

ORIGINAL

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY

William Jeffrey Young, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

WILLIAM EDWARD PRICE,

APPELLANT

APPELLATE CASE NO. 2013-000185

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSIONS
COUNTY OF BEAUFORT) IND. NO.: 2012-GS-07-01104

STATE OF SOUTH CAROLINA,)
)
)
) vs.) TRANSCRIPT OF RECORD
)
WILLIAM EDWARD PRICE,)
)
) DEFENDANT.)
)

January 22 & 23, 2013
Beaufort, South Carolina

B E F O R E:

THE HONORABLE W. JEFFREY YOUNG, JUDGE

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1 **THE COURT:** All right, Madam Solicitor, are you ready
2 to call your first case?

3 **ASSISTANT SOLICITOR CONCANNON:** Yes, Your Honor. The
4 State calls State v. William Edward Price.

5 **THE COURT:** You can pass up the indictment, please.

6 **ASSISTANT SOLICITOR CONCANNON:** My apologies, Your
7 Honor. The indictment is on its way.

8 **THE COURT:** Does anybody have a copy of the
9 indictment?

10 **ASSISTANT SOLICITOR CONCANNON:** I have a copy.

11 **THE COURT:** I just need a copy so I can read it.

12 **ASSISTANT SOLICITOR CONCANNON:** Okay.

13 **THE COURT:** Thank you. Okay.

14 All right, ladies and gentlemen, we are about to
15 begin the trial of State versus William Edward Price, and
16 he is charged under Indictment 2012-GS-70-1104 and the
17 indictment reads as follows: That in Beaufort County on
18 or about 2012 5 10, would that be May 10, 2012?

19 **ASSISTANT SOLICITOR CONCANNON:** Yes, sir, Your Honor.

20 **THE COURT:** That the defendant, William Edward Price,
21 did enter the dwelling of Carolyn Lyn located at
22 , Beaufort, South Carolina, without consent
23 and with the intent to commit a crime therein, in
24 violation of Section 16-11-312(a) and 16-1-80 of South
25 Carolina Code of Laws 1976, as amended.

1 Now, ladies and gentlemen, let me remind you that the
2 fact that the defendant was arrested, charged, and
3 indicted in no way is indicative that he is guilty of this
4 charge. Ladies and gentlemen, the indictments are simply
5 the charging papers that brings this case into court. The
6 defendant has pled not guilty, therefore, the State has
7 the burden of proving his guilt beyond a reasonable doubt.

8 Now, ladies and gentlemen, before we select our jury,
9 there are several questions that I will need to ask you,
10 and I will remind you that you are still under oath from
11 earlier today. And again, the reason that you are under
12 oath is because this is such a critical stage of the
13 trial.

14 You know, just like a building must have a firm
15 foundation to be strong and protective of those who live
16 in it, so a jury must be strong as a basis for a fair and
17 impartial trial for those who participate, which would be
18 the State, or the solicitor for the State, and the
19 defendant who is on trial, and your answer to these
20 questions are going to help them select a jury that will
21 be unbiased and will diligently listen to the evidence and
22 render a true and just verdict.

23 The first question I have is, has any member of the
24 jury panel ever been related by blood or marriage or had a
25 close business or personal relationship with the

1 defendant, William Edward Price, who is sitting with his
2 attorney over at this right table, or with the alleged
3 victim, Ms. Carolyn Lyn? So if any member of the jury
4 panel knows either of these people professionally or
5 personally or related by blood or marriage, please stand
6 at this time.

7 (NO RESPONSE.)

8 **THE COURT:** Okay, thank you. No one is standing.

9 Ladies and gentlemen, this is a list of possible
10 witnesses in this trial. Let me read through the list and
11 then I'm going to ask you the same question. Melanie
12 Smith of the Beaufort County Sheriff's Office;
13 Investigator John Kelleher of the Beaufort County
14 Sheriff's Office; Sergeant Robert DiCarlo of the Beaufort
15 County Sheriff's Office; Mark David Lyn, Jr.; Carolyn Lyn,
16 who I've already named; Patricia Price of Beaufort; Chris
17 Hamilton of Beaufort; Kevin F. Crouse, Jr., of Beaufort;
18 and Lori VanWallendael of Charlotte, North Carolina. Does
19 any member of the jury panel know any of these witnesses,
20 or related by blood or marriage or have a personal, close
21 relationship?

22 Yes, sir, on the left in the blue striped shirt?

23 **JUROR:** Yes, I ---

24 **THE COURT:** Yes. His is solid.

25 **JUROR:** Yes, his is solid.

1 **THE COURT:** What's your name?

2 **JUROR:** Hector Avila, Juror Number 8, and I know Mr.
3 Robert DiCarlo.

4 **THE COURT:** Would the fact that you know Mr. Robert
5 DiCarlo make it so that you can't be fair and impartial to
6 the State or the defense?

7 **JUROR:** No.

8 **THE COURT:** You can be?

9 **JUROR:** I can be.

10 **THE COURT:** Okay, very well. Thank you, sir. Please
11 be seated.

12 Yes, sir? State your name and number please.

13 **JUROR:** 296 and Charles Steedley. In my position at
14 the fire department, I work very close with Bob DiCarlo.

15 **THE COURT:** Okay.

16 **JUROR:** I served on his board.

17 **THE COURT:** Okay. Does the fact that you know Bob
18 DiCarlo, who is apparently an officer in this case, make
19 it so that you can't be fair and impartial to both the
20 State and the defense of this case?

21 **JUROR:** No, it doesn't.

22 **THE COURT:** Okay. Thank you very much, sir.

23 Thank you, ladies and gentlemen. The attorneys who
24 will be trying this case are Mary Concannon of the
25 Fourteenth Solicitor's -- Fourteenth Circuit Solicitor's

1 Office and Mr. Andrew Platte of Speights and Runyan Law
2 Firm for the defendant. Is there any member of the jury
3 panel who has been represented by either of these
4 attorneys or their law firm? If so, please stand.

5 (NO RESPONSE.)

6 **THE COURT:** Okay. Thank you.

7 Has any member of the jury panel formed or expressed
8 any opinion about any issue involved in this case? If so,
9 please stand.

10 (NO RESPONSE.)

11 **THE COURT:** All right. Has any member of the jury
12 panel ever been the victim of a violent crime? If so,
13 please stand.

14 Yes, ma'am? Would you like to speak to me privately
15 up here?

16 **JUROR:** (NODDED AFFIRMATIVELY.)

17 (WHEREUPON, THE FOLLOWING PROCEEDINGS WERE HELD ON
18 THE RECORD AT THE BENCH OUT OF THE HEARING OF THE
19 REMAINING JURY PANEL:)

20 **CLERK:** Juror 153, Ms. Hoyl.

21 **THE COURT:** Ms. Hoyl, come here please.

22 Yes, ma'am?

23 **JUROR:** I was ---

24 **THE COURT:** They need to hear it too, so.

25 **JUROR:** Many years ago, I was the victim of a rape.

1 **THE COURT:** Okay. This is a burglary trial. Would
2 the fact that you had that happen to you a number of years
3 ago make it so that you can't be fair and impartial?

4 **JUROR:** No. If it were a rape trial, it would be
5 kind of different.

6 **THE COURT:** But you think you can be fair and
7 impartial?

8 **JUROR:** Yes.

9 **THE COURT:** Okay. Well, thank you.

10 **JUROR:** Okay.

11 **THE COURT:** She is qualified.

12 **CLERK:** Juror Number 316, Mr. Van Tiem.

13 **THE COURT:** Good morning, sir.

14 **JUROR:** Good morning, Your Honor. Yes, I was, uh, I
15 was in college and I was robbed at gun point.

16 **THE COURT:** Okay. Will the fact that you were robbed
17 at gun point a couple of years ago make it so that you
18 couldn't be fair and impartial?

19 **JUROR:** I think I will be fine, Your Honor.

20 **THE COURT:** Okay. Thank you.

21 All right, this juror says he can be fair and
22 impartial. Thank you.

23 (WHEREUPON, THE FOLLOWING PROCEEDINGS WERE HELD ON
24 THE RECORD IN THE HEARING AND PRESENCE OF THE JURY PANEL:)

25 **THE COURT:** Is any member of the jury panel aware of

1 any bias or prejudice towards either the State or the
2 defendant in this matter? If so, please stand.

3 (NO RESPONSE.)

4 **THE COURT:** Thank you. No one is standing.

5 Is any member of the jury also a member of the Grand
6 Jury that indicted this case? If so, please stand.

7 (NO RESPONSE.)

8 **THE COURT:** Thank you. No one is standing.

9 Is there any member of the jury panel who is a member
10 of or contributor to any group which has as its primary
11 concern the promotion of law enforcement or victims'
12 rights? These groups would include, and certainly
13 wouldn't be exclusively, Mothers Against Drunk Drivers,
14 Students Against Drunk Drivers, or Citizens Against
15 Violent Crimes? If so, please stand.

16 Yes, ma'am?

17 **JUROR:** I contribute to the Women's Crisis Center, um
18 which is ---

19 **THE COURT:** Okay. What's your name again, please?

20 **JUROR:** Hoyl, Number 153.

21 **THE COURT:** Okay.

22 **JUROR:** And I also contribute to the sheriff's
23 department.

24 **THE COURT:** Okay. And the fact that you do that,
25 would that make it so that you could not be fair and

1 impartial to the State or the defense?

2 JUROR: No.

3 THE COURT: Thank you, ma'am.

4 Does any member of the jury panel know of any reason
5 whatsoever why he or she should not serve as a juror in
6 this case, with particular emphasis being placed upon your
7 ability to be fair and impartial to both the State and the
8 defendant? If so, please stand.

9 (NO RESPONSE.)

10 THE COURT: Okay. Thank you. Does the State have
11 any additional questions it would like me to ask?

12 ASSISTANT SOLICITOR CONCANNON: No, Your Honor.

13 THE COURT: Does the defense have any additional
14 questions it would like me to ask?

15 MR. PLATTE: No, Your Honor.

16 THE COURT: Okay. Let me see the attorneys for one
17 quick question.

18 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE
19 RECORD AND OUT OF THE HEARING OF THE JURY PANEL.
20 THEREAFTER, THE FOLLOWING PROCEEDINGS WERE HELD ON THE
21 RECORD IN THE PRESENCE AND HEARING OF THE JURY PANEL:)

22 THE COURT: All right, ladies and gentlemen, what's
23 going to happen now is the computer is going to give us a
24 list of the possible jurors. When your name is called
25 please -- how do they do it here? I see y'all don't have

1 a center place for them to come down. Do they just stand
2 in their place?

3 **CLERK:** It's up to you, Judge. Some judges like for
4 them to come up and face the jury panel. Some just have
5 them stand where they are.

6 **THE COURT:** There's a lot of y'all out there, so I'm
7 just going to let y'all stand. So when your name is
8 called, please just stand and the attorneys will then have
9 an opportunity to look at your record and then they will
10 strike you or place you on the jury.

11 Please don't take it personally if you are stricken
12 from the jury. Each attorney has some idea as to what
13 they think would make the best juror for their cause, and
14 it's just nothing personal in this.

15 We will select twelve primary jurors and one
16 alternate juror. So, are we ready to proceed?

17 **CLERK:** I'm printing it now.

18 **THE COURT:** Okay. Thank you.

19 **CLERK:** We're ready.

20 **THE COURT:** Okay.

21 **CLERK:** Juror Number 268, Walter Ryals.

22 What says the State?

23 **ASSISTANT SOLICITOR CONCANNON:** Please present the
24 juror.

25 **CLERK:** What says the defense?

1 **MR. PLATTE:** Seat the juror.
2 **CLERK:** Come on up, sir.
3 **THE COURT:** Bring any personal items you have with
4 you.
5 **CLERK:** Juror Number 299, Weston Sumner.
6 What says the State?
7 **ASSISTANT SOLICITOR CONCANNON:** Please present the
8 juror.
9 **CLERK:** What says the defense?
10 **MR. PLATTE:** Seat the juror.
11 **CLERK:** Please come up, sir.
12 Juror Number 343, James Wood.
13 What says the State?
14 **ASSISTANT SOLICITOR CONCANNON:** Please present the
15 juror.
16 **CLERK:** What says the defense?
17 **MR. PLATTE:** Seat the juror.
18 **CLERK:** Juror Number 156, Karen Hyska.
19 What says the State?
20 **ASSISTANT SOLICITOR CONCANNON:** Please present the
21 juror.
22 **CLERK:** What says the defense?
23 **MR. PLATTE:** Please strike the juror.
24 **CLERK:** Juror Number 122, Donald Gergle.
25 What says the State?

1 **ASSISTANT SOLICITOR CONCANNON:** Please present the
2 juror.

3 **CLERK:** What says the defense?

4 **MR. PLATTE:** Please strike the juror.

5 **CLERK:** Juror Number 187, Deron Mack.

6 What says the State?

7 **ASSISTANT SOLICITOR CONCANNON:** Please present the
8 juror.

9 **CLERK:** What says the defense?

10 **MR. PLATTE:** Seat the juror.

11 **CLERK:** Juror Number 170, Paul Kositzka.

12 What says the State?

13 **ASSISTANT SOLICITOR CONCANNON:** Please present the
14 juror.

15 **CLERK:** What says the defense?

16 **MR. PLATTE:** Please strike the juror.

17 **CLERK:** Juror Number 318, Linda Walker.

18 What says the State?

19 **ASSISTANT SOLICITOR CONCANNON:** Please present the
20 juror.

21 **CLERK:** What says the defense?

22 **MR. PLATTE:** Strike the juror.

23 **CLERK:** Juror Number 300, Marcia Sundling.

24 What says the State?

25 **ASSISTANT SOLICITOR CONCANNON:** Please present the

1 juror.

2 CLERK: What says the defense?

3 MR. PLATTE: Seat the juror.

4 CLERK: Juror Number 189, Margaret Manuel.

5 What says the State?

6 ASSISTANT SOLICITOR CONCANNON: Please present the
7 juror.

8 CLERK: What says the defense?

9 MR. PLATTE: Seat the juror.

10 CLERK: Juror Number 194, Larry Masters.

11 What says the State?

12 ASSISTANT SOLICITOR CONCANNON: Please present the
13 juror.

14 CLERK: What says the defense?

15 MR. PLATTE: Strike the juror.

16 CLERK: Juror Number 41, Kathy Brown.

17 What says the State?

18 ASSISTANT SOLICITOR CONCANNON: Please present the
19 juror.

20 CLERK: What says the defense?

21 MR. PLATTE: Seat the juror.

22 CLERK: Juror Number 86, Marietta Dennis.

23 What says the State?

24 ASSISTANT SOLICITOR CONCANNON: Please present the
25 juror.

1 **CLERK:** What says the defense?

2 **MR. PLATTE:** Strike the juror.

3 **CLERK:** Juror Number 105, Eric Fawbush.

4 What says the State?

5 **ASSISTANT SOLICITOR CONCANNON:** Please present the

6 juror.

7 **CLERK:** What says the defense?

8 **MR. PLATTE:** Seat the juror.

9 **CLERK:** Juror Number 49, Mary Campbell.

10 What says the State?

11 **ASSISTANT SOLICITOR CONCANNON:** Please present the

12 juror.

13 **CLERK:** What says the defense?

14 **MR. PLATTE:** Seat the juror.

15 **CLERK:** Juror Number 193, James Mason.

16 What says the State?

17 **ASSISTANT SOLICITOR CONCANNON:** Please present the

18 juror.

19 **CLERK:** What says the defense?

20 **MR. PLATTE:** Strike the juror.

21 **CLERK:** Juror Number 75, Donald Cullen.

22 What says the State?

23 **ASSISTANT SOLICITOR CONCANNON:** Please present the

24 juror.

25 **CLERK:** What says the defense?

1 **MR. PLATTE:** Strike the juror.

2 **CLERK:** Juror Number 233, Sean O'Sullivan.

3 What says the State?

4 **ASSISTANT SOLICITOR CONCANNON:** Please present the
5 juror.

6 **CLERK:** What says the defense?

7 **MR. PLATTE:** Strike the juror.

8 **CLERK:** Juror Number 144, Mark Heck.

9 What says the State?

10 **ASSISTANT SOLICITOR CONCANNON:** Please present the
11 juror.

12 **CLERK:** What says the defense?

13 **MR. PLATTE:** Seat the Juror.

14 **CLERK:** Juror Number 211, Cathy Mildren.

15 What says the State?

16 **ASSISTANT SOLICITOR CONCANNON:** Please present the
17 juror.

18 **CLERK:** What says the defense?

19 **MR. PLATTE:** Seat the juror.

20 **CLERK:** Juror Number 21, Joseph Billitteri.

21 What says the State?

22 **ASSISTANT SOLICITOR CONCANNON:** Please present the
23 juror.

24 **CLERK:** What says the defense?

25 **MR. PLATTE:** Strike the juror.

1 **CLERK:** Juror Number 247, Marnita Powell.
2 What says the State?
3 **ASSISTANT SOLICITOR CONCANNON:** Please present the
4 juror.
5 **CLERK:** What says the defense?
6 **ASSISTANT SOLICITOR CONCANNON:** Seat the Juror.
7 **THE COURT:** One alternate. Two and one.
8 **CLERK:** Now for the alternate?
9 **THE COURT:** Yes, do an alternate. Two and one --
10 excuse me, one and two.
11 **CLERK:** Juror Number 153, Edwina Hoyle.
12 What says the State?
13 **ASSISTANT SOLICITOR CONCANNON:** Please present the
14 juror.
15 **CLERK:** What says the defense?
16 **MR. PLATTE:** Strike the juror.
17 **CLERK:** Juror Number 243, Stephanie Pivirotto.
18 What says the State?
19 **ASSISTANT SOLICITOR CONCANNON:** Please present the
20 juror.
21 **CLERK:** What says the defense?
22 **MR. PLATTE:** What number?
23 **CLERK:** 243.
24 **MR. PLATTE:** Seat the juror.
25 **THE COURT:** If you'll please call out the names of

1 all the jurors to make sure we have it accurate?

2 **CLERK:** The ones that we struck?

3 **THE COURT:** No, the ones we selected.

4 **CLERK:** The ones we selected.

5 Juror Number 268, Walter Ryals; Juror 299, Weston

6 Sumner, ---

7 **THE COURT:** Please raise your hand.

8 **CLERK:** Juror number 2 -- I'm sorry, Juror Number
9 343, James Wood; Juror Number 187, Deron Mack; Juror
10 Number 300, Marcia Sundling; Juror Number 189, Margaret
11 Manuel; Juror Number 41, Kathy Brown; Juror Number 105,
12 Eric Fawbush; Juror Number 49, Mary Campbell; Juror Number
13 144, Mark Heck; Juror Number 211, Cathy Mildren; Juror
14 Number 247, Marnita Powell; and Alternate Juror Number
15 243, Stephanie Pivirotto.

16 **THE COURT:** All right. Thank you.

17 Ladies and gentlemen, y'all have been selected as the
18 jury for this case. At this moment I'm going to send you
19 back into the jury room for just a few minutes while we
20 take up a few matters here.

21 While you are back there, if you could talk amongst
22 yourselves only about who you want to be your foreperson,
23 and that would be the person who would be your spokesman
24 here in court and would be responsible for the verdict.
25 It cannot be the alternate. It has to be one of the

1 twelve primary jurors.

2 And when you come back in, y'all can all sit wherever
3 you want to, except for you as the alternate, you will
4 always sit up on the top row. The foreperson will sit in
5 the seat that you are in right now. They will sit on the
6 front in that seat. I'm going to send you back for just a
7 few minutes, and then I'll bring you back out here and
8 tell you a little bit more.

9 All right. Thank you.

10 (JANUARY 22, 2013, 11:46 P.M., WHEREUPON, THE JURY
11 RETIRES FROM THE COURTROOM, AND THE FOLLOWING
12 PROCEEDINGS WERE HELD OUT OF THEIR PRESENCE.)

13 **BAILIFF:** The jury is clear, Your Honor.

14 **THE COURT:** All right. Thank you.

15 Are there any objections to the jury that has been
16 selected or the manner in which they have been selected?
17 From the State?

18 **ASSISTANT SOLICITOR CONCANNON:** None from the State.

19 **THE COURT:** From the defense?

20 **MR. PLATTE:** None from the defense.

21 **THE COURT:** All right. So that will be our jury.

22 Now, ladies and gentlemen, that's your week for jury
23 duty. I hope y'all have a nice week. Thank you very much
24 for coming today and participating.

25 I'm sure in a little while or in a couple of years

1 you might get another notice to come back here. I hope
2 you will have as good of an experience. I won't tell
3 anybody you're off the rest of the week, but you know,
4 that will be up to y'all. Y'all have a nice week. Thank
5 you.

6 (WHEREUPON, THE REMAINING JURY PANEL WAS RELEASED.
7 THEREAFTER, THE FOLLOWING PROCEEDINGS WERE HELD ON THE
8 RECORD OUT OF THE PRESENCE OF THE JURY:)

9 THE COURT: Do y'all have some motions that y'all
10 need to take up before we start the case?

11 ASSISTANT SOLICITOR CONCANNON: I believe we do, Your
12 Honor.

13 THE COURT: Okay.

14 ASSISTANT SOLICITOR CONCANNON: My witnesses, some of
15 whom are victims as well as law enforcement, weren't told
16 to be back until 1:45 today.

17 THE COURT: Okay. Well, that is what I was expecting
18 that we would do. We'll start the trial at 2:00 o'clock.

19 ASSISTANT SOLICITOR CONCANNON: All right.

20 THE COURT: And we'll bring the jury back in and then
21 I'll swear them at 2:00 o'clock, and we'll take up our
22 motions at this point in time and we'll start the trial at
23 2:00.

24 ASSISTANT SOLICITOR CONCANNON: Well, my witnesses
25 are -- they need to be here for the motions, the Jackson

1 v. Denno and the Biggers Hearing and whatnot.

2 MR. PLATTE: There's actually a couple motions that
3 we could probably handle ---

4 THE COURT: Yeah, are there any motions ---

5 MR. PLATTE: --- without witnesses.

6 THE COURT: Let me go ahead and bring the jury back
7 out so I can send them to lunch.

8 Bailiffs, bring our jury back in.

9 BAILIFF: Yes, Your Honor.

10 THE COURT: Thank you.

11 I guess I better say 2:30 for them to be back.

12 BAILIFF: Jury is ready to enter.

13 THE COURT: All right. Please bring them in.

14 (JANUARY 22, 2013, 11:52 A.M., WHEREUPON, THE JURY
15 ENTERS THE COURTROOM, AND THE FOLLOWING PROCEEDINGS
16 WERE HELD IN THEIR PRESENCE.)

17 BAILIFF: The jury is present. They haven't chosen a
18 foreperson.

19 THE COURT: Y'all didn't pick a foreperson? Y'all
20 need a little more time to do that?

21 JURORS: (NODDED AFFIRMATIVELY.)

22 THE COURT: Okay. Y'all have a seat, please.

23 Okay. What I'm going to do is I'm going to release
24 you for lunch right now. Y'all go have lunch.

25 Be back here just a little bit before 2:30. So be

1 back here about 2:15, and at that time y'all need to
2 select your foreperson.

3 Y'all can think about it over lunch and then when you
4 get back together, select who your foreperson is. If you
5 don't, I'll select one of you. So that will just make it
6 easier for you.

7 So, ladies and gentlemen, have a nice lunch. Please
8 do not discuss anything about this case with anyone while
9 you have your lunch and be back here about 2:15. All
10 right? Thank you.

11 (JANUARY 22, 2013, 11:54 A.M., WHEREUPON, THE JURY
12 RETIRES FROM THE COURTROOM, AND THE FOLLOWING
13 PROCEEDINGS WERE HELD OUT OF THEIR PRESENCE.)

14 BAILIFF: The jury is clear Your Honor.

15 THE COURT: All right. What's the first motion we
16 can do without the witnesses?

17 MR. PLATTE: The first two motions I think we can
18 dispense with pretty quickly, Your Honor.

19 THE COURT: All right.

20 MR. PLATTE: They are just motions in limine to
21 restrict the reference to the prior record of my client.
22 He doesn't plan on testifying, so we don't see ---

23 THE COURT: And I'll go through those questions with
24 him at close of the case, in case he changes his mind.

25 MR. PLATTE: And the second motion is for the

1 solicitor and all witnesses to, if my client's statement
2 is admitted, to refer to as a statement and not a
3 confession.

4 THE COURT: All right. Do you have any problems with
5 that?

6 ASSISTANT SOLICITOR CONCANNON: No, Your Honor.

7 THE COURT: Well, that's easy. Is that the only ones
8 we can -- do y'all have any motions that y'all need heard?

9 MR. PLATTE: There's one more, Your Honor. This one
10 is a little bit more. It's a motion to compel the
11 production of the criminal record of the eyewitness, Mark
12 David Lyn, Jr. Um, in my motion for -- my Rule 5
13 discovery that I served on the solicitor back in -- the
14 18th of October, 2012, Item Number 13 was the criminal
15 records, either juvenile or adult, of such witnesses.

16 Um, they provided a rap sheet, but I had also
17 requested the actual records of the case. Since he's
18 going to be an eyewitness testifying, I think I'm --
19 I'm -- I should be allowed to look at the records in order
20 to find out who the arresting officers were and other
21 facts that might lead to bias or prejudice that might
22 taint his testimony.

23 THE COURT: Okay.

24 Madam Solicitor?

25 ASSISTANT SOLICITOR CONCANNON: Thank you, Your

1 Honor.

2 **THE COURT:** I think the Supreme Court has pretty much
3 said if his record is available, but what is your position
4 on what they want?

5 **ASSISTANT SOLICITOR CONCANNON:** Well, the State's
6 position is that Mr. Platte does have a rap sheet as of
7 this morning on David Lyn, who is our witness.

8 We would turn the Court to 63-19-210, as well as
9 63-19-220, and I have a hard copy of it for Your Honor, if
10 you would like it.

11 **THE COURT:** Okay.

12 **ASSISTANT SOLICITOR CONCANNON:** And it just states
13 that he is a juvenile. He was only sixteen years old at
14 the time -- as of today. We would argue that his actual
15 files remain sealed, absent a court order.

16 Also, I am not entirely sure -- anything Mr. Platte
17 would like to get out of those files, he has from the
18 convictions. And I would also ask that any reference to
19 David Lyn's prior convictions remain as to the
20 convictions, not to any specifics regarding details of
21 each ---

22 **THE COURT:** Well, all he is asking for right now is
23 to look at it. Is that correct?

24 **MR. PLATTE:** Yes, Your Honor.

25 **THE COURT:** Well, I'm going to let Mr. Platte look at

1 it. So I'm going to unseal the record and let him look at
2 it with -- under confidentiality. You will not further
3 disclose it ---

4 **MR. PLATTE:** Yes, Your Honor.

5 **THE COURT:** --- to anyone, but I will let you look at
6 it. There may be something in there, but I think the
7 defendant has the right to at least look.

8 And whether or not he is going to be able to question
9 him any further than the convictions remains to be
10 determined. But at this point in time, I'm going to at
11 least let him look at it between now and when we start the
12 trial at 2:30.

13 **ASSISTANT SOLICITOR CONCANNON:** I do not physically
14 have it. I have not seen this file. I can try to get in
15 touch with our juvenile solicitor.

16 **THE COURT:** It is somewhere in this courthouse; isn't
17 it?

18 **ASSISTANT SOLICITOR CONCANNON:** I can get a copy of
19 it from our juvenile solicitor.

20 **THE COURT:** Okay. All right.

21 That will be allowed. Again, you will not further
22 disclose anything.

23 **MR. PLATTE:** Yes, Your Honor. If there is anything
24 that is in there, I will come before the Court and we can
25 discuss it then.

1 **THE COURT:** Sure. Okay.

2 Is there anything else we need to take care of until
3 the Jackson v. Denno Hearing?

4 **ASSISTANT SOLICITOR CONCANNON:** Nothing from the
5 State.

6 **THE COURT:** All right. Then y'all need to be ready
7 to go at 2:45, um, excuse me, 1:45, on the Jackson v.
8 Denno.

9 And that's the only other motion?

10 **MR. PLATTE:** Um, there is actually a motion to compel
11 a video, but it regards one of the witnesses for the State
12 and since he's not here, I don't think it's worth talking
13 about at this point.

14 **THE COURT:** Okay.

15 **MR. PLATTE:** We can discuss it when we come back
16 after lunch.

17 **THE COURT:** All right. Sounds good. I'll see y'all
18 at 1:45. Thank you.

19 **ASSISTANT SOLICITOR CONCANNON:** Thank you, Your
20 Honor.

21 **MR. PLATTE:** Thank you, Your Honor.

22 **THE COURT:** The Court stands at ease until 1:45.

23 (WHEREUPON, A BREAK WAS TAKEN. THEREAFTER, THE
24 FOLLOWING PROCEEDINGS WERE HELD ON THE RECORD OUT OF THE
25 PRESENCE OF THE JURY:)

1 **THE COURT:** All right. Are we ready to proceed?

2 **ASSISTANT SOLICITOR CONCANNON:** I believe so.

3 **THE COURT:** All right. What would be your next
4 motion, Mr. Platte?

5 **MR. PLATTE:** Your Honor, I think in terms of how we
6 should do this, the next motion should be the motion to
7 compel the video from Sergeant DiCarlo.

8 **THE COURT:** Okay.

9 **MR. PLATTE:** Um, we have asked -- he had made a
10 statement in his police report that he had recorded my
11 client waiving his Miranda rights and maybe recording some
12 other things.

13 Um, that video was never entered into evidence. It
14 wasn't saved, it has now been deleted. They can't find it
15 and um, I was, that's -- you know, that's what they say.
16 I just want to get the Court to see if there is anything
17 ---

18 **THE COURT:** Is there a video or is that a statement
19 made in error?

20 **ASSISTANT SOLICITOR CONCANNON:** There initially was a
21 video automatically recorded; however, it was not set --
22 it was not placed into evidence. I never saw it. When it
23 became an issue and we tried to find it off of their
24 computer system, their data, it was no longer available
25 because so much time had elapsed.

1 **THE COURT:** Okay. Do you expect there to be
2 exculpatory information on that, or I mean, unlike a DUI
3 case where it actually shows the scene, I guess they're
4 probably going to have testimony that he waived his
5 Miranda rights. Is there a documentation of that, as
6 well?

7 **MR. PLATTE:** Well -- the -- the -- the reason why,
8 the main reason is, is there was documentation that it was
9 done nine hours later, a form that he filled out and
10 initialed the side, but up until that point there was
11 nothing in writing. There was just this video that
12 Sergeant DiCarlo said that he made. On the audio
13 statement with Investigator Kelleher, he mentioned
14 something about: You waived your rights? Okay.

15 So there is no real definitive statement that he was
16 ever Mirandized, was read his rights. We don't know if
17 there was any coercion involved, but then there's this
18 Miranda statement waiving it.

19 This -- this occurred about 9:00 o'clock in the
20 morning. At 5:00 o'clock in the afternoon, after his
21 processing, they had him sign a Miranda Waiver.

22 **THE COURT:** Well, there's no question that's his
23 signature?

24 **MR. PLATTE:** At that point.

25 **THE COURT:** Right.

1 **MR. PLATTE:** There's no statements after that point
2 either. This all happened at 9:00 o'clock in the morning,
3 not 5:00 o'clock in the afternoon.

4 **THE COURT:** Well, let's just have a hearing on his
5 statement then, itself. Just because -- it's not required
6 that the giving of the Miranda be videotaped. As long as
7 they are not trying to use it in some way, in other words,
8 you are not prejudiced by that.

9 **MR. PLATTE:** Understood.

10 **THE COURT:** Okay.

11 All right. Are y'all ready to present testimony
12 concerning the statement that was given?

13 **ASSISTANT SOLICITOR CONCANNON:** We can do that.

14 **THE COURT:** All right.

15 **ASSISTANT SOLICITOR CONCANNON:** Sergeant DiCarlo is
16 here and ready to testify.

17 **(JACKSON V. DENNO HEARING)**

18 **THE COURT:** Call your first witness.

19 **ASSISTANT SOLICITOR CONCANNON:** The State calls
20 Sergeant Robert DiCarlo.

21 **CLERK:** Would you place your left hand on the Bible
22 and raise your right hand for me, please?

23 ROBERT DICARLO, after being duly sworn,
24 testified as follows:

25 **CLERK:** Please be seated and state your name and

1 spell it for the court reporter.

2 **WITNESS:** Staff Sergeant Robert DiCarlo.

3 **ASSISTANT SOLICITOR CONCANNON:** I'm sorry, Your
4 Honor. I just wanted to -- do we want to get out all of
5 the statements through all of the officers?

6 **THE COURT:** Well, you can ask while you've got him on
7 the stand -- is he -- is he going to have all of the
8 statements?

9 **ASSISTANT SOLICITOR CONCANNON:** He has some. Some of
10 the statements were also made to Investigator Kelleher.

11 **THE COURT:** Okay. Then we will go ahead.

12 **ASSISTANT SOLICITOR CONCANNON:** Okay. Thank you.

13 DIRECT EXAMINATION

14 BY ASSISTANT SOLICITOR CONCANNON:

15 **Q** Good morning, Sergeant -- good afternoon, Sergeant
16 DiCarlo.

17 **A** Good afternoon.

18 **Q** Are you currently employed with the Beaufort County
19 Sheriff's Office?

20 **A** I am.

21 **Q** And in what capacity are you employed with the
22 sheriff's office?

23 **A** Road Patrol Staff Sergeant.

24 **Q** Thank you. Were you working on May 10th of last
25 year, 2012?

1 A I was.

2 Q And were you involved in the investigation and
3 subsequent arrest of the defendant, William Price?

4 A I was.

5 Q Thank you. Did the defendant make any statements to
6 you?

7 A Uh, several inconsistent statements. Correct.

8 Q Prior to any statements or during the time these
9 statements were made, was the defendant in custody?

10 A Uh, he was not in custody until I was advised by an
11 officer who had the victim on scene that that was the
12 individual, at which point, I detained him.

13 Q Okay. And after you detained him, what did you do?

14 A I immediately advised him of his Miranda rights.

15 Q Did you read them from a card, or just ---

16 A Yes, I actually have the card with me right here.

17 Q Thank you. Could you go through the rights you read
18 him?

19 A It says: You have the right to remain silent.
20 Anything you say can and will be used against you in
21 court. You have the right to consult with an attorney and
22 have an attorney present during questioning. If you
23 cannot afford to hire an attorney, one can be provided to
24 you before questioning at no cost. Do you understand
25 these rights?

1 I wait for a response and then: With these rights in
2 mind, do you wish to speak with me now?

3 Q And did the -- I'm sorry. Did the defendant
4 acknowledge that he understood these rights?

5 A He did.

6 Q He did?

7 A Yes.

8 Q Was there a signed Miranda waiver?

9 A Not on scene, no.

10 Q Okay.

11 A Not by me.

12 Q Did the defendant then voluntarily begin to speak
13 with you after, post Miranda?

14 A He did.

15 Q And what sort of, what did he tell you?

16 A Uh, I began to question him as to his -- why he was
17 in the area at the time. When I pulled onto Hogarth
18 Street, I left the Law Enforcement Center when the call
19 came out, and the call came on as a burglary in progress.
20 Um, a white male was just observed by a victim, um,
21 breaking into a house, described as a white male, blue
22 t-shirt, blue jeans, dirty white sneakers.

23 And between the Law Enforcement Center and Hogarth
24 Street is maybe just over a mile or so. I turned, as I
25 turned right onto Hogarth Street, I immediately observed a

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1 suspect very closely matching the description that was
2 given out over the radio in communications.

3 Um, I stopped the individual and noticed that he was
4 sweating. He was a little bit out of breath. He had
5 some, what appeared to be, fresh dirt on the front of his
6 t-shirt, so I asked him what he was doing in the area.

7 Um, originally he said that he had just left his
8 house walking from Springfield Road where he lives at, uh,
9 and he was walking to Enterprise to rent a vehicle because
10 his uh previous vehicle had been in an accident.

11 Um, we continued some other conversations. Uh, again
12 I brought up what he was doing in the area again, um, and
13 he stated he again he had just -- he had -- he was walking
14 from the house and somebody picked him up, never at this
15 point who that somebody was, never actually really
16 explained where they picked him up, dropped him off at
17 Tiger Express, and that's as far as they could go with
18 him. But on that statement, he said he had left his house
19 at 7:00 o'clock, instead of the original 5:30 in the
20 morning.

21 Um, so it kind of really started raising my
22 suspicions as to the inconsistency of statements. Um, I
23 then asked him if he had gone into the Tiger Express um,
24 to purchase any items. He said he did. He purchased a
25 coke, glass coke bottle and a pack of New Port Red

1 Cigarettes. I asked how he paid for the items. He told
2 me in cash.

3 Um, I then questioned him about the dirt on his
4 t-shirt, and he stated that he had done yard work before
5 he left this morning. And I asked him again, you know,
6 what type of yard work or what time did you do the yard
7 work, and he was never able to tell me again an exact
8 time.

9 So, all of the inconsistent statements continued
10 raising my suspicion as to really what was going on. Um,
11 I had Corporal Cook, who was now on scene, go over to the
12 Tiger Express and meet with the store clerk to verify that
13 Mr. Price was or was not in the store purchasing items.
14 Mr. Cook did get the store clerk, brought her back, and
15 she actually did say that he was in there, but he was
16 accompanied with another older white female and the
17 purchase was actually the glass bottle coke, the New Port
18 Red Cigarettes, but there was also an ice tea and that the
19 older white female had paid for these items on her debit
20 card, um, and Mr. Price did not pay for them at all.

21 Um, we verified through Mr. Price's statements now
22 that it changed, that his mother had actually driven him
23 from his home to the Tiger Express with the intent of
24 meeting a friend in Pope Village to then continue to
25 Enterprise to rent the car. Uh, I asked Mr. Price for his

1 mom's cell number. He did provide it to me. I called
2 her. She was at Lowe's actually at the time. Uh, I
3 explained to her the scenario and the incident and what
4 was going on.

5 Um, she came back to the scene, at which point I met
6 with her and interviewed her. Um, she said that Mr. Price
7 had not -- had the intention of doing yard work that
8 morning but never had.

9 Um, I asked her if his shirt was dirty when she
10 dropped him off at the Tiger Express. She said, no, it
11 was not.

12 Um, I asked her about the purchase of the items. And
13 she said she did, in fact, purchase them.

14 Um, so with all the inconsistent statements at this
15 point, I went back to Mr. Price and advised him of the
16 penalties for providing false information, at which point
17 he stopped my interview completely and requested to speak
18 to Sergeant Kelleher alone.

19 Q Okay. And during this questioning, when was Miranda
20 read?

21 A Immediately when he was detained.

22 Q Immediately? So no questions took place prior to
23 Miranda being read?

24 A Other than the general, you know: Who are you? What
25 are you doing in the area?

1 But nothing -- nothing pertaining to ---

2 Q And the defendant never gave you any inclination that
3 he did not understand those rights, that he did not wish
4 to speak to you?

5 A Not at all.

6 Q Was there any other law enforcement around when you
7 were questioning the defendant?

8 A Yes, Corporal Cook was there. Uh, Corporal Nelson,
9 was there. There were, my best recollection, would be up
10 to four to five deputies, at least.

11 Q Okay. And this all happened in the proximity of the
12 Tiger Express and the Chinese Restaurant area?

13 A Yes. Almost -- literally, almost standing in the
14 roadway, yes.

15 Q Standing in the roadway in between the two?

16 A Correct.

17 Q Okay.

18 ASSISTANT SOLICITOR CONCANNON: Beg the Court's
19 indulgence?

20 THE COURT: Okay.

21 Q How long, in your opinion, were you questioning Mr.
22 Price, prior to when he stopped your questioning?

23 A Best guess would be fifteen minutes or so.

24 Q All right. And how close is this to the actual
25 incident location of .?

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1 A Within fifty to seventy-five yards, one hundred
2 yards.

3 Q Okay.

4 ASSISTANT SOLICITOR CONCANNON: I have no further
5 questions for this officer at this time.

6 THE COURT: Mr. Platte?

7 CROSS-EXAMINATION

8 BY MR. PLATTE:

9 Q Sergeant DiCarlo, you mentioned that Mr. Price was
10 sweating and out of breath. Um, about what time did you
11 arrive at the scene after the incident was called in?

12 A I believe the call came in about 8:48, roughly, and I
13 got there almost right at 9:00 o'clock.

14 Q So ---

15 A So within ten or fifteen minutes.

16 Q Do you have knowledge of when the incident actually
17 occurred and when the 911 call happened, in terms of when
18 the incident occurred versus when the 911 call was made?

19 A I -- we go by what our dispatch schedule says times,
20 you know, received and times dispatched.

21 Q So, it's fair to say that it's probably fifteen or
22 twenty minutes after the -- after the incident that you
23 arrived on scene.

24 A Very close to that, yes.

25 Q Can you tell me how -- what the weather was like on

1 May 10th, 2012, at about 9:00 o'clock when you arrived?

2 A My best guess it would be warm, but I don't recall
3 exactly how warm it was.

4 Q I actually got a copy of the weather report. I was
5 just -- the reason why I asked is that the weather in
6 South Carolina in May is warm and everybody -- I'm out at
7 8:00 o'clock in the morning and I'm sweating just taking
8 my dog out.

9 A Sure.

10 Q Would you mind taking a look at this? And this is a
11 weather summary for Beaufort, South Carolina, for
12 Thursday, May 10th, and um, just take a look at the hours
13 and temperature and tell me, does the hour and the
14 temperature that shows up there kind of correspond with
15 how warm you think it was?

16 A Well, I'm not -- it was almost nine months ago. I
17 don't recall exactly how warm it was.

18 Q So mid-seventies, probably a little humid. Make
19 sense? Is that -- is that -- is that from your
20 recollection?

21 A I really wasn't paying attention to how hot it was,
22 to be very honest.

23 Q You mentioned that where you detained him was about
24 fifty to seventy-five yards?

25 A I was kind of looking at it almost like a football

1 field, that far way.

2 Q Okay. Um, but you didn't -- you didn't walk off the
3 distance or ---

4 A No.

5 Q No. Okay. And you mentioned -- what was the color
6 of his t-shirt?

7 A Blue.

8 Q Blue. Dark blue, light blue, medium blue?

9 A Like a navy-bluish.

10 Q Like a navy, kind of like a darker blue. And you
11 said and mentioned there was -- there was dirt ---

12 A Right.

13 Q --- on his shirt. When you stopped and detained him,
14 you mentioned in your police report that when you -- it
15 was decided that he was going to be placed under arrest
16 and would be detained, that you turned on your in-car
17 video to record the Miranda rights.

18 A Right.

19 Q Um, so you don't carry around a little piece of paper
20 for him to initial and sign off on?

21 A Not usually on-scene. That's normally done at the
22 detention center. Uh, and I don't transport prisoners,
23 so.

24 Q So that's the reason why they -- there's a signed
25 waiver nine hours later in the police report, the waiver

1 of Miranda at 9:00 o'clock is because they did that at the
2 detention center just as part of procedure?

3 A I -- I could not speak on that. I wasn't present.

4 Q Do you normally start you in-car video when you
5 administer Miranda rights on suspects?

6 A Yes.

7 Q Do you ---

8 A And a lot times the camera is already running due to
9 that fact of how it's set up.

10 Q What's the -- what's the sheriff's department
11 procedure in terms of preserving that evidence?

12 A We will submit an in-car camera request. It goes up
13 the chain. The CD gets burned and it gets to us, at which
14 time we submit it to evidence.

15 Q In your experience, what percentage of cases does
16 that happen in? Fifty? A hundred percent? Seventy-five
17 percent?

18 A Meaning? I don't ---

19 Q The -- if there is a waiver of Miranda on the video,
20 how often does it get preserved in evidence?

21 A I would say almost all of the time.

22 Q Okay. So it's standard procedure for the sheriff's
23 department to preserve that video.

24 A Right.

25 Q After -- after you detained Mr. Price and

1 administered his Miranda rights and recorded the video,
2 did you turn the video off after the rights or did you let
3 it run so that when you talked with him you would have a
4 record?

5 A The only way you can turn on the video is you
6 actually open the car door and manually you turn it off,
7 and I never went back to my car until, you know, when I
8 was leaving, so.

9 Q So hypothetically speaking, that video would include
10 your discussions with Mr. Price, the waiver of his rights
11 ---

12 A Correct.

13 Q --- and any other statements that you made or he made
14 in that whole period of time.

15 A Correct.

16 Q Did you ever enter that evidence into -- did you ever
17 enter that video into evidence?

18 A I believe I did, but I cannot recall.

19 Q Okay. But it is your standard procedure or your
20 sheriff's department that you shall do that?

21 A Well, it's not in our policy procedure manual, but it
22 is a chain of custody for evidence. Correct.

23 Q But you didn't do that?

24 A Like I said, I thought I had. I don't recall whether
25 it just didn't happen. I know we turn in dozens of pieces

1 of evidence in a course of nine months, so I don't recall.

2 Q I completely -- I mean, I understand that you have a
3 lot of things that y'all need to take care of. You know,
4 I'm just asking about this because I think the video is
5 important ---

6 A Uh-huh.

7 Q --- because you testified that he says a number of
8 things and you go to the effort to make the video, but
9 then it seems the video just kind of disappears. So, you
10 know, it makes me start thinking, what other things were
11 said on the video that might have been coercive in nature
12 or things of that nature?

13 ASSISTANT SOLICITOR HALL: Your Honor, is there a
14 question coming?

15 THE COURT: She needs to be the one to object.

16 ASSISTANT SOLICITOR HALL: I apologize.

17 ASSISTANT SOLICITOR CONCANNON: Objection. Does Mr.
18 Platte have a question, or is he testifying?

19 THE COURT: Yeah, Mr. Platte, you need to ask
20 questions.

21 MR. PLATTE: I'll move on, Your Honor.

22 Q At any point in your discussion with Mr. Price, did
23 you talk about the potential charges that he might be
24 facing?

25 A No.

1 Q So you didn't discuss with him that y'all would
2 have -- that y'all might be able to charge him with
3 burglary, burglary first, burglary second?

4 A Not during my discussion with him, no.

5 Q Not during your discussion?

6 A No. I had mentioned his providing false information,
7 at which point he immediately told me he did not want to
8 talk to me anymore. He wanted to talk to Sergeant
9 Kelleher, so I walked away.

10 Q The last question I have is if -- why was it included
11 in the police report that he made the video, and it looks
12 like on the evidence sheet that the video was never
13 included?

14 A I put that sentence in on every single piece of
15 evidence that we turn in. That's just a normal report
16 procedure for me.

17 (COUGHING.) Excuse me.

18 Q Can I get you a glass of water?

19 A No, I'm good. Thank you.

20 Q Okay. Thanks.

21 As I see here on the evidence submittal form, its
22 actually Sergeant Kelleher, so he is probably the person
23 that I need to speak with in terms of submitting evidence
24 on this, rather than yourself.

25 A Correct. Correct.

1 Q Okay.

2 MR. PLATTE: No further questions, Your Honor.

3 THE COURT: Any redirect?

4 ASSISTANT SOLICITOR CONCANNON: No redirect, Your
5 Honor.

6 THE COURT: Okay. Thank you. You may step down.

7 ASSISTANT SOLICITOR CONCANNON: State calls
8 Investigator John Kelleher.

9 CLERK: Place your left hand on the Bible and raise
10 your right hand for me, please.

11 JOHN KELLEHER, after being duly sworn, testified
12 as follows:

13 CLERK: Please be seated and state your name and
14 spell it for the Court, please. Thank you.

15 WITNESS: Sergeant John Kelleher, K-E-L-L-E-H-E-R,
16 Investigator, Sheriff's Office, Beaufort County Sheriff's
17 Office.

18 THE COURT: You may proceed.

19 ASSISTANT SOLICITOR CONCANNON: Thank you, Your
20 Honor.

21 DIRECT EXAMINATION

22 BY ASSISTANT SOLICITOR CONCANNON:

23 Q Good afternoon, Sergeant Kelleher.

24 A Good afternoon.

25 Q You are currently employed with the sheriff's office?

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1 A Yes, I am.

2 Q And in what capacity are you employed with the
3 Beaufort County Sheriff's Office?

4 A I am a Sergeant in the Investigation Section.

5 Q And were you dispatched and involved in the
6 subsequent arrest of this defendant on May 10th of last
7 year?

8 A Yes, I was.

9 Q And did you, yourself, provide the defendant his
10 Miranda rights?

11 A When I met the defendant, I asked him if he was
12 advised of his Miranda rights and if he understood them,
13 and he told me he did.

14 Q Did he ever indicate to you that he did not
15 understand his Miranda rights?

16 A No, he didn't.

17 Q How did you begin questioning him?

18 A By asking him pretty much what was going on and what
19 happened.

20 Q I -- my apologies. I guess my question is, in what
21 sense of the investigation did he come to you for
22 questioning?

23 A Well actually, I went to him. I was notified -- I
24 don't -- I believe that Staff Sergeant DiCarlo called me
25 that morning. And, um, I went over to the incident

1 location.

2 When I turned onto Hogarth Street behind the Exxon
3 Station between the China -- the Chinese restaurant, there
4 was numerous deputies there. Uh, the Defendant was in the
5 back of one of the patrol cars, and that's how we met.

6 Q And upon approaching him, when you spoke to the
7 defendant, what was the first thing you asked him?

8 A I asked him about if he was advised of his Miranda
9 rights and if he understood them.

10 Q And he stated he did understand them?

11 A I don't remember his exact words, but he made an
12 acknowledgment that was positive.

13 Q Did he make any statements after this question?

14 A We talked a bit. He gave me his version of doing
15 yard work. He was -- that's how he got dirty. Um, his
16 shirt was dirty from yard work. He said he was going to
17 Enterprise. In my experience, it just wasn't fitting
18 properly.

19 Q Okay. And for whatever reason, the in-car video in
20 question, that was not conducted from any patrol car you
21 were in, was it?

22 A No. Actually, I was never in a patrol car. I was
23 outside and the defendant was in, and I opened the door
24 and spoke to him.

25 Q Would you have had any reason to admit Sergeant

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1 DiCarlos' in-car video?

2 A In this circumstance, no, I would not.

3 Q Okay.

4 ASSISTANT SOLICITOR CONCANNON: I would ask that I --
5 that the State play an audio recording of Investigator
6 Kelleher's conversation with the defendant.

7 THE COURT: All right.

8 (WHEREUPON, State's Exhibit No. 1 was marked for
9 identification only.)

10 ASSISTANT SOLICITOR CONCANNON: It's marked State's
11 Exhibit One.

12 My apologies. It's warming up.

13 (WHEREUPON, STATE'S EXHIBIT ONE WAS PUBLISHED.)

14 ASSISTANT SOLICITOR CONCANNON: Thank you.

15 Q Investigator Kelleher, was that the extent of your
16 conversation with Mr. Price?

17 A To the best of my memory, yes.

18 Q Okay. Did he ever indicate to you that he did not
19 want to speak to you?

20 A No.

21 ASSISTANT SOLICITOR CONCANNON: I have no further
22 questions at this time for this officer.

23 THE COURT: Mr. Platte?

24 CROSS-EXAMINATION

25 BY MR. PLATTE:

1 Q According to that audio, you asked him: Have you
2 already been advised of your rights?

3 A That's what I said, yes.

4 Q Okay. Did you ask him to sign an expressed waiver?

5 A No. I didn't have one on me.

6 Q Okay. Did you think about maybe writing something
7 down on a piece of paper, or you just thought that because
8 he was already Mirandized that was okay?

9 A That's one way of putting it, Counselor. Mr. Price
10 understood what his rights were.

11 MR. PLATTE: Defense rests, Your Honor.

12 THE COURT: Okay. Thank you.

13 Any redirect?

14 ASSISTANT SOLICITOR CONCANNON: No redirect, Your
15 Honor.

16 THE COURT: Thank you. You may step down.

17 THE COURT: Anything else from the State?

18 ASSISTANT SOLICITOR CONCANNON: The State would just
19 like to add that Mr. Price acknowledged in his opening
20 remarks to Investigator Kelleher that he was Mirandized.
21 He did acknowledge his Miranda and then he said it was
22 voluntarily made.

23 THE COURT: Is there a form -- is there a form that
24 he signed?

25 ASSISTANT SOLICITOR CONCANNON: There is a form. It

1 was done once he was booked into the detention center,
2 hours after any of his statements were made. Would you
3 like to see it?

4 THE COURT: Yes, I would like to see it.

5 ASSISTANT SOLICITOR CONCANNON: That's just
6 procedural also for when he was served with his arrest
7 warrant.

8 THE COURT: Yeah.

9 ASSISTANT SOLICITOR CONCANNON: It has nothing to do
10 with any statements he made.

11 THE COURT: Anything further?

12 MR. PLATTE: Not on this, Your Honor.

13 THE COURT: Okay. You know, the statements come in
14 various forms. I mean, they are not all clear and
15 pristine where somebody sits down with cameras all over
16 them or anything like that. I've got sworn testimony that
17 he was given his rights from the card that he normally
18 gives.

19 He then later, you know, shut down. He was asked by
20 another officer was he given his rights, and then he
21 starts talking again.

22 I find that his statements were freely and
23 voluntarily given and will be admissible in court. Now,
24 whether the jury decides that they want to believe it or
25 not, is a whole different matter, but the statement will

1 come in. All right?

2 ASSISTANT SOLICITOR CONCANNON: Thank you, Your
3 Honor.

4 THE COURT: What's our next motion?

5 ASSISTANT SOLICITOR CONCANNON: I believe the defense
6 has a Biggers Motion, based on the identification.

7 THE COURT: Okay.

8 MR. PLATTE: Yes, Your Honor. We have a Biggers
9 Motion to suppress any identification of the defendant.

10 THE COURT: Okay.

11 (NEIL V. BIGGERS HEARING)

12 ASSISTANT SOLICITOR CONCANNON: The State would like
13 to call David Lyn to the stand.

14 THE COURT: Okay. Come forward, please, to be sworn.

15 CLERK: Would you place your left hand on the Bible
16 and raise your right hand for me, please?

17 DAVID LYN, after being duly sworn, testified as
18 follows:

19 CLERK: Please be seated. State your name and spell
20 it for the court, please.

21 WITNESS: David Lyn.

22 DIRECT EXAMINATION

23 BY ASSISTANT SOLICITOR CONCANNON:

24 Q Good afternoon, David. How are you doing today?

25 A Fine.

- 1 Q Fine? I'm going to ask you a couple of questions
2 about what happened at your house on May 10th. Okay?
- 3 A Yes, ma'am.
- 4 Q May 10th of last year, 2012. Okay?
- 5 A Yes, ma'am.
- 6 Q Do you remember that day?
- 7 A Yes, ma'am.
- 8 Q Do you remember what you were doing that morning?
- 9 A Yes, ma'am.
- 10 Q What were you doing that morning?
- 11 A Cooking breakfast.
- 12 Q Cooking breakfast in the kitchen in your house?
- 13 A Yes, ma'am.
- 14 Q Who do you live there with?
- 15 A My grandmomma, my dad, my sister.
- 16 Q Was anybody else home?
- 17 A No, ma'am.
- 18 Q When you were cooking breakfast, what happened?
- 19 A I heard a loud noise in the back.
- 20 Q And what did you do when you heard this loud noise?
- 21 A I took a peek, and then I called the police.
- 22 Q Okay. When you took a peek, did you see anything?
- 23 A Yes, ma'am.
- 24 Q What did you see?
- 25 A A white male coming through the window.

1 Q Okay. And what did this white male look like? What
2 did he have on?

3 A A blue shirt, some blue jeans, and some dirty shoes.

4 Q Dirty shoes?

5 A Yes, ma'am.

6 Q Did he make his way all the way through the house --
7 through the window, or?

8 A Yes, ma'am. I guess he seen me, and then he went out
9 the door, the side door of the house.

10 Q Okay. Can you explain this room a little bit and how
11 close you were to him? Is it a bedroom? Is it a
12 bathroom?

13 A It's -- it's like a door right behind the kitchen
14 door.

15 Q Okay.

16 A It's like a door and then another door, so.

17 Q Okay. Is there anything in that room or is it empty?

18 A It's, um, washing machine, dryer and a ice box, like
19 a freezer.

20 Q And you saw this defendant, you saw this man, in the
21 window or in the room, did you get a good look at him?

22 A Yes, ma'am.

23 Q Do you -- and you remembered what he looked like to
24 tell 911?

25 A Yes, ma'am.

1 Q What did you do after you saw him?

2 A Uh, I went and called the police and then I guess he
3 went out the door, and then I followed him to see where he
4 was going.

5 Q Okay. And where did you follow him to?

6 A He was going towards the Chinese restaurant and the
7 gas station.

8 Q Can you see the Chinese restaurant and the gas
9 station from your house?

10 A Yes, ma'am.

11 Q You can?

12 A Yes, ma'am, from where I been standing at.

13 Q Okay. Where were you standing exactly?

14 A Uh, across the street at my neighbor's house.

15 Q Okay. And from your neighbor's house you could see
16 it?

17 A Yes, ma'am.

18 Q How far away do you think that is from your house?
19 How many blocks would you say?

20 A One.

21 Q One?

22 A Two -- two.

23 Q Two blocks?

24 A Yes, ma'am.

25 Q Okay. So let's back up a little bit. You were on

1 the phone with 911.

2 A Yes, ma'am.

3 Q And what happened after that?

4 A Uh, the cop arrived.

5 Q Okay.

6 A And then he was asking me questions, and I told him
7 the description of the male.

8 Q Okay.

9 A And then um, another cop came and then I was pointing
10 like down there at, um, at the cop to tell him where he
11 was at. And I guess he seen him, because he turned.

12 Q Okay.

13 A He turned to the dude going towards the Chinese
14 restaurant.

15 Q Okay. You are going to have to explain that a little
16 better. I don't really understand that. So you are
17 speaking with the police?

18 A Yes.

19 Q Are you on the phone with 911 anymore?

20 A No, ma'am.

21 Q No. Okay. And when you are talking with the police,
22 do y'all stay right there or do y'all go anywhere else?

23 A Um, we went to the Chinese restaurant.

24 Q Okay. And when you get to the Chinese restaurant,
25 how are you -- how are you positioned? Are you ---

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1 A I was outside the car.

2 Q Okay. You were outside the car. And were you -- who
3 were you speaking with at this time?

4 A The officer.

5 Q Okay. And in your line of sight, did you see anymore
6 police officers?

7 A Yes, ma'am.

8 Q And were they talking to anybody?

9 A Yes, ma'am.

10 Q Who were they talking to?

11 A The male.

12 Q The male?

13 A Yes, ma'am.

14 Q Which male?

15 A With the blue shirt.

16 Q Okay.

17 A And the blue jeans.

18 Q So when you got -- when the police officer took you
19 to where the suspect was also speaking with other law
20 enforcement, what did you do? What did you say?

21 A I tell them that was the person that had broke into
22 my house.

23 Q Okay. Did you do any -- did you make any physical
24 gestures? What did you -- in addition to your words ---

25 A I just told them that was him right there. I know

1 that that was him.

2 Q You knew that was him?

3 A Yes, ma'am.

4 Q How did you know that was him?

5 A Because he just came in my house.

6 Q How many minutes or how long do you think had passed
7 since you had initially seen him in your laundry room?

8 A About thirty minutes.

9 Q About thirty minutes?

10 A Yes, ma'am.

11 Q And when you -- when he was in your laundry room, how
12 long were you able to look at him?

13 A Like five seconds.

14 Q Five seconds?

15 A Long enough to know who he was.

16 Q Long enough to be able to recognize him good?

17 A Yes, ma'am.

18 Q Okay. So let's go back. You were in the roadway and
19 you are speaking to a sheriff's deputy; is that correct?

20 A Yes, ma'am.

21 Q Okay. Is the sheriff's deputy asking you any
22 questions, or how long are you in the roadway until you
23 see the suspect?

24 A Um, about fifteen minutes.

25 Q In between -- I'm sorry, David. The fifteen minutes

1 was maybe in between you arriving at the Chinese
2 restaurant?

3 A Yes, ma'am.

4 Q Okay. And once you got to the Chinese restaurant,
5 how long were you there until you recognized the
6 defendant?

7 A About three minutes, five minutes.

8 Q Okay. And did he match the description of the person
9 you saw in your house?

10 A Yes, ma'am.

11 Q How do you know that was him?

12 A Because I just seen him.

13 Q Because you just -- you just saw him?

14 A I just saw him in the house.

15 Q Okay. And do you see that person in this courtroom
16 today?

17 A Yes, ma'am.

18 Q Can you point him out for us, please?

19 A Over there.

20 Q Have you ever seen this person any time before?

21 A No, ma'am.

22 Q Okay. Besides from in your house?

23 A No, ma'am.

24 ASSISTANT SOLICITOR CONCANNON: Beg the Court's
25 indulgence?

1 I have no further questions for this witness.

2 David, if you could answer any questions Mr. Platte
3 would have for you?

4 THE COURT: Mr. Platte?

5 CROSS-EXAMINATION

6 BY MR. PLATTE:

7 Q How are you doing this afternoon?

8 A Fine.

9 Q Good. I have a few questions for you, because the
10 story you just told is remarkably different from the
11 statement you gave the police and the other reports that
12 the officers made regarding the situation, especially
13 regarding the identification. Just um -- so I want to
14 walk you through kind of what happened again, just so that
15 I understand what's going on. So, in the morning you said
16 you were in the kitchen.

17 A Cooking breakfast.

18 Q Cooking some breakfast. And what time was this?

19 A I'd say about 8:00 o'clock.

20 Q About 8:00 o'clock?

21 A Yes.

22 Q And this was Thursday, May 10th, 2012?

23 A Yes, sir.

24 Q Well, where do you go to school?

25 A I was kicked out of school at that time.

1 **ASSISTANT SOLICITOR CONCANNON:** Objection. That's
2 irrelevant.

3 **THE COURT:** Well, we can hear it for this hearing.

4 **ASSISTANT SOLICITOR CONCANNON:** Okay.

5 **MR. PLATTE:** Okay. Um, okay.

6 **THE COURT:** But it is irrelevant. It doesn't matter.

7 **MR. PLATTE:** Your Honor, I was just asking. I didn't
8 know.

9 **Q** Um, and you said you were cooking some breakfast and
10 then you heard a noise coming from your laundry room?

11 **A** Yes, sir.

12 **Q** And the laundry room is directly next to the kitchen?

13 **A** Right behind.

14 **Q** Right behind?

15 **A** Well, right beside.

16 **Q** And is it separated by an opening, a door?

17 **A** Uh, a little plastic door kind of thing.

18 **Q** Was it open or closed at the time?

19 **A** It was closed.

20 **Q** It was closed. So you heard a little noise.

21 **A** No, it was a loud noise.

22 **Q** A loud noise. And then you walked in and what did --
23 what did -- what did you exactly see?

24 **A** I saw a white male coming through the window.

25 **Q** Coming through the window. Was he -- was he coming

1 through on his stomach? Was he ---

2 A On his stomach, yes, sir.

3 Q All right. So was -- was he halfway in? Was he on
4 his belly, or was he on his chest, or where was he when
5 you opened the -- when you opened the door and saw him
6 standing there?

7 A He was all the way in after I saw him.

8 Q So he was actually in the room?

9 A Yes.

10 Q He wasn't through the window. He was in the room.

11 A Yes.

12 Q So he was standing in the room.

13 A Yes. And then when I saw him -- well, it all
14 happened so quick. It's like I saw him. He saw me. He
15 came in and went out.

16 Q And in that room, is there a door to the outside?

17 A Yes.

18 Q And he grabbed the handle. He turned the handle.
19 Does -- does the door open to the inside or the outside?

20 A It opens inside.

21 Q Inside. So ---

22 A As soon as he opened the door he went out.

23 Q He saw you. He turned. He grabbed the handle ---

24 A Yes.

25 Q --- he opened it ---

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- 1 A And then he left.
- 2 Q --- and then he ran.
- 3 A Yes.
- 4 Q And I think you estimated that it was about five
5 seconds that you saw him in there before he was out the
6 door and gone.
- 7 A Yes.
- 8 Q So one thousand one, one thousand two, one thousand
9 three, one thousand four, one thousand five.
- 10 A Yes.
- 11 Q Okay. And after he ran out the door, which way did
12 he run?
- 13 A He went right.
- 14 Q He went right.
- 15 A Yes.
- 16 Q Did he go through your gate?
- 17 A Yes.
- 18 Q Which gate did he go through?
- 19 A The back gate.
- 20 Q Was it the one by the driveway, or was it the one by
21 the ---
- 22 A The one on Hogarth Street.
- 23 Q --- front yard on Second Street. I'm sorry?
- 24 A The one on Hogarth Street.
- 25 Q The one on Hogarth. So the one by the driveway.

1 A Yes.

2 Q So he ran to the right and went out the gate.

3 A To the right.

4 Q Did he run out through the gate first and then to the
5 right, or did he run to the right first?

6 A He went out the gate and then went to the right.

7 Q Down Hogarth Street. And which -- which general
8 direction does that take you?

9 A Towards the Chinese restaurant and the gas station.

10 Q Okay. And he -- he -- he ran down that way and you
11 went inside and called 911?

12 A Yes. No. I was already on the phone with them when
13 I seen him in the window.

14 Q Okay. I'm a little bit confused, because you said
15 you walked into the laundry room and he took off out the
16 door and you went out after him and you saw him go to the
17 right down towards Boundary Street, and we talked about
18 Tiger Express and the Chinese restaurant.

19 A Right.

20 Q But then you just said that you called 911 and was on
21 the phone with them. Did you go out the door to see where
22 he was going before you called 911 or after?

23 A After.

24 Q After. So you caught him -- you saw him in your
25 house. He went out the door. Where is your phone

1 located?

2 A Right there in the kitchen.

3 Q In the kitchen? So you grabbed your phone and you
4 dialed 911.

5 A Yes.

6 Q Did you go out the door and look again?

7 A Yes.

8 Q All right. So you are on the phone with 911. He's
9 going to Hogarth Street, and he gets to the Tiger Express
10 and the Chinese restaurant, and then what happens?

11 A And then I went across the street to my neighbor's
12 house, and I was still on the phone with the cops. And
13 then they had came like five minutes after that, after I
14 was on the phone. And then another one came. And I
15 stopped the first one and told him that the suspect was
16 over there at the Chinese restaurant.

17 Q Okay. And this neighbor's house, is it directly
18 across Hogarth Street?

19 A Yes.

20 Q Is it further away from the Chinese restaurant or is
21 it towards the Chinese restaurant?

22 A It's closer to the Chinese restaurant.

23 Q Closer to the Chinese restaurant. Okay. Is it right
24 there at the intersection with Hogarth and Second?

25 A Yes.

1 Q So, if Second Street continued on, it would run into
2 your neighbor's house where you were?

3 A Yes.

4 Q Okay. And you -- so you were standing there and the
5 police arrived. Then what happened?

6 A I told the police that someone broke into my house,
7 and then I gave them the description of him. And then I
8 guess another police was coming, just coming in down the
9 road at the time. Then I pointed at him, because he was
10 walking across towards the Chinese restaurant.

11 Q Okay. So, Mr. Price, or the suspect, was walking
12 across Hogarth from the ---

13 A No. He was walking from Tiger Express towards the
14 Chinese restaurant.

15 Q Right. That's what I was going to ask. The gas
16 station to Chinese restaurant, he was going across the
17 street.

18 A Yes.

19 Q Um, and then what happened?

20 A And then a police came down the road, like, just
21 turned coming towards us.

22 Q So, turned off of Boundary Street onto Hogarth.

23 A Yes. And then I was pointing, because he didn't see
24 him I guess, and then I pointed at him and then I guess he
25 turned into where he was at.

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1 Q So, he turned into the Chinese restaurant parking
2 lot.

3 A Yes.

4 Q And then what happened?

5 A I told the police that I was with the description of
6 him, like, that was him.

7 Q Okay. And what was your description of him?

8 A A blue shirt, dirty blue shirt, some blue jeans and
9 some dirty shoes.

10 Q Dirty shoes?

11 A Yes.

12 Q What color were those shoes? Was it dirty like mud
13 on them?

14 A Dirty white. The shoes were white but they were
15 dirty.

16 Q Was it like -- was it -- was it mud dirt or just kind
17 of ---

18 A I couldn't tell you.

19 Q Sorry?

20 A I couldn't tell you.

21 Q Okay.

22 A They were just dirty.

23 Q All right. So the police officer turned into the
24 Chinese restaurant, and they stopped the suspect and then
25 what happened?

1 A And then the police took me down there, like, I'd say
2 about five minutes, ten minutes later and then they got me
3 out the car.

4 Q I'm sorry I don't mean to interrupt you. So about
5 five or ten minutes later, an officer came up to where you
6 were standing at the intersection of Second and Hogarth
7 and walked you down to ---

8 A No, they drove me down there.

9 Q Oh, so you got into the police car and drove down to
10 the Chinese restaurant?

11 A Yes, sir.

12 Q Okay. After they drove you down to the Chinese
13 restaurant, what happened?

14 A I got out the car and then I told them that was the
15 person who broke into -- well, I identified him as the
16 person that broke into my house. It was, like, about
17 thirty minutes later.

18 Q Okay. Was he -- where was he -- where was that
19 person sitting?

20 A He was in the back of the car.

21 Q He was in the back of the police car?

22 A Yes, sir.

23 Q And so, how much of him did you see?

24 A Just his face.

25 Q Just his face?

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- 1 **A** His face and his shirt.
- 2 **Q** His face and his shirt?
- 3 **A** Yes, sir.
- 4 **Q** You didn't see his pants or his shoes?
- 5 **A** I didn't need to see it.
- 6 **Q** You didn't see those dirty white shoes?
- 7 **A** I didn't need to see it.
- 8 **Q** Okay. I have the statement that you made to police
- 9 dated May 10th, 2012. I'm going to hand it up to you and
- 10 I want you to go ahead and read that for me, please.
- 11 Start at the top and you can, uh, work your way down.
- 12 **A** I was in my ---
- 13 **THE COURT:** Please read into the microphone so I can
- 14 hear you.
- 15 **A** Okay. I was -- I was in the kitchen and I heard
- 16 something moving in the back, so I went to go look, and
- 17 someone was coming through the back window. I went and
- 18 got the phone.
- 19 **Q** Excuse me. I'm going to stop you for a second. Can
- 20 you read that first sentence again?
- 21 **A** I was in my bedroom, and I heard something moving in
- 22 the back, so I went and took a look and someone was coming
- 23 through the back window, and I went to get the phone and
- 24 call 911. It was a white male looking at me, so I went to
- 25 see where he was going and he went down -- down Second.

1 That's supposed to be Hogarth.

2 Q What you wrote down there is 2 St., so I would assume
3 that's Second Street.

4 A But I meant to say Hogarth.

5 Q Okay, but -- but you wrote Second Street.

6 A Yes. Well -- Second to -- to -- oh, to the black
7 male's house but -- I can't even read my writing.

8 Q Well, can you please try, because it's important that
9 we get through this, because this statement is what you
10 made directly after what happened. So, I think that it
11 maybe shows exactly what happened. So can you continue
12 there? It goes: I said ---

13 A I said I just seen him with, with blue shirt ---

14 Q No. Can you read that word?

15 A What is it? Purple? Purple shirt?

16 Q Okay.

17 A Purple shirt and blue jeans and white ---

18 Q Can you read the word that you wrote there? Not
19 white.

20 A Gray. Gray shoes. The black male was at the front
21 of my gate waiting on the white male to open the front
22 door, and I looked at him and said to him if you know
23 where you can get some drugs. No, because he seen me, so
24 he said that. Then he did a 360 and went the other way
25 quick. The white male went out the back door and went out

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1 -- the white male went out the back door and ---

2 COURT REPORTER: I'm sorry, Your Honor, but I can't
3 hear him.

4 THE COURT: Yeah, you've got to speak up. She's
5 trying to take down what you're saying.

6 A He went out the back door towards the road on
7 Boundary Street at the corner store.

8 Q Okay. So that's the statement you made to police on
9 May 10th after the incident happened; correct?

10 A Yes.

11 Q Okay. I'm going to have you -- I've got a map for
12 you to look at. I just want you to kind of diagram.

13 I'm going to show you a map. And this is just a
14 print off from Google. It's just a map of your house and
15 the general area.

16 Can you -- I'm going to ask you to write -- draw a
17 few things on here for me to kind of help me understand
18 where the different streets are, because we talked about a
19 lot of different places and it's getting a little bit
20 confusing. I want to make sure that we kind of have it
21 down in writing exactly where things were.

22 A Okay.

23 Q On this map, can you draw an X where your house is?

24 A Here.

25 Q Okay. So it's on the corner lot of Second Street and

1 Hogarth.

2 A Yes.

3 Q On the north side. Where is your neighbor's house
4 that you went to after you got on 911? You said you went
5 across the street. Can you make an X?

6 THE COURT: Yes, ma'am?

7 ASSISTANT SOLICITOR CONCANNON: Can I approach so I
8 can see what he's doing?

9 THE COURT: Yes.

10 MR. PLATTE: Oh, I'm sorry, Mary. I apologize.

11 ASSISTANT SOLICITOR CONCANNON: That's okay.

12 Q Let's mark the first X as a one, and mark the second
13 X as a two. And then where -- can you make -- can you
14 make an X where the Chinese restaurant is?

15 A Chinese restaurant?

16 Q Yes.

17 A It's over here.

18 Q All right. Would you mind writing a three? And
19 where's Tiger Express?

20 A Right here.

21 Q Would you put four on there? Okay. So your
22 testimony is that the suspect went out the back door onto
23 Hogarth Street and down Hogarth Street to the Tiger
24 Express.

25 A Yes.

1 Q All right. In your statement you said that he goes
2 out your window and down Second Street.

3 A He went out the back door and down Second Street.

4 Q Well, you say two different things. That's what I'm
5 a little bit confused at. You say he goes down Second
6 Street to the black male's house. Where is the -- I'm
7 sorry. Can you make an X where the black male's house is?

8 ASSISTANT SOLICITOR CONCANNON: Objection. I think
9 Mr. Platte is misstating the Defendant's statement -- my
10 apologies, the witness's statement. The last line of it
11 says the white male went out the back door and went out
12 the back towards the road on Boundary Street and at the
13 corner store.

14 MR. PLATTE: But he also says earlier he goes out the
15 door down Second Street. Second Street is a different
16 direction than Hogarth Street. So I'm trying to ---

17 THE COURT: Does he correct that?

18 ASSISTANT SOLICITOR CONCANNON: He corrected it with
19 the drawing and with his statement.

20 THE COURT: I mean, that's good cross-examination
21 stuff, but I don't know if that's going to make the
22 determination on an identification statement.

23 Q And then where is the black male's house?

24 A Right there.

25 Q Okay. So it's down Second Street, which is -- if

1 you're sitting -- if we are sitting with you, Hogarth
2 Street would be the back of the courtroom, going down
3 there.

4 A Yes.

5 Q Second Street would be ninety degrees to your right
6 going towards the Judge; correct?

7 ASSISTANT SOLICITOR CONCANNON: Objection. Mr.
8 Platte again is testifying. I believe ---

9 THE COURT: Are you just using one part of the
10 statement, or does he actually say where he is going? I'm
11 more concerned about whether he saw him or not and whether
12 he was able to make an identification. I mean, people get
13 things mixed up all the time ---

14 MR. PLATTE: I understand.

15 THE COURT: --- with statements and correct them.
16 I'm not so concerned about that. This is a Biggers
17 hearing not a Google Earth ---

18 MR. PLATTE: I understand. And I'm -- he just on
19 his -- on his -- on his direct, he just gave me a
20 different statement than what he had given the police, so
21 I was trying to figure out what he saw and how much he
22 saw.

23 Q So your testimony is that you saw him for about five
24 seconds in the room, and then he took off through the
25 door.

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- 1 A Yes.
- 2 Q And then the only identification you made is when you
3 got in the police car and they drove you to where the
4 suspect was. And you said and -- what did they ask you
5 when they drove up to the Chinese restaurant?
- 6 A What did they say to me?
- 7 Q Did any law enforcement officer say anything to you?
- 8 A Well, they got me out the car and asked me if this
9 was the person.
- 10 Q Is that the words they said?
- 11 A I can't remember.
- 12 Q That's just generally what they said.
- 13 A Yes. They said is this -- can you identify this
14 person as the person that broke into your house?
- 15 Q Okay. So, the person sitting in the back of the cop
16 car.
- 17 A Yes.
- 18 Q They asked you if that was the person that broke into
19 your house? Okay. At any point did any officer ask you
20 when you were standing by your neighbor's house, which was
21 right there at Second Street, to make any identification?
- 22 A Say what?
- 23 Q When you were standing by your neighbor's house ---
- 24 A Uh-huh.
- 25 Q --- your neighbor's house at the intersection of

1 Second and Hogarth, did any officer at that point ask you
2 to make an identification? Did they ask you: Do you see
3 anybody you know?

4 A No.

5 Q No. You didn't tell them -- did you tell anybody?

6 A I told -- I told them the description of him when
7 they first came on scene.

8 Q Okay. So, when they first arrived, you gave them the
9 description of the color.

10 A Yes.

11 Q Okay. You mentioned also that when you saw him
12 walking across the street from the Tiger Express to the
13 Chinese restaurant you -- did you shout out?

14 A I pointed.

15 Q Did you whisper? Did you -- you said something about
16 that's the guy?

17 A I pointed at the police, like, I was going.

18 (WHEREUPON, WITNESS IS HOLDING HIS HAND UP IN THE AIR.)

19 Q Who was standing there with you at that time?

20 A The police.

21 Q Was there one officer, two officers?

22 A There was one, and then there was one up there by the
23 Chinese restaurant.

24 Q Were you able to see his face?

25 A Yes.

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1 Q You saw his face?

2 A I saw the side of his face.

3 Q The side of his face. Were you able to see the color
4 of his hair?

5 A Yes.

6 Q The length of his hair?

7 A Yes, sir.

8 Q If he had any facial hair?

9 A I couldn't see that far for facial hair.

10 Q Okay. You just saw -- but you were able to see the
11 color of his shirt, the color of his pants? Could you see
12 the color of his shoes?

13 A Yeah.

14 Q Okay. So you are standing at Second Street looking
15 all the way down to the Tiger Express or to the Chinese
16 restaurant, and you are able to see the colors of his
17 clothing, the color of his shoes, some -- a little few
18 features on his face.

19 A (NODDED.)

20 Q Okay.

21 THE COURT: You need to say yes or no.

22 A Yes, sir.

23 Q I would like to show you a couple of pictures,
24 because I went out the other day and took some pictures of
25 the exact same location. And I want to show it to you,

1 and I want you to see if those -- those pictures are an
2 accurate description of, of the -- of the way you were
3 looking. Okay?

4 A Yes, sir.

5 MR. PLATTE: I beg the Court's indulgence. I'm
6 sorry.

7 Q I'm going to show you this picture. Can you identify
8 the name on that street sign?

9 A Second.

10 Q And do you recognize that picture?

11 A Uh-huh.

12 Q Where do you recognize it from?

13 A Down my road.

14 Q Okay. So it's standing next to your house on Hogarth
15 Street looking down towards the Chinese restaurant and the
16 Tiger Express?

17 A Uh-huh.

18 MR. PLATTE: All right. I would like to mark this as
19 Defendant's First.

20 THE COURT: Any objection?

21 ASSISTANT SOLICITOR CONCANNON: Without objection.

22 (WHEREUPON, Defendant's Exhibit No. 1 was marked for
23 identification and received into evidence.)

24 Q This is another picture looking in the same
25 direction, would you agree?

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1 **A** Uh-huh.

2 **Q** And do you recognize this?

3 **A** Uh-huh.

4 **THE COURT:** You need speak up, sir.

5 **WITNESS:** Yes.

6 **Q** I'm sorry. The court reporter has to take down what
7 you say, and when you -- we all kind of say uh-huh, but we
8 need to have a verbal yes or no. I appreciate that.

9 Thank you.

10 Do you recognize this location?

11 **A** Yes.

12 **Q** And can you describe it to me? What general
13 direction? What road is that?

14 **A** Hogarth.

15 **Q** Okay. Going down towards the Tiger Express?

16 **A** Yes.

17 **MR. PLATTE:** Okay. I'd move this in as Defendant's
18 Second.

19 **THE COURT:** Any objection?

20 (NO RESPONSE.)

21 **THE COURT:** Without objection.

22 **ASSISTANT SOLICITOR CONCANNON:** Without objection,
23 Your Honor.

24 (WHEREUPON, Defendant's Exhibit No. 2 was marked for
25 identification and received into evidence.)

1 Q And finally, the last picture, do you recognize this
2 area?

3 A Yes.

4 Q Can you describe it for me?

5 A By the Chinese restaurant and the gas station.

6 Q In what direction is it looking?

7 A Um, down Hogarth.

8 Q Towards Second Street?

9 A Towards my house.

10 Q Towards your house. Okay.

11 MR. PLATTE: All right. I'd move this in as
12 Defendant's Three.

13 THE COURT: Without objection, as well?

14 ASSISTANT SOLICITOR CONCANNON: No, objection, Your
15 Honor.

16 (WHEREUPON, Defendant's Exhibit No. 3 was marked for
17 identification and received into evidence.)

18 Q Okay. I'm going to leave these here for you to look
19 at, because I'm going to ask you a few questions about
20 them. Okay?

21 Does this accurately describe -- does this picture
22 accurately show where you were standing when you were
23 looking down Hogarth Street and made an identification of
24 the suspect?

25 A Is that where I been standing at?

- 1 Q Yes.
- 2 A No. I wasn't standing there.
- 3 Q Well, that's at the intersection of Hogarth and
4 Second.
- 5 A I was standing by that car over there.
- 6 Q What -- can you tell me the color of the car?
- 7 A The gray car.
- 8 Q The gray car that's just behind the white car?
- 9 A Yes.
- 10 Q Okay. So, maybe twenty feet closer?
- 11 A Yes.
- 12 Q Would you agree?
- 13 A Yes.
- 14 Q Can you read what's on that van that's parked down
15 the street on the right side?
- 16 A That van?
- 17 Q Yeah.
- 18 A No.
- 19 Q Can you see anything there?
- 20 A No. I can't even see it. It's blurry.
- 21 Q Okay. And we are looking at the Defendant's First,
22 Defendant's Number one. Would you turn to Defendant's
23 Number Three?
- 24 A Three?
- 25 Q Yes.

1 A Okay.

2 Q Is this an accurate description of where the parking

3 lot is where the Chinese restaurant is?

4 A Yes.

5 Q And it's looking down Hogarth towards your house?

6 A Yes, sir.

7 Q There is a white car parked on the right side of the

8 road. That's just behind -- I guess you said you were by

9 the gray car. That's probably in front of that.

10 A Yes.

11 Q Can you identify the make and model of that car?

12 A Which one? That white one?

13 Q Yes.

14 A I don't know.

15 Q I mean, it's pretty small. It's really tiny; isn't

16 it? I can't even make out the make and model of the car.

17 So, my question is, as you were standing in these

18 approximate locations and you told me that you positively

19 identified the suspect?

20 A Yes. These are pictures, though. These are not, you

21 know, ---

22 Q I'm -- but I'm -- I'm -- I'm asking you if these

23 objects are larger than people and you have a hard time

24 even making out generalized descriptions of it, how can

25 you possibly make an accurate identification of the

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1 suspect from that distance?

2 A 'Cause it's not that far.

3 Q I was out there and I paced it off, and it's about

4 ---

5 THE COURT: Mr. Platte, what you did is irrelevant.

6 You need to ask him. You are not on the stand. Okay?

7 I -- I was waiting for them to object, but they won't

8 object to it, but you can't testify in that situation.

9 MR. PLATTE: You're right. I'm sorry, Your Honor.

10 Q Okay. But you can't make any -- when you look at the
11 pictures, you can't identify any distinguishing features
12 of any of those cars from that distance?

13 A No.

14 Q Okay. Now, I would like you to take a look at
15 Defendant's Number Two. When you are standing at the
16 intersection of Hogarth and Second, it was about 9:00
17 o'clock in the morning on May -- in May, correct?

18 A Yes, sir.

19 Q Where was the sun located?

20 A The sun?

21 Q The sun.

22 A That morning?

23 Q That morning. Yes, sir.

24 A I don't know. I wasn't looking at the sun.

25 Q Okay. When you were looking at Hogarth, do you -- do

1 you -- do you recall if there was any sun in your eyes?

2 A No.

3 Q No? Okay.

4 All right. So, you said you made the first
5 identification at this far distance, and then they put you
6 in a car and drove you up and asked you if the person
7 sitting in the back of the, uh, sheriff's car was the
8 suspect.

9 ASSISTANT SOLICITOR CONCANNON: Objection. That was
10 not what the witness indicated his first identification
11 was. He never indicated a first identification.

12 THE COURT: Sustained.

13 Q So, the time that you were standing at Second and
14 Hogarth, you told the officers that there was somebody
15 walking across the street and that was the suspect?

16 A Yes.

17 Q And then they brought you up in the police car and
18 asked you to make an identification concerning the person
19 sitting in the back of the car?

20 A Yes.

21 Q Okay. And you also say that you saw him for maybe
22 five seconds ---

23 A Yes.

24 Q --- and that he crawled in through your window and
25 then went out through the back door?

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1 A Yes.

2 Q And that's where you saw him.

3 A Yes.

4 Q Okay.

5 MR. PLATTE: Your Honor, that's all I have for this
6 witness.

7 THE COURT: Any redirect?

8 ASSISTANT SOLICITOR CONCANNON: Yes, Your Honor.

9 REDIRECT EXAMINATION

10 BY ASSISTANT SOLICITOR CONCANNON:

11 Q David I just have one question. Was the person you
12 saw in your house the same person you identified to the
13 police officers?

14 A Yes.

15 ASSISTANT SOLICITOR CONCANNON: Thank you.

16 THE COURT: Thank you. You may step down.

17 ASSISTANT SOLICITOR CONCANNON: The State has no
18 further witnesses for this motion.

19 THE COURT: Does the defense have anymore witnesses
20 they would like to present?

21 MR. PLATTE: Yes, Your Honor. The defendant would
22 like to call Sergeant DiCarlo to the stand.

23 THE COURT: All right.

24 MR. PLATTE: Do you need a glass of water?

25 WITNESS: No, I'm good. Thank you.

1 MR. PLATTE: All right.

2 DIRECT EXAMINATION

3 BY MR. PLATTE:

4 Q I just have a few brief questions for you concerning
5 Mr. Lyn. Did you at any point interview him as a witness?

6 A Uh, no I did not.

7 Q Okay. I'm just going to ask you to look at your
8 incident report and tell me who -- there's a star that
9 says interview with a witness. Do you know who made that?

10 A Uh, that was, um, I think that came through Sergeant
11 Kelleher maybe, because this is all kind of a combined
12 whole report, I mean, all the way through meeting with the
13 judge to get the warrant, so.

14 Q Okay. Um, ---

15 A I know the first person he made contact with was
16 Sergeant Hall.

17 Q Sergeant Hall?

18 A Which was a -- I did point that out on the report, I
19 do believe.

20 Q Yeah, let me -- let me get that report, because I
21 believe it's on the first page, which I did not show you.
22 It would be page four or five.

23 A Right.

24 Q I believe it's right there by the star.

25 A Correct.

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1 Q So it's Sergeant Hall who, in fact, had the first
2 interview with ---

3 A He made first contact with David, as far as kind of
4 what was going on, uh, got the description. And that's
5 when I had turned onto Hogarth, saw a person matching that
6 description, got out, made contact.

7 During my conversations with, who was determined to
8 be Mr. Price, um, David had mention to Sergeant Hall that
9 that is the one. And Sergeant Hall had contacted me on
10 the radio saying that that is the one that David
11 identified as going into the house.

12 Q Okay. So at this time, you're -- you're parked at
13 the Chinese restaurant and you are having a conversation
14 with -- with the suspect.

15 A I'm actually parked almost in the roadway, but yes,
16 near the Chinese food restaurant.

17 Q I just use the Chinese food restaurant because it's a
18 good location.

19 A That's fine.

20 Q It's kind of hard to describe parking your patrol
21 vehicle halfway in the road, but um, so you are having
22 conversation and you got a radio call from Sergeant Hall
23 that ---

24 A Yeah, I could see, from where I was standing, I could
25 see down the road. I saw Sergeant Hall talking to who

1 ended up being Mr. Lyn. And I saw Mr. Lyn gesturing and
2 pointing, at which point Sergeant Hall contacted me on the
3 radio and said he's identified him as the one. So I
4 immediately detained him to pursue it further.

5 Q Okay. So Sergeant Hall said that Mr. Lyn identified
6 the suspect you were talking to as the one?

7 A It was something to the effect that he's the one.

8 Q Okay.

9 A You know, I don't know exactly. I mean I wasn't with
10 Sergeant Hall, but I saw the gesturing towards my
11 direction.

12 Q Okay. After that, were you around when they made
13 the -- when they did the show-up identification?

14 A I'm sure that I was on scene, but I was trying to
15 coordinate interviews with the store clerk and the mother
16 and contact the mother and contact Sergeant Kelleher. So
17 at that point, a lot of the other details would be taken
18 over by the troops on the road.

19 Q Okay. So you would not be the person most
20 knowledgeable of that?

21 A No.

22 MR. PLATTE: Okay. That's all I have.

23 THE COURT: All right. Any questions for this
24 witness?

25 ASSISTANT SOLICITOR CONCANNON: The State has no

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1 questions for this witness.

2 THE COURT: All right. Thank you. You may step
3 down.

4 Yes, sir?

5 MR. PLATTE: The Defense would call Sergeant or
6 Investigator Kelleher.

7 THE COURT: You're already under oath.

8 WITNESS: Yes, sir.

9 DIRECT EXAMINATION

10 BY MR. PLATTE:

11 Q Good afternoon again, sir.

12 A Good afternoon.

13 Q Were you involved with any identification of the
14 suspect?

15 A With Mr. -- I guess in reference to Mr. Lyn, with Mr.
16 Lyn?

17 Q Well, I -- let me -- let me rephrase that. That was
18 a terrible question.

19 Were you involved with any identification by Mr. Lyn
20 of the suspect?

21 A No, I wasn't.

22 MR. PLATTE: Okay. That's all I have.

23 THE COURT: All right. Thank you.

24 Any follow-up?

25 ASSISTANT SOLICITOR CONCANNON: I have no follow-up

1 to that.

2 THE COURT: Okay.

3 Thank you. You may step down.

4 WITNESS: All right, sir.

5 MR. PLATTE: I thank the Court for their indulgence.

6 THE COURT: Okay. All right. Do you have anything
7 further?

8 MR. PLATTE: The defense would call Lori
9 VanWallendael.

10 THE COURT: Okay.

11 CLERK: Place your left hand on the Bible and raise
12 your right hand for me, ma'am.

13 LORI VANWALLENDael, after being duly sworn,
14 testified as follows:

15 CLERK: Please be seated. State your name and spell
16 it for the Court, please.

17 THE COURT: How long do you expect this witness to
18 be, because I want to send word to the jury.

19 MR. PLATTE: I think maybe fifteen or twenty minutes,
20 at the most. I don't believe ---

21 THE COURT: Let them know.

22 BAILIFF: Is this the last one?

23 THE COURT: Is this the last witness?

24 MR. PLATTE: It will be the last one, Your Honor.

25 THE COURT: Okay.

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1 **WITNESS:** My name is Lori, L-O-R-I, VanWallendale,
2 V-A-N-W-A-L-L-E-N-D-A-E-L.

3 DIRECT EXAMINATION

4 BY MR. PLATTE:

5 **Q** And you are a doctor; correct?

6 **A** Yes.

7 **Q** All right. Dr. VanWallendael, what is your
8 occupation?

9 **A** I'm an Associate Professor of Psychology at the
10 University of North Carolina at Charlotte.

11 **Q** What is -- I guess your present title would be
12 Associate Professor?

13 **A** Yes.

14 **Q** What position do you currently hold at the University
15 of North Carolina, Charlotte, as professor for?

16 **A** I am an Associate Professor and Associate Chair, and
17 I teach courses primarily in cognition, research methods,
18 memory.

19 **Q** Can you briefly describe the subject matter of your
20 specialty?

21 **A** Yes. I specialize in memory, in real world kinds of
22 situations. Over the last, probably ten years or so, my
23 research area has been primarily specializing in
24 recognition of faces and voices in an eyewitness context,
25 and also in the effect of various lineup and other

1 identification procedures on eyewitness accuracy.

2 Q Do you specialize on anything within that field?

3 A Um, my most recent research has been having to do
4 with lineup procedures and how that affects a witness's
5 memory for a situation.

6 Q What academic degrees do you hold and from where and
7 when did you obtain them?

8 A I received my Bachelor's Degree in Psychology and
9 English from MacMurray College in Illinois in 1982 and
10 then my Masters and my Ph.D from Northwestern University
11 in 1986.

12 Q How long have you been practicing in this field?

13 A I guess about twenty-six years now.

14 Q Are you Board Certified, or is there even a Board
15 Certification for this?

16 A Not for what I do. That's pretty strictly for
17 clinical psychologists.

18 Q Can you briefly go through the positions you've held
19 since your completion of your formal education?

20 A Yes, I ---

21 Q Lengths and times and where.

22 A Okay. Um, I started out as a ---

23 **THE COURT:** Hold on for a second. For the purpose of
24 this hearing, do y'all have any objection to her
25 testifying? You know, I don't want to waste time.

1 **ASSISTANT SOLICITOR CONCANNON:** I feel like it is a
2 waste of time, Your Honor.

3 **THE COURT:** So you're going to let her -- you have no
4 objection to her going ahead and testifying at this time?

5 **ASSISTANT SOLICITOR CONCANNON:** Yes, I do have an
6 objection. I feel that it is irrelevant and it is not
7 pertinent to this motion, in particular.

8 **THE COURT:** Yeah, this is just a motion hearing. She
9 doesn't have to convince me, because see I'm the finder of
10 fact at a motion hearing.

11 **MR. PLATTE:** I just -- I just need -- my purpose for
12 her testimony is to show that there is no way that he
13 could have accurately made that first identification.

14 **THE COURT:** That is a major conclusion she's making
15 to say that there is no way ---

16 **MR. PLATTE:** Sorry. I apologize, Your Honor, that
17 there is no reasonable accuracy that he could have made
18 that first identification.

19 **THE COURT:** This is just a motion hearing. You may
20 be able to call her at trial to convince a jury, but as
21 far as the motion, I have to look at some different
22 things. It's just as to whether there is enough for it to
23 come in. The jury will make the ultimate decision on
24 that. So you may -- I think you -- the proper time to
25 call her would be if the issue makes it to the jury. I

1 mean, there is no way she can say he did not see this.

2 MR. PLATTE: I just -- I don't believe that that's
3 going to be the testimony that she would give.

4 ASSISTANT SOLICITOR CONCANNON: She wasn't there. I
5 believe this is ---

6 THE COURT: She wasn't there. She doesn't know
7 what -- she wasn't there on that day.

8 MR. PLATTE: Well, we will save her for the jury.

9 THE COURT: Okay. Thank you. You may step down.
10 Anything further?

11 MR. PLATTE: Your Honor, we don't have anymore
12 witnesses.

13 THE COURT: The lynchpin of eyewitness testimony is
14 its reliability. And granted, just because somebody said
15 they saw something, doesn't mean that they actually did
16 and that it's admissible in court, but when we look as to
17 whether it's going to be at least admissible in court, and
18 again, the jury may be the ultimate finder on that, we
19 look to the actual witness's ability to view the defendant
20 at the time of the crime.

21 In this case, the young man said he saw him in the
22 house for approximately five seconds. Whether it's three
23 to five, I don't know, but he had testimony at that point
24 in time.

25 The degree of attention, he saw it from a close angle

1 or close range, which at that point in time, I would think
2 that his degree of attention of seeing somebody in your
3 house that you didn't expect to be there would be great.

4 The accuracy of the prior description. And again,
5 when you take the whole thing together, the guy, he sees
6 him. He runs out of the house. He sees him from a
7 distance.

8 You know, and it's not like he's got to read the
9 license tag of a car or something like that. This is
10 somebody he maintains that he can see him and saw from a
11 distance. It's all within about a fifteen minute
12 timeframe.

13 So, I think the State has presented enough to the
14 Court to say that it may be reliable. Now, whether the
15 jury is going to find that it's reliable enough, or rather
16 to convict him is a whole other matter. But I believe,
17 even though there is some confusion at the time, there's
18 enough for him to be able to say: I saw the guy at my
19 house. I saw him down the street. I saw him in the car,
20 and I see him in the courtroom.

21 So I am going to allow him to make an in court
22 identification, provided the proper foundation is made at
23 that time. All right?

24 **MR. PLATTE:** Thank you, Your Honor.

25 **ASSISTANT SOLICITOR CONCANNON:** Thank you, Your

1 Honor.

2 THE COURT: All right. I will give y'all fifteen
3 minutes, and then we will start. Are there any other
4 motions?

5 MR. PLATTE: No, Your Honor.

6 THE COURT: Okay. Thank you.

7 MR. PLATTE: That was it.

8 THE COURT: All right. We will take a fifteen minute
9 recess, then we will begin the trial at that time. Thank
10 you.

11 (WHEREUPON, A BREAK WAS TAKEN. THEREAFTER, THE
12 FOLLOWING PROCEEDINGS WERE HELD ON THE RECORD OUT OF THE
13 PRESENCE OF THE JURY:)

14 THE COURT: I understand our jury has picked a
15 foreman. Is there anything else we need to take up?

16 MR. PLATTE: No, Your Honor.

17 ASSISTANT SOLICITOR CONCANNON: Nothing from the
18 State.

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

20 (JANUARY 22, 2013, 3:27 P.M., WHEREUPON, THE JURY
21 ENTERS THE COURTROOM, AND THE FOLLOWING PROCEEDINGS
22 WERE HELD IN THEIR PRESENCE.)

23 BAILIFF: Jury is entering.

24 THE COURT: All right. Please be seated.

25 Ms. Mildren, I understand you are the foreperson; is

1 that correct?

2 FOREPERSON: Yes, sir.

3 THE COURT: Okay. Ladies and gentlemen, I apologize
4 for the delay. We had some matters we had to take up. We
5 were in here working. Don't think we were just
6 lollygagging around.

7 Would you please swear the jury?

8 CLERK: Yes, Judge.

9 Will you please stand and raise your right hand?

10 (WHEREUPON, THE JURY WAS DULY SWORN.)

11 CLERK: Please be seated.

12 THE COURT: Thank you.

13 All right, ladies and gentlemen, before we begin this
14 trial, I want to tell you that this trial will probably be
15 different from what you might expect. You know, most
16 people never have an opportunity to attend a trial as you
17 are and may think from watching TV, movies, or reading
18 books that trials are always full of high drama, intense
19 action, and riveting circumstances. Now, you know, while
20 all these things may be true at times, let me remind you
21 that this trial is not for entertainment.

22 This is a real trial, which is a fundamental part of
23 our democracy and it is a search for the truth in an
24 effort to make sure that justice is done. In searching
25 for the truth and ensuring that justice is done is often

1 slow, deliberate, and repetitive, the exact opposite of
2 what you have seen in movies, TV, or read in books.

3 And, ladies and gentlemen, this courtroom, which
4 y'all have a beautiful courtroom at least on the inside, I
5 see y'all are doing a lot of work on the outside, is a
6 place of honor that is dedicated to the protection and the
7 preservation of our citizens' rights through what many
8 have called, and I truly believe, to be the greatest
9 justice system that has ever been created by man. The
10 attorneys who are appearing before you are advocates for
11 the parties that they represent, but first and foremost,
12 they are officers of this court who are sworn to uphold
13 the integrity and the fairness of our judicial system and
14 to help you as jurors in your search for the truth.

15 Ladies and gentlemen, you should expect them to be
16 professional, competent, and ethical in the representation
17 of their client's interest. And remember, ladies and
18 gentlemen, you also just took an oath to listen to the
19 evidence in this case and reach a fair and just verdict,
20 and you are expected to be professional, reasonable, and
21 ethical as well. And again, let me thank you for your
22 accepting this important responsibility of jury service.

23 Now, ladies and gentlemen, what I'm going to tell you
24 now is just intended to serve as an introduction of the
25 trial of this case. These remarks are not a charge on the

1 law. I charge you the law that is applicable to this
2 particular case at the end of the trial. This is merely
3 the explanation of the procedures that we will follow so
4 you may better understand what may be happening.

5 And let me say further, ladies and gentlemen, you
6 will not be allowed to take notes during this trial.
7 Therefore, it is very important that you listen closely
8 throughout this trial.

9 Now, ladies and gentlemen, the defendant in this case
10 is charged by indictment of this court of burglary in the
11 second degree, non-violent. The elements of this
12 particular charge will be explained to you in detail
13 later.

14 Now, I remind you, as I did when you -- before you
15 were selected, that the indictment charging the defendant
16 is simply the document by which the case is brought into
17 court and is not in any sense any evidence of the charge
18 contained therein. The defendant has pled not guilty to
19 the charge. So the State, therefore, has the burden of
20 proving all the elements of the charge beyond a reasonable
21 doubt. And it will be your duty, ladies and gentlemen, to
22 decide whether the State has met that burden.

23 Ladies and gentlemen, your purpose as jurors is to
24 determine the facts of this case. You are to determine
25 the facts from the testimony that you hear from this

1 witness stand and other evidence that is presented here in
2 court. It is up to you to determine the inferences which
3 you feel may be properly drawn from the evidence that is
4 presented.

5 Ladies and gentlemen, it is especially important that
6 you perform your duty diligently and conscientiously,
7 because ordinarily there is no way to correct an erroneous
8 determination of facts by a jury. On the other hand, but
9 with equal emphasis, the same law that makes you the
10 judges of the facts makes me the judge of the law. The
11 law, as given to you by me, is the only law that you may
12 consider. You must accept the law as I give it you and
13 follow it, even though you may disagree.

14 As I said, I cannot tell you what the facts are, and
15 you cannot disagree with me about what the law is or what
16 you believe the law should be. Your job as jurors is to
17 take the law as I give it to you and apply it to the facts
18 as you find them from the testimony and/or any other --
19 from the witnesses that are presented and any other
20 exhibits that are offered here in trial. After hearing
21 the evidence, you will then deliberate and render a true
22 and just verdict under the solemn oath that you just took
23 as jurors.

24 Now, ladies and gentlemen, until I advise you to
25 begin your deliberations at the conclusion of the case,

1 you must not discuss the case with anyone else, including
2 your fellow jurors. You may not use a computer or cell
3 phone or other electronic device with communications
4 capability while here in attendance at court or during
5 your deliberations. Now, you may use these items when we
6 break for the evening or if we break for lunch tomorrow,
7 but even then you may not use it to obtain or disclose any
8 information about the case when you are not here in court.

9 Information about the case would include, but
10 certainly would not be limited to, information about a
11 party, a witness, an attorney, or a court officer, any
12 news accounts about the case, any information collected
13 through juror research on any topic that might be raised
14 during -- by any witness or any information that comes
15 through juror research. In other words, the idea is that
16 you should be able to get all the information necessary to
17 render a verdict within the four walls of this courtroom
18 and not from anywhere else. And again, ladies and
19 gentlemen, as I said, after -- after the case is submitted
20 to you, you must discuss it only in the jury room with
21 your fellow jurors.

22 Now, the attorneys in this case, and the other
23 parties in this matter, are advised that they are not to
24 talk to you at all. So if you see somebody, and I know
25 it's kind of strange with the entrances around here, but

1 if you see somebody and they don't say hello, well, they
2 are not being impolite, they are just following my
3 directions.

4 Now, ladies and gentlemen, it is very important that
5 you keep an open mind throughout this case and not decide
6 any issue until all of the evidence has been presented and
7 the attorneys have made their closing arguments and I have
8 instructed you on the law in this matter.

9 Now, ladies and gentlemen, it is your solemn
10 responsibility to determine the guilt or innocence of the
11 defendant, and your verdict must be based solely on the
12 evidence that has been presented in this courtroom and in
13 this trial and on the law as I instruct you at the close
14 of the trial.

15 Now, in just a moment the solicitor will make what is
16 called an opening statement, where she will explain to you
17 what she believes the issues are in this case. The
18 attorney for the defendant may also make an opening
19 statement, although he is not required to do so.

20 Let me remind you that what the attorneys tell you
21 during their opening statements is not evidence. It is
22 only their contention as to what they believe the evidence
23 will show in this case.

24 Now, ladies and gentlemen, from time to time during
25 this trial you may hear one of the lawyers say something

1 like: Your Honor, I believe we have a question or matter
2 of law to discuss with you, or, Your Honor, may we
3 approach the bench?

4 Or sometimes I might find it necessary to excuse you
5 from the courtroom for a short period while the attorneys
6 and I discuss a matter of law. Now, the reason for this
7 is because, as I said, I'm -- as you are the judges of the
8 facts, sometimes when I'm discussing a matter of law, it
9 may be necessary for me to make some comment on the fact
10 in connection with making a ruling as to whether or not a
11 particular law applies. And as I have said, I'm not
12 suppose to tell you what I think the facts are, so I will
13 excuse you from the courtroom so that while these
14 discussions take place, nothing that I might say will in
15 any way influence you in connection with the facts.

16 Also, during the trial the attorneys -- you may hear
17 one of the attorneys make an objection to some testimony
18 or evidence that is about to be presented. Whether I
19 sustain the objection, which would be to grant the
20 objection, or overrule the objection, which would be to
21 deny the objection, should not be construed that I favor
22 one side over the other. I do not. Nor should you
23 consider or infer that the objecting party is trying to
24 hide something from you.

25 You know, in this court, as in all situations in

1 life, there are specific rules that must be followed and
2 the attorneys, as officers of this court, are merely
3 trying to follow the rules of evidence of this court in
4 making their objection. And I am only ruling based upon
5 what I believe the law of this state to be concerning the
6 evidence which is about to be presented.

7 Now, ladies and gentlemen, in determining what the
8 true facts are in this case, you must decide whether or
9 not the testimony of a witness is believable. It will be
10 my responsibility to rule as a matter of law whether
11 certain testimony is admissible.

12 Once the testimony is admitted, whether or not you as
13 jurors decide to believe it, is solely for you to
14 determine. In deciding whether to believe a witness, you
15 have a right to consider the interest of any witness, the
16 bias of any witness, the prejudice of any witness, the
17 opportunity for the witness to have actually observed the
18 matters and things about which the witness may testify,
19 and the way the witness acts on this witness stand.

20 Ladies and gentlemen, you have a right to consider
21 anything that is in the record that will help you evaluate
22 the testimony of the witness. That means, as jurors, it
23 is your responsibility to pay close attention to the
24 witnesses and to observe the witness and to listen to the
25 witness and to pay close attention to the attorneys and to

1 the Court.

2 Ladies and gentlemen, please do not let your thoughts
3 wander, but give strict attention to the testimony in this
4 case. So at the end of all the testimony, after the
5 argument of counsel, and the charge of the law by me, you
6 will then be in a position to determine what the true
7 facts are and to apply the law to those facts and thus
8 render a true and just verdict.

9 Now, Madam Forelady, it will also be your duty to
10 preside in the jury room and be the jury spokesperson here
11 in court. It will also be your responsibility to write
12 down the verdict, but I will give you further instructions
13 on that at the appropriate time.

14 Now, in order to preserve everyone's rights, I will
15 give the parties an opportunity to object to anything that
16 I've stated. Does the State have any objections to
17 anything I've told the jurors?

18 **ASSISTANT SOLICITOR CONCANNON:** No objections by the
19 State.

20 **THE COURT:** Does the defense have any objections?

21 **MR. PLATTE:** No, Your Honor.

22 **THE COURT:** All right. Thank you.

23 All right, ladies and gentlemen, we will now begin
24 the trial of this case.

25 Madam Solicitor?

1 **ASSISTANT SOLICITOR CONCANNON:** Thank you, Your
2 Honor.

3 A home is somebody's sanctuary. It's where you can
4 find peace. It's where you feel safe and secure.

5 TV shows and movies and media could warn you about
6 dangers lurking on the outside. We like to keep this fear
7 unknown, so we take precautions. Doors are locked.
8 Windows are locked. We draw the blinds and the curtains
9 so no one can see in, so no one can see into our
10 sanctuary, into our security.

11 But unfortunately for Ms. Carolyn Lyn and her
12 grandson David, this fear is no longer unknown. And on
13 May 10th of 2012, it came breaking through their back
14 window in broad daylight.

15 William Price, the man seated at this table back
16 here, he is that fear for them. He waited for Ms. Lyn to
17 leave her house. He thought the coast was clear, so he
18 chose a back window, broke it open, and went in.

19 He wasn't alone, though. He didn't know it, but
20 David, Ms. Lyn's sixteen year old grandson, was in the
21 residence at this time.

22 He heard a noise, and before he knew it, he was
23 face-to-face with this unwanted intruder. Now for David,
24 his adrenaline hit and a chase ensued. The defendant went
25 out the back door and David went out the front, and he

1 watched him until he lost eyesight of him.

2 He was able to call 911 immediately. He gave a very
3 vivid description of the man that he saw breaking into his
4 house. And within minutes, law enforcement had this --
5 had a suspect apprehended, a block and a half from the
6 incident location, from the Lyn's home on Second Street
7 over here in Beaufort.

8 David was taken to where the suspect was apprehended,
9 and he immediately identified him. He said: That's him.
10 That is the man that I saw in my house moments ago.

11 Now Mr. Price, the defendant, is charged with
12 burglary in the second degree. That is the charge he is
13 facing today.

14 The Judge, as he instructed, will instruct y'all
15 later on in this trial on the law, but I just wanted to
16 briefly explain to you what that exactly means. It means
17 that a person is guilty of burglary in the second degree
18 if they enter the dwelling place of another without
19 consent and with the intent to commit a crime therein.

20 Now let's backtrack a little bit. The Lyns, they
21 don't know the defendant. They have never seen him
22 before. He has never been at their house. He had no
23 inclination to think that he should be in that house.

24 That's why he waited. That's why he waited until he
25 thought it was empty. That's why he went through a back

1 window that he broke open.

2 There is no indication that any of that is proper
3 behavior. The only thing that that could mean is criminal
4 behavior.

5 Now, you are going to hear testimony throughout this
6 trial, and I apologize it's going to seem repetitive at
7 times, so my apologies in advance for that, but, you are
8 going to hear from the different law enforcement that were
9 there that responded to the incident. You are going to
10 hear from Ms. Lyn, herself, and David, who is going to be
11 able to tell you that that's the man who broke into my
12 house, and that's the man I identified. That's him.
13 That's him.

14 You are also going to hear the very words of the
15 defendant, himself, and a recorded statement he gave to
16 Investigator Kelleher.

17 William Price waited. He waited what he thought was
18 the best time. He thought the coast was clear. He
19 thought it was the best opportune time for him to break
20 into that house. He didn't hesitate.

21 Ms. Lyn left. He didn't hesitate. He didn't
22 hesitate to burglarize this house and turn the Lyns into
23 unsuspecting victims.

24 Now, I'm confident that at the end of this trial
25 after you hear all the testimony and weigh the evidence,

1 you, yourselves, will not hesitate, and you will find
2 William Price guilty of burglary in the second degree,
3 just as he didn't hesitate when he made that choice that
4 brought us all here today.

5 THE COURT: Thank you.

6 Mr. Platte?

7 MR. PLATTE: Thank you, Your Honor. May it please
8 the Court?

9 THE COURT: Yes, sir.

10 MR. PLATTE: Ladies and gentlemen, thank you for your
11 time this week. Serving on a jury is one of the most --
12 one of the highest duties that we can do as a civilian in
13 the United States. You're being asked to listen to the
14 case against William Price and find beyond a reasonable
15 doubt that he has committed the crime that the State has
16 charged him with.

17 The Judge has already mentioned that he is presumed
18 innocent. The State bears the burden of proof in a
19 criminal case.

20 As Mr. Price sits there right now, he is presumed to
21 be innocent of these charges. It is up to the State to
22 provide enough evidence to remove all reasonable doubt
23 that he is guilty of this crime.

24 In our system of justice, the defendant bears no
25 responsibility to prove his innocence or create reasonable

1 doubt. Since he is presumed innocent, there is already
2 reasonable doubt present before this case has begun that
3 he is not guilty. It is the State's burden to present
4 evidence to overcome this presumption of innocence and
5 remove all reasonable doubt.

6 The evidence that the State provides must leave no
7 room for reasonable doubt that Mr. Price is guilty of each
8 and every element of this crime. The Judge is going to
9 charge you at the end of this case with the elements of
10 burglary second, and it's going to be very important that
11 you listen to what those elements are and apply the
12 evidence that the State has presented in your
13 deliberations. And I will -- and I believe that you will
14 find that the State hasn't provided the evidence to prove
15 every element of this crime.

16 What is reasonable doubt? You hear that all the
17 time.

18 Everybody says: Beyond a reasonable doubt.

19 But you rarely hear an example of what reasonable
20 doubt really is. There are different levels of proof and
21 each one -- each step up requires more evidence to support
22 it. So it's like that staircase that you come in and we
23 came up to come to this courtroom. At the very bottom,
24 that very first step, there's no evidence. That means
25 there is no trace of evidence whatsoever. You are

1 standing on the ground floor.

2 Then you have what's called a scintilla. That means
3 any evidence at all. That's that first step up that you
4 make. Even the smallest measure of evidence will fit
5 scintilla evidence.

6 Next is called reasonable suspicion. This should be
7 based on the specific or particular facts, but it's not
8 based on a gut guess or a hunch.

9 The next step up you are going to make is probable
10 cause, reasonable, trustworthy information that a
11 particular person has committed a particular crime. To be
12 arrested, the officer is only required to have probable
13 cause.

14 If you look at a football field as an example,
15 probable cause does not even cross the fifty yard line.
16 It is a lower standard than we have in trials, and it's
17 rightly so.

18 The officers should not be charged with making a
19 decision at the scene of a crime at a bank robbery.
20 Somebody's running out the front door with a gun. The
21 officer shouldn't be forced to make the decision beyond a
22 reasonable doubt that is that the suspect or is that the
23 armed security guard.

24 The next step up is called the preponderance of the
25 evidence. This is the greater weight of the evidence --

1 of the amount of the evidence. This is when you have
2 crossed the fifty yard line in the football analogy.

3 The next step up is clear and convincing. It is the
4 firm belief that the allegations are true. You may be
5 seventy-five yards down the field. Still, not all the
6 way.

7 And then finally, that last step is reasonable doubt
8 and that there is no other reasonable explanation based on
9 the evidence provided that the evidence -- that the
10 defendant is guilty.

11 There are many different examples of explaining what
12 reasonable doubt is. One that kind of struck out --
13 struck me was, I had a box, and in the box I put a mouse
14 and I also put in a hungry cat. I put them in the box. I
15 close it up tight, really tight, and I left it and I came
16 back. I open it up and the mouse is gone. It could
17 qualify as proof beyond a reasonable doubt as to the
18 mouse's fate.

19 On the other hand, if I go through the same procedure
20 and I find no mouse, but under closer inspection, there is
21 a small mouse size hole, but the mouse is still gone.
22 This little hole gives you reasonable doubt as to the fate
23 of that mouse. Either you don't know if he has been
24 eaten, but he could have also escaped.

25 So I've tried to come up with an example to kind of

1 quantify it, because everybody talks about reasonable
2 doubt, and it kind of helps to put it into an example that
3 you can understand.

4 At the end of this trial when you are asked to
5 deliberate in this case, I think you will find the State
6 has not sustained its burden to remove all reasonable
7 doubt as to Mr. Price's innocence. I think you will find
8 the State's investigation has fallen short in many areas
9 and leave you asking why they didn't do more. Why didn't
10 they do something else?

11 I think you will have the feeling that the State did
12 not do its job proving all elements of this crime. And
13 because that there is still reasonable doubt, you will
14 have to find Mr. Price not guilty. Thank you.

15 **THE COURT:** Thank you, Mr. Platte.

16 The State may call its first witness.

17 **ASSISTANT SOLICITOR CONCANNON:** Thank you, Your
18 Honor. That State calls Master Sergeant Melanie Smith.

19 **CLERK:** Please raise your right hand put your left
20 hand on the Bible.

21 **MELANIE SMITH,** after being duly sworn, testified
22 as follows:

23 **CLERK:** Thank you. State your name.

24 **WITNESS:** Melanie Smith, S-M-I-T-H.

25 **THE COURT:** You may proceed.

DIRECT EXAMINATION OF M. SMITH BY CONCANNON

116

1 **ASSISTANT SOLICITOR CONCANNON:** Thank you, Your
2 Honor.

3 DIRECT EXAMINATION

4 BY ASSISTANT SOLICITOR CONCANNON:

5 **Q** Good afternoon, Master Sergeant Smith. Are you
6 currently employed with the Beaufort County Sheriff's
7 Office?

8 **A** The Communication Section.

9 **Q** And in the Communication Section, what are some of
10 your duties?

11 **A** I am the Communications Coordinator. I am the
12 liaison with all the departments that we work with. I am
13 in charge of the National Crime Information Center for all
14 the law enforcement agencies. I investigate complaints.
15 I do internals on dispatchers, and my main duty is the
16 records custodian, where I respond to requests for
17 recording from documentation of what dispatch did.

18 **Q** What sort of recordings would you be the custodian
19 of?

20 **A** Recordings of the 911 calls or the radio
21 transmissions to and from the agencies we dispatch for.

22 **Q** Thank you.

23 **ASSISTANT SOLICITOR CONCANNON:** May I approach, Your
24 Honor?

25 **THE COURT:** You may.

DIRECT EXAMINATION OF M. SMITH BY CONCANNON

117

1 (WHEREUPON, State's Exhibit No. 2 was marked for
2 identification only.)

3 Q Master Sergeant Smith, I am going to show you what
4 has been previously marked State's Exhibit Number Two.
5 You might want to take it out so you can see it.

6 A Okay.

7 Q Do you recognize that?

8 A Yes, I do.

9 Q What is that?

10 A That is a recording I made on the 18th of this month.

11 Q And what is the recording in reference to?

12 A The recording is a 911 call of a breaking an entering
13 call at -- correction,

14 Q Thank you.

15 ASSISTANT SOLICITOR CONCANNON: At this time, the
16 State would ask that State's Exhibit Two be published to
17 the jury and admitted into evidence.

18 THE COURT: Any objection?

19 MR. PLATTE: No objections.

20 THE COURT: Without objection, State's Exhibit Number
21 One may be -- is admitted and it may be published.

22 ASSISTANT SOLICITOR CONCANNON: Thank you, Your
23 Honor.

24 (WHEREUPON, State's Exhibit No. 2 was admitted into
25 evidence.)

1 (WHEREUPON, STATE'S EXHIBIT NUMBER TWO WAS PUBLISHED
2 TO THE JURY. THEREAFTER, THE FOLLOWING PROCEEDINGS
3 WERE HELD ON THE RECORD:)

4 ASSISTANT SOLICITOR CONCANNON: Thank you. I have no
5 further questions. If you can answer any questions for
6 Mr. Platte?

7 WITNESS: Okay.

8 THE COURT: Mr. Platte?

9 MR. PLATTE: I have no questions for the witness.

10 THE COURT: Thank you. You may step down.

11 WITNESS: Thank you.

12 THE COURT: Any objection to this witness being
13 excused for the balance of the trial?

14 ASSISTANT SOLICITOR CONCANNON: None from the State.

15 MR. PLATTE: No, Your Honor.

16 THE COURT: Thank you. You may call your next
17 witness.

18 ASSISTANT SOLICITOR CONCANNON: Thank you. The State
19 calls Carolyn Lyn.

20 CLERK: Please raise your right hand.

21 CAROLYN LYN, after being duly sworn, testified
22 as follows:

23 CLERK: Please be seated.

24 THE COURT: Please speak into the microphone so we
25 can hear you.

DIRECT EXAMINATION OF C. LYN BY CONCANNON

119

DIRECT EXAMINATION

BY ASSISTANT SOLICITOR CONCANNON:

Q Good afternoon, Ms. Lyn. How are you?

A Just fine. You?

Q Good. I have a couple of questions for you. Where do you live?

A in Beaufort.

Q Is that in Beaufort County?

A Yes.

Q Thank you. On May 10th of last year, 2012, were you at home in the morning?

A Yes.

Q And did you go anywhere?

A Yes.

Q Where did you go?

A I don't remember. I just went and came back.

Q How long do you think you were gone?

A Ten, fifteen, twenty minutes. I'm not sure. I didn't pay any attention to it.

Q Okay. When you came back home after running your errands, what did you see?

A When I turned in at the light, there was police cars sitting over at the Chinese place and one across the street, I believe. Go down Second Street, and one is sitting across on Hogarth there, and there's one sitting

1 in the middle of Second Street.

2 Q Okay. Was David anywhere around here?

3 A He was over there across the street talking to a
4 policeman.

5 Q Okay. I have a couple of questions about your house
6 itself. This laundry room, can you describe that to us?

7 A It's got a washer, dryer, couple of freezers.

8 Q Are there any entry points to the outside?

9 A Just one window and a door.

10 Q Okay. Ms. Lyn, I'd like to show you a couple of
11 pictures.

12 (WHEREUPON, State's Exhibit No. 3 was marked for
13 identification only.)

14 (WHEREUPON, State's Exhibit No. 4 was marked for
15 identification only.)

16 (WHEREUPON, State's Exhibit 5 was marked for
17 identification only.)

18 (WHEREUPON, State's Exhibit No. 6 was marked for
19 identification only.)

20 (WHEREUPON, State's Exhibit No. 7 was marked for
21 identification only.)

22 Q This has been marked State's Exhibit Six -- Three,
23 Four, Five, Six and Seven.

24 THE COURT: Any objection?

25 MR. PLATTE: No objection.

DIRECT EXAMINATION OF C. LYN BY CONCANNON

121

1 **THE COURT:** All right. State's Exhibits Three, Four,
2 Five, Six, and Seven are admitted without objection.

3 (WHEREUPON, State's Exhibit No. 3 was admitted into
4 evidence.)

5 (WHEREUPON, State's Exhibit No. 4 was admitted into
6 evidence.)

7 (WHEREUPON, State's Exhibit No. 5 was admitted into
8 evidence.)

9 (WHEREUPON, State's Exhibit No. 6 was admitted into
10 evidence.)

11 (WHEREUPON, State's Exhibit No. 7 was admitted into
12 evidence.)

13 **THE COURT:** You may publish them to the jury.

14 **ASSISTANT SOLICITOR CONCANNON:** Thank you. May I
15 approach the witness?

16 **THE COURT:** Yes.

17 **ASSISTANT SOLICITOR CONCANNON:** Thank you, Your
18 Honor.

19 **Q** Ms. Lyn, I'm going to show you a couple of pictures
20 here. Can you tell the Court what this is?

21 **A** That's the window on the outside to the wash room.

22 **Q** How high up is that window?

23 **A** As tall as I am.

24 **Q** As tall as you are? It's pretty high up? Can you
25 tell what that is?

1 A It looks like the wall below the window or the
2 window. I'm not sure exactly what that is.

3 Q How does it appear to you? Is it clean, is it ---

4 A It looks like somebody put footprints on it to help
5 climb into the window.

6 Q Okay. How about these pictures?

7 A They're the same.

8 Q Thank you. Do you recognize what this is?

9 A That's the inside of the wash room.

10 Q Okay.

11 A That's the freezer in front of the window there.

12 Q What's that in front of the window?

13 A What do you mean?

14 Q On the window.

15 A Uh-huh, a curtain.

16 Q A curtain?

17 A Yeah.

18 Q From the outside, can you see in this window?

19 A You might see that much, if you can.

20 Q But you really ---

21 A No. I'd say no.

22 Q Okay.

23 ASSISTANT SOLICITOR CONCANNON: May I publish these
24 to the jury, Your Honor?

25 THE COURT: You may.

CROSS-EXAMINATION OF C. LYN BY PLATTE

123

1 Q Do you normally lock your doors and windows?

2 A Yes.

3 Q What about this window?

4 A I'd say it was locked.

5 Q Okay. I have just a couple more questions. Do you
6 know the defendant over there, Mr. Price?

7 A No.

8 Q Have you ever seen him before?

9 A No.

10 Q Any reason he should be in your house?

11 A No.

12 ASSISTANT SOLICITOR CONCANNON: I beg the Court's
13 indulgence?

14 THE COURT: Yes, ma'am.

15 Q Did you ever give William Price permission to enter
16 your house?

17 A No.

18 ASSISTANT SOLICITOR CONCANNON: I have no further
19 questions for this witness at this time.

20 THE COURT: Thank you.

21 Mr. Platte?

22 CROSS-EXAMINATION

23 BY MR. PLATTE:

24 Q You said you think that your window was locked; is
25 that correct?

1 A Well, it was locked, whether it was locked then or
2 not, I could not honestly say. I can't reach the window
3 from over the freezer, so ---

4 Q So you're not sure.

5 A I won't swear to it, no.

6 Q Okay.

7 MR. PLATTE: That's all, Your Honor.

8 THE COURT: Thank you.

9 Any redirect?

10 ASSISTANT SOLICITOR CONCANNON: Just briefly, Ms.

11 Lyn.

12 REDIRECT EXAMINATION

13 BY ASSISTANT SOLICITOR CONCANNON:

14 Q Do you normally keep all your windows and doors
15 locked?

16 A Yes.

17 Q Thank you. Are there blinds and curtains on these
18 windows?

19 A There's a curtain on the front of it, and there was a
20 curtain on the door that we had. We switched doors. So
21 there was a curtain on the door that went out the wash
22 room door.

23 Q Thank you. How about the other windows in your
24 house?

25 A They've all got curtains and things over them.

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1 Q They're covered?

2 A Yes.

3 Q Can you see in from the outside?

4 A No.

5 Q No? I have no further questions. Thank you.

6 THE COURT: Any recross, based on her redirect?

7 MR. PLATTE: No, Your Honor.

8 THE COURT: Thank you. You may step down.

9 WITNESS: Thank you.

10 ASSISTANT SOLICITOR CONCANNON: Your Honor, may we
11 approach?

12 THE COURT: You may.

13 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE
14 RECORD OUT OF THE HEARING OF THE JURY. THEREAFTER, THE
15 FOLLOWING PROCEEDINGS WERE HELD ON THE RECORD IN THE
16 PRESENCE AND HEARING OF THE JURY:)

17 THE COURT: The State may call its next witness.

18 ASSISTANT SOLICITOR CONCANNON: Thank you, Your
19 Honor. The State calls David Lyn.

20 THE COURT: All right.

21 Come forward and be sworn, please.

22 CLERK: Please raise your right hand and put your
23 left hand on the Bible.

24 DAVID LYN, after being duly sworn, testified as
25 follows:

1 **CLERK:** Please have a seat.

2 **THE COURT:** Sir, if you have any gum, please put your
3 gum in here.

4 **ASSISTANT SOLICITOR CONCANNON:** Thank you.

5 DIRECT EXAMINATION

6 BY ASSISTANT SOLICITOR CONCANNON:

7 **Q** David, how are you doing today?

8 **A** Fine.

9 **Q** You're doing fine?

10 **A** Yes, ma'am.

11 **Q** I'm going to ask you a couple of questions about what
12 happened on May 10th of last year.

13 **A** Yes, ma'am.

14 **Q** Okay. Can you tell me what you did that morning?

15 **A** I was cooking breakfast.

16 **Q** You were cooking. Can you speak up a little bit?

17 **A** I was cooking breakfast.

18 **Q** Okay. And what happened when you were cooking
19 breakfast?

20 **A** I heard a noise in the back.

21 **Q** What sort -- how would you describe this noise?

22 **A** Like somebody had broken in the back.

23 **Q** Was it loud? Was it quiet?

24 **A** Loud.

25 **Q** It was loud? And where were you in reference to the

DIRECT EXAMINATION OF D. LYN BY CONCANNON

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1 back that you just stated?

2 A Like, a couple of feet.

3 Q You were in a different -- were you in the same room
4 or in a different room?

5 A Right next door.

6 Q Right next door. Okay. When you heard this loud
7 noise, what did you do next?

8 A I went to see what it was.

9 Q Okay. Did you see anything?

10 A Yes.

11 Q What did you see?

12 A A white male coming through the window.

13 Q Where was he when you looked in the laundry room and
14 saw him?

15 A Almost all the way in.

16 Q Did he get all the way in?

17 A Yes.

18 Q Okay. And once you saw the defendant, how long would
19 you say you looked at him?

20 A About five seconds.

21 Q Were you able to see what he looked like?

22 A Yes, ma'am.

23 Q Okay. Were you able -- what did you do after you saw
24 him in your laundry room?

25 A I called the police.

1 Q Okay. And what did you tell 911?

2 A That a white male wearing a blue shirt and some blue
3 jeans and dirty shoes had broke into my house.

4 Q Okay. And where are you at the time when you are on
5 the phone with 911?

6 A Outside.

7 Q How did you get outside?

8 A I walked. Well, I followed -- I followed him ---

9 Q Okay.

10 A --- to see where he was going.

11 Q Okay. Did you see where he was going?

12 A Yes, ma'am.

13 Q How did -- let's backtrack a little bit. The
14 defendant -- the -- there's a man in your laundry room.

15 A Yes, ma'am.

16 Q How did he get out of that laundry room?

17 A He seen me, and then he ran out the back door.

18 Q All right. So there is a door to the outside in that
19 laundry room?

20 A Yes, ma'am.

21 Q And where did you say -- you followed him?

22 A Yes, ma'am.

23 Q Where did you see him go?

24 A He was going towards the Chinese restaurant and the
25 Exxon station.

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- 1 Q Do you know what road that's called?
- 2 A Hogarth Street.
- 3 Q Hogarth Street. What street do you live on?
- 4 A Hogarth and Second Street, on the corner.
- 5 Q On the corner of Hogarth and Second Street?
- 6 A Yes, ma'am.
- 7 Q And when you are standing in your front yard, can you
- 8 see the Chinese restaurant and the Tiger Express?
- 9 A A little.
- 10 Q Okay. Where do you end up when you are still on the
- 11 phone with 911?
- 12 A Across the street at my friend's house.
- 13 Q Okay. Can you see down Hogarth ---
- 14 A Yes, ma'am.
- 15 Q --- when you are across the street?
- 16 A Yes, ma'am.
- 17 Q Okay. You are still on the phone with 911, and do
- 18 police arrive?
- 19 A Yes. About five minutes later.
- 20 Q Okay. How do they come to you?
- 21 A They just -- well, I flagged them down.
- 22 Q You flagged them down?
- 23 A Yes, ma'am.
- 24 Q What did you say to them?
- 25 A I said somebody broke into my house.

1 Q Did you ---

2 A With a blue shirt and blue jeans and some dirty white
3 shoes.

4 Q Okay. And what did that officer say to you after you
5 told him the description?

6 A Which way did he go? I told him up towards the
7 Chinese restaurant and the gas station.

8 Q Okay. And then what happened?

9 A And then another police was coming down Hogarth
10 Street, and I was pointing at him because he was walking
11 across towards the Chinese restaurant.

12 Q Okay. So you ---

13 A I pointed towards the police like that was him.

14 Q How far away are you at this point from the Chinese
15 restaurant?

16 A About a block and a half.

17 Q About a block and a half. So you can see.

18 A Yes, ma'am.

19 Q Did you ever leave your friend -- your neighbor's
20 front yard?

21 A Yes, ma'am.

22 Q And where did you go?

23 A They took me to the Chinese restaurant to identify
24 him.

25 Q Who is they?

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1 A The police officers.

2 Q Okay. They walked you there or they drove?

3 A They drove me.

4 Q They drove you there?

5 A Yes, ma'am.

6 Q Okay. Once you got to the Chinese restaurant, what
7 happened -- what happened? What did you see and what
8 happened?

9 A I got out of the car, and they told me to look at him
10 and I told them that was him, the person who broke into
11 the house.

12 Q When you saw this person that broke into your house
13 at the Chinese restaurant, how much time approximately,
14 and I know it's hard in the heat of the moment type thing,
15 would you say passed from when you saw him in your laundry
16 room?

17 A About thirty minutes.

18 Q About thirty minutes?

19 A Yes, ma'am.

20 Q Did you remember what he looked like?

21 A Yes, ma'am.

22 Q How long did you get a look at him in your laundry
23 room?

24 A Five seconds.

25 Q Five seconds?

1 A Yes, ma'am.

2 Q So then you picked him out at the Chinese restaurant?

3 A Yes, ma'am.

4 Q Okay. Do you see that man in the courtroom today?

5 A Yes, ma'am.

6 Q Can you please point him out for me?

7 A (POINTING.)

8 Q Thank you. Have you ever seen this man before?

9 A No, ma'am.

10 Q You've never had any dealings with him?

11 A No, ma'am.

12 Q You've never spoken with him?

13 A No, ma'am.

14 Q Never seen him on the streets walking around?

15 A No, ma'am.

16 Q Never around your neighborhood?

17 A No, ma'am.

18 Q Do you know him?

19 A No, ma'am.

20 Q You maybe ever heard his name?

21 A No, ma'am.

22 Q So you have no idea who this man is?

23 A No, ma'am.

24 Q When was the first time you saw this man?

25 A When he broke in.

CROSS-EXAMINATION OF D. LYN BY PLATTE

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1 **ASSISTANT SOLICITOR CONCANNON:** I beg the Court's
2 indulgence? I would ask that the record reflect that
3 the -- that the witness, Mr. Lyn, did point to the
4 defendant and identified him in court.

5 **THE COURT:** The record will so reflect.

6 **ASSISTANT SOLICITOR CONCANNON:** Thank you. I have no
7 further questions for this witness.

8 **THE COURT:** Thank you.

9 Mr. Platte?

10 **MR. PLATTE:** Yes, Your Honor.

11 CROSS-EXAMINATION

12 **BY MR. PLATTE:**

13 **Q** Good afternoon. How are you doing?

14 **A** Fine.

15 **Q** Good. I want to walk through your testimony again,
16 just so I can get a clear picture of what exactly
17 happened. So you -- you -- you said that you were cooking
18 breakfast that morning and you heard a noise.

19 **A** Yes, sir.

20 **Q** And when you heard that noise, it was coming from the
21 laundry room?

22 **A** Yes, sir.

23 **Q** And you decided you were going to look to see what
24 caused that noise?

25 **A** Yes, sir.

1 Q Is there a door between the kitchen and the laundry
2 room?

3 A Yes, sir.

4 Q Was it open or closed?

5 A Closed.

6 Q Closed. What kind of door was it?

7 A A plastic door.

8 Q A plastic door. So, a closed plastic door, and you
9 heard a noise. So you opened the door. Does the door
10 swing in towards the kitchen or outward towards ---

11 A Towards the kitchen.

12 Q Towards the kitchen. So you reached to grab the door
13 and pulled it towards the kitchen, and you stepped into
14 the laundry room and you saw somebody coming through your
15 window?

16 A No. I peeked out the window.

17 Q Okay.

18 A Out of the curtain in the kitchen.

19 Q So you first peeked out -- what -- what direction
20 does that window in the kitchen face? Does it face Second
21 Street or does it face Hogarth Street?

22 A Which one?

23 Q You said that you peeked out through the curtain ---

24 A Out the kitchen window into the laundry room, and I
25 seen him coming into the laundry room.

CROSS-EXAMINATION OF D. LYN BY PLATTE

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1 Q So there is a window that goes between ---

2 A Yes.

3 Q I'm -- I'm sorry. I -- I thought -- you had me a
4 little bit confused. Okay. So there is actually a window
5 and a door that face -- that are on the wall between the
6 kitchen ---

7 A Yes.

8 Q --- and the laundry room? Okay. So you heard a
9 noise, so you peeked through the window first.

10 A Uh-huh.

11 Q How long -- how long did you -- did you spend looking
12 through that -- peeking through that curtain?

13 A Five seconds.

14 Q Five seconds?

15 A Yes.

16 Q So you stood and ---

17 A I stood five seconds. I seen him coming in. He came
18 in, and then I guess he seen me, and then he went out the
19 back door.

20 Q Okay. So you never opened up the door ---

21 A No.

22 Q --- and went through the door and saw him.

23 A No, sir. Not at that time.

24 Q Okay. So you were always in the kitchen the entire
25 time ---

1 A Yes.

2 Q --- when you are seeing the suspect coming through
3 the window.

4 A Yes, sir.

5 Q Okay. When you saw him coming through the window,
6 was he -- was he coming through -- was he standing in the
7 room, or was he coming through on his stomach?

8 A Coming through on his stomach.

9 Q So he was pulling himself up, ---

10 A Yes.

11 Q --- pushing himself into the laundry room, and you
12 saw him when he was halfway in?

13 A Yes, sir.

14 Q And you stayed behind the kitchen wall. You were
15 peeking through the window. You saw him. Did he come all
16 the way into the building?

17 A Yes.

18 Q Into the laundry room?

19 A Yes.

20 Q All right. And then what did you do?

21 A I went and grabbed the phone.

22 Q You went and grabbed the phone?

23 A It was right there in the kitchen.

24 Q Okay.

25 A And then I called 911 and told them that somebody was

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1 breaking in.

2 Q So when you are on the phone with 911, he was still
3 in the house.

4 A Yes.

5 Q So he is still in the house, and you have them on the
6 phone, 911, and you are describing him to the dispatcher
7 at the time, right?

8 A Uh-huh.

9 Q Okay. And then what happens?

10 A Then he left out the back door. He went out the back
11 door and went walking, walking towards the gas station.

12 Q Walking towards ---

13 A And then he turned.

14 Q And do you think he ever saw you?

15 A Yes.

16 Q He did see you?

17 A Or he heard me, one or the other.

18 Q Okay. Do you think he saw you when he was inside the
19 laundry room?

20 A Probably.

21 Q Probably.

22 ASSISTANT SOLICITOR CONCANNON: Objection. Calls for
23 speculation.

24 THE COURT: Sustained.

25 Q Did the suspect make any movement -- or did you ever

1 enter the laundry room or did you ever open the door to
2 the laundry room when the suspect was in the -- in that
3 room?

4 A No, sir.

5 Q So he came through the window and then went out
6 through the door?

7 A Yes, sir.

8 Q Did you make any noise ---

9 A No, sir.

10 Q --- when he was in?

11 A No, sir.

12 Q So you then called 911, and did you follow him
13 outside through the laundry room door?

14 A Yes, sir.

15 Q Okay. And which way did he go?

16 A To the left.

17 Q To the left? So, he came out onto Hogarth Street and
18 he turned left?

19 A No, he went right. He went right.

20 Q Okay. So he turned right and went down towards
21 Boundary Street and the ---

22 A The Chinese restaurant.

23 Q --- the restaurant. Okay. And you are on the phone
24 and you are standing outside and you went out the back
25 door; right?

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1 A Yes, sir.

2 Q And you were watching him walk down the road, and
3 where did he go?

4 A He went towards -- he went to the gas station first.

5 Q Okay. And after he was at the gas station, where did
6 he go?

7 A To the Chinese restaurant.

8 Q Okay. I'm going to hand you the statement you made
9 on May 10th, 2012, to the Beaufort Sheriff's Department,
10 and I'm going to ask you to start at the top and read it
11 word for word exactly how those words are for me, please.

12 A Uh, I was in my dad's room when I heard something
13 moving in the back, so I went -- I went to take a look and
14 saw someone coming through the back window. I -- I went
15 to get the phone and call 911. The white male was looking
16 at me, so -- so I went to see where he was going. He went
17 down Second Street to the black man's house. I said I
18 just seen him with a purple shirt, blue jeans, and gray
19 shoes. The black male was at the front of my gate and the
20 white male was coming through the window, and I looked at
21 him and he said if you know where to get any drugs at.
22 No, because he seen me he said that. Then he did a 360
23 and went the other way quickly. The white male went out
24 the back door and went to the corner store on Boundary
25 Street.

1 Q Okay. So you made that statement after the police
2 showed up?

3 A Yes.

4 Q And it looks like you talk about him going in a
5 couple different directions now.

6 A Yes.

7 Q You know, you just testified that he came out and
8 went straight down Hogarth Street to Boundary Street, but
9 in here you talk about him walking down Second Street,
10 which is I think it's a different direction to go to
11 somebody else's house. In the 911 tape, you talk about
12 him going out the back door and going to the left, which
13 is the opposite direction of Boundary Street. So I'm --
14 I'm just kind of confused which -- you have him going
15 three different -- the three directions that there are
16 streets, you have him going down all three directions.
17 And then even on the 911 call, you have him walking ---

18 ASSISTANT SOLICITOR CONCANNON: Objection. Is Mr.
19 Platte going to ask David a question or is he testifying?

20 THE COURT: Well, I'll let him get to it.

21 Q And then on the 911 tape, you have him walking in
22 front of your house towards Hogarth Street on Second
23 Street and then turning and going down to the Tiger
24 Express. I'm just trying to figure out -- the 911 call
25 ---

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1 **THE COURT:** Is there a question?

2 **MR. PLATTE:** Yes.

3 **Q** The 911 call and the statement say one thing, and
4 then you testified to another. Which one is true?

5 **A** The one I just said.

6 **Q** Okay. Okay. So the statement that you made during
7 this incident and the statement you made immediately after
8 are not correct, and the statement you made in the
9 courtroom, I believe is nine months after the incident, is
10 the correct one?

11 **A** Uh-huh.

12 **Q** Okay. You said that after you called 911, you'd gone
13 outside and you are standing at the intersection of
14 Hogarth and Second, and you saw the suspect walk across
15 the street going towards the Chinese restaurant. Was
16 there anybody around you when you made that -- when you
17 saw that?

18 **A** Saw what? Saw him coming from ---

19 **Q** From the Tiger Express to the Chinese restaurant.

20 **A** Yes.

21 **Q** And so he was walking across the street down that
22 direction, and you were standing kind of at the
23 intersection of Hogarth and Second?

24 **A** Yes.

25 **Q** And you were -- when you saw him walk across the

1 street, what did you see?

2 A What did I see when I saw him walk across the street?
3 His blue shirt, his blue jeans, and his dirty shoes.

4 Q Were you able to see what kind of hair he had?

5 A Yes.

6 Q Um, did you see if he had big ears?

7 A No. ~~I~~ wasn't looking at that.

8 Q So you weren't looking at his face? You were just
9 looking at the colors ---

10 A I was looking at what he had on.

11 Q So, you were just looking at the colors that he was
12 wearing.

13 A Yes.

14 Q You weren't making that -- you weren't making that
15 observation based on any facial features ---

16 A No.

17 Q --- or any distinct identification markers on him?
18 It was just the color of his clothing.

19 A Yes.

20 Q Okay. So after you saw him, what did you say?

21 A I said I saw him.

22 Q Okay. And so -- and was there an officer standing
23 next to you?

24 A Yes.

25 Q Okay. And then sometime, ten or fifteen minutes

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1 later, they put you into a squad car and drove you down to
2 the Chinese restaurant. Who -- do you remember who put
3 you in the squad car?

4 A No, sir.

5 Q No? And they took you down, and did they ask you to
6 get out of the car?

7 A Yes, sir.

8 Q They asked you to get out, and then what did they ask
9 you to do?

10 A To identify him, and I told them that was the person
11 who broke into my house about fifteen or thirty minutes
12 later.

13 Q Okay. So what -- what part of him did you see? I
14 mean, if he is sitting in the squad car, then he must have
15 been kind of hunched down.

16 A I seen his shirt. That's all I needed to see.

17 Q Just his shirt?

18 A Yes.

19 ASSISTANT SOLICITOR CONCANNON: Objection. That
20 calls for speculation.

21 THE COURT: Well, he can ask him what he saw.

22 MR. PLATTE: It goes to what he saw. I'm not asking

23 ---

24 Q So you only saw the blue shirt?

25 A Yes.

1 Q Was there any identifying marks on the suspect that
2 made you realize, oh, this is the guy? A tattoo, or a ---

3 A I just knew that was him, because I seen him in the
4 house. I looked at him for five seconds.

5 Q Five seconds. So, one thousand one, one thousand
6 two, one thousand three, one thousand four, one thousand
7 five?

8 A Yes.

9 Q That's how -- and all this while, you are cooking
10 breakfast, you heard a noise. Were you startled? Did you
11 expecting somebody to be home?

12 A No.

13 Q So it would be fair to say that you were startled?

14 A Yes, a little.

15 Q Did your heart start racing a little bit?

16 A A little.

17 Q Did you wonder what was going on?

18 A A little.

19 Q A little? Were you scared?

20 A A little.

21 Q A little? So you heard this noise, you were
22 startled, you're scared, and your heart's racing a little
23 faster, and you peek out through that window between the
24 kitchen and the laundry room, and you see somebody coming
25 through the window. Did you look at his face?

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1 **A** Yes.

2 **Q** You looked at his face? Did you get a really good
3 look? Did you study it? Did you see what color eyes he
4 had?

5 **A** No.

6 **Q** No? Did you see what color hair?

7 **A** Yes.

8 **Q** Did you see if it was long hair, short hair?

9 **A** Short.

10 **Q** And then you saw what color clothes he had.

11 **A** Yes.

12 **Q** And then -- that's -- for five seconds, that's a good
13 amount of information to take in; wouldn't you agree? To
14 see somebody you had never seen before ---

15 **A** I mean, I could do that.

16 **Q** Okay. And then it was about thirty or forty minutes
17 later, you saw him walking across the street a block and a
18 half away, and you knew that had to be the guy, because he
19 had the same color clothes on?

20 **A** Yes.

21 **ASSISTANT SOLICITOR CONCANNON:** Objection. That's
22 not what the witness testified to.

23 **THE COURT:** Please rephrase the question, because
24 that is not what the witness said. Sustained.

25 **MR. PLATTE:** Yes, Your Honor. I've lost my train of

1 thought now.

2 Q Okay. And then they put you in the squad car and
3 brought you down, and you are able to make a positive
4 identification with him sitting in the police car and just
5 the top half of him.

6 A Yes.

7 Q Just the blue shirt.

8 A The blue shirt and his face.

9 Q And his face?

10 A Uh-huh.

11 Q Okay. I want to show -- have you ever been arrested?

12 A Yes.

13 Q And what was that for?

14 A Shoplifting.

15 Q Shoplifting. And you were convicted on that?

16 A Yes.

17 Q Is that the only thing you have ever been arrested
18 on?

19 A Yes.

20 ASSISTANT SOLICITOR CONCANNON: Objection.

21 THE COURT: Sustained. If you have a specific
22 question, you may ask it.

23 Q So you've only been arrested on one occasion?

24 ASSISTANT SOLICITOR CONCANNON: Objection.

25 THE COURT: Sustained.

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1 Q I want to draw a little picture -- I want you to draw
2 a little picture for me. Is that okay?

3 THE COURT: You probably need to put it so the ---

4 MR. PLATTE: Yeah, I'm going to pull out the -- we
5 have a little board. Can everybody see that?

6 Q Okay. I'm going to give you a map so you can make it
7 accurate. Would you mind standing up here and drawing a
8 few things for me?

9 THE COURT: You need to speak up since there's no
10 microphone in front of you.

11 MR. PLATTE: I'll try not to ask him any questions.
12 I'll get him to draw first, and then we can sit down.

13 Q Would you mind drawing -- let's draw Boundary Street,
14 and let's start -- let's start to have Boundary Street
15 down here, because a lot of stuff kind of goes on up here.
16 Would you mind drawing Boundary Street? Can you draw
17 Hogarth Street?

18 A Hogarth? (DRAWING.)

19 Q How about doing it kind of over on this side.

20 A Yes, sir.

21 ASSISTANT SOLICITOR CONCANNON: Objection. He asked
22 the defendant -- the witness to draw it. He can't show
23 him where he wants him to draw it.

24 THE COURT: Yeah. You've got to let the witness draw
25 it. It's his drawing.

1 **MR. PLATTE:** The only reason I asked him to place the
2 road on one side is because we are going to be drawing a
3 whole bunch of other stuff on the left.

4 **THE COURT:** Just, if you are going to let him draw
5 it, let him draw it.

6 **MR. PLATTE:** Okay.

7 **Q** All right. So that's Hogarth Street. Would you mind
8 drawing Second Street for me?

9 **A** Okay. (DRAWING.)

10 **Q** Are there any more streets in between Boundary and
11 Second Street?

12 **A** Are there any more streets?

13 **Q** What I'm talking about ---

14 **THE COURT:** They can't hear you when you're speaking.

15 **Q** Are there any roads between Boundary and Second
16 Street, or is that Second Street the very first street you
17 get to when you turn onto Hogarth?

18 **A** No.

19 **Q** No? Is there another street?

20 **A** Yes.

21 **Q** Would you draw that, please?

22 **ASSISTANT SOLICITOR CONCANNON:** Objection. I just
23 want to make a relevance objection as to what relevance is
24 it that David knows the geography around his house.

25 **THE COURT:** I'm going to let the jury make that

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1 determination, but he can certainly ask him to, for what
2 it's worth.

3 ASSISTANT SOLICITOR CONCANNON: Thank you.

4 THE COURT: Overruled.

5 Q Will you draw -- will you write Hogarth on the street
6 that you drew that was Hogarth?

7 A Hogarth? (DRAWING.)

8 Q Okay. Would you write Boundary Street on the road
9 that was Boundary Street?

10 A Boundary Street. (DRAWING.)

11 Q Would you label Second Street now?

12 A (DRAWING.)

13 Q Would you draw your house, where it's located?

14 A (DRAWING.)

15 Q Okay. So from your testimony today, will you draw
16 the direction that the suspect left your house and where
17 he went? Whoa, I'm sorry. Before you do that, can you
18 draw where the Chinese restaurant and the Tiger Express
19 is? That's important.

20 A (DRAWING.)

21 Q Okay. Will you just label one, just put gas and the
22 other one put Chinese?

23 A (WRITING.)

24 Q All right. So according to your testimony in court,
25 he came out the back street -- back door and went straight

1 down Hogarth Street?

2 A Yes.

3 Q Will you draw an arrow showing where this -- where
4 the suspect went? And draw all the way down to where he
5 ended up.

6 THE COURT: I thought you weren't going to ask him
7 any questions. He's got to speak up.

8 MR. PLATTE: Okay.

9 THE COURT: You were going to have him draw, and now
10 you are asking him a bunch of questions.

11 MR. PLATTE: I'm so sorry, Your Honor.

12 THE COURT: I'm just noticing the court reporter is
13 having a hard time.

14 MR. PLATTE: Okay.

15 Q If -- in a loud voice, we just -- is this the
16 first -- is that what you testified to today? Loud voice.

17 A Yes.

18 Q Okay. Will you draw a number one next to that?

19 A (WRITING.)

20 Q In the 911 call, you mentioned the suspect coming
21 down Second Street. If you are coming down Second Street
22 and making a right hand turn, will you demonstrate -- will
23 you draw an arrow?

24 A Second Street ---

25 COURT REPORTER: I'm sorry, Your Honor, I can't hear

CROSS-EXAMINATION OF D. LYN BY PLATTE

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1 him.

2 THE COURT: You are going to need to speak up, as
3 well.

4 MR. PLATTE: I'm so sorry, Your Honor.

5 THE COURT: I'm sorry. You can't ask questions right
6 now.

7 MR. PLATTE: I -- I -- I ---

8 THE COURT: Y'all have got to speak up. I've got
9 jurors who aren't hearing what you are saying.

10 MR. PLATTE: Okay.

11 Q Will you draw -- I'll try to do this without asking
12 questions. Will you draw an arrow, according to the 911
13 call, that you saw the suspect coming down Second Street
14 and turning onto Hogarth Street?

15 A (DRAWING.)

16 Q Okay. And then finally, on the 911 call, initially
17 you said that he came out and turned to the left on
18 Hogarth Street. Will you draw an arrow in that direction?

19 A (DRAWING.)

20 Q And when -- okay. Thank you. You can -- go sit down
21 and I'll ask you a couple of questions, so you can use the
22 microphone.

23 So, it looks like you have -- I mean, I'm trying to
24 figure out -- I was trying to figure out exactly where he
25 went, and I thought a graphical demonstration ---

1 **THE COURT:** You don't need to explain it to him. You
2 just need to need to ask him questions.

3 **Q** I want to show you a couple of pictures, and I would
4 just like you to tell me if you recognize them. This is
5 Defendant's Exhibit One. Do you recognize this?

6 **A** Yes.

7 **Q** What is it a picture of?

8 **A** Hogarth Street going towards the Chinese restaurant.

9 **Q** Okay. Where were you -- can you describe where you
10 were standing when you first saw the suspect go from the
11 Exxon station to the Chinese restaurant?

12 **A** By that gray car.

13 **Q** Okay.

14 **COURT REPORTER:** I'm sorry Your Honor, I can't ---

15 **THE COURT:** Hold on a second. Let me see the
16 attorneys over here for a minute.

17 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE
18 RECORD OUT OF THE HEARING OF THE JURY. THEREAFTER, THE
19 FOLLOWING PROCEEDINGS WERE HELD ON THE RECORD IN THE
20 PRESENCE AND HEARING OF THE JURY:)

21 **Q** I'm going to hand you a picture and can you tell me,
22 do you recognize this?

23 **A** Yes.

24 **Q** Where do you recognize that from?

25 **A** From Hogarth Street.

CROSS-EXAMINATION OF D. LYN BY PLATTE

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1 Q Is it an accurate -- accurate picture, if you were
2 standing next to your house going down towards Hogarth --
3 going down Hogarth Street going towards Boundary?

4 A Yes.

5 Q Okay.

6 MR. PLATTE: Your Honor, I move that this picture be
7 entered into evidence as defendant's first.

8 THE COURT: Any objection?

9 ASSISTANT SOLICITOR CONCANNON: Without -- can I see
10 it?

11 MR. PLATTE: I'm sorry.

12 ASSISTANT SOLICITOR CONCANNON: The State has no
13 objection in reference to -- for the sole purpose of
14 identifying these streets and the location of the house.

15 THE COURT: All right. For that purpose, the
16 defendant -- or the witness says that it is a fair and
17 accurate representation for just identifying the house,
18 not to distance or anything like that.

19 MR. PLATTE: Okay.

20 (WHEREUPON, Defendant's Exhibit No. 1 was marked for
21 identification and received into evidence.)

22 Q And do you recognize this picture?

23 A Yes.

24 Q Is that a fair and accurate picture -- or where do
25 you recognize that picture from?

1 A By the Chinese restaurant.

2 Q Do you know which direction it's looking?

3 A Yes.

4 Q Can you ---

5 A Going towards my house.

6 Q Is that a fair and accurate picture of Hogarth Street
7 when you are sitting at the Chinese restaurant ---

8 A Yes.

9 Q --- looking towards your house?

10 A Yes.

11 Q I move this picture into evidence.

12 THE COURT: Any objection?

13 ASSISTANT SOLICITOR CONCANNON: Just the objection
14 that was stated earlier.

15 THE COURT: For the same limited purpose for showing
16 you the actual intersection. It cannot be used to show
17 distance.

18 MR. PLATTE: Okay.

19 THE COURT: This is Defendant's Exhibit Number Two is
20 admitted for the limited purpose.

21 (WHEREUPON, Defendant's Exhibit No. 2 was marked for
22 identification and received into evidence.)

23 THE COURT: You may proceed.

24 MR. PLATTE: Thank you, Your Honor.

25 Q In the distance between where you are standing and

REDIRECT EXAMINATION OF D. LYN BY CONCANNON

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1 the Chinese restaurant, how far do you think that was?

2 A The distance from the Chinese restaurant and what?

3 Q To where you were standing.

4 A Not that long.

5 Q You said before about a block and a half.

6 A Yes.

7 Q Okay. And you ---

8 MR. PLATTE: Your Honor, I'm done with this witness.

9 THE COURT: All right. Thank you.

10 Why don't we take about a ten minute recess, then we
11 will -- well, let me see the attorneys.

12 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE
13 RECORD OUT OF THE HEARING OF THE JURY. THEREAFTER, THE
14 FOLLOWING PROCEEDINGS WERE HELD ON THE RECORD IN THE
15 PRESENCE AND HEARING OF THE JURY:)

16 THE COURT: Okay. We are going to have redirect at
17 this point.

18 ASSISTANT SOLICITOR CONCANNON: Thank you, Your
19 Honor.

20 REDIRECT EXAMINATION

21 BY ASSISTANT SOLICITOR CONCANNON:

22 Q David, how old are you?

23 A Sixteen.

24 Q I'm sorry?

25 A Sixteen.

1 Q Sixteen?

2 A Yes, ma'am.

3 Q And were you sixteen in May of last year when this
4 happened?

5 A No.

6 Q How old were you then?

7 A Fifteen.

8 Q Okay. Who do you live with?

9 A My grandma, my dad, and my sister.

10 Q So there are four of y'all in the house?

11 A Yes, ma'am.

12 Q And you were -- were you alone?

13 A Yes, ma'am.

14 Q I just have a couple of questions regarding this map
15 that we have here. Prior to that, you testified that your
16 adrenaline was pumping and you were kind of excited and
17 nervous.

18 A Yes.

19 Q Okay. So you may have gotten mixed up with the
20 lefts, rights, initially.

21 A Yes, ma'am.

22 Q But is it your testimony that the defendant made it
23 to Hogarth Street?

24 A Yes, ma'am.

25 Q And went in the direction of?

REDIRECT EXAMINATION OF D. LYN BY CONCANNON

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1 **A** The Chinese restaurant.

2 **Q** Okay. Has your house ever been broken into before?

3 **A** Yes.

4 **Q** It has? A couple more questions with this geography.

5 When you are standing in your front yard, can you see the
6 Chinese restaurant and the Tiger Express?

7 **A** A little.

8 **Q** A little? How about when you are across the street?

9 **A** You can see it all the way.

10 **Q** You can see it all the way?

11 **A** Yes.

12 **Q** And what was your path? You went out across the
13 street?

14 **A** Yes.

15 **Q** Okay. And I just have one -- one final question.

16 Was the same person that you saw in the laundry room, the
17 same person that you identified for the first time at the
18 Chinese restaurant?

19 **A** Yes, ma'am.

20 **Q** And is he here today?

21 **A** Yes, ma'am.

22 **Q** And where is he?

23 **A** Right over there.

24 **ASSISTANT SOLICITOR CONCANNON:** Thank you. No
25 further questions.

1 **THE COURT:** Any recross, based on her redirect?

2 **MR. PLATTE:** No, Your Honor.

3 **THE COURT:** Thank you. You may step down.

4 All right, ladies and gentlemen, that is a good place
5 for us to break with the testimony for the day. So, I'm
6 going to send you home for the evening with the strict
7 instructions that you not speak to anyone about this case.

8 Do not look online or do your own research. Again,
9 as I said, everything that you're going to hear on this
10 case should come within this courtroom.

11 Ladies and gentlemen, have a nice day. I want you to
12 be back here right at 9:30 tomorrow morning when we will
13 start our testimony again. All right. Have a nice
14 evening.

15 (JANUARY 22, 2013, 4:45 P.M., WHEREUPON, THE JURY
16 RETIRES FROM THE COURTROOM, AND THE FOLLOWING
17 PROCEEDINGS WERE HELD OUT OF THEIR PRESENCE.)

18 **BAILIFF:** The jury is clear, Your Honor.

19 **THE COURT:** Okay. Thank you.

20 Anything else before we adjourn for the day?

21 **ASSISTANT SOLICITOR CONCANNON:** Not from the State.

22 **MR. PLATTE:** Nothing from the defense, Your Honor.

23 **THE COURT:** All right. Court is adjourned until 9:30
24 tomorrow morning.

25 **ASSISTANT SOLICITOR CONCANNON:** Thank you, Your

1 Honor.

2 MR. PLATTE: Thank you, Your Honor.

3 (WHEREUPON, A BREAK WAS TAKEN. THEREAFTER, ON
4 JANUARY 23, 2013, AT 9:30 A.M., THE FOLLOWING PROCEEDINGS
5 WERE HELD ON THE RECORD OUT OF THE PRESENCE OF THE JURY:)

6 THE COURT: Thank you. Please take a seat.

7 Okay. Is there anything we need to bring up before
8 we resume our testimony?

9 ASSISTANT SOLICITOR CONCANNON: Nothing from the
10 State.

11 MR. PLATTE: No, Your Honor.

12 THE COURT: All right. Please bring our jury in.

13 BAILIFF: Yes, sir.

14 The jury is ready to enter.

15 THE COURT: All right. Please bring them in.

16 (JANUARY 23, 2013, 9:34 A.M., WHEREUPON, THE JURY
17 ENTERS THE COURTROOM, AND THE FOLLOWING PROCEEDINGS
18 WERE HELD IN THEIR PRESENCE.)

19 BAILIFF: The jury is present.

20 THE COURT: Thank you.

21 Please be seated.

22 Good morning, ladies and gentlemen. It was a brisk
23 one this morning, wasn't it? I guess, you know, in
24 Sumter, we get weather like this all the time. I don't
25 know if it gets cold like this in Beaufort too much. I

1 hope everyone got a nice rest last night, and we will
2 resume our testimony at this time.

3 Is the State ready to call its next witness?

4 **ASSISTANT SOLICITOR CONCANNON:** Yes, Your Honor.

5 **THE COURT:** You may call your next witness.

6 **ASSISTANT SOLICITOR CONCANNON:** The State calls Staff
7 Sergeant Robert DiCarlo.

8 **CLERK:** Would you place your left hand on the Bible
9 and raise your right hand for me, please?

10 ROBERT DICARLO, after being duly sworn,
11 testified as follows:

12 **CLERK:** Please be seated. State your name and spell
13 it for the Court, please.

14 **WITNESS:** Staff Sergeant Robert DiCarlo,
15 D-I-C-A-R-L-O.

16 **THE COURT:** You may proceed.

17 **ASSISTANT SOLICITOR CONCANNON:** Thank you.

18 DIRECT EXAMINATION

19 BY ASSISTANT SOLICITOR CONCANNON:

20 Q Good morning, Staff Sergeant DiCarlo.

21 A Morning.

22 Q How are you?

23 A Good. Thank you.

24 Q I see you are in uniform today. Can you please tell
25 the Court what it is you do for a living?

DIRECT EXAMINATION OF R. DICARLO BY CONCANNON

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1 A I am a road patrol shift sergeant for the Northern
2 Enforcement Division.

3 Q Okay. Do you cover Beaufort County?

4 A I do.

5 Q Were you working on May 10 of 2012?

6 A I was.

7 Q Were you working in your capacity at the sheriff's
8 office?

9 A Yes, ma'am.

10 Q And were you involved in the investigation and
11 subsequent arrest of the defendant, William Price?

12 A I was.

13 Q Did you get a call from dispatch to respond to an
14 incident location that morning?

15 A A call had come over the radio through communications
16 in reference to a burglary in progress in the area of
17 Second Street and Hogarth. Yes.

18 Q And did you respond?

19 A I did.

20 Q And when you responded, what did you observe?

21 A I was actually at the Law Enforcement Center at that
22 time the call came out which is, you know, about a mile
23 away from the incident location. As I was turning right
24 onto Hogarth Street from Boundary Street, I observed -- a
25 radio communication came across as the suspect being a

1 white male in blue jeans, blue t-shirt, and white
2 sneakers. As I turned onto Hogarth from Boundary, I
3 observed an individual very closely matching that
4 description, so I stopped and made contact with that
5 individual.

6 Q Okay. Did you speak with this individual?

7 A I did.

8 Q And what did -- what sort of conversation ensued when
9 you made contact with him?

10 A My initial contact comprised of gathering his
11 personal identification, his name, if he had any I.D. on
12 him, things of that nature and what he was doing in the
13 area and where he was coming from, those types of initial
14 questions.

15 Q How did the suspect appear?

16 A At that time, he was sweating. He appeared to be a
17 little bit out of breath.

18 Q What state were his clothes in?

19 A I observed on the front of his t-shirt looked to be
20 fresh -- fresh stain or fresh dirt marks on the front of
21 his t-shirt.

22 Q Okay. When you say fresh, you mean you could
23 probably brush it off?

24 A Yeah, you could have. Yes.

25 Q Okay. Thank you.

DIRECT EXAMINATION OF R. DICARLO BY CONCANNON

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1 When you made contact with the suspect and he gave
2 you his personal information, who did he turn out to be?

3 A William Edward Price.

4 Q Okay. And is he present here today?

5 A He is, right at the defense table.

6 Q Thank you. Please note for the record the deputy
7 identified the defendant as William Price.

8 **THE COURT:** The record will so note.

9 **ASSISTANT SOLICITOR CONCANNON:** Thank you.

10 Q So you said you began interviewing him.

11 A Yes.

12 Q What did y'all talk about in this conversation?

13 A I originally asked him, you know, again, what are you
14 doing in the area, where he is coming from?

15 He stated that he had left his house on Springfield
16 Road, which is on Lady's Island. The intention was that
17 he was going -- he walked from his home.

18 During the walk at some point, he got picked up by
19 somebody. He never did tell me who the somebody was, the
20 vehicle that picked him up or anything.

21 They got him as far as the gas station, which was on
22 the corner of Boundary and Hogarth. They couldn't take
23 him any further, because he was trying to get to a
24 friend's house in Pope Village to in turn walk to
25 Enterprise Rental to pick up a rental car to replace his

1 that he had just got into a crash with about a week prior
2 to.

3 Q Where is Springfield Road in reference to the gas
4 station where you made contact with him?

5 A Springfield Road is off of Sams Point Road on Lady's
6 Island. If I were to make a guess, it's a good over --
7 over ten -- ten to twelve miles away.

8 Q Did he tell you what time he began this walk from
9 Lady's Island to Beaufort?

10 A His initial statement to me was at 5:30 in the
11 morning.

12 Q Okay. While you were speaking with the defendant,
13 did other law enforcement arrive?

14 A Yes, ma'am. Several actually did.

15 Q And what did you observe regarding the other law
16 enforcement that arrived on the scene?

17 A Corporal Jay Cook actually arrived to assist me at my
18 immediate location. And approximately, my best guess
19 would be, seventy-five yards away, fifty to seventy-five
20 yards, away I observed another deputy, who I identified as
21 Sergeant Hall, actually pulled up and made contact with
22 the young victim that had originally made the 911 call.

23 Q And could you see the victim?

24 A Yes, I could.

25 Q What sort of mannerism was he making?

DIRECT EXAMINATION OF R. DICARLO BY CONCANNON

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1 A While I was talking to Mr. Price, I observed --
2 because I actually had Mr. Price kind of over my left
3 shoulder, I could look down the road and I observed the
4 young victim pointing in my direction, almost gesturing,
5 at which time Sergeant Hall radioed over the radio to
6 inform me that the victim was telling me that that was the
7 one who just broke into his house, that's the suspect.

8 Q And what did you do after you learned that was the
9 suspect?

10 A I immediately placed him in handcuffs and detained
11 him for further investigation.

12 Q Did you say anything to him?

13 A Immediately upon detaining him, I advised him of his
14 Miranda rights.

15 Q Okay. Did he say anything in reference to these
16 rights?

17 A He said he understood them.

18 Q Did he, in fact, agree to speak with you again after
19 being Mirandized?

20 A He did.

21 Q What conversation followed that?

22 A I again went back to the statements made about
23 leaving his house that morning. The statement -- the
24 second question when I asked him, the statement changed.
25 He said that he had left his house at 7:00 o'clock in the

1 morning this time, and again, got picked up by somebody
2 and dropped off at the gas station.

3 I then questioned him about the dirt that I
4 recognized on the front of his t-shirt, and he stated to
5 me that he had been doing yard work at his mother's house
6 that morning, which seemed a little bit inconsistent based
7 on right now it was about 9:00 o'clock in the morning and
8 he stated he left somewhere between 5:30 to 7:00 and
9 walked and did all sort of activities, where I didn't
10 think that dirt would still be that fresh.

11 Q What sort of behavior or mannerisms was the defendant
12 acting when you were speaking with him?

13 A The more I talked to him, the more I, from my
14 seventeen years of being a law enforcement officer, I
15 noticed that he became a little more nervous. He was
16 shaking. He was sweating more profusely as I continued
17 questioning him.

18 Q You were questioning him at the Tiger Express? Is
19 that where y'all were?

20 A We were almost in the roadway, slightly off the
21 roadway in between the Tiger Express and the Chinese
22 restaurant.

23 Q What did he say regarding his connection with the
24 Tiger Express?

25 A He stated that he had originally had been dropped off

DIRECT EXAMINATION OF R. DICARLO BY CONCANNON

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1 there by somebody and went to a friend's house in Pope
2 Village. I asked him if he had gone into the Tiger
3 Express. He said he did.

4 I asked him what he purchased. He said he bought a
5 bottle of coca-cola and a pack of Newport Red cigarettes.
6 I asked him how he paid for those items, and he advised me
7 he had paid in cash.

8 Q Through your investigation, were you able to confirm
9 that is what transpired at the Tiger Express?

10 A Through the investigation, I confirmed that actually
11 what he had advised was not, in fact, what happened. I
12 sent Corporal Cook over to the gas station to make contact
13 with the store clerk to verify the statements that were
14 given.

15 The store clerk advised that, yes, Mr. Price was in
16 the store, but he was also accompanied with another older
17 white female. The purchase was a bottle of the coca-cola
18 and a pack of cigarettes, but there was also an iced tea
19 purchased, and the older white female actually made the
20 purchase of these items on a debit card.

21 Q Did you ever explain to Mr. Price what you had
22 learned about what was actually purchased in the store?

23 A Yes, ma'am. I went back to him with that information
24 and advised him that, in fact, he was in the store with
25 another individual and questioned him who that individual

1 was, and he advised that it was his mother and that, in
2 fact, his mother is the one that drove him from the home
3 to the Tiger Express, which was now the third inconsistent
4 statement made on how he got there.

5 Q Was -- did -- did any other -- were any other
6 statements made by the defendant, after you advised him
7 that you had learned that he, in fact, wasn't alone in the
8 Tiger Express?

9 A I asked him for his mother's cell phone number to
10 confirm this. He actually did voluntarily give me the
11 cell phone number.

12 I actually called her. She was at Lowe's at the
13 time.

14 I briefly explained to her what was going on, and
15 then I requested her to come back to the scene so I could
16 interview her. Then I advised Mr. Price his mother was on
17 the way, and I also advised him the penalties for
18 providing false information to law enforcement.

19 Q Okay. And after you advised him of providing false
20 information to law enforcement, what happened?

21 A He immediately ended my interview and said he did not
22 want to talk to me anymore, that he would talk to Sergeant
23 Kelleher alone.

24 Q He requested to speak with Sergeant Kelleher?

25 A Yes.

DIRECT EXAMINATION OF R. DICARLO BY CONCANNON

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1 Q Okay.

2 A Not -- not by name. Sergeant Kelleher was standing
3 next to me, and he said: I want to talk to him alone.

4 And he kind of pointed to him. So I ended my
5 interview and immediately walked away.

6 Q That was the last communication you had with the
7 defendant?

8 A That's correct.

9 ASSISTANT SOLICITOR CONCANNON: Beg the Court's
10 indulgence?

11 THE COURT: Yes, ma'am.

12 Q Just a few more follow-up questions, Staff Sergeant
13 DiCarlo. When you were initially questioning the suspect,
14 who turned out to be the defendant, William Price, how far
15 away were you when you noticed the victim, David, standing
16 with law enforcement?

17 A My best guess was -- I kind of look at things as a
18 football field. My best guess is fifty to seventy-five
19 yards away, fifty yards away.

20 Q And can you explain again how you were able to learn
21 that Mr. Price was, in fact, the suspect that David
22 identified?

23 A Again, as I was speaking to Mr. Price, I saw the
24 young victim pointing in my direction kind of in somewhat
25 of a manner, at which point Sergeant Hall, who was

1 standing with the victim, radioed me and said that's the
2 suspect. The victim is identifying him as the suspect who
3 broke into the house.

4 Q Approximately how long was this after you received
5 notice over dispatch that a burglary had occurred?

6 A Within fifteen to twenty minutes.

7 Q Okay. I have no further questions for this witness
8 at this time.

9 THE COURT: Mr. Platte?

10 CROSS-EXAMINATION

11 BY MR. PLATTE:

12 Q Good morning, Sergeant. How are you doing?

13 A Morning. Good. Thank you.

14 Q Good. I just have a few questions for you. When Mr.
15 Price waived his Miranda rights, did he -- did you have
16 him sign anything or was it verbal?

17 A Verbal.

18 Q Verbal. Did you videotape it?

19 A No.

20 ASSISTANT SOLICITOR CONCANNON: Objection. May we
21 approach?

22 THE COURT: You may.

23 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE
24 RECORD OUT OF THE HEARING OF THE JURY. THEREAFTER, THE
25 FOLLOWING PROCEEDINGS WERE HELD ON THE RECORD IN THE

CROSS-EXAMINATION OF R. DICARLO BY PLATTE

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1 PRESENCE AND HEARING OF THE JURY:)

2 THE COURT: Counsel may proceed as directed.

3 Q When you had Mr. Price waive his Miranda rights, was
4 there a video camera operating in your car at the time?

5 A I believe there was.

6 Q Okay. And in your -- in your report, you mention
7 that you videotaped the waiver of Miranda.

8 A I did not -- I did not videotape, per se, because
9 where my vehicle was parked wouldn't have actually caught
10 it on visual, because we have both visual and audio.

11 Q Okay. Okay. So ---

12 A Yeah, the camera in the car is mounted. It only
13 points straight ahead, so if you were off camera, you
14 actually won't see a visual of it.

15 Q Would it pick up the audio in the surrounding area?

16 A Yes.

17 Q Okay. Did you -- did you submit that video or maybe
18 the audio portion? Well, I mean, obviously there wasn't
19 video because it wasn't showing it, but the audio portion,
20 did you submit that into evidence?

21 A I believe I had. It may have been an oversight that
22 I may have not.

23 Q Okay. You testified that you just -- you pulled in.
24 You saw my client, and you proceeded to have a discussion
25 with him. Did you do anymore investigations --

1 investigating after your discussion with Mr. Price, after
2 he cut off his conversation with you?

3 A I spoke to his mother.

4 Q Okay. Did you participate in any collection of
5 evidence at the scene of the incident?

6 A No, I did not.

7 Q Okay. Were you present when the -- when Mr. Lyn
8 participated in the show-up identification?

9 A I was on scene, but at that time as the role of
10 supervisor, I was now kind of coordinating everything else
11 that was going on, so I did not actually see the actual
12 visual identification of him. At the time, I was speaking
13 to the defendant's mother, because she had now arrived,
14 and I was trying to get the story from her as to how the
15 morning's activities transpired.

16 Q Let me -- I'm just going to repeat back, because I
17 think I -- just to make sure that I know what you just
18 said. You were on-scene doing other tasks, and you were
19 not aware of the -- you did not participate or were not
20 aware of the show-up identification?

21 A Correct.

22 Q Okay. Do you know who might have done that?

23 A I don't. At the time, there would have been upwards
24 of, my best guess, was eight to ten deputies now on scene,
25 including investigators.

CROSS-EXAMINATION OF R. DICARLO BY PLATTE

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1 Q Is it normal procedure for any kind of identification
2 to be included in the incident report?

3 A Yes.

4 Q Okay. Who would have been responsible for submitting
5 the information about the procedure, the show-up and
6 procedure and the identification by the eyewitness?

7 Who -- who would have been the person in charge of
8 submitting that to be included in the incident report?

9 A Well, really as to in charge, nobody. It would have
10 been whoever was participating in the identification
11 and/or investigation.

12 Q Okay. So that would be the person we need to speak
13 to to find out if the show-up happened and if there was
14 positive identification through law enforcement?

15 A I suppose so.

16 Q Okay. And, again, you said you were about fifty to
17 seventy-five yards away from Sergeant Hall and Mr. Lyn
18 when he made the gestures and Sergeant Hall radioed you
19 that Mr. Lyn had identified the -- Mr. Price, who was
20 standing next to you, as the person who broke into his
21 house?

22 A Yes. That's my best guess. Yes.

23 Q When you were speaking with Mr. Price, did he mention
24 anything about the reason why he broke in?

25 A No. He actually never said to me that he did.

1 Q Did you obtain any evidence from his person when
2 you -- after you detained him?

3 A No.

4 Q Okay. That's all I have for this witness.

5 THE COURT: Any redirect?

6 ASSISTANT SOLICITOR CONCANNON: Just briefly, Your
7 Honor.

8 THE COURT: Okay.

9 REDIRECT EXAMINATION

10 BY ASSISTANT SOLICITOR CONCANNON:

11 Q Staff Sergeant DiCarlo, when you were following
12 through with your investigation of this arrest and whatnot
13 and you spoke with the defendant's mother, were you able
14 to confirm his yard work story?

15 A Yes. As a matter of fact, she stated that the
16 intention was that he was going to do yard work but never
17 did because she drove him to the Pope Village area to drop
18 him off in reference the rental car. So he never did do
19 any yard work.

20 Q He told you he did, though; didn't he?

21 A He did say he did yard work.

22 Q Okay.

23 ASSISTANT SOLICITOR CONCANNON: I have no further
24 questions for this witness.

25 THE COURT: Any recross?

DIRECT EXAMINATION OF J. KELLEHER BY CONCANNON

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1 MR. PLATTE: No, Your Honor.

2 THE COURT: Thank you. You may step down.

3 You may call your next witness.

4 ASSISTANT SOLICITOR CONCANNON: Thank you, Your
5 Honor. The State calls Staff Sergeant John Kelleher.

6 CLERK: Place your left hand on the Bible and raise
7 your right.

8 JOHN KELLEHER, after being duly sworn, testified
9 as follows:

10 CLERK: Please be seated. State your name and spell
11 it for the Court, please.

12 WITNESS: My name is Sergeant John Kelleher. It's
13 K-E-L-L-E-H-E-R. Investigator with the Beaufort County
14 Sheriff's Office.

15 DIRECT EXAMINATION

16 BY ASSISTANT SOLICITOR CONCANNON:

17 Q Thank you, Investigator Kelleher. You mentioned that
18 you were an investigator with the sheriff's office. Can
19 you explain some of your duties with the Beaufort County
20 Sheriff's Office?

21 A As an Investigator in the Northern Division, the road
22 patrol does the initial incident. When it first comes
23 out, they respond. They react to it. If they need an
24 investigator to follow-up, we will follow-up on it.

25 Q Did you respond to any incidents on May 10th of 2012?

1 A Yes, I did.

2 Q Did you respond to the area of Hogarth and Boundary
3 Streets?

4 A Yes, I did. That morning I received a telephone
5 call, I believe from Staff Sergeant DiCarlo, asking for
6 some assistance over at that incident. The office is
7 right across through courtyard here.

8 I left here, and I went straight over there, probably
9 about 9:00'ish in the morning. I'm not exactly sure what
10 time it was.

11 Q Okay. When you arrived on-scene, did you speak with
12 the defendant?

13 A I arrived on-scene. I turned off of Boundary Street
14 onto Hogarth, which is right in the middle is the Exxon
15 station and the China Town Restaurant.

16 There was numerous patrol cars and officers there
17 when I got there. I pulled literally in the middle of the
18 road, and I made contact almost immediately with Staff
19 Sergeant DiCarlo.

20 Q Who was Staff Sergeant DiCarlo speaking with at the
21 time?

22 A At the time, he was talking to a lady in a van, a
23 Dodge Caravan, I believe it was, later identified as the
24 defendant's mother.

25 Q Okay. After you made contact with Staff Sergeant

DIRECT EXAMINATION OF J. KELLEHER BY CONCANNON

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1 DiCarlo, did you make contact with the defendant, himself?

2 A Yes. After I was briefed by Staff Sergeant DiCarlo,
3 I went over. The defendant was sitting in the back of a
4 patrol car, one of the sheriff's office patrol cars.

5 I believe I opened the door or the window was put
6 down. Eventually, the door was opened, and I talked to
7 him at that time.

8 Q Do you remember the first thing you said to the
9 defendant?

10 A I believe the first thing would have been: Have you
11 been advised of your rights?

12 And he acknowledged yes.

13 Q Okay.

14 ASSISTANT SOLICITOR CONCANNON: May I approach, Your
15 Honor?

16 THE COURT: You may.

17 ASSISTANT SOLICITOR CONCANNON: Thank you.

18 Q At this time I am showing you what has previously
19 been marked State's Exhibit One. Do you recognize that?

20 A Yes, I do.

21 Q Can you explain to the Court what that is?

22 A Upon arrival at the scene -- I carry a little, small
23 digital recorder, tape recorder, because there was a lot
24 of traffic, a lot of activity going on, and unfortunately
25 sometimes as an older person, I kind of forget sometimes,

1 so I record my interviews when possible, and I began
2 recording. So it's a recording of my interview with the
3 defendant at the incident scene where he was detained.

4 Q Okay.

5 ASSISTANT SOLICITOR CONCANNON: At this time I move
6 to admit State's Exhibit One into evidence and publish it
7 to the jury.

8 THE COURT: Any objections?

9 MR. PLATTE: No objections, Your Honor.

10 THE COURT: Without objection.

11 (WHEREUPON, State's Exhibit No. 1 was admitted into
12 evidence.)

13 ASSISTANT SOLICITOR CONCANNON: Thank you.

14 THE COURT: Please publish it to the jury.

15 (WHEREUPON, STATE'S EXHIBIT NUMBER ONE WAS PUBLISHED
16 TO THE JURY.)

17 Q Thank you. Sergeant Kelleher, I just have a couple
18 more questions regarding that conversation you had with
19 the defendant.

20 A Sure.

21 Q He mentioned Mark. Who is Mark? Beaufort, I believe
22 he said his last name is.

23 A Mark Beaufort lives on -- was living at the time on
24 Second Street in Pope Village, which is approximately two,
25 maybe three, houses down from the victim's house.

DIRECT EXAMINATION OF J. KELLEHER BY CONCANNON

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1 Q Does the sheriff's office currently have active
2 arrest warrants for him?

3 A Yes, ma'am. There is a current active arrest warrant
4 for Mark for burglary second in reference to this
5 incident.

6 Q And why hasn't that been served?

7 A Um, I'm like -- like on television, the word on the
8 street is Mark has left the area of Beaufort, due to the
9 fact that he was breaking into a lot of houses in the area
10 also and a lot of people were looking for him. So he's on
11 the run.

12 Q Based on your investigation of this case, Mark never
13 made it into this house?

14 A Correct.

15 Q Okay. I have just a couple of more questions
16 regarding that recording. I believe I heard the defendant
17 reference speakers and a stereo system.

18 A Correct. He told me that he was looking for his
19 stolen stereo system, stereo speakers, and clothing that
20 was stolen from him.

21 Q Okay. Were you able to confirm that he actually had
22 a stereo system and that it was, in fact, stolen from him?

23 A No. The Pope Village area falls under the
24 jurisdiction of the Beaufort County Sheriff's Office, as
25 well as Springfield Road. I went all the way back to

1 January of 2012, January 1st, to present date, May 10th,
2 and there was no report ever filed of those stolen items
3 by that gentleman or his mother.

4 Q So you have nothing to indicate that that actually
5 happened?

6 A No, I don't.

7 ASSISTANT SOLICITOR CONCANNON: Beg the Court's
8 indulgence?

9 THE COURT: Yes, ma'am.

10 ASSISTANT SOLICITOR CONCANNON: I have no further
11 questions for this witness at this time.

12 THE COURT: Mr. Platte?

13 CROSS-EXAMINATION

14 BY MR. PLATTE:

15 Q Good morning. How are you?

16 A Good. How are you doing, sir?

17 Q I'm good. I have a few brief questions for you.

18 After that statement, including when you turned off
19 your recorder, did you take Mr. Price back to the
20 investigation office?

21 A I talked to Staff Sergeant DiCarlo on-scene, and it
22 was determined at the time that -- no, we decided not to
23 take him back. He was taken right to jail.

24 Q And what was the basis of your decision?

25 A Because he told me he was breaking into the house,

CROSS-EXAMINATION OF J. KELLEHER BY PLATTE

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1 and there was really no further discussion needed at the
2 time.

3 Q Okay. So he told you that he broke into the house,
4 and you arrested him for burglary second?

5 A Correct.

6 Q Do you have a guide that tells you what charges that
7 you will bring on somebody, based on the evidence that you
8 have at the time?

9 A A guide? I don't understand what you mean by a
10 guide. Through my experience, sir, it was burglary
11 second.

12 Q Okay. At any point, did he -- was -- did he make any
13 statement about his intent to commit a crime when he broke
14 into that house?

15 A His intent was as soon as he put his body through the
16 window.

17 ASSISTANT SOLICITOR CONCANNON: Objection. That's
18 speculation. That calls for speculation on the part of
19 Investigator Kelleher.

20 THE COURT: Yeah. Sustained.

21 Q Did you find any items on Mr. Price when he was
22 detained?

23 A I didn't do a search of him, no.

24 Q After you detained him and he went off to booking,
25 did you continue the investigation?

1 A No.

2 Q Okay. So you ---

3 A Not with Mr. -- I need to clarify. Not with Mr.
4 Price, I did not, but there were some other things that
5 I've done.

6 Q Okay. That's exactly what I was asking. So I
7 appreciate you mentioning that. So after Mr. Price left
8 and you were still at the scene, what did you continue to
9 do there?

10 A I met with Ms. Lyn and took photos of the outside and
11 inside of the residence. Then I just did some follow-up,
12 just checking on reports to see if there was a report and
13 stuff.

14 Q When you took photos, did you also write down any
15 observations of the physical condition of the house or the
16 area?

17 A No.

18 Q Did you notice if there was a broken window or broken
19 locks?

20 A To the house?

21 Q In the house.

22 A No. I didn't do an inspection of the house. I took
23 photos of the window and the backyard outside, and I went
24 into the laundry room that's adjacent to the kitchen and
25 took photos of the laundry room area.

CROSS-EXAMINATION OF J. KELLEHER BY PLATTE

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1 Q Okay. I would like to show you State's Exhibit Six.

2 A Uh-huh.

3 Q What's that a picture of?

4 A I believe that is a picture of the outside of the
5 window.

6 Q Do you notice, is the pane -- is there any spider
7 webbing on it or is the pane broken?

8 A In this photo, no. There doesn't seem to be any. I
9 see dirt on the window area, on the window sill.

10 Q Is the window itself broken away from the sill, or
11 does it look like it's sitting like a normal window would
12 sit?

13 A Well, it looks like it sits like a normal window
14 would sit.

15 Q Okay. All right. Did you find any burglary tools on
16 the suspect or at the scene?

17 A No, I didn't. No.

18 Q Did you take any fingerprints inside or outside of
19 the house?

20 A No, sir.

21 Q Did you collect any DNA from inside or outside of the
22 house?

23 A No, sir.

24 Q Did you -- were any missing items reported to you
25 from inside or outside the house?

1 A No, sir.

2 Q Did you collect any footprints inside or outside of
3 the house?

4 A No, sir. There were no footprints to be collected.

5 Q Did you collect any physical evidence that Mr. Price
6 was inside the house?

7 A Except for the digital recorder that he said he was
8 in there.

9 Q I'm -- I'm -- you know, I'm asking -- that's his --
10 his -- his verbal statement. I was asking about any
11 physical, hard evidence.

12 A There was very little hard evidence there. No, I
13 don't have any physical evidence. As far as my
14 understanding, he came through the window. He wasn't
15 there very long. He didn't have time to go through the
16 house.

17 Q Okay. He mentioned a stereo system and speakers, and
18 you said you looked for some reports and didn't find
19 anything reported to the sheriff's department about a
20 missing stereo; is that correct?

21 A Correct.

22 Q Did you -- did you -- did you look for any of those
23 items when you were in the house?

24 A No.

25 Q No. So you don't know if there could have been a

CROSS-EXAMINATION OF J. KELLEHER BY PLATTE

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1 stereo there or not?

2 A I wouldn't be able to say it was Mr. Price's.

3 Q But you didn't look to see if there was a stereo at
4 all.

5 A No.

6 Q Okay. Do you remember if there was a window between
7 the kitchen and the laundry room, or if there was just a
8 door?

9 A There was a door, I believe, with a window.

10 Q Okay. So there's no separate window. It's just the
11 door with a window?

12 Let me -- let me rephrase that. There is no separate
13 window, apart from the door. That was a bad question,
14 too. Um, ---

15 (WHEREUPON, A LOUD NOISE WAS HEARD IN THE COURTROOM.)

16 THE COURT: There's construction going on around
17 here! I think we're okay..

18 Q Okay. So the only window between the kitchen and the
19 laundry room was on the door?

20 A Kitchen and laundry room. Yes.

21 Q Was there a curtain on that window?

22 A I believe so. My best recollection also, it wasn't
23 closed. I believe the curtain was open.

24 Q Was it -- was it -- what kind of door was it? Was it
25 a single hinge, or was it like a closet door that kind of

1 butterflies out?

2 A Single hinged door.

3 Q Okay. Were you present for the show-up I.D.?

4 A I -- I -- believe I was not. No, I'm not sure.

5 Q Do you know ---

6 A I don't know -- I'm sorry. Go ahead.

7 Q I apologize for cutting you off.

8 A No. I wasn't there. I didn't actually hear it. I
9 wasn't there.

10 Q Do you know which officer from the sheriff's
11 department conducted that show-up I.D.?

12 A I'm not sure which one did, no.

13 Q Okay. Are you aware that it was included in the
14 incident report at all?

15 A I -- I -- I really don't know. I don't know if it's
16 in Staff Sergeant DiCarlo's, but he said he didn't do it.
17 So ---

18 Q Okay. And you said you don't know who did it either?

19 A No. I don't know who did it.

20 Q When the sheriff's department conducts
21 identifications, is it normally documented?

22 A Normally it is, yes.

23 Q Is it standard procedure to do that?

24 A Normally standard procedure, yes, sir. Sometimes
25 there are administrative errors that may happen.

CROSS-EXAMINATION OF J. KELLEHER BY PLATTE

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1 Q Okay. What is included in those reports?

2 A I can't speak for the whole sheriff's office, but I
3 try -- whatever I do, I put on -- I try to put on paper.

4 Q Well, if you conducted a show-up identification, what
5 would you report?

6 A That Mr. so-and-so identified Mr. so-and-so to be the
7 suspect.

8 Q Would you talk about the environment that it was
9 done?

10 A That's just a broad statement.

11 Q Was there any other identification made in this case?

12 A David Lyn identifying the suspect and what he told
13 me.

14 Q So, to the best of your knowledge, did this show-up
15 identification ever happen?

16 A I believe it did, yes.

17 Q And that's -- can you quantify that for me, please?
18 Because you said you were present.

19 A I trust these gentlemen with my life everyday, sir.
20 I believe it did happen, yes.

21 Q But there is no documentation.

22 A Unfortunately, there's not. But I do believe ---

23 Q That's it. I'm good. Thank you.

24 THE COURT: Any redirect?

25 ASSISTANT SOLICITOR CONCANNON: Yes, Your Honor,

1 briefly.

2 REDIRECT EXAMINATION

3 BY ASSISTANT SOLICITOR CONCANNON:

4 Q Investigator Kelleher, how long have you been with
5 the sheriff's office?

6 A Just shy of ten years, ma'am.

7 Q And how long have you been with investigations?

8 A Um, January of 2005.

9 Q Okay. So, a good while.

10 A Yes, ma'am. I've done a few rodeos.

11 Q Okay. Based on your experience with the sheriff's
12 office in investigations, is it reasonable to believe that
13 if someone had a twelve hundred dollar stereo system
14 stolen from them that they would report it?

15 A Oh, I've learned also, ma'am -- I would hope so. I
16 would hope so.

17 Q Okay. Just a couple more follow-ups. Through your
18 investigation when you were on scene, it's true that you
19 learned that David saw the defendant in his house;
20 correct?

21 A Yes. It was my understanding that there was an
22 identification already made.

23 Q And the suspect, who turned out to be the defendant,
24 was apprehended based on a description that David had
25 provided to dispatch?

REDIRECT EXAMINATION OF J. KELLEHER BY CONCANNON

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1 **A** That is my understanding, yes.

2 **Q** And after he was apprehended, David later identified
3 him in between the Chinese restaurant and the gas station?

4 **A** Right. In that block and a half, yes.

5 **ASSISTANT SOLICITOR CONCANNON:** I have no further
6 questions for Investigator Kelleher.

7 **THE COURT:** Any recross based on her redirect?

8 **MR. PLATTE:** No, Your Honor.

9 **THE COURT:** Okay. Thank you. You may step down.

10 **WITNESS:** Thank you.

11 **THE COURT:** Yes, ma'am?

12 **ASSISTANT SOLICITOR CONCANNON:** Thank you, Your
13 Honor. At this point, the State rests.

14 **THE COURT:** All right. Thank you.

15 All right, ladies and gentlemen, you are going to get
16 an early break this morning. We have a few matters we
17 need to tend to, so I'm going to send you out and let you
18 have a cup of coffee or coca-cola or something like that,
19 and I'll bring you back in shortly. Please do not discuss
20 anything about the case while you are out. Thank you.

21 **THE COURT:** You may be seated.

22 (JANUARY 23, 2013, 10:16 A.M., WHEREUPON, THE JURY
23 RETIRES FROM THE COURTROOM, AND THE FOLLOWING
24 PROCEEDINGS WERE HELD OUT OF THEIR PRESENCE.)

25 **BAILIFF:** The jury is clear, Your Honor.

1 **THE COURT:** All right. Thank you.

2 Are there any motions to be made at this time?

3 **MR. PLATTE:** Yes, Your Honor.

4 **THE COURT:** All right.

5 **MR. PLATTE:** The defendant -- the defense makes a
6 motion for a directed verdict, that the State did not
7 establish all the elements of the crime based on -- the
8 State must produce proof of corpus delicti from sources
9 other than the out-of-state confession of -- out of court
10 confession of the defendant. Based on that, the element
11 of intent has not been proven.

12 **THE COURT:** Okay.

13 Yes, ma'am?

14 **ASSISTANT SOLICITOR CONCANNON:** Thank you, Your
15 Honor. The State would argue that we have met all of our
16 elements for burglary second. We have had multiple
17 witnesses testify as to the date, the area, the
18 jurisdiction, the venue and whatnot. It did happen in
19 Beaufort County. Identification, David did identify the
20 defendant.

21 Regarding the specific elements of burglary in the
22 second degree, I believe the defense is focusing more on
23 the intent required. Based on the circumstances that Mr.
24 Price is a stranger to these victims, he did break in
25 through a window. He did not knock on the front door and

1 the totality of the circumstances, the intent can be
2 inferred by the acts and the conduct of the defendant and
3 other circumstances. It's just reasonable that he had no
4 other reason to be there, but for to commit a crime. And
5 but for David being there, a crime would have been
6 committed.

7 **THE COURT:** Okay. I'll give you the last argument.

8 **MR. PLATTE:** Your Honor, the mere breaking into a
9 house is not burglary second. The mere breaking and
10 entering a house is not burglary second.

11 The mere breaking and entering a house is not any
12 crime -- it is not burglary second. It's only when
13 breaking and entering, with breaking and entering with the
14 intent to commit a crime does ---

15 **THE COURT:** You don't think it's strange that
16 somebody crawls through a back window of a house?

17 **MR. PLATTE:** I've seen some ---

18 **THE COURT:** Do you think that just happens every day?
19 You don't think the jury could infer that?

20 **MR. PLATTE:** I don't believe the State has provided
21 enough evidence to prove that element. Um, they haven't
22 shown any -- they haven't proven any other crime that may
23 have been committed.

24 They say he wasn't suppose to be there, but that's
25 not burglary second. There's maybe other crimes that

1 could have been charged, but burglary second requires the
2 defendant to have the intent to commit a crime the moment
3 he crawls -- crawls into that house. The instant that he
4 sticks his head through that house, if he has the intent
5 to commit a crime, he's committed burglary second.

6 He told the investigator that he was just looking for
7 his stolen stereo. While that was stupid and he should
8 have called the police, it doesn't rise to the criminal --
9 it doesn't rise to the level of committing a crime. It's
10 stupid. I admit that.

11 He should have called the police, but when he entered
12 that house, he was just looking for his property. He
13 wasn't looking to steal someone else's.

14 And that's all we have here. The State hasn't
15 provided evidence to show anything different. They are
16 asking inferences.

17 And with burglary, if it was done at night, the State
18 says you can infer that a crime was committed, but that's
19 only at night. This occurred at 8:30 in the morning.
20 It's daylight. So that inference doesn't apply.

21 Again, I just submit to the Court that based on the
22 evidence that is presented here, his intent was to look
23 for a stolen stereo. The State hasn't proven that
24 anything was stolen. It hasn't proven anything was
25 broken. They haven't shown any physical evidence that he

1 was actually inside the house, but it goes back to the
2 intent to commit a crime.

3 **THE COURT:** We have eyewitness testimony that he was
4 inside the house. I find that there is sufficient
5 evidence. I won't grant it. There is sufficient evidence
6 to take it to the jury. Whether the jury decides to find
7 him guilty beyond a reasonable doubt is a different
8 matter.

9 Does your client intend to testify? I need to go
10 over some questions.

11 **MR. PLATTE:** No, Your Honor, he does not.

12 **THE COURT:** Well, let me go over the questions to
13 make sure.

14 Please have the defendant stand and be placed under
15 oath for this limited purpose. Please place him under
16 oath.

17 **CLERK:** Raise your left hand for me, please.

18 **WILLIAM PRICE,** after being duly sworn, testified
19 as follows:

20 **THE COURT:** You are William Price?

21 **DEFENDANT, MR. PRICE:** Yes.

22 **THE COURT:** All right, Mr. Price -- please take your
23 hands out of your pockets. Mr. Price, at this time, I am
24 going to ask you some questions concerning your rights.
25 If you do not understand anything that I say, please let

1 me know. If you need for me to explain anything in
2 further detail, I will be glad to. Do you understand what
3 I'm telling you now?

4 **DEFENDANT, MR. PRICE:** Yes, sir.

5 **THE COURT:** All right. Now, we have reached the
6 stage of the trial where you may present your defense.
7 You have a right to claim protections given to you by the
8 Fifth Amendment of the United States Constitution, which
9 in part says that no person shall be compelled in any
10 criminal case to be a witness against himself. This means
11 that you cannot be required to testify in this case.

12 You have a right to testify on your behalf, however,
13 no one can make you testify. And this is a personal right
14 that no one can waive, except for you.

15 Now, if you decide to testify, you will be subject to
16 the same rules that govern other witnesses and you may be
17 examined and cross-examined on any relevant issues in this
18 case. In addition, if you have any convictions involving
19 dishonesty or false statement or for any crimes punishable
20 by imprisonment of more than one year and I determine that
21 the probative value of admitting this outweighs the
22 prejudicial effect on you, then the solicitor will be able
23 to introduce your record to attack your credibility.

24 What is the defendant's criminal record?

25 **ASSISTANT SOLICITOR CONCANNON:** Your Honor, the

1 defendant has a 1999 burg second and attempted burglary.
2 It looks like that earlier second was pled down from a
3 burglary first, and he was eligible for YOA. He also has
4 a CDV, a public disorderly, possession of marijuana. He
5 does have a check fraud, possession of marijuana, driving
6 under suspension. There's a forgery charge from 2005, two
7 times criminal conspiracy, unlawful carrying. 2008, he
8 picked up another possession of marijuana. 2009, he has
9 ill treatment of animals, possession of a weapon by a
10 felon. 2010, he has a possession of marijuana.

11 **THE COURT:** Is that correct?

12 **DEFENDANT, MR. PRICE:** Yes, sir.

13 **THE COURT:** All right. Now, if you decide to
14 testify, the decision on your part must be completely
15 voluntary and intelligently made by you with full
16 knowledge of the protections given to you by the Fifth
17 Amendment.

18 If you decide not to testify, I will instruct the
19 jury that they cannot consider the fact that you did not
20 testify and give it no consideration whatsoever, and there
21 is to be absolutely no prejudice towards you because you
22 did not testify. It is left entirely up to you whether
23 you want to testify.

24 Your attorney just said that you do not want to
25 testify, and I am going to ask you now, do you want to

1 testify?

2 DEFENDANT, MR. PRICE: No, sir.

3 THE COURT: Okay. All right. Thank you. You may be
4 seated.

5 DEFENDANT, MR. PRICE: Thank you.

6 THE COURT: All right. What witnesses do you intend
7 to call?

8 MR. PLATTE: I have four witnesses, one who is here
9 and a couple of more short ones who are on their way.
10 They were told to be here about 10:30.

11 THE COURT: Okay. We are going to take a five minute
12 recess, and then we will come back and start with your
13 testimony.

14 (WHEREUPON, A BREAK WAS TAKEN. THEREAFTER, THE
15 FOLLOWING PROCEEDINGS WERE HELD ON THE RECORD OUT OF THE
16 PRESENCE OF THE JURY:)

17 MR. PLATTE: I'm sorry, Your Honor.

18 THE COURT: That's okay.

19 MR. PLATTE: My other witnesses are on the way.

20 THE COURT: All right. I intend to, as soon as we
21 finish testimony, I'm going to go straight into closing
22 arguments.

23 All right. Let's bring our jury in.

24 BAILIFF: The jury is ready to enter.

25 THE COURT: All right.

DIRECT EXAMINATION OF VANWALLENDAEL BY PLATTE

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1 (JANUARY 23, 2013, 10:39 A.M., WHEREUPON, THE JURY
2 ENTERS THE COURTROOM, AND THE FOLLOWING PROCEEDINGS
3 WERE HELD IN THEIR PRESENCE.)

4 BAILIFF: The jury is present.

5 THE COURT: All right. Thank you.

6 Please be seated.

7 All right. The defense may call its first witness.

8 MR. PLATTE: The defense calls Doctor Lori
9 VanWallendael.

10 THE COURT: Please come forward to be sworn.

11 LORI VANWALLENDAEL, after being duly sworn,
12 testified as follows:

13 CLERK: Thank you. Please be seated and state your
14 name for the Court.

15 WITNESS: My name is Lori VanWallendael.

16 DIRECT EXAMINATION

17 BY MR. PLATTE:

18 Q Dr. VanWallendael, what is your occupation?

19 A I am an Associate Professor of Psychology at the
20 University of North Carolina at Charlotte.

21 Q What position do you hold there currently?

22 A I'm currently Associate Professor and Associate
23 Chair.

24 Q Briefly described the subject matter of your
25 specialty.

1 A My specialty area in research is human cognition,
2 most specifically memory. And in recent years, my
3 research has focused almost exclusively on memory, in the
4 sense of eyewitness recall of faces and places.

5 Q What academic degrees do you hold and from where and
6 when did you obtain them?

7 A I obtained a B.A. in Psychology and English from
8 MacMurray College in Illinois in 1982, then a Master's
9 Degree in Psychology, and a Ph.D. in Psychology from
10 Northwestern University in 1986.

11 Q Do you have any specialized degrees or training,
12 other than the degrees you just went through?

13 A That's basically it. My specialty area on my Ph.D.
14 is Experimental Psychology.

15 Q What's the length of time that you have been
16 practicing in this field?

17 A It's been about twenty-six years.

18 Q Do you have any board certifications?

19 A No. Those apply strictly to clinical psychologists,
20 rather than research psychologists.

21 Q Can you briefly described the positions you have held
22 since the completion of your formal education and the
23 length of time at each position?

24 A Yeah. I started out, I got what's called a lecture
25 position, which is basically a teaching position at UNC

DIRECT EXAMINATION OF VANWALLENDael BY PLATTE

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1 Charlotte in 1986. And after a few years in that
2 position, I was hired as an Assistant Professor, which is
3 a tenure track, and I was in that position for six years
4 and received tenure and promotion to Associate Professor.

5 Q What are the duties and the functions of your current
6 position?

7 A In my current position, since I am Associate Chair, I
8 have a certain number of administrative responsibilities
9 with students and scheduling. I also typically teach
10 courses in Research Design, Memory, Cognitive Psychology,
11 Forensic Psychology. And then I am expected, as part of
12 my role as a professor, to continue to be active in
13 research and collect data, write book chapters, and so
14 forth.

15 Q You actually just went through what you teach. Can
16 you also describe the lecturing by you in your field?

17 A Yes. I do do lectures, sometimes law programs. I've
18 done lectures for the -- UNC Chapel Hill has an annual
19 series of lectures and workshops for lawyers in various
20 areas, and I've done talks for them. And then I do talks
21 for -- regarding research and regarding the use of
22 research in teaching.

23 Q Can you briefly describe some of the publications by
24 you in this field and the titles?

25 A Yeah. I have recently been collaborating with a

1 former Chair from UNC Charlotte, Dr. Brian Cutler, and we
2 have done some work on line-up administration and how
3 police can use different kinds of line-ups to try and
4 increase the likelihood of a correct identification.

5 So we have had some publications on -- let's see,
6 there was one recent one called Six Ways to Reduce
7 Misidentifications, I believe. And then I also wrote
8 chapters and some articles on different ways to try and
9 decrease the chances of a misidentification happening in
10 court.

11 Q Do you have any membership in any professional
12 societies, associations, or organizations?

13 A Yes. I am a member of The American Psychology Law
14 Society, which is kind of the major society for research
15 psychologists in my field.

16 Q Do you hold any special positions there?

17 A No.

18 Q What is the requirement for membership in that
19 organization?

20 A Basically, I should be a psychologist actively doing
21 research to have -- full members have a Ph.D. There is a
22 student section, as well, but basically to be actively
23 engaged in researching and teaching in the field.

24 Q Do you have any honors, acknowledgments, or awards
25 you have received in the field?

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- 1 A I was a finalist a couple of years ago from my
2 University's top teaching award.
- 3 Q Have you ever given testimony in court as an expert
4 witness?
- 5 A Yes, I have.
- 6 Q How many times have you given testimony in court as
7 an expert witness?
- 8 A I think it's probably been about twenty.
- 9 Q How many times -- have you ever been qualified as an
10 expert in South Carolina?
- 11 A Yes, I have.
- 12 Q How many times?
- 13 A Probably, I'd say seven or eight. It may be more.
- 14 Q In the cases where you have been called as an expert,
15 were there any courts that did not find you qualified?
- 16 A No.
- 17 Q Have you been used as an expert for just the defense
18 or also the prosecution?
- 19 A Just the defense.
- 20 Q Have you ever been asked by the prosecution to
21 testify?
- 22 A No, I have not.
- 23 Q Do you recognize this document?
- 24 A Yes.
- 25 Q Can you briefly describe what it is?

1 **A** That is my CV.

2 **THE COURT:** Did she see it?

3 **MR. PLATTE:** Let me show you that. I'm sorry, Mary.

4 **WITNESS:** It's basically an academic resume.

5 **THE COURT:** Are you objecting to her being an expert?

6 **ASSISTANT SOLICITOR CONCANNON:** No, I just wanted to
7 see what they were talking about.

8 **THE COURT:** Okay.

9 **MR. PLATTE:** I should have shown it to her. I
10 apologize, Your Honor.

11 **THE COURT:** So you are not objection to her being an
12 expert?

13 **ASSISTANT SOLICITOR CONCANNON:** I'm not objecting.

14 **THE COURT:** Okay. Then I will go ahead and deem
15 her -- in what area of expertise are you offering her?

16 **WITNESS:** Psychology.

17 **MR. PLATTE:** I was going to ask her as to her opinion
18 within a reasonable degree of scientific certainty ---

19 **THE COURT:** I don't need her -- I need what area of
20 expertise. What kind of expert is she?

21 **MR. PLATTE:** Accuracy -- in the accuracy and
22 reliability of eyewitness identification.

23 **THE COURT:** You have no objections?

24 **ASSISTANT SOLICITOR CONCANNON:** I have no objections.

25 **THE COURT:** Okay. Because there is no objection, I

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1 will deem her to be an expert in accuracy of eyewitness
2 identification.

3 Now, ladies and gentlemen, the fact that I have
4 deemed her to be an expert means she can give an opinion
5 about something other than what she saw, touched, smelled,
6 heard, or felt. That's what normal witnesses testify to.
7 They normally say what they actually observe. However, a
8 witness, because of her education and experience, may be
9 able to render an opinion that is not based upon one of
10 her senses.

11 Now, whether or not you as jurors decide to believe
12 her or not is totally up to you. And you shouldn't give
13 it any more weight than you deem appropriate.

14 You should look at it as just another piece of
15 evidence and give it the weight that you as jurors believe
16 is appropriate for this witness.

17 All right? Thank you.

18 You may proceed.

19 MR. PLATTE: Thank you, Your Honor.

20 Q Do you have an opinion within a reasonable degree of
21 scientific certainty as to the accuracy and the
22 reliability of the eyewitness identification made in this
23 case?

24 ASSISTANT SOLICITOR CONCANNON: Objection.

25 THE COURT: Sustained.

1 Q What is your opinion as to the accuracy -- strike
2 that. What is your opinion as to the reliability of an
3 eyewitness identification based on a very short time of
4 that eyewitness seeing that suspect?

5 A Research suggests that accuracy increases with the
6 amount of time that you have to view a face. So when you
7 only have a few seconds, accuracy is going to be less
8 likely.

9 Q Does memory -- what's the basis for your opinion?

10 A Basically, about a hundred years of research on
11 memory has shown us now that memory doesn't work like a
12 photograph or videotape. We wish it did. There are a
13 couple of very important differences.

14 When you take a photo or when you take a video of
15 something, you take in the entire field of view, and once
16 you have that photo, it doesn't change. It may fade in
17 the sunlight over a long period of time, but basically the
18 details of that photo are set.

19 Memory, on the other hand, never takes in everything
20 that you can see. It's a very reconstructive kind of
21 process, and it does change a lot over time.

22 So, when you see something, your eyes can take it in,
23 but your brain doesn't necessarily turn it into a memory
24 without a whole set of steps and processes happening. You
25 have to first of all pay attention to any given detail

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1 that is out there in front of us.

2 There is only a limited amount that we can pay
3 attention to at one time. So we take in, in a glance,
4 maybe a handful of features, and if we have more time we
5 can process further. But, we are limited to remembering
6 only what we paid attention to.

7 And then that information that we paid attention to
8 has to be coded. Basically the brain doesn't have a way
9 of storing photos. So, it stores more abstract bits of
10 information.

11 And then at some point, we have to bring that
12 information back out and turn it into what we think of as
13 a memory so that we can answer questions about what
14 happened and so that we can potentially recognize things
15 that we have seen before.

16 And every time that we try to bring that memory back
17 into our mind, what we are really doing is kind of putting
18 a puzzle together where we don't have all the pieces. So
19 we put together the pieces that we do have that we happen
20 to have paid attention to, and then we can reach a point
21 where our brain does not like holes in our memories. Our
22 brain likes to see the whole picture. So our brain fills
23 in the details of any pieces that didn't make it into our
24 memory.

25 And every time we reconstruct that memory, there is a

1 chance that our memory will change for those details. So
2 the first time it happens, we take in a certain storyline.
3 And then maybe the next time you tell someone about it --
4 excuse me -- the next time you tell someone about it,
5 maybe some of those details change. Maybe we guess some
6 things that we hadn't really remembered before. Maybe we,
7 you know, remember someone coming in through a window and
8 then we think they went back out through the window or
9 maybe we think they came and went out through a door.

10 And all of those changes in memory are perfectly
11 natural, because that is just the way our memory works.
12 We are always reconstructing what happened, rather than
13 just playing a videotape back.

14 Q How close would you have to be to make an accurate
15 identification?

16 ASSISTANT SOLICITOR CONCANNON: Objection.

17 THE COURT: Sustained.

18 MR. PLATTE: That's all I have for this witness.

19 THE COURT: Any cross-examination?

20 ASSISTANT SOLICITOR CONCANNON: Very briefly, Your
21 Honor.

22 THE COURT: Okay.

23 CROSS-EXAMINATION

24 BY ASSISTANT SOLICITOR CONCANNON:

25 Q Were you at on May 10th of last

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1 year?

2 A No, I was not.

3 Q Were you at the Tiger Express on May 10th of last
4 year?

5 A No, I was not.

6 Q I have no further questions.

7 THE COURT: Thank you. Any redirect?

8 MR. PLATTE: No, Your Honor.

9 THE COURT: Okay.

10 Thank you. You may step down.

11 MR. PLATTE: May we have a brief recess to see if my
12 witnesses are here?

13 THE COURT: The jury will stay right here.

14 MR. PLATTE: Your Honor, is Dr. VanWallendael free to
15 go?

16 THE COURT: Do you have any need for her?

17 ASSISTANT SOLICITOR CONCANNON: No, Your Honor.

18 THE COURT: Okay. She's free to go.

19 MR. PLATTE: Thank you, Your Honor.

20 THE COURT: Thank you for coming.

21 MR. PLATTE: Your Honor, the defense would call
22 Patricia Price.

23 THE COURT: All right. Please come forward and be
24 sworn.

25 CLERK: Raise your right hand and put your left hand

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1 on the Bible.

2 PATRICIA PRICE, after being duly sworn,
3 testified as follows:

4 CLERK: Please be seated and state your name for the
5 Court.

6 WITNESS: Patricia Price.

7 THE COURT: You may proceed.

8 DIRECT EXAMINATION

9 BY MR. PLATTE:

10 Q Good morning, Ms. Price. How do you know the
11 defendant?

12 A He's my son.

13 Q At the time of this incident on May 10th, 2012, did
14 Billy own a car?

15 A Yes.

16 Q Do you know what happened to that car at that time?

17 A He was in an accident.

18 Q Was there something in the car that was special to
19 him?

20 A His new stereo that he put in.

21 Q What ended up happening to the car after he was in
22 the accident?

23 A It was towed to a place that fixes cars and ---

24 Q Did he -- go ahead and finish.

25 A And they let him get his things out of the car.

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1 Q Do you know what he removed?

2 A He removed his personal papers and things and his
3 stereo system.

4 Q Do you know if anything happened to that stereo
5 system?

6 A I was told that it was stolen.

7 ASSISTANT SOLICITOR CONCANNON: Objection.

8 THE COURT: Sustained. Hearsay.

9 ASSISTANT SOLICITOR CONCANNON: Thank you, Your
10 Honor.

11 MR. PLATTE: That's all I have for this witness.

12 THE COURT: The jury will disregard the witness's
13 last answer.

14 Please step down.

15 THE COURT: Or do you have any cross-examination?

16 ASSISTANT SOLICITOR CONCANNON: I have no questions
17 for this witness.

18 THE COURT: Okay. Thank you.

19 MR. PLATTE: Your Honor, that's all I have.

20 THE COURT: All right. Does the plaintiff wish to
21 present any reply testimony?

22 ASSISTANT SOLICITOR HALL: May I have a moment?

23 THE COURT: You may.

24 ASSISTANT SOLICITOR HALL: Thank you.

25 ASSISTANT SOLICITOR CONCANNON: The State would like

1 to recall Carolyn Lyn.

2 THE COURT: Okay. Ms. Lyn, please come forward. You
3 may proceed.

4 ASSISTANT SOLICITOR CONCANNON: Thank you, Your
5 Honor.

6 DIRECT EXAMINATION

7 BY ASSISTANT SOLICITOR CONCANNON:

8 Q Just very briefly Ms. Lyn.

9 THE COURT: Is she under oath? If she was under oath
10 yesterday, she still is.

11 ASSISTANT SOLICITOR CONCANNON: Yes, Your Honor.

12 THE COURT: Okay. Very good.

13 ASSISTANT SOLICITOR CONCANNON: Thank you.

14 Q Was there a stereo in your house?

15 A No.

16 Q Has there ever been a stereo in your house?

17 A Five or six years ago.

18 Q Not recently?

19 A No.

20 Q And you would know that because you go through your
21 house, and you've never seen a stereo?

22 A Yes.

23 Q Okay. I have no further questions.

24 THE COURT: Any cross-examination?

25 MR. PLATTE: No, Your Honor.

1 **THE COURT:** All right. Thank you. You may step
2 down.

3 Any further rebuttal testimony?

4 **ASSISTANT SOLICITOR CONCANNON:** No, Your Honor.

5 **THE COURT:** All right. Thank you.

6 All right, ladies and gentlemen, that is all the
7 testimony that is going to be heard in this trial. I will
8 send you back to you jury room for just a little while,
9 and then we will come back out and have closing arguments,
10 and I will charge you on the law, and then I will allow
11 you to begin your deliberations.

12 Beaufort County is going to provide you lunch today.
13 It's going to be a cheap lunch, but it will be lunch
14 nevertheless, because we are going to go ahead and move
15 forward on this case, rather than bring you back at 2:00
16 o'clock and continue after that.

17 So, ladies and gentlemen, please retire to your jury
18 room. Please do not discuss anything while you are back
19 there, and we will see you back out here shortly.

20 (JANUARY 23, 2013, 11:00 A.M., WHEREUPON, THE JURY
21 RETIRES FROM THE COURTROOM, AND THE FOLLOWING
22 PROCEEDINGS WERE HELD OUT OF THEIR PRESENCE.)

23 **BAILIFF:** The jury is clear, Your Honor.

24 **THE COURT:** Thank you.

25 Now at the close of all of the evidence, would you

1 like to renew your motions?

2 **MR. PLATTE:** Yes, Your Honor. We, again, the defense
3 would like to move for a directed verdict based on the
4 fact that the intent of the crime, the State has not
5 provided enough evidence -- provided evidence showing that
6 he intended to commit a crime when he entered the house.

7 **THE COURT:** All right. Thank you.

8 Yes, ma'am?

9 **ASSISTANT SOLICITOR CONCANNON:** Your Honor, the State
10 would renew its earlier argument that based on the
11 circumstances, the inconsistent statements, no stereo
12 found, no reported stereo stolen, that but for David being
13 there, a crime would have been committed. And we have
14 case law that says an actual crime does not have to be
15 committed for it still to be burglary.

16 **THE COURT:** All right. I find there is sufficient
17 evidence to go to the jury.

18 What I think I will do is I will give you about a
19 half-hour to formulate your closing arguments. We will
20 come back at 11:30 and do closing arguments, and then I
21 will charge the jury, and then they will commence their
22 deliberations. All right?

23 **MR. PLATTE:** Thank you, Your Honor.

24 **ASSISTANT SOLICITOR CONCANNON:** Thank you, Your
25 Honor.

1 **ASSISTANT SOLICITOR HALL:** Thank you, Your Honor.

2 **THE COURT:** Court is in recess until 11:30.

3 (WHEREUPON, A BREAK WAS TAKEN. THEREAFTER, THE
4 FOLLOWING PROCEEDINGS WERE HELD ON THE RECORD OUT OF THE
5 PRESENCE OF THE JURY:)

6 **THE COURT:** Okay. Y'all have had an opportunity to
7 review the charge. Are there any objections or additions
8 that you think need to be made?

9 From the State?

10 **ASSISTANT SOLICITOR CONCANNON:** None from the State.

11 **THE COURT:** From the defense?

12 **MR. PLATTE:** No, Your Honor.

13 **THE COURT:** All right. Very well.

14 Let's bring our jury in.

15 **BAILIFF:** The jury is ready to enter.

16 **THE COURT:** All right. Please bring them in.

17 (JANUARY 23, 2013, 11:34 A.M., WHEREUPON, THE JURY
18 ENTERS THE COURTROOM, AND THE FOLLOWING PROCEEDINGS
19 WERE HELD IN THEIR PRESENCE.)

20 **BAILIFF:** The jury is present.

21 **THE COURT:** Thank you. Please be seated everyone.

22 All right, ladies and gentlemen, as I told you, all
23 of the evidence that you are going to hear in this case
24 has been presented to you. The attorneys will give you
25 their final arguments, and then I will charge you the law

1 that is applicable to this case.

2 Is the State ready to proceed?

3 ASSISTANT SOLICITOR CONCANNON: Yes, Your Honor.

4 THE COURT: Is the defense ready to proceed?

5 MR. PLATTE: Yes, Your Honor.

6 THE COURT: Okay.

7 Madam Solicitor?

8 ASSISTANT SOLICITOR CONCANNON: Thank you, Your
9 Honor.

10 William Price, the defendant, burglarized the Lyns'
11 home. He waited. He waited until he saw Ms. Lyn pull
12 away in her car. He waited until he thought the coast was
13 clear, and that's when he decided to break in a back
14 window, break the hinges, not the glass, and climb in.

15 He went in on his stomach and was in the laundry
16 room. But for, to his surprise of David being there, a
17 crime, a further crime, would have been committed. He had
18 every intent when he was in that residence to do no other
19 than criminal behavior. It wasn't but for David's
20 presence that this was stopped.

21 William Price gave lots of stories. He told lots of
22 stories that day he was caught. He was caught redhanded
23 in the house.

24 He knew he had to say something. It began with Staff
25 Sergeant DiCarlo, who you heard testify. He gave this

1 elaborate story of, oh, I woke up at 5:30. I walked over
2 here. I did -- I did -- first I did some yard work at my
3 mom's house. Well, according to his mom, that wasn't
4 true.

5 The stories continued again with Staff Sergeant
6 DiCarlo, when he gave another story of well, I didn't
7 really do yard work, or I planned on doing it but I didn't
8 get a chance to. Someone picked me up and brought me over
9 here. Again, false.

10 The stories continued when he asked to speak to
11 Investigator Kelleher. He gave this elaborate story of a
12 stereo being taken and that's why he was going into the
13 house. Well, Investigator Kelleher told you, he looked
14 into it. There is no report of a stereo being stolen, any
15 sort of stereo, much less my victims having any access to
16 the stereo.

17 Ms. Lyn stated that she never saw a stereo in her
18 house. It was never there. That did not happen.

19 And we don't condone vigilante justice. It is not
20 for the defendant himself to break into somebody's house
21 because he maybe thinks that his belongings are in there.
22 Call the police. That's what a reasonable person would
23 do.

24 William Price knew exactly what he was doing. You
25 heard it from the recording with Investigator Kelleher.

1 He heard the word burglary, and he was scared. He knew he
2 had done something wrong and he nearly begged and pleaded
3 for the charge not to be burglary. That's what he did.
4 He committed the crime of burglary.

5 Now the defense gave you this saga of they had an
6 expert come, they had David come off the stand and draw
7 this map, after he had already testified that the suspect
8 who turned out to be the defendant, went down Hogarth
9 Street. He went towards the Chinese restaurant and the
10 Tiger Express. That's where they found him. That's where
11 he went.

12 That was all just smoke and mirrors. They are trying
13 to get you to look over here, when the truth is screaming
14 at you over here.

15 The truth is, William Price is guilty. He is guilty.
16 He broke a window. He broke into the Lyns' home. He did
17 not have permission.

18 Ms. Lyn told you he had no right to be in her house.
19 He broke the window. He entered with the intent to commit
20 a crime. Its only flaw was that David was home, and David
21 stopped him before anything else could happen.

22 There is only one logical conclusion that you can
23 reasonably infer, is that he was there to burglarize that
24 house, not any other reason. I hope that after the end of
25 this trial that y'all are firmly convinced that William

1 knew what he was doing. He knew he was there to commit a
2 crime. He knew he shouldn't be in that house. He knew
3 that he shouldn't be in that house, because he went in
4 through a window.

5 He was caught redhanded, and he was apprehended a
6 block and a half away from where the crime occurred. He
7 gave inconsistent stories, continuously, all morning long.
8 Every interview he gave, it changed, his story changed and
9 changed and changed. It was just smoke and mirrors. They
10 were having their story over here. The truth is over
11 here.

12 After you have heard all that testimony and you saw
13 the evidence, there is only one conclusion that can be
14 drawn from that series of events that happened on May 10th
15 of last year, and that is that William Price is guilty of
16 burglary in the second degree. Thank you.

17 **THE COURT:** Mr. Platte?

18 **MR. PLATTE:** Thank you, Your Honor.

19 I first want to thank you for your time. This is a
20 great honor and a great duty that you have to serve on a
21 jury, and I appreciate your time and your effort.

22 We make the burden of proof in this country very
23 high. It reveals a belief of a value that it is far worse
24 to convict an innocent person than to let a guilty one go
25 free. The law also recognizes that very few citizens have

1 the resource, the money, the people, to help prove
2 themselves innocent.

3 Now being entitled to a verdict of not guilty does
4 not mean you have to like someone to acquit them. You
5 don't have to like what they did. You don't even have to
6 be comfortable with your verdict, but you have a duty --
7 you are duty bound to follow this rule, the reasonable
8 doubt standard.

9 This rule goes throughout all your deliberations into
10 every aspect of this case. Your decision -- and to every
11 aspect of your decision-making. This rule is supposed to
12 be the guiding light, the beacon, to make sure that an
13 injustice does not occur, whether you like it or not.

14 Now let me make another point that I think is very
15 important. It is extremely important. When you are
16 examining testimony in this case, especially as to intent,
17 that is what he was thinking, his intent was important.

18 When you are at home reading a newspaper or watching
19 the news, you saw a headline or heard that police had
20 apprehended someone for a serious crime. If you are like
21 most people, you did something very natural and very
22 human. You said to yourself: Thank goodness they caught
23 that person.

24 Now, it's interesting about that feeling, because
25 what you did at that point, you presumed the police

1 correctly arrested that person, that the person was the
2 person who committed the crime they were charged with, and
3 that that person was guilty.

4 You assumed and presumed the worst. You became
5 prejudiced against that person, based on what you read and
6 what you heard.

7 Ladies and gentlemen, that is a very natural and very
8 human reaction. That is fine when you are sitting at
9 home, but your role in the world dramatically changed when
10 you were selected to serve on this case. You swore under
11 oath to uphold the law as the Judge gives it to you, and
12 he told you that the defendant is presumed innocent.

13 Now you are going to have shed yourself of the
14 natural inclination to presume and assume that because he
15 is sitting over there charged with a crime, that he has
16 done something wrong. You can say: I can do that.
17 That's going to be the most difficult task that you are
18 faced with here today.

19 Look at and examine the testimony that the State
20 provides in a skeptical sort of fashion. That means you
21 truly embrace that presumption of innocence.

22 The State bears the burden of proof in criminal
23 cases. Mr. Price is innocent until the State provides
24 enough evidence to remove all reasonable doubt that he is
25 guilty of a crime.

1 You must resolve all issues as to reasonable doubt in
2 favor of the defendant. In our system of justice, the
3 defendant bears no responsibility to prove his innocence
4 or create reasonable doubt.

5 Since he is presumed innocent, there is reasonable
6 doubt present before this case begins that he is not
7 guilty. It is the State's burden to present evidence to
8 overcome that presumption of innocence and remove all
9 reasonable doubt.

10 The evidence the State provides must leave no room
11 for reasonable doubt that Mr. Price is guilty of each and
12 every element of the crime. Reasonable doubt has been
13 defined as that sort of doubt that would cause us to
14 hesitate to act or fail to act in our more important
15 affairs and duties.

16 It is also your job to determine the credibility of
17 the witnesses here. You have to judge the believability
18 of the witnesses. Do you believe their testimony? How
19 much weight can you place on what they say? That's your
20 job as the jury.

21 Mr. Lyn testified to one story yesterday, but the
22 statements he made on the day of the incident and the
23 words in his 911 call paint different pictures as to what
24 happened. It's your responsibility to evaluate the
25 credibility of his testimony, based on everything that you

1 you heard.

2 The officers could not provide evidence to show that
3 Mr. Price intended to commit a crime when he opened that
4 window. The State's evidence shows that my client was
5 probably looking for his car stereo. That was his
6 motivation. That is what he told Investigator Kelleher
7 when he spoke with him and when he admitted he actually
8 entered the house.

9 With this information he asked -- with this
10 information Investigator Kelleher asked the homeowner if
11 there was a stereo inside, but he failed to meaningfully
12 follow up on this. With that statement, the State should
13 have conducted an additional investigation to determine
14 what and if the intent at the time -- to determine if and
15 what the intent was at that time he entered the dwelling.
16 It's an element of the crime. It's important.

17 Apparently there was a show-up identification. No
18 one who testified in court for the sheriff's department
19 seems to have any idea of when it happened, who conducted
20 it, or what happened during it. The only identification
21 in the report was as reported by Sergeant DiCarlo that Mr.
22 Lyn had identified Mr. Price from a distance of
23 fifty-yards.

24 The sheriff's department has no records of the
25 show-up identification. In fact, the police failed to

1 conduct any physical investigation regarding the crime
2 scene. The police failed to write in their investigation
3 report anything about the show-up. The police failed to
4 collect fingerprints, DNA, failed to mention any broken
5 window, any broken lock, any broken hinge, any broken
6 window frame. They failed to show that there were any
7 tools used to open this window, to break it.

8 Nothing was missing from the house. There was not
9 damage in the investigation report to the house.

10 The State has failed to support its burden of proof
11 to remove all reasonable doubt in this case. The evidence
12 presented by the State fails this task.

13 The State has failed to prove intent. The evidence
14 presented cannot remove reasonable doubt as to what Mr.
15 Price was going to do when he entered that house. We have
16 what he said, but the State hasn't proved that beyond a
17 reasonable doubt this element of the crime.

18 Your duty is to convict if the evidence shows guilty
19 beyond a reasonable doubt, but you have just as much a
20 duty to acquit when the evidence fails to satisfy you
21 beyond a reasonable doubt.

22 The criminal justice process is a long, straight road
23 with a beginning of presumed innocent, and an end, a
24 guilty verdict. When the government decides to charge
25 someone with a crime, they start marching him down the

1 road from the beginning towards the end. There are a
2 number of stops along the way, a preliminary arraignment,
3 a preliminary hearing, suppression hearings, etcetera.

4 We are at the stop in the road called the trial. The
5 next stop at the end of the road is guilty. Because that
6 next stop at the end of the line -- the next stop is the
7 end of the line, the law has built a big brick wall across
8 that road between the trial and guilty. That wall is
9 called reasonable doubt.

10 It's the prosecution's job to tear down that wall,
11 every last brick of reasonable doubt and get it completely
12 off the road. If they can't do that, if there is one
13 brick of reasonable doubt remaining in the road, the law
14 says the defendant gets to turn around and go back to
15 start, because the verdict is not guilty.

16 Ladies and gentlemen, the fact is that there is no
17 fingerprint evidence, no DNA evidence, no evidence in the
18 sheriff's department report of the show-up identification.
19 There is no evidence of a broken window or broken lock or
20 broken sill or broken frame. There is no evidence
21 anything was missing.

22 In fact, there is no physical evidence that Mr. Price
23 was inside the residence. The eyewitness seems to have a
24 different story every time he was asked how to tell
25 someone what happened.

1 The police -- the State has not shown Mr. Price
2 committed a crime inside. The State has not shown that he
3 intended to commit a crime inside. All these things are
4 bricks in the wall of reasonable doubt that are still
5 present on the road.

6 Again, I mentioned the law does not require the
7 defendant to prove his innocence, because many times a
8 person cannot prove his own innocence. It is a burden the
9 State bears. They are charged with providing the evidence
10 to knock down the wall of reasonable doubt that exists
11 between the person being charged with a crime and going to
12 trial and a jury finding them guilty.

13 I'm now going to place the life and the freedom of
14 Mr. -- of William Price in your hands. Treat him kindly,
15 treat him fairly, and above all, treat him justly. Render
16 a verdict that speaks the truth, one that will release
17 William Price and let him leave this courtroom as a free
18 man, and find him not guilty. Thank you.

19 **THE COURT:** Madam Solicitor, final argument?

20 **ASSISTANT SOLICITOR CONCANNON:** In response to Mr.
21 Platte, the State would just argue that we have met our
22 reasonable doubt standard. Mr. Price is guilty. He did
23 intend to commit a crime. But for David's presence, he
24 was stopped.

25 He broke into that house without permission, with the

1 intent to commit a crime. He is guilty of burglary.

2 Thank you.

3 THE COURT: All right. Thank you.

4 Ladies and gentlemen, all of the evidence has been
5 presented in this case. All the witnesses have testified.
6 The attorneys have given you their closing arguments. Now
7 is the time where I will charge you the law that is
8 applicable to this case.

9 And, ladies and gentlemen, I will remind you that
10 during this trial, you and I have certain duties to
11 perform. As the trial judge, it is my responsibility to
12 preside over the trial of this case, and I also have the
13 duty to rule on the admissibility of evidence which has
14 been offered during this trial.

15 You are to consider only the competent evidence
16 before you. If there was any testimony ordered stricken
17 from the record in this case and during this trial, you
18 must disregard that testimony, and you are to consider
19 only to consider the testimony which has been presented
20 from this witness stand and any exhibits which have been
21 made a part of the record or any stipulations of counsel.

22 Now, ladies and gentlemen, in addition, I have the
23 duty to charge you the law that is applicable to this
24 case. As the presiding judge, I am the sole judge of the
25 law of this case, and it is your duty as jurors to accept

1 and apply the law as I now state it to you. If you
2 already have some idea as to what the law is or what the
3 law ought to be and it does not agree with what I now tell
4 you the law is, you must abandon that idea, because you
5 are sworn to accept and apply the law exactly as I state
6 it to you.

7 Now, ladies and gentlemen, in every case tried in
8 this court before a jury, you the jury, become the sole
9 and exclusive judges of the facts in a case. As a trial
10 judge, I cannot state, comment, or in any way make any
11 statements to the trial jury about the facts in a case.
12 Since you're the jury, you are the sole judges of the
13 facts, and you are not to infer from anything that I have
14 said during the progress of this trial in ruling upon the
15 admissibility of evidence, or otherwise, or anything that
16 I say now during the course of these closing instructions,
17 that I have any opinion about the facts in this case. The
18 law simply does not allow me to have an opinion about the
19 facts of this case. It's a matter solely for you as
20 jurors to determine. And, ladies and gentlemen, as
21 jurors, it is your duty to determine the effect, the
22 value, the weight and the truth of the evidence that has
23 been presented during this trial.

24 Now, ladies and gentlemen, the indictment in this
25 case, Indictment Number 2012-GS-07-1104, alleges one count

1 against the defendant, William Edward Price. Count one
2 alleges that the defendant, William Edward Price,
3 committed burglary in the second degree on or about May
4 10, 2012.

5 I remind you the fact that the defendant was
6 arrested, charged, and indicted is not evidence in this
7 case and cannot be considered by you as evidence of guilt,
8 nor does it create any presumption or inference of guilt.
9 The indictment is simply the formal written instrument
10 that contains the charge made against the defendant. It
11 is the formal document by which the case is brought into
12 this court.

13 Now, ladies and gentlemen, the defendant has pled not
14 guilty to this indictment, and that plea puts the burden
15 on the State to prove the defendant guilty. A person
16 charged with committing a criminal offense in the State of
17 South Carolina is never required to prove his innocence.

18 I charge you that this is an important rule of law,
19 that the defendant in a criminal trial, no matter how
20 serious the charge is, will always be presumed to be
21 innocent of the crime for which the indictment was issued,
22 unless guilt has been proven by evidence satisfying you of
23 that guilt beyond a reasonable doubt.

24 The presumption of innocence does not end when you
25 begin your deliberations, but it accompanies the defendant

1 throughout the trial until you reach a verdict of guilt,
2 based on evidence, again, satisfying you of that guilt
3 beyond a reasonable doubt.

4 The presumption of innocence is like a robe of
5 righteousness placed about the shoulders of the defendant,
6 which remains with the defendant until it has been
7 stripped from the defendant by evidence satisfying you of
8 the defendant's guilt beyond a reasonable doubt.

9 The presumption of innocence is not a mere legal
10 theory. It is not just a legal phrase that we use. It is
11 a substantial right to which every defendant is entitled
12 to, until you the jury are satisfied from the evidence of
13 the defendant's guilt beyond a reasonable doubt.

14 Now, ladies and gentlemen, there are two types of
15 evidence which are generally presented during a trial.
16 There is direct evidence and there is circumstantial
17 evidence.

18 Direct evidence is the testimony of a person who
19 claims to have actual knowledge of a fact, such as an
20 eyewitness. It is evidence which immediately establishes
21 the main fact to be proved.

22 Circumstantial evidence is a proof of a chain of
23 facts or circumstances indicating the existence of a fact.
24 It is evidence which immediately establishes collateral
25 facts from which the main fact may be inferred.

1 Circumstantial evidence is based on inference and not
2 on personal knowledge or observation. And the law makes
3 absolutely no distinction between the weight or value to
4 be given to either direct or circumstantial evidence, nor
5 is a greater degree of certainty required for
6 circumstantial evidence than of direct evidence.

7 Ladies and gentlemen, as jurors, you should weigh all
8 the evidence in this case. And after weighing all the
9 evidence, if you are not convinced of the guilt of the
10 defendant beyond a reasonable doubt, you must find the
11 defendant not guilty.

12 Now, necessarily, ladies and gentlemen, you must
13 determine the credibility of witnesses who have testified
14 in this case. Ladies and gentlemen, credibility simply
15 means believability.

16 It becomes your duty as jurors to analyze and to
17 evaluate the evidence and determine which evidence
18 convinces you of its truth. In determining the
19 believability of witnesses who have testified in this
20 case, you may believe one witness over several witnesses
21 or several witnesses over one witness. You may believe a
22 part of the testimony of a witness and reject the
23 remaining parts of the testimony of that same witness.
24 You may believe the testimony of a witness in its
25 entirety, or you may reject the testimony of a witness in

1 its entirety.

2 You may consider whether any witness has exhibited to
3 you any interest, bias, prejudice, or other motive in this
4 case. You may also consider the appearance and the manner
5 of the witness while on the witness stand.

6 Now, ladies and gentlemen, as I told you earlier, the
7 rules of evidence ordinarily do not permit a witness to
8 testify to opinions or conclusions. An exception to this
9 rule exists for witnesses we call expert witnesses. A
10 witness, who by education and experience has become expert
11 in some art, science, or profession, may give an opinion
12 as to the subject the witness claims to be an expert in
13 and may also give the reasons for that opinion.

14 You should consider any expert opinion given by a
15 witness like any other witness and give it the weight that
16 you think it deserves. If you decide that an expert
17 witness's opinion is not based on sufficient education and
18 experience, or if you decide that the reason given in
19 support of the opinion are not sound or that the opinion
20 is outweighed by other evidence, you may disregard that
21 opinion entirely.

22 An expert witness's testimony is to be given no
23 greater weight than that of other witnesses, simply
24 because the witness is an expert. And you do not have to
25 accept an expert's opinion, even though it is

1 uncontradicted.

2 Now, ladies and gentlemen, I instruct you and I
3 emphasize, the fact that the defendant did not testify is
4 not a factor to be considered by you in your deliberation
5 and in your consideration of the question of guilt or
6 innocence of the defendant. It must not be considered by
7 you in any manner whatsoever.

8 A defendant has the constitutional right to remain
9 silent, and the assertion of this right must not be
10 considered by you in your deliberations. And I repeat,
11 under your oath, you are to draw no conclusions whatsoever
12 from the fact that the defendant in this case did not
13 testify. The fact that the defendant did not testify
14 should not even be discussed in the jury room.

15 The burden of proof, as I have stated to you, is on
16 the State and the defendant is not required to prove his
17 innocence. The burden of proof remains on the State to
18 prove guilt beyond a reasonable doubt.

19 Ladies and gentlemen, that begs the question: What
20 is reasonable doubt?

21 Reasonable doubt is the type of doubt that would
22 cause a reasonable person to hesitate to act. The State
23 has the burden of proving the defendant guilty beyond a
24 reasonable doubt.

25 Some of you may have served as jurors on civil cases

1 where you were told that it is only necessary to prove
2 that a fact is more likely true than not true, such as by
3 the greater weight or the preponderance of the evidence.
4 In criminal cases, the State's proof must be more powerful
5 than that, and it must be beyond a reasonable doubt. As I
6 said, it must be beyond a reasonable doubt, and proof
7 beyond a reasonable doubt is proof that leaves you firmly
8 convinced of the defendant's guilt.

9 Ladies and gentlemen, there are very few things in
10 this world which we know with absolute certainty, and in
11 criminal cases, the law does not require proof that
12 overcomes every possible doubt. If, based upon your
13 consideration of the evidence, you are firmly convinced
14 that the defendant is guilty of the crime charged, you
15 must find the defendant guilty.

16 If, on the other hand, you think there is a real
17 possibility that the defendant is not guilty, you should
18 give the defendant the benefit of the doubt and find him
19 not guilty.

20 Now, ladies and gentlemen, an issue in this case is
21 the identification of the defendant as the person who
22 committed the crime charged. The State has the burden of
23 proving identity beyond a reasonable doubt, and you must
24 be satisfied beyond a reasonable doubt of the accuracy of
25 the identification of the defendant before you may convict

1 the defendant.

2 Identification testimony is an expression of belief
3 or impression by a witness, and you must determine the
4 accuracy of the identification of the defendant. And you
5 must consider the believability of each identification
6 witness in the same way as any other witness.

7 You may consider whether the witness has had adequate
8 opportunity to observe the offender at the time of the
9 offense, and this will be affected by things like how long
10 or how short of time was available, how far or how close
11 the witness was, the lighting conditions, and whether the
12 witness had a chance to see or know the person in the
13 past.

14 Once again, I instruct you that the burden of proof
15 is on the State to extend to every element of the crime
16 charged, and this specifically includes the burden of
17 proving beyond a reasonable doubt the identity of the
18 defendant as the person who committed the crime. And if
19 after examining the testimony you have a reasonable doubt
20 as to the accuracy of the identification, you must find
21 the defendant not guilty.

22 In order to establish criminal liability, criminal
23 intent is required. For example, the mental state
24 required to be proven by the State for a particular crime
25 might be purpose, intent, knowledge, recklessness or

1 criminal negligence.

2 Criminal intent must be proven by the State beyond a
3 reasonable doubt. Criminal intent is always a matter that
4 must be determined by the jury from the circumstances
5 surrounding the situation.

6 There is no way to prove intent to a mathematical
7 certainty, and there is no way medical science can dissect
8 a person's brain and determine what the person had in
9 mind. So the law says that criminal intent may be
10 inferred from the circumstances shown to have existed.

11 This is for you to make a determination of whether or
12 not the element required, intent, was present. It is not
13 necessary to establish intent by direct and positive
14 evidence, but intent may be established by inference in
15 the same way that any other fact, by taking into
16 consideration the acts of parties and all of the facts and
17 circumstances of the case.

18 Criminal intent is a mental state, a conscious
19 wrong-doing, and it is up to you to determine what the
20 defendant intended to do, based upon the circumstances
21 shown to have existed. Criminal intent can arise from
22 action or a failure to act, and it may arise from
23 negligence, recklessness, or an indifference to duty or to
24 consequences that is considered by the law to be the
25 equivalent of criminal intent.

1 Now, ladies and gentlemen, the defendant has been
2 charged with second degree burglary under Section
3 16-11-312 of the South Carolina Code. And to prove second
4 degree burglary, the State must first prove beyond a
5 reasonable doubt that the defendant entered a dwelling
6 without consent.

7 A dwelling is any building or portion of a building
8 in which a person ordinarily sleeps. A building
9 constructed as a dwelling that has never been occupied
10 cannot be considered a dwelling for purposes of burglary,
11 but a building is a dwelling, even if the residents are
12 temporarily absent from the building.

13 In order to prove the defendant entered the dwelling,
14 the State does not have to show that the defendant's
15 entire body entered the building. The smallest entry is
16 sufficient, and it may be a part of the body such as a
17 hand or foot or even an instrument such as a hook or other
18 instrument.

19 In addition, the State does not have to prove that
20 force was used to gain entry. If a person enters the
21 dwelling of another by using deception, artifice, trick,
22 or misrepresentation to get consent to enter, this is an
23 entry without consent.

24 Next, the State must prove beyond a reasonable doubt
25 that the defendant intended to commit a crime, either a

1 felony or a misdemeanor, at the time of the entry to be
2 guilty of burglary. The mere entry into a dwelling
3 without consent is not burglary. If the intent to commit
4 a crime is formed after the entry, it is not burglary.
5 But, on the other hand, if the defendant intended to
6 commit a crime at the time of entry, it is a burglary,
7 even if the intent was abandoned after the entry. It does
8 not matter that the intended crime was not completed.
9 Intent may be shown by acts and conduct of the defendant
10 and other circumstances from which you may naturally and
11 reasonably infer intent.

12 Now, ladies and gentlemen, there are two possible
13 verdicts which you may find in this case on the charge
14 under Indictment 2012-GS-07-1104, burglary in the second
15 degree. It's not guilty or guilty.

16 Now, ladies and gentlemen, there is no significance
17 whatsoever in the order that I state these possible
18 verdicts, just simply that one must be stated first.

19 Now, ladies and gentlemen, your verdicts must be
20 unanimous. All twelve of you must agree on the verdict,
21 and your decision must not be based on sympathy, passion,
22 prejudice, emotion or any other consideration that is not
23 in evidence.

24 Madam Forelady, when the jury agrees on the verdict,
25 you will check the appropriate box, then date it, and then

1 sign as the foreperson. And then if you would knock on
2 the jury room door and inform the bailiff that you have
3 reached a verdict, then you will be received back here in
4 the courtroom for the publication of your verdict.

5 Now, ladies and gentlemen, I am going to instruct you
6 to go to the jury room, but do not begin your
7 deliberations, as there are still a few matters that we
8 need to take up here in court.

9 They should be bringing you lunch shortly. So,
10 ladies and gentlemen, I'm going to instruct you to go back
11 now, and we will tell you when to begin your
12 deliberations. Thank you.

13 (JANUARY 23, 2013, 12:12 P.M., WHEREUPON, THE JURY
14 RETIRES FROM THE COURTROOM, AND THE FOLLOWING
15 PROCEEDINGS WERE HELD OUT OF THEIR PRESENCE.)

16 **BAILIFF:** The jury is clear, and the door is closed,
17 Your Honor.

18 **THE COURT:** Y'all need to separate the alternate from
19 the main jury.

20 **BAILIFF:** At this point.

21 **THE COURT:** That's right.

22 **BAILIFF:** But keep them back there, right, Your
23 Honor?

24 **THE COURT:** Yeah.

25 All right. Are there any exceptions to the charge?

1 **ASSISTANT SOLICITOR CONCANNON:** None for the State.

2 **MR. PLATTE:** None from the defense, Your Honor.

3 **THE COURT:** All right. Very well.

4 Y'all can gather the evidence, and then we will tell
5 the jury to begin their deliberations. And then the
6 courtroom will be at ease, pending the call of the Court.
7 Thank you.

8 Does anybody have any objections of my sending the
9 Charge back to the jury?

10 **ASSISTANT SOLICITOR CONCANNON:** No, Your Honor.

11 **THE COURT:** Do you have any objection?

12 **MR. PLATTE:** None from the defense, Your Honor.

13 **THE COURT:** Okay. All right.

14 **ASSISTANT SOLICITOR CONCANNON:** There is -- I'm
15 sorry, Your Honor.

16 **THE COURT:** Yes, ma'am?

17 **ASSISTANT SOLICITOR CONCANNON:** There is one more
18 thing. In the event that the jury would like to hear any
19 of the audio recordings, ---

20 **THE COURT:** They can certainly hear anything they
21 want to. I'll bring them back out here for that. I
22 won't -- I do not send tape records, because they will
23 only listen to what they want and they need to hear the
24 whole thing.

25 **ASSISTANT SOLICITOR CONCANNON:** Okay. Thank you.

1 **THE COURT:** We will bring them back, if they want to
2 hear anything.

3 **ASSISTANT SOLICITOR CONCANNON:** Thank you, Your
4 Honor.

5 **MR. PLATTE:** Thank you, Your Honor.

6 **THE COURT:** All right. Court's at ease.

7 (WHEREUPON, A BREAK WAS TAKEN.)

8 (WHEREUPON, AT 12:15 P.M., EXHIBITS ARE TAKEN TO THE
9 JURY AND TOLD TO BEGIN DELIBERATIONS.)

10 (WHEREUPON, AT 1:05 P.M., THE FOLLOWING PROCEEDINGS
11 WERE HELD ON THE RECORD OUT OF THE PRESENCE OF THE JURY:)

12 **THE COURT:** All right. It is my understanding that
13 the jury has reached a verdict.

14 Let me just say this. As far as the trial goes, both
15 attorneys have upheld their civility oaths. It's been a
16 pleasure working with you in this case. I don't know how
17 it will turn out, but we will wait and see.

18 **MR. PLATTE:** Thank you, Your Honor.

19 **ASSISTANT SOLICITOR CONCANNON:** Thank you, Your
20 Honor.

21 **BAILIFF:** The jury is ready to enter.

22 **THE COURT:** All right. Please bring them in.

23 (JANUARY 23, 2013, 1:10 P.M., WHEREUPON, THE JURY
24 ENTERS THE COURTROOM, AND THE FOLLOWING PROCEEDINGS
25 WERE HELD IN THEIR PRESENCE.)

1 **THE COURT:** You may be seated.

2 **BAILIFF:** The jury is present.

3 **THE COURT:** Thank you.

4 You may be seated.

5 Madame Forelady, I understand the jury has reached a
6 verdict in this case; is that correct?

7 **FOREPERSON:** Yes, sir.

8 **THE COURT:** Is it unanimous?

9 **FOREPERSON:** Yes, sir.

10 **THE COURT:** Okay. Please pass it to the bailiff.

11 All right. Please publish the verdict.

12 The defendant will rise.

13 **CLERK:** State of South Carolina versus William Edward
14 Price, Indictment Number 2012-GS-07-1104, as to the charge
15 of burglary second degree, we the jury unanimously find
16 the defendant guilty. Signed the 23rd day of January,
17 2013.

18 Madame Forelady, was this your verdict?

19 **FOREPERSON:** Yes, ma'am.

20 **CLERK:** If all agree, would you please raise your
21 right hands?

22 (WHEREUPON, ALL JURORS RAISED THEIR RIGHT HAND.)

23 **CLERK:** Thank you.

24 **THE COURT:** Does the defendant request polling of the
25 jury?

1 MR. PLATTE: Yes, Your Honor.

2 THE COURT: All right. Please poll the jury.

3 CLERK: Yes, sir.

4 Cathy Mildren, would you please stand? Was this your
5 verdict?

6 JUROR: Yes, ma'am.

7 CLERK: Is it still your verdict?

8 JUROR: Yes, ma'am.

9 CLERK: Thank you, ma'am.

10 Cathy Brown, was this your verdict?

11 JUROR: Yes.

12 CLERK: Is it still your verdict?

13 JUROR: Yes.

14 CLERK: Thank you.

15 Mary Campbell, was this your verdict?

16 JUROR: Yes.

17 CLERK: Is it still your verdict?

18 JUROR: Yes.

19 CLERK: Eric Fawbush, was this your verdict?

20 JUROR: Yes, ma'am.

21 CLERK: Is it still your verdict?

22 JUROR: Yes, ma'am.

23 CLERK: Mark Heck, was this your verdict?

24 JUROR: Yes, ma'am.

25 CLERK: Is it still your verdict?

1 JUROR: Yes, ma'am.
2 CLERK: Margaret Manuel, was this your verdict?
3 JUROR: Yes, ma'am.
4 CLERK: Is it still your verdict?
5 JUROR: Yes, ma'am.
6 CLERK: Marnita Powell, was this your verdict?
7 JUROR: Yes.
8 CLERK: Is it still your verdict?
9 JUROR: Yes.
10 CLERK: Walter Ryals, was this your verdict?
11 JUROR: Yes, ma'am.
12 CLERK: Is it still your verdict?
13 JUROR: Yes, ma'am.
14 CLERK: Weston Sumner, was this your verdict?
15 JUROR: Yes, ma'am.
16 CLERK: Is it still your verdict?
17 JUROR: Yes, ma'am.
18 CLERK: Marcia Sundling, was this your verdict?
19 JUROR: Yes, ma'am.
20 CLERK: Is it still your verdict?
21 JUROR: Yes, ma'am.
22 CLERK: James Wood, was this your verdict?
23 JUROR: Yes.
24 CLERK: Is it still your verdict?
25 JUROR: Yes.

1 **CLERK:** Thank you very much.

2 **THE COURT:** All right. Thank you.

3 The verdict stands.

4 You may be seated.

5 Ladies and gentlemen, let me take this opportunity to
6 thank you. You know, there was a lot of important things
7 going on in Beaufort County today, but nothing is more
8 important than what y'all have done and sat as a jury to
9 administer justice and determine someone's guilt or
10 innocence. With everything else going on, this was a
11 serious matter, and I want to thank you for taking it
12 seriously.

13 You were an attentive jury, and I appreciate that.
14 You were also very timely, as far as being here when you
15 were supposed to be, and I appreciate that.

16 Ladies and gentlemen, the debt that you are owed by
17 Beaufort County is great, but they are not going to pay
18 you a whole lot. I think you get twelve dollars and fifty
19 cents a day, and that in no way compensates you for what
20 you've done for Beaufort County and for the State of South
21 Carolina.

22 Ladies and gentlemen, throughout this trial I've told
23 you that you can't talk about this case. You are welcome
24 to talk about it to anybody you want to now. It's up to
25 you. You've done your job.

1 Ladies and gentlemen, I also want to remind you that
2 you don't have to serve as a juror for the next three
3 years, if you don't want to, and you can't serve as a
4 juror for the next year.

5 Ladies and gentlemen, in about fifteen minutes I will
6 hear from the defense attorney and the prosecution and
7 will sentence the defendant in accordance with your
8 verdict of guilt beyond a reasonable doubt. You are
9 welcome, as you are released from the jury room, if you
10 would like to come back into the courtroom to hear the
11 final chapter in this book, you are welcome to do that.

12 Ladies and gentlemen, you know there are a lot of
13 things that make this country absolutely great, and I am a
14 big believer in America and I just think it's a great
15 country. The thing that makes it great is people like you
16 who come from their jobs, their homes and come in here,
17 listen to the evidence and render a verdict. And I just,
18 you know, I don't think y'all get enough praise for that,
19 and I just want to thank you.

20 This isn't like TV. TV does everything within an
21 hour, and it's usually pretty clear. This just isn't that
22 way, and thank you for taking the time to render a
23 verdict.

24 I would just like to shake each and every one of your
25 hands as you leave. And again, you are welcome to come

1 back around if you want to.

2 If you need work excuses, they will be glad to
3 provide it for you. This terminates your service for the
4 week. So you don't have to come back, but I won't tell
5 anybody.

6 (JANUARY 23, 2013, 1:15 P.M., WHEREUPON, THE JURY
7 RETIRES FROM THE COURTROOM, AND THE FOLLOWING
8 PROCEEDINGS WERE HELD OUT OF THEIR PRESENCE.)

9 BAILIFF: The jury is clear.

10 THE COURT: Are there any post trial motions?

11 MR. PLATTE: Your Honor, the defense would just
12 reserve its right to make any post trial motions within
13 ten days.

14 THE COURT: Well, I'm going to go ahead and sentence
15 him today, so you need to go ahead and make your motions
16 at this time.

17 MR. PLATTE: Your Honor, the defense would make a
18 motion for JNOV, that based on ---

19 THE COURT: There's no such thing as JNOV in a civil
20 case -- I mean in a criminal case.

21 MR. PLATTE: No, Your Honor.

22 THE COURT: Okay. Thank you.

23 Anything from the State?

24 ASSISTANT SOLICITOR CONCANNON: Nothing further from
25 the State, Your Honor.

1 **THE COURT:** All right. I will give y'all about
2 fifteen minutes to get your thoughts together, and then
3 I'll hear his record, and I'll hear any mitigation.

4 Okay. Thank you. Court will be in recess until
5 1:30.

6 (WHEREUPON, A BREAK WAS TAKEN. THEREAFTER, AT 1:34
7 P.M., THE FOLLOWING PROCEEDINGS WERE HELD ON THE RECORD:)

8 **THE COURT:** Do y'all have a sentencing sheet
9 prepared?

10 **ASSISTANT SOLICITOR CONCANNON:** We do.

11 **MR. PLATTE:** Your Honor?

12 **THE COURT:** Yes, sir?

13 **MR. PLATTE:** Just in order to preserve my client's
14 rights on appeal.

15 **THE COURT:** Yes, sir?

16 **MR. PLATTE:** I would like to make two motions.

17 **THE COURT:** Yes, sir.

18 **MR. PLATTE:** The first one would be a motion for a
19 directed verdict based on -- based on just that the
20 evidence presented cannot support a finding of guilty
21 beyond a reasonable doubt as to each and every element of
22 the crime.

23 **THE COURT:** Yes, sir.

24 Ms. Concannon, I'll hear from you.

25 **ASSISTANT SOLICITOR CONCANNON:** I maintain our

1 objection, as earlier stated in the trial. We oppose that
2 motion.

3 **THE COURT:** All right. I had ruled that there was
4 sufficient evidence to at least go to the jury. The jury,
5 after having evaluated the evidence, has found the
6 defendant guilty, and I respectfully deny your motion.
7 What's your second motion?

8 **MR. PLATTE:** It would just be a motion for a new
9 trial.

10 **THE COURT:** Okay.

11 **MR. PLATTE:** Based on the same.

12 **THE COURT:** Okay. And I'm going to respectfully deny
13 that as well.

14 **MR. PLATTE:** Thank you, Your Honor.

15 **THE COURT:** Okay. All right. If y'all will come up
16 to the front?

17 What's the defendant's record?

18 **ASSISTANT SOLICITOR CONCANNON:** Your Honor, Mr. Price
19 has a record dating back to 1999. It looks like he was
20 charged with burg first, and it was reduced to burg
21 second.

22 **THE COURT:** Burglary? You said burg. Burglary?

23 **ASSISTANT SOLICITOR CONCANNON:** Burglary in the
24 second degree is what he was convicted of in 1999, as well
25 as attempted burglary. In 2002, he has a CDV and a public

1 disorderly conduct. 2003, possession of marijuana. 2004,
2 check fraud, possession of marijuana, and driving under
3 suspension. 2005, forgery, two times criminal conspiracy,
4 and unlawful carrying. 2008, he has possession of
5 marijuana. 2009, he has ill treatment of animals and a
6 felon in possession of a handgun, and in 2010, he has
7 possession of marijuana.

8 The State would argue that based on Mr. Price's prior
9 record and the rejection of our prior offer that the full
10 ten years is appropriate for this sentence for this
11 defendant.

12 **THE COURT:** Mr. Platte?

13 **MR. PLATTE:** Your Honor, Mr. Price has had his issues
14 in the past. He suffers from a conditioned mental
15 disease, not otherwise specified, more commonly known as
16 bipolar, but also includes some other elements from
17 schizophrenia and some other things.

18 And the majority of his past convictions have been
19 when he decided at that point that he didn't need medicine
20 to control that, his disease. And so he self-medicated
21 with his drug charges, with marijuana and cocaine, and
22 that led him to make some really bad decisions, in which
23 is reflected in his record.

24 Beginning in 2011, he started making a conscious
25 decision that he needed some medical assistance, and he

1 started to take some medicine and seek counseling. At the
2 end of 2011, he relapsed when his daughter was born and
3 the mother of his daughter refused to let him see her.
4 And he made a choice that he wasn't going to stay on his
5 medicine, and it led down the path that we are here today.

6 He understands that he does have a mental condition
7 that causes him to do things that aren't acceptable in
8 society. But I think he has finally reached an age and
9 reached an understanding that this is a condition that
10 will be with him for the rest of his life and requires
11 medical attention, medical medicine and counseling, and he
12 has started to show that that's what he needs to do. And
13 um -- he um ---

14 **THE COURT:** Has he gone a year without breaking the
15 law since 1999?

16 **MR. PLATTE:** I believe his last conviction was in
17 2010. So he went about a year, year and a half.

18 **ASSISTANT SOLICITOR CONCANNON:** It was.

19 **THE COURT:** About a year without breaking the law.

20 **MR. PLATTE:** And in that time period is when he
21 started to have that realization that he needed help on
22 his condition. And as soon as he decided that the
23 depression was too much, it caused him to abandon that
24 help. He resorted back to his original path.

25 And so I think that with constant medical counseling

1 and medicine, I think that he can be a very productive
2 member of society, but he is going to have to stay on
3 that. We just ask for the Court's mercy, and we just ask
4 that he gets credit for his time served.

5 **THE COURT:** Well, he will get credit for time served.
6 Would he like to say anything?

7 **DEFENDANT, MR. PRICE:** I just ask for the mercy of
8 the Court, Your Honor. What I did was really stupid, and
9 I went about things completely in the opposite direction
10 that I should have.

11 I would just like to say, like my lawyer said, the
12 last two years or so has been a lot of changes in my life.
13 I have been realizing that I am getting too old for this
14 kind of thing.

15 I went almost two years with -- with no drugs, no --
16 no problems whatsoever. And, you know, when this thing
17 with my daughter came about it, it just put me back. I
18 went the wrong way, and I realize that what I did was
19 wrong.

20 In the eight months that I have been here in Beaufort
21 County, I've suffered tremendously because of -- because
22 of that decision. I understand that I could suffer a lot
23 more. I just ask for your mercy. I had no ill
24 intentions, but when I do get released I'll seek help.

25 **THE COURT:** That would be up to you.

1 **DEFENDANT, MR. PRICE:** Right. I just want to try to
2 be a good father and a member of society now.

3 **THE COURT:** Okay.

4 **DEFENDANT, MR. PRICE:** I'm not a career criminal and
5 not a drug dealer or anything like that.

6 **THE COURT:** You've done a pretty good job since 1999.

7 **DEFENDANT, MR. PRICE:** I -- I had a drug problem,
8 Your Honor. Like what he said, I had a drug problem that
9 led me to do a lot of things that I wouldn't, without the
10 drug problem, be interested in.

11 **THE COURT:** Okay. Anything further?

12 **MR. PLATTE:** We just ask your mercy, Your Honor.

13 **THE COURT:** Anything further from the State?

14 **ASSISTANT SOLICITOR CONCANNON:** We would just like to
15 reiterate the consistency of his record since 1999, which
16 is the foundation for our ten year recommendation.

17 **THE COURT:** All right. How many days has he been
18 incarcerated?

19 **MR. PLATTE:** I believe it is 237.

20 **THE COURT:** Do you dispute that?

21 **ASSISTANT SOLICITOR CONCANNON:** I don't dispute that,
22 if that's what Mr. Platte says.

23 **MR. PLATTE:** Can we just say he's been in jail since
24 May 10th, 2012?

25 **THE COURT:** Okay.

1 **MR. PLATTE:** I don't want to trust my math.

2 **THE COURT:** Okay.

3 You know, Mr. Price, what you did this time was
4 incredibly stupid, but it was also incredibly bad. You
5 went into someone's home.

6 You intended to go into their home, and you just
7 happened to find somebody there. I mean, you found that
8 there was a juvenile there, who actually did the right
9 thing and kept his mind and called the police.

10 He saw you go out of the house. He followed you and
11 he pinpointed you, and then you even admitted that you had
12 been in the house.

13 I just -- and then when I look at your record, and
14 you are twenty-nine now, but over the last, you know,
15 twelve years, you have just consistently been breaking the
16 law. And it looks like the only thing that causes you not
17 to break the law is when you get caught.

18 So I just -- you don't give me any sense of warm
19 feeling that if I were to give you a probationary
20 sentence, that there would be anything other than -- I
21 just don't think you can do probation, quite frankly. I
22 just don't know if it's within you. And I hope you will
23 get -- when you're in prison that you are going to get
24 help for your drugs, but at this point in time, you
25 invaded someone's home.

1 And, you know, in this culture, we give a lot of --
2 your home is your castle, and you didn't seem to go along
3 with that. You wanted to go in there, scared the heck out
4 of a young man, and I don't know what would have happened
5 if no one was in there. I hope nothing bad would have
6 happened, but you are kind of lucky that you broke into
7 this house, because there are a lot of houses that if you
8 had broken into around here that you may have been taken
9 away in an ambulance after having been shot. And they
10 would certainly have been within their rights to shoot you
11 as you are coming through the window.

12 I'm not going to give you the maximum, but I am going
13 to give you enough years that you are going to have some
14 substantial time to think about this. And again, I don't
15 think that you can -- there is any reason in giving a
16 split sentence with probation, because I just don't think
17 you can do probation.

18 The sentence of the Court is that you be committed to
19 the State Department of Corrections for a period of eight
20 years. You will be given credit for time served, whatever
21 that might be, since May 10th of 2012. That is the
22 sentence of the Court.

23 Your attorney can advise you on the -- when you need
24 to file your appeal.

25 **MR. PLATTE:** Your Honor, we just ask that he receive

1 mental health treatment.

2 THE COURT: If they have it available. I don't know
3 that they have it in there.

4 MR. PLATTE: If it's available, we would just ask.

5 THE COURT: If it's available, they can certainly
6 give it to him in prison. As you know, this is not a most
7 serious crime, so he doesn't have to serve eighty-five
8 percent. With his credit for time served, they will try
9 to turn him out in a couple of years anyway, but I just
10 feel that that is the appropriate sentence in this
11 situation.

12 MR. PLATTE: Thank you, Your Honor.

13 THE COURT: Thank you. Good luck.

14 ASSISTANT SOLICITOR CONCANNON: Thank you, Your
15 Honor.

16 (END OF REQUESTED TRANSCRIPT OF RECORD.)

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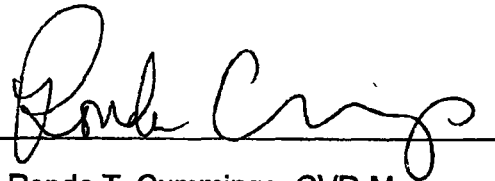
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

I, Ronda T. Cummings, Official Court Reporter for the
Judicial Department of the State of South Carolina, do
hereby certify that the foregoing is a true, accurate and
complete Transcript of Record of the proceedings had and
evidence introduced in the trial of the captioned case,
relative to appeal, in the Court of General Sessions for
Beaufort County, South Carolina, on the 22nd and 23rd day
of January, 2013.

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

July 5, 2013



Ronda T. Cummings, CVR-M
Official Court Reporter

WITNESSES

R. D'Carlo - BCSO

ARREST WARRANT NUMBER

M057427

ACTION OF GRAND JURY

True Bill

Melina Beere

Foreperson of Grand Jury
Date: JUN 28 2012

VERDICT

Foreperson of Petit Jury
Date:
INDICT

DOCKET NO. 2012GS0701104

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

June Term 2012

THE STATE

vs.

William Edward Price

Indictment for

Burglary / Burglary 2nd (Non - Violent)

SC Code: 16-11-0312
CDR Code.0080

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I _____
Hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

INDICTMENT
2012GS0701104

At a Court of General Sessions, convened on June 28, 2012, the Grand Jurors of Beaufort County present upon their oath:

Burglary / Burglary 2nd (Non - Violent)

That in Beaufort County, on or about 2012-05-10 the Defendant, William Edward Price, did enter the dwelling of Carolyn Linn located at , Beaufort, SC without consent and with the intent to commit a crime therein in violation of Section 16-11-312(A) and 16-1-80 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.

Gene M. Shivers

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Beaufort
 STATE VS.
William Edward Price
 AKA: _____
 Race: CAUCASIAN Sex: M Age: _____
 DOB: _____ SS#: _____
 Address: _____
 City, State, Zip: _____
 DL#: _____ SID#: _____

INDICTMENT/CASE#: 2012GS0701104
 A/W#: M057427
 Date of Offense: 5/10/2012
 S.C. Code §: 16-11-0312
 CDR Code #: 0080

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐
 In disposition of the said indictment comes now the Defendant who was
 TO: Burglary / Burglary (Non - Violent) (After June 20, 1985) - Second degree

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-11-0312 of the S.C. Code of Laws, bearing CDR Code # 0080
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)
 The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: Mar Cannon 100353 William Price
 Confession, Mary SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 8 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*, the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
 probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
 by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
 Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine: _____ \$
 § 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 \$
 Proviso 47.9 (Public Def/Prob) \$500 \$
 § 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00
 § 14-1-213 (Drug Court Surcharge) \$150 \$
 § 50-21-114 (BUI Breath Test Fee) \$50 \$
 § 56-5-2942(J) (Vehicle Assessment) \$40/ea \$
 Proviso 90.5 (SCCA Surcharge) \$5 \$ 5.00
 3% to County (if paid in installments) \$ 3.90
 TOTAL \$ 133.90

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: Certified - A True Copy

Kristy Taylor
 Jem Ann Rosebrou - Clerk of Court
 Beaufort County, SC - Kristy Taylor

☐ Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk
 during probation.

Clerk of Court/ Deputy Clerk

Court Reporter: Ronda Cunningham

SCCA/217 (03/2011)

Presiding Judge

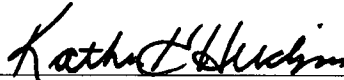
Judge Code: 2156

Sentence Date: 23 January 2013

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

January 10th 2014



Kathrine H. Hudgins
Appellate Defender

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

ATTORNEY FOR APPELLANT