

ORIGINAL

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM HORRY COUNTY

Larry B. Hyman, Jr., Circuit Court Judge

RECEIVED

JAN 31 2014

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

MAURICE WARD,

APPELLANT

APPELLATE CASE NO. 2013-001996

RECORD ON APPEAL

ROBERT M. PACHAK
Appellate Defender

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

Attorney for Appellant

ALAN WILSON
Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211
(803) 734-3727

Attorneys for Respondent

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF HORRY)

2013-GS-26-01742

STATE OF SOUTH CAROLINA,)

Plaintiff,)

Transcript of Record

vs.)

MAURICE WALLACE WARD,)

September 16, 2013

September 17, 2013

Defendant.)

B E F O R E:

Honorable Larry B. Hyman, Sr.
Horry County Courthouse
Conway, South Carolina

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

J. Stephen Grooms, Esquire
Donne E. Elder, Esquire
Attorney for Plaintiff

J. Eric Fox, Esquire
Attorney for Defendant

Kay H. Richardson
Circuit Court Reporter

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BY THE COURT

6

1 **(September 16, 2013)**

2 THE COURT: Ladies and gentlemen, it's good to see you
3 all here. You are all qualified as jurors by Judge Hocker, I
4 think, who met with you this morning. I am a Circuit -- my
5 goodness what's going on -- we had a malfunction. I am
6 required to move about in the state and hold court in any of
7 the counties but luckily, we are so busy here in Horry County,
8 that I get to stay here a good bit of the time. Judge Hocker,
9 as he probably told you this morning is from Laurens. He's a
10 new judge that has just actually been on the bench by himself
11 for about a month now but it's good to have him here. I think
12 we've got four circuit judges here this week. He probably
13 told you, we have two terms of jury court going on. One is a
14 Common Pleas term, which is a civil term where cases involving
15 individuals, usually suits for money and things of that nature
16 are heard. But this case that we have here or the cases that
17 I will be trying this week are on the General Sessions side,
18 or the criminal side of the court and it involves cases where
19 people have been charged or it is alleged that people have
20 committed some criminal offense.

21 Well, you were qualified this morning by Judge Hocker to
22 determine if you were -- generally met the requirements of
23 jurors in this state. The second part of qualification of
24 jurors for a particular trial involves questions concerning
25 the actual case that the Defendant is being tried for. Now

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BY THE COURT

7

1 normally, the staff has passed up to me an indictment but no
2 one has given me that courtesy this morning, so I think it
3 would be good if someone did.

4 Mr. Grooms? Mr. Fox?

5 MR. GROOMS: I'm sorry, Your Honor.

6 THE COURT: We are about to begin the case of the State
7 of South Carolina versus Maurice Wallace Ward. It is alleged
8 in that indictment that on or about August the 14th of 2010,
9 Mr. Ward did enter without consent and with the intent to
10 commit a crime in the building of the Freewill Baptist Church
11 located at 1807 4th Avenue in Conway. And that he did enter
12 that building in the nighttime thereby committing the offense
13 of burglary in the second degree. As I said that offense
14 allegedly occurred in Conway and it involved the Freewill
15 Baptist Church just a few blocks from here down on 4th Avenue.

16 I am going to be asking you questions concerning any
17 knowledge that you may have about that event and it's very
18 important that you answer my questions truthfully. And to
19 that end, we're gonna place you under oath before I begin
20 asking you questions.

21 But before I do that, let me tell you a little bit about
22 what an indictment is and how we go about selecting a jury in
23 the Court of General Sessions. Indictment, which I have here,
24 is nothing more than a notice document. It is a document by
25 which a case is brought to court. It puts the Defendant on

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BY THE COURT

8

1 notice of what he or she may be charged with. Nothing
2 contained in that indictment is evidence and should not be
3 considered by you as evidence. It is nothing more than a
4 summary of the allegations made by the State against the
5 Defendant. The State, as in all criminal cases, has the
6 burden of proof. The State must convince each and every one
7 of you who are seated on this jury of the guilt of the
8 Defendant beyond a reasonable doubt before a conviction can
9 occur. So, when we speak of the indictment, please understand
10 that the fact that a person has been indicted for a particular
11 offense is not evidence, it should not even be discussed by
12 you if you are seated on this jury and I will tell you more
13 about that when I give final instructions at the close of this
14 case.

15 Now, there are two procedures that we generally follow in
16 selecting jurors in this Court. One procedure pertains to the
17 civil cases, that is such a nice and pleasant procedure. We
18 take all of you and we put your names at random on a list and
19 we give you new numbers so you won't know who we're talking
20 about. And the attorneys go through the strike process where
21 each attorney has an opportunity to have some input into what
22 jurors are selected for each trial. But, as I said, you don't
23 even know who they're talking about, if they're talking about
24 you because you're given an entirely new number that you don't
25 even know about. Isn't that a pleasant way to do it?

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BY THE COURT

9

1 On the criminal side, we make you march up here and stand
2 right down here in front of me and turn around and face the
3 lawyers and the -- and the parties and witnesses and your
4 fellow jurors. And when we do that, the State, in this case
5 Mr. Grooms, will lead off and Mr. Grooms will say something
6 like, present the juror. And if he says that, then Mr. Fox
7 has an opportunity to have some input into the juror. Or, Mr.
8 Grooms may say excuse the juror and if he says excuse the
9 juror, you immediately return to your seat; you are struck
10 from the case. But if he says, present the juror, then Mr.
11 Fox may say, swear the juror. And if he says that, you come
12 around and you're in the jury box and you're on the jury. Or,
13 he may say, excuse the juror and there again, you're struck
14 and you return to your seat. Some people find that to be
15 somewhat embarrassing or intimidating, but please don't feel
16 that way because -- let me tell you something that I learned
17 from practicing law for about thirty-two years. What I
18 learned was that these lawyers that are doing this striking
19 today, they're gonna be making faces and scratching their head
20 and making notes and all but they don't have a clue what they
21 are doing, I can tell you; they don't know. There is
22 absolutely nothing more difficult than selecting a jury.
23 These attorneys don't know you and don't know very much about
24 you except what you put on that little questionnaire that you
25 sent back in when you were summonsed as jurors. And quite

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BY THE COURT

10

1 frankly, usually, the attorney is going by just a gut reaction
2 to general information that you gave and many times they're
3 just looking down the list and they're thinking well, here's a
4 juror that might be more sympathetic to my position and you
5 may be struck for no other reason than that. Now, there, I've
6 spent all that time trying to make you feel good about being
7 struck and not have your feelings hurt and you're probably all
8 out there thinking, I hope I get struck so I don't get on this
9 jury; that's probably exactly what you want to do. But let me
10 say this, although jury service is an inconvenience and we
11 understand that. We bring you here from things that you need
12 to be doing and your jobs and places that you need to be and
13 rather be doing and we sit you here and we make you listen to
14 this evidence and try these cases and we, as I said,
15 appreciate the fact that that is a substantial inconvenience
16 to you. But let me say that people who actually serve on
17 juries, and it's very rare that you end of serving on a jury
18 -- how many of you have ever actually served on a Common Pleas
19 or General Sessions jury? You know, very few, you know,
20 considering. But people who do it usually tell me that they
21 leave with a renewed sense of pride in our country and in our
22 government and in the way we handle these matters. And
23 they're enlightened and educated by the process and have found
24 it to be rewarding, if not educational. So, I hope that that
25 will be your take on jury service. It is an important thing

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VOIR DIRE

11

1 that you do.

2 Well, now that I've said that to you, we're about to
3 begin the process of selecting a jury in this case. The clerk
4 is going to call your names and again that will be at random
5 and I want you to come right up here and turn around and face
6 all the folks and the attorneys will have an opportunity at
7 that time to seat you or strike you from this jury. Would you
8 " place them under oath?

9 CLERK: No, sir.

10 THE COURT: You won't?

11 CLERK: Oh, I thought you said did I.

12 THE COURT: I asked you would you.

13 CLERK: Please stand and raise your right hand.

14 (REPORTER'S NOTE: Jury is duly sworn.)

15 THE COURT: Call the first witness.

16 CLERK: Juror Number 79, Patrick Coleman ---

17 MR. GROOMS: Your Honor, could we approach?

18 THE COURT: Yes.

19 (REPORTER'S NOTE: A bench conference was held off the record
20 in the presence of the jury but out of hearing of the jury.)

21 THE COURT: Go back and have a seat. I need to ask some
22 more questions.

23 VOIR DIRE:

24 I got carried away wanting to get started with this case
25 and I need to ask you some more questions.

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VOIR DIRE

12

1 You're under oath now and what I want to do is ask you
2 this, are any of you related by blood or marriage to the
3 Defendant in this case, who I said is Maurice Wallace Ward; or
4 are any of you connected in any way by being a member of or
5 associated with in any way, the Freewill Baptist Church that's
6 located here on 4th Avenue in Conway? Is there anyone?

7 And there is no response.

8 Is anyone a close personal friend or do you have a social
9 relationship with Mr. Ward or anyone that you know that might
10 be a member at the Freewill Baptist Church here on 4th Avenue?

11 And there is no response.

12 Do we have a list of the witnesses, Mr. Grooms or Mr.
13 Fox?

14 (REPORTER'S NOTE: A bench conference was held off the record
15 in the presence of the jury but out of hearing of the jury.)

16 THE COURT: All right. I have a list of possible
17 witnesses in this case. You may not hear from all these
18 witnesses and please don't draw any conclusions from the fact
19 that you heard a name and that witness did not testify but --
20 the witnesses who may possibly be testifying in this case
21 would be Tyrone Williams, with the Conway Police Department;
22 Jason Eaddy with the Conway Police Department; Robert
23 Robinson, Conway Police Department; Jeff Jordan, Conway Police
24 Department; Rick Morgan, Conway Police Department; Justin
25 Strickland, Conway Police Department; Danny Hardwick; Russell

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VOIR DIRE

13

1 Hucks; Amy Stephens, with SLED; Doug McClure with SLED; Nancy
2 Skraba, with SLED; Kenneth Bogan with SLED; Carolyn Winstead,
3 FedEx; Gerald Gasper with FedEx; Deshawn Pirella, P-I-R-E-L-L-
4 A, with FedEx; Cynthia Kale with Strand Analytical; and
5 Heather Lewis, the Horry County Clerk of Court.

6 Do you want to supplement that list, Mr. Fox?

7 MR. FOX: It would just at this point be Mr. Ward, Your
8 Honor.

9 THE COURT: Okay. And possibly Mr. Maurice Ward, who is
10 the Defendant.

11 Is anyone related by blood or marriage or do you have any
12 close, personal or social relationships with any of those
13 people?

14 And there is no response.

15 Yes, 'ma'am; I'm sorry.

16 JUROR 135: Jerry Gasper.

17 THE COURT: Gasper, Mr. Gasper; that would be Gerald
18 Gasper. And you are?

19 JUROR 135: Michelle Hall Gagnon. I work with FedEx.

20 THE COURT: And your number is? Stand up so we can see
21 you there.

22 JUROR 135: Sir?

23 THE COURT: Stand up so we can see you.

24 JUROR 135: I don't know -- oh, here it is. 135.

25 THE COURT: 135. And you know Mr. Gasper, I believe you

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VOIR DIRE

14

1 said you worked with him at FedEx; is that correct?

2 JUROR 135: Yes, sir.

3 THE COURT: Would the fact that you know Mr. Gasper
4 affect your ability to be a fair and impartial juror?

5 JUROR 135: No.

6 THE COURT: Can you be fair to both the State and the
7 Defendant?

8 JUROR 135: Yes, sir.

9 THE COURT: All right, very well.

10 The attorneys in this case are Mr. Stephen Grooms. Mr.
11 Grooms, stand up. Mr. Grooms is with the Fifteenth Circuit
12 Solicitor's Office. He works for Mr. Jimmy Richardson who is
13 our solicitor. And he prosecutes cases primarily in
14 Georgetown County -- I mean, Horry County, but he could from
15 time to time go over into Georgetown County. Seated here at
16 the Defense table is Mr. Eric Fox. Mr. Fox has been around
17 Horry County for quite some time. He is employed by the Horry
18 County -- or the Fifteenth Circuit Public Defender's Office
19 and he tries cases primarily in Horry but occasionally can go
20 over into Georgetown County and, of course, he represents Mr.
21 Ward seated by him. And I don't know how much she will
22 participate in this, is Ms. Katherine Owens, Ms. Katie Owens.
23 Ms. Owens likewise is employed by the Fifteenth Circuit Public
24 Defender's Office and she tries cases primarily in Horry
25 County.

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VOIR DIRE

15

1 Has anyone ever been represented by any of these
2 attorneys or are you related by blood or marriage or do you
3 have a close social or personal relationship with either of
4 these attorneys?

5 And there is no response.

6 Has any member of the jury panel formed or expressed an
7 opinion about any issue or matter involved in this case? And
8 you will recall just a moment ago I told you generally about
9 this case. It involved a burglary that occurred on August the
10 14th of 2010 and involves the Freewill Baptist Church down
11 here on 4th Avenue, just a few blocks from the courthouse. Is
12 there any member of the jury panel that knows anything about,
13 read anything about that case or has discussed it with anyone
14 or has any information at all about that case?

15 And there -- yes, sir?

16 JUROR 161: I seem to recall I read about it.

17 THE COURT: And stand up, and you are Mr. ---

18 JUROR 161: 161, Haggerty, Harry Haggerty.

19 THE COURT: Haggerty, okay.

20 JUROR 161: I believe I read about it, yes, sir.

21 THE COURT: About three years ago.

22 JUROR 161: Okay.

23 THE COURT: Can you remember any of the details or
24 anything about it?

25 JUROR 161: No, nothing.

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VOIR DIRE

16

1 THE COURT: Would the fact that you vaguely remember
2 something perhaps being in a newspaper about it, would that in
3 any way affect your ability to be a fair and impartial juror,
4 could you be fair to both the State and the Defense?

5 JUROR 161: Yes, sir.

6 THE COURT: All right. Thank you very much, Mr.
7 Haggerty.

8 Okay. Is there any member of the jury panel aware of any
9 bias or prejudice towards either the State or the Defendant in
10 this case? And as I said, the Defendant is Mr. Maurice Ward.

11 Mr. Ward, stand up and turn around and face the jury so
12 they can see who you are. Thank you, Mr. Ward.

13 Is anyone aware of any bias or prejudice towards either
14 the State or the Defendant in this case?

15 And there is no response.

16 Is there any member of the jury panel that was a member
17 of the Grand Jury, which issued the indictment in this case?
18 And generally Grand Jury members would be excluded from the
19 jury panel anyway, so I don't expect any response. But is
20 there by chance anyone who has recently been on the Grand
21 Jury.

22 And there was no response.

23 Is there any member of the jury panel who is a member of
24 or contributor to any group which has as its primary concern,
25 promotion of law enforcement or victim's rights, groups like

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VOIR DIRE

17

1 MADD, SADD, CAV, which is Citizens Against Violence, things of
2 that nature?

3 And there is no response.

4 Is there any member of this panel who knows any reason
5 whatsoever why he or she should not serve as a juror in this
6 case with particular emphasis being placed on your ability to
7 be fair and impartial both to the State and the Defendant?
8 That's what we are seeking, a fair and impartial jury.

9 And there's no response.

10 Any further questions from the Defense?

11 MR. FOX: Yes, Your Honor, I have just two, one would be
12 whether the Court would inquire if any member of the jury
13 panel has ever been the victim of a crime and the other would
14 be given the nature of allegations being a break-in at a
15 church, if any member of the jury panel feels that because of
16 the nature of the allegations, that they could not be fair and
17 impartial?

18 THE COURT: All right. Is there any member of the jury
19 panel who has been personally the victim of a crime.

20 All right. Let's start right here. Yes, ma'am. Stand
21 up.

22 JUROR 369: I think it's 369, Mary Tovornik. I was
23 robbed at an ATM when I was in Boston.

24 THE COURT: Okay. Would that affect your ability to be
25 fair and impartial?

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VOIR DIRE

18

1 JUROR 369: No, sir.

2 THE COURT: Can you give both the State and the Defense a
3 fair trial?

4 JUROR 369: Yes, sir.

5 THE COURT: And your number?

6 JUROR 369: 369; yes, sir, 369.

7 THE COURT: 369. Thank you, ma'am.

8 Yes, sir?

9 JUROR: Did you say the victim of a crime?

10 THE COURT: Victim of a crime:

11 JUROR: Oh, never mind, sorry.

12 THE COURT: Okay. Yes, sir? Mr. Haggerty.

13 JUROR 161: 161, Harry Haggerty. My home was burglarized
14 many years ago.

15 THE COURT: Okay. Would that affect your ability to be
16 fair and impartial?

17 JUROR 161: Probably not.

18 THE COURT: Well, could you ---

19 JUROR 161: I'm sorry; no.

20 THE COURT: Okay. Could you be fair to both the State
21 and the Defense?

22 JUROR 161: Yes, sir.

23 THE COURT: All right. Was there someone on this side?
24 Yes, sir?

25 JUROR 79: Juror 79, Patrick Coleman. I've been in

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19

JURY SELECTION

1 management in the grocery business for years and in the past
2 have had robberies but -- and as well as my house was
3 burglarized.

4 THE COURT: Would that affect your ability to be fair and
5 impartial?

6 JUROR 79: I see no reason why it would.

7 THE COURT: Could you be fair to both the State and the
8 Defense?

9 JUROR 79: I see no reason why I couldn't.

10 THE COURT: And your name is?

11 JUROR 79: Patrick Coleman.

12 THE COURT: Coleman, okay. And your number?

13 JUROR 79: Number 79.

14 THE COURT: 79, okay. Is there anyone else?

15 Okay.

16 Is there anyone who feels that you would have any
17 particular prejudice or bias against a Defendant because the
18 victim in this case was a, a church?

19 And there was no response.

20 Okay. Anything further from the State?

21 MR. GROOMS: No, sir, Your Honor.

22 THE COURT: All right. Let's call a juror then.

23 JURY SELECTION:

24 CLERK: When I call your name, if you'll please come to
25 the front of the courtroom, turn around and face the back of

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JURY SELECTION

20

1 the courtroom and bring any belongings that you have with you.

2 MR. GROOMS: Your Honor, is it ten and five, the strikes?

3 THE COURT: Yes, I think that's right.

4 MR. FOX: That's correct, Your Honor.

5 THE COURT: Since it is a burglary.

6 All right. Go ahead.

7 CLERK: Juror 79, Patrick Coleman.

8 What say the State?

9 MR. GROOMS: Please seat this juror.

10 CLERK: Defense?

11 MR. FOX: One moment, please. Please excuse this juror.

12 THE COURT: You are excused on this particular case.

13 CLERK: 78, James Coleman.

14 What say the State?

15 MR. GROOMS: Please seat this juror.

16 CLERK: Defense?

17 MR. FOX: Please seat this juror.

18 CLERK: Please be seated in the jury box.

19 THE COURT: See, Mr. Coleman did such a good job, we're

20 gonna make him the foreperson.

21 CLERK: 377, Nehemiah Vereen.

22 What say the State?

23 MR. GROOMS: Please seat this juror.

24 CLERK: Defense?

25 MR. FOX: Please seat this juror.

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21

JURY SELECTION

1 CLERK: Please be seated in the jury box.
2 189, Tiffany Hunt.
3 What say the State?
4 MR. GROOMS: May I ask her occupation, please?
5 JUROR 189: Customer service representative.
6 MR. GROOMS: Okay. Please seat this juror.
7 CLERK: Defense?
8 MR. FOX: Please seat the juror -- excuse me -- please
9 seat the juror.
10 CLERK: Please be seated in the jury box.
11 369, Mary Tovornik.
12 What say the State?
13 MR. GROOMS: Please seat this juror.
14 CLERK: Defense?
15 MR. FOX: Please excuse this juror.
16 CLERK: You are excused from this particular case.
17 211, Christine Lawson.
18 What say the State?
19 MR. GROOMS: Please excuse this juror.
20 CLERK: You are excused from this particular case.
21 165, Tanya Hardee.
22 What say the State?
23 MR. GROOMS: Please accept this juror.
24 CLERK: Defense?
25 MR. FOX: Please excuse this juror.

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JURY SELECTION

22

1 CLERK: You are excused from this particular case.
2 383, Theodore Waters.
3 What say the State?
4 MR. GROOMS: Please excuse this juror.
5 CLERK: You are excused from this particular case.
6 28, Christina Bisset.
7 What say the State?
8 MR. GROOMS: May I ask her occupation, please?
9 JUROR 28: Attorney.
10 MR. GROOMS: Why type of law do you practice?
11 JUROR 28: Civil litigation.
12 MR. GROOMS: Please accept this juror.
13 CLERK: Defense?
14 MR. FOX: Please excuse this juror.
15 CLERK: You are excused from this particular case.
16 252, Mildred Myers.
17 What say the State?
18 MR. GROOMS: Please accept this juror.
19 CLERK: Defense?
20 MR. FOX: Please seat this juror.
21 CLERK: Please be seated in the jury box.
22 54, Daniel Bull.
23 What say the State?
24 MR. GROOMS: Can I ask what part of the county you work
25 in?

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JURY SELECTION

23

1 JUROR 54: Socastee, located in Socastee.
2 MR. GROOMS: You're a contractor, is that what it is?
3 JUROR 54: Please accept this juror.
4 CLERK: Defense?
5 MR. FOX: Please seat this juror.
6 CLERK: Please be seated in the jury box.
7 306, Samantha Saber?
8 What say the State?
9 MR. GROOMS: Please accept this juror.
10 CLERK: Defense?
11 MR. FOX: Please excuse this juror.
12 CLERK: You are excused from this particular case.
13 352, Jeffrey Suggs.
14 What say the State?
15 MR. GROOMS: Please -- tell me what you do? I'm not sure
16 I have it here.
17 JUROR 352: EMT.
18 MR. GROOMS: EMT?
19 JUROR 352: Horry County.
20 MR. GROOMS: Please accept this juror.
21 CLERK: Defense?
22 MR. FOX: Please seat this juror.
23 CLERK: Please be seated in the jury box.
24 204, Sabrina King.
25 What say the State?

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JURY SELECTION

24

1 MR. GROOMS: Please excuse this juror.
2 CLERK: You are excused from this particular case.
3 51, Olivia Brown.
4 What say the State?
5 MR. GROOMS: Please excuse this juror.
6 CLERK: You are excused from this particular case.
7 216, Robbie Lucas.
8 What say the State?
9 MR. GROOMS: Please seat this juror.
10 CLERK: Defense?
11 MR. FOX: Please excuse this juror.
12 CLERK: You are excused from this particular case.
13 224, Kathryn Marcus.
14 What say the State?
15 MR. GROOMS: Please seat this juror.
16 CLERK: Defense?
17 MR. FOX: Please seat this juror.
18 CLERK: Please be seated in the jury box.
19 392, Chiquita Wilson.
20 What say the State?
21 MR. GROOMS: Please seat this juror.
22 CLERK: Defense?
23 MR. FOX: Please seat this juror.
24 CLERK: Please be seated in the jury box.
25 287, William Pugia.

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JURY SELECTION

25

1 JUROR 287: Pugia.
2 THE COURT: What say the State?
3 MR. GROOMS: Please seat this juror.
4 CLERK: Defense?
5 MR. FOX: Please excuse this juror.
6 CLERK: You are excused from this particular case.
7 226, Steven Markovic.
8 What say the State?
9 MR. GROOMS: Please seat this juror.
10 CLERK: Defense?
11 MR. FOX: Please seat this juror.
12 CLERK: Please be seated in the jury box.
13 3, Deborah Amaral.
14 JUROR 3: Amaral, Number 3.
15 CLERK: What say the State?
16 MR. GROOMS: Please seat this juror.
17 CLERK: Defense?
18 MR. FOX: Please excuse this juror.
19 CLERK: You are excused from this particular case.
20 161, Harry Haggerty.
21 What say the State?
22 MR. GROOMS: Please seat the juror.
23 THE COURT: Defense?
24 MR. FOX: Please excuse this juror.
25 THE COURT: You are excused from this particular case.

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JURY SELECTION

26

1 228, Julie Martin.
2 What say the State?
3 MR. GROOMS: Please seat this juror.
4 CLERK: Defense?
5 MR. FOX: Please excuse this juror
6 CLERK: You are excused from this particular case.
7 31, Morgan Blackmon.
8 What say the State?
9 MR. GROOMS: Please seat the juror.
10 CLERK: Defense?
11 MR. FOX: Please seat this juror.
12 CLERK: Please be seated in the jury box.
13 29, Angela Black.
14 What say the State?
15 MR. GROOMS: Please seat this juror.
16 CLERK: Defense?
17 MR. FOX: Please seat this juror.
18 CLERK: Please be seated in the jury box.
19 329, Teresa Smith.
20 What say the State?
21 MR. GROOMS: Please seat the juror.
22 CLERK: Defense?
23 MR. FOX: Please seat the juror.
24 CLERK: Please be seated in the jury box.
25 THE COURT: Gentlemen, let's do two alternates. One for

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JURY SELECTION

27

1 the State and two for the Defense on each alternate.

2 MR. GROOMS: How many strikes?

3 THE COURT: One for the State and two for the Defense on

4 each alternate.

5 MR. GROOMS: Thank you.

6 CLERK: 135, Michelle Gagnon.

7 What say the State?

8 MR. GROOMS: Please accept this juror.

9 CLERK: Defense?

10 MR. FOX: Please excuse this juror.

11 CLERK: You are excused from this particular case.

12 169, Arthur Haskins, Jr.

13 What say the State?

14 MR. GROOMS: Please seat this juror.

15 CLERK: Defense?

16 MR. FOX: Please seat this juror.

17 CLERK: Please be seated in the jury box.

18 113, Edsol Edge.

19 What say the State?

20 MR. GROOMS: Please seat this juror.

21 CLERK: Defense?

22 MR. FOX: Please excuse this juror.

23 CLERK: You are excused from this particular case.

24 299, Fred Richardson.

25 What say the State?

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BY THE COURT

28

1 MR. GROOMS: Please accept this juror.

2 CLERK: Defense?

3 MR. FOX: Please seat this juror.

4 CLERK: Please be seated in the jury box.

5 BY THE COURT:

6 THE COURT: All right. Mr. Ropp, would you take this
7 jury panel momentarily into the jury room; and, Deputy
8 Hemingway, could you take the balance of the jury panel across
9 the hall into the waiting room. I have some matters I have to
10 take up concerning the jury with the attorneys before we can
11 release them.

12 (REPORTER'S NOTE: Paneled jury and remaining jury pool exit
13 courtroom. 12:16 P.M.)

14 THE COURT: Mr. Fox, any challenge to the jury?

15 MR. FOX: No, Your Honor.

16 THE COURT: None. Okay.

17 Mr. Grooms?

18 MR. GROOMS: No, sir, Your Honor.

19 THE COURT: Very well. Turn right around and bring them
20 back.

21 (REPORTER'S NOTE: The remaining jury pool returns to the
22 courtroom. 12:18 P.M.)

23 THE COURT: Now, you probably wondered what all that was
24 about. But after a jury is seated, on the criminal side, the
25 attorneys have an opportunity -- either have an opportunity to

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BY THE COURT

29

1 challenge the panel that was seated as a whole and so we -- if
2 I were to grant such a motion, then I would bring all the
3 jurors back, we would mix you back up and we would draw again
4 from the same panel. But, in this case, there was no
5 challenge to the panel and I had to clarify that before I
6 could release you. They tell me that they need you back
7 downstairs for a few minutes.

8 Mr. Hemingway, can you or someone make sure that they get
9 down there back in the jury pool. They're dismissed. Thank
10 you.

11 (REPORTER'S NOTE: Remaining jury pool exits courtroom. 12:19
12 P.M.)

13 THE COURT: I need the jury.

14 (REPORTER'S NOTE: The jury returns to the courtroom. 12:23
15 P.M.)

16 THE COURT: All right. Ladies and gentlemen, as I said,
17 we're about to begin the case of the State of South Carolina
18 versus Maurice Wallace Ward but before we get started, I want
19 to talk with you a minute about how we will proceed and what
20 you can expect to happen in this trial.

21 Mr. Coleman, I want you to always occupy that seat. You
22 will serve as the foreperson of our jury. In that regard, you
23 are sort of the liaison between the Court and your fellow
24 jurors. If there's any question that you have or you need
25 anything, please let Mr. Ropp know. Mr. Ropp serves as my

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BY THE COURT

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1 Bailiff most of the time and he will always be with you all
2 through this trial, whether you're back in your jury room or
3 you're out in the courtroom, he's always gonna be right there
4 with you. If you have any problems, please, let me know. You
5 will also preside over the deliberation process that your jury
6 will undertake at the end of this trial. And in that regard,
7 you will actually return the verdict that's reached in this
8 particular trial.

9 Mr. Richardson and Mr. Haskins, I'll ask you to always
10 occupy those two seats. You will be our alternates and that
11 way we can keep up with you. The rest of you, of course, may
12 sit anywhere you like. I'd just like these three individuals
13 so I can readily find them.

14 Let me tell you a little bit about the way I handle my
15 court. It's very important to me that you are comfortable and
16 that is the key to you being able to pay close attention to
17 what we are doing. If you're in that jury box and you need to
18 refresh yourself or your back is hurting, you're not gonna be
19 able to listen and concentrate on the evidence as presented in
20 this case. So, in that regard, I have a policy that if at any
21 time any of you become uncomfortable, you need a break, please
22 don't hesitate to raise your hand right in the middle of
23 testimony or trial or whatever, you raise your hand. If you
24 are to the point that you've got to have a break, you let me
25 know and I promise you that we'll take a break. Our very fine

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1 Clerk of Court here in Horry County always provides
2 refreshments back there for you, soft drinks, water, coffee,
3 snacks, things of that nature. If you run out or you need any
4 more, make sure that Mr. Ropp goes back there and gets them
5 for you. You know, I have an awful time just getting him to
6 keep my coffee pot going, so he slips sometimes but you remind
7 him that he needs to pick up the slack if you run out of
8 anything.

9 We're very fortunate here in Horry County, as I said, I
10 have to travel about the state sometimes and I'll tell you
11 there's not a better courthouse in the State of South Carolina
12 than the one we have in Horry County. We have people who come
13 here on a regular basis from other counties that are in the
14 process of restoring or replacing some of the older
15 courthouses that we have and they all want to come here and
16 look at this courthouse.

17 How many of you had never been in it before you were
18 summoned for jury duty? I bet you were surprised when you got
19 here to see what a nice courthouse we have. And one of the
20 things that, back when I was practicing law, we had a little
21 bit of input into it and one of the things that I was very
22 concerned about making sure that finally we have comfortable
23 rooms for the jury to retire to. And I think you'll find
24 that's the case. But again, if there's anything that is
25 uncomfortable about your jury room, you just let me know and

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1 we'll take care of it for you. Again, I want to make sure
2 that you're able to listen to what's going on here. You let
3 me know if you're uncomfortable.

4 All the evidence that's presented in this case, it's
5 presented for your benefit. The attorneys and I could sit
6 around and we could just talk about what's going to be
7 introduced into evidence and, you know, if that was the way
8 the law works and we could just among ourselves make a
9 decision as to how the case ought to be handled but that's not
10 how the law works in our state. And in this country, you're
11 entitled to a verdict from a jury of your peers, twelve
12 people. And the purpose of a trial is to present evidence in
13 this case for your consideration.

14 In that regard, if you're sitting on that jury and you
15 can't hear or you can't see because an attorney has moved
16 around and he's blocking your view of an exhibit or anything
17 of that nature, then you can't see or hear the evidence. So,
18 if that occurs, again, raise your hand, you alert me somehow
19 to the fact that you can't see or you can't hear the witness
20 or you can't determine what's going on, it is vitally
21 important that you see and hear everything that goes on.

22 Now, generally speaking, this trial will not be anything
23 like what you're used to seeing on T.V. It seems like every
24 time I turn on the T.V., they've got some kind of trial going
25 on or, I think they've got networks now that do nothing but

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BY THE COURT

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1 trials or there are T.V. shows about trials and everything in
2 them seems to be action-packed and exciting and something
3 going on every minute of the trial. I will tell you that the
4 search for the truth is very seldom that way. It's often very
5 slow, deliberate repetitive. And it is so because we have to
6 follow the rules of evidence in introducing evidence and
7 sometimes you will think to yourself well why do they keep
8 bringing more and more witnesses to say the same thing; it's
9 because that's the way our rules and our law requires us to do
10 it. So, in that regard, you may think that we are wasting
11 time but we're really not. Think of it this way, this trial
12 is not really here or being conducted for our entertainment.
13 It's being conducted because there are substantial rights at
14 stake. Not only does the State have an interest in this case
15 but the Defendant has a tremendous interest in the outcome of
16 this case. It involves his liberty. The State takes the
17 position that it involves the interest of the citizens of this
18 state. Those are all very special and important interests
19 that we are here to protect.

20 You will notice during this trial that the State will be
21 represented by Mr. Grooms and, of course, the Defendant will
22 be represented by Mr. Fox and Ms. Owens. These are officers
23 of the Court. They are bound by their oath of office to act
24 professionally and reasonably and ethically during the
25 presentation or representation of the parties in this case.

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1 Likewise, I am required and bound to conduct myself
2 professionally and ethically and I will do everything I can to
3 do so. But you, jurors, also are going to take an oath,
4 another oath, that places upon you a duty to act responsibly
5 and ethically in your jury service and your contribution to
6 the justice system today.

7 Now, I want to talk with you a few minutes about how we
8 will proceed in this matter. What I'm about to tell you is
9 not an instruction on the law. At the end of the case, I will
10 do that. I will instruct you as to the law. But I think it's
11 important that you know beforehand a little bit about what
12 we're going -- or how the trial will proceed. In just a few
13 minutes, I am going to give the attorneys to make opening
14 remarks to you. And in those opening remarks, they're going
15 to tell you a whole lot more about this case than I have been
16 able to tell you up to this point. They're going to go into
17 greater detail. They will tell you what they expect or
18 anticipate that they will be able to show you by way of
19 evidence during the trial of the case. Please understand that
20 what they say is not evidence. The only evidence that you
21 will consider in this case will be evidence that comes from
22 this witness stand from witnesses who are under oath or from
23 exhibits that have been introduced into evidence that you may
24 consider.

25 Following Mr. Grooms opening remarks, Mr. Fox or Ms.

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1 Owens have an opportunity -- they don't have to do it, they
2 have an opportunity to make an opening remark. And if they
3 chose to do so, they will tell you their position. They will
4 tell you what their defenses are, they will tell you what
5 evidence they may produce if they chose to produce any
6 evidence. They certainly, again, don't have to do so.

7 Following that, the State will then proceed with the
8 evidence in this case. The State will put up witnesses.
9 Those witnesses, of course, will be subject to cross
10 examination by the Defense and at the end of the State's case,
11 the State will rest and at that point, the Defense has an
12 opportunity to -- no obligation but an opportunity to present
13 evidence that it feels needs to be presented to you.

14 Following the Defense's case, again, the State or the
15 Defense, depending on how the case is proceeding, one or the
16 other will begin with a closing argument. And there again,
17 they will talk about the case as they see it from their
18 prospective. What they say is not evidence. They may even
19 comment on the law. What they say about the law is not the
20 law of the case if it is not exactly the law that I charge you
21 with. Following the State or the Defense, the other party has
22 an opportunity to also make a closing argument. Again,
23 whoever that may be, the closing argument is not evidence.

24 Finally, at the end of all the evidence and the closing
25 remarks by the attorneys, I will charge you on the law. I

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1 will give you a charge on the law that you will use during
2 your deliberations.

3 Now, the Defendant in this case, as I said, is charged
4 with offense of burglary in the second degree. He's charged
5 by an indictment, which as I have told you is not evidence in
6 this case and should not be considered as evidence. You will
7 draw no conclusions or presumptions or inferences from the
8 fact that he has been charged with a criminal offense. It
9 merely sets forth the allegations that the State has made to
10 you. Once a Defendant enters a plea of not guilty, then the
11 burden shifts to the State to prove that Defendant guilty
12 beyond a reasonable doubt and each and every one of you must
13 be convinced of his guilt beyond a reasonable doubt before a
14 conviction can be had. And I'm going to tell you more about
15 reasonable doubt, what it means, at the end of this case.

16 In determining the guilt or the innocence of a Defendant,
17 the deliberations process is really sort of a two-part
18 process. First of all, you the jury has to determine from the
19 evidence what the facts are. You are absolutely the sole
20 judges of the facts. I don't have the right to even have an
21 opinion about the facts or the evidence in this case. You
22 will hear it and you will determine what the facts are. Then
23 I will instruct you as to the law. You will take the law and
24 the facts and you will put them together. Think of two great
25 big gears. One's the facts and one's the law and it's the way

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1 they mesh, the way they fit that determines whether or not
2 there is any probable cause. Remember that it is important
3 for you to listen to the evidence in this case because as I
4 said, the jury is the sole and exclusive judge of the facts.
5 The only thing in this case that is not recorded and that
6 there's not a record of is what goes on in that jury room.
7 Everything I say, every ruling I make, every motion that the
8 attorneys makes is being recorded. It's what we call the
9 record in the case. But once a jury goes into that jury room,
10 there's no record. So, if the jury makes a mistake in their
11 determination of the facts, there's no way it can be
12 corrected, there's no appeal, there's no way that can be done.
13 If I make a mistake, Supreme Court or the Court of Appeals
14 will just simply go to the record and if they determine I've
15 made a mistake, it can be fixed but not what the jury does.
16 So, it's vitally important that you pay close attention to
17 what's being said and what's being done in the courtroom.

18 Now, you may say to yourself, how do we determine what
19 the facts are. You use the same method of determining the
20 truth as you do in your everyday lives. The standard is no
21 different in this courtroom. You can consider whether a
22 witness had the opportunity to see, hear or, or observe what
23 he says that he is testifying about. You can consider whether
24 an interest -- a witness has any interest, prejudice or bias
25 in the case. You can consider the witness' intelligence, his

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1 ability to recall what occurred. You can consider even the
2 manner in which a witness testifies on the stand, we call that
3 the demeanor of the witness, how he looks when he's
4 testifying. You can consider all those things because it is
5 solely in your prerogative as jurors to determine the truth in
6 this case.

7 Now, let me advise you that one of the most important
8 things I can tell you is not to pre-deliberate in this case.
9 Not to start your deliberations before you have heard all the
10 evidence in the case and until I have given you the law. The
11 worst thing you can do is go back as witnesses are testifying
12 and discuss that witness' testimony before you've heard the
13 rest of the evidence. That is not something that you should
14 do. You should not even discuss the case among yourselves.
15 If we go over into tomorrow don't discuss it with your wives
16 or husbands or significant others and I know that's hard to do
17 but you shouldn't discuss it with anyone until you've heard
18 all the evidence and you have had an opportunity to be charged
19 on the law. Don't read anything in the newspaper about it.
20 If for some reason tomorrow there's an article about this case
21 -- I don't anticipate there will be but if there is, don't
22 read it. Don't try to look up any old newspaper articles on
23 the internet. Don't go to Facebook and look up a witness that
24 may've testified or linked in or linked out or interweb or the
25 outerweb or all those things that I'm not familiar with, don't

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1 do any of that. You must deliberate and reach a verdict in
2 this case based only on the evidence that you have heard in
3 this case.

4 Occasionally in this case, you may hear a lawyer say
5 something like, Your Honor, I've got a matter we've got to
6 take up outside the jury or, Your Honor, I've got a motion.
7 If that happens, I may send you out the courtroom. Please
8 don't think we're trying to keep anything from you. Usually
9 what that involves is the method or way in which a piece of
10 evidence is presented or whether a piece of evidence should be
11 presented to you in this case. In ruling on those, often
12 times I will have to express my opinion about that particular
13 piece of evidence in a very narrow context. It's not proper
14 for you to hear me say anything about the evidence in the
15 case; that's why we send you out not that we're trying to keep
16 anything from you. It's just that you are the sole judges of
17 the facts and I should have no input in that.

18 Now, do you need a break before we proceed with the
19 opening remarks?

20 And it appears that we do not.

21 What I want to do is put them under oath. I don't think
22 we've put them under oath yet. If you would all please stand.

23 (REPORTER'S NOTE: Jury panel duly sworn.)

24 THE COURT: Is there any witness who did not -- I mean,
25 any juror who did not take the oath?

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1 And there is no response.

2 All right. Very well.

3 MR. GROOMS: May I approach?

4 THE COURT: Yes.

5 (REPORTER'S NOTE: A bench conference was held off the record
6 in the presence of the jury but out of hearing of the jury.)

7 THE COURT: Bobby, would you take them to their jury
8 room. We have a couple of pretrial matters.

9 (REPORTER'S NOTE: The jury exits courtroom. 12:43 P.M. The
10 following takes place outside the presence of the jury.)

11 MOTIONS:

12 MR. GROOMS: Your Honor, I've got a couple of things I
13 wanted to address. The first one, which is the indictment
14 addresses the fact that one of the elements is that he has two
15 priors and we would be presenting that as the Defendant's ---

16 THE COURT: All right. Mr. Fox, the State has the duty of
17 proving beyond a reasonable doubt that he has two prior
18 convictions for burglary or housebreaking.

19 MR. FOX: Well, Your Honor, I would -- I'm aware of the
20 law, it's similar to the law in first degree burglary. I
21 would offer to stipulate to those two convictions upon proof
22 that he has a counseled conviction. I believe he's had a 1984
23 housebreaking and a subsequent burglary second. I'm not sure
24 exactly of the later conviction. I would stipulate if he can
25 show me and I've not seen the certified ---

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1 THE COURT: Well, let's show it to him if you want to
2 stipulate and if that -- if the State is agreeable to allowing
3 you to stipulate.

4 MR. FOX: If I may have just one moment, Your Honor, to
5 ask my client -- Your Honor, I'm just trying to determine on
6 the '85 conviction that there was in fact a trial and counsel.
7 Let's see this. The 2001 burglary second, I have a sentencing
8 sheet indicates it's a trial and Mr. Ward knows who is
9 attorney was in that one. So, I think they can certainly
10 establish that.

11 Mr. Ward does not recall -- and I'll show Your Honor
12 perhaps you're more -- this is one of the older sentencing
13 sheets before we ---

14 THE COURT: And you're looking at a Baldasar chance type
15 issue?

16 MR. FOX: Yes, Your Honor. I'm sorry. Yes, that's
17 exactly what I'm looking at, Your Honor, that perhaps that
18 there was an uncounseled conviction, that that may not serve
19 as one of the elements for ---

20 MR. GROOMS: Your Honor, I think that's for sentencing
21 purposes and I think the record and the convictions, the Clerk
22 can verify that he was in fact convicted of both of these.

23 THE COURT: Well, didn't Chance go to whether or not you
24 could have a conviction for a subsequent offense? I think
25 that was Judge Floyd's old case.

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1 MR. GROOMS: Your Honor, I'm not sure if I follow. I

2 think ---

3 THE COURT: You're saying that it only affects
4 sentencing?

5 MR. GROOMS: Well, he was in fact convicted of those two
6 charges which are clearly stated in the elements of burglary
7 second violent. He was sentenced to fifteen years and twelve
8 years. Your Honor, I don't believe he was ---

9 THE COURT: But, I ---

10 MR. GROOMS: The way that was explained to me, I
11 obviously wasn't around in '84, but that was a verdict form
12 from a trial. And the charges that are dotted out are the
13 charges that he was not convicted of which would also make
14 sense from his MCIC, he was found guilty of housebreaking and
15 grand larceny, not receiving stolen goods on that fifteen-year
16 charge.

17 THE COURT: Well, doesn't he have -- let's see here.
18 Well, Mr. Ward was sentenced to fifteen years ---

19 MR. FOX: I don't see any indication who the attorney is,
20 Judge. Mr. Ward can recall who is attorney was on the other
21 charge. I think it's the same -- an uncounseled plea or a
22 trial.

23 THE COURT: Well, it was a trial but doesn't Baldasar,
24 Chance and that line speak in terms of uncounseled pleas?

25 MR. FOX: As the context of those cases, Your Honor, I

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1 think it would be similar argument, analogous argument, that
2 it's a plea or a trial. If anything, it would perhaps worse
3 to be a trial unrepresented in a serious case. There's no
4 indication by the record whether he was advised prior about
5 his rights, cautioned the way Your Honor would do now with
6 someone who tries to represent himself about motions, issues,
7 how they'll be treated the same. We don't know what was done
8 with Mr. Ward in that case. So, I would argue that it's, if
9 anything, we should be more cautious than with typically a
10 Baldasar ---

11 THE COURT: But isn't the duty on your client to
12 establish that he did not have counsel?

13 MR. FOX: No, I would say it's on the State. They're
14 seeking to introduce it as an element and I think they have
15 got to show that this is in fact a conviction and a counseled
16 conviction.

17 MR. GROOMS: Your Honor, I believe you're correct in that
18 it's his duty under Baldasar. Your Honor, this is a fifteen-
19 year trial that took place in '84. I can't imagine that -- I
20 think that clearly on its face is a conviction on a certified
21 record. I think he's got the duty to prove that it's not.

22 THE COURT: I think that's right, Mr. Fox. If you do not
23 want the State to be used -- it's clearly a conviction.

24 MR. FOX: Yes, sir.

25 THE COURT: This conviction, that the burden shifts to

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1 the Defendant to show that it was an uncounseled plea which
2 resulted in a period of incarceration. Now, I don't think
3 that there's any problem with establishing that there was a
4 period of incarceration. The sentencing sheet says fifteen
5 years. There was -- and I don't see where probation was
6 given; it says fifteen years. So, I think you're safe on
7 that. But I -- I believe you're gonna have to establish that
8 it was an uncounseled plea.

9 MR. GROOMS: Your Honor, if ---

10 THE COURT: And there are more recent cases. Baldasar
11 was an Illinois case, I think, that goes back into the 80s, if
12 not early 90s and that was followed shortly by State vs
13 Chance, which was actually a -- I think a case out of Horry
14 County but I believe that that has been addressed several
15 times by the Supreme Court since then and I think there's
16 several cases.

17 MR. GROOMS: I agree, Your Honor.

18 THE COURT: These cases -- this line of cases arose
19 initially in the context of DUI trials, that's what they were.

20 MR. GROOMS: I think there's a lot of cases and the
21 recent case law talks about a lot of out-of-state convictions
22 when they just had to prove the elements and the fact that it
23 was in fact a conviction.

24 THE COURT: I tell you what we're gonna do. It's almost
25 one o'clock. So, what I'm gonna do is cut the jury loose and

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1 let them go to lunch. And that'll give you -- I'll bring them
2 back at 2:30. It's 1:00 now; I'll bring them back at 2:30 and
3 that'll give you an hour and a half over lunch to give you
4 both an opportunity to sort of look at that. And there may be
5 further information down in the Clerk's office as to whether
6 he had an attorney or not. I would certainly suspect that if
7 he had a trial resulting in fifteen years, that there was an
8 attorney. I would almost bet you money on that.

9 MS. ELDER: Can we ask the Clerk to bring that file up,
10 Your Honor, after the lunch break?

11 THE COURT: Okay. And I would suppose that there is one.

12 CLERK: I'll bring it if it's still here. It's an older
13 case, so it had to come from archives.

14 THE COURT: Where is archives?

15 CLERK: I think it's out on 701.

16 THE COURT: Out on the edge of town?

17 CLERK: Uh-huh (affirmative response).

18 THE COURT: We haven't got people who do that?

19 CLERK: Well, I can ask somebody to go get it.

20 THE COURT: Send somebody out there to go get it. Tell
21 them I want it.

22 MR. GROOMS: Your Honor, did you want to address the
23 other two issues?

24 THE COURT: Yeah, what I want to do is is just go ahead
25 and send the jury. Any objection to having the Bailiff tell

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1 the jury that they could leave for lunch until 2:30?

2 MR. FOX: No, Your Honor.

3 THE COURT: That'll save us bringing them back in and we
4 can go on with the other matters that have to be addressed.

5 The difference in this issue is gonna make it whether
6 it's violent or nonviolent, right?

7 MR. GROOMS: Yes, sir.

8 MR. FOX: Yes, sir.

9 THE COURT: Bobby, I want you to -- the attorneys have no
10 objection to you telling the jury that they can go to lunch.
11 It's one o'clock already. Let's have them come back at 2:30.
12 If you would just tell them to go ahead and take lunch and be
13 back at 2:30.

14 BAILIFF: Yes, sir.

15 THE COURT: Okay.

16 (REPORTER'S NOTE: Jury released for lunch. 12:56 P.M.)

17 MR. GROOMS: Your Honor, the second issue that we
18 addressed briefly last Friday in regards to CODIS, we'll have
19 David McClure, who was a SLED employee at the time, verify the
20 CODIS hit. He'll be here to testify as to how CODIS works.
21 How it's populated, the original entry of the Defendant's DNA
22 card and what he does to check when a hit comes in on the
23 computer, how he checks that information and verifies it to
24 the DNA ---

25 THE COURT: Well, let me tell you what my understanding

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1 is. We've got the Anderson case and we've got the Rich case,
2 which involves an AFIS hit. As far as I know, the Supreme
3 Court has not addressed the CODIS data base. But CODIS, I
4 think is very analogous to an AFIS. AFIS, of course, is the
5 database that SLED maintains, and the FBI, concerning
6 fingerprints. CODIS is the DNA data base. In Rich and in
7 Anderson, the Supreme Court said that it is enough if you have
8 someone who can testify as to when and from whom or who took
9 the initial sample. It's not required that they get an actual
10 individual but if you can name the agency or the correctional
11 facility in the AFIS cases that took the fingerprints. In the
12 Anderson case, the Court said testimony that the fingerprints
13 were taken in the normal course of business at -- I think at
14 Kingstree, or wherever the -- or Turbeville, wherever the
15 correctional facility was, and that someone from SLED can
16 testify as to the policy and the procedure for taking those
17 fingerprints and how they are transmitted to SLED and that
18 this person is able to testify as to how they are maintained
19 at SLED and that they are maintained in the normal course of
20 business, that they seem to be an exception to the hearsay
21 rule. But it -- I think it's certainly clear now that at
22 least in an AFIS case that the fingerprints or the known
23 fingerprints, the ones that are into AFIS system are
24 admissible. The difference I see here, the difference I see
25 here with CODIS and AFIS is that under AFIS the prints are

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1 taken, they're photographed, they go into the AFIS system.
2 With CODIS, a DNA sample is taken under similar circumstances,
3 he's been arrested been charged with or convicted of a crime.
4 It's taken and then there's another step. A procedure by
5 which a data base or DNA profile is developed and then that
6 profile is entered into the CODIS system. I believe that the
7 same treatment for -- would be appropriate for CODIS that it
8 is with AFIS as long as you have someone who can testify as to
9 when and where and who took the sample, the procedure that is
10 followed in converting that sample into the CODIS data base, I
11 think that you have met the requirements. I think that's what
12 you have to do. There's a little difference here than the
13 Anderson case or the Rich case because in those two cases, all
14 that was done was the latents taken at the scene were compared
15 to the AFIS known sample. We've got another step here with
16 CODIS because we have got the sample taken at the scene, the
17 evidentiary sample, it was first compared to the CODIS data
18 base which gave the probable cause for arrest. Then there was
19 a Buccal sample taken and we have the evidentiary sample now
20 compared to a Buccal sample or the evidentiary sample that was
21 taken from the Defendant following arrest. So, I think it's
22 even more favorable to the Defendant that he doesn't even have
23 to concern himself with whether there's been any problems with
24 the CODIS sample because he's being -- the evidentiary sample
25 is being compared to a sample recently taken directly from

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1 him. He has more protections than were available to the
2 Defendant in Anderson or Rich, because in Anderson or Rich,
3 they didn't arrest him and take a new ten-finger sample, they,
4 as I read the cases, still relied on the known sample that was
5 in the database for him. I don't think they ever -- in
6 reading the cases, I don't think they ever took a sample from
7 him. So, I think there's even more protections here for the
8 Defendant because my understanding is you took a Buccal swab
9 sample from the Defendant post arrest; is that right?

10 MR. GROOMS: Yes, Your Honor.

11 THE COURT: And the comparison is the evidentiary sample
12 compared to the post arrest sample; is that right?

13 MR. GROOMS: Yes, sir.

14 THE COURT: I don't even know why we even need the AFIS
15 sample at all except perhaps to establish probable cause for
16 arrest.

17 MR. FOX: That's exactly right, Judge. That's that extra
18 step and it's -- well, you're not specifically addressing
19 chain issues. They take the unknown sample, send it out to
20 have a profile developed, it's then entered into CODIS when
21 there's an apparent match, then they do get the Buccal swabs.
22 I think you do have to have the CODIS portion of it because
23 that was the basis to arrest him and then subsequently
24 provided probable cause to get the Buccal swab.

25 THE COURT: But I believe the standard is gonna be

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1 different from when we talk about an AFIS hit, I think Rich
2 and Anderson make it clear that if you can establish when,
3 where and the procedure, that you're okay. But as to the
4 Buccal, you don't have to establish a chain for that. But as
5 to the Buccal swab that was taken -- if it was a Buccal swab
6 and I assume it was, it was taken post arrest, that is a
7 fungible piece of evidence that's gonna require that they
8 establish a chain of custody for the analysis of that piece of
9 evidence.

10 MR. FOX: Yes, sir. And as well as the original sample,
11 the original unknown ---

12 THE COURT: Exactly, the original unknown ---

13 MR. FOX: Yes, sir.

14 MR. GROOMS: Thank you, Your Honor. The ---

15 MS. ELDER: Your Honor, I'm sorry, one more thing
16 regarding that. On the Anderson case, that was very clear, I
17 think the Court said that that was the Defendant's choice if
18 he required us to put that evidence forward about him being in
19 AFIS, that that was at the Defendant's election. I see that
20 that's what Eric is requiring at this point.

21 THE COURT: I think what they did in Anderson was by
22 agreement the Defense and the Prosecution, to avoid any 403
23 issues, agreed that they would say nothing about his prior
24 offense but simply that his prior fingerprints were taken by a
25 law enforcement agency -- and that was to satisfy everything

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1 -- by a law enforcement agency and as a result of that was
2 entered into AFIS. No discussion of him being convicted of
3 anything, tried for anything, no discussion of his prior
4 offenses, and that was at the election of the Defense. The
5 State could've said he was convicted on such-and-such a date,
6 he was sent to Wateree or Kingstree or wherever the
7 correctional facility was, policy there is to fingerprint them
8 when they arrive and to enter it into AFIS. Defense said we'd
9 be satisfied and will raise no objection if you simply say law
10 enforcement took his fingerprints at a correctional
11 institution on a such-and-such a date and they were sent to
12 AFIS -- SLED to be entered into the AFIS thing. Okay?

13 MR. GROOMS: Yes, sir.

14 THE COURT: Is that what you want?

15 MR. FOX: Judge ---

16 THE COURT: Or do you want to talk about all of it.

17 MR. FOX: Well, Judge, I'm gonna -- we're gonna -- in
18 this particular situation because although we're gonna get the
19 Clerk's file and make sure that both convictions were properly
20 introduced as an element of the crime, the jury is gonna hear
21 about his prior conviction in the State's case. So, I have
22 less concern about hearing the details ---

23 THE COURT: Unless you stipulate.

24 MR. FOX: Well, if they'll accept the stipulation then I
25 don't need to ---

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1 THE COURT: I thought he was asking you if you would.

2 MR. GROOMS: Your Honor, we were talking about the CODIS
3 hit. We're not gonna stipulate to the priors.

4 MR. FOX: Right.

5 THE COURT: Okay.

6 MR. GROOMS: I don't believe we need to prove that as an
7 element.

8 THE COURT: Okay. All right.

9 MR. FOX: So, therefore, they're gonna hear them anyway,
10 I'm gonna hold them to their -- whatever it is they need to do
11 under Anderson and those cases with regard to CODIS.

12 THE COURT: See, we don't even have to talk about AFIS, I
13 mean, CODIS in your case. We don't have to even talk about
14 it. If you will concede there was probable cause for the
15 arrest and you don't raise an issue there, you can simply say,
16 don't even want to talk about CODIS. We got a sample, we
17 arrested him, we took a Buccal sample from him and it was a
18 match.

19 MR. FOX: Well, that's what I've got to fight, Judge, as
20 far as -- as difficult as that is, so anything they need to
21 present, I'm gonna have them present it in this situation.

22 THE COURT: Well, we can do that.

23 MR. GROOMS: Thank you, Your Honor. The last issue would
24 be the actual chain itself. Your Honor, relying on Hatcher,
25 we have of course, two chains in this case. The first of

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1 which is the DNA. DNA was taken by an officer, given to
2 evidence, which then personally hand-delivered it to Amy
3 Stephens of SLED and put it in a heat-sealed package and
4 labeled it with lab numbers. That was then sent out via FedEx
5 to the lab in Indiana. Just addressing this part, we'll have
6 the officer, evidence custodian and Amy Stephens who sealed
7 it. I believe at that point, it's no longer fungible. Amy
8 Stephens will deal with -- testify to the internal chain as to
9 who these people are, who put in the mail. If you require us
10 to, we'll have someone from FedEx to testify to the records of
11 shipping, picking up and receiving. Your Honor, although I do
12 believe there is case law in Cochran that says that's not
13 necessary.

14 THE COURT: Well, that's the sorriest thing I've heard.
15 We've got a lab at SLED and we're having to send this stuff to
16 Indiana. I mean, that is absolutely ridiculous. That is
17 ludicrous.

18 MR. FOX: We've got a lab right here.

19 THE COURT: But I understand you can't get SLED to do
20 it. I think we need to close SLED down if they're not doing
21 their job but ---

22 MR. GROOMS: Your Honor, I'm just working with what I
23 have. The same thing on the swabs.

24 THE COURT: I mean, that is just -- I can't believe that
25 we do that in send it -- was it Illinois?

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1 MR. GROOMS: Indiana.

2 MR. FOX: Indiana.

3 THE COURT: Indiana, of all states.

4 MR. FOX: Two times.

5 MR. GROOMS: Your Honor, I ---

6 THE COURT: Of all states to send it to, Indiana.

7 MR. GROOMS: That's why my chain notebook is as thick as
8 it is, Your Honor. Same thing on the DNA swab that was
9 ordered by Judge John, taken by an officer, given to evidence,
10 hand-delivered to Amy Stephens, who once again heat-sealed it.
11 She will testify to the internal chain as to how it was out
12 sourced. The chemist from Indiana can say I received it in
13 this order. I know who this person is, they received it, this
14 person verifies that it's in proper order and hasn't been
15 damaged. I look it, it's in a heat-sealed package with a lab
16 number over it. It's not been tampered with. I think that is
17 all that is required of the State regarding what is practical
18 and even above and beyond that we're having someone from FedEx
19 here just to say that yes it was in fact shipped via FedEx. I
20 would like to ask the person from FedEx not be needed based on
21 the case law in Cochran. I do have a write-up of those cases,
22 if you'd like review it.

23 THE COURT: All right. I will over lunch.

24 MR. FOX: Judge, I would just take the position that it's
25 premature on the case and if you think it's sufficient that

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1 they've met their burden with regard to the chain, then fine
2 but I think it's premature to make that ruling.

3 THE COURT: Well, I believe it is. It's basically asking
4 me for an advisory ruling as to how to go forward.

5 MR. FOX: Exactly. I do have ---

6 THE COURT: He's telling me he's gonna make you have
7 everybody here and you need to have everybody that you can
8 possibly put up and we'll judge it then.

9 MR. FOX: Because I have no basis to object until I know
10 what's being put up and the evidence that's sought to be
11 introduced and at that time we'll address the sufficiency of
12 the chain.

13 THE COURT: All right. Okay. We'll be back at 2 o'clock
14 -- I mean, 2:30.

15 MR. GROOMS: Thank you, Your Honor.

16 (RECESS - 1:11 P.M.)

17 *****OFF THE RECORD*****

18 (On the Record. 2:51 P.M.)

19 THE COURT: All right. Do we have any loose ends we
20 needed to address before we ---

21 MR. GROOMS: Your Honor, we were able to get a card
22 regarding the 1984. It looks like it was a jury trial before
23 the same judge. It's on the indictment and the sentencing
24 sheet that you saw -- it's to the attention of a public
25 defender. I think at this point it was an actual jury trial.

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OPENING BY MR. GROOMS

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1 It wasn't a plea. So, at the very least, he represented
2 himself. I think we've shown that ---

3 THE COURT: It says public defender?

4 MR. GROOMS: If I may, it says to the attention of, it
5 doesn't necessarily say that they represented him but I would
6 assume so.

7 THE COURT: Jury trial before Judge Paul Moore. It says
8 attorney -- it says attorney, public defender.

9 MR. GROOMS: Yes, it's to the attention of them, I didn't
10 see the name.

11 THE COURT: Not, that's A-T-T, that's attorney, bond
12 magistrate, attorney.

13 All right.

14 MR. GROOMS: Your Honor, I don't have anything else.

15 THE COURT: All right. How about it, Mr. Fox?

16 MR. FOX: No, Your Honor.

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

18 (REPORTER'S NOTE: The jury returns to the courtroom. 2:51
19 P.M.)

20 THE COURT: All right. Mr. Grooms. We have all our
21 jurors in.

22 OPENING STATEMENT BY MR. GROOMS.

23 MR. GROOMS: Thank you, Your Honor.

24 Ladies and gentlemen of the jury, my name is Stephen
25 Grooms. We're here today for a burglary trial. We're here

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OPENING BY MR. GROOMS

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1 today for a burglary second violent trial, which is a burglary
2 on a building in the nighttime. In this case, there's more
3 than one factor; it's in the nighttime and the Defendant
4 having two prior convictions of a burglary and/or
5 housebreaking or a combination of those two. That's what I
6 can prove to you.

7 Ladies and gentlemen, on August 15th of 2010, church
8 goers at Conway Freewill Baptist showed up to go to church
9 that morning and instead of talking about what's for lunch or
10 Sunday school, they're talking about the break-in of the
11 church that happened last night. When they got there, there
12 was still -- the damage to the church hadn't been replaced.
13 This Defendant did enter into that church through a window
14 that was broken that night on the side of the church and
15 you'll get to see pictures of that. This burglar, I don't
16 know if it was just him or if there was others, did go
17 upstairs, kick doors off hinges, go through the pastor's
18 office, rifle through the papers, don't find anything. But
19 then going to the -- what we believe was the clerk's office,
20 Mr. Hardwick from the church will be able to help me out with
21 that, kicks open that door and they find the safe. They
22 proceeded to try to get into the safe, it looks like by way of
23 crowbar. Beat the safe in as much as possible, tried to
24 remove the hinges from the safe and were unable to get into it
25 but had it beaten to where they couldn't use it anymore even

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OPENING BY MR. GROOMS

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1 with the combination they couldn't open the safe, had to get a
2 new safe. The fact that this Defendant did enter that church
3 through the window clearly shows that he wasn't invited. When
4 he goes inside, damages the church, clearly shows that he
5 wasn't there for a good purpose. He was there to commit an
6 unlawful act, beating on the safe, I think we all know he was
7 trying to take whatever was in that safe. Now, luckily they
8 didn't get into the safe but as some point, this Defendant did
9 set off an alarm. Now, when the alarm set off, Conway Police
10 is notified, Mr. Hardwick is notified at the church -- he's
11 not at the church, he's notified -- he works with the church
12 -- and the police respond.

13 Now, then the police respond there's nobody there. So,
14 this Defendant thinks he got away with it clean. Except for
15 one crucial part, when he broke into the church through the
16 window, he left blood on the church, DNA evidence. You'll
17 hear from officers that will testify that it was blood on the
18 glass that had fallen outside the window, there was blood on
19 the actual shards of glass on the window and there was blood
20 inside the church. You're gonna hear how they took a sample
21 of that evidence, properly sealed it, took it and turned it
22 into evidence. You'll hear from the evidence custodian who
23 took it into evidence, documents that it's not been tampered
24 with and that he personally hand delivers that evidence to
25 SLED in Columbia.

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OPENING BY MR. GROOMS

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1 Now, SLED in Columbia at the time was out-sourcing come
2 of their DNA testing. They sent the swab through FedEx to a
3 lab in Indiana. And all this took some time. This isn't the
4 way you see it on T.V. that they can wrap up a DNA case in
5 half an hour and get a guilty verdict; this took some time.
6 They sent it out to Indiana and it was almost two years later
7 before the information had come back, there'd been a CODIS
8 hit. Mr. McClure will testify to what CODIS hit is and the
9 information that came back. They had enough probable cause
10 for an arrest warrant. And we're gonna get in more to the DNA
11 side of the case as we go along. But just as a brief opening,
12 this is a burglary. You're gonna listen to the testimony of
13 the witnesses that will clearly establish there was a
14 burglary. I don't think there's gonna be any question that
15 this church was burglarized on that night. And then you're
16 gonna hear from the witnesses who took that evidence and who
17 sent that evidence off to Columbia, Indiana, back to Columbia.

18 I think the Judge briefly addressed the fact that there's
19 gonna be a lot of chain witnesses and I don't know if he was
20 necessarily even talking about this case in particular or just
21 cases in general. But this case, we certainly have a lot of
22 chain witnesses. I promise you I will do my best to get each
23 one up here, say their role and get out of here because I know
24 you have better things to do. So, just bear with me. Know
25 that there is a reason we have to have each person in the

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OPENING BY MR. FOX

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1 chain testify to show that there was no tampering of the
2 evidence, there's no way the evidence could've been misplaced
3 or swapped out.

4 So, thank you for your time. Just remember burglary
5 violent means burglary of a building, in this case a church.
6 A church is certainly a building. And then what makes if
7 violent doesn't mean there's anything violent in nature; it
8 just means that there are other factors, that's how the
9 legislature has classified those factors being it was in the
10 nighttime and/or, so either one, this Defendant does have two
11 or more prior convictions for the burglary and/or
12 housebreaking.

13 Thank you for your time.

14 THE COURT: Mr. Fox?

15 MR. FOX: May it please the court.

16 OPENING STATEMENT BY MR. FOX:

17 MR. FOX: Ladies and gentlemen, again, my name is Eric
18 Fox and it's my privilege today to be here representing Mr.
19 Maurice Ward. I'm not gonna talk to you much yet about the
20 facts of the case. I don't agree with some of the
21 interpretations that the Solicitor has given you at this point
22 and, that is, what they propose to show you. I would remind
23 you and the Judge will tell you at the end of the case, of
24 course the burden of proof in criminal court in South Carolina
25 is on the State. No Defendant is ever required to prove their

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OPENING BY MR. FOX

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1 innocence. The burden is completely on the State to prove a
2 man guilty beyond a reasonable doubt. The Judge will define
3 that for you. One way to define it is a doubt that leaves you
4 firmly convinced of the Defendant's guilt. There's no way
5 none of you -- one thing we do know for sure, none of you were
6 at that church back in 2010. So, none of you were witnesses.
7 None of you can know one hundred percent what happened. And
8 the law doesn't require you to be convinced one hundred
9 percent but it does require you to be left firmly convinced.
10 If you were in a civil trial, in other words, were people were
11 suing each other over a contract or an automobile wreck and
12 insurance, the burden of proof is beyond -- is a preponderance
13 of the evidence which simply means if you think of the scales
14 of justice, to win in civil court, you simply need to tilt
15 those scales ever so slightly in your favor. All right?
16 That's not the case here in this courtroom. All right. It's
17 the highest burden of proof in our system, beyond a reasonable
18 doubt. So, please keep that in mind.

19 Another very, very important concept that I want to point
20 out to you, obviously, every person has the right to a jury
21 trial, a constitutionally guaranteed right to a jury trial, to
22 have a jury of his peers selected from the community at large
23 pass judgment, now law enforcement, not the solicitor, not
24 even the judge because our system doesn't presume that people
25 trained in the law are automatically better in accessing guilt

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OPENING BY MR. FOX

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1 than people with their everyday experiences. That's why we
2 take people, pick basically at random from a cross section of
3 the community because we believe and know that twelve heads
4 are better than one and the combined life experiences that you
5 all bring are far superior than anything even the most
6 educated and experienced lawyer or police officer or
7 prosecutor can bring to the case.

8 Now, the concept I want you keep in mind though is that
9 every defendant is presumed to be innocent. That means at
10 this moment as we sit here, you've heard no evidence. You've
11 heard the Solicitor's summation of what he intends to prove
12 and what Mr. Ward is accused of but you've seen and heard no
13 evidence. At this moment and right up until the time you
14 reach a verdict, whatever that verdict may be, the
15 Constitution of the United States, State of South Carolina,
16 requires that you presume -- assume is another way -- that he
17 is an innocent man until you are firmly convinced that he is
18 not. Those aren't mere words. Okay? The best way I've heard
19 it described, another lawyer I heard say, think about your mom
20 and if somebody came to you and said, you know, your mom has
21 done a very bad thing. She's knocked of a liquor store. And
22 you would say, that's crazy, not my mom, not my dear, sweet --
23 not the woman who raised me, no way, couldn't happen. That's
24 the kind of attitude the law says you have to bring as jurors
25 in this case. Presuming that Mr. Ward is innocent until the

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DANNY LANUE HARDWICK - DIRECT BY GROOMS

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1 State, if they can, establishes beyond a reasonable doubt that
2 he is not.

3 At the end of the case, I will address the factual issues
4 and ask you to return a verdict. Thank you.

5 THE COURT: Very well. All right. Mr. Grooms?

6 MR. GROOMS: Thank you, Your Honor.

7 I'd call Danny Hardwick to the stand, please.

8 DANNY LANUE HARDWICK, HAVING BEEN
9 SWORN, TESTIFIED AS FOLLOWS:

10 CLERK: State your full name and spell your last name.

11 MR. HARDWICK: Danny Lanue Hardwick, that's H-A-R-D-W-I-
12 C-K.

13 DIRECT EXAMINATION OF DANNY LANUE HARDWICK BY MR. GROOMS:

14 Q: Thank you, Mr. Hardwick. I know we've been over some of
15 these questions, but just so the jury knows, Where are you
16 from?

17 A: Conway.

18 Q: Conway. And where do you go to church?

19 A: I go to Conway Freewill Baptist Church.

20 Q: Okay. And how long have you gone to church there?

21 A: All my life.

22 Q: All your life. And you are how old?

23 A: Fifty-eight.

24 Q: Fifty-eight. Mr. Hardwick, do you hold a position in that
25 church?

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- 1 A: Yes.
- 2 Q: And please tell the jury what position that is.
- 3 A: I'm deacon, trustee and also Sunday School Superintendant.
- 4 Q: And were you in that same position during 2010?
- 5 A: Yes.
- 6 Q: During August 2010, to be specific. Mr. Hardwick, do
- 7 those positions give you access to the church?
- 8 A: Yes.
- 9 Q: And how did that work?
- 10 A: Well, all deacons have a key to the church.
- 11 Q: Okay. Did you respond to a call to the church on August
- 12 -- I believe it was -- 14th, 2010?
- 13 A: Yes.
- 14 Q: And what was the nature of that call?
- 15 A: It was a breaking and entering.
- 16 Q: Okay. You tell me who you got that call from, just so the
- 17 jury knows.
- 18 A: The security system that we have at the church.
- 19 Q: Okay. What time did you receive that phone call?
- 20 A: I -- sometime between 10:00 and 11:00 that night on a
- 21 Saturday night.
- 22 Q: Saturday night. And do you know, was it dark outside?
- 23 A: Yes.
- 24 Q: Okay. Mr. Hardwick, let me show you what's been marked as
- 25 State's Exhibit One. It's a photo of a church. I've shown

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1 this to Defense. Can you for id purposes, tell me, is this
2 the church that you go to?

3 A: As you come in the ---

4 Q: Just tell me whether or not it's the church. We've got a
5 ---

6 A: Yes, this is the church, yes.

7 MR. GROOMS: Your Honor, can I move to have these
8 pictures of the church into evidence.

9 THE COURT: Show him the other one there. You've got two
10 or three.

11 MR. GROOMS: I've actually got several.

12 THE COURT: Let's do them all at one time. Okay?

13 BY MR. GROOMS:

14 Q: Just tell me if you recognize these, if this is the same
15 building?

16 A: Yes.

17 Q: Okay. Do you recognize that?

18 A: Uh-huh (affirmative response), yes.

19 Q: And do you recognize this?

20 A: Yes.

21 Q: And the final one?

22 A: Yes.

23 MR. GROOMS: Your Honor, these are items of evidence One
24 through ---

25 THE COURT: Okay. I thought you, Mr. Grooms, just had

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1 pictures of the church. Just your first two were there?

2 MR. GROOMS: The other ones are inside the church.

3 THE COURT: Okay. Well, why don't we do this way. Why
4 don't we do these two that show the exterior of the church and
5 show those to Mr. ---

6 MR. FOX: I've seen them, Your Honor.

7 THE COURT: Do you have any objection? Any objection to
8 their introduction?

9 MR. FOX: I'm sorry, the inside -- the inside or the
10 outside?

11 THE COURT: No, the outside. The ones he's identified.

12 MR. FOX: As long as they're in the same -- represent the
13 building in the same condition. ---

14 THE COURT: As it was then.

15 MR. FOX: --- as it was back in August of 2010.

16 THE COURT: Okay. Mr. Hardwick, does that look like the
17 building back in August. I know it's changed now. I drive by
18 there every morning.

19 A: We -- the only change that we've made to the building is
20 parking lot. We haven't made any changes to the building
21 personally and the ---

22 THE COURT: No, I think what he was asking is that how it
23 looked back then.

24 A: That is how it is today and back in 2010 as well, yes.

25 THE COURT: All right. Thank you, sir.

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1 All right, Mr. Grooms, do ---

2 MR. GROOMS: Your Honor, could I have these entered into
3 evidence?

4 THE COURT: All right. No objection. And that's
5 State's ---

6 MR..GROOMS: State's One and Two.

7 THE COURT: One and Two, okay.

8 STATE'S EXHIBIT NUMBER ONE AND TWO

9 ADMITTED INTO EVIDENCE

10 THE COURT: You want to publish them?

11 MR. GROOMS: Yes, sir, Your Honor. I'd like to publish
12 these to the jury. This is what the witness is describing as
13 the outside of the church and the door.

14 BY MR. GROOMS:

15 Q: Mr. Hardwick, whenever you responded to the church that
16 night, can you tell me who was on scene when you got there?

17 A: Conway City Police.

18 Q: Had they been able to determine an entry point?

19 A: Yes.

20 Q: So, this was a legit burglary call?

21 A: Yes.

22 Q: Can you tell us where that entry point was?

23 A: To the left of the front door -- I mean, to the right of
24 the front door going in the fellowship hall.

25 Q: I'll give you these pictures back.

1 A: It'd be in that ---
2 Q: Could you tell the jury which window or door you're
3 talking about?
4 A: This is the front entrance door to the fellowship hall and
5 this window.
6 Q: Okay. And this is the same door on this larger picture.
7 Can you point that out?
8 A: Yes. That's the entrance door to the fellowship hall and
9 this window right in the corner.
10 Q: Okay. Thank you. Can you tell me, was that are a well-
11 lit in 2010?
12 A: No, sir. It was dark.
13 Q: It was not?
14 A: It was not lit; it was dark.
15 Q: Why was that? Did you have lights out there?
16 A: The only lighting we had was on the edge of the parking
17 lot both sides of the church.
18 Q: Okay. So, was this a well-lit area?
19 A: No, not really. In that corner it's dark, but like I say
20 it was in a dark corner.
21 Q: Okay. Where is this view from?
22 A: It is viewed from the road, you could see it from the
23 road.
24 Q: This from the road?
25 A: Yes.

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1 Q: Okay. I'll publish these to the jury. Y'all can pass
2 those around if you like.

3 All right, Mr. Hardwick, for id purposes only, I'd like
4 to show you a picture of where that window would've led to if
5 it's the same today as it was there. Let me show you what's
6 been marked as State's Exhibit Number Four. Can you tell me if
7 that is where the inside of that church and that door would've
8 led to?

9 A: Yes, that is the typical arrangement of the furniture too.

10 Q: Same time -- 2010 as today?

11 A: Pretty much, yes, sir.

12 MR. GROOMS: Your Honor, I'd like to move this into
13 evidence.

14 THE COURT: Mr. Fox?

15 MR. FOX: No objection, Your Honor.

16 THE COURT: Without objection.

17 MR. GROOMS: And I'll publish them also to the jury.

18 THE COURT: And that's Number?

19 MR. GROOMS: Number Four, Your Honor.

20 THE COURT: Number Four, okay. Number Four is in.

21 STATE'S EXHIBIT NUMBER FOUR

22 ADMITTED INTO EVIDENCE

23 BY MR. GROOMS:

24 Q: All right. Now, you said that they were able to determine
25 the entry point. Can you tell the jury again one more time

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1 where that entry point is believed to have been?

2 A: It's to the right of that entrance door, the window had
3 been broken.

4 Q: All right. Did it have any marks on it that would
5 indicate how someone entered?

6 A: Yes. Someone put a pry bar up between the sash and to top
7 window.

8 Q: That's what had looked like happened?

9 A: Yes.

10 MR. FOX: Objection, leading, objection, the answer is
11 speculation and ---

12 THE COURT: Well, I think that he was answering the first
13 question as to whether or not there was any indication as to
14 how someone did it. I think it doesn't take anything other
15 than general knowledge to show that there was a pry bar or
16 some object put between the sashes. We won't go any further
17 than that. Okay?

18 MR. FOX: Yes, sir.

19 BY MR. GROOMS:

20 Q: Mr. Hardwick, did you see any blood on the window?

21 A: Yes.

22 Q: Do you recall if there was blood inside or outside or ---

23 A: I don't recall really for sure if it was inside -- I know
24 it was on the window. I think some had dropped on the window
25 sill.

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DANNY LANUE HARDWICK - DIRECT BY GROOMS

1 Q: Okay. Where does this room lead you to the congregation
2 hall? In other words, you enter that room, where do you go
3 from there?

4 A: Well, from the arrangement of the furniture in that
5 picture ---

6 Q: Not regards to the picture, just in general -- where are
7 the -- where can you go when you enter that room? In other
8 words, you can't ---

9 A: When you enter the fellowship all, the only -- going
10 upstairs is the stairway.

11 Q: And what's upstairs?

12 A: The educational classrooms.

13 Q: All right. I'm gonna show you a picture for id purposes,
14 does this describe one of your offices?

15 A: Right.

16 Q: Yes, sir.

17 A: That is the clerk's office.

18 Q: Same structural condition it would've been in 2000 -- Your
19 Honor, I'd like to have this entered into evidence State's
20 Five.

21 THE COURT: Mr. Fox?

22 MR. FOX: No objection.

23 THE COURT: Without objection.

24 STATE'S EXHIBIT NUMBER FIVE

25 ADMITTED INTO EVIDENCE

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1 MR. GROOMS: And publish also the jury.

2 THE COURT: Now, let me understand, that shows the
3 clerk's office?

4 A: Yes.

5 THE COURT: Okay.

6 BY MR. GROOMS:

7 Q: Mr. Hardwick, thank you for your patience. There's a
8 reason we've got to through this order. When you enter that
9 congregation hall, where were the alarm sensors at in 2010?

10 A: The only sensors, both doors have sensors.

11 Q: Yes, sir.

12 A: And also a motion sensor and the back corner of the room
13 up above the ---

14 Q: Do you mind telling the jury where it was in 2010?

15 A: This back corner, there's a motion sensor right in that
16 corner.

17 Q: Okay. And where was the door again, or window?

18 A: The window is over on this side.

19 Q: Thank you. Was ---

20 THE COURT: Let's have him mark those locations so that
21 there would be a record. You can -- you had him refer to a
22 photograph. Let's have him put A where the door is, B where
23 the motion sensor is.

24 Did you get that, Mr. Hardwick?

25 A: The door doesn't really show over here, it'll be down

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1 beyond this.

2 THE COURT: All right. Well, put your A ---

3 A: The window would be right here, that's the only window on
4 that side.

5 THE COURT: Well, put where you indicated the door would
6 be when you testified a moment ago with an A; and then put a B
7 where the sensor is. That's so that on review we'll have a
8 record of where you were indicating.

9 A: B at the motion sensor?

10 THE COURT: Yes, sir.

11 MR. GROOMS: The State reflects he's marked the door, by
12 writing door and B is the motion sensor.

13 THE COURT: That's correct.

14 MR. GROOMS: We'll publish to the jury.

15 BY MR. GROOMS:

16 Q: One more picture, Mr. Hardwick. Can you identify what's
17 been marked as State's Exhibit Three?

18 A: Yes.

19 Q: Okay. Can you please tell the jury, is that the same door
20 that you've been describing this whole time?

21 A: That is the same door.

22 Q: Is that the same door that was there in 2010?

23 A: That is and that's the marks that were made that night.

24 Q: Okay. How do you know that those were the marks that were
25 made that night?

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1 A: There had been no entry in that door prior to this and it
2 still hasn't been replaced, it's still there today.

3 Q: And how often are you at the church?

4 A: Every service about so.

5 Q: During the week, would you have been there during the week
6 to know that this didn't happen on a Wednesday?

7 A: I -- yeah, we would -- it wouldn't -- nothing was brought
8 to our attention, so we didn't notice anything prior to this,

9 Q: Okay. So, it would be your opinion that this hadn't
10 happened until that night?

11 A: That night, I believe -- it's our opinion, yes, sir.

12 MR. GROOMS: Okay. Your Honor, we'd like to move to have
13 this entered into evidence as well, State's Exhibit Three.

14 MR. FOX: No objection, Your Honor.

15 THE COURT: Without objection.

16 STATE'S EXHIBIT NUMBER THREE

17 ADMITTED INTO EVIDENCE

18 MR. GROOMS: Publish to the jury.

19 BY MR. GROOMS:

20 Q: All right, Mr. Hardwick, almost finished. Would you
21 please tell the jury about the damage that was done to the
22 church upstairs?

23 A: The damage upstairs, the pastor's door had been kicked in.
24 The door was still on the hinge but the casing itself had been
25 broken and also going into the clerk's office saying the door

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1 was still intact on the hinge but the casing on the side was
2 broken.

3 Q: Okay. And what about the safe?

4 A: The safe, both pins were knocked out of the hinges and it
5 was all beat up, mangled up, and we were unable to access
6 entry by combination.

7 Q: Thank you, sir. Have you ever met this Defendant before?

8 A: No, sir.

9 Q: You ever seen him as a churchgoer, someone at a service?

10 A: No, sir.

11 Q: Do you normally speak to the people that visit your
12 church?

13 A: I make it my point, yes, sir.

14 Q: Okay. Mr. Hardwick, would it be safe to say that whoever
15 did this damage wasn't invited?

16 A: Yes, sir.

17 Q: Okay. Thank you for your time, Mr. Hardwick.

18 THE COURT: All right. Mr. Hardwick, answer any
19 questions Mr. Fox has.

20 CROSS EXAMINATION OF DANNY LANUE HARDWICK BY MR. FOX:

21 Q: Mr. Hardwick, do I understand correctly this State's --
22 this picture of State's Number Three, which is a close-up of
23 the door?

24 A: Yes.

25 Q: That that -- and it shows a lock and what looks like the

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- 1 frame of the door, looks like the frame is dented; is that a
2 fair ---
- 3 A: That's the -- the aluminum wrap is dented, yes.
- 4 Q: Okay. Damaged?
- 5 A: Yes.
- 6 Q: Okay. And I understood you to say that that had to be
7 brought to your attention by the police; is that correct?
- 8 A: Yes.
- 9 Q: So, you hadn't noticed that? Correct?
- 10 A: I had not noticed, of course, we hadn't -- you know, been
11 around there, that had not been done, you know, prior to this.
12 I don't recall it ever being there.
- 13 Q: You don't recall but it could've been done at some point
14 previously?
- 15 A: It would've been a slim chance but possible, yes.
- 16 Q: And but it's possible. The -- did I understand -- I'm
17 showing you State's Number Four which is the fellowship hall?
- 18 A: Fellowship hall, yes, sir.
- 19 Q: Now, if I understood in the lower -- it would be lower
20 right corner, you've written door.
- 21 A: Door.
- 22 Q: And that's the inside of where that door would lead,
23 correct?
- 24 A: Right, yes.
- 25 Q: Correct, where State's Three would lead. If I understand

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1 that there is an alarm or a sensor on that door?

2 A: On the door itself, yes.

3 Q: Okay.

4 A: The door was never opened, the deadbolt is secure.

5 Q: Now, is there any other alarm or sensor once you get in
6 that room, is there anything else if you were to get in that
7 room, say through the window, that would set it off?

8 A: In 2010, that front -- top corner, where the B is, is a
9 sensor, motion sensor.

10 Q: Okay. And that's in kind of in the corner?

11 A: Yes, it is in the corner.

12 Q: Okay. And then to -- what is -- if you were to come
13 towards me, the door is down here, this room extends a little
14 bit out of the frame of the picture; is that fair -- right?

15 A: Yes, yes, it does.

16 Q: Are there any entrances on this back side, there's a wall
17 back here where you've got B for the motion sensor, that's in
18 the corner, correct?

19 A: Yes.

20 Q: And there's a wall that's at the back of the church,
21 correct?

22 A: Yes, there is another entrance door to the back, yes.

23 Q: Okay. So, that's one way to go. If you go out then up
24 here towards the top of the picture and I see and it looks
25 like a little kitchen up there, where is the -- is there an

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1 exit out of this room?

2 A: Yes. In the corner there is a door here to goes up to the
3 step that leads up to the educational building, like a ---

4 Q: Pretty much the top center of this picture; is that fair
5 to say?

6 A: Right, center of that picture, yes, sir.

7 Q: Okay. Does this sensor that's here in the corner, it is
8 aimed out into the room?

9 A: No, it really is -- it does come across that room but it's
10 more centered or focused to the back wall, protection on that
11 back wall because I -- we really never assumed anyone would
12 try to come in on the front side to the road.

13 Q: Now, the front side -- we've seen the picture of the
14 exterior, State's One, that's the ---

15 A: Front side, yes, sir, to the road.

16 Q: So, and that road -- the front of the church is here at
17 the right so that they know -- you walk up the steps and
18 that's where the steeple is and the what's closest to the
19 road, correct?

20 A: Correct.

21 Q: Where the sanctuary is up there, correct?

22 A: Sanctuary.

23 Q: What road is that that's out there in the front?

24 A: It's on 4th Avenue, 701 South.

25 Q: Okay. And this window and door that we've been looking

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1 at, those are fully visible from Fourth Avenue, aren't they?

2 A: Yes.

3 Q: Thank you; I have no further questions.

4 MR. GROOMS: Just briefly, Your Honor.

5 REDIRECT EXAMINATION OF DANNY LANUE HARDWICK BY MR. GROOMS:

6 Q: You just told Mr. Fox that you can see that from 4th
7 Avenue, 701 South.

8 A: In the visible daylight it's very to see but, at night,
9 that is a dark corner, at that time in 2010.

10 Q: Were there any lights on at the time?

11 A: Only the security light. Since then, we have now lights
12 under both those entrance ways.

13 Q: Okay. And what about the back of the church; were there
14 any lights in the back of the church?

15 A: We have a, a light over the entrance door coming in as
16 well as a ---

17 Q: So, is the back of the church fairly lit up?

18 A: Yes, more so than that corner, yes.

19 Q: So, it would make sense for someone to choose the darkest
20 corner?

21 A: Right.

22 Q: Thank you, sir.

23 THE COURT: Anything in recross?

24 MR. FOX: No, Your Honor.

25 THE COURT: You may step down, Mr. Hardwick. Thank you.

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JASON RUSSELL EDEN - DIRECT BY GROOMS

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1 MR. GROOMS: Your Honor, can Mr. Hardwick be excused?

2 THE COURT: Do you have any objection to excusing Mr.

3 Hardwick?

4 MR. FOX: No, sir.

5 THE COURT: If you wish, you are released from your
6 subpoena. You're welcome to stay but you may leave.

7 MR. GROOMS: Thank you, sir.

8 The State would call Officer Eden.

9 JASON RUSSELL EDEN, HAVING BEEN

10 SWORN, TESTIFIED AS FOLLOWS:

11 CLERK: Please be seated and state your full name and
12 spell your last name.

13 OFFICER EDEN: My name is Jason Russell Eden, last name
14 is Eden.

15 DIRECT EXAMINATION OF JASON RUSSELL EDEN BY MR. GROOMS:

16 Q: Thank you, Officer Eden. Where do you work?

17 A: Conway City Police Department here in Conway.

18 Q: All right. Where did you work in 2010?

19 A: Conway City Police Department.

20 Q: Okay. And what was your title and/or duties at that time?

21 A: Police officer, patrolman.

22 Q: Okay. Did you respond to a call August 14th, regarding
23 this case?

24 A: Yes, sir, by alarm.

25 Q: Okay. So, it was an alarm; how does that work, for the

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1 jury? Who called it in?

2 A: Normally a security company will call us pick up and let
3 us know that an alarm had gone off at a certain location and
4 then we respond and check that alarm.

5 Q: All right. And so, did you respond?

6 A: Yes, sir.

7 Q: And were you the first on scene?

8 A: Yes, sir.

9 Q: Okay. Please tell the jury what you did, what you
10 normally -- just tell me what you did in this case, I assume,
11 it's what you normally do.

12 A: If I respond on a scene, at first what I do is go around
13 the building and see if anything has been damaged, if any
14 doors have been opened. In this case, I observed a window had
15 been broken out and then I notified other officers so we can
16 go inside the building and clear the building, make sure
17 there's nobody inside the building before anybody else came on
18 the scene.

19 Q: Where is this church located?

20 A: On 4th Avenue.

21 Q: Is that in the City of Conway?

22 A: Yes, sir.

23 Q: You have jurisdiction?

24 A: Yes, sir.

25 Q: What county is Conway in?

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- 1 A: Horry County.
- 2 Q: Thank you. Can you tell us when you arrived to that call?
- 3 A: I know it was in -- early in the morning but I can't tell
- 4 you exactly what time. I don't remember.
- 5 Q: Was it early in the morning?
- 6 A: Yes, sir.
- 7 Q: So, it was light outside?
- 8 A: No.
- 9 Q: Early in the morning?
- 10 A: It was definitely dark outside.
- 11 Q: Okay. And you -- all right, so when did you begin your
- 12 shift?
- 13 A: I begin my shift at 6:00 P.M.
- 14 Q: 6:00 P.M. and you got off in the morning?
- 15 A: 6:00 A.M.
- 16 Q: Your testimony is you don't know exactly it was -- what
- 17 you describe as the morning hours.
- 18 A: It's dark outside, that's one thing I can remember, I can
- 19 tell you.
- 20 Q: It's dark outside. Would it be helpful if I showed you a
- 21 copy of the report?
- 22 A: Yeah, that'd be fine.
- 23 MR. GROOMS: If I may ---
- 24 THE COURT: Yes, you may, you may show him his report to
- 25 refresh his recollection.

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1 A: 22:49 hours.

2 Q: What does that translate to?

3 A: 10:49 P.M.

4 Q: 10:49 P.M., okay; thank you. When you arrived -- is this
5 the church you arrived to?

6 A: Yes, sir.

7 Q: Okay. And was that a well-lit area?

8 A: That -- the window and the door?

9 Q: Yes, sir.

10 A: This right here when I arrived on scene, I remember it was
11 dark in this area right here where the window is, the point of
12 entry.

13 Q: Were there lights underneath that overhang?

14 A: When I respond that night, no, there was no lights; it was
15 dark. You couldn't tell ---

16 Q: Why don't you tell the jury what you found when you
17 arrived on scene?

18 A: When I come on scene and I looked at this window right
19 here, it had been shattered out and on that window would
20 appear to be blood, which I did later collect after we got
21 done securing the building.

22 Q: Okay. And you -- whenever -- let's focus on the blood for
23 a moment. * Would you have searched the area outside of the
24 church as well for blood?

25 A: Yeah, we search -- outside then the inside.

1 Q: Was there any blood leading away from the church?
2 A: There was some outside the window but I couldn't
3 necessarily tell leading from the window.
4 Q: Was there blood on the sidewalk is what I'm asking leading
5 away?
6 A: I don't recall on the sidewalk.
7 Q: Okay. Was there blood inside the church?
8 A: There's blood inside the church, inside the windowsill and
9 also I saw was the kitchen, it was on the floor in the
10 kitchen.
11 Q: What Mr. Hardwick described as a congregational hall.
12 A: That's right.
13 Q: And how was -- how was this blood, is it smeared, is it --
14 -
15 A: It was droplets.
16 Q: Big droplets, small droplets.
17 A: Good size drops you can tell.
18 Q: Okay. Where was the most amount of blood?
19 A: I would say it would be inside the window.
20 Q: Inside the window.
21 A: Because it appeared he had cut his arm and so forth and
22 you can see the sharp glass that was still left in the window.
23 Q: Okay. Please tell the jury -- I know this seems petty but
24 what do you mean when you say inside the window.
25 A: Actually inside the window, window sill itself and also on

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1 the floor.

2 Q: When you describe a window sill, are you seal or sill, are
3 you talking about the layer underneath the window or what the
4 sealant in the glass?

5 A: On this one, it's actually wooden and you have the glass
6 in-between the two pieces of wood. I'm talking about the wood
7 that's inside on the other part of the glass, on the side of
8 the glass, not outside.

9 Q: And what condition was the -- did the blood appear to be
10 in when you arrived?

11 A: I appeared somewhat wet.

12 Q: The droplets you saw inside, were those wet?

13 A: That's right.

14 Q: Okay. Did the droplets inside the church appear to be the
15 same droplets that were on the window?

16 A: Right.

17 Q: What you did as far as blood in the case, did you just

18 ---

19 A: When I come on scene, there's a certain way you have to
20 take a blood -- in this case, you had to make sure the swab is
21 wet because some of the blood might have been dry. Once I
22 lift that, it would appear to be blood and once I lift that,
23 we secure it inside a box. Now the box, once you get done
24 folding it and you slid it in the box, you got to make sure
25 it's elevated so the swab itself does not touch any part of

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- 1 the box or you'll damage the evidence.
- 2 Q: So, ---
- 3 A: So, it's kind of like elevated.
- 4 Q: How many samples did you take?
- 5 A: I took three samples.
- 6 Q: Where were those samples from?
- 7 A: I took one as in -- actually on the glass itself, one from
- 8 the outside ---
- 9 Q: When you say the glass itself, the glass that's still in
- 10 the window?
- 11 A: The shard of glass that was still inside the window.
- 12 Q: Okay. What was the second one?
- 13 A: The second one was outside and then the third one was
- 14 inside the seal itself.
- 15 Q: When you say outside, where would that be?
- 16 A: Right there at the window.
- 17 Q: That was on ---
- 18 A: If you look at it -- that's right there; that's right.
- 19 STATE'S EXHIBIT NUMBER SIX
- 20 MARKED FOR IDENTIFICATION
- 21 Q: And let me show you what's been marked as State's Exhibit
- 22 Six, can you id this as the sample that you took that night?
- 23 Take your time.
- 24 A: Yeah, this is what I took.
- 25 Q: How can you be sure that's the sample?

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1 A: Because I initial everything, I put my name on it.

2 Q: Okay."

3 A: It has to be -- it has to be labeled by the person who
4 took the samples.

5 Q: When would you have done that? When you would have sealed
6 it?

7 A: I -- as soon as I lifted them, it goes in a box and then I
8 seal it before I moved on to the next swab.

9 Q: Okay. And then what would you do with the swabs?

10 A: What I do with the swabs is I took them and put them in
11 our refrigerator for safe keeping.

12 Q: Okay, when you say refrigerator, is this the same
13 refrigerator you keep your Gatorade in?

14 A: No, it's only for -- it's only for DNA evidence.

15 Q: Okay. And so what you told -- you pick up the swab in the
16 box and you seal it.

17 A: That's right.

18 Q: What do you seal it with?

19 A: There's actually a label -- there's this label seal that
20 comes with the box. It's like a white -- red-and-white seal.

21 Q: Okay. Let's -- all right, just so -- help the jury
22 understand, when you say seal, it's like a piece of like tape
23 or ---

24 A: It's sort of like tape, that's right.

25 Q: Could you open the box without breaking the tape?

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- 1 A: No.
- 2 Q: Okay. Thank you.
- 3 A: And the refrigerator is also secured as well, we have a
- 4 lock so nobody can go in the refrigerator.
- 5 Q: Okay. What else did you see in the church regarding
- 6 anything out of the ordinary?
- 7 A: Well, I remember going up stairs. There's where it
- 8 appeared to be blood on the floor, the carpet. And also we
- 9 noticed that safe was heavily damaged.
- 10 Q: Were there any damaged doors?
- 11 A: They was one door that was leading into -- we believe it
- 12 was the pastor's office at that time, we believe it was the
- 13 pastor's office, the door had been appeared to have been
- 14 kicked in but it would definitely had to be broke into because
- 15 he kept it -- kept it locked.
- 16 Q: I want to show you two different records regarding entry
- 17 of this chain. I want you to explain it to the jury if that's
- 18 all right. Can you look at these and explain to the jury the
- 19 difference in the two?
- 20 A: Yeah, on this one, it is incorrect, it is labeled
- 21 different. The first one that was actually submitted with our
- 22 master report. This one right here is actually done correctly
- 23 and this is submitted to Mr. Morgan who is our evidence
- 24 officer.
- 25 Q: When did you submit this evidence ---

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1 THE COURT: What are they, first?

2 MR. GROOMS: It's the beginning of the ---

3 THE COURT: Let's have him tell me what they are.

4 A: I'm sorry, sir. These are evidence reports that we have
5 to submit in with what evidence that we collected and then we
6 list them out exactly what we collected on this report.

7 THE COURT: Very well. Okay.

8 BY MR. GROOMS:

9 Q: How can you be sure that you turned them in to the
10 evidence that night?

11 A: Because I put the boxes, secured them inside the
12 refrigerator.

13 Q: So you remember doing it?

14 A: Yeah, I had to do it right away because it is -- what
15 appeared to be blood and if I kept it, it would dry up and
16 then wouldn't have been a good sample and nobody would be able
17 to, from my understanding, do anything with it.

18 Q: Okay. But your job was to turn it in?

19 A: That's right. That's my procedure as well, policy.

20 Q: Okay. Does that conclude your involvement in the initial
21 investigation?

22 A: That's right.

23 Q: Okay. Thank you, sir. Answer any questions Mr. Fox has.

24 THE COURT: Mr. Fox.

25 CROSS EXAMINATION OF JASON RUSSELL EDEN BY MR. FOX:

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1 Q: Which one of these were done incorrectly -- which one of
2 those was done incorrectly?

3 A: Could I see those. I'll show you exactly which one. Mr.
4 Fox.

5 Q: Yes.

6 A: We have -- this one right here, sir.

7 Q: And that is the one that is correct or incorrect?

8 A: This one that's done incorrectly.

9 Q: Okay. And what's incorrect about it?

10 A: This right here -- at that time we had a certain
11 procedure, there's a certain code we got to go by and it was
12 done incorrect.

13 Q: Okay.

14 A: So, this next one, I done it correctly, I say, yeah, this
15 is one item and we collected three swabs and then we turned
16 those in.

17 Q: Okay. When was the correct one done, what is that date?

18 A: That's done 8/16 at 4:15 A.M.

19 Q: Okay. Does that indicate when you actually put the
20 samples, the swabs into the refrigerator?

21 A: That would've been the first one that was done
22 incorrectly. And the reason why -- the reason why I dated it
23 is because this is the actual day I did the form, the report.

24 Q: I understand.

25 A: This is the day I actually, I turned it in and placed them

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1 in the refrigerator and locked it. This is when I actually
2 done this report to make sure Mr. Morgan had -- this is
3 actually correct form but this is the day I actually did it.

4 Q: I understand. What's the date on the first form?

5 A: The date on the first form is the 15th.

6 Q: Okay. Where is it -- you said the first thing you did,
7 pretty much when you arrived, saw the broken window and saw,
8 you know, what you took to be blood was to take a sample; that
9 was pretty much your first action; is that correct?

10 A: No.

11 Q: Okay. But while you were there, I mean, you did that ---

12 A: That's right.

13 Q: --- quickly because you don't want that to dry up and ---

14 A: Right, right.

15 Q: How long were you on the scene, would you say, that night?

16 A: I couldn't tell you exactly how long I was on the scene.
17 I could tell you that when I responded, I noticed a window was
18 broken and then I called for another officer to clear the
19 building. That takes -- that building may be ten -- if that,
20 ten minutes or maybe ten minutes, I -- probably not even that
21 long.

22 Q: And then you, at some point, now that it's secured, you're
23 confident there's nobody there ---

24 A: Nobody there.

25 Q: --- there's no danger to you or the other officer, so now

1 you're gonna collect the swabs?

2 A: That's right.

3 Q: How many did you collect?

4 A: Three.

5 Q: Okay. Just so I'm -- I'm a little confused, like Mr.

6 Grooms. One, I'm clear there is a piece of glass in the

7 frame, correct?

8 A: That's right.

9 Q: And you took a piece from that. Where did the other two

10 come from exactly?

11 A: One is on the outside, there's a glass that's right there

12 on the ledge that -- there's a brick ledge on this -- you --

13 probably you're not gonna be able see it here but there's

14 actually a ledge. Like if you have this window pane itself,

15 you got window right here, right on the -- just on the

16 outside, there's a ledge and there's some glass in the -- on

17 that glass -- the shard that was still inside the window sill

18 and actually inside, the other side the glass that would be

19 inside the church.

20 Q: On what would be the kind of the inside ledge, for --

21 would that be a fair ---

22 A: That's right. That's right.

23 Q: Pretty much the frame of the window, I mean ---

24 A: That's right.

25 Q: Okay. All right. But not down on the ground or any --

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1 there wasn't any broken glass or any ---

2 A: There's a little bit of -- there's a little bit on the
3 glass but a lot of it stayed on top of ---

4 Q: But the swabs you took were all from different locations
5 in the window frame?

6 A: That's right.

7 Q: Okay. Blood on the floor ---

8 A: That's right.

9 Q: --- in the kitchen and the fellowship hall?

10 A: Yes, sir.

11 Q: Make any effort to collect those?

12 A: Not that one, no.

13 Q: Okay. How would you possibly be able to tell if that
14 blood, and you testified that they appeared to be same as the
15 blood on the window, how could you possibly know?

16 A: Okay. That's a good question. If you look at the blood
17 that was inside the hallway, you can tell, it was like a
18 little pattern leaving directly from the window into the
19 kitchen. Okay. You follow me, Mr. Fox?

20 Q: Oh, I understand your point but you have no way of
21 knowing, you didn't collect the sample of that, correct?

22 A: Uh-huh (affirmative response); that's right.

23 Q: Okay. Any reason you couldn't?

24 A: I couldn't tell you at this time what the reason was.

25 Q: Could you have gotten -- any problem with having more kits

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- 1 -- if you had needed more kits, could you have had more -- as
2 I understand there are separate boxes for each swab?
3 A: Right, right, each swab has its own box; that's right.
4 Q: Okay. And then you also saw blood, where was the blood on
5 the carpet?
6 A: Some leading on the steps and then also there's some on
7 top of the stairway.
8 Q: Okay, now which -- if you go out the kind of the back side
9 and you go past the kitchen which is at kind of the far end of
10 the fellowship hall, right?
11 A: Right.
12 Q: When you come out, there are steps that lead up, right?
13 A: When you're coming through -- when you're coming through
14 this door right here, the steps you're talking about would be
15 to your right. It's towards the back but to your right.
16 Q: But outside, you actually have to exit that
17 kitchen/fellowship hall to reach those stairs, right?
18 A: That's right.
19 Q: And then there's actually kind of a double -- you go up
20 some steps and you can enter the sanctuary and then another
21 flight that goes up to where the classrooms and offices are,
22 correct?
23 A: Well, you're talking about two different places. Off to
24 the right would lead to this main, this main building, and the
25 other flight of stairs would lead all the way upstairs.

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1 Q: Okay. But there's also, if you came in the main entrance
2 of the church, you know where you go from the outside --

3 A: That's where the ---

4 Q: -- that's right, there's also a flight ---

5 A: Right.

6 Q: --- because the sanctuary -- when you come in -- if you
7 come in the main entrance here off 4th Avenue ---

8 A: That's right.

9 Q: Right up the sidewalk there.

10 A: Uh-huh (affirmative response).

11 Q: And you walk up the -- the sanctuary actually is not at
12 street level, right, it's up on what might be second floor.

13 A: Right.

14 Q: And when you come in, you actually turn to the left into
15 the sanctuary; does that sound right?

16 A: Uh-huh (affirmative response).

17 Q: But you could continue up the stairs up to another level;
18 it's not visible here.

19 A: Right.

20 Q: Okay. That's where I was getting but you could also do
21 that from the interior from the kitchen, right?

22 A: That's right, as long as that front door was unlocked.

23 Q: Okay. So, my -- that's a very roundabout way of me asking
24 me where -- which exactly stairs -- which set of stairs and
25 where was the blood you saw inside?

- 1 A: Soon as you come in, like I said, you -- and you go
2 through this little doorway, boom, right there on the right is
3 the flight of stairs I'm talking about where you -- leads
4 right up the second floor.
- 5 Q: So basically the first steps that you come into.
- 6 A: Right.
- 7 Q: Okay. Anywhere else inside, see any blood?
- 8 A: Not as I can recall, no, sir.
- 9 Q: Okay. Did you attempt -- are you trained to lift
10 fingerprints?
- 11 A: I didn't lift fingerprints or attempt to lift
12 fingerprints, no, sir.
- 13 Q: Okay. Are you trained to do that; can you do that?
- 14 A: Yes, sir.
- 15 Q: And you could in 2010?
- 16 A: Right.
- 17 Q: Okay. Was there another officer there that you're aware
18 of that was trained and attempted to do that?
- 19 A: I believe there was, yes, sir.
- 20 Q: Okay. Do you know which officer that was?
- 21 A: I couldn't -- I can't remember. I stayed primarily
22 outside of the -- to collect those samples.
- 23 Q: But that would be a pretty standard procedure to at least
24 make that effort to, I guess, dust a window or ---
- 25 A: Yes, sir, because of ---

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- 1 Q: Door handles.
- 2 A: Right.
- 3 Q: The safe, right?
- 4 A: Right.
- 5 Q: Because someone was beating on the safe?
- 6 A: Right.
- 7 Q: But you didn't have any part of that; is that correct?
- 8 A: No, sir.
- 9 Q: Okay. Do you know Officer Jeff Jordan?
- 10 A: Yes, sir.
- 11 Q: Is he here today?
- 12 A: No, sir.
- 13 Q: Okay. Is he still employed by Conway PD?
- 14 A: Yes, sir; he is.
- 15 Q: Okay. Did you take any photographs on the scene?
- 16 A: No, sir; I didn't.
- 17 Q: Do you know if anybody did?
- 18 A: Jeff Jordan did, sir.
- 19 Q: Okay. How did he -- obviously, a camera; but what did he
- 20 use; do you know?
- 21 A: Yeah, we use a digital camera that comes with each of our
- 22 patrol vehicles and that's the camera he used that was with
- 23 that vehicle.
- 24 Q: Okay.
- 25 A: A digital camera.

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- 1 Q: Okay. And you observed him taking photographs?
- 2 A: Yes, sir.
- 3 Q: Okay. Do you know where those photographs are?
- 4 A: No, I could not tell you where they are.
- 5 Q: Okay. What would normally happen -- have you been in
- 6 responding to a scene maybe yourself, use your camera from
- 7 your patrol vehicle to take pictures?
- 8 A: Yes, sir.
- 9 Q: What do you usually do -- what the protocol after you've
- 10 taken pictures when you get back to the station, what's the
- 11 procedure?
- 12 A: After we take the pictures of all the evidence, we secure
- 13 the evidence, we attach them with the file. We can print them
- 14 out or we do not have to because they're stored electronically
- 15 in our computer system. We'll sometimes print them out, color
- 16 printed, and then add them with the file, the case file.
- 17 Q: And I would imagine this is -- if you said, a digital
- 18 camera, correct?
- 19 A: Right.
- 20 Q: So, there's a SIM card ---
- 21 A: Right
- 22 Q: --- and you can take that, load it on a computer.
- 23 A: Right.
- 24 Q: Okay. And then from that you can print it or you can copy
- 25 it to a disc or a zip drive and ---

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1 A: Yes, sir.

2 Q: So, in discovery for that, so the Solicitor's office in
3 some manner.

4 A: Correct.

5 Q: So, it's not just left on the card because you're gonna
6 want to reuse the card and the camera.

7 A: Right.

8 Q: Are they then deleted from the camera typically -- from
9 the SIM card?

10 A: Some officers can delete them but I haven't deleted on my
11 camera. I don't know anything about Mr. Jordan.

12 Q: Okay. So, there's not ---

13 A: I couldn't tell you.

14 Q: I'm sorry. I didn't mean to talk over you. There's not a
15 specific procedure about that. Some officers might leave it
16 on there, some might ---

17 A: Right.

18 Q: --- free up room and delete those once they've been
19 transferred.

20 A: Right.

21 Q: Okay. Does each, when you take a swab sample, and this
22 gets blood, you use -- it looks like a big Q-tip, right?

23 A: Yeah, it's a long -- long Q-tip.

24 Q: Okay. And each one of those gets its own box, correct?

25 A: Right.

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1 Q: Does each box get its own pouch? In other words, once you
2 get -- you're gonna send that to SLED, right?

3 A: The box itself is -- the box itself is individual sealed
4 evidence and that's where you would place in.

5 Q: So, you would have three boxes and that's what you would
6 place in your refrigerator.

7 A: Right.

8 Q: When that goes to SLED, does it go in three boxes or does
9 it go in a then maybe a larger pouch? Do you know what I'm
10 asking?

11 A: That might be so but I don't handle that to there to
12 actually -- the evidence guy would -- Mr. Morgan, he would
13 take care of all that.

14 Q: Okay. When you take and you have -- you put in the
15 refrigerator ---

16 A: Immediately.

17 Q: --- at CPD and they're in individual box -- three
18 individual boxes.

19 A: Yes, sir.

20 Q: Okay. Thank you.

21 MR. GROOMS: Officer Eden ---

22 MR. FOX: I'm sorry ---

23 THE COURT: Oh, I'm sorry. I thought you were done, Mr.
24 Fox.

25 MR. FOX: I think I am, but let me -- just one minute. I

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JASON RUSSELL EDEN - REDIRECT BY GROOMS

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1 am; thank you, Your Honor.

2 THE COURT: Mr. Grooms, any redirect?

3 REDIRECT EXAMINATION OF JASON RUSSELL EDEN BY MR. GROOMS:

4 Q: Officer Eden, was there any indication that gloves were
5 worn in this burglary?

6 A: From -- yes, sir, because it had like little tips ---

7 Q: Explain to the jury what you mean by that.

8 A: Some like gardening hand gloves, on the tips of the
9 gloves, you see like a little circle like dots on all the
10 fingers of the gloves, that's what appeared to be on ---

11 Q: Where as this print or where was this ---

12 A: On the safe itself.

13 Q: Okay. Was it on a window?

14 A: I can't remember if it was on the window or not, sir..

15 Q: Okay. So, you're telling the jury what you believe to
16 have been a glove was on the safe?

17 A: A glove.

18 Q: But you can't verify that?

19 A: Say again.

20 Q: There's no way of verifying that?

21 A: On the window?

22 Q: On the glove -- on the safe that this is in fact a glove?

23 A: Right.

24 Q: Okay. When you took the samples, you testified that you
25 took two from glass and one from the window sill, one from the

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JASON RUSSELL EDEN - RECROSS BY FOX

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1 window sill, would it then be possible that you put the two
2 from the glass in one box and the two -- one from the sill in
3 a separate -- in other words, there's two boxes, not three.
4 You've got glass listed as two, window sill as one.

5 A: No, I put each swab in its individual because you have --
6 you'll contaminate it if I put them both together.

7 Q: But aren't the swabs covered?

8 A: That's right. You're right.

9 Q: So, swabs -- the swab itself, say this is the swab, it's
10 covered with a plastic ---

11 A: You're right.

12 Q: If you were to label the box, swabs from the glass, you're
13 telling me you couldn't put two of those swabs in the same
14 box?

15 A: If I had done them, they'd have to be like separated so
16 they wouldn't be touching.

17 Q: That does happen?

18 A: Right.

19 Q: And this was 2010?

20 A: Right.

21 Q: Okay. Thank you. That's all I have.

22 RECROSS EXAMINATION OF JASON RUSSELL EDEN BY MR. FOX:

23 Q: Just quickly, what is your recollection of how many boxes
24 that you actually used at that time?

25 A: I believe it was only two.

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JUSTIN WILLIE STRICKLAND - DIRECT BY GROOMS

1 Q: But you testified, both for Mr. Grooms question and from
2 mine that there were three; is that correct, initially?

3 A: I thought there was three but there might've been just
4 two.

5 Q: It sounds like it would be better to use three because you
6 don't want any risk of them touching or touching the box,
7 touching -- the swab touching ---

8 A: Well, not necessarily, as long you don't contaminate them,
9 don't touch them then we should be good.

10 Q: Thank you.

11 THE COURT: All right. You may step down.

12 A: Thank you, sir.

13 MR. GROOMS: The State would call Officer Strickland.

14 JUSTIN WILLIE STRICKLAND, HAVING BEEN

15 SWORN, TESTIFIED AS FOLLOWS:

16 CLERK: Please state your full name and spell your last
17 name.

18 MR. STRICKLAND: My name is Justin Willie Strickland, S-
19 T-R-I-C-K-L-A-N-D.

20 DIRECT EXAMINATION OF JUSTIN WILLIE STRICKLAND BY MR. GROOMS:

21 Q: Officer Strickland, although it's obvious, where do you
22 work?

23 A: Conway Police Department?

24 Q: And where were you working in 2010?

25 A: At Conway Police Department.

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JUSTIN WILLIE STRICKLAND - DIRECT BY GROOMS

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- 1 Q: Did you respond to this burglary?
- 2 A: That is correct, sir.
- 3 Q: Did you also see the entry point?
- 4 A: That is correct, sir.
- 5 Q: Okay. Where did you observe blood at the church?
- 6 A: When we first arrived there, with Officer Eden, we noticed
- 7 some on the outside on the ground in the glass. It was right
- 8 on top of the glass. We also located some, like Eden said, on
- 9 the window ledge itself on the outside, on the brick. There
- 10 was one angle that was actually like where he was -- cut
- 11 himself going in the window. It had run down there and also
- 12 in the inside where he looks like maybe where someone put
- 13 their hand on that sill that it would smear off onto it.
- 14 Q: Okay. And what would make you think that the blood was
- 15 from that night?
- 16 A: Because it was fresh. It was still wet.
- 17 Q: And how can you be sure that the blood on the window and
- 18 leading into the church was the same blood?
- 19 A: Because, again, if you were following the blood of how it
- 20 was -- you know, where we located it from the window sill to
- 21 the cut, you know, what we assume was the cut on the window
- 22 into the ledge, it looks as if it's dripping and we followed
- 23 the drip going inside the church from that window.
- 24 Q: Okay. Were you aware of any potential use of gloves in
- 25 this case?

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JUSTIN WILLIE STRICKLAND - DIRECT BY GROOMS

1 A: We -- I, actually after Officer Eden got done taking the
2 blood sample, I tried to do, you know, print -- lift prints
3 around that window sill and we could not find anything due to
4 the fact of it still being a little wet from the moisture
5 outside, you know, we couldn't find anything there. I do
6 believe Corporal Robinson did state that while him and Officer
7 Jordan were processing the upstairs in the pastor's office or
8 wherever the safe was located that they did some -- find
9 something that is consistent with what they believed to be
10 gardening gloves.

11 MR. FOX: Objection. That would be hearsay.

12 THE COURT: Sustained. The jury will disregard the
13 question and the response.

14 BY MR. GROOMS:

15 Q: Did you personally observe anything that would make you
16 believe that gloves were used? Just a simple yes or no.

17 A: No, sir, not in the downstairs area where I processed.

18 Q: Okay. But downstairs you did process for fingerprints?

19 A: That is correct. I did around the window sill after
20 Officer Eden lifted the blood because we didn't want to
21 contaminate it with our fingerprint dust.

22 Q: What about the doorknob downstairs?

23 A: Yes, again, we did not locate any -- anything. There was
24 a bunch of smudge marks but nothing that we could clearly
25 identify as a fingerprint.

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JUSTIN WILLIE STRICKLAND - DIRECT BY GROOMS

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1 Q: Was the door unlocked when y'all arrived?

2 A: That is correct, sir. That is how was do believe the
3 alarm initially came out.

4 Q: Would you please tell the jury what door we're talking
5 about?

6 A: We're talking about this door here that is facing 4th
7 Avenue.

8 Q: Okay. Was the alarm going off when you arrived?

9 A: I believe at that time it had silenced itself but there
10 was still an active alarm at the business.

11 Q: What does that mean, active alarm?

12 A: It's still showing that the door is open, that there's a
13 -- until someone comes in and resets the alarm, it's gonna
14 show as an active alarm system.

15 Q: Okay. And once you secure the church, then you -- the
16 police are called and that's how it becomes ---

17 A: That is correct.

18 Q: Okay. What else -- what else did you do in this case
19 besides the incident ---

20 A: The only thing that I done is, again, I came on scene
21 assisting Officer Eden of clearing the church and I was there
22 with him while he processed the blood from the window and done
23 the fingerprints. And being as big as the church was,
24 Officer Eden and I's focus was on the first level and Corporal
25 Robinson and Officer Jordan focused on the upstairs.

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JUSTIN WILLIE STRICKLAND - DIRECT BY GROOMS

1 Q: Okay. Your Honor, Court's indulgence.

2 (REPORTER'S NOTE: A bench conference was held off the record
3 in the presence of the jury but out of hearing of the jury.)

4 BY MR. GROOMS:

5 Q: Officer Strickland, were you able to later take a swab
6 from this Defendant?

7 A: Yes, I did, with a search warrant.

8 Q: What type of swab is that?

9 A: It was a Buccal swab from the inside of his mouth.

10 Q: And what's that called?

11 A: It was a Buccal swab.

12 Q: Okay. So, Detective, you're actually there, you take the
13 swab?

14 A: I went to -- got the search warrant and the kit from our
15 crime -- Detective Morgan and went to the jailhouse.

16 THE COURT: All right.

17 Q: Just limit it to taking the actual swab.

18 A: Okay. Yes. I went to the jailhouse, took two cotton
19 swabs, swabbed the inside of his mouth, sealed the plastic
20 caps, sealed them in the box and took it to the PD where I
21 turned it into evidence.

22 Q: You were here when the other officer testified and the
23 seal, that's the same seal we've been over, it's a piece of
24 tape?

25 A: That is correct. It's a tampered seal.

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JUSTIN WILLIE STRICKLAND - CROSS BY FOX

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1 Q: Okay. Where did you turn it in?

2 A: I turned it into the evidence, property and evidence.

3 Q: Okay. And who is -- into a refrigerator and how does that
4 work?

5 A: Yes. Any blood item we get is to be submitted into the
6 refrigerator unless it is locked up already and then we have
7 to put it into a evidence locker.

8 Q: Okay. Thank you, sir. That's all I have.

9 CROSS EXAMINATION OF JUSTIN WILLIE STRICKLAND BY MR. FOX:

10 Q: Officer Strickland, you were unable to get any prints from
11 any place that you tested; correct?

12 A: That is correct, around the window sill. There was, like
13 I say, a small portion of the window left intact that had the
14 blood on it itself. So, around the window there was nowhere
15 else that we could make any prints off of.

16 Q: And the same thing with the door that was there to the
17 left?

18 A: There again, there was so many smudge marks there from
19 probably everyone from the church that's hit the door.

20 Q: And you didn't -- if I understood, you didn't have
21 anything to do with the upstairs room?

22 A: That's is correct, sir, I was -- my focus was downstairs.

23 Q: Okay. Anything further, once you collected the swab from
24 Mr. Ward, placed it into evidence, did you have anything
25 further to do with those swabs, transport them to SLED or any

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JUSTIN WILLIE STRICKLAND - REDIRECT BY GROOMS

1 other time?

2 A: No, sir. Once I place it into the evidence locker, I am
3 completely done with it.

4 Q: And the door, if I understand that door downstairs again
5 in the church, that was unlocked, that's how y'all actually
6 gained entry into the church?

7 A: Yes, sir. That's where the initial alarm -- set off the
8 alarm system.

9 Q: Thank you.

10 REDIRECT EXAMINATION OF JUSTIN WILLIE STRICKLAND BY MR.

11 GROOMS:

12 Q: Officer Strickland, how do you know what initially set off
13 the alarm system?

14 A: We got it from the alarm company whenever they give it to
15 us.

16 Q: But you don't know whether it was the door or the sensor
17 inside ---

18 A: They give you -- whenever they give you an alarm, each
19 alarm is set up on a location and they give you a generalized
20 location and that was the location they give us. They didn't
21 give it to us as the fellowship motion, they give it to us a
22 fellowship door entry, entry/exit.

23 Q: Thank you, sir.

24 THE COURT: All right. Anything further, Mr. Fox?

25 MR. FOX: No, Your Honor.

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SHELTON RODERICK MORGAN - DIRECT BY GROOMS.

1 THE COURT: All right. You may step down, Officer
2 Strickland; thank you.

3 MR. GROOMS: The State would call Officer Rick Morgan.

4 SHELTON RODERICK MORGAN, HAVING BEEN

5 SWORN, TESTIFIED AS FOLLOWS:

6 CLERK: State your full name and spell your last name,
7 please.

8 MR. MORGAN: Shelton Roderick Morgan, M-O-R-G-A-N. Rick
9 is a nickname.

10 DIRECT EXAMINATION OF SHELTON RODERICK MORGAN BY MR. GROOMS:

11 Q: Is it Officer?

12 A: Officer.

13 Q: Okay. Mr. -- Officer Morgan, where do you work?

14 A: Conway Police Department.

15 Q: Were you working there in 2010?

16 A: Yes, I was.

17 Q: And what is your position?

18 A: Property and evidence custodian.

19 Q: Okay. Please tell the jury what that means.

20 A: Any found property or, you know, sometimes pertains to the
21 Department's property, I'm responsible for; evidence that it
22 turned in from any case, I'm responsible for logging it into
23 the system, it's a reporting system; as well as any evidence
24 that needs to be tested. I insure that it's locked away
25 safely and then transported safely to SLED and turned over to

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1 them.

2 Q: Once it's submitted to SLED, are you the only person that
3 can do anything with it?

4 A: Once it's -- once it's submitted to me, I lock it up.

5 It's locked behind two locked doors and alarm system.

6 Q: All right. I'm gonna show you what we showed Officer Eden
7 earlier. I'm gonna ask you to only testify as to what you
8 know as a fact. How can you know that only one of those forms
9 went to you?

10 A: It has my initials and last name on there.

11 Q: Okay. Thank you. So, if it's not on this one ---

12 A: I never received it.

13 Q: Thank you. This case is a little different than usual,
14 you were involved in this case more than once?

15 A: That's right.

16 Q: Could you please tell us when you were first involved --
17 and if I could hand Mr. Morgan a copy of his notes?

18 THE COURT: If there's his notes and he needs to refresh
19 his memory by reference to those.

20 Q: I'll show you what's been marked as State's Exhibit Number
21 Six, can you identify these?

22 A: Yes, this is the -- my copy of the evidence sheet report,
23 lab report and the evidence itself in a SLED bag, where I
24 submitted to SLED.

25 Q: Okay. And how does that -- how does that work?

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SHELTON RODERICK MORGAN - DIRECT BY GROOMS

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- 1 A: If you look at the first line on 8/23 is when I logged the
2 evidence in. That means it was sitting in the refrigerator at
3 11:13 A.M. And then on 8/24 -- I can't read Nicki's writing
4 on -- Amy's writing on there.
- 5 Q: Just to what you signed is fine.
- 6 A: Yeah, it's -- I took it out of the refrigerator, logged it
7 into our system, put my name on there and then proceeded to do
8 a pre-log for SLED.
- 9 Q: And who did you receive it from?
- 10 A: According to this, it was received from Officer Eden.
- 11 Q: Okay. What did you do with it again?
- 12 A: I would take it out, I would log it into our system, I
13 would place a number on it which is in this case it would be
14 M0352 which is a evidence inventory number. What it is, DNA,
15 the year and the case number, the same as -- similar to what's
16 on this bag here.
- 17 Q: And when you say you take it SLED, who actually takes it?
- 18 A: I do.
- 19 Q: And who do you deliver it to?
- 20 A: I deliver it to the State Law Enforcement Division intake,
21 SLED's intake custodians.
- 22 Q: Do you recall which individual that was?
- 23 A: It was Amy Stephens.
- 24 Q: Do you have a working relationship with Ms. Stephens?
- 25 A: Yes, I do with all four of the ladies up there.

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SHELTON RODERICK MORGAN - DIRECT BY GROOMS

1 Q: Okay. Were these items later returned to Conway Police
2 Department?

3 A: Yes, they were.

4 Q: And what date was that?

5 A: They were returned from SLED on June 4th of 2012.

6 Q: Thank you. And was there another evidence chain involved
7 in this case?

8 A: Yes, there is. There is a Buccal swab that was turned in
9 on December 26th, 2012.

10 Q: And who was that turned in by?

11 A: Officer Strickland.

12 Q: What was the date again?

13 A: The date that I received it was December 26, 2012.

14 Q: What's the date that it was turned into evidence?

15 A: December 19th, 2012.

16 Q: Okay. And what -- where would it have been in the
17 meantime?

18 A: It would've been in a locker.

19 Q: And what did you do when you got this evidence?

20 A: I'm sorry?

21 Q: What did you do with this evidence?

22 A: The same as always, since it was a Buccal swab pertaining
23 to a case, once I log it into our system, I put it inside the
24 evidence room behind the double locks and the alarm and put it
25 in the SLED holding to go to SLED.

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SHELTON RODERICK MORGAN - DIRECT BY GROOMS

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- 1 Q: And then who took it to SLED?
- 2 A: I did.
- 3 Q: And who did you deliver it to?
- 4 A: This particular instance, it was delivered to Amy Stephens
- 5 again.
- 6 Q: Would the same number have been used or a separate number?
- 7 A: No, in this particular case, it was a separate number, a
- 8 separate -- the same case number but separate inventory number
- 9 because it's a separate item.
- 10 Q: Okay. Thank you..
- 11 A: Uh-huh (affirmative response).
- 12 Q: Okay. Once again, you can -- or can you identify what's
- 13 been marked as State's Exhibit Number Six?
- 14 A: The SLED evidence bag that ---
- 15 Q: Turned in from Officer Eden?
- 16 A: Right, because he has signed it here.
- 17 Q: Okay. And do you know what's in those packages when you
- 18 get them?
- 19 A: It's -- what's inside of them is what's labeled on the
- 20 outside of it. Since they are sealed and they have a
- 21 biohazard seal on them as well, I don't open them, I don't
- 22 break the seal, so I can only go by what's written on the
- 23 outside and it says swabs, you know, blood, which I assume is
- 24 a blood-like substance.
- 25 Q: Yes, sir.

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SHELTON RODERICK MORGAN - CROSS BY FOX

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1 A: And that's what I entered it into SLED as ---

2 Q: How many boxes are in there?

3 A: From what I can tell, two.

4 Q: Does that necessarily mean there was two swabs?

5 A: No.

6 Q: Okay. Does that end your involvement in this case?

7 A: Pretty much, then I take to SLED; that's it.

8 Q: And did you bring the evidence over with you today from
9 SLED?

10 A: Yes, I did.

11 Q: I mean, from Conway Police Department?

12 A: Conway Police Department, yes, sir.

13 Q: Okay. Thank you, sir. That's all I have.

14 CROSS EXAMINATION OF SHELTON RODERICK MORGAN BY MR. FOX:

15 Q: Mr. Morgan, as evidence custodian, would you be
16 responsible for all evidence collected from a crime scene?

17 A: Yes, sir.

18 Q: Okay. That would include any photos that might've been
19 taken at the crime scene?

20 A: Some -- if photos are turned in by an officer or by the
21 crime scene investigator, yes, sir; they usually turn it in on
22 a CD of something of that nature.

23 Q: To your knowledge, were any turned in on this case?

24 A: No, sir. The only thing that I have turned in to me is
25 what's on those property and evidence sheets.

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- 1 Q: The original blood swabs you got from Officer Eden were
2 logged in August of 2010; is that correct?
- 3 A: Whatever is on the sheet there, sir, yeah.
- 4 Q: 8/23. And they weren't returned to you until June of
5 2012?
- 6 A: That's correct.
- 7 Q: So, almost two years?
- 8 A: That's correct.
- 9 Q: Do you know where they were in-between? Not specifically
10 but do you know ---
- 11 A: I had them at SLED and what SLED did with them, if they
12 out-sourced it to a lab in Indiana, then I assume that's where
13 they went to.
- 14 Q: Okay. So, more than one place?
- 15 A: Possibly, yes.
- 16 Q: Okay. I don't really know. I mean ---
- 17 A: And then again, with the Buccal swab that was taken from
18 Mr. Ward in 2012, correct?
- 19 A: Yes, sir.
- 20 Q: Same procedure, SLED, Indiana. Do you have any further
21 involvement other than logging those items in -- do you
22 physically go and retrieve them from SLED; I know you took
23 them there initially.
- 24 A: Yes, sir.
- 25 Q: When you get word they're back, you go and physically

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SHELTON RODERICK MORGAN - REDIRECT BY GROOMS

1 retrieve them?

2 A: Not necessarily. Usually, I make a -- I go to SLED about
3 twice a month and so when I'm dropping off, I also pick up
4 anything that's ready to come back.

5 Q: But physically, you transport them back from SLED?

6 A: Yes, I do.

7 Q: Thank you. That's all the questions I have.

8 REDIRECT EXAMINATION OF SHELTON RODERICK MORGAN BY MR. GROOMS:

9 Q: Just briefly, Officer Morgan, was the package sealed when
10 you received it?

11 A: Yes.

12 Q: And when -- and you said you didn't manipulate it in any
13 way?

14 A: No, sir.

15 Q: You took it to SLED?

16 A: Yes, sir.

17 Q: Okay. Thank you, sir.

18 THE COURT: What package are you talking about?

19 MR. GROOMS: The actual DNA from the crime scene, the
20 swabs.

21 THE COURT: Okay.

22 MR. GROOMS: Thank you, sir.

23 THE COURT: Thank you.

24 MR. GROOMS: May we excuse Mr. Morgan?

25 MR. FOX: No objection.

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AMY ELIZABETH STEPHENS - DIRECT BY GROOMS

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1 THE COURT: No objection; you're excused from your
2 subpoena.

3 MR. GROOMS: And I didn't ask, does the same thing go for
4 the officers?

5 MR. FOX: Yeah, no objection.

6 THE COURT: No objection. They're excused and released
7 from their subpoenas.

8 MR. GROOMS: Your Honor, we're getting Ms. Stephens.

9 AMY ELIZABETH STEPHENS, HAVING BEEN
10 SWORN, TESTIFIED AS FOLLOWS:

11 CLERK: State your full name and spell your last name for
12 the Court.

13 MS. STEPHENS: Amy Elizabeth Stephens, S-T-E-P-H-E-N-S.

14 DIRECT EXAMINATION OF AMY ELIZABETH STEPHENS BY MR. GROOMS:

15 Q: Thank you, Ms. Stephens. Thank you for being here today.
16 Will you please tell the Court where you work and what your
17 job is?

18 A: I'm employed with the South Carolina Law Enforcement
19 Division, also known as SLED. I'm employed in the Evidence
20 Control Department as a forensic technician. Our daily
21 responsibilities are to log in and package and transfer
22 evidence for forensic analysis.

23 Q: Okay. Do you keep records of these items that come in and
24 what happens when they're in SLED?

25 A: We do.

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AMY ELIZABETH STEPHENS - DIRECT BY GROOMS

1 Q: Okay. If I was to give you records related to this case,
2 would that assist you in your testimony?

3 A: It would.

4 Q: Okay. If you -- Judge ---

5 THE COURT: You may.

6 Q: What is the document that I handed you called?

7 A: This is a chain of custody which is an electronic document
8 that tracks the movement of the evidence throughout the
9 laboratory.

10 Q: Okay. And sounds like you don't even need me here. Can
11 you tell the Court how you became involved in this case?

12 A: Yes. On August 25th of 2010, at 11:08 A.M., I received
13 two swabs from Rick Morgan of the Conway Police Department. I
14 packaged the evidence appropriately in our heat-sealed
15 packages and then I transfer the evidence to our DNA evidence
16 intake storage in our evidence room.

17 Q: Are there any other names listed on there?

18 A: Yes, there is.

19 Q: Can you identify those parties as -- can you identify
20 those parties?

21 A: Would you like me to read the full chain or custody?

22 Q: Yes, ma'am.

23 A: Okay. Do you want me to read dates also or just the
24 names?

25 Q: I think we need to just read everything on that business

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1 record.

2 A: Okay. On August 26th, 2010, at 9:43 A.M., Nicki Perry

3 Hughes received the evidence from DNA evidence intake storage

4 and transferred it to forensic technician Sherry Brown at 9:45

5 A.M. Sherry Brown transferred the evidence to the DNA

6 department, DNA storage drawer 8B on August 26th, 2010 at 3:18

7 P.M. On March 24th, 2011, at 9:03 A.M., forensic technician

8 Jennifer Stainbrook, received the evidence from the storage

9 drawer in the DNA department and transferred it to Patricia

10 Crooks, a forensic technician at 9:25 A.M.. Patricia Crooks

11 then transferred the evidence to a DNA intake shelf 21,

12 located in our evidence room on March 24th, 2011, at 9:46 A.M.

13 On November 9th, 2011, at 4:35 P.M., Patricia Crooks received

14 the evidence from the intake shelf and transferred it to

15 forensic technician Sherry Brown at 4:39 P.M. Sherry Brown

16 transferred the evidence to DNA out-source drawer 3 on

17 November 10th, 2011 at 9:57 A.M. Forensic scientist Nancy J.

18 Skraba who received the evidence from the out-source drawer on

19 December 8th, 2011 at 9:04 A.M. and transferred the evidence

20 to evidence sent for outside testing also on December 8th,

21 2011 at 9:08 A.M. On April 16th, 2012, at 11:16 A.M., Kenneth

22 Bogan received the evidence and transferred it to a DNA

23 return. Sherry Brown received the evidence from DNA return on

24 April 16th, 2012 at 3:09 P.M. and transferred the evidence to

25 Nicki Perry Hughes on April 17th, 2012 at 9:47 A.M. Nicki

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1 Perry Hughes transferred the evidence to shelf 9C in the
2 evidence room on April 17th, 2012 at 1:29 P.M. On June 4th
3 2012 at 1:32 P.M. Nicki Perry Hughes received the evidence
4 from 9C and transferred it to Rick Morgan of the Conway Police
5 Department.

6 Q: Thank you so much. Sorry, I had to ask you to do that.
7 Do you recognize all those names on that piece of paper?

8 A: Yes, I do.

9 Q: And they are ---

10 A: They are current or either previous employees of the South
11 Carolina Law Enforcement Division.

12 Q: And why do you keep a record like that?

13 A: So we can track the movement of the evidence throughout
14 the laboratory.

15 Q: And when the evidence first comes in, what do you do with
16 it?

17 A: I package it according to the type of evidence in this
18 particular case, the swab, I package it in a SLED heat-sealed
19 pouch, I sealed it and had the submitting officer, which is
20 Rick Morgan, initial and date the seal as well as sign and
21 date the front of the bag.

22 Q: I'll show you what's been marked as State's Exhibit Number
23 Six, can you identify this?

24 A: Yes. The lab number that is on this piece of evidence
25 corresponds with the chain of custody, the lab number is L10-

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AMY ELIZABETH STEPHENS. - DIRECT BY GROOMS

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1 09567 and this is container 8.
2 Q: And who did you receive that from?
3 A: Rick Morgan or Conway Police Department.
4 Q: And how many boxes do you see there or how many boxes did
5 you receive from Mr. Morgan.
6 A: According to my chain of custody and my log-in sheets, I
7 received two swabs.
8 Q: Two boxes or two swabs?
9 A: Well, we call them two items which according to my
10 paperwork was two swabs.
11 Q: So, do you know -- do you know whether -- if a box came to
12 you and it says swabs, do you know how many swabs are in
13 there?
14 A: I don't actually look at the physical evidence itself, I
15 go based on what's on the paperwork.
16 Q: Okay. So, you take it -- do you look at it to see that it
17 hasn't been tampered with?
18 A: We -- yes, we do.
19 Q: Okay. And how do you determine that?
20 A: If it looks to be broken or messed up in any ways, we will
21 not accept it.
22 Q: Would you check the seal on these packages?
23 A: Yes.
24 Q: And tell me about the seal -- the package that you put it
25 in. What's the point of that?

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AMY ELIZABETH STEPHENS - DIRECT BY GROOMS

1 A: I just make sure the integrity of the evidence is
2 maintained during it's time at SLED.

3 Q: And what is that, what is the package called?

4 A: A heat-sealed pouch.

5 Q: What does that mean?

6 A: It's a pouch that's heat-sealed.

7 Q: Okay. And how would you know if somebody tampered with
8 this package?

9 A: It would be cut open or torn open and you would be able to
10 tell by the tear of the plastic.

11 Q: Okay. Would you call that tamper-evident?

12 A: Yes.

13 Q: So, according to the internal chain, you received it, it
14 went through several different people and then was sent out
15 for out-sourcing, I assume that's for testing?

16 A: Yes.

17 Q: Okay. And did you also receive another chain in this case
18 at a later date?

19 A: Yes, I received a third item in this case.

20 Q: Okay. And once again, could you please tell the jury what
21 the internal record state?

22 A: Our first Item Number Three which was a Buccal swab
23 described as Maurice Ward. On January 22nd, 2013 at 3:46
24 P.M., I received the evidence from Rick Morgan of the Conway
25 Police Department. I transferred it to DNA intake shelf 80 in

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- 1 our evidence room at 3:55 P.M. On January 29th, 2013, Nicki
2 Perry Hughes retrieved the evidence and transferred it to
3 forensic scientist Ken Bogan at 12:10 P.M. Ken Bogan then
4 transferred the evidence to evidence sent for outside testing
5 on January 30th, 2013 at 11:35 P.M.
- 6 Q: Once again, how would this have been packaged?
- 7 A: We would've put it in a SLED heat-sealed pouch just as I
8 would have done with the previous swabs that I received.
- 9 Q: When we say we, who are we talking about, you?
- 10 A: Yes.
- 11 Q: And once again, that package was sealed in a heat-sealed
12 package?
- 13 A: I put it in a heat-sealed package.
- 14 Q: You put it in a heat-sealed package?
- 15 A: Yes.
- 16 Q: And it's tamper-evident?
- 17 A: Yes.
- 18 Q: And would you have put anything in there that appeared to
19 have been tampered with?
- 20 A: No.
- 21 Q: Anything in there with the seal broken?
- 22 A: No.
- 23 Q: And that item was sent out for testing?
- 24 A: Yes.
- 25 Q: Okay. Do you know how it was sent?

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AMY ELIZABETH STEPHENS - CROSS BY FOX

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1 A: No.

2 Q: Okay. Does that include your involvement in this case?

3 A: Yes.

4 Q: Okay. Those items were received by Rick Morgan?

5 A: I received them from Rick Morgan.

6 Q: Okay. Personally?

7 A: Yes.

8 Q: Okay. Thank you.

9 CROSS EXAMINATION OF AMY ELIZABETH STEPHENS BY MR. FOX:

10 Q: Ms. Stephens, your involvement is on the receiving end
11 when they first come into SLED; is that correct?

12 A: That's correct.

13 Q: And so, when they return, when these samples are returned
14 to Officer Morgan, that's not your part; is that correct?

15 A: We do -- our department returns them to the agency,
16 however I was not the one that physically returned them.

17 Q: So, on the -- I realize there are two timeframes we're
18 talking about. First, are two samples back in 2010 and then
19 most recently the Buccal swabs, so there were two sealed
20 pouches you received from Officer Morgan in August of 2010,
21 correct?

22 A: Yes.

23 Q: And one is described as a swab from the window sill, and
24 the other is described item 2, is described as swab from glass
25 on ground, correct?

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AMY ELIZABETH STEPHENS - CROSS BY FOX

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1 A: That's correct.

2 Q: And that description would've come from where?

3 A: From the paperwork that the submitting agency provides to
4 us.

5 Q: In this case, Conway Police Department.

6 A: That's correct.

7 Q: Okay. Now, you've read through the chain, you've read off
8 the names and dates and let me ask you about some particular
9 things I count Nikki Perry Hughes, Sherry Brown, Jennifer
10 Stainbrook, Patricia Crooks, Nancy Skraba and Kenneth Bogan at
11 SLED, all had contact with the -- and I'm talking about the
12 first item submitted. Six different people other than
13 yourself had contact or handled that sample of it yourself,
14 correct?

15 A: That's correct.

16 Q: Okay. And it came into -- you logged it in on August the
17 25th, 2010. It stayed in a storage drawer from August 26th
18 until March the 24th the following year, correct? So, from
19 August 2010 till March, approximately five months, no four,
20 five, six, seven months.

21 A: It transferred locations. It was in our DNA evidence
22 intake storage location and it transferred to the storage
23 drawer on August 26th, 2010.

24 Q: And it stayed there until March 24th of 2011.

25 A: According to my chain of custody, yes.

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1 Q: Right. And then from there, it went on the same day to
2 the DNA intake shelf, what is the DNA intake shelf?

3 A: It's an intake location in our evidence room.

4 Q: Is it literally a shelf?

5 A: Yes.

6 Q: Okay. Secure in any way?

7 A: Yes, it's secured by alarm, a key card and a key.

8 Q: Okay. And there it sits from March until November of
9 2011, not quite eight months, correct?

10 A: Correct.

11 Q: All right. Then it's on the move again. It goes from
12 there to the DNA outsource drawer, what would the DNA
13 outsource drawer be?

14 A: That's not my department, I'm a member of the evidence
15 control department, not the DNA department.

16 Q: Okay. So, you don't have any idea what the DNA outsource
17 drawer is?

18 A: From my knowledge of working in the laboratory, it is a
19 storage drawer.

20 Q: Okay. But you are familiar because you've testified with
21 this printout of this chain of custody, it went to the source
22 -- outsource drawer whatever and wherever that is ---

23 A: It's in the DNA department.

24 Q: On -- in the DNA department on November the 10th, 2011 and
25 there is sat for a month until forensic scientist Nancy Skraba

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AMY ELIZABETH STEPHENS - CROSS BY FOX

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- 1 appears; is that correct?
- 2 A: Correct.
- 3 Q: And then from there it says it's sent for outside testing
4 and from December 8th, 2011 until April the 16th, so four
5 months, 2012 for four months it's somewhere outside of SLED,
6 correct?
- 7 A: Correct.
- 8 Q: Okay. And at which point it returns on April the 16th.
9 So, from the time it came into SLED in Columbia, August the
10 25th, 2010, until it returns finally tested April the 16th,
11 2012?
- 12 A: Correct.
- 13 Q: Twenty months, correct?
- 14 A: (Indicates affirmatively.)
- 15 Q: Does SLED employ forensic scientists ---
- 16 A: Yes.
- 17 Q: --- whose job it is to test Buccal swabs and DNA blood and
18 fingerprints and all that sort of thing?
- 19 A: Yes.
- 20 Q: So, they had that capability?
- 21 A: They do.
- 22 Q: Okay. And they are the agency specifically funded and
23 designated to do that in the State of South Carolina?
- 24 A: Yes, they are.
- 25 Q: Thank you. No further questions.

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AMY ELIZABETH STEPHENS - REDIRECT BY GROOMS

1 REDIRECT EXAMINATION OF AMY ELIZABETH STEPHENS BY MR. GROOMS:

2 Q: Just briefly, about how many items of evidence did SLED
3 receive in a given year?

4 A: Multiple thousands of items. I've logged in in my career
5 at SLED over 60,000 cases.

6 Q: And isn't that why you put them in a heat-sealed package
7 with a label on it behind a key card, behind a key, behind a
8 -- I think that maybe that's it. Conway sealed it, you sealed
9 it in a heat-sealed bag, and it's behind lock and key the
10 whole time it's there?

11 A: Yes, it is.

12 Q: And if somebody was to sneak in and tamper with it, how
13 would that be evident?

14 A: We have video cameras in our evidence room and also you
15 would be able to tell on the bag by a tear or cut in the bag.

16 Q: Why would SLED outsource testing?

17 A: That's not my knowledge of expertise. I believe it's --
18 we were given a DNA grant due to backlog.

19 Q: Okay. Would it be safe to say you're overworked or
20 overloaded with items of evidence?

21 A: Yes.

22 Q: Okay. Thank you for being here.

23 THE COURT: Mr. Fox?

24 MR. FOX: I'm sorry. No further questions.

25 THE COURT: You may step down.

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BY THE COURT

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1 A: Thank you.

2 MR. GROOMS: Your Honor, can we have a very brief break
3 so I can talk to my next witness?

4 THE COURT: Yes. Mr. Ropp, give the jury some time in
5 their room.

6 (REPORTER'S NOTE: The jury exits courtroom. 4:16 P.M. The
7 following takes place outside the presence of the jury.)

8 MR. GROOMS: Your Honor, I anticipate only calling two
9 more witnesses today. One of them should be rather quick and
10 then Mr. McClure ---

11 BY THE COURT:

12 THE COURT: I'm just concerned about what I've heard so
13 far. I heard no testimony as to the date, time or procedure
14 employed in collecting the Buccal swab, none. I heard no one
15 testify as to the condition of the samples when they left
16 SLED, whether or not they -- what -- how they were packaged,
17 how they were marked or how they were -- the condition they
18 were in upon receipt back from Indiana.

19 MR. GROOMS: Your Honor ---

20 THE COURT: I've heard no testimony concerning -- there
21 was a third thing that I was concerned about -- I am just
22 concerned about what I've heard so far. I'm not hearing what
23 I need to hear to make a ruling. First of all, on this chain
24 of custody, I need to know something about the procedures. I
25 need to know what was done where and I'm not hearing it.

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BY THE COURT

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1 MR. GROOMS: Everything was done in Indiana and Ms.
2 Stephens testified ---

3 THE COURT: No, no, it wasn't all done in Indiana, it was
4 collected, it was sealed, it was transported in South
5 Carolina. I haven't heard anything about the condition it was
6 in when it left SLED, I haven't heard anybody even say while
7 it was at SLED, it was not tampered with. I haven't heard
8 those things and I need to hear them.

9 MR. GROOMS: Your Honor, I think Ms. Stephens just
10 testified to that.

11 THE COURT: I don't think so; I didn't hear it.

12 MR. GROOMS: She said she received it in a -- in a sealed
13 package from Conway.

14 THE COURT: She certainly did.

15 MR. GROOMS: And then when it went -- she puts it in a
16 heat-sealed package, Ms. Cindy Cale from Indiana will say she
17 removed it out of that heat-sealed package and had not been
18 tampered with.

19 THE COURT: Well, she hadn't identified her package. She
20 hadn't said what markings were on it or how she transported
21 it. I'm just real concerned. Maybe it'll all come together
22 for me but I'm just -- I'm telling you right now, I'm real
23 concerned about this DNA, the way it was handled. Three
24 packages instead of two; you know, how many were there? It
25 has to be refrigerated, it was put on a shelf, I've got some

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BY THE COURT

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1 problems with that that need to be answered and I hope they
2 get answered.

3 Okay. We're gonna take a break.

4 (RECESS - 4:19 P.M.)

5 *****OFF THE RECORD*****

6 (On the Record. 4:30 P.M.)

7 THE COURT: Please be seated.

8 All right. Let's bring in the jury. We're gonna do one
9 more witness. I've got a matter I'm gonna have to deal with,
10 apparently involving a juror on another case.

11 MR. GROOMS: Your Honor, I may have to call a witness out
12 of order.

13 THE COURT: That's all right.

14 (REPORTER'S NOTE: The jury returns to the courtroom. 4:31
15 P.M.)

16 THE COURT: All right. We have our jury back in the
17 courtroom. Call your next witness.

18 MR. GROOMS: Thank you, Judge. The State would call
19 David McClure.

20 DAVID LEE MCCLURE, HAVING BEEN SWORN,
21 TESTIFIED AS FOLLOWS:

22 CLERK: State your full name and spell your last name for
23 the Court.

24 MR. MCCLURE: David Lee McClure, M-C-C-L-U-R-E.

25 DIRECT EXAMINATION OF DAVID LEE MCCLURE, HAVING BEEN SWORN,

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DAVID LEE MCCLURE - DIRECT BY GROOMS

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1 TESTIFIED AS FOLLOWS:

2 Q: Mr. McClure, where do you work?

3 A: I work for Nephron Pharmaceuticals Corporation.

4 Q: Where did you work in 2010?

5 A: I worked for the South Carolina Law Enforcement Division.

6 Q: And you retired?

7 A: Yes, I did.

8 Q: What year did you retire?

9 A: December 31st, 2012.

10 Q: Okay. What was your position while you were at SLED?

11 A: I was Lieutenant over the DNA database department.

12 Q: And what was your general duties?

13 A: The DNA database department receives DNA samples from
14 certain individuals required by law to provide samples. We
15 run their DNA profiles and we put them into CODIS, what is
16 called, the Combined DNA Index System.

17 Q: Okay. Can you explain to the jury how CODIS works?

18 A: CODIS is a computer repository of DNA profiles. We enter
19 -- or the case work department will enter in evidence samples
20 from pieces of evidence that are collected at a crime scene,
21 biological evidence. They will develop a DNA profile and they
22 will enter those into CODIS. The DNA database department, as
23 stated earlier, we obtain samples from certain individuals
24 required by law to provide samples to SLED. We run those DNA
25 profiles and we enter those into the Combined DNA Index

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DAVID LEE MCCLURE - DIRECT BY GROOMS

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1 System. CODIS not only houses evidence samples and samples
2 from persons required by law but CODIS also houses samples
3 from persons who can't or refuse to identify themselves. We
4 also enter samples in from parents of missing persons,
5 biological parents in case that person is ever found and then
6 we can compare those back to the biological parents as well.

7 Q: What is a CODIS hit?

8 A: Anytime there is a piece of evidence that's entered into
9 CODIS, once a week, the computer program automatically
10 searches all evidence against everybody who is in the database
11 including other evidence. So, that if we get a match or a
12 CODIS hit, where a DNA profile from the piece of evidence
13 matches another piece of evidence, then we know those two
14 cases are linked together. Or, if a DNA profile from evidence
15 from a crime scene matches one of the individuals in the
16 database, we know that that DNA profile from that evidence
17 belongs to that individual.

18 Q: Okay. If I give you your notes, can you -- will that help
19 you as far as your involvement in this case?

20 A: Yes, sir.

21 Q: May I ask you what -- once you've had a chance to review,
22 what was your involvement in this case and what were the steps
23 taken?

24 A: Being a supervisor over the DNA database department, we
25 would've received a sample from Maurice Ward from the South

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1 Carolina Department of Corrections. John Ryan developed a DNA
2 profile from that sample and entered that profile into the DNA
3 database system, CODIS.

4 Q: Do you know John Ryan?

5 A: Yes, I do.

6 Q: And so he entered in a sample; when was that?

7 A: He actually developed that DNA profile and I'm the one who
8 entered that DNA profile into the computer. After you run
9 your DNA profile on the instrumentation, the instrument
10 generates a profile for us and a computer file that contains
11 that profile. We don't run one individual at a time, we run a
12 plate of individuals so they'll be several profiles that are
13 within that run. We review those profiles that come off of
14 the instrument but then the instrument provides us with a file
15 that we just directly import into the CODIS system.

16 Q: How did you get the information related to a hit on
17 Maurice Ward?

18 A: When a sample is taken from the agency of jurisdiction,
19 there is a DNA card that is submitted with that, with the
20 individual's name on it and their identifying information,
21 date of birth, social security number. They also roll their
22 left and right thumb print when they take that sample from the
23 individual.

24 Q: As far as this case goes, how did you compare or what did
25 you compare to that original CODIS information?

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DAVID LEE MCCLURE - DIRECT BY GROOMS

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1 A: When the evidence was put into the CODIS system, the hit
2 is generated when it hits an individual. We will then look at
3 the profile from that piece of evidence and physically look at
4 the profile from that individual just to make sure that it
5 does indeed match up.

6 Q: Okay. What I'm getting at is -- all right -- who put that
7 information into CODIS? You've explained that the original
8 CODIS entry was done by Mr. Ryan some time ago?

9 A: That's correct.

10 Q: How would we get to where are today with Maurice Ward?

11 A: Mr. Ward's original profile was put in or developed by
12 John Ryan and I actually uploaded it into the CODIS computer.
13 Then once that evidence sample has hit his profile, it
14 generates a report that comes back to me. I will then look at
15 the evidence profile and look at Mr. Ward's profile to see in
16 fact that they do match up. At that point in time, we
17 actually physically go to where his sample is stored and we'll
18 retrieve Mr. Ward's sample and I ran it a second time and
19 compared those results to the original results just to make
20 sure that there was nothing that was in error, there were no
21 administrative errors and that the profile indeed were the
22 same. We also send the original DNA card that comes with the
23 left and right thumb print to our latent print department and
24 they will pull his fingerprints that are on file at CJIS with
25 SLED and compare that thumb print on the DNA card to the thumb

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1 print that's on file at CJIS at SLED to make sure that the
2 person who provided us with that sample, that those
3 thumbprints do match and it is, in fact, the person who was on
4 that DNA card. At that point in time, we issue a report
5 indicating that this piece of evidence has matched Mr. Ward
6 and that you need to collect another sample for court purposes
7 and then the agency will go out and collect another additional
8 sample from that individual that will have a chain of custody
9 with it.

10 Q: Okay. Maybe you've already said it but I missed it but I
11 know we talked about the original sample and then you said you
12 got a hit and then you go back and you compare it; is that all
13 correct?

14 A: That's correct.

15 Q: And then you send information for -- to the county that
16 sent you the sample. What I'm missing is, Where did the
17 information come from that led to this hit?

18 A: That came from the CODIS computer.

19 Q: Okay.

20 A: The DNA sample from the evidence is entered into the CODIS
21 computer; the DNA sample from Mr. Ward was entered into the
22 CODIS computer. The CODIS automatically searches all evidence
23 once a week and compares it to any individual who is in that
24 data base and the DNA sample from the evidence came back as a
25 hit to Mr. Ward's DNA sample that was in the CODIS system.

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1 Q: When was that done?

2 A: The hit was returned to us on January 24th, 2012.

3 Q: Okay. Are you able to tell from your documents when the
4 information regarding the DNA profile was loaded into CODIS,
5 not the original, but the one that gave you your hit?

6 A: That would've been the original sample from Mr. Ward is
7 what provided the hit against the evidence.

8 Q: All right. Maybe I'm saying it wrong then. We've got the
9 old -- to me, the old sample, the original, and then you had a
10 hit based on information that you received when?

11 A: That was the information, the CODIS hit was January 24th.
12 Mr. Ward's sample was provided to us.

13 Q: Okay. When was that? That was the original, I got you.

14 A: That is the original sample.

15 Q: Okay. And then we just heard from Amy Stephens who said
16 that DNA was sent out. How do you we know it's the same
17 return?

18 A: I'm not sure I'm following your question.

19 Q: Mr. Stephens just testified that the -- that SLED sent the
20 DNA out and then there was a return. I'm not connecting the
21 dots here. There is the original and then you have a hit,
22 what do -- why did it take ten to twelve years for a hit?

23 THE COURT: What do you mean by original? I'm a little
24 confused.

25 Q: The original CODIS entry was back ---

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1 THE COURT: Are you talking about the CODIS information?

2 Q: --- in when, 2000 ---

3 A: The original sample from Mr. Ward was received February
4 19th, 2002.

5 Q: Okay. That obviously wasn't from this incident. What
6 connected the dots?

7 A: That was a sample from Ward provided to us by the
8 Department of Corrections.

9 Q: Yes, sir; I understand. What happened in the meantime for
10 us to get a sample or a hit in 2012?

11 A: The evidence would've been put into CODIS and after the
12 evidence was put into CODIS then it would've hit on the 2002
13 sample that Mr. Ward provided.

14 Q: Okay. And you don't know where that evidence came from?

15 A: No, I do not. That would've been the DNA case work
16 department who would've entered that evidence into the CODIS
17 system.

18 Q: Okay. So, you -- there's a hit and then you go back and
19 verify that this is in fact a match to the original?

20 A: We match it back to Mr. Ward's sample. Once there's a
21 hit, we go back to that 2002 sample that was a part of --
22 provided to us. We will rerun that same sample just to
23 confirm that what we put into CODIS was in fact correct and
24 then we ask for a third sample from that individual, from the
25 police department. So, after the hit and after we confirmed

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1 that hit, the police department would've gone out with a
2 search warrant and collected another sample from Mr. Ward and
3 provided it to SLED.

4 Q: Okay. Thank you. Sorry for asking the same question two
5 or three times. I'm just trying to figure it out. Thank you,
6 sir.

7 CROSS EXAMINATION OF DAVID LEE MCCLURE BY MR. FOX:

8 Q: I'll try not to ask the same question.

9 A: Okay.

10 Q: If I understand for persons in the system because they've
11 been in the Department of Corrections are otherwise required
12 to have a sample taken. So, in Mr. Ward's case, 2002, he's in
13 CODIS, right?

14 A: That would be correct.

15 Q: Okay. So, now we get to this point and he's charged with
16 another crime or at least there are samples submitted. Are
17 you aware in this case, that blood samples, DNA samples were
18 submitted to an outside lab outside of SLED? Were you aware
19 of that?

20 A: I don't have knowledge of that evidence coming into SLED;
21 no, sir.

22 Q: Are you aware that -- that SLED does that sometimes,
23 outsource their DNA testing?

24 A: Yes, they do. SLED's laboratory primarily focuses on
25 crimes against persons, sexual assaults, homicides, robberies,

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1 things such as that and I do know that the DNA casework
2 department does outsource some of their property crimes.

3 Q: So, now, if I can ask this artfully. In those situations,
4 for whatever reason that the sample has been outsourced, okay,
5 it goes to a lab. I'm guessing SLED employs more than one, it
6 goes to a lab, in this case Indiana, to do what? What's their
7 job? They get a sample and they are to do what?

8 Q: The outsource lab would receive a sample in a heat-sealed
9 pouch that would have been sealed at our evidence control
10 section and then signed by the submitting agency and dated.
11 When the outsource lab receives that sample, they will process
12 that DNA evidence that was from that crime scene and develop a
13 DNA profile. They will then send back all of their
14 information from where they tested that sample and an analyst
15 at SLED would review that information and then upload the DNA
16 profile from that evidence into CODIS.

17 Q: So, they're sending back -- that -- you answered my
18 question. What you get back -- the hope is that they'll be
19 able to develop a profile because sometimes for different
20 reasons, you're not able to develop a DNA profile in a given
21 situation, correct?

22 A: There are certain circumstances where you may not get a
23 DNA profile.

24 Q: Right. So, the goal is, from SLED's point of view to send
25 it somewhere who's got the time and they're gonna develop a

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- 1 profile that you can then compare; is that right?
- 2 A: That would be correct. They would develop a profile and
3 then it would come back to SLED, be reviewed and uploaded into
4 CODIS.
- 5 Q: But what they first send back to you is the raw data
6 rather than returning to -- I know the sample at some point
7 we've had testimony about that, the sample itself will come
8 back but what comes to you to match in CODIS or at least enter
9 in CODIS to see if there's a match and if the raw data that
10 they developed at that other lab, correct?
- 11 A: That's correct. The raw data would come back to the DNA
12 case work department. They would review that raw data. Along
13 with that would be the DNA profile and then that DNA profile
14 from the evidence would be entered into CODIS to be searched.
- 15 Q: But you're -- that coming up with a valid result on your
16 end is dependent on proper procedures, handling, testing, et
17 cetera, on the lab, correct, that does it?
- 18 A: That would be correct. The DNA labs that are chosen to
19 send evidence to are chosen because they are accredited
20 laboratories through ASCLD/LAB or another accrediting agency
21 and there's also a site visit that's done on that lab by
22 someone from the DNA casework department.
- 23 Q: When was the last site visit done at Strand Labs by SLED?
- 24 A: You would have to ask the DNA casework department.
- 25 Q: Thank you. No further questions.

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DAVID LEE MCCLURE - CROSS BY FOX

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1 MR. GROOMS: Nothing further.

2 THE COURT: You may step down.

3 All right. That is gonna conclude the last witness that
4 we will do today. I will ask you to be back in your jury room
5 at 9:30. Okay? Thank you. I again ask you not to discuss
6 this case with anyone.

7 (REPORTER'S NOTE: The jury exits courtroom and is released
8 for the day. 4:49 P.M.)

9 THE COURT: We're at ease until 9:30.

10 (RECESS - 4:50 P.M.)

11 *****OFF THE RECORD*****

12 September 17, 2013

13 (On the Record. 9:36 A.M.)

14 THE COURT: Are we ready?

15 MR. GROOMS: I think this is everyone.

16 THE COURT: We're getting the jury.

17 (REPORTER'S NOTE: The jury returns to the courtroom. 9:38
18 A.M.)

19 THE COURT: All right. We have our jury back.

20 Mr. Grooms.

21 MR. GROOMS: Thank you, Judge. Your Honor, we'd call
22 Charles Gasper to the stand.

23 CHARLES GUSTUS GASPER, HAVING BEEN

24 SWORN, TESTIFIED AS FOLLOWS:

25 CLERK: State your full name and spell your last name for

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CHARLES GUSTUS GASPER - DIRECT BY GROOMS

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1 the Court.

2 MR. GASPER: Charles Gustus Gasper, G-A-S-P-E-R.

3 DIRECT EXAMINATION OF CHARLES GUSTUS GASPER BY MR. GROOMS:

4 Q: Thank you, Mr. Gasper. Mr. Gasper, please tell the jury
5 where you work.

6 A: Federal Express.

7 Q: Okay. And how long have you been there?

8 A: Nineteen and a half years.

9 Q: What is your title or, I guess, job position?

10 A: Manager of Operations.

11 Q: Okay. And that's for what area?

12 A: Myrtle Beach.

13 Q: Okay. What are your general duties in that position?

14 A: I manage a work force of fifty drivers, CSAs, packages
15 accepted over the counter, packages accepted in customer
16 location, security of the packages throughout the day until
17 they are sent out at night to be delivered to their
18 destinations.

19 Q: Okay. How long have you been in that actual position?

20 A: Eighteen years.

21 Q: Okay. And although it's probably clear, what type of
22 company is FedEx?

23 A: It's an overnight shipping company.

24 Q: Okay. And these overnight shipments, does FedEx keep a
25 record of those shipments?

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CHARLES GUSTUS GASPER - DIRECT BY GROOMS

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1 A: We do.

2 Q: Okay. And how do you keep a record of ---

3 A: A tracking number. It's a twelve-digit number.

4 Q: Can you explain to the jury how that works?

5 A: Every package is assigned a number. It's twelve digits in
6 length for FedEx Express. And that is we start our scanning
7 process from the time we receive it and throughout its
8 movement until we deliver it.

9 Q: Okay. Do you have any personal involvement in this case?

10 A: No, I do not.

11 Q: And if I ask you who flew the -- a particular FedEx plane
12 in 2010, would you have any way of knowing?

13 A: No, I don't.

14 Q: Thank you. If I were to give you a copy of the business
15 records, excuse me, regarding this case, would it help you in
16 testifying?

17 A: It would.

18 MR. GROOMS: Your Honor, can I give Mr. Gasper a copy of
19 the ---

20 THE COURT: Any objection?

21 MR. FOX: No, Your Honor.

22 BY MR. GROOMS:

23 Q: Would you please review these? We'll call that package
24 one. Would you tell me does it appear that the records I've
25 sent you, are those FedEx records?

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- 1 A: Yes. It's a copy of the airbill and the information
2 regarding that airbill.
- 3 Q: I would imagine you've seen many of those over the years?
- 4 A: Yes.
- 5 Q: Okay. There's no question that is a FedEx shipping label?
- 6 A: That is correct.
- 7 Q: Okay. Can you tell me who sent this package?
- 8 A: Nancy Skraba.
- 9 Q: Can you tell me when it was shipped?
- 10 A: December 8th.
- 11 Q: Okay. And who was it shipped to?
- 12 A: Gay Bush.
- 13 Q: All right. Do you know any of these parties?
- 14 A: I do not.
- 15 Q: Okay. When was it received, can you tell?
- 16 A: Yes, December 8th at 3:26 in the afternoon.
- 17 Q: Okay. Was there any indicator in what condition it was
18 received in?
- 19 A: We inspect every package when we get it and if it's not in
20 good condition, we don't accept it.
- 21 Q: Okay. And when you say good condition, looking at the
22 outside of the package?
- 23 A: Correct.
- 24 Q: Okay.
- 25 A: Make sure there's no damage to it.

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CHARLES GUSTUS GASPER - DIRECT BY GROOMS

1 Q: What types of procedures are, I guess, steps are taken to
2 insure that the package is in a good condition? Just walk us
3 through.

4 A: If it was a box, we would make sure that there was no
5 obvious damage to the exterior of the box. If it's an
6 overnight letter, that it's properly sealed, if -- regardless
7 of what type of package it is, we would inspect it to make
8 sure there's no obvious damage to it.

9 Q: And do these packages go through anyone besides FedEx?

10 A: I'm sorry.

11 Q: Do they go through anyone besides FedEx?

12 A: No.

13 Q: Okay. I'm gonna give you a second set of records and
14 refer this as Package Two. Mr. Fox?

15 MR. FOX: Same, no objection.

16 Q: If you could review those for me. Do those also appear to
17 be shipping records from FedEx?

18 A: That's correct.

19 Q: And how can you tell? Is there a tracking number?

20 A: There is.

21 Q: Okay. Can you tell who sent this package?

22 A: Yes. This was sent by Ken Bogan.

23 Q: Before we go on, did I ask you the date this first package
24 was sent?

25 A: Yes, December 8th.

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- 1 Q: Okay. Did I ask you the date it was delivered?
- 2 A: December 9th.
- 3 Q: Okay. Thank you. I just want to make sure. What was the
- 4 date that the second package was sent?
- 5 A: Shipping date was January 30th ---
- 6 Q: Okay.
- 7 A: --- 2013.
- 8 Q: Okay. And what day was it delivered?
- 9 A: January 31st.
- 10 Q: And who was it delivered to?
- 11 A: S. Dugan signed for it.
- 12 Q: S. Dugan, do you know who he works for or who he might be?
- 13 A: It was shipped to Strand Analytical Laboratories, 5770
- 14 Decatur Boulevard in Indianapolis.
- 15 Q: Okay. Thank you, sir. And does it appear that this
- 16 package was shipped without incident?
- 17 A: Yes.
- 18 Q: Okay. And once again, do you have any personal
- 19 involvement in this case?
- 20 A: I do not.
- 21 Q: But you are able to verify that those are in fact FedEx
- 22 records?
- 23 A: That is correct.
- 24 Q: Thank you, sir. That's all I have.
- 25 THE COURT: Mr. Fox?

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1 MR. FOX: Thank you.

2 CROSS EXAMINATION OF CHARLES GUSTUS GASPER BY MR. FOX:

3 Q: Mr. Gasper, and I'll -- with regard to the first package,
4 which was the 2011 package, I think that was December 8th, the
5 year 2011, correct?

6 A: Yes, sir.

7 Q: Okay. Is there anything on that airbill that indicates
8 whether what was shipped was a envelope or a box or a package
9 or ---

10 A: It says it was a FedEx box.

11 Q: Okay. FedEx box, okay. So, that would just be cardboard
12 box?

13 A: Yes, sir.

14 Q: Okay. Anything in there that indicates any special
15 precautions or handling procedures that need to be taken with
16 that box or was that just standard ---

17 A: There was nothing indicated on it.

18 Q: Okay. So, that would've gone in the mix with letters and
19 packages and everything else?

20 A: Letters, diagnostic packs are handled separate from
21 cardboard boxes.

22 Q: Okay. Was that a cardboard box?

23 A: This says it's a cardboard box; yes, sir.

24 Q: Okay. Thank you. And then the second one -- then later
25 there as another one that the Solicitor asked you about.

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1 A: Uh-huh (affirmative response).

2 Q: And that was January of 2013, correct?

3 A: Yes, sir.

4 Q: Okay. And that was a separate package that also went from
5 South Carolina to Strand Labs in Indiana but that was a
6 distinct and separate ---

7 A: Yes, there are two separate ---

8 Q: Approximately a little over a year later?

9 A: One was December of '11 and the one was January of '13.

10 Q: January of '13. Thank you. No further questions.

11 THE COURT: You may step down.

12 MR. GROOMS: Your Honor, we would ask that Mr. Gasper be
13 excused from the subpoena.

14 THE COURT: Any objection from the Defense.

15 MR. FOX: No, Your Honor.

16 THE COURT: You may be excused and you are released from
17 your subpoena.

18 MR. GROOMS: Your Honor, the State has two witnesses that
19 are on their way from Columbia this morning. They're supposed
20 to be here by 10:00. Can we give them a few minutes?

21 THE COURT: All right. Mr. Ropp, take your jury back
22 into the jury room.

23 MR. GROOMS: Thank you, Your Honor.

24 (REPORTER'S NOTE: The jury exits courtroom. 9:47 A.M.)

25 THE COURT: All right. We'll be at ease. Please inform

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1 the Court when your witnesses arrive.

2 MR. GROOMS: Thank you, Your Honor.

3 (RECESS - 9:48 A.M.)

4 *****OFF THE RECORD*****

5 (On the Record. 9:18 A.M.)

6 THE COURT: Let's bring in the jury.

7 (REPORTER'S NOTE: The jury returns to the courtroom. 10:19
8 A.M.)

9 THE COURT: All right. Go ahead.

10 MR. GROOMS: Thank you, Judge.. The State would call Ken
11 Bogan to the stand.

12 KENNETH L. BOGAN, HAVING BEEN SWORN,
13 TESTIFIED AS FOLLOWS:

14 CLERK: Please state your full name and spell your last
15 name for the Court.

16 MR. BOGAN: My name is Kenneth L. Bogan. My last name is
17 spelled B-O-G-A-N.

18 DIRECT EXAMINATION OF KENNETH L. BOGAN BY MR. GROOMS:

19 Q: Thank you, Mr. Bogan. Can you tell the jury where you
20 work, please?

21 A: I'm employed with the South Carolina Law Enforcement
22 Division in Columbia.

23 Q: Thank you. And how long have you worked there?

24 A: Almost thirty years.

25 Q: What's your position?

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1 A: I am forensic scientist currently assigned to the DNA
2 analysis section.

3 Q: Thank you, sir. How long have you been in that position?

4 A: Well, I started out in forensic serology in 1984. The
5 DNA analysis laboratory started in 1990 and I actually went
6 through training in 1990 to 1992, and I've been in DNA
7 analysis ever since.

8 Q: All right. I'm sure there is a laundry list but what are
9 your general duties in that position?

10 A: Currently, I'm assigned as the outsourcing coordinator.
11 What that means is that I am responsible for gathering
12 evidence from law enforcement agencies throughout the State of
13 South Carolina, inventorying that evidence, and then
14 submitting it to what we call vendor laboratories and other
15 laboratories so that they can perform the DNA analysis. Along
16 with that duty, also, I'm active, still active in doing my own
17 cases.

18 Q: Do you keep a record when you send items out?

19 A: Yes, I do.

20 Q: If I give you a copy of those records, would that help you
21 refresh your memory for testimony?

22 A: It may, yes.

23 MR. GROOMS: Mr. Fox?

24 BY MR. GROOMS:

25 Q: Mr. Bogan, can you tell me which lab number this case is?

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1 A: The SLED laboratory number is L10-09567.

2 Q: Thank you, sir. Can you tell me what the purpose of the
3 lab number is?

4 A: It's so that we can track the case individually as long as
5 the evidence that goes along with the case so that the -- when
6 the evidence is submitted to the SLED laboratory, it's
7 assigned a case number and all the evidence is marked with
8 that case number as well as the case file.

9 Q: And when that evidence comes in, do you keep a record of
10 who takes it in and where it goes from there?

11 A: Yes.

12 Q: And what is that called?

13 A: It's called the chain of custody.

14 Q: And is that kept as a normal business record, what we
15 referred to earlier as an internal chain? Is that -- would
16 that be the same thing?

17 A: Yes, it is.

18 Q: Okay. Can you tell me who received the items by SLED?

19 A: There were two different submissions, I'll have to check
20 both of them. The first submission was submitted and received
21 by Amy Stephens.

22 Q: What would that -- does it indicate what that is?

23 A: The actual item description?

24 Q: Yes, sir.

25 A: Yes. It was a heat-sealed pouch containing a swab as

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1 described as a swab from a window sill.

2 Q: Did you have any involvement in that particular item of
3 evidence?

4 A: I have received it back after analysis, the analysis was
5 performed by Strand Analytical Laboratory.

6 Q: Okay. Do you know what date that was?

7 A: That it was returned it me? I took custody on that on
8 April 16th of 2012.

9 Q: Okay. What other items of evidence related to this lab
10 number were you involved in, if you could check the internal
11 chain.

12 A: Also, there was item number 2 this is described as a swab
13 from glass that's on the ground. And the same chain of
14 custody, I received that back from Strand Analytical
15 Laboratories on April 16th, 2012. There was a heat-sealed
16 pouch containing a Buccal swab from Maurice Ward that was
17 received by SLED, forensic technician Amy Stephens. It went
18 into our evidence log in, evidence custodian, was in the
19 evidence locker. I obtained custody from that or that item on
20 January 29th of 2013.

21 Q: Can you tell me what day Amy Stephens would've received
22 that item?

23 A: January 22nd, 2013.

24 Q: Do you know Ms. Stephens?

25 A: Yes, I do.

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1 Q: And what is her normal procedure when she receives an
2 item?

3 MR. FOX: Objection, Your Honor.

4 THE COURT: Sustained.

5 BY MR. GROOMS:

6 Q: Do you recognize the names on this chain as coworkers?

7 A: Yes.

8 Q: What did you do with the Buccal swab sample?

9 A: I packaged it and sent it by Federal Express to Strand
10 Analytical Laboratories.

11 Q: What date is that?

12 A: January 30th, 2013.

13 Q: Is there a way to determine if that was received by Strand
14 Analytical?

15 A: Yes.

16 Q: And how is that?

17 A: I received a evidence examination request, that was a
18 request from me, an internal chain of custody from Strand
19 Analytical Laboratories that's dated January 31st, that the
20 evidence was received.

21 Q: Does it tell you how it was received or just that it was
22 received?

23 A: Do you mean by what carrier or ---

24 Q: I'll just ask it differently. Would you have given
25 instructions with this sample to Strand Analytical?

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- 1 A: Yes.
- 2 Q: And what would those instructions have been?
- 3 A: To perform DNA analysis -- what I sent was the Buccal
- 4 swab.
- 5 Q: Yes, sir.
- 6 A: So, my request was to perform DNA analysis on the Buccal
- 7 swab and to compare it to samples that were submitted earlier.
- 8 Q: And those instructions were sent along with the packaging?
- 9 A: Yes.
- 10 Q: Okay. Whenever that sample came to you for packaging, how
- 11 was it packaged when you received it?
- 12 A: It was, like I said, in a heat-sealed pouch. A heat-
- 13 sealed pouch is like a plastic bag that's sealed on the edge
- 14 and it's labeled, well, with the case number and the sealing
- 15 official's initials.
- 16 Q: So, that package would've contained the same lab number,
- 17 correct?
- 18 A: Yes.
- 19 Q: Okay. Would you have opened the package?
- 20 A: No.
- 21 Q: And is that the standard procedure?
- 22 A: For most of the items that I deal with, I -- well, I'd
- 23 probably say about half of them, half of the packages I open.
- 24 On this particular package, I would not have opened it. It
- 25 would've been sent as said to contain the Buccal swab from

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1 Maurice Ward.

2 Q: How many items of evidence did you show?

3 A: On this particular shipment?

4 Q: Yes, sir. Well, related to this lab number.

5 A: I only sent one item. That was the Buccal swab from
6 Maurice Ward. There were three items total that had been sent
7 to Strand Analytical for analysis.

8 Q: Okay. And you may've said this, sorry if I'm being
9 repetitive. Were you able to receive confirmation of that
10 package?

11 A: Yes, I received a chain of custody, internal chain of
12 custody from Strand Analytical. I received a memo that
13 includes the case number. It says that it was received in
14 inventory on January 31st at 12:30 P.M. Evidence was properly
15 sealed. I also received a memo. This memo serves as a record
16 of the case as delivered by you to Strand Laboratories on the
17 above-date, received via FedEx tracking number -- and then
18 there's a long tracking number -- and signed for at 8:41 A.M.
19 on January 31st, 2013.

20 And who did you use as a courier to actually send the
21 package?

22 A: Federal Express.

23 Q: And is that who you use every time?

24 A: With this particular shipment, yes, and this particular
25 company, yes.

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1 Q: Did you whenever you received the package, did you inspect
2 it to make sure that it was a Buccal swab or that it had not
3 been tampered with?

4 A: I did not open the package. What I had was I had a
5 submission form -- I don't have that package slip with me --
6 submission form from -- let's see -- from Conway Police
7 Department that had their case number on it and an item
8 description. The item was described as a Buccal swab for
9 Maurice Ward and I did not open the package to inspect it.

10 Q: Okay. Can you tell me the date of that, please?

11 A: That date that it was submitted to SLED?

12 Q: Yeah, you said from Conway Police?

13 A: Yes. It was submitted to SLED by Rick Morgan of the
14 Conway Police Department on August -- excuse me -- on January
15 22nd of 2013.

16 Q: Okay. You said you didn't inspect the actual swab but
17 would you have noticed that the package had been tampered
18 with? Had you checked for the heat-sealed package?

19 A: Yes.

20 Q: And there was no tampering?

21 A: No.

22 Q: Okay. Thank you, Mr. Bogan.

23 THE COURT: Mr. Fox?

24 CROSS EXAMINATION OF KENNETH L. BOGAN BY MR. FOX:

25 Q: Mr. Bogan, how did you -- let's start with the samples

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- 1 that were sent out, the swabs from the window sill and the
2 glass on the ground that was sent out in 2011 as a pair. How
3 did they physically come back to you? How did Strand Labs
4 send them back to Ken Bogan at SLED?
- 5 A: They shipped them by Federal Express.
- 6 Q: Do you have that -- those receipts, that documentation?
- 7 A: I don't appear to have it with me here. I know it's
8 available. Stand by one second. I don't appear to have any
9 FedEx documentation with me. I have the SLED chain of custody
10 form with me that says that it was returned to SLED on April
11 16th, 2012.
- 12 Q: That's your internal, that's simply logs the fact that
13 it's back in-house at SLED, correct?
- 14 A: Yes.
- 15 Q: Okay. And it was sent out December 8th of 2011 and came
16 back four months later, is that right? December to April?
- 17 A: Yes, that's correct.
- 18 Q: Okay. So, during that time, it's either -- it out of your
19 hands, out of SLED's hands at that time and it's either in
20 possession of FedEx or Strand Labs, correct?
- 21 A: It was in the hands of FedEx for approximately one day,
22 twenty-four hours, and then in the hands of Strand Analytical.
- 23 Q: And Strand Analytical is located where?
- 24 A: In the Indianapolis, Indiana.
- 25 Q: So, obviously, you at SLED had no day-to-day control or

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1 observation over their internal practices?
2 A: Not directly.
3 Q: You were not ---
4 A: The -- their laboratory has been visited by some staff
5 from our lab to inspect the facilities and their evidence
6 handling procedures.
7 Q: Yes, sir. Now, I want to make clear, I'm -- I'm referring
8 again to this chain that SLED generated. Item one, reported
9 to be a swab -- describes a swab from the window sill,
10 correct?
11 A: Yes.
12 Q: And this is information you get from law enforcement
13 agency that submits it, correct?
14 A: Yes.
15 Q: Because, of course, they collected and you all didn't have
16 any part of collecting that evidence.
17 A: That is correct.
18 Q: And this case, you did not have a need to open and see
19 what was in there, so you had to take that description at face
20 value, I assume, as being what it purported to be.
21 A: Yes. When I received it back from Strand Analytical, I
22 did not open it.
23 Q: Okay. And then the second item in that, again I'm talking
24 about the 2011 submission to Strand, the second item, the swab
25 described as swab from glass on the ground.

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1 A: Yes, that's correct.

2 Q: And, again, reiterate, that's a description that came from
3 the Conway Police Department as the collector of evidence,
4 correct?

5 A: Yes.

6 Q: Okay. When was those initial -- when were those initial
7 swabs -- what was the date they were received at SLED?

8 A: August 25th of 2010.

9 Q: And they were not sent out, were they, until December of
10 the following year, 2011; is that correct?

11 A: That's correct.

12 Q: Okay. So, about twenty months -- I'm sorry, about sixteen
13 months?

14 A: Approximately, yes.

15 Q: Now, if the Buccal swab, I know on the chain, SLED chain,
16 it indicates that you sent it out for outside testing on the
17 30th of January, 2013, of this year. Did you receive that
18 back?

19 A: No, I have not received it back.

20 Q: Thank you. No further questions.

21 MR. GROOMS: Nothing further

22 THE COURT: You may step down. Thank you, Mr. Bogan.

23 MR. GROOMS: Your Honor, can we please excuse Mr. Bogan

24 ---

25 THE COURT: Mr. Fox, do you have any objection to

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1 releasing him from the subpoena.

2 MR. FOX: No, Your Honor.

3 THE COURT: You are released from your subpoena, Mr.
4 Bogan.

5 MR. GROOMS: Nancy Skraba would be the State's next
6 witness.

7 NANCY JEAN SKRABA, HAVING BEEN SWORN,
8 TESTIFIED AS FOLLOWS:

9 CLERK: State your full name and spell your last name for
10 the Court, please.

11 MS. SKRABA: Nancy Jean Skraba, S-K-R-A-B-A.

12 DIRECT EXAMINATION OF NANCY JEAN SKRABA BY MR. GROOMS:

13 Q: Thank you, Ms. Skraba. Can you tell the jury where you
14 work?

15 A: I'm retired. I worked as SLED for twenty-seven years and
16 retired December, 2010. I came back for an additional year
17 and a half and retired once again February of 2012.

18 Q: Thank you. While you were at SLED, what was your
19 position?

20 A: I was working in the out-sourcing lab.

21 Q: Okay. And what was your title?

22 A: I was a forensic DNA analysis, analyst.

23 Q: And what were your general duties in that position?

24 A: I received evidence from various law enforcement agencies.
25 I evaluated that evidence and decided which samples to send to

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1 an outside laboratory for DNA testing.

2 Q: Ms. Skraba, this case is from 2010. If I gave you notes,
3 would it help in refreshing your memory as to your
4 involvement?

5 A: Yes.

6 THE COURT: Now, are these her notes or your notes?

7 MR. GROOMS: These are the internal chain.

8 THE COURT: Okay. All right.

9 MR. FOX: Yes, sir. I've seen them, Your Honor.

10 MR. GROOMS: Definitely not my notes. Thank you.

11 BY MR. GROOMS:

12 Q: Ms. Skraba, can you tell me what lab number is associated
13 with this case?

14 A: The SLED lab number is L10-09567.

15 Q: All right. Can you tell me when these items of evidence
16 were received through SLED?

17 A: 8/25/2010.

18 Q: And what were those items?

19 A: Swabs from a window, Item One; swab from glass, Item Two.

20 Q: All right. And can you tell what was your involvement
21 with these items?

22 A: I received these items on December 8th, 2011. I evaluated
23 the items. In other words, I actually looked at what was sent
24 in to determine which samples I wanted analyzed by the outside
25 laboratory.

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- 1 Q: And when you received them, were they in a heat-sealed
2 package?
- 3 A: Yes, they were.
- 4 Q: And who would've put them in a heat-sealed package?
- 5 A: Amy Stephens.
- 6 Q: Would anyone else in that chain open this item in a normal
7 course of business?
- 8 A: No.
- 9 Q: And why is that?
- 10 A: They didn't have any reason to.
- 11 Q: Okay. Would you have opened the package?
- 12 A: Yes. I open the packages just to evaluate the evidence.
13 I need to know if there is a stain there to begin with because
14 we were sending these samples to an outside laboratory. So, I
15 looked at the samples to see if there was enough for DNA
16 analysis.
- 17 Q: Why wouldn't you have just sent it? Is there an
18 economical reason, is there ---
- 19 A: Yes. Because the outside laboratory charged for each
20 sample and in this case there were two samples that were sent
21 from the investigator and I determined that one sample, the
22 swabs from the window was the best sample for DNA analysis.
23 And that's the sample that I requested Strand Laboratories to
24 analyze.
- 25 Q: So, you're saying there was two samples total ---

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- 1 A: Yes.
- 2 Q: Meaning two boxes?
- 3 A: Yes.
- 4 Q: And were there multiple swabs in the box?
- 5 A: Swabs from the window, multiple samples; one swab from the
- 6 glass.
- 7 Q: Thank you. So, when you got it, it was in a heat-sealed
- 8 package, you opened it, it was in a box. That means you
- 9 would've had to have broken the seal?
- 10 A: I did.
- 11 Q: Okay. And when you broke the seal, inside was a DNA
- 12 sample?
- 13 A: Correct, a swab.
- 14 Q: What appeared to be a DNA sample.
- 15 A: Correct.
- 16 Q: And then how was it repackaged?
- 17 A: I repackaged it into a small coin envelope and that coin
- 18 envelope went into a larger-sized manila envelope.
- 19 Q: What's a coin envelope?
- 20 A: It's just a small little envelope that I sealed.
- 21 Q: Okay. So, does it go back into a heat-sealed package?
- 22 A: It wasn't a heat sealed package, it was a paper envelope,
- 23 a larger size paper envelope, a little smaller than this size.
- 24 Q: But you take the DNA sample ---
- 25 A: Correct.

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- 1 Q: --- out of the box?
- 2 A: Yes.
- 3 Q: And then you drop it in an envelope?
- 4 A: I repackage it; that's correct.
- 5 Q: There's nothing to protect it other than manila envelope?
- 6 A: That's correct. It was sealed.
- 7 Q: The envelope was sealed?
- 8 A: Yes; uh-huh (affirmative response).
- 9 Q: Okay. How was the envelope sealed?
- 10 A: Evidence tape.
- 11 Q: And just so we're all following along, it's in an envelope
- 12 and it's sealed on the top half?
- 13 A: On the opening; that's correct.
- 14 Q: Okay. When did all this happen?
- 15 A: December 8th, 2011.
- 16 Q: Did you add an additional lab number?
- 17 A: Other than the SLED lab number, no.
- 18 Q: Okay. Would that have been on the seal?
- 19 A: Yes.
- 20 Q: Okay.
- 21 A: It would've been on the envelope.
- 22 Q: Was anything else in this envelope?
- 23 A: No.
- 24 Q: All right. I'm going to show you what's been identified
- 25 and this is for identification purposes as State's Exhibit

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1 Six. Can you identify this by its markings?

2 A: This is the envelope that I received.

3 Q: Okay.

4 A: For this case.

5 Q: And how can you be sure that the swabs inside are what you
6 received?

7 A: Well, this isn't the -- this isn't the same envelope that
8 was returned.

9 Q: Okay. Give me just a second. Your Honor, would it be
10 appropriate to open the package so she can examine it?

11 THE COURT: Certainly she can examine the contents of
12 that package. If you're asking her to identify it, I don't
13 know how she can do otherwise.

14 Q: If you don't mind, would you open the inside -- open it so
15 you can see the actual swabs?

16 A: I would need scissors or a knife.

17 THE COURT: Is it resealed now?

18 A: It is.

19 THE COURT: Did you reseat it after you removed the
20 swabs?

21 A: Yes, I did.

22 THE COURT: So, that's your seal?

23 A: That's correct.

24 THE COURT: Does it appear to have been tampered with
25 since you sealed it?

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1 A: No.

2 THE COURT: All right, very well. I'll allow her to open
3 it then.

4 Q: If you're testifying that that's your sealed package and
5 your lab number, then I think I'm good. That's what I was
6 trying to establish.

7 A: Okay.

8 Q: Whenever you sent the package, did you get any type of
9 receipt from Strand to know that it was received?

10 A: Yes, I did.

11 Q: Okay. Is that a normal business document?

12 A: Yes. It's a letter -- a memo sent by Karen Brinegar from
13 Strand.

14 Q: And when was that sent to you?

15 A: She received the items on 12/09/11.

16 Q: Okay. And when did you receive that receipt, the letter
17 saying they received it.

18 A: This receipt? Just a few days after that ---

19 Q: A few days or ---

20 A: 12/9.

21 Q: 12/9, the day after.

22 A: 12/9 was the day she received it. The day she sent me
23 this memo, I'm not sure.

24 Q: Okay. But you sent it on 12/8 and she received it on
25 12/9.

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1 A: Yes, on 12/9, that's correct.

2 Q: Were these items later returned to SLED?

3 A: Excuse me?

4 Q: Were these items later returned to SLED?

5 A: Yes.

6 Q: When did you retire?

7 A: I retired in February of 2012.

8 Q: Okay.

9 A: Yes, these items were returned April 11th, 2012 ---

10 Q: After you retired.

11 A: --- after I retired.

12 Q: Okay. Thank you, Ms. Skraba; that's all I have for you.

13 THE COURT: Mr. Fox?

14 CROSS EXAMINATION OF NANCY JEAN SKRABA BY MR. FOX:

15 Q: So, it's a money issue as to at least in part as to which
16 and how many samples get sent out, you've got to pay people to
17 do this for SLED, SLED's gotta pay people, of course, to do
18 this for them, correct?

19 A: That's correct. We had a federal grant that we used for
20 this program.

21 Q: Not the regular appropriations the State of South Carolina
22 makes for SLED and forensic services?

23 A: That's correct.

24 Q: Would it surprise you to know the budget for SLED in 2010-
25 11 was upwards to Eighty Million Dollars?

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- 1 A: No.
- 2 Q: Okay. And the budget specifically for forensic services
3 was in excess of Eight Million Dollars?
- 4 A: No.
- 5 Q: But still the federal grant to send it -- and you
6 certainly had the capability to do exactly what Strand Labs
7 did, correct?
- 8 A: We have the capability; we don't have enough people to do
9 all the cases that we receive.
- 10 Q: Now, you said, if I understood you, that receipt of the
11 samples, there were two and you chose, quote, the best sample?
- 12 A: That's correct.
- 13 Q: In other words, you're gonna have to spend -- two is gonna
14 cost more than one?
- 15 A: Yes.
- 16 Q: Does that mean that you could not have tested the other
17 sample?
- 18 A: In this particular case, I don't know because I don't have
19 my Excel sheet. Normally, what I do when I evaluate this
20 evidence, I look to see which sample is the best and I make
21 notes on my Excel sheet but I don't have access to that. So,
22 I don't know if there was enough sample on the swab from the
23 glass to test.
- 24 Q: But there might've been, you don't know.
- 25 A: There might've been; I don't know.

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1 Q: Now, if you got two samples, isn't it reasonable to assume
2 they might be from different sources ---

3 A: It's possible.

4 Q: Might that not have some bearing on the case?

5 A: It's possible.

6 Q: You've answered -- thank you; that's all the questions I
7 have.

8 A: Uh-huh (affirmative response).

9 MR. GROOMS: Thank you, Ms. Skraba.

10 THE COURT: You may step down.

11 MR. GROOMS: May she please be excused?

12 THE COURT: Any objections?

13 MR. FOX: No, Your Honor.

14 THE COURT: You are excused and released from your
15 subpoena.

16 MR. GROOMS: Your Honor, the State would call Cynthia
17 Cale.

18 MR. FOX: Your Honor, I have a matter of law to take up
19 before this witness testifies.

20 THE COURT: Very well. Take the jury to their jury room.
21 The witness may have a seat back there.

22 (REPORTER'S NOTE: The jury exits courtroom. 10:52 A.M. The
23 following takes place outside the presence of the jury.)

24 THE COURT: Okay.

25 MR. FOX: Your Honor, this is the -- Ms. Cale is the

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1 forensic scientist who actually did the testing at Strand
2 Laboratories. The report, I have a copy of that, at the
3 bottom of the report, it indicates, it goes into
4 probabilities, statistics, the probability of having a
5 unrelated person picked at randomly and it's got, you know,
6 the number one in eleven-quadrillion and then it states that
7 is a -- frequencies published by the FBI are used for the
8 statistical calculation. I would object to any testimony
9 regarding that probability, number one, because the risk of
10 confusing the jury that somehow a statistical indication of a
11 -- the probability that he is innocent as opposed to being
12 guilty and one in eleven-quadrillion, that's certainly not
13 what it is. And number two, unless they can validate those
14 figures from the FBI -- in other words, that this is a
15 statistically valid calculation some ---

16 THE COURT: But wouldn't it be ---

17 MR. FOX: Statistics is a science, Your Honor, it's not
18 just high school.

19 THE COURT: Wouldn't the data be relied upon normally in
20 the preparation of these reports and the calculation of
21 probability?

22 MR. FOX: It may be but that wouldn't justify it in and
23 of itself, the FBI may well be wrong.

24 THE COURT: I understand.

25 MR. GROOMS: Your Honor, our witness has been an expert,

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1 qualified over a hundred times in multiple states. I think
2 she can explain and Mr. Fox can certainly cross her as to what
3 that number means. It means a number chosen at random, not
4 that it's one in eleven-quadrillion, she can explain that if
5 he wants to cross her on it.

6 THE COURT: Well, I'm gonna require you to lay some basis
7 for it before she testifies to that.

8 MR. GROOMS: Certainly.

9 THE COURT: Okay?

10 MR. FOX: Yes, sir.

11 THE COURT: All right.

12 When they're ready to come back in; they may've wanted to
13 use the restroom and all but whenever they're ready, bring
14 them back in.

15 (REPORTER'S NOTE: The jury returns to the courtroom. 10:57
16 A.M.)

17 THE COURT: All right, Mr. Grooms.

18 MR. GROOMS: Thank you, Judge. Your Honor, the State
19 would call Cynthia Cale as the next witness.

20 CYNTHIA CALE, HAVING BEEN SWORN,
21 TESTIFIED AS FOLLOWS:

22 CLERK: State your full name and spell your last name for
23 the Court.

24 MS. CALE: My name is Cynthia Cale. My last name is
25 spelled C-A-L-E.

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CYNTHIA CALE - DIRECT BY GROOMS

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1 DIRECT EXAMINATION OF CYNTHIA CALE BY MR. GROOMS:

2 Q: Thank you, Ms. Cale. Would you please tell the jury where
3 you work?

4 A: I work for Strand Analytical Laboratories in Indianapolis,
5 Indiana.

6 Q: Thank you. And how long have you worked there?

7 A: Over five years.

8 Q: Okay. And where did you work before that?

9 A: Prior to coming to Strand, I worked for the Illinois State
10 Police at their Rockford crime lab.

11 Q: All right. What is your position at Strand Analytical?

12 A: I am the lead forensic serologist and DNA analyst.

13 Q: So, what is Strand Analytical?

14 A: It is a private DNA testing laboratory. We actually have
15 two departments. The forensic department where we mainly test
16 forensic evidence and then we have the medical testing
17 department which confirms that a biopsy sample came from a
18 certain patient.

19 Q: Okay. What type of education or training is required for
20 someone to hold your position?

21 A: Well, for a forensic DNA analyst, we have to have a degree
22 in natural science, minor in biology, we also have to have
23 course work in molecular biology, genetics and biochemistry.

24 Q: Okay. And how often do you have to update or continue
25 that training?

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CYNTHIA CALE - DIRECT BY GROOMS

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1 A: I have to -- I'm required to have, at Strand, twelve hours
2 of continuing education every year.

3 Q: So, five years that's sixty hours, while you were at
4 Strand.

5 A: That's while I was at Strand.

6 Q: Okay.

7 A: I know it was eight hours when I was at Illinois and that
8 was for seven years.

9 Q: And what's the purpose of that?

10 A: Just to keep up on the current methodologies in the field
11 and the new emerging technologies.

12 Q: Okay. So, total how long have you been in this field?

13 A: Almost thirteen years.

14 Q: Thirteen years. Have you ever testified in court before?

15 A: Yes.

16 Q: Thank you. How many states have you testified in?

17 A: Illinois, Indiana, Texas, California and now here.

18 Q: And that testimony is regarding lab testing ---

19 A: Correct.

20 Q: --- that you've done?

21 A: Yes.

22 Q: How many times have you been admitted as an expert witness
23 in other states?

24 A: Between seventy-five and a hundred.

25 Q: Thank you. Can you tell us when did your department,

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CYNTHIA CALE - DIRECT BY GROOMS

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1 Strand Analytical, receive information related to this case?

2 A: The initial submission came in December of 2011 --

3 December of 2011.

4 Q: Ms. Cale, I apologize. I'm gonna take my questions out of
5 order. How is a sample tested when it comes to you or when it
6 comes to your lab? Can you please explain to the jury what
7 the process is for testing?

8 A: Just like my part or ---

9 Q: Just in general, how is the testing done? What type of --
10 is it done by machine, it is done by chemicals? What type of
11 test is done?

12 A: I actually do all -- it's all manual processing by the
13 analyst.

14 Q: Okay. So, a case comes to an analyst and they do the
15 tests on a particular case, what type of tests are used?

16 A: There's actually four basic steps in the DNA analysis
17 process. There's extraction, quantization, amplification and
18 then the analysis of the DNA profile.

19 THE COURT: Just a moment.

20 (REPORTER'S NOTE: A bench conference was held off the record
21 in the presence of the jury but out of hearing of the jury.)

22 BY MR. GROOMS:

23 Q: Your Honor, based on Ms. Cale's lengthy testimony and
24 tests run, we would like to offer her as a witness -- expert
25 witness in this case.

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CYNTHIA CALE - DIRECT BY GROOMS

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1 THE COURT: In what field?

2 MR. GROOMS: In DNA testing.

3 THE COURT: DNA analysis?

4 MR. GROOMS: Yes, sir, Your Honor.

5 THE COURT: All right. Mr. Fox?

6 MR. FOX: I have no questions, Your Honor.

7 THE COURT: All right. Do you have any objections?

8 MR. FOX: No.

9 THE COURT: Okay. She's so admitted.

10 MR. GROOMS: Thank you.

11 BY MR. GROOMS:

12 Q: Ms. Cale, when did your office receive this evidence?

13 A: December 9th, 2011.

14 Q: Who actually received the evidence in this case?

15 A: It was signed for by H. Denning.

16 Q: And what would H. Denning have done? Do you know H.
17 Denning?

18 A: Yeah, I believe her name was Heather Denning, she's no
19 longer employed by Strand but she was a biopsy assessor.

20 Q: Okay. Do you have notes as to that receipt?

21 A: Yes. I have the memo generated by Karen Brinegar.

22 Q: Okay. And who is Ms. Brinegar?

23 A: She is our forensic assessor.

24 Q: Can you explain how the evidence would've gotten from each
25 of those people to you?

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CYNTHIA CALE - DIRECT BY GROOMS

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- 1 A: Yes. We receive -- typically receive packages via FedEx
2 or Federal Express. Whoever is signing in those packages for
3 that day signs for the packages and then they identify whether
4 or not they need to go to the medical testing department or
5 the forensic department. As soon as a package is identified
6 for the forensic department, it's given to our forensic
7 assessor, Karen Brinegar who takes it into our vaults and
8 inventories the contents of that box and assigns a unique
9 Strand Lab number to each of those cases.
- 10 Q: Okay. Would she -- would Ms. Brinegar have looked at the
11 packet to see if they had been tampered with?
- 12 A: Yes.
- 13 Q: And are those notes of that in your records?
- 14 A: Yes.
- 15 Q: What was her notation?
- 16 A: That they were -- they were properly sealed.
- 17 Q: Thank you. So, when did this package actually come to you?
- 18 A: I took custody on January 3rd of 2012.
- 19 Q: January 3rd, 2012. So, where would it have been in-
20 between receipt and yourself?
- 21 A: It's in our secure vault and it's also in a locked cage
22 that -- and then I get custody of the evidence from Karen and
23 it goes back and forth between the two of us.
- 24 Q: Okay. What was the lab number associated with this case?
- 25 A: 11F0490.

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BY THE COURT

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1 Q: Okay. Let me show you what's been marked as State's
2 Exhibit Number Six. Can you identify whether or not this is
3 the sample you're referring to, the evidence that you're
4 referring to?

5 A: I don't believe so. I don't see any of my markings on
6 this item.

7 Q: Can you look at the back? Yes. My markings are on this
8 item. I'm gonna open this for you. Can I get those scissors
9 back?

10 THE COURT: One moment. Send the jury out.

11 (REPORTER'S NOTE: The jury exits courtroom. 11:05 A.M. The
12 following takes place outside the presence of the jury.)

13 BY THE COURT:

14 THE COURT: First of all, is that package been introduced
15 into evidence?

16 MR. GROOMS: No, sir.

17 THE COURT: Okay. It's a sealed package. There's been
18 no testimony that that package was ever sent to Strand. A
19 manila envelope with two coin pouches having samples were sent
20 to Strand. This package was never sent and I don't think the
21 manila envelopes are in there, are they? This was sealed by
22 Ms. Skraba before -- I mean, when she took the samples out and
23 sent it. I just -- you know, if you insist on opening it, we
24 can do so but that's already been introduced into evidence,
25 it's sealed, it's been identified as the -- what it is. If

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BY THE COURT

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1 you want to open it, we can but I don't think you're gonna
2 find your manila envelopes in there.

3 MS. ELDER: Your Honor, can we have just a few minutes?

4 THE COURT: Certainly. I'm not -- I may be
5 misunderstanding the testimony but I understood that ---

6 MS. ELDER: I understand what you're ---

7 THE COURT: That was not what was necessarily sent back
8 from Strand and I may be wrong and if there's no need to open
9 it, I'd rather not. But if you do need to open it, we'll
10 certainly do that.

11 Mr. Grooms, your witness is in the back of the courtroom
12 that actually sealed it. I think Ms. -- is she still back
13 there?

14 Ms. Skraba, we've just heard that there are biological
15 samples in there somewhere or perhaps. Can you enlighten us,
16 was that sealed when you took out the other samples to be sent
17 and you left the other in or was that sealed up after you got
18 back? I'm a little confused as to what -- I don't recall what
19 you told the Court. I'd just prefer, if it's got biological
20 samples, keep it sealed; if we need to open it, we certainly
21 can.

22 MS. SKRABA: They should be in there.

23 THE COURT: Okay.

24 MS. SKRABA: You just can't see them.

25 THE COURT: That would've been sealed after it was

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BY THE COURT

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1 returned from Strand?

2 MS. SKRABA: After it was returned from Strand.

3 THE COURT: Okay. Then let's go ahead and open it and

4 ---

5 MS. SKRABA: Yes, and I sealed ---

6 THE COURT: All right. There are the scissors right over
7 there, Mr. ---

8 (REPORTER'S NOTE: Mr. Grooms opens sealed package.)

9 MR. GROOMS: Can I approach the witness, Your Honor?

10 THE COURT: Well, the jury is not here.

11 MR. GROOMS: Okay. Fair enough.

12 THE COURT: Let me bring the jury back if you think
13 you've found what you were looking for.

14 MS. ELDER: Just one moment, Your Honor.

15 THE COURT: Okay.

16 MS. ELDER: I think we're ready, Your Honor.

17 THE COURT: All right. Bring the jury back in.

18 MS. ELDER: Do you want us to mark this internal
19 separately, Your Honor?

20 THE COURT: I'll let you do anything you want as long as
21 it's very clear on the record what has been done. That was
22 Exhibit ---

23 MS. ELDER: Six.

24 THE COURT: Six.

25 MR. GROOMS: Can you please mark this as -- remark this

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1 as Six-A and Six-B.

2 STATE'S EXHIBIT NUMBER SIX-A AND SIX-B

3 MARKED FOR IDENTIFICATION

4 (REPORTER'S NOTE: The jury returns to the courtroom. 11:13
5 A.M.)

6 THE COURT: All right. Mr. Grooms as I understand it,
7 you've removed an article from previously admitted Exhibit Six
8 ---

9 MR. GROOMS: Previously identified, yes, sir.

10 THE COURT: Well, that's what I ask a moment ago if it
11 had been introduced. It has not been introduced?

12 MR. GROOMS: For ID purposes.

13 MR. FOX: No, Your Honor.

14 THE COURT: All right. Well, there's a difference
15 between and ID and introduced. So, go ahead now.

16 MR. GROOMS: Thank you, Your Honor.

17 BY MR. GROOMS:

18 Q: Ms. Cale, let me show you what's been marked as State's
19 Evidence Six-B.

20 THE COURT: Any objection, Mr. Fox, Six-B? Well, let's
21 let her identify it and then I'll ask you if you have any
22 objections.

23 BY MR. GROOMS:

24 Q: Can you identify this?

25 A: Yes. This is the packaging that we received from Strand

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BY THE COURT

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1 or from SLED, sorry.

2 THE COURT: All right. Now, Mr. Fox, do you have any ---

3 MR. FOX: Is he seeking to introduce it into evidence?

4 THE COURT: Are you seeking to introduce it now?

5 MR. GROOMS: Yes, Your Honor.

6 THE COURT: Okay.

7 MR. FOX: We have an objection and a matter of law to
8 take up outside the jury's presence, Your Honor.

9 THE COURT: Okay. Let's take the jury out again.

10 (REPORTER'S NOTE: The jury exits courtroom. 11:14 A.M. The
11 following takes place outside the presence of the jury.)

12 THE COURT: Yes, sir.

13 MR. FOX: Your Honor, I would object to introduction.
14 These are the two swabs that were collected at the church.
15 One being identified as a swab from the window sill and the
16 other officer testified -- Officer Eden testified very --
17 specifically he took three samples ---

18 THE COURT: Three samples.

19 MR. FOX: And put them in three boxes, not just three
20 samples but three boxes. He was very clear about that.

21 THE COURT: Well, I think he may have qualified a little
22 bit by saying he might have put two in one but he wouldn't
23 normally do that because that would cause cross contamination.

24 MR. FOX: That's exactly right. And that was only in
25 prompting after the -- from the Solicitor. But his direct

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BY THE COURT

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1 testimony and questioning from me was three samples, three
2 boxes. Only two samples show up at SLED that are identified
3 as a pouch containing a swab described as a swab from the
4 window sill and swab identified as being from glass on the
5 ground. There is no testimony that would've been ---

6 THE COURT: None at all that there was any ---

7 MR. FOX: --- glass on the on the ground.

8 THE COURT: --- swab taken from glass on the ground.

9 MR. FOX: And that sample ---

10 THE COURT: I remember the testimony very clearly because
11 I sat here and watched him as he demonstrated on the bar and
12 from the witness stand, one sample from the exterior sill, one
13 sample from the jagged glass remaining in the sash, one sample
14 from the interior sill.

15 MR. FOX: That's exactly right. But then what goes to
16 SLED, what's sent from Conway PD to SLED specifically
17 describes it as a sample and they talk -- and the officer did
18 testify about glass being on the ground.

19 THE COURT: But are we not talking here about a situation
20 where that sample -- and I had real concerns about what you're
21 -- I think you're getting at that the sample was analyzed, it
22 was taken from glass on the ground as marked. And the officer
23 never testified that he took a sample from glass on the
24 ground. But, the testimony that we have heard from Mr. Bogan
25 and from Ms. Skraba is that the sample that was submitted to

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BY THE COURT

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1 Strand was the sample taken from the window sill, the sample
2 from the glass and I would agree with you, I would have grave
3 concerns they had analyzed a sample marked taken from glass
4 found on the ground when the officer clearly testified that he
5 did not take a sample whether it was a matter of his
6 recollection or not, there's no basis or foundation for that.
7 But I think, Mr. Fox, that the testimony here is that the only
8 sample submitted was a sample comprised of two swabs
9 indicating they were taken from the window sill, where the
10 officer said he did take it.

11 MR. FOX: Well, I would say since they mislabeled --
12 there's two ways to look at it. Either the sample came from
13 the ground or it didn't. Either way, law enforcement
14 mislabeled it. But I would say it calls into question what
15 Strand actually tested -- maybe they did test the one from the
16 window but at this point, how do we know? The officer says
17 they didn't get anything from ---

18 THE COURT: Well, because Ms. Skraba said that's the one
19 she sent.

20 MR. FOX: Well, if she's -- what I'm saying is they
21 couldn't get it right, Conway PD couldn't get right where the
22 sample came from. Was it on the ground or was it from the
23 window? How do we know that the one that they labeled ---

24 THE COURT: I would agree with that but that's unobjected
25 testimony. You did not object to him testifying without

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BY THE COURT

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1 qualifying him as to his expertise or his training in
2 collecting the swabs, preserving the swabs. You didn't
3 question Officer Strickland's ability to take a Buccal swab.
4 He didn't even tell the jury what a Buccal swab was. As far
5 as I know, they may've thought he got it off his belt. I
6 don't know but there was no objection to that testimony. It's
7 in. I think your objection is that the proper foundation for
8 admission of the analysis has not been established because of
9 the confusion as to the labeling of the samples.

10 MR. FOX: In part.

11 THE COURT: Okay. All right. I see that part. Now move
12 on to the other part. Tell me what you got.

13 MR. FOX: Further, I think there is a big gap in the
14 chain when it comes back from Strand. There's been no
15 testimony, and I'm talking about the initial swab, and my
16 understanding is that this -- that the Buccal swab never did
17 return from Strand to SLED. So, I'm confused about that. But
18 there is no testimony ---

19 THE COURT: Why would they need the Buccal swab back?

20 MR. FOX: I don't know that they do but they did send the
21 first swabs back and it's logged in at SLED but there's no
22 testimony about how it got back, no FedEx documentation.

23 THE COURT: But that was post analysis, isn't it? I
24 mean, I have never had a trial where after the analysis of
25 cocaine, that there needed to -- there was any need for the

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BY THE COURT

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1 cocaine. I mean, we don't necessarily have to introduce it.
2 I mean, they do sometimes but when they have testimony
3 concerning seizing it and they get up to the point, they say
4 here's the cocaine and here's the analysis. Is there
5 necessity of maintaining a chain of custody after that? Was
6 there gonna be any more testing, was there -- have you
7 requested any more testing? Is there anything prejudice or
8 harm after the analysis?

9 MR. FOX: Not at that point.

10 THE COURT: Well, that's what I think. You know, I
11 understand that in Hatcher, Judge Beatty wrote for the Court,
12 he lowered the bar or the Court lowered the bar from that
13 inflexible standard that we used to adhere to concerning chain
14 of custody. It was lowered substantially. But I don't think
15 they threw out the baby with the bathwater. There is still a
16 requirement of establishing a chain of custody, but I think
17 that custody -- that chain of custody can be established under
18 the -- under 901, the business records exception. We've heard
19 testimony as to who handled it at SLED. I am somewhat
20 concerned about who handled it once it got to the outsource
21 department because Ms. Stephens very candidly says I don't
22 have a clue what happens to it when it hits outsource or
23 something to that nature. I don't know what they do with it.
24 Mr. Bogan is in-charge of outsource. I don't know that
25 there's -- that anybody else in out-source had access to it or

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1 what their procedures are but he wasn't asked what those
2 procedures are. Maybe a thousand people in out-source touched
3 it, maybe none. Maybe out-source is nothing more than Mr.
4 Bogan's desk and it comes on his desk and he sends it out; I
5 don't know.

6 MR. FOX: Well, in part, I would address that the
7 question was not asked in part because it's the State's burden
8 to establish the chain, not for me to pull it apart. So, I
9 would say that, in part, that was done because there -- if
10 there's a lack of something, I'm not going to remind them. I
11 think all those things, Your Honor, the questions about where
12 it is and who is doing it when it's in the out-source or when
13 it gets to Strand and there are, by testimony and by FedEx
14 records, at least two or three people before Ms. Cale touches
15 it that we have not heard from to know what their procedures
16 are, what they did with it. All we know is they signed the
17 FedEx slip. So, I think there's questions there also. So,
18 although it's true I didn't specifically ask what is your
19 procedure, what is it -- that's not my burden to prove.

20 THE COURT: I understand.

21 MR. FOX: That's the State's burden of proof. And if
22 that evidence is not before the Court, we can't speculate,
23 it's gone. It's just absence of evidence and there hasn't
24 been those sorts of testimony. I think there are --

25 THE COURT: Well, you ---

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BY THE COURT

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1 MR. FOX: Your Honor, just briefly, Hatcher certainly
2 says lower the bar. It says you don't have to bring every
3 person in the chain or even always -- always identify every
4 person in the chain, but it addresses things like there's been
5 a lot of testimony about this came here sealed. It all --
6 Hatcher also says the mere fact that something arrives in a
7 sealed envelope doesn't do it. You've got other case law that
8 says it shouldn't be -- the chain of custody shouldn't be open
9 to speculation. You shouldn't have to speculate what happened
10 and where it was and what was happening while it was there. I
11 think that's the situation we have is we are speculating on
12 what was done.

13 THE COURT: But didn't Mr. Bogan testify he received it
14 from Amy Stephens when he sent it out?

15 MR. FOX: He did.

16 THE COURT: Okay. I've heard nothing else that anyone
17 else touched it. He said he received it and he sent it out.
18 There's nothing to suggest that anyone else touched it.

19 MR. FOX: Well, until it gets ---

20 THE COURT: I mean, that's -- that's the testimony.

21 MR. FOX: From the SLED end.

22 THE COURT: And then it goes into FedEx and maybe the
23 Court of Appeals or the Supreme Court is gonna have to talk
24 about that. They have talked about couriers, the unidentified
25 couriers in some of the cases that have -- have come down

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BY THE COURT

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1 recently, that you didn't have to identify or name couriers.
2 I think that FedEx has been used then in business and in every
3 -- medical procedures and everything else to move things
4 about. The key here, the key, I believe, is whether or not
5 the evidence demonstrates a reasonable assurance that the
6 condition of the item remains the same from the time it was
7 obtained until its introduction in trial. And I think that's
8 what we have to do. Now, I think that's kind of a Hatcher
9 standard that we have. And the trial judge now exercises
10 discretion rather than using that inflexible rule that we used
11 to have and the Courts have given us some guidance in that and
12 what they tell us is we look at the circumstances surrounding
13 the preservation and custody of the item, the likelihood of
14 intermeddlers tampering with it. And those are circum -- what
15 we look at to determine whether or not it's been tampered
16 with.

17 I think that a chain has been established at least as to
18 the Hatcher standard that we have now, the chain of custody,
19 and that her testimony will be admissible. All right. Thank
20 you.

21 MR. FOX: Thank you, Your Honor.

22 THE COURT: You want to be heard on that? You want to
23 put something on the record, Mr. Grooms?

24 MR. GROOMS: No, sir, Your Honor.

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

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BY THE COURT

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1 MS. ELDER: Your Honor, does he need to move that -- that
2 piece of evidence in or are you just gonna tell the jury that
3 you admitted it at this point now?

4 THE COURT: He needs to move it in on the record.

5 MS. ELDER: That's fine.

6 (REPORTER'S NOTE: The jury returns to the courtroom. 11:29
7 A.M.)

8 THE COURT: Okay.

9 MR. GROOMS: Thank you, Your Honor.

10 Your Honor, the State would request to move item Six-B
11 into evidence at this time?

12 MR. FOX: I ---

13 THE COURT: As stated. Okay.

14 MR. FOX: Objection as stated, Your Honor.

15 THE COURT: Okay.

16 STATE'S EXHIBIT NUMBER SIX-B

17 ADMITTED INTO EVIDENCE

18 BY MR. GROOMS:

19 Q: Ms. Cale, I'm gonna hand you what's been entered into
20 evidence now as Item Six-B. Could you please identify what
21 Item Six-B is for the jury?

22 A: This is the evidence that was received in Strand case
23 number 11F0490.

24 Q: Okay. Can you please explain your involvement in that
25 sample, with that sample?

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1 A: Yes. I took custody of this item on January 3rd of 2012.
2 I would've opened it, this is my seal, and examined Item One
3 that was contained within this package.

4 Q: What was Item One?

5 A: The swabs from the window sill.

6 Q: Okay. And how did you test that item?

7 A: I performed DNA analysis on the item.

8 Q: Okay. Just very briefly, what does that entail?

9 A: The DNA analysis process involves extracting the DNA from
10 the sample, analyzing it to determine if -- how much human DNA
11 is in the sample and then amplifying that DNA which is just
12 basically making copy after copy of that DNA until there's
13 enough DNA for me to analyze and then at the end, possibly
14 developing a DNA profile from that sample.

15 Q: Were you able to develop a DNA profile?

16 A: Correct, yes.

17 Q: Okay. And can you explain to the jury what a DNA profile
18 is?

19 A: Well, there are certain locations in the DNA that I
20 examine. All these locations we have the same sequence of DNA
21 but it's the number of times that that sequence repeats that
22 differs from person to person. And I may be able to look at
23 those different variations in the DNA sample. I actually, in
24 this particular chemistry that we use, I look at sixteen
25 locations, one of which is the sex typing location tells me

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1 whether or not the source of the sample is from a male or
2 female. And in this particular instance, I was able to obtain
3 data from all sixteen locations.

4 Q: Does that tell you who the person is?

5 A: Not at that moment. It basically would tell me whether or
6 not it was a male or a female but I wouldn't be able to
7 determine the source of that profile.

8 Q: Can you tell me, did you receive any other items of
9 evidence in this case?

10 A: Yes. Later in January of 2013, we received a Buccal swab
11 from Maurice Ward.

12 Q: And what is a Buccal swab?

13 A: It's just a swabbing taken from the inside of the mouth of
14 the individual.

15 Q: And what does a Buccal swab tell you?

16 A: It gives me the reference sample of the known DNA profile
17 for that individual.

18 Q: Okay. So, what did you do then with that Buccal swab?

19 A: I performed DNA analysis on that swab and generated a
20 profile from that sample and then compared that profile to the
21 unknown evidence sample.

22 Q: Okay. The sample that you just testified about?

23 A: Correct, yes.

24 Q: And what were the results of your finding?

25 A: The DNA profiles matched.

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BY THE COURT

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1 Q: Okay. And what does that mean when you say you have a
2 match?

3 A: That they matched at all sixteen locations.

4 Q: Okay. Is that -- is it -- is that a -- is that as good a
5 match as you can get?

6 A: Yes. The more information I have, if I have a complete
7 profile and I can match it to a complete profile, then yes,
8 that's a good match.

9 Q: Okay. Is there any way to -- what is the method for
10 returning your match as far as probability?

11 A: We -- there is a database that we use, that's provided by
12 the FBI. They determined how frequently we would expect to
13 encounter certain alleles in the general population. Alleles
14 are just the different variations incur, at the different
15 locations that we look at. These frequencies have been
16 published. You can find them in the Journal of Forensic
17 Sciences and that's where we obtain the information from and
18 then we can calculate the frequency at which we would expect
19 that unknown profile to occur in the general population.

20 Q: Okay. So, who was the match to?

21 A: It was -- it matched to Maurice Ward.

22 Q: Okay. Did you use any type of -- did you issue an opinion
23 as far as the probability of the match on the sample?

24 A: Yes. The probability of the -- selecting an individual --
25 an unrelated individual from the general population that would

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CYNTHIA CALE - CROSS BY MR. FOX

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1 be the source of this DNA profile from the swabs from the
2 window sill was one in eleven quadrillion.

3 Q: Okay. Thank you very much. Nothing further.

4 THE COURT: All right. Mr. Fox?

5 CROSS EXAMINATION OF CYNTHIA CALE BY MR. FOX:

6 Q: Ms. Cale, you explained that last number. That's not a
7 probability of guilt is it?

8 A: No, it's just basically -- it's the probability that I
9 would expect to encounter that particular profile in the
10 general population.

11 Q: And you received initially in 2011 two swabs, correct?

12 A: Two items, yes.

13 Q: Two items.

14 A: Yes.

15 Q: Tested one?

16 A: Correct.

17 Q: And that was at the direction of SLED?

18 A: Yes.

19 Q: SLED asked you to test one but not the other?

20 A: That's correct.

21 Q: Did you even examine the untested?

22 A: No, I didn't even open it.

23 Q: Okay. So, you don't know whether it would've been

24 possible to develop a profile from that like a -- attempt to

25 develop the profile because you didn't even open it, correct?

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CYNTHIA CALE - CROSS BY MR. FOX

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1 A: That's correct.

2 Q: Okay. Because SLED, you're under contract -- I say you,
3 Strand is under contract with SLED. They send you material,
4 they tell you what to test, what not to test and you report
5 your results?

6 A: That's correct.

7 Q: Okay. So, there was never, as far as you know, any
8 testing at all on that second sample?

9 A: None that I performed.

10 Q: And that would've been returned with the original -- the
11 other sample you did return ---

12 A: That's correct.

13 Q: --- you did test went back to SLED?

14 A: Yes.

15 Q: Okay. Is -- as a forensic analyst, is the manner of
16 collection of the sample important?

17 A: Like the preservation of the sample?

18 Q: Yes.

19 A: Yes, it is.

20 Q: Okay. And you want to avoid things like cross
21 contamination?

22 A: That's correct, yes.

23 Q: Okay. Explain to the jury what cross contamination is.

24 A: Well, if you package items of evidence altogether in one
25 package, you could have transfer of DNA from one item to

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CYNTHIA CALE - CROSS BY MR. FOX

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1 another which could give an implication that there -- you
2 know, that DNA was originally on that item when it wasn't that
3 -- wasn't that case. So, you want to package evidence
4 separately so that cross contamination doesn't occur and you
5 also want to protect the evidence from introducing any
6 extraneous DNA from an outside source that's not related to
7 the case.

8 Q: How about temperature, does that anything -- in terms of
9 preservation once you've collected it? Storage, are there
10 issues with storage that need to be addressed?

11 A: Well, once the sample is dried, it's pretty stable.
12 Obviously, you don't want to expose it to high heat but even
13 at room temperature it's pretty stable. It's not going to
14 degrade. If it stays wet for very long, you could have
15 bacterial growth that could degrade the DNA. So, if you want
16 to dry it and preserve it so that it's dried and remain
17 stable.

18 Q: Okay. So, at the front end, when you initially collect
19 it, you want to make sure it's properly dried to avoid some of
20 the other issues of bacteria and ---

21 A: Correct.

22 Q: --- contamination?

23 A: Yes.

24 Q: You want to -- if you're gonna take three samples, then
25 you want to put them in three different containers or three

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CYNTHIA CALE - CROSS BY MR. FOX

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1 separate envelopes, boxes or whatever?

2 A: Yes. If they were from different locations, yes.

3 Q: Okay. Even if it's in the same area, if you have a
4 window, blood sample on the outside, that would be one. If
5 you have something on the other side of the window, another.

6 A: Yes.

7 Q: And they should be packaged separate if you find something
8 on the ground, a third?

9 A: Yes, yes.

10 Q: Okay. Thank you. No further questions.

11 THE COURT: All right.

12 MR. GROOMS: Court's indulgence, Your Honor.

13 Nothing further, Your Honor.

14 THE COURT: You may step down.

15 MR. GROOMS: Your Honor, can we have this witness
16 released from her subpoena?

17 THE COURT: Any objection?

18 MR. FOX: No, Your Honor.

19 THE COURT: You are released from your subpoena.

20 MR. GROOMS: The State would call Heather Lewis as our
21 next witness.

22 HEATHER DAWN LEWIS, HAVING BEEN

23 SWORN, TESTIFIED AS FOLLOWS:

24 CLERK: State your full name and spell your last name for
25 the court.

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HEATHER DAWN LEWIS - DIRECT BY MR. GROOMS

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1 MS. LEWIS: Heather Dawn Lewis, L-E-W-I-S.

2 DIRECT EXAMINATION OF HEATHER DAWN LEWIS BY MR. GROOMS:

3 Q: How are you, Ms. Lewis? Would you please tell the jury
4 what your job is, what you do?

5 A: I work for the Horry County Clerk of Court's office. I
6 handle criminal court proceedings. I assist the public with
7 any matters they may have regarding criminal matters, file
8 indictments; that's about it.

9 Q: Does the Clerk's office keep a record of -- record of
10 everything that happens in court?

11 A: We do.

12 Q: You keep of record of sentencing sheets?

13 A: Yes, sir.

14 Q: Let me show you what's been marked as State's Exhibits
15 Seven and Eight and can you tell me if you can identify this?

16 A: Yes. It is a sentencing sheet for Maurice Wallace Ward,
17 Indictment Number 2001-GS-26-3133. And the other is a
18 sentencing sheet on Maurice Wallace Ward, Indictment Number
19 1985-GS-26-122.

20 MR. GROOMS: Your Honor, I'd like to have these items
21 entered into evidence.

22 THE COURT: Mr. Fox?

23 MR. FOX: Without objection, Your Honor.

24 THE COURT: All right. They are admitted.

25 MR. GROOMS: Thank you, Your Honor.

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HEATHER DAWN LEWIS - DIRECT BY MR. GROOMS

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1 STATE'S EXHIBIT NUMBER SEVEN AND EIGHT

2 ADMITTED INTO EVIDENCE

3 By MR. GROOMS:

4 Q: Could you please tell the jury what those indictments are
5 for?

6 A: 2001-GS-26-3133, looks like he was convicted for burglary
7 second degree.

8 Q: What year was that?

9 A: He was sentenced February 5th, 2002.

10 Q: He being the Defendant?

11 A: Yes.

12 Q: Could you please read the other one?

13 A: The other one, he received a fifteen-year sentence for ---

14 Q: There's information on the back of it as well. It's an
15 old one.

16 A: Looks like for larceny and housebreaking.

17 Q: Okay. Thank you, ma'am. That's all I have for you.

18 Thank you.

19 THE COURT: Mr. Fox.

20 MR. FOX: No questions for this witness, Your Honor.

21 THE COURT: You may step down.

22 MR. GROOMS: Your Honor, the State would rest its case at
23 this time.

24 THE COURT: All right. Ladies and gentlemen of the jury,
25 I'm gonna -- I tell you what I'm gonna do. It's twenty

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1 minutes till 12:00. I'm gonna let you go to lunch. Be back
2 at one o'clock. That'll give you about an hour and twenty
3 minutes. Okay?

4 Thank you, Mr. Ropp. Take them out.

5 (REPORTER'S NOTE: The jury exits courtroom. 11:42 A.M. The
6 following takes place outside the presence of the jury.)

7 THE COURT: All right, gentlemen?

8 MR. GROOMS: Your Honor, that's the case ---

9 THE COURT: I understand. Mr. Fox?

10 MOTIONS:

11 MR. FOX: Well, Your Honor, first of all, I would move
12 for a mistrial based on that last testimony regarding Mr.
13 Ward's prior convictions. Obviously, the statute allows
14 admittance of the convictions themselves but I don't believe
15 it calls for any testimony about sentence. And I believe
16 there was mention of a fifteen-year sentence, that's nothing
17 for the jury -- we certainly are not allowed to introduce any
18 mitigating explanation about circumstances of his convictions
19 and the State can't come up with details either.

20 THE COURT: I ---

21 MR. FOX: And in addition, there as mention of a charge
22 for which is not a part of the elements of the crime, as being
23 larceny, so now the jury has heard -- he has not testified.
24 If he testifies that may or may not be something that he could
25 be impeached with, it is outside ten years, so it may or may

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1 not be something he could be impeached with. He hasn't yet
2 testified. The jury has now heard that he has an addition to
3 the burglary conviction, the larceny conviction and they've
4 heard the very large sentence and I think it's -- we do not
5 want to be in the situation of them back there calculating how
6 long he was in jail before this happened.

7 THE COURT: I would offer a curative charge. I do not
8 think it rises to the level of requiring a mistrial on this
9 matter.

10 MR. FOX: Thank you, Your Honor. That would -- I would
11 request that.

12 THE COURT: Okay. Then I'll let you write it.

13 MR. FOX: Thank you.

14 Then, Your Honor, at this time, we would move for a
15 directed verdict on the basis the State has not proven beyond
16 a reasonable doubt all the elements of the crime charged.
17 Specifically, they have failed to sufficiently establish the
18 chain of evidence for the DNA samples and without those there
19 is no evidence that Mr. Ward committed a burglary and we would
20 move for a directed verdict, Your Honor.

21 THE COURT: Again, I would say that had the State
22 analyzed the sample that was submitted and marked as --
23 submitted to SLED and marked as taken from glass on the
24 ground, I would have granted your motion to at least suppress
25 that evidence which would've led, I believe, to a directed

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1 verdict, the granting of the directed verdict, but the
2 evidence has been that that sample that was submitted to SLED
3 from wherever it came, there's no testimony in this trial that
4 Officer Eden collected it. He specifically said that where he
5 got his sample and he got three samples. Two samples ended up
6 going to SLED. I think that the chain has been sufficiently
7 established. Ms. Stephens testified as to everyone at SLED
8 who had any access to the, the DNA samples. I think that's
9 permissible for her to do so under Rule 901. I think it's in
10 compliance with the Hatcher decision. I then had some concern
11 with her saying that she had no idea what happens to the
12 sample when it goes to the out-sourcing department. I heard
13 Mr. Bogan's testimony and from what -- from what I gather from
14 his testimony, he received it and he sent it. There's been no
15 testimony that it was in the custody or control or tampered
16 with in any way by any other person. It was then sent by
17 FedEx to Strand. FedEx representative has testified
18 concerning their policies and procedures. The case law in
19 this state is very clear that an unidentified courier does not
20 break the chain if the evidence demonstrates a reasonable
21 assurance the condition of the item remains the same from the
22 time it was obtained until its introduction at trial. Then we
23 have the technician from or the scientist from Strand who has
24 identified the package that was sent to her. She tested it.
25 I think that it is admissible. I think the chain has been

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BY THE COURT

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1 sufficiently established under Hatcher and I am going to allow
2 the evidence and I would respectfully then deny your motion
3 for a directed verdict. Certainly, with the DNA evidence
4 there is sufficient evidence to submit this matter to the
5 jury. And that's my ruling. Okay?

6 You want to add anything for the record, Mr. Grooms?

7 MR. GROOMS: No, sir, Your Honor.

8 THE COURT: Okay. All right.

9 Mr. Fox ---

10 MR. FOX: Yes, sir.

11 THE COURT: The State has rested. Have you discussed
12 with your client his right to testify in this matter?

13 MR. FOX: I have, Your Honor.

14 THE COURT: And does he choose to testify?

15 MR. FOX: He has not given me a final answer on that
16 question, Your Honor.

17 THE COURT: All right. Let me -- please stand if you
18 would, sir, Mr. Ward.

19 Place him under oath.

20 MAURICE WALLACE WARD, HAVING BEEN
21 SWORN, TESTIFIED AS FOLLOWS:

22 THE COURT: Mr. Ward, at this time, I'm gonna explain to
23 you certain rights. If you don't understand anything I saw,
24 please let me know and I will explain it again in a more
25 detailed fashion. Do you understand?

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BY THE COURT

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1 MR. WARD: Yes, sir.

2 THE COURT: We've now reached the stage in the trial
3 where you may present your defense and you have the right to
4 claim the protections given you by the 5th Amendment to the
5 Constitution of the United States. This Amendment states in
6 part, no person shall be compelled in any criminal case to be
7 a witness against himself. This means that you cannot be
8 required to testify in this case. You have the right to
9 testify on your own behalf; however, no one can make you
10 testify. This is a personal right. No one can waive that
11 right except you. If you decide to testify, you will be
12 subject to the same rules that govern other witnesses and you
13 may be examined and cross examined on any relevant issue in
14 the case. In addition, if you have any convictions involving
15 dishonesty or false statement or for crimes punishable by
16 imprisonment for more than one year and this Court determines
17 that the probative value of admitting this evidence outweighs
18 it's prejudicial effect to you, the Solicitor will be able to
19 introduce your record to attack your credibility or
20 believability. If you decide to testify, this decision on
21 your part must be freely, voluntarily and intelligently made
22 with knowledge of the protection given you by the Fifth
23 Amendment and consequences of your decision to testify.

24 If you decide not to testify, I will instruct the jurors
25 that they cannot give that fact any consideration at all, none

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1 whatsoever and that there is to be absolutely no prejudice to
2 you because you did not testify. It is left entirely up to
3 you whether or not to testify. You may talk with your,
4 attorney, your family or your friends of anyone else but the
5 final decision will be left entirely to you. Do you
6 understand what I've explained to you?

7 MR. WARD: Yes, sir.

8 THE COURT: Do you have any questions about what I've
9 explained to you?

10 MR. WARD: No, sir.

11 THE COURT: Have you discussed with your lawyer whether
12 you should testify or not?

13 MR. WARD: We have, we just haven't ---

14 THE COURT: Okay. Well, I'm not gonna make you reach
15 that decision at this time. Your lawyer says you want to have
16 some further conversations with him. That's perfectly all
17 right. We're gonna reconvene at one o'clock. You will have
18 -- that's an hour and ten minutes to visit with your attorney
19 and discuss it further with him and when we return I will let
20 you tell me whether or not you intend to testify. Do you
21 understand?

22 MR. WARD: Yes, sir.

23 THE COURT: All right. Very well. We are at ease until
24 one o'clock.

25 MR. GROOMS: Thank you, Your Honor.

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1 (RECESS - 11:52 A.M.)

2 *****OFF THE RECORD*****

3 (On the record. 1:10 A.M.)

4 (REPORTER'S NOTE: The following takes place outside the
5 presence of the jury.)

6 THE COURT: All right, gentlemen. Let's take up a few
7 matters before we bring in the jury.

8 Mr. Fox, your client wish to testify?

9 MR. FOX: He tells me that he does.

10 THE COURT: He wishes to testify?

11 MR. FOX: Yes, sir.

12 THE COURT: Okay. Then we will do that as soon as we
13 bring the jury. You can have a seat, Mr. Ward.

14 Let me first run over my charge, proposed charge with you
15 because I don't anticipate his testimony to take very long.

16 MR. FOX: No, sir.

17 THE COURT: And that you will probably be resting and if
18 we can have the charge ready by then, that would certainly be
19 helpful. As both of you gentlemen know, it's my practice to
20 give the jury a written copy of my charge. I have always done
21 that. You have all heard at least portions of my charge. I
22 intend to begin by charging the duties of the judge and trial
23 jury; I'm sure you've heard me do it many times. It's the
24 recommended charge. Then I'm going to charge on the
25 indictment, I will tell the jury as I have always done and you

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1 have both heard me do, state that these charges, burglary
2 second degree and remind them the arrest or charge is not
3 evidence and they should not consider it. I'm sure you're
4 familiar with my charge. Then the presumption of innocence,
5 the same charge that I always give, it's the recommended
6 charge where I charge that the -- there is a presumption of
7 innocence and it follows the defendant throughout the trial
8 and it's my typical charge. I would charge reasonable doubt,
9 the recommended charge, essentially, that they must be firmly
10 convinced charge. It is the recommended charge and I'm sure
11 both of you gentlemen have heard me charge it before. I'm
12 going to charge on direct and circumstantial evidence, typical
13 charge for that.

14 MR. FOX: Your Honor, will you charge the new language in
15 Logan for circumstantial evidence.

16 THE COURT: What language is that?

17 MR. FOX: Your Honor, I don't have the whole -- that says
18 -- and it's a very recent South Carolina Supreme Court case.
19 I'll hand it up. But it says, it mirrors the Grippon language
20 that the law makes no distinction, which is the Grippon
21 language between circumstantial evidence and direct evidence,
22 however to the extent the State relies on circumstantial
23 evidence, all of the circumstances must be consistent with
24 each other when taken together point conclusively to the guilt
25 of the accused beyond a reasonable doubt.

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1 THE COURT: That's the old rule that we had many years
2 ago.

3 MR. FOX: Well, they kind of blend together. They've
4 kind of taken -- they say we haven't thrown out Grippon and
5 I'm afraid I don't have a copy but this is the -- it's State
6 v. Logan, it's from earlier this year and they've basically
7 blended the old rule and Grippon. And I can pull up the exact
8 -- that's a copy -- cite.

9 THE COURT: Okay. As a matter of fact, what I will do is
10 I will give the whole Logan charge.

11 MR. FOX: Yes, Your Honor.

12 THE COURT: It's very similar to mine. I will do that.

13 MR. FOX: Thank you, Your Honor.

14 THE COURT: I will charge on the credibility of
15 witnesses, that they may believe any portion of or part of one
16 witness, many over one, that sort of stuff. I'm sure you've
17 heard me to that charge before. I give the charge on expert
18 witnesses. There was an expert qualified in this matter.
19 It's the recommended charge and again, it -- in it I say that
20 they have the right to believe or disbelieve the opinion of an
21 expert. That's the important part. I will not give the
22 charge on the Defendant's failure to testify. What I did want
23 to talk with you about is my charge on the offense here.
24 Second degree burglary, to prove second degree burglary, the
25 State must prove beyond a reasonable doubt that the Defendant

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1 entered a building without consent with the intent to commit a
2 crime therein. A building is any structure, vehicle,
3 watercraft or aircraft where any person lodges or lives or
4 where people assemble for the purpose of business, government
5 and education, religion, entertainment, public transportation,
6 for public use or where goods are stored. Finally, the State
7 must also prove beyond a reasonable doubt that the Defendant
8 entered or remained in the building in the nighttime.
9 Nighttime is the period between sunset and sunrise during
10 which there's not enough light to -- daylight to recognize a
11 person's face except artificial light or moonlight. Or the
12 burglary was committed by a person with a prior record of two
13 or more convictions for burglary or housebreaking or a
14 combination of the both.

15 Now, in that regard, gentlemen, Mr. Fox, will you be
16 seeking a charge on any lesser included?

17 MR. FOX: No, Your Honor.

18 THE COURT: Very well. And then I will charge that there
19 are simply two possible verdicts, either guilty or not guilty,
20 and that will be my charge.

21 Mr. Fox, do you -- I am going to give your curative
22 charge or I think you have done one but I will not charge that
23 in my general charge, I will give it during the -- during the
24 actual case. All right, sir?

25 MR. FOX: Yes, sir. And I have handed a copy to Mr.

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1 Grooms.

2 THE COURT: Mr. Grooms, the proposed curative instruction
3 is, Ladies and gentlemen, you have heard testimony regarding
4 prior -- the Defendant's prior conviction of burglary and
5 housebreaking. You also heard testimony regarding the prison
6 sentence that the Defendant received and the testimony is the
7 conviction for larceny. I now instruct you as a matter of law
8 that you are to disregard any testimony regarding the
9 Defendant's past sentences or convictions for anything other
10 than burglary and housekeeping [sic]. I further instruct you
11 that these matters shall play no part whatsoever during your
12 deliberations.

13 MR. GROOMS: Yes, sir, Your Honor.

14 THE COURT: I think that that is appropriate. Okay.

15 MR. FOX: Your Honor, just for the record, I'm in the
16 position, although I know I drafted that, I still -- my main
17 position is that a mistrial is appropriate and we object to
18 the curative instruction being ---

19 THE COURT: I understand. You have not waived anything.
20 The curative instruction was -- is offered by me as an
21 alternative to a mistrial.

22 MR. FOX: Yes, sir. And, Your Honor, on one other issue,
23 actually related to that, I've discussed this with the
24 Solicitor, as a way -- the sentencing sheets that are in
25 evidence, do of course have sentences on there written --

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1 years written on them. We have proposed and the Solicitor is
2 in agreement that we redact those portions that show the
3 length of the sentence as well as any reference to a larceny
4 conviction and substitute copies ---

5 MR. GROOMS: Yes, Your Honor, it would be entered into
6 ---

7 THE COURT: All right. Then that's what we will do then.

8 MR. GROOMS: If you would give us a moment to get the
9 other ones together. We've got one done and we've got to fix
10 the other one.

11 THE COURT: Okay.

12 MR. GROOMS: Your Honor, regarding the Defendant's prior
13 record, I'd like to run through it and see what's allowable in
14 cross. He's got a grand larceny, 1979; housebreaking, 19984.

15 THE COURT: Those are rather remote, are they not?

16 MR. GROOMS: They're a long time ago but they go to show
17 the honesty and ---

18 THE COURT: What do you say about that?

19 MR. FOX: Your Honor, I say way too far back, that in
20 1979, thirty-some years back.

21 THE COURT: I believe that probative value they would
22 have would certainly be outweighed substantially by any -- by
23 the prejudice that they may have to the Defendant.

24 MR. GROOMS: Your Honor, there's a armed robbery from
25 1988, which he was sentenced to twenty-one years on. So, he

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1 got out of prison and then committed a burglary in 2002, like
2 that's ---

3 THE COURT: That's, what, fifteen years ago.

4 MR. GROOMS: Armed robbery and his sentence was twenty-
5 one years.

6 THE COURT: What do you say on the issue of whether or
7 not that is evidence of dishonesty, truthfulness and that sort
8 of thing, Mr. Fox?

9 MR. FOX: I don't believe that it has been held to be one
10 of those things by our courts. I believe it's been found to
11 be one of those that isn't outside the ten years. It
12 certainly is a very serious crime but that's not the standard.
13 But I would say again, the prejudicial value and stated intent
14 is not just the armed robbery but to show that he's served a
15 long sentence and was in trouble again shortly after being
16 released. I'd say the prejudicial effect.

17 THE COURT: I think he -- the State's purpose -- he
18 doesn't have to talk about the sentence.

19 MR. GROOMS: Right, Your Honor, just the fact ---

20 THE COURT: Doesn't have to talk about the sentence at
21 all.

22 MR. GROOMS: Just that he's stealing or attempting to
23 steal, which is a crime of dishonesty.

24 THE COURT: And don't you believe that that under the
25 rule would be admissible.

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1 MR. FOX: If you determine that it's a crime of
2 dishonesty, you still have the discretion of it being well
3 outside the ten-year window which is not an absolute limit ---

4 THE COURT: I am going to exclude those older ones but
5 this one, it was, you know, fifteen years or so, sixteen years
6 ago but it does involve dishonesty on the part of the
7 Defendant and it goes to his truthfulness. I think that it
8 should be admitted.

9 MR. GROOMS: Your Honor, by that same logic, we'd like to
10 ask that we be allowed to ask him about his burglary second
11 from 2002 and possession of a stolen vehicle in 2002.

12 THE COURT: His burglary second in 2002?

13 MR. GROOMS: Yes, sir, and ---

14 THE COURT: Is that one of the ones that were ---

15 MR. GROOMS: Admitted, yes, sir.

16 THE COURT: Well, that's already in; I'm certainly gonna
17 let you do that.

18 MR. GROOMS: Okay.

19 THE COURT: What's the other one?

20 MR. GROOMS: Possession of stolen vehicle; he was
21 convicted in 2002 and sentenced to three years.

22 THE COURT: I'm not gonna do that one. I'm not gonna let
23 you do that one. I mean, that's doesn't necessarily involve
24 dishonesty. That's not an element of the crime, it's just
25 possession

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1 MR. GROOMS: Okay.

2 THE COURT: I wouldn't allow that.

3 MR. GROOMS: Okay. Your Honor, he also has several
4 magistrate court level charges. He has a receiving stolen
5 goods under 1,000 from 2001 as well as two shopliftings from
6 2010.

7 THE COURT: What do you say about those, Mr. ---

8 MR. FOX: I'd say the receiving stolen goods is analogous
9 to the possession of a stolen vehicle. It doesn't necessarily
10 go to dishonesty or -- I think shoplifting has been held to be
11 a crime of dishonesty.

12 THE COURT: I will allow the shopliftings in.

13 MR. GROOMS: Your Honor, you said earlier that the
14 burglary second was coming in because it was already in. That
15 housebreaking that you said couldn't come in, that was what
16 was also ---

17 THE COURT: Well, I didn't know you said the
18 housebreaking."

19 MR. GROOMS: I'm sorry. If I didn't, the housebreaking
20 and grand larceny from '84 ---

21 THE COURT: I think both of those are in, you can
22 certainly talk about those. I'll allow that.

23 MR. GROOMS: Even the grand larceny which we're
24 redacting.

25 THE COURT: Pardon?

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BY THE COURT

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1 MR. GROOMS: Even the grand larceny which we are now
2 redacting?

3 THE COURT: Yeah, that's redacted. I mean, I'm not gonna
4 allow that, just leave that out.

5 MR. GROOMS: Okay.

6 THE COURT: So, once again, tell me the ones that I've
7 said that I'll allow you to ---

8 MR. GROOMS: I have housebreaking from '84, which is in
9 the record; I have a armed robbery from '88, being a crime of
10 dishonesty; and I have a burglary second, 2002; and two
11 shopliftings from 2010.

12 THE COURT: Okay. All right. Is that right, Mr. Fox?

13 MR. FOX: Well, I don't -- and I'm looking again. He
14 hadn't -- Mr. Ward asked me about shoplifting and looking
15 again I don't see my copy of the NCIC any arrest or conviction
16 for shoplifting.

17 THE COURT: Well, if he denies it, that's as far as he
18 can go with it. If he said it never happened, you can't prove
19 it by extrinsic evidence if he is simply asking for it.

20 MR. FOX: Yes, sir.

21 MR. GROOMS: Your Honor, for the purpose of the record,
22 that's from the County page of his convictions. That's --
23 those are misdemeanors.

24 THE COURT: I mean, if you have a record of it, you can
25 certainly ask him the rule but I think it's very clear that if

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1 he denies it, you may not prove it by extrinsic evidence.

2 MR. GROOMS: Okay. We would just need to redact that
3 sentencing sheet.

4 THE COURT: Have y'all got that one, that sentencing
5 sheet done?

6 MR. GROOMS: We've got one of them. We have to finish
7 the other one.

8 THE COURT: Okay.

9 (RECESS - 1:25 P.M.)

10 *****OFF THE RECORD*****

11 (On the Record. 1:32 P.M.)

12 THE COURT: All right. Mr. Grooms, in lieu of State's
13 Exhibit Eight, that will not go to the jury, rather a redacted
14 copy which will be State's Exhibit Eight-A will be submitted
15 to the jury, if you'll mark that Eight-A.

16 And as to State's Exhibit Seven, we will -- we will not
17 send that to the jury but rather a redacted copy which will be
18 marked as Seven-A.

19 STATE'S EXHIBIT NUMBER SEVEN-A AND EIGHT-A

20 ADMITTED INTO EVIDENCE

21 THE COURT: All right. Gentlemen, anything further?

22 MR. GROOMS: No, Your Honor.

23 MR. FOX: No, Your Honor.

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

25 Let me put on the record, Mr. Ward, you will testify; is

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1 that correct?

2 MR. WARD: Yes, sir.

3 THE COURT: Do you understand all the rights I explained
4 to you before lunch?

5 MR. WARD: Yes, sir.

6 THE COURT: You have discussed this with your attorney
7 and you chose to testify?

8 MR. WARD: Yes, sir.

9 THE COURT: Very well.

10 (REPORTER'S NOTE: The jury returns to the courtroom. 1:35
11 P.M.)

12 THE COURT: All right. We have all our jurors back.

13 Ladies and gentlemen of the jury, the State has rested,
14 as you heard before we broke for lunch. And now, we're about
15 to proceed with the defense.

16 However, before I begin the defense, or we begin the
17 defense, there's a matter I want to address with you. You
18 may've heard or I'm sure you did hear the testimony from the
19 Clerk of Court's Office just before we broke involving some
20 convictions that the Defendant had, some prior convictions.
21 One was the conviction for burglary, one was a conviction for
22 housebreaking. You also heard that in conjunction with one of
23 those charges, there was also a conviction for a grand larceny
24 and there was some mention of a sentence. That information
25 was unsolicited and was inadvertently provided to you.

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1 Concerning those two items, let me say this: Ladies and
2 gentlemen, you have heard testimony regarding the Defendant's
3 prior convictions for burglary and housebreaking. You've also
4 heard testimony regarding a prison sentence the Defendant
5 received as well as testimony of a conviction for larceny. I
6 now instruct you as a matter of law that you are to disregard
7 any testimony regarding Defendant's past sentences or
8 convictions for anything other than the burglary and the
9 housebreaking. I further instruct you that these matters
10 shall play no part whatsoever during your deliberation.
11 Please put out of your mind any information you heard about a
12 sentence or the grand larceny charge. You may hear other
13 information later in the trial but at this time, as to those
14 matters, please put them out of your mind, don't discuss them.
15 They have no part in your deliberation.

16 Sufficient?

17 MR. FOX: Yes, Your Honor.

18 THE COURT: Very well. Okay. The State has rested and
19 Mr. Fox, you may call your witness.

20 MR. FOX: Maurice Ward.

21 MAURICE WALLACE WARD, HAVING BEEN
22 SWORN, TESTIFIED AS FOLLOWS:

23 CLERK: State your full name and spell your last name for
24 the Court, please..

25 MR. WARD: My name is Maurice Wallace Ward, W-A-R-D.

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MAURICE WALLACE WARD - DIRECT BY FOX

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- 1 DIRECT EXAMINATION OF MAURICE WALLACE WARD BY MR. FOX:
- 2 Q: Mr. Ward, how old are you?
- 3 A: I'm fifty-one.
- 4 Q: And where do you live?
- 5 A: I live here in Conway.
- 6 Q: Is this where you grew up?
- 7 A: No, I grew up in Myrtle Beach.
- 8 Q: In Horry County?
- 9 A: Yes, Horry County.
- 10 Q: Are you married, sir?
- 11 A: Yes, sir, I am.
- 12 Q: What kind of work do you?
- 13 A: I do renovating, painting, small jobs.
- 14 Q: Okay. You kind of hustle what you can?
- 15 A: Yeah, I used to be a cook but kind of got away from that.
- 16 Q: Now, the jury has heard that you have prior convictions
- 17 for housebreaking and second degree burglary; is that correct?
- 18 A: Yes, sir.
- 19 Q: And in fact, don't you also have a conviction from 1988
- 20 for armed robbery?
- 21 A: Yes, sir.
- 22 Q: And as well as the housebreaking and burglary second. All
- 23 right. Now, you heard -- were you living in Conway in August
- 24 of 2010?
- 25 A: Yes, sir, I was.

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MAURICE WALLACE WARD - DIRECT BY FOX

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- 1 Q: Okay. And you -- are you familiar with the Freewill
2 Baptist Church on Fourth Avenue?
- 3 A: Yes, sir, I am.
- 4 Q: Where were you living in 2010; what part of Conway?
- 5 A: Off Ninth Avenue.
- 6 Q: Off Ninth Avenue?
- 7 A: Yes.
- 8 Q: Okay. So, for those not from this area, Fourth Avenue is
9 a few blocks closer to the beach, correct?
- 10 A: Right; yes, sir.
- 11 Q: And Ninth Avenue and Fourth Avenue, do they run -- do they
12 intersect each other or do they run parallel or ---
- 13 A: More parallel.
- 14 Q: Okay. What -- on the evening of August the 10th, did you
15 have any reason to be around Freewill Baptist Church?
- 16 A: I was riding my bicycle heading down Fourth Avenue. I was
17 going to, to a house, a friend's house.
- 18 Q: Let me stop you. Can you tell me what time of day this
19 was?
- 20 A: This was like ten o'clock.
- 21 Q: In the morning?
- 22 A: At night.
- 23 Q: At night, okay. Anybody with you?
- 24 A: No, I was alone.
- 25 Q: Okay. How come you riding a bicycle? Do you have car?

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MAURICE WALLACE WARD - DIRECT BY FOX

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1 A: No, I don't.
2 Q: Okay. So, you're on a bicycle?
3 A: Yes. And I went to -- it's behind NAPA parts store on
4 Fourth Avenue. Guys hang out there. We used to hang out
5 there and drink at night, just sitting in the yard. But when
6 I got there, no one was there. But on my way back -- I left
7 out a step. On the way going there, that's when I heard the
8 sound of glass breaking. Didn't know where it came from so I
9 kept on about my business. When I got to the house behind
10 NAPA ---
11 Q: Let me ask you -- let me interrupt you. As you were going
12 ---
13 A: Yes.
14 Q: --- to your friend's house, which side of Fourth Avenue
15 were you riding on?
16 A: I was on -- going down Fourth, I would've been on the left
17 side.
18 Q: Okay. Is that the same side as the church is on?
19 A: No, the opposite side.
20 Q: Okay. And who is this friend you were going to see?
21 A: His name is Polia (spelled phonetically), this guy that
22 was I working with, doing some floor work with and that's just
23 a spot that they all hung out at. He just said, if you got
24 time, stop by sometime. So, I decided to stop by that
25 particular night but no one was there. And as I said, as I

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1 was riding towards it, that's when I heard the sound of glass
2 breaking, didn't know where it came from, I kept on riding.
3 And then when I got there and they weren't at the house,
4 that's when on my way back instead of going home, I decided
5 I'm gonna be nosey. And so I -- I rode the bicycle in the
6 parking lot next to the Freewill Church which is -- I think is
7 a warehouse or some type of building. I rode back in that
8 parking lot and I saw nothing. So, when I came out of that
9 parking lot, I rode in back of the church parking lot. And
10 when I rode in the church parking lot, that's when I saw the
11 broken glass, the broken window.
12 Q: Where was that window in relation to the ---
13 A: To the street? It would be facing the street cause soon
14 as you turn off the sidewalk, you'll be facing the window.
15 Q: So, facing Fourth Avenue?
16 A: Facing Fourth Avenue.
17 Q: Okay. Which side of the building?
18 A: It would be the left side of the building.
19 Q: Okay. So, you're on your bicycle and you rode up to the
20 church, what did you do?
21 A: Well, when I saw the glass -- the window broken, I rode up
22 to it. The glass was everywhere. So, being nosey, I decide,
23 somebody just did this, at least five, ten minutes ago. So, I
24 stood there and I looked around. I stuck my head in through
25 the window and that's when the alarm went off. I panicked,

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1 jumped on my bicycle and took off across the street. On my
2 way across the street, I hear the squealing sound of tires. I
3 looked back, all I saw was a dark-colored vehicle pulling off.
4 Not thinking nothing of it, not even aware that I even cut
5 myself. I kept going and I never looked back until I got
6 arrested and they served the warrant on me for it.

7 Q: Did you see anybody when you stuck your head in the
8 window?

9 A: No. It's like as soon as I stuck my head in the window,
10 that's when the beep-beep went off and I panicked, jumped
11 back, jumped on my bicycle and head across the street. And
12 soon as I cross Fourth Avenue going down -- I don't know which
13 road that is directly in front of the church but there's a
14 road goes directly across from it. As I'm going down that
15 road, that's when I hear the squeal of the tires. I look back
16 on the bicycle and all I saw was a dark-colored vehicle,
17 truck, pulling out of that parking lot.

18 Q: Which way did it go?

19 A: It goes towards where the locker plant, it goes back up
20 towards Fourth Avenue.

21 Q: Towards downtown?

22 A: Yes, sir.

23 Q: Could you see how many people were in the truck?

24 A: I couldn't see at all. I couldn't even see the driver
25 because if I'm not -- the windows either been tinted or -- I

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MAURICE WALLACE WARD - DIRECT BY FOX

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1 believe it had to be tinted because I couldn't see no head or
2 anything. But that vehicle came out of that parking lot.

3 Q: When you rode up, did you see the vehicle in the parking
4 lot when you rode up on your bike?

5 A: No, I didn't.

6 Q: Could you see it behind the church where you were?

7 A: Well, I never went that far back because the window is
8 right here on the side of the building. I never made it all
9 the way to the end of the parking lot.

10 Q: Does the parking lot encircle the church? Does it go all
11 the way around?

12 A: It does but I only know that now because passing it last
13 couple of years, I realize that it does have a circle but at
14 that night I didn't know that.

15 Q: Had you ever been inside that church before?

16 A: No, sir.

17 Q: Never been a visitor with anybody or services or ---

18 A: No, sir. No, sir.

19 Q: When you rode up, you say you got off your bicycle?

20 A: I never got off the bike.

21 Q: Okay. So, how were you able to look in the window ---

22 A: Well ---

23 Q: --- without falling off your bike?

24 A: I pulled the bicycle up on the sidewalk, I think it's some
25 bushes or hedges right close to the window. I actually pulled

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1 the bicycle up, the front tire into the hedges and I leaned
2 over and looked in there.

3 Q: Could you -- you say you didn't see anybody, could you
4 hear anything?

5 A: That's why I stuck my head in because, like I said, it had
6 to've been ten minutes when I actually heard the sound of
7 glass breaking. So, I -- when I got there, I figured either
8 somebody was still in there or I don't know what happened but
9 that's why I stuck my head in to hear -- to listen for sound
10 and I didn't hear -- but like I said, as soon as I stuck my
11 head in there, that's when the alarm went off.

12 Q: What were you gonna do if you heard a sound?

13 A: I was gonna take off anyway but like I said, I should've
14 went home but I was being nosey and later I realized that if I
15 would've stayed and told them what I saw or -- I mean, I don't
16 know what would've happened, so -- take that chance and I
17 actually knew that I didn't go in there, so I left.

18 Q: And you were alone going to your friend's and coming back,
19 correct?

20 A: Yes, it was -- it was just me.

21 Q: And you didn't meet -- did you meet anybody at the church?

22 A: No, I did not.

23 Q: Did you have any plan to meet anybody at the church?

24 A: No, sir.

25 Q: Did you have any intention before you rode up to the

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1 church to go inside and see what you could find and take it?

2 A: No, sir.

3 Q: When you rode up and saw that there was broken window, did
4 you form a plan at that moment ---

5 A: No, sir.

6 Q: --- to go inside and try to take anything?

7 A: No, sir, I did not.

8 Q: Did you ever go inside?

9 A: I never been inside the church.

10 Q: Did you have any intention of stealing anything of value
11 from that church?

12 A: No, sir.

13 Q: Did you have any intention of damaging the property of the
14 church in any way?

15 A: No, sir.

16 Q: You have any intention of committing any sort of crime
17 whatsoever at that church that night?

18 A: No, sir, not that church or any church.

19 Q: Did you commit any crime while you were at the church?

20 A: No, I did not.

21 Q: Did you break the window?

22 A: No, sir, I did not.

23 Q: Do you know who broke the window?

24 A: No.

25 Q: Thank you. Please answer any questions Mr. Grooms has for

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MAURICE WALLACE WARD - CROSS BY GROOM

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1 you.

2 CROSS EXAMINATION OF MAURICE WALLACE WARD BY MR. GROOMS:

3 Q: Mr. Ward, your testimony is that as you rode by that
4 night, you heard a window break.

5 A: Yes, sir.

6 Q: And you went to see your friends and they weren't there,
7 so you turned around and got curious at that point and you had
8 nothing better to do?

9 A: Yes. Yes, sir.

10 Q: And you rode your bike up to the window?

11 A: Yes, sir.

12 Q: You did not get off your bike?

13 A: No, I didn't.

14 Q: Did you ride around the whole church or did you ride
15 straight to that window?

16 A: I rode in the parking lot and made a -- as I got closer
17 down the parking lot, closer because the window is not right
18 up front when you first turn in.

19 Q: Right.

20 A: You have to actually ride down the parking lot. And as I
21 was riding down, that's when I saw the broken window, turned
22 the bicycle around right then, then rode up to the window.

23 Q: Okay. Let me show you what's been marked as State's
24 Exhibit Number One. Is this the place you're talking about?

25 A: Yes, sir.

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MAURICE WALLACE WARD - CROSS BY GROOM

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1 Q: And you were able to see that broken window from the
2 sidewalk and ride right up to it?

3 A: Yes, sir; I was.

4 Q: It wasn't dark that night?

5 A: I mean, there's a place of business right next door,
6 there's lights shining from that building. So, as I rode ---

7 Q: Okay. But there were no lights there?

8 A: No, not right here.

9 Q: Okay. Thank you. And you testified that curiosity got
10 the best of you, you stuck your head in the window and cut
11 yourself?

12 A: I didn't know it at the time. I didn't -- I didn't see
13 nothing, no cut or felt no blood or nothing. I just didn't
14 know that I cut myself.

15 Q: And then you heard squealing tires and the real bad guy
16 got away?

17 A: When I stuck my head in the window, the alarm went off. I
18 took off on the bicycle. I heard the squealing tires as I was
19 across the street, leaving.

20 Q: I got you. Well, what do you have to say about testimony
21 that the door being open is what set the alarm off? There was
22 no sensor on that side of the church.

23 A: Well, that's when the alarm went off if I'm sticking my
24 head in the window and then the alarm went off, that means
25 somebody else had to come out that door.

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1 Q: So, somebody came out the door while you had your head in?

2 A: I'm saying that's the only way the alarm could've went
3 off.

4 Q: But you didn't see them?

5 A: I didn't see anyone. I stuck my head in ---

6 Q: You stuck your head in the window and somebody sneaking
7 out the door and you missed it?

8 A: No, that's not what I said. As I was sticking my head in
9 the window, the alarm went off. I don't know if a door open
10 or if anybody ran out. The alarm went off and I took off.

11 Q: All right, Mr. Ward. Is it true that you were convicted
12 of housebreaking in 1984?

13 A: Yes, sir.

14 Q: Were you convicted of armed robbery in 1988?

15 A: Yes, sir.

16 Q: Were you convicted of burglary in 2002?

17 A: Yes, sir.

18 Q: Were you convicted of shoplifting in 2010?

19 A: No, sir.

20 Q: How about again shoplifting in 2010?

21 A: No, sir.

22 Q: Okay. Thank you, for your time.

23 THE COURT: You may step down.

24 MR. FOX: Defense rests, Your Honor.

25 THE COURT: All right. Ladies and gentlemen of the jury,

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MOTIONS

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1 the Defense has rested and it is now -- we've not reached the
2 point in the trial where we will have closing arguments.

3 Mr. Fox, are you prepared and ready to go?

4 MR. FOX: I am. I believe I have a matter I need to
5 address before that, Your Honor, some motions.

6 THE COURT: Okay, very well. Let's take the jury out for
7 a moment.

8 (REPORTER'S NOTE: The jury exits the courtroom. 1:53 P.M.
9 The following takes place outside the presence of the jury.)

10 THE COURT: You're renewing your motions?

11 MOTIONS:

12 MR. FOX: Your Honor, now that all evidence has been
13 presented from the State and Defense, we would renew the
14 motion, first, for a mistrial for that motion for the same
15 reasons as before the jury heard testimony about Defendant's
16 larceny conviction and his sentence of fifteen years. I know
17 Your Honor has given a curative instruction and we object to
18 that and we renew our motion for a mistrial. And we also
19 renew our motion for a directed verdict at this time.

20 THE COURT: All right. I would respectfully deny your
21 motion for a mistrial. I do not believe that the information
22 -- it was unsolicited and was inadvertently provided to the
23 jury -- it's so prejudicial that it raises prejudice to the
24 point that a mistrial would be appropriate and I'm going to
25 consequently deny your motion for a mistrial. I would also

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MOTIONS

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1 deny your motion for a directed verdict. I think there is
2 substantial evidence that the State has presented that would
3 justify sending this to the jury. Any questions I may have
4 had about the reliable for the DNA evidence has been resolved
5 by the Defendant's testimony that the blood samples taken were
6 his or his blood samples were there.

7 I do want to place on the record that in my review of the
8 prejudicial versus probative value of the prior convictions
9 that we have discussed that I did apply a 403 analysis. I
10 think that the very heart of this case would be the
11 credibility of the Defendant and those go to the credibility
12 of the Defendant -- directly to the credibility of the
13 Defendant and I think that that's what the State has to
14 overcome in this case and I would therefore rule that any
15 prejudicial value does -- it certainly outweighed by the
16 probative value. And the probative value is not substantially
17 outweighed by the prejudicial value.

18 All right. Are we ready to go forward?

19 MR. FOX: Yes, Your Honor.

20 THE COURT: All right. Let's go. Bring in the jury.

21 (REPORTER'S NOTE: The jury returns to the courtroom. 1:57
22 P.M.)

23 THE COURT: All right. Ladies and gentlemen, we're about
24 to hear closing arguments.

25 Mr. Fox?

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CLOSING BY MR. FOX

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1 MR. FOX: May it please the Court.

2 CLOSING BY MR. FOX:

3 MR. FOX: Ladies and gentlemen, now is the part of the
4 case where the Solicitor and I sum up for you and I just want
5 to take a few minutes to point out some things and argue to
6 you why I believe the State has not carried its burden of
7 proof in this case.

8 You certainly have a good bit of evidence but I urge you
9 that it's not necessarily to lead you to the conclusion that
10 the State wants you to draw which is that Mr. Ward broke into
11 the Freewill Baptist Church back in August of 2010 with the
12 intent to commit a crime. You've got the evidence, exhibits,
13 photographs and so forth, the envelopes from SLED that were
14 tested and the swabs that were tested. If you wish, you can
15 open all that stuff up and look at it for yourselves. You had
16 the woman from Indiana who tested it, lots of people that were
17 necessary to be here that don't necessarily establish that Mr.
18 Ward committed the crime. The chain of custody people had to
19 show that this item went from here to there to there. They're
20 important and necessary but not necessarily other than
21 establishing the chain of custody. Most people you heard from
22 have no idea what happened.

23 You've heard from Mr. Ward this afternoon. The Judge
24 will tell you that it is your role to assess all the
25 witnesses, their believability, their credibility, et cetera.

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CLOSING BY MR. FOX

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1 You've heard in a couple of context the fact that Mr. Ward is
2 a convict. He does have a prior record. The Judge will tell
3 you, now one thing the State had to prove that as an element
4 of burglary second. They had to show that he's a person that
5 had prior qualifying convictions, which he did back in 1984
6 and 2002, way back. And he did in fact have those things and
7 you'll have copies of the Clerk's records to show that, not
8 any question about that.

9 But the Judge would also tell you and the reason I asked
10 Mr. Ward when he was testifying, another way you can weigh
11 prior convictions for any witness is for their believability.
12 I believe the Judge will charge you that the fact that someone
13 has a previous conviction is not evidence that he committed
14 this crime. In other words, the reasoning that you are not to
15 engage in and cannot engage in is, well, he did it before, he
16 must've done it again.

17 It's very difficult to do as human beings but there are
18 specific evidentiary reasons why those convictions were
19 brought in. One, our legislature has said that's an element
20 of burglary in the second degree violent certain prior
21 convictions. Two, any witness that takes the stand has again
22 certain convictions of certain types he can be asked about
23 that, not proof that they committed the crime they're on trial
24 for but for you all to assess more generally in terms of their
25 credibility as a witness.

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1 The way the rules work in here, since I put up a case,
2 I've got to argue first and so I've got to anticipate -- I
3 won't get back up and I have to anticipate what Mr. Grooms
4 will say. It's not my job to argue for him. He's a very good
5 attorney and he can speak for himself. I assume he's gonna
6 say something like you can't believe Mr. Ward, he's got every
7 reason to want to lie to you than for no other than because
8 he's on a trial. And I submit to you that's just not a valid
9 argument to make. That stands our jury system, our criminal
10 system, on its head. Every person has a right to a jury
11 trial. Every person has a constitutional right to testify.
12 And if we automatically erase from our minds what any
13 defendant would say simply on the fact that they are a
14 defendant with a motive to lie, it certainly exists. Anybody
15 accused has a motive to not want to go to jail but if we just
16 say that's it and don't base the verdicts on anything else and
17 you're not doing your job as a juror. So, I'd certainly urge
18 you to reject that argument and base it on the evidence.

19 It's really not anymore much of a fight about DNA. Mr.
20 Ward testified to you that he was in fact at that church.
21 That he went up to the window after he heard it breaking and
22 on his way back he went up and he rode around the other
23 building, the next-door building, because he had heard the
24 glass break and didn't see anything there, kept riding towards
25 home, rode around, or least up to the church, saw a broken

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1 window, leaned in, sounds like cut himself on that glass.

2 Where the DNA is important is this, Officer Eden
3 testified that he took three samples, three swabs. All right.
4 And he was very sure about that. Let me just backtrack a
5 little bit. He was very sure initially, oh, yeah, I took
6 three separate samples. He can tell you where he took them,
7 glass on one side of the window, glass on the inside, glass on
8 the window sill. Now, later, he wasn't sure if he put them in
9 three separate boxes or two. They should've been put in
10 three. Ms. Cale from Strand Lab, who is the expert, says oh,
11 yeah, you want to avoid cross contamination, that's not a good
12 thing, you can get an invalid result. No question you only
13 end up with two boxes. No question that there were three
14 samples. And why is that still important and Mr. Ward admits
15 that he went there, that he was at the church. Well, it's
16 important because on that internal chain you heard so much
17 about and that most people testified to, when they're
18 documenting what came to SLED and where it went and who took
19 it and when it left, all those things, it refers to the
20 samples that they took in. One of them says blood sample from
21 the window sill. The other one says blood sample from glass
22 on the ground. Well, why in the world does that matter?
23 Well, it matters for a couple of reasons. If I were arguing
24 to you about whether this was a valid DNA result, there would
25 be real issues of contamination here. There would really be a

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1 big chain of custody issue because nobody, no officer
2 testified to you that it took any samples of blood from a
3 piece of glass off the ground and that there's now a piece of
4 glass with blood on it at SLED or at least a swab from that
5 blood on the glass at SLED, it creates a really big issue
6 about where in the world did that actually come from. But it
7 does leave one issue -- one question unraised, it raises a
8 possibility, it raises a doubt which is there's somebody else
9 there. What do you have, other than Mr. Ward, telling you he
10 didn't go in? What might you have in the evidence, what is
11 there in the evidence that might actually support what he's
12 telling you. He does in fact have a motive to lie to you. I
13 submit there's got to be more than that but is there anything
14 that can back up what he says. Well, we don't know. We
15 could've known though, we couldn't known, because there were
16 three samples taken. They missed the chance, the police
17 missed the chance to test others. There was blood seen inside
18 the church. We could've proved who was inside the church or
19 at least attempted to. Maybe it would never gotten a profile.
20 Sometimes, they testified, you take a sample of blood or hair
21 or saliva or whatever and you can't always develop the DNA
22 from that, the profile from it but you don't know if you don't
23 try. Testimony there was blood on at least one occasion
24 inside the church. That is very strong evidence of an attempt
25 to commit a burglary. Would that blood have matched Maurice

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1 Ward's? We don't know because that was never tested. We
2 don't know where the -- whose blood is on that glass on the
3 ground. That's how it's described the Conway Police
4 Department collects the evidence, they package it up, they
5 label it and send it to SLED. SLED doesn't know where it was
6 collected from. SLED doesn't know here it came from on the
7 scene. They only know what they're told by Conway PD. Conway
8 PD said sample from the window, sample from a piece of glass
9 on the ground. But what if you knew that the person whose
10 blood was on the ground was a totally different person than
11 Mr. Ward? Might that not support his version that, hey, the
12 glass was broken when I got there, I didn't go in. Yeah,
13 maybe I was being a little stupid but -- we all know and the
14 other thing is even though that, wherever it came from, it's
15 unclear why it's labeled as glass on the ground as opposed to
16 in the window because no officer, police officer on the scene
17 testified about getting that off the ground. They didn't
18 bother to test it because they're either too lazy or too cheap
19 or both. SLED is one of the largest agencies in this state.
20 They are provided with probably not every resource they want
21 but every resource they need. They have a lab in Columbia
22 specifically to do this work to test things like this. We can
23 do this in South Carolina, you know. We're always at the
24 bottom of the list we want to be on top of and the top of the
25 list we'd like to be on the bottom of. But guess what, we can

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1 test DNA, we got that capability. They do it. Ken Bogan does
2 it. But that's not as convenient and that's not as cost
3 effective as sending it to an outside lab. So, we'll let it
4 sit in Columbia for over a year and then we'll remember and
5 send it to Indiana and then it'll sit there for a few more
6 months and then it will come back and then we'll lay low a
7 little longer and then we'll get this confirmations log and so
8 almost three years will go, over three years will go by from
9 the time the church is broken into and people are wondering
10 who broke into their church until we're finally in court
11 trying to work it all out. But they were told, Strand Labs
12 was told, oh, don't test that other piece. They're just gonna
13 charge us money for that. It might tell us who was involved
14 in this thing but, you know, we've already got our CODIS --
15 you know, we think it's Maurice Ward, so -- they didn't tell
16 them to come back with Maurice Ward but they -- but the point
17 is it's an important piece of evidence they just left and that
18 you're denied of being able to make an informed decision on it
19 in terms of deciding if Mr. Ward was telling you the whole
20 truth today." You're gonna have to base it on what he told you
21 and that's enough. You can say, you know what, I listened to
22 Mr. Ward, obviously the man has got a history but I was able
23 to look at him and hear his version of events, assess his
24 credibility today and I decided that he's telling the truth.
25 But it sure would be nice if you had the extra piece evidence

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1 that's available, that was collected, that was submitted to
2 SLED and was sent to Strand Labs, they had it right in their
3 little hands but SLED said, no don't bother with that.

4 So, that's something you don't have that might well
5 support the idea that there was somebody else present, that
6 somebody else broke that window because you've got no other
7 evidence of Mr. Ward being in the church. There's nothing
8 inside. There's evidence of the crime because of what
9 happened upstairs in the pastor's office with the safe and --
10 but there was no -- they're weren't able to get any
11 fingerprint evidence, they weren't able to find any --
12 sometimes people have loose hairs or, you know, drop
13 something. I find it interesting they thought Mr. Ward had
14 gloves on because of the little nub, I guess it must've been
15 the dust, I never could figure that out but there was little
16 -- like gardening gloves, they have the nub, they saw that on
17 the, on the safe and I assume it was dust, it never was clear
18 about that. I found it strange that he had gloves on but cut
19 himself going through window. I'm not sure how that worked
20 but maybe he broke the window and then put the gloves on. But
21 there is no physical evidence, no evidence inside, no
22 witnesses, nobody saw this so there's no witness to put Mr.
23 Ward inside. Nobody saw him riding up to the church or riding
24 away. When the alarm went off, the police didn't get there
25 quick enough to see. He left. There was no fingerprints or

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1 any kind of evidence inside. He wasn't found with any kind of
2 burglary tools or anything like that. So, it's all
3 circumstantial and the Judge is gonna describe circumstantial
4 evidence and define that for you. But it is circumstantial
5 evidence. At the most, the State's DNA evidence proves that
6 he was there, as he told you he was and that he cut himself on
7 the outside of the window. Even taking it in the light most
8 favorable the State, that's really all that they have proven
9 beyond a reasonable doubt.

10 So, all of those things taken together, I think the Judge
11 will tell you reasonable doubt is a doubt -- beyond a
12 reasonable doubt is that it leaves you firmly convinced -- I
13 told you at the beginning of the trial, leaves you firmly
14 convinced of the Defendant's guilt. You don't have -- your
15 verdict must be unanimous. It does not have to be the same
16 doubt though. In other words, one of you may doubt the blood,
17 one of you may doubt other things. But if you can articulate
18 a doubt, not based on a gut feeling, based on what you've
19 heard in this courtroom yesterday and today or what you've
20 heard or seen. Lack of evidence is just as important as
21 evidence. If you can articulate a doubt, that is a reasonable
22 doubt. Don't mistake deliberating for doubt. It is
23 understood that you all will go back there, voice your
24 opinions and that it would be amazing if you instantly reach a
25 verdict either way. The fact that you may disagree and argue,

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1 in and of itself is not doubt, but after going through the
2 evidence and thinking about it, if you can articulate a doubt,
3 they're not firmly convinced that Mr. Ward is guilty of this
4 crime, then by oath, you're required to return the verdict of
5 not guilty.

6 The last thing I'll point out, I love history, I love
7 little lessons. And one of the things -- I clerked for a
8 judge who told me that -- South Carolina was a colony at one
9 time from Great Britain. Our court system is derived almost
10 entirely on the British model, jury system, judges in black
11 robes, all sorts of things. In Britain, though, they had in a
12 criminal trial three possible verdicts, guilty, not guilty and
13 not proven. Guilty is what it sounds like. Not guilty is
14 what it sounds like. Not proven is a jury saying, well, we're
15 not sure, we're not convinced he's innocent but we're not
16 firmly convinced that he's guilty. The State/Crown has not
17 proven to our satisfaction that the Defendant is guilty. That
18 has the same effect in Great Britain as the not guilty
19 verdict. Here we've just merged the two. So, not proven and
20 not guilty or innocent are the same. So, if you feel no
21 question Mr. Ward is innocent, you must vote not guilty. If
22 you feel unsure but you feel the State has not left you firmly
23 convinced of his guilt, then you also must return a verdict of
24 not guilty and that's what I urge you to do.

25 THE COURT: Mr. Grooms.

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1 MR. GROOMS: Thank you, your Honor. May it please the
2 court.

3 CLOSING BY MR. GROOMS:

4 MR. GROOMS: Ladies and gentlemen, Maurice Ward just sat
5 there and lied to every single person in this room. He was
6 caught in his lie. He has zero credibility. He told you that
7 he stuck his head in this window because curiosity killed the
8 cat and when he did that the alarm went off. The police told
9 you they got a call on an alarm on a open door. This is the
10 door, the officer told us that. This is the door that set the
11 alarm off. This door was open. This door was, according to
12 Mr. Hardwick, who's the deacon, who grew up in this church, it
13 was deadbolted. It could only be opened from the inside. So,
14 you -- Maurice Ward wants you to believe he stuck his head in
15 this door, somebody came back through the church but yet he
16 didn't hear them. They opened a deadbolted door, walked out
17 past him, he's still got his head in the window, pulls back,
18 misses that but yet doesn't hear them go and get in their car
19 and speed away. Is that believable; is that credible?

20 Ladies and gentlemen, please do not lose sight of what's
21 important in this case. What's important in this case is that
22 we have a burglary. They've all but stipulated to that at
23 this point. It's a burglary of a church. This Defendant
24 entered into that church and he almost got away with it except
25 for leaving that blood. Now, the police could've done a

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1 better job and sadly that is the case a lot of times. They
2 could've taken a sample from each droplet inside the church
3 going towards that safe but they didn't. The officers being
4 simple-minded thought, there's the biggest pool of blood, that
5 would be the best sample. We're not gonna hold that against
6 the church. This blood was sent through Conway PD to Columbia
7 to Grand Strand -- I'm sorry, not Grand Strand -- to Strand
8 Analytical in Indiana, who developed the DNA profile. You
9 heard how they do that. They send that profile back, it
10 matches with CODIS, information that was already in CODIS on
11 this Defendant. That's one match. That's done through a
12 computer, the first match. The second match is done by Mr.
13 David McClure, you heard from him and how professional he was,
14 saying I've gone through and verified this, this is it, this
15 is, match. Then the State gets a completely separate sample,
16 a Buccal swab from this Defendant, sends that to Indiana, so
17 now we have the Buccal swab to the DNA from the church. And
18 you heard Ms. Cale say, this is a match.

19 Ladies and gentlemen, that evidence is in and it
20 certainly shows that he was there. The officers testified
21 that the blood on the window was wet, that they got an alarm
22 call, they respond. This isn't a large city, these officers
23 respond within -- I'm not gonna a minute or two because they
24 didn't testify to -- within a short amount of time. They tell
25 you when they get there that the blood is still wet, the blood

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1 is on the window and blood drops leading into the church are
2 still wet.

3 Ladies and gentlemen, when we get back to Mr. Ward's lie
4 he was just caught in, I'm going to show you what was marked
5 as State's Exhibit Number Four. You heard from Mr. Hardwick
6 earlier, Mr. Hardwick who grew up in this church, he's a
7 deacon and superintendent. I can't believe anyone else other
8 than maybe the preacher would know more about what's going on
9 in that church than Mr. Hardwick. He testified B is where the
10 sensor was for that alarm. The other sensor is on the door.
11 I just want to reiterate that point that there's no way
12 sticking your head inside that window set off the alarm.
13 Sorry, I missed that earlier.

14 What I have to do in this case, it's my burden, I've got
15 to prove to you that a burglary in the second degree occurred.
16 Violent meaning that it has additional factors in it. One of
17 which being the entering or remaining occurs in the nighttime.
18 Well, he's now admitted to entering, putting his head in there
19 and burglary is committed by a person with a prior record, two
20 or more convictions for burglary or housebreaking or a
21 combination of both. Well, he's got one of each so we've
22 proven that element too. It's one or the other, we don't got
23 to prove them both but we've proven both because just in case
24 there was any issue with the time being in the summertime,
25 10:30 at night, it's dark outside, that is in fact nighttime.

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1 You can imply that when this Defendant entered the church
2 with all the blood dropping upstairs where the doors are
3 kicked off the offices, the paper are rifled through and the
4 safe is beaten beyond repair that he was there to steal. If
5 nothing else, to damage everything in the church, that's also
6 a crime. I think it's pretty clear from the damage to the
7 safe, what he was trying to do.

8 Ladies and gentlemen, Mr. Fox told you that if you could
9 articulate it, that that as a doubt. That's not necessarily
10 true. We're not talking about every single possibility.
11 There's always a possibility that this could've been an inside
12 job and the police framed him and framed all his blood, but I
13 think we know that's not a credible story. Just because you
14 can articulate it doesn't mean it's reasonable. I think we
15 all know what's reasonable here.

16 I'd like to tell you what I think happened. According to
17 the testimony you heard, this is the darkest corner on the
18 church. Conveniently, Mr. Ward saw it on his bicycle, didn't
19 even check the back of the church, went straight to this
20 window. Ladies and gentlemen, I think he went up -- he's been
21 riding by this several times, he lives right down the road.
22 He sees what he thinks is an easy target. He goes to the
23 darkest space -- place on the church, attempts to break in the
24 door, that doesn't work. Then takes that crowbar and tries to
25 jimmy the window. When he's doing that, the window breaks.

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1 Well, that's not gonna stop him because there's no alarm went
2 off at that point. He's gonna go on inside. Except when he
3 did, it cut him. Police officer said there's no blood leading
4 away, blood leading in the church. And then he goes upstairs,
5 he vandalizes the church. He doesn't get anything,
6 thankfully; that doesn't mean it's not a burglary. When he
7 exits through this door -- I would submit to you that when you
8 climb in through this window or this door, it's makes no sense
9 to walk this way; that's where the officers said they saw the
10 blood. There's no alarm on this side other than if you open
11 the door. The other alarm is on the other side of the church.
12 You go on upstairs and try to break in the safe, come out
13 through this way, you're gonna hit that alarm right there.
14 It's my submission that he didn't hit it on the way in but hit
15 it on the way out, either here or say he came back through the
16 same path from that door, walked on outside. Either way, I
17 would submit to you that that story about poking your head in
18 the window and someone sneaking behind you and unlocking the
19 door and setting the alarm off, shows absolutely no
20 credibility of this witness. It shows a man who is trying to
21 give testimony because he realizes he's on the verge of being
22 convicted. I've done everything I can to get this evidence
23 into trial. I want you to go back to jury room, look at the
24 evidence, think about what we've done in the last day or two
25 and how methodical I've had to show you the steps only to get

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1 to the story about poking your head in the window and the bad
2 guy slipping out the back and I'd ask you what's more
3 credible.

4 Thank you for your time. When you get done, apply those
5 facts to that law -- the Judge will give you the instruction
6 on the law, please return a verdict of guilty. Thank you.

7 CHARGE OF THE JURY:

8 THE COURT: Ladies and gentlemen of the jury, before I
9 charge you on the law, let me tell you about a practice that I
10 have started -- I started employing when I went on the bench.
11 I don't any other judge that does it but I think that it helps
12 the jury and that is I prepare a transcript of my charge on
13 the law. I appreciate how difficult it is for laypersons to
14 come into the Court and try to absorb and remember everything
15 that the judge tells them about the law when sometimes that
16 charge it -- it can be extensive. So, I prepare a transcript.
17 The Supreme Court has ruled on that and said that that is
18 appropriate, that I give you a transcript of my charge so long
19 as my charge is taken directly from the transcript or the
20 transcript is a verbatim transcript of my charge on the law.
21 So, I'm going to provide that for you during your
22 deliberations. Now, that doesn't mean you don't have to
23 listen to me now; I certainly want you to.

24 But I want to remind you that a charge on the law should
25 be taken as a whole. Don't focus in on one little part of the

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1 charge. Look at it as a whole document. All parts of the
2 charge are important. Do that while you are deliberating and,
3 as I said, you're gonna have a copy of this in your jury room.

4 I'll remind you that during this trial you and I have
5 certain duties to perform. And as Trial Judge, it's my
6 responsibility to preside over the trial of the case and I
7 also have the duty to rule on the admissibility of evidence
8 offered during the trial. You are to consider only the
9 competent evidence before you. If there was any testimony
10 ordered stricken from the record in this case during the
11 trial, you must disregard that testimony. You are to consider
12 only the testimony which has been presented from this witness
13 stand, any exhibits which have been made a part of the record
14 in this case and any stipulations, agreements of counsel. I
15 have the additional duty to charge you the law applicable to
16 this case. As presiding judge, I am the sole judge of the law
17 of the case. It is your duty as jurors to accept and apply
18 the law as I now state it to you. If you already have an idea
19 as to what the law is or what the law ought to be and it does
20 not agree with what I now tell you the law is, you must
21 abandon this idea because you are sworn to accept the law and
22 apply the law exactly as I stated to you. In every case tried
23 in this court before a jury, the jury becomes the sole and
24 exclusive judge of the facts in the case. A trial judge
25 cannot comment, intimate, state or make any statement to a

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1 trial jury about the facts in a case. Since you the jury are
2 the sole judge of the facts in the case, you are not to infer
3 from what I have said during the progress of this trial in
4 ruling on the admissibility of evidence or otherwise or
5 anything that I say now during the course of this instruction
6 to you that I have any opinion about the facts in this case.
7 The law does not allow me to have an opinion about the facts
8 in this case. This is a matter solely for you the jury to
9 determine. And as jurors, it is your duty to determine the
10 effect, value, weight and truth of the evidence presented to
11 you during this trial.

12 Now, the indictment charges the Defendant with burglary
13 second degree. I'll remind you that the fact that the
14 Defendant was arrested, charged and indicted in this case is
15 not evidence in the case and cannot be considered by you as
16 evidence of guilt in this case nor does it create any
17 presumption or inference of guilt. This document is simply
18 the formal written instrument which contains the charge made
19 against the Defendant. It is the formal document by which the
20 case is brought into the court.

21 The Defendant has pled not guilty to the indictment and
22 that plea puts the burden on the State to prove the Defendant
23 guilty. A person charged with committing a criminal offense
24 in South Carolina is never required to prove himself innocent.
25 I charge you that it is an important rule of the law that the

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1 Defendant in a criminal case, no matter how serious the charge
2 may be will always be presumed to be innocent of the crime for
3 which the indictment was issued unless guilt has been proved
4 by evidence satisfying you of that guilt beyond a reasonable
5 doubt. This presumption of innocence does not end when you
6 begin your deliberations but it accompanies the Defendant
7 throughout the trial until you reach a verdict of guilt based
8 on evidence satisfying you of that guilt beyond a reasonable
9 doubt. The presumption of innocence is like a robe of
10 righteousness placed about the shoulders of the Defendant
11 which remains with the Defendant until it has been stripped
12 from the Defendant by evidence satisfying you of the
13 Defendant's guilt beyond a reasonable doubt. The presumption
14 of innocence is not mere legal theory. It is not just a legal
15 phrase. It is a substantial right in which every Defendant is
16 entitled unless you, the jury, are satisfied from the evidence
17 of the Defendant's guilt beyond a reasonable doubt.

18 Now, the State has the burden of proving guilt beyond, as
19 I said, reasonable doubt. Some of you may have served as
20 jurors in civil cases where you were told that it's only
21 necessary to prove that a fact is more likely true than not
22 true such as by the greater weight or the preponderance of the
23 evidence. In criminal cases, the State's proof must be more
24 powerful than that. It must be beyond a reasonable doubt.
25 Proof beyond a reasonable doubt is proof that leaves you

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1 firmly convinced of the Defendant's guilt. There are very few
2 things in this world that we know with absolute certainty and
3 in criminal cases the law does not require proof that
4 overcomes every possible doubt. If based on your
5 consideration of the evidence, you are firmly convinced that
6 the Defendant is guilty of the crime charged, you must find
7 the Defendant guilty, a reasonable doubt is the kind of doubt
8 that would cause a reasonable person to hesitate to act. It
9 is doubt for which you could give a reason. If on the other
10 hand, you think there is a real possibility that the Defendant
11 is not guilty, you must give the Defendant the benefit of the
12 doubt in finding that guilt.

13 There are two types of evidence which are generally
14 presented during a trial, direct evidence and circumstantial
15 evidence. Direct evidence directly proves the existence of a
16 fact. It does not require deduction. Circumstantial evidence
17 is proof of a chain of facts and circumstances indicating the
18 existence of a fact. Crimes may be proved by circumstantial
19 evidence. The law makes no distinction between the weight or
20 value to be given, either direct or circumstantial evidence.
21 However, to the extent the State relies on circumstantial
22 evidence, all of the circumstances must be consistent with
23 each other and when taken together point conclusively to the
24 guilt or the accused beyond a reasonable doubt. If these
25 circumstances merely portray the Defendant's behavior as

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1 suspicious, the proof has failed. The State has the burden of
2 proving the Defendant guilty beyond a reasonable doubt. The
3 burden rests with the State regardless of whether the State
4 relies on direct or circumstantial evidence or some
5 combination of the two. Necessarily, you must determine the
6 credibility of witnesses who have testified in the case.
7 Credibility simply means believability. It becomes your duty
8 as jurors to analyze and to evaluate the evidence and
9 determine which evidence convinces you of its truth. In
10 determining the believability of witnesses who have testified
11 in this case, you may believe one witness over several
12 witnesses or several witnesses over one witness, you may
13 believe a part of the testimony of a witness and reject the
14 remaining part of the testimony of that same witness. You may
15 believe the testimony of a witness in its entirety or reject
16 the testimony of a witness in its entirety. You may consider
17 whether any witness has exhibited to you any interest, bias,
18 prejudice or other motive in this case. You may also consider
19 the appearance and manner of a witness while on the witness
20 stand. The rules of evidence normally do not permit witnesses
21 to testify to opinions or conclusions. An exception to this
22 rule exists for witnesses we call expert witnesses. A witness
23 who by education and experience has become expert in some
24 arts, science, profession or calling may state an opinion as
25 to relevant and material matters in which the witness claims

State v. Ward - 2012-GS-26-01742
CHARGE TO JURY

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1 to be an expert and may also state the reasons for the
2 opinion. You should consider any expert opinion received in
3 evidence in this case and like any other evidence give it the
4 weight you think it deserves. If you decide that the opinion
5 on an expert witness is not based on sufficient education and
6 experience or if you conclude that the reasons given in
7 support of the opinion are not sound or that the opinion is
8 outweighed by other evidence, you may disregard that opinion
9 entirely. And expert witnesses' testimony is to be given no
10 greater weight than that of other witnesses simply because the
11 witnesses -- the witness is an expert. Further, you are not
12 required to accept an expert's opinion even though it's not
13 contradicted.

14 Now, to prove second degree burglary, the State must
15 prove beyond a reasonable doubt that the Defendant entered a
16 building without consent and with the intent to commit a crime
17 therein. A building is any structure, vehicle, watercraft or
18 aircraft where any person lodges or lives or where people
19 assemble for the purposes of business or government,
20 education, religion, entertainment, public transportation or
21 public use or goods are stored.

22 Finally, the State must also prove beyond a reasonable
23 doubt that, number one, the Defendant entered or remained in
24 the building in the nighttime. Nighttime is the period of
25 time between sunset and sunrise during which there's not

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CHARGE TO JURY

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1 enough daylight to recognize a person's face except by
2 artificial light or moonlight. Or, or, two, the burglary was
3 committed by a person with a prior record or two or more
4 convictions for burglary or housebreaking or a combination of
5 the both.

6 You have heard evidence that Mr. Ward was convicted of a
7 crime other than the one for which the Defendant is now on
8 trial. This evidence may be considered by you if you conclude
9 that it's true only in determining whether the Defendant's
10 testimony is believable and for no other purpose. You may not
11 consider the Defendant's prior record as any evidence of the
12 Defendant's guilt of the charge we are trying today.

13 There are two possible verdicts which you may find in the
14 indictment in this case, guilty or not guilty and there's no
15 significance whatsoever in the order in which I state these
16 possible verdicts. It's simply that I got to say one before
17 the other. Ladies and gentlemen, your verdict must be a
18 unanimous one.

19 Mr. Foreperson, when the jury agrees on the verdict, you
20 will write the verdict on the verdict form which I am
21 providing for you and sign your name as foreperson and then
22 knock on the jury room door and inform the Bailiff that you
23 have reached a verdict and at that time I will receive you
24 back into the courtroom. I'm going to have Mr. Ropp now take
25 you to your jury room. I ask that you not begin your

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CHARGE TO JURY

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1 deliberations until you are told to by the Clerk or either the
2 Bailiff. There are some matters that I have to address with
3 the attorneys. And I'll tell you what I'll do, if I send in
4 these exhibits and my charge and the verdict form that I have
5 prepared for you, that's your signal to begin your
6 deliberations. If I have to bring you back out, I will, but
7 if I don't I won't bring you back out, I'll just send in the
8 exhibits and the charge and the verdict form.

9 I want to review the verdict form with you. It's very
10 simple. It says verdict form. As to the charge of burglary
11 second degree violent, we, the jury, unanimously find the
12 Defendant -- and you circle one -- guilty or not guilty and
13 sign it. Very simple. Okay?

14 Mr. Ropp, if you would, take your jury in the jury room,
15 segregate the two alternates for a moment. Okay?

16 (REPORTER'S NOTE: The jury exits the courtroom. 2:28 P.M.
17 The following takes place outside the presence of the jury.)

18 THE COURT: All right. Ms. Kay, I would like for you to
19 mark the charge that I have given you as Court's One. I think
20 it's Court's One, is it not?

21 COURT REPORTER: Yes, sir.

22 COURT'S EXHIBIT NUMBER ONE

23 ADMITTED INTO EVIDENCE

24 THE COURT: That one will be submitted to the jury. I
25 also have a verdict form.

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CHARGE TO JURY

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1 Gentlemen, any need to review the verdict form. Very
2 simple. I read everything that was on it. Any further
3 charges from the State?

4 MR. GROOMS: Your Honor, I assume it's too late to ask
5 about hand of one, hand of all.

6 THE COURT: Hand of one, hand of all?

7 MR. GROOMS: In that if he is the one that broke into the
8 window ---

9 THE COURT: There's no evidence on the part of the State
10 of anyone else being involved, is there?

11 MR. GROOMS: I guess other than talking about the
12 possibility of other burglars ---

13 THE COURT: But the only evidence concerning other
14 burglars is that he had -- didn't know who they were. I mean
15 there's no evidence of any combination of people. I would
16 respectfully deny the State's request for that charge.

17 MR. GROOMS: Yes, sir.

18 THE COURT: And it's never too late to ask.

19 Mr. Fox?

20 MR. FOX: No additions.

21 THE COURT: All right. Would you gentlemen, please come
22 up and assemble the exhibits and remember, I think, Seven and
23 Eight don't go in but Seven-A and Eight-A, I think that's the
24 numbers, do go in. So, please get those together.

25 THE COURT: All right. Are they ready? Are they put

State v. Ward - 2012-GS-26-01742
BY THE COURT

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1 together? Have you reviewed them all?

2 MR. GROOMS: Yes, sir.

3 THE COURT: Rags, if you would, take those in and inform
4 the jury that they may begin their deliberation.

5 All right. We will be at ease while the jury
6 deliberates. Gentlemen, stay close.

7 (REPORTER'S NOTE: Deliberations begin at 2:41 P.M.)

8 (RECESS - 2:41 P.M.)

9 *****OFF THE RECORD*****

10 (On the Record. 3:40 P.M.)

11 THE COURT: All right. I understand we have a verdict.
12 Before we bring in the jury, a few housekeeping matters, I
13 just noticed that the curative instruction that you handed up
14 -- and I understand you objected to my failure to grant a
15 mistrial but I think it needs to be marked as an exhibit.

16 COURT'S EXHIBIT NUMBER TWO

17 MARKED FOR IDENTIFICATION

18 THE COURT: Furthermore, let me state on the record that
19 prior to the jury beginning any deliberations, the alternates
20 were segregated and I did excuse them. They have not
21 participated in any deliberations by the jury.

22 Jury please.

23 (REPORTER'S NOTE: The jury returns to the courtroom. 3:44
24 P.M.)

25 VERDICT OF THE JURY:

State v. Ward - 2012-GS-26-01742
VERDICT OF THE JURY

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1 THE COURT: All right. Mr. Foreman, I understand that
2 you have reached a verdict; is that correct?

3 JUROR 78: Yes, sir. We have a unanimous verdict.

4 THE COURT: And it was unanimous; all right. Would you
5 give it to Mr. Ropp and have him deliver it to the clerk or
6 deliver it to me, actually. Thank you very much.

7 Madame Clerk, will you please publish the verdict?

8 CLERK: Indictment number 2013-GS-26-1742, State of South
9 Carolina, County of Horry versus Maurice Wallace Ward as to
10 the charge of burglary second degree violent, we, the Jury,
11 unanimously find the Defendant guilty, dated September 17,
12 2013, signed by foreperson, James Coleman.

13 Ladies and gentlemen of the Jury, if this is your
14 verdict, so signify by raising your right hand.

15 THE COURT: And may the record reflect that all jurors
16 have responded by raising their hands.

17 Any request for individual polling, Mr. Fox?

18 MR. FOX: No, Your Honor.

19 THE COURT: All right, very well.

20 Is the Defendant -- is the State ready to proceed with
21 sentencing?

22 MR. GROOMS: Yes, sir. Let me grab the sentencing sheet.

23 THE COURT: All right. Mr. Fox, I will hear from you.

24 SENTENCE OF THE COURT:

25 MR. FOX: Thank you, Your Honor. At this time, I would

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SENTENCE OF THE COURT

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1 renew previous motions specifically for a mistrial or in the
2 alternative a new trial. Based on motions we've made
3 previously and arguments that Your Honor has heard as to
4 evidence that was before the jury and should not have been
5 regarding prior convictions, as well as I believe it was error
6 for the DNA evidence be admitted because of the faulty chain.
7 So, we would renew all previous motions and request a new
8 trial, Your Honor.

9 THE COURT: All right. And I have heard these motions
10 and denied them and for the same reasons I would deny them at
11 this time.

12 Now, let me hear from the State as to sentencing.

13 MR. GROOMS: Your Honor, Mr. Ward has a prior record in
14 1979 of grand larceny; '84, housebreaking and grand larceny;
15 1988 armed robbery; 2002, burglary second and possession of
16 stolen vehicle. Your Honor, we were not able to substantiate
17 at least on the NCIC the shopliftings from 2010, although I
18 have record of those guilty forms from the Horry County's
19 public index.

20 Your Honor, our position would be that this Defendant has
21 been incarcerated in '84 for fifteen years and '88 for twenty-
22 one years; and '02 for twelve years; nothing seems to work.
23 Your Honor, we ask for the maximum.

24 THE COURT: All right. Let me hear from you, Mr. Fox.

25 MR. FOX: Well, Your Honor, you've heard Mr. Ward's -- he

State v. Ward - 2012-GS-26-01742
SENTENCE OF THE COURT

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1 has been incarcerated two extensive stretches. He comes out
2 and like so many felons and he's basically unemployable. He
3 does what he can to work and the he falls into substance abuse
4 and that's just -- the cycle just goes on and on. It's not an
5 excuse but that is how he is here. The demeanor that you saw
6 in court and on the witness stand, I think is how he really
7 is. He's a mild-mannered guy but he continues to do these
8 things. We'd ask the Court for whatever mercy you can show
9 him.

10 THE COURT: All right. Mr. Ward, do you want to tell me
11 anything?

12 MR. WARD: Yes, sir, I do have a problem. And I've been
13 in and out of the system. And being in the system, I look for
14 help in the system and they didn't offer any help, so -- I
15 mean, I need some help. I'm tired of the same routine. I do
16 have family that loves me. I just hope that I can get the
17 help I need so I can come back and be a productive citizen in
18 society.

19 THE COURT: All right.

20 MR. WARD: I apologize for any mistake that I've made,
21 any wrongdoing.

22 THE COURT: All right, Mr. Ward, you have an extensive
23 record. Incarceration only seems to protect the community
24 from you. When you get out, you go right back to what you're
25 doing. You've got -- as I understand, although I don't

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BY THE COURT

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1 consider these for purposes of sentencing, but you have two
2 more pending burglaries, I understand.

3 MR. GROOMS: It's just one, Your Honor. He had that
4 trial back in May.

5 THE COURT: Okay. But Mr. Ward, I see here, you're
6 fifty-one?

7 MR. WARD: Yes, sir.

8 THE COURT: You have just been a -- essentially, a career
9 criminal. The sentence of the Court is that you be confined
10 to the State Department of Corrections for a period of fifteen
11 years. Thank you, sir.

12 Mr. Grooms, you need to sign the sentencing sheet and
13 have Mr. Fox sign it as well.

14 BY THE COURT:

15 Ladies and gentlemen of the Jury, it is difficult to sit
16 in judgment on a fellow citizen; I understand that. That is
17 always a difficult, difficult thing to do. It's much harder
18 than you probably believed it would be. It is not at all an
19 easy task but it -- it's something that must be done. Mr.
20 Ward was entitled to have a trial by a jury of his peers and
21 you listened very tentatively to the, to the testimony in this
22 trial. I notice that you were all paying close attention. I
23 think you deliberated in this matter. There was substantial
24 evidence in this case, substantial evidence of Mr. Ward's
25 guilt and no one can complain at all of what you did here

State v. Ward - 2012-GS-26-01742
BY THE COURT

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1 today. You served an important civic duty. I'm gonna ask
2 y'all to come back in the morning at 9:30. We, I think, are
3 gonna try one more case this week and we'll select a jury from
4 the entire pool.

5 I hope that if you see me about in the County -- I'm from
6 Horry County and no telling where I'll pop up but if I do pop
7 up that you won't hesitate to come up and speak to me and
8 remind me that you were on my jury. It's always good to see
9 and hear from people who are on the juries and I like to hear
10 their comments.

11 Do any of you have any questions about this process or
12 about the trial or anything like that that you'd like to ask
13 me or have you got any comments you want to share with us.
14 We'll be glad to hear you?

15 THE COURT: Yes, ma'am?

16 JUROR: I thought that this was probably one of the most
17 rewarding but also difficult things that I have done in a very
18 long time.

19 THE COURT: I tell you, it probably is gonna be. There's
20 no higher civic duty I think that you can serve. Some judges
21 say service of combat in times of war and I think this is -- I
22 know that -- how important that is and that's a wonderful
23 thing and something we should always be grateful for but
24 protecting this system that we have is just as important. And
25 I hope y'all understand that.

State v. Ward - 2012-GS-26-01742
BY THE COURT

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1 Mr. Ropp, help this jury back to their jury room and let
2 them collect their personal effects and make sure that they
3 get out to their vehicles. Okay?

4 Thank you.

5 (REPORTER'S NOTE: The jury exits the courtroom and is
6 excused. 3:54 P.M.)

7 MR. GROOMS: Thank you, Judge.

8

9 (ADJOURNED 3:55 P.M.)

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ORIGINAL

State v. Ward - 2012-GS-26-01742
CERTIFICATE OF COURT REPORTER

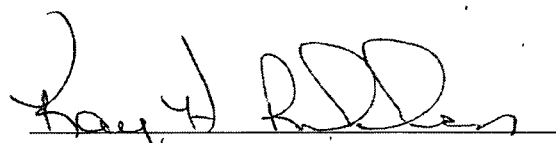
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C E R T I F I C A T E

I, the undersigned, Kay H. Richardson, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the hearing held in the case of State of South Carolina versus Maurice Wallace Ward, held in the Court of General Sessions for Horry County, Horry County Courthouse, Conway, South Carolina, on September 16 and 17, 2013.

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



Kay H. Richardson, CVR

Official Reporter

November 18, 2013.

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**Horry County Courthouse
RANDOM STRIKE SHEET****JUDGE NAME :****TRIAL TYPE :** Criminal**FILE ID :** HYMAN 9-16**COURTROOM JAR****DESCRIPTION :** HYMAN 9-16**Sorted by:** Random Nbr**Trial**

NAME	JUROR NBR	RACE	SEX	STRIKE	DEF	ORT	REMARKS
✓ 25 Black, Angela L	29	W	F	()	()	()	
✓ 26 Smith, Teresa R	329	W	F	()	()	()	
27 Gagnon, Michelle F	135	W	F	()	∞	()	- work Fed Ex
28 Haskins, Arthur W Jr.	169	W	M	()	()	()	
29 Edge, J Edsol	113	W	M	()	∞	()	
✓ 30 Richardson, Fred	299	W	M	()	()	()	
31 Dipalma, Bonnie A	104	W	F	()	()	()	
32 Lopez, Amy S	215	W	F	()	()	()	
33 Rankin, Robert L	292	W	M	()	()	()	
Wise, Rick E	394	W	M	()	()	()	
35 Grzymalski, Lenore G	157	W	F	()	()	()	

Total Number of Jurors:**35****** END OF REPORT ****

Horry County Courthouse RANDOM STRIKE SHEET

State v Ward 267
2013-05-26-1742

JUDGE NAME :

TRIAL TYPE : Criminal

Sorted by: Random Nbr

EL ID : HYMAN 9-16

DESCRIPTION : HYMAN 9-16

Trial

COURTROOM JAR

NAME	JUROR NBR	RACE	SEX	ST/PLTFF	DEF	ORT	REMARKS
1 Coleman, Patrick V	79	W	M	()	X	()	vs robbery/burglary
✓ 2 Coleman, James A	78	W	M	()	()	()	foreperson
✓ 3 Vereen, Nehemiah	377	B	M	()	()	()	
✓ 4 Hunt, Tiffany D	189	B	F	()	()	()	
5 Tovornik, Mary W	369	W	F	()	X	()	robbed at ATM
6 Lawson, Christine L	211	W	F	X	()	()	
7 Hardee, Tanya S	165	W	F	()	X	()	
8 Waters, Theodore A	383	W	M	X	()	()	
9 Bisset, Christina A	28	W	F	()	X	()	
✓ 10 Myers, Mildred A	252	W	F	()	()	()	
11 Bull, Daniel C	54	W	M	()	()	()	
12 Saber, Samantha M	306	W	F	()	X	()	
✓ 13 Suggs, Jeffery A	352	W	M	()	()	()	
14 King, Sybrina K	204	B	F	X	()	()	
15 Brown, Olivia L	51	B	F	X	()	()	
16 Lucas, Robbie K	216	A	M	()	X	()	
✓ 17 Marcus, Kathryn M	224	W	F	()	()	()	
✓ 18 Wilson, Chiquita B	392	B	F	()	()	()	
19 Pugia, William F	287	W	M	()	X	()	
✓ 20 Markovic, Stephen E	226	W	M	()	()	()	
21 Amaral, Deborah A	3	W	F	()	X	()	home burglarized
22 Haggerty, Harry E	161	W	M	()	X	()	read about it
23 Martin, Julie A	228	W	F	()	X	()	
✓ 24 Blackmon, Morgan E	31	W	F	()	()	()	

WITNESSES

Tyrone Williams Conway Police Department

DOCKET NO. 2013-GS-26-01742

FILED
The State of South Carolina
COUNTY OF Horry

2013 SEP 18 PM 3:24

J. Stephen Grooms

12H01301

CLERK OF COURT

CLERK OF COURT

COURT OF GENERAL SESSIONS Horry County

APRIL, 2013 TERM

ARREST WARRANT NUMBER

2013GS2601742

CDR 0086 16-11-0312(B)

DOA 3/22/2012

THE STATE

vs.

Maurice Wallace Ward B/M

ACTION OF GRAND JURY

ATTORNEY: Fox, J. Eric

APR 25 2013

Foreperson of Grand Jury
Date

APR 25 2013

VERDICT

Indictment for

BURGLARY, SECOND DEGREE
(VIOLENT)

Jimmy A. Richardson, II, Solicitor

Foreperson of Petit Jury
Date

ORIGINAL

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)

INDICTMENT

At a Court of General Sessions convened on APRIL 25, 2013, the Grand Jurors of Horry County present upon their oath

BURGLARY, SECOND DEGREE
 (VIOLENT)

CIDR 0086 16-11-0312(B)

That Maurice Wallace Ward did in Horry County on or about August 14, 2010, enter without consent and with the intent to commit a crime therein, a building of Freewill Baptist Church located at 1807 4th Avenue, Conway and the defendant, Maurice Wallace Ward did enter the building in the nighttime, and having two prior convictions for burglary and/or housebreaking in violation of Section 16-11-0312(B), S. C. Code of Laws, 1976, as amended

Against the peace and dignity of the State, and contrary to the statute in such case made provided.

Jimmy A. Richardson, II
 JIMMY A. RICHARDSON, II
 FIFTEENTH CIRCUIT S

CLERK OF COURT
 HORRY COUNTY

2013 SEP 18 PM 3:24
 2013 SEP 18 PM 3:17
 FILED
 HORRY COUNTY
 CLERK OF COURT
 HORRY COUNTY

CERTIFIED COPY

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 31, 2014



Robert M. Pachak
Appellate Defender

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

ATTORNEY FOR APPELLANT

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 31, 2014

A handwritten signature in black ink that reads "Robert M. Pachak". The signature is written in a cursive style with a horizontal line underneath.

Robert M. Pachak
Appellate Defender

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

ATTORNEY FOR APPELLANT

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Horry County

Larry B. Hyman, Jr., Circuit Court Judge

RECEIVED

JAN 31 2014

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

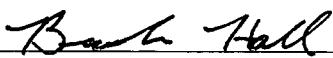
MAURICE WARD,

APPELLANT

APPELLATE CASE NO. 2013-001996

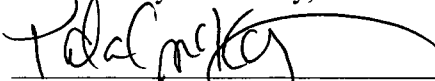
CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Salley W Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 31st day of January, 2014.



Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 31st day of January, 2014



(L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022