

ORIGINAL

STATE OF SOUTH CAROLINA

In The Court of Appeals

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APPEAL FROM CHARLESTON COUNTY

SC Court of Appeals

Deadra L. Jefferson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MARVIN XAVIER PORCHER,

APPELLANT

APPELLATE CASE NO. 2013-001620

RECORD ON APPEAL

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INDEX

INDEX.....	i
TRIAL TRANSCRIPT (dated July 17, and 18, 2013)	1
PRE-TRIAL MOTIONS	6
OPENING STATEMENT BY MS. WHITAKER.....	23
OPENING STATEMENT BY MR. SMITH.....	28
TESTIMONY	
FERNANDO SALGADO	
Direct examination by Ms. Shealy.....	33
Cross-examination by Mr. Smith	52
Redirect examination by Ms. Shealy	54
MARK EVANS	
Direct examination by Ms. Shealy.....	56
Cross-examination by Mr. Smith.....	69
Redirect examination by Ms. Shealy	73
NANCY WOHLFORD	
Direct examination by Ms. Shealy.....	74
Cross-examination by Mr. Smith.....	99
Redirect examination by Ms. Shealy	107
GILBERT CORDRAY BALDWIN	
Direct examination by Ms. Shealy.....	109
Cross-examination by Mr. Smith.....	121
KATHY KJELLMAN	
Direct examination by Ms. Shealy.....	123
Cross-examination by Mr. Smith.....	131
Redirect examination by Ms. Shealy	135
SARAH LIPPE	
Direct examination by Ms. Shealy.....	136
Cross-examination by Mr. Smith.....	141
MOTION FOR A DIRECTED VERDICT.....	142

CLOSING ARGUMENT BY MS. SHEALY	147
CLOSING ARGUMENT BY MR. SMITH	153
CHARGE ON THE LAW	162
VERDICT	176
MOTION FOR A NEW TRIAL	177
SENTENCING	196
STATE’S EXHIBIT# 25 (SENTENCE SHEET FROM PRIOR CONVICTION).....	198
STATE’S EXHIBIT# 27 (SENTENCE SHEET FROM PRIOR CONVICTION).....	199
INDICTMENTS	200
CERTIFICATE OF COUNSEL.....	210

STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
	)	
State of South Carolina,	)	CASE NO. 2013-GS-10-4867
	)	2013-GS-10-0411
	)	2012-GS-10-1910
VS.	)	2012-GS-10-1111
	)	
	)	TRANSCRIPT OF RECORD
Marvin Xavier Porcher,	)	
	)	
DEFENDANT.	)	

Trial July 18 and July 19, 2013

Charleston, South Carolina

B E F O R E:

The Honorable Deadra L. Jefferson, Judge; and a Jury.

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

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Jason King, Esquire
For the Defendant

I N D E X(SW = STATE WITNESSES)

<u>(July 15, 2013)</u>	Jury Qualification	--	06
<u>(July 18, 2013)</u>		--	44
Jury Voir Dire		--	49
Motion		--	76
Jury Instruction		--	92
Voir Dire Forelady		--	106
Opening By Ms. Whitaker		--	113
Opening By Mr. Smith		--	118
<u>(SW) Fernando Salgado:</u>			
Direct Examination by Ms. Shealy		--	123
Cross-Examination by Mr. Smith		--	142
Redirect Examination by Ms. Shealy		--	146
<u>(SW) Detective Mark Evans:</u>			
Direct Examination by Ms. Shealy		--	148
Cross-Examination by Mr. Smith		--	162
Redirect Examination by Ms. Shealy		--	167
<u>(SW) Nancy Wohlford:</u>			
Direct Examination by Ms. Shealy		--	167
Cross-Examination by Mr. Smith		--	194
Redirect Examination by Ms. Shealy		--	202
<u>(SW) Deputy Gilbert Baldwin:</u>			
Direct Examination by Ms. Shealy		--	204

(SW) Deputy Gilbert Baldwin (continue):

Cross-Examination by Mr. Smith -- 216

Redirect Examination by Ms. Shealy -- 221

(SW) Kathy Kjellman:

Direct Examination by Ms. Shealy -- 222

Cross-Examination by Mr. Smith -- 230

Redirect Examination by Ms. Shealy -- 234

(SW) Sarah Lippe:

Direct Examination by Ms. Shealy -- 236

Cross-Examination by Mr. Smith -- 240

Motion for Directed Verdict -- 242

Defendant's Rights -- 245

Renew Motion for Directed Verdict -- 254

(July 19, 2013) -- 258

Closing by Ms. Shealy -- 260

Closing by Mr. Smith -- 266

Instruction to Jury -- 275

Poll Jury -- 292

Motion for New Trial -- 297

Defendant Plea on Other Charges -- 299

CERTIFICATION OF TRANSCRIPT -- 318

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<u>E X H I B I T S</u>			
<u>STATE</u>	<u>DESCRIPTION</u>	<u>MARKED</u>	<u>ADMIT</u>
1	Color copy 8 x 10 photograph	84	85
2	Color copy 8 x 10 photograph	85	85
3	Color copy 8 x 10 photograph	85	85
4	Color copy 8 x 10 photograph.	85	85
5	Color copy 8 x 10 photograph	85	85
6	Color copy 8 x 10 photograph	85	85
7	Color copy 8 x 10 photograph	85	85
8	Color copy 8 x 10 photograph	86	86
9	Color copy 8 x 10 photograph	86	86
10	Color copy 8 x 10 photograph	86	86
11	Color copy 8 x 10 photograph	86	86
12	Color copy 8 x 10 photograph	86	86
13	Color copy 8 x 10 photograph	86	86
14	Color copy 8 x 10 photograph	87	87
15	Color copy 8 x 10 photograph	87	87
16	Color copy 8 x 10 photograph	87	87
17	Color copy 8 x 10 photograph	87	87
18	Color copy 8 x 10 photograph	87	87
19	Color copy 8 x 10 photograph	87	87
20	Defendant's clothing & personal effects (box)	87	88

<u>NO.</u>	<u>DESCRIPTION</u>	<u>MARKED</u>	<u>ADMIT</u>
21	Stipulation Regarding Defendant's Clothing for Detention	88	88
22	Stipulation Regarding North Charleston Police	88	88
23	Stipulation - Advise Rights	88	88
24	Photograph	88	88
25	Sentencing Sheet Indictment 11/5-6-2005	88	238
26	ID - Indictment 11/27/2005	88	--
27	Sentencing Sheet Indictment 11/24-25/2006	89	238
28	ID - Jewelry in Envelope (Note: Substitute photo of jewelry and bag. Retained bag jewelry was in.)	89	--
29	ID - Computer (Note: Substitute photo of computer. Retained bag computer was in.)	89	--
30	Envelope with receipts	89	89

1 opening arguments from the attorneys and we are going to go
2 ahead and start testimony.

3 We anticipate that we will finish the testimony in this
4 case today and that we will have closing argument and
5 instruction in the morning.

6 That schedule may vary a little. If we get done
7 earlier today we may have closing argument and instruction
8 today.

9 But we try to let you all go as close to 5:00 as
10 possible knowing that you all have other responsibilities
11 that you need to attend to.

12 During this break please do not discuss the case in any
13 manner whatsoever. Please don't speculate about what you
14 think it may or could be about.

15 And as soon -- I am going to give you about ten minutes
16 for that. And then once we are concluded with that we will
17 then -- you all will be brought back into the courtroom and
18 we will begin the trial of this case. If you would go with
19 the bailiff's, please.

20 (WHEREUPON, jurors exits courtroom at 10:45 a.m.)

21 THE COURT: Okay. I assume you all will agree to
22 sequester the witnesses?

23 MS. SHEALY: Yes, Your Honor. Our victim obviously
24 will be able to stay.

25 THE COURT: Yeah, that's -- yeah, that goes without

1 saying. Okay. Now let's see. All of the State's motion in
2 limine just so -- we had a status conference on yesterday
3 while my other jury was deliberation.

4 And I would instruct you all to stay away from any of
5 the items in the State's motion in closing -- in opening
6 argument until such time as the court has the opportunity to
7 rule on these matters.

8 And I would also ask that you all once you approach any
9 of this information or the subject of the motion that you
10 simply let me know that you have a matter of law. We will
11 take it up outside of the jury's presence, create a proffer,
12 and if I need argument we will take that so that we can have
13 a clear record.

14 Is there any exception from the State?

15 MS. SHEALY: No, Your Honor. We may be able to clarify
16 one thing.

17 THE COURT: Okay.

18 MS. SHEALY: If I were to agree to elicit testimony
19 about his convictions under the municipal charges --

20 It is my understanding that you have no objection to
21 that?

22 MR. SMITH: That is correct, Your Honor.

23 THE COURT: Okay. So ---

24 MS. SHEALY: We ---

25 THE COURT: --- maybe it's -- maybe then y'all have

1 resolved the issue then?

2 MS. SHEALY: We may ---

3 THE COURT: At least as to the municipal court. Which
4 the first one was the fact that the defendant pled guilty in
5 North Charleston Municipal Court to the offense of the false
6 information to police and possession of stolen goods.

7 MS. SHEALY: That's correct.

8 THE COURT: So y'all have resolved that one?

9 MS. SHEALY: If I could have until the end of the
10 restroom break to tell you for sure. But I believe I am
11 going to go ahead and elicit that.

12 THE COURT: You have no problem with that?

13 MR. SMITH: I do not.

14 THE COURT: Okay. Then the only other thing we needed
15 to deal with was the hearsay which is his statement to
16 Detective Evans, the willingness to give a Miranda -- to
17 give a statement and waive Miranda, and the recording not
18 being available.

19 MS. SHEALY: And it was my understanding, Your Honor,
20 that yesterday ---

21 THE COURT: Well, we will -- we will take it up.

22 MS. SHEALY: We will take that up?

23 THE COURT: Yeah. I just need y'all to tell me it is a
24 matter of law and then -- I need a full record to rule on
25 it.

1 My original impression was that it would be admissible,
2 however, because it goes to the thoroughness of their
3 investigation.

4 MS. SHEALY: And I think I am going to go ahead and go
5 into that as well.

6 THE COURT: I assume Mr. Smith doesn't have a problem
7 with that. So then that is resolved as well, recording --
8 the recording not being available, his willingness to give a
9 statement and waive Miranda. And the statement ---

10 MS. SHEALY: We are going to go into the statement.

11 THE COURT: Okay. So then all of your motions in
12 limine are resolved.

13 MS. SHEALY: Your Honor, and we -- would you like for
14 me to put on the record what we have agreed to evidence wise
15 coming in?

16 THE COURT: Give me one second.

17 MS. SHEALY: Okay.

18 THE COURT: Yeah. I want to go through a couple of
19 other things first.

20 MS. SHEALY: Oh, I'm sorry.

21 THE COURT: That's okay. Motion to exclude testimony
22 of prior bad acts, is the State going to be eliciting any
23 Lyle type evidence?

24 MS. SHEALY: Nothing other than what occurred that
25 evening.

1 THE COURT: Okay. And I assume you have no exception
2 to that, Mr. Smith?

3 MR. SMITH: No, Your Honor.

4 THE COURT: And a motion in limine we will deal with
5 his prior convictions at the time that I question him. But
6 we have already put his record on the record, so he is
7 clear.

8 I would assume the only thing you all would be seeking
9 to use to impeach him would be the burglary offenses?

10 MS. SHEALY: That's correct, Your Honor. And we have
11 three of his prior ---

12 THE COURT: Well, the false information, yeah.

13 MS. SHEALY: I'm sorry, are you ---

14 THE COURT: I said the false information.

15 MS. SHEALY: Do you mean within the trial ---

16 THE COURT: If he ---

17 MS. SHEALY: Before ---

18 THE COURT: --- testifies.

19 MS. SHEALY: Oh, if he testifies ---

20 THE COURT: I am talking about if he testifies.

21 MS. SHEALY: No, let me take a look at that. Because
22 I think there are some other things. If he were to
23 testify ---

24 THE COURT: Well, you gave me his whole record; didn't
25 you?

1 MS. SHEALY: Yes. I was just double-checking that New
2 York record. I think we could -- couldn't we also get into
3 the petty larcenies?

4 THE COURT: Uh-huh.

5 MS. SHEALY: And the unlawful use of vehicle?

6 THE COURT: That is not a theft. That is one of those
7 fudgy -- I don't know. That is an iffy one.

8 MS. SHEALY: To me it is suggestive of ---

9 THE COURT: It is suggestive. But ---

10 MS. SHEALY: Okay.

11 THE COURT: --- it is not dispositive. I think a theft
12 is a theft. Use without permission can cover so many
13 things.

14 MS. SHEALY: Okay.

15 THE COURT: And you have -- it is almost like piling it
16 on to some extent. Because I am going to limit probably
17 some of this. Because it gets to be a little -- it just
18 depends on the age of it as well. Because use without
19 possession was from 1991.

20 So even with him being released from confinement I'm
21 sure it is more than ten years old; '91, 2001. We are in
22 2013 now. That is 22 years ago.

23 MS. SHEALY: He has just been ---

24 THE COURT: Unless the ---

25 MS. SHEALY: --- very active.

1 THE COURT: --- date you gave me was inaccurate.

2 Huh?

3 MS. SHEALY: I said he has just been very active.

4 THE COURT: Well, the rules still apply.

5 MS. SHEALY: Yes, Your Honor.

6 THE COURT: Ten years.

7 MS. SHEALY: So you are saying the burglaries and ---

8 THE COURT: If it is more than ten years old and you
9 didn't give them notice I think, you know, the rules
10 restrict you.

11 That they come in irregardless of punishment. But it
12 still doesn't -- you know, there is still a second part of
13 that rule that deals with the ten-year limitation if my
14 memory serves me accurately.

15 MS. SHEALY: I will double-check that as well. The
16 regarding the breaking into the automobile storer tank ---

17 THE COURT: What year was that?

18 MS. SHEALY: That is in 2010.

19 THE COURT: Anything that deals with a theft -- I mean
20 I am going to deal with this when he testifies.

21 MS. SHEALY: Okay.

22 THE COURT: I don't know that we need to -- if he ---

23 MS. SHEALY: Because we can ---

24 THE COURT: --- if he doesn't decide to testify really
25 it is sort of an exercise in futility at this moment. If he

1 decides to testify, I will make a decision then.

2 MS. SHEALY: Yes. One thing I don't know if you want
3 to take up now. We ---

4 THE COURT: Well, let me -- let me -- let me finish one
5 thing.

6 MS. SHEALY: Oh, goodness. I keep doing that. I'm
7 sorry.

8 THE COURT: That is okay. And as I understand it
9 State's Exhibits 1 through 30 have been marked and there is
10 no exception to those documents; is that correct, Mr. Smith?

11 MR. SMITH: Let me just double check.

12 MS. SHEALY: No, Your Honor, the thing I keep wanting
13 to rush to talk to you about is we have pre-marked items 25
14 through 27 as ID only right now ---

15 THE COURT: Okay.

16 MS. SHEALY: --- unless Your Honor would like to
17 address that.

18 THE COURT: I will take them up contemporaneously.

19 MS. SHEALY: Okay.

20 THE COURT: So one through twenty-five would come in
21 without objection; is that correct?

22 MS. SHEALY: One through ---

23 THE COURT: One through twenty-four. I'm sorry.

24 MS. SHEALY: One through twenty-four. And then also
25 number ---

1 THE COURT: Well, let me -- you are getting ahead of
2 me.

3 MS. SHEALY: Okay.

4 THE COURT: One through twenty-four would come in
5 without objection; is that correct, Mr. Smith?

6 MR. SMITH: Yes, Your Honor.

7 THE COURT: And then 25 through 27 would be marked for
8 ID only?

9 MR. SMITH: Yes, Your Honor.

10 THE COURT: And 28 through 30 would come in without
11 objection? Or is that not accurate?

12 MS. SHEALY: That is not accurate. Number 28 is the
13 actual jewelry that was taken.

14 THE COURT: I just need to know if it was with or
15 without objection.

16 MS. SHEALY: It is ID only.

17 THE COURT: Twenty-eight is ID only?

18 MS. SHEALY: And 29 is ID only.

19 THE COURT: Twenty-eight and twenty-nine is ID. And so
20 does 30 come in without objection?

21 MS. SHEALY: Yes, Your Honor.

22 THE COURT: Okay.

23 MR. SMITH: Yes, Your Honor.

24 (WHEREUPON, State's Exhibit Number 1, 8 x 10 color photocopy
25 was marked for identification.)

1 (WHEREUPON, State's Exhibit Number 1 was admitted into
2 evidence.)
3 (WHEREUPON, State's Exhibit Number 2, 8 x 10 color photocopy
4 was marked for identification.)
5 (WHEREUPON, State's Exhibit Number 2 was admitted into
6 evidence.)
7 (WHEREUPON, State's Exhibit Number 3, 8 x 10 color photocopy
8 was marked for identification.)
9 (WHEREUPON, State's Exhibit Number 3 was admitted into
10 evidence.)
11 (WHEREUPON, State's Exhibit Number 4, 8 x 10 color photocopy
12 was marked for identification.)
13 (WHEREUPON, State's Exhibit Number 4 was admitted into
14 evidence.)
15 (WHEREUPON, State's Exhibit Number 5, 8 x 10 color photocopy
16 was marked for identification.)
17 (WHEREUPON, State's Exhibit Number 5 was admitted into
18 evidence.)
19 (WHEREUPON, State's Exhibit Number 6, 8 x 10 color photocopy
20 was marked for identification.)
21 (WHEREUPON, State's Exhibit Number 6 was admitted into
22 evidence.)
23 (WHEREUPON, State's Exhibit Number 7, 8 x 10 color photocopy
24 was marked for identification.)
25 (WHEREUPON, State's Exhibit Number 7 was admitted into

1 evidence.)
2 (WHEREUPON, State's Exhibit Number 8, 8 x 10 color photocopy
3 was marked for identification.)
4 (WHEREUPON, State's Exhibit Number 8 was admitted into
5 evidence.)
6 (WHEREUPON, State's Exhibit Number 9, 8 x 10 color photocopy
7 was marked for identification.)
8 (WHEREUPON, State's Exhibit Number 9 was admitted into
9 evidence.)
10 (WHEREUPON, State's Exhibit Number 10, 8 x 10 color
11 photocopy was marked for identification.)
12 (WHEREUPON, State's Exhibit Number 10 was admitted into
13 evidence.)
14 (WHEREUPON, State's Exhibit Number 11, 8 x 11 color
15 photocopy was marked for identification.)
16 (WHEREUPON, State's Exhibit Number 11 was admitted into
17 evidence.)
18 (WHEREUPON, State's Exhibit Number 12, 8 x 10 color
19 photocopy was marked for identification.)
20 (WHEREUPON, State's Exhibit Number 12 was admitted into
21 evidence.)
22 (WHEREUPON, State's Exhibit Number 13, 8 x 10 color
23 photocopy was marked for identification.)
24 (WHEREUPON, State's Exhibit Number 13 was admitted into
25 evidence.)

1 (WHEREUPON, State's Exhibit Number 14, 8 x 10 color
2 photocopy was marked for identification.)
3 (WHEREUPON, State's Exhibit Number 14 was admitted into
4 evidence.)
5 (WHEREUPON, State's Exhibit Number 15, 8 x 10 color
6 photocopy was marked for identification.)
7 (WHEREUPON, State's Exhibit Number 15 was admitted into
8 evidence.)
9 (WHEREUPON, State's Exhibit Number 16, 8 x 10 color
10 photocopy was marked for identification.)
11 (WHEREUPON, State's Exhibit Number 16 was admitted into
12 evidence.)
13 (WHEREUPON, State's Exhibit Number 17, 8 x 10 color
14 photocopy was marked for identification.)
15 (WHEREUPON, State's Exhibit Number 17 was admitted into
16 evidence.)
17 (WHEREUPON, State's Exhibit Number 18, 8 x 10 color
18 photocopy was marked for identification.)
19 (WHEREUPON, State's Exhibit Number 18 was admitted into
20 evidence.)
21 (WHEREUPON, State's Exhibit Number 19, 8 x 10 color
22 photocopy was marked for identification.)
23 (WHEREUPON, State's Exhibit Number 19 was admitted into
24 evidence.)
25 (WHEREUPON, State's Exhibit Number 20, Box of Defendant's

1 Clothing and Personal Effects, was marked for
2 identification.)
3 (WHEREUPON, State's Exhibit Number 20 was admitted into
4 evidence.)
5 (WHEREUPON, State's Exhibit Number 21, Stipulation Regarding
6 Defendant's Clothing for Detention, was marked for
7 identification.)
8 (WHEREUPON, State's Exhibit Number 21 was admitted into
9 evidence.)
10 (WHEREUPON, State's Exhibit Number 22, Stipulation Regarding
11 N. Charleston Police, was marked for identification.)
12 (WHEREUPON, State's Exhibit Number 22 was admitted into
13 evidence.)
14 (WHEREUPON, State's Exhibit Number 23, Stipulation - Advise
15 Rights, was marked for identification.)
16 (WHEREUPON, State's Exhibit Number 23 was admitted into
17 evidence.)
18 (WHEREUPON, State's Exhibit Number 24, Photograph, was
19 marked for identification.)
20 (WHEREUPON, State's Exhibit Number 24 was admitted into
21 evidence.)
22 (WHEREUPON, State's Exhibit Number 25, Indictment
23 11/5-6/2005, was marked for identification.)
24 (WHEREUPON, State's Exhibit Number 26, Indictment
25 11/27/2005, was marked for identification.)

1 (WHEREUPON, State's Exhibit Number 27, Indictment

2 11/24-25/2006, was marked for identification.)

3 (WHEREUPON, State's Exhibit Number 28, Jewelry in Envelope,
4 was marked for identification.)

5 (WHEREUPON, State's Exhibit Number 29, Computer, was marked
6 for identification.)

7 (WHEREUPON, State's Exhibit Number 30, Envelope w/Receipts,
8 was marked for identification.)

9 (WHEREUPON, State's Exhibit Number 30 was admitted into
10 evidence.)

11 THE COURT: All right. And the defense has no exhibits
12 they wish to mark at this time, correct?

13 MR. SMITH: That is correct, Your Honor.

14 THE COURT: All righty. Now are there any other issues
15 I haven't covered that we need to take up?

16 MS. SHEALY: I don't think so. Thank you.

17 THE COURT: Anything, Mr. Smith?

18 MR. SMITH: No, Your Honor.

19 THE COURT: All right. Why don't y'all take a quick
20 restroom break and then get set up for argument. If you
21 need any equipment, let the clerk know so that can be set up
22 as well. And then we will start with opening instruction
23 and argument and then we will go ahead and proceed with
24 witnesses.

25 Let's give ourselves about maybe five -- well, probably

1 ten minutes is more realistic.

2 (WHEREUPON, break taken July 18, 2013, 10:54 a.m.)

3 (WHEREUPON, resumed July 18, 2013, 11:00 a.m.)

4 THE COURT: Anything from the State before we proceed
5 with opening argument and instruction?

6 MS. SHEALY: Your Honor, one question regarding our
7 first witness. And I have already spoken with Mr. Smith
8 about this.

9 THE COURT: Uh-huh.

10 MS. SHEALY: We have entered into a stipulation
11 regarding the items taken off the defendant when he was
12 booked in.

13 With the court's permission I would like to in the
14 middle of my questioning of the first witness read the
15 stipulation into the record if I could bring it to the
16 court's attention at that time.

17 THE COURT: Why would you publish a stipulation in the
18 middle of a witness's testimony?

19 MS. SHEALY: Because it involves his property, so that
20 they will know that what I am bringing out that we both have
21 agreed was the property that ---

22 THE COURT: I think it is better to do that at the
23 conclusion of the witness's testimony and then I can explain
24 what the stipulation is. I think it is a little disjointed
25 to do that in the middle of testimony. But it is up to you.

1 MS. SHEALY: I don't typically do it. The only reason
2 I would want to do it here is I then need to go through some
3 of the items with him and the jury would have the benefit of
4 knowing that in fact we agreed this is what he had on when
5 he was booked in that night.

6 THE COURT: Any exceptions, Mr. Smith?

7 MR. SMITH: No, Your Honor.

8 THE COURT: All right. Number 28 is the foreperson.
9 And there was something else I was about to ask. Oh, yeah.
10 We have a juror, Number 201, Ms. Parker, who made me aware
11 during the break that she works for a summer camp. They
12 found a substitute for her Monday through today, but they do
13 not ---

14 Don't bring them in yet. Don't bring them in yet.

15 But they do not have a substitute for her tomorrow. I
16 wish she had told me that at the beginning. But she didn't.

17 And whatever camp it is, they have to comply with
18 DHEC's requirements. And they said they have to have her
19 there or they have to shut the camp down basically tomorrow.
20 Because to comply with DHEC they need her there tomorrow at
21 8:00 in the morning.

22 So I told her that we would do our best to accommodate
23 her. We may have to -- if we don't finish today we may have
24 to let her go if they are going to have to shut their camp
25 down, and seat the alternate. I guess we will just have to

1 cross that bridge when we come to it. So I wanted to make
2 you all aware of it.

3 And I don't know what type of camp it was -- I mean I
4 don't know the name of the camp, because I didn't ask. But
5 apparently it is a camp with small children that DHEC --
6 they have to have DHEC compliance to operate.

7 Is the State ready to proceed?

8 MS. WHITAKER: Yes, Your Honor, we are.

9 THE COURT: Is defense ready to proceed?

10 MR. SMITH: Yes, Your Honor.

11 THE COURT: Please bring in the jury.

12 (WHEREUPON, the jury entered the courtroom 11:15 a.m.)

13 THE CLERK: All jurors are present, Your Honor.

14 THE COURT: Thank you. Ladies and gentlemen, you may
15 be seated.

16 Please pass out those notebooks for me.

17 Ladies and gentlemen, you are going to be given an
18 opportunity to take notes during this trial. There is a
19 white sticker on the front of each notepad. If you would
20 write your juror number on that sticker so that you would be
21 able to identify which notebook belongs to you. And I will
22 give you some further instructions on note taking during the
23 course of these preliminary instructions to you.

24 Ladies and gentlemen, we are going to try the case of
25 the State of South Carolina versus Marvin Xavier Porcher.

1 THE CLERK: All jurors are present, Your Honor.

2 THE COURT: Thank you, ladies and gentlemen, we
3 appreciate your patience. We are now going to resume with
4 opening argument. I would ask that you give the attorneys
5 your undivided attention.

6 You may proceed.

7 MS. WHITAKER: Thank you, Your Honor.

8 THE COURT: You are welcome.

9 MS. WHITAKER: May it please the court.

10 THE COURT: Yes, ma'am.

11 MS. WHITAKER: Mr. Smith, Mr. King.

12 **OPENING BY MS. WHITAKER:**

13 Good morning. Everyone should feel safe in their own
14 home. They should feel secure in their own home. And not
15 only should they feel like they are safe in their own home,
16 they should feel like their belongings are safe when they
17 leave them in their home.

18 For Nancy Wohlford and Susan Rutledge that was not the
19 case. You are going to hear from Nancy very soon. She is a
20 very busy woman. She works multiple jobs. In fact, one of
21 her jobs is as a security job. As a security guard she
22 makes sure that others can feel safe.

23 On the night in question her own home was burglarized.
24 And what adds insult to injury, the perpetrator was someone
25 she knew. It was this man over here, (motioning) Marvin

1 Porcher, the defendant.

2 Now Nancy knew neighbors on both sides of the trailer.
3 On one side she had -- it was an older man, and she would
4 help him from time to time. On the other side was the
5 defendant, Marvin Porcher, and Cassie Callier his
6 girlfriend.

7 Now Nancy knew Cassie from work. Occasionally they
8 would socialize. Nancy also knew Maryin Porcher. Not very
9 well. They had more of a business relationship. Marvin
10 Porcher had done some work on Nancy's trailer.

11 Nancy's roommate, Susan Rutledge, who has since passed
12 away had some health difficulties and she needed some help
13 moving around. So Nancy had hired Marvin Porcher to do a
14 little work on the outside of the house to make that
15 possible. But he had never really been inside the home
16 until the night before the burglary.

17 In fact, the first time he was in the home was to do a
18 tattoo. Nancy had learned from Cassie, the defendant's
19 girlfriend, that he was good at doing tattoos.

20 And Nancy is a big -- big fan of tattoos. And she
21 likes them and she had wanted a new tattoo. So she had
22 spoken -- spoken to Cassie and found out that Marvin Porcher
23 would do this tattoo for her.

24 So the night before the burglary Marvin Porcher,
25 Cassie, and Nancy's friend Kenny they all came over. Nancy

1 was going to make dinner for them. She was cooking some
2 country ribs. After everybody ate they all stayed around
3 and chatted for a while. And the defendant over there did
4 the tattoo on Nancy.

5 The process is pretty involved. It takes a while. And
6 Nancy needed a break during the tattoo. So she let Marvin
7 Porcher get on her laptop. He logged onto his Facebook
8 account, stayed on there for about 20 minutes, played on the
9 computer for a little while before they finished -- finished
10 doing the tattoo.

11 The next day Nancy and Cassie talked about going out
12 for the evening. Nancy wasn't sure because she was still
13 kind of sore from the tattoo, a little bit tired.

14 But she decides to rally and around 9:20 that evening
15 Nancy goes over to Cassie's home which is right next door so
16 they can go out for the evening. They head out to Rivals
17 which is a bar in North Charleston that they were familiar
18 with.

19 After they went to Rivals they headed over to Denny's
20 to get a cup of coffee and some snacks. But as they are
21 leaving Denny's, as they are getting in the car - they are
22 getting in Nancy's car - Nancy gets a phone call from North
23 Charleston Police Department. Her laptop had been located
24 on Marvin Porcher.

25 She follows the instructions of the police and she

1 heads home where she finds that her laptop, some of her
2 jewelry, her roommate Susan's television, they had all been
3 stolen. Her home had been broken into. The back door had
4 been forced open.

5 Now I'm going to stop here for a minute because there
6 is something about this case that might be a little bit
7 confusing. There are two different agencies that are
8 working on this investigation, the Charleston County
9 Sheriff's Office and the North Charleston Police Department.

10 And the reason there are two different agencies is
11 because where Nancy's home is located, that is in the
12 jurisdiction of the Charleston County Sheriff's Office.
13 Where Marvin Porcher was located just about a mile away it
14 is in North Charleston jurisdiction, and that is where he
15 was found.

16 So I want you to know that these are all in Charleston
17 County and both of the agencies are working together, but
18 you are going to hear from both of them.

19 In fact, you are going to hear about Resource Officer
20 Fernando Salgado coming across Marvin Porcher after midnight
21 with the bulky, bulging jacket he was wearing and what
22 happened as a result of their conversation. They found a
23 laptop and some jewelry on his person.

24 When the police came across the laptop they opened up
25 the computer. There was no password needed. So Detective

1 Mark Evans tried to go through the computer and find out who
2 owned it. And he came across Nancy's resume, and he called
3 her and asked her where her laptop was. She said she
4 thought it was at home where she had left it sitting safely
5 on her bed.

6 At this point in time Evans who was with North
7 Charleston Police Department realized that her home,
8 Nancy's home, was in the Charleston County Sheriff's
9 Office jurisdiction so went ahead and called them to let
10 them know. So they all arrived on the scene together:
11 North Charleston, Charleston County Sheriff's office, and
12 Nancy.

13 When they arrived at the home they performed a
14 walk-through. They found that the back door of the mobile
15 home had been forced open.

16 They found out that the television had been taken from
17 Susan's room, taken right off her dresser right off of a
18 stand, and that jewelry had been taken out of Nancy's
19 closet.

20 And now this jewelry, it was costume jewelry. It might
21 not have had a whole lot of monetary value, but it had a
22 great deal of sentimental value because it belonged --
23 several pieces of it belonged to Nancy's grandmother.

24 You are going to be presented with other evidence in
25 this case. You are going to see what the Crime Scene did

1 when they responded to the mobile home. You will see some
2 pictures of the crime scene. And you are also going to see
3 the laptop that was found on Marvin Porcher's person as well
4 as the jewelry that was found in his pocket.

5 Now please give Marvin Porcher a fair trial. But
6 listen to the evidence and listen to the testimony and
7 return a verdict of guilty to the charge of burglary in the
8 first degree. Thank you.

9 THE COURT: You may proceed.

10 MR. SMITH: Thank you, Your Honor. May it please the
11 court.

12 THE COURT: Yes, sir.

13 **OPENING BY MR. SMITH:**

14 Ms. Shealy, Ms. Whitaker.

15 Three poor decisions don't equal burglary. Marvin
16 Porcher on the evening this happened, he got home from work.
17 He had been working at an auto parts place. He gets let out
18 at the end of the street. When he gets out there he sees
19 his cousin.

20 MS. SHEALY: Your Honor, may we approach? I have an
21 objection.

22 THE COURT: Yes, you may approach.

23 (Bench conference 11:47 a.m. as follows:)

24 MS. SHEALY: My objection would be to him getting into
25 any details unless he plans on putting his defendant up.

1 Otherwise he is presenting his defendant's case.

2 THE COURT: And he has another witness to ---

3 MS. SHEALY: But I have just asked ---

4 THE COURT: --- present that evidence. Because he has
5 a witness listed. Opening argument is only what the
6 evidence will say. He proceeds at his own risk if he
7 doesn't present testimony to support that.

8 So he can argue what he believe the evidence is going
9 to show; and if he falls short of that, then that is his
10 peril with the jury.

11 MS. SHEALY: Thank you.

12 THE COURT: You are welcome.

13 (End of bench conference.)

14 THE COURT: You may proceed.

15 (RESUME OPENING BY MR. SMITH:)

16 MR. SMITH: When Marvin gets home his girlfriend is at
17 the house. She is talking about going out, going out with
18 Ms. Wohlford. And she really isn't -- she is kind of
19 undecided about whether to go out or not.

20 And so she talks to Marvin. And what she says to him
21 is what are you going to do. And Marvin says I've got work
22 to do; I've got to go work on a car; go out if you want.

23 And so Marvin leaves. He goes to work on the car. He
24 goes down. He is gone until almost 10 o'clock. When he
25 gets back there is a note on the table. That note says I

1 have gone out, I am going to be gone for a while, dinner is
2 being cooked, have dinner.

3 And so Marvin grabs something to eat. He is thinking
4 about what is going to go on for the rest of the evening.
5 And he says you know what, I am going to go out and grab a
6 beer.

7 And so Marvin goes out in his yard. There is a bicycle
8 that he has borrowed, someone -- a friend of theirs had left
9 there. And so he says I am going to take the bicycle, I am
10 going to go down the road, I am going to get a beer.

11 Marvin Porcher made his first bad decision when he
12 started out on that bike. As he began to go down the street
13 what he saw on the ground was a little tube, and what was in
14 it was some jewelry. He picked it up. It is dark outside.
15 I don't know what this is about but I will take a look at it
16 when he gets -- when I get back home.

17 So he puts that into his pocket. Then what happens, he
18 goes a little bit further. Under the light there are some
19 necklaces on the ground. He picks up that necklace. Does
20 the same thing. I can't see much of anything out here. I
21 will look at it when I get home.

22 So Marvin proceeds. He goes on down the road. He is
23 on his way to Big Keys to get a beer. And when -- as he is
24 approaching the area where Big Keys is, there is a man
25 there. And that man says hey do you want to buy a laptop.

1 Marvin begins to kind of haggle with him and say how
2 much do you want for it. The guy says I want a hundred
3 bucks. Marvin says I don't have a hundred bucks, I will
4 give you sixty. They guy said no \$60 that is not enough,
5 you will have to owe me. Marvin says I don't know you, you
6 either take the \$60 or you don't.

7 The guy says okay I will take the \$60. Marvin says
8 show me the computer works. Show me that you have the
9 charger for it. The guy powers the computer on, shows him
10 the charger. Marvin pays him the \$60 dollars and takes the
11 computer.

12 By the time he is finished with all of this, Big Keys
13 is closed. He can't get his beer. So what he does is he
14 takes the bike that he had in his yard, his friend's bike.
15 He returns that bike and he begins to walk home.

16 As he is walking home Officer Salgado comes up behind
17 him and stops him. This is where he makes probably the
18 poorest decision that he made that entire night. And that
19 decision was to give them someone else's name. He only used
20 part of his name.

21 He was worried about the computer that he had. He was
22 worried about the jewelry that he had gotten. He had just
23 picked up the jewelry. He had just purchased the computer
24 off the street.

25 Marvin is in a situation that he made three poor

1 decisions. But fortunately for him those three poor
2 decisions don't equal a burglary.

3 So what else are we going to look at in this case and
4 what else is important in this case is simply this: There
5 was a social relationship. There was a working relationship
6 between Mr. Porcher, Ms. Wohlford, and Ms. Rutledge. He had
7 been at her home to do work in the past. He had been in her
8 home in the past socially.

9 On the night before, he was there. He gave her a
10 tattoo. There is no question about that. He didn't charge
11 her for the tattoo.

12 But in the past when he had done work on the house they
13 had worked out an arrangement and money was exchanged for
14 that.

15 Probably what is most important is what you won't hear
16 today. And what you are not going to hear is you are not
17 going to hear any evidence, any scientific evidence, any
18 DNA, any fingerprints, anything, any other eyewitness that
19 is going to say Marvin Porcher burglarized that house that
20 night.

21 At the conclusion of this trial I am going to come back
22 to you and after you have heard the lack of physical
23 evidence, about the decisions that Marvin Porcher made that
24 night and how poor they were. But even being poor they
25 don't equal burglary. And I'm going to ask you at the

1 conclusion of this case to find Mr. Porcher not guilty.

2 Thank you.

3 THE COURT: You may call your first witness.

4 MS. SHEALY: May it please the court.

5 THE COURT: Yes, ma'am.

6 MS. WHITAKER: Fernando Salgado.

7 (WHEREUPON, the witness was duly sworn.)

8 THE CLERK: State your full name and spell your last
9 name.

10 MR. SALGADO: Fernando Salgado, S-A-L-G-A-D-O.

11 THE COURT: You may proceed.

12 MS. SHEALY: Your Honor, at this time may we go ahead
13 and move into evidence the items that we have had previously
14 marked that are without objection?

15 THE COURT: Proceed.

16 MS. SHEALY: Okay. At this time we would move into the
17 record State's Exhibits 1 through 24.

18 THE COURT: I have already marked -- I have already
19 moved your exhibits into ---

20 MS. SHEALY: Okay. I just wanted to do it on the
21 record.

22 THE COURT: You -- it is on the record.

23 MS. SHEALY: Okay. Very good. Thank you.

24 (FERNANDO SALGADO, having first
25 been duly sworn, testified as follows:)

1 DIRECT EXAMINATION BY MS. SHEALY OF MR. SALGADO:

2 Q Mr. Salgado, you may need to speak up just a little bit
3 for us if you don't mind; okay?

4 A Yes, ma'am.

5 Q Tell the jury your name again.

6 A Fernando Salgado.

7 Q And where are you currently employed?

8 A Stabilus.

9 Q Spell that for me.

10 A S-T-A-B-I-L-U-S.

11 Q Okay. And where is that business?

12 A It is in Gastonia, North Carolina.

13 Q Where did you grow up?

14 A Dallas, North Carolina.

15 Q Okay. Now tell us about your educational background.

16 A I graduated from North Gaston High School. And
17 graduated from Gaston College with an associate's degree in
18 applied sciences.

19 Q Okay. Did you have any further educational training?

20 A The South Carolina Criminal Justice Academy.

21 Q Okay. Did you in fact work for North Charleston Police
22 Department?

23 A I did.

24 Q And would you tell the jury please when you were
25 employed there.

1 A From 2008 to 2012.

2 Q And in your capacity there did you have to attend the
3 Criminal Justice Academy?

4 A Yes, ma'am.

5 Q If we could focus your attention back to November of
6 2011. Would you tell the jury in what capacity you were
7 working with North Charleston.

8 A I was a neighborhood resource officer.

9 Q Okay. And could you describe for us what a
10 neighborhood resource officer does?

11 A They work very closely with the community having
12 community meetings, talk with the community helping them
13 whatever way they can if we can help them out, and just try
14 and answer questions and concerns that they have for us.

15 Q Okay. And pursuant to that rule did you in fact were
16 you assigned to a certain area of North Charleston?

17 A Yes, ma'am, I was assigned two neighbors, the Stall and
18 Midland Park area and also Pepperhill.

19 Q Okay. Focusing your attention specifically on
20 November 3rd, 2011, spilling into the morning hours of
21 November 4th, would you tell the jury please what shift you
22 worked that day.

23 A I worked 5:00 to 1:00 shift.

24 Q Okay. And in being a resource officer do you patrol
25 the streets?

1 A Yes, I just ride around and patrol. Yes, ma'am.

2 Q Okay. You indicated to us that you attend community
3 meetings. Is that in an effort to make relationships within
4 that community?

5 A Yes, ma'am.

6 Q On that night in question were you at any point
7 traveling down Stall Road?

8 A Yes, ma'am.

9 Q Your Honor, at this time I would ask that Mr. Salgado
10 be allowed to approach the dry-erase board for a diagram for
11 me.

12 THE COURT: Uh-huh.

13 Q If you will stand down over here. If you will open
14 that. Just to give members of the jury who may not be
15 familiar with that area an idea about where you were on
16 Stall Road could you draw that for us.

17 A (Witness complies.)

18 Q And what are you writing there?

19 A This will be Ashley Phosphate Road.

20 Q Okay. So if you could orient the jury.

21 A This is Ashley Phosphate Road (pointing), and this
22 would be Stall Road (pointing), the actual road where the
23 incident took place. And this is Midland Park Road
24 (pointing).

25 Q Okay. You can go ahead and have a seat for us. Well,

1 while you are up there if you would indicate please as you
2 were traveling down Stall Road before you encountered Mr.
3 Porcher could you explain to the jury which way you were
4 traveling.

5 A I was traveling this way (pointing).

6 Q Okay. And when do you come across an individual on a
7 bicycle?

8 A Around this general area right here (pointing).

9 Q Okay. We are going to go to some photographs. So you
10 can have a seat. Go ahead and close that door if you would
11 so we can see the photographs.

12 A (Witness complies.)

13 Q The picture should come up on your monitor after it
14 comes up here showing you what has been previously marked as
15 State's Exhibit 1. Do you see -- can you see that?

16 A Yes, ma'am.

17 Q Can you describe that area by pointing to it to kind of
18 give us a place of reference?

19 A Do you want me

20 Q I think if you -- does he need to actually draw on the
21 diagram?

22 THE COURT: Uh-huh.

23 THE CLERK: He can just

24 A Draw like a circle right here (motioning)?

25 THE COURT: Uh-huh.

1 A (Witness complied.)

2 Q Okay. Now what drew your attention when you went by
3 the bicyclist?

4 A I drove by. And as I passed him I noticed that he did
5 not have a rear blinking light ---

6 Q Okay.

7 A --- on his bicycle.

8 Q And why -- why did that catch your attention; what were
9 you concerned about?

10 A It concerned me because right there where he was it was
11 very dark area and he disappeared, and I was concerned for
12 his safety and also the safety of others.

13 Q Was he clothed in bright colors?

14 A Dark clothing.

15 Q Okay. I am showing you what has been previously marked
16 as State's Exhibit 2. Okay. Now this photograph obviously
17 was taken during the daytime, but what hour -- well, what
18 time of the evening did you come across the bicyclist?

19 A 12:04 ---

20 Q 12:04 in the ---

21 A --- a.m.

22 Q --- evening -- early morning hours ---

23 A Yes, ma'am.

24 Q --- of the 4th? Can you explain to the jury, please,
25 which way you were going initially and which way the

1 bicyclist was?

2 A I was going this way (pointing). He was coming this
3 way (pointing).

4 Q Okay. And after you passed him what did you then do?

5 A Went to somewhere where I could turn around safely and
6 then come back and meet ---.

7 Q Okay.

8 A --- and speak with him.

9 Q I am showing you again State's 1. Can you point out
10 for us there where it was that you turned around?

11 A (Indicating on monitor.)

12 Q When you turned around and came back did you come back
13 with flashing -- with your blue lights on or with your siren
14 or anything?

15 A No, ma'am.

16 Q Okay. What was your intention in coming back towards
17 the bicyclist?

18 A To advice him of my concern and hoping he would take my
19 advice, and because I don't want anybody to get injured ---

20 Q Okay.

21 A --- especially

22 Q Especially what?

23 A Especially him or somebody else.

24 Q When you returned back from making your U-turn - I am
25 showing you State's Exhibit 2 - could you point out to us

1 where it was that you encountered Mr. Porche?

2 A When I came back, ma'am?

3 Q When you came back down.

4 A This area right here (indicating on monitor.)

5 Q Okay. And which direction if you could show us on the
6 map you were coming back.

7 A I was coming this way (indicating on monitor.)

8 Q Okay. Did he still have the bicycle?

9 A No, ma'am.

10 Q Were you in some type of marked car that evening?

11 A Yes, ma'am.

12 Q So you went past him in a marked car, turned around;
13 and when you came back the bicycle was no longer there?

14 A Yes, ma'am.

15 Q Okay. And showing you State's Exhibit 3 does that
16 better show you where you encountered him? You may need to
17 redraw those.

18 A Around in this general area (indicating on monitor.)

19 Q Describe for the jury if you would on Stall Road in the
20 evening hours is that area very well lit?

21 A There are some areas that are not well lit at all.

22 Q And what about that area?

23 A No.

24 Q Okay. If you would tell us then when you approached
25 Mr. Porcher tell us what happened. What happened?

1 A Well, I greeted him like I greet everyone else and
2 advised him of my concern for his safety.

3 Q Did you ask him his name?

4 A Yes, ma'am.

5 Q And tell the jury whether or not you recognized him
6 from the community.

7 A Yes, ma'am, I did recognize him.

8 Q Okay. When he gave you his name what name did he give
9 you?

10 A He gave me Marvin Swinton.

11 Q Okay. And is that the name you knew him as?

12 A No, ma'am.

13 Q When ya'll were talking did he indicate -- well, what
14 did you do based on the name that he gave you?

15 A Well, I knew that he was -- he wasn't being truthful
16 with me. So I asked him for his ID.

17 Q Okay. And while you were talking to him did you notice
18 anything about his jacket area?

19 A Yes, I noticed he had a bulge in his jacket.

20 Q Okay. Did Mr. Porcher give you his lic- -- his ID?
21 I'm sorry.

22 A No, ma'am.

23 Q Tell us what happens next. Do you call to check on
24 that ID at any point?

25 A Yes, ma'am.

1 Q Describe to the jury when you are checking on someone's
2 ID who are you actually calling?
3 A The North Charleston Reference Department.
4 Q Okay. And what information do you give them when you
5 call?
6 A I gave them the name and date of birth.
7 Q And they are checking for what?
8 A For ID.
9 Q Okay. And did you give the name Marvin Swinton?
10 A Yes, ma'am.
11 Q Did anything come back?
12 A No, ma'am.
13 Q Did you have a further discussion with Mr. Porcher
14 about where he was from?
15 A Yes, ma'am, he said he was from New York.
16 Q Okay. And that is when he was giving you the name
17 Swinton?
18 A Yes, ma'am.
19 Q Based on that, when you called in for an ID check did
20 you tell anything to the person that you called; did you ask
21 them anything regarding New York?
22 A Yeah, I told them to run it through New York ---
23 Q Okay.
24 A --- and make sure it is through New York.
25 Q So it had already been run through South Carolina?

- 1 A Yes, ma'am.
- 2 Q And then you asked them to run it through New York?
- 3 A Yes, ma'am.
- 4 Q And did anything come back on Marvin Swinton?
- 5 A No, ma'am.
- 6 Q When you were looking at Mr. Porcher if you could
- 7 describe to the jury how he appeared.
- 8 A He appeared sweaty and nervous.
- 9 Q Okay. And what about his coat, was there anything that
- 10 you noticed about the way his jacket looked?
- 11 A Yeah, it was bulging out a little.
- 12 Q Okay.
- 13 A It didn't look normal at all.
- 14 Q Based on that what did you ask Mr. Porcher?
- 15 A I asked for consent to search his person.
- 16 Q And did he in fact give that to you?
- 17 A Yes, ma'am.
- 18 Q If you would please, tell the jury what you found as
- 19 you searched him.
- 20 A I found the laptop with the charger which I put on the
- 21 hood. And then in his back, left pock- -- pant pocket I
- 22 found his wallet which contained his ID.
- 23 Q Okay. And when you found that ID did it have the name
- 24 Marvin Swinton?
- 25 A No, ma'am.

1 Q What name did it have?

2 A Marvin Porcher.

3 MS. SHEALY: Your Honor, at this time with the court's
4 permission I would like to read a stipulation into the
5 record.

6 THE COURT: You may proceed.

7 MS. SHEALY: This is State's Exhibit 21. Attorneys for
8 the State and the defense agree and stipulate to the
9 following: Marvin Porcher was booked into the Charleston
10 County Detention Center on November 4th, 2011, charged with
11 burglary-first.

12 Removed from Mr. Porcher were the following items: one
13 pair of black sweatpants, one brown belt, one grey hat, one
14 green jacket, one black wallet, one penny, a Visa Plasma
15 card, one watch, one black rag, South Carolina ID, three
16 keys on a ring, two brown shoes, one pair of blue jeans, and
17 one black sweatshirt.

18 Q Now Mr. Salgado, I am showing you what has been
19 previously marked as State's Exhibit 20. Was this the hat
20 that Mr. Porcher had on?

21 A Yes, ma'am.

22 Q You would not have seen any underclothes from him?

23 A No, ma'am.

24 Q Or sweat pants if they were under jeans?

25 A No, ma'am.

1 Q Did he have on jeans?

2 A Yes, ma'am.

3 Q If you could step down with the court's permission.

4 THE COURT: Uh-huh.

5 (Witness complied.)

6 Q And in taking a look at the jacket that Mr. Porcher had
7 on can you show us where you found items.

8 A In this pocket.

9 Q And speak loud enough so the court reporter can hear
10 you for me. Maybe you should stand over here so you are
11 facing her.

12 A I found the items in this jacket pocket right here
13 (pointing).

14 Q What did you find there?

15 A A pearl necklace.

16 Q Okay. And were there other -- any other area of the
17 jacket that you found anything?

18 A Huh-uh.

19 Q Where did you -- was there a cylinder found?

20 A Yes, ma'am.

21 Q Where was that found?

22 A In the left, pant pocket ---

23 Q Okay.

24 A --- along with the wallet.

25 Q And when you say left pant pocket you are talking about

1 his jeans; is that correct?

2 A Yes, ma'am.

3 Q And there you found a cylinder?

4 A Yes, ma'am.

5 Q Now did you -- let me show you what's been marked just
6 for ID purposes and ask you, do you recognize that?

7 A Yes, ma'am.

8 Q And is this the laptop that you found?

9 A Yes, ma'am.

10 Q That is State's Exhibit for ID 29. And the charger?

11 A Yes, ma'am.

12 Q You can go ahead and take your seat now.

13 (Witness complied.)

14 Q I am showing State's Exhibit 20. Do you see State's
15 Exhibit 20? When you describe the word cylinder can you
16 point in that photograph and show us what you are talking
17 about?

18 A (Indicating.)

19 Q Okay. And in the jacket you found what if you recall
20 from that jewelry?

21 A (Indicating.)

22 Q That is the pearl necklace?

23 A Yes, ma'am.

24 Q Okay. The other items in that photograph are you aware
25 of whether or not they were in that cylinder?

1 A Yes, ma'am.

2 Q Very good. What did Mr. Porcher tell you about that
3 laptop?

4 A He advised that he was going to go to a friend's house
5 on Stall Road to get on the internet.

6 Q That that is why he had that laptop with him?

7 A Yes, ma'am.

8 Q Okay. Now based on the fact that he gave you a name
9 other than this own name that night what did you do?

10 A Placed him under arrest for false information to
11 police.

12 Q Okay. One other matter. Did you find any other items
13 on him tool wise?

14 A Yes, ma'am. I located a razor knife, an Allen wrench,
15 a wrench, and a zip tie. And that was in his pants, left
16 pocket, front.

17 Q Pants, left, front pocket?

18 A Front, left pocket. Yes, ma'am.

19 Q Okay. So those tools on the front and the wallet and
20 the cylinder on the back and the pearl necklace in the coat
21 pocket; is that correct?

22 A Yes, ma'am.

23 Q You then put him under arrest; is that what you said?

24 A Yes, ma'am.

25 Q And that was for what charge?

1 A False information to police.

2 Q What did you then do after making that arrest?

3 A I continued to search revealing the other property and
4 then I placed him in the back of my patrol vehicle.

5 Q Where did y'all go once you left that scene?

6 A Went to the North Charleston City Hall where the
7 detective bureau is located.

8 Q Okay. So the way that the police hierarchy is you have
9 people who are resource officers and patrolmen and then
10 there's a detective unit as well?

11 A Yes, ma'am.

12 Q Okay. And you in fact took Mr. Porcher to the
13 detective unit?

14 A Yes, ma'am.

15 Q Tell the jury if you would which detective you brought
16 Mr. Porcher to.

17 A Detective Evans.

18 Q Okay. Is that Mark Evans?

19 A Yes, ma'am.

20 Q When y'all arrived at the police station what was --
21 what happened with Mr. Porcher?

22 A He was put in the room, in the interview room.

23 Q Okay. And did -- were you around when Mr. Evans did
24 something with the computer?

25 A Yes, ma'am, he opened it up.

1 Q And after he opened it up were you present when he did
2 something further?

3 A Yes, ma'am.

4 Q What did he do?

5 A He turned it on and looked through a couple of files.

6 Q That were on the computer?

7 A Yes, ma'am.

8 Q Were you present when he made a phone call?

9 A Yes, ma'am.

10 Q Okay. And I can have him talk about the details of the
11 phone call. After the phone call or some time while y'all
12 were there was Mr. Porcher in fact interviewed by Detective
13 Evans?

14 A While he was there?

15 Q Yes.

16 A Yes, ma'am.

17 Q Okay. Were you a participant in that process?

18 A No, ma'am.

19 Q After the interview and after Detective Evans made a
20 phone call what did you then do with Mr. Porcher?

21 A I transported to the Charleston County Detention
22 Center.

23 Q Okay. Was he in fact charged with something else in
24 North Charleston that evening as well?

25 A Yes, ma'am.

- 1 Q Tell us what he was charged with?
- 2 A Possession of stolen property.
- 3 Q Okay. And that is a North Charleston charge?
- 4 A Yes, ma'am.
- 5 Q Based on the items that you found on him while on Stall
- 6 Road?
- 7 A Yes, ma'am.
- 8 Q And again, you came in contact with him just minutes
- 9 after 12 o'clock?
- 10 A Yes, ma'am.
- 11 Q Okay. Now those charges, false information and
- 12 possession of stolen goods, those are municipal court
- 13 charges?
- 14 A Yes, ma'am.
- 15 Q Where you go to traffic court?
- 16 A Yes, ma'am.
- 17 Q Okay. Let me ask you this: Did y'all find out where
- 18 the owner of the laptop lived?
- 19 A Yes, ma'am.
- 20 Q And could you tell the jury if you recall what street
- 21 that is? Do you remember the name of the street?
- 22 A No, ma'am.
- 23 Q Okay. Do you know whether or not it was in North
- 24 Charleston's jurisdiction?
- 25 A Yes, it was in the North Charleston jurisdiction.

1 Q Okay. If I showed you something to refresh your
2 memory -- you don't recall the name of the street? Do you
3 remember where it was located?

4 A Yes, ma'am.

5 Q Okay. Where was it located?

6 A Off of Townsend.

7 Q And is that off -- also off of Rivers?

8 A It is off of -- Townsend is off of Midland Park Road.

9 (Cough) I'm sorry. Street is off of Rivers Avenue.

10 Q Well, that is the street I was asking you about,

11 ---

12 A Oh, Street.

13 Q --- Street.

14 A I'm sorry.

15 Q You didn't go out to the trailer that night?

16 A No, ma'am.

17 Q Okay. Now on your diagram if you could approach that
18 one more time and just show us in connection to where Stall
19 Road is where is Road -- or Street?

20 A (Indicating.)

21 Q Okay. Do you know how far it was from where you came
22 across Mr. Porcher back over to Street approximately
23 how far?

24 A A mile and a half.

25 Q A mile and a half. Were you present when Detective

1 Evans asked that another detective from North Charleston go
2 to Street?

3 A Yes, ma'am.

4 MS. SHEALY: Beg the court's indulgence just one
5 moment.

6 THE COURT: Uh-huh.

7 MS. SHEALY: I have no further questions. Please
8 answer any that the defense may have.

9 THE COURT: You may proceed.

10 MS. SHEALY: Thank you.

11 THE COURT: Mr. Smith, you may proceed when you are
12 ready.

13 **CROSS-EXAMINATION BY MR. SMITH OF MR. SALGADO:**

14 Q Good morning.

15 A Good morning.

16 Q Officer Salgado, when you initially encountered Mr.
17 Porcher you advised him about a bicycle violation; is that
18 correct?

19 A The red blinking light.

20 Q And is that something that you gave him a ticket for?

21 A No, sir.

22 Q And so you were just basically stopping just to advise
23 him about that and that he might want to get that on his
24 bike; is that correct?

25 A Yes, sir. My intention was never to give him a ticket

1 A Yes, sir.

2 Q And the solicitor was asking you about knowing Mr.
3 Porcher from the community. Even though you knew him you
4 still called him the name Marvin Swinton; is that correct?

5 A Yes, sir.

6 Q When you took the other items from him did you ask him
7 about the knife, the razor knife, the Allen wrench, what he
8 had those for?

9 A No, sir.

10 Q And I just want to be clear on the jewelry. The pieces
11 of the jewelry aside from the necklace, they were down in
12 that little cylinder; is that correct?

13 A Yes, sir.

14 Q Now you transported Mr. Porcher at some point over to
15 the Detective Bureau; is that correct?

16 A Yes, sir.

17 Q And were you there when he waved his Miranda warnings?

18 A No, sir.

19 Q Okay. When you left -- and your involvement in the
20 case was that he had been charged with false information to
21 police and with receiving stolen goods; is that correct?

22 A Yes, sir.

23 Q And that pertained specifically to the items that he
24 had on his person?

25 A Yes, sir.

1 Q And to the fact that he had given you the name Marvin
2 Swinton?

3 A Yes, sir.

4 Q As part of those charges do you appear in magistrate
5 court?

6 A Municipal -- yes.

7 Q Municipal court?

8 A Yes, sir.

9 Q And did you appear at municipal court in this case?

10 A Yes, sir.

11 Q And do you remember how that case was disposed of?

12 A I can't recall.

13 Q Okay. Do you remember if -- did you ever have a jury
14 trial on that charge that you are aware of?

15 A We didn't have a jury trial.

16 Q Okay. Do you remember if he pled guilty or not?

17 A I believe he plead -- pled guilty.

18 MR. SMITH: I beg the court's indulgence.

19 THE COURT: Yes, sir.

20 MR. SMITH: No further questions, Your Honor.

21 THE COURT: Any redirect?

22 MS. WHITAKER: Just a few follow-up questions.

23 THE COURT: You may proceed.

24 **REDIRECT EXAMINATION BY MS. SHEALY OF MR. SALGADO:**

25 Q I just want to make sure I understand correctly. When

1 you asked Mr. Porcher what happened to the bike, he said he
2 took it to where?

3 A His girlfriend's house.

4 Q His girlfriend's house. Okay. And when Mr. Smith was
5 asking you about whether Mr. Porcher pled guilty to the
6 false information and to the possession of stolen goods,
7 that didn't happen in this courthouse; right?

8 A No -- no, ma'am.

9 Q That happened over where the traffic court is held in
10 North Charleston Municipal Court?

11 A Yes, ma'am.

12 Q Okay. That is on a big court charge?

13 A Yes, exactly.

14 Q Okay. And I wasn't sure I understood correctly. Mr.
15 Smith asked you whether you continued to call him Swinton?
16 Tell the jury who did you know he was when you walked up to
17 him.

18 A Marvin Porcher.

19 Q What name did he give you?

20 A Marvin Swinton.

21 Q Okay. And do you see the individual that you dealt
22 with that evening in the courtroom?

23 A Yes, ma'am.

24 Q Can you point him out to us?

25 A Yes, ma'am. Right there (indicating).

1 Q Okay. And just one follow-up. Street was not in
2 North Charleston's jurisdiction, but it is in Charleston
3 County's jurisdiction?

4 A Yes, ma'am.

5 Q Very good. I have no further questions. Thank you.

6 THE COURT: Any objection to the witness being excused,
7 from the State?

8 MS. SHEALY: Your Honor, we would ask that he remain
9 under subpoena.

10 THE COURT: Sir, you are excused subject to being
11 recalled. You may call your next witness.

12 MS. SHEALY: Detective Mark Evan.

13 (WHEREUPON, the witness was duly sworn.)

14 THE CLERK: State your first name and spell your last
15 name.

16 MR. EVANS: Mark Evans, E-V-A-N-S.

17 THE COURT: You may proceed.

18 MS. SHEALY: Thank you, Your Honor.

19 THE COURT: You are welcome.

20 (MARK EVANS, having first been duly
21 sworn, testified as follows:)

22 DIRECT EXAMINATION BY MS. SHEALY OF MR. MARK EVANS:

23 Q It is actually Sergeant Evans now; is that correct?

24 A Yes.

25 Q Let me close this behind you. Tell the jury a little

1 bit about yourself. Where are you from?

2 A Wheeling, West Virginia.

3 Q Okay. And how long have you been in the Charleston
4 area?

5 A Roughly about 11 years.

6 Q Tell us about your educational and employment
7 background.

8 A Yes, ma'am. I have a bachelor's degree in criminal
9 justice. I have an associate's degree in business -- or
10 business management. And I have a -- been in law
11 enforcement for ten years now.

12 Q Okay. Were you at a different agency other than North
13 Charleston originally?

14 A I worked with the Hanahan Police Department and North
15 Charleston.

16 Q Okay. Focusing your attention then back to
17 November 4th of 2011 if you would please tell the jury what
18 capacity you were working and where.

19 A At that time I was assigned to the North Charleston
20 Police Department Detective Division. I was over the
21 Persons Crime Unit. I was assigned on the Persons Crime
22 Unit.

23 Q Okay. And how long had you been in that capacity? Do
24 you remember?

25 A I guesstimate maybe two years.

1 Q Okay. On the date of the fourth, the early morning
2 hours, did you receive a phone call from Resource Officer
3 Salgado?

4 A Yes, I did.

5 Q Okay. And based on your conversation with him did you
6 instruct him to do something?

7 A Based on the information that he provided, Detective
8 Jourdan asked me to have him bring up Mr. Porcher.

9 Q Okay. And did in fact Mr. Salgado bring Mr. Porcher to
10 the detective unit?

11 A He did.

12 Q When he arrives there could you tell the jury please
13 what you did.

14 A Upon Mr. Porcher's arrival he would have been brought
15 in and placed into an interview room and then I would have
16 spoke with Officer Salgado about obtaining whatever
17 information he had.

18 Q Okay. So you spoke with Salgado, and Mr. Porcher was
19 in an interview room?

20 A Yes.

21 Q Did Mr. Salgado in fact show you a laptop?

22 A He did.

23 Q And showing you what has been previously marked for ID
24 purposes State's 29, does this appear to be the laptop?

25 A That appears to be the laptop.

1 Q Okay. And did you in fact also see the charger?

2 A Yes.

3 Q Okay. Now at some point do you speak with Mr. Porcher?

4 A Later, yes.

5 Q Okay. So initially what -- tell the jury what you did
6 with the laptop.

7 A Initially when Officer Salgado brought the laptop I
8 opened up the laptop. I turned the power on. I observed --
9 I don't exactly recall what the background was, but I
10 believe it was some writing with pink and brown. At which
11 point I clicked on an icon and then observed that the --
12 there was a thing that said Nancy -- I believe it was
13 Nancy's resume. And I opened that up where I found a phone
14 number and contacted.

15 Q Okay. And so you off of that resume found the number?

16 A Yes.

17 Q Could you tell the jury what you said when you called
18 the number?

19 A I don't recall exactly what I said. But it was
20 basically I am a detective with North Charleston, I am
21 inquiring about your laptop, do you know where it is. And I
22 believe her response was it is at my residence.

23 Q Okay. Now when Mr. Porcher came in prior to your doing
24 that, were you made aware of the items that he had on him?

25 A Yes.

1 Q Okay. And so did you in fact see a cylinder with
2 jewelry?

3 A I believe Officer Salgado showed me that, yes.

4 Q Okay. And do you also recall some tools?

5 A I believe so. But I don't -- I can't --

6 Q Okay.

7 A -- recall exactly what they were.

8 Q You are not as fresh on the items?

9 A Yes.

10 Q Your attention was where?

11 A On the laptop computer.

12 Q Okay. And when talking to -- was it Nancy ---

13 A Yes.

14 Q --- Waldrop that you called?

15 A Wohlford I believe is her ---

16 Q Yes.

17 A --- last name. When you called her, she indicated what
18 about her laptop?

19 A That it was last seen at her residence.

20 Q Did you give her any other information at that point?

21 A No.

22 Q Okay. Did you instruct her to do something?

23 A I asked her to return to her residence and that
24 Charleston County deputy along with a North Charleston
25 detective would meet her there.

1 Q Did Detective Jourdan then leave to actually go and
2 meet ---

3 A Yes, ma'am.

4 Q --- Ms. Wohlford? Now what did you do after
5 establishing that? Did you speak with Mr. Porcher?

6 A After I established that the laptop did not belong to
7 Mr. ---

8 Q Yes.

9 A --- Porcher? Yes, ma'am.

10 Q Okay. And if you would, describe what an investigative
11 room looks like or an interview room looks like at North
12 Charleston.

13 A Our interview rooms are I guess I would say ten by ten.
14 There's a table sitting in the middle with two chairs on
15 each side. On one side the walls are white. At that time
16 the floors were kind of a linoleum tile. On one wall there
17 is a viewing window. And that is

18 Q Okay. Now when you were interviewing Mr. Porcher was
19 anyone else in the room with you?

20 A No.

21 Q What is one of the first things you do when you begin
22 to talk to a suspect?

23 A Obtain some biographical information and then do an
24 advisement of constitutional rights.

25 Q Okay. And did you in fact do that with Mr. Porcher?

1 A I did.

2 Q I'm showing you what has have been marked as State's
3 Exhibit 23. I ask you if you would describe to the jury
4 what that document is.

5 A This is the assigned North Charleston form. It is the
6 form that we use when we provide both witnesses, victims,
7 suspects, with their advise of constitutional rights.

8 Q Okay.

9 MS. SHEALY: Beg the court's indulgence just a
10 second.

11 (Pause.)

12 Q Okay. If you would please, on this document -- well,
13 first of all, go through if you would exactly how you read
14 Mr. Porcher his Miranda warnings that evening.

15 A At the top of the form I would have asked him what his
16 name was. To which he replied Marvin Porcher.

17 I would have made sure that I had the correct spelling.
18 I then asked date of birth. Which he provided his age which
19 he provided as 45, the grade he completed in school which is
20 the 10th grade, and whether he had a diploma or GED. And he
21 advised that he had a diploma.

22 Q When beginning to interview someone is it important for
23 you to establish whether or not you are able to understand
24 them and they appear to be able to understand you?

25 A Yes, very much so.

1 Q And in your dialogue with Mr. Porcher did he appear to
2 understand what you were saying to him?

3 A Yes, ma'am.

4 Q Did you have any difficulty in understanding what he
5 was saying?

6 A No, ma'am.

7 Q Okay. If you would continue with your process then.

8 A The next line following down it says I, and then I
9 wrote Marvin Porcher have been advised by Detective M. Evans
10 of the North Charleston Police Department that. And then it
11 proceeds through your advisement of constitutional rights.

12 And I read them as: I have the absolute right to
13 remain silent and do not have to answer any questions or
14 give a statement and this fact cannot be used against me.

15 He advised that he understood if I do answer any
16 questions or give a statement anything I say can and will be
17 used against me in a court of law. Again, he advised that
18 he understood.

19 I have the right to consult with a lawyer of my choice
20 before I answer questions or give a statement and also have
21 him or her present while I am being questioned. Again, he
22 understood.

23 If I wish to talk to a lawyer or have him or her
24 present but I am unable to afford to hire a lawyer one will
25 be appointed to represent me free of charge. Again, he

1 understood.

2 If I decide to answer questions or give a statement
3 without having a lawyer present representing I have the
4 absolute right during this interview to stop answering
5 questions and to remain silent. Again, he understood.

6 I would have then provided him with a form. He would
7 have initialed beside each one. The following line says I
8 fully understand each of these rights explained to me.

9 He would have then signed that form, that line,
10 acknowledging that he understood each of the rights that I
11 explained to him previously.

12 Most of the time I would say just keep a hold of the
13 pen and I would proceed down to: Having these rights of
14 mine I wish to waive these rights and answer questions. No
15 threats, force or promise of any kind have been made to me
16 by anyone to cause me to waive these rights and/or answer
17 questions. And again, he would have signed that form and
18 then I would have taken the form back.

19 I placed my name on the signature where it says
20 witness, on two lines. And then I would have put the date
21 and the time as when I completed this form which was
22 zero-one-forty-five.

23 Q Okay. And if you will hand me that form back. I am
24 going to give you a copy to look at. It is going to show up
25 on this monitor as well.

1 So this is where you put the biographical information?

2 A Yes, ma'am.

3 Q And each of these lines that appear to have initials
4 reflect what?

5 A Those are Mr. Porcher's initials.

6 Q Okay. And whose signature is this (pointing)?

7 A Mr. Porcher's signature.

8 Q And whose signature is this?

9 A Mr. Porcher's signature.

10 Q Okay. Now when interviewing him, tell the jury whether
11 or not you used any type of recording device.

12 A I -- at the time our interview rooms were not equipped
13 with video and audio recording. We used a departmental
14 issued, handheld digital recorder.

15 Q And did you in fact use that in this case?

16 A It was activated.

17 Q Okay. Now after getting -- going over his rights with
18 him and his indicating he wanted to speak to you, could you
19 describe for the jury how that conversation went and what
20 Mr. Porcher said.

21 A I don't really recall exactly what Mr. Porcher said. I
22 recall that he had mentioned that he had purchased it from a
23 gentleman on Remount Road.

24 He didn't really divulge any information as to who he
25 purchased it from, exactly where he purchased it from, or

1 any other pertinent details.

2 Q Okay. Was he being cooperative and talkative when he
3 was being interviewed?

4 A We were conversating.

5 Q Okay. But as it came to details he didn't tell you the
6 name of the person?

7 A No.

8 Q He didn't give you a description of the person?

9 A No.

10 Q He didn't tell you the specific location?

11 A No.

12 Q Okay. Now when you finished interviewing him that
13 evening did you in fact at some point make notes of your
14 conversation with him?

15 A I would have, yes.

16 Q And do you have your notes with you?

17 A My case notes?

18 Q Yes.

19 A Yes, ma'am. I have a copy in my pocket.

20 Q Well, I can just show you in case you need to refer to
21 them. When would you have made these notes?

22 A I try to make them as soon as possible after the --
23 after the conclusion of whatever action was taken. At this
24 night I don't recall whether I made it that night or when I
25 came in the following day.

1 Q Okay. But it would have either been that same night or
2 the next day that you would have reported it?

3 A Actually I began these notes at 0306 a.m. on the
4 fourth.

5 Q Okay.

6 A So it would have been the same night.

7 Q So that was pretty contemporaneous with your having
8 spoken to him; you spoke to him and then you made your notes
9 a little bit later that morning; ---

10 A Yes, ma'am.

11 Q --- is that correct? And again, any details that Mr.
12 Porcher gave you about allegedly buying it off the street?

13 A Not that I recall.

14 Q Okay. In writing your notes did you put down the
15 detail that you thought was significant regarding what he
16 had said?

17 A Mr. Porcher denies having any involvement in the theft
18 of the property and states that he purchased the laptop from
19 a subject on Midland Park.

20 Q And no other details were given?

21 A No.

22 Q Now pursuant to our request did we ask that you provide
23 us with a copy of that recording?

24 A You did.

25 Q And could you in fact find the recording?

1 A Unfortunately not.

2 Q Describe if you would to the jury what is usually done
3 with the recording after it has been completed.

4 A Once we are finished with our interviews we take those
5 recordings. We go through our computer that is stationed at
6 our desk. We plug it into our computer. It is a USB plug.
7 We plug it in. We take that and download it from the
8 player -- or the recorder I should say, onto a CD.

9 That CD is usually then taken and placed into the case
10 file which is maintained by what would be the case agent or
11 the arresting officer in this case.

12 Q Okay. And despite efforts did you ask other people to
13 look for the recording for us as well?

14 A Yes, I went to our records division in reference to
15 obtaining the entire case file. And when I did such I was
16 advised that the case file had been missing.

17 Q Okay. Now as far as North Charleston was concerned,
18 the two charges that y'all had against him, the false
19 information and the possession of stolen property, had been
20 disposed of for months before we asked for it; is that
21 right?

22 A I could only assume, yes, ma'am.

23 Q And those again are municipal level charges?

24 A Yes.

25 Q And Detective Jourdan went to the trail- -- to the

1 Q And you brought them to the courtroom today?

2 A Directly here.

3 Q And I am showing you what has been previously marked as
4 State's Exhibit 30. If you could tell the jury whether or
5 not that is what you brought to court for us.

6 A That is exactly what I received from evidence and
7 brought here.

8 MS. SHEALY: Beg the court's indulgence just a
9 moment.

10 (Pause.)

11 MS. SHEALY: I have no further questions. Please
12 answer any that the defense may have.

13 THE COURT: You may proceed.

14 **CROSS-EXAMINATION BY MR. SMITH OF MARK EVANS:**

15 Q Good afternoon Sergeant Evans. How are you?

16 A Good. How are you, sir?

17 Q Good. Can you tell me at the time that this occurred
18 was there a specific area of crime that you dealt with?

19 A Yes, I was in the violent crimes.

20 Q Okay. And as part of that are property crimes
21 something that you investigate?

22 A When we are on call or when we are working, any crime
23 that occurs if a detective is needed if you are the one that
24 is there, you handle it. Yes, sir.

25 Q And so that would have been your reason for involvement

1 in this case; is that correct?

2 A Yes, sir.

3 Q Now when Mr. Porcher sat down with you do you remember
4 the time when you all began your interview?

5 A I have in my notes it was 0140.

6 Q Okay. And you spent approximately 35 minutes with him;
7 is that correct?

8 A That is when I said that the interview had stopped,
9 yes, sir.

10 Q So that would have been at the point where you stopped
11 recording, you weren't writing anything down at that point;
12 is that correct?

13 A I am not -- I am not writing anything down during the
14 interview or at 0215 when I walked out?

15 Q What I am trying to get at is you would have stopped
16 any type of recording either written or audibly recording
17 Mr. Porcher at 2:15; is that ---

18 A I would have, yeah.

19 Q Okay. As a result of your talk with Mr. Porcher were
20 there any other notes that you took other than what are
21 contained in this report?

22 A Not that I am aware of.

23 Q Now do you routinely interview people that have been
24 charged with a crime?

25 A Yes.

1 Q And as part of that, sometimes you let a person give a
2 narrative about what happened; is that correct?

3 A I do.

4 Q And sometimes you do some questions and answers; is
5 that correct?

6 A Often.

7 Q In this case you didn't do them, question and answer;
8 is that correct?

9 A I would assume that I would have done some question and
10 answers. But I obviously did not obtain any information
11 that I felt pertinent to put in my case notes.

12 Q So there was nothing that you felt was pertinent to the
13 case; is that correct?

14 A Exactly.

15 Q Or you would have recorded it in some form or fashion?

16 A I would have hoped so, yes, sir.

17 Q Did -- when Mr. Porcher told you -- I think the
18 solicitor asked you this question. When Mr. Porcher told
19 you about purchasing the laptop did you have any further
20 questions about the person that he purchased the laptop
21 from?

22 A I could only assume yes that I would.

23 Q But there was no information contained in your report?

24 A No information contained, which means I wasn't provided
25 a description. If I would have been provided that

1 description I would have noted it in my case notes and would
2 have furthered that -- passed that information on to the
3 Charleston County deputies.

4 Q And so it is fair to assume that you didn't -- you
5 didn't follow up in any way on what Mr. Porcher told you; is
6 that correct?

7 A I did not.

8 Q Now along with your time in violent crime have you ever
9 worked in the Property Crime Division?

10 A Never.

11 Q Okay. Are you familiar with what happens sometimes in
12 property crime cases with goods being sold on the street?

13 A Yes.

14 Q Okay. Would you say that that is a common occurrence?

15 A It -- yes.

16 Q And in some instances because it is maybe taken to the
17 pawn shop; is that correct?

18 A Often times obviously.

19 Q And so either of those ways can come up in a situation
20 where things are stolen?

21 A Correct.

22 MR. SMITH: Beg the court's indulgence.

23 THE COURT: Uh-huh.

24 MR. SMITH: No further questions.

25 THE COURT: Any redirect of the witness?

1 MS. WHITAKER: Just -- just briefly, Your Honor.

2 THE COURT: You may proceed.

3 REDIRECT EXAMINATION BY MS. SHEALY OF MARK EVANS:

4 Q Sergeant Evans, Mr. Smith asked you about there being
5 people on the street who go to buy items off of other
6 people; is that correct?

7 A Correct.

8 Q Certainly there are also people who go to certain areas
9 to sell things; is that correct?

10 A Correct.

11 Q And there are people who go to sell things they have
12 just stolen; is that correct?

13 A Correct.

14 MS. SHEALY: I have nothing further. Thank you.

15 THE COURT: Any objection to the witness being excused,
16 from the State?

17 MS. SHEALY: I would like for him to remain under
18 subpoena.

19 THE COURT: Sir, you are excused subject to being
20 recalled.

21 MR. EVANS: Thank you.

22 THE COURT: You are welcome. You may call your next
23 witness.

24 MS. SHEALY: Cathy Wohlford. Nancy. I'm sorry. Nancy
25 Wohlford.

1 (WHEREUPON, the witness was duly sworn.)

2 THE CLERK: State your full name and spell your last
3 name.

4 MS. WOHLFORD: Nancy Tina Marie Wohlford,
5 W-O-H-L-F-O-R-D.

6 THE COURT: You may proceed.

7 MS. SHEALY: Thank you, Your Honor.

8 THE COURT: You are welcome.

9 (NANCY WOHLFORD, having first been
10 duly sworn, testified as follows:)

11 **DIRECT EXAMINATION BY MS. SHEALY OF NANCY WOHLFORD:**

12 Q Do you mind if I refer to you as Nancy?

13 A That's fine.

14 Q If you would tell the jury. How long have you been
15 living in Charleston?

16 A Well over ten years in the area.

17 Q And when you were a younger person you lived in
18 Charleston as well for a short time?

19 A When I was 14 I moved to Charleston.

20 Q Okay. So let us know about your educational
21 background. How far did you go in school?

22 A I dropped out in 9th grade, went back when I was 30 and
23 got my diploma.

24 Q Now, you know what, you are going to need to speak up
25 just a little bit for me. If you can just kind of maybe

1 turn that microphone a little bit toward you.

2 (Witness complies.)

3 Q There you go.

4 A I dropped out in the 9th grade, went back to school
5 when I was 30 and got my diploma.

6 Q And if you would, tell us -- tell us what you have been
7 doing work wise for the last several years.

8 A I was an EMT for eight years until I hurt my back, and
9 then I became a security officer. And that has been
10 probably five plus years now.

11 Q Okay. And when you were working as an EMT where were
12 you working?

13 A I was working for St. Paul's Fire Department. And I
14 was also working with Personal Care Ambulance Service and
15 American Heritage.

16 Q Okay.

17 A And MUSC.

18 Q And MUSC. And the injury to your back has led you to
19 what type of work?

20 A Being a security officer.

21 Q Now as a security officer do you have to hold a certain
22 license?

23 A Yes, ma'am, you have to go through training through
24 SLED.

25 Q And do you in fact have that license currently?

1 A Yes, ma'am, I do.

2 Q And how long have you had a license?

3 A Since '08; '07, '08.

4 Q So now when you are working security, if you would, do
5 you work one job or do you work ---

6 A I work two different security jobs and a cleaning
7 service.

8 Q And a cleaning service. And when you are working a
9 security job are you working for other businesses or for
10 residences?

11 A I am working for two companies. One is with residence.
12 Another one is with business.

13 Q Okay. Now focusing your attention back to November of
14 2011 would you tell the jury where you were employed at that
15 time.

16 A I was employed with ASG Security going into Signal AVA
17 Security. I was leaving one getting to the other.

18 Q Say that again.

19 A I was leaving one to ---

20 Q Going to ---

21 A --- with notice going into another.

22 Q And where were you living at that time?

23 A At Street, Lot .

24 Q And when you say Lot is that a mobile home park?

25 A Yes, ma'am.

1 Q Okay. I am showing you what has been marked as State's
2 Exhibit 5. Can you see that on your monitor?

3 A Uh-huh.

4 Q Is that a photograph of your mobile home at the time?

5 A Yes, ma'am.

6 Q Whose vehicle is that in that picture?

7 A Katherine Jackson.

8 Q And Katherine Jackson, who is that?

9 A She is a fellow security officer, a very good friend of
10 mine.

11 Q Okay. She came over that evening?

12 A Yes, I called her.

13 Q Who was your roommate at the time?

14 A Susan Rutledge.

15 Q Can you see Susan in that picture?

16 A Yes, she is sitting in the -- on the step there in the
17 white outfit.

18 Q Can you point to where she is.

19 A (Witness complies.)

20 Q Okay. And how long had you and Susan lived together
21 before this happened?

22 A About four to six months, four to five months.

23 Q Tell us a little bit about your mobile home how many
24 bedrooms were in there.

25 A It is actually a three-bedroom mobile home. But I

1 converted one of the bedrooms into a wash -- washer and
2 dryer area. So it became a two bedroom, one bath.

3 Q Okay. And did Susan have any health concerns?

4 A Yes, ma'am, she had COPD, anxiety, depression, bipolar.

5 Q So was she able to work?

6 A No, ma'am.

7 Q And did she have a boyfriend at that time?

8 A Yes, ma'am.

9 Q Okay. And what was his name?

10 A John Nye.

11 Q Now looking at that photograph could you please tell
12 us -- see the other mobile home depicted in the photograph
13 behind you; can you see it?

14 A Oh, yeah, that is my shed.

15 Q That is who?

16 A That is a shed.

17 Q That's -- over here (pointing)?

18 A Oh, over there ---

19 Q Yes.

20 A --- on that side?

21 Q Yes.

22 A Okay. Yeah, that is the old man.

23 Q And then who lived over on the other side of this
24 mobile home?

25 A Marvin Porcher and Cassie Callier at the time.

1 Q Now tell the jury who did you realize lived there
2 first, Marvin Porcher or Cassie?

3 A Well, I know Bill owned it. And Marvin Porcher was
4 living in it.

5 Q Okay. And Bill is a gentleman that owned a couple of
6 homes in that ---

7 A Yes.

8 Q --- mobile home park?

9 A Well, that one I know for sure. I can't say for
10 anything more.

11 Q And as far as you knew was anyone else ever living in
12 that trailer with them, with Marvin Porcher and with Cassie?

13 A As far as I know, nobody. I'm

14 Q That's fine.

15 A Now did Bill, the gentleman you said that owned the
16 trailer, give you some assistance in finding someone to do
17 some handy men -- handyman work?

18 A Marvin Porcher.

19 Q Okay. And you learned about him through Bill?

20 A Through Bill.

21 Q And what type of work did you actually need done on the
22 trailer?

23 A I needed some facet fascia, some stuff underneath the
24 awning fixed.

25 Q Okay.

1 A And I needed a handrail put up and some lights put up.

2 Q And why was the handrail necessary?

3 A Because Susan was a little unsteady on her feet and she
4 needed that extra help to get up and down the stairs.

5 Q Okay. Do you recall how long before this incident
6 occurred that you had met Mr. Porcher?

7 A I want to say it was probably a good month, maybe six
8 weeks, if that long.

9 Q Okay. And when he came over to do the work, the work
10 along the roofline or the eaves and the handrail, did he
11 come into your trailer?

12 A No.

13 Q Okay. Now did you say he did some work on some lights
14 as well?

15 A I needed him to. It never got done.

16 Q That never happened?

17 A That never got done.

18 Q So when it came to the handrail and the work along the
19 top of the mobile home did you in fact pay Mr. Porcher?

20 A Yes, I did.

21 Q At the time that this occurred did you still owe him
22 some money?

23 A I felt I owed him money for the lights that did not get
24 put up.

25 Q Okay, so ---

1 A So there is nothing ---

2 Q You didn't pay him for the lights, but he didn't get a
3 chance to put the lights up?

4 A No, he never got the chance. The opportunity wasn't
5 there. It was all bundled into one price, and he never got
6 to the lights.

7 Q Now you learned at some point that Cassie is his
8 girlfriend?

9 A Yeah. Porcher had a roommate at one point named Tina
10 that was Bill's girlfriend. And she was in the hospital.
11 And then I found out about Cassie being over there.

12 Q Okay. And did you in fact know Cassie already?

13 A Yes, ma'am, I did.

14 Q How did you know her?

15 A She was a fellow security officer. She worked with me
16 in a couple of different companies that we both were
17 employed at.

18 Q Okay. And was she still employed at the companies at
19 the time that this occurred?

20 A No, ma'am.

21 Q Now were you aware of whether or not Mr. Porcher or
22 Cassie owned a vehicle?

23 A I don't think they did.

24 Q Describe your relationship if you would with Cassie.
25 Were y'all friends; did y'all socialize?

1 A We socialized a little bit. But mainly professional.

2 Q Okay. And when you said socialize a little bit, had
3 y'all gone out together ---

4 A Yes, ma'am.

5 Q --- in the evening before ---

6 A Yes, ma'am.

7 Q --- before this night?

8 A Yes, ma'am.

9 Q Now had you ever gone into their mobile home while they
10 were living in it, socially?

11 A No.

12 Q Did Marvin Porcher ever come into your mobile home
13 socially prior to November 2nd, 2011?

14 A No.

15 Q Now on November 2nd tell the jury what happened that
16 evening.

17 A Cassie, Marvin, and my friend Kenny came over for
18 Marvin to put a tattoo on me. I cooked dinner and we ate
19 dinner. Chit chatted a little bit. And he got busy on the
20 tattoo.

21 I want to say halfway through -- about halfway through
22 I needed a break. So he wanted to go on Facebook. So I
23 handed him my computer for him to go ahead and go on
24 Facebook because I needed a break.

25 Q Okay. Now the image that you had tattooed was a flame?

1 A It was flames.

2 Q Flames. And you told us that you had previously worked
3 where?

4 A As a firefighter.

5 Q Okay. On that occasion you said that while you were
6 getting your tattoo who all was in the mobile home?

7 A It was me, Kenny, Cassie and Marvin.

8 Q Okay. And when you fixed dinner who all ate with you?

9 A The same three; Kenny, Cassie and Marvin.

10 Q Okay. At the end of that evening was the tattoo
11 actually finished?

12 A No, ma'am.

13 Q Okay. Has that tattoo ever become finished?

14 A No, ma'am.

15 Q Okay. Now focusing then on the next day, that being
16 November 3rd, did you work that day?

17 A No, ma'am.

18 Q Did anyone suggest or did you have the idea that maybe
19 you and Cassie should go out that night; whose idea was
20 that?

21 A I know at one point we went to where Marvin Porcher
22 worked because I was going to give him last payments and you
23 know line up payment on the -- one of the payments of \$20 on
24 the house, the work that I was having him do.

25 Q Well, let me slow you down a little bit. Do you mean

1 earlier during the day ---

2 A During ---

3 Q --- of November 3rd who went to where he was?

4 A Cassie and I did.

5 Q Okay. And who drove?

6 A I did.

7 Q And the purpose of going there was what?

8 A To give him money.

9 Q Okay. And did you in fact give him money?

10 A Yes, I did.

11 Q And what did he do with that money?

12 A He handed it to Cassie.

13 Q Okay. Did you and Cassie go anywhere after he gave her
14 the money?

15 A We went to some -- one of the little beauty stores over
16 there off of Remount ---

17 Q Like a supply store?

18 A Kind of like a supply store. But they also have boots
19 and, you know, weave and all that.

20 Q Okay. Did you and Cassie make plans while y'all were
21 out at that time to go out socializing later?

22 A Marvin Porcher asked me if Cassie and I were going to
23 go out. Because we had started a pattern of every Thursday
24 night we went out.

25 Q Okay. And at that time did you commit to going out?

1 A I told them no I didn't feel like it at that time, that
2 I was kind of sore from the night before.

3 Q Okay. And do you at some point change your mind?

4 A Yes, I do.

5 Q Tell the jury if you would what happened then. When
6 you changed your mind what happened?

7 A Actually Cassie had come over earlier asking me about
8 seven o'clock if we were going to go out that night. I told
9 her I didn't know because I wasn't -- still hurting, kind of
10 tired.

11 About nine o'clock I went over and knocked on her door
12 and I said do you still want to go out. She said yes. So
13 at 9:30 we left the house.

14 Q Okay. And when you went over there did you know
15 whether or not Mr. Porcher was still there?

16 A I didn't see him anywhere.

17 Q Okay. Did you go into the house?

18 A No, I did not.

19 Q So you are not sure whether he was in the house or out
20 of the house?

21 A Right.

22 Q Where did you and Cassie in fact go?

23 A Cassie and I went to Rivals and then we went to
24 Denny's.

25 Q To Rivals and then to Denny's?

1 A Uh-huh.

2 Q When you were leaving Denny's did anything significant
3 happened?

4 A I received a phone call.

5 Q Okay. And tell the jury if you would please about the
6 phone call.

7 A I received a phone call from North Charleston Police
8 Department stating -- asking me if I had a burg- -- if I had
9 reported a burglary to my home. I stated no I have not,
10 that they must have the wrong number. And then they asked
11 me if I had an Acer laptop.

12 Q Okay. And did you in fact have an Acer laptop?

13 A Yes, ma'am, I did.

14 Q I'm showing you what has been marked as State's ID 29.
15 Is this in fact your Acer laptop?

16 A It is.

17 Q And is this in fact your charger?

18 A Yes, ma'am, it is.

19 Q Okay. When you left your home earlier that evening to
20 go out where was your Acer laptop?

21 A It was on my bed on a stack of paper.

22 Q When the officer had that conversation with you what
23 did you then do?

24 A Told him that I would head to -- I was heading home --
25 I was on my way home. I told him I was headed to the house.

1 He stated for me to sit tight outside, to not go in, don't
2 touch anything until the other officers arrived.

3 Q Okay. And did you in fact head to your house?

4 A Yes, I did.

5 Q Was anyone present when you got there?

6 A No, not -- just me and Cassie at that point. A couple
7 minutes later North Charleston showed up.

8 Q Where were you when they showed up?

9 A I was leaning on the back of my car.

10 Q And let's go back for a moment. When Mr. Porcher was
11 in your home doing the tattoo did he go in any area other
12 than where you were having your tattoo put on?

13 A I really don't remember him going anywhere. But he may
14 have went to the bathroom. But I seriously doubt he went
15 anywhere.

16 Q Okay. And showing you what has been marked as State's
17 Exhibit 15. Is -- does this reflect the area where you were
18 when you were having the tattoo put on?

19 A I was on the beige -- tan couch.

20 Q On the tan couch. Okay. Now when the police got there
21 who went into the -- into your home first; did you or did
22 they?

23 A No, it was a female detec- -- I'm sorry, I don't
24 remember her name. North Charleston and a county sheriff.

25 Q Now when you were with Cassie that evening did she have

1 a cell phone?

2 A No, ma'am.

3 Q And so you and she are waiting outside and Detective
4 Jourdan and the county officer arrives; is that correct?

5 A Correct.

6 Q What do they then do?

7 A They go in the house and do whatever they do inside. I
8 didn't know -- I don't even know what they did inside
9 really. They came back out and I asked -- the first
10 question I asked them about my dog.

11 Q The first question you asked was what?

12 A About my dog.

13 Q Okay. And that is the dog that you have lost since
14 this has happened?

15 A Uh-huh.

16 Q Okay. When you -- why were you concerned about your
17 dog?

18 A Well, she doesn't bark. She was elderly.

19 Q And so when they opened the trailer door you were
20 interested in what?

21 A My dog.

22 Q Did in fact you at some point go through the -- your
23 home with the detective and the officer?

24 A Yeah, the female detective took me in. I saw my dog on
25 the couch. I grabbed her up, and we walked around.

1 Q Okay. At this point had they mentioned to you at all
2 about who they found your laptop on?

3 A No.

4 Q So neither you nor Cassie knew at that point who they
5 found the laptop on?

6 A I just kept asking Cassie, you know, who would do
7 something like this.

8 Q When you were walking through your house with the
9 officers could you tell the jury what you noticed that
10 appeared to have been missing.

11 A I noticed that Susan's TV was missing and my laptop was
12 missing and some jewelry boxes were missing.

13 Q Okay. Now in taking it kind of room by room and
14 showing you State's Exhibit 16 could you tell us whose room
15 that was.

16 A That was Susan's room.

17 Q Okay. And is -- what piece of furniture -- let me
18 remove those markings real quick.

19 What piece of furniture are we looking at?

20 A That is her dresser.

21 Q And does it appear in that photograph like it appeared
22 prior to your going out that night?

23 A No, ma'am.

24 Q What was different?

25 A The black box that is over there has been moved when it

1 was facing the same way the handles on the dresser are. And
2 the TV is missing.

3 Q Okay. And what type of television was it?

4 A It was a Dysney (ph)?

5 Q Well, that's okay. How large of a television was it?

6 A It is like a 22 to 24-inch flat screen.

7 Q And that was actually Susan's television?

8 A That was Susan's television.

9 Q Now help me with the bedroom. I'm showing you
10 State's 17. Is -- whose bedroom is that?

11 A That's mine.

12 Q And where had you left your laptop?

13 A Right here (pointing).

14 Q What is that that we are looking at?

15 A That is a pile of printer paper.

16 Q Okay. So your laptop would have been there when you
17 left for the evening?

18 A Uh-huh.

19 Q Showing you State's Exhibit 18. Could you tell us what
20 is that in the brown chair, right here (pointing)?

21 A It is one of my jewelry boxes.

22 Q And was that jewelry box out like that when you left?

23 A No, ma'am.

24 Q If you would, please, tell -- and looking at 19 we
25 might get a little bit better picture of it. Okay, we will

1 just stick with that one. Did you have very valuable
2 jewelry?

3 A Not in there.

4 Q Okay. And was -- did you notice whether or not any
5 jewelry had been taken?

6 A Yes, some pearls that my grandmother had given to pass
7 down to the family.

8 Q Did those have monetary value or was it more
9 sentimental value?

10 A Probably at the time she purchased it it wasn't too
11 much. But in today's economy probably a little bit more.
12 But more sentimental than anything else. You can't put
13 memories on -- you know, money on anybody.

14 Q Do what? I'm sorry.

15 A It is more memories than anything else.

16 Q Than anything. Okay. Showing you State's Exhibit --
17 I'm sorry. Hold on just a second.

18 MS. WHITAKER: Beg the court's indulgence.

19 THE COURT: Uh-huh.

20 BY MS. WHITAKER:

21 Q Showing you State's Exhibit 24. I am going to put it
22 up on this monitor if possibly. Could you tell the jury
23 what items this photographs depicts.

24 A It has got the necklace from my grandmother and some
25 costume jewelry and a pendant I bought for my daughter on

1 her third birthday.

2 Q Okay. Where was that jewelry when you left your home
3 that evening?

4 A In my jewelry boxes in my closet.

5 Q Not the jewelry box we saw on the chair?

6 A I had three.

7 Q Okay. And which of the two necklaces is the necklace
8 from your grandmother?

9 A (Indicating on screen.)

10 Q Now did you ever give Marvin Porcher at any time
11 permission to go into your room?

12 A Only during the tattoo.

13 Q And prior to that it was just for the work outside?

14 A Right.

15 Q He did not have your permission to go back into your
16 home?

17 A No.

18 Q Did you ever agree to give him the computer for any
19 reason?

20 A No.

21 Q Let's talk about your computer for a second. When your
22 screen comes up did you have like a design on the
23 background?

24 A Yes, I had it is like I will say four little blocks
25 across, three down. And each one said the same thing.

1 Q Each one says the same thing?

2 A Uh-huh.

3 Q And would you see that when you opened your computer?

4 A Yes.

5 Q Okay. So it was distinctive?

6 A Yes.

7 Q Now describing the outside of your trailer how many
8 different entrances are there to the out -- to the inside of
9 your home?

10 A Two.

11 Q Like how many doors are there?

12 A Two.

13 Q And would you typically use the one that was where
14 Susan had been sitting in that photograph?

15 A That is one I would be using, yes.

16 Q Okay. So showing you State's Exhibit -- let's go back
17 to five if we could. Show us where the front door is in
18 that picture.

19 A Right where the light is.

20 Q Okay. Whereas the back door, showing you State's
21 Exhibit 6, does that reflect the area where the back door
22 is?

23 A Right, where that porch is in this -- the fenced area
24 there.

25 Q Showing you State's Exhibit 7 is that a closer up

1 picture in daylight?

2 A Yeah.

3 Q Okay. So that is the back door?

4 A Yes.

5 Q Did you use that door frequently?

6 A No.

7 Q How did you lock it?

8 A It had a handle and then I had a hasp at the bottom.

9 Q Okay. And in general was that door left unlocked or
10 locked?

11 A Locked.

12 Q On the night that you went out with Cassie did you
13 check to see whether both of your doors were locked?

14 A Yes.

15 Q And were they both locked?

16 A Well, the back door was locked. As I exited the front
17 door I did the deadbolt and made sure it was locked.

18 Q Showing you State's Exhibit 10, this being a closer up
19 picture of that door, was it in that condition when you left
20 that night?

21 A No, ma'am.

22 Q Showing you State's Exhibit 11, a closer version, had
23 your door been damaged like that before you left that night?

24 A No, ma'am.

25 Q State's Exhibit 12, a closer version, had it suffered

1 that damage before that evening?

2 A No, ma'am.

3 Q And State's Exhibit 13?

4 A Nope.

5 Q Okay. When did the police mention anything to you at
6 all about Marvin Porche?

7 A It was a female detective, North Charleston.

8 Q Uh-huh.

9 A She asked me if I knew anybody by the name of Marvin.
10 I told her no. And when she gave up the last name saying
11 Marvin Porcher -- I didn't even know Marvin's last name. I
12 didn't really even know Marvin's first name too well to call
13 him by name out in the street.

14 Q Tell the jury how you reacted when they told you he had
15 had your laptop.

16 A I was very very surprised. I didn't know what to say.
17 I was lost for words. Kay -- Cassie's facial reaction said
18 the same thing. We were both just like -- looked at each
19 other and just could not believe it.

20 Q Does Cassie still live over there as far as you know?

21 A Not to my knowledge.

22 Q Had she moved out before -- you in fact moved out of
23 that area as well, right?

24 A Yes, I have moved out of that area.

25 Q And had Cassie moved out of there prior to your moving

1 out?

2 A I think she took her suitcase the next day. She
3 wanted -- she came over to use my phone to get a hold of her
4 cousin who was going to Trident Tech to go back home to her
5 mom's house.

6 Q So she left the next day?

7 A She left the next day.

8 Q You learned then that the police had both your computer
9 and your jewelry?

10 A Uh-huh.

11 Q Did you in fact receive those items back from the
12 Charleston County Sheriff's Department?

13 A Yes, it was from Charleston County.

14 Q Okay. And in the photograph that we showed you,
15 State's 24 of your jewelry items, the envelope that is
16 depicted in that photograph - do you see the yellow
17 envelope?

18 A Uh-huh.

19 Q Is that the envelope that the Sheriff's Department gave
20 you your jewelry back in?

21 A The jewelry was actually in a plastic evidence bag up
22 in the corner.

23 Q Okay.

24 A Inside that yellow bag.

25 Q Inside the yellow bag?

1 A Yes, ma'am.

2 Q Okay. Very good.

3 MS. SHEALY: Beg the court's indulgence just a
4 moment.

5 THE COURT: Yes, ma'am.

6 MS. SHEALY: I have no further questions. Please
7 answer any the defense may have for you.

8 THE COURT: Ladies and gentlemen, we are going to take
9 advantage of this break in testimony to take our lunch
10 recess. During the break please do not discuss the case in
11 any manner whatsoever. Please leave your notepads in your
12 seats.

13 When you return to the courthouse, please return
14 directly to your jury room. The bailiffs will show you how
15 to do that.

16 Please don't have any contact with anyone in or about
17 the courthouse. Upon your return we would not want an
18 innocent conversation misinterpreted.

19 Have a good lunch. We will resume these proceedings at
20 2:15. If you would go with the bailiff, please.

21 (WHEREUPON, jury exits courtroom at 1:10 p.m.)

22 THE COURT: Anything from the State before we adjourn
23 for lunch?

24 MS. WHITAKER: No, Your Honor.

25 THE COURT: From the defense?

1 A Yes, ma'am.

2 Q Was she present the night that you had your tattoo
3 done?

4 A No, ma'am.

5 Q And was she at your home before you left to go out with
6 Cassie the evening in question?

7 A No, ma'am.

8 Q Was she at your residence when you arrived back to meet
9 the officers after this incident?

10 A No, ma'am.

11 Q Could you tell the jury where she was staying?

12 A She was at her boyfriend's house.

13 Q Okay. And her boyfriend was?

14 A John Nye.

15 Q And would she spend the night with him on several
16 nights?

17 A Pretty much, yeah.

18 Q Okay. Did you in fact go and get her the evening in
19 question after you went and met the officers at your mobile
20 home?

21 A Yes, ma'am, I couldn't reach her by phone or John by
22 phone.

23 Q And so what did you do?

24 A I drove over there after I asked Officer Burke I asked
25 him do you want me to go get her. And he said yes. So I

1 went and got her and brought her back in my car.

2 Q And you had shown us earlier where she was standing
3 outside the night in question?

4 A Right.

5 Q Okay. Very good. I have no further questions. Thank
6 you.

7 THE COURT: Any cross-examination of the witness?

8 MR. SMITH: Yes, Your Honor.

9 THE COURT: You may proceed.

10 **CROSS-EXAMINATION BY MR. SMITH OF MS. WOHLFORD:**

11 Q Good afternoon, Ms. Wohlford.

12 A Good afternoon.

13 Q I want to talk to you briefly about some of the things
14 that were missing from your home, okay?

15 A Uh-huh.

16 Q I think you told us earlier that there was a laptop
17 that was missing; is that correct?

18 A Yes, sir.

19 Q There was also a television, a 22- or a 24-inch flat
20 screen television?

21 A Yes, sir.

22 Q In addition to that I think you mentioned that you had
23 three jewelry boxes; is that correct?

24 A Yes, sir.

25 Q And two of those jewelry boxes were missing?

1 A Yes, sir.

2 Q And in addition to the things that you -- were returned
3 there was jewelry in those other boxes; is that correct?

4 A Yes, sir.

5 Q And those items you were never able to get back?

6 A No, sir.

7 Q Was there more jewelry in the other two jewelry boxes,
8 or was it about the same?

9 A About the same.

10 Q And at some point did you give any kind of an estimate
11 to the deputies about what the jewelry was worth?

12 A I what to say I said right around 150, \$250; somewhere
13 in that area.

14 Q And you felt like you got maybe about \$50 back, \$50
15 worth of jewelry back?

16 A About that.

17 Q But the jewelry boxes that were taken you never
18 recovered those; ---

19 A No.

20 Q --- is that correct? Were there any cell phones that
21 were taken?

22 A I don't remember.

23 Q Okay. Now I think initially you had talked about the
24 location of where the laptop was and you said it was in the
25 bedroom?

1 A Yes.

2 Q But I think at first you reported maybe it was in the
3 living room?

4 A No.

5 Q So it was always in the bedroom?

6 A Uh-huh.

7 Q Now I want to talk to you for just a minute about
8 Marvin Porcher and how you knew him, okay. You knew him
9 initially through a fellow named Bill; is that ---

10 A Yes, sir.

11 Q --- is that correct? And Bill had a girlfriend named
12 Tina; ---

13 A Yes, sir.

14 Q --- is that right? And Tina -- did Tina stay with
15 Marvin and Cassie for a period of time?

16 A I'm not sure about Cassie.

17 Q Okay.

18 A But I know that when Tina was there at one point,
19 Marvin was there. I don't know how long, the duration or
20 any of that.

21 Q And was Tina in some kind of bad health that you were
22 aware of?

23 A I never saw Tina, personally. I was just told she was
24 there.

25 Q Okay. Now you had said earlier that Marvin did some

1 work on your roof; is that correct?

2 A Not my roof. The eaves where the roof is. I don't
3 remember the name of the -- I want to say facet, but I know
4 that ain't right.

5 Q Okay.

6 A Flashing.

7 Q Flashing. Okay. And then he also did some work on a
8 banister out front?

9 A Yes, he installed a banister for Susan.

10 Q And at some point wasn't there a carport that he tore
11 down for you?

12 A Oh, yeah. Yeah. I forgot about that.

13 Q And so that was some work he had done for you?

14 A There was part of a carport, yeah.

15 Q Part of a carport?

16 A Part of a carport. Because I kept the awning over
17 the -- over the steps.

18 Q So he removed that completely and took it out; is ---

19 A Yeah.

20 Q --- that correct?

21 A Yeah.

22 Q And you all have worked out an arrangement, kind of a
23 payment plan for this work that he had done; ---

24 A Correct.

25 Q --- is that right?

1 A Correct.

2 Q And so when you went up with Cassie that day to see
3 him, that was part of that payment plan to pay him some
4 money?

5 A Yes, sir.

6 Q And there was still a little bit of money owed at that
7 point?

8 A I thought there was going to be, because he was
9 supposed to put in some lighting for me and he never did
10 that. So I don't feel I owe that money.

11 Q Okay. But at the point that you went, you had a little
12 bit more to pay him for work he had already done?

13 A Not for what he had already done. He still had to put
14 the lighting in.

15 Q He still had to put the lighting in, okay. Now when
16 Marvin and Cassie came over to the house the night before
17 this burglary happened how long were they there?

18 A Well, the tattoo took about three hours. So I would
19 probably say three and a half, four hours.

20 Q Okay. And there was kind of some down time. You said
21 at one point you all sat down and had dinner; is that
22 correct?

23 A Yes, we all sat in the living room.

24 Q Okay. Was that prior to the having the tattoo done or
25 was that afterwards?

1 A It was prior to the tattoo being done.

2 Q And there wasn't any kind of charge for doing the
3 tattoo work or anything like that?

4 A No, no, no.

5 Q Okay. Now you had mentioned when you testified earlier
6 about Thursday nights being a night that you traditionally
7 had gone out; is that ---

8 A If we went out we would go out on Thursday nights.

9 Q Okay. And you had -- I think you had mentioned that
10 you had been out with Cassie socially before; is that
11 correct?

12 A Yes, sir.

13 Q And did you do that -- was that a Thursday night thing
14 when you would go out with her?

15 A If we went out we would go out on Thursday nights.
16 Because that was my night if I was -- if I was off work. I
17 would typically be off on Thursdays.

18 Q One thing that the police asked you about and I wanted
19 to check with you about, your house had a video system in
20 it; is that right, a monitoring system?

21 A I had security cameras up, yes.

22 Q Okay. And people -- where were -- where were those
23 monitors?

24 A The cameras or the monitors?

25 Q The cameras.

1 A That's two different entities.

2 Q Yeah, the cameras. I'm sorry.

3 A . The cameras I had one in one -- the front window. I
4 can point it out if you bring me the picture of it. It
5 would be the one where Susan is at.

6 MR. SMITH: May I approach?

7 THE COURT: Yes, sir, you may.

8 Q I'm going to have them put up what has been marked as
9 State's Exhibit 5.

10 A In the corner here (pointing) I had a security camera
11 pointing toward the front door. There's a window over here
12 by the shed (pointing). I had a camera there pointing to
13 the front door. There is another window behind the shed. I
14 had it pointing out this way (pointing). And the house.

15 Q Okay. And the video system that you are talking about
16 was not working on this particular night; is that correct?

17 A No, my tower had crashed.

18 Q Okay. And I believe that you told the police that you
19 didn't tell anybody that the video system was not working
20 until you told the police?

21 A Exactly. So I had power going to the cameras so the
22 light was still on as if they were working, but they weren't
23 recording.

24 Q Okay. So the only person you told about that was the
25 police; is that ---

1 A Right.

2 Q Is that correct?

3 MR. SMITH: Beg the court's indulgence.

4 THE COURT: Uh-huh.

5 Q Ms. Wohlford, just a couple of other quick questions.

6 Can you tell me again, what was the locking mechanism on the
7 back door?

8 A There was like a hasp type lock at the bottom and a
9 door lock -- a door handle lock.

10 Q Okay. And on the front door, that was where the
11 deadbolt was?

12 A Yes, sir.

13 Q Okay. And when people come to your house how do they
14 normally come in?

15 A Through the front door ---

16 Q Through ---

17 A --- regularly.

18 Q Through the front door?

19 A Uh-huh.

20 MR. SMITH: Thank you, Your Honor. No further
21 questions.

22 THE COURT: Any redirect of the witness?

23 MS. SHEALY: I beg the court's indulgence just a
24 moment.

25 THE COURT: Uh-huh.

1 REDIRECT EXAMINATION BY MS. SHEALY OF MS. WOHLFORD:

2 Q Let me make sure I understand your testimony regarding
3 the non-activated cameras. Were they pointed towards the
4 outside?

5 A Yes, ma'am.

6 Q Okay. And you indicated that on that side of the
7 trailer there were two pointing out from on the outside; is
8 that right?

9 A Two pointing toward the front door. And actually this
10 camera right here (pointing) actually come out this way more
11 toward where my car was at -- would be normally parked.

12 Q Okay.

13 A Because that is my driveway right here (pointing).

14 Q And that is where your cameras were?

15 A That is where that camera was. They are all on the
16 inside pointing out the window.

17 Q Okay. And is it -- are they all pointed out of that
18 window?

19 A Then I got -- I had a bay-style window right here
20 (pointing), and that one went directly toward the shed and
21 to the front door.

22 Q And so none of those cameras were working?

23 A None of them were.

24 Q But those were the cameras that were obvious from the
25 outside?

1 A Yes, ma'am.

2 Q Okay. I have nothing further. Thank you.

3 THE COURT: Any objection to the witness being excused,
4 from the State?

5 MS. SHEALY: No objection, Your Honor.

6 THE COURT: From the defense?

7 MR. SMITH: No, Your Honor.

8 THE COURT: Ma'am, you are excused. You may step down.
9 You may call your next witness.

10 MS. SHEALY: Your Honor, at this time I would like to
11 read the stipulation into the record.

12 THE COURT: You may proceed.

13 (STIPULATION:)

14 MS. SHEALY: This is State's Exhibit Number 22. The
15 attorneys for the State and the defense agree and stipulate
16 to the following:

17 That on November 4th, 2011, while at North Charleston
18 Police Department the following items that were taken off
19 the person of Marvin Porcher were maintained in the evidence
20 locker: a razor knife, Allen wrench, wrench, and zip tie,
21 an Acer laptop serial -- laptop with the serial number
22 , a tube containing miscellaneous
23 earrings and two white in color pearl like necklaces and
24 receipts.

25 The attorneys for the State and the defense further

1 agree that the laptop and the jewelry were transferred to
2 the County evidence compound on December 5th, 2011, by
3 Franklin Burke; the razor knife, the wrenches, and the zip
4 tie were destroyed on February 1st, 2012, by North
5 Charleston Police Department; and the receipts were brought
6 to the courtroom from the evidence office for court this
7 morning.

8 Thank you, Your Honor.

9 MS. SHEALY: Your Honor, the State calls Gilbert
10 Baldwin.

11 (WHEREUPON, the witness was duly sworn.)

12 THE CLERK: State your full name and spell your last
13 name.

14 MR. BALDWIN: My name is Gilbert Cordray Baldwin.
15 Spelling the last as B-A-L-D-W-I-N.

16 THE COURT: You may proceed.

17 (GILBERT BALDWIN, having first been
18 duly sworn, testified as follows:)

19 **DIRECT EXAMINATION BY MS. SHEALY OF GILBERT BALDWIN:**

20 Q Good afternoon, Deputy Baldwin. Could you tell us a
21 little bit about your educational background.

22 A I was raised in Charleston and I graduated from St.
23 Andrews High School. Attended Trident Technical College,
24 criminal justice.

25 Q Now where did you work when you finished up at Trident

1 Tech?

2 A I worked at a family business in West Ashley,
3 automotive business.

4 Q Now after you were done with that what did you do?

5 A After I was done with that I began a career at the
6 Charleston County Detention Center where I worked for
7 approximately one year.

8 Q Okay. Did you go to the Criminal Justice Academy?

9 A Yes, ma'am.

10 Q Okay. And what did you do upon graduation from the
11 Criminal Justice Academy?

12 A I begin working with Charleston County Sheriff's
13 Office.

14 Q Can you tell us when that was approximately?

15 A May 2010.

16 Q While you were at the Criminal Justice Academy did you
17 win any awards there?

18 A Yes, ma'am, I won the JB Strong award.

19 Q Okay. And what does that award signify?

20 A The highest average of your graduating class above a
21 97.

22 Q Okay. Great. Now where are you currently employed?

23 A Charleston County Sheriff's Office.

24 Q So the same place that you were employed in 2010 when
25 you graduated?

1 A Yes, ma'am.

2 Q Okay. And so you have been employed there since 2010;
3 is that correct?

4 A Yes, ma'am.

5 Q Okay. What is your current position there?

6 A Deputy Sheriff.

7 Q Okay. And how long have you been in that particular
8 position?

9 A Just over two years.

10 Q Okay. What was your position in November of 2011?

11 A Deputy Sheriff. Okay. Can you describe for us a
12 little bit what your duties are as deputy sheriff what you
13 do on a day-to-day basis.

14 A Yes, ma'am, I am assigned to patrol which is answering
15 calls for service. We perform traffic stops, traffic
16 conducting.

17 Q Are you assigned -- well, actually in November of 2011
18 were you assigned to a specific geographic area?

19 A Yes, ma'am, I was assigned to north -- north area.

20 Q Can you describe what that encompasses?

21 A It is everything north of Leeds Avenue including North
22 Charleston areas, Lincolnville, Ladson.

23 Q Okay. Do you remember the early morning of
24 November 4th, 2011?

25 A Yes, ma'am.

1 Q Were you dispatched to Street?

2 A Yes, ma'am.

3 Q Now is that in Charleston County?

4 A Yes, ma'am.

5 Q Could you describe what the scene was like when you
6 arrived?

7 A When I arrived on the scene I met with Detective
8 Jourdan of the North Charleston Police Department.

9 Q Can you tell me who all was there?

10 A At this point it was Detective Jourdan and Ms.
11 Wohlford.

12 Q Okay. Was Susan Rutledge there at that point when you
13 first arrived?

14 A No, ma'am.

15 Q Okay. Had they assessed the scene yet; had Detective
16 Jourdan gone inside?

17 A No, ma'am.

18 Q Okay. So what did you do when you arrived?

19 A When we arrived on the scene we received the keys from
20 Ms. Wohlford. And Detective Jourdan and I entered the
21 residence.

22 Q Okay. What did you do when you entered the residence;
23 can you describe for us kind of what you did, what your path
24 was?

25 A Yes, ma'am, we -- we entered the front door and just to

1 conduct a protective sweep of the residence.

2 Q Okay. And what do you mean by protective sweep; what
3 are you looking for when you do a protective sweep?

4 A At that time we are not looking -- we are not
5 collecting evidence; we are not doing anything like that.
6 We are just going through the residence to secure for any
7 threats, look for possible suspects who could still be in
8 the residence.

9 Q Okay. What did you observe during that protective
10 sweep?

11 A After we made entry in the living room we proceeded
12 down the hallway. We observed that the rear door the frame
13 was actually bent. The door had been pried open from the
14 outside.

15 Q Okay. So did you see a point of entry?

16 A Yes, ma'am, it was that back door.

17 Q Now I am going to show you what has been marked as
18 State's Exhibit 10. Can you -- can you show on that picture
19 where the point of entry would have been?

20 A Well, at the jam itself you can see at the bottom
21 especially that an item had been used to pry open. And also
22 the frame on this side (pointing) had been pried away.

23 Q Okay. Now we are going to show you what is State's
24 Exhibit Number 11. Okay. And can you point out on that --
25 oh, you have already gotten it for me. If you could point

1 out for the jury there what the point of entry was as far as
2 if there was damage to the door.

3 A Yes, ma'am, all of this -- this is actually -- this
4 piece here (pointing) is actually metal laminate of the
5 door. And it had been pried away. And once you are able to
6 move that far enough including the jam you have clearance
7 for the door to open.

8 Q Okay. And now I am going to show you what has been
9 marked as State's Exhibit 12. And can you see is there any
10 injury -- is there any injury on that side of the doorframe?

11 A Yes, ma'am, it appears that the inside trim is actually
12 missing from the door.

13 Q Okay.. Are you familiar with doors of this type?

14 A Yes, ma'am.

15 Q Okay. Can you tell me how difficult it is to open that
16 sort of door when it is locked?

17 A Trailer doors are, because it was a mobile home, are
18 fairly secure.

19 Q Okay.

20 A But they are metal. So unlike wood, when you pry them
21 they actually stay pried.

22 Q Okay. In your experience what sort of items could be
23 used to pry open such a door?

24 A Many -- many different metal items. Anything small to
25 fit in the door of the jam ---

1 Q Okay.

2 A --- could be used.

3 Q Okay. Now let's see. Now we are going to move in the
4 inside of the house. Can you tell us what you found inside
5 of the house?

6 A When we conducted a protective sweep we went in and
7 when we re-entered the residence ---

8 Q Oh, yeah, I'm sorry, let's go back to the -- when you
9 re-entered the residence was anybody with you?

10 A Yes, sir.

11 Q Okay.

12 A Detective Jourdan was there with me.

13 Q Okay. Where was Nancy Wohlford at this point in time?

14 A She walked in I believe on the -- it was our -- I
15 believe it was our third entry.

16 Q Third entry?

17 A Yes, ma'am.

18 Q Okay. So let's go back to that second entry. Did
19 you -- did you discover anything on that second entry?

20 A When we made it to the bedroom we noticed there was a
21 jewelry box that had been pulled out of the closet. We
22 noticed in the rear bedroom, which would be the roommate's
23 bedroom, that a cable box had been removed and it looked
24 like there was possibly a TV that used to be there.

25 Q Okay.

1 MS. SHEALY: Can we pull up State's Exhibit
2 Number 16.

3 (Complied.)

4 MS. SHEALY: Okay.

5 Q Can you tell me what -- can you describe that scene
6 what you -- what you saw there?

7 A Yes, ma'am, that was the cable box that had been
8 removed. And actually on the dresser top you could see
9 where the dust had been disturbed from, you know, a square
10 item being there.

11 Q And your understanding whose room was that; do you
12 know?

13 A That was Ms. Wohlford's roommate.

14 Q Ms. Wohlford's roommate. Thank you. Let's see.
15 State's Exhibit Number 17 I will show you. And can you tell
16 us what we are looking at here?

17 A That was Ms. Wohlford's bedroom.

18 Q Okay. And State's Exhibit 19. And can you tell us
19 what we are looking at there?

20 A That is the actual closet of her bedroom.

21 Q Okay. And can you kind of point to us where that
22 closet is and show us what ---

23 A Well, the doorway -- this would -- this picture would
24 have been taken between the bed and the doorway.

25 Q Okay.

1 A Because the closet is in the back, right corner.

2 Q In the back, right corner. So is the closet the area
3 where we have that draped, pink fabric?

4 A Yes, ma'am.

5 Q Okay. So the surface is there; it is all fabric; it is
6 not like there is a door or anything of that nature, is
7 there?

8 A Yes, ma'am, no, there isn't.

9 Q All fabric. Okay. Now you said that there was also a
10 third walk-through?

11 A Yes, ma'am.

12 Q Okay. Did Nancy go through the house with you?

13 A Yes, ma'am, she did.

14 Q At that point did she point out specific items that
15 were missing?

16 A Yes, ma'am.

17 Q Okay. Do you remember what those items were?

18 A She addressed that there was a TV, as we suspected, in
19 the roommate's bedroom that had been stolen. Also the
20 jewelry box that had been taken out she listed several items
21 of jewelry that were removed.

22 Q Okay.

23 A Also on the -- she said in the bedroom was also located
24 a laptop ---

25 Q Okay.

1 A --- that was no longer.

2 Q That was no longer there?

3 A Yes, ma'am.

4 Q Okay. What happened after y'all completed that
5 walkthrough with Nancy?

6 A After we completed the walkthrough and were able to
7 determine what had been disturbed and what location we
8 needed to concentrate on we notified our supervisors to
9 request Crime Scene.

10 Q Okay. Can you tell me what Crime Scene is and what
11 they come in -- what is their task?

12 A Our Crime Scene they do all of our photog- --
13 photographs. They lift for prints, collect all evidence at
14 the scene.

15 Q Okay. So at that point the scene -- they are going to
16 kind of take over the interior of the house; is that ---

17 A Yes, ma'am.

18 Q Okay.

19 A Once we -- once we have them in route we just secure
20 it.

21 Q Okay. So what did you do while Crime Scene was in
22 route?

23 A Interviewed Ms. Wohlford.

24 Q Okay. Did you ask Nancy if she knew Marvin Porcher?

25 A Yes, ma'am.

1 Q Okay. And did she know Marvin Porcher?

2 A Yes, ma'am.

3 Q Okay. How did she appear; how did she react when you
4 told her that Porcher had been found in possession of her
5 computer?

6 A Surprised. She was upset.

7 Q Now did you share that information with Cassie Callier
8 that Porcher had been found in possession of that computer?

9 A Yes, ma'am.

10 Q Could you describe Cassie's demeanor for us, please.

11 A Extremely upset.

12 Q What did you do then?

13 A We asked Ms. Wohlford the connection between her and
14 Mr. Porcher.

15 Q Okay. Do you do anything with Cassie -- Cassie's
16 house?

17 A Not at this point.

18 Q Not at this point. Okay.

19 A We had first determined what the relationships were.

20 Q Okay. And then they told you what the relationships
21 were. What did you do next?

22 A We asked for permission to search Ms. Callier's
23 residence.

24 Q And was permission granted?

25 A Yes, ma'am.

1 Q Okay. Who went on that walkthrough?

2 A Myself.

3 Q Okay. Did you go with -- was Cassie Callier with you
4 or not?

5 A No, ma'am, she waited outside.

6 Q Okay.

7 A She was just outside the door.

8 Q Okay. Did Cassie Callier stay there the whole time
9 outside of the ---

10 A Yes, ma'am.

11 Q Okay. Did you see anything that matched the
12 description of the missing television in that house?

13 A No, ma'am.

14 Q Okay.

15 A How were Nancy and Cassie behaving after all of this?

16 A They were very upset. They kind of sat off to the side
17 and had conversations amongst themselves.

18 Q Now pursuant to your investigation was a warrant signed
19 by the judge and was the defendant arrested in Charleston
20 County?

21 A Yes, ma'am.

22 MS. SHEALY: Court's indulgence.

23 Q Just one other question. I'm going to go back to -- we
24 were talking about the point of entry on the door. You had
25 indicated you had had some experience with those kind of

1 doors and were somewhat familiar with what could be used to
2 pry them open; is that correct?

3 A Yes, ma'am.

4 Q Would it be possibly for instance for a wrench or a
5 razor knife to be used to pry them open?

6 A Certainly.

7 Q What about an Allen wrench?

8 A Yes, ma'am.

9 Q Okay. No further questions. Please answer and defense
10 many have.

11 THE COURT: Any questions for the witness?

12 MR. SMITH: Yes, Your Honor.

13 **CROSS-EXAMINATION BY MR. SMITH OF GILBERT BALDWIN:**

14 Q Good afternoon, Deputy Baldwin.

15 A Good afternoon.

16 Q I have got a few questions for you kind of
17 about the case. I am going to start I guess and kind of
18 talk a little bit about the entry point to this house if we
19 could.

20 You indicated -- the solicitor asked a question about
21 whether a wrench, an Allen wrench, or a razor knife could be
22 used as an entry point to this house; is that correct?

23 A Yes, sir.

24 Q And your answer was it certainly could have been; is
25 that correct?

1 A Yes, sir.

2 Q And to go along with what you testified to earlier I
3 think what you would say is any of those things would have
4 to be able to get into the jam of the door to be able to do
5 that; is that correct?

6 A Yes, sir.

7 Q And so they would have to be the size small enough to
8 get in to pry the door out?

9 A Yes.

10 Q When you arrived on the scene that evening, just so I
11 am clear, who all was there?

12 A When I arrived on the scene I met with Detective
13 Jourdan, North Charleston.

14 Q Okay. And did -- was her role just to give you an idea
15 of what the case was about?

16 A Well, she was actually who requested us arrive at the
17 residence.

18 Q And so you talked to her about what she had known at
19 that point; is that correct?

20 A Yes, sir.

21 Q Now we talked about items that were missing inside the
22 home. We talked about a TV missing. Is that correct?

23 A Yes, sir.

24 Q There was also some talk about some jewelry missing; is
25 that correct?

1 THE COURT: From the defense?

2 MR. SMITH: No, Your Honor.

3 THE COURT: Sir, you are excused.

4 THE WITNESS: Thank you.

5 THE COURT: You are welcome. Call your next witness.

6 MS. WHITAKER: Thank you, Your Honor. The State calls
7 Kathy Kjellman.

8 (WHEREUPON, the witness was duly sworn.)

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

11 MS. KJELLMAN: My first name is Kathy. Last name is
12 Kjellman. It is spelled K-J-E-L-L-M-A-N.

13 THE COURT: You may proceed.

14 (KATHY KJELLMAN, having first been
15 duly sworn, testified as follows:)

16 **DIRECT EXAMINATION BY MS. SHEALY OF KATHY KJELLMAN:**

17 Q Good afternoon. Could you tell us where you are
18 employed?

19 A Charleston County Sheriff's Office.

20 Q And can you tell us what your position is there?

21 A Forensic services investigator.

22 Q Okay. And can you tell me a little bit about what sort
23 of training you would have to obtain that position and to
24 maintain that position.

25 A There is some specialty classes that I have gone to.

1 And most of it is on-the-job training, firsthand.

2 Q Okay. And how long have you held that position?

3 A Eight years.

4 Q Eight years. Okay. What was your position in November
5 of 2011?

6 A It was forensic services investigator.

7 Q Can you describe a little bit of what your duties are
8 in that position?

9 A We go to several scenes and investigate traffic
10 accidents, burglaries, assaults, shootings. We pretty much
11 investigate everything.

12 Q Okay. Do you remember the early morning hours of
13 November 4th, 2011?

14 A Yes, ma'am.

15 Q Were you dispatched to _____ Street?

16 A Yes.

17 Q Could you describe the scene when you arrived; what did
18 you see?

19 A It was a single-wide trailer. It was apparently a
20 burglary that occurred at the trailer. And Deputy Burke and
21 Deputy Baldwin were on the scene.

22 Q What did you do when you arrived?

23 A I first spoke to the deputies on the scene and tried to
24 get an idea of the layout of the scene, the incidents that
25 happened prior to me arriving there.

1 Q Did you attempt to lift any fingerprints in the house?

2 A Yes, I did.

3 Q Okay. Actually lefts back up a little bit. Can you
4 describe that process for us, you know, trying to lift
5 fingerprints; what actually goes into that; can you describe
6 it?

7 A Fingerprinting is a process we use to -- it's basically
8 a black powder and a small brush we use to apply to a
9 surface to lift the fingerprints.

10 Fingerprinting is a process we use to -- it's basically
11 a black powder and a small brush we use to apply to a
12 surface to lift the fingerprints.
13 Fingerprinting is a process we use to -- it's basically
14 a black powder and a small brush we use to apply to a
15 surface to lift the fingerprints.

14 Q Can you give us an idea of what sorts of surfaces are
15 conducive to it and some surfaces that for instance might
16 not be able to hold prints?

17 A The ideal surface for me it would be a smooth surface,
18 smooth, flat, without any kind of texturing. There's a lot
19 of the surfaces inside like electronics and everything are
20 going to have a textured surface on it. A manufacturer does
21 that intentionally so the homeowner doesn't have to clean or
22 dust a lot. It hides the fingerprints.

23 Q Okay. And what about fabric; could you for instance
24 lift fingerprints off of something that was fabric?

25 A No.

1 Q Okay. Where in the house did you attempt to lift
2 prints?

3 A I attempted prints in the living room. There was a
4 dresser in the living room. And the front bedroom and the
5 back bedroom.

6 Q Okay. And why did you choose these locations?

7 A These locations were the areas that were identified by
8 me what I observed and from what the homeowner told me of
9 things that were disturbed inside the house. So I
10 concentrated on those areas.

11 Q Okay. For instance, would it be any use to try to lift
12 prints, for instance, in her closet area where no door but
13 just a fabric drapery; would that be of any use?

14 A In this instance I think there was a jewelry box that
15 was inside the closet. And from what the homeowner had told
16 me the jewelry box was in a spot where they could just like
17 reach in and pull it out.

18 Q Okay.

19 A And there was no need to really touch anything else.
20 And everything else in that closet was some kind of fabric
21 material, whether it be the drapes that were hanging down or
22 the clothing inside.

23 Q Okay. Did you attempt to lift prints from the door
24 where entry was forced?

25 A No, I did not.

1 Q And why did you not do that?

2 A I did not attempt fingerprints on the outside of the
3 door because of the weather conditions at the time. When I
4 arrived it was raining. With condensation and I think it
5 was 84 percent humidity that night.

6 Q And would that -- how would impact fingerprints?

7 A Any kind of wet surface it's -- one, it was a wet
8 surface; and two, that back door was a textured surface. So
9 attempting to get fingerprints off of that would be very
10 difficult.

11 Q Okay. Did you attempt to lift fingerprints from the
12 dresser where the television had been located?

13 A Yes.

14 Q Okay. Did you succeed?

15 A Not on the dresser itself, no.

16 Q Do you have any idea why you might not have been able
17 to; was there anything about that surface that might not
18 make it conducive?

19 A There was a thin layer of dust that was on the dresser.
20 And I think there was cable locks, VCR or something sitting
21 there on the dresser too. A layer of dust on the dresser.
22 And that dresser was also kind of -- kind of poor condition
23 as far as the finish on it was very rough and chipped and
24 scratched.

25 Q And dust can impact fingerprints?

1 A Yes.

2 Q Let's see. We have already gone over why you didn't
3 attempt to lift from the closet. What do you do after you
4 have lifted the prints; where do you go; where do you take
5 them?

6 A If there are any prints I think are good quality I take
7 them over to the North Charleston Police Department and the
8 AFIS unit over there and enter that into their computer.

9 Q Okay. Did you do that in this case?

10 A Yes.

11 Q Were they tested?

12 A Yes.

13 Q And can you remind us which -- where -- where you
14 actually were able to lift some prints?

15 A I will check at my notes real quick. There were two
16 cards. One was from the space heater. And -- actually both
17 of them were from the space heater that was in front of the
18 dresser.

19 Q Okay. In front of dresser where the television had
20 been taken?

21 A Yes.

22 Q Can you tell me what the results of that test were?

23 A They were insufficient for identification.

24 Q Can you tell me what that means?

25 A Once the fingerprints are entered into the computer it

1 is run through -- it is scanned through multiple offenders
2 that have been printed before. And there was nothing that
3 matched those prints that I picked up.

4 Q Okay.

5 MS. SHEALY: Court's indulgence.

6 THE COURT: Uh-huh.

7 MS. SHEALY: Just a few more questions. Permission to
8 approach the witness?

9 THE COURT: You may.

10 BY MS. SHEALY:

11 Q Would it refresh your recollection at all to look at
12 Kelly Murphy's report?

13 (WHEREUPON, document presented to witness.)

14 Q And can we go over again exactly what the results of
15 the test were.

16 A It looks like one latent print card was insufficient
17 for identification.

18 Q Okay.

19 A And the other one was insufficient was S-C-A-F-I-S
20 identification.

21 Q Can you tell us what that S-C-A-I-F (sic) is?

22 A South Carolina Automated Fingerprint Identification
23 System.

24 Q So -- so -- so is that saying that it was insufficient
25 to be run through any sort of system?

1 A Yes, there wasn't enough ridge detail in that print to
2 be able to run a search.

3 Q Okay. And can you -- the first print, could you repeat
4 what that was.

5 A Insufficient for identification.

6 Q And what would that mean?

7 A There was ridge detail there, but there wasn't enough
8 to effect an ID.

9 Q Okay. And just a few more things. In your experience
10 as a crime scene analyst have you ever encountered
11 burglaries where individuals have worn gloves?

12 A Yes.

13 Q Okay. And would that prevent them from leaving any
14 fingerprints?

15 A Definitely.

16 Q Okay. And also did you have an opportunity in this
17 case to return the laptop and jewelry in question to the
18 victim, Nancy Wohlford?

19 A I don't recall if it was specifically me that returned
20 it. I know that that stuff was eventually returned to her.

21 Q By at one point it was in evidence in Charleston County
22 Sheriff's Office?

23 A Yes, ma'am.

24 Q And that -- and it is your understanding that it has
25 been returned to the rightful owner?

1 A Yes.

2 Q Okay.

3 MS. SHEALY: Your Honor, no further questions. Please
4 answer any questions defense has for you.

5 THE COURT: Any questions for the witness?

6 MR. SMITH: Yes, Your Honor.

7 THE COURT: You may proceed when you are ready.

8 **CROSS-EXAMINATION BY MR. SMITH OF MS. KJELLMAN:**

9 Q Good afternoon, investigator.

10 A Good afternoon.

11 Q I have a couple of questions for you regarding this
12 case. I believe according to your report that it was listed
13 as a laptop as being taken in this case; is that correct?

14 A Yes.

15 Q And as far as you know was the laptop ever processed
16 for fingerprints?

17 A Well, while it was in my custody, no, I did not process
18 it.

19 Q There was also an indication that some jewelry was
20 taken; is that correct?

21 A Yes.

22 Q Was the jewelry ever processed in any form or fashion?

23 A To my knowledge while it was in my possession, no.

24 Q Now one of the things that I wanted to ask you about
25 with regard to fingerprints is you say that traditionally

1 fingerprints are caused by the oils in your fingers; is that
2 correct?

3 A Yes.

4 Q Can things enhance those oils, like for example grease
5 or ink or another substance like that?

6 A The other substances can enhance it. It all depends on
7 that substance. Oil would probably hinder the fingerprint
8 more than help it.

9 Q And if there were those substances would it -- would
10 there maybe be more of a print on a fabric or a textured
11 surface?

12 A Fabric is very difficult to get a fingerprint off of
13 any kind of fabric.

14 Q Perhaps on a textured surface?

15 A Perhaps on a textured surface it is possible to get a
16 print. But the identifiable ridges in that print -- in that
17 print are going to be lacking.

18 MR. SMITH: Your Honor, may I approach the witness?

19 THE COURT: Uh-huh.

20 Q I would like to show you what has been marked as
21 State's Exhibit Number 9.

22 (WHEREUPON, document presented to the witness.)

23 Q And can you tell me what that is?

24 A That is the backdoor to the mobile home.

25 Q And is that the area that you process -- that you did

1 not process for fingerprints?

2 A Yes.

3 Q Okay. And is that an awning or porch over the back
4 area?

5 A Yes, it is.

6 Q Okay. And was the area around the window ever
7 processed in any form or fashion that you are aware of?

8 A No, there was no part of that door that I processed.

9 Q Okay. And so even the interior portions of the door
10 you never processed for any prints?

11 A I did not process the interior of the door because of
12 the textured surface. I did process around the frame in the
13 interior of the door.

14 Q And what about the handle, the actual -- or the door
15 knob itself, was that ever processed inside or out?

16 A No.

17 Q In addition, when you were out at the scene were you
18 ever told that Mr. Porcher lived in the trailer next door?

19 A I know he -- I was told that he lived nearby. Exactly
20 where, I am not sure.

21 Q Did -- you never did any processing at his place; is
22 that correct?

23 A No.

24 Q You got out on the scene about 3:00 a.m.; is that what
25 you remember?

1 A Yes.

2 Q And you were there for about an hour?

3 A About an hour and a half, yeah.

4 Q About an hour and a half?

5 A Yeah.

6 Q And so during that time you would have taken the photos
7 that we have seen in court today?

8 A Yes.

9 Q And in addition to that you would have taken the prints
10 that you -- the latent prints that you did find; is that
11 correct?

12 A Yes.

13 Q In addition to those there was no other type of
14 evidence you collected?

15 A No, the only evidence I collected was the fingerprint
16 cards themselves.

17 Q Did -- did you take the jewelry box that we saw in the
18 photo; was that taken into evidence?

19 A No.

20 Q And throughout the crime scene -- well, let me back up.
21 Can you tell us a little bit about what trace evidence is?

22 A Trace evidence in regards to ...?

23 Q Just in general. What are things that ---

24 A Trace evidence can refer to like fibers or hairs and
25 fibers that were left -- that would be left behind.

1 Q And those would be important perhaps for some type of
2 further testing if they were found; is that correct?

3 A Yes, if we had something to compare it to.

4 Q And one of the things that sometimes can be compared to
5 hair would be DNA, preparing for known DNA; is that correct?

6 A Yes.

7 Q In this particular case none of that evidence was
8 collected?

9 A No.

10 MR. SMITH: Beg the court's indulgence, Your Honor.

11 THE COURT: Uh-huh.

12 MR. SMITH: No further questions, Your Honor.

13 THE COURT: Any redirect?

14 MS. SHEALY: Just briefly, Your Honor.

15 THE COURT: You may proceed.

16 **REDIRECT EXAMINATION BY MS. SHEALY OF KATHY KJELLMAN:**

17 Q Regarding the jewelry shown in Exhibit 24 ---

18 MS. SHEALY: Pull that up for me.

19 Q Just a second ---

20 A Okay.

21 Q --- while we get it on the screen. This is the jewelry
22 recovered in this case?

23 A Yes.

24 Q Could you tell the jury whether these substances would
25 they be good locations to find a fingerprint, to test for

1 A Actually, no, I don't think either one of them were.

2 Q No further questions.

3 MS. SHEALY: Thank you, Your Honor.

4 THE COURT: You may -- is there any exception to the
5 witness being excused, from the State?

6 MS. SHEALY: None, Your Honor.

7 THE COURT: From the defense?

8 MR. SMITH: No, Your Honor.

9 THE COURT: Ma'am, you are excused.

10 (WHEREUPON, witness steps down.)

11 THE COURT: The State may proceed.

12 MS. SHEALY: Your Honor, may we approach prior to
13 calling the next witness?

14 THE COURT: You may.

15 (WHEREUPON, bench conference was held.)

16 MS. SHEALY: The State calls Sarah Lippe.

17 (WHEREUPON, the witness was duly sworn.)

18 THE CLERK: State your full name and spell your last
19 name.

20 MS. LIPPE: Sarah Lippe, L-I-P-P-E.

21 THE COURT: You may proceed.

22 (SARAH LIPPE, having first been
23 duly sworn, testified as follows:)

24 **DIRECT EXAMINATION BY MS. SHEALY OF MS. SARAH LIPPE:**

25 Q Good morning, Ms. Lippe.

1 A Good afternoon.

2 Q Could you tell us where you work.

3 A I work at the Clerk of Court's Office in General
4 Sessions.

5 Q Okay. And what does the Charleston County Clerk of
6 Court's Office do?

7 A We are responsible for record retention and maintenance
8 of criminal records heard in Charleston County.

9 Q What is your responsibility when it comes to criminal
10 convictions?

11 A We maintain any documents having to do with that
12 conviction.

13 Q What sorts of records would you keep that are related
14 to those convictions?

15 A Any orders, the indictment, sentencing sheets.

16 Q I am showing you what has been marked for
17 identification purposes only as State's Exhibit 25 and 26.
18 Do you know what these documents are?

19 A Yes, ma'am.

20 Q Is this a record that would be kept by the Clerk of
21 Court's office?

22 A Yes.

23 Q Is there any way to tell if this is an official copy of
24 the document the clerk keeps?

25 A Yes, they are attested as true copies.

1 Q Okay. And is this something that is kept in the
2 regular course of business for the Clerk's Office?

3 A Yes.

4 Q Would part of your job require that you maintain
5 records like this?

6 A Yes.

7 Q Okay.

8 MS. SHEALY: Your Honor, we would now like to move them
9 into evidence. My understanding, is it is without
10 objection.

11 MR. SMITH: No objection.

12 THE COURT: Marked and admitted with objection.

13 (State's Exhibit 25 was admitted into evidence.)

14 (State's Exhibit 27 was admitted into evidence.)

15 BY MS. SHEALY:

16 Q Could you tell us what it shows, Exhibit Number 25?

17 A Twenty-five is a sentencing plea for Marvin Porcher.

18 Q Okay. Signatures appear on the document?

19 A Signatures would include the judge's signature, have
20 the solicitor, the defendant and the attorney for the
21 defendant.

22 Q Okay. And what does it show a conviction for?

23 A It shows a conviction for a burglary-second.

24 MS. SHEALY: May I approach the witness?

25 THE COURT: Uh-huh.

1 Q Okay. Bear with me. Are you able to see that on your
2 screen?

3 A Yes, ma'am.

4 Q Okay. Okay. And can you tell us again what a -- what
5 is the conviction for.

6 A Burglary-second.

7 Q Okay. And does it show -- show the date of offense?

8 A It does. The day of offense is -- let's see. It looks
9 like November 5th through 6th. And I can't make out the
10 year.

11 Q Let's move that over for you a little bit there.

12 A 2005.

13 Q Okay. And can you also see the date of conviction?

14 A That would be at the bottom of the sentencing sheet
15 with the judge's signature.

16 Q We have ---

17 A May 24th, 2006.

18 Q Okay. Thank you. And now I will refer your attention
19 to Exhibit Number 26 (sic). Can you tell me whose
20 signatures appear on that document?

21 A Actually I have 27.

22 Q You have 27. I am sorry about that. Twenty-seven.

23 A The signatures on this document are the same. The
24 judge, defendant, defendant's attorney, and solicitor.

25 MS. SHEALY: May I approach?

1 THE COURT: Yes, you may.

2 Q And can you tell me what that conviction is for?

3 A This is for a burglary third-degree.

4 Q Okay. And I know we just went over this, but could you
5 tell me again whose signatures appear on the document?

6 A Yes, ma'am, it is the solicitor, the defendant, the
7 defendant's attorney, and the judge's signature at the
8 bottom.

9 Q And can you tell you -- can you tell me who is the
10 defendant in this case?

11 A Marvin Porcher.

12 Q Okay. And what is the date of the offense?

13 A It is November 24th through 25th, 2006.

14 Q And can you tell me the date of the sentence?

15 A May 24th, 2006.

16 Q Okay. And are these official records of the Clerk of
17 Court for Charleston County?

18 A Yes.

19 Q No further questions. Please answer anything that the
20 defense has for you.

21 THE COURT: Any questions for the witness?

22 MR. SMITH: Thank you, Your Honor. Very briefly.

23 THE COURT: You are welcome, sir. You may proceed when
24 you are ready.

25 CROSS-EXAMINATION BY MR. SMITH OF SARAH LIPPE:

1 Q Ms. Lippe, I am going to show you what has been marked
2 State's Exhibit 25, okay. At the top, under the warrant
3 information, there are two boxes that are there. It is a
4 plea in trial; is that correct?

5 A Yes.

6 Q And when someone enters a plea in a case, that box is
7 checked?

8 A Yes.

9 Q It's their plea; is that correct?

10 A Yes.

11 Q In the box, same plea was checked in this case; is that
12 correct?

13 A Yes.

14 Q If there had been a trial, the other box would have
15 been checked; is that correct?

16 A That is correct.

17 Q And sometimes in regard to trial there may not be all
18 those signatures on the sentencing sheet; is that correct?

19 A That is correct.

20 Q I am going to show you what's marked State's Exhibit 27
21 and direct your attention to the same two boxes. In this
22 case does it indicate that this was a plea?

23 A Yes.

24 MR. SMITH: No further questions, Your Honor.

25 THE COURT: Any redirect of the witness?

1 MS. SHEALY: Nothing, Your Honor.

2 THE COURT: Any objection to the witness being excused?

3 MS. SHEALY: No, Your Honor.

4 THE COURT: From the defense?

5 MR. SMITH: No, Your Honor.

6 THE COURT: Ms. Lippe, you are excused.

7 THE WITNESS: Thank you.

8 THE COURT: You are welcome. The State may proceed.

9 You may proceed.

10 MS. WHITAKER: At this time, Your Honor, the State
11 would rest.

12 THE COURT: Madam forelady, ladies and gentlemen, the
13 State has rested their case. There are some matters of law
14 that I need to take up with the attorneys that should take a
15 few moments.

16 During this break please do not discuss the case and
17 please leave your notepads in your seats. We appreciate
18 your patience.

19 (WHEREUPON, jury exited courtroom 3:40 p.m.)

20 THE COURT: Are there any motions?

21 MR. SMITH: Yes, Your Honor. At this time we would
22 make a motion for a directed verdict. We believe that even
23 in looking at the evidence most favorable -- in the light
24 most favorable to this State that the State in this case
25 failed to prove the offense of burglary against Mr. Porcher.

1 There is no evidence that he entered the home. There
2 is no eyewitness accounts indicating that. There is no
3 forensic evidence indicating that.

4 In addition, Your Honor, Mr. Porcher the testimony has
5 been that he pled guilty to receiving stolen goods and a
6 false information. We believe that that is what this case
7 is and should have been resolved for.

8 And we don't believe that when you take a look at the
9 evidence in a totality since that they have met their burden
10 of proving beyond of where we are right now that they have
11 even established a burglary in any sense of the word.

12 THE COURT: Would the State like to respond?

13 MS. WHITAKER: Yes, Your Honor. We believe that we
14 have shown where there was entry and entry was made most
15 likely with a tool consistent with the ones found on his
16 person.

17 We would like to point out the proximity of time as
18 well as the short distance away he was located and the fact
19 that he had multiple goods from the home as well as the fact
20 that he had been on that laptop computer a mere 24 hours
21 prior.

22 THE COURT: Considering the evidence in the light most
23 favorable to the State and all inferences in their favor the
24 court is concerned with the existence or nonexistence of
25 evidence and not its weight.

1 The State's case does not have to -- the court does not
2 have to find that -- and actually I am in the middle of two
3 thoughts, and I apologize. I am trying to do too many
4 things at one time thinking ahead about lesser included
5 offenses and thinking about that analysis. And I apologize.
6 I'm trying to do too many things at once. So why don't we
7 start over.

8 The court is concerned with the existence or
9 nonexistence of evidence and not its weight. It is not for
10 the court to act as the fact finder. The court is not
11 required to find that the evidence infers guilt to the
12 exclusion of any other reasonable hypothesis.

13 While there is no direct testimony in this case such as
14 an eye-witness there is certainly substantial circumstantial
15 evidence reasonably tending to prove the defendant's guilt.

16 And in the interest of time I am not going to go back
17 through and re- -- and summarize all of that -- all of the
18 testimony.

19 But there is certainly sufficient evidence that the
20 defendant by some level of, not necessarily that it would
21 rise to the level of trickery or subterfuge or otherwise,
22 but he inquired of the victim as to whether she was going to
23 be home that night and then after she went out the home was
24 burglarized and then in close proximity to those events the
25 defendant was found in possession of the items that were

1 taken from the residence. So there is substantial
2 circumstantial evidence.

3 The arguments going to the weight of that evidence are
4 certainly appropriately made to the fact finder, not to the
5 court. It is not for me to parse out that and to weigh it.
6 It is for the fact finder to do that.

7 And certainly you can argue to them that you feel the
8 State has not met their burden of proof and that all he ever
9 had was possession of the items. Although receiving stolen
10 goods is not a lesser included offense of burglary in the
11 first-degree.

12 Now would counsel approach for me for a moment.

13 (WHEREUPON, bench conference was held.)

14 THE COURT: Sir, I will remind you that you are still
15 under oath. We have now reached the stage of the -- state
16 your name for me, please.

17 MR. PORCHER: Marvin Xavier Porcher.

18 THE COURT: Sir, we have now reached the stage of the
19 trial where you may present your defense, so I am going to
20 explain certain of your rights to you. If you do not
21 understand anything I say, please let me know. If you need
22 me to repeat anything I say, let me know. Do you
23 understand?

24 MR. PORCHER: Yes, ma'am.

25 THE COURT: Sir, you have the right to testify in this

1 appreciate your time. If you would leave your notepads in
2 your seats we will resume in the morning at 9:30. You will
3 come directly to your jury room and at that time we will
4 have closing argument and instruction.

5 Have a wonderful evening and we will see you at 9:30.

6 (WHEREUPON, the jury exits courtroom 4:27 p.m.)

7 THE COURT: Okay. And the defense has rested. Are
8 there any motions?

9 MR. SMITH: Your Honor, we would just renew our motion
10 for directive verdict, same grounds as stated before.

11 THE COURT: Okay. Would the State have anything in
12 response?

13 MS. WHITAKER: Your Honor, we would just renew our
14 argument of the last time.

15 THE COURT: The court will stand on its previous
16 ruling. If you give me one moment we will begin charge
17 conference.

18 I will give the jury a general instruction regarding
19 their responsibility and my responsibility, how they are to
20 judge witness credibility and believability.

21 I will give them a general instruction on direct and
22 circumstantial evidence as well as the charge, the arrest,
23 and the indictment not being evidence as well as the
24 presumption of innocence.

25 I will charge Victor versus Nebraska on reasonable

1 State may proceed.

2 MS. SHEALY: May it please the court?

3 THE COURT: Yes, ma'am.

4 MS. SHEALY: Mr. Smith. Mr. King.

5 CLOSING BY MS. SHEALY:

6 Good morning. Marvin Porcher, he didn't make three
7 poor decisions that night. He made one big mistake. He
8 burglarized the home of his neighbor, the neighbor who had
9 fed him the night before, the neighbor who had hired him and
10 paid him for some handyman jobs, the neighbor he had asked
11 earlier in that day are y'all going to be home tonight.

12 Mr. Porcher, he knew that house was going to be empty.
13 And he knew the home. He had been there to take down part
14 of a carport. He had been there on the outside to put up a
15 handrail. And he had worked along the roofline of her
16 mobile home. He knew where the cameras were. They were in
17 front. He went in the back door.

18 He knew her laptop was there. She was generous enough
19 the night before to let him get on Facebook while they took
20 a break from tattooing.

21 He that evening took his tools and he pried his way,
22 pried his way into her home. He pried his way into the
23 place that she worked three jobs to maintain working to
24 secure other people's property and cleaning houses.

25 He took the things that she spent money that she had

1 earned. And he took jewelry that didn't have a lot of
2 monetary value. It was simple jewelry, but it had a lot of
3 sentimental value to her.

4 I tell you, Marvin Porcher never thought he was going
5 to get caught. But thank goodness for Mr. Salgado. Mr.
6 Salgado told you that he was a resource officer, a community
7 resource officer.

8 He wanted to keep that neighborhood safe. That was his
9 duty. And on that evening when he passed Marvin Porcher
10 dressed in dark clothing on a bicycle that very difficult to
11 see because it didn't have a blinking light or reflector Mr.
12 Salgado thought enough of his safety to turn around and tell
13 him: Whoo. You need to get something. You are hard to
14 see.

15 And he was concerned about the safety of other people
16 as well, riding down the road and not being able to see a
17 bicycle.

18 What did Mr. Porcher do between the time that Mr.
19 Salgado passed and came back? He ditched that bike. Why
20 did he ditch the bicycle? Remember that he told Mr. Salgado
21 that he dropped it off at his girlfriend's house. Well,
22 Cassie didn't live off Stall Road. There was no
23 girlfriend's house that he ditched the bicycle at.

24 What is the next thing that Mr. Porcher does? He lies.
25 He lies. Mr. Salgado, what is your name? Marvin Swinton.

1 Can't find my ID in South Carolina. I am from New York.

2 Why does he give a fake name? He knew his goose was
3 cooked. He is the one with the incentive that evening to be
4 deceitful.

5 The judge has instructed you and may instruct you again
6 that the evidence that each of you are to consider in this
7 case comes from here (pointing), the witness testimony, and
8 comes from here (pointing), the items into evidence. That
9 is what you need to make your decision.

10 Don't base this on opening statements. There is
11 nothing in this record to support the hypothesis Mr. Smith
12 told you during opening statements. Flies in the face of
13 common sense.

14 And that is why our county selects juries to make
15 decisions. You are to use your common sense in deciding
16 this case.

17 There is no street with glistening jewelry in this
18 case. Pick up the glistening jewelry. Pick up the
19 glistening jewelry.

20 Mr. Porcher was found approximately one mile from the
21 home of Nancy Wohlford. And what does he have on her -- on
22 himself? He has her laptop, her jewelry. Ladies and
23 gentlemen, that evening when Mr. Salgado approached Mr.
24 Porcher he was wearing the burglary.

25 Black sweatshirt, black sweatpants, gray hat, jeans.

1 And what were in these jeans? In the back his wallet would
2 be right ID, Marvin Porcher; not Marvin Swinton.

3 And in the front, right pocket at 12:04 a.m. a razor
4 knife, an Allen wrench, another wrench. Who needs those
5 tools at 12:04 a.m.? Those were the burglary tools.

6 Also in the back pocket was that cylinder and some
7 jewelry. And his jacket, the jacket under which he hid the
8 laptop, jewelry in the pockets.

9 He didn't get them going down this fancy road with
10 glistening jewelry. He was snatching them when he invaded
11 her house that night and sticking things in pockets.

12 What else do his personal items tell you? You will
13 have those back there too. And we had those stipulations if
14 you need to refresh your memory.

15 He had one penny to his name. The other thing he had
16 was a Visa from the Plasma Center. You heard Detective
17 Evans yesterday talking about the receipts that were also
18 found on Mr. Porcher. They are back there. You can take a
19 look at them.

20 That morning he purchased on his plasma card it says
21 tobacco. It must have been cigarettes. He was not flush
22 with cash.

23 Mr. Smith pointed out that oh don't people go down in
24 that area to buy things. And remember I asked, don't they
25 go down there to sell things.

CLOSING BY MS. SHEALY

1 That is what was on Mr. Porcher's mind, selling stuff.
2 But he got cut short. I don't know where the TV is. And I
3 don't know where the other items of jewelry or the jewelry
4 box that Ms. Wohlford is still missing. I don't know where
5 they are. But I tell you who does. Marvin Porcher knows
6 where he stashed it.

7 Remember when Mr. Salgado asked Mr. Porcher why do you
8 have a laptop on you. Mr. Porcher said oh I am going to my
9 friend's house on Stall Road to use his internet. That is
10 what he told Mr. Salgado.

11 When he was taken to Detective Evans at the North
12 Charleston Police Department he said I bought it over in
13 Midland Park. But it was from a nameless man with no
14 description and no exact location. He didn't even bother to
15 tell Detective Evans anything about the jewelry.

16 Remember what Detected Evans testified to and Nancy
17 Wohlford testified to. When you opened that computer and
18 you powered it up, it had a very distinctive screensaver.
19 Marvin Porcher knew he had Nancy Wohlford's computer because
20 he stole Nancy Wohlford's computer.

21 You have heard some testimony that when he was arrested
22 for false information for lying and for possessing stolen
23 goods that he pled guilty.

24 Do not forget what Detected Evans told you and Mr.
25 Salgado told you. That is down in Traffic Court in North

1 Charleston. That's not what we are here about today. Those
2 charges don't come to this courthouse. We are here about
3 the burglary.

4 The defense in talking with and questioning Kathy
5 Kjellman made a big deal about the fact that there are no
6 fingerprints in this case and that there is no DNA.

7 As I said before: Porcher, he is wearing the burglary.
8 He is the one who lived next door to her. He is the one who
9 knew she would not be home that night. He's the one who
10 knew she had a laptop.

11 There are plenty of burglaries that involve people
12 wearing gloves. Kathy Kjellman told you that. Just because
13 there's not a fingerprint doesn't mean there is not a
14 burglary.

15 This trial is not an episode of CSI or some of those
16 other crime scene shows. This, ladies and gentlemen, is a
17 real burglary with real people.

18 Frankly, Nancy Wohlford, she didn't deserve this. And
19 he doesn't deserve to get away with it. Judge Jefferson
20 after Mr. Smith gives his closing argument will instruct you
21 what the law is, what a burglary is, what we have to have
22 proven to you regarding a burglary.

23 Marvin Porcher, he entered his neighbor's house that
24 night. He entered it with the intent to steal. It was
25 nighttime. And he has two prior convictions for burglary.

1 We could prove just the nighttime or just that he had
2 two prior burglary. But we have got both. He is guilty of
3 burglary-first.

4 I tell you what is very telling to me. Cassie, his
5 girlfriend who lived with him who went out with Nancy
6 sometimes on Thursday nights to go to a bar and go to
7 dinner, Cassie who knew, who knew Mr. Porcher best, what did
8 Officer Baldwin tell you about her reaction when she heard
9 that Marvin Porcher had Nancy's laptop? She was extremely
10 upset. But what is more telling is what does she do the
11 next day. She packs her bags and leaves. She who knew him
12 best.

13 Ladies and gentlemen, the evidence of guilt in this
14 case is overwhelming. And we ask that you return a verdict
15 of guilty. Thank you very much.

16 THE COURT: Mr. Smith, you may proceed.

17 MR. SMITH: May it please the court?

18 THE COURT: Yes, sir.

19 MR. SMITH: Ms. Shealy and Ms. Whitaker.

20 **CLOSING BY MR. SMITH:**

21 When I was a young boy my mother bought a glass-top
22 table. She was proud of that table, and she put it right in
23 her kitchen. She showed that table off all the time.

24 My brother and I what we thought of the table was that
25 table is a menace in the kitchen. And the reason why it was

1 a menace in the kitchen is because every time someone passed
2 by, touched it, got near it, there were smudges on it. And
3 one of our chores was to turn up and to get the Windex out
4 and clean that table. And so our battle cry became get the
5 Windex. We knew there were going to be prints on it.

6 One day there was a lot of activity in the house. My
7 brother had friends over. I had had friends over. We were
8 going to and from sports practices. And low and behold,
9 something bad happened and there was a chip in that glass
10 table.

11 My mother was angry about it. She was very upset about
12 it. And but she never punished us for it. And the reason
13 that she didn't punish us for it is because she couldn't
14 tell who had done what. But she suspected me. She
15 suspected my brother. Why? Because we were the convenient
16 suspects.

17 Marvin Porcher is a convenient suspect in this case.
18 Why? Because of where he was. He was out riding his bike
19 in North Charleston at night without a blinking red light.
20 That is convenient. Because of when he did it. It was
21 late. It was late. So automatically if he is out late, he
22 is riding around in his clothes, it's raining, he's got a
23 jacket on, he must be up to no good.

24 And finally he is convenient because of who he is. He
25 has got a prior burglary. You heard about it. It was

CLOSING BY MR. SMITH

1 yesterday. He is the convenient, the convenient choice in
2 this case. But lucky for Mr. Porcher convenience doesn't
3 mean he is the correct suspect.

4 Marvin Porcher did not commit this burglary because he
5 owns up to what he has done. He owned up to the prior
6 burglaries. He pled guilty to those. He owned up to the
7 false information charge in this case. He owned up to the
8 receiving stolen goods charge in this case, all without a
9 jury trial.

10 Now let's talk about Detective Evans for just a moment.
11 Because what a burglar doesn't do in a case, a shifty
12 burglar that has got this big burglary planned out, is he
13 doesn't sit down and he doesn't talk to the officer in the
14 case without a lawyer. That is not what a shifty, crafty
15 burglar does. He didn't have to do that.

16 You heard Detective Evans talk about the advise of
17 rights. He went through each and every one of those rights
18 with Mr. Porcher. Mr. Porcher initialed them. He signed
19 the form. And even after he signed it, he sat there and
20 talked to Detective Evans.

21 And he did all of that knowing that this was a serious
22 case. And he did so without calling for me or asking for
23 any other lawyer.

24 Let's talk for a minute a little more about Detective
25 Evans. It must be nice to be him. He is a little bit like

1 the Wizard of Oz. He hears someone's statement and he
2 decides what is important. He decides what he wants to
3 memorialize. He decides what he wants to bring to court.
4 He decides what Marvin Porcher said was important enough to
5 follow up on.

6 You don't get to decide that. You don't get to even
7 hear that statement. The recording is not here. They can't
8 find it. We don't even know -- I have never even had the
9 chance to hear that recording to know what exactly was on
10 it.

11 Now when you choose a house as a burglar to break into,
12 a house that you would be familiar with, you would not
13 choose one with cameras.

14 You're going to have a chance to look at the photos in
15 this case. And you will remember Ms. Wohlford's testimony.
16 She will talk about -- she talked about where those cameras
17 were pointing.

18 One of those cameras was pointed at the front door.
19 One of them was pointed out towards the car. And one was
20 pointed at the back towards the shed.

21 Guess what? Those cameras fanned out like this
22 (pointing) from her front door, and they were pointed right
23 in the direction of Marvin Porcher's trailer.

24 If he was going to come out of that trailer and come
25 across that yard, he would have never taken a chance like

CLOSING BY MR. SMITH

1 that. If he wanted to commit that burglary he would have
2 never come across that yard.

3 He didn't know those surveillance cameras were not
4 working. Nobody knew it. Nobody knew it until she told the
5 police that night.

6 Now let's talk a little bit about what is also not
7 available for you to see today. The tools that the
8 solicitor talked about, tools that could have been used in
9 this crime. You don't get a chance to see them. If you
10 had a chance to see them you could evaluate their size.
11 You could evaluate what they are and how they could have
12 been used. Think for a moment from your own experience
13 about a razor knife, a box cutter, could that blade have
14 been used.

15 Deputy Baldwin says a trailer door is generally pretty
16 sturdy. And it would have had to have been something that
17 would have fit between the door jam and the lock to pry it
18 out.

19 The size of the wrench matters. Think about a wrench
20 with a big handle. Is it a crescent wrench. Is it a
21 crescent wrench. Is it a regular wrench. Think about an
22 Allen wrench. An Allen wrench goes from a very microscopic
23 size all the way up to a very big size.

24 If you were able to see those things it might be
25 something you could consider. I haven't been able to see

1 those things. They weren't important enough to keep. They
2 were destroyed. And you're going to see a stipulation to
3 that effect.

4 The other thing that is important about the tools is if
5 they had been used -- and you will see the pictures of how
6 the door was pried out and moved out from its original spot.

7 You would be able to see if those tools were marked up
8 in any way if they had evidence that they had been used in
9 that form or fashion. But you are not going to be able to
10 do that.

11 Before you can make a decision about whether Marvin
12 Porcher went into that house or used those tools you should
13 at least be able to know about that. But you are not going
14 to be able to.

15 Now when Detective Salgado approached Marvin he didn't
16 do what a normal burglar would do. Detective Salgado said
17 Marvin saw me pass; I'm pretty sure that he saw me pass. He
18 didn't -- he didn't go wherever he supposedly ditched the
19 bike. The bike was never found. Officer Salgado never
20 looked for the bike.

21 The easy thing for Marvin to have done would have been
22 to turn around on that bike and ridden the other way. That
23 is not what he did.

24 He got off the bike. He continued to walk. And then
25 he did talk to Detec- -- or to Officer Salgado. He gave him

CLOSING BY MR. SMITH

1 the wrong name.

2 Think about this: He is out late. He has purchased a
3 computer that he knows or should have known was stolen. And
4 he decides, you know what, I am probably going to jail.

5 So he does give a false name. There is no question
6 about that. But he does -- he doesn't try to get away. He
7 doesn't try to put up a fight. He stays right there and he
8 does talk with Detective Salgado. Once he is placed under
9 arrest he is cooperative and he goes down and he talks to
10 Detective Evans.

11 Now let's talk for a moment about the things that
12 Marvin did do with regard to Officer Salgado. Officer
13 Salgado got from him the name of the person where he was
14 going to look and use the internet. Officer Salgado never
15 checked up on that. You know, he gave him an address. He
16 gave him a location to go to. And that just wasn't done.

17 Now let's think for a moment about Ms. Wohlford's
18 testimony about going to Marvin's work the day this
19 occurred.

20 Burglars unfortunately they don't usually go out and
21 burglarize a place on a day they are receiving money or
22 getting paid.

23 Ms. Wohlford went to Marvin's work that day. She paid
24 him some money. She paid him some money for some work that
25 she anticipated him doing.

1 He turned around and gave that money to Cassie. If he
2 had needed money that day the easy thing for him to do would
3 have been to have stuck that money in his pocket and to have
4 kept it with him that day. But that is not what he did.

5 Now Ms. Shealy talked about the clothes in the case.
6 She said he was wearing the burglary. It is November.
7 Charleston, that (displaying) is probably a coat I would
8 wear out.

9 These jeans (displaying) were on Mr. Porcher. They are
10 not dark jeans. They are not black jeans. There are not
11 only the sweatpants that were here. All he had on was the
12 sweatshirt with the sweatpants over the other jeans.

13 Think about the shoes. The shoes are light. They are
14 not black. They are not ones that you would be running
15 around in or worried about getting mud on your shoes. There
16 was testimony that it was raining out there. He wouldn't
17 have worn those shoes if that were the case.

18 But think for a minute what you don't see in this box.
19 Every good burglar needs a pair of gloves according to Ms.
20 Shealy. If he was out there and it was right after this
21 occurred there would have been gloves in that box. But
22 there wasn't.

23 The other thing that is missing is money. There was no
24 money on Marvin. He had a penny, one cent. If he had sold
25 the TV, if he had sold the other jewelry, if he had done

CLOSING BY MR. SMITH

1 something and sold the other jewelry boxes he would have had
2 cash on him. What he had was one single penny.

3 Let's talk about the physical evidence in this case.
4 And you will have a chance to look at the pictures. The
5 burglar in this case went in through the back door, the back
6 door where there were plenty of smooth surfaces. There were
7 door jams on the side. There were handles where you would
8 be able to see -- or doorknobs you would be able to see
9 pictures of those.

10 You'll also be able to see pictures of a diamond-shaped
11 window on the door. Think about this. That burglar didn't
12 go through one room. They didn't go through two rooms.
13 They didn't even go through three rooms in this house. They
14 went through three rooms total. Think about all the
15 surfaces that were in that house that they could have looked
16 for and found prints and they just didn't.

17 Now why did I ask the questions about DNA? Because
18 that can be an important part of the case. The reason that
19 I asked that question is because there was some testimony
20 about when Officer Salgado caught up to Marvin he was
21 sweating. What could be found in that sweater? DNA. They
22 didn't bother to look.

23 There are lots of things in this case that make Marvin
24 Porcher a convenient choice, an easy choice, the usual
25 suspect.

1 But what I submit to you is that the evidence in this
2 case says Marvin Porcher is not the correct choice. I ask
3 that you find Marvin Porcher not guilty.

4 THE COURT: During this trial, ladies and gentlemen,
5 you and I have certain duties to perform. As the trial
6 judge it is my responsibility to preside over the trial of
7 this case.

8 I also have the duty to rule upon or pass upon the
9 admissibility of evidence offered during this trial. You
10 are to consider only the competent evidence before you. You
11 are to consider only the testimony which has been presented
12 from the witness stand together with any exhibits which
13 have -- which have been made a part of the record in this
14 case as well as any stipulations of counsel made for the
15 record.

16 I instruct you, ladies and gentlemen, that a
17 stipulation is a legal term meaning agreement. And a
18 stipulation is an agreement entered into between the
19 attorneys and it requires no further proof.

20 I have the additional duty to charge or instruct you on
21 the law applicable to this case. As the presiding judge I
22 am the sole judge of the law of this case. And it is your
23 duty as jurors to accept and apply the law as I now state it
24 to you.

25 If you have a preconceived idea as to what the law is

1 or what the law ought to be in a case or in this case and it
2 should not agree with what I know tell you the law is, you
3 are obligated under the oath which you have taken to abandon
4 this preconception on your part because you are sworn to
5 accept the law and apply the law precisely as I now state it
6 to you.

7 In every case tried in this court before a jury the
8 jury becomes the sole and exclusive judges of the facts in a
9 case. You, the jury, are the judges of the facts in this
10 case. This court is the judge of the law.

11 The constitution of our state has declared that a trial
12 judge shall not state, intimate, or comment or make any
13 statement to a trial jury about the facts in a case.

14 Since you the jury are the sole judges of the facts in
15 this case you are not to infer anything from what I have
16 said during the progress of this trial in ruling upon the
17 admissibility of evidence or otherwise that I have any -- or
18 anything that I now say to you during the course of this
19 instruction that I have any opinion about the facts. The
20 law does not allow me to have an opinion about the facts.
21 This is a matter solely for you the jury to determine.

22 As jurors then it is your duty as I have instructed you
23 to determine the effect, the value, the weight, and the
24 truth of the evidence presented during this trial.

25 Necessarily you must assess the credibility of

1 witnesses who have testified in this case. Credibility is
2 simply a legalistic term which means believability. It
3 becomes your duty as jurors to analyze and to evaluate the
4 evidence and determine that evidence which convinces you of
5 its truth.

6 Some of the things you may consider as you decide
7 whether or not to believe a witness's testimony about a
8 particular matter include what was the manner and appearance
9 of the witness who testified, was he or she straightforward
10 or hesitant in answering, was the testimony of the witness
11 consistent or inconsistent, how did the witness come to know
12 the facts that he or she testified to or what was his or her
13 ability to know these facts, is there some reason a witness
14 would want to give testimony which would help or hurt one
15 side or the other; in other words, was the witness biased or
16 prejudiced; and was the testimony of a witness strengthened
17 or weakened by other testimony or evidence.

18 You can believe as much or as little of each witness's
19 testimony as you think proper. You may believe the
20 testimony of a witness in its entirety. And you may reject
21 the testimony of a witness in its entirety.

22 I further instruct you, ladies and gentlemen, that in
23 determining the question of the credibility or believability
24 of witnesses who have testified in this case you may believe
25 one witness against several witnesses or several witnesses

1 as against one witness.

2 You may believe a part of the testimony of a witness
3 and reject the remaining part of the testimony of that same
4 witness.

5 If you have a good and sound reason you may believe the
6 testimony of a witness in its entirety or reject the
7 testimony of a witness in its entirety.

8 You may consider the demeanor of the witness, that is
9 the appearance and manner of the witness from the witness
10 stand.

11 You can believe as much or as little of each witness's
12 testimony as you think appropriate.

13 Of course, ladies and gentlemen, throughout this
14 process you have but one objective, to seek the truth
15 regardless of its source.

16 I further instruct you, ladies and gentlemen, that
17 there are two types of evidence which are presented during a
18 trial, direct evidence and circumstantial evidence.

19 Direct evidence is the testimony of a person who
20 asserts or claims to have actual knowledge of a fact such as
21 an eyewitness. Circumstantial evidence is proof of a chain
22 of facts and circumstances indicating the existence of a
23 fact.

24 The law makes absolutely no distinction between the
25 weight or value to be given to either direct or

1 circumstantial evidence. Nor is a greater degree of
2 certainty required of circumstantial evidence than of direct
3 evidence.

4 You should weigh all of the evidence in this case.
5 After weighing all of the evidence if you are not convinced
6 of the guilt of the defendant beyond a reasonable doubt you
7 must find the defendant not guilty.

8 Conversely, if you are convinced of the guilt of the
9 defendant beyond a reasonable doubt then you must find him
10 guilty.

11 I instruct you that the fact that the defendant was
12 arrested, charged, and indicted in this case is not evidence
13 in this case and cannot be considered by you as evidence of
14 guilt in this case, nor does it create any presumption or
15 inference of guilt.

16 This documentation is simply the formal instrument
17 which contains the charge against a defendant. It serves as
18 the formal documentation by which the case is processed or
19 brought into this court.

20 The defendant has pled not guilty to the indictment.
21 And that plea casts the burden on the State to prove the
22 defendant guilty. Because a person charged with committing
23 a criminal offense in South Carolina is never required to
24 prove himself innocent.

25 I instruct you, madam forelady, ladies and gentlemen of

1 the jury, that it is a cardinal and important rule of the
2 law of evidence that the defendant in a criminal trial no
3 matter what the seriousness of the charge made against him
4 may be will always be presumed to be innocent of the crime
5 for which he is indicted unless his guilt has been proven by
6 evidence satisfying you of that guilt beyond a reasonable
7 doubt.

8 This presumption of innocent does not cease when you
9 retire to deliberate but it accompanies the defendant from
10 the time of his appearance throughout the trial until you
11 reach a verdict.

12 Our Supreme Court has said that the presumption of
13 innocence is like a robe of righteousness placed about the
14 shoulders of the defendant and it remains with him and
15 assigns him to that class, the innocent, until that
16 presumptive robe of righteousness has been stripped from his
17 person by evidence satisfying you of that guilt beyond a
18 reasonable doubt.

19 Madam forelady, ladies and gentlemen, the presumption
20 of innocence is not mere legal theory. It is not just a
21 legal phrase. It is a substantial right to which every
22 defendant is entitled unless you the jury are satisfied from
23 the evidence of his guilt beyond a reasonable doubt.

24 The State has the burden of proving the defendant
25 guilty beyond a reasonable doubt. Some of you may have

1 served as jurors in civil cases where you were told that it
2 is only necessary to prove that a fact is more likely true
3 than not true, such as by the greater weight or the
4 preponderance of the evidence.

5 In criminal cases the State's proof must be more
6 powerful than that. It must be beyond a reasonable doubt.
7 Proof beyond a reasonable doubt is proof that leaves you
8 firmly convinced of the defendant's guilt.

9 There are very few things in this world that we know
10 with absolute certainty, and in criminal cases the law does
11 not require proof that overcomes every possible doubt.

12 If based on your consideration of the evidence you are
13 firmly convinced that the defendant is guilty of the crime
14 charged you must find the defendant guilty.

15 If on the other hand you think there is a real
16 possibility that the defendant is not guilty you must give
17 the defendant the benefit of that doubt and find him not
18 guilty.

19 Ladies and gentlemen, the defendant is charged with
20 first-degree burglary. The State must first prove beyond a
21 reasonable doubt that the defendant entered a dwelling
22 without consent.

23 A dwelling is any building or portion of a building in
24 which a person ordinarily sleeps. A building constructed as
25 a dwelling or that has never been occupied cannot be

1 considered a dwelling for purposes of burglary. But a
2 building is a dwelling even if the residents are temporarily
3 absent from the building.

4 In order to prove that the defendant entered the
5 dwelling the State does not have to show that the
6 defendant's entire body entered the dwelling. The smallest
7 entry is sufficient. It may be any part of the body such as
8 a hand or foot or even an instrument such as a hook or other
9 instrument.

10 In addition, the State does not have to prove that
11 force was used to gain entry. If a person enters a building
12 by using deception, artifice, trick, or misrepresentation to
13 get consent to enter, this is an entry without consent.

14 Next the State must prove beyond a reasonable doubt
15 that the defendant intended to commit a crime, either a
16 felony or a misdemeanor, at the time of entry.

17 The mere entry into a dwelling without consent is not
18 burglary. If the intent to commit a crime is formed after
19 the entry it is not burglary.

20 On the other hand, if the defendant intended to commit
21 a crime at the time of the entry it is a burglary even if
22 the intent was abandoned after the entry. It does not
23 matter than the intended crime was not completed.

24 Intent may be shown by act and conduct of the defendant
25 and other circumstances from which you may naturally and

1 reasonably infer intent.

2 Finally, the State must prove beyond a reasonable doubt /
3 that the defendant entered or remained in the dwelling in
4 the nighttime - nighttime is the period between sunset and
5 sunrise during which there is not enough daylight to
6 recognize a person's face except by artificial light or moon
7 light - or the defendant has a prior record of two or more
8 convictions for burglary and/or housebreaking.

9 Evidence of prior offenses committed by the defendant
10 was not offered to prove the defendant has a bad character
11 or to prove that the defendant committed the burglary on
12 this occasion.

13 The prior convictions may be considered by you only for
14 the purpose of determining whether or not it satisfies that
15 element of the offense that makes it first-degree burglary,
16 if you enter a dwelling without consent to commit a crime
17 and you have two prior convictions for burglary and/or
18 housebreaking.

19 Before you can even consider the evidence of the
20 defendant's prior burglary and/or housebreaking convictions
21 you must first find that the State has proven beyond a
22 reasonable doubt that a burglary was committed by the
23 defendant.

24 If you find beyond a reasonable doubt that the burglary
25 was committed then you may consider the evidence of the

1 prior convictions as evidence of one of the circumstances
2 which would make the burglary first-degree burglary.

3 If you do not find beyond a reasonable doubt that the
4 defendant committed these alleged prior offenses then you
5 cannot return a verdict of first-degree burglary.

6 I instruct you and emphasize that the fact that the
7 defendant did not testify is not a factor to be considered
8 by you in any way in your deliberations and in your
9 consideration on the question of the guilt or innocence of
10 the defendant. It must not be considered by you in any
11 manner whatsoever.

12 A defendant has the constitutional right to remain
13 silent. And the assertion of this right must not be
14 considered by you in your deliberations.

15 I repeat, under your oath you are to draw no conclusion
16 whatsoever from the fact that the defendant in this case did
17 not testify.

18 The fact that this defendant did not testify should not
19 even be discussed in the jury room in any manner whatsoever
20 during your deliberations.

21 The burden of proof as I have stated to you is on the
22 State. The defendant is not required to prove his
23 innocence. The burden of proof remains on the State to
24 prove guilt beyond a reasonable doubt.

25 Ladies and gentlemen, there are two possible verdicts

1 in this case. And you don't have to try to write this down,
2 because the jury form goes into the jury room with you.

3 And there is no significance whatsoever to the order in
4 which I state these potential verdicts. It is simply that
5 one must be stated first. And they are as follows:

6 As to Indictment Number 2013-GS-10-4867 we the jury by
7 unanimous consent find the defendant guilty of burglary in
8 the first degree or not guilty.

9 Again, there is no significance whatsoever to the order
10 in which I have stated these potential verdicts. It is
11 simply that one must be stated first.

12 Ladies and gentlemen, your verdict must be a unanimous
13 one which means that all twelve of you must agree in order
14 to reach a verdict.

15 Madam forelady, when the jury has agreed upon a verdict
16 it is your responsibility to fill out the verdict form and
17 to sign and date the form. And it is also your
18 responsibility to knock on the door and advise the bailiffs
19 that the jury has reached a verdict.

20 Also, if the jury has any questions during
21 deliberations it is your responsibility to write those
22 questions out and follow the same procedure by notifying the
23 bailiffs that the jury has a question.

24 Ladies and gentlemen, if you have any questions during
25 deliberations please know that there will be a delay in our

1 response. It does not mean that we are ignoring you. It is
2 simply that there is a procedure that we must follow in
3 answering any questions.

4 So know if you have a question, there will be a brief
5 delay because we have to follow that procedure before we
6 answer you.

7 I am going to ask now that you return to your jury
8 room. But do not yet begin your deliberations. And please
9 leave your notepads in your seats. There are some matters
10 of law that I need to take up with the attorneys that may
11 require a further instruction or clarification of an
12 instruction.

13 However, if there is no further instruction we will
14 send in the evidence along with your notepads and the
15 verdict form and at that time you will be allowed to begin
16 your deliberations. And your lunch will arrive at twelve
17 noon. If you would go with the bailiffs, please.

18 (WHEREUPON, jury exits courtroom 10:46 a.m.)

19 THE COURT: Any exceptions from the State?

20 MS. SHEALY: Your Honor, we would ask that you
21 reinstruct them about opening statements not being evidence.

22 THE COURT: I have already done that in my opening
23 instruction. I think to do that at this point would draw
24 undue attention to it. It will almost be a comment on the
25 facts of the case, and I don't think it would be

1 appropriate.

2 I find that jurors take their responsibility very
3 seriously. And unlike us because we hear it all the time,
4 we are almost numb to it.

5 But you have to remember this is almost an experience
6 of first impression for them, so they listen very carefully.
7 And I think they take the court's instructions very
8 seriously. And I have already instructed them that argument
9 is not evidence.

10 And I think within the context of the entire
11 instruction, because at the very beginning of the
12 instruction I tell them that in making their decision the
13 only thing they are to rely on is the testimony they have
14 heard from the sworn witnesses, any stipulations, and the
15 evidence. So I think it is clear.

16 MS. SHEALY: Okay. Thank you, Your Honor.

17 THE COURT: You are welcome. Anything further?

18 MS. SHEALY: No, Your Honor.

19 THE COURT: Anything from the defense?

20 MR. SMITH: No, Your Honor.

21 THE COURT: All righty. Could y'all just one more time
22 make sure everything -- all the evidence is there that needs
23 to be sent in. And I don't know if those clothes need to be
24 put back in a bag or ---

25 MS. SHEALY: I will put them back.

1 THE COURT: Okay. So what do we need to do to do that?

2 MS. SHEALY: It is marked as ID 28. I guess what we
3 really probably should do just to make it easier is run a
4 duplicate of that photograph and mark it 28 ---

5 THE COURT: I think what you need to do is you need to
6 take the contents out of that envelope, put it on this table
7 and lay the envelope next to it. Take a picture of it ---

8 MS. SHEALY: Okay.

9 THE COURT: --- and substitute that for what is in the
10 envelope. And leave the envelope with the record and then
11 give her back her ---

12 MS. SHEALY: Okay.

13 THE COURT: Is there any exception to that from the
14 defense?

15 MR. SMITH: No, Your Honor.

16 THE COURT: Okay.

17 (WHEREUPON, a break was taken July 19, 2013, 10:53 a.m.)

18 (WHEREUPON, resumed July 19, 2013, 11:53.)

19 THE COURT: We have a verdict. Is there anything
20 further from -- before we bring in the jury, from the State?

21 MS. WHITAKER: Nothing from the State, Your Honor.

22 THE COURT: From the defense?

23 MR. SMITH: No, Your Honor.

24 THE COURT: Thank you. They are coming down the hall
25 right behind me so.

1 (WHEREUPON, jury enters courtroom 11:53 p.m.)

2 THE CLERK: All present.

3 THE COURT: Thank you, Mr. Julius. Madam forelady, has
4 the jury reached a verdict?

5 MADAM FORELADY: Yes, they have.

6 THE COURT: If you would give the jury form to the
7 bailiff for me, please.

8 (Complied.)

9 THE COURT: Thank you, sir. Sir, if you stand while
10 the clerk publishes the verdict.

11 THE CLERK: Case Number 2013-GS-10-4867, the State of
12 South Carolina versus Marvin Xavier Porcher, as to
13 Indictment 2013-GS-10-4867 we the jury by unanimous consent
14 find the defendant guilty of burglary in the first-degree.
15 Signed foreperson, Linda Brown.

16 Madam forelady, ladies and gentlemen of the jury, if
17 this is your verdict, please raise your right hand.

18 (Jurors complied.)

19 THE CLERK: Thank you.

20 THE COURT: Is there any request to poll the jury, from
21 the State?

22 MS. WHITAKER: None from the State, Your Honor.

23 THE COURT: From the defense?

24 MR. SMITH: Yes, Your Honor.

25 THE COURT: Ladies and gentlemen, if you would listen

1 If you need a work excuse before we mail those, those
2 will be mailed out today or Monday some time, your work
3 excuse as well as your check.

4 But if you need one today you can get it on the first
5 floor on the Circuit Court side of the courthouse. And any
6 of the deputy clerks at any of those windows can give you a
7 work excuse for today if you need one.

8 You are excused with the court's profound thanks. If
9 you would like to stay, just let Mr. Julius or Mr. Robinson
10 know. And then Mr. Brown is putting your lunch in the jury
11 room for you now as we are talking.

12 We will be at ease for just one moment and then we will
13 hear post-trial motions in a minute.

14 (WHEREUPON, jury exits courtroom July 17, 2013, 11:57 a.m.)

15 THE COURT: Are there any post-trial motions, from the
16 State?

17 MS. WHITAKER: No, Your Honor.

18 THE COURT: From the defense?

19 MR. SMITH: Your Honor, we would just make a motion for
20 a new trial based on the grounds that have already been
21 stated and note the directed verdict.

22 THE COURT: Any response from the State?

23 MS. WHITAKER: Your Honor -- Your Honor, our response
24 is the previous argument we have made.

25 THE COURT: Okay. The court would adopt its previous

1 rulings and make that a part of its ruling regarding the
2 motion for new trial.

3 In addition, I would further find that there is
4 substantial circumstantial evidence in the record to support
5 the jury's verdict, and the motion for a new trial is
6 denied.

7 Now as soon as the -- is there anything from the State
8 on sentencing?

9 MS. WHITAKER: Yes, Your Honor, there is. Your Honor,
10 we are also -- I had spoken with Mr. Smith earlier. We
11 would like to wrap up these two other cases we have
12 pending ---

13 THE COURT: Does he want to plead on these other two
14 cases, Mr. Smith, the breaking and entering motor vehicle?

15 MR. SMITH: I don't -- I would have to talk to him
16 about the options.

17 THE COURT: Why don't you go ahead and talk to him
18 about it. Because it really doesn't make sense for him to
19 be languishing. Even if he appeals it, it is going to take
20 three years and so -- at a minimum. At least two to three
21 years.

22 What you all told me at the beginning that he was
23 willing to plead on those. And frankly, those are 65
24 percent offenses. He would probably max those out by the
25 time his appeal is heard.

1 But of course I don't calculate time. I am not in the
2 business of that. But certainly if he -- it would seem to
3 me to make more sense than waiting to come back here and be
4 tried individually on each of those charges and not be given
5 credit for any of those indictments. But it up to him.
6 That is solely within his prerogative. That is his
7 decision.

8 (WHEREUPON, Mr. Porcher confers with counsel.)

9 THE COURT: Now we have that he has 2013-411 which is
10 B&E motor vehicle, 2012-1111 which is burglary first-degree,
11 and 2012-1910 which is B&E motor vehicle. What is the State
12 doing with the 2012-1111 indictment?

13 MS. WHITAKER: Your Honor, that one is being dismissed.

14 THE COURT: Okay. And so the only two then that are
15 pending is the 1910 and the 411?

16 MS. WHITAKER: Yes, Your Honor.

17 THE COURT: Mr. Smith, is he going to enter a plea on
18 the B&E motor vehicles?

19 MR. SMITH: Yes, ma'am.

20 THE COURT: Okay. And that plea would be guilty; is
21 that correct?

22 MR. SMITH: That is correct, Your Honor.

23 THE COURT: Have you fully explained to him the charges
24 contained in the indictment, the possible punishment, and
25 his constitutional rights?

1 MR. SMITH: I have, Your Honor.

2 THE COURT: Do you believe he understands the charges,
3 the punishment, and his rights?

4 MR. SMITH: I do, Your Honor.

5 THE COURT: Does he wish to plead guilty or not guilty?

6 MR. SMITH: Guilty, Your Honor.

7 THE COURT: Do you agree with that decision?

8 MR. SMITH: I do, Your Honor.

9 THE COURT: To your knowledge has he ever had to be
10 evaluated to determine his competency?

11 MR. SMITH: No, Your Honor.

12 THE COURT: Sir, raise your right hand to be sworn.

13 (WHEREUPON, the witness was duly sworn.)

14 THE COURT: You can put your right hand down. Sir,
15 state your full name for the record.

16 MR. PORCHE: Marvin Xavier Porcher.

17 THE COURT: Mr. Porcher, how old are you?

18 MR. PORCHE: Forty-seven.

19 THE COURT: How far have you gone in school?

20 MR. PORCHE: High school.

21 THE COURT: Graduated?

22 MR. PORCHE: Yes, ma'am.

23 THE COURT: What type of work did you do for a living?

24 MR. PORCHE: Auto body work. Paint and body work.

25 THE COURT: Are you married?

1 MR. PORCHE: Separated -- divorced.

2 THE COURT: Do you have any children?

3 MR. PORCHE: Four.

4 THE COURT: What are their ages?

5 MR. PORCHE: Twenty-eight, twenty-four, eighteen and
6 ten.

7 THE COURT: Are you currently on probation or parole?

8 MR. PORCHE: Probation.

9 THE COURT: What are you on probation for?

10 MR. PORCHE: Restitution for the burglary in 2005.

11 They put me back on it for -- I had finished. They put me
12 back on it to pay off the restitution. I was on parole and
13 I made parole. Completed the parole ---

14 THE COURT: You mean you are on community supervision?

15 MR. PORCHE: Yeah. And I had to pay off the
16 restitution. I had six months left.

17 THE COURT: Okay. And when was that supposed to
18 terminate?

19 MR. PORCHE: They still have a hold on me.

20 THE COURT: Okay. Do you understand that as a result
21 of this plea your community supervision could likewise be
22 revoked on that earlier charge?

23 MR. PORCHE: Yes, ma'am.

24 THE COURT: Okay. Have you ever been treated for the
25 abuse of alcohol, drugs, or mental illness?

1 MR. PORCHE: No, ma'am, just depression.

2 THE COURT: Okay. When were you treated for
3 depression?

4 MR. PORCHE: I am still being treated for depression.

5 THE COURT: Okay. Are you taking any medications for
6 that?

7 MR. PORCHE: Yes, ma'am.

8 THE COURT: And what are those medications?

9 MR. PORCHE: Rimron. Rimron.

10 THE COURT: Can you spell that for me?

11 MR. PORCHE: R-I-M-R-O-N.

12 THE COURT: Have you taken that in the last 72 hours?

13 MR. PORCHE: Yes, ma'am.

14 THE COURT: Does that in any way affect your ability to
15 understand where you are or what you are doing?

16 MR. PORCHE: No, ma'am.

17 THE COURT: Have you had any other drugs, alcohol, or
18 medication in the last 72 hours?

19 MR. PORCHE: High blood -- I take ---

20 THE COURT: For high blood pressure?

21 MR. PORCHE: Yes, ma'am.

22 THE COURT: Does that affect your ability to understand
23 where you are or what you are doing?

24 MR. PORCHE: No, ma'am.

25 THE COURT: Are you aware of any physical, emotional,

1 or nervous problem that would keep you from understanding
2 where you are right now or what you are doing?

3 MR. PORCHE: No, ma'am.

4 THE COURT: Sir, on Indictment 2012-1910 which is
5 breaking and entering a motor vehicle how do you plead?

6 MR. PORCHE: Guilty.

7 THE COURT: Do you understand that that carries a
8 maximum penalty of five years and/or maximum fine of \$1,000?

9 MR. PORCHE: Yes, ma'am.

10 THE COURT: And on Indictment 2013-411 -- 411, breaking
11 and entering a motor vehicle how do you plead?

12 MR. PORCHE: Guilty.

13 THE COURT: Do you understand that likewise that
14 carries a maximum penalty of five years and/or a maximum
15 fine of \$1,000?

16 MR. PORCHE: Yes, ma'am.

17 THE COURT: And for the record, both indictments have
18 been true billed. And Indictment 2012-GS-10-1111 burglary
19 first-degree is being null processed by the solicitor's
20 office. Sir, I want you to listen carefully to the facts.

21 Ms.

22 MS. WHITAKER: Thank you, Your Honor.

23 THE COURT: I always want to call you Ms. Shackity
24 instead of Ms. Whitaker. I apologize.

25 MS. WHITAKER: Oh, that is fine, Your Honor.

1 On August 9th, 2011, the victim contacted the North
2 Charleston Police Department to report that his vehicle had
3 been broken into.

4 The victim reported that his car radio was missing from
5 the dash of the vehicle. Crime Scene came out and was able
6 to lift a print from the vehicle. And those were found to
7 match Mr. Porcher's.

8 As far as the second incident, between the dates of
9 February 5th, 2011, and the morning of September 6th,
10 2011 ---

11 THE COURT: The indictment says November 5th, 2011.

12 MS. WHITAKER: I'm -- November -- the ---

13 THE COURT: It says No- -- it says September 5th, 2011,
14 which is Indictment 2013-411.

15 MS. WHITAKER: Yes, Your Honor, September 5th, 2011,
16 the victim's vehicle was parked at the Quality Inn on
17 Northside Drive.

18 The victim was staying there at that establishment.
19 And he noticed that his vehicle had been broken into.
20 There was visible blood on the driver's side door. And that
21 was -- that was taken and that ended up being a match to Mr.
22 Porcher's DNA.

23 As far as what had been taken from the vehicle: one
24 Magellan GPS unit, one HP printer, a pair of prescription
25 eye glasses, a cellular-phone vehicle charger, LG backpack,

1 souvenir mug, and other various items including cigarettes
2 and shirts and personal items.

3 The total monetary loss to the victim totaled \$1,073,
4 Your Honor.

5 THE COURT: Is there any restitution?

6 MS. WHITAKER: Your Honor, I do not believe any of
7 those goods were ever recovered. But I understand that he
8 will certainly be incarcerated for a while on the other one,
9 so that is not possible to be attached we understand.

10 THE COURT: Have the victims in this case -- each of
11 these cases been notified?

12 MS. WHITAKER: Your Honor, they have been notified.

13 THE COURT: And they are not present, correct?

14 MS. WHITAKER: They are not present.

15 THE COURT: Sir, do you agree or disagree with the
16 facts?

17 MR. PORCHE: I agree.

18 THE COURT: Do you feel anything needs to be changed or
19 added to the facts?

20 MR. PORCHE: No.

21 THE COURT: Are you pleading guilty, sir, because you
22 are guilty?

23 MR. PORCHE: Yes, ma'am.

24 THE COURT: Listen carefully. When you plead guilty
25 you give up certain important constitutional rights. Those

1 rights include your right to a jury trial.

2 At a jury trial you are entitled to a presumption that
3 you are innocent. The State has the burden of proving your
4 guilt beyond a reasonable doubt. You would have the right
5 to confront and cross-examine the State's witnesses, call
6 your own witnesses and present any defenses that you may
7 have.

8 If you have made any statement you would have the right
9 to challenge those statements. You would also have the
10 right to remain silent. And if you were silent your silence
11 could never be used against you. Do you understand your
12 rights?

13 MR. PORCHE: Yes, ma'am.

14 THE COURT: Do you understand you are giving up each
15 and every one of those rights?

16 MR. PORCHE: Yes, ma'am.

17 THE COURT: There have been no plea negotiations made,
18 correct?

19 MS. WHITAKER: No, Your Honor, there have not been.

20 THE COURT: Sir, have you been satisfied with your
21 lawyer's services?

22 MR. PORCHE: Yes, ma'am.

23 THE COURT: Has he answered all of your questions?

24 MR. PORCHE: Yes, ma'am.

25 THE COURT: Done everything you have asked or expected

1 in representing you?

2 MR. PORCHE: Yes, ma'am.

3 THE COURT: Have any complaints about his services?

4 MR. PORCHE: No, ma'am.

5 THE COURT: Has anyone promised you anything or held
6 out any hope of a reward to cause you to plead guilty?

7 MR. PROCHE: No, ma'am.

8 THE COURT: Has anyone used threats, coercion, force,
9 pressure, intimidation or duress to cause you to plead
10 guilty?

11 MR. PORCHE: No, ma'am.

12 THE COURT: Are you pleading guilty freely and
13 voluntarily and of your own will?

14 MR. PORCHE: Yes, ma'am.

15 THE COURT: Sir, have you understood my questions?

16 MR. PORCHE: Yes, ma'am.

17 THE COURT: Do you need to ask me about anything we
18 have been over?

19 MR. PORCHE: No, ma'am.

20 THE COURT: Have you been absolutely truthful in each
21 and every answer that you have given to the court?

22 MR. PORCHE: Yes, ma'am.

23 THE COURT: Do you understand that you have the right
24 to appeal this guilty plea and sentence of the court but
25 that you must do so in writing within ten days of today?

1 MR. PORCHE: Yes, ma'am.

2 THE COURT: Do you understand that if you cannot afford
3 an attorney for that process that one will be appointed to
4 you at no cost?

5 MR. PORCHE: Yes, ma'am.

6 THE COURT: I find there is a substantial factual basis
7 for each plea, that the defendant has entered the pleas
8 freely, voluntarily, knowingly, and intelligently; that he
9 has had the advice and assistance of counsel with whom he
10 has indicated to the court he is satisfied. And I will
11 accept each plea.

12 Do you have the sentence sheet for the trial?

13 MS. WHITAKER: Yes, Your Honor. May I approach?

14 THE COURT: Uh-huh.

15 (WHEREUPON, document presented to the court.)

16 THE COURT: Thank you, ma'am.

17 MS. WHITAKER: Thank you.

18 THE COURT: Anything further from the State regarding
19 sentencing on the case we just tried as well as the breaking
20 and entering motor vehicles?

21 MS. WHITAKER: Yes, Your Honor. Would you care for me
22 to publish his record?

23 THE COURT: We did that at the beginning ---

24 MS. WHITAKER: Okay.

25 THE COURT: --- of trial.

1 MS. WHITAKER: I would like to point out the victim is
2 here. She has been here the entire time. She is not
3 interested in speaking. But she has been very involved and
4 very accommodating to our office, always making herself
5 available in spite of a very busy work schedule.

6 And I would also like to point out that she has been
7 very much impacted by this burglary. She has since moved
8 residences because she felt unsafe.

9 Your Honor, and we would like to point out that the
10 defendant here has a long criminal history going back to
11 1988 without really any substantial breaks in time to the
12 present day. And, Your Honor, he was also on probation at
13 the time of these offenses.

14 THE COURT: I think he was on community supervision is
15 what it sounds like. It sounds like he -- well, I don't
16 know. What did he get for this burglary-second? Because I
17 have on my notes ten years suspended to five years
18 probation.

19 He said something about them putting him back on -- I
20 don't under ---

21 MS. WHITAKER: Your Honor ---

22 MR. PORCHE: I understand it is ten years suspended
23 service to five years, five years probation. I can serve
24 the five years ---

25 THE COURT: Ten suspended to five and five years

1 probation.

2 MR. PORCHE: I ---

3 THE COURT: Uh-huh.

4 MR. PORCHE: --- made parole. Went out on parole. I
5 completed the parole. After I completed the parole about
6 four or five months down the line they called me back and
7 said I had restitution to pay off, for me to come back and I
8 would pay up the restitution and have to pay -- didn't pay
9 any supervision fee, just pay off the restitution.

10 THE COURT: So this is a violation of probation, not --
11 well, sort of a violation of both because you still had time
12 hanging over your head. So they probably had you on
13 community supervision as well as probation.

14 MS. WHITAKER: Your Honor ---

15 THE COURT: So we need probation actually.

16 MR. SMITH: We have got ---

17 MS. WHITAKER: We have the paperwork from Dorchester if
18 that would be helpful, Your Honor.

19 THE COURT: Oh, it was a Dorchester County probation
20 case?

21 MS. WHITAKER: Yes, Your Honor. And we have that
22 printed out if it would be helpful for Your Honor.

23 THE COURT: Unless they agree to have it heard here, he
24 is going to have to go to Dorchester to have it heard.

25 MS. WHITAKER: I think, Judge -- and maybe I can step

1 out or somebody can help us with probation. I think
2 Dorchester sent the paperwork here to the probation office.

3 THE COURT: Okay. We need probation then to see what
4 the situation is or they will still have him on a hold and
5 that wouldn't -- that will -- that would be a problem.

6 MS. WHITAKER: Do you want me to go see if I can find
7 somebody?

8 THE COURT: No, somebody went to go get them.

9 MS. WHITAKER: Oh, okay.

10 THE COURT: Anything further from the State?

11 MS. WHITAKER: No, Your Honor.

12 THE COURT: I would be glad to hear from you, Mr.
13 Smith.

14 MR. SMITH: Thank you, Judge.

15 THE COURT: You are welcome.

16 MR. SMITH: As Marvin indicated to you, he did complete
17 high school. He is proud of that accomplishment.

18 He has done most of his work has been in the area of
19 auto body and mechanic type work. He has worked for a
20 couple of places, most recently for Kings Auto Body here in
21 Charleston. Also at Absolute Auto Sales.

22 He has been in Charleston pretty much his entire live,
23 more steadily since 1999. He does have brothers. He does
24 have children that are out there and that he was supporting
25 at the time this occurred.

1 Your Honor, obviously we understand the seriousness of
2 this case. But we do believe when you look at Mr. Porcher's
3 prior record that the minimum sentence of 15 years in this
4 case would be appropriate. It would be the most significant
5 amount of time he's spent in prison. It would send that
6 message.

7 He will also come away from this situation having two
8 strikes on his record knowing that if he were to ever get
9 out and this were to occur again it would result in life
10 without parole.

11 We would ask you to consider the minimum sentence on
12 this charge and consider the breaking and entering motor
13 vehicle charges to run concurrent with this.

14 THE COURT: How much free-time detention has he served?

15 MR. SMITH: Your Honor, he has been in jail since he
16 was arrested on this charge on November 4th, 2011.

17 THE COURT: There was something else. Oh, I needed to
18 correct on the burglary-first. It is a most serious
19 offense, not serious.

20 MS. WHITAKER: Yes, Your Honor. I am sorry. I must
21 have ---

22 THE COURT: That is okay.

23 MS. WHITAKER: --- marked that here.

24 THE COURT: I just wanted you all to be aware I
25 corrected it.

1 Sir, is there anything you would like to state for the
2 record on your own behalf?

3 MR. PORCHE: No, ma'am.

4 THE COURT: Okay. Anything further from the State?

5 MS. WHITAKER: Nothing from the State, Your Honor.

6 THE COURT: Okay. If you all will just bear with me
7 for a moment because I need to have probation here so that
8 we can deal with this other matter.

9 PROBATION: Your Honor, we are here.

10 THE COURT: Thank you.

11 Mr. Smith has a copy of the paperwork. It is from
12 Dorchester County.

13 MS. WHITAKER: Your Honor, may I approach.

14 (WHEREUPON, document presented to the court.)

15 THE COURT: Thank you. Mr. Smith, does Mr. Porcher
16 want to have his probation revocation dealt with now, or
17 does he want to deal with it in Dorchester County?

18 (WHEREUPON, defendant confers with counsel.)

19 MR. SMITH: Judge, he says he would like to deal with
20 that today.

21 THE COURT: Okay. His restitution was 2,675. It looks
22 like he is in arrears in his supervision fees and other
23 costs as well.

24 He was previously before Judge Hughston on 1/29/10 a
25 partial revocation of three years, reinstate on probation,

1 credit for time served to five months, failure to pay
2 supervision fees, fines and restitution.

3 And then on 4/16/09, Supervisor Talley, pay supervision
4 fees current within seven days; have all accounts current
5 within 60 days of signature. It looks like that was dealt
6 with administratively.

7 He is on probation for the offenses 2006-GS-10-4208,
8 2010-GS-10-4204, 4205, and 4207 which is burglary-second.
9 All burglary-second non-violence.

10 He was sentenced on 10/27/08 by Judge Goode. Actually
11 it was May 24th, 2006. His probation was to start 10/27/08.
12 He was sentenced to ten years suspended upon the service of
13 five years and five years probation.

14 How much time does he have left on this sentence?

15 PROBATION: Did he do a partial?

16 THE COURT: Yeah, well, he has ten years suspended to
17 five and five year's probation. So he did that five and
18 came out. Then Judge Hughston revoked three years.

19 PROBATION: So he has got two.

20 THE COURT: And reinstated ---

21 PROBATION: It sounds like two.

22 THE COURT: Yeah, so he has two years left. And the
23 violations would be, let's see, this conviction of -- in
24 general sessions court the trial we just completed and the
25 failure to report, the failure to pay supervision fees,

1 fines, surcharges, and restitution.

2 Mr. Smith, I guess the simple, straightforward way to
3 handle this probably would be just to revoke whatever
4 remaining time he has, terminate the probation, and reduce
5 everything to civil judgments. Does your client have any
6 objection to that?

7 MR. SMITH: No, Your Honor.

8 THE COURT: Okay. So what we will do then is pursuant
9 to agreement.

10 And sir, do you agree that you have willfully violated
11 the terms and conditions of your probation by being
12 convicted on the offense of burglary-first on the indictment
13 that was just -- that we just tried today to verdict which
14 is 2011 -- 2013-GS-10-4867?

15 MR. PORCHE: Yes.

16 THE COURT: Okay. What we will do then is by his --
17 with his consent we will revoke whatever is remaining, give
18 him credit for any time he is entitled to, and reduce all of
19 his financial obligations to civil judgments and then
20 terminate the probation. And the report will be made a part
21 of his court file.

22 (WHEREUPON, bench conference with probation officer off the
23 record.)

24 THE COURT: Considering the record before the court and
25 everything that has been presented by counsel, sir, if you

1 would stand for sentencing.

2 On both breaking and entering motor vehicles you are
3 sentenced to five years in the State Department of
4 Corrections.

5 On the burglary in the first-degree you are sentenced
6 to 15 years in the State Department of Corrections.

7 These sentences will run concurrent with one another.
8 You will get credit for any time that you have served to
9 be calculated and applied by the Department pursuant to
10 24-1340.

11 I have ordered the ATU if it is available. And these
12 will also be concurrent to your probation revocations.

13 MR. SMITH: Thank you, Your Honor.

14 THE COURT: You are welcome. Thank you all very much.
15 It was a very pleasant trial. Hope you all have a good
16 weekend.

17 MS. WHITAKER: Thank you, Your Honor.

18 THE COURT: You are welcome.

19 PROBATION: Thank you, Judge.

20 THE COURT: Thank you, sir. I appreciate you coming
21 over.

22 PROBATION: Thanks for waiting.

23 STATE ATTY: Judge, may Mr. Cooper approach with his
24 form?

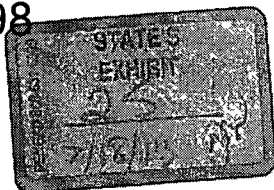
25 THE COURT: Sure.

1 (WHEREUPON, document presented to the court.)

2 THE COURT: And then make his probation revocation
3 concurrent to these as well.

4 MR. DAVIS: I will.

5 (WHEREUPON, the trial concluded July 19, 2013, 12:27 p.m.)



STATE OF SOUTH CAROLINA

COUNTY OF
STATE

AKA:

Race:

Sex:

Age:

DOB:

SS#:

Address:

City, State, Zip

DL#

SID#

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#:

A/W#:

Date of Offense:

S.C. Code §:

CDR Code #:

☐ CASE RESTORED

SENTENCE

☒ PLEA ☐ TRIALIn disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☐ PLEADS

TO:

in violation of § 16-11-312 of the S.C. Code of Laws, bearing CDR Code #

☒ NON-VIOLENT☐ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ 17-25-45The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☒ Defendant Waives Presentment to Grand Jury.The plea is ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST:

Solicitor

Defendant

Attorney for Defendant

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 5 days/months/years and/or paymentof \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for 5

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: 5/24/06☒ 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.

SPECIAL CONDITIONS:

☒ RESTITUTION: ☐ Heard, ☐ Waived, ☐ 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)

§14-1-211(A)(2) (DUI Surcharge)

§56-5-2995 (DUI Assessment)

§35.13 (Public Def/Prob)

§73-3, 1B TP (Law Enforce. Funding)

§33.7, 1B TP (Drug Court Surcharge)

§50-21-114(BUI Breath Test Fee)

§56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

TOTAL

\$100

\$100

\$12

\$500

\$25

\$100

\$50

\$40/ea

\$3.75

\$128.75

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, §35.13 TP Requires \$500 be paid to Clerk during probation

PRESIDING JUDGE

Judge Code:

Sentence Date:

Clerk of Court/ Deputy Clerk

Court Reporter:

ATTEST: A TRUE

JULIE D. ARMSTRONG, CLERK

By: _____

DEPUTY CLERK

White - Clerk

Green - Corrections

Canary - Probation

Pink - Defendant

SCCA/217 (7/2003)



STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATECharleston
Marvin Porcher

AKA:

Race:

Sex:

Age:

DOB:

SS#:

Address:

City, State, Zip

DL#

SID#

A/W#

Date of Offense:

S C Code §:

CDR Code #:

INDICTMENT/CASE#:

-GS-

☐ CASE RESTORED

SENTENCE

☒ PLEA ☐ TRIALIn disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS

TO: Burglary Third Degree

in violation of § 16-11-313 of the S.C. Code of Laws, bearing CDR Code # 0,4,2,7

☒ NON-VIOLENT☐ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ 17-25-45The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☒ Defendant Waives Presentment to Grand Jury.The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

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WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 5 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: 5/24/06☐ 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.

SPECIAL CONDITIONS:

☒ RESTITUTION ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ 2,250 plus 20% fee: \$

Payment Terms:

☐ set by SCDPPPS

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: _____

Recipient:

*Fine:

§14-1-206 (Assessments 107.5%)

§14-1-211(A)(1) (Conv. Surcharge)

§14-1-211(A)(2) (DUI Surcharge)

§56-5-2995 (DUI Assessment)

§ 35.13 (Public Def/Prob)

§73.3, 1B TP (Law Enforce. Funding)

§33.7, 1B TP (Drug Court Surcharge)

§50-21-114(BUI Breath Test Fee)

§56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

TOTAL

\$

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☐ Appointed PD or appointed other counsel, §35.13 TP Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

Sentence Date:

Clerk of Court/ Deputy Clerk

Court Reporter: G. Burns

ATTEST: A TRUE COPY

JULIE J. ARMSTRONG (CLERK)

By: Julie J. Armstrong

White - Clerk

Green - Corrections

Canary - Probation

Pink - Defendant

RS TSCCA/247-7/2003)

200

FA520110805683

WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER

2011029488

ARREST WARRANT NUMBER

M613172

DATE OF ARREST

August 23, 2011

ACTION OF GRAND JURY

TRUE BILL

Letia L. Schmitt
Foreperson of Grand Jury
Date APR 10 2012

VERDICT

Foreperson of Petit Jury

Date

INDICT

DOCKET NO 2012GS1001910

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

April Term 2012

THE STATE

vs.

MARVIN XAVIER PORCHER

DOB:

B/M

Indictment for

Breaking And Entering A Motor Vehicle

FILED

4/30/2012 2 41 08 PM

JULIE J ARMSTRONG

CLERK OF COURT

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

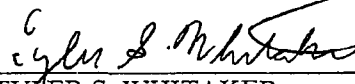
INDICTMENT

At a Court of General Sessions, convened on April 9, 2012 the Grand Jurors of Charleston County present upon their oath:

Breaking And Entering A Motor Vehicle

That in Charleston County, South Carolina, on or about August 9, 2011, the Defendant, MARVIN XAVIER PORCHER, did break or attempt to break into a motor vehicle belonging to James Wilson, at Road North Charleston, South Carolina, with intent to steal the same or anything of value therefrom; in violation of Section 16-13-160 of the South Carolina Code of Laws (1976) as amended.

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



TYLER S. WHITAKER
ASSISTANT SOLICITOR

202

TAS20120705172

WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER

2011033140

ARREST WARRANT NUMBER

M728037

DATE OF ARREST

June 23, 2012

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date

JUL 9 2013

VERDICT

Foreperson of Petit Jury

INDICT

DOCKET NO. 2013GS1000411

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

January Term 2013

THE STATE

vs.

MARVIN XAVIER PORCHER

DOB:

B/M

Indictment for

Breaking And Entering A Motor Vehicle

FILED

1/11/2013 3 38 44 PM

JULIE J ARMSTRONG

CLERK OF COURT

STATE OF SOUTH CAROLINA)

INDICTMENT

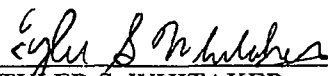
COUNTY OF CHARLESTON)

At a Court of General Sessions, convened on January 8, 2013 the Grand Jurors of Charleston County present upon their oath.

Breaking And Entering A Motor Vehicle

That in Charleston County, South Carolina, on or about September 5, 2011, the Defendant, MARVIN XAVIER PORCHER, did break or attempt to break into a motor vehicle belonging to Russell Boyd, at Drive North Charleston, South Carolina, with intent to steal the same or anything of value therefrom, in violation of Section 16-13-160 of the South Carolina Code of Laws (1976) as amended

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



TYLER S. WHITAKER
ASSISTANT SOLICITOR

204

TAS20111107543

WITNESSES

Charleston County Sheriff

AGENCY CASE NUMBER

2011018795B

ARREST WARRANT NUMBER

DIRIND1963

DATE OF ARREST

July 8, 2013

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury - JUL - 9 2013
Date.

VERDICT

GUILTY

Linda J. Brown 7-19-13
Foreperson of Petit Jury Date

INDICT

DOCKET NO 2013GS1004867

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

July Term 2013

THE STATE

VS.

MARVIN XAIVER PORCHER
DOB:

B/M

Indictment for
Burglary First Degree

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

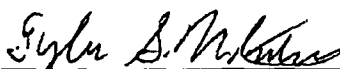
INDICTMENT

At a Court of General Sessions, convened on July 8, 2013 the Grand Jurors of Charleston County present upon their oath

Burglary First Degree

That in Charleston County, South Carolina, on or about November 3, 2011, the Defendant MARVIN XAVIER PORCHER, did enter the dwelling of Susan Rutledge and Nancy Wohlford, located at Street Lot Charleston, South Carolina, without consent and with the intent to commit a crime therein That, in addition, entry occurred at night and/or defendant was convicted of two or more housebreakings; in violation of Section 16-11-311 of the South Carolina Code of Laws (1976) as amended.

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



TYLER S. WHITAKER
ASSISTANT SOLICITOR

TAS20110805683

WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER

2011029488

ARREST WARRANT NUMBER

M613172

DATE OF ARREST

August 23, 2011

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date 1.09.12 10:20:12

VERDICT

Foreperson of Petit Jury

Date

INDICT

DOCKET NO. 2012GS1001910

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

April Term 2012

THE STATE

vs.

MARVIN XAVIER PORCHER

DOB:

B/M

Indictment for

Breaking And Entering A Motor Vehicle

FILED

4/30/2012 2 41 08 PM

JULIE J ARMSTRONG

CLERK OF COURT

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

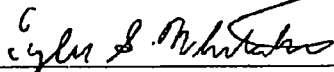
INDICTMENT

At a Court of General Sessions, convened on April 9, 2012 the Grand Jurors of Charleston County present upon their oath

Breaking And Entering A Motor Vehicle

That in Charleston County, South Carolina, on or about August 9, 2011, the Defendant, MARVIN XAVIER PORCHER, did break or attempt to break into a motor vehicle belonging to James Wilson, at Road North Charleston, South Carolina, with intent to steal the same or anything of value therefrom, in violation of Section 16-13-160 of the South Carolina Code of Laws (1976) as amended

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



TYLER S. WHITAKER
ASSISTANT SOLICITOR

TAS20120705172

WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER

2011033140

ARREST WARRANT NUMBER

M728037

DATE OF ARREST

June 23, 2012

ACTION OF GRAND JURY

TRUE BILLForeperson of Grand Jury
Date

JUL 9 2013

VERDICT

Foreperson of Petit Jury

1/9/13
Date

INDICT

DOCKET NO 2013GS1000411

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

January Term 2013

THE STATE

vs.

MARVIN XAVIER PORCHER
DOB:

B/M

Indictment for

Breaking And Entering A Motor Vehicle

FILED1/11/2013 3:38 44 PM
JULIE J. ARMSTRONG
CLERK OF COURT

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF CHARLESTON)

At a Court of General Sessions, convened on January 8, 2013 the Grand Jurors of Charleston County
present upon their oath:

Breaking And Entering A Motor Vehicle

That in Charleston County, South Carolina, on or about September 5, 2011, the Defendant, MARVIN XAVIER
PORCHER, did break or attempt to break into a motor vehicle belonging to Russell Boyd, at Drive
North Charleston, South Carolina, with intent to steal the same or anything of value therefrom, in violation of
Section 16-13-160 of the South Carolina Code of Laws (1976) as amended.

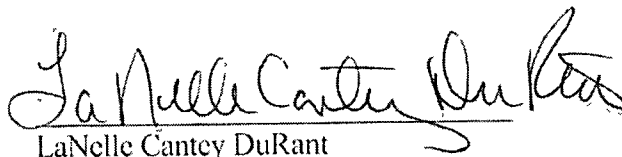
Against the peace and dignity of the State, and contrary to the statute in such case made and provided


TYLER S. WHITAKER
ASSISTANT SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

July 24th, 2014


LaNelle Cantey DuRant
Appellate Defender

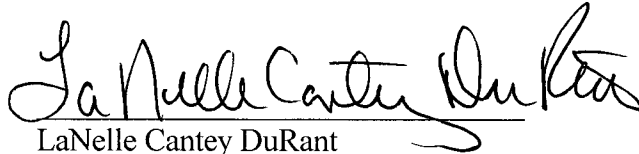
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings "

July 24th, 2014



LaNelle Cantey DuRant
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

DO NOTAL

Appeal from Charleston County
Deadra L. Jefferson, Circuit Court Judge

RECEIVED

JUL 24 2014

SC Court of Appeals

THE STATE,

RESPONDENT,

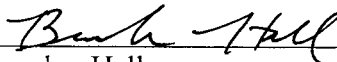
V.

MARVIN XAVIER PORCHER,

APPELLANT

CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon William M. Blich, Jr., Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 24th day of July, 2014.


Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 24th day of July, 2014.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: July 3, 2023