

ORIGINAL

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM NEWBERRY COUNTY

Eugene C. Griffith, Jr., Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

WILLIAM RUSSELL NEAL,

APPELLANT

APPELLATE CASE NO. 2013-000465

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA)
)
 COUNTY OF NEWBERRY) COURT OF GENERAL SESSIONS
) 11-GS-36-00733

STATE OF SOUTH CAROLINA,)
)
 PLAINTIFF.)
)
 vs.) TRANSCRIPT OF RECORD
) **ORIGINAL**
 WILLIAM RUSSELL NEAL,)
)
)
 DEFENDANT.)

FEBRUARY 9, 2012
 NEWBERRY, SOUTH CAROLINA

B E F O R E:

THE HONORABLE EUGENE C. GRIFFITH, JR., JUDGE.

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

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VIVIAN H. CROSS
 OFFICIAL COURT REPORTER

FEBRUARY 9, 2012
(STATE OF SOUTH CAROLINA V. WILLIAM RUSSELL NEAL)
(SCHMERBER HEARING)
(CASE NO. 2011-GS-36-00733)

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E X H I B I T S

IDENTIFICATION

ENTERED PG.

*****NO EXHIBITS OFFERED*****

P R O C E E D I N G S

(FEBRUARY 9, 2012 - 11:26 A.M.)

(CASE NUMBER: 11-GS-36-00733

MR. BROWN: Judge---

THE COURT: Yes, sir.

MR. BROWN: ---stands before you is William Russell Neal on indict- -- on, uh, indictment 11-GS-36-0733. He's been indicted for burglary, uh, first degree. Also, uh, petty larceny and possession of burglary tools.

Um -- when he was arrested on August 18th, uh, it is alleged that Mr. Neal, uh, burglarized the home of David Gillion, located at Street here in the, uh, city of Newberry, Newberry County, South Carolina.

Um -- during the investigation, Newberry Police Department, uh, went in the, uh, house of Mr. Gillion and did discover a baseball cap and a -- actually a Doctor Pepper can that was left inside, um -- they believe to be Mr. Neal's.

They based this information off of, uh -- Mr. Gillion returned to his home at Street and confronted, uh, Mr. Neal who he identified.

Uh -- law enforcement did pick Mr. Neal up later on down the road, uh, in close proximity to this location. And, uh -- and this is when they started investigating. They did discover a Doctor Pepper can and a baseball cap that did not belong to Mr. Gillion. And they, uh, believe that Mr. Neal's

1 D-N-A would be on that can.

2 And I am moving for a Schmerber, um -- for a Schmerber
3 order stating that Mr. Neal needs to submit his, uh -- a
4 sample of his D-N-A so we can get that compared to the, uh,
5 Doctor Pepper can and the -- the, uh, baseball cap.

6 THE COURT: All right; Mr. Verner, I'd like to hear you
7 on that.

8 MR. VERNER: Just we don't consent.

9 THE COURT: All right. Um -- being that the collection
10 of a buccal swab for a D-N-A sample is not invasive in its
11 nature, I'll allow The State to collect the sample and
12 compare it.

13 This has no ruling on admissibility of any of the
14 evidence at this time. The last Schmerber hearing I had
15 that's all they talked about was admissibility and that is
16 not ruling on that issue at this time; it's only on the D-N-A
17 evidence collection for him and its analysis. And then I'll
18 hear any further issues on the admissibility.

19 MR. VERNER: Thank you, Your Honor, for hearing us.

20 THE COURT: All right.

21 MR. BROWN: Your Honor, also, uh, I want to put on the
22 record is that Mr. Neal does have a past, uh -- a very --
23 well, he has a past criminal history.

24 In 1989 he was, uh, convicted of burglary first
25 degree -- or, a number of burglary first degrees along with

1 other charges. He did receive a life sentence on that
2 charge, and The State is serving him with notice of intent to
3 seek life without parole.

4 THE COURT: And for the record, it is the 9th of
5 February. So provided by The State to Mr. Verner, Mr. Neal's
6 attorney, The State's intent to seek a life without parole
7 sentence if he is convicted of burglary first.

8 MR. VERNER: Thank you for hearing us, Your Honor.

9 MR. BROWN: Thank you, Your Honor.

10 THE COURT: All right.

11 (WHEREUPON, HEARING ENDED AT 11:30 A.M.)

12 *****END OF REQUESTED TRANSCRIPT*****

STATE OF SOUTH CAROLINA)
)
 COUNTY OF NEWBERRY)

CERTIFICATE OF REPORTER

I, THE UNDERSIGNED VIVIAN H. CROSS, 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 THOSE PROCEEDINGS AND EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE COURT OF GENERAL SESSIONS FOR NEWBERRY COUNTY, SOUTH CAROLINA, ON THE 9TH DAY OF FEBRUARY 2012.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL NOR INTEREST TO ANY PARTY HERETO.

AUGUST 2, 2013

Vivian H. Cross
 VIVIAN H. CROSS
 CIRCUIT COURT REPORTER

State of South Carolina)
) Court of General Sessions
County of Newberry) 2011-GS-36-0733

State of South Carolina)
) Transcript of Record
)
William Russell Neal)
) DEFENDANT

February 4, 2013
Newberry, South Carolina

B E F O R E:

Honorable Eugene C. Griffith, Jr., Judge

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

Dale Scott, Deputy Solicitor
Yates Brown, Deputy Solicitor
Attorneys for the State

Charles Verner, Assistant Public Defender
Attorney for the Defendant

Joy E. Holston
Official Court Reporter

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1 THE COURT: Solicitor.

2 MR. BROWN: Judge, this is the State versus William
3 Russell Neal on indictment 11-GS-36-0733. He has been on
4 notice for trial this week on the burglary first charge
5 that took place on August the 18th of 2011. We are here
6 today to declare whether or not the wavier of rights and
7 the voluntary statement with William Neal was voluntarily
8 given in a Jackson v. Denno. And also, Your Honor,
9 pretrial matters as well. One, he does have prior
10 convictions so I would anticipate Mr. Verner bringing that
11 up. I think that is it on our part.

12 THE COURT: All right, Mr. Verner, y'all filed a
13 Jackson v. Denno on the voluntariness of the statement
14 provided to the State?

15 MR. VERNER: Yes sir, we want a clarification too.
16 Mr. Neal is charged with first degree burglary. My
17 understanding is the allegation that he had a knife and
18 also that he would have two prior burglaries. It seems
19 like everything he has got on his record he pretty much
20 plead on the same day. All of the strikes would be the
21 same plea date. And it would be our motion that that
22 would only be one prior burglary second on his record.
23 All of the pleas were from the same court date. But that
24 there is certainly more than two on the record.

25 THE COURT: With the allegation of this case was use

1 of a weapon also?

2 MR. VERNER: Yes, sir.

3 THE COURT: So perhaps two different ways to the
4 burglary first?

5 MR. BROWN: That's right, Your Honor. If you don't
6 mind if I may approach. There is the case of Bryan v.
7 State that supports the motion of the two priors. It
8 gives guidance on how to construe the statute 17-25-45(f),
9 also 17-25-50, how it is suppose to be construed by
10 reading together and also the legislative intent that they
11 have ruled on, giving their guidance on how that should
12 be, deciding whether two or more priors should be treated
13 and the close proximity which would support our two
14 priors.

15 THE COURT: Mr. Verner, are you ready, do you want to
16 go forward on the Jackson v. Denno first?

17 MR. VERNER: Yes, sir.

18 THE COURT: All right, that being the case call your
19 first witness.

20 MR. BROWN: Judge, the State calls Lieutenant Roy
21 McClurkin of the Newberry Police Department. Judge,
22 before we get started I don't know if I read out the
23 indictment number.

24 THE COURT: I thought you did. Go ahead.

25 MR. BROWN: State versus William Neal on indictment

1 11-GS-36-0733, charged with burglary first.

2 ROY MCCLURKIN, being
3 first duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 By Mr. Brown:

6 Q Mr. McClurkin, what is your profession?

7 A I am an investigator with the Newberry Police
8 Department.

9 Q And how long have you been with the Newberry Police
10 Department?

11 A 29 years.

12 Q Is that the only agency you have worked with?

13 A Yes, sir.

14 Q And what are your present duties there?

15 A I am an investigator. As an investigator I assign
16 cases for investigating from theft to burglary, also
17 process crime scenes, collecting evidence and reserving
18 evidence, also interview witnesses, interviewing victims
19 and also suspects.

20 Q Lieutenant McClurkin, were you working on August the
21 18th of 2011?

22 A Yes, I was.

23 Q And with regards with the case we are here for today,
24 State versus William Neal, did you become involved in that
25 case?

1 A Yes, I did.

2 Q Now, when was Mr. Neal arrested for burglary first?

3 A Actually on that day, February 18th, excuse me,
4 August--

5 Q August 18th of 2011?

6 A Yes, sir.

7 Q And Lieutenant, when did you become involved?

8 A Actually I heard patrolman, Ryan Gunwall get out with
9 Mr. Neal and I was actually close to that area and I
10 actually went over there to where he was.

11 Q And once you got to that area where he was what did
12 you do?

13 A After getting out I noticed that Patrolman Gunwall
14 was talking with him and getting his name and found out
15 where he was going and stuff like that. And I actually
16 started talking with Mr. Neal also and asked him if he
17 would mind going out to the police department with me.

18 Q And for the purposes of this is Mr. Neal in this
19 courtroom today?

20 A Yes, he is.

21 Q Where is he sitting?

22 A He is seated over next to Mr. Verner there.

23 Q And what is he wearing?

24 A He is wearing a yellow jumpsuit.

25 Q Is that who you, who was out there that day with Mr.

1 Gunwall?

2 A Yes, sir.

3 Q After you got out there you said he was talking with
4 Mr. Gunwall, Officer Gunwall, what did you do once you got
5 there.

6 A Officer Gunwall was getting his name and information
7 like that and talking to him for a little while. Like I
8 said, I asked him if he would accompany me to the police
9 department.

10 Q Was Mr. Neal in handcuffs at that point?

11 A Yes, he was. He was in handcuffs when I arrived.

12 Q What did you do after you asked him if he would like
13 to ride with you?

14 A I actually placed him inside of my car, an unmarked
15 patrol car that doesn't have a screen so I chose to leave
16 him in handcuffs for his protection and my protection
17 while I transported him to the police department.

18 Q What did you do once you got to the police
19 department?

20 A Once we arrived at the police department I took him
21 into my office and actually filled out a wavier of rights
22 form on Mr. Neal.

23 Q Now, when you transported him from the incident,
24 where he was picked up, to the police department was he in
25 investigative detention?

1 A Yes, he was.

2 Q So he was not free to leave?

3 A No, he was not free to leave.

4 Q And he was not under arrest at that time?

5 A No sir, he was not.

6 Q Once you got back to the police department you said
7 you gave him a waiver of rights form?

8 A Yes, sir.

9 Q Tell me about that wavier of rights form.

10 A It is actually a form that has a place for the
11 person's name, his address, his age, whether they can read
12 or write and the charges that I am investigating. And it
13 has Miranda rights listed on there also. Then it has a
14 place at the bottom that, where the suspect actually signs
15 the waiver of rights and a place where I witnessed it and
16 the date and time also.

17 Q Now, when you showed him this waiver or rights, what
18 did you do?

19 A I actually filled out the top part of the waiver of
20 rights with all of that information. And once we got down
21 to the first right, number one, I actually take another
22 copy of the waiver of rights. And I read it and I start
23 at number one and I read number one of his Miranda rights,
24 I asked him if he understands and he tells me he
25 understands and I ask him to put his initials beside that

1 particular right.

2 MR. BROWN: Judge, may I approach?

3 THE COURT: You may.

4 Q Lieutenant McClurkin, I am showing you what has been
5 marked just for identification as State's exhibit number
6 1. Will you take a look at that and tell me what that is?

7 A This is the actual adult waiver of rights that I
8 filled out on Mr. Neal on the 18th of August of 2011.

9 Q And how can you tell that is the one that was filled
10 out?

11 A It has my signature on the bottom as a witness, also
12 Mr. Neal's signature and it indicates his name, his
13 address, his level of education that he can read the
14 actual crime that I was investigating. And like I said,
15 beside number one, number one right down to number six it
16 has his initials.

17 Q What did you write as the crime of your
18 investigation?

19 A Burglary.

20 Q Now, go on down, what is the next line below that
21 where it says burglary?

22 A On the next line it says, it says explained to me, I
23 understand. And then it goes to question number one, I
24 have a right to remain silent. That means that I do not
25 say anything or answer any questions.

1 Q What was his answer to that?

2 A Like I said, once I read it to him I ask him if he
3 understands and indicates that if he understands put his
4 initials beside it. And this does have his initial beside
5 it.

6 Q Okay. Now, what did you do after that?

7 A And then I go to number two that says anything that I
8 say can be used against me. Once again, I ask him if he
9 understands and once he tells me that he understands I
10 tell him to indicate that he does understand, place his
11 initials beside that.

12 Q Is his initials there?

13 A His initials are there.

14 Q And next?

15 A And number three states, I have a right to talk with
16 a lawyer and to have a lawyer here with me to help me and
17 advise me during questioning. Again, I asked him if he
18 understands and if he does understand he indicates that he
19 does understand by placing his initials beside number
20 three which he did.

21 Q And next?

22 A Number four states that if I want to have a lawyer
23 with me during questioning but cannot afford to pay a
24 lawyer one will be provided to me at no cost before I am
25 questioned. Again, I ask him if he understands and if he

1 does understand indicate that he understands number four
2 by placing his initials beside it and his initials are
3 beside it.

4 Q Next?

5 A Number five, if I decide to answer questions now
6 without a lawyer here I still have a right to stop
7 answering questions whenever I want to. Again I asked him
8 if he understands and to indicate to me that he does
9 understand by placing his initials beside number five
10 which he did.

11 Q And the last one?

12 A And number six states, I also have the right to stop
13 answering any questions until I have talked to my lawyer.
14 Again, I asked him if he understands and if he does
15 understand he indicates to me that he understands by
16 placing his initials by number six which he did.

17 Q Is there anything else you told him?

18 A Yes, sir. And then I tell him, the next paragraph
19 under there states that is underlined, it states I
20 understand my rights that are explained by Officer
21 McClurkin. I put my name in there. I now state that I do
22 not wish to have a, I do wish to answer questions at this
23 time and I do not wish to have a lawyer here during
24 questioning. And once I do that, again, I tell him in the
25 next paragraph under that states that my decision to

1 answer questions now without a lawyer is made freely and
2 is my choice. No one has threatened me in any way or
3 promised me special treatment. To show my decision I am
4 signing my name in the space below. And I asked him to
5 sign his name that he understands that and he did.

6 Q So his name is on that wavier of right?

7 A Yes sir, it does, William R. Neal.

8 Q What is the date on that?

9 A The date on this is August the 18th of 2011.

10 Q Is there a time on there?

11 A Yes, the time is 11:45 a.m.

12 Q And who else, is there anything else on that sheet?

13 A Right under Mr. Neal's signature is my signature as a
14 witness, Roy McClurkin.

15 Q While you are doing this wavier of rights is there
16 anybody else present?

17 A No sir, it was just me and Mr. Neal in my office at
18 the police department.

19 Q And based on what you observed was there any
20 indication that Mr. Neal was under the influence of any
21 alcohol, drugs that would impair his ability to answer
22 these questions clear minded?

23 A No, sir.

24 Q Did he appear to have any kind of mental or physical
25 disability that would impair his ability to answer these

1 questions truthfully?

2 A No sir, he had no physical disabilities or anything.

3 Q Just go further on, where were you questioning him
4 at, of Mr. Neal?

5 A At my office at the police department.

6 Q Okay. And what were the surroundings like?

7 A It is just basically a, my desk, a computer stand
8 with a computer on it. I am sitting behind the desk in my
9 chair, he is sitting in front of me in one of the two
10 chairs that are in front of my desk.

11 Q And how long was Mr. Neal questioned?

12 A Probably, I guess close to maybe around 45 minutes or
13 so.

14 Q And were there any threats or promises made in
15 exchange for any, for him filling out the waiver of rights
16 or giving a statement?

17 A No sir, there were not.

18 Q Now, at that point after you give him the adult
19 wavier of rights was Mr. Neal under arrest at that point?

20 A Not at that point.

21 Q Was he in investigative detention where he knew that
22 he was not free to leave?

23 A Right, he was in investigative detention and knew
24 that he was not free to leave.

25 Q Was he still in handcuffs at that time?

1 A No sir, I had taken the handcuffs off of him.

2 Q And obviously when you gave him that adult waiver of
3 rights he knew what crime he was being questioned about at
4 that time?

5 A That's right.

6 Q Now, Lieutenant McClurkin, after you read him the
7 adult wavier of rights did he give you a statement?

8 A Not at first he didn't. At first he was
9 uncooperative when I explained to him what I was
10 investigating and actually started telling him what
11 evidence we had found at the scene and stuff like that.
12 After talking with him for a while and explaining to him
13 the evidence that we found at the scene he then changed
14 his mind and said he was going to cooperate and give a
15 statement.

16 Q There was no threats or any kind of intimidation on
17 him to make him give that statement?

18 A No sir, there were not.

19 Q And once he said he would give a statement did he
20 write that statement?

21 A No sir, I wrote the statement for him.

22 Q Why did you do that?

23 A He told me that he didn't have his glasses, he
24 couldn't see very well without his glasses so I told him
25 that I could write the statement for him and he agreed.

1 Q Now after he gave you that statement did he read over
2 it or did you read it out loud to him?

3 A I read the statement back to him and gave the
4 statement to him for him to sign. He looked over it.

5 Q And after he gave you the statement signed, did he
6 sign his name to it?

7 A Yes, he did.

8 Q And what does that mean?

9 A That means that he understands what was written in
10 that statement.

11 Q Lieutenant McClurkin, I am showing you now what has
12 been marked for identification, State's exhibit number 2.
13 Take a look at that and tell me what that is.

14 A This is the actual statement that I took from Mr.
15 Neal on August the 18th of 2011.

16 Q And how can you tell that is the statement that you
17 took?

18 A It actually has my signature on it and it has Mr.
19 Neal's signature on it. It actually has where, in my
20 handwriting I filled out the top part and it also has my
21 handwriting as to taking the statement that was dictated
22 to me by Mr. Neal.

23 Q Did it appear that he understood everything when you
24 were asking to give this statement?

25 A Yes sir, it did.

1 Q And what does the top left page say?

2 A This says, statement of William Russell Neal,
3 Newberry, South Carolina, this 18th day of August, 2011.
4 The time is 12:00 hours, 12 noon, in the presence of
5 Lieutenant Roy McClurkin of the Newberry City Police
6 Department.

7 Q And just so we understand the timeframe here, that
8 was made at 12:00 o'clock, what time was the advisement of
9 rights given?

10 A It was given at 11:45 a.m.

11 Q Okay. After that first little caption at the top of
12 the statement is there anything else on there that he
13 would have read?

14 A It states that, I, William Russell Neal saying that I
15 would like to remain silent, anything that I say can be
16 used against me in court. I have a right to talk to a
17 lawyer before you answer, excuse me, I have a right to
18 talk to a lawyer for advice before you ask me any
19 questions. And to have a lawyer with me during any
20 questioning. If I cannot afford a lawyer one will be
21 appointed for me before I am questioned if I wish. If I
22 decide to answer questions now without a lawyer present I
23 still have the right to stop answering questions at any
24 time. I also have the right to stop answering any
25 questions at any time until I have talked to a lawyer.

1 Having been advised of these rights, I understand them, I
2 do make the following statement.

3 Q And did he give a statement?

4 A Yes, he did.

5 Q And what did Mr. Neal tell you that day?

6 A On this statement it says, on Thursday, August the
7 18th of 2011, I, William Russell Neal was walking on Hazel
8 Street and I saw a brown house with no car in the yard. I
9 walked to the backdoor and used my butt to force open the
10 door. I went inside the house and went through the
11 closets and I took some change that was in a blue
12 container and I placed it in a clear plastic bag that I
13 had with me. I was there for five or six minutes and
14 someone pulled into the yard and I ran out the backdoor.
15 I left an Atlanta Braves hat that I was wearing and a Dr.
16 Pepper drink that I had inside the house I broke into.
17 This is the only thing that I have done. And beyond there
18 there is a line that says, and I put that, it says nothing
19 following in this statement and I had Mr. Neal place his
20 initials before the first word and after the last word.
21 Nothing further.

22 Q Now, is there a line that is part of the form for
23 that statement, after the body of Mr. Neal's statement
24 that you had read to him?

25 A Yes. It says, I have made the following statement

1 freely and voluntarily without fear, threat, promise or
2 reward or hope of reward of any kind.

3 Q Now, did Mr. Neal sign that?

4 A Yes, he did. He signed here.

5 Q Who else's signature is on there?

6 A My signature as a witness and Detective Kevin Goodman
7 as notary.

8 Q Now, you say Detective Kevin Goodman, was he in there
9 during the time that he read you this statement?

10 A No sir, I called him in to witness the statement and
11 witness, I called him in to actually notarize the
12 statement and notarize Mr. Neal's signature.

13 Q So Mr. Goodman was not in there when he gave this
14 statement, just to witness the signature?

15 A Yes, sir.

16 Q Just so we are clear. Just to make sure, at no point
17 did Mr. Neal ask for an attorney to be present during this
18 questioning?

19 A No, sir.

20 Q During the statement. And he never changed his mind
21 or stopped giving the statement?

22 A No sir, he did not.

23 Q And to the best of your knowledge Mr. Neal's
24 statement was freely and voluntarily given?

25 A That's right.

1 Q Nothing further.

2 THE COURT: Mr. Verner.

3 CROSS-EXAMINATION

4 By Mr. Verner:

5 Q Mr. McClurkin, when you interviewed William Neal he
6 indicated to you that he had been drinking, hadn't he?

7 A No sir, he did not. He didn't say that.

8 Q Do you recall him smelling of alcohol?

9 A No, sir.

10 Q Did he also indicate to you that he had been using
11 crack cocaine fairly recently that day?

12 A No sir, he did not.

13 Q Your testimony is he did not appear to be under the
14 influence of either crack or alcohol?

15 A No, sir.

16 Q Did he tell you he had been using crack or alcohol?

17 A No sir, he did not.

18 Q Did he tell you whether he had a history of using?

19 A I don't recall him saying that.

20 Q So your testimony is you don't recall him talking
21 about prior history of drugs or substance abuse?

22 A I don't recall that he said that.

23 Q About how long after he was placed in detention by
24 the patrol officer do you think that you came upon the
25 scene?

- 1 A No more than five or six minutes.
- 2 Q Had he been interviewed by the patrol officer?
- 3 A I knew he had asked him questions concerning his name
- 4 and stuff like that.
- 5 Q Did you talk to the patrol officer prior to
- 6 interviewing Mr. Neal?
- 7 A Just basically to find his name and ask him where he
- 8 was going and stuff like that.
- 9 Q When you approached Mr. Neal was he already in a
- 10 patrol car or was he standing?
- 11 A He was standing outside the car.
- 12 Q This was on Smith Road?
- 13 A Yes.
- 14 Q There is no sidewalk on Smith Road, is there?
- 15 A No sir, there is no sidewalk.
- 16 Q Was he standing on the side closer to where Academy
- 17 Street is or closer to where Evans Circle?
- 18 A He was staning on the side where the Academy is.
- 19 Q Okay. In somebody's yard?
- 20 A I think it was right there on the shoulder of the
- 21 road, on the, the main entrance to Newberry Academy.
- 22 Q He was actually on basically, either the
- 23 right-of-way, but on the property of the Academy School?
- 24 A Not across the ditch but actually on the roadside.
- 25 Q But roughly, so you pulled into the driveway of the

1 Academy?

2 A I don't recall where I parked. I think I did, I
3 think I pulled into that driveway in the Academy.

4 Q How many officers were with him at that time?

5 A Two.

6 Q At that time he was just standing in the road or
7 standing where ever he was on the side on the road with
8 the officers. He wasn't in a squad car or any other?

9 A No, sir.

10 Q But he was in cuffs by the time you had arrived?

11 A That's correct.

12 Q Did you observe a knife or anything on him at that
13 time?

14 A No sir, I did not.

15 Q Was that presented to you at the time that you
16 interviewed him?

17 A No, it was not.

18 Q So you would say that that was found later on or
19 produced later or after you had already taken him into
20 custody?

21 A That's correct.

22 Q Do you recall even being aware of a knife at the time
23 you interviewed him?

24 A No, sir.

25 Q If the police had found a knife pretty much at the

1 same time that they had placed him in detention, is that
2 something that would have been turned over to you or at
3 least told about, talked about to you?

4 A They probably would have told me about it but they
5 wouldn't have turned it over to me.

6 Q But that is something that you probably would have,
7 in the course of your business you would have spoken to
8 him about?

9 A I can't speculate, I don't know.

10 Q Ordinarily if somebody had a weapon and you were
11 aware of it that would most likely be an officer or
12 investigator would talk about the weapon to?

13 A Possibly, yes.

14 Q Did you, in fact you told him if he was honest you
15 would help him with his charges, didn't you?

16 A No sir, I did not.

17 Q Did you make any kind of representation that if he
18 was forthright with you that you would give him some kind
19 of assistance?

20 A No sir, I told him, after he told me that he would
21 cooperate I told him that him cooperating the Solicitor's
22 office would see his statement, the Solicitor's office
23 would see my notes and see that he actually cooperated.

24 Q Okay. Just to be clear. I understand your answer,
25 you did talk about helping him during his talk but it was

1 that the prosecutors would see that he cooperated?

2 A That does not help him, that is just telling him that
3 they would see his statement. I can't make anybody
4 promises to help because I am not in the position to do
5 that.

6 Q Was the interview videotaped?

7 A No sir, it was not.

8 Q Is there any reason it couldn't have been videotaped?

9 A We are not equipped to videotape, in my office, no
10 sir.

11 Q Are there, does law enforcement have any video
12 cameras where they could have videotaped it?

13 A They have a handheld video.

14 Q And in fact almost every patrol car has a video
15 camera in it as well, don't they?

16 A They do.

17 Q Is it a policy that you do not videotape, is there a
18 department policy not to use videotape in the policy?

19 A There is not a policy saying that we don't videotape,
20 but there is not a policy saying that we do videotape
21 either.

22 Q So you use that on a case by case basis?

23 A Basically, yes sir.

24 Q And it is clear that Mr. Neal does write, he
25 certainly wrote his name and indicated that he got at

1 least a GED, right?

2 A That's correct, he did.

3 Q Is there any reason you couldn't have waited until he
4 got his reading glasses and that he could write the
5 statement out in his own hand?

6 A There is no, no, there is no reason why but he didn't
7 indicate that he wanted to get his glasses. He just said
8 he didn't have them and he would prefer I write the
9 statement for him.

10 Q But he would have, whether he had given a statement
11 or not most likely he would have been held regardless,
12 right?

13 A That's correct, yes sir.

14 Q He could have been there long enough where he could
15 have produced a statement himself or written in his own
16 hand?

17 A Certainly, yes sir.

18 Q Are you aware of any other incriminatory statements
19 that he had gave or is the statement it?

20 A Just this statement here is the only one that I am
21 aware of.

22 Q Did you ask him whether he used drugs as part of your
23 investigation?

24 A I don't recall asking him that.

25 Q Is that a, it is not unusual for that to be discussed

1 during a police interrogation whether a suspect uses
2 drugs?

3 A No, that is not unusual.

4 Q Are you familiar with the house on Hazel Street, I
5 think it is or Hazel Street, Hazel Street?

6 A I am a little bit familiar with.

7 Q Is that a residence?

8 A That is correct, yes sir.

9 Q Do you know if it is rental property?

10 A I have no idea.

11 Q And you are not aware of any, if he had given
12 statements to the other officers do you believe that that
13 would be in your reports?

14 A More than likely that would be in their reports.

15 Q That should be ordinarily something that would be--

16 A Ordinarily, yes.

17 Q Thank you, Investigator.

18 REDIRECT EXAMINATION

19 By Mr. Brown:

20 Q Mr. Verner asked you, what you could tell by
21 observing Mr. Neal, whether or not he was under the
22 influence of alcohol or drugs or anything like that. What
23 was your observation of that?

24 A My observation was that he was not under the
25 influence of drugs or alcohol.

1 Q Okay. He also asked you, when you approached, when
2 you actually called out to the location where Mr. Neal was
3 picked up and was in custody. Do you want to look at your
4 notes to make sure you refresh your memory?

5 A Yes, sir.

6 Q Now, once you got out and started talking with
7 Patrolman Gunwall, having looked at your notes do you
8 remember what he advised you once you got out there and
9 saw Mr. Neal in custody?

10 A Yes. Now that I have looked at my notes because this
11 happened in 2011, I see that he did advise me that he had
12 found an ID, a knife and some actual bottle caps that had
13 been taken from the burglary location.

14 Q Did he give you any other, tell you anything else
15 about a statement that he gave out there?

16 A Let me look at my notes.

17 Q After looking at your notes was there ever mentioned
18 of any kind of, he gave a statement out there once he was
19 arrested?

20 A No sir, that would have been indicated in my notes.

21 Q That is all I have.

22 RECROSS-EXAMINATION

23 By Mr. Verner:

24 Q Which report did Mr. Brown hand up to you?

25 A It was actually my investigative notes.

- 1 Q Your investigative notes?
- 2 A Yes, sir.
- 3 Q As I read the report it seems to me that the
- 4 information you are talking about Mr. Gunwall provided you
- 5 would have been radioed or dispatched to you either
- 6 through a cell phone or through a radio?
- 7 A It could have been.
- 8 Q As I read your statement, while in route to my office
- 9 Patrolman Gunwall advised me that he had found--
- 10 A Right.
- 11 Q So that would probably mean that he--
- 12 A Cellphone.
- 13 Q But not in person at the scene?
- 14 A That's correct.
- 15 Q And real briefly, how far is Hazel Street from where
- 16 you came across Mr. Neal while he was in detention?
- 17 A Probably four or five blocks maybe.
- 18 Q What major street does Hazel Street opens up onto?
- 19 A It actually runs over to Kate Street, actually Smith
- 20 Street to Kate Street.
- 21 Q And Kate Street is by the Lewis Rich Complex?
- 22 A Well, actually Kate Street runs up, you know where
- 23 the old Sear's building is, where Newberry College has
- 24 their basketball facility at now.
- 25 Q Kate Street dead ends or Kate Street intersects

1 College Street?

2 A And then Kate Street turns into Glenn Street in the
3 curve.

4 Q And so Hazel Street is off of that Glenn Street?

5 A That's correct.

6 Q Okay. Thank you.

7 THE COURT: Anything else?

8 MR. BROWN: Not from the State. The State calls
9 Kevin Goodman to the stand.

10 KEVIN BOOKMAN, being
11 first duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 By Mr. Brown:

14 Q Mr. Goodman, where are you employed?

15 A I am a police officer with the City of Newberry.

16 Q How long have you been employed with Newberry?

17 A 18 years.

18 Q 18 years. Mr. Goodman, were you working on August
19 the 18th of 2011?

20 A Yes sir, I was.

21 Q And were you involved, did you ever become involved
22 in a case that is William Russell Neal?

23 A Yes sir, I was asked to come to Lieutenant
24 McClurkin's office and notarize a statement, a signature.

25 Q You weren't there actually to witness Mr. Neal give

1 the statement to Mr. McClurkin?

2 A No sir, I wasn't.

3 Q And what, tell me again what your role was?

4 A Basically I was asked to come up and notarize Mr.
5 Neal's signature. I come into the room, asked Mr. Neal if
6 this was his statement, his words and his signature and he
7 indicated, yes, that was it. And I notarized the
8 statement from there.

9 Q And, Detective Goodman, while you were in the room
10 did Mr. Neal appear to be under the influence of alcohol
11 or drugs of anything that would impair his ability to
12 understand what he was signing?

13 A No, sir.

14 Q Did it look like he had any kind of physical or
15 mental impairment that would affect his ability to
16 understand or sign what he had, what statement he had
17 given?

18 A No, sir.

19 Q Could you smell any type of alcoholic beverage on his
20 person or on his breath?

21 A No sir, I couldn't.

22 Q No further questions.

23 THE COURT: Mr. Verner.

24 CROSS-EXAMINATION

25 By Mr. Verner:

1 Q Did you take part in the actual interrogation or were
2 you there basically to ask him whether he had signed the
3 statement and you notarized it?

4 A No, sir. Basically I asked him if the contents of
5 the statement was his words, if it was his signature and
6 that was it.

7 Q So you did talk to him briefly but it was basically
8 is this your statement or your signature?

9 A Yes, sir.

10 Q Were you involved at all on the scene or in the
11 investigation of this crime?

12 A Mr. Verner, from the best of my recollection, I think
13 a lot of us was out and about after the actual call came
14 out but that was, my only interaction with Mr. Neal.

15 Q So you may have been but you don't, if you had a role
16 in this case you don't remember a prominent role in the
17 investigation?

18 A Other than initially, a call that comes out, we set
19 up perimeters and different things like that. But other
20 than that I wouldn't of had a role in it, no sir.

21 Q Is there a state trustee in there that is assigned to
22 do the chores at the Nance Street Complex Police
23 Department?

24 A Yes, sir.

25 Q What is his name?

1 A Charles Simpkins, I think that is right.

2 Q Is he a black man?

3 A Yes, sir.

4 Q Okay. Do you remember whether he was there also
5 during this incident?

6 A I don't remember, I couldn't see why he would be
7 there.

8 Q But doing maintenance he has, in large degree, some
9 run of the offices at the City Police Department?

10 A Say that again?

11 Q As the trustee assigned to the City Police Department
12 he has got some freedom of movement throughout the offices
13 in that location?

14 A Yes, sir.

15 Q Do you recall whether he was in the room for part of
16 the interrogation?

17 A I was not in the room for the interrogation.

18 Q You don't recall seeing Mr. Simpkins there?

19 A My office is on the other side of the building so I
20 wouldn't know who came in and out of that room during the
21 interview.

22 Q Are you saying that you are very sure that he was not
23 under the influence or just that you don't remember
24 noticing if he was?

25 A What I am saying is I was in there for a very short

1 period and I don't recall him being under the influence of
2 anything, he wasn't grossly anything or I would have
3 noticed that.

4 Q Did you say anything about helping him out or
5 thanking him for cooperating or just you were there really
6 just to notarize?

7 A I was just merely there as a witness or notarize his
8 signature.

9 Q That's all I have.

10 THE COURT: You can step down. Anything else Mr.
11 Brown?

12 MR. BROWN: Nothing from the State.

13 THE COURT: Mr. Verner.

14 MR. VERNER: William Neal is going to testify for the
15 purposes of this Jackson v Denno and he is reserving his
16 right not to testify at trial.

17 THE COURT: We can do that. Mr. Neal, come on up and
18 you can be sworn.

19 WILLIAM NEAL, being
20 first duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 By Mr. Verner:

23 Q Mr. Neal, how old are you, sir.

24 A 47.

25 Q 47. Where are you from?

- 1 A Union, South Carolina.
- 2 Q How far did you make it through school before you
3 left formal schooling?
- 4 A Ninth grade. I went to Job Corp and got my GED in
5 '81.
- 6 Q In '81?
- 7 A Yes, sir.
- 8 Q So you would still have been about a teenager at that
9 time?
- 10 A I believe 17.
- 11 Q Can you read and write?
- 12 A Yes, sir.
- 13 Q But you do wear glasses?
- 14 A Yes, sir.
- 15 Q How bad is your prescription in terms of your ability
16 to see what is written down?
- 17 A Well, they are not prescription glasses.
- 18 Q They are just reading glasses?
- 19 A Reading glasses.
- 20 Q And you can get those at a dime store?
- 21 A Yes, I had my sister get them for me.
- 22 Q Is that what you are wearing now, it looks like you
23 are wearing prescription glasses now?
- 24 A No, these are just reading glasses.
- 25 Q Oh, are they?

1 A Yes, sir.

2 Q Okay. You were arrested on August 11th, 1980. I
3 apologize, you were arrested August the 11th of 2011?

4 A Yes, sir.

5 Q Do you remember the day you were arrested?

6 A Yes, sir.

7 Q What was the level of your sobriety on August 11th,
8 sometime from 10:00 in the morning until 12:00?

9 A Well, it is like this. That morning when I left
10 home, okay, I had been smoking a little crack, I had been
11 drinking beer and smoking a little weed before I did my
12 crime.

13 Q Would you characterize yourself as impaired?

14 A I would.

15 Q Were you as clearheaded as you are right now?

16 A No, sir.

17 Q Were you just slightly impaired or were you
18 materially impaired where you did not, would not be able
19 to manage your own affairs?

20 A I would say I was coming down, I was feeling pretty
21 good but I was coming down by the time this incident
22 happened.

23 Q But no question you were high?

24 A Yes, sir.

25 Q At the time you met with Investigator McClurkin?

1 A Yes, sir.

2 Q Were you still high or inebriated?

3 A Yes, sir.

4 Q Did you fully understand what was going on with the
5 investigator?

6 A Yes, I understood what he was telling me but at the
7 same time he told me to be honest with him and he would
8 help me. And that is what I thought I was doing.

9 Q I will come back to that in a second. Was anybody,
10 do you remember being arrested by the officer?

11 A Yes, sir.

12 Q How long were you in, did the officer who first came
13 into contact with you, did he put you in handcuffs?

14 A After they searched me and went through the stuff I
15 had in my hands, I was sitting there sweating real bad and
16 then he put the cuffs on me and put me in the back of the
17 car.

18 Q Is that where you were when Investigator McClurkin
19 arrived?

20 A Yes, sir. At first though they had me stand outside
21 the car. And another officer with two guys come in, I
22 guess to recognize me. And after they turned around and
23 stopped to ID me then they went on.

24 Q How many officers were there when Mr. McClurkin came?

25 A It was two, when I first, it was two officers.

1 Q But two more came by?

2 A In the car with another, they never did get out.

3 They just stopped, it was two guys from the neighborhood.

4 I guess they brought them down there to identify me.

5 Q So the car that came by to identify you was not
6 officers but it was witnesses?

7 A No, it was an officer but the people was in there
8 with them.

9 Q Okay. And civilians, not officers were with them?

10 A Yes, sir.

11 Q And then they were allowed to identify you while you
12 were in the custody of the police officers?

13 A Yes, sir.

14 Q Okay. Did you have any kind of conversation with the
15 arresting officer, did he talk to you at all about why he
16 had stopped you?

17 A Yes, sir. He said there had been a break-in up on
18 Hazel Street.

19 Q Did you talk to him about it?

20 A No, sir. I did not.

21 Q But he clearly kept you as a suspect?

22 A Yes, sir.

23 Q How long, did you and Mr. McClurkin talk about what
24 you were being held for in the ride from the arrest site
25 to the police department?

- 1 A Yes, sir.
- 2 Q What did you talk about on the ride?
- 3 A Just about the burglary pretty much.
- 4 Q Were you volunteering to speak to him or was he
- 5 asking you questions?
- 6 A He was asking me questions.
- 7 Q Do you recall what specific questions he was asking
- 8 you?
- 9 A He just is saying, if you had anything to do with
- 10 this it would be the right time to tell me.
- 11 Q When you were interviewed by Investigator McClurkin
- 12 was anybody else in the room?
- 13 A There was another, other than that officer there it
- 14 was a state inmate was also in the doorway.
- 15 Q You are identifying Mr. Goodman?
- 16 A Yes, sir.
- 17 Q Will you point to Investigator McClurkin in the gray
- 18 jacket or Mr. Goodman in the orange jacket?
- 19 A Him. The officer right here.
- 20 Q The one in the orange shirt?
- 21 A Right there. I mean them was--
- 22 Q The one in the orange shirt?
- 23 A Yes, sir.
- 24 Q That is Investigator Goodman?
- 25 A Yes, sir.

1 Q So you are saying he was there as part of the
2 interview?

3 A No, he wasn't there as part of the interview but he
4 came--

5 Q Okay, he did come at some point in?

6 A Yes, he came at some point.

7 Q During the interview itself was anybody there other
8 than Mr. McClurkin, Investigator McClurkin?

9 A I asked Mr. McClurkin could I get some water. He had
10 the state inmate guy bring me some water but the guy
11 stayed a few minutes while me and Mr. McClurkin continued
12 to talk.

13 Q He kind of lingered in the room for a little bit?

14 A Yes, sir.

15 Q And that would be the state trustee?

16 A Yes, sir.

17 Q The report says you were sweating profusely, was that
18 because of the hot weather on that day or because of the
19 drugs or both or neither?

20 A I would say both because I was coming down and I was
21 just doing it up that morning.

22 Q You heard Mr. McClurkin indicate that you initially
23 denied any involvement?

24 A Yes, sir.

25 Q In the burglary?

1 A Yes, sir.

2 Q Is that true?

3 A Yes, sir.

4 Q Did you request to go ahead and be taken to the jail
5 and booked?

6 A I didn't request it. He asked me, you know, it was
7 more like, he just said,--

8 Q Well, what happened to change from the denial of the
9 burglary to the admission of the burglary, in your eyes?

10 A When I got down to the jailhouse and I got to talking
11 to him and he told me to be honest and he would do his
12 best to help me out. So I figured, okay, I am going to go
13 ahead and be honest with him. That is what his words
14 were, he was going to help me out.

15 Q Did he make any specific statements about how he
16 would help you out?

17 A No, sir. He just said, if I will be honest with him
18 he would do all he can to help me out. Just like that.

19 Q Okay. Which you took to understand as helping you
20 out with the charges or the punishment?

21 A To be honest at that time I don't know what I took it
22 as. But I thought being honest was the best policy at
23 that time.

24 Q Well, let me get, did you ask him to write the
25 statement for you?

- 1 A Yes, sir.
- 2 Q Did you read it yourself?
- 3 A I couldn't read it because I didn't have my glasses.
- 4 Q So you were not able to read the statement that he
- 5 wrote?
- 6 A No, sir.
- 7 Q Were you given a copy of the statement?
- 8 A No, sir. Only when I got my Rule 5.
- 9 Q So the first time you would have been given a copy of
- 10 your statement, the written statement is with the
- 11 discovery in this criminal case?
- 12 A Yes, sir.
- 13 Q You have served, my understanding is you are on
- 14 parole right now?
- 15 A Yes, sir.
- 16 Q From what charges?
- 17 A Burglary, from 1988.
- 18 Q What is the sentence you are on parole for?
- 19 A Life sentence.
- 20 Q But you have maxed out a full life sentence under the
- 21 statute?
- 22 A I have 21 years, 10 months on it.
- 23 Q Did you have any continued education when you were in
- 24 the Department of Corrections?
- 25 A We had took arts up in Greenwood Tech. I had a

1 little course going at that time and I got involved with
2 it but that is about it.

3 Q Do you remember what day, did you have a jury trial
4 or a trial or did you plead guilty?

5 A No, I was told to, the public defenders told me to,
6 he said that if I plead guilty to one first degree--

7 Q I will get to it in a second. But did you, you plead
8 guilty as opposed to having a trial?

9 A Well, they never spoke of a trial. He just said
10 plead to one first degree and everything else would be ran
11 into that.

12 Q Do you recall when you plead guilty, what your
13 sentence date was?

14 A I would like to say February of 1989.

15 Q Do you recall still who the Judge was at that time?

16 A No, sir. It has been a long time ago.

17 Q Do you remember what county you went in front of the
18 Judge on?

19 A It was in Spartanburg County.

20 Q And you plead to several different charges at that
21 one?

22 A Yes. He said plead guilty to one first degree and
23 everything else would run into it.

24 Q So you plead guilty to several, do you remember
25 exactly how many charges you plead guilty to?

1 A I don't know, it was a good many.

2 Q But you plead guilty to everything that was pending
3 against you at one time?

4 A Yes, sir.

5 Q Did you, and then you were sentenced to life?

6 A Yes.

7 Q And other than this offense have you been resentenced
8 for anything?

9 A No, sir.

10 Q It appears possibly, did you pick up maybe a
11 contraband charge in 1995?

12 A Yes, that was in jail though.

13 Q May have been handled through the jail process but in
14 terms of coming to a court house outside the situation,
15 you plead guilty to all of your crimes on one date?

16 A Yes, sir.

17 Q And that was about February of 1989?

18 A Yes, sir.

19 Q Were you advised at that time of the State's two
20 strikes, three strikes law?

21 A No, sir.

22 Q And at that time the State did not, were you aware of
23 whether the State even had a two strikes--

24 A I don't thing that existed during that time.

25 Q Did your attorney advise you at all of the

1 consequences that could come to you in the future beyond
2 just getting your prison time?

3 A No, sir. I sat in jail for three months and the only
4 day I seen the public defender was the day I went to
5 court.

6 Q Were you understanding of any future punishments or
7 any collateral consequences to your plea other than the
8 prison sentence itself?

9 A No, sir.

10 Q Okay. Did your lawyer advise you about the
11 consequences of multiple burglary second degrees on your
12 record?

13 A No, sir.

14 Q You did plead guilty to several counts of burglary
15 second as well?

16 A Yes, sir. The way it was explained to me was that I
17 plead guilty to one and everything else was ran into that.
18 So I was under the understanding that it was just one
19 charge that I was facing when I pleaded guilty to that.

20 Q It was one major charge or the, one plea and then
21 everything run concurrent into the one sentence?

22 A He told me to plead to the life sentence, first
23 degree life sentence and everything else was ran into
24 that.

25 Q Okay. The charges that you plead guilty to did not

1 all occur on the same date, did they?

2 A No, sir.

3 Q Was this a spree of crimes in a short timeframe?

4 A Yes, sir. A spree of crimes in a short period.

5 Q Were drugs involved at all?

6 A Yes sir, I was on that crack real bad.

7 Q Did you have codefendants?

8 A No, sir.

9 Q It was just you?

10 A Just me.

11 Q But your testimony is that all the crimes that you
12 plead to, you plead only one time to everything?

13 A Yes, sir.

14 Q And that factually, that everything was kind of in
15 one continuous spree of crimes?

16 A Yes, sir.

17 Q Is that part of the reason that they ran your
18 sentence as they did or do you know why they crafted how
19 they--

20 A Well, I sat in jail three months and the only time I
21 seen the public defender who was Lewis Cox, he told me to
22 plead to one first degree and everything else would be ran
23 into that. That was the only time I ever seen him that
24 day I went to court. I just did what he asked me to do.

25 Q Thank you. If Mr. Brown has any questions or Judge

1 Griffith you need to answer those.

2 CROSS-EXAMINATION

3 By Mr. Scott:

4 Q Mr. Neal, you stated August the 11th of 2011 is when
5 you were arrested?

6 A Yes, sir.

7 Q But it was August 18th, correct?

8 A Yes, August 18th, yes sir.

9 Q So you went through the ninth grade and got your GED
10 and you can read and write?

11 A Yes, sir.

12 Q And you wear reading glasses?

13 A Yes, sir.

14 Q You weren't wearing reading glasses on August 18th
15 though, were you?

16 A No, sir.

17 Q But you were able to navigate from your home on
18 Drayton, is that what--

19 A Well, I can see, read good but I, when it comes to
20 reading small things that is why I have my problems.

21 Q Law enforcement made contact with you on the corner
22 of--

23 A On Smith Road.

24 Q What is that corner street, Smith and, right near
25 Newberry Academy, you were near Academy, near the

1 intersection of Smith and Glenn, is that correct?

2 A Yes, sir.

3 Q And that is some three blocks away from aside of this
4 burglary on Hazel Street?

5 A Yes, sir.

6 Q And you were standing on the corner and you waived at
7 the police as they rode by, is that right?

8 A I don't recall that.

9 Q You stated you were sweating profusely?

10 A Yes, I was.

11 Q Were you familiar with this area?

12 A I been through there a few times.

13 Q You said you served 21 years and 10 months in prison?

14 A Yes, sir.

15 Q So you got out in 2010, right?

16 A Yes, sir.

17 Q And you committed this crime on August, well you were
18 alleged to commit this crime August 18th of 2011, is that
19 right?

20 A Yes, sir.

21 Q And when did you develop this crack habit?

22 A Really, August the 11th when I started back smoking
23 crack.

24 Q August 11th or August 18th?

25 A August the 11th.

1 Q So a week before you started smoking crack again?

2 A A week before I did the crime, that is when I started
3 smoking again.

4 Q What made you start smoking crack that week?

5 A Pressure.

6 Q When was the last time you had smoked crack before
7 then?

8 A I hadn't, not since I have been out, not since I went
9 in prison.

10 Q At least almost 22 years since you had smoked crack?

11 A Yes, sir.

12 Q And you started the week that you committed this?

13 A Yes, sir.

14 Q You heard Mr. McClurkin's testimony, correct?

15 A Yes, sir.

16 Q And he said after he met with you over there on Smith
17 he asked if you would voluntarily go into the police
18 station?

19 A Yes, he asked me.

20 Q And you agreed to go with him?

21 A I didn't have a choice, he had me in handcuffs, I
22 didn't have a choice but to go.

23 Q But did he ask you if you would go with him?

24 A Not really.

25 Q Did he forcibly--

1 A He asked the officer to put me in his car and take
2 me, we were going down to his office to talk.

3 Q Had he questioned you about this burglary at this
4 time?

5 A I mean, like I say, he just said to, if I had
6 anything to do with it just to be honest.

7 Q Apparently investigating a crime that had just
8 occurred?

9 A Yes.

10 Q As Mr. Verner stated, you have got some experience
11 with law enforcement, correct?

12 A From the 1988 experience, yes sir. That is it, that
13 is the only two times I have ever been in trouble.

14 Q And you got a DUI before that?

15 A Yes.

16 Q You have had contact with law enforcement?

17 A Yes.

18 Q You have been read Miranda rights before, correct?

19 A Yes.

20 Q And you weren't wearing your reading glasses that day
21 but your hearing was fine, was it not?

22 A Yes.

23 Q Once you got to the police department you went into
24 McClurkin's office?

25 A Correct.

- 1 Q And he left the door open?
- 2 A Correct.
- 3 Q And you saw various people walking past in the
- 4 hallway, correct?
- 5 A Correct.
- 6 Q And one of them was a janitor?
- 7 A One of them was a state inmate.
- 8 Q Trustee and the other was this officer here?
- 9 A Yes, sir. And Captain Swinney or Swindle or whoever,
- 10 yes sir.
- 11 Q And you say you got discovery and you have seen
- 12 everything I got here, your statement that you gave and
- 13 your waiver of rights?
- 14 A Yes.
- 15 Q This wavier, this is State's ID number 1. It has got
- 16 a number of rights which is referred to as Miranda rights.
- 17 And WRN, what is that?
- 18 A William R. Neal.
- 19 Q Is that your handwriting?
- 20 A Yes, sir.
- 21 Q So McClurkin read these rights to you, correct?
- 22 A Yes, sir.
- 23 Q And you endorsed them with your initials, correct?
- 24 A Correct.
- 25 Q Which means you understood the rights, correct?

1 A I ain't going to say I understood. I was, because,
2 listen. I am going by what he told me. He said to be
3 honest with him, he would help me. So, I am just,
4 whatever he asked me I am going with it.

5 Q I know you are wanting to say, you are wanting to ask
6 him about or talk about him telling you to be honest and
7 being honest is good. I don't disagree with you. But
8 this waiver of rights, did you understand as he read these
9 rights to you what he was asking of you?

10 A Listen. Some of it I understood and some of it I
11 didn't. I was still under the influence. I was scared, I
12 was still high.

13 Q Did you tell him you were high?

14 A He ask me did I do drugs. And I said, yes.

15 Q Did you tell him you were high right then?

16 A No, I didn't tell him that.

17 Q Okay.

18 A He didn't ask me either. He asked me did I do drugs.
19 He didn't ask me was I under the influence or under drugs.

20 Q Well, surely you have told somebody else since that
21 day that you were high when you gave this statement,
22 correct?

23 A Other than my public defender, yes.

24 Q You didn't tell these law enforcement agents that
25 day?

1 A No, I did not.

2 Q When they asked you, this officer has also explained
3 to me and I understand that. I have the right to remain
4 silent. That means I do not have to say anything or
5 answer any questions.

6 A I understand that. But the man told me to be honest
7 and he would help me. So I am trying to help myself.

8 Q I am going to move on because you said you understood
9 your rights, correct?

10 A Correct.

11 Q And earlier Mr. Verner was questioning you, you said,
12 I understood what he was telling me?

13 A I understood but it is, but it is still to the fact I
14 was under the influence though.

15 Q And isn't it true when you were speaking to Mr.
16 Verner, you stated that Mr. McClurkin asked you to be
17 honest?

18 A Yes, sir.

19 Q You said, so, I was honest?

20 A Correct.

21 Q And then Mr. Verner asked you, what does that mean to
22 you? And you said, I don't know what I took that as.
23 Didn't you just say that to Mr. Verner?

24 A I guess I did.

25 Q And you said honesty is the best policy, correct?

- 1 A Yes, I did say that.
- 2 Q So what you gave in that statement was what was
- 3 honest, right?
- 4 A Yes.
- 5 Q And you gave this statement after you read all of
- 6 these rights that you just said you understood?
- 7 A I didn't read the rights. I never did read the
- 8 rights.
- 9 Q After they were read to you?
- 10 A Right.
- 11 Q And you are not hearing impaired?
- 12 A No, I am not.
- 13 Q You don't wear prescription glasses?
- 14 A No, I don't.
- 15 Q Okay. Mr. Verner was also going over a plea you
- 16 entered back in 1988, some 50 charges or so, property
- 17 crimes?
- 18 A Yes, sir.
- 19 Q Grand larceny, burglary second, burglary first?
- 20 A Yes, sir.
- 21 Q And you classified it as a spree, is that what you
- 22 were saying during direct?
- 23 A Yes sir, it was a little short spree.
- 24 Q But they do encompass a number of different victims
- 25 and I just, looking at just a few of them they encompass a

1 number of months, correct?

2 A Yes, sir.

3 Q Some from April, some from August, some from October,
4 some from November?

5 A Yes, sir.

6 Q So it was many different instances, right?

7 A I guess you can say that.

8 Q 50 charges or so, correct?

9 A I only pleaded guilty to one charge.

10 Q You only plead guilty to one charge, what was that?

11 A First degree burglary. I understand what you are
12 saying but I only plead guilty to one first degree. That
13 is what I was sentenced on.

14 Q I am confused, you only plead to one? Why does your
15 rap sheet show 50 convictions?

16 A I only.

17 MR. VERNER: Your Honor, I don't think that is a
18 proper question.

19 THE COURT: Rephrase your question.

20 MR. SCOTT: Your Honor, I beg the Court's indulgence.

21 (Whereupon, a bench conference was held.)

22 Q I am going to show you what has been marked for ID
23 purposes State's 3, 4, 5, 6, 7.

24 (Whereupon, State's Exhibit nos. 3, 4, 5, 6, 7 were
25 marked for identification only.)

- 1 Q This is State's number 3, do you recognize this?
- 2 A Yes, sir.
- 3 Q What is this?
- 4 A An indictment.
- 5 Q For what?
- 6 A First degree burglary.
- 7 Q Do you recognize this writing down at the bottom?
- 8 A Yes.
- 9 Q Whose name is that?
- 10 A Are you talking about mine or his?
- 11 Q Do you recognize whose handwriting is on it?
- 12 A Yes.
- 13 Q That is your handwriting, correct?
- 14 A Correct.
- 15 Q And that is indictment, State's ID number 3 is
- 16 indictment ending in 1233. Is that correct?
- 17 A Yes, sir.
- 18 Q And State's number 4, do you recognize what that is?
- 19 A Yes, sir.
- 20 Q What is that?
- 21 A The same thing.
- 22 Q An indictment for burglary?
- 23 A Yes, sir.
- 24 Q And do you recognize the signature down at the
- 25 bottom?

- 1 A Yes, sir.
- 2 Q State's number 4, that is indictment 1237, is that
- 3 correct?
- 4 A Yes, sir.
- 5 Q State's number 5, do you recognize that?
- 6 A An indictment for burglary.
- 7 Q And you signed it and pleaded guilty to it?
- 8 A Yes, sir.
- 9 Q And that is indictment 1254, correct?
- 10 A Correct.
- 11 Q Show you State's exhibit number 6. What is that?
- 12 A An indictment for burglary.
- 13 Q You signed it and endorsed it and pleaded guilty to
- 14 it?
- 15 A Yes, sir.
- 16 Q That is indictment number 1193, correct?
- 17 A Correct.
- 18 Q State's number 7?
- 19 A Indictment for burglary.
- 20 Q You signed it and pleaded guilty to it at the bottom?
- 21 A Yes, sir.
- 22 Q Indictment number 1264, is that correct?
- 23 A Correct.
- 24 Q I have just shown you five separate indictments, all
- 25 that you plead guilty to, correct?

1 A Correct.

2 Q So you have plead guilty to at least five burglaries,
3 correct?

4 A Yes, sir.

5 Q These are entitled indictment for burglary, dwelling?

6 A All of them are the same, indictments about a
7 dwelling, the same thing.

8 Q I am sorry, on the bottom you plead guilty to
9 burglary first, is that correct?

10 A Yes, sir.

11 Q So you have plead to more than just one burglary?

12 A Yes sir, I have plead more than one. But
13 understanding that the public defender explained to me, I
14 am just telling you what was explained to me. That is
15 what I was saying.

16 Q You plead on the same day, that is what you
17 understood, right?

18 A Yes, sir.

19 Q These incidents all happened at various times during
20 that year, correct?

21 A Yes, sir.

22 Q And many different months and many different victims,
23 it is all in Spartanburg County?

24 A Yes, sir.

25 Q I was told, I didn't ask you, I don't know that it is

1 relevant but you did get a copy of this statement you gave
2 on that day, correct?

3 A Yes, sir. I got it when I got the Rule 5, I got
4 everything then.

5 Q Nothing further from the State.

6 THE COURT: Mr. Verner?

7 MR. VERNER: No, sir.

8 THE COURT: You can step down. Mr. Verner, anything
9 else?

10 MR. VERNER: No, Your Honor, unless the State has any
11 rebuttal testimony.

12 MR. BROWN: No, sir.

13 MR. VERNER: Just briefly, may I be heard.

14 THE COURT: Sure.

15 MR. VERNER: I am not going to really argue the
16 voluntariness of the statement. The Court has heard the
17 testimony. He indicates that he was under the influence
18 at the time and he was not given a copy of the statement
19 he signed and wasn't aware until this actual case what the
20 statement, what the actual statement was although he does
21 indicate he recalls the statement. I guess the much more
22 important issue before the Court, Your Honor, is the
23 burglary twos, whether the State can use the prior
24 burglary two's that were all entered, or burglary one's
25 even, they were all entered into on one date as a first

1 and a second. If he is convicted at trial of burglary
2 one, Your Honor, I think it is a mute point. He clearly
3 has at least one burglary one and the Supreme Court has
4 made it clear that that can count as a one strike, two
5 strike offense. My motion would be in the event that the
6 jury were to find him guilty of second degree burglary
7 which I think is entirely possible, whether that would
8 also be, then become a first degree burglary by the virtue
9 of the three, two prior burglaries two's and then this
10 one, if it happens which in candor is how we are hoping to
11 tender a plea to. But should a jury find him guilty of
12 second degree burglary, my understanding is the State
13 would say that that is a first degree burglary by virtue
14 of the two prior convictions.

15 THE COURT: You say that is going to be a matter for
16 the Court to take up at that time.

17 MR. VERNER: Well, other than, I assume that the
18 Court and the State would get the Court to charge a jury
19 that he has got two prior convictions of burglary second
20 and therefore that they would put it to the jury that
21 because of the prior burglary seconds that the jury would
22 have to find first degree burglary even if it was a
23 second, factually a second degree burglary, it would be a
24 jury issue because the State would charge the Court,
25 charge the jury that he has got two prior burglaries and

1 therefore this third one--

2 THE COURT: Of course, wouldn't be showing the
3 evidence of the weapon.

4 MR. VERNER: I am sorry, Your Honor.

5 THE COURT: The State wouldn't show any evidence of
6 the weapon.

7 MR. VERNER: That would be the burglary one, there
8 was a knife alleged to have been found in the area where
9 he was apprehended at the time, sometime as we heard the
10 officer testify, sometime after his arrest but prior to
11 arrival to the police station. I think reasonably a jury,
12 without his prior record coming into it, reasonably a jury
13 could debate between first degree and second degree
14 burglary, whether he was armed with a deadly weapon at the
15 time of the burglary. Obviously if the jury felt that he
16 was not armed with a deadly weapon at the time of the
17 burglary they would find burglary second, but for his
18 record of prior record. So then if the State charged the
19 jury that even if you find him guilty of second degree
20 burglary, if you find that he has got two prior burglaries
21 on his record he would still be guilty of first degree
22 burglary and I think he is indicted that way.

23 THE COURT: What was the determination of the number
24 of burglaries in his prior record, wouldn't that be a
25 legal issue?

1 MR. VERNER: Yes, sir. So if the Court would rather
2 do it at the time but if that is what they are going to,
3 make that part of their argument to the jury, that he has
4 got at least two prior burglaries, kind of like a DUI, it
5 would be an issue for the law. But if they argue the
6 indictment to the jury, that he has got two prior
7 burglaries then it is an issue that we would want to
8 address before the trial.

9 THE COURT: What is your intent, Mr. Brown?

10 MR. BROWN: Judge, my intent is to argue both ways
11 can be a burglary first. First of all we have certified
12 convictions from Spartanburg County. He has got, I have
13 just selectively picked out five burglary first that range
14 from April of '88, August of '88, October of '88 and
15 November of '88, that he plead guilty to all on this one
16 term of General Sessions in February or March of '89. But
17 they are all separate incidents, separate burglaries and
18 also separate victims in that. I would also intend to
19 argue that once their investigation began at this burglary
20 that a knife was found next to Mr. Neal's ID, a short
21 distance from where he was placed in investigative
22 detention. So I would submit and with the intent to argue
23 that he was or he did have in possession, while he was
24 doing this burglary, of a deadly weapon. But I have
25 passed up a number of cases that kind of shows how the

1 Courts have ruled with regard to--

2 MR. VERNER: Before we get there, Judge, I think the
3 Court's question was just whether y'all intended to put it
4 to the jury that he has got two prior burglaries.

5 MR. BROWN: And I intend to.

6 MR. VERNER: That is the issue, if they are going to
7 put it to the jury that he has got two prior burglaries
8 and therefore they can only back with a burglary one then,
9 and I didn't mean to preempt you but I would want this
10 matter heard prior to the trial. But we would stipulate
11 that they have got the certified copies of it, Your Honor.

12 THE COURT: The DUI second--

13 MR. VERNER: Yes sir, it is either way, should the
14 jury come back with second degree burglary our position is
15 that he plead guilty to all of his charges at one time and
16 that should only be treated as one prior burglary
17 conviction, whether they are first or second doesn't
18 really matter because they would be three for the burglary
19 second. The State's argument is that they span from April
20 to November or several months, our position is that he
21 plead to them all on one date. Just the Gordon case, Your
22 Honor, that was handed up I don't believe really apples
23 because that is a PCR case where he was LWOP'd and the
24 Judge found that the LWOP was improper because he had
25 plead guilty to similar charges that were part of the same

1 conspiracy alleged for the second offense. And the Judge
2 found it was double jeopardy to sentence him to life
3 because under the double jeopardy clause the conspiracy
4 ranged the whole, so that is not a three subsequent
5 conviction case. That is the Judge finding that, I find
6 that this was conspiracy. He is not charged with
7 conspiracy. The Robinson case I don't really think
8 applies either, Your Honor, because at that case the
9 defendant plead guilty to a second drug offense. Although
10 he plead guilty on the same date to multiple charges he
11 was given one sentence sheet and one indictment on a first
12 offense drug offense. And on the same day he actually
13 plead guilty to a second offense on the same date. So he
14 plead on the same date and he was notified up front this
15 is a second drug offense. And then he subsequently got a
16 third. So that is a little bit different because he was
17 told at the time he was pleading, this will count as a
18 second drug offense. The case that does apply and is it
19 the Robinson case, Mr. Brown?

20 MR. BROWN: Bryant case.

21 MR. VERNER: The Bryant case that says, ordinarily
22 convictions on the same date are to be treated as one
23 offense but when, in the Bryant case the guy plead guilty
24 to probably burglaries, probably burglaries that happened
25 on different incident dates. The Court said in that

1 event, because of what he plead guilty to were and I think
2 it was about two or three weeks apart, the two burglaries,
3 that they could be treated as separate burglaries. The
4 Court, which would be a bad decision for us because that
5 was two or three weeks difference between the burglaries
6 and even though he plead guilty to them all at one time.
7 And what was not raised before that Court and the open
8 issue is, if the trial court found that what he plead
9 guilty to was part of a spree, that was not, that was not
10 argued to the Court of appeals or to the Supreme Court.
11 By inference it left that open to the trial court, that is
12 the trial court found that what he had plead guilty to was
13 part of a spree it would probably be considered one
14 offense. You have heard the testimony from Mr. Neal, that
15 even though it was several months between the burglaries
16 that he was in one crime spree. Because that would be an
17 element of their indictment, Your Honor, I submit to the
18 Court that they have to prove beyond a reasonable doubt
19 that it was not part of one spree because they are using
20 the two prior burglaries as an element of the first degree
21 burglary. Therefore the standard proof is the same, the
22 State has to have proffered evidence to the Court today
23 beyond a reasonable doubt that the crimes were not part of
24 a spree. The reason Bryant did not address that was
25 because it was not raised during the appeal. But they

1 specifically said, had the trial court considered whether
2 this was a spree, that would be an issue that we would
3 have had to address. Thank you.

4 THE COURT: All right. On the statement, the
5 statement appears to be voluntarily given after being
6 advised of his rights thoroughly, orally. And he waived
7 those and the statement was voluntarily given. Mr. Neal
8 testified that he was being honest so the statement comes
9 in. I want to read these cases. We will take a break.

10 MR. BROWN: Judge I just wanted to correct one little
11 thing that Mr. Verner said regarding Bryant. The three
12 offenses took place on December the 27th of 1996, December
13 28th and then December 29th. The first two he plead
14 guilty to, the third one he took a trial the next year and
15 they found the prior two were separate, totally separate
16 offenses and they were not, they were inextricably
17 connected or not connected and they weren't in proximity,
18 they had different victims, different locations.

19 THE COURT: We will take a break, I want to read
20 them.

21 MR. VERNER: The jury is coming in at what time?

22 THE COURT: 9:00.

23 MR. VERNER: That is something that the Court can
24 think about overnight. If the State, prior to him
25 testifying can still bring in his prior record during the

1 case-in-chief, without mentioning it in opening arguments.
2 That is one.

3 THE COURT: Did they give you a copy of all of those
4 sentencing sheets.

5 MR. VERNER: He has provided me copies of them or let
6 me review the indictments, Your Honor. But as long as
7 that was not mentioned in the opening statement, if the
8 Court didn't make a ruling tonight.

9 THE COURT: I will hear from y'all before y'all open
10 tomorrow.

11 MR. VERNER: Okay. Thank you, sir.

12 MR. BROWN: Thank you, Judge.

13 February 5, 2013.

14 (Whereupon, the jury panel came into open court at
15 approximately 10:40 a.m.)

16 THE COURT: Solicitor, call your case.

17 MR. BROWN: Yes, Your Honor. The State calls William
18 Russell Neal, indictment for burglary first degree,
19 11-GS-36-0733.

20 THE COURT: All right, ladies and gentlemen of the
21 jury, as I told you earlier, my questions will be a little
22 more directed at point regarding your knowledge of
23 anything about the case which is now being called to
24 trial. By intent is to ask you a number of questions, get
25 your responses and then seat twelve people plus one

1 alternate in the jury box that can be fair and impartial
2 to both sides, for the State and the defense. So, as the
3 Deputy Solicitor Brown says his first case is State versus
4 William Russell Neal, he is charged with burglary in the
5 first degree. This offense occurred within Newberry
6 County on the 18th day of August of 2011, it appears that
7 a house located over off of Hazel Street. Does any member
8 of this jury panel know anything, I am sorry, let me ask
9 the question this way. Has any member of this jury panel
10 read or heard or have any personal knowledge of the events
11 which led to this accusation by the State against Mr.
12 Neal. If so, please stand and I will ask further
13 questions.

14 (No response.)

15 THE COURT: No one is standing. Now, I am going to
16 have the attorneys introduce themselves and everyone at
17 the counsel tables. Then I am going to ask you this
18 question. Any member of the jury panel know the people so
19 introduced, close personal friends, related by blood or
20 marriage. That will be my question so be listening for
21 that question. Solicitor Stumbo.

22 MR. STUMBO: Thank you, Your Honor. If it please the
23 Court. My name is David Stumbo, I am the Solicitor her
24 for the Eighth Circuit which includes Newberry. This case
25 will be prosecuted by two of my deputy solicitors, Deputy

1 Solicitor Yates Brown and Deputy Solicitor Dale Scott.
2 And also another remember of my staff that is on the bench
3 here is Mr. Kenn Wiltshire, he is our victim advocate and
4 he deals with victim's issues here in Newberry. Thank
5 you.

6 THE COURT: Any member of the jury panel related by
7 blood or marriage, close personal friends, to any of the
8 attorneys just introduced and/or victim's advocate. If so
9 please stand.

10 (No response.)

11 THE COURT: No one is standing. Mr. Verner
12 represents Mr. William Neal. Mr. Verner, stand up and
13 introduce your client to the jury appeal.

14 MR. VERNER: My name is Charles Verner, I am a lawyer
15 her in Newberry across the street. I practice with my
16 father, Jay Verner across the street. And my client is
17 William Neal.

18 THE COURT: Any member of this jury panel related by
19 blood or marriage, close personal friends with Mr. Verner
20 or Mr. Neal in this matter. If so please stand. Yes
21 Ma'am, tell me your name.

22 JUROR: Harriett Rucker.

23 THE COURT: Ms. Rucker, you are jury number 124.

24 JUROR: I know Mr. Verner.

25 THE COURT: Ms. Rucker, you know Mr. Verner?

1 JUROR: Yes, sir.

2 THE COURT: Would the fact that you know Mr. Verner,
3 would that cause you, would you be able to be fair and
4 impartial to both the State and the defense based upon
5 your knowledge and friendship with Mr. Verner?

6 JUROR: Absolutely.

7 THE COURT: You can be fair and impartial?

8 JUROR: Absolutely.

9 THE COURT: Thank you very much. Potential witnesses
10 in this case and if some of these witnesses are in the
11 courtroom I will ask them to stand and face the jury.
12 Potential witnesses that could be called in this case are,
13 and then I am going to ask the same question at the very
14 end. So I will list a number of witnesses and then ask
15 you whether you have any knowledge or close personal
16 friends, related by blood or marriage. Witnesses names
17 are, Brandon Gillion, David Gillion, Andrew Rowe, Casey
18 Edmunds, Ryan Gunwall, Captain Kevin Atkins, Roy
19 McClurkin, Kevin Goodman, Mike O'Connell, Amy Stephens,
20 Nikki Hughes, Katie Urka, Kenneth Bogan, Catherine Leisy,
21 Doris Yarbrough, Janice Bryson, Patricia Crooks, Lewis J.
22 Swindler, Richard Mercer. Regarding that list of
23 witnesses or potential witnesses any member of this jury
24 panel related by blood or marriage, close personal friends
25 to any of those witnesses. If so, please stand. I have

1 got several, I am going to start on the right. My
2 question is going to be, who do you know and then how do
3 you know them, can you be fair and impartial. Those are
4 going to be the questions. Ma'am, tell me your name.

5 JUROR: Elaine Hyler, juror number 80.

6 THE COURT: Which witness did I read that you are
7 friends with or related to.

8 JUROR: David Gillion is my husband's cousin.

9 THE COURT: Your husband's cousin. What cousin
10 relation would that be, first cousin or second cousin.

11 JUROR: First cousin.

12 THE COURT: So your husband is related first cousin
13 to a marriage to one of the victim's in this case?

14 JUROR: Yes.

15 THE COURT: Would that cause you to be fair and,
16 could you be fair and impartial to both sides or is that
17 going to create a issue for you?

18 JUROR: I can be fair.

19 THE COURT: Thank you. Right here on the front.
20 Tell me your name.

21 JUROR: I know the officers right here.

22 THE COURT: I need your name first.

23 JUROR: Robert Alexander, number 3.

24 THE COURT: And you know both of the, Mr. McClurkin
25 and Mr. Atkins?

1 JUROR: Me and Mr. Atkins had a dealing a couple of
2 months ago. I ended up having to charge and he was the
3 one that was there.

4 THE COURT: I am going to set you aside of this
5 trial. You can be seated. Tell me your name, please,
6 sir.

7 JUROR: Charles Evans Hawkins. Number 71.

8 THE COURT: Which witness do you particularly know?

9 JUROR: Mike O'Connell and Richard Mercer.

10 THE COURT: So you know Mr. Mercer and O'Connell.

11 JUROR: My dad is a city policeman.

12 THE COURT: I am not going to put you in that
13 position. That is related by blood or marriage, that is a
14 member of your family, that was going to be my next
15 question. So I am going to set you aside from this case.
16 In the very back.

17 JUROR: Benjamin Bradley.

18 THE COURT: Mr. Bradley, tell me who you know.

19 JUROR: Casey Edmund.

20 THE COURT: Edmund?

21 JUROR: Yes, sir.

22 THE COURT: How do you know Ms. Edmund.

23 JUROR: We have been friends for about three years.

24 THE COURT: The fact that you have been friends,
25 would that create an issue for you or can you be fair and

1 impartial to both the State and the defense?

2 JUROR: I can be fair and impartial.

3 THE COURT: Thank you, Mr. Rucker, juror number 124.

4 Tell me which officers, who all do you know.

5 JUROR: I know Chief Swindler.

6 THE COURT: The fact that you are friends with Mr.

7 Swindler, would that create an issue for you giving the

8 State a fair trial as well as Mr. Neal?

9 JUROR: No.

10 THE COURT: Thank you. Tell me your name.

11 JUROR: Brent Connelly, juror number 36.

12 THE COURT: Mr. Connelly, which witness do you know.

13 JUROR: I know Officer Goodman and I can be fair and
14 impartial.

15 THE COURT: Can you be fair and impartial?

16 JUROR: Yes, sir.

17 THE COURT: Thank you. Now, regarding this incident,
18 and I asked early on, any member of the jury panel, have
19 y'all read any news accounts, saw anything on the
20 internet, television regarding this incident in August of
21 2011. Does anybody know of anything from the street,
22 internet, Facebook, newspaper. Anybody heard or seen
23 anything about this case please stand.

24 (No response.)

25 THE COURT: No one is standing. Any member of this

1 jury panel members of any organization which the primary
2 focus is against violent crimes, such as citizens against
3 violent crimes, MADD, SADD, if so please stand. That is
4 for information purposes only.

5 (No response.)

6 THE COURT: No one is standing. Does anybody,
7 members of this jury panel know of any reason whatsoever
8 that they cannot give both the State a fair trial and the
9 defense a fair trial, please stand.

10 (No response.)

11 THE COURT: No one standing. Any other questions
12 from the State?

13 MR. BROWN: No, Your Honor.

14 THE COURT: Mr. Verner, from the defense?

15 MR. VERNER: No, Your Honor.

16 THE COURT: Madam Clerk, please generate me a random
17 list. Ladies and gentlemen, this is what is going to
18 happen next is the Clerk of Court through our magnificent
19 case management system, the management system is going to
20 generate a list randomly from your number. Once she
21 generates that we will call you up one at a time or she
22 will and you will come to the front, stand by my Court
23 Reporter. And each side has a certain number of strikes
24 or please excuse the juror request and so they can excuse
25 you or select you at their pleasure. And so they have

1 listened to my questions to you and your responses and
2 trying to get some information. And so they employ
3 whatever means necessary to try to select 12 jurors plus
4 one alternate, 13 of you on this trial. Once we get you
5 seated then I have got some other issues to go over with
6 you and we will get started.

7 CLERK OF COURT: Number 14, Beverly Boyd. What says
8 the State?

9 MR. BROWN: Please present the juror.

10 CLERK OF COURT: What says the defense?

11 MR. VERNER: Please seat the juror.

12 CLERK OF COURT: Number 160, Roth Quentin Williams.

13 What says the State?

14 MR. BROWN: Please present the juror.

15 MR. VERNER: Please seat Mr. Williams.

16 CLERK OF COURT: Number 46, William Derrick. What
17 says the State?

18 MR. BROWN: Please present Mr. Derrick.

19 CLERK OF COURT: What says the defense?

20 MR. VERNER: Please seat Mr. Derrick.

21 CLERK OF COURT: Number 120, Chad Randolph. What
22 says the State?

23 MR. BROWN: Please present Mr. Randolph.

24 CLERK OF COURT: What says the defense?

25 MR. VERNER: Please seat Mr. Randolph.

1 CLERK OF COURT: 112, Melinda Norton. What says the
2 State?

3 MR. BROWN: Please present Ms. Norton.

4 CLERK OF COURT: What says the defense?

5 MR. VERNER: Please seat Ms. Norton.

6 CLERK OF COURT: Number 146, Linda Taylor. What says
7 the State?

8 MR. BROWN: Please present Ms. Taylor.

9 CLERK OF COURT: What says the defense?

10 MR. VERNER: Please seat Ms. Taylor.

11 CLERK OF COURT: 10, Jonathon Boggess. What says the
12 State?

13 MR. BROWN: Please present Mr. Boggess.

14 CLERK OF COURT: What says the defense?

15 MR. VERNER: Please seat Mr. Boggess.

16 CLERK OF COURT: Number 30, Mamie Chaplin. What says
17 the State?

18 MR. BROWN: Please present Ms. Chaplin.

19 CLERK OF COURT: What says the defense?

20 MR. VERNER: Please seat Ms. Chaplin.

21 CLERK OF COURT: Number 11, Dinah Boice. What says
22 the State?

23 MR. BROWN: Please present Ms. Boice.

24 CLERK OF COURT: What says the defense?

25 MR. VERNER: Please seat Ms. Boice.

1 CLERK OF COURT: 142, Julie Spencer. What says the
2 State?

3 MR. BROWN: Please excuse Ms. Spencer from this
4 trial.

5 CLERK OF COURT: Ms. Spencer, you are excused. 80,
6 Elaine Hyler. What says the State?

7 MR. BROWN: Please present Ms. Hyler.

8 CLERK OF COURT: What says the defense?

9 MR. VERNER: From this case I am going to excuse Ms.
10 Hyler.

11 CLERK OF COURT: You are excused, Ms. Hyler. 88,
12 Tobe Kiehl. What says the State?

13 MR. BROWN: Please present Ms. Kiehl.

14 CLERK OF COURT: What says the defense?

15 MR. VERNER: Please seat Ms. Kiehl.

16 CLERK OF COURT: 48, Elizabeth Dominick. What says
17 the State?

18 MR. BROWN: Please present Ms. Dominick.

19 CLERK OF COURT: What says the defense.

20 MR. VERNER: Please present Ms. Dominick.

21 CLERK OF COURT: Number 27, Roniece Caldwell. What
22 says the State?

23 MR. BROWN: Please present Ms. Caldwell.

24 CLERK OF COURT: What says the defense?

25 MR. VERNER: Please seat Ms. Caldwell.

1 CLERK OF COURT: Number 96, Donna Livingston. What
2 says the State?

3 MR. VERNER: We are doing one alternate, Judge?

4 THE COURT: Yes, do you think that will be enough?

5 MR. VERNER: Yes, sir.

6 MR. BROWN: Please present Ms. Livingston.

7 THE COURT: The defense?

8 MR. VERNER: Please seat Ms. Livingston.

9 THE COURT: Are there any matters of law that needs
10 to be taken up regarding the selection process employed
11 and/or the composition of this jury from either the State
12 or the defense?

13 MR. BROWN: Not from the State, Your Honor.

14 MR. VERNER: No, Your Honor.

15 THE COURT: Those of you not so selected, does
16 everyone have a juror information card that has the Clerk
17 of Court's phone number on it. Please call that number
18 tonight after 6:00 p.m. and listen to the instructions.
19 And it is very likely that the instructions will be,
20 please call back the next night after 6:00 p.m. or please
21 come in tomorrow morning at some particular time. That is
22 your responsibility, not the 13 here. Something may
23 happen to this case and we start another case so I need
24 you to call after 6:00. It is important, Ms. Bowers has a
25 small staff. If you call her number early, I promise you

1 Ms. Bowers will be here in the courtroom and Ms. Folk will
2 be here in the courtroom. Ms. Brehmer might not be but
3 the two ladies that are up here know what is going on and
4 what the status of the jury trial is, what cases are
5 moving. The ladies that are downstairs have no idea what
6 is going on. So if you call early and you are ringing the
7 Clerk's phone to someone who is not going to know the
8 answer to your question. So wait until after 6:00 to
9 listen to the recording. You are excused.

10 (Whereupon, the jury panel was excused at
11 approximately 11:05 a.m.)

12 THE COURT: Do we have any pretrial matters we need
13 to address other than the one we heard yesterday?

14 MR. VERNER: Your Honor, basically the one from
15 yesterday.

16 THE COURT: All right, I will give y'all some ground
17 rules. Your jury room is right here. My job is to
18 preside, I listen and make rulings. I am kind of like the
19 umpire at the baseball game, I call balls and strikes.
20 Y'all listen to the whole thing and at the very end you
21 evaluate what is testified to and there will be certain
22 questions presented to you as a group, questions of fact.
23 Now, it is critical that you do several things to not
24 violate these rules. One is listen to everything before
25 you begin discussing the case. I will allow you to take

1 notes. So we will take a break momentarily and let y'all
2 go back to the jury room. Ms. Boyd, you are my foreperson
3 and you are going to sit right here. When you come back
4 out I want you to sit in this chair and you don't get paid
5 extra. But you are the spokesperson for the jury and you
6 will preside over deliberations. The first thing is
7 first, you determine how many pencils and pads you need to
8 take notes. You don't have to take notes but you can.
9 Some jurors like to have something in their hands to write
10 on. Now, the testimony is going to come from the witness
11 stand here, it is going to be in an orderly fashion, my
12 presiding over it in the courtroom. Ms. Holston,
13 everything that is said, she also records everything, so
14 she has it twice. Now, y'all as a group need to listen to
15 all of the witnesses. The State goes first, they have the
16 burden of proof in the case. The indictment that I showed
17 you that was up on the bench says that Mr. Neal was
18 charged with a crime, is nothing more than an accusation
19 or an allegation. It doesn't prove anything, it doesn't
20 disprove anything. When the trial starts the State will
21 have the burden of proving those allegations to you
22 through their witnesses and their evidence. Now, it will
23 be terribly unfair to anybody in this court for the first
24 or third witness, that you make up your mind to decide the
25 case based upon the first witness, based upon the first

1 three witnesses. Your job is not to discuss the case with
2 anybody, among yourselves or when you go home. We
3 probably won't finish today, we will finish tomorrow,
4 depending on how long it takes. But you will be home to
5 eat supper with your family. You can't talk about the
6 case at home. Until you hear my instructions on the law
7 and how you are going to evaluate the testimony you heard
8 you are really not ready to discuss the case with each
9 other. So, take notes if you like, if you need something
10 you let me know, Ms. Boyd will let me know and understand
11 Ms. Wardlaw right here, the bailiff in the back, the
12 bailiff back over here, got four or five, if y'all need
13 something in the jury room or coming in and out of the
14 courthouse, you can talk to them and they can get it for
15 you. Everybody else can't speak to you because it would
16 look odd if one of y'all were talking to the State's
17 witnesses, to the defense, to Mr. Verner. So the lawyers
18 and the parties involved, they know these rules. Your
19 jury badges, you may get a good morning out of them but
20 that will be the extent of the conversation. The bailiffs
21 can talk to you, you need a bottle of water, a cup of
22 coffee, whatever. They can talk to you and you can speak
23 to them to get you in and out of the courtroom safely.
24 Now, in a trial like this or in any trial it is important
25 that the testimony y'all hear, y'all hear as a group and

1 discuss as a group and not bring in anything outside of
2 the courtroom, into your deliberations or any of the
3 decision making. Y'all need to decide this case in this
4 room under my supervision with a record. Okay. That way
5 if you need to hear it and see what they said we can do
6 that. It is very important, your cellphones, your smart
7 phones, your computers, y'all are not allowed to do any
8 independent research, any individual conversations,
9 anything on the computer, Facebook, Myspace, Twitter,
10 instagram, whatever the latest and greatest thing is. My
11 kids know all of them and I don't. A Judge got in trouble
12 one time, his law clerk, some Judge's law clerk, during
13 the trial, this case is boring. The witness that so and
14 so called doesn't know what he is talking about. And
15 guess who read it, a juror. Judge got in trouble, the law
16 clerk lost her job. I don't have time for that. Because
17 of that none of the Judges or law clerks are allowed to go
18 on Facebook, it is off limits. Stay away from that, don't
19 text anybody. What y'all need is what you will hear it in
20 here. If you don't hear it in here it wasn't necessary.
21 Now, also that goes along with, I want you as a group to
22 hear sworn testimony from the witness in your presence.
23 In here you get to see what they say, what they look like
24 when they said it. And that is why it is important to
25 hear as a group. Those are some of my preliminary

1 instructions. If y'all will be punctual, I will be
2 punctual and I will make the lawyers be extra punctual. I
3 will start on time. I will not keep you back in the jury
4 room for long extended periods of time. Now, certain
5 things will happen during a trial. The lawyers will jump
6 up and say objection, Your Honor, hearsay; objection, Your
7 Honor, irrelevant. Something along those lines. That is
8 a code for me to chune in, I am taking notes, to make a
9 ruling on whether something is in or out. And I make a
10 ruling. Now, many times the lawyers want to protect their
11 record and make it a little more extensive argument about
12 why something under the court rules are one way or the
13 other. And I allow that but what I do, when I am
14 considering their arguments on the law I excuse y'all to
15 the jury room and let y'all take a break and I will let
16 the lawyers make a full record. But sometimes I don't
17 exactly know what the next question is going to be or what
18 the testimony is going to be so I have got to listen to it
19 to see if it is relevant and important and allowed. I
20 don't know a thing about this case other than what I have
21 told you. I know what the accusations are, who the
22 witnesses are, I don't know anything other than that.
23 Y'all can't discuss the case at breaks, lunch time, supper
24 time, no time, until I say okay, you can begin your
25 deliberations. That is when y'all start. I ask y'all as

1 a group to step in the jury room. If somebody wants a
2 smoke break just let me know and we can do that. This is
3 the jury room, there are snacks and restrooms. Step back
4 there and we will have you back in just a few minutes.

5 (Whereupon, the jury was excused from open court.)

6 THE COURT: From yesterday the issue regarding the
7 prior convictions. My understanding of the reading of the
8 analysis currently as outlined by Justice Kittredge, I
9 think those convictions would be distinguishable enough to
10 implore a proximity to be used as multiple convictions.
11 It didn't occur in one string, one week, one close crime
12 spree. They were over several different months, perhaps
13 as many, spring and several seasons, the spring, summer
14 and the fall before the plea was made I would rather not
15 mention those in the opening remarks. I think that should
16 come in when the proof comes in. So that is my ruling on
17 that, Mr. Verner.

18 MR. VERNER: Yes sir, I understand that. The next
19 issue would be given the Court's ruling, we would
20 stipulate that he has two prior convictions subject to the
21 Court's overruling our motion that that should count as
22 one conviction, one plea, one conviction.

23 THE COURT: That is based upon the prior bad acts and
24 the 403 analysis.

25 MR. VERNER: Yes, sir. My understanding and I read

1 the law again last night, was that the cases that have
2 allowed the State to introduce indictments of prior
3 convictions, the Court has made it clear that that does,
4 all evidence comes in under 403 and the balancing. And
5 obviously the Court can start with the proposition that
6 the Supreme Court said that the prior burglaries would be
7 prejudicial to a defendant. So that is basically
8 recognized that the State would have to show that it is
9 more probative than not given our stipulation that he has
10 two prior burglaries, Your Honor. My understanding of the
11 cases that I have read were all free of the 403 analysis
12 being applied to those cases.

13 THE COURT: A lot of those cases used to come on the
14 DUI law through stipulation, the jurisdiction, for a DUI
15 second and third being in General Sessions Court.

16 MR. VERNER: Yes sir, the Court is absolutely right.
17 It is a, on paper it is the identical basic position.

18 THE COURT: I understand your position. All right,
19 Mr. Brown.

20 MR. BROWN: Judge, we are anticipating presenting the
21 prior convictions through a witness on the stand just
22 showing that that is what he looked into, for the burglary
23 first, that is the way to get that out on the burglary
24 first.

25 THE COURT: I want to read those cases under the 403

1 analysis because my concern would be under 403, the
2 prejudicial value of the prior conviction.

3 MR. VERNER: Your Honor, I think James is the most,
4 State v. James in 2003 is, I think is a similar case on
5 that, the Supreme Court case which overruled the Court of
6 Appeals.

7 THE COURT: Let me ask you this, Mr. Verner. In
8 light of the fact that if, do you intend on agreeing to
9 let the State submit a verdict form of lessor included
10 offenses for the facts using a weapon, if they failed to
11 meet the burden, your client's conviction of burglary
12 second without the benefit of presenting the prior
13 burglaries, the conviction on burglary second. And the
14 Court then would make a, out of the presence of the jury,
15 finding of two prior convictions and it would
16 automatically enhance back to a first for sentencing
17 purposes?

18 MR. VERNER: Yes, sir.

19 THE COURT: Do y'all understand that, what was just
20 asked?

21 MR. BROWN: I do understand that. Judge, I was
22 looking back at the State v. James. I think that was
23 hitting more on the State was presenting, for example,
24 seven prior burglaries and may use that saying that was
25 more prejudicial rather than probative but yet the

1 evidence was so overwhelming at that point it didn't
2 hinder the defense. What we were planning to do is just
3 present two prior burglaries, not five like, we had five
4 as exhibits, we were going to present two to cover the
5 elements. But not having prejudicial effect.

6 THE COURT: We are not going to get there before
7 lunch I don't believe. I want to reserve that ruling, I
8 want to read those cases over lunch then I will let you
9 know before you get to that point in your case. That is
10 not your first witness, is it?

11 MR. BROWN: No, sir.

12 THE COURT: So we can do openings, get the case
13 rolling, take a lunch break, let me study those cases and
14 then I will decide which way we are going to go. One
15 way or another, if there is a conviction they will come
16 in, one way or the other. But the 403 problem is the one
17 that I have got to study on.

18 MR. SCOTT: Judge, I think Mr. Brown is going to
19 argue the opening. Just so we are clear, I am not even
20 sure if he plans to do it but if he discusses the elements
21 of the crime. I understand that we are not to go into the
22 elements, these prior convictions in opening.

23 MR. VERNER: I would have a problem, he is entitled
24 to open on the law, Your Honor. I think the Court, the
25 factual evidence of this defendant's prior two convictions

1 would be what my understanding, what the Court is
2 concluding. But he is certainly entitled to open on the
3 law on the two priors, burglaries two's would qualify as a
4 first degree burglary as the proposition of the law. I
5 don't know if Mr. Scott is talking about applying that to
6 this defendant or not but that is where I think that the
7 Court has precluded that.

8 THE COURT: Nevermind. He can open on the law and he
9 can discuss the statute. And anything else?

10 MR. VERNER: And it might be more economical, Your
11 Honor, to just open then take, it may be too early for
12 lunch but I really don't anticipate this case going beyond
13 today. I will propose to just opening arguments, lunch
14 and then start with the case-in-chief.

15 THE COURT: My guess is Mr. Brown is going to call
16 Mr. McClurkin first. Call whoever you want, I don't care.
17 Whoever it is about 12:30 we are going to take a break.
18 We will stand at ease until Ms. Wardlaw tells me all the
19 jurors are back in the court house.

20 (Whereupon, a short break was taken.)

21 THE COURT: We will begin. I want y'all to listen
22 throughout the trial, y'all have got to take the oath of
23 the jurors momentarily. One last thing. I provide jurors
24 with candy and you can have a piece of candy or two while
25 the testimony is going on. If you want something else in

1 it let me know. I went to the Judicial College in October
2 and one of the Judge's that taught us said, if you are
3 eating hard candy let the jury have some too and make it
4 comfortable for them. One other thing that I allow you to
5 do, if the lawyers have an issue and they want to talk to
6 me briefly and say, Judge, can we talk to you at the
7 sidebar. I go over there and talk to them. So when I go
8 over there and talk to the lawyers y'all can stand up and
9 stretch. If you all will stand and Ms. Bowers will place
10 you under oath and we will begin. (

11 (WHEREUPON, the jury was sworn at approximately 11:51
12 a.m.)

13 THE COURT: Mr. Brown.

14 MR. BROWN: May it please the Court.

15 THE COURT: Yes, sir.

16 MR. BROWN: Good morning. Ladies and gentlemen, my
17 name is Yates Brown and I along with Dale Scott will
18 present this case to you today. We represent the State,
19 it is our honor and privilege to be here for you today.
20 And we also want to thank you for being here and also your
21 willingness to serve on this jury, your willingness to let
22 our system work. If you are not here we can't have a fair
23 trial here. Also I want to introduce to you Mr. Brandon
24 Gillion and his father David Gillion. They are the
25 victims in this case, they are the victims of a burglary.

1 Somebody broke into their house and the person that broke
2 into their house is Mr. Neal sitting right here. Now, on
3 August the 18th of 2011 Brandon Gillion was at his house,
4 it was around 10:30 in the morning and he left to go to
5 the store. When he left he was gone for about 20 minutes
6 and when he came back up to his driveway and he came to
7 his backdoor he noticed that his door was a little
8 different than what he left it as. He got a little closer
9 and realized the door was open, somebody broke into his
10 house. At that point he saw a man or a hand, African
11 American male hand come through the door, he left, he went
12 down the driveway and called his dad and called law
13 enforcement. A short time later Mr. Neal was arrested.
14 Now, we have the burden of proof in this case, we have to
15 prove beyond a reasonable doubt that Mr. William Neal
16 committed burglary first. Burglary first is the unlawful
17 entry or breaking in, entering into another person's home
18 without the consent, with the intent to commit a crime
19 therein. And also for burglary first we have to show that
20 there is some type of aggravating factor. One that the
21 burglary occurred at nighttime or that the person that
22 broke into the house was in possession of weapon or that
23 the person had been convicted of two or more prior
24 burglaries. Those are just some of the examples of
25 aggravating factors. Now, what we intend to show in this

1 case is that Mr. Neal was seen in the house, he was caught
2 a short distance away. He then, after evidence was
3 collected from the house his DNA shows up on the evidence.
4 And also lastly, what we intend to show you, is that Mr.
5 Neal gave a statement to law enforcement concerning this
6 burglary. Ladies and gentlemen, I ask you to just pay
7 attention to everybody that comes up here, all of the
8 witnesses, look at all of the evidence, remain patient
9 with us. We will try to go as fast as we can and just
10 take in everything and at the end we will be back in front
11 of you and ask you to find Mr. Neal guilty as charged and
12 that is guilty of burglary in the first degree. Thank
13 you.

14 THE COURT: Mr. Verner.

15 MR. VERNER: May it please the Court, Your Honor, Mr.
16 Stumbo; Madam Forelady. I am Charles Verner, and I do
17 represent William Neal. I want to explain something, we
18 are just asking, we do dispute. If we agreed to
19 everything we wouldn't be here right now. Parts of the
20 State's case we absolutely dispute and I am just asking
21 you to keep an open mind and weigh the evidence at the end
22 of the case because obviously the side that gets the first
23 shot has a tremendous advantage and the reason for that is
24 that the burden is entirely on the State to produce every
25 witness. In law school they call it the burden of

1 production and the burden of persuasion. They have got
2 the burden of producing all the evidence, all the
3 witnesses. The burden never shifts to the defendant to
4 prove I didn't do something. If the State is going to be
5 here they have the burden of proving everything. That is
6 every element of their crimes. And persuasion means that
7 after you see and hear the witness and the evidence that
8 all twelve members of the jury agree beyond a reasonable
9 doubt that it supports the State's crime that they
10 submitted. Just briefly, we are not here, it is not an
11 academic debate we are here for today. It is not a
12 science. This is a crime case. The jury system is put in
13 and what you are doing now, they have had jury trials for
14 two-thousand years, three-thousand years, beyond. There
15 is different ways of doing it, used to be just men in the
16 village would come down. The jury appears and people who
17 own the property had the right to vote on a jury. Today
18 in America is just twelve people from Newberry County who
19 decides the case. The jury system is to put in to protect
20 the citizen against the State. That is your job, you
21 protect the individual against the Sate. If the State is
22 going to take somebody's property, somebody's liberty,
23 somebody's life they have to get beyond twelve people who
24 live with the system. That is your role. The verdict
25 means to speak truly, that is the State produce the

1 evidence. The Judge is going to tell you if there is any
2 doubt, it could have happened this way, I think it could
3 have happened that way. It is reasonably possible it
4 could have happened this way. If that is the case then
5 the defendant enures the benefit of any doubt. I
6 appreciate your service here, it is very important to the
7 defendant and it is important to the State too. We try a
8 lot of cases, we respect your verdict however you do it.
9 We have got other cases to do. In candor it ends today.
10 Judge Griffith, as he said, he allows evidence or doesn't
11 allow evidence provided, it has been noticed and properly
12 introduced. That is his role, that is the end of it. You
13 decide the facts. There is not anybody else, there is not
14 a calvary that comes after you, what you decide happens
15 today is it. So I mean it is important and I ask you to
16 hear the evidence and just keep an open mind. I submit it
17 is probably going to close today. I submit you probably
18 going to be home and that is going to be the end of the
19 case. But however long it takes I just ask that you keep
20 an open mind, that you hold the State, they are going to
21 be here, they are going to call a party, then just make
22 them produce the evidence on each part of their claim that
23 they need to. And I appreciate your time.

24 THE COURT: I just spoke to the lawyers earlier. I
25 told them I wanted to break for lunch at 12:30. We will

1 call one witness and we will eat lunch at 12:30. Mr.
2 Brown, call your first witness.

3 MR. BROWN: The State calls Brandon Gillion.

4 BRANDON GILLION, being
5 first duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 By Mr. Brown:

8 Q How are you this morning?

9 A Doing all right.

10 Q Mr. Gillion, are you from Newberry?

11 A Yes, sir.

12 Q How long have you lived here?

13 A All of my life.

14 Q You still live here now?

15 A Yes, sir.

16 Q Where are you living right now, what house are you
17 living in now?

18 A Up on Mill Street, Newberry, South Carolina.

19 Q Where did you live back in August of 2011?

20 A Street, Newberry, South Carolina.

21 Q Who did you live there with?

22 A My dad.

23 Q Is your dad here today?

24 A Yes, sir.

25 Q And, Mr. Gillion, do you remember what happened on

1 August 18th of 2011?

2 A Yes, sir. That morning I woke up and I left the
3 house about 10:30, returned home approximately at 10:50
4 and whenever I pulled into the yard I noticed something
5 strange with the door. So I backed out of my parking
6 spot, pulled up closer to that door and at that point I
7 just sat in my truck watching the backdoor. And about
8 that time an African American male's hand went to reach
9 for like the screen door to push it open. The door itself
10 was busted open and he had a plastic bag in his hand, it
11 looked like maybe a Walmart bag. And I left the house.
12 At that point I called my dad and I sat at the end of my
13 dirt road so I could kind of watch the house in my
14 rearview mirror. And then I called 911 immediately
15 afterwards. And I still sat there for a few moments just
16 kind of watching to see if he left from the house. And I
17 couldn't see him. Either he was in the house or had left
18 from the back corner of the house which is an area that I
19 was unable to see, from where I was parked.

20 Q Let's back up, you said you pulled into the driveway.
21 You said you noticed what looked a little off, what could
22 you tell was wrong when you pulled back up to your house?

23 A Our door is brown and the screen door is white. And
24 so I noticed that the actual brown door was no longer
25 closed like it was whenever I left the premises.

1 Q Tell me, what is the address of your house, address
2 where you saw this man in your house?

3 A , Newberry County, South Carolina,
4 .

5 Q Mr. Gillion, I am showing you what has been marked as
6 an exhibit, State's exhibit number 8. Take a look at that
7 and tell me what that picture is?

8 A That is the front of the house that I just named, the
9 address that I just gave.

10 Q Is that where you were living?

11 A Yes, sir.

12 Q On August the 18th?

13 A That is correct, August 18th of 2011 I was living
14 there.

15 MR. BROWN: Judge, if I may publish this to the jury.

16 THE COURT: Ladies and gentlemen of the jury,
17 everything introduced into evidence y'all will have in the
18 jury room, you don't have to commit to memory or try to
19 study it real closely as he is publishing it to you and
20 showing it to you. You will have everything. So both
21 sides well be allowed to show you what they want to show
22 you or present it on the screen but during deliberations
23 y'all will have them, you can look at them as closely and
24 as long as you want.

25 Q Does this fairly and accurately represent your house

1 at that time?

2 A Yes, sir.

3 MR. BROWN: Judge, I want to introduce State's
4 exhibit number 8 into evidence.

5 MR. VERNER: No objection.

6 (Whereupon, State's Exhibit 8 was admitted into
7 evidence.)

8 Q Mr. Gillion, you said when you were sitting in your
9 car you noticed that the door, something was wrong with
10 the door. Tell me what you observed there?

11 A At that point I noticed that the screen door was
12 still closed but the backdoor itself was opened. And
13 while I was sitting there an African American male hand
14 come approaching towards the door and had a plastic bag in
15 the hand.

16 Q After you saw the hand what did you do?

17 A I immediately drove off.

18 Q What did you do after you drove off?

19 A I called my dad probably while I was still in the
20 driveway. As you can see in the picture, the driveway
21 going towards the road and at that point I just told him,
22 hey, someone is in the house, come home from work. And I
23 immediately hung up and dialed 911, got to the end of the
24 dirt road which is, I am terrible with distances, I can't
25 tell you. But I was still able to see the house from my

1 mirror. And so I watched the house while I was talking to
2 911. And then after a brief time I went ahead and left
3 and circled around the block until I saw law enforcement
4 approaching the house.

5 Q What did you do after you saw law enforcement
6 approaching the house?

7 A They kind of went the wrong way since the dirt road
8 splits two different ways. So I just went ahead and
9 stopped them from going down further to the wrong
10 direction, told them to go back the other way and
11 immediately I stopped at the end of the yard while they
12 went into the house.

13 Q After they went into the house what did you do?

14 A Stood at my truck at the end of the yard. While they
15 searched and cleared the house and then it was probably a
16 minute or two later my dog came running out of the yard,
17 out of the house so I caught her. And I took her and put
18 her on a chain that I have in the yard. And then at that
19 point one of the officers asked me if I could go inside of
20 the house to verify any changes that had been made from
21 when I left the premises. Immediately upon entering the
22 home, on the, from the backdoor which is the door that was
23 busted in, on the right side which is the counter there
24 was a drill sitting there, there was some scattered change
25 like from an old cookie can or something. And that was

1 scattered around there. Right there immediately in my
2 direct vision to the right which was between the L-shaped
3 counter was a Dr. Pepper can. And then directly in front
4 of me, from the backdoor was my dad's room which was his
5 dresser and the drawers were pulled out and the clothes
6 were shuffled around and there was a baseball cap sitting
7 on the floor. None of these items were things that we
8 used so they were obvious to me since I knew they were
9 different than when I had just left the house.

10 Q All right. I am showing what has been previous
11 marked State's exhibit number 9. Can you identify that
12 picture.

13 A That would be the backdoor, the one that was busted
14 in and the one that the African American male come
15 approaching the door. That is where I was parked at the
16 time when I saw him, the hand come to the backdoor.

17 Q Does that picture fairly and accurately represent
18 what the house looked like on that day?

19 A Yes, sir. That is correct.

20 MR. BROWN: Judge, we move State's exhibit 9 into
21 evidence.

22 MR. VERNER: No objection.

23 THE COURT: No objection, State's 9 is in evidence.

24 (Whereupon, State's Exhibit 9 was admitted into
25 evidence.)

1 Q Mr. Gillion, you said when you approached that door,
2 you said the door was in bad shape, it had been busted
3 open?

4 A Yes sir, that is correct.

5 Q Mr. Gillion, I want to show you what has been
6 previously marked as State's exhibit number 10. Can you
7 identify that picture for me.

8 A That is the backdoor that I come home to whenever I
9 entered the house with the officers.

10 Q Does that fairly and accurately represent what it
11 looked like on that day?

12 A Yes, sir. That is correct.

13 MR. BROWN: Judge, I move State's exhibit number 10
14 into evidence.

15 MR. VERNER: No objection.

16 THE COURT: No objection, State's 10.

17 (Whereupon, State's Exhibit 10 was admitted into
18 evidence.)

19 Q Mr. Gillion, you said officers had to go through the
20 house to identify anything that looked like it was out of
21 the ordinary or if you saw anything that was not suppose
22 to be there. Tell me again, what did you see in the
23 house?

24 A Immediately upon entering the house I saw a drill on
25 the right hand side on the counter, I saw some change that

1 was kind of poured the counter that was not previously
2 there and it was a cookie can that had, that was beside
3 it. I saw a Dr. Pepper can on the floor and then directly
4 in front of me I saw the drawers pulled out of the chester
5 drawer and a baseball cap was on the floor in front of the
6 dresser.

7 Q Mr. Gillion, I am showing you what has been
8 previously marked as State's exhibit number 18. Can you
9 take a look at that and tell me, and see if you recognize
10 that picture.

11 A Yes, sir. That would be the drill that was on the
12 counter and the change that was kind of scattered around
13 and also the door, you can see the door too.

14 Q Does that fairly and accurately represent what you
15 saw that day?

16 A Yes sir, that is correct.

17 MR. BROWN: Judge, the State moves State's exhibit
18 number 18 into evidence.

19 MR. VERNER: Without objection.

20 THE COURT: 18 is admitted without objection.

21 (Whereupon, State's Exhibit 18 was admitted into
22 evidence.)

23 Q Mr. Gillion, going back you said you saw a Dr. Pepper
24 can?

25 A Yes sir, that is correct.

1 Q I am showing you what has been marked as State's
2 exhibit number 14. Take a look at that and tell me what
3 you see there.

4 A That is a Dr. Pepper can which shows what I saw that
5 day on August 18th of 2011.

6 Q Does it fairly and accurately represent where it was
7 located that day?

8 A Yes sir, that is correct.

9 MR. BROWN: Judge, the State moves State's exhibit
10 number 14 into evidence at this time.

11 MR. VERNER: Without objection.

12 THE COURT: 14 is without objection.

13 (Whereupon, State's Exhibit 14 was admitted into
14 evidence.)

15 Q Mr. Gillion, I want to show you another photo which
16 has been previously marked as State's exhibit number 15.
17 Take a look at that and tell me what you see there.

18 A That would be the baseball cap that I saw in front of
19 my dad's dresser.

20 Q Does that photo fairly and accurately represent what
21 you saw that day?

22 A Yes sir, that is correct.

23 MR. BROWN: Judge, the State moves State's exhibit
24 number 15 into evidence.

25 MR. VERNER: No objection.

1 THE COURT: No objection, 15.

2 (Whereupon, State's Exhibit 15 was admitted into
3 evidence.)

4 Q The last picture I am going to show you, State's
5 exhibit number 16. Take a look at that and see if you
6 recognize what that is?

7 A That would be the location in our pool room where
8 some alcohol stoppers were located on that shelf that was
9 missing at the time.

10 Q Okay. Does that fairly and accurately represent what
11 it looked like on the day that you went back in the house?

12 A Yes sir, it does.

13 MR. BROWN: Judge, State moves in State's number 16.

14 MR. VERNER: No objection.

15 THE COURT: State's 16.

16 (Whereupon, State's Exhibit 16 was admitted into
17 evidence.)

18 Q I am going to show you one more picture. This has
19 been marked as State's exhibit number 19. I will ask you
20 to identify that picture for me.

21 A That would be the bottle stoppers that were located
22 on that shelf prior to August 18th of 2011.

23 Q Does that clearly represent what those bottle
24 stoppers looked like?

25 A Yes sir, that is correct.

1 MR. BROWN: Judge, State moves in State's exhibit
2 number 19 into evidence at this time.

3 MR. VERNER: No objection.

4 THE COURT: 19 without objection.

5 (Whereupon, State's Exhibit 19 was admitted into
6 evidence.)

7 Q Now, Mr. Gillion, do you know the defendant here, Mr.
8 Neal?

9 A No sir, I do not.

10 Q Did you ever give him consent or were you aware that
11 your dad gave him consent to come into the house?

12 A No, sir.

13 Q And also the day you came home and you saw the hand
14 of the African American, could you tell whether or not it
15 was a male or female's hand?

16 A It more closely resembled a male due to the texture
17 of the skin. I am accustomed to paying close attention to
18 that since I am in the healthcare field so I see a lot of
19 hands.

20 Q Okay. One last question, Mr. Gillion, when you
21 approached the house what did you feel when you saw
22 somebody was in your house?

23 A Frightened. You don't know what they are going to do
24 to you at that point. You don't know if they had a gun,
25 if they are going to shoot you or, and then afterwards you

1 can't help to feel that they are coming back. Even though
2 they are in jail you don't know, maybe they released him
3 on accident. And it is just scary.

4 MR. BROWN: No further questions.

5 THE COURT: Mr. Verner.

6 CROSS-EXAMINATION

7 By Mr. Verner:

8 Q When you came home, I believe you testified that it
9 was about 11:00, before 11:00 o'clock in the evening,
10 morning?

11 A Yes, sir.

12 Q During the daytime?

13 A Correct.

14 Q Thank you.

15 THE COURT: You may step down. We will break for
16 lunch and come back at 1:30. Please don't discuss the
17 case and be back at 1:30. Leave your pads in your seats
18 or put them in the jury room.

19 (Whereupon, the jury was excused from open court for
20 a lunch break.)

21 (Whereupon, a lunch break was taken.)

22 THE COURT: Bring the jury in.

23 (Whereupon, the jury came into open court at
24 approximately 1:40 p.m.)

25 THE COURT: Mr. Brown, call your next witness.

1 MR. SCOTT: The State calls Andrew Rowe to the stand.

2 ANDREW ROWE, being

3 first duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 By Mr. Scott:

6 Q Sergeant Rowe, where are you employed?

7 A Newberry City Police Department.

8 Q And how long have you been with the city?

9 A For ten years, sir.

10 Q Do you have any law enforcement experience prior to
11 coming over to Newberry?

12 A No law enforcement experience, no sir.

13 Q What are your day-to-day duties in Newberry?

14 A I am the shift supervisor, the shift investigator,
15 ground offense tactics, defense tactics instructor. That
16 is pretty much the major ones.

17 Q And one of your duties is to respond to crimes that
18 are in progress?

19 A Yes, sir.

20 Q Were you working in that capacity on August the 18th
21 of 2011?

22 A Yes, sir.

23 Q About 11:00 o'clock that morning did you have an
24 occasion to respond to Street?

25 A Yes sir, I did.

1 Q What was the nature of that call?

2 A At that time it was a burglary in progress. The
3 complainant who called said that he had walked in and
4 found someone in his house that was not suppose to be
5 there.

6 Q You responded directly to 3134 Hazel?

7 A Yes, sir.

8 Q That is Newberry County, correct?

9 A No sir, it is in the city limits, Newberry City, yes.

10 Q Newberry City is in Newberry County?

11 A Right, that's correct.

12 Q What did you observe when you arrived there?

13 A When I arrived there, walked around to the back, the
14 backdoor had been kicked in. Some property had been
15 scattered around on the outside steps as well as inside
16 the house.

17 Q How did you know the door had been kicked in?

18 A When I first got there I spoke to the complainant who
19 told that he had came home and found his house burglarized
20 or broken into. And when I walked up I seen the doorframe
21 had been kicked in, locking mechanism on the door was
22 splintered and the actual lock of the door was laying
23 inside on the kitchen floor.

24 Q Are you talking about Mr. Gillion?

25 A Yes.

1 Q How did he appear when you arrived at the scene?

2 A He was very upset, excited, scared.

3 Q Have you had occasion to respond to very many
4 burglaries?

5 A I have, yes sir.

6 Q And speak to the victims?

7 A Yes, sir.

8 Q Is that typical for them to be frightened?

9 A Yes, sir.

10 Q You said the locking mechanism was on the floor of
11 the kitchen?

12 A Yes, sir.

13 Q What did you say was scattered around?

14 A Well, what I noticed was scattered was like change.
15 When you are walking up to the door there was some change
16 laying out on the steps and then there was some change.
17 Right when you walk into the backdoor, the backdoor led
18 into the kitchen area and right inside there is a
19 countertop and it had change laying all around it as well.

20 Q State's exhibit number 9, do you recognize that?

21 A Yes, sir.

22 Q That is the backside of the house, correct, that is
23 where the door was broken?

24 A Yes, sir.

25 Q And number 10 here, this depicts the shadow of the

1 frame that you were speaking of?

2 A Yes sir, that is.

3 Q And that is indicative of forced entry?

4 A Yes, sir.

5 Q I will show you number 11 and number 12.

6 A That is the lock mechanism.

7 MR. BROWN: Any objection to the State offering 11
8 and 12?

9 MR. VERNER: No objection.

10 THE COURT: 11 and 12 are in, no objection.

11 (Whereupon, State's Exhibits 11 and 12 were admitted
12 into evidence.)

13 MR. VERNER: And which exhibits have been put in?

14 COURT REPORTER: 8, 9, 10, 14, 15, 16, 18 and 19.

15 THE COURT: Ms. Boyd, so y'all know, what they are
16 talking about. While we were getting ready for trial the
17 State had a bunch of photographs and they premarked them
18 with Ms. Holston. She put numbers on them, she
19 inventories everything, whether it is in evidence or not
20 and the parties kind of know these numbers and that is
21 what they are talking about. They are not hiding anything
22 from you. The way they are coming in out of order is just
23 how they numbered them to begin with and different
24 witnesses are attached to different photographs.

25 MR. VERNER: I don't have any objection, Your Honor.

1 Should be 11 through--

2 MR. SCOTT: The State is offering 13.

3 (Whereupon, State's Exhibit 13 was admitted into
4 evidence.)

5 Q Number 12 illustrates the locking mechanism you saw
6 on the floor?

7 A Yes, sir.

8 Q Number 13, this is the back step as you enter the
9 house and that is some of the change that you mentioned
10 that was on the floor leading up to the house?

11 A Yes, sir.

12 Q What did you observe when you entered the house?

13 A Well, first when I entered the house I entered with
14 another officer and I cleared it just to make sure he was
15 no longer there. And then I had more of a chance to
16 really focus on the interior of the house and it looked in
17 just a mess, it looked like everything had been ransacked.

18 Q Describe it.

19 A First walked in, like I said, in the kitchen there
20 was some change laying there on the floor, all over the
21 counter. There was a drill laying in the middle of the
22 change on the counter.

23 Q Let me stop you and show you State's number 18.

24 A That is it.

25 Q That is what you are describing with the change on

1 the counter and the drill?

2 A Yes, sir.

3 Q And what did you learn about that drill?

4 A I learned that that was not the homeowner's drill.

5 Q Not the homeowner's drill?

6 A Right.

7 Q As you move through the house what else did you
8 observe?

9 A Right there since I was in the kitchen I noticed
10 there was a drink laying on the floor in front of the
11 frig, like a can drink.

12 Q Do you remember what kind of can drink it was?

13 A It was a Dr. Pepper.

14 Q Let me show you State's number 14. Is that what you
15 are speaking of?

16 A Yes, sir.

17 Q That is in the kitchen, that is a Dr. Pepper can on
18 the floor?

19 A Yes, sir.

20 Q And what did you learn about that Dr. Pepper can?

21 A I learned that that also did not belong to the
22 homeowner.

23 Q What else did you learn?

24 A Walked straight, once you go into the kitchen I
25 walked straight ahead and there is a bedroom there and the

1 first thing I noticed when I walked in was a, like a
2 baseball cap laying on the bedroom floor amongst the room.
3 Of course it was in complete disarray as well. But that
4 was the first thing that stuck out was a ball cap laying
5 right there on the floor. I believe the safe was pulled
6 out as well.

7 Q What did you learn about the baseball hat?

8 A I learned the baseball cap was also, also did not
9 belong to the homeowner.

10 Q Do you remember what kind of hat it was?

11 A It was an Atlanta hat.

12 Q Braves?

13 A Yes, sir.

14 Q State's number, 15?

15 A Yes, sir.

16 Q That is what you are speaking of?

17 A Yes, sir.

18 Q So the Atlanta Braves hat was on the bedroom floor,
19 what is that beside it, is there something laying beside
20 the hat?

21 A Can I look at it?

22 Q Sure.

23 A I am not sure what that is right off the top of my
24 head, sir.

25 Q That hat and that rag were not suppose to be there,

- 1 is that what you learned?
- 2 A That's correct, that's correct.
- 3 Q What else did you see in the bedroom?
- 4 A I believe there was a safe pulled out, it had been
- 5 moved.
- 6 Q Tell me about the drawers, the dresser drawers and
- 7 everything?
- 8 A All the drawers had been pulled out as if they had
- 9 been looked through.
- 10 Q Let me show you State's number 16, is that what you
- 11 are describing, the dresser drawers open?
- 12 A Yes, sir.
- 13 Q State's number 17?
- 14 A Yes, sir.
- 15 Q What did you do after you went to the house and you
- 16 learned that nobody was in it and you observed all of
- 17 these things that we just described?
- 18 A After learning that the suspect or the person was no
- 19 longer in the house, I informed my other officers to
- 20 establish a perimeter within the area in an attempt to
- 21 capture the subject since he obviously had fled out the
- 22 back of the house.
- 23 Q Did you learn that somebody had located him in the
- 24 vicinity, a subject I guess?
- 25 A I did, sir. I learned from one of my other officers,

1 he got out with a suspect that was nearby, a street over I
2 believe who was a possible suspect, matched the
3 description as far as a black male, and was out of breath
4 and had appeared to have just been running.

5 Q You know about how long after you had entered the
6 house that they learned they had located this person?

7 A It was within a couple of minutes, not very long.

8 Q Did you ever learn who that person was?

9 A I learned the name but as far as, I never actually
10 saw him because I stayed at the house. I did learn the
11 name.

12 Q What was that name?

13 A It was Mr. William Neal.

14 Q Okay. Let me show you what has been premarked as
15 State's exhibit or ID number 20. Do you recognize this?

16 A Yes, sir.

17 Q What is this?

18 A Right here is the victim's house and I believe that
19 is where they found him at right there walking. That is a
20 picture and a map and a scale where the victims lives and
21 it also shows where the person was found.

22 MR. VERNER: Your Honor, I do object to him
23 testifying where they located, he has testified that he
24 didn't go to that location. But that is beyond his
25 personal knowledge unless he went there. So I object to

1 him testifying.

2 THE COURT: I will sustain that objection. He can
3 answer questions of his own personal knowledge and is part
4 of the investigation.

5 Q In State's 20, let me ask you this, to be less
6 specific and more broad. What is this entire, I guess,
7 exhibit depict?

8 A It just depicts a small area of Newberry, a little
9 block.

10 Q And you are familiar with these areas, you patrol
11 these streets regularly, correct?

12 A Yes, sir.

13 Q Does this fairly and accurately represent this
14 portion of Newberry County?

15 A Yes, sir.

16 Q And you stated this fairly and accurately represents
17 Street?

18 A That's correct.

19 Q And that's the location that you responded to in
20 reference to the burglary?

21 A Yes, sir.

22 Q You didn't collect any evidence, did you?

23 A No, sir.

24 Q That is all from the State. Please answer any
25 questions Mr. Verner may have.

1 MR. VERNER: No questions, Your Honor.

2 THE COURT: You may step down.

3 MR. SCOTT: The State calls Ryan Gunwall.

4 RYAN GUNWALL, being

5 first duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 By Mr. Scott:

8 Q Mr. Gunwall, where are you employed?

9 A Newberry Police Department.

10 Q How long have you been with the police department?

11 A Almost four years.

12 Q What are your duties?

13 A I work the road, patrol officer.

14 Q Were you working on August the 18th of 2011?

15 A Yes, sir.

16 Q Did you have the occasion to respond to a burglary
17 that occurred on Hazel Street?

18 A Yes, sir. I responded to work the perimeter and try
19 to locate the subject.

20 Q Where did you go?

21 A Just around the perimeter of the location of where
22 the burglary took place.

23 Q So you didn't actually respond to the location of the
24 burglary, you were part of the perimeter team?

25 A Yes, sir.

1 Q And that would just mean that you were patrolling the
2 vicinity of that--

3 A The Smith Road area, Glenn Street, that area.

4 Q Who were you looking for?

5 A It was a black male I believe that we were looking
6 for that had been seen in the residence.

7 Q Did you find him a black man?

8 A Yes, I did.

9 Q Where did you find him?

10 A He was on Smith Road just past Glenn Street there in
11 front of Newberry Academy which is in the City limits of
12 Newberry.

13 Q About how far was that from the incident location?

14 A I am not sure exactly how far it was. I would say it
15 may be about a quarter to a half mile but I am not sure.

16 Q Let me show you something for ID purposes as State's
17 20. Do you recognize what this is?

18 A Yes.

19 Q What is it?

20 A It is a map of the area where the incident occurred
21 and where generally I was.

22 Q Does it fairly and accurately represent this portion
23 of Newberry County?

24 A Yes.

25 Q Do you see the incident location?

1 A Yes, it is marked as Hazel Street.

2 Q Do you agree that that is Street?

3 A To the best of my knowledge, yes.

4 Q Do you see where you made contact with the suspect
5 you were describing?

6 A Yes, I do.

7 Q And is it labeled?

8 A It is not labeled, the vacant lot of 2005 Smith Road,
9 where you had the label, it is close to where I made
10 contact with him but it is not exactly.

11 Q Okay. Would you agree with me that this is maybe
12 three blocks away from the incident location?

13 A Yes, roughly.

14 COURT REPORTER: I can't hear you.

15 Q Let me repeat the question. Would you agree with me
16 that the incident location where the burglary--

17 MR. VERNER: Your Honor, I object to the form of that
18 question.

19 THE COURT: Rephrase your question, sustained to the
20 form.

21 Q How far away is the burglary incident location from
22 where you made contact with the subject?

23 A It is about three, maybe four blocks at the most.

24 Q Thank you.

25 MR. SCOTT: The State would offer number 20 for

1 admission into evidence.

2 MR. VERNER: No objection.

3 THE COURT: Number 20 without objection.

4 (Whereupon, State's Exhibit 20 was admitted into
5 evidence.)

6 Q So you stated that you made contact with the subject
7 that is labeled a vacant lot, that is near Newberry
8 Academy, some four blocks away from the incident location?

9 A Yes sir, it was just beyond that on Smith Road in
10 front of Newberry Academy.

11 Q How did this person appear, what did you observe?

12 A He was covered in sweat, he was out of breath, he was
13 carrying, I believe he had a bag of change in his hand,
14 several CD's, he was carrying some items. But the thing
15 that was most apparent was just how much sweat he had on
16 him, he was out of breath and he was covered with sweat.

17 Q This was August, it was hot outside?

18 A It was hot but it was not that type hot, I mean I was
19 wearing a vest and duty gear and all of that. I wasn't
20 sweating that much but, you know, he was
21 uncharacteristically sweating for the evening in August.

22 Q What was his demeanor?

23 A Once I got out and made contact with him, he was
24 agitated, he didn't want to talk to me. He wanted to know
25 why I was bothering him. He didn't want to stop, he

1 didn't want to stay with me. He was just very
2 uncooperative, he did give me his name and his date of
3 birth but beyond that he didn't want to stay with me at
4 all.

5 Q What did he say his name was?

6 A William Russell Neal, he gave me his name and date of
7 birth. But he was just very, other than that, he was very
8 uncooperative, he did not want to stay with me.

9 Q Did he give you his ID?

10 A No, he did not have his ID.

11 Q You said he had a bag, what kind of bag was it?

12 A It was a bag that had change in it. It was a plastic
13 bag to the best of my recollection.

14 Q A plastic bag?

15 A Yes.

16 Q You say he didn't have his ID?

17 A He kept searching his pockets, kept saying he had
18 just had it but he didn't have it.

19 Q Did you ever find an ID?

20 A I did after Lieutenant McClurkin left him, we went
21 back and searched the area where I had seen him walking up
22 the road and we located his ID and a large knife laying in
23 the grass on the side of the roadway where he had been
24 walking.

25 Q How far away was it from where you made contact with

1 him?

2 A Probably about 20 feet behind him where I had
3 initially got him to stop and come made contact with him.

4 Q Do you see Mr. Neal in the courtroom?

5 A Yes, he is sitting right over there.

6 Q That is the man that was sweating standing on the
7 side of the road?

8 A Yes.

9 Q And you found his ID in the area you had made contact
10 with him and you said you found a knife?

11 A Yes, sir.

12 Q How far apart were those two items?

13 A Maybe about two foot in the grass, in the grassy area
14 right beside the road, on the side of the roadway.

15 Q His drivers license was laying right beside the
16 knife?

17 A Yes, right on top of the grass.

18 MR. VERNER: Your Honor, may we approach?

19 THE COURT: Yes. Y'all can stretch.

20 (Whereupon, a bench conference was held in the
21 presence of the jury but out of the hearing of the
22 jury.)

23 Q Let me show you State's number 22. Do you recognize
24 that?

25 A Yes, sir.

1 Q What is it?

2 A Drivers license from the subject.

3 Q Is that what you observed August 18th of 2011?

4 A Yes, sir.

5 Q And that is what you were just describing that you
6 found in the grass in the vicinity of where you made
7 contact with Mr. Neal?

8 A Yes.

9 MR. SCOTT: The State offers number 22 for admission
10 into evidence.

11 MR. VERNER: No objection.

12 THE COURT: No objection.

13 (Whereupon, State's Exhibit 22 was admitted into
14 evidence.)

15 Q You ID'd this as Mr. Neal's drivers license?

16 A Yes, sir.

17 Q Let me show you State's number 21. Do you recognize
18 that?

19 A Yes, sir. That is the knife that was laying close to
20 the drivers license on top of the grass right where he was
21 walking down Smith Road.

22 Q Is that how it appeared August 18th when you first
23 saw it?

24 A Yes sir, exactly.

25 MR. SCOTT: The State offers number 21 for admission

1 into evidence.

2 MR. VERNER: No objection.

3 THE COURT: 21 admitted without objection. It will
4 remain in the box as one exhibit.

5 (Whereupon, State's Exhibit 21 was admitted into
6 evidence.)

7 Q That is all I have.

8 CROSS-EXAMINATION

9 By Mr. Verner:

10 Q Officer Gunwall, were you patrolling alone at that
11 time?

12 A Yes, sir.

13 Q But there were other units in the same general area?

14 A Yes, sir.

15 Q And I believe you testified to Mr. Scott that where
16 they have marked as, is not where you came into contact
17 with Mr. Neal?

18 A Not exactly but it is very close, yes sir.

19 Q Academy is on Smith Road, right?

20 A Yes, sir.

21 Q Smith Road dead ends on one end on Wilson Road?

22 A Yes, sir.

23 Q What is at the end of Smith Road and Wilson Road,
24 what kind of landmarks or stores would be?

25 A At the end of Smith Road and Wilson Road would be DSS

1 and now I believe there is another shop on the other side
2 but I am not sure.

3 Q Cash and Carry type of store?

4 A Yes.

5 Q And DSS is where the old supermarket used to be, that
6 is a converted complex?

7 A Yes.

8 Q And then Smith Road ends at Glenn Street, right,
9 there is a stop sign and--

10 A Smith Road actually goes, there is a stop sign there
11 at Glenn Street, yes sir, four-way stop.

12 Q How far from Wilson Road?

13 A How far from Wilson Road?

14 Q From where Smith Road dead ends into Wilson Road, how
15 far would you travel, estimate until you come to the stop
16 sign where Glenn Street crosses.

17 A Maybe a mile, a mile and a half.

18 Q A mile or so?

19 A Yes, sir.

20 Q And then Smith Street goes beyond Glenn Street and
21 actually dead ends into College Street?

22 A College Street, yes sir.

23 Q And that is where the radio station and college
24 baseball field are?

25 A Yes, sir.

- 1 Q Okay. And my understanding is that Hazel Street
2 comes into Glenn Street, is that right?
- 3 A No. It comes into Smith Road.
- 4 Q Hazel Street dead ends into Smith Road?
- 5 A Yes.
- 6 Q Where does it come into Smith Road?
- 7 A It comes out there by the baseball field.
- 8 Q Coming from Wilson Road direction and you would
9 travel past the DSS on your right?
- 10 A Yes.
- 11 Q When you first came onto Smith Road coming from that
12 direction?
- 13 A Yes.
- 14 Q And then you would pass the Academy School?
- 15 A Yes, sir.
- 16 Q And that is where, is that where you came across Mr.
17 Neal?
- 18 A Yes, sir.
- 19 Q And the Academy is about far, the actual building is
20 about how far off the road?
- 21 A Maybe 75 yards, the school itself.
- 22 Q And there is a big, kind of half oval or semicircle
23 driveway that goes in this?
- 24 A Yes, sir.
- 25 Q That then you would cross over to Glenn Street, if

1 you are going to Hazel Street you would cross over Glenn
2 Street?

3 A Yes, sir.

4 Q And I guess you would go down a steep hill wooded
5 area, I guess semi-residence?

6 A It is a residential area, yes sir.

7 Q And at some point you get to the baseball field?

8 A Yes.

9 Q And that is where the Hazel Street is?

10 A Take a right and go down by the radio station back
11 through there, yes sir.

12 Q Hazel Street is where the radio station is?

13 A Yes sir, I believe so.

14 Q So just give me an estimate of how far from where
15 Hazel Road dead ends into Smith Street and where you came
16 across Mr. Neal, how far?

17 A As far as blocks go, it is probably three or four
18 blocks.

19 Q It is more than a mile?

20 A No.

21 Q How far, which direction were you traveling in your
22 perimeter, were you going towards Wilson Road?

23 A I was going towards Wilson Road from the baseball
24 field area, from the Hazel Street area.

25 Q And Mr. Neal was on the left side?

1 A He was on the right hand side of the road.

2 Q He was on the opposite of the Academy?

3 A Yes, sir.

4 Q And is that where you stopped him?

5 A I actually went past him and turned around in the
6 driveway there, the Academy. So if he ran he would
7 actually go back toward our units in the perimeter, yes.

8 Q And then where did you approach him, where was he--

9 A He was still walking down the side of the road when I
10 got into my vehicle and approached him there on the side
11 of the road and then we went back towards my vehicle.

12 Q So when you, what did you do when you approached him?

13 A I just asked him if I could speak to him.

14 Q Did he run from you?

15 A No, sir.

16 Q Did you pat him down or how did you approach him?

17 A I asked him if I could speak with him, I asked him
18 for his name and date of birth, I asked him where he was
19 coming from. I asked him why he was so sweaty, why he was
20 so out of breath. And then I explained to him that we
21 were investigating a crime that had been committed, a
22 burglary and asked him if he would mind if I checked his
23 person for any weapons if I searched him, he consented to
24 the search and I searched his person.

25 Q When you approached him you certainly considered him

1 a possible suspect?

2 A Yes.

3 Q Or you wouldn't have approached him?

4 A I would have identified him even if I had not
5 considered him a possible suspect, yes sir.

6 Q And how long was he with you, at some point you
7 turned him over to another officer?

8 A When Investigator McClurkin arrived and started
9 speaking with him, he consented to go to the police
10 department with Investigator McClurkin and I turned him
11 over to Investigator McClurkin.

12 Q About how long would you had been with Mr. Neal
13 before you turned him over to Investigator McClurkin?

14 A At this point I am not sure but it was a matter of
15 minutes.

16 Q Just out of curiosity, did you read him his Miranda
17 rights?

18 A I did not but I was not questioning him at that time,
19 I was waiting on the Investigator to arrive because they
20 were in the area and I knew they were coming.

21 Q So when you stopped him he was actually and when you
22 approached him with the vehicle he was on the opposite
23 side of the street at the Academy?

24 A Yes, sir.

25 Q There is no real open area, aren't the woods fairly

1 close to the road on that side?

2 A Yes, sir.

3 Q Had you found anything other than him at the time you
4 turned him over to Mr. McClurkin. The knife that you have
5 talked about, had you found that?

6 A No, sir.

7 Q Okay. When did you find the knife?

8 A After Lieutenant McClurkin left the scene with him,
9 myself and Corporal Mercer had the opportunity to go back
10 and check the side of the road where he had been walking
11 for any other items that he may have dropped.

12 Q When you saw him first in the car how far did you
13 watch him before you decided to approach him?

14 A I didn't watch him for any time. When I came from
15 the four-way stop I passed him, however long it took me to
16 get from the four-way stop to where he was, I passed him.
17 Like I say, I went past him to make sure that he couldn't
18 run out of our perimeter. I turned around in those
19 driveways and I stopped and I got out and I confronted him
20 face to face instead of from behind. And then confronted
21 him that way, so it couldn't have been more than ten
22 seconds.

23 Q And then, at some point he was put in handcuffs and
24 passed him to another officer?

25 A When I put him in handcuffs I let him know he was

1 being placed in investigative detention because of his
2 demeanor more than anything.

3 Q And then you started walking back towards Hazel
4 Street area?

5 A No, we stayed right there, we never moved.

6 Q After Mr. McClurkin had picked him up. At some point
7 you said you started--

8 A Yes, sir.

9 Q And then you were going to walk all the way back to
10 Hazel?

11 A No. Just right there in that general area from the
12 time he saw, he observed my police, my patrol car.

13 Q How far from where you apprehended him was the knife?

14 A Maybe 10 or 15 feet at the most.

15 Q And how far, and it was where compared to the road,
16 where was it?

17 A Right in there, there is only maybe a two foot area
18 of grass beside that roadway and it was laying right there
19 where he had been walking.

20 Q And the drivers license you said was within a few
21 feet of that?

22 A Within maybe a foot and a half, two foot of the
23 knife.

24 Q What did you do with the knife when you found it?

25 A I placed it in a bag, evidence bag from my car and

1 then I took it back to the police department and placed it
2 in the box that it is in now, labeled it and placed it
3 into evidence.

4 Q Did you handle the knife?

5 A Yes, sir.

6 Q Did you fingerprint it out?

7 A I did not.

8 Q Is that something, by you I mean your office fairly
9 routinely can do?

10 A No, sir.

11 Q They don't fingerprint in your office?

12 A I do not.

13 Q But the city police certainly has the ability to
14 fingerprint?

15 A The city police do but it is not my responsibility as
16 a patrol officer to make that decision or do so.

17 Q I assume by putting it in a plastic bag that was so
18 it could be, possibly examined for latent prints?

19 A It could be but like I say that is not my area of
20 decision making or anything.

21 Q Right. But when you take evidence, at some point
22 often it is turned over to the officer who does the
23 fingerprints?

24 A That is not my decision, it is above my ranking.

25 Q You ever have had items that was tested for

1 fingerprints before?

2 A I am sure they have and, yes sir, they may be but
3 that is not my decision to make.

4 Q And that would be Captain Counts?

5 A I am not sure who makes that decision. It is whether
6 the investigator who handles the case or Captain Counts or
7 who makes that decision.

8 Q Who at the city does fingerprint analysis or did at
9 that time?

10 A Again, I am not aware, I am sure the investigators do
11 it but I am not aware of which investigator at the time
12 does the finger analysis, fingerprint analysis.

13 Q I am not asking who handled any particular thing, I
14 am just asking you in general do you know who any of the
15 city police officers who perform fingerprint analysis?

16 A No, sir.

17 Q That is just beyond your responsibility, you know
18 somebody does it but who they are you have no idea who
19 actually does that?

20 A Well, I am aware the investigators do it but as who
21 the specific investigator that would do it for this case,
22 no sir, I am not aware.

23 Q Well, that is my point, the point of my question is
24 there are several people at the city police department who
25 do fingerprint analysis, right?

1 A To my knowledge, yes.

2 Q One of them being Captain Counts?

3 A To my knowledge, yes.

4 Q Are you aware of whether this knife was
5 fingerprinted?

6 A No, sir.

7 Q It may or may not have been but that would not be
8 part of your job responsibilities to know that?

9 A No, sir.

10 Q Then you are not really in the prosecution of the
11 police department during the patrol?

12 A Yes, sir.

13 Q Did you see the defendant throw down the knife?

14 A No, sir.

15 Q Do you have any idea where the knife came from?

16 A No, sir.

17 Q Thank you.

18 REDIRECT EXAMINATION

19 By Mr. Scott:

20 Q Did you see the defendant throw down his ID?

21 A No, sir.

22 Q But you found that ID right beside the knife, right?

23 A Yes, sir.

24 Q And you found that ID and that knife within a matter
25 of feet of where you located Mr. Neal?

1 A Yes.

2 Q Thank you.

3 THE COURT: You may step down.

4 MR. SCOTT: The State calls Richard Mercer.

5 RICHARD MERCER, being

6 first duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 By Mr. Scott:

9 Q Mr. Mercer, you are employed with the Newberry Police
10 Department?

11 A Yes, sir.

12 Q How long have you been there?

13 A Four and a half years.

14 Q Were you working on the day of August the 18th of
15 2011?

16 A Yes sir, I was.

17 Q Did you have an opportunity to respond to a burglary
18 that occurred on Hazel Street?

19 A Yes, sir.

20 Q And what was your duty, what was your job to do that
21 day?

22 A I was patrolling the area just to see if there was
23 any suspect in that area. Once a suspect had been located
24 we continued patrolling in case any items were located
25 from the scene.

- 1 Q Did you yourself find any items?
- 2 A Yes sir, I did.
- 3 Q What did you find?
- 4 A I found a little black case with three liquor bottle
5 or wine bottle stoppers incased inside of it.
- 6 Q Three liquor bottles?
- 7 A No sir, it was three wine bottle stoppers, like a
8 plug for a liquor bottle.
- 9 Q Let me show you State's number 19. Do you recognize
10 that?
- 11 A Yes sir, that is it.
- 12 Q That is what you found?
- 13 A Yes, sir.
- 14 Q And where did you find those?
- 15 A That was found on Radio Road.
- 16 Q How far away form the incident location of Radio
17 Road?
- 18 A It is approximately one street over.
- 19 Q Do you remember where on Radio Street you found this?
- 20 A It was right on the corner of the intersection and I
21 am not sure of the cross street, it may have been
22 Pricilla, I am not positive.
- 23 Q Let me show you State's number 20.
- 24 A Right here on this corner, Pricilla.
- 25 Q So at the corner of Radio and Pricilla?

- 1 A Yes, sir.
- 2 Q How many blocks was that from the incident location?
- 3 A A block and a half.
- 4 Q Are you indicating there at the corner of Pricilla
- 5 and Radio?
- 6 A Yes, sir.
- 7 Q Was it in the road or was it in the grass?
- 8 A It was in the roadway.
- 9 Q Did you see where they located Mr. Neal?
- 10 A Yes sir, I got out with Corporal Gunwall at that
- 11 location.
- 12 Q How far from that location was the bottle stoppers
- 13 found?
- 14 A It would still be about a block and a half, possibly
- 15 two blocks.
- 16 Q Will you point, the intersection of Radio and
- 17 Pricilla, is that correct, that you found the bottle
- 18 stoppers?
- 19 A Yes, sir.
- 20 Q Thank you. Did you have any other involvement in
- 21 this particular case?
- 22 A No, sir. I collected the bottle stoppers and brought
- 23 them to the Lieutenant.
- 24 Q Who?
- 25 A Lieutenant Atkins.

1 Q Okay. Kevin Atkins?

2 A Yes, sir.

3 Q Thank you.

4 CROSS-EXAMINATION

5 By Mr. Verner:

6 Q I just want to clarify, Mr. Mercer, you testified
7 that the Academy is one or two blocks where Mr. Neal was
8 stopped by Officer Rowe is only one or two blocks from
9 Pricilla?

10 A Yes, sir.

11 Q That is all.

12 THE COURT: You may step down. We are going to take
13 a break. Don't talk about the case. We will be back in a
14 few minutes. Take about ten minutes.

15 (Whereupon, the jury was excused from open court for
16 a break.)

17 (Whereupon, a short break was taken.)

18 MR. SCOTT: I wonder if we can recall Mr. McClurkin?

19 THE COURT: Yes, we have not excused him. Bring the
20 jury in, please.

21 (Whereupon, the jury came into open court at
22 approximately 3:15 p.m.)

23 THE COURT: Mr. Brown, call your next witness.

24 MR. BROWN: We call Kevin Atkins to the stand.

25 KEVIN ATKINS, being

1 first duly sworn, testified as follows:

2 DIRECT EXAMINATION

3 By Mr. Brown:

4 Q Mr. Atkins, what is your profession?

5 A I am a police officer with the Newberry Police
6 Department.

7 Q And what is your position there?

8 A Currently I am a Captain of the police department.

9 Q How long have you been employed with the Newberry
10 Police Department?

11 A I started with Newberry Police Department in the
12 summer of 1999 and then I had a three year stint with the
13 Lexington County Sheriffs Office and then I came back to
14 Newberry in 2006, working on year 14 in law enforcement.

15 Q And during your career what have your duties been?

16 A Been a road patrol, been a shift supervisor, a road
17 deputy at the sheriffs office, detective at Lexington
18 County Sheriffs Office. And I came back as a Lieutenant
19 and I was over the records division and our secretaries at
20 the office and now as the captain I supervise the
21 investigators and some of the other office staff. And I
22 am also a full time investigator as well.

23 Q So you do a lot of the investigations at the Newberry
24 Police Department yourself?

25 A Yes, sir.

1 Q What training have you had?

2 A Over the years, kept up with all of my
3 certifications, radar, data master, DUI detection, reading
4 fingerprints, basic detective, drug investigations,
5 highway interdiction, more than I can remember.

6 Q Now, Captain Atkins, were you employed on August the
7 18th of 2011?

8 A Yes, sir.

9 Q Did you become involved in the investigation of this
10 case, this burglary case that took place at
11 Street?

12 A Yes, sir.

13 Q When did you become involved or what time did you
14 become involved in this case?

15 A It was that morning sometime around, maybe 11:00 I
16 heard a call come out over the radio that there was a
17 possible burglary in progress. Usually when a call like
18 that comes out, because we are a small department and we
19 all listen out for each other, it is kind of a all hands
20 on deck so everybody floods out of the police department
21 that is in the office to help set up a perimeter or go
22 straight to the scene, whatever is needed.

23 Q What was the address of that scene you went to?

24 A It was on Hazel Street which is in the city limits.

25 Q Do you know what the address was?

1 A I don't remember, the numerics were maybe maybe,
2 Street.

3 Q Let me show you what has previously been marked as
4 State's exhibit number 8. Is that the location?

5 A Yes, sir.

6 Q What is that picture of?

7 A That is the house at Hazel Street, the residence.

8 Q Now is that the residency you went to that day?

9 A Yes, sir.

10 Q What was your role there when you went to that house?

11 A To try to gather evidence and I begin by taking
12 pictures, I took that picture.

13 Q With all of these, you have been in the courtroom
14 this whole time. All of these pictures that we have shown
15 to the witnesses, who took those pictures?

16 A I did.

17 Q Was that part of your investigation?

18 A Yes, sir.

19 Q Now once you got to that location, besides taking
20 pictures of the home and going in the house, what did you
21 do?

22 A My first act was to photograph it, to go around the
23 house, photograph and go in and photograph the interior.
24 And then after that I collected a couple of pieces of
25 evidence.

1 Q What evidence did you collect?

2 A I took possession of the Dr. Pepper can that was in
3 the kitchen, the dark in colored hat with the A on it,
4 maybe it was a Braves or a Oakland A's style A on the
5 front of the cap. I took a change jar and I believe those
6 are the only items and I took possession of a drill.

7 Q Captain Atkins, I want to show you what has been,
8 State's exhibit number 18. What is that a picture of?

9 A That is the entrance to the house that shows the
10 damage to the door and then the change, that, I think it
11 was a Maxwell House coffee jar, it was a blue jar and then
12 the drill.

13 Q Next I am going to show you State's exhibit number
14 15. What is that?

15 A That is the hat I spoke of, the dark colored hat and
16 there is a small washcloth rag next to it on the floor.

17 Q And lastly State's exhibit number 14?

18 A That is the Dr. Pepper can that was in the kitchen,
19 on the floor.

20 Q And you say part of your investigation you collected
21 these items?

22 A Yes, sir.

23 Q You said you got the baseball cap and you collected
24 what else?

25 A The wash cloth that was beside the cap on the ground,

1 the Dr. Pepper can and the drill and also took possession
2 of the blue in color Maxwell House coffee can.

3 Q All right. Captain Atkins, I want to show you
4 State's exhibit number, right now for identification
5 purposes, State's exhibit number 23. I want to ask you to
6 open that bag there and tell me what is inside?

7 A Yes, sir. This appears to be the hat that I
8 collected from the residence.

9 Q If you would hold that up. Is that the hat that was
10 located inside?

11 A Yes sir, it appears to be.

12 Q Is it in the same condition as it was when you picked
13 it up?

14 A Yes, sir.

15 MR. BROWN: Judge, State moves State's exhibit number
16 23 into evidence.

17 MR. VERNER: No objection.

18 THE COURT: State's 23 is admitted without objection.

19 (Whereupon, State's Exhibit 23 was admitted into
20 evidence.)

21 Q Captain Atkins, I want to show you what has been
22 marked as ID purposes right now as State's exhibit number
23 24. Tell me what this is.

24 A It is a Merchant Cordless Drill, it is the drill that
25 was left in the residence on Hazel Street.

1 Q And to your knowledge did that belong to anybody that
2 lived in that, to the Gillion's that lived there at the
3 house?

4 A I was able to speak with them, they were on the scene
5 and said that it was not their drill.

6 Q Is it in the same condition as it was when you took
7 it into evidence.

8 A Yes, sir.

9 MR. BROWN: Judge, the State moves State's exhibit
10 number 24 into evidence.

11 MR. VERNER: No objection.

12 THE COURT: State's 24 in evidence.

13 (Whereupon, State's Exhibit 24 was admitted into
14 evidence.)

15 Q Captain Atkins, you said looking at those pictures,
16 that you took pictures of a Dr. Pepper can and a rag. I
17 want to show you what has been marked as State's exhibit
18 number 25. What is that?

19 A This is the Dr. Pepper can that I took from the
20 residence and then sealed up.

21 Q Is that in the same condition as you, when you took
22 it off the floor there?

23 A It has got fingerprint dust on it. I fumed it with
24 cyanoacrylate which is to kind of harden the prints on it
25 in an attempt to lift prints from it. And then also

1 swabbed the mouth of the can, take swabs from it and then
2 I sealed it up in this bag and initialed it over the heat
3 seal.

4 Q And I want to get back to that swab. Next I want to
5 show you what has been marked as State's exhibit number
6 26. What is that?

7 A That is the wash rag, wash cloth that was next to the
8 hat on the floor in the bedroom of the house on Hazel
9 Street.

10 MR. BROWN: Judge, the State moves now the, State's
11 exhibit number 25 and 26 into evidence.

12 MR. VERNER: No objection.

13 THE COURT: State's 25 and 26 is admitted without
14 objection.

15 (Whereupon, State's Exhibits 25 and 26 were admitted
16 into evidence.)

17 Q Captain Atkins, let's go back to where you were
18 talking about this Dr. Pepper can. You said, you tried to
19 get fingerprints off and then you also swabbed the mouth
20 of the can. What was the purpose of swabbing the mouth of
21 the can?

22 A I swabbed the mouth of the Dr. Pepper can to try to
23 obtain a sample of possibly the saliva for DNA purposes.

24 Q And tell me the procedure how you did that, how did
25 you go about doing that, what did you do with the swab?

1 A Yes, sir. All of the investigators had a kit that we
2 have made up that contains a small plastic bottle that has
3 distilled water in it and also sealed sterilized cotton
4 swabs in a wrapper, you have to open up the wrapper to get
5 a swab out. And so I opened up the container, took a swab
6 out and then soaked it with the distilled water while
7 wearing gloves and I run it over the mouth area of the can
8 to try to pick up his DNA from the mouth of the can.

9 Q And after you rubbed around the mouth of the can what
10 do you do with that swab?

11 A I have to take it and dry it before I can package it.
12 And the police department, behind our police department
13 where our maintenance shop is we have a lab that we built
14 maybe 15 years ago. And it originally had a dark room and
15 where we were still taking .35 millimeter pictures which
16 we don't use any more, we use all digital. So we have
17 kind of converted that dark room into a area we can place
18 items that need to be dried, that we don't want touched.
19 There is also a box inside there, it is just basically a
20 cardboard box with a bunch of holes picked in it to allow
21 air to flow through. And there is a board with numbers on
22 it and you mark the paper beside it that is in peg one
23 with this case number. And I put the box over it to keep
24 anybody from sneezing on it or coughing on it until it is
25 dry and then I can go back in and package it and put it

1 into our evidence refrigerator.

2 Q Now, Captain Atkins, after you did your investigation
3 at this house and you collected the Dr. Pepper can and the
4 drill and the baseball cap what did you do when you left
5 that location, what did you do with that evidence?

6 A I took the items up to our lab to be processed.

7 Q And let me show you what has been marked as State's
8 ID purposes as exhibit number 27. Tell me what this is
9 and if you need to you can open it.

10 A I just want to see the front where my handwriting
11 would be. This is the envelope, after the swab was dry
12 the next day I packaged it in this, it is a Newberry
13 Police Department envelope and I write the case number,
14 what the swab is from and it says from Dr. Pepper can and
15 then I place it into a locked refrigerator until it can go
16 to SLED.

17 Q Now, after you did that swab and you put it in that
18 envelope was there anything else contained in that
19 envelope that could, I guess, hurt the integrity of that
20 swab or provide any other type of DNA on that swab other
21 than what came off of that can?

22 A Not that I am aware of.

23 Q And after you took that swab what did you do with it?

24 A I took the swab, put it in a envelope while wearing
25 gloves, tape up the back and then place it into the locked

1 refrigerator that we use to store items until we can take
2 them to SLED.

3 Q And after it was put in that refrigerator, do you
4 know that it was taken to SLED?

5 A Yes sir, to my knowledge it was.

6 MR. BROWN: Judge, at this time I want to move
7 State's exhibit number 27 into evidence.

8 MR. VERNER: Without objection.

9 THE COURT: State's 27 is admitted.

10 (Whereupon, State's Exhibit 27 was admitted into
11 evidence.)

12 Q And also, Captain Atkins, going back to that baseball
13 cap, where was that baseball cap kept once you took it
14 back to the police department?

15 A I took up to the lab so it could dry as well because
16 it was hot outside and afraid it had moisture or sweat,
17 something that would deteriorate. And then I think on the
18 next day when I did the swab I packaged it up and placed
19 into evidence. It didn't go in the refrigerator though.

20 Q Did not go into the refrigerator?

21 A No, sir.

22 Q What happened to that baseball cap, where did you put
23 it after that, what took place with the cap?

24 A It went into our evidence and was later sent to SLED.

25 Q It was sent to SLED, was it sent to SLED the same day

1 as the swab?

2 A I would assume. We try to let the evidence custodian
3 do most of that to cut down on the number of people in the
4 chain. I can only assume that he took it the same day. I
5 haven't looked at the evidence sheet.

6 Q Ultimately it went to SLED?

7 A Yes, sir.

8 Q That is all I have. Answer any questions that Mr.
9 Verner may have for you.

10 CROSS-EXAMINATION

11 By Mr. Verner:

12 Q Captain, just so I have got it right. You responded
13 to the house on Hazel Street on the day of the break in?

14 A Yes, sir.

15 Q And you did a forensic examination throughout the
16 house?

17 A Yes, sir.

18 Q And you are an investigator, that is your assigned or
19 trained role at the city police department?

20 A One of them, yes sir.

21 Q I believe you testified that you attempted to take
22 fingerprints from the Dr. Pepper can?

23 A I did.

24 Q Did you obtain any fingerprints?

25 A Nothing with ridge detail, nothing of any evidentiary

1 value.

2 Q So you may have but you don't remember anything else
3 of substance?

4 A I processed the Maxwell House coffee can that the
5 change had been in and then the Dr. Pepper can. And I
6 tried to fingerprint the, maybe the exterior door. I
7 didn't lift any prints that had any evidentiary value, no
8 ridge detail.

9 Q And then I think you subsequently did the DNA where
10 you tried to, you did the swab?

11 A Yes sir, I swabbed the mouth of the Dr. Pepper can.

12 Q Did you have any other role in this investigation in
13 this case?

14 A No sir, I never met the defendant.

15 Q Were you captain of the police force at that time?

16 A No sir, Captain Charles Counts was still full time.

17 Q Do you have any other proof, other than, I understand
18 the officer testified that the knife that was found
19 somewhere up Smith Road in the vicinity of where the
20 defendant was stopped from the police. Do you have any
21 other proof that the house was, the knife was ever taken
22 to the house?

23 A No, sir.

24 Q Thank you.

25 THE COURT: Any redirect?

1 MR. SCOTT: Not from the State, Your Honor.

2 THE COURT: You may step down.

3 MR. BROWN: The State calls Roy McClurkin.

4 ROY MCCLURKIN, being

5 first duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 By Mr. Brown:

8 Q Good afternoon, Lieutenant McClurkin.

9 A Good afternoon.

10 Q Lieutenant McClurkin, what is your profession?

11 A I am an investigator with the Newberry City Police
12 Department.

13 Q And how long have you been employed with Newberry
14 Police Department?

15 A A little over 29 years.

16 Q Have you worked anywhere else besides the police
17 department?

18 A No, sir.

19 Q And tell me, what are your present duties?

20 A Like I say, I am an investigator and as an
21 investigator what I do is I investigate crimes consistent
22 of anything from an assault to thefts, to burglaries, to
23 credit card fraud, on up to homicides.

24 Q Lieutenant McClurkin, have you ever seen Mr. Neal
25 here in the courtroom?

1 A Yes, I have.

2 Q And, Mr. McClurkin, did you ever have to take a DNA

3 sample from Mr. Neal?

4 A Yes, I did.

5 Q Do you remember when that was?

6 A That was on February the 9th of 2012.

7 Q And tell me, how do you go about taking a DNA sample?

8 A What I did, I left my office and I actually came up

9 here to the Court House on this floor to take the sample.

10 I brought it with me and two latex gloves, a mask, also a

11 envelope and also cotton swabs that was still sealed

12 inside of the manufacture's pack.

13 Q And after you came into contact with Mr. Neal what

14 did you do after that with your latex gloves and your

15 swabs?

16 A After arriving here, what I did is I took my gloves

17 and put them on, put the mask on and also broke open the

18 seal on the two swabs, told Mr. Neal that I had a Judge's

19 order to take a DNA swab from him. What I had him to do

20 is open his mouth, took the swab and wiped on the inside

21 of a sheet and then placed it inside of the envelope that

22 I had with me and sealed it and then went back to my

23 office with that sealed envelope and entered that swab

24 that I had taken from him into evidence and placed it

25 inside of our secure evidence refrigerator there at the

1 police department.

2 Q And who has access to that?

3 A The evidence custodian.

4 Q To the best of your knowledge, what happened with
5 that swab or what another name for that type of swab?

6 A That is a buccal swab.

7 Q Is that what they refer to it as?

8 A Yes, sir.

9 Q In any event it is the same thing as DNA swab?

10 A That's correct.

11 Q Now, after it was entered into your evidence there at
12 the police department do you know who had access or who
13 came into contact with it next?

14 A Yes, our evidence custodian, Lieutenant Mike
15 O'Connell.

16 Q What did he do with it?

17 A He took it to SLED for analysis.

18 Q No further questions.

19 CROSS-EXAMINATION

20 By Mr. Verner:

21 Q Investigator McClurkin, did Mr. Neal cooperate?

22 A Yes, he did.

23 Q No more questions.

24 REDIRECT EXAMINATION

25 By Mr. Brown:

1 Q One other thing, before I let you go--

2 MR. VERNER: This is beyond the scope of cross.

3 THE COURT: He is subject to be recalled.

4 Q Lieutenant McClurkin, I am showing you what has been
5 marked as State's ID number 28. Can you tell me what that
6 is?

7 A That is actually evidence, a sealed evidence package
8 from the South Carolina Law Enforcement Division and has
9 Michael Patrick O'Connell's name on it and the date that
10 he submitted it to SLED.

11 Q What is inside?

12 A There is an envelope inside of it and this envelope
13 is the envelope that I actually placed inside of it. It
14 has the case number, the subject's name, Mr. William
15 Russell Neal. It has the date, 2-9-2012 and right beside
16 that it has my initials, RHM and the time that I took the
17 sample, 11:50 a.m.

18 Q So you are able to identify it?

19 A I am because that is my writing and I put my initials
20 on it.

21 Q Thank you. And to the best of your knowledge where
22 did this go once it was taken back to the police
23 department?

24 A I placed it inside, I placed it inside of the
25 evidence refrigerator once I entered it into evidence.

1 Q And where was it sent after that?

2 A And then Lieutenant O'Connell took it to the South
3 Carolina Law Enforcement Division which is SLED in
4 Columbia.

5 MR. BROWN: We move State's number 28 into evidence
6 at this time.

7 MR. VERNER: It is beyond the scope of cross, Your
8 Honor. I will withdraw that, Your Honor, he is coming
9 back as a witness. So will withdraw that motion.

10 MR. BROWN: We will mark it as State's ID right now.

11 THE COURT: All right.

12 (Whereupon, State's Exhibit 28 was marked for
13 identification only.)

14 THE COURT: You may step down.

15 MR. SCOTT: The State calls Catherine Leisy.

16 CATHERINE LEISY, being
17 first duly sworn, testified as follows:

18 DIRECT EXAMINATION

19 By Mr. Scott:

20 Q Ms. Leisy, where are you employed?

21 A I work for the South Carolina Law Enforcement
22 Division commonly known as SLED.

23 Q How long have you been with that agency?

24 A For approximately 7 years.

25 Q What are your duties?

1 A I am a forensic scientist assigned to the DNA and
2 serology unit. My responsibilities include processing
3 forensic cases, generating reports based on the
4 conclusions and testifying to those reports as necessary.
5 I also assist in the training of newly hired analysts.

6 Q You have to take a course on this I imagine, could
7 you explain to us what is DNA?

8 A DNA stands for deoxyribonucleic. It is the genetic
9 material found in all of our body cells with the exception
10 of our red blood cells. DNA is packed into structures
11 called chromosomes which contain our genes. And genes are
12 simply strains of DNA that code for our physical
13 characteristics such as our height or our eye color. We
14 inherent half of our DNA from our mother and half from our
15 father and therefore have two copies of every gene.
16 Approximately 99.9 percent of an individual's DNA is
17 identical to that of everyone else's. And it is the
18 variation in that remaining .1 percent that allows us to
19 tell different people apart.

20 Q How do you isolate that particular set of DNA that
21 you compare between individuals?

22 A We perform tests on 15 specific DNA locations which
23 are called STR's. STR stands for short tandem repeat. It
24 is a location in our DNA where a short core unit of DNA
25 repeats a certain number of times. So counting the number

1 of repeat units at each location we can assign DNA types.
2 So if at one location I inherit a gene containing 10
3 repeats from my mother and 12 repeats from my father my
4 DNA types at that location are 10 and 12. It simply
5 corresponds to the number of repeats. So by testing these
6 15 locations plus a location called aminolipin which tells
7 us male or female we have what we call an individual's DNA
8 profile. And if we can develop a DNA profile from an item
9 of evidence we can compare it to that of a known
10 individual to try and determine if that individual
11 contributed the DNA on the events we are testing.

12 Q So each one of us has our own unique DNA profile?

13 A With the exception of identical twins, that's
14 correct.

15 Q And all of their DNA's are identical?

16 A It is, yes.

17 Q Where did you get your undergraduate degree?

18 A I have a Bachelor of Science Degree in genetic
19 engineering from Cedar Crest College in Allentown,
20 Pennsylvania.

21 Q What other education have you had?

22 A I received in-house training at SLED on all of the
23 different types of testing analysis I am required to
24 perform. I also have approximately four years of
25 experience as a forensic DNA Analyst at a private testing

1 facility known as Orchard Somark in Germantown, Maryland.
2 I am required to perform annual continuing education which
3 means basically I have to attend seminars or training
4 courses specific to the types of test that I perform on an
5 annual basis.

6 Q Have you ever testified in General Sessions before?

7 A Approximately 50 occasions, yes.

8 Q How many times?

9 A Approximately 50.

10 Q 50 times. And were you qualified as an expert?

11 A I was.

12 Q What were you qualified as an expert in?

13 A In forensic DNA identification testing.

14 Q Forensic--

15 A DNA identification testing.

16 MR. SCOTT: Your Honor, the State offers Catherine
17 Leisy as an expert in the field of DNA identification.

18 THE COURT: Any voir dire, Mr. Verner?

19 MR. VERNER: I don't have anything.

20 THE COURT: She is so qualified.

21 MR. VERNER: I would ask the Court to charge the jury
22 on the role of an expert.

23 THE COURT: Sure. That is what I am going to tell
24 them right now. Ladies and gentlemen of the jury, thus
25 far we have had several what the Court calls lay

1 witnesses, not expert witnesses. At the present time the
2 State has called Ms. Leisy who is employed at SLED, asked
3 her several questions more or less on her background, on
4 what she does or training, where she went to school, what
5 she studied, where she has worked, what she has done over
6 the last 10 or 15 years. And she has been offered to
7 testify as an expert in the field of forensic DNA
8 identification in that testing. The State has offered her
9 as an expert in that field. Mr. Verner is not challenging
10 her qualification as an expert in that field. What that
11 means is she can then offer an opinion in that field for
12 you to consider. It doesn't mean anything greater or less
13 than the other witnesses. This is opinion testimony
14 rather than I saw this, I heard that, this is what I
15 picked off the ground. A little different, it is opinion
16 testimony.

17 Q Were you subpoenaed to be here today?

18 A Yes, I was.

19 Q And what case do you understand you are here for?

20 A Identified as SLED L12-559. The submitting agency
21 case is 201106929.

22 Q And do you have a suspect listed in your report?

23 A I do. It was identified as a William Neal.

24 Q Did you receive a buccal swab from Mr. Neal?

25 A I did.

1 Q What is a buccal swab?

2 A Buccal swab is a sterile cotton swab that looks very
3 much like a Qtip that is rubbed against the inside of an
4 individual's cheek. It is used to collect cells that we
5 can then develop a DNA profile from and we use that
6 profile as what we call as that individual's known
7 standard.

8 Q Let me show you State's ID number 28. Do you
9 recognize that?

10 A I do.

11 Q How can you identify that?

12 A I can identify this particular heat sealed pouch
13 through the SLED identification number located on the top
14 of the pouch as well as the item number that corresponds
15 to the buccal swabs of Mr. Neal. I can also see my
16 handwritten SLED case number, item number and my initials
17 on the envelope that contains the swabs.

18 Q And what do you call that bag that you are holding?

19 A We refer to these as heat sealed pouches. All of the
20 evidence that we receive is picked up by us in these
21 pouches. When evidence is placed inside it is heat sealed
22 across the top and the initials of the individual who
23 sealed as well as the date it was sealed goes in place
24 across the seal.

25 Q What is the first thing you do when you get one of

1 those bags at SLED?

2 A When I first take an item into custody the first
3 thing I do is to make sure that the bag is properly
4 sealed. That indicates that no one has been able to
5 tamper with or contaminate the bag in any way.

6 Q What do you do if there is a rip, tear or break in
7 that bag?

8 A We will document that within our computer information
9 system and make a phone call to see if there is another
10 item that can be tested because the bag is not intact, it
11 may indicate to us that we may need to find a different
12 item for testing as we may not be able to trust what is
13 inside.

14 Q As a matter of policy do you test items that display
15 compromises in that plastic bag?

16 A No, we don't unless, again, we call and it is the,
17 you know, submitting agency ask us to go ahead and test it
18 anyway. But it is not common place for us to test if the
19 bag is not intact.

20 Q Did you note any tears or compromise in that plastic
21 bag before testing?

22 A No, I did not.

23 Q Let me show you State's 27. Do you recognize what
24 that is?

25 A I do.

1 Q What is it?

2 A This is identified as SLED item 1 for this particular
3 case. It is identified as a swab taken from the mouth of
4 a Dr. Pepper can.

5 Q And, again, did it come to you in an evidence bag
6 like you are holding there?

7 A Yes, it did. It was intact in a sealed plastic
8 envelope when I took custody of it.

9 Q And you didn't note any tears or rips in the bag?

10 A No, I did not.

11 Q So what do you do when you get a buccal swab from
12 somebody and then something like that, a swab from a Dr.
13 Pepper can?

14 A I will go ahead and process what we consider to be
15 evidence first. And then process a standard or a buccal
16 swab second. I will perform DNA extraction on an item of
17 evidence meaning I am removing the DNA from that
18 particular item. I go through what is called the
19 amplification process where I am making copies of the DNA
20 at those 15 STR locations and then perform DNA typing to
21 develop a DNA profile. If I am able to develop a profile
22 from an item of evidence I can compare it to the profile
23 developed from the buccal swabs of the subject to
24 determine whether or not that individual contributed the
25 DNA on the evidence.

1 Q The swab you have, the Dr. Pepper can swab contained
2 from a piece of evidence presumably, it is an unknown
3 sample?

4 A Correct.

5 Q And were you able to develop a DNA profile from that
6 Dr. Pepper swab?

7 A Yes, I was.

8 Q What kind of test do you do on the swab?

9 A I performed what is called PCR STR testing. Again, I
10 am testing the 15 STR locations using a process called PCR
11 which stands for preliminary chain reaction. That is just
12 the amplification process that allows us to make copies of
13 the locations we are testing.

14 Q Did you, tell me what the results were once you
15 tested the buccal swab from Mr. Neal and the swab from the
16 Dr. Pepper can?

17 A The DNA profile developed from the swab from the Dr.
18 Pepper can matches the DNA profile of William Neal. And
19 the probability of randomly selecting an unrelated
20 individual having a DNA profile matching this item is
21 approximately 1 in 3.8 quadrillion.

22 Q How many zero's are in a quadrillion?

23 A One quadrillion would be a 1 with 15 zeros behind it.

24 Q And how many people are on earth?

25 A Approximately 7 billion.

1 Q So can we accurately say the DNA found on that Dr.
2 Pepper can came from Mr. Neal?

3 A I can say within a reasonable degree of scientific
4 certainty that it is my opinion that he is the contributor
5 of the DNA developed from the can, yes.

6 Q 1 in 3.8 quadrillion?

7 A Yes, sir.

8 MR. SCOTT: Your Honor, the State offers State's
9 number 28 and 27 for admission into evidence.

10 MR. VERNER: No objection.

11 THE COURT: No objection.

12 (Whereupon, State's Exhibits 27 and 28 were admitted
13 into evidence.)

14 Q Thank you.

15 CROSS-EXAMINATION

16 By Mr. Verner:

17 Q Just to clarify, you take it as a given, the source
18 of, that DNA came from the Dr. Pepper can or wherever it
19 is alleged it come from you take that as a given, that is
20 something that you don't independently know?

21 A That is correct. We rely on submission people work
22 and information received from the submitting agency to
23 identify where a sample was taken from.

24 Q Okay. And I believe you also, I appreciate your
25 testimony. Thank you.

1 THE COURT: Any redirect?

2 MR. SCOTT: No, Your Honor.

3 THE COURT: You may step down.

4 MR. SCOTT: We ask that Ms. Leisy to be excused, Your
5 Honor.

6 MR. VERNER: No objection.

7 THE COURT: You are excused. Ladies and gentlemen, I
8 have got something this afternoon in Columbia and I need
9 to go attend to. We took a couple of witnesses out of
10 order and that is why I made the comments to recall, that
11 was during our break and so it kind of made us adjustable
12 a little bit. We are done for the day and we will start
13 back in the morning early. Now, y'all can tell me how you
14 want to start, as early as 9:00 and as late as 9:30. You
15 tell me when you want to be at work and I will have
16 everybody else here.

17 FORELADY: 9:00.

18 THE COURT: We well start at 9:00. Be in the jury
19 room at 9:00. Don't talk about the case with anybody, not
20 with each other, not at home, you can't even talk to your
21 dog. You can tell somebody you are on the jury but tell
22 them Judge Griffith said you can't discuss the case. That
23 is all. We will see you at 9:00 in the morning.

24 (Whereupon, the jury was excused from the trial of
25 the case for the day.)

1 THE COURT: We will stand down until 8:45 in the
2 morning. We are going to address the issue that we have
3 been talking about. If y'all want me to know anything,
4 hear anything, consider anything just email it to me or
5 give it to me at 8:30 in the morning. I will be here by
6 8:00. I don't want to start this at 9:00 and try to let
7 them wait, I want to get it done. I will be here early
8 and I will see y'all here. We are at ease now.

9 (Whereupon, the trial will resume the next morning at
10 9:00 a.m.)

11 February 6, 2013

12 THE COURT: Are you ready to address this issue?

13 MR. VERNER: Yes, sir.

14 MR. BROWN: Yes, sir.

15 THE COURT: Folks, I hear y'all. Here is what I
16 think this indictment does. I think this indictment is
17 sufficient in providing this Court jurisdiction because it
18 alleges all of the elements of burglary first under 311
19 except for the two priors. I believe and find that it is
20 sufficient conveying jurisdiction on this Court and thus
21 far the facts hitting on some of the elements alleging
22 here have been presented by the State. So what concerns
23 me if I allow the amendment to go into the priors, allow
24 two priors to be stipulated under a 403 analysis that we
25 bring in more risks of, appealable issue for prejudicial

1 impact upon the trial when thus far what we have presented
2 to the jury is very clean and within the bounds of each of
3 the elements and one of the aggravating circumstances.
4 One is out, the noon, not nighttime, that is clear. But
5 the knife is there within the purview of the jury's
6 evaluation. And they are going to have to make the
7 decision of whether or not the facts are there.
8 Understanding that is where I am leaning, what do y'all, I
9 have read both of y'all's emails with your, I consider
10 memos of the law.

11 MR. SCOTT: Judge, obviously we want those
12 convictions in. That jury, what Charles is going to argue
13 is that knife was just laying in somebody else's yard.
14 Who cares if his ID was found a couple of feet away.
15 Those convictions, you can't argue against those and that
16 is going to be the difference between the burglary first
17 that we are trying for and falling down to a burglary
18 second. We would ask for those convictions to come in. I
19 agree with Your Honor's analysis of the defective
20 indictment. It is not a matter of this Court's
21 subject-matter jurisdiction.

22 THE COURT: I have subject-matter jurisdiction, no
23 question. But the indictment is sufficient and not
24 defective prior to the jury being sworn. It is good as
25 here where we are right now. No question about that.

1 MR. SCOTT: It appears to me, if it is a sufficiency
2 issue the Court has been pretty conclusive that the fact
3 that he challenged it, those are waived after the jury is
4 sworn. It doesn't change the nature of the offense, it is
5 a burglary first with a knife as Your Honor stated. It is
6 an interesting issue as I read the case and I kept going
7 around in a circle.

8 THE COURT: It does involve some circular logic.

9 MR. SCOTT: That is our stance, Your Honor.

10 THE COURT: Mr. Verner, did you make a pre-jury
11 swearing argument regarding the use of the prior
12 convictions?

13 MR. VERNER: In terms of whether the State should be
14 allowed to go into prior convictions, no, Your Honor. In
15 candor--

16 THE COURT: I thought that argument you had was one
17 versus two then a sequence of events and a crime spree
18 versus proximity. That argument, which I ruled against
19 you on that.

20 MR. VERNER: In fairness for the Court, that is the
21 only thing I made on the record. I did address the issue
22 prior to trial but not formally and I don't think would be
23 preserved. And I don't think Guthrie is an objection
24 pretrial to the sufficiency of the indictment. I think
25 that objection actually came during the trial. I

1 understand Gentry talks about the pretrial.

2 THE COURT: Can y'all read Guthrie this way, is that
3 Guthrie alleged or discussed with the indictment that
4 said, burglary first with this aggravating circumstance,
5 they give him a trial on that circumstance is not present.
6 Such as the daytime, nighttime in this case. And in the
7 middle of trial they jump from one aggravating
8 circumstance to another because one was totally absent.
9 Is that what happened because this one, I find that is not
10 the case here because there are two. One was alleged and
11 one was not alleged in the indictment itself. So we are
12 not going to lose subject-matter jurisdiction, one is
13 there and it is locked.

14 MR. VERNER: I think that is exactly my reading of
15 Guthrie too, is that the, the distinction between this
16 case and Guthrie is that you can reach burglary one by
17 several different paths or element trails of prior
18 convictions, nighttime or weapon. Now in this case the
19 State has indicted, one element went before the Grand
20 Jury, that is the knife that is involved in this case.
21 And now in trial the State is trying to add an additional
22 that did not go to the Grand Jury, that his prior record
23 also reached first degree burglary. My argument would be,
24 when deciphering it, Your Honor, and of course Guthrie and
25 Gentry both talk about the elements have to be alleged in

1 the indictment as well, not just the crime, but the
2 elements of the crime. And burglary is one of the unusual
3 crimes, it has several different paths to still get into
4 the conviction, it is not all four of them but several
5 different where you can reach that road. The latent
6 expression, the expression of one infers the exclusion of
7 others when the State specifically list specific items.
8 Legally when you are interpreting and I understand this is
9 a lot of contract law, but you exclude items that are not
10 included. The closest case I found to this case, Your
11 Honor, was a case out of Alabama where the State, it was a
12 murder trial and then the, the State added, it was a death
13 penalty murder case and then I think the defendant was
14 found guilty. And then at the sentencing phase the State
15 tried to include additional elements that could be
16 aggravating factors that could make it a capital murder.
17 And the Judge apparently inadvertently let the State get
18 into aggravating factors that were not supported by the
19 record or in the indictment, actually not in the
20 indictment. And the Supreme Court in Alabama reversed
21 saying those were not in the indictment as aggravating
22 factors. And the State shouldn't have been allowed in the
23 middle of a trial to include aggravating factors that were
24 not indicted. That was a death penalty case and those
25 were more aggravating factors that got to the, justified

1 whether the death penalty was appropriate but in that
2 factor the Supreme Court noted that those were aggravating
3 factors that should have been in the indictment because
4 the indictment had to have alleged the aggravating factors
5 to reach a capital murder that is really the closest, in
6 the Alabama case they already had some of the aggravating
7 factors to get to the death penalty but then they were
8 trying to argue additional ways to get there. That is
9 where the Supreme Court said you can't bring any
10 additional or shouldn't have brought in any additional
11 aggravating factors.

12 THE COURT: I understand your argument.

13 MR. VERNER: This is a case where the State has the
14 proper elements of a burglary and then seeks in the middle
15 of a trial to be allowed to argue additional elements of
16 the crime that were unindicted.

17 THE COURT: You are not going to waive presentment,
18 are you?

19 MR. VERNER: I am not waiving, certainly not waiving
20 the indictment and certainly the, no stipulations. The
21 difference between this one and Guthrie is the State has
22 already got the path to how to get the convictions. And
23 then in mid-trial they want to add additional paths to the
24 jury. I understand it is not truly mid-trial because they
25 had the indictments prior but certainly those were not

1 presented to the Grand Jury.

2 MR. SCOTT: If I may?

3 THE COURT: Yes, you may.

4 MR. SCOTT: Recently is the Dickerson case, Your
5 Honor, that I cited in my email, it is a case from last
6 year. Again they quote Gentry in that case. The Court
7 therefore has subject-matter jurisdiction to hear a case
8 even if the indictment fails to allege all of the elements
9 of the offense. Again, and I know Your Honor has already
10 ruled subject-matter jurisdiction. The defendant fails to
11 challenge the sufficiency of the indictment prior to the
12 jury being sworn he waives that challenge.

13 THE COURT: Here is the thing. The indictment is
14 sufficient so there is nothing for Mr. Verner to raise in
15 regarding sufficiency that I see. I mean, it would be
16 like, you are putting, Mr. Verner may also have said,
17 look, y'all make certain y'all don't come up with an
18 indictment in a few minutes for the use of a weapon during
19 the commission of a violent crime.

20 MR. SCOTT: Then his argument naturally is is that,
21 the indictment is a notice document. Okay. The purpose
22 of the indictment is to put the defendant on notice on
23 what he is called to defend himself against. Your Honor,
24 he was served an LWOP notice that mentioned the two prior
25 convictions nearly a year ago, February. It is hard for

1 him to argue now prejudice and not being on notice which
2 is what the indictment requires. That is pretty much the
3 theory of this case the whole time, the two prior
4 convictions. So I don't know if it is not subject-matter
5 jurisdiction argument and it is a sufficiency argument,
6 then it has to be that he wasn't on notice for what he was
7 called to defend. That is the natural argument, that is
8 what it has got to be. I don't see how he can argue
9 prejudice for being not on notice for those particular
10 charges.

11 MR. VERNER: Just very brief, Your Honor. Dickerson
12 distinguishes the Gentry case. It doesn't cite favorably
13 Gentry, it is listed why Gentry does not aid by this
14 specific case. And, again, Dickerson was a defendant
15 asking the Court to charge a crime that would not be a
16 lesser included offense. My guy is charged with rape and
17 I want the charge, you know, lewd act which would not be a
18 lesser included offense. That is what the Court actually
19 came down on and said, no, you can't do that. Dickerson,
20 I don't believe applies, Judge, because they distinguish
21 Gentry that they are not citing favorably. They say what
22 Gentry doesn't control in Dickerson case. Again, the
23 indictment is a notice document but it says specifically
24 it is a constitutional right, you know, the purpose of it
25 is to give fair notice. But it is still constitutionally

1 required rights so they don't take it down as just a
2 notice document. That is why the LWOP cannot amend.

3 THE COURT: Does burglary second, violent, a serious
4 offense?

5 MR. VERNER: It would be.

6 THE COURT: Well, you are not saying, you have got
7 two strikes on your record and you get burglary second,
8 violent. Is that not third strike, that is LWOP also.

9 MR. VERNER: If the Court rules that his prior
10 convictions for burglary two are two separate events we
11 are realistically in the same box.

12 THE COURT: I think I made that decision.

13 MR. VERNER: Yes, sir.

14 THE COURT: I think those were distinguishable.
15 Although the plea on the same day in February of '98 there
16 was a pattern of crimes, spring, summer and fall during
17 '97. They are distinguishable, it is not like one week
18 and he had a bad month. He had a bad year.

19 MR. VERNER: Yes, sir.

20 THE COURT: What I am told there is five firsts, four
21 seconds.

22 MR. VERNER: If he gets a burglary first that
23 certainly triggers the two strikes law. Given the Court's
24 ruling earlier if he gets a burglary second that is also
25 triggering the three strikes law.

1 THE COURT: I want to go off the record. Y'all come
2 over here.

3 (Whereupon, a bench conference was held.)

4 THE COURT: For the record, I am going to not allow
5 the State to amend the indictment to include the third
6 aggravating circumstance of any prior convictions to
7 sustain the burglary first. The indictment is sufficient
8 if the jury on the burglary first charge alleges the use
9 of a weapon and the weapon has been introduced into
10 evidence. That will be a jury issue whether or not the
11 State has met that burden. So no mention of the prior
12 convictions for purposes of the case-in-chief. Discussed
13 that whether or not the prior record could be used on life
14 without parole if there is a conviction. That will be a
15 decision to be made if there is a conviction. My ruling
16 stands on the priors, pretrial, there is a distinction
17 between the events in 1997, multiple burglaries committed
18 by Mr. Neal. Those won't be mentioned in front of the
19 jury. Right?

20 MR. SCOTT: Yes, sir.

21 THE COURT: Bring me the jury.

22 (Whereupon, the jury came into open court at
23 approximately 9:25 a.m.)

24 THE COURT: All right, Mr. Brown.

25 MR. BROWN: The State calls Lieutenant Roy McClurkin

1 back to the stand.

2 THE COURT: Lieutenant, you were placed under oath
3 yesterday, remind you you are still under oath.

4 MR. MCCLURKIN: Yes, sir.

5 DIRECT EXAMINATION

6 By Mr. Brown:

7 Q Lieutenant McClurkin, I just want you to state your
8 name for us again.

9 A Roy McClurkin.

10 Q And yesterday we had you up on the stand and you said
11 you worked with Newberry Police Department?

12 A That is correct.

13 Q And what is your role there?

14 A I am a police investigator.

15 Q And while you are investigating, what do you do
16 during your investigation?

17 A Like I said yesterday, I investigate all types of
18 crimes, anywhere to assault up to homicides and during
19 that course of my job I take statements, I take statements
20 from witnesses, victims and also suspects. I interview
21 suspects, I also process crime scenes, collect evidence,
22 preserve evidence. I also interact with the community and
23 stuff like that as an investigator.

24 Q Lieutenant McClurkin, back on, did you become
25 involved in this case back on August the 18th of 2011?

1 A Yes, I did.

2 Q And when did you become involved in that case?

3 A I was actually at the office and I heard a call come
4 in that a burglary was in progress and that they were
5 setting up a perimeter so I headed that way towards the
6 incident location.

7 Q And once you got that call what did you do?

8 A As I was going to set up a perimeter I heard Officer
9 Gunwall get out with a possible suspect on Smith Road near
10 the Academy and I started heading in his direction not
11 knowing if anybody was close to him. And I was close at
12 the time so I headed to that direction and got out with
13 Officer Gunwall who was already out with Mr. Neal.

14 Q Lieutenant McClurkin, I am going to show you what has
15 been, State's evidence number 20. This is, tell me what
16 this is?

17 A That is a aerial shot of the community area there
18 where the incident location happened.

19 MR. BROWN: Judge, if I can get him to step down so
20 he can point to it.

21 Q Can you see where this incident location took place?

22 A Yes. This is the incident location there,
23 Street.

24 Q And where did you come in contact or where did
25 Officer Gunwall have Mr. Neal?

1 A Officer Gunwall and Mr. Neal were in this area here,
2 in the, I call it the main entrance to Newberry Academy.
3 They were on the side of the road here. I came down Smith
4 Road, turned and parked my car there at the entrance to
5 the Academy.

6 Q And once you got to that location what did you do?

7 A Like I say, Officer Gunwall was already out with Mr.
8 Neal so I got out of my car and walked over to where
9 Officer Gunwall was talking with Mr. Neal. Officer
10 Gunwall was questioning Mr. Neal about his name and also
11 questioning him about a large amount of change that he had
12 in a bag and that was on the back of the trunk of one of
13 the police cars. I walked up to them and I noticed that
14 Mr. Neal was agitated and sweating profusely and was
15 basically saying that I just left home and that I was
16 walking this area here on my way to Food Lion to cash this
17 change in.

18 Q After he said that what did you do next?

19 A After back and forth talking for a while I told Mr.
20 Neal, well I asked Mr. Neal, I said would you mind
21 accompanying me to my office so we can talk some more.
22 And he agreed to go with me voluntarily to my office at
23 the police department.

24 Q At this time was Mr. Neal in investigative custody?

25 A That's correct. Officer Gunwall had told me that he

1 had placed him in investigative detention by placing
2 handcuffs on him for his safety and for Officer Gunwall's
3 safety also.

4 Q And at that point did he go with you to the police
5 department?

6 A Yes, he did. He accompanied me to the police
7 department in my car.

8 Q And did you talk to Mr. Neal during that time?

9 A No, not about anything to do with the incident
10 location.

11 Q Were any statements taken in this case?

12 A Yes, it was. Once we got down to the office there
13 was a statement taken from Mr. Neal.

14 Q And who was present during this questioning?

15 A Just me and Mr. Neal.

16 Q And when you were questioning Mr. Neal, prior to
17 questioning Mr. Neal did you read out, are you familiar
18 with Miranda warnings?

19 A Yes, I am.

20 Q And did you read Mr. Neal his Miranda warnings?

21 A Actually I read them to him and also had them
22 documented on paper. We have got an adult wavier form
23 that we use.

24 Q What does that form have on it?

25 A It actually has a place for the person who was

1 questioning, his name. It also has a place for his
2 address, a place for his amount of education that he has
3 and also has a place on it for the crime that I was
4 investigating. And then there is the defendant's rights
5 which is 1 through 6 listed on there and there is a space
6 beside each one of those rights where the person puts his
7 initials once I read them to him and he tells me that he
8 understands them.

9 Q And let me show you what has been previously marked
10 State's exhibit number 1. Can you tell me what that is.

11 MR. VERNER: Your Honor, I would like to reserve my
12 objection, pretrial objections to voluntariness of the
13 statement and I understand the Court's ruling.

14 THE COURT: And your objection is noted and properly
15 preserved at this time.

16 A This is the adult wavier of rights form that I filled
17 out on Mr. Neal on the incident date.

18 Q Let's go through that. Tell me what that adult
19 wavier of rights says. What is the first line?

20 A The first line of it, it says, I and then there is a
21 space there. I don't know if you can see it or not.
22 There is a space there that says the person's name,
23 William Russell Neal. And it says, I am 46 years old. My
24 address is in Newberry, South Carolina.
25 I have finished the, and he has got a place there that you

1 put the grade there and stuff like that. Mr. Neal
2 indicated to me that he had a GED so I wrote GED in the
3 grade in school. And I asked him whether he can or cannot
4 read. And Mr. Neal indicated to me that he can read. So
5 I circled, can read.

6 Then the next line says, I've been told by Lieutenant
7 Roy McClurkin, it has a place for my name so he knows who
8 he is talking to. That he would like to talk with me
9 concerning a crime. And then I fill in the crime that I
10 was investigating as a burglary.

11 The next line after that states that, this officer
12 has also explained to me and I understand that.

13 And then the next line goes and it starts with number
14 1 and goes into the first right. The first right that I
15 read to him is that I have a right to remain silent. That
16 means that I do not have to say anything or answer any
17 questions. I am going to back up a little bit. Prior to
18 me stating the rights, what I did is I gave Mr. Neal the
19 original one of these and I got another one and I read off
20 of that one so I could read each one of the rights. I
21 told Mr. Neal once I read him number one, I told him if
22 you understand the way you tell me, you tell me that you
23 understand is that you indicate on this paper with your
24 initials beside that right, that you understand that right
25 and he told me that he understood. And he placed his

1 initials, WRN, right beside number 1.

2 Q Tell me what question number 2 says.

3 A Number 2 states that anything I say can be used
4 against me. And, again, I asked Mr. Neal, I said do you
5 understand. And he said, yes. I said, the way you tell
6 me that you understand is you indicate with your initials
7 beside number 2 in the space. And he put his initials,
8 WRN beside number 2.

9 Q And number 3.

10 A Number 3 states I have a right to talk to a lawyer
11 and have a lawyer here with me to help me and advise me
12 during questioning. Again, I asked Mr. Neal if he
13 understood. I told him if he do understand the way you
14 indicate to me that you understand is to place your
15 initials beside number 3. He placed his initials, WRN,
16 beside number 3.

17 Q And 4.

18 A And number 4 states, if I want to have a lawyer with
19 me during questioning but cannot afford to pay a lawyer
20 one will be provided to me at no cost before I am
21 questioned. Again, I asked Mr. Neal if he understood and
22 he stated that he understood. And I told him the way you
23 tell me that you understand is that you put your initials
24 right beside number 4. And he put his initials, WRN,
25 beside number 4.

1 Q And number 5 and 6.

2 A Number 5 states that if I decide to answer questions
3 now without a lawyer here I still have the right to stop
4 answering questions whenever I want to. He placed his
5 initials beside number 5 also stating that he understood
6 and the way he understood was to put his initials beside
7 it, WRN.

8 And number 6 states that I have a right to talk to a
9 lawyer, excuse me, have a right to stop answering
10 questions until I have talked to my lawyer. And, again, I
11 asked him if he understood and he placed his initials
12 beside number 6 indicating that he does understand.

13 Q Lieutenant McClurkin, is there anything else on that
14 page?

15 A Yes, right under that is a statement that is
16 underlined. It states, that I understand my rights as
17 explained by Officer McClurkin. I have to put my name in
18 that space there. And it states that I now state that I
19 do wish to answer questions at this time and I do not wish
20 to have a lawyer here during questioning. The next thing
21 under that, the next little paragraph states that my
22 decisions to answer questions now without a lawyer is made
23 freely and is my choice. No one has threatened me in any
24 way or promise me special treatment. I am signing my name
25 in the space below. And right under that it has a place

1 for the suspect to sign his name and Mr. Neal signed his
2 name there, William R. Neal and right under there is a
3 place for me to witness his signature and my name is right
4 under that, Roy H. McClurkin. It also has a place for the
5 date. I placed the date in there which was August the
6 18th, 2011. And place the time that I finished up reading
7 him his rights which was 11:45 a.m.

8 Q And at 11:45 a.m., how, when did this crime allegedly
9 take place?

10 A We got the call about 11:00 a.m. that morning.

11 Q So this was just a short time within the hour
12 afterwards?

13 A That's correct.

14 Q Lieutenant McClurkin, now you read him this adult
15 waiver of rights before you did any other questioning?

16 A That's correct, before I questioned him anything
17 about the burglary I read him his rights.

18 Q And after you read him his rights did he give a
19 statement?

20 A He did, not right after I read him his rights because
21 he was still, once I questioned him about the burglary he
22 still denied knowing about what I was talking about and we
23 just went back and forth. And after awhile I told him, I
24 said, well, at the incident location we had found items
25 that were left there by the suspect. A hat, a drill and a

1 drink can and I told him, I said, whether you tell me the
2 truth or not your DNA will be on that evidence so we are
3 going to find out whether you did it or not. And then at
4 that time he said, well, okay, I will cooperate and I will
5 tell you what happened. And he confessed to breaking into
6 that location.

7 Q And on the, how did he give this statement. Was it
8 an oral statement or was it reduced to writing?

9 A Well, his first statement to me was orally, what he
10 told me what had happened. And then I asked him if he
11 wanted to give a written statement and he said, yes, he
12 will give a written statement. But once I filled out the
13 paperwork on the written statement he said, well, I don't
14 have my glasses, I can't see that well so would you write,
15 I asked him, do you want me to write this statement for
16 you. And he said, yes, I do want you to write this
17 statement for me. And he dictated to me the statement
18 that he wanted me to write and I wrote it down.

19 Q Lieutenant McClurkin, I want to show you what has
20 been marked State's exhibit number 2 for identification
21 purposes. Would you tell me what that is?

22 A Yes, this is the statement that I took from Mr. Neal
23 on August the 18th of 2011. It states right on the top
24 line, the statement of William Russell Neal.

25 Q And what does, what does the first line or the first

1 paragraph say?

2 A The first paragraph, under Mr. Neal's name it has a
3 place for the date and the place for the person who is
4 taking the statement. But right under that it says, I,
5 William Russell Neal and it has his rights again which
6 states I understand that I have a right to remain silent.
7 Anything I say will be used against me in court, or excuse
8 me, can be used against me in court. I have a right to
9 talk to a lawyer for advise before you ask me any
10 questions and to have a lawyer with me during any
11 questioning. If I cannot afford a lawyer one will be
12 appointed for me before any questions if I wish. If I
13 decide to answer questions now without a lawyer present I
14 still have the right to stop answering questions at any
15 time. I also have the right to stop answering questions
16 at any time until I talk to a lawyer. Having been advised
17 of these rights I understand them I do make the following
18 statement.

19 Q And did Mr. Neal give a statement?

20 A Yes, he did.

21 Q Will you read me what he said.

22 A The statement that Mr. Neal gave me states that on
23 Thursday, August the 18, 2011 I, William Russell Neal, was
24 walking on Hazel Street and I saw a brown house with no
25 car in the yard. I walked to the backdoor and used my

1 butt to force open the door. I went inside of the house
2 and went through the closets and I took some change that
3 was in a blue container and I placed it in a clear plastic
4 bag that I had with me. I was there for five or six
5 minutes and saw someone pull into the yard and I ran out
6 the backdoor. I left an Atlanta Braves hat that I was
7 wearing and a Dr. Pepper drink that I had inside the
8 house. I broke into, this is the only thing that I have
9 done.

10 And after I took this statement and wrote it for Mr.
11 Neal I let him read it and he stated that that was his
12 statement and he signed the statement in one, two, three,
13 four places.

14 Q So at the end of statement he did show, he did sign
15 his name?

16 A Yes, he did. He also, I also put a line right here
17 indicating there was nothing to follow in this statement.
18 I had Mr. Neal to place his initials in front of nothing
19 further here and here which states WRN indicating there
20 was no more to follow in this statement.

21 Q Now, Lieutenant McClurkin, while you were giving
22 these, reading him his rights and asking for a voluntary
23 statement did it appear to you that Mr. Neal was under any
24 type of influence of any alcohol or drugs or anything that
25 would impair his ability to understand what you are asking

1 of him?

2 A No, he did not.

3 Q Did it look like he had any type of mental disability
4 or physical disability that would impair him understanding
5 what you were asking him?

6 A No.

7 Q Tell me, where did you give him his advisement of
8 rights, also where did he give his statement?

9 A We were at my office at the police department on
10 Nance Street.

11 Q And tell me what the room looks like?

12 A It is just a basic office, a desk, has a computer
13 stand in it. When I took the statement from Mr. Neal he
14 was sitting in front of the desk in one of the two chairs
15 I have in front of the desk. I am sitting behind the desk
16 in my chair.

17 Q And at this time was he in handcuffs?

18 A No, I had taken the handcuffs off and once we got to
19 my office.

20 Q Did he understand that, was he free to leave at that
21 point though?

22 A No, he was not free to leave at that point. He was
23 not free to leave once I gave him his rights because of
24 the, what I had found out about the evidence at the house.

25 Q And how long was Mr. Neal questioned by you?

1 A He probably was with me for about an hour, a little
2 over an hour.

3 Q I asked you what time, on the advisement of rights,
4 the advisement of rights was taken. What time was that?

5 A The advisement of rights was taken at 11:45 a.m.

6 Q And when was the statement given?

7 A I filled out the paperwork at 12:00 o'clock so the
8 statement would have been taken right after 12:00 o'clock
9 or so.

10 Q Were any breaks taken while you were getting this
11 statement?

12 A No. There was no breaks taken or anything like that.
13 He asked for some water and he was given water.

14 Q So you didn't deny him water?

15 A No sir, no sir.

16 Q In giving this statement did you promise Mr. Neal
17 anything, give him any hope or reward?

18 A No, sir.

19 Q And before any of these were taken, just to clarify,
20 he was read his rights before he gave his statement?

21 A That is correct.

22 MR. BROWN: Judge, at this time I would like to move
23 State's exhibit number 1 and number 2 into evidence at
24 this time.

25 MR. VERNER: 1 and 2, without objection.

1 THE COURT: No objection, 1 and 2 is admitted,
2 subject to the prior ruling. Your objection is preserved.

3 (Whereupon, State's Exhibits 1 and 2 were admitted
4 into evidence.)

5 Q Now, Lieutenant McClurkin, going back to the
6 investigation, was the, were you aware there was a knife
7 found on the road?

8 A That is correct.

9 Q Was that knife ever tested for DNA?

10 A No, it was not.

11 Q Was there a test for fingerprints?

12 A No, it was not.

13 Q Why?

14 A Because we chose to use the evidence inside of the
15 house for testing because he had given me a statement
16 confessing that he was inside of the house. And we chose
17 to send the hat and the drink can as evidence because SLED
18 has parameters on how many submissions you can send them.
19 SLED which being the South Carolina Law Enforcement
20 Division is where we send evidence to be processed. We
21 don't do it here in Newberry. They have a protocol and we
22 can only send two submissions. So we sent the two
23 submissions of evidence that we found in the house where
24 he had given a statement saying that he was located. He
25 said that he went into the house, he said he left those

1 items in the house and those items belong to him so those
2 are the items that we sent for submission.

3 Q Now, was there any doubt during the investigation who
4 that knife belonged to?

5 A No, there was no doubt that the knife belonged to him
6 because it was found where he was located by Officer
7 Gunwall, a short distance. Plus his ID was with that
8 knife. But because of those parameters on what we can
9 send to SLED we chose to send the items that were inside
10 of the house.

11 Q After talking to Mr. Neal, after getting his
12 statement and finding out what you did during this
13 investigation what did you charge Mr. Neal with?

14 A I charged Mr. Neal with burglary first degree.

15 Q And why?

16 A Based on the weapon, the knife, based on the fact
17 that we had found a knife with his ID. I chose to charge
18 him with burglary first degree.

19 Q No further questions.

20 THE COURT: Mr. Verner.

21 CROSS-EXAMINATION

22 By Mr. Verner:

23 Q You are saying SLED will only test two items for law
24 enforcement?

25 A That's correct. They send parameters saying that

1 they would only take two submissions.

2 Q Do you have any kind of written documentation of
3 that. I find it hard to believe, if you have got a major
4 crime SLED will only test two items.

5 A I don't have that documentation with me but those are
6 the parameters.

7 Q And so the baseball cap was more important to send
8 than the knife?

9 A That is what we chose to send because of those items
10 being found in the house where he had indicated to us that
11 he broke into.

12 Q But he never ever disputed that he was in the house,
13 did he?

14 A At first he disputed, even knowing anything about a
15 burglary.

16 Q But he gave, within fifteen minutes he gave his
17 statement admitting that he had gone in the house?

18 A That's correct.

19 Q When you were taking the statement from him do you
20 believe he was being candid and truthful?

21 A Yes, I do.

22 Q Was the statement that you took from him recorded or
23 videotaped?

24 A No, it was not.

25 Q Do you have the ability to videotape or record at the

1 City Police Department?

2 A We have some handheld recording devices, yes sir,
3 that we can use.

4 Q In fact, every City Police Cruiser we see in Newberry
5 has got a video camera in it, doesn't it?

6 A All of the marked units, yes sir, and some of the
7 unmarked units that are used on the road.

8 Q There is a policy at the city not to record
9 interviews with defendants, isn't there?

10 A There is not a policy, there is not a policy saying
11 do not record. There is not a policy saying do record.

12 Q There is a policy saying do record?

13 A No, sir. There is not a policy saying don't.

14 Q Don't?

15 A Yes, there is no policy.

16 Q You were aware of the knife prior to the interview?

17 A That's correct.

18 Q Does the statement reflect whether a knife was taken
19 into the house or not?

20 A No sir, it does not.

21 Q The fact that a knife was found where he was, within
22 20 feet or however the officer testified from where he was
23 arrested, that is the only evidence you have to justify
24 the first degree burglary charge?

25 A The knife was found with his ID and that is what

1 justified it.

2 Q Other than that there is no other evidence, there is
3 no witness that says they saw the knife?

4 A No, sir.

5 Q There is no statement admitting that he had a knife?

6 A No, sir.

7 Q But the knife was found how far from the house?

8 A Probably three blocks or so or more.

9 Q And I take it that you are certainly suspicious that
10 he had the knife when he went into the house.

11 A I don't understand the question.

12 Q You suspect that he had the knife--

13 A Yes sir, I suspected that he had the knife when he
14 went into the house on his person, that he discarded the
15 knife once he saw the officer.

16 Q But it is also possible he didn't have the knife,
17 isn't it?

18 A It is possible.

19 Q That would be a second degree burglary, right?

20 MR. BROWN: Objection, Your Honor.

21 MR. VERNER: Well, he talked about why he chose to
22 charge first degree burglary.

23 MR. BROWN: Judge, he is asking to comment on a
24 matter of law.

25 THE COURT: Rephrase your question. The issues of

1 law is for the Court, not for the officer.

2 Q You could have also charged him with second degree
3 burglary too, couldn't you?

4 A Yes, sir.

5 Q And the sole issue for this jury today is just
6 whether the knife makes it first degree burglary, right.
7 Whether he carried the knife into the house?

8 A I don't know how to answer that.

9 Q Well, I will withdraw that. Thank you.

10 THE COURT: Any redirect?

11 MR. BROWN: Yes, sir.

12 REDIRECT EXAMINATION

13 By Mr. Brown:

14 Q Lieutenant McClurkin, when you are doing an
15 investigation you have to make a number of judgment
16 decisions?

17 A Yes sir, that is correct.

18 Q And in this investigation y'all chose to send DNA
19 from the Dr. Pepper can and the baseball cap to SLED?

20 A That is correct.

21 Q And why didn't you send a DNA sample of the knife?

22 A Because, like I said, we--

23 MR. VERNER: Your Honor, that has been asked and
24 answered several times.

25 THE COURT: I will allow him to clarify this.

1 A Like I said, we have to file the parameters of SLED
2 who analyzes our items of DNA for us and we can only send
3 two submissions. And like I said, he confessed to being
4 in the house and he confessed that those items were his.
5 So we chose to send those items to SLED for DNA analysis.

6 Q And where was the knife found?

7 A The knife was found in close proximity where the
8 officer got out with him, with his ID.

9 Q That is all. Thank you.

10 THE COURT: You may step down.

11 MR. BROWN: The State rests, Your Honor.

12 THE COURT: All right. We will take a short break.
13 We have got a couple of issues for me to deal with. Step
14 in the jury room and will have you right back out. Don't
15 begin discussing the case.

16 (Whereupon, the jury was excused from open court for
17 a break.)

18 THE COURT: All right, Mr. Verner.

19 MR. VERNER: Your Honor, I would move for a directed
20 verdict certainly as to the first degree burglary count.
21 I acknowledge that the State has proffered evidence that
22 is certainly suspiciously indicating the defendant was
23 armed with a knife. That being said, Your Honor, as the
24 Court is aware, mere suspicion does not support a
25 conviction beyond a reasonable doubt.

1 THE COURT: I think the facts, the ID is there, he is
2 there, the knife is there, it is in close proximity. That
3 is enough to give to the jury. That is not a mere
4 suspicion, that is circumstantial evidence, several
5 different circumstances all lead to a conclusion that the
6 knife and the ID were with Mr. Neal. That is a jury
7 issue. I want the jury to make that decision.

8 MR. VERNER: Thank you.

9 THE COURT: Anything else? Are you going to put
10 anything up.

11 MR. VERNER: Judge, I think the Court needs to
12 admonish my client about his right to testify. I know
13 that is required. We always seemed to have done it.

14 THE COURT: I will go ahead and do it. Mr. Neal, you
15 having been sitting in the court throughout the entire
16 trial and all of the pretrial matters. It is now the
17 opportunity for you and Mr. Verner to present any evidence
18 you wish to the jury. You have the right to testify and
19 you have the right to remain silent. If you want to get
20 on the witness stand and testify that is your decision
21 with the advice of your attorney. Have you had an
22 opportunity to discuss whether or not you wish to testify
23 with Mr. Verner?

24 MR. NEAL: Yes, sir.

25 THE COURT: Now, understanding your conversation,

1 have you understood your conversations with him and you
2 understand those issues?

3 MR. NEAL: Yes, sir.

4 THE COURT: You understand if you were to decide to
5 testify you could and then the State would then be allowed
6 to try to cross-examine and perhaps bring in your prior
7 record as indications of lack of truthfulness. Do you
8 understand that?

9 MR. NEAL: Yes, sir.

10 THE COURT: And do you understand if you don't
11 testify I will instruct the jury they cannot consider or
12 discuss in any way whatsoever you not testifying. But the
13 jury would have to restrict their decision with your guilt
14 and your innocence based upon what the State has presented
15 and the facts that have been presented thus far. Do you
16 understand that?

17 MR. NEAL: Yes, sir.

18 THE COURT: And have you decided or made a decision
19 whether or not you wish to testify in your trial yet?

20 MR. NEAL: I decided not to testify.

21 THE COURT: Do you understand my instructions to you,
22 the jury cannot use that against you in any way
23 whatsoever?

24 MR. NEAL: Yes, sir.

25 THE COURT: Very well. Have you had enough time to

1 talk to Mr. Verner about that?

2 MR. NEAL: Yes, sir.

3 THE COURT: Are you comfortable?

4 MR. NEAL: Yes, sir.

5 THE COURT: Clearheaded?

6 MR. NEAL: Yes, sir.

7 THE COURT: Do you need any more time with him before
8 you go forward with your trial?

9 MR. NEAL: No, sir.

10 MR. VERNER: Your Honor, I would just ask for a few
11 minutes to take a break before closing arguments. I would
12 claim my right to argue last. I don't think we submitted
13 any evidence.

14 THE COURT: If you decide not to submit any evidence
15 right now you are correct.

16 MR. VERNER: When the jury comes in at that time I
17 will make the final decision, I intend to probably put up
18 a defense.

19 THE COURT: All right. We will take a break.

20 (Whereupon, a short break was taken.)

21 THE COURT: Let's bring the jury in.

22 (Whereupon, the jury came into open court at
23 approximately 10:10 a.m.)

24 THE COURT: Ms. Boyd, ladies and gentlemen of the
25 jury, Mr. Verner, for the record.

1 MR. VERNER: Your Honor, that is the State's case,
2 the defense is going to rest. The jury has got the case.

3 THE COURT: All right, we talked about that while
4 y'all were at break. I told you in my earlier remarks,
5 the burden of proof is on the State. The State has got to
6 prove the case, the defense has nothing to prove. In this
7 case the defendant has decided to present no evidence.
8 That is their decision and their right. And so that is
9 why the break was a little longer because we had discussed
10 that to make certain that was their decision and it is.
11 So y'all have heard all of the testimony you are going to
12 hear. What y'all have heard is what you are going to base
13 your deliberations with, what you have heard over the last
14 two days. So now it is an opportunity for both sides to
15 summarize their positions. Now, under our rules because
16 the defense has placed nothing before you they get to talk
17 to you last. So in this case we are starting with Mr.
18 Scott. Mr. Scott will summarize the State's position and
19 after that Mr. Verner gets to summarize his client's
20 position. Y'all give careful attention to them and then
21 after that is done then I will give you my instructions on
22 the law as to what your decision will be. Mr. Scott.

23 MR. SCOTT: Thank you, Your Honor, may it please the
24 Court.

25 THE COURT: Yes, sir.

1 MR. SCOTT: Ladies and gentlemen of the jury, there
2 it is, you heard the case. That is our case, it started
3 yesterday, done today. You heard from six witnesses, seen
4 a handful of evidence. But we got a lot of information on
5 those six witnesses. Had a whole lot of information from
6 that evidence right there. What have we learned. You
7 heard from the victim, Brandon Gillion. Talks about his
8 house over there on Hazel Street, leaving, forgetting
9 something and coming right back and pulled around to the
10 back of his house and immediately realizes that something
11 is wrong. The door was open, the backdoor to his home was
12 cracked open. Inside of that door he sees a hand, the
13 hand of a black man, a hand holding a plastic bag. He
14 turns to leave because he is frightened as anybody would
15 be. He calls the police. Mr. Rowe talked about feeling
16 frightened, talked about feeling scared, talked about
17 feeling violated. You heard from Officer Rowe, Rowe was
18 our first responder. He shows up and noticed that the
19 backdoor had been kicked in, forceable entry was noted,
20 the locking mechanism was lying on the kitchen floor.
21 There was change everywhere, change on the floor, change
22 on the back porch. A Dr. Pepper can that didn't belong
23 there, an Atlanta Braves hat that didn't belong there.
24 Every drawer in the house was opened. Immediately they
25 are looking for a black man because that is what the

1 victim said he saw, the hand of a black male. Officer
2 Gunwall came next, he talked about finding a black male
3 three or four blocks away on the corner of Smith and Glenn
4 sweating. That black male was Mr. Neal, Mr. Neal was
5 sweating, he was agitated to be speaking with the police
6 when they stopped him. And he had that plastic bag still
7 in his hand. Immediately developed a suspect, placed him
8 in investigative custody. You heard from Mercer. What he
9 told us was about the bottle stoppers, the caps from a
10 liquor bottle and a wine bottle. The victim identified as
11 those being his, they were missing from his home. Mercer
12 found those right here on Radio. What is interesting,
13 Neal is leaving a trail of evidence as he makes his way
14 here to Smith Street, where he was located by law
15 enforcement. Kevin Atkins, the Captain over there at
16 Newberry, he talked about taking the Dr. Pepper can and
17 got a DNA swab. Took that swab to SLED where it was
18 tested. Roy McClurkin also with Newberry, he got that
19 statement. We just heard about that this morning. He
20 also got a buccal swab, that is where they swab the cheek
21 and collected DNA. He sent that to SLED. That brings us
22 to our next witness, that was Catherine Leisy, forensic
23 scientist over at SLED. She tested that buccal swab of
24 Mr. Neal against the DNA swab obtained from that Dr.
25 Pepper can. Do y'all remember that result, it was 15

1 zeros, 1 in 3.8 quadrillion. What else can we give you,
2 ladies and gentlemen. I mean seriously, we have got the
3 man giving a statement saying he used his butt to bust
4 open the door because he noticed there wasn't a car there.
5 That man talking about leaving his Atlanta Braves hat, a
6 Dr. Pepper can because he wanted to steal some money from
7 somebody else. Then he is found two blocks down the road
8 with the same plastic bag the victim saw him with. Now
9 right beside him is this knife, right beside this knife is
10 his drivers license. So essentially while people like you
11 are out working--

12 MR. VERNER: Judge, that is absolutely an improper
13 argument, that is absolutely improper argument. People
14 like you are out working, if that is not an appeal to the
15 jury's emotion.

16 THE COURT: You can find the arguments in the facts
17 in evidence.

18 MR. SCOTT: That day while Mr. Brandon Gillion was
19 gone Mr. Neal is taking and stealing. Now for a burglary
20 first, we have got to prove some things and we told you at
21 the beginning of this trial we were going to prove, we
22 were going to prove beyond a reasonable doubt. Let me
23 tell you what we have got to prove to you. For burglary
24 first we have to show entry into a dwelling. Entry into a
25 home. We have got that. Mr. Gillion saw him in there, he

1 admitted to being in there, his DNA was found in there.
2 Without consent. He had no consent to be in that house.
3 Mr. Gillion testified to that, he gave him no consent to
4 be there, nor did anyone else. We have to show he had an
5 intent to commit the crime inside the house. He said he
6 broke into the house, he said he took money. That brings
7 us to the other thing, the aggravating factor. When you
8 find him guilty of burglary first you have to find that we
9 have proved one of the aggravating factors. In this case
10 the aggravating factor is the use of a deadly weapon. Mr.
11 Verner is going to say, no, no, no, he has got to show
12 that he had that weapon inside the house. That is not
13 right. He had that knife as he was fleeing from the
14 scene. We know that. That knife was found where he was
15 found laying right beside his drivers license. So that
16 knife that he had with him is the aggravating factor. I
17 will put a checkmark by each one of these. Each one of
18 these have been proven beyond a reasonable doubt. At a
19 closing argument when the State has to argue first as we
20 have to do right now, the wish I always have is that I can
21 sit back and say, okay, some of you may have questions.
22 There may be some other things you would like to hear,
23 some things might not be crystal clear. So raise your
24 hand and I will answer each one of your questions. That
25 is not how it works, I can't do that. I wish I could.

1 There is no such thing as a trial that a juror don't have
2 maybe one little question about or something might not be
3 crystal clear. But if you sit around and you wait for a
4 case like that you are going to be waiting a long time.
5 It is going to be kind of like waiting around for sausage
6 biscuits in Newberry County jury room and all you get is
7 Walmart donuts. But that is fine. Those donuts are fine.
8 And Mr. Verner is going to get up here and say, no, you
9 have got to have sausage biscuits. Donuts will not
10 suffice, you can't have any questions. That is not true.
11 Reasonable doubt does not require that. There is almost
12 nothing in this world that you don't have some question
13 about. You just need to be firmly convinced that Mr.
14 William Neal broke into that house and we have proven
15 these elements. We have done that, ladies and gentlemen.
16 Now, the other argument is going to be that law
17 enforcement failed down on their job, they could have done
18 this, they could have done that. And we could play Monday
19 morning quarterback all we want. I submit to you these
20 men made a good case, they have given you all the evidence
21 you need to find him guilty of these charges. We stand by
22 this evidence, y'all are going to read that statement,
23 y'all are going to take that evidence back with you and
24 look at it. After you apply the testimony from the stand,
25 that evidence to the facts or the law as the Judge will

1 instruct you, that is all you need to decide guilt in this
2 case. Let me tell you what you don't need to do. You
3 don't need to consider possible penalties of what is going
4 to happen to Mr. Neal if y'all do find him guilty. I
5 submit to you that that is improper. Well, look at Mr.
6 Neal over there, I kind of feel sorry for him. Maybe we
7 should cut him some slack. That is improper. Look at
8 that evidence, listen to what came from that stand and
9 apply it to the law. That is what you do. About 2,000
10 years ago there is a man named Cicero. A great orator,
11 philosopher, lawyer, he said, what more safer, what more
12 guarded with every whole feeling than one's own house.
13 What more safer. That is why you hear the victims of
14 burglary such as Mr. Gillion talk about being violated.
15 Your home, that is where you go at the end of the day
16 after getting beat down all day long at work or wherever
17 you go during the day, that is your refuge. That is where
18 you go to be safe. Every man's home is his castle. Not
19 for Mr. Gillion anymore. You heard how this has affected
20 him. Ladies and gentlemen, have the courage to do what
21 justice dictates in this case, look at that evidence,
22 remember that testimony, find Mr. Neal guilty of burglary
23 first degree, nothing more, nothing less. Thank you.

24 THE COURT: Thank you, Mr. Scott. Mr. Verner.

25 MR. VERNER: We are not talking about sausage

1 biscuits and we are not talking about donuts today. We
2 are talking about major crimes, major penalties. This
3 General Sessions court is the highest court in South
4 Carolina. So it is a serious responsibility, I am
5 standing for the proposition that people in Newberry can
6 go to trial and face charges that the State knows they are
7 guilty of. And I don't mean that we saw it and we know
8 it, we didn't. We are here after the fact, I wasn't
9 there, you weren't there, they weren't there. Reasonable
10 doubt means that as close to actual knowledge that you
11 have a surety, you are firmly convinced as close to actual
12 knowledge about being there. He admitted on the day he
13 was arrested he was the one in the house. August 18th,
14 2011, he said I am the one who went in the house. I
15 understand we have had evidence that is corroborated. He
16 admitted it to the officer on the day he was arrested.
17 That his not why we are here. We are here because whether
18 somebody in Newberry should go to trial on the most
19 serious charges that could possibly be put on them or the
20 charge that everybody knows he is guilty of and that is
21 second degree burglary. We are still talking major crimes
22 and that is the proposition. This guilt or innocence and
23 fear of the victim and niceness, safety of the home, that
24 is all wonderful. That is not why we are here. We are
25 asking beyond a reasonable doubt, giving Mr. Neal any

1 benefit of the doubt. He admitted two years ago, the day
2 he got taken into custody he admitted it. Law enforcement
3 finds a knife and I don't think, two blocks away from the
4 crime scene is, I don't think was quite what was testified
5 to. And right immediately next to him I don't think is
6 quite consistent with what was testified to. But nobody
7 is contesting that. Nobody is contesting that. The issue
8 is, was he using a deadly weapon. That is what burglary
9 first degree requires in the home. Mr. Gillion said he
10 saw the man come out. I saw a hand. I saw him carrying a
11 bag. That is a given. I saw the hand and I saw him
12 carrying the bag. What didn't he see, a knife. What
13 didn't law enforcement see. There is no proof it is
14 possibly that he had a knife in his hand. It is also
15 reasonably possible he may not have. I am pretty sure my
16 regular TV show comes on at 8:00 at night. Sometimes it
17 doesn't, it might be unusual for it not to come on but
18 sometimes it doesn't. This is just very simple. He has
19 got the right to go to trial on the charge that we can all
20 agree, twelve people here can all agree he is guilty. Now
21 we know this burglary second degree, it is possible he may
22 have done the more serious charge too. But it is possible
23 maybe he didn't. If that is at all realistically true
24 then he is entitled under your oath to a, not a first
25 degree burglary conviction. That is what we are asking

1 for. The Judge is going, I was going to show you upon my
2 Ipad but, I have got so many apps for three year old and
3 eight year old daughter, it would take me too long to find
4 it. The Judge is going to charge you first degree
5 burglary. The State has to submit all the other elements.
6 The one we are contesting whether the State can prove as a
7 matter of fact and by fact is we know it is true. We are
8 sure of that as anything else we know that we haven't seen
9 ourselves. That is why we are here today. The Judge is
10 going to charge you the law. That is the issue. If it is
11 at all possible he, not armed with a deadly weapon, he is
12 entitled to be convicted of the charge he is guilty of.
13 And that is why we are here and I appreciate you coming.

14 THE COURT: Ms. Boyd, I want to look over my
15 instructions very briefly. My instructions will be about
16 twenty minutes. Step in the jury room for just a minute,
17 I will have you right back out here and I am going to give
18 you my instructions. Don't begin discussing the case yet.

19 (Whereupon, the jury was excused from open court for
20 a break.)

21 THE COURT: Mr. Verner?

22 MR. VERNER: I don't know if the Court has made, if
23 the Court is inclined to use the charges submitted by the
24 State then I don't have to argue that, Your Honor.

25 THE COURT: I want to read you the charge I have in

1 my notebook. Which it says this regarding that issue.
2 Entering the dwelling, while in the dwelling and when
3 fleeing did or accomplish with a deadly weapon or
4 explosive. A deadly weapon is an--

5 MR. VERNER: Your Honor, by the officer's testimony
6 he was somewhere between three or four blocks and I think
7 the officer testified not quite a mile from the location.
8 I think you can properly be characterized as fleeing
9 because the homeowner testified he came home but it is not
10 immediate flight. It is probably, about a mile down the
11 road. And I have got just a quick legal argument, Your
12 Honor.

13 THE COURT: All right.

14 MR. VERNER: Looking at the statute, 16-11-311 which
15 is the burglary first degree statute. One of the prongs
16 is armed with a deadly weapon which I think we can agree
17 is a general term. There is a more specific term when it
18 comes to knives and that is subsection (d), displays what
19 is or appears to be a knife, pistol, revolver, rifle,
20 shotgun, machine gun or other firearm. The rule of law is
21 that more specific sections control or general sections in
22 this case, the actual statute refers specifically denies
23 and says there must be display of what is or what appears
24 to be a knife. I think we could agree that is a more
25 specific statute than just armed with a deadly weapon

1 which is a wide general statement. And on that basis,
2 Your Honor, we would argue that and move for a directed
3 verdict that there has been no evidence of a display of a
4 knife. In fact the only evidence was that an officer,
5 after he was arrested and taken into custody, they
6 retraced their steps back towards the house and they found
7 it along the path. I think he said about 20 yards.

8 THE COURT: I think he said 20 feet.

9 MR. VERNER: But some distance away but basically it
10 was, we were retracing his steps back towards the house
11 along side of the road and that is where we saw it in the
12 grassy margin.

13 THE COURT: I think it is all a factual question. I
14 think the officer said, when he arrived there before he
15 got out of the car where he first saw him, where he talked
16 to him was about 20 feet. He had a conversation and
17 Lieutenant McClurkin took him away and then he went to the
18 initial observation of Mr. Neal and that is where he found
19 the ID and the knife in very close proximity of one
20 another, within 20 feet of the conversation point.

21 MR. VERNER: I don't dispute that. Because the
22 statute, when it comes to knives, says there has to be a
23 display of the knife.

24 THE COURT: I thought it was a display of the weapon.

25 MR. VERNER: It says display of what appears to be a

1 knife, what is or what appears to be a knife. When it
2 comes to just a weapon it just says is armed with a deadly
3 weapon. That I would agree does not require a display.
4 But I think, it can be a fair reading that a more specific
5 section of burglary first, the facts are requires a
6 display of a deadly weapon. And there has been no
7 evidence that anybody saw the knife on him until the
8 officer retraced, however close it was, I don't dispute
9 the Court's characterization. But there is no evidence
10 that anybody ever saw him with a knife, it is a
11 circumstantial, we found a knife where he was.

12 THE COURT: Unless you get caught in the act which is
13 rare most burglaries are something, breaking into a
14 dwelling or a building, taking or requiring or using a
15 weapon of some type. If it is a display it is generally a
16 robbery. Armed robbery versus strong armed robbery. I
17 think it is a factual question, he had a weapon, the
18 weapon was a knife and it is burglary first. And did the
19 State meet the burden of proof, it is a jury question.

20 MR. VERNER: Does the Court charge on the suspicion.
21 I think you do, Judge.

22 THE COURT: I generally do. The verdict is not based
23 on conjecture or speculation.

24 MR. VERNER: I think, mere suspicion that somebody
25 might be, in and of itself is not supported. It is

1 generally called the mere suspicion. That is where we
2 are, Your Honor, thank you.

3 THE COURT: I going to keep the generic charge on a
4 deadly weapon that is in the charge book, I am not going
5 to dress it up. Bring the jury in.

6 (Whereupon, the jury came into open court at
7 approximately 10:43 a.m.)

8 THE COURT: Y'all are like most juries. Y'all pick
9 your seat, I chose Ms. Boyd and everybody else has kind of
10 acclimated to one seat and that is their area and you go
11 back to your seat. It is very amazing, it happens
12 generally every time. I have to read my instructions to
13 you. In some cases they are very specific and so as I
14 read these understand that if I go over something, later
15 on y'all get to deliberations and y'all need further
16 instructions or re-instruction on any court of law I will
17 be more than happy to do that. And that would be one of
18 your duties, Ms. Boyd, is to ask me, Judge, we didn't
19 understand reasonable doubt, we didn't understand the
20 specifics of the burglary statute. And then that will be
21 put in writing and then I will prepare an additional
22 instruction for you in that regard. Ms. Boyd and members
23 of the jury, the State of South Carolina charges the
24 defendant, William Russell Neal, with the crime of
25 burglary in the first degree. You, of course, bear in

1 mind that he has plead not guilty and by that plea he
2 denies the charge alleged in the indictment. Mr. Neal
3 comes into the court clothed with the presumption of
4 innocence and this presumption of innocence continues
5 throughout the case and entitles him to a verdict of not
6 guilty unless and until the State removes and displays by
7 evidence satisfying you, the jury, beyond a reasonable
8 doubt that he is guilty of the offense charged. And the
9 State has proved each and every element of this alleged
10 crime by proof beyond a reasonable doubt.

11 Now, the same constitution and law which makes you,
12 the jury, the finders of the facts in evidence, as I am
13 going to discuss with you, the same law makes me, the
14 Judge, the sole and only instructor of the law in this
15 case. You must accept the law as I am instructing it to
16 you and apply it to the evidence as you find in your
17 deliberations. In finding these decisions on the evidence
18 it will assist you and direct you into the verdict you
19 must reach.

20 Now, if I should make an error as I instruct the law
21 to you there is another time and another place for that
22 error to be corrected. And for purposes of today you must
23 accept the law as I am instructing it to you. If you
24 believe or have another version of what you believe the
25 law is or what the law ought to be you need to disregard

1 reasonable doubt, that belief and accept the law as I am
2 instructing it to you as the law of South Carolina. Now,
3 in a criminal prosecution the burden of proof is upon the
4 State of South Carolina. The defense has no burden
5 whatsoever, the defendant is presumed innocent. In our
6 State and according to our constitution the prosecution
7 must prove their case to the standard of proof called
8 beyond a reasonable doubt before a finding of guilt may
9 occur. If the State fails to meet this burden then the
10 defendant is entitled to a verdict of not guilty.

11 Now, as the sole fact finders you should have
12 listened closely to the evidence presented. Weighing
13 evidence is entirely a mental process. You must weigh the
14 evidence using your good judgment and common sense. Under
15 the constitution and laws of South Carolina and the United
16 States you are the sole fact finders in this case. I am
17 not allowed to suggest in any way what I think the facts
18 ought to be or the facts should be. I am not allowed to
19 suggest that in any manner or, and I am not allowed to
20 tell you what I think about the guilt or innocence of any
21 of the defendants who have appeared in front of me. You
22 are the judges of the credibility and the believability of
23 the witnesses who have testified in this trial. In
24 passing upon the credibility of these witnesses you may
25 take into consideration many things. Some examples of the

1 things that you may take into consideration in judging the
2 credibility are, what was the manner and appearance of the
3 witnesses who testified. Was the witness straightforward
4 or was the witness hesitant in answering. How did the
5 witness come to know the facts to which he or she
6 testified to. What was his or her ability to know these
7 facts. Is there some reason a witness would want to give
8 testimony which would help or hurt one side or the other.
9 Was the witness biased or prejudiced in any way. Was the
10 testimony of one witness strengthened or weakened by
11 testimony or other evidence. You, the jury, may believe
12 as much or as little of each witnesses testimony as you
13 think proper. You can believe the testimony of a single
14 witness against that of many or many against the single.
15 You may believe part of a witnesses testimony and
16 disregard the rest. The fact that testimony was not
17 controverted does not mean that you must accept as true
18 and undisputed. You must still gauge the credibility of
19 the witnesses to determine the believability or the truth
20 of the facts offered through this testimony.

21 Now, normally and as I have explained to you during
22 the trial a person cannot give opinion testimony. However
23 there is an exception to that rule, when a person
24 testifies he must testify to what he either saw, heard or
25 sense by smell or something of that nature. The exception

1 is when someone is qualified because of their education
2 and experience to testify to a particular expertise. They
3 are permitted to give their opinion in these areas if the
4 Court so qualifies them. There was one expert in this
5 case qualified that was a SLED, Leisy, who was qualified
6 as an expert in DNA analysis and identification. Experts
7 are allowed to give opinion testimony in their areas of
8 expertise. This does not mean that you must accept their
9 opinions but it is evidence for you to consider in your
10 deliberations.

11 Now, I instruct you and I emphasize to you that the
12 fact that Mr. Neal did not testify is not a factor to be
13 considered by you in any way in your deliberations. It
14 must not be considered or discussed by you, as the jury,
15 in any manner whatsoever. The defendant has a
16 constitutional right to remain silent. His assertion of
17 this right is not to be considered by you in your
18 deliberations. Under your oath you are not to draw any
19 conclusions whatsoever from the fact that he has decided
20 to not testify. The fact that he did not testify should
21 not even be discussed in the jury room. The burden of
22 proof, as I have told you before, is upon the State. The
23 defendants are not required to prove their innocence. The
24 burden remains upon the State to prove the guilt of the
25 defendant beyond a reasonable doubt by the evidence

1 presented in the trial.

2 Now, in trials there are two types of evidence which
3 are generally presented. There is direct evidence and
4 circumstantial evidence. Direct evidence is the testimony
5 of a person who has or asserts the claim to have actual
6 knowledge of certain facts such as an eyewitness. Now on
7 the other hand, circumstantial evidence is proof of a
8 chain of facts and circumstances indicating the existence
9 of another fact. The law makes no distinction between the
10 weight or value to be given to either direct or
11 circumstantial evidence nor is a greater degree of
12 certainty or degree of proof required of circumstantial
13 evidence than that of direct evidence. You, the jury,
14 should weigh all the evidence you have heard in this case,
15 weigh it fairly and impartially. After weighing all of
16 the evidence, if you are not convinced of the guilt of the
17 defendant beyond a reasonable doubt you must find the
18 defendant not guilty.

19 What is a reasonable doubt. A reasonable doubt is
20 simply this, is the kind of doubt that would cause a
21 reasonable person to hesitate to act. Reasonable doubt
22 may arise from the evidence which is in this case or from
23 the lack or absence of evidence in this case. Proof
24 beyond a reasonable doubt is proof that leaves you firmly
25 convinced of the defendant's guilt. It is a doubt to

1 which one can assign a reason if the assignment can be
2 done reasonably, firmly and convincingly. A reasonable
3 doubt is the kind of doubt that would make a reasonable,
4 conscious and honest and sincere person hesitate to act in
5 a manner important to his own affairs. I charge you that
6 the defendant is entitled to every reasonable doubt which
7 may arise in this case. And what this means is that, if
8 any of you have a doubt about anything during the trial
9 you will be required to resolve that doubt in favor of the
10 defendant. Now, the very fact that a jury engages in a
11 full and free discussion on the issue of guilt or
12 non-guilt does not automatically mean that a reasonable
13 doubt exist in the case. You, the jury, must make the
14 determination a reasonable doubt exist as to the guilt of
15 the defendant. And if you find the State has met the
16 burden of proof beyond a reasonable doubt then the
17 defendant, I am sorry, if you find that the State has not
18 met its burden of proof beyond a reasonable doubt the
19 defendant is entitled to a verdict of not guilty. If you
20 find that the State has met its burden of proof beyond a
21 reasonable doubt you are required to find a verdict of
22 guilty.

23 Now, criminal intent is also a necessary element of
24 each crime that must be proved by the State. Criminal
25 intent is always a matter that must be determined by the

1 jury and the circumstances surrounding the situation.
2 There is no way to prove intent to a mathematical
3 certainty and there is no way medical science can dissect
4 a person's brain and determine what he or she had in mind.
5 So the law states criminal intent may be inferred and the
6 circumstances showing to have existed both before and
7 after the fact. This is how you, the jury, make a
8 determination of whether or not the element of intent was
9 present.

10 Now, the specifics of law in this case regarding
11 burglary in the first degree because the indictment
12 alleged to this indictment, William Russell Neal has been
13 charged with burglary in the first degree under code
14 section 16-11-311. He is charged with first degree
15 burglary. In order to meet a conviction the State must
16 prove beyond a reasonable doubt that he entered a dwelling
17 without consent. A dwelling is any building or portion of
18 a building in which a person ordinarily sleeps. A
19 building constructed as a dwelling that has never been
20 occupied cannot be considered a dwelling for purposes of a
21 burglary. But a building is a dwelling even if the
22 resident was temporally absent from the building. In
23 order to prove the defendant entered the dwelling the
24 State does not have to show that the defendant's entire
25 body entered the dwelling. The smallest entry is

1 sufficient. It may be any part of the body such as a hand
2 or a foot or even an instrument such as a hook or other
3 instrument. The State does not have to prove that force
4 was used to gain entry. A person enters a building, I am
5 sorry, that is not pertinent to this case. The State must
6 then prove beyond a reasonable doubt that the defendant
7 intended to commit a crime, either a felony or a
8 misdemeanor at the time of the entry. The mere entry into
9 a dwelling without consent is not a burglary. If the
10 intent to commit a crime is formed after the entry it is
11 not a burglary. On the other hand, if the defendant
12 intended to commit a crime at the time of entry is a
13 burglary even if the intent was abandoned after the entry.
14 It does not matter that the intended crime was not
15 completed. Intent may be shown by acts and conduct of the
16 defendant and other circumstances for which you may
17 naturally and reasonably infer intent. Finally, the State
18 must prove beyond a reasonable doubt that when entering
19 the dwelling, while in the dwelling or when fleeing that
20 the defendant or an accomplice was armed with a deadly
21 weapon. A deadly weapon is an article or instrument of
22 substance which is likely to cause death or great bodily
23 harm. Whether an instrument has been used as a deadly
24 weapon depends on the facts and circumstances of each
25 case. The following are examples of instruments which may

1 be deadly weapons. They include a pistol, shogun, rifle,
2 dirk, dagger, knife, slingshot, other such instruments.

3 Now, if you find that the State has failed to meet the
4 burden of proof regarding a burglary first you may then
5 consider whether or not the State has proved beyond a
6 reasonable doubt that the defendant committed a second
7 degree burglary. Second degree burglary includes all of
8 the elements of first degree burglary except the
9 circumstance of aggravation. The dwelling, by same
10 definition is that the State must prove beyond a
11 reasonable doubt that the defendant entered a dwelling
12 without consent. A dwelling is a building, portion of a
13 building which a person normally sleeps. A building is a
14 dwelling even if the resident is temporally absent from
15 that building. In order to prove the defendant has
16 entered the State does not have to show again, the same
17 instructions on the burglary first, the State does not
18 have to show that the defendant's entire body entered the
19 building. The smallest entry is sufficient. It may be
20 any part of the body, a hand or a foot or even an
21 instrument. In addition, the State does not have to prove
22 that force was used to gain entry. Next, the State must
23 prove beyond a reasonable doubt that the defendant
24 intended to commit a crime, either a felony or misdemeanor
25 at the time of the entry to be guilty of a burglary. The

1- mere entry into a dwelling without consent is not a
2 burglary. If the intent to commit a crime is formed after
3 the entry it is not a burglary. However, on the other
4 hand, if the defendant intended to commit a crime at the
5 time of the entry it is a burglary even though the intent
6 was abandoned after the entry. It does not matter that
7 the intended crime was not completed. Intent, again, may
8 be shown by the acts and conduct of the defendant and
9 other circumstances from which you may naturally and
10 reasonably infer intent.

11 Now, in summary, in a criminal prosecution, a case
12 such as this, the State has the burden of proof. The
13 defendant has nothing to prove, has no burden to prove
14 anything, as every defendant coming into court is presumed
15 innocent. In our State and according to our constitution
16 the prosecution must prove their case to the standard of
17 proof beyond a reasonable doubt before a finding of guilt
18 may occur. If the State fails to meet this burden then
19 you should find Mr. Neal not guilty. If the State has met
20 its burden of proof then the State is entitled to a guilty
21 verdict. You must, after weighing all of the evidence
22 make the determination of whether or not a reasonable
23 doubt exist as to the guilt of the defendant and the very
24 fact that you engage in full and free discussion on the
25 issue of guilt or non-guilt does not automatically mean

1 that a reasonable doubt exist in this case.

2 Now, I instruct you further that your verdict may not
3 be based upon conjecture or mere speculation. A mere
4 suspicion that someone has committed a crime is not proof,
5 it is not sufficient to support a conviction. However, if
6 you are convinced beyond a reasonable doubt the guilt of
7 Mr. Neal you must find him guilty. However, if you find
8 that the State has not met its burden beyond a reasonable
9 doubt then Mr. Neal is entitled to a verdict of not
10 guilty.

11 Ms. Boyd and members of the jury, as you retire to
12 the jury room I wish to express the hope that each of you
13 will be mindful of your importance in serving as jurors.
14 You are not called very often to serve as jurors. You as
15 a group are active in this community and this State. It
16 has been my responsibility to see to it that this trial
17 has been conducted fairly and impartially. And it is
18 your responsibility to make certain that the verdict you
19 reach is just and it must be unanimous. I am not trying
20 to tell you how to decide the case, I have already told
21 you under the laws I am not allowed to make comments from
22 the facts. You, the jury, are the judges of the facts.
23 It will be improper for me to try to influence you in your
24 responsibility. However, I am vitally convinced that
25 whatever verdict you reach will be the result of you going

1 to the jury room, considering the evidence you have heard,
2 weighing the evidence fairly and impartially and reaching
3 a unanimous verdict. Now, I have prepared, Ms. Boyd, so
4 you can see it, a verdict form. I am going to show it to
5 you. There are two separate, burglary first and burglary
6 second, guilty or not guilty, on one or the other. Then
7 you sign that and initial that. That is an outline how
8 you are to proceed with your deliberations. Now, once you
9 begin your deliberations y'all can proceed in any way you
10 like. You can weigh the evidence any way you like, you
11 can take a break if you would like. If you want to step
12 outside, your restriction is this. You can't discuss the
13 case unless all twelve are in the room. If you need a
14 break, somebody wants to go outside and take a cigarette
15 break, deliberations will seize and when you come back
16 together, make sure all twelve are together. Now, what I
17 have got to do next. I get to ask the lawyers whether my
18 instructions were complete and sufficient regarding the
19 case. I will ask you to step in the jury room. If they
20 were not, the lawyers say, Judge, you forgot such and such
21 then I will call you back in and give you that
22 instruction. However, if my instructions were complete
23 and then we will gather the evidence in which Ms. Holston
24 has, the verdict form and the evidence comes in the jury
25 room that is your key you may start deliberating right

1 then. Now, while you are deliberating and you discuss the
2 testimony, I thought we heard that, I thought we had seen
3 that. If you want to hear testimony replayed write it
4 down and give it to Ms. Wardlaw and she will give it to me
5 and Ms. Holston will cue up and she can go back and
6 retrieve whatever testimony you want to hear. We will
7 bring you back in and let you hear that. If you want
8 instructions or any particular aspect of the law, explain
9 it to us one more time. I will be glad to do that. And
10 on the second instruction I will tell you this. When I
11 bring you back to reinstruct you on a particular law I
12 generally read it to you and give it to you in writing.
13 My law instruction I do not. Questions, comments from the
14 jury, can we hear another witness. No ma'am, you cannot.
15 I get that question a lot. You have got to decide this
16 case based on the evidence that you have heard. You are
17 not allowed to send for other witnesses or ask questions
18 such as that. What you have got is what you have got. I
19 am going to put the alternate in the jury room until y'all
20 get the verdict form. At that time the alternate will be
21 pulled out. So he is with you until then. That being the
22 case, step in the jury room. And write a question down if
23 you have one and I will send the note back with an answer
24 but don't throw it away because I have to keep it as a
25 court record. Step in the jury room and as soon as you

1 get the verdict form you can begin discussing it.

2 (Whereupon, the jury was excused from open court.)

3 MR. VERNER: No objections for the charges, Your
4 Honor.

5 THE COURT: Any objections on the charges from the
6 State?

7 MR. BROWN: No, sir.

8 THE COURT: On the knife, I think we will let Ms.
9 Wardlaw tell the jury they can look at the knife and once
10 they finish looking at it I would rather keep it out here
11 unless they want to examine it further. I just want to
12 keep it in the courtroom under the observation of somebody
13 with a little more responsibility than unsupervised people
14 in the jury room. Do y'all have any objection to that.
15 They can have it, as soon as they are done looking at it
16 then it kept out here. If they want to see it again they
17 can just call for it. I am going to tell the forelady
18 about this. The knife is in the box, y'all keep it back
19 there. But if you don't want it back there then send it
20 back out. If it makes somebody uncomfortable that is up
21 to you. You can keep it as long as you want or as long as
22 you need to. But if somebody says anything about it you
23 can leave it out here and we can bring it back out here in
24 the box. However y'all want to handle that. It shouldn't
25 be a problem.

1 (Whereupon, deliberations started at approximately
2 11:10 a.m.)

3 (Whereupon, the alternate was excused at
4 approximately 11:11 a.m.)

5 THE COURT: We have received a note from the jury.
6 Have y'all read the note?

7 MR. BROWN: Yes, sir.

8 MR. VERNER: Yes, sir.

9 THE COURT: My understanding on the first question.
10 Explain aggravated assault/factor. I think that is the
11 aggravating factor of a burglary first, not an aggravated
12 assault. Now, would y'all rather me write down burglary
13 first is and just put the definition, enter a dwelling
14 without consent, including the aggravating circumstance.

15 MR. VERNER: I would just rather the Judge to give
16 them the actual statute itself.

17 THE COURT: You mean print it off and show it to
18 them?

19 MR. VERNER: I guess for first degree and second
20 degree burglary or certainly at least first degree
21 burglary. And that the State has to prove all of these.
22 I would just print it out.

23 THE COURT: I am going to try to write it out.

24 (Whereupon, a short break was taken.)

25 THE COURT: Y'all look at this. That is I think what

1 you were talking about and we can type that up, it won't
2 take any time to do that. If you want me to explain to
3 them and say, one of the other elements is like at
4 nighttime and this clearly was daytime and that is why
5 that wasn't presented to you.

6 MR. VERNER: I am happy with that. You didn't do the
7 common sense portion of it.

8 THE COURT: Not yet.

9 MR. SCOTT: You are going to bring them back out here
10 or are you going to go in there and explain it to them.

11 THE COURT: I just send the note back in with them
12 unless y'all want me to explain it further to them.

13 MR. SCOTT: That is fine.

14 THE COURT: I am going to bring them out and explain
15 this to them, read this to them and then let her have it.

16 MR. BROWN: Are you going to have words in them--

17 MR. VERNER: That is not an element, that is case law
18 that is expounding, that is not the statute that Mr. Brown
19 is talking about. Doesn't that mean display.

20 MR. BROWN: Armed with a deadly weapon comes in--

21 MR. VERNER: That doesn't include your flight, the
22 immediate flight is not in there.

23 MR. BROWN: Or an immediate flight. Look at the
24 highlighted portion of it.

25 THE COURT: Print this up for me. I want that, that

1 is what you were suggesting anyway is that.

2 (Whereupon, a short break was taken.)

3 THE COURT: All right, bring them in.

4 (Whereupon, the jury came into open court at
5 approximately 12:13 p.m.)

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

8 THE COURT: All right, in response to your question.

9 In response to y'all's questions. My instructions
10 regarding common sense and good judgment. Y'all are to
11 consider the facts and weigh any evidence using your good
12 judgment and common sense and consider the applicable
13 statutory which is code section of burglary first. I am
14 going to give it to you. Now, what is told to you, I had
15 one juror tell me one time, Judge, when you give us
16 instructions it is like taking a drink of water through a
17 firehose. I threw a lot at you, I know, I have been doing
18 this for 20 years. Burglary first, under our statute is,
19 as we call them elements. Entering a dwelling without
20 consent, did commit a crime therein. That is burglary
21 first and it has got to include one of several aggravating
22 factors. One of which is whether or not someone is armed
23 with a deadly weapon, whether it was at nighttime is
24 another one, whether he has got prior convictions is
25 another one. They are listed. So the appropriate one for

1 y'all to consider on this one is, whether the person
2 displays what is or appears to be a knife, pistol,
3 revolver, firearm. Okay. That is where it is, right
4 here. Now, burglary second is, without aggravating
5 factors. Entering a dwelling without consent, did a crime
6 therein, no aggravating factors. That is the simplicity
7 of that. Does that answer your questions. Y'all go back
8 to your jury room, I am going to let y'all have this. I
9 have got your question right here, I am going to keep it.
10 I will let you have and if you have another question write
11 it down. I have attempted to answer your question. All
12 right.

13 (Whereupon, the jury continued deliberations at
14 approximately 12:15 p.m.)

15 (Whereupon, Court's Exhibit 2 was marked for
16 identification only.)

17 THE COURT: The jury has reached a verdict. Bring
18 then in.

19 (Whereupon, the jury came into open court with the
20 verdict at approximately 12:35 p.m.)

21 THE COURT: Ms. Forelady, have y'all reached a
22 verdict?

23 MADAM FORELADY: Yes.

24 THE COURT: Was your verdict unanimous?

25 MADAM FORELADY: Yes.

1 THE COURT: All right. Let me have it. All right.

2 CLERK OF COURT: The State of South Carolina versus
3 William Russell Neal. As to the charge of burglary in the
4 first degree. We, the jury, find the defendant, William
5 Russell Neal, not guilty.

6 As to the lessor charge of burglary in the second
7 degree, we, the jury, find the defendant, William Russell
8 Neal, guilty.

9 I certify this as a decision and a unanimous decision
10 of the jury. Signed Beverly Boyd.

11 Ladies and gentlemen of the jury, if this is your
12 verdict please indicate by raising your right hand.

13 (Whereupon, all jurors raised their hand.)

14 THE COURT: Any matters for the jury, Mr. Verner?

15 MR. VERNER: No, Your Honor.

16 THE COURT: Mr. Brown?

17 MR. BROWN: No, sir.

18 THE COURT: All right. Y'all step out to your jury
19 room for a minute and I will come and talk to y'all.

20 (Whereupon, the jury was excused from open court at
21 approximately 12:37 p.m.)

22 THE COURT: Are we ready to go forward with
23 sentencing.

24 MR. BROWN: Yes, Your Honor.

25 THE COURT: The juror as I talked to them, the

1 biggest concern was sausage biscuits. All right, Mr.
2 Brown.

3 MR. BROWN: Yes, Your Honor. The State is here for
4 the sentencing portion of this trial. Obviously, we were
5 disappointed that we did not get burglary first. But in
6 this case Mr. Neal, just for your information, Mr. Neal's
7 prior history. He does have several burglaries. Burglary
8 first in Spartanburg County in '88 where he did receive a
9 life sentence on and he was out on parole when he did this
10 burglary. Just wanted you to be aware of that. He has
11 burglary firsts and burglary seconds and also armed
12 robberies.

13 THE COURT: And we discussed at pretrial the plea in
14 early '98, February of '98, Mr. Verner, is that right?

15 MR. VERNER: '88, Your Honor. He did a life sentence
16 beginning in 1988 where he did 24 years in prison. He is
17 on parole for that sentence. So this plea will revoke his
18 parole and he will go back in and be revoked on his life
19 sentence.

20 THE COURT: You did make a record of all of the
21 convictions. In '97 there were some events, in the Spring
22 of '97, in the summer of '97 and perhaps the fall of '97
23 involving burglaries and armed robberies.

24 MR. VERNER: '87.

25 THE COURT: '87, I am sorry, '87.

1 MR. VERNER: Yes, sir.

2 THE COURT: With one singular plea to the cumulative
3 number of convictions in '88.

4 MR. VERNER: All the trouble he got in was in a three
5 month period in '87, '88, '87. He plead guilty and got a
6 life sentence and did 24 years before he got out. This
7 will revoke his life sentence and send him back to serve
8 that life sentence, Your Honor, regardless of what the
9 Court does today. Did the statute change before or after
10 he was charged. It was before this.

11 THE COURT: All right, now, understanding that the
12 burglary second is under the non-violent provision because
13 it is in a dwelling during the daytime rather than a
14 building at night, is the violent portion, is that
15 correct?

16 MR. BROWN: Or with those aggravating factors.

17 THE COURT: Is that your understanding, Mr. Verner?

18 MR. VERNER: It is, Your Honor. Your Honor, he has
19 been in jail consistently since August 18th of 2011. The
20 only trouble he got into in his life was a lot of it 24
21 years ago, unfortunately did this after getting out and he
22 will get a life sentence imposed on him regardless of what
23 the Court does today. So he is going to have a prison
24 time.

25 THE COURT: This conviction would be a violation of

1 his parole from the life sentence?

2 MR. VERNER: Yes, sir. I don't think there is any
3 question.

4 THE COURT: And the sentence on this, I am going to
5 give him 10 years. Prepare a sentence sheet for me.

6 MR. BROWN: Yes, sir.

7 THE COURT: Isn't 10 years the max?

8 MR. BROWN: Yes, sir.

9 THE COURT: Good luck to you.

10 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

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CERTIFICATE OF REPORTER

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State of South Carolina)
)
County of Newberry)

I, Joy E. Holston, 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 the proceedings had and
evidence introduced in the trial of the captioned case,
relative to appeal, in the County of Newberry, South
Carolina on the 4th day of February, 2013.

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

September 30, 2013



Joy E. Holston, Court Reporter

My Commission expires: March 13, 2016

✓

WITNESSES

Roy McClurkin
Newberry Police Department

THE STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

COURT OF GENERAL SESSIONS

October Term, 2011

Indictment # 11GS36-0733

WARRANT NUMBER

M795306

TRUE BILL

Cindy A. O'Neil

Foreman of the Grand Jury

Date: *10/28/2011*

THE STATE

vs.

William Russell Neal

VERDICT

Guilty: Burg: 2nd

UBeverly Boyd 2-6-13
Foreman

INDICTMENT FOR

BURGLARY
16-11-0311

THE STATE OF SOUTH CAROLINA

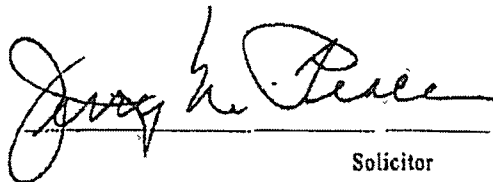
COUNTY OF NEWBERRY

INDICTMENT FOR**BURGLARY
16-11-0311**

At a Court of General Sessions, convened on the 28th day of October, 2011 the Grand Jurors of Newberry County present upon their oath.

That William Russell Neal, did in Newberry County, state aforesaid, on or about the 18th day of August, 2011 willfully and unlawfully enter a dwelling without consent and with intent to commit a crime therein, when in effecting entry or while in the dwelling or in immediate flight there from, he or another participant in the crime: was armed with a deadly weapon or explosive, or caused physical injury to a person who was not a participant in the crime; or used or threatened the use of a dangerous instrument, or displayed what was or appeared to be a knife, pistol, revolver, rifle, shotgun, machine gun or other firearm, the said dwelling being owned and/or occupied by David Gillion, in violation of Section 16-11-311 of the South Carolina Code of Laws, 1976, as amended

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


Solicitor

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

December 18, 2013



Robert M. Pachak
Appellate Defender

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

ATTORNEY FOR APPELLANT

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December 18, 2013

A handwritten signature in black ink, reading "Robert M. Pachak", is written over a horizontal line.

Robert M. Pachak
Appellate Defender

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

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

ORIGINAL

IN THE COURT OF APPEALS

Appeal from Newberry County

Eugene C. Griffith, Jr., Circuit Court Judge

RECEIVED
DEC 18 2013
SC Court of Appeals

THE STATE,

RESPONDENT,

V.

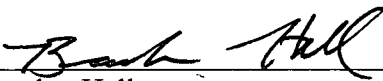
WILLIAM RUSSELL NEAL,

APPELLANT

APPELLATE CASE NO. 2013-000465

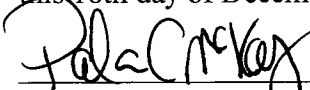
CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 18th day of December, 2013.



Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 18th day of December, 2013.

 (L.S.)

Notary Public for South Carolina
My Commission Expires: July 24, 2022.