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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Oconee County
Honorable R. Scott Sprouse, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

WILLIAM DAVID GUNN,

APPELLANT

APPELLATE CASE NO. 2024-001358

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[THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

**COURT'S EXHIBIT 1 (SOLICITOR BLUNDY'S TRIAL NOTES), COURT'S EXHIBIT
2 (JUDGE SPROUSE'S TRIAL NOTES), COURT'S EXHIBIT 3 (LAW CLERK'S TRIAL
NOTES)]**

STATE OF SOUTH CAROLINA)
)
 Plaintiff,)
)
 versus)
)
 WILLIAM D. GUNN,)
)
 Defendant.)

PRESENT: WILLIAM D. GUNN
DATE: April 15-16 and July 22, 2024
LOCATION: South Carolina Circuit Court 10
TRANSCRIBED BY: Jeanne Meldrim

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Witness	Direct	Cross	Redirect	Re-cross	Further
Burton	55				
Shaw	58	81	87		
Shedd	88	94	98		
Pitts	99	103			
Entsminger	106	113	121	125	
Alexander	136	145	154		

EXHIBITS
COURT'S EXHIBITS

Number	Description	Marked	Entered
1	Document	40	
3&4	Documents	214	

STATE'S EXHIBITS

Number	Description	Marked	Entered
3	Document	57	57
4	Document	57	57
5	Video	65	65
6&7	Photos	66	66
8-13	Photos	69	69
14-16	Photos	71	71
17&18	Photos	74	74
19	Photo	93	93
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(THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL
IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

1 PROCEEDINGS BEGIN APRIL 15, 2024 9:59 A.M.)

2 THE COURT: Good morning, ladies and gentlemen. I'm
3 Judge Sprouse. I am happy to be with you this week for a
4 term of Circuit Court. This is a term of general
5 sessions court. General sessions means that if you are
6 called to serve as a juror, you will sit in a case
7 involving criminal charges. This is a one-week term of
8 court. You are subject to being called as a juror any
9 time during this week.

10 First order of business is to confirm that
11 everyone's in the right place. If you are supposed to be
12 in Magistrates Court or Federal Court, you're in the
13 wrong courthouse. Is there anyone who thinks they may
14 have come to the wrong place? Very good.

15 Ladies and gentlemen, like I said, this is a
16 one-week term of court. We understand the inconvenience
17 this poses to you for taking off your job and your daily
18 lives and this is inconvenient. However, this is very
19 important. Our system cannot function without our
20 citizens serving as jurors. We can't get cases through
21 court without it. This is a very, very vital service to
22 our judicial system. We appreciate your attendance. We
23 will do our best to minimize your inconvenience.
24 Hopefully this will be an educational and enjoyable week
25 for you.

25 And finally, if your spouse is retired or disabled,

1 state their former occupation or nature of business.

2 So Madam Clerk, please proceed.

3 CLERK: Number one Jennifer Adams.

4 JUROR: I am a contract manager for
5 (unintelligible).

6 CLERK: Are you married?

7 JUROR: Yes, I am.

8 CLERK: And what does your husband do?

9 JUROR: My husband's retired from Duke Energy.

10 CLERK: Thank you. 12, Victoria Boyles.

11 JUROR: Retired from (unintelligible) and he's
12 retired (unintelligible).

13 CLERK: Thank you. 13 Levon Gramlet.

14 JUROR: My occupation is (unintelligible) married,
15 and my wife is Ann Gramlet (phonetic). She is a teacher's
16 aide at Jason and Brown (unintelligible).

17 CLERK: 17, April Bruce.

18 JUROR: (Unintelligible).

19 CLERK: Thank you. 18, Joseph Brockton.

20 JUROR: (Unintelligible) maintenance for Ace
21 Hardwares. Married (unintelligible) Upstate Medical
22 Associates.

23 CLERK: Thank you. 19, James Burkett.

24 JUROR: Millwright and I am single.

25 CLERK: 20, Teresa Burton.

1 JUROR: I am currently a stay-at-home wife. I used to
2 work in real estate. My husband is (unintelligible)
3 works at (unintelligible).

4 CLERK: Thank you. 30. Barry Conway.

5 JUROR: Real estate (unintelligible).

6 CLERK: Thank you. 32 Taylor Crawford.

7 JUROR: I'm a registered nurse (unintelligible)
8 memorial and I'm single.

9 CLERK: 33, Kevin Crooks.

10 JUROR: I work as a rancher. My wife works at
11 DOT, she's a benefits administration specialist.

12 CLERK: Thank you. 38, Amber Dietz.

13 JUROR: (Unintelligible) data analyst at Blue Cross Blue
14 Shield of South Carolina.

15 CLERK: 40. Mary Deal.

16 JUROR: I am retired (unintelligible) and my husband
17 is a pastor.

18 CLERK: Thank you. 43, Sandy Eades.

19 JUROR: I'm a daily associate for, Engels (phonetic)
20 Condo Association and a general foreman for
21 (unintelligible).

22 CLERK: Thank you. 51, Tina Frisbee.

23 JUROR: Estimator. Married. My husband is a
24 custom home builder.

25 CLERK: Thank you. 59, Amanda Graves.

1 JUROR: (Unintelligible).

2 CLERK: Thank you. 60, Elaine Grimm.

3 JUROR: I am retired from the post office and my
4 husband is retired from Duke Energy.

5 CLERK: 62. Viola Haygood.

6 JUROR: Work at (unintelligible) Seneca. (Unintelligible)
7 husband is a project manager.

8 CLERK: Thank you. 70, Michael Hillman.

9 JUROR: Nuclear (Unintelligible) security for Duke
10 Energy.

11 THE CLERK: 71, Dan Henry.

12 JUROR: (Unintelligible) agility foreman. Wife is a stay
13 at home mom now.

14 THE CLERK: 74 William Holiday.

15 JUROR: I work for a company called Webber
16 (unintelligible).

17 CLERK: 77, Sisely Hunter.

18 JUROR: I work for Prisma Oconee, single, and
19 (unintelligible).

20 CLERK: 78, Daryl Hunter.

21 JUROR: (Unintelligible).

22 CLERK: 84, Morgan Jenkins.

23 JUROR: (Unintelligible).

24 CLERK: 85, Todd Johnson.

25 JUROR: I work for (unintelligible) as a locator

1 (unintelligible) married. My wife's Michelle Johnson. She
2 was a nurse at up in Nashville at Nashville VA. She
3 stays up there during the week, so I'm a kind of a single
4 parent.

5 CLERK: All right. Thank you. 86. Dean Justy.

6 JUROR: Out see. I'm retired disabled former
7 (unintelligible) technician. My wife is a teacher's aide
8 for Oconee County schools.

9 CLERK: Thank you. 89 Ashley Keith.

10 JUROR: I'm a CNA for CenterWell Home Health. My
11 husband is (unintelligible).

12 CLERK: Thank you. 98. Vickie Lay.

13 JUROR: I work at (unintelligible) international
14 coordinator and widowed.

15 CLERK: 101. Erin Lee.

16 JUROR: (Unintelligible) service manager with
17 Johnson & Johnson (unintelligible). Married but legally
18 separated. He works at the University of South Carolina.

19 CLERK: 103, Richard Lebic.

20 JUROR: I work at Green Field Industries engineering
21 and maintenance manager and customer service.

22 CLERK: 104, Barry Lester.

23 JUROR: Project manager stage floors and disabled I'm
24 single.

25 CLERK: 105, John List.

1 JUROR: Best serves as an accounting supervisor. My
2 wife is Marjorie List, retired postal worker.

3 CLERK: 107, Hannah Martin.

4 JUROR: Teacher. Upstate Children's Center and I'm
5 single.

6 CLERK: 111, Denise McDonald.

7 JUROR: Retired (unintelligible) technician
8 (unintelligible) husband works for (unintelligible).

9 CLERK: Thank you. 113, Rebecca Medlin.

10 JUROR: Retail store manager for Dollar General
11 Corporation. My husband owns a building and roofing company.

12 CLERK: Thank you. 117, Sherry Mullinax.

13 JUROR: Billing specialist for (unintelligible) and
14 my husband is a military (unintelligible).

15 CLERK: 119, Judy Merry.

16 JUROR: I'm an (unintelligible) and I am not
17 married.

18 CLERK: 120, Dawn Messler.

19 JUROR: I'm a social worker at Carolina Counseling
20 Center in Seneca. And my husband is a retired
21 schoolteacher.

22 CLERK: 123, Ciera Nicholson.

23 JUROR: I'm a preschool teacher Ocone Baptist Preschool
24 and I'm single.

25 CLERK: 126 Alissa Odell.

1 JUROR: I work at Walmart and I'm single.

2 CLERK: 132, Mark Pressley.

3 JUROR: Independent contractor. Seven employees,
4 single.

5 CLERK: 136, Steven Roberts.

6 JUROR: (Unintelligible) my wife's a nurse
7 (unintelligible).

8 CLERK: 141, John Sandifer.

9 JUROR: I'm self-employed I have a sign business
10 business and my wife's a cosmetologist.

11 CLERK: 145 Mark Scott.

12 JUROR: A biologist with South Carolina Department
13 of Natural Resources. My wife is a part-time hygienist
14 with Healey Family Dentist.

15 CLERK: 147, Michael Sissonball.

16 JUROR: I work at Walmart and I'm not
17 married.

18 CLERK: 149, Jody Shell.

19 JUROR: (Unintelligible).

20 CLERK: 151, Texas Skelton.

21 JUROR: (Unintelligible) Corporation. My wife is a
22 insurance agent.

23 CLERK: Okay. Thank you. 152, Colin Smith.

24 JUROR: I'm self-employed. I work at CS Structures
25 and I'm single.

1 CLERK: Thank you. 157, Reid Spalding.

2 JUROR: Self-employed for (unintelligible) Manufacturing
3 Company. My wife is also self-employed as a transcriptionist
4 for the (unintelligible).

5 CLERK: Thank you. 161 Alexander Stellen.

6 JUROR: Maintenance technician for (unintelligible).

7 CLERK: Thank you. 165, Derrick Stroble.

8 JUROR: Teacher and coach for Hudson High School.

9 CLERK: Thank you. 166, Jeffery Tailor.

10 JUROR: I'm a semi-retired journalist. My wife
11 works at Clemson University teaching (unintelligible)
12 science.

13 CLERK: 168, Julianne Tomason.

14 JUROR: (Unintelligible).

15 CLERK: 177, Joe White.

16 JUROR: I'm retired (unintelligible) self-employed
17 (unintelligible).

18 CLERK: 180, Amanda Wilson.

19 JUROR: I'm self-employed (unintelligible) my
20 husband is an operations manager.

21 CLERK: 181, Robert Wilson.

22 JUROR: Operations manager at Superior AB. And my
23 wife (unintelligible).

24 CLERK: Thank you. 183, Raymond Whit.

25 JUROR: Retired for over six years (unintelligible)

1 and I'm single.

2 CLERK: Is there anyone's name I did not call?

3 THE COURT: Thank you, Madam Clerk.

4 Ladies and gentlemen, I now have certain questions
5 that I need to ask you. These questions determine your
6 qualifications and eligibility to serve as jurors. State
7 law requires that I ask you these questions. If any
8 juror needs to stand to respond to a particular question,
9 please give your juror number and your name. It is
10 absolutely essential that we have accurate information.

11 Now, some of these questions are very personal. If
12 you do not wish to stand and give a public response in
13 the presence of your fellow jurors, I will give you the
14 opportunity to come forward at the end and speak to me in
15 private. Just be sure to remember to come forward at the
16 end if a question requiring an affirmative response from
17 you is asked. Please listen very carefully to these
18 questions.

19 Is any member of the jury panel not a citizen of the
20 United States of America? If so, please stand. There
21 are none.

22 Is any member of the jury panel not a resident of
23 Oconee County, South Carolina? If so, please stand.
24 There are none.

25 Is any member of the jury panel unable to read,

1 write, speak, or understand the English language? If so,
2 please stand. There are none.

3 Does any member of the jury panel have less than a
4 6th grade education or its equivalent? If so, please
5 stand. There are none.

6 Is there any member of the jury panel unable to
7 serve because of physical or mental infirmities, and has
8 a statement from your doctor attesting to such to render
9 efficient jury service? If so, please stand. There are
10 none.

11 Has any member of the jury panel been convicted by
12 guilty plea or trial in a State or Federal Court of
13 record of a crime punishable by imprisonment for more
14 than one year and your civil rights have not been
15 restored by pardon or amnesty? Punishable by more than
16 one year means that you could have received a sentence of
17 more than one year regardless of what sentence you may
18 have actually received. If this applies to any of you,
19 please stand.

20 JUROR: What is the question again?

21 THE COURT: Has any member of the jury panel been
22 convicted by guilty plea or trial of a criminal offense
23 punishable by more than one year? That's --- that's the
24 question. Okay. If that applies to any of you, please
25 stand.

1 JUROR: I don't know if it applies to me.

2 THE COURT: All right. Well --- well come forward. Let me
3 --- let me speak to you.

4 (Bench conference)

5 THE COURT: Number 19 is disqualified.

6 JUROR: Thank you, sir.

7 THE COURT: Thank you. All right. Anyone else? We
8 have another one.

9 (Bench conference)

10 THE COURT: Thank you, sir. While I'm down here,
11 anyone else? Okay. All right.

12 Is any member of the jury pool, a clerk, or deputy
13 clerk of court, constable, sheriff, commissioned law
14 enforcement officer, probate judge, county commissioner,
15 magistrate, county officer, or employed within the walls
16 of any courthouse? If any of those categories applies to
17 you, please stand. There are none.

18 Is there any member of the jury panel who has served
19 on jury duty in Circuit Court during 2024 or served on a
20 grand jury during 2024? If so, please stand. There are
21 none.

22 That concludes our qualification questions. We now
23 move to jury exemptions. State law provides for several
24 exemptions from jury service. An exemption does not mean
25

1 that you are not qualified to serve. It simply means
2 that you have the right to say I choose not to serve.

3 Those of you who are 65 years of age or older may be
4 exempted from service. Those who are 65 or older
5 represent a pool of tremendous talent for jury service
6 and we would urge you to serve if are so inclined, but if
7 you wish to be exempt, you may certainly do so.

8 So is there any member of the jury pool that is
9 65 years of age or older and wishes to be excused this
10 week, please stand. Okay. There are none.

11 Another exemption concerns prior jury service. No
12 person is required to serve as a juror more often than
13 once every three calendar years. Therefore, if any
14 member of the jury panel has served on jury duty during
15 the last three calendar years, you may be exempt this
16 week if you choose to do so. If this applies to any of
17 you, please stand. There are none.

18 Persons who have served as grand jurors during the
19 last five calendar years may be exempt. If this applies
20 to any of you, please stand. There are none.

21 Next exemption deals with those of you who have
22 small children. Please listen very carefully to this
23 exemption. It has several parts all of which must apply
24 for you to be exempted on this basis. You may exempted
25 from jury service if one, you have a small child or

1 children under the age of seven years. Two, you have
2 legal custody of your child or children. Three, you have
3 the principal care, custody, and control of your child or
4 children. And four, you are unable to make arrangements
5 for the adequate care of your child or children while
6 performing jury duty. If all of these requirements apply
7 to you, and you wish to be exempted, please stand. There
8 are none.

9 The next exemption involves those are you who may be
10 attending school at this time or working in some capacity
11 with the school. If this exemption applies to you and
12 you wish to be exempted, we will transfer your service to
13 a time that does not conflict with your school
14 responsibilities.

15 Ladies and gentlemen, if you come up here in July
16 and the beginning of August, or late June, our pool is
17 filled college students and schoolteachers. So if --- if
18 one of these categories applies to you and you need to be
19 exempted, just stand.

20 So listen very carefully to these categories. Is
21 there any member are the jury panel who is a full-time
22 student, schoolteacher, certified personnel, school
23 crossing guard, school bus driver, or who serves in any
24 public or private school-related function, including
25 technical colleges, who is unable to serve on jury duty

1 this week as a result of that school involvement? If so,
2 please stand. Okay. There are none.

3 Is there any member of the jury panel who is
4 employed with the Department of Corrections at a
5 penitentiary and wishes to be exempt, please stand.
6 There are none.

7 Is there any juror who performs services for a
8 business, a commercial, or agricultural enterprise which
9 are so essential to the operation of the enterprise that
10 if you were required to perform jury duty the enterprise
11 would have to close or stop functioning. If so, and you
12 wish to be exempted, please stand. There are none.

13 Finally, is there any juror who is the primary
14 caretaker of a severely disabled person or a person age
15 65 or older who is unable to care for himself and cannot
16 be left unattended? If so and you wish to be exempted,
17 please stand. There are none.

18 Ladies and gentlemen, that concludes the statutory
19 list of qualifications and exemptions from jury service.
20 It may be that you are qualified and no exemption applies
21 to you, but jury service this week would constitute an
22 extreme hardship on you for a particular reason. I
23 cannot permanently excuse a qualified juror from jury
24 service, but I can under extreme and compelling
25 circumstances transfer a juror to another term of court,

1 particularly jurors who have not been previously
2 transferred.

3 Please understand that general inconvenience is not
4 sufficient reason to transfer you to another term of
5 court. To justify transfer to another term of court,
6 service this week must constitute an extreme hardship on
7 you. So any of you wishing to be transferred may come
8 forward.

9 Also anyone who needed to tell me an affirmative
10 response from one of my previous questions but wanted to
11 speak to me in private may come forward at this time.
12 Okay.

13 (Bench conference)

14 THE COURT: Okay. Anyone else, speak now or forever
15 hold your peace. All right. Okay. All right. After
16 conducting the statutory questioning, I find this jury
17 pool qualified for service this 15th day of April 2024,
18 for General Sessions Court here in Oconee County.

19 So ladies and gentlemen, before we draw our first
20 jury, we're going to take a short break. You can stretch
21 your legs. Do not leave this floor, but you can go out
22 in --- in --- in the lobby and we'll --- we'll take about
23 a ten-minute break and then we'll be ready to draw the
24 first jury.

25 Let me see the attorneys on --- on the first case.

1 (Whereupon a brief recess was taken)

2 THE COURT: Okay. All right. Call the first case.

3 MS. BLUNDY: Good morning, Your Honor. May it

4 please the Court. We're here on indictments

5 2023-GS-37-1124, burglary in the first degree. The

6 defendant is William David Gunn.

7 We're also here on 2023-GS-37-1125, malicious injury

8 to real property. The defendant is William David Gunn.

9 We're here on 2023-GS-37-1126. Resisting arrest.

10 The defendant is William David Gunn.

11 We're here on 2023-GS-37-1127, possession of tools

12 used in the commission of a crime. The defendant is

13 William David Gunn.

14 THE COURT: Okay. All right. As you heard, ladies

15 and gentlemen, this is the case the State versus William

16 David Gunn. He is charged with burglary first degree,

17 malicious injury to real property, resisting arrest, and

18 position of tools used in the commission of a crime.

19 Ladies and gentlemen, these are indictments. And

20 let me remind you indictments are simply the charges by

21 which the case is brought to court. They are not in any

22 sense evidence of the allegations that they contain ---

23 that they contain.

24 The defendant has entered a plea of not guilty to

25 these charges. The State therefore has the burden of

1 proving the guilt of the defendant beyond a reasonable
2 doubt. It will be your duty ladies and gentlemen, if
3 you're called to serve on this jury to determine if the
4 State has met its burden of proof.

5 Now, ladies and gentlemen, I know that I asked you a
6 bunch of questions a while ago to determine your
7 qualifications and eligibility to serve as jurors. I'm
8 getting ready to ask you some more questions. And these
9 are not to pry into your private lives, but to ensure
10 that both the State and the defendant receive a fair and
11 impartial jury to hear the facts in this case.

12 And let me remind you that you are still under oath.
13 So it is absolutely essential that we have accurate
14 answers to the questions.

15 First order of business, let me have each attorney
16 introduce themselves and any persons that will be seated
17 with them at the table during the trial of this case.

18 MS. BLUNDY: Good morning, everybody. My name is
19 Beth Blundy and I work for your elected solicitor, David
20 Wagner. I represent the State of South Carolina. And
21 seated next to me is Officer Entsminger from the Oconee
22 County Sheriff's Office.

23 MS. WYSE: Good morning everyone. My name is
24 Catherine Wyse. I am here to represent Mr. William David
25 Gunn. Seated next to me on my left is Ms. Angelica

1 Constranada. She is my assistant.

2 THE COURT: Is any member of the jury pool related
3 by blood or marriage or has a close personal relationship
4 with of the attorneys in the case? If so, please stand.

5 Has any member of the jury pool ever been
6 represented by one of these attorneys or had one of these
7 attorneys represent someone against you in court? If so,
8 please stand.

9 Is any member of the jury pool related by blood or
10 marriage to the defendant in the case or has a close
11 personal relation with his family? If so, please stand.

12 Now, ladies and gentlemen, I'm going to read to you
13 the list of potential witnesses that has been submitted.
14 Listen very carefully to these names. Deputy Joshua
15 Entsminger, Oconee County Sheriff's Office; David Carr,
16 Oconee County Sheriff's Office, Sergeant Aaron Alexander,
17 Oconee County Sheriff's Office; Deputy Brody Pitts,
18 Oconee County Sheriff's Office; Officer Michael Shedd,
19 Walhalla Police Department; Toby Honey of Brice and Shaw;
20 Kristy Shaw; Melissa Ann Richmond; Lisa Burton; David
21 Philpott, Oconee County Sheriff's Office.

22 Is any member of the jury pool related by blood or
23 marriage or a close personal relation to any of those
24 potential witnesses? If so, please stand. Okay. There
25 are none. Are there any further witnesses to --- by the

1 State?

2 MS. BLUNDY: No, Your Honor.

3 THE COURT: Any further witnesses by the defense?

4 MS. WYSE: No, Your Honor.

5 THE COURT: All right. Now, ladies and gentlemen,
6 is any member of the jury pool a member of any victim's
7 advocacy groups, like MADD, SADD, or CAVE? There are
8 none.

9 Is any member of the jury pool a member of a law
10 enforcement advocacy group or made monetary donation to
11 such group? If so, please stand.

12 Yes, sir. What's your number?

13 JUROR: 74.

14 THE COURT: Okay. Mr. Holiday, which group did you
15 donate to?

16 JUROR: Fraternal Order of Police South Carolina.

17 THE COURT: And with that knowledge, do you believe
18 you could be fair and impartial if called to serve?

19 JUROR: Yes, sir.

20 THE COURT: Thank you, sir. You can be seated.

21 All right. Any --- anyone else? Okay.

22 Is there any member of the jury pool that believes
23 that the testimony of the law enforcement officers should
24 be believed over the testimony of another person simply
25 because the witness was a law enforcement officer? If

1 so, please stand. Okay. There are none.

2 Has anyone in the jury pool been the victim of a
3 theft or burglary? If so, please stand. Okay. There
4 are none.

5 Now, Ladies and gentlemen of the jury, this case is
6 alleged to have happened on April 18, 2023, in Oconee
7 County. Does any member of the jury pool have any prior
8 knowledge about the facts of this case from any source?
9 If so, please stand. Okay. There are none.

10 Does any member the jury pool know of any other
11 reason why he or she could not be fair and impartial if
12 called to serve as a juror in this case? If so, please
13 stand. There are none. Oh --- yes, sir.

14 JUROR: I did have a theft ---

15 THE COURT: Okay. Well, hold on. Let me come
16 forward.

17 (Judge conferring with jurors)

18 THE COURT: All right. Anyone else? Any other
19 reasons why that you feel like you couldn't be fair and
20 impartial? Thank you.

21 All right. Okay. Any further submissions from the
22 State?

23 MS. BLUNDY: No, Your Honor.

24 THE COURT: Any further submissions from the
25 defense?

1 MS. WYSE: No, Your Honor.

2 THE COURT: All right. Ladies and gentlemen, we are
3 ready to select a jury. Catherine show them --- show
4 them the hopper. Used to be --- and I'm going to
5 show --- have her show you this. When I --- when I was
6 my law clerk's age, I had to try my first case next door
7 in that old courthouse that's now falling down. We had
8 this hopper and they -- they -- the clerk drew the names out
9 of --- out of that. And she --- they turn it and they
10 had little --- little numbers inside it. Now --- now the
11 computer does all that for me. I've had --- I've had
12 them keep this thing so people like to see it. And our
13 system's great today, but until the computer goes down,
14 and I've had that happen to me a couple of times. But
15 fortunately, that's not often. So it'll be just a
16 minute.

17 CLERK: Ladies and gentlemen, as I call your name,
18 if you would please come forward. You will bring your
19 personal belongings. You'll come through the gate, step
20 to the bar, turn, and face the gallery.

21 Juror number 38. Amber Dietz.

22 What says the State?

23 MS. BLUNDY: Please seat Ms. Dietz.

24 CLERK: What says the defense?

25 MS. WYSE: Please present Ms. Dietz.

1 CLERK: Ma'am, if you would, please take a seat in
2 the jury box.

3 Number 98, Vickie Lay.

4 What says the State?

5 MS. BLUNDY: Please seat Ms. Lay.

6 CLERK: What says the defense?

7 MS. WYSE: Please present Ms. Lay.

8 CLERK: Ma'am, if you would please take a seat in
9 the jury box.

10 Number 120, Dawn Messler.

11 What says the State?

12 MS. BLUNDY: Please excuse Ms. Messler from this
13 case.

14 CLERK: Ma'am, you have been excused from this case.
15 You may be seated.

16 Number 84, Morgan Jenkins.

17 What says the State?

18 MS. BLUNDY: Please seat Ms. Jenkins.

19 CLERK: What says the defense?

20 MS. WYSE: Please present Ms. Jenkins.

21 CLERK: Ma'am, if you would, please take a seat in
22 the jury box.

23 Number 84 --- that's was her. I'm so sorry. Number
24 40, Mary Dill.

25 What says the State?

1 MS. BLUNDY: Please seat Ms. Dill.

2 CLERK: What says the defense?

3 MS. WYSE: Please excuse Ms. Dill from this trial.

4 CLERK: Ma'am, you have been excused from this case.

5 You may be seated.

6 Number 71, Dan Henry.

7 What says the State?

8 MS. BLUNDY: Please seat Mr. Henry.

9 CLERK: What says the defense?

10 MS. WYSE: Please present Mr. Henry.

11 CLERK: Sir, if you would, please take a seat in the

12 jury box.

13 Number 86, Dean Justy.

14 What says the State?

15 MS. BLUNDY: Please seat Mr. Jutze.

16 CLERK: What says the defense?

17 MS. WYSE: Please excuse Mr. Jutze.

18 CLERK: Sir, you have been excused from this case.

19 You may be seated.

20 Number 149, Jody Shell.

21 What says the State?

22 MS. BLUNDY: Please seat Mr. Shell.

23 CLERK: What says the defense?

24 MS. WYSE: Please present Mr. Shell.

25 CLERK: Sir, if you would, please take a seat in the

1 jury box.

2 Number 74, William Holiday.

3 What says the State?

4 MS. BLUNDY: Please seat Mr. Holiday.

5 CLERK: What says the defense?

6 MS. WYSE: Please excuse Mr. Holiday from the trial
7 in this case.

8 CLERK: Sir, you have been excused from this case.
9 You may be seated.

10 Number 141. John Sandifer.

11 What says the State?

12 MS. BLUNDY: Please seat Mr. Sandifer.

13 CLERK: What says the defense?

14 MS. WYSE: Please excuse Mr. Sandifer.

15 CLERK: Sir, you have been excused from this case.
16 You may be seated.

17 Number 157, Reid Spalding.

18 What says the State?

19 MS. BLUNDY: Please seat Mr. Spalding.

20 CLERK: What says the defense?

21 MS. WYSE: Please excuse Mr. Spalding.

22 CLERK: Sir, have you been excused from this case.
23 You may be seated.

24 Number 132. Mark Pressley.

25 What says the State?

1 MS. BLUNDY: Please excuse Mr. Pressley from this
2 case.

3 CLERK: Sir, have you been excused from this case.
4 You may be seated.

5 Number 85, Todd Johnson.

6 What says the State?

7 MS. BLUNDY: Please seat Mr. Johnson.

8 CLERK: What says the defense?

9 MS. WYSE: Please present the juror.

10 CLERK: Sir, if you would, please take a seat in the
11 jury box.

12 Number 33, Kevin Crooks.

13 What says the State?

14 MS. BLUNDY: Please seat Mr. Crooks.

15 CLERK: What says the defense?

16 MS. WYSE: Please seat Mr. Crooks.

17 CLERK: Sir, if you would, please take a seat in the
18 jury box.

19 Number 59. Amanda Graves.

20 What says the State?

21 MS. BLUNDY: Please excuse Ms. Graves from this
22 case.

23 CLERK: Ma'am, you have been excused from this case.
24 You may be seated.

25 Number 18, Joseph Bryson.

1 What says the State?

2 MS. BLUNDY: Please seat Mr. Bryson.

3 CLERK: What says the defense?

4 MS. WYSE: Please excuse Mr. Bryson.

5 CLERK: Sir, you have been excused from this case.

6 You may be seated.

7 Number 104, Barry Lester.

8 What says the State?

9 MS. BLUNDY: Please excuse Mr. Lester.

10 CLERK: Sir, you have been excused from this case.

11 You may be seated.

12 Number 89, Ashley Key.

13 What says the State?

14 MS. BLUNDY: Please seat Ms. Key.

15 CLERK: What says the defense?

16 MS. WYSE: Please seat Ms. Key.

17 CLERK: Ma'am, if you would, please take a seat in
18 the jury box.

19 Number 103, Richard Wabak.

20 What says the State?

21 MS. BLUNDY: Please seat Mr. Wabak.

22 CLERK: What says the defense?

23 MS. WYSE: Please excuse Mr. Wabak.

24 CLERK: Sir, you have been excused from this case.

25 You may be seated.

1 Number 105, John List.

2 What says the State?

3 MS. BLUNDY: Please seat Mr. List.

4 CLERK: What says the defense?

5 MS. WYSE: Please excuse Mr. List.

6 CLERK: Sir, you have been excused from this case.

7 You may be seated.

8 Number 78, Daryl Hunter.

9 What says the State?

10 MS. BLUNDY: Please seat Mr. Hunter.

11 CLERK: What says the defense?

12 MS. WYSE: Please seat Mr. Hunter.

13 CLERK: Sir, if you would please take a seat in the
14 jury box.

15 Number 51, Tina Frisbee.

16 What says the State?

17 MS. BLUNDY: Please seat Ms. Frisbee.

18 CLERK: What says the defense?

19 MS. WYSE: Please excuse Ms. Frisbee.

20 CLERK: Ma'am, you have been excused from this case.

21 You may be seated.

22 Number 147, Michael Simpsonball.

23 What says the State?

24 MS. BLUNDY: Please examine excuse Mr. Simpsonball.

25 CLERK: Sir, you have been excused from this case.

1 You may be seated.

2 Number 107, Hannah Martin.

3 What says the State for cause?

4 MS. BLUNDY: Nothing for cause, please seat Ms.
5 Martin.

6 CLERK: What says the defense?

7 MS. WYSE: Please excuse Ms. Martin.

8 CLERK: Ma'am, you have been excused from this case.
9 You may be seated.

10 Number 70, Michael Hellman.

11 What says the State for cause?

12 MS. BLUNDY: Please seat Mr. Hellman, nothing for
13 cause.

14 CLERK: What says the defense for cause?

15 MS. WYSE: Please seat Mr. Hellman.

16 CLERK: Sir, if you would please take a seat in the
17 jury box.

18 Number 13, Lavone Bramlett.

19 What says the State for cause?

20 MS. BLUNDY: Please seat Mr. Bramlett.

21 CLERK: What says the defense for cause?

22 MS. WYSE: Please seat the juror.

23 CLERK: Sir, if you would, please take a seat in the
24 jury box.

25 Number 177, Joe White.

1 What says the State for cause?

2 MS. BLUNDY: Nothing for cause, please seat the
3 juror.

4 CLERK: What says the defense for cause?

5 MS. WYSE: Please seat Ms. White.

6 CLERK: Ma'am, if you would please take a seat in
7 the jury box.

8 This will be for our first alternate. Number 145,
9 Mark Scott.

10 What says the State?

11 MS. BLUNDY: Please seat Mr. Scott.

12 CLERK: What says the defense?

13 MS. WYSE: Please seat Mr. Scott.

14 CLERK: Sir, if you would please take a seat in the
15 jury box.

16 This will be for alternate number two. Juror number
17 165, Derrick Stroble.

18 What says the State?

19 MS. BLUNDY: Please seat Mr. Stroble.

20 CLERK: What says the defense?

21 MS. WYSE: Please excuse Mr. Stroble.

22 CLERK: Sir, you have been excused from this case.
23 You may be seated.

24 Juror number 62, Viola Hagood.

25 What says the State?

1 MS. BLUNDY: Please seat Ms. Hagood.

2 CLERK: What says the defense.

3 MS. WYSE: Please excuse Ms. Hagood.

4 CLERK: Ma'am, you have been excused from this case.

5 You may be seated.

6 Number 17, April Bruce.

7 What says the State?

8 MS. BLUNDY: Please seat Ms. Bruce.

9 CLERK: What says the defense for cause?

10 MS. WYSE: Please seat Ms. Bruce.

11 CLERK: Ma'am, if you would please take a seat in

12 the jury box.

13 Judge.

14 THE COURT: Are there any motions or exception to

15 the selection of the jury from the State?

16 MS. BLUNDY: None from the State, Your Honor.

17 THE COURT: Are there any motions or exceptions to

18 the selection of the jury from the defense?

19 MS. WYSE: No, Your Honor.

20 THE COURT: All right. Madam Clerk, swear our jury.

21 (Jury sworn)

22 CLERK: Let the record reflect all members of the

23 jury have accepted the oath.

24 THE COURT: Thank you, Madam Clerk.

25 Ladies and gentlemen in the remainder of the pool,

1 that will conclude your service for today. There will be
2 a message --- have y'all given them the number?

3 CLERK: Yes, sir. The number at the top of the page
4 that you were given as you checked in this morning. It
5 will be the same number that you called last night.

6 THE COURT: Okay. Every night after 6:00 check
7 that --- that message and it will give you instructions
8 for the following day. So thank you for your attendance
9 this morning. You are now excused.

10 All right. We got everybody out? All right.
11 Ladies and gentlemen, before we start, let me explain our
12 roles in this case. I am the judge of the law, you will
13 apply the law as I give it to you. You are the judge of
14 the facts.

15 As a judge of the fact, you have the duty to
16 evaluate the evidence that will be presented during the
17 trial. Evidence is the sworn testimony from witnesses
18 from the witness stand and any exhibits that are entered
19 into evidence. You and you alone determine how much
20 weight to give the witnesses testimony and the
21 credibility of that witness. Each attorney will have the
22 opportunity to speak to you in opening statements, and
23 they will also have the opportunity to speak to you again
24 in closing arguments.

25 Keep in mind that the statements of the attorneys

1 are not evidence in the case, but merely tools that they
2 use to help you understand their respective positions.

3 Now, as I stated at the beginning, the State has the
4 burden of proof in this trial. It must prove beyond a
5 reasonable doubt that the defendant is guilty of the
6 offenses charged. If the State fails to meet that
7 burden, then you must find the defendant guilty --- not
8 guilty. If on the other hand if the State meets it's
9 burden of proof, then you must find the defendant guilty.

10 The defendant is presumed to be innocent. He has no
11 burden of proof in this trial. Now, you're going to hear
12 a much more extensive instruction on reasonable doubt at
13 the end, but a preliminary definition is a doubt that
14 would cause a reasonable person to hesitate to act.

15 Now, a few more things. This is not going to be a
16 very quick trial, but it's not going to be overly long
17 either. But there --- as you --- you saw from the list,
18 there are a number of potential witnesses. This is not
19 an endurance contest. We're going to take breaks as we
20 go along. I'm --- I'm mindful that I often have people
21 on juries that have health issues, they need to stretch
22 their legs. I've had people with back problems,
23 diabetes, all other kind of issues that they couldn't sit
24 for long periods of time. So I try to schedule breaks
25 during the day. But if at any time you get in distress

1 and you have to have a break, let your bailiffs know.
2 They will let me know and we'll do our best to
3 accommodate you.

4 Now, while we are taking a break, when you leave
5 this courtroom and you go to the jury room or you go to
6 lunch or --- or --- or outside the courthouse, there are
7 three things that you are specifically prohibited from
8 doing. The first is independent investigation. In this
9 era of smart phones and internet access, it's easy for
10 someone to try to research either the law or the --- or
11 the facts of the case. You are strictly prohibited from
12 doing that.

13 The second thing that you are prohibited from doing
14 is discussing this case with third parties. If some ---
15 when you leave this courthouse, if somebody comes up to
16 you and tries to talk about the case, you let the
17 bailiffs know. They'll let me know. I'll --- I'll
18 handle that. But that --- there's a reason we have this
19 juror button. It tells the entire world that you are a
20 juror serving on the case, and that you're not to --- to
21 have someone attempt to talk you about it. You run into
22 these attorneys, they're going to go the opposite
23 direction from you. They're not trying to be rude to
24 you, they just know they can't have any contact with you.

25 Now, this --- this is going to be difficult: When

1 you go home tonight, your family's going to want to know
2 what this case is about and discuss it. You're going to
3 have to tell them you can't talk about it.

4 Now, the last thing that you are prohibited from
5 doing is discussing it amongst yourselves. That's called
6 deliberations. I will tell you at the end of the case
7 when you may start your deliberations. But when you're
8 in the jury room or you go to lunch to today, you can
9 talk amongst yourself about anything you want to except
10 this case.

11 So ladies and gentlemen, the reason for these rules
12 is you're not to base your decision on any outside
13 influences. You're to base your decision solely on the
14 evidence presented in the courtroom. And you shouldn't
15 make your decision prematurely. You should not make a
16 decision until all of the evidence is in and --- and
17 deliberations were beginning at the, you know,
18 appropriate time.

19 Just a few more things. There may be times during
20 the trial when there is an objection --- an objection
21 meaning an attorney objects to a question or a piece of
22 evidence. I have to make a ruling on that, that should
23 not be interpreted to mean that I favor one side or the
24 other. My job is to ensure that both the State and the
25 defendant receive a fair trial in accordance with the

1 rules of evidence.

2 And along those same lines, there may be times that
3 we have to send you out of the courtroom to take up
4 matters of law outside of your presence. That's not to
5 hide things from you, but again it's just so ensure
6 that --- that each side receives a fair trial.

7 Now, this morning you have one order of business,
8 and this --- this is something that --- that you will
9 need to do before I let you go to lunch, and that is to
10 elect a foreperson. This will be the presiding juror
11 over your deliberations at the end. This will be the
12 juror that communicates with the court. Anything that
13 happens, any problem that may arise that I need to be
14 aware of needs to be in the form of a written note signed
15 by the foreperson.

16 Once you have elected a foreperson, write that
17 juror's name and number on a slip of paper, knock on the
18 door and let the bailiff know. And then we'll go from
19 there. So Madam Bailiff, would you take our jury in the
20 jury room, please.

21 JUROR: Your Honor, I have a quick question as to
22 the role and responsibility of the alternates.

23 THE COURT: You have the same responsibility at this
24 point that the rest of the jurors do. But now, when you
25 get to the end it may change. So right now, you --- you

1 act like the other jurors.

2 (Jury exits courtroom)

3 THE COURT: Okay. All right. Any exceptions to my
4 preliminary instructions from the State?

5 MS. BLUNDY: No, Your Honor.

6 THE COURT: Any exceptions to my preliminary
7 instructions from the defense?

8 MS. WYSE: No, Your Honor.

9 THE COURT: All right. We will go into recess on
10 this case until --- before we do that, let me ask, do we
11 have pretrial motions that y'all want to it take up now?

12 MS. WYSE: If I could just have a two-minute break.

13 THE COURT: All right. Let's take --- let's take a
14 short break and then we'll --- we can ---

15 (Simultaneous speaking)

16 MS. BLUNDY: Thank you. And I'll have some too.

17 THE COURT: Okay.

18 MS. WYSE: I actually don't have any, but I need ---

19 MS. BLUNDY: Okay.

20 THE COURT: Okay. All right. We'll take a short
21 break.

22 (Whereupon a brief recess was taken)

23 THE COURT: Juror number 13 has been elected to
24 foreman. So let me --- let's make that Court's exhibit.

25 (Court's Exhibit 1 marked)

1 THE COURT: All right. I'm going to bring our jury
2 in. I'm going to go ahead and send them to lunch and
3 then we'll --- it's 11:30, I know I told you in chambers,
4 we'd start a 1:30. Would you be ready to go at 1:15?

5 MS. BLUNDY: I would need to call my witnesses again.

6 THE COURT: Well, we will just start at 1:30. That 15
7 minutes is not going to make a huge difference. All right.
8 Let's get our jury.

9 (Jury enters courtroom)

10 THE COURT: Okay. Mr. Foreman you have been elected
11 so you always sit where you're seated right now on --- on
12 the end. And the two alternates, you'll always sit
13 on --- on this. And the rest of you are free to move
14 about as --- as you see fit.

15 It's 11:30. We have some matters of law that we
16 need to take up outside of your presence. So I'm just
17 going to go ahead and send you to lunch now. I don't
18 want you sitting back here just waiting. So the trial
19 will start at 1:30. So go to lunch and be back in the
20 jury room shortly before 1:30. Okay.

21 (Jury exits courtroom)

22 THE COURT: Okay. It's my understanding that the
23 defense has some pretrial motions.

24 MS. WYSE: Yes, Your Honor. We do.

25 THE COURT: All right.

1 MS. WYSE: First of all, there --- his mother is
2 present and she's tried to enter the courtroom a couple
3 of times. She keeps getting turned away. I don't have
4 her on a witness list, Judge. I don't see any reason why
5 she wouldn't be able to enter as long as that's okay with
6 the State.

7 THE COURT: Well, it's a --- it's a public forum.

8 MS. WYSE: Yes, sir.

9 THE COURT: That's it now. So if we -- we're in a
10 situation in this courthouse is we do not have a jury
11 assembly room. So during jury selection, third parties
12 are not generally allowed in because we don't have
13 anyplace to put them without them getting around jurors.

14 But the jury's been selected in the case and this is a
15 public forum. So anyone's free to come in and ---

16 MS. WYSE: Thank you, Judge. I appreciate that.

17 THE COURT: --- watch the trial.

18 MS. WYSE: And we'll let her know that she can come
19 back.

20 Judge, there is mention of other crimes during some
21 of the body cam footage that Mr. Gunn is not charged
22 with.

23 THE COURT: Okay.

24 MS. WYSE: One of those is a mention of whether
25 he --- where he got the tools that he used to break into

1 the house that is the subject of this trial. Judge, he's
2 not charged with petty larceny. I think that he's ---
3 he's just not charged with it. I would ask the Court to
4 strike any mention of any other crimes that are --- may
5 or may not have been committed that night. And there's
6 also mention of him --- whether or not he'd done drugs at
7 some point that night before he was arrested. And Ms.
8 Blundy and I already spoke about that. She said that she
9 would redact that from the body cam that is played. Your
10 Honor, I just want to make the Court aware of it that
11 smoking pot, stealing other items that he's not charged
12 with, I would just ask that they not be mentioned in
13 front of the jury.

14 THE COURT: All right. Ms. Blundy.

15 MS. BLUNDY: Yes, Your Honor. As to the first one,
16 where he got the tools, it's going to be completely
17 relevant to the element of the crime of burglary tools.
18 And I don't think petty larceny is actually mentioned in
19 the conversation from what I can remember, but I think
20 it's definitely more probative than it is prejudicial.

21 And there are admissions by the defendant
22 post-Miranda as well as contemporaneously going on during
23 the arrest because the tools fell out of his pocket. So
24 and they're also found inside of a backpack.

25 So I would ask that the Court maybe reserve that

1 holding right now, but I definitely think they are
2 probative for the jury.

3 THE COURT: Do --- do you have the video to the
4 point where I could watch it? I'm --- I'm --- and I'll

5
6 let you do this over lunch if you can get it to the point
7 where the --- the statement in question. Because
8 certainly the State has the burden of proving
9 possession ---

10 MS. BLUNDY: Uh-huh.

11 THE COURT: --- and I would need to hear the context
12 of ---

13 MS. BLUNDY: We also ---

14 THE COURT: --- of the question.

15 (Simultaneous speaking)

16 MS. BLUNDY: --- relevant on the burglary itself.

17 THE COURT: Okay.

18 MS. WYSE: Just, we --- we don't deny that the tools
19 were found in his pocket, they were. I mean it's just
20 where did you get them, you stole them from the neighbor
21 next door, that's the thing that we don't want in. I
22 mean, they were in his pocket. And --- and he admits
23 that he used them to open the back door.

24 MS. BLUNDY: He also says that he gathered them up
25 from the yard and I think that's relevant for the jury

1 that he's saying he came to the residence and gathered
2 them in the yard while he was there.

3 THE COURT: Okay. All right. Well, I'll --- I'll
4 reserve that. Let --- get the video to where I can watch
5 that excerpt right before we start.

6 MS. BLUNDY: As far as the mention of marijuana, I
7 mean, it is a statement made post Miranda by the
8 defendant, but I --- I have no problem cutting the video
9 off before he makes that ---

10 THE COURT: All right.

11 MS. BLUNDY: --- statement. It's at the tail end of
12 what we were going to play anyway. And I really don't
13 have a problem with cutting it off earlier.

14 THE COURT: All right. So redact the statement
15 about the marijuana. So Ms. --- Ms. Wyse, your motion
16 would be granted as to the mention of marijuana.

17 MS. WYSE: Thank you, Your Honor. And I would like
18 to point the Court's attention to State versus
19 Washington. Judge, that is a case that came out in
20 support of State versus Brewer. Several years ago.
21 Washington came out in 2020 and I can give you the site
22 for that, Judge, if ---if you would like it.

23 But anyway it talks about the hearsay used in the
24 interrogation and when the officers are asking the
25 defendant questions. And it basically states that, you

1 know, there are things that officers say while they are
2 interrogating or questioning a defendant and that those
3 statements are hearsay, and that they are relevant and
4 needed for the jury to hear. It --- there's --- there's
5 an argument that it improperly shifts the burden of
6 proof.

7 Now, Judge, throughout the body cams that Ms. Blundy
8 would like to play, there's a couple of things in there
9 that are pretty prejudicial more so than probative. One
10 of them, you know, at one of the marks one of the
11 officers says you've been in jail enough times to know.

12 And Your Honor, of course we would --- we would ask that
13 that be redacted, not said in front of the jury. They
14 don't need to know that he's been in jail for enough
15 times to know anything.

16 Judge, there is another one where it says --- the
17 officer says, you know, you're stealing in the house.
18 You went over and you stole the tools just like what we
19 were talking about. But Judge the --- the overreaching
20 objection from the defense at this point in time is that
21 based upon the State v Washington, State v Brewer, some
22 of these questions that the officers are asking Mr. Gunn
23 are bolstering the State's case. They are hearsay. You
24 know, they're --- they're making statements and making
25 assumptions. You know, you brought that backpack, and

1 you stuff it full of things, you know, you're wearing all
2 black. These statements that they make in the body cam
3 are things that they can testify to on the stand that
4 they don't need to, you know, we didn't need to have the
5 body cam playing it.

6 Mr. Gunn makes confessions throughout. They find
7 him red-handed in the house. They found tools in his
8 pocket. He tells them that he used the tools to open
9 that back door. He caused damage to the back door. And
10 these are all statements that he made.

11 The State can play those statements that Mr. Gunn
12 made. They can testify to the statements that Mr. Gunn
13 made. But some of the things that the officer saying pre
14 him answering are --- are hearsay and they're improper
15 bolstering the State's case.

16 THE COURT: How many different statements are that
17 you --- you said you've been in jail enough times to know
18 is one; what else?

19 MS. WYSE: Judge, there's one about, you know,
20 how --- well, of course the one about smoking pot.
21 There's also one about, you know, you were going to fill
22 that backpack up with stuff and you just haven't had time
23 to do it yet. Judge, these are all things that the
24 officers ---

25 THE COURT: All right.

1 MS. WYSE: --- can just say that they asked him.
2 They don't have to play it on the body cam. And they
3 can even give his answers.

4 THE COURT: All right. Well, do --- let's do this,
5 identify the specific statements on the tape and I'll ---
6 again, shortly before we start at 1:30. I'll --- I'll
7 watch it in camera.

8 MS. WYSE: Okay.

9 THE COURT: And but Ms. Blundy, you --- you ---

10 MS. BLUNDY: Judge, if I --- I may respond and ---
11 and we didn't put this on the record, so I do want to
12 make sure we're clear. Ms. Wyse and I had a conversation
13 over the weekend that we were agreeable to two different
14 segments on two of the videos that I planned on playing.
15 And the first one is for the record is Entsminger's
16 Axon body camera. And I was going to start it at the
17 32-minute mark and run it through 40:52. And so the
18 other one is Aaron Alexander's body cam video. And I was
19 going to start that at 39:55. And I actually had 47:56,
20 but that talked about the pot, so we backed that up a ---
21 a minute or so to make sure we redact that part of it.

22 I have no objection and I actually when we were
23 working on the redactions heard the statement you've been
24 to jail enough times to know. I believe the sections
25 that we both reviewed do not contain that statement.

1 THE COURT: Okay.

2 MS. BLUNDY: Also, as far as hearsay, not every
3 out-of-court statement is hearsay. First of all, you
4 have to be questioning. And it has to be offered for the
5 truth of the matter asserted. And certainly all of the
6 officers are under subpoena. They are welcome to be
7 cross-examined we have no issues with the 6th amendment
8 here. Their testimony can also be impeached versus on
9 what they testified to versus what the video plays. I
10 don't think it's offered for the truth, Your Honor.
11 They're kind of extraneous statements to an extent.
12 Certainly with six hours' worth of video and multiple
13 officers in the chaotic situation where the defendant is
14 caught at the crime scene, you're going to hear mention
15 of things, but I don't see it as bolstering the State's
16 case at all. In fact, when they question Mr. Gunn, he is
17 post Miranda, and he has waived those rights, and he is
18 speaking with the officers specifically about the
19 crime ---

20 (Simultaneous speaking)

21 THE COURT: Do we need to a Jackson v Denno hearing?

22 MS. BLUNDY: Your Honor, I suppose for the purposes
23 of making sure the record is clean that we would have one
24 really fast. Sure.

25 THE COURT: We'll do that at 1:30.

1 MS. BLUNDY: Okay. And Entsminger, you did
2 Miranda. So I mean, he's here right now, Judge, if
3 we --- if we needed to do that. He is fully capable to
4 testify since he was the one who Mirandized ---

5 (Simultaneous speaking)

6 THE COURT: Are you going to present other officers
7 that took statements from him?

8 MS. BLUNDY: Yes, Your Honor. There are Aaron
9 Alexander would be the other officer who questioned him.

10 THE COURT: All right. Well, let me ask you Ms. ---
11 Ms. Wyse --- Ms. Wyse, of the statements that you have
12 objected to, are any of those inside of the 32 minute to
13 40:50 point in Deputy Entsminger's video?

14 MS. WYSE: Your Honor the --- the Axon that I was
15 listening to, it was. But, you know, if Ms. Blundy is
16 saying that it wasn't and then I will go back and relook
17 again.

18 THE COURT: Okay. All right. And what about Mr.
19 Deputy Alexander's 35 --- 39:55 to 40 --- approximately
20 47-minute mark.

21 MS. WYSE: Based on what I listened to and it was
22 basically an overlap. So that covered the same time.

23 MS. BLUNDY: Judge, I mean, I wrote it out.
24 Basically, you know, Aaron Alexander says, "Why are you all
25 dressed in black?" And the defendant says, "That's all I

1 have."

2 THE COURT: Okay.

3 MS. BLUNDY: And that's --- I don't know if that's
4 the statement you're referring to.

5 THE COURT: All right. Well, over lunch look at the
6 videos, see if there's anything in your objection in the
7 videos, and then I will watch that before we start. And
8 we can do a Jackson v Denno hearing prior to starting at
9 1:30.

10 MS. BLUNDY: Okay. Yes, Your Honor.

11 MS. WYSE: Judge, I have one last motion.

12 THE COURT: Yes, ma'am.

13 MS. WYSE: Your Honor, it's my understanding that
14 Ms. Blundy is going to put into evidence his prior
15 burglaries. Judge, when I read through the statute,
16 first of all, I know that it is allowable that the jury
17 can hear about the other --- the prior burglaries.
18 However, my objection and my concern is this: I think
19 that --- that, you know, the State believes that they've
20 already --- they've met the burden of proof as far as
21 what Section A requires. Then there was Section 2,
22 the --- the burglaries committed by a person with a prior
23 record of two or more convictions for burglary, or house
24 breaking, or a combination of both. Or the entering or
25 remaining occurs in the nighttime.

1 Your Honor, based upon the fact that it's very clear
2 that the it occurs during the nighttime, you can see it
3 on the body cams and see it reflected in the timestamp
4 that the --- the officers arrived on the scene. Your
5 Honor, I --- I don't believe that it is necessary to put
6 in the prior convictions. I believe that at that point
7 she has over-proved her --- her case for lack of a better
8 way of saying it.

9 I --- I know that Judge --- Chief Justice --- former
10 Chief Justice Cole calling it gilding the Lily. Judge,
11 she's --- she has shown very clearly that it occurred
12 during the nighttime. And then, you know, her statement
13 of course, her --- her belief that the State can prove
14 that he is guilty for entering into a dwelling without
15 consent with intent to commit a crime therein. So that
16 is one of our arguments as well.

17 THE COURT: All right. Ms. Blundy.

18 MS. BLUNDY: Yes, Your Honor. I know we talked
19 about in chambers where we all agreed that the legal
20 issue in this case was going to be whether this was a
21 burglary in the first degree or burglary in the second
22 degree. So I think it's going to become very critical
23 for the jury to be able to assess all the facts and weigh
24 all the factors. And certainly there's case law that
25 supports the statement that's a stipulate and that that

1 is an element of the crime that the jury can assess.

2 I have redacted all of the penalty information on
3 the prior burglary convictions that I plan on admitting,
4 so that they wouldn't be able to assess any of the
5 penalties, but just the pure fact that he had two prior
6 convictions.

7 You --- the problem is you don't know what weight
8 the jury's going to give to any of the facts in the case.
9 And so I think the State should be able to present a
10 comprehensive case and let the jury decide from there.

11 THE COURT: And Ms. Wyse, it is an element of
12 the --- the offense. And I --- I understand your
13 concerns. And do you have any case law that prohibits
14 the State from presenting the elements?

15 MS. WYSE: There is no case law that presents ---

16 THE COURT: Okay.

17 MS. WYSE: --- the State from prohibiting these
18 elements at this point in the juncture. Your Honor, if I
19 can find something that's more on point with Chief
20 Justice Cole's, you know, classic quote just gilding the
21 Lily, then I will certainly bring it to your attention.

22 THE COURT: Bring --- bring it to my attention
23 before we --- we start. But certainly I want to make
24 sure that we are in accordance with the statute.

25 So anything further?

1 MS. WYSE: Judge, there's nothing further.

2 THE COURT: Okay. All right. We'll be in recess
3 till 1:30.

4 (Whereupon a lunch recess was taken)

5 (AUDIO MISSING FROM APPROXIMATELY 1:30 TO 3:00)

6 THE COURT: All right. Anything from either side
7 before we bring our jury back in?

8 MS. BLUNDY: No, Your Honor.

9 MS. WYSE: Judge, Ms. Blundy was kind enough to tell
10 me who she intends to call next. And I --- I think that
11 she's about to place into evidence the --- the prior
12 convictions. And Your Honor, and the Defense is making
13 an objection to placing the prior convictions into
14 evidence before the other elements of the charge are
15 proved.

16 THE COURT: Okay. Ms. Blundy.

17 MS. BLUNDY: Judge, there's no case law directing
18 when the elements need to be proved inside of a trial,
19 just that they need to be proved in the case-in-chief.

20 THE COURT: All right. The reading of the statute
21 does not require them to be presented in a specific
22 order. Ms. Wyse, do you have any case law that --- that
23 does that?

24 MS. WYSE: No, Your Honor. I do not. Thank you for
25 hearing my objection.

1 THE COURT: So noted, but objection is overruled.

2 All right. Let's get our jury.

3 (Jury enters courtroom)

4 THE COURT: All right. Ms. Blundy, call your next
5 witness.

6 MS. BLUNDY: Thank you, Your Honor. The State will
7 call Lisa Burton to the stand.

8 (Witness sworn)

9 MELISSA BURTON, HAVING BEEN DULY SWORN, TESTIFIED AS
10 FOLLOWS.

11 DIRECT EXAMINATION

12 BY MS. BLUNDY:

13 Q. Ms. Burton, could you please state your name for the
14 record.

15 A. My name is Melissa Burton. I go by Lisa.

16 Q. And where do you work?

17 A. I work for the Oconee County Clerk of Court's
18 Office.

19 Q. And how long have you been in the clerk of court here in
20 Oconee County?

21 A. I have been the clerk of court for almost four
22 years. I have worked in the Clerk of Court's Office for
23 21 years.

24 Q. And what is your current title here?

25 A. Clerk of court.

1 Q. And is that an elected position?

2 A. It is.

3 Q. What is your authority over the record of conviction here
4 in Oconee County?

5 A. I am the record keeper for the courts of Common
6 Pleas, General Sessions, and Family Court.

7 Q. I am showing you what has been premarked as State's
8 Exhibit Number 3. What is this document?

9 A. This is a general sessions sentencing sheet.

10 Q. And who is listed as the defendant?

11 A. The defendant listed is William David Gunn.

12 Q. And when was a plea entered?

13 A. On March 22, 2005.

14 Q. And what was the charge?

15 A. The charge was burglary in the second degree.

16 Q. Is this a fair and accurate representation as of the time
17 this was certified as a true copy of the conviction?

18 A. With the exception of the redactions on the
19 sentencing sheet, yes.

20 MS. BLUNDY: The State would move to admit Exhibit
21 Number 3.

22 THE COURT: Any objection?

23 MS. WYSE: No, Your Honor.

24 THE COURT: State's Exhibit Number 3 is admitted
25 without objection.

1 (State's Exhibit 3 marked and entered)

2 BY MS. BLUNDY:

3 Q. I am now showing you what has been marked as State's
4 Exhibit Number 4. What is the name of the defendant in this
5 document?

6 A. William David Gunn.

7 Q. And when was a plea entered?

8 A. On April 7th of 2015.

9 Q. And what was the charge?

10 A. Burglary second degree.

11 Q. Is this a fair and accurate representation? Is it
12 substantially in the same condition when it was certified
13 true other than the redactions? Is this an accurate
14 reflection of the conviction?

15 A. Yes.

16 MS. BLUNDY: The State would move to admit Exhibit
17 Number 4.

18 THE COURT: Any objection?

19 MS. WYSE: No, Your Honor.

20 THE COURT: State's Exhibit Number 4 is admitted
21 without objection.

22 (State's Exhibit 4 marked and entered)

23 MS. BLUNDY: I have no further questions for this
24 witness. Please answer anything Ms. Wyse may have for
25 you.

1 THE COURT: Ms. Wyse, any ---

2 MS. WYSE: I have no questions, Your Honor.

3 THE COURT: All right. Thank you, Madam Clerk.

4 MS. BLUNDY: The next witness the State would like
5 to call is Toby Shaw.

6 TOBY SHAW, HAVING BEEN DULY SWORN, TESTIFIED AS
7 FOLLOWS.

8 DIRECT EXAMINATION

9 BY MS. BLUNDY:

10 Q. Mr. Shaw, would you please state your full name for the
11 record.

12 A. Toby (unintelligible) Shaw.

13 Q. What county do you reside in?

14 A. Ocone.

15 Q. And where do you work?

16 A. I'm pastor One Love Community Church and I've been a
17 carpenter for 20 --- 27 years.

18 Q. And whom are you married to?

19 A. Kristy Shaw.

20 Q. And how long have you been married to her?

21 A. Five years.

22 Q. Can you tell the jury a little bit about how you were
23 raised?

24 MS. WYSE: Objection, Your Honor. That's
25 irrelevant.

1 THE COURT: Overruled. Overruled.

2 THE WITNESS: We were raised by a single parent, my
3 mother. There were four of us. And be honest, we was
4 raised up hard. We didn't have a lot but my mother tried
5 everything she could to provide the best she could. And
6 very Godly religious lady, always had us in church. You
7 know, she was always by the book, anybody that knowed
8 her. And she taught us to work hard and always, you
9 know, believe in God and --- and to put our family first.

10 Q. And what was her name?

11 A. Her name was Peggy Beatrice Shaw.

12 Q. Do you remember the actual day when your mother
13 passed ---

14 (Simultaneous speaking)

15 A. Yes, I do.

16 Q. Do you remember the date?

17 A. It was March the 18th.

18 Q. And do you remember the date of this incident?

19 A. Yes, I do.

20 Q. And so is it fair to say it was exactly a month?

21 A. Yes, ma'am. It was.

22 Q. When she passed how many other of your four --- of the
23 four siblings that you had were still alive?

24 A. I only have one sister alive. I have a brother and
25 sister that had previously passed.

1 Q. And what did you and your sister decide to do after your
2 mother passed, with the home at [REDACTED] Johnson Drive?

3 A. We had agreed that I would take care of the estate
4 because I took care of my mother most of the time. At
5 one point when the last sibling had passed I'd
6 actually --- my sister was in Tennessee and then she
7 decided to come back home. And for the year prior to
8 mother's passing, she had undergone and had dementia and
9 it was tough to be honest.

10 I had stayed --- well, me and Kristy both actually
11 had stayed a lot and we would take care of her and my
12 sister would help. And then when mother had passed ---
13 well, prior actually, my sister's like, you know, you've
14 took care of everything, you paid the bills, you take care
15 of mom and all that. You do as you please with the
16 place. And that was the agreements that we had.

17 Q. And who had the key to her home?

18 A. I did.

19 Q. And in the time that she passed to the time of this
20 incident, how often would you say you frequented the house?

21 A. At that point, about every other day I was going. I
22 wasn't staying every night because prior to her passing I
23 had stayed there so much and, you know, been away from my
24 wife. And then we have a granddaughter that we have
25 adopted, so a lot of the times I wasn't able to be there

1 and so I wasn't staying every night. I --- I can't say
2 that I did, that would be a lie.

3 Q. When you --- between --- and during that time period,
4 from the time that she passed till the time of the incident,
5 had you been sleeping there?

6 A. Yes. Just a --- it was probably a couple of nights
7 before the incident had happened I was there. It was
8 over towards the late morning. And actually the water
9 had busted. Being a large guy, of course, I couldn't get
10 up under the trailer to fix it that night. So I turned
11 the water off. And so it had been a couple of days since
12 I had been there as far as any staying amount of the
13 time.

14 Q. Had the water been previously on inside the house?

15 A. Oh, yes ---

16 (Simultaneous speaking)

17 Q. --- prior ---

18 A. --- yes. Yes, the water was on. I had groceries
19 there. I have internet, I have TV. I have a home phone
20 there, cameras, the whole nine yards. I mean, there was
21 groceries in the refrigerator.

22 Q. So you have perishable items there?

23 A. Oh, yes.

24 (Simultaneous speaking)

25 A. Yes, ma'am.

1 Q. Food you were eating?

2 A. Yes, ma'am.

3 Q. And you were taking care of the utilities?

4 A. Yes, ma'am.

5 Q. Who maintained the Blink cameras?

6 A. My wife and I. We were the only two that has the
7 accounts -- is us.

8 Q. Who was monitoring the Blink camera that night?

9 A. My wife had --- well, actually both of our
10 phones --- the way it works, they will go off, alert.
11 But I --- to be honest did not hear it at first when it
12 went off. She heard it, she awoke first and then she
13 woke me up.

14 Q. And you have access to that account?

15 A. Oh, yes, ma'am.

16 Q. Can you tell the jury a little bit --- if we're not
17 familiar with how the Blink camera system works, can you tell
18 us how that works?

19 A. The Blink system is set up to where you can have it
20 continuously record any time it goes off. But we had to
21 take that and only put it in sections, because like if
22 mom would move just a half inch, the sensitivity of the
23 camera would pick her up. So, you know, constantly with
24 working and everything like that, it's just constantly
25 going off every five minutes and of course the data, all

1 the things that you have to go along with it. So we had
2 taken it to where it goes off --- we would only get like
3 a maybe a minute or two we had set it down. I could look
4 at the videos and tell you. But we had set the timelines
5 down lower, that way it wouldn't --- because we were
6 running out of data, it was, you know.

7 And I had had the cameras set up in the kitchen and
8 the living room where my mother slept in a hospital bed.
9 And then in the back room. That way, if we had to go
10 out, we could monitor her at all times. She didn't sleep
11 in her bedroom. She hadn't for --- for years.

12 Q. And who was paying for that data?

13 A. I do.

14 Q. And fair to say you were continuing to monitor the
15 cameras after she passed?

16 A. Oh yes, ma'am.

17 Q. Continuing to pay for it?

18 A. Yes, ma'am.

19 Q. Who was her designated legal power of attorney while she
20 was alive?

21 A. That would be me.

22 MS. WYSE: Objection, Your Honor. That is evidence
23 the State has not provided the defense.

24 THE COURT: Counsel approach.

25 (Bench conference)

1 BY MS. BLUNDY:

2 Q. Turning to your statement ---

3 MS. BLUNDY: The State would like to move to strike
4 the last statement, Your Honor.

5 BY MS. BLUNDY:

6 Q. Turning to April the 18, 2023, what happened early that
7 morning or late at night; do you recall?

8 A. We were sleeping. And of course the camera went
9 off. And my wife, she woke me. And immediately I tried
10 to get onto my phone to be able to witness what was
11 happening, you know, to see what's going on. And while
12 in the process, I began to put clothes on to be able to
13 go to the residence. And of course my wife had called
14 911 to go ahead and have the police dispatched.

15 Q. I'm showing you what has been marked as State's
16 Exhibit 5. What is this?

17 A. That's the video surveillance from the Blink
18 cameras.

19 Q. And how do you recognize it?

20 A. I have previewed it and also put my initials on it.

21 Q. Did you view it prior to trial?

22 A. Yes.

23 Q. Is it a fair and accurate representation as of the date
24 and time it was recorded when you viewed it last?

25 A. Yes, ma'am. It is.

1 MS. BLUNDY: The State would move to admit Exhibit
2 Number 5.

3 THE COURT: Any objection?

4 MS. WYSE: No, Your Honor.

5 THE COURT: State's Exhibit Number 5 is admitted
6 without objection.

7 (State's Exhibit 5 marked and entered)

8 MS. BLUNDY: Your Honor, at this time we would like
9 to publish ---

10 THE COURT: Yes, ma'am.

11 MS. BLUNDY: --- the security video for the jury.

12 (Video played)

13 BY MS. BLUNDY:

14 Q. When you saw that, what did you ask your wife to do?

15 A. To call the 911 as I was getting ready.

16 Q. And where did you immediately go?

17 A. I went from my home to the home.

18 Q. I'm showing you what has been marked as State's Exhibit 6
19 and State's Exhibit 7. Do you recognize these?

20 A. Yes, ma'am.

21 Q. Are they a fair and accurate representation?

22 A. Yes, ma'am. They are.

23 Q. And what are they?

24 A. The entrance to the home and then in the kitchen at
25 the bar that separates from the living room.

1 THE COURT: Which --- which is which?

2 THE WITNESS: This is ---

3 (Simultaneous speaking)

4 THE COURT: By --- by numbers.

5 THE WITNESS: Number six is the entrance to the
6 home. And then number seven is at the kitchen at the
7 bar.

8 THE COURT: Okay.

9 BY MS. BLUNDY:

10 Q. Do these reflect how you last saw the property and left
11 the property?

12 A. Yes, ma'am, to the best of my ability it --- it
13 looks the same.

14 MS. BLUNDY: State would move to admit Exhibits 6
15 and 7.

16 THE COURT: Any objection?

17 MS. WYSE: None, Your Honor.

18 THE COURT: State's Exhibits Number 6 and Number 7
19 are admitted without objection.

20 (State's Exhibits 6 and 7 marked and entered)

21 BY MS. BLUNDY:

22 Q. Tell me, what are we looking at here?

23 A. That is the front entrance of the home.

24 Q. And how about here?

25 A. That is looking from the kitchen back into the

1 living room area where my mother slept, and the front
2 door.

3 Q. So that front door in this picture is the same as the
4 front entrance in the other ---

5 (Simultaneous speaking)

6 A. Yes, ma'am. It is.

7 Q. And where was your mother sleeping at the time that she
8 was alive?

9 A. In the photo just over to that --- that wall that
10 you see in the far back. We had a hospital bed in there.

11 Q. Was the bed still there?

12 A. Oh yes, ma'am. That's where I lay at is in there
13 because the other room, we didn't have a bed set up
14 because we had it at the time only where my mom could go
15 from the kitchen to the living room and to the restroom.
16 Because like I said, she had dementia and we didn't want
17 her traveling through the home. Because to be honest, my
18 mom kept everything that she ever had. She was just that
19 way. I mean, she had every toy that we ever had, so just
20 everything meant a lot to her. And then when she got the
21 dementia it was --- it was hard because we couldn't throw
22 anything away, we couldn't do anything like that. It
23 just meant so much to her.

24 Q. And while you were watching over the property you slept
25 in that bed, in that ---

1 (Simultaneous speaking)

2 A. Yes, ma'am.

3 Q. --- in that living room?

4 A. Yes, ma'am.

5 Q. I am showing you what has been marked State's Exhibit 8,
6 9, 10, 11, 12, and 13.

7 I am showing you what has been marked State's Exhibit 8
8 through 13. Can you please identify the number of the exhibit
9 and what is in each one of these photographs?

10 A. Number eight is the back door of the home. Number
11 nine is the back door of the home. Number ten is the ---
12 the rear entrance door. Number 11 is the rear entrance
13 door. Number 12 is the rear entrance that comes into the
14 actual kitchen. And then number 13 is into the kitchen
15 area.

16 Q. Are these a fair and accurate representation as of the
17 night that they were taken?

18 A. Yes, ma'am.

19 Q. Have they been altered or changed in any way prior to
20 trial?

21 A. No, ma'am.

22 MS. BLUNDY: State would move to admit Exhibits 8
23 through 13.

24 THE COURT: Any objection?

25 MS. WYSE: So, Your Honor.

1 THE COURT: State's Exhibits 8, 9, 10, 11, 12, and
2 13 are admitted without objection.

5 BY MS. BLUNDY:

7 A. That's the rear door of the trailer --- or the home.

9 A. That is also the rear.

11 (Simultaneous speaking)

13 Q. Is it --- because there's a entrance on the front side of
14 the trailer and as well as back?

16 Q. Where was this door?

18 Q. What do you notice about this door post incident that you
19 didn't notice before?

22 Q. Was it like that the last time ---

24 A. No it was not. That door had been approximately
25 replaced maybe a year ago. At one time we had a door

1 that did not have a window in it. And it was in bad
2 shape and we replaced that with a window because at the
3 time she wanted to see out of it if someone come over or
4 something.

5 Q. This might be a little clearer picture. Are you referring
6 to that right there?

7 A. Yes, ma'am.

8 Q. And that was not like that when you had left ---

9 (Simultaneous speaking)

10 MS. WYSE: Objection. Leading.

11 THE COURT: Rephrase your question.

12 BY MS. BLUNDY:

13 Q. What was the door like the last time you saw it?

14 A. The last that I had checked there there had never
15 been any kind of prior entrance or any kind of damage to
16 the door.

17 Q. Every time you would leave the residence, how would you
18 leave it secured?

19 A. We'd lock all the doors and leave out the front
20 door.

21 Q. Which door are we looking at from the interior here?

22 A. That is the rear door that leads --- the door that
23 we just seen that leads from the outside.

24 Q. What angle are we looking at?

25 A. That's as soon as you enter from the rear door

1 looking forward into the kitchen. So if you walk through
2 the back door that's the view you would have.

3 Q. I'm showing you what has been marked as State's
4 Exhibits 14, 15, and 16.

5 Could you please say the exhibit number and what we are
6 looking at?

7 A. Exhibit Number 14 is looking into the refrigerator
8 and where the camera is located to the left of the
9 fridge.

10 Exhibit 15 is in the kitchen looking to --- used to
11 be the master bedroom, but like I said she kept
12 everything and it was just basically a lot of the stuff
13 that she had over the years.

14 And Exhibit 16 is the camera that is located into
15 the kitchen.

16 Q. Are these a fair and accurate representation as of the
17 date and time they were taken on the incident date?

18 A. Yes, ma'am. They are.

19 MS. BLUNDY: State would move to admit Exhibits 14,
20 15, 16.

21 THE COURT: Any objection?

22 MS. WYSE: No, Your Honor.

23 THE COURT: State's Exhibits 14, 15, and 16 are
24 admitted without objection.

25 (State's Exhibits 14, 15, 16 marked and entered)

1 BY MS. BLUNDY:

2 Q. Toby, what room are we looking at here?

3 A. That is the kitchen.

4 Q. And where is the camera located in this picture?

5 A. If you look to the left of the photo above the table
6 area, you can actually see a cork board that's where the
7 camera is right above it.

8 Q. Referring to right here?

9 A. Yes, that's it. That camera would take all the
10 entrances at the back. And I could see in the kitchen
11 area if something, you know, she was doing anything.

12 Q. Is this the same camera --- a --- a view of the camera
13 that you just ---

14 (Simultaneous speaking)

15 A. Yes, ma'am it is.

16 Q. --- picture?

17 A. Yes, ma'am.

18 Q. And the door that we see, where does that lead to?

19 A. Like I said, it used to be the master bedroom, but
20 she hasn't slept in there in years and it's just full of
21 stuff that she's collected over the years and had. Like
22 I said, my mom didn't throw a lot away because we was
23 raised without a lot. And when she got dementia,
24 literally you couldn't throw anything away. I mean, it
25 just --- she would cry because it felt like it was

1 something that meant to her personal to her.

2 Q. Would that camera have picked up anything on the other
3 side of the door or just the view of the kitchen?

4 A. No, just the view in the kitchen area. That door
5 actually has a --- we had that door locked and I don't
6 know if it is now, but it usually stays locked that door
7 and the other door down the hallway.

8 Q. What is this?

9 A. That is the camera that's located in the kitchen.

10 Q. How many cameras did you have in the house?

11 A. I have a total of three.

12 Q. Were they all active and working at the time of the
13 incident?

14 A. Yes, ma'am.

15 Q. I'm showing you what has been marked as State's Exhibits
16 17 and 18.

17 MS. WYSE: Judge, may we approach?

18 THE COURT: Yes, ma'am.

19 (Bench conference)

20 BY MS. BLUNDY:

21 Q. I'm showing you what has been marked as State's Exhibits
22 17 and 18. Could you please identify what we're looking at?

23 A. Exhibit 18 is the camera that is located at the
24 bathroom. It actually covers all the way down the hall
25 and you can see all the way up to the kitchen from this

1 camera.

2 Same thing on 17. It's a camera located in the
3 hallway right at the bathroom.

4 Q. And are these a fair and accurate representation as of
5 how everything looked the last time you saw it on the
6 incident date?

7 A. Yes, ma'am.

8 MS. BLUNDY: The State would move to admit
9 Exhibits 17 and 18.

10 THE COURT: Any objection?

11 MS. WYSE: No objection, Your Honor.

12 THE COURT: State's 17 and 18 are admitted without
13 objection.

14 (State's Exhibits 17 and 18 marked and entered)

15 BY MS. BLUNDY:

16 Q. Toby, what are we looking at here?

17 A. That is the hallway that leads from the living room
18 into the --- the bathroom.

19 Q. And where was the camera located?

20 A. If you look on the very small wall above like the
21 little ceramic --- well, it's actually a concrete Indian.
22 There is a camera that's located on that wall.

23 Q. And what area of the house did that camera capture?

24 A. That would capture all the way down the hallway back
25 into the living room and into the kitchen area.

1 Q. Is this the hallway camera?

2 A. Yes, ma'am. It is.

3 Q. When you --- where was --- you said --- mentioned there
4 was three cameras?

5 A. Yes, ma'am.

6 Q. Where was the third camera located?

7 A. The third camera was located in the living room as
8 soon as you walked through the front door to the left
9 over near the bookshelf. And it --- that night, I don't
10 think we ever ended up with it going off because I know
11 why it didn't.

12 Like I said earlier, we had taken the sensitivity of
13 the camera and turned it down. And with me going there a
14 lot and I was always in the living room area, we had
15 turned the sensitivity on that one down a good bit. Now,
16 if you were up walking around, you know, of course
17 you --- it could come on for just a moment. But that's
18 one reason I feel like it probably didn't take that many
19 photos. But like the entrance ones was turned up. Any
20 movement on the entrance was of course that's the reason.

21 But when I'm in the home, I mean, I didn't want
22 it --- because like I said, woke her and it woke me
23 every time you moved just the least little bit.

24 Q. Did you recall seeing any footage from that night from
25 that third camera near the entrance?

1 MS. WYSE: Objection. Leading.

2 THE COURT: Overruled.

3 MS. BLUNDY: I'll rephrase.

4 BY MS. BLUNDY:

5 Q. What footage did you review from that third camera that
6 night near the entrance?

7 A. If I'm not mistaken, we did have it come on one time
8 with like --- because it showed the --- the officers had
9 come by. And I could remember that camera. I don't know
10 if it picked up his movement or something but I can
11 remember seeing the lights through the --- through the
12 outside flashing and all the different lights shining in.
13 But as far as an actual video, it never did video. It
14 just --- that one --- one moment.

15 Q. Then you reviewed the Blink footage through your phone,
16 you said?

17 A. Yes.

18 Q. What did you see?

19 A. Whenever the time --- like I said before, she ---
20 time she woke me up, he had already entered the home and
21 our next clip --- I think the first clip that we actually
22 seen was him walking to the camera to turn that camera
23 up. And then it's like we couldn't see anything. And
24 like I said, meantime I'm already jumped up. I'm trying
25 to get ready, she's trying to call 911. And then the

1 next thing I see is the bathroom camera goes off.

2 Q. What kind of audio do you have on this system?

3 A. It records all audio, so we could hear even though
4 the cameras is turned up, you can hear audio off of each
5 one as they continued to record.

6 Q. Could you hear anything after the camera was turned up?

7 A. Yes, ma'am. We could actually hear movement. And
8 even when I got there, the officers, you know, I told
9 them, I said, there's someone still there. I can hear
10 audio in the kitchen area. And you could hear movements
11 in the area. That --- that camera is designed to ---
12 whether it's alerting or not, if I go onto my phone and
13 just hit play, I can automatically take a video and start
14 listening and watch it whether it picks up motion or not.
15 It's how that we could establish that the sound is on.

16 Q. What personal knowledge do you have as to who this
17 defendant was?

18 A. I had heard of David. I don't think we have ever
19 met. My brother knew him. I don't know how well, how
20 personal. But my brother's been dead since like 2015.
21 Some of my cousins, like second cousins, I think they
22 know him. He had mentioned a --- a cousin or aunt, I'm
23 not quite sure, which is Mary Gunn. And I've known Mary,
24 we've been childhood friends for --- for years. Other
25 than that, really don't know a lot about him. Don't know

1 much of anything.

2 And then recently I heard that, you know, somebody
3 had --- had made a mention to me about him, and was like
4 well, I don't really know ---

5 Q. Okay. Thank you.

6 A. --- him.

7 Q. Thank you. But you didn't know him personally or have a
8 relationship?

9 A. No. No.

10 Q. What permission did you ever give Mr. Gunn to be inside
11 the property at [REDACTED] Johnson Drive on April the 18th?

12 A. I've never given permission.

13 Q. When you came face-to-face with Mr. Gunn that --- that
14 night, what did he say to you?

15 A. At first he had said to my knowledge I heard him
16 saying something about my family as they were walking up.
17 And then he made the statement --- he referred to Keith,
18 which is --- he'd be my --- my second cousin. And he had
19 made the mention of his name. And then I'm like --- I'm
20 not kin to him, he's no kin to us. And then as he got up
21 closer, he was naming off people like I said, the ones
22 that I basically just described. Calvin, my brother.
23 And then he had made reference to a cousin which was by
24 the reference of Keith.

25 And then all of a sudden he said, you know, "I'm

1 sorry" as he was coming up through there. So he
2 acknowledged, you know. Because I said, you know, my
3 mother is not his aunt.

4 MS. WYSE: Objection, Your Honor. He can't
5 speculate as to what Mr. Gunn may have meant when he said
6 anything.

7 THE COURT: Ask the question in a different form
8 Ms. --- Ms. Blundy.

9 MS. BLUNDY: Judge --- okay.

10 BY MS. BLUNDY:

11 Q. Who in your family had access to [REDACTED] Johnson Drive?

12 A. Myself and my wife at that time.

13 Q. Anybody else?

14 A. My sister. She had access to it only. That's it.

15 No one else.

16 Q. Cousins?

17 A. No.

18 Q. Aunts?

19 A. No, they're all deceased.

20 Q. In fact, you continued to reside in [REDACTED] Johnson Drive
21 after your mother passed?

22 MS. WYSE: Objection. Leading question, Your Honor.

23 THE COURT: Overruled.

24 THE WITNESS: After my mother passed, like I said, I
25 was there off and on. And then after the incident --- I

1 have a niece that actually come and stayed when my mother
2 was still alive sometimes to help out, and she had
3 acquired --- she's like, look, can I stay a --- you know,
4 granny's place. And I said, oh well, I think it would be
5 good, because I --- you know, I want to be able to stay
6 more at home. And so the deal was that she would stay, she
7 would continue to keep the place up. You know, we have
8 made the agreement that she would pay the power bill
9 and ---

10 MS. WYSE: Objection, Your Honor. Some of this
11 is --- once again, evidence that has not been given from
12 the State. He's also using hearsay saying what the niece
13 agreed to.

14 THE COURT: Sustained.

15 MS. BLUNDY: Judge, certainly if he has personal
16 knowledge as to how the property was being utilized.

17 THE COURT: Counsel --- Counsel --- Counsel
18 approach.

19 (Bench conference)

20 BY MS. BLUNDY:

21 Q. How is the property still being utilized by your family?

22 MS. WYSE: Objection, Your Honor. This is unusable
23 under Brady Rule five. None of this has been given over
24 to the State prior to ---

25 (Simultaneous speaking)

1 MS. BLUNDY: Judge ---

2 THE COURT: Overruled. Overruled.

3 BY MS. BLUNDY:

4 Q. How was this property being utilized by your family?

5 A. We still own the property and my niece lives there.

6 MS. BLUNDY: Thank you. I have no further
7 questions. Please answer anything Ms. Wyse might have
8 for you.

9 THE WITNESS: Yes, ma'am.

10 CROSS-EXAMINATION

11 BY MS. WYSE:

12 Q. Good afternoon Mr. Shaw.

13 A. Good evening.

14 Q. I am very sorry for your loss. Mr. Shaw, did you write
15 statements?

16 A. What do you mean?

17 Q. Did you ever give a statement --- did you ever write a
18 statement to ---

19 A. I can't remember if I did or didn't to be honest.

20 Q. All right. Did you ever go into the sheriff's office and
21 make a statement at any time?

22 A. No, I never went into the sheriff's office.

23 Q. All right. And do you remember whether or not several of
24 the items in your house --- or your mother's building were
25 covered with plastic?

1 A. (Unintelligible).

2 Q. Okay. And do you remember whether or not there was any
3 plastic on the --- the items inside?

4 A. Plastic? No, ma'am.

5 Q. All right. And can you tell me whether or not --- how
6 far away do you live from [REDACTED] Johnson Drive?

7 A. Approximately maybe 15 minutes if that.

8 Q. All right. And you testified earlier that your mother
9 had dementia?

10 A. Yes. Yes, she had contracted it.

11 Q. And you said for how long did she (unintelligible)?

12 A. Roughly, we really didn't notice until maybe a year
13 or less --- less than a year.

14 Q. Okay. And did anyone stay with her --- did you hire
15 anybody to stay with her ---

16 (Simultaneous speaking)

17 A. Yes, at that time we had the --- Agape Care I think it is
18 what they call it. Myself, my sister and my wife.

19 Q. Right.

20 A. And then of course my niece, she would come.

21 Q. And how long did that go on?

22 A. That didn't happen until probably six months or less
23 before passing, because the doctors felt that she didn't
24 need it. She was capable to do everything. The problem
25 was she just would forget stuff. And we had talked with

1 the doctors and she never wanted to go into any kind of
2 residence. And I asked her to live with me and she said
3 no. And so we decided it was best that we continued to
4 take care of her in her home.

5 Q. Is that when you decided to put in the cameras?

6 A. I did the cameras actually like before she had
7 actually had the dementia. Right at when we started
8 noticing. Because she had actually told me she --- one
9 night that she felt like someone was at the door.

10 Q. Without telling me what your mother said, can you just
11 tell me when you put the cameras in?

12 A. Approximately a year.

13 Q. Okay. And they were still in operation the night that
14 this occurred?

15 A. Oh, yes.

16 Q. All right. And you said that your mother was a hoarder?

17 A. Well, my mother --- people would say a hoarder, but
18 she cherished everything that she had. She was grewed up
19 in a very hard home, didn't have a lot of money. A lot
20 of poverty. So everything that she worked for, ever got,
21 or that she give us as kids, she cherished it a lot. And
22 she kept those things.

23 Q. And do you remember telling law enforcement the night
24 that --- that you arrived, that she was a hoarder?

25 A. I may have said in that example. To me, of course,

1 there was some things that I wouldn't have kept. But to
2 her they meant something.

3 Q. Do you remember telling law enforcement ---

4 MS. BLUNDY: Objection. Asked and answered.

5 THE WITNESS: I may have. I can't recall.

6 THE COURT: All right. Hold on. Hold on.

7 (Simultaneous speaking)

8 THE COURT: Overruled objection. Answer the
9 question again.

10 THE WITNESS: I can't recall if I specifically said
11 hoarder.

12 BY MS. WYSE:

13 Q. Okay.

14 A. It's 2:00 in the morning.

15 Q. Okay. Sure. Now, how long were you on the scene?

16 A. Pretty much from the time that it happened till the
17 time they get there, and then till they arrested him and
18 had left with him and the scene had begin to clear out.

19 Q. And do you know how long that was?

20 A. I do not.

21 Q. All right. And you did say that you do know Mary Gunn
22 Brice?

23 A. Yes.

24 Q. And you've known her for a while?

25 A. Yes.

1 Q. All right. And you said --- are you related to Mary
2 Brice?

3 A. No.

4 Q. She's not married into your family in any way?

5 A. She is not.

6 Q. All right. And it's your testimony today that your niece
7 lives there?

8 A. Say what now?

9 Q. It is your testimony today in this courtroom that your
10 niece lives there?

11 A. Yes, my niece has been staying there ever since the
12 incident had happened. And now actually in the past two
13 weeks, she is part time because she's wanting to find ---
14 she's actually between trying buy a home.

15 Q. Did you ever tell law enforcement officers at any point
16 in time that your niece lives at that home?

17 A. At the time she wasn't living there ---

18 Q. All right.

19 A. --- she had stayed there prior while my mother was
20 alive to help my mother.

21 Q. And how many bedrooms were in that building?

22 A. That home has three bedrooms.

23 Q. And you said that several of the rooms had too much stuff
24 in them to stay in?

25 A. The second bedroom that --- actually, the small

1 bedroom beside the livingroom had a bed that was clear and
2 could be stayed in. The third bedroom on the far end was
3 actually the bedroom that my brother had. When he passed, my
4 mother took it really hard and basically didn't want no one
5 to go in there. The bedroom that was the master bedroom at
6 that time was where she kept a lot of the things and stored a
7 lot of the stuff.

8 Q. Okay. And what was missing from the home after this
9 incident occurred?

10 A. Nothing that I could physically tell.

11 Q. And you noticed that there (background noise) later on?

12 A. No.

13 Q. All right. And you said earlier that you normally went
14 out the front door?

15 A. Yes.

16 Q. And you said that there was damage to the back door?

17 A. Yes.

18 Q. But you don't have a camera there?

19 A. The camera points to the back door.

20 Q. Not on the outside though, correct?

21 A. No, not on the outside.

22 Q. All right. So there's no camera footage of the outside
23 of the back door?

24 A. No.

25 Q. So you don't know for certain whether or not Mr. Gunn did

1 that?

2 A. By the camera footage, he come through that door.

3 Q. But you don't know if he was the one who actually caused
4 the damage?

5 A. I will say prior to this incident it wasn't, because

6

7 I installed that door.

8 Q. Okay. But you can't say for certain that Mr. Gunn is the
9 one who did that?

10 A. Well, no. We won't say that.

11 Q. Okay. And you said that you were a pastor at what
12 church?

13 A. One Love Community.

14 Q. All right. How long have you been there?

15 A. I just established that church this year. I am also
16 vice president over Cornerstone Covenant World Missions,
17 I travel around the world doing missions.

18 Q. At any point in time have you been investigated for
19 embezzling from the churches that ---

20 (Simultaneous speaking)

21 A. Oh, no ma'am.

22 MS. WYSE: Thank you. I have no further questions.

23 THE COURT: Any redirect?

24 MS. BLUNDY: Sure.

25 REDIRECT EXAMINATION

1 BY MS. BLUNDY:

2 Q. Toby how many cameras are --- were placed outside of the
3 trailer?

4 A. Outside, there was none.

5 Q. None?

6 A. No. Everything was on the inside.

7 MS. BLUNDY: Thank you, no further questions.

8 THE COURT: Anything else for this witness?

9 MS. WYSE: No, Your Honor.

10 THE COURT: All right. Thank you, sir. You can
11 step down.

12 THE WITNESS: Yes, sir.

13 THE COURT: Call your next witness.

14 MS. BLUNDY: Thank you. We'd like to call Officer
15 Michael Shedd to the stand.

16 (Witness sworn)

17 MICHAEL SHEDD, HAVING BEEN DULY SWORN, TESTIFIED AS
18 FOLLOWS.

19 DIRECT EXAMINATION

20 BY MS. BLUNDY:

21 Q. Officer Shedd, can you please state your full name for
22 the record.

23 A. Michael Joseph Shedd.

24 Q. Where do you work?

25 A. I work for the City of Walhalla Police Department.

1 Q. And how long have you been with the Walhalla Police
2 Department?

3 A. I've been with them since 2022.

4 Q. And where did you work before you came to Walhalla?

5 A. I worked for the Town of West Union Police
6 Department.

7 Q. And how long did you work for West Union?

8 A. Started in 2019.

9 Q. What training do you have as a law enforcement dog
10 handler?

11 A. First off, I'm classified as a Class one police
12 officer from the Criminal Justice Academy. Also
13 certified as a dual purpose K9 handler, which means my
14 dog is trained in narcotics, tracking and apprehension.

15 Q. Were you called out to the scene on April 18, 2023?

16 A. I was. I was dispatched by the Oconee County
17 Sheriff's Office in reference to a K9 assist for a
18 burglary in progress.

19 Q. So they assisted --- he they asked for your assistance?

20 A. That's correct.

21 Q. Do you know who put that request in?

22 A. I do not. I would say it's most likely Sergeant
23 Alexander or at the time Corporal Carr, because they
24 are the ones that primarily requested assistance from the
25 shift.

1 Q. What happened when you arrived there around 2:00 a.m.?

2 A. I arrived on scene, I met with other officers. I'm
3 referring to them as in they're technically deputies. I
4 met with other officers on the scene. And I was advised
5 of the situation that there was possibly a suspect inside
6 the residence that did not live there and was reported by
7 the homeowner as a burglary in progress.

8 Q. What loud verbal commands did you give to the defendant
9 inside the home?

10 A. Our agency requires previously -- prior to taking out
11 the K9 deployment that we notify who we are, what our
12 intentions are, and what actions are going to occur. And
13 generally that's along the line of identifying him as a
14 police K9 that the subject is under arrest. And if
15 they're inside, they need to make them self known,
16 because that particular K9 is going to be used with force
17 potentially applied if they don't respond.

18 Q. Do you recall saying those things to Mr. Gunn?

19 A. Yes, I do.

20 Q. How long would you say that you were staked outside of
21 the house waiting for him to come out?

22 A. I think it was a rather prolonged period of time. I
23 can't give an exact time. I would estimate it was at
24 least 30 minutes that we were staked out.

25 Q. Who made the decision to enter into the home?

1 A. Sergeant Alexander.

2 Q. To the best of your recollection, do you remember who
3 actually went inside the home when entry was made?

4 A. I do remember it was myself, Alexander, Carr, Deputy
5 Entsminger, K9 Cos was from the police department.

6 Q. And who remained at the back side of the home?

7 A. I believe deputy (unintelligible) went around to the
8 rear of the house with Deputy Pitts.

9 Q. What happened when you made entry?

10 A. Initially we made entry into the residence,
11 Alexander had the key to the front door. Upon opening
12 the front door from what I could see directly around, I
13 took a look to the right, because the hallway goes to the
14 right, make sure nobody was standing there. Then we all
15 went in together. The subject was at the back door
16 stepping out off the back porch that time
17 (unintelligible).

18 Q. How was the key to the home obtained?

19 A. It was from the homeowner which is Mr. Shaw who has
20 already previously spoken.

21 Q. What involvement did you have in apprehending Mr. Gunn?

22 A. My involvement in this incident is deployment of K9
23 Cos, again, he's a apprehension K9 at the direction of
24 the sheriff's office. When I'm operating under mutual
25 aid from them, I essentially take orders from Sergeant

1 Alexander at that point. And a dog was intended to be used
2 to apprehend the suspect because he had not come out
3 after being given numerous opportunities by voice or
4 physical appearance.

5 So during that when I assisted Alexander and Carr
6 going into the residence, the subject ran out the back
7
8 door. Upon seeing us, he went to the back porch. And
9 also went with the K9 to the back porch as a show of
10 force so the subject could see that if he didn't comply
11 not only was there a risk of being tased, but also dog
12 bit.

13 Q. Did you have any involvement in laying hands or
14 handcuffing the defendant?

15 A. I did not.

16 Q. I'm showing you what has been marked as State's
17 Exhibit 19. What is this?

18 A. That is a picture of Mr. Gunn in handcuffs, and
19 there's a picture of Walhalla's police K9 Cos standing
20 by. Again, as a show of force. While Mr. Gunn lay on
21 his back he continued to move around on the porch while
22 in my time and my assessment be under investigative
23 detention at that point.

24 Q. Is it a fair and accurate representation as of the date
25 and time that photo was taken?

1 A. Yes.

2 Q. Accurate?

3 A. That is correct.

4 Q. Has it been altered or changed in any way ---

5 (Simultaneous speaking)

6 A. It has not.

7 MS. BLUNDY: The State would move to admit

8 Exhibit 18 --- or sorry, 19.

9 THE COURT: Any objection?

10 MS. WYSE: No, Your Honor.

11 THE COURT: State's Exhibit Number 19 is admitted

12 without objection.

13 (State's Exhibit 19 marked and entered)

14 BY MS. BLUNDY:

15 Q. Where would you have been standing when this photograph

16 was taken?

17 A. If you were at the back door of the residence coming

18 outside of the home, there is a wheelchair access ramp

19 that you see Mr. Gunn on. I'd be standing to the right

20 if you were looking out the back door.

21 Q. And that is your K9 Cos?

22 A. That is correct.

23 Q. Did you actually have to deploy the K9 against this

24 defendant?

25 A. As far as a deployment goes by definition through

1 the certifying agency any time the K9 is utilized, it's
2 technically a deployment. As far as a use of force on
3 the subject, no. The K9 was deployed to initially clear
4 the house. And after this photo, or incident, we did
5 clear the rest of the house to make sure there was no
6 nobody inside.

7 Q. And was there anybody else inside the house?

8 A. We did not locate anybody else inside the house.

9 MS. BLUNDY: Thank you. I have no further
10 questions. Please answer anything Ms. Wyse might have
11 for you.

12 THE COURT: All right. Ms. Wyse.

13 MS. WYSE: Thank you, Your Honor.

14 CROSS-EXAMINATION

15 BY MS. WYSE:

16 Q. Deputy Shedd, how long do you think you were at the
17 scene?

18 A. As I previously stated, I believe it was at least
19 30 minutes. It was a very prolonged time frame while we
20 were waiting for everybody to show up brought some safety
21 issues.

22 Q. Okay. So you think you were on the scene 30 minutes
23 before you went in, or how long were you there technically?

24 A. Probably an hour or so ---

25 Q. Okay.

1 A. --- for the whole incident.

2 Q. Did you go inside?

3 A. I did.

4 Q. Okay. And do you --- were you part of the getting the
5 information as it came in through CAD and through 911?

6 A. As far as the collection (unintelligible) when the
7 call come in, no, I was just dispatched after the call
8 had been created.

9 Q. All right. And were you aware that no one lived there?

10 A. At the time I arrived on scene and I met with other
11 units who advised that the homeowner was en route to the
12 scene that's all that I knew at that point.

13 Q. And you said it was the homeowner, but they didn't tell
14 you that it was (unintelligible) that was on ---
15 (unintelligible) scene ---

16 (Simultaneous speaking)

17 A. To my knowledge it could have been the complainer,
18 or the homeowner. It was somebody that was
19 (unintelligible) for the property.

20 Q. All right. And were you aware that the person who lived
21 there prior had passed away?

22 A. No, I was not. I have no recollection or knowledge
23 prior to this incident anything that's occurred at this
24 address.

25 Q. Okay. All right. So was there water in the building?

1 A. That I'm not sure. I can't speak to that.

2 Q. Did you look in the refrigerator?

3 A. No, ma'am. I did not.

4 Q. Did you walk inside and look at anything?

5 A. I did go through the house. (Background noise).

6 Q. Okay. And did you take any pictures?

7 A. Just them that you see there.

8 Q. The one ---

9 A. The one that was just shown, that picture from K9

10 Cos, that would be it.

11 Q. Okay. Now, you said that when Mr. Gunn came out the back

12 door, he was on the ground?

13 A. When I got to the back door, he was on the ground by the

14 porch, there.

15 Q. Were you in the front ---

16 A. Yes.

17 Q. --- when he came out?

18 A. Yes.

19 Q. Okay. All right. And you were the one who had the

20 K9 that day?

21 A. Yes that's correct.

22 Q. All right. And did you have --- did --- the K9 went

23 through the house?

24 A. The K9 did, yes.

25 Q. At what point in time did the K9 enter the house?

1 A. Initially when we made a entry, generally what we'll
2 do for officer safety issues we could tell looking
3 outside this house that there is a left and right hallway
4 essentially once you go through the front door. With
5 that, our initial plan, you see three people on the
6 body-worn camera go in. That's one officer to the left,
7 one to the right. I'll come in the center of the room.
8 That's in case anybody is down in corners that we can't
9 see, 'cause y'all just can't fire bullets. That's what I
10 tell people generally. So ---

11 Q. All right.

12 A. --- was the three of us that made initial entry.
13 Upon clearing that initial room, the subject was on the
14 back porch. We then reported to the back porch. Once he
15 was in custody we then cleared the rest of the house.
16 While they were working putting him in handcuffs, I
17 turned around to make sure nobody else would come out,
18 you know, that we didn't see, because we hadn't cleared
19 the rest of the house.

20 Q. And did you find anybody else there?

21 A. No, we did not.

22 Q. Do you remember whether or not you spoke to Mr. Shaw?

23 A. I did speak with him, yes. My agency's policy
24 requires me as an individual to also confirm that the
25 complainant as you refer to him as is interested in

1 pursuing charges. That is for the civil litigation side
2 for K9 apprehensions.

3 Q. Okay. But you didn't have to do anything civil with the
4 K9?

5 A. No, because there was no apprehension or as far as a
6 physical body.

7 Q. All right. And that's just an agency policy?

8 A. That is correct.

9 Q. All right. Were you -- did you ask Mr. Gunn any
10 questions?

11 A. To my knowledge, I don't believe so.

12 Q. All right. And are you aware of whether Mr. Gunn --- did
13 he try to physically fight you in any way, shape, or form?

14 A. Not me, no.

15 Q. Okay. Did you see him try to physically fight anybody?

16 A. When I come to the back porch, there were so many
17 people at the porch at that time, because again, I
18 automatically assumed to turn around and watch the rest
19 of the house ---

20 (Simultaneous speaking)

21 A. --- handcuffs. Because if somebody's going to run
22 off and the dog is used, at that point there was no need
23 for him to physically be apprehended by the bite from a K9.

24 MS. WYSE: Okay. I have no further questions.

25 Thank you.

1 THE COURT: Anything further of this witness?

2 MS. BLUNDY: Yes. Yes, Your Honor. Just briefly.

3 REDIRECT EXAMINATION

4 BY MS. BLUNDY:

5 Q. How many times do you recall telling the defendant you're
6 under arrest, come out of the house?

7 A. Going to be a minimum of three times per agency
8 policy.

9 Q. And did he listen to any of those commands?

10 A. At no point did I hear any sounds, movement or
11 physical observations of him exiting the structure and
12 notifying me of his presence.

13 MS. BLUNDY: Thank you. Nothing further.

14 THE COURT: Anything further from this witness.

15 MS. WYSE: No, Your Honor.

16 THE COURT: Thank you officer, you can step down.

17 MS. BLUNDY: Your Honor, next we would like to call
18 Deputy Brodi Pitts to the stand.

19 THE COURT: Okay.

20 (Witness sworn)

21 BRODI PITTS, HAVING BEEN DULY SWORN, TESTIFIED AS
22 FOLLOWS.

23 DIRECT EXAMINATION

24 BY MS. BLUNDY:

25 Q. Deputy Pitts, will you please state your full name for

1 the record.

2 A. Brodi Lane Pitts.

3 Q. Where do you work?

4 A. The Oconee County Sheriff's Office.

5 Q. And how long have you been with the Oconee County
6 Sheriff's Office?

7 A. April 3rd will be one year.

8 Q. What are your duties as a deputy?

9 A. Respond to calls for service, enforce state and
10 local ordinances.

11 Q. Do you recall being called out to the scene on April 18,
12 2023?

13 A. I do.

14 Q. When you were out on that call, where were you
15 specifically stationed around the house?

16 A. We were facing the front of the house. I was at the
17 back right side corner of the residence.

18 Q. When did you acknowledge that your fellow officers were
19 going make entry into the home?

20 A. I was advised by first Sergeant Alexander that they
21 were going to go make entry to the front door. That's
22 why they wanted me to stand out the back just in case
23 somebody were to come out the back door.

24 Q. When you were standing at the back, what did you do with
25 your weapon?

1 A. I had my county-issued weapon drew and pointing
2 towards the door just in case somebody were to come out.

3 Q. What happened when they made entry into the house?

4 A. Just prior to them making entry to the residence, I
5 was watching the back door. And just before they
6 informed me that they were about to make entry, I watched
7 the back door partially come open and close, partially
8 come open and close, which is indicating that somebody
9 was trying to come out the back door. And I notified the
10 deputies up front of this incident.

11 Q. And then what happened?

12 A. I started verbally challenging the subject inside
13 the home, telling him to come out and show me his hands.
14 Eventually he did come outside and he was given verbal
15 commands to get down on the ground, and then he was taken
16 into custody.

17 Q. Did he get down on the ground?

18 A. Initially no. It took several times to call out to
19 him for him to come out and comply. Then eventually he
20 did get on the ground.

21 Q. How many officers would you say it took to apprehend him?

22 A. Initially, it was Deputy Entsminger and I verbally
23 challenged him. And then Sergeant Alexander, Carr, and
24 Shedd come to the back door. So we kind of just met
25 there. From what I recall it was just Deputy Entsminger

1 now that actually put cuffs on him and put him into
2 custody.

3 Q. And once you finally were able to place handcuffs on him,
4 what did you do next?

5 A. He was handed over to deputy Entsminger. Sergeant
6 Alexander wanted me to go finish clearing the rest of the
7 residence with other deputies.

8 Q. What do you recall Entsminger doing as far as physically
9 to the defendant after the handcuffs were put on?

10 A. He started checking his person for weapon.

11 Q. And what happened when --- when he was checking him?

12 A. Miscellaneous tools come out of his hoodie onto the
13 ground.

14 Q. Do you recall where those tools exactly came out? You
15 said his hoodie; was it in the hood or in the pockets?

16 A. If I recall correctly, they were in the little front
17 pocket of his hoodie.

18 Q. Were you able to place your hand on some of those tools?

19 A. Yes, once they --- he was detained and went through
20 his personal belongings, there towards the end I did take
21 possession of the items.

22 Q. I'm going to show you what the State is marking as
23 Exhibit 21. Looking at these items, do you recall seeing them
24 the night of the incident?

25 A. I do.

1 Q. And where did you locate these items? Or do you remember
2 last seeing them?

3 A. The screwdriver tool and the little pick, I recall
4 coming off his person. If I recall correctly, the
5 crowbar came from his book bag. I don't remember
6 exactly remember where the pliers came from.

7 Q. And who placed them into the evidence bag initially?

8 A. I took possession of them on scene and separated
9 from his personal belongs that was going to go to the
10 jail with him. And then once I took possession of them,
11 they were handed over to deputy Entsminger to be placed
12 into the evidence locker for submission.

13 Q. While these items were in your care, custody, and
14 control, did you alter or change them any way prior to trial?

15 A. I did not.

16 Q. When you had care, custody, and control of these items,
17 who did you give them to next?

18 A. Once I took possession, they were handed over to
19 Deputy Entsminger.

20 MS. BLUNDY: Thank you. I have no further questions
21 for this witness. Please answer anything Ms. Wyse may
22 have for you.

23 MS. WYSE: Thank you, Your Honor.

24 CROSS-EXAMINATION

25 BY MS. WYSE:

1 Q. You said you've been on the force a little over a year?

2 A. At this agency, yes.

3 Q. Okay. And you had prior law enforcement experience?

4 A. Yes, ma'am.

5 Q. All right. And how many officers did you remember being
6 on the scene that evening?

7 A. Five total.

8 Q. And how long were you there?

9 A. I was the last one to get on scene, so I was
10 probably there 45 minutes, 40 minutes or so.

11 Q. And were you aware that no one lived there?

12 A. The only knowledge that I had at the time that there
13 was a burglary in progress and it was not the homeowner,
14 somebody that wasn't supposed to be there and he was
15 considered to be still in the residence.

16 Q. I'm not sure I understood the last part of your sentence.
17 Who was still in the residence?

18 A. That the suspect was still in the residence.

19 Q. Okay. All right. So you --- were you a part of the
20 information that received from 911 dispatch that no one lived
21 there?

22 A. No, ma'am ---

23 (Simultaneous speaking)

24 A. --- I was just briefed on what a quick synopsis of
25 what was going on when I got on scene.

1 Q. Okay. And were you aware that no one was supposed to be
2 there? If you were briefed, then was that one of the things
3 you were told?

4 A. I was just told that who was in there at the time
5 was not supposed to be there.

6 Q. Okay. Great. So how long were you there total on the
7 scene?

8 A. 40, 45 minutes total.

9 Q. All right. And you watched Mr. Gunn come out the back
10 door?

11 A. Correct.

12 Q. All right. And did he fight you in any way, shape, or
13 form?

14 A. Not physically, calling him out he was hesitant on
15 coming out at first. And when I was handcuffing he did
16 pull his arm away from me briefly. But after that there
17 was no further incident as far as physically resisting.

18 MS. WYSE: All right. I have no further questions.

19 MS. BLUNDY: Your Honor, we have nothing more for
20 this witness.

21 THE COURT: Okay. Thank you officer. You can step
22 down.

23 MS. BLUNDY: Your Honor, next the State would like
24 to call Deputy Josh Entsminger to the stand.

25 (Witness sworn)

1 JOSH ENTSMINGER, HAVING BEEN DULY SWORN, TESTIFIED
2 AS FOLLOWS.

3 DIRECT EXAMINATION

4 BY MS. BLUNDY:

5 Q. Please state your full name for the record.

6 A. Joshua Scott Entsminger.

7 Q. Where do you work?

8 A. I work for the Oconee County Sheriff's Office.

9 Q. And how long have you worked for the Oconee County
10 Sheriff's Office?

11 A. A little over two years.

12 Q. And what is your title?

13 A. I'm a master patrol deputy.

14 Q. And as a master patrol deputy, what are your duties?

15 A. I patrol the county of Oconee, I respond to calls
16 for service, and enforce local and state ordinances.

17 Q. Turning to April the 18th, 2023, were you on duty that
18 night?

19 A. I was.

20 Q. Do you remember being called out to the residence around
21 2:00 in the morning?

22 A. Yes.

23 Q. And what was the call for?

24 A. A burglary in progress.

25 Q. Who was the first to respond at the scene?

1 A. I was.

2 Q. And do you recall the address of the call?

3 A. [REDACTED] Johnson Drive, Walhalla.

4 Q. And what county and state is that in?

5 A. It's in Oconee County in South Carolina.

6 Q. Since you were the first to respond, what did you observe
7 as soon as you got there?

8 A. As soon as I got there I --- say that question one
9 more time. Sorry.

10 Q. What did you observe as soon as you got there?

11 A. As soon as I got there, I walked the perimeter of
12 the home and observed some damage to the back door.

13 Q. Could you hear anything going on on the inside?

14 A. Not from the outside, no.

15 Q. Were you briefed as to --- you said burglary in progress?

16 A. Yes.

17 Q. What officers came out as backup to you, or were you alone
18 for a period of time?

19 A. Initially, David Carr responded to the call with me.

20 So he arrived shortly after me.

21 Q. Do you remember who arrived next?

22 A. It would have been officer Shedd from Walhalla.

23 Q. How long would you say you observed that residence prior
24 to the defendant's coming out of the home?

25 MS. WYSE: Objection to the question, Your Honor.

1 It's leading.

2 THE COURT: Overruled.

3 BY MS. BLUNDY:

4 Q. How long would you say you observed the residence prior
5 to the defendant coming out of the home?

6 A. I would say about --- between 30 minutes to an hour.

7 Q. And during that time frame, what were you doing?

8 A. Set a perimeter around the house.

9 Q. And when you say, "set a perimeter," describe for the
10 jury exactly what you were doing?

11 A. Okay. So essentially we surrounded the house with
12 officers. I mean ---

13 Q. What --- what did you see the --- what did you see when
14 you looked at the windows?

15 A. We could see through some of the windows, but we
16 didn't see any --- any people inside.

17 Q. What assistance did you request from Walhalla to come out
18 with the K9 unit?

19 A. I didn't make the specific request, another deputy
20 did; do you want me to elaborate on that?

21 Q. Sure.

22 A. Deputy Carr requested --- or came over the radio to
23 Sergeant Alexander requested that we --- if we could call
24 the K9 from Walhalla, which was granted, and then officer
25 Shedd arrived.

1 Q. What efforts did you make to knock and announce who you
2 were?

3 A. I didn't specifically knock and do the knocking and
4 announcing. At the time that that occurred I was on the
5 back right side of the --- of --- of the home and Deputy
6 Carr had gone around, he knocked and announced. And then
7 shortly after that Officer Shedd announced as well.

8 Q. Eventually who made the call to enter into the home?

9 A. Being that both of my supervisors were on scene, I
10 mean, we all have the collective idea of, you know, this
11 is where we're going with that --- that we are going to
12 have to make entry if nobody surrenders. So being that
13 both my supervisors were on scene, my highest supervisor
14 is Sergeant Alexander. So ---

15 Q. And when entry into the home was made, where were you set
16 at the perimeter?

17 A. You said as we're about to enter?

18 Q. Uh-huh.

19 A. I was on the front steps in front of the front door.

20 Q. And when entry into the home was made, where did you go?

21 A. I had run around to the back side where Deputy Pitts
22 was.

23 Q. What happened when you ran around to the back side of the
24 house?

25 A. When I ran around to the back side, Deputy Pitts

1 call --- or calling out to basically the door --- back
2 door had been opened so he was calling out to that
3 subject. So we began announcing for --- for that subject
4 that we were the Oconee County Sheriff's Office for
5 to --- to come out with his hands up.

6 Q. What happened when he finally came out?

7 A. When he finally came out, he wasn't necessarily
8 complying with our orders of, you know, getting down on
9 the ground. After a few moments though, we could see
10 other officers come through the back door towards him and
11 then he laid down on the ground.

12 Q. And then the K9 was with the other officer?

13 A. Yes.

14 Q. And he laid down on the ramp?

15 A. Yes.

16 Q. Okay. Was it difficult to put handcuffs on the
17 defendant?

18 A. I mean, I wouldn't say difficult for myself. I was
19 holding one of his arms.

20 Q. Who actually handcuffed the defendant?

21 A. To the best of my knowledge, Deputy Pitts actually
22 physically placed the handcuffs on him.

23 Q. Who read him his Miranda warnings?

24 A. I did.

25 Q. After the handcuffs were placed on him, what did you do

1 next?

2 A. After the handcuffs were placed on him I searched
3 him for weapons.

4 Q. And when you searched him for weapons, what happened when
5 you patted him down?

6 A. I found tools in his pocket when I --- basically the
7 tools started falling out of his pocket as I was grabbing
8 on to his --- he had a pocket on the front of his jacket
9 or hoodie and the tools started coming out.

10 Q. I'm showing you what has been previously marked as
11 State's Exhibit 21. Do you recall seeing these tools?

12 A. Yes.

13 Q. And where did you locate them?

14 A. Some of them would have been in his pocket that had
15 fallen out and the crowbar was in his backpack inside of
16 the house.

17 Q. When did you take custody of this evidence bag and who
18 gave it to you?

19 A. Brodi --- Brodi Pitts took possession of the --- the
20 tools, and he met with me and I got the tools back,
21 placed them into the evidence bag and sealed it and
22 turned it in.

23 Q. And when they were in your care, custody, and control,
24 did you alter or change these items in any way?

25 A. No.

1 Q. When did you place them into the evidence locker at the
2 sheriff's office?

3 A. That would have been around 6:00 in the morning.

4 Q. They went right from your care, custody, and control to
5 the evidence locker?

6 A. Yes.

7 Q. Okay. I am showing you what has been marked State's
8 Exhibit 20; what is this document?

9 A. It's a chain of custody form.

10 Q. How do you recognize it?

11 A. It's a part of our report system when we entered
12 evidence into --- into the report system.

13 Q. And when did you place this evidence bag into the locker
14 at the sheriff's office?

15 A. Would have been April 18, 2023, at 6:14 a.m.

16 Q. And does that correlate with this evidence bag right
17 here?

18 A. Yes.

19 Q. What do you remember about how this defendant was dressed
20 when you came on the scene with him?

21 A. He was wearing dark clothing and a black beanie on
22 his head.

23 Q. What --- other than the tools, what other things did he
24 have with him?

25 A. Other than the tools, he had --- he had a backpack

1 inside the house as well.

2 MS. BLUNDY: Thank you. I have no further
3 questions. Please answer anything Ms. Wyse may have for
4 you.

5 THE COURT: Ms. Wyse.

6 MS. WYSE: Thank you, Your Honor.

7 CROSS-EXAMINATION

8 BY MS. WYSE:

9 Q. I'm sorry, I might butcher your name. I apologize in
10 advance. It's is Entsminger?

11 A. That's correct.

12 Q. How long were you approximately at the scene?

13 A. In total over an hour.

14 Q. Okay. And you were the first ones to receive information
15 about this going on?

16 A. All of the Oconee County Sheriff's Office also would
17 have received at the same time over the radio. I was
18 dispatched to the call.

19 Q. All right. And when you got there, anyone living there?

20 A. I'm sorry?

21 Q. Did anybody live at the home?

22 A. To my knowledge, what was given by dispatch was that
23 the --- what we heard was that the mother had died and
24 the property owner was the complainant, essentially.

25 Q. All right. And actually in your body cam, do you

1 remember saying that the owner is deceased?

2 A. I don't recall specifically.

3 Q. Do you remember saying that no one is here?

4 A. That would have been solely off of what was reported
5 to us.

6 Q. All right. And on your body cam do you remember hearing
7 or saying no one's supposed to be here?

8 A. Yes.

9 Q. That no one lives here?

10 A. No one's supposed to be here is what I recall.

11 Q. All right. Now, was there water in the home?

12 A. It --- after we had made entry, we found out that
13 the water was not working.

14 Q. All right. Was there electricity on?

15 A. Yes.

16 Q. And did you ever speak to Mr. Shaw?

17 A. I did.

18 Q. All right. And did he take you through the house?

19 A. After --- yeah, after the incident we had
20 essentially cleared up and I went --- went inside the
21 house with him. Yes.

22 Q. And do you remember dispatch also telling you that the
23 home was in probate?

24 A. I don't recall specifically.

25 Q. If it was --- if it was on your body cam ---

1 (Simultaneous speaking)

2 A. May have. Yeah.

3 Q. All right. Did anybody ever show you a deed to this
4 home?

5 A. No.

6 Q. Did anybody ever show you a rental agreement of any kind?

7 A. No.

8 Q. Did you ever look in the refrigerator?

9 A. I don't recall looking in the refrigerator, no.

10 Q. Do you remember if there was any plastic on any of the
11 (background noise)?

12 A. I don't know.

13 Q. All right. Now, did you sign the warrant for --- this
14 case?

15 A. I did.

16 Q. All right. And specifically, did you sign a warrant for
17 having burglary tools?

18 A. Yes.

19 Q. Now, (background noise).

20 MS. WYSE: --- approach.

21 MS. BLUNDY: Objection, Your Honor.

22 THE COURT: Counsel --- counsel approach.

23 (Bench conference)

24 THE COURT: Okay. We need to take a short break.

25 (Off the record)

1 THE COURT: All right. Anything before we bring our
2 jury back in?

3 (Jury enters courtroom)

4 THE COURT: Ms. Wyse.

5 MS. WYSE: Thank you, Your Honor.

6 BY MS. BLUNDY:

7 Q. Deputy, how would you describe the building in your
8 warrant?

9 A. I don't know off the top of my head.

10 MS. WYSE: Permission to approach?

11 THE COURT: Yes, ma'am.

12 BY MS. BLUNDY:

13 Q. I showed you a copy of the warrant that you've already
14 stated that you signed. How did you describe the building?

15 A. An unoccupied dwelling.

16 Q. And that was based upon the information that you got that
17 night?

18 A. Yeah, throughout the event. Yes.

19 Q. And that was based upon the information that no one
20 lived there?

21 A. That was based off of no --- yeah, nobody was inside
22 besides the suspect. Yeah.

23 Q. Now deputy, did William Gunn try to fight you at any
24 point in time?

25 A. No.

1 Q. And did he try to run at any point in time?

2 A. He did not try to run.

3 Q. All right. Now, you said that you don't remember whether
4 or not there was plastic on any of the ---

5 A. I --- I don't recall. No.

6 Q. You said that you didn't remember whether or not you
7 looked in the refrigerator?

8 A. I do not recall that either. No.

9 Q. All right. And did Mr. Shaw ever tell you that night
10 that he lived there?

11 A. At some point me and --- me and Mr. Shaw did have a
12 discussion about that he had been staying --- staying
13 there very frequently. And during the day I believe he
14 said his sister had been coming, you know, occupying the
15 house during the --- during the daytime frequently as
16 well.

17 Q. Did you include that in your incident report?

18 A. I am not sure.

19 Q. Would you like to look at it?

20 A. I can.

21 MS. WYSE: Permission to approach?

22 THE COURT: Yes, ma'am.

23 THE WITNESS: Okay. And what was your question
24 again?

25 BY MS. WYSE:

1 Q. I said did you include anything in your inquiry report
2 about Mr. Shaw telling you he lived there?

3 A. I did not, no.

4 Q. All right. And when did you write the incident report?

5 A. Been on April 18th.

6 Q. Would it have been before or after?

7 A. After the incident.

8 Q. All right. And that was around the time that you also
9 signed the warrant; is that correct?

10 A. I would gotten the warrant signed a few hours after.

11 Q. Besides the things that are already in evidence was there
12 anything else that you recall that Mr. Gunn had in his
13 pockets?

14 A. I don't recall what was in his pockets. I do remember I
15 believe there was a flashlight from --- from what I recall
16 that was admitted into evidence.

17 Q. All right. And did you find anything in the backpack
18 that he had?

19 A. A crowbar.

20 Q. Were there any items missing from the house?

21 A. No, not that --- not that I would have known. No.

22 Q. Did Mr. Shaw ever make any complaints that there was
23 anything missing from the house?

24 A. No.

25 Q. All right. Now, did Mr. Gunn tell you at any point in

1 time where he had been prior to you arriving on the scene?

2 A. I'm sorry. State that one more time.

3 Q. Do you remember if Mr. Gunn told you anything about where
4 he was prior to you arriving on the scene?

5 A. Where he was in regard to inside the house? Or ---

6 Q. How did he get there?

7 A. How far along before ---

8 Q. How did he ---

9 A. How -- how did he get to the home?

10 Q. How did he get there?

11 A. Said that he got dropped off and he walked there.

12 Q. But he was dropped off, but he wasn't dropped ---

13 (Simultaneous speaking)

14 Q. --- off back at home, correct?

15 A. No. No, that's --- he didn't say that, no.

16 Q. In fact, he told you he walked several miles?

17 A. From Bountyland gas station.

18 Q. All right.

19 A. It would have been a couple miles.

20 Q. All right. And then, do you know where Mr. Gunn lived at
21 the time?

22 A. Personally, I do not know his address. No.

23 Q. All right. And did you know --- were you aware of it
24 that night?

25 A. I --- I knew it was on Gunn hill.

1 Q. Okay. But that's all you remember?

2 A. That's all that I know. Yes.

3 Q. Do you know approximately how far away that is from
4 Johnson Drive?

5 A. I do not. No.

6 Q. Okay. So --- but you do remember that he had been
7 walking several miles?

8 A. For --- for what he said, yes.

9 Q. And do you remember what he said about his clothing?

10 A. No.

11 Q. You don't remember him telling you that that was the only
12 thing he had to wear?

13 A. I don't know that he told me that specifically, that
14 may have been another officer.

15 Q. Okay. And did you by chance find any weapons, guns, or
16 knives (background noise)?

17 A. I did not. No.

18 Q. All right. And you said that you found no items from the
19 home on him?

20 A. No.

21 Q. All right.

22 A. I did not.

23 MS. WYSE: I have no further questions.

24 THE COURT: Any redirect?

25 MS. BLUNDY: Yes, Your Honor.

1 REDIRECT EXAMINATION

2 BY MS. BLUNDY:

3 Q. Deputy Entsminger, I'm going to show you what's been
4 marked as State's Exhibit 22. What is this?

5 A. It would be my Axon body camera.

6 Q. And did you have a opportunity to review that body camera
7 prior to trial?

8 A. I did.

9 Q. Is it a fair and accurate representation as of the date
10 and time it was recorded on the incident date?

11 A. Yes.

12 Q. Subject to any redactions from the Court?

13 A. Yes.

14 Q. And did you have an opportunity to initial that
15 particular disc?

16 A. I did.

17 MS. BLUNDY: State would move to admit Exhibit 22
18 prior to stipulated redactions (unintelligible).

19 MS. WYSE: Judge, we would object at this time. She
20 didn't enter in during her original direct. We would
21 also object to all of the prior motions --- based upon
22 the prior motions that were made. Your Honor, at this
23 point in time, it's not proper to enter it into evidence
24 on redirect.

25 MS. BLUNDY: Judge, questions were asked

1 specifically about statements on the body camera, and
2 what was said on the body camera and was asked on
3 redirect several times about the body camera. So at this
4 time the State would like to move to admit.

5 THE COURT: There was questions about that. So I
6 will allow the --- the exhibit. Your previous objection
7 is noted.

8 MS. WYSE: Thank you, Judge.

9 (State's Exhibit 22 marked and entered)

10 MS. BLUNDY: Judge, it would take the State a moment
11 to be able to publish this. If we could have the jury
12 excused.

13 (Jury exits courtroom)

14 MS. BLUNDY: So Judge, for the record, the State and
15 the defense prior to trial has stipulated to play from
16 32:02 to 40:52, right where after he says, "Yeah,
17 basically."

18 THE COURT: Say that again.

19 MS. BLUNDY: 32:02 to 40:52, after the defendant
20 says, "Yeah, basically."

21 THE COURT: All right.

22 MS. WYSE: Your Honor, that is correct. We --- we
23 didn't stipulate to that.

24 MS. BLUNDY: Oh, I'm sorry. I --- I misunderstood.

25 MS. WYSE: I mean, that was definitely the agreed

1 upon times ---

2 (Simultaneous speaking)

3 THE COURT: --- times.

4 MS. WYSE: Yes. Yes, Your Honor. I just wanted
5 that ---

6 (Simultaneous speaking)

7 THE COURT: --- previous objection (unintelligible).

8 MS. WYSE: Correct. Thank you, Your Honor. I
9 appreciate it.

10 MS. BLUNDY: Thank you. Sorry.

11 MS. WYSE: That's okay.

12 (Video playing)

13 MS. BLUNDY: Judge, we're ready whenever you are.

14 THE COURT: Okay.

15 (Jury enters courtroom)

16 (Video playing)

17 BY MS. BLUNDY:

18 Q. Deputy Entsminger, after reviewing the body camera, do
19 you recall finding a flashlight as well?

20 A. There was a cell phone and the flashlight sitting
21 next to each other on the porch.

22 Q. And an inhaler?

23 A. And an inhaler, sorry.

24 Q. Okay. When you signed the warrant, you put inside the
25 body of the warrant an unoccupied dwelling?

1 A. Yes.

2 Q. And you called it a dwelling?

3 A. I did.

4 Q. Why did you say unoccupied?

5 A. Because there was nobody else inside the home that
6 night besides who was being charged.

7 Q. So you were referencing that night when you arrived?

8 A. Yes.

9 Q. Okay. When you found the tools, what did he say he used
10 to make entry into the home?

11 A. He said that he had used the file and a screwdriver,
12 and I'm pretty sure it was hard to understand, but
13 I'm --- I'm fairly certain that he said a pick as well.

14 Q. You had testified earlier that you when you first arrived
15 noticed back door?

16 A. Yes.

17 Q. I'm showing you what's already been marked as --- marked
18 and admitted as State's Exhibit 11. What exactly caught your
19 attention when you looked at the back door?

20 A. There's like what I would describe as pry marks,
21 there's dents in the right about where the lock is in the
22 handle of the door.

23 Q. So based on your training and experience working burglary
24 cases, that drew your attention when you first arrived?

25 A. Yes.

1 Q. How did you feel after talking with the defendant as to
2 whether or not entry was made through that door?

3 MS. WYSE: Objection. Calls for speculation.

4 THE COURT: Overruled.

5 BY MS. BLUNDY:

6 Q. Go ahead.

7 A. Can you restate the question so that I'm hundred
8 percent on that?

9 Q. Basically based on your training and experience in
10 investigation of burglaries ---

11 A. Uh-huh.

12 Q. --- you said that this door had caught your attention ---

13 A. Yes.

14 Q. --- then you spoke with the defendant. So how did you
15 feel as to whether or not entry was made through that back
16 door?

17 A. I felt as if he made entry through the back door
18 using the tools.

19 MS. BLUNDY: Thank you. I have no further questions.

20 THE COURT: Anything further of this witness?

21 MS. WYSE: Yes, Your Honor.

22 RECROSS-EXAMINATION

23 BY MS. WYSE:

24 Q. You --- you just stated to Ms. Blundy that you're saying
25 that the reason (background noise) the reason is because you

1 did (unintelligible) that night, correct?

2 A. Yes.

3 Q. And that is why you wrote the warrant (unintelligible)?

4 A. Yes.

5 Q. All right. And you don't remember at the beginning of
6 your body cam ---

7 A. Uh-huh.

8 Q. --- when you said no one lives here?

9 A. Yeah, I'm aware that, you know, someone had died
10 that had previously lived there, yes. That's what I was
11 aware of.

12 Q. Okay. But you say very ---

13 MS. WYSE: Your Honor, at this point in time, we
14 might need to (background noise) so that I can refresh
15 his recollection (unintelligible) body cam outside the
16 presence of the jury.

17 THE COURT: All right. Let's take the jury to the
18 jury room.

19 (Jury exits courtroom)

20 MS. BLUNDY: Judge, I think the defense is wanting
21 to play portions that were play portions that were ---
22 like not admitted into evidence. So I certainly have no
23 problem with the line of questioning. If she wants to
24 ask the officer if he remembers what he said. But
25 playing the portion of the video that has not been

1 admitted.

2 THE COURT: My understanding, you're not seeking to
3 admit this, you just want to refresh his memory by playing
4 the recording that was produced at the time?

5 MS. WYSE: That is correct, Your Honor.

6 THE COURT: Well, she can do it but -- this
7 has been redacted and this is not coming in.

8 MS. WYSE: Correct. I --- I have no intention of
9 ever put playing this part of the recording ---

10 MS. BLUNDY: Okay. So just right now. Okay.

11 THE COURT: This is not --- this is not to come into
12 evidence.

13 (Video playing)

14 MS. WYSE: Your Honor he's --- he's already ---
15 they've already said that the owner is deceased ---

16 THE COURT: Okay.

17 MS. WYSE: --- and that ---

18 THE COURT: Okay.

19 MS. WYSE: --- the State (unintelligible).

20 THE COURT: We don't need to watch the whole ---

21 (Simultaneous speaking)

22 MS. WYSE: No, sir.

23 THE COURT: --- redacted portion.

24 MS. WYSE: Yes.

25 THE WITNESS: I've got it and understand the

1 question.

2 MS. WYSE: I'm just going to try to close this out
3 before I ask any questions, if you don't mind, because
4 I ---

5 (Simultaneous speaking)

6 MS. BLUNDY: Yeah, just hit the exit ---

7 MS. WYSE: --- break it.

8 MS. BLUNDY: --- at the top right. Exit at the top
9 right.

10 MS. WYSE: Yeah. All right.

11 THE COURT: I'll just get our jury in place. And
12 while they're getting here, do we have another short
13 witness (background noise)?

14 MS. BLUNDY: Judge, I did have one more short
15 witness and then one more witness after that and that's
16 it.

17 THE COURT: Okay.

18 MS. BLUNDY: So ---

19 THE COURT: You --- you haven't called Alexander yet. So
20 he would be one of them.

21 MS. BLUNDY: Okay.

22 (Jury enters courtroom)

23 THE COURT: Okay. Obligated to proceed.

24 MS. WYSE: Thank you, Your Honor. May it please the
25 Court.

1 BY MS. WYSE:

2 Q. Do you remember stating earlier in the night that the
3 homeowner was deceased?

4 A. I did state that, yes.

5 Q. And do you remember that in the CAD report that was
6 broadcast to everybody that no one was there, no one lives
7 there?

8 A. I don't --- I don't know what the CAD report said
9 specifically. You have a copy of that?

10 MS. BLUNDY: All right.

11 MS. WYSE: Objection. He does not have first-hand
12 knowledge of the CAD report. It's not generated by him.

13 MS. BLUNDY: Your Honor ---

14 (Simultaneous speaking)

15 THE COURT: Is that Exhibit Number 2?

16 MS. BLUNDY: It was.

17 THE COURT: That's --- that's already in evidence.
18 Showing him the exhibits that is already is evidence.

19 THE WITNESS: Okay. What was your question again?

20 BY MS. WYSE:

21 Q. Do you remember that in that CAD report it was generated
22 says no one lives there?

23 A. Let's see. It says mother lived in residence, she
24 had --- can I read what it says? She has passed away,
25 nobody is supposed to be at the residence.

1 Q. And then looking down a little bit further ---

2 (Simultaneous speaking)

3 A. Okay. Nobody lives there per complainant. Yeah.

4 MS. WYSE: No further questions.

5 THE COURT: Thank you all. You have a short witness
6 we finish up (unintelligible).

7 MS. BLUNDY: Yes, Your Honor. We'd like to call
8 sergeant David Philpott to the stand.

9 (Witness sworn)

10 DAVID PHILPOTT, HAVING BEEN DULY SWORN, TESTIFIED AS
11 FOLLOWS.

12 DIRECT EXAMINATION

13 BY MS. BLUNDY:

14 Q. Sergeant Philpott, please state your full name for the
15 record?

16 A. David Philpott.

17 Q. Where do you work?

18 A. The Oconee County Sheriff's Office.

19 Q. And how long have you worked for the sheriff's office?

20 A. Shortly over 22 years.

21 Q. And in what role do you currently work for the sheriff's
22 office?

23 A. I'm currently a evidence tech, sergeant rank that's
24 attached to CID, a criminal investigator --- or CIB now,
25 bureau. I do crime scenes and evidence control.

1 Q. And how long have you been in that area or that
2 department?

3 A. Full time, I've been doing this for 14 and a half
4 years.

5 Q. I'm going to show you what has previously been marked as
6 State's Exhibit 20. What is this?

7 A. This is a computer-generated copy of a chain of custody
8 for a particular piece of evidence from our Zuercher software
9 system that tracks all of our casework and CAD entries.

10 Q. Okay. And who is listed as this evidence being retrieved
11 from?

12 A. This says that Josh Entsminger deposited it into a
13 locker and I subsequently removed it from the same
14 locker.

15 Q. And when did you remove it from the locker?

16 A. On April 18, 2023, at 9:37 a.m.

17 Q. And I am also showing you what has been previously marked
18 as State's Exhibit 21, how do Exhibits 20 and 21 correlate
19 with
20 each other?

21 A. So this paper here in this top portion here, there's
22 an item number. It's item 02023-01692-001, which
23 corresponds to the item number on this bar code label
24 that was on the evidence bag that was in locker number
25 six.

1 Q. So in this report or this chain, this item number matches
2 this evidence bag?

3 A. Correct. It's the same number.

4 Q. So when Entsminger dropped it off, would you have taken
5 it on what day?

6 A. April 18, 2023, at 9:37 a.m.

7 Q. And you would have moved it to where?

8 A. I placed it into storage location 196-C10, which is
9 just a --- it's shelf C10 in the back of our evidence
10 location.

11 Q. And who brought Exhibit 21 to court today?

12 A. I did.

13 Q. And while this evidence bag was in your care, custody,
14 and control, has --- have any of these items been altered or
15 changed in any way?

16 A. No, ma'am.

17 Q. Looking at your chain of custody, could you please
18 describe who is listed as the owner of these items?

19 A. The owner is listed as a William David Gunn.

20 Q. Is that slip of paper that change of custody kept in the
21 ordinary course of business with the sheriff's office?

22 A. I'm sorry, can you repeat that.

23 Q. Is that chain of custody kept in the ordinary course of
24 business with the sheriff's office?

25 A. Yes.

1 Q. Is it substantially in the same condition as the day it
2 was generated by the notations that were made?

3 A. Yes, it is.

4 MS. BLUNDY: State would move to admit Exhibit
5 Number 20.

6 THE COURT: Any objection?

7 MS. WYSE: None, Your Honor.

8 THE COURT: State's Exhibit Number 20 is moved
9 without objection.

10 (State's Exhibit 20 marked and entered)

11 BY MS. BLUNDY:

12 Q. And since these two items correlate and you just stated
13 that none of these items have been altered, correct?

14 A. Correct.

15 Q. State would move to admit Exhibit Number 21.

16 THE COURT: Any objection?

17 MS. WYSE: No, Your Honor.

18 THE COURT: That's Exhibit Number 21's admitted.

19 (State's Exhibit 21 marked and entered)

20 BY MS. BLUNDY:

21 Q. Sergeant Philpott, would you please cut open the evidence
22 bag for (background noise).

23 MS. WYSE: Judge, if it would help move things
24 along, we stipulate that those were the items that were
25 found that night that there in that bag.

1 MS. BLUNDY: Sure.

2 BY MS. BLUNDY:

3 Q. Can you please pull out each and every item. And could
4 you tell the jury based on the description also up in the
5 chain what each item is.

6 A. This is a crowbar; pair of Kobalt pliers; a common
7 chisel; flat blade screwdriver; a pick of some sort. And
8 a PEX key that has been ground down to a sharp point on
9 one end.

10 Q. Thank you.

11 A. Do you want them back in or ---

12 Q. Sure. That would be fine.

13 MS. BLUNDY: Judge, I have no further questions for
14 this witness. Please answer anything Ms. Wyse may have
15 for you.

16 THE COURT: Ms. Wyse?

17 MS. WYSE: I have no questions for this witness.

18 THE COURT: Thank you. You can step down. Okay.

19 Ladies and gentlemen of the jury, it's 5:30 and I believe
20 our next witness is going to be lengthier so we will stop for
21 the today.

22 Let me just reiterate my earlier instructions.
23 Family and all are going to want to talk about this so
24 you and tell them you can't talk about the case. Do not
25 do independent research on any of the law or the facts.

1 And do not discuss the case amongst yourselves, that's
2 deliberation and that's prohibited as well. I will tell
3 you when you can start your deliberations.

4 But we will start at 9:00 tomorrow morning. So be
5 back in the jury room shortly before 9:00. Thank you.

6 (Jury exits courtroom)

7 All right. Anything from the State before we go
8 into recess?

9 MS. BLUNDY: No, Your Honor.

10 THE COURT: Anything from the defense?

11 MS. WYSE: No, Your Honor.

12 THE COURT: Okay. We'll be in recess till 9:00.

13 (PROCEEDINGS FOR APRIL 15, 2023 CONCLUDED)

14 (OFF THE RECORD)

15 (PROCEEDINGS FOR APRIL 16, 2023 BEGIN)

16 THE COURT: Good morning. Our final juror has
17 finally got here. We are ready to proceed? Proceed. Is
18 there anything for me to decide before I bring our jury
19 in?

20 MS. BLUNDY: No, Your Honor. Nothing from the
21 State.

22 MS. WYSE: No, Your Honor.

23 THE COURT: All right. Madam Bailiff, get our jury,
24 please.

25 (Jury enters courtroom)

1 THE COURT: Form, Ladies and gentlemen of the jury,
2 good morning. We are ready to continue. State call your
3 next witness.

4 MS. BLUNDY: Thank you, Your Honor. Good morning.
5 May it please the Court. We'd like to call First
6 Sergeant Aaron Alexander to the stand.

7 (Witness sworn)

8 AARON ALEXANDER, HAVING BEEN DULY SWORN, TESTIFIED
9 AS FOLLOWS.

10 DIRECT EXAMINATION

11 BY MS. BLUNDY:

12 Q. Good morning Officer Alexander.

13 A. Good morning.

14 Q. Could you please state your full name for the record.

15 A. Aaron Nathaniel Alexander.

16 Q. And where do you work?

17 A. I work for the Oconee County Sheriff's Office.

18 Q. How long have you worked for the Oconee County Sheriff's
19 Office?

20 A. Around March '21, I was hired by the sheriff's
21 office.

22 Q. And did you have previous law enforcement experience?

23 A. I did. I came from the Seneca Police Department.

24 Q. And how long were you at the Seneca Police Department?

25 A. Total years I have right at 14 years in.

1 Q. And what is your current rank at the sheriff's office?

2 A. I'm a first sergeant on the bravo shift.

3 Q. Can you explain to the jury what the difference is then
4 between a regular road patrol deputy and a first sergeant?

5 A. Yes, we have a --- a rank structure at the
6 sheriff's office. It goes from a deputy to a master
7 deputy, corporal, and a first sergeant on each shift.
8 The first sergeant supervises the shift along with the
9 other --- other supervisors. And so I'm responsible
10 for --- for supervising the shift and the deputies on
11 that shift.

12 Q. Do you recall April 18th of 2023?

13 A. I do.

14 Q. And do you recall what occurred that evening?

15 A. The delta shift at the time responded to a
16 burglary-in-progress call.

17 Q. And how were you notified?

18 A. I heard the call come out over the radio. I didn't
19 respond initially. Deputies did respond out there, but
20 I --- I was monitoring the radio traffic to see if it's
21 something I needed to respond to.

22 Q. And based on that, you decided to go?

23 A. I did. One of the units was asking on scene for
24 another unit, so I wasn't too far out so I responded to
25 the scene.

1 Q. And what did you observe when you arrived there?

2 A. When I arrived on scene, I believe it was Master
3 Deputy Carr at the time was his rank was on the scene,
4 along with Deputy Entsminger and Officer Shedd from the
5 Walhalla Police Department. They were parked in front of
6 the residence there. From what I could see the patrol
7 vehicle was parked there.

8 Q. And what were you informed was going on?

9 A. I was informed that the --- the complainant had
10 called in stating someone was in the home that they had
11 seen on their cameras inside the home. I believe it was
12 Deputy Entsminger that told me that the --- the homeowner
13 was en route to --- for us to gain --- gain entry into
14 the home. I was also informed they haven't seen or heard
15 anybody exit the home, but there was a very strong
16 possibility that someone was still inside.

17 Q. And were you present when the homeowner arrived?

18 A. I was.

19 Q. And what was the homeowner able to provide you?

20 A. He provided us with a key to make entry to the home.

21 Q. And who made the call to finally make entry into the
22 home?

23 A. I believe that part was a collective effort between
24 all of us, but I did make the --- the call to --- to make
25 entry inside the residence.

1 Q. What was your role in making entry into the home?

2 A. We --- I had to establish a perimeter. And for lack
3 of better words kind of get all our ducks in a row to
4 make sure we cover all aspects of something. When we
5 make entry into something like that, we have to make sure
6 that we're --- we're covering everything. So we had our
7 perimeter established. We had some guys around back and
8 we had a team along with a K9 unit that was going to make
9 entry and side the residence.

10 Q. And when you made entry like that, are weapons utilized?

11 A. They are.

12 Q. And were they utilized in this case?

13 A. They were.

14 Q. How were you able to finally apprehend the defendant?

15 A. While attempting to make entry into the front ---
16 the front door of the residence, we heard a --- a noise
17 coming from the back that --- that sounded like somebody
18 was coming out the back. From past experience and things
19 like that, that's what was going through my mind as
20 we're --- we're trying to make entry into the front door,
21 that it sounds like somebody's going out the back.

22 So we sent another unit around back to assist with
23 that and we come in through the front door in case they
24 come back inside or something like that, so we don't lose
25 ground that we've already established. And the deputies

1 around back were able to --- to apprehend them.

2 Q. Were you able to get a good look at the suspect when he
3 exited the home?

4 A. I was.

5 Q. And is he sitting here in the courtroom this morning?

6 A. Yes, ma'am.

7 Q. Could you please point to the suspect?

8 A. Sitting over there.

9 MS. BLUNDY: Please record reflect that the witness
10 has pointed to William Gunn at the defendant's table.

11 BY MS. BLUNDY:

12 Q. What happened after Mr. Gunn went through the back door?

13 A. The deputies --- when he --- he exited the back door
14 there was a brief moment that I wasn't --- I wasn't
15 there. I was making my way through the house. So when I
16 got there, he was --- he was on the ramp with --- with
17 Deputy Pitts and Entsminger. You know, attempting to get
18 him into custody.

19 Q. Were you ever able to put handcuffs on him or were other
20 officers doing that?

21 A. No, ma'am. I don't recall ever --- ever putting any
22 handcuffs on.

23 Q. Were you apprised that the defendant had been read his
24 Miranda rights?

25 A. Yes, ma'am.

1 Q. Did you engage in a conversation with him after those
2 rights were given?

3 A. I did.

4 Q. And do you recall asking him why he was wearing the
5 clothes that he was?

6 A. Yes, ma'am.

7 Q. And what was his response?

8 A. I think he said something to effect that this is all
9 I have.

10 Q. What other kinds of questions did you ask him?

11 A. I asked him, you know, since what he's doing in ---
12 inside the residence.

13 Q. And what did he say?

14 A. He responded he --- he was going to get some rest
15 and --- and was just there to get water and rest.

16 Q. What did he say if he actually drank the water or not?

17 A. He did tell me that he --- he drank water from the
18 sink.

19 Q. And were you able to check the water to see if it was on?

20 A. I did.

21 Q. And what did you find when you did that?

22 A. The water to the sink, I --- I turned on and no
23 water came out of the --- the faucet.

24 Q. Where did he say he was coming from?

25 A. He said that he referred to it has his old lady, but

1 he said he was with --- with her and that she had set him
2 out in the Bountyland area first and then it --- it --- I
3 never nailed down the exact area, but in --- in that area
4 around the Bountyland area.

5 Q. What did he say where he walked or got a ride there? How
6 did he end up at the residence?

7 A. He --- he said he walked.

8 Q. And why did he say he stopped there?

9 A. He said he was tired and wanted some water and ---
10 and rest.

11 Q. What did he say --- how did he say he got into the house?

12 A. I recall, I --- I asked him about --- I think he
13 said he checked --- he checked the doors and they were
14 locked so that he --- and he found some tools that he
15 ended up using to --- to gain further entry.

16 Q. What, if anything, did he say he had taken from the
17 house?

18 A. He said he had taken nothing from the house other
19 than the water.

20 Q. How long did he tell you he had been at that residence?

21 A. A few hours.

22 Q. Few hours? Did you have an opportunity to discuss with
23 Officer Entsminger the charges in this case?

24 A. I don't recall other than --- than burglary. I
25 don't recall discussing the charges further.

1 Q. In other words, did you have any involvement in taking
2 out the warrant?

3 A. No, ma'am.

4 Q. That was Officer Entsminger?

5 A. That's correct.

6 Q. And you delegated that duty to him?

7 A. That's correct.

8 Q. I'm showing you what has been marked --- premarked as
9 State's Exhibit Number 23. What is this?

10 A. That looks like my Axon body camera.

11 Q. And how do you recognize it?

12 A. It has my initials on it.

13 Q. Did you have a opportunity to review it prior to trial?

14 A. I have.

15 Q. Is it a fair and accurate representation as of the date
16 and time it was recorded?

17 A. It is.

18 Q. Has it been altered or changed in any way?

19 A. No, ma'am. Not to my knowledge.

20 MS. BLUNDY: The State would move to admit
21 Exhibit 23.

22 THE COURT: Any objection?

23 MS. WYSE: Your Honor, the objections are the same
24 as we were yesterday. That we think this is a violation
25 under State v Washington and State v Brewer, regarding

1 the officer's questions that he asked the defendant ---

2 THE COURT: Yes, ma'am.

3 MS. WYSE: --- shouldn't be present in front of the
4 jury.

5 THE COURT: Note --- noted for the record. So ---

6 MS. WYSE: Thank you, Your Honor.

7 THE COURT: --- Exhibit Number 23 is admitted.

8 (State's Exhibit 23 marked and entered)

9 MS. BLUNDY: At this time, we would like to publish
10 the disc for the jury if the jury can be excused so we
11 can get ---

12 THE COURT: Because if it's still not redacted.

13 MS. BLUNDY: It's not, Your Honor.

14 THE COURT: Okay. All right. Madam Bailiff, take
15 our jury to the jury room.

16 (Jury exits courtroom)

17 (Video playing)

18 MS. BLUNDY: Let the record reflect the State
19 intends to play 39:55 through the statement "Tell him I
20 apologize."

21 THE COURT: Okay. Are we -- we're at the point?

22 (Jury enters courtroom)

23 THE COURT: Okay. All right. Ms. Blundy, proceed.

24 (Video playing)

25 BY MS. BLUNDY:

1 Q. Sergeant Alexander, how far is Gunn Hill from that
2 residence?

3 A. I couldn't give you the exact --- exact mileage ---

4 (Simultaneous speaking)

5 A. --- right off the top of my head, but ---

6 Q. Approximately?

7 A. Approximately, couple --- couple miles.

8 Q. Couple miles?

9

10 A. Yeah.

11 MS. BLUNDY: Thank you. I have no further
12 questions. Please answer anything Ms. Wyse may have for
13 you.

14 THE WITNESS: Yes, ma'am.

15 THE COURT: Ms. Wyse, your witness.

16 MS. WYSE: Thank you, Your Honor.

17 CROSS-EXAMINATION

18 BY MS. WYSE:

19 Q. Officer Alexander, at the beginning of your body cam, you
20 make some observations about the --- the residence. Did you
21 say that the homeowner is dead, correct?

22 A. I think one of the deputies told me that. I wasn't
23 on scene to gather that information.

24 Q. And you also mentioned on the body cam that Mr. Shaw was
25 not the homeowner?

1 A. Again, I --- I believe it was Master Deputy Carr
2 that advised me of the situation. What I heard from
3 dispatch was a burglary in process. I --- I can't
4 testify to --- to everything that was said with that,
5 because to be honest, I --- I cannot recall because I
6 monitor the radio. I hear burglary in progress, I also
7 have to monitor all of the --- the other calls we have
8 coming in. So I --- I couldn't --- I couldn't tell you
9 exactly what dispatch said other than, you know, the
10 burglary part because that's something that would stand
11 out in my mind.

12 Q. So you were the supervisor on the scene that evening?

13 A. Yes, ma'am.

14 Q. And you delegated some duties to Officer Entsminger?

15 A. It's his case. He --- it's his call. He's on
16 scene. I'm just there to --- to assist. And if --- and
17 to make sure we do adhere to departmental policies and
18 procedures.

19 Q. Are you aware that there is no probate estate for
20 Peggy Shaw?

21 A. No, ma'am.

22 Q. And are you aware that there is no real estate deed
23 deeding the house to Mr. Shaw?

24 MS. BLUNDY: Objection. He wouldn't have knowledge
25 to the matters of Ms. Shaw's estate.

1 MS. WYSE: Your Honor ---

2 THE COURT: Overruled.

3 MS. BLUNDY: Thank you.

4 THE WITNESS: No ma'am. I have no knowledge
5 whatsoever.

6 BY MS. WYSE:

7 Q. So at this point in time it looks like nobody owns [REDACTED]
8 Johnson Drive?

9 A. Again, I can't testify to that. I --- I have no ---
10
11 no knowledge of --- of any of it.

12 Q. Now, are you aware that the utilities the weren't
13 working?

14 A. No, ma'am. I have no knowledge of the utilities
15 other than the --- the water that --- that I checked
16 personal to know that it did not come on at that faucet
17 when I turn --- tried to turn it on.

18 Q. All right. And you said that you monitored the --- the
19 radio; is that correct?

20 A. Yes, ma'am. I do my best to --- to monitor the
21 radio.

22 Q. And you're aware of what the deputies and the dispatch is
23 saying they go on?

24 A. Again, I --- I there's no way as much as our radio
25 goes off that I can tell you everything that's said. But

1 I --- what I --- we would call a hot call, a priority
2 call, I'm going to do my best to --- to obviously hear
3 those because my crew was going out to those. I don't
4 hear everything that's said.

5 But I --- I did hear, you know, that --- that type
6 of call and then another deputy had asked for another
7 unit, which also piqued me further with that.

8 Q. All right. And you said --- I asked you about what you
9 said on the body cam. Now, Ms. Blundy asked you a few minutes
10 ago about the homeowner?

11 A. Uh-huh.

12 Q. And you answered about homeowner?

13 A. Uh-huh.

14 Q. But on the CAD report it says no one --- nobody lives
15 there per complaintant. Would you like to see it?

16 A. I can. Yes, ma'am. That's fine. I see it.

17 Q. And does that refresh --- you know, that and my question,
18 does that refresh your memory about, you know, Mr. Shaw not
19 being the homeowner?

20 A. No, ma'am. I --- I honestly can't testify under
21 oath as to if --- if he's the homeowner or --- or not.
22 That term was used on scene. And that's, you know, we
23 were told he was in control of the property. I was told
24 by my guys on the scene. Other than that, I --- I can't
25 tell you. I haven't looked at anything further with

1 that.

2 Q. But you still have the CAD report in front of you,
3 correct?

4 A. I do.

5 Q. And they talk about a complainant, right?

6 A. Uh-huh.

7 Q. And that complainant can't possibly be Ms. Shaw --- the
8 deceased Ms. Shaw, right?

9 A. Our dispatch --- the --- when we're typing reports
10 or anybody that calls in to us, is --- is our

11

12 complainant. They can also be the complainant/victim.

13 But anybody that calls in to us, we refer to them --- and
14 to use cop lingo, but we refer to them as our
15 "complainants."

16 Q. And when you did arrive on the scene, no one was there
17 other than Mr. Gunn?

18 A. No. No, ma'am.

19 Q. Inside the house?

20 A. Correct.

21 Q. And Mr. Gunn did not take anything from the inside of the
22 house?

23 A. To my knowledge, no, ma'am, other than --- well, no
24 not even the water. He said he took the water, but he
25 didn't. To my knowledge, I don't know of anything he

1 took from the residence.

2 Q. Were you able to determine how far he walked based on the
3 information he told you?

4 A. Again, I --- I can't testify to that off the top of
5 my head to the exact mileage or anything like that. I
6 was trying to nail down the area.

7 Q. But you said it was a couple of miles?

8 A. Again, I may be wrong on that. I --- I --- it
9 may --- it may be.

10 Q. Now, you said that you were going to talk to his
11 girlfriend?

12 A. Uh-huh.

13 Q. Did you?

14 A. I never found her. No, ma'am. I did check the area
15 to make sure that, you know, she wasn't riding around the
16 area, but I haven't --- I haven't spoken to her to this
17 day.

18 Q. Okay. And did you write a report?

19 A. I did not. No, ma'am.

20 Q. Do you know who did write a report?

21 A. Deputy Entsminger.

22 Q. All right. How many officers were there?

23 A. There was me, Deputy Entsminger, Master Deputy Carr,
24 Deputy Pitts and Officer Shedd.

25 Q. All right. And how many of those officers were wrote

1 incident reports?

2 A. I --- I don't recall. I believe Deputy Entsminger
3 was the primary deputy that responded and did the
4 incident report. I don't know about the Walhalla City
5 officer, Shedd, if he did anything on his end or not.

6 Q. Did you review Officer Entsminger's report?

7 A. To be honest with you, I'm not sure.

8 Q. Did you review his warrant?

9 A. Not to my knowledge, no. That he went to a
10 magistrate judge to --- to have that taken care of.

11 Q. Now, this is a burglary, correct?

12 A. Uh-huh.

13 Q. And you've been saying that this is priority, right?

14 A. Yes. Call for service.

15 Q. But nobody else wrote a supplemental?

16 A. Not to my knowledge. No, ma'am.

17 Q. Are you aware of whether or not Mr. Shaw ever came to
18 Oconee County Sheriff's Office and made a statement of any
19 kind?

20 A. I'm not. No, ma'am.

21 Q. And are you aware of any efforts on Deputy Entsminger's
22 behalf to, you know, find out whether or not this actually
23 was a residence that someone live in?

24 A. I'm not sure what he did further with the case after that.

25 That would have to be his --- his testimony. I don't --- I

1 don't know.

2 Q. All right. But you did go in front of a judge and get
3 warrants?

4 A. Yeah, I wasn't there, but I'm --- you know, that ---

5 Q. Did you go inside [REDACTED]?

6 A. Yes, ma'am.

7 Q. And did you look inside the refrigerator?

8 A. No, ma'am.

9 Q. Did you test the water?

10 A. No, ma'am.

11 Q. How did you know the water didn't work?

12 A. Well, I'm sorry. I'm confused on what you said,
13 testing it. I did turn the faucet on to see if the water
14 would come out. It did not.

15 Q. And did you --- did you check the other --- the bathroom?

16 A. I did not. No, ma'am.

17 Q. All right. Now, I asked you this earlier. And if you
18 need me to ask the jury to step out and let you listen to
19 your body cam ---

20 A. Uh-huh.

21 (Simultaneous speaking)

22 Q. We can do that. You mentioned in the beginning that
23 something about at the beginning of your body came that this
24 was in probate. You remember that now that we've been talking
25 for a few minutes?

1 A. Did --- did you say that it's in probate?

2 Q. Yes.

3 A. No, ma'am. I did not say that it's in probate. I
4 had --- I had no knowledge of that.

5 Q. Do you remember anything talking about the estate ---

6 A. I remember asking Master Deputy Carr when I arrived on
7 scene if it was in probate or who was in control of the
8 property and things like that. Because we have to have that
9 information before we --- we make tactics to make entry
10 because I don't want to make entry into someone's residence
11 and it be the homeowner. So those are questions that
12 procedurally I would have asked my crew. But I never made the
13 statement this is in probate. I have no knowledge of --- of
14 any of this prior to the call.

15 Q. Were you able to get an answer to question?

16 A. Master Deputy Carr never told me that it --- I don't
17 believe that it --- I don't recall ever saying it's in
18 probate, but he did say the --- the lady had passed away.

19 Q. And but you --- you --- you never got an answer as to who
20 owned ---

21 (Simultaneous speaking)

22 A. I was told that Mr. Shaw was in control of the
23 property and was on the way. But I don't recall if it
24 was Entsminger or for sure or Master Deputy Carr that
25 said that, but --- but I was told that he was in control

1 of the property. I --- I had no knowledge of, you know,
2 probate or anything like that.

3 Q. Do you know if any efforts were made to see if that was
4 actually true?

5 A. No, ma'am. I --- I --- Deputy Entsminger was the
6 primary case agent on this. I don't know --- I can't
7 testify to what he done ---

8 (Simultaneous speaking)

9 Q. Did you look into it?

10 A. No, ma'am. I was not the --- the charging officer.

11 Q. And as far as you know Deputy Entsminger didn't look into
12 it?

13 A. I --- yeah, I have no idea.

14 Q. And as far as you know Officer Carr didn't look into it?

15 A. No, ma'am, he --- he wasn't the --- the primary
16 charging deputy either. So ---

17 Q. As far as you know, Officer Shedd didn't look into it
18 either?

19 A. No, ma'am.

20 Q. Supervisor?

21 A. No, ma'am.

22 Q. You don't know?

23 A. I --- I don't.

24 Q. Okay. But you were the (unintelligible)?

25 A. Correct.

1 MS. WYSE: I have no further questions.

2 THE COURT: Redirect?

3 REDIRECT EXAMINATION

4 BY MS. BLUNDY:

5 Q. Just one quick follow-up. Officer Alexander, Ms. Wyse
6 had handed you the CAD report ---

7 A. Uh-huh.

8 Q. --- those CAD reports aren't generated by the sheriff's
9 office are they?

10

11 A. No, ma'am. It --- it's through the --- the agency.

12 Our dispatch uses that, but I --- I don't --- I'm going
13 to be honest with you, I can read it, but if you put me
14 in a dispatch room and told me to operate that stuff, no
15 one would respond to your house because I have no idea
16 how to operate this stuff.

17 Q. And that record is not a record of the radio traffic over
18 your walkie talkies is it?

19 A. No.

20 Q. Okay. So those two things really don't correlate as to
21 what was said about the homeowner or anything like that?

22 A. No, ma'am.

23 MS. WYSE: Thank you. I have no further questions.

24 THE COURT: Any further for this witness?

25 MS. BLUNDY: No, Your Honor.

1 THE COURT: Thank you officer.

2 THE WITNESS: Thank you.

3 MS. BLUNDY: Your Honor, at this time the State
4 would rest their case. We have no more witnesses.

5 THE COURT: Okay. Bailiff, would you take our jury
6 to the jury room, please.

7 (Jury exits courtroom)

8 THE COURT: All right. The State has rested, are
9 there any motions?

10 MS. WYSE: Yes, Your Honor. The defense has a
11 motion --- well, I have several motions.

12 The first would be, Your Honor, for a directed
13 verdict. Directed verdict on the existing arrest
14 possession of burglary tools, the (background noise)
15 property and burglary first.

16 Judge, I'll start with the resisting arrest. Your
17 Honor, there has been no testimony in the record that Mr.
18 Gunn attempted to run, attempted to flee the scene.
19 There's no been no testimony in the record that Mr. Gunn
20 was, you know, tried to hit anybody, tried to hurt
21 anybody, tried to pull away.

22 Judge, there's been no testimony of any kind that
23 shows that Mr. Gunn actually resisted arrest.

24 And as far as the burglary first is concerned,
25 Judge, I would --- I would go with that on the State upon

1 two prongs. First of all, the State failed to give us
2 any evidence that this house was actually occupied or was
3 a dwelling. When we received the discovery for this
4 case, we received a lot of evidence that was going to be
5 put into evidence, but we never received any information
6 about Mr. Shaw, his testimony, or utility bills, mail,
7 anything. We never received anything from the State that
8 would have proved this element of the case.

9 So we're asking not only for a directed verdict
10 which is saying that the State didn't prove their case,
11
12 that there was --- there was a dwelling place. We're
13 also asking for a mistrial, Judge. And the reason why
14 would be a Brady and Rule 5 violation. They did not give
15 us key elements that we needed in order to properly
16 defend this case.

17 Like I said, we have no knowledge that Mr. Shaw had
18 been dwelling at this --- this residence. We had no
19 knowledge that there was a --- a lease agreement and
20 there was any kind of rental agreement with the niece.
21 The first time defense has ever heard this was yesterday
22 over the witness table.

23 And, Your Honor, I took it upon myself to inquire
24 with the lawyer who had this case before me just to make
25 sure that I didn't mess up, that I did not see something

1 the State didn't see. The lawyer who had this case
2 before me has no knowledge that the State was going to
3 introduce the elements that somebody actually lived in
4 that house, stayed and that house, and intended to go back
5 to that house.

6 Your Honor, we're asking not only for a directed
7 verdict based upon the burglary first stating that the
8 evidence that we were provided with would have shown that
9 there was no one who lived there and no one who intended
10 to go back.

11 And we're also asking for a mistrial based upon the
12 fact that we were not given any of this Rule 5. We were
13 not given any of this discovery. Now, even go so far as
14 to say, Your Honor, that we might not be here right now
15 if we had that discovery.

16 THE COURT: Okay. All right. Ms. Blundy, response.

17 MS. BLUNDY: Yes, Your Honor. Well, she said she
18 wanted a directed verdict on the malicious injury and the
19 possession of burglary tools, but she didn't provide any
20 argument, Your Honor.

21 So you know, I don't know if she has anything else
22 to say about that, but I'll start with the resisting
23 arrest. There's ample evidence for the jury to consider
24 resisting arrest in this case, Your Honor. The testimony
25 was that he was in the house two to three hours; that

1 they had set up a perimeter around the house; that they
2 had verbally commanded him multiple times that he was
3 under arrest and to exit the home at least for over a
4 half an hour. He did not do that. It was only up until
5 the officers made entry into the front door that he
6 didn't even come out the front door with his hand up.

7 I'll make note that the jury can look at the facts
8 in this case and decide because he went out the back door
9 and actually motioned the back door a couple times.
10 Judge, he was going to run but he didn't know there was
11 two officers --- actually one officer and then another
12 who ran when they found out he was going out the back
13 door staked out at the back door.

14 Also, once he finally gets out of the house, he's on
15 the ramp, he's still walking, but he doesn't get down on
16 the ground right away. And when they say give me your
17 hands, he doesn't do that right away either. I think the
18 audio and the video actually says give me your effing
19 hands, and they finally are able to get him apprehended.
20 I think that's a question of fact for the jury, not for
21 directed verdict.

22 Looking at the burglary of the first degree, I think
23 there was no surprises that the defense and I were on the
24 opposite side of the fence on this issue. But when I
25 researched the case law, there is ample case law that

1 says an ownership interest in a home is not what should
2 be focused on. That the crime of burglary is not against
3 ownership, it's against possession, it's against
4 habitation.

5 And then when you go to our actual definition of a
6 dwelling within our statute, it talks about different
7 factors that the Court can assess, and is one being a
8 watchman of the property. Is someone sleeping there?
9 And the testimony was by Toby Shaw that in fact, he had
10 been staying there on and off, not only when his mother
11 was alive, but even after she passed in that three-week
12 period that he frequented the home; that he slept in the
13 home; that he continued to provide Internet in the home;
14 that he had the utilities on in the home; that he had
15 perishable goods including grocery inside the home. All
16 of those are factors that the jury can then consider,
17 Your Honor.

18 And I have case law to provide that and I am happy
19 to do that for the Court. The first one that I would
20 like to hand up is State v Evans. Well, Judge, I'll hand
21 you my copy. State v Evans assesses all those
22 factors that I had just mentioned.

23 The other seminal case that was an arson case, Your
24 Honor, but it actually extended it all the way to the
25 burglary is State v Glenn. And in State v Glenn, the

1 facts in this case were husband and wife --- husband
2 died. Wife was not residing inside the home, but she
3 ends up torching the house for insurance money. And in
4 that case, even though she wasn't living there, wasn't
5 even intending to go back there. And because the house
6 was about to enter in foreclosure which is why she
7 torched it in the first place rather than it being
8 foreclosed on she tried to collect the insurance money.
9 In that case said this is a dwelling.

10 And not only is this a dwelling, but we're going to
11 extend this all the way to the burglary statute. The
12 other case that is the seminal case for saying a
13 defendant ownership interest in the home does not
14 preclude a conviction for burglary is State v Singley.
15 Sorry.

16 And Judge, there's also some unpublished opinions
17 which are know are --- have lesser precedent for this
18 Court to consider, but they also reaffirm the same thing.
19 And State v Reed, this is a 2021 case. This one
20 specifically looked at whether there was furniture inside
21 the home, whether there was medicine, whether there was
22 clothes, food.

23 Certainly the State is not here arguing that Peggy
24 Shaw who was deceased had an intent to return to the
25 home. Thank goodness she was probably in a better home

1 with the Lord. But what we are arguing is that you and I
2 both know that probate doesn't necessarily do anything
3 but transfer title. And that the estate does not have to
4 be probated, people have up to a year and actually
5 there's no timeline for a probate. And most people wait
6 after a year because the fees go significantly down.
7 We're talking about a mobile home, and an estate that is
8 not loaded with money here that has nothing to do with
9 it.

10 And how does the property then --- and we could go
11 back to property class for a moment, get distributed? It
12 gets distributed to the children down the line intestate,
13 which is exactly what happened here.

14 And Toby testified that he had full control over the
15 property; that he had the key to the property. That it
16 was his mother's property, and after she passed him and
17 his sister had access to the property just how our
18 intestacy statutes would work.

19 And so if --- if we don't even need to focus on the
20 ownership though. He had control. And then his
21 testimony was that the property continued to remain
22 within his family, that he then gave access to his niece
23 to stay there after this incident and that she stayed
24 inside the home.

25 Now, I think the defense needs to rereview Brady and

1 Rule 5. We had provided a witness list prior to trial.
2 We had also provided all of the documents that had the
3 witnesses in that. She could have picked up the phone
4 and talked about Toby and he would have gladly told her
5 all the same things he told me. We did not have a rental
6 agreement to provide and the only thing the State is
7 accountable for is anything in the possession and control
8 of law enforcement which we have turned over. So I do
9 not believe there are rule --- Rule 5 or Brady violations
10 here.

11 I do not have any utility bills, but we heard the
12 testimony they said that he continued to maintain those
13 and that the water was only off because the pipe had
14 burst in that room and he had shut it off 4 days before.

15 THE COURT: Thank you, Ms. Blundy. I've heard the
16 testimony and the evidence presented. And I'll --- I'll
17 start in order of --- of how these were presented.

18 On the resisting arrest, the defendant's move for a
19 directed verdict. Now, in a general sense let me remind
20 counsel ruling for directed verdict the Court is only
21 concerned with the existence or nonexistence of evidence,
22 not its weight. To grant a directed verdict, I must find
23 that after hearing the evidence and a light most
24 favorable to the State, that the State has not produced
25 any direct or circumstantial evidence reasonable proving

1 the guilt of the accused. So in each one of these in
2 resisting arrest, the State has put evidence in the
3 record that the defendant would not come out of the
4 residence. There was some brief testimony about him
5 pulling his arm away. I find there is evidence in the
6 record to support the charge and that that is a jury
7 question. So I would deny the motion for directed
8 verdict on resisting arrest.

9 Malicious damaged property. There is evidence in
10 the record of damage to a door. Again, that's a factual
11 question of how that got there. That's a jury question.
12 I would deny the motion for directed verdict on malicious
13 damage.

14 Burglary tools. A number of tools are in
15 evidence. There is evidence in the record to support
16 the --- to support that charge. Again, that is a jury
17 question. I would deny the motion for directed verdict
18 on burglary tools.

19 Now, as to the issue of burglary of first degree,
20 the dispute is a dispute surrounding whether or not the
21 property was a dwelling. The Court has reviewed case law
22 in this and I --- I appreciate the parties calling the
23 Court's attention to the various cases. That there is
24 evidence in the record that Toby Shaw is the son of the
25 deceased owner of the property; that he is in control of

1 the property; that there are utilities on in the property
2 that he returns to the property on occasion; that he
3 spends the night at the property; that he has spent the
4 night in the property. He identified the bed that he
5 sleeps in that he had food at the property. He was in
6 possession of the key to the property. That --- those
7 are all things that are in evidence.

8 Now, there's also evidence in the record that the
9 water flow had been cut off. So ultimately, this is a
10 factual question whether the State has been able to prove
11 that it's burglary first. But that's a jury question
12 and --- and not a directed verdict question because there
13 is evidence that --- that contradicts that also in the
14 record. So I find that is a jury question. I would deny
15 the motion for directed verdict on burglary first.

16 Now, as to the testimony regarding the niece, the
17 defendant moves for a mistrial that the --- that the
18 circumstances surrounding the niece. Those circumstances
19 were not provided in discovery. The Court heard the
20 testimony regarding the niece. The testimony from Toby
21 Shaw was that the niece now lives in the property and
22 began living in the property after this incident and was
23 not living at the property at the time of the incident.
24 Therefore, the niece is irrelevant to whether or not a
25 burglary and these other offenses occurred on this date.

1 And the --- the niece does --- her --- her occupying the
2 residence does not figure into whether or not it was a
3 dwelling at the time of the alleged event. So I'm ---
4 I'll going to deny the motion for a mistrial on --- on
5 that --- on those grounds.

6 All right. Ms. Wyse, would you and your client
7 please stand. Okay. Madam Clerk, would you put Mr. Gunn
8 under oath.

9 (Witness sworn)

10 WILLIAM D. GUNN, HAVING BEEN DULY SWORN, TESTIFIED
11 AS FOLLOWS.

12 THE COURT: All right. You are William David Gunn;
13 is that correct?

14 MR. GUNN: Yes, Your Honor.

15 THE COURT: Okay. Mr. Gunn, at this time I'm going
16 to explain to you some of your rights. If you do not
17 understand anything that I say, please let me know and I
18 will explain it in more detail. If you answer a
19 question, I will assume that you understood the question.
20 Do you understand?

21 THE WITNESS: Yes. Yes, Your Honor.

22 THE COURT: We have reached the stage in the trial
23 where you may present your defense. You have the right
24 to claim the protections given to you by the 5th
25 Amendment of the Constitution of the United States. This

1 amendment states in part: No person shall be compelled
2 in any criminal case to be a witness against himself.
3 This means that you cannot be required to testify in this
4 case.

5 On the other hand you have the right to testify on
6 your own behalf should you choose to do so. However, no
7 one can make you testify. This is a personal right and
8 no one can waive this right except you. If you decide to
9 testify you will be subject to the same rules that govern
10 other witnesses, and you may be examined and
11 cross-examined on any relevant issue in this case.

12 In addition, if you have any convictions involving
13 dishonesty, or false statements, or for crimes punishable
14 by imprisonment for more than one year, and this Court
15 determines that the probative value of admitting this
16 evidence outweighs its prejudicial effect to you, the
17 solicitor will be able to introduce your record to attack
18 your credibility.

19 If you decide to testify, this decision on your part
20 must be freely, voluntarily, and intelligently made with
21 the knowledge of the protections given to you by the 5th
22 Amendment and the consequences of your decision to
23 testify.

24 If you decide not to testify, I will instruct the
25 jurors that they cannot give the fact that you did not

1 testify any consideration whatsoever. And that there is
2 to be absolutely no prejudice to you because you did not
3 testify. If is left entirely up to you whether or not to
4 testify.

5 You may talk to your attorney, your family, friends
6 or anyone else, but the final decision will be left
7 entirely up to you. Do you understand what I've
8 explained to you?

9 MR. GUNN: Yes. Yes, Your Honor.

10 THE COURT: --- if you have any questions about that
11 and then you talk to your attorney, I'm going to ---
12 we're going to take a break. I'm going to give you an
13 opportunity to talk to Ms. Wyse and then Ms. Wyse can
14 inform the Court of your decision. So we'll --- we'll be
15 in recess for a few minutes.

16 MR. GUNN: All right. Thank you, Your Honor.

17 (Off the record)

18 THE COURT: Ms. Wyse, have you spoken to your
19 client?

20 MS. WYSE: I have, Your Honor.

21 THE COURT: And what is his decision?

22 MS. WYSE: He does not want to testify.

23 THE COURT: Is that correct, Mr. Gunn?

24 MR. GUNN: Yes it is, Your Honor.

25 THE COURT: Okay. All right. Well, we'll bring the

1 jury back and Ms. Wyse, I'll allow you to rest on --- on
2 the record.

3 MS. WYSE: Thank you.

4 THE COURT: And then we will go into closing
5 arguments. Since the defense is putting up no testimony
6 the State would argue in full and then the defense
7 would --- would get the last argument.

8 I want to go over my charges with you. When we have
9 the jury out, you each have heard my standard charges
10 many times. I have a general charge on the
11 responsibilities of the judge and jury, direct and
12 circumstantial evidence, credibility of witnesses,
13 presumption of innocence, reasonable doubt, criminal
14 intent, the charge, arrest, indictment is not evidence.

15 And then we will have the statute on burglary first
16 degree. I find that there is evidence in the record for
17 a lesser included offense of burglary second degree.
18 Then we have the statute for a malicious injury to real
19 property, resisting arrest, Sub-Section A, the
20 non-assault. There is no evidence in the record of an
21 assault, resisting arrest and possession of tools and use
22 of --- possession of tools used in the commission of a
23 crime under the statute.

24 So there --- are there other specific --- oh, and I
25 have a charge on failure of the defendant to testify and

1 statement of the defendant. So are there other specific
2 charges that would be requested by either party?

3 MS. BLUNDY: Judge, does the burglary in the first
4 degree include the statutory definition of the dwelling?

5 THE COURT: That --- that --- that needs to be ---
6 that's --- the definitions portion would be charged as
7 well of --- of --- of the statute. Okay. It's basically
8 I'll just read to you a dwelling is any building or
9 portion of a building in which a person ordinarily
10 sleeps. The building constructed as a dwelling and has
11 never been occupied cannot be considered a dwelling for
12 purposes of burglary. But a building is a dwelling even
13 if the residents are temporarily absent from the building
14 under the statute proves that. Dwelling means the living
15 quarters of a building which is used normally for sleeping,
16 living or lodging Sub-Section 2 under the statute. And
17 dwelling house under 16.11.10, any house, outhouse, apartment
18 building, erection, or shed, or box in which there sleeps
19 proprietor, tenant, watchman, clerk, laborer, or person who
20 lodges there with the view to protect the property shall be
21 deemed dwelling house and such dwelling house or any other
22 dwelling house, outhouse, building, shed, protection, which
23 are within 200 yards of it and are pertinent to it on the
24 same statute of which it is in a pertinent deemed parcel,
25 that's 16-11-10.

1 MS. BLUNDY: That's the language I would like to
2 have included.

3 THE COURT: (Inaudible) Ms. Wyse, is there anything
4 specific that --- that --- that you request?

5 MS. WYSE: No, Your Honor.

6 THE COURT: Okay. (Unintelligible). Okay.
7 Anything further before we bring our jury back in?

8 MS. BLUNDY: Nothing from the State, Your Honor.

9 MS. WYSE: No, Your Honor.

10 THE COURT: All right. Madam Bailiff, would you get
11 our jury?

12 (Jury enters courtroom)

13 THE COURT: Okay. Mr. Foreman, Ladies and gentlemen
14 of the jury, the State has rested. Ms. Wyse.

15 MS. WYSE: Thank you, Your Honor. The defense
16 rests.

17 THE COURT: Ladies and gentlemen, the defense has
18 rested as well, so that concludes the evidentiary stage
19 of the trial. The next stage of the trial will be
20 closing arguments by the attorneys. So Ms. Blundy, is
21 the State ready to proceed?

22 MS. BLUNDY: We are, Your Honor. Thank you.
23 When I started this trial, I had told you a couple
24 things and one was napping with a crowbar, resting with a
25 pair of pliers, and relaxing with a screwdriver. None of

1 those things make sense. You aren't going to cuddle up with
2 those things. These were the items found on scene with the
3 defendant. This was in his backpack, this was in his pocket.
4 These also were in his hoodie and they fell out when the
5 officers had him on the ground.

6 If you look closely this would be perfect to wedge
7 in between the siding of the door and the actual door, which
8 is what he told the officer he used to actually open the
9 door.

10 He admitted going into the house. He admitted using
11 burglary tools. And when you have these back in the jury
12 room with you, take a look at them. You can actually
13 see --- I think this is the allen wrench, I don't know. I'm
14 not really a tool person. It is filed. That would be a
15 perfect file. Take a look at it. They were on his person. He
16 didn't deny it, but he does say, "Oh, I found them in the
17 yard." Really? Do you honestly believe that? He did not find
18 them in the yard. He went to the house with the intent to
19 break in and steal stuff.

20 You've heard the testimony. You have heard that
21 it's 2:00 a.m. in the morning or night, however you want
22 to look at it, but it was dark outside. In the cover of
23 the night, he went to Peggy Shaw's house. He knew
24 exactly what he was doing. He was dressed in all black.
25 A guise for the nighttime. Not only that, he had a knit

1 toboggan, they call it here. Other places it's a beanie.
2 He had a hat on to cover his head in hopes that nobody
3 would see him.

4 There was testimony that even though Toby Shaw
5 didn't know the defendant, somehow he knew some family
6 members and somehow he knew that Peggy had died. What a
7 perfect target. He knew that she wouldn't be there. He
8 purposely planned to go into that home that night. He had
9 gathered all of his tools.

10 He was ready, but there was something he wasn't
11 ready for. He would not know that Toby had been keeping
12 that property. That he was the watchman of that
13 property. And under our statute it says, if someone is
14 sleeping there, if someone is watching over the property,
15 we have to put this into real life. She had only been
16 dead three weeks. Three weeks. All of her stuff was in
17 there, his childhood stuff was in there. It might not
18 mean anything to us, but it meant something to the Shaws.
19 It was what he had left of his mother. It was all Tammy
20 had left of her mother. Those were the family's items,
21 they were not the defendant's.

22 He didn't count on the cameras being there, and so
23 when he walked in, if you recall the video and I'd be
24 happy to play it again --- in fact, you know what? Let's
25 play it. Let's play it.

1 (Video playing)

2 MS. BLUNDY: There he is. He's at the back door.
3 The same door that was dented. You can tell that this is
4 Mr. Gunn sitting at the defendant's table. What does he
5 do? He is looking dead at that camera. Oh crap. What
6 is he going to do now? Well, we know what he does.

7 (Video playing)

8 MS. BLUNDY: He turns it. He turns it in hopes that
9 nobody's watching, nobody's going to know, and he's going
10 to continue on with his plan. But what was foiled was
11 that Kristy Shaw got woken up at 2:00 a.m. in the morning
12 to an alert on her phone from the Blink camera because
13 they were still monitoring it. They were still paying
14 the (background noise) on it. They were still having the
15 utilities on at the house. They still had the internet
16 there.

17 And she woke up her husband and said someone's in
18 the home. They immediately called 911. And you heard
19 from the dispatcher and you saw the CAD report. They
20 called 911 for help. They said someone's in the family
21 home. Someone's there. And we have to use our common
22 sense just because the fact that she died does not take
23 this house and turn it into a building. Does this look
24 like a building? Does this look like a building? Looks
25 like a sweet old lady's kitchen to me.

1 You heard the testimony from Toby that he had
2 replaced that door he said about a year earlier. He had
3 said that every time he went to the house he left it
4 locked. Front door, back door, locked and secured. He
5 said the last time he saw that door it didn't have dents
6 by the doorknob. And in fact when Officer Entsminger
7 testified, he said that was one of the first things he
8 noticed when he was walking the perimeter of the home.
9 So that along with the video and the audio that they
10 could still hear, they all believed that he was still in
11 the house. And he was.

12 Now, the defendant has lots of stories about why he
13 was there. He says he was going to rest. Well, if he
14 lived at Gun Hill, even if it was a few miles away, why
15 would he rest in there? And if he really needed rest,
16 why was he up at 2:00 a.m. in the morning? He wasn't
17 there to rest.

18 Now, we can't get inside the defendant's brain. We
19 don't know his intent for sure. But how we do know what
20 the intent is by his actions, but the circumstances
21 surrounding his actions. The clothing he was wearing,
22 what he did when he got inside the home, his confession
23 that he went inside the home and didn't have permission
24 to be there in the first place.

25 He does not actually have to remove items from the

1 home to be guilty of burglary. He doesn't actually have
2 to take anything at all. But he has to have the intent
3 to commit the crime. Oh, but he had the intent. The
4 problem is he couldn't follow through with it because he
5 got caught. And when the officers finally arrived, he
6 wasn't expecting them to show up.

7 And as soon as they did, he panicked and he didn't
8 know what to do. So he laid down in hopes that they
9 would go ahead. He even says that on video. Officer
10 Alexander said oh, what were you going to do? Were you
11 waiting for us to leave? And he says, "Yes, basically."

12 And then when they start to make entry into the
13 front door, he heard them with the key and with the dog
14 at that porch he didn't surrender. He didn't come out
15 with his hands up after they commanded him three times
16 and said you're under arrest, we've got a K9, come out of
17 the house with your hands up. Officer Shedd testified to
18 it. You heard his testimony. You heard him on the
19 video. That's exactly what they told him. He heard
20 them.

21 That's resisting arrest, folks. He did not comply
22 with a lawful arrest. They said, you're under arrest,
23 come out. You don't have to fight the officer. It took
24 him over half an hour. And then finally, when they make
25 entry into the house, what does he do? He tests the back

1 door. Pops it open just a little bit. Was anybody back
2 there? I'm going to make a run for it into those woods.
3 That's exactly what he was thinking.

4 But what he didn't know that Deputy Pitts was
5 stationed at the back door. The rest were in the front,
6 but he was at that back. And he radioed immediately and
7 said there's action at the back door. And then
8 Entsminger jumped to it and he came around. They had to
9 draw guns, y'all. This is a dangerous situation.
10 Now, once he realizes there's four or five officers
11 and there's a K9, he's done. He lays down on the ramp
12 eventually. But he doesn't give them his hands right
13 away. You watched the same video I did multiple times.
14 Give us your hands, give us your hands, give us your
15 F-ing hands. He finally does. Says I'm not going to
16 jail.

17 He tries to say, "I know the family, I had a right to be
18 here." He did not. Toby testified, I didn't even know
19 the guy, he might have known my brother. He might have
20 known my brother, but I didn't know him. I never gave
21 him permission to be there. I'm the only one with a key,
22 me and my sister and my sister's in Tennessee. He had no
23 right to be there.

24 So when you consider all of the elements, burglary
25 tools are things used capable of helping a person commit

1 a burglary. I don't know what more I could show you.
2 All of those tools are burglary tools, especially the
3 crowbar. So whether he used the crowbar to get --- pry
4 that door open, or whether he used the chisel or the lock
5 pick, it really doesn't matter which one he used. But he
6 damaged the door. The testimony was it wasn't like that.

7 He even admitted going in the house. We know the
8 house was locked. He used the tools, he's guilty of
9 that. Resisting arrest, he's guilty of that. He didn't
10 come out over half an hour, staked out perimeter of the
11 house. He resisted arrest. He's guilty of that. He's
12 guilty of damaging the door. That's malicious injury of
13 property to a house, he's guilty of that.

14 Now, burglary in the first degree, the defense wants
15 you to believe this is a building and that is the
16 argument. But I've told you why it's not. And you've
17 heard the testimony. You've heard the testimony that
18 Toby was staying there on and off during the three-week
19 period, that he was caring for the property. The
20 property was going to stay within his family, that his
21 niece actually ended up living in the property after this
22 incident. He had goods there. He had perishables.
23 Food. I mean, why would you continue to pay bills if you
24 didn't plan on utilizing the property? Save yourself the
25 money. He also, you know, testified that he had paid for

1 the internet, that he was still paying on the Blink
2 cameras.

3 It would have been nice if he had a higher data
4 plan. I would have like to have seen all the video, not
5 just the portions of the video (background noise). And
6 (unintelligible).

7 But you can piece it together, because there's a
8 direct link as to how it all happened, along with the
9 defendant's testimony and statements --- sorry, not
10 testimony, but statements the defendant made to the
11 officers (background noise).

12 We do not have to own the property to commit a
13 burglary. So whether the estate owned it, whether Toby
14 owned it, it really doesn't matter. It's a crime of
15 possession and habitation. It is not ownership. And the
16 fact of the matter is if she died without a will, you
17 don't have to probate the property. All that does is
18 transfer title, but it goes down the line to your family,
19 to your kids. And that's exactly what happened here. It
20 went to Toby and Tammy. He was in control of that property.
21 He was utilizing it.

22 So for burglary in the first degree, it has to be a
23 dwelling in the sense. Everything about that is a house not a
24 building. It also needs to occur in a couple different ways.
25 And one thing for you to consider is whether the defendant

1 had two prior convictions for burglary or house breaking
2 which he did.

3 And you heard from Lisa Burton burglary in the
4 second degree William David Gunn, March 22, 2005.
5 Burglary second degree, William David Gunn, April 7,
6 2015.

7 The other thing you can consider, and these are ors.
8 You don't have to have all of these to be burglary in the
9 first degree, but did it happen in the nighttime? Yes,
10 2:00 a.m. It's dark outside. It's nighttime. His
11 intentions are clear. He targeted the home knowing she
12 was deceased. He went there looking for easy property to
13 take in the middle of the night. He did it wearing all
14 black clothes with a pocket full of tools and a backpack
15 ready to stuff. He didn't count on the cameras working
16 or being there. He didn't know the police were going to
17 (unintelligible).

18 These crimes are committed. And I ask that when you
19 go back into your deliberation room that you find the
20 defendant guilty of all the charges in the first degree.
21 Thank you.

22 THE COURT: All right. Ms. Wyse.

23 MS. WYSE: Thank you, Your Honor. May it please the
24 Court, Ms. Blundy. Ladies and gentlemen of the jury, the
25 beginning of the trial I told you that there were going

1 to be things that you heard and there were going to be
2 things that you didn't hear. There were going to be
3 things that the State was going to tell you, things
4 the defendant was going to admit. From the very beginning
5 Mr. Gunn admitted to me that he committed burglary in the
6 second degree. He did. Admitted to me that he had those tools
7 in his pocket. He confessed it to the police. I don't know if
8 you remember when these witnesses took the stand and a
9 lot of them (unintelligible) questioning them. Because
10 we aren't trying to dispute the fact that he admitted to
11 a lot of things that he did, a lot of things that there
12 is evidence of a lot of things. That has never been our
13 intention. But you as members of the jury are entitled
14 and should and you need to hear that the State has met every
15 single element beyond a reasonable doubt.

16 What do we know? We know that Mr. Gunn came into
17 the back door. He told you he did. There's never been
18 any controversy that he did it.

19 What else do we know? We know that he got caught
20 with his burglary tools in his pocket. He admitted
21 that from the beginning. He even told the officers where
22 he got them. He was in that house (background noise)
23 the difference between burglary second and that ladies and
24 gentlemen (background noise) burglary first.

25 Now, he does have a prior record. I knew that. You

1 knew that. They knew that. We all know that. There's
2 no hiding it. I'll tell you what, don't let that prior
3 record blind you to the fact that there are other issues. He
4 never admitted or said or argued that what he did, or that
5 what he did was okay. He's willing to take that
6 responsibility. He is guilty of burglary second.

7 Now, I am going to ask you to not find him guilty of
8 burglary first, and there are reasons why. And I want
9 you to consider these reasons. First thing I would like
10 to play for you is the 911 call. Excuse me ladies and
11 gentlemen. I apologize for this inconvenience while we
12 wait for just a second. Obviously I am lacking in the
13 skills to play this on this --- this drive. Let's try
14 that one more time.

15 (Audio playing)

16 MS. WYSE: What do you (background noise) about
17 this?

18 (Audio playing)

19 MS. WYSE: She's not upset.

20 (Audio playing)

21 MS. WYSE: She's not upset. While the crime was
22 occurring she's not hysterical, there's no threat. Know
23 why? Because nobody lives there and nobody is supposed
24 to be there. But don't take my word for it. You can
25 look at State's Exhibit Number 2. This is the CAD

1 report.

2 Now, I questioned the last officer about this
3 report, you know, a couple of times. Ms. Blundy put up and
4 asked some questions on cross-examination. And basically I
5 think she tried to discredit the report that she put in.
6 But needless to say, you've heard the 911. And you can
7 see on what's marked as actually it's marked as
8 Plaintiff's Exhibit Number 2. No one's supposed to be
9 there. Nobody lives there per complaint.

10 I brought up the warrant to Deputy Entsminger signed.
11 You heard Alexander when he took the stand. He was the
12 supervisor that was there on the scene. He was the one who
13 gave Deputy Entsminger responsibility as far as the case is
14 concerned. Deputy Entsminger took the stand yesterday and he
15 talked about what he did. You've heard his body cam. I asked
16 him about his incident report (background noise). Nowhere
17 on that incident report does it mention that Mr. Shaw was
18 staying in the house that he was going back to the house.
19 Nowhere is there a statement from the State saying that
20 Mr. Shaw was going back to the house. There's no mention
21 of anything to do with the niece. There's no mention of
22 Mr. Shaw spending the night there. Mr. Shaw took the stand
23 and said there was food in the refrigerator. I asked every
24 single deputy who took the stand, deputy (unintelligible) was
25 there food in the refrigerator? None of them looked.

1 Ladies and gentlemen, right after Deputy Entsminger
2 left this seat at [REDACTED] he read the incident report. He read
3 this warrant. And this warrant said there that it was an
4 unoccupied place. I'm not making this up. This is what was
5 testified to on the stand with what the deputy told you
6 himself that he did. It is what Mr. Gunn admitted to on
7 scene. These are the details that the deputy wrote down right
8 after the incident occurred. Not a year later, not a month
9 later, and certainly not something that we heard for the
10 first time (unintelligible).

11 Now, the State has told you that it's the intent to
12 return, it's the intent to come back to the house, it's
13 the intent to stay there, it's the intent to be a
14 watcher. I'm going to argue with you today that there
15 wasn't clear intent on this day and time. And do you
16 know why? Because she had just passed away. And I am
17 very sorry that she did pass away. The three or four
18 weeks after someone passed away, you don't know what
19 you're going to do with the residence. You don't know
20 what bills are going to have to be paid, you don't know
21 if the taxes have been paid. You don't know anything
22 about the shape of the residence, or the building, or
23 whatever you want to call it. You have no idea if there
24 are medical bills based on Hospice, nursing center, or
25 home healthcare that had to come in. There's no telling.

1 You can get doctor's bills for months. There's no way to
2 have known on this date and time what was going to happen
3 to --- to [REDACTED] Johnson Drive. There's just no way to know.

4 And I'm not saying that to be callous, to be mean,
5 to be cruel to anyone. Death is terrible. And it leaves
6 a lot of questions. But it also leaves a lot of bills
7 that have to be paid. But sometimes --- a lot of
8 times --- most times those bill have to be paid out of
9 the estate. How do you do that? You (unintelligible).

10 You heard from the witness stand that that family
11 didn't have a lot. And I asked Mr. Shaw if he called his
12 mother a hoarder because I heard him say that to several
13 different officers on the body cam. There was a lot of
14 stuff in that house. And it might have been her prized
15 possessions, but that doesn't mean anyone is going to
16 move there or return. Yet he had to get the stuff out.
17 Obviously there were things that he had to go through.

18 Ladies and gentlemen, I'm having a really, really,
19 really hard time believing that he went back to his dead
20 mother's home and spent the night away from his wife when
21 the grief was still so fresh --- in a nursing home bed.
22 I'm having a hard time believing that.

23 Ladies and gentlemen, there's something that's been
24 bothering me since it happened yesterday. You see like I
25 told you in the opening, the judicial system here is the

1 best in the world because the State has to prove beyond a
2 reasonable doubt each and every element of the defense.

3 Now, I know that most of you are not familiar with
4 this process. And that --- that's okay. That's good. What the
5 State is required to do by South Carolina law and Federal law
6 is give me everything that pertains to the case. I get to. So
7 does he. So does the defendant. I get to hear the 911 call.
8 So does the defendant. I get to (background noise.
9 (Unintelligible). Because that is a basic right guaranteed by
10 our constitution. It is a basic right that every single
11 person accused of a crime in the State of South Carolina in
12 America has the right to review the State's evidence to every
13 little element of the crime.

14 For the first time ever when the defense informed
15 Mr. Shaw had ever been back in that house and he had
16 spent the night in that house was yesterday. There's no
17 evidence given to the defense by the State.

18 The picked the perfect guy because you probably don't
19 like him. His convictions, tools, caught red-handed with his
20 hand in the cookie jar. Right? But if they can do that to
21 William David Gunn, then they can do that to anyone. Made it
22 a slippery slope, ladies and gentlemen of the jury.

23 MS. BLUNDY: Judge, I'm going to object.

24 THE COURT: Sustained.

25 MS. WYSE: So ladies and gentlemen, you've heard

1 evidence that Mr. Gunn admitted to going into that house.
2 You've heard evidence that Mr. Gunn had burglary tools in
3 his pocket. We've heard evidence that Mr. Gunn was in a
4 place where he was not supposed to be in the nighttime.
5 Two prior convictions on something very similar. If I
6 were to tell you what I said in the very beginning in
7 this case he admits that he was wrong. He admits that he
8 was not supposed to be there. He admits to the burglary
9 tools that you are going to have in that evidence. There is
10 no question about that. He admits to opening that back
11 door. Nobody actually saw Mr. Gunn cause the damage to
12 that back door but I think it is a reasonable inference
13 that he did. And he agrees with me.

14 But what he didn't do is commit burglary in the
15 first. Because he knew the house was not occupied. He
16 knew that no one lived there that no one had been staying
17 there. That he knew that there was no intent
18 (unintelligible). He absolutely made a burglary second.
19 Absolutely. What he didn't do is commit burglary first.

20 Ladies and gentlemen of the jury, you've heard ---
21 you've heard testimony, you've seen videos, you've heard
22 911, you seen CAD report, you've seen photographs. Mr.
23 Gunn did not take anything from that house, that's
24 undisputed.

25 Mr. Gunn for intents and purposes walked there. He

1 walked there for several miles. Whether you want to
2 believe him or not as to whether or not he went in there
3 to take a rest and get some water that's what he said.
4 But the fact remains that we don't really know how long
5 he was in that place. He could have been in there for hours
6 according to him, resting. We don't really know if the
7 cameras that were inside that place were that sensitive or
8 effective. We don't exactly know the long time. Ms. Blundy
9 has stated that officers arrived and he was inside for at
10 least 30 minutes.

11 Nothing was damaged other than the back door where
12 he tried to go in. There is no report, no reference to
13 any of the things in the house had been moved around or
14 misplaced. There's no report that items had been rifled
15 through or thrown around. You didn't hear that from
16 anybody. Mr. Gunn admits all that. He admits a lot.

17 He did not take anything from inside. Not a thing.
18 They didn't find a line of, like, you know, goods that he
19 dropped on the floor on his way to get out. They didn't
20 find anything in his pockets other than the tools and
21 cell phone. The backpacks were empty. There was the no
22 evidence to suggest that he'd gone through anything,
23 broken anything, tried to actually stuff anything into
24 any --- any of the backpacks.

25 When you heard the officer's questions about what he

1 was wearing, you heard what he said. It's all he had.
2 I'm inclined to believe him. I am inclined to believe
3 that that was all he had with him. He didn't even have a
4 vehicle or a ride to get back to his place.

5 Ladies and gentlemen, burglary first and burglary
6 second are very, very similar. The main difference
7 between the two is whether or not the building was
8 inhabited. And the way you determine whether or not it
9 was a home is if there was any intent to return. I
10 submit to you there's no way that Ms. Shaw could return.
11 I submit to that there was no probate. There were no
12 bills placed into evidence; there was no mail that was
13 shown going to that trailer; no pictures of the inside of
14 her refrigerator. There is dispute about whether or not
15 there were utilities. Some records show there were, some
16 records show there weren't.

17 Ladies and gentlemen you can have a trailer and have
18 different purposes for that trailer. You can have a
19 dress shop (background noise). That doesn't mean that
20 someone is going to live there and spend the night. You
21 can have tools inside a trailer. You can do --- have all
22 kinds of things inside a trailer. That doesn't mean that
23 anybody lives there or is going to go back and spend the
24 night. A building can have a lot of different uses. You
25 see things all the time now where old mills are

1 reconverted into a project. You can take a building and
2 repurpose it. Just because Mr. Shaw had had been there
3 prior doesn't mean that we know beyond a reasonable doubt
4 if anybody was going to live there after.

5 Ladies and gentlemen, I submit to you this: Mr.
6 Gunn didn't lie, he did come out of the house, he didn't
7 fight anybody on his way out. He didn't take off for the
8 hills, and yes, he might have gotten more than one
9 command to put his arms behind his back. It's not
10 exactly comfortable when you throw yourself onto the
11 ground to comply with a command and trying to get your
12 arms in the right position to be handcuffed. That
13 doesn't mean he was resisting. (Unintelligible) the
14 video. I'm not resisting, I'm not resisting, I'm not
15 (unintelligible). They caught him red-handed.

16 For those reasons ladies and gentlemen, I would ask
17 that you find him guilty of burglary second. Exactly
18 what he admits he says that he did. I ask you to take
19 him at his word when he said that he jimmied the --- the
20 back door that he caused malicious entry and damage to
21 personal property. And take him at his word -- taking his
22 word when she said those tools --- these tools right here he
23 had them. He was the in possession of them. I don't know if
24 he bought them. But he had them very clearly. What he didn't
25 do is he didn't report it, and he didn't commit burglary

1 first. Thank you.

2 THE COURT: Ladies and gentlemen, we've come to the
3 point in the trial where I instruct you on the law. My
4 instructions will be somewhat lengthy. They're going to
5 be in three parts. First instructions on the general
6 rules that define and control the jury's duties.

7 Secondly, instructions that state the rules of law
8 that you must apply of what the State must prove to make
9 its case.

10 Lastly, some rules for your deliberations. The
11 general rules begin with your duties as jurors. It is
12 your duty to find the facts from all the evidence in the
13 case.

14 To those facts, you must apply the law as I give it
15 to you. You shall not be concerned with what the law
16 should be, but what it is. And you must not be
17 influenced by any personal likes, dislikes, opinions,
18 prejudices, or undue sympathy. This means that you must
19 decide the case solely on the evidence before you in
20 accordance with the law. The very thing that you took an
21 oath promising to do at the beginning of the trial. It
22 is your responsibility and yours alone to determine the
23 facts of this case.

24 I will therefore charge you that if during the
25 course of this trial or during this charge you have been

1 given or left with the impression or feeling that I have
2 a personal feeling about the facts of this case, or that
3 I favor one side or the other, I would specifically
4 instruct you to disregard that impression. Under our
5 constitution I am not allowed to have an opinion as to
6 the facts of the case. You should not be influenced by
7 any objections or the Court's ruling on them. You and
8 you and alone are the judges of the facts. You determine
9 the facts by evaluating or weighing evidence that you
10 have heard during the trial.

11 What is evidence? Evidence is the sworn testimony
12 of the witnesses and any exhibits that have been entered
13 into evidence. The statements by the attorneys are not
14 evidence. What they have said in opening statements,
15 closing arguments and in other times is intended to help
16 you interpret the evidence, but it is not evidence.

17 There are two types of evidence which are generally
18 presented during a trial. Direct evidence and
19 circumstantial evidence. Direct evidence directly proves
20 the existence of a fact and does not require deduction.

21 Circumstantial evidence is proof of a chain of facts
22 and circumstances indicated the existence of a fact.
23 Crimes may be proven by circumstantial evidence. The law
24 makes no distinction between the weight or value to be
25 given to either direct or circumstantial evidence.

1 However, to the extent the State relies on
2 circumstantial evidence all the circumstances must be
3 consistent with each other and when taken together point
4 conclusively to the guilt of the accused beyond a
5 reasonable doubt. If the circumstances merely portray
6 the defendant's behavior as suspicious, the proof has
7 failed.

8 The State has the burden of proving the defendant
9 guilty beyond a reasonable doubt. The burden rests with
10 the State regardless of whether the State relies on
11 direct evidence, circumstantial evidence, or some
12 combination of the two. As the judges of the facts, you
13 are the sole judges of the credibility that is the
14 believability of the witnesses who have testified in this
15 case.

16 In determining their credibility, you may take into
17 consideration many things, such as the appearances and
18 manner of the witness on the stand, sometimes referred to
19 as the demeanor of the witnesses. Was the witness able
20 to see, hear, or know the things about which the witness
21 testified? How well was the witness able to recall and
22 describe those things? Did the witness have a cause or
23 reason to be biased and prejudiced in favor of the
24 testimony that he or she gave? How reasonable was the
25 witness's testimony considered in the light of all the

1 evidence in the case? Was the witness's testimony
2 contradicted by the witness about what the witness had
3 said or done in another time, or by the witness of other
4 witnesses, or by other evidence? These are some of the
5 factors you may consider in deciding whether to believe
6 testimony.

7 As jurors, you have the right to believe all of the
8 testimony of a witness, or none of the testimony of a
9 witness. You have a right to believe a portion of the
10 testimony of a witness and discard the rest. You may
11 believe the testimony of one witness over the many, or
12 the many over the one. Most certainly though, you do not
13 determine the matter of credibility by simply counting up
14 the number of witnesses who may have testified on behalf
15 of the parties.

16 The defendant has entered a plea of not guilty to
17 these indictments and that plea puts the burden on the
18 State to prove the defendant guilty.

19 A person charged with committing a crime is never
20 required to prove himself innocent. I charge you that it
21 is an important rule of the law that a defendant in a
22 criminal trial no matter what the seriousness of the
23 charge will be --- will always be presumed to be innocent
24 of the crime for which the indictment was issued unless
25 guilt has been proven by evidence satisfying you of that

1 guilt beyond a reasonable doubt.

2 The presumption of innocence does not end when you
3 begin your deliberation, but it accompanies the defendant
4 throughout the trial until you reach a verdict of guilt
5 based upon evidence satisfying you of that guilt beyond a
6 reasonable doubt. The presumption of innocence is like a
7 robe of righteousness placed about the shoulders of the
8 defendant which remains with the defendant until it has
9 been stripped from the defendant by evidence satisfying
10 you of that defendant's guilt beyond a reasonable doubt.

11 The presumption of innocence is not a mere legal
12 theory, it is not just a legal phrase. It is a
13 substantial right to which every defendant is entitled
14 unless you the jury are satisfied from the evidence of
15 the defendant's guilt beyond a reasonable doubt.

16 What is a reasonable doubt in the law? A reasonable
17 doubt is the kind of doubt that would cause a reasonable
18 person to hesitate to act. Some of you may have served
19 as jurors in civil cases whether you were told that it's
20 only necessary to prove that a fact is more likely true
21 than not true. So judge by the greater weight of
22 preponderance of the evidence.

23 In criminal cases the State's proof must be more
24 powerful than that. It must be beyond a reasonable
25 doubt. Proof beyond a reasonable doubt is proof that

1 leads firmly convinced of the defendant's guilt. There
2 are very few things in this world that we know with
3 absolute certainty and in criminal cases the law does not
4 require proof that is overcoming every possible doubt.

5 If based on your consideration of the evidence you
6 are firmly convinced that the defendant is guilty of the
7 crime charged, you must find the defendant guilty.

8 If on the other hand you think that there is a real
9 possibility that the defendant is not guilty, you must
10 give the defendant the benefit of the doubt and find him
11 not guilty.

12 A reasonable doubt may arise from the evidence or
13 from a lack of evidence. The defendant is entitled to
14 every reasonable doubt that may arise in the case.

15 If upon any issue of fact essential to a conviction
16 and a verdict of guilty of --- of an offense, if you have
17 any reasonable doubt as to how that issue should be
18 resolved, it is your duty to resolve that doubt in favor
19 of the defendant.

20 Suspicion, however strong, is not enough to sustain
21 a conviction. The evidence presented by the State must
22 be substantial evidence that tends to prove the guilt of
23 the defendant beyond a reasonable doubt.

24 In order to establish criminal liability, criminal
25 intent is required. For example, the mental state

1 required to prove by the State for a particular crime
2 might be purpose, intent, knowledge, or recklessness, or
3 criminal negligence.

4 Criminal intent must be proven by the State beyond a
5 reasonable doubt. Criminal intent is always a matter
6 that must be determined by the jury from the
7 circumstances surrounding the situation. There is no way
8 to prove intent to a mathematical certainty. There's no
9 way medical science can dissect a person's brain and
10 determine what that person had in mind. So the law says
11 that criminal intent may be inferred from the
12 circumstances shown to have existed.

13 This is how you make a determination of whether or
14 not the element requiring intent is present. It is not
15 necessary to establish intent by direct and positive
16 evidence, but intent may be established by inference in the
17 same way as any other facts by taking into consideration the
18 acts of the parties and all the facts and circumstances of
19 the case.

20 Criminal intent is a mental state, a conscious
21 wrongdoing. It is up to you to determine what the
22 defendant intended to do based on the circumstances shown
23 to have existed.

24 I instruct you and emphasize the fact that the
25 defendant did not testify is not a fact to be considered

1 by you in any way in your deliberation and in your
2 considerations on the questions of guilt or innocence of
3 the defendant. It must not be considered by you in any
4 manner whatsoever.

5 A defendant has the constitutional right to remain
6 silent. And the assertion of this right must not be
7 considered by you in your deliberations. I repeat under
8 your oath, you are to draw no conclusion whatsoever from
9 the fact that the defendant in this case did not testify.
10 The fact that this defendant did not testify should not
11 even be discussed in the jury room. The burden of proof
12 as I've stated to you is on the State. The defendant is
13 not required to prove his innocence. The burden of proof
14 remains on the State to prove guilt beyond a reasonable
15 doubt.

16 The statements alleged to have been made by the
17 defendant have been admitted into evidence in this case.
18 While the Court has determined that the statements are
19 admissible, I instruct that you --- that you make the
20 ultimate decision of whether or not the defendant made
21 the statements. If the defendant did make the
22 statements, you must determine whether the statements
23 were made by the defendant voluntarily and of his own
24 free will. This means that the statements were not
25 caused by pressure, force, fear, threats, coercion, or

1 intimidation, or by the hope of a --- or a promise of
2 leniency or a reward of any kind.

3 In determining whether the statement was voluntary,
4 you should consider both the characteristics of the
5 defendant and the details of the questioning. Some of
6 the factors that you must consider are the age of the
7 defendant, the defendant's education, or the lack of
8 education, defendant's mental ability or capacity and its
9 IQ or intelligence. The defendant's background,
10 environment, place and the length of the intention.

11 The nature of the questioning, the advice or lack
12 thereof to the defendant of his constitution rights
13 including but limited to the right to remain silent that
14 any statement could be used against him in a court of
15 law. The right to have a lawyer present. If he could
16 not afford a lawyer, a lawyer would be appointed to
17 represent him without any cost and that he could stop
18 making a statement at any time.

19 You must carefully consider all the surrounding
20 circumstances before you give any weight to an alleged
21 statement. The State has the burden of proving beyond a
22 reasonable doubt that the alleged statement was
23 voluntary. If you determine it was, you must give the
24 statement any further consideration that you deem proper.

25 You must decide what weight, if any, should be given to

1 the alleged statement. You can determine that the
2 alleged statement was not free and voluntary, you should
3 not consider the statement at all.

4 The indictments charge the defendant with burglary
5 first degree, malicious injury to real property,
6 resisting arrest, possession of tools used in the
7 commission of a crime. I remind you that the fact that
8 the defendant was arrested, charged, and indicted in this
9 case is not evidence in -- in this case and cannot be
10 considered by you as evidence of guilt in this case, nor does
11 it create any presumption or inference of guilt.

12 These documents are simply the formal written
13 instruments which contain the charges made against the
14 defendant. They are the formal documents by which the
15 case is brought to court.

16 So I'm going to go down each charge. Defendant's
17 charged with burglary first degree. The State must prove
18 beyond a reasonable doubt that the defendant entered a
19 dwelling without consent. A dwelling is any building or
20 portion of a building in which a person ordinarily
21 sleeps. A building constructed as a dwelling that has
22 never been occupied and cannot be considered a dwelling
23 for purposes of burglary. But a building is a dwelling
24 even if the occupants are temporarily absent from the
25 building, but have an intent to return.

1 That statute defines dwelling house as follows with
2 respect to the crimes of burglary, and arson, and to all
3 criminal offenses which are constituted or aggravated by
4
5 the committing --- by being committed in a dwelling
6 house, any house, outhouse, apartment, building,
7 erection, shed, or box in which there sleeps a
8 proprietor, tenant, watchman, clerk, laborer, or person
9 who lodges there with a view to the protection of
10 property shall be deemed a dwelling house.

11 And if such a dwelling house or any other dwelling
12 house, all houses, out houses, buildings, sheds, and
13 erections which are within 200-yards of it and are
14 pertinent to it to the same establishment of which it is
15 pertinent shall be deemed parcel.

16 In order to prove that the defendant entered the
17 dwelling, the State does not have to show that the
18 defendant's entire body entered into the dwelling. The
19 smallest entry is sufficient. It may be any part of the
20 body such as a hand or foot or even an instrument such
21 as a hook or other instrument.

22 In addition, the State does not have to prove that
23 force was used to gain entry. If a person enters a
24 building by use of deception, or if it's trick or
25 misrepresentation, didn't get consent to enter, this is

1 entry without consent.

2 Next, the State must prove beyond a reasonable doubt
3 that the defendant intended to commit a crime, either a
4 felony or misdemeanor at the time of entry. The mere
5 entering into a dwelling without intent is not burglary.
6 If the intent to commit a crime is formed after the
7 entry, it is not burglary.

8 On the other hand, if the defendant intend today
9 commit a crime at the time of the entry, it is burglary
10 even if the intent was abandoned after the entry. It
11 does not matter that the intended crime was not
12 completed.

13 Intent may be shown by acts and conduct of the
14 defendant of the circumstances from which you may
15 naturally and reasonably confer intent.

16 Finally, the State must prove beyond a reasonable
17 doubt that the defendant has a prior record of two or
18 more convictions or burglary and/or house breaking.
19 Evidence of prior offenses committed by the defendant was
20 the not --- was not offered to prove the defendant as a
21 character or to prove that the defendant committed the
22 burglary on this occasion. The prior convictions may be
23 considered by you only for the purpose of determining
24 whether or not it satisfies the element of the appearance
25 that makes it a first degree burglary if you enter a

1 dwelling without consent to commit a crime and you have
2 two prior convictions for burglary and/or house breaking.

3 Before you can even consider the evidence of the
4 defendant's prior burglary and/or house breaking
5 convictions, you must find that the State has proved
6 beyond a reasonable doubt that a burglary was committed
7 by the defendant. If you find beyond a reasonable doubt
8 that burglary was considered then you may consider the
9 evidence of the prior convictions of evidence of one of
10 the circumstances which would make the burglary a first
11 degree burglary. If you do not find beyond a reasonable
12 doubt that the defendant committed these alleged prior
13 offenses, then you cannot return the verdict on first
14 degree burglary on this ground.

15 Also the --- you may also consider the defendant
16 entered or remained in the dwelling in the nighttime.
17 Nighttime is the period between sunset and sunrise during
18 which there is not enough daylight to recognize a
19 person's face except by artificial light or moon light.

20 Ladies and gentlemen, if you find that the State has
21 failed to prove beyond a reasonable doubt that the
22 defendant committed a first degree burglary, you may
23 consider whether the State had proved beyond a reasonable
24 doubt that the defendant committed second degree
25 burglary. Second degree burglary includes all of the

1 elements of first degree burglary except the
2 circumstances of aggravation that the entry was --- was
3 not into a dwelling, that it was into a building.
4 Included within the offense of first degree burglary is
5 the lesser offense of second degree burglary. Second
6 degree burglary includes all of the elements of first
7 degree burglary except the circumstance of aggravation.

8 To prove a second degree burglary the State must
9 prove beyond a reasonable doubt the defendant entered a
10 building without consent with the intent to commit a
11 crime in the building. A building is any structure,
12 vehicle, water craft, or aircraft where a person lodges
13 or lives, or where people assemble for the purpose of
14 business, government, education, religion, entertainment,
15 public transportation, or public use, or where goods are
16 stored.

17 And finally, the State must prove beyond a
18 reasonable doubt that the defendant has a prior record of
19 two or more convictions for burglary and house breaking
20 or the defendant entered or remained in the building in
21 the nighttime under the same conditions as burglary
22 first.

23 Defendant's also charged with malicious injury to
24 real property, the State must prove beyond a reasonable
25 doubt that the defendant willfully or maliciously cut,

1 mutilated, defaced, or otherwise injured a tree, house,
2 outside fence, or fixture, or of another person, or
3 committed any other trespass on the real property of
4 another person.

5 Willfully means voluntarily, intentionally means
6 with a specific intent to do something the law forbids.
7 Maliciously means involving malice. Malice is hatred,
8 ill will or hostility toward another person. It is the
9 intentional doing of a wrongful act without just cause or
10 excuse and with an intent to include an injury or under
11 circumstances that the law will infer evil intent.

12 The defendant's also charged with resisting arrest.
13 The State must prove beyond a reasonable doubt that the
14 defendant knowingly and willingly opposed or resisted a
15 law enforcement officer inserting, executing or
16 attempting to serve or execute legal writ of process;
17 resisted a lawful or resisted a lawful arrest to be made
18 by a person the defendant knew or reasonably should have
19 known was a law enforcement officer.

20 Knowingly means with knowledge consciously done,
21 willfully means done intentionally and not by accident.
22 Resist means to oppose, strive against, or obstruct.
23 Obstruct means to impede, hinder or interfere with. Even
24 peaceful non-violent indirect instruction of an arrest or
25 the service or execution of process is considered

1 resisting arrest. If the means used are sufficient to
2 prevent the officer from making an arrest the defendant
3 is guilty of resisting arrest.

4 Finally, possession of tools used to commit the
5 crime. It is unlawful for a person to make or mend,
6 cause to be made or mended, or have in his possession
7 engine, steam, tool, false key, pick lock, bit, dynamite,
8 nitroglycerin, (inaudible) steel wedge, drill, tap in or
9 other implement, or thing adapted designed or commonly used
10 for the commission of burglary, larceny, safe cracking, or
11 other crime under circumstances advancing in the attempt to
12 use, employ, or allow the same to be used or employ in the
13 commission of a crime or knowing that the same are intended
14 to be so used.

15 Ladies and gentlemen, we're almost at the point
16 where I say enter the jury room. This --- this has been
17 a long instruction on the law. But I want to leave you
18 with some final thoughts. You were chosen as jurors in
19 this case because both sides believe that you could be
20 fair and impartial in deciding the case.

21 I instruct you to make use of your life experiences,
22 your good common sense and your sense of logic and reason
23 in evaluating the evidence in this case. You are not
24 partisans for either side. You have no friends to
25 reward, no any enemies to punish. You are the judges of

1 the facts. Your sole interest is to determine whether
2 the State has proven its charges against the defendant
3 beyond a reasonable doubt.

4 Be courteous with one another, listen to the views
5 of your fellow jurors. Take the amount of time necessary
6 for you to thoroughly evaluate the evidence in this case.
7 This case is important to both sides and this is their
8 day in court.

9 So Mr. Foreman, I'm going to go over the --- the
10 verdict form with you. It is --- it is a two-page
11 verdict form, it starts out on the first page with
12 burglary first degree. And it gives you two options as
13 the charge is burglary first degree, we the jury find
14 first option is not guilty, the second option is guilty.

15 Then you have below that alternatives. The
16 defendant may be found guilty of the lesser included
17 offense of burglary in the second degree. And keep in
18 mind, you cannot find him guilty of burglary in the
19 second degree if you found him guilty in burglary in the
20 first degree.

21 But whatever --- whatever verdict you choose on each
22 one whether it's not guilty or guilty, you would just
23 check the appropriate box on --- on each one.

24 Then you go to the second page you have the other
25 three charges, malicious injury to real property,

1 resisting arrest, and possession of tools in the
2 commission of a crime. Again, it gives you the same
3 options, not guilty or guilty.

4 And when you've reached a verdict on each one of
5 those charges individually, you will check the
6 appropriate box. Your verdict has to be unanimous. So
7 what I'm going to do is I'm going to send you to the jury
8 room now. Do not begin your deliberations until I send
9 the verdict form and the exhibits back with the bailiff.

10 So Madam Bailiff, would you take to the jury to the
11 jury room, please.

12 (Jury exits courtroom)

13 THE COURT: Any exceptions from the State?

14 MS. BLUNDY: None, Your Honor.

15 THE COURT: Any exceptions from the defendant?

16 MS. WYSE: None, Your Honor.

17 THE COURT: Okay. Counsel, I'd like each of you to
18 come forward, count the exhibits, make sure that they're
19 all there and then we'll send them back to the jury.

20 (Attorneys counting exhibits)

21 MS. BLUNDY: They are all in order.

22 THE COURT: Okay. Madam Bailiff, here is the
23 verdict form. Take the exhibits and the verdict form
24 back to the jury. Tell the foreman they may begin their
25 deliberations and bring the two alternates back out here.

1 (Off the record)

2 THE COURT: What I received from the foreman, it
3 said can we have the definition of dwelling and building,
4 and a copy of first and second degree burglary. Well,
5 first my policy is I don't send charges back. I'll ---
6 I'll read them the charges again. And then I'll just
7 read the definitions of dwelling and building again,
8 and --- and send them back for their deliberations.

9 Madam Bailiff, would you get the jury.

10 (Jury enters courtroom)

11 THE COURT: All right. Mr. Foreman, I --- I have
12 both of your questions. Can we have the definition of
13 dwelling, building, and then first and second degree
14 burglary. And then the second one, restate the
15 definition of resisting arrest. So what I'm going to do
16 is I'm going to read the definitions to you again. And
17 then we'll --- then I'll send you back.

18 Okay. We'll start with first degree burglary. The
19 defendant is charged with first degree burglary. The
20 State must first prove beyond a reasonable doubt that the
21 defendant entered a dwelling without consent and in order
22 to prove that the defendant entered the dwelling, the
23 State does not have to show that the defendant's entire
24 body entered the dwelling. The smallest entry is
25 sufficient. It may be any part of the body such as a

1 hand, or foot, or even instruments such a hook or other
2 instrument.

3 In addition the State does not have to prove that
4 force was used to gain entry. If a person enters a
5 dwelling --- dwelling by using --- excuse me ---
6 deception, artifice, trick or misrepresentation to get
7 consent. This is entry without consent.

8 Next, the State must prove beyond a reasonable doubt
9 that the defendant intended to commit a crime either a
10 felony or misdemeanor at the time of the entry. The mere
11 entry into a dwelling without consent is not burglary.
12 If the intent to commit a crime is formed after the entry
13 it is not burglary.

14 On the other hand if the defendant intended commit a
15 crime at the time of the entry it is a burglary even if
16 the intent was abandoned after the entry. It does not
17 matter that the intended crime was not completed.

18 Intent may be shown by the acts and conduct of the
19 defendant and other circumstance from which you may
20 naturally and reasonably infer intent.

21 Finally, the State must prove beyond a reasonable
22 doubt that the defendant has a prior record of two or
23 more convictions for burglary and/or house breaking.
24 Evidence of prior offenses committed by the defendant was
25 not offered to prove the defendant has a bad character or

1 to prove that the defendant committed the burglary on
2 this occasion. The prior convictions may be considered
3 but only for the purpose of determining whether or not it
4 satisfies that element of the offense that makes it first
5 degree burglary.

6 If you enter a dwelling without consent to commit a
7 crime and you have two prior convictions for burglary
8 and/or house breaking, before you can even consider the
9 evidence of the defendant's prior burglary and/or house
10 breaking convictions you must first find that the State
11 has proved beyond a reasonable doubt that a burglary was
12 committed by the defendant.

13 If you find beyond a reasonable doubt that burglary
14 was committed, then you may consider the evidence of the
15 prior convictions as evidence of one of circumstances
16 which make the burglary first degree. If you do not find
17 beyond a reasonable doubt that the defendant committed
18 these alleged prior offenses, then you cannot return a
19 verdict of first degree burglary on that basis. The
20 other basis is that the defendant entered or remained in
21 the dwelling in the nighttime. Nighttime is the period
22 between sunset and sunrise during which there is not
23 enough daylight to recognize a person's face except by
24 artificial light or moonlight. If you find that the
25 State has failed to prove beyond a reasonable doubt that

1 the defendant committed first degree burglary, you may
2 consider whether the State has proved beyond a reasonable
3 doubt that the defendant committed second degree
4 burglary.

5 Second degree burglary includes all of the same
6 elements of first degree burglary except that the entry
7 was into a building and not a dwelling.

8 So let me give you the definitions of dwelling and
9 building. A dwelling is any building or portion of a
10 building in which a person ordinary --- ordinarily
11 sleeps. A building constructed as a dwelling that has
12 never been occupied cannot be considered dwelling for
13 purposes of burglary, but a building is a dwelling even
14 if the occupants are temporarily absent from the building
15 but have an intent to return.

16 With respect to the crimes of burglary, and arson,
17 and to all criminal offenses which are constituted or
18 aggravated by being committed in a dwelling house any
19 house, outhouse, apartment, building, erection, shed, or
20 box in which there sleeps a proprietor, tenant, watchman,
21 clerk, laborer, or person who lodges there with a view to
22 the protection of property shall be deemed a dwelling
23 house. And such a dwelling house or any other dwelling
24 houses all houses, outhouses, building, sheds and
25 erections which are within 200 yards of it and are

1 pertinent to it or to the same establishment of which it
2
3 is the pertinent shall be deemed parcels.

4 Now, building is defined as any structure, vehicle,
5 watercraft, or aircraft, or where any person lodges or
6 lives, or where people assemble for the purpose of
7 business, government, education, religion, entertainment,
8 public transportation, or public use, or where goods are
9 stored.

10 Those are the two definitions of dwelling and
11 building.

12 So if you find as a jury that it was a dwelling,
13 then it applies as burglary first degree. If you find
14 that it was a building, it applies under burglary second
15 degree. Okay?

16 Now, the other definition you wanted was resisting
17 arrest. Resisting arrest: The State must prove beyond a
18 reasonable doubt that the defendant knowingly and
19 willfully opposed or resisted a law enforcement officer
20 in serving, or executing, or attempting to serve or
21 execute a legal writ or process, or resisted a lawful
22 arrest being made by a person the defendant knew or
23 reasonably should have known was a law enforcement
24 officer.

25 Resist means to oppose, strive against, or obstruct.

1 Obstruct means to impede, hinder or interfere with. Even
2 peaceful non-violent, indirect obstruction is
3 (unintelligible) arrest or the service or execution of
4 process is considered resisting arrest.

5 If the means used are sufficient to prevent the
6 officer from making an arrest, the defendant is guilty of
7 resisting arrest. So that's the definition of that ---
8 that --- that offense.

9 So with me reading these two charges in response to
10 your two questions, I'm going to send you back to the
11 jury room. You may resume your deliberations.

12 Let's make these two --- make these two Court's
13 Exhibits.

14 (Court's Exhibits marked)

15 THE COURT: Okay. Any --- anything from the State
16 before we go back into recess?

17 MS. BLUNDY: No, Your Honor.

18 THE COURT: Anything from the defense?

19 MS. WYSE: No, Your Honor.

20 THE COURT: Okay. We'll go back into recess.

21 (Off the record)

22 THE COURT: Counsel, I've been informed that the
23 jury has a verdict. So is there anything for me to
24 decide before we bring our jury in?

25 MS. BLUNDY: Nothing from the State, Your Honor.

1 MS. WYSE: No, Your Honor.

2 THE COURT: All right. Where'd my bailiff go? Can
3 somebody let our bailiff know we need to get our jury.

4 UNIDENTIFIED SPEAKER: Yeah, we just called her.

5 (Jury enters courtroom)

6 THE COURT: Okay. All right. Mr. Foreman has the
7 jury reached a verdict?

8 THE FOREMAN: We have, Your Honor.

9 THE COURT: Could you hand that to the bailiff,
10 please. Mr. Foreman, I need you to sign the verdict
11 form.

12 (Simultaneous speaking)

13 THE FOREMAN: --- thinking, I'm sorry.

14 THE COURT: Sign and date the verdict form. Thank
15 you. All right. Madam Clerk.

16 CLERK: In the matter of the State of South Carolina
17 versus William David Gunn, on indictment number
18 2023-GS-37-01124, as to the charge of burglary first
19 degree, we the jury unanimously find the defendant not
20 guilty.

21 On the --- under the same indictment as to the
22 lesser included charge of burglary second degree, we the
23 jury unanimously find the defendant guilty.

24 As to indictment number 2023-GS-37-01125, malicious
25 injury to real property, we the jury unanimously find the

1 defendant guilty.

2 On indictment number 2023-GS-37-01126, as to the
3 charge of resisting arrest, we the jury unanimously find
4 the defendant guilty.

5 On indictment number 2023-GS-37-01127, as to the
6 charge of possession of tools used in the commission of a
7 crime, we the jury unanimously find the defendant guilty.

8 Ladies and gentlemen of the jury, if this was your
9 verdict and remains your verdict, please indicate so by
10 raising your right hand. Let the record reflect that all
11 members of the jury have affirmed your verdict.

12 THE COURT: Okay. All right. Is there anything
13 from the State before I dismiss the jury?

14 MS. BLUNDY: No, Your Honor.

15 THE COURT: Anything from the defense before I
16 dismiss the jury?

17 MS. WYSE: No, Your Honor.

18 THE COURT: All right. Mr. Foreman, Ladies and
19 gentlemen of the jury, thank you for your service today.
20 That will conclude your service for today. Call the
21 number after 6:00 tonight and it will give you further
22 instructions for the week. So thank you.

23 And Mr. Foreman, I need you --- I need to see you
24 for just a minute to sign something at the end. So you are
25 dismissed.

1 (Jury exits courtroom)

2 THE COURT: Thank you, sir. (Background noise) the
3 attorneys a moment to formulate your thoughts before we
4 proceed with sentencing. We'll take just a short break.

5 MS. BLUNDY: Thank you, Judge.

6 MS. WYSE: Thank you, Judge.

7 (Off the record)

8 MS. WYSE: Judge, as to the --- the burglary second
9 charge, I was wondering if we have any clarification on
10 whether it was the violent or the non-violent. I --- I
11 can't tell. And I don't want to assume and then ask the
12 Court to assume.

13 THE COURT: It was ---

14 MS. WYSE: The law that was presented was the
15 violent.

16 THE COURT: Because it --- it occurred in --- in
17 nighttime, we --- with --- but it was a building, but it
18 occurred at nighttime with --- with two of the
19 aggravating circumstances were presented.

20 MS. WYSE: So then you all the --- the
21 qualifications for burg second. I just --- I just want
22 to make sure we're --- we're clear ---

23 THE COURT: Yes.

24 MS. WYSE: --- and I don't want so assume like I
25 said. Your Honor, I was hoping that you could make ---

1 (Simultaneous speaking)

2 THE COURT: Well, it --- it --- it was --- it was
3 presented with the aggravating circumstances. So that
4 would qualify it as a violent ---

5 MS. WYSE: Okay. I ---

6 THE COURT: --- offense.

7 MS. WYSE: I just want to qualify ---

8 MS. BLUNDY: The lesser included was not even read
9 to the jury as far as non-violent. The law was not read
10 to the jury.

11 THE COURT: Right. Right. It --- it --- because it
12 was presented as nighttime and with two --- two previous
13 convictions so that's --- that's a violent
14 classification.

15 MS. WYSE: Mr. Gala had told me that one of the jurors
16 told him it was the non-violent. I don't remember mentioning
17 that or that ---

18 (Simultaneous speaking)

19 THE COURT: That was ---

20 MS. BLUNDY: When did Mr. (Unintelligible) talk to
21 the juror?

22 MS. WYSE: Just a few minutes ago.

23 UNIDENTIFIED SPEAKER: (Unintelligible).

24 THE COURT: Was that as they were leaving the
25 building?

1 UNIDENTIFIED SPEAKER: It was leaving the building,
2 I said, oh, can you tell me what happened? He said,
3 yeah, burglary second.

4 I said do you remember which one it was? He said
5 non-violent.

6 THE COURT: Okay. Well that --- that was not ---

7 UNIDENTIFIED SPEAKER: I don't know if that means
8 anything. I'm just saying ---

9 THE COURT: That was not presented to --- to the
10 jury so okay.

11 MS. WYSE: Thank you for clarifying that, Judge.

12 THE COURT: Yes, ma'am. Okay. You have a
13 sentencing sheet ready? Okay. Ms. Blundy, if you would
14 come forward, and Ms. Wyse, you and your client come
15 forward.

16 All right. Let me hear anything that the State
17 would like to present, including if the victim wishes to
18 address the Court, I'll be happy to --- to hear from him.
19 Prior record, any --- anything the State needs to tell me
20 at this point?

21 MS. BLUNDY: Yes, Your Honor. You've heard the
22 facts at length, although we disagree with the jury. We
23 respect the jury's decision in this case to go with the
24 guilty on the burglary second violent.

25 Judge, you've heard the two prior burglary

1 convictions that have come into evidence. He is a repeat
2 offender, a repeating burglar. He is a menace to Ocone
3 County. We are asking specifically for the full 15 on
4 the burg second violent. We are also asking for a
5 consecutive five on possession of burglary tools.

6 Judge, in 2003 he had assault and battery of a high
7 and aggravated nature. Again, with the burglary in 2005,
8 even though the State presented one, looking up the
9 warrants there were actually six different counts of
10 burglary non-violent in the second degree. Convictions
11 on each six, but of course only counts as one, because
12 they were pled at the same time.

13 Also, Judge, he's got in 2012 a petty larceny; 2012
14 assault and battery in the third degree; 2013,
15 shoplifting. 2015 was the second burglary in the second
16 degree. 2015, he had a violation of probation
17 conviction. 2017, petty larceny and possession of
18 methamphetamine. 2021, possession of a firearm by a
19 convicted violent felon.

20 He also had a Federal charge back in 2013 and a
21 conviction for passing counterfeit securities. And a
22 probation violation at the Federal level.

23 Mr. Shaw, I believe would like to address the Court
24 and be heard.

25 THE COURT: Yes, sir. If you could just come to

1 that microphone please, sir.

2 MR. SHAW: Yes, sir. We've heard all the evidence,
3 and --- and we've everybody's testimony and everything.
4 And --- and we continuously through the defense attorney
5 how that she wanted to paint the picture of the building
6 and it's not a dwelling.

7 And even in the closing remarks, how she continued
8 to make the accusation that, you know, well, who would go
9 back? Well, I did. For over a year I slept with my
10 mother. She had dementia. In the last months of her
11 life, we went from knowing her all my life to not even
12 knowing who the lady was and even who I was.

13 Last two to three months, my mom thought I was her
14 dad. And that house become my home, because I spent
15 every moment that I could because her wish was to never
16 go to a home, but to always die at home. And I was able
17 to do that.

18 Was I ever going to sell the trailer? No, I don't
19 need the money. I have a successful business over almost
20 30 years now. Money's not an option.

21 But then the whole story was to --- to be able to
22 say it's not a home. Yes, it's a home. I went back
23 countless days and even nights to look through photos of
24 our childhood, to look through the things that my mom had
25 kept over the years from shoes to pants, to dolls of all her

1 children. She didn't even know she had children then.

2 And said to say that it's not a home and because
3 they want to get him off on a technicality of a second
4 degree, no it's not right.

5 Number one, it's not his place. It's not his home.
6 He had no right to be there to begin with for no intent.
7 And if he wanted water, there was a hose bib and we seen
8 it in the pictures that was right outside the door. He
9 could have got water.

10 She made the arguments oh, well we questioned if
11 there was utilities. Well, internet doesn't run without
12 power, cameras don't run without power. If they'd opened
13 the fridge, they would have seen in the photos, you seen
14 onions and even a loaf of bread that was sitting there on
15 the table.

16 The night the water burst, I laid the pictures on
17 the bed where I usually lay at because I knowed I
18 couldn't stay without water to be able to use the
19 restroom. And I turned the water off and left.

20 I'd asked my nephew, could you come over and help me
21 fix the water, because I can't get to the place where
22 it's busted.

23 But everything was to paint a picture to show that
24 it wasn't a home. It was a home. She might not go back
25 to her parents' if they pass away, but you know what? My

1 mother was all I had. She raised me by herself. She provided
2 everything for us. And you know what? She didn't have much,
3 she was disabled.

4 And we talk about the utilities, if I'd have knowed,
5 I could have shown it. For over 20 years I've paid my
6 mother's bills, because she only getting 700-and-some
7 dollars for SSI and then there at the last, they raised
8 her to like \$900. And you know yourself that doesn't pay
9 bills, not with medication, food. No government
10 assistance or nothing because I chose to do that for my
11 mother.

12 And they might have not seen that it was a home, and
13 even you might not see it as a home, but it was a home.
14 And it's a home that's still in my family that my niece
15 lives in right today. My mother's stuff, guess what?
16 They're still exactly where they was the day she died.
17 My agreement with my niece is my mom's stuff stays
18 exactly where it was.

19 The utilities are still in my name. She only pays
20 \$150 to stay there, and that's to cover the light bill.
21 Because why? That's maybe a trailer to y'all, but it's a
22 home that means something to me because all of my
23 memories are still there.

24 And it doesn't give the right whether it's a
25 building as she wants to call it or a home that they

1 didn't see, for anybody to take anything or to go into.
2 And I hope that you see that. And I hope that you
3 understand what it meant.

4 We heard the lies, we've heard all the different
5 evidence, and even to the point that she would try to
6 take and destroy my character on that stand by asking me
7 have I ever been accused of embezzling money from the
8 church. Lady, I've traveled over 20 different countries
9 and give my whole life to serving people. I serve on two
10 different drug rehab ministries. I have housed people
11 that come out of prison. And I have given my life to
12 helping people and restoring people my whole life.

13 2015, I've carried a young man and give him a job at
14 my construction company and put him in my church and he
15 lived there. And you know what he did? He stole over
16 \$15,000 from me in the end because I tried my best able
17 to help this young man. Anybody that knows me in this
18 county --- and I'm telling you there's a lot, you've
19 mention --- they say, he'd give me the shirt off his
20 back. He'll help you any way he can.

21 I don't judge nobody. I've got a past. I'm not a
22 perfect man by no means. I've made mistakes in my life.
23 The only difference is I've learned to trust God and walk
24 with him. And I've learned to be able to not judge and
25 to be able to help the others because his good grace on

1 me.

2 But I only want what's fair and what's right. And
3 like I said, they may have not have seen it, but it's a
4 home whether she believes it or not, or whether the rest
5 of these people believe it or not. And it's not up to
6 him, or her, or anyone here to say that it's not. Thank
7 you.

8 THE COURT: Thank you, sir. I'm sorry for your
9 loss. Anything further from the State, Ms. Blundy?

10 MS. BLUNDY: No, Your Honor.

11 THE COURT: All right. Ms. Wyse.

12 MS. WYSE: Thank you, Your Honor. May it please the
13 Court. Mr. Gunn is 39 years old. He has lived in Oconee
14 County all his life. He has a mother who's been present
15 throughout most of his trial. She is not here right now.
16 She had to be at work so she knew that she would have to
17 leave.

18 Your Honor, you've already heard his criminal
19 record. That was not secret that Mr. Gunn or the defense
20 ever tried to keep from the Court or --- but he had ---
21 he is looking at a significant amount of time. As I
22 said, he's 39, I think he's going to turn 40 next month.
23 He is looking at 15 years. You know, we would ask that
24 you give him any leniency or --- or credit that he might
25 be due for the 363 days that he was in jail.

1 Judge, he always admitted that he did wrong. He
2 always admitted that, you know, the malicious entry of
3 personal property, that the possession of the burglary
4 tools, that he did those things as well as the burglary
5 second. And he never, ever tried to say that he didn't
6 commit a burglary second. His hard and fast line is
7 always that he didn't commit a burglary first.

8 Judge, we are thankful that the jury returned the
9 verdict that they did. I know that he has remorse, that
10 he is sorry for what he has done. We would ask that you
11 give him credit for the 363 days that he has served in
12 jail.

13 And I'd ask that based upon the fact that he is
14 40 years old basically that you would not run sentence
15 consecutive, but that you would run that concurrent.

16 Judge, he is facing up to 15 years and we would just
17 ask that you give him a sentence that would allow him an
18 opportunity to go to South Carolina Department of
19 Corrections, make positive change, do better, take
20 advantage of any drug or alcohol programs they might
21 have. That he would have the ability to rehabilitate
22 himself and then come home.

23 THE COURT: Thank you, Ms. Wyse. Mr. Gunn, is there
24 anything you'd like to say?

25 MR. GUNN: Yes, Your Honor. I want to speak, and

1 apologize to the victims. I'm very sorry for their loss.
2 I wasn't there to take nothing from them. And I
3 apologize dearly and I hope that we can get through this.
4 And again, (unintelligible) against me. Thank you.

5 THE COURT: Thank you, Mr. Gunn.

6 (Judge reviewing documents)

7 THE COURT: Mr. Gunn, I've heard your record, and I
8 know that you are not happy in being convicted.
9 Considering your record, but I hope you also understand
10 just how close you came to complete total disaster
11 with ---

12 MR. GUNN: Yes, Your Honor.

13 THE COURT: --- with burglary first. But your
14 record indicates that you haven't taken any steps
15 throughout your life to straighten this problem out. It
16 goes back to 2005 and then it's repeated. Repeated
17 thefts and crimes involving dishonesty through this
18 period all the way up to August --- April 18, 2023, this
19 incident.

20 So this case warrants the maximum sentence. You
21 have served a year in jail and I'm concerned that you
22 possess these tools. Considering the record the Court
23 has a lot of concern about that. But this is a violent
24 and serious offense that you --- you are convicted of so
25 this will be the sentence of the Court on

1 2023-GS-37-1124: To be confined in the Department of
2 Corrections for 15 years. 2023-GS-37-1126, to be
3 confined to the Department of Corrections for one year
4 condition current. 2023-GS-37-1125, be sentence to
5 30 days' time served concurrent. And then on
6 2023-GS-37-1127, due to the nature and circumstances, I'm
7 going to sentence you to two years consecutive. He gets
8 credit for the time served.

9 So Mr. Gunn, you going to get out of jail at some
10 point and you still have time in your life to work a
11 lawful occupation. You'll still have time to do
12 something productive with your life. This does not have
13 to mean that you are going to spend the rest of your life
14 in and out of jail. You've got a sizeable amount of jail
15 time to serve on this. But it's never too late to turn
16 your life around.

17 These --- this --- this is a bad --- bad situation.
18 In some cases it --- people pick the absolute worst times
19 and worst places to commit a crime like this. This was
20 a --- this is a very bad situation. This woman had died,
21 the family was in distress and this --- this is really
22 bad. So good luck to you.

23 MR. GUNN: Thank you, Your Honor.

24 MS. WYSE: Turn your life around.

25 MR. GUNN: Thank you, Your Honor.

1 THE COURT: And Mr. --- Mr. Shaw --- Mr. And Ms.
2 Shaw, good luck to you. I hope your family find peace as
3 you move forward with your life. Okay. Can you close
4 the record.

5 MS. BLUNDY: Judge, on the burglary sentencing sheet,
6 would double-check that I checked the serious box as well ---

7 THE COURT: Yes, ma'am. It's checked.

8 MS. BLUNDY: Okay. Okay. Thank you.

9 (PROCEEDINGS FOR APRIL 16, 2024 CONCLUDED)

10 (OFF THE RECORD)

11 **(PROCEEDINGS FOR JULY 22, 2024 BEGIN)**

12 THE COURT: Okay. All right. We --- we ready?

13 MS. WYSE: Yes, sir. Your Honor. I think we need
14 to bring --- the first matter is James Barly. I need to
15 copy (unintelligible).

16 THE COURT: Okay. Okay. Here are these two orders.

17 (Ms. Wyse printing document)

18 MS. WYSE: Sorry about that. My bad. I just had him on my
19 brain. I said the wrong defendant's name, Your Honor.

20 THE COURT: Well, yeah. We need to make sure we
21 have the right guy.

22 MS. WYSE: Yes, sir.

23 UNIDENTIFIED SPEAKER: This is William David Gunn
24 here on 2023-GS-37-01125, 1126 and 1127. As well as
25 1124.

1 You may recall, Judge, Mr. Gunn was tried before
2 Your Honor. I believe Ms. Blundy was prosecuting that
3 case. He was convicted and sentenced to 15 years and
4 this is defense motion for reconsideration. And I do
5 have a copy of the ---

6 THE COURT: Okay.

7 UNIDENTIFIED SPEAKER: --- motion.

8 THE COURT: All right. Ms. Wyse.

9 MS. WYSE: Thank you, Your Honor. May it please the
10 Court. Your Honor, we are here today on --- Mr.
11 (Unintelligible) has already told you a motion for
12 resentencing and possibly a new trial if Your Honor would
13 so grant it.

14 Mr. Gunn was tried back in April (background noise)
15 in Oconee County Courthouse (unintelligible) Judge. Ms.
16 Blundy was the prosecuting attorney for the case. Mr.
17 Gunn --- originally charged with burglary first, malicious
18 damage to personal property, possession of burglary tools and
19 resisting arrest.

20 He was found guilty of burglary second. And then
21 malicious damage to personal property, resisting arrest, and
22 possession of burglary tools.

23 Your Honor, at sentencing once the jury came back
24 and returned a verdict for burglary --- burglary second,
25 the jury was dismissed. And Your Honor, when sentencing

1 rolled around and burglary second violent, I think then
2 raised the issue to the Court that we had not instructed
3 the jury that they could find him of guilty of burglary
4 second violent or burglary second non-violent. When
5 Deputy Public Defender John (unintelligible) saw some of
6 the jurors leaving the courthouse, he did ask them what
7 did you find Mr. Gunn guilty or --- what was the verdict
8 and the --- one of the --- one of the jurors told him
9 burglary second non-violent. We did --- make this information
10 available to the Court.

11 At this point in time, Your Honor, you held a
12 hearing and you found on the record that the elements of
13 burglary violent second violent were present and
14 therefore sentenced him to 15 years burglary second
15 violent. You ran all the sentences consecutive except
16 for the possession of burglary tools and you added an
17 additional two years consecutive.

18 We're filing this motion, Your Honor after --- after
19 speaking to Appellate defense --- Appellate defense
20 explain the issue and told them that, you know, what ---
21 what had occurred, at which point in time they told me I
22 needed to file this motion. And I wanted to let you know
23 that in advance.

24 Judge when, I looked at the case law as far as what
25 would be possibly --- relevant to this case and to the Court,

1 I found (unintelligible) v State. Which is almost exactly the
2 same scenario. In that case (unintelligible) the defendant
3 was charged with burglary third and burglary second. On the
4 jury verdict form it wasn't violent or not-violent. And then,
5 you know, the jury returned a verdict for burglary second,
6 never specific as to whether it was violent or non-violent.

7 Now, difference in between Mr. Gunn's case and in
8 the (unintelligible) case, I did raise the argument at
9 sentencing as to which --- which burglary are we talking
10 about. In (unintelligible) that not occur. So it did go
11 forward on appeal and it was overturned. Wertz was
12 overturned. And it was based upon the reasoning that,
13 you know, the jury couldn't make a proper determination
14 as to --- well, it was more along the lines of --- of we
15 can't know what the jury actually thought and decided at
16 the time. We can't know if --- the Wertz Court decided
17 there was no way to know what the jury intended to find
18 him guilty of violent or not-violent.

19 Therefore, I would make the same arguments to you
20 today. There's no way that we could know whether ---
21 what that jury actually intended to find Mr. Gunn guilty
22 of, violent or not-violent. I've spoken to Mr. Alderman
23 about this and I --- I've given him the information.
24 As --- as --- as everything that I have.

25 And Mr. Gunn was always willing to plead guilty. It

1 was just he wasn't willing to plead guilty to the
2 burglary first or to the offer that Ms. Blundy made.

3 Judge, I have explained to him that, you know, this
4 is formality, that we needed to bring this in front of
5 you before it goes any further.

6 Reading the case law, of course, Your Honor, I can't
7 determine whether or not that a higher court might
8 overturn this. I do believe that there are some
9 appealable issues. Of course as I've already stated,
10 there's just no way for me to know which way the Court's
11 going to go.

12 Therefore as I said earlier, Appellate defense told
13 me to bring this back in front of you to let you make the
14 final determination on it before we go any further.

15 I did inquire as to whether or not the victim was
16 present. They are not. (unintelligible) did check in with the
17 victim advocate. She said that she's made numerous attempts
18 to let him know about court and if he wanted to be here
19 today, he is not at this point.

20 THE COURT: Okay. Mr. Alderman.

21 MR. ALDERMAN: Judge, our --- our position is
22 simple. This issue was raised, argued and --- and ruled
23 upon at trial. And is an Appellate issue from there on.

24 THE COURT: Okay. Well, I remember this trial and
25 Ms. Wyse, I remember you bringing that issue up and it

1 was a general second degree burglary verdict. I want to
2 go read this case. So I --- I'm going to --- I'm going
3 to take this under advisement. And I will have my law
4 clerk be in touch with you.

5 MS. WYSE: Thank you, Judge. I appreciate it.

6 MR. ALDERMAN: Thank you, Judge.

7 (PROCEEDINGS CONCLUDED JULY 22, 2024 11:24 A.M.)

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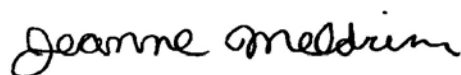
25

CERTIFICATE OF TRANSCRIBER

1 I, JEANNE MELDRIM, a court-approved transcriber, do
2 hereby certify that the foregoing is a true, accurate and
3 complete Transcript of Record of the proceedings had and
4 evidence introduced in the trial of the captioned case,
5 relative to appeal, in the Court of CIRCUIT COURT 10 for
6 OCONEE COUNTY, South Carolina, on the 12th through 16th
7 days of April, 2024 and 22nd day of July, 2024

8
9 I do further certify that I am neither of kin, counsel,
10 nor interest to any party hereto.

11
12 December 18, 2024

13 
14

15 Jeanne Meldrim

16 Transcriber
17
18
19
20
21

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	TENTH JUDICIAL CIRCUIT
COUNTY OF OCONEE	)	INDICTMENTS NO: 2023GS3701124,
	)	2023GS3701125, 2023GS3701126, 2023GS3701127
	)	
State of South Carolina,	)	
	)	
vs.	)	
	)	
WILLIAM DAVID GUNN,	)	Motion for Reconsideration on Sentencing
	)	and New Trial
Defendant.	)	

2024 APR 25 A 11: 29

FILED OCONEE COUNTY, SC
MELISSA C. BURTON
CLERK OF COURT

On April 15, 2024, a jury trial commenced for William David Gunn on Burglary First Degree, Malicious Injury to Personal Property, Possession of Burglary Tools, and Resisting Arrest in Oconee County. The Jury returned a guilty verdict on the above listed indictments for Burglary Second Degree, Possession of Burglary Tools, Malicious Injury to Personal Property, and Resisting Arrest. The Jury was not given a specific instruction on the two types of Burglary Second to be considered for a lesser included of Burglary First Degree.

At sentencing, the Defense raised the issue of which Burglary Second Degree sentence should be imposed. The Defense produced testimony from Deputy Public Defender John Abdallah that a Juror on Gunn's case stated while leaving the courthouse the verdict was for Burglary Second Non-Violent. Post verdict, the Court made a specific finding that the elements of Burglary Second Violent were met and therefore sentenced Gunn to fifteen years. This Court ran the other sentences concurrent except for Possession of Burglary Tools which was an additional two years consecutive.

The Defense files this motion for reconsideration for which definition of Burglary Second did the Jury find Gunn guilty of, and what should be his penalty. For this, the Defense requests a hearing for the court to reconsider sentencing. This hearing is requested based upon State v. Higgenbottom, 344 S.C. 11, 542 S.E.2d 718, S.C, 2001. In the alternative, the Defense requests a new trial.

In Wertz v. State, Wertz was tried for second degree burglary. Wertz v. State, 349 S.C. 291, 562 S.E.2d 654, 2002. The Jury was charged on second degree burglary, but not violent or non-violent. Id. The Court ordered a new trial. Id. The Court reasoned that since the jury verdict did not differentiate or instruct the jury that a guilty verdict would be for the highest offense charged the verdict was confused. Id. Similarly, this Defendant was tried for First Degree Burglary, and the verdict form included the lesser offense of Second Degree Burglary. The verdict form did not differentiate between violent and non-violent. The jury was not instructed that a guilty verdict would be for the highest offense charged. Instead, the Jury was given a general verdict form for the charge of Second Degree Burglary and returned a general verdict of guilty.

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 Atty ☒ (P) _____ (D) _____
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 BY: P SHEPARD

Counsel for defendant pointed out the ambiguity of the verdict form to the Court. The Court then made a finding of fact that the elements of Second Degree Burglary Violent were proven in the trial. The Court in Wertz, stated that "a general verdict of guilty furnishes ... no ground for a

new trial, provided the jury have been explicitly instructed that the effect of a general verdict will be to find the [defendant] guilty of the highest offense charged" Id at 297. The Court further stated that "[a] verdict of a jury should be upheld when it is possible to do so, and carry into effect

what was clearly the intention of the jury. "When a verdict is so confused, however, that it is not absolutely clear what the jury intended to do, the safest and best course for the court to pursue is to order a new trial. Judges and parties should not be required to guess as to what verdict a jury sought to render." Id at 296.

Here, the jury verdict simply says guilty of Second Degree Burglary leaving everyone to guess as to which Second Degree Burglary, violent or non-violent, the Defendant was found guilty. This Court cannot be certain that the verdict was for Second Degree Burglary Violent based on the verdict form. Given the ambiguity in the verdict, it is not clear what the jury found the defendant guilty of doing. When coupled with the statement of Deputy Abdallah the verdict is further confused and the intent of the jury even less clear. Therefore, a new trial should be ordered.

Catherine A Wye

73802

4/25/24

FILED IN OCONEE COUNTY, SC
 STATE OF SOUTH CAROLINA
 COUNTY OF OCONEE

State of South Carolina, 2024 AUG -6 P 12:09

v.

IN THE COURT OF GENERAL SESSIONS
 TENTH JUDICIAL CIRCUIT

Indictments No. 2023-GS-37-01124; 2023A3710200200
 2023-GS-37-01125; 2023A3710200201
 2023-GS-37-01126; 2023A3710200203
 2023-GS-37-01127; 2023A3710200204

William David Gunn,

ORDER

Defendant.

This matter came before the Court on July 22, 2024, in Oconee County, South Carolina. The Court heard two motions, both filed by the Defendant: (1) Defense Motion for Reconsideration of Sentencing and (2) Defense Motion for New Trial. The Court heard arguments from counsel and reviewed the applicable law and filings. Accordingly, the Court makes the following findings:

PROCEDURAL POSTURE AND FACTUAL BACKGROUND

Following his arrest by Oconee County Law Enforcement, William David Gunn was charged with Burglary First Degree, Malicious Injury to Personal Property, Possession of Burglary Tools, and Resisting Arrest. A jury trial for this matter was held in Oconee County, South Carolina, beginning on April 14, 2024. The jury returned a guilty verdict on the above listed indictments for Burglary Second Degree pursuant to S.C. Code Ann. § 16-11-312(B) (indicted for Burglary First Degree and convicted of lesser-included offense of Burglary Second Degree), Possession of Burglary Tools, Malicious Injury to Personal Property, and Resisting Arrest. After the conclusion of the trial, and after examining the evidence put in the record, the Court gave the jury a general charge for the lesser-included offense of Burglary Second Degree, under S.C. Code Ann. § 16-11-312(B).

OCDC _____ SOL ☒ PD _____
 SCDPPS _____ DAT WDS
 SCDMH _____ SCDDSN _____ OCSO _____
 OTHER _____

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During sentencing, after the jury rendered its verdict and was dismissed, the Court was informed that Deputy Public Defender John Abdallah initiated conversation with members of the jury and decided to use the opportunity to inquire into their reasoning in finding the Defendant guilty on Burglary Second Degree. Defense Counsel presented Abdallah's testimony during the sentencing hearing which indicated there may have been some confusion in the Jury regarding the distinction between Burglary Second Degree Violent and Burglary Second Degree Non-Violent.¹ Post-verdict, after hearing the trial and looking at the evidence placed into the record, the Court made a specific finding that two of the elements of Burglary Second Degree – pursuant to the charge under S.C. Code Ann. § 16-11-312(B) – were met and the Defendant received a Seventeen (17) year sentence.²

The Defendant alleges that the Jury was not given a specific instruction on the two types of Burglary Second Degree to be considered for a lesser included Burglary First Degree. During the July 22, 2024 hearing, defense counsel requested either a hearing for the court to reconsider sentencing based upon *State v. Higgenbottom*, 344 S.C. 11, 542 S.E.2d 716 (2001) or, in the alternative, a new trial. The State opposed both Defense motions and contended that the issue had previously been raised, argued, and ruled upon at trial; leaving the issue preserved for appellate review.

APPLICABLE LAW

"A trial judge must charge a lesser included offense if there is any evidence from which the jury could infer the defendant committed the lesser rather than the greater offense." *State v. White*, 361 S.C. 407, 412, 605 S.E.2d 540, 542 (2014). When "a party believes there is confusion

¹ John Abdallah testified that a Juror on Gunn's case stated, while leaving the courthouse, that "the verdict was for Burglary Second Non-Violent."

² The other sentences imposed by the Court, with the exception of a two (2) year consecutive sentence for Possession of Burglary Tools, were to run concurrent with the fifteen (15) year Burglary Second Degree sentence.

in the wording of a jury's verdict, that party should call it to the attention of the trial court at the time the verdict is rendered so that any confusion in the verdict's language can be easily cleared up." *Wertz v. State*, 349 S.C. 291, 297, 562 S.E.2d 654, 658 (2001) (emphasis added); *Howard v. Kirton*, 144 S.C. 89, 101, 142 S.E. 39, 43 (1928) (it is "the duty of the trial judge to decide what the verdict meant, and, in reaching his conclusion thereabout, it [is] his duty to take into consideration not only the language of the verdict, but all the matters that occurred in the course of the trial.") (emphasis added).

"[T]he trial court is required to charge only the current and correct law of South Carolina." *State v. Marin*, 415 S.C. 475, 482, 783 S.E.2d 808, 812 (2016) (quoting *State v. Brandt*, 393 S.C. 526, 549, 713 S.E.2d 591, 603 (2011)). "The law to be charged must be determined from the evidence presented at trial." *Id.* (quoting *Brandt*, 393 S.C. at 549, 713 S.E.2d at 603). "A trial [court] is required to charge a jury on a lesser included offense if there is evidence from which it could be inferred that a defendant committed the lesser offense rather than the greater." *State v. Gilliland*, 402 S.C. 389, 400, 741 S.E.2d 521, 527 (Ct.App.2012) (alterations in original) (quoting *State v. Drafts*, 288 S.C. 30, 32, 340 S.E.2d 784, 785 (1986)). "The test for determining whether one offense is a lesser included offense of another 'is whether the greater of the two offenses includes all the elements of the lesser offense. If the lesser offense includes an element not included in the greater offense, then the lesser offense is not included in the greater.'" *Id.* (quoting *Hope v. State*, 328 S.C. 78, 81, 492 S.E.2d 76, 78 (1997)); see *State v. Elliott*, 346 S.C. 603, 606, 552 S.E.2d 727, 728 (2001), overruled on other grounds by *State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005).

The Court read two charges to the jury; first-degree burglary pursuant to South Carolina Code Section 16-11-311 and second-degree burglary pursuant to South Carolina Code Section 16-

11-312(B). The Court's second-degree burglary charge was taken directly from S.C. Code Ann. Section 16-11-312(B), the exact language chosen by our legislator's when enacting the crime into law, which provides:

(B) A person is guilty of burglary in the second degree if the person enters a building without consent and with the intent to commit a crime therein, and either:

(1) When, in effecting entry or while in the building or in immediate flight therefrom, he or another participant in the crime:

(a) Is armed with a deadly weapon or explosive; or

(b) Causes physical injury to any person who is not a participant in the crime; or

(c) Uses or threatens the use of a dangerous instrument; or

(d) Displays what is or appears to be a knife, pistol, revolver, rifle, shotgun, machine gun, or other firearm; or

(2) The burglary is committed by a person with a prior record of two or more convictions for burglary or housebreaking or a combination of both; or

(3) The entering or remaining occurs in the nighttime.

S.C. Code Ann. § 16-11-312(B) (emphasis added). The only language in the statute this Court could interpret to distinguish second-degree burglary "violent" and second-degree burglary "non-violent," is the statute's reference to a "dwelling" under S.C. Code Ann. § 16-11-312(A) and a "building" under S.C. Code Ann. § 16-11-312(B). However, the Court never read the "non-violent" charge for second-degree burglary.³

DISCUSSION

The main issue argued throughout the trial, and supported by the facts and record in this case was whether the trailer in question was a dwelling or a building. If the jury found the trailer was a "dwelling", the facts and evidence in the record would support a verdict under first-degree burglary. If the jury found that the evidence supported the trailer being a "building", the facts and

³ See S.C. Code Ann. § 16-11-312(A) ("(A) A person is guilty of burglary in the second degree if the person enters a dwelling without consent and with intent to commit a crime therein.") (emphasis added).

evidence in the record would support a finding for second-degree burglary, pursuant to S.C. Code Ann. § 16-11-312(B).

The relevant charge for burglary second-degree choice on the verdict form that was read to the jury, alleged in defense counsel's motion as one of the reasons "the verdict is further confused and the intent of the jury even less clear" (def. mot. for reconsid. of sent. and for new trial, pg. 2), was second-degree burglary in violation of South Carolina Code Section 16-11-312(B). The Defendant was charged with first-degree burglary and the Court included second-degree burglary as a lesser-included offense for burglary first-degree. The verdict form included an option for burglary first-degree and burglary second-degree. The second-degree burglary instruction was read directly from S.C. Code Ann. § 16-11-312(B). Defense counsel argues that the jury should have been made aware of the distinction between burglary second-degree "violent" and burglary second-degree "non-violent" and thus the Court erred.⁴

The Defendant stipulated that the burglary occurred at **nighttime**. This arose during pre-trial motions; specifically, Defense counsel's motion in limine to exclude two prior burglary convictions. The Court ruled that these two prior burglary convictions could be admitted because they proved an element of the charged first-degree burglary offense.⁵ During the motion in limine hearing, Defense counsel argued that the body worn camera footage and surveillance footage from

⁴ The Court, after thoroughly reviewing the relevant statutes for burglary offenses as written by our legislators, has found no use of the terms "violent" and "non-violent" under S.C. Code Ann. § 16-11-312(B). The Court makes this decision under the assumption that Defense counsel is referencing the inclusion of 16-11-312(B) in the definition section for "violent crimes" found in S.C. Code Ann. § 16-1-60. At no point was the jury instructed by the Court on the difference between second-degree burglary "violent" or "non-violent" because it was not requested by Defense counsel. Further, the Defense's theory of the case – which was successful as illustrated by the jury rendering a verdict of guilt under the lesser-included charge – rested on evidence contradicting the State's theory that the trailer/structure that the Defendant entered was unoccupied at the time and thus a "building" under S.C. Code Ann. § 16-11-312(B), opposed to a "dwelling" under S.C. Code Ann. § 16-11-311 and – 312(A).

⁵ Additionally, the offense of burglary second-degree under S.C. Code Ann. § 16-11-312(B) which defense counsel refers to as "violent," includes identical factors as burglary first-degree but the major distinction placed in this law by the legislators is the classification of the burglarized structure as a "building" under S.C. Code Ann. § 16-11-312(B) opposed to a "dwelling" under S.C. Code Ann. § 16-11-311.

the trailer, combined with time stamps and testimony from officers on scene, would prove one of the three aggravators (the entering and remaining occurred during nighttime) necessary to meet first-degree burglary "violent," pursuant to S.C. Code Ann. § 16-11-311, and thus there would be no need to include the evidence and testimony of the Defendant's prior burglary convictions. The Court denied the motion in limine and the State presented testimony during the trial from Oconee Clerk of Court Lisa Burton. *See State v. Cheatham*, 349 S.C. 101, 561 S.E.2d 618 (Cl. App. 2002) (Explaining that the State may introduce evidence of prior burglary convictions because this is an element of second-degree burglary even though the defendant offers to stipulate the alternate element that the offense occurred in the nighttime). During the Clerk of Court's testimony, the state admitted a March 22, 2005 General Sessions Sentencing Sheet and a 2015 General Sessions Sentencing sheet; both of which were admitted into the record. These sentencing sheets showed that the Defendant had entered into two prior pleas of guilty for the crime of burglary second-degree.

There is the possibility that the jury could disregard the Defendant meeting the second aggravator for the two prior convictions which was supported by the Clerk of Court's testimony and two sentencing sheets for burglary second-degree that were admitted without defense objection. Additionally, it was possible that the jury could also disregard the third aggravator, although stipulated by the Defense, that the crime occurred during nighttime; which was supported by the introduction of officer testimony who responded to the scene and body worn camera footage entered into evidence that showed a lack of sunlight, use of flashlights by responding officers, and time stamps indicating the video was taken after 3:00 AM; along with the admission of the 911 call into evidence and testimony from the 911 operator Melisande Richmond that she answered the call reporting the alleged burglary at 2:56 AM.

However, the Court is bound by the evidence in the record when it determines what charges it will present to the jury. See *State v. Drafts*, 288 S.C. at 32, 340 S.E.2d at 785 (1986) ("A trial [court] is required to charge a jury on a lesser included offense if there is evidence from which it could be inferred that a defendant committed the lesser offense rather than the greater."). Here, it would have been improper for the Court, even though Defense counsel never requested it do so, to charge second-degree burglary "non-violent"⁶ or third-degree burglary⁷ because the evidence in the record undisputedly showed at least one aggravator for first-degree burglary and second-degree burglary "violent" was met and overwhelming evidence supported finding another aggravator was met. The record included evidence that could support a jury finding that two of the qualifying aggravators necessary to charge second-degree burglary "violent," pursuant to S.C. Code Ann. § 16-11-312(B). See *State v. Marin*, at 482, 783 S.E.2d at 812 (2016). Thus, the Court read directly from the applicable statutes and instructed the jury on the offenses of first-degree burglary pursuant to S.C. Code Ann. § 16-11-311 and second-degree burglary "violent" pursuant to S.C. Code Ann. § 16-11-312(B), because: (1) the Defendant stipulated that the event occurred at nighttime; and, (2) testimony from the Oconee County Clerk of Court accompanied by proffered sentencing sheets revealed Defendant pled guilty to two prior burglary offenses.

Defense counsel never requested that burglary third-degree, under S.C. Code Ann. § 16-11-313, be charged as the lesser-included offense of burglary second-degree "violent," pursuant to S.C. Code Ann. § 16-11-312(B).⁸ Even if defense counsel requested these offenses be charged, it would have been improper because the overwhelming evidence in the record supported a finding that two of the aggravators which would elevate the crime to burglary second-degree "violent"

⁶ Pursuant to S.C. Code Ann. § 16-11-312(A)

⁷ Pursuant to S.C. Code Ann. § 16-11-313.

⁸ See S.C. Code Ann. § 16-11-313 "(A) A person is guilty of burglary in the third degree if the person enters a building without consent and with intent to commit a crime therein." (emphasis added).

from burglary third-degree were met; the crime occurred "during the nighttime" and the "defendant had two or more prior convictions for burglary."

Counsel had ample time to raise, and preserve, this new issue regarding the "violent" and "non-violent" classifications for second-degree burglary when arguing jury charges and immediately after the verdict was rendered; but they never did so. *See Wertz v. State*, 349 S.C. 291, 297, 562 S.E.2d 654, 658 (2001) (Ruling in favor of a PCR applicant's ineffective assistance of counsel when defense counsel failed to properly raise and preserve the issue for appeal and went on to explain that when "a party believes there is confusion in the wording of a jury's verdict, that party should call it to the attention of the trial court at the time the verdict is rendered so that any confusion in the verdict's language can be easily cleared up.") (emphasis added). This new issue, however, was not raised by the Defendant until sentencing when they presented the testimony of Deputy Public Defender John Abdallah regarding his post-verdict conversations with the jury.

The Defendant requested the lesser-included crime of second-degree burglary be charged, arguing that the record supported a jury finding that the trailer was a "building" opposed to a "dwelling." A common sense reading of the statute, coupled with the Defendant's argument and a knowledge of the record from observing the trial from start to finish, would make it difficult to find that the jury returning a verdict of guilt for second-degree burglary, pursuant to the charge read under S.C. Code Ann. § 16-11-312(B), was anything other than indicative of a finding of guilt for second-degree burglary "violent." *See Howard v. Kirton*, 144 S.C. 89, 142 S.E. 39, 44 (1928) (explaining that it is the "duty of the trial judge to decide what [a] verdict meant, and, in reaching [the court's] conclusion thereabout, it was [the court's] duty to take into consideration not only the language of the verdict, but all matters that occurred in the course of the trial.) (emphasis

added). Moreover, the aggravator that "the offense occur at nighttime, was not disputed by the Defense and evidence supporting another aggravator, only one of which must be met, was available for the jury to consider.

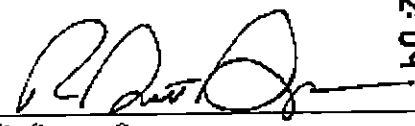
The overwhelming evidence supports two aggravators for second-degree burglary "violent" are met. This evidence coupled with the failure of the Defense to request the Jury be instructed on third-degree burglary, second-degree burglary "non-violent," or raise this new issue immediately after the rendering of the verdict merits the Court's denial of both defense motions. The Defendant's motion for reconsideration of sentencing and the Defendant's motion for new trial are **DENIED**.

CONCLUSION

The Court, when applying the facts to the law, concludes:

1. The Court concludes that it has jurisdiction over the parties and subject matter of the litigation.
2. The Defense Motion for Reconsideration on Sentencing is **DENIED**.
3. The Defense Motion for New Trial is **DENIED**.

AND IT IS SO ORDERED.


 R. SCOTT SPROUSE
 Judge, Tenth Judicial Circuit

2024 AUG - 6 P 12:09

FILED
CLERK OF COURT
JULY 11 2024
JULY 11 2024

Oconee, South Carolina
 August 6, 2024

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Oconee County

Honorable R. Scott Sprouse, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

WILLIAM DAVID GUNN,

APPELLANT.

APPELLATE CASE NO. 2024-001358

MOTION FOR ABEYANCE AND REMAND OF APPELLANT'S TRIAL

Pursuant to Rule 240 of the South Carolina Appellate Court Rules, undersigned counsel requests an order holding this appeal in abeyance and remanding this matter to the trial court with an order requiring the parties to reconstruct portions of appellant's trial from April 15-16, 2024 and July 22, 2024.

Appellant was indicted at the July 17, 2023 term of the Oconee County grand jury for the offenses of burglary-first degree, malicious injury to real property, possession of tools used in the commission of a crime, and resisting arrest. Appellant's case was called to trial on April 15, 2024, before the Honorable R. Scott Sprouse and a jury. Catherine A. Wyse of the Law Office of Jessica

R. DeShon represented appellant. Bethany A. Blundy was the assistant solicitor prosecuting for the state. The jury found appellant guilty of burglary-second degree, malicious injury to real property, possession of tools used in the commission of a crime, and resisting arrest. Judge Sprouse sentenced appellant to fifteen years' incarceration on the burglary, one year concurrent on the charge of resisting arrest, 30 days' time served concurrent on the charge of malicious injury to real property, and two years' consecutive on the charge of possession of tools used in the commission of a crime. Judge Sprouse convened a hearing on July 22, 2024, to hear a motion for reconsideration of the sentence. The transcript of this hearing was combined with the April trial transcript by the court reporter. This case is now on appeal before this Court.

Appellant has been unable to obtain a true and complete transcript of this trial, as will be discussed below.

This case was not assigned to a live court reporter but was recorded by the Digital Court Reporter Project (DCRP). The first transcript delivered on or about January 2, 2025, by subcontractor Legal Eagle and transcribed by Jeanne Meldrim, noted on April 15, 2024, the audio file from 1:30 p.m. to 3:00 p.m. is "missing" and the transcript lacks opening statements, the entirety of a *Jackson v. Denno* hearing, and unknown witness(s). Additionally, the 235-page transcript contained more than 226 instances of "unintelligible," 37 instances of "simultaneous speaking," 21 instances of "background noise," and 6 instances of "inaudible" testimony that could not be transcribed. Moreover, while the above occurs throughout witness testimony, counsel submits there are more than 15 instances where the above occurs during critical portions of trial such as objections, closing arguments, and jury instructions.

On February 28, 2025, undersigned counsel requested Legal Eagle review the audio and see if additional testimony could be recovered and filed a motion to hold the case in abeyance

pending receipt of a complete trial transcript. On March 12, 2025, a revised transcript was received by this office. After careful review by undersigned counsel the transcript is still lacking the audio file from April 15, 2024, 1:30 p.m. to 3:00 p.m. Thus, the transcript continues to lack opening statements, the entirety of a *Jackson v. Denno* hearing, and unknown witness(s). Additionally, 94 instances of “unintelligible,” 37 instances of “simultaneous speaking,” 21 instances of “background noise,” and 6 instances of “inaudible” testimony that could not be transcribed. Moreover, while the above occurs throughout witness testimony, counsel submits there are more than 10 instances where the above occurs during critical portions of trial such as objections, closing arguments, and jury instructions. A complete list of the updated transcript deficiencies are attached to this motion as Exhibit A.

Undersigned counsel reached out to trial counsel to confirm the missing audio portion did indeed include opening statements, the entirety of a *Jackson v. Denno* hearing, and unknown witness(s). Trial counsel was unsure of the number or identities of the missing witnesses.

The trial court has the authority to set the record for appeal. *State v. Ladson*, 373 S.C. 320, 324, 644 S.E.2d 271, 273 (Ct. App. 2007). “[T]he inability to prepare a complete verbatim transcript, in and of itself, does not necessarily present a sufficient ground for reversal.” *Id.* (internal citations omitted). “Where a trial transcript has been lost or destroyed, a court may remand to have the record reconstructed.” *Koon v. State*, 358 S.C. 359, 367, 595 S.E.2d 456, 460 (2004); *see also Whitehead v. State*, 352 S.C. 215, 221, 574 S.E.2d 200, 203 (2002) (holding that when a transcript has been lost or destroyed, an appellate court may remand to have the record reconstructed).

In order for the record to be reconstructed, it must be done in a manner that provides for meaningful appellate review and complies with the constitutional guarantees of procedural due

process. *Ladson*, 373 S.C. at 325, 644 S.E.2d at 273-274; *see also Adams v. H.R. Allen, Inc.*, 397 S.C. 652, 726 S.E.2d 9 (Ct. App. 2012). Moreover, a “new trial is therefore appropriate if the appellant establishes that the incomplete nature of the transcript prevents the appellate court from conducting a meaningful appellate review.” *Ladson*, 373 S.C. at 325, 644 S.E.2d at 274 (internal quotations omitted).

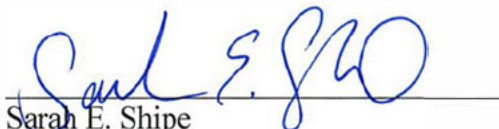
In *Ladson*, after the reconstruction hearing, the Court was “left with a bare bones summary of the evidence (with more remaining unknown than known) from a lengthy multi-day and fact-intensive trial that resulted in a non-parolable, twenty-five-year person term.” *Id.* at 327, 644 S.E.2d at 274. The record before the *Ladson* Court contained only “a few gratuitous references to generic motions and objections” without any information concerning “the context of the motions, the specific nature of the motions, and whether the challenged evidence was cumulative to other unchallenged evidence.” *Id.* In concluding the record was insufficient for meaningful appellate review, this Court also noted the record “would effectively foreclose any collateral challenge through post-conviction relief or otherwise.” *Id.* at 327, 644 S.E.2d at 275. Thus, this Court concluded, *Ladson* had demonstrated “clear prejudice.” *Id.*

In *Deaton v. Leath*, 279 S.C. 82, 84, 302 S.E.2d 335, 336 (1983), the defendant’s convictions were set aside, and a new trial had where the court reporter’s equipment malfunctioned and there was no transcript of the trial court proceedings in the case from which to base an appeal. Citing *Deaton*, the Court of Appeals denied a request for reconstruction in *State v. Serrette*, 375 S.C. 650, 652-653, 654 S.E.2d 554, 555 (Ct. App. 2007) where the reason for the lack of transcript was due to the defendant’s absence for a ten-year period, which this Court explained was “not a situation where the court reporter’s equipment malfunctioned at trial leading to a loss of the trial transcript.”

The absence of critical portions of the trial transcript and the lack of clarity throughout in the present matter, including witnesses and pre-trial motions and ruling, prevents meaningful appellate review and reconstruction of the testimony of the omitted witnesses and acknowledgement of the factual and legal basis for issues surrounding the same.

WHEREFORE, undersigned counsel requests an order to continue holding the present appeal in abeyance and remanding this matter to trial court for the reconstruction of the missing portions of the April, 2024 trial. While this motion is pending, counsel asks this Court to continue hold the timelines for filing the initial brief of appellant and designation of matter.

Respectfully submitted,



Sarah E. Shipe
Appellate Defender

Attorney for Appellant

This 9th day of April, 2025.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Oconee County

Honorable R. Scott Sprouse, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

WILLIAM DAVID GUNN,

APPELLANT

APPELLATE CASE NO. 2024-001358

REVISED TRIAL TRANSCRIPT ERRATA

In accordance with Rules 207 and 607, SCACR, counsel for William David Gunn submits the following trial transcript errata with the challenge of the accuracy of the transcript of record dated April 15-16 & July 22, 2024 transcribed by Jeanne Meldrim of Legal Eagle:

p. 1: Cover page deficient per CR Manual, lacks appearances.

p. 2: Erroneous appearances page.

p. 3, l. 2: "Audio missing—Opening Statements, Witness(s), Jackson-Denno Hearing"

p. 6, ll. 4-5: "I am a contract manager for (unintelligible)."

p. 6, ll. 11-13: "Retired from (unintelligible) and he's retired (unintelligible)."

p. 6, ll. 14-16: "My occupation is (unintelligible) married and my wife is (unintelligible) she is a teacher's aide at Jason Brown (unintelligible)."

p. 6, l. 18: "JUROR: (unintelligible)"

p. 6, ll. 20-21: "(unintelligible) maintenance for Ace Hardwares. Married (unintelligible) Upstate Medical Associates."

p. 7, ll. 2-3: "My husband is (unintelligible) works at (unintelligible)"

p. 7, l. 5: "Real estate (unintelligible)."

p. 7, l. 7: "I'm a registered nurse (unintelligible)"

p. 7, l. 13: " (unintelligible) Blue Cross Blue Shield"

p. 7, l. 16: "I am retired (unintelligible) and my husband is a pastor."

p. 7, ll. 20-21: "general foreman for (unintelligible)"

p. 8, l. 1: "JUROR: (unintelligible)"

p. 8, l. 6: "Work at (unintelligible) Seneca. (unintelligible)."

p. 8, l. 9: "JUROR: Nuclear (unintelligible) security."

p. 8, l. 12: "JUROR: (unintelligible) agility foreman"

p. 8, ll. 15-16: "I work for a company called Webber (unintelligible)."

p. 8, ll. 18-19: "I work for Prisma Oconee, single and (unintelligible)."

p. 8, l. 21: "JUROR: (unintelligible)."

p. 8, l. 23: "JUROR: (unintelligible)."

pp. 8, l. 25 – 9, l. 1: "I work for (unintelligible) as a locator (unintelligible) married."

p. 9, ll. 6-7: "I'm retired disabled former (unintelligible) technician."

p. 9, l. 11: "husband is (unintelligible)"

p. 9, l. 13: "I work at (unintelligible)"

p. 9, ll. 16-17: "(unintelligible) service manager with Johnson & Johnson (unintelligible)"

p. 10, ll. 7-8: "Retired (unintelligible) technician (unintelligible) husband works for (unintelligible)."

p. 10, ll. 13-14: "Billing specialist for (unintelligible) and my husband is a military (unintelligible)"

p. 10, l. 16: "I'm an (unintelligible)"

p. 11, ll. 6-7: "(unintelligible) my wife's a nurse (unintelligible)"

p. 11, l. 19: "JUROR: (unintelligible)."

p. 11, l. 21: "(unintelligible) corporation."

p. 12, l. 2: "Self-employed for (unintelligible)"

p. 12, ll. 3-4: "transcriptionist for the (unintelligible)"

p. 12, l. 6: "maintenance technician for (unintelligible)"

p. 12, l. 11: "Works at Clemson University teaching (unintelligible)"

p. 12, l. 14: "JUROR: (unintelligible)."

p. 12, ll. 16-17: "I'm retired (unintelligible) self-employed (unintelligible)."

p. 12, l. 19: "I'm self-employed (unintelligible)"

p. 12, ll. 22-23: "and my wife (unintelligible)."

p. 12, l. 25: "Retired for over six years (unintelligible)"

p. 20: Case called, no time stamp.

p. 40, ll. 13-16: "Let's take a short break and then we'll---we can--- (simultaneous speaking) MS. BLUNDY: Thank you"

p. 44, ll. 14-16: "THE COURT: ---of the question. (simultaneous speaking) MS. BLUNDY: ---relevant on the burglary itself."

p. 49, ll. 19-21: "speaking with the officers specifically about the crime--- (simultaneous speaking) THE COURT: Do we need to a Jackson v. Denno hearing?"

p. 50, ll. 4-6: "testify since he was the one who Mirandized---(simultaneous speaking) THE COURT: Are you going to present other officers"

- p. 54, l. 5: (AUDIO MISSING FROM APPROXIMATELY 1:30 TO 3:00) no timestamp when audio resumes.
- p. 58, l. 12: "Toby (unintelligible) Shaw"
- p. 59, ll. 12-15: "when your mother passed --- (simultaneous speaking) A. Yes"
- p. 61, ll. 15-17: "oh, yes --- (simultaneous speaking) – prior—"
- p. 61, ll. 23-25: "Oh, yes. (simultaneous speaking) Yes, ma'am."
- p. 66, ll. 2-4: "This is --- (simultaneous speaking) By---by numbers."
- p. 67, ll. 4-6: "front entrance in the other --- (simultaneous speaking)"
- pp. 67, l. 25 – 68, l. 2: "in that bed, in that --- (simultaneous speaking) Yes ma'am."
- p. 69, ll. 10-12: "and that's a ramp at the back--- (simultaneous speaking) Yes , it is."
- p. 69, ll. 22-24: "Was it like that the last time – (simultaneous speaking) A. No it was not."
- p. 70, ll. 8-10: "And that was not like that when you had left--- (simultaneous speaking) Objection"
- p. 72, ll. 13-15: "that you just--- (simultaneous speaking) Yes, ma'am it is."
- pp. 80, l. 24 – 81, l. 1: "to the State prior to --- (simultaneous speaking) MS. BLUNDY: Judge---"
- p. 82, l. 1: "A. (unintelligible)"
- p. 82, l. 11: "and you said for how long did she (unintelligible)"
- p. 82, ll. 15-17: "anybody to stay with her --- (simultaneous speaking) A. Yes."
- p. 84, ll. 6-8: "Hold on. (simultaneous speaking) Overruled"
- p. 86, l. 11: "and you noticed that there (background noise) later on?"
- p. 87, ll. 19-21: "embezzling from churches that --- (simultaneous speaking) A. Oh, no ma'am"
- p. 91, l. 7: "I believe deputy (unintelligible) went around to"

- p. 91, ll. 16-17: "stepping out off the back porch that time (unintelligible)"
- p. 93, ll. 4-6: "altered or changed in any way--- (simultaneous speaking) A. It has not"
- p. 95, ll. 6-7: "as far as the collection (unintelligible) when the call come in"
- p. 95, ll. 14-19: "but they didn't tell you that it was (unintelligible) that was on--- (unintelligible) scene---(simultaneous speaking) A. to my knowledge...it was somebody that was (unintelligible) for the property."
- p. 96, l. 5: "I did go through the house (background noise)"
- p. 98, ll. 19-21: "of the house---(simultaneous speaking) --- handcuffs"
- p. 104, ll. 22-24: "No ma'am---(simultaneous speaking)---I was just briefed"
- pp. 114, l. 25- 115, l. 2: "if it was on your body cam---(simultaneous speaking) A. May have"
- p. 115, ll. 10-11: "Do you remember if there was any plastic on any of the (background noise)?"
- p. 115, l. 19: "Q. Now, (background noise)"
- p. 119, ll. 12-14: "but he wasn't dropped---(simultaneous speaking) -- off back at home"
- p. 120, ll. 15-16: "did you by chance find any weapons, guns, or knives (background noise)?"
- p. 121, l. 18: "prior to stipulated redact (unintelligible)"
- pp. 122, l. 25 – 123, l. 7: "MS. WYSE: I mean, that was definitely the agreed upon times---(simultaneous speaking) THE COURT: ---times. MS. WYSE: Yes,...I just wanted that---(simultaneous speaking) THE COURT: ---previous objection (unintelligible)"
- pp. 125, l. 25 – 126, l. 3: "the reason (background noise) the reason is because you did (unintelligible)...and that is why you wrote the warrant (unintelligible)?"
- p. 126, ll. 13-15: "might need to (background noise) so that I can refresh his recollection (unintelligible) body cam outside"

p. 127, ll. 19-22: "MS. WYSE: ---the State (unintelligible). THE COURT: We don't...(simultaneous speaking) MS. WYSE: No, sir"

p. 128, ll. 3-6: "because I---(simultaneous speaking) MS. BLUNDY: Yeah, just hit the exit"

p. 128, ll. 12-13: "do we have another short witness (background noise)?"

p. 129, ll. 12-15: "Your Honor (simultaneous speaking) THE COURT: Is that Exhibit Number 2?"

p. 130, ll. 1-3: "and then looking down a little bit further---(simultaneous speaking) A. Okay."

p. 130, l. 6: "we finish up (unintelligible)."

p. 133, ll. 21-22: "cut open the evidence bag for (background noise)"

p. 145, ll. 3-5: "I couldn't give you the...exact mileage---(simultaneous speaking)—right off the top of my head"

p. 152, ll. 20-22: "uh-huh. (simultaneous speaking) Q. (unintelligible) You mentioned in the beginning"

p. 153, ll. 19-22: "Q: But you...never got an answer as to who owned---(simultaneous speaking) A. I Was told that Mr. Shaw was in control"

p. 154, ll. 7-9: "I can't testify to what he done---(simultaneous speaking) Q. Did you look into it?"

p. 154, l. 24: "Q. Okay. But you were the (unintelligible)?"

p. 156, ll. 14-15: "possession of burglary tools, the (background noise) property and burglary first"

p. 171, l. 13: "THE COURT: (inaudible) Ms. Wyse, is there anything"

p. 171, l. 6: "THE COURT: Okay. (unintelligible). Okay"

p. 174, ll. 13-14: "They were still paying the (background noise) on it"

p. 179, ll. 4-6: "I would like to have seen all of the video, not just the portions of the video (background noise). And (unintelligible)."

p. 180, ll. 10-11: "statements the defendant made to the officers (background noise)."

p. 180, ll. 16-17: “He didn’t know the police were going to (unintelligible).”

p. 181, ll. 9: “lot of them (unintelligible) questioning them”

p. 181, ll. 22-24: “He was in that house (background noise) the difference between burglary second and that ladies and gentlemen (background noise) burglary first.”

p. 182, ll. 16-17: “What do you (background noise) about this?”

p. 183, ll. 15-16: I asked him about his incident report (background noise)”

p. 183, ll. 24-25 “I asked every single deputy who took the stand, deputy (unintelligible) was there food in the refrigerator”

p. 184, ll. 9-10: “not something that we heard for the first time (unintelligible)”

p. 185, l. 4: “How do you do that? You (unintelligible).”

p. 186, ll. 8-9: “I get to (background noise) (Unintelligible) Because that is a basic right”

p. 187, ll. 17-18: “That he knew that there was no intent (unintelligible)”

p. 189, ll. 18-19: “you can have a dress shop (background noise)”

p. 190, ll. 12-15: “That doesn’t mean he was resisting (unintelligible) the video...I’m not (unintelligible)”

p. 206, l. 8: “nitroglycerine, (inaudible) steel wedge, drill, tap in.”

p. 208, l. 10: (jury exits courtroom) *jury exits **to deliberate**, no timestamp

p. 209, l. 8: (jury enters courtroom) *jury enters courtroom following sending questions, no timestamp

p. 214, ll. 2-3: “indirect obstruction, is (unintelligible) arrest or the service or execution”

p. 214, l. 11: “you may resume your deliberations” Lacks entry noting jury movement, lacks timestamp.

p. 214, ll. 22-23: “THE COURT: Counsel, I’ve been informed the jury has a verdict.” Lacks timestamp.

p. 215, l. 5: “(jury enters courtroom)” Lacks timestamp.

p. 215, ll. 10-13: “Mr. Foreman, I need you to sign the verdict form.
(simultaneous speaking) THE FOREMAN: ---thinking, I’m sorry.”

p. 217, l. 1: “thank you, sir. (background noise)”

pp. 217, ll. 25 – 218, ll. 2: “You Honor, I was hoping that you could make---
(simultaneous speaking) THE COURT: Well, it---it---it was---”

p. 218, ll. 15-21: “Mr. Gala had told me...(simultaneous speaking)... When did
Mr. (unintelligible) talk to the juror?”

p. 218, l. 23: “UNIDENTIFIED SPEAKER: (unintelligible)”

p. 227, l. 4: “and again, (unintelligible) against me.”

p. 229, ll. 9-11: “(PROCEEDINGS FOR APRIL 16, 2024
CONCLUDED)...(PROCEEDINGS FOR JULY 22, 2024 BEGIN)” no listing of
appearances for July 22 proceedings, no notation of time or location of
proceedings- prosecutor not present at trial present at this hearing speaking on the
record (Mr. Alderman)

P. 229, ll. 14-15: “THE FIRST MATTER IS James Barly. I need to copy
(unintelligible)”

p. 230, ll. 10-11: “we are her today on ---Mr. (unintelligible) has already told you”

p. 230, ll. 14-15: “Mr. Gunn was tried back in April (background noise) in
Oconee County Courthouse (unintelligible)”

p. 231, ll. 5-6: “Deputy Public Defender John (unintelligible) saw some of the
jurors”

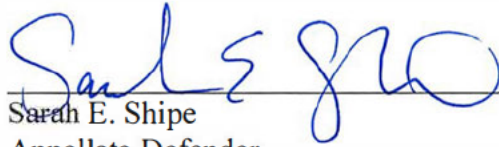
p. 232, ll. 1-3: “I found (unintelligible) v. State...in that case (unintelligible) the
defendant was charged”

p. 232, ll. 7-10: “Mr. Gunn’s case and in the (unintelligible) case, I did raise the
argument at sentencing...In (unintelligible) that did not occur”

p. 233, ll. 16-17: “They are not. (unintelligible) did check in with the victim
advocate”

p. 233, l. 20 “THE COURT: Okay. Mr. Alderman” unknown prosecutor not
previously listed within the transcript begins argument

p. 235: Signed certificate of transcriber dated December 18, 2024- this is a revised transcript requested on February 28, 2025 and delivered to Appellate Defense by Legal Eagle on March 12, 2025. Certificate should reflect a new date.



Sarah E. Shipe
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR APPELLANT

This 9th day of April, 2025.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED
Apr 09 2025
SC Court of Appeals

Appeal from Oconee County

Honorable R. Scott Sprouse, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

WILLIAM DAVID GUNN,

APPELLANT.

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Motion to Reconstruct the Record of Appellant's Trial in the above-referenced case have been served upon Mark R. Farthing, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), this 9th day of April, 2025.



Sarah E. Shipe
Appellate Defender

Attorney for Appellant

The South Carolina Court of Appeals

The State, Respondent,

v.

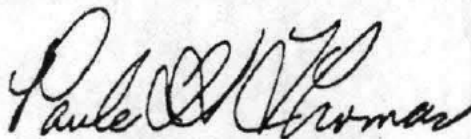
William David Gunn, Appellant.

Appellate Case No. 2024-001358

ORDER

On April 9, 2025, Appellant filed a motion to remand for record reconstruction. Appellant "requests an order holding this appeal in abeyance and remanding this matter to the trial court with an order requiring the parties to reconstruct portions of appellant's trial from April 15-16, 2024, and July 22, 2024." Respondent did not file a return. After careful consideration of the filings, we grant Appellant's motion. We hold this appeal in abeyance and remand to the circuit court for reconstruction of the missing pretrial motions, rulings, opening and closing statements, witness testimony, and jury instructions from Appellant's trial.

Appellant's counsel shall contact opposing counsel and Judge R. Scott Sprouse within 10 days of the date of this order to schedule such hearings as Judge Sprouse deems appropriate. If Judge Sprouse determines reconstruction is not possible, he shall immediately notify this court and all parties. If the record is reconstructed, Appellant's counsel shall immediately notify this court so that the appropriate appellate timelines can be set. Appellant's counsel shall provide an update to the clerk of this court no later than 30 days from the date of this order, and every 30 days thereafter until Judge Sprouse resolves this matter, or the appeal will be dismissed.



FOR THE COURT

Columbia, South Carolina

cc:

Alan McCrory Wilson, Esquire
Mark Reynolds Farthing, Esquire
Sarah Elizabeth Shipe, Esquire
The Honorable R. Scott Sprouse

FILED
May 30 2025

STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF OCONEE	)	2023-GS-37-01124
	)	2023-GS-37-01125
	)	2023-GS-37-01126
	)	2023-GS-37-01127
	)	
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
WILLIAM DAVID GUNN,	)	
DEFENDANT.	)	
_____	)	

October 9, 2025
Laurens, South Carolina

B E F O R E:

THE HONORABLE R. SCOTT SPROUSE, JUDGE.

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

J. BENJAMIN APLIN, ESQ.
Assistant Attorney General

SARAH E. SHIPE, ESQ.
Attorney for the Defendant

HOLLIE M. JENKINS
Circuit Court Reporter

I N D E X

(SW) - Denotes State's Witness

(DW) - Denotes Defense Witness

Page No.(DW) CATHERINE WYSE:

Direct Examination by Ms. Shipe.....9

Cross-Examination by Mr. Aplin.....16

(SW) BETHANY BLUNDY:

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(SW) BETHANY BLUNDY:

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<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
	(Court's Exhibits)		
C-1	Solicitor Blundy's Trial Notes.....	8	
C-2	Judge Sprouse's Trial Notes.....	65	
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All Exhibits were retained by the Clerk of Court for Oconee County.

P R O C E E D I N G S

THE COURT: This is the matter of the State vs.
William David Gunn, which is appellate case 2024001358.

This Court received an order from the Court of Appeals --
(WHEREUPON, Defendant William David Gunn entered the
courtroom.)

THE COURT: Again, this Court received an order from
the Court of Appeals in which a reconstruction of the
record was ordered. The Court previously had a telephone
conference with Counsel. And in looking at the schedule
set today's date and time for a formal hearing. This
hearing is being heard in Laurens County as I was assigned
here and this was the first available time we could get
everyone together.

Now, before we begin, Counsel, have there been any
developments regarding retrieving of any of the missing
transcripts?

MS. SHIPE: No, Your Honor. I -- we've had some back
and forth with the digital court reporting and Legal
Eagle. And there was no further recordings found and they
were not able to do any more as far as that.

THE COURT: So the situation is just like it was when
we had our telephone conference?

MS. SHIPE: Yes, sir.

THE COURT: Does the State agree with that?

1 MR. APLIN: Yes, Your Honor.

2 I'm Ben Aplin with the Attorney General's Office.

3 I know at the telephone conference I think you
4 had with Mark Farthing, who's my boss over there --
5 but just like Ms. Shipe said, the same thing. We have
6 nothing, no new information.

7 Of course, we've spent some time going through the
8 materials. But other than that, nothing.

9 THE COURT: Well, and, as I understand it, we are
10 missing the first day of the trial.

11 MS. SHIPE: My understanding is we've got -- and I
12 have a copy of the transcript, if you --

13 THE COURT: Yes, ma'am.

14 MS. SHIPE: Ben and I have talked some -- Mr. Aplin
15 and I have spoken some. And we've -- we've agreed, I
16 think, that we are missing the substance of the Jackson
17 vs. Denno hearing, opening statements from both the
18 Solicitor and Defense Counsel, and two -- the first two
19 witnesses, Kristy Shaw, the wife of the property owner,
20 and I believe Melissa Richmond, the 911 operator.

21 And with Your Honor's permission, while there are
22 several instances of inaudible and intelligible throughout
23 this transcript, there are just three places that I would
24 like to get clarification on if -- with Your Honor's
25 permission today.

1 THE COURT: That -- that was going to be my next
2 question. Can we zero in on what you need?

3 MS. SHIPE: Yes. There are just three -- three --
4 three instances. And I spoke to Mr. Aplin this morning
5 and he seemed agreeable to that.

6 THE COURT: Okay.

7 MR. APLIN: That's correct, Your Honor. Those three
8 instances of the inaudible, or talking over each other, or
9 whatever -- however it says in the transcript, and, as
10 Ms. Shipe mentioned, the Jackson vs. Denno hearing, the
11 opening statements, and two witnesses.

12 And I know you probably have the case already, but if
13 you'd like, I have a copy of just the main reconstruction
14 hearing cases out there.

15 THE COURT: Yes, sir.

16 MR. APLIN: I can hand them up.

17 THE COURT: If you've got a hard copy of that, that
18 would be helpful.

19 Thank you.

20 Okay. What are the three areas that -- for the
21 record, that you seek to have reconstructed?

22 MS. SHIPE: The first is on Page 80 of the
23 transcript. And Ms. Wyse, Defense Counsel, made an
24 objection. It was sustained. There was a bench
25 conference. And then at the bottom of that page, it

1 has -- it indicates simultaneous speaking. And then at
2 the beginning of the next page, the -- the Court
3 overrules.

4 And so I just, you know, wanted to find out the basis
5 of the objection, and the argument made, and, you know,
6 the reason they -- during all that cross talk what
7 happened. So that was the first instance.

8 The second instance on Page 122 through 123 of the
9 trial transcript, trial counsel objected. And there's,
10 again, an indication of simultaneous speaking. So I
11 wanted to ask what the argument -- what the basis of the
12 objection was, and the argument made, and the ruling
13 there.

14 And then, lastly, on Page 232, which is, actually,
15 from a hearing on the motion to reconsider or in the
16 alternative grant a new trial, based on the overtly second
17 issue. Some of that argument made by Defense Counsel
18 was -- is missing due to the recording kind of being
19 spotty. So you can see throughout that page where it says
20 either inaudible -- inaudible or unintelligible. So I
21 just kind of wanted to clear that up, if possible.

22 THE COURT: Okay. So there's -- I see on Line 8,
23 there's an unintelligible on Page 232. And then Line 16,
24 Page 233, there's, also, an unintelligible. And then on
25 Page 230 and 231, there's a couple of those.

1 Okay. Now, I see that you have Counsel for both
2 sides from the trial present.

3 MS. SHIPE: Yes.

4 THE COURT: And are -- are you seeking to present
5 them today for their recollection?

6 MS. SHIPE: Yeah. I've only done this a couple
7 times. Generally, we call them and swear them just out of
8 formality. And I understand they're officers of the
9 Court. So I leave it to your discretion.

10 THE COURT: Well, I'm -- I'm going to let y'all
11 proceed however you -- you would like to. I want you to
12 have what you -- whatever you need to be able to go forward.

13 So if you'd like to call them as a witness, let's
14 just have them come forward.

15 MR. APLIN: And, Your Honor, I'm amenable to that.
16 One thing I did want to do, if possible, is we have Beth
17 Blundy, who was the Solicitor and tried the case, a copy
18 of her pre-trial notes, basically, where she has a summary
19 of what her opening statement was going to be, what she
20 was going to ask each of the trial witnesses, sort of a
21 list of questions. And I'd like to make that a Court's
22 Exhibit.

23 THE COURT: Yes, sir.

24 (WHEREUPON, Court's Exhibit No. 1 was marked for
25 identification only.)

1 MR. APLIN: And then, as Ms. Shipe said, do you want
2 to focus first on those three instances and then we can go
3 into the bigger kinds of stuff that's missing?

4 MS. SHIPE: That's fine.

5 I'm going to go ahead and call Ms. Wyse, if that is
6 okay with the Court.

7 It may be a little bit easier to hear me up here.
8 I'm trying to project, but I'll do my best.

9 THE COURT: Madam Clerk, will you swear Ms. Wyse,
10 please?

11 MS. CATHERINE WYSE: Do I need to come over there?

12 THE CLERK: No. You're good.

13 WHEREUPON,

14 CATHERINE WYSE,
15 after first having been duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MS. SHIPE:

18 Q Good morning, Ms. Wyse.

19 A Good morning.

20 Q Thank you for being here.

21 As I was just discussing, the first place that I
22 would like to draw your attention to in the transcript
23 from April 15th, 2024, is Page 80.

24 THE WITNESS: Okay. Am I loud enough that you can
25 hear me?

1 THE COURT REPORTER: Yes.

2 THE WITNESS: Okay.

3 BY MS. SHIPE:

4 Q And it's -- it appears that you're making a hearsay
5 objection. Could you elaborate as to the objection and --
6 and what happened after that where we're missing some
7 speaking at the end of that page, or do you have a
8 recollection?

9 A Which line are you on?

10 Q You make -- you make the -- you make an objection on
11 Line 10.

12 A All right. So this was during the testimony of the
13 deceased's son. And I cannot remember his name. I
14 apologize.

15 But he was testifying. And he was, basically, saying
16 that somebody had been going back and forth to the house
17 staying there. That he had been paying the utility bills
18 and any other bills that were coming -- that, you know,
19 were associated with the -- with the home, as well as his
20 niece had been staying there. And the reason for my
21 objection was that we didn't have any of that information
22 prior to him testifying that day in court.

23 So I made an objection based upon both hearsay, as
24 well as a Brady violation. Because, you know, the -- and
25 it's not a surprise. But the crux of the Defense's

1 defense was that the home was abandoned and, therefore,
2 not eligible as a burglary first.

3 So I did, you know, object to the fact because I --
4 we were completely unaware that anybody had been back in
5 that home -- or the trailer since the victim had died.

6 Q And then it appears that on Line 14, it was
7 sustained. And then Solicitor Blunda -- Blundy, you know,
8 responded. And then do you -- do you recall what happened
9 in that -- that's where we kind of don't have the -- the
10 speaking objections. Because there's a bench conference,
11 obviously, that's off the record. And then at the end, it
12 says, Simultaneous speaking. And then the objection was
13 overruled. And then it went forward.

14 A What I remember is that Judge Sprouse sustained the
15 objection as to hearsay. But he allowed in the -- what I
16 objected to as a Brady violation.

17 Q Okay.

18 A And so when -- when Ms. -- or Solicitor Blundy had
19 started asking the questions about how's the property
20 still being used, I made another objection.

21 Q Okay. That makes sense.

22 Let's move to Pages 122 and 123. And it looks like
23 the -- the jury had just left the courtroom. And there's
24 a discussion about the portion of the -- State's No. 22 is
25 going to be played, which is the body-worn camera of

1 Officer Entsminger, if I'm correct.

2 A That's correct.

3 Q And you talk about the times being, you know, 32
4 minutes to 40 minutes roughly, 40 minutes and 52 seconds.
5 And then there's a lot of simultaneous speaking on Page
6 123. So I -- I can't tell if you were just renewing a
7 prior objection or if there was an additional objection to
8 this body-worn camera footage.

9 A It was a little bit of both. I was definitely
10 renewing my prior objection that I thought that this
11 body-worn camera should not be played for the jury.

12 And -- and to be clear, it was not the Defendant's
13 confession and words that he used, it was what the
14 officers were saying to the Defendant, you know, why are
15 you wearing all black, or what'd you steal while you were
16 in there? And, you know, you know better than to do this.
17 I mean, they were just making a lot of statements that I
18 did not think were appropriate for the jury to hear. And,
19 you know, I -- I based that objection on case law. I
20 believe it was State vs. Washington.

21 Anyway, so Ms. Blundy prior to trial had sent me some
22 times of what she intended to play. And so I listened to
23 those times. And there was still -- you know, I think
24 there was mention of what are you high on tonight, or
25 something like that. But, anyway, she did send me some

1 times that she intended to introduce. And I did view
2 them.

3 I made the objection at the beginning of the trial,
4 of course. And then I renewed my objection to the video
5 being played. And, also, to clarify, we didn't stipulate
6 that we would agree to the -- the times. But, you know, I
7 did look at them and listened to them. And I appreciated
8 Ms. Blundy -- or Solicitor Blundy submitting them to me
9 ahead of time.

10 Q Okay. Lastly, the post-trial hearing on your motion
11 to reconsider or in the alternative grant a new trial
12 regarding an argument about the second degree burglary on
13 Page 232 and 233. You, actually, begin arguing on Page
14 230.

15 But that's where I noticed some unintelligibles and
16 if -- if there's anything you wanted to clarify. It looks
17 like at the beginning at the top of the page, you're
18 talking about a case, but the case is not there. It's
19 just got, Versus State. So I don't know if you were
20 referring to Works or if there was another case you were
21 citing to just clarifying any argument that -- any
22 clarification you can gave us on that argument. You --
23 there's several pages of argument, but those pages, in
24 particular, are difficult to understand.

25 A Sure. So the case that I cited was Works vs. State.

1 It was almost exactly on point. It was a burglary
2 conviction. And the jury went back and considered the
3 burglary. But they were not given burglary second
4 violent, burglary second non-violent, and burglary third.
5 They were explained -- they could just find whichever one
6 they wanted. And that was, actually, a PCR.

7 And the first court that heard the PCR denied the
8 motion for a new trial. The second -- or the Supreme
9 Court heard the motion. And they were like, you know,
10 have a retrial, basically. And that's exactly what
11 happened here, you know.

12 We -- of course, the State pursued burglary first.
13 We were always -- and Mr. Gunn told me several times, as
14 well as I argued to the Court, that he was willing to
15 plead to a burglary second non-violent. He absolutely was
16 going to do that.

17 The -- the biggest part of our defense was the fact
18 that the home was not occupied. And that there was no
19 intent to return, which is what's required under the
20 statute for burglary first.

21 So when the jury went back to consider the charges,
22 they were given a -- a verdict form. And I did not object
23 to it at the time. It did not occur to me. But there was
24 an option for burglary first and an option for burglary
25 second. On the verdict form, it did not say burglary

1 second violent or -- or burglary second non-violent, just
2 on burglary second.

3 So the jury went back. They deliberated for a long
4 time, if I remember correctly. They came back with
5 burglary second. So Works was exactly like -- the fact
6 pattern in Works was a lot like the fact pattern here.
7 And my argument was based on the fact that, you know, the
8 jury did not have an option to decide whether or not it
9 was violent or non-violent.

10 The Deputy Public Defender, John Abdalla, saw one of
11 the jurors as he left the courthouse. And, you know, he
12 said, Yeah, we found him guilty of burglary second
13 non-violent. And while that might seem like a weird thing
14 for a person to say, you know, they were able to look at
15 his prior sentencing sheets. And I believe that on his
16 prior sentencing sheets, they saw burglary second
17 non-violent and that's what they intended to convict him
18 of.

19 And I just, basically, argued the fact that we have
20 no idea. We weren't back there. We don't know what the
21 jury intended to do. I mean, obviously, they convicted
22 him of burglary second. We don't know which one.

23 So Judge Sprouse made some specific findings of fact
24 on the record. And I made this motion for a rehearing --
25 or resentencing.

1 MS. SHIPE: Sure.

2 That's all the questions that I have.

3 THE COURT: Okay. Mr. Aplin.

4 MR. APLIN: Yes, Your Honor.

5 Thank you.

6 CROSS-EXAMINATION

7 BY MR. APLIN:

8 Q Hello, Ms. Wyse.

9 A Good morning.

10 Q Good to see you.

11 I'll try to be brief with this. Just to kind of
12 follow up on -- I guess I'll go in reverse order of what
13 Ms. Shipe was saying just because it's fresh in my mind.

14 On that third issue at the end, remind me if this is
15 correct or not. Is -- your -- your big theory and kind of
16 defense was to sort of push that he's not guilty of
17 burglary first, but he -- we acknowledge he's guilty of
18 burglary second?

19 A Absolutely. I mean, we admitted that from the very
20 beginning. I mean, he and I talked about that as his
21 trial strategy.

22 Q Okay. And that out of your -- play out throughout
23 the trial, that was your strategy it looked like to me.
24 Do you know off the top of your head -- and I've not
25 looked at the statutes and I should know this, but if

1 there's a different sentence for burglary second violent
2 versus non-violent --

3 A There is.

4 Q -- or are they the same --

5 A It's different. So I apologize for speaking over
6 you. I hate it when witnesses do that to me.

7 So burglary second carries zero to 15 years. And
8 it's classified as violent. It doesn't quite meet the 20
9 years, you know, to be considered for 85 percent. But
10 it's still categorized as violent. So zero to 15.

11 And burglary second non-violent is zero to 10. And
12 as the name states, it's considered non-violent. So it
13 would be calculated at a lower percentage.

14 Q Okay. And would it be safe to say that you were
15 pretty pleased with getting the burglary second versus
16 burglary first?

17 A Absolutely. So was Mr. Gunn.

18 Q Okay. And I think you said this a minute ago, but
19 you didn't -- you didn't object at the time of the jury
20 charge being given, or any of that. It was -- you didn't
21 request a jury charge or some specific verdict form on
22 non-violent versus violent. It was only after the
23 sentence that you kind of realized that that was an issue?

24 A Absolutely. That is correct. And that was my
25 mistake.

1 Q Okay. And then on -- going back to the other -- I
2 guess the same issue. You said the case was Works vs.
3 State. And your recollection was it's a pretty similar
4 fact pattern. And that was the basis of you coming back
5 and making that argument later that you kind of realized
6 that, oh, I wish I had pushed this non-violent versus
7 violent?

8 A Correct. I called the -- I spoke to Bob Dudek, like,
9 I think the very next day and told him what had happened
10 and I said, I know I have made an error. What should I
11 do?

12 And he, basically, walked me through it and he said,
13 you know, you need to file for a rehearing on sentencing,
14 you know, lay all of that out in your argument and just
15 submit it to the Court and go ahead and get it scheduled.
16 And he did tell me, in fact, the appeal would stay until,
17 you know, we had that hearing. And so, you know, I just,
18 basically, followed his instructions.

19 And, you know, I informed the Deputy Solicitor who
20 presented the argument at the time, Jason Alderman, as
21 well as the Court, that, you know, I -- I -- I knew that
22 the Court had already ruled and that they had already made
23 their decision and that I needed to go forward, put this
24 on the record for procedural purposes to make sure that
25 every appeal is as clean a possible.

1 Q Okay. I understand. Jumping back to the second
2 issue, which was Page 121, 122 of the transcript -- and I
3 think there was this discussion of the body-worn camera
4 video with Entsminger. In looking at this part of the
5 testimony, it looks like this happened on redirect
6 examination from Ms. Blundy?

7 A It did.

8 Q And it looks like over on Page 121 your initial
9 objection seemed to be that she had not moved to introduce
10 it during direct, it was on redirect?

11 A Correct.

12 Q And is that -- I know you sort of explained already.
13 But is that your recollection of how this whole objection
14 was sort of playing out, or were you --

15 A I'm so sorry. I forgot -- I forgot that part while
16 Ms. Shipe was -- was questioning me. Yes, you know,
17 Ms. Blundy questioned -- of Solicitor Blundy -- I'm sorry.
18 So she had questioned Deputy Entsminger. And she had not
19 put in the body-worn camera at the time. So I got up on
20 cross and asked him the questions I needed to for our
21 case.

22 And once -- you know, Judge Sprouse was like, All
23 right. Is there any redirect? Ms. -- or Assistant
24 Solicitor Blundy stood up and then introduced the body cam
25 into evidence. I objected based upon the fact that it was

1 redirect and she hadn't used it in her -- her beginning.
2 But then she made the argument that I brought up things
3 that were said throughout the arrest. And Judge Sprouse
4 allowed for the body camera to be entered on redirect.

5 And, yes, that and the things that he questioned
6 Mr. Gunn about on body cam were the reasons for my
7 objection.

8 Q Okay. And I think -- and I'm going back -- way back
9 to the start of the trial. You had a pre-trial motion
10 about -- you mentioned Washington and Crawford?

11 A Yes.

12 Q And you were trying to keep some of the things that
13 the officers were saying from coming in because it would
14 be hearsay, I think, was your objection?

15 A Right. And it was -- and, obviously, we understand
16 here in this courtroom that officers are allowed to ask
17 questions in such a way that they illicit, you know, the
18 truth from someone charged. I mean, we understand that
19 as -- as part of the judicial system.

20 But, you know, jurors don't have that knowledge, that
21 an officer can just lay into a person who is being charged
22 with something and just accuse them of anything they want
23 to in order to illicit an answer.

24 So that was the basis for the objection. Because I
25 didn't think the jury needed to hear the commentary from

1 the officers about Mr. Gunn's history.

2 Q Okay. And I don't think I have any questions about
3 the first instance.

4 A All right.

5 MR. APLIN: And, Your Honor, I think that things are
6 very fluid and open as reconstruction hearings. So,
7 obviously, if you have follow-up questions, you're -- you
8 can ask Ms. Wyse or any of the witnesses as well. And I
9 think you, also, can rely on your own notes. And you can
10 explain what your recollection is of what happened as
11 well.

12 THE COURT: Well, I -- and that's what I'm doing.
13 I'm looking -- my law clerk, at the time, took very
14 thorough notes. And I'm glad Ms. Shipe gave me a copy of
15 the transcript, that helps. So I can look at the notes.
16 That's -- that's fine.

17 Do you have any redirect for this -- this witness?

18 MS. SHIPE: I -- no redirect regarding those
19 instances. We can get to the -- the meat of the -- what
20 was missing.

21 THE COURT: All right.

22 MR. APLIN: Your Honor, I guess I would like to call
23 Solicitor Blundy to the stand just on these same instances
24 just to see if there's anything different --

25 THE COURT: Okay.

1 MR. APLIN: -- that she remembers or anything she can
2 add to that discussion about those objections and rulings.
3 That might be helpful.

4 THE COURT: Thank you, Ms. Wyse.

5 THE WITNESS: Thank you.

6 THE COURT: Good to see you.

7 THE WITNESS: Thank you very much.

8 I'm not sitting there any more so you can't ask me
9 any questions.

10 WHEREUPON,

11 BETHANY BLUNDY,
12 after first having been duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. APLIN:

15 Q Good morning, Solicitor Blundy.

16 A Good morning.

17 Q You have a copy of the transcript as well?

18 A I do.

19 Q Okay. And I'll just -- what I'm going to do is have
20 you turn to these three places we discussed. I know you
21 were listening to the earlier testimony. And rather than
22 really asking questions, I'd like for you to look at those
23 sections and see if you can describe from your
24 recollection of how they went down.

25 And the first one is on Page 80, I believe. And it

1 was during the testimony of Toby Shaw. And if look down
2 to Line 10, I guess you could read the tran -- the
3 witnesses testimony leading up to that and then the
4 objection that Ms. Wyse made on, like, Line 10. Just kind
5 of if you have any recollection of what was going on
6 there.

7 A Yes. I do recall the objection. Mr. Shaw began
8 testifying that his niece had, also, stayed in the house
9 that had been burglarized after his mother had passed
10 away. But he had gone into length as to what the niece
11 had told him.

12 So I understood Judge Sprouse sustaining the
13 objection on hearsay because the niece was not under
14 subpoena or present at the trial. But Mr. Shaw had, also,
15 been staying in the house. And that information had been
16 turned over to the Defense via video and officer notations
17 inside the report, I believe.

18 So they were aware that the house had been occupied.
19 The question of fact went to the jury as to the level of
20 occupancy and whether that would have reached the
21 threshold of burglary in the first degree.

22 Q Okay. And so what you're saying is your recollection
23 was the hearsay portions of what the niece had said, Judge
24 Sprouse sustained the objection so they can't go into
25 that. But when it came to, there again, a Brady or a Rule

1 5 objection, it -- it was overruled because your
2 understanding was that that all had been disclosed prior?

3 A Correct.

4 Q And turning your attention now to Page 121 and 122 of
5 that transcript.

6 A And, also, I just want to add this was outside of the
7 Court. But I do recall having discussions with Ms. Wyse
8 prior to the trial as to those facts when she had raised
9 her defense to me. And I had let her know what we were
10 pursuing it on.

11 Q Okay. So, then again, on Page 121 and 122, this is
12 where we're talking about the body-worn camera from
13 Officer Entsminger?

14 A Yeah. So we had four different body cam -- four or
15 five different body cameras from that incident. Because
16 there was multiple officers on scene who, actually, made
17 entry into the home at the time of the burglary. So, of
18 course, there was overlap between the four or five
19 different views that we had.

20 And I can't remember exactly which one I had planned
21 to admit at the trial. But after she started with Deputy
22 Entsminger and asking specific statements that were on his
23 body camera, I think I made the decision in the trial to
24 go ahead and admit that video since that was,
25 specifically, referenced by the Defense.

1 Q Okay.

2 A And as to those statements, from my recollection,
3 when they were executing the arrest -- so, basically,
4 officers made entry through the front door and there were
5 other officers waiting at the back door. When they made
6 entry, the Defendant exited out the back door. And they
7 were able to tackle him to the ground. But there was no
8 handcuffs at the immediate moment.

9 And he stood up and he began making other statements.
10 The officers were talking, but I don't remember a lot of
11 interrogation going on at that point. He made statements
12 from my notes like, This is my aunt's house and tools
13 flew -- you know, were flying out of his pockets, and
14 different things.

15 So, at that point, they did end up Mirandizing him
16 several minutes later. And then more statements were made
17 post-Miranda. It was all on video. There was no question
18 about the statements or whether or not Miranda was
19 properly given and the statements that were made
20 post-Miranda.

21 The only thing I do recall -- I agree with Ms. Wyse.
22 Several things -- prior to trial, I had time stamped the
23 video. We had what I thought was stipulated to the
24 testimony. So it did come as a surprise to me mid-trial
25 that she had raised that objection. Because I thought we

1 were on the same understanding of what we were going to
2 admit during the hearing.

3 I did agree to redact a portion of the statements
4 about Mr. Gunn using marijuana. I did agree with her that
5 was probably more prejudicial than probative in this
6 particular case. And so I agreed to redact that one
7 statement.

8 Q And that was agreed to prior -- I mean, pre-trial
9 during the motion hearings; is that correct?

10 A I know we had talked about it pre-trial. But
11 definitely before the trial started, she had raised that
12 and again in the pre-trial motions. And I had agreed to
13 redact.

14 Q Okay. And the -- the fact that Ms. Wyse said during
15 trial that she -- No, actually, I didn't stipulate to the
16 stuff coming in. She mentioned that. That's in the
17 transcript. You saw that; correct?

18 A Yeah. And that could have just been a
19 misunderstanding between her and I at -- you know, what I
20 thought we had agreed upon pre-trial versus what she had
21 thought, so.

22 Q And she mentioned that in the record and then,
23 ultimately, Judge Sprouse admitted the video. And it was
24 played for the jury; is that right?

25 A That is correct.

1 Q Okay. And then the last thing I wanted to ask you
2 about was that third instance -- at least, at this point,
3 the last thing to ask you about. It's on Page 231 and
4 232. And do you recall -- no, you weren't there. I'm
5 sorry.

6 A Yeah. So I -- I looked at that in the transcript.
7 And I believe, at that point, I was no longer working for
8 the solicitor's office.

9 Q Okay.

10 A And so I did not do the hearing afterwards. The best
11 I can tell from that transcript, that would have been
12 Deputy Solicitor Alderman at the time.

13 MR. APLIN: Okay. And I have no further questions,
14 Your Honor.

15 MS. SHIPE: I -- I don't have any questions --

16 THE WITNESS: Okay. Thank you.

17 MS. SHIPE: -- regarding these instances.

18 THE COURT: Okay. And I will note for the record --
19 again, I've been following along with my notes and my law
20 clerk's notes. And the only thing in my notes regarding
21 the body cam video that was introduced on redirect was
22 that it was admitted and published. And I have a Defense
23 objection noted in that. That's all that's in my notes.

24 And then my law clerk has, Body cam footage is
25 played. And he does -- he does -- and I believe this was

1 State's Exhibit No. 22. And he doesn't have anything
2 about the objection. He has -- he talks about the
3 objection further down in the transcript, which is not an
4 issue today about the State's Exhibit. So that's --
5 that's what I have in my notes.

6 As for the motion hearing, which is covered in 220 --
7 Page 223 -- 221 and 223 of the transcript, really, the
8 only thing I have there is what's included in my written
9 order from -- from the hearing.

10 Okay. Now, what else do we need to reconstruct?

11 MS. SHIPE: I think we can get now to the portion
12 that wasn't recorded. Those are all -- those are all the
13 places in the transcript that I thought were necessary to
14 get to the unintelligibles.

15 So if we just want to recall Ms. Wyse and we could
16 then call Ms. Blundy.

17 THE COURT: Okay. If you'll take the witness stand.

18 MS. CATHERINE WYSE: Sure.

19 DIRECT EXAMINATION

20 BY MS. SHIPE:

21 Q I'm just going to take you through in order how it
22 appears that it would have come out. This is how it was
23 recorded in the -- what we were missing. So if you recall
24 it differently, just let me know.

25 There was a Jackson vs. Denno hearing held. And from

1 conversations with Judge Sprouse and Mark Farthing, we
2 learned that Joshua Entsminger and Aaron Alexander were
3 called is my recollection of that conversation.

4 Is that -- do you -- do you recall those witnesses
5 being called during the Jackson vs. Denno hearing, or do
6 you recall additional law enforcement witnesses?

7 A I do remember the two of them being called. And I do
8 not remember any additional witnesses being called.

9 Q And do you recall what questions you would have asked
10 either of them?

11 A I know that Solicitor Blundy took them through the
12 majority of their testimony, you know, trying to establish
13 whether or not the statement was voluntary, whether or not
14 he was under arrest, and he understood what was going on,
15 that kind of thing.

16 I know she laid out that foundation pretty well. And
17 then she played the video. I mean, and it -- it is
18 obvious on the video that he did not appear to be under
19 the influence. He knew what was going on. I didn't have
20 any objections to the voluntariness of the statement. I
21 just had objections as to what has already been stated as
22 to what the officers asked him.

23 Q So did you -- did most of that come out during the
24 direct -- or cross-examination later or were these
25 questions that you were asking of them during the Denno

1 hearing, like, regarding -- you -- you didn't object to
2 the voluntariness. So there was -- there was no objection
3 following the Denno hearing?

4 A I -- okay. So Solicitor Blundy went through
5 everything. I mean, and I made -- I cross-examined on
6 some questions, you know, especially based upon the, What
7 are you high on tonight, or have you been smoking
8 marijuana? I mean, I -- you know, of course, I followed
9 up on that as far as the cross-examination was concerned.
10 And I made -- I made the objections that I was supposed to
11 make, but I did not go any further.

12 Q Do you recall if Officer Entsminger said that he --
13 you know, he thought -- he thought that there was some
14 substance use going on, or was there -- was there -- did
15 he give any basis for his asking about substances? Did he
16 smell something? Did he think that Mr. Gunn appeared
17 intoxicated in any way, shape, or form? Did that
18 testimony come out during this Denno hearing?

19 A I believe that the reason they asked him those
20 questions is because they knew he had a prior history with
21 drug use.

22 Q Is that what the testimony was, or that's your
23 belief?

24 A (There was no response.)

25 Q And if you don't remember --

1 A I can't remember what the testimony was. But looking
2 at Mr. Gunn's prior history, and where he was arrested,
3 and for what he was arrested, it was -- it was clear to me
4 looking at the body cams, meeting with Mr. Gunn, and
5 looking at his criminal history that they had opinions
6 about him.

7 Q Okay. But as far as you remember, neither of them
8 said that he appeared intoxicated?

9 A No, they did not.

10 Q And -- and both -- both of them indicated that they
11 thought that he was, you know, well enough to respond and
12 was not coerced?

13 A Correct. Yes.

14 Q I'm just going to go all the way through. Does that
15 work for you?

16 A Uh-huh.

17 Q Okay. I'm not going to ask you necessarily unless
18 you have recollections of Ms. Blundy's opening. If you
19 do, wonderful.

20 But do you recall your opening, kind of how you would
21 have theorized the case to the jury at the beginning?
22 What's your -- what's your recollection of your own
23 opening statement?

24 A From the very beginning, we admitted to, you know,
25 being there, having the tools. And, you know, we -- I

1 admitted to that in opening statement, that he was guilty
2 of burglary second. Because it was an abandoned home.

3 I did not admit to the resisting arrest or -- but we
4 definitely -- we discussed this prior to trial that we
5 were going to go in there and, basically, tell the jury
6 exactly what he himself agreed he was guilty of. And that
7 was the entire defense is that he was guilty of burglary
8 second.

9 So I -- we -- I said that in the opening statement.
10 And I do remember making a statement about President Trump
11 because, apparently, he was -- he was going through his
12 trial at the same time. And I was saying that, you know,
13 if he was entitled to a trial, then everybody -- everybody
14 should be entitled to a trial. Because we cannot treat
15 people differently whether or not they are poor, rich,
16 smart, uneducated, whatever it was. That everybody
17 deserved the right to a fair trial.

18 So that was -- that was, basically, it, everybody has
19 a Constitutional right.

20 Q Okay.

21 A And I remember Ms. Blundy's opening. It was -- it
22 was very effective. She and I -- I think she had some
23 visuals that she used, if I remember correctly.

24 Q Any other recollections? I know that Ms. Blundy
25 will, also, testify as to her opening. And we have notes.

1 But are there any other recollections that you have
2 regarding the State's opening that you wanted to put on
3 the record?

4 A No.

5 Q Lastly, there were two witnesses that we don't have
6 the recording of their testimony. My notes -- hopefully,
7 they're correct -- say the trial began with Kristy Shaw,
8 the wife of the property owner. And just to kind of
9 orient you, because I just read the transcript, it appears
10 that the -- there was some camera triggered.

11 So if that kind of orients you to her testimony. Do
12 you have a recollection of what you would have asked
13 Ms. Shaw and any answers that you recall from her
14 testimony?

15 A (There was no response.)

16 Q And it doesn't appear any -- if you have -- if you
17 have any recollection of evidence admitted -- I don't
18 believe any evidence was admitted during her testimony.
19 But if you recall that differently, please...

20 A Ms. Shaw, if I remember correctly, she's the one who
21 got the alerts first or she noticed them first. I think
22 Mr. Shaw was asleep and she woke him up. And I might not
23 be remembering that correctly. Maybe Ms. Blundy will have
24 more information on that.

25 But she was -- basically, got up there and testified

1 about she -- she told her husband. And I think she's the
2 one who called 911. And I think she -- you know, she
3 testified that, what do you want me to do when she was
4 asking her -- when she was telling her husband about
5 the -- the cameras picking up. And he told her to call
6 911. And then he was going to go to the location, so she
7 did.

8 As far as me asking her questions, I don't recall
9 very many. I may have asked her whether or not the estate
10 was in probate. But that was -- anything I asked, it
11 would have been very short.

12 Q What -- what was her response to the question? Do
13 you remember what Ms. Shaw said in response to the estate?

14 A I don't remember.

15 Q Okay. And then, lastly, I have it as Melissa, but I
16 think it's Melisande Richmond, the 911 operator. Do you
17 recall this witness?

18 A Barely. And if I remember correctly, I didn't ask
19 her any questions. I mean, she was just up and down. And
20 there wasn't anything to ask her. I mean, she got the 911
21 into evidence and that was it.

22 Q And did you have -- in your recollection, did you
23 have any objection to the -- the 911 -- the admission of
24 the 911 call or the admission of the CAD report?

25 A I didn't have any objection to the 911 call. I think

1 I did object to the CAD report. Because if you have the
2 911 call, you don't need the CAD report, too. Also, of
3 course, it's information that law enforcement and lawyers
4 can figure out that, of course, a jury would not
5 necessarily understand.

6 So my recollection is that I had an objection to the
7 CAD report, but not to the 911 call. There wasn't any
8 reason to object to the 911 call.

9 Q And any other recollections about the 911 operator's
10 testimony that you recall?

11 A No. Again, there wasn't anything to object to.

12 MS. SHIPE: Okay. That's -- that's all the questions
13 that I have.

14 THE WITNESS: Okay.

15 MS. SHIPE: Mr. Aplin.

16 CROSS-EXAMINATION

17 BY MR. APLIN:

18 Q Hello again, Ms. Wyse.

19 Backing up to the Jackson vs. Denno hearing. I know
20 you've answered some questions already. My recollection
21 from the trial -- and you can correct me, again, if I'm
22 wrong -- is that you used some of your client's statements
23 to the officers at the time of his arrest to your
24 advantage. In other words, you asked questions to
25 establish that he had walked a long distance to get to

1 this house before he came in. And he was looking for
2 water, and things like that. Does that sound familiar?

3 A It does.

4 Q Okay. And so you had the Jackson vs. Denno hearing.
5 You don't remember objecting to the voluntariness of the
6 statement --

7 A I don't.

8 Q And at -- even back -- at this time, you don't recall
9 there being any really good grounds for challenging the
10 voluntariness?

11 A No. And, you know, I know that I have to object, you
12 know, make things for the record. But I -- I don't enjoy
13 or like it. And I don't want to waste the Court's time
14 with frivolous objections.

15 Q Okay. And -- and, again, like I said, so you didn't
16 see too much basis for objecting at the time. And then
17 you did use part of that statement as your defense; right?

18 A Yes. Now that you mention it, that is correct.

19 Q And, obviously, I guess the recollection is that the
20 Judge ruled that it was admissible?

21 A Yes, he did.

22 Q All right. And do you remember during the jury
23 charge the Judge gave a full charge on the jury having the
24 duty to rule on the voluntariness of the statement,
25 ultimately, even though he had admitted it? And I can

1 draw your attention to that part, if you want to, or we
2 can just let the record speak for itself.

3 A Sure. Sure. Let me -- I mean, I'm sure that -- I'm
4 sure that is correct, if you say it's -- it's in here. I
5 have no reason to doubt you.

6 Q Okay. And moving on to the opening statements -- and
7 this is just -- hopefully, maybe you can help clarify. If
8 you look at Page 185 of the transcript and Line 23, kind
9 of that paragraph that starts on Line 23 at the bottom of
10 the page where you say, You see, like I told you in the
11 opening, the judicial system here is the best in the world
12 because the State has to prove beyond a reasonable doubt
13 each and every element of the offense. Does that match up
14 with what you were just testifying to as your
15 recollection?

16 A Yes.

17 Q Okay.

18 A That is something that I usually put in every single
19 opening statement, too.

20 Q Okay. And then, again, on Page 187, Line 6 through
21 13, where you say, I said it in the very beginning.

22 Again, sort of what is your strategy here? You were
23 recounting what you said in the opening, essentially?

24 A Yes. Yes. That is -- that is correct. I mean, that
25 was the strategy.

1 Q And so you think you, also, repeated that strategy
2 somewhat in the opening statement as well?

3 A Yeah. And, like I was telling Attorney Shipe, that
4 was -- that was the strategy. So we admit to exactly what
5 he says he did. And we just disagree that it was a
6 burglary first.

7 Q Okay. And, obviously, I know it's hard to remember
8 with you being a witness. But when Ms. Shaw was
9 testifying as the first witness at trial, do you have any
10 recollection of objecting to anything during Solicitor
11 Blundy's direct examination?

12 A I don't. But, I mean, I may have objected to the
13 fact that she never had, like, given a statement, or
14 something like that. Again, I don't like to make
15 frivolous objections.

16 Q And then I think you already covered this about 911
17 Operator Richmond that you may have objected to something
18 with -- the CAD report, but not necessarily the recorded
19 call?

20 A Correct.

21 MR. APLIN: And, Your Honor, just to make sure we
22 don't miss anything while Ms. Wyse is on the stand, I know
23 that the Court of Appeals order mentioned pre-trial
24 motions and rulings and making sure they were
25 reconstructed. I looked through the transcript. It

1 appeared most of the pre-trial arguments were there, that
2 the gap came later. But just if we get to the end of this
3 and it looks like there's anything missing, then we can
4 maybe cover that as well just in our discussions.

5 THE COURT: Yes, sir.

6 MR. APLIN: That's all the questions I have, Ms. Wyse.
7 Thank you.

8 THE COURT: Any redirect?

9 MS. SHIPE: No, sir.

10 THE COURT: Thank you, Ms. Wyse.

11 MR. APLIN: Your Honor, we'll call Solicitor Blundy
12 back to the stand.

13 THE COURT: Okay.

14 DIRECT EXAMINATION

15 BY MR. APLIN:

16 Q Thank you, Solicitor.

17 And now kind of going back, we were just having a
18 brief discussion over at the table there. The issue with
19 the 911 operator, do you recall anything about the
20 recorded phone call versus the CAD report and how that
21 went down as to what evidence may have been introduced, or
22 objected to, or allowed?

23 A I cannot say with a hundred percent certainty if I
24 admitted both the 911 call and the CAD report. I am
25 uncertain. Although, my trial notes have me marking them

1 both as an exhibit and requesting admission. Whether that
2 was, actually, done in the trial, with the time that has
3 passed, I cannot recall.

4 But I do know that I called Kristy Shaw as a witness.
5 She was the wife of the son who was staying in his
6 mother -- deceased mother's home. She, initially, got the
7 alert from the ring cameras or the -- whatever the
8 surveillance camera was inside the home that there was a
9 strange person inside the home. It woke her up in the
10 middle of the night. So all of that testimony came in.

11 She then woke up her husband and said somebody is in
12 the house. And she was the one who placed the 911 call.
13 Melisande Richmond was the 911 operator at the time. She
14 was the one who received the 911 call and dispatched the
15 officers out to the call.

16 Q Okay. Do you recall objections to Ms. Shaw's
17 testimony or...

18 A I do not recall any objections to the first two
19 witnesses testifying that I can remember. But as Ms. Wyse
20 stated, there could have been an objection -- objection to
21 the CAD report. But I routinely admit both of those as
22 non-hearsay.

23 I know Ms. Shaw, specifically, was relaying to the
24 911 operator everything she was seeing through the camera
25 at the time as she was watching the Defendant inside the

1 home. At some point, the Defendant did turn the camera
2 around.

3 Q Okay. And, of course, you had both parties to that
4 911 call as witnesses?

5 A I did. And that's why I routinely call both of them
6 since the recording has both of their voices on it.

7 Q Now, I know that you -- we introduced as a Court's
8 Exhibit a copy of your notes, your pre-trial sort of typed
9 out prep notes for how you're going to handle witnesses.
10 Would you say that that is a fairly accurate
11 representation of what you planned to ask Ms. Shaw and
12 Ms. Richmond on the stand?

13 A Yes. Not that I use those notes verbatim in the
14 trial. I use it as a guide as the trial is kind of going
15 along. But I try to lay out my questions so that I don't
16 leave anything out or miss anything.

17 So I prep every trial pretty much the same way since
18 I started my career. I would write out all of my trial
19 notes so that I can bring them with me to the trial. Same
20 thing with my opening. I don't memorize it, but I pretty
21 much stick to the gist of what I write and present that to
22 the jury.

23 Q And so I guess same question there you kind of
24 covered already. But you believe that the notes of your
25 opening statement are a fairly accurate representation of

1 what you would have argued?

2 A Yeah. They would be pretty accurate. I might have
3 ad-libbed here and there. I'm a big story teller. So I
4 did kind of paint the picture for the jury of what went on
5 that night.

6 And I do remember talking about, you know, burglary
7 in the first degree. Because we had discussions about the
8 prior criminal convictions being used or nighttime. And
9 that was one motion that the Defense had brought up that I
10 couldn't use both. And we had a discussion that all of
11 the facts should be submitted to the jury. And then they
12 would be able to make a decision from there.

13 Q Okay. If would you, just really briefly look at Page
14 171 of the transcript.

15 A 171?

16 Q Yes.

17 A Sure.

18 Q Go to the bottom of the page starting on Line 22.
19 Just kind of read out loud that -- the first few sentences
20 there, what you said to the -- where you started your
21 closing argument.

22 A I'm sorry. What line do you want me to start on?

23 Q Starting on Line 23.

24 A 23. We are -- so we are here, Your Honor.

25 Thank you.

1 When I started this trial, I had told you a couple
2 things. And one was napping with a crow bar, resting with
3 a pair of pliers, and relaxing with a screwdriver, none of
4 those things make sense. You aren't going to cuddle up
5 with those things. These were the items that were found
6 on scene with the Defendant. This was in his backpack.
7 And this was in his pocket.

8 I believe I might have held those up for the jury.

9 Q Okay. And does -- does that sound like -- I mean,
10 you referenced that when you told them at the start of the
11 trial, does that match up with what your recollection of
12 what -- as far as your opening statement would have been?

13 A Yeah. So I kind of always start with a theme. And
14 that was my little catchy theme that I thought that the
15 jury would kind of relate with. And part of that was
16 because the Defendant had stated that he didn't come there
17 with those tools, that he had found them in the yard. But
18 there was marks on the doors, and different things.

19 So I had used those in my opening and closing. Plus,
20 he was charged with burg -- possession of burglary
21 tools -- or tools used in the commission of a crime.

22 Q Backing up a little further to the Jackson vs. Denno
23 hearing. Do you recall having -- having a Jackson vs.
24 Denno hearing at the trial?

25 A Yes. That wasn't something we had, initially, talked

1 about doing. But when Ms. Wyse started to really hone in
2 on the Defendant's specific statements, we thought it
3 would be wise to go ahead and do a Jackson vs. Denno
4 hearing.

5 So I did call Deputy Entsminger. And I did call
6 Sergeant Aaron Alexander. They both testified at the
7 Jackson vs. Denno to the statements. I believe, if I
8 recall correctly, that Aaron Alexander was the one who,
9 actually, Mirandized the Defendant. Like I said, there
10 was four officers. And it was kind of chaotic when they
11 were taking him to the ground, but.

12 So we went piece by piece through what the statements
13 were. And at the end of it, I believe, also, Judge
14 Sprouse had reviewed the -- Entsminger's video and his --
15 that was the most comprehensive of the four videos. And
16 he ruled that they were voluntary and that they were
17 admissible.

18 Q Okay. And do you recall -- does it match up with
19 what Ms. Wyse said whether there would have been any
20 objection to the voluntariness or any argument much about
21 that?

22 A I don't recall. Because honestly, in my opinion, it
23 was -- it was pretty blatant and pretty obvious. It was
24 all on video. So there wasn't a whole lot to debate,
25 really.

1 MR. APLIN: I think that's all I have, Your Honor.

2 THE COURT: Any redirect?

3 MS. SHIPE: I don't have any questions for you.

4 THE WITNESS: Thank you.

5 THE COURT: Thank you, Ms. Blundy.

6 Okay. Let me -- for the purposes of the record here,
7 let me go down my notes and my law clerk's notes on the
8 issue of the Jackson vs. Denno hearing and the first two
9 witnesses. My notes indicate that the Jackson vs. Denno
10 hearing began with Officer Entsminger being called. He
11 testified that he responded to a burglary call. Call on
12 4/18/23. The Defendant was at the scene. He arrived,
13 inspected the house, set the perimeter. The Defendant was
14 inside.

15 The backup officers that came were Officers Aaron
16 Alexander, Michael Shedd, and David -- I believe it -- I
17 can't read my handwriting. I believe it was Carr and
18 Brady Pitts.

19 He testified that he got the Defendant outside. He
20 had made entry through the front door. The Defendant went
21 back -- went out the back door. And then they instructed
22 him to get on the ground. Eventually, he did. They
23 handcuffed him. Put -- he was put down, asked him, Is
24 anybody else inside? I asked him standard questions
25 regarding weapons. All officers were present at the back

1 porch. The taser was pointed at the Defendant during
2 handcuffing him.

3 A statement was made, Maybe just a minute, not very
4 long. My notes don't indicate who made that statement.
5 No questions were asked prior to Miranda about the
6 incident. The Defendant was fully Mirandized.
7 Post-Miranda, the Defendant spoke to them, didn't ask for
8 a lawyer, cited to them he was on the back porch. The
9 Defendant was under arrest.

10 Then cross-examination, Ms. Wyse asked about the
11 questions. And the answer was only -- the only
12 pre-Miranda questions were about a weapon and were other
13 people inside.

14 So then Aaron Alexander was called as a witness, who
15 was the supervisor on shift. He arrived third. He made
16 the call to enter and, ultimately, it was my call.
17 Perimeter was set up. Attempting to enter and heard
18 yelling. Came through front door. Made way to the back.
19 Subject was at the back. Officer attempted to apprehend.
20 It was Entsminger, Pitts, Shedd, and Carr, and him. There
21 was five total officers.

22 The Defendant was given verbal direction after
23 handcuffed. Procedure questions of weapons and home had
24 not -- home had not been cleared yet. He does not
25 remember the exact time Miranda was given. He asked the

1 Defendant questions post-Miranda. The only questions
2 pre-Miranda were about weapons or other people in the
3 house. The Defendant never asked for a lawyer.

4 Ms. Wyse's cross-examination. I don't have any notes
5 of what was asked during the cross-examination. State's
6 Exhibit No. 22 was played. That's the video from Officer
7 Entsminger. The video indicated that at the 44:36 mark,
8 Miranda warnings were given.

9 The Defendant was talking, said his aunt was dead.
10 He was having an argument with his old lady. He was there
11 just to rest. Tools picked up along the way. Door was
12 unlocked. Turned off camera inside, flashlight, phone
13 charger, pryers. I was resting at first. Hoping we will
14 go away.

15 Then the Alexander video was played. And the only
16 thing I have in my notes about the Alexander video was at
17 the 39:50 mark, he was asked how he walked there, what
18 made him choose that location.

19 And he replied, I was just tired.

20 Then they asked him questions at 42:57 about the
21 burglary tools, wearing all black. And then there was a
22 question at 43:19 about marijuana. And that's the -- and
23 then I say in my notes, Denied.

24 Now, I'll go through what my law clerk's notes said.
25 His notes have some overlapping and goes into a little

1 more detail. He says that the Jackson vs. Denno hearing
2 begins at 1:32 p.m., ends at 2:12 p.m.

3 The State witness number one Officer Joshua
4 Entsminger was called to the burglary scene on April 18th,
5 2023. Yes, who came into contact with Mr. Gunn and how
6 come into contact?

7 We received call of burglary and he was present at
8 the scene.

9 What happened when he arrived?

10 We viewed building from the outside and set perimeter
11 where -- see Dunn, believed in house. Last know position
12 from camera footage.

13 What officers began assisting?

14 Then he says, Alexander, Shedd, Pitts.

15 Able to get the Defendant outside the house?

16 Yes. Began making entry to the front as the
17 Defendant exited out the back door.

18 What happened?

19 Instructed him to get on the ground, detained in
20 handcuffs.

21 What happened when detained?

22 We patted down for weapons to ensure no weapon on
23 him.

24 What kind of questions asked immediately when placed
25 in handcuffs?

1 Anyone else inside with any weapons on them?

2 When normally place handcuffs on someone, what is the
3 standard protocol?

4 Then his answer, Put hands behind back, check for
5 weapons. All that was done.

6 He says -- the question, How many officers were
7 involved in the process of placing handcuffs on the
8 Defendant?

9 All present on the back porch. Three or four may
10 have been touching him.

11 Any weapons drawn or utilized?

12 Then he says, Not during handcuffing. Taser pointed
13 at him during handcuffing.

14 How long from point handcuffs placed to Mirandized?

15 His answer was, Just like two or three minutes maybe,
16 not very long.

17 At that point, were questions started to be asked as
18 to why he was there and what he was doing?

19 His answer was, I don't believe any questions asked
20 before Mirandized.

21 And then was the Defendant able to be fully
22 Mirandized?

23 The answer, Yes.

24 Did he decide to speak with you?

25 Yes. He spoke with us post-Miranda.

1 Any point -- I think it's, At any point object to
2 questioning or asked for a lawyer?

3 The answer, No.

4 Were you able to ask why he was there and what he was
5 doing?

6 Yes.

7 Other -- any other custody placed on Defendant when
8 questioning on back -- and I don't understand what he's
9 saying here. It just says, On back porch. Freedom to
10 leave restrained and under arrest?

11 His answer, Yes.

12 And then there was cross-examination, again, at 1:38
13 p.m. And he was asked about questions.

14 He said, No questions. Before only about weapons and
15 being inside.

16 Pretty quick other -- after handcuffs and placed
17 under Miranda?

18 Yes.

19 When you and everyone else began questioning?

20 Yes, one other officer.

21 It ends at 1:38.

22 Then State witness number two, Sergeant Alexander.
23 Direct examination at 1:39 p.m. What was your role on
24 April 18th, 2023, with the incident?

25 His answer was, I was a supervisor on shift and

1 responded to the scene to assist. When arrived, first,
2 second, recall probably third and entry made into home.
3 It was later.

4 Who made the call?

5 Ultimately, my call once arrived on scene, but all
6 collectively agreed.

7 And then he was asked, What happened?

8 Answer: After perimeter set up, we could hear
9 yelling at back while attempting entry. So come on
10 through front door and made way to back.

11 Then, What happened?

12 His answer: Suspect there. Officers attempting to
13 apprehend him.

14 There's a statement, A part of process verbally,
15 don't think physically. I don't know the question.

16 Recall how many officers there apprehending?

17 Four and himself, so five.

18 He was asked, Who handcuffed Defendant?

19 I know Pitts and Entsminger were there and they were
20 asked to go around back, but don't know.

21 Recall hand -- was he handcuffed?

22 And his answer, Correct.

23 What else recall after?

24 And then his answer, Given some verbal directions.
25 Had to sweep the rest of the home.

1 Asked procedural questions about weapons and if
2 anyone else -- in conversation between Entsminger and a
3 card. I don't -- I don't know what that refers to.

4 But I -- but don't know exact time transpired.

5 Then the question, Were you able to ask the Defendant
6 questions on scene post-Miranda?

7 His answer, Questions other than weapons and anyone
8 else in home, yes.

9 At any time, did Defendant object or ask to stop for
10 a lawyer?

11 And he answered, No.

12 And then it looks like there was no cross, other --
13 it just says, No questions other than two, no.

14 Placed under Miranda?

15 Yes.

16 That's it?

17 Yes.

18 I -- I don't know what that means. Then the video
19 was published. Video of Entsminger cam started at the 32
20 minute mark. 44:45 remaining on video, Mirandized. Video
21 ends with 41:10 remaining.

22 So then the Defense made an -- apparently, made an
23 objection. And this is what the notes say, About him
24 announcing his name in tone like he knew exactly who he
25 was. Also, picked up tools in yard to break into house.

1 Obviously, tools came out of pocket. Defense requests
2 that part -- leave that part out. They come out of
3 pocket. As far as statements, question asked prior to
4 Mirandized. Those are questions that are fine to be heard
5 in front of jury.

6 And then he typed in my ruling. According to my law
7 clerk, this is what I said, I have considered this video
8 and the totality of the circumstances. Statements were,
9 certainly, custodial. Announced to be under arrest prior
10 to contact and on ground in handcuffs. Questions prior
11 were procedural. Questions regarding events themselves
12 took place after Miranda rights clearly audible and on
13 video. Statement on video, considering totality, was
14 voluntarily -- voluntary and admissible for purposes of
15 trial. Question of fact for the jury and will give them
16 the charge on that.

17 And then the video of Officer Alexander, which was
18 Exhibit No. 23 from the 39:54 mark. The questions that
19 were asked about it is, Mirandized at time the video
20 begins. He's asked repeatedly about lying and who asked
21 to come to house.

22 At the 8:13 mark remaining, the question, You
23 normally dress in all black?

24 7:59 remaining, you got burglary tools. Dressed in
25 all black. Caught in the process of doing it.

1 7:43 remaining, You broke in.

2 6:35 remaining, Want me to tell homeowner why you did
3 it?

4 4:49, Not that far when burglary involved.

5 Video ends with 4:17 remaining.

6 Defense concern -- the Defense raise the issue of
7 concern is conjecture by officers when making statements.
8 As far as Jackson vs. Denno concerned, he was Mirandized.
9 The Defense is worried about State vs. Washington hearsay
10 that can just be testified by officers on the stand.

11 And then, apparently, I ask her to identify what
12 hearsay statements she's talking about.

13 And the Defense said, Questions officers asking,
14 honest, normally in black, pipe and smoking device in
15 background, tools, all things being asked. These
16 statements are bolstering the officer's theory of the
17 case.

18 The State responded, These are offered for -- these
19 are not -- it says, Offered for truth. But then it says,
20 Officer is not stating truth. He is asking questions. It
21 becomes issue for jury post-Miranda and things jury has
22 right to hear from the Defendant.

23 And then his notes just say, Post-Miranda. And
24 that's the end of that.

25 My notes of Kristy Shaw -- I have no notes regarding

1 what was said in either sides opening statement and
2 neither does my law clerk. It just says, The State's
3 opening statement began at 2:14 p.m. and ends at 2:25 p.m.
4 The Defense's opening statement begins at 2:25 p.m. and it
5 ends at 2:29 p.m. And that's all that are in the notes.

6 Kristy Shaw, my notes state that in direct she
7 testified that she lives in Oconee, married to Toby Shaw.
8 They've been married five years. Her mother-in-law was
9 Peggy Shaw who lived at 208 Johnson Drive. She has passed
10 away. She died in March of '23.

11 April 18th, '23, her blink camera went off. She
12 pulled up, saw someone entering the house. She woke up
13 her husband, said, Honey, there's somebody in your
14 mother's house. She called 911.

15 The State had Exhibit No. 1 marked. The 911 CD, she
16 initialed it. She ID'd that. Her husband went to the
17 residence. He had the key to the house.

18 On cross-examination, she was asked how long she had
19 been married.

20 She said, Five years.

21 And the only other question was how far away. She
22 testified that she lived -- that they lived 15 minutes
23 away from the house.

24 My law clerk's testimony -- my law clerk's notes
25 indicate -- say it began at 2:30 p.m. She resides in

1 Ocone, married to Tony [sic] Shaw for the past five
2 years. Mother-in-law was Peggy Shaw. Resided at
3 [REDACTED] [sic] Johnson Drive.

4 Do you recall April 18th, the date of the incident?

5 Yes.

6 What happened?

7 Pulled up cameras and saw someone entering her house.

8 Remember time of night?

9 Remember during the night I woke up. Woke husband up
10 and said, Somebody in Peggy's house and called 911.

11 And State's Exhibit No. 1 was identified. That is
12 the 911 disc.

13 Do you recognize?

14 Yes.

15 Is it fair and accurate?

16 Yes.

17 Altered or changed in any way?

18 No.

19 It ends at 2:33. Cross-examination begins at 2:33.

20 Married and lived with Shaw for five years?

21 Yes.

22 How far do you live from Peggy's house?

23 About 15 minutes.

24 It ends at 2:34. So that's all our notes from
25 those -- those two witnesses.

1 The other witness in question is Melisande Richmond.
2 My notes indicate that she works now at Prisma. She was
3 at Oconee Sheriff's Office answering 911 calls at the time
4 of the incident. She had been there about eight months.
5 She described the process of 911 calls and how they are
6 recorded, when they start pick up. She describes what a
7 CAD report is. It records everything in the ordinary
8 course of business.

9 The -- now, my notes indicated that Ms. Blundy
10 presented State's Exhibit No. 1, which Ms. Shaw had
11 identified to Ms. Richmond, who, also, identified it.
12 Now, my notes indicate that Ms. Wyse made an objection to
13 State's Exhibit No. 1. And my law clerk says the same
14 thing.

15 Defense objected on the basis of foundation. And
16 that the objection was proper foundation has not been laid
17 to place into evidence under the rules of evidence.
18 Object under any grounds that both 911 operator here and
19 had the lady who made the call present could've testified
20 as to anything said on the call. And that Ms. Blundy
21 replied that the proper foundation had been laid. Both
22 caller and listener ID'd the tape and said not altered.
23 Testified fair and accurate representation as to date and
24 time.

25 And then my ruling, according to my law clerk's

1 notes, was, This is a recording kept in the ordinary
2 course of business. The hearsay objection is overruled.

3 So it indicates at 2:40 p.m., State's Exhibit No. 1
4 was admitted over objection. And then it was published to
5 the jury. And then there's a statement in his notes about
6 what was being played. But that was in evidence.

7 Now, Ms. Richmond, it indicates that there was no
8 cross-examination.

9 Now, my notes indicate, also, that the CAD report was
10 State's Exhibit No. 2 and that it was admitted without
11 objection. So my notes indicate and my law clerk's notes
12 that the objection was made to the 911 call and not the
13 CAD report.

14 So I believe that's -- that's -- brings us to where
15 the transcript is complete.

16 Do you need anything else?

17 MR. APLIN: I think it does, Your Honor. Would it be
18 amenable to have your notes made a Court's Exhibit and
19 added to the record. I know you covered them in detail
20 with what you just read out. But it might be helpful to
21 have --

22 THE COURT: Well, let me copy -- let's just copy
23 these sections. We can make those Court's Exhibits.

24 MR. APLIN: Thank you, Your Honor.

25 And while he's copying, just to make sure we're clear

1 since we're all here, I don't want to miss anything the
2 Court of Appeals talked about. Again, I mentioned that
3 they had mentioned pre-trial motions and rulings.

4 And this is -- I just want to go through what my --
5 looking at the transcript showed --

6 And, Ms. Shipe, just feel free to -- anybody to speak
7 up. I think everyone is sworn.

8 But Ms. Wyse made a motion to allow Mr. Gunn's mother
9 to come in the courtroom because, apparently, they were
10 not letting her in at some point. And you did make a
11 ruling on the record and granted that motion to allow his
12 mother to come in to watch the trial.

13 The second one is I have that Ms. Wyse had made a
14 motion to strike or exclude portions of the body-cam
15 footage that mentioned Mr. Gunn's gun charge crimes.
16 Particularly, there were two things where he got the tools
17 from. She was afraid that if there was a reference that
18 it would be indicating that he was [inaudible] to petit
19 larceny.

20 And, second, there was a reference to drugs and
21 smoking marijuana.

22 The State responded to those and, ultimately, agreed
23 to not talk about the -- I think Ms. Blundy testified to
24 this already -- not talk about the drugs and the smoking
25 pot with that being redacted.

1 I didn't see any particular ruling in regard to the
2 burglary tools. Ms. Blundy argued they should be admitted
3 because they were relevant. It's clear it looks like from
4 later in the trial that the Court's ruling was to allow
5 it. But I didn't see an actual ruling on the record on
6 Page 45 to 49 of the transcript.

7 THE COURT: Let me look at the transcript.

8 MR. APLIN: Based on her closing argument, it looks
9 like that was allowed, so.

10 MS. BLUNDY: To the best of my recollection, it was
11 allowed. Because burglary third -- we call it burglary
12 tools, but tools used in the commission of a crime, he was
13 charged with. So it was relevant to proving the elements
14 of that charge.

15 MR. APLIN: The third motion I saw was the one that I
16 think Ms. Wyse testified about. It was State vs.
17 Washington and State vs. Brewer arguing the hearsay
18 statements made by the officers.

19 There isn't -- this was her argument on Pages 45 to
20 49 of the transcript. And there was some back and forth
21 on that. The State argued that they're not hearsay
22 because they weren't offered for the truth of the matter
23 asserted.

24 I think you referenced that, Judge, in your notes.

25 And that, also, the officers were there to be

1 cross-examined on the statements and there was no
2 prejudice involved. Again, there was no -- it looked like
3 from what I could tell on the record -- ruling. But on
4 Page 143 to 144, it makes clear that the Court had ruled
5 in the State's favor because number 23 was admitted into
6 evidence.

7 That last --

8 THE COURT: And I'll just note that what I just -- I
9 just read from my notes and my law clerk's notes indicates
10 that that is correct and that I overruled the objection.

11 MR. APLIN: And then I think we've covered the
12 Jackson vs. Denno hearing that was, also, pre-trial.

13 And then the last one, Ms. Wyse had made a motion to
14 prohibit the State from mentioning his prior burglaries.
15 That one was on the record on Pages 54 and 55. The Court
16 ruled in favor of the State and said the State would be
17 allowed to put in evidence of the prior burglaries and the
18 elements of the offense.

19 And I think that's everything.

20 THE COURT: Okay. Ms. Shipe, anything further?

21 MS. SHIPE: No. I think -- I mean, those were all
22 covered in the transcript. And the order does say
23 pre-trial motions. But those were, certainly, not
24 missing. And so any clarification is fine on those.

25 I don't have anything else that, you know, seems like

1 it's missing from the transcript. I think I mentioned
2 earlier there are several instances throughout. But they
3 didn't -- they weren't around objections. I think the
4 context was -- I could kind of understand what was going
5 on.

6 I mean, I just ask this Court to, you know, look at
7 the case law, State vs. [Inaudible] especially and make a
8 finding -- a ruling whether or not you find this
9 reconstructed. If you want to do that today or take --
10 take it under advisement. I just wanted to request that.

11 THE COURT: Well, does either side have a position on
12 that?

13 MS. SHIPE: I mean, it's difficult -- the notes are
14 good. Your notes are good. Obviously, Defense Counsel
15 doesn't have notes. I think the testimony was thorough
16 today.

17 I think reconstruction is always hard a year plus
18 after for summarizing testimony. But as far as I could
19 tell today, you know, regarding what we're going to need
20 on direct, I mean, we've got -- we've got the objections.
21 We've got the basis, you know. It's kind of difficult to
22 argue. But I'm not going to be able to do that on appeal.

23 We, also, have to looked forward to the PCR. So I
24 just ask the Court to consider, you know, the appeals are
25 going forward beyond today. And I think -- I understand

1 the notes are good. But, it's -- like I said, we're
2 summarizing testimony. We don't have the witnesses here.
3 So just take that into consideration.

4 THE COURT: Thank you.

5 MR. APLIN: Your Honor, I think the State's position
6 was that it's been sufficiently reconstructed for the
7 purposes of direct appeal, which is what the Court of
8 Appeals sent it back for. Fortunately, you had very
9 thorough notes. And I think with the two trial attorneys
10 here, we've covered as best we can what was -- what was
11 testified to, and what the opening statements were, what
12 objections were made, and what the rulings were.

13 So I think it's sufficient at this point.

14 THE COURT: Well, I -- I've looked -- after we had
15 our telephone conference and I was able to zero in on what
16 the issues were again, I went back and pulled the notes,
17 which I have put in the record today. And hearing from
18 the attorneys, it -- it helps me.

19 I find that the record has been reconstructed
20 sufficiently so that y'all can proceed. I think that the
21 issues have been identified. And you -- you will be able
22 to ascertain what the arguments were and what the rulings
23 were from the Court at the time.

24 Now, we've, certainly --

25 Ms. Shipe, as you mentioned, we, certainly, don't

1 have the actual specific words used by the witness for
2 their entirety. We've got some of them both in my notes
3 and my law clerk's notes. But they're not in the form of
4 complete questions. But I do find you'll be able to make
5 your arguments on any appeal with what has been put into
6 the record.

7 So I will let this transcript suffice for a
8 reconstruction of these portions of the trial.

9 So any -- anything else for the record?

10 MR. APLIN: No, Your Honor.

11 Thank you.

12 MS. SHIPE: Thank you.

13 THE COURT: Thank you, Counsel.

14 I appreciate everyone -- when I saw I had this term
15 in Laurens County, I thought it would help y'all driving
16 from Columbia to come up here.

17 So thank you for -- and I know Ms. Blundy and
18 Ms. Wyse have been taken off their -- their jobs today to
19 drive down here. But I appreciate them coming.

20 This is not something you ever anticipate having to
21 do. We are blessed in this state. We have good court
22 reporters. And this is the first time I've ever had this
23 issue come up in a trial that I handled that's on appeal.
24 So, hopefully, this will be the last.

25 So thank you.

1 And we'll close the record.

2 (WHEREUPON, Court's Exhibit Nos. 2 and 3 were marked
3 for identification only.)

4 *****END OF TRANSCRIPT OF RECORD*****
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CERTIFICATE OF REPORTER

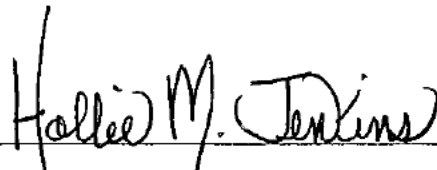
STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

I, HOLLIE JENKINS, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and the evidence introduced in the captioned case, relative to appeal, in the Court of General Sessions for Oconee County, South Carolina, on the 9th day of October, 2025.

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

March 23, 2026

A handwritten signature in cursive script that reads "Hollie M. Jenkins". The signature is written in dark ink and is positioned above a horizontal line.

Hollie M. Jenkins, Court Reporter

WITNESSES

Oconee Co Sheriff's Dept.

J. Entsminger
*David Smith***ARREST WARRANT NUMBER**

2023A3710200200

ACTION OF GRAND JURY**TRUE BILL***Quanda Williams*

Foreperson of Grand Jury

Date:

JUL 17 2023

VERDICT

Foreperson of Grand Jury

Date:

DOCKET NO. 2023-GS-37-

011a4

The State of South Carolina**County of Oconee****COURT OF GENERAL SESSIONS**

JUL 17 2023

, TERM

THE STATE**VS.****WILLIAM DAVID GUNN****INDICTMENT FOR****BURGLARY, FIRST DEGREE**

SC Code: § 16-11-0311

CDR Code: 0079

BAB

2023 JUL 17 P 4:04

FILED OCONEE COUNTY SC

**ENTERED IN COMPUTER
BY: A HOLBROOKS**

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

INDICTMENT

At a Court of General Sessions, convened on JUL 17 2023, the
Grand Jurors of Oconee County present upon their oath:

BURGLARY, FIRST DEGREE

The defendant, William David Gunn, did on or about April 18, 2023, in Oconee County, South Carolina,, willfully and unlawfully enter the dwelling of Toby Honea Bryson Shaw located at [REDACTED], without consent and with the intent to commit a crime therein, and when, in effecting entry or while in the dwelling or in immediate flight, he or another participant in the crime: is armed with a deadly weapon or explosive; and/or causes physical injury to a person who is not a participant in the crime; and/or uses or threatens the use of a dangerous instrument; and/or displays what is or appears to be a knife, pistol, rifle, shotgun, machine gun, or other firearm; and/or the burglary is committed by a person with a prior record of two or more convictions for burglary or housebreaking or a combination of both; and/or the entering or remaining occurs in the nighttime. All in violation of 16-11-0311 of the South Carolina Code of Laws (1976) as amended.

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


BETHANY BLUNDY
ASSISTANT SOLICITOR

WITNESSES

Oconee Co Sheriff's Dept.
J Entsminger

ARREST WARRANT NUMBER

2023A3710200201

ACTION OF GRAND JURY

TRUE BILL

Camanda Williams
Foreperson of Grand Jury

Date:

JUL 17 2023

VERDICT

Foreperson of Grand Jury
Date.

DOCKET NO. 2023-GS-37-

01125

The State of South Carolina
County of Oconee

COURT OF GENERAL SESSIONS

JUL 17 2023

, TERM

THE STATE

VS.

WILLIAM DAVID GUNN

INDICTMENT FOR

**MALICIOUS INJURY TO REAL
PROPERTY**

SC Code: § 16-11-0520(A)
CDR Code: 3428
BAB

ENTERED IN COMPUTER
BY: A HOLBROOKS

2023 JUL 17 PM 6:04

FILED FOR COURT

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

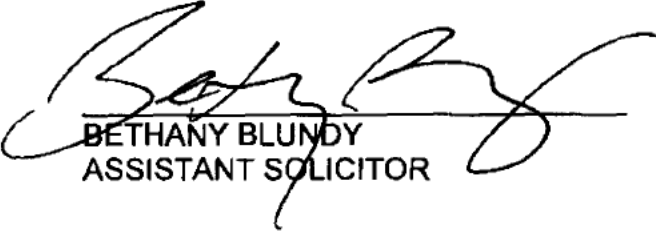
INDICTMENT

At a Court of General Sessions, convened on JUL 17 2023, the
Grand Jurors of Oconee County present upon their oath:

MALICIOUS INJURY TO REAL PROPERTY

The defendant, William David Gunn, did on or about April 18, 2023 in Oconee County, willfully, unlawfully and maliciously do damage to real property, damaging a back door, located at [REDACTED], the damage being Two Thousand Dollars (\$2,000.00) or less. All in violation of 16-11-0520(A), Code of Laws of South Carolina, (1976), as amended.

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



BETHANY BLUNDY
ASSISTANT SOLICITOR

WITNESSES

Oconee Co Sheriff's Dept.

J Entsminger

ARREST WARRANT NUMBER

2023A3710200203

ACTION OF GRAND JURY

TRUE BILL

Cassandra Williams

Foreperson of Grand Jury

Date:

JUL 17 2023

VERDICT

Foreperson of Grand Jury

Date:

DOCKET NO. 2023-GS-37-

01126

The State of South Carolina**County of Oconee**

COURT OF GENERAL SESSIONS

JUL 17 2023

, TERM

THE STATE

VS.**WILLIAM DAVID GUNN****INDICTMENT FOR****RESISTING ARREST**

SC Code: § 16-09-0320(A)

CDR Code: 0326

BAB

**ENTERED IN COMPUTER
BY: A HOLBROOKS**

2023 JUL 17 P 4:04

REC'D OCONEE COUNTY
JUL 17 2023

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

INDICTMENT

At a Court of General Sessions, convened on JUL 17 2023, the
Grand Jurors of Oconee County present upon their oath:

RESISTING ARREST

The defendant, William David Gunn, did in Oconee County, on or about on or about April 18, 2023, knowingly, willfully and unlawfully oppose Deputy Entsminger while serving, executing, or attempting to serve or execute a legal writ or process or resist an arrest being made by Deputy Entsminger with the Oconee County Sheriff's Office whom he knew or reasonably should have known was a law enforcement officer. All in violation of §16-9-320(A) of the South Carolina Code of Laws (1976) as amended.

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



BETHANY BLUNDY
ASSISTANT SOLICITOR

WITNESSES

Oconee Co Sheriff's Dept.
J Entsminger

ARREST WARRANT NUMBER

2023A3710200204

**ACTION OF GRAND JURY
TRUE BILL**

Cassandra Williams
Foreperson of Grand Jury
Date:

JUL 17 2023

VERDICT

Foreperson of Grand Jury
Date:

DOCKET NO. 2023-GS-37-

01127

**The State of South Carolina
County of Oconee**

COURT OF GENERAL SESSIONS

JUL 17 2023, TERM

THE STATE

VS.

WILLIAM DAVID GUNN

INDICTMENT FOR

**POSSESSION OF TOOLS USED IN THE
COMMISSION OF A CRIME**

SC Code: § 16-11-0020
CDR Code: 0124
BAB

2023 JUL 17 P 4:04

REDACTED COURT OF
GENERAL SESSIONS

**ENTERED IN COMPUTER
BY: A HOLBROOKS**

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

INDICTMENT

At a Court of General Sessions, convened on JUL 17 2023, the
Grand Jurors of Oconee County present upon their oath:

POSSESSION OF TOOLS USED IN THE COMMISSION OF A CRIME

The defendant, William David Gunn, did in Oconee County, on or about April 18, 2023, make or mend, cause to be made or mended, or have in his possession any engine, machine, tool, false key, picklock, bit, nippers, nitroglycerine, dynamite cap, coil or fuse, steel wedge, drill, tap pin, or other implement or thing adapted, designed, or commonly used for the commission of burglary, larceny, safecracking, or other crime, under circumstances evincing an intent to use, employ, or allow the same to be used or employed in the commission of a crime, or knowing that the same are intended to be so used. This incident occurred at [REDACTED]. This is in violation of §16-11-20 of the South Carolina Code of Laws (1976) as amended.

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


BETHANY BLUNDY
ASSISTANT SOLICITOR

338
STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

STATE

VS.

WILLIAM DAVID GUNN

AKA: David Gunn, William Daid Gunn

Race: White Sex: M Age: 38

DOB: [REDACTED] SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip: [REDACTED]

DL# [REDACTED] SID# [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the above indictment comes now the Defendant who was

☒ CONVICTED OF or ☐ PLEADS

TO: Burglary, First Degree (Violent)

In violation of § 16-11-0344 of the S.C. Code of Laws, bearing CDR Code # 0079 0006

☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ § 17-25-45

(CSC w/minor 1st or CSC w/minor 3rd)

The charge is: ☐ As indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)

The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

79907

Bethany Brundy, Assistant Solicitor

SC Bar #

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Correction ☐ County Detention Center,

for a determinate term of 15 days/months/years/Time Served ☐ Youthful Offender Act not to exceed ___ years

and/or to pay a fine of \$___; provided that upon the service of ___ days/months/years/Time Served and or payment

of \$___; plus costs and assessments as applicable*; the balance is suspended with probation for ___

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

The sentence shall run

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by SCDOC.

363 days/months

☐ To include time spent on monitored house arrest prior to trial and sentencing.

☐ The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ PTUP after _____ months/years

And Other Terms Listed Below:

- ☐ Substance Abuse Counseling ☐ Completion of GED ☐ Random Drug/Alcohol Testing
☐ Attend Voc. Rehab. Or Job Corp ☐ No Contact with Victim ☐ Domestic Violence Intervention Program
☐ Mental Health Counseling ☐ May serve W/E beginning: _____
☐ Sex Offender Registry pursuant to S.C. Code § 23-3-430 ☐ Public Service Employment _____ days/hours
☐ Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.
☐ Other: _____

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total \$ _____ plus 20% fee: _____ \$ _____

Payment Terms: _____ ☐ Set by SCDPPPS

Recipient: _____

*Fine:

Fine may be pd. in equal consecutive weekly/monthly pmts. of \$ _____ Beginning _____

§14-1-206 (Assessments 107.5%)		\$
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ 100.00
§14-1-211 (A)(2)(DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§56-1-286 (DUI Breath Test)	\$25	\$
§14-1-212 (Law Enforce. Funding)	\$25	\$ 2500
§14-1-213 (Drug Court Surcharge)	\$150	\$
§34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)	\$41	\$
§50-21-114 (BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)	TBD	\$ 3.75
☐ Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees	\$500	\$
☐ § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund	TBD	\$
TOTAL		\$ 128.75

 Clerk of Court/Deputy Clerk: Melissa C. Burton
 Court Reporter: Anna Foster

 Presiding Judge: [Signature]
 Judge Code: #2752
 Sentence Date: 4-11-24

340
STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

STATE

VS.

WILLIAM DAVID GUNN

AKA: David Gunn, William Daid Gunn

Race: White Sex: M Age: 38

DOB: [REDACTED] SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip: [REDACTED]

DL#* [REDACTED] SID# [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the above indictment comes now the Defendant who was

☒ CONVICTED OF or ☐ PLEADS

TO: Malicious Injury To Real Property 2k or less

In violation of § 16-11-0520(A) of the S.C. Code of Laws, bearing CDR Code # 3428

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ § 17-25-45

(CSC w/minor 1st or CSC w/minor 3rd)

The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (def.'s initials)

The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

19907
Bethany Blundy, Assistant
Solicitor

SC Bar #

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☐ State Department of Correction ☒ County Detention Center,

for a determinate term of 30 days/months/years/Time Served ☐ Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$____; provided that upon the service of _____ days/months/years/Time Served and or payment

of \$____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

The sentence shall run

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by SCDoc.

363 days/months

☐ To include time spent on monitored house arrest prior to trial and sentencing.

☐ The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ **PTUP** after _____ months/years

And Other Terms Listed Below:

- ☐ Substance Abuse Counseling ☐ Completion of GED ☐ Random Drug/Alcohol Testing
- ☐ Attend Voc. Rehab. Or Job Corp ☐ No Contact with Victim ☐ Domestic Violence Intervention Program
- ☐ Mental Health Counseling ☐ May serve W/E beginning: _____
- ☐ Sex Offender Registry pursuant to S.C. Code § 23-3-430 ☐ Public Service Employment _____ days/hours
- ☐ Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.
- ☐ Other: _____

☐ **RESTITUTION:** ☐ **Deferred** ☐ **Def. Waives Hearing** ☐ **Ordered**

Total \$ _____ plus 20% fee: _____ \$ _____

Payment Terms: _____ ☐ Set by SCDPPPS

Recipient: _____

*Fine:		\$
Fine may be pd. in equal consecutive weekly/monthly pmts. of	\$ _____	Beginning _____
§14-1-206 (Assessments 107.5%)		\$
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ <u>100.00</u>
§14-1-211 (A)(2)(DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§56-1-286 (DUI Breath Test)	\$25	\$
§14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§14-1-213 (Drug Court Surcharge)	\$150	\$
§34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)	\$41	\$
§50-21-114 (BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)	TBD	\$ <u>3.75</u>
☐ Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees	\$500	\$
☐ § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund	TBD	\$
TOTAL		\$ <u>128.75</u>

Clerk of Court/Deputy Clerk: _____
Court Reporter: _____

Melissa G. Burton
Anna Foster

Presiding Judge: _____
Judge Code: _____
Sentence Date: _____

[Signature]
#2732
4-16-24

342
STATE OF SOUTH CAROLINA
COUNTY OF OCONEE
STATE

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 20234537 01126

VS.
WILLIAM DAVID GUNN

AKA: David Gunn, William Daid Gunn
Race: White Sex: M Age: 38
DOB: [REDACTED] SS#: [REDACTED]
Address: [REDACTED]
City, State, Zip: [REDACTED]
DL# [REDACTED] SID# [REDACTED]

A/W#: 2023A3710200203
Date of Offense: 04/18/2023
S.C. Code §: 16-09-0320(A)
CDR Code #: 0326

SENTENCE SHEET

0-1

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the above indictment comes now the Defendant who was

☒ CONVICTED OF or ☐ PLEADS

TO: Resisting Arrest

In violation of § 16-09-0320(A) of the S.C. Code of Laws, bearing CDR Code # 0326

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ § 17-25-45

(CSC w/minor 1st or CSC w/minor 3rd)

The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)

The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Bethany Blundy, Assistant
Solicitor

SC Bar #

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Correction ☐ County Detention Center,

for a determinate term of 1 days/months/years Time Served ☐ Youthful Offender Act not to exceed ____ years

and/or to pay a fine of \$____; provided that upon the service of ____ days/months/years/Time Served and or payment

of \$____; plus costs and assessments as applicable*; the balance is suspended with probation for ____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

The sentence shall run

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by SCDOC.

363 days/months

☐ To include time spent on monitored house arrest prior to trial and sentencing.

☐ The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

✓

SPECIAL CONDITIONS:

☐ PTUP after _____ months/years

And Other Terms Listed Below:

- ☐ Substance Abuse Counseling ☐ Completion of GED ☐ Random Drug/Alcohol Testing
☐ Attend Voc. Rehab. Or Job Corp ☐ No Contact with Victim ☐ Domestic Violence Intervention Program
☐ Mental Health Counseling ☐ May serve W/E beginning: _____
☐ Sex Offender Registry pursuant to S.C. Code § 23-3-430 ☐ Public Service Employment _____ days/hours
☐ Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.
☐ Other: _____

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total \$ _____ plus 20% fee: _____ \$ _____

Payment Terms: _____ ☐ Set by SCDPPPS

Recipient: _____

*Fine:

Fine may be pd. in equal consecutive weekly/monthly pmts. of	\$	Beginning	\$
§14-1-206 (Assessments 107.5%)			\$
§14-1-211 (A)(1)(Conv. Surcharge)	\$100		\$ 100.00
§14-1-211 (A)(2)(DUI Surcharge)	\$100		\$
§56-5-2995 (DUI Assessment)	\$12		\$
§56-1-286 (DUI Breath Test)	\$25		\$
§14-1-212 (Law Enforce. Funding)	\$25		\$ 25.00
§14-1-213 (Drug Court Surcharge)	\$150		\$
§34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)	\$41		\$
§50-21-114 (BUI Breath Test Fee)	\$50		\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea		\$
3% to County (if paid in installments)	TBD		\$ 3.75
☐ Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees	\$500		\$
☐ § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund	TBD		\$
TOTAL			\$ 128.75

 Clerk of Court/Deputy Clerk: Melissa G. Burton
 Court Reporter: Anna Foster
Presiding Judge: [Signature]Judge Code: 2752Sentence Date: 4-16-24

344
STATE OF SOUTH CAROLINA
COUNTY OF OCONEE
STATE

VS.

WILLIAM DAVID GUNN

AKA: David Gunn, William Daid Gunn
Race: White Sex: M Age: 38
DOB: [REDACTED] SS#: [REDACTED]
Address: [REDACTED]
City, State, Zip: [REDACTED]
DL# [REDACTED] SID# [REDACTED]

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2023GS3701127

A/W#: 2023A3710200204
Date of Offense: 04/18/2023
S.C. Code §: 16-11-0020
CDR Code #: 0124

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the above indictment comes now the Defendant who was

☒ CONVICTED OF or ☐ PLEADS

TO: Possession of Tools Used in the Commission of a Crime

In violation of § 16-11-0020 of the S.C. Code of Laws, bearing CDR Code # 0124

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ § 17-25-45

(CSC w/minor 1st or CSC w/minor 3rd)

The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives
Presentment to Grand Jury. (def.'s initials)

The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature] William Gunn *[Signature]* Catherine AlWyx 73802
Bethany Blundy, Assistant SC Bar # Defendant Attorney for Defendant SC Bar #
Solicitor

WHEREFORE, the Defendant is committed to the ☒ State Department of Correction ☐ County Detention Center,

for a determinate term of 2 days/months/years Time Served ☐ Youthful Offender Act not to exceed ____ years

and/or to pay a fine of \$ ____; provided that upon the service of ____ days/months/years/Time Served and or payment

of \$ ____; plus costs and assessments as applicable*; the balance is suspended with probation for ____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

The sentence shall run

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on:

2023GS371124, 2023GS3701125

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by SCDoc.
363 days/months

☐ To include time spent on monitored house arrest prior to trial and sentencing.

☐ The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ PTUP after _____ months/years

And Other Terms Listed Below:

- ☐ Substance Abuse Counseling ☐ Completion of GED ☐ Random Drug/Alcohol Testing
- ☐ Attend Voc. Rehab. Or Job Corp ☐ No Contact with Victim ☐ Domestic Violence Intervention Program
- ☐ Mental Health Counseling ☐ May serve W/E beginning: _____
- ☐ Sex Offender Registry pursuant to S.C. Code § 23-3-430 ☐ Public Service Employment _____ days/hours
- ☐ Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.
- ☐ Other: _____

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total \$ _____ plus 20% fee: _____ \$ _____

Payment Terms: _____ ☐ Set by SCDPPPS

Recipient: _____

*Fine:		\$
Fine may be pd. in equal consecutive weekly/monthly pmts. of	\$ _____ Beginning	_____
§14-1-206 (Assessments 107.5%)		\$
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ 100.00
§14-1-211 (A)(2)(DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§56-1-286 (DUI Breath Test)	\$25	\$
§14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§14-1-213 (Drug Court Surcharge)	\$150	\$
§34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)	\$41	\$
§50-21-114 (BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)	TBD	\$ 3.75
☐ Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees	\$500	\$
☐ § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund	TBD	\$

TOTAL \$ 128.75

Clerk of Court/Deputy Clerk: _____
Court Reporter: _____*Melissa C. Burton*
*Anna Foster*Presiding Judge: _____
Judge Code: _____
Sentence Date: _____*RD*
2752
4/16/2024

CERTIFICATE OF COUNSEL FOR APPELLANT

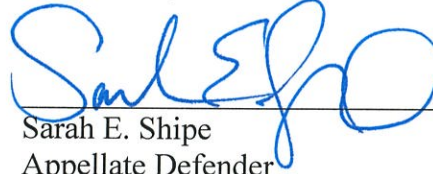
Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

RECEIVED

Aug 21 2026

SC Court of Appeals

Respectfully Submitted,



Sarah E. Shipe
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR APPELLANT

This 21st day of August, 2026.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED
Aug 21 2026
SC Court of Appeals

Appeal from Oconee County

Honorable R. Scott Sprouse, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

WILLIAM DAVID GUNN,

APPELLANT

APPELLATE CASE NO. 2024-001358

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Record on Appeal in the above-referenced case has been served upon Mark Farthing, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on William David Gunn, #308373, at Evans Correctional Institution, 610 Hwy. 9 West, Bennettsville, SC 29512, this 21st day of August, 2026.



Sarah E. Shipe
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR APPELLANT