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ORIGINAL

STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM CHEROKEE COUNTY
Court of General Sessions

John C. Hayes, III, Circuit Court Judge

Appellate Case No: 2012-207559

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S.C. Supreme Court

THE STATE

PETITIONER,

v.

KEVIN TYRONE BENNETT

RESPONDENT.

APPENDIX

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STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY

John C. Hayes, III, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

KEVIN TYRONE BENNETT,

APPELLANT

APPELLATE CASE NO. 2012-207559

RECORD ON APPEAL

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1 STATE OF SOUTH CAROLINA }
2 COUNTY OF SPARTANBURG } COURT OF GENERAL SESSIONS
3
4 STATE OF SOUTH CAROLINA,)
5 PLAINTIFF,)
6 vs.)
7 KEVIN BENNETT,)
8 DEFENDANT.)
9

TRANSCRIPT
OF
RECORD
2011-GS-42-1061 - 1063

10 January 24th and 25th, 2012
11 Spartanburg, South Carolina
12

13 B E F O R E:
14 THE HONORABLE JOHN C. HAYES, III, Judge, and a jury.

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18 Attorney for the State
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1 and you will have to, you will have to resolve that doubt in
2 his favor.

3 So, listen carefully. I know you're going to be an
4 attentive group. Mr. Bennett helped me choose you. He has
5 trust in you. He, he feels, as I feel, that you will honor
6 the oath you've taken, listen to the circumstances, examine
7 the puzzle pieces, and if the puzzle pieces don't fit, then
8 you must acquit Mr. Bennett.

9 Thank you.

10 THE COURT: Call your first witness.

11 SOLICITOR CUDE: Thank you, Your Honor.

12 The State calls Officer Frank Osrechek.

13 FRANK OSRECHEK, having been first duly
14 sworn, testified as follows:

15 SOLICITOR CUDE: Beg the Court's indulgence for a
16 moment.

17 (Pause.)

18 DIRECT EXAMINATION

19 BY SOLICITOR CUDE:

20 Q What's your name, sir?

21 A Frank Osrechek.

22 Q And how are you employed?

23 A Spartanburg City Police Department.

24 Q How long have you been employed there?

25 A Approximately five years.

Frank Osrechek - Direct examination
By Solicitor Cude

1 Q Now, were you working the morning of November 17th,
2 2010?

3 A I was.

4 Q Let me ask you, what are your duties for the
5 Spartanburg Public Safety Department?

6 A I'm a patrol officer on the third shift.

7 Q What kind of training have you received as a police
8 officer?

9 A Successfully completed the Criminal Justice Academy,
10 police training, basic police training, and additional
11 training thereafter.

12 Q Okay. And did you work in law enforcement prior to
13 joining the Spartanburg Public Safety Department?

14 A I did.

15 Q Where did you work?

16 A I worked for the Spartanburg County Detention Facility.

17 Q How many years did you work there?

18 A In excess of five years.

19 Q Now, let me ask you -- and you said you were working
20 the morning of November 17th, 2010?

21 A That's correct.

22 Q Did you respond to C.C. Woodson Community center?

23 A I did.

24 Q Okay. Where is that located?

25 A

Frank Osrechek - Direct examination
By Solicitor Cude

- 1 Q Okay. And what city is that in?
2 A Spartanburg City.
3 Q What county is that in?
4 A Spartanburg.
5 Q All right. Did you respond alone or were other
6 officers present?
7 A I was the first responder.
8 Q Okay. And why did you respond there?
9 A I was dispatched to an alarm activation.
10 Q And what did you find when you arrived?
11 A I found a window completely smashed out and the door
12 adjacent to that window was broken.
13 MS. JONES: I have no objection to those photos.
14 SOLICITOR CUDE: Your Honor, may I have the photos
15 marked for identification?
16 THE COURT: Yes, sir.
17 (WHEREUPON, four photographs were marked as State's
18 Exhibit Nos. 1 through 4 for identification purposes only at
19 this time.)
20 SOLICITOR CUDE: May I approach the witness, Your
21 Honor?
22 THE COURT: Yes, sir.
23 Q Please look at these photos, Officer Osrechek.
24 Do you recognize them?
25 A Yes, sir.

Frank Osrechek - Direct examination
By Solicitor Cude

1 Q Please look at 1 through 4, sir, and let me know if you
2 recognize them.

3 A I do.

4 Q Do they accurately depict what you saw that night?

5 A They do.

6 SOLICITOR CUDE: Your Honor, may I lower the screen
7 to---

8 THE COURT: Yes, sir.

9 Q Officer Osrechek, this is State's Exhibit 1.

10 And, Your Honor, may I move State's Exhibit 1 into
11 evidence at this time?

12 THE COURT: Any objection?

13 MS. JONES: No, sir, Your Honor.

14 THE COURT: Without objection.

15 (WHEREUPON, State's Exhibit No. 1 was received into
16 evidence at this time.)

17 Q Can you tell me what we're looking at, Officer
18 Osrechek?

19 A We're, we're looking at the, the room that's I believe
20 referred to as the community room, and the window has been,
21 been completely smashed out and the door to the right is
22 ajar. The glass from on that window is, is on the ground.
23 It's scattered on the ground where, where the window once
24 was.

25 SOLICITOR CUDE: Your Honor, I'd like to move State's

Frank Osrechek - Direct examination
By Solicitor Cude

1 Exhibit 2 in evidence at this time.

2 THE COURT: Any objection?

3 MS. JONES: No objection, Your Honor.

4 THE COURT: In without objection.

5 (WHEREUPON, State's Exhibit No. 2 was received into
6 evidence at this time.)

7 Q Now, can you tell me what we're looking at there,
8 officer Osrechek?

9 A That is the community room. It's a photograph of the
10 broken window from the inside and the same door and the
11 glass below the window and where the window is, was.

12 SOLICITOR CUDE: Your Honor, I'd like to move State's
13 Exhibit 3 and 4 into evidence at this time.

14 MS. JONES: I have no objection, Your Honor.

15 THE COURT: In without objection.

16 (WHEREUPON, State's Exhibit Nos. 3 and 4 were received
17 into evidence at this time.)

18 Q This is State's Exhibit 3, officer Osrechek.
19 what are we looking at there?

20 A It's a close-up of the window and the door from the
21 inside. The exhibits -- the glass that has been shattered
22 into thousands of pieces.

23 Q Let me ask you.

24 How often do you process burglaries in your career with
25 the Spartanburg Public Safety Department?

Frank Osrechek - Direct examination
By Solicitor Cude

1 A Frequently. Almost nightly.

2 Q All right. How often have you lifted fingerprints as
3 part of your career in the Spartanburg Public Safety
4 Department?

5 A It's, it's difficult to put a number on it. I could, I
6 could say hundreds.

7 Q Let me ask you, what else did you do while you were at
8 the C.C. Woodson Community Center that night?

9 A Well, upon arrival, it was clear that there had been a
10 burglary. I notified the, the other officers and
11 established a perimeter and a K-9 unit was also notified and
12 a tracking team.

13 Q Okay. Let me -- did you go into the building before
14 the K-9 team went into the building?

15 A No, sir.

16 Q Okay. Well, did you see the K-9 team come out of the
17 building?

18 A Yes.

19 Q Did they emerge with anyone in custody?

20 A No.

21 Q All right. What did you do after they cleared the
22 building?

23 A We then, we then entered the building and we processed
24 the crime scene.

25 Q All right. And can I ask you to raise your voice a

Frank Osrechek - Direct examination
By Solicitor Cude

- 1 little bit?
- 2 I'm a little hard of hearing.
- 3 A Yes, sir.
- 4 Do you want me to repeat that?
- 5 Q Yeah, if you would.
- 6 A Okay.
- 7 Q Just what did you do after the K-9 team cleared the
- 8 building.
- 9 A We began to process the crime scene.
- 10 Q Just tell me what you did in relation to that.
- 11 A I began taking the photographs of, of the scene, the
- 12 broken glass, the door, trying to identify I guess a path or
- 13 a trail that the suspect used as they traveled through the
- 14 building, photograph any items that may of been tampered
- 15 with, and applied fingerprint dust to various surfaces.
- 16 Q Well, let me ask you, did you do any of those things in
- 17 the room, in the room where the window was broken?
- 18 A Yes.
- 19 Q Okay. And what did you do in that room?
- 20 A I applied fingerprint dust to the door adjacent to the
- 21 broken window. I then applied print dust to the televisions
- 22 because they had been tampered with. I then applied print
- 23 dust to an exit door within the community room that exits
- 24 into the hallway.
- 25 SOLICITOR CUDE: Your Honor, actually I'd like -- if I

Frank Osrechek - Direct examination
By Solicitor Cude

1 can have the lights again?

2 THE COURT: Okay.

3 SOLICITOR CUDE: I'd like to publish one of those
4 photos again.

5 Your Honor, this is State's Exhibit No. 2.

6 Officer Osrechek, can you come down briefly and just
7 maybe show us with this laser pointer?

8 A (Witness comes down from the stand.)

9 Q And if you can see on there, if you can show us where
10 the laser -- can you show us where the TV was that you
11 processed?

12 A It will be this television that's mounted on the wall.

13 THE COURT: You need to keep your voice up if you don't
14 mind so the jury can hear you.

15 WITNESS: I apologize.

16 I applied fingerprint dust to the television that's
17 mounted on the wall right here. It's to the left of this
18 doorway.

19 Q Okay. And can you show us the other surfaces you
20 applied print dust to?

21 A The doorway, the surfaces like the handle that someone
22 would naturally touch when they're entering or exiting, and
23 along the frame right here.

24 Q And can you tell me what that, what those items are
25 that are below the TV?

Frank Osrechek - Direct examination
By Solicitor Cude

1 A Those are chairs.

2 Q All right. Thank you.

3 Thank you, Your Honor. I don't need the lights any
4 longer if the Court doesn't mind.

5 Your Honor, can I beg the Court's indulgence?

6 (Pause.)

7 SOLICITOR CUDE: May I approach the witness, Your
8 Honor?

9 THE COURT: Yes, sir.

10 Q Officer Osrechek, do you recognize the item I'm handing
11 you?

12 A Yes, sir.

13 Q How do you recognize it?

14 A It is a fingerprint card. It is a print that I removed
15 from the television in the community room.

16 Q Let me ask you, how do you recognize this?

17 A I recognize it by the information that I penciled in on
18 the rear of the card, the case number, the date and time it
19 was lifted, the type of offense, the location, which is
20 indicated, the community room, the victim, which is C.C.
21 Woodson, and the prints are lifted from the television,
22 which is indicated on the card.

23 SOLICITOR CUDE: Your Honor, I'd like this marked as
24 State's Exhibit 5 for identification at this time.

25 MS. JONES: I have no objection to marking it for

Frank Osrechek - Direct examination
By Solicitor Cude

1 identification.

2 THE COURT: Be marked.

3 (WHEREUPON, the fingerprint card was marked as State's
4 Exhibit No. 5 for identification purposes only at this
5 time.)

6 Q Can you tell me again, just what is this diagram
7 reflected under the sticker that's been marked for
8 identification?

9 A Well, the diagram is, is a diagram, a partial diagram
10 of the television and it indicates where I, I located the
11 print and lifted the print from, the surface, and the area
12 on the television.

13 Q And how did you, how did you lift this print?

14 A I applied print dust to the surface. The print dust
15 illuminated a fingerprint. I then applied a small portion
16 more and then I used fingerprint tape, applied it to the
17 surface, and the tape -- when I peeled the tape from the
18 surface, it then lifted the print, and then applied that
19 fingerprint tape to the backside of that card.

20 Q Now, did you, did you find any fingerprints anywhere
21 else in the room?

22 A I did. I found additional fingerprints on the
23 television. However, they were insufficient.

24 Q Well, and just to be clear, where did you lift the
25 fingerprint that's on this card?

Frank Osrechek - Direct examination
By Solicitor Cude

1 A It was on, it was on the television on the right facing
2 post several inches above the corner.

3 Q And when you say right facing post, can you be more
4 specific, can you be more clear?

5 A If I'm facing the television it would be on this side.
6 So, it would actually be on the left side of the television.
7 It would be on the right post above the corner.

8 Q So, it -- was it on the body of the television?

9 A Yes, it was.

10 Q Okay. Well, what kind of surfaces can someone leave a
11 fingerprint on?

12 A Ideally, flat, nonporous surfaces.

13 Q All right. What kind of surfaces are not conducive for
14 fingerprints?

15 A Concrete, bricks, unfinished wood, any porous type
16 surface.

17 Q All right. Well, is it possible for someone to touch a
18 surface and not leave a fingerprint?

19 A Yes.

20 Q All right. What -- let me ask you, what did you do
21 with the print card after you gathered it?

22 A It, it maintained -- I maintained it on my person. I,
23 I maintain evidence envelopes in my patrol vehicle, and I
24 process the print cards and secure them in that envelope,
25 and subsequently I transported them to the Spartanburg City

Frank Osrechek - Direct examination
By Solicitor Cude

1 Police Department where I submitted them to evidence in a
2 secure location.

3 Q All right. Thank you. Please answer any questions
4 that Ms. Jones may have for you.

5 A Yes, sir.

6 CROSS-EXAMINATION

7 BY MS. JONES:

8 Q Officer, was it your primary duty that night to process
9 this center for prints?

10 A Yes, ma'am.

11 Q Okay. And you only processed the, this one room that
12 we've seen the photographs of?

13 A Yes, ma'am.

14 Q Okay. You didn't process any other rooms?

15 A No, ma'am.

16 Q And why was that?

17 A Other officers were on scene that processed the other
18 areas.

19 Q Okay. Did you say you just divided up the areas?
20 Is that it basically?

21 A Yeah.

22 Q Okay. The, the photographs that we've got in evidence
23 so far, did you take those photographs prior to applying any
24 of this print dust around the room?

25 A Yes, ma'am.

Frank Osrechek - Cross-examination
by Ms. Jones

- 1 Q Okay. And did you take any photographs of the
2 television up-close prior to printing it?
- 3 A No, ma'am.
- 4 Q Did you take any photographs of the television up-close
5 at all?
- 6 A No, ma'am.
- 7 Q Okay. And did you -- you indicated by the pointer that
8 you tried to print the door and its frames.
- 9 Did you try to print the chairs that are askew beneath
10 the TV?
- 11 A The skew I'm not -- can you be more---
- 12 Q Out of -- they're turned. They are askew.
- 13 A Oh, I'm sorry. The chairs that have, are you---
- 14 Q Right.
- 15 A Oh.
- 16 Q Did you try to print those?
- 17 A No, ma'am.
- 18 Q Okay. And you attempted, I believe you said, to or, or
19 applied some dust to the exit door into the hall is how you
20 described it.
- 21 A Yes.
- 22 Q Okay. This particular room we've seen photographs of
23 has how many doors that open inside the community center off
24 of it?
- 25 A The---

Frank Osrechek - Cross-examination
by Ms. Jones

- 1 Q Do you remember?
- 2 A Are we refusing -- excuse me. We're referring to the
3 community room?
- 4 Q As the -- if you -- this room we can call the community
5 room.
- 6 A Okay.
- 7 Q I'm referring to the entire center.
- 8 A Okay.
- 9 Q From this community room, how many doors open into the
10 rest of the, the community center?
- 11 A One --
- 12 Q Okay.
- 13 A -- that I recall.
- 14 Q And did you -- and that's the -- so, you attempted to
15 print one room, one door that exits into the hallway,
16 correct?
- 17 A Yes.
- 18 Q Okay.
- 19 A Yes.
- 20 Q And you indicated that you lifted other fingerprints,
21 but they were insufficient.
- 22 From where did you lift other prints?
- 23 A The television.
- 24 Q This -- only this one TV?
- 25 A Yes, ma'am.

Frank Osrechek - Cross-examination
by Ms. Jones

1 Q Did you conduct any examination of the other
2 television?

3 A No, ma'am.

4 Q Do you recollect that there is another television in
5 this room?

6 A There is.

7 Q Okay. And you didn't look at the other television?

8 A I did.

9 Q Okay. And what was your -- what was the result?

10 A I believe I focused on that television because it, it
11 appeared to have been tampered with. It was resting in an
12 unnatural position.

13 Q And did you photograph that unnatural position for us?

14 A Only in that the photograph that is a, exhibits the
15 door and the television beside the doorway.

16 Q I'm going to hand you State's Exhibit No. 2, and you
17 indicate it is sitting in an unnatural position.

18 Is that your terminology?

19 A Yes.

20 Q Okay. Do you see that in that photograph?

21 A It appears to be pointing down at a sharper angle than
22 it should be. Now, this is a large room. The television
23 should be more pointing towards or leveled out so that it's,
24 it's projecting across the room. Not down at the floor.

25 Q Have you ever been in this room before this night?

Frank Osrechek - Cross-examination
by Ms. Jones

- 1 A Yes, not -- before this night?
- 2 Q Before this night.
- 3 A Yes, ma'am.
- 4 Q You had?
- 5 A (Witness nods affirmatively.)
- 6 Q Personally?
- 7 A Yes.
- 8 Q Okay. Is, is that why you thought this was at an
- 9 unnatural angle or is that just some expertise you think you
- 10 have in television hanging?
- 11 A No, it was the result of surveying the crime scene, and
- 12 the television appeared to have been tampered with.
- 13 Q Okay. Did you -- and -- but you did not take any
- 14 photographs of the other television to show if it, how it
- 15 was hung on the wall by comparison, did you?
- 16 A No.
- 17 Q Okay. What other surfaces within this community
- 18 center, excuse me, community room, this particular room
- 19 itself, did you attempt to lift prints from?
- 20 A The, the entrance door from the outside, and the, the
- 21 exit door into the hallway.
- 22 Q Okay. Which side of the door, beside which the window
- 23 was shattered, was it the inside or the outside that you
- 24 printed?
- 25 A I attempted on both sides.

Frank Osrechek - Cross-examination
by Ms. Jones

- 1 Q Okay. With no result, correct?
- 2 A Correct.
- 3 Q The insufficient other prints that you mentioned
- 4 where -- and you said those came from the television as
- 5 well?
- 6 A Yeah.
- 7 Q Okay. Why do you consider them insufficient?
- 8 A They were -- they were smudges. They didn't, they
- 9 didn't exhibit any real characteristics of a, of a,
- 10 fingerprint ridges and details.
- 11 Q And the exit -- one exit door that you attempted to
- 12 print from, that leads into the hallway into the rest of the
- 13 building, did you find any prints or only insufficient
- 14 prints?
- 15 A Insufficient.
- 16 Q Okay. So, there were smudges of prints on this door
- 17 push --
- 18 A Yes.
- 19 Q -- correct?
- 20 This is a public building, correct?
- 21 A Yeah.
- 22 Q And, so, from this entire room in this community center
- 23 you were only able to lift one print that was deemed
- 24 sufficient, correct?
- 25 A Yes.

Frank Osrechek - Cross-examination
by Ms. Jones

- 1 MS. JONES: Okay. Just a moment, Your Honor.
2 (Pause.)
3 Q Now, you photographed or took multiple photographs of
4 broken glass.
5 In your examination of this room, the community room,
6 did you find any traces of, of what appeared to be blood?
7 A In the community room?
8 Q Yes, sir.
9 A I did not.
10 Q On any surface whatsoever?
11 A I did not --
12 Q Okay.
13 A -- locate any.
14 Q And you had no other involvement with any, processing
15 any other room, the hall, the gym, any other part of this
16 building?
17 A I took photographs of the computer room.
18 Q Okay. And what guided you as you took photographs of
19 the computer room?
20 what items did you choose to take photographs of?
21 A The -- there was holes in the wall and the mounting
22 anchors on the floor where a TV once existed. It was
23 obvious that there was an item removed from that wall, and I
24 did take a picture of that scene.
25 Q Okay. And you took a photograph from the base of the

Frank Osrechek - Cross-examination
by Ms. Jones

1 room kind of into the room in general, and then up close to
2 the wall you, where you indicate you believe a TV was
3 removed, correct?

4 A Yes.

5 Q Do you recollect how many photographs you took?

6 A No.

7 Q Okay. In photographing those rooms, you -- I'm --
8 excuse me.

9 In taking those photographs of that room, the learning
10 center or computer room, did you note the location of any
11 potential fingerprints or other forensic evidence as you
12 moved about the room to take the photographs?

13 A I did not.

14 Q Were you looking for it or you just didn't see it?

15 A I was looking.

16 Q Okay.

17 A I always look for forensic evidence.

18 Q Okay. And you, you saw no forensic evidence in that
19 room to photograph, correct?

20 A That is correct.

21 Q And you saw no forensic evidence in that room to
22 collect, is that correct?

23 A That's correct.

24 Q And you were there shortly after the alarm call,
25 correct?

Frank Osrechek - Cross-examination
by Ms. Jones

1 A That's correct.

2 Q 3:30 in the morning, 3:30 to four o'clock in the
3 morning when it's still dark?

4 A Yes, ma'am.

5 Q Okay. The center's well lighted obviously from your
6 photographs. We can see what's depicted inside, see the
7 items inside the building, and you saw nothing forensically
8 of interest in the computer room, correct?

9 A I did not.

10 Q Okay.

11 A I did not see anything.

12 Q Okay. Thank you. That's all.

13 THE COURT: Redirect?

14 SOLICITOR CUDE: Yes, Your Honor. Just briefly.

15 REDIRECT EXAMINATION

16 BY SOLICITOR CUDE:

17 Q Now, going back to the community room, Officer
18 Osrechek, did you notice any signs of damage to the TV that
19 you lifted fingerprints from?

20 A I don't recall seeing any damage to the television. I
21 do recall, as I said earlier, that it appeared to have been
22 manipulated as if it were, someone was trying to remove it
23 from the wall.

24 Q All right. And, again, just to be clear, did you, as
25 Ms. Jones asked you, did you lift one, that you lifted one

Frank Osrechek - Redirect examination
by Solicitor Cude

1 usable print.

2 Did you lift that from the body of the television?

3 A Yes.

4 Q All right. Was that close to -- was that close to the
5 screen?

6 A Yes.

7 SOLICITOR CUDE: All right. That's, that's all I have
8 for this witness at this time, Your Honor.

9 THE COURT: Any recross?

10 MS. JONES: No, sir.

11 THE COURT: All right. You can step down. Be excused
12 if you wish. Thank you.

13 Call your next witness.

14 SOLICITOR CUDE: Your Honor, the State calls Officer
15 Steven McClure.

16 STEVEN MCCLURE, having been first
17 duly sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY SOLICITOR CUDE:

20 Q Please state your name.

21 A Steven McClure.

22 Q All right. What's your occupation?

23 A Police officer with the Spartanburg Public Safety
24 Department.

25 Q How long have you been employed there?

Steven McClure - Direct examination
by Solicitor Cude

- 1 A Close to five years now.
- 2 Q Have you been employed anywhere else in law enforcement
3 before that?
- 4 A No, sir.
- 5 Q What are your duties for Spartanburg Public Safety
6 Department?
- 7 A I'm assigned to a patrol unit on third shift as well.
- 8 Q Did you respond to C.C. Woodson Community Center the
9 morning of November 17th, 2010?
- 10 A Yes, sir.
- 11 Q Do you know about what time?
- 12 A It was approximately 3:30AM.
- 13 Q All right. Was it dark or light outside?
- 14 A It was still dark.
- 15 Q Okay. Were any other officers present?
- 16 A Yes, sir, there were at least one or two other officers
17 that were on scene before my arrival.
- 18 Q All right. What did you do when you got there?
- 19 A Well, I was notified by the officers on scene that they
20 had a possible burglary. So, we responded to set up what we
21 call perimeter so we can check and see if the suspect left
22 the area. After we set up our perimeter, and I believe the
23 K-9 team had cleared the building, realized there was nobody
24 inside, I responded to the scene to assist in processing
25 since it's a large community center, and I assisted with the

Steven McClure - Direct examination
by Solicitor Cude

1 processing of, of the scene for evidence.

2 Q All right. Specifically -- what room did you process?

3 A I processed the, I guess the computer room. It was
4 inside the community center.

5 Q And let me ask you, is that the room where the window
6 was broken?

7 A No, sir, it was---

8 Q Where is this computer room in relation to the room
9 where the window was broken?

10 A I believe it's -- when you go out of the community
11 center or go out of the community room into the hallway,
12 it's down -- I believe it's either the next room down or
13 maybe two rooms down. It's on the right side of the hallway
14 just down from the community room.

15 SOLICITOR CUDE: Your Honor, I'd like to mark State's
16 Exhibit 6 through 9 for identification.

17 MS. JONES: No objection, Your Honor.

18 THE COURT: All right.

19 (WHEREUPON, four photographs were marked as State's
20 Exhibit Nos. 6 through 9 for identification purposes only at
21 this time.)

22 Q Now, Officer McClure, please take a look at all these
23 photos and tell me if you recognize them.

24 A Yes, sir.

25 SOLICITOR CUDE: Your Honor, can I lower the lights?

Steven McClure - Direct examination
by Solicitor Cude

1 Can we have the lights lowered so I can publish these
2 to the jury?

3 THE COURT: Yeah.

4 SOLICITOR CUDE: Can you lower the lights please?

5 Actually, Your Honor, I'd like to move State's 6
6 through 9 into evidence at this time.

7 MS. JONES: I have no objection. I just need to get my
8 numbers straight if I could.

9 THE COURT: In without objection.

10 (WHEREUPON, State's Exhibit Nos. 6 through 9 were
11 received into evidence at this time.)

12 Q Now, Officer McClure, if you want to come down you can,
13 but can you tell us just what we're looking at here in
14 State's Exhibit 6?

15 A (Witness comes down from the stand.)

16 All right. This, this photo is an overview of the
17 computer room where I processed for evidence.

18 Q Well, if you want to use the laser pointer, can you
19 show us just what areas you processed?

20 A Processed, it's this -- mainly this area here. It
21 appeared there was a computer missing from there. They're
22 four, four computers on each row except for this one where
23 there was one missing and there was some -- it appeared
24 there was a computer missing. Processed that table. It's
25 hard to see in this picture, but there's two chairs that

Steven McClure - Direct examination
by Solicitor Cude

1 are, that are not in their normal place. They're kind of
2 pushed up against the wall as if somebody would use them as
3 leverage. Attempted those and then off, off camera there's
4 a doorway that leads out into the hallway. I processed that
5 doorway on the interior and exterior as well.

6 Q All right. And this is state's Exhibit 7.

7 Can you tell us what that is?

8 A Yes, this is the, this is the area where the TV was,
9 the holes in the wall where the anchors were, a plug in here
10 which is where the TV was apparently plugged into. This is
11 where the TV was that was missing.

12 Q Now, can you -- this is state's Exhibit No. 8.

13 Can you tell us what this shows?

14 A Yes, sir, these are the chairs I spoke of. They were
15 removed from their place underneath the desk where the
16 computers were and set up underneath where the TV was
17 missing from. Also behind the chair here this was a four
18 sided tire iron. It didn't appear to belong in the computer
19 room. It was laying next to the, the one chair.

20 Q And just to be clear, where's there, where's -- where
21 is the contents of state's Exhibit 8?

22 where is that in relation to the TV, where the brackets
23 for the TV were?

24 A They were -- the brackets would of been in, in this
25 area here. So, it's underneath the brackets where -- the

Steven McClure - Direct examination
by Solicitor Cude

1 chairs are directly underneath the brackets.

2 Q Finally, State's Exhibit 9, can you tell us what this
3 shows?

4 A Yes, sir, this is the area that we believe where the
5 computer was taken from. I said it was the only row that --
6 it only had three computers. The rest had four and you see
7 the table is slightly moved and also there was some cables
8 hanging down that we believe use to be plugged into a
9 computer that were no longer there.

10 Q All right. Thank you. Please take your seat back if
11 you would.

12 A (Witness returns to the stand.)

13 Q Now, again, can you tell us just what -- tell us what
14 you did, again, to process the room.

15 A I attempted fingerprints. So, we take fingerprint
16 powder or fingerprint dust, apply it with a brush, and just
17 check to see if you have any kind of areas or anything else.
18 So, I checked the, the computer desk. I tried on the chairs
19 that were pushed up underneath and also on the exterior,
20 interior and exterior of the door leading into the hallway.

21 I also recovered the tire iron. We don't really have
22 the, the ability on scene to process something of that, of,
23 by the material and everything else. We have the greater
24 chance by letting our forensic unit do that. So, I
25 collected that and placed that into evidence so that it

Steven McClure - Direct examination
by Solicitor Cude

1 could be processed.

2 Q All right. Did you, did you recover any blood or any
3 other, any other forensic evidence?

4 A No, sir.

5 Q All right. Did you find -- did you lift any
6 fingerprints from that room?

7 A No, sir.

8 SOLICITOR CUDE: Beg the Court's indulgence.

9 (Pause.)

10 SOLICITOR CUDE: May I approach the witness, Your
11 Honor?

12 THE COURT: You may.

13 MS. JONES: No objection, Your Honor.

14 Q Do you recognize this item?

15 A I do, yes, sir.

16 Q Okay. Please, if you would, can you tell us what it
17 is?

18 A This is the four sided tire iron that was located in
19 the computer room behind the chairs that were pushed
20 underneath the bracket where the TV was missing from.

21 Q And what did you do with it that night?

22 A I collected it using latex gloves so as not to
23 contaminate it. I just collected it, placed it in my patrol
24 vehicle until I could get it to the City Hall and place it
25 into evidence at the forensic unit.

Steven McClure - Direct examination
by Solicitor Cude

1 SOLICITOR CUDE: Your Honor, I'd ask this be moved into
2 evidence as State's Exhibit 10.

3 THE COURT: Without objection.

4 MS. JONES: That's correct.

5 THE COURT: In.

6 (WHEREUPON, the tire iron was marked as State's Exhibit
7 No. 10 and received into evidence at this time.)

8 SOLICITOR CUDE: Beg the Court's indulgence.

9 (Pause.)

10 Q Thank you. Please answer any questions Ms. Jones has.

11 A Yes, sir.

12 CROSS-EXAMINATION

13 BY MS. JONES:

14 Q Officer McClure, you, you were assigned to process this
15 computer room or the learning center I think is what they
16 call it there just as the first officer who testified was
17 assigned the duty of the other room, is that correct?

18 A Yes, ma'am.

19 Q Okay. And just by way of clarification, you continued
20 to refer to the TV brackets?

21 Were there brackets in the floor that had been on the
22 wall?

23 A No, ma'am, not, not brackets.

24 Q Okay. So, there were no, no brackets that would of
25 attached the missing TV to the wall in that room at all?

Steven McClure - Cross-examination
by Ms. Jones

- 1 A No, ma'am.
- 2 Q Okay. Did you know, at the time you were processing
3 the room, how big the TV that had been placed on the wall
4 was?
- 5 A No, ma'am, I didn't know.
- 6 Q Okay. You indicated you processed the area of the desk
7 where you believed the computer had been taken, an empty
8 spot on the back row?
- 9 A Yes, ma'am.
- 10 Q Correct?
- 11 A Yes, ma'am.
- 12 Q Okay. Did you process any of the cords?
- 13 A No, ma'am.
- 14 Q Okay. Cause they would of had to of been pulled out by
15 hand from the computer, correct?
- 16 A Yes, ma'am.
- 17 Q Okay. And you indicated you processed the chairs that
18 were pushed up next to the wall where you believe the TV had
19 been removed from, correct?
- 20 A Yes, ma'am.
- 21 Q Did you process any, the, any of the chairs around the
22 area where the computer appeared to have been removed?
- 23 A No, ma'am, I don't believe I did.
- 24 Q Okay. So, if they were jarred, touched, shoved out of
25 the way to get up, down on the floor to disconnect all

Steven McClure - Cross-examination
by Ms. Jones

1 equipment, you didn't find any prints on those?

2 A No, ma'am.

3 Q Cause you didn't look?

4 A No, ma'am.

5 Q Okay. Likewise, did you process the, any of the cords
6 that had been connected to the television that was missing?

7 A No, ma'am, I'm not, not -- I can't recall if there were
8 even any cables left from the TV.

9 Q On State's Exhibit No. 8, look on the, next to those
10 chairs, don't you see some cords---

11 A Yes, ma'am.

12 Q ---in the floor?

13 A Yes, ma'am.

14 Q Okay. You didn't think it was important to process
15 those either, did you?

16 A I did not process them, no, ma'am.

17 Q Okay. Did you -- and did you process the, the chair
18 that was turned -- I apologize. I might of just asked you
19 that.

20 The chair up against the wall that was turned sideways,
21 did you process it?

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

23 Q Okay. Do you remember how long all that took you to do
24 that night?

25 A I, I don't remember, ma'am.

Steven McClure - Cross-examination
by Ms. Jones

- 1 Q To process a single spot, how long does it take?
- 2 A On average I would say maybe from, anywhere from a
3 couple minutes to five minutes or more depending on the
4 complexity of it.
- 5 Q Okay. Is it safe to say you were in this particular
6 room probably 20 to 30 minutes at least?
- 7 A Yes, ma'am, I'd say so.
- 8 Q Okay. You didn't take the photographs?
9 You just did the, the process work, correct?
- 10 A I did not take the photographs, no, ma'am.
- 11 Q Okay. And part of that processing include, included
12 being up close to the wall where the TV was removed in order
13 to recover the tire iron that we've now seen, process, and
14 process the chairs, but at no time while you were leaning
15 down standing near or looking at that wall did you see the
16 presence of any other forensic evidence such as blood on
17 that wall?
- 18 A No, ma'am.
- 19 Q Okay. Did you see blood anywhere in this room?
- 20 A I did not.
- 21 Q Okay. On the white desk top where the computer, the
22 monitor, the mouse, the keyboard had all been removed?
- 23 A No, ma'am.
- 24 Q Okay. Any blood on the floor at or near the cords that
25 had been connected to the computer?

Steven McClure - Cross-examination
by Ms. Jones

1 A No, ma'am.

2 Q No blood on the cords or on the floor that had been
3 connected to the TV?

4 A No, ma'am.

5 Q And no blood on the chair that was ajar near the tire
6 iron?

7 A No, ma'am.

8 Q Did you look at the tire iron---

9 A Yes, ma'am.

10 Q ---when you recovered?

11 Did you see anything of forensic value on it?

12 A No, ma'am.

13 Q Okay. You've processed the interior door, I'm sorry,
14 the interior of the door of that room and the exterior of
15 the door of that room.

16 Now, how did you process that?

17 A That's where I did the fingerprint. Like I said, the
18 same -- I took the fingerprint dust or powder, apply that,
19 appeared to attempt to find any presence of any latent
20 fingerprints.

21 Q And you found none?

22 A I found none, no, ma'am.

23 Q So, none at all?

24 Not just sufficient ones?

25 No sufficient?

Steven McClure - Cross-examination
by Ms. Jones

1 A I can't recall if I found any like what we term as---

2 Q Smudges?

3 A ---smudges. I can't recall that, no.

4 Q Okay. This is a, a community center with a good bit of
5 foot traffic?

6 A Yes, ma'am.

7 Q Was that reflected when you tried to print all these
8 surfaces?

9 A See, I can't remember that case specifically. I don't
10 remember if we found any.

11 Q Okay. Thank you. I have no further questions.

12 SOLICITOR CUDE: May I have redirect, Your Honor?

13 THE COURT: (Nods affirmatively.)

14 REDIRECT EXAMINATION

15 BY SOLICITOR CUDE:

16 Q Have you received any training in evidence collection?

17 A Yes, sir.

18 Q And what kind of training is that?

19 A When we -- when we went through the Criminal Justice
20 Academy, you go through the basic evidence collection
21 classes. Once we graduate we go through what we term as a
22 field training program. We -- it's approximately about 16
23 weeks we ride with an experienced officer to kind of teach
24 you how to do things. We went over how to, how to collect
25 fingerprints and stuff like that. Also working calls to

Steven McClure - Redirect examination
by Solicitor Cude

1 show you how to actually do a hands-on experience, and then
2 about every year we have what we call in-service training
3 where we take, we have -- basically we spend a week doing
4 training to keep us up and there's usually a block that we
5 do during that time frame about evidence collection. It's
6 usually taught by forensics people to kind of give us a
7 little, a little bit of knowledge about forensics
8 collection.

9 Q Well, let me -- as part of your training, are you
10 advised to print the entire room or are you advised to
11 process entire rooms?

12 A Be more specific.

13 Q Do they train you to process an entire room?

14 A We know how. We don't usually process the whole room.

15 Q Why not?

16 A It's just a whole -- some stuff you can tell just
17 hasn't been messed with or touched, and it's a, it's a lot
18 of stuff to process. You usually focus on what you can tell
19 has been tampered with.

20 SOLICITOR CUDE: That's all I have for this witness,
21 Your Honor.

22 THE COURT: Ms. Jones.

23 RE CROSS EXAMINATION

24 BY MS. JONES:

25 Q But that would not include apparently computer cords

Steven McClure - Recross examination
by Ms. Jones

1 that have been removed from computers or cable cords that
2 have been removed from TV's, correct?

3 A I did not process those.

4 Q Thank you, sir.

5 THE COURT: You can step down and be excused. We
6 appreciate your time. Thank you.

7 Call your next witness.

8 SOLICITOR CUDE: Thank you, Your Honor.

9 State calls Ms. Olivia Sartor.

10 OLIVIA SARTOR, having been first duly
11 sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY SOLICITOR CUDE:

14 Q What's your name, ma'am?

15 A Olivia Sartor.

16 Q And how are you employed?

17 A With the City of Spartanburg Park and Recreation.

18 Q Okay. And what is your occupation?

19 A I'm the director of C.C. Woodson Community Center.

20 Q And what are your duties as, as director?

21 A I plan, organize, schedule programs and events and
22 staff.

23 Q How long has the center been opened?

24 A That particular center will be opened two years in
25 March.

Olivia Sartor - Direct examination
by Solicitor Cude

1 Q Okay. And have you been the director the entire time?

2 A Yes.

3 Q Okay. And what kinds of activities do they have at the
4 community center?

5 A We have a variety of activities for youth, adults,
6 senior citizens, neighborhood associations, weddings,
7 different functions.

8 Q Okay. Do y'all have any athletic facilities there?

9 A We have a gymnasium, gymnasium and a fitness room.

10 Q Okay. And -- now, we've seen photos of a computer
11 room.

12 Is -- do y'all call it something other than a computer
13 room?

14 A Well, some people call it the learning lab.

15 Q And what, what's done in that room?

16 A We do workshops. The youth do programs and things like
17 that. We schedule events in there. Sometime meetings.

18 Q I see.

19 What are the community center's regular hours?

20 A Well, our operating hours right, well, since it opened,
21 has been basically from 6:00 to 9:00PM Monday through
22 Thursday, and 6:00AM to 9:00PM Friday. We also open on
23 Saturday and Sunday, but it's prorated hours.

24 Q Okay. Let me ask you, just to be clear, Monday through
25 Thursday is it 6:00AM to 9:00PM?

Olivia Sartor - Direct examination
by Solicitor Cude

- 1 A That's correct.
- 2 Q All right. Are you there the entire time it's opened?
- 3 A No, I'm not.
- 4 Q Did you have to come out to the center the morning of
- 5 November 17th, 2010?
- 6 A Yes, I did.
- 7 Q Do you know about what time it was?
- 8 A It was between 3:30 and four o'clock.
- 9 Q Was it still nighttime?
- 10 A It was.
- 11 Q What did you find when you got there?
- 12 A The police officers were on scene, and they asked me to
- 13 wait while they were going through the building with the
- 14 dogs. It was a -- it was a break-in.
- 15 Q Now, did you, did you eventually walk through the
- 16 building?
- 17 A I did.
- 18 Q Did you notice anything missing from the building?
- 19 A Yes, when they asked me to walk through to look and see
- 20 if I saw anything missing, the -- well, of course, the glass
- 21 was broken in the community, community room, and in the
- 22 computer lab there was a TV missing and a computer and
- 23 monitor and keyboard.
- 24 Q Do you know how much the TV is worth?
- 25 A The TV, approximately was about \$1,200 for the TV and

Olivia Sartor - Direct examination
by Solicitor Cude

- 1 installation.
- 2 Q Okay. All right. Do you know how much the computer is
3 worth?
- 4 A About -- it was about \$730.
- 5 Q Okay. Does that include the monitor or---
- 6 A It includes installation and everything.
- 7 Q Okay. So, that includes the monitor and keyboard?
- 8 A Keyboard and monitor.
- 9 Q Okay. Let me ask, do you know, do you know how much it
10 cost to repair the window that we saw broken?
- 11 A It was a little over \$1,200. That was for the
12 replacement and the repair.
- 13 Q Let me ask you, the, the room where the window was
14 broken, was anything missing from there?
- 15 A No, it wasn't anything missing in the room.
- 16 Q Is it correct that's called the community room?
- 17 A That's correct.
- 18 Q Now, let me ask you, is, is that room open to the
19 public?
- 20 A It's -- that room is basically scheduled. It's not
21 just open to the public to go there. It's events that we
22 schedule for them.
- 23 Q Let me -- so, if there's not a scheduled event, are the
24 doors, are the doors to that room locked?
- 25 A The doors are not always locked to the room, no.

Olivia Sartor - Direct examination
by Solicitor Cude

- 1 Q Okay. Let me, let me ask you, did -- is there a
2 procedure -- does somebody walk through the center when it
3 closes at night?
- 4 A Yes, we check all of the exterior doors because our
5 alarm system will not go -- it can not be turned on at all
6 without that being secured.
- 7 Q Let me ask you, do you think the -- as the director,
8 let me ask you, do you think somebody would of notified you
9 if they found that a TV was missing from the---
- 10 A Most definitely.
- 11 Q ---community---
- 12 A Definitely.
- 13 Q Do you think somebody would of notified you if they
14 found the outer window broken to the meeting room?
- 15 A Definitely.
- 16 Q Do you think a center employee would of done so if they
17 found a tire iron sitting in the computer lab?
- 18 A Yes.
- 19 Q Let me ask you, have you ever seen the defendant
20 before?
- 21 A Yes, Mr. Bennett has been in the community center for
22 several times.
- 23 Q All right. And was that before the break-in?
- 24 A Yes.
- 25 Q Do you know about how many times you'd seen him there

Olivia Sartor - Direct examination
by Solicitor Cude

1 before?

2 A I don't know how many times, but he, he had been
3 frequently visiting quite often before the event.

4 Q And do you know what activities he was involved in at
5 the community center?

6 A He mainly participated in our computer lab. He didn't
7 go in or do anything in the other rooms.

8 Q Okay. So, just to be -- do you remember him being in
9 the meeting room or community room?

10 A No.

11 Q Are you familiar with the groups that are scheduled for
12 the meeting room or community room?

13 A Yes.

14 Q Do you remember him -- can you give me examples of some
15 of those groups?

16 A Usually during the hours of the day when he was in the
17 center, I usually have our after school program in there or
18 adult groups that meet during the, the early hours of the
19 day.

20 Q And can you give me an example of some of those adult
21 groups?

22 A We have our senior citizens craft classes. We have our
23 bridge club, groups like that that's in there during the
24 early part of the day.

25 Q Do you remember seeing him in, in the community room as

Olivia Sartor - Cross-examination
by Ms. Jones

1 part of those groups?

2 A No.

3 Q Thank you. Please answer any questions Ms. Jones has.

4 CROSS-EXAMINATION

5 BY MS. JONES:

6 Q Ms. Sartor, you indicated you are the director of the
7 center, but you're not there all the time?

8 A That's correct.

9 Q Cause those are pretty wide hours during a week.
10 6:00AM to 9:00PM that would be quite rough on you if you had
11 to be there every hour that it was opened. You do indicate
12 that you saw Mr. Bennett there and he was most often in the
13 computer room.

14 Now, did you, at anytime, make mention or, or enter
15 into a log his presence there in the computer room?

16 A He did.

17 Q Okay. Is that the, the, actually the notebook that's
18 laying on No. 6 on the---

19 A Yes, ma'am.

20 Q ---table in picture No. 6?

21 A Yes, ma'am.

22 Q Okay. So, you had a process where people were
23 accountable and could sign in and, and be in the room?

24 A Uh-huh. (Affirmative).

25 Q Okay. Well, did you, through the course of your

Olivia Sartor - Cross-examination
by Ms. Jones

1 employment, you didn't stay right there with him the whole
2 time while he was in the community center himself, the
3 entire center?

4 A In that room.

5 Q In the entire center?

6 A To be honest with you, when Mr. Bennett was in the
7 facility he was outside in the hallway or in that room, and
8 I did monitor him.

9 Q Okay. Where is your office?

10 A My office is in the interior, but I use -- I'm usually
11 at the front desk.

12 Q Okay. And where is the front desk in relation to
13 either of these rooms we're talking about?

14 A The front desk is up the hall at the front entrance,
15 and the computer lab is about two rooms down on the left.

16 Q Okay. But you have a personal office where you conduct
17 budgeting, personnel issues, private phone calls, and those
18 kind of things, correct?

19 A I do. But during that time of the day I was not in my
20 office.

21 Q Okay.

22 A Cause I only had one staff person there, and that was
23 me, and I'm usually at the front desk.

24 Q Okay. Okay. And what time frame are you referring to?

25 A Well, usually during the time of the day between 9:00

olivia Sartor - Cross-examination
by Ms. Jones

1 and 6:00 or 7:00, that's the time of day that I'm there,
2 6:00AM to, to about 7:00 to 8:00PM.

3 Q Okay. And you -- so then you are telling the jury that
4 every time of the frequent quite often times that Mr.
5 Bennett was there you visually were keeping contact, you
6 were keeping up with where he was?

7 A When I was there, no. When I was not there I don't
8 know.

9 Q Okay.

10 A But the times that I was there I did know.

11 Q Okay. Now -- and you indicated in this community room,
12 the room with the two TV's we've heard about and the
13 multiple round tables, there are a lot of groups, up to this
14 time, that used that room, correct?

15 A Yes, ma'am.

16 Q A lot of people in and out of there, bridge, crafts,
17 the kids after school, and you indicated, indicated, quite
18 honestly, that that room is not always locked. So, there is
19 entry and exit by anybody in the community center
20 potentially into that room.

21 A If they're scheduled.

22 Q Okay. But the door is not always locked?

23 A No, ma'am.

24 Q Okay. So, scheduling is not gonna control who goes in
25 and out, is it?

Olivia Sartor - Redirect examination
by Solicitor Cude

1 A No, ma'am, that's correct.

2 Q Okay. Thank you. Appreciate it.

3 REDIRECT EXAMINATION

4 BY SOLICITOR CUDE:

5 Q Now, Ms. Sartor, just to be clear, you did -- did I
6 understand your testimony, you said when Mr. Bennett was in
7 the building you did pay attention where he was?

8 A Uh-huh. (Affirmative).

9 Q Do you routinely monitor people who are in the
10 building?

11 A Well, I usually monitor people who seem suspicious to
12 me, that really don't have a purpose, and Mr. Bennett
13 normally walked through the building and he actually ended
14 up going to the computer lab because I suggested that he
15 pick a particular program to be a part of.

16 Q Now, let me ask you -- now, there was a lot of
17 testimony about the scheduling for the community room.

18 If someone isn't a member of a group scheduled for
19 there, do they have any business in the community room?

20 A They do not.

21 Q Are people free to sit there and socialize?

22 A No.

23 Q And, again, as the director of the center, I mean are
24 people encouraged to sit there and watch TV if they're not
25 part of a group?

Olivia Sartor - Redirect examination
by Solicitor Cude

1 A No.

2 Q Let me ask you, just to the best of your recollection,
3 I mean in 2010, do you have any idea of what, how many
4 groups were using that community room at that time?

5 A I don't.

6 Q Did you examine the community room where the window was
7 broken?

8 A I did.

9 Q Did you see -- did you -- are you aware -- is there any
10 damage to either of the TV's that were in that room?

11 A When I, when I saw it, what I saw was abrasions on the
12 wall where it seems like something had been used to pry, try
13 to remove those TV's. That's what I, I saw.

14 Q Okay. But both TV's were still present---

15 A They were.

16 Q ---in the community room?

17 All right. Thank you. Please answer any other
18 questions Ms. Jones may have.

19 RECROSS EXAMINATION

20 BY MS. JONES:

21 Q With regard to the various groups, you really can't
22 even estimate how many different groups were using the room
23 during the time frame of, of this case, can you?

24 A I can't give you the actual number, but we keep a
25 record of everybody that we schedule for that room---

Olivia Sartor - Recross examination
by Ms. Jones

- 1 Q Okay.
- 2 A ---because it's usually groups.
- 3 Q And did you examine those records?
- 4 A No, ma'am, nobody asked me to.
- 5 Q Nobody asked you to look and see if that---
- 6 A No, ma'am.
- 7 Q Those groups, would they include, in addition to what
- 8 you said before, support groups?
- 9 A Yes, ma'am.
- 10 Q Grief support?
- 11 A (Witness nods affirmatively.)
- 12 Q NA, AA, those kinds of---
- 13 A Yes, ma'am.
- 14 Q Yeah.
- 15 A They, they also use our room, but it's usually in the
- 16 evening, not during the early part of the day.
- 17 Q Okay. Now -- and you, you noticed abrasions on the
- 18 wall near---
- 19 A Yes, ma'am.
- 20 Q Was it one TV or both TV's?
- 21 A It actually was both, but one had more than the other.
- 22 Q Did you point that out to the officers?
- 23 A We talked about it.
- 24 Q But -- okay. Thank you. That's all I have.
- 25 THE COURT: You can step down and be excused. Thank

Olivia Sartor - Recross examination
by Ms. Jones

1 you.

2 Call your next witness.

3 SOLICITOR CUDE: Your Honor, the State calls officer
4 Chris Banks.

5 CHRIS BANKS, having been first duly
6 sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY SOLICITOR CUDE:

9 Q Please state your name, sir.

10 A My name is Christopher Michael Banks.

11 Q How are you employed?

12 A I'm employed with the City of Spartanburg Public Safety
13 Department.

14 Q How long have you worked there?

15 A I been with the city for 23 years and two months.

16 Q Okay. And have you worked anywhere else in law
17 enforcement?

18 A I use to work for the Greenville County Sheriff's
19 Department as the criminal justice support team.

20 Q How many years did you work there?

21 A Two years.

22 Q What are your, what are your current duties at
23 Spartanburg Public Safety Department?

24 A I've been assigned to the burglary task force since
25 February of '09 and burglary reduction specialist.

Chris Banks - Direct examination
by Solicitor Cude

- 1 Q Okay. And what does that mean in layman's terms?
- 2 A Whenever a burglary's reported, if I'm here, I go and
- 3 help the officers process, canvas the area, look for other
- 4 evidence, and if the officers go and I'm not at work, I go
- 5 back the next day or as soon as I find out about the
- 6 incident, I go back and check, oversee if everything else
- 7 has been missed, and if there's any other evidence that
- 8 could be found.
- 9 Q Okay. Have you received any specialized training
- 10 relating to this?
- 11 A Yes, I've been to several forensics classes, interview
- 12 interrogation, basic investigations, and several other
- 13 classes.
- 14 Q Did you go to C.C. Woodson Community Center the morning
- 15 of November 17th, 2010?
- 16 A I did. Approximately 9:30 in the morning.
- 17 Q Okay. And, and just to be, just to be clear, was that
- 18 several hours after the other officers had been there?
- 19 A Yes.
- 20 Q Okay. And is that part of your standard procedure
- 21 or---
- 22 A Yes, when I come in in the morning I go through the
- 23 reports, and whenever a burglary's been reported, I go and I
- 24 start taking care of business. They left at approximately
- 25 5:00 something in the morning.

Chris Banks - Direct examination
by Solicitor Cude

1 Q Let me -- when you got to C.C. Woodson, I mean what did
2 you do when you got there?

3 A Introduced myself to the management and informed them
4 what I was there for.

5 Q Okay. What, what did you do after that?

6 A Started going through the scene from the entry point to
7 the location where the TV was stolen from.

8 Q What did you do in the entry point?

9 A Entry point, I checked for more evidence to see if
10 there's any type of blood, fingerprints that the officers
11 might have missed. The TV on the left-hand side appeared to
12 have the right-hand back of the brackets had been dislocated
13 from the wall caused it to hang down lower than it usually
14 should sit.

15 Q And I'm sorry, what room was that again?

16 A That would be the conference room where the entry point
17 was gained.

18 Q Okay. Did you collect any evidence in that room?

19 A The officer's had already dusted the television. I had
20 found that they had already recovered the print from the
21 bottom left-hand corner of the television on the left-hand
22 side of the wall.

23 Q Do you remember about how long you spent in that room?

24 A Not very long. I checked the glass to see if there's
25 any type of footprints in the glass or on the floor.

Chris Banks - Direct examination
by Solicitor Cude

1 Couldn't find any residue from a shoe or from anything else.

2 Q All right. What other rooms did you, did you process?

3 A The next room I went to would be the computer lab.

4 Checked the counter of the desk where the fingerprint was

5 still located at, went over to the wall where the TV would

6 usually be sitting at that was removed. While processing it

7 or checking over it I found two small droplets of blood

8 approximately two inches below where the TV usually sat.

9 SOLICITOR CUDE: May I approach the witness, Your
10 Honor?

11 THE COURT: Yes, sir.

12 Q Now, I'm handing you State's Exhibit 8 previously
13 entered into evidence.

14 Is the blood visible in that photo?

15 A Pretty much. You see the two little droplets just
16 above that chair. Probably about a foot and a half to
17 two feet above the chair.

18 SOLICITOR CUDE: Your Honor, can I have the lights
19 lowered again just to publish this?

20 THE COURT: Yes, sir.

21 Q Officer Banks, would you mind coming down and can you
22 show us what it is that you're talking about?

23 A (Witness comes down from the stand.)

24 Q And this is -- if it helps, you can use the laser
25 pointer.

Chris Banks - Direct examination
by Solicitor Cude

1 A It's hard to see it on that picture, but it's right
2 about that corner of the brick right there.

3 Q Let -- and where is this in relation to where the TV
4 was taken from?

5 A Like I said, it's probably about two inches from where
6 the bottom of the TV was sat pretty much to the right-hand
7 side of that TV where it was originally at.

8 Q And if you would, I'm, I'm putting State's Exhibit 7 on
9 the presenter, and what does that show again?

10 A Looking at where the TV was set, I call that right-hand
11 side. That would be the bracket to the right. That's the
12 bracket to the left. The blood droplets was found probably
13 around the corner of that block right there. The glare's
14 hiding it at this time.

15 Q Thank you.

16 A (Witness returns to the stand.)

17 SOLICITOR CUDE: I beg the Court's pardon.

18 what did you do after you discovered these blood
19 droplets?

20 A After I recovered the or found the blood droplets I
21 went to that little binder that I carry. It holds the
22 sealed swabs, a box, and a bottle of distilled water.

23 Q Okay. And what did you do then?

24 A Broke the tip off the box, opened up the swabs, with,
25 while wearing latex gloves, applied the distilled water to

Chris Banks - Direct examination
by Solicitor Cude

1 the swabs, these two swabs in it. Rubbed the remainder of
2 the blood on the thing, opened up the box, you put them into
3 the holes, and let them sit and dry. While you're letting
4 them dry you fill out the information on the box.

5 SOLICITOR CUDE: Your Honor, I'd ask this be marked
6 State's Exhibit 11 for identification.

7 THE COURT: I can't see what it is, but any objection?

8 MS. JONES: Your Honor, I have no objection.

9 SOLICITOR CUDE: I'm sorry, Your Honor.

10 THE COURT: All right. Be marked without objection.

11 (WHEREUPON, the evidence box was marked as State's
12 Exhibit No. 11 for identification purposes only at this
13 time.)

14 Q I'm handing you what's been marked State's Exhibit 11
15 for identification, and, again, without breaking the outer
16 plastic wrapping, you know, can you tell me what this is?

17 A This being an evidence envelope containing I believe
18 it's the swabs and the inside that I filled out after
19 returning to City Hall.

20 Q Okay. And how do, how do you recognize this item?

21 A It has my signature on it and location and the dates
22 and times in my handwriting with the case number on top.

23 Q And, again, just can you tell me, again, just briefly
24 how you collected those blood, those blood spots?

25 A You bring the thing, I can actually show them. I've

Chris Banks - Direct examination
by Solicitor Cude

- 1 got other samples. We are given packets that can tip,
2 conceal or hold two swabs. They're sealed. You open those
3 up. The next thing you get is a plastic vile that is
4 constantly closed. Once you use it you have to dispose of
5 it. It's filled up with distilled water. You place it on
6 the tips, and then you prepare to wipe over whatever you're
7 trying to retrieve. Once you get that done, the box
8 container has two holes in it to keep the, let the liquids
9 keep drying. You put them in those and let them sit for a
10 while until most of the moisture evaporates away leaving
11 nothing but the item that you recovered.
- 12 Q And, again, just what did you do with these swabs after
13 you collected them?
- 14 A Placed them into the evidence envelope and took them
15 back to City Hall. I believe they were placed in evidence.
- 16 Q Is this the evidence envelope that you---
- 17 A Yes, it is.
- 18 Q ---used?
- 19 Let -- did you seal the evidence envelope before
20 turning it into City Hall?
- 21 A No, it's not sealed until it's actually dropped in the
22 drop locker.
- 23 Q Okay. But did you seal it before placing it in the
24 drop locker?
- 25 A It was placed in that binder there and placed inside my

Chris Banks - Direct examination
by Solicitor Cude

1 desk once I got back to City Hall. My desk has a lock on
2 it.

3 Q Okay. And did you ever take it out of the desk?

4 A Not until it was dropped.

5 Q Okay. Did you tamper with the blood swabs or alter
6 them while they were in your custody?

7 A No.

8 Q Did they appear untampered when you turned them into
9 the drop box?

10 A No, they were not.

11 Q Let me ask you, did they appear to have been tampered
12 with before you turned them into the drop box?

13 A No, they were not. They were locked inside my drawer.

14 Q Let me ask you, did you use any, any special techniques
15 or any equipment to detect the blood in this case or---

16 A I carry different types of magnifiers. While wearing
17 my glasses, I have a loop and I also have a magnifying card
18 and I use that to try to find more evidence. I can't tell
19 you what the magnification of them are. The loop is used
20 for identifying fingerprints. That's how powerful it is.

21 Q Okay. Did you use these in processing this room?

22 A Yes, I did.

23 Q Please answer any questions Ms. Jones may have.

24 CROSS-EXAMINATION

25 BY MS. JONES:

Chris Banks - Cross-examination
by Ms. Jones

- 1 Q With regard to State's Exhibit No. 8, I'll ask you to
2 look at that photograph again. Show me, if you would, what
3 you identified as being the drops on the---
- 4 A Those two little spots right there.
- 5 Q Again, show me that.
- 6 A Right there. Right---
- 7 Q Are they visible---
- 8 A ---in the corner---
- 9 Q ---in the photograph?
- 10 A They are, yes.
- 11 Q Okay. So, you didn't need a magnifier, right?
12 Is that right there?
- 13 A Yes.
- 14 Q Okay.
- 15 A But I do use one.
- 16 Q Now, you've indicated when you began testifying that
17 you got there some time in the morning hours and introduced
18 yourself to the manager.
- 19 A Yes.
- 20 Q How many people were working when you got there?
- 21 A It was two or three.
- 22 Q Okay. Was the center again opened to the public?
- 23 A I don't believe so at the time.
- 24 Q Pardon me?
- 25 A I don't believe so at the time.

Chris Banks - Cross-examination
by Ms. Jones

- 1 Q Okay. Do you recollect that it was not or are you---
- 2 A I don't believe it was. The incident had not been
- 3 cleaned up yet.
- 4 Q Okay. And you think there were two or three staff
- 5 members already there moving about?
- 6 A Yes.
- 7 Q Okay.
- 8 A They were at the front desk.
- 9 Q Okay. Do you know, cause you reexamined these rooms,
- 10 how was the broken window secured overnight?
- 11 A The broken window?
- 12 Q Uh-huh. (Affirmative).
- 13 A It had a piece of plywood on it.
- 14 Q Okay. And you moved into -- the two rooms involved
- 15 would be the meeting room and the computer room, and you
- 16 just basically went back over what the other officers had
- 17 done?
- 18 A Yes, also the whole entire building on the inside and
- 19 the outside.
- 20 Q Okay. You found something or testified as to something
- 21 that Officer Osrechek, if I said that correct, did not
- 22 mention with regard to damaged brackets behind the
- 23 television.
- 24 A Yes.
- 25 Q Did you photograph those?

Chris Banks - Cross-examination
by Ms. Jones

1 A I did not have a camera at the time.

2 Q Okay. Have you ever considered that might be useful if
3 you're gonna go back in and look for additional evidence?

4 A Yes, I did. I ride a motorcycle and that day I did not
5 have my motorcycle, and the motorcycle I was using didn't
6 have a camera. When I called for an officer to bring me
7 one, none was available.

8 Q Okay. So, none of -- nobody could bring a camera to
9 you to photograph---

10 A No.

11 Q Okay. And was there anything else that you found that
12 had not been found before?

13 A Other than blood, no, I did not.

14 Q Thank you.

15 That's all I have.

16 SOLICITOR CUDE: Nothing further for this witness.

17 THE COURT: All right. You can be excused and you may
18 step down.

19 WITNESS: Thank you, Your Honor.

20 THE COURT: Members of the jury panel, I think this is
21 a good time to stop for the day. It's ten after 5:00, and
22 if we took a break, we started back, it would run well into
23 the evening. So, we're gonna stop, and I'm gonna ask you to
24 be back at 10:00 in the morning. Keep in mind what I told
25 you about not discussing the case, and not let anyone

1 the case, if so, let me know.

2 (No response.)

3 THE COURT: All right. Thank you.

4 Call your next witness.

5 SOLICITOR CUDE: Thank you, Your Honor.

6 State calls David Reeves.

7 DAVID REEVES, having been first duly
8 sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY SOLICITOR CUDE:

11 Q Please state your name for the record.

12 A My name is George David Reeves.

13 Q Okay. What is your occupation?

14 A I'm a property and evidence technician for the City of
15 Spartanburg Police Department.

16 Q And what are your duties for the Spartanburg Public
17 Safety Department?

18 A I receive all property and evidence that an officer
19 finds. I safeguard the chain of possession. I safeguard
20 the property. I send property if it has to be analyzed. I
21 pick it back up and I present it to the court.

22 Q Have you had any specialized training related to that?

23 A I'm a certified specialist with the International
24 Association of Property and Evidence.

25 Q How long have you had this job?

David Reeves - Direct examination
By Solicitor Cude

- 1 A Eleven years.
- 2 Q Now, I'm showing you what's been marked for
3 identification as State's Exhibit 1.
- 4 Can you please look at it and tell me if you recognize
5 it?
- 6 A I recognize it very well.
- 7 Q Okay. How do you recognize it?
- 8 A This is my name, this is my initials, this is the date
9 I put on it, and I also filled this information out when I
10 submitted it to SLED.
- 11 Q Let me see.
- 12 Do you know where you, where and when you received this
13 item?
- 14 A It was received into property and evidence on
15 November 19th of 2010 at seven o'clock in the morning.
- 16 Q Let me -- at the time that you put your name and other
17 identifying information on there, did the package appear
18 tampered with?
- 19 A Sir, I didn't -- we have two people who work property
20 and evidence, and my associate, Mylnor Beach, is the person
21 who actually received this swab --
- 22 Q Okay.
- 23 A -- this item.
- 24 Q well, let me ask you, just at the time though that you
25 put your name and other information on the packet, did it

David Reeves - Direct examination
By Solicitor Cude

1 appear tampered with when you did that?

2 A It was not tampered with.

3 Q Okay. What were the circumstances of your putting your
4 name and other information on that package?

5 A So that we can show who has handled, come in contact
6 with this property.

7 Q Okay. And do you know when and why you had occasion to
8 do that?

9 A We were requested to take this item to SLED. I
10 physically took it from property and evidence, which is a
11 secure location, drove to SLED. It was placed in an
12 envelope and I seal it at that time, and I put my
13 information on it showing that it's not been tampered with
14 at this point when it's submitted to SLED.

15 Q Okay. Let me back up.

16 You said, prior to taking it to SLED, you took it from
17 the property and evidence room at the City?

18 A Yes.

19 Q And you described that as a secure location?

20 A It is.

21 Q What do you mean generally?

22 A It's one, two, three, four locked doors, a video
23 camera, and a locked fence just to get to the evidence. The
24 only people who have a key to it is myself and my partner,
25 Mr. Beach.

David Reeves - Direct examination
By Solicitor Cude

- 1 Q Let me ask you, you testified that you took this to
2 SLED.
3 Do you know who you gave it to?
4 A I do not remember who I gave it to.
5 Q Okay. Do you know what date you turned this over to
6 SLED?
7 A I say that -- one moment. I turned this in to Amy
8 Stephens.
9 Q Okay. Do you know what date by any chance?
10 A It was received 12/18/2011.
11 Q Okay. Is it possible it's February 18th, 2011,
12 Mr. Reeves?
13 A Oh, it is. I'm sorry. Yes, it is.
14 Q Let me ask you --
15 A February 18th, 2011.
16 Q When you had custody of State's Exhibit 11, did you
17 change or alter it substantially?
18 A I did not.
19 Q Did you tamper with State's Exhibit 11?
20 A I did not.
21 Q All right. Did you maintain the integrity of the item?
22 A I did.
23 Q And let me ask you, just to be thorough, you know when
24 you transferred it to Ms. Stephens, did you see her do
25 anything to secure the item?

David Reeves - Direct examination
By Solicitor Cude

1 A The only thing she did was, in our presence, grab the
2 envelope, stick it inside this bag and heat seal it in front
3 of us. At that time she returns it to us while it's still
4 in our presence, never leaves our sight, and we initial it,
5 date it, and complete the rest of the information.

6 Q Okay. And, again, I apologize -- and can you show me,
7 again, just to be clear, when you gave it to Ms. Stephens,
8 where did you mark it?

9 A It's heat sealed here. I put my initials across the
10 heat seal. I date it. I also complete the front
11 information saying that I, this is my initials, that's my
12 name right here. This is the date it was given. That's our
13 department, and that's our case number. I fill that
14 information out.

15 Q Thank you, Mr. Reeves. Please answer any questions Ms.
16 Jones may have.

17 CROSS-EXAMINATION

18 BY MS. JONES:

19 Q Officer Reeves, with regard to No. 11, what is
20 contained inside the heat sealed pouch?

21 A Blood swabs.

22 Q Okay. I guess I meant what item itself.
23 There's an envelope in there, correct?

24 A There is.

25 Q Okay. Is that your property envelope?

David Reeves - Cross-examination
by Ms. Jones

- 1 A It is.
- 2 Q It's manila in the -- the manila type envelope.
- 3 What is contained inside the envelope?
- 4 A Two blood swabs.
- 5 Q Okay. Are they single like single Q-tips or are they
- 6 in something?
- 7 A They're in a box.
- 8 Q Okay. Separately or together?
- 9 A I believe they're together.
- 10 Q So that the two swabs are put in the same box?
- 11 A I believe so.
- 12 Q Okay. You indicated you did not receive that
- 13 particular item personally from the officer, correct?
- 14 A That is correct.
- 15 Q Okay. And Mr. Beach, excuse me, Officer Beach, who's
- 16 present, he's the one who actually received it. So, he
- 17 knows what condition as far as it was in when he received
- 18 it, correct?
- 19 A Yes.
- 20 Q Okay. Do you produce a report that's called a chain of
- 21 custody report for each case listing the different pieces of
- 22 evidence that are received on a case?
- 23 A I do when required.
- 24 Q Okay. Do you have the one for this case, which I
- 25 believe is Case Number 11051610?

David Reeves - Cross-examination
by Ms. Jones

- 1 A I do not have that on me.
- 2 Q Okay. Well, let me show you a document. Look at that
- 3 for a moment and see if you identify, can identify that
- 4 document. It's actually two on that report, but it's the
- 5 first page.
- 6 A Okay. Are you referring to piece number one?
- 7 Q Okay. Does your information on piece number one on
- 8 this form correspond to what we're now calling No. 11, that
- 9 heat sealed pac there?
- 10 Is that the same item?
- 11 A It is the same item.
- 12 Q Okay. Does your form show who recovered that item?
- 13 A It's showing S. McClure, but that is a program issue
- 14 for the case itself, not for the item itself.
- 15 Q Okay. I'm gonna need for you to explain that.
- 16 What do you mean by that answer?
- 17 A If you'll look at this item here, it says Steve McClure
- 18 as the case officer. When this information was imported, we
- 19 got new software, which is why you have this documentation.
- 20 Q Uh-huh. (Affirmative).
- 21 A Whoever that case officer was, when they imported it,
- 22 they put the received officer as the same.
- 23 Q Okay.
- 24 A Because we had an issue at that time.
- 25 Q Okay. So, the fact that it says it was recovered by

David Reeves - Cross-examination
by Ms. Jones

1 McClure on here is a mistake?

2 A It -- that's correct.

3 Q Okay. That's all. Thank you, Officer Reeves.

4 THE COURT: Redirect.

5 SOLICITOR CUDE: Just briefly.

6 REDIRECT EXAMINATION

7 BY SOLICITOR CUDE:

8 Q Officer Reeves, you know, how does a mistake like that
9 happen?

10 I mean how can -- do you have any idea why this, why
11 the computer says, says why it lists Officer McClure in that
12 position?

13 A When we -- we had to go to a new software system.
14 Our -- the software system we were using when this item was
15 submitted was no longer usable, and the only way we can
16 import that information was to make those generic. They did
17 not separate it at the time.

18 Q Well, let me ask you, can you read any names on the
19 evidence, evidence envelope through the plastic outer pouch?

20 A Yes.

21 Q Can you tell me the names that are showing on that
22 evidence envelope?

23 A The names that are showing on this evidence envelope is
24 recovered by Chris Banks. I'm also showing that Chris Banks
25 is the officer who submitted it to evidence.

David Reeves - Redirect examination
by Solicitor Cude

1 Q Okay. And can -- does it show anyone else handling it
2 after that on the evidence envelope?

3 A Only my associate, Mr. Beach.

4 Q All right. Thank you. That's all I have.

5 THE COURT: Recross.

6 MS. JONES: No, sir, Your Honor.

7 THE COURT: All right. Thank you. You may step down
8 and be excused if you wish.

9 Call your next witness.

10 SOLICITOR CUDE: Yes, Your Honor.

11 The State calls Ed Guthro.

12 ED GUTHRO, having been first duly
13 sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY SOLICITOR CUDE:

16 Q Please state your name for the record.

17 A Edgar Victor Guthro.

18 Q How are you employed?

19 A I'm sorry?

20 Q How are you employed?

21 A I work for the Spartanburg, Spartanburg Public Safety
22 Department.

23 Q And what is your position there?

24 A I'm a forensic technician.

25 Q Okay. And can you, can you explain what that means?

Ed Guthro - Direct examination
by Solicitor Cude

- 1 A Respond to and process certain crime scenes and
2 evidence.
- 3 Q How long have you worked in that position?
- 4 A About seven years.
- 5 Q How long have you been in law enforcement prior to
6 that?
- 7 A About 23.
- 8 Q And what other positions did you hold in law
9 enforcement?
- 10 A Worked as a regular criminal investigator, patrol
11 officer, worked on the housing complex unit for several
12 years.
- 13 SOLICITOR CUDE: Your Honor, I'd like to have this
14 marked as State's Exhibit 12 for identification.
- 15 THE COURT: That---
- 16 MS. JONES: No objection.
- 17 THE COURT: Without objection.
- 18 (WHEREUPON, an evidence bag was marked as State's
19 Exhibit No. 12 for identification purposes only at this
20 time.)
- 21 Q Officer Guthro, I'm handing you what's been marked for
22 identification State's Exhibit 12.
- 23 Do you recognize it?
- 24 A Yes, sir, I do.
- 25 Q How do you recognize it?

Ed Guthro - Direct examination
by Solicitor Cude

1 A It's, it's a Buccal swab which I collected from
2 Mr. Bennett, and it has my handwriting on it indicating what
3 it is. It has my name on it and the date.

4 Q Okay. And can you explain briefly what a Buccal swab
5 is?

6 A It's a DNA sample, a method of collecting a DNA sample.
7 It's a sterile Q-tip. Basically a cotton swab and you use
8 it to swab the inside of a person's cheeks and then it's
9 placed into a carton and then into this bag and logged into
10 evidence.

11 Q Okay. Do you secure the carton?

12 A Secure the carton?

13 Q When you place the swab into the carton, do you secure
14 the carton?

15 Is it closed or sealed in anyway?

16 A Yes, you close the carton and then, the carton itself,
17 and you put your identifying marks on that carton, and then
18 you log into it evidence. It's placed into our evidence
19 bag, which that information is put on this bag again, and
20 then it's logged into the evidence locker, into a secured
21 locker.

22 Q I mean do you see the man who you collected the Buccal
23 swab from here in the courtroom today?

24 A Yes.

25 Q Can you point him out please?

Ed Guthro - Direct examination
by Solicitor Cude

1 A Sitting at with -- well, the defendant sitting next to
2 the, his attorney.

3 SOLICITOR CUDE: All right. Please let the record
4 indicate Mr. Guthro indicated the defendant.

5 All right. Let me ask you, you testified that you
6 placed this Buccal swab into a container?

7 A Yes.

8 Q And then into an evidence envelope?

9 A Yes.

10 Q Did you secure the evidence envelope after doing that?

11 A I did. Once it's filled out and you log it into the
12 computer, it's -- you put it into a metal locked locker.

13 Q Did you change or alter the Buccal swab in anyway when
14 you had custody of it?

15 A No, sir.

16 Q Did you tamper with the Buccal swab in anyway while you
17 had custody of it?

18 A No, sir.

19 Q Did you maintain the integrity of the Buccal swab?

20 A I did.

21 Q Thank you. Please answer any questions Ms. Jones has.

22 CROSS-EXAMINATION

23 BY MS. JONES:

24 Q Officer Guthro, you indicated that this was a, the
25 equivalent of a sterile Q-tip---

Ed Guthro - Cross-examination
by Ms. Jones

- 1 A Yes.
- 2 Q ---and you swabbed Mr. Bennett's cheek.
- 3 when, when you did that that day, were you alone or was
- 4 somebody else with you other than Mr. Bennett?
- 5 A Investigator Gardner.
- 6 Q Okay. Was he involved in this process at all?
- 7 A Other than being there to observe me do it, and he had
- 8 the Court order.
- 9 Q Okay. So, was he involved in this process at all?
- 10 A Did he physically take part in the collection of the
- 11 swab, no.
- 12 Q Okay. And once you swabbed it, what, what happened at
- 13 that point?
- 14 what did you do with the, the Q-tip itself?
- 15 A It goes into a cardboard container at which is then
- 16 placed into this bag with its identifying marks and then
- 17 placed into evidence.
- 18 Q Okay. And did you go as -- as soon as you swabbed, did
- 19 you go back physically at that point straightaway and give
- 20 it to Mr. Reeves?
- 21 A I did not give it to Mr. Reeves. I logged it in and
- 22 put it into a locker I, roughly a half later maybe.
- 23 Q Okay. And was the carton anywhere else other than in
- 24 your possession in the half hour?
- 25 A No, it was not.

Ed Guthro - Cross-examination
by Ms. Jones

- 1 Q Okay. That's all. Thank you.
- 2 THE COURT: Redirect?
- 3 SOLICITOR CUDE: No, Your Honor.
- 4 THE COURT: All right. Thank you. We appreciate your
- 5 time. You can be excused. You may step down.
- 6 SOLICITOR CUDE: Your Honor, the State calls Mylnor
- 7 Beach.
- 8 MYLNOR BEACH, having been first duly
- 9 sworn, testified as follows:
- 10 DIRECT EXAMINATION
- 11 BY SOLICITOR CUDE:
- 12 Q Please state your name, Mr. Beach.
- 13 A It's Mylnor S. Beach.
- 14 Q How are you employed?
- 15 A I'm employed as a property and evidence technician with
- 16 the Spartanburg Public Safety Department, the City of
- 17 Spartanburg.
- 18 Q How long have you been employed there?
- 19 A Five years now.
- 20 Q Did you have any other experience in law enforcement
- 21 prior to working there?
- 22 A No, sir.
- 23 Q Do you have any specialized training in property or
- 24 evidence management?
- 25 A I've been certified through the International

Mylnor Beach - Direct examination
by Solicitor Cude

- 1 Association of Property and Evidence.
- 2 Q I'm handing you what's marked as State's Exhibit 12.
- 3 Do you recognize this?
- 4 A Yes, sir.
- 5 Q How do you recognize it?
- 6 A This was the envelope of the Buccal swab that
- 7 Investigator Guthro turned into evidence received by my
- 8 associate Officer Reeves. I delivered this to SLED and it
- 9 has, once again, the date, my initials, signature, date, and
- 10 the case number---
- 11 Q Do you---
- 12 A ---where I turned it into SLED. It was taken straight
- 13 from property and evidence to SLED.
- 14 Q Okay. What is the date that you turned it into SLED?
- 15 A May the 6th, 2011.
- 16 Q Okay. Who did you transfer it to?
- 17 A Nikki Perry.
- 18 Q Let me ask you, before taking it to SLED, where were --
- 19 where exactly did you receive the item and where did you
- 20 take custody of the item before taking it to SLED?
- 21 A I took the custody of the item from my property and
- 22 evidence room.
- 23 Q Did it appear tampered with at that time?
- 24 A No, sir.
- 25 Q Okay. And when you took it to SLED, what condition was

Mylnor Beach - Direct examination
by Solicitor Cude

- 1 the envelope in when you gave it to Ms. Perry?
- 2 A Other than being folded exactly as you see it now is
- 3 the way we received it.
- 4 Q Okay. When you had the item did you change or alter it
- 5 in anyway?
- 6 A No, sir.
- 7 Q Did you tamper with the item in anyway?
- 8 A No, sir.
- 9 Q Did you maintain the integrity of the item?
- 10 A No, sir.
- 11 Q Okay. And when you transferred it to Ms. Perry, did
- 12 you see her do anything to secure the item?
- 13 A Yes, sir, she takes the initial paperwork and the
- 14 report, logs it into the computer. I'm sitting directly
- 15 across from her desk and eye-to-eye contact, two or
- 16 three feet. She took the, our evidence envelope, placed it
- 17 in this plastic bag, and at that time she heat sealed it.
- 18 She then gives it back to me, and it's, as Officer Reeves
- 19 stated, we date it across the heat seal, and initially sign
- 20 it, and then put the rest of the information here on the
- 21 bottom of the envelope. At that time, it's sealed, we give
- 22 it back to her, and then it's -- they go about their
- 23 business with it.
- 24 Q Okay. Let me -- you testified that you delivered this
- 25 to Ms. Perry at SLED.

Mylnor Beach - Direct examination
by Solicitor Cude

1 Can you tell me just what, what town that is located
2 in?

3 A SLED is located in Columbia, South Carolina.

4 SOLICITOR CUDE: Okay. Beg the Court's indulgence.

5 (Pause.)

6 SOLICITOR CUDE: May I approach the witness again, Your
7 Honor?

8 THE COURT: Yes, sir.

9 Q Mr. Reeves, I'm handing you a document.

10 Can you tell me if you recognize the document?

11 I'm sorry, Mr. Beach.

12 A It is -- it's a copy of the evidence sheet on the blood
13 swabs that Officer Banks turned in that I received on
14 November the 19th, 2010, and there's the original. That's
15 a copy of it.

16 Q And can you tell me, just, just to be clear, who turned
17 in, I just want to be clear, who turned that item into
18 evidence.

19 Just based on the property and evidence sheet, what
20 does that indicate?

21 A Based on the property and evidence sheet, Officer Banks
22 did, sir.

23 Q Okay. And who received that item?

24 A I received that item on November the 19th, 2010, at
25 seven o'clock in the morning.

Mylnor Beach - Direct examination
by Solicitor Cude

1 Q Okay. And, again, which item is that property and
2 evidence sheet referring to?

3 A The two blood swabs --

4 Q Okay.

5 A -- that was turned in by Officer Banks.

6 Q All right. Thank you. Please answer any questions Ms.
7 Jones may have.

8 CROSS-EXAMINATION

9 BY MS. JONES:

10 Q Officer Beach, when you received the item, you received
11 it from an, an evidence locker

12 A We -- yes, ma'am, we have what is called the drop box
13 area. We have a metal lock box that resembled a U.S. Postal
14 box, and we have I think, I think it's 17 lockers. And when
15 these lockers are shut, they lock automatically. The drop
16 box has to have a separate key to open it as well, a
17 separate key for the locker. Officer Reeves and I are the
18 only ones that have keys to those items. So, we use the
19 terminology drop box area, and it could be a locker or the
20 drop box itself.

21 Q Okay. And, so, when you retrieved that item that's now
22 marked as No. 11 from the drop box, although the evidence
23 sheet says it's blood swabs, you don't know, actually take
24 two swabs out of the evidence locker, do you?

25 A I take the envelope itself out, yes, ma'am.

Mylnor Beach - Cross-examination
by Ms. Jones

1 Q Okay. So, that -- in, in essence, there's blood swabs.

2 Just described what's in the envelope.

3 A Yes, ma'am.

4 Q Okay. And the inner envelope itself, I'm not inner --
5 the envelope itself that had been put in the locker, is it
6 taped shut too?

7 A Now, are you talking about the envelope itself or
8 the---

9 Q Evidence envelope that contains---

10 A The evidence---

11 Q ---the, the blood swab.

12 A It has a clasp on the back that's closed and it -- the
13 particular time with the blood swab, we were on our old
14 evidence system, which they manually wrote a, an evidence
15 sheet.

16 Q Uh-huh. (Affirmative).

17 A Normally the evidence sheet would be inside the
18 envelope unless it was a bulky item that would, you know,
19 mess it up. We open it and take it out and make sure the
20 container of swabs would be in there and then clasp it back.
21 But we don't touch or mess with the swabs themselves just to
22 get the evidence sheet out.

23 Q Okay. So, I guess to answer briefly the question I
24 asked, when you retrieved it, it was not in a sealed
25 envelope?

Mylnor Beach - Cross-examination
by Ms. Jones

1 It was just---

2 A Not sealed.

3 Q ---clasped with those little metal fingers, right?

4 A Yes, ma'am.

5 Q Okay. Thank you.

6 A Yes, ma'am.

7 REDIRECT EXAMINATION

8 BY SOLICITOR CUDE:

9 Q Just briefly, Mr. Beach, if I can.

10 Did -- referring to State's Exhibit No. 12, I think you
11 testified previously you'd taken to SLED, did you maintain
12 the integrity of that item when it was in your care?

13 A Yes, sir.

14 Q Thank you.

15 That's all I have, Your Honor.

16 MS. JONES: Nothing further.

17 THE COURT: All right. You may step down. Appreciate
18 your time. You can be excused.

19 WITNESS: Thank you, sir.

20 THE COURT: Call your next witness.

21 SOLICITOR CUDE: Your Honor, the State calls Amy
22 Stephens.

23 AMY STEPHENS, having been first duly
24 sworn, testified as follows:

25 DIRECT EXAMINATION

Amy Stephens - Direct examination
by Solicitor Cude

- 1 BY SOLICITOR CUDE:
- 2 Q Please state your name for the record, ma'am.
- 3 A My name is Amy Stephens.
- 4 Q How are you employed?
- 5 A I'm employed with the South Carolina Law Enforcement
- 6 Division also known as SLED as a forensic technician in the
- 7 evidence control department.
- 8 Q And what are your duties?
- 9 A My duties include logging in, packaging, and
- 10 transferring evidence for forensic analysis in criminal
- 11 cases.
- 12 Q How long have you had that position?
- 13 A This March will be six years.
- 14 Q And did you receive any special training---
- 15 A We have---
- 16 Q ---along with this position?
- 17 A Excuse me. I'm sorry. We have on-the-job training as
- 18 well as I have attended the International Association of
- 19 Evidence and Property Training Seminar.
- 20 Q Beg your pardon, ma'am.
- 21 I'm handing you State's Exhibit No. 11 for
- 22 identification. Do you recognize this item?
- 23 A I recognize the lab number that's affixed to the
- 24 outside of the package, which is our SLED lab number,
- 25 L11-01851, item number one.

Amy Stephens - Direct examination
by Solicitor Cude

- 1 Q From whom was it received?
- 2 A I received the package from David Reeves with the
- 3 Spartanburg Department of Public Safety on February 18th,
- 4 2011, at 9:34AM.
- 5 Q And where were you when you received this?
- 6 A I was in my office at SLED in Columbia, South Carolina.
- 7 Q And just to be clear, when you received this item, was
- 8 it in any sort of container at the time you received it?
- 9 A When I received it it was just in this envelope like
- 10 that's package inside this heat sealed pouch.
- 11 Q All right. Did you see any, any evidence that that
- 12 envelope had been tampered with?
- 13 A No, I did not.
- 14 Q All right. Well, when you had that item in your
- 15 custody, what did you do with it?
- 16 A Once I logged it into our computer system, and once I
- 17 have placed it in this bag and had the submitting officer
- 18 initial and date and sign the date of the outside of the
- 19 bag, I then transferred the evidence to our DNA evidence
- 20 intake storage located in our evidence room.
- 21 Q Is that -- is that area secure?
- 22 A Yes, it is.
- 23 Q Can you describe it a little more?
- 24 A It requires a key. It also requires a computer card in
- 25 which each technician in my department has. It also has an

Amy Stephens - Direct examination
by Solicitor Cude

1 alarm and we also have two video cameras.

2 Q And what building is that area, that area located in?

3 A It's located in our forensics laboratory.

4 Q Okay. Thank you.

5 Did you tamper or alter with the item inside that heat
6 sealed pouch in anyway?

7 A No, I did not.

8 Q Okay. And did you mark the heat sealed pouch yourself
9 in anyway?

10 A The only thing I placed on this heat sealed pouch, I
11 wrote part DPS up here in the corner and then I wrote which
12 department the evidence was gonna be transferred to in the
13 other corner.

14 Q Thank you. Please answer any questions Ms. Jones may
15 have.

16 CROSS-EXAMINATION

17 BY MS. JONES:

18 Q Ms. Stephens, when you received the envelope from the
19 public safety officer, was it sealed in any fashion?

20 A There is some seal tape located on this envelope. It
21 looks to be SLED seal tape.

22 Q Okay. Well, to ask the question again, when you
23 received it, was it sealed?

24 A Yes, ma'am, it was.

25 Q Okay. In what way?

Amy Stephens - Cross-examination
by Ms. Jones

1 A There is SLED tape on the envelope itself on the inside
2 of this heat sealed pouch --

3 Q Okay.

4 A -- across the, where the envelope meets the bottom of
5 the envelope.

6 Q Okay. So, when you received it on that date, they had
7 used -- is it the regular red tape?

8 A No, ma'am, it's a yellow SLED seal tape.

9 Q Okay.

10 A It appears that he placed the SLED seal tape on the
11 envelope before handing it to me.

12 Q Okay. Do you recollect if he did that while standing
13 in your office from your supply of that type tape?

14 A I believe he did, but I can not be one hundred percent
15 positive.

16 Q Okay. Thank you. That's all.

17 THE COURT: Mr. Cude.

18 SOLICITOR CUDE: That's all I have of Ms. Stephens,
19 Your Honor.

20 THE COURT: You can be excused. We appreciate your
21 time. Thank you.

22 SOLICITOR CUDE: Your Honor, the State calls Nikki
23 Perry Hughes.

24 NIKKI PERRY HUGHES, having been first
25 duly sworn, testified as follows:

Nikki Perry Hughes - Direct examination
by Solicitor Cude

1 DIRECT EXAMINATION

2 BY SOLICITOR CUDE:

3 Q Please state your name for the record.

4 A Nikki Perry Hughes.

5 Q And what is your occupation?

6 A I'm also a forensic technician in the evidence control
7 department at the forensic lab at SLED.

8 Q And generally what are your duties?

9 A The same as Amy Stephens. We work in the same
10 department. We log in, package, and we transfer evidence
11 for forensic analysis.

12 Q And how long have you worked there?

13 A Approximately five and a half years.

14 Q Did you receive any training related to this position?

15 A We received on-the-job training and I also attended the
16 International Association of Property and Evidence Seminar.

17 Q Ms. Hughes, I'm handing -- beg your pardon.

18 This is State's Exhibit No. 12 for identification.

19 Can you tell me if you recognize it?

20 A I do recognize this piece of evidence also by the lab
21 number, L11-01851, item number two.

22 Q All right. Who is -- who is it received from?

23 A I received it from Mylnor Beach of the Spartanburg
24 Department of Public Safety on May the 6th, 2011.

25 Q Okay. And where were you when you received this?

Nikki Perry Hughes - Direct examination
by Solicitor Cude

1 A I was in my office in the SLED forensic lab evidence
2 control department.

3 Q Let me ask you to be clear, and I can -- we see this
4 Item Number 12 has a plastic envelope around it.

5 was it like that when you received it or what, what
6 exactly did you receive from Mr. Beach?

7 A I would of received this manila, manila envelope from
8 Mr. Beach and at that time I log in the information from the
9 SLED packaging slip that he provides me. I just placed the
10 envelope inside of the heat sealed pouch and I will seal it
11 in his presence. He will then initial and date the heat
12 seal and sign and date the front of the bag in my presence.

13 Q When you received it did you see any sign that the
14 envelope had been tampered with?

15 A No, sir.

16 Q Was it closed when you received it?

17 A By clasps. It would of been clasped. I can't really
18 see in there, but he just hands me the envelope. I don't
19 look inside the envelope. We work on a said to contain
20 basis. I place the envelope he hands me inside of this heat
21 sealed pouch.

22 Q Okay. All right. And did you mark the heat sealed
23 pouch, just to be clear, when you received it?

24 A I would of written DNA on the corner cause that is the
25 department it would be going to for analysis.

Nikki Perry Hughes - Direct examination
by Solicitor Cude

1 Q Let me ask you, when you received State's Exhibit 12,
2 did you tamper with or alter the contents in anyway?

3 A No, sir.

4 Q Okay. Thank you. Please answer any questions Ms.
5 Jones may have.

6 CROSS-EXAMINATION

7 BY MS. JONES:

8 Q You indicated the envelope was merely clasped when you
9 got it.

10 Does it have any tape on it?

11 A I can't see inside the way it's folded. It doesn't
12 appear to, but I can't really see inside the pouch.

13 Q Okay. So, the only thing -- and you said we operate on
14 a --?

15 A Said to contain---

16 Q Okay.

17 A ---basis.

18 Q Thank you. That's all I have.

19 THE COURT: Mr. Cude.

20 SOLICITOR CUDE: That's all I have for Ms. Hughes, Your
21 Honor.

22 THE COURT: Thank you. You can step down and be
23 excused.

24 WITNESS: Thank you.

25 THE COURT: We appreciate your time.

Katie Urka - Direct examination
by Solicitor Cude

1 Call your next witness.

2 SOLICITOR CUDE: Your Honor, the state calls Katie
3 Urka.

4 KATIE URKA, having been first duly
5 sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY SOLICITOR CUDE:

8 Q Please state your name for the record.

9 A Katie Urka.

10 Q And what is your occupation?

11 A I'm a forensic DNA analyst at South Carolina Law
12 Enforcement Division.

13 Q Okay. And how long have you been employed there?

14 A Just about six years.

15 Q What is your educational background?

16 A I have a Bachelor of Science in Forensic Biology, and I
17 also have a Master of Science in Forensic Biology.

18 Q Okay. What are your duties at the State Law
19 Enforcement Division?

20 A I receive evidence and known standards from agencies
21 across the, the State, analyze these items for the presence
22 of body fluids, and attempt to develop DNA profiles.

23 Q Have you ever been qualified as an expert witness in
24 the field of serology and forensic DNA analysis in South
25 Carolina?

Katie Urka - Direct examination
by Solicitor Cude

1 A Yes.

2 Q About how many times have you been qualified in such a
3 way?

4 A Twenty-five.

5 SOLICITOR CUDE: Your Honor, the State offers Ms. Urka
6 as an expert in the field of forensic DNA analysis and
7 serology.

8 THE COURT: Any voir dire?

9 MS. JONES: No, sir, no objection.

10 THE COURT: I find she's qualified.

11 Q Can you tell me what DNA is?

12 A D stands for deoxyribonucleic acid. It's a chemical
13 that's found in almost every cell of your body. DNA is
14 responsible for passing genetic information from generation
15 to generation, and no two individuals have the same DNA
16 profile except for identical twins.

17 SOLICITOR CUDE: Okay. Beg the Court's pardon.

18 State's Exhibit 11 and 12 are in front of you.

19 Can I ask if you recognize these items?

20 A They have our SLED lab number on them as well as my
21 initials across the seal.

22 Q Okay. From whom did you receive State's Exhibit 11 or
23 under what circumstances did you receive State's Exhibit 11?

24 A That was item number one, which was the swabs. I
25 received them on June 1st, 2011, from Agent Amy Stephens.

Katie Urka - Direct examination
by Solicitor Cude

1 Q Okay. And at the time -- when you say swabs, does
2 it -- can you identify which, what kind of swabs more
3 specifically?

4 A It's described as swabs that are blood collected at the
5 scene.

6 Q Okay. And let me ask you, was the packaging, when you
7 received them, had it been tampered with or opened at that
8 time?

9 A Not that I could tell.

10 Q Okay. Now, what kind of packaging was it in when you
11 received it?

12 A The evidence that I received is from, is in these heat
13 sealed pouches that are sealed in the log-in department.

14 SOLICITOR CUDE: Your Honor, I'd like to move State's
15 Exhibit 11 into evidence at this time.

16 THE COURT: Any objection?

17 MS. JONES: No, sir.

18 THE COURT: In without objection.

19 (WHEREUPON, State's Exhibit No. 11 was received into
20 evidence at this time.)

21 Q All right. And please look at State's Exhibit No. 12,
22 Ms. Urka.

23 what were the circumstances under which you received
24 that?

25 A That was SLED Item Number 2, which were Buccal swabs

Katie Urka - Direct examination
by Solicitor Cude

- 1 from Kevin Bennett and I also received those on June 1st,
2 2011, from Amy Stephens or---
3 Q And---
4 A Yes, from Amy Stephens.
5 Q And where were you and what location were you at when
6 you received these?
7 A I would go down to the log-in department to pick up my
8 evidence.
9 Q Okay. And what building is that in?
10 A The forensics building.
11 Q Okay. When you received State's Exhibit 12, was it --
12 did it appear to be tampered with or opened in anyway?
13 A No.
14 Q Okay. And can you, just to be clear, what kind of
15 package was it in when you received it?
16 A A heat sealed pouch.
17 SOLICITOR CUDE: Okay. I'd like to move State's
18 Exhibit 12 into evidence at this time.
19 MS. JONES: No objection.
20 THE COURT: In without objection.
21 (WHEREUPON, State's Exhibit No. 12 was received into
22 evidence at this time.)
23 Q All right. Did you perform any DNA analysis on State's
24 Exhibit 11 or 12?
25 A Yes.

Katie Urka - Direct examination
by Solicitor Cude

1 Q Can you tell us generally what you did?

2 A I would open each package separately, and I processed
3 the, the evidence before the standard. I would look at the
4 item and determine if I needed to perform a serology
5 analysis, which is just a test to, to see if there's blood
6 or another body fluid present, and then I would attempt to
7 develop DNA profiles from each item.

8 Q And what are DNA profiles?

9 A In the DNA profile we're looking at 15 specific regions
10 on your DNA, and each location you're gonna get a set of
11 numbers because you're gonna get one from your mother and
12 one from your father. So, your profile is similar to a
13 Social Security Number. It's just a string of numbers. So,
14 I develop a profile from evidence and from standards and I
15 compare the numbers to see if they match.

16 Q And just to be clear, did you, did you develop a DNA
17 profile for both items, State's Exhibit 11 and State's
18 Exhibit No. 12?

19 A Yes.

20 Q And what were your findings?

21 A The DNA profile from Item Number 1, the swabs, matches
22 the DNA profile of Kevin Bennett. The probability of
23 randomly selecting an unrelated individual having a DNA
24 profile matching this item is approximately one in
25 17 quintillion.

Katie Urka - Direct examination
by Solicitor Cude

1 Q Okay. Just to be clear, if, if you can answer this,
2 when you say the DNA profile from Item Number 1, are you
3 referring to State's Exhibit 11?

4 A Yes.

5 Q And when you say the, the Buccal swabs, are you
6 referring to State's Exhibit 12?

7 A Yes.

8 Q Now, can you explain that number you cited, one in
9 17 quintillion?

10 A One in 17 quintillion is assigning how rare a
11 particular profile is from evidence. One in 17 quintillion
12 is extremely rare. The population of the earth is about
13 7 billion. So, this number is about a billion times larger
14 than the earth's population.

15 Q Do you have an opinion as to whether the DNA on the
16 blood swab is consistent with the DNA from Kevin Bennett?

17 A The profile from the evidence matches the DNA profile
18 of Kevin Bennett.

19 Q Okay. And just, again, can you, can you explain what
20 your, what your statement means, the probability of
21 selecting an unrelated person to have that DNA, having that
22 DNA profile matching that item?

23 Can you put that in prospective again?

24 A When we're assigning a statistic to an item, we say the
25 probability of randomly selecting an unrelated individual.

Katie Urka - Direct examination
by Solicitor Cude

1 So, if you have a grouping, a random grouping of
2 17 quintillion people, I would expect to see that profile
3 once.

4 Q All right. Thank you. Please answer any questions Ms.
5 Jones has.

6 CROSS-EXAMINATION

7 BY MS. JONES:

8 Q Item -- your Item Number 1, which is now called State's
9 Exhibit No. 11, is more than one swab, is it not?

10 A I believe it was two.

11 Q Okay. Did you combine those two swabs for analysis?

12 A Generally, depending on the size of the stain, I would
13 probably only cut from one of them in my analysis. If the
14 stain was very small I would cut from both.

15 Q Do you not recollect exactly what you did here?

16 A In this case, no.

17 Q Okay. You didn't -- do you have your DNA file jacket
18 that indicates what you did with the two swabs?

19 A I don't normally write if I cut from both swabs or not.

20 Q Okay. Do you not consider that relevant information if
21 they're two separate swabs?

22 A If they're packaged together, the two swabs are one
23 item.

24 Q Okay. For, for the purpose of testing?

25 A Correct.

Katie Urka - Cross-examination
by Ms. Jones

1 Q And, and, so, then you would have no way of knowing if
2 the two swabs came from an identical location or two
3 separate locations, correct?

4 A Right.

5 Q Okay. So -- because you don't know that, and because
6 the submitting agency's put them in one pack, you test them
7 together?

8 A If two swabs are in the same packaging I assume them to
9 be from the same source.

10 Q Okay. And you indicated that you received this and
11 what description, if any, did you have with the pack you
12 received or any other submission from the agency about where
13 this sample was retrieved?

14 A The evidence items were just described as swabs.

15 Q So, do you have any idea where they came from?

16 A No.

17 Q Do you have any idea when the sample itself was left on
18 the location from which it was retrieved?

19 A No.

20 Q So, you can't age this at all?

21 A No.

22 Q Thank you. That's all.

23 THE COURT: Mr. Cude.

24 REDIRECT EXAMINATION

25 BY SOLICITOR CUDE:

Katie Urka - Redirect examination
by Solicitor Cude

1 Q Can I ask you, just to be clear, at the time you
2 received these packages, did they appear to be tampered with
3 in anyway or opened in anyway?

4 A No.

5 Q Thank you. That's all I have for this witness.

6 THE COURT: Okay. Ms. Jones.

7 MS. JONES: Nothing further.

8 THE COURT: You can step down. You can be excused. We
9 appreciate your time. Thank you.

10 You may call your next witness.

11 WITNESS: Thank you, Your Honor.

12 SOLICITOR CUDE: Is she free to go, Your Honor?

13 THE COURT: Yes.

14 Call your next witness.

15 SOLICITOR CUDE: Beg the Court's pardon. I did have
16 somebody coming in late.

17 THE COURT: All right. Well, it will be a good time to
18 take a break. I know I told you we usually go for about an
19 hour and a half. Y'all hadn't been in here for that long.
20 But the rest of us have. We, we got started with some other
21 matters that we didn't need you. So, this is our time then.
22 It might not be yours. So, this will probably, since we're
23 waiting on a witness, be a good time to take a break.

24 So, we'll take about a 15 minute break.

25 All right.

1 some witnesses, we might could still do arguments and charge
2 this afternoon or we'll see.

3 MS. JONES: I believe we'll probably be able to do
4 argument and charge this afternoon.

5 THE COURT: Okay. All right. Bring in the jury.
6 And you're not held to anything. I was just---

7 MS. JONES: Pardon me?

8 THE COURT: I'm not gonna hold you to obviously any --
9 do what you want to do.

10 MS. JONES: Thank you.

11 (WHEREUPON, the following takes place within the
12 presence of the jury.)

13 THE COURT: Call your next witness.

14 SOLICITOR CUDE: Thank you, Your Honor.

15 The State calls Lieutenant Kim Ashley.

16 KIM ASHLEY, having been first duly
17 sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY SOLICITOR CUDE:

20 Q Please state your name for the record, ma'am.

21 A Lieutenant Kim Ashley.

22 Q How are you employed?

23 A I work for the Spartanburg County Jail.

24 Q What are your duties at this time?

25 A Currently I'm the lieutenant over special services, but

Kim Ashley - Direct examination
by Solicitor Cude

1 at the time that, regarding the fingerprint card, I was a
2 sergeant of the identification department.

3 Q Okay. And what were your duties at that time when you
4 were sergeant over identification?

5 A When an individual comes to jail, one of the first
6 things we do is take fingerprints of that individual and
7 include the charges on the card and everything is submitted
8 to SLED.

9 Q Okay. Does the jail keep a record of fingerprints that
10 it takes?

11 A Yes, sir.

12 Q All right. And are those records -- you know, at least
13 are those records always produced in the same format?

14 A Yes, sir.

15 Q Are they kept in the same manner?

16 A Yes, sir.

17 Q And have you seen such records before?

18 A Yes, sir.

19 SOLICITOR CUDE: Your Honor, I'd like to have this
20 marked as State's Exhibit 13 for identification.

21 MS. JONES: I have no objection.

22 THE COURT: Without objection.

23 (WHEREUPON, the fingerprint card was marked as State's
24 Exhibit No. 13 for identification purposes only at this
25 time.)

Kim Ashley - Direct examination
by Solicitor Cude

- 1 Q Lieutenant Ashley, can you examine State's Exhibit 13,
2 both sides?
3 A Okay.
4 Q Have you seen fingerprint -- have you seen -- do you
5 know what that is?
6 A Yes, sir.
7 Q Have you seen items like that before?
8 A Yes, sir.
9 Q Do you have an opinion as to the origin of what that
10 document is, the origin of that document?
11 A The prints were taken of Mr. Kevin Tyrone Bennett.
12 Q Can you tell me where they were taken?
13 A Yes, at the Spartanburg County Jail.
14 Q Okay. Okay. And why do -- what leads you to believe
15 it was taken at the Spartanburg County Jail?
16 A The format of the card or ORI number, which is a number
17 that is given to us by the State of South Carolina for law
18 enforcement purposes, and it's distinct to the jail, and
19 that number is printed on the back of the card.
20 SOLICITOR CUDE: Okay. Your Honor, I'd like to move --
21 I like to -- can you tell me generally what that item is,
22 just what that record is that you have in your hand?
23 A This is a ten print fingerprint card of Mr. Kevin
24 Bennett whenever he was arrested.
25 Q All right. And is it standard to take those at the, at

Kim Ashley - Direct examination
by Solicitor Cude

1 the Spartanburg County Jail?

2 A Yes, every individual that comes to jail is
3 fingerprinted.

4 SOLICITOR CUDE: Okay. Your Honor, I'd like to move
5 State's Exhibit 13 into evidence at this time.

6 MS. JONES: I have no objection.

7 THE COURT: In without objection.

8 (WHEREUPON, State's Exhibit No. 13 was received into
9 evidence at this time.

10 SOLICITOR CUDE: Thank you. That's all the questions I
11 have for Lieutenant Ashley.

12 MS. JONES: I have no questions.

13 THE COURT: All right. You can step down and be
14 excused.

15 SOLICITOR CUDE: Thank you, lieutenant.

16 THE COURT: Call your next witness.

17 SOLICITOR CUDE: The State calls Lou Jones.

18 LOU JONES, having been first duly
19 sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY SOLICITOR CUDE:

22 Q Please state your name, ma'am.

23 A Lou Mathis Jones.

24 Q Okay. How are you employed?

25 A I work for the City of Spartanburg.

Lou Jones - Direct examination
by Solicitor Cude

- 1 Q Okay. And what is your position there?
- 2 A I'm a latent examiner.
- 3 Q Okay. Can you explain what that means, what your
4 duties are?
- 5 A Latent pertains to that, that is hidden or concealed,
6 but my duties are I examine latent prints to latent prints,
7 ink prints to ink prints, latent prints to ink prints. I do
8 a report of my findings and testify to those findings in
9 court whether positive or negative.
- 10 Q And let me -- when you say latent prints, do you mean
11 fingerprints?
- 12 A Fingerprints that are lifted from the crime scene.
- 13 Q Okay. All right. How long have you been employed in
14 fingerprint work?
- 15 A Twenty-one years.
- 16 Q Okay. And what specialized training have you received
17 as a fingerprint examiner?
- 18 A I've had basic fingerprinting, fingerprint
19 classification, fingerprint comparisons, fingerprint ridge
20 analysis, the history of fingerprinting, complex, complex
21 latent prints comparison, demystifying palm prints, advance
22 palm prints, and I have a diploma from basic forensics,
23 American Institute of Applied Science for Basic Forensics
24 101.
- 25 Q All right. And where did you receive that other

Lou Jones - Direct examination
by Solicitor Cude

1 training that you mentioned, those other classes?

2 A The other -- some of the classes came from SLED, from
3 Search & Laboratory in Youngsville, North Carolina.

4 Q Have you received any certification in the field of
5 fingerprints?

6 A I have a certification, certification of competency for
7 the operation of our Automated Fingerprint Identification
8 System also known as A.F.I.S.

9 Q How many fingerprints have you examined in your 21
10 years?

11 A I don't know the exact number, but I know it's been
12 well over a hundred thousand prints that I've examined.

13 Q Are you a member of any professional agencies?

14 A No, I'm not.

15 Q Okay. Well, do you use any technical equipment in this
16 work?

17 A I use the Automated Fingerprint Identification System.

18 Q Okay. And is that known by any acronyms?

19 A A.F.I.S.

20 Q Okay. And is there any other technical equipment that
21 you use?

22 A I have an A.F.I.S. tracker also. I have the -- I have
23 a National Crime Information Center computer system that I
24 also use.

25 Q Okay. Have you had occasion in your career to identify

Lou Jones - Direct examination
by solicitor Cude

1 persons by comparing latent fingerprints or palm prints with
2 their own inked fingerprints?

3 A Yes.

4 Q Can you give any prospect about how many times you've
5 done that?

6 A I've compared so many prints. Well over a hundred
7 thousand prints I've compared.

8 Q Okay. Do you know how many times, say in the last
9 year, you've identified people based on latent prints?

10 A Last year I identified 226 prints.

11 Q Have you ever -- have you ever testified as an expert
12 in court regarding identification of persons based on
13 fingerprint identification --

14 A Yes.

15 Q -- or fingerprint -- how many times?

16 A Four.

17 SOLICITOR CUDE: Okay. Your Honor, the State offers
18 Ms. Jones as an expert in the field of fingerprint
19 examination.

20 THE COURT: Voir dire?

21 MS. JONES: Yes, sir, I do have a couple of questions.

22 CROSS-EXAMINATION

23 BY MS. JONES:

24 Q If I can go back and ask you, you indicated you had a
25 diploma from which---

Lou Jones - Cross-examination
by Ms. Jones

1 A American Institute of Applied Science for Basic
2 Forensics 101.

3 Q Okay. And you are not a member of any professional
4 organizations?

5 A Well, I, I have -- I was a member of the South Carolina
6 Identification Association.

7 Q Okay. And you -- what is your -- what certificate --
8 what certificates do you hold or certifications do you hold?

9 A Certification of competency for the operation of our
10 Automated Fingerprint Identification System through SLED.

11 Q Okay. And that's the only certification you have?

12 A Yes.

13 Q Okay.

14 MS. JONES: No objection.

15 THE COURT: All right. I find she is qualified.

16 SOLICITOR CUDE: Thank you, Your Honor.

17 CONTINUED DIRECT EXAMINATION

18 BY SOLICITOR CUDE:

19 Q Ms. Jones, what is an inked print?

20 A An ink print is the reproduction of your friction
21 ridges. That's the raised portion of your skin of the lines
22 in your fingers, a reproduction of those in black printers
23 ink.

24 Q Okay. Okay. So, if -- well, what is a latent print
25 then?

Lou Jones - Direct examination
by Solicitor Cude

1 A A latent print is the outline of your friction ridges
2 and sweat on a surface or an object when touched. Latent
3 pertains to that which is hidden.

4 Q And when, when you hear a term like -- what is a latent
5 print?

6 A A latent print or latent print would be that print that
7 is obviously seen. It is usually left behind at a crime
8 scene in a substance like blood or paint or puddy.

9 Q I beg your pardon. If I can find State's Exhibit 13.
10 I'm showing you State's Exhibit 13 and what kind of
11 prints, of the three we discussed, what are those an example
12 of?

13 A This is -- actually this is live skin. It's an example
14 of an ink print.

15 Q Okay. Now, I mean are there different distinguishing
16 characteristics of a fingerprint?

17 A Yes.

18 Q How many characteristics are there?

19 A They're many, but some are more common than others.
20 There is several different prints, characteristics or
21 details from prints.

22 Q Okay. Well, I mean can you give me an idea of just how
23 you look at when you're doing your work?

24 A The ones that are more common than others are usually
25 like five standard ones that are more common than others.

Lou Jones - Direct examination
by Solicitor Cude

1 That would be a, a line or a ridge where it stops, it's
2 called an ending ridge. There's a ridge or a line that
3 splits into two that's called a bifurcation. There's a line
4 that splits into three caused trifurcation. There's dots.
5 They're enclosures. There's a little island in print, short
6 ridges, long ridges. Those are some of characteristics of
7 the print that I look for.

8 Q All right. How -- are fingerprints specific to each
9 person?

10 A Yes.

11 Q Could two people have the same fingerprints?

12 A No.

13 Q All right. I'm handing you what's marked for
14 identification as State's Exhibit 5.

15 Can you please look at both sides?

16 A Okay.

17 Q All right. Do you recognize that item?

18 A Yes.

19 Q How do you recognize it?

20 A I've got my initials and the date I examined the print,
21 the latent print card.

22 SOLICITOR CUDE: Your Honor, I'd like to move State's
23 Exhibit 5 into evidence at this time.

24 MS. JONES: I don't have any objection.

25 THE COURT: In without objection.

Lou Jones - Direct examination
by Solicitor Cude

- 1 (WHEREUPON, State's Exhibit No. 5 was received into
2 evidence at this time.)
3 Q Okay. What did you find when you looked at State's
4 Exhibit 5?
5 A I found that it had sufficient quality for me to be
6 able to identify the print.
7 Q And, again, I'm sorry, just to be clear, what is
8 State's Exhibit 5 again?
9 A It's a latent print.
10 Q Okay. And how did you come to examine that?
11 A This print was down, down in our evidence room. I have
12 to go down and retrieve all of our fingerprint evidence.
13 Q Okay. What did you do after examining -- after you
14 looked at the card, what did you do then?
15 A You want me to tell you how I came about to make the
16 identification or---
17 Q Yes. Yes.
18 A Okay. I have a charting with -- can I have permission
19 to come before the jury to show them the chart of what we
20 do?
21 THE COURT: Yes, ma'am.
22 WITNESS: Okay.
23 THE COURT: Ms. Jones, you can come stand over here if
24 you'd like so you can see what's going on.
25 A I just got part of that one side covered up, but this

Lou Jones - Direct examination
by Solicitor Cude

1 is actually what a latent print left behind at a crime scene
2 looks like. When I'm examined, examining a print, first of
3 all, I have to do an analysis on the print. I'm looking at
4 this print to see what I see in this print.

5 I'm looking for ridge details or the lines in the
6 print. I'm looking to see if there's sufficient clarity of
7 those lines. If there is sufficient clarity, I'm looking
8 for to what else I see within these prints. I'm looking for
9 some of those characteristics that we were talking about
10 just a few minutes ago. I'm looking for that line that will
11 split, which means bifurcate. I'm looking for where that
12 line will make three lines and will trifurcate. I'm looking
13 for dots. I'm looking for little islands. I'm looking for
14 any, any detail that would make this print unique from any
15 other print. I'm looking for the location of this detail.

16 Once I find out I have a sufficient clarity, and
17 sufficient ridge detail, I will scan this print into our
18 system called A.F.I.S. It's Automated Fingerprint
19 Identification System. Once I've scanned that print into
20 that system I'll start marking these details. I'll start
21 marking those ending ridges where these lines stop or these
22 bifurcations where they split into two or three.

23 A.F.I.S. requires that you have a minimum of six points
24 to submit a print, and if I find I have sufficient ridge
25 detail going to mark those points and submit it to A.F.I.S.

Lou Jones - Direct examination
by Solicitor Cude

1 for a search. I'm going to ask this computer system, system
2 bring me back the 18 highest scoring possible matches. Now,
3 A.F.I.S. does not make an identification. It's going to be
4 up to the examiner to make the identification.

5 So, when those prints come back, which takes about ten
6 minutes, I'm going to examine those prints when they come
7 back, and see if I see any print that comes back that looks
8 anything like this print that I examined the first time. It
9 has to have the ridges flowing in the same direction. The
10 position of the characteristics have to be the same
11 location. Everything about this print is gonna have to
12 match to the other print.

13 When I search the A.F.I.S. system one did come back
14 with a possible match. I'm saying possible match right now
15 because until I finished doing my identification process I
16 will not know if it is a match or not. There was a print
17 that came back who I, that I thought possibly matched it.
18 In order to find out for sure if it matches it, you'll have
19 to put both prints side-by-side. You have to make sure that
20 all the ridges or all the lines in the print are flowing in
21 the same direction. Then you have to start charting these
22 prints and they're numbered and they're clocked by position.

23 So, I'll start with the first ridge that pops out to me
24 or that has that specific identification, and I'll mark that
25 ridge number one. I'll look on -- I'll look here at my

Lou Jones - Direct examination
by Solicitor Cude

1 latent print and I'll look at the one that I think is a
2 possible match to it. I'll start with the center of that
3 print.

4 Now, in this print -- prints have three different
5 types, pattern types. Some will come in and make a looping
6 formation in the middle. That's one type. Another type
7 will make a circle or a circuit, this circle in the middle,
8 and another one will make what we call an arch. It will
9 come in on one side, make a wave in the middle, and then
10 make it out the other side. So, I can tell at this -- I can
11 tell that this print is a looping print.

12 So, I'm gonna go over here and look right above where I
13 have position mark number one, which is an ending ridge, and
14 making sure that that number one will meet the same
15 criterias as this one, and that looping ridge, and that
16 first, that first number one is an ending ridge.

17 I will count down to the next point of identification
18 on number two and see if I find any characteristics of this
19 print. I'll make sure that the same amount of ridges are
20 intervened between point one and two here, and it's got to
21 intervene between this position here between one and two, in
22 this case I will count down one ridge. Number two is gonna
23 be a bifurcation right in the center of that loop.

24 I'm gonna do the same over here. I have to go in the
25 same area, same position. I can't go somewhere down. It's

Lou Jones - Direct examination
by Solicitor Cude

1 got to be exactly the same position here. I'll count down
2 from that position one, one two, and that's got to be the
3 same type of characteristic and here is the same one. It's
4 a bifurcation, and that's where the ridge, the ridge comes
5 into one and it's split into two. Then I will go down to
6 wherever I see another point of identification or
7 characteristic under number three, and over here I'll start
8 with my latent print.

9 I'll count down five ridges and there we go. There's a
10 short ridge, maybe a quarter of an inch ridge. Now, I've
11 got to be able to do the same thing directly under number
12 two, and not over in a different area. It's got to be in
13 the same area, same location, and count down five ridges and
14 here we go, a short ridge here. I'll go back over to my
15 latent print from the crime scene, I will count down one,
16 two, three ridges that intervene between point three and
17 four. They're two dots. Dots is a, is a characteristic.
18 I'll go to my print over here and do the same thing.

19 I'll count down three ridges that intervene over to the
20 right and it has to go over to the right, and they're three
21 dots, two dots here. Same characteristics. I'll do this
22 for the whole, the whole fingerprint. I'll go down, I'll
23 count those characteristics, mark those points of
24 identification, and make sure that all those ridges are
25 intervening in the exact count for the, for the latent print

Lou Jones - Direct examination
by Solicitor Cude

1 to the one that came up on our computer system.

2 Then it's time for me to make a decision, for me to
3 evaluate a print. Looking at all of the clarity of the
4 print, look at the sufficient ridge detail, I'll, I'll
5 determine that this is either an identification or not. In
6 this case the print was identified as the print that came
7 back on our SLED computer system.

8 Now, I still don't know who that print belongs to at
9 this point. Every print on our computer system is assigned
10 ID numbers through SLED. I'll have to back into their
11 computer, put in the ID number, and that ID number will give
12 you the name that goes with it, and the date of birth of
13 that particular person. So, I did that in this case.

14 Once I do that, I will either have to print out the
15 fingerprint card or if I have a card in my own file system,
16 depository files, I will pull that card out and do a
17 comparison. I'll also have to go through this whole step
18 again. I'll have to analyze the print. I'll have to check
19 the points of identification. Then I'll have to make a
20 decision again whether it's that print or not, and the last
21 and final stage of that is I have to get someone to verify
22 what I've done.

23 I have to get someone that's trained in fingerprint
24 identification also. They'll have to examine that print.
25 They'll have to do their own analysis of that print.

Lou Jones - Direct examination
by Solicitor Cude

1 They'll have to do their own comparison of that print, and
2 we both have to come up with the same conclusion, that this
3 print is the same print as the one that SLED showed to me on
4 Kevin Tyrone Bennett.

5 Thank you.

6 Q Thank you, Ms. Jones. I have a few more questions.

7 A Okay.

8 Q But just to be clear, if I can look at this chart, now,
9 now pointing at what's marked on the chart as a latent,
10 latent print that was lifted, now, did that, did that come
11 from State's Exhibit No. 5?

12 A I'm not sure which one is State's Exhibit No. 5. It
13 came from that -- is this the---

14 Q It is.

15 A It is. Yes, it is.

16 Q All right. And what is State's Exhibit 5 just to be
17 clear to the jury?

18 A It's a latent print.

19 Q Okay. Is that the source for this photo marked latent
20 print on your chart?

21 A Yes.

22 Q All right. And just to be clear, you testified that
23 you submitted that latent print through the A.F.I.S. system,
24 and the A.F.I.S. system came back with a tentative match to
25 who?

Lou Jones - Direct examination
by Solicitor Cude

1 A Actually it sends you back possibilities. So, they
2 don't come back with a match at all. You just have to
3 review the prints that come back.

4 Q All right. And what was, what was -- what is the
5 source for the photograph, for the image that's labeled on
6 your chart ten print card, number one finger?

7 Where, where did that image come from?

8 A That's from the database. We print out a fingerprint
9 card, and once it's printed out we'll do a charting of it so
10 we can show the points of identification.

11 Q And did you compare the latent print on State's
12 Exhibit, Exhibit No. 5 to the ten print card, State's
13 Exhibit, excuse me, Exhibit No. 13?

14 A Yes.

15 Q Okay. And which finger did you compare on State's
16 Exhibit No. 13?

17 A Number one, right thumb.

18 Q And what is your opinion about whether there's a match
19 between the latent print in State's, just to be clear,
20 State's Exhibit 5 and---

21 A In my expert opinion, latent print lifted from the
22 crime scene is that of the number one finger of a Kevin
23 Tyrone Bennett.

24 Q And can you tell us just how many points of comparison
25 you found between, between the inked fingerprint and the

Lou Jones - Direct examination
by Solicitor Cude

1 latent print?

2 A Well, here are identified 11 points, but they're more
3 points than that on here. We don't usually mark all the
4 points cause you -- it's, it's really clear -- there's
5 sufficient clarity that you can see the points. That is
6 just one part of identifying the print. That's the position
7 of the characteristic. There's the curvature of the ridges.
8 There's the pattern type. All these are, are taken into
9 account when you're making an identification.

10 Q All right. And, again, just to be clear, you
11 testified -- you submitted the latent print into, into the
12 A.F.I.S. system and you testified that it came back with a
13 match or the possible match and did, just to be clear, did
14 you know who that, who that person was at the time that
15 possible match came back?

16 A No, all 18 are possible matches that they sent.
17 Possible -- it could be a match or sometimes none of them
18 are a match. So, we have no idea who the prints are gonna
19 belong to.

20 Q Okay. And after examining those possible matches that
21 came back from A.F.I.S., just how did you -- where did you
22 obtain -- just to be clear.

23 Where did you obtain the print that you, that you
24 compared to the latent print?

25 A Well, once I've done my any charting I put in the

Lou Jones - Direct examination
by Solicitor Cude

1 control number, the ID number that SLED assigns to a
2 fingerprint card, and I'll either print out the fingerprint
3 card or check my database. Well, when I put in the control
4 number, there's a name associated with that number, a name
5 and a date of birth. I'll look at my files and see if I see
6 a fingerprint card associated with that name and date of
7 birth and I did find one in our files. So, I pulled that
8 from our depository files.

9 Q All right. Thank you.

10 And did you prepare the chart that you showed the jury
11 today?

12 A No, I did not prepare this one. The lady that verified
13 the identification prepared the chart for me.

14 Q Okay. Is it your standard practice to have someone
15 verify your identification?

16 A All prints have to be verified. All identifications
17 has to be verified.

18 Q Okay. Thank you. Please answer any questions Ms.
19 Jones has.

20 CROSS-EXAMINATION

21 BY MS. JONES:

22 Q What is the -- is there a name for the technique you
23 use in your analysis?

24 A A.C.E.V. Methodology.

25 Q Okay. And do you know what governing body promulgated

Lou Jones - Cross-examination
by Ms. Jones

1 that, that technique or the requirements of using that
2 technique?

3 A The International Association of Identification.

4 Q Okay. Did -- do you point -- do you count the points
5 of identification?

6 A I do sometimes. I count the ridges, which is actually
7 the point, the curvature, the ridge flow, the direction
8 they're going into. I do count the points.

9 Q Okay. Is that -- but that is not what drives your
10 identification or your conclusion, point counting?

11 A No, it's a combination of everything you see within
12 that print.

13 Q Okay. The -- you indicated that you utilized a
14 computer search that gave you the 18 highest possible
15 matches.

16 How many others of those possible matches did you
17 compare the latent with?

18 A Well, actually I went down to the first print, which
19 was the same one. I went down to the second one, which was
20 the same one. I went down to the third one, which was the
21 same print. I went down to the fourth one, which was the
22 same print, and I went down to the fifth one, which was the
23 same print.

24 Q Okay. Now, when you indicate -- you indicated the
25 A.C.E.V., which is analysis, comparison, evaluation, and

Lou Jones - Cross-examination
by Ms. Jones

- 1 verification?
- 2 A Uh-huh. (Affirmative).
- 3 Q And verification is where the other examiner comes in,
4 is that correct?
- 5 A Yes.
- 6 Q And she -- is she aware of your result when she's given
7 the prints to identify or to do an analysis?
- 8 A I guess she probably would know that there's a reason
9 why she's doing a verification.
- 10 Q Okay.
- 11 A But she has to come up with her own comparison. She
12 has---
- 13 Q Okay.
- 14 A ---to analyze the print herself.
- 15 Q You indicated that on, early on you gave a figure of,
16 of matching, identifying, or matching 220 prints.
17 was that this year or a year or total?
- 18 A 2011. Last year.
- 19 Q 2011. Okay.
- 20 A Uh-huh. (Affirmative).
- 21 Q Do you know how many analysis you did overall out of
22 which 220 were deemed to be a match or an identification?
- 23 A No, I do not know the exact number.
- 24 Q Okay. Can you estimate?
- 25 A Probably about 500.

Lou Jones - Cross-examination
by Ms. Jones

- 1 Q Okay. So, in almost half --
2 A Almost half.
3 Q -- you had an identification?
4 Okay.
5 A Excuse me. I want to clarify that. It's not almost
6 half. What it is, some -- these are cases. I had about 500
7 cases, but some, some cases have four identifications made
8 of them.
9 Q Okay.
10 A Okay.
11 Q I understand now.
12 How many -- how many years has the other examiner been
13 in your agency with you to verify, to be your verification
14 agent or analyst?
15 A I'm not sure how long she's been employed with the
16 City, but she's been verifying since she's been there.
17 Q And how long has that been?
18 A She'll have to tell you how long she's been employed
19 with the City.
20 Q Okay. Do you know how many times, in the course of
21 that multiple years I would assume --
22 A Yes.
23 Q -- more than one or two years, how often she has not
24 verified a print that you have deemed an identification?
25 A Maybe I don't quite understand the question.

Lou Jones - Cross-examination
by Ms. Jones

- 1 Q Okay. You indicated, as part of this process --
- 2 A Uh-huh. (Affirmative).
- 3 Q -- A.C.E.V., the first letter being V, verification --
- 4 A Uh-huh. (Affirmative).
- 5 Yes.
- 6 Q An analysis can not be called an identification or
- 7 individualization I think is another word they use --
- 8 A Yeah.
- 9 Q -- in the science unless someone verifies the result --
- 10 A Yes.
- 11 Q -- behind you.
- 12 A Uh-huh. (Affirmative).
- 13 Q Okay. How many times have you been working with the
- 14 other analyst has she failed to verify your result?
- 15 A I've never seen a time when she has not been able to
- 16 verify the results.
- 17 Q Okay. And when was the last time you personally had a
- 18 proficiency review done on your work?
- 19 A I haven't had one done since I actually went to SLED to
- 20 have that test done.
- 21 Q And when was that?
- 22 A I think it was in 2000 maybe. I'm not sure.
- 23 Q Okay.
- 24 A Yeah.
- 25 Q Eleven years ago.

Lou Jones - Cross-examination
by Ms. Jones

1 Okay. Thank you. That's all.

2 SOLICITOR CUDE: I -- just briefly, Your Honor.

3 THE COURT: (Nods affirmatively.)

4 REDIRECT EXAMINATION

5 BY SOLICITOR CUDE:

6 Q I just -- I want to be clear, ma'am, since we've been
7 going back and forth on a lot of issues. Just -- you know,
8 do you have an expert opinion as to, as to what person left
9 the latent print on State's Exhibit No. 5?

10 A Yes, my expert opinion, the print that was left here at
11 the crime scene belongs to Kevin Tyrone Bennett.

12 Q All right. Thank you.

13 MS. JONES: Nothing.

14 THE COURT: All right. Thank you. We appreciate your
15 time. You can be excused.

16 Call your next witness.

17 SOLICITOR CUDE: Your Honor, the State calls Courtney
18 Burgess.

19 COURTNEY BURGESS, been first duly
20 sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY SOLICITOR CUDE:

23 Q Please state your name for the record, ma'am.

24 A Courtney Westfall Burgess.

25 Q And how are you employed?

Courtney Burgess - Direct examination
by Solicitor Cude

- 1 A I'm a forensic technician for Spartanburg City Police
2 Department.
- 3 Q So, what are your duties?
- 4 A I'm responsible for responding to crime scenes,
5 processing for evidence, collecting evidence, and also
6 processing evidence that's collected by other officers.
- 7 Q How many years have you worked with the Spartanburg
8 City Police Department?
- 9 A It will be six years next month.
- 10 Q Let me ask, just to be clear, is that the same thing as
11 the Spartanburg Public Safety Department?
- 12 A It is.
- 13 Q Okay. Have you received any specialized training in
14 this field?
- 15 A I have a Bachelor of Science in forensic identification
16 from West Virginia University, and as well as on-the-job
17 training.
- 18 Q All right. Have you received any other training from
19 other outside sources while you've been---
- 20 A Yes, SLED, several other different agencies. Others
21 that aren't related to this particular case, but as far as
22 video analysis, and DNA collection.
- 23 Q All right. If you remember -- and if you remember, I
24 mean do you remember any specific training you received from
25 SLED at this time?

Courtney Burgess - Direct examination
by Solicitor Cude

- 1 A I believe photography and DNA collection.
- 2 Q Now, I'm handing you State's Exhibit No. 10.
- 3 Did you examine this as in relation to this case?
- 4 A Yes.
- 5 Q Okay. And what, what kind of examination did you
- 6 perform?
- 7 A I performed a fingerprint examination. Well, actually
- 8 I processed the item for fingerprints using fingerprint
- 9 powder.
- 10 Q Okay. And what were the -- what were the results?
- 11 A There were no prints found on the item.
- 12 Q All right. Is that an unusual result?
- 13 A Not, not usually. Leaving a fingerprint, they're --
- 14 it's not always exact. Just because you touch something
- 15 doesn't mean you're necessarily gonna leave a fingerprint.
- 16 They're different factors that contribute to that. The
- 17 surface of that item is not a real smooth surface. So, it,
- 18 as you can see, it's got -- it's a little bit rusty and the
- 19 paint's been worn off on it. It's not a perfect surface to
- 20 leave a print on.
- 21 Q And let me ask you about another matter.
- 22 Do you have any training in fingerprint examination?
- 23 A I do.
- 24 Q And where did you receive that training or as part of
- 25 what course of study did you receive that training?

Courtney Burgess - Direct examination
by Solicitor Cude

- 1 A At West Virginia University during my course of study
2 there we had to take several classes on fingerprinting. I
3 was -- I can't exactly remember. I believe it was two or
4 three semesters. One was in fingerprint classification and
5 identification. Another one was in fingerprint comparison.
6 Another was in actually processing for latent prints.
- 7 Q All right. Well, in the course of your work for the
8 City, do you ever examine fingerprints?
- 9 A I do the verifications --
- 10 Q Okay.
- 11 A -- when I'm there.
- 12 Q I'm sorry. Go ahead.
- 13 A Whenever there's a possible identification made by Ms.
14 Jones, I do the verifications.
- 15 Q Okay. And when you say verification, can you tell us
16 more about what that means?
- 17 A I basically analyze the print that is -- let me
18 back-up. Whenever there's a possible identification, I
19 usually go get a stack of evidence from Ms. Jones whenever
20 she has some identifications that need verifying. I get the
21 envelope. The envelope normally has any latent prints that
22 were lifted from that scene in the envelope. There's also a
23 ten print card or multiple ten print cards depending on how
24 many identifications have been made.
- 25 After that I do my analysis, compare the latent

Courtney Burgess - Direct examination
by Solicitor Cude

- 1 fingerprints to the known fingerprints.
- 2 Q Did you review any latent fingerprints in this case?
- 3 A I did.
- 4 Q Let me -- when Ms Jones provided -- just to be correct,
5 is Ms. Jones the one that provides you with the material to
6 review?
- 7 A Yes.
- 8 Q All right. And when she provides you that -- I mean do
9 you know the name or identity of the person?
- 10 A Not blatantly. There's, like I said, there's the
11 latent card in the envelope and there's a ten print card.
12 So, I can kind of assume that ten print card -- the name on
13 that ten print card is going to be the subject of that print
14 came back to.
- 15 Q I'm handing you State's Exhibit 5.
16 Can you take a look at that?
- 17 A This is a latent print.
- 18 Q And do you recognize it specifically?
- 19 A Yes.
- 20 Q How do you recognize it?
- 21 A It's got my signature in the corner here on the back,
22 It says verified 11/24/2010.
- 23 Q And did you examine State's Exhibit 5 in relation to
24 this case?
- 25 A I did.

Courtney Burgess - Direct examination
by Solicitor Cude

1 Q Can you tell us what you did in relation to when you
2 were examining it?

3 A I compared this print to the ten print card.

4 Q Okay. And did you compare it to one print in
5 particular on the ten print card?

6 A Normally what I do is I'll look at the latent print
7 card, and I'll look at the ridge flow, the, the shape of the
8 pattern that's actually in the fingerprint, and then I'll
9 look at the ten print card and try to narrow it down to
10 determine which of those prints it may correspond to, and
11 then from there I go in deeper with the magnifying glass and
12 try to determine the characteristics that would match.

13 Q All right. Well, did you have an opinion -- did you
14 have an opinion about?

15 MS. JONES: Your Honor, I have an objection to
16 foundation. I don't think you've qualified her yet.

17 THE COURT: You, you hadn't tendered her as an expert.

18 SOLICITOR CUDE: Well, at this time the State offers
19 her as an expert in fingerprint examination.

20 THE COURT: Any voir dire?

21 MS. JONES: Yes, sir.

22 CROSS-EXAMINATION

23 BY MS. JONES:

24 Q Officer Burgess, do you hold any certifications?

25 A Through my fingerprint analysis class at West Virginia

Courtney Burgess - Cross-examination
by Ms. Jones

1 University it was an entire semester. It was -- I received
2 a certificate. It was in fingerprint analysis through West
3 Virginia University in conjunction with the FBI Criminal
4 Justice Information Services Division or the C.J.I.S.
5 Division.

6 Q Okay. Is that the only certification you hold?

7 A As far as fingerprinting goes, yes.

8 Q Okay. Have -- how many times, if any, have you ever
9 testified as to fingerprint comparison?

10 A As an expert?

11 Q Yes, ma'am.

12 A None.

13 MS. JONES: I have an objection, Your Honor.

14 THE COURT: I find, over objection, I find she is
15 qualified.

16 Go ahead.

17 CONTINUED DIRECT EXAMINATION

18 BY SOLICITOR CUDE:

19 Q You know, based on your comparison, your review of
20 State's Exhibit 5, do you have an opinion about who is the
21 contributor of State's Exhibit 5 or what the origin of what
22 person left State's Exhibit 5?

23 A Yes, the latent print, 1.1, or State's Exhibit No. 5,
24 is verified as being the number one print on the right thumb
25 of Kevin Tyrone Bennett.

Courtney Burgess - Direct examination
by Solicitor Cude

1 Q Let me ask you, did you create the chart that's sitting
2 in front of you--

3 A I did.

4 Q ---on the left?

5 A Yes.

6 Q Can you tell us just generally how you created that?

7 A I just scanned the latent fingerprint in using a
8 scanner on your computer as a, scanned it in as an image
9 file or a photo and blow it up so that you can see it better
10 in the courtroom because it's pretty difficult for y'all to
11 see this tiny print from where you're sitting. So, just to
12 make it easier to see, once you scan it into the computer,
13 you just blow it up, enlarge it, and the same goes for the
14 ten print image.

15 Q And just to be clear, did you review Ms. Jones, Ms.
16 Jones findings in this case?

17 A I did.

18 Q And what is your opinion about Ms. Jones findings?

19 A It's correct. The latent print comes back to the
20 number one finger of Kevin Bennett.

21 SOLICITOR CUDE: Your Honor, I'd ask that State's, that
22 the chart be moved into evidence as State's Exhibit 14.

23 MS. JONES: No objection.

24 THE COURT: In without objection.

25 (WHEREUPON, State's Exhibit No. 14 was received into

Courtney Burgess - Direct examination
by Solicitor Cude

1 evidence at this time.)

2 Q All right. And let me ask you about one other matter,
3 Ms. Burgess, while I have you here.

4 Have you ever collected blood swabs as part of your
5 work as a forensic technician?

6 A I have.

7 Q Do you know about how many times you've done that?

8 A Hundreds, maybe a thousand. Several, several times.

9 Q I mean is there a standard procedure that you follow
10 when you're doing that?

11 A When I collect blood on the scene I am always gloved,
12 of course, for my protection and to prevent
13 cross-contamination, but whenever we swab blood stains, the
14 sterile Q-tips that, that we have, that we use on scenes,
15 they come two to a pack. Whenever something is swabbed,
16 normally we take both swabs out and swab the same stain with
17 two swabs. Both of those swabs then go into the carton and
18 are sealed up.

19 The reason we do that is, number one, there's two in
20 the package. Might as well use both of them. But, number
21 two, if something were to happen at SLED when they're
22 processing that evidence, they usually use the one, one swab
23 at a time. If there's not enough blood on or any other body
24 fluid, what's ever been swabbed. If there's not enough of
25 the sample on that Q-tip, then they've got the second one in

Courtney Burgess - Direct examination
by Solicitor Cude

1 the backup and it comes from the same stain.

2 Q Thank you. Please answer any questions Ms. Jones has.

3 A Thanks.

4 CROSS-EXAMINATION

5 BY MS. JONES:

6 Q The information you just provided with regard to blood
7 swabs is just a generic description?

8 You were weren't involved in any blood connection in
9 this case?

10 A Correct. No, I wasn't.

11 Q So, you don't know exactly how that took place here?

12 A That's correct. That's just a general idea of how to
13 do it.

14 Q And with regard to the analysis of the print, you had
15 a, a latent print card?

16 A Yes, ma'am.

17 Q And other than the information printed on a reverse
18 side, did -- were you provided any other details about the
19 origin of that latent?

20 A No, in the packet there's also some charting as far
21 as -- it's basically a screen shot that's printed from the
22 A.F.I.S. system. It shows the latent print and the possible
23 match, but there's no identifying information on there. I
24 think it may be that number---

25 Q Okay.

Courney Burgess - Cross-examination
by MS. Jones

- 1 A ---that's, that's on there.
- 2 Q Okay. The point I'm getting at, in, in analyzing a
3 print, you don't know, other than a general location, you
4 know none of the surrounding circumstance about from where
5 it came?
- 6 A Correct. There's usually information written on the
7 back of the card where they lifted it, but as far as the
8 circumstances, no, I don't know anything about that.
- 9 Q Okay. And, so, do you have any manner -- well, strike
10 that.
- 11 With regard to this individual case of -- the, the
12 print card is in front of you.
- 13 Not the ten print, the latent print?
- 14 A Yes, ma'am.
- 15 Q Look at the lifted side please.
- 16 A Okay.
- 17 Q It's quite smudgy, is it not?
- 18 A In some places it is, yes.
- 19 Q Okay. And are you aware or were you made aware at all
20 that there were multiple attempts at lifting insufficient
21 prints from the same location?
- 22 A No, ma'am.
- 23 Q Okay.
- 24 A No.
- 25 Q That's all I have.

Courney Burgess - Cross-examination
by Ms. Jones

1 THE COURT: Redirect.

2 SOLICITOR CUDE: No, Your Honor.

3 THE COURT: All right. You can step down. Appreciate
4 your time. Thank you. You can be excused.

5 All right. Call your next witness.

6 SOLICITOR CUDE: Your Honor, that's the State's case in
7 chief.

8 THE COURT: All right. Members of the jury panel, the
9 State is resting. That means the State is offered its
10 evidence. Under certain circumstances it perhaps could
11 present later testimony, but basically you've heard the
12 State's case. At this point we have to take up some matters
13 of law before we move forward, and it's also a good time to
14 break for lunch. So, we're gonna break for lunch until
15 1:30.

16 So, keep in mind that you're not to discuss the case.
17 You haven't yet heard the arguments of the attorneys or my
18 charge. You haven't received all that you need to receive
19 in order to be prepared and responsible under your duty and
20 your oath. So, have a pleasant lunch and we'll see you back
21 at 1:30.

22 (WHEREUPON, the following takes place outside the
23 presence of the jury.)

24 THE COURT: All right. The jury's been dismissed.
25 Anything from the state?

1 SOLICITOR CUDE: Not from the State, Your Honor.

2 THE COURT: From the defense.

3 MS. JONES: Yes, sir, Your Honor.

4 At this point I'd make a motion for directed verdict on
5 all counts. The evidence, as is been presented, does
6 indicate the presence of a fingerprint and a blood sample
7 from Mr. Bennett on the scene of the Woodson Center, which
8 we have established is a public building. We've also --
9 it's also been shown and testified to that Mr. Bennett was
10 often in that building. And, so, Your Honor, this motion --
11 at this point I'd make a motion for a directed verdict.

12 THE COURT: Let me hear from the State on that.

13 SOLICITOR CUDE: Your Honor, we're asking you deny the
14 defendant's motion. Viewed in evidence -- if you view the
15 evidence in the light most favorable to State, we feel the
16 jury could find Mr. Bennett guilty of the charges. You
17 know, the jury are the finders, finders of the fact.
18 Obviously, Your Honor, we think they could infer from the
19 presence of the fingerprint near, you know, near a TV that
20 had some damage to its brackets and from the finding of the
21 blood spot near the scene where the TV was stolen, we think
22 the jury could infer that Mr. Bennett was the burglar in
23 this case.

24 THE COURT: I deny the motion. I believe there's
25 substantial circumstantial evidence, as you told the jury to

1 begin with, Ms. Jones, it is a circumstantial evidence case,
2 but I find there is substantial circumstantial evidence from
3 which a jury could reach a decision on that, the defendant
4 was the perpetrator of the crime and could convict. So, I
5 deny your motion.

6 Mr. Bennett, can you hear me?

7 DEFENDANT: Yes, sir.

8 THE COURT: We reached a point in the trial where you
9 have a right to present a defense if you wish. You do not
10 have to present a defense because you are presumed innocent
11 of the charge. The State must prove your guilt beyond a
12 reasonable doubt. But you have a right to present a
13 defense. You can call witnesses if you wish, and you can
14 testify if you wish or you can exercise your Constitutional
15 right to remain silent. If you -- does he have any
16 impeachable offenses?

17 SOLICITOR CUDE: Yes, Your Honor.

18 THE COURT: All right. You want to tell me about them.

19 SOLICITOR CUDE: Just 1990, grand larceny, petty
20 larceny, burglary second. 1995, burglary---

21 THE COURT: Woa, woa, woa. That's way beyond the ten
22 years.

23 SOLICITOR CUDE: Well, I filed -- well, I filed a
24 notice of Rule 609 putting them on notice, Your Honor. But
25 we do have offenses within the ten year range as well.

1 we'll tell them to start deliberating.

2 As soon as they have that together, take that back to
3 them, and---

4 BAILIFF: Yes, sir.

5 (WHEREUPON, the jury began deliberations at 2:29PM and
6 returned with a verdict at 3:10PM.)

7 THE COURT: I understand we have a verdict.

8 Anything before the jury comes in?

9 SOLICITOR CUDE: Nothing from the State, Your Honor.

10 MS. JONES: Nothing from the defense, Your Honor.

11 THE COURT: Bring in the jury.

12 (WHEREUPON, the following takes place within the
13 presence of the jury.)

14 THE COURT: I understand the jury's reached verdicts.

15 FORELADY: We have, sir.

16 THE COURT: Please hand it to the bailiff.

17 (Forelady complies.)

18 THE COURT: Madam Clerk.

19 CLERK: In the General Sessions Court, Case Number
20 2010-GS-42-1062, State of South Carolina versus Kevin Tyrone
21 Bennett, we find the defendant guilty of petty larceny.
22 This is dated today's date and signed by the foreperson.

23 Case Number 2010-GS-42-1061, the State of South
24 Carolina versus Kevin Tyrone Bennett, we find the defendant,
25 the defendant guilty of malicious injury to real property.

1 This is also dated today's date and signed by the
2 foreperson.

3 Case Number 2010-GS-42-1063, State of South Carolina
4 versus Kevin Tyrone Bennett, we find the defendant guilty of
5 burglary second degree. This is dated today's date and
6 signed by the foreperson.

7 Ladies and gentlemen of the jury, if these are your
8 verdicts and still your verdicts, please raise your
9 right-hand.

10 (WHEREUPON, all jurors raise their hand at this time.)

11 CLERK: So say you all.

12 THE COURT: All right. Anything from the State before
13 the jury is dismissed?

14 SOLICITOR CUDE: No, Your Honor.

15 THE COURT: Anything from the defense before the jury
16 is dismissed?

17 MS. JONES: No, sir, just to renew motions.

18 THE COURT: Okay. We---

19 MS. JONES: Yeah.

20 THE COURT: We'll take care of that after the jury is
21 dismissed at that time.

22 (WHEREUPON, the following takes place outside the
23 presence of the jury.)

24 THE COURT: All right. We have any motions.

25 MS. JONES: Yes, sir, Your Honor.

1 Again, I would renew my motions as made previously and
2 request a new trial based on the argument I presented
3 earlier on the lack of sufficient evidence. This was a
4 strictly circumstantial case, Your Honor, and that's all.

5 THE COURT: Well, I deny the motion. I find, just as I
6 said earlier, this is a substantial -- there is substantial
7 circumstantial evidence. This is one of those cases that
8 would of gone unsolved probably except for the fingerprints,
9 but without the DNA.

10 All right. Bring the defendant around.

11 (WHEREUPON, the parties comply.)

12 THE COURT: All right. Mr. Cude, I'll be glad to hear
13 from you.

14 I feel, Ms. Jones, take on this, the solicitor has put
15 this as a zero to 15 because of when it happened, before
16 the, the change in the law, which takes I believe second
17 degree nonviolent to a ten.

18 MS. JONES: Well, I think he gets the benefit.

19 THE COURT: I do too.

20 MS. JONES: Yes, sir.

21 THE COURT: But I just wanted to make sure. I wanted
22 to hear you.

23 MS. JONES: Be our position that any pending cases, if
24 the, the statutes are amended to lower the penalty, that the
25 defendant gets the benefit of the change.

1 I still presume my innocence, Your Honor. Unfortunately,
2 you know, I just may of went in the recreation building one
3 time too, one time too many, Your Honor. There's just a
4 little bit too much evidence that looked like I had did this
5 particular burglary, but -- and I'm sorry to this particular
6 county, this particular state, and I would just hope that
7 you have mercy on me in your sentencing, Your Honor.

8 THE COURT: All right. Well, I really don't have much
9 room, in my opinion, for mercy other than giving you the
10 benefit of the new statute because of your tremendously bad
11 record.

12 All three of these run concurrent. You're entitled to
13 383 days credit on all of them, and they're all for ten
14 years.

15 Thank you.

16 DEFENDANT: All right.

17

18 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

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22

23

24

25

WITNESSES

Spartanburg Public Safety Department

REPORT MADE

CARD FILED

INDEXED

CHECKED WARRANTS

CHECKED SIGNATURE

ARREST WARRANT NUMBER

FILE CARD NAME

VIOLATION NUMBER

M751240

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET

11-GS-42-1061

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

TERM

THE STATE

vs.

Kevin Tyrone Bennett

Indictment for

MALICIOUS INJURY TO
REAL PROPERTY < \$2,000

SC Code: 16-11-520 (A), (B) (3), 16-1-57

CDR Code: 2367

Class FEL/E

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CLERK OF COURT
SPARTANBURG COUNTY
2011 FEB 28 PM 12:50
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

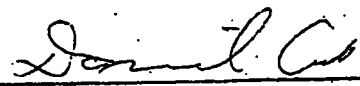
INDICTMENT

At a Court of General Sessions, convened on _____ the
Grand Jurors of Spartanburg County present upon their oath:

MALICIOUS INJURY TO REAL PROPERTY < \$2,000

That Kevin Tyrone Bennett did in Spartanburg County between
November 16, 2010 and November 17, 2010, willfully, unlawfully and
maliciously injure, damage, or destroy the real property of C.C. Woodson
Community Center located at _____ o-wit: by breaking a
window and damaging a TV attached to the wall, causing damage of less
than Two Thousand Dollars, all in violation of §16-11-520 (A),(B) (3), *THE
CODE OF LAWS OF SOUTH CAROLINA*, (1976, as amended). Further,
that the Defendant has two or more convictions for offenses for which the
term of imprisonment is contingent upon the value of the property involved,
all in violation of §16-1-57, *THE CODE OF LAWS OF SOUTH CAROLINA*,
(1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such
case made and provided:


ASSISTANT SOLICITOR

WITNESSES

Spartanburg Public Safety Dept.

REPORT MADE

CARD FILLED

INDEXED

CHECK

ARREST WARRANT

CHECK

ON ARREST

ASSIGNMENT AND

TRANSFER MADE

ARREST VIOLATION

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date:

VERDICT

Guilty

Karen Dawkins
Foreperson of Petit Jury
Date: *1/25/12*

DOCKET NO.

11-GS-42-1062

The State of South Carolina

County of Spartanburg

Barry Barnette, Acting Solicitor

COURT OF GENERAL SESSIONS

TERM

THE STATE
vs.

Kevin Tyrone Bennett

Indictment for
PETIT LARCENY

SC Code: 16-13-0030 (A), 16-1-57
CDR Code: 2367
Class FEL/E

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2011 FEB 28 PM 12:50
W. HOPE BLACKLEY

SOUTH CAROLINA)
COUNTY OF SPARTANBURG) INDICTMENT

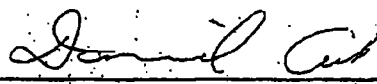
At a Court of General Sessions, convened on _____, the
Grand Jurors of Spartanburg County present upon their oath:

BURGLARY, SECOND DEGREE
(Building)

That Kevin Tyrone Bennett did in Spartanburg County between November 16, 2010
and November 17, 2010, willfully and unlawfully enter a building without consent and
with intent to commit a crime therein, C.C. Woodson Community Center, at

Spartanburg, South Carolina, and the defendant entered in the nighttime, in
violation of §16-11-312 (B), *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976, as
amended).

Against the peace and dignity of the State, and contrary to the statute in such
case made and provided.


ASSISTANT SOLICITOR

SPARTANBURG

VS.

Kevin Tyrone Bennett

INDICTMENT/CASE# 2011GS4201061

A/W# M751240

Date of Offense: 11/17/2010

S.C. Code § 16-11-520(A)

CDR Code # 3428

SENTENCE SHEET #2

Age: 40 Sex: M
 DOB: SS#:
 Address:
 City, State, Zip:
 DL# SID#

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Malicious Injury to Real Property under \$2,000.00; 3rd or subsequent offense, 0-10 years.

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-11-520, 16-1-57 of the S.C. Code of Laws, bearing CDR Code # 2367

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC) ☐ §17-25-45 w/minor 1st or Lewd Act

The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: Daniel Cook 69337 K. Bennett
 CUDE, DAN SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of, _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 383 245

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:	\$
§ 14-1-206 (Assessments 107.5%)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100 \$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100 \$
§ 56-5-2995 (DUI Assessment)	\$12 \$
§ 56-1-286 (DUI Breath Test)	\$25 \$
Proviso 47-9 (Public Def Prob)	\$500 \$
§ 14-1-212 (Law Enforce. Funding)	\$25 \$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150 \$
§ 50-21-114 (BUI Breath Test Fee)	\$50 \$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea \$
Proviso 90.5 (SCJA Surcharge)	\$5 \$ 5.00
3% to County (if paid in installments)	\$ 3.90
TOTAL	\$ 139.90

PTUP _____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk C. Jones

Court Reporter: P. Brown

SCCA/217 (03/2011)

Presiding Judge John C. Haynes

Judge Code: 2049

Sentence Date: 11/25/12

COUNTY OF SPARTANBURG
 VS.
Kevin Tyrone Bennett
 AKA:
 Race: B Sex: M Age: 40
 DOB: SS#
 Address:
 City, State, Zip:
 DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐
 In disposition of the said indictment comes now the Defendant who was
 TO: Petit Larceny, 3rd or subsequent offense, 0-10 years

INDICTMENT/CASE#: 2011GS4201062
 A/W#: M751242
 Date of Offense: 11/17/2010
 S.C. Code: § 16-13-0030(A)
 CDR Code #: 3419

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-13-0030, 16-01-0057 of the S.C. Code of Laws, bearing CDR Code # 2367
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)

The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)
 The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: [Signature] 69337 [Signature] [Signature] 07913
 CUDE, DAN SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed years
 and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
 of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
 probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 1/25/12
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
 by the State Department of Corrections. 383 days
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
 Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine: \$
 § 14-1-206 (Assessments 107.5%) \$
 § 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00
 § 14-1-211(A)(2) (DUI Surcharge) \$100 \$
 § 56-5-2995 (DUI Assessment) \$12 \$
 § 56-1-286 (DUI Breath Test) \$25 \$
 Proviso 47.9 (Public Def/Prob) \$500 \$
 § 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00
 § 14-1-213 (Drug Court Surcharge) \$150 \$
 § 50-21-114 (BUI Breath Test Fee) \$50 \$
 § 56-5-2942(J) (Vehicle Assessment) \$40/ea \$
 Proviso 90.5 (SCJA Surcharge) \$5 \$ 5.00
 3% to County (if paid in installments) \$ 2.90
 TOTAL \$ 123.90

Clerk of Court/ Deputy Clerk: [Signature]

Court Reporter: [Signature]

SCCA/217 (03/2011)

PTUP

 days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ beginning

\$ paid to Public Defender Fund.

Other:

☐ Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk
 during probation.

Presiding Judge: [Signature]

Judge Code: 2044

Sentence Date: 1/25/12

IN THE COURT OF GENERAL SESSIONS

JLINA

SPARTANBURG

VS.

Kevin Tyrone Bennett

Sex: M

Age: 40

SSN:

Zip:

SID#:

Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

disposition of the said indictment comes now the Defendant who was
 IO: Burglary / Burglary (Violent) (After 06/20/85) - Second degree

INDICTMENT/CASE# 2011GS4201063

A/W#: M751239

Date of Offense: 1/17/2010

S.C. Code § 16-11-0312

CDR Code #: 0080

SENTENCE SHEET #1

☒ CONVICTED OF or ☐ PLEADS-

in violation of § 16-11-0312(B) of the S.C. Code of Laws, bearing CDR Code # 0086

☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

CUDE, DAN

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*, the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
 probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
 by the State Department of Corrections. 393 days

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
 Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☒ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☒ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:	\$	
§ 14-1-206 (Assessments 107.5%)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)	\$	\$ 3.90
TOTAL	\$	\$ 133.90

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

PTUP _____

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive, weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk
 during probation

Presiding Judge

Judge Code:

Sentence Date:

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."

June 7th, 2013



David Alexander
Appellate Defender

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

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County

John C. Hayes, III, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

KEVIN TYRONE BENNETT,

APPELLANT

Appellate Case No. 2012-207559

FINAL BRIEF OF APPELLANT

DAVID ALEXANDER
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUES ON APPEAL

Whether the trial court erred by not granting appellant a directed verdict where the evidence against him was only circumstantial and insubstantial?

STATEMENT OF THE CASE

In February 2011, Kevin Bennett ("Bennett") was indicted for burglary of a building, second degree; petit larceny; and malicious injury to real property causing less than \$2,000.00 worth of damage. R.142. On January 24 - 25, 2012, Bennett was tried in Spartanburg County before the Honorable John C. Hayes, III and a jury. R. 1. Beverly Jones represented Bennett. R. 1. Dan Cude represented the State. R. 1. The jury found Bennett guilty on all three charges. R. 138, l. 19 - 139, l. 6. Judge Hayes sentenced Bennett to ten years' imprisonment on each conviction, to run concurrently. R. 141, ll. 8 - 14. On January 31, 2012, Bennett served his notice of appeal. This appeal follows.

ARGUMENT

The trial court erred by not granting appellant a directed verdict where the evidence against him was only circumstantial and insubstantial.

Relevant Facts

On November 17, 2010, someone burgled the C.C. Woodson Community Center in Spartanburg. R. 8, l. 19 – 9, l. 4. Officer Frank Osrechek of the Spartanburg City Police Department responded because of an alarm activation at approximately 3:30 am. R. 9, ll. 5 – 9. He found a smashed window and a broken door adjacent to the window. R. 9, ll. 10 – 12. Another policeman found a tire iron in the community center's computer room. R. 31, ll. 17 – 19. A television, computer, and computer monitor were missing from the community center. R. 43, l. 18 – 44, l. 18. The missing television had been mounted on a wall and the police found chairs from the computer desks underneath where the television had been. R. 31, ll. 8 – 19. Another television appeared to be in an unnatural position. R. 21, ll. 9 – 24.

The State presented no direct evidence that Bennett committed any crime. No witness observed Bennett at the scene of the crime that night. The goods stolen from the community center were never recovered. No evidence that Bennett confessed to the crime was presented. The State produced only two pieces of circumstantial evidence. First, a fingerprint expert testified that a single fingerprint lifted from one of the televisions at the center matched Bennett's index finger. R. 117, ll. 18 – 23. Second, a DNA expert testified that Bennett's DNA matched a spot of blood found on the wall of the computer room. R. 95, ll. 20 – 25.

At the close of the State's case, Bennett moved for a directed verdict on the ground that the fingerprint and blood sample were insufficient to convict Bennett. R. 136, ll. 3 – 11. Judge Hayes denied the motion. R. 136, l. 24 – 137, l. 5. Bennett renewed his motion after the verdict and Judge Hayes again denied the motion. R. 139, l. 25 – 140, l. 9.

Discussion

The South Carolina Supreme Court “has repeatedly affirmed the principle that when the State fails to produce substantial circumstantial evidence that the defendant committed a particular crime, the defendant is entitled to a directed verdict.” State v. Odems, 395 S.C. 582, 720 S.E.2d 48 (2011). Specifically, the trial court “should grant a directed verdict motion when the evidence merely raises a suspicion that the accused is guilty.” Odems, 395 S.C. 586, 720 S.E.2d 50 (citation omitted). In this case, the evidence presented by the State was barely sufficient to raise a suspicion that Bennett was guilty.

The Court is required to view the evidence in the light most favorable to the State. State v. Bostick, 392 S.C. 134, 139, 708 S.E.2d 774, 777 (2011). Even in this light, the only pieces of circumstantial evidence in the State's case incriminating Bennett were a single fingerprint and the DNA. It was undisputed that the community center was open to the public from 6:00 am to 9:00 pm Monday through Friday and also on the weekends. R. 42, ll. 3 – 23. Bennett had been in the community center several times before the crime. R. 45, ll. 19 – 24. The doors to the room where Bennett's fingerprint was found on the television—the “community room”—were not always locked and events were frequently scheduled in that room. R. 44, ll. 16 – 25. Additional fingerprints were found on the television that were “insufficient” for comparison. R. 16, ll. 20 – 23. The police

did not try to lift any fingerprints from the other television in the community room. R. 20, l. 20 – 21, l. 12.

The first policeman on the scene (who found the fingerprint) also looked for evidence in the computer room. R. 25, ll. 7 – 23. He did not notice any blood. R. 25, ll. 7 – 23. The officer charged with processing the computer room for evidence conducted an extensive examination, but did not notice any blood. R. 37, ll. 11 – 20. It was not until after 9:30 the next morning—six hours after the crime—that an officer with Spartanburg's burglary task force examined the community center that "two small droplets of blood" were found two inches below the mount for the television in the computer room. R. 56, ll. 2 – 17. This officer did not find any blood at the entry point where glass had been broken. R. 55, ll. 6 – 14. Two or three employees of the community center were already at work when the blood spots were found. R. 61, ll. 20 – 21.

The State's DNA expert testified that DNA from the blood in the community center's computer room matched Bennett's DNA. R. 95, ll. 20 – 25. Bennett was a frequent visitor to the computer room. R. 46, ll. 2 – 7. The expert stated the possibility that an unrelated individual would be randomly selected and match that DNA profile was one in 17 quintrillion. R. 95, ll. 20 – 25. The expert used this unfathomable number to buttress its "match" even though 17 quintrillion "is about a billion times larger than the earth's population." R. 96, ll. 8 – 14. The expert did not offer any testimony about the probability of the DNA sample matching an individual related to Bennett. The probability of finding a match with an individual related to Bennett would be much higher than the figure given by the State's expert. See Richard Lempert, The Suspect

Population and DNA Identification, 34 Jurimetrics J. 1, 6 (Fall 1994). The State's expert did not give the probability that the DNA profile would match an individual related to Bennett or consider the pool of people who use the community center.

The circumstantial evidence in this case is similar to other appellate decisions finding directed verdicts were appropriate. In State v. Mitchell, 341 S.C. 406, 409, 535 S.E.2d 126, 127 (2000), a burglary case, the only evidence that the defendant committed the crime was a fingerprint on a screen near a broken window. It was undisputed that the defendant had been in the victim's home on several prior occasions. Id. The Court concluded that the fingerprint was evidence only that the defendant had been "in and around the victim's house" and was insufficient to prove burglary. Id. Similarly, Bennett's fingerprint and DNA in a public place that he undisputedly frequented before the crime are insufficient to prove he committed a crime.

In State v. Odems, 395 S.C. 582, 588, 720 S.E.2d 48, 51 (2011), another burglary case, the circumstantial evidence was as follows: (1) the defendant was found in a car with the burglars and the stolen goods, (2) the defendant fled from the police, and (3) the defendant "asked an uninvolved person to lie for him" to the police. The unconvincing reason the defendant supposedly fled was because the driver told him that he had a suspended license. Id. at 585, 720 S.E.2d at 49. The evidence against the defendant in Odems is much greater than the scant evidence against Bennett. The Supreme Court held that nothing placed Odems at the scene of the crime and reversed his conviction.

Even in murder cases, the South Carolina Supreme Court has reversed convictions where the circumstantial evidence was greater than in Bennett's case. In State v. Arnold, 361 S.C. 386, 389, 605 S.E.2d 529, 530-31 (2004), the defendant's fingerprint was found

on a coffee cup in a car borrowed by the victim. The victim disappeared after leaving his office in Savannah, Georgia, and his body was found three days later in Colleton County. Id. at 388, 605 S.E.2d at 530. The borrowed car was found in Johnson City, Tennessee near where the defendant called another witness the day after the crime. Id. at 388-89, 605 S.E.2d at 530. The defendant and the victim had been sexual partners. Id. The Supreme Court held that a directed verdict should have been granted because the fingerprint only established that defendant “was in the borrowed [car] on the same day the victim was last seen alive.” Id. at 390, 605 S.E.2d at 531. The fact that the car was found in Tennessee near the defendant only raised “a suspicion of guilt.” Id. The evidence in Arnold is much stronger than in Bennett’s case. The fact that the car was borrowed meant that the fingerprint placed the defendant in a car with the victim—a private place—on the day of the murder. In Bennett’s case, no one could testify when the fingerprint and blood were left in the community center—a public place frequented by Bennett.

In State v. Bostick, 392 S.C. 134, 708 S.E.2d 774 (2011), another murder case, the circumstantial evidence against Bostick exceeded what the State presented against Bennett. In Bostick, the victim was found bludgeoned in a house set ablaze with gasoline. Id. at 136-37, 708 S.E.2d at 775. The victim’s car keys and other items were found in a burn pile on Bostick’s property. Id. at 141-42, 708 S.E.2d at 778. Bostick’s shoes had gasoline on them and his clothes had blood on them. Id. at 142, 708 S.E.2d at 778. While the blood excluded 99% of the population other than the victim, the DNA expert would not testify as to a “match.” Id. The Supreme Court held the above

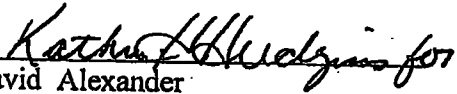
evidence was insufficient to convict Bostick and reversed. Id. Certainly this evidence far exceeds the case against Bennett.

Ultimately, the State's evidence in this case only proves an undisputed fact: that Bennett was in the community center at some point in time before the burglary. Even viewing this evidence in a light most favorable to the State, this evidence barely raises a suspicion that Bennett committed this crime. No "substantial" circumstantial evidence ties Bennett to this crime to the exclusion of the other reasonable hypothesis: that Bennett's fingerprint and DNA were left by him on one of his many visits to the community center. When compared to the above-cited cases, it is clear that the trial court erred in not granting a directed verdict.

CONCLUSION

For the above-stated reasons, this Court should reverse appellant's convictions.

Respectfully submitted,


David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

This 26th day of June, 2013.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Spartanburg County
John C. Hayes, III, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

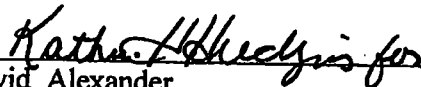
KEVIN TYRONE BENNETT,

APPELLANT

Appellate Case No. 2012-207559

CERTIFICATE OF SERVICE

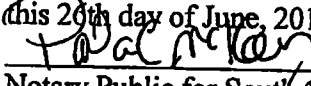
The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon David Spencer, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 this 26th day of June, 2013.



David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
(this 26th day of June, 2013.)

 (L.S.)

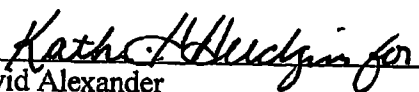
Notary Public for South Carolina

My Commission Expires: July 24, 2022.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and 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."

June 26th, 2013


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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Circuit Court
Harris County, Texas

WILLIAM C. HAYES, JR., Appellant,
vs.
JAMES C. HAYES, Jr., Appellee.

The State

Respondent

Exhibit A-100-0000

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

The trial court did not err in denying the motion for directed verdict on the charge of burglary.

STATEMENT OF THE CASE

Appellant Bennett was indicted for second degree burglary, petit larceny, and malicious damage to real property. Bennett was tried by jury and convicted as charged following trial on January 24-25, 2012. The Honorable John C. Hayes, III sentenced Bennett to ten years' imprisonment.

STATEMENT OF FACTS

Appellant Bennett was convicted for the nighttime burglary of the C.C. Woodson Community Center. He left his prints and DNA behind.

Officer Frank Osrechek was the first officer to respond after the alarm went off at the community center at about 3:30 a.m. He found a window smashed out and the door adjacent to the window broken. The glass was shattered "in thousands of pieces."¹ He found holes in the wall and mounting anchors on the floor where it appeared a television had been. Officer Osrechek applied fingerprint dust to a number of items. He was able to lift prints from a television mounted on the wall in the community room. It appeared the television was manipulated as if someone was trying to remove it. There were chairs placed below the television. ROA. pp. 7-15; p. 24; pp. 26-27.

Officer Steve McClure also responded to the Community Center. A computer appeared to be missing. There were two chairs out of place against the wall as if

¹ ROA. p. 11, lines 20-22.

someone was using them as leverage. They were underneath where a television had been. Officer McClure also recovered a tire iron from the computer room. ROA. pp. 27-31.

The director of the community center, Olivia Sartor testified. She confirmed that two televisions, a computer monitor, and keyboard were all stolen. She testified the community center's hours were 6 a.m. to 9 p.m. While the community center room is not locked when not in use, it is not a room open to the public or for people to merely sit and socialize. It is only used for scheduled events. Sartor saw Bennett in the community center several times before the burglary, but never in the community room. Usually there were group meetings at the time he was commonly at the center such as the senior citizens craft group or bridge group. He was not involved in any of the activities in the community room and the only program he was involved in at the center was in the computer lab. Sartor was monitoring him when he was in the hall or computer room. ROA. pp. 41-48.

She testified to the following:

Q: Do you routinely monitor people who are in the building?

A: Well, I usually monitor people who seem suspicious to me, that really don't have a purpose, and Mr. Bennett normally walked through the building and he actually ended up going to the computer lab because I suggested that he pick a particular program to be a part of.

ROA. p. 50, lines 11-15.

She noticed abrasions on the wall by the two television sets in the community room where it appeared something was used in an attempt to pry the television sets from

their mounts. ROA. p. 51.

Chris Banks from the Spartanburg Public Safety Department arrived at 9:30 a.m. for a follow up investigation to determine if anything was missed. He found two small droplets of blood located two inches below where the stolen television in the computer lab had been. It was about one and half to two feet above the chairs propped underneath the television. ROA. pp. 53-56.

The DNA analyst determined that the DNA in the blood was a one in seventeen quintillion match to Bennett's DNA. ROA. p. 95. The fingerprints on the television in the community center matched Bennett's prints. ROA. pp. 116-118; p. 136.

ARGUMENT

The trial court did not err in denying the motion for directed verdict on the charge of burglary.

Bennett claims that the trial court erred in denying his motion for directed verdict, arguing that although his DNA matched blood droplets found at the crime scene and his fingerprints were found on a television in the community room, there was insufficient evidence that the blood or fingerprints were not left at some other time he was present in the community center. However, Bennett's argument is based on a superficial view of the evidence.

When considering a motion for directed verdict, the trial court is concerned with the existence of evidence, not its weight. State v. Walker, 349 S.C. 49, 53, 562 S.E.2d 313, 315 (2002). In reviewing the denial of a motion for a directed verdict, the reviewing court must put the evidence in the light most favorable to the State. Id. If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, an appellate court must find that the case was properly submitted to the jury. State v. McGowan, 347 S.C. 618, 622, 557 S.E.2d 657, 659 (2001).

In the instant case, a window was shattered leaving a thousand pieces of glass. Droplets of Bennett's blood was found directly under a stolen television. This evidence creates a strong inference that Bennett cut himself with glass and left blood under the television set he stole. Additionally, the community room in which his fingerprints were found was not open to the public, but only available for meetings of groups he was uninvolved with. The State's evidence indicates he was never in the community room during regular operating hours and would not be allowed in the room merely to hang out or

watch television. The television he left his fingerprints on appeared to have been manipulated as if someone was attempting to remove it and two chairs were placed below the television as if the burglar was standing on them during the attempt to remove the television.

Bennett attempts to argue that evidence in this case is weaker than evidence in circumstantial evidence cases where directed verdict was granted. However, his analysis fails. Bennett relies on State v. Mitchell, 341 S.C. 406, 535 S.E.2d 126 (2000). In Mitchell, the appellant was present at the burglary victim's house on three prior occasions. The sole evidence regarding identity was a fingerprint found on a window screen propped up against the house near the broken window that was apparently the point of entry. No evidence was presented that the screen was on the window at the time the window was broken. The Supreme Court found "the fact that respondent's fingerprint was on a screen that was propped up against the house does not prove entry where respondent had been in and around the victim's house on at least three times prior to the burglary." Id., 341 S.C. at 409, 535 S.E.2d at 127.

Unlike Mitchell, Bennett's fingerprint was in a room that evidence established Bennett would not have otherwise been in except if he was the burglar. This case is further distinguished from Mitchell because there was fingerprint evidence and DNA evidence linking Bennett to the burglary. Additionally, evidence was presented that Bennett was loitering around the facility for no apparent purpose before the director suggested he become involved in some activity. This suspicious activity does not seem to have been present in the case against Mitchell.

In State v. Odems, 395 S.C. 582, 588, 720 S.E.2d 48, 51 (2011), there was no evidence presented that Odems was even at the scene of the burglary – instead he was found in a car with stolen goods and two burglars, and fled. The burglars testified they picked him up at a gas station after the burglary. The burglars' prints were found on stolen items, but no fingerprints matching Odems were found. Id. So evidence in the instant case is much stronger than in Odems, upon which Bennett relies. Unlike Odems, Bennett is linked to the crime scene by fingerprint evidence, as well as DNA evidence. The fingerprint was found on an item that evidence tended to show the burglar attempted to steal – the television in the community room. Evidence in this case is considerably stronger than the evidence presented in Odems.

This case also bears little resemblance to State v. Arnold, 361 S.C. 386, 605 S.E.2d 529 (2004). In that case, the murder victim, a doctor, had a clandestine affair, first with the State's chief witness and then with Arnold, in Savannah. The victim borrowed a BMW that day from a co-worker and then disappeared and was subsequently found dead off a road in Colleton County. The BMW was found abandoned in Tennessee. Arnold's thumbprint was found on a coffee cup lid found in the BMW. At the time these events occurred, Arnold travelled from Savannah to Tennessee, although the State failed to present any evidence to the jury of how close to where he was staying the abandoned car was found. Accordingly the only evidence the jury had was that Arnold had a sexual relationship with the victim, he was in the BMW the day that the victim went missing, and he was in the same state where the BMW was found. Id., 361 S.C. at 389-90, 605 S.E.2d at 530-31.

In the instant case, the fingerprint was found on an item that the burglar attempted to steal, in a room that Bennett was not previously in, so the location of the print is far more probative; and the DNA evidence was found inches away from where the other television was stolen. The majority in Arnold noted that no evidence placed Arnold at the scene of the crime in Colleton County. Id., 361 S.C. at 390, 605 S.E.2d at 531. The evidence is far stronger in the instant case.

State v. Bostick, 392 S.C. 134, 708 S.E.2d 774 (2011) offers little assistance to the present case. In Bostick, the victim died of carbon monoxide poisoning from an arson in her house, but she had also been struck by a blunt force object. Some of her items were found in a burn pile in the yard of Bostick's mother, but no evidence established his control over the pile. His mother's yard was about a quarter mile away from the victim's house. He had blood on a pair of jeans. However, when analyzed for DNA evidence, the expert was able to exclude ninety-nine percent of the population, but could not actually match the blood to the victim. Accelerant was used in the arson and on the items in the burn pile, and traces of fresh gasoline were found on Bostick's shoes. Id.

The instant case is stronger than Bostick because there was an actual DNA match and also, fingerprint evidence, implicating Bennett. Additionally, unlike Bostick, the evidence placed Bennett at the scene of the crime.

Instead, more useful for analysis is Mutcherson v. State, 696 So.2d 420 (Fla. Dist Ct. App. 1997). In that case, fingerprint evidence was found on three different gumball machines that were separately vandalized at three separate locations in a neighborhood. The fingerprints were found on the side and back of the gumball machines where

customers' fingerprints would not be expected to be found. The Mutcherson court opined as follows:

First, we recognize that a single fingerprint in a public location is not sufficient to establish the identity of the burglar. . . . Unless there is other evidence of identity, the state must show that the prints could have been made only at the time the crime was committed. . . . This case involves three sets of fingerprints on vandalized machines under circumstances strongly suggesting that they were not the prints of a customer, but of a thief. Although we have located no precedent directly on point, we conclude that this cumulative evidence is sufficient to establish that Mr. Mutcherson committed the burglaries. Had the prints been on the front of all three machines, the outcome might be different.

Id., 696 So.2d at 422. See also Hutchinson v. State, 347 S.E.2d 315 (Ga. Ct. App. 1996) (finding that directed verdict was not warranted where no evidence presenting a reasonable explanation of how appellant's fingerprint's came to be on broken piece of glass near point of entry was presented other than the conclusion he was the burglar).

The fact that Bennett's fingerprint was on a television intended to be taken by the burglar is further bolstered by the DNA evidence found immediately below a television that was taken, amplifying the evidence of identification against Bennett. These two pieces of evidence were discovered in separate rooms that both happened to be burglarized resulting in a cumulative effect between the two pieces of evidence.

Accordingly, substantial circumstantial evidence indicates Bennett was the burglar and accordingly, the trial court did not err in allowing the jury to determine Bennett's guilt.

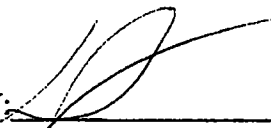
CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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BY: 

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ATTORNEYS FOR RESPONDENT

June 21, 2013

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Cherokee County
John C. Hayes, Circuit Court Judge

THE STATE,

Respondent,

vs.

KEVIN TYRONE BENNETT

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR.

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ATTORNEYS FOR RESPONDENT

June 21, 2013

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Cherokee County
John C. Hayes, III, Circuit Court Judge

THE STATE,

RESPONDENT,

vs.

KEVIN TYRONE BENNETT,

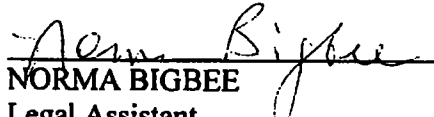
APPELLANT.

PROOF OF SERVICE

I, Norma Bigbee, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorney of record, David Alexander, Esquire, South Carolina Commission on Indigent Defense, Division of Appellate Defense, Post Office Box 11589, Columbia, South Carolina, 29211.

I further certify that all parties required by Rule to be served have been served.

This 21st day of June, 2013


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**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Kevin Tyrone Bennett, Appellant.

Appellate Case No. 2012-207559

Appeal From Spartanburg County
John C. Hayes, III, Circuit Court Judge

Opinion No. 5234
Heard December 12, 2013 – Filed May 28, 2014

REVERSED

Appellate Defender David Alexander, of Columbia, for
Appellant.

Attorney General Alan McCrory Wilson and Assistant
Deputy Attorney General David A. Spencer, both of
Columbia, for Respondent.

HUFF, J.: Kevin Tyrone Bennett was convicted of burglary in the second degree, petty larceny, and malicious injury to real property. Bennett appeals, arguing the trial court erred in denying his motion for directed verdict based upon the insufficiency of the evidence. We reverse.

FACTUAL/PROCEDURAL BACKGROUND

Around 3:30 a.m. on November 17, 2010, an alarm activated at the C.C. Woodson Community Center (the Center) in the City of Spartanburg. Upon their arrival, police discovered a broken door adjacent to a smashed window in the area referred to as the "community room." Officer Osrechek dusted the doors, as well as the televisions, for fingerprints in this room. He was able to lift one usable print from a wall-mounted television located in the community room. Officer Osrechek focused on this particular television in the room because it appeared to him that someone had tampered with it. He testified he found the television in an unnatural position, pointing down at a sharper angle than it should have been in order to project across the large room. Though he did not recall seeing any damage to the television, it appeared to him to have been manipulated, as if someone were trying to remove it from the wall. Officer Osrechek also went to the computer room, where he took photographs. In particular, he photographed holes in a wall and mounting brackets on the floor where a television once sat, and noted it was obvious an item had been removed from the wall. He did not locate any fingerprints or other forensic evidence in the computer room. A fingerprint examination expert later testified that, after comparing the latent print lifted from the community room by Officer Osrechek with Bennett's prints, the latent print belonged to Bennett.

Officer McClure also responded to the scene, where he processed the computer room. He testified it appeared that one of the computers was missing. He observed two misplaced chairs, which had apparently been moved from underneath the computer desk and were found directly below brackets on the wall where a television was missing. The chairs were pushed against a wall "as if somebody would use them as leverage." Also discovered next to one of the chairs was a tire iron. Officer McClure was unable to lift any fingerprints from the computer room, and did not discover any blood or other forensic evidence in there. He collected the tire iron to be processed by their forensic team, but no prints were ultimately recovered from this item either.

Olivia Sartor, the director of the Center, testified she arrived at the Center between 3:30 and 4:00 a.m. on November 17, 2010, and was asked by officers to walk through the building to see if anything was missing. She observed glass broken in the community room. Nothing was missing from that room, but Sartor did observe abrasions on the wall, as if something had been used to try to pry the televisions from the wall. In the computer room, she found a television, computer, monitor and keyboard were missing. Sartor explained the community room was not simply

open for the public to enter, but that it was scheduled for events. However, the doors were not always locked to that room and Sartor agreed the scheduling of events did not control who was able to access the community room. Sartor stated she had seen Bennett in the Center several times prior to the break-in, characterizing him as a frequent visitor who mainly participated in their computer lab in the computer room. During the hours of the day she saw Bennett at the Center, there were usually after school programs meeting in the community room, as well as adult groups such as senior citizen craft classes or bridge groups, both of which met earlier in the day. Sartor did not remember Bennett being in the community room and did not recall seeing him in that room as part of these groups. Sartor also stated she would monitor Bennett when he was in the facility. She testified the Center was open from 6:00 a.m. to 9:00 p.m., and she was typically present at the facility from 6:00 a.m. until 7:00 or 8:00 p.m. She acknowledged, though, that she was unable to monitor Bennett during the times she was not at the Center. She further agreed that grief support groups and addiction support groups also used the community room in the evening.

Officer Banks, who was assigned to Spartanburg Public Safety Department's burglary task force, testified he arrived at the Center at approximately 9:30 in the morning on November 17, 2010. He checked to see if there was any other evidence, such as blood or fingerprints, the other officers may have missed. He noted that brackets to one of the televisions in the community room appeared to have been dislocated from the wall on one side, leaving the television hanging lower than normal. In the computer room, Officer Banks discovered two small droplets of blood approximately two inches below what would have been the bottom of the missing television. The blood droplets were also about one and a half to two feet above the chair. The officer collected swabs of the blood found in the computer room. A later DNA analysis of the blood swabs showed it matched the DNA profile of Bennett.

After the State rested, Bennett moved for a directed verdict on all charges arguing, though there was evidence of the presence of his fingerprint and blood in the Center, it was a public building and the evidence showed he often visited the building. The State countered, viewing the evidence in a light most favorable to the State, based on the presence of the fingerprint near the television with the damaged brackets as well as the blood spot near the missing television, the jury could infer Bennett was the burglar. The trial court recognized this was a circumstantial evidence case, but denied Bennett's motion finding there was substantial circumstantial evidence from which the jury could conclude Bennett was the perpetrator of the crime.

STANDARD OF REVIEW

In an appeal from the denial of a motion for directed verdict, this court must view the evidence in the light most favorable to the State, and if there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, we must find that the case was properly submitted to the jury. *State v. Cope*, 405 S.C. 317, 348, 748 S.E.2d 194, 210 (2013). When a case is built wholly on circumstantial evidence, if the State fails to produce substantial circumstantial evidence the defendant committed a particular crime, he is entitled to a directed verdict. *State v. Odems*, 395 S.C. 582, 586, 720 S.E.2d 48, 50 (2011). "The State has the burden of proving beyond a reasonable doubt the identity of the defendant as the person who committed the charged crime or crimes." *State v. Lane*, 406 S.C. 118, 121, 749 S.E.2d 165, 167 (Ct. App. 2013). "Unless there is a total failure of competent evidence as to the charges alleged, refusal by the trial judge to direct a verdict of acquittal is not error." *State v. Arnold*, 361 S.C. 386, 389, 605 S.E.2d 529, 531 (2004). However, the trial court should grant a directed verdict when the evidence merely raises a suspicion that the accused is guilty. *Id.* at 390, 605 S.E.2d at 531. *See also State v. Hernandez*, 382 S.C. 620, 625, 677 S.E.2d 603, 605 (2009) (holding mere suspicion is insufficient to support a verdict). "'Suspicion' implies a belief or opinion as to guilt based upon facts or circumstances which do not amount to proof." *State v. Cherry*, 361 S.C. 588, 594, 606 S.E.2d 475, 478 (2004). The trial court is not, however, required to find that the evidence infers guilt to the exclusion of any other reasonable hypothesis. *Id.*

LAW/ANALYSIS

On appeal, Bennett contends the trial court erred in denying his motion for directed verdict, because the evidence against him was solely circumstantial, and the circumstantial evidence was not substantial. We agree.

The State's case consisted solely of circumstantial evidence. It relied primarily upon the following: (1) that Bennett's fingerprint was found on a community room television set that may have been manipulated by the burglar in an attempt to remove the television, and (2) that two small droplets of blood matching Bennett's DNA were found below the space where a stolen television once sat in the computer room. However, it is uncontroverted that Bennett was a frequent visitor to the Center prior to the crime, spending much of his time in the computer room. Additionally, while the director of the Center testified she was in the habit of monitoring Bennett when he was at the Center, she acknowledged that she

typically left the Center at least one hour before it closed at night and she was not able to monitor Bennett when she was not at the Center. Further, though she directed Bennett to the computer room and did not see him participating in the group activities such as the afterschool programs and Senior Citizen programs held in the community room earlier in the day, she agreed there were other groups which met in the room at night and she was not typically at the Center the last hour it was open. The director also acknowledged the community room door was not always locked, and the scheduling of activities in the community room would not control who had access to the room. Thus, we cannot say it would be unexpected to find Bennett's DNA in the computer room and his fingerprint in the community room. Though the exact locations of the DNA and fingerprint evidence do raise a suspicion of his guilt, the evidence simply does not rise above suspicion. The evidence undoubtedly placed Bennett at the *location where a crime ultimately occurred*; however, it is undisputed that Bennett was a frequent visitor to the location prior to the crime, and we disagree with the State's assertion that the evidence placed Bennett *at the scene of the crime*. Viewing the evidence in a light most favorable to the State, we find the State did not present substantial circumstantial evidence to reasonably prove Bennett's guilt, but at most, the evidence presented merely raised a suspicion that Bennett committed the crimes. *See State v. Bostick*, 392 S.C. 134, 141-42, 708 S.E.2d 774, 778 (2011) (considering the circumstantial evidence relied upon by the State and finding, viewing the evidence in the light most favorable to the State, the State's evidence raised only a suspicion of guilt such that the trial court erred in failing to direct a verdict in favor of Bostick).

CONCLUSION

Based on the foregoing, we find the trial court erred in refusing to grant Bennett's motion for directed verdict. Accordingly, Bennett's convictions are

REVERSED.

GEATHERS and LOCKEMY, JJ., concur.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Cherokee County
John C. Hayes, III, Circuit Court Judge

Appellate Case No: 2012-207559

The State,

Respondent,

vs.

Kevin Tyrone Bennett,

Appellant.

PETITION FOR REHEARING

This Court issued its opinion on May 28, 2014, reversing the trial court's denial of directed verdict on the charges of second degree burglary, petty larceny, and malicious injury to property. State v. Kevin Tyrone Bennett, Op. No. 5234 (S.C. Ct. App., filed May 28, 2014). The charges stem from a nighttime burglary of a community center. Pursuant to SCACR Rules 221 and 224, the State of South Carolina respectfully asks for rehearing on the following points that this Court may have overlooked or misapprehended in its decision:

This Court noted that the trial court is not required to find that the evidence infers guilt to the exclusion of any other reasonable hypothesis, citing State v. Cherry, 361 S.C. 588, 594, 606 S.E.2d 475, 478 (2004). However, in contradiction to Cherry's holding,

this Court based its opinion on two alternate hypotheses: (1) that Bennett had the ability to enter the community room, even though it was not generally open for the general public and no evidence indicated he was part of any group meeting in that room, and left his fingerprint on a television that coincidentally appeared to have been manipulated, but not stolen, during the burglary; and (2) that Bennett's blood could have been left on the wall in the computer room, directly underneath where the stolen television was located before it was removed, while Bennett was taking computer classes or otherwise being legally present in the room. Whether or not these alternate hypotheses were reasonable, the State's evidence did not need to exclude these alternate hypotheses in order for this case to be properly presented to the jury.

Ultimately, the question is whether, in view of the evidence in the light most favorable to the State, a rational trier of fact could find all the elements beyond a reasonable doubt. State v. Robinson, 310 S.C. 535, 539, 426 S.E.2d 317, 318 (1992) (finding any rational trier of fact could have found all the elements of the crime beyond a reasonable doubt in affirming the denial of a motion for directed verdict and citing Jackson v. Virginia, 443 U.S. 307 (1979)) (emphasis added).

The United States Supreme Court noted the following:

[T]he relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. . . . This familiar standard gives full play to the responsibility of the trier of fact fairly to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts.

Jackson, 443 U.S. at 319 (second emphasis added).

Our Supreme Court recently articulated the following concerning the standard of

review:

The trial court should grant the directed verdict motion when the evidence merely raises a suspicion that the accused is guilty as suspicion implies a belief or opinion as to the guilt based upon facts or circumstances which do not amount to proof. On the other hand, a trial judge is not required to find that the evidence infers guilt to the exclusion of any other reasonable hypothesis.

State v. Hepburn, 406 S.C. 416, 753 S.E.2d 402, 409 (2013) (quoting State v. Cherry, 361 S.C. 588, 593, 606 S.E.2d 475, 478 (2004) (citations and internal quotation marks omitted)). This is consistent with the United States Supreme Court's observation concerning circumstantial evidence:

Admittedly, circumstantial evidence may in some cases point to a wholly incorrect result. Yet this is equally true of testimonial evidence. In both instances, a jury is asked to weigh the chances that the evidence correctly points to guilt against the possibility of inaccuracy or ambiguous inference. In both, the jury must use its experience with people and events in weighing the probabilities. If the jury is convinced beyond a reasonable doubt, we can require no more.

Holland v. United States, 348 U.S. 121, 137-38 (1955) *cited with approval in Jackson*, 443 U.S. at 317 n.9.

The problem is in the present case, this Court has required more than what Hepburn, Jackson, and Holland require – the Court required that the State show someone was observing Bennett at all times in case he snuck into the community room and required the State to prove that the blood did not end up underneath the location of the stolen television by some unknown (and unlikely) innocent means. As a practical matter, Bennett would need to suffer an incredible series of unfortunate events to innocently leave behind such well-placed evidence to be misinterpreted. The jury is not irrational to conclude this imagined series of unfortunate events did not occur but instead find the

evidence firmly established Bennett's guilt beyond a reasonable doubt.

In the instant case, a window was shattered leaving a thousand pieces of glass. Droplets of blood were found directly under the space where the stolen television was previously located in the computer room. It was Bennett's blood based on DNA analysis. This evidence creates a strong inference that Bennett cut himself with glass and left blood on the wall directly under the television set he stole. While Bennett may have been in this room on prior occasions, leaving blood behind is hardly a common event and its placement right below where the stolen television was located carries special significance. The most reasonable conclusion was that this blood was left during the burglary. The jury was not irrational for reaching this conclusion.

Additionally, the community room in which Bennett's fingerprints were found was not open to the public, but only available for meetings of groups. No evidence suggests he was involved with these groups. The State's evidence indicates he was never in the community room during regular operating hours and would not be allowed in the room merely to hang out or watch television. The television he left his fingerprints on appeared to have been manipulated as if someone attempted, but failed, to remove it, and two chairs were placed below the television as if the burglar was standing on the chairs during the attempt to remove the television. The State was not required to account for Bennett's presence during all operating hours on each occasion he was in the community center for the jury to make the rational conclusion that Bennett left his print on the television during the course of the burglary in which the television was manipulated in an attempt to steal it.

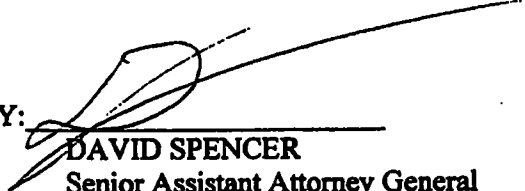
Rational jurors have the experience with people and events to determine whether the inferences pointed conclusively toward guilt. Indeed, a juror would not be irrational in concluding the totality of the evidence presented proved Bennett guilty beyond a

reasonable doubt. This Court should grant the petition for rehearing and affirm the trial court's denial of the directed verdict motion, thereby affirming Bennett's conviction and sentence.

Respectfully submitted,

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Attorney General

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ATTORNEYS FOR RESPONDENT

June 3, 2014

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Cherokee County
Honorable John C. Hayes, III, Circuit Court Judge

THE STATE,

RESPONDENT,

vs.

KEVIN TYRONE BENNETT,

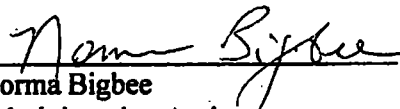
APPELLANT.

PROOF OF SERVICE

I, Norma Bigbee, certify that I have served the State's Petition for Rehearing on Appellant's Attorney by depositing a copy of the same in the United States mail, postage prepaid, addressed to David Alexander, Esquire, Appellate Defender, SC Commission on Indigent Defense, Division of Appellate Defense, P.O. Box 11589, Columbia, SC 29211.

I further certify that all parties required by Rule to be served have been served.

This 3rd day of June, 2014.


Norma Bigbee
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Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

The South Carolina Court of Appeals

The State, Respondent,

v.

Kevin Tyrone Bennett, Respondent.

Appellate Case No. 2012-207559

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

Thomas C. Huff

J.

John D. Deather

J.

James E. Ebel

J.

Columbia, South Carolina

cc:

David Alexander, Esquire

David A. Spencer, Esquire

Alan McCrory Wilson, Esquire

FILED

June 19, 2014

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