yeah. That's the bathroom.

11 Q Bathroom at El-Amin?

12 A Yeah. That's our bathroom.

13 Q And that's the only bathroom you have?

14 A Only bathroom.

15 Q All right. And ---

16 MR. BROWN: Your Honor, at this time, the state moves

17 State's Exhibit No. 16 into evidence at this time.

18 MR. VERNER: No objection.

19 THE COURT: Without objection, State's 16 will be in

20 evidence and you may publish.

21 (Whereupon, State's Exhibit 16 was entered into

22 evidence.)

23 Q And what do you see in that picture?

24 A Me?

25 Q Yes, sir.

- 1 A I see the walls tore down, trash can knocked over.
- 2 Q Where would that hole in that wall go to?
- 3 A That goes to the outside in the back -- it comes in
- 4 from the back.
- 5 Q Comes in from outside?
- 6 A Yes, sir.
- 7 Q All right. And this is already in evidence as State's
- 8 6A. From the picture you just -- that I just showed you,
- 9 is that the sheet metal you were talking about that was
- 10 peeled back?
- 11 A Yes, sir.
- 12 Q All right. And you spoke of a second hole. This is
- 13 State's 6D. Do you recognize that photograph?
- 14 A Yes.
- 15 Q And what does that show?
- 16 A That's the hole in the other wall I was telling you
- 17 about.
- 18 Q And where does that lead to?
- 19 A Goes straight into the Boost Mobile.
- 20 Q All right. Now, Mr. Marshall, when you left work that
- 21 day, none of these hole were in the building, right?
- 22 A No, sir.
- 23 Q And did you give anybody permission to create these
- 24 holes in your building?
- 25 A No, sir.

CROSS-EXAMINATION BY MR. VERNER - JAMES MARSHALL 212

1 Q And more specifically, did you or any of your other
2 employees there at El-Amin give Mr. McCoy permission or
3 consent to be in your building?

4 A No, sir.

5 MR. SCOTT: No further questions, Your Honor.

6 THE COURT: Mr. Verner?

7 CROSS-EXAMINATION

8 BY MR. VERNER:

9 Q Mr. Marshall, is the El-Amin still in that strip mall?

10 A Excuse me?

11 Q Is that barbershop still in the same ---

12 A Yeah.

13 Q --- location?

14 A Yes, sir.

15 Q Okay. The -- when you left at 6:30 on Saturday, was
16 it still daylight?

17 A I honestly don't remember.

18 Q Do you?

19 A I don't -- I honestly don't remember.

20 Q But this happened in mid-May?

21 A Yes, sir.

22 Q Okay. Thank you.

23 THE COURT: Thank you, sir. You can step down.

24 THE WITNESS: Uh-huh.

25 (Whereupon, the witness exited the witness stand.)

DIRECT EXAMINATION BY MR. BROWN - SHIRLEY LONG 213

1 MR. BROWN: Your Honor, he asked that he be excused.

2 THE COURT: No objection to excusing Mr. Marshall, Mr.
3 Verner? Very good.

4 Call your next witness, please.

5 MR. BROWN: The state calls Shirley Long.

6 (Off the record briefly.)

7 (Whereupon, the witness came forward.)

8 SHIRLEY LONG, having been first duly sworn,
9 testified as follows:

10 DIRECT EXAMINATION

11 BY MR. BROWN:

12 Q Good morning, Ms. Long.

13 A Good morning.

14 Q Ms. Long, where do you work?

15 A Boost Mobile.

16 Q And you work there now?

17 A Yes.

18 Q How long have you worked for Boost Mobile?

19 A About four years.

20 Q And so last year, May 26th/May 27th, 2012, you were
21 working at Boost Mobile?

22 A Yes.

23 Q What's your job description there at Boost Mobile?

24 A I'm the operations manager.

25 Q Operations manager?

1 A Uh-huh.

2 Q And, Ms. Long, tell me your store hours of Boost
3 Mobile.

4 A During that time on Saturdays it would be from 10 till
5 6.

6 Q Ten till 6?

7 A Yes.

8 Q On May 26th of last year, it would've been 10 till 6?

9 A Yes.

10 Q Were you working that day there?

11 A I was.

12 Q And, Ms. Long, tell me the description of your -- of
13 your -- inside your business during regular working hours.

14 A During regular working hours, we have a total of four
15 displays. All displays are stocked with phones, Wi-Fi
16 devices, the boxes that the phones are housed in; then
17 include the accessories: ear buds that you can purchase
18 with the phones, hotspot devices for Internet as well. The
19 displays are fully stocked at all times.

20 Q Fully stocked?

21 And were those fully stocked when you left work on
22 Saturday, May 26th ---

23 A Yes ---

24 Q --- at six o'clock?

25 A --- they were.

1 Q I'll show you what's been marked as State's Evidence

2 5E. Could you take a -- what does that picture show?

3 A That is the back of my office area.

4 Q If you need to, you ---

5 A Yeah. Because I can't ---

6 Q --- move closer.

7 A Yeah. That is the back -- some of the display
8 glasses, microwave. It's the back of the building with the
9 hole in the wall over the area where we keep some of our
10 additional equipment.

11 Q Okay. What -- if you go through that hole, what's on
12 the other side of that wall?

13 A That one is, I believe, connected to the barbershop.

14 Q Okay. Now, when you left on Saturday at six o'clock,
15 the 26th, was that hole in that wall?

16 A No.

17 Q Okay. Now, did you ever receive a call saying that
18 something happened at your business?

19 A I did not receive one directly. One of our church
20 members called my husband and told him that something was
21 going on with our store. And so my husband went to the
22 store. And then he called me, and I came to the store.

23 Q So that'd have been May 27th ---

24 A Yes.

25 Q --- 2012?

1 When you got to the store that morning, what'd you
2 discover?

3 A That the store had been broken into; all of the phones
4 and displays -- everything in the displays had been taken.
5 The store had been damaged; wiring had been damaged. The
6 computer had been damaged; the wiring to the computers had
7 been damaged -- chaos, basically: holes in walls.

8 Q I want to show you what's been marked State's 5G.
9 What is that?

10 A That's one of my display cases.

11 Q And it doesn't appear to have anything in it.

12 A No, it does not.

13 Q And that display case was stocked before you left on
14 Saturday ---

15 A Yes. Every one ---

16 Q --- the 26th?

17 A --- of those empty display stands had phones on them.
18 And at the bottom where the two boxes are, there would've
19 been phones lined up neatly all across.

20 Q I'll show you what's been marked as State's 5F. What
21 does that picture show?

22 A That is a hole in the wall leading to the next
23 building beside me, Jackson Hewitt.

24 Q Jackson Hewitt?

25 A (Nodded head up and down.)

1 Q I'll show you what's been marked as State's 5B. What
2 does that show?

3 A Those are some of my alarm wires that had been cut and
4 damaged.

5 Q Okay. Now, you said a few moments ago that your
6 display cabinets were full of phones on May 26th when you
7 left from work around six o'clock that evening. When you
8 got back on Sunday morning, May 27th, they were empty?

9 A Yes.

10 Q What -- do you have a -- do you know how much all the
11 -- the costs of the phones would've ---

12 A Of ---

13 Q --- added up to?

14 A Of the phones itself, it was \$10,204.

15 Q \$10,204?

16 A Yes.

17 Q And after you left work on Saturday, May 26th, around
18 6 p.m. in the evening, was there anybody else left in the
19 store?

20 A No.

21 Q Did you give anybody consent to be in your store?

22 A No.

23 Q Did you give Mr. McCoy consent to be in your store?

24 A No.

25 Q Or to bore holes in the wall?

CROSS-EXAMINATION BY MR. VERNER - SHIRLEY LONG 218

1 A No.

2 (Whereupon, Mr. Brown and Mr. Scott conferred.)

3 Q Ms. Long, were those phones that were in those display
4 cases -- were they ever discovered or given back to you?

5 A Some of them were.

6 Q They were given back to you?

7 A Yes. Some of them.

8 (Whereupon, Mr. Brown and Mr. Scott conferred.)

9 Q And were you able to identify those phones as ---

10 A Yes.

11 Q --- the ones that were taken from Boost Mobile?

12 A Yes.

13 MR. BROWN: No further questions.

14 THE COURT: Cross?

15 CROSS-EXAMINATION

16 BY MR. VERNER:

17 Q Hey, Ms. Long. The ---

18 A Good morning.

19 Q Did you take a count of how many phones were taken?

20 A Yes. I'm -- we gave a printout of ---

21 Q Okay. Do ---

22 A --- the phones.

23 Q --- you -- do you recall right now?

24 A It was anywhere from 23 to 30 phones.

25 Q Total phones?

1 A Yes.

2 Q Okay. What -- what else was taken from Boost Mobile,
3 other than the phones?

4 A Cash. We keep -- well, we kept \$150 in our drawer and
5 as well as petty cash, and it was gone.

6 Q Okay. And there were approximately 30 phones taken?

7 A Yes, thereabout.

8 Q The -- and -- and how many of those phones were
9 returned?

10 A I -- I would say a little over half of those were
11 returned to us.

12 Q So about 15 phones?

13 A Yes, at least.

14 Q Okay.

15 A Yes.

16 Q The -- did -- did the phones retail for more than a
17 hundred dollars apiece?

18 A Yes.

19 Q Okay. What do you think the average retail value of
20 the phones would be?

21 A It depends on the phones. Most of what we sell are
22 Android phones. Android phones go anywhere from \$129 to
23 \$499.

24 Q Okay. The -- and I'm sorry. You said they run from
25 \$129 to \$400?

CROSS-EXAMINATION BY MR. VERNER - SHIRLEY LONG 220

1 A Uh-huh.

2 Q The -- I guess -- or is it used phones that are 129,
3 or is that just when you get a service plan -- like a new
4 line, you get a discount on the phone, or ---

5 A No. We're a noncontract company.

6 Q Okay.

7 A So you're going to pay the full price of your phone in
8 exchange for a discount of the lower rate.

9 Q Okay. So the -- the -- they're -- unless there's a
10 sale or something like that, you don't get a service-plan
11 discount.

12 A Right.

13 Q The phones sell for what they sell for?

14 A Right.

15 Q The -- do -- what do you think the average phone was
16 selling for?

17 A The average ---

18 Q I -- I understand you said they ran from a price 129
19 to 400 dollars?

20 A Uh-huh.

21 Q What do you think the average one was?

22 A The average phone price ---

23 Q Yes, ma'am.

24 A --- of an Android is going to be 129.

25 Q What -- so the average phone would cost about 129?

- 1 A That is a low-end Android phone.
- 2 Q But -- but they sell more than the ---
- 3 A Yes. It really ---
- 4 Q --- high-end ---
- 5 A --- just depends on ---
- 6 Q Got you.
- 7 A --- the phone.
- 8 Q The -- but you would expect to have more \$129 phones
- 9 in your store than \$400 phones?
- 10 A No.
- 11 Q They just ---
- 12 A We ---
- 13 Q --- sell quicker?
- 14 A We -- no. We have a diverse audience that we service
- 15 phones for. So we have diverse pricing. I mean, I could
- 16 have -- typically, in my store we have maybe two to three
- 17 phones that range 129 for Android. The rest are going to
- 18 be anywhere from 249 to 399.
- 19 Q Okay. The -- and did you do a inventory printout
- 20 where you came up with the total value of the 10,000, or
- 21 how did you ---
- 22 A Yes.
- 23 Q --- come up with that number?
- 24 A We did a inventory. We had just had a shipment prior
- 25 to that, the day before. And so all of those phones were

1 fresh and new. And we already knew the pricing on those.

2 Q Okay. Did you bring the printout to court?

3 A No, I didn't. No, I ---

4 Q Did you ---

5 A --- didn't.

6 Q --- supply it to the law enforcement officers?

7 A Yes.

8 Q Okay. The -- and the solicitor asked if you knew that
9 -- if it was Jeff McCoy who went through your hole. You
10 don't know who went through your hole ---

11 A No, I don't.

12 Q --- or came into your business, other than what you
13 believe, I guess, what you've been told by law enforcement
14 ---

15 A Right.

16 Q --- but ---

17 A I don't know who ---

18 Q Yeah. Okay. The -- what time does Boost Mobile
19 close?

20 A On -- now or ---

21 Q Then ---

22 A --- during that ---

23 Q --- May ---

24 A --- time?

25 Q --- 27th -- that -- I guess this would've been a

1 Saturday?

2 A Six p.m.

3 Q Six p.m.?

4 A Uh-huh.

5 Q And do you recall whether it was daytime or nighttime
6 when you closed?

7 A It was 6 p.m. when I closed.

8 Q But, I mean, was it dark or was it ---

9 A It would've been daytime.

10 Q Okay. Six p.m. on May 27th would've still been ---

11 A --- light.

12 Q --- the ---

13 A Yes.

14 Q --- daylight?

15 Okay. The -- and about half the phones that were
16 taken were not recovered at all to you?

17 A Right.

18 Q Are they still in law enforcement custody, or they
19 just -- they said we don't know where they are?

20 A I don't know what -- I ---

21 Q Okay.

22 A --- don't know where they are.

23 Q The -- thank you, Ms. Long.

24 A Thank you.

25 (Whereupon, Mr. Brown and Mr. Verner conferred.)

REDIRECT EXAMINATION BY MR. BROWN - SHIRLEY LONG 224

REDIRECT EXAMINATION

1
2 BY MR. BROWN:

3 Q Ms. Long ---

4 A Yes.

5 Q --- how many -- you said there were a number of phones
6 that were taken from the store that night?

7 A It could've -- it was anywhere, I guess, between 20
8 and 30. I provided a document about ---

9 Q Okay.

10 A --- the phones.

11 Q And you received items back from law enforcement?

12 A Yes.

13 Q When you received some of these items back, did you
14 sign a return sheet saying you returned some of that?

15 A Yes.

16 Q I'll let you look at that; see if it'll refresh your
17 memory on ---

18 A Okay.

19 Q --- how many phones you actually did receive back.

20 A Okay. I received 54 phones back.

21 Q Fifty-four phones ---

22 A Yes.

23 Q --- back?

24 A Yes.

25 Q And what type of phones? Would those have been the

1 Androids ---

2 A They would've ---

3 Q --- Blackberries?

4 A --- been Android phones.

5 (Whereupon, Mr. Brown and Mr. Scott conferred.)

6 A If you like, I can go through them and tell you.

7 (Whereupon, Mr. Scott and Mr. Verner conferred.)

8 Q Again, I'm just going to let you refresh your memory.

9 Don't ---

10 A Okay.

11 Q --- read from it. And then, after you refresh your
12 memory, I'll take that back from you.

13 MR. VERNER: He -- he hasn't asked her a question to
14 refresh her memory for, Your Honor.

15 THE COURT: All right. Why don't you ask a question
16 first, please.

17 Q Do you know what all type of phones that you did
18 recover back from law enforcement?

19 A Okay. They are Android phones, Blackberry ---

20 MR. VERNER: Again, Your Honor, it's improper ---

21 A --- and ---

22 MR. VERNER: --- for her just to be asked a question
23 and then given a list to -- to answer it. She has to try
24 to answer the question. If she cannot answer the question,
25 she can use her notes to refresh her recollection. They're

RECROSS-EXAMINATION BY MR. VERNER - SHIRLEY LONG 226

1 actually handing her a law enforcement document.

2 THE COURT: All right. Let -- let -- let's do it Mr.
3 Verner's way, if you don't mind ---

4 MR. BROWN: Yes, sir.

5 THE COURT: --- Mr. Brown. Ask her a question. If
6 she can't remember, then you can refresh her memory.

7 MR. BROWN: Yeah.

8 Q Do you remember all the phones you did receive back?

9 A Yes. They were Android phones, Blackberry phones,
10 which is what I predominantly sell, which range anywhere
11 from \$169 and up.

12 Q And how many did you receive back from law
13 enforcement?

14 A Fifty-four.

15 Q Thank you.

16 MR. BROWN: No further questions, Your Honor.

17 RECROSS-EXAMINATION

18 BY MR. VERNER:

19 Q The -- but there was still out -- the -- you got --
20 you signed a document that Mr. Goodman gave you where he
21 returned 54 phones to you?

22 A Uh-huh.

23 Q But you were still out about 15 or more, give or take,
24 in that area of phones?

25 A Correct.

DIRECT EXAMINATION BY MR. BROWN - SARAH HOFFMAN

227

1 Q Okay. Thank you.

2 A Uh-huh.

3 THE COURT: All right. Thank you, ma'am. You can
4 step down.

5 THE WITNESS: Thank you.

6 (Whereupon, the witness exited the witness stand.)

7 THE COURT: Solicitor, call your next witness, please.

8 MR. BROWN: The state calls Sarah Buhrow Hoffman.

9 (Off the record briefly.)

10 (Whereupon, the witness came forward.)

11 SARAH HOFFMAN, having been first duly sworn,
12 testified as follows:

13 DIRECT EXAMINATION

14 BY MR. BROWN:

15 Q Good morning, Ms. Hoffman.

16 A Morning.

17 Q Ms. Hoffman, where do you work?

18 A At Jackson Hewitt Tax Service.

19 Q How long have you worked there?

20 A Four years.

21 Q Four years?

22 Last year, May 26th/May 27th, were you working at
23 Jackson Hewitt?

24 A Yes.

25 Q And were -- was the business at Jackson Hewitt open on

1 Saturday, May 26th?

2 A No.

3 Q When was the last day that y'all would've been open?

4 A That Wednesday.

5 Q Wednesday?

6 A Yes.

7 Q And when you left work on Wednesday, what were your
8 business hours?

9 A I think we were open until 5 that day.

10 Q Five o'clock?

11 And when you left work on -- on that Wednesday at five
12 o'clock ---

13 A Uh-huh.

14 Q --- what did your store -- what was the condition of
15 your store?

16 A It was clean and intact, no holes.

17 Q No holes in any walls?

18 A Right.

19 Q And was there anybody -- what -- after you left work
20 that day around five o'clock, do you lock your doors of the
21 ---

22 A Yes.

23 Q Did -- do you know -- to the best of your knowledge,
24 did anybody else that had consent to come back into the
25 building ---

1 A No.

2 Q --- after it's closed?

3 And did you receive a call or learn of anything that
4 took place at Jackson Hewitt?

5 A Yes.

6 Q When did you receive a call?

7 A I think it was the next morning after the event so ---

8 Q What -- do you remember what day, though?

9 A Sunday -- it was that ---

10 Q Is that ---

11 A --- Sunday.

12 Q --- Sunday, May 27th ---

13 A Yes.

14 Q --- 2012?

15 And what -- once you got the call, what did you do?

16 A My dad, who's the owner, he went over to the store and
17 saw the damage and started cleaning up.

18 Q Did you ever see the damage?

19 A I did. But it was a couple days later.

20 Q When you arrived and saw the damage, what did you see?

21 A It was -- the file cabinets were damaged and the holes
22 in the -- the wall in the bathroom. And then, there -- it
23 had flooded from them hitting a water pipe. So there was
24 ---

25 Q I want to show you what's been entered into evidence

DIRECT EXAMINATION BY MR. BROWN - SARAH HOFFMAN 230

1 as State's 4F. What is that a picture of?

2 A The hole in -- the hole in the bathroom.

3 Q And what -- if you look through that hole, where does
4 that go?

5 A To the next door, to the check-casher.

6 Q Check Into Cash?

7 A (Nodded head up and down.)

8 Q Okay. Was that hole -- was that hole there on
9 Wednesday when you left ---

10 A No.

11 Q --- work?

12 This is State's 4E. What is that?

13 A That's the damage from whomever, from that night.

14 Q Damage to a ---

15 A The ---

16 Q --- filing cabinet?

17 A --- file cabinets, yes. And we had some equipment
18 stored back there that had been pushed over.

19 Q This is State's 4B. What does that appear to be?

20 A It looks like where the other hole is, I guess. Or
21 that's where the -- the -- the wires were cut.

22 Q Okay. Were those wires cut when you left on
23 Wednesday?

24 A No.

25 Q Now, Ms. Hoffman, to your knowledge, did you or your

1 father or any -- anybody else that has authority give
2 consent to anyone to enter your business after business
3 hours were closed?

4 A No.

5 Q Did you give anybody consent to cut holes in your
6 wall?

7 A No.

8 Q And more specifically, did anybody have -- give any
9 consent to Mr. McCoy ---

10 A No.

11 Q --- to be in your business?

12 And was there anything noted as missing from Jackson
13 Hewitt?

14 A No.

15 Q Nothing that was ---

16 A Just damage.

17 Q Just ---

18 A Yeah.

19 Q --- damage? Holes ---

20 A Uh-huh.

21 Q --- in the wall?

22 A Yes.

23 Q And damage to the filing cabinet?

24 A Right. Correct.

25 Q All right. No further questions.

CROSS-EXAMINATION BY MR. VERNER - SARAH HOFFMAN 232

1 A Okay.

2 CROSS-EXAMINATION

3 BY MR. VERNER:

4 Q Just to clarify: The hole in the wall, you weren't
5 next to the check-cashing place?

6 A Correct. Sorry. The Regional ---

7 Q The Regional ---

8 A --- Finance.

9 Q --- Finance?

10 The -- but the -- the next business day to open up the
11 Jackson Hewitt would've been Monday, I guess?

12 A Just Wednesdays during the summer.

13 Q Okay. The -- tax season it gets busier but ---

14 A Right.

15 Q Okay.

16 A Exactly.

17 Q So Thursday, Friday, and Saturday, it would've been
18 unoccupied all day and all night?

19 A Correct.

20 Q Okay. The -- okay. Thank you.

21 A Okay.

22 THE COURT: All right. Thank you, ma'am. You can ---

23 THE WITNESS: Okay.

24 THE COURT: --- step down.

25 (Whereupon, the witness exited the witness stand.)

DIRECT EXAMINATION BY MR. BROWN - MARIE HENRY

233

1 THE COURT: Solicitor, call your next witness, please.

2 MR. BROWN: The state calls Marie Henry.

3 (Off the record briefly.)

4 (Whereupon, the witness came forward.)

5 MARIE HENRY, having been first duly sworn,

6 testified as follows:

7 DIRECT EXAMINATION

8 BY MR. BROWN:

9 Q Good morning, Ms. Henry.

10 A Good morning.

11 Q Ms. Henry, where do you work?

12 A Check Into Cash.

13 Q Check Into Cash?

14 Now, where is Check Into Cash located?

15 A On Wilson Road.

16 Q In ---

17 A In the ---

18 Q --- Newberry ---

19 A --- Wilson Shop -- Newberry, South Carolina.

20 Q Okay. Newberry County, South Carolina?

21 A Yes.

22 Q Ms. Henry, what -- what are your job duties at the
23 Check Into Cash?

24 A I'm a district manager for Check Into Cash.

25 Q Okay. And as district manager, what are your job

1 duties there?

2 A I oversees 12 stores. I hire and fire. And I inspect
3 at nights.

4 Q And I might've already asked you: How long have you
5 worked ---

6 A Fourteen years.

7 Q Fourteen years?

8 And are you district manager over the Check Into Cash
9 there on Wilson Road?

10 A Yes.

11 Q And were you district manager last year, May 26th/May
12 27th, 2012?

13 A Yes.

14 Q What are your business hours there?

15 A Ten to 6 Monday through Fridays, and 10 to 3 on
16 Saturdays.

17 Q Ten to 3 on Saturdays?

18 A Yes, sir.

19 Q Was Check Into Cash open on Saturday, May 26th, 2012?

20 A No.

21 Q On Saturday?

22 A On Saturday, no. We was off for the holiday.

23 Q Off for holiday?

24 A Uh-huh.

25 Q What holiday was that?

- 1 A Labor Day or Memorial Day, one of those days -- Labor
2 Days.
- 3 Q Memorial Day?
- 4 A Memorial Day, yeah.
- 5 Q But you had been open on Friday?
- 6 A Right.
- 7 Q And that'd ---
- 8 A Correct.
- 9 Q --- have been 10 to 6?
- 10 A Ten to 6.
- 11 Q All right. And on Friday, being district manager,
12 what was the condition of the store when it closed on --
13 after regular business hours?
- 14 A Fine, perfect.
- 15 Q And what do you mean by that?
- 16 A We lock up; we clean up; we inspect; and we set alarm.
- 17 Q You set an alarm?
- 18 A Yes.
- 19 Q Ms. Henry, did -- was there a call made to you or
20 another employee of Check Into Cash?
- 21 A Yes. Somebody called my CSR then, Nancy Boyd, and
22 she, in turn, called me.
- 23 Q What day was that?
- 24 A That was on the 27th, that Monday -- that Sunday
25 morning.

1 Q Sunday morning?

2 What was that call in reference to?

3 A That somebody cut out wall -- a hole in the back wall
4 to go into the bathroom and went into the store.

5 Q Okay. And did you respond?

6 A No. She lived in Prosperity. She beat me there. So
7 when she got there, they investigated.

8 Q Okay.

9 A I looked up when she called me back and the police was
10 leaving and said I didn't need to come.

11 Q Did you ---

12 A And ---

13 Q --- ever go inspect ---

14 A Yes.

15 Q --- the place?

16 A Yes. That Monday morning.

17 Q Monday morning?

18 Was the building -- Check Into Cash there on Wilson
19 Road, was it still in the same condition as ---

20 A Yes.

21 Q Well, it was in a different condition than what was
22 there ---

23 A Yes.

24 Q --- on Friday, the 25th?

25 A Yes.

1 Q What were some of things you saw?

2 A Cement blocks that was cut from the back wall leading
3 into our bathroom. We had cements all in the bathroom, all
4 in the commode. Ate -- ate up all the -- they snacks, they
5 lunch; food paper all over the floor.

6 Q What kind of snacks where they?

7 A Vienna sausage; cup-of-noodles soup; chips; candy
8 bars; wrappers and papers all over the floor.

9 Q So ---

10 A And the safe -- tried to get in the safe; the safe was
11 damage.

12 Q So the snacks and all, the wrappers were there, but
13 the ---

14 A Yeah.

15 Q --- contents were missing?

16 A Yes.

17 Q And you mentioned the cinder blocks. I'm showing you
18 what's been marked State's Evidence 2K. What does that
19 picture look like?

20 A Yes. That's the cinder blocks.

21 Q And if you went out that hole, where does that go? Do
22 you know?

23 A Went in -- went -- if you went out -- it went into our
24 bathroom. If you come back, you're going back in the back
25 of the store.

1 Q So what would -- what does that -- where would that
2 go, if I ---

3 A To go into it, you would go into the bathroom.

4 Q Okay. I'll show you what's State's Evidence 2J. What
5 is that?

6 A The bathroom.

7 Q And is that the ---

8 A The one with the door open, that's the bathroom. And
9 that's the hallway where we have all our video cameras and
10 stuff -- wires hooked up.

11 Q All right. Is that the -- are those the same holes?

12 A Yes.

13 Q And to your knowledge, on Friday, the 25th, when the
14 store closed, were those holes there?

15 A No, sir.

16 Q Again, this is State's Evidence 2I. What is that a
17 picture of?

18 A The bathroom.

19 Q Is that where you said there was a lot of ---

20 A The cement blocks, like, if you chisel or rub the
21 bricks -- yeah. You could see all the little stuff, debris
22 all over the floor.

23 Q Yes, ma'am. I'll show you what's State's 2F. What is
24 that?

25 A Our video camera. That's the VCR and the wires that

1 goes into our camera system.

2 Q Okay. Were those wires in that condition when the
3 store closed on Friday?

4 A No, sir.

5 Q I want to show you State's Evidence 2E.

6 A That's our safe.

7 Q And is that how the safe normally looks?

8 A No, sir.

9 Q What's different about that one?

10 A Like, the handlebar that you -- after you've set in
11 the timer to go off, you have to push down on a handlebar.
12 The handlebar there, it's not in the right position. Look
13 like it was trying to been pull out.

14 Q All right. Now, was that safe -- did that safe look
15 like that on Friday when the store closed?

16 A No, sir.

17 Q I want to show you another picture. This is State's
18 2D. What is that?

19 A That's the safe ---

20 Q And ---

21 A --- and they little eating room/snack area in the
22 back. We have a little table back there.

23 Q And when the store closed on Friday, the 25th, were
24 those tools that are in front of that safe on that floor?

25 A No, sir.

DIRECT EXAMINATION BY MR. BROWN - MARIE HENRY 240

1 Q And do you close -- when the store closes on -- for
2 example, on that Friday, did anybody else have -- do you --
3 did you or anybody else that's employed with Check Into
4 Cash give anybody permission or consent to be in that
5 building?

6 A No, sir.

7 Q Any consent to cut on that safe?

8 A No, sir.

9 Q What about bore holes in the wall?

10 A No, sir.

11 Q And more specifically, did you or any other employee
12 of Check Into Cash give Mr. McCoy consent to being your
13 building?

14 A No, sir.

15 (Whereupon, Mr. Brown and Mr. Scott conferred.)

16 Q And out of curiosity, what's in the safe?

17 A We used to keep cash in it during the day. And at the
18 end of the night, we deposit all our money. And we keep --
19 we cash checks, and we keep all our check-cashing checks in
20 the safe.

21 Q Was actually -- did -- were they still in there?

22 A Just the checks from check-cashing we cash.

23 Q No ---

24 A No money.

25 Q No money?

1 A Unh-unh.

2 Q Was anything -- other than the -- the food, was
3 anything else reported missing?

4 A No, sir.

5 Q But the -- the food?

6 A Yes.

7 Q And you mentioned -- what items -- food items were
8 missing?

9 A It was, like, Vienna sausage; some -- they always keep
10 cup-of-noodle soup; water; and candy bars -- junk food.

11 Q So small items?

12 A Yes.

13 MR. BROWN: No further questions.

14 THE COURT: Mr. Verner?

15 CROSS-EXAMINATION

16 BY MR. VERNER:

17 Q All right. Ms. Henry, the ---

18 A Yes.

19 Q --- the store was last occupied or open at three
20 o'clock on Saturday?

21 A No. We was closed that Saturday. It was ---

22 Q Oh.

23 A --- that Friday.

24 Q So it wasn't open at all on Saturday?

25 A No, sir.

1 Q Okay. And would have closed at what time on Friday?

2 A Six.

3 Q Okay. The -- now, this was in late May ---

4 A Yes, sir.

5 Q --- that this happened? So it still ---

6 A Uh-huh.

7 Q --- would've been -- closes in the daytime, but late
8 -- late afternoon?

9 A Yes.

10 Q The -- no question, the safe was unopened?

11 A It was unopened.

12 Q Okay. Thank you, Ms. Henry.

13 A All right.

14 THE COURT: Thank you, ma'am. You can step down.

15 (Whereupon, the witness exited the witness stand.)

16 MR. SCOTT: Your Honor, the state calls Captain
17 Charles -- Charles Counts, Your Honor.

18 (Off the record briefly.)

19 (Whereupon, the witness came forward.)

20 CHARLES COUNTS, having been first duly sworn,
21 testified as follows:

22 THE WITNESS: My name is Charles Edward Counts.

23 Nickname is "Chuck."

24 (Whereupon, State's Exhibits 17, 18, and 19 were
25 marked for identification.)

1 DIRECT EXAMINATION

2 BY MR. SCOTT:

3 Q Capt. Counts, you're with the Newberry Police
4 Department?5 A I am with the Newberry City Police on a part-time
6 basis.

7 Q But you're retired; is that correct?

8 A Yes, sir. I retired in February of last year, after
9 spending a little over 17 and -- 17 years and 50 weeks with
10 the Newberry City Police.11 Q What sort of things do you do for the police
12 department on your part-time job status?13 A Mostly, I process evidence: footwear, fingerprints,
14 DNA evidence, and package it. And I also help with the
15 investigative division.16 Q All right. Did you come to be involved in the case
17 we're here for today? This is a -- a burglary
18 investigation that occurred at the Shops on Wilson Road,
19 1335 Wilson Road, May 26th and 27th last year?

20 A Yes, sir, I did.

21 Q All right. For what purpose did you come -- become
22 involved in that case?23 A I was asked by Sgt. Goodman, who was a chief
24 investigator for that case, to help him process evidence,
25 coming from the -- those break-ins.

DIRECT EXAMINATION BY MR. SCOTT - CHARLES COUNTS 244

1 Q Specifically, were you asked to analyze some footwear
2 impressions?

3 A We discovered footwear impressions on a metal plate.
4 Yes, sir. And I did analyze those at a later time.

5 Q All right. So at the time you see the footprints on
6 the metal plate, those would be an unknown sample? Is that
7 what you'd describe that as?

8 A Yes, sir. An unknown foot -- footwear ---

9 Q Because at ---

10 A --- was depicted ---

11 Q --- the time ---

12 A --- on a silver plate.

13 Q Okay. Because at the time you don't know whose
14 footprint that is; is that fair to say?

15 A That is correct.

16 Q Is this the metal plate that you're describing?

17 A Yes, sir, it is. I actually put it in this plastic
18 bag after -- the heat-seal bag and put my initials, the
19 date, and the case number on the item.

20 Q Okay. Did you go to the scene when this was
21 recovered?

22 A No, sir, I did not.

23 Q Now, you -- you received it from whom?

24 A Sgt. Goodman. He -- he and I met at the laboratory.
25 And we went through the evidence together and processed it

1 together.

2 Q Where did you understand it had come from?

3 A At that point in time, just a break-in on Wilson Road.

4 Q Okay. What kind of training and experience do you
5 have that qualifies you as an expert in the field of
6 footwear analysis?

7 A I started examining footwear when I went to work with
8 the Richland County Sheriff's Department in July of 1978.
9 I had been a deputy there since 1976 and was promoted into
10 the lab. They called it the "identification section" back
11 then, instead of "forensic." You hear "forensic" all the
12 time on TV. Forensic is the -- can be defined as the ---

13 MR. VERNER: Your Honor, at -- this is, candidly, not
14 in response to any particular question.

15 THE COURT: All right. Ask another question, please.

16 Q What sort of training have you had in the field of
17 footwear examination?

18 A Since -- since that point in 1978, I have attended
19 over 30 different seminars and classes on processing crime
20 scenes, which incorporate fingerprints, DNA, footwear
21 examinations. I also attended a seminar at the FBI Academy
22 in 1974, which was a symposium nationally for footwear
23 identification and tire-wear identification.

24 Q All right. Tell me how long you've been doing
25 footwear-impression analysis.

DIRECT EXAMINATION BY MR. SCOTT - CHARLES COUNTS 246

1 A Since 1978. July the 1st, 1978, is when was put into
2 the identification section for the Richland County
3 Sheriff's Department. I spent 12 years -- well, actually,
4 10 years with Richland County Sheriff's Department, doing
5 footwear. There was four to five officers there. We
6 processed crime scenes throughout Richland County and
7 sometimes outside of Richland County for footwear,
8 fingerprints, serology evidence, and later DNA, and
9 actually saw footwear on a daily basis, just about, because
10 we processed about 2300 crime scenes a year in Richland
11 County.

12 In 1988 I was offered a position at SLED, the South
13 Carolina Law Enforcement Division, in their crime lab when
14 they expanded the laboratory. I went there and spent the
15 next 5 1/2 years processing -- processing crime scenes all
16 over the state of South Carolina for footwear,
17 fingerprints. We had serology back then too.

18 And then when I came to Newberry City Police, they
19 hired me away from SLED. I spent the next 17 1/2 years as
20 the captain of the police department, which incorporated
21 the -- the lab and the investigative division. And anytime
22 there was footwear involved or fingerprints involved, I was
23 involved.

24 Q All right. And in those 35 years, how many footwear
25 impressions do you think you had a chance to analyze?

1 A It would be hard to say. It would be in the
2 thousands, looking at footwear.

3 Q All right. Have you ever been qualified as an expert
4 in footwear examination?

5 A Yes, sir, I have. In -- in state court many times.

6 Q General sessions court?

7 A General sessions court.

8 Q How many times?

9 A Yes, sir. I would say more than -- between 25 and 50
10 times, on -- on footwear alone; on fingerprints and crime-
11 scene-related matters, well over a hundred.

12 MR. SCOTT: Your Honor, the state would now offer
13 Capt. Counts as an expert in the field of footwear
14 examination and comparison.

15 THE COURT: All right. Mr. Verner, do you have any
16 questions or ---

17 MR. VERNER: Just briefly.

18 CROSS-EXAMINATION

19 BY MR. VERNER:

20 Q Captain ---

21 THE COURT: Certainly.

22 Q --- have you also been qualified as an expert witness
23 in the field of fingerprint identification?

24 A Yes, sir.

25 Q Have you also been qualified expert witness by a judge

1 in the seriology [sic] or DNA-type ---

2 A No, sir, not DNA. The collection of DNA samples and
3 crime-related, but never in DNA analysis.

4 Q But you have been approved as an expert witness in the
5 field of collecting DNA-type or seriology [sic] evidence?

6 A In the collection of it. Yes, sir.

7 Q Okay.

8 MR. VERNER: Your Honor, just -- I -- I would oppose
9 that he be qualified as an expert in all three areas. He's
10 certainly qualified in -- in footwear. I -- I think he's
11 probably qualified in fingerprints and in collection of
12 seriology [sic]. And -- and I'm probably going to have a
13 few questions.

14 THE COURT: No objection to qualifying him as an
15 expert in those two additional areas, Solicitor?

16 MR. SCOTT: No, Your Honor.

17 THE COURT: All right. Ladies and gentlemen of the
18 jury, the parties in this case have stipulated that Capt.
19 Counts is an expert in three fields: namely, footwear
20 examination and comparison, as well as fingerprints and the
21 collection of serological evidence. And usually, when a
22 witness testifies, they have to testify about something
23 that they observed with one of their five senses:
24 something they smelled, saw, heard, etc.

25 An exception to this rule exists for a person who is

1 qualified by education or experience in a particular field.
2 The these witnesses are known as "expert witnesses." And
3 they are allowed to give opinion testimony if it relates to
4 that particular field. Of course, this testimony should be
5 treated the same way as anyone witness, and you're not
6 required or compelled to accept their testimony. But it is
7 evidence for you to use in the way that you deem
8 appropriate.

9 Okay. You can continue, Solicitor.

10 MR. SCOTT: Thank you, Your Honor.

11 DIRECT EXAMINATION

12 BY MR. SCOTT:

13 Q All right. Capt. Counts, what is a footwear
14 impression?

15 A A footwear impression is -- can be broken down into
16 two types of impression: a two-dimensional impression,
17 where the hard sole of the foot picks up residue such as
18 dirt and dust and leaves an impression on the ground of the
19 outsole of that footwear; and a three-dimensional, where
20 the hard sole of the foot goes into a soft substrate and
21 leaves a foot track.

22 Q All right. So if I -- if I'm wearing some boots and I
23 -- I step in a pile of mud or something like that, what is
24 that? Is that the three-dimension you described?

25 A That'd be the three-dimensional, if it sunk down there

DIRECT EXAMINATION BY MR. SCOTT - CHARLES COUNTS 250

1 and left an impression of that outsole. It also transfers
2 that mud to a different area. And you could walk through
3 and you could see the mud. Although that is technically
4 three-dimensional and -- the -- we refer to it as a "two-
5 dimensional print." And we would use a different technique
6 of -- of picking that up for examination.

7 Q What if I step on a piece of a tile or a sheet of
8 metal, like we have in this case?

9 A Yes, sir. That's a hard surface, and we would refer
10 to as a "two-dimensional footwear impression."

11 Q How do you collect and preserve a two-dimensional
12 footwear impression?

13 A The first thing is we photograph it with a scale. And
14 we photograph it extensively with oblique lighting. When I
15 refer to "oblique lighting," this is lighting from the
16 side, shooting at different angles across, to highlight
17 specific characteristics of the footwear.

18 Q Let me show you State's 18. Does it look -- first,
19 let me ask you: Do you recognize that?

20 A Yes, sir, I do.

21 Q How are you able to recognize it?

22 A This is a photograph I took of the actual footwear
23 impression on the steel plate that Sgt. Goodman and I
24 processed on the 20th, I believe, of February.

25 Q Of this year?

1 A Yes, sir.

2 MR. SCOTT: The state would offer State's 18 for
3 admission into evidence.

4 THE COURT: Any objection to State's 18?

5 MR. VERNER: No, Your Honor.

6 THE COURT: All right. State's 18 is in evidence
7 without objection.

8 (Whereupon, State's Exhibit 18 was entered into
9 evidence.)

10 Q All right. So this is the photo you take of the two-
11 dimensional footwear pattern; is that correct?

12 A That is correct. Yes, sir.

13 Q Okay. And you've got some arrows that -- did you
14 generate these arrows there?

15 A Yes, sir, I did.

16 Q And what is the purpose of that?

17 A I prepared this document for court purposes. And
18 those errors -- arrows are pointing to unique
19 characteristics that I found in that shoe that can be
20 considered identifying characteristics. In other words,
21 that is not something that came from the mold of the shoe
22 or the outsole of the shoe. It came from when somebody
23 wore the shoe and abrasive action took place, which
24 degrades the -- the outsole of the shoe. And they step in
25 different things, and it cuts and mars and scratches the

1 shoe and makes it unique unto itself.

2 Q All right. So is it fair to say you were pointing out
3 defects that are in that shoe? Those are probably not
4 factory-made markings?

5 A Correct. Those are not factory-made markings. Those
6 are actual created by contact with a surface that has
7 marred and scratched and cut the shoe. And we call those
8 "identifying characteristics."

9 Q Well, you're looking for those, because if I wear a
10 pair of Nikes and I step on a hard surface, there's
11 probably a million other Nikes like the ones I'm wearing;
12 is that fair to say?

13 A Technically -- well, if you -- if you're specific
14 about Nike brand, there's millions of Nikes. But there's
15 also millions of different -- I -- I'm sorry -- not
16 millions, but thousands upon thousands of different
17 outsoles that Nike puts out, as far as the different size,
18 the different shape, and the different outsole design of
19 it.

20 Q What about Filas?

21 A All of them are the same. Many shoes -- 80 percent --
22 more than 80 percent of all the -- what you're talking
23 about is athletic-type shoes that are made in molds -- are
24 -- are imported for the -- to the United States, more than
25 80 percent. And they're made in these molds. When they're

1 -- during the molding process, sometimes the molds will
2 have some kind of debris in them or a toolmark of some that
3 will reproduce that in each of those shoes. And that would
4 be a class characteristic. It's reproduced in that
5 specific mold. And it'll be on many shoes, but not all of
6 that particular brand.

7 Q Okay. So you're pointing out a thing specific to one
8 pair of shoes or one shoe specifically. These would be
9 things you described as cuts that may have been picked up
10 from wear or other markings that would've occurred after
11 factory production; is that fair to say?

12 A That is correct. Yes, sir. These are not -- these
13 are flaws in the actual shoe due to it being walked in and
14 mars/scratches/abrasions/cuts in that particular shoe.

15 Q All right. So that is a photo, State's 18, that you
16 took from the metal sheet we talked about that was
17 collected from the scene?

18 A That is correct.

19 Q Let me show you State's 17. Do you recognize that?

20 A Yes, sir.

21 Q And what is it?

22 A This is a photograph of the -- the acetate sheet that
23 I took a -- prepared a impression from the bottom of the
24 sole of the shoe that I examined. And I put arrows on it,
25 showing the generalities of the specific identifying

1 qualities of both shoes.

2 Q So this is a acetate ---

3 A It's an acetate sheet. And I take the shoes, which I
4 don't have up here, and I take a roller with a thin coat of
5 fingerprint ink and I place it on the acetate sheet, trying
6 to replicate the bottom of the shoe, making comparisons.

7 There's two ways to make comparisons on footwear like
8 this: side by side, or to take an acetate sheet and make a
9 -- a negative of that shoe and you can hold it over the
10 actual impression itself and line it up and look for
11 identifying characteristics; make sure it's the same size,
12 outsole design, and characteristics that are unique unto
13 that shoe.

14 Q Okay. So is the acetate sheet -- is this ---

15 A That is ---

16 Q --- derived ---

17 A --- a photograph ---

18 Q --- from the plate or from the shoe?

19 A That originates from the shoe itself.

20 Q Okay. All right. Well, let me back up, then. So you
21 -- were -- you were given a pair of shoes to test the
22 impression from the metal plate. You were given a pair of
23 shoes to compare it; is that fair?

24 A I -- yes, sir. I was given a pair of shoes to compare
25 to that.

1 Q And what -- would you describe them?

2 A They were Fila, size 10, and I believe they were red,
3 white -- white in color with red and blue trim.

4 Q All right. I'm going to show you State's 12K, 12L.
5 All right. Do you recognize those?

6 A Those appear to be the shoes. Yes, sir. The ones
7 that I examine will have my initials on it and the date.

8 MR. VERNER: (To Mr. Scott) You going to put them in
9 evidence?

10 THE COURT REPORTER: You want each shoe marked
11 separately or marked as one pair?

12 MR. SCOTT: Mark -- mark them as one. I'll tie them
13 together.

14 (Whereupon, State's Exhibit 20 was marked for
15 identification.)

16 Q All right. Let me show you State's 20. You recognize
17 those?

18 A Yes, sir, I do.

19 Q All right. How are you able to recognize them?

20 A I have my initials here and the date that I examined
21 them on ---

22 Q What's the ---

23 A --- the side ---

24 Q --- date?

25 A --- of the shoe. And these are the same outsole

DIRECT EXAMINATION BY MR. SCOTT - CHARLES COUNTS 256

1 designs that I took test impressions from and also
2 photographed.

3 Q What's the date of the examination on the side of
4 those shoes?

5 A 6/20 of '12.

6 Q June 28th, '12; is that what you said?

7 A Yes, sir.

8 MR. SCOTT: The state offers 20 for admission into
9 evidence, Your Honor.

10 THE COURT: Any objection, Mr. Verner?

11 MR. VERNER: No objection.

12 THE COURT: All right. Without objection State's 20
13 is in evidence.

14 (Whereupon, State's Exhibit 20 was entered into
15 evidence.)

16 MR. SCOTT: All right. So getting back to 17, the
17 state would also offer 17. That's the acetone-sheet ---

18 THE WITNESS: Acetate.

19 MR. SCOTT: --- impression. Oh, acetate.

20 THE COURT: Any objection ---

21 THE WITNESS: Acetate.

22 THE COURT: --- to the acetate sheet?

23 MR. VERNER: Yes, sir. I -- I don't -- if he's going
24 to use the shoes as evidence, I would object to just
25 leaving them in front of the jury bar.

DIRECT EXAMINATION BY MR. SCOTT - CHARLES COUNTS 257

1 THE COURT: I'm sorry?

2 MR. VERNER: If -- if he's going to use the shoes to
3 refer to, that's fine. But I -- I think it's improper just
4 to set them in front of the jury bar.

5 THE COURT: Okay. Where -- where ---

6 MR. VERNER: The shoes.

7 THE COURT: --- I -- oh. All right. Stick them on
8 the side of the table, if you don't mind. But no objection
9 to 17, right?

10 MR. VERNER: That's the shoes?

11 THE COURT: No. I think 17 is the impression, right?

12 MR. SCOTT: Seventeen ---

13 THE COURT: It's acetate ---

14 MR. SCOTT: --- is the acetate ---

15 MR. VERNER: Oh. It's the -- well, I hadn't ---

16 MR. SCOTT: --- exhibit.

17 MR. VERNER: --- seen refer to it. But I don't -- I
18 don't have an objection to it, Your Honor.

19 THE COURT: All right. State's 17 will also be in
20 evidence.

21 (Whereupon, State's Exhibit 17 was entered into
22 evidence.)

23 Q All right. Seventeen -- you were just talking about
24 you'd drawn arrows and that -- I believe your testimony is
25 that is a -- a lift from the bottom of these shoes, State's

1 20?

2 A Yes, sir. Specifically, the left shoe and the front
3 portion of it -- of the shoe itself. On the left exterior,
4 this is a partial impression of that acetate sheet.

5 Q Okay. All right. The acetate sheet, State's 17,
6 you've drawn arrows on this as well. Again, are those
7 pointing out defects or ---

8 A Yes, sir.

9 Q --- wear patterns?

10 A Specific identifying qualities that I noted in both
11 the acetate-sheet impression and the actual photograph of
12 the footwear impression on the silver plate. They
13 correspond with one another.

14 Q This is State's 19. Do you recognize that?

15 A I do. Yes, sir.

16 Q Okay. How are you able to recognize it?

17 A It has my initials on it on the back, it -- the case
18 number. And it is a photograph that I took of the
19 footwear, the actual shoe itself, the left shoe on the
20 exterior left side of the shoe. And it also has arrows on
21 it that correspond with the other two.

22 MR. SCOTT: The state offers 19 for admission into
23 evidence.

24 THE COURT: Any ---

25 MR. VERNER: No objection.

1 THE COURT: Without objection, 19 shall be in
2 evidence.

3 (Whereupon, State's Exhibit 19 was entered into
4 evidence.)

5 Q Okay. So we have three charts now that we're
6 comparing; is that correct?

7 A Well, actually, I prepare the charts for court. But I
8 prepare the acetate sheet and compare it to the actual lift
9 itself -- a photograph of the lift from the steel plate.
10 And I ---

11 Q All right.

12 A --- I use the shoe as the basis for that. And it is
13 included in the comparison.

14 Q Okay. So what we've just introduced appears to be a
15 picture of the bottom of the shoe; an acetate lift from the
16 bottom of the shoe; and then, a photograph from the metal
17 sheet that came from the safe; is that correct?

18 A That is correct.

19 Q And arrows are pointed -- are -- are included in each
20 of these designs?

21 A Yes, sir.

22 Q Are those all pointing to -- what are those all
23 pointing to: the same thing?

24 A Identifying characteristics that I found that were
25 unique to that shoe.

CROSS-EXAMINATION BY MR. VERNER - CHARLES COUNTS 260

1 Q Okay. After your examinations and after your acetate
2 lifts and looking at the actual shoes, were you able to
3 come to a conclusion -- did you form an opinion?

4 A Yes, sir, I did.

5 Q What is your expert opinion?

6 A That the impression on the metal safe plate was
7 produced by the left shoe -- this left Fila shoe.

8 Q Okay. So that left Fila shoe produced the print from
9 this sheet of metal?

10 A Yes, sir, it did.

11 Q Thank you. Please answer any question Mr. Verner
12 might have.

13 THE COURT: Mr. Verner?

14 CROSS-EXAMINATION

15 BY MR. VERNER:

16 Q Good morning, Captain.

17 A Good morning, sir.

18 Q The -- you -- you sealed the plate in the evidence bag

19 ---

20 A Yes, sir, I did.

21 Q --- for trial?

22 Do you know why the bag would be open ---

23 A I ---

24 Q --- prior to trial?

25 A Yes, sir. I took it -- I -- I cut it open myself and

1 -- and was preparing these charts for court.

2 Q Okay. So ---

3 A After I finished processing it, I sealed it. And then
4 I brought it back out to make the photographs for the
5 charts for court. And I have that documented in the ---

6 Q Well -- well, when it came to you, it -- it just came
7 as a metal plate?

8 A Correct.

9 Q Okay.

10 A But ---

11 Q And the -- you don't know, other than what you've been
12 told, where the metal plate came from?

13 A That is correct.

14 Q Did you personally visit the Shops on Wilson Road on
15 May 27th?

16 A No, sir.

17 Q At -- at all as part of this investigation, did you
18 visit the Shops on Wilson Road?

19 A No, sir. It was my understanding it happened over the
20 weekend. And I only work on Wednesdays.

21 Q Okay. The -- so all you were really given was the
22 metal plate and the shoe?

23 A That is correct.

24 Q Okay. And -- and also, as far as where the shoes come
25 from, you wouldn't have any personal knowledge?

CROSS-EXAMINATION BY MR. VERNER - CHARLES COUNTS 262

1 A No, sir, I would not.

2 Q Okay. The -- and then, when you first -- I think it
3 was June 20th of last year that you did this -- that you --
4 you just said that you did it on -- around June 20th?

5 A That's when I -- yes, sir -- took ---

6 Q Okay.

7 A --- the impressions of the shoe and put my initials
8 and date on it. Yes, sir.

9 Q Okay. And at that time you would've made a photograph
10 of the impression of the shoe tread?

11 A I did. Yes, sir. I made some then. And I also made
12 some later for court purposes.

13 Q Okay. Is this the one that you made then or recently?

14 A I'm sorry. I made so many of them. I couldn't tell
15 you.

16 Q Okay. Is this one that you made then or more
17 recently?

18 A That is a photograph of the actual acetate sheet ---

19 Q Yes, sir.

20 A --- that I prepared for the Court. And I made many
21 acetate sheet to make sure that I got documented the
22 correct area.

23 Q Well, I'm -- I'm just curious when you took this
24 photograph: then or more recently before court?

25 A I would have to refer to my notes. I rephotographed

1 it on 3/6 of 2013.

2 Q Okay. So they may or may ---

3 A So ---

4 Q --- not have been the same prints you took then? But
5 I -- I guess the purpose of photographing them again was to
6 put them into more demonstrative or -- or showable format?

7 A Yes, sir.

8 Q Okay. And ---

9 A I ---

10 Q --- at that time you would've also taken the metal --
11 these here out of the evidence seal?

12 A Yes, sir.

13 Q Okay. And it was sealed at the time you opened it up
14 again in May or ---

15 A Yes, sir.

16 Q --- March?

17 A Yes, sir. That's correct.

18 Q Okay. And I think Investigator Goodman -- well, I --
19 I suspect -- but did you have a large hand in helping to
20 train Investigator Goodman in some of the stuff that he
21 does today?

22 A Yes, sir.

23 Q Okay. The -- and he took about -- do -- do you know
24 how many photographs he took of the scene?

25 A I do not. I'm sure he took a good many. We worked

1 together for over a decade as investigators. And he's ---

2 Q You ---

3 A --- very competent. I'm sure he took plenty.

4 Q If -- if there appear to be photographs of other shoe
5 patterns that were taken by Investigator Goodman, what
6 would that indicate to you?

7 A That ---

8 Q Like zigzag shoe patterns or -- in -- in general, a
9 layperson, I can look at a shoe print and get a general
10 idea of what -- maybe not in great detail or understand,
11 you know, ridge detail. But ordinarily, looking at shoe
12 impressions, if they're clear enough, almost anybody can
13 get a good, general idea of what type of shoe that is if
14 you compare it to the sole?

15 A Well, I don't think that's a fair statement because
16 many different companies overseas will produce outsoles and
17 then sell them to Nike or Reebok or -- so it's -- even the
18 sizes vary. So -- but you have to take each individual
19 shoe on its own merit and go by the actual design --
20 outsole design itself. You can't judge mainly on the guess
21 what size you're dealing with. There might be up to 30
22 millimeters on a size 10 coming out of Taiwan difference
23 than one might come out of Japan ---

24 Q But -- but you're ---

25 A --- you know.

1 Q --- talking about making an individual positive
2 identification against the -- a specific shoe, though,
3 aren't you?

4 A Yes, sir. On individual examinations you have to take
5 the shoe as it is and the outsole design, looking for wear
6 characteristics, the shape and size of the outsole design,
7 and those identifying characteristics that become very
8 crucial to make a positive examination.

9 Q Okay. I'm just talking about in general. If -- if
10 ten basketball players, each one wearing a different shoe,
11 and one of them put an impression in the sand and then
12 everybody lifted up their shoe where I could look at their
13 shoe ---

14 A Yes, sir.

15 Q --- you're saying I couldn't, in general, figure out,
16 just as a layperson, which shoe it came off of?

17 A Certainly. Certainly.

18 Q Okay. So -- so, I mean, they -- they have very unique
19 and specific features. But in general, if you get a clear
20 enough impression, an -- an average person could pretty
21 much match it to a type of shoe if he had that shoe to
22 compare it?

23 A They could -- they could -- it depends on whether you
24 want to testify an expert. You would have to do a little
25 more exam of that for the accidental characteristics, or

1 the identifying characteristics. But just to look at the
2 basic shoe design, you're correct. Yes, sir.

3 Q Okay.

4 A You could say, Well, that looks -- that looks like
5 your shoe because it's the same outsole design.

6 Q Now -- and -- and if the sole had, like, zigzag
7 designs on the bottom of it and -- and had a fairly clear
8 impression, then I -- I could certainly see the zigzag
9 would differ from square or from circles or -- okay.

10 A Yes, sir.

11 Q If -- if there are photographs of shoes with other
12 features, like zigzags in the pictures that Mr. Goodman
13 took of the scene, what would that indicate to you?

14 A That another set of shoes was there.

15 Q Okay. The -- and -- and presumably, that would be
16 another person in that set of shoes?

17 A Well, somebody wearing a pair of shoes. I don't know

18 ---

19 Q Could be the same person wearing ---

20 A It could ---

21 Q --- different ---

22 A --- be an ---

23 Q --- shoes or ---

24 A --- employee. It could be an officer. It could be --

25 I ---

1 Q Okay.

2 A --- it could be anybody. Yes, sir.

3 Q Okay. The -- were you given any kind of fingerprints
4 in this case to analyze?

5 A I only had one. And that actually came off that
6 silver plate also. But once I lifted it, I deemed it was
7 not suitable for identification.

8 Q There is also a fingerprint on this -- on -- on the
9 same side that the shoe pattern was on?

10 A No, sir. It was on the front.

11 Q On the front side?

12 A Yes, sir. Yes, sir.

13 Q But ---

14 A It was just a small amount of ridge detail that ---

15 Q But basically, it just wasn't sufficient for you to
16 ---

17 A Correct.

18 Q But that would -- that would indicate to you that
19 somebody not wearing gloves was holding that piece of
20 metal?

21 A Well, at some point in time.

22 Q Okay.

23 A You can't date a fingerprint. It could be put on
24 there within minutes of the officer seeing it or me seeing
25 it or days or weeks.

1 Q The ---

2 A But it was on the outside of the plate.

3 Q The -- well, do fingerprint last -- how long does a
4 fingerprint last on an item?

5 A There is no set time for fingerprints. It depends on
6 the perspiration -- the amount of perspiration that
7 somebody's perspiring. That's what constitute 99.5 percent
8 of a fingerprint. In your hands or the bottoms of your
9 feet where your palms come in contact, there's tiny pores
10 on tops of the ridges in these -- this particular area of
11 your skin. And you have a tendency to deposit that.

12 Some people don't sweat a lot. Some people sweat a
13 good bit. Other people might have some kind of oil or
14 lotion on their hands, which will keep the fingerprint or
15 constitute that perspiration for a good while. And it
16 depends on the surface that you touch. The -- they have
17 developed fingerprints on the Nazi war-criminal papers that
18 were locked in a safe 40 years after the actual crimes
19 itself.

20 Normally, out in the hot sun or something, it'll
21 dissipate pretty quickly.

22 Q The -- and you also -- well, how many -- as part of
23 the -- you're not just in -- a lab-type officer; you're
24 also a -- investigating crime scenes as part of your job?

25 A Yes, sir.

1 Q Okay. And I -- I don't want to say a number. But you
2 would be -- have gone to hundreds of crime scenes as well
3 as going and doing your lab work -- maybe in the thousands?

4 A Yes, sir. Thousands.

5 Q Okay. The -- DNA is the -- comes from your blood or
6 your saliva, urine? That -- that's the ---

7 A Hair ---

8 Q --- sources that DNA comes from?

9 A Yes, sir. Hair, seminal fluid.

10 Q Okay. Pretty much, any part of your body you can ---

11 A Body fluids ---

12 Q --- have a chance of getting DNA taken from it?

13 A Correct.

14 Q And -- and also from sweat or things that --
15 secretions from the body?

16 A Yes, sir.

17 Q Would -- would you leave it in a drinking cup or a
18 drinking bottle of water?

19 A Yes, sir.

20 Q Okay. And -- and in many ways DNA is more specific
21 than a lot of the other techniques? Maybe not in every
22 ways, but in many ways DNA is a fairly unique ---

23 A It is a very good tool. Yes, sir.

24 Q In -- in fact, paternity of children is established by
25 DNA?

CROSS-EXAMINATION BY MR. VERNER - CHARLES COUNTS 270

1 A I'm sorry?

2 Q Paternity of children is established by DNA?

3 A Correct. Yes, sir.

4 Q And -- and it goes to a very high probability of
5 accuracy?

6 The -- are you aware that -- that there was a drinking
7 bottle found at the scene; is that correct?

8 A Yes, sir. I helped process that.

9 Q By "processing," I -- I assume you mean dust it for
10 fingerprints or ---

11 A Yes, sir. I also took a -- let's see. In which
12 particular crime scene? One water bottle from -- with the
13 silver plate and all that, that was taken. Yes, sir. And
14 that -- that was swabbed for DNA.

15 Q The -- do you know what the results of that were?

16 A I do not. I haven't seen any results from the DNA.

17 Q Okay. Did you -- you -- you know of anything else
18 that was swabbed for DNA?

19 A In this particular box, three screwdrivers were
20 swabbed for DNA, two grinders; the actual silver plate was;
21 and one hammer.

22 Q Okay. So -- so several items were tested for DNA?

23 And in -- in ---

24 A They -- they were swabbed. The state lab has -- on
25 break-ins, limits us to two swabs per break-in. But I

1 don't let that interfere with the fact that I can't submit
2 that stuff. They won't take but two swabs.

3 What I do is go ahead and process that. Maybe years
4 down the road, it'll come into play where they'll let all
5 that stuff come in. But I just do it as a -- regardless of
6 how much evidence there is against anybody. I do it as a
7 precaution.

8 Q Okay. And I ---

9 A And I ---

10 Q --- I guess ---

11 A --- did that ---

12 Q --- if you're ---

13 A --- in a ---

14 Q --- if you're limited on how much you can send in, I
15 guess you choose what you think is the most likely?

16 A That's correct. They -- they have a -- a limit of
17 five on a homicide because of so many cases in South
18 Carolina and the backlog.

19 Q I -- I would think that you could exceed the limit,
20 but you would have to have a special permission to do it or
21 ---

22 A Correct.

23 Q Okay.

24 A Yes, sir. The chief of police would have to call and
25 arrange that. And ---

1 Q But ---

2 A --- it has been done. But -- and the time element:
3 One of the last cases that I had was almost three years old
4 when I got the DNA results back.

5 Q The -- it -- it's not rare anymore to take and submit
6 DNA samples. That's become fairly routine in
7 investigations, hasn't it?

8 A Yes, sir. It's ---

9 Q Okay.

10 A --- just the time element of getting the results back.

11 Q Right. But -- but -- would -- would you agree with me
12 that size 10 would be a fairly common size for men's shoes?

13 A Probably. Yes, sir.

14 Q The ---

15 A I would -- I would say the range for men, 8 to 12.

16 Q Okay. And did you review the video in any of these --
17 several of these stores have -- at least appeared to have
18 in-store video systems.

19 A No, sir, I didn't. The only thing I was asked to do
20 was the footwear and process the evidence.

21 Q The -- are you aware that several of these stores have
22 video or -- from -- from looking at the evidence afterward,
23 during, or just -- you don't know at all?

24 A No, sir. I don't know anything about that.

25 Q Okay. Thank you, Captain.

1 A Thank you.

2 THE COURT: All right. Redirect?

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

4 THE COURT: All right. Thank you, sir. You can step
5 down.

6 THE WITNESS: Thank you, Your Honor.

7 (Whereupon, the witness exited the witness stand.)

8 THE COURT: Call your next witness, please.

9 MR. SCOTT: The state rests, Your Honor.

10 THE COURT: All right. Ladies and gentlemen, there's
11 some matters that I will need to take up with the attorneys
12 before we can proceed further. This is also a good
13 opportunity for a brief break. So if you would, adjourn to
14 the jury room; don't talk about the case yet. And I hope
15 to have y'all back out here in the next ten or fifteen
16 minutes, okay? But go ahead and take a morning break, and
17 I'll see you shortly. Thank you.

18 (Whereupon, the jury exited the courtroom at 11:36
19 a.m.)

20 (Off the record from 11:36 until 11:45 a.m.)

21 THE COURT: We're back on the record in the *State v.*
22 *McCoy*. Mr. Verner, happy to hear from you at this point,
23 sir.

24 MR. VERNER: The -- well, I -- I guess we've been
25 under the habit of the Court instructing the defendant on

1 his rights to testify or not to testify, Judge. My -- my
2 anticipation is that he will not testify. But the ---

3 (Whereupon, Mr. Verner and the defendant conferred.)

4 MR. VERNER: --- the only thing I would intend to
5 offer at this point, Your Honor -- and I think it's proper
6 for the Court to take judicial notice -- that on May 27th
7 of last year, Eastern Standard Time, the sun would have set
8 at 8:18 p.m. And that comes from calendar.com. The
9 solicitor is looking at something, so he may -- I think
10 he's agreeing.

11 I -- the -- the question, I guess, is -- my
12 understanding that that could -- that the Court could take
13 judicial notice of -- of times and dates. The -- the only
14 question is, by introducing that evidence, whether I would
15 have offered evidence and lost my right to close.

16 THE COURT: I believe that the Court can simply take
17 judicial notice of that. I don't -- my understanding is I
18 can take judicial notice of anything: dates; times; I
19 guess, astrological phenomenon such as the setting of the
20 sun. I don't think that that would necessarily -- by
21 asking me to take judicial notice of that, I don't think
22 that constitutes evidence that the defense has offered.

23 MR. SCOTT: I agree, Your Honor.

24 MR. VERNER: The -- well, the -- from -- from my
25 review, Your Honor, the sun would have set on May 27th --

1 is that the night the crime ---

2 MR. SCOTT: I -- I stipulate to that, Your Honor.

3 MR. VERNER: --- 8:18 ---

4 THE COURT: All right.

5 MR. VERNER: --- p.m.

6 THE COURT: 8:18 p.m. Very good. The parties have
7 stipulated to that, and the Court will accept that as a
8 stipulation and take judicial notice of that fact.

9 MR. VERNER: The -- the ---

10 MR. SCOTT: Perhaps give also judicial notice of the
11 sunset -- or sunrise, rather.

12 MR. VERNER: Unfortunately, it probably -- in
13 fairness, that would come in. The following day, that
14 would be the 28th?

15 THE COURT: Right.

16 MR. BROWN: The ---

17 MR. SCOTT: The 26th?

18 MR. BROWN: --- 26th/27th.

19 THE COURT: Oh, that it rose on the -- but ---

20 MR. VERNER: Would have -- sun would have risen on
21 5:30 the 26th; 5:29 the 27th; and 5:29 the 28th.

22 MR. SCOTT: This is from last year?

23 THE COURT: Right.

24 MR. SCOTT: Because I have 6:17 a.m.

25 (Whereupon, Mr. Scott, Mr. Verner, and Mr. Brown

1 conferred.)

2 MR. VERNER: The solicitor actually has it printed out
3 specifically for Newberry. Mine was New York, Eastern
4 Standard Time.

5 THE COURT: Okay.

6 MR. VERNER: The solicitor has sunrise at 6:17 a.m.

7 THE COURT: On the 26th?

8 MR. VERNER: Why it would rise an hour early -- later
9 in Newberry than New York is -- but 6:17 a.m. both the 27th
10 and the 28th. I guess the 28th would be the time that the
11 officer identified he came on scene.

12 MR. SCOTT: No. 27th.

13 MR. VERNER: 27th? Okay.

14 THE COURT: So the 27th is ---

15 MR. VERNER: Would've risen at 6:17 in the morning.
16 And sunset actually, using their numbers, would have been
17 actually at 8:29 p.m. ---

18 MR. BROWN: 26th?

19 MR. VERNER: --- on the 26th. So, I mean, if -- if
20 we're using from the same ---

21 THE COURT: All right. Well, now, I'm -- now, I'm not
22 confused. Because I'm trying to figure out -- it -- it --
23 it's alleged that this incident took place the evening of
24 the 26th, right, the ---

25 MR. SCOTT: That's correct.

1 THE COURT: --- sometime between ---

2 MR. SCOTT: And ---

3 THE COURT: --- the 26th and the 27th, when we're
4 transitioning from those two days ---

5 MR. VERNER: Right.

6 THE COURT: --- correct?

7 MR. SCOTT: That's correct.

8 MR. VERNER: Evening would be 8:29 p.m. on the -- on
9 Saturday night.

10 THE COURT: The 26th?

11 MR. VERNER: The 26th. Yes, sir.

12 THE COURT: Okay.

13 MR. VERNER: And the sun would have risen at 6:17 the
14 next morning.

15 THE COURT: All right. That will be the stipulation
16 that the Court takes judicial notice of.

17 MR. VERNER: The -- Judge, just Mr. Scott was nice
18 enough to give me a copy of his proposed charges for
19 safecracking. The -- the -- the bottom sentence, I -- I
20 would object to. I -- I don't know where he got that: The
21 defendant does not have to succeed in breaking into the
22 safe for this conduct to constitute safecracking. I -- I
23 would just defer to the language of the statute, Your Honor.

24 MR. SCOTT: Judge, I believe there's a citation to go
25 with that. Your Honor, I could provide that to you.

1 THE COURT: The Court's instructions to the jury --
2 and let's go ahead and address that, because if I can get
3 those done, I can print copies out for everybody and you
4 can review what I've prepared. But my recollection is that
5 the Court's instruction to the jury on the safecracking
6 does already include that language. The bench book has
7 that, I believe, language in there.

8 And I will go ahead and read it to you: The -- all
9 right. It says: He's charged with safecracking, etc.
10 Then, it talks about intent. The next paragraph describes
11 larceny. And then, the final paragraph states: The
12 defendant does not have to succeed at breaking into the
13 safe for the conduct to be safecracking. And that's, I
14 believe, actually from a case from the '70s.

15 So I'm inclined to charge what's in the bench book.

16 (Whereupon, Mr. Scott and Mr. Verner conferred.)

17 MOTION BY DEFENDANT

18 MR. VERNER: The -- and just, Judge, on the -- you
19 know, I would move at this point for a directed verdict.
20 The -- I don't know that anybody from Regional came and
21 testified. Am -- am I mistaken?

22 MR. SCOTT: Yesterday.

23 MR. VERNER: The ---

24 THE COURT: I think that was -- that witness was ---

25 MR. VERNER: That ---

1 MR. SCOTT: That would've been both Ms. Hawkins and
2 Sherwin ---

3 MR. VERNER: Oh, that ---

4 MR. SCOTT: --- Jessie.

5 MR. VERNER: --- was the one -- yeah. Okay. Okay.

6 THE COURT: Right.

7 MR. VERNER: That was the one -- I'm sorry, Your
8 Honor.

9 That -- the -- well, why didn't you say Ms. Hawkins
10 and save me that argument? That -- that was the witness
11 that closed up yesterday. I apologize, Judge.

12 The -- I -- I think there was a petit larceny for that
13 water bottle, Judge. There was absolutely no testimony
14 where the water bottle came from, other than the person at
15 Checking In Cash [sic]. The district manager said it could
16 have been a food item; they keep water and food. But he's
17 also charged with a separate petit larceny count for the
18 Vienna sausages, isn't he?

19 I -- I think he's charged for -- with two petit
20 larcenies, one of them ---

21 THE COURT: You should ---

22 MR. VERNER: --- being ---

23 THE COURT: --- have the indictments and the
24 indictment that relates to the petit larceny you're
25 discussing would be the -880: food and beverages allegedly

1 taken from Check Into Cash.

2 MR. VERNER: The ---

3 MR. BROWN: Judge, I think the second petit larceny is
4 the stamps and coins ---

5 MR. VERNER: Okay. Okay.

6 MR. BROWN: --- that the witness testified also to.

7 MOTION BY DEFENDANT

8 MR. VERNER: It's the -- the food and beverages from
9 Check and Carry [sic] and the -- it is the -- I stand
10 corrected. The -- and I would also move for a directed
11 verdict on the -- and I'll look at the charge -- but the --
12 Mr. Goodman testified probably El-Amin was the first
13 business broken into and that the person worked his way and
14 then back out and then in again to Check In Cashing [sic]
15 or -- or else he did it this one first and then -- but the
16 -- definitely would've started at El-Amin or at least these
17 four, Judge.

18 Mr. Marshall from El-Amin testified that he would have
19 closed by 6:30 on Saturday, which leaves two hours of
20 daylight. The Boost Mobile was closed at 6 p.m., so that
21 was 2 1/2 hours of daylight. The Jackson Hewitt was not
22 even open for about a week, for three or four days. They
23 had closed Wednesday beforehand and wouldn't be open until
24 the following Wednesday. The -- so certainly, that -- all
25 day would've been open.

1 And I understand it comes from there. The -- Regional
2 Finance, that's the one where the lady indicated that she
3 had taken her -- come back after she had taken her son to
4 some game or something. The -- and -- and I understand
5 that that can reflect on the other two, which she had
6 testified that after it had closed, she had gone for some
7 period of time to be with her son and then she came back at
8 night.

9 The -- so while I think they can show that most likely
10 the burglary second-degree would've happened on Regional,
11 there would be several hours of daylight for these three.
12 And Check Into Cash, I think, would have been closed all of
13 Saturday. The -- and that -- that -- that's also, I guess,
14 the -- the lady at Regional would've been next door to it.
15 But . . .

16 THE COURT: All right. Well --

17 MR. VERNER: Or -- or Check Into Cash certainly
18 would've been closed. I thought she -- she testified both
19 that they close at 3 on Saturday. And then, she also
20 testified we weren't open at all on that Saturday, but
21 certainly would've been closed by 3 at the latest. I -- I
22 thought she said we -- we weren't open at all on that
23 Saturday, but we do work sometimes until 3 on Saturdays.

24 THE COURT: All right. Solicitor, what's the state's
25 position regarding that -- that directed-verdict motion?

1 MR. SCOTT: Your Honor, just that Ms. Hawkins did
2 testify she was there till 9 the night of the 26th. She
3 parks in the back. She talked about leaving and then
4 coming back and being there between the hours of 10 p.m.
5 and 11 p.m. Your Honor, she also testified that in parking
6 in the back, she didn't notice any of the damage that was
7 testified to, to the rear of these businesses, that being
8 the peeled-back sheet metal in the barbershop, nor the hole
9 in the wall at Check Into Cash.

10 So we -- we -- we know that it didn't happen before 10
11 to 11 p.m., well into the dark hours, the nighttime hours
12 of the 26th. Justin Weaver, who was the first on the
13 scene, Officer Weaver, he arrived on the scene
14 approximately 6 a.m., well before sunup. Your Honor,
15 obviously, we are talking about the existence some evidence
16 tending to show nighttime. Not necessarily the weight of
17 it, but that was testified to through Ms. Hawkins
18 yesterday.

19 THE COURT: All right. For those reasons I will deny
20 Mr. McCoy's motion for a directed verdict. Mr. Verner, are
21 there any -- is there anything that you want to charge or
22 that you want to -- the Court to consider as a lesser-
23 included?

24 MR. VERNER: The -- it would just be whether burglary-
25 third would be appropriate for the -- really, the three

1 northernmost buildings: the El-Amin to ---

2 THE COURT: All right. So you would be -- you would
3 be maintaining that he would be entitled to a burglary-
4 third lesser-included on Jackson Hewitt, Boost Mobile, and
5 El-Amin?

6 MR. VERNER: The three on the left, Your Honor,
7 certainly, were open -- all open no later than 6:30, two
8 hours before the sunlight -- the -- the ones on the three
9 on the left would have been.

10 THE COURT: Three on the left. Okay. So Check Into
11 Cash, Regional Finance ---

12 MR. VERNER: I -- I apologize, Judge.

13 THE COURT: Help -- help me out. I'm trying to
14 remember the testimony myself. And so ---

15 MR. VERNER: The El-Amin would've been open by 6:30 --
16 would have been closed, at least, by 6:30 in the evening.
17 Boost would have been closed by 6 p.m. in the evening. And
18 nobody would've been at Jackson Hewitt at all that day.
19 And the -- the lady did say that she came back sometime
20 around ten o'clock/eleven o'clock at night to Regional.

21 THE COURT: Correct.

22 MR. VERNER: Check Into Cash, I -- I think, she
23 indicated was not open that Saturday. But -- but she also
24 indicated sometimes they work until 3. And I wasn't really
25 clear which one she -- but certainly would've been open by

1 three o'clock. I guess it would be a question of fact
2 whether the lady would have seen the hole in the wall when
3 she came back at nighttime or not.

4 But I -- I think, conceivably, that could also be a
5 burglary-third charge. But that would be the toughest to
6 sell it on, Judge. But -- but certainly, I think it would
7 be appropriate for the Jackson Hewitt, Boost Mobile, and
8 El-Amin.

9 THE COURT: All right, Solicitor. It does appear to
10 be somewhat of a question of fact as to whether this took
11 place during the daylight hours or at night. I understand
12 the state's position that, clearly, the -- I mean, I know
13 what you're going to hang your hat on. It's going to be
14 the lady that came back late at night and nothing was
15 wrong; and so clearly, based on the nature of this, here's
16 what we think happened.

17 At the same time, it's conceivable that one might
18 burglarize the other businesses and not be alerted -- or
19 the person who was there not be alerted to their presence.
20 So I would be inclined to charge burglary-third on the four
21 businesses that we're talking about: El-Amin, Boost,
22 Jackson Hewitt, as well as Check Into Cash.

23 MR. SCOTT: Check Into Cash as well, Your Honor? She
24 -- she specifically stated that she would have driven this
25 way; would've seen the hole in the wall.

1 THE COURT: My recollection's a little fuzzy on her,
2 I'm afraid. I have my notes. But I -- I'll go ahead and
3 charge burglary-third out of an abundance of caution on
4 Check Into Cash. Anything else, Mr. Verner, aside from me
5 talking to your client?

6 MR. VERNER: The -- no, Judge. I -- I think it's
7 pretty much just arguments at this point.

8 THE COURT: All right.

9 (Whereupon, Mr. Verner and Mr. Scott conferred.)

10 THE COURT: Gentlemen, if you could, just afford me
11 five minutes. Let me fix these instructions. I'll print
12 out copies, let you look at them, and then we'll keep
13 rolling.

14 (Off the record from 12:02 p.m. until 12:15 p.m.)

15 THE COURT: All right. If we may, let's go ahead and
16 go back on the record real quick, please.

17 All right. Now, Mr. McCoy, at this point in time, I
18 need to ask you ---

19 (Whereupon, Mr. Verner and the defendant conferred.)

20 THE COURT: --- just a few questions about your right
21 to testify, okay, sir? And I believe I placed him under
22 oath yesterday, correct?

23 MR. VERNER: I believe you did ---

24 THE COURT: All right.

25 MR. VERNER: --- Your Honor.

1 THE COURT: So consider yourself still under oath,
2 okay, Mr. McCoy?

3 Now, Mr. McCoy, at this time I'm going to explain to
4 you certain rights that you have. And if you don't
5 understand something I'm saying to you, stop me and I'll
6 let you talk to Mr. Verner or you can ask me, okay, sir?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: All right. Now, we've reached the stage
9 of the trial where you can present a defense. And you have
10 the right to claim the protections guaranteed to you under
11 the Fifth Amendment of the Constitution of the United
12 States. And, of course, South Carolina has a similar
13 amendment. This amendment says that no person shall be
14 compelled in any criminal case to be a witness against
15 himself. You understand that?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: What this means is that you can't be
18 required to testify in this case. You certainly have the
19 right to testify on your own behalf. However, no one can
20 make you testify, not myself, Mr. Verner, not the
21 solicitor. No one can force you to testify because this is
22 a personal right that belongs to you and it can only be
23 waived by you. Do you understand that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Now, if you decide to testify, understand,

1 Mr. McCoy, you'll be subject to the same rules that govern
2 other witnesses and you can be examined or cross-examined
3 on any relevant issue in this case.

4 Additionally, I've been made privy to your criminal
5 history. If you have any convictions or the convictions
6 involving dishonesty or false statements or crimes that are
7 punishable by more than a year in prison, if the Court
8 determines that the probative value of admitting this
9 evidence outweighs its prejudicial effect, the solicitor
10 will be able to introduce your records to attach -- or your
11 criminal convictions to attach your -- to attack your
12 credibility. Do you understand, Mr. McCoy?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Now, if you decide to testify, this
15 decision on your part has to be freely, voluntarily, and
16 intelligently made with knowledge of the protections given
17 to you by the Constitution and the Fifth Amendment and the
18 consequences of your decision to testify.

19 Now, if you decide not to testify, I'll tell the jury
20 that they cannot give the fact that you didn't testify any
21 consideration whatsoever and that there is to be absolutely
22 no prejudice to you because you chose not to testify.

23 Now, this decision, Mr. McCoy, is left entirely up to
24 you whether or not you want to testify. You can certainly
25 talk to your attorney or anyone else, but you understand

1 the final decision will be left up to you. Do you
2 understand that, sir?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: All right. And have you understood what I
5 explained to you?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Anything that you want to ask me about
8 anything we've discussed?

9 THE DEFENDANT: No, sir.

10 THE COURT: All right. And, Mr. McCoy, I've been told
11 by your attorney that -- that in all likelihood, you --
12 you've chosen not to testify; is ---

13 THE DEFENDANT: Yes, sir.

14 THE COURT: --- that right?

15 And you understand at this point in time, I have not
16 made any determination as to what offenses would be
17 impeachable. Do you understand that?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: But obviously, for tactical reasons,
20 perhaps you and Mr. Verner feel it would be best to have
21 the last argument. The way I usually do this is if you
22 need to talk to your lawyer, certainly, you'll have an
23 opportunity to do so. But when the jury comes back out and
24 I ask Mr. Verner for his case, if he calls you as a
25 witness, I will assume that you've waived that right under

1 the Fifth Amendment. Is that acceptable?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Okay. At the same times, if he rests,
4 I'll assume that you're asserting your Fifth Amendment
5 right, okay, Mr. McCoy?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: All right. Very good. Thank you very
8 much.

9 THE DEFENDANT: Thank you.

10 THE COURT: You can have a seat, sir.

11 All right. Anything else before we bring the jury
12 out?

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

14 THE COURT: All right.

15 MR. SCOTT: Well, I -- I guess at another time we'll
16 talk about the instructions?

17 MR. VERNER: Well, I think now is the proper time, I
18 guess.

19 THE COURT: I -- if -- if we need to talk about it
20 now, why don't we go ahead and do it now. Because I kind
21 of want to launch straight into there. I don't know if the
22 jury -- we're getting up to 12:20, and I think they're
23 going to want some pizza or something at one o'clock.
24 Let's do this: Madam clerk, go and poke your head in
25 there. Tell -- tell them I'd like to work through lunch

1 and we'll order them some pizza if they want. At the same
2 time, if they want to break for lunch because they don't
3 want pizza, that's fine with me too. We can break around
4 one o'clock. So ask them what ---

5 MR. VERNER: But they ---

6 THE COURT: --- they want ---

7 MR. VERNER: --- need to ---

8 THE COURT: --- to do.

9 MR. VERNER: --- do it all as a group or they need to
10 ---

11 THE COURT: I -- I -- I'm not going to have some here
12 and then some walk off, so they'll need to make a decision
13 on that.

14 (Off the record briefly.)

15 MR. SCOTT: Your Honor, the only thing that -- just
16 perusing through here, I would ask that "nighttime" be
17 defined as the period between sunset and sunrise. I -- I
18 -- I know -- I recognize the language about the -- there
19 being enough daylight to recognize a person's face and then
20 the artificial moonlight and everything. I'd submit to
21 you, I -- I think that is a ---

22 MR. VERNER: What page are you on?

23 MR. SCOTT: Oh, I'm sorry. Page 15. I -- I think it
24 is recognized that nighttime is the period between sunset
25 and sunrise. Perhaps the case that the moonlight and

1 artificial light and the person's face and that language
2 came from may be a little bit outdated.

3 THE COURT: I'm feeling ---

4 MR. SCOTT: But we would accept the fact that
5 nighttime is the -- what we talked about earlier -- sunset
6 to sunrise and we'll stipulate to times.

7 THE COURT: Personally, I do feel that that language
8 is also antiquated. But, Mr. Verner, do you have a strong
9 position on this one way or another?

10 MR. VERNER: I -- I -- I think the Court's definition,
11 actually, is more beneficial to the state, quite frankly.
12 The -- nighttime is the period between sunset and sunrise
13 during which there is not enough daylight -- I -- I think
14 what makes it first-degree burglary or -- or the enhanced
15 aggravating factor is that you could not see the intruder
16 from outside the home. I -- I don't know ---

17 THE COURT: If you want me to take it out, I'll be
18 happy to take it out.

19 MR. VERNER: And I -- I think it's appropriate as it
20 is. And quite frankly, Your Honor, I'm just going to argue
21 along the solicitor's line anyway that sunset marks
22 nighttime.

23 THE COURT: All right.

24 MR. VERNER: So -- so my argument is not going to
25 really tread on any issue that I think he's bringing up.

1 But ---

2 THE COURT: Okay.

3 MR. VERNER: --- I -- I don't really -- I think he's
4 anticipating I'm going to argue something differently than
5 I am. I -- I don't, off the top of my head, appreciate
6 what he's concerned I'm going to ---

7 THE COURT: I -- I will use, then, the time-tested
8 definition, Solicitor.

9 (Off the record briefly.)

10 THE COURT: Anything else before I bring the jury out
11 and we proceed, gentlemen?

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

13 THE COURT: Okay.

14 MR. VERNER: I didn't read, Your Honor, the charge.
15 But the -- the -- is burglary-third included in the charge?

16 THE COURT: It is. And the way I -- I've tweaked it a
17 little bit; basically just said it's a lesser-included
18 where -- it's on page 15 ---

19 MR. VERNER: All the -- okay. Well, that's -- that --
20 that's -- I -- I read it. And that's how I'm going to
21 argue it: that nighttime ---

22 THE COURT: Yeah.

23 MR. VERNER: --- is the distinguishing ---

24 THE COURT: Elements of second-degree burglary of a
25 building except the circumstances of aggravation; namely,

1 that the crime occurred in the nighttime.

2 MR. VERNER: That's how I'm going to argue it.

3 THE COURT: Right. All right. Did the clerk come
4 back out?

5 MR. VERNER: Not yet.

6 THE COURT: Not yet? As soon as she comes out, bring
7 the jury out, please.

8 (Off the record briefly.)

9 (Whereupon, the jury entered the courtroom at 12:25
10 p.m.)

11 THE COURT: Let the record reflect that the jury is
12 back and seated. At this point in time, Mr. Verner, your
13 case, sir.

14 MR. VERNER: Your Honor, I -- I believe the Court, in
15 the break, has agreed to take judicial notice that the sun
16 set at 8:29 p.m. the evening of May 26th; is that correct?

17 THE COURT: That is correct. Ladies and gentlemen,
18 the Court has taken judicial notice and the parties have
19 stipulated to a certain fact. And the way a judicial
20 notice -- or the way taking judicial notice of something
21 works is I'm allowed to basically recognize a common fact
22 or a fact that's easily proven, okay, such as the earth
23 revolves around the sun. That's a common fact that
24 everybody knows, and I'm allowed to take judicial notice of
25 that.

1 I'm also allowed to take judicial notice of the time
2 and -- and -- and date on which the sun rises and sets.
3 And in this case the parties and the Court agree that on
4 May the 26th, the sun set at 8:29 p.m. And on Sunday, May
5 27th, the sun rose at 6:17 a.m. Okay? So that's a fact
6 that you can take; nobody has to prove it. It is -- you
7 can consider it a fact that exists as plainly as we exist,
8 okay?

9 At that point, Mr. Verner, anything further, sir?

10 MR. VERNER: If -- if that's the state's case, with
11 that acknowledgment, Your Honor, I -- I think the jury
12 should have the case.

13 THE COURT: All right. Ladies and gentlemen, we've
14 reached that portion of the case where all the evidence has
15 been received by the Court and by you. We will now proceed
16 with the closing argument of the attorneys involved in this
17 case. And the way that we'll -- we'll go is the state will
18 have an opportunity to argue first, to be followed by Mr.
19 Verner.

20 I will tell you that what the attorneys tell you
21 during their arguments, of course, is not evidence in this
22 case. It is only their contention as to what has been
23 proven or has not been proven. You must judge this case
24 based solely on the evidence that you have heard from the
25 witness stand.

1 And because you are the judges of the facts in this
2 case, if the lawyers make reference to a fact, okay, and
3 what they say the fact is differs from what your
4 recollection of the facts is, you should go with your
5 recollection. All right? For example, if one of the
6 lawyers said, "Yesterday, when I came in here to the
7 courthouse, it was raining," and your recollection was that
8 at that particular point in time, it was sunny and bright
9 and beautiful, you should go with your recollection as to
10 them -- as opposed to them saying that it was rainy, okay?

11 Now, with that, Solicitor, you are invited to give
12 your closing, sir.

13 MR. SCOTT: Thank you, Your Honor. May it please the
14 Court?

15 THE COURT: Yes, sir.

16 CLOSING ARGUMENT BY MR. SCOTT

17 MR. SCOTT: Ladies and gentlemen of the jury, when you
18 go to do a job, make sure you have the right tools for the
19 job, right? We talked about that. I -- I -- I talked
20 about tools a lot in my opening statement. I suspect you
21 know why now.

22 May 26th Jeff McCoy came down from Tennessee here to
23 Newberry. And he had a large amount -- I'd submit to you a
24 Taurus -- Ford Taurus full of tools with him. And that was
25 because he was coming to Newberry to do a job.

1 We went through a lot of evidence. We looked at a lot
2 of tools. I submit to you, that evidence was fairly
3 overwhelming. And that evidence pointed to one conclusion,
4 and that is the guilt of Mr. Jeffrey McCoy.

5 I don't get any joy of piling this evidence on. You
6 guys probably got kind of tired of all the pictures, all
7 the tools, all the testimony. But it's my job to present
8 this evidence to you, evidence tending to show his guilt.
9 I have nothing to do with the existence of that evidence.
10 I'm only presenting it to you for your consideration.

11 I submit to you, there's a lot of evidence to
12 consider. And it all points to one conclusion: Jeffrey
13 McCoy is guilty of the charges as indicted.

14 What do we know now after -- I don't know -- day and a
15 half of testimony? We know Jeff McCoy came here to
16 Newberry from Tennessee May 26th of last year; went right
17 to the Budget Inn; slapped \$90 on the table; said, "Give me
18 a room for two nights. I'm only going be here two nights.
19 I got my tools with me. I got a job to do. I've got a
20 plan. I've got a purpose. And I'm equipped, come to do my
21 job."

22 And we've got his receipt with his name on it from the
23 Budget Inn. We heard Ms. Patel yesterday talk about him
24 checking in. They keep the records of anyone who checks
25 in; that he paid \$90 for two nights; checked in on the

1 26th.

2 What happened on the 26th? Well, all the shopkeepers
3 and all the people who were shopping at the Shops on Wilson
4 Road -- Check Into Cash, Regional Finance, Jackson Hewitt,
5 Boost Mobile, El-Amin Barbershop -- they wouldn't have
6 noticed anything out of the ordinary that particular day.
7 The folks who testified that they were there working on
8 that particular Saturday said as much. There weren't holes
9 in the wall. There weren't tools laying on the floor. The
10 safes weren't busted up. It was as it had been all week.

11 So what happened on the 26th? Jeff McCoy came to town
12 and checked into the Budget Inn; got in Taurus full of
13 tools and went to do his job. We know that there's a hole
14 in the back of Check Into Cash in the cinder block wall.
15 We know that the sheet metal had been peeled back from El-
16 Amin Barbershop, and there was a hole in that wall. We
17 know there's holes all through these partitions.

18 We know that Regional Finance had various coins, gold
19 coins, rolls of stamps taken. We know Boost Mobile was
20 cleared of pretty much their entire display. Check Into
21 Cash had a safe that was vandalized; it was attempted to be
22 broken into. Had some food items stolen, and that was
23 testified to.

24 Justin Weaver -- well, let me back up. Regional
25 Finance -- yesterday Ms. Hawkins, who -- who sits here

1 today, watching, she testified that she worked that
2 Saturday, May 26th. She was a very important witness, I
3 submit to you. Want to know why? One of the elements we
4 got to show in burglary-second is the aggravating factor I
5 talked about. Nighttime was the aggravating factor in this
6 case. We got to prove that to you guys.

7 Wish I could show you videotape. Mr. McCoy cut all
8 the video cameras. Can't do that.

9 But what we have is Ms. Hawkins stayed at Regional
10 Finance till nine o'clock that night. She was cleaning.
11 Left Regional Finance at nine o'clock, well into the
12 nighttime hours. Judge just instructed y'all on judicial
13 notice on what constitutes nighttime. We're going call it
14 the hours between sundown and sunup.

15 Specifically, we said on the 26th, it became nighttime
16 at 8:29 p.m. She's talking about being there at 9 p.m., 30
17 minutes after -- 30 minutes into the nighttime. But she'd
18 tell you later than that. She comes -- takes her child to
19 a skating rink, I believe her testimony was. Then she
20 comes back -- or maybe she went there while her daughter
21 was at the skating rink.

22 Either way, her testimony was that she went back to
23 Regional Finance between the hours of 10 and 11. Her
24 testimony was she pulled to the back of the store. She
25 would've passed Check Into Cash; parked back here. That

1 hole wasn't there. Jeffrey McCoy had not done it yet.

2 So at -- between 10 and 11, he still hadn't broken
3 into Check Into Cash. She saw nothing out of the ordinary
4 on the back row.

5 We know it happened in the nighttime. He's going to
6 tell you it wasn't the nighttime; it hadn't been proven.
7 You know it was the nighttime, ladies and gentlemen.

8 Justin Weaver, the officer the next day, and shows up
9 and discovers that this -- this building had been broken
10 into. He gets there at 6 a.m., okay? That's before sunup.
11 Sunup on the 27th is going to be 6:17 a.m. So we know it
12 happened between 10 p.m. and 6 a.m. Those are nighttime
13 hours, okay? So we've got that element down.

14 Aggravating factor, night: check. Entry into the
15 building? That's well established. The holes in the wall?
16 That's how he got in. Hole here; hole here; hole; hole;
17 hole. Couldn't get through this wall, so we think he went
18 out the back door and broke in through the back wall.

19 It kind of goes without saying those types of entries,
20 we pretty much assume they're without consent. But we had
21 each one of these shop owners come testify that: No. I
22 didn't give anybody consent to break in through my cinder
23 block wall. No. I didn't give anybody consent to tear
24 down the Sheetrock between our stores. Without consent.

25 The intent to commit a crime therein? What do y'all

1 think Mr. McCoy was there to do? He was there to steal,
2 take things that didn't belong to him, tear up these shops,
3 and leave town.

4 Every one of these elements for this burglary-second
5 are satisfied for every one of those buildings. And what
6 we have: five different businesses, five burglaries. Made
7 entry without consent, an intent to commit a crime therein
8 in every one of them, and it happened at night.

9 Don't be mistaken. It was at night. You heard Ms.
10 Hawkins testify to it. I don't know if anybody would be
11 that brazen -- I'm -- to do it during the daytime. But we
12 know for a fact it was at night.

13 All right. There's also a grand larceny charge. That
14 comes from the Boost Mobile, okay? That's him taking all
15 those phones, phones that were found in his room. And
16 there was testimony today that there was -- the value of
17 those phones was \$10,204, okay? He's indicted for grand
18 larceny over \$10,000. He beat the \$10,000 threshold by
19 \$204. That's where your grand larceny indictment is going
20 to come from.

21 You're going to consider two petit larcenies. Petit
22 larceny is taking and carrying away a belongings that
23 belong to somebody else with the intent to convert them to
24 your own use. Anything under \$2,000 is considered petit
25 larceny. The Regional Finance he took some gold coins and

1 some quarters and some rolled coins and some stamps. Under
2 \$2,000, that's a petit larceny. That's where that charge
3 comes from.

4 Check Into Cash, another petit larceny. I think he
5 took some Vienna sausages. And those were on the road back
6 behind the building, obviously under \$2,000. Maybe some
7 other snacks, I think, under \$2,000, that's petit larceny.

8 You're going to consider a safecracking charge. All
9 right. Safecracking is from the Check Into Cash. And
10 those are those pictures we had with the safe -- I -- I
11 know y'all got tired of those pictures -- with all the
12 tools out in front of them. But -- but that's one of the
13 charges he's here to answer for, so I had to cover it.

14 You see the burn marks on it. You see where he
15 actually was able to cut a strip off the veneer. He
16 doesn't -- the judge will instruct you, just because he was
17 unable to successfully get into the -- inside the safe --
18 ultimately, he was unsuccessful -- it's still safecracking.
19 The fact that he went to town on that safe with his tools
20 with the intent to get in and valuables are kept in that
21 safe on a regular basis, that makes it safecracking.

22 I believe -- I want to cover all his charges. I think
23 the other one is a possession of tools used for burglary.
24 All those tools we talked about, it's our -- our
25 contention, that those were used for the purposes of

1 burglarizing these buildings. And I think that's
2 abundantly clear.

3 Just because you or I may use those tools for
4 legitimate purposes doesn't -- doesn't prevent them from
5 being burglary tools when used in the hands of somebody
6 like Mr. McCoy. Because his intent for those tools on this
7 night was to do burglaries.

8 After May 26th and in the early-morning hours of May
9 27th -- okay. Because they find it May 27th. That was
10 Justin Weaver yesterday, the officer who was on the scene.
11 I thought it was interesting, too, another thing we have to
12 put it in the nighttime, to me: He gets there at 6 a.m.,
13 okay? So I know you and I may think of 6 a.m. as being the
14 morning time. We wake up and have our coffee at 6, get
15 ready for work. But it's nighttime for purposes of this
16 trial.

17 He talks about going in after he sees the hole and the
18 peeled-back sheet metal and smelling burning metal. It was
19 his fear that the person was still in there. To him, he
20 testified it seemed like it was something that had either
21 just occurred or was occurring as he was there. That's why
22 he went business to business to business, clearing the
23 whole area to make sure nobody was still in there.

24 Brought in investigations; that'd be Kevin Goodman,
25 who sat at my table this week. He took pictures of the

1 scene. They collected evidence. And then they went into
2 the night of the 27th without a suspect. They didn't know
3 who had done this at that point.

4 That -- that brings us to Boris Alvarado, who -- who's
5 here with us today. They call him "Al." He testified that
6 on the night of the 27th -- that was a -- a Sunday night --
7 Newberry Police Department, they were probably a little
8 flustered, pretty aggravated they had been had. Somebody
9 had burglarized this strip mall, and they didn't catch
10 them. So their sense of security -- or, I guess, their
11 vigilance that night was probably heightened. They were
12 going to be extra vigilant that night.

13 Boris Alvarado talked about going to the Shops at Bear
14 Village, okay? That -- I hope that wasn't too confusing
15 that we were dealing with these two different incident
16 locations. But they were really very similar in that they
17 were both strip malls. I believe the testimony was that
18 they were about eight tenths of a mile apart.

19 Y'all are going to have all these for your
20 consideration. But pretty much this -- this map depicts
21 the relation of the two. Wilson Road -- I call it "Highway
22 76" -- splits the middle. This is Bear Village right up
23 here, okay? This is -- this is Sunday night.

24 This down here is the Shops on Wilson. Shops on
25 Wilson are these that we've talked about so exhaustively.

1 That happens on the night of the 26th.

2 Mr. Alvarado is patrolling Bear Village the next
3 night. I hope all this was clear to y'all. I know it got
4 confusing at times. He talks about doing property checks,
5 because they -- they were aware this happened the night
6 before. They're going catch this guy. They're not going
7 let it happen again.

8 Goes around the corner; it's nighttime, again. And
9 he's surprised to see a man crouched down behind some
10 heating and air units. Up pops, who else, Jeffrey McCoy.
11 What does he have with him: tools in his pocket; gloves in
12 his hand -- I -- I submit to you, very distinguishable
13 gloves, very, very similar to the ones that appear in his
14 hotel room. He's got a bag, a blue bag full of other
15 tools.

16 So the officers begin questioning him; ask for his
17 name and date of birth. He gives it to them. They run it;
18 find he's from Tennessee. Randy Malloy, who's also here
19 today, shows up. He goes to the BI-LO parking lot, which
20 is right next door to the Shops at Bear Village; finds a
21 Ford Taurus with Tennessee tags on it.

22 Lo and behold, that Taurus has a bag full of power
23 tools, very, very similar to the ones found the night
24 before that were left behind at the Shops on Wilson. You
25 got the grinders, gloves, saw blades -- same things that

1 were left outside of that safe.

2 There's a hotel key in there too; says "Room 125."
3 You better believe they're going follow that lead. Where's
4 this guy staying, this guy from Tennessee who's in town
5 here in Newberry? He's staying at the Budget Inn. Get a
6 search warrant for the Budget Inn. Again, ladies and
7 gentlemen, what do they find in there: tools, tools, and
8 more tools; and a whole store full of cell phones.

9 Ladies and gentlemen, they -- also find this pair of
10 tennis shoes here. We talked about that today. Those were
11 in that room, that room that was registered to Jeffrey
12 McCoy, along with all those stolen cell phones, all those
13 tools.

14 And the interesting thing about these Fila tennis
15 shoes is that when they compared the soles of those shoes
16 to that veneer I was talking about that was stripped off of
17 that safe as part of that safecracking charge, they match.
18 It's the same shoe. That shoe produced the mark on that
19 piece of metal found outside the safe in the Check Into
20 Cash.

21 There -- there's a lot of evidence. I -- I think I've
22 pretty much covered it all. It -- it all points to one
23 conclusion, ladies and gentlemen: That is the guilt of Mr.
24 McCoy.

25 Now, Mr. Verner, he's going to have the last word here

1 today. He gets to argue to you guys last before you get
2 the case and get to consider it. He's going to talk a lot
3 about reasonable doubt. But I'm going to tell you a little
4 bit about it before he does.

5 Reasonable doubt is a standard in any criminal
6 prosecution that the state bears. I have the -- the burden
7 of proving this case to you, element by element, and beyond
8 a reasonable doubt. All right.

9 What does that mean? I think the best way to describe
10 it -- and the judge will tell you this -- I -- if he tells
11 you different, you follow the judge's instructions. But I
12 -- I -- I think he'll tell you that reasonable doubt is if
13 I leave you people firmly convinced that he committed these
14 crimes we've alleged -- firmly convinced.

15 And reasonable doubt does not mean beyond any doubt.
16 It does not mean beyond all doubt. Just because you walk
17 back in that room and y'all talk about things and you say,
18 "Well, what about this? I never understood that. Or what
19 about this?" Just because you have a debate back and forth
20 and some of you bring up different points and just because
21 you don't all jump on the same boat all at the same time,
22 that doesn't mean beyond a reasonable doubt.

23 After your deliberations, after y'all consider all
24 this evidence -- and y'all are going to get it back there.
25 Y'all are going to get to look at it up close, pass it back

1 and forth. If, after y'all do that, you're firmly
2 convinced that he did it, that's beyond a reasonable doubt.
3 That's all you need.

4 We don't have to have the -- the DNA. We don't have
5 to have the videocassette footage of him breaking into this
6 store. All this evidence we've given you, I submit, is
7 plenty to get you beyond that reasonable doubt.

8 That is what you are to consider: the evidence.
9 You're not -- it would be wholly inappropriate for you all
10 to sit there and think about penalties. I've heard this
11 judge say it before: You have no friend here to reward.
12 Your decision is not to reward me, if you find guilty.

13 You have no enemy here to punish. You're not here to
14 punish Mr. McCoy. All right?

15 Only to consider this evidence: Does it show him
16 guilty beyond a reasonable doubt? You've got a lot of
17 evidence to consider. It all points to one conclusion.

18 I -- I've put something together, fairly hastily, but
19 I think it effectively shows you some of these points --
20 illustrates some of these points I'm talking about. Again,
21 state's burden of proof is beyond a reasonable doubt. The
22 state's burden of proof is always reasonable doubt --
23 beyond a reasonable doubt.

24 Again, it doesn't mean beyond any doubt. Oftentimes,
25 people use a analogy about folks coming in from the rain to

1 describe reasonable doubt, something to the effect of: We
2 all got here this morning. And we're going to assume, for
3 analogy's sake, that these blinds are closed. But when we
4 get here this morning, there's a bluebird sky, sunny,
5 beautiful outside, beautiful spring day in Newberry County.
6 We come in there; the blinds are shut. Bailiff walks in
7 and he's got some -- let's say he's got a rain jacket on.
8 And we say, "Oh, that's kind of -- that's kind of funny. I
9 didn't see it raining." But he's wearing a -- a rain
10 jacket. That's kind of a clue to me.

11 Next guy comes in. He's got some speckles -- wet
12 speckles on his jacket or whatever. That's another clue.
13 We haven't actually seen the rain falling out there. And
14 we didn't personally observe it before we came in.

15 But using our logic and our reason, it's starting to
16 look like it may be raining now. Third guy comes on in,
17 and he's got his umbrella that he's folding up and he's
18 knocking the rain off of it. At this point it's pretty
19 safe to say it's raining now, even though we haven't
20 personally seen it and even though it goes against what we
21 observed before we came into the courtroom. Our logic and
22 our deductive thinking and our common sense kind of tells
23 us it's probably raining.

24 And when I talk about tools, let's -- that's going be
25 the theme of our trial. I guess I've made that abundantly

1 clear. Y'all's tools are going to be your common sense and
2 your logic. What makes sense here? I mean, when you use
3 your reason, in considering all this, there's only one
4 conclusion. There's the tools you guys bring to this
5 thing.

6 If Newberry County was a living, breathing organism,
7 you all symbolize the collective conscience of Newberry.
8 And you decide: Does the evidence show Mr. McCoy's guilt,
9 using that collective logic and reason.

10 When you use your reason, common sense, and logic, do
11 you still have any doubt? The evidence points to one
12 conclusion, ladies and gentlemen.

13 The receipt from the hotel, the Budget Inn, indicating
14 he was there for two nights; the car with the hotel keys;
15 the room -- what about the glove? What about the glove
16 that was found on Mr. McCoy when he was caught red-handed
17 behind Bear Village by Boris Alvarado? The tools he had
18 with him, does that raise his suspicion to y'all? Do you
19 often hang out after hours behind a business with gloves on
20 and tools?

21 Well, what about the bag that was found in his hotel
22 room? Those gloves look similar to you guys? What about
23 the grinder that was in that bag? Does that sound
24 familiar, kind of like the one that was laid out beside the
25 safe in Check Into Cash?

1 The grinder, for those of you don't know, is -- is
2 almost like a -- I don't know -- it's a -- I showed them to
3 you yesterday. That's a big piece of machinery with a
4 spinning wheel on it. I'm not sure what the -- it -- it
5 almost feels like sandpaper. But it -- it's called a
6 "grinder," but you cut through metal with it. He's got two
7 of them out here, outside of this safe. That's the only
8 way that he was able to tear the veneer off of it. You can
9 see it right here that he stepped on it, that matched those
10 shoes in his room.

11 Tools here outside of the safe in Check Into Cash --
12 there's his car. Tools in the back of the car, after
13 hours, in the BI-LO parking lot outside of Bear Village;
14 bag full of tools in his hotel room.

15 Boost Mobile -- he cleaned them out. There's an empty
16 display case. Here's his hotel room. Cops got there; they
17 were all in the bags, brand-new phones and bunches of them.
18 Here's what they look like all laid out: \$10,204 worth of
19 cell phones.

20 These are called "aviation snips." They are very
21 effective at cutting wires and disabling security systems,
22 to include security cameras.

23 And this shoe, ladies and gentlemen: Mr. McCoy was
24 careless in two respects, probably more. Stepping on that
25 plate, shouldn't have done that. You heard Capt. Counts

1 testify that that shoe that was found in his hotel room
2 made that print on that piece of metal outside of that safe
3 that he was attempting to break into.

4 I think the other thing was that -- that he -- he got
5 greedy and that's why he got caught: being there that
6 second night. You know, if he would've just robbed the
7 Shops on Wilson and gone back to Tennessee, I don't know --
8 you know, we probably never would've caught him.

9 But thanks to the -- Alvarado, who had stepped up his
10 game the next night, he did catch him. Maybe it was
11 because he had already paid for the two rooms. I don't
12 know. He should've gotten out of town.

13 That's the evidence. I'm not going to stand up here
14 and go on any longer. You're going to have it all to
15 consider. But use your common sense. Use your reason and
16 logic.

17 They want you to say: No, no, no. It's not
18 nighttime. No, no, no. We don't know for sure that it was
19 McCoy.

20 But you know. You heard the testimony. You heard all
21 the witnesses, and you can vouch for their -- or you can
22 determine their credibility.

23 I'm going to do now what I said I was going do in
24 opening statements. I'm going to ask you to go back to
25 that room, talk about it, consider everything, and then

1 find Jeffrey McCoy guilty of those five burglary, second-
2 degrees; find him guilty of safecracking; find him guilty
3 of two petit larcenies; and find him guilty of the grand
4 larceny, over \$10,000. Thank you.

5 THE COURT: Thank you, Mr. Scott. Mr. Verner, you're
6 recognized, sir.

7 MR. VERNER: May it please the Court?

8 THE COURT: Yes, sir.

9 CLOSING ARGUMENT BY MR. VERNER

10 MR. VERNER: Madam forelady, I'm just standing for the
11 proposition, if he's going to be found guilty, find him
12 guilty of just the charges we know he's guilty of. And by
13 "know" is we know without hesitation.

14 Now, I've been, at least in some role or another, a
15 public defender here in Newberry since 1999. Sometimes I'm
16 by myself on that side with my client and just a voice in
17 the wilderness. And -- and sometimes it's stronger.

18 But -- but we try a lot of cases in Newberry. The --
19 the -- I don't care if your verdict is guilty or not
20 guilty. It -- it's your conscience, your decision. They
21 don't care. It's your conscience, your decision. Just
22 don't be intimidated to find a verdict of what you know
23 beyond hesitation.

24 The -- the -- the burglary is a slam-dunk case. I --
25 I mean, clearly, the -- that is no question, it's a strong

1 case, other than who did it. And a -- a two-day case --
2 and -- and really, it boils down to the circumstance that,
3 one, that they've proven as a fact that these are Jeff
4 McCoy's shoes. The -- they weren't -- certainly weren't
5 the shoes he was wearing. They were the shoes that they
6 found in his hotel room.

7 The -- coupled with the -- there -- there was
8 testimony of the -- at -- at least a dozen more missing
9 phones that suggest that there may have been somebody else.

10 The -- the -- there is just not one shred of evidence,
11 other than that one partial shoe print, of -- of a shoe
12 that was not on Jeff McCoy that he was in there the night
13 beforehand that he was arrested. The -- there's just not.
14 There's not a fingerprint. The -- out of five stores,
15 there's not a fingerprint. And I understand that they've
16 argued the gloves, although they certainly indicate that --
17 that they came across fingerprints too.

18 Water bottles on the scene and food that was eaten
19 that they sent for SLED DNA testing, the -- we -- we just
20 didn't get it in time, because it takes three years. Do
21 you believe that?

22 The -- one partial shoe print in -- in one of the
23 stores that Jeff McCoy was there at all is their evidence.
24 But there is strong evidence that he had stolen merchandise
25 in his possession. He -- he's got a hotel room in his

1 name. He's got stolen merchandise in there. That is
2 crystal-clear evidence.

3 It's not just that they find somebody with stolen
4 merchandise. You have to actually prove that that is the
5 person who did the crime.

6 The -- the -- and I will argue this for what it's
7 worth. It -- it's not the point I would've made. The --
8 Solicitor Scott said, "We know for a fact it happened at
9 nighttime." Well, we don't it happened, for a fact, at
10 nighttime.

11 For a fact that it happened at nighttime? But we know
12 El-Amin was completely empty at 6:30 that afternoon. And
13 we know that the sunset was two hours later.

14 The -- we know that Boost Mobile was empty at 6 p.m.,
15 at the latest, that afternoon, which is 2 1/2 hours of
16 daylight. And we know Jackson Hewitt wasn't occupied at
17 all for several days prior to this burglary.

18 That -- the people at Regional -- and -- and it's a
19 little bit unclear, but at some point that day, she had
20 done some cleanup and left to take her son skating and to
21 come back that night to clean up. The -- is -- is it
22 possible that these could have broken into while she was
23 gone that afternoon?

24 Is -- is it at all possible? If it is, then that's
25 burglary, third-degree.

1 The -- obviously, the -- the evidence, if you believe
2 that it was Jeff McCoy, would support a burglary, second-
3 degree, on Regional Finance because she said, "When I came
4 back, it was nighttime and I left after nighttime."

5 The -- so I'm -- I'm not really arguing with that one
6 or the other one. But the -- there was 2 1/2 hours of --
7 of daytime hour with no testimony how long it took to get
8 into the building in the first place. If you think it is
9 Jeff McCoy for a fact, then -- then it's a burglary-third,
10 unless you know for a fact it happened at nighttime.

11 The -- the -- this is -- is a -- a -- a -- a lot -- a
12 two-day case, which is longer than average. This is,
13 unfortunately, a little bit longer than the average case.
14 Usually, it's done in a day. The -- this is the only
15 evidence whatsoever that they have of -- of who was in the
16 place. And there's been just absolutely no evidence, other
17 than it was found in Jeff McCoy's hotel room, that this was
18 Jeff McCoy's. I appreciate your time.

19 THE COURT: All right. Thank you, Mr. Verner.

20 CHARGE OF THE COURT

21 THE COURT: All right. Now, ladies and gentlemen, it
22 now becomes my responsibility to instruct you on the law
23 that applies in this particular case. And the way that
24 this has traditionally been done is that the judge simply
25 sits up here and reads out the law to you. And like 12

1 sponges, you're supposed to absorb everything that I say
2 during the course of 19 pages and take it back there and
3 apply it to the facts.

4 I've always found that a little unreasonable. Because
5 I went to law school for three years; I've been practicing
6 for about twenty. And I think it's a little unreasonable
7 for the Court to simply read it to you and to send you back
8 there and ask you to apply it. So you'll have a copy of
9 these instructions to refer to you during your
10 deliberations if y'all need to refer to them, okay?

11 Obviously, don't refer to simply -- or don't pay
12 attention to only part of the instructions and ignore the
13 rest, but consider the instructions at a whole -- as a
14 whole. Additionally, if you need me to clarify any of the
15 instructions on the law for you, I can do that. Simply
16 send out a note, telling me what you're having a problem
17 with. And I'll bring you out here and try and help you
18 with that.

19 I -- at this point in time, however, because the
20 evidence is closed, I can't answer questions. I can't
21 answer factual questions for you, aside from the
22 stipulation that's been -- been agreed to. But it is
23 possible for me to answer legal questions, if you have any
24 questions about these instructions.

25 Now, Madam forelady, ladies and gentlemen of the jury,

1 I charge you that the indictments in this case charge Mr.
2 McCoy with five counts of burglary, two counts of petit
3 larceny, one count of safecracking, and one count of
4 possession of burglary tools, as well as one count of grand
5 larceny.

6 Now, each indictment charges a separate and distinct
7 offense. So you must decide each indictment separately on
8 the evidence and the law applicable to it, uninfluenced by
9 your decision as to any other indictment. The defendant
10 may be convicted or acquitted on any or all of these
11 offenses charged. You will be asked to write a separate
12 verdict of guilt or not guilty -- of guilty or not guilty
13 on this sentencing sheet, which I have -- or this verdict
14 sheet, rather, which I have prepared for you.

15 Now, I'll remind you, ladies and gentlemen, the fact
16 that Mr. McCoy was arrested, charged, and indicted in this
17 case is not evidence in this case and cannot be considered
18 by you as evidence of guilt in this case, nor does it
19 create any presumption or inference of guilt. The
20 indictments are simply the formal written instruments by
21 which charges are made against the defendant. They are the
22 formal documents by which this -- these cases are brought
23 into court.

24 Defendant in this case has pled not guilty to these
25 indictments. And that plea puts the burden on the state to

1 prove the defendant guilty. I instruct you that a person
2 charged with committing a criminal offense in South
3 Carolina is never required to prove himself innocent. It
4 is an important rule of law that the defendant in a
5 criminal trial, no matter what the seriousness of the
6 charge may be, will always be presumed to be innocent of
7 the crime for which the indictments were issued, unless
8 guilt has been proven by evidence satisfying you of that
9 guilt beyond a reasonable doubt. This presumption of
10 innocence does not end when you begin your deliberations,
11 but it accompanies the defendant throughout the trial until
12 you reach a verdict of guilt based on evidence satisfying
13 you of that guilt beyond a reasonable doubt.

14 The presumption of innocence, ladies and gentlemen, is
15 like a robe of righteousness placed about the shoulders of
16 the defendant. That robe remains with him until it has
17 been stripped from him by evidence satisfying you of his
18 guilt beyond a reasonable doubt.

19 The presumption of innocence, ladies and gentlemen, is
20 not merely a legal theory. It's not just a legal phrase.
21 It is a substantial right to which every citizen is
22 entitled, unless you, the jury, are satisfied from the
23 evidence of the defendant's guilt beyond a reasonable
24 doubt.

25 Well, what is a reasonable doubt in the eyes of the

1 law? A reasonable doubt is the kind of doubt that would
2 cause a reasonable person to hesitate to act. And the
3 state has the burden of proving the defendant guilty beyond
4 a reasonable doubt.

5 Some of you may have served as jurors in civil cases,
6 where you were told that it's only necessary to prove that
7 -- to prove that a fact is more likely true than not true,
8 such as by the greater weight, or the preponderance of the
9 evidence. In criminal cases the state's proof must be more
10 powerful than that. It must be proof beyond a reasonable
11 doubt.

12 Proof beyond a reasonable doubt is proof that leaves
13 you firmly convinced of the defendant's guilt. Now, there
14 are very few things in this world that we know with
15 absolute certainty. And in criminal cases the law does not
16 require proof that overcomes every possible doubt. If,
17 based upon your consideration of the evidence, you are
18 firmly convinced that the defendant is guilty of the crimes
19 charges, you should find the defendant guilty. If, on the
20 other hand, you think there is a real possibility that the
21 defendant is not guilty, you should give the defendant the
22 benefit of the doubt and find him not guilty.

23 Now, ladies and gentlemen, I remind you that during
24 this trial, you and I have certain duties to perform. As
25 the trial judge, it's my responsibility to rule -- or to

1 preside over the trial of this case. And I also have the
2 duty to rule on the admissibility of evidence offered
3 during this trial.

4 Again, you're to consider only the competent evidence
5 before you. Any testimony that was ordered stricken from
6 the record in this case, you must disregard that testimony.
7 And you're to consider only the testimony which has been
8 presented from the witness stand, the exhibits which have
9 been introduced into the record in this case, and the
10 stipulation that I read a moment ago to you: again, that
11 stipulation that the parties have agreed that on May 26th,
12 the sun set at 8:29 p.m.; and on May 27th -- the morning of
13 May 27th, the sun rose at 6:17 a.m.

14 Now, ladies and gentlemen, I have the additional duty
15 to charge you the law applicable in this case. And as the
16 judge, I'm the sole judge of the law in the case. So it's
17 your duty to accept and apply the law as I now state it to
18 you.

19 If you already have any idea as to what the law is or
20 what the law ought to be and it doesn't agree with what I
21 now tell you the law is, you should abandon this idea,
22 because you're sworn to accept and apply the law as I state
23 it to you now.

24 Again, in every case tried in this Court, the jury
25 becomes the sole and exclusive judge of the facts in a

1 case. A trial judge cannot intimate, state, comment on, or
2 make any statement to a trial jury about the facts in this
3 case.

4 Ladies and gentlemen, since you, the jury, are the
5 sole judges of the facts, you're not to infer, from what I
6 have said during the progress of this trial or otherwise or
7 anything that I say now during the course of these
8 instructions, that I have any opinion about the facts in
9 this case. Ladies and gentlemen, the law does not permit
10 me to have an opinion about the facts in this case. This
11 is a matter solely for you to determine.

12 As jury -- as jurors it's your duty to determine the
13 effect, value, weight, and truth of the evidence presented
14 during this trial. Now, there are typically two types of
15 evidence which are presented during a trial: direct
16 evidence and circumstantial evidence. Direct evidence is
17 the testimony of a person who claims to have actual
18 knowledge of a fact, such as an eyewitness. It's evidence
19 which immediately establishes the main fact to be proved.

20 Circumstantial evidence is proof of a chain of facts
21 and circumstances indicating the existence of a fact. It
22 is evidence which immediately establishes collateral facts
23 from which the main fact may be inferred. Circumstantial
24 evidence is based on inference and not on personal
25 knowledge or observation.

1 Now, the law makes absolutely no distinction between
2 the weight or value to be given to either direct or
3 circumstantial evidence, nor is a greater degree of
4 certainty required of circumstantial evidence than of
5 direct evidence. You should weigh all the evidence in this
6 case. After weighing all the evidence, if you're not
7 convinced of the defendant's guilt beyond a reasonable
8 doubt, you should find him not guilty.

9 Now, necessarily, you -- you must determine the
10 credibility of witnesses who have testified in this case.
11 Credibility, ladies and gentlemen, simply means
12 believability. It becomes your duty as jurors to analyze
13 and to evaluate the evidence and determine which evidence
14 convinces you of its truth.

15 In determining the believability of witnesses who have
16 testified in this case, you may believe one witness over
17 several witnesses or several witnesses over one witness.
18 You maybe believe a part of the testimony of a witness and
19 reject the remaining part of the testimony of that same
20 witness. You may believe the testimony of a witness in its
21 entirety or reject the testimony of a witness in its
22 entirety. You may consider whether any witness has
23 exhibited to you any bias, interest, prejudice, or other
24 motive -- motive in this case. And you may also consider
25 the appearance and manner of a witness while on the witness

1 stand.

2 Now, as I mentioned earlier today, the rules of
3 evidence, ladies and gentlemen, normally don't permit a
4 witness to testify as to opinions or conclusions. But an
5 exception to this rule exists for witnesses we call "expert
6 witnesses." Pardon me. A witness who, by education and
7 experience, has become an expert in some art, science, or
8 profession may state an opinion as to relevant and material
9 matters in which the witness claims to be an expert. And
10 he may also state the reasons for that opinion.

11 You should consider any expert opinion received in
12 evidence in this case and, like any other evidence, give it
13 the weight you think it deserves. If you decide that the
14 opinion of an expert witness is not based on sufficient
15 education or experience or if you conclude that the reasons
16 given in support of the opinion are not sound or that the
17 opinion is outweighed by other evidence, you may -- you may
18 disregard the opinion entirely.

19 An expert witness's testimony is to be given no
20 greater weight than that of any other witness simply
21 because the witness is an expert. Further, you're not
22 required to accept an expert's opinion, even though it's
23 not contradicted.

24 Now, ladies and gentlemen, I instruct you and
25 emphasize to you that the fact that the defendant did not

1 testify is not a factor to be considered by you in any way
2 in your deliberation and in your consideration on the
3 question of the guilt or the innocence of the defendant.
4 It must not be -- it must not be considered by you in any
5 manner whatsoever. A defendant has the constitutional
6 right to remain silent, and the assertion of this right
7 must not be considered by you in your deliberations.

8 I repeat, under your oath, you're to draw no
9 conclusion whatsoever from the fact that the defendant in
10 this case did not testify. The fact that this defendant
11 did not testify should not even be discussed in the jury
12 room. The burden of proof, as I have stated to you, is on
13 the state. The defendant is not required to prove his
14 innocence. The burden of proof remains on the state to
15 prove guilt beyond a reasonable doubt.

16 Now, ladies and gentlemen, in order to establish
17 criminal liability, criminal intent is required. For
18 example, the mental state required to be proven by the
19 state for a particular crime might be purpose, intent,
20 knowledge, recklessness, or criminal negligence. Criminal
21 intent must be proven by the state beyond a reasonable
22 doubt.

23 Criminal intent is always a matter that must be
24 determined by the jury from the circumstances surrounding
25 the situation. Now, ladies and gentlemen, there is no way

1 to prove intent to a mathematical certainty. There's no
2 way medical science can dissect a person's brain and
3 determine what the person had in mind. So the law says
4 that criminal intent may be inferred from the circumstances
5 shown to have existed.

6 This is how you make a determination of whether or not
7 the element requiring intent was present. It's not
8 necessary to establish intent by direct and positive
9 evidence. But intent may be established by inference in
10 the same way as any other fact, by taking into
11 consideration the acts of the parties and all the facts and
12 circumstances of the case.

13 Criminal intent is a mental state, a conscious
14 wrongdoing. It is up to you to determine what the
15 defendant intended to, based upon the circumstances shown
16 to have existed.

17 Now, ladies and gentlemen, I further instruct you that
18 mere presence at the scene of a crime is not sufficient to
19 prove someone guilty of a crime. A defendant's presence
20 where a crime is being committed or mere association with
21 someone who commits a crime doesn't make the defendant an
22 accomplice or an aider or an abettor of the person
23 committing the crime.

24 The burden is on the state to prove every -- every
25 element of the crimes charged. If you find, after

1 reviewing all the evidence, that the state has proved that
2 the defendant was only present at the scene of the crime
3 and that he had -- and that the state has not proven beyond
4 a reasonable doubt any other participation in the crime,
5 then you should find the defendant not guilty. The law is
6 that proof of being at the scene of the crime is not
7 sufficient to find someone guilty.

8 Now, ladies and gentlemen, in this case the defendant
9 is charged with five counts of burglary, second-degree. In
10 order to prove burglary, second-degree, the state must
11 prove beyond a reasonable doubt that the defendant entered
12 a building without consent with the intent to commit a
13 crime in the building. I instruct you that a "building" is
14 defined under the law of this state as any structure,
15 vehicle, watercraft, or aircraft where any person lodges or
16 lives or where people assemble for the purpose of business,
17 government, education, religious -- religion,
18 entertainment, public transportation, or public use or
19 where goods are stole -- or -- sorry -- or where goods are
20 stored.

21 Finally, the state must prove beyond a reasonable
22 doubt that the defendant entered the building or remained
23 in the building in the nighttime. "Nighttime" is defined
24 as the period between sunset and sunrise during which
25 there's not enough daylight to recognize a person's face,

1 except by the moonlight or by artificial light.

2 Again, the state must prove beyond a reasonable doubt
3 that the defendant is guilty of each burglary, and each
4 charge of burglary must be considered separately.

5 Now, ladies and gentlemen, with regard to four of the
6 counts of burglary, second-degree, if you find that -- and
7 this is kind of spelled out and laid out for you, Madam
8 Forelady, in the -- in the verdict form. But if you find
9 that the state has failed to prove beyond a reasonable
10 doubt that the defendant committed second-degree burglary,
11 you may consider whether the state has proven beyond a
12 reasonable doubt that the defendant committed third-degree
13 burglary. Third-degree burglary, ladies and gentlemen,
14 includes all the elements of second-degree burglary of a
15 building, except the circumstance of aggravation; namely,
16 that the crime took place in the nighttime.

17 Now, the defendant in this case is also charged with
18 two counts of petit larceny and one count of grand larceny.
19 To prove larceny, the state must prove beyond a reasonable
20 doubt that the defendant took and carried away the property
21 of another against the will or without the consent of that
22 other person.

23 The slightest removal of the property or the complete
24 possession of the property, even for an instant, by the
25 defendant is enough to show a taking and carrying away of

1 the property. The state must also prove beyond a
2 reasonable doubt that the defendant intended to permanently
3 deprive the owner of that property.

4 Finally, with regard to the charge of grand larceny,
5 the state must also prove that the value of the things or
6 items taken was \$2,000 or more.

7 On the verdict form, Madam Forelady, there's actually
8 a -- a blank where it asks the jury to decide how much or
9 what the value of the stuff that was taken from the Boost
10 Mobile place was, if you do conclude that the state has met
11 its burden of proving his guilt on the grand larceny charge
12 involving that business.

13 Now, the defendant is also charged with safecracking.
14 Therefore, the state must prove beyond a reasonable doubt
15 that the defendant used explosives, tools, or any other
16 implement in or about a safe used for the keeping of money
17 or other valuables with the intent to commit larceny or any
18 other crime. Intent may be shown by acts and conduct of
19 the defendant and other circumstances from which you may
20 naturally and reasonably infer intent.

21 Again, "larceny" is defined as the taking and carrying
22 away of the goods or personal things of another person with
23 the intent to permanently deprive the owner of that
24 property and to convert it to the taker's use.

25 I instruct you that the defendant does not have to

1 succeed in breaking into the safe for the conduct to
2 constitute safecracking.

3 Now, in this case, finally, ladies and gentlemen, the
4 defendant is charged with possession of burglary tools. To
5 prove that the defendant is guilty of possessing burglary
6 tools, the state must prove beyond a reasonable doubt that
7 the defendant knowingly, willfully, and unlawfully
8 possessed any implement or thing adapted, designed, or
9 commonly used for the commission of burglary, larceny, or
10 safecracking under circumstances evidencing an -- an intent
11 to use, employ, or allow said instrument to be used or
12 employed in the commission of a crime.

13 Now, ladies and gentlemen, there are several possible
14 verdicts that you may find in this particular case. And
15 again, Madam Forelady, I prepared this verdict form that
16 hopefully will help you guide your deliberations, okay?

17 It's -- it's pretty simple and pretty straightforward.
18 But the possible verdicts in this case are guilty or not
19 guilty on the burglaries, larcenies, safecracking, and/or
20 possession of burglary tools. Again, there is no
21 significance whatsoever in the order that I state these
22 possible verdicts. It's simply that one has to be stated
23 first.

24 And the way that the form works, ladies and gentlemen,
25 is it basically tracks you through -- through the decision-

1 making process or through the way that -- that you may
2 choose to -- to try and decide these cases. The first
3 question asks: "We the jury in the above-captioned charge
4 -- or on the above-captioned case, on the charge of
5 burglary-second, with regard to Check Into Cash,
6 unanimously find Jeffrey G. McCoy" -- and then, it gives
7 you options for the forelady to initial either not guilty
8 or guilty. If you conclude he's guilty, then you would go
9 down to Question 2. If you find that he's not guilty, then
10 you would go to Question 1A. And that asks the same
11 question about the charge of burglary, third-degree, or the
12 lesser-included offense of burglary, third-degree. Okay?

13 Exact same thing for three of the other burglary
14 charges; the only exception is the Regional Finance charge.
15 Your only option on that one is burglary, second-degree,
16 guilty or not guilty on that charge. Okay?

17 As you go on down, you'll be asked the same sort of
18 question with regard to the charge of petit larceny -- or
19 the two charges of petit larcenies involving Check Into
20 Cash and Regional Finance, as well as the charge of grand
21 larceny involving Boost Mobile. You're then asked about
22 the safecracking charge. Again, the jury has to be
23 unanimous on all these -- on all these findings. And then,
24 finally, the tenth question asks you about the possession-
25 of-burglary-tools charge.

1 Again, once more, ladies and gentlemen, we don't have
2 majority verdicts in this state. I hope we never have
3 majority verdicts in South Carolina. That means all 12 of
4 you have to agree on each verdict that's rendered. I will
5 remind you that you have no enemies to punish; you have no
6 friends to reward. Your job here is to find the facts and
7 to state those facts by way of the verdict that you return.

8 Now, in a moment, ladies and gentlemen, I'm going to
9 -- I'm going to ask that you return to the jury room, but
10 don't start your deliberations yet. Your cue to begin your
11 deliberations will be the receipt of the exhibits, these
12 instructions, this verdict form, and hopefully some pizza.
13 And at that point in time, you can start your
14 deliberations. All right, ladies and gentlemen? So when
15 you get all that stuff, you can then begin your
16 deliberations.

17 I -- I know I mentioned to you yesterday that I have
18 to -- that I have the matter at three o'clock -- or that I
19 need to leave here at three o'clock to hold a hearing in
20 Greenwood or deal with some stuff in Greenwood at four. My
21 policy has always been, ladies and gentlemen, that once we
22 have a case to a jury, the jury is now in charge. All
23 right? So whether it takes you an hour, twenty minutes,
24 two hours, all night, we're now on your schedule. All
25 right?

1 My -- so whatever I had, it's going to have to wait,
2 because we are now on your schedule. You understand that?
3 So I -- I don't plan on breaking at three o'clock. If
4 y'all are still deliberating, again, there's no rush. You
5 take as much time as you need to thoroughly review this
6 case.

7 Now, at this point in time, I'm going to ask that you
8 adjourn to the jury room. The pizza hopefully is here.
9 The pizza is here. Good. We'll bring that up in a minute.
10 We do have come coffee that's been freshly brewed. We'll
11 get that inside too. Don't talk about the case yet. You
12 know what the cue is to begin the -- begin discussing the
13 case. With that, thank you.

14 (Whereupon, the jury exited the courtroom at 1:23
15 p.m.)

16 THE COURT: All right. Let the record reflect that
17 the jury is out. Exceptions/additions from the state?

18 MR. SCOTT: No, Your Honor.

19 THE COURT: From the defense?

20 MR. VERNER: No, Your Honor.

21 THE COURT: All right. Very good. Gentlemen, if you
22 could, simply review the exhibits and let's get together on
23 what does need to go back to the jury, please.

24 (Whereupon, the jury began deliberating at 1:30 p.m.)

25 (Off the record from 1:24 p.m. until 2:42 p.m.)

1 THE COURT: All right. We've had a communication from
2 the jury -- actually, two communications. The first
3 question asks to replay the testimony of one of the
4 witnesses. And then, a second question that got sent out
5 asked for the invoice for the telephones that supposedly
6 was provided to the police. My recollection is that that
7 was not put in evidence. So at this point in time, I don't
8 think we can provide that to them. Is that everyone's --
9 is everyone in agreement on that?

10 MR. SCOTT: Yeah. I agree with you, Your Honor.

11 MR. VERNER: And just -- you know, is the Court going
12 to send a note or ---

13 THE COURT: I was going to bring them out and tell
14 them that. Because apparently, they've now said that they
15 don't want the testimony of that first witness. I'm going
16 to offer it. But apparently, they don't want to hear it.

17 MR. VERNER: I would ask the Court to recharge the
18 jury on the burden of production is on the state.

19 THE COURT: All right. Since their question is pretty
20 specific as to a piece of evidence, I'm just going to say
21 that at this point in time, because it was not introduced
22 into evidence, it's not possible to reopen the record.
23 That's typically what I tell them.

24 MR. VERNER: Thank you.

25 THE COURT: (To the bailiff) Let's have them out,

1 please.

2 (Whereupon, the jury entered the courtroom at 2:43
3 p.m.)

4 THE COURT: All right. Thank you. Madam Forelady,
5 ladies and gentleman of the jury, I'm -- I -- I received
6 the two communications that y'all sent out. Apparently,
7 the first one you were asking for a transcript of the
8 testimony of Ms. Hawkins, I believe, who's -- who testified
9 yesterday. And then, subsequently, when you sent the
10 second note out, you told the clerk that you don't actually
11 need that testimony; is that correct, Madam Forelady?

12 FOREPERSON: That's correct.

13 THE COURT: Okay. We -- we have a -- we have the
14 ability -- just so that you know, we have the ability to
15 play testimony back. It's somewhat a little bit -- it's
16 sometimes a little bit cumbersome to do that, but we can't
17 do a -- a transcript immediately. The court reporter has
18 to -- it takes a long while sometimes for a transcript to
19 be prepared, and we just don't have capacity to do that
20 immediately. So I'm -- I'm glad that you don't feel like
21 you need that.

22 If you do need that testimony replayed or decide at a
23 later point in time you'd like it replayed, just let us
24 know and we'll boot that back up. But if you're satisfied,
25 then we won't do that.

1 The second question related to the invoice, I think,
2 concerning the cell phones; is that right, ma'am?

3 FOREPERSON: Yes, sir.

4 THE COURT: All right. At this point in time, because
5 the record is closed, there's no way to introduce
6 additional evidence into the record at this point. So
7 unfortunately, I'm not going to be able to help you with
8 that request, just because the law doesn't let me reopen
9 the record once we're at this point and receive new
10 evidence in. So you'll need to basically try and
11 deliberate and reach a verdict based on what your
12 recollection of the testimony is. Okay? So that's kind of
13 where we are.

14 If you'll continue your deliberations, though, and
15 should you need anything else, don't hesitate to ask. I'll
16 try and accommodate that. Thank you.

17 FOREPERSON: Thank you.

18 (Whereupon, the jury exited the courtroom at 2:45
19 p.m.)

20 THE COURT: All right. The jury is back out and we'll
21 continue to be at ease.

22 MR. VERNER: But, Your Honor, the ---

23 THE COURT: Oh, yes, sir.

24 MR. VERNER: --- respectfully, I -- I take exception
25 to the -- the -- the charge that they would base their

1 decision based on their recollection of just the testimony.
2 It would also be and the evidence admitted into evidence
3 and evidence not admitted into evidence. But it's -- it's
4 -- it's not just the testimony they heard. It's what was
5 admitted into evidence and what evidence was not admitted.
6 I -- I know the Court is kind of summarizing the statement.
7 But it's ---

8 THE COURT: I'll be happy to pull them back out if you
9 want me to, if you think it's that urgent.

10 MR. VERNER: I -- I -- well, I -- I don't want to not
11 preserve ---

12 THE COURT: Certainly.

13 MR. VERNER: --- my point. But it would be the
14 testimony and any evidence that was admitted or not.

15 THE COURT: (To the bailiff) Let's have them back out
16 real quick. Ask them to stop deliberating.

17 MR. SCOTT: Your Honor ---

18 THE COURT: I need ---

19 MR. VERNER: Your Honor ---

20 THE COURT: --- to mention ---

21 MR. VERNER: --- I think the solicitor wants to be
22 heard, Your Honor.

23 THE COURT: Well, hold on -- hold on one second. You
24 ---

25 MR. SCOTT: I think if you're going to do that, it'd be

1 -- I would ask that you'd say you are to consider the
2 testimony and the evidence presented.

3 THE COURT: All right. (To the bailiff) Bring them
4 back out.

5 (Off the record briefly.)

6 MR. VERNER: Your Honor, I was just -- the -- the --
7 this is really the least of our argument. I would waive or
8 -- or drop my request.

9 THE COURT: Thanks. I ---

10 MR. VERNER: I think ---

11 THE COURT: --- think I ---

12 MR. VERNER: --- I'm correct on my proposition, but
13 this is on the outer reaches of what I'm trying to prove in
14 this case.

15 THE COURT: You're absolutely correct. And you are
16 technically correct. And that's why I was going to do the
17 technically correct and politically correct thing and bring
18 them back out, but we won't do that now. (To the bailiff)
19 Tell them they can start -- resume deliberating. I don't
20 need them back out. Tell them just go ahead and start
21 deliberating; I don't need them back out.

22 All right. Now we're at ease.

23 (Off the record from 2:48 p.m. until 2:54 p.m.)

24 THE COURT: All right. If we could, let's go back on
25 the record, please. I've been informed that the jury has

1 reached a verdict. Anything before we receive the jury
2 back into the courtroom from the state?

3 MR. SCOTT: No, Your Honor.

4 THE COURT: Mr. Verner?

5 MR. VERNER: No questions.

6 THE COURT: All right. Very good. (To the bailiff)
7 Let's have them back in, please.

8 (Whereupon, the jury entered the courtroom at 2:56
9 p.m.)

10 (Off the record briefly.)

11 (Whereupon, the jury entered the courtroom at 2:56
12 p.m.)

13 THE COURT: All right. Let the record reflect that
14 the jury is back. Madam Forelady, I am told that the jury
15 has reached a verdict; is that correct?

16 FOREPERSON: Yes, sir.

17 THE COURT: All right. And all 12 of you agree on the
18 verdicts rendered?

19 FOREPERSON: Yes, sir.

20 THE COURT: All right. If you would, hand the verdict
21 form, please, to the bailiff for me. Thank you.

22 FOREPERSON: (Complied.)

23 THE COURT: All right. One housekeeping matter:
24 Madam Forelady, would you mind -- if this is the verdict,
25 you need to sign the last page. I think that's probably

1 the only thing that you did not do. So let me go ahead and
2 hand that to you before it's read.

3 FOREPERSON: I apologize.

4 THE COURT: No. That's all right. All right. Madam
5 clerk, if you'll publish the ---

6 DEPUTY CLERK OF COURT: Yes, sir.

7 THE COURT: --- verdict, please.

8 VERDICT OF THE JURY

9 DEPUTY CLERK OF COURT: "Indictments 2012-GS-36-872,
10 -874, -877-884, *State of South Carolina v. Jeffrey Glenn*
11 *McCoy*: We, the jury, in the above-captioned case, in the
12 charge of burglary, second-degree, with regard to Cash --
13 Check in Cash business, Indictment -874, unanimously find
14 Jeffrey G. McCoy guilty.

15 "We, the jury, in the above-captioned case, on the
16 charge of burglary, second-degree, with regard to Jackson
17 Hewitt Tax Service business, Indictment -877, unanimously
18 find Jeffrey G. McCoy guilty.

19 "We, the jury, in the above-captioned case, on the
20 charge of burglary, second-degree, with regard to Regional
21 Finance Corp., Indictment -878, unanimously find Jeffrey G.
22 McCoy guilty.

23 "We, the jury, in the above-captioned case, on the
24 charge of burglary, second-degree, with regard to El-Amino
25 (phonetic) Barbershop, Indictment -882, unanimously find

1 Jeffrey G. McCoy guilty.

2 "We, the jury, in the above-captioned case, on the
3 charge of burglary-second, with regard to Boost Mobile,
4 Indictment -883, unanimously find Jeffrey G. McCoy guilty.

5 "We, the jury, in the above-captioned case, on the
6 charge of petit larceny with regard to food and beverages
7 allegedly taken from Check Into Cash, Indictment -880,
8 unanimously find Jeffrey G. McCoy guilty.

9 "We, the jury, in the above-captioned case, on the
10 charge of petit larceny with regard to the coins allegedly
11 taken from Regional Finance Corp., Indictment -879,
12 unanimously find Jeffrey G. McCoy guilty.

13 "We, the jury, in the above-captioned case, on the
14 charge of larceny with regards to the cell phones allegedly
15 taken from Boost Mobile, Indictment -884, unanimously find
16 Jeffrey G. McCoy guilty. We further unanimously find that
17 the value of the phones taken was \$10,204.

18 "We, the jury, in the above-captioned case, on the
19 charge of safecracking, Indictment -872, unanimously find
20 Jeffrey G. McCoy guilty.

21 "We, the jury, in the above-captioned case, on the
22 charge of possession of burglary tools, Indictment -881,
23 unanimously find Jeffrey G. McCoy guilty.

24 "Signed foreperson, Barbara J. Siloam -- Siloam
25 (phonetic)."

1 Ladies and gentlemen, if this is your verdict, please
2 indicate by raising your right hand.

3 JURORS: (All raised right hand.)

4 THE COURT: All right. Let the record reflect that
5 all 12 jurors did, in fact, raise their right hand.
6 Anything further of the jury from the state?

7 MR. SCOTT: No, Your Honor.

8 THE COURT: From the defense?

9 MR. VERNER: No, Your Honor.

10 THE COURT: All right. Very good. Ladies and
11 gentlemen of the jury, I want to thank you for your
12 attention these last three days, okay? I will tell you
13 that you've been extremely attentive and you've been --
14 been very good about accommodating the Court. And your
15 patience with the Court is -- is appreciated.

16 You will receive a -- a letter from me, thank you for
17 your jury service. And it'll have my contact information
18 on that letter: my e-mail, my mailing address, my
19 telephone number. I'm rarely in my office nowadays, so you
20 may want to just send me an e-mail because it seems like I
21 never get back there much anymore. They always have me
22 moving throughout the state.

23 And there -- the -- one of the major purposes of the
24 -- the letter to you is not only to thank you, but to
25 solicit your feedback. If there was something that you --

1 you liked about jury service this week, let me know. If
2 there was something that you did not like or hated about
3 jury service, definitely let me know, okay? Because I
4 believe that this court doesn't belong to me; it doesn't
5 belong to the state; doesn't belong to the defense bar. It
6 belongs to the people of South Carolina.

7 And since this is your court, if you can think of a
8 way to improve it, let me know. I'll be all ears. And I
9 will share that with other judges around the state.

10 You do get paid for your jury service. It is not a
11 lot of money. (To the clerk) Are the checks ready?

12 DEPUTY CLERK OF COURT: We have them right here.

13 THE COURT: The checks are right here. In a moment,
14 we're -- what we're going to do is we'll take a brief break
15 so that the clerk can pass those checks out to you. If you
16 want to stick around for sentencing, that's perfectly fine.
17 You're -- you're -- feel free to do that.

18 I'll need you to not sit over there, just for security
19 concerns. What we can do is make room out -- well, there's
20 plenty of room out here. So just come back downstairs and
21 -- and back up the other side. And the bailiffs can find a
22 place for y'all to sit out here if you want to stay for the
23 sentencing portion. But we're going to go ahead and give
24 you your checks, because your jury service is over for the
25 week. All right?

1 Remember what I told you on Monday morning: You get a
2 three-year jury -- "get out of jury service free" card. So
3 if you get summoned again for jury service in circuit court
4 -- that's either general sessions or common pleas court --
5 in this courthouse, you can call the clerk and let them
6 know -- if it happens in the next three years, you can let
7 them know that you served this week. They'll pull the
8 records. You won't even have to show up on Monday. Okay?

9 With that, you have my appreciation. You have my
10 thanks and my gratitude. Thank you so much for your
11 patient with us -- patience with us this week. The clerk
12 will pay you. You take care. All right? Thank you very
13 much.

14 (Whereupon, the Court and the clerk conferred.)

15 THE COURT: Oh, yeah. And we -- Madam Forelady, I --
16 I'll need you to sign the indictments. But I'll give those
17 to the clerk and you can do those outside. Okay?

18 (Off the record from 3:03 p.m. until 3:13 p.m.)

19 THE COURT: Solicitor, while you are here, Mr. Verner,
20 do you have any motions that you would choose to make at
21 this point in time?

22 MR. VERNER: None. No, sir.

23 THE COURT: Okay. Very good.

24 (Off the record briefly.)

25 THE COURT: All right. One quick housekeeping matter,

1 if we could, let's -- the two notes from the jury, those
2 will be marked as Court's exhibits. So at some point in
3 time, we will -- if she has not already done so, I'll ask
4 the court reporter to mark those.

5 (Whereupon, Court's Exhibits 1 and 2 were marked for
6 identification.)

7 (Off the record briefly.)

8 THE COURT: All right. I believe I have all the
9 sentencing sheets in front of me. At this point,
10 Solicitor, I know that earlier the state had provided me
11 with a listing of Mr. McCoy's prior convictions. Just for
12 the purposes of the record, since I've marked all over the
13 sheet that you've given me, would you mind reading those
14 back into the record and Mr. Verner can address, if need
15 be, any issue that the defendant has with the -- what's
16 listed as convictions? Go ahead, please ---

17 MR. SCOTT: Your Honor, the ---

18 THE COURT: --- Mr. Scott.

19 MR. SCOTT: Thank you, Your Honor. As I read his
20 convictions, they are out of Florida and Tennessee. The
21 Florida are: in 1993, a petit theft; burglary, structure
22 unoccupied; burglary, conveyance unoccupied; disorderly
23 intoxication; '94, possession, marijuana; possession of
24 drug equipment; loitering and prowling; 1995, disorderly
25 conduct; possession of drug equipment; 1997, resisting with

1 violence, petit theft; 1998 and 2004, driving while license
2 suspended; 2005, battery; and then, again, a loitering and
3 prowling charge; 2006, he had an habitual-offender offense;
4 2007, grand theft of motor vehicle; another habitual-
5 offender -- offender charge; vehicle theft; 2009, grand
6 theft; passing forged checks times two; and a larceny
7 charge.

8 In Tennessee: 2002, theft under \$500; 2009, habitual
9 offender; 2010, criminal trespass; 2011, theft of property.

10 THE COURT: All right. All right. I'm happy to hear
11 from the state on any issues involving sentencing or
12 anything that the victims in these incidents would care for
13 me to know.

14 MR. SCOTT: Your Honor, none of the victims in this
15 case wish to address the Court. At the risk of testing
16 Your Honor's patience, I would, again, ask for a
17 substantial period of incarceration. To me, this is not
18 the typical kick in the back door of a shed during the
19 night. Again, I said he came with a plan, a purpose, and
20 he was well equipped.

21 He is from out of state. And anytime you have
22 somebody coming from elsewhere with apparently the specific
23 purpose of -- of burglarizing businesses, to me, that --
24 that probably carries more weight. Again, the thing that
25 -- that worries me so much was the diagrams and the

1 sketches that were found in his hotel room, detailing
2 locations of bedrooms and valuables in other people's homes
3 and businesses, detailing when people would be home, when
4 they would be gone, their pets, indicative of somebody who
5 was perhaps scouting out an area to hit.

6 His rap sheet does -- it -- it shows a pattern of
7 taking things that don't belong to him and being in places
8 that he's not supposed to be. Your Honor, and -- and for
9 those reasons and the nature of this crime, we are asking
10 for a substantial period of incarceration.

11 THE COURT: All right. Thank you, Solicitor. I
12 understand your position.

13 All right. All right. Mr. Verner, happy to hear from
14 you on the issue of mitigation, sir.

15 MR. VERNER: May it please the Court?

16 THE COURT: Yes, sir.

17 MR. VERNER: And I'd -- I'd like to address Solicitor
18 Stumbo. I saw him here; we appreciate him coming to
19 Newberry. I -- I will say, in -- in 13 years here, the --
20 this is one of the finer performances by the prosecutions
21 in -- in just presenting the case in -- in an orderly
22 fashion; fairly difficult, complex case. And I appreciate
23 that.

24 Jeff here is 39 years old. He is from Tennessee,
25 Judge. He has four children who are teenage years. I --

1 they live in West Virginia with their mother. The -- he
2 has been incarcerated on this offense since May 27th of
3 last year, Your Honor, continuously, so almost a year.

4 The -- his only felony record as I read it, Your Honor
5 -- and it is a number of arrests -- almost all of it would
6 be the blue-ticket, or the magistrate level, except for the
7 '93, which looks like a pair of burglary, third-degrees.
8 He was 19 at that time. And I think he would've gotten the
9 equivalent of a suspended youthful-offender-type sentence.
10 And then, of course, he is on probation or parole out of
11 the state of Tennessee, where he's got a grand larceny of a
12 vehicle. And he got an active four-year sentence --
13 gesundheit.

14 The -- the -- those are the only two times I see that
15 he would've had a court-of-record-type conviction. The
16 burglaries were 20 years ago. Several thefts since then,
17 but they -- they appear to be the petit larceny-type
18 thefts, Your Honor; and then, of course, the grand larceny
19 of the motor vehicle that he got in trouble for in
20 Tennessee.

21 In South Carolina he tells me he had been at the bike
22 week -- that was the week of the Myrtle Beach bike week --
23 and that he just -- the -- the only reason he was Newberry
24 was he was on his way back to Tennessee and that is where
25 he stopped. Obviously, made bad decisions on his way back.

1 No question he had tools, Your Honor. I -- I'll
2 acknowledge some degree of sophistication in the burglary,
3 but the -- not complete. The safecracking is what I --
4 what I do want to address, Your Honor. The -- I -- I think
5 the evidence certainly supports the attempt to open a safe.
6 It's clear, from looking at it, Your Honor, that the tools
7 that he did have weren't of the type that would actually
8 open a -- what I consider a true safe.

9 Of course, when safecracking was put into law, safes
10 were large, usually built-into-the-walls-type. And -- and
11 they -- through the years they've gotten smaller and
12 smaller. But I -- I certainly agree that the Regional --
13 or the Cash and Carry [sic] safe would legally be a safe.
14 It was a fairly large, refrigerator-size unit.

15 I -- I do believe, Your Honor, that he just happened
16 upon the safe because he was in the buildings. Certainly,
17 he intended to enter the buildings. The -- there --
18 there's nothing that indicates he had tools that were
19 sophisticated enough to get into heavy -- heavier-than-
20 wood-type lockup. But he did make attempts for it.

21 But I -- I think it would be unfair to say that he's a
22 -- a -- a safecracker; that he had that type of
23 sophistication. I -- I think he was just trying to break
24 into buildings on his way back and make some money or
25 stores.

1 The -- so I -- I would ask the Court to treat the
2 safecracking as the lead indictment for SCDC purposes. But
3 the -- I -- I do see this as basically a burglary --
4 severe, but a -- but still a "burglary-second of unoccupied
5 buildings" situation. The -- the -- the safe just
6 compounded it.

7 Again, the -- he -- he did intend to plead guilty both
8 during this trial and before, Your Honor. I think his
9 concerns were obviously, he was scared about how much time
10 he was facing, particularly on the safecracking charge.
11 And, of course, safecracking is basically a day-for-day
12 offense; carries up to 30 years; and the -- and the
13 punishment is not quite, but -- but it's basically a day-
14 for-day-type offense. And -- and I think that is what
15 concerned him.

16 And I think part of it, Your Honor, was the -- he --
17 he had a concern, I -- I think somewhat irrational, but --
18 but he had a concern about forfeiting appeal rights or --
19 or other kind of rights; that he didn't know where he would
20 be if he did plead guilty. But he -- he's never really
21 denied the burglary. The -- the safecracking was just the
22 -- the holdup on that, and -- and he -- the lack of
23 forfeiting his appellate rights, Your Honor.

24 The -- but that's really all I can basically say is
25 just a -- a pattern of stealing, but no real indication

1 that he's been in a long series of felonies. I understand
2 the state's concern about the letters that were brought up,
3 Your Honor. In -- in fairness now, the -- I -- I have --
4 they were not part of discovery package, so I haven't had a
5 chance to review them and -- and see.

6 And I understand the solicitor's concerns. In -- in --
7 in fairness to our side, we wouldn't have had an
8 opportunity to -- really, to -- that's not what he's being
9 convicted of and -- and charged with. I understand the
10 Court's going to take it in the right way and the solicitor
11 has raised it as a concern. But the -- he has given me
12 some descriptions of the papers that -- that would contrast
13 to the solicitor. But, I mean, it -- it's, I -- I think, a
14 lose situation for us to try to dispute too much of it.

15 He -- he just wants to get back to Tennessee. He's
16 been willing to take jail time. He -- he's just been
17 concerned about the almost-life-in-prison qualities of the
18 safe conviction -- conviction on him, Your Honor.

19 THE COURT: All right. I understand. And -- and
20 while we're discussing sentencing, Mr. Verner, my clerk has
21 done some research. The out-of-state prior property
22 offenses would count for enhancement purposes on the
23 larceny charges, the three larcenies, I believe. Would
24 that be accurate?

25 MR. VERNER: Yes. And my -- my hunch is that the

1 Court's probably going to sentence on the burglary and the
2 safecracking and less on the larcenies. I -- I don't know
3 that he was indicted under the property-enhancement
4 section. And ---

5 THE COURT: According to the CDR code, this is not the
6 enhancement section. It's probably six of one, half-dozen
7 of the other, gentlemen. I don't see the larcenies as
8 being the primary -- the primary driving force of this
9 case, obviously. So I'll -- I'll -- I'm going to sentence
10 him under the nonenhanced version on those petit larcenies.

11 MR. VERNER: Thank you. I -- I think I would make an
12 argument that he would have to be indicted under the
13 enhancement section to -- but -- that -- that -- that might
14 -- that's probably going to be something we may address in the
15 future, Judge. But I -- my concern is -- well, my thoughts
16 are that the -- it -- it's essentially a burglary case with
17 the safecracking conviction. And -- and I think that's the
18 -- what -- what to judge is going to base your decision on.

19 THE COURT: All right. Thank you very much, Mr.
20 Verner.

21 All right. Mr. McCoy, I'm certainly happy to hear
22 anything that you want to say to me, sir.

23 THE DEFENDANT: I pretty much said it all the -- the
24 last time I was -- well, I -- I hope you do what I --
25 what's best.

1 THE COURT: And, Solicitor, in terms of his criminal
2 history, does that that reflect the longest amount of time
3 or there -- does his criminal history reflect what the
4 longest sentence is that he's received or actually served?

5 MR. SCOTT: Judge, in -- in all candor, I'm -- I
6 always have a fit reading Florida rap sheets. I'm trying
7 to put my hands on it right now. Tennessee's are fairly
8 vague as well. I -- I didn't see anywhere on there the --
9 I'm checking as I'm talking, Your Honor -- where basically
10 the -- they have a disposition. And they'll say
11 "guilty/convicted." They don't really go into sentences,
12 that I can tell.

13 Let's see. I'm -- burglary was ---

14 (Whereupon, Mr. Scott and Mr. Brown conferred.)

15 MR. SCOTT: There is -- okay. Yates is -- is showing
16 me -- one of the -- that's a burglary from '97?

17 MR. BROWN: '93.

18 MR. SCOTT: Oh, '93? And then, it -- it's showing a
19 one-year-six-month state-prison sentence, credit for 119
20 days. But that might -- there's a probation revocation. I
21 -- Your Honor, I can't tell.

22 MR. VERNER: He did get revoked on -- he tells me,
23 Judge -- and, of course, the judge can query him. It -- he
24 tells me he got a -- basically a youthful-offender-type
25 sentence for the two burglaries when he was 19. He did get

1 revoked on probation. But he's got no other department-of-
2 correction sentence, other than the four-year sentence from
3 2007 out of Tennessee.

4 THE DEFENDANT: Your -- Your Honor, can I say
5 something about that?

6 THE COURT: Certainly.

7 THE DEFENDANT: That -- that's not two burglary.
8 That's just one.

9 THE COURT: One burglary?

10 THE DEFENDANT: They -- they know, Your Honor.
11 Somehow I had convicted on it twice or I pled out to it
12 twice. I had got out on probation, and they violated my
13 probation and put me back through. It's a -- it's '93/'96
14 charge, is the way they have it in the paperwork.

15 THE COURT: Okay.

16 (Whereupon, Mr. Scott and Mr. Brown conferred.)

17 SENTENCE OF THE COURT

18 THE COURT: All right. Well, Mr. McCoy, I truly
19 regret having to make your acquaintance this way. I --
20 I've heard the testimony and in all candor, I'm -- I'm not
21 entirely convinced that you were coming back from bike week
22 to Tennessee and you decide to stop off in Newberry and
23 rent a place for two nights just because you like the area.
24 I think there's got to be more to it than that.

25 And I look at your criminal history, Mr. McCoy. In

1 all candor, in -- in many respects you -- you strike me as
2 somewhat of a professional thief for someone who is doing a
3 lot of crime consistently. And my experience is that
4 sometimes a very successful criminal does not get caught
5 very often.

6 Of course, I'm only taking into account your
7 convictions. And for purposes of sentencing, Solicitor,
8 I'm not taking into account in any way, shape, or form any
9 of the documents that were discovered in his hotel room.
10 So I will not be considering those for -- for purposes of
11 sentencing. I understand they raise some suspicions. But
12 in and of themselves, I don't know that it would be proper
13 for me to consider those. So I'm -- I'm simply not going
14 to at this particular juncture.

15 But that as it is, Mr. McCoy, you've been in and out
16 of trouble your entire life, sir. And again, I'm not
17 buying it that you were on your way back from Myrtle Beach
18 for bike week.

19 So the sentence that I have decided to impose, sir:
20 On Indictment -872 -- that's the safecracking charge --
21 sentence of the Court is that you will be committed to the
22 Department of Corrections for 15 years. You'll receive
23 credit for the time in jail that you have served since May
24 the 27th of last year. I've noted here that this will be
25 the lead indictment per the request of your attorney.

1 On Indictments -884 and -881 -- that is the grand
2 larceny charge and the possession-of-burglary-tools charge
3 -- sentence on those charges is five years. Those will run
4 concurrent with each other and concurrent with the
5 safecracking charge, of course; credit time served since
6 May the 27th of 2013.

7 On Indictments -883, -882, -887 -- no, sorry -- -878
8 -- scratch that last one. The ones I'm -- the burglary
9 charges -- burglary, second-degree-violent, charges: On
10 Indictments -883, -882, -878, -877, and -874, sentence of
11 the Court, Mr. McCoy, is that you're committed to the
12 Department of Corrections for ten years. This sentence
13 will be consecutive to the safecracking charge. And you're
14 to receive credit for the time that you've served in jail
15 since May the 27th of 2013 (verbatim).

16 On -880 and -879, the petit larcenies, sentence of the
17 Court is that you're committed to the detention center for
18 30 days; credit 30 days in jail.

19 Mr. McCoy, you have 25 years to serve. I would
20 suggest that once you get out, you stay clear of South
21 Carolina and Newberry County. Good luck to you, sir.

22 (Whereupon, Mr. Verner and the defendant conferred.)

23 MR. VERNER: Thank you for your patience this week,
24 Judge.

25 THE COURT: Thank you, sir. And just so that the

1 record is clear: It is my intention that that burglary
2 charges run concurrent with each other -- concurrent on all
3 the burglary charges, but they will be consecutive to the
4 safecracking charge, resulting in a sentence of 25 years.

5 I will also enter an order tomorrow indicating that
6 for purposes of the strikes -- the strike issues involved
7 in this case, that this shall be treated as one offense,
8 since it arose out of one continuous course of conduct. I
9 will need to pull that section of the law, make reference
10 to it, but will be a very brief order, indicating that this
11 will be counting as one strike for purposes of serious ---

12 MR. VERNER: Your Honor ---

13 THE COURT: --- offenses.

14 MR. VERNER: --- I can prepare that tonight, if -- if
15 the Court wants me to, and just attach -- and we can ---

16 THE COURT: It may be ---

17 MR. VERNER: --- attach it ---

18 THE COURT: It may be beneficial going forward. Thank
19 you.

20 (Whereupon, the proceedings were concluded at 3:43 p.m.)

21 --- END OF TRANSCRIPT OF RECORD ---

22

23

24

25

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 Newberry County, South Carolina, on the 23rd and 24th days of April, 2013.

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
October 9, 2013

FORM 5

2017-CP-36-00587

STATE OF SOUTH CAROLINA

COUNTY OF NewberryJeffrey Glenn McCoy #355188
Full name and prison number (if any) of Applicant.

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

I, Elizabeth P. Folk, Clerk of Court, Newberry,
South Carolina, do hereby certify that this is a true
Copy of the original on file in this office.INSTRUCTIONS - READ CAREFULLY

Clerk of Court

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention South Carolina Department of Corrections / Kirkland R+E
4344 Broad River Rd, Columbia, SC 29210
2. Name and location of Court which imposed sentence Newberry County General Session
Court P.O. Drawer 10 Newberry S.C.
29108
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) Safe Cracking 12G536-0872 / Burglary 2nd 12G536-0883 / Burglary 12G536-0876
 - (b) 0876 / Burglary 2nd 12G536-0877 / Burglary 2nd 12G536-0878 / Burglary 2nd
 - (c) 12G536-0882 Grand Larceny 12G536-0884 / Tools Used in a Crime
 - (c) 12G536-0881 Petit Larceny 12G536-0880 / Petit Larceny 12G536-0878
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 4/24/13 when imposed sentenced to 15 years Violent at 85% for Safe Cracking
 - (b) 10 years for all five Burglaris that were run Concurrent with each other but is to be run consecutive with the Safe Cracking Sentence. 5 years for Grand Larceny Concurrent with the Safe Cracking. 5 years for tools of a crime also Concurrent with Safe Cracking.

Revised 3/2003

30 days for the two petit Larcenys credited
for time served in the Newberry County Correction Center.

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty Yes _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes _____
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. The State of South Carolina Court of Appeals
- ii. The Court of Common Pleas of the Eighth Judicial District
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. AFFIRMED pursuant to Rule 220(b), S.C.A.C.R.
- ii. Dismissed Without Prejudice
- iii. _____
- (c) the date of each such result:
- i. Submitted February 1, 2015 - Filed March 11, 2015
- ii. Hearing held June 7, 2017 - Filed July 3, 2017
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Unpublished Opinion No. 2015-UP-136
- ii. Dismissed Without Prejudice NO. 2015-CP-36-0591
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) See Supplement papers marked Appendix - A - pages 1 through 51
 (b) Applicant believes he has additional claims for post-conviction
 (c) relief but does not yet have collateral counsel access to the
 11. State concisely and in the same order the facts which support each of the grounds set out,
 in (10): See Supplement papers marked Appendix - A - pages 1 through 51
 (a) Applicant believes he has additional claims for post-conviction
 (b) relief, but does not yet have collateral counsel access
 (c) to the discovery process or funds for expert services. I also
do not have access to the law library or my legal material
while here at Kirkland R+E.
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? _____
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions
 relief? Yes
 (c) any petition in the United States Supreme Court for certiorari other than petitions,
 if any, already specified in (8)? _____
 (d) any other petitions, motions or applications in this or any other Court? _____
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or
 application:
- (a) the specific nature thereof:
 i. Post-Conviction Relief Application
 ii. Motion requesting Court to withdraw order of Dismissal
 iii. Motion to appeal order of Dismissal
 iv. _____
- (b) the name and location of the Court in which each was filed:
 i. Court of Common Pleas of the Eighth Judicial District
 ii. Clerk of Court Newberry County
 iii. P.O. Drawer 10
 iv. Newberry, SC 29109
- (c) the disposition thereof:
 i. Dismissed without prejudice.
 ii. No respons from the Courts
 iii. No respons from the Courts.

- iv. _____
- (d) the date of each such disposition:
- i. Filed on July 3, 2017 - hearing held on June 7, 2017
- ii. Filed on July 17, 2017 - never got response from the court
- iii. Filed on July 19, 2017 - never got response from the court
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. Dismissed with out prejudice
- ii. _____
- iii. _____
- iv. _____
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
yes
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. See Supplement papers marked Appendix A - pages 1-51
- ii. Applicant believes he has additional claims for post-conviction Relief but does not have collateral counsel, access to the discovery process or funds for expert services. I also do not have access to my legal material or the law library while here at Kirkland R+E.
- iii. the proceedings in which each ground was raised:
- i. _____
- ii. _____
- iii. _____
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) N/A
- (b) _____
- (c) _____
17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? no
- (b) your trial, if any? yes
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? yes

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
- i. Charles Verner Public Defenders Office 1303 Main St, Suite 304 Newberry, SC, 29108
- ii. Lara M. Coudy Appellate Defense 1330 Lady St, Columbia SC, 29201
- iii. Carson Henderson Attorney 109-B Oak Av. Greenwood SC, 29646
- (b) the proceedings at which each such attorney represented you:
- i. Trial and Sentencing
- ii. Direct Appeal
- iii. Post-Conviction Relief

19. State clearly the relief you seek in filing this application: Appellant's conviction should be reserved and this case remanded to the Newberry County Courts at General Sessions for a new trial.
20. Are you now under sentence from any other court that you have not challenged?
NO

STATE OF SOUTH CAROLINA)

County of)

Newberry)
Jeff McCoy

VERIFICATION

I, , 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.

SWORN to and subscribed before me this 30
day of October, 2017.

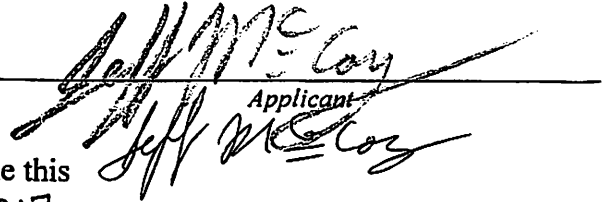
Melissa Sprague (L.S.)
Notary Public

My Commission Expires: Dec. 1, 2025.

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, _____, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.



 Applicant

SWORN or affirmed to and subscribed before me this
30 day of October, 2017.



 Notary Public

My Commission Expires: Dec. 1, 2025

LEGAL
MAIL
ONT

- 10(A): Applicant was denied the right to effective assistance of Counsel - guaranteed by the Sixth and Fourteenth Amendments of the United States Constitution and by Article I §§ 3 and 14 of the South Carolina Constitution during the guilt or innocence phase of his trial.
- 11(A): Supporting facts: Trial Counsel's performance during the guilt or innocence phase was both unreasonable and prejudicial. See *Strickland v. Washington*, 466 U.S. 668 (1984); *State v. Davis* 239 S.C. 280; *State v. Tucker*. Counsel's acts or omissions included, but are not limited to the following:
- (1): Counsel failed to ask the court for a Batson hearing after the selection of the jury. See *State v. Tucker* 334 S.C. 1. As a result, Counsel's failure to request a Batson hearing, applicant's conviction and sentence is unreliable.
- 10(B): Applicant was denied the right to effective assistance of Counsel - guaranteed by the Sixth and Fourteenth Amendments of the United States Constitution and by Article I §§ 3 and 14 of the South Carolina Constitution - during the guilt or innocence phase of his trial.
- 11(B) Supporting facts: Counsel's performance during the guilt or innocence phase was both unreasonable and prejudicial. See *Strickland v. Washington*, 466 U.S. 668 (1984); *State v. Lyle* 125 S.C. 406; *State v. McGee* 408 S.C. 278; *State v. Lyles* 379 S.C. 328; and *United States v. Easley* 994 F.2d 1241. Counsel's acts or omissions included but are not limited to the following:
- (1): Counsel failed to object to opening statements by the prosecutor Dale Scott when he referred to other crimes or bad acts under S.C.R.E. Rule 404(b) and 403. See Trial Transcript Page 43 Line 7 - Page 44 Line 20.
 - (2): Counsel failed to seek an instruction from the court limiting the specific elements to other crimes or bad acts.
 - (3): Counsel's failure to object and develop and present relevant and mitigating evidence concerning other crimes or bad acts made the applicant's conviction and sentence unreliable. See South Carolina Code Ann. § 17-13-20.

ELIZABETH P. FOLK
CLERK OF COURT
2017 NOV 03 AM 11:04
NEWBERRY COUNTY
FRED

**LEGAL
MAIL
ONLY**

10 (C) Applicant was denied the right to effective assistance of Counsel - guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I §§ 3 and 14 of the South Carolina Constitution during the Plea of guilty at the mercy of the Court

11 (C): Supporting facts: Trial Counsel's performance during the guilty plea was both unreasonable and prejudicial. See *Strickland v. Washington*, 466 U.S. 668 (1984). Counsel's failure to inform Applicant included but are not limited to the following:

(1): Counsel failed to inform the defendant that if he pled guilty at the mercy of the Court he could be sentenced to consecutive sentences on all charged indictments and could be ordered by the Court to serve a sentence of up to 100 years. See Trial Transcript Page 9 and 10. Also see *State v. Murdock* 311 S.C. 16.

10 (D): Applicant was denied the right to effective assistance of Counsel guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I §§ 3 and 14 of the South Carolina Constitution during the guilt-or-innocence phase of his trial.

1 (D): Supporting facts: Counsel's performance during the guilt-or-innocence phase was both unreasonable and prejudicial. See *Strickland v. Washington*, 466 U.S. 668 (1984). Counsel's acts or omissions include but are not limited to the following:

(1): Counsel failed to object to the introduction of state exhibits 2(A-K), 3(A-H), 4(A-F), 5(A-G), and 6(A-G). Crime scene photos of all five Burglaries at the shops on Wilson. See Trial Transcript Page 53-55, Page 60-61, Page 62-63, Page 64-66, and Page 68-70

(2): Counsel failed to ask for a hearing out of the Jurys presence under S.C.R.E. Rule 402 on state exhibits 2(A-K), 3(A-H), 4(A-F), 5(A-G) and 6(A-G). Crime scene photos of all five Burglaries at the shops on Wilson.

LEGAL
MAIL
ONLY

10(E): Applicant was denied the right to effective assistance of Counsel guaranteed by the Sixth and Fourteenth Amendments of the United States Constitution and by Article I §§ 3 and 14 of the South Carolina Constitution - during the guilt or innocence phase of his trial.

11(E): Supporting Facts: Trial Counsel's performance during the guilt-or-innocence phase was both unreasonable and prejudicial. See *Strickland v. Washington*, 466 U.S. 668 (1984). Counsel's acts or omissions included but are not limited to the following:

(1): Trial Counsel failed to object to the introduction into evidence of State exhibit No. 1 being admitted into evidence twice as two separate aerial photographs of two separate locations. One being a Aerial photo of the shops on Wilco and the other a drawing of the Bearville Shopping Center. See Trial transcript page 49 Line 24 and 25; also see Trial transcript page 72 Line 9 - Page 73 Line 8 and at Page 102 Line 18 - Page 103 Line 8. Next look at suppression hearing transcript Page 44 Lines 1-9.

(2): Counsel failed to object to the introduction of State exhibit No. 1 under S.C.E. Rule 403 and 404(b) or on any other possible grounds to inflammatory and irrelevant evidence makes the applicant's conviction and sentence unreliable. See *State v. Gray*, 759 S.E.2d 160 and *State v. Collins*, 398 S.C. 19. Also see S.C. Code 17-19-2.

12(F): Applicant was denied the right to effective assistance of counsel guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I §§ 3 and 14 of the South Carolina Constitution - during the guilt-or-innocence phase of his trial.

13(F): Supporting Facts: Trial Counsel's performance during the guilt-or-innocence phase was both unreasonable and prejudicial. See *Strickland v. Washington*, 466 U.S. 668 (1984). Counsel's acts or omissions included but are not limited to the following:

LEGAL
MAIL
ONLY

(1): Counsel failed to object to the second photo marked as states exhibit No. 1 under SCRE Rules 404(B) and Rule 403. See State V. Lyle 125 S.C. 406; Trial transcript page 49 Line 24 and 25 also see Trial Transcript Page 72 Line 9 - Page 73 Line 8; then look at Suppression hearing transcript page 44 Lines 1-9, also see S.C. Code Ann. § 17-19-20 and State V. Tabory 136, 202, S.E.2d 852

2): Counsels failure to object to state second introduction of exhibit No. 1 on all possible grounds to inflammatory and irrelevant evidence makes applicants conviction and sentence unreliable. See State V. Gray 759 S.E.2d 160 and United States V. Easley 994 F.2d 1214, also see S.C. Code §§ 17-19-20

3(G): Applicant was denied the right to effective assistance of counsel guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I §§ 3 and 14 of the South Carolina Constitution - during the guilt - or - innocence phase of his trial.

(G): Supporting Facts: Trial Counsels performance during the guilt - or - innocence phase was both unreasonable and prejudicial. See Strickland v. Washington 446 U.S. 668 (1984) Counsels acts or omissions included but are not limited to the following:

(1): Counsel failed to object to the introduction into evidence states exhibit No. 7 Under SCRE Rules 403 and 404(b) Other crimes wrongs or acts. See State V. Lyle 125 S.C. 406 (1923) also see State V. McCree 408 S.C. 278 (2014) also see Trial transcript page 80 Line 24 - Page 82 Line 10. Then see State V. Cutro 504 S.E.2d 324.

(2): Counsel failed to object to any testimony made at trial by the states witness Boris Alvarado under SCRE Rules 403 and 404(b) in relation to states exhibit No. 7. See State V. Collins 398 S.C. 197. State V. Gray 759 S.E.2d 160; State V. Torres 390 S.C. 618 and see Trial Transcript Page 81 Line 1 - Page 84 Line 7.

(3): Counsel failed to object and ask for a lyle hearing to any and all photo's, statements and information concerning untried charge of Attempted Burglary. See State V. Lyle 125 S.C. 406 also see trial Transcript page 77 Line 9 - Page 96 Line 15.

LEGAL
MAIL
ONLY

488(4): Counsel's failure to object on all possible grounds to other crimes, wrongs, or acts that the applicant was not on trial for deprived the jury of an accurate assessment of the defendant's guilt or innocence and makes his convictions and sentences unreliable. See S.C. Code 17-19-20 and State V. Tabory 136, 202, S.E. 2d 852. P. 5 of 51

10(H): Applicant was denied the right to effective assistance of counsel guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I §§ 3 and 14 of the South Carolina Constitution during the guilt or innocence phase of his trial.

11(H): Supporting facts: Trial counsel's performance during the guilt or innocence phase was both unreasonable and prejudicial. See Strickland v. Washington 466 U.S. 668 (1984). Counsel's acts or omissions included but not limited to the following.

(1): Counsel failed to object to the introduction of state exhibit No. 8 an overview of the city of Newberry with Wilson road being the main road cutting across the map under SCRC Rules 404(b) and 403. See State v. Lyle 125 S.C. 406; State v. McGee 408 S.C. 278; State v. Collins 398 S.C. 197; State v. Gray 759 S.E.2d 160; and United States v. Easley 994 F.2d 1241. Also see Trial transcript Page 84 Line 9 - Page 85 Line 13.

(2): Counsel failed to object to the testimony by state witness Boris Alvarado under SCRC Rule 404(b) and 403 concerning state exhibit No. 8. See cited case law in the above column marked 11(H)(1). Also see Trial Transcript page 84 Line 9 - page 85 Line 11.

(3): Counsel's failure to object on all possible grounds to any testimony by state witness Boris Alvarado concerning state exhibit No. 8 makes the applicant's conviction and sentence unreliable. See S.C. Code 17-19-20 and State v. Tabory 136, 202, S.E. 2d 852.

LEGAL
MAIL
ONLY

10(I): Applicant was denied the right to effective assistance of counsel guaranteed by the Sixth and 14 Amendments to the United States Constitution and by Article I §§ 3 and 14 of the South Carolina Constitution - during the guilt or innocence phase of his trial.

11(I): Supporting facts: Counsel's performance during the guilt-or-innocence phase was both unreasonable and prejudicial. See *Strickland v. Washington* 466 U.S. 668 (1984). Counsel's acts or omissions included but are not limited to the following:

(1): Counsel failed to object to the introduction into evidence of states exhibits No. 9 (A-N) under SCRE Rules 404(B) and 403. See *State v. Lyle* 125 S.C. 406 (1923), *State v. McGee* 408 S.C. 278, *State v. Collins* 398 S.C. 197, *State v. Gray* 759 S.E.2d 160, and *United States v. Easley* 994 F.2d 1241. Also see Trial Transcript Page 87 Line 22 through Page 94 Line 10.

(2): Counsel's failure to object to any and all of the states witness Boris Alvarado concerning states exhibits No. 9 (A-N) under SCRE Rule 404(B) and 403 as well as S.C. Code §§ 17-19-20. See above cited case law under 11(I)(1) as well as Trial Transcript Page 87 Line 22 - Page 94 Line 10.

10(J): Applicant was denied the right to effective assistance of counsel guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I §§ 3 and 14 of the South Carolina Constitution - during the guilt-or-innocence phase of his trial.

**LEGAL
MAIL
ONLY**

11(J): Supporting Facts: Counsel's performance during the guilt-or-innocence phase was both unreasonable and prejudicial. See *Strickland v. Washington* 466 U.S. 668 (1984). Counsel's act or omissions included but are not limited to the following:

(1): Trial Counsel failed to properly object to states exhibits No. 9C, 9J, and 9K under SCRE Rules 404(b), 403, and 402. See *State v. Cutro* 504 S.E.2d 324, and *State v. Lyle* 125 S.C. 406. Also see Trial transcript Page 93 Line 16 - Page 94 Line 10. Then look at Trial transcript Page 90 Line 16 - Page 91 Line 3. Next look at Trial Transcript Page 92 Line 10 - Line 16.

(2): Counsel failed to ask for a Lyle hearing under SCRE Rule 404(b) when he made his objection under rule 403 to states exhibits 9C, 9J, and 9K. See *State v. Lyle* 125 S.C. 406, and *State v. Cutro* 504 S.E.2d 324. Also see Trial Transcript Page 90 Line 16 - Page 91 Line 3.

(3): Counsel's failure to object on all possible grounds to inflammatory and irrelevant statement presented by the States Witness Boris Alvarado in regards to State exhibits NO, 9C, 9J, and 9K. makes the applicants conviction and sentence unreliable. See Trial Transcript Page 90 Line 16 - Page 94 Line 10

0(K): Applicant was denied the right to effective assistance of counsel guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I §§ 3 and 14 of the South Carolina Constitution - during the guilt-or-innocence phase of his trial.

(K): Supporting Facts: Trial Counsel's performance during the guilt-or-innocence phase was both unreasonable and prejudicial. See *Strickland v. Washington* 466 U.S. 668 (1984). Counsel's acts or omissions included but are not limited to the following:

LEGAL
MAIL
ONTV

(1): Trial Counsel failed to investigate, develop, and present all Available relevant and admissible mitigating evidence to the introduction of States exhibits No. 9C, and 9N. Counsel's failure to conduct such an investigation deprived the Jury of critical information relevant to an accurate assessment of applicant's guilt or innocence. See *Wiggins v. Smith*, 539 U.S. 510 (2013). Also see Trial Transcript - Page 90 Line 16 - Page 93 Line 23.

2): Counsel failed to insure that the state proved by clear and convincing proof that the wives in States exhibits No. 9C, and 9N, were cut. As a result the applicant's conviction and sentence is unreliable. See *State v. Cutro*, 504 S.E.2d 324 and *State v. Lyle* 125 S.C. 406. Also see Trial transcript - page 90 Line 16 - page 93 Line 23.

3): Counsel failed to object to States exhibit NO. 9M, and 9C and any statements made by State witness Boris Alvarado pertaining to States exhibits NO. 9M, and 9C under SCRE Rule 404(b) and 403. See *State v. Alexander* 401 S.E.2d 146, *State v. Cutro* 504 S.E.2d 324 *State v. Lyle* 125 S.C. 406 (2013), S.C. Code §§ 17-19-10 and S.C. Code §§ 17-19-20. Also see Trial Transcript Page 90 Line 16 - Page 94 Line 6

0(L): Applicant was denied the right to due process under the Fifth and Fourteenth Amendments of the United State Constitution and by Articles unknown to the applicant of the South Carolina Constitution during the guilt or innocence phase of his trial.

1(L): Trial Judge abused his discretion when allowing States exhibits No. 9(A-N) to be allowed into evidence. See *State v. Timmons* 488 S.E.2d 323. Trial Judges Acts or omissions included but are not limited to the following:

(1): Trial Judges abuse of discretion occurred when he allowed the Solicitor Yate Brown to state in presence of the jury that States exhibits No. 9A-N should be in evidence collectively to show what the defendant's intent was in order to show that the defendant committed the crimes charged. See Trial Transcript Page 93 Line 24 - Page 94 Line 10

LEGAL
MAIL
ONLY

(2): Trial Judges abuse of discretion occurred when he allowed solicitor yate Brown to speculate that the defendants intended to commit a crime after the crimes charged in order to show that the defendant committed the crimes charged. See State V. Stokes 304 S.E.2d 814. Also see Trial Transcript Page 93 Line 24 - Page 94 Line 10.

3): Trial Judge abused his discretion when he admitted into evidence of the other bad act to show the inclination of the defendant to commit other bad acts not on trial for instead of the actual acts the defendant was on trial for. See State V. Timmons 488 S.E.2d 323, and State V. Stokes 304 S.E.2d 814. Also see Trial Transcript page 93 Line 24 - Page 94 Line 10.

0(m): Applicant was denied the right to effective assistance of appellate counsel - guaranteed by the sixth and Fourteenth Amendments to the United States Constitution and by article I §§ 3 and 14 of the South Carolina Constitution - during the direct appeal of the applicants conviction and sentence.

1(m): Supporting facts: Appellate counsels performance during the direct appeal was both unreasonable and prejudicial, See *Evitt v. Lucey* 469 U.S. 387 (1985). Appellate counsels acts or omissions included but are not limited to the following:

1): Appellate Counsel fail to argue the introduction of state exhibits No. 9C, 9F, and 9K after it had been preserved for the record by trial counsels objection Under rule 403. See Trial Transcript page 93 Line 24. Page 94 Line 10

2): Appellate Counsels failure to adequately argue on direct appeal the trial courts ruling on trial counsels objection to state exhibits No. 9C, 9F, and 9K deprived the applicant of an accurate assessment of appellate review and makes his conviction and sentence unreliable. See Trial transcript Page 93 Line 24 - Page 94 Line 10.

LEGAL
MAIL
ONTV

P. 10 of 57
493

(3): Appellate counsels failure to argue all possible ground to the trial courts ruling on applicant objection to states exhibit NO. 9C, 9F, and 9K, deprived the applicant an accurate assessment of appellate review and makes his conviction and sentence unreliable. See Trial Transcript Page 93 Line 24 - Page 94 Line 10.

(IV): Applicant was denied the right to effective assistance of Counsel guaranteed by the Sixth and Fourteenth amendments to the United States Constitution and by Article I §§ 3 and 14 of the South Carolina Constitution - during the guilt-or-innocence phase of his trial.

(V): Supporting facts: Trial Counsels performance during the guilt or-innocence phase was both unreasonable and prejudicial. See *Strickland v. Washington* 466 U.S. 668 (1984). Counsels acts or omissions included but are not limited to the following:

(1): Trial counsel failed to object to the arrest of the applicant under SCRE Rule 402, 403, and 404(B). See *Map v. Ohio*, *Terry v. Ohio*, *Huntley v. New York*, and *Dunaway v. New York* 442 U.S. 200. also see Trial Transcript page 78 Line 1 - page 97 Line 5. Then see Transcript of suppression hearing page 21 Line 3 - Page 42 Line 3.

(2): Counsel failed to ask for a hearing under SCRE 403 outside the presence of the jury to determine if the probative value of the applicants arrest outweighed the danger of unfair prejudice. See *State v. Alexander* 401 S.E.2d 146, *State v. Hess* 301 S.E.2d 547, 104 S.C. 100, 78 L.Ed.2d 105 and *State v. Gregory* 98, 16 S.E.2d 532. also see Trial transcript page 78 Line 1 - page 97 - Line 5. Then see suppression hearing Transcript page 21 Line 3 - Page 42 Line 3.

(3) Counsel failed to ask for a lyle hearing to determine if the defendants arrest was admissible under SCRE Rule 404(B). See *State v. Lyle* 125 S.C. 496 (1923) and *State v. Mcgee* 408 S.C. 278 (2014). also see Trial transcript page 78 Line 1 - page 97 Line 5. Then see suppression hearing transcript page 21 Line 3 - page 42 Line 3.

322/88
LEGAL
MAIL
ONLY

P. 11 of 51

(4): Trial counsel's failure to object to applicant's arrest and any testimony made by the state's witness Boris Alvarado pertaining to the applicant's arrest on all possible grounds makes the applicant's sentence and conviction unreliable. See Trial transcript page 78 Line 1 - page 97 Line 5. Also see Suppression hearing transcript page 21 Line 3 - page 42 Line 3.

(0): Applicant was denied the right to effective assistance of counsel guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I §§ 3 and 14 of the South Carolina Constitution - during the guilt-or-innocence phase of his trial.

(0) Supporting facts: Trial counsel's performance during the guilt-or-innocence phase was both unreasonable and prejudicial. See *Strickland v. Washington* 466 U.S. 668 (1984). Counsel's errors or omissions included but are not limited to the following:

(1): Counsel failed to object to the solicitor Yates Brown showing of an aerial photo of Bear Village shops to the jury as state exhibit No. 1 under SCRE Rule 403. See trial transcript page 102 Line 19 - page 103 Line 8. Also see Trial transcript page 72 Line 9 - page 73 Line 6. Also see *State v. Alexander* 401 S.E2d 146, *State v. Hess* 301 S.E2d 547, 78 L. Ed 2d 105 and *State v. Gregory* 98, 16, S.E2d 532.

(2): Counsel failed to object to the testimony of the state's witness Paul Malloy explaining to the jury the untried charge of attempted burglary while using an aerial photo of Bear Village as state exhibit No. 1 when state exhibit No. 1 is actually admitted in to evidence as a aerial photo of the shops on Wilson Under SCRE Rule 403. These are two completely different locations. See trial transcript page 102 - page 103 Line 22. Also see trial transcript page 72 Line 9 - page 73 Line 6. Then see *State v. Alexander* 401 S.E2d 146, *State v. Hess* 301 S.E2d 547, 78 L. Ed 2d 105 and *State v. Gregory* 98, 16, S.E2d 532.

355188

P/D 4957

LEGAL
MAIL
ONLY

(3): Trial Counsel failed to object to the testimony of the States witness explaining to the jury the untried charge of Attempted burglary while the jury was under the impression that States exhibit No. 1 was an aerial photo of Bear Village shopping center. After it had been excepted into evidence by the Court as an aerial photo of the shops on Wilson. Under SCRE Rule 403, Confusing and misleading the jury. See Trial Transcript Page 102 Line 19 - Page 103 Line 22. Also see Page 72 Line 9 - Page 73 Line 6.

4): Counsel failed to object to the testimony of the States witness Harold Malloy explaining to the jury the untried charge of attempted burglary Under SCRE Rule 404(B). See S.C. Code § 17-19-10, and 17-19-20. Also see State v. Lyle 125 S.C. 406 (1923) and State v. McGee 408 S.C. 218 (2014). Then see Trial Transcript Page 101 Line 5 - Page 108 Line 25.

10(P): Applicant was denied the right to effective assistance of Counsel guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I §§ 3 and 4 of the South Carolina Constitution - during the guilt-or-innocence phase of his trial.

11(P): Supporting Facts: Trial Counsels performance during the guilt-or-innocence phase was both unreasonable and prejudicial. See *Strickland v. Washington* 466 U.S. 668 (1984). Counsels acts or omissions included but are not limited to the following:

(1): Counsel failed to object to the testimony of States witness Harold Malloy of the Confiscation, Search and impounding of the applicants car Under SCRE Rules 403 and 404 (B). See Trial Transcript Page 101 Line 5 - Page 119 Line 2. Also look at Suppression hearing transcript Page 42 Line 6 - Page 62 Line 18. Then look at State v. Lyle 125 S.C. 406, and State v. McGee 408 S.C. 218 (2014).

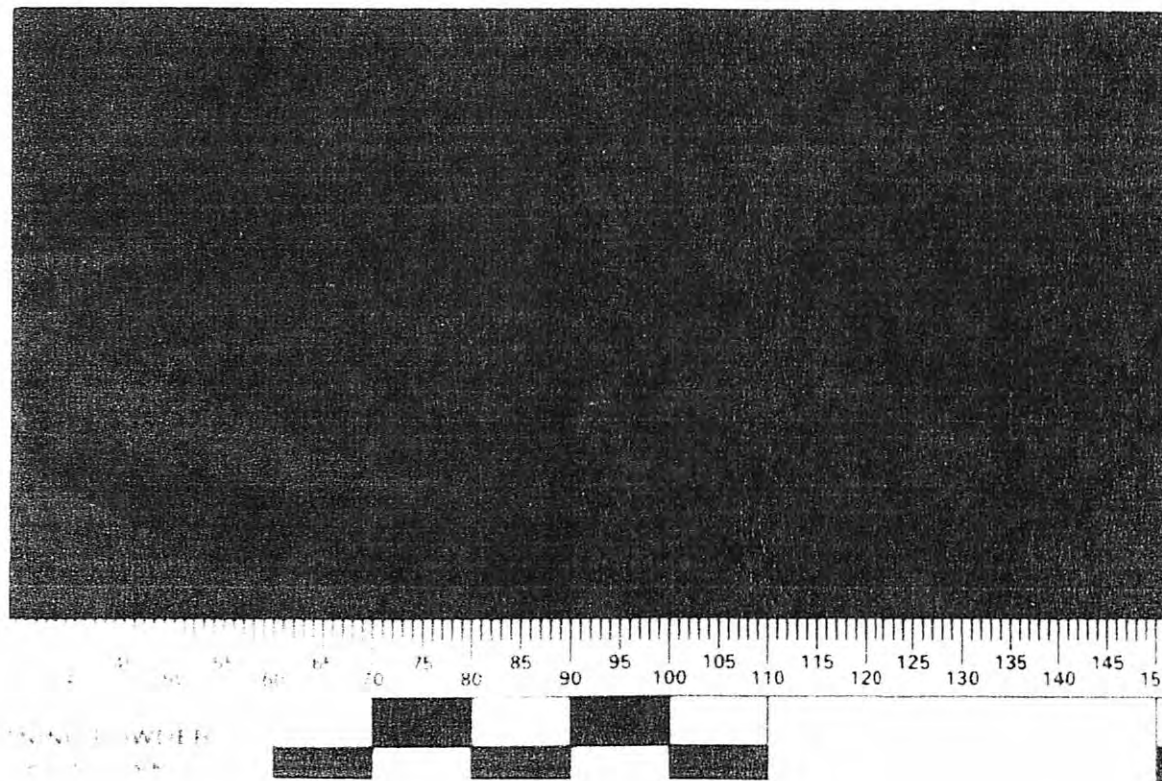
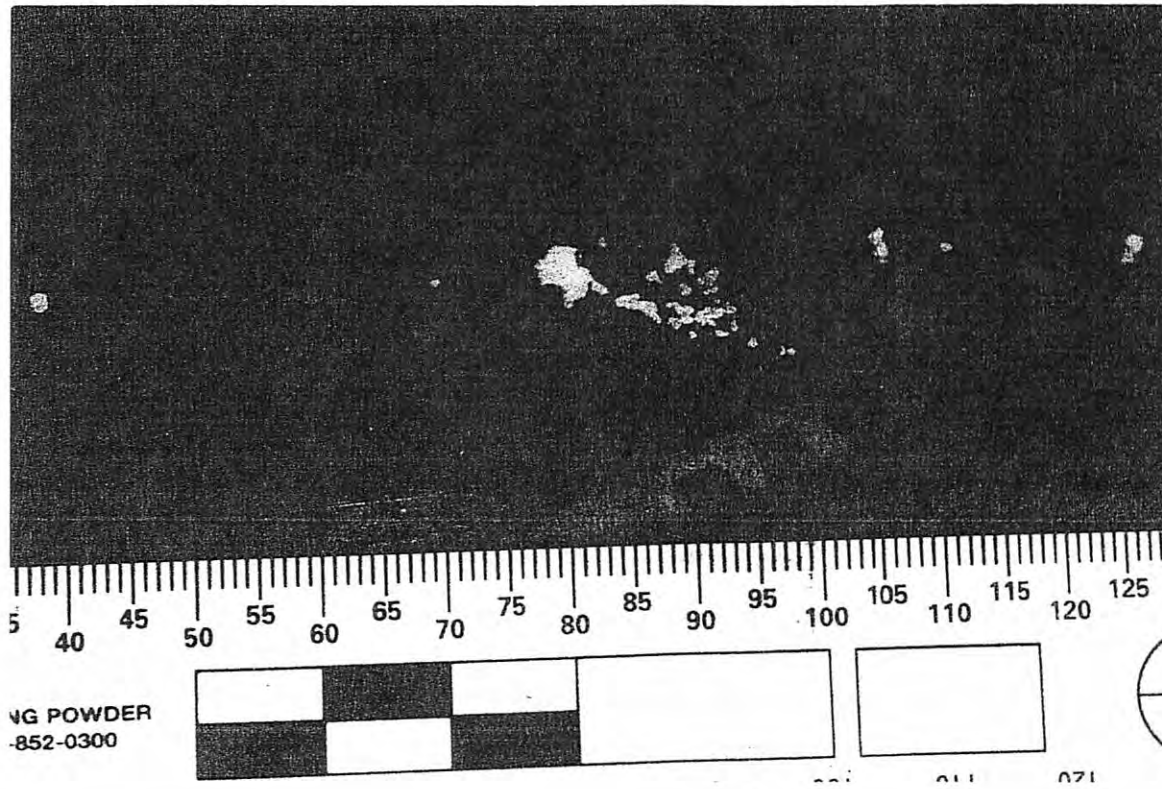
- (2): Counsel failed to object and ask for a live hearing to the testimony of State's witness Harold Malloy under SCRC Rule 404 (B). See State V. Lyle 125 S.C. 406 and State V. McGee 408 S.C. 278 (2014). Also see Trial transcript Page 101 Line 5 - Page 10 Line 2, Note: See Suppression hearing transcript Page 42 Line 6 - Page 62 Line 19.
- 3): Trial Counsel's failure to object to the seizure, inventory and impounding of applicant's car on all possible ground to inflammatory and irrelevant evidence presented at trial by the prosecution makes the applicant's conviction and sentence Unreliable. See Trial Transcript Page 101 Line 5 - Page 119 Line 2. also see suppression hearing Transcript - page 42 Line 6 - page 62 Line 19.
- 4): Counsel failed to object to Harold Malloy's statement that Officer Abernethy and a man - in regard to his location where he had a suspect behind the Bear Village Shopping Center whom possibly attempted to break into one of the building at the Bear Village location under SCRC Rule 404 (B). See State V. Lyle 125 S.C. 406 and State V. McGee 408 S.C. 278 (2014). Then see Trial Transcript Page 101 Lines 5 - Line 23. Also see State V. Stokes 304 S.E.2d 814
- 0(Q): Applicant was denied the right to effective assistance of counsel guaranteed by the sixth and Fourteenth Amendments to the United States Constitution and by Article I §§ 3 and 14 of the South Carolina Constitution - during the guilt-or-innocence phase of his Trial.
- 1(Q): Supporting Facts: Trial Counsel's performance during the guilt-or-innocence phase was both unreasonable and prejudicial. See Strickland V. Washington 466 U.S. 668 (1984). Counsel's acts or omissions included but are not limited to the following:

355/88

P. 1404957

LEGAL
MAIL
ONLY

- (1): Counsel failed to object to States witness Harold Malloy's testimony that he went looking for a potential vehicle that the applicant could have been traveling in that brought him to the scene of the untried attempted Burglary under SCRE Rules 403 and 404(B). See trial transcript Page 102 Line 5 - line 18. Also see Suppression hearing transcript - page 43 Line 10 - Line 22.
- 2): Counsel failed to ask for a Lyle hearing under SCRE Rule 204(B) to States witness Harold Malloy's testimony that he went looking for and found the vehicle the applicant was traveling when he arrived at the scene of the untried attempted Burglary. See State v. Lyle 125 S.C. 406 (1923) and State v. McGee 408 S.C. 278 (2014). Also see Trial transcript page 102 Line 5 - Line 18. Then see Suppression hearing Transcript Page 43 Line 10 - Line 22.
- 3): Counsel failed to object to the States witness Harold Malloy's testimony when he showed the jury on the aerial photo of the Bear Village Shops where he found the applicant's vehicle after the aerial photo had been presented falsely as State Exhibit NO. 1. Under SCRE Rule 403 see State v. Alexander 301 S.E.2d 547, 1045 Ct. 100, 18 L.Ed2d 105, 403 S.E.2d 1061. State v. Hess 301 S.E.2d 547, 1045 Ct. 100, 18 L.Ed2d 105, and State v. Gregory 98, 16, S.E.2d 532. Also see trial transcript Page 102 Line 5 - page 104 Line 23. Then see Suppression hearing Transcript Page 43 Line 10 - page 46 Line 7.
- 4): Trial counsel's failure to object on all possible grounds to inflammatory and prejudice evidence presented by the State witness Harold Malloy's testimony about where the applicant's car was found when he pointed it out to the jury on the aerial photo of the Bear Village Shops after it had been falsely shown to be State's exhibit NO. 1. See Trial transcript page 72 Line 17 - Page 73 Line 12. Also see Trial transcript page 102 Line 19 - Page 103 Line 8.
- 5) (R): Applicant was denied the right to effective assistance of counsel guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I § 3 and 14 of the South Carolina Constitution - during the guilt or innocence phase of his trial.



LEGAL
MAIL
ONLY

P.15 of 499

11(R): Supporting facts: Trial Counsel's performance during the guilt-or-innocence phase was both unreasonable and prejudicial. See *Strickland v. Washington* 466 U.S. 668 (1984). Counsel's acts or omissions included but are not limited to the following:

- 1) Trial Counsel failed to object to the testimony of States witness Harold Malloy when he testified that he found a car with Tennessee tags on it and when he ran the tag through the DMV it came back registered to the applicant Jeffrey McCoy out of Tennessee under SCRE Rules 403 and 404(B). See *State v. Lyle* 125 S.C. 406 (1923), and *State v. McGee* 408 S.C. 278 (2014). See Trial Transcript Page 103 Line 23 - Page 105 Line 2. Also see Suppression hearing Page 43 Line 10 - Line 22.
- 2) Counsel failed to object to the testimony of the States witness Harold Malloy when he testified that he looked inside the applicant's car and could clearly see a tool bag with tools in it under SCRE Rules 403 and 404(B). See *State v. Timmons* 488 S.E.2d 323, *State v. Lyle* 125 S.C. 406, and *State v. McGee* 408 S.C. 278 (2014). See Trial transcript Page 105 Line 3 - Line 22. Also see Suppression hearing Page 46 Line 14 - Line 25.
- 3) Counsel failed to object to the testimony of the States witness Harold Malloy when he testified that he saw a large amount of quarters, gold dollars and a red hotel key in the center console of the car under SCRE Rules 403 and 404(B). See *State v. Timmons* 488 S.E.2d 323, *State v. Lyle* 125 S.C. 406, and *State v. McGee* 408 S.C. 278. Also see trial transcript Page 105 Line 10 - Line 22. Also see Suppression hearing transcript page 47 Line 1 - Line 6.
- 4) Counsel failed to object to the testimony of States witness Harold Malloy when he stated that he and his officers set up surveillance on the applicant's vehicle under SCRE Rule 403 and Rule 404(B). See *State v. Timmons* 488 S.E.2d 323, *State v. Lyle* 125 S.C. 406, and *State v. McGee* 408 S.C. 278. Also see Trial Transcript Page 105 Line 23 - Page 106 Line 23. Then see Suppression hearing Page 47 Line 7 - Page 48 Line 14.

LEGAL
MAIL
ONLY

- (5): Counsel failed to object to the testimony of the States witness Harold Malloy when he stated that he took possession and inventoried the applicants vehicle under SCRE Rules 403 and 404(B). See State V. Timmons 488 S.E.2d 323, State V. Lyle 125 S.C. 406 and State V. Mcgee 408 S.C. 278. Also see Trial Transcript page 106 Line 24 - Page 108 Line 22. Then see suppression hearing page 48 Line 15 - Page 49 Line 21.
- (6): Counsel failed to object to the testimony of the States witness Harold Malloy when he testified to the jury explaining the items listed that were inventoried when he took possession of the applicants vehicle under SCRE Rules 403 and 404(B). See State V. Timmons 488 S.E.2d 323, State V. Lyle 125 S.C. 406 and State V. Mcgee 408 S.C. 278. Also see Trial transcript Page 108 Line 23 - page 110 Line 21. Then see suppression hearing Page 49 Line 19 - 51 Line 16.
- (5): Applicant was denied the right to effective assistance of Counsel guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I §§ 3 and 14 of the South Carolina Constitution - during the guilt-or-innocence phase of his trial.
- (5): Supporting facts: Trial Counsels performance during the guilt-or-innocence phase was both unreasonable and prejudicial. See Strickland v. Washington 466 U.S. 668 (1984). Counsels acts or omissions include but are not limited to the following:
- (1): Trial counsel failed to object to the introduction into evidence States exhibit No. 10 (A-R) and any statements made at trial by the States witness Harold Malloy in regards to the States exhibit No. 10 (A-R) under SCRE Rules 403 and 404(B). See State V. Timmons 488 S.E.2d 323, State V. Lyle 125 S.C. 406, and State V. Mcgee 408 S.C. 278. Also see Trial Transcript Page 110 Line 22 - Page 116 Line 24.