

ORIGINAL

VOLUME ONE OF TWO

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM OCONEE COUNTY

Alexander S. Macaulay, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

TIMOTHY R. WIRTZ,

APPELLANT

APPELLATE CASE NO. 2013-002328

RECORD ON APPEAL

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**THE FOLLOWING EXHIBIT IS ON FILE WITH THIS COURT:
STATE'S EXHIBIT #4 (CD OF TELEPHONE CALLS)**

1 State of South Carolina) In the Court of General Sessions
2 County of Oconee) Indictments Nos:
3) 2012GS3700588
4) 2012GS3700589
5) 2012GS3700590
6) 2013GS3700591

5 State of South)
6 Carolina)
7 Plaintiff,) Transcript of Record
8 -vs-) Trial - Volume 1
9 Timothy Ray Wirtz,)
10 Defendant.)

11 October 14 and 15, 2013
12 Walhalla, South Carolina

13 B e f o r e:

14 The Honorable Alexander S. Macaulay, Judge; and a
15 Jury.

16
17
18 A p p e a r a n c e s:

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20 Deputy Assistant 10th Circuit Solicitor
Attorney for the State

21 E. Delane Rosemond, Esq.
22 Attorney for the Defendant

23 Robin Sue Hild, FCRR, RPR
24 Circuit Court Reporter
25

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Exhibits

No.	Description	Id/Ev.
4	S1, rights waiver 2-14-14, 2012	45/177
5	S2, Voluntary Statement 2-14-2012 6:30 pm	45/177
5	S3, Voluntary Statement	45/177
6	S4, CD -- NOT TRANSCRIBED	45/181
6	D1, Warrants	126/--
7	D2, Oconee Sheriff's Office Info. Agreement	126/--
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1 Afternoon Proceedings

2 2:42 p.m.

3 (Marked for identification was State's Exhibit 1,
4 rights waiver dated February 14, 2012.)5 (Marked for identification was State's Exhibit 2,
6 Voluntary Statement dated February 14, 2012, at
7 6:30 p.m.)8 (Marked for identification was State's Exhibit 3,
9 Voluntary Statement.)10 (Marked for identification was State's Exhibit 4,
11 CD.)

12 THE COURT: All right. Is the State ready?

13 MR. WAGNER: Yes, sir.

14 THE COURT: Is the Defense ready?

15 MR. ROSEMOND: Yes, Your Honor.

16 THE COURT: All right. I understand we've got a
17 motion in the State v. Timothy Ray Wirtz?18 MR. WAGNER: Yes, Your Honor. I believe a Jackson
19 v. Denno hearing.20 THE COURT: Anything before we proceed,
21 Mr. Rosemond?22 MR. ROSEMOND: No, Your Honor.
23 Jackson v. Denno Hearing:

24 THE COURT: Call your first witness.

25 MR. WAGNER: I call David McMahan.

1 (Whereupon, the Witness, David McMahan, was sworn
2 by the Clerk of Court.)

3 THE CLERK: Please be seated.

4 Whereupon,

5 David McMahan

6 Having first been duly sworn, was examined and
7 testified as follows:

8 Direct Examination by Mr. Wagner:

9 Q. Officer, give us your name and spell your last name
10 for the record, please.

11 A. My name is David McMahan, it's M-c-M-a-h-a-n.

12 Q. And who do you work for?

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

14 Q. How long have you been working for the Sheriff's
15 Office?

16 A. Five years.

17 Q. And what are your job duties there currently?

18 A. I'm an investigator for the Sheriff's Office.

19 Q. Were you working as an investigator in that same
20 capacity back on February the 11th, 2012?

21 A. Yes, sir.

22 Q. And, as a result of your job duties, did you get a
23 call to go out to Eric Bush's residence?

24 A. Yes, sir, I did.

25 Q. And is that in Oconee County?

1 A. Yes, sir.

2 Q. What led you to go out there, what was the call
3 for?

4 A. The call came out over dispatch as a burglary that
5 had just taken place, and I was dispatched soon after
6 the call was sent out.

7 Q. The address of Mr. Bush's house, [REDACTED]
8 in Westminster --

9 A. Yes, sir.

10 Q. -- is that location in Oconee County?

11 A. Yes, sir.

12 Q. And, when you got out there, did you talk to the
13 victim?

14 A. Yes, sir, I did.

15 Q. What did you determine had happened?

16 A. What we determined had happened, there was -- we
17 determined there was forced entry into the home. The
18 victim, Mr. Bush, was asleep at the time. He was, woke
19 up and found a person in his room. He was tied up and
20 held at gunpoint.

21 Q. Okay. And what was stolen?

22 A. Several items. Mainly it was most all of his guns,
23 pistols, rifles, shotguns, a lot of ammunition and
24 related gun parts, laptops, billfolds, credit cards; a
25 numerous amount of things.

1 Q. Okay. Did your investigation, did it progress
2 rapidly from that point?

3 A. Yes, sir, it did.

4 Q. And did you check into whether anybody had used his
5 credit card of the victim?

6 A. Yes, sir. I instructed the victim to call his
7 credit card company and see if we could get them
8 cancelled at the time, and at the time the credit card
9 company alerted Mr. Bush that it had just been used.

10 Q. Okay. And when you say just been used, how close,
11 how close to the actual time of the burglary had it
12 been used?

13 A. We're talking between 30 and 45 minutes.

14 Q. Okay. So were you able to determine where it was
15 used and were you able to get any video of where it was
16 used?

17 A. Yes, sir.

18 Q. Okay. And where was that?

19 A. It was at the Bountyland Quick Stop in Westminster.

20 Q. All right. Were you able to get any video from the
21 cameras there?

22 A. Yes, sir.

23 Q. Do they have cameras?

24 A. Yes, sir, they do.

25 Q. How many cameras do they have?

- 1 A. They have four.
- 2 Q. Okay. Were you able to view that video -- I guess,
3 when did you go over there to Bountyland?
- 4 A. After I finished up my investigation there at the
5 crime scene, I immediately went to the Bountyland store
6 in Westminster.
- 7 Q. Okay. Was anybody from the Sheriff's Office there
8 already?
- 9 A. I believe so, sir. I can't recall to that effect.
10 But they had sent someone there earlier to try to
11 secure the scene because of the information that the
12 credit card company had sent me.
- 13 Q. Okay. Were you able to view the video from that
14 time period?
- 15 A. Yes, sir.
- 16 Q. And were you able to see the person that had come
17 and used the credit card?
- 18 A. Yes, sir.
- 19 Q. Okay. Were you able to identify him on the video?
- 20 A. Yes, sir.
- 21 Q. And who was that person?
- 22 A. Timothy Wirtz.
- 23 Q. At that point in time did he become a suspect in
24 this case?
- 25 A. Yes, sir.

1 Q. Were you able to do anything else during the course
2 of your investigations that led to you to be able to go
3 talk to the Defendant Timothy Wirtz?

4 A. His name come up through other sources and that's
5 what led me to eventually direct my full attention to
6 him.

7 Q. Where was the first time you saw Timothy Wirtz and
8 where was it?

9 A. The first time I actually knew who Timothy Wirtz
10 was?

11 Q. Well, I'm talking about in the course of your
12 investigation on this, did you meet up with Timothy
13 Wirtz?

14 A. Oh, yes, sir, I did.

15 Q. Where were you able to meet him?

16 A. Tabor Baptist Church.

17 Q. Whereabouts is that?

18 A. It's off of Tabor Mountain Road in Westminster.

19 Q. How did that come about?

20 A. During my investigation, as my investigations were
21 leading towards Mr. Wirtz, some of his acquaintances
22 had told him that I wanted to talk to him, and at that
23 point there was a meeting arranged there at the church
24 for me to meet him there.

25 Q. Okay. And, when you went and met him, was he with

1 anybody?

2 A. He was.

3 Q. Who was that?

4 A. Carrie Tyner.

5 Q. And what kind of vehicle were they in?

6 A. They were driving a 1999 Ford Taurus.

7 Q. Whose vehicle was it?

8 A. It belonged to Mr. Wirtz and his wife, Amanda.

9 Q. Okay. And what happened when you met him at the
10 church, what transpired?

11 A. Mr. Wirtz had agreed to talk to me, he agreed to
12 come to the Sheriff's Office and discuss the case.

13 Q. Are you familiar with what's referred to as Miranda
14 rights?

15 A. Yes.

16 Q. And are you familiar with what, the suspect has
17 Constitutional rights to have his Miranda rights read
18 to him?

19 A. Yes, sir, I'm aware of it.

20 Q. Let me show you what's been marked State's Exhibit
21 Number 1 for identification and ask you if you
22 recognize that.

23 A. Yes, sir, I do.

24 Q. And what is that?

25 A. This is a Miranda form that the Sheriff's Office

1 used and this is our standard form when we want to
2 question someone, we read this to them and make sure
3 they understand their rights.

4 Q. Did you use a form such as that to talk to Timothy
5 Wirtz on the side of the road at the Tabor church?

6 A. Yes, sir, I did.

7 Q. And is that the actual form you used?

8 A. This is the actual form that I'm holding.

9 Q. Looking at State's Exhibit Number 1, can you tell
10 us how you -- number one, did you advise him of his
11 Constitutional rights?

12 A. Yes, sir. What I do is I verbally read each line,
13 and as I do, the person I'm questioning also had this
14 form in front of him so that we -- it's verbally and
15 read, the person I want to question also reads it. So
16 it's kind of a two-part...

17 Q. Okay. And what place did you read him his Miranda
18 rights?

19 A. At what place?

20 Q. Yeah. What did you put on the form?

21 A. At the church.

22 Q. Okay. What day was this?

23 A. It was on February the 14th.

24 Q. How many days after the burglary was that?

25 A. Three days.

1 Q. What time did you first start your Miranda rights
2 to Timothy Wirtz?

3 A. It was 5:08 in the afternoon.

4 Q. Okay. And was he there -- was the girl that was
5 with him, Carrie Tyner, or whatever her name, Radford,
6 was she still there at the time?

7 A. Yes, she was there. Mr. Wirtz and I were in the
8 back seat of the Tahoe, which was a vehicle that the
9 Sheriff's Office has, but she was outside.

10 Q. Was he under arrest?

11 A. No, he was not.

12 Q. Was he in custody?

13 A. He was in custody.

14 Q. Okay. Was he in your car but not under arrest at
15 the time?

16 A. Yes -- no.

17 Q. Looking at State's Exhibit 1, can you tell us how
18 you went about Mirandizing and reading the Defendant
19 his Miranda rights, and what exactly did you say, word
20 for word?

21 A. Okay. Would you like for me to read it word for
22 word?

23 Q. Yes, please. However you, however you put it to
24 him on that day.

25 A. Okay. What I do is I place this form in front of

1 them, and I read it out loud to them while they're
2 reading along. And on each line I read to them. And
3 the first one is (reading):

4 Before we ask you any questions, you must
5 understand your rights.

6 And once I read that line, I have them to initial
7 that particular line, and he did.

8 The next line is (reading):

9 You have the right to remain silent.

10 He initialed that as understanding it.

11 The third line is (reading):

12 Anything you say can be used against you in court.

13 He understood and initialed it.

14 The fourth line is (reading):

15 You have the right to talk to a lawyer for advice
16 before we ask you any questions and to have him with
17 you during questioning.

18 He initialed that.

19 The fifth line is (reading):

20 If you cannot afford a lawyer, one will be
21 appointed for you before any questions if you wish.

22 He initialed that.

23 The sixth line is (reading):

24 If you decide to answer questions now without a
25 lawyer present, you still have the right to stop

1 answering at any time.

2 He initialed that.

3 The last line that (reading):

4 I have read the statement of my rights and
5 understand what my rights are. I'm willing to make a
6 statement and answer questions. I understand what I'm
7 doing. No promises or threats have been made to me and
8 no pressure or coercion of any kind has been used
9 against me.

10 And he initialed that. Then immediately after he
11 signed it underneath, and then I signed as a witness.

12 Q. Okay. And what was his physical appearance like?

13 A. Physical appearance. He was wearing a dark
14 overcoat with a hat and a dark bandana underneath that.
15 He was coherent, talking to me.

16 Q. Have you dealt, during your law enforcement
17 experience and life experience, have you dealt with
18 people that have been under the influence of alcohol
19 and drugs?

20 A. Yes, sir, quite often.

21 Q. And did he appear to be under the influence of
22 alcohol or drugs or a combination you were aware of
23 that day?

24 A. No, sir. He appeared maybe I would call tired
25 maybe, but I smelled no alcoholic beverages on him.

1 When I talked to him, he responded as a normal person
2 would.

3 Q. Did he appear to understand your questions?

4 A. Yes, sir.

5 Q. And especially in regard, in regards to his rights?

6 A. Yes, sir.

7 Q. And was his speech coherent?

8 A. Yes, sir.

9 Q. How did he respond when you asked him if he wanted
10 an attorney?

11 A. He said that he wanted to talk to me, he didn't
12 want an attorney.

13 Q. And, if he had said different, would you have quit
14 talking to him?

15 A. Yes, sir.

16 Q. Did he agree to answer any questions that you had?

17 A. Yes, sir.

18 Q. And where did you all decide to go do that?

19 A. We decided to go ahead and ride on up to the
20 Sheriff's Office at that point.

21 Q. Okay. Did you ask him if he would go up there with
22 you?

23 A. Yes, sir.

24 Q. And what was his response to that?

25 A. He said he would.

1 Q. Okay. At any point in time did he ever ask to
2 cease questioning, said he didn't want to answer any
3 more, didn't want to talk to anybody?

4 A. No, sir.

5 Q. Did he ever at any time ask for an attorney?

6 A. No, sir, not at this point, no, sir.

7 Q. Where did you go in the Sheriff's Office and what
8 did you do?

9 A. Well, we have a room that we question people in in
10 our investigative division, and that's where we went.

11 Q. And who was in the room initially?

12 A. Initially it was Mr. Wirtz and myself, and then
13 later on I asked for another investigator to come in.

14 Q. Okay. Initially what were y'all talking about and
15 what, what did you discuss?

16 A. We were discussing, of course, the case and the
17 reason why I wanted him up there to try to fill in some
18 gaps where my investigation was leading and whatnot.

19 Q. Did you all discuss him being on the video at
20 Bountyland?

21 A. Yes, sir, we did.

22 Q. And did you discuss him being in possession of any
23 of the stolen firearms?

24 A. Yes, sir, we did.

25 Q. And at some point in time along there did he start

1 telling you things that you deemed to put him as far as
2 being a perpetrator in this crime?

3 A. Yes, sir.

4 Q. What did you do next? Did you stay there and talk
5 to him or did you go get Gentry Hawk?

6 A. At this point during this, during the investigation
7 I felt the need to go ahead and have another
8 investigator come in and be along with me as Mr. Wirtz
9 was talking.

10 Q. Okay. And who was -- did you get such a person and
11 who was that person?

12 A. Yes, sir. Lieutenant Gentry Hawk.

13 Q. And where did you find Gentry Hawk?

14 A. He was in his office just several doors down from
15 where we were.

16 Q. Okay. Did he come in there?

17 A. Yes, sir.

18 Q. Did you all discuss with him afterwards what had
19 happened?

20 A. Yes, we did.

21 Q. And then Timothy Wirtz agreed to give you a written
22 statement to that effect?

23 A. Yes, sir.

24 Q. Let me show you what's been marked State's Exhibit
25 Number 2 for identification. Do you recognize State's

1 Exhibit Number 2?

2 A. Yes, sir, I do.

3 Q. What is that?

4 A. This is the Voluntary Statement that Mr. Wirtz give
5 me that night, February the 14th.

6 Q. And did you write that statement for him?

7 A. No, sir.

8 Q. Who wrote that statement?

9 A. Mr. Wirtz did.

10 Q. Okay. Did he write that statement after you had
11 discussed the case with him?

12 A. Yes. After we had discussed the case and the
13 reason why he was there, he was, agreed to write this
14 statement.

15 Q. Okay. So you gave him -- did you give him a blank
16 form?

17 A. Yes, sir, it was a blank statement form.

18 Q. Did you stay in the room while he filled it out?

19 A. I, what I did was he started writing it and I just
20 kind of stepped out of the room just so that I wouldn't
21 be hanging over his shoulder and whatnot.

22 Q. Okay. Is State's Exhibit Number 2 the statement
23 that he gave you as to his involvement?

24 A. Yes, sir.

25 Q. Did you offer him any hope of reward or leniency

1 for him to give you that statement?

2 A. No, sir.

3 Q. Did you make him any promises of any kind?

4 A. No, sir.

5 Q. Did you threaten him in any manner?

6 A. No, sir.

7 Q. Did you use any kind of coercion to try to get him
8 to give you a statement?

9 A. No, sir.

10 Q. Did you threaten his family or anybody?

11 A. No, sir.

12 Q. Did you holler at him? Did you do anything to try
13 to get him to give you a statement?

14 A. No, sir.

15 Q. To the best of your knowledge, is that statement,
16 State's Exhibit Number 2, that he gave you freely and
17 voluntarily given to you by him?

18 A. Yes, sir.

19 Q. And was it in his own handwriting and his own
20 words?

21 A. Yes, sir.

22 Q. Did you go over -- prior to that did you go over
23 his Miranda any again with him, besides being on the
24 side of the church, and if so, how did you do that?

25 A. Yes, sir. There is -- on the Voluntary Statement

1 there is a description of what the Voluntary Statement
2 is, and it's basically your Miranda rights all over
3 again, and it's advising you that this statement is
4 voluntary, that you do not have to write anything. And
5 he did understand that so he did initial to the left of
6 this statement form here, he did initial it right
7 beside it that he did understand it. So that's the
8 second time.

9 Q. You went over his Miranda rights a second time with
10 him from that statement?

11 A. From this statement, there is a Miranda in this
12 statement.

13 Q. Okay. It's an actual part of the statement?

14 A. Yes, sir.

15 Q. The top part there where it has his name and place
16 where this took, his address and things like that, he
17 filled that out, too?

18 A. Yes, sir, he did.

19 Q. He filled out the entire thing except your
20 signature and Gentry's?

21 A. Yes, sir.

22 Q. He did sign it down there at the bottom?

23 A. He did.

24 Q. What, if you could, starting with the Miranda
25 warning, could you read us what, what, what happened,

1 what was told to him that he read, and then what did he
2 say?

3 A. The Miranda on the Voluntary Statement?

4 Q. Yes. Did you all read that word for word, or did
5 you just give it to him and ask him to read it?

6 A. No. This is customary for me to ask the person to
7 read this --

8 Q. Okay.

9 A. -- and if they do understand it, I just ask them to
10 initial it.

11 Q. And did he tell you he could read and write?

12 A. Yes, sir.

13 Q. Okay. What did he tell you happened that night as
14 far as his involvement in this case? What does his
15 statement say?

16 A. Would you like me read his statement?

17 Q. Please.

18 A. Okay. (Reading): On February the 8th I, Timothy
19 Wirtz, along with Gary Smith, Chad Bush and Greg Bates
20 were in my car and we were short on cash. Chad Bush
21 told us we could enter his brother's house and take
22 guns, cash, and jewelry, also some traveler's checks.
23 Chad Bush said he could not be there because that's his
24 brother. The conversation was ended.

25 On Saturday around 1 p.m. me, Tim, Gary Smith and

1 Greg Bates went to the location that Chad Bush had
2 shown us, his brother's house. Then Gary Smith
3 received a house key from Chad Bush on the 8th of
4 February in which Gary used to enter the dwelling. I,
5 Tim, stepped up on the porch. Gary plundered the
6 downstairs while Greg Bates waited in the car.

7 I then heard a loud voice upstairs and I asked
8 what's going on. Gary Smith then tied up the victim
9 and started bringing guns to the foyer where I, Tim
10 Wirtz, carried the guns along with Greg Bates, loaded
11 the guns into the trunk of my wife's '99 blue Taurus.
12 We, Greg, Gary and Timothy then witnessed Gary Smith
13 break a glass door per Chad Bush's request so that it
14 looked like forced entry. I, Timothy, heard the
15 conversation myself between Chad and Gary.

16 Gary then ransacked the house to make it look
17 random per Chad's request. I, Timothy, Greg and Gary
18 left the victim's house to use an ATM. Then I,
19 Timothy, went into the store to use an ATM and also
20 used the card to purchase fuel. We then left and
21 transported the firearms to my, Timothy's, house where
22 he met Shane Elliott and Daniel Morrison who paid me in
23 meth for some of the guns. Austin Justice, Austin
24 Justice came to purchase another firearm. All this
25 time Gary Smith was sitting in the back bedroom

1 collecting 50 percent while I and Bates got to split
2 the other half. Then they, Gary and Bates, stayed for
3 15 minutes and left.

4 Q. And was that the end of his statement?

5 A. That was the end of his statement, yes, sir.

6 Q. And did he make cross lines at the bottom of that
7 and initial it to where nobody could add anything to
8 it?

9 A. Yes, sir, he did.

10 Q. And did he sign and did he date it?

11 A. Yes, sir, he did.

12 Q. Did he put the correct time down on this statement?

13 A. No, sir. I believe he was off on his time a little
14 bit there at the bottom.

15 Q. What time did you start the statement?

16 A. The time it started was 6:30 p.m.

17 Q. What time did he put as the completed statement?

18 A. He put 9:05 p.m.

19 Q. Did the statement take that long for him to write?

20 A. No, sir.

21 Q. How long did it take for him to write it?

22 A. I didn't actually time him, but it was probably ---

23 MR. ROSEMOND: Objection, Your Honor, it calls for
24 speculation.

25 THE WITNESS: Um...

1 **THE COURT:** Restate your question, Mr. Wagner, to
2 see if he is speculating.

3 **MR. WAGNER:** Yes, sir.

4 By Mr. Wagner:

5 **Q.** If he started at 6:30, did it take him two and a
6 half hours to do the statement?

7 **A.** No, sir.

8 **Q.** Did he finish it within 30 minutes or so?

9 **A.** Yes, sir.

10 **Q.** So, when it says 9:05, that's his writing?

11 **A.** Yes, sir.

12 **Q.** Okay. But that's basically a typo?

13 **A.** It's a typo, yes, sir.

14 **Q.** Okay. In the course of writing his statement, did
15 he cross through anything and make any initials like
16 where he amended something?

17 **A.** Yes, sir. If there's any errors in statements,
18 then people scratch out a word, I always have them to
19 initial it that they, they are the ones who scratched
20 out that area.

21 **Q.** And did he do that, where it says 9:05 when he
22 wrote the time down, did he also cross out whatever he
23 had written?

24 **A.** Yes, sir, he did.

25 **Q.** Okay. And did you have Gentry Hawk sign it, too?

1 A. Yes, sir, I did.

2 Q. And that's the Defendant who signed that down at
3 the bottom?

4 A. Yes, sir.

5 Q. Okay. And I ask you again: Did anybody at any
6 time ever promise him anything or make any threats or
7 try to use any coercion to get him to give you that
8 statement?

9 A. No, sir, I did not.

10 Q. What happened after that statement? Did you all
11 continue to work on the case at all, or what happened?

12 A. Yes, sir. After the statement, I advised Mr. Wirtz
13 that I would like to try to get back some of the stolen
14 property for the victim's sake, and he agreed to maybe
15 try to make some phone calls to try to get some of the
16 property back.

17 Q. And let me show you -- before we go there, let me
18 show you State's Exhibit Number 3 for identification.

19 A. Okay.

20 Q. (Handing). Do you recognize State's Exhibit Number
21 3?

22 A. Yes, sir, I do.

23 Q. And what is that?

24 A. This is a second statement that Mr. Wirtz had
25 decided to write that he said he wanted -- he left

1 something out and he wanted to continue with the second
2 statement.

3 Q. Okay. So did you give him another statement form?

4 A. Yes, sir.

5 Q. Did this statement occur after the first one?

6 A. Yes, sir.

7 Q. What time did he start this statement?

8 A. 7:37 p.m.

9 Q. And what time did he finish it?

10 A. 7:40 p.m.

11 Q. Okay. Did the phone calls that you refer to, did
12 those occur after this statement was taken?

13 A. Yes, sir. Phone calls were after this, yes.

14 Q. What did he -- did he fill out this statement? Is
15 that his writing?

16 A. Yes, sir.

17 Q. And for this second statement where he made an
18 addition, did you promise him anything, hold out any
19 hope for reward or leniency?

20 A. No, sir.

21 Q. Did you coerce him, did you threaten him, did you
22 holler at him, did you use any kind of coercive tactics
23 to try to get him to give you the statement?

24 A. No, sir.

25 Q. And did you give him the statement and did he write

1 that?

2 A. He did.

3 Q. And what did he say?

4 A. He said (reading):

5 On February the 9th at around 1:30 p.m. I, Timothy
6 Wirtz, drove Gary Smith to Yank, alias, at Yank's house
7 to stash some items from the Ivy Creek burglary.

8 Currently Yank is holding the stolen items and says he
9 wants money to purchase the items stolen by Gary Smith.

10 Q. Okay. And was that the end of that statement?

11 A. That was the end of the statement.

12 Q. What he says on February 9th, then, could it have
13 occurred on February the 9th?

14 A. It could not have occurred on February the 9th.

15 Q. And why is that?

16 A. Because it occurred on February the 11th.

17 Q. So is that a typo there?

18 A. It's, yes, that would be a typo.

19 Q. In these two statements were you able to, from what
20 Timothy Wirtz told you, were you able to corroborate
21 things that you already knew about the case with what I
22 would call insider information? Was there stuff that
23 he told you that only you would have known?

24 A. Yes, sir. During the course of my investigation he
25 was telling me things that only the person who did it

1 would have known.

2 Q. Okay. And what did that tell you about his
3 statements?

4 A. It told me that he, at that point in time, he was
5 telling me the truth.

6 Q. Did he sign this second statement here, State's
7 Exhibit Number 3?

8 A. Yes, sir.

9 Q. And, to the best of your knowledge, was that freely
10 and voluntarily given by Timothy Wirtz on that date?

11 A. Yes, sir.

12 Q. These phone calls, how did they come about, and
13 tell me what exactly they were.

14 A. Well, the phone calls were a result of Mr. Wirtz
15 being cooperative and he -- I told him that these guns
16 meant a lot to the victim, that they were cherished
17 items, and it would be a great opportunity for us to
18 get these guns back if he could help us find out where
19 all of them went to, places wherever they were
20 distributed. So he was agreeing to try to make some
21 phone call contacts to try to get these guns back.

22 Q. And in his statement in State's Exhibit Number 2 he
23 gave you exact names of who he had sold them to. Did
24 you recognize those names?

25 A. Yes, sir. These were some names that I recognized.

1 Q. Were you able -- before all this transpired, were
2 you able to recover any of the guns from any of those
3 people before you talked to Timothy Wirtz?

4 A. Yes, sir, I did.

5 Q. And who was that?

6 A. Heath Bates.

7 Q. And what gun did he have?

8 A. He had a 270 deer hunting rifle.

9 Q. Okay. Did you get that back?

10 A. I got that back, yes, sir.

11 Q. Did you return that to the victim?

12 A. Yes, sir.

13 Q. And was that his gun?

14 A. Yes, sir.

15 Q. Were you able to get some of the rest of these guns
16 that went to these other people that Mr. Wirtz listed
17 in his statement? Were you all able to recover some of
18 those guns?

19 A. Yes, sir, I did.

20 Q. Did you ever promise Heath Bates -- I mean excuse
21 me, promise Timothy Wirtz anything in response for
22 trying to help you get the guns back?

23 A. No, sir.

24 Q. And did he try to help you get the guns back?

25 A. He did.

1 Q. And how did he do that?

2 A. By, through phone conversations. He was making
3 phone calls.

4 Q. Was that right there from y'all's office?

5 A. Yes, sir.

6 Q. And whose phone was used for that?

7 A. He was using his phone.

8 Q. And what did he do?

9 A. He would call up people who he thought had the guns
10 and was trying to make some offers or deals to try to
11 get them back.

12 Q. Have you listened to those phone calls prior to
13 court today?

14 A. Yes, sir.

15 Q. Let me show you what's been marked as State's
16 Exhibit Number 4, State's Exhibit Number 4. Do you
17 recognize that exhibit?

18 A. Yes, sir.

19 Q. And what is that?

20 A. This is a CD of...

21 Q. And how do you know that's the CD that you listened
22 to prior to court?

23 A. Because I examined this CD prior and I initialed it
24 that I did examine it.

25 Q. Is that CD a true and accurate copy of the phone

1 calls that you were present for in the Sheriff's Office
2 that he made on your behalf?

3 A. Yes, sir.

4 Q. When I say "he", the Defendant?

5 A. Yes, sir.

6 Q. And have they been altered or tampered with in any
7 manner?

8 A. No, sir.

9 MR. WAGNER: Your Honor, at this time we would like
10 to play a few of the calls. There's a number of calls
11 on there. I just plan to play a couple. I think it
12 goes to his state of mind, the clarity of his speech,
13 and the fact that he is able to make phone calls to
14 people and talk to them and try to get the guns back.

15 THE COURT: All right.

16 Mr. Rosemond?

17 MR. ROSEMOND: He can't pick and choose, Your
18 Honor. Either he plays it in its entirety, not just to
19 help him out, Your Honor, but to get a true picture of
20 what happened that day we need to get the entire tape.

21 THE COURT: All right.

22 MR. WAGNER: That would be fine, yes, sir.

23 THE COURT: That's an opinion on that Cabrera
24 opinion.

25 You say there are four different statements or just

1 four different --

2 MR. WAGNER: There's two different statements and
3 then there's the phone calls.

4 THE COURT: All of it's on this?

5 MR. WAGNER: Yeah. Many of them are just kind of
6 hang-up calls, but there are a number that he talks to.

7 THE COURT: No. He's entitled to hear the whole
8 thing at the same time.

9 (Discussion off the record.)

10 THE COURT: Just for the record, set it up.

11 (Whereupon, State's Exhibit Number 4, CD -- NOT
12 TRANSCRIBED -- began playing.)

13 THE COURT: All right. These are phone calls?

14 MR. WAGNER: Yes, sir.

15 THE COURT: Phone calls made from your office or
16 from the --

17 THE WITNESS: From the interrogation room, yes,
18 sir.

19 THE COURT: All right. Very good. By the
20 Defendant? Or allegedly made by the Defendant?

21 THE WITNESS: Yes, sir.

22 (Whereupon, State's Exhibit Number 4 -- NOT
23 TRANSCRIBED -- a CD, was played for Court from
24 approximately 3:35 p.m. until 4:12.)
25

1 By Mr. Wagner:

2 Q. Is the tape we just heard, State's Exhibit Number
3 4, is that a true and accurate copy of the phone calls
4 that you had the Defendant, Timothy Wirtz, make when he
5 was in your custody right after he gave you these six
6 statements, State's Exhibits Numbers 2 and Number 3?

7 A. Yes, sir.

8 Q. And has that been altered or tampered with in any
9 manner?

10 A. No, sir.

11 Q. Were the people he was calling, do you know who
12 those people were?

13 A. I knew some of them, heard their names and whatnot.
14 There's one in particular Danny, I'm not sure who Danny
15 is. I believe it to be -- I don't know, but I believe
16 it to be a Danny Morris (phonetic).

17 Q. Were some of the people that he called Shane
18 Elliott, Heath Bates and Greg Bates, were they people
19 whose names that were given to you in the statement
20 that he gave you that day?

21 A. Yes, sir.

22 Q. And were they corroborated by him calling them?

23 A. Yes.

24 Q. He had their phone numbers in his phone?

25 A. Yes, sir.

1 Q. And that's who he either called or attempted to
2 call?

3 A. Yes, sir.

4 Q. Okay. Did anybody, you or Sergeant Hawk or
5 Lieutenant Hawk or anybody else from the Sheriff's
6 Office ever promise him anything to make those phone
7 calls for you?

8 A. No, sir.

9 Q. And what was the purpose of the phone calls?

10 A. The purpose of the phone calls was to try and
11 recover some of the stolen guns, or all of them.

12 Q. And were you able later to recover some of the
13 stolen goods, the guns?

14 A. Yes, sir.

15 Q. And who did you all recover the guns from?

16 A. Shane Elliott.

17 Q. And the one other gun that you mentioned earlier
18 that you recovered, from Heath Bates, that you
19 recovered from him?

20 A. Yes, sir, I did.

21 MR. WAGNER: Your Honor, I think that those are the
22 only questions that I have for Mr. McMahan.

23 THE COURT: All right. Let's take a short break --
24 Is that all right?

25 MR. WAGNER: Yes, sir.

1 THE COURT: -- before you do your Cross.

2 We'll be at ease for a few minutes.

3 (A recess was taken.)

4 THE COURT: All right. We're back on the record
5 now.

6 Mr. McMahan, you understand you are still under
7 oath?

8 THE WITNESS: Yes, sir.

9 THE COURT: All right. Very good.

10 Mr. Rosemond?

11 Cross-Examination by Mr. Rosemond:

12 Q. Sergeant McMahan, you knew Tim Wirtz before this
13 particular day?

14 A. I had met Mr. Wirtz maybe a year earlier.

15 Q. Okay. Now, you testified earlier after Mr. Wagner
16 asked you were you able to ID the person in that video.
17 How were you able to identify the person?

18 A. I was able to identify the person two different
19 ways. First was by knowing him from about a year ago.

20 Q. Okay.

21 A. Or a year earlier. I'm sorry.

22 Q. All right. So you knew him a year ago. And what
23 else?

24 A. During my investigation I had the video that we
25 were speaking of earlier, and I had a person who also

1 ID'd Mr. Wirtz in the video.

2 Q. Well, hold on, Sergeant McMahan. You said after
3 you left [REDACTED] you went to Bountyland,
4 right?

5 A. Yes, sir.

6 Q. And, once you went to Bountyland, you obtained the
7 video. Is that right?

8 A. Yes, sir.

9 Q. And did you watch the video at that time?

10 A. I did.

11 Q. And Mr. Wagner said, were you able to identify the
12 person at that time. What was your answer?

13 A. Was I able -- tell me again?

14 Q. Mr. Wagner asked you were you able to identify the
15 person on the video at that time.

16 A. Yes, sir. What that was, and I knew who the person
17 was, but I did not let that out at the time. Or I
18 assumed that's who it was.

19 Q. Have you got your report with you?

20 A. I got it right there.

21 Q. Do you want to use my copy?

22 A. Yes, sir, that would be fine.

23 Q. Is that your report right there, Sergeant McMahan?

24 A. This is, this particular one is not my narrative.

25 It's the Officer, whoever ---

1 Q. That's not your narrative right there?

2 A. No, sir.

3 Q. Okay. So go down to that third spot down where it
4 said, Mr. Bush.

5 A. The third spot?

6 Q. Yeah, all the way down. Right there. Go up three
7 lines. Right there. Does that happen to pertain to
8 you?

9 A. Let's see (reading.)

10 Q. Read that line for me, sir.

11 A. Okay (reading):

12 Mr. Bush called in about the stolen credit cards
13 and was notified that a purchase was made at the
14 Bountyland station located in Westminster.
15 Surveillance video was looked into by Detective McMahan
16 and at this time suspect is still unknown. No further
17 at this time.

18 Q. So you couldn't identify Mr. Wirtz by looking at
19 that video, could you?

20 A. That is not mine. That is a narrative of the
21 responding officer.

22 Q. Okay.

23 A. That's not my narrative.

24 Q. That's not you?

25 A. No, sir.

1 Q. When he said that Detective McMahan couldn't
2 identify him at that time, he was not correct; is that
3 right?

4 A. He was not on the scene.

5 Q. Okay. Well, let's talk about the day that you met
6 Tim Wirtz. What day did you actually meet Tim Wirtz?

7 A. The day I can't recall, sir.

8 Q. Okay. How about the date?

9 A. The date I can't recall, no.

10 Q. February 14th, 2012. Valentine's Day.

11 A. Oh, that date? Yes, sir.

12 Q. Yes. Was that the date that you met him?

13 A. No, sir. I had met him here earlier, as I said
14 before.

15 Q. Is that the date you met him in regards to this
16 particular case?

17 A. Yes, sir.

18 Q. Now, how did you come in contact with Mr. Wirtz
19 that day? Was Ms. Carrie Tyner driving the car?

20 A. Yes, sir.

21 Q. Had you met Carrie Tyner earlier that day?

22 A. No, sir.

23 Q. Okay. So Carrie Tyner was driving Mr. Wirtz' wife,
24 Amanda's, '99 Taurus car, right?

25 A. Yes, sir.

1 Q. And you all met at -- what place did you all meet
2 at?

3 A. Tabor Baptist Church.

4 Q. Tabor?

5 A. Yes, sir.

6 Q. Where is that at?

7 A. It's off Tabor Mountain Road in Westminster.

8 Q. Okay. What time did you meet her that day?

9 A. Her and Mr. Wirtz?

10 Q. Her and Mr. Wirtz.

11 A. It was in the afternoon of, late afternoon.

12 Q. Okay. When you say late afternoon, when I think of
13 late afternoon, I think of four or five o'clock.

14 A. Yes, sir, around that time.

15 Q. Okay. So you met Mr. Wirtz about four or five
16 o'clock that afternoon?

17 A. Yes, sir.

18 Q. And you met at Tabor Baptist Church; is that right?

19 A. That's correct.

20 Q. Now, you have his statement up there, right? I
21 think it's State's Exhibit Number 1.

22 A. Yes.

23 Q. Is that what it is?

24 A. Number 1? Let's see. I have Number 2.

25 Q. Number 1 is the Miranda rights right here.

- 1 A. It is.
- 2 Q. Okay. And let's look at that. That says
- 3 2-14-2012; is that right?
- 4 A. Yes, sir, it does.
- 5 Q. It says you met at the church?
- 6 A. Yes, sir.
- 7 Q. 5:08 p.m.?
- 8 A. Yes, sir.
- 9 Q. And you Mirandized him at that particular time?
- 10 A. Yes, sir.
- 11 Q. That lasted up until 5:09 p.m.; is that right?
- 12 A. The Miranda did, yes, sir.
- 13 Q. Okay. Did you talk to him at the church?
- 14 A. We had conversations, yes, sir.
- 15 Q. Now, did he give you any oral statements at the
- 16 church?
- 17 A. While en route to the Sheriff's Office he did.
- 18 Q. What did he say?
- 19 A. Um, he's wanting to cooperate, he's wanting to tell
- 20 me what happened, such as that.
- 21 Q. Okay. So you take him to the Sheriff's Office; is
- 22 that right?
- 23 A. Yes, sir.
- 24 Q. And you put him in, put him in the room?
- 25 A. Yes, sir.

1 Q. And that's the interrogation room?

2 A. Yes, sir.

3 Q. And at that time he signs another Miranda warning;
4 is that right?

5 A. He initials a Miranda in the Voluntary Statement.

6 Q. Okay. Now, do you have that one identified? Do
7 you have that with you?

8 A. Yes, sir.

9 Q. And that one says OLEC place?

10 A. Yes, sir, right there.

11 Q. Okay. Now, did you talk to Tim Wirtz anytime after
12 2-14-2012?

13 A. Yes, sir, uh-huh.

14 Q. Okay. So you talked to him on 2-14 and you talked
15 to him on 2-16; is that right?

16 A. He, I believe he sent a request to speak with me
17 from the jail.

18 Q. Okay. Let's look at his statement on 2-14-2012,
19 the first one he gave you. That should be State's
20 Exhibit Number 2.

21 A. Number 2, yes, sir.

22 Q. Do you still have it with you?

23 A. I do.

24 Q. What time did it start?

25 A. 6:30 p.m.

- 1 Q. 6:30 p.m., okay.
- 2 A. Yes, sir.
- 3 Q. And, if you read the first line of the statement,
- 4 what does it say?
- 5 A. Of his statement?
- 6 Q. Yes, sir.
- 7 A. (Reading): On February the 8th I, Timothy Wirtz,
- 8 along with Gary Smith --
- 9 Q. That's good enough right there.
- 10 A. Okay.
- 11 Q. The statement starts off with the wrong date; is
- 12 that right?
- 13 A. The wrong date to what, sir?
- 14 Q. The incident, the robbery. The, Mr. Bush's home
- 15 did not get broken into on February the 8th, did it?
- 16 A. No, sir. But if you will ---
- 17 Q. It got broken into February the 11th --
- 18 A. Yes, sir.
- 19 Q. -- is that right?
- 20 A. Yes, sir.
- 21 Q. So Mr. Wirtz's statement begins out, it begins
- 22 wrong?
- 23 A. No, sir, it begins right.
- 24 Q. Okay. All right.
- 25 A. If you will read the rest of the sentence, you will

1 see why.

2 Q. Tell me why. Why is it right?

3 A. Because February the 8th is when they are planning
4 it.

5 Q. Who is planning it?

6 A. Well, it says right here that (reading):

7 I, Timothy Wirtz, along with Gary Smith, Chad Bush,
8 and Greg Bates were in my car and we were short on
9 cash.

10 Q. Okay. Now ---

11 A. That's on February the 8th.

12 Q. Okay. Greg Smith, was he -- or Gary Smith, was he
13 arrested?

14 A. Yes, sir.

15 Q. Was Chad Bush arrested?

16 A. Yes, sir.

17 Q. And Greg Bates, was he arrested?

18 A. No, sir.

19 Q. Okay. So then they start talking about robbing
20 Mr. Bush; is that correct?

21 A. According to the statement, yes, sir.

22 Q. And when you say according to the statement, do you
23 not believe the statement?

24 A. Yes, sir. I believe in what he was telling me at
25 the time.

1 Q. Okay. Do you not believe Chad Bush had anything to
2 do with this?

3 A. I believe he had something to do with it, yes.

4 Q. Yeah. You believe Chad, you believed Chad Bush had
5 something to do with robbing his brother's house,
6 didn't you?

7 A. Yes, sir.

8 Q. Two informants have told you Chad Bush was involved
9 with robbing Mr. Bush's house; isn't that correct?

10 A. Yes, sir.

11 Q. Okay. Is Chad Bush still charged with this crime?

12 A. No, sir.

13 Q. The charge was dismissed against Chad Bush, wasn't
14 it?

15 A. Yes, sir.

16 Q. Now, when Mr. Wirtz started giving you this
17 statement, it was about 6:00 in the evening; is that
18 right?

19 A. Yes, sir.

20 Q. And the statement, at least according to the
21 statement, it was over at 6:09? Well, it was over at
22 9:06 then? I'm sorry. At least according to the
23 statement it is.

24 A. Yes, sir.

25 Q. Okay. So, according to the statement, it's 9:08 on

1 2-14-2012. Now, you say he wrote another statement
2 somewhere in there; is that right?

3 A. Yes, sir.

4 Q. And the other statement took place, according to
5 the statement, sometime about 7:37?

6 A. Yes, sir, Exhibit 3.

7 Q. Okay. Exhibit 3. And it lasted till 7:40.

8 A. Yes, sir.

9 Q. That's that second statement he gave you?

10 A. Yes, sir.

11 Q. Now, and then, after he gave you two statements,
12 did you not tell Mr. Wirtz that, if you help me out,
13 then I will let you go; is that right?

14 A. That's not right.

15 Q. That's not what you said?

16 A. No, sir.

17 Q. You heard on the video Mr. Wirtz kept saying I'm
18 about to get out of here, I'm about to get out of here;
19 is that right?

20 A. On the video?

21 Q. On the audio.

22 A. Yes, sir, that's what he said.

23 Q. Okay. And you heard Mr. Wirtz say that the only
24 thing that Mr. McMahan was wanting was the gun back and
25 we'll all be cleared. Is that right?

1 A. I heard that.

2 Q. And so he's thinking, he thinks that he gets to go
3 home the end of the night; is that right?

4 A. No, sir, that's not right.

5 Q. Well, if he's saying that, you don't think he
6 believed it?

7 A. He's saying whatever he can to get the guns back.

8 Q. Okay. So he's saying whatever you want him to say?

9 A. I'm saying that he's saying, he's trying anything
10 he can to get these guns back.

11 Q. Okay.

12 A. That's who he's talking to on the phone.

13 Q. So you told him to say whatever he had to say to
14 get whatever, to get the guns back?

15 A. You are implying that I was telling a lie?

16 Q. No. I'm not implying that. I'm saying you were
17 telling Mr. Wirtz to say whatever you have to say to
18 get the guns back.

19 A. I told him to try to get the guns back. I don't
20 remember saying to lie or anything like that. I don't
21 recall that.

22 Q. Did you hear a drug deal going down on the phone?

23 A. Yes, sir, I did.

24 Q. Okay. Mr. Wirtz was in your custody. He set up a
25 drug deal with, I think it was one of, the

1 second-to-the-last call, Gene Poole (phonetic); is that
2 right?

3 A. Yes, sir, he did.

4 Q. And Gene Poole called back in to the phone and they
5 essentially said, I'll be there in 20 minutes and I'll
6 get some drugs for you. Is that right?

7 A. Yes, sir.

8 Q. Did Tim Wirtz believe that he could go do that drug
9 deal?

10 A. That would be something you would have to ask him
11 about the drug deal, sir. I absolutely do not know.

12 Q. I heard another voice on the tape a few minutes
13 ago. Whose voice was that?

14 A. Could you refer to which one it was?

15 Q. It was the last tape, after the tape cut off, there
16 was a voice on there, it was an authoritative voice.
17 Was it your voice?

18 A. I was in the room. It very well could have been
19 mine.

20 Q. Who else was in the room with you?

21 A. Gentry Hawk.

22 Q. Okay. Who else?

23 A. There was only two, myself and Gentry in the room,
24 and at times an officer would check on by and check on
25 us and see if we were okay.

1 Q. Was there not a narcotics officer in the room with
2 you?

3 A. That's the one I'm speaking of.

4 Q. Okay. That name was Sergeant Casey Bowling; is
5 that right?

6 A. Yes, sir.

7 Q. So Sergeant Bowling was in the room, as well?

8 A. He would pass through. He was never in the
9 interview.

10 Q. Okay. So he never came in the interview room?

11 A. He would step in and say, you guys okay, whatnot,
12 and stuff like that.

13 Q. Okay. Now, this particular -- you first met him
14 about 5:00; is that right?

15 A. Yes, sir, uh-huh.

16 Q. You never really told him he was under arrest, did
17 you?

18 A. No, sir.

19 Q. What time did you arrest Mr. Wirtz?

20 A. It was later on in the afternoon after the
21 statements and the phone calls.

22 Q. Later on what afternoon?

23 A. On the 14th.

24 Q. I'm gonna show you what's Page 5 of 14 on this Case
25 Report, okay? Have you ever seen that report before?

1 A. Yes, sir. This is the report of this incident.

2 Q. Okay. Do you see where it says "arrest" is right
3 there?

4 A. Yes, sir.

5 Q. What time does it say Mr. Wirtz was arrested?

6 A. It says right here he was arrested on 2-15-2012.

7 Q. So he wasn't arrested on February the 14th, he was
8 arrested on February the 15th at 2:47 a.m. in the
9 morning.

10 A. Well, Mr. Rosemond, I placed him under arrest as a
11 Temporary Custody Order on the 14th.

12 Q. Okay. Have you got a copy of that Temporary
13 Custody Order when you placed him under arrest?
14 Because I don't have a copy of it.

15 A. I don't have a copy of it, no, sir.

16 Q. Okay. But at least that document shows that he was
17 placed under arrest at 12:47 on February the 15th?

18 A. 2-15 at 12, yes, sir, that's correct.

19 Q. That's what the document says?

20 A. Yes, sir. That's after he was booked, yes, sir.
21 (Hanging.)

22 Q. So, at least according to this document, he had
23 been with you since 5:00 that afternoon on February the
24 14th, and he was finally placed in jail or arrested at
25 12:47 the next day; is that right?

1 A. Yes, sir, that's correct.

2 Q. Now, while he was with you in your presence, he
3 made some phone calls on your behalf; is that right?

4 A. That's correct.

5 Q. To get some guns back; is that right?

6 A. Yes, sir.

7 Q. Do you know whether or not Mr. Wirtz had ever
8 helped the police out before, helped the Sheriff's
9 Office out before?

10 A. I'm not aware of that, no, sir.

11 Q. You didn't ask anybody?

12 A. No, sir.

13 Q. Do you know that Mr. Wirtz used to be an informant
14 for the Sheriff's Office?

15 A. I did not know that.

16 Q. Do you know that he used to make buys for the
17 Sheriff's Office, drug buys?

18 A. I did not know that.

19 Q. Did you know that he used to, he used to receive
20 compensation for his help with the Sheriff's Office; is
21 that right?

22 A. I'm not aware of that, sir.

23 Q. Okay. Now, if he had received compensation for the
24 work he had done with the Sheriff's Office, doesn't it
25 stand to reason that he also thought that he may

1 receive something from you?

2 A. No, sir, I don't think so.

3 Q. You don't think so?

4 A. We were there about the burglary. That's what we
5 were there for.

6 Q. Okay. Well, that couldn't have been the only thing
7 you were there for, because I heard at least two drug
8 deals on that tape. Is that right?

9 A. Yes, sir, I heard it too.

10 Q. So, I mean, he was there for something other than
11 the burglary.

12 A. Well, I'm not a narcotics officer. He was free to
13 talk to these people however he wanted to talk to them.

14 Q. Okay.

15 A. So whatever he was saying was of his choosing.

16 Q. But you did exert some influence over him; is that
17 not right?

18 A. Some influence?

19 Q. Yes, sir.

20 A. I'm sorry. I don't understand your questions.

21 Q. You at least exerted some influence over him to get
22 him to get the guns back; is that right?

23 A. Oh, yes, sir. I told him it would be nice if we
24 could get the guns back.

25 Q. And also the inference was it would be nice if you

1 could set up some drug deals. Is that right?

2 A. If he wanted to set up some drug deals, it was his
3 choosing.

4 Q. He couldn't go anywhere. He was locked up in jail;
5 is that right? He was in custody, right?

6 A. Yes, sir.

7 Q. And you weren't gonna let him -- he was not free to
8 leave the Sheriff's Office that day, was he?

9 A. After the statements and whatnot, no, sir, I
10 planned to put him on a Temporary Custody Order.

11 Q. Did you tell him that at all?

12 A. When this was done I did, yes, sir.

13 Q. Well, you said when this is all done?

14 A. When my statements and my interrogation was over.

15 Q. So, prior to the phone calls, do you think that he
16 believed that he was going to jail?

17 A. It's possible he believed it. I had a lot of
18 evidence at the time.

19 Q. Okay. Now, Mr. Wirtz did not -- did he tell you
20 that he had been on meth for a couple of days?

21 A. Told me he had been on meth for a couple days?

22 Q. He had been doing meth for several days prior to
23 February the 14th, 2012.

24 A. Mr. Wirtz has been on meth for a long time, sir.

25 Q. Okay.

1 A. Several years is what I've been told.

2 Q. All right. Knowing that, were you not aware that
3 he was on, he had meth in his system on February the
4 14th, 2012?

5 A. No, sir, I didn't know that. I have no way of
6 knowing that.

7 Q. Did you ask him?

8 A. I don't recall if I asked him or not, I really
9 don't.

10 Q. Now, when Carrie Tyner was there with Mr. Wirtz,
11 where did you get the shotguns from?

12 A. From their possession.

13 Q. From whose possession?

14 A. Carrie and Tim.

15 Q. Okay. Was Carrie arrested in this case?

16 A. No, sir.

17 Q. Now, the shotguns came specifically from where in
18 the car?

19 A. From right there in the center console.

20 Q. The shotguns came from in the center console?

21 A. They were between the console and the butt was
22 sticking back towards the --

23 Q. Who handed you the shotguns?

24 A. Oh, goodness. I believe it was Carrie's, but I --
25 I believe it was her.

1 Q. Okay. And you said you had no knowledge that
2 Mr. Wirtz had received compensation for helping the
3 cops retrieve drugs; is that right?

4 A. No, sir, I had no knowledge of that.

5 Q. Now, he had been in custody at least seven and a
6 half hours; is that right?

7 A. From 5:00 till --

8 Q. Yes.

9 A. -- until -- let's see -- yes, sir, somewhere like
10 that.

11 Q. Okay. And Mr. Wirtz, you heard him say all we want
12 is the guns and everybody is cleared; is that right?

13 A. I heard him say that, yes, sir.

14 Q. You didn't tell him that?

15 A. No, sir.

16 Q. You didn't tell him that all the family wanted was
17 the guns back?

18 A. Could I clarify that for you?

19 Q. Certainly.

20 A. The people that he was calling, I made the
21 statement that the guns can be given back and that's
22 all I want is the guns back in reference to the people
23 who had possession of the guns at the time, not Tim
24 Wirtz.

25 Q. But did you arrest anybody that had the guns?

1 A. No, sir. Well -- no, sir, you're right, I did not.

2 Q. Before Mr. Wirtz started writing, did you ask him
3 to help you out because you needed to put somebody at
4 the scene?

5 A. No, sir.

6 Q. Did you have an idea prior to meeting Mr. Wirtz who
7 was involved in this robbery?

8 A. Yes, sir, I did, I had an idea.

9 Q. Okay. Did the idea lead you to Mr. Wirtz?

10 A. Yes, sir.

11 Q. Did it also lead you to Chad Bush?

12 A. Yes, sir.

13 Q. Did it also lead you to -- who else did it lead you
14 to?

15 A. Greg Bates and Gary Smith.

16 Q. Okay.

17 MR. ROSEMOND: No further questions, Your Honor.

18 THE COURT: Re-exam?

19 Redirect Examination by Mr. Wagner:

20 Q. Did you ever promise the Defendant anything to give
21 you the statements?

22 A. No, sir.

23 Q. Did you ever imply anything to him that there would
24 be leniency and that you would drop all charges and all
25 you wanted were the guns back?

1 A. No, sir.

2 Q. Did you have any control over how he talked to
3 these people that he sold the guns to?

4 A. No, sir. He was free to talk to them on the phone
5 as he chose.

6 Q. And, if he dealt with them on a level of buying
7 drugs for them or selling drugs for them or doing drugs
8 to them, from what you heard, did he communicate to
9 them on the level that he knew them, that he dealt with
10 them at?

11 A. Yes, sir.

12 Q. And somebody in his shoes would have to talk to
13 them that way.

14 MR. ROSEMOND: Objection, Your Honor, it's
15 speculation.

16 THE COURT: Does he know the answer?

17 State your question but restate it as a question
18 rather than a statement.

19 By Mr. Wagner:

20 Q. Would Timothy Wirtz have -- would Timothy Wirtz
21 have to talk to Shane Elliott, Heath Bates, people like
22 that, would he have to talk to them on a level he dealt
23 with them at, or would he call them up and say, Hey,
24 I'm sitting here in David McMahan's interrogation room
25 and I'm busted and I want to get those guns back?

1 A. No, sir. I believe that he would have to talk to
2 his friends on their level, their comfort level.

3 Q. And do you feel he did that?

4 A. He did that.

5 Q. Did he also say -- in the tape did he also say that
6 he was facing 60 years or something to that effect? He
7 knew he was in a lot of trouble.

8 A. Yes, sir, he said that.

9 Q. And did he also say he that he wanted -- he wasn't
10 gonna let Heath Bates go down for something that he
11 did?

12 A. Yes, sir, I heard that in the tape as well.

13 Q. And after the tape was over, did you tell him that
14 he was gonna be under arrest and did you place him
15 under a TCO?

16 A. A Temporary Custody Order, yes, sir.

17 Q. And did you serve the warrants on him the next day?

18 A. The next day, yes, sir.

19 Q. And did anybody, you, Gentry Hawk, or any of the
20 two narcotics guys that stuck their head in the door,
21 did anybody ever promise him anything?

22 A. No, sir.

23 MR. WAGNER: Thank you. That's all the questions I
24 have.

25 Recross-Examination by Mr. Rosemond:

1 Q. You stated he knew that he was going to jail for 60
2 years, but yet he's really trying to work his butt off
3 for you to help you get those guns back; is that right?

4 A. Yes, sir, he was gonna try to help me get the guns
5 back.

6 Q. And he was doing that because of indirect promises
7 that you made to help him out; is that right?

8 A. No, sir.

9 Q. You didn't make him any promises at all?

10 A. No, sir.

11 Q. Did Gentry Hawk make him any promises?

12 A. No, sir.

13 Q. Did Casey Bowling make him any promises?

14 A. No, sir.

15 Q. So he's just doing this on the hopes of what?

16 A. Doing the right thing.

17 Q. People don't do the right thing like that Mister
18 Sergeant McMahan. They do that for a reason. Isn't
19 that right?

20 A. I explained earlier that these were cherished guns
21 and that it would be a good gesture on his part to help
22 get them back, and he agreed.

23 Q. He agreed?

24 A. Yes, sir.

25 MR. ROSEMOND: No further questions, Your Honor.

1 **MR. WAGNER:** Nothing further, Your Honor.

2 **THE COURT:** All right. You may step down.

3 (Whereupon, the Witness left the witness stand.)

4 **MR. WAGNER:** I think this next -- Mr. Hawk will be
5 next, I hopefully will be brief on mine if you want to
6 continue or...

7 **THE COURT:** Is he the only other witness?

8 **MR. WAGNER:** Yes, sir as far as the State for this
9 motion.

10 **THE COURT:** I don't want to put any sort of limit
11 on Mr. Rosemond. Do you want to continue in the
12 morning?

13 **MR. ROSEMOND:** You know, Judge, before today I
14 didn't know Lieutenant Hawk was involved in this case.
15 He can't have much to testify to, Judge, because I
16 hadn't seen his name anywhere in this paperwork, so it
17 will be brief.

18 **THE COURT:** All right. Very good.

19 **MR. WAGNER:** I call Gentry Hawk.

20 **THE COURT:** Have you got anybody else?

21 **MR. WAGNER:** No, sir.

22 **THE COURT:** All right.

23

24

25

1 (Whereupon, the Witness, Gentry Hawk, was sworn by
2 the Clerk of Court.)

3 Whereupon,

4 Gentry Hawk

5 Having first been duly sworn, was examined and
6 testified as follows:

7 Direct Examination by Mr. Wagner:

8 Q. Give us your name and spell your last name for the
9 record, please.

10 A. Gentry Morris Hawk, II. It's H-a-w-k.

11 Q. What do you do for a living?

12 A. I'm in the Investigations Division at the Oconee
13 County Sheriff's Department. I'm currently the
14 Lieutenant over Investigations.

15 Q. And how long have you been with the Sheriff's
16 Office?

17 A. Over 15 years.

18 Q. Were you working as an investigator at the
19 Sheriff's Office back on February 14th, 2012?

20 A. Yes, sir.

21 Q. As a result of you being in the office, did you sit
22 in on an interrogation of the Defendant, Timothy Wirtz,
23 involving a burglary case where a bunch of guns were
24 stolen?

25 A. I did.

1 Q. And what led you to go to the interrogation room,
2 to the interview room there and sit in on that?

3 A. Investigator McMahan asked me to sit in, that the
4 Defendant had, was starting to talk about the burglary
5 and he wanted me to sit in with him.

6 Q. Were you present during basically the full
7 interrogation?

8 A. No, sir.

9 Q. Okay. Were you present during the time where he
10 wrote his statement and wrote an additional statement
11 and then made some phone calls?

12 A. Yes, sir.

13 Q. Let me show you what's been marked as State's
14 Exhibit Number 2 for identification. Do you recognize
15 State's Exhibit Number 2?

16 A. Yes, sir.

17 Q. And what is that?

18 A. It's a statement the Defendant had given to
19 Sergeant David McMahan and I witnessed.

20 Q. Okay. Were you present from the time when Sergeant
21 McMahan and the Defendant were talking about and
22 making, he was making notes talking about this thing
23 before he wrote the statement out, were you present
24 during that discussion?

25 A. Yes, sir.

1 Q. And were you present when he was asked to re-read
2 the Miranda rights that were at the top of that
3 statement?

4 A. Yes, sir.

5 Q. And did Mr. Wirtz do that?

6 A. He did. He initialed it.

7 Q. And that was in your presence, too?

8 A. Yes, sir.

9 Q. Did you sit in with him while he actually wrote the
10 statement, or did you all step outside the room?

11 A. We stepped outside.

12 Q. And that statement is in his handwriting?

13 A. Yes, sir.

14 Q. Is that your signature down at the bottom?

15 A. It is.

16 Q. And is that David McMahan's signature below it?

17 A. It is.

18 Q. And was that the Defendant's signature over there
19 to the right where it says signature of person giving
20 Voluntary Statement?

21 A. Yes, sir.

22 Q. Did you or anybody in your presence, David McMahan,
23 ever promise the Defendant any leniency? Did you ever
24 offer him any hope for reward or did you ever threaten
25 him or coerce him in any manner to try to give you a

1 statement?

2 A. No, sir.

3 Q. What was Casey Bowling and Tyrel Woodring's
4 involvement? Did they sit in on the interview?

5 A. No, sir.

6 Q. What did they do?

7 A. They were, they were working narcotics at the time
8 and they were there -- they didn't have a lot to do
9 with the case other than sitting in on this and that
10 and making the phone calls, but they were there because
11 it was in the drug world and they had some connections
12 with people that, from what I understand, were involved
13 in the case.

14 Q. Did they promise the Defendant anything?

15 A. No, sir.

16 Q. Were you all there the whole time with him that he
17 was there and giving these statements and making these
18 phone calls?

19 A. We were. I was in and out. We were in there
20 during the phone calls and when we left and in there
21 for the statement and everything we were there.

22 Q. Were Tyrel Woodring or Casey Bowling ever in the
23 room alone with him?

24 A. Not that I recall.

25 Q. Okay. Y'all sat in the -- did you observe his

1 demeanor that day? When I say "his", the Defendant?

2 A. Yes, sir.

3 Q. Have you had an opportunity to view people that
4 have been under the influence of alcohol and/or drugs
5 during your time with the Sheriff's Office?

6 A. Yes, sir.

7 Q. Did he appear to be under the influence of drugs or
8 alcohol on that day?

9 A. He, he appeared to be coherent. He was answering
10 our questions without hesitation. He seemed to know
11 exactly what was going on. I wasn't familiar with the
12 case, but he was answering Sergeant McMahan's questions
13 and seemed to be knowledgeable about what happened at
14 the scene.

15 Q. Was he coherent in his responses?

16 A. Yes, sir.

17 Q. Did he seem to know what was going on?

18 A. Yes, sir.

19 Q. Did he also later -- let me show you State's
20 Exhibit Number 3. After he gave the first statement,
21 did he go back and add that as another statement that
22 had extra information?

23 A. Yes, sir.

24 Q. And I guess the same questions that I asked
25 earlier: Did anybody promise him, hold out any hope

1 for reward, offer any leniency, or try to coerce him in
2 any manner to give you that second statement, State's
3 Exhibit Number 3?

4 A. No, sir.

5 Q. And did he sign it?

6 A. He did.

7 Q. You signed it and David McMahan signed it?

8 A. Yes, sir.

9 Q. To the best of your knowledge, were both of those
10 statements given freely and voluntarily by Timothy
11 Wirtz on February 14th, 2012?

12 A. Yes, sir.

13 Q. Did he write them in his own handwriting and his
14 own words?

15 A. Yes, sir.

16 Q. Were you present when the phone calls were made?

17 A. Yes, sir.

18 Q. That's State's Exhibit Number 4.

19 A. Uh-huh.

20 Q. Is that a true and accurate copy of the phone calls
21 as y'all made them from the interview room?

22 A. Yes, sir.

23 Q. Have they been altered or tampered with?

24 A. No, sir.

25 MR. WAGNER: Thank you. That's all I have.

1 **THE COURT:** Cross-exam?

2 Cross-Examination by Mr. Rosemond:

3 **Q.** Lieutenant Hawk, you don't know what promises Casey

4 Bowling or Tyrel Woodring made to Mr. Wirtz, do you?

5 **A.** There was none made in my presence.

6 **Q.** None made in your presence?

7 **A.** No, sir.

8 **Q.** Let's take a look at these statements right quick.

9 Let's start out with State's Exhibit Number 1.

10 **A.** 2?

11 **THE COURT:** I think it's Exhibit 2.

12 By Mr. Rosemond:

13 **Q.** Okay. State's Exhibit Number 2, okay?

14 **A.** Uh-huh.

15 **Q.** How many pages is that statement, consists of that

16 statement?

17 **A.** Two pages.

18 **Q.** What time does that statement start on the first

19 page?

20 **A.** At 6:30 p.m.

21 **Q.** What time does it end on the first page?

22 **A.** (Pause.)

23 **Q.** On the first page.

24 **A.** On the first page? I can't -- it looks like 9:05,

25 but I can't make if that's a zero or what.

1 Q. Okay. But it's nine-something; is that right?

2 A. Yes, sir.

3 Q. Now look on the second page.

4 A. Uh-huh.

5 Q. What time does it end on the second page?

6 A. It appears to be 9:05 p.m.

7 Q. Okay. But it also appears somebody scratched out
8 something and then put TW. He may have done that
9 himself, right?

10 A. Yeah, uh-huh.

11 Q. But on both of those pages of State's Exhibit
12 Number 2 it says it ends at 9:05; does it not?

13 A. It does, yes, sir.

14 Q. Now look at State's Exhibit Number 3.

15 A. Uh-huh.

16 Q. Do you know what date the robberies took place on?

17 A. No, sir.

18 Q. It took place on February the 11th, 2012. Please
19 read that statement to us.

20 A. (Reading): On February 9th at around 1:30 p.m. I,
21 Timothy Wirtz, drove Gary Smith to Yank, alias, at
22 Yank's house to stash some items from the Ivy Creek
23 burglary. Currently Yank is holding these stolen items
24 and says he wants money to purchase the items stolen by
25 Gary Smith.

1 Q. Well, we know that that statement, Number 3, right
2 there says on February the 9th Timothy Wirtz drove to
3 Yank's house to stash some items from the Ivy Creek
4 burglary, right?

5 A. Yes, sir.

6 Q. But we know that the Ivy Creek burglary didn't take
7 place on February the 9th; is that right?

8 A. I don't, I don't know that.

9 Q. Okay.

10 A. From what you said.

11 Q. It took place on February the 11th, okay?

12 A. Okay.

13 Q. So that statement right there, if it took place on
14 February the 11th, cannot be true.

15 A. Or he's just wrong on the date.

16 Q. Well, let's go back. Taking what you read right
17 there on that statement --

18 A. Uh-huh.

19 Q. -- that statement cannot be true. It didn't happen
20 on February the 9th?

21 A. It didn't happen on February the 9th. That doesn't
22 mean it's not a true statement.

23 Q. Okay. Well, if it didn't happen on February the
24 9th and he put February the 9th, that means it's not
25 true.

1 A. Or he's wrong about the date.

2 Q. Well, that's a possibility, too. But what does the
3 statement say?

4 A. On February 9th.

5 Q. Okay. So you say he's wrong about the date. Well,
6 you say he could be wrong about the date; is that
7 right?

8 A. To my knowledge. I don't know when the burglary
9 happened other than what you are telling me.

10 Q. Do you want me to show it to you?

11 A. Yes.

12 Q. (Handing). The Incident Report. What date did the
13 burglary happen on?

14 A. 2-11.

15 Q. Okay. So, if the burglary happened on 2-11 and the
16 State's Exhibit Number 3, the statement from Tim Wirtz,
17 says February the 9th, looking at that statement, that
18 statement could not be true.

19 A. The date -- I mean, I don't know if the statement
20 is true or not. It's just what he wrote in there. I
21 assume it's true because it's his words.

22 Q. Okay. Now...

23 MR. ROSEMOND: I don't have any other questions,
24 Your Honor.

25 THE COURT: Redirect?

1 Redirect Examination by Mr. Wagner:

2 Q. Were Sergeant McMahan and you the only two people
3 that were in the room when he was giving his statement,
4 Exhibit Number 2 and Number 3?

5 A. Yes, sir.

6 Q. Were you all the only two people in the room when
7 you made those phone calls that you just heard on
8 State's Exhibit Number 4?

9 A. On the phone call I heard another person's voice on
10 there. I don't know if it was Sergeant Bowling. But
11 we were making the phone calls.

12 Q. Were you all present the whole time?

13 A. Yes.

14 Q. Most particular, the statement, Number 2 and Number
15 3?

16 A. Yes, sir.

17 Q. And y'all never promised him anything nor
18 threatened him in any manner?

19 A. No, sir.

20 MR. WAGNER: Thank you. That's all the questions I
21 have, Your Honor.

22 MR. ROSEMOND: Last question.

23 Recross-Examination by Mr. Rosemond:

24 Q. Do you ever recall Sergeant McMahan saying Casey
25 Bowling was ever in that room?

1 A. Today?

2 Q. Yes.

3 A. He stuck his head in the room.

4 MR. ROSEMOND: Okay. All right.

5 No further questions Your Honor.

6 THE COURT: Re, re, Redirect?

7 MR. WAGNER: No, sir. That's all we have on this
8 issue, Your Honor.

9 (Whereupon, the Witness left the witness stand.)

10 THE COURT: Okay. Does the Defendant have
11 anything, Mr. Rosemond?

12 MR. ROSEMOND: Just Timothy Wirtz, Your Honor.

13 THE COURT: All right. Very good.

14 MR. ROSEMOND: He probably will be a little long.

15 THE COURT: Do you want to wait until tomorrow?

16 MR. ROSEMOND: If you wanted to wait until
17 tomorrow, that would be fine. Timothy could be long.

18 MR. WAGNER: That would be fine, Your Honor.

19 THE COURT: All right. I think so. It's 5:00 and
20 we've done a little bit today. All right. So we'll
21 stand in recess until what time in the morning, 10:00?

22 MR. WAGNER: Yes, sir.

23 MR. ROSEMOND: Yes, Your Honor.

24 THE COURT: Is that all right?

25 MR. ROSEMOND: Yes, it is.

1 Can we go over one thing, Your Honor?

2 THE COURT: Certainly.

3 MR. ROSEMOND: And perhaps it won't come up
4 tomorrow and they can have time to do something with it.

5 THE COURT: Okay.

6 MR. ROSEMOND: Your Honor, I want to pass up the
7 Supplemental Brady Motion Request that we sent out.

8 (Counsel confer.)

9 MR. ROSEMOND: Your Honor, in front of you, you
10 have our Supplemental Brady Request to the Sheriff's
11 Office. Request Number 1 asks for the CI file of Tim
12 Wirtz and Carrie Tyner. The response was (reading): We
13 have consulted with the Oconee County Sheriff's Office
14 and to our knowledge this information does not exist.

15 Mr. Wirtz is gonna testify tomorrow that he has
16 made numerous buys, at least five or six buys from the
17 Sheriff's Office, the Narcotics Division, he has been
18 paid for these buys. There has to be a file there
19 showing a transaction of what he's done for them. I
20 don't care whether or not it tells us who he bought from
21 or not, but I need it to establish the fact that he was,
22 in fact, an informant, he was paid for his work, and
23 therefore, he relied upon the promises of Sergeant
24 McMahan.

25 Now, and certainly I think that goes to his state

1 of mind, Your Honor. He's worked with them before,
2 he's, you know, according to him he said, Hey, they
3 promised me some stuff, that's why I was making these
4 calls for him. I was thinking I can go home later
5 tonight. I had no idea I was going to be arrested.

6 And when I get a response back that (reading) we
7 consulted with the Sheriff's Office and to our knowledge
8 this information does not exist (end of reading), that's
9 wrong, Your Honor, and I think they should turn it over
10 to us.

11 **THE COURT:** All right. Do you want to be heard
12 today?

13 **MR. WAGNER:** I can go ahead and respond, Your
14 Honor. We consulted with the Narcotics Division. I
15 believe -- and Jeremy Chapman has been here in court
16 today for that reason. They don't have him in their --
17 they put everybody that they use and do that where they
18 go in a central system, so they know and it's not like
19 shared with the rest of the Sheriff's Office, I believe.
20 I believe it's their stuff that they know who was being
21 worked as an informant and who is not. And my
22 understanding is he's nowhere in that system, none of
23 them ever used him. And to be honest with you, this is
24 the first time I heard that was just now. I don't know
25 what Mr. Rosemond is talking about or what the Defendant

1 is talking about.

2 **THE COURT:** You are talking about a Question or
3 Request Number 1 about the confidential informant's
4 files of Carrie Tyner and Timothy Wirtz?

5 **MR. WAGNER:** Yes, sir. What I'm telling you, from
6 what they told me, they don't exist. There are no
7 confidential informant files. They didn't use him as a
8 confidential informant.

9 **THE COURT:** I mean, are they saying there are no
10 confidential informant files, or they did not use these
11 individuals as CIs.

12 **MR. WAGNER:** Both, Your Honor, on both questions,
13 yes. There are no files. And to my knowledge, from
14 what the officers that are out there now, they never
15 used them. Now, Casey Bowling's name came up today. He
16 doesn't work there. My understanding -- I actually did
17 talk with him at lunch today when I heard him on
18 Mr. Rosemond's Witness List. He tells me he has had
19 no -- at least to Carrie Tyner, I didn't ask him if
20 Wirtz was one of those guys. But he never used her as
21 an informant, and to my knowledge nobody at the
22 Sheriff's Office has.

23 **MR. ROSEMOND:** He said he worked for Brandon Long,
24 Your Honor, he's in the Narcotics Office. He can tell
25 you who he purchased drugs from and he can tell you how

1 much money they paid him for doing that. But I need
2 that to establish --

3 THE COURT: Let's do this. You say there isn't any
4 reason not to have these individuals available tomorrow?

5 MR. WAGNER: We can get Brandon here. This is the
6 first I heard Brandon's name, Your Honor, so I'm kind of
7 at a loss.

8 THE COURT: We've got a lot of time between 10:00,
9 nine and ten o'clock.

10 MR. WAGNER: But we'll get Mr. Long here.

11 THE COURT: All right. Anything else?

12 MR. ROSEMOND: A couple more, Your Honor.

13 Evidently, Your Honor, there was a robbery that
14 took place on Catawba Road up in Long Creek -- well, up
15 near, up above Walhalla, Judge. And the response we got
16 back was that this is still an ongoing and active
17 investigation and it is the State's position that
18 discovery at this time would compromise that
19 investigation.

20 But if they have information that Chad Bush and
21 Heath Bates, who are on their Witness List, were
22 involved in this particular robbery, I think they have a
23 duty to turn that over to us, Your Honor. Heath Bates
24 is in jail, Your Honor, at the Department of SCDC.

25 THE COURT: He's already been sentenced?

1 **MR. ROSEMOND:** He's serving some time for some of
2 this, Your Honor.

3 Chad Bates is at the Sheriff's Office in the
4 Detention Center. Chad Bates's charges were
5 automatically dismissed in this particular case for some
6 unknown reason. Sergeant McMahan just testified that,
7 yeah, he believed that Chad Bates was involved in this
8 case. He's been told by two confidential informants
9 Chad Bates has admitted to being involved in this case,
10 but there's no charges for Chad Bates. They've been
11 dismissed. I mean Chad Bush.

12 The Solicitor's Office told me to go downstairs and
13 get the paperwork from the Clerk's Office. I went down
14 there at lunch. No paperwork. Must be expunged. But
15 somebody has some paperwork on the reason why Chad
16 Bush --

17 **THE COURT:** Is there an Expungement Order there.

18 **MR. ROSEMOND:** I didn't see anything, Your Honor.
19 I looked at lunchtime today. I put all of the other
20 stuff on his other charges ---

21 **THE COURT:** The warrants and everything are --

22 **MR. ROSEMOND:** Wasn't there, Your Honor.

23 **MR. WAGNER:** I dismissed them, Your Honor. The
24 only evidence we had on Chad Bush was that Defendant's
25 statement, who I felt was far from credible. And I say

1 the only evidence. That was the principal evidence that
2 we had on Chad Bush.

3 THE COURT: There was never any warrant or
4 anything?

5 MR. WAGNER: They arrested Chad Bush, and it was my
6 call. I dismissed it back, probably within a month or
7 so after this case was made. Whether it was expunged or
8 not, I think Mr. Sires represented him. I guess
9 Mr. Sires, probably being a diligent attorney, got it
10 expunged. I don't know. I don't have the paperwork in
11 my possession. I thought maybe the dismissal sheets
12 would be at the Clerk's Office and Mr. Rosemond could
13 get them there. If it was expunged and all that stuff
14 is gone, I don't have it. I can tell you that I
15 dismissed a case actually, against Sergeant McMahan's
16 wishes, because I didn't feel like we could prove the
17 case on George Bush and he was in jail at the time. To
18 me what I did with that case --

19 THE COURT: Chad Bush.

20 MR. WAGNER: Chad Bush. It's George Chad Bush. I
21 call him George Bush. They call him Chad. I'm sorry,
22 Judge. But the same guy.

23 MR. ROSEMOND: And they control who they prosecute,
24 I understand that. But when you have two confidential
25 informants that when Sergeant McMahan believes saying

1 that Chad Bush admitted to participating in this
2 particular crime, and the charge gets dismissed, and I
3 can't find any record of it, it's just problematic for
4 me, Your Honor.

5 THE COURT: Well, there has to be some record
6 somewhere, either an Expungement Order or the warrants,
7 and then the dismissal of the warrants.

8 MR. ROSEMOND: If they have it, Your Honor, I'm
9 just asking them to turn it over to me.

10 MR. WAGNER: If it had been on the docket sheet, it
11 wouldn't have been.

12 THE COURT: No. The warrants are all serial.

13 MR. ROSEMOND: There were no warrants down there,
14 there was no disposition sheets down there. And I
15 looked in Chad Bates' --

16 THE COURT: I'll tell you what. Mr. Rosemond
17 provided the State with a sort of shopping list here. I
18 hate to ruin your evening, but let's see if we can't
19 find something, a real response. In other words, is
20 that a search has been made and there is no, or that --
21 and of course that goes to whether or not a non existent
22 warrant was ever dismissed. Let's see what we can find.
23 I mean, Mr. Rosemond says that this was the first time
24 he's heard of it and all, and I think that it's only
25 fair that he be provided with --

1 MR. ROSEMOND: I don't want to mislead you.

2 Mr. Wagner and I have talked about this before, but he
3 kept saying, Go look in the Clerk's Office.

4 MR. WAGNER: Delane, that's not --

5 MR. ROSEMOND: I mean, you told me to go look in
6 the Clerk's Office to find it.

7 MR. WAGNER: I did on the response yesterday.

8 MR. ROSEMOND: Right.

9 MR. WAGNER: The response from what you filed to me
10 on Monday.

11 MR. ROSEMOND: But it's not there.

12 THE COURT: Wait a minute. Yesterday?

13 MR. ROSEMOND: I got the material back.

14 MR. WAGNER: Friday I mean.

15 THE COURT: Please. I'm having hard enough time
16 trying to --

17 MR. WAGNER: I'm sorry, Judge.

18 THE COURT: -- organize things right now as to when
19 things happened.

20 All right. So, in other words, on Friday, which
21 would have been the 11th, you gave this information to
22 Mr. Rosemond?

23 MR. WAGNER: What we could, Your Honor, he, what he
24 was asking about earlier too is there's an ongoing,
25 there's a case there that they're talking about, another

1 burglary charge.

2 **THE COURT:** You're talking about the Tugaloo Road
3 case?

4 **MR. WAGNER:** Yes, sir. That case is still under
5 investigation. Chad Bush may have been involved in it.
6 I think the principal evidence is against his Defendant,
7 Mr. Wirtz here, who Sergeant McMahan has not charged
8 with that yet because he's still looking into it and it
9 is currently still under investigation and has not been
10 solved. It happened, I believe, I'm gonna say prior to
11 this case, and I would argue again that it's not
12 relevant to this case in hand. But it is an ongoing
13 investigation, and if -- I would suggest we could turn
14 it over to you and you could look through it if you
15 wanted to.

16 **THE COURT:** That's what I think that we're going to
17 do. At least let's have an impartial review of the
18 evidence and determine whether or not it can be used in
19 any fashion. I think that what Mr. Rosemond is looking
20 for is whether or not there's any evidence of perhaps an
21 understanding, not necessarily an affirmative offer, but
22 that there's some sort of understanding that there's
23 cooperation that something might be done.

24 So we won't compromise any ongoing investigation,
25 but we would find out that there was something else that

1 there had been a prior -- if that is the case, a prior
2 involvement. All right.

3 But, no, you can have that and I'll be here about
4 9:00 if necessary, or 10:00. You want to have the
5 information available, and it looks like it's about,
6 this is the only thing we have tomorrow on this case.
7 All right. So let's just do that at 10:00 have what you
8 have.

9 Have you gone through the Mr. Rosemond's
10 Supplemental Brady Motion here? Have you got any
11 questions about it as to what he wants? In other words,
12 to address, not necessarily that you have anything,
13 but --

14 MR. WAGNER: No, sir.

15 THE COURT: -- you know what he's looking for.

16 MR. WAGNER: Yes, sir. I'll have Brandon Long
17 here. He is the officer that supposedly worked Tim as
18 an informant. I'll try to have him here.

19 THE COURT: But I do want to see any sort of --
20 because I can do that in camera in a protected way.

21 MR. WAGNER: Yes, sir.

22 THE COURT: -- anything that you have that reflects
23 any sort of activity.

24 All right. Anything else?

25 MR. ROSEMOND: No, Your Honor.

1 THE COURT: All right. We'll see you at 10:00 in
2 the morning.

3 MR. WAGNER: Thank you, Your Honor.

4 (Court adjourned at 6:00 p.m. on October 14, 2013,
5 to reconvene on October 15, 2013.)

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1 October 15, 2013

2 11:00 a.m.

3 (Whereupon, the second day of the trial in the case
4 of the State of South Carolina v. Timothy Ray Wirtz
5 resumed with the continuation of the Jackson v.
6 Denno hearing outside of the presence of the Jury,
7 with all parties being present.)

8 **THE COURT:** Back on the case of State v. Wirtz.
9 Jackson v. Denno Hearing (continuation):

10 (Marked for identification was Defendant's Exhibit
11 1, Warrants.)

12 (Marked for identification was Defendant's Exhibit
13 2, Oconee County Sheriff's Office Information
14 Agreement.)

15 **THE COURT:** Investigator McMahan was on the stand.
16 Please come around.

17 (The Witness, David McMahan, resumed the witness
18 stand.)

19 **THE COURT:** Yes, sir.

20 **MR. WAGNER:** Your Honor, I believe we were done
21 with Officer McMahan and the Defendant was gonna
22 testify. That's where I probably left off.

23 **THE COURT:** Oh, I'm sorry.

24 **MR. ROSEMOND:** Since he's up there, Your Honor, I
25 do have a couple of questions of him.

1 THE COURT: All right. Very good.

2 I'm sorry, Officer McMahan.

3 THE WITNESS: That's fine.

4 Whereupon,

5 David McMahan

6 Having been previously duly sworn, was examined and
7 testified as follows:

8 Further Cross-Examination by Mr. Rosemond:

9 Q. Detective McMahan, you testified yesterday that you
10 had developed probable cause for the arrest warrant
11 when you talked with Tim Wirtz; is that right?

12 A. Yes, sir.

13 Q. Okay. And you talked with Tim Wirtz on February
14 the 14th, 2012; is that right?

15 A. Yes, sir.

16 Q. And during that conversation he purportedly
17 confessed to this particular crime; is that right?

18 A. Yes, sir.

19 Q. Now I want to show you what's been marked as
20 Defendant's Exhibit Number 1. Can you identify those
21 documents?

22 A. Yes, sir, I can identify these.

23 Q. What are those documents?

24 A. They're copies of arrest warrants.

25 Q. Arrest warrants for who?

1 A. Timothy Ray Wirtz.

2 Q. On what charges?

3 A. Possession of a weapon during a violent crime,
4 grand larceny, armed robbery, kidnapping, burglary
5 first degree.

6 Q. And on that warrant Affidavit it talks about what
7 date that crime occurred; is that right?

8 A. Yes, sir, it does.

9 Q. What date is on that warrant for the date the crime
10 occurred?

11 A. February the 11th, 2012.

12 Q. Sergeant McMahan, could you tell me when you
13 obtained these warrants for Mr. Wirtz' arrest?

14 A. I believe I obtained them the day before -- or I'm
15 sorry, forgive me. I'm looking.

16 Q. At the bottom of the document, Sergeant McMahan,
17 there is a date on it.

18 A. Yes, sir, I see it now.

19 Q. What date is that?

20 A. February the 13th.

21 Q. And you obtained these from Judge Derrick?

22 A. Yes, sir.

23 Q. So you obtained these arrest warrants for Mr. Wirtz
24 the date prior to you talking to Mr. Wirtz; is that
25 right?

1 A. Yes, sir.

2 Q. So you didn't -- you had already had the warrants
3 in your possession prior to talking to Mr. Wirtz; is
4 that right?

5 A. Yes, sir.

6 Q. And you didn't -- you already had the warrants in
7 your possession prior to talking to Mr. Wirtz?

8 A. Yes, sir.

9 Q. And you didn't use his confession to obtain
10 probable cause for his arrest, did you?

11 A. No, sir.

12 Q. Evidently you already had it.

13 A. I had probable cause, yes, sir.

14 Q. Okay. So to say that you used his confession to
15 obtain the probable cause for his arrest was not true;
16 is that right?

17 A. Well, I obtained it under probable cause, but this
18 was further investigation the next day.

19 Q. Okay. All right.

20 MR. ROSEMOND: I don't have any further questions
21 of this Witness, Your Honor.

22 THE COURT: Redirect?

23 MR. WAGNER: No further questions.

24 THE COURT: All right. Now you may step down.

25 (Witness leaves stand.)

1 THE COURT: Anything further from the State?

2 MR. WAGNER: No, sir.

3 THE COURT: Anything further from the Defendant?

4 MR. ROSEMOND: Yes, Your Honor. I would like to
5 call Brandon Long to the stand.

6 (Whereupon, the Witness, Brandon Long, was sworn by
7 the Clerk of Court.)

8 Whereupon,

9 Brandon Long

10 Having first been duly sworn, was examined and
11 testified as follows:

12 Direct Examination by Mr. Rosemond:

13 THE COURT: If you would please, sir, give us your
14 full name for the record, spelling your last name.

15 THE WITNESS: My name is Brandon Edward Long,
16 L-o-n-g.

17 THE COURT: Very good. Thank you, sir.

18 By Mr. Rosemond:

19 Q. Mr. Long, where do you work?

20 A. Oconee County Sheriff's Office.

21 Q. How long have you worked there?

22 A. Approximately eight years.

23 Q. And what department do you work in?

24 A. Narcotics and Vice Division.

25 Q. How long have you been in Narcotics?

1 A. Approximately six years.

2 Q. Have you ever had a chance to come in contact with
3 Timothy Wirtz?

4 A. Yes.

5 Q. When is that?

6 A. If I can -- 2011 we signed him up as an informant.

7 Q. So you signed Mr. Wirtz up as an informant in 2011.
8 What month in 2011?

9 A. He was signed up on the 20th of January, 2011.

10 Q. Did he do any work for you?

11 A. He made a couple purchases, yes.

12 Q. From making those purchases, did you pay him or did
13 you drop any charges for him?

14 A. We paid him.

15 Q. You paid him?

16 A. Yes, sir.

17 Q. And the information that he gave you, was it
18 reliable?

19 A. To the best of my knowledge, yes.

20 Q. Did you make any charges off of those particular
21 buys that Mr. Wirtz did?

22 A. Um, one I believe I did. The other right off the
23 top of my head I didn't.

24 Q. But he did work for you; is that right?

25 A. Yes, sir.

1 Q. And you paid him for his work?

2 A. Yes.

3 MR. ROSEMOND: No further questions, Your Honor.

4 THE COURT: Cross-exam?

5 Cross-Examination by Mr. Wagner:

6 Q. As part of your, when you have an informant, do you
7 tell them up front and is it in the agreement that
8 there will be no consideration given on any charges by
9 you guys for their cooperation?

10 A. We tell them that if there's charges, that we may
11 make a recommendation to the Solicitor's Office, but
12 the Solicitor's Office has the final decision.

13 Q. Do you know anything about this case in particular
14 from February 11, 2012?

15 A. No. I remember we assisted Sergeant McMahan in
16 helping locate him, but that was about the extent of
17 it. I mean as far as the details or anything like
18 that, I don't know.

19 Q. Did you, did you have any involvement in this case
20 at all?

21 A. Other than assisting Sergeant McMahan locating, no.

22 Q. Locating the Defendant?

23 A. Yes.

24 Q. Okay. Did you make him any promises or anything to
25 do with any kind of confession that he made?

1 A. No. I never even talked to him about this case
2 here.

3 MR. WAGNER: Thank you. That's all the questions I
4 have.

5 MR. ROSEMOND: No Redirect.

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

7 (Whereupon, the Witness was excused.)

8 MR. ROSEMOND: I'd like to call Timothy Wirtz to
9 the stand.

10 (Whereupon, the Witness, Timothy Ray Wirtz, was
11 sworn by the Clerk of Court.)

12 Whereupon,

13 Timothy Ray Wirtz

14 Having first been duly sworn, was examined and
15 testified as follows:

16 Direct Examination by Mr. Rosemond:

17 THE COURT: If you would please state your full
18 name for the record, spelling your last name.

19 THE WITNESS: My name is Timothy Ray Wirtz,
20 W-i-r-t-z.

21 THE COURT: Very good. Thank you, sir.

22 By Mr. Rosemond:

23 Q. Mr. Wirtz, would you slide up to the microphone.

24 I'm having a little trouble hearing you.

25 A. Yes.

1 Q. Mr. Wirtz, how old are you?

2 A. I'm 31 years old.

3 Q. On February the 14th, 2012, how old were you?

4 A. I was 29 years old.

5 Q. Now I'm gonna take you back to that particular
6 morning of February the 14th, 2012. What did you do
7 that morning?

8 A. I was home that morning with my wife and daughter.

9 Q. Okay. And what did you do after that?

10 A. I went to Shane Elliott's apartment.

11 Q. Okay. And how were you traveling?

12 A. By my wife's vehicle.

13 Q. Now, what did you do at Mr. Elliott's apartment?

14 A. Mr. Elliott had called me earlier that morning and
15 asked me to come to his apartment about some legal
16 troubles is the way he put it.

17 Q. Okay. And what did you do at his apartment?

18 A. He asked me if I could locate any firearms that had
19 been stolen in this case.

20 Q. And what did you tell him?

21 A. "No."

22 Q. What time, what time was this conversation?

23 A. Um, approximately 11 a.m.

24 Q. What time did you leave Mr. Elliott's apartment?

25 A. Approximately 1, 1:00.

1 Q. And where did you go after that?

2 A. I went to meet Carrie Tyner at her grandmother's
3 house.

4 Q. Okay. Now, who was Carrie Tyner?

5 A. She is by marriage my stepsister.

6 Q. Okay. Now, what did you do when you went to
7 Mrs. Tyner's house, or grandmother's house?

8 A. I went inside, sat down on the bed with Carrie. We
9 talked for a few minutes and she offered me to buy some
10 Xanaxes.

11 Q. Okay. Do you normally take Xanaxes?

12 A. Yes, sir.

13 Q. What other drugs do you normally take?

14 A. At that point in time I was injecting
15 methamphetamine.

16 Q. And that morning at Carrie Tyner's house, tell me
17 about your mental state.

18 A. Well, I'd been up six, possibly seven days on
19 methamphetamine. I was pretty tired. I would say meth
20 kind of makes you crazy, makes you very unpredictable.

21 Q. So you were at Ms. Tyner's house and what happened?

22 A. She confronted me to purchase some Xanax and I told
23 her that I would take five of them and I purchased
24 five.

25 Q. What happened after that?

1 A. She instructed me that she was gonna have to have
2 the car to go get them, and I told her, I said,
3 "Carrie, I don't like you taking the car" because she's
4 known to run off with vehicles. But I let her use the
5 vehicle. She was gone for approximately 15 to 20
6 minutes and returned with the Xanax.

7 Q. What did you do with the Xanaxes?

8 A. I took three of them.

9 Q. Now, what occurred after that?

10 A. Ms. Tyner asked me about 20 minutes after that if I
11 would be willing to ride with her to go make a sale of
12 methamphetamine.

13 Q. And your response was?

14 A. "Yes."

15 Q. So where did you all go?

16 A. We rode down a couple back roads for a little
17 while, we were kind of headed towards Georgia, and she
18 was on my cell phone and she was discussing something
19 with someone. And this person, whoever she was
20 discussing, Ms. Tyner looked at me and said, do you
21 realize you may have warrants on you?

22 I said, I don't think so but it's possible.

23 Q. Okay.

24 A. So after that she said that she wanted to meet with
25 Tyrel Woodring of the Narcotics Unit at Tabor Church.

1 Q. Did you all go to Tabor Church?

2 A. Yes, sir, we did.

3 Q. About what time did you all go to Tabor Church?

4 A. To my recollection around 2:30, 3:00.

5 Q. Okay. When you arrived at Tabor Church, what
6 happened?

7 A. I was approached by Tyrel Woodring first, he came
8 up to the vehicle. I spoke with Tyrel for a few
9 minutes. He told me he that was a narcotics agent.
10 I'd never met Tyrel before. Mr. McMahan approached me,
11 and while I was speaking to Mr. McMahan, Carrie Tyner
12 opened the trunk of the car and took out two shotguns.

13 Q. She opened the trunk of what car?

14 A. My wife's Ford Taurus she was driving.

15 Q. Did you know the shotguns were in the trunk?

16 A. No, sir.

17 Q. What did she do with the shotguns?

18 A. She gave them to Mr. McMahan.

19 Q. So what happened after that?

20 A. Um, after that I spoke with Mr. McMahan for a few
21 minutes about a possible burglary. He asked me if I
22 would come back to the Sheriff's Department and if I
23 would basically be interrogated is the way I took it.

24 Q. Did you go back to the Sheriff's Office?

25 A. Yes, sir, we did.

1 Q. When you arrived at the Sheriff's Office, what
2 happened?

3 A. To my recollection I was placed immediately in an
4 interrogation room. It was a couple years ago and I
5 was very high.

6 Q. Okay. And while you were in there, did you sign a
7 Miranda warning? Do you know what a Miranda warning
8 is?

9 A. Yes, sir, I do.

10 Q. I'm gonna show you what's been marked as State's
11 Exhibit Number 1. Do you recall that document right
12 there?

13 A. I recognize the document, yes, sir.

14 Q. Do you remember going over that document with
15 Sergeant McMahan?

16 A. No, sir.

17 Q. Is that your initials on that particular document?

18 A. It appears to be.

19 Q. Is that your signature on the bottom of that
20 document?

21 A. Yes, sir, it appears to be.

22 Q. Now, while you were in the interrogation room, who
23 were you talking to?

24 A. At first I believe it was just Mr. McMahan at
25 first. He was the first one I talked to.

1 Q. Okay. Had you ever met Mr. McMahan?

2 A. Not to my knowledge.

3 Q. So tell me about the discussion with you and
4 Mr. McMahan.

5 A. Mr. McMahan started asking me some questions about
6 a burglary that had taken place, and I recall him
7 asking about the shotguns that were in the car, why the
8 shotguns were in the car. I told him I did not know
9 why the shotguns were in the car.

10 There was officers in and out. I believe -- I know
11 Casey Bowling was in there at one time. Mr. Hawk, I do
12 remember seeing Mr. Hawk. I believe Scott Arnold was
13 in there. It was kind of an all-day event. There was
14 people in and out, in and out, in and out.

15 Q. Now, so you -- what did Mr. McMahan tell you?

16 A. He told me that with the shotguns being in the
17 vehicle I was implicated in the burglary, that I was
18 implicated in a crime that had been committed.

19 Q. Okay. And did he tell you anything else?

20 A. No, sir, not at that point in time that I can
21 recollect. He came back. I remember, I remember he
22 came back in numerous times, and one point in time he
23 had come back in and give me some details about the
24 burglary, some simple details, and tried to get me to
25 talk and ask if I knew anything about the burglary.

1 Q. What was your response?

2 A. I told him I did know some about the burglary.

3 Q. Okay. What did you tell him?

4 A. I believe I told him that I knew that Chad Bush had
5 been implicated in it. I told him that I knew where it
6 was actually planned at because I was present when this
7 burglary was planned.

8 Q. Now, who was there -- when you say this burglary
9 was planned, who was there in the planning stages of
10 this burglary?

11 A. We were at Chad Bush's mother's house, Chad Bush,
12 we were at his mother's house in the basement. There
13 was Gene Poole, Greg Bates, me, Timothy Wirtz; Carrie
14 Tyner, Heath Bates, Chad Bush, Gary Smith, Amanda
15 Wirtz. I want to say that's all, but there was a lot
16 of people there that night.

17 Q. So there was a discussion of breaking into whose
18 house?

19 A. Into Mr. Bush's brother's, Chad Bush's brother's
20 house.

21 Q. Did you tell Mr. McMahan that in this interview?

22 A. Yes. Yes, I did.

23 Q. So, after telling him that, what did he ask you to
24 do?

25 A. Mr. McMahan informed me that he needed to place

1 someone at the scene. He needed some help because he
2 thought it was wrong what Chad had done to his brother.
3 From talking to Mr. McMahan he really does not like
4 Mr. Bush. So he told me that since I had been working
5 for the police and I had been working for Brandon Long,
6 he asked me if I would make a statement for him.

7 Q. Did you give him a statement?

8 A. Yes, I did.

9 Q. And the statement that you gave him -- let me show
10 you what's been marked as State's Exhibit Number 2. Is
11 that the statement that you gave him?

12 A. Yes, sir, it is.

13 Q. Why did you give him that statement?

14 A. Because Mr. McMahan informed me that he needed to
15 place someone at the scene. He told me he could help
16 me out on, with the fact of the guns being in the car.
17 He told me he needed to place someone at the scene of
18 the burglary.

19 Q. When you say he could help you out, what was that?

20 A. He implied I would be released. He implied that it
21 wouldn't be brought against me.

22 Q. Now, speaking of being released, yesterday we heard
23 about 14 audiotapes. How did those tapes come about?

24 A. I really don't have a recollection of making the
25 phone calls in the state I was in. But I would assume

1 from prior knowledge that my phone was wired by the
2 Narcotics Unit the way that they had, the way we had
3 made buys in the past.

4 Q. You made several phone calls to several different
5 people. Did you set up a drug deal?

6 A. Yes, sir.

7 Q. Why did you set that drug deal up?

8 A. Because Casey Bowling had came in and spoken to me
9 about setting up a drug buy because they were
10 attempting to bust Shane Elliott.

11 Q. Were you, did you believe that you were
12 participating in a drug deal at that time?

13 A. Yes, sir, I did.

14 Q. And for your participation in that drug deal, what
15 were you going to receive?

16 A. Payment and release.

17 Q. You set up a drug deal with a gentleman and you
18 told him you would be there in 20 minutes. Where did
19 you get that idea from?

20 A. Casey Bowling and Mr. McMahan.

21 Q. But did you ever go to that particular drug deal?

22 A. No, sir, I did not.

23 Q. Were you released that night?

24 A. No, sir, I was not.

25 Q. Now, you had been in Mr. McMahan's presence for,

1 beginning at what time?

2 A. To my recollection around 3, 3:30 p.m.

3 Q. And what time were you put in the jail cell?

4 A. Well after midnight.

5 Q. Now, during that time you had given -- during that
6 time had you eaten?

7 A. No.

8 Q. Had you slept any?

9 A. No, sir.

10 Q. What time on that State's Exhibit Number 2 did you
11 begin writing that statement?

12 A. 6:30 p.m.

13 Q. What time did you end writing that statement?

14 A. 9:05 p.m.

15 Q. Is that on both pages?

16 A. Yes, sir, it is.

17 Q. Now, you wrote a second statement which was marked
18 as State's Exhibit Number 3 (handing). Do you remember
19 giving them that statement?

20 A. No, sir, I don't recall giving this one. But it's
21 my signature on the paper so I would say that I did.

22 Q. What time does State's Exhibit Number 3 say you
23 started writing it?

24 A. At 7:37 p.m.

25 Q. And you finished writing it at what time?

1 A. Three minutes later at 7:40 p.m..

2 Q. Now, do you recall how the phone calls came about?

3 A. I was asked to make some drug buys. I was also
4 asked if I could recover any guns from the crime.

5 Q. Who asked you to do that?

6 A. Mr. McMahan.

7 Q. And the reason why you made those phone calls was
8 because of what?

9 A. Because Mr. McMahan told me that if I could get the
10 guns back, I could go home.

11 Q. Now, at that time did you know that he had some
12 arrest warrants for you?

13 A. No, sir, I did not.

14 Q. Had you ever relied upon an investigator's word
15 before?

16 A. Yes, sir, many times.

17 Q. Whose word did you rely upon?

18 A. Brandon Long.

19 Q. In exchange for doing what Brandon asked you to do,
20 what did he do?

21 A. Um, he paid me in money. I had a possible
22 probation violation. He told me that he had spoken to
23 Ginger about it and that he could get me booked and
24 released on it without having to stay in jail on it.

25 Q. Who told you that?

1 A. Brandon Long.

2 Q. When?

3 A. When I was making buys for him.

4 Q. So that wasn't that night?

5 A. No, that was not that night.

6 Q. You didn't see Brandon Long on February the 14th,
7 2012?

8 A. Yes, sir, I did.

9 Q. You did see him?

10 A. Yes, sir, I did.

11 Q. Where did you see him at?

12 A. At Tabor Church. He pulled into the parking lot
13 for a second to meet with Tyrel Woodring and David
14 McMahan and then he left.

15 Q. Okay. But you didn't see him at the jail?

16 A. No.

17 Q. Or OLEC?

18 A. No, sir, I did not.

19 Q. Now, do you recall what you said on the audio in
20 regards to talking to Shane Elliott?

21 A. Yes, sir, after listening to it.

22 Q. What did you say to him?

23 A. I told him that I needed to get some guns back,
24 that it was gonna clear everybody's name and I would be
25 released.

1 Q. Okay. You also talked with Carrie Tyner that
2 night; is that right?

3 A. Yes, sir, I did.

4 Q. And did you have a discussion as to what time you
5 were gonna be let, released or whether or not who was
6 gonna pick you up?

7 A. After listening to the calls, yes, sir, I
8 acknowledged many times that she was gonna pick me up
9 and I would be leaving soon.

10 Q. Did you believe that to be true?

11 A. Yes, sir. I said it.

12 Q. When do you recall Sergeant McMahan placing you in
13 handcuffs, or when do you recall him telling you you
14 were under arrest?

15 A. Sergeant McMahan didn't arrest me. I believe it
16 was Casey Bowling arrested me well after midnight and
17 took me down to the jail.

18 Q. Were you surprised at that point?

19 A. Yes. I actually argued with Casey Bowling for
20 about five to ten minutes about why I was being
21 arrested.

22 Q. And what was the argument about?

23 A. Because they had promised me I was going home. I'd
24 set up drug deals, I had tried to get guns back. I'd
25 just done what they told me to. I had no knowledge

1 that I was gonna be arrested.

2 Q. And that was on February the 14th, 2012?

3 A. Yes, sir.

4 Q. You had been in jail ever since?

5 A. Yes, sir, I have.

6 Q. How many days?

7 A. Approaching 615.

8 Q. Have you ever been arrested before, Mr. Wirtz?

9 A. Yes, sir.

10 Q. Have you ever been interrogated by any law
11 enforcement officer?

12 A. Once or twice.

13 Q. Did they read you your Miranda warnings at that
14 particular time?

15 A. I can't recall if they did. It's been years past.

16 Q. So you have been involved with the police before;
17 is that right?

18 A. Yes, sir. I've been arrested numerous times.

19 Q. Okay. In exchange for being arrested numerous
20 times, have you ever asked them to help you out?

21 A. One time I asked an investigator if he would help
22 me out. It was not an investigator, it was a Walhalla
23 City Policeman.

24 Q. Okay.

25 A. They had caught me at the scene of a crime and he

1 asked me if I would just admit to it, that they would
2 let me sign my bond. So I admitted to it and the Judge
3 let me sign my bond that night.

4 Q. Ultimately the reason why you gave that statement
5 to Sergeant McMahan was because of what?

6 A. He asked me to.

7 Q. In exchange for you giving that particular
8 statement, what was gonna happen?

9 A. I was told that I was going home.

10 Q. Let me look at that statement once again.

11 A. (Handing.)

12 MR. ROSEMOND: No further questions, Your Honor.

13 THE COURT: Cross-examine?

14 Cross-Examination by Mr. Wagner:

15 Q. Mr. Wirtz, you got convicted back in 2004, common
16 law robbery?

17 A. Yes, sir, that's correct.

18 Q. You went to prison for that, didn't you?

19 A. Yes, sir, I did.

20 Q. Okay. Then you got out and you committed a
21 burglary third degree and went back to prison in 2007;
22 isn't that correct?

23 A. Yes, sir, that's correct.

24 Q. Then you got out and you committed another burglary
25 and went back to prison, or at least, yeah, went back

1 to prison again in 2010?

2 A. That's correct.

3 Q. Okay. You got 18 months then. So you hadn't been
4 out long before you entered into this informant
5 agreement with Brandon Long?

6 A. Approximately ten months.

7 Q. Okay. And then I'm guessing at some point in time
8 you got back on methamphetamine?

9 A. Yes, sir. About -- well, not back on
10 methamphetamine. I was not a methamphetamine user
11 before I got on it that time. I got on methamphetamine
12 maybe six to seven months after being released.

13 Q. Okay. And you were hooked on meth?

14 A. Yes, sir.

15 Q. And you were, according to your testimony here
16 today, you were strung out for six days at least?

17 A. Sometimes I would stay up up to 13 days.

18 Q. And then somehow you hooked up with Carrie Tyner on
19 this day, the day in question.

20 Is your testimony here today you weren't at the
21 scene of the burglary --

22 A. No, sir.

23 Q. -- on the 11th?

24 A. No, sir.

25 Q. Okay. And all this information you gave in State's

1 Exhibit Number 2 --

2 A. Yes, sir.

3 Q. --- you remembered on February 8th that you, Gary
4 Smith, Chad Bush and Greg Bates were in the car and
5 y'all were short on cash. You said that Chad Bush said
6 that you could go in his brother's house and steal his
7 guns and jewelry? You don't remember that?

8 A. No, that's not correct. That's not correct.

9 Q. That's your handwriting, though, correct?

10 A. Yes, sir, it is.

11 Q. And you don't remember filling out this statement
12 at all?

13 A. I remember filling out a statement. I didn't
14 recall what I had written until my motion in discovery
15 came back.

16 Q. Okay. But they left the room, Sergeant McMahan and
17 Gentry Hawk left the room and let you write this?

18 A. Sir, they left many times with the statement in
19 hand. They left with the statement in hand.

20 Q. But you wrote it; is that correct?

21 A. Yes, sir, I did.

22 Q. Okay. And you recalled those facts; is that
23 correct?

24 A. No, sir. At this time Mr. McMahan was explaining
25 to me about the burglary. He'd asked me to place

1 myself at the scene.

2 Q. You are trying to say that he told you everything
3 to write here and you wrote that as he told you, write
4 this, Tim Wirtz, you write this?

5 A. No. Not the part about it being planned, sir, no,
6 sir; just details such as the door being busted, things
7 like that.

8 Q. Okay. But you are saying you recall now y'all were
9 talking about it in Chad Bush's basement?

10 A. I recalled that to begin with. I spoke to
11 Mr. McMahan and gave him a list of names that were in
12 the basement.

13 Q. Okay. But in your statement you put car?

14 A. Yes, I did.

15 Q. Okay. So was it the car or was it the basement?

16 A. It was the basement.

17 Q. Okay. But McMahan is telling you what to do,
18 right?

19 A. Not about planning the burglary, no, sir.

20 Q. Okay. So but you, he decided just to change what
21 you said and put it that it all happened in the car?

22 A. Mr. Wagner, I had also been up six to seven days
23 and taking narcotics pills when I wrote this.

24 Q. But you remember little facts like taking three
25 Xanaxes from Carrie, numbers like three, numbers going

1 to get five Xanax from Carrie Tyner; is that correct?

2 A. Methamphetamine does not cause memory loss.

3 Methamphetamine actually heightens the senses. Whereas

4 Xanax does cause memory loss and it's a depressant

5 instead of a stimulant.

6 Q. All right. But you took it, but yet you are able

7 to remember later today that you took three Xanaxes

8 instead of five, she went to get five, and she went to

9 ask you to go on a meth deal and go sell meth?

10 A. It wasn't that I remembered it as much as I spoke

11 with Carrie Tyner on the phone.

12 Q. But you are saying that you remember that in court

13 today?

14 A. Yes, I do today.

15 Q. And you remember she pulls out two shotguns and

16 gives them back to you?

17 A. Yes, sir, I remember that.

18 Q. The whole Narcotics Unit was there?

19 A. No, sir, they were not.

20 Q. Well, you say Tyrel Woodring was there, you said

21 Brandon Long was there and you said Casey Bowling was

22 there, I believe.

23 A. I said Mr. McMahan and Tyrel Woodring were there at

24 this point. Mr. Long ---

25 Q. You said they came down to the church, too.

1 A. Mr. Long pulled in the parking lot and never
2 actually approached us because I said I didn't want him
3 there.

4 Q. Let me show you State's Exhibit Number 1. That's
5 the rights waiver.

6 A. Okay.

7 Q. You don't remember filling that out at the church?

8 A. No, sir, I do not.

9 Q. You don't remember initialing each one of those
10 rights and signing that?

11 A. No, sir, I do not.

12 Q. Okay. So you, the Xanax I guess had kicked in at
13 that time and you were forgetting that part of it?

14 A. It takes approximately 15 to 20 minutes for
15 sedatives to work.

16 Q. So are you saying you don't remember writing that,
17 filling that out at the church and being Mirandized, or
18 are you saying that it didn't happen at the church, it
19 happened at the Sheriff's Office?

20 A. I'm saying that I don't remember filling this out
21 at the church.

22 Q. Okay. You are saying it didn't happen at the
23 church? That's what I'm asking you.

24 A. No, sir, I'm not saying it didn't happen. I'm
25 saying that I don't remember.

1 Q. You just testified earlier that they gave it to you
2 at the Sheriff's Office and Mirandized you at the
3 Sheriff's Office?

4 A. I was Mirandized twice. There's another one of
5 these from the Sheriff's Office.

6 Q. Let's look at State's Exhibit Number 2 there.

7 A. Okay.

8 Q. All right. You gave details of Saturday at 1 p.m.,
9 meet Tim, Gary, Greg Bates; went to the location, which
10 is the house where you all went and robbed the
11 Defendant. You remember ---

12 A. No, sir. I did not rob any Defendant.

13 Q. Okay. And it just so happened it was around 1 p.m.
14 on that day. Is that another fact that McMahan gave
15 you to put in your statement?

16 A. No, sir, he did not tell me a time.

17 Q. And you went ahead and wrote it, though?

18 A. I mean, the time was incorrect to begin with, sir.

19 Q. Okay. And somehow that coincides with the
20 videotape where you are on the videotape taking the
21 guy's credit card and using it at Bountyland?

22 A. I do not deny using the credit card, I never have.

23 Q. You conveniently left that out a little while ago.
24 You said you didn't have nothing -- you weren't doing
25 that on that day.

- 1 A. No, sir.
- 2 Q. Somehow ---
- 3 A. I never ---
- 4 Q. --- within an hour of this robbery.
- 5 A. I never testified to what I was doing on February
- 6 the 11th. I have given no testimony about February the
- 7 11th.
- 8 Q. Somehow within an hour of this robbery you were
- 9 using the victim's credit card at Bountyland; is that
- 10 not correct?
- 11 A. That is correct.
- 12 Q. That's you on that tape?
- 13 A. Yes, sir, that is.
- 14 Q. And you conveniently skew the statement to try to
- 15 basically try to minimize your involvement in that.
- 16 That McMahan is telling you to write it -- that's what
- 17 my question is -- is McMahan telling you to write it to
- 18 minimize your involvement?
- 19 A. No, sir, he just --
- 20 Q. You're saying Gary went in and plundered the
- 21 basement, Gary went upstairs and tied the guy up, Gary
- 22 brought the guns down the stairs to you and you put
- 23 them in your wife's car?
- 24 A. That's what the statement says, yes, sir.
- 25 Q. Okay. And you are saying that you don't remember

1 writing any of that?

2 A. No, sir.

3 Q. And you don't remember telling McMahan that you
4 took all the guns back to your house and sold them to
5 Shane Elliott, Heath Bates, and the rest of Oconee
6 County's misfits?

7 A. No, sir, I do not recall that. Mr. McMahan had
8 told me that Heath Bates had been caught with one of
9 the guns. He told me that he needed to place someone
10 at the scene and asked if I would help him out.

11 Q. And so you just decided, based on your state of
12 mind and your good nature and good will, to help
13 Mr. McMahan out and incriminate yourself to an armed
14 robbery, kidnapping, first-degree burglary and
15 possession of a weapon?

16 A. When you are promised that you are not gonna be
17 incriminated for it and that you're gonna go home and
18 that you are helping the police out, yes, sir.

19 Q. Okay. And McMahan told you all this stuff --

20 A. Yes, he did.

21 Q. -- just to get you to write out that statement?

22 A. Yes, sir, he did.

23 Q. And then somehow they shifted gears and wanted you
24 to call all these phone calls and set up dope deals?

25 A. That's what the tapes show, yes, sir.

1 Q. Okay. But you don't remember any of that?

2 A. I mean, I remember making phone calls, but I don't
3 remember the specifics until after I listened to the
4 phone calls.

5 Q. But somehow you had the state of mind to call each
6 one of those numbers and you knew exactly who you had
7 named in this statement and you called those people;
8 did you not?

9 A. I don't think I had made the statement at that
10 point. I'm not sure.

11 Q. You called Shane Elliott; did you not?

12 A. Of course I did.

13 Q. And you left him messages?

14 A. Yes, sir.

15 Q. You told him you wanted the guns back.

16 A. Yes, sir.

17 Q. You needed to get the guns back.

18 A. I told him he needed to recover some guns.

19 Q. Okay. And it just so happened you had named him in
20 that statement, this statement.

21 A. Yes, sir. Mr. McMahan had told me previously that
22 Shane Elliott was getting guns back.

23 Q. You called Heath Bates in those phone calls, too,
24 didn't you, and wanted to talk to his dad, Greg Bates?

25 A. Yes, I did.

1 Q. Who you had named in this statement?

2 A. Yes, I did.

3 Q. Okay. And then told him that Chad Bush had given
4 up his name, and you tried to blame it on Chad Bush.

5 A. I don't recall that.

6 Q. Do you recall listening to anything saying you
7 didn't want Heath Bates to go down for something that
8 you did?

9 A. I mean, the man told me to say whatever I had to
10 say to get guns back.

11 Q. So he sat there and put every word in your
12 mouth ---

13 A. That is not ---

14 Q. --- in those phone calls?

15 A. That's not what I said, sir. I said he told me to
16 say what I had to say to get these guns returned so I
17 could go home.

18 Q. And you remember that it was well after midnight
19 when Casey Bowling locked you up?

20 A. I didn't recall exactly what time it was, but after
21 studying the case, yes, sir, I know the time now.

22 Q. And you remember that you hadn't eaten?

23 A. Yes, sir.

24 Q. You don't remember writing this statement, you
25 don't remember a lot of these details about it, but you

1 pick and choose which details that you want to
2 remember.

3 A. No, sir, I'm not picking and choosing. I mean, I
4 just know that they didn't offer me anything to eat. I
5 did not eat that day. He may have offered me something
6 to drink, that's possible, but he did not offer me
7 anything to eat that day.

8 Q. And you don't remember making this second statement
9 at all?

10 A. No, sir, I do not.

11 Q. So naturally McMahan told you to write February 9th
12 instead of February the 11th.

13 A. No. That was probably just an error, I would
14 imagine.

15 Q. So that was your mistake, not his?

16 A. Well, Mr. Wagner, when you have been high for seven
17 days and you're eating pills, it's not like your
18 judgment is the best.

19 Q. So what I'm saying is: Is that your mistake or
20 his?

21 A. That's my mistake.

22 Q. Now, if he's telling you what to write, don't you
23 think he'll get the date right on the burglary?

24 A. I mean, I don't know. He doesn't have the date
25 right or the time on these statements that he testified

1 yesterday.

2 Q. And I guess he told you this is from the Ivy Creek
3 burglary, he made up the Ivy Creek burglary. You
4 didn't know that because you were never there; is that
5 correct?

6 A. I was already told about the Ivy Creek burglary.

7 Q. Okay.

8 A. If you will remember, I was there when it was
9 planned.

10 Q. And you just happened to mention in your statement
11 that you traded these guns for meth?

12 A. That's what the statement says, yes, sir.

13 Q. Okay. And it just so happens that you were hooked
14 on meth, and by your own testimony, ended up using meth
15 for six days?

16 A. Mr. Bates said he purchased the guns for money. So
17 is it: money or meth?

18 Q. Well, where did you get the meth?

19 A. Where did I get meth?

20 Q. You got it by selling the victim's guns, didn't
21 you?

22 A. No, sir.

23 Q. Or trading them.

24 A. No, sir. I already had meth.

25 Q. It grows on trees?

1 A. No, it doesn't grow on trees. But when, I mean,
2 when you are tied in with the big dealers that the
3 informants are wanting you to bust, meth's easy to get.
4 It's Oconee County.

5 Q. How did you get the credit card?

6 A. Mr. Bush gave me the credit card.

7 Q. Okay. Told you to go use it?

8 A. Mr. Bush owed me \$80 for meth and he contacted me
9 and said he had my money.

10 Q. Okay. So you remember that?

11 A. Yes, sir, I do remember that.

12 Q. You remember hooking up with Carrie Tyner that day
13 and sitting on a bed?

14 A. This is a totally different day you are talking
15 about, sir. You're talking about ---

16 Q. I shifted gears on you a little bit ---

17 A. Okay, sir. Well, I'm just saying we're talking
18 about two different dates.

19 Q. All right. You remember the 14th, you remember
20 sitting on the bed with her talking to her?

21 A. I remember going in her house.

22 Q. You remember she went to get the five Xanax?

23 A. Yes, sir, I do remember she went to get five Xanax.

24 Q. But you only took three?

25 A. Yes, sir, I took three of them.

1 Q. And you had a total blackout after that; is that
2 fair to say?

3 A. No, sir, it was not total blackout. I mean, I
4 don't ever totally black out.

5 Q. Do you remember telling the officer that Carrie
6 Tyner gave you the credit card?

7 A. No, sir, I did not tell him that.

8 Q. Do you remember telling him that if he looked at
9 the video that she would be standing right outside
10 there, right off the video and you could see, you could
11 go in and talk to her?

12 A. No, sir. I said Chad Bush was parked right outside
13 the building. I never said Carrie Tyner gave me
14 anything.

15 MR. WAGNER: Nothing further.

16 THE COURT: Re-exam?

17 Redirect Examination by Mr. Rosemond:

18 Q. Let's talk about, when did you get that credit
19 card?

20 A. After Chad Bush had contacted me, he owed me \$80
21 for meth, he told me to meet him.

22 Q. Meet him where?

23 A. At the Bountyland in Westminster.

24 Q. And what did -- tell me about going to the
25 Bountyland in Westminster.

1 A. I had my daughter with me and I had Gary Smith with
2 me and we got in the vehicle and we drove to the
3 Bountyland.

4 Q. Okay. And did you meet Mr. Bush?

5 A. Yes, I did.

6 Q. What did Mr. Bush do?

7 A. Mr. Bush told me that I could get my money out of
8 the ATM machine, he was parked beside the building. I
9 told him that I needed some fuel. Mr. Bush said that I
10 could get fuel and get the rest of the money out of the
11 ATM machine.

12 Q. Okay. So what was the first thing you did when you
13 pulled into the parking lot of Bountyland?

14 A. Met with Chad Bush on the side of the building.

15 Q. What was the second thing you did?

16 A. I pulled to the gas pumps and got fuel.

17 Q. Were you able to get fuel?

18 A. Yes, sir, I got fuel.

19 Q. Okay. Now, what's the third thing you did?

20 A. I entered the store and used the ATM card at the
21 ATM.

22 Q. To use an ATM card you have to have what?

23 A. A PIN number.

24 Q. Okay. Now, if you don't know the PIN number, what
25 happens?

1 A. It's not gonna let you get money.

2 Q. Did you have a PIN number?

3 A. Yes, I did.

4 Q. And where did you get that PIN number from?

5 A. From Mr. Bush.

6 Q. Did it work?

7 A. No, it did not.

8 Q. And what did you do after that?

9 A. I tried it again.

10 Q. Okay. And, after trying it a second time, what did
11 you do?

12 A. I exited the store.

13 Q. That was on what date?

14 A. February the 11th, according to the tape.

15 MR. ROSEMOND: No further questions, Your Honor.

16 MR. WAGNER: Nothing further, Your Honor.

17 THE COURT: Very good. You may step down. Thank
18 you, sir.

19 (Witness leaves stand.)

20 MR. ROSEMOND: That would be the Defendant's case,
21 Your Honor.

22 THE COURT: Very well.

23 Any Reply?

24 MR. WAGNER: Just one second, Your Honor.

25 (Discussion off the record.)

1 MR. WAGNER: No, sir.

2 THE COURT: All right. I'll hear the State first.

3 MR. WAGNER: We would move to admit State's
4 Exhibits 1, 2 and 3. I think under the totality of the
5 circumstances, both Officer McMahan and Officer Hawk
6 have testified and said that they, while I think it's
7 clear that they had warrants, they did not place him
8 under arrest. But he was in custody, and I think for
9 the purposes of this hearing and purposes of what
10 happened, I think we would agree that he was in custody
11 because he was in the back of the patrol car when the
12 Miranda rights were read to him.

13 I would submit to the Court that he initialed each
14 one and signed it and that his initials and signature
15 are legible.

16 He had had his Miranda rights read to him before
17 with prior run-ins with the law, and I think he
18 understood what he was doing. The officers said he
19 seemed tired but that he did not seem high, did not seem
20 under the influence, and I think his voice on that tape
21 when he's making these phone calls also shows that his,
22 that he was not high. The way he talks and the way he
23 was able to dial numbers for certain people. He talked
24 to the officers for I would say not quite a lengthy time
25 but for a time. When he started giving incriminating

1 statements, Officer McMahan went and got Gentry Hawk as
2 a witness. He came in, they talked to him, he told them
3 what his involvement in the case was. And I would point
4 out to the Court that in his statement he minimizes his
5 involvement, which again I submit shows he knew what he
6 was doing when he was giving that statement. I think he
7 knew that they had him on video using the credit card
8 within an hour of the crime, and they knew that he -- he
9 knew that they had traced guns stolen in the crime back
10 to himself.

11 He gave them a written statement. He admitted
12 being there, he admitted being present and admitted his
13 involvement in that. He signed it and initialed it.
14 There's several places on this statement where he
15 crossed things out and initialed it and made changes.

16 He later went back and gave a second statement to
17 add to it.

18 Both officers have testified no promises were made.
19 He was held out no hope for reward. He was not told
20 that he could go home, that he wouldn't be charged. He
21 was not threatened, he was not coerced, that they didn't
22 tell him what to say. They left him alone in the room
23 and let him write the statement, which he did, and his
24 handwriting is legible and his signature is legible, and
25 he gives details that only somebody involved in the

1 crime would have known.

2 I submit to the Court that his testimony with his
3 prior record and his credibility, his story here today
4 is not credible. He gives details that such as five
5 Xanax and three Xanax and sitting on the bed, and he
6 remembers things that help him but he conveniently
7 leaves out the parts where what he said was true. And
8 he put it down that it was his true statement, that he
9 was freely and voluntarily giving it. Both officers I
10 believe have testified that that is the case and that
11 was the case in this instance.

12 The phone calls were made afterwards. I think all
13 they do basically is go to show his state of mind, that
14 he was trying to help, that he was coherent, that he was
15 making phone calls to these people. And I submit to the
16 Court that he's talking to them not to set up drug deals
17 but he's talking to them because these are his meth
18 suppliers and these are the people that he sold the guns
19 to, by his own admission, from his house he sold the
20 guns to these folks and he's trying to get them back to
21 help himself.

22 But the statements had already been given and he
23 had already signed them and given them the statements
24 admitting to what he had done. The phone calls came
25 afterward, and they just essentially I think reinforced

1 what he told them that night to try to help get them
2 back.

3 And I believe looking at the totality of
4 circumstances, I think both State's Exhibits 1, 2, 3 and
5 4 should be admitted for those reasons.

6 THE COURT: All right. Mr. Rosemond?

7 MR. ROSEMOND: Your Honor, I'm gonna hand up two
8 cases. One is State v. Moses, 702 S.E.2d 395, South
9 Carolina Court of Appeals 2010; as well as State v.
10 Parker, 671 S.E.2d 619 South Carolina Supreme Court.

11 Your Honor, as you very well know, the test for the
12 admissibility of the statement is whether or not it was
13 knowingly, intelligently and voluntarily made. It was
14 also -- the burden of proof is on the State of South
15 Carolina.

16 In the analytical framework that we have to use in
17 looking at this statement was, was the confession
18 involuntarily made or coerced by the police? That's the
19 first question I have to ask myself.

20 And the second question is, was the statement
21 obtained as a result of a custodial interrogation?
22 Well, we know that's true.

23 And then the third question: Was the Defendant
24 entitled to counsel under the Fifth and Sixth Amendment?

25 And Mr. Wagner is right that the voluntariness of

1 this particular statement depends upon the totality of
2 the circumstances. And in South Carolina versus Moses,
3 Your Honor, the Supreme Court lists a litany of factors
4 that we look at to determine whether or not the totality
5 of the circumstances was overblowing his will. They
6 look at the background. They look at the experience.
7 They look at the conduct. They look at the age, the
8 maturity, physical condition, mental health, the length
9 of custody, police misrepresentation, direct or indirect
10 promises, exertion of improper influence, promises of
11 leniency, and deception are the factors that the Court
12 in the State v. Moses mentioned.

13 Well, we know about Mr. Wirtz' background, he's
14 married, he has a child. He does have a criminal
15 record, Your Honor. He was 29 years of age at that
16 particular time. But his physical condition, testified
17 to by the State, that he was tired. Well, we know he
18 was tired. But certainly Mr. Wirtz said he had been
19 high on meth, and I think we all know that if you are
20 high on meth, you're gonna be up for several days based
21 upon what we know about meth users. He said he took
22 some Xanax and Valium about 1:30 that particular day,
23 and his mental health was shaky at best, Your Honor. I
24 don't necessarily know how someone acts or how someone
25 behaves when they're under the influence of meth

1 because, quite frankly, I ain't never seen anyone who's
2 actually under the influence of meth in front of me.

3 THE COURT: That you knew about.

4 MR. ROSEMOND: That I knew about, Your Honor. So
5 certainly --

6 THE COURT: You're not saying that in your totality
7 of life that you have on occasion come across somebody.

8 MR. ROSEMOND: Not that I'm aware of, Your Honor.

9 THE COURT: All right.

10 MR. ROSEMOND: But certainly if you look at the
11 length of custody, Your Honor, he was in the police
12 custody from at least 2:30 or 3:00 until 12:47 that
13 particular night. State's Exhibit Number 2 says that he
14 gave his statement at 6:30, he finished his statement at
15 9:30. State's Exhibit Number 3 says that he started
16 giving that statement at 7:37 and he finished at 7:40.

17 But then, Your Honor, he goes on and starts making
18 phone calls where he calls at least 14, made 14 calls
19 and he told some people, Hey, you know, if we can get
20 these guns back, all of us will be cleared or we will be
21 cleared. He also sets up a drug deal, a clear drug deal
22 on the phone that just surprised --

23 THE COURT: I'm curious, though. And that's what I
24 understood his testimony was, that he did tell, I think
25 it was Mr. Elliott, that if he gave the guns back, then

1 we would all be cleared?

2 MR. ROSEMOND: That's what he said Your Honor.

3 THE COURT: "We".

4 MR. ROSEMOND: "We".

5 THE COURT: As if we were all in it together.

6 MR. ROSEMOND: That may be one interpretation, sir.

7 THE COURT: Well, I mean, I'm just asking. I don't
8 know of any other interpretation. I mean, not you will
9 be cleared or not those that were in there would be
10 cleared, but, quote, "we would be cleared."

11 MR. ROSEMOND: Quite frankly, Your Honor, everybody
12 who was at the planning stage of that particular crime
13 were all conspirators and should have been arrested. I
14 mean, they were planning or listening to this crime
15 being planned, and certainly they were implicated as
16 well.

17 Now, Your Honor, he makes this drug deal on the
18 telephone, and he tells the guy "I'll be there in 20
19 minutes" because he expects to be released based upon
20 what he believes is the cooperation that he's giving
21 with the Sheriff's Office. And that's one of the
22 factors that we look at are direct and indirect promises
23 in regards to if you give this statement, what happens.
24 It goes to the exertion of improper influence over
25 somebody when they believe that if you give me this

1 statement, then I will help you out. I will be
2 released.

3 You know, certainly, Your Honor, he thought he was
4 going to be released because he told the person on the
5 phone "I'll be there in 20 minutes and I'll get a gram
6 for you." That was one of the last phone calls that he
7 made at that particular time.

8 Another factor that they use, Your Honor, is
9 deception. From the very beginning, and the police
10 don't have to tell you that I have an arrest warrant,
11 they can just keep that in their pocket and spring it on
12 you at any time and we are all aware of that. But the
13 deception in this case, Your Honor, was he thought that
14 if he would make this drug deal, he was going to be
15 hooked up, wired, and go out and make this drug deal
16 with the person that he was talking to on that
17 particular phone call.

18 But at no time did the Sheriff's Office have any
19 intention of letting him do that drug deal. We don't
20 even know whether or not that drug deal went down to be
21 honest with you, Your Honor. But with the promises of
22 leniency. "Help me out. I need to put somebody at the
23 scene."

24 "I'll say it if you want me to."

25 But the promises of leniency, the exertion of

1 improper influence, the direct and indirect promises are
2 so intertwined with this case, Your Honor, that this
3 confession was not knowing, it was not knowing, it was
4 involuntary, Your Honor, and certainly because of that,
5 the Courts have said that you don't let these statements
6 in, and we would ask you to prohibit the State from
7 using this particular statement in their Case-in-Chief,
8 Your Honor, and suppress it.

9 THE COURT: All right. Anything else, Mr. Wagner?

10 MR. WAGNER: No, sir.

11 The Court's Ruling:

12 THE COURT: Well, I've read now State v. Moses,
13 Court of Appeals, 2010; and State v. Parker, Court of
14 Appeals, 2008.. Which the introduction of the statements
15 were affirmed, but the law, of course, is clear.

16 I might note that in State v. Moses there was a,
17 the Defendant was a, I believe a 17-year-old with a
18 learning disability. 17 years old and enrolled in
19 special education classes. And still the Court found
20 that under the totality of the circumstances there that
21 it was admissible.

22 And, of course, again, in Parker, was a minor who
23 was then shot, or was shot at by the police, I'm not
24 sure. He was in the hospital for a while. He'd been
25 outdoors in the cold, and allegedly his father aided the

1 police in getting the statement.

2 Of course, as we know, as far as the voluntariness
3 of the statement, that is an initial issue for the Court
4 to determine, it must be determined by the preponderance
5 of the evidence. However, if the Court does approve or
6 find that there is sufficient evidence to establish the
7 voluntariness of the statement and it is given to the
8 Jury for its consideration, that decision must be made
9 beyond a reasonable doubt.

10 Here, as far as age is concerned, it's my
11 understanding that the Defendant is 31 years of age and,
12 as I said, that, of course, he has had, been arrested
13 before, in fact, he says numerous times, and he
14 apparently has had some success negotiating the system
15 in that when he was arrested by the Walhalla Police
16 Department it was his testimony that he was caught at
17 the scene of the crime and was told if he admitted, they
18 would let him out. He admitted that he did it and they
19 let him out. So apparently that was a tactic that he
20 thought would be valuable to him, or at least it had
21 been before.

22 There were no threats of violence. In fact, he
23 said that he did it because, or at least implied that he
24 did it because he wanted to please the officers and that
25 he was asked to do it.

1 And, as I say, the main thing is he admits,
2 Mr. Rosemond, you make a good statement there, that I'm
3 not sure about the charges, but obviously it would
4 appear that as far as his participation, he was there at
5 the first when it was planned either in the basement or
6 in the car. He doesn't deny the planning of it. And he
7 apparently knew where the guns were. And so obviously
8 he was somewhat involved afterwards, so at least he was
9 an accessory before the fact.

10 But there again, that's not for the Court to
11 determine what the charges were as much as at this stage
12 but whether or not the statements he gave, which are --
13 well, first of all, if Miranda warnings were given
14 adequately, and it's the Court's understanding from the
15 testimony and the evidence in the case that the Miranda
16 warnings were actually given at the Tabor Church; and
17 later, when they went to the interrogation area there at
18 the Sheriff's Office, that he initialed them two times
19 when he apparently was, acknowledged, at least the
20 testimony was that he acknowledged that he had been
21 given the rights. And also with his experience in
22 courts, apparently had been sentenced several times and
23 he never requested an attorney even though he had been
24 advised that, in his Miranda warnings that he would be
25 entitled to one, also that he could stop the hearing --

1 I mean the interrogation at any time.

2 After considering the entire, all of the evidence,
3 you might say, the Court is convinced by a preponderance
4 of the evidence that the Defendant was fully advised of
5 his rights under the Fifth and Sixth Amendments, those
6 rights being the right to remain silent, that the
7 statement can and will be used against him, that he had
8 the right to an attorney; if he couldn't afford one, one
9 would be appointed for him; the right to consult with
10 that attorney, the right to interrupt and terminate the
11 interrogation; the interrogation would cease if he
12 needed to consult with his attorney.

13 And the Court finds that the Defendant knowingly,
14 and again I have to say that I'm like Mr. Rosemond, I'm
15 not sure what a person on meth would be, but the
16 Defendant tells us that your acuity is improved as to
17 what you know and recall and all of that under meth.
18 However, you have difficulty with Xanax, but that was
19 apparently not the problem because obviously he did
20 remember what he did and related that in the writing.

21 Also, I might note that in, I think it was Parker
22 that the officer wrote the statement. Here, the
23 testimony is that throughout the interviews,
24 interrogation, whichever, that the officers were in and
25 out and that it was his handwriting, he did it out of

1 the presence of the officers at times, but that was his
2 signature, that he recognized that.

3 So I do find that the Defendant knowingly and
4 intelligently waived his rights under the Fifth and was
5 given the Miranda warnings and signed them as well as
6 initialed them; and that the alleged statements or
7 confessions obtained from the Defendant were freely and
8 voluntarily given without duress, without coercion,
9 without undue influence, without reward, without promise
10 or hope of reward, without promise of leniency, without
11 threat of injury, without the form of inducement of any
12 kind; it being the statement of the officers that no
13 such absolute statement of absolute promise or anything
14 was made. And, of course, when it is given to the Jury,
15 it must be more than just a preponderance of the
16 evidence and the Jury must be convinced that there was.

17 I, therefore, find that the incriminating
18 statement, being State's Exhibits 2 and 3 are admissible
19 into evidence and I find that the Miranda warnings,
20 State's Exhibit 1, is also in evidence.

21 (State's Exhibit 1 was received in evidence.)

22 (State's Exhibit 2 was received in evidence.)

23 (State's Exhibit 3 was received in evidence.)

24 **THE COURT:** All right. But, as I said, it's gonna
25 be up to the Jury to determine all of this beyond a

1 reasonable doubt.

2 Anything else from the State?

3 MR. WAGNER: No, sir, Your Honor.

4 As to State's Exhibit 4, the phone calls, I guess
5 we want to admit those, too.

6 THE COURT: Mr. Rosemond, what do you say about the
7 phone calls?

8 MR. ROSEMOND: One moment, Your Honor?

9 THE COURT: Yes, sir.

10 (The Defendant conferred with Counsel off the
11 record.)

12 MR. ROSEMOND: Your Honor, certainly I think those
13 phone calls are inadmissible right this minute unless
14 they are able to lay some adequate foundation as to why
15 those phone calls came about. And certainly even under
16 Rule 404 it may be deemed more prejudicial to my client
17 than anything. Certainly, at least right this minute,
18 Your Honor, I would take the position that they should
19 be inadmissible.

20 THE COURT: All right, Mr. Wagner?

21 MR. WAGNER: Your Honor, on those phone calls he,
22 at one point in time in one of the phone calls he admits
23 that he doesn't want Heath Bates to take the fall for
24 something he did, so it is in a sense another admission.
25 I believe the officers laid a sufficient foundation to

1 authenticate them as they were present when they were
2 made.

3 THE COURT: Well, you know, Rule 403, that does go
4 to the admissibility of relevant evidence, there are
5 also considerations about not only being, the
6 prejudicial value being, outweighing the probative
7 value, but also if it's cumulative or if it's confusing
8 to the Jury, then -- what was the purpose of the phone
9 calls?

10 MR. WAGNER: I think the purpose was to try to
11 recover the firearms from the people that he admits he
12 traded for methamphetamine in his statement, people that
13 he had taken the guns to his own residence and then
14 traded them to these folks for methamphetamine. These
15 are the people that he called back, Shane Elliott and
16 Heath Bates, who they recovered one of the stolen
17 firearms, attributed it to the Defendant from Heath
18 Bates left it at the person's house. And Heath Bates
19 will testify and say that, or at least that he gave a
20 statement saying that he bought one of the guns from the
21 Defendant like a day after.

22 Those phone calls help corroborate what he said in
23 his statement as being accurate and true, plus he makes
24 the admission on one of the phone calls that he doesn't
25 want someone else to get in trouble for something that

1 he did, basically.

2 Additionally, one of the other, the last phone
3 calls he admits selling one of the pistols he refers to
4 it as a 40, to a Tim Elrod, who the State has a witness
5 to say that she went over there, this little girl also
6 gave a statement she went over there with Tim Elrod and
7 they bought two pistols from the Defendant.

8 **MR. ROSEMOND:** Your Honor, that phone call also had
9 to do with the drug deal. It wasn't only about just
10 phone calls on that audio that we heard yesterday.
11 There was at least two or three attempts to say, Hey,
12 you know, do you have something for me? Can you get
13 something for me? So those phone calls were not solely
14 for the purpose of bringing those guns back, but
15 certainly it was also for the purposes of this CI going
16 out and making some buys in hopes of some consideration
17 later on down the road, and certainly although it's
18 relevant, the cumulative issue of it, the needless
19 presentation of cumulative evidence, we think that the
20 danger of unfair prejudice is substantially outweighed
21 from any probative value.

22 **THE COURT:** All right. Anything else from the
23 State?

24 **MR. WAGNER:** No, sir.

25 **THE COURT:** From the Defense?

1 **MR. ROSEMOND:** No, Your Honor.

2 **THE COURT:** Well, there are two things, that one, I
3 remember that initially an objection was made that, of
4 course, that the Defendant was entitled to the
5 completeness of the calls, in other words, not just some
6 calls, but all those used by the State and any others
7 that might have been made contemporaneous or in the same
8 process, which the Court sustained the objection and
9 permitted the playing of the entire series of calls.

10 Inasmuch as at least some of those calls
11 corroborate the statement made or the statements made by
12 the Defendant, the Court does find that they would be
13 admissible because they go directly to the knowledge of
14 the Defendant's, or the Defendant's knowledge of the
15 alleged offenses. So I'm going to find that the phone
16 calls or the CD with the phone calls would be
17 admissible.

18 (State's Exhibit 4 was received in evidence.)

19 **THE COURT:** All right. Very good. I overrule the
20 objection. In other words, I deny the Defendant's
21 motions to suppress State's Exhibits 1, 2, and 3 and
22 admit them into evidence as well as the Defendant's
23 objection to State's Exhibit 4 and admit it into
24 evidence. Very good. Thank you.

25 All right. Anything else in this case?

State of South Carolina

In the Court of General Sessions

County of Oconee

State of South Carolina,

Plaintiff,

-vs-

Timothy Ray Wirtz,

Defendant.

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2012-GS-37-588/591

October 16 - 18, 2013

Transcript of Record

Volume I

BEFORE:

The Honorable Alexander Macaulay, Judge

APPEARANCES:

David Wagner, Esquire
Deputy Solicitor for the 10th Judicial Circuit
Attorney for the State

R. Delane Rosemond, Esquire
Attorney for the Defendant

Renee H. Tollison
Circuit Court Reporter

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1 the facts in this case. I do not have any interest in
2 the facts at all. You're the ones that determine that.
3 The only thing that I am concerned about is the course of
4 the conduct of the trial. And so I'm jotting down things
5 that occurred that are supposed to occur or not occur.
6 But the point is, I'm just keeping track of what is
7 happening, not the significance of what's happening.
8 That is for you. So therefore, I will be taking notes,
9 but I would suggest that you not take notes.

10 With that, we will now begin the trial of the case
11 and I will recognize the Solicitor for his opening
12 statement.

13 MR. WAGNER: Thank you, Judge.

14 OPENING STATEMENT

15 BY MR. WAGNER:

16 Back on February 11th, 2012, Eric Bush, the victim
17 -- he's seated over there in the court. And he'll be the
18 State's first witness today here in a few minutes. He
19 worked third shift. He got home from third shift. He
20 had breakfast with his wife and kids, talked to them for
21 a little bit, and then went to bed like he normally did
22 sometime around ten o'clock.

23 He's going to tell you that he was awoken in his
24 home to a loud noise, a noise of some sort. When he woke
25 up and he looked, there was a man standing there close-by

1 in the room with him. The man was wearing a bandana, a
2 dark bandana, over his face. He was dressed in a dark
3 shirt and blue jeans. When he saw the victim looking at
4 him, he pulled a gun, pointed it in his face and
5 basically robbed him in his own house.

6 They stole a number of firearms, a bunch of long
7 guns, a couple of pistols. He's going to tell you that
8 they went over to his gun -- the guy went over to his gun
9 cabinet while he held a pistol on him, got some string
10 from somewhere, made him stick his hands out. He tied
11 him up. Told him basically if he moved he was going to
12 be shot. And they robbed him in his house, a number of
13 firearms, at gunpoint. A number of firearms, his wallet,
14 credit cards, a number of other items they took.

15 When I say they, it involved this Defendant, Timothy
16 Wirtz, and at least one other person. The victim's going
17 to tell you that he heard another voice downstairs and
18 that one of the guys -- not sure which one -- was handing
19 the guns down to the second person.

20 Sergeant McMahan got called out immediately. He was
21 out there in a very short time. He's seated here at the
22 table today. He's going to tell you -- he's an
23 investigator at the Sheriff's office. He got assigned to
24 work this case. One of the first things he did was ask
25 the victim when he found out there was credit cards

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1 missing, call your credit card company, find out --
2 cancel the cards because somebody might use them.

3 They were able to determine that they had just been
4 used a very short time after the crime. They were able
5 to trace that down to Bountyland in Westminster which is
6 not far away from where the victim lives.

7 Sergeant McMahan ended up going down there that day,
8 was able to view the video. He's going to tell you the
9 first thing that crossed his mind was, that's Timothy
10 Wirtz using the card.

11 With that information and some staying up and
12 working the case, doing some good detective work, he was
13 able to trace back at least one of the guns and link it
14 back to this Defendant, Timothy Wirtz.

15 He ended up getting warrants for Timothy Wirtz.
16 Ended up picking up Timothy Wirtz and talking to him at
17 the Sheriff's office. And after mirandizing him, reading
18 him his rights and following the law as he has to do in a
19 case like this, the Defendant confessed. He admitted
20 what he'd done. He admitted his involvement in the case.

21 The evidence in this case is strong. The State, me,
22 the officers, we have the burden of proof in this case,
23 and we intend to prove all four indictments that he's
24 charged with.

25 He's charged with burglary first degree. That's

1 basically going in somebody's residence with the intent
2 to commit a crime in the building, whether that be
3 assault, theft, robbery, kidnapping. Any crime going
4 into the victim's house with the intent to rob him or
5 steal from him. That is first-degree burglary. If you
6 steal guns and if you're armed either during the
7 commission of a crime or you go in armed. In this case I
8 would submit to you it's going to be both because at
9 least one of the burglars and robbers was armed at the
10 time he went in, and then they stole a large number of
11 firearms. So they armed themselves while they were in
12 the building. That makes it burglary first-degree under
13 those circumstances.

14 He's also charged with armed robbery. That's
15 basically robbing somebody with a deadly weapon, which a
16 firearm is, and taking property from them by force and
17 stealing.

18 He's also charged with kidnapping. Kidnapping is
19 when you tie somebody up on their bed and confine them at
20 gunpoint while you rob them. If you inhibit their
21 movement and if you confine them to that area, that's
22 kidnapping. This is, I submit to you, is more of a
23 kidnapping case than sometimes they are. When people
24 think kidnapping, they think somebody tied somebody up,
25 throwing them in the trunk of the car and abducting them.

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1 You don't necessarily have to abduct them, but you do
2 have to confine them. And in this case they tied him up
3 and held him at gunpoint. And that, I submit to you, is
4 going to be the kidnapping charge.

5 He's also charged with grand larceny more than ten
6 thousand dollars because there was more than ten thousand
7 dollars worth of property that was stolen.

8 And he's charged with possession of a pistol during
9 the commission of a violent crime. That's a companion
10 charge on one of the indictments because kidnapping,
11 burglary first degree and armed robbery are violent
12 crimes in South Carolina. And if you do those kinds of
13 crimes or one of them while you are armed with a pistol,
14 there's another charge there for having a pistol during
15 the commission of those crimes.

16 Sergeant McMahan put together a good case. You're
17 going to hear this case, and by lack of any better way to
18 do it, from the witness stand with the witnesses. But
19 you may hear on -- in -- they've got to go in some order.
20 And some of the witnesses you may hear, at least
21 initially, they only have maybe one piece of the story.
22 So bear with us and listen to all of them. It'll come
23 together like pieces of a puzzle, one piece at a time.
24 You'll see it. But some of them initially, when you hear
25 it, you'll -- you know, they'll be tied in. You'll

1 understand.

2 But my name's David Wagner. I'll be prosecuting the
3 case on behalf of the State of South Carolina and Oconee
4 County. I'm a county employee, and I work for Chrissy
5 Adams. Detective McMahan was the case officer. I think
6 y'all saw him earlier in jury selection this week.

7 We will try to make things as quick as possible, to
8 keep you here as least possible. We appreciate your
9 patience. We appreciate your being here. I appreciate
10 your taking time out of your work schedule to be here.
11 Thank you.

12 THE COURT: Mr. Rosemond?

13 OPENING STATEMENT

14 BY MR. ROSEMOND:

15 Beyond a reasonable doubt. What does that mean?
16 And we hear that all the time. And that's going to be
17 something that you hear a lot in this particular case
18 because the foundation of our legal system is built upon
19 three things: the presumption of innocence, the burden
20 of proof, and proof beyond a reasonable doubt.

21 You know how sometimes you get the Greenville News
22 or you get the Seneca Journal, and the front page of the
23 paper -- and you look or you open the Seneca Journal, and
24 the first thing you see on the left side is people who's
25 been arrested. And the first thing we think, well, we

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1 know he must be guilty because it's in the paper. But
2 that's not true. What the law says is you have to look
3 at everybody, and you have to presume them to be
4 innocent. And until a case is presented to you, he's
5 innocent, presumed to be innocent.

6 So as you look at Mr. Wirtz here today, he's an
7 innocent man. And he is entitled to that particular
8 presumption throughout this trial. And it's hard to do
9 sometimes because we make judgments about people. We
10 make judgments about how they look, how they talk, what
11 they're wearing. But Mr. Wirtz is presumed to be
12 innocent. And I'm asking you to make sure you keep that
13 in mind throughout this particular trial.

14 The other tenant is the burden of proof. Who has
15 the burden to prove to you that Mr. Wirtz is guilty of
16 this particular crime, that Mr. Wirtz is guilty of the
17 kidnapping and guilty of the burglary and guilty of the
18 grand larceny?

19 Every piece of evidence that you'll receive this
20 week has to come from this table. They have the burden
21 of proving those elements to you. Mr. Wirtz doesn't have
22 to prove anything because the Constitution says that they
23 have the responsibility. And when you have the
24 responsibility, you have the burden to convince you that
25 Mr. Wirtz is guilty. And not only do they have the

1 burden to do that, they have to do that beyond a
2 reasonable doubt.

3 And what is a reasonable doubt? If, at the end of
4 this case, you have a reasonable doubt in your mind or
5 some thought that you can put a reason to, and if you
6 have a doubt whether or not Mr. Wirtz committed this
7 particular crime, he's entitled -- you are obligated to
8 find him not guilty.

9 The confession that they talked about. You will
10 hear evidence that that confession was the product of the
11 Sheriff's office promising him, if you'll write this
12 statement, we'll let you go. You will hear evidence that
13 if you write this statement, then you can go home
14 tonight. At least in his mind, he thought that he could
15 go home tonight. The evidence will show they had already
16 had arrest warrants for him even before he gave them that
17 particular statement.

18 The evidence will also show that the statement that
19 he gave was at the coercion and the improper influence of
20 the police. And I would submit to you that I think at
21 the end of this case you will say, I have a reasonable
22 doubt as to whether or not that statement was given
23 voluntary.

24 Mr. Wirtz in this particular trial is not guilty.
25 You will hear evidence from that particular witness stand

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1 that will make him look guilty. But at the end of this
2 particular trial, I submit to you that he will not be
3 guilty of the kidnapping because Mr. Wirtz was not there.
4 He will not be convicted of the burglary because Mr.
5 Wirtz was not there. He will not be convicted of the
6 possession of a weapon, the grand larceny because Mr.
7 Wirtz was not there.

8 You will hear who planned this particular robbery.
9 You will hear who staged this particular robbery. You
10 will hear evidence that Mr. Bush's brother planned this
11 robbery. This robbery occurred at one o'clock in the
12 afternoon. Most robberies occur at night, but not when
13 you have inside information.

14 And I submit to you that at the end of this
15 particular case, at the end of this trial, there will be
16 a reasonable doubt in your mind as to whether or not Mr.
17 Wirtz is guilty of this crime.

18 Thank you.

19 THE COURT: All right. Mr. Wagner, you may
20 call your first witness.

21 MR. WAGNER: May it please the Court, Your
22 Honor. Thank you. I call Eric Bush.

23 (WHEREUPON, the witness was duly sworn.)

24 THE COURT: If you would, please, sir, give us
25 your full name for the record, spelling your last name.

1 THE WITNESS: Eric Bush, B-U-S-H.

2 **ERIC BUSH,**

3 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

4 DIRECT EXAMINATION

5 BY MR. WAGNER:

6 Q. Mr. Bush, how old are you?

7 A. Thirty-eight.

8 Q. And are you married?

9 A. Yes, sir.

10 Q. Do you have children?

11 A. Yes, sir.

12 Q. Where were you living back on February 11, 2012?

13 A. [REDACTED] Westminster, South Carolina.

14 Q. If you could pull that microphone up a bit, please.

15 I'm having a hard time hearing you back here.

16 A. At [REDACTED] Westminster, South Carolina.

17 Q. Okay. And are you currently still living there?

18 A. Yes, sir.

19 Q. Where is that in regards to where we sit here in the
20 courthouse today? Which direction?

21 A. It would be south on Highway 11.

22 Q. Okay. I'm going to say on the Walhalla/West Union
23 side of Westminster?

24 A. Yes, sir.

25 Q. Kind of mid-way between ---

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- 1 A. About halfway between Westminster and Walhalla.
2 Probably three miles from Ingles down.
3 Q. Okay. And what were you doing job-wise back in
4 February of 2012?
5 A. I'd worked night shift the night before.
6 Q. Where did you work?
7 A. I work at Duke Energy. Jocassee Hydro..
8 Q. Do you still work at the same place?
9 A. Yes, sir.
10 Q. Okay. Third shift went from when to when?
11 A. Seven p.m. to seven a.m.
12 Q. All right. So about what time would you normally
13 get home off third shift?
14 A. Between seven-thirty and eight o'clock in the
15 morning.
16 Q. What did you do when you got home on February 11,
17 2012, from working third shift? About what time did you
18 get home and what did you do?
19 A. I got home about seven-thirty, eight o'clock. And I
20 ate breakfast with my wife and kids. And then about ten
21 o'clock they'd got ready. She had to take the youngest
22 one to the doctor. So they left, and then I laid down.
23 That's whenever I was woke up by someone in the room with
24 me.
25 Q. You were normally on third shift? I mean, you're

1 normally sleeping from ten to when?

2 A. Ten to four, something like that. Three or four,
3 somewhere in that time frame.

4 Q. Were you sound asleep?

5 A. Yes, sir.

6 Q. What woke you up? What happened?

7 A. I just heard a noise. Whenever I looked over there,
8 someone's standing in the room with me with a dark
9 bandana over their face.

10 Q. Describe the person for us.

11 A. Male, probably six foot, slim built. Like I said,
12 it looked like he had dark hair.

13 Q. Would you say -- was the bandana covering his face?

14 A. Yeah. There was a bandana covering up the lower
15 part of his face.

16 Q. What kind of bandana?

17 A. It was a dark color, either black or dark blue. It
18 had a print design on it, but I don't remember.

19 Q. What went through your mind?

20 A. What's going on? Am I dreaming? I really didn't
21 know what was going on with someone being in the room
22 with me.

23 Q. All right. What happened next?

24 A. Next he pulled a gun out and told me, let me see
25 your hands. I didn't really know what to do, so I kind

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1 of went to put my hands on a night stand beside me. He
2 got real excited start screaming, let me see your hands,
3 coming towards me with a firearm pointed at me.

4 Q. Where did he have the gun stashed?

5 A. Behind his back. He reached behind his back and
6 pulled it out and pointed it at me.

7 Q. Okay. Now, are you a deer hunter and ---

8 A. Yes, sir.

9 Q. --- do you have guns in your house?

10 A. Yes, sir.

11 Q. Did you recognize the gun that this guy pulled on
12 you as a -- as a real firearm?

13 A. It was a real firearm. It looked like it was either
14 a stainless or a nickle finish. It had wood handgrips on
15 it. I'm not sure what caliber. It was a semi-automatic.

16 Q. A revolver or automatic?

17 A. Semi-automatic.

18 Q. Okay. And so what did he say to you?

19 A. Let me see your hands. And whenever I didn't put
20 them straight in front of me -- I kind of put them on to
21 the side because I thought I'm going to put them on the
22 table -- he started getting real excited and hollering,
23 let me see your hands, and coming at me with a firearm.

24 Q. Now, did you have any guns in the room with you?

25 A. I did. In my gun cabinet I had my deer rifle and

1 shotguns. And there was another pistol, but it was in a
2 case. I couldn't get to it.

3 Q. Okay. So you didn't have anything to defend
4 yourself with?

5 A. No, sir.

6 Q. And I guess he kind of had the drop on you?

7 A. Yeah. He already had his gun pulled out. I would
8 have had to open up the case, load a clip and return
9 fire. But I didn't have ...

10 Q. What did you think was going to happen to you?

11 A. I wasn't real sure at that point whenever he was
12 getting so excited screaming, let me see your hands. I
13 didn't know if he was going to shoot or what he was going
14 to do.

15 Q. All right. Did he tell you to stay still?

16 A. He did.

17 Q. What happened next? What did he do?

18 A. He grabbed a shoelace or something, came over there
19 and put the gun in my face and had me to hold my hands
20 out as he tied my hands up.

21 Q. How did he do that holding a gun with one hand and
22 what -- how did he go about doing that?

23 A. He kind of had the gun in this hand, and he was
24 wrapping around using it at the same time. So it was
25 moving around in front of me at the same time.

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1 Q. Was that making you nervous?

2 A. Yes, sir.

3 Q. What else did he say to you?

4 A. Told me to lay on the bed with my hands out in front
5 of me and not to look at him.

6 Q. Did you look at him?

7 A. I did. And then he'd holler not to look at him.

8 Q. Could you see his face?

9 A. No, sir.

10 Q. Was anybody with him? What did he do? And then
11 just take us through what happened.

12 A. At that point he went back over towards the gun
13 cabinet. And then someone -- you could hear someone down
14 below yell out or yelling a name. And as they started
15 yelling a name, he went like, woo hoo, like made a sound
16 at the top of it to cover up the name they were yelling
17 downstairs.

18 Q. And what was the name you heard?

19 A. Gary.

20 Q. So you're certain there was more than one person in
21 your house at the time?

22 A. Yes, sir.

23 Q. What happened next?

24 A. He went over to the gun cabinet and started getting
25 the guns out that had straps on them, putting them on his

1 shoulders. Then he kind of went down the steps, just
2 down a little piece down the steps, handed them off to
3 someone. Said he was coming right back up, not to move.
4 He come right back up. Then he come over and flipped the
5 lid off of a, kind of like a cedar chest where I keep my
6 hunting coats and stuff in to -- for the cedar smell.
7 Anyhow, he flipped the top of it, grabbed a couple of
8 coats. Laid them down and he laid the guns that didn't
9 have straps on them, wrapped them up to where he could
10 carry them down and hand them off to somebody.

11 Q. Did he go out of sight?

12 A. He would go down the steps, but I never heard him
13 come off the steps as far as on the hardwood floors
14 downstairs.

15 Q. Describe your house to us. Explain and tell us how
16 come you didn't move at that point if he went out of
17 view. What were you're thinking?

18 A. The way our steps are in our house, when you come
19 upstairs, there's like a half a wall. So you could just
20 be three steps down being squatted down, handing
21 something off, and you just stand right back up and you
22 could see right where I was laying at.

23 Q. Okay. So what did you do?

24 A. I just laid there with my hands out.

25 Q. Let me show you what's been marked as State's

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1 Exhibit for identification -- let's start with 6-A.

2 A. Okay.

3 Q. 6-A. I know the quality of the picture is not the
4 best.

5 (Off record discussion)

6 Q. That's a little better. What have we got here? Do
7 you recognize ---

8 A. Yes, sir. That's a picture of the front of my house
9 after the burglary because you can see there's a little
10 spot on the sidewalk there, that after I'd come out and
11 come back, it looked like it was transmission fluid. I'd
12 walked through that sidewalk on my way in that morning.
13 It was not there.

14 Q. Are you talking here?

15 A. Yes, sir.

16 Q. That's a spot?

17 A. Yes, sir.

18 Q. That wasn't there that morning when you came in?

19 A. No, sir.

20 Q. And how do you know that?

21 A. Because I'd walked straight across that sidewalk.
22 And I would have seen it. It was probably as big as a
23 dinner plate.

24 Q. Do you go in the front door when you come home?

25 A. Yes, sir. I walk straight up that sidewalk, up the

- 1 steps and in the front door.
- 2 Q. Okay. Does that picture fairly and accurately
- 3 depict your house as it looked that morning?
- 4 A. Yes, sir.
- 5 Q. Let me show you 6-B.
- 6 A. Okay.
- 7 Q. And what do we see here?
- 8 A. The same thing. You can see the spot a little bit
- 9 better. You can kind of see the size of it.
- 10 Q. Your garage there, do you have a door that goes in
- 11 from your garage?
- 12 A. No, sir, I don't have a door that goes into the
- 13 house. There's a door in the back of it that's got like
- 14 a little storage room in the back of it. It was open at
- 15 that time. It's normally closed.
- 16 Q. And where in your house were you sleeping?
- 17 A. Up above the carport there. It's kind of like a
- 18 bonus room. I'd been upstairs. Yes, sir.
- 19 Q. Up here?
- 20 A. Yes, sir.
- 21 Q. And you're positive that stain wasn't there ---
- 22 A. Yes, sir.
- 23 Q. --- when you came in that morning?
- 24 A. Yes, sir.
- 25 Q. I show you 6-C. Do you recognize that?

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1 A. Yes, sir. That's the front of the house. But

2 there's a glove laying in the yard that was not there

3 that morning when I come home either.

4 Q. Does this picture also, along with A and B, do they

5 ---

6 A. It is my house.

7 Q. --- accurately depict your house as it looked that
8 day?

9 A. Yes, sir.

10 Q. When you went back out, was that glove laying there?

11 A. Well, when I come back from the neighbor's house, it
12 was laying there whenever the police was there. So ...

13 Q. Was it your glove?

14 A. No, sir.

15 Q. Do you have any idea where it came from?

16 A. No, sir.

17 Q. Let me show you 6-D. Is that a closer version of
18 that glove?

19 A. Yes, sir, that is the glove.

20 Q. Okay. Was that the one laying in the yard that you
21 could see earlier?

22 A. Yes, sir.

23 Q. 6-E?

24 A. That's a view of the back of my house. And that's
25 the -- there's a room underneath the kitchen there. That

1 door's normally closed. It's standing open.

2 Q. Okay. But you're saying it's normally closed, but
3 it was open that day?

4 A. Yes. It's always closed. Someone opened it that
5 day. I'm assuming -- I don't know if they were looking
6 for a way in or if they were looking for something to
7 take. I don't know.

8 Q. Okay. I see two staircases here. Can you explain?
9 Are there doors at the top of each one of those?

10 A. The staircase to the left comes into my kitchen.
11 There's a door there. It's kind of like -- well, it's
12 not a French door. But there's a glass pane door on one
13 side and there's a painted glass on the other side. And
14 then the door to the right goes into the laundry room,
15 and there's a door there also ---

16 Q. Okay.

17 A. --- like a storm door. And then there's a door with
18 glass dividers in it.

19 Q. So you're talking about over here?

20 A. Yes, sir, on the right-hand side.

21 Q. Now, was anything unusual about that door that day?

22 A. Before I went to bed or after I got up?

23 Q. Well, before you went to bed and after?

24 A. No, sir. When I went to bed everything was fine.

25 When I come back to the house, the door actually had been

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1 -- glass had been busted out. I assume that's where they
2 entered from.

3 Q. I show you 6-F.

4 A. Yeah. That's the steps going up to it, and that's
5 the storm door that's closed. It's spring-loaded.

6 Q. Okay. Is there a door behind that storm door?

7 A. Yes, sir.

8 Q. Is that the one that was broken in?

9 A. Yes, sir.

10 Q. Referring to 6-G.

11 A. That's the glass where they busted out the -- on the
12 outside, there's glass on the outside and the inside. I
13 don't know if they busted it out and break the glass out
14 or what they did.

15 Q. Okay. Is that how it looked after you ---

16 A. It's all piled right there at the door.

17 Q. 6-H?

18 A. That's actually in the laundry room. You can see
19 the glass all the way across the room, all the way into
20 the edge of the living room. But you can tell they
21 pushed the door open. We would normally have the laundry
22 stuff sit against that door so they would have had to
23 push all that stuff out of the way to open that door.
24 That looks like another picture of just the glass laying
25 there all the way in to the hardwood floor of the living

1 room.

2 Q. Okay. And I'm sorry if I'm getting ahead of myself.

3 That's 6-I. Here is 6-J.

4 A. And that's the door that was busted out where they
5 entered through.

6 Q. Was your window -- was the hole here?

7 A. No, sir. It was a solid window. There was no hole.

8 The plastic wasn't broke on it. Like I said, they hit it
9 pretty hard to bust the plastic divider in it, and not
10 just to push it off.

11 Q. Okay. But I mean, when you got up, could you stick
12 your hand all the way through it?

13 A. After I got up, yes, sir, you could stick your hand
14 all the way through it.

15 Q. 6-K?

16 A. Looks like that's just showing another picture in
17 the laundry room with the glass in the floor in there
18 where the glass come in.

19 Q. So it was glass all the way in?

20 A. Yes, sir. From that other picture that you showed
21 me, it was all the way in to the living room, all the way
22 through the room.

23 Q. Okay. This is 6-L.

24 A. That's a picture from the other side of my living,
25 actually from about where the front door is. The door to

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1 the right is the laundry room, which it would have been
2 shut that day. And the door to the left is the one that
3 comes up to my bedroom. So ---

4 Q. So you're saying this is the door to the laundry
5 room?

6 A. Yes, sir, that's the door to the laundry room. And
7 then the one to the left would be the door to my bedroom.

8 Q. Okay. Is this the stairwell that goes up?

9 A. Yes, sir.

10 Q. The door to the laundry room on the right here, is
11 that where the broken-in window in the door was?

12 A. It was. When I went to bed, they were both shut.
13 That's just normally how we do it. So that might be why
14 I didn't hear the glass break whenever they first
15 initially come in.

16 Q. Let me show you 6-M.

17 A. That's the stairs coming up into my bedroom.

18 Q. Okay. And is that the stairwell that we saw in the
19 picture earlier, just the one before this?

20 A. That's the door we just saw in the previous picture
21 of the door that was to the left.

22 Q. 6-N?

23 A. That would be at the top of the stairs where the
24 actual individual was standing whenever they were -- had
25 their mask on when I woke up and they pulled their gun

1 out. And like I said, when I went to put my hands on the
2 dresser, they started coming towards me.

3 Q. Where would the person have been?

4 A. Just about right where that black bag is is pretty
5 close to where they would stand or maybe where those
6 scope covers are.

7 Q. Right here?

8 A. Yes, sir. There or a couple of feet in front of it.

9 Q. And there's glare on there. But is that your bed
10 right there?

11 A. That is. That's my bed approximately, I don't know,
12 ten to twelve feet away maybe.

13 Q. Where the black -- the black bag at the bottom of
14 the picture, that's where you said the man was standing?

15 A. Right in that area. He could have been a little bit
16 more closer to me.

17 Q. .6-0?

18 A. That's a picture of the gun cabinet after the fact
19 where you can see where they took all the guns out of the
20 top and then cleaned out ammo and different hunting
21 things out of the bottom.

22 Q. And how many guns did you have in there?

23 A. I had two muzzle loaders, five shotguns, three high-
24 powered rifles and two pistols.

25 Q. They were all in that cabinet?

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- 1 A. Yes, sir.
- 2 Q. Okay. And were they all stolen?
- 3 A. Yes, sir.
- 4 Q. Was the cabinet locked? Was there damage to it?
- 5 A. No, sir, it's not locked. It's just got a little
- 6 magnet close on it.
- 7 Q. And how close is that cabinet -- and I'm going to
- 8 show you 6-P.
- 9 THE COURT: 6 which?
- 10 MR. WAGNER: P.
- 11 THE COURT: P?
- 12 Q. Is that the same thing but just a different angle.
- 13 A. It is, yes, sir. That's just looking at it from the
- 14 side. You can see where the stuff is in the floor where
- 15 they pulled stuff out.
- 16 Q. How far is your bed from there?
- 17 A. Maybe ten feet.
- 18 Q. In which direction?
- 19 A. It would be to the right. There's actually a stair-
- 20 climber kind of thing in between, so as far -- it
- 21 wouldn't be any way for me to get to the individual,
- 22 especially with him having a weapon.
- 23 Q. 6-Q?
- 24 A. That's my youngest son's room. They got the closet
- 25 door open. There was stuff thrown around in that room

1 also, but that's just showing that the closet door is
2 open.

3 Q. But had somebody been in there looking around?

4 A. Yes, sir. He's just now going back in his room.

5 Probably six months ago, he would go back there by
6 himself.

7 Q. 6-R?

8 A. That would be our oldest son's room. You can see
9 where his bottom drawer is pulled out and stuff thrown
10 around in the floor. Different play station games. And
11 that's his, I think, school project board that's kind of
12 pulled out away from the wall. I don't know if they were
13 looking for stuff behind it. I'm not sure.

14 Q. Okay. 6-S?

15 A. I think that's just another picture there at the
16 laundry room door. I can see the tile. That's the
17 laundry room. You can see where the glass is all the way
18 into the living room.

19 Q. 6-T?

20 A. That's the same picture.

21 Q. Yeah, it's the same thing.

22 A. You can see the glass.

23 Q. 6-U?

24 A. That would actually be at the top of my steps.

25 That's that little half wall that I was talking about

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1 where, if you go down about five steps and you duck down,
2 you stand right back up, you can see right back over to
3 where the bed's at.

4 Q. Is this the stairwell here?

5 A. It is. That's the stairwell going back downstairs.

6 Q. Okay. And your bed is where?

7 A. Right straight across. You can see it on the other
8 side of the stair-climber thing.

9 Q. And is that where you're saying earlier you were
10 afraid when the guy went out of view that he was standing
11 just right here?

12 A. Yes, sir. I don't think he ever went all the way
13 off the steps. I never actually heard feet hit the floor
14 downstairs. I heard him go down steps, but I never heard
15 him come off the steps.

16 Q. So he could have been out of sight but right there?

17 A. Yes, sir.

18 Q. And last is 6-V?

19 A. That's actually the serial number off of one of the
20 firearms that they returned back to me that they found
21 somewhere from somebody.

22 Q. Was that stolen from you that day?

23 A. Yes, sir, it was stole that day. It's back in my
24 possession now.

25 Q. And who gave it back to you?

1 A. Mr. McMahan.

2 Q. Okay. I'm going to show you one more. This is 7-B.

3 Is that the same rifle that you just saw the serial
4 number on?

5 A. Yes, sir, it is.

6 Q. And you know that for a fact that's your gun?

7 A. Yes, sir. I know for a fact the gun that was given
8 back to me has got on the bolt throw -- it's stainless,
9 but there's a little bit of rust like on it. It's
10 stained up from where blood had got on it. It's a red
11 mark. You can look at it. It was on there before, and
12 it's on there still.

13 Q. When you say blood?

14 A. Blood from shooting a deer.

15 Q. Do those pictures fairly and accurately depict your
16 house, the gun, the interior of your house as it looked
17 after you were robbed in your house that day?

18 A. Yes, sir.

19 Q. I mean, they fairly depict what your house looked
20 like?

21 A. Yes, sir, they do.

22 MR. WAGNER: Your Honor, at this time we would
23 move State's 6-A through 6-V as well as 7-B. We would
24 ask they be admitted into evidence.

25 THE COURT: All right. Any objection?

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1 MR. ROSEMOND: No objection, Your Honor.

2 THE COURT: All right. Without objection,

3 State's Exhibits 6-A, B, C, D, E, F, G, H, I, J, K, L, M,

4 N, O, P, Q, R, S, T, U, V and State's Exhibit 7-B are

5 admitted.

6 (WHEREUPON, State's Exhibit Numbers 6-A through 6-V

7 and 7-B were admitted into evidence.)

8 Q. So after the guy with the mask that handed the --

9 your guns and stuff down the stairwell, what happened

10 next, and what did you do?

11 A. As far as at the end or during the time?

12 Q. Yeah. What did he say to you? How long was -- any

13 idea to know how long he was in there?

14 A. I don't have any -- it seemed like forever, but I'm

15 sure just because I was laying there tied up. At one

16 time he asked me where my wife and kids were. I asked

17 him what time it was, and he didn't know what time it

18 was. Well, one of the times when he went outside, I

19 looked over at the clock. It was one o'clock. They -- I

20 guess whenever I called them from the neighbor's house,

21 they had went to lunch or they would have been coming

22 right back in the middle of it while it was going on.

23 But when I saw what time it was when he come back up, I

24 told him that my wife and kids would be back any time.

25 And then it seemed like things sped up, and they left

1 after that. At one point he'd asked me what my PIN was
2 to my A.T.M. card. I told him that I wasn't going to
3 give it. And he started -- he yelled that you didn't
4 want to do this. I told him I wasn't going to give it to
5 him. I decided I wasn't going to give him anything
6 because my wife needed to pay bills. He said he
7 respected that, and he didn't say anything else about the
8 PIN.

9 Q. What else did he say to you, and what did he do?

10 A. As far as -- before he left, he told me to count
11 down from -- I think it was count to five or countdown
12 from five, something like that. He come over and tied up
13 my hands again with a cord. Actually took a humidifier
14 off of the night stand and tied my hands again before
15 they had left out of the house.

16 Q. Okay. And I guess they left. And when they left,
17 what ---

18 A. Well, whenever I counted to five, I looked out the
19 window, and I didn't see the car or anything. So they
20 must have been moving on pretty quick when he left out of
21 there.

22 Q. What did you do?

23 A. Went over to my pants and cut my -- got my knife out
24 of my pants pocket, and I cut the rope, pulled the cord
25 loose and pulled a pair of pants on to go to my

1 neighbor's house because I was sleeping in my underwear
2 at the time.

3 Q. Okay. Why did you go to your neighbor's house?

4 A. Because I tried to make a 9-1-1 call from my phone,
5 and the phone was dead. And they had stole my cell phone
6 when they left. They also stole my keys, all the spare
7 keys off the key ring downstairs.

8 Q. Did you later find out why your phone was dead?

9 A. Yes, sir. Whenever I come back to the house with
10 the detectives, we went around and they actually had cut
11 the phone line into the house.

12 Q. But was your phone working that morning?

13 A. Yes, sir, it was.

14 Q. So you ran to your neighbor's. How far away do they
15 live?

16 A. A hundred and fifty yards, maybe two hundred yards,
17 down over -- kind of down the road a little piece.

18 Q. And did you call 9-1-1?

19 A. I did. I called 9-1-1 as soon as I got there.

20 Q. Okay. Let me show you what's been marked as State's
21 Exhibit, for identification, Number 5.

22 A. Yes, sir. That's the 9-1-1 C.D. that we had
23 listened to.

24 Q. Okay. Is that a true and accurate copy of the 9-1-1
25 call?

1 A. Yes, sir, to the best of my recollection.

2 Q. Is that your voice on the 9-1-1 call, on that tape?

3 A. Yes, sir, it is..

4 Q. How do you know that's the same recording?

5 A. I initialed the top of the C.D. when we listened to
6 it.

7 Q. Okay. And has it been altered or tampered with?

8 A. No, sir.

9 MR. WAGNER: Your Honor, we would move to admit
10 State's Exhibit Number 5 and publish it.

11 MR. ROSEMOND: No objection, Your Honor.

12 THE COURT: Without objection, State's Exhibit
13 Number 5 is admitted.

14 (WHEREUPON, State's Exhibit Number 5 admitted into
15 evidence and published in open court.)

16 Q. Mr. Bush, can you tell us what all was stolen? What
17 did these guys take?

18 A. Five shotguns, two muzzle loaders, three high-
19 powered rifles, two pistols, all my spare keys, different
20 hunting stuff that I had as far as like GPSes. And then
21 some backpacks they grabbed up that had gloves and
22 different things in it. Stole our laptop. A pretty good
23 bit of stuff. That's the main things that I can think
24 of.

25 Q. What kind of pistols were they?

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1 A. One was a .22 caliber Browning Buckmark. Another
2 was a .40 caliber Smith and Wesson Sigma, both of them
3 semi-automatics.

4 Q. And what was the total value of the firearms and
5 other items that were taken from you?

6 A. Greater than ten thousand dollars.

7 Q. And did you get any insurance recovery from them?

8 A. Yeah, about six thousand dollars. The way the
9 insurance works is on thefts for firearms, they only
10 cover a maximum. Mine was a thousand dollars, "so ...

11 Q. Did the Sheriff's office get some of your guns back
12 though?

13 A. They did.

14 Q. How many? How many were recovered?

15 A. I got back one of the pistols, the .22 pistol they
16 got back. And then I got back that high-powered rifle
17 that you showed me the picture of. I got back another
18 high-powered rifle. I got my over-and-under shotgun, the
19 two muzzle loaders and a pump shotgun. I think that's
20 ...

21 Q. Did you and officer McMahan -- when he got out
22 there, did y'all talk about the credit cards?

23 A. Yes, sir. When we went back in the house, he was
24 asking me some questions. He'd asked about my billfold
25 getting stolen and if I'd cancelled my credit cards, if I

- 1 needed to call and cancel them.
- 2 Q. Did you do that?
- 3 A. Yes, sir. When I went to cancel, they told me that
- 4 it had been used at a Bountyland and a number. They
- 5 didn't say which Bountyland it was. That's what I told
- 6 officer McMahan.
- 7 Q. Okay. And he took that from there?
- 8 A. Yes, sir.
- 9 Q. About how long after the robbery did you tell
- 10 McMahan and find out they'd been used?
- 11 A. Maybe forty-five minutes at the most. Maybe an
- 12 hour.
- 13 Q. So they had just been used?
- 14 A. Just been used.
- 15 Q. Do you know the Defendant in this case, Timothy
- 16 Wirtz?
- 17 A. I do not.
- 18 Q. Do you know Gary Smith or Greg Bates?
- 19 A. I do not.
- 20 Q. Do you know Chad Bush?
- 21 A. I do.
- 22 Q. Who is Chad Bush?
- 23 A. He's my brother.
- 24 Q. Do you necessarily get along with your brother?
- 25 A. Well, some of the things he does, I don't agree

1 with. So we don't hang out much.

2 Q. Did any of these guys, most particular Timothy Wirtz
3 -- did any of these guys have consent to come into your
4 house and rob you of your stuff, tie you up and steal
5 your stuff?

6 A. Nobody had consent to steal anything from me.

7 Q. Did any of them have a key to your house?

8 A. No, sir.

9 Q. And the only one you know of that day is your
10 brother?

11 A. Sir?

12 Q. The only one of those four people you know is your
13 brother, Chad Bush?

14 A. Yes, sir, that's correct.

15 Q. When they had you tied up, did you feel like you
16 could move at all? Did you feel confined?

17 A. Yes, sir. I mean, he was right there in the room
18 with me. He told me not to look at him. If I looked at
19 him, he'd yell not to look at him. He still had the
20 pistol, so ...

21 Q. I think that's the only questions I have. If you
22 would, answer anything Mr. Rosemond has.

23 THE COURT: Gentlemen, we've been at it a
24 little while. Let's take a break.

25 MR. WAGNER: Yes, sir.

1 THE COURT: How long do you think your cross
2 might be, Mr. Rosemond?

3 MR. ROSEMOND: Ten minutes.

4 THE COURT: All right. Madam Forelady, do you
5 think the jury could go through the cross-examination?

6 MADAM FORELADY: Yes, sir.

7 THE COURT: All right. Very good.

8 You may proceed. Thank you.

9 CROSS-EXAMINATION

10 BY MR. ROSEMOND:

11 Q. Mr. Bush, you don't know Mr. Wirtz, do you?

12 A. No, sir.

13 Q. Never really seen him before in your life; is that
14 true?

15 A. No, sir.

16 Q. Now, you indicated earlier that the person upstairs
17 asked you for a PIN number?

18 A. Yes, sir.

19 Q. Did you provide him one?

20 A. No, sir.

21 Q. Whenever he asked you for the PIN number, you said
22 no. Did he do anything else? Did he say anything else
23 to you?

24 A. Yes, sir. That's whenever he raised his voice and
25 said, I don't want to do this anymore or something like

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1 that. I told him I wasn't going to give him the PIN
2 number because my wife needed to pay some bills. Then he
3 said, I respect that.

4 Q. Okay.

5 A. He didn't say anything else about it.

6 Q. All right. So when he left out of the house that
7 particular day, that person didn't have a PIN number for
8 your credit card; is that right?

9 A. That is correct.

10 Q. Now, you indicated that the person that was in your
11 room had a pistol?

12 A. Yes, sir.

13 Q. A silver pistol?

14 A. Yes, sir.

15 Q. Was it one of yours?

16 A. No, sir.

17 Q. Now, you had indicated earlier that you heard the
18 two people or the two or three people talking. You heard
19 him -- you heard somebody say the name Gary?

20 A. Yes, sir. Somebody downstairs yelled the name Gary
21 like they were trying to locate somebody. The person
22 that was in the room with me, when he started the name of
23 Gar (phonic), he just done like a woo hoo, made a noise
24 over the top of it.

25 Q. So the person that was in the room with you made a

- 1 noise so you couldn't hear the person downstairs talking
2 to him; is that right?
- 3 A. Correct. Or whoever he was talking to.
- 4 Q. And the person downstairs hollered out the name
5 Gary; isn't that correct?
- 6 A. That is correct.
- 7 Q. Was any females in the house?
- 8 A. Not that I know of.
- 9 Q. Could have been?
- 10 A. There could have been.
- 11 Q. We don't really know exactly how many people was in
12 the house, do we?
- 13 A. No, sir, I do not.
- 14 Q. Now, you gave a description of the guy, said he was
15 about six foot tall; is that right?
- 16 A. Yes, sir.
- 17 Q. And about how much did he weigh?
- 18 A. I'm not sure.
- 19 Q. Okay.
- 20 A. He was slender built.
- 21 Q. Okay. How tall are you?
- 22 A. Six foot tall.
- 23 Q. Okay. About how much you weigh?
- 24 A. Three hundred pounds.
- 25 Q. So that particular person upstairs, they burst in

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1 your house and you was just unable to get to your guns?

2 A. Well, mine was actually in a case locked up where
3 theirs was actually loaded and ready for me.

4 Q. Okay. Now, you indicated that you don't get along
5 with -- well, you indicated that your brother do some
6 things that you don't really like; is that right?

7 A. Yes, sir. He uses drugs. And I'm not in the drug
8 scene, so I don't agree with that. And I don't hang
9 around with him much.

10 Q. Does your brother ever come to your house?

11 A. Very seldom.

12 Q. You work at Duke Energy, right?

13 A. Yes, sir.

14 Q. And he's in the drug scene?

15 A. Yes, sir.

16 Q. Do you leave a key outside of your house just in
17 case you get locked out?

18 A. No, sir, I do not.

19 Q. Outside of you and your wife, does anyone else have
20 a key to your house?

21 A. Yes, sir. My mother had a key.

22 Q. Okay. Do you know whether or not she still has that
23 key?

24 A. She did after the burglary. The locks have been
25 changed since then. They stole all of my spare keys, so

1 I've changed all my locks.

2 Q. We saw a picture earlier of a glove that was left in
3 the middle of the yard.

4 A. Yes, sir.

5 Q. Do you know whether or not the person that was in
6 your room with you had that glove on?

7 A. No, sir. I don't remember.

8 Q. The guns that you were able to recover, were they
9 damaged?

10 A. They were scratched up.

11 Q. Do you have -- I saw a picture earlier where you
12 couldn't tell what type of gun or if it was a gun at all.
13 I saw something with a serial number on it. As a matter
14 of fact, it's right here. This one right here.

15 A. Yes, sir, that's the .270 that they retrieved.

16 Q. A .217 Remington rifle?

17 A. It's a point two seven zero Winchester short mag.
18 It's a high-powered rifle.

19 Q. You gave a statement to the police shortly after the
20 burglary; is that right?

21 A. Yes, sir.

22 Q. And certainly in that statement I think you told
23 them that -- you told them about hearing the name Gary;
24 is that right?

25 A. Yes, sir.

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1 Q. But ultimately, you have no evidence that Mr. Wirtz
2 is the person that broke into your house; is that right?

3 A. No, sir, I have no evidence other than he does fit
4 the description.

5 Q. So does many other people fit the description; is
6 that right?

7 A. Yes, sir, you are correct.

8 Q. Many six-foot tall people around this world with a
9 slender build; is that correct?

10 A. Yes, sir.

11 Q. Is that right?

12 A. I agree.

13 Q. So just because he may fit the description doesn't
14 necessarily mean he committed this crime; is that right?

15 A. Yes, sir.

16 MR. ROSEMOND: No further questions, Your
17 Honor.

18 THE COURT: Redirect?

19 MR. WAGNER: Nothing further from this witness,
20 Your Honor.

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

22 Thank you, sir.

23 What do you have next?

24 MR. WAGNER: I don't think it would be a
25 lengthy witness, but ...

1 THE COURT: Thank you very much.

2 **HEATH BATES,**

3 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

4 DIRECT EXAMINATION.

5 BY MR. WAGNER:

6 Q. Mr. Bates, where are you currently residing?

7 A. I'm in S.C.D.C.

8 Q. Okay. And are you serving time down there for
9 distribution of methamphetamine?

10 A. Yes, sir.

11 Q. Okay. Did you get brought back up here for court
12 this week?

13 A. Yeah. I was subpoenaed up here.

14 Q. What actual prison in S.C.D.C. are you in?

15 A. I'm current at Livesay.

16 Q. Okay. Are you friends with the Defendant over
17 there, Timothy Wirtz?

18 A. Yeah.

19 Q. Back on the 11th or 12th of February 2012, did you
20 buy a .270 ---

21 MR. ROSEMOND: Objection, Your Honor. Leading.

22 THE COURT: Let's restate your question.

23 By the way, a leading question is a question that
24 suggests an answer. In other words has a tendency of the
25 attorney testifying and just asking the witness to agree.

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1 And so when you call your -- call a witness as your
2 witness -- in other words, you're the one, as I say,
3 called them, then you cannot lead. Now, on cross-
4 examination, of course -- what is it -- the other side
5 can lead the witness on cross-examination. Now, there
6 are exceptions, and I haven't heard one yet.

7 Q. Mr. Bates, let me rephrase it. You're friends with
8 the Defendant, right?

9 A. Yeah. We went to school together.

10 Q. All right. Have you remained friends with him since
11 you went to school together?

12 A. Yeah.

13 Q. Did you have any contact with him back on February
14 11th or 12th of 2012?

15 A. Yeah.

16 Q. And what was the nature of that contact?

17 A. I went over to his house. And I was with one of my
18 friends, and I ended up buying a rifle from him.

19 Q. Okay, sir. And is he the one that sold it to you?

20 A. Yeah.

21 Q. Let me show you what's been marked State's Exhibit
22 7-B.

23 THE COURT: Which one is that?

24 MR. WAGNER: 7-B.

25 THE COURT: Very good.

- 1 Q. Do you recognize that?
- 2 A. Yeah.
- 3 Q. And what is that?
- 4 A. It's the rifle I bought.
- 5 Q. Okay. Where did you leave that rifle?
- 6 A. I ended up getting busted at Standpoint Vista, and I
- 7 had the rifle with me over there.
- 8 Q. Okay. Let me show you what's been marked as State's
- 9 7-C. Do you recognize that?
- 10 A. Not at all.
- 11 Q. Okay.
- 12 THE COURT: What was the number?
- 13 MR. WAGNER: 7-C.
- 14 THE COURT: C?
- 15 Q. And whose apartment were you at in Standpoint Vista?
- 16 A. Where I got arrested at, I was at Joey Donald's
- 17 apartment.
- 18 Q. Do you know Candace Roberts?
- 19 A. I met her that day.
- 20 Q. And does she live at [REDACTED]
- 21 A. I'm not sure. I guess so.
- 22 Q. Okay. Is that who you left the rifle with?
- 23 A. I didn't leave it with anybody. I had the rifle
- 24 with me over there, and somebody wanted to look at it to
- 25 buy it.

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1 Q. And you got arrested?

2 A. Yeah. I was arrested in a whole 'nother apartment
3 from where Robert was though.

4 Q. Was that the last time that you saw that rifle was
5 at Standpoint Vistas Apartment?

6 A. Yeah.

7 Q. And you had it with you and you got arrested?

8 A. (No verbal response)

9 Q. Did you know that rifle was stolen the day before?

10 A. No.

11 Q. What were you going to do with it?

12 A. I was going to sell it. I didn't have no intentions
13 for it.

14 Q. And how much did you pay for it?

15 A. I don't know. Maybe a a hundred and twenty-five,
16 hundred and fifty dollars.

17 Q. Okay. And you bought it from that Defendant right
18 there, Timothy Wirtz?

19 A. Yeah.

20 Q. Timothy Wirtz?

21 A. Yeah.

22 MR. WAGNER: Nothing further, Your Honor.

23 CROSS-EXAMINATION

24 BY MR. ROSEMOND:

25 Q. So basically you're in the custody of S.C.D.C.

- 1 because you sold some methamphetamine; is that right?
- 2 A. Yes, sir.
- 3 Q. And you're down there doing five-year bid?
- 4 A. Yeah. Two and a half actually. I got thirty
- 5 months.
- 6 Q. Time for good credit?
- 7 A. Yeah. I had eight months in the County.
- 8 Q. Now, you and Tim Wirtz, have y'all always been
- 9 friends?
- 10 A. Yes, sir.
- 11 Q. And what date do you recall allegedly buying this
- 12 gun from Tim Wirtz?
- 13 A. Man, I was doing so much drugs back then I can't
- 14 tell you a specific date now.
- 15 Q. You was doing so much drugs back when you purchased
- 16 the gun from Mr. Wirtz?
- 17 A. Yeah.
- 18 Q. You don't know exactly where you were when you
- 19 purchased the gun from Mr. Wirtz, do you?
- 20 A. I mean, I recall where I was. But as far as telling
- 21 if I was coming or going, I couldn't tell you, man. My
- 22 mind was so cloudy.
- 23 Q. Your mind was so cloudy because you was on drugs; is
- 24 that right?
- 25 A. Yes, sir.

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1 Q. Now -- under the influence of meth; is that right?

2 A. Uh-huh (affirmative).

3 Q. And you were under the influence of meth when you
4 wrote a statement that says you got the gun from Mr.
5 Wirtz; isn't that correct?

6 A. Probably were still in my system, yeah.

7 Q. Now, how often were you doing meth at that time?

8 A. Every day. I sold it.

9 Q. You sold meth and you were using meth. And if I
10 told you that this alleged robbery took place on February
11 the 11th, does that help you in any way try to identify
12 when you allegedly purchased this gun from Mr. Wirtz?

13 A. No, sir. I just know I was arrested for my meth
14 charges on February 12th.

15 Q. Okay. So you were arrested for your meth charges on
16 February the 12th. And even when you was arrested, you
17 was messed up?

18 A. Yes, sir.

19 Q. Now, when you're on meth, I take it you go through
20 binges where you just stay up all the time?

21 A. Yes, sir.

22 Q. You don't ever sleep during the time you're on a
23 binge?

24 A. No, sir.

25 Q. How long had you been up that particular time?

- 1 A. I couldn't even tell you.
- 2 Q. Messed up?
- 3 A. Yes, sir.
- 4 Q. Cloudy in your mind.
- 5 Now, you can't tell me when you purchased this
- 6 particular gun from Mr. Wirtz. You said you went over
- 7 there with somebody?
- 8 A. Yeah.
- 9 Q. Who did you go over there with?
- 10 A. My friend Shane.
- 11 Q. Shane who?
- 12 A. Elliott.
- 13 Q. Okay. Mr. Elliott. Was he messed up on drugs too?
- 14 A. Probably.
- 15 Q. You said that you were not at that Candace person's
- 16 apartment when you was arrested; is that right?
- 17 A. Yes, sir.
- 18 Q. Whose apartment were you at?
- 19 A. Joey Donald.
- 20 Q. Mr. Wagner showed you a picture here. How do you
- 21 know that's the gun that you purchased?
- 22 A. I just remember it was a black rifle.
- 23 Q. You just remember it was a black rifle. Did you
- 24 remember ---
- 25 A. With a scope.

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Heath Bates - Cross-examination by Mr. Rosemond

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1 Q. --- whether or not there was any serial numbers at
2 all?

3 A. Oh, no.

4 Q. Didn't really want to get that far? Now -- you just
5 remember a black rifle; is that right?

6 A. Uh-huh (affirmative).

7 Q. Anything else that stood out about that particular
8 rifle that you remember?

9 A. Just the scope was real expensive.

10 Q. Okay. Anything else?

11 A. No, sir.

12 Q. Now, whose couch is that?

13 A. I have no idea.

14 Q. Whose bag is that?

15 A. I don't recall that either.

16 Q. Is that where you left the gun when you last had it?

17 A. On the couch?

18 Q. Right there where it's at.

19 A. No.

20 Q. So that gun has been moved or something?

21 A. Yeah.

22 THE COURT: Mr. Rosemond, what ---

23 MR. ROSEMOND: Looking at 7-B.

24 THE COURT: Very good. Thank you.

25 Q. You got arrested on February the 12th; is that

1 right?

2 A. Yes, sir.

3 Q. Do you remember about what time you got arrested
4 that day?

5 A. No. I know it was getting dark.

6 Q. Okay. Because that rifle has a scope on it, you're
7 sure that that's the rifle?

8 A. No, not a hundred percent, no.

9 Q. Not a hundred percent sure?

10 A. No. It's similar.

11 MR. ROSEMOND: No further questions, Your
12 Honor.

13 REDIRECT EXAMINATION

14 BY MR. WAGNER:

15 Q. Do you remember meeting Candace Roberts in her
16 apartment, 5-B?

17 A. I'm not sure what numbers are them apartments up
18 there, but I was in an apartment in the very back. And
19 then I walked across -- like directly across is my friend
20 Joey's apartment, so ...

21 Q. Okay.

22 A. But I was at two different apartments, yeah.

23 Q. Do you remember going there with Dustin and Preston
24 Cox?

25 A. I didn't -- I come over there by myself.

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1 Q. Were they over there too?

2 A. Yeah. I met Dustin.

3 Q. Okay. Do you remember giving Sergeant McMahan a
4 statement that you bought the rifle from Tim Wirtz on
5 2/13/2012.

6 A. I remember I had to write a statement, yeah.

7 Q. Okay. But you gave the statement on 2/13. You were
8 arrested on 2/12. And you were not aware that that rifle
9 was stolen on 2/11, the day before?

10 A. No.

11 Q. Okay. But you were at Timothy Wirtz's house with
12 Shane Elliott when you bought it?

13 A. Uh-huh (affirmative).

14 Q. And you bought it from Timothy Wirtz?

15 A. Yeah.

16 Q. Assuming that's the same rifle. But you bought a
17 rifle like that from Timothy Wirtz?

18 A. Yes, sir.

19 Q. Okay. Is your dad Greg Bates?

20 A. Yes, sir.

21 MR. WAGNER: Thank you. That's the only
22 questions I have.

23 THE COURT: Recross?

24 RECROSS EXAMINATION

25 BY MR. ROSEMOND:

- 1 Q. On that particular day you was arrested, you was
2 arrested for a trafficking meth charge?
- 3 A. Yes, sir.
- 4 Q. And on that particular day, you had a nine
5 millimeter pistol?
- 6 A. Yes, sir.
- 7 Q. That nine millimeter pistol didn't come from Tim
8 Wirtz, did it?
- 9 A. No.
- 10 Q. You also on that particular day -- what happened to
11 that trafficking methamphetamine charge? Do you know?
- 12 A. I don't understand what you're trying to ---
- 13 Q. You was arrested for trafficking methamphetamine; is
14 that right?
- 15 A. Yes, sir.
- 16 Q. And was that your first drug offense?
- 17 A. Yes, sir.
- 18 Q. Do you know how many years you was facing for having
19 ---
- 20 A. A mandatory of three.
- 21 Q. Mandatory of three?
- 22 A. Yeah.
- 23 Q. Minimum three up to ten. Is that about right?
- 24 A. I think so.
- 25 Q. Okay. And certainly you only received five?

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1 A. I actually received two and a half, but they dropped
2 it down to a possession with intent.

3 Q. They -- when you say they dropped it down, who is
4 they?

5 A. The solicitor or whoever.

6 Q. The Solicitor's office? The Oconee County
7 Solicitor's Office?

8 A. Yeah.

9 Q. They reduced your charges?

10 A. Uh-huh (affirmative).

11 Q. Can you ---

12 A. Yeah.

13 Q. And they reduced your charges down from a
14 trafficking charge which is more serious than a P.W.I.D.
15 charge; is that right?

16 A. Yes, sir.

17 Q. So they gave you a benefit; is that right?

18 A. I mean, if you want to call it that, yeah.

19 Q. Had you pled guilty to that trafficking charge,
20 you'd have been subject to more time; is that right?

21 A. Yes, sir.

22 Q. And how you're here today testifying on their
23 behalf?

24 A. I mean, I was subpoenaed here. I didn't come by
25 choice.

1 Q. Have you ever discussed this case with either one of
2 these two guys?

3 A. I guess when I wrote that statement, I had talked to
4 McMahan.

5 Q. So instead of you doing the maximum of ten, you're
6 doing five, but you only have to do two and a half. Is
7 that what you're telling me?

8 A. Yes, sir.

9 MR. ROSEMOND: No further questions, Your
10 Honor.

11 RE-REDIRECT EXAMINATION

12 BY MR. WAGNER:

13 Q. Mr. Bates, you're not here because you were offered
14 any deals on your case; is that correct?

15 A. No, sir, I ain't.

16 Q. Have you ever discussed this case with me?

17 A. No.

18 Q. Are you here because you were subpoenaed and made to
19 come?

20 A. Yeah.

21 Q. Do you want to be here testifying against your
22 friend?

23 A. No, sir, I don't.

24 Q. Were you offered anything in exchange for your
25 testimony here today?

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1 A. No. I was already sentenced.

2 MR. WAGNER: Nothing further, Your Honor.

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

4 Thank you, sir.

5 MR. WAGNER: Your Honor, we'd call Candace
6 Roberts.

7 (WHEREUPON, the witness was duly sworn.)

8 THE COURT: If you would, please, ma'am, give
9 us your full name for the record spelling your last name.

10 THE WITNESS: It's Candace Roberts, R-O-B-E-R-
11 T-S.

12 THE COURT: Very good. Thank you, ma'am.

13 **CANDACE ROBERTS,**

14 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

15 DIRECT EXAMINATION

16 BY MR. WAGNER:

17 Q. Ms. Roberts, are you here today under subpoena?

18 A. Yes.

19 Q. Do you want to be here?

20 A. No.

21 Q. Do you know the Defendant -- I mean, excuse me. Do
22 you know the guy that just testified, Heath Bates?

23 A. Yes.

24 Q. How do you know him?

25 A. Just know him through friends.

1 Q. Did he come to your apartment back on February the
2 12th, 2012?

3 A. Yes.

4 Q. And did he have anything with him?

5 A. Yes.

6 Q. What did he have?

7 A. He had a gun.

8 Q. What kind of gun?

9 A. A rifle. He was carrying it on his shoulder.

10 Q. Let me show you what's been marked State's Exhibit
11 7-B. If you would take a look at that, ma'am. Do you
12 recognize that?

13 A. Yes.

14 Q. And where was that picture taken?

15 A. In my apartment at Standpoint. That's the living
16 room.

17 Q. Standpoint Vistas?

18 A. Yeah, Vista.

19 Q. Unit 5-B?

20 A. Yes.

21 Q. Is that the rifle that Heath Bates brought over
22 there?

23 A. Yes.

24 Q. What happened to that rifle? When's the last time
25 you saw it?

- 1 A. The cops took it.
- 2 Q. Okay. Do you remember Sergeant McMahan being over
3 there?
- 4 A. Yes.
- 5 Q. Did he take possession of it?
- 6 A. Yes.
- 7 Q. Is that your couch and your bag and your stuff?
- 8 A. That's my couch. That was not my bag.
- 9 Q. Okay. It's hard to see. But is this you sitting
10 over there?
- 11 A. Yes.
- 12 Q. And who brought that gun there?
- 13 A. Heath Bates.
- 14 Q. Do you know where he got it?
- 15 A. No.
- 16 Q. What did you do with it when he left it there?
- 17 A. I put it up so my child couldn't get a hold of it.
- 18 Q. Let me show you what's marked State's C. Do you
19 recognize that?
- 20 A. Yes.
- 21 Q. What is that?
- 22 A. It's a vent where -- up under the air conditioner.
- 23 Q. In your apartment?
- 24 A. Yes. In the apartment, yes.
- 25 Q. Okay. Was that covered with a vent cover like a

- 1 return vent cover?
- 2 A. Yes.
- 3 Q. And is that where you stuck the gun?
- 4 A. I didn't per se put it there, but, yes, that's where
- 5 it was put.
- 6 Q. Okay. Who put it there?
- 7 A. The girl that was staying with me, Erica Halford.
- 8 Q. All right. Was it stuck in there behind the grate?
- 9 A. Yes.
- 10 Q. I mean, was it hidden in there?
- 11 A. Yes.
- 12 Q. Okay. Let me show you State's 7-A. Do you
- 13 recognize that?
- 14 A. Yes.
- 15 Q. What is that?
- 16 A. That's the door to my apartment.
- 17 Q. Okay. And that's the apartment where Heath Bates
- 18 brought that rifle in on February the 12th, 2012?
- 19 A. Yes.
- 20 Q. Okay. And that's the last time you've seen Heath
- 21 Bates?
- 22 A. Yes.
- 23 Q. Were y'all friends then?
- 24 A. No. That's the first time we had really talked.
- 25 Q. Okay. That's the only questions I have.

1 A. Okay.

2 THE COURT: Cross-examination?

3 CROSS-EXAMINATION

4 BY MR. ROSEMOND:

5 Q. You have a roommate?

6 A. At the time, yes.

7 Q. And her name was?

8 A. Erica Halford.

9 Q. Erica Halford? I'm going to show you again what's

10 7-C. What is that again?

11 A. It's an air conditioner. It's up under the air

12 conditioner. I guess -- I don't know. It's got a cover

13 on it. I thought maybe the filters would go there, but I

14 don't think they do.

15 Q. And that's in your apartment?

16 A. Yes.

17 Q. Has it always looked like that?

18 A. Yes.

19 Q. Is that where Erica Humphrey [sic] -- who put the

20 gun in there?

21 A. Erica Halford.

22 Q. Okay. Did you ever touch the gun?

23 A. No.

24 Q. All right. Was your child home with you that day?

25 A. Yes.

1 Q. You gave a statement to the police on February 12th,
2 2012, didn't you?

3 A. Yes.

4 Q. Have you -- do you recall giving a statement?

5 A. Yes.

6 Q. Do you need to see your statement to refresh your
7 memory?

8 A. I mean, I know what happened that day.

9 Q. Okay. In your statement did you say anything about
10 Erica Halford putting that gun in that particular vent?

11 A. No.

12 Q. You didn't mention that in your statement, did you?

13 A. No.

14 Q. In fact, your statement says that that gun was
15 placed underneath the couch; isn't that right?

16 A. I guess. I'm not sure about that. But that's where
17 it was when the law came in, in the air conditioner vent.

18 Q. Okay. Let me show you this document here. Have you
19 ever seen that document before?

20 A. Yes.

21 Q. What is that document?

22 A. That's my statement.

23 Q. Okay. You want to look on the second page, halfway
24 down?

25 A. Yes. He did push it under the couch.

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Candace Roberts - Cross-examination by Mr. Rosemond

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- 1 Q. Who is he?
- 2 A. Heath Bates.
- 3 Q. So Heath Bates pushed the gun underneath the couch?
- 4 A. Yes.
- 5 Q. All right.
- 6 A. But it was moved from that spot.
- 7 Q. Who moved it?
- 8 A. Erica Halford.
- 9 Q. Okay. Did you put that in your statement?
- 10 A. No, I didn't.
- 11 Q. So in fact, on that particular gun, Heath Bates put
- 12 the gun underneath the couch?
- 13 A. Yes.
- 14 Q. Now, Mr. Bates just testified that he came over by
- 15 himself; is that right?
- 16 A. Yes.
- 17 Q. Is that true?
- 18 A. No.
- 19 Q. That wasn't true either. Who did he come over there
- 20 with?
- 21 A. He came over with Dustin Cox.
- 22 Q. Okay. He actually came to your apartment with
- 23 Dustin?
- 24 A. He came into my apartment with Dustin Cox. As far
- 25 as how he got there, I don't know.

1 Q. Okay. But he came with somebody?

2 A. Yes.

3 Q. So when he said that he came by himself, that wasn't
4 true?

5 A. No.

6 Q. Now, you never met Mr. Bates before; is that right?

7 A. I had met him one time.

8 Q. Kind of back when you was pregnant or something?

9 A. Yeah.

10 Q. But you all wasn't friends?

11 A. No.

12 Q. Since that day he was at your apartment -- since
13 that day he left your apartment, you hadn't seen him
14 before?

15 A. No.

16 Q. You would agree, Ms. Roberts, that everything Mr.
17 Bates testified to wasn't true; isn't that right?

18 A. Yes.

19 MR. ROSEMOND: No further questions, Your
20 Honor.

21 REDIRECT EXAMINATION

22 BY MR. WAGNER:

23 Q. Did you say Bates and the Cox boy walked in
24 together?

25 A. Yes.

1 Q. Does that mean they came together?

2 A. Yes. I knew Dustin previously. That's how he came
3 to my house, was to see Dustin. They had met somewhere
4 else outside the apartment because they both came to my
5 apartment together.

6 Q. Did they ride together. Do you ---

7 A. No, I don't know that. They walked in my door
8 together.

9 Q. Bates just testified that he came by himself. Could
10 he have come by himself and met Cox there and walked into
11 the apartment together?

12 A. Yeah. That could have happened, yes.

13 Q. So you don't know if anything Heath Bates just said
14 wasn't true?

15 A. No. I mean, like if he was talking about if he came
16 in my house alone, then, no, that wasn't true. But he
17 did come to my house ---

18 Q. Did Heath Bates bring that rifle into your house and
19 leave it there?

20 A. Yes.

21 Q. Did he get locked up while he was over at Standpoint
22 Vistas?

23 A. At Standpoint Vista, yeah.

24 Q. And did Officer McMahan come out there and take that
25 statement from you and recover the gun that day?

1 A. Yes.

2 MR. WAGNER: Nothing further.

3 THE COURT: All right. Any further questions?

4 MR. ROSEMOND: No, Your Honor.

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

6 Thank you very much.

7 THE WITNESS: Thank you.

8 MR. WAGNER: Your Honor, she can be excused.

9 THE COURT: Any objection?

10 MR. ROSEMOND: No objection.

11 THE COURT: All right. You may be excused.

12 Thank you very much, ma'am.

13 Do you have a short one?

14 MR. WAGNER: I think so, yeah. I mean, I

15 believe so.

16 THE COURT: All right. Go ahead. We'll take
17 it and see if we can move along.

18 MR. WAGNER: We'd call Veronica Smith.

19 (WHEREUPON, the witness was duly sworn.)

20 THE COURT: If you would, please, ma'am, give
21 us your full name for the record, spelling your last
22 name.

23 THE WITNESS: Veronica Smith, S-M-I-T-H.

24 THE COURT: Very good. Thank you, ma'am.

25 **VERONICA SMITH,**

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Veronica Smith - Direct Examination by Mr. Wagner

1 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

2 DIRECT EXAMINATION

3 BY MR. WAGNER:

4 Q. Ms. Smith, are you here under subpoena also?

5 A. Yes.

6 Q. Do you want to be here?

7 A. No.

8 Q. Do you know the Defendant in this case, Timothy

9 Wirtz?

10 A. No. I mean, I've seen him once. But other than

11 that, no.

12 Q. Okay. But you have seen him once?

13 A. Yes.

14 Q. When was that? When did you see him, and where were

15 you?

16 A. Well, I got a phone call from my friend, or what I

17 thought was my friend, to take a ride with him to go pick

18 something up.

19 Q. And who was your friend?

20 A. Tim Elrod. And we took a ride. We ended up at this

21 house, and he was inside the house.

22 Q. Okay. And what was he doing? Was he inside of his

23 house?

24 A. I was told later on ---

25 MR. ROSEMOND: Objection, Your Honor.

1 THE COURT: Sustained.

2 What we have is an objection to hearsay. Hearsay is
3 just what the term implies. It's not what you know of
4 your own knowledge. It's what you heard somebody else
5 say. And so therefore, it's not dependable because you
6 can't -- what is it -- know what the context was or even
7 if she actually heard the statement correctly because
8 just as when we were talking about notes, sometimes we
9 might miss something. So I sustained the objection to
10 hearsay.

11 MR. WAGNER: Your Honor, may I approach the
12 witness?

13 THE COURT: Certainly.

14 Q. Do you remember giving a statement to Officer
15 McMahan back on May 31st of 2012?

16 A. Yes.

17 Q. Okay. Let me show you and ask you if you can
18 identify this?

19 A. Yeah. This is what I wrote.

20 Q. Okay. And in that statement ---

21 THE COURT: What's the date on the statement?

22 MR. WAGNER: The statement -- May 31st of 2012,
23 Your Honor.

24 Q. In that statement what did you say, just to refresh
25 your memory?

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1 A. It says that we rode to a house that belonged to Tim
2 Wirtz. But I was told that it was his house.

3 MR. ROSEMOND: Objection, Your Honor. She
4 doesn't have any knowledge of whose house that is.

5 THE COURT: Mr. Wagner?

6 MR. WAGNER: Your Honor, she had put it in her
7 statement. I was refreshing her memory. And I think she
8 ---

9 THE COURT: Well, she said still that's what
10 she was told.

11 A. As far as I'm concerned, I cannot say one hundred
12 percent ---

13 THE COURT: Just a minute. Just a minute.
14 I'm going to sustain the objection. So go on to
15 something else.

16 MR. WAGNER: Okay.

17 Q. Ma'am, you rode over to this house. And whereabouts
18 was it?

19 A. We rode to Walhalla, and we -- it was a gas station,
20 I think, or something that looked like a gas station. It
21 was a house behind the gas station.

22 Q. Okay. Was this Defendant, Timothy Wirtz -- was he
23 in there?

24 A. Yes.

25 Q. Was he in there with anybody else?

1 A. When we walked in, there was a table sitting to the
2 left at the front door. And he was sitting at the table
3 with another man, and the other man got up and walked in
4 the other room. And there was some -- there was a lady
5 laying on the couch asleep, so I don't know who that was.

6 Q. Okay. Was there anything unusual on the table?

7 A. Not that I recall.

8 Q. Did you know why y'all were over there?

9 A. All I knew is that we were going to drop something
10 off.

11 Q. Okay.

12 A. And pick something up. I mean, that's it.

13 Q. Did you pick anything up?

14 A. Yes.

15 Q. Okay. What did you pick up?

16 A. He handed him like a laptop bag, like a soft-cover
17 bag that you would put a laptop in or a computer in.

18 Q. Okay. And did you find out what was in the bag?

19 A. After we ---

20 Q. Did you see what was in the bag?

21 A. Not until we were on the way back and we had already
22 left.

23 Q. Do you know what was in the bag?

24 A. At the time we were at the house, no.

25 Q. All right. On the way home, did you look in the

1 bag?

2 A. Yes. He told me to check and make sure what was in
3 the bag was really in the bag. And I did open the bag,
4 and I looked down. I opened the bag and I looked down --
5 I mean, it was -- that's what was in the bag.

6 Q. What was in the bag?

7 A. There was at least two pistols and a sawed-off, I
8 believe.

9 Q. And what?

10 A. And a sawed-off shotgun.

11 Q. Okay. So there were two pistols in the bag?

12 A. At least two pistols, yeah.

13 Q. Okay. Other than that, you've never had any contact
14 ---

15 A. No.

16 Q. --- with Timothy Wirtz?

17 A. No. I don't know who that is. That was the one and
18 only time I've ever been face-to-face with him or heard
19 anything about him, so ...

20 Q. Okay. And did -- did your friend, Tim Elrod -- did
21 he know him?

22 A. As far as I knew, he did. When we walked into the
23 house, they were conversating (phonic) like they knew
24 each other. But I couldn't say for sure. I don't know.

25 Q. Thank you, ma'am. That's all the questions I have.

1 THE COURT: Cross-examine?

2 CROSS-EXAMINATION

3 BY MR. ROSEMOND:

4 Q. Ms. Smith, you wrote a statement that day that Mr.
5 Wagner just showed you; is that right?

6 A. Yes.

7 Q. Do you recall what your statement says?

8 A. Yes.

9 Q. Do I need to show you a copy of your statement?

10 A. (No verbal response)

11 Q. You don't need it?

12 A. I don't, no.

13 Q. Your statement doesn't say anything about a pistol,
14 two pistols, and a shotgun in the laptop bag, does it?

15 A. No, sir, it don't.

16 Q. So when Sergeant McMahan asked you to give him a
17 statement as to what occurred that day, you wrote out
18 your statement, right?

19 A. Yes.

20 Q. And in this statement you said absolutely nothing
21 about two pistols and a shotgun in a laptop bag; is that
22 right?

23 A. Right.

24 Q. And it wasn't until today when you come in here, and
25 that's the first time that we've heard about two pistols

1 and a sawed-off shotgun being in that bag; isn't that
2 correct?

3 A. Other than me telling McMahan that that was what was
4 in the bag, yes. I did not put it in the statement
5 though. I did not.

6 Q. But you told him?

7 A. Yes.

8 Q. But you didn't put that in the statement?

9 A. Right.

10 Q. But didn't Sergeant McMahan tell you to write
11 everything down in this statement that was true?

12 A. Yes.

13 Q. But you didn't do that, did you?

14 A. I didn't write -- I didn't say the pistols were in
15 there, no.

16 Q. "I have read each page of this statement consisting
17 of one page, each page on which bears my signature, and
18 corrections, if any, bear my initials, and I certify that
19 the facts contained herein are true and correct."

20 A. Yes.

21 Q. And you signed this, didn't you?

22 A. Yes.

23 Q. But it wasn't true and correct, was it?

24 A. Everything that's written down is true.

25 Q. Then show me in here where you said that he had two

- 1 pistols and a sawed-off shotgun?
- 2 A. It's not on there.
- 3 Q. It's not on there?
- 4 A. No.
- 5 Q. And you didn't write that in there, did you?
- 6 A. I didn't write -- I didn't say that the pistols were
- 7 in there. No, I did not.
- 8 Q. How many times you ever seen this young man before?
- 9 A. Once.
- 10 Q. Once.. And that was that particular day?
- 11 A. Yes.
- 12 Q. And what day -- that was February -- can you tell me
- 13 what day it was?
- 14 A. It had to have been the 12th or the 13th very early
- 15 morning like right after dawn.
- 16 Q. The 12th or 13 -- February 12th or 13th, 2012; is
- 17 that right?
- 18 A. Yes.
- 19 Q. And that's the only time you've ever seen that young
- 20 man?
- 21 A. Yes.
- 22 Q. Haven't seen him since?
- 23 A. No.
- 24 Q. Hadn't seen him before?
- 25 A. No.

- 1 Q. What was he wearing that particular day?
- 2 A. A black t-shirt, I think.
- 3 Q. Okay. What else was he wearing?
- 4 A. Jeans.
- 5 Q. What did Tim Elrod have on?
- 6 A. Jeans and a raggedy t-shirt.
- 7 Q. Okay.
- 8 A. And a hat.
- 9 Q. And you said there was some gas station; is that
- 10 right?
- 11 A. Uh-huh (affirmative).
- 12 Q. Have you been back to that gas station before?
- 13 A. No.
- 14 Q. Now, what color was the laptop bag?
- 15 A. Like a green. Like a dark green.
- 16 Q. Like a dark green?
- 17 A. Uh-huh (affirmative). It was a dark color, yeah. I
- 18 do believe it was green.
- 19 Q. Now, the only reason why you know that young man's
- 20 name is because someone told you his name; is that right?
- 21 A. Because of Tim Elrod, yes.
- 22 Q. Okay. And you really don't know the guy?
- 23 A. No.
- 24 Q. Are you related to Mr. Elrod?
- 25 A. No.

- 1 Q. Boyfriend/girlfriend?
- 2 A. No. At the time, we were just friends.
- 3 Q. Is it something more now?
- 4 A. No. I don't speak to him at all now.
- 5 Q. You don't speak to Mr. Elrod now?
- 6 A. No, not at all.
- 7 Q. Your statement was dated May 31st, 2012 ---
- 8 A. Yes.
- 9 Q. --- which is, what, two months after this alleged
- 10 incident?
- 11 A. Uh-huh (affirmative).
- 12 Q. How were you approached about giving this statement?
- 13 A. What do you mean? I was already incarcerated in
- 14 County, and they pulled me out to talk to me.
- 15 Q. Okay. I assume that you've been arrested before; is
- 16 that right?
- 17 A. Yes.
- 18 Q. All right. What have you been arrested for?
- 19 A. Shoplifting twice, and the rest of the times have
- 20 been child support. And that's it.
- 21 Q. So you've been arrested for shoplifting two times;
- 22 is that right?
- 23 A. Yes.
- 24 Q. So you walked in somebody's store and you stole
- 25 something?

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- 1 A. Yes.
- 2 Q. And you took it without paying for it; is that
- 3 right?
- 4 A. Right.
- 5 Q. Now -- and you've done that how many times?
- 6 A. Twice.
- 7 Q. Were you convicted for them?
- 8 A. Yes, twice.
- 9 Q. Okay. And when did that occur?
- 10 A. 2011, 2012 maybe. But I think both 2011. I'm not
- 11 real sure. I couldn't say for sure.
- 12 Q. Okay. Do you recall what store you went to and
- 13 stole?
- 14 A. One time it was Bi-Lo in Seneca, and the other time
- 15 it was K-Mart in Seneca. Bi-Lo was before, the first
- 16 one. I mean, you know, it was the first one. That one
- 17 might have been in 2010, late that year.
- 18 Q. Did you ever tell Mr. McMahan that you was guilty --
- 19 that you had convictions for shoplifting?
- 20 A. I can't say for sure. I'm not -- I don't know.
- 21 Q. I take it, Ms. Smith, that you admit to defrauding
- 22 the person that you stole from, right?
- 23 A. Yes.
- 24 Q. And just as in this particular statement, you didn't
- 25 tell the ---

1 MR. WAGNER: Objection, Your Honor.

2 THE COURT: I beg your pardon?

3 MR. WAGNER: I think we've gone beyond the
4 scope of ---

5 THE COURT: Well, this is cross.

6 MR. WAGNER: Yes, sir.

7 THE COURT: He's entitled to go into anything
8 on cross, but not recross.

9 Go ahead.

10 Q. In this particular statement, you left out a crucial
11 fact in this statement that you brought out today; is
12 that right?

13 A. Yes. I would suppose so.

14 Q. You was what?

15 A. I would suppose so, yes.

16 Q. So to make that statement true, you had to put in
17 there that you had two pistols and a sawed-off shotgun in
18 that laptop bag; is that right?

19 A. According to the law, yeah.

20 Q. And certainly we know that you don't always follow
21 the law; is that right?

22 A. I guess not, no.

23 MR. ROSEMOND: No further questions, Your
24 Honor.

25 MR. WAGNER: Briefly, Your Honor.

1 REDIRECT EXAMINATION

2 BY MR. WAGNER:

3 Q. Let me hand you your statement back up. And I would
4 ask you if you would read the last paragraph here.

5 A. On the back page?

6 Q. On the front page there. I'd like for you to start
7 right here down, particularly that last line.

8 A. "Tim Wirtz handed Tim Elrod what looks like to be a
9 laptop bag or a briefcase and looks at me and says, let's
10 go. Me and Tim Elrod get in his vehicle and he hands the
11 bag to me to put in the floor between my legs then asked
12 me to reach in the bag and make sure the guns was in it."

13 Q. You meant guns, plural?

14 A. Yes, it is.

15 Q. More than one?

16 A. Uh-huh (affirmative).

17 Q. So you told the officer -- you said there were guns
18 in there. The only thing is you just didn't specify that
19 it was two pistols and a shotgun. You just said it was
20 guns?

21 A. Correct.

22 Q. So you weren't trying to mislead anybody, were you?

23 A. No. There's -- I have no reason to.

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

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

1 record and then spell the last name.

2 THE WITNESS: Michele Ann Wright, W-R-I-G-H-T.

3 THE COURT: Thank you, ma'am.

4 **MICHELE WRIGHT,**

5 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

6 DIRECT EXAMINATION

7 BY MR. WAGNER:

8 Q. Ms. Wright, who do you work for?

9 A. I work for Bountyland Quick Stop.

10 Q. And how long have you been working for Bountyland?

11 A. Sixteen years.

12 Q. Were you working for Bountyland Quick Stop back on
13 February 11th, 2012?

14 A. Yes, sir.

15 Q. Did you get a call from the Sheriff's office to
16 respond to your Bountyland store, the one in Westminster?

17 A. Yes, sir.

18 Q. Is that the one that's across from Trent Smith, the
19 dentist office?

20 A. Yes, sir.

21 Q. And did you respond there?

22 A. Yes, sir.

23 Q. Did you meet Officer McMahan from the Sheriff's
24 office over there?

25 A. Yes, sir.

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1 Q. And at his request, did you look at the video of
2 y'all's surveillance cameras at that store?

3 A. Yes, sir.

4 Q. Let me show you what's been marked as State's
5 Exhibit, for identification, Number 8. Do you recognize
6 State's Exhibit Number 8?

7 A. Yes, sir.

8 Q. What is that?

9 A. It's a video where, you know, Officer McMahan asked
10 me to pull.

11 Q. Okay. And did you pull that at his request?

12 A. Yes, sir.

13 Q. Have you reviewed that prior to court today?

14 A. Yes, sir.

15 Q. Is it a true and accurate copy of the video that you
16 pulled?

17 A. Yes, sir, it is.

18 Q. Did you give that -- hand that to Officer McMahan?

19 A. Yes, sir.

20 Q. And has it been tampered or altered in any manner?

21 A. No, sir.

22 Q. And you know that how?

23 A. I viewed the video prior to coming here.

24 Q. And you initialed that and signed it to where you
25 know that's the same disk?

1 A. Yes, I have.

2 Q. And it is a true and accurate copy?

3 A. Yes, sir, it is.

4 MR. WAGNER: Your Honor, at this time we would
5 move State's Exhibit Number 8 into evidence.

6 MR. ROSEMOND: No objection, Your Honor.

7 THE COURT: All right. Without objection
8 State's Exhibit Number 8 is admitted.

9 (WHEREUPON, State's Exhibit Number 8 was admitted
10 into evidence.)

11 MR. WAGNER: Your Honor, we would probably
12 publish this with the next witness, but that's the only
13 questions I have for Ms. Wright.

14 THE COURT: Any cross-exam?

15 MR. ROSEMOND: No, Your Honor.

16 THE COURT: All right. You may be excused.
17 And thank you for being with us.

18 MR. WAGNER: We would call David McMahan.

19 (WHEREUPON, the witness was duly sworn.)

20 THE COURT: All right. If you would, please,
21 sir, give us your full name, spelling your last name for
22 the record.

23 THE WITNESS: David McMahan, M-C-M-A-H-A-N.

24 THE COURT: Thank you, sir.

25 **DAVID MCMAHAN,**

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1 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

2 DIRECT EXAMINATION

3 BY MR. WAGNER:

4 Q. Detective McMahan, what are your current job duties
5 at the Sheriff's office?

6 A. I'm an investigator for the Sheriff's office.

7 Q. Were you working as an investigator back on February
8 11th, 2012?

9 A. Yes, sir.

10 Q. And then the week or so thereafter?

11 A. Yes, sir.

12 Q. Did you get assigned to work this burglary at Eric
13 Bush's house on Ivy Creek Lane or Road?

14 A. Yes, sir.

15 Q. As a result of -- well, tell me what do you do? As
16 an investigator, what do you do? What do you ---

17 A. My primary job is to investigate property crimes
18 throughout the county. However, I investigate any type
19 of crimes, especially felony crimes:

20 Q. Okay. Are you guys on call from every so many
21 weeks?

22 A. Yes, sir, we are.

23 Q. And when you're on call, do you investigate roughly
24 anything that comes up?

25 A. Yes, sir. When we're on call, anything from minor

- 1 to major, we will investigate it.
- 2 Q. And how long have you worked with the Sheriff's
3 office?
- 4 A. I've been with the Sheriff's office five years.
- 5 Q. Prior to working for the Sheriff's office, what did
6 you do?
- 7 A. I'm a certified auto repair mechanic.
- 8 Q. Okay. Did you have a mechanic's shop yourself?
- 9 A. Yes, sir. For twenty-one years, I owned and
10 operated my own auto repair shop.
- 11 Q. Okay. And you got called out to Eric Bush's house?
- 12 A. Yes, sir.
- 13 Q. What time approximately do you remember did you get
14 there?
- 15 A. Approximately, I got there one forty, one forty-
16 five, maybe something like that, in the afternoon.
- 17 Q. Okay. When you got there, what did you find had
18 happened?
- 19 A. I found that a burglary had just taken place and
20 that the victim had been tied and robbed.
- 21 Q. Did you talk to Eric Bush?
- 22 A. I did.
- 23 Q. As a result of talking to the victim, what -- did
24 you make a call to find out about a Bountyland store?
- 25 A. Yes, sir. How that come about was Mr. Bush had

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1 informed me that he had some credit cards missing in his
2 billfold. So I suggested to Mr. Bush that he call his
3 credit card company to try to cancel them so that maybe
4 we could save some his finances or whatnot. And he did
5 so. At that point the credit card company informed him
6 that his credit card had just recently been used, like in
7 the last few minutes.

8 Q. And what kind of time frame are you talking about in
9 relation to when he was robbed in his house?

10 A. I'd been there probably fifteen minutes or so when
11 he made the phone call, and then he discovered it had
12 just been used somewhere.

13 Q. Okay. And were you able to find out where it'd been
14 used?

15 A. Yes, sir. It'd been used at the Bountyland in
16 Westminster.

17 Q. And what did you do?

18 A. At that point, I asked dispatch to try get a deputy
19 to respond over there in the hopes that maybe whoever was
20 using that card would still be there.

21 Q. Okay. And did anything come about with that? Was
22 the person still there?

23 A. No, sir.

24 Q. Did you later on go on over to Bountyland when you
25 finished at the scene?

1 A. After I did my thorough investigation of the crime
2 scene, I then left and departed and went over to the
3 Bountyland store in Westminster.

4 Q. Did y'all try to lift any prints at the crime scene?

5 A. We did.

6 Q. Okay. Were you present when the pictures were
7 taken?

8 A. Yes, sir.

9 Q. You saw the pictures earlier in court?

10 A. Yes, sir.

11 Q. Are they a true and accurate representation of how
12 the scene looked?

13 A. Yes, sir, they are.

14 Q. Did you determine whether there was a forced entry
15 or not?

16 A. Yes, sir. One of the back doors that we saw in the
17 picture, one of the two, there was definitely a -- the
18 pane in the door had been burst. Someone had busted it
19 open and went in there.

20 Q. Were y'all able to get any prints on the scene?

21 A. No, sir, we were not able to get any prints.

22 Q. What did you do next? Was there anything else at
23 the scene that was unusual?

24 A. Yes, sir. At the ---

25 Q. Let me stop you there. Let me show you ---

1 A. Okay.

2 Q. --- State's Exhibit 6-A. Anything unusual in that
3 picture that struck you as odd?

4 A. Yes, sir, there is one item in there that does
5 strike me as odd.

6 Q. And what is that?

7 A. If you'll notice on the sidewalk right there leading
8 up to the front door, there's a spot or a stain in the
9 concrete.

10 Q. Okay. And tell us why that's unusual. What drew
11 your attention to it?

12 A. Well, as testified earlier in the pictures, there
13 was a glove there right close by laying in the yard. But
14 that's definitely a fluid from an automobile, and I
15 determined it was transmission fluid.

16 Q. And how do you know that?

17 A. My years of experience as an auto mechanic, basic
18 fundamentals is knowing what kind of fluids and liquids
19 are in vehicles.

20 Q. Okay. And is the position on that, that stain -- is
21 it consistent with anything to your knowledge as an auto
22 mechanic?

23 A. Yes, sir. It's consistent with an automatic
24 transmission leak.

25 Q. Okay. And where would that be? How would a

1 transmission leak get there?

2 A. The only way a transmission leak would get there, if
3 an automobile was parked over it, over this sidewalk.

4 Q. Okay. Did you later put that together when you
5 investigated the case as far as how that was relevant to
6 your case?

7 A. Yes, sir, I did.

8 Q. Okay. Let me show you State's Exhibit 6, 6-C.

9 THE COURT: C?

10 MR. WAGNER: Yes, sir.

11 Q. Now, is this the stain that you're talking about
12 here, this shiny area?

13 A. Yes, sir.

14 Q. All right. And I believe here in the other picture,
15 was that the glove that you're talking about that was
16 found?

17 A. Yes, sir, it is.

18 Q. And in talking with the victim and stuff, were you
19 able to determine had any of those items, the stain or
20 the glove, been there prior to him going to bed that
21 morning?

22 A. Yes, sir. That was not there prior to him going to
23 bed.

24 Q. Okay. What else did you do at the crime scene as
25 far as taking pictures, anything else that -- I guess you

1 talked to the victim at length?

2 A. I did. I talked to him at length. I did a walk-
3 through of the property, to see if there was any other
4 evidence in the yard, in the back yard. Noticed, as the
5 pictures indicate, these doors that were open in the
6 back. So I did a thorough walk around the house as well
7 as inside.

8 Q. From there, did you go to Bountyland?

9 A. Yes, sir, I did.

10 Q. Okay. And why, again, did you go to Bountyland?

11 A. I went to Bountyland because the credit card company
12 had informed the victim that his credit card that was
13 taken from that home had been just recently used.

14 Q. Okay. Let me show you what was just previously put
15 into evidence as State Exhibit Number 8. Do you
16 recognize State's Exhibit Number 8?

17 A. Yes, sir, I do.

18 Q. And what is that?

19 A. This is a videotape from Bountyland Quick Stop.

20 Q. And have you -- is that the copy of the tape that
21 you received from Michele Wright who just previously
22 testified?

23 A. Yes, sir.

24 Q. And has it been altered or tampered with in any
25 manner?

1 A. No, sir.

2 Q. Did you view that with her at the store?

3 A. Yes, sir, I did.

4 Q. Okay. Let me have that back if you don't mind,
5 please, sir:

6 MR. WAGNER: Your Honor, at this time we would
7 ask to publish State's Exhibit Number 8?

8 THE COURT: Any objection?

9 MR. ROSEMOND: No objection, Your Honor.

10 THE COURT: All right. Without objection you
11 may publish the exhibit.

12 (Pause while Mr. Wagner attempted to play the
13 video.)

14 MR. WAGNER: I'm sorry for the delay, Your
15 Honor. I think we're ready. And I would ask if the
16 witness could step down.

17 THE COURT: Certainly.

18 Q. Mr. McMahan, can you come down here and explain to
19 us what's here?

20 A. Yes, sir.

21 (WHEREUPON, the witness stepped down from the
22 witness stand, and State's Exhibit Number 8 was
23 published in open court.)

24 Q. Mr. McMahan, what do we have here? What are we
25 looking at?

1 A. This is four surveillance cameras at the Westminster
2 Bountyland Store.

3 Q. What were you looking for on that day?

4 A. We were looking for -- since we received information
5 that Mr. Bush's credit card had just been used at this
6 location, then we immediately asked for the video
7 surveillance to see if we could see a face.

8 Q. Okay. Would you show us what you saw in the course
9 of your investigation?

10 A. Yes, sir. Would you like all four frames up at the
11 same time or one at a time, or how would you like it?

12 Q. Let's do it all four together?

13 A. Okay. There's a little bit of time lapse right
14 here, as you see. And then we'll -- okay. Do you notice
15 the blue Taurus right here?

16 Q. Yes, sir.

17 A. This is what I'm looking at right here.

18 Q. Were you able to determine whose car that was?

19 A. I was.

20 Q. And whose car was it?

21 A. It belongs to Timothy and Amanda Wirtz. There's a
22 little bit of time lapse. People are still just sitting
23 here at this point. No one's gotten out of the vehicle
24 yet.

25 Now the driver, he exits the vehicle and walks

1 around as if to go ahead and start pumping gas.

2 Q. Were you able to determine if the card was used at
3 that pump?

4 A. Yes, sir.

5 Q. Was it used at that pump?

6 A. For gas.

7 At this point, the Defendant goes around to the door
8 right here, passenger door, as if he's talking to
9 someone.

10 MR. ROSEMOND: Objection, Your Honor. Assuming
11 facts not in evidence. We don't know if that's the
12 Defendant right there.

13 THE COURT: All right. He's only describing
14 what he sees. And I think it's for the jury to determine
15 what it is.

16 A. Mr. Wagner, should we reverse this?

17 THE COURT: No. You're good.

18 THE WITNESS: We're good?

19 THE COURT: Go ahead.

20 A. Okay. What we see now was the Defendant walking
21 from here and enters this door right here. And I'm
22 sorry. We must -- we probably missed it. The Defendant
23 is walking through the parking lot. You will soon see
24 him enter right here, this door. Right here. Walks
25 across -- walked across to an A.T.M. machine that's in

- 1 the store right here. At this point, he is attempting to
2 get money from the A.T.M. machine right here, punching
3 some numbers, and has put a debit card or credit card in
4 the slot here. Walks across the store right here, looks
5 towards the camera right here. Here's the back shot.
6 Looks at a few things on an aisle. Comes back right here
7 and here, then exits. Back in the picture right here.
8 Exits from the door, walks back to the Taurus. At this
9 point I believe he put his gas cap back in.
- 10 Q. So gas was purchased on the stolen credit card at
11 the gas pump?
- 12 A. Yes, sir.
- 13 Q. What do you have to do to access gas on a gas pump
14 like that?
- 15 A. You insert the credit card. It asks for a zip code,
16 you punch in a zip code and you're ready to go and get
17 gas.
- 18 Q. You would just have to know what zip code somebody
19 lived in?
- 20 A. Yes, sir.
- 21 Q. Did anybody -- was he able to access the ---
- 22 A. Here's the Taurus leaving now at this point.
- 23 Q. Was he able to access any money out of the PIN
24 machine?
- 25 A. No, sir. The A.T.M. machine?

1 Q. When you looked at that video in the presence of
2 Michele Wright, what thought crossed your mind?

3 A. The thought crossed my mind that I knew this person.

4 Q. And who did you think it was?

5 A. Timothy Wirtz.

6 Q. Okay. Were you later able to slow that video down
7 to look at it closer than we've been able to do right
8 here?

9 A. Yes, sir.

10 Q. Okay. And did that change your mind in any manner
11 that that was the Defendant here, Timothy Wirtz?

12 A. No, sir. I played this video over many times in my
13 office.

14 Q. Okay. Is that, I guess, as far as the end of it?

15 A. This is the end of it.

16 Q. Okay. If you would, please have a seat back.

17 (WHEREUPON, the witness resumed the witness stand.)

18 THE COURT: Are you through with the ---

19 MR. WAGNER: Yes, sir. I'm through with that
20 for this second.

21 Q. Did you tell anyone, any of the people that you work
22 with or did you say anything about when you were watching
23 that, that you felt like it was Timothy Wirtz?

24 A. No, sir.

25 Q. Why didn't you?

1 A. Well, when I looked at it and I said it in my mind,
2 I said, I believe that's Timothy Wirtz, I just kept it to
3 myself because at the time I just wanted to try to
4 corroborate, see if it was.

5 Q. Okay. So what did you do next? Did you pretty much
6 stay up around the clock working on this case?

7 A. Yes, sir, I pretty much -- because of the
8 seriousness of this crime, I felt it my duty to stay out
9 as long as necessary to try to solve this crime.

10 Q. What was your next break as far as this crime? What
11 happened?

12 A. My next break in the case?

13 Q. Yeah.

14 A. Well, as my investigation progressed, I had learned
15 through my investigation that a person had been seen with
16 a rifle in the Standpoint Vista area. And I had asked
17 all the deputies in the area to completely scan the
18 county looking for any suspects matching the description
19 or whatnot. And I had information that someone was seen
20 with a rifle in the Walhalla Standpoint Vista area. So
21 myself and other deputies had responded there at that
22 location.

23 Q. Okay. And did you go to -- did your investigation
24 lead you to Candace Roberts' apartment?

25 A. Yes, sir, it did.

- 1 Q. Was that 5-B Standpoint Vista?
- 2 A. That's correct.
- 3 Q. Was the picture we saw up earlier of the B where she
- 4 -- where is Standpoint Vista?
- 5 A. Standpoint Vista is near the right now Walhalla High
- 6 School on the Walhalla -- the Pickens Highway. It's
- 7 right off Pickens Highway close to Sertoma Field.
- 8 Q. Okay. Did you go in there and did you talk to Ms.
- 9 Roberts?
- 10 A. Yes, sir, I did.
- 11 Q. And were you able to determine -- were you able to
- 12 recover a firearm?
- 13 A. I was.
- 14 Q. Let me show you what's been marked 7-A.
- 15 A. Yes, sir.
- 16 Q. Do you recognize that?
- 17 A. Yes, sir. That is from the apartment, apartment B,
- 18 5-B, I believe it is.
- 19 Q. 7-B?
- 20 A. Yes, sir. I recognize that as the inside living
- 21 area of 5-B.
- 22 Q. And do you recognize the rifle?
- 23 A. I do.
- 24 Q. And which rifle is that?
- 25 A. That's the .270 Winchester deer hunting rifle.

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1 Q. Okay. And were you able to return that to the
2 victim?

3 A. Yes, sir, I was.

4 Q. Was he able to identify that as his rifle?

5 A. Yes. That night, when I discovered the rifle there
6 in the apartment, I immediately called the victim. And I
7 asked the victim -- I said, I need you to describe a
8 rifle for me over the phone. And he did so. He
9 described in detail that rifle over the phone to me.

10 Q. Okay.

11 A. Things that only he would have known about it.

12 Q. And do you recognize 7-C?

13 A. Yes, sir, I do.

14 Q. And what is that?

15 A. That's an opening in the A.C. duct work at the
16 apartment there at 5-B.

17 Q. Okay. And why is that significant? Why did you
18 take the picture of it?

19 A. I took that because that is where the gun was
20 concealed, the rifle.

21 Q. Was it behind a grate?

22 MR. ROSEMOND: Objection, Your Honor. Leading.

23 THE COURT: Sustained. Restate your question.

24 Q. Why do you say it was concealed?

25 A. Well, you don't normally store an expensive hunting

1 rifle in an A.C. duct work. That's not reasonable. So
2 when I say concealment, you normally -- that would be
3 probably a concealment-type issue.

4 Q. And were you able to find out where that rifle came
5 from?

6 A. Yes, sir.

7 Q. Were you able to locate Heath Bates?

8 A. Yes, sir.

9 Q. Heath Bates, I believe, testified here earlier this
10 morning. Where did you find Heath Bates?

11 A. I found -- Heath Bates had been arrested earlier in
12 -- as he testified, in an apartment just right across
13 from that apartment. And I then went to the detention
14 center here in Oconee to talk to Mr. Bates.

15 Q. And in talking with Mr. Bates, were you able to
16 figure out where and when he got the rifle there?

17 A. Yes, sir, he did give me a statement.

18 Q. You heard him testify here today?

19 A. I did.

20 Q. Was his testimony here today -- was it the same
21 thing as what he told you in the statement basically?

22 A. Yes, sir, it was.

23 Q. Who did he say he got the rifle from, or where did
24 he get it?

25 A. He said he got the rifle from Timothy Wirtz.

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1 Q. And where did he get the rifle at?

2 A. He said he got the rifle from Timothy Wirtz's
3 residence, his home.

4 Q. Okay. Well, where did Timothy Wirtz live?

5 A. Timothy Wirtz lives just right up the road from
6 Standpoint Vista. There is a gas station, which is now
7 called the Marathon, I believe, right past the now
8 Walhalla High School. He lives in a home right behind
9 that gas station.

10 Q. And what's the name of that gas station?

11 A. The gas station has recently changed names, but it's
12 been known at one time as Fairfield Grocery for years.
13 Now it's called, I believe, the Marathon.

14 Q. Okay. You're talking just a couple of miles from
15 here?

16 A. Oh, yes, sir. Just a couple of miles from here.

17 Q. Where we're sitting today?

18 A. Yes, sir.

19 Q. Is that location consistent with what Veronica Smith
20 testified to, where she went somewhere with Tim Elrod?

21 A. Yes, sir. She testified she went to a home right
22 there behind the gas station.

23 Q. When you talked to her, is what she told you she
24 went -- is that consistent to where Timothy Wirtz was
25 living on February 11th, 12th, 2012?

1 A. Yes, sir.

2 Q. And did you find -- Heath Bates, is he related to
3 anybody else that was named in the course of your
4 investigation?

5 A. Yes, sir, he is.

6 Q. And who was that?

7 A. Greg Bates, the father of Heath Bates.

8 Q. Okay. At this point, where did you go? I mean,
9 what did you do next in the course of your investigation?
10 What was your next step?

11 A. At the course of my investigation as it was
12 progressing, based on the evidence that I did retrieve,
13 items from the home of the incident location, and based
14 on the fact that where Mr. Bates told me he'd got it
15 from, at that point I went ahead and had probable cause
16 enough for a warrant for Mr. Wirtz's arrest.

17 Q. Okay. And when did you get those warrants?

18 A. I believe that was on the 13th.

19 Q. So according to your time line, what you've
20 testified here today, the robbery occurred on the 11th?

21 A. The robbery occurred on the 11th.

22 Q. You saw video on the 11th? When you saw it, you
23 said that's Timothy Wirtz?

24 A. Yes, sir.

25 Q. All right. On the 12th you recovered a rifle from

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- 1 Candace Roberts' house?
- 2 A. Yes, sir.
- 3 Q. Linked it to Heath Bates?
- 4 A. I did.
- 5 Q. Who told you that he got it from Timothy Wirtz at
- 6 Timothy Wirtz's house?
- 7 A. Yes, sir.
- 8 Q. All right. Then you went and got warrants for
- 9 Timothy Wirtz?
- 10 A. Yes, sir.
- 11 Q. Were you able to find Timothy Wirtz on the 13th?
- 12 A. On the 13th I was actually looking for him but did
- 13 not find him on the 13th, no, sir.
- 14 Q. When were you able to locate Timothy Wirtz? How
- 15 were you able to locate Timothy Wirtz and where did you
- 16 see him?
- 17 A. At that point, I had sent word out to all deputies
- 18 and people within the community that I needed to speak to
- 19 Timothy Wirtz. So at that point, some people had made
- 20 arrangements for me to meet Mr. Wirtz.
- 21 Q. And who were these people?
- 22 A. These people were some acquaintances of Mr. Wirtz.
- 23 And I had the help of some narcotics officers.
- 24 Q. Okay. And who did you talk to to help you? Did
- 25 anybody call you to give you information on that?

- 1 A. A Carrie Tyner, I believe, had spoke to me possibly
2 twice, I believe, by phone.
- 3 Q. Did you know Carrie Tyner?
- 4 A. Yes.
- 5 Q. As a result of your conversation with her, where did
6 you go and what did you do?
- 7 A. We arranged to have a meeting place at Tabor Mount
8 Baptist Church which is off Tabor Road in Westminster.
- 9 Q. Okay. Did you go to the church?
- 10 A. I did.
- 11 Q. Approximately what time did you go to the church?
- 12 A. My time would be between four thirty and five was
13 when I arrived there. In the afternoon. I'm sorry.
14 Four thirty in the afternoon.
- 15 Q. All right. And when you got to the Tabor Church,
16 who did you see?
- 17 A. At that point, Ms. Tyner, Carrie Tyner, arrived in
18 the Taurus that we saw in the video. And Mr. Wirtz was
19 there with her, and they both arrived in the parking lot.
- 20 Q. Who was driving?
- 21 A. Ms. Tyner was driving.
- 22 Q. And whose car is that?
- 23 A. The car belongs to Tim Wirtz and his wife Amanda.
- 24 Q. Okay. Did you talk to -- did you get out of the car
25 and talk to him? Was anybody with you?

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- 1 A. Yes. Yes, I was with narcotics officers.
- 2 Q. Okay. And did you confront Timothy Wirtz?
- 3 A. I did. I got out of the vehicle I was in as they
- 4 rolled up. And I both spoke to Carrie and Tim.
- 5 Q. Okay. Did you tell him why you were there?
- 6 A. Yes.
- 7 Q. When you're talking to somebody like that, what's
- 8 the first thing -- if you're going to be asking him
- 9 questions, what do you have to do as a law enforcement
- 10 officer?
- 11 A. Yes, sir. As a law enforcement officer, it's my
- 12 duty to inform them of their Miranda rights.
- 13 Q. Let me show you what's been marked State's Exhibit
- 14 Number 1.
- 15 A. Yes, sir.
- 16 Q. Do you recognize that?
- 17 A. I do recognize it.
- 18 Q. Okay. And what is that?
- 19 A. This is a Miranda form -- it's in written form --
- 20 that Oconee County Sheriff's Office -- it's our policy to
- 21 read to someone we're going to question before we
- 22 question them.
- 23 Q. Okay.
- 24 MR. WAGNER: Your Honor, if I could ask the
- 25 witness to step down to the video?

1 THE COURT: Sure.

2 (WHEREUPON, the witness stepped down from the
3 witness stand.)

4 Q. If you could, Officer, is that the actual copy of
5 the form that you did that day? And when I say copy, is
6 that the actual form that you used that day?

7 A. Yes, sir, that is the actual form that I used.

8 Q. Okay. And has it been altered or tampered with in
9 any manner?

10 A. No, sir, it has not.

11 Q. Has it been in your custody since you had it that
12 day?

13 A. It's been in my custody.

14 Q. Will you explain to us what, like I say, again, what
15 that is and exactly how you used it and what you did?

16 A. Yes, sir.

17 Q. Starting at the place up at the top up there, what
18 exactly did you do?

19 A. As I mentioned earlier, this is the form that we use
20 in the Sheriff's office. It's in written form. At the
21 top, it's basically to understand your rights, your
22 Miranda rights. The first line is the place where the
23 Miranda rights was given. As you can see, I put the
24 church. The date was the date that we did -- I read the
25 Miranda rights to Mr. Wirtz, and the time was five oh

1 eight p.m. in the afternoon.

2 Q. Okay.

3 A. What we do is so that the Defendant or the person
4 you want to question completely and fully understands
5 their Miranda rights, we read each line separately in the
6 Miranda warning. And then once we read each line, we ask
7 them if they will initial it that they understand each
8 line so that we want to make sure that they understand
9 perfectly their rights.

10 Q. Okay.

11 A. So the first line is, before we ask you any
12 questions, you must understand your rights. Then you ask
13 them to initial it if they understand that line. The
14 second line is, you have the right to remain silent. Do
15 you understand that? If you do so, then you initial it
16 that you understand it. The third line, anything you say
17 can be used against you in court. Do you understand
18 that? Yes. Well, then put your initial there that you
19 understand it. You have the right to talk to a lawyer
20 for advice before we ask you any questions and to have
21 him with you during questioning. Do you understand that?
22 Yes, by indicating your initials. If you cannot afford a
23 lawyer, one will be appointed for you before any
24 questions, if you wish. Do you understand that? Yes.
25 Indicate by initials. If you decide to answer questions

1 now without a lawyer present, you will still have the
2 right to stop answering at any time. Do you understand
3 that? Yes, by indicating initials. I have read this
4 statement of my rights, and I understand what my rights
5 are. I'm willing to make a statement and answer
6 questions. I understand and know what I'm doing. No
7 promises or threats have been used to me and no pressure
8 or coercion of any kind has been used against me. Do you
9 understand this? Yes, by indicating initials. The last
10 -- the person who you requested signs. I witness it.

11 That's my signature. This is Mr. Wirtz's signature and
12 the time you ended this Miranda form.

13 Q. Now, did you do that exactly as you just described
14 to us? Did you read everything to him, and those are his
15 initials?

16 A. Those are his initials.

17 Q. Did he write those initials?

18 A. He did.

19 Q. In your time in law enforcement, have you had the
20 opportunity to view people that have been under the
21 influence of alcohol or drugs or a combination of them?

22 A. Yes, sir, quite often I've had that.

23 Q. You can go back.

24 (WHEREUPON, the witness resumed the witness stand.)

25 Q. And did he appear -- the Defendant, did he appear to

1 be under the influence of alcohol or drugs or anything at
2 the time you met him at the church?

3 A. No, sir.

4 Q. I think it was on February 14th?

5 A. On February 14th, no, sir.

6 Q. What was his appearance? Can you describe it?

7 A. Yes, sir. His appearance was he -- I remember he
8 had a long coat, a dark coat on. He had on a hat and he
9 had what appeared to be some type of cloth or bandana
10 underneath his hat. Boots. Slender, dark-haired, light
11 male.

12 Q. Did he respond to your Miranda -- when you read him
13 the Miranda rights and you asked him to sign them, would
14 he answer your questions or when he talked to you, did he
15 respond appropriately?

16 A. Yes, sir, he did.

17 Q. Okay. And he didn't appear to you to be under the
18 influence of anything?

19 A. No, sir.

20 Q. Did he appear to be tired?

21 A. He appeared tired. I think he even made the comment
22 maybe he said he'd been up all night.

23 Q. Did you at any time ever promise him anything, hold
24 out any hope for reward or anything of that nature? A
25 lighter sentence or anything? Or did you ever threaten

1 him in any manner to give you -- to sign away his rights
2 and agree to talk to you?

3 A. Absolutely not.

4 Q. Did he agree to talk to you?

5 A. He did.

6 Q. Did he waive his rights and agree to go with you to
7 the Sheriff's office?

8 A. Yes, sir, he did.

9 Q. Did you ask him to go to the Sheriff's office with
10 you?

11 A. I did.

12 Q. And how did y'all get there?

13 A. We were -- we went there by a vehicle there that
14 belongs to the Sheriff's office.

15 Q. Okay. Did he sit in the back seat?

16 A. He did.

17 Q. Did you tell him where y'all were going and what you
18 were going to be talking about?

19 A. Yes, sir.

20 Q. Did you talk on the way there?

21 A. We did.

22 Q. Did you talk about the case or just talk about small
23 talk?

24 A. It was more or less small talk. It was we-know-
25 what-this-is-all-about-let's-get-this-over-with type

1 conversation.

2 Q. Okay. And in talking to him, was his speech
3 coherent on the way over there?

4 A. Yes, sir. I had a conversation with him all the way
5 from Westminster to Walhalla.

6 Q. Did he respond to what you said appropriately?

7 A. Oh, yes, sir.

8 Q. Did he ever ask for an attorney or ever once cease
9 questioning?

10 A. No, sir.

11 Q. If he had, would you have stopped?

12 A. Yes, sir. It's my duty to stop if he asks for an
13 attorney.

14 Q. When you got to the Sheriff's office, where did
15 y'all go?

16 A. We went to the investigation division, which is in
17 my department. We have an interrogation room in there
18 that is a room where we sit down with a table and we can
19 talk about things.

20 Q. Okay. Is it quiet there?

21 A. Yes, sir.

22 Q. Okay. Is it right near y'all's offices?

23 A. It is. It's in our -- right there near our offices.

24 Q. Okay. And what did y'all talk about? What did you
25 ask him?

1 A. Well, I asked him -- I said, Tim, you know, we need
2 to talk about some things, serious things. And he's --
3 at this point he's agreeing that we should talk about
4 some things. And I started asking him about the case.

5 Q. Did you bring up the fact that you had him on video?

6 A. Yes, sir.

7 Q. Okay. Did you bring up the fact that you recovered
8 a rifle that was linked to him?

9 A. I did.

10 Q. That had been stolen?

11 A. I did.

12 Q. And what was his demeanor when you brought these
13 things up?

14 A. He had the demeanor that he was -- again, earlier he
15 said, let's get this over with, type deal. It's a
16 comment that I remember him saying. So he started
17 talking to me about it.

18 Q. Okay. As he talked to you, did you take notes?

19 A. I did.

20 Q. Okay. When he started telling you things about the
21 crime, did you do anything? Did you get up and leave?

22 A. There would be times when I would get up and leave
23 if I had to take a phone call or something like that
24 maybe. But very brief. I would come right back in.

25 Q. Were you still in there by yourself at this point?

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1 A. At this point Mr. Wirtz and I was together, yes.

2 Q. Did you ever involve anybody else in your
3 conversation?

4 A. Yes. Once Mr. Wirtz was willing to tell all, I
5 asked Lieutenant Gentry Hawk, who was an investigator in
6 there in our department -- he was there in his office.
7 And I stepped out to ask Mr. Hawk to come in and be a
8 witness to what was going to be a confession.

9 Q. Okay. And did he come down there while y'all
10 discussed what had happened?

11 A. I'm sorry, sir?

12 Q. Was Gentry Hawk there while y'all discussed what had
13 happened?

14 A. He was.

15 Q. And was anybody else in the room?

16 A. No one was in the room but Mr. Hawk, Lieutenant
17 Hawk, myself and Timothy Wirtz.

18 Q. Let me show you what's been marked as State's
19 Exhibit Number 2. Do you recognize State's Exhibit
20 Number 2?

21 A. Yes, sir, I do recognize it.

22 Q. And what is that?

23 A. This is a voluntary statement written by Tim Wirtz.

24 Q. Okay. Is that the statement that you took from him
25 after five o'clock on the 14th of February?

1 A. Yes, sir. This is the original statement.

2 Q. Okay. Has that been in your custody ever since?

3 A. This has been in my custody ever since.

4 Q. Has it been altered or tampered with by anybody?

5 A. No, sir, it's not.

6 MR. WAGNER: Your Honor, if we could, we would
7 ask the witness to step down here again.

8 THE COURT: Very well.

9 (WHEREUPON, the witness stepped down from the
10 witness stand.)

11 Q. Detective McMahan, can you tell us ---

12 MR. ROSEMOND: Your Honor, I object. He has
13 not moved to have this introduced to the jury, and it's
14 being published without having that.

15 THE COURT: Did you move for admission?

16 MR. WAGNER: I thought it was already in. But
17 -- I'm sorry. I thought it was entered on an earlier
18 hearing. If not, I'll go ahead and ---

19 THE COURT: All right. I understand. Madam
20 Forelady, ladies and gentlemen of the jury, how about
21 return to the jury room. I need to take up a matter of
22 law with the attorneys. Again, do not undertake a
23 discussion of this case among yourselves in any way.

24 (WHEREUPON, the jury exited the open court at
25 approximately 3:52 p.m.)

1 THE COURT: All right. State your objection
2 again, Mr. Rosemond.

3 MR. ROSEMOND: Your Honor, ultimately if he's
4 going to introduce that into evidence, I've got to put
5 some objections on the record before he publishes that to
6 the jury. And simply my objections are, you know, it
7 would prohibit his Fifth Amendment rights and his Sixth
8 Amendment rights, Your Honor. And if we don't do that,
9 then it won't be ---

10 THE COURT: I understand. You're absolutely
11 correct. Of course, I did rule that it was admissible,
12 but that was done upon the preponderance of evidence as
13 to whether or not it was voluntary and also given in
14 accordance with the Fifth and Sixth Amendments of the
15 constitutional rights. But you have not moved for it's
16 admission. Now, I trust you're going to do that at this
17 time.

18 MR. WAGNER: I will do that at this time, Your
19 Honor. We would move to admit State's Exhibit Number 1
20 and 2. And I guess I'll go ahead and admit 3 and 4.
21 Those were the four that we dealt with yesterday.

22 THE COURT: All right. Let's see. So that
23 will be -- 1 is the Miranda rights.

24 MR. WAGNER: Yes, sir.

25 THE COURT: 2 is the first statement, and 3 is

1 third statement.

2 MR. WAGNER: Yes, sir. And 4 was the phone
3 calls.

4 THE COURT: All right. We had a Jackson v.
5 Denno hearing on the admissibility. I will admit it.
6 I'll instruct the jury that, of course, it's for them to
7 determine whether or not it will be considered as
8 evidence in this case, or at least, if at all, how it
9 would be considered as evidence in this case. Whereas,
10 my decision would be -- has been made on the burden of
11 proof being the preponderance of evidence, that on the
12 finding by the jury, it must be beyond a reasonable
13 doubt. I'll give them an instruction. However, I will,
14 when the jury returns, upon Mr. Wagner's motion to admit
15 it, I'll grant that motion over your objection.

16 MR. ROSEMOND: And my objection would be for
17 all of the evidence, 1, 2, 3, and 4, Your Honor.

18 THE COURT: Right. But as far as the three
19 dealing with the alleged statement. All right. Very
20 good.

21 Anything more?

22 MR. WAGNER: No, sir. No, sir.

23 THE COURT: All right. I tell you what. Well,
24 why don't you come back, Sergeant, and we'll go from
25 there after I instruct the jury.

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1 (WHEREUPON, the witness resumed the witness stand.)

2 THE COURT: All right. Anything further from
3 the State before we ...

4 MR. WAGNER: No, sir.

5 THE COURT: From the Defense?

6 MR. ROSEMOND: No, Your Honor.

7 THE COURT: All right. Ask the jury when --
8 well, see if they're ready to come back. If they're not
9 quite ready ...

10 (WHEREUPON, the jury entered the open court at
11 approximately 3:56 p.m.)

12 THE COURT: All right. Madam Forelady, ladies
13 and gentlemen of the jury, we've come to a point now
14 where an alleged statement or a statement allegedly to
15 have been made by the Defendant has been moved to be
16 admitted into evidence. And the Court, based on its own
17 finding, has ruled that it has -- that this statement, as
18 well as the Miranda warnings which are State's Exhibits
19 1, 2, and 3 have been admitted into the record in this
20 case, allegedly to have been made by the Defendant.

21 Before you may consider these statements as evidence
22 for any purpose, however, you must determine four
23 questions. First, did the Defendant even make the
24 statement? Second, was the Defendant warned of his
25 constitutional rights? Three, did the Defendant

1 knowingly and intelligently waive his constitutional
2 rights? And fourth, was the statement given freely and
3 voluntarily?

4 The fact that the Court has admitted a statement
5 into evidence should not be considered by you as any
6 evidence whatsoever and that the Defendant made such a
7 statement or that the required constitutional safeguards
8 were, in fact, provided and waived by the Defendant or
9 that this statement was voluntarily given because these
10 issues are for you, the jury, to determine. And the
11 State must prove beyond a reasonable doubt each of these
12 four requirements that I just stated to you before you
13 may consider the statement as evidence for any purpose.

14 If you conclude that the Defendant did not make the
15 statement, then you must completely and totally disregard
16 the statement. If you conclude that the Defendant did
17 not make the statement, you cannot and you must not
18 consider the statement as evidence in any manner
19 whatsoever, and you should completely disregard the
20 statement in its entirety in every part.

21 If you find the Defendant did make the statement,
22 you must then consider whether the Defendant was warned
23 of his constitutional rights. Those rights are, one,
24 that he had the right to remain silent, two, that any
25 statement that he does make can and will be used against

1 him in a court of law, three, that the right -- he has a
2 right to select a lawyer of his choice. If he does not
3 have the money or resources to employ a lawyer, the court
4 will appoint and provide a lawyer to represent him
5 without cost or expense to him if he so desires. Four,
6 that he has a right to consult a lawyer before answering
7 any questions or making any statement. And five, that he
8 has a right to have his lawyer present with him at all
9 times during all interviews and all interrogations.

10 If you determine that these constitutional warnings
11 were not given to the Defendant prior to interrogation,
12 in the taking of the statement or that the Defendant was
13 not afforded the opportunity to exercise these rights,
14 you must completely disregard the statement. And in that
15 event, you cannot consider the statement as evidence in
16 any manner whatsoever.

17 If you find the Defendant did make the statement and
18 if you conclude that these constitutional rights were, in
19 fact, given to the Defendant and that the Defendant was
20 afforded an opportunity to exercise these constitutional
21 rights, you must next consider whether or not the
22 Defendant knowingly and intelligently waived his
23 constitutional rights. If you find the Defendant did not
24 knowingly and intelligently waive his constitutional
25 rights, then any answer given by him or any statement.

1 made by him cannot be used against him, and you must
2 completely disregard all of the testimony concerning any
3 such answers or alleged statement.

4 If you find that the Defendant did make the
5 statement and if you conclude that the constitutional
6 warnings were in fact given to the Defendant and the
7 Defendant was afforded an opportunity to exercise his
8 constitutional rights, and if you further find the
9 Defendant, after being given his constitutional warnings,
10 knowingly and intelligently waived his constitutional
11 rights and agreed to answer the questions and make a
12 statement, you must next consider whether the statement
13 was given voluntarily.

14 Now, the word voluntarily means that the statement
15 was an expression of the Defendant's own free will and
16 was not induced by any pressure, force or fear, or the
17 influence of any hope or promise of some benefit or
18 reward or extracted by threats or coercion or
19 intimidation. If the statement is not voluntary, it may
20 not be used against the Defendant unless it is the
21 product of an essentially free and unconstrained choice
22 by its maker. If the statement is voluntary, if the
23 statement [sic] is willed to make a statement then it may
24 be used against him. If the statement is not voluntary,
25 it cannot be used against him.

1 The true test to be applied as whether a statement
2 is freely, voluntary and understandingly made without any
3 compulsion or inducement with regard to the alleged
4 statement of the Defendant, the State must prove by
5 evidence of each and every requirement about which I've
6 instructed you beyond a reasonable doubt before you may
7 consider the alleged statement as evidence. The ultimate
8 question to be resolved by you with respect to the
9 alleged statement by the Defendant, in addition to the
10 questions of whether or not the Defendant made the
11 statement or whether or not his constitutional rights
12 were observed and knowingly and intelligently waived by
13 him, was the statement the expression of the Defendant's
14 own free will, made without compulsion or inducement but
15 representing an essentially free and unconstrained choice
16 by the Defendant, or was the product overborne of the
17 Defendant.

18 Absent any one of these requirements about which
19 I've instructed you, the alleged statement must be
20 disregarded completely. In that event, you will accord
21 no evidentiary weight whatsoever to it or any part of it.
22 On the other hand, if you find a reasonable doubt --
23 beyond a reasonable doubt that the statement made -- that
24 the Defendant made the statement and the Defendant was
25 given the required constitutional warnings before

1 interrogation, that the statement knowingly -- or that
2 the Defendant knowingly and intelligently waived his
3 constitutional rights and gave a voluntary statement, the
4 statement may be considered by you together with all the
5 other evidence in the case and given such weight and such
6 value and such effect as you may conclude that it is
7 entitled.

8 As I said, the fact that the statement and the
9 Miranda warnings have been admitted by the Court does not
10 mean that it is controlling on you. I admitted it solely
11 on a lesser-degree of proof, which is by a preponderance
12 of the evidence, whereas, you must make your
13 determination that it was given freely and voluntarily in
14 accordance to his constitutional rights, knowingly,
15 intelligently, freely and voluntarily waiver of those
16 rights and that it was, in fact, made beyond a reasonable
17 doubt.

18 All right. Anything further from the State?

19 MR. WAGNER: No, sir.

20 THE COURT: On the admission of the evidence?

21 MR. WAGNER: No, sir.

22 THE COURT: From the Defendant?

23 MR. ROSEMOND: No, Your Honor.

24 THE COURT: Very good.

25 All right. You may proceed.

1 (WHEREUPON, State's Exhibit Numbers 1, 2, 3, and 4
2 were admitted into evidence.)

3 Q. Officer, if you'd step back down.

4 A. Yes, sir.

5 (WHEREUPON, the witness stepped down from the
6 witness stand.)

7 Q. State's Exhibit Number 2 here, tell us what that is
8 and how it came about.

9 A. Yes, sir. This is a form that we at the Sheriff's
10 office use. It's a form that if anybody wants to put
11 anything in written form, they're welcome to do so. It's
12 voluntary. It says in bold letters up at the top
13 'voluntary statement.'

14 Q. Now, prior to this statement, State's Exhibit Number
15 1, you had given Mr. Wirtz his Miranda warnings on the
16 side of the road.

17 A. Yes, sir.

18 Q. At the church?

19 A. Yes, sir.

20 Q. And he'd signed off on and signed that he would
21 agree to go talk with you?

22 A. Yes, sir.

23 Q. Your testimony, I believe, was that he waived his
24 rights and he would go with you?

25 A. That's correct.

1 Q. And you asked him to go up to the Sheriff's office
2 and you talked to him and he said he would give you a
3 statement?

4 A. Yes, sir.

5 Q. Okay. Is State's Exhibit Number 2 the statement
6 that he first gave you or that he gave you?

7 A. Yes, sir, it is.

8 Q. Okay. And you say that's been in your custody ever
9 since?

10 A. It's been in my possession ever since.

11 Q. And that is the actual statement?

12 A. It is the actual statement.

13 Q. And has it been altered or tampered with?

14 A. No, sir. I examined it earlier. It has not been.

15 Q. And who was present when he wrote the statement, or
16 did he write the statement himself?

17 A. He wrote the statement himself.

18 Q. Okay. And where were you and Lieutenant Hawk?

19 A. We were at the same table, sitting right across from
20 him when he started writing.

21 Q. Okay. Did y'all stay in there the whole time while
22 he wrote?

23 A. No. It's customary for myself to step out of the
24 office so that the person writing the statement won't
25 feel that I'm leaning over their shoulder or anything.

1 Let them relax and write their statement.

2 Q. Did you promise him anything to give you this
3 statement?

4 A. No, sir.

5 Q. Did you hold out any hope for reward or a lighter
6 sentence or you would go to bat for him for a lighter
7 sentence? Did you promise him anything like that?

8 A. No, sir. I cannot promise anything.

9 Q. Did you threaten him in any manner?

10 A. No, sir.

11 Q. Did Lieutenant Hawk do any of those things?

12 A. No, sir.

13 Q. Did anybody come in that room, or did anybody come
14 in there and promise him anything or threaten him or try
15 to coerce him in any manner to go ahead and give you a
16 statement?

17 A. No, sir. The initial two people were Lieutenant
18 Hawk and I doing the interrogation.

19 Q. When this statement was taken?

20 A. Yes, sir.

21 Q. Did he agree to go ahead and give you the statement?

22 A. He did.

23 Q. And you let him write it?

24 A. Yes, sir.

25 Q. Okay. Tell us exactly. It's kind of hard to read.

1 Maybe it's my eyes. Can you go over there a little
2 closer and tell us exactly what he said and how he went
3 about doing it, say, to start the statement?
4 A. Yes, sir. Again, this form is a form that we use in
5 the Sheriff's office. And at the top, of course, it
6 says, 'voluntary statement.' And up at the very top
7 right here as you start, it's basic information on the
8 person that who's writing the statement. The date, who
9 you are, your birthday, where you live, as you see right
10 here. And then the person that's going to receive the
11 statement is myself. You see, 'Sergeant David McMahan.'
12 And I'm identifying myself as an investigator to Mr.
13 Wirtz.
14 Q. Who filled out that top part over there?
15 A. The top part was filled out by Mr. Wirtz.
16 Q. Okay. And what time did y'all start that statement?
17 A. Six thirty p.m.
18 Q. Now, I'm going to call it fine print. But the
19 smaller print right here that's hard to read.
20 A. Would you like for me to read it, sir?
21 Q. If you would, and explain what that is and what
22 those initials are on the left over there?
23 A. Yes, sir. What this is, this is a person's
24 constitutional rights to remain silent. And what we do
25 is we put this in printed form for the person to read

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1 before the actual statement is written. And what we at
2 the Sheriff's office do, it's customary for us to, once
3 they have read their constitutional rights, we'll ask
4 them to initial it that they do understand and have read
5 their constitutional rights. And if you'd like for me to
6 read, I'd be glad to.

7 Q. Well, no, that's okay. So they're basically the
8 same rights as you read to him on the Miranda form,
9 State's Exhibit Number 1.

10 A. It's the same right. And it does express the -- it
11 talks in detail -- this is Miranda again.

12 Q. I guess my question is, so he read them again in
13 your presence?

14 A. Being present. And then ---.

15 Q. He initialed?

16 A. He initialed that he had read it.

17 Q. And he still wished to give you a statement?

18 A. Yes, he did.

19 Q. What did he say?

20 A. Would you like for me to read it right here?

21 Q. Yeah. Just whatever is easier for you.

22 A. Let's see. I think I can read it easier here. This
23 is the statement I'm reading. "On February the 8th, I,
24 Timothy Wirtz, along with Gary Smith, Chad Bush, and Greg
25 Bates, were in my car, and we were short on cash. Chad

1 Bush told us we could enter his brother's house and take
2 guns, cash and jewelry and some traveler's checks. Chad
3 Bush said he could not be there because that's his
4 brother. The conversation was ended."

5 "On Saturday, around one p.m., me, Tim, Gary Smith
6 and Greg Bates went to the location that Chad Bush had
7 shown us, his brother's house. Then Gary Smith received
8 a house key from Chad Bush on the 8th of February and
9 which Gary used to enter the dwelling. I, Tim, stepped
10 up on the porch. Gary plundered the downstairs while
11 Greg Bates waited in car. I then heard a loud voice
12 upstairs, and I asked what's going on. Gary Smith then
13 tied up the victim and started bringing guns to the foyer
14 where I, Tim Wirtz, carried the guns, along with Greg
15 Bates, loaded the guns into the trunk ..."

16 Page two, "... into the trunk of my wife's '99 blue
17 Taurus. We, Greg, Gary and Timothy then witnessed Gary
18 Smith break a glass door per Chad Bush request so that it
19 looked like forced entry. I, Timothy, heard the
20 conversation myself between Chad and Gary. Gary then
21 ransacked the house to make it look like random per
22 Chad's request."

23 "I, Timothy, Greg, and Gary left the victim's house
24 to use an A.T.M. Then I, Timothy, went into the store to
25 use an A.T.M. and also used the card to purchase fuel."

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1 "We then left and transported the firearms to my,
2 Timothy's house where Heath Bates, Shane Elliott and
3 Daniel Morrison paid me in meth for some of the guns.
4 Austin Justice came to purchase another firearm. All
5 this time, Gary Smith was sitting in the back bedroom
6 collecting fifty percent while I and Bates got to split
7 the other half. Then they, Gary and Bates, stayed for
8 fifteen minutes and left."

9 Q. Okay. And did he sign that statement at the bottom?

10 A. He signed the statement at the bottom.

11 Q. Did you sign it, and did Gentry Hawk sign it?

12 A. I signed it, and Lieutenant Hawk signed it as well.

13 Q. And what time on the second page there -- if you
14 could push that up. What time did Timothy Wirtz write as
15 he finished the statement?

16 A. Timothy Wirtz, he scribbled out a time and initialed
17 it and then beside it put nine oh five p.m.

18 Q. Okay. Did he finish that statement at nine oh five
19 p.m?

20 A. No. He finished it not long after he started.

21 Q. Okay. But that's what he wrote?

22 A. That's what he wrote.

23 Q. Explain the big 'X' mark and the T.R.W. all around
24 the bottom there. Why do you do that and what's that
25 for?

1 A. Yes, sir. There again, that's unused portion of the
2 statement, the extra lines. So we ask the person writing
3 the statement if they'll do a big 'X' and initial their
4 'X' so that no one can add or take away anything from the
5 statement.

6 Q. Okay. Is that how he did it that day?

7 A. Yes, sir.

8 Q. Are there spots on that statement where he scribbled
9 things out and initialed that he had scribbled them out?

10 A. Yes, sir, there is.

11 Q. Do you tell them to do that if they want to change
12 something?

13 A. It's customary when somebody will make a mistake,
14 they'll scribble out the word or whatever that they made
15 a mistake on. And we ask them to initial it, that it was
16 their scribble marks.

17 Q. Okay. And everything on that statement is what he
18 put down?

19 A. Yes, sir, it is.

20 Q. And did y'all promise him anything, or did you
21 threaten him or try to coerce him in any manner to give
22 you that statement?

23 A. No, sir.

24 Q. Did anybody else at the Sheriff's office do -- was
25 anybody else present while that statement was given

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- 1 besides you and Gentry Hawk?
- 2 A. No, sir.
- 3 Q. Did you continue to talk with Timothy Wirtz?
- 4 A. Yes.
- 5 Q. Did he later want to add something to his statement?
- 6 A. He did.
- 7 Q. Okay. Let me show you what's been marked, while
- 8 you're still down here, State's Exhibit Number 3. And
- 9 what is State's Exhibit Number 3, and what time did you
- 10 start it?
- 11 A. This is also a voluntary statement. At this time it
- 12 started at seven thirty-seven p.m. in the upper right
- 13 corner.
- 14 Q. Okay. And did you fill out the top part there?
- 15 A. No, sir. Mr. Wirtz did.
- 16 Q. Okay. Did you write seven thirty-seven or did he?
- 17 A. I don't know that. I may have or he may have.
- 18 Q. Okay. But that's what time y'all started ---
- 19 A. That's what time we started. Look at the watch and
- 20 see what time you started and jot it down.
- 21 Q. What does he say in this statement, and why did
- 22 y'all take a second statement?
- 23 A. We took the second statement because Mr. Wirtz said
- 24 that he didn't mention something in the first statement
- 25 and wanted to add. So we naturally pulled out a brand

1 new statement and wanted to add something. So this is
2 why the second statement is here.

3 Q. Okay. And the reason you couldn't add anything to
4 the first statement, was it because of those Xs?

5 A. That's correct. When you 'X' it out and that
6 statement is filled up and signed at the bottom, then
7 naturally you'd want to go and do another one.

8 Q. What does he say here on the second statement?

9 A. He says, "On February the 9th at around one-thirty
10 p.m., I, Timothy Wirtz, drove Gary Smith to Yank, alias,
11 at Yank's house to stash some items from the Ivy Creek
12 burglary. Currently, Yank is holding the stolen items
13 and says he wants money to purchase the items stolen by
14 Gary Smith."

15 Q. Did he put that big 'X' there and initial it?

16 A. Yes, sir, the big 'X', there again, is to make sure
17 no one adds or takes away from the person writing the
18 statement is for.

19 Q. He says, "On February 9th" That's what he
20 wrote? That's his writing?

21 A. That's his writing.

22 Q. And is February 9th accurate?

23 A. No, sir, that's not accurate.

24 Q. Do you think maybe he just got confused on the date?

25 A. Yes, sir. The date is wrong. The incident occurred

- 1 the 11th.
- 2 Q. What time did that statement end?
- 3 A. It ended at -- down at the bottom, it ended at seven
- 4 forty p.m.
- 5 Q. And did you sign it, and did Gentry Hawk sign it?
- 6 A. Yes.. We both did.
- 7 Q. And did he sign it, Mr. Wirtz sign it, at the bottom
- 8 right?
- 9 A. Mr. Wirtz signed it at the bottom right.
- 10 Q. Either you or Gentry Hawk, was anybody else in the
- 11 room present when that statement was done?
- 12 A. No, not at this time.
- 13 Q. Did y'all promise him, Timothy Wirtz, anything to
- 14 give you that statement?
- 15 A. No, sir.
- 16 Q. Did you threaten him in any manner?
- 17 A. No, sir.
- 18 Q. Did you use any coercive tactics or try to coerce
- 19 this statement out of him?
- 20 A. No, sir, I did not.
- 21 Q. To the best of your knowledge, were both of these
- 22 statements and the rights waiver freely and voluntarily
- 23 given and agreed to by the Defendant?
- 24 A. Yes, they were.
- 25 Q. And his demeanor while he was giving this, was he

1 cooperative to you?

2 A. He was cooperative.

3 Q. Based on what he put in his first statement about
4 backing the car up to the front porch where they loaded
5 the guns, did you later put two and two together as far
6 as evidence you found at the crime scene?

7 A. Yes, sir.

8 Q. From what you understood what went on?

9 A. Yes, sir.

10 Q. Could you explain that?

11 A. You're referring to at the end where I understood
12 about the leak?

13 Q. Yes.

14 A. Yes, sir. As I testified earlier, there was a
15 transmission puddle in the sidewalk right there leading
16 up to the front door. Mr. Wirtz said that the Taurus was
17 backed up to the front door where the guns were loaded in
18 the trunk. Back at the church, I testified where we met
19 at the church, he signed a Miranda form. Carrie Tyner
20 had his vehicle, the Ford Taurus. She was going to drive
21 the vehicle because Mr. Wirtz was going with us. At that
22 time, Mr. Wirtz verbally told -- and I heard her say it
23 -- or excuse me -- I heard him, Mr. Wirtz, say, keep a
24 check on my transmission fluid because it's got a bad
25 leak. And that right there, I remember that very

1 distinctly.

2 Q. Were the things that the Defendant told you in his
3 statement that anybody else could have known outside of
4 you and the people working the investigation?

5 A. No, sir. It was my case, and that's -- I'm the one
6 that knew that.

7 Q. Okay. Were the things he told you consistent with
8 what the victim had told you?

9 A. Yes, sir.

10 Q. If you could have a seat, please.

11 (WHEREUPON, the witness resumed the witness stand.)

12 Q. Did y'all continue to talk to him?

13 MR. ROSEMOND: Your Honor, may we approach for
14 one second?

15 THE COURT: Oh, certainly.

16 (WHEREUPON, a bench conference was held off the
17 record.)

18 THE COURT: All right. I note an objection on
19 the record. Overruled.

20 All right. You may proceed.

21 Q. Did y'all continue to talk to the Defendant about
22 the case, you and Gentry Hawk?

23 A. Yes, sir, we did.

24 Q. And what did y'all tell him? What did y'all decide
25 to do? What transpired?

1 A. Well, at that point, I told Mr. Wirtz the importance
2 of these firearms, how much it meant to the victim.
3 These firearms were firearms that meant a lot to him.
4 There were cherished items. They were expensive items.
5 He was proud of his guns, his gun collection. I let Mr.
6 Wirtz know that and that it would be a good gesture on
7 his part to try to help us get these guns back. And he
8 agreed.

9 Q. Did you promise him anything to help you get the
10 guns back?

11 A. I did not promise him anything, no, sir.

12 Q. Did you or Gentry Hawk or any of the narcs or
13 anybody make him any promises in order to try to recover
14 the guns?

15 A. No, sir.

16 Q. Did you tell him that you'd be lenient or drop any
17 charges or go soft on him or light on him or try to --
18 did you give any hope or hold out any hope for rewards
19 like that in order to get him to help you recover the
20 guns?

21 A. No, sir.

22 Q. To the best of your knowledge, did he freely and
23 voluntarily agree to help you get the guns back?

24 A. He did agree to help, start getting help to get
25 these guns back, yes, sir.

1 Q. Did he know where they went?

2 A. Yes, sir.

3 Q. I believe you testified earlier in his statement he
4 told you he either sold or traded them for meth, did he
5 not?

6 A. He did. He put that in his statement.

7 Q. Okay. Did you know who these people were? Shane
8 Elliott, Heath Bates. I believe you'd already talked to
9 Heath Bates at that point though?

10 A. Yes, sir.

11 Q. Did you know who Shane Elliott and the other guys
12 were?

13 A. Yes, sir, I knew who these people were.

14 Q. While this was going on, were there any of the
15 narcotics agents present in the office, or did they come
16 by?

17 A. Yes, sir. They would come by to check on me and Mr.
18 Hawk because at that time, most of the Sheriff's office,
19 of course, normal working hours, they had left for the
20 day. So there was very few people in the Sheriff's
21 office. Myself and Mr. Hawk or Lieutenant Hawk was the
22 only two there. So the narcotics office was close.

23 They're close by. Just stop in and say, hey, you okay?

24 You need any water? Anything such as that.

25 Q. Did they come by the interview room?

1 A. They did.

2 Q. Did they actually come in the room, or did they poke
3 their head in?

4 A. One time one of them stuck their head in, and
5 another time one may have put his whole body in the room,
6 may have commented on something.

7 Q. Did they talk to the Defendant about the case?

8 A. Not about the case. Just maybe a hello or something
9 like that. Nothing relative to the case.

10 Q. What did you and Lieutenant Hawk decide to do about
11 trying to go about getting some of the guns back?

12 A. At this point Mr. Wirtz agreed the best way to start
13 trying to get these guns back was to do a series of phone
14 calls and say, hey, I need to get these guns back to the
15 people who -- some of them that had mentioned in the
16 statement, he agreed to call them up and do just that. I
17 need these guns back.

18 Q. Did he attempt to do so?

19 A. He did.

20 Q. Did anybody force him to do that?

21 A. No, sir.

22 Q. Did anybody promise him anything to get him to do
23 that?

24 A. No, sir.

25 Q. Did you ever tell him any charges would not be

1 pursued against him?

2 A. No, sir.

3 Q. Did you ever tell him that if he could get them
4 back, you would not pursue charges against the people
5 that actually had the guns if you could recover them?

6 A. Ask me that one more time, sir. I'm sorry.

7 Q. Did you tell him that you wouldn't pursue charges
8 against anybody that had the gun if you could get it
9 back?

10 A. That's correct. Anybody who had the guns at the
11 time, I didn't have knowledge that they knew they were
12 stolen. So therefore, at that point, all I wanted from
13 those people who he was calling was to get the guns back.
14 I wouldn't be pursuing any charges on them. My basis of
15 this phone call was to get these guns back.

16 Q. Did those phone calls have any bearing on what --
17 the two statements that he had already given you and what
18 was transpiring with him?

19 A. Yes. He, of course, said that these people were the
20 ones that had the guns, and that's why the phone calls
21 were set up.

22 Q. Okay. And did you make some phone calls?

23 A. Yes, sir.

24 Q. And who made the calls, and whose phone did they
25 use?

- 1 A. Mr. Wirtz made the phone calls on his phone.
- 2 MR. WAGNER: Your Honor, at this time ---
- 3 Q. Let me show you State's Exhibit Number 4. Do you
- 4 recognize State's Exhibit Number 4?
- 5 A. I do.
- 6 Q. And what is that?
- 7 A. This is taped phone call conversations.
- 8 Q. And are they a true and accurate copy of the phone
- 9 calls that y'all made that night?
- 10 A. Yes, sir.
- 11 Q. And have they been altered or tampered with in any
- 12 manner?
- 13 A. No, sir.
- 14 Q. Whose voice is on there making the calls?
- 15 A. Tim Wirtz's voice is on there making the calls.
- 16 Q. And who was present when those calls were made?
- 17 A. Lieutenant Gentry Hawk and myself.
- 18 Q. Was anybody else present during a portion of any of
- 19 those calls?
- 20 A. Yes, sir. As I stated earlier, narcotics officers
- 21 were close by to check on us to see if we were okay. And
- 22 they would occasionally step in the door.
- 23 MR. WAGNER: Your Honor, at this time we would
- 24 move State's Exhibit -- move to admit State's Exhibit
- 25 Number 4.

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1 THE COURT: Again, I think that was ruled on
2 too. Is that not correct?

3 MR. ROSEMOND: It was, Your Honor. Same
4 objection.

5 THE COURT: The objections are noted for the
6 record and overruled because the Court has ruled that the
7 conversations would be admissible. But do again,
8 remember that ruling is based on preponderance of
9 evidence, and that you have to find that they can be
10 relied on, that they were actually made and that they are
11 what they purport to be beyond a reasonable doubt.

12 Very good. You may proceed.

13 MR. WAGNER: Your Honor, this is going to take
14 just a little while. I just didn't know if we wanted to
15 take a break before we started it.

16 THE COURT: Well, this is a little bit. How
17 long is it?

18 MR. WAGNER: Forty-five minutes or so to go
19 through them. I'm just asking.

20 THE COURT: Let me ask you, what else do you
21 have from this witness?

22 MR. WAGNER: That'll pretty close get close to
23 -- maybe just, maybe some just additional follow-up
24 questions to tie things up with him. As far as evidence-
25 wise, I think this is kind of the last piece with him.

1 up.

2 MR. WAGNER: Yes, sir. It's ready to go, Your
3 Honor. I guess we would recall David McMahan at the
4 proper time.

5 THE COURT: All right. Let the Court know what
6 this is.

7 MR. WAGNER: Your Honor, this is State's
8 Exhibit Number 4. It's what Officer McMahan was
9 testifying before we broke yesterday for the evening. It
10 is a series of phone calls that were made in the
11 interview room at the Sheriff's office by the Defendant
12 to the people that he is charged with.

13 THE COURT: All right. So these are calls made
14 by the Defendant?

15 MR. WAGNER: Yes, sir.

16 THE COURT: All right. Very good. Anything
17 else from the Defense?

18 MR. ROSEMOND: No, Your Honor.

19 THE COURT: All right. Somebody play it for
20 us.

21 MR. WAGNER: Okay. Your Honor, just for the
22 Court's information, we have to stay here. At the end of
23 each phone call it loops over and over. To play it,
24 we've got to click it to each phone call.

25 THE COURT: Do you want to bring a chair up for

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1 the lady?

2 MR. WAGNER: Yes, sir.

3 (WHEREUPON, State's Exhibit Number 4 was played in
4 open court.)

5 MR. WAGNER: Your Honor, could we approach?
6 I've got a family emergency that just came up.

7 THE COURT: All right. Do we need to take a
8 recess?

9 MR. WAGNER: Yes, sir.

10 THE COURT: All right. Madam Forelady, ladies
11 and gentlemen of the jury, if you would retire to your
12 jury room. I need to take up some matters with the
13 attorneys. And do not undertake a discussion of the case
14 among yourselves in any way.

15 (WHEREUPON, the jury exited the open court at
16 approximately 10:03 a.m.)

17 MR. WAGNER: My wife just called and my
18 daughter, my thirteen-year-old, she fell over, killed
19 over, passed out. We've called the ambulance or
20 something. I just need to take a break and go call.

21 THE COURT: Okay. Take as long as you need.
22 Yeah, but do keep us in touch.

23 MR. WAGNER: I'm sorry.

24 THE COURT: Not at all. Not at all. Anything
25 from the Defense on this?

1 MR. WAGNER: Yes, sir.

2 THE COURT: All right. Anything else?

3 MR. WAGNER: No, sir.

4 THE COURT: Anything else?

5 MR. ROSEMOND: Not from the Defense, Your

6 Honor.

7 THE COURT: All right. Ask the jury to join

8 us.

9 (WHEREUPON, the jury entered the open court at
10 approximately 10:41 a.m.)

11 THE COURT: All right. Let the record show
12 that the jury and alternates are in the jury box.

13 Madam Forelady, ladies and gentlemen, we will now
14 continue with the State's case. Sergeant McMahan has
15 previously testified and he's under oath now and has been
16 recalled.

17 All right. Mr. Wagner?

18 DIRECT EXAMINATION

19 CONTINUED BY MR. WAGNER:

20 Q. Sergeant McMahan, the phone call recording that we
21 just heard, whose voice was that again making those
22 calls?

23 A. The Defendant, Tim Wirtz.

24 Q. And who exactly was he calling?

25 A. He was calling individuals who possibly had these

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1 guns that we were trying to get back.

2 Q. Okay. And was that the only reason for the calls?

3 A. Well, also, the calls was to possibly contact the
4 other people that he mentioned in his statement that was
5 with him to see if they might could talk about the
6 burglary.

7 Q. Okay. Did you or Gentry Hawk, Lieutenant Hawk, or
8 any of the narcotics guys promise him anything to make
9 those calls?

10 A. No, sir.

11 Q. When he talks about -- on the calls about clearing
12 it up for everybody, everybody could be cleared up or
13 something to that effect, what exactly is he talking
14 about?

15 A. That was specifically for the people who he was
16 calling that had possession of these weapons or allegedly
17 had possession of them to let them know that basically
18 they weren't in any trouble. I just wanted those guns
19 back.

20 Q. Okay. You never made him any promises -- did
21 anybody ever make him any promises about dropping his
22 charges or letting him go?

23 A. No, sir.

24 Q. Okay. Were those just the words he chose to use?

25 A. Yes, sir. He was free to speak however he wanted to

1 to these people. There was no rules or anything. Just
2 pick up the phone and start talking to them. He was at
3 his own liberty to speak how he wanted to to these
4 people.

5 Q. Were y'all able to recover some of the guns from
6 these people?

7 A. Yes, sir.

8 Q. At one point in time he mentions Tim Elrod. How did
9 that, I'm going to say, dovetail into your investigation?
10 What did that tell you?

11 A. Yes, sir. That corroborates earlier testimony from
12 a witness, Veronica Smith, in her statement how she and
13 Tim Elrod went to this supposed, as she said, home of Tim
14 Wirtz. She and Tim Elrod enters the home. She sees a
15 man at the table, and she testified that he went in the
16 back room and she saw Tim Wirtz and Tim Elrod, her friend
17 at the time, discuss some things. And she picked up a
18 green bag, maybe a laptop-type bag. They go get back out
19 in the car and they're leaving. Tim Elrod says, make
20 sure they're in the bag. And she looks and sees the guns
21 in the bag. That is where Tim Elrod comes up earlier in
22 her statement.

23 Q. And was that a reference to a forty?

24 A. That was in reference to a .40 caliber.

25 Q. Was a .40 caliber pistol among the things that the

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1 victim listed as stolen?

2 A. Yes, sir.

3 Q. Let me show you what's been marked State's Exhibit
4 Number 6-W for identification. Do you recognize that?

5 A. Yes, sir.

6 Q. What is that?

7 A. This is a dark colored bandana.

8 Q. Okay. And whose person was that on?

9 A. Timothy Wirtz.

10 Q. As far as in his pocket or on his person?

11 A. Yes, sir.

12 Q. When he was arrested?

13 A. Yes, sir.

14 Q. Thank you, Officer. That's the only questions I
15 have.

16 CROSS-EXAMINATION

17 BY MR. ROSEMOND:

18 Q. You don't have any information that that dark
19 bandana is the same one that the assailant wore in this
20 particular crime, do you?

21 A. No, sir.

22 Q. Now, while you was at the scene, did you dust for
23 any fingerprints?

24 A. Yes, sir.

25 Q. You did dust for any fingerprints?

- 1 A. Our forensic tech did.
- 2 Q. And Tim Wirtz's fingerprints did not show up at the
- 3 scene; is that right?
- 4 A. No, sir.
- 5 Q. Did you take any D.N.A. from the scene?
- 6 A. I sent some samples off for testing, yes, sir.
- 7 Q. And was the -- did you get the results back?
- 8 A. Just recently, yes, sir.
- 9 Q. And there was no D.N.A. from Tim Wirtz that was at
- 10 the scene, was it?
- 11 A. We can't say that because it never -- the D.N.A.
- 12 wasn't followed up because we just recently got the test
- 13 results back. But there was D.N.A. evidence, but nothing
- 14 to compare it to at the time.
- 15 Q. So you don't have any information that says Tim
- 16 Wirtz was there or not there at the scene? D.N.A.
- 17 evidence.
- 18 A. Speaking just specifically D.N.A. evidence?
- 19 Q. Yes.
- 20 A. No, sir.
- 21 Q. Sergeant McMahan, I want to show you this particular
- 22 document right there. Can you turn over to that other
- 23 page and -- what is that document right there?
- 24 A. Are you speaking of the other page? Which one are
- 25 you referring to?

- 1 Q. The page where it has your name on it.
- 2 A. This one right here?
- 3 Q. That's correct.
- 4 A. Okay.
- 5 Q. Have you ever seen that document before?
- 6 A. Mr. Rosemond, I believe I've seen one similar to it.
- 7 I can't testify that I've actually seen this one.
- 8 Q. Whose name is at the top of that?
- 9 A. David McMahan.
- 10 Q. And who is David McMahan?
- 11 A. That would be me.
- 12 Q. And who -- what's the date of that particular
- 13 document?
- 14 A. Incident date you're speaking of?
- 15 Q. The date that they sent that document to you?
- 16 A. Forgive me. I'm looking for it. I don't think I
- 17 see an incident date unless you can point it out to me.
- 18 Oh, I'm sorry. Not the incident date but the date they
- 19 sent it to me.
- 20 Q. Let's do -- that date right there?
- 21 A. I'm sorry. Yes. Yes, sir, I see it.
- 22 Q. What's the date?
- 23 A. August 16th, 2013.
- 24 Q. And what did you send to SLED? You sent to SLED a
- 25 cut shoestring and a black glove; is that not right?

- 1 A. That's correct.
- 2 Q. And you asked SLED to perform a D.N.A. analysis on
- 3 the cut shoestring and the black glove; is that right?
- 4 A. Yes, sir, I did.
- 5 Q. And SLED did that; is that right?
- 6 A. Yes, sir.
- 7 Q. And they sent you back a report; is that right?
- 8 A. Yes, sir.
- 9 Q. And that's the report that you have in front of you,
- 10 correct?
- 11 A. Yes, sir.
- 12 Q. And what does that report say it tested?
- 13 A. Under the items submitted -- excuse me. I'm sorry
- 14 -- a black/gray work glove and a gray cut shoe string.
- 15 Q. That was the same black work glove that we saw on
- 16 the screen earlier this week; is that right?
- 17 A. Correct.
- 18 Q. The same cut -- the same shoestring we saw earlier
- 19 this week?
- 20 A. Yes, sir.
- 21 Q. And that was the shoestring that you said that was
- 22 used to tie Mr. Bush up; is that right?
- 23 A. That's correct.
- 24 Q. Now, could you tell us what the results was of that
- 25 test?

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1 A. Yes, sir. Would you like for me to read it?

2 Q. I would like for you to read it.

3 A. The D.N.A. profile developed from item two one is a
4 mixture of at least two individuals. The D.N.A. profile
5 of the major contributor of this mixture is from an
6 unidentified male individual. The D.N.A. profile of the
7 minor contributor to this mixture is from a second
8 unidentified individual. The partial D.N.A. profile
9 developed from item one dash one is from an unidentified
10 individual. This partial profile is suitable for
11 comparison but is not suitable for entry into combined
12 D.N.A. index systems or cubbies.

13 Q. Read that note for me in bold at -- bold print at
14 the bottom.

15 A. D.N.A. comparisons can be conducted following the
16 submission of a known standard from Eric Bush, Timothy
17 Ray Wirtz, Gary Martin Smith, and George Chadwick Bush to
18 the laboratory.

19 Q. So -- go ahead. I didn't mean to interrupt you.

20 A. Any remaining evidence and/or packaging will be
21 returned to the requesting agency.

22 Q. So essentially they compared the D.N.A. analysis to
23 Eric Bush, Tim Wirtz, Gary Smith, and George Bush; is
24 that right?

25 A. No, sir, they did not.

- 1 Q. They did not?
- 2 A. They did not compare it.
- 3 Q. Who did they compare it to?
- 4 A. As you pointed out, August the 16th is when this
- 5 come back just that they had some D.N.A.
- 6 Q. Right.
- 7 A. Not any comparisons. No comparisons whatsoever.
- 8 Q. They didn't have any comparison whatsoever?
- 9 A. No, sir. They said they had suitable D.N.A., but
- 10 there were no comparisons.
- 11 Q. D.N.A. comparisons can be conducted following the
- 12 submission. And what does submission mean? It means
- 13 that they have been submitted.
- 14 A. And it can be conducted. However, it's not
- 15 conducted.
- 16 Q. Okay. Following the submission of a known standard
- 17 from Eric Bush, Tim Wirtz, Gary Smith and George Bush?
- 18 A. Yes, it can be conducted, but it is not conducted.
- 19 There is no comparison.
- 20 Q. The results said the D.N.A. profile developed from
- 21 item two point one, which is the cut shoestring, is a
- 22 mixture of at least two individuals; is that right?
- 23 A. That's correct.
- 24 Q. So they compared it with at least two people; is
- 25 that right?

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1 A. No, sir, they didn't compare it. They found D.N.A.
2 results of at least two individuals. No comparison was
3 made.

4 Q. They found D.N.A. results, right?

5 A. Yes.

6 Q. Did they find Tim Wirtz D.N.A. results?

7 A. There was no comparison for us to find that at the
8 time. I'll explain it if you'd like me to.

9 Q. They don't have Tim Wirtz D.N.A.?

10 A. Is that SLED you're speaking of?

11 Q. The State of South Carolina doesn't have ...

12 A. I can't answer for SLED, sir. I don't know.

13 Q. Okay. Let's go back to what you said earlier.

14 There was no fingerprints of Mr. Wirtz at the scene; is
15 that right?

16 A. That's correct.

17 Q. Now, this fluid leak that you said that was at the
18 particular scene.

19 THE COURT: Do you want the lights off?

20 MR. ROSEMOND: Yes.

21 Q. I'm showing you what's been marked as the State's 6-

22 B. The fluid leak that we're talking about is that leak
23 right there; isn't that correct?

24 THE COURT: There's a pointer too. It's got a
25 little button. That's the only one we have, so give it

1 to the witness. He can point it up there on the screen.

2 Q. That particular spot right there. Is that the
3 transmission leak that you're referring to?

4 A. Yes, sir, it is.

5 Q. So essentially, according to what you believe is a
6 Ford Taurus made that transmission leak right there; is
7 that correct?

8 A. Yes, sir.

9 Q. This '99 Ford Taurus is a front-wheel or -- it's a
10 front-wheel transmission?

11 A. A '99 Ford Taurus is a front-wheel-drive vehicle.

12 Q. Okay. So essentially from the way that you believe
13 that this car was backed up to this particular door,
14 these steps right here; is that right?

15 A. That's what your client told me.

16 Q. And essentially this particular spot was made was
17 when the front of the vehicle was facing back this way;
18 is that right?

19 A. Yes, sir.

20 Q. And that right there between that particular front
21 transmission and that step is about how many feet? Six?

22 A. I don't think it would be fair for me to say because
23 we don't have -- there would have to be something that --
24 I can't say the distance. Pictures, photographs have
25 different angles. What -- that right there appears maybe

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1 six feet, maybe ten feet. I don't know.

2 Q. You can't even given me an opinion of what that is?

3 A. Of the stain, yes, sir.

4 Q. No. You can give me an opinion of the stain because

5 it helps you. But what you can't give me is the length

6 between here and here; is that right?

7 A. I can give you what it appears to be.

8 Q. That's what I asked. I mean, what do you think is

9 the length between here and here?

10 A. Just looking at it, eight feet.

11 Q. Okay. So the front of the car is right here. The

12 driver had to be here, and there's not enough room for

13 that back part of that car back there, is it?

14 A. Yes, sir. Well, you're forgetting about the bumper,

15 the front bumper.

16 Q. I'm forgetting the front bumper?

17 A. Yes, sir.

18 Q. Did you -- can you show me where you collected that

19 transmission fluid?

20 A. Collected?

21 Q. Yes?

22 A. I didn't collect it, no, sir.

23 Q. You had people who were technicians on the scene,

24 right?

25 A. Technicians?

- 1 Q. Patrick Merck. Who is Pat Merck?
- 2 A. Patrick Merck is our forensics crime lab.
- 3 Q. He's a forensic crime lab. He came out. Did he
- 4 dust for prints?
- 5 A. Yes, sir, he did.
- 6 Q. Did he dust -- did he obtain any other items and
- 7 evidence for D.N.A. comparison purposes?
- 8 A. He did.
- 9 Q. But he did not collect what you believe is that
- 10 transmission fluid right there; is that right?
- 11 A. Mr. Rosemond, at the time I did not know the value
- 12 of the evident -- the evidentiary value of that stain at
- 13 the time. However, I did take a picture to make sure
- 14 that for evidence purposes that there was a stain there.
- 15 Q. But certainly a thorough investigation would have
- 16 required you to at least take a dab of that particular
- 17 stain so you can find out what stain it is; is that
- 18 right?
- 19 A. Well, I knew what the stain was from my experience.
- 20 Q. Okay. Then show me where -- you didn't capture that
- 21 stain so we can see it, did you?
- 22 A. Yes, sir, it's captured right there.
- 23 Q. But that's a photograph of something -- of a house
- 24 of something that is on a walkway, but that doesn't mean
- 25 that that's a transmission leak, does it?

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1 A. I'm saying that that is a transmission leak, and I
2 took a picture of it.

3 Q. But have you ever been wrong before?

4 A. Absolutely, yes, sir.

5 Q. So to prove to this jury that is a transmission
6 leak, did you collect any transmission leak from that
7 particular scene?

8 A. I collected a photograph of the transmission stain.

9 Q. I didn't ask that particular question. My question
10 was did you collect any of the fluid from that scene so
11 we could show this jury that that's transmission fluid?

12 A. I collected it on my finger.

13 Q. Do you have any evidence to show this particular
14 jury that that's transmission fluid from that scene; yes
15 or no?

16 A. Yes, sir, you're looking at it.

17 Q. That's the only thing you have? Let me go back to
18 my question.

19 A. You're looking at the transmission stain.

20 Q. Did you collect any evidence that we can show to
21 this jury and prove that it is a transmission leak that
22 we're looking at; yes or no?

23 A. Yes.

24 Q. You filed a report in this particular case?

25 A. I did not file an initial report, no, sir.

- 1 Q. Did you file any reports in this particular case?
- 2 A. I supplemented the original report.
- 3 Q. Okay. You supplemented the original report. In
- 4 your supplemental reports that you filed with this case,
- 5 did you write anywhere in there about that transmission
- 6 leak?
- 7 A. No, sir, I don't think I did.
- 8 Q. Didn't put it in there anywhere, did you?
- 9 A. No, sir.
- 10 Q. You didn't put in the supplemental reports that you
- 11 wrote for this case anything about a transmission leak;
- 12 isn't that true?
- 13 A. Again, as I stated earlier, I wasn't sure of the
- 14 evidentiary value of the stain.
- 15 Q. But you didn't put that in your report, did you?
- 16 A. Because of what I just stated.
- 17 Q. The answer is no, I didn't put it in my report
- 18 because of what I just stated; is that right?
- 19 A. Because of the evidentiary value I wasn't sure of,
- 20 sir.
- 21 Q. Now, let's talk about the Bountyland Quick Stop.
- 22 A. Yes, sir.
- 23 Q. When that car drove in to Bountyland Quick Stop,
- 24 what was the tag number on that car?
- 25 A. I think we can all agree that you can't see the tag

- 1 number.
- 2 Q. You can't see the tag. How many people were in the
- 3 car?
- 4 A. You could see a figure of a head in the car beside
- 5 your Defendant. .
- 6 Q. How many people were in the car?
- 7 A. Well, we definitely can see two.
- 8 Q. Okay. You saw two people in that car?
- 9 A. I saw -- like I said earlier, I saw a head, a figure
- 10 of a head and your client.
- 11 Q. Now, so when the car pulls in to the Bountyland
- 12 Quick Stop, we don't know what the tag number or who that
- 13 car belongs to by looking at the vehicle, do we?
- 14 A. No, sir.
- 15 Q. Now, the person that went into the Bountyland Quick
- 16 Stop, do we know how tall he or she -- well, do we know
- 17 how tall he was?
- 18 A. As a matter of fact, yes, sir. I have a close
- 19 estimation.
- 20 Q. You have a close estimation of how tall he was?
- 21 A. Yes, sir.
- 22 Q. Where, in your supplemental report, did you write
- 23 your close estimation of how tall he was?
- 24 A. I can't recollect if I did.
- 25 Q. It's not in there, is it?

1 A. No, sir.

2 Q. This particular person allegedly pumps some gas; is
3 that right?

4 A. Yes, sir, he did.

5 Q. How much gas did he pump?

6 A. I'm not for sure about that.

7 Q. How did you know at that time that he pumped some
8 gas?

9 A. Because on the video you can see him out there
10 putting the pump into the gas cap, walking in, trying to
11 use the A.T.M. card, walking out and then taking the pump
12 back out the cap.

13 Q. Okay. When you go get gas at Bountyland Quick Stop,
14 it gives you a choice, credit or debit; isn't that
15 correct?

16 A. Sir, I can't truthfully answer because I usually pay
17 cash. Don't know.

18 Q. You've never used a credit card to get gas?

19 A. My wife does sometimes.

20 Q. Do you have a County car?

21 A. Yes, sir.

22 Q. Where do you get gas at for your county car?

23 A. Bountyland.

24 Q. You pay cash there?

25 A. No, sir. We're talking about me personally or for

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1 the County?

2 Q. Well, you know, you made the statement that you
3 don't ever use credit cards, so we're about to find out
4 whether or not that's true. So you do have a County car;
5 is that right?

6 A. Yes, sir.

7 Q. And they issued you a County gas card; is that
8 right?

9 A. That's right.

10 Q. You certainly don't use cash for gas that you buy
11 for the County; is that right?

12 A. Yes, sir, but I think you should make it clear to
13 the jury that the County card ---

14 THE COURT: Just a moment. Answer the
15 question. But once you answer the question, then you can
16 explain your answer.

17 THE WITNESS: Yes, sir.

18 THE COURT: All right. State your question.

19 Q. You use your County card to get gas at the pump; is
20 that right?

21 A. That's correct.

22 Q. And it gives you a choice between credit and debit;
23 isn't that right?

24 A. No, sir.

25 THE COURT: All right. Now, you can explain

1 your answer.

2 Q. Okay.

3 A. A County card is already -- I don't know the proper
4 word. But it's already pre-fixed with -- Bountyland and
5 the County has an agreement.

6 Q. Okay.

7 A. When you hit -- when you put that card in there, it
8 already knows that it's a County car or a County vehicle.

9 Q. Okay.

10 A. It does not ask those questions.

11 Q. Okay. Fair enough. But you've never used a credit
12 card to get gas for any other reason?

13 A. I have a personal Bountyland Credit Card that I get
14 gas with from time-to-time when I don't have cash on me.

15 Q. Do you have to make a decision between credit and
16 debit at that time?

17 A. No, sir.

18 Q. You don't because it's tied in to ---

19 A. It's pre -- it knows who I -- who that -- it knows
20 that card when it does it.

21 Q. So you don't -- you've never had to go to Bountyland
22 to get gas and make the choice of credit and debit; is
23 that right?

24 A. I think my wife does for a credit.

25 Q. And when you have to make the choice about debit,

- 1 you have to put in a PIN number; is that right?
- 2 A. She never mentioned it. I mean, if you speaking --
- 3 me personally, sir, I don't know.
- 4 Q. And if you choose credit, you have to put in a what?
- 5 A. Zip code?
- 6 Q. Yeah, a zip code.
- 7 A. All right.
- 8 Q. Now ---
- 9 A. I'm sorry, sir. You're asking questions that I ...
- 10 Q. Did you not testify earlier today that he put in a
- 11 zip code to get -- to access the pump for the gas?
- 12 A. Did I testify to that?
- 13 Q. Yes, sir. Earlier on your direct examination?
- 14 A. The zip code, yes, sir.
- 15 Q. How did you know that he put in a zip code to get
- 16 gas?
- 17 A. The victim told me that's what the records reflect
- 18 on his credit card.
- 19 Q. So you don't know that. You was repeating what
- 20 somebody else told you; is that right?
- 21 A. Well, if anybody would know, it would be the victim.
- 22 Q. I didn't ask that question. My question was simply,
- 23 you was just repeating back to us what someone else told
- 24 you; isn't that correct?
- 25 A. That's correct. Gathering information.

1 Q. Now, the person on that particular video walks into
2 the store and walks toward the A.T.M. machine; is that
3 right?

4 A. Yes, sir.

5 Q. Correct me if I'm wrong. But Mr. Bush says that I
6 did not give the people -- the person that had me tied up
7 a PIN number; is that right?

8 A. Yes, sir, he said that.

9 Q. So this person walks up to an A.T.M. machine. And
10 if you put the wrong code in an A.T.M. machine too many
11 times, it keeps your card; is that right?

12 A. If you say so, Mr. Rosemond.

13 Q. Okay. But this person walks up to the A.T.M.
14 machine. What numbers did he punch in?

15 A. I don't think any of us knows that.

16 Q. Didn't go back to the bank to find out what number
17 they punched in?

18 A. According to my victim, again ---

19 Q. No, uh-uh (negative). That's hearsay. What I want
20 to know did you go to the bank to kind of figure out what
21 number did they punch in?

22 A. No, sir. I don't think Delaware was an option at
23 the time.

24 Q. The person that robbed the house did not have the
25 PIN number to use that A.T.M. card, did they?

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- 1 A. Based on their actions, I would assume not.
- 2 Q. Did you retrieve the card that this person used?
- 3 A. No, sir.
- 4 Q. You didn't retrieve it from Mr. Wirtz, did you?
- 5 A. No, sir.
- 6 Q. You talked to Veronica Smith May 31st of 2012; is
- 7 that correct?
- 8 A. Yes, sir.
- 9 Q. She gave you a statement?
- 10 A. Yes, sir.
- 11 Q. Evidently, you didn't know that she was a thief, did
- 12 you?
- 13 A. No, sir.
- 14 Q. As a matter of fact, she had two shoplifting
- 15 charges; is that right?
- 16 A. According to the testimony, yes, sir.
- 17 Q. Now, Veronica Smith indicated to you that Mr. Elrod
- 18 had in his possession a green laptop bag; is that right?
- 19 A. I believe that's what she testified. Yes, sir.
- 20 Q. Can you tell me what that document is right there?
- 21 THE COURT: Do you need the lights?
- 22 THE WITNESS: Yes, sir, please.
- 23 MR. ROSEMOND: Yes, sir.
- 24 A. A property detail report.
- 25 Q. Property detail report for what case?

1 A. From this particular case.

2 Q. This particular case. And on that property detail
3 report, essentially all the property that you all
4 collected was put in that report; is that right?

5 A. Please ---

6 Q. Anything that you all -- that was stolen from him
7 that you all collected is always put in the file; is that
8 right? What does that report show?

9 A. It shows an item description is an H.P. laptop black
10 carrying case.

11 Q. Now that particular report shows that the laptop bag
12 was what color?

13 A. Black.

14 Q. Black. Now, not green but black; is that right?

15 A. That's correct. But I don't believe -- I don't
16 believe green has anything to do with the laptop being
17 green. We don't know what laptop cover that was or where
18 it came from.

19 Q. We're talking about the bag of the laptop, whether
20 or not it was black or whether or not it was green. Your
21 report says the bag that was stolen from Mr. Bush's house
22 was black; is that right?

23 A. Yes, sir. But I believe the testimony doesn't say
24 that that particular green laptop come from the location.

25 Q. Didn't ask that question. You was trying to make a

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1 connection between that bag and Mr. Wirtz. But that bag
2 that Ms. Smith saw was green; isn't that correct? That's
3 what she testified to.

4 A. I'm making a connection with the guns and the bag.

5 Q. The color of the bag that Veronica Smith said was
6 green; isn't that correct?

7 A. That's what she said, yes, sir. However ---

8 Q. Now ---

9 A. --- that -- I'm not looking for a green laptop bag
10 in this case. I'm looking for the guns which was in the
11 green bag.

12 Q. But the question to Ms. Smith was, what color was
13 the bag. And she said green; is that right?

14 A. A green bag, yes, sir.

15 Q. Now, let's move on to Heath Bates. You took a
16 statement from Heath Bates, didn't you?

17 A. Yes, sir.

18 Q. Do you remember the statement you took from Heath?

19 A. I do.

20 Q. You have it with you?

21 A. My original is in evidence. I don't have it with
22 me, no, sir.

23 Q. Can you recall the date that you talked to Heath
24 Bates?

25 A. If I can refer to my original statement, I can tell

- 1 you.
- 2 Q. What day did you talk to Heath Bates?
- 3 A. February the 13th.
- 4 Q. What day did you arrest Heath Bates?
- 5 A. I didn't arrest Heath Bates.
- 6 Q. Okay. What date was Heath Bates arrested?
- 7 A. The day before, 2/12.
- 8 Q. And on 2/13 you talked to him; is that right?
- 9 A. Yes, sir.
- 10 Q. Mr. Bates testified that he had been high for almost
- 11 a week on meth; is that right?
- 12 A. Yes, sir, I believe that's what he testified. Yes,
- 13 sir.
- 14 Q. And when you obtained that particular statement, he
- 15 was still high on meth; is that right?
- 16 A. Not to my knowledge.
- 17 Q. Did you ask him?
- 18 A. When I spoke with him, he spoke clear. He was --
- 19 answered questions, very alert. I saw no reason to ask,
- 20 are you high or are you intoxicated, because in my
- 21 opinion, he wasn't.
- 22 Q. Now, you have the ability to record telephone
- 23 conversations at the Sheriff's office; is that right?
- 24 A. Yes, sir.
- 25 Q. You have the ability to tape record conversations

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1 between investigators and people who've been arrested; is
2 that right?

3 A. We have the ability to tape phone messages, yes,
4 sir.

5 Q. You also have the ability to have a tape recorder
6 that you can record a conversation between me and
7 somebody else; is that right? Or you and somebody else;
8 is that right?

9 A. Oh, yes, sir. That's what this these phone tapes
10 are here.

11 Q. Well, no. Sergeant McMahan, you have the ability
12 while Mr. Heath Bates or Mr. Wirtz are in an
13 interrogation room to record the conversation that you
14 have with either of two people; isn't that correct?

15 A. Okay. I understand your question now. No, sir.

16 Q. You don't have that ability?

17 A. No, sir.

18 Q. You don't have a phone that has a recorder on it
19 that you can record a conversation between you and a
20 suspect?

21 A. All we would have would be my cell phone or the
22 person who's making the phone call's cell phone. That's
23 what we have.

24 Q. You don't have them old tape recorders that you can
25 hit record on it and it'll record the conversation

1 between you and the suspect?

2 A. No, sir, not to my knowledge.

3 Q. You don't have a video camera in there that you can
4 video the interrogation between you and a suspect?

5 A. That's not our policy.

6 Q. So you have the ability to record a interrogation
7 between you and the suspect; it's just not your policy to
8 do so?

9 A. No, sir, we do not have a recording device in our
10 interrogation room.

11 Q. Then we must live in a very broke county if the
12 County cannot afford a tape recorder to record a
13 conversation; is that right?

14 A. That's something our County government would have to
15 discuss. I don't know.

16 Q. So the conversation when Tim Wirtz was giving you
17 this purported statement that he gave you, you have no
18 ability to record that particular transaction or that
19 conversation?

20 A. No, sir.

21 Q. Is it because you don't want to record it, or is it
22 because you just don't have the ability to record it?

23 A. It's because we don't have the ability to record.

24 Q. When did you develop probable cause to arrest Mr.
25 Wirtz for kidnapping, armed robbery, burglary first,

- 1 possession of a weapon?
- 2 A. That developed between the dates of 2/12 and 2/13.
- 3 Q. 2/12 and 2/13?
- 4 A. Yes, sir.
- 5 Q. Tell me what probable cause you had to arrest him
- 6 for the burglary on 2/12 and -- well -- and 2/13?
- 7 A. Well, naturally, I had Heath Bates' statement where
- 8 I recovered a firearm or he had bought a firearm from Mr.
- 9 Wirtz.
- 10 Q. Okay. So Heath Bates purchased a firearm from Mr.
- 11 Wirtz?
- 12 A. Yes, sir, at his home.
- 13 Q. All right.
- 14 A. I also recovered that actual weapon.
- 15 Q. Okay.
- 16 A. I had a statement from the person who lived in the
- 17 apartment who said that Mr. Bates brought the weapon
- 18 there to corroborate Mr. Bates' own statement.
- 19 Q. Okay.
- 20 A. I had a video of a '99 blue Ford Taurus, which I
- 21 know that Mr. Wirtz owns. I also have ---
- 22 Q. Who owns that video? I mean, who owns that Taurus?
- 23 A. The Wirtzes.
- 24 Q. The Wirtzes or?
- 25 A. Amanda and Tim.

1 Q. You know that Amanda Wirtz owns that car by herself;
2 isn't that true?

3 A. I don't know that. He's told me that it was his car
4 several times.

5 Q. Sergeant McMahan, we'll keep doing this until, you
6 know ...

7 A. Yes, sir.

8 Q. Can you identify that document right there?

9 A. Yes, sir, I can.

10 Q. What is that document?

11 A. That is a record of ownership of a vehicle from the
12 State Highway Department.

13 Q. What vehicle?

14 A. It is a Taurus.

15 Q. What year?

16 A. '99.

17 Q. Who's it registered to?

18 A. Amanda Lee Wirtz.

19 Q. Doesn't say Tim Wirtz, does it?

20 A. Doesn't say Tim Wirtz.

21 Q. So when you say it's Tim Wirtz's vehicle and Amanda
22 Wirtz's vehicle, that's not correct, is it?

23 A. Marital property.

24 Q. When you say Tim Wirtz and Amanda Wirtz own that
25 vehicle, that is not true, is it, because you have the

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1 current plate information; isn't that correct?

2 A. If the highway department has a listing ---

3 Q. Is it so ---

4 A. --- of who it belongs to, so Amanda Wirtz is who it
5 belongs to on paper.

6 Q. Thank you. Now, those video recordings that we
7 heard today, when did those video recordings take place?

8 A. Later that night on the 14th.

9 Q. What time did you first come in contact with Mr.
10 Wirtz?

11 A. That day I come in contact with him between the
12 hours of four-thirty and five of that afternoon.

13 Q. Four-thirty and five. And we know that Mr. Wirtz
14 started writing the statement at six-thirty, six oh
15 three, I think; is that right?

16 A. I don't have my statement right in front of me. But
17 if that's what you're reading off of, yes, sir.

18 Q. I'm going to show you what's been marked as State's
19 Exhibit Number 2. What time does he begin that
20 statement?

21 A. Six thirty p.m.

22 Q. Okay. So you had met him about five -- four thirty
23 -- between four thirty and five.

24 A. Yes, sir.

25 Q. He started giving you this particular statement; is

1 that right?

2 A. That's correct.

3 Q. And what time does it say that he finished this
4 statement?

5 A. It says nine oh five p.m.

6 Q. Okay. That's page number one; is that correct?

7 A. Yes, sir. Yes, sir.

8 Q. Page number two. That's page number two?

9 A. Yes, sir.

10 Q. What time does he say that he finished that
11 statement?

12 A. I believe that says nine oh -- does that say five, I
13 believe. Nine oh five? I don't know. If I had it right
14 in front of me, I could tell you. But I don't see it
15 from that distance.

16 (WHEREUPON, Mr. Rosemond handed document to
17 witness.)

18 A. Nine oh five.

19 Q. So we know at least from four thirty to nine oh five
20 that he's in your presence; is that right?

21 A. As I stated earlier, I stepped out of the room there
22 just to give him some time to relax and write his own
23 statement.

24 Q. Now, when you say give him some time to write his
25 own statement, isn't it true that you promised him that

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1 he could go home that particular night if he gave you a
2 statement?

3 A. No, sir, that's not true.

4 Q. You didn't tell him that you would help him on his
5 charges if he gave you a statement?

6 A. Help him? No, sir.

7 Q. For the most part when someone gives information to
8 the police, they expect something in return; is that
9 right?

10 A. Yes, sir. It's asked by all folks.

11 Q. And it's not uncommon for somebody to say, hey, if I
12 give you this, would you recommend a lighter sentence for
13 me; is that right?

14 A. Yes, sir, that happens quite often.

15 Q. And also, it's not uncommon if a person is working
16 for the police that you all pay them for information; is
17 that right?

18 A. Yes, sir. Yes, sir, they can be paid for services.

19 Q. Now, Mr. Wirtz gave you a purported statement; is
20 that right?

21 A. Yes, sir, he did.

22 Q. And you want us to believe that he just gave you
23 this statement out of his own free good will?

24 A. I believe, as I stated earlier in my testimony, he
25 said he wanted to get this over with.

- 1 Q. Okay. So what does that mean?
- 2 A. That means he wants to get it over with and confess.
- 3 Q. Now, the statement that he gave you, what time did
- 4 you eventually put Tim Wirtz in jail that night?
- 5 A. Mr. Rosemond, a specific time, I can't tell you.
- 6 But it was later on in the evening. And I believe
- 7 someone else took him down to the jail. I didn't do
- 8 that.
- 9 Q. Somebody that work for you or work along beside you?
- 10 A. Oh, yes, sir. We always work together, law
- 11 enforcement does.
- 12 Q. You can identify that document, Sergeant McMahan?
- 13 A. Yes, sir. This is a case report.
- 14 Q. Does it have on there what time that you took Tim
- 15 Wirtz into custody, arrested him?
- 16 A. Yes, sir, it does.
- 17 Q. What time?
- 18 A. February 15th, at twelve -- oh oh forty-seven hours.
- 19 Q. So that's twelve o'clock in the morning at twelve
- 20 forty-seven a.m.?
- 21 A. Yes, sir.
- 22 Q. So you came into contact with Mr. Wirtz on February
- 23 the 14th, 2012, at about four thirty or five o'clock; is
- 24 that right?
- 25 A. That's correct.

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1 Q. And then you finally arrested him or put him in jail
2 at twelve forty-seven the next day; is that right?

3 A. The next day, early that morning, yes, sir.

4 Q. So he had been in your custody for seven hours,
5 seven and a half hours; is that right?

6 A. Roughly.

7 Q. Did you give him any food to eat?

8 A. Give him water, I believe. I think we both drank a
9 couple of waters together.

10 Q. So you gave him some water?

11 A. Uh-huh (affirmative).

12 Q. You didn't give him any food, did you?

13 A. I can't recollect if I give him food or not. I
14 don't think either one of us had food. I think we just
15 had water.

16 Q. You had the ability to go get you some food, did you
17 not?

18 A. I could have went, yes, sir.

19 Q. Now, so we know that he's been in your custody for
20 seven and a half hours. Now, you told him, Mr. Wirtz,
21 all that we want is the guns back; is that right?

22 A. Yes, sir.

23 Q. Okay. Did you not tell him all that we want is the
24 guns back and everybody's cleared?

25 A. Well, no, sir. The everybody is what you got me

1 right there on. Everybody.

2 Q. You heard that audio tape. It was audio number five
3 thirty-seven. And he said clearly, hey, if we get these
4 guns back, everybody's clear; is that right?

5 A. That's what I heard on the tape, yes, sir.

6 Q. And you also heard on the tape when he said, hey,
7 I'm leaving in a few minutes; is that right?

8 A. Yes, sir. He was free to say whatever he wanted to
9 on that phone.

10 Q. He said it because he thought he was going home;
11 isn't that correct?

12 A. Well, he thought wrongly.

13 Q. You didn't tell him that he was going home?

14 A. No, sir.

15 Q. Did you tell him you had an arrest warrant for him?

16 A. Sometime during the interview it was -- I told him
17 that there was a warrant.

18 Q. Did you tell him before he wrote that statement or
19 afterwards?

20 A. I'm thinking afterwards.

21 Q. After you got what you wanted, then you said, oh, by
22 the way, I have an arrest warrant for you. Isn't that
23 the case?

24 A. I didn't say it in those words.

25 Q. Just like you didn't say he could go home, but you

1 made him believe it, right?

2 A. If he believed that, sir, that's what he believed.

3 Q. Now, whose voices did we hear on that tape? Your
4 voice; is that right?

5 A. I think you did hear a couple of words, yes, sir, of
6 mine.

7 Q. Did we hear Lieutenant Hawk's voice?

8 A. No, sir.

9 Q. Did we hear -- who else's voice did we hear then?

10 A. We heard a narcotics officer's voice, and we heard
11 Tim Wirtz's voice.

12 Q. This is a property crime. Why was the narcotics
13 guys in there?

14 A. Narcotics officers were assisting me.

15 Q. On the tape we heard of two drug deals, did we not?

16 A. I believe Mr. Wirtz made some drug deals, yes, sir,
17 or mentioned drugs.

18 Q. Call number five twenty-eight. He says, man, I'm
19 trying to score some dope. You remember hearing that?

20 A. Yes, sir, I do.

21 Q. And call number five thirty-nine, he set up a drug
22 deal. You're going to be straight? You know why he
23 wanted to be straight because he can get some drugs when
24 he gets out; is that right?

25 A. I think that's a term they use, get straight.

- 1 They're wanting drugs.
- 2 Q. Call five forty-two said, I've got a little money.
- 3 Help me out. Help me out. I mean, hey, you know, I'd
- 4 like to buy some drugs from you; isn't that right?
- 5 A. Yes, sir. That's what he said.
- 6 Q. Call forty-three, well, that was the call about the
- 7 dog food; is that right?
- 8 A. Dog food, yes, sir. I remember that.
- 9 Q. You don't just come out and say, hey, man, do you
- 10 have any marijuana; is that right?
- 11 A. I think they talk in code.
- 12 Q. Yeah, they talk in code.
- 13 A. Yeah.
- 14 Q. That was the guy that we couldn't really understand;
- 15 is that right?
- 16 A. I'm just not sure if the food wasn't maybe some of
- 17 the stolen property they were talking about.
- 18 Q. Speculating?
- 19 A. Just as you are speculating. I don't know.
- 20 Q. Call five forty-four. As soon as I can walk out of
- 21 here, I'll see you. Call five forty-seven. The call
- 22 came in and said, hey, man, I got what you looking for.
- 23 Tim said, I can be there in forty-five minutes. The guy
- 24 said, I ain't going to be there that long. So they kind
- 25 of switched back; is that right?

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1 A. Yes, sir.

2 Q. And he's doing all this to help himself out,
3 correct? He's making all these calls so the police can
4 go out and bust somebody; is that right?

5 A. As I said earlier, my main effort was to get the
6 guns back. And he was attempting to get them back for
7 me.

8 Q. What was the narcotics guy's main effort?

9 A. To assist me.

10 Q. In what? Doing the drug deals or getting the guns
11 back?

12 A. Getting the guns back.

13 Q. But we heard the drug deals go down on the audio
14 recording; isn't that right?

15 A. That's right. Mr. Wirtz was free to talk about
16 whatever he wanted to, even it was a cloudy day or a
17 sunny day. He could talk about what he wanted to on the
18 phone.

19 Q. Mr. Wirtz was trying to help you out because you
20 promised him that you would help him out if he gave you
21 that statement; isn't that correct?

22 A. No, sir.

23 Q. Why do you think he's spending all this time writing
24 statements, making these phone calls, trying to set up
25 drug deals in order to help himself out?

1 A. That's how they talk. As you stated earlier, they
2 talk in code. I guess he felt relaxed talking about
3 drugs trying to get the guns back.

4 Q. You told Mr. Wirtz that you needed to put somebody
5 at the scene of the crime so you can bust another person
6 in this case; is that right?

7 A. No, sir.

8 Q. You didn't tell him, hey, I need somebody to say
9 they was at the scene of the crime so I can go out and
10 get everybody else?

11 A. No, sir. I needed to put the person that was there,
12 and he said he was the one that was there.

13 Q. You had no intention of Tim Wirtz going home that
14 night, did you?

15 A. No, sir.

16 Q. But you didn't tell him that, did you?

17 A. I told him later on.

18 Q. But you was being deceptive because you didn't tell
19 him that, did you?

20 A. Not telling somebody is not being deceptive, sir.

21 Q. You heard him say, hey, I'm getting out of here
22 soon. I'm going home. Why didn't you just say, well,
23 you're not going home right this minute?

24 A. Because he was in that phone recording. I wasn't
25 going to interrupt him. I just let him talk.

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David McMahan - Cross-examination by Mr. Rosemond

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- 1 Q. Tim Wirtz told you that Greg Bates and Gary Smith
2 was at the house; is that right?
- 3 A. Yes, sir, that's what he told me.
- 4 Q. What is Tim Wirtz charged with?
- 5 A. Armed robbery.
- 6 Q. Armed robbery.
- 7 A. First degree burglary.
- 8 Q. Okay.
- 9 A. Possession of a weapon during a violent crime.
- 10 Q. Okay.
- 11 A. Grand larceny.
- 12 Q. What is Greg Bates charged with?
- 13 A. He's not charged with anything.
- 14 Q. Mr. Wirtz gave you a statement that says Greg Bates
15 did this crime, and you didn't charge Greg Bates?
- 16 A. No, sir.
- 17 Q. But you believe his statement to be true?
- 18 A. Backed up with evidence.
- 19 Q. This is bad evidence here?
- 20 A. His statement?
- 21 Q. Yes.
- 22 A. That's good evidence.
- 23 Q. Well, if it's good evidence, go out and arrest Greg
24 Bates for this crime. Why not do that?
- 25 A. The evidence is not there at the time.

- 1 Q. Did you arrest Gary Smith for this crime?
- 2 A. Yes, sir.
- 3 Q. Did you arrest him for kidnapping?
- 4 A. No, sir.
- 5 Q. Did you arrest him for armed robbery?
- 6 A. No, sir. He was arrested for accessory.
- 7 Q. Did you arrest him for possession of a weapon?
- 8 A. For accessory.
- 9 Q. Grand larceny? You arrested him for being an
- 10 accessory before the fact?
- 11 A. That's correct.
- 12 Q. And that really means that he had nothing to do with
- 13 the robbery; he did something before the robbery took
- 14 place. Isn't that correct?
- 15 A. That's correct.
- 16 Q. So the only person that you arrested for kidnapping,
- 17 for kidnapping Mr. Bush, was this man right here?
- 18 A. Yes, sir.
- 19 Q. So he's the one that went in the house and tied Mr.
- 20 Bush up?
- 21 A. Did he, Mr. Wirtz, go in and tie the man up?
- 22 Q. Yes.
- 23 A. In his statement he does not say that.
- 24 Q. So then you can't charge him with kidnapping if he
- 25 didn't tie Mr. Bush up; isn't that correct?

1 A. The correct thing is that he was there. He said he
2 was there and he did it.

3 Q. He did not say, I tied Mr. Bush up, did he?

4 A. No, sir, he did not.

5 Q. He didn't say that I did anything to Mr. Bush, did
6 he?

7 A. No, sir.

8 Q. So therefore, if he's the only one charged with
9 kidnapping, you can't charge him with kidnapping because
10 you have no probable cause; isn't that right?

11 A. He put himself there.

12 Q. He put himself there, but he didn't put himself
13 tying up Mr. Bush, did he?

14 A. The hands of one is the hands of all.

15 Q. Okay. If that's the case you would have arrested
16 everybody for kidnapping; is that right?

17 A. (No verbal response)

18 Q. If you're going to tell me the hands of one are the
19 hands of all, you would have arrested everybody for
20 kidnapping, correct?

21 A. If there's evidence there, I would.

22 Q. If it's the hands of one, you would have arrested
23 everybody for burglary first; isn't that right?

24 A. I can put Tim Wirtz there based on his own
25 statement.

- 1 Q. But you can't put him tying up Mr. Bush, can you?
- 2 A. Based on his statement, he says he didn't tie him
- 3 up.
- 4 Q. That's the only evidence that you have; isn't that
- 5 right?
- 6 A. As far as tying him up?
- 7 Q. Exactly.
- 8 A. Yes, sir, you could say that.
- 9 Q. Mr. Wirtz ever work for the police before?
- 10 A. Based on testimony earlier, I found out that he did.
- 11 Q. And he was promised things before whenever he worked
- 12 with the police; isn't that right?
- 13 A. I can't speak for another officer, sir.
- 14 Q. Sergeant McMahan, you sat up here in this courtroom,
- 15 and you know that the narcotics guys paid Mr. Wirtz for
- 16 doing work for them; isn't that true?
- 17 A. That's true.
- 18 Q. Okay. So he's been promised, if you do work for us
- 19 we will pay you, right?
- 20 A. Yes, sir.
- 21 Q. So he has the ability or he has the right to rely
- 22 upon if an officer tells me he's going to do something,
- 23 then he knows he's going to do it; is that right?
- 24 A. With that particular officer, yes, sir.
- 25 Q. Mr. -- Sergeant McMahan ...

- 1 A. Yes, sir.
- 2 Q. ... can you identify that document right there?
- 3 A. It is a statute.
- 4 Q. What's the statute?
- 5 A. § 16-13-18.
- 6 Q. And what is the title of that statute?
- 7 A. Receiving stolen goods.
- 8 Q. And what is receiving stolen goods?
- 9 A. Would you like for me to read the statute?
- 10 Q. If that helps you, yes, sir.
- 11 A. It is unlawful for a person to buy, receive or
- 12 possess stolen goods, chattel -- excuse me -- or other
- 13 property if the persons known or has reason to believe
- 14 the goods, chattels or property is stolen. A person is
- 15 guilty of this offense whether or not anyone is convicted
- 16 of the theft of the property.
- 17 Q. Now, how come you didn't arrest Heath Bates for
- 18 receiving stolen goods?
- 19 A. Because I had no evidence at the time that Shane
- 20 Elliott knew that the guns were stolen. Again, it says
- 21 you have to know it's stolen.
- 22 Q. And you arrested nobody for stealing guns, receiving
- 23 stolen goods; is that right?
- 24 A. I have arrested people for stealing.
- 25 Q. Look, you've not arrested anybody in this case for

- 1 receiving stolen goods?
- 2 A. No, sir.
- 3 Q. Although we know that those guns was out in the
4 county; is that right?
- 5 A. Yes, sir. They were spread out amongst drug dealers
6 and whatnot.
- 7 Q. Sergeant McMahan, you did admit to us that you had
8 obtained that arrest warrant on February the 13th, 2012;
9 is that right?
- 10 A. I believe that's correct, yes, sir.
- 11 Q. What time of day did this robbery take place?
- 12 A. The middle of the day. Around one, one-thirty.
- 13 Q. Was it raining that day?
- 14 A. No, sir.
- 15 Q. Sunshine?
- 16 A. Yes, sir, it was sunshine.
- 17 Q. How come Greg -- how come Gary Smith is not on trial
18 here today along with Tim Wirtz?
- 19 A. I think he may have a pending trial on what I
20 charged him with.
- 21 Q. Do you know why he's not here today?
- 22 A. No, sir.
- 23 Q. But he's a person that you arrested in this crime;
24 is that right?
- 25 A. Yes, sir, as an accessory.

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David McMahan - Cross-examination by Mr. Rosemond

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1 Q. As an accessory? Accessory to Mr. Who?

2 A. Mr. Wirtz.

3 Q. What information do you have who set this crime in
4 place?

5 A. Before the incident occurred? Is that what you're
6 speaking of?

7 Q. Yes, sir.

8 A. There was a group of individuals that was at a party
9 and was talking about this crime.

10 Q. Who was those individuals?

11 A. It would be Greg Bates, Gary Smith, Tim Wirtz, Chad
12 Bush. I believe he mentioned Gene Poole. And I believe
13 he mentioned Carrie Tyner. And I think he said there was
14 other people there, but I don't think he mentioned names.
15 And forgive me. There may be other names I may have not
16 mentioned. I'll be glad to refer back to the statement.

17 Q. But the only person in this case that you charged
18 with kidnapping is Tim Wirtz?

19 A. Yes, sir. He said he was there.

20 Q. The only person you charged in this case with
21 burglary, grand larceny, possession of a weapon was Tim
22 Wirtz?

23 A. Yes, sir. He said he was there.

24 Q. Everybody else was accessories? He says he was
25 there?

- 1 A. Yes, sir.
- 2 Q. And you believe him, don't you?
- 3 A. It's his words.
- 4 Q. He's also told you Greg Bates was there?
- 5 A. Yes, sir, he did.
- 6 Q. And he told you Gary Smith was there?
- 7 A. Yes, sir.
- 8 Q. But you didn't arrest Gary Smith, did you?
- 9 A. For accessory, I did.
- 10 Q. And you didn't arrest Greg Bates, did you?
- 11 A. No, sir.
- 12 Q. Because you don't believe him?
- 13 A. No, sir. There's not enough evidence that I felt to
- 14 arrest Greg Bates.
- 15 Q. But enough evidence to arrest him?
- 16 A. Yes, sir. He put himself there.
- 17 Q. He put him there because you promised him that he
- 18 would get some help and some reward for you?
- 19 A. I put him there because he, in his own admission,
- 20 was there along with all my evidence of recovered
- 21 property that corroborates everything he said.

22 MR. ROSEMOND: No further questions, Your

23 Honor.

24 THE COURT: Re-examine?

25 REDIRECT EXAMINATION

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1 BY MR. WAGNER:

2 Q. Did you have any other evidence on Greg Bates other
3 than Tim Wirtz's statement?

4 A. No, sir.

5 Q. Did you have any other evidence on Gary Smith
6 basically other than Tim Wirtz's statement? Let me
7 rephrase it.

8 A. Yes, sir.

9 Q. Could you put Gary Smith at the scene other than Tim
10 Wirtz's statement?

11 A. No, sir.

12 Q. Could you put anybody else at the scene other than
13 Tim Wirtz's statement besides Tim Wirtz?

14 A. No, sir.

15 Q. Whose vehicle was used to rob the victim, break in
16 his house, tie him up and haul off his guns and property?
17 Whose car was used?

18 MR. ROSEMOND: Objection, Your Honor. It calls
19 for speculation. There's nobody has put that car at that
20 particular place.

21 THE COURT: Well, just a moment. I hoped he
22 asked him did he know. If he doesn't know, then he can't
23 say.

24 Q. Do you know whose car was used?

25 A. Before or after? I'm sorry.

- 1 Q. What did the Defendant tell you? Whose car was used
2 to haul the stuff off?
- 3 A. He referred to it as mine.
- 4 Q. And which vehicle was that?
- 5 A. The '99 Taurus.
- 6 Q. And did you have video of that Taurus that linked
7 him to stolen credit cards from an hour before during the
8 robbery?
- 9 A. Yes, sir.
- 10 Q. And were you able to trace the guns to anybody else
11 as stealing them and selling them except this Defendant?
- 12 A. Just to the Defendant, yes, sir.
- 13 Q. All the evidence that you have, who does it point
14 to?
- 15 A. It points to Tim Wirtz.
- 16 Q. Is that the reason Tim Wirtz is here on trial today?
- 17 A. That is the reason why.
- 18 Q. Do you have any evidence that they wore gloves
19 during the crime?
- 20 A. Yes, sir.
- 21 Q. What evidence is that?
- 22 A. As we all saw in the photographs, we saw a glove
23 left behind by the people that committed this crime. And
24 also in the interview Mr. Wirtz told me that they used
25 gloves.

1 Q. Would you expect to get fingerprints or D.N.A. if
2 they were wearing gloves?

3 A. I would not expect to get D.N.A. or fingerprints,
4 no, sir.

5 Q. Okay. So those results, would they be consistent or
6 inconsistent with what the Defendant told you?

7 A. That would be consistent with him wearing the
8 gloves. We would not get fingerprints, no, sir.

9 Q. And you didn't, I guess, swab -- as the Defense
10 pointed out, you didn't swab the transmission fluid off
11 the sidewalk?

12 A. No, sir.

13 Q. And why again did you not swab the transmission
14 fluid?

15 A. I didn't know the evidentiary value at the time. At
16 the time, I didn't know if it was evidence to be taken or
17 not. You've got to make a choice of what evidence you
18 collect. Just didn't know what the evidentiary value was
19 at the time.

20 Q. But you found out later?

21 A. I found out later.

22 Q. But did you check it with your finger and smell it?
23 And with your experience as a mechanic for twenty-five
24 years, did you know exactly what was there?

25 A. Yes, sir. I can comfortably say that I know what

- 1 that is.
- 2 Q. And did you later put two and two together when you
- 3 heard this Defendant tell his friend Carrie Tyner to
- 4 watch the transmission, it had a bad leak?
- 5 A. Yes, sir. That's when I made a mental note of that
- 6 right there.
- 7 Q. Was that consistent with what you saw at the scene?
- 8 A. That's consistent with what I saw at the scene.
- 9 Q. And the consistence is in that picture 7-A?
- 10 A. Yes, sir, it is.
- 11 Q. If the car's registered and the owner of it is
- 12 Amanda Wirtz, who is Amanda Wirtz?
- 13 A. Amanda Wirtz is the wife of Tim Wirtz.
- 14 Q. During your investigation of this case, did you ever
- 15 see Amanda Wirtz driving the car?
- 16 A. I never saw Amanda drive -- excuse me, sir. Never
- 17 saw Amanda drive the car.
- 18 Q. Did you ever see Amanda in the car?
- 19 A. No, sir.
- 20 Q. Who did you see in the car?
- 21 A. You're speaking of the time that we met?
- 22 Q. And on the video?
- 23 A. And on video. I see Tim Wirtz in the car.
- 24 Q. Was the Defendant in custody seven and a half hours
- 25 before he gave the statement?

1 A. From the time he give the statement up until the
2 time he was taken down to jail.

3 Q. Let me rephrase that. How long was he in custody
4 with you before he gave the statement?

5 A. Oh, three hours. Two and a half, three hours.
6 Maybe something like that.

7 Q. What time did you pick him up? What time did you
8 meet him at the church?

9 A. I met him between four thirty and five at the
10 church.

11 Q. And what time did the statement -- I'm going to show
12 you State's Exhibit Number 2. What time was the
13 statement starting?

14 A. Six thirty.

15 Q. So how long had he been in custody before he gave
16 his statement?

17 A. He was in my custody at five oh eight, I believe is
18 the correct times.

19 Q. So roughly an hour and a half ---

20 A. Yes, sir.

21 Q. --- before he wrote the statement?

22 A. Yes, sir.

23 Q. So he had not been in custody seven and a half hours
24 under y'all's questioning before he gave you the
25 statement?

- 1 A. Oh, no, sir.
- 2 Q. The phone calls, those were later on in the evening?
- 3 A. Yes, sir.
- 4 Q. Did he ever ask for anything to eat or drink?
- 5 A. He never asked for anything to eat. However, I did
- 6 offer water. It's customary I offer everybody a glass of
- 7 water.
- 8 Q. I guess my thing is did y'all deprive him of
- 9 anything to get him to give this statement? Did you
- 10 deprive him of any food?
- 11 A. No, sir.
- 12 Q. Did you deprive him of water?
- 13 A. No, sir.
- 14 Q. Did you deprive him of sleep?
- 15 A. No, sir.
- 16 Q. Did you deprive him of anything?
- 17 A. No, sir.
- 18 Q. Did you make him any promises at all?
- 19 A. No, sir.
- 20 Q. And as far as not charging the people that had the
- 21 stolen goods, did you have any evidence at all to go get
- 22 a warrant to lock those people up for receiving stolen
- 23 goods?
- 24 A. No, sir.
- 25 Q. Is it hard to prove whether somebody knew if

1 something was stolen?

2 MR. ROSEMOND: Objection, Your Honor. He
3 doesn't know whether or not it's hard to prove that.

4 THE COURT: Restate your question, Mr. Wagner.

5 Q. Did you feel you had enough evidence in hand to
6 charge anybody with having a stolen gun that belonged to
7 Eric Bush?

8 A. I did. Mr. Wirtz.

9 Q. I mean as far as knowledge. As far as Shane
10 Elliott, Heath Bates ---

11 A. Oh, I'm sorry.

12 Q. --- the people that had the stuff -- the people
13 that, according to the Defendant's statement, he traded
14 these guns for meth?

15 A. No, sir.

16 Q. According to these people with the guns out there,
17 did you have enough evidence that you felt like you could
18 go lock them up for receiving stolen goods?

19 A. No, sir. As Mr. Rosemond pointed out, he had me to
20 read the statute, the receiving stolen goods. In there
21 it does state that the person has to know that the
22 property's stolen. I had no evidence to know that these
23 people knew that the guns were stolen, so the statute
24 doesn't fit.

25 Q. Thank you.

1 MR. WAGNER: That's all the questions I have.

2 RECROSS EXAMINATION

3 BY MR. ROSEMOND:

4 Q. You just testified that Mr. Wirtz told you about a
5 glove; is that right?

6 A. Yes, sir.

7 Q. Show me in his statement where he says about a
8 glove.

9 A. It's in my interview notes.

10 Q. Show me. Right there. Interview notes.

11 A. It's right here about ten lines down.

12 Q. What does it say?

13 A. We took gloves.

14 Q. Not the best handwriting, but okay.

15 A. My handwriting sometimes leaves a lot to be desired.

16 Q. You indicated that Ms. Wirtz never drove the car?

17 A. Mr. Wagner asked me if I'd ever seen her during this
18 time drive a car. And I stated no, during my
19 investigation.

20 MR. ROSEMOND: No further questions, Your
21 Honor.

22 MR. WAGNER: Nothing on redirect.

23 THE COURT: You may step down. All right. You
24 may call your next witness.

25 MR. WAGNER: We call Gentry Hawk.

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1 THE COURT: I tell you what. Let's take a
2 short break. I need to consult with the attorneys.

3 How many more witnesses do you think you have, Mr.
4 Wagner?

5 MR. WAGNER: This is probably it for us, Judge.

6 THE COURT: Well, let's do take a short break.
7 Just a few minutes. And then when you're ready to come
8 back, knock on the door.

9 (WHEREUPON, the jury exited the open court at
10 approximately 12:01 p.m.)

11 THE COURT: All right. I do want to see
12 Counsel.

13 (WHEREUPON, a bench conference was held off the
14 record after which court stood at recess for a short
15 break.)

16 THE COURT: All right. Is there anything from
17 the State before we bring the jury back?

18 MR. WAGNER: No, sir.

19 THE COURT: All right. From the Defense?

20 MR. ROSEMOND: No, Your Honor.

21 THE COURT: All right. Ask the jury to join
22 us, please.

23 (WHEREUPON, the jury entered the open court at
24 approximately 12:17 p.m.)

25 THE COURT: All right. Let the record reflect

1 the jury and alternate are in the jury box.

2 Madam Forelady, ladies and gentlemen of the jury,
3 we'll now continue with the State's case.

4 Mr. Wagner, you may call your next witness.

5 MR. WAGNER: Thank you, Judge. We call Gentry
6 Hawk.

7 (WHEREUPON, the witness was duly sworn.)

8 THE COURT: All right. If you would, please,
9 sir, give us your full name for the record, spelling your
10 last name.

11 THE WITNESS: Gentry Morris Hawk, II. It's H-
12 A-W-K.

13 THE COURT: Very good.

14 **GENTRY HAWK,**

15 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

16 DIRECT EXAMINATION

17 BY MR. WAGNER:

18 Q. Lieutenant Hawk, who do you work for?

19 A. The Oconee County Sheriff's Department.

20 Q. And how long have you worked for the Sheriff's
21 office?

22 A. Over fifteen years.

23 Q. And back in February of 2012, were you working at
24 the Sheriff's office in basically the same capacity as
25 you are now?

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1 A. Yes, sir. I was in the investigations division of
2 the Sheriff's office.

3 Q. Okay. And you're still currently in the
4 investigations?

5 A. I am.

6 Q. Did you talk with Sergeant McMahan and the
7 Defendant, Timothy Wirtz, in the interview room?

8 A. I did.

9 Q. On the 14th of February, 2012?

10 A. Yes, sir, I did.

11 Q. And how did you come to go to the interview room and
12 sit in?

13 A. Investigator McMahan came and got me for me to sit
14 in with him while Mr. Wirtz was telling him what happened
15 on the day of what he was investigating.

16 Q. Were you present before they took -- before the
17 statement was given, were you present while they were
18 discussing it?

19 A. Not the whole time they had discussed it. I came in
20 prior to the statement.

21 Q. Okay. And what was the Defendant's appearance that
22 day?

23 A. I don't remember what he -- I mean, he was there. I
24 don't remember all he was -- seemed a little tired. I
25 don't remember what he was wearing or what he was, you

- 1 know ...
- 2 Q. You've had the opportunity to see people that have
3 been under the influence of alcohol or drugs during your
4 fifteen years at the Sheriff's office?
- 5 A. Yes, sir.
- 6 Q. And with that experience, did he appear to you to be
7 under the influence of alcohol or drugs?
- 8 A. No, sir. He just -- he was answering the questions.
9 He was talking with us and didn't appear to be
10 incapacitated by any of those.
- 11 Q. Was his voice steady and clear?
- 12 A. Yes, sir.
- 13 Q. And did he respond to y'all appropriately when you
14 asked him questions?
- 15 A. Yes, sir.
- 16 Q. Was he slurring his words or anything?
- 17 A. No, sir, not that I could tell.
- 18 Q. Did he seem to have his wits about him?
- 19 A. Yes, sir.
- 20 Q. Was he cooperative?
- 21 A. He was.
- 22 Q. Did you or David McMahan or anybody else at the
23 Sheriff's office, prior to the statement, while you were
24 there or at any time, ever make him any promises in the
25 leniency or hold out any hope for reward?

1 MR. ROSEMOND: Objection, Your Honor. He can
2 only speak for himself and Mr. McMahan. He wasn't there
3 any of the other times.

4 THE COURT: Restate your question.

5 MR. WAGNER: Yes, sir, your Honor.

6 THE COURT: It has to be of this witness'
7 knowledge.

8 MR. WAGNER: I believe my question was while he
9 was there, did anything happen?

10 Q. While you ---

11 A. No, sir. When I was present, nobody threatened him,
12 made him any promises, leniency or anything for his
13 statement.

14 Q. Did you ever promise him anything?

15 A. No, sir, I didn't.

16 Q. Did you ever threaten him?

17 A. No, sir.

18 Q. Did anybody in your presence ever do anything to
19 force him or try to induce him to give you a statement?

20 A. No, sir.

21 Q. Okay. And to the best of your knowledge, were the
22 statements that he gave, State's Exhibit Number 2 and
23 Number 3, were those freely and voluntarily given by the
24 Defendant?

25 A. Yes, sir.

1 Q. Were you present when he made the phone calls?

2 A. Yes, sir.

3 Q. What was the object of those phone calls?

4 A. The object was to get the guns back for the victim.

5 And also, we were trying to corroborate with the other
6 people who he had said in his statement -- we was trying
7 to see if we could get any of them to talk on the phone
8 about what had happened.

9 Q. Was there any deals with him that these charges
10 would get dropped on him if he could just get the guns
11 back?

12 A. No, sir.

13 Q. Would y'all have ever made such a deal on a case as
14 serious as this?

15 A. Absolutely not, no, sir.

16 Q. Did anybody ever threaten him or try to coerce him
17 to make these calls?

18 A. No, sir.

19 Q. To the best of your knowledge, did he call of his
20 own free will?

21 A. Yes, sir.

22 Q. And were you present while these phone calls were
23 made?

24 A. Yes, sir.

25 Q. Let me show you what's been marked State's Exhibit

- 1 Number 2. Do you recognize State's Exhibit Number 2?
- 2 A. Yes, sir.
- 3 Q. And is that the statement that the Defendant gave
- 4 y'all on the evening of the 14th?
- 5 A. Yes, sir.
- 6 Q. Do you remember approximately at six, six-thirty --
- 7 was that the approximate time that y'all started the
- 8 statement?
- 9 A. Yes, sir, if it's written on this, yes, sir, that's
- 10 the approximate time.
- 11 Q. Do you know why -- and whose handwriting is it as
- 12 far as finishing up at nine oh five? And then again
- 13 right here where it says nine oh five and there's crossed
- 14 out and his initials?
- 15 A. Yes, sir.
- 16 Q. Is that your writing or his?
- 17 A. That's his.
- 18 Q. Do y'all know why he put nine oh five?
- 19 A. No, sir.
- 20 Q. Would you consider that a typo?
- 21 A. Yes, sir.
- 22 Q. Was this statement given before the second
- 23 statement?
- 24 A. It was.
- 25 Q. Okay. Let me show you State's Exhibit Number 2.

- 1 And what time did y'all start it?
- 2 A. Looks like seven thirty-seven.
- 3 Q. What time did y'all finish it?
- 4 A. Seven forty.
- 5 Q. Now, are those times consistent with your
- 6 recollection of how the statements took place, in what
- 7 order and what time frame?
- 8 A. Yes, sir.
- 9 Q. When y'all made the phone calls, how much longer
- 10 after these two statements were given?
- 11 A. I do not remember an exact length of time.
- 12 Q. Okay. Was it later in the evening?
- 13 A. It was after this, yes, sir.
- 14 Q. Was this Defendant ever deprived of food or water,
- 15 or was he deprived of anything in order to induce him to
- 16 give you a statement?
- 17 A. No, sir.
- 18 Q. And that taped phone call, State's Exhibit Number 4,
- 19 the series of phone calls, are they all true and accurate
- 20 copies? And have those been altered or tampered with in
- 21 any manner?
- 22 A. They are true, and they haven't been tampered with.
- 23 Q. Okay. Were you present when all those phone calls
- 24 were made?
- 25 A. Yes, sir.

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

2 THE COURT: Cross-examine?

3 CROSS-EXAMINATION

4 BY MR. ROSEMOND:

5 Q. What type of behavior does a meth addict display?

6 A. From my experience -- I don't know what all of them
7 display. But nervousness, twitching, itching. It speeds
8 up their -- how they act or they're twitching. There's a
9 bunch of different symptoms.

10 Q. And certainly that's different than a person who's
11 under the influence of alcohol; is that right?

12 A. Yes, sir.

13 Q. And certainly those particular -- that twitching
14 that you talked about, the nervousness and all that other
15 stuff, may be apparent in some people and not in other
16 people; is that right?

17 A. Yes, sir.

18 Q. Now, who notarized that document right there,
19 State's Exhibit Number 2?

20 A. I did.

21 Q. Who notarized State's Exhibit Number 3?

22 A. Well, which one's that?

23 Q. It's the other statement.

24 A. I did.

25 Q. Okay. And you notarized it after he signed it; is

1 that right?

2 A. No, sir. He signed it when I -- I swear him to it,
3 and then he would sign it.

4 Q. Okay. But you notarized him after he signed it?

5 A. No, sir. He signs it after I swear him to it.

6 Q. Okay. Saying the same thing then. And essentially
7 that nine oh five right there, he's saying to you that's
8 true and correct to his knowledge; is that right?

9 A. I asked him if his statement's true, yes, sir.

10 Q. Right. And he said it was and he signed it; is that
11 right?

12 A. Yes, sir.

13 Q. And you signed it, correct?

14 A. Yes, sir.

15 Q. Any ability to think that that was not true?

16 A. I'm sorry?

17 Q. Any reason to think that time was not true?

18 A. Well, the time wasn't true. It was a typo, or he
19 just wrote it wrong. However you want to say it.

20 Q. Did you write a report in this case?

21 A. No, sir, I didn't. Not that I know of. I don't
22 remember one.

23 Q. And the reason why you say that the time is wrong is
24 because of what?

25 A. Well, because if you notice on his second statement

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- 1 -- when we finished his first statement, we 'X' it out so
2 nothing else can be added.
- 3 Q. Exactly.
- 4 A. So if he would have -- if we wouldn't have been
5 finished with the first one, we would have added it to
6 the first one.
- 7 Q. Is that the only possible solution to that?
- 8 A. That's what I remember from looking at the
9 statement, sir.
- 10 Q. Okay. So there's no way in the world that could be
11 -- that should be nine thirty-seven and that should be
12 nine forty?
- 13 A. No, sir.
- 14 Q. That would have been after that particular statement
15 right there; is that correct?
- 16 A. Well, if you're looking at the bottom times if it
17 was correct.
- 18 Q. Right. But you are absolutely sure that these times
19 are wrong?
- 20 A. Yes, sir.
- 21 Q. And you're sure because of that statement started at
22 seven thirty-seven?
- 23 A. Yes, sir.
- 24 Q. And you know it started at seven thirty-seven
25 because of what?

- 1 A. It's written up there.
- 2 Q. It's written down here too. I mean ---
- 3 A. But if you look at the times on the statements, if
- 4 you look at -- that started at six thirty. That one
- 5 started at seven thirty-seven. That's more in line with
- 6 what -- than nine oh five because we wouldn't have -- if
- 7 he would have wanted to add something to that statement,
- 8 we would have added it to it instead of redoing another
- 9 one.
- 10 Q. You're a lieutenant now in the Sheriff's department,
- 11 are you not, Lieutenant Hawk?
- 12 A. Yes, sir.
- 13 Q. You've been in investigations for how long?
- 14 A. Approximately eleven years.
- 15 Q. How many interrogations rooms do y'all have in the
- 16 Sheriff's office?
- 17 A. Well, let me count. We've got three interview rooms
- 18 and a ---
- 19 Q. I mean, was he in an interview room?
- 20 A. He was.
- 21 Q. All of them have the same stuff?
- 22 A. Well, they have tables and chairs. I mean, it's not
- 23 the same -- not all set up the same way, but they have
- 24 basically the same furniture.
- 25 Q. Do they have cameras?

- 1 A. We do have cameras in there.
- 2 Q. And those cameras record what happens?
- 3 A. No, sir. It's not set up to record. We attempted
- 4 to do that, and it didn't work.
- 5 Q. Those rooms also have microphones?
- 6 A. Yes, sir.
- 7 Q. Those are the original microphones?
- 8 A. Uh-huh (affirmative).
- 9 Q. They don't work either?
- 10 A. No, sir.
- 11 Q. So the cameras doesn't work.
- 12 A. Let me re -- they work but they're not set up to
- 13 record because we can't get it to record the right way.
- 14 So the sheriff, the old sheriff told them to take it all
- 15 out, not to do anything with it.
- 16 Q. So you have cameras in the interrogation room. You
- 17 have microphones in the interrogation rooms; is that
- 18 right?
- 19 A. Yes, sir.
- 20 Q. So it's not that y'all don't have the ability to do
- 21 that; it's just that those things are just -- weren't
- 22 working right this minute?
- 23 A. They're not working. They haven't worked since we
- 24 got them, so it's not that minute. They haven't worked
- 25 period.

1 Q. You were there when the audio phone calls was going
2 on?

3 A. Yes, sir.

4 Q. Did you hear a drug deal go down on the tape?

5 A. Yes, sir.

6 Q. So getting the guns back was not the only thing that
7 was happening on that tape; is that right?

8 A. Well, that's all that we were attempting to get were
9 the guns back.

10 Q. But you heard the drug deal go down on the tape?

11 A. Yes, sir.

12 Q. Okay. As a matter of fact, I heard two of them.

13 A. Yes, sir.

14 Q. Okay. And there was narcotics people in the room?

15 A. They were in an out. They were assisting us.

16 MR. ROSEMOND: I don't have any further
17 questions, Your Honor.

18 THE COURT: Redirect?

19 MR. WAGNER: Nothing further, Your Honor.

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

21 Thank you, sir.

22 Madam forelady, ladies and gentlemen, I'm going to
23 suggest that we go to lunch at this time. I have some
24 things I need to take up with the attorneys, but also I
25 think I have a plea at two o'clock. So I'm going to

1 even present evidence. There's no requirement that you
2 present evidence either. Do you understand this?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: And I would so instruct the jury.

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: All right. Very good. Thank you
7 very much.

8 Now, Mr. Rosemond if you're ready for your motion,
9 I'll hear it.

10 MR. ROSEMOND: Yes, Your Honor. Your Honor, we
11 would ask for a directed verdict. And we're going to
12 start with the charge of the kidnapping, Your Honor. You
13 know, certainly, Your Honor, we understand that you are
14 looking to see whether or not there's any evidence which
15 reasonably would tend to prove the guilt of Mr. Wirtz in
16 regards to the kidnapping. Your Honor, the only evidence
17 against Mr. Wirtz is his statement. And his statement
18 says absolutely nothing about seizing, confining,
19 inveigled, decoy, kidnap, abduct or carried away with the
20 victim in this case, Mr. Bush.

21 As you know, there's two people charged. In the
22 beginning there was three. The other two was charged
23 with accessories. That leaves Mr. Wirtz with the
24 kidnapping. And to be charged with the kidnapping, the
25 evidence has to show or he has to say in his statement

1 that he kidnapped Mr. Bush. And that statement is
2 devoid. There is absolutely no evidence out there that
3 says Mr. Bush was kidnapped by Mr. Wirtz.

4 THE COURT: Well, there is evidence that
5 somebody was tied up or somebody tied the ---

6 MR. ROSEMOND: Somebody tied him up, Your
7 Honor. Now, but as we said earlier, the only evidence
8 that they're relying upon is Mr. Wirtz's statement. And
9 if they're relying upon that particular statement, it
10 does not say in his statement that he did anything
11 specifically with Mr. Bush. And if you take his
12 statement to be true, you can find no evidence to say
13 that he committed the crime of kidnapping. Certainly,
14 Your Honor, that's different from the grand larceny.
15 That's different than -- that's different from the
16 possession of a firearm because in there he admitted to
17 actually touching a firearm in his statement. But his
18 statement for the burglary, it says that ---

19 THE COURT: Wait a minute. Now, are you still
20 on the kidnapping?

21 MR. ROSEMOND: Still on the kidnapping. But
22 Your Honor, if you look at his statement, statement
23 number one says absolutely nothing about kidnapping. And
24 I would, at this time, ask the Court to dismiss this
25 kidnapping charge against Mr. Wirtz.

1 THE COURT: All right. Mr. Wagner, what do you
2 say on the kidnapping? That would be indictment 2012-GS-
3 37-590, Mr. Wagner.

4 MR. WAGNER: Your Honor, as to the kidnapping,
5 Your Honor -- and that is indictment 2012-GS-37-590 --
6 the victim testified that he was held at gunpoint by a
7 masked robber wearing a dark mask, a black shirt and blue
8 jeans. The guy held the gun to him, pointed it at his
9 head. Ended up tying him up, ordered him to stay there
10 and held him there against his will while his house was
11 robbed and burglarized. I will submit to the Court under
12 those facts, that's definitely kidnapping.

13 This Defendant admitted being at the scene. He
14 admitted being present while it was going on. It just so
15 happens that he's dressed the same way in the video an
16 hour later when he's using the credit cards as the robber
17 was that actually tied him up.

18 But whether or not he's the person that tied him up,
19 I would submit to the Court the hand of one is the hand
20 of all on that, that he is just as guilty as if he -- if
21 the other guy's the one that tied him up. He admits in
22 his statement that he says -- looks like he actually
23 says, I heard a loud noise upstairs and I asked what's
24 going on. Gary Smith then tied up the victim and started
25 bringing guns to the foyer. He knew, at the very least

1 -- if he's not the one that tied him up, he knew Gary was
2 tying him up while he was doing it, and he was present
3 and participated in the crime as a co-defendant. And I
4 think that, along with the other evidence in the case
5 that shows he was indeed there as far as the stolen guns
6 and tracing it back to him as well as his confession,
7 certainly warrants submitting it to the jury.

8 THE COURT: All right.

9 Mr. Rosemond?

10 MR. ROSEMOND: But Your Honor, you have to be
11 the person that does the kidnapping especially in the
12 case where the other people was charged with accessory
13 before the fact. They were not even charged with the
14 kidnapping, the burglary first, the possession of a
15 weapon. These people was charged with being accessory
16 before the fact, not even being at the scene. And if you
17 take what he says as true, then he did not do the
18 kidnapping. And therefore, the hands of one cannot be
19 the hands of all because the hands of one is these people
20 was the accessory.

21 Now, if everybody was charged with the same thing,
22 that's a totally different story, Your Honor. But in
23 this particular case, the only person charged with
24 kidnapping is Mr. Wirtz. Mr. Wirtz gave a statement.
25 Certainly, if you believe his statement, he could not

1 have been the person that did the kidnapping. You can't
2 have it both ways. You know, they want to believe Mr.
3 Wirtz's statement when it suits their purposes. But when
4 it doesn't suit their purposes, they want to negate his
5 statement and say, oh, that's not enough evidence there.
6 And therefore, Your Honor, this case is ripe for the
7 dismissal of the kidnapping charge.

8 THE COURT: All right. Of course, we're all
9 familiar with confessions aliunde which requires that the
10 state prove that the crime had actually been committed
11 outside or without the Defendant's extrajudicial
12 confession, which means from another source. And to be
13 honest with you, I'm going to have to think about this
14 one because one question that was asked Sergeant McMahan
15 was the only evidence the Defendant tied -- that -- the
16 only evidence that tied Defendant -- that the Defendant
17 tied up Mr. Bush is his own statement. That's right.
18 Inasmuch as he's the only one charged with kidnapping,
19 it's kind of difficult to bring hands of others in there
20 when he was the only one that was charged with it. It's
21 not -- you don't even have a conspiracy charge. Is there
22 a conspiracy charge against anybody on the kidnapping?

23 MR. WAGNER: I don't believe so, no, sir.

24 THE COURT: Any co-defendants?

25 MR. WAGNER: No, sir.

1 MR. ROSEMOND: No.

2 THE COURT: But again, this is a rather novel
3 issue for the Court because there is some other
4 corroborating evidence. I am going to take the motion
5 for directed verdict under advisement to determine
6 whether or not there is sufficient evidence to go forward
7 on the question of the Defendant's guilt of kidnapping
8 except for his statement. Of course, it's going to
9 require that I make my decision based on what I know now
10 at the time that the State rests and not anything else
11 that might be developed. Of course, I'll have to look at
12 it and revisit it at that time anyway.

13 All right. Now, I'm going to take the motion to
14 dismiss or directed verdict on the issue of kidnapping
15 under advisement.

16 All right. Next motion?

17 MR. ROSEMOND: Outside that motion, Your Honor,
18 I would ask for directed verdict on the burglary charge,
19 the grand larceny and possession charge. But it's based
20 upon -- the one that stands out to me is the kidnapping
21 charge.

22 THE COURT: Well, the only thing is the others
23 there is corroborating evidence from the phone calls at
24 least that -- what is it -- there were weapons taken and
25 that they were -- and I think the value has been

1 testified as to over ten thousand dollars.

2 MR. WAGNER: Your Honor, if could I just would
3 like to add, I think that there is other corroborating
4 evidence. I think Officer McMahan may have been confused
5 with the question possibly. But the victim testified
6 that the guy that tied him up had blue jeans, a dark
7 shirt, and a dark bandana. This Defendant, according to
8 the officer's testimony, in the State's Exhibit with the
9 videotape, I believe it was Number 5, is wearing blue
10 jeans and a dark shirt and had a dark bandana in his
11 possession when he was arrested. I think that -- within
12 an hour of the robbery when he's using the credit cards
13 that he stole from the victim, the description there and
14 the way he's dressed, I think all that does help
15 corroborate ---

16 THE COURT: Well, the only thing is, if I
17 remember, that the credit card -- there's some part of
18 the statement says that the credit card was given ---

19 MR. WAGNER: Well, the victim testified they
20 took his credit cards and they caught -- but the
21 Defendant himself said he's the one that used the credit
22 card at Bountyland. So he put himself as being that
23 person, also along with the I.D. from the officer.

24 THE COURT: Well, there again, you're using his
25 testimony to convict him, and that's not ---

1 MR. WAGNER: But the officer testified that's
2 him, from knowing him on the videos that that is --
3 that's Timothy Wirtz.

4 THE COURT: Very good. That's probably what's
5 going to control it. I have a problem when it says that
6 the only evidence the Defendant tied up Mr. Bush is his
7 own statement. And as far as -- but I do find that there
8 is sufficient evidence to go to the jury on the issues of
9 armed robbery. And I guess the armed robbery is being --
10 having weapons, acquiring weapons during the robbery. Is
11 that the element?

12 MR. WAGNER: Yes, sir. And he was armed.

13 THE COURT: I mean, in other words that's the
14 basis. It is armed robbery as far as having weapons.
15 He's armed when he goes or at least when he leaves?

16 MR. WAGNER: Yes, sir.

17 MR. ROSEMOND: Yes, sir.

18 THE COURT: And then the burglary first is
19 based on acquiring the weapons?

20 MR. WAGNER: Yes, sir.

21 THE COURT: You're not using any prior
22 convictions or anything?

23 MR. WAGNER: Your Honor, I could have. I did
24 not. I didn't ---

25 THE COURT: Well, that's what I wanted ---

State of South Carolina

In the Court of General Sessions

County of Oconee

State of South Carolina,

Plaintiff,

-vs-

Timothy Ray Wirtz,

Defendant.

2012-GS-37-588/591

October 16 - 18, 2013

Transcript of Record

Volume II

BEFORE:

The Honorable Alexander Macaulay, Judge

APPEARANCES:

David Wagner, Esquire
Deputy Solicitor for the 10th Judicial Circuit
Attorney for the State

R. Delane Rosemond, Esquire
Attorney for the Defendant

Renee H. Tollison
Circuit Court Reporter

1 case?

2 THE DEFENDANT: No, Your Honor, I do not.

3 THE COURT: All right. And you have fully
4 understood the advice of your counsel, Mr. Rosemond?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: You're completely satisfied with
7 Mr. Rosemond's services in this case as far as whether or
8 not you should testify?

9 THE DEFENDANT: Yes, definitely, Your Honor.

10 THE COURT: All right. I find that the
11 Defendant knowingly, intelligently, freely, and
12 voluntarily waives his right to testify, and we'll
13 proceed. I will also instruct the jury that the fact
14 that you do not testify cannot and will not be used
15 against you in their deliberations. All right. Thank
16 you very much.

17 If you would, please, sir, ask the jury to join us.

18 (WHEREUPON, the jury entered the open court at
19 approximately 2:30 p.m.)

20 THE COURT: All right. Let the record reflect
21 the jury and alternate are in the jury box.

22 All right. Mr. Wagner, you may call your next
23 witness.

24 MR. WAGNER: Your Honor, that's all the
25 witnesses for the State, and we would rest.

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1 THE COURT: All right. The State rests?

2 MR. WAGNER: Yes, sir.

3 THE COURT: All right. Madam Forelady, ladies
4 and gentlemen of the jury, we will now go forward with
5 the Defense case. You've only heard one part of the
6 case. And I'll now recognize Mr. Rosemond for his first
7 witness.

8 Mr. Rosemond?

9 MR. ROSEMOND: I'd like to call Carrie Tyner to
10 the stand, Your Honor.

11 (WHEREUPON, the witness was duly sworn.)

12 THE COURT: All right. If you would, please,
13 ma'am, give us your full name for the record, spelling
14 your last name.

15 THE WITNESS: Carrie Leigh Tyner, T-Y-N-E-R.

16 THE COURT: Very good. Thank you, ma'am.

17 **CARRIE TYNER,**

18 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

19 DIRECT EXAMINATION

20 BY MR. ROSEMOND:

21 Q. Ms. Tyner, where do you currently live?

22 A. At [REDACTED] Westminster.

23 Q. And how old are you?

24 A. Twenty-nine years old.

25 Q. Do you know Timothy Wirtz?

1 A. I do.

2 Q. Were you with him the day that he was arrested?

3 A. I was.

4 Q. Tell me about that day that he was arrested.

5 A. The day -- he came to my house that morning. It was
6 kind of like eleven o'clock, maybe, ish. We ate some
7 food. I told him that -- we talked about some things
8 that were going on. He was extremely upset.

9 Q. Do you know what he was upset about?

10 A. Thinking about the cops were looking for him. We
11 were leaving my house. His transmission was messed up.
12 When we were coming out of my driveway, I stopped to get
13 my grandmother and put two -- and I seen the narcotics
14 truck go by my house. So then I had called them and I
15 said, what was going on and where they were at. And then
16 we left and went into Westminster the opposite way as
17 opposed to going to meet them.

18 Q. Where were y'all headed?

19 A. I'm not sure. I can't remember exactly where we
20 were going. But I know we stopped at the dollar store
21 and got some transmission fluid. And then after that, we
22 went back around and I stopped at the church at the end
23 of Black Jack Road where Mr. McMahan, Mr. Woodring and
24 Casey Bowling pulled in and got Tim.

25 Q. Now, was this a designed meeting, or did you just

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1 happen to run into them?

2 A. No, it wasn't -- we just happened to run into them.

3 I had told Tim that I'd been talking to them and that

4 they wanted to talk to him. And so he said that he would

5 talk to them.

6 Q. And about what time was this? Do you recall?

7 A. Probably about four maybe. I'm not sure. I'm not

8 positive.

9 Q. So how long were you at the church?

10 A. Twelve, thirteen minutes.

11 Q. Tell me about Tim's -- tell me what you -- tell me

12 how Tim was acting at that particular time.

13 A. He wasn't a hundred percent himself. He was

14 stressed out. He -- I don't know. He was worried and he

15 was kind of high.

16 Q. When you say kind of high, what do you mean?

17 A. He'd been up for a few days.

18 Q. Had you been with him those few days?

19 A. Not the day before, but I'd seen him throughout the

20 week.

21 Q. What, if any, drugs did you see him do?

22 A. I didn't see him do any drugs.

23 Q. When you say he's kind of high, what made you think

24 that he was kind of high?

25 A. Because I know the -- I know how jittery, anxious-

- 1 like.
- 2 Q. Now, at the particular scene, at the church, what
- 3 occurred?
- 4 A. He was supposed to be meeting with just one person.
- 5 And then three people got out of the vehicle. So he got
- 6 kind of upset. And then another one went to block us in.
- 7 They waved the other vehicle off, and Tim got out and
- 8 told them that he would talk to them and he would -- you
- 9 know, he agreed to be there with them and speak with them
- 10 a hundred percent.
- 11 Q. After -- what happened after everybody got out of
- 12 the car?
- 13 A. They asked me about some guns. And they were in my
- 14 grandma's trunk, so I went -- took Tim's car to my
- 15 grandmother's, got them out of grandma's trunk, put them
- 16 in that trunk in Tim's car, went to Deer Run Road and met
- 17 them, and they got the guns out of the vehicle.
- 18 Q. When you said them, you mean who?
- 19 A. Officer McMahan, Bowling and Woodring.
- 20 Q. Had you met Sergeant McMahan before?
- 21 A. No, sir.
- 22 Q. What, if any, law enforcement officers did you know?
- 23 A. I just know Casey Bowling and Woodring.
- 24 Q. How did you know Woodring and Bowling?
- 25 A. Because they had come to my house looking for me

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1 when Chad Bush had tried to buy the gun to kill me with.

2 Q. Now, the particular -- what time did you give the
3 guns back to Sergeant McMahan?

4 A. Between four and five, I'm assuming. Like I said,
5 it's been a long time ago. I'm not for sure at all about
6 the time of day it was.

7 Q. Now, who did you give the guns back to?

8 A. Mr. McMahan, I believe. They were wrapped up in a
9 camouflage -- no -- some weatherproof coveralls. I'm not
10 sure. I'm not positive. I'm pretty sure it was Mr.
11 McMahan or Mr. Woodring, one.

12 Q. Now, do you know Chad Bush?

13 A. I do.

14 Q. How do you know Chad Bush?

15 A. I met Chad when my cousin, Bridgette Cooper, died.
16 He was a family friend. And that's when I met him, and
17 had somewhat of a relationship with him since then.

18 Q. Prior to this particular incident of the robbery,
19 did you have a -- ever -- did you ever have a discussion
20 with Chad Bush about this robbery?

21 A. A few nights before this, I had -- me and Jackie
22 Webb and Tom Moseley had come to Chad's house. Tim was
23 there. Tim's wife was there. Tim's daughter was there.
24 Who else? There were a couple of other people there.
25 And Tim was asking me -- I mean, Chad was asking me about

1 getting them a large quantity of meth because he had set
2 something up and they would have a lot of money. That he
3 had it all worked out, and that they had planned on doing
4 something where nobody was going to get hurt. People who
5 were missing out were going to get reimbursed somehow,
6 and that they would be flying high for a few days.

7 Q. What did Chad say he set up?

8 A. He didn't particular come out and say a robbery, but
9 he said that he knew where some things were and that they
10 could be claimed on the insurance, and nobody was going
11 to get hurt and that they'd have a lot of money to spend.
12 He didn't go into great, great, great detail about what
13 was going on, but ...

14 Q. You've been incarcerated before, have you not?

15 A. I have.

16 Q. What have you been incarcerated for?

17 A. Felony possession of a firearm in 2002, I believe,
18 or 2003. It might have been a little after that. And
19 then recently for an escape charge, unlawful possession
20 of prescription medicine.

21 Q. Now, were you charged with something else and you
22 pled to another charge, or how did that work out?

23 A. No, I don't think so.

24 Q. So when you saw Tim Wirtz that morning, was he
25 coherent?

- 1 A. Yes.
- 2 Q. But you still thought he was high; is that right?
- 3 A. Yes.
- 4 Q. Now, when you went to the church, who all was -- who
- 5 got there first?
- 6 A. We did.
- 7 Q. Now, did Chad want to -- did Tim want to go or what?
- 8 A. He was iffy about it. We were talking about either
- 9 putting him on a plane or him talking to the cops.
- 10 Q. Do you recall talking to Tim later on that
- 11 particular day?
- 12 A. Vaguely, but I can't remember exactly what was said.
- 13 Q. Do you recall having any phone calls with him later
- 14 that -- later the same day he got arrested?
- 15 A. It's possible.
- 16 Q. When was the last time you talked to Casey Bowling?
- 17 A. That day.
- 18 Q. That was back when he got arrested?
- 19 A. Right before we met them.
- 20 Q. When's the last time you talked to Tyrel Woodring?
- 21 A. I haven't.
- 22 Q. The last time you talked to Sergeant McMahan?
- 23 A. That day. And I didn't at all.
- 24 Q. Did you ever do any work for Casey Bowling?
- 25 A. No, sir.

1 Q. You ever did any work for anybody?

2 A. No, sir.

3 Q. Tell me about ---

4 MR. ROSEMOND: No further questions of this
5 witness, Your Honor.

6 THE COURT: Cross-examine?

7 CROSS-EXAMINATION

8 BY MR. WAGNER:

9 Q. Whose car were y'all driving that day?

10 A. Tim's.

11 Q. Was it a '99 Taurus?

12 A. Yes, sir.

13 Q. Dark colored?

14 A. Yes, sir. It was green, I believe.

15 Q. The transmission was leaking fluid bad?

16 A. Yes, sir.

17 Q. You and Tim were friends, right?

18 A. Well, he's like my stepbrother.

19 Q. Good friends?

20 A. He's my brother's brother.

21 Q. Okay. But you don't have any idea what he did on
22 the 11th of February of 2012, do you?

23 A. No, sir.

24 Q. You don't know where he was or what he was doing it,
25 do you?

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- 1 A. No, sir.
- 2 Q. And so you don't know for a fact -- from being
- 3 there, you don't know that he was involved in the
- 4 burglary and robbery at Eric Bush's house, do you?
- 5 A. I know. But I don't know whether he was or he
- 6 wasn't, no, sir.
- 7 Q. And when you say he was coherent, y'all had
- 8 conversations, y'all talked?
- 9 A. Uh-huh (affirmative).
- 10 Q. He responded?
- 11 A. He did.
- 12 Q. All day long?
- 13 A. Well, we wasn't around each other but for the couple
- 14 of hours, but, yeah, he was -- yeah, he could -- yes,
- 15 sir.
- 16 Q. All that, but he was high? You know he was high?
- 17 A. Yeah, he was high.
- 18 Q. Was he high enough to know what he was doing?
- 19 A. I'm not sure if I'm the right person to answer that
- 20 question.
- 21 Q. You were talking to him; you were around him.
- 22 A. I were. I was. I was talking to him, yes.
- 23 Whether, you know, he knew what he was doing consciously
- 24 or not, yeah, I guess he was coherent.
- 25 MR. WAGNER: No further questions.

1 THE COURT: Re-examine?

2 MR. ROSEMOND: No questions, Your Honor.

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

4 Call your next witness.

5 MR. ROSEMOND: I call Brandon Long to the
6 stand, Your Honor.

7 THE COURT: Very good.

8 (WHEREUPON, the witness was duly sworn.)

9 THE COURT: All right. If you would, please,
10 sir, give us your full name for the record, spelling your
11 last name.

12 THE WITNESS: Brandon B. Long, L-O-N-G.

13 THE COURT: Very good. Thank you, sir.

14 **BRANDON LONG,**

15 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

16 DIRECT EXAMINATION

17 BY MR. ROSEMOND:

18 Q. Mr. Long, where are you currently employed?

19 A. Oconee County Sheriff's Office.

20 Q. And how long have you been working there?

21 A. Approximately eight years.

22 Q. And what department do you work in?

23 A. The narcotics and vice division.

24 Q. How long you been -- how long have you been in that
25 department?

1 A. Approximately six years.

2 Q. In your department, how do you go about making
3 cases?

4 A. A majority of the time it's through informants.

5 Q. And how do you use informants?

6 A. Basically, we'll get an informant and we'll send
7 them in places we can't go to buy drugs to make cases for
8 us.

9 Q. Now, what are the ways that normally you get
10 informants?

11 A. Through charges. Some people call the office
12 voluntarily. Different ways.

13 Q. So when someone has a charge, a criminal charge,
14 against them, they can become an informant. And if they
15 are an informant, what normally happens to those charges
16 sometimes?

17 A. We notify the Solicitor's office, and we'll make a
18 recommendation. The final decision is up to the
19 Solicitor's office on the charges as to if they receive
20 any leniency or not.

21 Q. Now, so that's one way they can work for you guys,
22 and if they're successful, they can get some leniency?
23 How about payment of money?

24 A. Yes. They can also, if they don't have charges or
25 something, we do pay them money to work for us.

1 Q. So that's a second way. Any other ways that you
2 would get informants?

3 A. To the best of my knowledge, no.

4 Q. I mean, those are about the only two ways?

5 A. Yeah.

6 Q. Has Tim Wirtz ever been an informant for you?

7 A. Yes, sir.

8 Q. And how long has he been an informant for you?

9 A. It was -- he was signed up on January 20th of 2011.

10 Q. Now -- and without going into too much detail of
11 what he did, was he successful in his efforts?

12 A. Yes, a couple of times.

13 Q. Now, as a result of being successful, was he paid
14 money or was charges reduced for him?

15 A. He was paid money.

16 Q. Now, when you -- did he come to you or you went to
17 him?

18 A. I'm pretty sure he came to us. I don't remember a
19 hundred percent, but I don't remember going to him. I
20 don't remember how he contacted us or anything.

21 Q. Now, when he came to you, he was working for money?

22 A. Yes.

23 Q. If he had had some charges and he was successful in
24 his endeavors, would you have made a recommendation to
25 the Solicitor's office if he was successful?

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1 A. Yes, like with everybody.

2 Q. Now, most of the time those recommendations are for
3 leniency in sentencing; is that right?

4 A. Yes.

5 Q. Now, so Tim Wirtz was kind of familiar with helping
6 the narcotics office and getting something in return; is
7 that right?

8 A. He was used to getting payments.

9 Q. When they become informants, they sign an agreement
10 with you; is that right?

11 A. Yes, sir.

12 Q. And that agreement kind of -- it sets parameters of
13 what they will do and what you all will do; is that
14 right?

15 A. Yes. Basically, it's general rules.

16 MR. ROSEMOND: No further questions, Your
17 Honor.

18 THE COURT: Cross-examine?

19 CROSS-EXAMINATION

20 BY MR. WAGNER:

21 Q. And in that agreement, does it say that, I further
22 confirm no law enforcement officers made any promises or
23 representation as part of this agreement and that I will
24 receive any specific sentence, probationary or otherwise.
25 Further, no law enforcement officer has made promises

1 that any of the charges will be dismissed as a result of
2 my cooperation.

3 A. Yes, sir. That's number nine of the rules.

4 Q. Okay. And did he initial that, that he understood
5 that when y'all signed up on this agreement?

6 A. Yes, sir.

7 Q. And this agreement was signed, I think you just said
8 it was ---

9 A. January the 20th of 2011.

10 Q. So well over a year before the case that we're on
11 trial for here today?

12 A. Yes, sir.

13 Q. Okay. And also below that it says, I acknowledge
14 that I'm aware that all final decisions regarding
15 disposition of pending charges are in the sole discretion
16 of the Solicitor's office. Recommendations of law
17 enforcement will be considered by the Solicitor's office
18 in making those determinations.

19 A. Yes, sir. That's rule number ten.

20 Q. And did he initial that?

21 A. Yes, sir.

22 Q. So he understood that y'all weren't allowed to -- I
23 mean, couldn't deal with him on that?

24 A. We don't make promises, no, sir.

25 Q. Okay. And then number eleven. I further

1 acknowledge that I have not been offered or promised
2 anything in exchange for cooperation and that cooperation
3 is completely voluntary and not the result of force or
4 coercion.

5 A. Yes, sir.

6 Q. Did he initial that?

7 A. Yes, sir.

8 Q. Did he understand those things?

9 A. Yes, sir.

10 Q. There's a whole bunch of other things on there. But
11 was he understanding as far as the narcotics guys go that
12 y'all couldn't really promise him anything, that you just
13 basically paid him money for the couple of cases that he
14 worked on you for, and that was about the extent of his
15 involvement?

16 A. Yes, sir.

17 Q. Did you help or were you in the process of trying to
18 help Sergeant McMahan find him on the 14th, the day that
19 he got picked up at the church?

20 A. Yes, I was. I was trying to text him by telephone
21 to meet me or to get a hold of him.

22 Q. And why did you offer to help Sergeant McMahan try
23 to find him?

24 A. Because I had previous dealings with him and had
25 contact with him.

1 Q. And you thought maybe you could aid and assist in
2 that manner?

3 A. Yes, sir.

4 Q. Okay. Was that the only involvement you had with
5 this case at all?

6 A. Yes, sir. I didn't investigate it or anything like
7 that.

8 Q. Did you really know anything about it?

9 A. No, sir, not really other -- they told me what
10 charges they had on him, but that was basically it. I
11 didn't investigate it, like I said.

12 Q. Did you have any contact with him that day or in the
13 days prior to that?

14 A. I had texted him several times that day. I can't
15 remember if he texted me back. But he ended up meeting
16 them instead of me.

17 Q. Why did you text him that day?

18 A. Trying to get a hold of him to meet me.

19 Q. To find him?

20 A. Yeah, for the active warrants.

21 Q. Okay. Thank you, Officer. That's the only
22 questions I have.

23 REDIRECT EXAMINATION

24 BY MR. ROSEMOND:

25 Q. This particular agreement, people who are getting

1 paid sign this agreement, don't they?

2 A. Well, both. Anybody.

3 Q. Anybody can sign this agreement?

4 A. Any informant that we run signs this agreement
5 before we run them.

6 Q. And certainly, when you say you don't make them any
7 promises, you don't make them promises what their
8 sentencing will be; is that right?

9 A. That's right. I tell them -- basically, what I tell
10 them is I can make a recommendation to the Solicitor's
11 office. I can't sit here and tell you what kind of time
12 you're going to get on a sentence. That's up to the
13 Solicitor's office and the judge. I can make a
14 recommendation, but that's it. I can't promise you.

15 Q. And certainly if they're successful, you normally
16 make a recommendation of leniency; is that right?

17 A. Yes, sir.

18 Q. And you can't promise them exactly what they will
19 get, but you can promise them that you will make a
20 recommendation as long as they do what they're supposed
21 to do?

22 A. Well, I tell them I'll make a recommendation.

23 Q. Right.

24 A. Yes, sir.

25 Q. And certainly -- and normally when they're working

1 off charges, they do these things to help themselves out;
2 is that right?

3 A. Yes, sir.

4 Q. And you know, certainly, if they're successful they
5 get help, and if they don't -- if they're not successful,
6 they don't get any help?

7 A. Most of the time, yeah. I mean, if they get out
8 there and actually put forth an effort and something goes
9 wrong, I mean, we'll still let the Solicitor's office
10 know, hey, they tried.

11 Q. Are you aware that Mr. Wirtz made some phone calls
12 for drug deals on the day he got arrested?

13 A. I wasn't there other than during the hunting part.
14 After he was picked up, I didn't have anything else to do
15 with that.

16 Q. Who is Casey Bowling?

17 A. He used to work in the narcotics and vice division.

18 Q. Was he working in the vice and narcotics division
19 back during that time?

20 A. Yes, sir.

21 MR. ROSEMOND: No further questions, Your
22 Honor.

23 THE COURT: Recross?

24 MR. WAGNER: Nothing, no, sir. No recross.

25 It's not my witness, but I told him I'd ask if he could

1 be excused if it was all right with Mr. Rosemond.

2 Mr. Rosemond?

3 MR. ROSEMOND: Certainly, Your Honor.

4 THE COURT: All right. Without objection, the
5 witness may be excused. Thank you, sir.

6 THE WITNESS: Thank you.

7 THE COURT: All right. You may call your next
8 witness.

9 MR. ROSEMOND: Thank you. I call Thomas Hoxit.

10 (WHEREUPON, the witness was duly sworn.)

11 THE COURT: If you would, please, sir, give us
12 your full name for the record, spelling your last name.

13 THE WITNESS: Thomas Durham Hoxit, H-O-X-I-T.

14 THE COURT: Thank you, sir.

15 **THOMAS HOXIT,**

16 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

17 DIRECT EXAMINATION

18 BY MR. ROSEMOND:

19 Q. Mr. Hoxit, where do you currently live?

20 A. [REDACTED] (phonic). And that's in Seneca.

21 Q. And what do you do for a living?

22 A. I'm not driving at the present time.

23 Q. Do you know Timothy Wirtz?

24 A. Yes, sir, I do.

25 Q. How do you know Mr. Wirtz?

1 A. Association from just different friends from before.
2 And I also had to spend a little down at the L.E.C. with
3 him as well.

4 Q. Now, do you recall the day he got arrested?

5 A. Yes, sir.

6 Q. Why do you recall that particular day?

7 A. Because I'm acquainted with not only Timothy but
8 also very acquainted with the individual's brother that
9 all this was about.

10 Q. Who is that?

11 A. His brother, I think it's Chad Bush. His brother
12 that all this is about is Eric, I do believe.

13 Q. And you're familiar with Chad?

14 A. I'm very familiar with Chad.

15 Q. What, if anything, did Chad tell you about this
16 particular robbery?

17 A. I don't recall the exact date ---

18 MR. WAGNER: Objection, Your Honor.

19 THE COURT: What's the objection?

20 MR. WAGNER: Hearsay.

21 MR. ROSEMOND: 801(d)(2), Your Honor. Mr.
22 Bush, at that particular time was a co-conspirator. The
23 same question I had asked Ms. Tyner.

24 THE COURT: All right. I'm going to overrule
25 the objection.

1 As Mr. Rosemond has pointed out, there are certain
2 exceptions to the hearsay rule. And one of those is
3 somebody is speaking for someone else or they are part of
4 a organization or anything like that, and of course,
5 they're authorized to make those statements. It's not as
6 if they're making an uniformed statement. All right. In
7 other words, it gives a certain authenticity to the
8 statement rather than just being pure hearsay.

9 All right. Very good.

10 Q. What did Chad Bush say to you about this robbery?

11 A. Chad had said that he had set up Timothy and Gary
12 out of -- I would assume it was revenge -- for the part
13 that he had taken (phonic) place in a previous break-in
14 or something. All they referred to it was up on the
15 mountain to where they had took some coins and some other
16 things and possibly a gun, I think. And he didn't
17 receive any money out of it, and he was very unhappy
18 about it.

19 Q. So what did Chad do?

20 A. He had -- he told me that he had let them know that
21 there was certain items and everything that belonged to
22 his brother, when they could go in and do all this and
23 that he was going to make sure that they went down for
24 doing it. He said, whether they did it or not, that he
25 was going to make sure because he didn't get his cut out

- 1 of what he thought -- or he didn't get what he thought he
2 should have out of the other one, referring to the one he
3 had spoke about on the mountain up there.
- 4 Q. Now, how often do you see Chad?
- 5 A. Before that?
- 6 Q. Yes, sir.
- 7 A. Quite often. Weekly basis probably. Probably no
8 more than a week would go by before we would see him.
9 And at that time, we were very good friends.
- 10 Q. And do you know Sergeant McMahan?
- 11 A. Yes, I know Mr. McMahan.
- 12 Q. How do you know him?
- 13 A. I've known him through his job and things for years.
14 He's always been a very nice man to me in things.
- 15 Q. Did you ever have any conversation with him about
16 the conversation that you had with Chad Bush?
- 17 A. Yes, we did.
- 18 Q. And what did you tell Sergeant McMahan about that?
- 19 A. I had told him for the most part the same thing.
20 Most of our conversation with that had to do with --
21 well, Chad had called me at my mother's house wanting to
22 do or wanting me to get him a firearm to try to kill Ms.
23 Tyner.
- 24 Q. Now, let's take both of those separately. You told
25 Sergeant McMahan that Chad Bush set up the robbery for

1 his brother?

2 A. After the whole incident -- we had talked about the
3 firearm and stuff because I'd went to probation. I spoke
4 to -- I do not recall if it was Mr. McMahan who was at
5 the probation or if it was the other detective. But I
6 spoke with them. I'd also previously called my probation
7 officer and informed her of what Chad had called me
8 wanting to do. And we proceeded from there. I do not
9 recall the complete exact conversation, but that was the
10 circumstances under getting Chad to try to buy the
11 firearm and everything like that was because they
12 suspected Chad was very much involved in all of that with
13 his brother.

14 Q. Now, what did Chad say to you about this firearm?

15 A. His specific words, I do believe -- I mean, I can't
16 be a hundred percent -- is, Thomas, get me a gun. I'm
17 going to kill that bitch, Carrie Tyner. He said, I've
18 had it with her. He said, get me a gun.

19 Q. Did he say why he wanted to do that?

20 A. He was sick of her. He said, I'm tired of her. He
21 said, I'm sick of all of them. He said they have always
22 -- they've been a pain in my ass, pain in my side
23 constantly. He said, I'm going to get rid of her, so I
24 need you to get me a gun.

25 Q. So what did you do?

1 A. I first told him -- I said, look. I said, you
2 called me on my mother's phone wanting me to do this and
3 that. I said, and then want to tell me that you know for
4 a fact that your home phone is probably tapped because of
5 what's happening with your brother. I said ---

6 Q. Did you talk to McMahan about this?

7 A. Not until after that phone conversation with Chad.
8 After that phone conversation with Chad, I called my
9 probation officer, told her what had happened, explained
10 to her. I do not remember the days after that. It may
11 have been the same day or maybe a few days after that
12 when I went to report to probation. And then I spoke
13 with a couple of officers. I do not recall if it was Mr.
14 McMahan that day I went to report to probation or not.

15 Q. Did you ever meet with Mr. McMahan?

16 A. Yes. Me and Mr. McMahan, we all spoke. Me and Mr.
17 McMahan, I believe Mr. Long and a few of the other ones.
18 I talked to David a couple of times about it because I
19 trust David. He's always been very honest and good to me
20 if I ever needed him or needed help with something. And
21 as I said, we worked up a plan and outlined it to ---

22 Q. So what was the plan that you worked up?

23 A. Was to go talk to Chad, offer him the opportunity to
24 purchase the firearm. Present him with a firearm that
25 the Sheriff's department had presented me. And of

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1 course, there's no bullets in it, and I imagine it wasn't
2 working. I'm not for sure. I didn't go to that extent.
3 But they also said to make sure to be specific and ask
4 Chad Bush what his exact intentions is. Not to let him
5 stutter or step around. Say, well, you know, this, that
6 and the other. To make Chad Bush sit right there and
7 plain and simply state what his intentions of buying the
8 firearm was. I did that repeatedly. It was recorded.
9 We done it at his house.

10 We took him to Seneca to the pawn shop. We sat in
11 the parking lot of the pawn shop, me and Chad. Allison
12 went in to pawn an X-box, I believe it was, that belonged
13 to his son to come up with the money to pay us for the
14 gun. And I said, Chad, now, tell me, listen,
15 specifically, what are you wanting the gun for? And he
16 sat right there and told me. He said, I want that gun.
17 I'm going to kill Carrie Tyner. He said, I'm going to
18 kill that bitch.

19 Q. Now ...

20 MR. ROSEMOND: No further questions, Your
21 Honor.

22 CROSS-EXAMINATION

23 BY MR. WAGNER:

24 Q. So Chad, the victim's brother, is a dirt bag? Y'all
25 do meth together, have done meth together?

- 1 A. Yeah.
- 2 Q. Okay. After you've been convicted of
- 3 methamphetamine?
- 4 A. Yes, sir.
- 5 Q. Arson?
- 6 A. Yes, sir.
- 7 Q. Stealing electrical current?
- 8 A. No, I was not convicted of that.
- 9 Q. You weren't?
- 10 A. No.
- 11 Q. 2/21/2013 of this year?
- 12 A. Yes, sir. I went to court for it, but it was
- 13 supposed to have been disposed of.
- 14 Q. Would you be surprised if I say it says convicted?
- 15 A. I may need to speak to my attorney about that, but
- 16 that's fine.
- 17 Q. Anyway, never mind. So the fact that Chad Bush --
- 18 I'm calling him a dirt bag -- is a dirt bag and y'all do
- 19 drugs together -- apparently, he's done drugs with many
- 20 other people?
- 21 A. Yes.
- 22 Q. -- does not excuse this Defendant from going over
- 23 and robbing his brother in his own house, ransacking his
- 24 house, and sticking him up at gunpoint and stealing his
- 25 guns, does it?

1 A. If he did it, no.

2 Q. It's got nothing to do with that, does it?

3 A. No.

4 Q. So everything you've just said really has nothing to
5 do with other than the victim's brother happens to be a
6 dirt bag?

7 A. I wouldn't say that when Chad admits that he set him
8 and Gary up for doing it.

9 Q. Set up -- I mean -- except he didn't put a gun to
10 their head and force them go over there ---

11 A. Right.

12 Q. --- and rob his brother, did he?

13 A. No.

14 Q. They did it on their own free will, didn't they?

15 A. I'm assuming so, yes, sir. I mean, that's what ---

16 Q. If that's what the evidence says -- if that's what
17 the evidence says, that's what they did. It's got
18 nothing to do with what Chad's beef with Carrie Tyner or
19 the fact that Chad's a dirt bag, does it?

20 A. I don't guess not, no.

21 MR. WAGNER: Nothing further.

22 REDIRECT EXAMINATION

23 BY MR. ROSEMOND:

24 Q. You don't have any evidence that Mr. Wirtz committed
25 that robbery, do you?

1 A. No, sir.

2 Q. Mr. McMahan, has he ever helped you out on any
3 charges?

4 A. No.

5 Q. Has he ever paid you any money for any services?

6 A. No. The thing with Chad was done because he put my
7 -- Chad put my family at risk by trying to pull me into
8 killing Carrie -- getting him -- letting him kill Carrie.

9 MR. ROSEMOND: No further questions, Your
10 Honor.

11 MR. WAGNER: Nothing, Your Honor.

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

13 THE WITNESS: Yes, sir.

14 MR. ROSEMOND: We call Chad Bush to the stand,
15 Your Honor.

16 (WHEREUPON, the witness was duly sworn.)

17 THE COURT: If you would, please, sir, give us
18 your full name, spelling your last name for the record.

19 THE WITNESS: George Chad Bush, B-U-S-H.

20 THE COURT: Very good. Thank you, sir.

21 **CHAD BUSH,**

22 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

23 DIRECT EXAMINATION

24 BY MR. ROSEMOND:

25 Q. You go by Charge, Mr. Bush?

1 A. I go by Chad.

2 Q. Chad? Prior to the robbery that took place at your
3 brother's house, you discussed robbing your brother with
4 some friends?

5 A. No, sir.

6 Q. You never had that discussion?

7 A. No, sir.

8 Q. You don't recall being at your house in your
9 basement or in your house at least talking about the
10 things that your brother has in his house?

11 A. We discussed things that was in my brother's house,
12 but we never discussed a robbery.

13 Q. Now, you did not discuss that your brother had guns
14 in his house that you all could get money for?

15 A. No, sir.

16 Q. You've been convicted of forgery, right?

17 A. Yes, sir.

18 Q. And you also are currently in jail on a
19 methamphetamine charge; is that right?

20 A. Yes, sir.

21 Q. Now, do you know Carrie Tyner?

22 A. Yes, I'm aware of Carrie. I know Carrie Tyner.

23 Q. Isn't it true that at one time you had tried to
24 obtain a gun to kill her?

25 A. No, sir.

- 1 Q. That's not true?
- 2 A. No, sir.
- 3 Q. Did you obtain a gun from Thomas Hoxit and Allison
- 4 Barrineau to kill Carrie Tyner?
- 5 A. No, sir.
- 6 Q. Do you recall talking with David McMahan on
- 7 2/12/2012?
- 8 A. I talked to David McMahan on several occasions. I
- 9 don't remember what date it was.
- 10 Q. That would have been a day after the robbery at your
- 11 brother's place.
- 12 A. Yes, sir.
- 13 Q. You remember talking to him on February the 15th,
- 14 2012?
- 15 A. Like I said, there's been -- I've talked to him on
- 16 several occasions. I don't what -- I mean, I don't know
- 17 what the days were.
- 18 Q. And you told him that although you didn't condone
- 19 it, but you had some discussions about what may be found
- 20 at your brother's house, such as traveler's checks, guns,
- 21 money and such; is that right?
- 22 A. I don't recall saying anything about traveler's
- 23 checks or anything like that with David McMahan, no.
- 24 Q. Okay. Do you remember saying something about guns?
- 25 A. I remember telling David McMahan the day after --

1 no. It would have been two days. I guess it was on a
2 Sunday, and I think the robbery was on a Friday or
3 Saturday. Am I correct? Whenever it was. I remember
4 telling David that I had made statements saying that I
5 was strung out on drugs and that there was things taken
6 from my father's house to my brother's house for their
7 safety. I remember that, yes, sir. But as far as
8 traveler's checks or anything like that, no, I do not
9 recall it.

10 Q. Now, when was the last time you talked with Timothy
11 Wirtz?

12 A. It would have been on a Tuesday or so prior to -- it
13 would have been one day, probably maybe a week before
14 that happened, four or five days.

15 Q. Now, you know Gary Smith?

16 A. Yes, sir.

17 Q. How you know Gary Smith?

18 A. I've been acquaintances with Gary since I was
19 sixteen years old.

20 Q. And do you also know Gary -- do you know Greg Bates?

21 A. Yes, sir.

22 Q. Now, y'all been friends -- how old are you, sir?

23 A. Forty-one.

24 Q. And you've been friends with him since -- if you say
25 sixteen ---

- 1 A. I've been friends with Gary since I was sixteen.
- 2 I'm not friends with Greg, no.
- 3 Q. Okay. Does he come over to your house sometimes?
- 4 A. Who's that?
- 5 Q. Gary.
- 6 A. He used to prior to this, yes.
- 7 Q. And he was at your house that day that you was
- 8 talking about the guns and the traveler's checks at your
- 9 brother's house?
- 10 A. Again, I don't recall anything about any traveler's
- 11 checks or anything on that. And there was several people
- 12 there at the house in and out that day. But to my
- 13 knowledge, I don't know -- I don't remember whether Gary
- 14 was there or not. He'd left sometime before that. And
- 15 me and Tim -- the day that you're talking about, me and
- 16 Tim had been talking about how I was trying to quit doing
- 17 dope. And he'd just got out of jail on a prior charge,
- 18 and he was pretty much done with it. And that's how all
- 19 that came about.
- 20 Q. Have you quit using meth?
- 21 A. Yes, sir, I have.
- 22 Q. Were you using meth during the time that your
- 23 brother's house got broken into?
- 24 A. I was at my parent's house at the time that that
- 25 happened.

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1 MR. ROSEMOND: Yes, Your Honor.

2 THE COURT: The jury's ready.

3 So ask the jury to join us please.

4 (WHEREUPON, the jury entered the open court at
5 approximately 3:32 p.m.)

6 THE COURT: All right. Let the record reflect
7 the jury and alternate are in the jury box. Madam
8 Forelady, ladies and gentlemen of the jury, we'll
9 continue with the Defense case.

10 Mr. Rosemond?

11 Q. Mr. Bush, on 2/28/2012 at about twelve o'clock in
12 the afternoon, did you tell Thomas Hoxit and Allison
13 Barrineau that you wanted to kill Carrie Tyner?

14 A. I don't recall whether I did or not.

15 Q. Do you recall whether or not you said I wanted to
16 kill the bitch? And y'all was at [REDACTED]

17 A. That's a possibility. Like I said, I don't recall
18 whether I did or not.

19 Q. So you don't recall whether or not you did or not?

20 A. I don't recall whether I said that or not.

21 MR. ROSEMOND: Your Honor, we'd like to play
22 that tape now.

23 MR. WAGNER: Objection, Your Honor, as to
24 relevance.

25 THE COURT: Pardon?

1 MR. WAGNER: Objection as to relevance.

2 THE COURT: No. It goes to the credibility and
3 speaks for the prior inconsistent statement of a witness.
4 In State versus Miller, 262 South Carolina 369, I don't
5 remember is a denial. Go ahead. You may play it.

6 (WHEREUPON, a C.D. was published in open court.)

7 THE COURT: Mr. Rosemond, can you stop that?
8 Can you interrupt that for a second? I need a sidebar.
9 Mr. Wagner?

10 (WHEREUPON, the C.D. was paused after which a bench
11 conference was held off the record.)

12 THE COURT: Now, Madam Forelady, ladies and
13 gentlemen of the jury, following my policy I mentioned
14 yesterday about five o'clock -- and I do apologize about
15 the sort of lack of progress this afternoon, but it's
16 something I didn't anticipate. But I am going to excuse
17 you for the day and ask what time would you like to start
18 in the morning.

19 MADAM FORELADY: Nine o'clock.

20 THE COURT: Nine o'clock. All right. We'll
21 start at nine o'clock, and hopefully we will move a
22 little bit quicker and finish it tomorrow. Again, do not
23 undertake discussion of the case among any of yourselves
24 or permit anybody to discuss it with you.

25 Everyone else remain seated while the jury retires

1 asked Mr. Rosemond to see if he could find the exact area
2 that he was interested in. And we will now continue with
3 the playing of the exhibit.

4 (WHEREUPON, the C.D. was played in open court.)

5 DIRECT EXAMINATION

6 CONTINUED BY MR. ROSEMOND:

7. Q. I'm telling you, dog, I'm going to kill that bitch.

8 That's what you said; isn't that true, Mr. Bush?

9. A. Evidently so.

10 Q. Mr. Bush, you was convicted of forgery; is that
11 right?

12 A. Yes, sir.

13 Q. Forged somebody else's signature?

14 A. I signed a check that -- I didn't sign it. I signed
15 a check and cashed it at the bank. Somebody else wrote
16 it. But that's what I was convicted of, yes, sir.

17 MR. ROSEMOND: No further questions of this
18 witness, Your Honor.

19 THE COURT: Cross-examine?

20 CROSS-EXAMINATION

21 BY MR. WAGNER:

22 Q. Mr. Bush, there's just like, I want to say, less
23 than a minute left on this tape that they made. Let's
24 see if we can hear the rest of it.

25 (WHEREUPON, the C.D. was played in open court.)

1 Q. Mr. Bush, I'm going to stop it. We're not going to
2 spend any more time listening to it. But do you remember
3 telling -- do you remember any of this conversation with
4 this Hoxit guy and this Barrineau woman?

5 A. Yeah, I remember it.

6 Q. Okay. And do you remember telling them that Carrie
7 Tyner had tried to set you up and that they were going to
8 hide in a boat and put a slug in your head?

9 A. Yeah, I remember saying that. I don't remember
10 telling them that on the video, but I remember talking
11 with them about it. I also ---

12 Q. Who is they?

13 A. Who is they that told me about that?

14 Q. No. When you're talking about Carrie and they were
15 going to put a slug in your head.

16 A. Tim and Carrie. The way it was put to me was ---

17 MR. ROSEMOND: Objection, Your Honor. Calls
18 for hearsay.

19 THE COURT: Mr. Wagner?

20 MR. WAGNER: I don't know that he's gotten
21 there yet, Your Honor, but ---

22 THE COURT: For right now he is -- the
23 question, as I do understand it, is that he's asking did
24 he have a conversation. So he is subject to cross-
25 examination, so that would be an exception to the

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1 hearsay. I mean, you're asking him about the
2 conversation with whoever he was with during the
3 recording; is that right?

4 MR. WAGNER: Yes, sir.

5 THE COURT: Okay. I overrule. You may
6 proceed.

7 Q. Who did you think was going to put a slug in your
8 head?

9 A. It was explained to me that I was going to get a
10 phone call ---

11 MR. ROSEMOND: Objection, Your Honor. That's
12 hearsay.

13 THE COURT: Now, if you're going into what you
14 were told, that's one thing. But you're talking about
15 what you thought from what you had been told.

16 MR. WAGNER: Yes, sir.

17 THE COURT: That's different. That's a state
18 of mind. All right. I'm going to ---

19 Just remember don't talk -- testify about anything
20 that somebody might have told you. But what was your
21 reaction to what was told to you, you can testify to
22 that. Go ahead.

23 Q. Go ahead, Mr. Bush.

24 A. I was told ---

25 THE COURT: Well, you had ---

1 Q. What do you ---

2 THE COURT: Excuse me.

3 You had a conversation with somebody, right?

4 THE WITNESS: Yes, sir.

5 THE COURT: All right. And as a result of that
6 conversation, did it have any impact on what you thought?

7 Q. As a result of that conversation, what did you think
8 was going to happen to you?

9 A. I was afraid that they or somebody was going to come
10 to the house and try and shoot me.

11 Q. And who did you think, based on your conversations,
12 wanted to do that?

13 A. Carrie or her -- some of her family.

14 Q. Okay. And how were they going to go about doing it?

15 A. Carrie was going to call me and tell me to come
16 outside. And in my parents' carport there's a boat that
17 is -- that has a cover over it. And somebody was going
18 to hide -- Tim was supposed -- going to hide in the boat,
19 and whenever I walked outside was going to shoot me in
20 the back of the head.

21 Q. Tim who?

22 A. Wirtz.

23 Q. Okay. So Tim Wirtz and Carrie Tyner, they were
24 hanging around a lot back around those days?

25 A. Yes, sir. They're family. From what I understand,

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1 they're family.

2 Q. Is Carrie Tyner related to Gary Smith?

3 A. That's her daughter -- that's his daughter.

4 Q. Okay. All right. And she's hanging -- was running
5 with Tim around that time frame?

6 A. That's how I first met Tim. She showed up at my
7 house with Tim, Brandon Payne, and Gene Poole. I'd only
8 met Tim maybe three times. I mean, I've only been around
9 him three times.

10 Q. And all this stuff here that we've been listening
11 to, isn't it true that it happened two and a half, three
12 weeks after your brother's house got robbed, that he'd
13 got robbed in his own house and burglarized?

14 A. Yes, sir.

15 Q. And this stuff we're talking about here, did it have
16 anything to do with Tim Wirtz breaking in and robbing
17 your brother?

18 A. No, sir. It had to do with the fact that I was told
19 that they were going to -- that I was getting set up to
20 get hit because I'd told -- because I had ID-ed Tim on a
21 video that Mr. McMahan and three other officers had
22 brought to the house.

23 Q. Okay. So other than the fact that you'd pointed out
24 the Defendant too and had discussed -- let me stop there.
25 Do you remember what you told Sergeant McMahan about the

1 case that we're here on this week, about the robbery at
2 your brother's house?

3 A. I can remember -- I can remember telling him -- I
4 just remember telling him that indirectly that it was my
5 fault. That I had -- that me and the ---

6 Q. Would you like me to hand up a copy of your
7 statement that you gave him to refresh your memory?

8 A. Yeah, you can.

9 MR. ROSEMOND: Your Honor, there's nothing
10 wrong with his memory right this second. He hasn't said
11 he's having any trouble remembering. He doesn't need his
12 statement.

13 THE COURT: Was his statement given to state
14 officials?

15 MR. WAGNER: It was give to Sergeant McMahan.

16 THE COURT: Well, he's a state official, isn't
17 he?

18 MR. WAGNER: Yes, sir.

19 THE COURT: I think that that statute provides
20 that he's entitled to have a copy of the statement.

21 MR. WAGNER: Yes, sir.

22 Q. Take your time, Mr. Bush, and just read over it to
23 refresh your memory, please.

24 A. Yeah, I mean, that's pretty -- that's what I
25 remembered is that we -- I don't remember Gary being

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- 1 there at the time, but I remember him being there later
2 on that evening and giving me -- and harassing me about.
3 Like I said, me and Tim had talked about -- like I said,
4 if I'm not mistaken, Tim had just got out of jail on
5 another charge, on a charge that he'd just been on. And
6 me and him both, we was straight at the time. And we was
7 both standing there talking about how we didn't want to
8 do -- live that life no more. He was talking about his
9 girls and everything, about how he wants -- and I had
10 told him that I understood that, that my parents had had
11 to take everything from their house and take it to my
12 brother's house because like I'd -- sometimes I'd go pawn
13 guns or I'd -- I mean, things that I'd do. And they
14 didn't want that to happen anymore. And I understood
15 that, and I felt bad about it. And I told Tim that. And
16 I mean, that's when I -- and that's what I told David.
17 Q. Okay. So what exactly did you tell David?
18 A. That's it right there. I mean, it's ---
19 Q. You told him that you'd been living at your parents
20 house?
21 A. Yeah.
22 Q. That you'd been taking their stuff and pawning it?
23 A. Right.
24 Q. To get money?
25 A. Right.

1 Q. To get money to buy drugs?

2 A. Yeah. I mean, I was -- at that point in time, I was
3 on ice really bad.

4 Q. So you told Tim that your dad took valuable stuff
5 from his house and took it over to your brother's house?

6 A. Yeah. I mean, I don't remember saying anything
7 other than took like all his guns and stuff like that.

8 Because, I mean, my dad and my brother hunt a lot. And I
9 mean -- you know what I mean? But it wasn't told in the
10 instance as far as let's go rob him because of that. It
11 was because we were sitting there like -- he was talking
12 about his girls, about how he didn't want to have to go
13 back and lose his girls and go through -- you know what
14 I'm saying? It wasn't in that context.

15 Q. I understand. But what was Tim's reaction to
16 telling him that? What else transpired?

17 A. Nothing else. I mean, I don't really remember.
18 There wasn't nothing that was -- there was really nothing
19 else that was said about it. I mean, not just that
20 point. I mean, now looking back, there's different
21 things that was asked like between -- there were three of
22 them. There were different things that were asked
23 throughout -- I mean, I think it was like a two or three
24 day span. I can't -- I mean, to be to honest with you, I
25 can't really remember because I -- I mean, like I said,

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1 we were doing a lot of drugs at the time too.

2 Q. Okay. Well, if you can't remember -- you said in
3 your statement what you remembered at the time. How
4 about tell us what you said in your statement?

5 A. Well, do you want me to read my statement all
6 through?

7 Q. Yeah.

8 A. It says, when I was getting high on ice and bull
9 shitting with Tim Wirtz and Gary Smith and we were -- and
10 during that time, I had told them about how myself and
11 everyone used to hang around, at one point in time had
12 taken stuff from my parents house and how my dad had
13 taken anything of any value to my brother's house so it
14 didn't get taken. I went into detail as far as how much
15 stuff had been taken over there. At some point in time
16 there was a joke made about how -- what does it say. I
17 can't remember -- I can't read what's -- what I wrote.
18 About how -- about how we knew where to get some money --
19 something enough money. Nothing more was said until
20 later. And it was brought up again by Tim if I could get
21 the layout and help with trying to rob him. And I said,
22 no. Nothing was ever said about that until Saturday a.m.
23 and Tim called me and asked me again. And I remember
24 that phone call. And asked me again if I would be
25 willing to help him with that. And I got angry and

1 started raising hell and told him no. I never talked to
2 him again until Monday, I think it was. I felt like a
3 piece of shit because indirectly I helped these people
4 hurt my brother, my family. And I remember that call on
5 Saturday.

6 Q. What did he say on Saturday?

7 A. I don't remember. I don't remember exactly what was
8 said. I just remember it because I remember my son was
9 there, and it was the weekend that my son was there. And
10 I remember me getting mad and Mama telling me to get off
11 the phone. And now, I can remember that. I don't
12 remember directly. I don't remember what was said. I
13 remember -- I can also remember -- I remember telling
14 Mama that it was weird that Gary had kept calling, like
15 he called like ten times that day, acting like, how you
16 doing, what's going on. Stuff like that. And I mean, it
17 was just weird. We never understood why that was until
18 later on. As I said, David and them didn't come to the
19 house until, what was it, a day after. The next day or
20 the day after, whenever they showed up with that
21 videotape. And I didn't -- I mean, I think Mama and them
22 knew, but they didn't -- Mama and them said they didn't
23 want to tell me until Tyler was gone what had happened.
24 Q. Okay. And what did Tim Wirtz say to you when he
25 called you on Monday? Do you remember?

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1 A. I don't have any idea. I don't believe -- I don't
2 remember. I don't remember. To be honest with you, I
3 don't remember it at all. I can't -- I don't remember at
4 all. There was a lot of stuff that was going on then. I
5 was trying -- I had -- I was trying to help David get
6 some of the guns back, and there was a lot of different
7 things. I can't remember. Honestly, I do not remember
8 what was said per se.

9 Q. Do you know Shane Elliott?

10 A. Yeah, I know Shane.

11 Q. Do you know Heath Bates?

12 A. Yeah, I know Heath.

13 Q. Do you know Greg Bates?

14 A. I know who Greg is.

15 Q. Do you know Gene Poole?

16 A. I know Gene.

17 Q. You know, I guess, Thomas Hoxit and Allison
18 Barrineau?

19 A. Yeah.

20 Q. Besides just knowing these people, what was y'all's
21 connection to this group of folks?

22 A. We was all doing dope.

23 Q. When you say dope, were y'all using meth?

24 A. Uh-huh (affirmative).

25 Q. All of them meth addicts?

1 A. Yes, sir.

2 Q. And as far as this tape that we're hearing where you
3 said, I'm going to kill the bitch, talking about Carrier
4 Tyner, did you ever try killing Carrie Tyner?

5 A. No, sir. I never had any intentions of killing her.
6 I just didn't -- I was really upset with her because that
7 was the last thing that I thought she'd do to the family
8 because my family tried to help her a lot. She'd lived
9 with us at one time, and they was -- I mean, I was just
10 upset with her, man. It hurt. You know what I mean? I
11 mean, even if she was involved in it -- whether she was
12 or she wasn't, I have no idea. But I mean, the fact of
13 the matter was that she wouldn't help me try and solve
14 the issue either, not to mention things then that I was
15 told that ---

16 MR. ROSEMOND: Objection, Your Honor. Hearsay.

17 THE COURT: All right. Sustained.

18 MR. WAGNER: Nothing further, Your Honor.

19 THE COURT: All right.

20 REDIRECT EXAMINATION

21 BY MR. ROSEMOND:

22 Q. Did you ever tell your brother that somebody may rob
23 him?

24 A. No.

25 Q. Did you ever tell the police that the people that

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1 you hang with may rob your brother?

2 A. No.

3 Q. But you felt bad after it happened, but you never
4 took any steps to prevent whoever robbed your brother,
5 did you?

6 A. No.

7 Q. Now, you were mad at Carrie Tyner because she
8 implicated you in the robbery of your brother; isn't that
9 right?

10 A. No, sir.

11 Q. She didn't implicate you in the robbery of your
12 brother?

13 A. Not that I know of, no, sir.

14 Q. You don't know that she implicated you?

15 A. No, sir.

16 Q. Now, the reason why you wanted to kill her because
17 she had told the police that you were part of the people
18 who robbed your brother?

19 A. Not that -- I have no recollection of that.

20 Q. Now, you took stuff from your parent's home and
21 pawned it, right?

22 A. Yes, sir.

23 Q. And you took it -- you concealed it, and they didn't
24 know about it; is that correct?

25 A. They knew about it when I came home and I told them.

1 Q. They knew -- well, the stuff was gone by then,
2 wasn't it?

3 A. Yes, sir.

4 Q. Now, so you rob your parents -- well, you stole from
5 your parents. Doesn't it make sense that you would also
6 steal from your brother?

7 A. No, sir.

8 Q. It doesn't?

9 A. No, sir. I never had to break in my parents' home
10 and take anything.

11 Q. You were living there; isn't that true?

12 A. That's correct.

13 Q. So you didn't have to break into your parents' home;
14 is that right?

15 A. That's correct.

16 Q. Your mom had a key to your brother's house, didn't
17 she?

18 A. After sometime or another, my mom went over there
19 and picked up my nephew and things. I mean, I don't know
20 whether she did or not. I'm assuming that she did, yeah.

21 Q. That statement you read, what date was that that you
22 gave that statement?

23 A. 2/15.

24 Q. You were high on meth that day, were you not?

25 A. On 2/15 that I give this statement, no, sir.

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1 Q. Oh, you wasn't high that day?

2 A. I don't believe so.

3 Q. But wasn't you a meth addict? You was doing meth
4 every day?

5 A. As much as I possibly could.

6 Q. As much as you possibly could. And it could be that
7 you were high the day that you gave that statement; isn't
8 that true?

9 A. No, sir.

10 Q. No possibility?

11 A. No, sir.

12 Q. You remember the days you smoked and the days you
13 didn't smoke?

14 A. If I remember correctly -- if I remember correctly,
15 the day that I wrote this statement, I'd got woken up
16 like at eleven-thirty at night at my parents' house, and
17 my daddy took me up there to -- it was the day that Tim
18 and them were arrested, I believe.

19 Q. What time you give that statement, sir?

20 A. I have no idea what time of day it was.

21 Q. Then please look on your statement at the top right-
22 hand corner and tell us.

23 A. It says two oh four a.m.

24 Q. Two oh four a.m. Mr. Wagner mentioned to you Shane
25 Elliott. Is he a meth-head?

1 A. I -- Shane do -- I mean, I don't know what Shane
2 does anymore. I know Shane's in prison. I mean, I used
3 to -- I've never done drugs with Shane, no.

4 Q. You ever bought drugs from Shane?

5 A. No, sir.

6 Q. You ever did drugs with Gene Poole?

7 A. Yes, sir.

8 Q. You ever did drugs with Greg Bates?

9 A. Yes, sir.

10 Q. How about Heath Bates?

11 A. Yes, sir.

12 Q. All of them meth-heads; isn't that right?

13 A. All of them use sometimes. I don't know what they
14 do now. I know what they used to do.

15 Q. I never had any intention to kill Carrie Tyner. You
16 told Thomas Hoxit and Allison Barrineau that you wanted a
17 gun; isn't that correct?

18 A. No. Thomas Hoxit and Allison Barrineau called me
19 and told me they had a surprise for me. They brought it
20 to my house.

21 Q. You told Allison Barrineau and Thomas Hoxit that you
22 wanted to obtain a gun to kill Carrie Tyner?

23 A. I never told Thomas Hoxit that I wanted to obtain a
24 gun to kill Carrie Tyner, no.

25 Q. Whose voice is on that tape a few minutes ago?

1 A. That was my -- it was my voice. You never heard me
2 say anything about I wanted to buy a gun to kill anybody.

3 Q. Whose voice is on that tape?

4 A. That was my voice.

5 Q. And in fact, you purchased a gun from Thomas Hoxit,
6 did you not?

7 A. In all reality, I never purchased a gun. Allison
8 took the -- what is it -- the X-box in there and got the
9 money and then brought it back outside. So I never
10 really -- I never -- there was no money exchanged hands.

11 Q. What was you going to exchange your son's X-box for?

12 A. I wasn't going to exchange my son's X-box for
13 anything. They did. I wanted a -- I did want a pistol,
14 yes. But to kill Carrie Tyner, no. For some protection
15 around my house because of what I was told, yes.

16 Q. When you say, I'm going to kill that bitch, who were
17 you referring to?

18 A. I have no idea. I don't recall at this time.

19 Q. I guess not. Now, Mr. McMahan showed you a tape of
20 the Bountyland Quick Stop; is that right?

21 A. I don't know where the store was. He just showed me
22 -- but he showed me a D.V.D., yeah.

23 Q. He showed you a D.V.D. And what was on that D.V.D.?

24 A. It was Tim getting out of a car and going into a
25 store.

- 1 Q. What color car?
- 2 A. I believe it was a blue car.
- 3 Q. What was the tag number on that car?
- 4 A. I have no idea.
- 5 Q. Did you -- how many blue Tauruses do you think are
- 6 around here?
- 7 A. I don't know.
- 8 Q. How do you know that was the car that he was
- 9 supposed to be in?
- 10 A. I have no idea about the car that he's supposed to
- 11 be in. I was asked to identify the man getting out of
- 12 the car going into the store. He didn't say anything
- 13 about a car.
- 14 Q. Okay. What did that man have on?
- 15 A. I don't recall. If I remember right, it was a -- I
- 16 hate to say because I don't want to tell you a lie and
- 17 get caught up in it.
- 18 Q. On the video, were you able to identify his face?
- 19 A. Yes.
- 20 Q. You were?
- 21 A. Yes.
- 22 Q. At what point did Mr. -- or whoever's on the video
- 23 turn towards the camera?
- 24 A. He never did turn towards the camera. They got a
- 25 profile of him walking in the store.

1 Q. You got a profile of him walking in the store?

2 A. Yes, sir.

3 Q. And that profile allowed you to do what, identify
4 somebody?

5 A. It was probably -- it was approximately maybe twenty
6 feet away. Pretty easy to tell what a man looks like
7 walking on a video camera twenty feet away. I took it as
8 that's who it was. I mean, did I just pull his name out
9 of a hat? Where did that come from?

10 Q. Because you're trying to set Mr. Wirtz up; isn't
11 that true?

12 A. For what reason?

13 Q. Because he implicated you in this particular
14 robbery; isn't that true?

15 A. No, it's not true. I was never implicated or
16 anything else to my knowledge until after the fact that
17 he was arrested after that.

18 Q. Wasn't he the first one arrested?

19 A. That, I do not know.

20 Q. Who else was arrested for kidnapping in that crime
21 for your brother?

22 A. I believe Gary was.

23 Q. He was arrested for accessory before the fact. Who
24 else was arrested for kidnapping?

25 A. Nobody to my knowledge. I don't know.

1 Q. Nobody. And you think one person did that robbery
2 by himself?

3 A. No, sir.

4 Q. There were many people around you when you was
5 telling them about how much stuff your brother had in
6 this house; is that right?

7 A. At the time, no, it wasn't. Me and Tim was standing
8 in my basement garage door opening. And I remember it
9 specifically. We were standing in my basement at the
10 garage door. And it was just me and him. Everybody had
11 left and went to go get his daughter, I believe. And it
12 was later on after that that we were getting -- that me
13 and Gary was around each other. And Gary -- and I told
14 Gary -- and maybe it got brought back up somehow or
15 another. Then Gary started harassing me about it. So at
16 the time that he was being told that, no.

17 Q. So ---

18 A. Because at the time he was being told that, that's
19 when we were straight standing there talking about how we
20 didn't want to go through that again.

21 Q. At the time that you were -- your statement said
22 that you was talking to Tim Wirtz and Gary Smith; isn't
23 that correct?

24 A. That's ---

25 Q. It doesn't say I was just talking to Tim, does it?

1 A. No. I don't believe Gary was there at the time. I
2 believe Gary came later after that. I mean, if I'm
3 correct -- now, my recollection that's what it was. I
4 mean, I could be wrong about that. But I know that me
5 and Gary and Tim was all standing around the pool table,
6 and Gary was -- and I can remember specifically Gary
7 giving me -- harassing me about it because, I -- I mean,
8 I've known Gary for all my life. He knows my life. He
9 knows -- I mean, he tried to get me out of here so I can
10 quit and go to North Carolina with him.

11 Q. Wasn't Greg Bates there when you discussed all this?

12 A. Greg was in and out at the time.

13 Q. Wasn't he basically there when you discussed all
14 this?

15 A. No, he wasn't.

16 Q. Wasn't Carrie Tyner there when you discussed all
17 this?

18 A. She was in and out at the time, too.

19 Q. Wasn't Gene Poole there when you discussed all the
20 stuff that your brother had?

21 A. No.

22 Q. He wasn't there?

23 A. Gene Poole was at the house, but he wasn't there
24 when that was -- Gene was there like for ten minutes
25 later on that night. This -- I mean, he wasn't there

1 when all that was discussed. Gene and his girlfriend
2 were on the phone screaming and hollering. I had to get
3 -- make them leave because Mama was getting mad about it.
4 Gene was never there when all of that was discussed or
5 around any of that. It wasn't like it was a daggone
6 five-hour lengthy conversation. It was like me and Tim
7 talked about it for ten minutes. And then like I said,
8 after that then I said something about it. And then Gary
9 came in and then he started giving me hell about, about
10 damn how I wasn't no good and shit like that.

11 Q. Well, you wasn't no good. You set your brother up;
12 isn't that right?

13 A. No, I did not set my brother up.

14 Q. You wasn't no good because stole from your parents;
15 isn't that correct?

16 A. I wasn't no good because I stole from my parents,
17 yeah. But I didn't set my brother up.

18 Q. Just like you didn't say that you were going to kill
19 Carrie Tyner; isn't that correct?

20 A. I said I was going to kill that bitch. I didn't say
21 I was going to kill Carrie Tyner.

22 MR. ROSEMOND: No further questions, Your
23 Honor.

24 MR. WAGNER: Nothing further, Your Honor.

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

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1 Thank you, sir.

2 All right. You may call your next witness.

3 MR. ROSEMOND: Allison Barrineau, Your Honor.

4 (WHEREUPON, the witness was duly sworn.)

5 THE COURT: If you would, please, ma'am, give
6 us your full name for the record, spelling your last
7 name.

8 THE WITNESS: Allison Danielle Barrineau. You
9 said spell my last name?

10 THE COURT: Please, yes, ma'am.

11 THE WITNESS: B-A-R-R-I-N-E-A-U.

12 **ALLISON BARRINEAU,**

13 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

14 DIRECT EXAMINATION

15 BY MR. ROSEMOND:

16 Q. Ms. Barrineau, where do you currently live?

17 A. Off 123, across from the Food Lion behind the
18 Roadrunner.

19 Q. And do you know Mr. Chad Bush?

20 A. Yes, I do.

21 Q. How do you know him?

22 A. He's an ex-friend of mine actually.

23 Q. You all are no longer friends?

24 A. No.

25 Q. What, if anything, do you know about Chad Bush and a

1 gun?

2 A. He calls my mother-in-law's house, and it's a land-
3 line phone. And he asks me and Thomas if we could find
4 him a gun so he can kill Carrie Tyner.

5 Q. What did you all do after that conversation?

6 A. Contacted David McMahan.

7 Q. And as a result of contacting David McMahan, what
8 did you do next?

9 A. Um ...

10 Q. Did you meet with David McMahan?

11 A. Yes, I did. Yes, I did.

12 Q. Okay. As a result of that meeting, what steps did
13 you take?

14 A. They -- David McMahan and -- I'm sorry. I'm a
15 little nervous. They supplied us with a gun for Chad to
16 buy.

17 Q. And did they ---

18 A. Because if I didn't say anything -- after him
19 calling us on a land-line phone and him stating that he
20 wants us to find him a gun so he can kill Carrie Tyner,
21 and if we didn't say anything and he actually did that,
22 then that would kind of look bad on us.

23 Q. What else did they do? Did you ever go meet with
24 Chad Bush?

25 A. Yes, I did.

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1 Q. Okay. And before meeting with Chad Bush, were you
2 at the police station?

3 A. Yes, I was.

4 Q. And what did they do at the police station?

5 A. They supplied the gun, and they wired us up to
6 record Chad Bush admitting to wanting to kill Carrie
7 Tyner.

8 Q. Now, you met with Mr. Bush?

9 A. Yes.

10 Q. And what happened?

11 A. There was a long conversation with Mr. Bush. And I
12 believe during that conversation that he admitted in-
13 depth about how he wanted to kill Carrie.

14 Q. Now, did Mr. Bush make any other admissions to you?

15 A. That he had set Gary Smith and Tim Wirtz up in the
16 home invasion.

17 Q. Now, when did he mention that to you?

18 A. It was a day that Chad was with me and Thomas, and
19 we got pulled over in West Union. And I believe Chad
20 Bush had called the police and had the van tagged. And
21 so we were followed maybe a good six to eight miles, and
22 then we were pulled over when we were in city limits.
23 And the van was shook down, the paneling took out of the
24 van and everything. I don't know what they were looking
25 for, but they tore the van apart and they didn't find a

- 1 thing. And Chad was -- usually, when he's around police,
2 he's sweating bullets and stuff like that, but he was
3 calm as a -- just calm. Do you know what I'm saying?
- 4 Q. So what did you and Chad do after being pulled over?
- 5 A. Well, Thomas was arrested because his license were
6 suspended. So we walked back to his house, his mother's
7 house. And there -- as soon as we go in the house, he
8 admits to setting -- he's starts in tears, admits to
9 setting up Tim and Gary. And if -- because I asked him
10 -- I said, what if they'd hurt your brother? I mean,
11 what if they hurt your brother? And that's when he
12 started crying really heavily and admits to all of it.
- 13 Q. Did you ever tell any law enforcement officer that?
- 14 A. Yes, I did.
- 15 Q. Who did you tell?
- 16 A. David McMahan.
- 17 Q. Is there any other thing that you know about that
18 situation?
- 19 A. I'm thinking.
- 20 Q. Now, Ms. Barrineau, you've been arrested before?
- 21 A. Yes, I have.
- 22 Q. You been arrested for what?
- 23 A. Driving under suspension, shoplifting, trespassing
24 and fraudulent checks. They were my checks.
- 25 Q. Being arrested for that, does that have any bearing

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1 on your testimony?

2 A. No, because what I'm saying today is the truth.

3 Q. Now, when was you arrested for those things?

4 A. A few years ago.

5 MR. ROSEMOND: No further questions, Your
6 Honor.

7 CROSS-EXAMINATION

8 BY MR. WAGNER:

9 Q. You were also convicted of forgery in 2009, correct?

10 A. Yes, yes. And I actually done my time for that. I
11 went to prison for that.

12 Q. Okay. And I believe you said shoplifting. Have you
13 ever done meth with any of these people you're talking
14 about?

15 A. Yes.

16 Q. Do y'all do meth quite often? Have you done meth
17 quite often with them?

18 A. Years ago, yes.

19 Q. Okay. Did you and Thomas Hoxit do -- did you do
20 some meth, get some bad meth from Tim Elrod?

21 A. Yes.

22 Q. Made you real sick?

23 A. Yes.

24 Q. And he got mad at Tim, and then he went and burnt
25 his house down?

1 A. Yes.

2 Q. Okay. And that's the same Tim Elrod that all of
3 y'all kind of hang out with?

4 A. Not now, no, sir.

5 Q. But you did?

6 A. Not really.

7 Q. At one point in time?

8 A. Not really.

9 Q. Okay. And Thomas went and set his house on fire?

10 A. I mean, that's what he's doing time for right now,
11 yes, sir.

12 Q. Okay. So when y'all are on meth and stuff, y'all
13 tend to get mad at each other about things, don't you?

14 A. I mean ---

15 Q. Does meth do that to you?

16 A. It makes you angry, yes, very easily.

17 Q. Okay. And you remember George Bush, Chad Bush,
18 whatever he goes by -- do you remember the reason he --

19 do you remember him telling y'all that the reason he
20 wanted to get a gun is because that Carrie set him up and
21 that they were going to hide in a boat and put a slug in
22 his head? Do you remember him telling you that?

23 A. Chad was always big about conspiracy theories. I
24 mean, that's just the way his mind works whether he was
25 on dope or not.

1 Q. Okay. But do you remember him telling you that?

2 A. Yes.

3 Q. Okay. So if he'd wanted to get a gun, he may have
4 said kill Carrie Tyner just because he was mad at her?

5 A. No. I actually believe that she might have had some
6 evidence on him about something that he had done, a crime
7 prior to the home invasion.

8 Q. Okay.

9 A. Yes, sir.

10 Q. And the person that was going to hide and ambush
11 Chad was the Defendant, Timothy Wirtz, wasn't it?

12 A. I don't know anything about that.

13 Q. Okay. And when you're talking about he cried and
14 admitted that he set up his brother's house, he didn't go
15 over there, did he? You don't know where he was or who
16 -- you don't know who went over there, do you?

17 A. No, I don't.

18 Q. Okay. You don't know that -- you weren't around the
19 Defendant on February 11th, 2012, were you?

20 A. Are you speaking of ---

21 Q. Yes, Timothy Wirtz.

22 A. No.

23 Q. Okay. So you don't know what he did on February
24 11th, 2012, do you?

25 A. No. All I know is what Chad told me.

1 Q. Okay. Well, Chad told you -- he also told you that
2 he had told them about what stuff was in his brother's
3 house?

4 A. Yes.

5 Q. And that he did feel bad about it, didn't he?

6 A. Yes.

7 Q. Okay. But he wasn't ---

8 A. Because it was probably staged because the family,
9 the ritual of Eric Bush and his family, what his brother
10 had, what Eric Bush had in his home and what rooms that
11 the things were in.

12 Q. Okay. But he also told you he didn't go over there
13 and do it, didn't he?

14 A. No, he did not.

15 Q. And he told you who did go?

16 A. Yes.

17 Q. And who was that?

18 A. The only two people I know of is Tim and Gary.

19 Q. Okay. And Gary is Carrie Tyner's daddy, right?

20 A. Father, yes.

21 Q. Father? And do you also know Shane Elliott and Gene
22 Poole?

23 A. Yes.

24 Q. Thomas obviously, Heath Bates?

25 A. Yes.

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1 Q. Knew all these guys?

2 A. Yes.

3 Q. And y'all do meth together?

4 A. No. Not even in the past, no.

5 Q. Okay. But you know them all ---

6 A. Yes.

7 Q. --- and have been friends with them; is that
8 correct?

9 A. No.

10 Q. No?

11 A. No.

12 MR. WAGNER: No further questions.

13 REDIRECT EXAMINATION

14 BY MR. REDMOND:

15 Q. When's the first time -- do you know Tim Wirtz?

16 A. No, I do not.

17 Q. When's the first time you actually saw Tim Wirtz?

18 A. Yesterday.

19 Q. Y'all friends?

20 A. No.

21 Q. Any reason to lie for him?

22 A. No.

23 MR. ROSEMOND: No further questions.

24 MR. WAGNER: Nothing further, Your Honor.

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

1 And then at that time, the case will be given to you for
2 your deliberation. So do not undertake the discussion of
3 the case among yourselves yet because it is not complete.
4 If you would, please, retire to the jury room.

5 Everyone else remain seated while the jury ...

6 (WHEREUPON, the jury exited the open court at
7 approximately 10:10 a.m.)

8 THE COURT: All right. Anything from the
9 State?

10 MR. WAGNER: No, sir.

11 THE COURT: Anything from the Defense?

12 MR. ROSEMOND: Your Honor, a lack of ruling
13 from when the prosecution rested their particular case,
14 we asked for a directed verdict on the kidnapping charge.

15 THE COURT: All right. As I said, I took the
16 matter of the indictment for kidnapping under advisement
17 to review the case that the State put up at that time at
18 the close of their evidence. It was a timely motion, and
19 I considered not only my notes that were made, but also
20 copies of the statements that were introduced as State's
21 Exhibits 2 and 3. And from my review, it appears that
22 the statement of the Defendant, particularly State's
23 Exhibit 2, states that Gary Smith then tied up the
24 victim. He also states that he -- that the Defendant
25 heard a loud voice upstairs and asked what was going on.

1 Now, that puts him at the scene. It also puts him at the
2 scene when the victim was tied up. And so I went back
3 and reviewed, as I say, the notes, my notes of the
4 testimony. And the victim testified that he was tied up.
5 In fact -- what is it -- he corroborated everything that
6 was said although he said that the person that tied him
7 up did have his face covered. But yet -- what is it --
8 there's no question there was a kidnapping.

9 Now, that brings me -- and so I do find that there
10 is corroborating evidence beyond just the statement of
11 the Defendant that there was a, quote, kidnapping of the
12 victim by the participants in the breaking and entering
13 or the burglary. Then I had to decide, well, there's
14 only one Defendant. But the Defendant has implicated, I
15 mean, in his statements, other people. Gary Smith, for
16 example. And our law provides that where two or more
17 people conspire to commit an act, then that conspiracy
18 creates a, you might say, liability responsibility of
19 each member of the conspiracy for the acts of the others.
20 And here again, looking at the statements made and
21 introduced on the State's case, that even if we would
22 accept the statement that Gary Smith was the one that
23 actually did the kidnapping and tying up, his hand became
24 the hand of all who were involved. And the Defendant
25 acknowledges at least he was involved. So therefore, I

1 find that there is sufficient evidence to go to the jury
2 on the question of the indictment for kidnapping.

3 I might note that the case, the State versus Dye,
4 354 S.C. 13, 579 S.E.2d 331, provides that the State need
5 only present sufficient independent evidence to
6 corroborate the Defendant's statement. And here,
7 honestly, the independent evidence was the victim, that
8 he was tied up. And with that, I do find there's
9 sufficient evidence to go the jury on the indictment of
10 kidnapping. Motion for directed verdict denied. Noted
11 for the record.

12 All right. Anything else? Now, I have prepared
13 verdict forms here.

14 (Off record discussion)

15 THE COURT: All right. Gentlemen, if you
16 would, approach so I can give you -- well, here we go.
17 Here we are. These are proposed verdict -- all right.

18 Madam Clerk?

19 MADAM CLERK: Yes, sir?

20 (Off record discussion)

21 THE COURT: All right. Look over the verdict
22 form and see ...

23 (Off record discussion)

24 THE COURT: All right. When you're ready, let
25 me know.

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1 verdict being the correct finding. You are the judges,
2 sole judges, of the facts in this case.

3 After the State will open, the Defense will argue,
4 and then the State will close. After the final argument
5 by counsel, then I will give you the law in the case.
6 And just as I said, you are the sole and only judges of
7 the facts, you will accept the law as I give it to you at
8 the appropriate time.

9 With that, I recognize Mr. Wagner for his argument.

10 MR. WAGNER: Thank you, Judge.

11 . CLOSING ARGUMENT

12 BY MR. WAGNER:

13 I'm going to try to be brief. I know everybody's
14 tired.

15 We're here basically for four indictments charging
16 this Defendant with the crimes that we've been discussing
17 here in court this week. He's charged with burglary
18 first-degree. And again, as I told you in opening
19 statement, burglary first-degree is when you go into
20 somebody's residence with the intent to commit a crime
21 inside, whether that be a kidnapping, armed robbery,
22 theft, larceny, assault and battery. If you go into
23 somebody's house with the intent to commit a crime in
24 there and while armed with a deadly weapon -- in this
25 case the victim says they brought a weapon with them.

1 But they also stole his guns, which means they armed
2 themselves during the commission of the burglary. They
3 got guns while they were in there which basically counts
4 the same, the way the law reads. If you're armed during
5 the commission of the crime in any form with a deadly
6 weapon and it's somebody's residence, then that is what
7 burglary first-degree is.

8 Kidnapping is when you basically tie somebody up and
9 confine them against their will. If you carry them off,
10 if you tie them up, throw them in the trunk of the car
11 and haul them away. In this case, it's basically they
12 confined -- they tied him up and confined him to the
13 space in his bedroom while they robbed him. And that's
14 where the kidnapping is.

15 Armed robbery is basically taking something from
16 somebody by force while armed with a deadly weapon. In
17 this case, the victim testified that it was a -- they
18 pulled a pistol on him. And then, of course, they stole
19 his guns too, so they were armed that way. But they
20 robbed him at gunpoint in his home.

21 There's a companion charge with that for possession
22 of a firearm during the commission of a violent crime.
23 That's like an accessory charge. It's on the same
24 indictment, but it's a separate charge. And it kind of
25 speaks for itself. It's if you have a gun when you do a

1 violent crime, which burglary first, armed robbery and
2 kidnapping are all considered violent crimes under South
3 Carolina law -- if you have a pistol while you do that,
4 you can be charged with an additional charge for having a
5 weapon, the pistol or the gun, during the commission of a
6 violent crime. A knife or something would probably be --
7 would be sufficient for burglary first. But the charge
8 on this is for having a pistol during the commission of a
9 violent crime.

10 The Judge is going to charge you the law when we're
11 all done. If I'm saying anything different than what he
12 charges you, you need to take it as he charges it to you
13 because he is the judge of the law. He's going to charge
14 it as it is.

15 The charges are pretty simple as far as -- they're
16 charges everybody's probably heard about at some point in
17 time in life. I mean, everybody knows what burglary,
18 armed robbery and kidnapping basically are. And that's
19 what this Defendant is charged with.

20 You're going to have to find him guilty beyond a
21 reasonable doubt. The Judge is going to charge what a
22 reasonable doubt is. But it's not a doubt beyond all
23 doubt. It's a very, very high standard, but it's not
24 beyond all doubt. You can never really prove anything
25 beyond all doubt. But in this case, I think you're going

1 to have a lot of tools to work with to make your
2 decision.

3 The Defense is going to be up here in a minute to
4 give their closing argument, and I'll be back to address
5 for ours. Like I say, I'm going to try to be brief, but
6 thanks for bearing with us.

7 THE COURT: All right. Mr. Rosemond?

8 CLOSING ARGUMENT

9 BY MR. ROSEMOND:

10 Ladies and gentlemen, I owe you an apology. And
11 yesterday I wasted your time for an hour. And I
12 apologize to that because I wanted to prove that Chad
13 Bush was a liar. And I apologize for sitting up here and
14 making you listen for an hour to all that stuff. I
15 should have used a better tactic. Should have just got
16 right to the point. And I'm sorry for wasting your time.
17 Blame it on me. Just don't hold it against my client.

18 You know, when we started this particular case, we
19 talked about reasonable doubt. We talked about the
20 presumption of innocence. We talked about the burden of
21 proof. We talked about the foundations of our criminal
22 justice system. And you listened to the evidence that
23 came from the witness stand. And now we're at the end of
24 this trial. And in a few minutes the Judge is going to
25 just give this case to you with the evidence and he's

1 going to say, go render a decision.

2 And let's talk about the evidence that he's going to
3 give you. He's going to talk to you about Tim Wirtz's
4 statement. You're going to have that in the back room
5 back there to listen -- to read Tim Wirtz's statement.
6 And one of the things that you're going to have to decide
7 is whether or not that statement was the product of the
8 police promising Mr. Wirtz he could go home if they could
9 give him a statement. You're going to have to decide
10 whether or not the statement that he gave was a product
11 of promises of leniency, promises of I will help you if
12 you give me this statement. And if you find that that
13 statement was a product of the police exerting that
14 influence over Mr. Wirtz, if you find that that statement
15 was the product of the police misrepresenting items to
16 Mr. Wirtz, then you have the right to say that statement
17 was not voluntary. That statement was made because he
18 thought the police was going to give him something. He
19 thought the police was going to allow him to go home that
20 particular night.

21 And that particular day that Tim Wirtz gave that
22 statement, it started about five o'clock. And he started
23 writing until about six, and he went on to nine-thirty.
24 No matter what they want you to believe, Mr. Wirtz wrote
25 on that statement, I began at six oh three and I finished

1 at nine oh five. And no matter how much they try to say
2 he made a mistake, that's the statement that you have.

3 But I'll tell you this. You saw how evasive
4 Sergeant McMahan was on that witness stand. And if you
5 believe that people just sit down and give the police a
6 statement without having a promise of something in
7 return, that's not the way the police works.

8 Now, you heard the statements by Mr. Wirtz on the
9 phone conversation. And what was he trying to do? He
10 called fourteen people or made fourteen calls. And in
11 some of those calls he talked about, hey, if we get the
12 guns back, everybody's cleared. If we get the guns back,
13 then we've done what they asked us to do.

14 But also on that call was two drug deals that Mr.
15 Wirtz set up. He called Gene Poole and said, hey, are
16 you straight. Gene Poole called him back towards the end
17 of those phone conversations. Yeah, I got it. Come on.
18 He said, how long. He said, forty-five minutes. I
19 cannot wait that long. So he said, well, I'll be there
20 in thirty. Because Mr. Wirtz thought he was going home
21 because the police told him, if you help us set up these
22 drug deals, if you help us get these guns back, we're
23 going to let you go home. And you heard those drug deals
24 on the telephone. And why make a drug deal if they
25 hadn't promised you anything?

1 Certainly, Mr. Wirtz in this particular situation,
2 found himself trying to please Sergeant McMahan, trying
3 to please the narcotics guys. We already know he worked
4 for Brandon Long. Brandon Long came in here and said,
5 I'm a narc. He worked for me in the past. I've done
6 things for him. He's done things for me. He knew how
7 this stuff operates. Sergeant McMahan knows how this
8 stuff operates. That's why they use informants. That's
9 why you get plea deals.

10 In this particular case, while he was sitting there,
11 he gave them that statement because Sergeant McMahan
12 said, I need to put somebody at the scene. I need
13 someone to say I was there so I can go after other
14 people. I can go after Chad Bates [sic], who we know is
15 a liar.

16 Now, in Tim Wirtz's statement, he says, I was on the
17 porch. Someone else was upstairs. We know that Tim
18 Wirtz did not tie up Mr. Bush. We know Tim Wirtz did not
19 take the guns from upstairs and bring them down if you
20 believe this statement, that he did not rob or he did not
21 kidnap Mr. Bush.

22 Ask yourself some questions in this case. Do they
23 have any fingerprints of Tim Wirtz on the door? No. Do
24 they have any D.N.A. of Tim Wirtz? No. Ask yourselves
25 all the stuff that they took, how was they able to get

1 all that stuff in the car this time of day? This robbery
2 took place at one o'clock in the afternoon. Who robs a
3 place at one o'clock in the afternoon in broad daylight?
4 Only when you know that Chad Bates [sic] sets things in
5 motion by saying, my brother will be home, he will be
6 asleep, his wife will be at work and his children will be
7 gone. And that's the time where you hit this place.

8 Shane Elliott was there, Gene Bates was there, Heath
9 Bates was there, Carrie Tyner was there, but we don't
10 know who broke into that particular house.

11 Now, Mr. McMahan wants you to believe that that was
12 a transmission leak that he saw in the driveway in the
13 walkway. Did he take a swab of it? Did he have it
14 analyzed to confirm that it was transmission fluid? He
15 did not. He did that with the fingerprints, but he
16 didn't do it with the transmission leak.

17 He wants you to believe that he was able to identify
18 Mr. Wirtz when he drove the blue car to the Bountyland
19 Quick Stop. That car came in to the Quick Stop, pulled
20 up at the drive -- gas pumps. And it may have gotten
21 gas, but we don't know because there's nobody who's
22 produced any gas receipts in here. You couldn't see the
23 tag. The person walks into the store and goes over to
24 the A.T.M. machine. We do know that the assailant asked
25 Mr. Bush, what is your PIN number? Mr. Bush rightfully

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1 said, I'm not going to give it to you. So why would this
2 person go to an A.T.M. machine and hopefully pick out
3 four numbers that may very well be right? Because the
4 person that robbed Mr. Bush didn't know the PIN number.
5 He didn't give it to him. But they want you to believe
6 that the person, this person, walked in side the
7 Bountyland Quick Stop, walked over to the A.T.M. machine
8 and punched in four numbers and said, I hope it works.
9 The chances of that is about the chances of you and I
10 winning the lottery this weekend. You have to have some
11 idea of what the PIN number is to even start that.

12 I asked Mr. McMahan that question. When you pull up
13 to a gas station, what do you do? You've got to put your
14 card in, you choose credit or debit. I don't know. I
15 don't ever necessarily get -- use my credit card. But
16 that's that evasive answers that he was giving you during
17 this particular time.

18 We know this about Tim Wirtz. That certainly when
19 he talked to Sergeant McMahan, he was certainly high on
20 meth. Heath Bates, we know he was certainly high on
21 meth. Chad Bush, we know he was certainly high on meth
22 because they all said, yes, I was a meth-head. Heath
23 Bates said, I was so confused. Heath Bates says, I
24 walked into this place by myself. But Candace Roberts
25 says, no, he came in with Patrick and Dustin Cox. That's

1 because he was so high on meth. You know, if you start
2 looking at this particular case from this point of view,
3 that Veronica Smith -- Veronica Smith says, myself and
4 Tim Elrod went to a house up behind a gas station. And
5 we went in and we obtained a green laptop bag. And going
6 back down the road, Tim Wirtz asked me -- I mean Tim
7 Elrod asked me -- see if the guns are in the bag. But we
8 know that the bag, the laptop bag, that was stolen from
9 Mr. Bush was a black laptop bag, not green. Did they
10 bring Tim Elrod in here for Tim Elrod to say, yes, I was
11 the one that went to Tim Wirtz's house to get some guns.
12 They didn't bring Tim Elrod here.

13 They brought someone in here who's a convicted felon
14 by the name of Heath Bates who came in here on Wednesday
15 and said, my mind was cloudy. My mind was confused. He
16 could not even identify the rifle that they wanted you to
17 believe that was taken from Mr. Bush. But did they bring
18 in Tim Elrod? No. Did they bring in Shane Elliott? No.
19 Did they bring in Greg Bates?

20 You heard earlier that Tim Wirtz's is the only one
21 charged with kidnapping, burglary first, possession of a
22 weapon, grand larceny, armed robbery. He did all of that
23 by himself? He's the only one charged with the -- other
24 people were charged with accessory before the fact. And
25 where are they? He's the only one here today, sitting

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1 here charged with this particular crime.

2 When you start looking at this particular case, and
3 when you start thinking about the evidence that came from
4 that particular witness stand, you have to ask yourself,
5 do I have a doubt that Tim Wirtz committed this
6 kidnapping. Do I have a reasonable doubt that he
7 committed this burglary, the possession of a weapon? Do
8 I have a doubt that he committed this grand larceny? And
9 I would submit to you that there is reasonable doubt in
10 this particular case. The reasonable doubt is when he
11 was at the police station and he was asked to make these
12 phone calls. That his confession was procured under
13 police misconduct, under the promises of leniency, under
14 the promises of I will help you down the road. That this
15 confession that was obtained through direct and indirect
16 promises of the police.

17 When we talk about Candace Roberts, she comes in and
18 she says that the gun was placed in the vent. But we
19 know Heath Bates says he pushed the gun, the shotgun,
20 underneath the couch. Did they ever put a gun in Tim
21 Wirtz's hands? They did not. Did they do a search
22 warrant of Tim Wirtz's residence? They did not. Did
23 they look around for items that Tim Wirtz had? No, they
24 didn't. If Tim Wirtz sold the gun to Heath Bates, was
25 his fingerprints on it? No. And if they were, we would

1 have heard of it.

2 I said, Sergeant McMahan, how come you didn't record
3 the interrogation of Tim Wirtz. Well, we don't have the
4 capabilities. We don't have a tape recorder. We don't
5 have a video camera to make that connection right there.
6 I submit to you, ladies and gentlemen, that, yes, they
7 do. There was a reason why they didn't want to record
8 the interrogation of Mr. Wirtz. Because they certainly
9 have the capabilities to buy a tape recorder.

10 Ask yourself this question. Do I have a doubt about
11 Mr. McMahan's testimony because of his evasiveness,
12 because he wouldn't answer a question, because some of
13 the questions he gave just really didn't make any sense
14 to me? Ask yourself the question of, how many other
15 people did Chad Bates [sic] talk to about this particular
16 robbery or the opportunity for this robbery? We have
17 information that says Tim Wirtz was there. We have
18 information about Amanda Wirtz being there, Carrie Tyner
19 being there, Heath Bates being there, Greg Bates being
20 there. But yet and still, the only person arrested is
21 Tim Wirtz and Gary Smith.

22 Ask yourself this question. Where is Gary Smith at
23 today? How come he's not sitting on trial? How come
24 he's not sitting in that vacant seat right there beside
25 Tim Wirtz? And why is he not here?

1 Yesterday we brought in to you Allison Barrineau and
2 Thomas Hoxit. And from their testimony, we know that
3 Chad Bates [sic] put all this in motion. We don't see
4 Chad Bates [sic] sitting here. They told Sergeant
5 McMahan Chad Bates [sic] was involved. They told
6 Sergeant McMahan Chad Bates [sic] was involved. Chad
7 Bush is involved. Mr. Wirtz told them Chad Bush was
8 involved. You know, they want to believe Tim Wirtz's
9 statement when it's convenient for them. They're saying,
10 listen, I want you to believe this statement because
11 that's what Tim Wirtz said. He said he did it. But
12 don't believe it because he said other people was there.
13 Don't believe it because he said Chad Bush set this thing
14 in motion. What person steals from his parents, sells
15 their stuff? What person sets up their own brother,
16 knowing he's going to be asleep at night -- in the
17 daytime, when his wife and children are going to work,
18 other than Chad Bates -- Chad Bush?

19 Ladies and gentlemen, there's reasonable doubt all
20 in this case. The testimony of Heath Bates, not
21 credible. The testimony of Veronica Smith who's charged
22 with two shopliftings, not credible. The testimony of
23 Candace Roberts who differ from Heath Bates about where
24 the gun was, not credible. But the testimony of Allison
25 Barrineau, regardless of whether or not she's been

1 charged with a crime, regardless of whether or not she
2 has some fraudulent checks on her record, regardless of
3 whether or not she has a forgery on her record, what did
4 she say? I don't know Tim Wirtz. He's not my friend.
5 The first day I saw Tim Wirtz was yesterday. She has no
6 friends to reward. She even has no enemies to punish.
7 And that's why we're asking you, at the end of this case,
8 at the end of the case of the State versus Mr. Wirtz,
9 that you come back with a verdict of not guilty. You
10 come back with a verdict that says not guilty for
11 kidnapping, not guilty for the burglary, not guilty for
12 the possession of a weapon, not guilty for the grand
13 larceny because the State has not met its burden of
14 proof, to prove to you beyond a reasonable doubt that Tim
15 Wirtz committed this crime.

16 You've heard that testimony that came from that
17 particular witness stand. You heard the evasive answer.
18 You've heard the credibility of the witnesses. And I
19 submit to you, ladies and gentlemen, that when you have
20 conduct like the police officers who brought about the
21 confession of Tim Wirtz, who they met at four-thirty or
22 five o'clock that day on February 14th, 2012, Valentine's
23 Day, and he gave a statement. He gave another statement.
24 He made phone calls about some guns, trying to help
25 McMahan out. He made some phone calls about setting up

1 some drug deals. In fact, set up drug deals. And they
2 finally put him in jail at twelve forty-seven a.m.,
3 February the 15th, 2012.

4 That confession, ask yourself, do I have any doubts
5 in my mind that that confession was not brought about by
6 the misconduct of the Oconee County Sheriff's Office. If
7 you believe that, stay true to that. Don't let people
8 change your mind. We've picked these twelve jurors
9 because we thought you could look at this particular
10 evidence and come away with the verdict of not guilty.
11 Not guilty.

12 Thank you all.

13 THE COURT: Mr. Wagner?

14 MR. WAGNER: Thank you, Judge.

15 CLOSING ARGUMENT

16 BY MR. WAGNER:

17 Before I start on why you should convict him of
18 everything, let me just touch on what you heard from the
19 Defense. Basically, you heard two or three more meth-
20 heads come in and say that George Bush, Chad Bush, was
21 going to try to shoot Carrie Tyner or whatever. I submit
22 to you none of that's relevant. It all happened two and
23 a half, three weeks after the fact. Whether these meth-
24 heads get into it about something else, obviously they
25 do. You heard Ms. Barrineau say her boyfriend, Tim

1 Elrod, went and burnt a house down of the other guy
2 because they got into it over meth. These things
3 apparently happen in the meth world. But this particular
4 -- these people had nothing to say and can say nothing
5 about whether that Defendant did it or not. They weren't
6 there, and they didn't know. So Ms. Barrineau said that
7 she knew or she thought Chad Bush wasn't involved or at
8 least wasn't there, but he and the other guy were. So
9 maybe she was telling the truth. I don't know. But they
10 had nothing to add. So I'm done with that as far as that
11 goes.

12 But let's look at the evidence of why he did it.
13 And I will be brief. State's Exhibit Number 1 was the
14 rights waiver. Mr. McMahan, Deputy McMahan, testified it
15 was very thorough. They went over this entire form with
16 him at the church, where he labeled church, at five oh
17 eight, p.m. They went through, he initialed it. That's
18 the Defendant's handwriting. He signed and said, I will
19 talk to you. Carrie Tyner dropped him off. She
20 confirmed that. She didn't have anything to say about
21 them threatening him or promising or anything like that.

22 They went back to the sheriff's office and talked.
23 Sergeant McMahan realized he was making some headway in
24 the interview. And when I say headway, he was starting
25 to admit to stuff. Sergeant McMahan testified that he

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1 confronted him. He knew that Timothy Wirtz was involved
2 because he'd already traced at least one of the rifles
3 back to Wirtz as well as had seen him on the video within
4 an hour of this crime. He's using that guy, the victim's
5 credit cards up there at the Bountyland. And so he knew
6 that. The Defendant knew that. I think the Defendant,
7 trying to help himself, they went through his rights
8 again and he initialed that he understood. And he
9 decided he would talk to them.

10 So Gentry Hawk comes into play too. The two of them
11 sat in there and talked to him, and they took notes.
12 Then they left him alone in the room and let him write it
13 in his own handwriting what he did. And he wrote on
14 February 8th, "I, Timothy Wirtz, along with Gary Smith,
15 Chad Bush and Greg Bates were in my car. And we were
16 short on cash. Chad Bush told us we could enter his
17 brother's house and take guns, cash and jewelry. Also
18 some traveler's checks. Chad Bush said he could not be
19 there because that's his brother. The conversation was
20 ended. On Saturday, several days later, around one p.m.
21 ..."

22 Which was the time this crime happened.

23 "... me, Tim, Gary Smith and Greg Bates went to the
24 location that Chad Bush had shown us, his brother's
25 house. Then Gary Smith received a house key from Chad

1 Bush on the 8th of February and which Gary used to enter
2 the dwelling. I, Tim, stepped up on the porch. Gary
3 plundered the downstairs while Greg Bates waiting in the
4 car. I then heard a loud voice on the stairs and I asked
5 what's going on. Gary Smith then tied up the victim and
6 started bringing guns to the foyer where I, Tim Wirtz,
7 carried the guns, along with Greg Bates, loaded the guns
8 into the trunk of my wife's '99 blue Taurus."

9 Which we now know obviously was the car that was
10 used.

11 "We, Greg, Gary, and I, Timothy, then witnessed Gary
12 Smith break a glass door per Chad Bush's request so that
13 it would look like a forced entry. I, Timothy, heard the
14 conversation myself between Chad and Gary. Gary then
15 ransacked the house to make it look random per Chad's
16 request. I, Timothy, Greg, and Gary left the victim's
17 house to use an A.T.M. Then I, Timothy, went into the
18 store to use an A.T.M. and also used the card to
19 purchased fuel."

20 "We then left and transported the firearms to my,
21 Timothy's, house where Heath Bates, Shane Elliott, and
22 Daniel Morrison all paid me in meth for some of the guns.
23 Austin Justice came to purchase another firearm. All of
24 this time, Gary Smith was sitting in the back bedroom
25 collecting fifty percent while I and Bates split the

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1 other half. Then they, Gary and Bates, stayed for
2 fifteen minutes and left." Whereupon, he made a huge 'X'
3 here and initialed that, signed it, dated it, put the
4 wrong time down there and signed it.

5 Since he closed out this statement, they had to take
6 the other one where basically he admitted that they then
7 took them to Yank's house. That's State's Exhibit 3,
8 which you can read back in the jury room too. Whether
9 Chad Bush or not told them enough about how to get to his
10 brother's house or not, we may never know. The only
11 person that says that and the only evidence against Chad
12 Bush is that Defendant's statement. Bush denied it. You
13 heard him on the stand, what he said. He denied it.
14 Said he felt bad about it. And granted, he's a dirt bag.
15 Most everybody that testified in this thing is a meth-
16 head or a dirt bag of some form or fashion with criminal
17 records. And that's just what we're dealing with here.

18 How else do we know the Defendant went to Eric
19 Bush's house back on February 11th, 2012 and helped
20 participate in robbing him? Whether he was the guy who
21 held the gun or whether he was the guy downstairs that
22 helped haul the guns off, we may never know. We do know
23 that the guy was wearing blue jeans, a dark shirt and a
24 dark bandana. We also know that within an hour of the
25 crime, he was wearing blue jeans, a dark shirt and had a

1 bandana in his possession similar when he was arrested a
2 few days later. So it very well could have been him. He
3 may be minimizing his involvement as to what his role in
4 the crime was, but he had a role. And it was an active
5 role. He went in the building, and he helped steal those
6 guns. And whether or not he pointed the gun or tied the
7 guy up, the Judge is going to charge -- it's called the
8 hand of one is the hand of all -- they're all guilty just
9 as if they did every single thing in there together. If
10 they go and they participate in the crime, they're guilty
11 as if they did every single act and they're responsible
12 for what their co-defendants do.

13 You'll have the video if you want to watch it again.
14 And it does show within an hour, this Defendant pulled up
15 in that Ford Taurus. They got gas at the pump like he
16 admitted to in his statement. He went in, tried to use
17 the A.T.M. card like he did. Took a chance on a PIN
18 number, maybe get a little cash. Maybe they could go get
19 a little meth. I submit to you it's reasonable to see
20 that that's what he did. And he admitted it in his
21 statement. And it helped corroborate what Sergeant
22 McMahan already knew about this crime.

23 And then we've got the phone calls that he did. And
24 he went through fourteen calls. And who did he call but
25 the same people that he admitted in his statement that he

1 sold the guns to? The meth heads that they all knew.
2 Everybody up here seemed to know the same bunch. Shane
3 Elliott, Gene Poole, Heath Bates, Chad Bates [sic],
4 Heath's daddy, they're all intertwined. He calls Gene
5 Poole. He calls Carrie Tyner. He calls Dannyo (phonic),
6 who I submit to you is probably Danny Williams or whoever
7 the guy is that he mentions in his statement. Calls him
8 Dannyo. He calls Yank who he mentions in his second
9 statement that they took some more of the guns to. And
10 he tries to get the guns back. He's trying to help
11 himself at this point because he knows he's caught.

12 The officers testified there were no promises made.
13 They're not going to drop a major case like this so he
14 can call and make a couple of penny-ass -- excuse my
15 language -- penny little drug buys.

16 On that tape, if you choose -- and you will have it
17 available to listen to again if you want to -- you will
18 hear Tim say, Carrie, stick to the story. You'll hear
19 when he calls on like the fourteenth call, I don't want
20 Heath to fall for something I did. He admits it on there
21 again. Tim Elrod still got that forty. And we know Tim
22 Elrod was the guy that came over there and took the bag
23 of pistols in the bag because the girl went over there.
24 And maybe she couldn't put it as definitely Tim Wirtz's
25 house, but it was a house right behind a gas station

1 where the officer testified that's where he lived. He
2 lived behind the Fairfield Grocery right there -- within
3 a night of the burglary or so.

4 He blamed it on Chad Bush, that Chad Bush had
5 squealed. And yeah, he kept talking about drugs on
6 there. But from his perspective, I submit to you when
7 you're calling the likes of Shane Elliott and Heath Bates
8 and stuff like that, you don't call them up and say,
9 look, I'm sitting here with Sergeant McMahan and Gentry
10 Hawk at the Sheriff's office. I'm in a lot of trouble.
11 You guys might be too. You know, he calls up and tries
12 to go into the lingo of the drugs. And that's how they
13 talk. That's how they act. That's what they do. He was
14 trying to get the guns back.

15 And it just so happened he's the only one in this
16 crime that can be linked to the guns. He's the one that
17 took them to his house, and he's the one that was selling
18 them. He's the one that admitted selling them. None of
19 these other guys are. So I submit to you he's the one on
20 trial here today. Nobody else is on trial today. We're
21 concerned with him. The evidence all supports him.
22 That's why he's here. He's not being picked on. He's
23 here because of what he did.

24 And I'll submit to you, you have no friends to
25 reward, no enemies to punish. The evidence suggests one

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1 thing and one thing only, and that is guilty.

2 The transmission fluid, before I forget to tell you,
3 that also helps tie him in. We know there was
4 transmission leaked out on the thing. Sergeant McMahan
5 was a mechanic for twenty-five years. He touched it with
6 his finger, and he smelled it. And he looked at it. He
7 knows what transmission fluid is. We know that that car
8 had a leaky transmission because he overheard that
9 Defendant tell Carrie Tyner, make sure you put that
10 transmission fluid in there, or something to that effect.
11 And then she got up on the stand yesterday and said the
12 same. One of the first things out of her mouth was it
13 had a bad transmission problem, a bad leak. They had to
14 stop and get stuff that day. That's another way we know
15 to tie this Defendant on that car.

16 There was a lot of headway made about whose car it
17 was, whether it was the wife's car or his car. When I
18 asked Carrie Tyner, she said it was his car. I said,
19 what car did you take? His car. She knew it was his
20 car. He was driving it.

21 Every piece of evidence in this case points directly
22 one way, and it's right here to Timothy Wirtz. And the
23 only verdict, the only reasonable verdict, in this case
24 is guilty.

25

CHARGE

1 BY THE COURT:

2 Madam Forelady, ladies and gentlemen of the jury, as
3 jurors in this case, you have certain functions and
4 responsibilities to perform which are entirely separate
5 and distinct from those of mine as the trial judge. I am
6 prohibited by the Constitution of our state from charging
7 you on the facts of this case. I am also prohibited from
8 discussing the facts of the case with you or in any way
9 intimating what my feelings, if any, are about the facts
10 of the case.

11 It is your responsibility, and yours alone, to pass
12 upon all the issues of fact presented in the case. I
13 would, therefore, charge you that if, during the course
14 of the trial or during my charge, you have been given or
15 left with an impression or feeling that I do have a
16 personal feeling about the facts of this case, I would
17 specifically instruct you to disregard that feeling or
18 impression.

19 Moreover, you're the sole judges of what the
20 testimony was and not the argument of counsel. It is
21 also your duty, and yours alone, to weigh the testimony
22 and evidence in the case and to pass upon the credibility
23 or believability of the witnesses. In this connection,
24 you have the right to believe all that a witness tells
25 you or to disbelieve all that a witness tells you. You

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1 have the right to believe a part of what a witness tells
2 you and disbelieve a part of what a witness tells you.
3 You have the right to take into consideration any bias or
4 prejudice or interest you feel a witness might have in
5 the case. I say this merely to emphasize that the weight
6 you see fit to give to the testimony, to the credibility
7 of the witnesses as well as to all issues of fact are for
8 your sole determination.

9 As judges of the facts, you're the sole judges of
10 the credibility, that is, the believability of the
11 witnesses who have testified in this case. In passing
12 upon their credibility you take into consideration many
13 things such as the appearance and manner of the witness
14 on the stand, sometimes referred to as the demeanor of
15 the witness. Was the witness forthright or hesitant?
16 Was the witness' testimony consistent or did it contain
17 discrepancies? What was the ability of the witness to
18 know the facts about which he or she testified? Did the
19 witness have a cause or a reason to be biased and
20 prejudiced in favor of the testimony he or she gave? Was
21 the testimony of the witness corroborated or made
22 stronger by testimony in evidence, or was it made weak or
23 impeached by such other testimony in evidence?

24 As jurors, you have the right to believe a small
25 portion of a witness' testimony and disregard the larger

1 or vice versa. You may believe all of a witness'
2 testimony or none. Most certainly, you do not determine
3 the matter of credibility or believability by counting up
4 the number of witnesses who may have testified on behalf
5 of the parties. Throughout this entire process, you have
6 but one single objective. That is to seek the truth
7 regardless from what witness that testimony may have
8 come.

9 Now, I instruct you and emphasize that the fact the
10 Defendant did not testify is not a factor to be
11 considered by you in any way in your deliberations and in
12 your consideration on the question of whether the State
13 has proven the guilt or proven the Defendant is guilty or
14 not guilty of the charges in the indictments. It must
15 not be considered by you in any manner whatsoever. A
16 defendant has a constitutional right to remain silent.
17 And the exercise of this right must not be considered by
18 you in your deliberations.

19 I repeat, under your oath that you're to draw no
20 conclusion whatsoever from the fact that the Defendant in
21 this case did not testify. The fact that this Defendant
22 did not testify should not even be discussed in the jury
23 room. The burden of proof, as I have stated to you, is
24 on the State. This Defendant is not required to prove
25 his innocence. The burden of proof remains on the State

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1 to prove guilt beyond a reasonable doubt.

2 Now, by that same Constitution and law which makes
3 you the finders of the facts and the evidence, as I've
4 discussed with you, I am, as the Judge, made the sole and
5 only instructor of the law. You must accept as correct
6 the law which I charge and apply to it the evidence as
7 you find it and reach your verdict. If I should make an
8 error in the law as I instruct you, there's another time
9 and place that error can be considered, and if necessary,
10 corrected. But for the purposes of this case today, you
11 must accept the law as I charge it to you to be the
12 correct law. And finally, I charge you that in this
13 regard that you, nor for that matter I, should not be
14 concerned with what the law ought to be, but rather what
15 I charge you the law to be.

16 Now, the Defendant has pled not guilty to each of
17 these indictments and each count of each indictment. And
18 that plea puts the burden on the State to prove the
19 Defendant guilty. A person that's charged with
20 committing a criminal offense in South Carolina is never
21 required to prove himself innocent. I charge you that it
22 is an important rule of the law, that the Defendant in a
23 criminal trial, no matter what the seriousness of the
24 charge may be, will always be presumed to be innocent of
25 the crime for which the indictment was issued unless that

1 guilt has been -- unless guilt has been proven by
2 evidence satisfying you of that guilt beyond a reasonable
3 doubt.

4 This presumption of innocence does not end when you
5 begin your deliberations, but it accompanies the
6 Defendant throughout the trial until you reach a verdict
7 of guilt based upon evidence satisfying you of that guilt
8 beyond a reasonable doubt. The presumption of innocence
9 is like a robe of righteousness placed about the
10 shoulders of the Defendant which remains with the
11 Defendant until it has been stripped from the Defendant
12 by evidence satisfying you of the Defendant's guilt
13 beyond a reasonable doubt.

14 The presumption of innocence is not a mere legal
15 theory. It's not just a legal phrase. It is a
16 substantial right to which every Defendant is entitled
17 unless you, the jury, are satisfied from the evidence of
18 the Defendant's guilt beyond a reasonable doubt.

19 Now, what is a reasonable doubt? A reasonable doubt
20 is the kind of doubt that would cause a reasonable person
21 to hesitate to act.

22 While the Court determines the admissibility of
23 evidence, you, the jury, must determine the existence and
24 voluntariness and weight of any alleged statement made by
25 the Defendant. You must make the ultimate determination

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1 on whether or not the Defendant, in fact, made the
2 alleged statement. You must then determine whether the
3 statement was made voluntarily. Finally, you must decide
4 what weight, if any, should be given to any alleged
5 statement. You must determine whether the alleged
6 statement was a product of an essentially free and
7 unconstrained choice by its maker. The State must prove
8 the voluntariness of a statement beyond a reasonable
9 doubt.

10 If you determine beyond a reasonable doubt that a
11 statement was given freely and voluntarily, then you may
12 give the statement such further consideration as you deem
13 proper. If you determine that the alleged statement was
14 not the free and voluntary will, expression of the
15 Defendant, then you should not consider the statement as
16 evidence.

17 In determining whether a Defendant's will was
18 overcome in obtaining a statement, the law requires you
19 to consider what is known as the totality of the
20 circumstances. You should consider both the
21 characteristics of the Defendant and the circumstances
22 surrounding any questioning or interrogation. Some of
23 the factors the law says you may consider are the age of
24 the Defendant, the Defendant's educational background,
25 the Defendant's mental ability or capacity, and the

1 Defendant's background along with all other facts and
2 circumstances surrounding the making of an alleged
3 statement to include the length of custody, police
4 misrepresentation, threats of violence, promises of
5 leniency and the like.

6 In determining the voluntariness of any alleged
7 statement, you should also consider whether the Defendant
8 was advised of and understood his constitutional rights.
9 The law requires that before any interrogation or
10 questioning of the person in custody may begin, the law
11 enforcement officers must advise the accused of his
12 Miranda rights. This means that the authorities advised
13 the accused, one, that the accused has a right to remain
14 silent, that any statement may be used against him a
15 court of law. That the accused has a right to have a
16 lawyer present. And if the accused cannot afford a
17 lawyer, then a lawyer would be appointed to represent him
18 without any cost to him. That the accused could stop
19 making a statement at any time.

20 Other factors to consider are the place and length
21 of any detention and the nature of the questionings. You
22 must carefully scrutinize all the surrounding
23 circumstances before you give any weight to an alleged
24 statement. You must be satisfied beyond a reasonable
25 doubt that the statement was made by the Defendant,

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1 uninfluenced by promise of reward or threat of harm.

2 If you find a reasonable doubt that any alleged
3 statement was given voluntarily, then you must decide
4 what weight, if any, should be given to the statement.

5 If you find the statement was not voluntary, then you
6 must find -- must -- excuse me -- in the event-- in that
7 event, that you find that it was not made voluntarily,
8 then you must not consider the statement for any purpose
9 whatsoever.

10 No alleged confession or admission should be
11 considered as any evidence in this case as against the
12 Defendant making it unless the State has satisfied you
13 beyond a reasonable doubt that the same was freely and
14 voluntarily made without any threats or inducements
15 addressed to hope or fear. In other words, before an
16 alleged confession can be considered by the jury as
17 evidence, it must not have been induced by promises nor
18 extorted by fear, but must be free and voluntary in every
19 respect. And even then, it must be believed by you, the
20 jury.

21 Now, there are two types of evidence which are
22 generally presented during a trial, direct evidence and
23 circumstantial evidence. Direct evidence is the
24 testimony of a person who claims to have actual knowledge
25 of a fact, such as an eyewitness. It is evidence that

1 immediately establishes the main fact to be proved and
2 does not require a deduction. Circumstantial evidence is
3 proof of a chain of facts and circumstances indicating
4 the existence of a fact. It is evidence which
5 immediately establishes collateral fact from which the
6 main fact may be inferred. Circumstantial evidence is
7 based on inference and not on personal knowledge or
8 observation.

9 Crimes may be proven by circumstantial evidence.
10 The law makes no distinction between the weight or value
11 to be given to either direct or circumstantial evidence.
12 However, to the extent the State relies on circumstantial
13 evidence, all the circumstances must be consistent with
14 each other and when taken together point conclusively to
15 the guilt of the accused beyond a reasonable doubt. If
16 the circumstances merely portray the Defendant's behavior
17 as suspicious, the proof has failed.

18 The State has the burden of proving the Defendant
19 guilty beyond a reasonable doubt. This burden rests upon
20 the State regardless of whether the State relies on
21 direct evidence, circumstantial evidence or some
22 combination of the two.

23 You should weigh all of the evidence in the case.
24 After weighing all of the evidence, if you are not
25 convinced of the guilt of the Defendant beyond a

1 reasonable doubt, you must find the Defendant not guilty
2 on that indictment or that count of that indictment.

3 In order to establish criminal liability, criminal
4 intent is required. For example, mental state required
5 to be proven by the State for a particular crime may be
6 purpose, intent or knowledge. Criminal intent must be
7 proven by the State beyond a reasonable doubt.

8 Criminal intent is always a matter that must be
9 determined by the jury from the circumstances surrounding
10 the situation. There is no way to prove intent to a
11 mathematical certainty. There is no medical science that
12 can dissect the person's brain and determine what the
13 person had in mind. So the law says that criminal intent
14 may be inferred from the circumstances shown to have
15 existed. This is how you make a determination of whether
16 or not the element requiring intent was present.

17 It is not necessary to establish intent by direct
18 and positive evidence, but intent may be established by
19 the inferences in the same way as any other fact, by
20 taking into consideration the acts of the parties and all
21 the facts and circumstances of the case.

22 Criminal intent is a mental state, a conscious
23 wrongdoing. It is up to you to determine what the
24 Defendant intended to do based on the circumstances shown
25 to have existed. Criminal intent is a state of mind that

1 operates jointly with an act or admission in the
2 commission of a crime. Criminal intent is a mental
3 state.

4 Criminal liability is normally based on the
5 concurrence of two factors, an evil-meaning mind and an
6 evil-doing hand. A person is said to act knowingly if he
7 is aware that the result is particularly certain to
8 follow from his conduct, whatever his desire may be to
9 that result. Suspicion, however strong, is not enough to
10 sustain a conviction. The evidence presented by the
11 State must be substantial evidence that tends to prove
12 the guilt of the Defendant beyond a reasonable doubt.

13 Now, in this case the indictments 2012-GS-37-588 and
14 589, 590 and 591 charge the Defendant, Timothy Ray Wirtz,
15 with armed robbery and possession of a weapon during a
16 violent crime, grand larceny of a total value of ten
17 thousand or more, kidnapping and first degree burglary
18 pursuant to subsections § 16-11-330, § 16-23-490, § 16-
19 13-30(b), § 16-03-910, and § 16-11-311 of the Code of
20 Laws of South Carolina respectively.

21 Each indictment charges a separate and distinct
22 offense. You must decide each indictment separately on
23 the evidence and the law applicable to it, uninfluenced
24 by your decision as to any other indictment. The
25 Defendant may be convicted or acquitted on any or all of

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1 the offenses charged. You may be asked to write a
2 separate verdict of guilty or not guilty for each
3 indictment.

4 I remind you that the fact the Defendant was
5 arrested and charged and indicted in this case is not
6 evidence and cannot be considered by you as evidence of
7 guilt in this case, nor does it create any presumption or
8 inference of guilt. The document is simply the formal
9 written instrument which contains the charge made against
10 the Defendant. It is the formal document by which a case
11 is brought into court.

12 Now, the Defendant is charged with armed robbery.
13 In order to prove this offense, the State must first
14 prove beyond a reasonable doubt that the Defendant took
15 personal property from the person or presence of another
16 person. Now, property in this present -- in the --
17 excuse me. Property is in the presence of a person if it
18 is within the person's reach, inspection, observation or
19 control so that the person could, if not overcome with
20 violence or prevented by fear, keep possession of the
21 property.

22 The State must also prove beyond a reasonable doubt
23 that the Defendant carried the property away intending to
24 permanently deprive the owner of the property and to keep
25 the property from the Defendant's own use -- keep the

1 property for the Defendant's own use.

2 Now, the slightest removal of the property or the
3 complete possession of the property, even for an instant,
4 by the Defendant is sufficient to show a taking and
5 carrying away of the property. The taking and carrying
6 away of the property must have been done with violence or
7 by putting the owner of the property in fear of violence.

8 Finally, the State must prove beyond a reasonable
9 doubt the Defendant was armed with a deadly weapon during
10 the robbery. A deadly weapon is any article, instrument
11 or substance which is likely to cause death or great
12 bodily harm. Whether an instrument has been used as a
13 deadly weapon depends on the facts and circumstances of
14 each case. Now, the following are examples of
15 instruments which may be deadly weapons: a pistol, a
16 shotgun, a rifle, or a dagger.

17 Now, the Defendant is also charged with possession
18 of a weapon during the commission of or attempt to commit
19 a violent crime. The State must prove beyond a
20 reasonable doubt that the Defendant was in possession of
21 a firearm or visibly displayed what appeared to be a
22 firearm during the commission of a violent crime. A
23 firearm means any machine gun, automatic rifle, revolver,
24 pistol or any other weapon which is designed to or may be
25 readily converted to expel a projectile. In order to

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1 find the Defendant guilty of possession of a weapon
2 during the commission of a violent crime, you must find
3 the Defendant was guilty of either committing a crime or
4 attempting to commit a violent crime. Armed robbery,
5 kidnapping and first degree burglary are each statutorily
6 defined as being a violent crime. The State must prove
7 beyond a reasonable doubt that the weapon furthered,
8 advanced or helped in the commission of the crime.

9 Now, the Defendant is charged with grand larceny of
10 personal property with a total value of more than ten
11 thousand dollars. The State must prove beyond a
12 reasonable doubt that the Defendant took and carried away
13 the goods, chattels, instruments or other personalty of
14 another against the will or without the consent of the
15 other person. The slightest removal of the property or
16 the complete possession of the property, even for an
17 instant, by the Defendant is enough to show a taking and
18 carrying away of the property. The State would also
19 prove beyond a reasonable doubt that the Defendant
20 intended to permanently deprive the owner of the
21 property. Finally, the State must prove the total value
22 of the things taken was ten thousand dollars or more.

23 Now, the Defendant is charged with kidnapping. The
24 State must prove beyond a reasonable doubt the Defendant
25 knowingly and unlawfully seized, confined, inveigled,

1 decoyed, kidnapped, abducted or carried away another
2 person without authority of law. To do a thing
3 unlawfully is to do it willfully against the law.
4 Knowingly means with knowledge, consciously and not
5 accidentally. Seize means to hold or suddenly -- excuse
6 me. Seize means to take hold of suddenly or forcibly.
7 Confine means to limit, restrict or enclose within
8 bounds, imprison, or shut or keep in. Inveigle means to
9 lure, entice, or lead astray by false representations,
10 promises or other deceitful means. Kidnap is to remove a
11 person against his will by unlawful force or by fraud.
12 Abduct means to carry off secret or by force for an
13 illegal purpose. Carry away means to remove.

14 Now, the State does not have to prove that the
15 Defendant did all of these things. Instead, if you find
16 beyond a reasonable doubt that the Defendant did any of
17 these things, you may find the Defendant guilty of
18 kidnapping. Something done without authority of law is
19 something which the law does not sanction, permit, allow,
20 condone or provide justification for. The kidnapping
21 does not have to be any personal or monetary gain for any
22 illegal purpose but may be for any reason whatsoever.

23 The Defendant is charged with first-degree burglary.
24 Now, the State must prove beyond a reasonable doubt that
25 the Defendant entered a dwelling without consent. A

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1 dwelling is any building or portion of a building which a
2 person ordinarily sleeps. A building constructed as a
3 dwelling that has never been occupied cannot be
4 considered as a dwelling for purposes of burglary. But a
5 building is a dwelling, even if the residents are
6 temporarily absent from the building. In order to prove
7 the Defendant entered the dwelling, the State does not
8 have to show that the Defendant's entire body entered the
9 dwelling. The smallest entry is sufficient. It may be
10 any part of the body such as the hand or foot or even an
11 instrument, such as a hook or other instrument. In
12 addition, the State does not have to prove that force was
13 used to gain entry. If a person enters a building by
14 using deception, artifice, trick or misrepresentation to
15 get consent to enter, this is an entry without consent.

16 Next, the State must prove beyond a reasonable doubt
17 that the Defendant intended to commit a crime, either a
18 felony or misdemeanor, at the time of entry. The mere
19 entry into a dwelling without consent is not burglary.
20 If the intent to commit a crime is formed after the
21 entry, it is not burglary. On the other hand, if a
22 defendant intended to commit a crime at the time of the
23 entry, it is burglary even if the intent was of mind
24 after the entry. It does not matter that the intended
25 crime was not completed. Intent may be shown by acts and

1 conduct of the Defendant in other circumstances which you
2 may naturally and reasonably infer intent.

3 Finally, the State must prove beyond a reasonable
4 doubt that when entering, while in the dwelling or when
5 fleeing, the Defendant or an accomplice was armed with a
6 deadly weapon. A deadly weapon is any article,
7 instrument or substance which is likely to cause death or
8 great bodily harm. Whether an instrument has been used
9 as a deadly weapon depends on the facts and circumstances
10 of each case. The following are examples of instruments
11 which may be a deadly weapon: a pistol, a shotgun or
12 rifle or any firearm. A gun may be a deadly weapon, even
13 if it is not operating.

14 Now, if a crime is committed by two or more people
15 who are acting together in committing a crime, the act of
16 one is the act of all. A person who joins with another
17 to commit an unlawful act is criminally responsible for
18 everything done by the other person which happens as a
19 probable or natural consequences of the act done in
20 carrying out the common plan and purpose. For example,
21 two people can be guilty of killing another person when
22 only one of the two had a gun, there was only one bullet
23 and only one of the two fired the shot that caused the
24 death. If two or more people are acting together, are
25 together, acting together, assisting each other in

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1 committing the offense, the act of one is the act of all,
2 or is sometimes said, the hand of one is the hand of all.
3 Prior knowledge that a crime is going to be committed --
4 prior knowledge that a crime is going to be committed,
5 all are guilty under the hand of one is the hand at all.
6 Being present at the commission of a crime means to be
7 sufficiently near to aid and abet and assist the
8 commission of the crime. However, mere presence at the
9 scene of a crime is not sufficient to convict one as a
10 principle on the theory of aiding and abetting.

11 Intent is also a necessary element. There must have
12 been a common design or intent to commit the crime, and
13 the crime must have been committed pursuant thereto with
14 the person aiding and abetting some overt act. Intent
15 means intending the result which actually occurs, not
16 accidentally or involuntary. Intent may be shown by acts
17 and conduct of the Defendant and other circumstances
18 which you may naturally and reasonably infer intent. The
19 State must prove these elements beyond a reasonable
20 doubt.

21 Now, if you have a reasonable doubt of the
22 Defendant's guilt after considering all the evidence on
23 any of the indictments, then you must find the Defendant
24 not guilty on that indictment. On the other hand, if you
25 find a reasonable doubt of the Defendant's guilt after

1 considering -- or if you find no reasonable doubt as to
2 the Defendant's guilt after considering all the evidence
3 on any of the indictments, then you must find the
4 Defendant guilty on that or those indictments.

5 Madam Forelady, ladies and gentlemen of the jury,
6 you have been selected as fair and impartial jurors,
7 sworn to impartially try and determine the facts of this
8 case. And when you comply with your oath to do so, then
9 no one will have the right to criticize your verdict and
10 you will have fully discharged your duty as jurors. You
11 should not be influenced by opinions or expression of
12 opinions, if any, you may have heard on the outside. But
13 you are to decide the case according to the testimony
14 that you have heard from the lips of the sworn witnesses
15 along with other evidence that may have been introduced.

16 As to those questions to which an objection was
17 sustained, you must not speculate as to what the answer
18 might have been or the reason for the objection.. As I
19 said earlier, you are the sole judges of the facts in
20 this case and you are to determine only if the Defendant
21 is guilty or not guilty based upon the testimony and
22 evidence presented in the trial after applying the law as
23 I've given it to you. From the evidence, if you have a
24 -- excuse me. If, from the evidence you have a
25 reasonable doubt as to whether or not the Defendant is

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1 guilty, it is your duty to acquit the Defendant and write
2 the two words, not guilty.

3 Under the oath you took, you swore to try this case
4 based only and solely on the testimony, evidence and law
5 presented and heard in the courtroom. It is your duty to
6 lay aside any bias, prejudice or sympathy you may have in
7 reaching your verdict. You have no friends to reward or
8 enemies to punish in this case.

9 I might note that the word verdict is taken from the
10 word veredicta or the Latin word veredicto which means to
11 speak the truth. Abide by your oath and return a verdict
12 which speaks the truth as to each indictment.

13 Madam Forelady, I have prepared a verdict form for
14 you and the jury to use in the deliberations. As I say,
15 there are four different verdicts -- four different
16 indictments and one count -- or two counts in one
17 indictment. So each indictment has to be considered
18 separately without any consideration to what your verdict
19 might have been on another indictment. In other words,
20 the Defendant could be acquitted on all indictments or
21 none and found guilty on all indictments or on some
22 indictments and not on the other indictments. As you
23 will note, indict -- to do it under the indictments as
24 they are presented.

25 Indictment number 2012-GS-37-588, count one, armed

1 robbery. Now, do remember whatever your verdict is, it
2 has to be unanimous. That means all twelve of you have
3 to agree to that verdict. However, on this indictment we
4 provide that, we, the jury, unanimously find on
5 indictment 2012-GS-37-588, count one, that the Defendant,
6 Timothy Ray Wirtz, is -- you have two verdicts that you
7 can reach, whatever your unanimous verdict is, either
8 guilty of armed robbery or not guilty. Then you would
9 mark the appropriate verdict on that count one of the
10 indictment.

11 Now, indictment number 2012-GS-37-588, on the second
12 page has count two, possession of a weapon during a
13 violent crime. Again, you have two possible indictments.
14 We, the jury -- or two possible verdicts. We, the jury,
15 unanimously find on indictment 2012-GS-37-588, count two,
16 that the Defendant, Timothy Ray Wirtz, is either guilty
17 of possession of a weapon during a violent crime or not
18 guilty. Then you would go to the second indictment.

19 Indictment number 2012-GS-376-589, grand larceny
20 value of ten thousand dollars or more. Again, you have
21 two possible verdicts. Whichever verdict it is, though,
22 it must be unanimous and you would check the appropriate
23 verdict. We, the jury, unanimously find that on
24 indictment 2012-GS-37-589, that the Defendant, Timothy
25 Ray Wirtz, is guilty of grand larceny value of ten

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1 thousand or more -- ten thousand dollars or more or not
2 guilty. And you would go to the next indictment.

3 Indictment number 2012-GS-37-590, kidnapping. We,
4 the jury, unanimously find on indictment 2012-GS-37-590
5 that the Defendant, Timothy Ray Wirtz, is guilty of
6 kidnapping or not guilty. As I say, each time it must be
7 unanimous.

8 And finally, indictment number 2012-GS-37-591 first-
9 degree burglary, we, the jury, unanimously find on
10 indictment 2012-GS-37-591 that the Defendant, Timothy Ray
11 Wirtz, is guilty of first-degree burglary or not guilty.
12 Again, you would check the appropriate verdict form that
13 is -- or verdict that is the unanimous verdict of the
14 jury.

15 Now, once the verdict on each indictment and each
16 count of each indictment is filled in or at least checked
17 the appropriate one, then you would sign on the line
18 provided on the last page and knock on the door and then
19 we'll return and receive your verdict.

20 I'm going to ask you, if you would, please return
21 the verdict form to the bailiff. And then I'm going to
22 ask you to retire to the jury room. Do not begin your
23 deliberations until I send the verdict form together with
24 all the exhibits that have been admitted into evidence.
25 Once you receive the verdict form and the exhibits, then

1 you will begin your deliberations. So I'm going to ask
2 you to wait until you do. But you can begin as soon as
3 you are given the verdict form and the exhibits.

4 Now, I'm going to have to ask the two alternates to
5 stay with us. But if the jury would now retire to the
6 jury room.

7 (WHEREUPON, the jury exited the open court at
8 approximately 12:10 p.m.)

9 THE COURT: You can just keep it. Just when
10 you get the exhibits.

11 THE BAILIFF: Okay.

12 THE COURT: Don't take it now, but just ...

13 THE BAILIFF: I got you.

14 THE COURT: Are there any exceptions to the
15 charge or additional requests to charge from the State?

16 MR. WAGNER: No, sir.

17 THE COURT: From the Defendant?

18 MR. ROSEMOND: On the hand of one.

19 THE COURT: All right. Subject to all of the
20 objections I've previously ruled on. All right.

21 Now, if you would, please, collect the exhibits.

22 Now, gentlemen, make sure that all those that are
23 supposed to go back do go back and those that are not
24 supposed to go back don't.

25 (WHEREUPON, the attorneys organized and reviewed the

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1 THE CLERK: He's downstairs.

2 THE DEPUTY: Mr. Wirtz is downstairs, Your
3 Honor, and we'll find Mr. Rosemond.

4 THE COURT: Let's not keep the jury waiting.

5 (WHEREUPON, court stood at ease.)

6 THE COURT: All right. The jury has sent out a
7 note with two of the charges on the note, armed robbery,
8 kidnapping, and then in parenthesis, as described by law.
9 So what I will do is give them the charge on armed
10 robbery as well the charge on kidnapping. Any questions
11 or any suggestions from the State?

12 MR. WAGNER: None, Your Honor.

13 THE COURT: From the Defense?

14 MR. ROSEMOND: No, Your Honor.

15 THE COURT: All right. Very good. Ask the
16 jury to join us, please.

17 (WHEREUPON, the jury entered the open court at
18 approximately 1:10 p.m.)

19 THE COURT: All right. Madam Forelady, ladies
20 and gentlemen of the jury, I've been handed a note that
21 says, armed robbery and kidnapping as described by law.
22 Now, what I intend to do is to read you the charges I
23 gave you on those two indictments.

24 Armed robbery. The Defendant is charged with armed
25 robbery. In order to prove this offense, the State must

1 prove first beyond a reasonable doubt that the Defendant
2 took personal property from the person or presence of
3 another person. Property is in the presence of a person
4 if it's within the person's reach, inspection,
5 observation or control so that the person could, if not
6 overcome with violence or prevented by fear, keep
7 possession of the property.

8 The State must also prove beyond a reasonable doubt
9 that the Defendant carried the property away intending to
10 permanently deprive the owner of the property and to keep
11 the property for the Defendant's own use. The slightest
12 removal of the property or the complete possession of the
13 property, even for an instant, by the Defendant is
14 sufficient to show a taking and carrying away of the
15 property. The taking and carrying away of the property
16 must have been done with violence or by putting the owner
17 of the property in fear of violence.

18 Finally, the State must prove beyond a reasonable
19 doubt the Defendant was armed with a deadly weapon during
20 the robbery. A deadly weapon is any article, instrument
21 or substance which is likely to cause death or great
22 bodily harm. Whether an instrument has been used as a
23 deadly weapon depends on the facts and circumstances of
24 each case. The following are examples of instruments
25 which may be deadly weapons: a pistol, a shotgun, a

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1 rifle, or the like.

2 Now, as far as kidnapping, the Defendant is charged
3 with kidnapping. The State must prove beyond a
4 reasonable doubt the Defendant knowingly and unlawfully
5 seized, confined, inveigled, decoyed, helped kidnap,
6 abducted or carried away another person without authority
7 of law. To do a thing unlawfully is to do it willfully
8 against the law.

9 Knowingly, means with knowledge, consciously, not
10 accidentally. Seize means to take hold of suddenly or
11 forcibly. Seize means to take hold suddenly or forcibly.
12 Confine means to limit, restrict or enclose within
13 bounds, imprison or shut or keep in. Inveigle means to
14 lure, entice or lead astray by false representations,
15 promises, or other deceitful means. Kidnap is to remove
16 a person against his will by unlawful force or by fraud.
17 Abduct means to carry off secretly or by force for an
18 illegal purpose. Carry away means to remove.

19 The State does not have to prove that the Defendant
20 did all of these things. Instead, if you find beyond a
21 reasonable doubt that the Defendant did any of these
22 things, you may find the Defendant guilty of kidnapping.

23 Something done without authority of law is something
24 which the law does not sanction, permit, allow, condone
25 or provide justification for. The kidnapping does not

1 have to be for any personal or monetary gain or an
2 illegal purpose, but it may be for any reason whatsoever.

3 Now, is there any further help I can be?

4 (WHEREUPON, a juror raised his hand.)

5 THE COURT: All right. Yes, sir?

6 THE JUROR: I think some clarification on the
7 stipulation concerning the hand of one and the hand of
8 all in relation to all the charges brought forth against
9 the Defendant.

10 THE COURT: All right. The hand of one is the
11 hand of all. If a crime is committed by two or more
12 people who are acting together in committing a crime, the
13 act one is the act of all. A person who joins with
14 another to commit an unlawful act is criminally
15 responsible for everything done by the other person which
16 happens as a probable or natural consequence of the acts
17 done in carrying out the common plan and purpose. For
18 example, two people can be guilty of killing another
19 person when only one of the two had the gun, there was
20 only one bullet and only one of the two fired the shot
21 that caused the death. If two or more people are
22 together acting together, assisting each other in
23 committing the offense, the act of one is the act of all.
24 As it is sometimes said, the hand of one is the hand of
25 all.

State v. Timothy Ray Wirtz 2012-GS-37-588/591
Charge by the Court

411

1 Prior knowledge that a crime is to be committed, all
2 are guilty. The hand of one is the hand of all. Present
3 at the commission of a crime means to be sufficiently
4 near to aid and abet and assist in the commission of the
5 crime. However, mere presence at the scene of a crime is
6 not sufficient to convict one as principle in the theory
7 of aiding and abetting. Intent is also a necessary
8 element, for there must have been a common design or
9 intent to commit the crime and the crime must have been
10 committed pursuant thereto by the person aiding and
11 abetting by some overt act. Intent means intending the
12 result which actually occurs, not accidentally or
13 involuntary. Intent may be shown by acts and conduct of
14 the Defendant and other circumstances which may naturally
15 and reasonably infer intent. And the State must prove
16 all these elements beyond a reasonable doubt.

17 Now, is there anything else?

18 (No response)

19 THE COURT: Very good. If you would please,
20 then, retire. I understand you've ordered lunch. All
21 right. Well, it will be here. And you can continue to
22 deliberate during your lunch.

23 (WHEREUPON, the jury exited the open court at
24 approximately 1:17 p.m.)

25 THE COURT: All right. For the record, the

1 THE COURT: And if you're going to leave, we'll
2 have to find you. Be sure that Lisa has your cell phone
3 number.

4 MR. WAGNER: Yes, sir.

5 (WHEREUPON, court stood at recess awaiting the
6 verdicts of the jury.)

7 THE COURT: I understand that the jury has
8 reached a verdict or verdicts. Is there anything from
9 the State before we bring the jury back?

10 MR. WAGNER: No, Your Honor.

11 THE COURT: From the Defense?

12 MR. ROSEMOND: No, Your Honor.

13 THE COURT: All right. Very good. Ask the
14 jury to join us, please.

15 (WHEREUPON, the jury entered the open court at
16 approximately 3:29 p.m.)

17 THE COURT: Madam Forelady, I understand the
18 jury has reached a verdict or verdicts?

19 MADAM FORELADY: Yes, Your Honor.

20 THE COURT: Very good. Would you pass it up to
21 the bailiff for me?

22 (WHEREUPON, the verdict form was handed up to the
23 Court.)

24 THE COURT: Madam Clerk, if you would, please,
25 publish the verdict.

State v. Timothy Ray Wirtz 2012-GS-37-588/591
Verdicts and Sentencing

414

1 Mr. Wirtz, would you please stand?

2 THE CLERK: In the matter of State of South
3 Carolina versus Timothy Ray Wirtz, on indictment number
4 2012-GS-37-588 for armed robbery, we, the jury,
5 unanimously find on indictment number 2012-GS-37-588,
6 count one, that the Defendant, Timothy Ray Wirtz, is
7 guilty of armed robbery.

8 On indictment number 2012-GS-37-558, count two,
9 possession of a weapon during a violent crime. We, the
10 jury, unanimously find on indictment number 2012-GS-37-
11 588, count two, that the Defendant, Timothy Ray Wirtz, is
12 guilty of possession of a weapon during a violent crime.

13 On indictment number 2012-GS-37-589, grand larceny,
14 we, the jury, unanimously find on indictment number 2012-
15 GS-37-589 that the Defendant, Timothy Ray Wirtz, is
16 guilty of grand larceny, value of ten thousand dollars or
17 more.

18 On indictment number 2012-GS-37-590, kidnapping, we,
19 the jury, unanimously find on indictment number 2012-GS-
20 37-590 that the Defendant, Timothy Ray Wirtz, is guilty
21 of kidnapping.

22 On indictment number 2012-GS-37-591, first degree
23 burglary, we, the jury, unanimously find on indictment
24 number 2012-GS-37-591 that the Defendant, Timothy Ray
25 Wirtz, is guilty of first-degree burglary.

1 Ladies and gentlemen of the jury, if this was your
2 verdict and remains your verdict, please indicate so by
3 raising your right hand.

4 (WHEREUPON, all jurors raised their right hand.)

5 MADAM CLERK: Let the record reflect that all
6 members of the jury have raised their right hand.

7 THE COURT: Very good. Thank you very much.
8 You may be seated.

9 Is there anything from the State before I dismiss
10 the jury?

11 MR. WAGNER: No, sir.

12 THE COURT: Anything from the Defendant?

13 MR. ROSEMOND: No, sir, Your Honor.

14 THE COURT: Madam Forelady, ladies and
15 gentlemen of the jury, the Court is never interested in a
16 verdict or verdicts. The only thing that the Court is
17 interested in is how that verdict was reached. And
18 although it looks like I'm doing everything else up here
19 except paying attention, I have developed a certain knack
20 for keeping up with what's going in the court. And I do
21 assure you that I am satisfied that you have given both
22 the State and the Defendant a fair and impartial trial
23 because I noticed throughout the trial of the case you
24 were all very attentive. You listened to each of the
25 witnesses, you watched the evidence, you listened to some

1 bar.)

2 THE COURT: All right. Mr. Solicitor, I'll be
3 glad to hear from you.

4 MR. WAGNER: Your Honor, his criminal history
5 started in 2002 with a number of fraudulent checks. He
6 was also convicted of shoplifting in 2002. He had a
7 possession of drug paraphernalia in 2002 again. Also,
8 two petit larceny convictions from 2002. Graduated to
9 grand larceny in 2003 and unlawful use of the telephone.
10 He was charged with armed robbery and ended up pleading
11 to common-law robbery in 2004. He got a six-year Y.O.A.
12 sentence then. When he got out, he wasn't -- well, I
13 don't know how long he was in there. But in 2007 he was
14 convicted of third-degree burglary and petit larceny.
15 And then he was convicted of second-degree burglary in
16 2010. And I believe he's still on probation for that.
17 He got some time. He got a split sentence and he did ---

18 THE COURT: The 2010 was what?

19 MR. WAGNER: Yes, sir. He got ten years for
20 second-degree burglary.

21 THE COURT: Burglary second?

22 MR. WAGNER: So he's got two burglary
23 convictions, but he got a ten-year sentence suspended on
24 eighteen months with five years probation. Ms. Newton,
25 when she was in here earlier, told me that he was still

1 on probation. And that was from 2010.

2 THE COURT: Does he have any other record?

3 MR. WAGNER: No, sir. That's his record.

4 The victim would like to address the Court whenever
5 you would find that appropriate.

6 THE COURT: All right.

7 Anything else, Sergeant McMahan?

8 SERGEANT MCMAHAN: No, sir.

9 THE COURT: I would like to hear from the
10 victim.

11 MR. WAGNER: Okay. Mr. Bush?

12 MR. ERIC BUSH: Your Honor, in exchange for the
13 restitution I would like a lengthy prison sentence. When
14 he's finished with his time, his debt would be paid to
15 me.

16 THE COURT: Has any restitution been requested?

17 MR. WAGNER: He did have restitution. What he
18 was just saying was he would rather see him serve a
19 significant sentence.

20 THE COURT: There was some restitution?

21 MR. WAGNER: Yes, there was some asked for. I
22 did not put it down based on what he told me.

23 THE COURT: Thank you, sir.

24 All right. Mr. Rosemond, what do you have to say on
25 behalf of Mr. Wirtz?

1 MR. ROSEMOND: Mr. Wirtz now is thirty-one
2 years of age. He worked for McCuen Tree Service at the
3 time. He's married. He has two children. You know, I
4 think from the testimony that we all heard here today
5 that certainly methamphetamine has affected his
6 particular life. You've heard all the witnesses that
7 came before you this particular week. And it seems like
8 that meth, in one way or the other, has affected all of
9 their lives.

10 Certainly, we're glad that Mr. Bush is okay, that he
11 didn't get physically injured in this particular episode.
12 I will also say, Your Honor, that it's a tragedy that Mr.
13 Wirtz is the only one ever going to prison for this crime
14 based upon kidnapping, burglary, possession of a weapon.
15 We all know that certainly there was more people that was
16 involved in this particular crime. And we all know that
17 he gave a confession. We all know that there was other
18 people there, and there's some other people that should
19 be sitting and standing before you right this minute, but
20 they're not here for whatever reason.

21 Certainly, Mr. Wirtz understands that he is going to
22 prison. And I would ask that you fashion a sentence that
23 will be responsible for everybody, everybody in this
24 particular courtroom. Certainly, Mr. Bush is asking for
25 a long prison sentence. I know the kidnapping charge is

1 probably a thirty-year charge. And I would ask that you
2 take into account his age, that he has children, and
3 fashion a sentence that one day he will get out of prison
4 and be able to see his children.

5 THE COURT: All right. Mr. Wirtz, anything
6 you'd like to say or anybody would like to say on behalf
7 of Mr. Wirtz? All right. Mr. Wirtz?

8 THE DEFENDANT: Yes, Your Honor. I would just
9 like to say that I'm not guilty of robbing Mr. Bush here.
10 That wasn't me that did that, Your Honor. Mr. McMahan
11 led me to believe he was going to help me out. Just told
12 me to tell him what he needed to know. So I mean, I
13 think the Oconee County Sheriff's Department did a very
14 poor job, and I hope Mr. McMahan can sleep at night with
15 the lies he told. Other than that, Your Honor, I have
16 nothing else to say.

17 MR. WAGNER: I do have something additional,
18 Judge.

19 THE COURT: Pardon?

20 MR. WAGNER: I said I've got something
21 additional.

22 THE COURT: Well, that's what I'm asking.

23 MR. WAGNER: Okay. Your Honor, as far as the
24 other people that were involved in this case, they are
25 still pending. The other guy that was with him on this

1 day that we can show, the cases, in my opinion, was not
2 near as strong on him. But it is still pending, and we
3 are still pursuing it. So just for the record, nobody
4 else has walked away from it scot-free. His brother, the
5 victim's brother, may have been involved. He denied it.
6 This Defendant said that he did. In my opinion, what I
7 know from this Defendant, having dealt with him in the
8 past, his credibility to me was non-existent. He has no
9 credibility with me. We would have loved to have had
10 some help somewhere along the line from any of them
11 really, but they all basically thumbed their noses at us.
12 And we were -- that's what led us here today. But the
13 fact -- I just want people to know that the other guys
14 are not walking away from this scot-free. We still
15 intend to try to pursue them the best we can. So that's
16 not accurate.

17 THE COURT: All right.

18 Sergeant McMahan, you still have nothing to say?

19 SERGEANT MCMAHAN: I would like to also say,
20 Your Honor, that Mr. Wagner is correct. We are pursuing
21 these other people involved.

22 THE COURT: That's all right. I just want to
23 be sure that everyone had an opportunity to be heard.

24 SERGEANT MCMAHAN: Yes, sir.

25 THE COURT: I understand he has served some

1 time?

2 MR. ROSEMOND: He's been in jail close to six
3 hundred ...

4 How many?

5 THE DEFENDANT: Twenty months and a week,
6 however long that is. About six hundred and twenty days.

7 MR. WAGNER: He's been in since February 14th
8 of 2012.

9 THE COURT: How far did you go in school, Mr.
10 Wirtz?

11 THE DEFENDANT: I have a G.E.D., sir.

12 THE COURT: Thank you.

13 Were you appointed or retained?

14 MR. ROSEMOND: Appointed.

15 THE COURT: All right. Anything else from the
16 State?

17 MR. WAGNER: No, sir.

18 THE COURT: Mr. Rosemond, anything else on
19 behalf of Mr. Wirtz?

20 MR. ROSEMOND: No, Your Honor.

21 THE COURT: Mr. Wirtz, anything you'd like to
22 tell the Court? Anything else?

23 THE DEFENDANT: Just I'm sorry what happened to
24 you, Mr. Bush. It wasn't me, man. You got the wrong
25 guy. Sorry, though. That's all I can say.

1 THE COURT: Well, you said some things under
2 oath. In fact, put them in writing. So I'll have to
3 accept your statement for what it's worth.

4 THE DEFENDANT: I understand, Your Honor.

5 THE COURT: Unfortunately, when we start
6 serving ourself before we serve our family and our
7 children and we undergo and engage in activities that are
8 harmful to other people, we have to pay the price. And
9 sometimes we think of burglary and the like as being
10 property crimes. Burglary is not a property crime. It's
11 a crime against a person. Because people are entitled to
12 be protected and enjoy the safety and security of their
13 own home. And those who engage including planning and to
14 put into operation and then take part in those invasions
15 of one's home show a complete lack of trustworthiness,
16 and they are a menace. Your life seems to have been
17 somewhat less than positive, and affirmative things that
18 could be done should have been done. I'm sure if you'd
19 been somewhere else than where you were on the days that
20 have been recounted in February 2012 by so many different
21 people that you wouldn't be here today. I don't know who
22 you want to blame for that. And sometimes it helps to
23 accept responsibility.

24 In this regard, my responsibility is to do what the
25 law requires. If there's nothing else, Mr. Wirtz?

1 THE DEFENDANT: No, Your Honor. I have nothing
2 else.

3 THE COURT: Indictment number 2012-GS-37-588,
4 it's the sentence of the Court that the Defendant,
5 Timothy Ray Wirtz, be committed to the State Department
6 of Corrections for a term of twenty-five years plus pay
7 the costs and assessments as applicable. Indictment
8 number 2012-GS-37-589, it's the sentence of the Court the
9 Defendant, Timothy Ray Wirtz, be committed to the State
10 Department of Corrections for a term of ten years plus
11 pay the costs and assessments as applicable. Indictment
12 number 2012-GS-37-590, it's the sentence of the Court the
13 Defendant, Timothy Ray Wirtz, be committed to the State
14 Department of Corrections for a period of twenty-five
15 years plus pay the costs and assessments as applicable.
16 Indictment number 2012-GS-37-591, it's the sentence of
17 the Court that the Defendant, Timothy Ray Wirtz, be
18 committed to the State Department of Corrections for a
19 term of thirty years plus pay the costs and assessments
20 as applicable. Special conditions, you'll undergo drug
21 and alcohol testing and treatment and substance abuse
22 counseling as directed to include A.T.U. and to pay five
23 hundred -- well, no probation. Those first four
24 sentences are to run concurrent and the Defendant will be
25 given credit for six hundred and twelve days time served.

State v. Timothy Ray Wirtz
Verdicts and Sentencing

2012-GS-37-588/591

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1 Indictment 2012-GS-37-588, count two, it's the sentence
2 of the Court, the Defendant, Timothy Ray Wirtz, be
3 committed to the State Department of Corrections for a
4 term of five years plus pay the costs and assessments as
5 applicable. This sentence is to run concurrent to the
6 sentence on 2012-GS-37-591. The Defendant will be given
7 credit for six hundred twelve days time served.

8 Good luck to you, sir.

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Excuse me. Just a moment. Madam
11 Court Reporter, on the last sentence, did I not make it
12 consecutive to 2012-GS-37-591?

13 MR. ROSEMOND: No, you didn't.

14 THE COURT: It is consecutive ---

15 MR. ROSEMOND: It is?

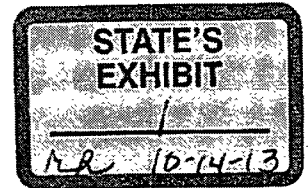
16 THE COURT: --- to 2012-GS-37-591.

17 (WHEREUPON, court stood at recess in this case at
18 approximately 4:12 p.m.)

19 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

Oconee County Sheriff's Office
Manual of Standard Policy and Procedure
Distribution: All Personnel

Rights Form
Policy number: 300.80.a
Effective date: 11/02/2009



OCONEE COUNTY SHERIFF'S DEPARTMENT

300 South Church Street
WALHALLA, SOUTH CAROLINA, 29691

YOUR RIGHTS

Place CHURCH

Date 2/14/2012

Time 5:08 PM

FW BEFORE WE ASK YOU ANY QUESTIONS, YOU MUST UNDERSTAND YOUR RIGHTS.

TRV YOU HAVE THE RIGHT TO REMAIN SILENT.

TRV ANYTHING YOU SAY CAN BE USED AGAINST YOU IN COURT.

TRW YOU HAVE THE RIGHT TO TALK TO A LAWYER FOR ADVICE BEFORE WE ASK YOU ANY QUESTIONS AND TO HAVE HIM WITH YOU DURING QUESTIONING.

TRW IF YOU CANNOT AFFORD A LAWYER, ONE WILL BE APPOINTED FOR YOU BEFORE ANY QUESTIONS IF YOU WISH.

TRW IF YOU DECIDE TO ANSWER QUESTIONS NOW WITHOUT A LAWYER PRESENT, YOU WILL STILL HAVE THE RIGHT TO STOP ANSWERING AT ANY TIME.

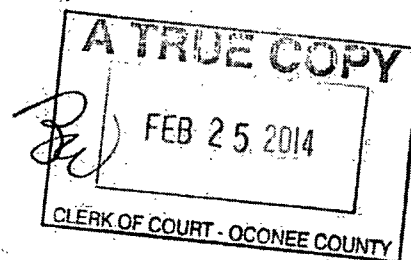
TRW I HAVE READ THIS STATEMENT OF MY RIGHTS AND I UNDERSTAND WHAT MY RIGHTS ARE. I AM WILLING TO MAKE A STATEMENT AND ANSWER QUESTIONS. I UNDERSTAND AND KNOW WHAT I AM DOING. NO PROMISES OR THREATS HAVE BEEN MADE TO ME AND NO PRESSURE OR COERCION OF ANY KIND HAS BEEN USED AGAINST ME.

SIGNED [Signature]

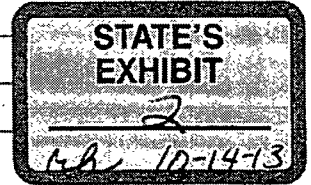
WITNESS [Signature]

WITNESS _____

TIME 5:09 PM



VOLUNTARY STATEMENT

DATE 2/14/2012 PLACE OLEC TIME STARTED 6:30 P .M.I, the undersigned, Timothy Roy Wirtz, am 28 years of age, my date and place ofbirth being the day of at AndersonI now live at Before answering any questions or making statements, SGT. DAVID MCMAHANa person who identified himself as a INVESTIGATOR

duly warned and advised me, and I know and understand that I have the following rights: That I have a right to remain silent and I do not have to answer any questions or make any statements at all; that any statement I make can and will be used against me in court or courts of law for the offense or offenses concerning which the following statement is hereinafter made, that I have the right to counsel with a lawyer of my choice before or at anytime during any questioning or statements I make; that if I cannot afford to hire a lawyer, I may request and have a lawyer appointed for me by the proper authority, before or at anytime during any questioning or statements that I make, without cost or expense to me; that I can stop answering any questions or making any statements at anytime that I choose; and call for the presence of a lawyer to advise me before continuing any more questioning or make any more statements, whether or not I have already answered some questions or made statements.

I do not want to talk to a lawyer, and I hereby knowingly and purposely waive my right to remain silent, and my right to have a lawyer present while I make the following statement to the aforesaid person, knowing that I have the right and privilege to terminate any interview at any time hereafter and have a lawyer present with me before answering any more questions or making any more statements, if I choose to do so.

I declare that the following voluntary statement is made by my own free will without promise of hope or reward, without fear or threat of physical harm, without coercion, favor or offer of favor, without leniency or offer of leniency, by any persons whomsoever.

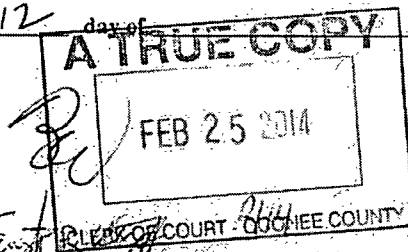
On Feb. 8, I, Timothy Wirtz along with Gary Smith, Chad Bush, and Gregg Bates were in my car and we were short on cash. Chad Bush told us we could enter his brother's house, and take guns, cash & jewelry. Also some travelers check. Chad Bush said he could not be there, because that's his brother. The conversation was ended. On Saturday around 1 pm Me (Tim), Gary Smith, and Gregg Bates went to the location that Chad Bush had shown us his brother's house. Then Gary Smith received a house key from Chad Bush on the 8th of February in which Gary used to enter the dwelling. I Tim, stepped up on porch. Gary plundered the down stairs while Gregg Bates waiting in car. I then heard a loud voice up stairs and I asked what's goin on. Gary Smith then tied up the victim and started bringing guns to the Foyer, where I (Tim) carried the guns along with Gregg Bates loaded the guns into the trunk.

I certify I have received a copy of this statement Timothy R. Wirtz

I have read each page of this statement consisting of 3 page(s), each page of which bears my signature, and corrections, if any, bear my initials, and I certify that the facts contained herein are true and correct. I further certify that I made no request for the advice or presence of a lawyer before or during any part of this statement, nor at any time before it was finished did I request that this statement be stopped. I also declare that I was not told or prompted what to say in this statement.

This statement was completed at 9:05 P.M. on the 2/14/2012 day of Feb, 2012

Notary Public for S.C.

My Commission Expires SEPT 22, 2013WITNESS: WITNESS: 

Signature of person giving voluntary statement

**VOLUNTARY STATEMENT
USED FOR ADDITIONAL PAGES ONLY**

PAGE # 2

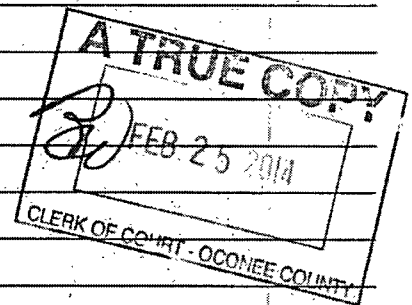
of my wife's 99 Blue Taurus. We Gregg, Gary + I Timothy then witness Gary Smith break a ^{TRW} glass door per Chad Dush's request so that it looked like forced entry. I Timothy heard the conversation myself between Chad + Gary + Gary then ransacked the house to make it look random per Chad's request. I Timothy, Gregg + Gary left the victims house to use an ATM ^{TRW}. Then I Timothy went in to the store to use an ATM and also used the card to purchase fuel. We then left and transported the firearms to my (Timothy) house where Heath Bates, Shane Elliot + Daniel Morrison paid me in meth for some of the guns. Austin Jada came to purchase another firearm. All this time Gary Smith was sitting in the back bedroom collecting 50 percent, while I and Bates got to split the other half. Then they Gary + Bates stayed for 15 min and left.

TRW

TRW

TRW

TRW



I certify I have received a copy of this statement Timothy Ray Witz
I have read each page of this statement consisting of 2 page(s), each page of which bears my signature, and corrections, if any, bear my initials, and I certify that the facts contained herein are true and correct. I further certify that I made no request for the advice or presence of a lawyer before or during any part of this statement, nor at any time before it was finished did I request that this statement be stopped. I also declare that I was not told or prompted what to say in this statement.

This statement was completed at COLEMAN ^{TRW} 9:05 P.M. on the 14 day of February, 20 12.

Notary Public for S.C.

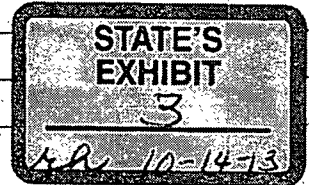
My Commission Expires Sept 22, 2013WITNESS: [Signature]

WITNESS: _____

Timothy R. Witz 2/14

Signature of person giving voluntary statement

VOLUNTARY STATEMENT

DATE 2/14/2012 PLACE OLEC TIME STARTED 7:37 P.M.I, the undersigned, Timothy Ray Wirtz, am 22 years of age, my date and place of birth being the day of , at AndersonI now live at Before answering any questions or making statements, SGT. DAVID MCMAHAN

a person who identified himself as a INVESTIGATOR
 duly warned and advised me, and I know and understand that I have the following rights: That I have a right to remain silent and I do not have to answer any questions or make any statements at all; that any statement I make can and will be used against me in court or courts of law for the offense or offenses concerning which the following statement is hereinafter made, that I have the right to council with a lawyer of my choice before or at anytime during any questioning or statements I make; that if I cannot afford to hire a lawyer, I may request and have a lawyer appointed for me by the proper authority, before or at anytime during any questioning or statements that I make, without cost or expense to me; that I can stop answering any questions or making any statements at anytime that I choose, and call for the presence of a lawyer to advise me before continuing any more questioning or make any more statements, whether or not I have already answered some questions or made statements.

I do not want to talk to a lawyer, and I hereby knowingly and purposely waive my right to remain silent, and my right to have a lawyer present while I make the following statement to the aforesaid person, knowing that I have the right and privilege to terminate any interview at any time hereafter and have a lawyer present with me before answering any more questions or making any more statements, if I choose to do so.

I declare that the following voluntary statement is made by my own free will without promise of hope or reward, without fear or threat of physical harm, without coercion, favor or offer of favor, without leniency or offer of leniency, by any persons whomsoever.

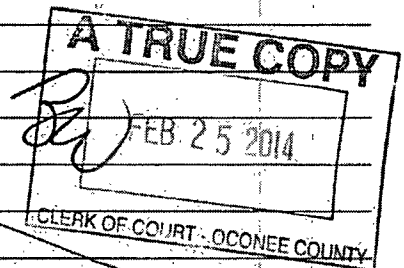
On February 9th at around 1:30 pm I (Timothy Wirtz) drove Gary Smith to Yank's place at Yank's house to stash some items from the burglary. Currently Yank is holding the stolen items and says he wants money to purchase the items stolen by Gary Smith.

TRW

TRW

TRW

TRW

I certify I have received a copy of this statement Timothy Wirtz

I have read each page of this statement consisting of page(s), each page of which bears my signature, and corrections, if any, bear my initials, and I certify that the facts contained herein are true and correct. I further certify that I made no request for the advice or presence of a lawyer before or during any part of this statement, nor at any time before it was finished did I request that this statement be stopped. I also declare that I was not told or prompted what to say in this statement.

This statement was completed at 7:40 P.M. on the 2/14/2012 day of , 20

Notary Public for S.C.

My Commission Expires Sept 22, 2013WITNESS: WITNESS:

A handwritten signature of Timothy R. Wirtz.

Signature of person giving voluntary statement

DOCKET NO. 2012GS37 00588

WITNESSES

David McMahan, Oconee Co Sheriff's Dept.

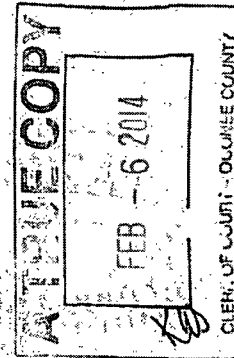
Amanda Kepler
Amanda Kepler

The State of South Carolina
County of Oconee

COURT OF GENERAL SESSIONS

JUN 11 2012

Term



2012 JUN 12 A 8:46

FILED OCONEE SC
BEVERLY H. WHITEFIELD
CLERK OF COURT

ARREST WARRANT NUMBER

N130695, N130693

THE STATE

vs.

Timothy Ray Wirtz

ACTION OF GRAND JURY

True Bill

DRW

Indictment for

Robbery / Armed Robbery, robbery while armed
or allegedly armed with deadly weapon

SC Code: 16-11-0330(A)

CDR Code: 0139

Possession Of A Weapon During Violent Crime

SC Code: 16-23-0490

CDR Code: 0549

VERDICT

CT. 1 Guilty

CT. 2 Guilty

SO Russell

For person of Petit Jury

Date: 10-18-13

ENTERED
JB
COMPUTER

STATE OF SOUTH CAROLINA)
COUNTY OF Oconee)

INDICTMENT

At a Court of General Sessions, convened on JUN 11 2012, the Grand Jurors of Oconee County present upon their oath:

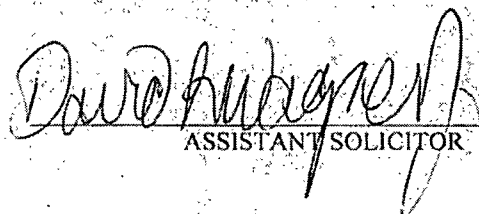
**Armed Robbery, Robbery While Armed Or Allegedly Armed With
Deadly Weapon**

That **Timothy Ray Wirtz** did in Oconee County, on or about **February 11, 2012**, while armed with a deadly weapon, to wit: a firearm and/or a knife, or while alleging either by action or words he/she was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery would reasonably believe to be a deadly weapon, take by means of force or intimidation, goods or monies described as: a 270 Winchester Rifle, credit cards, checks, laptop, several long guns and handguns from the person or presence of Eric Bush. This is in violation of §16-11-330(A) of the South Carolina Code of Laws (1976) as amended.

Possession Of A Weapon During Violent Crime

That **Timothy Ray Wirtz**, did in Oconee County on or about **February 11, 2012**, while committing the crime of Armed Robbery, a crime of violence, have in his possession a a firearm and/or a knife, all in violation of Section 16-23-490, Code of Laws of South Carolina, (1976, as amended).

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


ASSISTANT SOLICITOR

DOCKET NO. 2012GS37 00589

WITNESSES

David McMahon, Oconee Co Sheriff's Dept.

Amanda Kepler

Amanda Kepler

The State of South Carolina

County of Oconee

COURT OF GENERAL SESSIONS

JUN 11 2012

Term

ARREST WARRANT NUMBER

N130694

THE STATE

vs.

Timothy Ray Wirtz

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury

Date: JUN 11 2012

VERDICT

Guilty

Foreperson of Petit Jury

Date: 10.18.13

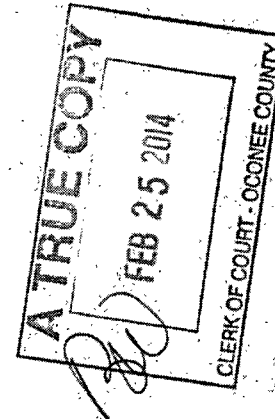
DRW

Indictment for

Grand Larceny, value \$10,000 or more

SC Code: 16-13-30(B)

CDR Code: 3421



2012 JUN 12 A 8:46

FILED OCONEE, SC
BEV. J. A. WHITFIELD
CLERK OF COURT

ENTERED
JB
COMPUTER

STATE OF SOUTH CAROLINA)
COUNTY OF Oconee)

INDICTMENT

At a Court of General Sessions, convened on JUN 11 2012, the Grand Jurors of Oconee County present upon their oath:

Grand Larceny, value \$10,000 or more

That Timothy Ray Wirtz did in Oconee County, on or about February 11, 2012 feloniously take and carry away the personal property of Eric Bush, to wit: a 270 Winchester, Rifle, laptop, several long guns and pistols, credit cards and checks, with a total value or more than Ten Thousand Dollars with the intent to deprive the owner permanently of such property. This is in violation of 16-13-30 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.


ASSISTANT SOLICITOR

DOCKET NO. 2012GS37 00590

WITNESSES

David McMahon, Oconee Co Sheriff's Dept.

Amanda Kepler

Amanda Kepler

The State of South Carolina

County of Oconee

COURT OF GENERAL SESSIONS

JUN 11 2012

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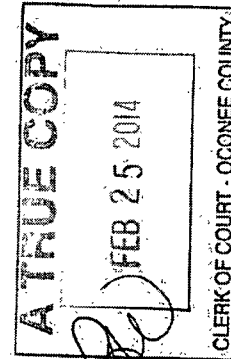
DRW

Indictment for

Kidnapping

SC Code: 16-03-0910

CDR Code: 0095



2012 JUN 12 A 8:46

FILED OCONEE, SC
BEVILYN H. WHITFIELD
CLERK OF COURT

ENTERED
JB
COMPUTER