

Vol I OF II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Aiken County

R. Ferrell Cothran, Jr., Circuit Court Judge

RECEIVED

JAN 16 2015

S.C. Supreme Court

RUSTY DUNBAR,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-000565

APPENDIX

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State of South Carolina)
County of Aiken) Court of General Sessions
09-GS-02-90-93

The State of South Carolina)
Plaintiff)
vs.) Transcript of Record
Rusty Dunbar)
Defendant)

December 15 - 17, 2009
Aiken, South Carolina

B E F O R E:

The Honorable Doyet A. Early, III, Judge; and a jury.

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

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Official Court Reporter

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250

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Juror Note # 31

163

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Juror Note

493

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2 (Whereupon, on December 15, 2009 the following
3 proceedings were held:)

4 MRS. YOUNG: This is the State of South Carolina
5 versus Rusty N. Dunbar calling cases 2009-GS-02-92,
6 burglary in the first degree; 2009-GS-02-93, kidnapping;
7 2009-GS-02-91, armed robbery; 2009-GS-02-90, possession of
8 a knife during the commission of a violent crime.

9 THE COURT: Mr. Mims, are you ready to proceed?

10 MR. MIMS: Yes, Your Honor.

11 THE COURT: Let the record reflect -- Mr. Dunbar,
12 good morning. How are you, sir?

13 THE DEFENDANT: I am fine, sir.

14 THE COURT: He is in the courtroom with us. All
15 right.

16 Ladies and gentlemen, as you've heard the solicitor
17 has called the the case of the State of South Carolina
18 versus Rusty Merritt Dunbar. There are four charges:
19 Burglary in the first degree, kidnapping, armed robbery,
20 and possession of a knife during the commission of a
21 violent crime. Mr. Dunbar has plead not guilty to each of
22 those four indictments. Obviously, his plea of not guilty
23 puts the burden on the State of South Carolina to prove
24 each and every element of each and every indictment to the
25 jury beyond a reasonable doubt. I'll explain to you the

1 various elements of the various offenses at the conclusion
2 of the case. I will define and go over with you the terms
3 reasonable doubt, presumption of innocence, and various
4 other legal matters in the case.

5 The fact that the Defendant has been indicted, that
6 is absolutely not evidence in the case. He is presumed to
7 be innocent. That presumption of innocence stays with him
8 throughout the trial unless the state is able to prove his
9 guilt to you beyond a reasonable doubt.

10 Now, please remember that you are still under oath
11 when I ask you these questions. If any of the questions
12 apply to you, please stand and we will address them.

13 The first case I have is that in this case the victim
14 -- Strike that. Mr. Rusty Merritt Dunbar is the
15 Defendant.

16 Mr. Dunbar, would you please stand and face the jury
17 panel? Thank you. You may be seated.

18 The alleged victim is Daniel Hynes, H-Y-N-E-S.

19 Is Mr. Hynes in the courtroom?

20 Would you please stand and face the jury panel?

21 Thank you. You may be seated.

22 Ladies and gentlemen of the jury panel, has anyone
23 now or in the past been related by blood or marriage to
24 either the Defendant Mr. Dunbar or the alleged victim
25 Mr. Hynes? If so, please stand.

1 Any member of the jury panel now or in the past ever
2 had a close personal or social relationship with either
3 the Defendant or the alleged victim? If so, please stand.

4 Yes, ma'am your name?

5 THE JUROR: I think I know his girlfriend Laura
6 Smith.

7 THE COURT: Hold on. Your name is what?

8 THE JUROR: Peggy Chalker, juror 25.

9 THE COURT: You know whose girlfriend? Mr. Dunbar's?

10 THE JUROR: Yes, sir. And I know Daniel Hynes.

11 THE COURT: Okay.

12 THE JUROR: I used to work with his sister.

13 THE COURT: All right. And, you know, we're all -- I
14 am from Bamberg. It is even smaller than Aiken. We all
15 know a lot of people in the community, and the fact that
16 you happen to know these people, would that in any way,
17 ma'am, keep or preclude you from being a fair and
18 impartial juror in the trial of the case?

19 THE JUROR: Possibly.

20 THE COURT: All right. Have a seat, please. Take
21 her out. You can stay with us, though.

22 All right. Please do not get scared. I am going to
23 read off the list of potential witnesses. The solicitor
24 has already scared me this morning with the list, but she
25 assured me that probably it won't be as long as it sounds.

1 I am going to read off the list and then I am going to ask
2 you the same question are you related by blood or marriage
3 now or in the past or do you now or in the past have a
4 close personal or social relationship.

5 The potential witnesses are as follows: Lieutenant
6 Marcus Padgett, Aiken County Sheriff's Office. If anybody
7 is in the courtroom, please stand. Investigator Chris
8 Johnson; Deputy Mel Moody; Lieutenant Clay Adams; Sergeant
9 Kenneth Looney; Deputy Paul Sharpton; Investigator J.D.
10 Sanders; Deputy Lawrence Wiggins; Deputy Mike Goodwin;
11 Corporal Jeremy Hembree; Special Agent Amy Stephens with
12 SLED; Katherine Leisy, L-E-I-S-Y, with SLED; Patricia
13 Crooks with SLED; Sheree Brown with SLED; Jerry Thornton;
14 Brian Morton; Laura Smith, Ricky Smith; Mabel Metts; Chris
15 Byars; Christopher Michael Herndon; Nathaniel Hamilton;
16 Gary Boatwright; Investigator Jessie Adams; Gerald Turner,
17 Aiken County Sheriff's Office Investigator; Mary Francis
18 O'Grady-Watts; Jack Buckley, Lieutenant Billy Fleury,
19 F-L-E-U-R-Y; Amber Way; Chris Toole, Deputy Dale Pearson;
20 Tony Dunbar; Dana Langley; Ricky Smith; Rusty Dunbar.

21 Any member of the jury panel related by blood or
22 marriage or do you now or have you in the past had a close
23 personal or social relationship with any of the potential
24 witnesses? If so, please stand.

25 Okay. On my front row on my right, your left, your

1 name, please ma'am?

2 THE JUROR: Abby Taylor, juror 157. I went to high
3 school with Amber Way.

4 THE COURT: All right. And the fact that you went to
5 high school with Ms. Way, would that keep you from being
6 fair and impartial?

7 THE JUROR: I don't think so.

8 THE COURT: I need to know. Yes or no?

9 THE JUROR: No.

10 THE COURT: Thank you. Yes, ma'am, the lady who
11 helps with the restaurants? Your name?

12 THE JUROR: 152, Toni Stilp. The Boatwright -- What
13 was the the first name?

14 THE COURT: I don't know.

15 THE JUROR: Gary?

16 THE COURT: Ma'am?

17 THE JUROR: I went to school with a Gary Boatwright.

18 THE COURT: Okay. The fact that you went to
19 school --

20 THE JUROR: No.

21 THE COURT: -- would that in any way preclude or keep
22 you from being fair or impartial?

23 THE JUROR: No, sir.

24 THE COURT: Thank you, ma'am.

25 Yes, ma'am, on the back?

1 THE JUROR: I am juror number 83. My name is Miranda
2 Jordan and Christopher Byars is my husband's best friend.

3 THE COURT: All right. And the fact that Christopher
4 Byars who may be a potential witness in the trial of the
5 case is your husband's best friend, would that in any way
6 preclude or keep you from being fair and impartial?

7 THE JUROR: No, sir.

8 THE COURT: Thank you. You may be seated. Did you
9 get that number?

10 THE JUROR: Eighty-three.

11 THE COURT: Thank you.

12 Ma'am?

13 THE JUROR: I am juror 59 and I go to church with
14 Officer Hembree.

15 THE COURT: You go to church with whom?

16 THE JUROR: Officer Hembree.

17 THE COURT: Okay.

18 THE JUROR: I just know his name.

19 THE COURT: That's fine. And that would not preclude
20 you from being fair and impartial?

21 THE JUROR: No, sir.

22 THE COURT: Anybody else? Anyone else?

23 Yes, ma'am, your name?

24 THE JUROR: 183, Donna Zuehlke. Dale Pearson played
25 baseball for my husband for many years, but it wouldn't be

1 a problem.

2 THE COURT: And the fact that your husband played
3 baseball with a potential witness --

4 THE JUROR: He coached Dale.

5 THE COURT: -- coached -- that would not preclude you
6 from being fair and impartial?

7 THE JUROR: No, sir.

8 THE COURT: Thank you, ma'am. Anybody else? All
9 right. Ladies and gentlemen, in this case the State of
10 South Carolina will be represented by the solicitor's
11 office, Mrs. Elizabeth Beth Ann Young -- Mrs. Beth Ann
12 Young -- Mr. Sam Grimes. Thank you.

13 The Defendant will be represented by Mr. Justin Mims,
14 Mr. Grant Gibbons. Thank you.

15 All right. A couple of questions about these people.
16 Is anybody currently right now being represented by any of
17 them? If so, please stand. Any of the lawyers. Has
18 anybody in the past been represented by any of the four
19 lawyers? Has anybody now or in the past had a close
20 personal or social relationship or related by blood or
21 marriage to any of the four attorneys? If so, please
22 stand.

23 Yes, sir?

24 THE JUROR: Beth Ann Young is a family friend.

25 THE COURT: Your name?

1 THE JUROR: My name is William Gibson, juror 50.

2 THE COURT: Number 50. Would that in any way
3 preclude you from being fair and impartial?

4 THE JUROR: No, sir.

5 THE COURT: Thank you. All right. Ladies and
6 gentlemen, as I said a while ago the Defendant has been
7 indicted. Once again, that is not evidence in the case,
8 but I must tell you just sort of a very bare-boned
9 description. It is alleged that these events allegedly
10 occurred in Aiken County on or about October 7 of 2008.
11 That would have been last year allegedly at the dwelling
12 or the house of Daniel Hynes who stood up and that is
13 located on Road in Aiken and it's alleged that
14 the Defendant came without consent in the nighttime to
15 commit a crime and that he kidnapped the Defendant (sic)
16 and he robbed him by taking goods being armed with perhaps
17 a knife.

18 These are all allegations. It's not evidence. The
19 state, obviously, will have to prove these matters, but
20 the reason I mention that to you I need to know if anybody
21 knows anything about this case. Have you read about it in
22 the newspapers, heard anything on the radio, seen anything
23 on the TV, Facebook, Twitter, internet? Anybody discuss
24 it with you? Seriously, I need to know if you have any
25 knowledge of these facts. If so, please stand.

1 Let me ask you just a few more questions and then
2 we'll draw the jury. Any member of the the jury panel
3 ever been a victim of a burglary or home invasion or
4 victim of a kidnapping? If so, please stand.

5 Yes, ma'am, your name, again, please, for the record.

6 THE JUROR: Juror 152, Toni Stilp. I've had my home
7 broken into.

8 THE COURT: You know, we all live -- I've had the
9 same thing. My house was broken into years ago, but the
10 fact that you were a victim to a homebreaking --
11 housebreaking, would that in any way, ma'am, preclude you
12 from being fair or impartial?

13 THE JUROR: No, Your Honor.

14 THE COURT: Thank you. You may be seated. My
15 financial advisor?

16 THE JUROR: Elizabeth Darden, 34. I did have my
17 house broken into and it shouldn't affect --

18 THE COURT: Ms. Darden, would that in any way
19 preclude you from being fair and impartial?

20 THE JUROR: No, sir.

21 THE COURT: Thank you. You may be seated.

22 Yes, sir, on the front row.

23 THE JUROR: I am Joseph Walker, juror 173. I was
24 burglarized last New Year's and it wouldn't.

25 THE COURT: Would not affect you?

1 THE JUROR: I don't believe so.

2 THE COURT: Thank you. You may be seated.

3 Ms. Kellog, your number again?

4 THE JUROR: Eighty-seven and my house was broken into
5 back in 2002.

6 THE COURT: Would that keep you from being fair and
7 impartial?

8 THE JUROR: No, sir.

9 THE COURT: Thank you.

10 Ma'am?

11 THE JUROR: I am juror number 141. My home has been
12 broken into twice several years ago. I don't see where it
13 would impact my decision.

14 THE COURT: You and your husband work at Savannah
15 River Site; is that right?

16 THE JUROR: Yes.

17 THE COURT: That would not affect you?

18 THE JUROR: No, sir.

19 THE COURT: Thank you. You may be seated.

20 Yes, ma'am?

21 THE JUROR: Dawn Kasserman man, juror 85. A couple
22 of years ago my house was broken into. A lot of weapons
23 were stolen and one used to murder somebody.

24 THE COURT: Very traumatic. Would that preclude you,
25 ma'am, from being fair and impartial?

1 THE JUROR: I think I can be fair and impartial.

2 THE COURT: I need to know for certain.

3 THE JUROR: Yes, sir.

4 THE COURT: Thank you. You may be seated.

5 Yes, ma'am?

6 THE JUROR: I am number 46, Vickie Foussat. My home
7 was broken into when I was a child and I still remember
8 it. I think I can be very impartial.

9 THE COURT: I need to be more than think. Can you?

10 THE JUROR: Yes.

11 THE COURT: Thank you. Once again.

12 THE JUROR: Juror 152, Toni Stilp. Back in the 70's
13 I forgot I was robbed at gunpoint while I was working at a
14 store.

15 THE COURT: All right. Ma'am, the fact that you had
16 to endure that most unpleasant experience, would that
17 preclude you from being fair and impartial?

18 THE JUROR: No, Your Honor.

19 THE COURT: Thank you. You may be seated. Any
20 member of the jury panel have a family member -- you or a
21 close family member employed in law enforcement and that
22 would include any Sheriff's Office, Highway Department,
23 Highway Patrol, SLED, FBI?

24 Yes, sir? My far left. Your name? Your name?

25 THE JUROR: Willie Butler, number 23. My son works

1 for the Aiken County Detention Center.

2 THE COURT: For the detention center. Would that in
3 any way preclude or keep you from being fair and
4 impartial?

5 THE JUROR: No, sir.

6 THE COURT: You may be seated. Yes, sir?

7 THE JUROR: Juror number 137, Michael Schoener. My
8 son is an Aiken County Public Safety officer.

9 THE COURT: Aiken Public Safety Officer? Is that
10 their case?

11 MRS. YOUNG: No, sir. It's a county case.

12 THE COURT: The fact your son works for Aiken Public
13 Safety, would that preclude you from being fair and
14 impartial?

15 THE JUROR: No, sir.

16 THE COURT: You may be seated.

17 Ma'am?

18 THE JUROR: I'm juror number 24, Michelle Campbell.
19 My sister works for a judge in Richmond County.

20 THE COURT: And the fact that you have a sister with
21 a judge in Richmond County -- that's in Georgia?

22 THE JUROR: Yes, sir.

23 THE COURT: Augusta. Would that preclude you from
24 being fair and impartial?

25 THE JUROR: It does not.

1 THE COURT: Thank you very much.

2 Yes, ma'am?

3 THE JUROR: Juror number 83, Miranda Jordan. My
4 father is a retired from the Aiken County Sheriff's
5 Office.

6 THE COURT: Your father is retired Aiken County
7 Sheriff's Office? Would that preclude you, ma'am, from
8 being fair and impartial?

9 THE JUROR: No, sir.

10 THE COURT: You may be seated.

11 Yes, ma'am?

12 THE JUROR: Patricia Lynn Blevins, juror 13. My
13 cousin works for SLED in Newberry and my brother-in-law
14 was in law enforcement at one time.

15 THE COURT: The fact that you have relatives with
16 SLED and other law enforcement, would that preclude or
17 keep you from being fair and impartial?

18 THE JUROR: No, sir.

19 THE COURT: Thank you. You may be seated.

20 Yes, ma'am?

21 THE JUROR: My mom is a Clerk of Court Deputy Court
22 Officer in Richmond County.

23 THE COURT: And your name?

24 THE JUROR: 158, Angela Temples.

25 THE COURT: Would that keep you from being fair and

1 impartial?

2 THE JUROR: No, sir.

3 THE COURT: Thank you. Any member of the jury panel
4 a contributor to or a member of a group who has its
5 primary focus on enforcement of laws or the promotion of
6 law enforcement? That would include groups such as SADD,
7 that's Students Against Drunk Drivers; MADD, Mothers
8 Against Drunk Drivers; CAVC, Citizens Against Violent
9 Crimes -- those sort of organizations. Does anybody
10 regularly contribute to any of those groups or are a
11 member of those groups? If so, please stand.

12 All right. Ladies and gentlemen, please listen to
13 this last question. It is the most important one that I
14 ask. One of my main jobs -- one of my main things that I
15 have to ensure as a judge is to make sure that any citizen
16 who is accused of a crime receives a fair trial. We have
17 the greatest system in the world when it comes to criminal
18 justice.

19 You know, some countries when someone is accused of a
20 crime they take them out and one person makes the decision
21 whether or not they're guilty or not or perhaps sometimes
22 nobody makes the decision and they just execute them, I
23 mean, but we choose a jury from citizens of the community
24 and the 12 citizens are asked to perform a task of
25 determining what the true facts are in a case. When you

1 determine what the true facts are, what the truth is, and
2 you take those facts as you find them to be and you will
3 apply it to the law as I give it to you, then you'll be in
4 a position to render a true and just verdict in the case.

5 So, a person accused of a crime is actually judged by
6 his own citizens from his own community. That's the
7 fairest way in the world to make sure that we live in a
8 world or a country of law ruled by the rule of law. If
9 you cannot perform that task, if you cannot sit and
10 determine what the true facts are and apply those facts to
11 the law, I need to know now. If you have some religious
12 belief, if you have some preconceived idea, if you just
13 hate the court system, you hate judges, lawyers, any
14 reason -- you had a bad experience in life, any reason
15 whatsoever that you cannot serve as an impartial juror and
16 determine what the true facts are, I need to know now.

17 If it is a private matter, I'll be glad to hear you
18 at the sidebar, but is there anybody who cannot be fair
19 both to the State and to the Defendant in this trial? Is
20 there anybody who can't listen to the evidence and make a
21 decision as to what is true? I need to know now, please.
22 All right. Come forward.

23 (Whereupon, the Court speaks with a juror outside of
24 my hearing.)

25 THE COURT: Anybody else? Yes, ma'am, you want to do

1 it privately?

2 THE JUROR: No, sir. I'm just -- 116, Vivian
3 Moseley. I just forgot. A few years ago we had a
4 break-in at a beach house.

5 THE COURT: Would that in any way, Ms. Moseley,
6 preclude you from being fair and impartial?

7 THE JUROR: No, sir.

8 THE COURT: Thank you for telling me. Last call.
9 All right, ladies and gentlemen, the way we draw a jury in
10 a criminal case is different than a civil case. In a
11 civil case at this point in the game the clerk's office
12 would generate a list of 20 names randomly drawn from the
13 80-some-odd -- whatever it was -- she would draw randomly
14 20 names. The Plaintiff -- person bringing the suit --
15 would have four strikes. The Defendant -- person being
16 sued -- would have four strikes. So, 20 less 8 would give
17 us our 12 jurors.

18 In a criminal case she will randomly draw your name.
19 When your name is called you will leave your seat and come
20 forward and stand right here in the middle. The State has
21 five strikes. They can, basically, say I don't want you
22 to sit as a juror for most any reason within certain
23 bounds. The Defendant in this type of case has 10
24 strikes. He can strike you for particularly, you know --
25 within reason almost no reason he can strike you, but

1 there is certain bounds if you understand what I am
2 saying. So, don't get offended if you're not chosen.

3 Anyway, we're going to do that task now. As your
4 name is called please come forward. We'll do that until
5 we have 12 jurors and two alternates. Once we get that
6 done, those who are not chosen will be released for the
7 balance of the week and those who are chosen will get
8 right into the trial of the case.

9 Any additional questions by the state?

10 MRS. YOUNG: No, sir, Your Honor.

11 THE COURT: By the defense?

12 MR. MIMS: No, sir, Your Honor.

13 THE COURT: All right. Give me 20. Give me the
14 names, please. We have become modern in Aiken County. We
15 have just -- in the last couple of months we implemented a
16 case management plan which was put in by the Supreme Court
17 and Court Administration and we're all on computer now in
18 selecting juries. So, the computer has a program that
19 randomly selects the names. Up until last term of court
20 we did it the old fashioned way. We put your name in a
21 metal box and shake it and reach in. We have moved along.
22 I guess we have. I don't know. All right. As your name
23 is called, please come forward.

24 THE CLERK: As your name is called, please come
25 forward. Stand in the middle in front of the bench here

1 facing the back of the room. Bring your belongings with
2 you. Juror number 50, William Gibson (white male).what
3 says the state?

4 MRS. YOUNG: Please seat Mr. Gibson.

5 THE CLERK: What says the defense?

6 MR. MIMS: Please excuse this juror.

7 THE CLERK: You may return to your seat. Juror
8 number 46, Vickie Foussat (white female).

9 THE COURT: What says the state?

10 MRS. YOUNG: Please seat Ms. Foussat.

11 THE CLERK: What says the defense?

12 MR. MIMS: Please seat this juror.

13 THE CLERK: You may have a seat in the jury box to
14 the left. Juror number 24, Michelle Campbell (white
15 female).

16 THE CLERK: What says the state?

17 MRS. YOUNG: Please seat Mrs. Campbell.

18 THE CLERK: What says the defense?

19 MR. MIMS: Please excuse this juror.

20 THE CLERK: You may return to your seat. Juror
21 number 62, Jacob Harrison (black male).

22 THE COURT: Mr. Harrison, you said you worked 36
23 years at?

24 THE JUROR: Thirty-two.

25 THE COURT: Thirty two. Where was that?

1 THE JUROR: A.G.Y.

2 THE CLERK: What says the state?

3 MRS. YOUNG: Please seat Mr. Harrison.

4 THE CLERK: What says the defense?

5 MR. MIMS: Please seat this juror.

6 THE CLERK: You may have a seat in the jury box to
7 the left. Juror number 144, Kathlene Simmons (black
8 female). What says the state?

9 MRS. YOUNG: Please seat Mrs. Simmons.

10 THE CLERK: What says the defense?

11 MR. MIMS: Please seat this juror.

12 THE CLERK: You may have a seat in the jury box to
13 the left. Juror number 110, Jennifer Millwood (white
14 female). What says the state?

15 MRS. YOUNG: Please seat Ms. Millwood.

16 THE CLERK: What says the defense?

17 MR. MIMS: Please seat this juror.

18 THE CLERK: You may have a seat in the jury box to
19 the left. Juror number 33, Robert Curton (white male).
20 What says the state?

21 MRS. YOUNG: Please seat Mr. Curton.

22 THE CLERK: What says the defense?

23 MR. MIMS: Please seat this juror.

24 THE CLERK: You may have a seat in the jury box to
25 the left. Juror number 86, Linda Keith (white female).

1 What says the state?

2 MRS. YOUNG: Please seat Ms. Keith.

3 THE CLERK: What says the defense?

4 MR. MIMS: Please excuse this juror.

5 THE CLERK: You may return to your seat. Juror

6 number 148, Melanie Smalley (white female). What says the
7 state?

8 MRS. YOUNG: Please seat Ms. Smalley.

9 THE CLERK: What says the defense?

10 MR. MIMS: Please seat this juror.

11 THE CLERK: You may have a seat in the jury box to
12 the left. Juror number 14, Marcus Blizzard (white male).

13 What says the state?

14 MRS. YOUNG: Please excuse Mr. Blizzard from this
15 trial.

16 THE CLERK: You may return to your seat. Juror
17 number 101, Irwin May (white male). What says the state?

18 MRS. YOUNG: Please seat Mr. May.

19 THE CLERK: What says the defense?

20 MR. MIMS: Please excuse this juror.

21 THE CLERK: You may return to your seat. Juror

22 number 37, Lorraine Dillon (white female). What says the
23 state?

24 MRS. YOUNG: Please seat Ms. Dillon.

25 THE CLERK: What says the defense?

1 MR. MIMS: Please excuse this juror.

2 THE CLERK: You may return to your seat. Juror
3 number 98, Elizabeth Manci (white female). What says the
4 state?

5 MRS. YOUNG: Please seat Ms. Manci.

6 THE CLERK: What says the defense?

7 MR. MIMS: Please seat this juror.

8 THE CLERK: You may have a seat in the jury box to
9 the left. Juror number 82, Christine Jones (black
10 female). What says the state?

11 MRS. YOUNG: Please seat Mrs. Jones.

12 THE CLERK: What says the defense?

13 MR. MIMS: Please seat this juror.

14 THE CLERK: You may have a seat in the jury box to
15 the left. Juror number 31, John Craft (white male). What
16 says the state?

17 MRS. YOUNG: Please seat Mr. Craft.

18 THE CLERK: What says the defense?

19 MR. MIMS: Please seat this juror.

20 THE CLERK: You may have a seat in the jury box to
21 the left. Juror number 91, Corine Leaphart (black
22 female). What says the state?

23 MRS. YOUNG: Please seat Ms. Leaphart.

24 THE CLERK: What says the defense?

25 MR. MIMS: Please excuse this juror.

1 THE CLERK: You may return to your seat. Juror
2 number 2, Brittney Adams (Black female). What says the
3 state?

4 MRS. YOUNG: Please seat Ms. Adams.

5 THE CLERK: What says the defense?

6 MR. MIMS: Please seat this juror.

7 THE CLERK: You may have a seat in the jury box to
8 the left. Juror number 160, Linda Thompson (white
9 female). What says the state?

10 MRS. YOUNG: Please seat Ms. Thompson.

11 THE CLERK: What says the defense?

12 MR. MIMS: Please seat Mrs. Thompson.

13 THE CLERK: You may have a seat in the jury box to
14 the left. Juror number 140, Thomas Seigler (white male).
15 What says the state?

16 MRS. YOUNG: Please seat Mr. Seigler.

17 THE CLERK: What says the defense?

18 MR. MIMS: Please seat Mr. Seigler.

19 THE CLERK: You may have a seat in the jury box to
20 the left.

21 THE COURT: Let me have two alternates. Two strikes
22 on behalf of the Defendant, one on behalf of the
23 plaintiff.

24 THE CLERK: Yes, sir. Alternate number one, juror
25 number 49, Gerald Fuller (white male). What says the

1 state?

2 MRS. YOUNG: Please seat Mr. Fuller.

3 THE CLERK: What says the defense?

4 MR. MIMS: Please seat Mr. Fuller.

5 THE CLERK: You may have a seat in the jury box to

6 the left. Alternate number two, juror number 30, Marsha

7 Monteiro (white female). What says the state?

8 MRS. YOUNG: Please seat Ms. Monteiro.

9 THE CLERK: What says the defense?

10 MR. MIMS: Please seat the juror.

11 THE CLERK: You may have a seat in the jury box to

12 the left.

13 THE COURT: Any motions by the state?

14 MRS. YOUNG: No motions, Your Honor.

15 THE COURT: Mr. Mims, any motions in connection with

16 the drawing of the jury?

17 MR. MIMS: No, Your Honor.

18 THE COURT: Thank you. You know, we give a prize for

19 the last person drawn.

20 All right. Ladies and gentlemen, those of you who

21 were not drawn, I am going to release you now. I please

22 ask you to call back in after 6 o'clock. Everybody have

23 the call-back number? It is on the thing. Just call back

24 in and the message will be to call back Wednesday

25 afternoon or I'll excuse you or it'll be something on

1 there. So, we'll just have to see how we're doing.

2 You want their badges?

3 As you leave please leave us your juror back in case
4 you do not have to come back. I want to thank each and
5 every one of you for your willingness to serve. We cannot
6 run our court system without jurors. Thank you. If I
7 don't see you, please have a happy holiday season.

8 Everybody else remain seated. My jurors are free to
9 go.

10 (Whereupon, the main jury panel exits the courtroom.)

11 THE COURT: Mr. Whittle, I am going to let you show
12 them to their jury room. We got a few more things to
13 mark. It will take us about five minutes. Y'all stretch
14 your legs, bathroom break, whatever you need. Would y'all
15 like me to buy your lunch today? All right. Does The
16 Bowery suit which is right across the street? Anybody
17 that cannot walk? Is it raining?

18 THE BAILIFF: No.

19 THE COURT: Is it pretty?

20 THE BAILIFF: No, it's not pretty.

21 THE COURT: Anybody can't walk? I can send you for
22 lunch and I'll be glad to buy your lunch. How about that?
23 See, that's the present.

24 THE JUROR: Thank you.

25 THE COURT: Just step back there. We're going to go

1 until about 12:30 or a quarter 'til 1 and we'll break for
2 lunch and get you fed and come back and go until about 5
3 if that's okay with everybody.

4 (Whereupon, the jury exited the courtroom at 11:29.)

5 THE COURT: All right. Anything for the record
6 before we start on behalf of the State?

7 MRS. YOUNG: Not for the record, Your Honor.

8 THE COURT: By the Defendant?

9 MR. MIMS: Your Honor, there was a written motion by
10 my client originally to relieve me.

11 THE COURT: I thought you told me he was withdrawing
12 that?

13 MR. MIMS: He is withdrawing that. I just thought
14 out of an abundance of caution that he is, in fact, doing
15 that.

16 THE COURT: Doing what?

17 MR. MIMS: Withdrawing the motion.

18 THE COURT: Stand up, Mr. Dunbar. You filed a motion
19 to have your lawyer removed or relieved. As I understand
20 you are withdrawing that motion; is that correct?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Any other questions you have?

23 THE DEFENDANT: No, sir.

24 THE COURT: All right. Y'all ready?

25 MRS. YOUNG: Judge, I would just ask about five

1 minutes so we could step out to the restroom. I am ready
2 otherwise.

3 THE COURT: Well, you know I will certainly grant
4 that.

5 MRS. YOUNG: I appreciate that.

6 THE COURT: All right. Let's take about five so
7 everybody can stretch their legs.

8 (Whereupon, a break was taken.)

9 THE COURT: Anything for the record?

10 MRS. YOUNG: No, sir, Your Honor.

11 THE COURT: By the Defendant?

12 MR. GIBBONS: We need the Defendant.

13 THE COURT: That always helps.

14 (Whereupon, the Defendant enters the courtroom.)

15 THE COURT: Anything by the Defendant?

16 MR. MIMS: No, Your Honor.

17 (Whereupon, the jury came into open court at
18 approximately 11:47.)

19 THE COURT: The first thing we have to do -- You're
20 going to swear so much you're going to think you're in
21 church. Please stand back up and let's swear you in for
22 this case.

23 (Whereupon, the jury was sworn at 11:47.)

24 THE COURT: All right. Ladies and gentlemen, let me
25 tell you a little bit about what to expect. The first

1 part of the trial is I am going to give you just some
2 brief opening remarks and then we will hear the opening
3 arguments or opening statements by the state followed by
4 the Defendant and once we complete that then we'll start
5 the trial of the case. Obviously, the State of South
6 Carolina has the burden of proof in these cases. So they
7 will present their evidence first followed by the
8 Defendant. Once all the evidence has been introduced into
9 the trial of the case, then the lawyers will come back
10 before you for final arguments. Then I will charge or
11 instruct you on the law and once that is done then you'll
12 start your deliberations.

13 During the trial of the case I have certain functions
14 to perform and you have certain functions to perform.
15 Your functions are a lot more important than mine, but as
16 the Judge in the case, basically, I have two things to do.
17 Number one, I have to rule on the admissibility of the
18 evidence that is introduced into the trial of the case.
19 The lawyers have to comply and abide by our rules of
20 evidence and our rules of criminal procedure. I suspect
21 that most all the questions that you hear will comply with
22 those rules, but I have to make sure they comply with the
23 rules and the evidence is admitted.

24 My other task in the case is I am the judge of the
25 law -- not Jack Early, but my position makes me the judge

1 of the law in the case. So, you have sworn to accept the
2 law as I give it to you. If you have some preconceived
3 idea about what the law is or what it should be and it
4 does not agree with what I tell you, then you must set
5 aside those preconceived ideas and accept the law as I
6 give it to you during the trial of the case. Those are my
7 two functions.

8 Your function -- you are the finders of the facts in
9 the case. You are the judges of the facts in the case. I
10 am the the judge of the law. You're the Judges of the
11 facts. During the last five and a half years as Judge I
12 have tried cases all over the state. I can promise you
13 you will hear different versions of the facts. You'll
14 hear a different spin on the facts. You may hear
15 different stories. I am not sure what you'll hear, but
16 you have to go through those facts and determine what the
17 true facts are of the case.

18 You will judge the credibility or the believability
19 of the witnesses. It will be up to you to use your good
20 ordinary common sense that you deal with your husbands
21 each day, your wives each day, your children, your fellow
22 workers in determining what is the truth. When you decide
23 what the true facts are in the case, you'll take those
24 true facts and apply it to the law as I give it to you.
25 Then you'll be in a position to render a true and just

1 verdict in the case at the conclusion of the trial.

2 This is a criminal trial. A criminal trial starts
3 off by someone being indicted. That's simply the charging
4 document by which the case is brought into the courtroom.
5 In this case the Defendant is indicted for the four
6 alleged offenses as I told you -- burglary in the first
7 degree, armed robbery, kidnapping, and possession of a
8 weapon during the commission of a violent crime. He has
9 plead not guilty. The constitution presumes him to be
10 innocent until the state or unless the state can prove
11 each and every element of these individual indictments to
12 you beyond a reasonable doubt. So, they have the burden
13 of proof in the case to prove the crimes to you beyond a
14 reasonable doubt, and, of course, at the conclusion of the
15 case I will explain to you what reasonable doubt is and
16 what their burden requires.

17 I ask that you pay close attention because,
18 obviously, it is a very important case. He is charged
19 with a major felony. It is a major trial.

20 During the trial of the case I'm not trying to run an
21 endurance record up here, but I am trying to be efficient.
22 So, we will run as efficiently as we can, but if at any
23 time you get uncomfortable, you need to use the bathroom,
24 you need to stand up and stretch, if you get tired of
25 listening to us, listening to me, please raise your hand,

1 and I will make sure that your needs are met.

2 We are going to go today until about 12:30. I called
3 the restaurant. They want us there about 12:45. So, by
4 the time we get out of here and walk over there it'll be
5 about 12:45. You'll have lunch today and we'll start back
6 around 2 o'clock and go this afternoon until about 5 if
7 that suits everybody.

8 If anybody has any particular problems, just let me
9 know and we'll adjust our schedule accordingly. We'll
10 start tomorrow morning at about 9:30. I don't think we'll
11 finish today. We should finish tomorrow if everything
12 goes accordingly. I will not require y'all to come back
13 if we have a second trial. This will be the only trial
14 that you will be involved with. I will excuse you after
15 the trial of this case.

16 I will tell you each time that we take a break for
17 the evening do not discuss the case among yourselves, do
18 not start any deliberations among yourselves. You can't
19 deliberate or discuss the case until all the evidence has
20 been presented, the lawyers have concluded their final
21 arguments, and I have charged you on the law. You go back
22 to the jury room. You can talk about anything you want
23 to, but don't talk about the case until we finish. I will
24 ask you at the first break when we go to lunch if you will
25 select a foreperson among the 12 regular jurors. The

1 foreperson is simply someone who sort of heads up the
2 deliberations. They are the spokesperson for the jury.
3 You can select it among ourselves. If you can't, I'll
4 just pick somebody randomly when you come back out or you
5 can do like the last time I was over here. I said y'all
6 select the foreperson. The poor lady went to the
7 bathroom. All the rest of them selected her while she was
8 in the bathroom.

9 Do you need some water? Are you okay?

10 THE JUROR: Yes, please.

11 (Whereupon, the bailiff gives the juror a cup of
12 water.)

13 THE COURT: In just a few minutes the lawyers will
14 make their opening statements. Please bear in mind that
15 the opening statement -- that is not evidence in the case.
16 The only evidence that you can consider comes from the
17 witness stand by sworn testimony and or through relevant
18 exhibits that may be introduced into the trial of the
19 case. The opening statements is not evidence. It's what
20 the lawyers contend their case is about, what they intend
21 to prove, sort of a roadmap as to what they will be
22 showing in the trial of the case.

23 I ask that you pay close attention. As I said, it's
24 a very important case. This is a significant case, and
25 you're going to be called upon to decide whether or not.

(Opening Statement by Mrs. Young)

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1 the state can prove their case to you beyond a reasonable
2 doubt. I look forward to working with you. As I said, if
3 you have at anytime any questions or if you have any
4 concerns or you just get uncomfortable, raise your hand
5 and I'll make sure that you're taken care of.

6 Any objections to my opening remarks by the State?

7 MRS. YOUNG: No, sir, Your Honor.

8 THE COURT: By the Defendant?

9 MR. MIMS: No, Your Honor.

10 THE COURT: All right. Mrs. Young.

11 OPENING STATEMENT

12 MRS. YOUNG: Mr. Mims. May it please the court.

13 Good afternoon, ladies and gentlemen of the jury. A
14 man's home is his castle. That's the saying that's well
15 known to all of us. It is a saying that brings to mind
16 security, comfort, and wellbeing. This trial is about
17 Daniel Hynes and what happened to him in early morning
18 hours of October 7, 2008 here at his home in Aiken County.
19 In the early morning hours on that date in the blink of an
20 eye Daniel's home was invaded. With one kick to the front
21 door two men rushed into his home, and the Defendant Rusty
22 Dunbar was one of those men. Within seconds Daniel was
23 held in headlock with a knife to his throat, his face
24 pointing down to the ground. The man that was holding him
25 in that headlock with the knife to his throat was the

(Opening Statement by Mrs. Young)

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1 Defendant Rusty Dunbar.

2 The Defendant continued to hold Mr. Hynes at
3 knifepoint while his co-defendant looked for things of
4 value in Mr. Hynes' home and then the Defendant took
5 Mr. Hynes against his will to his bedroom continuing the
6 whole time to hold him against his will at knifepoint with
7 his head facing down. Once they were in the bedroom the
8 Defendant held Mr. Hynes still while his co-defendant
9 slashed him on the back with a knife. At that point in
10 time he continued to hold the Defendant -- he continued to
11 hold the victim, rather, while his co-defendant went and
12 took cords from a fan and lamp and then both of them
13 together hog-tied in Hynes to the floor of his own bedroom
14 and kicked him repeatedly in the head while he lay there
15 on the floor completely vulnerable.

16 During this time Mr. Hynes' life was threatened
17 repeatedly. He was repeatedly told he would be killed and
18 the person who told him that was the Defendant Rusty
19 Dunbar. The reason that we're here today and the reason
20 we are having this trial is about Daniel. It is about how
21 his home was invaded, about how he was held at knifepoint
22 while his home was gone through, how he was assaulted and
23 left in a vulnerable position and had had his life
24 threatened. All of that going on and all of that
25 happening until the two co-defendants finally fled the

(Opening Statement by Mrs. Young)

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1 scene and they did that by stealing the victim's car and
2 The person that's responsible for those crimes is
3 Mr. Dunbar.

4 You're going to hear from Daniel, the victim in this
5 case. You're going to hear from him and he is going to
6 testify on the witness stand and he is going to tell you
7 the horror of what happened to him that night and you're
8 going to have an opportunity to hear the terror in his
9 voice as he called 9-1-1 after this happened and reported
10 what happened to him.

11 We're here today because of four crimes the defendant
12 committed. The crimes are armed robbery, burglary in the
13 first degree, possession of a weapon or a knife during a
14 violent crime, and kidnapping. At the end of the case the
15 Judge is going to instruct you on the law. You will
16 follow his instructions, but I'll just give you a brief
17 definition or my interpretation and you can keep that in
18 mind if you'd like to during the trial. I think it's all
19 self-explanatory. Burglary is, obviously, entering
20 another person's home without their permission. In this
21 case it is in the first degree because it happened in the
22 early morning hours meaning it happened at night.

23 Armed robbery is, obviously, taking someone's
24 possession without their permission while holding them
25 with a weapon -- in this case a knife. Possession of a

(Opening Statement by Mrs. Young)

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1 weapon during a violent crime -- in this case, again, the
2 knife -- and the last charge is kidnapping and I wanted to
3 especially explain that one because I think we have a
4 vision of kidnapping meaning somebody is carried away from
5 a certain place and taken to another place, but under the
6 law in South Carolina it has a more broad meaning and
7 kidnapping means that you seize somebody or confine them
8 against their will. You keep them from leaving one place.
9 That is kidnapping in this state.

10 You're going to hear various types of testimony
11 during this trial and it's all going to come from that
12 witness stand. There are several types of testimony.
13 You're going to hear direct testimony. That's going to be
14 from people like Daniel. He is going to get up there.
15 He's going to tell you what happened to him, what he saw,
16 what he felt, and what he experienced. That's direct
17 testimony.

18 You're also going to hear evidence from other
19 witnesses that may be circumstantial. Circumstantial
20 evidence in South Carolina should be treated the same way
21 as direct evidence. Circumstantial evidence may mean that
22 you hear testimony from witnesses that the Defendant and
23 the co-defendant were at a certain place at a certain time
24 together and from that you can -- as a jury it is your
25 decision if you choose to make inferences as to what that

(Opening Statement by Mrs. Young)

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1 might mean in this particular case.

2 We also have what's called physical evidence. As you
3 can see there are a variety of things stacked up here.
4 That's going to be pictures. It is going to be items that
5 are relevant to these crimes and 9-1-1 tapes and things
6 like that that you can look at and talk about and
7 hopefully will help bring this trial a little bit more to
8 reality in your minds.

9 There is a co-defendant in this case -- Christopher
10 Herndon. He is going to testify in the trial of this
11 case. He is going to tell you what happened that night,
12 what he did, and who was with him. The person that was
13 with him was the Defendant. Initially, you're going to
14 hear the name Christopher Herndon a lot. You might ask
15 yourself why is that? Well, as I stated previously the
16 victim in this case had his home invaded and within
17 seconds was physically held in a headlock with his head
18 faced down. He never got a good chance to see the faces
19 of the men who did this to him. However, during the
20 course of the event the two men were talking and he
21 recognized the voice of Christopher Herndon because he
22 knows Christopher Herndon. So, that's how Christopher
23 Herndon comes into this, and you're going to have a chance
24 to hear from him and he'll tell you what happened in this
25 case.

(Opening Statement by Mrs. Young)

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1 Basically, as soon as he was able to Daniel called
2 the police. They responded quickly. He described his
3 car. It had been stolen, and the police actually passed
4 his car while they were responding to his residence. They
5 were able to turn and and get behind the car at some
6 distance and they were able to see various items that had
7 been thrown out in the road that Mr. Hynes or Daniel had
8 reported being stolen.

9 Unfortunately, the car got out of sight of the
10 deputy. He didn't see where it ended up. So, they looked
11 around and finally within several minutes another deputy
12 found the car and it was abandoned behind a location here
13 in Aiken County called Wrights Mill Grocery. So they set
14 up what's called a perimeter to try to find figure out
15 where the two people that the victim said had done this to
16 him had gone.

17 They called out the Aiken Bloodhound Tracking Team
18 and within several hours Christopher Herndon ended
19 upcoming up out of the woods surrendering himself to the
20 police and giving a full confession. When he gave his
21 confession he immediately implicated Mr. Dunbar and stated
22 that he was with him the whole time and the timing of that
23 is going to come into play and I would ask you to keep a
24 note of that in your mind and think about it to be
25 discussed further at a later time in this trial.

(Opening Statement by Mrs. Young)

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1 Finally, but certainly not least you're going to hear
2 some testimony about some DNA that links that Defendant,
3 Rusty Dunbar, to the crime in this case. It puts him
4 within this crime scene.

5 The state has a burden. We have to prove the case
6 beyond a reasonable doubt. What is a reasonable doubt?
7 It's one of those things that's hard to define. It's not
8 beyond all doubt. It's not beyond a shadow of a doubt.
9 It's not any kind of doubt that can be defined with any
10 reasonable mathematical certainty. The Judge is going to
11 give you a definition and you'll obviously follow what he
12 tells you, but I am going to try to sort of simple it down
13 as best as my understanding of it is and I would make an
14 analogy to how you each make decisions everyday.

15 You're going to get some information and make a
16 decision. Probably one that you're already thinking about
17 right now is where are we going for lunch and what are we
18 going to have. That's a simple decision and you analyze
19 and you make decisions. You're also going to have more
20 complicated decisions such as if you get a phonecall from
21 your child's school that your child has done something
22 bad. What are you going to do? How are you going to
23 respond to that? You have to take the information that
24 you're given, analyze it, and come to a decision, and,
25 basically, that's all you have to do as jurors in the case

(Opening Statement by Mr. Mims)

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1 and that's what we're asking you to do is to listen to all
2 of the information, take a look at all the evidence,
3 listen to all of the witnesses as they testify, take all
4 of that into consideration, process it, and come to a
5 decision.

6 In this particular case I'd like to kind of compare
7 it to a little child's puzzle that I think we probably all
8 seen if you have children or school teachers. You know
9 they have those little pages that have a bunch of dots on
10 them and it is supposed to be a picture -- connect-the-dot
11 picture. Sometimes you might be able to kind of tell what
12 it is from to get-go, but sometimes you can't. You have
13 to put all of the lines together.

14 Each witness that testifies in this case is plotting
15 a point in this process. Each piece of evidence is
16 another point and at the end when you connect all of the
17 points you're going to have a clear picture of what
18 happened on this evening and you're going to find Rusty
19 Dunbar guilty of all four crimes. Thank you very much.

20 OPENING STATEMENT

21 MR. MIMS: May it please the court, Your Honor,
22 Mrs. Young.

23 Ladies and gentlemen of the jury, my name is Justin
24 Mims and I am here on behalf of Rusty Dunbar. You've
25 obviously just heard a lot of claims surrounding

(Opening Statement by Mr. Mims)

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1 Mr. Dunbar, but I want you to keep an open mind. As of
2 now the claims are just what I said they are -- claims.
3 There's been no evidence that's been introduced to support
4 these claims.

5 I want you to follow your oath as jurors and make
6 sure that you don't form an opinion as to this case until
7 you've heard all of the evidence. Right now Mr. Dunbar
8 sits before you as an innocent man. He doesn't have to
9 prove he is innocent. He is presumed innocent. The
10 burden is on the State of South Carolina to prove his
11 guilt and they have to do that beyond a reasonable doubt.
12 That is the highest burden of proof in criminal court.

13 Reasonable doubt has been defined as a doubt that
14 would cause a reasonable person not to hesitate to act.
15 Sorry. I probably confused you with that. Reasonable
16 doubt has been defined as a doubt that would cause a
17 reasonable person to hesitate to act. So, if at the end
18 of the trial after you've heard all the evidence if you
19 feel like you have to hesitate to convict Rusty Dunbar, if
20 you feel like there is a perfectly reasonable alternative
21 to somebody else committing this crime, you must find him
22 not guilty. I believe that that is what you'll find in
23 this trial. Thank you.

24 THE COURT: You may call your first witness.

25 MRS. YOUNG: The state calls Daniel Hynes.

(Daniel J. Hynes-Direct by Mrs. Young)

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1 DANIEL J. HYNES, after being duly sworn,
2 testified as follows:

3 THE WITNESS: Daniel Jonas Hynes, H-Y-N-E-S.

4 DIRECT EXAMINATION

5 BY MRS. YOUNG:

6 Q Good afternoon, Mr. Hynes. How are you?

7 A I am okay.

8 Q Can you tell us where you live, Mr. Hynes?

9 A Yea. I live at Road, Aiken.

10 Q That's here in Aiken County?

11 A Yes, ma'am.

12 Q And is that where you lived back in October?

13 A Yes.

14 Q On October 7 specifically of 2008?

15 A Yes.

16 Q And during that time were you working somewhere?

17 What were you doing?

18 A No. October of last year I was a fulltime student at
19 Aiken Tech. I was previously laid off from Avondale. So
20 I went to school for two years to obtain a degree in
21 management.

22 Q Did you eventually obtain that degree?

23 A Yes. I graduated December of last year.

24 Q And you're currently employed?

25 A Right. I am a customer service rep for Circle K in

1 Aiken.

2 Q Do you recall the date of October 7 of last year of
3 2008?

4 A Yes.

5 Q And could you tell us what you did that afternoon?

6 A The day started out -- I got home probably around
7 2 o'clock, did some of my homework, and I guess about 5 or
8 6 I went and picked up one of my friends and brought him
9 back to the house.

10 Q What was your friend's name?

11 A Brian Morton.

12 Q And I didn't ask you this earlier, Mr. Hynes, but
13 during this time was anybody living with you?

14 A No.

15 Q You lived by yourself?

16 A Right.

17 Q What happened after you went and picked up Mr. Brian
18 Morton?

19 A We went back to my house and we were planning on
20 cooking and listening to the radio. We were having some
21 drinks, just kicking it together. He was staying at my
22 house that night because he lived close to where I live --
23 worked close to where I live at and I was going to be
24 taking him to work that next morning.

25 Q Okay. And did you, in fact, do those things that you

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1 stated? Did you cook dinner?

2 A Yes.

3 Q Did you eat dinner?

4 A Yea. We ate.

5 Q Do you recall about what time that was?

6 A I guess about 7:30 or 8.

7 Q And what did you do after you ate dinner?

8 A We sat around and had a few more drinks. I guess

9 Brian went to bed about probably between 9 and 10, maybe

10 10:30. Like I said, he had to work the next morning and I

11 didn't have class until 12. So I stayed up.

12 Q After Brian went to bed, Mr. Hynes, what were you

13 doing?

14 A Watching TV and I was still having some drinks, but,

15 you know, I was in the living room. He was back in my

16 back bedroom.

17 Q Talking about having drinks, what were you drinking

18 that night?

19 A E & J.

20 Q What is that?

21 A It is a brandy.

22 Q You said that you had several of those. Did you

23 reach a level of intoxication?

24 A I wasn't drunk. I was buzzed, but I wasn't drunk.

25 Q You have a clear recollection --

1 A Oh, yes.

2 Q -- of the events of that evening?

3 A Oh, yes.

4 Q What were you doing -- you said you were watching TV.

5 Do you recall about what time that was?

6 A I guess I started watching TV around 11.

7 Q Okay. And for the jury and myself and people who
8 don't know what your house looks like, could you describe
9 the room that you were watching TV in? What is it like?

10 A I was sitting in my living room. When you first walk
11 into my home the couch is right up against the back wall
12 and I have an entertainment center that is in front of the
13 door. That's where the TV is at and then directly in
14 front of my couch is two windows which I didn't have
15 anything in front of the two windows.

16 Q I'm sorry?

17 A I didn't have anything in front of the two windows.
18 It is my two windows and then my couch here and then I
19 have a chair that sits over here.

20 Q So, if you walked into your home the couch would be
21 on the wall directly opposite the door?

22 A Right. That's the first thing that -- the way it was
23 set up then the first thing that you see when you walked
24 into my house is my couch.

25 Q Is that where you were watching TV that night?

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1 A Yes.

2 Q And can you describe how your blinds or windows were
3 that evening?

4 A I specifically remember because it was a nice night
5 outside and I had the blinds on one of my windows up about
6 halfway and I had the window halfway and, so, I mean, you
7 know, it was just the screen.

8 Q So it was somewhat open to the outside?

9 A Yea. Yea, but I live kind of, you know, off the
10 road. So, I am not really worried about anybody from the
11 road being able to -- you know, you can't see in my house
12 from the road because of the privacy I had. So, it is
13 nothing for me to leave a window open to like that.

14 Q How far is your house from the road if you can guess?

15 A I'd say at least a good 100 to 150-foot, I guess.

16 Q At some point in the evening did something start
17 happening?

18 A When I was sitting on the couch the first thing I
19 remember is I just heard this loud bang and my door flew
20 open and the way it hit me at first it's like I knew what
21 had just happened but I wasn't wanting to believe what had
22 just happened, but by the time I realized what had
23 happened someone had already -- the first person had
24 already entered my home, jumped over the table, and had me
25 down with a knife.

1 Q When you say "had me down" can you describe that a
2 little more thoroughly?

3 A When the -- He came directly over the coffee table,
4 grabbed me around the head, put my head down facing the
5 ground with a knife, and he was sitting right here on this
6 side of me holding me down like this the whole time.

7 Q Mr. Hynes, what were you wearing?

8 A I had on boxers and a t-shirt.

9 Q And after that person entered what is the next thing
10 that you remember happening?

11 A Well, he was sitting there holding me, you know, in
12 the headlock. I saw two figures when it first happened
13 anyway. I knew there was two. You know, I couldn't see
14 faces, but while he was holding me down the other one was
15 just running through my house going through cabinets,
16 going through drawers, and you know the one that was
17 holding me just kept hollering, Give it up. Give it up
18 give it up. Give it up now. We're going to kill you.
19 You better give it up. We're going to kill you. I just
20 heard it over and over and over.

21 Q Were you in fear for your life?

22 A That was the most fear I have ever been in especially
23 for it to happen in your own home.

24 Q You stated that he had you on the sofa?

25 A Right.

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1 Q Were you moved at some point in time?

2 A After they couldn't find anything and I kept telling
3 them that I don't have anything in my house. I mean I
4 didn't even have a dollar in my wallet that night. I kept
5 telling them there is nothing in there and so then he
6 proceeded to keep me bound in the headlock and dragged me
7 back to my bedroom and after they got me in the bedroom I
8 was thrown over my bed. My head was -- When you walk in
9 my bedroom my bed is right there. It is positioned like
10 this and I was thrown right up on my bed and pinned down
11 again with a knee and an arm, you know, on the back of my
12 neck with one person -- the same person that was holding
13 me from the time that they entered -- and then the second
14 one got up on where my head was at on the bed and
15 proceeded to help hold me down.

16 Q Okay. And what were they doing or saying at that
17 point, if anything?

18 A They just kept telling me to give it up. I kept
19 telling them I didn't have anything. I finally told them
20 where my wallet was. I told them my ATM card was in
21 there. I even gave them my PIN number knowing there
22 wasn't any money the bank. I was just hoping they'd like
23 it and leave. I was saying and doing whatever I thought I
24 had to do to get them out of my house and I was just
25 begging.

1 Q What were you begging for?

2 A My life. Please don't kill me.

3 Q I'm sorry?

4 A Please don't kill me.

5 Q And at some point -- at this point you stated that

6 they are both on top of you?

7 A Right.

8 Q Had you physically restrained?

9 A Right.

10 Q And what was happening at that point in time?

11 A The first person that came in -- they held me down

12 the whole time and kept the knife to me the whole time,

13 but at this point when the second one got on the the bed,

14 too, that's when I heard him say, Do it. Do it now.

15 Q Heard which one say, Do it?

16 A The second one that entered the house that was doing

17 all of the rummaging and stuff while the other one was

18 holding me down.

19 Q You heard the second person say, Do it?

20 A No. I heard the person that was holding me down from

21 the time they entered the house tell the second person to

22 just do it.

23 Q All right. Just to clarify before we go any further

24 because we're talking about one person and then the second

25 person.

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1 A Right.

2 Q One person had you physically restrained the whole
3 time?

4 A Yea.

5 Q And you're saying that is the person who stated, Do
6 it, Do it?

7 A Right.

8 Q And at that point in time what happened?

9 A The way I had my head on the bed I could see out of
10 the corner of my eye and I saw a switchblade open up..

11 THE COURT: Saw what?

12 THE WITNESS: A switchblade knife. And when I saw
13 that that's when I felt -- I felt they sliced my back and
14 that's when I realized that this was serious, that I'm
15 fixing to die, and I pretty much just quit fighting. I
16 figured if I just quit fighting and arguing maybe they'd
17 just leave.

18 Q What was the next thing that happened, Mr. Hynes?

19 A They took me and put me -- just a second -- on the
20 floor and while I was being held down he told him to cut
21 the cord.

22 Q When you're stating he, which one?

23 A The one that had me bound from the time they entered
24 until pretty much the end. He was the one still on top of
25 me when I was on the ground. He told the second one, Get

1 the cord, and that's when I heard a pop. The first thing
2 I thought of was a gun, but what had happened was he was
3 cutting a cord to my fan that was still plugged into the
4 wall to use the cord to tie me up with and that's what the
5 pop came from. So, he got that cord, handed it to the
6 first guy that had been holding me down, and they went the
7 tie my wrist up. I was laying on my stomach. They went
8 to tie my wrist up. So, about the time they got my wrist
9 tied up he said, "Get another one."

10 Q When you're talking about he, you're referring to?

11 A The first one. The one that held me down. He went
12 around -- the second guy went around my bed and cut the
13 cord to my lamp and that's when they tied my ankles up.
14 After they tied my ankles up that's when they hog-tied me.
15 They tied my wrist to my ankles.

16 Q So, your wrists were tied behind your back. Your
17 ankles were tied and your wrists were tied to your ankles?

18 A Right.

19 Q At this point in time did you have any idea who
20 either one of these people was?

21 A By that point -- the first one that came in is the
22 one that pretty much held me down the whole time. The
23 second guy didn't talk and when we were back in my room on
24 my bed I still can't remember to this day exactly what was
25 said, but he said maybe two or three words and I knew

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1 right then who it was, but I didn't say anything because I
2 knew for sure if I would have let him know that I even
3 know who one of them was, then that would have probably
4 been it. So I still didn't say it.

5 Q When you're talking about referring to recognizing
6 somebody you're talking about the person who was not
7 holding you?

8 A Right.

9 Q It was the person who was going through your house?

10 A Right.

11 Q Who did you recognize that voice to be?

12 A That was Chris Herndon.

13 Q And other than recognizing the voice of Chris Herndon
14 and that it was two men, were you able to tell anything
15 about them about their race or anything of of that nature?

16 A I knew that -- I knew the first -- The way that he
17 was talking I knew he was white. I don't know if you want
18 to call it stereotype or not, but I just knew it was a
19 white person the way he was talking and the -- when they
20 were back -- when they had me back on my bed and I saw the
21 knife being open and all and I was being held down, you
22 know, I could see hands and I could tell that the guys
23 were white.

24 Q Both men?

25 A Both of them were white.

1 Q Were they wearing gloves?

2 A No.

3 Q What happened after you were hog-tied?

4 A The first guy told the second guy -- and by then I
5 had pretty much -- like I said, I hadn't really gave up,
6 but I figured just be quiet, let them to do what they got
7 to do, and they're going to leave. That's when he said
8 let's put him in his trunk.

9 Q Let me stop you right here. At this point in time do
10 you know who the second guy is?

11 A That's Chris.

12 Q Okay. So, it might be a little easier if you refer
13 to --

14 A Okay.

15 Q -- him as Chris.

16 A Well, the first guy told Chris, Let's put him in his
17 trunk, and I freaked then because I know good enough to,
18 you know, if you get taken away from any scene like that
19 and I started begging again. Please, just leave me here.
20 If you're going to kill me do it here. Let my family find
21 me. Don't take me away from my house. And Chris would
22 not help the other guy do it.

23 Q What do you mean he wouldn't help him?

24 A He -- the first guy was already like picking me up by
25 one leg and one arm to put me in trunk.

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1 Q That's when you were tied up?

2 A Right and then he was telling Chris, Let's -- Come
3 on. Chris was like, no, we got his wallet, we got his
4 keys, let's just go. Let's go. So, that's when they got
5 -- they started walking out and as they were walking out
6 of my bedroom they turned around and took turns kicking me
7 in my head one after the other.

8 Q Where were you at that point in time?

9 A I was on the floor in my bedroom and I had -- like
10 this was the corner of my bed and I had my head down to
11 the side and the front of my face was up under the corner
12 and all that was really exposed was top of my head and
13 they started kicking.

14 Q You're stating that your face -- the front part of
15 your face -- you were facing underneath the bed?

16 A Right. Right.

17 Q How many times would you say they kicked you?

18 A I was thinking it was at least three or four apiece.
19 So, a good six to eight times.

20 Q How were you able to differentiate that two different
21 people were kicking you?

22 A It's -- because it was coming from one from here and
23 one from here and I could tell that one -- one was kicking
24 harder than the other, but I could just tell because it
25 was just like boom, boom. I mean, that's the way I

1 perceived it to be.

2 Q It was almost continual kicking?

3 A Yea, one after the other.

4 Q What was the next thing that happened?

5 A They walked out of my house picking up items on the
6 way out.

7 Q What items did they pick up?

8 A You know, I didn't know at the time, but it ended up
9 being some tennis shoes, my cellphone, my wallet, my car
10 keys, and I had a little tin that they also took out where
11 I had a couple of joints in it.

12 Q A tin. Are you referring to some kind of --

13 A It is just a little tin can.

14 Q Okay.

15 A And they took it and I heard my car crank up.

16 Q Do you recall what kind of shoes they took?

17 A Oh, yea, because I had just bought the pair of shoes.
18 They were almost brand new. They were K-Swiss.

19 Q What happened after you heard your car crank up?

20 A When I heard my car crank up the first thing I did
21 was I was able to kick loose my ankles from my wrist so I
22 was still tied up behind my back and my ankles were tied,
23 but I wasn't hog-tied anymore. You know, since I knew my
24 car had started up I was able to pull my wrists loose and
25 about time I did that I heard my front door open back up.

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1 So, when I heard the front door open back up I
2 automatically put my wrist back together and through my
3 ankles back up to look like I was still tied up and
4 somebody came in and stood over my -- at the door of my
5 bedroom and stood over me and I laid there like I was
6 still tied up and I kept my head just like it was when
7 they left and I quit breathing. I held my breath hoping
8 that they would think I was dead because I was just
9 waiting for them to start stabbing me. Why else would
10 they come back?

11 And after it was just a couple of seconds and he
12 turned around and walked back out and I heard my car
13 pulling out of the yard.

14 Q What did you do at that point in time?

15 A When that happened I was able to get to my feet
16 and -- but I still couldn't -- I still couldn't get my
17 ankles loose. So, as soon as I come out of my bedroom I
18 am in my kitchen and I got a knife and cut the cord to get
19 my ankle loose and I went and -- my phone was in the
20 living room floor. The battery was hanging out of it and
21 that's when I plugged my battery back in and called 9-1-1.

22 Q Where was Mr. Morton while all of this was going on?

23 A He was in the back bedroom. He was -- I have one
24 room that's on this end of the trailer and that's where he
25 was at sleeping and he was back there with the door shut

1 and locked and my bedroom is all of the way at the other
2 end and that's where they did all of this and I never did
3 really scream because one of the first things that they
4 told me when they first came into my house -- and that's
5 another thing. I knew whoever it was knew something about
6 me because my sister lives in a mobile home right next to
7 mine and one of the first things that they told me when --
8 because I did try to be a little loud at first to at least
9 wake up Brian hopefully and he told me, Be quiet. I know
10 that you're just trying to wake your sister up next door
11 to get her up here. So you better hush. You better hush
12 before you wake her up and get her up here. So I never
13 did really get -- I never was really screaming or yelling,
14 you know, because, you know, I feared for my sister, too.

15 Q And did you, in fact, call 9-1-1?

16 A Yes.

17 MRS. YOUNG: May I approach the witness, Your Honor?

18 THE COURT: Yes, ma'am.

19 Q Mr. Hynes, I am going to show you what's been marked
20 for identification purposes as State's Exhibit 17 through
21 28. I will ask you to look at them slowly and carefully
22 and tell me if you recognize after you look at all of them
23 what's depicted in the pictures. You don't have to tell
24 me individually. Just look through them all at one time
25 and then we'll talk about them individually.

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1 A Okay.

2 Q Mr. Hynes, can you generally identify what items 17
3 through 28 are?

4 A Yes, ma'am.

5 Q And can you just generally describe as a group what
6 they are?

7 A It's just going into my house. You can see where my
8 door was kicked in.

9 Q Let me just ask you this. Is it photos? Are they
10 photos?

11 A Oh, yea, photos.

12 Q And are they photos of your house?

13 A Yes.

14 Q And what else are they photos of?

15 A My injuries.

16 Q And after looking at those pictures do they appear to
17 be an accurate depiction and accurately show how your home
18 and how your injuries looked on the evening in question?

19 A Yes.

20 Q They don't appear to have been tampered or changed in
21 any way from your recollection?

22 A No.

23 MRS. YOUNG: Your Honor, at this time I would ask
24 that State's Exhibits 17 through 28 be admitted as
25 evidence in this case.

1 THE COURT: Any objection?

2 THE PUBLIC DEFENDER: Without objection.

3 (Whereupon, State's Exhibit Nos. 17 - 28 were
4 admitted into evidence.)

5 MRS. YOUNG: Your Honor, at this time I would like to
6 question him about them individually and if I may once he
7 answers publish them or hold them up to the jury.

8 THE COURT: We say that we're going to stop at 12:30.
9 It sounds like a pretty good breaking point.

10 MRS. YOUNG: Yes, sir.

11 THE COURT: We'll stop.

12 Ladies and gentlemen, I am going to break now for
13 lunch. We're going to let you walk up up to -- Sit right
14 there. Y'all walk up to the Bowery and have lunch. You
15 got bailiffs going. They'll take care of the bill. So,
16 enjoy yourselves.

17 Don't discuss the case. Don't start any type of
18 deliberation. Please don't let anybody discuss the case
19 with you and we'll start back -- what have I got? I got a
20 little hearing at 1:45. We'll start back right at
21 2 o'clock. So, if you get back before 2 o'clock and you
22 don't want to sit back in jury room and you want to go
23 outside and stretch or get some fresh air, you're welcome
24 to do that. We're just going to start right at 2 o'clock.
25 So, everybody else remain seated. My jury is free to go.

1 (Whereupon, the jury exited the courtroom at 12:29.)

2 THE COURT: All right, sir. You're right in the
3 middle of your testimony so I am going to require that you
4 not discuss your testimony with anybody -- solicitor or
5 defense counsel or anyone, investigators. Obviously,
6 you're free to go to lunch. We're going to start back at
7 2.

8 Anything for the record before we break by the state?

9 MRS. YOUNG: Nothing from the state.

10 THE COURT: Mr. Mims?

11 MR. MIMS: Nothing, Your Honor.

12 THE COURT: All right. The Defendant is in custody.
13 We'll stand at ease until 2 o'clock.

14 (Whereupon, a break was taken.)

15 THE COURT: Anything for the state?

16 MRS. YOUNG: No, sir.

17 THE COURT: Anything by the Defendant?

18 MR. MIMS: No, Your Honor.

19 (Whereupon, the jury came into open court at
20 approximately 2:05.)

21 THE COURT: Mr. Harrison, welcome. This is your
22 first election? We'll try to get some money together and
23 let you run for county council. How about that?

24 All right. We're going to run -- Is 5 o'clock okay
25 with everybody? You got time enough to get your nails did

1 at 5 o'clock? How about kickboxing? Who is the
2 kickboxer? Nobody? See, I know more about you than you
3 thought. Okay.

4 MRS. YOUNG: Thank you, Your Honor.

5 DIRECT EXAMINATION CONTINUED

6 BY MRS. YOUNG:

7 Q I believe we left off with the pictures. If you
8 could please, explain what's in that picture for the jury.

9 THE COURT: Tell us what number it is.

10 MRS. YOUNG: It's number 17. I apologize, Your
11 Honor.

12 THE WITNESS: It's walking in my front door. The
13 couch and where the blanket is at where I was sitting at.

14 Q Make sure that you speak up. Everybody's got to hear
15 you.

16 A If you look to the left when you come in the door
17 there is a piece of cord. There is some of the cord that
18 I was still in the process of taking off when I was on the
19 phone with 9-1-1.

20 MRS. YOUNG: Your Honor, may I briefly publish it by
21 holding it up for the jurors to look at?

22 THE COURT: You may.

23 Q All right. Mr. Hynes, I will have you do the same
24 thing with State's Exhibit No. 18.

25 A That's a picture of the door jam itself where all of

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1 the wood and all was split from where it was kicked open.

2 THE COURT: Speak up a little bit louder.

3 THE WITNESS: Okay, sir.

4 THE COURT: Mr. Foreman, ladies and gentlemen,
5 obviously, at the end of the trial you'll have all of the
6 pictures in the jury room with you.

7 Q Describe State's Exhibit 19.

8 A This is a picture of my kitchen going into my
9 bedroom. You can see where some stuff was knocked off the
10 refrigerator, some of the rugs scattered around and right
11 at the entry of my bedroom you can see another piece of
12 cord that was cut off or that I pulled off when I first
13 started breaking loose.

14 Q Your rug -- was it askew like that?

15 A No. I had just cleaned house that day. None of that
16 stuff was out of order. None of it.

17 Q This drawing --

18 A The rug -- that's a picture that my nephew drew for
19 me. That was hanging on my refrigerator. You can see the
20 magnet laying there next to it where they knocked the
21 magnet and the picture off.

22 Q And would you please identify State's No. 20?

23 A Still in the kitchen but it's closer back to the
24 bedroom. If you look on the counter you'll see a knife.
25 When I first was able to get out of my bedroom there's a

1 knife holder right here on the counter and that's where I
2 had to get one of the knives from to cut my ankles because
3 my ankles were still the only thing that were bound.

4 Q That's the knife that you used to release yourself?

5 A That's the knife I used to release my ankles.

6 Q Will you please identify State's 21?

7 A It's the entrance right into my bedroom. That's just
8 some of the cord that was used to bound me up with.

9 Q Is that a closer picture?

10 A Right. It's almost fixing to enter into my bedroom.

11 Q So it would be similar to the picture that they just
12 saw? Just a closer --

13 A Right. Just a closer up version.

14 Q Now, Mr. Hynes, can you please identify State's
15 Exhibit No. 22?

16 A This right here is where when I was -- when I was
17 getting kicked in the head once or twice it caught me in
18 the ear right here because I had that place on my ear that
19 it probably stayed for a good week and a half to two
20 weeks.

21 Q All right. And do you recall where these pictures
22 were taken?

23 A At Aiken Regional the night after this incident
24 happened.

25 Q Do you recall who took the pictures?

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1 A Investigator Sanders.

2 Q How about State's 23?

3 A That's pretty much rug-burn from where when I was in
4 my bedroom when I finally got down on -- when they had me
5 tied up on the carpet just from my face and all just being
6 pushed down into the carpet.

7 Q You didn't get down there yourself, did you?

8 A Oh, no. No. This is after I was already bound and
9 already placed down on the floor.

10 Q Mr. Hynes, State's 24 and State's 25 are somewhat
11 similar so what I would like for you to do is identify
12 what's in 24 and identify what's in 25. I'll show them at
13 the same time.

14 A Okay. Twenty-four are just the marks around my wrist
15 and 25 are the marks around my ankles just from how tight
16 the cords were tied to me.

17 Q That's where the cords were on your body?

18 A Right.

19 Q On your wrist and --

20 A On my wrist and my ankle.

21 Q And will you identify State's No. 27?

22 A That was the actual cut on my back.

23 Q Okay. And how about State's 26? I got a little out
24 of order there.

25 A Twenty-six was just some more of the marks left from

1 the cord.

2 Q Now, regarding this cut on your back did you have to
3 get numerous staples for that?

4 A (Witness nods head.)

5 Q How long did you have those?

6 A About two weeks.

7 Q What kind of follow-up care did you have to get to
8 have that taken care of?

9 A I just had to go back up to have them removed once it
10 healed up.

11 Q So you had to go back to the hospital --

12 A Yes.

13 Q -- to have it removed?

14 A Yes, yes.

15 Q And finally State's No. 28.

16 A This was the top of my head where the skin was just
17 kind of peeled back from being -- the numerous kicks that
18 I had taken in the head.

19 Q Is that the location where they were kicking you?

20 A Yes. Yes, ma'am.

21 Q On the top of your head?

22 A Right up here.

23 Q All right. Mr. Hynes, you stated earlier that
24 various items were stolen from your residence and that
25 included what?

(Daniel J. Hynes-Direct by Mrs. Young) 71

1 A Wallet, cellphone, shoes, the tin can. I think there
2 was actually two pairs of shoes.

3 Q What I'd like to do now is show you State's No. 16
4 and ask you if you can identify it, and, if so, then you
5 can pull it out and explain what it is and show it to the
6 jury at that time.

7 A This is one of the shoes. It was in the bedroom
8 where I was at. They snatched this up on their way out --
9 the pair of them.

10 Q And you can identify that shoe?

11 A Oh, yea. Like I said I just bought them. I loved
12 those shoes.

13 Q How about State's No. 16 for identification purposes?

14 A That's just the other one -- the matching.

15 Q And that was also taken from your bedroom?

16 A Yes, ma'am.

17 Q That is kind of noisy. How about State's Exhibit
18 No. 6?

19 A This is the box. Do I need to take it out?

20 Q If you can identify it you can take it out.

21 A Yea. That's the box that the shoes were in. I still
22 kept it. Like I said, I only wore them a couple of times
23 so I was keeping them in the box.

24 Q You can hold it up. Is there anything inside of the
25 the box?

1 A That's the second pair of shoes. Those were old
2 anyway, but, yea, that's the second pair.

3 THE COURT: Speak up, please.

4 THE WITNESS: This is the second pair of shoes that
5 was taken out of the house.

6 Q Okay. When they left your residence you said the
7 Defendants left in your vehicle?

8 A Right.

9 Q Okay. And what kind of vehicle was that?

10 A A 1996 Pontiac Grand Prix.

11 Q How long had you owned that vehicle?

12 A Probably about three or four years.

13 Q Was there anything that wasn't working on the vehicle
14 at the time that you already knew about when it was taken?

15 A The trunk latch didn't work on it.

16 Q When you're talking about the trunk latch, what
17 exactly are you describing?

18 A There is a button in the glovebox that you use to,
19 you know, pop the trunk from inside of the vehicle. That
20 wasn't working, but other than that everything was in
21 working order.

22 Q Would you be able to open the trunk if you had the
23 keys?

24 A Yes, because you'd be able to actually just go back
25 to the back to --

(Daniel J. Hynes-Direct by Mrs. Young)

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1 Q But the button didn't work?

2 A No, the button didn't work.

3 Q I am going to show you what's been marked for
4 identification purposes as State's Exhibit No. 13 and ask
5 if you recognize that?

6 A Yes.

7 Q Look on the back of State's 13.

8 A This is my bank card, SRP bank card.

9 Q You said they took a bank card from you earlier. Is
10 this the one that you're referring to?

11 A It was in my wallet. Right.

12 Q Is that the one that you gave the PIN number for?

13 A Right.

14 Q Can you identify State's Exhibit No. 12?

15 A Yes, that's the tin can that, you know, I smoke and I
16 keep a couple of joints in.

17 Q Okay. Now, you said you recognized Chris Herndon's
18 voice. Had he ever been inside your house?

19 A Yes.

20 Q Do you recall prior to this incident when the last
21 time was that he had been inside your house?

22 A It -- I don't know the exact date. It had been a
23 couple of months.

24 Q And had Chris Herndon ever been inside your vehicle?

25 A Yes.

1 Q Do you recall a time to when this happened when that
2 would have been?

3 A A couple of months.

4 Q Just to make sure I didn't confuse things earlier,
5 when you talked about coming home from work -- I mean,
6 excuse me -- coming home from class and doing your
7 homework, which day in October would that have been?

8 A That would have been on the 6th.

9 Q Because this incident happened when?

10 A After midnight on the 7th.

11 Q All right. I just think I might have confused that
12 earlier. How about Rusty Dunbar? Did you know Rusty
13 Dunbar prior to this incident?

14 A No.

15 Q Had Rusty Dunbar ever been in your house?

16 A No.

17 Q Had Rusty Dunbar ever been in your vehicle?

18 A No.

19 Q Did you give Chris Herndon or Rusty Dunbar permission
20 to come in your house that night?

21 A No.

22 Q October 7?

23 A Neither one.

24 Q After this happened and after you called 9-1-1 what
25 is the next thing that you did?

(Daniel J. Hynes-Direct by Mrs. Young)

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1 A That's when I went back and woke Brian up because I
2 was still on the phone with 9-1-1 when I finally made it
3 back there to go in the room he was in and wake him up.

4 Q And you said he was in another bedroom?

5 A Right.

6 Q How did you wake him up?

7 A I just -- while I was on the phone I just went in
8 there hollering at him, you know, Man, you didn't hear me?
9 You didn't hear what was going on? He just woke up out of
10 a startled sleep.

11 Q Did he come out of the room at the time that you woke
12 him up?

13 A Right. I asked him to go next door and get my
14 sister.

15 Q She lived closely to you?

16 A Right. Right next door.

17 Q And did your sister respond to the house, also?

18 A Yes. Her and her boyfriend came up after he went
19 down there. They were walking up to my house about the
20 same time that the cops were getting there.

21 Q And that's because Brian had alerted them to this?

22 A That's because Brian went down there and got them.

23 Q Mr. Hynes, I want to show you what's been marked for
24 identification purposes as State's Exhibit No. 1 and ask
25 if you recognize that?

1 A That's the CD from the 9-1-1 call.

2 Q And prior to coming into court today have you had an
3 opportunity to hear this 9-1-1 call?

4 A Yes.

5 Q And does what you heard appear to be what you said to
6 the 9-1-1 dispatcher?

7 A Oh, yea. It was what was going on at the time.

8 Q And it hasn't been changed or altered in any way?

9 A No.

10 MRS. YOUNG: Your Honor, at this time we'd move
11 State's -- we would ask that you admit State's Exhibit
12 No. 1 into evidence.

13 MR. MIMS: Without objection.

14 THE COURT: Without objection.

15 MRS. YOUNG: And we would request to publish it for
16 the jury.

17 (Whereupon, State's Exhibit No. 1 was admitted into
18 evidence.)

19 (Whereupon, the CD was played.)

20 Q Mr. Hynes, other than the female dispatcher, who was
21 on the other voice on the tape?

22 A That was Brian.

23 Q And you stated previously or I don't know if I asked
24 you this -- Rusty Dunbar, had he ever been in your car?

25 A No.

(Daniel J. Hynes-Cross by Mr. Mims)

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1 MRS. YOUNG: No further questions from the state.

2 THE COURT: All right. How about put that screen
3 down for me, please?

4 CROSS-EXAMINATION

5 BY MR. MIMS:

6 Q All right. Mr. Hynes, you stated that you were
7 burglarized by two white males?

8 A Correct.

9 Q And I know that you were able to identify one of them
10 as Christopher Herndon; correct?

11 A Right.

12 Q So you knew that he was a white male?

13 A Right.

14 Q How were you able to identify that the other one was
15 a white male?

16 A Like I said earlier when they both had me on the bed
17 at the same time and all the knives were coming out I saw
18 wrists and there were no gloves being worn. I could tell
19 both of them were Caucasian by their hands.

20 Q Okay. So their hands be were exposed. Do you also
21 -- were you also able to see their forearms? Do you know
22 if they had short --

23 A I don't remember. I can't remember that.

24 Q And you told the 9-1-1 operator that you were able to
25 recognize the voice of one of them?

1 A Correct.

2 Q That was Christopher Herndon; correct?

3 A Right.

4 Q But he was the one that you said spoke less?

5 A Right.

6 Q Compared to the two of them?

7 A Right.

8 Q But the one that did more of the talking he was the
9 one that told you to keep quiet because your sister -- he
10 thought that you were trying to notify your sister?

11 A Right.

12 Q So do you believe that he knew your sister?

13 A I don't know. I don't know what Chris may have told
14 him before they got there.

15 Q Okay. And I know you stated that Rusty Dunbar had
16 never been in your car or in your house. Did you know
17 him?

18 A I knew of him, but I have never met him.

19 Q Can you elaborate on you know of him?

20 A Back when I went to school I knew Bridget. She used
21 to be married to Malcom. That was his brother. I just
22 knew him from hearing his name. We all grew up out there
23 in the same area. So I have heard of him before but I
24 have never been around him.

25 Q Had you seen his face before?

(Daniel J. Hynes-Cross by Mr. Mims)

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1 A No.

2 Q Had you ever heard his voice?

3 A No.

4 Q All right. And you said other than knowing that the
5 two individuals did not have gloves on you don't remember
6 anything else that they were wearing?

7 A No.

8 Q Is it fair to say that they were not wearing masks?

9 A From the brief shot I got of them coming into the
10 house, yea, it was. They weren't wearing masks.

11 Q And you stated that one of them kicked in your front
12 door; right?

13 A Right.

14 Q Is your front door in view of the couch in your
15 living room?

16 A Yea. When you come in through the front door the
17 first thing that's there in front of you is my couch.

18 Q So if you're sitting on your couch you're looking
19 basically out the front door?

20 A At the front door.

21 Q And you were sitting on the couch when they kicked
22 the front door in?

23 A Yes.

24 Q And you stated the neither one of them had mask on;
25 correct?

1 A To my recollection, no, because like I said when the
2 door came open, you know, I froze for a minute. I
3 didn't, you know, realize what was happening.

4 Q Okay.

5 A I didn't know to start taking identities.

6 Q Was a photo line-up containing the image of Rusty
7 Dunbar ever shown to you at any time?

8 A No.

9 Q Do you remember any distinguishing characteristics of
10 either of the two individuals?

11 A No.

12 Q No scars, tattoos?

13 A No.

14 Q And you said that one of them had you in headlock for
15 sometime?

16 A Right.

17 Q And you remember being able to see his hands at
18 least?

19 A Right. Like I said, he is the one that did most of
20 the talking which is another way that I could tell that he
21 was white, too, because you could tell the way, you know,
22 he was talking that he was white.

23 Q I know this happened a while ago, but how long would
24 you estimate these individuals were in your house?

25 A I mean I knew what it felt like. As far as what it

(Daniel J. Hynes-Cross by Mr. Mims)

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1 actually was, maybe 10, 15 minutes tops.

2 Q And I know you stated that they stold your wallet and
3 your cellphone. Where were those items located in your
4 house when they took them?

5 A They were on my counter in the kitchen because if you
6 look at one of those pictures you can see where my phone
7 charger is plugged into the wall. All that stuff was on
8 my counter.

9 Q On your kitchen counter?

10 A Right.

11 Q Were the car keys there as well?

12 A The car keys were there, too. The can.

13 Q Where did they retrieve the little tin from?

14 A Off the counter.

15 Q Okay. And you stated that that contained some
16 marijuana?

17 A Right.

18 Q When both of the individuals left and one came back
19 into your house did you have the opportunity to observe
20 him at all?

21 A No, because I still had my head up under the bed.
22 Like I said, I quit breathing. I was playing dead.

23 Q And you stated that you thought that both of them had
24 knives?

25 A They did.

1 Q Both of them did. Okay. All right. Is it fair to
2 say that you knew Christopher Herndon? You said that you
3 had heard of Rusty Dunbar, but you actually knew
4 Christopher Herndon?

5 A Right.

6 Q Okay. Did you know that they ever worked together?

7 A No.

8 Q Okay. Did you know Jerry Thornton?

9 A He's another one I know of but I don't know. I mean,
10 you know, he grew up out in the same neighborhood, too. I
11 have never actually hung out with him either but I know of
12 him.

13 Q And Christopher Herndon had been to your house
14 before?

15 A Right.

16 Q Did he have a car?

17 A No.

18 Q How would he usually get to your house?

19 A Get dropped off.

20 Q Do you remember if Rusty Dunbar was ever somebody
21 that dropped him off?

22 A If he was I didn't know about it.

23 Q Are you friends with Sherry Cooper?

24 A Yes.

25 Q Were you aware that Rusty Dunbar is the Godfather of

(Daniel J. Hynes-Cross by Mr. Mims)

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1 her children?

2 A Yea, I have heard that before.

3 Q But he had never brought Sherry over the your house?

4 A If he's ever been to my house, he's never came in my
5 house and I didn't know he was at my house.

6 Q But you knew Christopher Herndon well enough to
7 recognize his voice after just saying two or three words?

8 A Yes.

9 Q And the other guy did most of the talking?

10 A Right.

11 Q Do you know Laura Smith?

12 A No.

13 Q Do you know who she is?

14 A I know who she is, but I don't know her.

15 Q Had she ever been over to your house?

16 A No.

17 Q Could you tell me who you think she is?

18 A That's Rusty's girlfriend.

19 Q Did Christopher Herndon ever stay the night at your
20 house?

21 A Yea.

22 Q Was there a period of time where he didn't have a
23 place to stay himself?

24 A No. If he has -- he's never stayed more than a
25 night. As far as a couple of nights or living there, no.

1 He's only stayed a night before when we were partying or
2 whatever.

3 Q And you stated that you bought the Pontiac used;
4 correct?

5 A Right.

6 Q Who did you buy the car from?

7 A I can't remember his name. He lived in Clearwater.

8 Q Was he -- did he -- was he selling it as the owner of
9 the car? Did he have a lot?

10 A Yea, I was buying it from him and his wife.

11 Q Okay. So, they actually used the car themselves?

12 A Right.

13 Q What was his name?

14 A I can't remember because I got introduced to him
15 through a friend that I worked with and I just met him and
16 bought the car. I mean, I can't remember his name.

17 Q Do you remember his wife's name?

18 A No.

19 Q Do you remember what area they lived in?

20 A Yea. They lived in Clearwater off Cherokee Drive.

21 Q Do you know if he bought that car brand new?

22 A I believe so, but I can't say for sure.

23 Q When you got it it was three or four years old?

24 A No, when I got it -- let's see. It was a '96. I got
25 it in about '02, '03. So, probably five or six years old,

(Daniel J. Hynes-Cross by Mr. Mims)

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1 something like that.

2 Q I'm sorry. One more time. When did you get it?

3 A The car is a '96. I got it around -- to the best of
4 my memory around '02 or '03.

5 Q Around '02 or '03?

6 A Yea. I mean, I could get the bill of sale and look,
7 but I don't remember the exact year.

8 Q Is it fair to say that since 2002 or 2003 whenever
9 you got the car that you've had it serviced somewhere?

10 A Oil change.

11 Q And you said that you had just drank a little bit of
12 brandy on the night that this happened; right?

13 A Right.

14 Q What about Brian Morton?

15 A What about him?

16 Q Did he drink any alcohol with you?

17 A Oh, yea.

18 Q Was he about at the same level as you?

19 A Probably. I mean, neither one of us was drunk. We
20 were just having a couple of drinks because, you know, he
21 had to work the next morning and I had to go to school. I
22 just didn't have to get up as early as he did.

23 Q Are you surprised that he didn't wake up from all of
24 this?

25 A No.

1 Q You're not surprised?

2 A No, not the way he sleeps. I have known him for
3 about 10 years.

4 Q I would imagine the door getting kicked in was pretty
5 loud; right?

6 A It was.

7 Q And were these two individuals yelling at you?

8 A No. They never did start -- I mean, not really
9 yelling. They were just -- they were talking and very
10 serious in their demeanor, but, you know, like I said
11 there was no yelling because even when I started to get
12 too loud I was cut short.

13 Q I believe you told the 9-1-1 operator that you
14 thought the suspects were looking for drugs or money; is
15 that correct?

16 A The way they were going through the house they were
17 just looking for anything worth anything. I mean, you
18 know, they left with shoes.

19 Q But I think you told the 9-1-1 operator that Herndon
20 was like that?

21 A Yea. He's been known --

22 Q Something to that effect?

23 A -- to abuse crack, yea.

24 Q I'm sorry?

25 A He's been known to abuse crack.

(Daniel J. Hynes-Redirect by Mrs. Young)

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1 Q Okay. Was there anything wrong -- I know you said
2 that the trunk latch wouldn't pop open the trunk from the
3 inside?

4 A Right.

5 Q Was there anything wrong with the passenger door
6 handle?

7 A Huh-uh.

8 Q Did you have your car parked in any kind of a way
9 that night where you wouldn't be able to enter the car
10 from the passenger side?

11 A I am not following you.

12 Q I'm saying the two suspects stold your Pontiac that
13 night; right?

14 A Uh-huh.

15 Q Did you have the car parked in a position where if
16 someone wanted to enter the passenger side front door they
17 could?

18 A No. There wasn't anything blocking it.

19 Q Okay. Lastly, you were only able to identify
20 Christopher Herndon as one of those two suspects that came
21 to your house that night; correct?

22 A Right.

23 MR. MIMS: No further questions.

24 THE COURT: Redirect?

25 REDIRECT EXAMINATION

(Brian Morton-Direct by Mrs. Young)

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1 BY MRS. YOUNG:

2 Q Mr. Hynes, did you get your car back after this?

3 A Yes.

4 Q Did you get your car keys back?

5 A No, ma'am.

6 MRS. YOUNG: Thank you.

7 THE COURT: All right. You may step down. The next
8 witness.

9 MRS. YOUNG: The state calls Brian Morton.

10 BRIAN MORTON, after being duly sworn, testified
11 as follows:

12 THE CLERK: Please have a seat in the witness box.
13 State your full name for the court and spell your last.

14 THE WITNESS: Brian Morton. M-O-R-T-O-N.

15 THE COURT: All right. Mr. Morton, speak distinctly
16 for us, please.

17 THE WITNESS: Yes.

18 DIRECT EXAMINATION

19 BY MRS. YOUNG:

20 Q Mr. Morton, where are you employed?

21 A Carlisle Tires and Wheels.

22 Q Do you know Daniel Hynes?

23 A Yes.

24 Q How do you know Daniel?

25 A I used to stay with him.

(Brian Morton-Direct by Mrs. Young)

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1 Q Do you recall an incident that occurred at his house
2 back in October of 2008?

3 A Yes.

4 Q What do you recall about the events that led up to
5 that incident that evening? What were you doing?

6 A Oh, I was sleep.

7 Q What had you been doing prior to being asleep?

8 A I drank some beers watching the football game.

9 Q Was anybody with you?

10 A Yes. Daniel.

11 Q And do you recall what time you went to bed that
12 evening?

13 A No. It was late.

14 Q Other than the beer that you drank, did you feel like
15 that you reached a level of intoxication?

16 A Yes.

17 Q You felt like you were intoxicated?

18 A Yes.

19 Q Did you have any other substances besides the beer
20 that you took?

21 A Yes.

22 Q What was that?

23 A Tylenol PM.

24 Q How many of those did you have?

25 A Two.

(Brian Morton-Direct by Mrs. Young)

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- 1 Q What was the reason for taking those?
- 2 A To go to sleep.
- 3 Q You have problems sleeping?
- 4 A Yes.
- 5 Q And you never heard anything about the commotion or
- 6 anything that was going on?
- 7 A No.
- 8 Q What's the first thing that led you to believe
- 9 something was wrong?
- 10 A When he came in the room and he woke me up.
- 11 Q When you're talking about he you got to tell us who
- 12 you're referring to.
- 13 A Oh, Daniel. Daniel.
- 14 Q Tell me how that happened. What did he do? What did
- 15 Daniel do?
- 16 A What did he do? He came in. He was hysterical. He
- 17 said, You ain't hear nothing? He had his hand tied and he
- 18 was on the phone talking to the police officer telling
- 19 them to come.
- 20 Q Did you observe anything else about him?
- 21 A Yes. He was cut on his back.
- 22 Q And did you assist --
- 23 A He was bleeding.
- 24 Q -- him?
- 25 A Yes.

(Brian Morton-Cross by Mr. Mims)

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1 Q What did you do?

2 A I helped him cut the wire off his arm and helped him
3 with his back.

4 Q So the first time --

5 A With Daniel's back.

6 Q I'm sorry?

7 A Daniel's back.

8 Q What did you do to Daniel's back?

9 A I got a towel.

10 Q The first time you were aware of anything taking
11 place was when?

12 A When I woke up.

13 Q How did you wake up?

14 A When Daniel woke me up.

15 MRS. YOUNG: No further questions from the state.

16 THE COURT: Cross.

17 CROSS-EXAMINATION

18 BY MR. MIMS:

19 Q Hi, Mr. Morton.

20 A Hey. How are you doing?

21 Q Have you ever met Rusty Dunbar?

22 A No.

23 Q You don't know him personally?

24 A No.

25 Q And you said you didn't know what time you went to

1 bed that night?

2 A No.

3 Q But that it was late?

4 A Yes.

5 Q And you stated that you had to take some Tylenol PM
6 to help you get to sleep?

7 A Yes.

8 Q Why did Daniel Hynes describe you as a heavy sleeper?

9 A Because I am.

10 Q Because you are?

11 A Yes. I do sleep heavy.

12 Q How often do you take Tylenol PM to get to bed?

13 A Every so often.

14 Q And you did not wake up until Daniel Hynes was
15 knocking on the door of the bedroom that you were sleeping
16 in?

17 A No, he was in there.

18 Q He was in there?

19 A Yes, sir.

20 Q But his hands were still bound?

21 A No. One --

22 Q Just --

23 A Yes. One arm was tied.

24 Q Okay. And what bedroom were you sleeping in in
25 relation to the front door? If I walk in --

(Brian Morton-Cross by Mr. Mims)

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1 A The back bedroom.

2 Q The back bedroom?

3 A Yes.

4 Q To?

5 A The right.

6 Q And Daniel's bedroom is on the other side of the
7 trailer?

8 A Yes.

9 Q Have you ever ridden in Daniel's car?

10 A Yes.

11 Q Have you ever driven his car?

12 A Yes.

13 Q At any point in time did anybody from the Sheriff's
14 Office seek your fingerprints or DNA?

15 A No.

16 Q No mouth swabs or anything like that?

17 A No.

18 Q And you stated you did not wake up until the suspects
19 had left?

20 A Yes.

21 Q So you are not able to identify who entered the
22 residence that night?

23 A No.

24 MR. MIMS: No further questions.

25 MRS. YOUNG: Your Honor, we have no redirect and we

(Jerry O. Thornton-Direct by Mrs. Young)

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1 ask that he be released from his subpoena.

2 THE COURT: You may step down. You're excused. Next
3 witness.

4 MRS. YOUNG: The state calls Jerry Thornton.

5 JERRY O. THORNTON, after being duly sworn,
6 testified as follows:

7 THE CLERK: Please have a seat in the witness box.
8 State your full name for the court and spell your last.

9 THE COURT: Just have a seat. Give us your name and
10 spell your last.

11 THE WITNESS: Sir?

12 THE COURT: Tell us your name and spell it.

13 THE WITNESS: Jerry Odell Thornton.

14 THE COURT: Thank you. Spell Thornton.

15 THE WITNESS: T-H-O-R-N-T-O-N.

16 DIRECT EXAMINATION

17 BY MRS. YOUNG:

18 Q Mr. Thornton, do you have trouble hearing?

19 A Yes, ma'am, I do.

20 Q Please make sure if you can't hear me tell me and
21 also please make sure you answer my questions loudly
22 because the jury and the court reporter need to hear you.

23 A Yes, ma'am.

24 Q Do you know Rusty Dunbar?

25 A Yes, ma'am, I do.

(Jerry O. Thornton-Direct by Mrs. Young)

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1 Q How do you know Rusty Dunbar?

2 A I have known him ever since he was a kid. He was a
3 friend of my cousins.

4 Q Who is your cousin?

5 A He used to come over to the house all the time. My
6 grandfather's.

7 Q All right. So, you've known him for numerous years?

8 A A lot, yea. Probably 20 years or more.

9 Q Do you know Christopher Herndon?

10 A Yes, ma'am, I do.

11 Q How do you know Christopher Herndon?

12 A He is my cousin.

13 Q He is your first cousin?

14 A First cousin, yes, ma'am.

15 Q What do you do for a living, Mr. Thornton?

16 A I am a brick mason.

17 Q Do you have any employees or people that work for
18 you?

19 A I don't. I don't -- I ain't working now, but at the
20 time I did.

21 Q Who was that?

22 A Christopher Herndon and Rusty Dunbar.

23 Q What did Christopher Herndon do in relation for work
24 -- what did he do for you?

25 A He was a laborer and my driver.

1 Q And how about Rusty Dunbar?

2 A He was a laborer.

3 Q And by laborer you mean he assisted you with whatever
4 project that you were working on at the time?

5 A Yes, that and to help me out, you know. I'm big --
6 too big to get in certain spots. They would help me out
7 there. I was trying to teach them and all that.

8 Q All right. Do you recall the date of October 6 of
9 2008?

10 A Somewhat.

11 Q What is the first thing you recall about that day?

12 A It was like every other day. I got up and drank
13 coffee, waiting to go to work.

14 Q By waiting to go to work, what do you mean by that?

15 A Waiting on Chris and Dunbar to get there --
16 Mr. Dunbar --

17 Q Uh-huh.

18 A -- to get to my house. I lived next door to Chris.

19 Q All right. Chris is your next door neighbor in a
20 close manner?

21 A Yes, ma'am.

22 Q What kind of vehicle did Chris drive you in?

23 A He because was driving the truck my brother lent me.

24 Q I'm sorry?

25 A He was driving the truck my brother lent me to do

(Jerry O. Thornton-Direct by Mrs. Young)

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- 1 this job.
- 2 Q What type of truck was that?
- 3 A It was a black Dodge.
- 4 Q So that truck belonged to you?
- 5 A No, ma'am.
- 6 Q You were in charge of that truck?
- 7 A Yes, ma'am.
- 8 Q It didn't belong to Chris, did it?
- 9 A No, ma'am.
- 10 Q It didn't belong to Rusty?
- 11 A No, ma'am.
- 12 Q All right. So you woke up that morning. You were
- 13 waiting to be picked up. What's the next thing --
- 14 A Well, the truck was there in my yard. I was waiting
- 15 on everybody to get there to my house.
- 16 Q I see. What is the next thing you remember about
- 17 that day?
- 18 A Well, after everybody got there we left to go to
- 19 work.
- 20 Q Where were you working on that particular day if you
- 21 recall?
- 22 A We was working in Warrenville.
- 23 Q Okay. And you left to go to the job site?
- 24 A Yes, ma'am.
- 25 Q All right. And what was the next thing that

1 happened?

2 A Well, nobody really wanted to work that day. So, I
3 loaded the mixer up and left.

4 Q By nobody really wanted to work, who were you
5 referring to?

6 A Rusty and Chris, you know. Why? I don't know, but
7 we didn't work that day.

8 Q You said you loaded the cement mixer up and left the
9 job site?

10 A We left that job site. Yes, ma'am.

11 Q Where did you go after that?

12 A Went -- I went and pawned my saw.

13 Q I'm sorry?

14 A I went and pawned my saw.

15 Q Where did you do that?

16 A Down at a hardware store on 421.

17 Q What kind of saw was it?

18 A It was my wet cut. I mean, it was a masonry saw,
19 like a chop saw, but a big saw.

20 Q Something that you would use in your labor?

21 A Yes, ma'am.

22 Q And what was the purpose of pawning the saw?

23 A To get some money to --

24 Q To do what?

25 A Buy beer.

(Jerry O. Thornton-Direct by Mrs. Young)

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1 Q And what was the next thing you did after you pawned
2 the saw? Let me ask you this. You said it was a hardware
3 store?

4 A Yes, ma'am.

5 Q Do you remember the name?

6 A Harrison's. I think that's the name of it.

7 Q What is the next thing you did after that?

8 A We got some beer.

9 Q And you're saying we. Who are you referring to?

10 A Me, Rusty, and Chris.

11 Q Was there anybody else present?

12 A No, ma'am. Well, yes, ma'am.

13 Q Who else was present?

14 A His girlfriend was with us.

15 Q I'm sorry?

16 A His girlfriend.

17 Q Whose girlfriend?

18 A Rusty's.

19 Q What was her name?

20 A I don't remember.

21 Q How long had she been with y'all that day?

22 A Well, she was with us pretty much the whole time I
23 mean, when we left the house and everything. She was
24 always with Rusty.

25 Q So that was normal for his girlfriend to be with him?

1 A Yes, ma'am. I think there was one or two days she
2 wasn't with us, but most of the time she was with us, you
3 know, sitting on the job or something like that.

4 Q Was there anything about her physical condition that
5 you knew about at the time?

6 A She was pregnant.

7 Q Was she visibly pregnant?

8 A I don't remember. I don't recall. I really paid no
9 attention to her.

10 Q Okay. Well, she was with you that morning; correct?

11 A Yes.

12 Q After you bought the beer -- Do you remember where
13 you bought that beer?

14 A I don't remember. I know that store. I don't know
15 if it is a grocery store or a convenience store.

16 Q All right. What is the next thing that you do
17 remember happening?

18 A We went to the creek and started drinking.

19 Q You went to the creek?

20 A Yes, ma'am.

21 Q What creek did you go to?

22 A Shaw's creek down past the police station.

23 Q And you started drinking at the creek?

24 A Yes, ma'am.

25 Q And who all was drinking?

(Jerry O. Thornton-Direct by Mrs. Young)

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1 A Just me, Chris, and Rusty.

2 Q What time of the day or night was this?

3 A It was daytime early around 11 -- 10:30 or
4 11 o'clock.

5 Q Getting your day started?

6 A As soon as I got the money I started drinking pretty
7 much.

8 Q So you started drinking pretty much the first thing
9 that morning?

10 A Not first thing that morning, but after we went and
11 sold the saw and all that we -- yes, ma'am.

12 Q All right. After you were at the creek drinking what
13 is the next thing that happened that you recall?

14 A We went to Jody's -- a guy name Jody Chavis.

15 Q Why did you go there?

16 A Went there to get rid of the mixer.

17 Q And by get rid of it what are you referring to?

18 A Pawning it.

19 Q Pawning it?

20 A Pawned it to him, yea.

21 Q Was that the only person that you attempted to sell
22 the mixer to?

23 A There was one more place we stopped at, I think. It
24 was at a motel, but I don't recall trying to get rid of
25 the mixer to them.

1 Q Okay. Do you know who was at the motel?

2 A Me, Rusty, everybody that was with us. Me, Rusty,
3 and Chris and the girlfriend.

4 Q Did you meet somebody there?

5 A Ma'am?

6 Q Did you meet somebody there?

7 A There was somebody staying there. I think Rusty knew
8 them.

9 Q Do you recall anything else about that person? His
10 name, description?

11 A No, ma'am.

12 Q Did you go there before or after Jody Chavis'?

13 A Before.

14 Q And where does Jody Chavis live?

15 A Well, at the time he was living out in Windsor.

16 Q And you went to his residence?

17 A Yes, ma'am.

18 Q And why did you go to Jody Chavis' residence?

19 A To pawn the mixer.

20 Q Why did you think he would buy it?

21 A Well, at the time I didn't know that was what we was
22 doing because we discussed it earlier but I didn't want to
23 do it.

24 Q When you say we discussed it, who were you referring
25 to?

(Jerry O. Thornton-Direct by Mrs. Young)

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1 A All three of us and I didn't want to do it, but the
2 more that morning progressed it ended up getting done.

3 Q And did you own that mixer at the time?

4 A No, ma'am.

5 Q Okay. So, Jody Chavis did, in fact, buy the mixer?

6 A Yes, ma'am.

7 Q Do you know how much money was received for the
8 mixer?

9 A Around 300, 400, something like that.

10 Q And who was involved with the actual transaction of
11 selling the mixer?

12 A Christopher. Chris. Chris Herndon.

13 Q Anybody else?

14 A That was pretty much it.

15 Q All right. What happened after you got the \$300 and
16 the cement mixer was gone?

17 A We went and bought more beer.

18 Q Okay. Do you recall where?

19 A At the store before -- right there at Ms. Roof's
20 country store I think it was was the closest one.

21 Q Can you say the name one more time?

22 A Ms. Ruth's.

23 Q Ms. Ruth's country store? Okay. Where did you go
24 after that?

25 A Went and got some drugs.

1 Q What kind of drugs did you get?

2 A Crack.

3 Q Who got the crack?

4 MR. MIMS: Objection, Your Honor.

5 THE COURT: What is the objection?

6 MR. MIMS: Relevance, Your Honor.

7 THE COURT: How is that relevant?

8 MRS. YOUNG: I think it's relevant to what they were
9 doing that day and also the witness' --

10 MR. MIMS: Can we have a side bar, Your Honor?

11 MRS. YOUNG: -- state of mind.

12 (Whereupon, a bench conference was held.)

13 THE COURT: All right. The fact that they bought
14 crack cocaine that day is not relevant to this case. Just
15 disregard that.

16 Q Did you go anywhere else -- disregarding anything
17 about that matter, did you go anywhere else after that?

18 A They went back to the creek, I think.

19 Q What is the final place you ended up at that evening
20 that you recall?

21 A The final place?

22 Q Uh-huh. Where you were all four together.

23 A That was late that night. I dropped them off at --
24 beside the road up there at Mr. Hynes' house.

25 Q Okay. Do you know what road that's on?

(Jerry O. Thornton-Direct by Mrs. Young)

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1 A On Wire Road, I think.

2 Q And do you know how that transpired or how you got to
3 dropping them off?

4 THE COURT: Who is them? Who did you drop off?

5 THE WITNESS: Chris and Rusty.

6 Q You dropped them off at Mr. Hynes' house?

7 A In front.

8 Q And when you say in front what are you describing?

9 A At the road. Up there at the road. I didn't pull in
10 no driveway or nothing like that.

11 Q Did you know what you were supposed to do after that
12 if you were supposed to do anything?

13 A They was going -- they said they were going to go buy
14 drugs, get drugs.

15 MR. MIMS: Objection, Your Honor.

16 THE COURT: Overruled.

17 Q What did you do after that?

18 A I went to the store.

19 Q Okay. Tell me a little bit about that. Which store
20 did you go to that time?

21 A On No. 1. I think it's No. 1. I don't know exactly.
22 It is a new store. I don't know the exact name of it. It
23 is on the other side of Family Dollar store -- the very
24 next one on the left.

25 Q You didn't go to the Family Dollar. You went next to

(Jerry O. Thornton-Direct by Mrs. Young)

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- 1 the Family Dollar?
- 2 A Yes. The store next to the Family Dollar.
- 3 Q What type of store is it?
- 4 A It is a convenience store, gas station.
- 5 Q Okay. And how did you get there from dropping off
- 6 Daniel -- excuse me -- Rusty and Chris?
- 7 A I drove.
- 8 Q And what route or how did you drive there?
- 9 A I went down the road, turned off on a dirt road right
- 10 that comes up behind airport Shell.
- 11 Q After you got to that road what did you do?
- 12 A I took a right and went to the store.
- 13 Q Okay. What did you do once you got to the store?
- 14 A Well, I waited. They wanted me to come back and pick
- 15 them up.
- 16 Q That's what your expectation was?
- 17 A Yes, ma'am.
- 18 Q And who was with you at the time, if anybody?
- 19 A Mr. Dunbar's girlfriend.
- 20 Q Did you do anything at the store?
- 21 A I got me some gas, got me a beer, and put some air in
- 22 the tire because it was slack. I had done had a few
- 23 problems with that tire going down.
- 24 Q All right. And did you do anything else while you
- 25 were at the store?

(Jerry O. Thornton-Direct by Mrs. Young)

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1 A I waited. I give them a few minutes. Then when I
2 left from there on the way back I got a -- there was a
3 phonecall from Mr. Dunbar.

4 Q Did he call you?

5 A He called his girlfriend. The girlfriend answered
6 the phone.

7 Q All right. Well, you can't say what was told because
8 you didn't hear it, but as a result of that phonecall what
9 did you do?

10 A As a result of the phonecall I was told he was down
11 in Aiken.

12 MR. MIMS: Objection, Your Honor.

13 THE COURT: All right. Don't say what --

14 MRS. YOUNG: Don't say what --

15 THE COURT: As a result of the phonecall what did you
16 do? Where did you go?

17 THE WITNESS: I turned around and went to pick him
18 up.

19 Q All right. And by picking him up, who are you
20 referring to?

21 A Mr. Dunbar.

22 Q And where did you pick him up?

23 A Behind I think it's the Golden Pantry right there
24 like going towards Aiken High School.

25 Q Uh-huh.

(Jerry O. Thornton-Direct by Mrs. Young)

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- 1 A Right there at the train tracks.
- 2 Q The train tracks?
- 3 A Yes, ma'am.
- 4 Q Was he on the side of the road?
- 5 A He was on the side of the road. I took it he used
- 6 the phone at the pay phone and just was walking up that
- 7 way.
- 8 Q All right. Who was with him?
- 9 A By himself.
- 10 Q All right. After you picked him up what did you do?
- 11 A Well, he wanted to go to somebody's house. I don't
- 12 remember whose house it was but I took him.
- 13 Q And what did you do with him once you got there?
- 14 A I dropped him off and left.
- 15 Q You dropped both of them off?
- 16 A Yes, ma'am.
- 17 Q All right. And what about Chris Herndon?
- 18 A Chris wasn't nowheres. He wasn't around there.
- 19 Q He wasn't around Rusty?
- 20 A He wasn't -- No, ma'am. He wasn't with Rusty. He
- 21 wasn't nowhere to be found.
- 22 Q And originally you were going to go back to
- 23 Mr. Hynes' residence and pick them up?
- 24 A When I dropped them off, yes, ma'am.
- 25 Q But you just ended up picking up Rusty?

(Jerry O. Thornton-Direct by Mrs. Young)

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1 A I just ended up picking up Rusty. He was the only
2 one that called.

3 Q And do you know what location -- you said you're not
4 sure exactly where you dropped him off. Do you know a
5 road or can you give us a little more detail?

6 A I know it was off of 19, I think.

7 Q Off Highway 19?

8 A Yes, ma'am. Down there back past the interstate to
9 the left. I don't know the name of the road or nothing,
10 but I know -- I think it was a trailer park. It had two
11 or three trailers in it. I don't remember what the name
12 of the road or nothing was.

13 Q All right. After you dropped them off what is the
14 next thing you did?

15 A I went home.

16 Q And that was pretty much it for the day?

17 A Yes, ma'am.

18 Q Are you the same Jerry Thornton that was convicted
19 for some fraudulent check charges in 2008?

20 A Yes, ma'am.

21 Q As well as 2009?

22 A Yes, ma'am.

23 Q And did you have something happen to you as a result
24 of this incident?

25 A Yes, ma'am. I was locked up. I mean, I went -- I

1 done time.

2 Q What was that for?

3 A Fraudulent checks.

4 Q All right. What about regarding the cement mixer?

5 A When I got out I had to go stand trial for that.

6 Q Okay. Did you?

7 A I got probation and all out of that.

8 Q But you were convicted?

9 A Yes, ma'am. I was convicted.

10 Q Do you know what the charge was in that particular
11 case?

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

13 MRS. YOUNG: I don't have anymore questions for
14 Mr. Thornton.

15 CROSS-EXAMINATION

16 BY MR. MIMS:

17 Q Hello, Mr. Thornton.

18 A How are you doing?

19 Q When you pawned that saw how much money did you get
20 for it?

21 A About a hundred I think. The saw was mine.

22 Q What kind of saw was it?

23 A It was a cement saw, a wet saw. You can cut brick
24 and block with it -- stone, tile, stuff like that.

25 Q The saw was yours, but you had rented the mixer?

(Jerry O. Thornton-Cross by Mr. Mims)

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1 A Yes.

2 THE COURT: Everybody hold on a second. All of my
3 jurors okay? Do you need some water? Please raise your
4 hand if you can't hear. Speak up, sir.

5 THE WITNESS: Sir? I'm sorry.

6 THE COURT: That's okay. Speak up. The jurors are
7 having a tough time hearing you. Hold on one more second.
8 Everybody okay? Anybody else need some water? Everybody
9 comfortable? Bathroom? All right. Move along.

10 Q All right. Mr. Thornton, you stated that you got
11 roughly \$100 for the cement saw?

12 A Yes.

13 Q And you used that money to buy beer?

14 A Yes.

15 Q Did you spend it all on beer?

16 A I don't remember. I don't -- probably. Probably,
17 yes.

18 Q So, you spent \$100 on beer and this was around 11:30
19 -- around noon?

20 A Yea, around noon.

21 Q And y'all went and drank at some lake?

22 A The creek. At the creek.

23 Q Okay. And it's your testimony that all four of you
24 were together when this was going on -- you, Mr. Herndon,
25 Rusty, and Laura?

- 1 A Yes.
- 2 Q Okay. And you mentioned three places -- well, four
- 3 places in total that y'all had gone. First to Harrison's
- 4 hardware; right?
- 5 A Yes.
- 6 Q And then to Jody Chavis'?
- 7 A Yes.
- 8 Q And then you went --
- 9 A I don't know what the time difference it took, but,
- 10 yea, we ended up out there at Mr. Chavis.
- 11 Q So, first Harrison's, second Jody Chavis, and then
- 12 the motel and then you said the last place you went was
- 13 Daniel Hynes' house?
- 14 A Yes.
- 15 Q Did y'all ever go to Laura's Daddy's house?
- 16 A I don't really remember. I remember making a detour,
- 17 but I don't know where we was at, you know.
- 18 Q Had you ever been to that house before?
- 19 A No. No, sir, I sure haven't.
- 20 Q Do you remember what time you -- roughly what time
- 21 you pawned the cement mixer?
- 22 A No, sir, I don't.
- 23 Q Did you ever go to Bull's Bar that day of the 6th or
- 24 early morning hours of the 7th?
- 25 A No, sir.

(Jerry O. Thornton-Cross by Mr. Mims)

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1 Q And what was your understanding why you were dropping
2 Chris and Rusty Dunbar off at the victim's house?

3 A What was the understanding?

4 Q Why did you think you were dropping them off there?

5 A Drugs. They wanted drugs.

6 Q Okay. And if they were there to pick up drugs they
7 -- Why did you leave? Why didn't you just wait for them?

8 A Because I was told to come back and pick them up.

9 Q Okay. So, Daniel Hynes --

10 A Chris -- Christopher Herndon told me. He said, Go on
11 to the store and come back and pick us up. We're going to
12 get some drugs. I don't know what kind of drugs. I don't
13 know what, but I was told to come back and pick them up
14 because Chris knows I don't wait around on nobody doing
15 nothing like that, you know, getting drugs or nothing like
16 that. I don't like to be in spots like that.

17 Q Well, earlier you testified that y'all sold the
18 cement mixer for drugs; right?

19 A Yes. I took them to go get drugs.

20 Q But that wasn't your drugs?

21 THE COURT: Mr. Mims...

22 A I mean I was doing drugs with them.

23 THE COURT: Hold on. You just objected to all of
24 that and now you're right back into it. So the objection
25 is out the window. Go ahead.

1 Q All right. Now, Rusty just -- you said that you
2 didn't stay stay there because you didn't want to wait on
3 him?

4 A No. I mean, I didn't want to, you know, wait around.
5 I was ready to go home.

6 Q And the victim lives out on Wire Road; right?

7 A I think that's the name of it. Wire Road.

8 Q Is it a good ways down it?

9 A I don't know exactly how far it was. I do not know.

10 Q Well, do you remember --

11 A Because at that point, like I said, I was a
12 passenger.

13 Q Okay.

14 A And at that point I wasn't paying no attention where
15 we was going. Evidently, I done went to sleep or
16 something, but, you know, I was told after we got to where
17 we was going to drive.

18 Q And you were driving after you had been drinking all
19 day?

20 A Yes, sir, I was.

21 Q Why didn't you let Laura drive if she was in the car?

22 A She was in the backseat.

23 Q What was she doing in the backseat?

24 A Sitting there with her boyfriend.

25 Q All right.

(Jerry O. Thornton-Cross by Mr. Mims)

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1 A Rusty? You're talking about after we dropped them
2 off? She was in the back seat.

3 Q Okay. And Christopher Herndon allegedly drove to the
4 victim's house?

5 A Yes.

6 Q But he didn't pull in the driveway?

7 A No.

8 Q Did you think that was odd at the time?

9 A I mean, you know, like I said, Chris knows I don't
10 like to get in spots like that.

11 Q Okay. And you stated you went to a gas station after
12 that with Rusty's girlfriend; right?

13 A Yes.

14 Q But the gas station you went to was all of the way
15 over on Highway 1?

16 A Yes, but the cut-through road I took was a dirt road.

17 Q About how long did it take to get from the victim's
18 house to the gas station?

19 A I don't remember. I took my time and I, you know,
20 waited around. I was waiting.

21 Q And Laura had a cellphone?

22 A I think it was Laura's. I ain't for sure.

23 Q And you said that she --

24 A There was a phonecall and Laura answered the phone --
25 the call.

1 Q Did you know Rusty Dunbar to have a cellphone?

2 A I don't remember.

3 Q And I can't remember -- earlier did you say that you
4 did know that Laura was pregnant or you did not know?

5 A I did know she was pregnant. He was happy that, you
6 know, he was going to have a son -- a son or a daughter,
7 but he was happy of the fact of her being pregnant.

8 Q Okay. You don't remember the name of the gas station
9 that you went to?

10 A Sir?

11 Q You don't remember the name of the gas station that
12 you went to?

13 A No, sir. It's a fairly new store. It's been out
14 there a couple of years. It's -- if you know the area I'm
15 talking about the Dollar Store is there -- the Family
16 Dollar Store. It's the very next one, the gas station on
17 the left.

18 Q This is on Highway 1?

19 A Yes, the airport. Where the airport is right up from
20 there on the left.

21 Q All right. Near I-20?

22 A Yes, near I-20 back this side of it.

23 Q Okay. And you said that you bought some gas and some
24 beer there; correct?

25 A Yes.

(Jerry O. Thornton-Cross by Mr. Mims)

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1 Q Do you remember what -- do you remember how you paid
2 for it?

3 A With money.

4 Q Okay.

5 A I mean...

6 Q I mean cash other than credit?

7 A I'm sorry. Yes.

8 Q You went inside to pay for the gas?

9 A Sir?

10 Q You went inside to pay for the gas?

11 A Yes, sir.

12 Q Did Laura go in the store?

13 A No, sir.

14 Q She waited in the backseat?

15 A Yes, sir.

16 Q And you stated that you picked Rusty Dunbar up near
17 Aiken High School?

18 A Yes, at the train tracks right there.

19 Q Do you remember what condition he was in?

20 A He was the same as I dropped him off, but it was hot,
21 I think, and he was a little sweaty but nothing come to my
22 attention.

23 Q Do you remember what he was wearing? Long sleeves?
24 Short leaves? Shorts?

25 A I don't even remember if we had his shirt on at that

(Paul Sharpton-Direct by Mrs. Young)

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1 time or not. Like I said, I don't remember.

2 Q Do you remember seeing any blood or scratches on him?

3 A No, sir.

4 Q Do you remember how he was acting?

5 A You got to know Rusty. I mean, I don't -- No, sir.

6 I don't remember how he was acting.

7 MR. MIMS: No further questions, Your Honor.

8 MRS. YOUNG: No redirect, Your Honor. The witness
9 may be excused.

10 THE COURT: You may step down and you may be excused.
11 Yes, sir, you. Next witness.

12 MRS. YOUNG: The state calls Deputy Paul Sharpton.

13 PAUL SHARPTON, after being duly sworn, testified
14 as follows:

15 THE CLERK: Please have a seat in the witness box.
16 State your full name for the court and spell your last.

17 THE WITNESS: My name is Paul Sharpton;
18 S-H-A-R-P-T-O-N.

19 DIRECT EXAMINATION

20 BY MRS. YOUNG:

21 Q You're employed with Aiken County Sheriff's Office?

22 A Yes, ma'am.

23 Q You're a Deputy Sheriff?

24 A Yes, ma'am.

25 Q How long have you been employed there?

(Paul Sharpton-Direct by Mrs. Young)

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1 A With the Sheriff's Office three years.

2 Q How long have you been in law enforcement?

3 A A total of five.

4 Q And were you on duty on the evening of October 6 into
5 the early morning of October 7, 2008?

6 A Yes, ma'am.

7 Q Do you recall responding to an incident on that
8 evening?

9 A Yes, ma'am.

10 Q Where were you when you first got the call or
11 describe how that happened.

12 A I was situated just off of Richland Avenue in Aiken
13 on a small side street. It's called Joe R. Lane. I was
14 actually checking a business with a coworker Holly
15 Tractor. While checking that business we received a
16 broadcast over the radio, some emergency tones.

17 Q What does that mean you got emergency tones?

18 A Similar to what you would hear over the radio when
19 the National Weather Service alerts a thunderstorm or
20 tornado. It is a tone a dispatcher enables to draw
21 everybody's attention to the radio or the broadcast that's
22 about to go over it.

23 Q What type of broadcast was it?

24 A It was for a freshly-committed burglary home
25 invasion.

(Paul Sharpton-Direct by Mrs. Young)

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1 Q Do you know the location where this incident had
2 happened?

3 A Yes, ma'am. We were told -- I don't recall the exact
4 address. It was on Wire Road just past Beaver Dam a
5 couple of miles.

6 Q Is that here in Aiken County?

7 A Yes, ma'am.

8 Q What did you do once you heard the tones?

9 A Proceeded in the direction of the location traveling
10 down Richland Avenue. I cut over to the 118 bypass or the
11 section referred to as Rudy Mason. I was traveling down
12 Old Wagener Road. I made a left on to Rudy Mason Parkway
13 and traveled down to Wire Road and made a right on to Wire
14 Road from there.

15 Q Did you have your lights and siren on at this time?

16 A I had my emergency lights on. I didn't run my siren
17 on that particular call.

18 Q Did you have any other lights on?

19 A Other than all the blue lights and the flashy stuff
20 you see on patrol cars, no, ma'am.

21 Q Did you receive a description of anything other than
22 a burglary and home invasion that you were looking for
23 something in particular?

24 A Received a -- the dispatcher broadcasted that the
25 suspects had just left the home in the victim's car; that

(Paul Sharpton-Direct by Mrs. Young)

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1 the victim's car had been stolen; and that it was I
2 believe a '96 Pontiac. It was green in color and that
3 there was -- they were unknown on the direction of travel
4 of the vehicle.

5 Q So you turned on to Wire Road and what's the next
6 thing that happened?

7 A I turned on my patrol radar, my radar that detects
8 the speed of vehicles to kind of gauge -- there was some
9 moderate, some very mild traffic that helped me kind of
10 pick out certain vehicles. When I was traveling on Wire
11 Road I passed a middle school and as I was coming up on an
12 intersection just before the Aiken County jail, Mae Royal
13 Drive, I saw a vehicle approaching me head on and it was
14 traveling at a high rate of speed. The speed limit for
15 that stretch of road is 55. This vehicle was traveling
16 over 70 miles per hour.

17 Q How did you know that?

18 A From the speed obtained on the radar unit.

19 Q What was the next thing you observed, if anything?

20 A Going back to additional lights on the car the
21 vehicle is equipped with what's called alley lights.

22 Q I'm sorry. What kind of light?

23 A Alley.

24 Q Alley?

25 A Yes, ma'am.

(Paul Sharpton-Direct by Mrs. Young)

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1 Q What kind of light were those?

2 A Those were lights that will illuminate to the side of
3 the vehicle lighting up a section to the left or to the
4 right or both sides. Being this vehicle was traveling
5 from the direction of the house that I was going to, it
6 was at a high rate of speed, I cut on a left alley light
7 to see the area to my left as I passed it. I couldn't
8 tell what kind of car it was from the headlights. They
9 were kind of bright. As it passed I quickly glanced and I
10 saw that it was a greenish-colored vehicle.

11 Q What did you do at that time?

12 A I announced that over the radio to responding units
13 and then I turned around into the road to proceed after
14 it.

15 Q What happened next?

16 A I increased speed and attempted to catch up to the
17 vehicle. I never made contact with it. The vehicle
18 increased speed, started traveling away from me despite
19 the lights and I'm unsure if I cut my siren on after that.

20 Q Did you observe anything particular once you turned
21 around to follow the vehicle?

22 A Coming up Wire Road initially I do remember the road
23 was free of debris. There was a clear roadway. There was
24 nothing lying in the roadway. After turning around on
25 this vehicle and following it I do remember seeing some

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1 items laying in the roadway. It looked like a small
2 cardboard box and some smaller items on the side of the
3 road that actually ran over or drove over as I was
4 pursuing the vehicle.

5 Q Do you recall where those items were located?

6 A In the area of the Aiken Middle School. I believe it
7 was Gator Lane, Jaws Lane.

8 Q What was the next thing you did, Deputy Sharpton?

9 A Continued following after the vehicle. As we were
10 approaching the bypass I lost contact with it. It had a
11 good distance ahead of me. I was unable to tell if it
12 went straight or turned left or right at the intersection
13 of the bypass and Wire Road. I did observe some skidmarks
14 in the roadway, some dark tire treads that weren't there
15 previously. There was also a light smoke in the air that
16 smelled of burned rubber as if a vehicle had freshly laid
17 those marks.

18 At that point I broadcast that I felt I had made
19 contact with the vehicle and that it was in that area but
20 I just had trouble locating it.

21 Q All right. And what was the next thing that you did?

22 A Again, patrolling that area not knowing if the
23 suspect were still in that vehicle or if they were -- or
24 if they had fled the vehicle looking for any clues in that
25 immediate area that they may have had a collision or just

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1 looking for anything moving that may further fit the
2 description of what I was told.

3 Q Where did you go while you were doing that?

4 A I consisted most of my search -- I concentrated most
5 of my search at that intersection. I did travel further
6 up Wire Road on the other side of the bypass to the
7 intersection of Beaufort.

8 Q I'm sorry?

9 A Beaufort Street. Beaufort street, Wire Road, the
10 bypass, and a small portion of Banks Mill and a small
11 portion of Crosland Park.

12 Q Did you observe anything out of the ordinary while
13 you were on patrol?

14 A On the other side of the intersection past the
15 initial set of skidmarks I observed there is a little
16 store there that we patrol check often. I do remember
17 seeing a second set of -- a small -- a smaller skidmark
18 beside that store that I didn't remember seeing there
19 earlier in that night.

20 Q What is the name of the store?

21 A It was originally named Wrights Mill Grocery. I am
22 not sure if it still goes by that name.

23 Q When you saw that second set of skidmarks, what did
24 you do next?

25 A I turned behind that building to see if the vehicle

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1 had traveled behind there.

2 Q Did you observe anything?

3 A No, ma'am. I actually came back out on to Wire Road
4 on the other side of the building. I never stopped behind
5 the building and searched that area. I continued through
6 assuming the vehicle was still moving.

7 Q How many buildings are in that location?

8 A There's the Wrights Mill Grocery and there is a small
9 brick home to the left of it. Currently there is a
10 trailer. There was not a mobile home there at the time.
11 That's the only ones.

12 Q In relation to those structures, where did you
13 re-enter Wire Road?

14 A You have Wrights Mill Grocery. You have the brick
15 home. I traveled to the left side of that brick home and
16 come out through its backyard on to Wire Road.

17 Q After you did that, what was the next thing that you
18 did on your patrol?

19 A I went back to the evidence. It had been
20 communicated eventually that some of the items that were
21 stolen from the home were a couple of pairs of shoes. I
22 made it back to the evidence and secured those items.

23 Q What evidence are you referring to exactly?

24 A The items that I ran over initially it was -- turned
25 out to be a shoe box labeled K-Swiss. It had a shoe

1 inside of it and there was a pair of shoes on the side of
2 the roadway that were K-Swiss shoes, also.

3 Q What did you do in relation to that evidence?

4 A Each item was secured separately.

5 Q Okay. Describe what that means for those of us who
6 don't know.

7 A We commonly would think of a pair of shoes as
8 together when really it's a left shoe and a right shoe. I
9 found them separately. So, I placed on a pair of
10 examination gloves -- rubber gloves -- and I took one of
11 the shoes, whether it be the left or right, whichever one
12 I came across first, placed it into a paper bag and it was
13 labeled. I performed a glove change where I put on a
14 separate pair of gloves on top of those.

15 Q What would be the purpose of that?

16 A To prevent any evidence that may be on one shoe being
17 transferred to the other shoe such as DNA or fingerprints
18 or whatever they're looking for.

19 Q And you collected the shoes and the box?

20 A Yes, ma'am.

21 Q Did you do anything else?

22 A That was the -- pretty much the extent of my
23 involvement with the call that I remember.

24 MRS. YOUNG: May I approach the witness, Your Honor?

25 THE COURT: Yes, ma'am.

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1 Q Deputy Sharpton, do you recognize that document?

2 A Yes, ma'am.

3 Q What is it?

4 A This is the evidence form that itemizes the items
5 that I found on the roadway at Wire Road at Jaws Lane.

6 Q You can take a minute and look at that if you'd like
7 to. After looking at that document does that refresh your
8 recollection how many shoes you actually recovered?

9 A Yes, ma'am.

10 Q How many was that?

11 A That was one pair of shoes.

12 Q So you recovered two shoes?

13 A Yes, ma'am.

14 Q A pair?

15 A Correct.

16 Q Not three shoes?

17 A Correct.

18 Q And you also recovered a shoe box?

19 A Correct.

20 Q I am going to show you what's been marked for
21 identifications purposes as State's Exhibit No. 6 and ask
22 you if you recognize it?

23 A This would be what drew my attention to the items in
24 the roadway. It was situated in the center of the lane
25 that I was traveling -- the box with the shoes that were

1 inside.

2 Q Is that what you, in fact, recovered?

3 A Yes, ma'am.

4 Q And how do you know that?

5 A From memory. It looks exactly as the items that I
6 described in detail on the evidence form.

7 Q Once you collect it, what do you do with it?

8 A It's secured or placed into an evidence bag for
9 protection. It is then immediately transferred to the
10 Sheriff's Office to our evidence room. There is a locker
11 with a padlock. We place these items in the locker. It
12 is locked and our evidence custodian receives it.

13 Q Once it's locked can anyone access it other than the
14 evidence custodian?

15 A No, ma'am.

16 Q Is there anything on that bag that also assists you
17 in your recollection?

18 A There were some items -- additional items other than
19 the shoes inside the paper. There was a receipt.

20 Q Let me ask you the question more simply. Does that
21 bag have your name on it?

22 A Yes, ma'am, it does.

23 Q Who put your name there?

24 A That would be me.

25 Q Okay. So that would be another indicator that that

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1 is what you collected from the roadway?

2 A Yes, ma'am.

3 Q All right. Let me show you what's been marked for
4 identification purposes. I'll take that back and put it
5 in the bag. It makes a lot of noise. That's been marked
6 for identification purposes as State's Exhibit 2 and ask
7 if you recognize that?

8 A This would be the in-car video from my response to
9 the scene.

10 Q So did you have in-car video going that evening?

11 A Yes, ma'am.

12 Q Have you had a chance to review the the video since
13 the incident?

14 A Yes, ma'am.

15 Q Have you had a chance to review it recently?

16 A Yes, ma'am, a few weeks ago.

17 Q Does it appear to be to reflect the recording of the
18 evening as you recall it happening?

19 A Yes, ma'am, exactly.

20 Q Does it appear to be changed or altered in any way?

21 A It is quite an old video. There is a couple of
22 moments where the video freezes and it has to be
23 restarted, but other than -- there is no editing or
24 alteration of it.

25 Q That's -- what you're describing, are you describing

1 a mechanical problem with the video?

2 A Yes, ma'am.

3 Q It doesn't alter what was recorded?

4 A No, ma'am.

5 Q Does it make it difficult to watch?

6 A No.

7 MRS. YOUNG: Your Honor, we'd ask that State's No. 2
8 be admitted as evidence at this time and request to
9 publish it to the jury.

10 MR. MIMS: No objection.

11 (Whereupon, State's Exhibit No. 2 was admitted into
12 evidence.)

13 THE COURT: How long is it?

14 THE WITNESS: Approximately 20, I believe -- 20 or 22
15 minutes.

16 THE COURT: All right. We've been going since two.
17 Let's take a little quick break.

18 Let me just ask y'all. Is 5 o'clock going to be an
19 imposition to anybody? Can we go until about five? Maybe
20 just a few minutes before five? Will you be able to get
21 to your kickbox lessons? Y'all better behave with that
22 lady. You got double trouble back there.

23 All right. Y'all step back. Don't discuss the case.
24 Don't start deliberating. Anybody smoke? Got smokers?
25 No smokers.

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1 (Whereupon, the jury exited the courtroom at 3:36.)

2 THE COURT: All right. Mrs. Young, anything for the
3 record before we break?

4 MRS. YOUNG: Nothing.

5 THE COURT: Tell me about the video. We got to look
6 at all 25 minutes or do you want -- I am not telling you
7 how to try the case.

8 MRS. YOUNG: I mean I'd prefer to put it all in just
9 so there is no question about what was seen or not seen
10 and because there is a difficulty playing it I'd prefer to
11 do it while Mrs. Adams can assist with playing the video.
12 It's not something they're going to easily be able to take
13 back there and just watch once they go to the jury room.

14 THE COURT: Anything for the record?

15 MR. MIMS: No, Your Honor.

16 THE COURT: All right. You're right in the middle of
17 your testimony, officer. Please don't discuss it with
18 anyone. We'll start back in about 10 minutes.

19 (Whereupon, a break was taken.)

20 (Whereupon, the jury came into open court at
21 approximately 3:57.)

22 THE COURT: Everybody okay?

23 Q Deputy Sharpton, if you could come off the stand.
24 You don't have to do a complete running monologue, but if
25 you'll explain what you're doing in the video as it

1 progresses it might assist the jury.

2 A Yes, ma'am.

3 Q Just make sure that you stand back so they can all
4 see the screen.

5 (Whereupon, the video is playing as the following
6 testimony is given.)

7 A The first 40 seconds of this video will have no audio
8 because of the built-in delay with the camera system.
9 That was on Joe R. Lane. I made a right on to Richland
10 Avenue. I am proceeding towards Old Wagener Road at this
11 point where I engaged my blue lights. At this point the
12 dispatch is receiving the call from Mr. Hynes. You hear a
13 noise in the background. That's me turning on the patrol
14 radar. We are on the bypass currently -- Rudy Mason.
15 We're approaching the intersection of Wire Road. That's
16 the traffic light you see up here.

17 Q When you say we, is there somebody with you?

18 A We, the jury, we're observing that now. Making a
19 right on to Wire Road.

20 Q Do you know if Deputy Goodwin was around?

21 A He was behind me. This is the area where the
22 evidence is discovered you see there is nothing in the
23 roadway at this point. We're passing the entrance to the
24 middle school. Dispatcher gives me the name of Chris
25 Herndon as the other man in the vehicle. These are the

(Paul Sharpton-Direct by Mrs. Young)

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1 headlights of the suspect vehicle. This is the victim's
2 car.

3 Q Were you looking at the car when it when passed you?

4 A Yes, ma'am observing the -- This is Deputy Goodwin
5 responding past me. You can see the taillights of the
6 vehicle as soon as we round this curve. Taillights of the
7 vehicle going over. Here are the shoes on the side of the
8 road in the box. Skidmarks, smoke. At this point I don't
9 observe any traffic to the left and the right. I am
10 turning my vehicle around. This is a point where it is
11 just a weird nature of computers and how they work the
12 video. It experiences a small pause. I turned behind
13 what I referred to as Wrights Mill Grocery. The brick
14 house. That was the driveway there. The car was later
15 located 4 feet to the right of this picture.

16 Q Behind the house or the grocery?

17 A It is behind the grocery, the convenience store.

18 Q Can you see it when you go by?

19 A I never looked. Here's the second set of marks which
20 gave me the idea they may have turned behind there. It
21 was parked so close to the building and in an area it was
22 so dark I just couldn't see it. I get frustrated.

23 There's, I believe, approximately four or five glitches.

24 Q To your recollection is there anything significant
25 that's being left out when she has to move past the glitch.

1 point?

2 A No, ma'am. We're probably only missing 10 seconds.

3 Q What road are you on here?

4 A I'm sorry.

5 Q What road are you on here?

6 A Right now I'm back out on the Rudy Mason bypass

7 coming back in the direction where I came from.

8 Q What are you looking for at this time?

9 A I'm looking for taillights, headlights similar to the
10 once that I saw and also the vehicle description that was
11 originally BOLO'ed because at this point I don't know if
12 the vehicle I passed may have been something else.

13 Q Is that one of your colleagues in front of you?

14 A This is a supervisor. This is my lieutenant. At
15 this point I am pretty sure that that was the vehicle and
16 we'll saturate that area in an attempt to locate it or any
17 suspects that exited the vehicle. This is just making
18 sure they didn't wreck into a home or another vehicle when
19 they come around the curve.

20 Q What neighborhood is this?

21 A This is Crosland Park neighborhood.

22 Q Do you know who you're talking to there?

23 A That was an officer with the Aiken Public Safety. I
24 don't recall who it was. At this point of the video I
25 just remember a lot of waiting. I sat on the evidence and

(Paul Sharpton-Direct by Mrs. Young)

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1 kind of guard it where it is for a length of time to
2 determine if my supervisor was deciding whether to have a
3 forensic investigator to come and secure those items and
4 place it into evidence or to have us collect it. So at
5 this point I am just sitting here in the roadway watching
6 the items until I am advised what to do with them.

7 Q As part of your law enforcement training did you
8 receive training on how to collect evidence?

9 A Yes, ma'am. They go over evidence collection to a
10 certain degree in the academy during basic training.
11 During continuing education that you receive throughout
12 law enforcement they're constantly reviewing policies and
13 procedures.

14 Q Who were you speaking to there?

15 A Just another gentleman with Aiken Public Safety. I
16 don't recall his name either.

17 Q Part of this was in the city limits of Aiken or are
18 they just responding to assist?

19 A Responding to assist. During our travels you may
20 recall me broadcasting the description of the vehicle to
21 other police jurisdictions in the area and responding such
22 as highway patrol and Aiken Public Safety so they can be
23 aware of the vehicle and its description. That would have
24 been the supervisor.

25 Q That's it. Is that it?

1 A Yes, ma'am. Not long after this video my sergeant
2 located the vehicle.

3 (Whereupon, the video ended.)

4 THE COURT: Come on back up and have a seat.

5 Q Deputy Sharpton, you previously identified what's
6 inside State's Exhibit No. 6 regarding the shoes in the
7 box?

8 A Yes, ma'am.

9 Q Those were the shoes that you found that evening?

10 A Yes, ma'am.

11 MRS. YOUNG: Your Honor, at this time we'd request to
12 admit State's Exhibit 6 into evidence with the possible
13 substitution of pictures at a later time for the actual
14 shoes.

15 MR. MIMS: No objection.

16 THE COURT: Without objection.

17 (Whereupon, State's Exhibit No. 6 was admitted into
18 evidence.)

19 MRS. YOUNG: No further questions.

20 THE COURT: Cross?

21 CROSS-EXAMINATION

22 BY MR. MIMS:

23 Q Were you able to observe how many individuals were in
24 Mr. Hynes' car?

25 A No, sir.

(Paul Sharpton-Cross by Mr. Mims)

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1 Q And were you able to determine their race or gender?

2 A No, sir.

3 Q So you weren't able to identify Rusty Dunbar as one
4 of those occupants?

5 A No, sir.

6 Q Did you see anybody running from the scene when you
7 responded to Wrights Mill Grocery?

8 A No, sir.

9 Q Did you see anybody in the area on foot during the
10 time that you spent after you left Wrights Mill?

11 A No, sir.

12 Q Is it your belief that the car was, in fact, parked
13 behind Wrights Mill when you pulled behind it?

14 A Yes, sir.

15 Q And did you say that you collected the shoes or did
16 somebody else?

17 A I collected the shoes, yes, sir.

18 Q And I know that, obviously, you were patrolling the
19 area and you said Officer Goodwin was right behind you as
20 well; correct?

21 A Yes, sir.

22 Q And then how many public safety officers were out
23 there with you?

24 A They -- when we have -- the Sheriff's Office and the
25 city, we tend to scratch each other's back. We'll send

1 units to back each other up when needed. I am not sure
2 how many they sent to that area. I know I encountered
3 several who you were driving through, but I don't know the
4 exact number.

5 Q One of those that you encountered was Goodwin;
6 correct?

7 A No, sir.

8 Q It wasn't Goodwin?

9 A Deputy Goodwin a co-worker on my shift who responded
10 from the same location as I did proceeded to the scene as
11 I turned around to follow the victim's vehicle.

12 Q But he was patrolling the same area as you?

13 A Yes, sir.

14 Q And then you said there were also at least two other
15 public safety officers that were patrolling that area as
16 well; correct?

17 A Yes.

18 Q And then also their supervisor?

19 A The gentleman we last saw on the video was a
20 supervisor for the city, yes, sir.

21 Q Do you know approximately how far Aiken High School
22 is from Wrights Mill Grocery? Just an estimate?

23 A A mile maybe.

24 Q Did you ever patrol in that direction?

25 A I never started towards that direction, no, sir.

(Paul Sharpton-Redirect by Mrs. Young)

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1 MR. MIMS: Thank you. No further questions.

2 THE COURT: Redirect?

3 MRS. YOUNG: Just briefly, Your Honor.

4 REDIRECT EXAMINATION

5 BY MRS. YOUNG:

6 Q Deputy Sharpton, as you were approaching the car that
7 you thought might be the suspect vehicle you said that you
8 used your alley light I think you called it?

9 A Yes, ma'am.

10 Q What was your focus on at the time you were
11 approaching and passing the car? What was your goal?

12 A My goal? To attempt to get the best view of that
13 vehicle passing me to see if it matched the broadcast that
14 I received.

15 Q Does that mean you were looking at the car itself?

16 A Yes, ma'am.

17 Q Trying to determine if it matched the description?

18 A Yes, ma'am.

19 MRS. YOUNG: Thank you, Your Honor. No further
20 questions?

21 THE COURT: You may step down. Next witness.

22 MRS. YOUNG: Your Honor, may Deputy Sharpton be
23 excused to return to work?

24 MR. MIMS: No objection. He can be excused, yes,
25 Your Honor.

(Michael Goodwin-Direct by Mr. Grimes)

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1 THE COURT: Thank you, sir.

2 MR. GRIMES: The state calls Deputy Michael Goodwin.

3 MICHAEL GOODWIN, after being duly sworn,
4 testified as follows:

5 THE CLERK: Please have a seat in the witness box.
6 State your full name for the court and spell your last.

7 THE WITNESS: Michael Goodwin; G-O-O-D-W-I-N.

8 DIRECT EXAMINATION

9 BY MR. GRIMES:

10 Q Deputy Goodwin, where are you currently employed?

11 A Aiken County Sheriff's Office.

12 Q Are you a deputy there?

13 A I am.

14 Q How long have you worked there?

15 A Four years.

16 Q Okay. Were you working on the October 6, early
17 morning of October 7, 2008?

18 A Yes, I was.

19 Q Do you recall an incident on that date?

20 A I do.

21 Q How were you informed that incident had occurred?

22 A Tones dropped across the radio to alert an emergency
23 broadcast for a burglary that was in progress or just
24 occurred, a home invasion type of burglary out in the Wire
25 Road area of Aiken County.

(Michael Goodwin-Direct by Mr. Grimes)

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1 Q Where were you when you heard that?

2 A Me and a co-worker, deputy Sharpton, were checking
3 Holly Tractor. It's a large area. We check it together,
4 kind of a perimeter sweep. We were checking that on Joe
5 R. Lane right there off of Richland Avenue.

6 Q And what did you do after you heard the call?

7 A Deputy Sharpton was in a better position than I. I
8 had to turn around. So, he got a headstart on me onto
9 Richland Avenue. I proceeded lights and sirens towards
10 Wire Road, up Richland Avenue, down on Wagener, across
11 Rudy Mason and then up Wire Road.

12 Q Were you behind his vehicle?

13 A I was maybe a half mile to a mile behind him.

14 Q Did you notice any vehicles pass you on Wire Road?

15 A There was a vehicle that passed me. I saw the car
16 pass me. I was familiar with what the vehicle looked like
17 that was broadcast across the radio by dispatch. I was
18 familiar that the lights went across the front of the
19 vehicle, the entire front of the vehicle. I saw the
20 vehicle after Deputy Sharpton said he thought that he had
21 passed it, but I wasn't sure how close other units were to
22 the call. So I proceeded on to the call as Deputy
23 Sharpton turned around for the other vehicle.

24 Q Okay. Did you notice anything in the road prior to
25 seeing that vehicle?

1 A There was nothing in the road.

2 Q After you saw that vehicle did you see Deputy
3 Sharpton pass?

4 A I did. I actually slowed down so Deputy Sharpton
5 could complete turning around.

6 Q Had you intended to follow that vehicle?

7 A No. My intentions were to head to the scene.

8 Q Were there any other officers when you arrived at the
9 scene?

10 A Yes, there was.

11 Q Who was that?

12 A Deputy Adam Stubbs.

13 Q Do you know how long he was there before you got
14 there?

15 A Not exactly sure; maybe a few minutes.

16 Q Do you recall seeing anyone else at the scene other
17 than Deputy Stubbs?

18 A There was a few other -- there was other civilians on
19 scene but no other officers.

20 Q Okay. Where was this scene?

21 A I am not sure of the numerics on Wire Road, but it
22 was past the crossroads of Beaver Dam on Wire Road.

23 Q Okay. Is that in Aiken County?

24 A It is in Aiken County.

25 Q Did you speak with anyone at the scene?

(Michael Goodwin-Direct by Mr. Grimes)

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1 A I spoke to the victim and I spoke to EMS. I spoke to
2 the roommate. I spoke to Investigator Sanders.

3 Q And do you recall what kind of condition the victim
4 was in when you arrived?

5 A The victim was cut up. He had abrasions on his body.
6 I believe he had some bruising and some cuts on his head.
7 I don't recall him wearing a shirt. He was on the couch.

8 Q Did the victim receive any medical attention?

9 A Yes. After we got there and made sure the scene was
10 secure EMS was called in to treat the victim.

11 Q How did you secure the scene?

12 A We call secure the scene making sure there is no
13 other suspects inside the house and we do a quick sweep
14 just to make sure nobody is hiding inside the house, just
15 a room-by-room glance to make sure there is no
16 perpetrators hiding in any of the closets or anything so
17 EMS crews can come in safely and perform their duties
18 without being harmed, and also in doing so we had
19 everybody else out of the house so we could preserve as
20 much of the crime scene as we could for investigations.

21 Q Did an investigator arrive?

22 A He did.

23 Q Who is that investigator?

24 A Investigator J. D. Sanders.

25 Q What did you do when he arrived?

1 A I briefed him on what we encountered when we got
2 there, what state the victim was in, what he had told us
3 about -- that his door had been kicked in and that his car
4 had been taken and that a couple of pair of shoes had also
5 been taken.

6 Q Did you do anything else?

7 A I assisted Investigator Sanders throughout until he
8 was ready to leave the scene.

9 MR. GRIMES: Please answer any questions that the
10 Defense Counsel has for you.

11 CROSS-EXAMINATION

12 BY MR. MIMS:

13 Q Deputy Goodwin, were you able to identify the
14 occupants of Mr. Hynes' car?

15 A I was not.

16 Q Were you able to determine the number of occupants,
17 their race or gender?

18 A I was not.

19 Q Did you see anyone in the area on foot after you
20 passed Mr. Hynes' vehicle?

21 A No.

22 Q And you stated that you were the second one to arrive
23 at the victim's house?

24 A That's correct.

25 Q And you stated that you had to clear some people out

(Michael Goodwin-Cross by Mr. Mims)

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1 of the house; correct?

2 A Right.

3 Q Roughly how many people was that?

4 A I believe there was only two additional people
5 besides the roommate and the victim.

6 Q And you said --

7 A I believe his sister and his sister's for lack of
8 better term boyfriend or husband.

9 Q Were there any other steps that you took to ensure
10 the crime scene integrity?

11 A As far as?

12 Q Such as gloves, take photographs of the house before
13 anything was touched?

14 A Nothing was touched.

15 Q Nothing was touched by you or the other officers?

16 A That's correct.

17 Q Did the victim -- the victim was one of the people
18 that you spoke with you stated?

19 A That's correct.

20 Q Did he provide a description of the people that
21 assaulted him?

22 A He named Chris Herndon as one of the suspects but did
23 not provide us a description of the other suspect.

24 Q He made no mention of Rusty Dunbar?

25 A No.

(Jeremy Hembree-Direct by Mrs. Young)

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1 Q He gave no description of height or weight or
2 anything like that either?

3 A No.

4 Q Did you ever reach a conclusion as to why you thought
5 he had been burglarized?

6 MRS. YOUNG: Objection, Your Honor. That calls for
7 speculation.

8 THE COURT: Sustained.

9 MR. MIMS: No further questions. Thank you.

10 THE COURT: Redirect?

11 MRS. YOUNG: None.

12 THE COURT: You may step down. Next witness.

13 MRS. YOUNG: The state calls Corporal Jeremy Hembree.

14 JEREMY HEMBREE, after being duly sworn,
15 testified as follows:

16 THE CLERK: Please have a seat in the jury box.
17 State your full name and spell your last.

18 MRS. YOUNG: Your Honor, may Deputy Goodwin be
19 excused to return to service?

20 MR. MIMS: Yes, sir.

21 THE WITNESS: Jeremy Hembree; H-E-M-B-R-E-E.

22 DIRECT EXAMINATION

23 BY MRS. YOUNG:

24 Q Corporal Hembree, where are you employed?

25 A Aiken Department of Public Safety.

(Jeremy Hembree-Direct by Mrs. Young)

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1 Q Obviously, I'm calling you a corporal so you are a
2 corporal there?

3 A Yes, ma'am.

4 Q Do you have any other duties that you do as part of
5 your law enforcement?

6 A I was assigned to the Aiken Bloodtracking Team on the
7 night in question.

8 Q Did you respond to the scene on the night in
9 question?

10 A Yes, ma'am.

11 Q Can you briefly describe what the Aiken Bloodhound
12 Tracking Team does when they respond to a call.

13 A We use bloodhound tracking dogs to go to the last
14 area where a suspect was located. We take the the dog
15 into that location and we refer to it as cutting in the
16 area.

17 Q What does that mean?

18 A Getting the dog to work. They're like anybody else.
19 They're going to have to come to work and want to work and
20 we brought them out to that area for that.

21 Q And do you recall what, if anything, happened when
22 you brought the dogs out that evening?

23 A We responded to the Wrights Mill Grocery once the
24 vehicle had been located in reference to the home
25 invasion.

(Jeremy Hembree-Direct by Mrs. Young)

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1 Q What did you do once you responded to the Wrights
2 Mill Grocery scene?

3 A We located the vehicle where it was located by the
4 uniformed patrol from the Sheriff's Office. We used -- we
5 bring two dogs with us on each call.

6 Q Why is that?

7 A One dog may get up during the middle of the night and
8 once we get them there decide that they don't want to work
9 or may have a long call and get tired and we have to
10 switch dogs out.

11 Q Okay.

12 A We placed Ginger on the ground area in front of the
13 vehicle where it was located just adjacent to the
14 building. We refer to it as called cutting her in the
15 area. It's possibly the last location where the suspect
16 was located. While doing that we were unable to locate a
17 trail initially with Ginger. It appeared that she wasn't
18 working. When we --

19 Q What do you mean? I think I know what you mean and I
20 think the jurors do, too, but just in case when you say
21 that Ginger wasn't working exactly what are you referring
22 to?

23 A How we determine if the bloodhound is working is they
24 to are, obviously, smelling the ground area. Usually if
25 they you're able to tell that they're on the trail they

(Jeremy Hembree-Direct by Mrs. Young)

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1 have their head down, tail pointing straight up, and
2 they're barking, and Ginger was doing none of that.

3 Q What is marking?

4 A Barking.

5 Q Oh, barking. I didn't hear you. So, what did you do
6 once Ginger did not find a trail?

7 A We -- it took several minutes to probably within a
8 half an hour to an hour for us to determine that we
9 weren't go able to get her to start working. Once we
10 initially tell her -- we continually give her praise
11 because that's all they work for is praise and the glory
12 for it. We continuously try to pump them and get them to
13 work. After about an hour to an hour and 15 minutes we
14 were unable to get her to finally start working and so we
15 placed her back in the vehicle and retrieved our second
16 dog.

17 Q What did you do with your second dog?

18 A In the process right before we were getting ready to
19 put Ginger up Sergeant Looney advised he had located one
20 of the suspects on the roadway in front of Wrights Mill
21 Grocery while he was working a perimeter.

22 Q I'm sorry?

23 A While he was working the perimeter.

24 Q What did you do at that point in time?

25 A We went back to where he was located and looked at

1 his shoes because what we go a lot on is footprints or
2 shoe prints.

3 Q When you're responding the "we," you're not referring
4 to the dogs. You're referring to the dog team?

5 A The dog team along with the dog.

6 Q And can you describe just very briefly what you do as
7 a human to assist the dog?

8 A We look for any items either dropped, footprints,
9 broken branches, ruffled leaves, any of that things within
10 the wooded area or footprints on the ground in the dirt
11 area.

12 Q Is there a name for that?

13 A It's hand tracking.

14 Q After Sergeant Looney informed you that somebody had
15 been found what did you do next?

16 A We were able to go down and look at his shoes. We
17 were able to determine that he came from an adjacent area
18 where we were already looking kind of behind us so in
19 thinking that if both people were still located within the
20 vehicle that they possibly ran together.

21 Q Describe a little more accurately if you can. You
22 said they were behind you. Where are you describing in
23 reference to the Wrights Mill Grocery area?

24 A If you're looking at the Wrights Mill -- if you're
25 looking at the very front of the Wrights Mill Grocery it's

(Jeremy Hembree-Direct by Mrs. Young)

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1 a fork in the road. On the lefthand rear of the building
2 is where the car was located parked behind it. We were
3 actually on the adjacent side of the building and the car
4 and the suspect was actually located if you're looking in
5 front of the store behind it.

6 Q Did you do anything after that?

7 A We retrieved our second dog Sampson and went down in
8 the area where the suspect was located and we went down in
9 a gulley area where we retrieved some of the evidence that
10 had been taken from the residence.

11 Q Describe if you can the condition of the gulley area.

12 A Very rocky. The big, huge granite rocks that you see
13 in gulley areas. Very thick woods, a lot of briars.

14 Q Was it difficult to get through?

15 A Very difficult and it was pitch black dark. There
16 was no street lighting in there.

17 Q Would the type of ground or terrain that you were on
18 be conducive for finding a print, a shoe print, or
19 anything of that nature?

20 A No, not in that area.

21 Q You said you found some items?

22 A We did. We found a Visa debit card and a tin can.

23 Q What is your normal protocol and procedure if the dog
24 team finds what could be considered to be evidence in a
25 case -- physical evidence --

1 A We --

2 Q I mean an item type.

3 A We relay back to the supervisor on scene that we have
4 located what we believe to be evidence and describe the
5 evidence to them and tell them where it is and then
6 normally an investigator would come by once we were past
7 that location and retrieve the evidence.

8 Q And that is not what happened in this case?

9 A That is correct.

10 Q What was the reason for that?

11 A Based on the terrain of where we located the
12 evidence. It was hard to get to so while we were already
13 there a couple of the other dog team members secured the
14 evidence.

15 Q You were saying you're already there. You were
16 actually down --

17 A We were down inside of the gulley in the wooded area
18 and briars.

19 Q What were the other dog team members that were with
20 you?

21 A Deputy Dale Pearson and officer Chris Toole.

22 MRS. YOUNG: No further questions.

23 THE COURT: Cross, if any.

24 CROSS-EXAMINATION

25

(Jeremy Hembree-Cross by Mr. Mims)

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1 BY MR. MIMS:

2 Q Do you remember what the weather was like that night?

3 A It was clear. Clear for an evening, mild
4 temperatures. I believe on our report we had it around 68
5 to 70 degrees.

6 Q Is clear weather and mild temperatures -- is that
7 more conducive to a dog search?

8 A There is a lot based upon a conducive dog search
9 besides the weather. It is terrain, traffic in and out of
10 the area, foot traffic, car traffic because what the dog
11 is smelling is epithelial cells that are dropped from your skin
12 as you move throughout and anything can hold that down or
13 disturb it.

14 Q And neither one of the dogs alerted to a trail in the
15 direction of Aiken High School?

16 A No, sir.

17 Q Did you start the dogs off around Mr. Hynes' vehicle?

18 A No. We don't start at the vehicle because during the
19 clearing process of once they find the vehicle like that
20 the deputies have to go up and clear it. There is foot
21 traffic around the area and our dogs work on what's called
22 last scent -- freshest scent in the area. So we go
23 outside of that area just a little bit.

24 Q And how long were y'all out there before you gave up
25 the search?

(Jeremy Hembree-Cross by Mr. Mims)

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1 A Approximately four hours.

2 Q And there were two dogs working the whole time?

3 A There was one working for the first hour and a half,
4 roughly an hour and a half and then the other dog probably
5 another hour and a half and then towards the end we
6 searched the area again by hand -- what we call hand
7 tracking looking for shoe prints or any other disturbed
8 environment area.

9 Q Do you remember observing any shoe prints around
10 Mr. Hynes' car?

11 A We didn't go around the vehicle.

12 Q Okay. And Mr. Herndon was the only individual that
13 was found by the dogs?

14 A He actually was found by a perimeter unit. When we
15 work the dog in an area we set up what's called a
16 perimeter and we have patrol cars with people in them
17 riding the area hopefully to keep the suspects contained
18 and he came out and was encountered by Sergeant Looney.

19 MR. MIMS: Thank you. No further questions.

20 THE COURT: Redirect, if any.

21 MRS. YOUNG: No redirect, Your Honor. May he be
22 excused?

23 THE COURT: You may step down. Next witness.

24 MRS. YOUNG: The state calls Public Safety Officer
25 Chris Toole. This will be very brief, Your Honor.

(Chris Toole-Direct by Mrs. Young)

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1 CHRIS TOOLE, after being duly sworn, testified
2 as follows:

3 THE CLERK: Please have a seat in the witness box.
4 State your full name for the court and spell your last.

5 THE WITNESS: Chris Toole; T-O-O-L-E.

6 DIRECT EXAMINATION

7 BY MRS. YOUNG:

8 Q Officer Toole, where are you employed?

9 A North Augusta Public Safety.

10 Q Do you have additional law enforcement duties?

11 A I am also assigned to the bloodhound tracking team.

12 Q Were you present on the incident evening that Officer
13 Corporal Hembree already testified about?

14 A Yes, ma'am.

15 Q You were present for the search or attempt to use
16 Ginger and Sampson?

17 A Yes, ma'am.

18 Q Were you present with Corporal Hembree in the gulley
19 area that he described?

20 A Yes, ma'am.

21 Q What did you do in that particular area?

22 A We were all kind of spread out looking for any sign
23 that someone had gone through the area. I actually came
24 across the credit card laying in the briars and just ivy
25 and that kind of stuff, the brush that was in the gulley.

(Chris Toole-Direct by Mrs. Young)

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1 I secured it. We radioed back that we had a card.

2 Q When you say secured it, what does that mean?

3 A I took it in my possession just so nothing would
4 happen to it at that point. We radioed back that we had a
5 card with the victim's name on it, didn't know the name of
6 the victim. They told us to take possession of that
7 card -- that it was the victim. In that same area we
8 found a tin box that contained a little bit of marijuana.

9 Q What did you pick up specifically, if anything?

10 A I picked up the ATM card.

11 Q Officer Toole, I am going to show you what's been
12 previously marked for identification purposes as State's
13 Exhibit No. 13. I will ask you if you recognize that
14 item?

15 A Yes, ma'am. This is the card I picked up.

16 Q After you picked it up what did you do with it?

17 A After we radioed back they told us to bring it out.
18 I took it straight to Investigator Sanders and turned it
19 over to him.

20 MRS. YOUNG: Your Honor, at this time we'd move the
21 to enter State's Exhibit 13 into evidence.

22 MR. MIMS: No objection.

23 MRS. YOUNG: No further questions.

24 THE COURT: Cross, if any.

25

(Chris Toole-Cross by Mr. Mims)

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1 (Whereupon, State's Exhibit No. 13 was admitted into
2 evidence.)

3 CROSS-EXAMINATION

4 BY MR. MIMS:

5 Q Did you see anything in the area that led you to
6 believe that there was more than one suspect?

7 A No, sir, just what we had been told.

8 Q And when you discovered the tin container did you
9 open it immediately?

10 A We were checking because it was around the card. We
11 didn't know what was taken. Anything could be evidence in
12 the woods. We just opened it and secured it.

13 Q But you did discover what was in the tin --

14 A There was marijuana in the tin.

15 MR. MIMS: No further questions.

16 THE COURT: Redirect, if any.

17 MRS. YOUNG: None, Your Honor.

18 THE COURT: You may step down. Next witness.

19 MRS. YOUNG: The state calls Deputy Dale Pearson.

20 DALE PEARSON, after being duly sworn, testified
21 as follows:

22 THE CLERK: Have a seat in the witness box. State
23 your full name for the court and spell your last.

24 THE WITNESS: Dale Pearson; P-E-A-R-S-O-N.

25 DIRECT EXAMINATION

1 BY MRS. YOUNG:

2 Q Where are you employed?

3 A Aiken County Sheriff's Office.

4 Q In what capacity?

5 A I'm with Special Operations Unit.

6 Q Do you have any additional law enforcement duties?

7 A We're primarily tracking team and SWAT related.

8 Q So being on the bloodhound tracking team is part of
9 that?

10 A Yes, ma'am.

11 Q Why are there other agencies other than Aiken County
12 Sheriff's Office involved with that if you know?

13 A Just, basically, joint task force and more manpower.

14 Q Sort of a cooperative efforts among the agencies in
15 this county?

16 A Right.

17 Q You were present on the evening in question?

18 A I was.

19 Q You were present with Corporal Hembree and Officer
20 Toole in the area?

21 A Yes, ma'am.

22 Q What, if anything, did you do while you were there?

23 A We were all in the gully together and I am actually
24 the one that seen the tin can and I secured the tin can.

25 Q What did you do after you secured it?

(Dale Pearson-Direct by Mrs. Young)

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1 A Turned it over to Investigator Sanders.

2 Q It went from you to Investigator Sanders?

3 A Yes, ma'am.

4 Q Directly?

5 A Yes, ma'am.

6 Q Let me show you what's been marked for identification
7 purposes as State's Exhibit No. 12. I ask you if you
8 recognize that?

9 A Yes, ma'am, I do.

10 Q What is it?

11 A It's the tin can that we found in the woods that
12 night.

13 Q That's the one that you turned over to Investigator
14 Sanders?

15 A Yes, ma'am.

16 MRS. YOUNG: Your Honor, at this time we'd move to
17 enter State's Exhibit No. 12 into evidence.

18 MR. MIMS: Without objection.

19 (Whereupon, State's Exhibit No. 12 was admitted into
20 evidence.)

21 THE COURT: Cross, if any.

22 MR. MIMS: No questions.

23 THE COURT: You may step down. You got another short
24 one?

25 MRS. YOUNG: That's all the witnesses we had for

1 today, Your Honor.

2 THE COURT: I told you we'd stop about 5. I tried to
3 get 14 more minutes, but not. Is 9:30 an imposition for
4 anybody? 9 o'clock? 8:30? 8? 9:30 okay? All right.
5 Doughnuts, muffins, fruit, or sausage biscuits?

6 THE JUROR: Sausage biscuits.

7 THE COURT: Sausage biscuits okay in the morning?
8 Coffee? We'll have plenty of coffee. All right. We'll
9 have good hot sausage biscuits and coffee. I am going to
10 start right at 9:30. So if you want to have you a sausage
11 biscuit get here earlier so you can eat that. I hope you
12 have a very pleasant evening.

13 I hadn't seen any press in here today, but if there
14 is anything in the newspaper in the morning please don't
15 read it. Sometimes they don't quite see it like y'all see
16 it. Let's try it based solely on what we hear in the
17 courtroom. Do not let anybody discuss it with you. If
18 they try to, get their names and we'll deal with them.

19 So, have a very pleasant evening. Everybody got
20 rides? Anybody got transportation problems? Anything?
21 Okay. I will see y'all bright and early in the morning.
22 Be here early for your sausage biscuits. We'll start
23 right at 9:30.

24 Everybody else remain seated.

25 No, y'all go ahead.

(Dale Pearson-Direct by Mrs. Young0

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1 (Whereupon, the jury exited the courtroom at 4:48.)

2 THE COURT: Anything from the state before we break
3 for the evening?

4 MRS. YOUNG: Nothing, Your Honor. I do believe we
5 have four bondsmen off bond scheduled in the morning.

6 THE COURT: They can wait.

7 MRS. YOUNG: All right.

8 THE COURT: Mr. Mims?

9 MR. MIMS: Nothing from us, Your Honor.

10 THE COURT: All right. Anything we need to go over
11 to try to expedite things tomorrow on the record?

12 MRS. YOUNG: Nothing that I'm aware of.

13 THE COURT: All right. Let me see y'all in chambers
14 in just a few minutes. The Defendant is in custody.

15 (Whereupon, the proceedings were concluded for the
16 day and were reconvened on December 16, 2009 as
17 follows:)

18 THE COURT: All right. Ladies and gentlemen, I got a
19 note from juror number 31 or either he handed it to the
20 bailiff and said he had some questions. I am going to
21 make this a court exhibit. I am not going to read it into
22 the record. Y'all come up and look at it. I am not sure
23 what to do about it.

24 MRS. YOUNG: Your Honor, all I can say is on behalf
25 of the the state is we hadn't finished putting our case in

1 yesterday.

2 THE COURT: Well, I understand that, but I don't know
3 how -- I don't know what he did last night or who he
4 talked to about that, if anybody. He could be on the
5 internet. I just don't know how. Maybe he was just a
6 very conscientious juror and went home and scratched his
7 head and, boy, these are the things that bothered me. I
8 just don't know what he did.

9 I can do a couple of things. I can bring him out
10 here and ask him. I can just let y'all know about it or I
11 can do whatever y'all suggest.

12 The state?

13 MRS. YOUNG: Well, I think for purposes of
14 clarification if it makes you uncomfortable it makes me
15 uncomfortable that we could bring him out here and ask him
16 about it.

17 THE COURT: That just may just add fuel to the fire.
18 I don't know.

19 Mr. Mims? Mr. Gibbons, the old sage?

20 MR. GIBBONS: I think we need to find out if he's
21 talked to anybody else, Judge, at least.

22 THE COURT: All right. Bring me juror 31, please.

23 Mr. Weeks, let me see y'all up here. Mr. Gibbons,
24 the old sage.

25

(Dale Pearson-Direct by Mrs. Young0

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1 (Whereupon, a bench conference was held.)

2 (Whereupon, the juror enters the courtroom.)

3 THE COURT: Good morning. How are you doing? Are
4 you Mr. Craft?

5 THE JUROR: Yes, sir.

6 THE COURT: All right, sir. I am going to have to
7 excuse you from the remainder of the case. Your duties
8 will be complete for the week. The rest of the cases have
9 been resolved. Thank you for coming.

10 (Whereupon, the juror exits the courtroom.)

11 THE COURT: All right. I had a sidebar for the
12 record. We unanimously agreed that probably the most
13 prudent thing to do in light of the note that was given to
14 us would be to replace him. I have two alternates: Juror
15 number 49, Gerald Fuller; juror number 30, Marcia
16 M-O-N-T-E-I-R-O. I am going to do it randomly. I don't
17 have the computer. I am going to put their numbers on a
18 piece of paper and let one of the clerks just draw it for
19 me. How about that? Anybody have any objection to that?

20 MRS. YOUNG: No objection from the state.

21 MR. MIMS: No objection, Your Honor.

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

24 THE COURT: All right. Juror 49, Gerald Fuller, will
25 be elevated. I am going to elevate him to the jury.

1 Any objection to that proceeding by the state?

2 MRS. YOUNG: No, sir.

3 THE COURT: By the Defendant?

4 MR. MIMS: No, Your Honor.

5 THE COURT: All right. Bring the jury in.

6 THE BAILIFF: The juror wants to know is there any
7 way he can get an explanation as to why he was excused.

8 THE COURT: No. Mr. Whittle, just tell him to stand
9 out there and I'll step back there.

10 (Whereupon, the jury came into open court at
11 approximately 9:42.)

12 THE COURT: Mr. Fuller, how about step over
13 Ms. Montero. I have elevated you since you were alternate
14 number one. Actually, I lost one juror this morning and I
15 put you and Ms. Monteiro -- did it real randomly. I put
16 your names on there and shook them up and drew one
17 randomly and you've been selected to replace him. Y'all
18 bear with me one second.

19 Is he still out there?

20 THE BAILIFF: Yes, sir.

21 (Whereupon, the Judge exits the courtroom and speaks
22 with the excused juror.)

23 THE COURT: You may call your first witness.

24 MRS. YOUNG: The state calls Gary Boatwright.

25 GARY R. BOATWRIGHT, JR., after being duly sworn,

(Gary R. Boatwright, Jr.-Direct by Mrs. Young)

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1 testified as follows:

2 THE CLERK: Please have a seat in the witness box.

3 State your full name for the court and spell your last.

4 THE WITNESS: Gary Rufus Boatwright, Jr.;

5 B-O-A-T-W-R-I-G-H-T..

6 DIRECT EXAMINATION

7 BY MRS. YOUNG:

8 Q Mr. Boatwright, how are you doing this morning?

9 A Doing just fine.

10 Q If you would please make sure that you speak up. All

11 of the jurors need to hear you as well as the Court

12 Reporter. Did you previously own a 1996 green Pontiac

13 Grand Prix?

14 A Yes, ma'am.

15 Q Do you recall when you purchased that vehicle?

16 A I want to say it was '03, August of '03.

17 Q Where did you purchase it?

18 A Henna.

19 Q In a dealership?

20 A No, that's when I sold it.

21 THE COURT: Sir?

22 THE WITNESS: That's when I sold it. I was trying to

23 think back.

24 THE COURT: That's when you what?

25 THE WITNESS: I am not sure. I just got called in

(Gary R. Boatwright, Jr.-Direct by Mrs. Young)

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1 here. That's when I sold it.

2 THE COURT: No problem. I thought you said that's
3 when I stold it. I didn't know. My wife says I need a
4 hearing aid. Maybe I do.

5 THE WITNESS: Sorry. I mumble.

6 THE COURT: That's when you sold it in '03?

7 THE WITNESS: Yea. I am trying to kind of calculate.

8 Q If you don't remember, that's fine.

9 A I would say I bought it in '98.

10 Q And you bought it from Henna?

11 A Yes, ma'am.

12 Q And that is a dealership?

13 A Yes, ma'am.

14 Q And now you say you sold it in 2003?

15 A Yes, ma'am.

16 Q And how did you go about selling the vehicle?

17 A I just --

18 Q Did you advertise it somewhere?

19 A I put it on the street on a Main Street, put a sign
20 on it, sold it.

21 Q And do you remember how many people inquired or asked
22 you about the vehicle?

23 A Yes, ma'am. There was two.

24 Q Excuse me?

25 A Two.

(Gary R. Boatwright, Jr.-Direct by Mrs. Young)

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1 Q Two. Okay. Do you remember what their names were?

2 A I don't remember their names. I mean it was so long
3 ago. More of a identity thing. One happened to be a
4 hispanic and another one was I guess that fellow right
5 there.

6 Q The man in the checked shirt?

7 A Yes.

8 THE COURT: Let the record reflect he is pointing to
9 the victim in the case.

10 THE WITNESS: Yes, sir, right here.

11 Q That's the man you sold the car to?

12 A Yes, ma'am.

13 Q Did those two individuals test drive it?

14 A This fellow here did. The hispanic guy didn't. He
15 just looked at it.

16 Q Were those the only two people that inquired about
17 buying the car?

18 A Yes, ma'am.

19 Q Do you know Rusty Dunbar?

20 A No, ma'am.

21 Q Has Rusty Dunbar ever been in that car with you?

22 A No, ma'am.

23 MRS. YOUNG: No further questions.

24 THE COURT: Cross, if any.

25 CROSS-EXAMINATION

(Gary R. Boatwright, Jr.-Cross by Mr. Mims)

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1 BY MR. MIMS:

2 Q You're not aware of everyone who was in your car
3 before you bought it in 1998; correct?

4 A No, sir.

5 Q And you're obviously not aware of everyone that drove
6 your car or had been in the car after you sold it;
7 correct?

8 A That's correct.

9 MR. MIMS: Thank you.

10 THE COURT: I appreciate your coming, sir. Sorry for
11 any inconvenience. Have a good holiday season. Next
12 witness.

13 MRS. YOUNG: Your Honor, will you release him?

14 THE COURT: You may go. Thank you.

15 MR. GRIMES: The state calls Sergeant Clark Looney.

16 KENNETH C. LOONEY, after being duly sworn,
17 testified as follows:

18 THE CLERK: Have a seat in this witness box and state
19 your full name for the court and spell your last.

20 THE WITNESS: My name is Kenneth Clark Looney;
21 L-O-O-N-E-Y.

22 DIRECT EXAMINATION

23 BY MR. GRIMES:

24 Q Sergeant Looney, where are you currently employed?

25 A With the Aiken County Sheriff's Office.

(Kenneth C. Looney-Direct by Mr. Grimes)

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1 Q Are you a Sergeant?

2 A I am, yes.

3 Q How long have you worked there?

4 A Just under 11 years.

5 Q Okay. Were you working on the night of October 6,

6 early morning of October 7, 2008?

7 A Yes, sir.

8 Q Okay. Do you recall an incident on that date?

9 A Yes, sir.

10 Q How were you informed of the incident?

11 A Over the radio through our dispatcher that a burglary
12 was in progress on Wire Road and I was responding to it.

13 Q Okay. How did you respond?

14 A I was responding from, you know, coming from the west
15 side of the county, you know, back to the east side and
16 going past the Sheriff's Office which is on Hampton Avenue
17 and going towards Wire Road.

18 Q Okay. Do you recall any -- do you recall where you
19 were headed?

20 A I was headed towards the call for the burglary in
21 progress and I was traveling in my vehicle -- Hampton
22 Avenue approaching Rudy Mason Highway and Wire Road.

23 MR. GRIMES: Your Honor, may I approach the witness?

24 THE COURT: You may.

25 Q I'm going to show you what's previously been marked

(Kenneth C. Looney-Direct by Mr. Grimes)

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1 as State's Exhibit 5 and ask if you recognize what it is?

2 A Yes, sir. It appears to be an aerial photograph of
3 Aiken County in the area of Wire Road and Rudy Mason.

4 Q Okay. Does this accurately reflect what you know to
5 be this area of Aiken County?

6 A Yes, sir, it does.

7 MR. GRIMES: At this time I'd move to enter State's
8 exhibit 5 into evidence and ask that --

9 MR. MIMS: No objection.

10 THE COURT: No objection.

11 MR. GRIMES: -- I be able to publish it at this time.

12 THE COURT: You may.

13 (Whereupon, State's Exhibit No. 5 was admitted into
14 evidence.)

15 MR. GRIMES: Your Honor, may the witness come down
16 and point?

17 THE COURT: He may. Officer, If you could move back.
18 This guy on the end has to see.

19 THE WITNESS: Yes, sir.

20 THE COURT: Thank you. My foreman has to see.

21 Q Can you please identify on the map where you were
22 responding to?

23 A I guess I was coming from this direction and I was
24 responding -- This is Wire Road here and this is Rudy
25 Mason. I was coming from this direction and, you know,

(Kenneth C. Looney-Direct by Mr. Grimes)

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1 this is where I was responding from. I was traveling in
2 this direction.

3 Q Okay. And do you know which direction -- Do you know
4 where the vehicle was at the point that you were
5 responding to this area?

6 A At the time I didn't know.

7 Q Okay.

8 A When I located the vehicle -- I located the vehicle
9 when I -- This is the what appears to be Wrights Mill
10 Grocery and this is the front side of it and this is the
11 backside and I pulled into this area here, came around the
12 backside of Rudy Mason -- I'm sorry, of Wrights Mill
13 Grocery and spotted the vehicle at the backside of Wrights
14 Mill Grocery facing in towards where it had, obviously,
15 struck the back of the store.

16 Q The vehicle -- was the vehicle located immediately?

17 A No. It had been a while. I am not sure how long,
18 but it wasn't right away. It was sometime had passed
19 because we were all searching the area for that suspect
20 vehicle.

21 Q Okay. All right. Have a seat up there. Once you
22 located the vehicle in that area what did you do?

23 A When I saw the vehicle I verified the tag number. I
24 knew it matched the description and the tag number that
25 was put out. I went out over the radio to our dispatcher

(Kenneth C. Looney-Direct by Mr. Grimes)

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1 calling it out and giving my location as to where I was
2 out with what I believed to be that suspect vehicle.

3 Q Was there anyone in the vehicle?

4 A Sir?

5 Q Was there anyone in the vehicle?

6 A No, sir. It was unoccupied.

7 Q Did anyone else respond to that scene?

8 A They did, yes, sir. Deputies in the area. I know
9 that Deputy Wiggins had arrived and, of course, an
10 investigator arrived sometime later -- Investigator
11 Sanders.

12 Q Did the Aiken Bloodhound Tracking Team respond to
13 that area?

14 A They were notified and they responded as well, yes,
15 sir.

16 Q What were you doing while they were in the area?

17 A I was on the scene with the vehicle.

18 Q Did you leave that scene during that period of time?

19 A No, sir.

20 Q Did you notice anyone at some point in the area?

21 A Sometime later, yes, sir. Much later. After the
22 bloodhound team had arrived and was conducting a search
23 for the suspect and they were about to wind that portion
24 up, then I saw from -- and I was in my vehicle at the time
25 facing the suspect vehicle in that grocery store when I

(Kenneth C. Looney-Direct by Mr. Grimes)

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1 just turned and looked and saw a male subject walking from
2 the rear of me which is near the bridge there -- walking
3 up towards the parking lot where I was located and at that
4 time I exited the vehicle and asked him where he was going
5 and at that time he kind of pointed. I didn't -- couldn't
6 make out what he was saying, but he kind of pointed and I
7 thought he had mumbled something like a friend or
8 something and I said, Where are you going, and then he
9 said "I'm the one you're looking for."

10 THE COURT: I'm the one what?

11 THE WITNESS: Like he said -- I asked him where he
12 was going and he kind of pointed and I thought I had heard
13 him say to a friend's house or a friend and at that time I
14 said, Where are you going? I repeated that again, and he
15 said, "I'm the one you're looking for."

16 Q Was that person placed under arrest?

17 A He was placed under arrest at that time and put in
18 the back patrol car.

19 Q Did you learn the name of that person?

20 A I did.

21 Q Do you recall what that name was?

22 A Rusty Dunbar. I'm sorry. I don't remember the name
23 of the other subject at the time. I know we were looking
24 for the --

25 Q Just to be clear it was not Rusty Dunbar?

1 A It was not Rusty Dunbar.

2 Q Was that person taken into custody?

3 A The person that walked up to me was taken into
4 custody, yes, sir.

5 MR. GRIMES: And if I could, Your Honor, have him
6 step down and mark on the map.

7 These arrows have a little tab on them. If you could
8 place an arrow on this map where the suspect -- where you
9 noticed the suspect at.

10 THE WITNESS: In the direction he was traveling or
11 walking?

12 Q If you could just point out that location.

13 A He was right here.

14 Q All right. Thank you.

15 (Whereupon, the attorneys conferred.)

16 Q May I have you place one more arrow on here for us,
17 please?

18 A Okay.

19 Q If you could place an arrow where you saw the
20 vehicle.

21 A Right there.

22 Q And what is that building?

23 A This is -- the building is Wrights Mill Grocery and
24 this is the backside of it. That's the direction in which
25 I saw the vehicle facing.

(Kenneth C. Looney-Cross by Mr. Mims)

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1 MR. GRIMES: Thank you. I have no further questions.

2 THE COURT: Mr. Mims?

3 CROSS-EXAMINATION

4 BY MR. MIMS:

5 Q Did you contact the owner of Wrights Mill Grocery?

6 A The owner was contacted. I personally did not --

7 Q Okay.

8 A -- but he was contacted through I believe it was our
9 dispatcher and they did respond.

10 Q And when Christopher Herndon came out of the woods do
11 you remember if the bloodhounds were still searching at
12 that point?

13 A They had just given up the search. They were just
14 winding that up and, you know, stopping.

15 Q And when he first came out you said that he pretended
16 that he was going to a friend's house?

17 A Right. Yes, sir. He was walking up towards the
18 parking lot where I was parked and when I approached and
19 was walking towards him he was walking up towards me and I
20 asked him where he was going and that's when he said to
21 that effect and I can't be quite sure other than he
22 pointed and that's what I believe I heard from him was
23 that he was, you know, going to a friend's house like he
24 was trying to say something about where he was going. I
25 said, Where are you going, and that's when he said, "I'm

(Kenneth C. Looney-Cross by Mr. Mims)

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1 the one you're looking for."

2 Q Just for clarification he said "I'm the one you're
3 looking for?" He didn't say I am one of the ones you're
4 looking for?

5 A He said, "I'm the one you're looking for."

6 Q The -- Do you remember what his clothing or body
7 looked like at the time?

8 A Not completely; not well enough to say. I know he
9 looked, you know, dirty.

10 Q He looked dirty?

11 A But not specific on the clothing.

12 Q And nothing that you discovered around Wrights Mill
13 Grocery or the car led you to believe that Rusty Dunbar
14 was in any way involved with this?

15 MRS. YOUNG: Objection, Your Honor. That calls for a
16 conclusion.

17 THE COURT: Did you find anything around the vehicle
18 to link it to Rusty Dunbar?

19 THE WITNESS: No, sir.

20 THE COURT: Thank you.

21 MR. MIMS: No further questions. Thank you.

22 THE COURT: Redirect?

23 MR. GRIMES: None, Your Honor.

24 THE COURT: Thank you. You may step down. You're
25 excused.

(Christopher M. Herndon-Direct by Mrs. Young)

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1 MRS. YOUNG: The state calls Christopher Herndon.

2 THE COURT: Mr. Foreman, ladies and gentlemen, just
3 bear with us one second. Every now and then we have a
4 little logistical problem. Bear with us. Everybody get
5 their sausage and cheese, ham and egg biscuits?

6 THE FOREPERSON: Yes, sir.

7 THE COURT: Mr. Whittle, what are the choices for
8 lunch today? Sir?

9 THE BAILIFF: We can go to the pool room.

10 THE COURT: I'm sorry. I shouldn't ask Mr. Whittle.
11 He just goes to all of these joints. He doesn't go to
12 nice places. Mr. Whittle is from the valley. We can go
13 down the in the valley somewhere and eat.

14 THE BAILIFF: You couldn't make it. You got to have
15 a passport.

16 THE COURT: Come around, sir, please.

17 CHRISTOPHER M. HERNDON, after being duly sworn,
18 testified as follows:

19 THE CLERK: Please have a seat in the witness box.
20 State your full name for the court and spell your last.

21 THE WITNESS: My name is Christopher Michael Herndon,
22 Sr.; H-E-R-N-D-O-N.

23 DIRECT EXAMINATION

24 BY MRS. YOUNG:

25 Q Good morning, Mr. Herndon.

- 1 A Good morning.
- 2 Q Mr. Herndon, where are you currently living?
- 3 A Aiken County Detention Center.
- 4 Q And why is that?
- 5 A I can't make bond.
- 6 Q Are you facing charges?
- 7 A Yes, ma'am.
- 8 Q And are the charges the same ones that Mr. Dunbar is
- 9 facing?
- 10 A Yes, ma'am.
- 11 Q And you're here in court to testify today?
- 12 A Yes, ma'am.
- 13 Q Have you been made any promises regarding your
- 14 testimony?
- 15 A No, ma'am.
- 16 Q You haven't been given any statements regarding
- 17 getting a benefit for testifying here today?
- 18 A No, ma'am.
- 19 Q Do you recall the morning of October 6, 2008?
- 20 A Yes, ma'am.
- 21 Q Where were you living at that point in time?
- 22 A With my mother.
- 23 Q What address?
- 24 A Road, Aiken.
- 25 Q You're kind of soft spoken so just make sure that you

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1 speak loudly.

2 A Yes, ma'am.

3 Q And what were you doing that morning?

4 A We got up. Me and my cousin had planned on going to
5 work.

6 Q Who is your cousin?

7 A Jerry Thornton.

8 Q What kind of work did you do?

9 A At the time we were doing brick and block work,
10 underpinning trailers.

11 Q You said you were planning to go to work?

12 A Yes, ma'am.

13 Q Did you go to work?

14 A No, ma'am.

15 Q Where did you go?

16 A We went and took some scrap metal to the scrap place
17 and stopped by the liquor store and bought some liquor.

18 Q What time of the day or night was this?

19 A It was that morning; pulled up at the liquor store at
20 9:25.

21 Q You were at the liquor store first thing in the
22 morning?

23 A Yes, ma'am.

24 Q What did you buy at the liquor store?

25 A A bottle of vodka.

(Christopher M. Herndon-Direct by Mrs. Young)

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1 Q And did Mr. Thornton have anything to drink to your
2 knowledge?

3 A Not at that time, no, ma'am.

4 Q What was the next thing that you did?

5 A We went to to the gas station next door to the liquor
6 store.

7 Q What did you do while you were there?

8 A I bought a couple of beers for my cousin Jerry and I
9 got a cup of water and put a little bit of gas in the
10 truck.

11 Q What kind of truck was it?

12 A A black Dodge Ram pickup truck.

13 Q Where did you go next?

14 A We left from there and went to the valley to pawn the
15 brick saw that my cousin had at Harrison's Hardware.

16 Q What was the purpose of that?

17 A To get some money for gas and get some more beer.

18 Q Where is the next place that you recall going?

19 A We went and picked a cement mixer up that was on the
20 job site that my cousin had rented.

21 Q Do you recall where the job site was?

22 A Yes, ma'am. It was up in I think Gloverville. It
23 was in the valley. Gloverville, I believe, if I ain't
24 mistaken.

25 Q You said you went there to pick up the cement mixer?

(Christopher M. Herndon-Direct by Mrs. Young)

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- 1 A Yes, ma'am.
- 2 Q Then what did you do?
- 3 A We left from there and we called Rusty up to try --
- 4 we were going to try to get rid of that cement mixer, sell
- 5 it.
- 6 Q I'm sorry?
- 7 A We were trying to sell the cement mixer.
- 8 Q So you called Rusty?
- 9 A Yes, ma'am.
- 10 Q What did you do after you called Rusty?
- 11 A We went and picked him up. We stopped by the gas
- 12 station first and got some more beer on the way out there
- 13 when we got towards his house.
- 14 (Whereupon, a cellhone rang.)
- 15 THE COURT: Hold on. Move along.
- 16 Q You stopped and got more beer?
- 17 A Yes, ma'am.
- 18 Q And then you said you picked Rusty up?
- 19 A Yes, ma'am. I picked Rusty up and his girlfriend
- 20 Laura.
- 21 Q And where was that?
- 22 A At his mother's residence.
- 23 Q Do you know the address?
- 24 A It is Bridge Creek Road.
- 25 Q Do you know about what time of day it was?

1 A It's about noontime, around 12.

2 Q You talked about getting some vodka. Had you been
3 drinking that prior to picking up Rusty?

4 A I had already drank it. Yes, ma'am.

5 Q You completed or you finished what you drank?

6 A Yes, ma'am.

7 Q And after you picked up Rusty and you said his
8 girlfriend?

9 A Yes, ma'am.

10 Q What is her name?

11 A Laura Smith.

12 Q Where did you go next or what did you do next?

13 A We left from there. We actually had a flat tire.

14 So, we was able to get some air in the tire and we turned

15 around and went back -- actually, went back to Rusty's

16 house -- mother's house -- because he had a tire because

17 the tire kept getting low and but the tire held air so we

18 decided not to do that. So we went -- He made a phonecall

19 to a friend of his Nathan Hamilton about getting rid of

20 the cement mixer. So, we wound up at the motel room where

21 his friend Nathan Hamilton was at.

22 Q Let me ask you this. You keep saying getting rid of
23 the cement mixer. That means?

24 A We were gonna sell it.

25 Q You said you went to a motel?

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1 A Yes, ma'am.

2 Q And met somebody named Nathan Hamilton?

3 A Yes, ma'am.

4 Q What did you do next?

5 A We stayed. Me and my cousin Jerry Thornton stayed
6 there and Rusty, his girlfriend Laura, and Nathan Hamilton
7 unhooked this cement mixer and put it -- hooked it to the
8 back of Nathan Hamilton's van and they left to try to go
9 get rid of it because Nathan Hamilton -- he is a brick
10 mason so he knew a lot of people.

11 Q And who all left to try to go sell the cement mixer
12 at that time?

13 A It was Nathan Hamilton, Rusty Dunbar, and Laura
14 Smith.

15 Q And who all was with you?

16 A Just me and my cousin Jerry Thornton.

17 Q And what did you do during that time period?

18 A We just sat at the motel room waiting on them to
19 return.

20 Q And do you know how long they were gone?

21 A A couple of hours.

22 Q They came back at some point?

23 A Yes, ma'am.

24 Q Who all came back?

25 A Nathan Hamilton, Rusty Dunbar, and Laura Smith.

1 Q And what happened when they came back?

2 A We hooked the the cement mixer back up to the truck.

3 I had made a phonecall to a friend of mine and my cousin

4 Jerry Thornton -- he used to work with him. He is a brick

5 and block mason. He said he would buy the cement mixer.

6 So we made our way out towards his house in Windsor.

7 Q Let me ask you this. I'm assuming -- you said Nathan

8 Hamilton came back -- they didn't sell the cement mixer?

9 A No, ma'am.

10 Q And who was the person that you called?

11 A Jody Chavis.

12 Q And you called him regarding selling the cement

13 mixer?

14 A Yes, ma'am.

15 Q And you said he lives where?

16 A In Windsor, South Carolina.

17 Q What did you do at that point in time?

18 A We left the motel room -- me, Jerry Thornton, Rusty

19 Dunbar, Laura Smith -- stopped by Jody Chavis' mother's

20 house to get some gas money to make it the rest of the way

21 out to Windsor.

22 Q Okay. Then what did you do?

23 A When we got out to Windsor Jody was out in his

24 backyard. So, when he we pulled up he told us to pull

25 around to the back. We pulled around to the back,

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1 unhooked the cement mixer. Me and Rusty actually unhooked
2 it and he give me the money. My cousin stayed --

3 Q Who give you the money?

4 A Jody Chavis.

5 Q All right.

6 A And my cousin stayed in the truck. We got back in
7 the truck and left, stopped at the store and got some beer
8 and cigarettes and made our way to go buy some crack.

9 Q What store did you stop at?

10 A A little store called Ruth's Country Store in
11 Windsor.

12 Q You said you were going to buy crack after that?

13 A Yes, ma'am.

14 Q Where did you go?

15 A We went behind -- it is over there behind the DSS
16 building here in Aiken.

17 Q You keep saying we. When you say we, who all are you
18 referring to?

19 A Me, my cousin Jerry Thornton, Rusty Dunbar, and Laura
20 Smith.

21 Q Where did you go?

22 A We went to the place behind DSS, over behind the DSS
23 building.

24 Q What did you do when you got there?

25 A We pulled up in the yard. Rusty -- Rusty Dunbar and

1 myself got out and actually went into the house. We had
2 to wait on the guy who was selling crack to get there. So
3 I went outside in the garage area with a couple of guys
4 that was there. I don't know who they were -- just talked
5 with them for a few minutes waiting on the guy to get
6 there to sell crack to us and I waited outside. When the
7 guy got there rusty went inside to with the guy and bought
8 crack and came back out. We got in the truck and I
9 actually sat in the driveway and was going to smoke some
10 there before we left and --

11 Q Did you do that?

12 A No, ma'am, I didn't. I made a can to smoke it on
13 though.

14 Q You were going to do what?

15 A Make a can. I was making a can up to smoke the crack
16 on when we while we were sitting in the driveway.

17 Q What does that mean for people who might not know?

18 A It is just a way to smoke crack.

19 Q What do you do?

20 A Poke holes in the top of the can, put ashes up on
21 there. Put it on top of the can and smoke it.

22 Q What is the next thing that you did?

23 A We left from there and my cousin Jerry and Rusty --
24 they wanted to stop by and get a stem which is another way
25 to smoke crack cocaine.

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1 Q What is a stem?

2 A It is a glass tubing that little plastic roses come
3 in. You take the plastic rose out and take some screen,
4 put it in the end of the pipe and you put your crack on it
5 and smoke it.

6 Q Where do you buy something like that?

7 A Several different convenience stores around Aiken
8 sell them.

9 Q Is that what you did next?

10 A Yes, ma'am. We stopped at the gas station.

11 Q And bought the stem?

12 A Yes, ma'am.

13 Q And then what happened?

14 A We smoked the crack, wanted to get more. I wasn't
15 satisfied with the quantity of the crack. So I said I
16 know somebody down in Clearwater we could go get some
17 from.

18 Q Let me ask you this. You said, "We smoked crack."
19 Who are you referring to?

20 A Me, Rusty Dunbar, and Jerry Thornton.

21 Q Who else was present?

22 A Laura Smith.

23 Q So you went to Clearwater?

24 A Yes, ma'am.

25 Q What did you do there?

1 A I bought some crack from a guy down there I knew. I
2 mean, I didn't know him very well, but I had dealt with
3 him several times in the past. It is a former guy I used
4 to work with. Crack dealer comes to his house and sells
5 crack.

6 Q Let me ask you this. I am not sure I asked you this
7 before. How much money did you get when you sold the
8 cement mixer?

9 A \$250. Actually, it was 240 because the ten dollars
10 we got from his mother he deducted that.

11 Q And do you know how much crack -- how much money was
12 spent at the first location?

13 A A hundred dollars.

14 Q And how much money did you spend when you got to
15 Clearwater?

16 A Thirty, forty dollars.

17 Q And this was somebody that you had dealt with
18 previously?

19 A Yes, ma'am.

20 Q What do you mean by dealt with?

21 A I have been down there and bought crack before.

22 Q After you did that what was the the next thing that
23 happened?

24 A We left from there. We made our way back towards
25 Aiken, stopped at a convenience store by Laura Smith's

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1 Daddy's house. We bought some Mad Dog 20/20. I am not
2 sure how many bottles we bought at that time. We went to
3 Laura Smith's Daddy's house and sat there and drank.

4 Q Mr. Herndon, where is Laura Smith's Daddy's house?
5 Do you have a a more exact location?

6 A Yes, ma'am. It is over by East Aiken Elementary
7 School on Moseley Road.

8 Q About what time of the day or night was this?

9 A It had to be around 10 or so.

10 Q After dark?

11 A Yes, ma'am.

12 Q Did you go to Laura Smith's Daddy's house?

13 A Yes, ma'am.

14 Q And who all was there, if you recall?

15 A I recall seeing Ricky Smith, his brother J.R. -- I am
16 assuming -- Smith. His mother was there and it is me,
17 Jerry Thornton, Rusty Dunbar, and Laura Smith.

18 Q What did you do when you got there?

19 A We just sat around and drank outside as normal. I
20 have been there several times and they just sit outside
21 mostly around the oak tree and drank and smoke weed.

22 Q Is that what you did that day?

23 A We drank, yes, ma'am. I don't recall if we smoked
24 any weed or not.

25 Q Who was drinking?

1 A Me, Rusty Dunbar, my cousin Jerry Thornton, Ricky
2 Smith, and J.R.

3 Q Do you know how long you stayed there?

4 A Not really; no, ma'am.

5 Q Did you leave from there at some point?

6 A Yes, ma'am.

7 Q Do you know what time of the day or night it was at
8 that point in time?

9 A It was around 12, I guess.

10 Q Who all -- You left from there?

11 A Yes, ma'am. Well, Rusty Dunbar and Laura went up to
12 the store to buy more Mad Dog 20/20 prior to us leaving
13 and we drank some more before we left.

14 Q So you stopped and got some Mad Dog, went to the
15 house, drank some, they left to get more --

16 A Yes, ma'am.

17 Q -- came back and you stayed at the house during that
18 time?

19 A Yes, ma'am.

20 Q And eventually you left for the evening?

21 A Yes, ma'am.

22 Q Who left?

23 A Me, Jerry Thornton, Rusty Dunbar, and Laura Smith.

24 Q Were you in the same vehicle?

25 A Yes, ma'am.

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- 1 Q What vehicle was that?
- 2 A My cousin's black Dodge pickup truck.
- 3 Q Do you recall who was driving?
- 4 A My cousin Jerry.
- 5 Q What was the next thing that happened?
- 6 A We had came up with a plan to go to Daniel Hynes'
- 7 house to rob.
- 8 Q Who is we?
- 9 A Me and Rusty Dunbar.
- 10 Q What did you do next after you came up with that
- 11 plan?
- 12 A I actually told my cousin to drop us off at Daniel
- 13 Hynes'.
- 14 Q When you say your cousin you're referring to who?
- 15 A Jerry Thornton.
- 16 Q And did he do that?
- 17 A Yes, ma'am.
- 18 Q Where is Daniel Hynes' house?
- 19 A It is located out on Wire Road, Aiken.
- 20 Q What did -- Where did your cousin drop you off?
- 21 A Out by the driveway. He dropped us -- He stopped in
- 22 the road and let us out.
- 23 Q So you, basically, got out of the truck while it was
- 24 on the road?
- 25 A Yes, ma'am.

(Christopher M. Herndon-Direct by Mrs. Young)

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1 Q Who got out?

2 A Me and Rusty Dunbar.

3 Q What did you do next?

4 A We made our way down to his house. He lives in a
5 bottom.

6 Q What does that mean? He lives in a bottom. It is
7 down a slope. He lives down in a bottom. You have to go
8 down hill to his house in other words. I'm sorry.

9 Q What did you do next?

10 A We looked through the window because the blinds were
11 cracked. There was a little bit of light on. We could
12 see a little light on in there so we looked through the
13 window.

14 Q What did you see when you looked in?

15 A I seen Mr. Daniel Hynes on the couch.

16 Q And could you describe what kind of lights were on
17 inside the residence at that time?

18 A It was just the kitchen light which was shining a
19 reflection into the living room.

20 Q Where would that have been in location to where
21 Mr. Hynes was at that time?

22 A The kitchen is right there. The living room is right
23 there beside it.

24 Q What did you do once you observed Mr. Hynes?

25 A I told my co-defendant Rusty Dunbar I said, I don't

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1 want to do this. Let's leave. Call my cousin up and tell
2 him to come get us. I said, Please tell him to come get
3 us.

4 Q What did he say?

5 A He said, We got him. Let's go on and get this done.
6 I said, No, I don't want to do this. I said, Come on,
7 please. I'm begging you. Call my cousin and let's leave.

8 Q What happened next?

9 A We walked from the window there to the porch and we
10 were going up the porch and the whole time I am telling
11 Rusty, please, let's don't do this. Don't do this. Let's
12 go. Let's go. Let's go. And he is just steady going up
13 the step and then he just kicked the door in and he run on
14 in. I actually stayed on out on the porch for 10 or maybe
15 15 seconds before I actually went in the house.

16 Q So you said, Let's not do this, let's not do this,
17 but you went on in the house anyway?

18 A Yes, ma'am.

19 Q What did you observe when you went into the house?

20 A Rusty had Daniel in headlock with a knife to his
21 throat.

22 Q And Daniel's body was positioned in what manner?

23 A He had him in headlock on the couch kind of in a
24 sitting position -- Rusty was. He kind of had Daniel
25 slumped over like this and during that time he had come up

1 with him and started making his way to the bedroom.

2 Q And you said Mr. Dunbar had a knife?

3 A Yes, ma'am.

4 Q Where did he get that knife?

5 A From me.

6 Q From you?

7 A Yes, ma'am.

8 Q You gave it to him that night?

9 A Yes, ma'am.

10 Q And in preparation for this?

11 A Yes, ma'am, on the way over there.

12 Q And while he was taking him to the back room was he
13 saying anything to him?

14 A Yea, he was telling him if you look at us we're gonna
15 to kill you and then just making threats to him.

16 Q What were you doing?

17 A I was looking through some of the things trying to
18 find some -- find the drugs.

19 Q What were you looking through?

20 A Marijuana. Oh, I looked through his kitchen, some of
21 the cabinets -- cabinets that are higher up. When he made
22 his way to the bedroom -- When Rusty made his way to the
23 bedroom with Daniel I looked through a couple of his
24 drawers in his bedroom, but didn't find anything.

25 Q Before we get any further, do you remember what you

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1 were wearing that night?

2 A Yes, ma'am.

3 Q What were you wearing?

4 A I was wearing a white t-shirt, denim shorts, and a
5 pair of boots -- work boots.

6 Q Are those your clothes?

7 A Yes, ma'am.

8 Q And do you recall what Mr. Dunbar was wearing?

9 A Yes, ma'am. He was wearing a black toboggan. A few
10 days prior to that they had a birthday party out at his
11 house for him. His brother bought him it was a black
12 shirt that had a thermal shirt underneath it that came
13 together as an outfit and he was wearing jeans and a pair
14 of black New Balance shoes.

15 Q And he had on long sleeves?

16 A Yes, ma'am.

17 Q Did either one of you have gloves on?

18 A No, ma'am.

19 Q So, you're at the bedroom and you said you were
20 rummaging through some drawers. What was Mr. Dunbar
21 doing?

22 A He had Daniel on the edge of the bed at this time
23 laid across him like this right here and still in the
24 headlock with a knife to him telling him not to look at us
25 or I am going to kill you and...

- 1 Q What were you doing at that point?
- 2 A I was still actually looking through stuff and then I
- 3 came and stood right there by where Daniel was at where
- 4 Rusty had him at.
- 5 Q And during this point in time were you saying
- 6 anything?
- 7 A Just asking where some drugs was at, maybe some
- 8 money.
- 9 Q Who were you asking that?
- 10 A Daniel.
- 11 Q Did he ever make a response that you recall?
- 12 A No, ma'am. I -- He was to me was real scared.
- 13 Q Was he saying anything?
- 14 A He just in fear for his life. He didn't want us to
- 15 kill him.
- 16 Q That's what he was saying?
- 17 A Yes, ma'am. He said, Please don't hurt me. Please
- 18 don't hurt me.
- 19 Q You said Mr. Dunbar had him on the bed?
- 20 A Yes, ma'am.
- 21 Q What did you do next?
- 22 A I cut him across his back.
- 23 Q You cut who?
- 24 A Daniel Hynes.
- 25 Q What did you cut him with?

(Christopher M. Herndon-Direct by Mrs. Young)

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- 1 A A pocket knife.
- 2 Q That one that you had in your possession?
- 3 A Yes, ma'am.
- 4 Q And can you describe how you did that?
- 5 A I just -- I had it on my side here and I opened the
- 6 case up and pulled it up, opened it up and just cut him
- 7 across his back.
- 8 Q Why did you do that?
- 9 A I don't know.
- 10 Q Once you did that what is the next thing you did?
- 11 A I had got the keys and the wallet because I had asked
- 12 him prior to that where his keys and his wallet and all
- 13 was and gotten his keys and his wallet and that tin can
- 14 with the marijuana in it and -- which everything was on
- 15 the counter there. Then we threw him in the floor. I
- 16 cut the drop-cord to the fan, the drop-cord to the lamp.
- 17 We tied him up, kicked him in the head a few times, and
- 18 proceeded to leave.
- 19 Q What is Mr. Dunbar doing while you're cutting these
- 20 cords?
- 21 A He is standing right there where Daniel is at over
- 22 him making sure he is ain't moving.
- 23 Q He is restraining him in some manner?
- 24 A I don't recall. I know he was just standing there.
- 25 Q Who tied him up?

- 1 A I think I tied him up while Rusty was holding him, I
2 believe.
- 3 Q How did you tie him?
- 4 A I hog-tied him -- hands behind his back, ankles.
- 5 Q Hands behind his back and his ankles were tied?
- 6 A Yes, ma'am.
- 7 Q And you said you kicked him in the head?
- 8 A Me and Rusty both kicked him in the head.
- 9 Q Mr. Dunbar saying anything else at this point in
10 time?
- 11 A He wanted me to help him put him in the trunk of the
12 car and take him off.
- 13 Q What did you say?
- 14 A I told him no. I am not doing that.
- 15 Q What did he say to you in that regard?
- 16 A He said, Let's take him and put him in the trunk of
17 the car. I said, No. I said, I am not doing that.
- 18 Q Is that before or after you kicked him in the head?
- 19 A It was before.
- 20 Q Then what's the next thing that happened? You kicked
21 him in the head?
- 22 A Yes, ma'am.
- 23 Q And did Mr. Dunbar kick him in the head as well?
- 24 A Yes, ma'am.
- 25 Q How did that happen?

(Christopher M. Herndon-Direct by Mrs. Young)

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1 A We just both started kicking him in the head at the
2 same time.

3 Q How many times did you kick him?

4 A Maybe five or six times.

5 Q What is the next thing that you did?

6 A Rusty grabbed a pair of shoes. I believe I grabbed
7 his cellphone and we got in the car to go leave. I went
8 through the driver's side door. Rusty said he wanted to
9 drive. So I climbed over into the passenger seat. I
10 never exited the car and went around. I just climbed over
11 into the passenger seat. Rusty got in and cranked the car
12 up and he got out the car and said, I can't leave this guy
13 alive. I got to go kill him. I said, Man, What are you
14 doing? Come on. Let's go. Let's get out of here. Don't
15 be stupid, you know. Please don't do that. But he went
16 on in the house anyway.

17 So I am sitting in the car waiting because, you know,
18 I am just -- I don't know what's going on. I don't know
19 if he is going to do this or what and I was nervous. He
20 came back out. I said, Please tell me you didn't kill
21 him. He says, No, I didn't kill him. I said, Man, please
22 tell me you didn't do that. He says, No, I didn't do
23 that, and we put it in drive and left the yard and got on
24 Wire Road.

25 Q You stated previously that you had gotten in the

(Christopher M. Herndon-Direct by Mrs. Young)

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1 driver's side?

2 A Yes, ma'am.

3 Q Why was that?

4 A Because I was gonna drive.

5 Q And then how did that change?

6 A Well, he said that he could drive better and, you
7 know, I just didn't argue. I just climbed over in the
8 passenger seat. I was just -- Everything was just
9 happening and I was just scared.

10 Q But you knew what you were doing, didn't you?

11 A Yes, ma'am.

12 Q What happened after you got out on Wire Road?

13 A We were going down Wire Road and the cops passed
14 us -- several cops, two or three, four cops. I am not
15 real sure how many it was.

16 Q When you got out on Wire Road what direction were you
17 going?

18 A We were heading back towards Aiken.

19 Q And before we get into the next part, had you given
20 Mr. Thornton any instruction about what he was supposed to
21 do?

22 A We just told them to go wait at the gas station on
23 us.

24 Q Did you refer to any specific gas station?

25 A No, ma'am.

(Christopher M. Herndon-Direct by Mrs. Young)

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1 Q All right. So you're headed back towards Aiken in
2 Mr. Hynes' car?

3 A Yes, ma'am.

4 Q And are you driving? Well, you said Mr. Dunbar was
5 driving?

6 A Yes, ma'am.

7 Q How was he driving?

8 A Pretty fast.

9 Q What happened after you saw the police?

10 A I rolled the the window down and tossed the shoes
11 out.

12 Q You tossed them out on the road?

13 A Yes, ma'am, going down -- while we was going down the
14 road I just rolled the window down and tossed the shoes
15 out.

16 Q What is the next thing that happened?

17 A We went up Wire Road and right before you get to the
18 end of Wire Road there that crosses the bypass Rusty lost
19 control and spun out a couple of times. The cops had
20 turned around so we thought they were in pursuit on us and
21 he straightened it out and he went down through the red
22 light. There is a curve where Wrights Mill Grocery is.
23 He lost control of the car and hit the guardrail. When he
24 hit the guardrail I jumped out of the car and there is a
25 bottom there -- a ravine. I went in the ravine and sat

(Christopher M. Herndon-Direct by Mrs. Young)

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1 down.

2 Q So he went straight on Wire through the intersection
3 at Rudy Mason?

4 A Yes, ma'am.

5 Q And you say he lost control of the car two times?

6 A Yes, ma'am.

7 Q And the second time you got out?

8 A Yes, ma'am.

9 Q Where did you go?

10 A I went in the bottom right there by Wrights Mill
11 Grocery. There is a bottom or ravine. I run down in
12 there.

13 Q Where did Mr. Dunbar go?

14 A I don't know. I thought he kept going in the car,
15 actually.

16 Q But you never saw where he went?

17 A No, ma'am.

18 Q What was the area like where you ran into?

19 A It was a wooded area. It was in a bottom. It is
20 some type of ravine where they did road work through
21 there.

22 Q You said you threw the shoes out of the car. Did you
23 throw anything else out of the car?

24 A Not that I recall; no, ma'am.

25 Q Did you still have any items of Mr. Hynes' in your

(Christopher M. Herndon-Direct by Mrs. Young)

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- 1 possession?
- 2 A Yes, ma'am.
- 3 Q What was that?
- 4 A The tin can of marijuana and the bank card.
- 5 Q What did you do with those?
- 6 A I threw them.
- 7 Q Where did you throw them?
- 8 A In them woods down there where I was at somewhere.
- 9 Q What did you do with the knife?
- 10 A I tossed it, too.
- 11 Q Did you throw it in the same place or different
- 12 place?
- 13 A I threw it in them woods somewhere.
- 14 Q When you were down there --
- 15 A Yes, ma'am.
- 16 Q -- in the ravine?
- 17 A Yes, ma'am.
- 18 Q What did you do down in that ravine?
- 19 A I sat there. I was real scared and I had actually
- 20 cut myself on my knees and I took my shirt off because it
- 21 was real white and, you know, I seen the police lights, of
- 22 course, and being that the shirt was as white as it was
- 23 and I had kind of a tan going on I didn't feel like -- I
- 24 felt like they could have seen me so I took the shirt off
- 25 and I sat there for -- I am not sure exactly how long it

1 was I got up and put my shirt on and by that time I heard
2 the dogs -- I guess bloodhounds. So I knew they were
3 searching the woods. So I made my way down into -- back
4 towards the road and actually smoked a cigarette and came
5 up out of the ravine and saw a county cop parked there at
6 Wrights Mill Grocery and I had walked up to him. I just
7 asked him what was going on. I was trying to play it off,
8 you know, like I didn't know anything. He asked me who I
9 was and I told him. He placed me under arrest.

10 Q What happened next?

11 A Investigator J. D. Sanders came on the scene and, of
12 course, I was denying everything to begin with and then he
13 asked me --

14 Q I'm sorry. What did you did you just say?

15 A I said I was denying everything to begin with.

16 Q What does that mean?

17 A I was telling him I didn't have anything to do with
18 it. I didn't know what he was talking about.

19 Q Prior to speaking to him had you been advised of your
20 Miranda warning?

21 A Yes, ma'am.

22 Q So, you were denying it and then what happened?

23 A Investigator Sanders said you know this will be
24 easier on you if you tell the truth and I was pretty shook
25 up. I never been involved in anything like this and I

(Christopher M. Herndon-Direct by Mrs. Young)

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1 said, yea, he is probably right. So I told him exactly
2 what happened.

3 Q What did you tell him?

4 A I told him that me and Rusty Dunbar went to go rob
5 Daniel Hynes.

6 Q What else did you tell him?

7 A I just told him the whole truth. Everything that
8 happened from the start of the day on through.

9 Q And where did you go next?

10 A I went to the hospital.

11 Q Where did you go after that?

12 A Aiken County Detention Center.

13 Q That's where you have been ever since?

14 A Yes, ma'am.

15 Q How long had you known Daniel Hynes or did you know
16 him?

17 A Yea. I have known Daniel for quite a few years -- 17
18 or 18 years, I guess. He used to be good friends with my
19 cousin years ago.

20 Q Which cousin are you talking about? Mr. Thornton?

21 A No, sir. I mean no, ma'am. Stacy Cooper. I'm
22 sorry.

23 Q Stacy who?

24 A Stacy Cooper.

25 Q Have you been to his house before?

(Christopher M. Herndon-Direct by Mrs. Young)

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- 1 A Yes, ma'am.
- 2 Q You hung out with him before?
- 3 A Yes, ma'am.
- 4 Q He was your friend?
- 5 A Yes, ma'am.
- 6 Q And this is the person that you went into his house,
7 watched somebody hold at knifepoint, cut him on the
8 back -- Is that a yes?
- 9 A Yes, ma'am.
- 10 Q Tied him up or helped tie him up?
- 11 A Yes, ma'am.
- 12 Q Heard somebody threaten him with his life?
- 13 A Yes, ma'am.
- 14 Q Rummage through his property looking for things?
- 15 A Yes, ma'am.
- 16 Q After you cut him you kicked him in the head?
- 17 A Yes, ma'am.
- 18 Q Then you stold his car?
- 19 A Yes, ma'am.
- 20 Q After you stold the other things that belonged to
21 him?
- 22 A Yes, ma'am.
- 23 Q Who else was with you that night?
- 24 A Rusty Dunbar.
- 25 Q He was with you from the point of Daniel Hynes'

(Christopher M. Herndon-Direct by Mrs. Young)

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1 driveway all the way throughout this?

2 A Yes, ma'am.

3 Q Are you the same Christopher Herndon that has a
4 fraudulent check conviction in 2001?

5 A Yes, ma'am.

6 Q Were you the same Christopher Herndon that has a
7 conviction for use of vehicle without permission with
8 intent to deprive in 2005?

9 A Yes, ma'am.

10 Q Mr. Herndon, is Mr. Dunbar present in the courtroom?

11 A Yes, ma'am.

12 Q Will you please identify where he is and what he is
13 wearing?

14 A He is sitting right there with a tie and striped
15 shirt on -- white striped shirt.

16 Q Sitting next to the man with the glasses?

17 A Yes, ma'am.

18 Q Can you point him out?

19 A Yes, ma'am.

20 Q Point him out.

21 A (Indicating.) Right there.

22 Q That's the person who was with you this night?

23 A Yes, ma'am.

24 Q That's the person who did these things with you?

25 A Yes, ma'am.

1 MRS. YOUNG: Your Honor, we'd like the record the
2 reflect that he's identified Rusty Dunbar.

3 THE COURT: Yes, ma'am.

4 MRS. YOUNG: No further questions.

5 THE COURT: Hold on one second. Everybody
6 comfortable? I turned -- I don't know if they got the air
7 conditioner on or what they got on. It looked like
8 somebody was getting cold. Did you turn it off?

9 THE CLERK: I bumped it up.

10 THE COURT: If you get uncomfortable, just let me
11 know.

12 CROSS-EXAMINATION

13 BY MR. GIBBONS:

14 Q Mr. Herndon, you were basically making a lot of the
15 decisions that night, weren't you?

16 A Both of us -- both of us were.

17 Q So, whose friend is the victim in this case?

18 A Excuse me, sir?

19 Q Who knows the victim in this case?

20 A We both know him.

21 Q Has Rusty been around him before?

22 A He's been over there.

23 Q He's been at the victim's house?

24 A Yes, ma'am.

25 Q Inside?

(Christopher M. Herndon-Cross by Mr. Gibbons)

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- 1 A Yes, sir. Sorry.
- 2 Q Inside?
- 3 A I don't know if he's been inside or not. He's been
- 4 over there with me before.
- 5 Q And all of you in the same place together?
- 6 A Yes, sir.
- 7 Q So does this man sitting right here know this man
- 8 sitting right here?
- 9 A I am not real positive.
- 10 Q They've been together?
- 11 A I said he's been at the house with me before.
- 12 Q He's been in the victim's house with you before?
- 13 A No, sir. I didn't say that. I said he's been over
- 14 there with me before.
- 15 Q And spoken to the victim?
- 16 A I'm not -- no, sir. I don't think so.
- 17 Q So you've been there without the victim being home?
- 18 A No, sir. I haven't been there without the victim
- 19 being home.
- 20 Q Well, tell me how he's been over there before.
- 21 A He's been over there with me, my cousin's ex-wife and
- 22 Rusty's girlfriend Laura Smith. We have been there and
- 23 bought some weed before.
- 24 Q From who?
- 25 A From the victim.

(Christopher M. Herndon-Cross by Mr. Gibbons)

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1 Q Well, if he was there with you getting some from the
2 victim, they've seen each other before, haven't they?

3 A Daniel never came outside. My cousin's ex-wife went
4 inside the house.

5 Q So, how do you know that it was Daniel that sold it?

6 A Well, that's where she went to get the weed from.
7 That's what she told me.

8 Q Do you know of anybody else that lives there?

9 A No, sir.

10 Q So, of the two of you and Rusty who would know the
11 victim better, you or Rusty?

12 A Probably me.

13 Q Now, how much would you say you had to drink that
14 day?

15 A Quite a bit.

16 Q Ten? Ten beers?

17 A Probably more than that.

18 Q Vodka?

19 A Yes, a bottle of vodka.

20 Q Starting in the early morning hours around?

21 A About 9:30.

22 Q And drank straight on until this happened?

23 A Well, during the time we were at the motel room we
24 didn't drink anything.

25 Q And using drugs?

(Christopher M. Herndon-Cross by Mr. Gibbons)

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- 1 A Later on that night, yes, sir.
- 2 Q And Mr. Thornton right along with you the whole time?
- 3 A Yes, sir.
- 4 Q And then you went to the house of Mr. Dunbar's
- 5 girlfriend?
- 6 A No; his mother's house.
- 7 Q She doesn't stay there?
- 8 A Yea, she stays there.
- 9 Q Okay. So her house, too?
- 10 A Yes, sir.
- 11 Q Okay. And you hung out there for a while?
- 12 A We were -- We picked them up and left.
- 13 Q But you hung out at that house you said drinking
- 14 under the oak tree, didn't you?
- 15 A Oh, his -- You got me confused. I'm sorry. Her
- 16 Daddy's house later on that night, yes, sir.
- 17 Q And you and Mr. Thornton and Mr. Dunbar and
- 18 Miss Laura -- y'all were together pretty much the whole
- 19 time?
- 20 A Yes, sir.
- 21 Q Except when they went off to try to get rid of the
- 22 mixer; correct?
- 23 A Yes, sir.
- 24 Q Was there ever a time when you and Rusty were alone?
- 25 A Just in the back of the truck. It is an extended

(Christopher M. Herndon-Cross by Mr. Gibbons)

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1 cab. My cousin Jerry -- Laura was driving and that's when
2 we were talking and, you know, came up with the plan to go
3 rob Mr. Daniel Hynes.

4 Q So you're telling this jury that you sat in the back
5 seat of a pickup truck and planned this whole thing?

6 A Yes, sir.

7 Q And your cousin was sitting in the truck and
8 Miss Laura Smith was sitting in the truck?

9 A Yes, sir.

10 Q And they didn't hear a thing of it?

11 A I don't guess.

12 Q Were you whispering?

13 A Yes, sir. I probably was, uh-huh.

14 Q Probably? Were you whispering?

15 A I am not sure.

16 Q But they didn't know anything about what y'all were
17 going to do?

18 A No, I don't think so.

19 Q And I think you told the solicitor that
20 Mr. Thornton's instruction were to drop you off and go
21 wait at the gas station?

22 A Yea, I told him to go wait at the gas station for us.

23 Q Well, how far is that gas station from that house?

24 A I don't know. Maybe three or four, five minutes
25 driving.

(Christopher M. Herndon-Cross by Mr. Gibbons)

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- 1 Q How long walking?
- 2 A Could be 30 minutes, I guess.
- 3 Q And he was supposed to wait there for y'all?
- 4 A Yes, sir, until we called him.
- 5 Q Until you called him? Who had the cell phone?
- 6 A Rusty Dunbar.
- 7 Q And Miss-Smith went with them?
- 8 A Went with my cousin Jerry Thornton, yes, sir.
- 9 Q All right. Now, isn't it true that throughout that
- 10 day you were the one making most of the decisions?
- 11 A No, sir. I wouldn't say that, no, sir.
- 12 Q Who would you say was making most of the decisions?
- 13 A We were all in it together.
- 14 Q All right. Who decided to go to Jody Chavis' house?
- 15 A I am the one that called Jody Chavis.
- 16 Q And who decided they knew a better place to go get
- 17 better crack?
- 18 A I did.
- 19 Q And who picked out Mr. Hynes as the victim in this
- 20 case?
- 21 A We both come up with the plan.
- 22 Q But who knew him better?
- 23 A I knew him better.
- 24 Q Who had been friends with him for 18 years?
- 25 A I was.

(Christopher M. Herndon-Cross by Mr. Gibbons)

214

- 1 Q Now, you knew Mr. Chavis had some money, didn't you?
- 2 A Yes, sir.
- 3 Q You could have gone there; right?
- 4 A Didn't think about that.
- 5 Q You chose Mr. Hynes instead; correct?
- 6 A Yes, sir.
- 7 Q You're the the one that had been there before more
- 8 times, correct?
- 9 A Uh-huh.
- 10 Q Now you're telling this jury that when you got up
- 11 there at the last minute you tried to talk Mr. Dunbar into
- 12 not doing anything?
- 13 A Yes, sir.
- 14 Q Because you didn't want any part of that?
- 15 A No, sir.
- 16 Q And did you just walk away?
- 17 A No, sir, I didn't.
- 18 Q Did he have a gun to your head?
- 19 A No, sir, he didn't.
- 20 Q You could have just walked and got back in the truck
- 21 and waited there, couldn't you?
- 22 A Yes, sir.
- 23 Q So you didn't want to leave very bad, did you?
- 24 A Well, I felt like I was there. I was obligated when
- 25 he kicked the door on in so...

(Christopher M. Herndon-Cross by Mr. Gibbons)

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- 1 Q You were obligated?
- 2 A Well, he was my friend. So...
- 3 Q Well, they're both your friends.
- 4 A Yea, I know.
- 5 Q You made the decision to go in there?
- 6 A Yes, sir, I made the decision. Nobody forced me.
- 7 Q And once you got in there who was the one that went
- 8 through all of the drawers?
- 9 A Me.
- 10 Q Anybody holding a gun to your head doing that?
- 11 A No, sir.
- 12 Q Now, according to your testimony why were you there?
- 13 A To rob Mr. Daniel Hynes.
- 14 Q And what were you expecting to find?
- 15 A Weed and money.
- 16 Q Now, who got out a knife and cut their friend?
- 17 A I did.
- 18 Q Was it a switchblade?
- 19 A No, sir. It was a lock-blade knife.
- 20 Q Just a regular work knife?
- 21 A A lock-blade knife.
- 22 Q How long -- How big was it?
- 23 A I'm not real sure.
- 24 Q Show me with your hands.
- 25 A Probably like that folded all the way out.

- 1 Q Unfolded 8 or 10 inches long?
- 2 A (Witness nods head.)
- 3 Q And that was your knife?
- 4 A Yes, sir.
- 5 Q And according to your testimony who provided the
- 6 other knife that was used in this crime?
- 7 A I did.
- 8 Q Who cut the cords to tie him up?
- 9 A I did.
- 10 Q Who helped tie him up?
- 11 A I did. Me and Rusty Dunbar.
- 12 Q Who took the cellphone?
- 13 A I did.
- 14 Q And who had instructed Thornton to wait at the gas
- 15 station?
- 16 A I did.
- 17 Q Who threw the shoes out driving down the road?
- 18 A I did.
- 19 Q Who took all of the items that were taken into the
- 20 bottom or the ravine?
- 21 A I did.
- 22 Q Now, as soon as you got -- walked up to that bunch of
- 23 police officers you wanted to tell them the whole thing,
- 24 didn't you?
- 25 A Not right off the bat, no, sir.

(Christopher M. Herndon-Cross by Mr. Gibbons)

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- 1 Q So what did you do right off the bat?
- 2 A I denied.
- 3 Q You lied?
- 4 A I told them I didn't know what was going on.
- 5 Q Was that the truth?
- 6 A No, sir. It was not the truth.
- 7 Q It was a lie then, wasn't it?
- 8 A Yes, sir.
- 9 Q And you lied because you were afraid you might get in
10 trouble?
- 11 A Yes, sir.
- 12 Q And you were trying to protect yourself?
- 13 A Yes, sir.
- 14 Q And you went to a hospital you said. Were you hurt
15 bad?
- 16 A I hit the -- jarred my neck whenever we hit the
17 guardrail.
- 18 Q So you didn't stay there. They didn't admit you.
19 They didn't keep you?
- 20 A No, I probably wasn't there an hour or two maybe.
- 21 Q And then you're telling the jury that at some point
22 an investigator came and talked to you?
- 23 A On the scene where I was arrested.
- 24 Q And as soon as he told you to tell the truth you
25 listened to him and you told the truth?

1 A Immediate -- not immediately. I denied everything to
2 begin with. When he questioned me what happened I said I
3 don't know; I don't know what you're talking about.

4 Q But then something changed in your mind and you
5 decided that you had to let the truth come out?

6 A Well, Mr. Sanders talked with me for a couple of
7 minutes telling me, Look, this is going to be easier on
8 you if you tell the truth. I was definitely scared. I
9 have never been involved in anything prior to this like
10 this.

11 Q Well, you have been involved in something before.

12 A Uh-huh.

13 Q You had been the trouble before?

14 A Yes, sir.

15 Q So, at this point he said, It'll be better for you.
16 It'll be better for you if you just tell the truth?

17 A He just said it would be better if you tell the
18 truth.

19 Q And you decided that was the thing to do?

20 A Yes, sir.

21 Q And so immediately you wrote down exactly what
22 happened?

23 A Yes, sir.

24 Q And told the whole thing start to finish?

25 A Yes, sir.

(Christopher M. Herndon-Cross by Mr. Gibbons)

219

1 Q Now, since that time how many times have you retold
2 that story?

3 A I don't know.

4 Q More than two?

5 A Maybe.

6 Q More than five?

7 A No.

8 Q How many people have you told that story to?

9 A Just the solicitor and maybe my mother.

10 Q And you're doing this just on the hope that what that
11 investigator told you this will be better for you. That's
12 the only reason you're telling it?

13 A Not the only reason, no, sir.

14 Q What is another reason?

15 A Because I want to tell the truth.

16 Q The truth is important to you?

17 A Yes, sir, it is.

18 Q Or is it another lie?

19 A No, it's not a lie. It is very important to me.

20 Q Now, you got these charges facing you as well, don't
21 you?

22 A Yes, sir.

23 Q And you've got to pay for your crime as well, don't
24 you?

25 A Yes, sir, I do.

(Christopher M. Herndon-Cross by Mr. Gibbons)

220

1 Q And you think that because you're being so helpful in
2 telling the truth you're going to get something out of
3 this, don't you?

4 A I'm hoping, yes, sir.

5 Q What are you hoping?

6 A Leniency.

7 Q What kind of leniency?

8 A And mercy. Maybe one day to be home with my
9 children.

10 Q And nobody has promised you anything, have they?

11 A No, sir.

12 Q Nobody has given you a theoretical promise?

13 A No, sir.

14 Q Maybe something like X, Y, Z will happen?

15 A No, sir.

16 Q So you're just taking it all on faith and jumping and
17 hoping for the best?

18 A Yes, sir.

19 Q Looking after yourself?

20 A Yes, sir.

21 Q Now, your testimony is that your cousin knew nothing
22 about this robbery?

23 A Yes, sir.

24 Q That's what you're saying?

25 A Yes, sir.

(Christopher M. Herndon-Cross by Mr. Gibbons)

221

1 Q You planned it sitting right behind him in the back
2 of the truck?

3 A Yes, sir.

4 Q But he didn't know anything?

5 A He's hard of hearing.

6 Q And you went through this and you even had a plan
7 where to meet him and how to call him back to come get
8 you; correct?

9 A Not a plan where to meet him. We just told him we'll
10 call him to pick us up us up.

11 Q Well, why did he go all the way down to a gas
12 station?

13 A I told him he could just wait on us at a gas station.

14 Q Why did he with have to go that far away?

15 A That was the nearest gas station.

16 Q When you went down to the valley to get the better
17 drugs you knew about did you send him off down the road
18 that time?

19 A No, sir.

20 Q He stayed right in the yard, didn't he?

21 A He went in with me because he knows the guy, too.

22 Q And when you went to the other place he was there,
23 too, wasn't he?

24 A Yes, sir.

25 Q And when you went to sell the mixer he was there,

1 too, wasn't he?

2 A Yes, sir.

3 Q So, he didn't know anything but this time he had to
4 do something different?

5 A Yes, sir.

6 Q Isn't it true that he's the one that went in the
7 house with you?

8 A No, sir.

9 Q Isn't it true that he's the one that planned this
10 robbery with you?

11 A No, sir.

12 Q Isn't it true that you're just trying to help your
13 cousin out to keep him out of trouble?

14 A No, sir.

15 Q Y'all didn't have gloves on that day?

16 A No, sir.

17 Q Y'all didn't have your faces covered?

18 A No, sir.

19 Q Y'all didn't have anything over the rest of your
20 body. Your clothes were visible to whoever was there?

21 A Yes, sir.

22 Q Did you get a good chance to see what Mr. Daniels was
23 doing the whole time?

24 A Yea, he had his head down.

25 Q The whole time?

(Christopher M. Herndon-Cross by Mr. Gibbons)

223

- 1 A He had him in a headlock. He had him down.
- 2 Q He never looked up once?
- 3 A Not that I recall. No, sir.
- 4 Q He never saw the knife that you know of?
- 5 A That I know of, no, sir.
- 6 Q And how many times would you say that you've been in
- 7 that house?
- 8 A Three or four maybe. Three or four times, I guess.
- 9 Q How many times have you been in that car?
- 10 A Once.
- 11 Q Just this night or one time before this?
- 12 A One time before that.
- 13 Q And how long before this happened was that?
- 14 A I don't know -- six or seven or eight months maybe.
- 15 Q What were you doing then? You borrowed the car?
- 16 A No. Me and him and another friend of ours went and
- 17 bought some drugs.
- 18 Q And to your knowledge has Mr. Dunbar ever been in
- 19 that car?
- 20 A No, sir.
- 21 Q To your knowledge Mr. Dunbar ever been in that house?
- 22 A No, sir; not that I know of.
- 23 Q Thank you.
- 24 THE WITNESS: You're welcome.
- 25 THE COURT: Redirect, if any.

(Christopher M. Herndon-Cross by Mr. Gibbons)

224

1 MRS. YOUNG: None.

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

3 Mr. Foreman, ladies and gentlemen, let's take a little
4 quick break. Don't discuss the case. Don't start any
5 type of deliberations. Would y'all like to go back to the
6 same place you ate yesterday or go somewhere else?

7 Mr. Whittle, talk to them about where they want to
8 go.

9 (Whereupon, the jury exited the courtroom at 10:51.)

10 THE COURT: Mrs. Young, anything for the record
11 before we take a short break?

12 MRS. YOUNG: No, sir, not at this time.

13 THE COURT: Mr. Gibbons, Mr. Mims?

14 MR. GIBBONS: No, sir.

15 THE COURT: All right. Let's take about 10 and we'll
16 get started right back up.

17 (Whereupon, a break was taken.)

18 THE COURT: Mrs. Young, anything for the record
19 before we start back?

20 MRS. YOUNG: No, sir.

21 THE COURT: Mr. Mims, anything for the record before
22 we start back?

23 MR. MIMS: No, Your Honor.

24 (Whereupon, the jury came into open court at
25 approximately 11:08.)

(Nathan Hamilton, III-Direct by Mrs. Young)

225

1 THE COURT: I hope going back down to where we ate
2 yesterday would be okay. That is just the easiest place.
3 They got a varied menu so you don't have to have the same
4 thing you did yesterday. Next witness.

5 MRS. YOUNG: The state calls Nathan Hamilton.

6 NATHAN HAMILTON, III, after being duly sworn,
7 testified as follows:

8 THE CLERK: Please have a seat in the witness box.
9 State your full name for the court and spell your last.

10 THE WITNESS: Nathan Hamilton, III; H-A-M-I-L-T-O-N.

11 DIRECT EXAMINATION

12 BY MRS. YOUNG:

13 Q Good morning, Mr. Hamilton.

14 A Good morning.

15 Q Do you recall an incident back in October of last
16 year 2008 that involved a Rusty Dunbar and a cement mixer?

17 A Yes, ma'am.

18 Q What can you tell us about that?

19 MR. GIBBONS: Your Honor?

20 THE WITNESS: I was --

21 THE COURT: Hold on.

22 MR. GIBBONS: We have an objection. Could we talk to
23 you at side bar?

24 (Whereupon, a bench conference was held.)

25 THE COURT: Rephrase your question, ma'am.

(Nathan Hamilton, III-Direct by Mrs. Young)

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1 MR. GIBBONS: Do I need to put that on the record?

2 THE COURT: No, sir. Just remind me and we'll do it
3 outside of the presence of the jury.

4 MR. GIBBONS: Thank you.

5 Q You can answer the question, Mr. Hamilton.

6 A I was staying at the Quality Inn on Aiken Augusta
7 Highway at the time and Rusty, his cousin, and girlfriend
8 came over there and tried to sell me a mixer.

9 THE COURT: Now, sir, please speak distinctly so
10 everybody can hear you.

11 THE WITNESS: They came to my hotel room and tried to
12 sell me a mixer.

13 Q Do you recall who all came?

14 A Rusty, Chris, and Rusty's girlfriend and the big guy.
15 I don't know his name -- Chris' cousin.

16 Q Do you know what time of the day or night it was?

17 A It was like about 11-something, 12-something in the
18 afternoon; something like that.

19 Q What happened after they got to the room?

20 A He told me about the mixer and I worked for my Daddy
21 building houses -- construction work. He build houses. I
22 was going to take it and talk to my Daddy about it. We
23 hooked it up to my van to drive over there but we turned
24 around because I called my Daddy and he didn't want it
25 because he already got five or six of them in the yard.

(Nathan Hamilton, III-Direct by Mrs. Young)

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1 So, we took it back to the hotel, hooked it back up to the
2 truck, and they went off their own way.

3 Q When you say "they went off," who are you referring
4 to?

5 A Chris, his cousin, the big guy, and Rusty and his
6 girlfriend.

7 Q That's your involvement with the cement mixer?

8 A Yes, ma'am.

9 Q No further questions.

10 MR. MIMS: I have no questions, Your Honor.

11 THE COURT: You may step down.

12 MRS. YOUNG: May he be released from his subpoena?

13 THE COURT: Next witness, please.

14 MRS. YOUNG: The state calls Chris Byars.

15 CHRISTOPHER R. BYARS, after being duly sworn,
16 testified as follows:

17 THE CLERK: Please have a seat in the witness box.
18 State your full name for the court and spell your last.

19 THE WITNESS: Christopher Ryan Byars; B-Y-A-R-S.

20 DIRECT EXAMINATION

21 BY MRS. YOUNG:

22 Q Good afternoon, Mr. Byars. Where do you live?

23 A Road.

24 Q Make sure you speak up so we can hear you, all right?

25 Who do you live with there at Road?

(Christopher R. Byars-Direct by Mrs. Young)

228

- 1 A My grandmother.
- 2 Q Do you have any neighbors that live close by?
- 3 A Yea, Ricky Smith -- Laura's Daddy.
- 4 Q He lives near you on Moseley road?
- 5 A Yes, ma'am. He lives pretty much right beside me.
- 6 Q Is that where you were living on October 6 of 2008?
- 7 A Yes, ma'am.
- 8 Q Do you recall that day?
- 9 A Yes, ma'am.
- 10 Q What were you doing that day?
- 11 A Just got off work, sitting around drinking a couple
- 12 of beers with Ricky and J.R.
- 13 Q You say you were drinking with J.R.?
- 14 A J.R. and Ricky and then Rusty and Jerry and Laura all
- 15 showed up.
- 16 Q They were all at the same location where you were?
- 17 A Yes, ma'am. They showed up later on that evening.
- 18 Q Where was that location?
- 19 A At Ricky's house.
- 20 Q And were you inside or outside?
- 21 A Outside.
- 22 Q Do you know about what time of the day or night it
- 23 was that they came over?
- 24 A Not -- in between 9 and 10, somewhere around in that
- 25 area.

(Christopher R. Byars-Direct by Mrs. Young)

229

1 Q How did they get there?

2 A They come in a Dodge, a black Dodge extended cab.

3 Q What did they do when they got there?

4 A We was just sitting around drinking.

5 Q When you say "we" who are you referring to?

6 A Me, Ricky, J.R., Rusty, Chris, and Jerry and Laura
7 was there, but I don't know that she was drinking. I
8 don't recall.

9 Q At some point in time did anybody leave?

10 A Yea. Laura and Rusty left, but they went to the
11 store to, I guess, get more alcohol.

12 Q Did they come back?

13 A Yes, ma'am. They wasn't gone long at all.

14 Q And did anybody leave after that?

15 A Yes, ma'am. They -- They all left -- Rusty and Jerry
16 and Laura. They all left about somewhere around midnight,
17 12 or 12:15, 12:30, somewhere in there.

18 Q Who all left?

19 A It was Rusty and Jerry and Laura.

20 Q Add what about Chris?

21 A Chris was there, too. I'm sorry.

22 Q And do you know who was driving?

23 A I want to say Jerry was driving if I am not mistaken.

24 Q And all of those were four people left together at
25 the same time?

(Christopher R. Byars-Cross by Mr. Mims)

230

1 A Yes, ma'am.

2 Q What time would you say that was?

3 A Somewhere around midnight, 12 or 12:15.

4 Q How do you recall that time?

5 A Because it was probably -- It was a little later
6 after I went in. It was probably about 1 o'clock. I
7 remember looking at the clock. I mean, it wasn't long at
8 all after they had left and we finished up drinking the
9 beers -- a couple of beers that were left in the cooler
10 and we went inside.

11 Q When you went inside that's when you noted the time?

12 A Yes, ma'am.

13 MRS. YOUNG: No further questions.

14 CROSS-EXAMINATION

15 BY MR. MIMS:

16 Q You're related to Christopher Herndon; correct?

17 A No.

18 Q Are you related to Jerry Thornton?

19 A No.

20 Q Are you friends with Daniel Hynes?

21 A I am.

22 Q But you weren't at Daniel Hynes' house on the night
23 that he was burglarized; is that correct?

24 A That's correct.

25 MR. MIMS: I don't have any further questions.

(Christopher L. Johnson-Direct by Mrs. Young)

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1 THE COURT: You may step --

2 MRS. YOUNG: No redirect, Your Honor.

3 THE COURT: You may step down.

4 MRS. YOUNG: May he be released from his subpoena?

5 THE COURT: He may. He is. Next witness.

6 MRS. YOUNG: The state calls investigator Chris
7 Johnson.

8 CHRISTOPHER LYNN JOHNSON, after being duly
9 sworn, testified as follows:

10 THE CLERK: Please have a seat in the witness box.
11 State your full name for the court and spell your last.

12 THE WITNESS: Christopher Lynn Johnson;
13 J-O-H-N-S-O-N.

14 DIRECT EXAMINATION

15 BY MRS. YOUNG:

16 Q Where are you employed.?

17 A I am currently employed with the Aiken County
18 Sheriff's Office.

19 Q What do you do for the Sheriff's Office?

20 A I am a forensic investigator.

21 Q What do your duties include?

22 A My duties include documenting, photographing,
23 fingerprinting, and collecting evidence at the crime
24 scenes and also processing evidence that deputies may turn
25 in to have fingerprinted and also occasionally have to go

(Christopher L. Johnson-Direct by Mrs. Young)

232

1 to SLED to drop evidence off at SLED

2 Q How long have you been employed as a forensic
3 investigator?

4 A I was -- My hired -- Well, I was promoted to forensic
5 investigator June 16, 2006.

6 Q And you've been employed in that capacity since that
7 time?

8 A Yes, ma'am, I have.

9 Q Investigator Johnson, I am going to show you what's
10 been premarked for identification purposes as State's
11 Exhibit No. 11 and ask you if you recognize that.

12 A Yes, ma'am, I do.

13 Q What is that?

14 A This is a piece of evidence that I took to SLED on
15 the first of July of 2009.

16 Q How do you know that you took it to SLED?

17 A When you take a piece of evidence to SLED what they
18 do is each -- wherever the evidence is going to go they
19 package it. In this case it says right here it was going
20 to go to DNA. So they put this in here. Once they put
21 the evidence in here, I sign it and put my date here.
22 After they heat-seal it right across here -- You see where
23 it's heat-sealed -- I put my initials and I mark the date
24 that I put my initials there.

25 Q So you would have taken the envelope that's inside?

(Christopher L. Johnson-Direct by Mrs. Young)

233

1 A Yes, this manilla -- this small 6 X 9 envelope right
2 here was something that I took to SLED, Yes, ma'am.

3 Q And would you have -- Where would you have received
4 this manilla envelope from?

5 A From evidence at the Sheriff's Office -- at the
6 evidence section of the Sheriff's Office.

7 Q And what would you do with it once you received it?

8 A I would take it to SLED I would put it in my truck
9 and drive to SLED with that most likely.

10 Q I'm sorry?

11 A Most likely that and any other evidence that had to
12 go to SLED.

13 Q Do you ride around with that in your car for any
14 extended period of time?

15 A No, ma'am. I drive straight to SLED

16 Q While you're in custody of that item did you do
17 anything with the item or tamper with it in any way?

18 A No, ma'am.

19 Q How you took it to SLED is how you got it from the
20 evidence room?

21 A Yes, ma'am.

22 Q Investigator Johnson, I am going to show you a
23 document and ask you to take a look at it without making
24 any comment as to what it is. Does that document refresh
25 your recollection in any way?

(Christopher L. Johnson-Direct by Mrs. Young)

234

1 A Yes, ma'am.

2 Q All right. I am going to show you another exhibit
3 that's been marked for identification purposes as State's
4 Exhibit No. 7 and ask you if you can recognize that?

5 A Yes, ma'am, I recognize it.

6 Q Can you identify what it is for the jury?

7 A The brown or manilla envelope that's inside here is
8 two buccal swabs that I collected from the victim.

9 Q Who is the victim?

10 A In this case, I believe, Hynes.

11 Q What is -- For those of us who might not know, what
12 is a buccal swab?

13 A A buccal swab -- what we do is when we collect a
14 buccal swab is we use a sterile --

15 THE COURT: Speak up, please.

16 THE WITNESS: Excuse me. Sorry, sir. What we use is
17 is a sterile Q-tip and we swab the inside of the mouth --
18 basically, the inside of the cheek -- that area -- to
19 obtain DNA.

20 Q What do you do with the swab? Once you received it,
21 for example, what did you do in this particular case?

22 A This particular case what we use is called an
23 Integri-swab. It's got a little cap on it so it'll be --
24 once you get your sample your sample is -- you're not
25 going to be able to -- it protects the sample is the best

(Christopher L. Johnson-Direct by Mrs. Young)

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1 way to say it. Once you get it you let it dry. Otherwise
2 you let it dry on its own and you package it up -- which
3 in this case what I did once I got the swab is I put the
4 cap on the actual tip of the swab and stuck it in this
5 package and then once the item had dried or had time to
6 dry I just closed the package.

7 Q And how do you know all that?

8 A Years of experience of collecting evidence.

9 Q Let me ask my question a little more directly. How
10 do you know you did that with that particular piece of
11 evidence?

12 A This is my handwriting on the outside of here. This
13 is how I label my evidence is normally my initials with
14 the item number.

15 Q And you for purposes of the record can't see -- when
16 you said outside of here what exactly are you referring
17 to?

18 A The outside of this manilla folder, the 6 X 9
19 envelope right here. It is all the information that I
20 wrote and it's my handwriting.

21 Q And after you collected those swabs what would you
22 have done with them?

23 A I would have placed them in evidence using an
24 evidence or property receipt.

25 Q And where does it go into evidence? Where do you

1 place it into evidence?

2 A I turned it over to our evidence custodian and he
3 places it where it needs to go in the evidence room.

4 Q And in this particular case after you took that swab
5 and put it in that envelope and turned it over to the
6 evidence room did you have any additional dealings or
7 touching of that particular piece of evidence?

8 A No, ma'am, other than put my hands on it right now.
9 No, ma'am.

10 Q So you -- other than the time you took it from the
11 victim this is the first time that you've touched it since
12 then?

13 A Yes, ma'am.

14 MRS. YOUNG: No further questions.

15 THE COURT: Cross?

16 CROSS-EXAMINATION

17 BY MR. MIMS:

18 Q You're not aware of what happened with the sample
19 between the date that it was collected and what day you
20 took it to SLED; right?

21 A I did not take this sample to SLED. Which sample are
22 you referring to as far as the one I took to SLED or the
23 one I collected?

24 Q The Defendant's buccal swab -- the one that you sent
25 to SLED.

(Clarence G. Turner-Direct by Mrs. Young)

237

1 A Oh, no, I'm not -- I just picked it up from the
2 evidence custodian and took it to SLED

3 Q Thank you.

4 A That's all the dealings I have with it.

5 MR. MIMS: No further questions.

6 THE COURT: Redirect?

7 MRS. YOUNG: None, Your Honor.

8 THE COURT: You may step down.

9 MRS. YOUNG: May he be excused?

10 THE COURT: He may. Next witness, please.

11 MRS. YOUNG: The state called Gerald Turner.

12 CLARENCE G. TURNER, after being duly sworn,

13 testified as follows:

14 THE CLERK: Please have a seat in the witness box.

15 State your full name for the court and spell your last.

16 THE WITNESS: Clarence Gerald Turner; T-U-R-N-E-R.

17 DIRECT EXAMINATION

18 BY MRS. YOUNG:

19 Q Mr. Turner, where are you employed?

20 A With Aiken County Sheriff's Office, evidence
21 custodian.

22 Q How long have you been employed in that capacity?

23 A January 11 two years.

24 Q So you were employed there in October of 2008?

25 A Yes, ma'am.

(Clarence G. Turner-Direct by Mrs. Young)

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1 Q What does an evidence custodian do, Mr. Turner?

2 A We receive -- Well, I receive, process, document, and
3 properly store and whatever decisions the investigators or
4 officers want me to do with it. I take care of it, in
5 other words.

6 Q Can you describe what the evidence room at the Aiken
7 County Sheriff's Office -- can you describe what it's like
8 and how it's accessed?

9 A Well, there is only three people that have keys to
10 it. My boss, one other investigator, and myself. It
11 consists of 13 cells that we keep evidence in along with
12 four cells behind closed doors, locked doors where we keep
13 drugs, guns, so forth, and then we have what's called a
14 death wing. We have six cells there that we store in. So
15 it's a pretty large area. Very large.

16 Q And when somebody or when a deputy or investigator
17 drops off a piece of evidence and they put it in a lock
18 box, what happens at that point in time?

19 A Okay. I am the only one that has a key to that. I
20 take it out. First I read the instructions on it and make
21 sure I know what I'm to do with the evidence. I take it
22 back to the evidence room and log it in the computer, fill
23 out the chain -- the chain letter that goes with it and
24 make sure that whatever is to be done with the evidence is
25 done which in most cases it's just to properly store.

(Clarence G. Turner-Direct by Mrs. Young)

239

1 Q And when you say "properly store," what exactly does
2 that mean?

3 A Well, again, it depends on the evidence. We have
4 evidence that comes in many ways, but as you can see here
5 it usually comes in in a bag -- a brown bag like this. I
6 label it. If it's got a seal on it I do not break the
7 seal which in most cases DNA -- we never break the seal on
8 that and then I take it and put it in the computer, fill
9 out the information on it, and then I store it away in a
10 special area.

11 Q How do you keep up with it? I mean, how do you know,
12 for example, that if you get a piece of evidence in one
13 day on this particular case and you get a piece of
14 evidence in several weeks later, how do you know that it
15 all gets together in one location? How do you keep track
16 of it?

17 A Computer. In other words, everything is under a case
18 number. It is given a case number. I bar-code everything
19 and that bar code is associated with that case number and
20 I place all of that in.

21 Q All right. And you said that you store those in
22 cells?

23 A Right, yes, ma'am. We have different cells for
24 different type evidence. Again, I get literally thousands
25 of different things.

1 Q And is there a particular reason you call it a cell?

2 A Yes, because this is the old jail is what it is.

3 We've reconditioned every room, put shelves in. They lock
4 up and, again, I'm the only one that has access to it.

5 Q So if somebody wanted to come in to look at some
6 piece of evidence, how would they do that?

7 A They would make an appointment usually with the
8 investigator. The investigator will coordinate it with
9 me. They'll come to my office. I will sign them in.
10 Then I will pull out the evidence and we look at it,
11 examine, or they just tell me what they want to do with
12 it.

13 Q And if they are just wanting to look at it or examine
14 it do you remain present?

15 A Yes, ma'am. All evidence I'm there. Nobody comes in
16 without me being with them.

17 Q Does somebody take out the trash without you being
18 present?

19 A No, ma'am. The trash is picked up at the door. I
20 actually do all that. I do my own sweeping, cleaning.
21 Again, nobody comes into these cells. I do it and then I
22 take it to them and they take it away.

23 Q So you're pretty serious about this that you're the
24 only with person and this is your way of ensuring that
25 happens?

(Clarence G. Turner-Direct by Mrs. Young)

241

1 A Yes, ma'am. Again, that's my responsibility, and I'm
2 one for making sure that if I do it it is going to be done
3 right.

4 Q And what if, for example, a particular case various
5 items were all going to be sent to SLED at the same time?
6 What would you do in that sort of case?

7 A Okay. I have a special area that when it's to be
8 sent to SLED I pull the evidence, place it in special
9 lockers. I too the paperwork myself. Again, I have to
10 take it out of the computer. I take the chains. I get
11 everything arranged out and then I make an appointment
12 with SLED. In fact, we just went to a different system
13 where I have to send everything ahead to SLED to let them
14 know what I'm bringing through the computer. Once I do
15 that, then I have another -- a deputy or investigator that
16 will take it for me to SLED.

17 Q And how do you -- I mean, do you just send all of
18 those envelopes? Do you give them to them loose or --

19 A No, ma'am.

20 Q -- is it pinned or what do you do?

21 A No, ma'am. Everything is still sealed. I separate
22 them out. I put them in different boxes. Nothing is, you
23 know, put together or contaminated. A case goes with a
24 case of if it's different types of evidence that I am
25 sending up there I'll place it different just so I know

(Clarence G. Turner-Direct by Mrs. Young)

242

1 what's there and also SLED and the person that's taking it
2 up there for me. It can get confusing if you don't do
3 that.

4 Q So, before you send anything to SLED you send them an
5 e-mail, I assume, or something to that effect letting them
6 know what to expect?

7 A Exactly. If we put in -- in fact, they won't take it
8 now unless I put it in the computer and describe it. That
9 doesn't mean the date I have to take it up. As long as
10 it's there once it gets there they'll take a scanner and
11 run it across my bar codes that I place on it and then it
12 automatically pulls up in their system.

13 Q All of this computerizing and sending it this way and
14 all of these steps that you take, what is the purpose of
15 all of that?

16 A To make sure that nothing is contaminated, that
17 nothing is crossed over, and everything is accounted for.

18 Q And on the occasions where you send like, let's say,
19 a box of items for one case that contains various items of
20 SLED, is there a designated person who takes those items?
21 Who does that?

22 A Well, we only have just a handful of people that can
23 do that. The forensic investigators can do it and, also,
24 I have one deputy that has done this for me before and she
25 transports.

(Clarence G. Turner-Direct by Mrs. Young)

243

1 Q And is it -- Would she necessarily know what she had
2 in a box? If she had like a big box of stuff, would she
3 know what it was?

4 A No, ma'am. In other words, once she takes it there,
5 you know, it's turned over to them.

6 Q So she would just take it from point A to point B?

7 A Yes, ma'am. That's it.

8 Q And you're point A?

9 A Yes, ma'am.

10 Q All right. I am going to show you what's been marked
11 for identifications purposes as State's Exhibit No. 11.
12 Do you recognize the handwriting on the outside of that
13 envelope?

14 A Yes, ma'am.

15 Q Whose handwriting is that?

16 A That's J. D. Sanders.

17 Q All right. And do you happen to know what's in that
18 particular envelope just by --

19 A Just by looking at it?

20 Q -- looking at the package?

21 A No, ma'am. Actually, all I've got is a case number,
22 the type of crime, the investigator, and what's in it.
23 Well, in other words, there's buccal swabs in here.

24 Q How do you know that?

25 A It is marked on here two buccal swabs from the mouth

1 of Rusty Dunbar.

2 Q All right. You talked before about logging things in
3 on property receipts; is that correct?

4 A Yes, ma'am.

5 Q Do you recognize that document?

6 A Yes, ma'am.

7 Q And how does that document compare, if it does at
8 all, with the piece of evidence that you're holding in
9 your hand?

10 A Well, it gives an idea of where it came from. Again,
11 it's got my name and signature on here showing where I
12 logged it in and also where I gave it over to the
13 transport to be transported by Mr. Johnson.

14 Q Okay. And based on that -- that property receipt you
15 can state that that item is what?

16 A Two buccal swabs from the mouth of Rusty Dunbar.

17 Q Who did you receive those from?

18 A I received them from Lieutenant Clay Adams.

19 Q I want to show you State's Exhibit No. 10 and ask if
20 you recognize that?

21 A Yes, ma'am.

22 Q What is that?

23 A This is also buccal swabs from Christopher Herndon --
24 two.

25 Q Okay. And how do you know all that?

(Clarence G. Turner-Direct by Mrs. Young)

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1 A Due to the writing and my bar code.

2 Q All right. I will show you that.

3 A Yes, ma'am. Two buccal swabs from the mouth of
4 Christopher Herndon, Sr., given to me by Lieutenant Clay
5 Adams. I logged it in on 17th and Investigator
6 O'Grady-Watts' Grady-Watts took it to SLED for me.

7 Q All right. Let me show you State's Exhibit No. 9.
8 Do you recognize that as something that would have come
9 through Aiken County?

10 A Yes, ma'am.

11 Q How do you recognize that?

12 A By the writing on the outside and my bar code.

13 Q All right.

14 A Okay. Yes, this is actually several different types
15 of evidence which this right here happens to be only five
16 of them -- I'm sorry, one through four -- given to me by
17 Mrs. O'Grady-Watts. I processed them and I returned them
18 to her. Well, actually I sent them to SLED by Deputy
19 Moody.

20 Q Okay. And how do you know all that?

21 A By the chain.

22 Q And the chain is documented where?

23 A The chain is documented on the paperwork that goes in
24 each case and associated with each piece of evidence.

25 Q And that's what you do as your job?

1 A Yes, ma'am.

2 Q Finally, I am going to show you what's been marked as
3 State's Exhibit No. 7.

4 A Okay. Yes, two buccal swabs from victim, Mr. Daniel
5 Hynes, was taken by Mr. Chris Johnson given to me to log
6 in evidence and I sent it to SLED through Deputy Moody.

7 Q All right. And each of these pieces of paper that I
8 have handed you, can you describe what they are for the
9 jury?

10 A Yes, ma'am. Every piece of evidence that comes to me
11 has to come in on a chain. Nothing is received without
12 it. If there was a mistake, then I get in touch with the
13 right authority -- investigators to let them know, but I
14 don't handle it unless it's got a chain for me to sign.

15 Q And, you know, for the jury who may not understand,
16 what exactly does that mean -- a chain? It's not like a
17 metal chain, is it? It's something else?

18 A No. Actually, it is just a chain of signatures and
19 where this evidence has been. In other words, I receive
20 it from someone. I process it and depending on what
21 happens afterwards, who takes it from me or who I give it
22 to, and I also place this same information in the
23 computer. It is a double-check is what it is.

24 Q So, basically, on all of these chains that you're
25 speaking of you're going to be for the most part link

(Clarence G. Turner-Direct by Mrs. Young)

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1 number two?

2 A In most cases, yes, ma'am, link number two.

3 Q And then it is your duty to document all of those
4 items, log them in --

5 A And make sure --

6 Q -- store them?

7 A -- they go to the next process or store them.

8 Storage is one of the biggest areas, too.

9 Q Do you store items for lengths of time?

10 A Yes, ma'am. We have it for quite a bit of time. We
11 have refrigerated areas that we put, for example, CSC
12 kits. I have special cells that I put -- for example, my
13 drugs and guns, I keep them in locked vaults. So I make
14 sure that everything is separated out, and, basically, I'm
15 the only one that knows where they are unless you go in
16 the computer.

17 Q So, various items of evidence of various types are
18 kept in separate locations?

19 A Yes, ma'am.

20 Q And you're the person who takes them in physically
21 and puts them in those locations?

22 A And tries to keep them by case.

23 Q By case. So, when you get items together you don't
24 just have them in there willy-nilly. You try to keep the
25 items for each case physically together in one location?

(Clarence G. Turner-Direct by Mrs. Young)

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1 A Exactly, yes, ma'am. Unless it's something like a
2 gun, I'll put the gun in the vault, drugs in the vault.
3 Everything else I can pretty much keep together.

4 Q All right. You said that you have a deputy that's
5 assigned to assist you on occasion with taking items to
6 SLED; is that correct?

7 A Yes, ma'am.

8 Q Who is that?

9 A Deputy Moody.

10 Q And if Deputy Moody was going to take items to SLED,
11 what would she do?

12 A Actually, I would let her know that I've got
13 something to go to SLED once I find out that I'm to send
14 it. My boss tells me when to send it or the investigators
15 tell me and then I go to deputy -- Well, in this case
16 right here I would go to Deputy Moody and say, Look, I
17 need to set a time that you can take this evidence to SLED
18 in Columbia and usually we try to do it in the afternoon.

19 Q All right. And you said you put all of the items in
20 a box if it's more than one?

21 A Yes, ma'am, plus separate them out by case if I can.

22 Q And does Deputy Moody assist you in doing that or you
23 do it on your own?

24 A No, ma'am. All of that is me.

25 Q So, when you give Deputy Moody a box she just knows

1 she's got a box?

2 A She's got a box and she's got the paperwork to go
3 with it.

4 Q And her duties are to take it to SLED and drop it
5 off?

6 A Yes, ma'am. Take it to SLED and actually once it
7 gets there, again, they'll go through my bar codes and
8 SLED knows by my previously putting it in the computer
9 what to do with it.

10 Q So, nothing shows up at SLED that they don't know
11 about or if they did they wouldn't take it?

12 A That's right.

13 Q So you have to pre-warn them about everything?

14 A Yes, ma'am. Well, there is so many different areas
15 that you send it to. Computers go to a different place.
16 Guns go to a different place. Your swabs go to a
17 different place.

18 Q So, you're the facilitator and protector of all of
19 this evidence?

20 A And the coordinator, yes, ma'am.

21 MR. MIMS: All right. No further questions of Mr.
22 Turner.

23 THE COURT: Mr. Gibbons?

24 CROSS-EXAMINATION

25

1 BY MR. GIBBONS:

2 Q Mr. Turner, it is pretty important to keep this stuff
3 straight, isn't it?

4 A Yes, sir.

5 Q That's the main part of your job to see that you can
6 track these items from the time they're collected until
7 the time they're tested; correct?

8 A And properly handled, yes, sir.

9 Q Now, I am going to hand you something marked for ID
10 purposes only at this point.

11 (Whereupon, Defendant's Exhibit No. 1 was marked for
12 identification only.)

13 Q Is it true that there is a piece of paper that
14 reflects the chain on each item that you take into your
15 evidence facility?

16 A Yes, sir.

17 Q And the person that collects it signs that they
18 collected it; correct?

19 A Yes, sir.

20 Q And then they also indicate who gets it next; right?

21 A Well, I would automatically be the one to get it
22 next, but they will leave instructions on the top. There
23 is an area there that tells whether they want latents done
24 on on it, serology done on it and so forth.

25 Q But if an officer is out in the field and they pick

(Clarence G. Turner-Cross by Mr. Gibbons)

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1 something off the ground and they hand it to another
2 deputy who brings it to you there is supposed to be paper
3 tracking that the whole way; correct?

4 A Everyone fills out the paperwork, yes, sir. Whoever
5 brings it to me is the one that is the only one I'm
6 concerned with.

7 Q But under your policy and under correct evidence
8 procedure everyone that touches it should put their name
9 on the piece of paper; correct?

10 A Yes, sir, they should.

11 Q Now, you log something into evidence it's yours;
12 right?

13 A Yes, sir.

14 Q And and you're responsible for it until it leaves
15 your facility?

16 A Yes, sir.

17 Q Now when something leaves your facility do you sign
18 on that paper who you give it to?

19 A Well, the person that takes it from me usually signs,
20 yes, sir.

21 Q Usually?

22 A Usually, yes, sir.

23 Q Is this a business of usually or is this a business
24 of you got to keep track of it?

25 A Well, we keep track of it by some type -- what I'll

1 do is write the name of the person taking it up.

2 Q They don't sign for it?

3 A Most cases they do, yes, sir.

4 Q In most cases? Is it a policy or is it not a policy,
5 sir?

6 A Yes, sir. It's a policy.

7 Q So they should sign every time, shouldn't they?

8 A Yes, sir.

9 Q And you're the evidence custodian?

10 A Right. Yes, sir.

11 Q And it's your responsibility to make sure when it
12 leaves you've done everything you're supposed to do and
13 everything is straight when it goes out your door;
14 correct?

15 A Yes, sir.

16 Q Now, these items -- someone brings you eight items --

17 A Uh-huh.

18 Q -- and logs them into evidence. They may be in a
19 bag; correct?

20 A They will separate them out. In other words, they
21 should be in a bag, yes, sir, protected.

22 Q Now, if they're in a bag and they're sealed up like
23 the state was showing you some of these envelopes --

24 A Right.

25 Q -- who decides what -- who tells you what's in the

(Clarence G. Turner-Cross by Mr. Gibbons)

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1 envelope?

2 A The person on the chain.

3 Q So you don't actually -- before you sign your name
4 saying that's what you got you don't open that envelope
5 and make sure there is something in it?

6 A When it deals with swabs, no, sir.

7 Q What about print cards?

8 A Print cards I do, yes, sir.

9 Q You would break open that bag and see what's in it?

10 A Well, it depends on -- What I do, if it is a print
11 card I send it to a.f.i.s. and a.f.i.s. requires the
12 smaller envelope. Sometimes they'll give me an envelope
13 with the print cards in a bigger envelope. So, I do
14 remove them.

15 Q All right. Are you familiar with the swabs from a
16 steering wheel, door handle, and some sneakers that got
17 sent to SLED?

18 A Well, they would have been written on the bags, yes,
19 sir.

20 Q And would there be a property sheet along with the
21 bag?

22 A Yes, sir.

23 Q And before you left -- let it leave your custody you
24 would verify who was taking it; correct?

25 A Right, yes, sir.

(Clarence G. Turner-Cross by Mr. Gibbons)

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1 MR. GIBBONS: One moment, Your Honor.

2 I am going to hand you what's been marked as
3 Defendant's Exhibit 1. What is that item?

4 THE WITNESS: This is a swab from steering wheels,
5 swab of steering wheel -- two swabs -- swab interior door
6 handle driver's door, swab interior door handle front
7 passenger door, one latent print card, one white K-Swiss
8 men's sneaker right shoe, two white envelopes from
9 household bills, and three blank deposit slips.

10 Q So there are some swabs from a car?

11 A From steering wheels and door handles, yes, sir.

12 Q And they were brought in by whom?

13 A Investigator Watts.

14 Q And what did she do when she brought those in?

15 A Well, she would bring them to me sealed and I would
16 document them, bar-code them, and wait until she tells me
17 what to do with them.

18 Q Is that what happened? She signed them over to who?

19 A She signed them over to me.

20 Q And they entered your evidence system at that point?

21 A Yes, sir.

22 Q Now, you were talking about a new system that SLED
23 has with the computers?

24 A Right, yes, sir.

25 Q When you got this item was that system being used?

(Clarence G. Turner-Cross by Mr. Gibbons)

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1 A No, sir.

2 Q It was a paper system at a that point, wasn't it?

3 A It was a paper system, yes, sir.

4 Q And that paper was an integral part of that system,
5 wasn't it?

6 A Yes, sir, that I fill out my other paperwork by, yes,
7 sir.

8 Q Okay. So you rely on that paperwork to make sure
9 that you've accounted for all of this stuff because it's a
10 lot of stuff?

11 A Yes, sir, exactly. This is the only thing I've got,
12 yes, sir.

13 Q All right. So there is no computer printout. There
14 is no list at SLED that they're relying on. It's that
15 paper; correct?

16 A Well, this paper and then I print one out. I did the
17 paperwork for SLED and sent it with the items.

18 Q All right. But that paper is what you used to fill
19 it out?

20 A Yes, sir.

21 Q All right. Now, according to that paper which is
22 supposed to stay with the item the whole time; correct?

23 A Or a copy of it, yes, sir.

24 Q That's supposed to reflect everywhere it's been,
25 isn't it?

1 A Right, yes, sir.

2 Q Now according to that item has that item left the
3 Sheriff's Office?

4 A No, sir; not at this point here not by 10/16 I
5 received it.

6 Q All right. Now, if it did leave the Sheriff's Office
7 it should have an officer's signature saying they received
8 it; correct?

9 A Right. That would be the next step, yes, sir.

10 Q That would be underneath your name on that document?

11 A Right, yes, sir.

12 Q Is there anything underneath your name on that
13 document?

14 A Not on this particular sheet.

15 Q So as far as the evidence custodian of the Aiken
16 County Sheriff's Office is concerned that item is still at
17 the Sheriff's Office?

18 A Yea, by that paper, yes, sir.

19 Q Was there another paper you can show me?

20 A There should be another one, yes, sir.

21 Q There should be? Is it--

22 A An updated one.

23 Q -- here?

24 A I don't see it at this point, no, sir.

25 Q But it should be written on this one; correct?

(Clarence G. Turner-Cross by Mr. Gibbons)

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1 A Well, that's a copy of my original. The original
2 would be with my case file.

3 Q Is this what was sent to the solicitor's office?

4 A That's what they picked up at that time. It had not
5 been sent to SLED at that time.

6 Q Sir, is it a fair statement to say that this piece of
7 paper wasn't handled correctly?

8 A No, sir. It depends on when you got that copy.

9 Q So, maybe there is a copy with a signature on it?

10 A Yes, sir.

11 Q Would it be attached to the item?

12 A It should be with the master file, yes, sir.

13 Q All right. Did you receive this item back from SLED?

14 A Yes, sir. It would be brought back by another
15 deputy.

16 Q And would it be logged back in at your evidence
17 locker?

18 A Yes, sir. In fact, that deputy would sign it in.

19 Q And is that reflected on this sheet?

20 A Not on that particular sheet, no, sir.

21 Q Are you aware of another sheet where that might be?

22 A Yes, sir. There is one in my case file.

23 Q Do you have your case file with you?

24 A No, sir.

25 Q You came to court without your case file?

(Clarence G. Turner-Redirect by Mrs. Young)

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1 A Yes, sir.

2 Q And, so, you don't have anything to show this jury --

3 A Not at this point, no, sir.

4 Q -- other than this at this point?

5 A Not unless I go back to get my case file.

6 Q Which you didn't bring?

7 A No, sir.

8 MR. GIBBONS: Nothing further.

9 THE COURT: Redirect?

10 REDIRECT EXAMINATION

11 (Whereupon, State's Exhibit No. 40 was marked for
12 identification only.)

13 BY MRS. YOUNG:

14 Q Mr. Turner, I am going to show you what's been marked
15 for State's exhibit -- as identification purposes rather
16 as State's Exhibit 40 and ask if you recognize that?

17 A Yes, ma'am. This is a further-dated copy from what I
18 just looked at.

19 MR. GIBBONS: Your Honor, I have something to bring
20 up with the court outside of the presence of the jury.

21 THE COURT: Can we do it at side bar?

22 MR. GIBBONS: Yes, sir.

23 (Whereupon, a bench conference was held.)

24 Q I can't remember what is the last thing I asked you.
25 Do you recognize that?

(Clarence G. Turner-Redirect by Mrs. Young)

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1 A Yes, ma'am. This is a copy of what I just looked at
2 but further down the line.

3 Q Okay. And what does that -- Can you recognize that
4 as being a completed version of what Mr. Gibbons was
5 asking you about?

6 THE COURT: That is Plaintiff's Exhibit for ID 40?

7 THE WITNESS: Forty, yes, sir.

8 Q Can you recognize it as -- What is it?

9 A Yes, ma'am. In other words this is where I sent it
10 to SLED through Deputy Moody and there is actually another
11 one where it is updated where it came back to me.

12 Q All right. So, all of that's reflected to on that
13 paperwork?

14 A All except for it coming back.

15 Q All right. And you recognize that paperwork because?

16 A Because it's got my signature on it, yes, ma'am.

17 Q And you said things are included in your case file.
18 Is that the type of paperwork that you're talking about?

19 A Right, from my master copy. I keep a -- well, the
20 master copy that came from the original. All of this is
21 is just a photocopy.

22 Q All right. But is that a true and correct copy of
23 what's in your master file?

24 A Except for the last addition where it came back, yes,
25 ma'am, it is.

(Clarence G. Turner-Redirect by Mrs. Young)

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1 MRS. YOUNG: Your Honor, we'd move to enter State's
2 Exhibit 40 as evidence at this time.

3 THE COURT: Subject to to objection by the Defense
4 which we'll put on the record when we take a break.

5 (Whereupon, State's Exhibit No. 40 was admitted into
6 evidence.)

7 Q So, just to clarify, your paperwork is a step-by-step
8 process?

9 A Yes, ma'am, step-by-step.

10 Q So there might be a copy that doesn't reflect another
11 step that somebody might have, but if something happens
12 and it goes to SLED or it comes back you write that down
13 and you keep the master copy?

14 A That's documented. Right. I keep all of the master
15 copies.

16 Q So, there could be a copy that's an earlier-in-time
17 version that wouldn't have the additional entries and
18 exits of the evidence on it?

19 A Yes, ma'am, depending on when it was taken.

20 Q All right. But you have one copy that you keep that
21 reflects everything?

22 A That's the master copy for the whole case, yes,
23 ma'am.

24 MRS. YOUNG: No further questions.

25 THE COURT: You may step down.

(Melody L. Moody-Direct by Mr. Grimes)

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1 MR. GRIMES: The state calls Deputy Mel Moody.

2 MELODY L. MOODY, after being duly sworn,
3 testified as follows:

4 THE CLERK: Please have a seat in the witness box.
5 State your full name for the court and spell your last.

6 THE WITNESS: Melody Leigh Moody; M-O-O-D-Y.

7 DIRECT EXAMINATION

8 BY MR. GRIMES:

9 Q Deputy Moody, where are you employed?

10 A Aiken County Sheriff's Office.

11 Q And are you a deputy there?

12 A Yes, sir.

13 Q What are some of your job responsibilities?

14 A I am a road deputy. I answer calls. I respond to
15 9-1-1, whatever they send me to.

16 Q Is it part of your job duties from time to time to
17 carry evidence to SLED?

18 A Yes, sir.

19 Q Where is SLED at?

20 A Columbia, South Carolina.

21 Q When you transport evidence to SLED is that at the
22 direction of the evidence custodian?

23 A Yes, sir.

24 Q And when you transport evidence is it prepackaged?

25 A Yes, sir.

(Melody L. Moody-Direct by Mr. Grimes)

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1 Q Do you recall transporting any evidence related to
2 this case?

3 A Yes, sir.

4 Q And how is that evidence when you took custody of it?

5 A A box. A sealed box.

6 Q Was it sealed?

7 A Yes, sir.

8 Q Did you, in fact, transport that evidence to
9 Columbia?

10 A Yes, sir.

11 Q Did you tamper or alter with that evidence in any
12 way?

13 A No, sir.

14 Q Did the box remained sealed?

15 A Yes, sir.

16 MR. GRIMES: No further questions. Thank you.

17 MR. MIMS: No questions, Your Honor.

18 THE COURT: You may step down. Next witness.

19 MRS. YOUNG: The state calls Lieutenant Clay Adams.

20 MARTIN CLAY ADAMS, after being duly sworn,
21 testified as follows:

22 THE CLERK: Please have a seat in the witness box.
23 State your full name for the court and spell your last.

24 THE WITNESS: Martin Clay Adams; A-D-A-M-S.

25 DIRECT EXAMINATION

(Martin Clay Adams-Direct by Mr. Grimes)

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1 BY MR. GRIMES:

2 Q Lieutenant Adams, where are you employed?

3 A I'm employed at the Aiken County Sheriff's Office.

4 Q What do you do with the Aiken County Sheriff's
5 Office?

6 A I am the Lieutenant of Forensic Investigations for
7 the Sheriff.

8 Q Okay. In general, what is forensic?

9 A I oversee the crime scene unit for the Sheriff. Our
10 main responsibilities are to respond to major calls for
11 service, to document and process crime scenes, collect
12 physical evidence, examine physical evidence such as
13 fingerprints. We operate the AFIS identification system.
14 I am also over the drug lab and the the evidence for the
15 Sheriff.

16 Q Are you familiar with swabs taken for DNA testing?

17 A I am.

18 Q Is it one of your responsibilities to take swabs for
19 DNA testing?

20 A It is.

21 Q How are those swabs taken?

22 A They're commonly referred to as buccal swabs.
23 They're swabs that are in a sterile container. The type
24 that we use is called Cap-Sure. It is a swab that has a
25 housing -- a plastic housing over the tip of the swab so

(Martin Clay Adams-Direct by Mr. Grimes)

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1 that it can be air-dried. What we do is we will take two
2 of those swabs and swab the inside of the left cheek and
3 the right cheek of the person. It's then -- the cap to
4 the top of them are secured and then they're put into an
5 envelope and sealed.

6 MR. GRIMES: Your Honor, may I approach?

7 THE COURT: Yes, sir.

8 Q I am going to show you what's been marked State's
9 Exhibit 11 and ask if you recognize that?

10 A I do.

11 Q And do you know what it is?

12 A This is an envelope that contains two buccal swabs
13 from the mouth of Rusty Dunbar.

14 Q Do you know who took those?

15 A Collected by me.

16 Q Does that indicate when?

17 A Not on this. It would be on the chain of custody.

18 Q Okay.

19 At this time I'd move to admit State's Exhibit 11
20 into evidence.

21 MR. MIMS: No objection.

22 (Whereupon, State's Exhibit No. 11 was admitted into
23 evidence.)

24 Q I am going to show you what's been marked as State's
25 Exhibit 10 and ask if you can identify that?

(Martin Clay Adams-Direct by Mr. Grimes)

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1 A I can.

2 Q What is that?

3 A These are two buccal swabs from Christopher Herndon.

4 Q Who took those?

5 A I did.

6 Q Did you package them in this envelope?

7 A I did.

8 MR. GRIMES: At this time I'd move to introduce
9 State's exhibit 10 into evidence.

10 THE COURT: That's subject to your other objections.

11 MR. GIBBONS: (Witness nods head.)

12 THE COURT: We'll deal with that in a few minutes.

13 (Whereupon, State's Exhibit No. 10 was admitted into
14 evidence.)

15 Q How do you take buccal swabs? Once you've taken
16 them, how are they packaged?

17 A They are packaged into a manilla envelope and then
18 sealed with the evidence tape to show if any tampering has
19 been done with the envelope.

20 Q Okay. And once you took the buccal swabs in this
21 case what did you do with them?

22 A They were sealed and admitted into the evidence room.

23 Q After taking the buccal swabs did you change them or
24 alter them in any way before they were taken into
25 evidence?

(Amber Way-Direct by Mrs. Young)

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1 A No, sir.

2 Q Thank you. No further questions.

3 THE COURT: Cross?

4 MR. MIMS: No questions, Your Honor.

5 MRS. YOUNG: The state calls Amber Way.

6 AMBER WAY, after being duly sworn, testified as
7 follows:

8 THE CLERK: Please have a seat in the witness box.

9 State your full name for the court and spell your last.

10 THE WITNESS: Amber Way; W-A-Y.

11 DIRECT EXAMINATION

12 BY MRS. YOUNG:

13 Q Ms. Way, where are you employed?

14 A Aiken County Sheriff's Office.

15 Q What do you do for the Sheriff's Office?

16 A The forensic drug chemist.

17 Q How long have you been doing that job?

18 A February will be four years.

19 Q Prior to doing that job describe your education that
20 you received?

21 A I have a Bachelor Degree in Chemistry and was trained
22 by the South Carolina Law Enforcement Division or SLED in
23 Columbia.

24 Q What were you trained to do?

25 A To analyze controlled substances.

(Amber Way-Direct by Mrs. Young)

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1 Q Can you describe how you were trained at SLED?

2 A I was given a series of books to read and then tested
3 upon the books and then given a hands-on test along with
4 doing numerous tests alongside another chemist.

5 Q How long does this testing process that you undergo
6 -- how long does that last?

7 A Four months.

8 Q And did you pass the tests?

9 A Yes, ma'am.

10 Q And how many times have you analyzed drugs during the
11 course of your employment?

12 A Over a thousand at least.

13 Q Have you been qualified as an expert witness to
14 testify in the state of South Carolina before?

15 A Yes, ma'am.

16 MRS. YOUNG: Your Honor, at this point in time we'd
17 offer Ms. Way as an expert in the field of drug analysis.

18 MR. MIMS: No objection, Your Honor.

19 THE COURT: Sir?

20 MR. MIMS: No objection.

21 THE COURT: Fine.

22 Mr. Foreman, ladies and gentlemen of the jury, what
23 that really means is when we have a person qualified as an
24 expert they're able to give an opinion. I'll tell you
25 when I charge you what weight, if any, you can give

1 opinions by experts. Normally a person can only testify
2 about what they see, smell, taste, hear, feel. They can't
3 give opinions, but an expert may give an opinion. That's
4 an exception to the rules of evidence. It's not an
5 exception, but it is a rule.

6 Q Ms.~Way, I am going to show you what's been marked
7 for identification purposes as State's Exhibit No. 8. I
8 ask if you recognize that item.

9 A Yes, ma'am.

10 Q And what is that?

11 A This is the sealed evidence after I've tested it.

12 THE COURT: Speak up for me.

13 THE WITNESS: This is the sealed evidence after it's
14 been tested.

15 Q And what's the procedure that you use once you
16 receive -- How do you receive evidence to test it?

17 A An evidence is dropped into a dropbox. It is like an
18 old US post box that I have outside of my lab. I have the
19 only key to it from which I retrieve the evidence, log it
20 in, and then I proceed with my testing.

21 Q What sort of testing do you do in your lab?

22 A I do two types of tests for marijuana. One is a
23 microscopic and the other is a color test, basically.

24 Q What is a color test?

25 A The color test -- if this is marijuana it's mostly

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1 the color turns purple and then the chloroform is added to
2 it and there is a little dot and if that dot turns pink
3 then you have the presence of THC or marijuana.

4 Q Is it some kind of chemical testing that's been
5 approved by SLED?

6 A Yes, ma'am.

7 Q And that's how you were trained to test for in this
8 case marijuana --

9 A Yes, ma'am.

10 Q -- as part of your testing?

11 A Yes, ma'am.

12 Q And those are the two methods that SLED uses?

13 A Yes, ma'am.

14 MRS. YOUNG: Your Honor, at this time we'd move to
15 admit State's Exhibit No. 8 as evidence in this case.

16 MR. MIMS: No objection, Your Honor.

17 THE COURT: Without objection.

18 (Whereupon, State's Exhibit No. 8 was admitted into
19 evidence.)

20 (Whereupon, State's Exhibit No. 41 was marked for
21 identification only.)

22 Q I am going to show you what's been marked as State's
23 exhibit No. 41 and ask if you recognize that?

24 A Yes, ma'am.

25 Q What is that?

1 A This is a copy of my report.

2 Q And how do you know -- When you say a copy of your
3 report, does it go with State's Exhibit No. 8?

4 A Yes, ma'am.

5 Q How do you know that?

6 A I have the lab number on my report. I also have the
7 control number which is on the evidence along with my lab
8 number on the evidence and they correspond with the
9 report.

10 Q There is a numeric system by which you identify
11 things for particular cases and that's how you keep track
12 of them?

13 A Yes, ma'am.

14 Q And did you come to a conclusion to a reasonable
15 degree of scientific certainty as to what you tested in
16 this particular case?

17 A Yes, ma'am.

18 Q And what was that?

19 A Marijuana was found. It was .73 grams.

20 MRS. YOUNG: No additional questions.

21 MR. MIMS: Nothing, Your Honor.

22 THE COURT: You may step down. Next witness.

23 MRS. YOUNG: Your Honor, at this time I'd like to
24 recall Deputy Moody to the stand.

25 THE COURT: Come around, ma'am -- sir -- ma'am.

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1 MRS. YOUNG: Your Honor, I have spoken with the
2 Defense. They don't mind. I should have entered
3 something with Deputy Moody. You don't have to come up,
4 Deputy Moody. We just move to enter State's Exhibit No. 7
5 pursuant to the testimony of Deputy Moody and the other
6 witnesses.

7 THE COURT: Any objection?

8 MR. MIMS: No, Your Honor.

9 (Whereupon, State's Exhibit No. 7 was admitted into
10 evidence.)

11 THE COURT: Thank you. Next witness.

12 MRS. YOUNG: Your Honor, may we approach?

13 THE COURT: Yes, ma'am.

14 (Whereupon, a bench conference was held.)

15 MRS. YOUNG: The state calls Mary Francis
16 O'Grady-Watts.

17 MARY FRANCIS O'GRADY-WATTS, after being duly
18 sworn, testified as follows:

19 THE CLERK: Please have a seat in the witness box.
20 State your full name for the court and spell your last.

21 THE WITNESS: Mary Francis O'Grady-Watts.

22 DIRECT EXAMINATION

23 BY MRS. YOUNG:

24 Q Kind of a mouth full there. Where are you employed
25 Mrs. O'Grady-Watts?

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1 A Aiken County Sheriff's Office Forensics Unit.

2 Q How long have you been employed in that capacity?

3 A Since January of 2005.

4 Q And what are your duties as a forensic investigator?

5 A Basically, to investigate the evidentiary aspects of
6 crime scenes.

7 THE COURT: Speak a little louder.

8 THE WITNESS: I'm sorry.

9 Q Can you just repeat that?

10 A To basically -- we investigate the evidentiary
11 aspects of crime scenes. We'll document, collect
12 evidence, package them.

13 Q And do you recall being called out to assist in the
14 case in October of 2008?

15 A Yes.

16 Q Regarding Rusty Dunbar and Christopher Herndon?

17 A Yes.

18 Q And how were you called out on that date?

19 A Actually --

20 Q If you recall?

21 A -- I was called to process the victim's vehicle.

22 Q That was the purpose of your being called out on the
23 date?

24 A Correct.

25 Q When you say you were called out to process the

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1 vehicle, what exactly do you do step-by-step, if you
2 would, to process a vehicle?

3 A Basically -- it's in this case it's not actually a
4 scene. Your is scene is your vehicle. I went to the tow
5 service where it was towed to from the early morning hours
6 and, basically, you'll have certain steps that you will do
7 while you're processing this vehicle.

8 The first thing you're going to do is take a basic
9 overview of the vehicle. You're going to look around and
10 see what you got, what you don't have. You're going to
11 then take photographs of the vehicle in its entirety
12 because you want to know what locations some things are in
13 because they might be pertinent. They may not -- things
14 that may not have been there that should have been there.
15 You don't know.

16 MRS. YOUNG: May I approach the witness, Your Honor?

17 THE COURT: Yes, ma'am.

18 Q Investigator O'Grady-Watts, I am going to show you
19 what's been marked for identifications purposes as State's
20 Exhibits 32 through 38 and ask you to take a look at --
21 Excuse me, 37 -- 32 through 37. I will ask you to take a
22 look at each of those individually and when you're done
23 tell me if you can collectively recognize what that is.

24 A These are the photographs I took of the victim's
25 vehicle that day, that morning.

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1 Q And do those photographs accurately and correctly
2 depict the state of the vehicle as you recall it on the
3 day in question?

4 A Yes.

5 Q Your Honor, at this time we'd move to enter State's
6 Exhibits No. 32 through 37 into evidence.

7 MR. MIMS: No objection.

8 THE COURT: Without objection.

9 (WHEREUPON, State's Exhibit No. 32 - 37 were admitted
10 into evidence.)

11 Q And as you're testifying, Investigator Watts, if you
12 could just hold up the pictures and describe why you took
13 each one and why it's important.

14 Your Honor, may she publish those as she discusses
15 her testimony?

16 THE COURT: Yes, ma'am.

17 THE WITNESS: State's Exhibit No. 32 is the back of
18 the vehicle. You want to take -- your first photograph
19 should be anything that identifies something on that
20 vehicle. Now, whether the tag belongs to it or not you'll
21 find out later, but usually you're going to do some
22 identifier. Then you proceed to go -- which this is
23 State's Exhibit 33 -- you'll go around the vehicle,
24 basically, documenting the exterior condition of when you
25 first see it.

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1 You're going to, basically, go around the vehicle.

2 This is just, basically, from the same view, front end.

3 This is going to be Exhibit No. 34. Once you're done on
4 the outside photographing you're actually going to go into
5 the interior of the vehicle. State's Exhibit No. 35 is
6 going to be the driver's side rear door for what you would
7 view if you opened that vehicle. State's Exhibit No. 36
8 is going to be the front passenger seat section and what
9 the contents are and No. 37 is going to be a photograph or
10 a close-up shot of the shoe that is in the front passenger
11 floorboard which you will see in No. 36.

12 Q Investigator Watts, where were you located when you
13 took those pictures of the vehicle?

14 A You're, basically, standing right outside of it in
15 the tow yard.

16 Q Do you recall which tow yard this was?

17 A It is near the airport. It is someplace I had never
18 been before. They were brand new on the rotation, I
19 guess.

20 Q What does that mean if somebody's tow yard is on the
21 rotation?

22 A There are different tow services that have contracts
23 with the county for different reasons. What they will do
24 is they will take vehicles like the victim's or suspect's
25 vehicle and they will tow them for safekeeping. If you

1 have a stolen vehicle they'll, basically, house those for
2 us for certain periods of time.

3 Q And can anybody be a tow yard? Are you familiar with
4 that at all?

5 A I believe they have to meet certain criteria in order
6 to have certain guidelines or standards that the county
7 must mandate that they have to have in order to be on the
8 rotation.

9 Q When did you say it was? What date did you take
10 those pictures?

11 A It is the same day that I processed the vehicle. It
12 should have been -- It is going to be October 7 of 2008.

13 Q At what time?

14 A Basically, I got there -- It was probably right
15 around 10:30 because normally the time that I enter in on
16 my chain of custody is basically the first piece of
17 evidence that I will collect. That's 10:55 on my sheet on
18 my chain of custody.

19 Q After you took the pictures of that particular
20 vehicle what is the next thing that you did, if anything?

21 A Well, it depends on what you're actually looking for
22 in the vehicle and in this case I really -- I was not at
23 the scene so I really don't know exactly everything that
24 took place and I don't know who was in the vehicle or how
25 many people were in the vehicle. So, you can collect for

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1 DNA and that could mean anything from visual things that
2 you will see. You collect blood or you can collect
3 certain other fluids or something that's dry that you see
4 or in some cases you may not see anything. You may just
5 be looking at in certain places that you know somebody had
6 to have been or touched, and you're, basically, taking
7 swabs like have been discussed earlier and you're looking
8 for not so much trace evidence, but something that you're
9 going to need later and you could send that to the lab up
10 at the South Carolina Law Enforcement Division and see if
11 they will, in fact, come up with anything for you.

12 Q Before we go any further let me back up with you for
13 a little bit. You said you've been with the Aiken County
14 Sheriff's Office since '07?

15 A Since '05.

16 Q And how long have you been in law enforcement?

17 A Seventeen years.

18 Q And where were you previously employed prior to being
19 employed at the Aiken County Sheriff's Office?

20 A The Columbia Police Department. I was there for 10
21 and a half years and I was actually in their Crime Scene
22 Unit for five years prior to becoming a forensic
23 investigator here.

24 Q Did you receive any special training in order to
25 become a crime scene investigator at the time?

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1 A Yes. There is always constant training involved, but
2 initially when you become a crime scene investigator they
3 will send you to certain basic classes -- everything from
4 processing evidence for latent impressions to actually
5 documenting crime scenes, courtroom testimony, the South
6 Carolina Law Enforcement or South Carolina Academy at that
7 time had different classes that they were offering. So,
8 basically, you were put through almost a mini-academy at
9 periods of time when classes were offered. There are
10 other classes that are offered outside of that fact that
11 you can attend. There is also the Association of --
12 International Association for Identification that allows
13 you to go classes periodically almost every two months.
14 They'll have a seminar on various topics that you can
15 either use as refresher courses or potentially learn
16 something new.

17 Q When you initially were trained by the Columbia
18 Police Department you passed the testing or the classes
19 that were required to become a crime scene analyst?

20 A Yes.

21 Q And that's additional training other than what you
22 received for a standard law enforcement officer; is that
23 correct?

24 A Yes. This is a specialty position so you're actually
25 going to receive training above and beyond what you would

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1 normally get when you enter into the academy when you
2 start out on the road.

3 Q Since the time you were initially qualified to do
4 crime scene work have you continued to take continuing
5 education classes in that field since then?

6 A Yes. Anything you can get your hands on you have to
7 take it because this is a constantly-evolving portion of
8 our occupation. So...

9 Q And have you been previously qualified as an expert
10 witness in the state of South Carolina?

11 A Yes.

12 Q How many times?

13 A Numerous times; more than 20.

14 MRS. MIMS: Your Honor, at this point in time we'd
15 offer Investigator Watts as an expert in the field of
16 forensic analysis.

17 MR. MIMS: No objection.

18 THE COURT: Without objection.

19 Q I'm sorry. I should have done that in beginning.
20 I'm backtracking. All right. So you took the pictures?

21 A Correct.

22 Q And you're at the car?

23 A Yes.

24 Q You stated you weren't exactly sure what was going on
25 with it?

1 A I had not gone -- I was not at the scene, the initial
2 crime scene. This is, in essence, you're processing it as
3 a crime scene in and of itself and so you're not really
4 sure what you're doing or what is involved in this so
5 you're going to have to collect everything that you
6 humanly can that you might think is involved. So, beyond
7 your basic photo documentation you're also going to look
8 for other evidence whether it be trace or be hairs,
9 fibers, et cetera, or in this case I did take swabs for
10 potential DNA because I did not know who was in the
11 vehicle.

12 Q Can you describe -- you talked a lot about swabs.

13 A These are the swabs we're talking about. Basically,
14 they're kind of like glorified Q-tips. This is,
15 basically, sealed from the factory. It is sterilized. It
16 has never seen the the light of day. Once you go to the
17 scene -- Well, first you have gloves. For everything you
18 do you have gloves. You'll put a pair of gloves on.
19 You'll change these gloves everytime you do something,
20 especially when you're doing DNA or especially when you're
21 using dust processing for prints. You will use a lot of
22 these. Your hands get sweaty. Things don't need to be
23 cross contaminated. You switch these out. These are of
24 of no -- you know, you can't spare them.

25 You'll open up this tape. You put the gloves on. It

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1 is housed in a plastic container. Basically within this
2 container it will protect it. Once you take your swab
3 what we do is we take distilled water. We will wet the
4 swab, especially if it is something, say, if you have what
5 you believe to be dried blood you can take other tests.
6 There is a phenolphthalein test that we also carry to make
7 sure beyond a reasonable doubt what you're getting is, in
8 fact, blood, but in this case I did not see any and there
9 was no reason for me to do that.

10 What I'm looking for is the unseen and whether it was
11 still water and, basically, you're going to go over any
12 surface that you deem that the person may have touched.
13 You know when you get in a car you're going to touch door
14 handles. You're going to touch a steering wheel. You're
15 going to touch gear shift. You're going to touch a whole
16 bunch of different things depending on how long you have
17 the car. So, within that just alone you're going to hit
18 those hotspots that you know somebody has to be touching.

19 So, once you like say you wet it with the distilled
20 water -- just one drop. That's all you need. You'll go
21 over the surface. You'll go over and above the steering
22 wheel. Human beings are creatures of habit. They'll
23 always consistently do the same things whether it's their
24 vehicle or somebody else's vehicle. They're going to
25 drive it the same way. You're going to look and you're

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1 going to go beyond exactly or just swabbing every nook and
2 cranny you can to see if you can get something out of
3 something. Like in this case in the steering wheel you'll
4 go in the grooves on the backside. You'll go around the
5 top. A lot of people will just hold it on the bottom of
6 the steering wheel. You'll do the same thing on the
7 bottom. Those are the few spots there. You go to the
8 gear shift. You're going to go all the way around the
9 gear shift. You can do the air controls. You can do the
10 radio -- all of that kind of stuff. Once you're done, you
11 seal it back up in your container and nothing can harm it.
12 It will dry by itself. That's the unique part of these.
13 These are great.

14 Q Investigator Watts, would you use an individual swab
15 for each location that you --

16 A Yes.

17 Q -- intended to swab?

18 A Yes, you will. You can take as many samples as you
19 want because you don't know where you're going to get
20 something. So, after you're done taking your sample each
21 one of them goes in its own separate entity. It basically
22 goes in the envelope. You take it, you seal it up in
23 there, and on the front once you're done you're going to
24 write all of your pertinent information -- your case
25 number, location that you took it from. In this case at

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1 the top since I was not actually the original crime scene
2 I am going to write all of that pertinent stuff at the
3 top. On the bottom is all my information -- when I took
4 it, where I was, et cetera, but once this is done this is
5 it. This is your final product. You'll put this with the
6 rest of your evidence -- whatever you happen to collect
7 out of that vehicle.

8 Q And so kind of taking us through the process do you
9 recall what you did particularly with this vehicle on the
10 date in question that you -- what you did to process the
11 inside?

12 A Yes. Basically, I did the two things. I went
13 looking for DNA I processed, you know, certain spots for
14 DNA and where I actually took swabs from in this
15 particular vehicle I took two from the steering wheel. I
16 took one from the interior door handle on the driver's
17 door and I took one from the interior door handle of the
18 front passenger door. There wasn't a lot in this vehicle.
19 Some vehicles you get a number of things in there, but for
20 some reason this one just didn't have a lot in it and so I
21 concentrated on those spots figuring there had to be
22 somebody at least in the front passenger aspect.

23 Then after I went and collected all of my DNA you can
24 actually get the car dirty. You can actually go back with
25 your dust and actually start looking for potential latent

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1 prints within the vehicle and on the outside of the
2 vehicle.

3 Q Did you do that in this particular case?

4 A Yes, I did.

5 Q Did you have any results as a result of your
6 fingerprint tests?

7 A I actually got two partial latent fingerprints and
8 they were from the exterior driver's door frame of the
9 victim's vehicle. So I went back and we have -- if we do
10 a manual comparison which is what I did in this respect
11 you'll go back and look at potential suspects and you'll
12 look at your victim because it's the victim's vehicle.
13 So, they're going to touch their vehicle.

14 Q Before I get there, let me ask you this. You say you
15 take latent. How do you do that? I mean, you dust them?
16 Everybody sees that on TV. Then what do you do?

17 A Basically, once you -- you'll look in certain areas a
18 lot of times around the exterior portions of the door. If
19 you have a driver they're going to get in or out. They're
20 gonna slam things closed. You'll put the dust which is,
21 basically, volcanic ash and it adheres to anything that
22 that has been previously wet. You may or you may not get
23 something that is identifiable. In this case I did.

24 You'll then take your tape and then what you'll do is
25 you'll smooth the tape over it. You'll cut yourself a

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1 portion of it, and, basically, you'll peel it back and
2 then you'll take a latent card and basically press it on
3 the latent card. You'll address the latent card on the
4 backside of it as to where you found it verbally like
5 handwritten and then you'll actually go and make yourself
6 a little diagram off to the left because most of the
7 latent cards nowadays do that that, and, basically, it
8 shows for reference actually where you obtained it from.

9 Q You say you were able to obtain some latent lifts
10 from the driver's door?

11 A Two.

12 Q Two. And then once you get them and put them on the
13 card what is the next thing that you do with those?

14 A You enter it into evidence with everything else
15 because that is part of everything that you're bringing
16 back from that vehicle.

17 Q And did you later do something with those latent
18 lifts that you took from the car?

19 A Actually, I compared them to different suspects and
20 they actually came back to the victim. They were his left
21 index and his left -- yea, his number seven and his number
22 eight fingers which I said if it's the victim, it's his
23 vehicle, more than likely he is going to leave prints
24 somewhere, but in this case it just happened to be his.

25 Q What is your number seven and your number eight

1 finger?

2 A Left index and -- I actually printed it twice on
3 here. These two. (Indicating) They are the fingers.

4 MRS. YOUNG: May I approach, Your Honor?

5 THE COURT: You may.

6 Q Mrs. O'Grady-Watts, I am going to show you now what's
7 been previously marked for identification purposes as
8 State's Exhibit No. 9. I will ask you if you recognize
9 that.

10 A This is basically -- They have my handwriting on
11 them. So, yes, this is all my evidence.

12 Q What would that have been in this the particular
13 case?

14 A These are swabs that I collected from evidence that
15 were submitted from the scene -- swabs off the electrical
16 cords and -- can I open it?

17 Q Sure.

18 A The swabs from the steering wheel, the swabs from the
19 interior door handles of the vehicle, and then there are
20 swabs that I collected from the golden color electrical
21 cord, the white electrical cord. There are three fabric
22 samples from a white t-shirt that were identified as
23 Christopher Herndon's or belonging to Christopher Herndon
24 and then there are another three fabric samples from denim
25 shorts that were identified as belonging to Christopher

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1 Herndon. All of these were sent for potential DNA
2 identification.

3 Q That includes the swabs that you took from the car on
4 October 7?

5 A Yes.

6 Q In the early morning hours? What would you have done
7 with those swabs once you took them and put them in the
8 envelope? What was the next step that you taken in
9 handling the evidence?

10 A Basically, they're entered into the evidence room and
11 they sit there until they're delivered to SLED for an
12 analysis.

13 Q So until after you put your name on them and seal
14 them up and send them into evidence, then that's the last
15 time you see them?

16 A Yes.

17 Q Until now?

18 A Until now.

19 Q And did you do that in this particular case?

20 A Yes.

21 Q With each of the individual swabs?

22 A Uh-huh.

23 Q And you used separate gloves?

24 A Yep.

25 Q Separate swabs?

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1 A Yes.

2 Q Separate envelopes?

3 A Yes.

4 Q And you took all of those and entered them into the
5 Sheriff's Office?

6 A Yes.

7 Q And you spoke about some additional swabs that didn't
8 come from the car?

9 A There are some things that are processed in the lab
10 within our office and then there is the car. So, it is
11 all pertaining to the same case, but when you submit
12 things to DNA -- when you submit things to the South
13 Carolina Law Enforcement Division Lab if it's going to DNA
14 a lot of times they will group bulk up. If it's all from
15 the same case they'll send it to the same analyst who will
16 be analyzing your case for you.

17 Q So, all of those envelopes that you're holding in
18 your hand, those all came from you?

19 A Yes.

20 Q What were the ones -- can you identify the ones that
21 did not come from the car -- what they were?

22 A They are from the lab. They are from evidence that
23 was submitted other than me from either the investigator
24 brought things in or it could have been from the scene
25 that night. It just depends. We will process things

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1 beyond what we collect ourselves.

2 Q So you did some additional processing?

3 A Yes.

4 Q What would that have been?

5 A I did -- There are various other things that were
6 submitted into evidence. There was a separate set of
7 shoes that was found by one of the road officers, I
8 believe, and then they were housed in a shoe box. So all
9 of those things were submitted beyond me. They were
10 waiting to be processed. There is a small tin with a wolf
11 impression on it. There is a Visa debit card, the broken
12 brown lamp base, and then there was a gold and a white
13 electrical wire. Those are the other things that came
14 from the evidence room for processing that I know of.

15 Q All right. So, with regard to those particular
16 envelopes that you are holding in your lap other than the
17 car what would those involve?

18 A I know that -- Like I said, I took swabs from the
19 actual electrical cords themselves to see if I could get
20 any other touch DNA off of them. There is also a dry red
21 liquid on the fabric samples. So I took cuttings from the
22 clothing just to see if it actually did belong to
23 Christopher Herndon or if it did belong to someone else.
24 So, the clothing was submitted in addition to everything
25 else.

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1 Q And you've identified all of the envelopes?

2 A Yes, they're all in my handwriting.

3 Q Other than you taking them out of the bag now and
4 what happened to them after at SLED, did they appear to
5 have been altered in any way, shape, or form?

6 A No. I mean, they're going to open them up and
7 they're going to do what they need to do with them and if
8 we happen to get something back, we get it back. So, this
9 is what you get back from them.

10 MRS. YOUNG: Your Honor, at this time the state would
11 move to enter State's Exhibit No. 9, I believe,
12 collectively into evidence.

13 THE WITNESS: Yes.

14 MR. MIMS: Your Honor, we object to these items being
15 admitted at this time based on prior objections.

16 THE COURT: We'll hear that in a little bit..

17 (Whereupon, State's Exhibit No. 9 was admitted into
18 evidence.)

19 Q You said you collected some things from the car?

20 A Right.

21 Q And you said that you did some additional testing of
22 various other --

23 A Within the lab.

24 Q I'm sorry?

25 A Within -- just within the lab itself there were.

(Laura Smith-Redirect by Mr. Mims)

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1 Q When we're talking about a lab you're not talking
2 about SLED. Are you talking about the lab somewhere else?

3 A We're talking within our office. We actually have a
4 lab that we will process evidence in on our own up to a
5 certain extent.

6 Q And what type of processing do you do there at the
7 Aiken County Sheriff's Office?

8 A We'll process for latent prints. We'll actually
9 bring items in and we have a fuming chamber that's in
10 there that we can use Superglue to adhere to the surfaces
11 which, basically, is designed the same way as the dust is
12 except it's a chemical in its own right and it adheres to
13 anything that was moist at one particular point in time.
14 And you can see kind of if there is anything that's on it
15 that could be evidence or not and then you'll dust it for
16 prints and then you'll lift anything that's viable off of
17 those objects.

18 With the clothing, basically, I photographed what was
19 there and then I took samples, like I said, from within
20 the actual clothing itself. So, it really depends on
21 what's being offered to you at the time. You can do
22 various things, but as far as when it goes to actual
23 processing of DNA or trace, you know, evidence that you
24 get -- hairs, fibers, or what-have-you -- off of certain
25 items we'll send that to the South Carolina Law

1 Enforcement Division.

2 Q So, basically, you're equipped to do the
3 fingerprinting and fuming to see if there are fingerprints
4 on certain items and then you're also -- part of your
5 duties are to collect potential evidence and send that off
6 to SLED for further analysis?

7 A Right.

8 Q And that's what you did in this particular case?

9 A Correct.

10 Q And did you generate any additional reports? Did you
11 have any other evidence of any pertinence of the things
12 that you worked on in your Aiken County lab?

13 A Basically, everything that should be -- Yes, we do.
14 We have to generate reports for everything that we do.

15 Q And on the reports that you generate did you find any
16 fingerprints anywhere?

17 A I did on the lamp base, and, again, I went back and
18 did a manual comparison to potential suspects and the
19 victim and it wound up being that it was the victim's left
20 index finger again on the lamp base. So, it was an
21 identifiable print and it wound up belonging to the
22 victim.

23 Q Do you find prints or things sometimes that appear to
24 be prints that are not useable?

25 A Yes.

(Laura Smith-Redirect by Mr. Mims)

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1 Q And why would that be?

2 A A lot of times you will have objects that have been
3 touched by someone and you can tell that they did touch it
4 if you're using gloves. A lot of times we'll have auto
5 break-ins or we'll have burglaries and they'll use various
6 types of either knit or latex or some type of rubber and
7 you'll see that there are marks, for lack of a better
8 word, that have been made on a object on a point of entry
9 like a window and they're not going to have any ridge
10 detail to them. Basically, what you're looking for when
11 you identify somebody is there's got to be the points of
12 reference on your fingers and they call them minutiae and,
13 basically, what your ridges will do is they are,
14 basically, indicative of you. They make up you and no one
15 else, and you go back and you look at prints that were
16 taken from the individual whether it be a suspect or the
17 victim and you compare them to what you get from the scene
18 or you compare them for what you get from things that you
19 processed in the lab and that's basically what you're
20 doing.

21 Q Is everything that the person touches going to have
22 useable print on it?

23 A No.

24 Q Why would that be?

25 A It depends on the individual. It depends on climate.

1 It depends on a number of factors. You might just not be
2 the type of person that leaves a whole lot of what we
3 refer for lack of a better word a watery substance.
4 There's like 303 compounds in what you actually leave on a
5 surface -- the water or the substance that you leave. You
6 may not always do that. If it's cold like it is today
7 you're not going to be giving off a whole bunch of this
8 water or there might be some other explanation why you
9 don't, but you will not always have it. A lot of times
10 you'll have a porous or non-porous surface. This is wood
11 which is finished. You may leave something on here. A
12 lot of times you may leave something on unfinished wood
13 which basically has not been stained or anything else.
14 It's not that you can't process it, you may just not leave
15 enough for someone to pick up on -- whether it be chemical
16 or powder. So...

17 Q Do you get a lot of smudges?

18 A A lot of smudges. A lot of them.

19 Q In your pictures that you took there was a picture of
20 a shoe --

21 A Uh-huh.

22 Q -- in the car.

23 A Right.

24 Q Did you do anything with that shoe?

25 A I processed one pair.

(Laura Smith-Redirect by Mr. Mims)

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1 Q Or did you collect it, I should say?

2 A That one shoe is from the inside of the shoe, but
3 there is an actual box that I was given that was already
4 there in evidence.

5 Q That was a different set of shoes?

6 A That was a different set of shoes.

7 Q But you took the shoe out of the car, did you not?

8 A Yes.

9 Q And that would be for safekeeping, I imagine?

10 A Right because I didn't know.

11 Q Or it might -- You might want to test it for some
12 reason?

13 A Yes.

14 Q I can I show you what's been marked for
15 identification purposes as State's 16. I ask you if you
16 recognize that without pulling it out of the bag?

17 A Yes. That's my handwriting. It is the right shoe,
18 K-Swiss brand, men's 10 1/2 size.

19 Q Where did you recover that?

20 A The right front floorboard of the victim's vehicle.

21 Q Can you look inside of the bag and see if that was,
22 in fact, the shoe?

23 A Yes, it was.

24 Q Your Honor, at this time we'd move State's 16 in
25 evidence.

1 THE COURT: Any objection?

2 MR. MIMS: No, Your Honor.

3 THE COURT: Thank you.

4 (Whereupon, State's Exhibit No. 16 was admitted into
5 evidence.)

6 Q All right. After you processed the car that day did
7 you do any additional work in regard to this case?

8 A We went -- Investigator Sanders and I -- from what I
9 understand a lot of this activity took place on Wire Road
10 and we only had one shoe. So we went looking for the
11 other shoe and Investigator Sanders was walking the
12 roadway and, basically, came upon the left shoe belonging
13 or matching to this at Jaws Road and Wire Road.

14 Q I'm sorry?

15 A At Jaws Road and Wire Road in the grass.

16 Q So he found the shoe?

17 A Uh-huh.

18 Q And you were with him?

19 A Yes.

20 Q And when he found the shoe, what did you do, if
21 anything?

22 A Basically, you pull the bag out.

23 Q You can put that one bag back in the bag.

24 A Yes.

25 Q Unless you need it. You'll do the same thing like

(Laura Smith-Redirect by Mr. Mims)

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1 you do with anything else. You document where you took it
2 from. You'll photograph it, and you'll put it in a bag so
3 you can maintain its integrity. Address the bag like this
4 one is addressed on the front. Everything is filled out.
5 So then you'll submit that in evidence.

6 Q So, when -- Let's say when you were with -- let me
7 just do it this way. I'll take that one back from you and
8 I'll give you State's Exhibit 15 and ask if you can
9 identify that. These are kind of crunchy so I'll try to
10 be quiet.

11 A This is the bag that I addressed out there at the
12 scene. This is one that I told you was at Jaws Lane.
13 Yea, Jaws Lane at Wire Road. This is the opposing shoe
14 that was in the grass.

15 MRS. YOUNG: Your Honor, at this time we'd move
16 State's 15 into evidence.

17 MR. MIMS: No objection.

18 (Whereupon, State's Exhibit No. 15 was admitted into
19 evidence.)

20 Q So, when Investigator Sanders found that shoe you
21 collected it in the same manner?

22 A Yes.

23 Q You put on new gloves?

24 A Uh-huh.

25 Q You put it in its own bag?

(Mary Francis O'Grady-Watts-Cross by Mr. Mims)

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1 A Put it in its own bag, yes.

2 Q You go through a lot of gloves?

3 A We'll go through boxes of gloves a year.

4 Q That's all the questions I have for you. Answer any
5 that the Defense may have.

6 THE COURT: Mr. Mims, how long is your cross?

7 MR. MIMS: One minute plus.

8 CROSS-EXAMINATION

9 BY MR. MIMS:

10 Q Investigator Watts, you stated that you didn't find
11 any prints in the victim's car or his house that could be
12 linked to Rusty Dunbar; correct?

13 A I did not go to the house.

14 Q You never went to the house?

15 A No. I did not.

16 Q But none of the prints in the car or on the
17 outside --

18 A There were no prints that I -- No, there weren't any
19 in the car that I developed.

20 Q You didn't develop any on the outside?

21 A I did on the outside, but not on the interior of the
22 vehicle.

23 Q Okay. But those could only be linked to the victim;
24 right ?

25 A Correct.

(Mary Francis O'Grady-Watts-Cross by Mr. Mims)

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1 Q And you stated earlier that people are creatures of
2 habit whether they use their own car or somebody else's;
3 right?

4 A Right.

5 Q Did you swab the victim's -- did you swab the
6 seatbelt strap?

7 A No.

8 Q Is that something that you've done in the past?

9 A No. Actually, I've actually done the actual clasp
10 itself for prints. Sometimes you usually -- if you buckle
11 up, but in this case there wasn't any prints on the
12 buckle, but, no, I did not swab -- I am not in the habit
13 of swabbing the actual -- Now, if there is something on it
14 if it is viable and you can see it being a bodily fluid of
15 some kind, sure, you'll take a sample of it. You might
16 even cut it if you want it.

17 Q The swabs that you took from the steering wheel,
18 could you actually see something with your eye?

19 A No.

20 Q So what made you swab there?

21 A Because he has to drive the vehicle. Someone was
22 driving the vehicle. So what I was doing is trying to put
23 somebody in that vehicle driving. I don't know who it is.

24 Q And you stated that there were not a lot of items in
25 the victim's car when you got there?

(Mary Francis O'Grady-Watts-Cross by Mr. Mims)

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1 A No.

2 Q Do you remember there being a change in the front
3 passenger seat?

4 A I believe it's in the back. No, there -- Hang on.
5 It was some change in there.

6 Q You didn't swab any of the money, any of the change;
7 right?

8 A No. Change? Change is one of those things that it
9 will -- It's like money in any respect. It'll change
10 hands so many times. What I'm looking for is case
11 specific. I'm looking for something that's relatively
12 fresh that was in that vehicle.

13 Q Well, do you remember there being a beer bottle
14 opener in the front passenger seat?

15 A Uh-huh. There was one in there.

16 Q That wasn't swabbed either; right?

17 A No, I did not.

18 Q And I know you said that you use a different swab for
19 every area that you touched?

20 A Correct.

21 Q Do you also change gloves in between?

22 A Yes.

23 Q So you're not going to swab one side of the car --

24 A No.

25 Q -- and then use the same gloves?

(Mary Francis O'Grady-Watts-Redirect by Mrs. Young)

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1 A No, I will not.

2 MR. MIMS: Thank you. No further questions.

3 THE COURT: Redirect, if any?

4 MRS. YOUNG: One question, Your Honor.

5 REDIRECT EXAMINATION

6 BY MRS. YOUNG:

7 Q Investigator Watts, when you were taking the -- when
8 you were deciding which areas of the car that you're going
9 to swab, what is your purpose and what's your goal? How
10 do you make that decision?

11 A It's almost as if you're putting yourself in the
12 position of the person that's wherever this is taking
13 place. You're actually trying to become part of your
14 scene. You are trying to think in a way if I'm this
15 person what am I doing, what am I touching, how am I going
16 to be able to put myself in a position where I know that I
17 might leave something?

18 Q So, you're looking for the most obvious places which
19 you might find evidence?

20 A Correct.

21 MRS. YOUNG: No further questions.

22 THE COURT: You may step down. You're excused if
23 you'd like to go. Just give it to my court reporter and
24 make sure everything is all together.

25 Mr. Foreman, ladies and gentlemen, we're going to

(Mary Francis O'Grady-Watts-Redirect by Mrs. Young)

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1 break now for lunch. They have arrangements for you to
2 eat again today at The Bowery. Please get good and full.
3 I've got a hearing at 1 o'clock that's going to last about
4 five minutes. Probably going to last an hour. I need to
5 eat something myself. Why don't we start at 2:15. That
6 gives me about 15 minutes to eat. Is that okay? When you
7 get back if you're back before 2:15 just like yesterday if
8 you want to go out and get some fresh air, please feel
9 free to do that.

10 I am going to ask you once again please do not
11 discuss the case with anybody. Do not start any
12 deliberations. Don't do any -- going on your
13 Blackberries, looking on the internet, or doing anything
14 of that sort. We try it right here. Enjoy your lunch. I
15 am not paying for it. The the County pays for it. Thank
16 you.

17 (Whereupon, the jury exited the courtroom at 12:45.)

18 THE COURT: Anything for the record by the state
19 before we break for lunch?

20 MRS. YOUNG: No, sir.

21 THE COURT: By the defense?

22 MR. MIMS: No, Your Honor.

23 THE COURT: Defendant is in custody. You got some
24 lunch for him?

25 THE POLICE OFFICER: Yes.

(Mary Francis O'Grady-Watts-Redirect by Mrs. Young)

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1 THE COURT: Let me see my lawyers in chambers for one
2 second, please.

3 (Whereupon, a lunch break was taken.)

4 THE COURT: Anything or the record before we start
5 Mrs. Young?

6 MRS. YOUNG: No, sir.

7 THE COURT: Mr. Mims?

8 MR. MIMS: No, Your Honor.

9 (Whereupon, the jury came into open court at
10 approximately 2:24.)

11 THE COURT: Who all got desert?

12 THE JUROR: All the ladies.

13 THE JUROR: It's too cold for dessert.

14 THE COURT: You didn't get any?

15 THE FOREPERSON: Too cold for desert.

16 THE COURT: How about my kickboxer? Did you get
17 desert?

18 THE JUROR: I had some hot cocoa.

19 THE COURT: I tried to practice that last night. I'm
20 glad y'all enjoyed it. Are you cold?

21 THE JUROR: I am freezing.

22 THE COURT: It is off. You want some heat?

23 THE CLERK: No.

24 THE COURT: I can't please all of these ladies.

25 Gracious me. Let me tell you sort of where we are. I had

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1 that hearing that I started right at one. We went until
2 about five after two. So, I gobbled a quick sandwich.
3 The state, I think, has two more witnesses. Isn't one
4 short? They won't tell me.

5 MRS. YOUNG: There is two definite.

6 THE COURT: We got two more with them and I am not
7 sure of how many the Defendant will have -- two, perhaps.
8 So, we're going to try to finish all of the testimony this
9 afternoon. We may finish at 3:30. We may finish at 4:30
10 or we may not. Anyway, we'll stop at five, but I was
11 going to see if we couldn't maybe stop a little earlier
12 but we're not going to get finished in time enough to do
13 all of the rest of the case which is the final arguments
14 and the charge and y'all would start deliberating. If we
15 tried to do all of that this afternoon, then we're going
16 to go late into the evening and it is Christmastime and
17 y'all have your families and all.

18 So, if it suits y'all, we'll try to get through with
19 the testimony this afternoon. If we finish before five,
20 fine. I'll let you go and then come back will the morning
21 and get a good fresh start and the only thing that would
22 be left is for them to argue and for me to charge. Y'all
23 know you got a nail lady back there?

24 THE JUROR: Yea. She does my wife.

25 THE COURT: Does she do yours?

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1 THE JUROR: No. I eat all mine off. She does my
2 wife. It'll be Friday.

3 THE COURT: Good. Anyway, that's sort of our plans,
4 and if we can do that, then we start at 9:30 in the
5 morning and we'll be through with the arguments and my
6 charge and we'll probably order you -- if we see that
7 we're going to be into lunch, we'll just order lunch in
8 tomorrow and that way you don't have to interrupt your
9 deliberations. Does that suit everybody? Is that a
10 doable thing? It may not suit, but is that the most
11 palatable? Let's do it like that.

12 All right. Let's call our next witness.

13 MR. MIMS: The state calls investigator J. D.
14 Sanders.

15 JACK DONALD SANDERS, after being duly sworn,
16 testified as follows:

17 THE CLERK: Please have a seat in the witness box.
18 State your full name for the court and spell your last.

19 THE WITNESS: Jack Donald Sanders, S-A-N-D-E-R-S.

20 DIRECT EXAMINATION

21 BY MRS. YOUNG:

22 Q Investigator Sanders, you're employed at the
23 Sheriff's Office?

24 A Yes, ma'am.

25 Q How long have you been an investigator?

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1 A Altogether I have been in law enforcement 30 years
2 and an investigator for probably most of that time --
3 quite a bit of that time.

4 Q How long have you been employed here in Aiken County?

5 A May 12 will be 10 years.

6 Q And were you the chief investigating officer in the
7 case involving Rusty Dunbar and Christopher Herndon?

8 A Yes, ma'am.

9 Q And can you tell me how you first came to be involved
10 with that?

11 A I was the on-call investigator and I was paged out
12 from my house to respond to the address on Wire Road.

13 Q And where is the first place that you went that you
14 were called out when you were paged that something
15 happened?

16 A I responded to Road.

17 Q What did you observe when you got there?

18 A On the way there I talked to Lieutenant Padgett and
19 he, basically, briefed me on what he knew about the
20 incident and stated that the victim had already been
21 transported to the hospital. I traveled to . When I
22 got out I believe it was Deputy Stubbs and Deputy Goodwin
23 were there. They also briefed me on what they knew from
24 the incident from when before the victim had left. I
25 spoke to them for just a few minutes and then I went and

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1 started examining the crime scene when I got there.

2 Q What was the purpose for them -- the other deputies
3 to remain at the crime scene?

4 A To preserve the crime scene, to make sure, you know,
5 nobody else came on the scene or nobody else came to
6 provide some security for the crime scene there.

7 Q When you started to process or examine the crime
8 scene what is the first thing that you did?

9 A The first thing I did is, again, I got briefed by the
10 deputies what they knew to know where to look. I then
11 went in and observed the front door there. They described
12 to me that the victim -- towards the front door had been
13 kicked in. So I started observing the front door. The
14 first thing I noticed was a large -- what appeared to be a
15 fresh shoe impression on the front door. I didn't know
16 the sufficient quality of that shoe print of any tread or
17 pattern on there that I would be able to match it up to a
18 shoe. I then looked at the front door. The front door
19 was consistent from what I had been briefed on. It
20 appeared that door had been breached up. The door was
21 tore up -- the lock mechanism and all on the door, the
22 door frame. Just inside of the door on the left I noticed
23 I believe some gold-colored cords, electrical-type cords
24 laying there. I then walked into the residence and
25 basically tried to get a feel for the residence first. I

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1 walked through to see what I observed, see what I thought
2 had been disturbed, any noticeable evidence laying out,
3 blood or weapons or anything of that sort.

4 MRS. YOUNG: May I approach the witness, Your Honor?

5 THE COURT: Yes, ma'am.

6 Q Do you do anything to document what you observe at a
7 crime scene?

8 A Yes, ma'am. I took some photographs while I was
9 there.

10 Q These have already been identified in evidence. If
11 you can identify 17 through 20, just describe it.

12 A Yes, ma'am. State's Exhibit 17 is when I came into
13 the front door this is the living room area, the couch
14 where it's described to me the victim was at. This is the
15 way it appeared when I made entry into the residence.

16 Q And you're the one that took that photograph?

17 A Yes, ma'am. State's Exhibit 18 is the front door and
18 the lock mechanism and the frame apparent to me where the
19 door had been kicked in. State's Exhibit 19 is the
20 kitchen area. The living room and the couch would be
21 immediately adjacent right here and when I walked into the
22 kitchen this is what I saw on the floor and this proceeds
23 on through into the victim's bedroom.

24 State's exhibit 20 is the counter in the kitchen.

25 You can see a knife here, a pack of cigarettes, a

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1 cigarette lighter, and you can see the white cord laying
2 on the floor entrance to the the victim's bedroom.
3 State's Exhibit 21 is the entrance out of the kitchen into
4 the victim's bedroom and you can see the white cord --
5 electrical cord here with the -- I believe that was the
6 piece with the small piece of gold, the actual plug off
7 the gold cord with it laying at the entrance to the
8 victim's bedroom.

9 Q When you photograph the scene do you kind of find the
10 starting point or where you believe is the starting point
11 and do kind of a global trying to capture what you feel is
12 pertinent to the crime scene?

13 A Yes, ma'am.

14 Q And that's how you proceeded in this investigation?

15 A Yes, ma'am. I actually -- Before I started taking
16 the photographs I actually made a cursory walk-through
17 just so it give me some overview of it, but then I started
18 at the front door and worked in.

19 Q So before you collected any physical evidence you
20 took a photograph of where it was at the time you arrived
21 at the crime scene?

22 A Yes, ma'am.

23 Q Investigator Sanders, I am going to show you what's
24 been marked for identification purposes as State's 29, 30,
25 31. I'll ask you to take a look at those individually and

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1 tell me if you can recognize what's in each one and, if
2 so, tell me what it is without publishing it to the jury.

3 A Yes, ma'am. This is the bed.

4 Q Which one are you referring to?

5 A The bedroom of Daniel Hynes, the victim's bedroom.

6 Q Which exhibit?

7 A I'm sorry. State's Exhibit 29.

8 Q All right. This is Daniel Hynes' bedroom and
9 immediately when you came in the previous picture that I
10 showed was the lamp cord at the entrance. The bed was
11 right in front of you. When you make a right to go in the
12 bedroom that's his bed. There is obvious blood on the
13 ground at the far corner which would be the righthand
14 corner of the victim's bed and there was a blue comforter
15 or blanket laying there next to it.

16 Q Does that picture fairly and accurately depict what
17 you observed on the evening in question?

18 A Yes, ma'am.

19 MRS. YOUNG: Your Honor, we would move to admit state
20 number 29 into evidence.

21 MR. MIMS: No objection.

22 (Whereupon, State's Exhibit No. 29 was admitted into
23 evidence.)

24 Q Just go ahead and tell me if you can identify those
25 and just briefly explain what's in them.

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1 A State's Exhibit 30 is the blanket that was on the
2 floor. I noticed blood on there and I photographed the
3 blood that was on the blanket that was on the floor.

4 Q Does that appear to be an accurate depiction of the
5 blanket that you photographed that night?

6 A Yes, ma'am.

7 MRS. YOUNG: Your Honor, we'd move to admit State's
8 No. exhibit. 30.

9 MR. MIMS: No objection.

10 (Whereupon, State's Exhibit No. 30 was admitted into
11 evidence.)

12 THE WITNESS: And State's Exhibit 31 is the lamp that
13 was on the other rear corner of the bed that I observed on
14 there. I photographed it in places that I found it when I
15 arrived on the scene.

16 Q And that fairly and accurately depicts the position
17 of the lamp when you arrived that evening?

18 A Yes, ma'am.

19 MRS. YOUNG: Your Honor, we'd request that State's
20 Exhibit No. 31 be admitted as evidence.

21 MR. MIMS: No objection.

22 (Whereupon, State's Exhibit No. 31 was admitted into
23 evidence.)

24 MRS. YOUNG: Your Honor, may he publish them to the
25 jury and briefly go back through his explanation?

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1 THE COURT: He may.

2 THE WITNESS: I start with State's Exhibit 29. This
3 is the victim's bed -- described to me as the victim's bed
4 and the victim's bedroom. On the this corner of the bed
5 down here you'll see the blood. This is -- the door is
6 right here facing the bed. You take a right. The blood
7 was right here at the corner of the bed. This blanket was
8 laying on the floor right here next to it.

9 State's Exhibit 30, I noticed blood on the blanket.
10 I had actually picked the blanket up in this particular
11 photograph after it was photographed on the floor and took
12 a picture of the blood stain on there. That is the same
13 blanket that was on the righthand side of the victim's bed
14 in the previous picture.

15 Q It wasn't on the bed, though, when you --

16 A No, ma'am. It was on the floor when I first found
17 it, but the blood was kind of -- the way the blanket was
18 rolled to get the entire photograph of the entire blood
19 stain I had to move -- after I had taken the photographs
20 of it in place, I had to move it to photograph it. On the
21 other side of the victim's bed is the lamp. Subsequently,
22 the lamp had a gold electrical cord that was missing from
23 it that appeared to match that that I found in the living
24 room.

25 Q Thank you, Investigator Sanders. After you took the

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1 pictures, what was the next thing that you did regarding
2 this case?

3 A While I was there the deputies informed me that there
4 was another individual by the name of Brian Morton that
5 had been present and there during this incident. The
6 deputies told me once they arrived on the scene they made
7 Mr. Morton go outside of the residence and wait. I was
8 informed that he was next door at the neighbor's house. I
9 went next door and spoke to -- after photographing and
10 collecting I went next door and spoke to Mr. Morton.

11 Q So you had an opportunity to speak with him on that
12 evening?

13 A Yes, ma'am.

14 Q And did you observe anything about his physical
15 state?

16 A A little anxious, concerned about what had happened
17 to his roommate, nothing out of the ordinary. I mean, he
18 appeared consistent with what I had been told.

19 Q You said you collected some physical evidence as
20 well?

21 A Yes, ma'am. While I was in the residence after I got
22 finished photographing this I collected the lamp, the gold
23 electrical cord, and the white electrical cord and placed
24 them into evidence bags and placed them -- locked them in
25 the trunk of my vehicle.

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1 Q I want to show you -- Can you identify State's 14?

2 A Yes, ma'am. This appears to be the lamp that I
3 collected from the bedroom that night.

4 MRS. YOUNG: Your Honor, we'd move State's 14 into
5 evidence in this case.

6 MR. MIMS: No objection.

7 (Whereupon, State's Exhibit No. 14 was admitted into
8 evidence.)

9 Q Can you pull it out of the bag? Did you collect the
10 top of it, too, or just the base part?

11 A I need to refresh my memory on that. If I could look
12 at the evidence sheet it might answer.

13 Q All right. Well, the purpose in collecting that was
14 what?

15 A To take fingerprints. I was attempting to get
16 fingerprints off of it. It appeared to me from my
17 investigation that the lamp cord had been cut from this so
18 I was looking at the probability of this was conducive to
19 be able to get fingerprints off of it with the type of
20 surface it was. So that's why I collected that to try to
21 get the fingerprints off of it.

22 Q And you were going to take that back so somebody from
23 the forensic unit could work on that?

24 A Yes, ma'am.

25 Q Can you identify State's Exhibit 39?

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1 A These are the lamp cords that I collected on the
2 scene there. This gold lamp cord was one I noticed
3 immediately coming into the residence right by the front
4 door to the left. This is this gold lamp cord. Going
5 into the entrance to the victim's bedroom was this white
6 cord that had been cut and it had the gold plugs I
7 described earlier on it.

8 MRS. YOUNG: Your Honor, may we enter State's 39 into
9 evidence in the case?

10 MR. MIMS: No objection.

11 (Whereupon, State's Exhibit No. 39 was admitted into
12 evidence.)

13 Q After you collected the evidence and spoke with the
14 other person that was in the residence -- Mr. Morton --
15 what was the next thing that you did?

16 A After speaking with Mr. Morton I believe at that
17 point was the -- sometime while I was speaking -- during
18 the time I was speaking with Mr. Morton Deputy Goodwin was
19 there with me. Deputy Goodwin advised that they had
20 located the vehicle behind Wrights Mill Grocery -- the
21 victim's vehicle behind Wrights Mill Grocery.

22 Q Once you received that information what was the next
23 thing that you did?

24 A As I recall I believe at that time I traveled to -- I
25 left -- I gave -- I talked to Lieutenant Padgett and I

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1 asked the Aiken Bloodhound Tracking Team respond to the
2 scene and I asked that the vehicle not be disturbed or
3 anything done until the tracking team get there until I
4 could arrive, but I still hadn't -- trying to get a clear
5 picture of everything in this and I needed to talk to the
6 victim. So, after talking to the Lieutenant Padgett I
7 traveled to the Aiken ER to speak to the victim.

8 Q He gave you -- He told you what had happened to him?

9 A That's correct.

10 Q And after you spoke to the victim and you also -- are
11 you the one who took the photographs of his injuries?

12 A Yes, ma'am.

13 Q What was the next thing that you did?

14 A As I recall after speaking with him at the hospital
15 and taking pictures of him I believe at that time I
16 traveled back to Wrights Mill Grocery and spoke with
17 Lieutenant Padgett and Sergeant Looney who were there.
18 I'm sorry. While I was at the hospital speaking with him
19 the deputy at the hospital informed me that they had a
20 suspect in custody at Wrights Mill Grocery. So after
21 speaking with the victim and taking his pictures I then
22 left the hospital and traveled to Wrights Mill Grocery.
23 Upon arriving there I spoke with Lieutenant Padgett and
24 Sergeant Looney who were there and was advised that they
25 had Christopher Herndon in custody -- the male that had

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1 identified himself as Christopher Herndon. I noticed
2 Mr. Herndon sitting in the front of one of the deputy's
3 patrol cars there.

4 Q Can you describe Mr. Herndon's physical appearance as
5 you recollect it?

6 A He had on white t-shirt. He had on shorts, I believe
7 some tan-colored boots. I did photograph the clothes he
8 was wearing. He had -- on one portion of his white
9 t-shirt I noticed some blood on there. Mr. Herndon had
10 what appeared to be to me superficial cuts and scrapes
11 around his knees and stuff. It looked more like briars
12 cuts from where he had been in the woods.

13 Q Did you at a later point in time also collect his
14 clothing?

15 A Yes, ma'am.

16 Q After observing him in the patrol car, what else did
17 you observe at the scene?

18 A Well, I actually interviewed him next. When I spoke
19 to Lieutenant Padgett and Sergeant Looney they advised me
20 that he had been read his Miranda rights. I got him out
21 of the deputy's vehicle and sat him in my vehicle and
22 spoke to him and took a recorded statement from him.

23 Q And then what -- then what did you do after that?

24 A After taking the statement from him, taking the
25 recorded statement from him one of the other deputies came

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1 up and knocked on my window, wanted to talk to me. When I
2 got out of the vehicle members of the Aiken Bloodhound
3 Tracking Team were there informing me they had recovered
4 the victim's SRP debit card in the wooded area where
5 Mr. Herndon described himself as having been hiding and
6 they also described a can with a little bit of marijuana
7 they found in a same area.

8 Q Did they turn those items over to you?

9 A Yes, ma'am. I spoke to each one of those deputies
10 individually. I completed the evidence sheet. I had them
11 drop the evidence into a bag. By the time I gotten on the
12 scene when they had got it back in the woods where it was
13 real thick they had already handled the evidence when they
14 came out. I had them drop it in the bag. I had each one
15 of those signed individually for the item they gave me on
16 the evidence sheet and I collected the evidence.

17 Q You stated -- How did you describe the area where
18 Mr. Herndon had been hiding?

19 A It was a ravine right beside the bypass right beside
20 Wrights Mill Grocery. It went down into a ravine and as
21 the Bloodhound Tracking Team described to me it was almost
22 impenetrable in places where the briars, wet in places
23 where water had stood, but a real thick, wooded area.

24 Q When Mr. Herndon gave you his statement did he ever
25 mention anything about what he had done with his knife?

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1 A He said he had thrown it out.

2 Q What was the next thing that you did?

3 A (No response.)

4 Q Let me ask you this. When you were at the scene
5 during all this when you were interviewing and getting the
6 evidence did you have an opportunity to observe the
7 vehicle?

8 A Yes, ma'am.

9 Q Can you describe what you observed?

10 A Yes, ma'am. When I first arrived at Wrights Mill
11 Grocery before talking to Mr. Herndon when I was talking
12 to Lieutenant Padgett and Sergeant Looney, Sergeant Looney
13 pointed out the vehicle. The vehicle was around on the
14 back corner. There's bushes that go around there. The
15 vehicle was kind of head-ways in straight in to the
16 building at an angle. At that particular time if I recall
17 correctly the driver's side door was open. Sergeant
18 Looney advised me that other than looking into the vehicle
19 to see to make sure there was no one else in the vehicle
20 that they hadn't touched the vehicle. I, basically, just
21 observed the vehicle. I saw a white tennis shoe laying,
22 I believe, on the passenger side front floor board at the
23 time, but other than that I didn't touch the vehicle.
24 Q And after y'all observed the things you did at the
25 scene do you recall what is the next thing you did with

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1 this case?

2 A Is it all right if I refer to my notes?

3 Q To refresh your recollection, but answer it after
4 you've looked at them and put them back up.

5 A I then went back to -- Deputy Wiggins transported
6 Mr. Herndon. When speaking with Mr. Herndon Mr. Herndon
7 had complained about being a little stiff -- his neck and
8 all hurting from the car wreck. At first he said he
9 didn't need medical attention. After speaking with him I
10 felt he probably needed to go to the hospital. The jail's
11 policy is if somebody comes there and they have an injury
12 they're not going to take them. So, Deputy Wiggins
13 transported Mr. Herndon to Aiken Regional Medical Center
14 which happened to be where the victim was at. So, I
15 traveled back to the hospital at that time to advise the
16 victim of the arrest and I also asked the victim at that
17 time about the tin can with the marijuana that was in it
18 and he advised me at that time that that tin can he
19 described to me and advised me that it was his tin can and
20 that it had a small amount of marijuana in it.

21 Q When you were at the house and this was -- the house
22 is the first place you went; correct?

23 A Yes, ma'am.

24 Q Did you observe any drug paraphernalia?

25 A Not that I recall.

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1 Q After speaking with Mr. Hynes and he identified the
2 can to you, did you collect Mr. Herndon's clothing at the
3 hospital?

4 A I instructed the deputy there with him that he was
5 being treated -- I instructed the deputy when they were
6 finished treating Mr. Christopher Herndon that I needed
7 his clothes collected.

8 Q About how much time is all of this taking? You're
9 describing a lot. Did you do it all in an hour or was it
10 over an extended period of time?

11 A No. It was an extended period of time. I think --
12 the best of my recollection I think the call went out at
13 like 12:36 and I think what time I actually cleared up and
14 was going back to the Sheriff's Office was somewhere
15 around 6 o'clock in the morning if I recall correctly.

16 Q And by "cleared up," what does that mean?

17 A I finished doing everything there at the scene that I
18 had. I talked to the victim, taken the evidence back to
19 the Sheriff's Office to place them in the evidence
20 lockers, and had, basically, done everything there on the
21 scene with the victim with the suspect on the scene that I
22 needed to do.

23 Q What was the next thing you did after clearing up the
24 various scenes and talking to people that evening?

25 A Sometime later on that morning I spoke to

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1 Investigator Watts and advised her about the vehicle and
2 the vehicle being processed. The vehicle had been towed
3 to the wrecker that was on rotation and she told me what
4 time she was going to be out there and I met her out at I
5 believe it's East Aiken. I believe it is on Old Kimball
6 Trail and met her out there and stood by while she
7 processed the vehicle.

8 Q At what point did you get there during her
9 processing?

10 A That I recall just a couple of minutes after she
11 arrived on the scene.

12 Q And do you recall appearance or how the tow yard
13 looked?

14 A Yes, ma'am.

15 Q How is that?

16 A When I got there the tow yard was open for business.
17 The car was sitting there. The doors were shut that I
18 recall. Investigator Watts was sitting there waiting on
19 me and then she started taking pictures, photographs,
20 walking around the vehicle taking photographs.

21 Q Is this tow yard just a yard out in the open?

22 A No, it's fenced in. It's there. It's got a fence
23 all the way around it with gates on it. I think if I
24 recall correctly I believe it was chain link and I think
25 it had barbed wire on top of that.

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1 Q After she finished processing the car what was the
2 next thing that you did, if anything?

3 A We had discussed -- while she was processing the car
4 we discussed about the fact that some of the items had
5 been thrown out on Wire Road. So, we went down to Wire
6 Road and parked the vehicles there and we proceeded to
7 walk down Wire Road looking for any evidence that may have
8 belonged to the victim that was tossed out of the window
9 there.

10 Q Did you find anything?

11 A Yes, ma'am.

12 Q What was that?

13 A I found a white tennis shoe. I pointed it out to
14 Investigator Watts. I left it in place and pointed it out
15 to her for her to collect.

16 Q Do you recall the location where you found the tennis
17 shoe?

18 A Yes, ma'am. It was on Wire Road right at Jaws Lane.
19 There is an entrance to the school there called Jaws and
20 it was laid right there.

21 MRS. YOUNG: Your Honor, may I have the witness step
22 down from the witness stand?

23 THE COURT: Yes, ma'am.

24 Q Investigator Sanders, I am going to show you State's
25 Exhibit 5 which has already been entered into evidence and

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1 ask you if you would to put the arrow where you found the
2 shoes. You can take a minute to orient yourself.

3 A This is Wire Road coming up right here. This is Jaws
4 Lane. I found it right in this vicinity right here.

5 Q Where was it in relation to the road?

6 A Right next to the road in the weeds just right off
7 the roadbed right at the entrance of Jaws Lane.

8 Q Are you familiar with this area that's been
9 identified as the Wrights Mill Grocery area?

10 A Yes, ma'am.

11 Q Is that the area that you referred to where you
12 responded and observed the vehicle?

13 A Yes, ma'am.

14 Q Can you describe, if you know, this is -- is this a
15 road, a complete road -- the one that runs to the side of
16 it?

17 A No, ma'am. You come through the parking lot of
18 Wrights Mill Road right here and it appears to be there
19 was an old road here, but the road doesn't come all the
20 way on Wire Road. It is, you know, a tar road that comes
21 out and it goes just about -- There is a residence right
22 here. It goes just a little bit past this residence and
23 then it ends and you have about 20 yards of grass. It is
24 all flat there. From about 20 yards worth of grass before
25 you actually come back out on the bypass to hit the main

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1 road again.

2 Q Did you have any additional things that you did in
3 the course of this investigation?

4 A Yes, ma'am. I received a phonecall I believe on two
5 days after the incident on October 9. I received a call
6 from Jerry Thornton. Mr. Thornton stated that he knew all
7 about the incident and wished to speak with me in
8 reference to that.

9 Q What did you do in response to his phonecall?

10 A I believe it was Investigator Savell and myself went,
11 to his residence on I believe it was Road
12 and picked him up and brought him back to the conference
13 room at the Sheriff's Office and interviewed him and
14 obtained a statement from him.

15 Q And did he give you any additional locations in
16 reference to that evening?

17 MR. MIMS: Objection. Hearsay.

18 THE COURT: Well, he's testified, hadn't he?

19 MRS. YOUNG: Yes, sir, he has.

20 THE COURT: Overruled.

21 THE WITNESS: Yes, ma'am. His -- You know,
22 basically, from his testimony today his statement that
23 night was consistent with what he gave the court today and
24 described a gas station that I believe was the Circle K
25 gas station is the one that he stated him and Miss-Smith

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1 had gone to after dropping Rusty Dunbar and Mr. Herndon
2 off at Mr. Hynes' house.

3 Q Where is that gas station located?

4 A It is located just down in the airport area close to
5 the Family Dollar store. If you're headed towards the
6 interstate on Highway no. 1 it is on the left-hand side of
7 the the road not too far before the interstate.

8 Q Did he give you any information about any other
9 locations?

10 A I don't recall at this time.

11 Q He didn't tell you where he picked up Rusty Dunbar?

12 A Yes, ma'am. Yes, ma'am.

13 Q He stated to me that they had received a phonecall.
14 He stated to me consistent with his statement today that
15 he dropped them off. They were supposed to call him and
16 he was going to come back and pick them up. He stated to
17 me that they put some gas in the truck -- that they had
18 problems with air in the tire at the Circle K. They put
19 some air in the tire there. While they were there doing
20 that they received a phonecall from Rusty. They traveled
21 back up Highway No. 1 and went to the railroad tracks
22 right there on the bypass just behind I believe it is a BP
23 station there on the corner headed towards the high school
24 and he stated when him and Laura Smith pulled up there
25 that Rusty was there and they picked Rusty up and if I

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1 recall correctly Rusty asked him to drop him and Laura off
2 at his brother's house and I believe that was on Old Friar
3 Road.

4 MRS. YOUNG: Your Honor, may the witness come down
5 off the stand one more time?

6 THE COURT: Yes, ma'am.

7 Q The area that you referred to as being the pick-up
8 area, is it depicted on this map?

9 A Yes, ma'am.

10 Q Can you put an arrow where that is? Point it out and
11 put the arrow.

12 A This is Rudy Mason. This is Wrights Mill Grocery
13 here. If you go down the bypass here the bypass comes
14 around. This is Highway No. 1 York street. You cross
15 York street and this is the gas station and all on the
16 corner here and you go just past that and this is the
17 railroad tracks. If you go a little farther the high
18 school is out there on the left.

19 Q Investigator Sanders, do you have an idea of the
20 distance between those two points that you just referred
21 to?

22 A Yes, ma'am. I had occasion to go out and measure
23 those distances.

24 Q How far is it from Wrights Mill Grocery area to the
25 point where Mr. Dunbar was picked up?

1 A From Wrights Mill Grocery to the railroad tracks is
2 according to my odometer in my car was at one mile.

3 Q One mile from that arrow to the other arrow?

4 A Yes, ma'am.

5 Q And you recorded that in your county-issue vehicle?

6 A Yes.

7 Q What else did you do in terms of investigating this
8 case?

9 A In reference to?

10 Q I mean, did you ever look for Rusty Dunbar?

11 A Yes, ma'am. I think I actually went out to Rusty's
12 house one day. I am not sure if it was me or don't recall
13 if it was me. It is possible it was myself and Lieutenant
14 Fleury. I went out there and no one answered the door. I
15 think I reported back to Lieutenant Fleury and I discussed
16 that and on October 10 Lieutenant Fleury and myself and
17 Investigator Savell and Investigator Prince went back out
18 to Rusty's house and spoke with his mother and with Laura
19 Smith attempting to locate Mr. Smith -- I mean,
20 Mr. Dunbar. I'm sorry.

21 Q And was he present at the time?

22 A No, ma'am.

23 Q Did you locate him at that time?

24 A No, ma'am.

25 Q Did you find him soon thereafter?

(Jack Donald Sanders-Cross by Mr. Mims)

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1 A Later on that afternoon. I believe that was on a
2 Friday. Later on that afternoon Lieutenant Fleury called
3 me. They said when we were at the house that they didn't
4 know where he was at at that time; they would try to get
5 in touch with him and have him call us. Later on that
6 afternoon Lieutenant Fleury advised me that he received a
7 phonecall.

8 MR. MIMS: Objection, Your Honor. Hearsay.

9 THE COURT: Sustained.

10 Q Did you have anything else to do or any other contact
11 with Mr. Dunbar regarding this case?

12 A I went to Mr. Dunbar's residence and picked
13 Mr. Dunbar up and transported him back to the Sheriff's
14 Office.

15 MRS. YOUNG: No further questions.

16 CROSS-EXAMINATION

17 BY MR. MIMS:

18 Q Investigator, you stated that you observed a
19 footprint on the victim's front door where it had been
20 kicked in?

21 A Yes, sir, what appeared to be a footprint.

22 Q But you didn't photograph the footprint?

23 A No, sir. As I testified to I could have took a
24 picture just to have a picture, but there was no tread
25 detail there. If I had had one of the suspects there,

(Jack Donald Sanders-Cross by Mr. Mims)

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1 there was no way from the impression on the door to have
2 matched it up. So I did not take a picture of that. I
3 just observed it and made a note of it.

4 Q But even if there wasn't tread detail if you had a
5 photo of the footprint you still would be able to compare
6 it to a shoe size; correct?

7 A There wasn't enough there on there.

8 Q There wasn't --

9 A Like if you kick the door and you only hit with the
10 heel or with the toe of it, there wasn't an entire foot
11 there. You could see it was obvious a shoe impression on
12 the door, but it wasn't an entire shoe impression that I
13 could put a scale to there and then come to a shoe and
14 say, hey, this is the same shoe size. There wasn't enough
15 of it there to have done that.

16 Q And the victim's cellphone was stolen; right?

17 A That's correct.

18 Q But it was never recovered?

19 A No, sir; not that I recall.

20 Q Did you or anyone from your office ever seek those
21 phone records?

22 A Not that I recall.

23 Q So we don't know if anybody made any phonecalls from
24 the victim's phone after it was taken from him?

25 A No, sir; none reported to me.

(Jack Donald Sanders-Cross by Mr. Mims)

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1 Q And you interviewed Jerry Thornton you said on
2 October 9?

3 A I believe it was October 9.

4 Q Did you ever seek his phone records?

5 A Mr. Thornton didn't have a telephone. I believe if I
6 recall correctly -- if I recall correctly I believe
7 Mr. Thornton said that the phone was one that Laura Smith
8 had and he believed from the conversations there it was a
9 prepaid phone, but we didn't have the phone number for
10 that.

11 Q And you were able to determine that the gas station
12 that Jerry Thornton was talking about was probably the
13 Circle K.

14 A That's what I believed it to be; yes, sir.

15 Q Did you ever seek any video surveillance from that
16 gas station to try to verify his story that he went there?

17 A No, sir. I dealt with that store on several
18 occasions before on other cases and by the time Jerry
19 Thornton had come down there they usually only keep their
20 video for about 48 hours. By the time I would have gotten
21 there the 48 hours is over with. So I did not go down
22 there based on my knowledge of having dealt with them in
23 the past.

24 Q Were you familiar with their hours of operation as
25 well?

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1 A They may be open 24 hours. I'm not sure.

2 Q And when you interviewed Christopher Herndon at
3 Wrights Mill Grocery he initially denied any involvement
4 with the crimes here?

5 A Yes, sir.

6 Q Were you the one that notified the owner of Wrights
7 Mill Grocery?

8 A No, sir.

9 MR. MIMS: Okay. No further questions.

10 THE COURT: Redirect?

11 MRS. YOUNG: None.

12 THE COURT: You may step down. Next witness, please.

13 MRS. YOUNG: The state calls Catherine Leisy.

14 THE COURT: Come around, ma'am.

15 CATHERINE LEISY, after being duly sworn,
16 testified as follows:

17 THE CLERK: Please have a seat in the witness box.
18 State your full name for the court and spell your last.

19 THE WITNESS: Catherine Leisy; L-E-I-S-Y.

20 DIRECT EXAMINATION

21 BY MRS. YOUNG:

22 Q Where are you employed?

23 A I am employed by the South Carolina Law Enforcement
24 Division also known as SLED.

25 Q How long have you been employed at SLED?

(Catherine Leisy-Direct by Mrs. Young)

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1 A For approximately four years.

2 Q What are your duties and responsibilities with SLED?

3 A I am a forensic scientist assigned to the DNA and
4 serology unit. My responsibilities include processing
5 forensic cases, generating reports based on the results
6 and conclusions drawn, and testifying to those reports as
7 necessary.

8 Q Is SLED an accredited agency for DNA testing?

9 A Yes, it is. We are accredited by the American
10 Society of Crime Laboratory Directors Accreditation Board.

11 Q How does SLED get that accreditation?

12 A The accreditation is a voluntary program that
13 forensic laboratories can participate in to show that we
14 meet a certain level of standards and a set of guidelines
15 that help ensure consistency and quality in testing and
16 we're audited on an annual basis to make sure that we meet
17 all the standards that are required.

18 Q Can you please describe your educational background?

19 A I have a Bachelor of Science Degree in Genetic
20 Engineering from Cedar Crest College in Allentown,
21 Pennsylvania.

22 Q Do you have any post-graduate experience?

23 A No, I do not.

24 Q What about additional work experience prior to SLED?

25 A Prior to working for SLED I spent approximately four

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1 years as a Forensic DNA Analyst at a private testing
2 facility in Germantown, Maryland.

3 Q As part of your duties at SLED do you have to go
4 through any testing processes or anything of that nature
5 before you can begin analyzing cases?

6 A We go through a training period that includes all of
7 the testing techniques that we use as well as analysis and
8 comparisons and we're required to pass proficiency testing
9 on all of the techniques used before we can begin
10 laboratory work on regular cases.

11 Q And approximately how long are you in that testing
12 period before you're allowed to analyze things
13 independently?

14 A I believe my overall training period lasted roughly
15 one year once I was hired on at SLED. After passing those
16 proficiencies we are required to pass two proficiency
17 tests per year to maintain accreditation.

18 Q So you had somebody reviewing your work or working
19 with you for a year prior to doing any solo analysis?

20 A The lab -- I did do some lab work, but it was
21 basically supervised for that first year by a senior
22 analyst.

23 Q What other professional or what other courses and
24 seminars have you attended with regard to DNA and your
25 duties at SLED?

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1 A My undergraduate work included classes in subjects
2 such as biology, genetics, population statistics, and to
3 maintain accreditation I am required to attend seminars
4 and training sessions on a yearly basis that apply either
5 to general DNA forensics testing or to specific
6 instrumentation or comparisons that we perform.

7 Q And that's in addition to the two proficiency
8 examinations that you testified to?

9 A That's correct.

10 Q Do you belong to any professional organizations?

11 A I am a member of the American Academy of Forensic
12 Sciences.

13 MRS. YOUNG: Your Honor, at this time we'd offer
14 Agent Leisy as an expert witness in the field of DNA and
15 serology analysis.

16 MR. MIMS: No objection.

17 THE COURT: She'll be allowed to give opinions in
18 that field.

19 Q How many times have you identified or testified as an
20 expert witness?

21 A On approximately five occasions here in South
22 Carolina and probably close to 30 occasions in various
23 jurisdictions throughout the country.

24 Q Can you give us a general idea or describe very
25 generally what DNA is?

1 A DNA stands for deoxyribonucleic acid. It's the
2 genetic material found in all of our body cells with the
3 exception of our red blood cells. DNA is packaged into
4 structures called chromosomes which contained our genes.
5 Genes are simply strains of DNA that code for our physical
6 characteristics such as our hair color or our height. We
7 receive half of our DNA from our mother and half of our
8 DNA from the father; therefore, we have two copies of
9 every gene.

10 Now, approximately 99.9 percent of an individual's
11 DNA is identical to everyone else's but there is the
12 variation remaining in that .1 percent that allows us to
13 tell different people apart.

14 Q When you refer to the 99.9 percent that's the same,
15 are you referring to humans having heart, lungs, and the
16 same general body structure?

17 A Correct.

18 Q And it's that smaller percentage that accounts for
19 individual characteristics?

20 A That's correct.

21 Q Regarding the analysis that you do of the DNA testing
22 is it accepted or generally accepted in the scientific
23 community?

24 A Yes, it is.

25 Q When you get something analyzed in a criminal case

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1 what are you trying to determine through testing identity
2 of DNA?

3 A Basically, we're trying to determine whether or not
4 an unknown biological stain found on a piece of evidence
5 or at a crime scene could or could not have been
6 contributed by a known individual whose DNA standard has
7 been submitted for comparison purposes.

8 Q Do you just compare DNA from one source or a known to
9 an unknown to try to figure out if they're from the same
10 source?

11 A That's correct.

12 Q Is that a real basic description of what you do?

13 A It is, yes.

14 Q What sort of actual physical testing in a very basic
15 description do you do at your lab to do this DNA
16 identification?

17 A We performed what's known as PCR STR testing. PCR
18 stands for polymerase chain reaction which is a technique
19 that allows us to make millions of copies of a specific
20 location in the DNA that we want to test. Those locations
21 are known as STR's or short tandem repeat. An STR is just
22 a location in our DNA where a short core unit of DNA
23 repeats a certain number of times. The number of times
24 that unit repeats varies from person to person. So by
25 generating copies of 15 different STR locations we then

1 assign DNA types to those locations. So, if at one
2 location an individual has 14 copies on one gene and 16
3 copies on the other their DNA times are 14 and 16.

4 By testing those 15 locations the overall collection
5 of DNA types gives us an individual's DNA profile.

6 Q You stated something about making a bunch of copies
7 when you get a sample. Does that alter or change what you
8 receive in any way when you do this copying process?

9 A It does not. It simply copies the STR location and
10 we need to generate enough that we can be able to detect
11 it to determine how many repeats are at each location.

12 Q So, that's not a change in -- anything that you
13 received you're not changing the structure. Is it kind of
14 like using a copier to copy a piece of paper?

15 A Essentially, yes.

16 Q And you said that there are 15 locations that you
17 look at in determining identity?

18 A That's correct.

19 Q Are you also able to determine the sex of the
20 person's DNA that you're --

21 A Yes. In addition to the 15 STR locations we also
22 test for a gene called amelogenin which is basically just
23 a gender marker. It tells us X and Y.

24 Q So you're able to determine if a specific sample is
25 male or female?

(Catherine Leisy-Direct by Mrs. Young)

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1 A Yes.

2 Q Do you have any safeguards or controls or procedures
3 at SLED that lets you know that your samples are reliable
4 and your testing procedures are reliable?

5 A We do have a number of safeguards including assigning
6 specific case and item numbers to each sample, only having
7 one item open a time, frequently changing disposable
8 gloves to prevent contamination. We also use what we
9 called positive controls which are known DNA samples that
10 run along at the same time with the evidence we're testing
11 to make sure that the tests run correctly and everything
12 is working as it's supposed to.

13 Q So you have a control that's going on at the same
14 time as the testing that would indicate that there is some
15 problem in the testing procedure?

16 A That's correct.

17 Q Did you receive evidence in the case involving Rusty
18 Dunbar and Christopher Herndon?

19 A Yes, I did.

20 Q How did you receive that evidence?

21 A I obtained the evidence from our locked DNA storage
22 facility at the laboratory.

23 Q Do you recall when that was?

24 A I took custody of the evidence of July 9th of this
25 year.

(Catherine Leisy-Direct by Mrs. Young)

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1 Q Did you perform testing on the items that you
2 received?

3 A Yes, I did.

4 Q Did you obtain results for any of the items that you
5 tested?

6 A Yes, I did.

7 Q And do you have your results with you here today?

8 A I do.

9 Q When you finish your analysis do you write a report?

10 A Yes.

11 Q Did you do some analysis on some clothing in this
12 case?

13 A Yes, I did.

14 Q And when you received that clothing was it identified
15 to belong to any individual?

16 A I received cuttings that were identified as belonging
17 to Christopher Herndon -- I believe three cuttings from
18 his shirt and three cuttings from Christopher Herndon's
19 denim shorts.

20 Q And to a reasonable degree of scientific certainty
21 what conclusions did you make regarding the cuttings from
22 the clothing?

23 A The DNA profile developed from the cuttings from
24 Mr. Herndon's shirt and the cuttings from Mr. Herndon's
25 pants matched -- matches the DNA profile of Christopher

(Catherine Leisy-Direct by Mrs. Young)

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1 Herndon.

2 Q No other DNA profile was obtained from the clothing?

3 A That's correct. They were what we call single
4 source. There was no indication of another individual.

5 Q What about with regarding some swabs pertaining to
6 the steering wheel?

7 A There were two swabs submitted that were identified
8 as being taken from the steering wheel.

9 Q To a reasonable degree of scientific certainty what
10 conclusions were you able to perform about the swabs from
11 the steering wheel?

12 A The DNA obtained from the swab from the steering
13 wheel identified as SLED item one is a mixture of at least
14 two individuals. The DNA profile developed from the major
15 contributor to this mixture matches the DNA profile of
16 Daniel Hynes. The probability of randomly selecting an
17 unrelated individual having a DNA profile matching a major
18 contributor to this mixture is approximately one in 12
19 quadrillion. Rusty Dunbar cannot be excluded as a
20 possible minor contributor to this mixture. Christopher
21 Herndon is excluded as a possible contributor.

22 Q Did you receive a swab with regard to the interior
23 door handle of the passenger door?

24 A Yes, I did. The partial DNA profile developed from
25 the swab from the interior door handle of the front

1 passenger door also matches the DNA profile of Christopher
2 Herndon.

3 Q Going back to the steering wheel, were there two
4 swabs that you analyzed?

5 A There were.

6 Q Did you reach a conclusion to a reasonable degree of
7 scientific certainty regarding the second swab?

8 A The DNA obtained from the second swab from the
9 steering wheel is also a mixture of two individuals.
10 Daniel Hynes and Rusty Dunbar cannot be excluded as
11 possible contributors to the mixture. The probability of
12 randomly selecting an unrelated individual that could have
13 contributed to this mixture is approximately one in
14 12,000. Christopher Herndon is excluded as a contributor.

15 Q What does -- Can you give us a little more
16 information about the statistics and the probability and
17 the numbers that you reached from that conclusion of one
18 in 12,000?

19 A The one in 12,000 refers to the probability that a
20 randomly selected individual could not be excluded as a
21 possible contributor so that if you could randomly select
22 an un unrelated individual, generate a known profile for
23 them and compare them to this mixture the likelihood that
24 they would not be excluded would be approximately one in
25 12,000.

(Cathering Leisy-Cross by Mr. Mims)

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1 Q Is there any other percentage that you -- or any
2 other way that you can state that?

3 A In regards to who you would expect to be able to
4 exclude a stat of one in 12,000 would mean that you should
5 be able to expect to exclude approximately 99.9 percent or
6 better of the population.

7 Q And did you -- Finally, did you do some analysis as
8 far as the interior door driver's handle?

9 A The DNA obtained from the interior door on the --
10 excuse me, the interior handle on the driver door is a
11 mixture of at least two individuals. Daniel Hynes and
12 Rusty Dunbar cannot be excluded as possible contributors
13 to this mixture.

14 Q Is that the basic results of your analysis in this
15 particular case?

16 A Yes, it is.

17 MRS. YOUNG: No further questions for Agent Leisy.

18 THE COURT: Cross?

19 CROSS-EXAMINATION

20 BY MR. MIMS:

21 Q Agent Leisy, I don't know a whole lot about DNA, but
22 is it true that identical twins are the only people that
23 have identical DNA?

24 A That's correct, yes.

25 Q So if that's the case, then everybody else that

1 doesn't have a twin is going to have different DNA than
2 the person next to them; right?

3 A They're overall DNA will be different, yes.

4 Q So why is it necessary to have these statistical
5 figures like one in 12 quadrillion or one in 12,000 if
6 everybody is different?

7 A The statistics are used to give weight to a
8 conclusion to be able to tell the difference between a
9 match and a statistic of, say, one in 10 versus a match
10 and the statistic is one and 10 million. It just gives
11 weight to how likely or unlikely it is to find an
12 individual randomly with that profile.

13 Q Okay. And you stated that 99.9 percent of all human
14 beings' DNA is the same, but that .1 percent that is
15 different it makes a big difference; right?

16 A As far as identification testing, yes, it does.

17 Q That .1 percent includes those 15 genes and then the
18 gender gene; right?

19 A It includes the 15 STR's, yes.

20 Q And those are billions of base blocks of the DNA? Is
21 that how you would say it?

22 A The STR's are locations where a short segment of DNA
23 or a short series is repeated a certain number of times --
24 not unsimilar to if you had like building blocks a DNA
25 type of 14 would be 14 building blocks. Sixteen would be

(Cathering Leisy-Cross by Mr. Mims)

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1 sixteen building blocks.

2 Q Okay. And is it correct to say that there is two
3 sub-specialties of genetics that are incorporated into the
4 forensic analysis of DNA that being molecular genetics and
5 population genetics?

6 A Population statistics is part of the forensic
7 identification testing.

8 Q And the molecular part is the actual laboratory work?

9 A You could look at it that way, yes.

10 Q Okay. And that's what leads to the generation --
11 that's how y'all create the DNA profile?

12 A That's correct.

13 Q All right. And once there is a so-called match
14 between a suspect's profile and -- the suspect's profile
15 and the DNA that you have from a sample, then you do an
16 analysis to determine how many other people in the world
17 could fit, could also be a match or not be excluded?

18 A The the statistics, again, is to determine how common
19 or rare that profile would be, how likely you would be to
20 find an individual with that profile if randomly selected.

21 Q All right. And the DNA technology that you used was
22 called PCR for short; correct?

23 A Yes.

24 Q And that standards polymerase chain reaction?

25 A That's correct.

1 Q Is that a sensitive technology?

2 A It is quite sensitive, yes.

3 Q Does it require that you wear gloves in your
4 laboratory?

5 A Yes.

6 Q And why is it necessary to do that?

7 A The use of gloves helps prevent contamination which
8 would be the introduction of an external source of DNA
9 into a sample. The gloves are frequently changed to
10 prevent both contamination from one sample to another --
11 also to prevent me from contaminating the sample with my
12 own DNA.

13 Q If you touch a sample without the gloves you could
14 put your day DNA on the sample?

15 A It would be possible, yes.

16 Q Does that relate to what you call transference in the
17 DNA field?

18 A Yes.

19 Q Okay. So, is it also -- if it's possible to touch
20 something and leave your DNA on it, is it also possible to
21 come into contact with somebody and touch something else
22 and put their DNA on that item even though they themselves
23 never came into contact with that item?

24 A It is possible, yes, that if you touched an item and
25 transfer someone else's DNA on to your hand it's not

(Cathering Leisy-Cross by Mr. Mims)

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1 impossible for you then to transfer that DNA to another
2 source by touching it.

3 Q I know that you said that you wear the gloves because
4 of how sensitive this technology is. Do you also clean
5 the area that you work in a lot as well?

6 A Yes. We clean on a regular basis to decontaminate.

7 Q That's also due to the sensitivity of this type of
8 DNA?

9 A Correct.

10 Q And I know that earlier you talked about a mixed
11 sample. The item that you analyzed -- the swab that you
12 analyzed from the steering wheel, that was a mixed sample;
13 correct?

14 A Yes. Both of the swabs from the steering wheel were
15 mixtures.

16 Q And it contained at least two people, right?

17 A Correct.

18 Q And the victim was the major contributor to that
19 sample?

20 A On swab one, yes, Daniel Hynes was considered the
21 major contributor to the swab.

22 Q But Rusty Dunbar is not defined as a minor
23 contributor. He is just -- you just say that he can't be
24 excluded?

25 A That's correct.

1 Q But one out of every 12,000 people also wouldn't be
2 able to be excluded either; right?

3 A The 12,000 actually -- one in 12,000 refers to the
4 second swab from the steering wheel. Swab number one
5 where Mr. Hynes is the major contributor the statistic on
6 that refers only to his profile. Rusty Dunbar simply
7 cannot be excluded as a possible minor contributor to that
8 sample.

9 Q You're right. Why would you -- why would you have a
10 statistical match for the second item but not the first --
11 the other swab on the steering wheel or the third item
12 from the inside of the driver's door handle?

13 A A mixture statistic -- the one in 12,000 -- was
14 generated on the second swab from the steering wheel
15 because it contains the most information. On the first
16 swab with Mr. Hynes being the major contributor there were
17 only a few minor types to consider and really wasn't a lot
18 to compare to. And on item three I believe you're
19 referring to the handle on the door. That was a very weak
20 and partial profile and very incomplete. The statistic
21 was generated on the second swab from the steering
22 steering wheel because it contained the most information
23 and I felt would give us the best picture of the overall
24 amount of DNA that was collected from the item.

25 Q So the second item was the strongest sample you just

(Cathering Leisy-Cross by Mr. Mims)

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1 stated; correct?

2 A In terms of --

3 Q That had the most --

4 A -- how much information was available as a mixture,
5 yes.

6 Q So, if that statistic was one out of every 12,000
7 people wouldn't be excluded then it's safe to say that the
8 number of people that couldn't be excluded on the first
9 and third item would be even less than 12,000; right?

10 A I would expect that a stat on those would be less
11 than the one in 12,000, yes.

12 Q Would it be even in the thousands at all?

13 A I would have to go through the statistics and
14 determine that. I can't tell you just by looking at the
15 profiles.

16 Q I know that you stated earlier that the first item on
17 the steering wheel was a mixture of at least two
18 individuals and that Daniel Hynes was the major
19 contributor and that the chances of randomly selecting
20 somebody else was one in 12 quadrillion; right?

21 A That's correct.

22 Q So, there is not even that many people on earth;
23 right?

24 A That's correct. Twelve quadrillion is quite a bit
25 larger than the current population of the Earth.

1 Q Is it safe to say that the statistical match like one
2 in 12,000 is relatively low when it comes to DNA if you
3 have figures like one in 12 quadrillion?

4 A A mixture statistic is significantly lower and is
5 typically lower than if you're just matching a single
6 source profile as we did on sample one in terms of Daniel
7 Hynes and a major contributor to that mixture.

8 Q And DNA will -- When you get a swab from something
9 like a steering wheel or from a door handle you can tell
10 -- you can tell if that sample came from a male or female;
11 right?

12 A It is possible to tell if there is male or female DNA
13 on it, yes.

14 Q But you can't tell the race of the individual; right?

15 A Not based on the testing that we performed, no.

16 Q And you can't tell -- based on the genes that you
17 examined you can't tell if -- what country they're from?

18 A No, I can't.

19 Q Or if they're from Aiken or state or anywhere -- you
20 just know they're a human being?

21 A That's correct.

22 Q So, all you can do really is eliminate half the
23 population of the earth when you get a sample because you
24 know it's a man or you know it's a woman so you can
25 exclude the other gender; right?

(Cathering Leisy-Cross by Mr. Mims)

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1 A Well, in terms of a mixture like we had from the
2 steering wheel I can tell that there is male DNA present
3 due to the presence of a Y amelogenin in my testing. I
4 can't determine necessarily whether or not there is female
5 because when you have a Y or -- excuse me, a male DNA
6 sample you get both X and Y. Female you would only get X.
7 So because the X is there for the male already I can't
8 determine whether or not there is female DNA present.

9 Q But you can determine that there is male DNA present?

10 A In this sample, yes.

11 Q And that's the sample that Rusty Dunbar has not been
12 excluded from?

13 A Correct, from sample number two.

14 Q But if Aiken had a population of somewhere around
15 150,000 you could cut that in half, right, and just look
16 at assuming that half of the population is male and half
17 of the population is female you could cut that in half and
18 then divide that by the statistical number one out of
19 12,000 and that would roughly tell you how many other
20 individuals in Aiken County alone could also not be
21 excluded as being a contributor to that sample; right?

22 A Again, I wouldn't affect a statistic based on male or
23 female. Again, I can't determine specifically if there is
24 female DNA present. With a mixture like this you could
25 compare female profiles just as you would a male. The

1 math is correct in determining how many people could be
2 possible contributors. That's assuming that all of those
3 people had opportunity to contribute to that item.

4 Q Right. And DNA also doesn't tell you when it was
5 deposited; correct?

6 A That's correct.

7 Q And when you're dealing with a mixed sample like we
8 were on the steering wheel and like we were on the
9 drivers's door handle you knew that there were at least
10 two contributors to -- at least two contributors to the
11 mixture; right?

12 A Correct.

13 Q But since we don't know when the DNA got there we
14 don't know if those two individuals put their DNA there at
15 the same time; correct?

16 A There is no way to determine on a sample like this
17 when the DNA may have been deposited. That's correct.

18 Q And going back to the transference, if somebody came
19 into contact with somebody else like two individuals shook
20 hands or something and then I were to touch a driver door
21 handle if I had taken -- if I had gotten somebody else's
22 DNA on my hand when I shook their hand if I go to touch
23 that driver door handle it's going to put both of our
24 DNA's on the door handle --

25 A That's --

(Catherine Leisy-Redirect by Mrs. Young)

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1 Q -- or it could?

2 A It could. That is a possibility, yes.

3 Q And you wouldn't be -- and you wouldn't be able to
4 tell if they got there at the same time, though?

5 A No, I can't. Again, I can't tell when a sample was
6 deposited.

7 Q So in the same light if somebody touched the door
8 handle and then on Saturday and then if somebody touched
9 the door handle on Sunday and both of their DNA's were
10 left on the door handle it would be a mixture but you
11 wouldn't be able to tell that one was left on Saturday and
12 one was left on Sunday?

13 A That's correct.

14 Q And you analyzed items that were taken out of the
15 victim's house as well; right?

16 A I believe the gold and white electrical cords were
17 removed from the victim's house.

18 Q And nothing came back on those cords that pointed
19 towards Rusty Dunbar; correct?

20 A The partial DNA profiles developed from the cords are
21 consistent with the profile of Daniel Hynes. There was no
22 indication of a second contributor to those items.

23 Q I don't have any further questions. Thank you.

24 REDIRECT EXAMINATION

25

1 BY MRS. YOUNG:

2 Q Agent Leisy, does DNA degrade with time?

3 A Yes, it does.

4 Q What are some of the factors that lead to its
5 degradation?

6 A The quality of DNA can be affected by heat, humidity,
7 sunlight, bacteria, and the presence of enzymes.

8 Q So DNA that was on a steering wheel would likely be
9 exposed to heat and sunlight; is that correct?

10 A Yes, it would.

11 Q Mr. Mims asked you about the possibility that it is
12 possible to transfer DNA from one person to another and
13 you stated that it was possible?

14 A Correct.

15 Q And isn't it true that if along with that
16 transference that the person transferring the item would
17 most likely -- what would happen with their DNA? Would
18 you just see one person's DNA, the transferee?

19 A I would expect that you would see the DNA from the
20 individual actually touching the item in addition to the
21 DNA that is being transferred to the item.

22 Q So, if a person -- if DNA is transferred and put on
23 an item by a person you would expect to see their DNA on
24 that item as well?

25 A I would expect to, yes.

(Catherine Leisy-Redirect by Mrs. Young)

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1 Q In this particular case Christopher Herndon was
2 excluded on both samples from the steering wheel as well
3 as the driver door handle?

4 A Yes, he was.

5 MRS. YOUNG: No further questions.

6 THE COURT: You may step down. May she go back to
7 Columbia?

8 MRS. YOUNG: Yes, sir.

9 THE COURT: Any objection?

10 MR. MIMS: No, Your Honor.

11 THE COURT: All right, ma'am. You're released from
12 your subpoena. Thank for coming.

13 THE WITNESS: Thank you, sir.

14 THE COURT: Have a pleasant trip back.

15 THE WITNESS: Thank you.

16 THE COURT: Next witness, please.

17 MRS. YOUNG: Your Honor, the state rests.

18 THE COURT: All right. Mr. Foreman, ladies and
19 gentlemen, that concludes the state's case. Let me spend
20 about five minutes with the lawyers and we'll see where we
21 are after that. Don't discuss the case. Don't
22 deliberate. I'll be back with you in just a few minutes.

23 (Whereupon, the jury exited the courtroom at 3:28.)

24 THE COURT: Any motions by the state?

25 MRS. YOUNG: No motions from the state, Your Honor.

(Catherine Leisy-Redirect by Mrs. Young)

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1 THE COURT: By the Defendant?

2 MR. MIMS: Yes, Your Honor. At this time I would
3 renew my objection to the testimony of Nathan Hamilton
4 where I objected saying that his testimony was bolstering.

5 THE COURT: All right. That's not a motion. Let's
6 go over that objection that I told you that I would take
7 outside of the presence of the jury. Just tell me what
8 your objection was. I think there were two objections.
9 One witness you deemed to be bolstering the testimony of
10 another one.

11 MR. MIMS: Right. And then we're withdrawing the
12 other objection in regards to the chain of custody
13 concern. I am not sure of the evidence numbers, but there
14 were eight items that were sent to SLED by deputy Moody.

15 THE COURT: So you're withdrawing that objection?

16 MR. MIMS: Yes, Your Honor.

17 THE COURT: What objections do you need to put on the
18 record to protect your client?

19 MR. MIMS: The last objection is we'd ask you --
20 We're moving for a directed verdict.

21 THE COURT: Before you get to directed verdict, do
22 you have any other -- I told y'all to reserve -- Anything
23 else we need to do? I told you to reserve putting on the
24 the record outside of the presence of the jury. Can you
25 remember anything else?

(Catherine Leisy-Redirect by Mrs. Young)

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1 MR. MIMS: Your Honor, I believe it was just the
2 objection to the testimony of Nathan Hamilton in regards
3 to bolstering.

4 THE COURT: Okay. I'll deny that respectfully. All
5 right. Now, motions.

6 MR. MIMS: Your Honor, we would move for a directed
7 verdict. Taking all the evidence in the light most
8 favorable to the state we believe the state has failed to
9 produce enough credible evidence to warrant this case
10 going to the jury.

11 THE COURT: Well, at this stage of the game I am not
12 necessarily concerned with the weight. I have to be
13 concerned with the admissibility or with the existence of
14 evidence. Certainly, there's factual issues in this case
15 that if the jury were to decide the facts in the light
16 most favorable to the state would result in a conviction,
17 and, obviously, it is a jury issue. There is evidence
18 that would support a conviction, and I respectfully deny
19 your motion.

20 MR. MIMS: That's all, Your Honor.

21 THE COURT: All right. Is your client going to
22 testify? Let me ask him. How about that?

23 Mr. Dunbar, how about stand up for me, please?

24 RUSTY DUNBAR, after being duly sworn, testified
25 as follows:

1 THE COURT: We're at the stage of the trial where,
2 obviously, now you can present your own defense. In
3 presenting your defense, obviously, you have the right to
4 testify in your own defense. You also have the right to
5 claim the protections given to you by the fifth amendment
6 to the Constitution of the United States which says,
7 quote, no person shall be compelled in any criminal case
8 to be a witness against himself, end quote. This means
9 that you cannot be required to testify. You have the
10 right to testify, but nobody can make you testify.

11 Does he have a record?

12 MRS. YOUNG: Yes, sir, Your Honor, he does.

13 THE COURT: All right. If you testify, obviously,
14 you'll be subjected to the same rules that govern other
15 witnesses and you may be examined and cross examined on
16 any relevant issue in the case. Because you have a prior
17 record involving either dishonesty or false statements or
18 for crimes punishable by imprisonment for more than one
19 year and I make a determination that the probative value
20 of admitting this evidence outweighs the prejudicial
21 effect the solicitor will be able to introduce your record
22 to attack your credibility for that reason and that reason
23 only. I would tell the jury that the only thing that they
24 could consider when they talked about your prior record
25 would be on the credibility and it would have no prejudice

(Rusty Dunbar-Questions by The Court)

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1 any other way.

2 If you decide not to testify I will tell the jury --
3 I have a long instruction saying that they cannot hold
4 your failure to testify against you in any manner
5 whatsoever, and I will instruct them that they can't even
6 discuss the fact that you did not testify during your
7 case. They can't hold that against you in any manner
8 whatsoever and there can't even be a consideration when
9 they deliberate your guilt or innocence. I will tell the
10 foreperson that as one of his specific duties is to not
11 allow the fact that you didn't testify to be discussed at
12 all and it can't be used in considering your guilt or
13 innocence.

14 The decision to testify is absolutely up to you. It
15 is your right and your right only. So, do you understand
16 what I have told you?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Understand your constitutional right to
19 remain silent and your right if you want to to testify?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Need any additional time to decide
22 whether you will testify or do you need time to talk with
23 your lawyer?

24 THE DEFENDANT: May I speak with my attorney?

25 THE COURT: Absolutely. Just go right there.

(Rusty Dunbar-Questions by The Court)

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1 Nobody is going to listen.

2 (Whereupon, the Defendant speaks with his attorney.)

3 THE COURT: Okay. Mr. Dunbar, what is your decision?

4 THE DEFENDANT: Yes, sir, I think I am going to
5 testify.

6 THE COURT: That's fine. No problem.

7 MRS. YOUNG: I'm sorry, sir. What did he say?

8 MR. GIBBONS: He's going to testify.

9 THE COURT: I think he said he is.

10 MR. GIBBONS: Your Honor, he has two impeachable
11 offenses on his record. They're both burglaries and grand
12 larcenies so they're similar to the crime we're about. We
13 would ask that they be termed as felony convictions and
14 make them generic.

15 THE COURT: Mrs. Beth Ann Young?

16 MRS. YOUNG: Your Honor, I guess in this particular
17 case the argument is whether the probative value
18 quantifying or stating what those prior convictions are
19 would be -- have to be weighed against the prejudice and,
20 I mean, it's a burglary.

21 THE COURT: Well, I understand it's a burglary, but
22 this is a burglary case as well, and there are all kind of
23 cases that you should -- I am just going to allow it just
24 simply on felony conviction. You leave the burglary --
25 that description off.

(Rusty Dunbar-Questions by The Court)

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1 MRS. YOUNG: Yes, sir.

2 THE COURT: I'll grant the motion. All right. Y'all
3 need a bathroom? Everybody okay?

4 MRS. YOUNG: Your Honor, can I have a brief break to
5 tell something to the defense that I just found out.

6 THE COURT: Always nice.

7 (Whereupon, a break was taken.)

8 THE COURT: Did y'all get everything resolved?

9 MRS. YOUNG: We did, Your Honor. Thank you for the
10 time.

11 THE COURT: Anything for the record before we start?

12 MRS. YOUNG: Nothing from the the state.

13 MR. MIMS: Nothing, Your Honor.

14 (Whereupon, the jury came into open court at
15 approximately 3:48.)

16 THE COURT: Mr. Foreman, ladies and gentlemen, what
17 we got left now is the defense testimony, witnesses.

18 Mr. Mims you may call your first witness.

19 MR. MIMS: The defense would call Tommy Dunbar to the
20 stand.

21 THE COURT: Come around, sir.

22 THOMAS DUNBAR, after being duly sworn, testified
23 as follows:

24 THE CLERK: Please have a seat in the witness box.
25 State your full name for the court and spell your last.

(Thomas Dunbar-Direct by Mr. Mims)

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1 THE WITNESS: My name is Thomas Dunbar; D-U-N-B-A-R.

2 DIRECT EXAMINATION

3 BY MR. MIMS:

4 Q Mr. Dunbar, could you tell us what your relationship
5 to Rusty is?

6 A Rusty is my baby brother.

7 THE COURT: Mr. Mims.

8 Q Speak up. Rusty is your younger brother you said?

9 A Yes, sir.

10 Q Could you tell us what you know about October 6,
11 2008?

12 A My brother and his girlfriend come to my residence in
13 between 11 and 11:30 and --

14 THE COURT: Daytime or night time?

15 THE WITNESS: Night time. It would be PM and I know
16 this because I was watching the afternoon news at that
17 time when they showed up.

18 Q And his girlfriend at the time was who?

19 A Laura.

20 Q Do you know how they got there?

21 A They had someone drop them off at the main highway of
22 my residence. I don't know who.

23 Q And where was your residence at the time?

24 A Road, Aiken.

25 Q Did you live there by yourself?

(Thomas Dunbar-Direct by Mr. Mims)

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- 1 A No, sir.
- 2 Q Who did you live there with?
- 3 A My girlfriend and her niece.
- 4 Q I guess you don't remember what was on the news that
- 5 night?
- 6 A No, sir.
- 7 Q But you remember that they came over while the news
- 8 was on?
- 9 A Yes, sir.
- 10 Q And the news started at 11 o'clock?
- 11 A Yes, sir.
- 12 Q When -- do you remember when you went to bed that
- 13 night?
- 14 A It was a quarter 'til one, 1:30, somewhere in there.
- 15 I had to get up the next morning to go to work and the old
- 16 lady -- well, my girlfriend had to get the young'uns up
- 17 and go to school.
- 18 Q Was Rusty Dunbar with you --
- 19 A He was sitting there in my residence until 1 o'clock
- 20 when I went to bed.
- 21 Q From the time he got there between 11 or 11:30 --
- 22 A Yes.
- 23 Q -- until you went to bed at a quarter 'til one?
- 24 A Yes, sir.
- 25 Q He did not leave your sight?

(Thomas Dunbar-Cross by Mrs. Young)

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1 A No, sir.

2 Q I don't have any further questions.

3 THE COURT: Cross?

4 CROSS-EXAMINATION

5 BY MRS. YOUNG:

6 Q You stated that Mr. Dunbar was in your sight from
7 11:30 to 1?

8 A Ma'am?

9 Q You stated that Mr. Dunbar was in your sight from
10 11:30 to 1?

11 A In between that time, yes, ma'am.

12 Q And he stayed in your sight the whole time?

13 A He was in my residence.

14 Q Okay. So he didn't just sit there in front of you.
15 He might have gone to the the bathroom or left your sight
16 for a minute?

17 A Yes, ma'am.

18 Q And you stated he's your baby bother?

19 A Yes, ma'am.

20 Q I assume that you love him, don't you?

21 A Yes, ma'am.

22 Q And you don't want anything bad to happen to him, do
23 you?

24 A Everybody's actions has to be taken up on their own
25 self.

(Laura Smith-Direct by Mr. Mims)

365

1 Q And I guess you probably heard about this back when
2 it happened in October of 2008 that something had happened
3 and Rusty was being accused of it?

4 A Yes, ma'am.

5 Q And between that time have you ever gone to
6 Investigator Sanders or the Sheriff's Office and reported
7 that he was with you at your residence?

8 A No, ma'am.

9 Q Never did that?

10 A No.

11 MRS. YOUNG: No further questions.

12 THE COURT: Redirect, if any.

13 MR. MIMS: None, Your Honor.

14 THE COURT: All right. You may step down. Next
15 witness.

16 MR. MIMS: The defense would call Laura Smith.

17 THE COURT: Come around, ma'am.

18 LAURA SMITH, after being duly sworn, testified
19 as follows:

20 THE CLERK: Please have a seat in the witness box.
21 State your full name for the court and spell your last.

22 THE WITNESS: Laura Smith. S-M-I-T-H.

23 DIRECT EXAMINATION

24 BY MR. MIMS:

25 Q Miss-Smith, how long have you known Rusty Dunbar?

(Laura Smith-Direct by Mr. Mims)

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1 A About four years.

2 Q What is the nature of y'all's relationship?

3 A We've been in a relationship. We have a 10-month-old
4 child.

5 Q When these incidents happened in October of last year
6 you were pregnant with that child?

7 A Uh-huh, four months pregnant.

8 Q Were you working at the time?

9 A No.

10 Q Are you working now?

11 A No.

12 Q As best as you can recall can you tell me about the
13 night of October 6, 2008?

14 A You want me to start during the day when we first got
15 with Jerry or?

16 Q Just start wherever you'd like.

17 A Okay. Well, we was at our house. Jerry Thornton,
18 Chris Herndon called us. They wanted to know if Rusty can
19 help them sell the cement mixer.

20 Q When you say you were at your house, what house was
21 that?

22 A Road, Ridge Spring, South Carolina.

23 Q Who all lives there?

24 A Me, Rusty, Rusty's stepdaddy and Rusty's mama.

25 Q So, y'all lived at Rusty's mom's house?

(Laura Smith-Direct by Mr. Mims)

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1 A Yes, sir.

2 Q And you got a call from who?

3 A Jerry Thornton and Chris Herndon. I don't recall
4 which one was on the phone. It was just them.

5 Q What time of the day was that?

6 A About noon.

7 Q That was around noon? Did you go to Harrison's
8 Hardware with them?

9 A No. We went -- when we left there we went -- Rusty
10 got a hold of his friend Nathan Hamilton. We went over
11 there to the motel with him. Like I said, me, Jerry --
12 me, Rusty and Nathan all left. We went and tried to sell
13 the concrete mixer. Nathan's daddy didn't want it. We
14 returned. We left. Then --

15 Q Just for clarification who is we at this point?

16 A Me, Rusty Dunbar, Jerry Thornton, and Chris Herndon.

17 Q So, Jerry and Chris picked you and Rusty up from
18 Rusty's mom's house?

19 A Yes, sir.

20 Q And was this -- Whose car was it?

21 A It was Jerry's cousin or brother or somebody's truck
22 that he borrowed. I am not really sure.

23 Q Okay. After you couldn't sell the cement mixer, then
24 what did y'all do?

25 A Chris Herndon got in touch with the guy named Jody

(Laura Smith-Direct by Mr. Mims)

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1 that lives in Windsor. So then we went over there. He
2 sold it for about \$250. They got some money. Jerry paid
3 Rusty probably over a hundred bucks and Jerry took the
4 rest of it and he give Chris a little bit of money and he
5 got kind of upset about that because Jerry didn't feel
6 like he owed Chris anything because the work that he done
7 wasn't all that great.

8 Q Why would Jerry owe Chris Herndon or Rusty Dunbar any
9 money?

10 A Because they was working together prior to that --
11 brick mason. I don't know why -- it just didn't work out
12 and he owed Rusty money and he wanted to get him some
13 money for working with him. So, the only way he could get
14 the money that he owed Rusty and Chris was to sell the
15 cement mixer.

16 Q And they used that cement mixer in their work?

17 A Yes, sir.

18 Q They laid concrete?

19 A Yes, sir.

20 Q How long had Rusty been working for Jerry?

21 A About a week or two.

22 Q Had Chris been working for Jerry longer than Rusty?

23 A Not really; maybe a couple of days. Then that's when
24 he called Rusty and asked Rusty did he want a job with
25 him. Rusty is like, okay, yea, sure, and he started

(Laura Smith-Direct by Mr. Mims)

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1 working with them, but it just didn't work out. They was,
2 I don't know, I guess spending too much money on drugs and
3 didn't have gas to go back and forth to work. I don't
4 really know what the deal was, but the job that they had
5 fell through. So he didn't have the money to pay Rusty
6 and Chris and Jerry himself didn't have any money so he
7 come up with a plan to sell the cement mixer to get some
8 money.

9 Q Would Rusty and Chris ever ride together to go to
10 work?

11 A Usually Rusty's mom took Rusty over to Jerry
12 Thornton's mama's house and they all met up over there and
13 they would all ride in the truck to the job in
14 Gloverville.

15 Q And Chris lives near by Jerry?

16 A Yea, he lives right beside Jerry. Chris' mama and
17 Jerry's mama live right beside each other.

18 Q All right. So, I think when we left off y'all had
19 left the hotel?

20 A Uh-huh.

21 Q Is that right?

22 A Yes, sir.

23 Q And then what happened?

24 A We went to Windsor to this guy named Jody's house.
25 He sold him the mixer for \$250. We stopped by the little

(Laura Smith-Direct by Mr. Mims)

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1 country store which Chris said it was Ruth's. I am not
2 really sure what name of the store is. Like I said it was
3 just a little country store. We got like some cigarettes,
4 some tums, something to drink, and we left and they went
5 somewhere in the city limits of Aiken like he said. They
6 bought some dope. They smoked it.

7 Q Now about what timeframe are we dealing with right
8 now?

9 A Probably about 4 or 5 in the afternoon now.

10 Q Sun is still up?

11 A Yea.

12 Q So, y'all left the country store and then who went
13 to -- who went to buy some dope?

14 A Chris, Jerry, and Rusty, and, of course, I was with
15 them.

16 Q So, Rusty was using it, too?

17 A Right.

18 Q And how did you feel about that as his girlfriend?

19 A It didn't make me happy, but, I mean, I am not his
20 boss. I can't tell him what to do.

21 Q Where did y'all go after you made that little stop?

22 A They waited on it and they talked to some guys that
23 was there. They got it. They drove around and smoked it
24 and then we went to the valley somewhere and got some more
25 dope. I think that was about the last little bit of money

(Laura Smith-Direct by Mr. Mims)

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1 that Jerry and Chris and them had. Then they got it there
2 and we was just driving around after that and they didn't
3 know where to go so I was like --

4 Q Still just the four of you?

5 A No. Yea. It was just dark at this point.

6 Q So where did you go next?

7 A We went to my Dad's house then.

8 Q And where does your Dad live?

9 A Road.

10 Q That's over by?

11 A Behind East Aiken Elementary.

12 Q And what time would you say you got there?

13 A About 8 o'clock because we got there -- my Dad and
14 them, they was all in the house. They were fixing to get
15 ready to wash wrestling or whatever they like to, you
16 know, watch the WWE or whatever.

17 Q And your Dad has got a big oak tree in the backyard?

18 A Yes, sir. They have picnic tables and chairs because
19 they sit outside and drink because my granny don't allow
20 it in her house.

21 Q All right. At any point in time did you hear
22 anybody -- either Chris or Jerry or Rusty -- talk about
23 robbing anybody?

24 A No. If they would've I would have heard it because
25 Chris and Jerry were in the front seat. Jerry Thornton

1 was driving and Chris was on the passenger side and me and
2 Rusty was in the back.

3 Q Before y'all get in the car just when you're at your
4 Daddy house?

5 A No. They was just hanging out talking to my Dad, you
6 know, just drinking. I believe we had a little fire going
7 and just sitting there talking about whatever.

8 Q Were you drinking at all?

9 A No, sir.

10 Q And do you remember about what time you left your
11 Dad's house that night?

12 A About 10:30.

13 Q Any reason that time stands out in you or just --

14 A I remember because I had got irritated with
15 everything that was going on. Like I said, I was
16 pregnant. I was tired. I was ready to go home. I was
17 aggravated with Rusty, Chris, and Jerry. So, we told my
18 Dad we was just ready to go and then Jerry and Chris and
19 all them, they was getting loud outside and my Daddy was
20 like, you know, I think y'all need to go on and go because
21 my mama is in the house. She's sick and she is trying to
22 sleep and y'all are getting too loud. I was ready to go
23 and my Daddy kind of run us off, too, you know.

24 Q Your mom lives at your Dad's house?

25 A Yea. She was staying there. She's been in and out

(Laura Smith-Direct by Mr. Mims)

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1 of the hospital here lately.

2 Q Who all lives at that house on Moseley Drive?

3 A Who lives there now is my mama, my Daddy, my sister,
4 my grandma, and my uncle J.R.

5 Q So the four of y'all left at 10:30 and where did you
6 go next?

7 A We went to Bull's because Chris and Jerry --

8 Q What is Bull's?

9 A Huh?

10 Q What is Bulls?

11 A Bull's Bar and Grill on Highway 19.

12 Q Okay. So y'all went to Bull's next?

13 A Right because Chris and Jerry and them wanted to get
14 some more dope. They didn't have no more money so Rusty
15 was like, well, I can see if I know somebody up here. So
16 we stopped there and just kind of sat in the parking lot
17 for a minute and Rusty didn't see the guy he was looking
18 for.

19 Q Do you know the name of the guy he was looking for?

20 A I think Rob Bush. It is just a friend of his that
21 hangs outside of Bull's all the time and he sells dope or
22 whatever.

23 Q But Rusty didn't see anybody that night?

24 A He didn't see the boy up there.

25 Q So then what happened?

1 A We were fixing to pull off. Chris saw somebody he
2 knew. He waved him over to the truck. They talked for a
3 few minutes -- I don't really know how long -- and the
4 guy -- he didn't -- I guess he came up to Bull's on foot
5 or whatever. He didn't have a ride. Chris was asking --
6 Q Had you seen him before?
7 A No, sir.
8 Q Okay. But Christopher Herndon knew him?
9 A Right. It was -- I mean, he seemed to. He waved him
10 over to the truck and they was talking. So, I guess so,
11 yea.
12 Q Did Jerry seem to know him?
13 A A little bit, but he was just more like sitting there
14 while Chris was doing most of the talking.
15 Q And what is y'all's position in the car at this point?
16 A Jerry is driving. Chris is in the passenger seat.
17 I'm sitting behind Jerry, and Rusty is sitting behind
18 Chris.
19 Q Okay. So, this fellow comes up to y'all in the
20 parking lot at Bull's --
21 A Uh-huh.
22 Q -- Bar and then what happens?
23 A He comes up to Chris' window. They talk for a few
24 minutes and Chris asks him did he have any dope or
25 whatever and the guy says no but if they give him a ride

(Laura Smith-Direct by Mr. Mims)

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1 to get some they would smoke it with him. So, they was
2 like, okay. Well, me and Rusty was going to get them to
3 take us to his Mama's house, but they was complaining
4 about they didn't have a lot of gas money and this and
5 that and they were going back towards Aiken to get the
6 dope -- I don't know, maybe on Highway 19, somewhere down
7 that way. So, Rusty just told us to drop us off at his
8 brother's house. They didn't go down the driveway. His
9 brother has a dirt drive. They just dropped us off at the
10 end of the road.

11 Q And that brother being?

12 A Tommy Dunbar.

13 Q The fellow that just testified?

14 A Uh-huh.

15 Q All right. This fellow that y'all met in the parking
16 lot at Bull's, you don't know his name?

17 A No, sir. I never caughted it. I wasn't paying
18 attention to him.

19 Q Did you ever subsequently learn who it was?

20 A No. I never really thought anymore about it until
21 after we found out all this happened.

22 Q Do you have a -- Could you describe him physically?

23 A Like a young guy maybe in his early 20's, sideburns,
24 a little bit of facial hair, kind of clean-cut looking
25 dude.

1 Q White or black?

2 A White.

3 Q And do you know if Mr. Hynes -- Do you know -- Have
4 you ever seen Rusty Dunbar and Daniel Hynes together
5 before?

6 A Yes, sir.

7 Q So they've met?

8 A Yes, sir, with Sherry Cooper. We went over there.
9 One night we had either one of her kids with us or two of
10 her kids with us. I don't exactly remember. It's been
11 a -- it's been a while ago.

12 Q Approximately between?

13 A It's been probably three or four months before the
14 whole thing occurred.

15 Q So sometime around the summer of 2008?

16 A Yes. And we went over there and Daniel was drinking
17 Hennessey or something and we came in there with Sherry
18 and he was listening to music. He had another little dude
19 over there. I don't know. He was about 17 or 18 years
20 old. I don't really remember -- I don't know what his
21 name was, and we sat over there for about 45 minutes and
22 we left because Sherry's kids I believe was getting on
23 Daniel's nerves.

24 Q And who is Sherry?

25 A Sherry Cooper. She's -- Her ex-husband is good

(Laura Smith-Direct by Mr. Mims)

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1 friends with Daniel, I believe, and that's how she's good
2 friends with him.

3 Q Were there any other times that you know that the
4 Defendant Mr. Dunbar and Daniel Hynes hung out together?

5 A I know it was that night he seen him, but we have
6 been over there a few more times but I'm not really sure
7 if we got out of the car or not. We took Sherry over
8 there to get drugs a few other times after that.

9 Q Did y'all ever drop anybody -- did you ever drop
10 Chris over there?

11 A We dropped Chris off over there one time. It was
12 when it was raining. He didn't have nowhere to live. He
13 was living in a tent behind Jerry Thornton's Mama's house
14 because his mama kicked him out because her husband
15 doesn't like Chris. He didn't have nowhere to stay and --

16 THE COURT: Ma'am, ma'am. You know that ain't
17 relevant to this case. All of this living in tents. Come
18 on.

19 Q All right. I know that --

20 THE COURT: Mama kicking him out. That's not
21 relevant. Get to the point.

22 Q I know that Rusty has shown you some of the photos
23 from this case; correct?

24 A Yes, sir.

25 Q The shorts that Christopher Herndon is wearing on the

(Laura Smith-Cross by Mrs. Young)

378

1 night that he was arrested on the early morning hours of
2 October 7, 2008 -- can you tell the jury what you told me
3 about those shorts?

4 A The shorts belong to Rusty Dunbar. He picked them up
5 off of Rusty's floor a couple of days before that and they
6 they wasn't even washed. They was dirty.

7 Q Rusty's floor being his mom's house?

8 A Yes, sir, because Rusty's mama said something to
9 Chris about it is how I remember it.

10 THE COURT: Ma'am, ma'am, I am not going to warn you
11 again. Don't be testifying to what somebody said. Do you
12 understand me?

13 THE WITNESS: Yes, sir.

14 Q And why would you recognize the shorts?

15 A Because they had holes and all in the front of them
16 and they just stick out. If you see 'em, you'd know 'em.
17 They are just a very familiar pair of shorts.

18 MR. MIMS: I don't have any further questions.

19 CROSS-EXAMINATION

20 BY MRS. YOUNG:

21 Q Miss-Smith, how old are you?

22 A Twenty-one.

23 Q And when did you turn 21?

24 A Yesterday.

25 Q Happy belated Birthday.

(Laura Smith-Cross by Mrs. Young)

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- 1 A Thank you.
- 2 Q You said you'd known Rusty for about four years?
- 3 A Yes, ma'am.
- 4 Q And you've been romantically involved with him for
- 5 that period of time?
- 6 A No, ma'am; about three years, a little over three
- 7 years. I met him January of '06 and we started dating
- 8 April 23 of '06.
- 9 Q Okay. You remember the date?
- 10 A Yes, ma'am.
- 11 Q All right. So you've been with him for it will be
- 12 four -- well, four years April coming up. You have a
- 13 10-month-old child with him; correct?
- 14 A Yes, ma'am.
- 15 Q And you stated previously that you live at his
- 16 mother's residence?
- 17 A Yes, ma'am.
- 18 Q How long have you lived there?
- 19 A Pretty much since we've been together.
- 20 Q Since April of 2006?
- 21 A No, maybe a few months after that. We lived in the
- 22 valley for a little while, a couple of months. Maybe
- 23 June, July of '06.
- 24 Q You said you're not working right now?
- 25 A No, ma'am. Rusty's mama had back surgery so I took

(Laura Smith-Cross by Mrs. Young)

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1 off of work for that reason.

2 Q You said you remember the date this happened because
3 you were present; is that correct?

4 A Excuse me?

5 Q You said you remember all of this that's happened
6 what you've testified about on October 6 --

7 A Oh, yes, ma'am.

8 Q -- because you were present?

9 A Yes, ma'am.

10 Q So you were with Rusty that day and you were going to
11 go to work with him; is that correct?

12 A No, ma'am.

13 Q You weren't going to work with him?

14 A No. They wasn't going to work that day. They was --
15 Jerry Thornton was trying -- Rusty was kind of raising
16 cain because he owed him money for working with him and
17 the job fell through so they was coming over there to get
18 us to go see if they could find somebody to buy the
19 concrete mixer.

20 Q So they came and picked you up and that's correct;
21 right?

22 A Yes, ma'am.

23 Q And you rode with them in Jerry's truck and it was
24 Jerry and yourself and Rusty and Chris; correct?

25 A Yes, ma'am.

(Laura Smith-Cross by Mrs. Young)

381

1 Q And you previously testified, I believe, that you
2 did, in fact, go to the motel where Nathan Hamilton lived
3 and that's correct; right?

4 A Yes, ma'am.

5 Q And you, Rusty, and Nathan left to try to sell the
6 cement mixer, but you were not able to do so; correct?

7 A Yes, ma'am.

8 Q So at that point in time you went to Jody Chavis'
9 house and they sold the cement mixer; correct?

10 A Yes, ma'am.

11 Q And then they divided up the money. That's what you
12 stated?

13 A Not fairly; no, ma'am.

14 Q All right. Well, that's your opinion, but the money
15 was divided up?

16 A Yes, ma'am.

17 Q And then you stated after that that they went to buy
18 some crack?

19 A Yes, ma'am.

20 Q And they drove around Aiken and smoked it?

21 A Yes, ma'am.

22 Q And they smoked it in the car while you were present?

23 A Yes, ma'am.

24 Q You were four months pregnant at the time?

25 A Yes, ma'am.

(Laura Smith-Cross by Mrs. Young)

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1 Q So you rode around in this car while they were
2 smoking crack?

3 A Yes, ma'am.

4 Q Did you see them drinking that day?

5 A Oh, yea, they had been drinking all day.

6 Q Did you think they were drunk?

7 A Probably, yea.

8 Q Why weren't you driving?

9 A Because I only have a permit and I have to have a
10 licensed driver in the front seat and that would have to
11 be Chris, but Jerry is too big to fit in the back of the
12 truck. So...

13 Q Jerry is a pretty big guy, isn't he?

14 A Yes.

15 Q Was he that big -

16 A Yes.

17 Q -- in October of 2008?

18 A Yes, ma'am, because they did ask me to drive and I
19 asked Jerry to get in the back. He said he couldn't get
20 back there.

21 Q All right. So you didn't drive any this day. You
22 never drove this truck?

23 A I don't think so. You talking about if I ever drove
24 the truck?

25 Q I'm talking about on this day.

(Laura Smith-Cross by Mrs. Young)

383

1 A Oh, no, ma'am.

2 Q You never drove his truck.

3 A No, ma'am.

4 Q Even though they were smoking crack in your presence
5 while you were pregnant?

6 A Yes, ma'am.

7 Q And drinking alcohol in your presence while you were
8 pregnant?

9 A Yes, ma'am.

10 Q And the last place you went was your daddy's house;
11 correct?

12 A Yes, ma'am.

13 Q And you stated your grandma lives there, too?

14 A Yes, ma'am.

15 Q And even though they had been driving around all day
16 smoking crack and drinking you still got in the car and
17 left with them?

18 MR. MIMS: Objection.

19 THE COURT: What is the objection?

20 MR. MIMS: She's established three times that she's
21 pregnant.

22 THE COURT: Overruled. Go ahead.

23 Q Even though you were pregnant at the time and they'd
24 been drinking all day and smoking crack in your presence
25 you still got in the car and left with them; correct?

(Laura Smith-Cross by Mrs. Young)

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- 1 A Yes, ma'am.
- 2 Q You didn't stay at your daddy's house?
- 3 A No, ma'am.
- 4 Q You got in the car with Jerry; correct?
- 5 A Yes, ma'am.
- 6 Q Rusty?
- 7 A Yes, ma'am.
- 8 Q And Chris?
- 9 A Yes, ma'am.
- 10 Q And y'all all left. The four of y'all left from your
- 11 daddy's house that night?
- 12 A Yes, ma'am.
- 13 Q And you stated previously that you never heard Chris
- 14 and Rusty discussing a robbery. Were you glued to Rusty's
- 15 side the entire time?
- 16 A Yes, ma'am.
- 17 Q You never left his side?
- 18 A No, ma'am.
- 19 Q You never left his side to go to the bathroom?
- 20 A Well, yes, ma'am.
- 21 Q So, you weren't at his side the whole time?
- 22 A Well, as far as the whole time we was in the truck I
- 23 was sitting back there with him and they wasn't talking
- 24 about a robbery or anything like that while we was driving
- 25 down the road in the truck.

(Laura Smith-Cross by Mrs. Young)

385

- 1 Q All right. But you weren't with him the whole day.
2 They might have had a conversation when you were gone to
3 the bathroom or something; correct?
4 A Yes, ma'am. They could have.
5 Q I mean, you already stated that he was -- you're
6 aggravated because he's smoking crack; isn't that right?
7 A Yes.
8 Q So, don't you think it might aggravate you if he
9 talked about robbing somebody in front of you?
10 A Yes, ma'am.
11 Q So you're saying that after this that y'all all went
12 to this Bull's bar. Where is that located?
13 A It's on Highway 19. I just know it's on 19. I don't
14 really know nothing that I can be pacific (sic) that's
15 close by it to kind of give you an idea where it's at.
16 Q And you said that Rusty was going to go over there
17 looking for somebody named Rob Bush?
18 A Yes, ma'am.
19 Q And you said Rob Bush is a guy that stands around
20 Bull's Bar and sells dope?
21 A Yes, ma'am.
22 Q He does that on a regular basis?
23 A Yes, ma'am.
24 Q And that's where Rusty goes and gets his dope?
25 A Yes, ma'am.

- 1 Q That's one of the places he goes?
- 2 A Yes, ma'am.
- 3 Q He apparently has several places that he's able to go
- 4 smoke crack?
- 5 A Yes, ma'am.
- 6 Q And you stated that on this evening Rob Bush wasn't
- 7 present but Chris saw somebody he knew?
- 8 A Yes, ma'am.
- 9 Q And that y'all picked this person up?
- 10 A Yes, ma'am.
- 11 Q And then at that point in time after all this you're
- 12 in the car with this unknown person -- Where was that
- 13 person sitting?
- 14 A In the back with me and Rusty.
- 15 Q Okay. Was he in the middle of y'all?
- 16 A No, ma'am.
- 17 Q He's sitting next to you?
- 18 A I scooted over and he got -- He was here. I was in
- 19 the middle. Rusty was on the other side.
- 20 Q And you don't know this guy's name?
- 21 A No, ma'am.
- 22 Q Never seen him before that night?
- 23 A No, ma'am.
- 24 Q Never seen him since that night?
- 25 A No, ma'am.

(Laura Smith-Cross by Mrs. Young)

387

1 Q Do you go to Bull's Bar a lot?

2 A We used to.

3 Q How many times would you say you've been there?

4 A Like 10.

5 Q You just turned 21?

6 A Yes, ma'am, but they have a bar and grill. I had to
7 be out during a certain time when they shut the grill
8 down.

9 Q So you've been to this bar ten times and you've never
10 seen this guy before?

11 A No, ma'am.

12 Q You talked about before about that you were certain
13 Chris was wearing Rusty's shorts?

14 A Yes, ma'am.

15 Q Are those the only shorts in the world that have
16 holes in them?

17 A No, ma'am.

18 Q Did you inspect these shorts personally?

19 A No, ma'am.

20 Q So you're basing all of this off some picture that
21 you said you saw?

22 A Yes, ma'am, and the memory of him getting the shorts.

23 Q Do you recall investigators coming to your house and
24 talking to you about this?

25 A Somewhat. I know they came by.

(Laura Smith-Cross by Mrs. Young)

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1 Q You don't recall having a conversation with
2 Investigator Billy Fleury?

3 A Yes, ma'am. I just don't recall exactly what was
4 said in the conversation.

5 Q So you don't remember what you told him or what he
6 said to you?

7 A No, ma'am.

8 Q But you don't deny that a conversation took place?

9 A No, ma'am.

10 Q So you live at Rusty's mama's house?

11 A Yes, ma'am.

12 Q And you're the mother of his child?

13 A Yes, ma'am.

14 Q And you've been together four years?

15 A Yes, ma'am.

16 Q And they drive you around because you don't have a
17 driver's license?

18 A Yes, ma'am.

19 Q So you're dependent on Rusty and his family?

20 A Yes, ma'am.

21 Q And you have a child with him. You live together
22 with him. You obviously love him a whole lot?

23 A Yes, ma'am.

24 Q And you don't want anything bad to happen to him, do
25 you?

(Laura Smith-Cross by Mrs. Young)

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- 1 A No, ma'am.
- 2 Q Well, this happened back in October of 2008 and you
- 3 said investigators came to your house?
- 4 A Yes, ma'am.
- 5 Q But you didn't tell them about this story then, did
- 6 you?
- 7 A No, ma'am. I didn't want to say anything. I just --
- 8 I really didn't have nothing to say.
- 9 Q You didn't think it was important to tell them that
- 10 Rusty couldn't have been there because he was at his
- 11 brother's house?
- 12 A I tried that and they was kind of like badgering me a
- 13 little bit trying to say, well, we got this, this, and
- 14 this, and we know you're lying and if you don't tell us
- 15 where Rusty is at we don't care if you're pregnant, we're
- 16 going to take your behind to jail, too, and this and that,
- 17 and it really kind of freaked me out a little bit.
- 18 Q So you're saying that you were scared of talking to
- 19 the police?
- 20 A Well, the way they were coming out towards me, yea.
- 21 Yes, ma'am.
- 22 Q So after that you never got your daddy or anybody to
- 23 go with you and go up to the police and when you felt safe
- 24 and tell them this story?
- 25 A No, ma'am.

(Laura Smith-Cross by Mrs. Young)

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- 1 Q Even though this happened in October of 2008?
- 2 A Yes, ma'am.
- 3 Q And Rusty wasn't there because he was with you?
- 4 A Yes, ma'am.
- 5 Q You never told anybody that story before today?
- 6 A I give a statement to the Public Defender's Office.
- 7 I thought that y'all would have a copy of that statement.
- 8 Q You gave a written statement?
- 9 A Yes, ma'am.
- 10 Q When did you give that?
- 11 A Probably a few weeks, maybe a month after Rusty
- 12 turned himself in.
- 13 Q Did you ever -- but you never took it to the police?
- 14 A No, ma'am.
- 15 Q You never asked them to take it to the police?
- 16 A No, ma'am.
- 17 Q You never asked them to go tell them he wasn't there
- 18 because he was with you at Tommy's house?
- 19 A No, ma'am.
- 20 Q All these months you never did that?
- 21 A No, ma'am.
- 22 Q That's because it's not true; right?
- 23 A It's true.
- 24 Q It's true but you never told anybody because it's not
- 25 important?

(Laura Smith-Cross by Mrs. Young)

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1 A I thought the Public Defender's Office would give you
2 a copy just like Tommy's did make a statement, too, to the
3 Public Defender's Office. We thought that y'all would get
4 a copy of it. I mean, it made sense to me.

5 Q Tommy gave a written statement, also?

6 A I believe a written statement or a verbal statement.
7 I am not sure. You'd have to --

8 Q You said that was months ago?

9 A I don't know when Tommy -- I did months ago. I don't
10 know when Tommy did.

11 Q And in between months ago and now you never went to
12 the police and you never told them this story?

13 A No, ma'am.

14 MRS. YOUNG: No further questions.

15 THE COURT: Redirect, if any.

16 REDIRECT EXAMINATION

17 BY MR. MIMS:

18 Q Laura, you said that when the investigators came out
19 to talk to you that they were saying they had this and
20 that. Can you --

21 A Like was saying that me and Jerry was at --
22 supposedly at the store at the time it happened and they
23 had us on surveillance camera and if I didn't tell them
24 where Rusty was at that they was going to take me to jail
25 and I told them I didn't know where Rusty was at.

(Rusty Dunbar-Direct by Mr. Mims)

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1 THE COURT: Step down, ma'am. Don't you leave the
2 courtroom. Next witness.

3 MR. MIMS: The defense would call Rusty Dunbar.

4 THE COURT: Let me see y'all at side bar.

5 (Whereupon, a bench conference was held.)

6 RUSTY DUNBAR, after being duly sworn, testified
7 as follows:

8 THE CLERK: Have a seat in the witness box. State
9 your full name for the court and spell your last.

10 THE WITNESS: My name is Rusty Dunbar; D-U-N-B-A-R.

11 DIRECT EXAMINATION

12 BY MR. MIMS:

13 Q Mr. Dunbar, are you the same Rusty Dunbar that was
14 convicted of a felony in the late 90's?

15 A Yes.

16 Q And again in 2003?

17 A Yes.

18 Q Can you tell us what you remember about the evening
19 of October 6, 2008?

20 A In October 6, 2008 Christopher Herndon called me.
21 Well, that was that morning. Chris called me. He asked
22 me if I could sell the cement mixer that we was using on
23 the job. I told him, I said, well, you know, yea, but why
24 would we want to sell the cement mixer if we're going to
25 use it on the job? He said J.R. is not going to be able

(Rusty Dunbar-Direct by Mr. Mims)

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1 to pay us, man, and it's onliest way we're going to be
2 able to get the money. Jerry was doing something. I'm
3 not sure what he was doing. Chris called me. They was at
4 the creek or rather they was drinking. Chris had some
5 liquor or something and I said, well, I guess I can sell
6 it. I can try a couple of phonecalls to see what I can
7 do. So, I called the Nathan Hamilton.

8 Q When they called you where were you at the time?

9 A I was at my mother's on Bridge Creek Road.

10 Q Was Laura with you?

11 A Yes. I called Nathan Hamilton and Nathan Hamilton
12 informed me that he was, in fact, interested in the mixer.
13 I was under impression that it was Jerry's mixer. I
14 didn't know it was leased and all of this, that, and the
15 fifth. Well, we went and met Nathan at the motel. He
16 called a couple of people. We went to take it. Didn't
17 nobody buy it. We brought it back.

18 Me, Laura, Chris, and Jerry, we left. We went to
19 Jody Chavis' because Chris had called him. We stopped by
20 Jody's mother's house. She give him ten dollars. They
21 went to the store and got some more beer and like three
22 dollars in gas just to get us out there. We got there and
23 Chris and Shane Scott is the ones that unloaded the mixer.
24 I never did get out of the truck.

25 Q Speak up a little bit.

(Rusty Dunbar-Direct by Mr. Mims)

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1 A Yea, Chris and Shane Scott are the ones that unloaded
2 the mixer. I never even got out of the truck. Whenever
3 we left there we went to the store. Jerry give me \$100.
4 He owed me \$130 for 13 hours of work. I was working for
5 him for ten dollars an hour. He owed me \$130. He got 240
6 just like Chris said because the lady had give him ten
7 dollars worth of gas. He gave me \$100. I went inside of
8 the store. Chris was already in the store buying some
9 stuff. I went inside of the store to get some Tums.

10 Q Do you remember what store that was?

11 A That was Ruth's Country Store after leaving Jody
12 Chavis' house.

13 Q About what time is that?

14 A I don't really know specifically. It was in the
15 daytime. I got the Tums because I had heartburn. I got
16 acid reflux pretty good. I got my girlfriend something
17 and me and Chris was in the store. He asked me if Jerry
18 had give me some money. I said, yea, he give me some
19 money. He asked me how much. I told him \$100. Well,
20 when I got back outside -- He went to pay for his stuff.
21 I looked for my stuff, got it, and I paid for mine and
22 came back outside. He -- When I came back outside they
23 was fussing. I said, well, you know --

24 Q Who was fussing?

25 A Chris and Jerry was fussing. I asked them, I said,

(Rusty Dunbar-Direct by Mr. Mims)

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1 well, what are y'all fussing about? Man, I am tired of
2 everytime we get money you get paid. I don't get paid. I
3 was like, man, I don't have nothing to do with that, but,
4 you know, why don't we throw -- I knew, you know, we
5 smoked dope before together. You know, it wasn't the
6 first time and I knew what he was fussing about. Jerry
7 done give him like 20 or \$30 to smooth him over, and, so,
8 I was like, well, why don't we just all throw in together.
9 I'll throw in 40 bucks. Y'all throw in 30 apiece and we
10 get 100 and we can smoke some dope.

11 Well, we left there. I called a guy that I buy dope
12 from in Aiken on Timberlane. We went and acquired the
13 dope -- Jerry, me, Chris, and Laura. We went -- We left
14 from there. We did ride around. Chris wanted to go get
15 some more crack, but I didn't have to get no more crack
16 because when I went there I had -- I paid \$80 for 3 grams
17 of crack which is a good deal. I don't know if y'all know
18 anything about crack or not, but, you know, I paid \$80 for
19 3 grams of crack which I was supposed to have paid 100.
20 When I came out I was going to divide the dope up. I give
21 Chris a piece, give Jerry a piece on the little console of
22 the truck. They were mad about it because they felt like
23 they should split the bag a little more because I had two
24 bags and I pulled out the wrong bag. I had -- You know, I
25 was going -- I was going to jew them out of a little dope,

1 you know. I paid the most, so, anyway. He -- They was
2 fussing about that. So, I told him, I was like, well, you
3 know, that's what you get for \$30, you know what I mean?
4 I done hooked them up and it was plenty worth \$30.

5 Anyway, we went to the store, got some stuff to get
6 some stems true enough. We rode around. We was. Smoking
7 Chris was steady fussing. Man, I want some more crack. I
8 want some more crack. I want some more crack. I was
9 like, man, you know, hey, you know, I got dope. I'm like,
10 well, you know, go do what you want to do this, that, and
11 the fifth. Well, we all soon went to Clearwater, got the
12 dope, came back to -- we rode around. On the way back
13 they smoked their dope. I had quit smoking by now because
14 I had -- I was like, well, I don't got no more dope.
15 Good. I had money. I didn't spend nothing. Well,
16 actually I spent \$20 out of my hundred because I told them
17 I was going to spend 40. I didn't really pay but 80. So
18 I still had \$80.

19 Q Well, did y'all ever go to Laura's Daddy's house?

20 A Yea. We left Clearwater and went back to Laura's
21 Daddy's house.

22 Q Okay. About what time was that?

23 A I am going to say it was probably in between I guess
24 six and eight, somewhere in that.

25 Q That's you, Chris, Laura, and Jerry?

(Rusty Dunbar-Direct by Mr. Mims)

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1 A I'm not exactly sure what time it was.

2 Q And how long did you stay over at Laura's daddy's
3 house?

4 A A couple of hours.

5 Q What did you do while you were there?

6 A We drank Mad Dog. I smoked a little bit of reefer.
7 Well, a couple of us partook in some reefer. That was
8 about it. Jerry and Chris -- they left and went and got
9 some more crack and came back. They were supposed to have
10 went and got some more beer because they were drinking all
11 of her uncle J.R.'s beer.

12 Q How long were they gone?

13 A Oh, they was gone anywhere from 30 to 45 minutes.
14 They left and came back. They had a 24-ounce Budweiser
15 apiece. Both of them were shaking. They was about empty.

16 Q What time do you think they got back from there?

17 A I am going to say they got back from there probably
18 about -- that was at least about 10:30, 10:45.

19 Q Okay. So, how much longer did you stay over at --

20 A Not long because when they got back they started
21 diving back into her Uncle J.R.'s beer and he is real
22 particular about his beer. He'll give you -- if he's out
23 there he'll let you drink until they gone. That's the
24 kind of guy he is, but once he is gone in the house he
25 expects everybody to respect his stuff enough to leave it

1 alone. Well, when they got back there was still a couple
2 of us out there drinking, whatnot. When they came back,
3 like I said, they had the beers but they was supposed to
4 have went and got some beers to replace some of J.R.'s
5 they had drank if we was going to stay around and drink.

6 Q But they didn't come back with any beers?

7 A They didn't come back with no beers. They just came
8 back all high. Well, when I seen -- Jerry -- he goes to
9 jump back in the cooler. I said, whoa, man, you know,
10 what are you doing? Y'all just went to the store to get
11 beer and -- man, we ain't got no beer, man. I said, well,
12 what are you talking about y'all ain't got no beer? Y'all
13 just went to the store to get beer, Jerry. A few more
14 choice words, you know, respecting and everything.

15 Q So y'all left shortly after that?

16 A I went in the house and I told Laura, I was like,
17 well, baby, let's go on and go. She went in there to get
18 something from her grandma or something. I went in the
19 house. I told Laura, Let's go.

20 Q Was she ready to go as well?

21 A Well, she said her goodbyes to her family. She
22 wasn't just, you know, oh, just go up the road, but she
23 said her goodbyes to the people inside. I went outside.
24 She came out. We left. When we left from there we went
25 to Bull's. I didn't really want to go home. I still had

(Rusty Dunbar-Direct by Mr. Mims)

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1 dope. You know, I just didn't -- I just didn't have it
2 out there. I wasn't smoking it because I didn't want them
3 hounding me again.

4 Q Why did y'all go to Bull's?

5 A Well I wanted to go because my girl -- she likes to
6 shoot pool and she was mad. She was real mad at me from
7 the day, you know. I was trying to smooth things over so
8 I was going to let her go shoot some pool and whatnot.
9 Well, we went to Bull's. I told them -- the only reason I
10 told them I was going to look for Rob is because, like I
11 said, I had dope. I wasn't going to spend no more money.
12 I was just going to go in there and act like I bought some
13 dope for them and give it to them and let them go about
14 their way because Bull's is not far from my mother's
15 house. I was going to get somebody to give us a ride from
16 there.

17 Q You were going to act like you bought --

18 A Bought the dope from somebody else that's known to
19 sell dope just to keep them from, Rusty, man, I know you
20 got dope, man, C'mon, C'mon. So that's why I said I was
21 going to meet Rob there. Well, when he wasn't there it
22 kind of backfired in my face because he generally is out
23 there. Well, we -- I was smoking probably about that much
24 of a blunt I had left.

25 Q How long were you at Bull's?

(Rusty Dunbar-Direct by Mr. Mims)

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1 A Probably every bit of three minutes.

2 Q Okay. So...

3 A We pulled in and sat around for a minute. I lit the
4 little blunt up. Chris was backing out. That's when he
5 seen the old buddy and he parked and waved him over there
6 and he came over there talking.

7 Q Who is his old buddy?

8 A I am going to say his name is Craig. I don't want to
9 swear to it. Don't know him.

10 Q Don't --

11 THE COURT: Well, is his name Craig or not?

12 THE WITNESS: That's what he introduced himself as
13 Craig but I don't want to swear that's his name. So, he
14 gets in the truck with us. He tells them, you know, well,
15 if y'all take me down here to get some dope -- They was in
16 the conversation about the dope and they was trying to
17 implement that I had dope, you know. Craig asked me, he
18 said, well, do you have dope? I said, no, I don't have no
19 dope. He said, well, you know, if y'all take me to get
20 some, I'll get some and smoke it with y'all, and that's
21 when I told them, I said, y'all can go ahead and take me
22 to my mom's. They said, no, I don't want to take you to
23 your mom's house, man. It's way out there, this, that,
24 and the other.

25 Q Where does your mom live?

(Rusty Dunbar-Direct by Mr. Mims)

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1 A In Ridge Spring. Bull's is like on 19 in the forks
2 of the road at Eureka in 19 and 191. My mama lives
3 probably I am going to say within -- it's easily within
4 five to 10-mile range, but to go back out there they would
5 have had to come all the way back to Aiken and they was
6 whining about that. So I said, well, you know, hey, take
7 me to my brother's house. I know I always got a place to
8 go to my brother's house. So, I went to my brother's
9 house and got dropped off.

10 Q Did you know where they were heading?

11 A Well, as far as I knew they were going to get some
12 dope. I don't know where.

13 Q Had you heard Daniel Hynes' name at that point?

14 A No.

15 Q Had his name been mentioned at any point during that
16 night?

17 A No, sir. Well, on the way to my brother's house
18 Chris asked me for my cellphone. I told him, I said,
19 well, okay. I had my --

20 Q He asked to use your cellphone?

21 A Yes, sir. I had my stepfather's cellphone. I said,
22 okay, and I let him use the phone. The guy that was
23 asking me about the little blunt asked me, you know, do
24 you have some more reefer, this, that, and the other? I
25 said, no, I don't have no more reefer. I had got that

(Rusty Dunbar-Direct by Mr. Mims)

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1 from someone else. No, I don't have any, you know, this
2 type of stuff.

3 Well, we went to my brother's house and got dropped
4 off. I went in my brother's. I was laying on the couch
5 with my girlfriend.

6 Q This is Tommy's house?

7 A Yes, sir. Tommy Dunbar's house.

8 Q Where is that located?

9 A On Old Friar Road.

10 A I went to my brother's house. I got dropped off.

11 Q Do you know what time that was approximately?

12 A That was anywhere between 11 and 12. I know that
13 much because wrestling hadn't even gone off when I left
14 Laura's Daddy's house because the main event hadn't even
15 -- hadn't even occurred yet. So, I knew that much and
16 then when I got to my brother's house I later find out,
17 you know, he told me that he was watching the news when I
18 got there. I said like, well, now knowing 11 or 11:30
19 that's when the news come on. So I would say 11 or
20 12 o'clock.

21 Q What wrestling program is this?

22 A The WWE. John Cena was supposed to be wrestling
23 somebody. That's what I remember. That was going to be
24 the main event and I left and I was standing there asking
25 Laura if she was ready to go and the TV is right there and

(Rusty Dunbar-Direct by Mr. Mims)

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1 I seen John Cena standing there with the little belt with
2 the spinner on it and it said --

3 Q So, what did you do?

4 A Well --

5 Q You and Laura got dropped off?

6 A We got dropped off at my brother's house. I knocked
7 on the door. They come --

8 THE COURT: Everybody with me? Keep on. Let's go.

9 THE WITNESS: They come let me in. We went in. My
10 and my girlfriend, we laid down on the couch. My brother
11 and his girlfriend came in and was talking to us in the
12 living room. Well...

13 Q Had y'all slept over there before?

14 A Oh, yes, sir.

15 Q Where do y'all usually sleep when you're there?

16 A On the couch because he's got -- my -- his
17 girlfriend's niece stays in the other room or his -- yea,
18 his girlfriend's niece stays in the other room. They stay
19 in the other room and we generally sleep on the couch.
20 Well, we just spent the night over there one time, I think
21 it was, but anyway, I woke up -- Well, I didn't go to
22 sleep. I went outside when my brother and them -- they
23 went to bed. It was probably about 1 or 1:30, I would
24 say, I guess. I don't know. I'm not sure. I went
25 outside and I was smoking crack in my car. I got a car

(Rusty Dunbar-Direct by Mr. Mims)

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1 over there at my brother's house with a hole in the oil
2 pan. I was outside sitting in the car smoking dope and
3 Jerry Thornton came back up in the truck and I was like,
4 man, I know these cats ain't back at my house -- my
5 brother's house. They don't even know my brother, and so
6 I got out of my car and I started walking down the
7 driveway. They was creeping up the driveway because like
8 I said they never been down my brother's driveway. They
9 seen where we walked up. They were creeping down the
10 driveway and I was like, well, what in the heck are they
11 doing? I got down to where they was at and there wasn't
12 nobody in the truck but Jerry. I said, well, man, cut the
13 truck off. You know, my brother -- he is particular, you
14 know. I said, well, man, what are you doing? You know,
15 what do you want? Man, I brought you your phone back.

16 MRS. YOUNG: Objection, Your Honor. Hearsay.

17 THE COURT: Overruled. He brought your phone back?

18 THE WITNESS: Yes, sir.

19 THE COURT: That's what he did?

20 THE WITNESS: Yes, sir. I had loaned my phone to
21 Chris. He brought my phone back to me. I said, well, I
22 appreciate that, you know. That's good looking out.
23 Well, he sat there a second. He was like, man, look here,
24 you reckon if anybody asked that you would tell -- you and
25 your people would tell that I was over here with you and

(Rusty Dunbar-Direct by Mr. Mims)

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1 Laura and that we had dropped Chris off at Bull's? I
2 said, well, yea, probably so, you know. Why? Well, man,
3 them boys is crazy. Man, them boys is crazy. I said,
4 well, probably so. Yea, why? He was like, man, you know,
5 they did something, but it ain't nothing bad, but I'm
6 like -- He was wanting an alibi. I was like, well, I
7 guess so, man. I said, but, you know, don't be dragging
8 me up in no bull crap.

9 The next morning. We left. The next morning I
10 called his mama's house. I was going to go help him
11 finish the job anyway because I knew it was going to take
12 a lot to do the job. Well, I benefitted off of selling
13 the the mixer. I figured I would help him out some more.
14 Well, I called his his mama. His mama asked me --

15 THE COURT: No, sir. Don't tell what his mama said.

16 THE WITNESS: Okay. Well, I called his mother. He
17 was in the bed asleep. He didn't answer the phone. His
18 brother called me back and told me --

19 THE COURT: Don't testify about what his brother
20 said.

21 THE WITNESS: Sir?

22 THE COURT: You heard me.

23 Q Let me ask you this, Rusty. Have you ever met Daniel
24 Hynes before?

25 A Yes, sir.

(Rusty Dunbar-Direct by Mr. Mims)

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1 Q And when was that?

2 A I have met him through Sherry Chavis Cooper. I have
3 been to his house. It was me, my girlfriend, her kids.

4 Q What is your relationship to Sherry Cooper?

5 A She's the the godmother of my -- she's the -- I'm the
6 Godfather to one of her two children.

7 Q And she introduced you to Daniel for the first time?

8 A Yes, sir.

9 Q And about when was this?

10 A It was in the summertime of last year -- the year
11 before. Not last year. It was the year before -- '08.

12 Q Where was this at?

13 A Daniel's house. Like I said, it was me and Sherry,
14 my girlfriend, her two kids. Daniel was there with
15 another guy. I went to purchase some cocaine from Daniel
16 because I had previously purchased from him several times.
17 He doesn't never have the drugs on him. He always has to
18 go to the people behind him to get the drugs.

19 Q All right. But you --

20 THE COURT: All right. Move along.

21 THE WITNESS: So --

22 Q I am just trying to --

23 A Okay.

24 Q You -- Daniel has seen your face before?

25 A Yes, sir.

(Rusty Dunbar-Cross by Mrs. Young)

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1 Q And you've seen his?

2 A Yes, sir.

3 Q Has he heard your voice before?

4 A Yes, sir.

5 Q And -- all right. There was that one occasion that

6 you went over there with Sherry. Were there any other

7 occasions that he saw your face and you were together?

8 A I went to say he came -- yea, he came to the car.

9 Me, Sherry, a little girl named Jennifer and Winston was
10 in the car. I came to purchase some cocaine from him that

11 instance. That was -- she brought me around him and then

12 that's where I started going to get to access my cocaine

13 because it was close to -- it was close to my house.

14 Q Did you ever go over to Daniel Hynes' house with

15 Christopher Herndon just the two of you?

16 A Just the two us? No. Me and my girlfriend took him

17 over there.

18 Q Did you go to his house on October 6?

19 A No.

20 Q The early morning hours of October 7, 2008?

21 A No, sir.

22 MR. MIMS: No further questions.

23 CROSS-EXAMINATION

24 BY MRS. YOUNG:

25 Q On October 6, 2008 Christopher Herndon called you and

1 asked you to sell a cement mixer for him; correct?

2 A Yes, sir.

3 Q I'm a ma'am, but thank you anyway.

4 A I said, yes, that's right.

5 Q Okay. And you said that you knew somebody to buy it
6 or you thought would buy it and that was Nathan Hamilton;
7 correct?

8 A That's correct.

9 Q So you went to where Nathan was living at the motel?

10 A Correct.

11 Q And then you and Laura left with Nathan; correct?

12 A Correct.

13 Q And you left in his van?

14 A Correct.

15 Q And you did not sell the mixer?

16 A No, we did not.

17 Q And Jerry and Chris were waiting for you there at the
18 hotel?

19 A That's correct.

20 Q So then you came back and you, Laura, Jerry, and
21 Chris, y'all all were back together again; right?

22 A Correct.

23 Q And then you go to Jody Chavis' mom and she gives you
24 gas money?

25 A Correct.

(Rusty Dunbar-Cross by Mrs. Young)

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1 Q And then you go out to Jody Chavis' house and he is
2 going to buy this mixer from you?

3 A Correct.

4 Q Where did this Shane Scott guy come from?

5 A Shane Scott was there working with Jody Chavis. He
6 was, if I am not mistaken, an employee of his.

7 Q So you're saying that you knew y'all were going there
8 to sell the mixer but you didn't have anything to do with
9 that. That's basically what you're saying?

10 A To sell the mixer? Well, I was going along with them
11 because I wanted my pay because I felt like if I wasn't --
12 if he was going to sell the mixer the job would be pretty
13 much bamboozled and I wouldn't be able to get my pay. So,
14 yes, I went to get some money.

15 Q So that's a long way to say, yes, you went to them to
16 sell the mixer?

17 A Yes.

18 Q Just like you did when you went to sell with Nathan?

19 A Well, yea, yea.

20 Q I mean, you were with them both times. You knew that
21 was the point was selling the mixer?

22 A Yea, exactly.

23 Q And that's what y'all did --

24 A Uh-huh.

25 Q And y'all stopped at Ruth's Country Store?

- 1 A Uh-huh.
- 2 Q And got some stuff, some Tums you said?
- 3 A Uh-huh.
- 4 Q And then after that y'all went to Timberlane and you
- 5 bought some crack from your crack dealer; correct?
- 6 A That's right.
- 7 Q And that y'all all threw your money in there together
- 8 to buy this crack?
- 9 A That's right.
- 10 Q How much money did you have?
- 11 A I had \$100.
- 12 Q Whose hundred dollars was that?
- 13 A That was my hundred dollars.
- 14 Q What kind of money did Jerry and Chris give you?
- 15 A That was the hundred dollars.
- 16 Q I thought Jerry paid you \$100?
- 17 A He gave me \$100 out of selling that mixer, yes, he
- 18 did.
- 19 Q So Jerry and Chris didn't give you any money to buy
- 20 crack then?
- 21 A Oh, no, no. They give me \$30 apiece to go towards
- 22 the \$100 worth of crack I bought.
- 23 Q So you had \$160?
- 24 A All together, yea.
- 25 Q And then you're saying that you bought 3 grams of

(Rusty Dunbar-Cross by Mrs. Young)

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1 crack -- I think the first time you said you bought it for
2 \$80 and then you said you bought it for \$20.

3 A No. I kept 20. I had \$100 altogether. Their 30
4 apiece and 40 of mine, that's 100. I told them -- then I
5 kept 20 because I don't pay but \$80 for an eight-ball. It
6 is a 3-gram eight-ball instead of a 3.5 regular street --

7 Q I am really confused. I am not good at math, but
8 correct me if I am wrong. A second ago you told me you
9 had \$160?

10 A Uh-huh.

11 Q Your hundred and their sixty.

12 A Okay.

13 Q Now you're saying that you had their 60 and your 40?

14 A I had their 60. I added my 40 to it to make \$100 to
15 purchase dope.

16 Q All right. And they knew that's what y'all were
17 going to do. I mean, y'all planned that together. This
18 was your idea all along?

19 A Exactly.

20 Q All of y'all together?

21 A Exactly.

22 Q Nobody made that decision for you. You went there to
23 buy that dope yourself?

24 A Yea.

25 Q That was your decision?

- 1 A Yea.
- 2 Q Nobody forced you to do that?
- 3 A No.
- 4 Q And you said previously that once you went in
- 5 there -- you're the person that went in there to buy the
- 6 dope; right?
- 7 A Chris and I, yea.
- 8 Q And you said but you're the one that was going to do
- 9 the transaction; right?
- 10 A I did do the transaction; yes, ma'am.
- 11 Q Because you said you were going to keep some back
- 12 from them?
- 13 A Shyst them a little bit, yes, ma'am.
- 14 Q So you were going to lie to them?
- 15 A Yea.
- 16 Q So you're a liar?
- 17 A Yea. I guess.
- 18 Q Do you lie on a regular basis?
- 19 A No, ma'am.
- 20 Q Just about your dope?
- 21 A Well, you know, you tend to do stuff like that. You
- 22 probably wouldn't know nothing about it, but in the dope
- 23 world they tend to lie about weight and stuff like that,
- 24 yes, ma'am.
- 25 Q So that's common practice is to lie about how much

(Rusty Dunbar-Cross by Mrs. Young)

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1. dope you bought?

2. A Yes, ma'am.

3. Q Well, anyway, you ended up -- you did lie to them or
4. you were going to try to but you messed yourself up
5. because you showed them the wrong bag?

6. A Yea, but I had two bags. Either way I still lied to
7. them. I still had a bag in my pocket.

8. Q You didn't tell them about that?

9. A Oh, no.

10. Q And that was your decision?

11. A Yes.

12. Q And y'all went riding around in that car smoking
13. crack all three of y'all together?

14. A Four.

15. Q Well, you had four. You had Laura in there; right?

16. A That correct.

17. Q And you knew she was pregnant with your baby?

18. A Yes.

19. Q And you smoked crack in front of your pregnant
20. girlfriend?

21. A Yes, ma'am.

22. Q Because that's a good idea, isn't it?

23. A Well, no, ma'am. It's not.

24. Q So you rode around all day and you're smoking crack.

25. Let's see. You went to another crack place in Clearwater?

- 1 A Yes, ma'am. Well, Chris and Jerry went in.
- 2 Q Chris and Jerry went in.
- 3 A Yes, ma'am. I stayed in the vehicle.
- 4 Q You didn't have to buy anymore because you still had
- 5 your bag that you lied about?
- 6 A Exactly, plus --
- 7 Q And they didn't know about it?
- 8 A Plus the rest of the other bag that I hadn't smoked,
- 9 yes, ma'am.
- 10 Q So you were sitting pretty with a lot of dope in your
- 11 pocket?
- 12 A Yes, ma'am.
- 13 Q And you're pretty good at this because you do this
- 14 all the time; right?
- 15 A No, not all the time. Just from time to time.
- 16 Q Well, you do it enough to know how it works and how
- 17 people lie about it?
- 18 A Yes, ma'am. I learned from others, yes, ma'am.
- 19 Experience. It is common practice.
- 20 Q So that's the common practice is to be a liar and
- 21 you've done it enough to know that you lie?
- 22 A Well, I lie, yes, ma'am.
- 23 Q Okay. So then you went over the Laura's Daddy's
- 24 house and y'all are drinking; right?
- 25 A Correct.

(Rusty Dunbar-Cross by Mrs. Young)

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1 Q And I believe you said -- I think I wrote this down
2 as a direct quote, while you were there you partook of
3 some reefer. I assume that you're referring to marijuana?

4 A Yes, ma'am.

5 Q So you're drinking and smoking marijuana and this is
6 all at Laura's Daddy's house?

7 A Yes, ma'am. Well, we smoked reefer on the outskirts.
8 We went out the building.

9 Q Outside?

10 A Yea, it's outside. Yes, ma'am.

11 Q But Laura was standing there with you, wasn't she?

12 A We never -- we never went out, you know -- yea, she
13 was standing there.

14 Q So you're smoking marijuana in front of your pregnant
15 girlfriend now?

16 A Yes, ma'am. I don't hide nothing from my girlfriend.
17 She accepts me for who I am. You know, I am not perfect.
18 I am not going to sit here and try to play myself as
19 perfect. I am not going to sit here and candy coat
20 nothing. It is what it is. I'm sorry, you know.

21 Q So you said you left there about 10:45?

22 A I would say give or take a couple of minutes, yes,
23 ma'am.

24 Q And you know that because wrestling wasn't over yet?

25 A Exactly.

1 Q So, at 10:45 wrestling wasn't over yet. John Ceno
2 was going to be the main event.

3 A Yes, ma'am.

4 Q Wrestling ends at 11 and he was going to come out and
5 be on there for 15 minutes?

6 A He hadn't wrestled yet. Generally, towards the end
7 of the show it's usually a long drawn-out match, but
8 that's the last thing I seen him standing before we left
9 his house, yes, ma'am.

10 Q Okay. So, 10:45 the main event of wrestling hadn't
11 come on yet. You said you were going to take Laura to
12 Bull's because she was mad at you probably because you
13 were smoking crack and smoking weed in front of her;
14 right?

15 A Yes.

16 Q And you were going to let her shoot some pool and
17 that was going to make her feel better?

18 A It tends to, yes, ma'am.

19 Q I'm sorry?

20 A It tends to, yes, ma'am.

21 Q All right. And then you say you drive out to Bull's
22 and that is on Highway 19?

23 A In Eureka.

24 Q And you drive there from East Aiken Elementary so how
25 long does that take you?

(Rusty Dunbar-Cross by Mrs. Young)

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1 A Fifteen to 20 minutes.

2 Q So now you're looking at 11:20?

3 A No, about 11:05 at Ricky Smith's house. About 11:05
4 if we're going by your calculations.

5 Q Well, I am going by your calculations. I don't know.
6 I am asking you.

7 A I am saying we left at 10:45. In 15 or 20 minutes,
8 that would be about 11:05, yes, ma'am.

9 Q But you don't know that because you weren't looking
10 at your watch?

11 A No, I don't have a watch.

12 Q It's not important because you don't need that in the
13 dope-smoking world?

14 A Exactly.

15 Q And you said you went to Bull's, but you only stayed
16 there about three minutes?

17 A Give or take a few.

18 Q I guess you didn't let Laura play pool very long, did
19 you?

20 A She never got out the truck. We never got out.

21 Q That was where you came up with this plan that you
22 were gonna try to make them feel better by acting like you
23 bought some dope but you were just going to lie to them
24 again and give them some of the dope you already had?

25 A Huh-uh. I did that at the store whenever we left.

1 Laura's Daddy's house. I forgot the mention we went to
2 the the store and acquired some more Mad Dog and we drank
3 that on the way to Bull's. I said to myself, well, she's
4 already ticked off. Well, I'll go by here and give them
5 some dope. I'll get dropped off here with her and let
6 them go their separate way. You know, we'll get a ride
7 home from there because generally there are some people
8 there we know.

9 Q Let me ask you this. Now I am a little bit confused.
10 You said you got to Bull's at 11:05, but now you're
11 stopping at the store to get more Mad Dog. So it had to
12 have been a little bit longer because it would take you
13 more than two seconds to buy some Mad Dog; right?

14 A Yes, ma'am.

15 Q So now you're looking at maybe 11:10? Ten after?

16 A 11:15.

17 Q 11:15. And you're saying it's at the store you
18 decided you were going to pretend to give them some dope?

19 A Yep. No, no, on the way. On the way.

20 Q On the way?

21 A Yea.

22 Q So you came up that you were going the lie to them
23 again and make them feel better by giving them some of the
24 dope that you originally held back from them?

25 A Well, pretty much. They was -- they was wanting some

(Rusty Dunbar-Cross by Mrs. Young)

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1 more and I seen -- I said, well, I'll go ahead and take --
2 go out there. It is all right. No harm. it's all okay.

3 Q All right. So you were going to go to Bull's to let
4 Laura shoot some pool and pretend like you were going to
5 buy some dope from this Rob guy --

6 A Uh-huh.

7 Q -- who stands out there and sells dope all the time?

8 A Yes, ma'am.

9 Q And you know that because you bought from him before?

10 A Yes, ma'am.

11 Q Because you buy dope a lot?

12 A Not everyday. I am not an everyday drug user, no,
13 ma'am.

14 Q You seem to know a lot about it?

15 A Yes, ma'am. I have smoked crack for my first time
16 when I was 13 years old. I am 36 years old now.

17 Q You've been smoking crack for that long?

18 A Well, give or take. I haven't smoked everyday. I
19 don't smoke everyday. I don't smoke every week.

20 Q But you're saying that you hadn't smoked a lot of
21 crack from the time you're 13 to the time you're 36?

22 A Oh, I smoked plenty of crack since that time. I
23 could probably build a new wing on this building here with
24 the crack I smoked.

25 THE COURT: What did you say?

(Rusty Dunbar-Cross by Mrs. Young)

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1 THE WITNESS: I could probably build a new wing on
2 this building with the crack I've smoked. I mean, I don't
3 have nothing to hide. It's an addiction. It is habit.

4 Q Okay. So you're at Bull's and you're going to
5 pretend to do this but the guy is not there. So Laura
6 doesn't get to play pool. She is probably still mad at
7 you. You don't know. I don't know.

8 A When we was leaving?

9 Q Probably.

10 A Yea. She was still ticked off, yes, ma'am.

11 Q You didn't let her play pool while like you said you
12 were going to?

13 A No because there wasn't nobody there that I knew to
14 take us home.

15 Q I see. And -- but you had a cellphone. You could
16 have called somebody; right?

17 A Yes, ma'am. You know, the onliest people I really
18 associate with were at that time was Chris and Jerry
19 because, like I said, I had been doing some work with
20 them.

21 Q This is up the road from your brother's. You don't
22 think Tommy would have come picked you up from Bull's? It
23 is just up the road.

24 A No, not come pick me up. If I needed him to, if I
25 was drunk to drive or something like that he does stuff

(Rusty Dunbar-Cross by Mrs. Young)

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1 like that for me, yes, ma'am.

2 Q All right. But you didn't want to inconvenience him
3 that night?

4 A I wasn't going to inconvenience him when I already
5 got a ride.

6 Q So then all of a sudden conveniently this Craig guy
7 shows up?

8 A Yes, ma'am.

9 Q But you don't know and you never seen him before that
10 night?

11 A I don't know him. No, ma'am.

12 Q And you don't really know that his name is Craig?

13 A That's what he introduced himself is so I would
14 assume it is Craig.

15 Q You never knew him before that night, never seen him
16 since?

17 A I have been in jail since.

18 Q You have been in jail since?

19 A Uh-huh.

20 Q So if you're at Bull's at 10 after 11 how long -- you
21 said you stayed there for three minutes. I believe that
22 was your testimony?

23 A I better give you 10. So, we'll say 11:20.

24 Q 11:20.

25 A My brother lives a good four or five miles from

1 there.

2 Q All right. So it wouldn't take you 10 minutes to get
3 there?

4 A Oh, no.

5 Q When you walk in -- Well, first of all, let's go back
6 because you said you wanted them to take you to your
7 mama's house but they didn't want to because they didn't
8 have much gas?

9 A That's right.

10 Q So you said just take me to Tommy's because he is my
11 brother and he'll let me stay there?

12 A I told him to just take me to brother's house and
13 drop me off. I didn't say all that.

14 Q You just thought that in your head?

15 A I just told him to take me to my brother's.

16 Q All right. So you go to Tommy's house and you say
17 Tommy told you the news was on. So that's how you know it
18 was before 11:30?

19 A He said he was watching the news. That's -- yea, so
20 I just figured that, yea.

21 Q But you don't wear a watch so you don't know that?

22 A I know the news comes on at 11 to 11:30.

23 Q But you didn't see the news? You just said Tommy
24 told you the news was on?

25 A I asked him what he was doing. He said he was

(Rusty Dunbar-Cross by Mrs. Young)

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1 watching the news in his bedroom.

2 THE COURT: Speak up.

3 THE WITNESS: The TV is in his bedroom. He doesn't
4 keep a lot of company. So he keeps his TV in his bedroom.
5 He's got bad hip problems so he lays in his bed. He don't
6 sit around much as you can see. He is kind of got a
7 disability. So...

8 Q So the answer to my question is yes, you did not see
9 the news on yourself. You're basing that on what Tommy
10 supposedly told you?

11 A Yes, ma'am.

12 Q And but before you got dropped off even though you're
13 kind of mad at Jerry and Chris and, you know, there is all
14 of this discussion about this dope and they're fussing,
15 you let them borrow a cellphone that does not belong to
16 you?

17 A Uh-huh.

18 THE COURT: Is that a yes or no?

19 THE WITNESS: Yes, ma'am. Yes, sir.

20 Q It was your stepfather's?

21 A Yes.

22 Q All right. And that was not really yours to let them
23 borrow but you let them borrow it anyway?

24 A Uh-huh.

25 Q So you didn't go to bed then. You went outside and

1 got in your car that doesn't work, I suppose, and you
2 smoked some more crack?

3 A Oh, it works. Yes, I got in the car and smoked
4 crack.

5 Q Well, if it works why don't you drive it around?

6 A Because I don't have a license.

7 Q Oh, I see. Well, you wouldn't want to break the law,
8 would you?

9 A Well, you know, that's a whole different story.

10 Q I see that. Well, okay. So, now you're saying that
11 you're out there and that Jerry comes back?

12 A Uh-huh.

13 Q Because he's coming back to bring you your cellphone
14 back?

15 A Uh-huh.

16 THE COURT: Yes or no, please.

17 THE WITNESS: Yes.

18 Q And this is after he didn't want to take you to your
19 mom's house because he didn't have enough gas. Now all of
20 a sudden he has enough gas to come and bring you your
21 cellphone back?

22 A Uh-huh. Yes.

23 Q That's very interesting. And then when he comes back
24 not only does he give you your cellphone back, he asked
25 you to give him an alibi or lie for him?

(Rusty Dunbar-Cross by Mrs. Young)

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- 1 A Yes, ma'am.
- 2 Q And you agree to do it? You said you would?
- 3 A Yes, ma'am.
- 4 Q And that's because you're a liar; right?
- 5 A No, I'm not a liar.
- 6 Q I mean, you lie when it's convenient for you?
- 7 A No. That would have been under his convenience and
- 8 not mine.
- 9 Q But you're so nice you're going to lie for somebody
- 10 else because that's the kind of person you are. You're
- 11 going to lie to them; right? You said that already?
- 12 A Yea.
- 13 MR. MIMS: Objection, Your Honor.
- 14 THE COURT: What's the objection?
- 15 MR. MIMS: It's been asked and he's answered it.
- 16 THE COURT: Thank you. Overruled.
- 17 Q You're going to lie to him; right?
- 18 A Lie to him about?
- 19 Q Drugs and how much you're giving him and all that
- 20 stuff?
- 21 A Yes.
- 22 Q Now you're going to lie for him?
- 23 A Yea. To his mother.
- 24 Q To his mother?
- 25 A About his truck. About his brother's truck and --

(Rusty Dunbar-Cross by Mrs. Young)

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1 because his mother -- Chris is supposed to be driving the
2 truck and ain't nobody else supposed to be driving the
3 truck. That was the pretenses for his brother to loan him
4 that truck to do his business and Chris was supposed to
5 drive the truck at all times.

6 Q So you're saying that Jerry drove all of the way back
7 from wherever they were by himself even though he didn't
8 drive, Chris drove him around, just to give you your phone
9 back after they didn't want to drive you somewhere because
10 they didn't have enough gas?

11 A Well, he says in his own testimony that he stopped at
12 a gas station at some point in time. So maybe he got gas.
13 I don't know.

14 Q Well, he did say that. He also said your girlfriend
15 was with him at the time?

16 A Yes, ma'am.

17 Q So, that's -- you know, that's mighty interesting
18 because you already said she was in bed.

19 A Yes, ma'am. She was on the couch.

20 Q So, you know, then she's two places at one time, but
21 you weren't going to lie to the police -- just to his
22 mama?

23 A Just to his mama, yes, ma'am.

24 Q All right. Now, you said you met Daniel for the
25 first time in 2008?

(Rusty Dunbar-Cross by Mrs. Young)

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- 1 A Yes, ma'am.
- 2 Q In summer of 2008?
- 3 A Yes, ma'am.
- 4 Q And how many times did you go over to his house?
- 5 A I am going to say four times.
- 6 Q Did you go over there four times or are you just
- 7 going to say four times?
- 8 A I went over there a minimum of four times, yes,
- 9 ma'am.
- 10 Q And who was with you when you went over there?
- 11 A Sherry Chavis, her two kids one time, my girlfriend,
- 12 and myself. That's the night we went in the house.
- 13 Sherry Chavis and myself went one time. He came outside
- 14 and met us then. Sherry Chavis and myself, Winston Cooper
- 15 and a little girl named Jennifer who was one of her
- 16 friend's children went one time and stayed outside. He
- 17 met us outside and went another time -- as a matter of
- 18 fact, with Chris and Sherry and they acquired reefer that
- 19 day.
- 20 Q So that's four times total?
- 21 A Yes, ma'am.
- 22 Q You went inside the first time?
- 23 A No, it wasn't the first time. That was just the
- 24 first recollection I gave to you, but that wasn't the
- 25 first time I have been at his house. I had been there, I

(Rusty Dunbar-Cross by Mrs. Young)

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1 am going to say, two times before I ever went into his
2 house and then I have been a couple of more times after I
3 had been in his house.

4 Q All right. Now I am really confused because first
5 you said you only went over there four times?

6 A Uh-huh.

7 Q But you've been to his house two times before that
8 and two times after that. How many times have you been to
9 his house?

10 A Well, I mean, I can't give you a particular number,
11 Mrs. Young.

12 Q You don't know how many times?

13 A I can't -- I know it's been at least four times
14 minimum.

15 Q At least four but probably more than that?

16 A I will say minimum four.

17 Q You went in his house one time?

18 A Yes, ma'am.

19 Q You didn't go into his car that time?

20 A No.

21 Q You have never been in his car, have you?

22 A No, ma'am.

23 Q Never been in Daniel's car?

24 A No, ma'am.

25 Q You said you took some kids with you -- little kids

(Rusty Dunbar-Cross by Mrs. Young)

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1 over there while you were going to buy this dope?

2 A No, ma'am. I was with someone who brought those kids
3 with her.

4 Q Oh, okay.

5 A I was the passenger in the car.

6 Q So you had no control over this person bringing their
7 children along?

8 A No, ma'am. Those are her children. She chose to do
9 that.

10 Q Let's go back to this -- everything that you've
11 testified to on October 6 sounds like you were making a
12 lot of decisions for yourself?

13 A Yes, ma'am.

14 Q Because people don't make decisions for you, do they?

15 A No, ma'am.

16 Q And you lie when it's convenient?

17 A Yes, ma'am.

18 Q And it's probably convenient for you to be lying
19 right now, isn't it?

20 A If I would be lying right now it would probably be a
21 nice convenient time, yes, ma'am.

22 Q And you got two prior felony convictions?

23 A Yes, ma'am.

24 Q And you're a liar?

25 A If that's what you want to call it.

1 Q Well, you've admitted it?

2 A I admit I will tell a lie, but I am not a liar.

3 Q So you're not lying now?

4 A No.

5 Q Even though it would be convenient for you?

6 A I would be if I was.

7 Q I see. Nothing else.

8 THE COURT: Mr. Mims, anything?

9 MR. MIMS: Nothing, Your Honor.

10 THE COURT: You can step down. Next witness.

11 MR. MIMS: The defense rests.

12 THE COURT: Anything in reply?

13 MRS. YOUNG: May I have just a minute, Your Honor?

14 Your Honor, we might have a rebuttal witness. It is

15 5 o'clock.

16 THE COURT: That's fine. It will be short. I know

17 that. Sausage biscuits or pastries? Let's go to the big

18 decision. My ladies yelled yesterday about the sausage

19 biscuits. You want doughnuts and pastries in the morning?

20 Chocolate filled, lemon? Biscuits?

21 THE JUROR: Biscuits.

22 THE COURT: They want sausage biscuits in the

23 morning. Hot coffee. 9:30 okay? All right. We'll start

24 right at 9:30. If you want your biscuits, be here early.

25 Please we had a little bit of problem with one juror.

1 That's why we're down one -- not a problem, but I didn't
2 want an appearance of impropriety. Please don't discuss
3 the case with anybody. Do not let anybody discuss it with
4 you. Please don't go home and do any internet research on
5 any of this stuff, please. Go home and have a nice
6 evening. Come back in the morning and enjoy your sausage
7 biscuits and we'll be through mid-day tomorrow. Thank
8 you. Everybody else remain seated.

9 (Whereupon, the jury exited the courtroom at 5:01.)

10 THE COURT: Anything for the record, ma'am?

11 MRS. YOUNG: No, sir, Your Honor.

12 THE COURT: Mr. Mims?

13 MR. MIMS: No, sir.

14 THE COURT: Let me see that statement.

15 MR. GIBBONS: Your Honor, if you want to look at the
16 rule real quick.

17 THE COURT: I just want to see the statement.

18 MR. GIBBONS: I don't know if I can disclose it.

19 THE COURT: You can't disclose it to me?

20 (Whereupon, a bench conference was held.)

21 THE COURT: We have any specific charges the state
22 would have to have other than the normal? I got the four
23 offenses and my regular charge on reasonable doubt,
24 credibility, expert witness.

25 MRS. YOUNG: Circumstantial evidence.

1 THE COURT: Ma'am?

2 MRS. YOUNG: Circumstantial evidence.

3 THE COURT: Circumstantial direct.

4 MRS. YOUNG: Hand of one hand of all.

5 THE COURT: Hand of one, hand of all. Write this
6 down. Prior record for impeachment only. He testified so
7 we don't have that.

8 What else, Mr. Mims?

9 MR. MIMS: I wouldn't add anything.

10 THE COURT: If you think of some over the evening,
11 let me know, but I think it's pretty basic.

12 MRS. YOUNG: It's always worth an ask even though you
13 haven't been giving it to us -- firmly convinced along
14 with hesitate to act.

15 THE COURT: No, ma'am.

16 MRS. YOUNG: All right. I have to ask.

17 THE COURT: Who made you ask that? I see him back
18 there smiling.

19 MR. THURMOND: Maintain hope.

20 THE COURT: I just charge what they got in the book.
21 All right. Let me see y'all in chambers. Defendant is in
22 custody.

23 (Whereupon, the proceedings were concluded for the
24 day and was reconvened on December 17, 2009 as
25 follows:)

1 THE COURT: Is the state ready for closing arguments?

2 MRS. YOUNG: Yes, sir.

3 THE COURT: Mr. Mims, on behalf of the Defendant are
4 you ready?

5 MR. MIMS: Yes, Your Honor.

6 THE COURT: Are you going to waive opening?

7 MRS. YOUNG: Mr. Grimes is prepared to open on the
8 law.

9 THE COURT: Thank you. For the audience my policy is
10 once we start arguing and charges you can't leave. So if
11 you can't sit through all of this, leave now. Thank you.
12 Bring the jury in.

13 (Whereupon, the jury came into open court at
14 approximately 9:42.)

15 THE COURT: Good morning.

16 THE JUROR: Good morning.

17 THE COURT: I hope you had a pleasant evening. All
18 right. We're at the stage of the trial now where we're
19 going to present the final arguments. As I told you at
20 the beginning of the case like the opening statement final
21 argument is not evidence in the case. Obviously, the
22 lawyers are adversaries for their respective sides which
23 means they'll be arguing the evidence in the light most
24 favorable to their side, but the arguments is not
25 evidence. You have heard all of the evidence that's going

(Closing Statement by Mr. Grimes)

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1 to come in and you'll make your decision from the
2 evidence.

3 Please listen carefully because they'll be giving you
4 various views on what they claim the evidence shows, but,
5 obviously, the ultimate decision is yours as to what it
6 shows. Once they have completed their final arguments,
7 then I will charge or instruct you on the law. It
8 shouldn't take us very long to do that and then I will
9 give you the case and y'all can start your deliberations
10 mid-morning.

11 The State, Mr. Grimes?

12 MR. GRIMES: Thank you, Your Honor.

13 CLOSING STATEMENT

14 MR. GRIMES: On the night of October 6, early morning
15 hours of October 7, 2008 Daniel Hynes was at his home when
16 his door was kicked in. He was held in a headlock on his
17 couch. He was taken to his bedroom. He was cut, tied up,
18 kicked in the head, and things from his house taken. The
19 the state's presented evidence in this case to prove that
20 the Defendant Rusty Dunbar committed the crimes of
21 burglary in the first degree, armed robbery, kidnapping,
22 possession of a knife during a violent crime.

23 Now, as the judge explained to you what the attorneys
24 say is not evidence in the case. The evidence comes from
25 testimony and any physical evidence that was admitted

(Closing Statement by Mr. Grimes)

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1 during the trial and at the end of the trial the Judge is
2 going to give you the law that applies. You'll take that
3 law and apply it to the facts as you find them in this
4 case. The jury is to determine what the facts are in the
5 case. You need to do that by looking at the evidence,
6 evaluating the testimony, evaluating the physical
7 evidence, and you can give whatever weight you choose to
8 give to that evidence and you can apply it to the law as
9 the Judge gives you.

10 Myself and Mrs. Young represent the state. It is our
11 job to present the evidence to prove that the Defendant
12 committed the crimes with which he is charged. What are
13 those crimes? Burglary in the first degree. The
14 Defendant is charged with burglary in the first degree. A
15 burglary is when a person enters the dwelling of another
16 with the intent to commit a crime and without consent.
17 You've heard testimony in the case from Daniel, the
18 victim, that his door was kicked in. You've heard
19 testimony from Christopher Herndon that he and Rusty
20 Dunbar went in; that the victim was held in headlock and
21 they took him to the bedroom; that they took things from
22 the house -- shoes, bank card. When a burglary occurs at
23 night that can be a burglary in the first degree.

24 The Defendant is also charged with armed robbery.
25 Well, what's armed robbery? A robbery that occurs while a

(Closing Statement by Mr. Grimes)

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1 person is in possession of a deadly weapon is an armed
2 robbery. What is a robbery? A robbery is when a larceny
3 or stealing has occurred. A person has a larceny or
4 stealing from another person takes items -- takes things
5 from that person's presence through force, through
6 violence, intimidation, or by means of fear.

7 So, Daniel explained to you that when these guys came
8 into his house he was held in headlock; that he had a
9 knife held to him; that they took him to his bedroom; that
10 they were going through the house to take things from
11 him -- bank card, shoes -- that he was tied up. He was
12 cut, kicked in the head. The robbery occurred and a
13 deadly weapon was used so it could be an armed robbery.

14 Another thing they're charged with is kidnapping and
15 as Mrs. Young explained to you kidnapping is not
16 necessarily where someone is taken and put in a van and
17 driven off and held for ransom. Kidnapping can occur when
18 somebody is confined or seized unlawfully against their
19 will. Well, Daniel explained to you that when he's been
20 broke into his house that he was held in headlock on his
21 couch. Christopher Herndon told you that Rusty Dunbar was
22 the one that held him in a headlock and that he was held
23 in a headlock on his couch with a knife to him. He wasn't
24 free to leave at that point. Then he was taken to his
25 bedroom and continued to be held in a headlock where he

(Closing Statement by Mr. Grimes)

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1 was still not free to leave. He was tied up, electrical
2 cord, still wasn't free to leave; kicked him in the head.
3 Before they left at this point he was not free to leave
4 would be a kidnapping.

5 Finally, possession of a weapon during a violent
6 crime. When this -- this can occur when somebody is
7 convicted of a violent crime and they possessed a weapon
8 during the commission of that crime. In this case armed
9 robbery is a violent crime in our state. When somebody
10 possesses a weapon during the commission of that crime it
11 can be possession of a weapon during the commission of a
12 violent crime. Now, we've heard testimony in this case
13 and physical evidence has been admitted that we've heard
14 from Daniel Hynes that those two men broke into his house
15 and the acts that they carried on. We've heard testimony
16 from Christopher Herndon that he was there. He was there
17 with Rusty -- that he gave Rusty a knife prior to these
18 acts being committed and that they committed these acts
19 together. They left together in the vehicle -- in Daniel
20 Hynes' car and that Christopher Herndon and Rusty Dunbar
21 split apart at that point.

22 We've heard testimony from Jerry Thornton that he
23 dropped the two of them off there together. We've heard
24 testimony related to DNA from Agent Leisy. In a little
25 while Mrs. Young is going to come back up and she is going

(Closing Statement by Mr. Grimes)

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1 to explain to you or discuss to you in more detail all the
2 testimony and evidence that was admitted in this trial,
3 but as a jury you get to come and you get to evaluate that
4 evidence at the end of the trial. You get to evaluate the
5 testimony that was presented. You get to evaluate the
6 physical evidence. You can use your common sense and your
7 life experience. You don't have to leave that outside of
8 the courtroom. You bring it in here with you. You can
9 use it when you evaluate the evidence.

10 You can give as much or as little weight to the
11 evidence as you see fit -- a particular person's
12 testimony. You can determine how much weight to give to
13 any item of evidence or any testimony that you see fit and
14 determine as a whole what the true facts of the case are
15 and after Mrs. Young comes and speaks to you about more
16 details of the evidence you can use that common
17 experience, that common sense, and that life experience
18 and work through the evidence and determine how to apply
19 the facts as you see them to the law as the Judge gives
20 you, and when you do that -- when you evaluate the
21 testimony of Daniel Hynes the victim in the case, Jerry
22 Thornton, Christopher Herndon, Agent Leisy, other evidence
23 in the case, you get the big picture of what happened.

24 When you do that you will have to evidence and
25 information available to determine that beyond a

(Closing Statement by Mr. Mims)

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1 reasonable doubt the Defendant Rusty Dunbar committed the
2 crime of burglary in the first degree, kidnapping, armed
3 robbery, and possession of a weapon during a violent
4 crime.

5 THE COURT: Mr. Mims?

6 CLOSING STATEMENT

7 MR. MIMS: May it please the court, Your Honor,
8 Mrs. Young.

9 Good morning, ladies and gentlemen. I would like to
10 begin by thanking you for services this week. I know that
11 you've all been very patient and listened carefully. At
12 the beginning of the trial I instructed you to please
13 listen to all of the evidence before you formed any
14 opinions and here we are three days later and it is time
15 to wrap it all up.

16 It's no secret at this point that Rusty Dunbar does
17 has used crack cocaine in his life but I want to make it
18 clear that he is not on trial for being addicted to crack
19 cocaine. The case is not about drugs. It is about Daniel
20 Hynes having his house broken into on the early morning
21 hours of October 7 of 2008 and it's important that you ask
22 yourself what evidence has come forward that puts Rusty
23 Dunbar at Daniel Hynes' house on that night.

24 Mr. Hynes hasn't been able to identify Rusty Dunbar
25 as one of the individuals that came through his front door

(Closing Statement by Mr. Mims)

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1 to this day. He has yet to identify him as one of those
2 two people. In the 9-1-1 call that he made immediately
3 after the incident happened while everything was fresh in
4 his head he mentions one name: Christopher Herndon.
5 Nothing said about Rusty Dunbar. When Investigator
6 Sanders interviewed Daniel down at the hospital, again, he
7 made no mention of Rusty Dunbar and then when he testified
8 in court here on Tuesday with Mr. Dunbar sitting right
9 there he is still unable to identify Rusty Dunbar as one
10 of those individuals that came through his front door.

11 I believe that it's clear that he had plenty of
12 opportunity to observe the two men that came in. He
13 stated that he was sitting on his couch; that the couch is
14 in plain view of the door. These two men kicked the door
15 in. He stated that they weren't wearing masks. They
16 weren't wearing gloves. I think that if something like
17 that were to happen to anybody that those are faces that
18 are going to be burned in your memory.

19 The testimony revealed that the kitchen light was on.
20 It wasn't a completely dark room. Mr. Hynes stated that
21 these individuals were in his house somewhere between 10
22 and 15 minutes, and Mr. Herndon stated that the second
23 individual who he claims to be my client is the one that
24 had Daniel in the headlock. They were, basically, face to
25 face for 10 to 15 minutes and yet he can't identify him

(Closing Statement by Mr. Mims)

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1 sitting right here today.

2 There was testimony that came out that Daniel has
3 seen Rusty before. Daniel stated that he doesn't know
4 Rusty, yet they know all of these people in common. They
5 both know Christopher Herndon, for one thing. Daniel
6 stated that Christopher had slept at his house before.
7 He's been in his car and Rusty and Chris worked together.
8 They spend a lot of time together. Another person that
9 they know in common is Sherry Cooper. Mr. Hynes stated
10 that Sherry has been to his house before. Rusty and Laura
11 both stated that they had taken Sherry to his house
12 before, and Rusty is, in fact, the Godfather of Sherry's
13 children, and, yet, Mr. Hynes was only able to say that he
14 knows of Rusty Dunbar? How do you know of somebody but
15 you've never seen their face, never heard their voice? If
16 you know of somebody, you know two people at least that
17 they know, then you probably recognize them if they kicked
18 your front door in.

19 Again, I want you to ask yourself what puts Rusty
20 Dunbar at Daniel Hynes' house on October 7. There were
21 many items that were taken from his house: A wallet, a
22 debit card, a cellphone, two electrical cords that were
23 used to tie him up, some shoes, and he testified that
24 neither one of the suspects had gloves on; yet, are Rusty
25 Dunbar's fingerprints found on any of those items? Are

(Closing Statement by Mr. Mims)

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1 Rusty Dunbar's fingerprints found anywhere on or in the
2 car? I forgot to mention the lamp. No prints on the lamp
3 either.

4 Now, you heard Catherine Leisy, the DNA expert from
5 SLED, testify as to some of the swabs that were taken from
6 the car. There were over ten and out of all of those only
7 three of them -- there were only three that Rusty Dunbar
8 could not be excluded from. It wasn't matched. He just
9 couldn't be excluded from being a possible contributor.
10 Furthermore, all of them were mixtures. We had two from
11 the steering wheel and one from the driver door handle.
12 They were all mixtures. She stated that just by looking
13 at a DNA sample that you can't -- you can't tell the race
14 of the individual that left the DNA there. You can't tell
15 when it was left there. You can't tell the nationality of
16 the individual, where they came from, and she testified
17 that a statistic like one in 12,000 is relatively low by
18 DNA standards.

19 The statistical analysis that we had on Mr. Hynes'
20 sample was one in 12 quadrillion. The samples that we had
21 from Christopher Herndon was one in 7.8 quadrillion. That
22 compared to one in 12,000 is pretty low. We didn't even
23 have a statistic on the other two items. We only had it
24 for the second one and she indicated that that was because
25 the other two items were even -- was even less of a DNA

(Closing Statement by Mr. Mims)

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1 sample. So that statistic would be even lower. She
2 testified that maybe one in a thousand people could be
3 excluded from it.

4 So, I don't think that the DNA is very telling in
5 this case. She also talked about transference -- that an
6 individual's DNA could end up on an item that he or she,
7 in fact, never personally touched -- that if you come in
8 contact with a person or object and then it brushes up
9 against something else that it could leave your DNA there
10 and you heard Laura Smith's testimony that she believes
11 that the shorts Christopher Herndon was wearing on the
12 night of the home invasion were Rusty's -- that he had
13 picked it up from Rusty's floor just days before.

14 You heard a lot of testimony from Jerry Thornton, the
15 person that supposedly dropped Christopher Herndon and
16 Rusty off at the victim's house that night. Now, Rusty --
17 I mean, Jerry admitted to starting drinking before lunch
18 that day. He says that the first thing he did on
19 October 6 was go to Harrison's Hardware and pawn that
20 cement saw for \$100 which they spent all of it on beer,
21 start drinking around 11 or 11:30. After that they sell
22 the cement mixer for somewhere between two and three
23 hundred dollars, take all of that money and spent it on
24 more beer and crack -- that he admitted to using crack
25 cocaine behind DSS and then he's got approximately a

(Closing Statement by Mr. Mims)

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1 four-hour gap in his memory. He didn't even remember
2 going to Laura's Dad's house over by East Aiken when other
3 witnesses testified to being there somewhere between 6 and
4 10, 6 and 10:30. He didn't even remember that. He never
5 testified to dropping Rusty and Laura -- dropping Rusty
6 off back at Tommy's house if he supposedly picked him up
7 at Aiken High School.

8 You remember that we had the officers with the
9 bloodhounds testify that the dogs were out there for
10 approximately four hours; that the weather conditions were
11 clear; that it had not been raining; and that there were
12 two dogs but they didn't pick up on any trails in the
13 direction of Aiken High School. You remember watching the
14 surveillance video of Deputy Sharpton and Goodwin, I
15 believe it was, that passed the victim's vehicle on Wire
16 Road. They went behind Wrights Mill Grocery. Although,
17 they didn't see the victim's car hidden behind the
18 building at that time, my point is that they were there
19 moments after it happened, yet they didn't observe anyone
20 on foot, no one walking in the area.

21 Deputy Sharpton -- one of the deputies testified that
22 there were several other public safety officers that were
23 out there, too, just trying to provide assistance. So, I
24 believe that we had three or four officers at least that
25 were patrolling this area and saw nobody on foot.

(Closing Statement by Mr. Mims)

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1 Mr. Thornton -- getting back to Jerry -- testified
2 that when he picked Rusty up at Aiken High School
3 supposedly he couldn't remember if he was even wearing a
4 shirt and really had no recollection of where he took him
5 after that. So, again, you're asking yourself what puts
6 Rusty Dunbar at Daniel Hynes' house on the early morning
7 hours of October 7?

8 You had Christopher Herndon testify. You might be
9 curious why he was sitting in that chair and not that
10 chair. He is charged with the exact same offenses. Why
11 is he not in the chair? He's the one that picked out the
12 victim. He's the one that admitted to cutting the victim
13 on the back and supposedly they hatched this scheme to --
14 this plan to assault and rob Mr. Hynes and in a truck with
15 four people sitting in it, yet nobody heard them do it?
16 It just sounds odd. What does -- you need to ask yourself
17 what does Christopher Herndon have to gain by implicating
18 Rusty Dunbar? Who is he protecting?

19 You heard Laura Dunbar testify that when they left
20 her father's house that they went to Bull's Bar and that
21 some individual approached the truck and stated that he
22 could help everyone gets more crack cocaine. You know
23 that they had been doing crack that day. Jerry testified
24 to it. Chris testified to it. Even Rusty admitted it.
25 It is pretty logical that they would have tried to get

(Closing Statement by Mr. Mims)

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1 more, especially at night, especially after they had been
2 drinking all day.

3 Laura testified that when they left Bull's Bar that
4 they went to Rusty's brother's house. You saw him
5 testify -- Tommy. Tommy stated that they got there
6 between 11 and 11:30 -- that he remembered it because the
7 news was on and he said that he went to bed at about a
8 quarter 'til one and that when he went to bed that Rusty
9 and Laura were still there. Laura testified to that same
10 effect that they had hung out at her mother's house and
11 her father's house -- her mother lives there, too -- and
12 that they had gone to Bull's and then gone to Tommy's.

13 Then, of course, you heard Rusty testify. Now, I
14 know that he probably opened your eyes to a side of Aiken
15 that maybe a lot of you aren't aware that is out there.
16 You know there's been a lot of drug use discussed in this
17 case. Drugs were even taken from the the victim's house,
18 but I want to keep you focused on the fact that the case
19 isn't about Rusty Dunbar using crack cocaine. You need to
20 look at all of this evidence that's been introduced and
21 really see if any of it puts him at the scene of the
22 crime. He admitted to using drugs. He doesn't claim to
23 be an angel. He got up here and he told you what he's
24 done, but he is also telling you what he's not done. He
25 is telling you that he had nothing to do with what

(Closing Statement by Mr. Mims)

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1 happened to Daniel Hynes.

2 I told you on the first day of the trial what the
3 burden of proof was and who had that burden. I told you
4 that Mr. Dunbar is presumed innocent. He is still
5 presumed innocent right now. He doesn't have to prove his
6 innocence. The state has to prove his guilt and they have
7 to prove it beyond a reasonable doubt. I told you that
8 that is the highest burden of proof in our criminal
9 justice system. It is higher than in a civil trial and
10 the reason it's so high is because someone's liberty is at
11 stake, okay? Someone's freedom. So we want to make sure
12 that everybody has -- is certain to -- is morally certain
13 that this individual committed the crime. If it's a tie
14 or if you're unsure, you have to defer to the Defendant
15 because he is innocent until proven guilty.

16 You know, beyond a reasonable doubt, like I said,
17 it's the highest standard of proof and beyond a reasonable
18 doubt has been defined as doubt that would cause a
19 reasonable person to hesitate to act. So when you go back
20 in the jury room and you deliberate and you look at all
21 the evidence if you decide that there could be a
22 reasonable -- a reasonable -- well, if you -- if you have
23 to hesitate to convict Mr. Dunbar or if you think that
24 there are reasonable alternatives to what may have
25 happened that night based on the testimony that you've

(Closing Statement by Mrs. Young)

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1 heard, it's your duty -- it is your job to find him not
2 guilty to not convict him.

3 So, I am just asking you to recognize that and follow
4 your oath. Think about everything that you've seen,
5 everything that you've heard, and find Rusty Dunbar not
6 guilty. Thank you.

7 CLOSING STATEMENT

8 MRS. YOUNG: May it please the court, Mr. Mims.

9 Good morning, ladies and gentlemen. At the beginning
10 of the trial I told you that the trial was going to be
11 like a connect-the-dots picture with each person that
12 testified and each item of physical evidence that is going
13 to be put in is going to be a little plot that is going to
14 be pointed and at the end of the trial you're going to
15 have the big picture and you're going to have an idea of
16 what exactly happened, and in preparation for my closing
17 argument today I prepared a Power Point that you're going
18 to see in a minute, and as often happens -- I don't know.
19 Particularly with me, technology seems to elude me. So,
20 this Power Point is going to come up, and it's not going
21 to be perfect.

22 I am just going to go ahead and tell you the Power
23 Point is kind of like a perfect example of this trial.
24 Nothing is perfect. If I could go out and pick a bunch
25 witnesses and choose people that I would have come in and

(Closing Statement by Mrs. Young)

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1 have testify before you, they certainly wouldn't have been
2 some of the people that you saw. They're not people that
3 are the nuns over there at St. Mary's Church. They are
4 people that don't have good lifestyles, people that you
5 might not like. They are people that you might not like
6 what they were doing, but these are people that were
7 witnesses to this crime. So I have to come in and present
8 them as best I can, and you're the person -- you as the
9 jury collectively can judge their credibility.

10 I don't think at this point in time that any of you
11 on the jury have any doubt at all that this crime occurred
12 and that Daniel Hynes was the victim of this crime.
13 Clearly, he testified about it. There was physical
14 evidence that his home was broken into, physical evidence
15 on his person and in his home that he was restrained. He
16 had injuries where he was cut with a knife. He had
17 injuries where he was struck in the head. He told you
18 that items were stolen from him including his car. That
19 was found elsewhere. I don't think there is any doubt
20 that this crime was committed.

21 So, now what I am here to argue to you and hopefully
22 convince you of during my argument is that that the person
23 that's guilty of these crimes is Rusty Dunbar. As you can
24 see not perfect, but it is what it is and Rusty Dunbar is
25 guilty. Well, how do we know Rusty Dunbar is guilty? You

(Closing Statement by Mrs. Young)

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1 heard from Christopher Herndon. I know that probably all
2 of y'all are sitting there now and as sure as you know a
3 crime happened to Daniel Hynes you know that Christopher
4 Herndon was involved. I mean, he told you that he was.
5 He told the police he was. He admitted that right off the
6 bat.

7 Well, the timing of that was important. Christopher
8 told you that he had been with Rusty all day. He told you
9 the things that they were doing, and he told you that he
10 was with Rusty when the crime occurred. We know that
11 Chris was discovered near the car. He was hiding in the
12 woods near where the police eventually found the car that
13 belonged to the victim. We know that the dog team members
14 found the car -- the SRP, SRS. You can't look at it. I
15 can't remember which one -- the debit card and also the
16 tin that contained the marijuana that the victim
17 identified as belonging to him. You know that he
18 eventually came up out of the woods and at first he tried
19 to play it off like I am going to my friend's house or
20 some ridiculous story that the police immediately knew was
21 not the case and so he came and was taken into custody and
22 at that point in time Investigator Sanders was already at
23 the Aiken Regional Medical Center. He was already having
24 an opportunity to talk to Daniel Hynes.

25 Daniel Hynes told him what happened. He told him how

(Closing Statement by Mrs. Young)

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1 two people came into home, how it happened so fast.
2 Daniel was in his home. He was in his personal space. He
3 was watching TV. Daniel was not looking at the door
4 waiting for somebody to kick it in. Somebody kicked in
5 the door, probably about gave him a heart attack, and
6 within two seconds he's in headlock and it's not a
7 face-to-face headlock. It is a headlock down at
8 somebody's waist and his face head is pointing to the
9 floor. He told you that he didn't see the faces of either
10 individual. He told you that he was only eventually able
11 to recognize that other individual as being Chris Herndon
12 by the fact that he knew his voice. He told you about all
13 the things that happened to him that it was at least two
14 people because he knew one of them had him held and the
15 other one was tying him up and instructing him to be
16 quiet, threatening to kill him, threatening his life, and
17 he could hear the noises of the other person going through
18 the home.

19 I don't think it's unreasonable based on the
20 circumstances of Mr. Hynes being -- minding his business,
21 being in his own home, you know, late at night watching TV
22 relaxing that somebody could have kicked the door in and
23 jump over and grab him and out of the pure shock and
24 horror and disbelief of what was happening he wouldn't
25 have had a chance to see their face. You heard the terror

(Closing Statement by Mrs. Young)

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1 in his voice on the 9-1-1 call. He said, What if they
2 come back?

3 He told you he doesn't know Rusty Dunbar. If he had
4 seen Rusty Dunbar's face, I'm sure he would have told you
5 that. He did not. He didn't see his face. He can only
6 tell you what he saw and what occurred. That's what he
7 did.

8 Going back to why that's important, Daniel Hynes told
9 Investigator Sanders what happened to him at the hospital.
10 About that time Investigator Sanders gets the call. He is
11 getting calls to a lot of places -- first to the house,
12 then to the hospital. Then he gets a call that they found
13 the suspect Christopher Herndon who they think has
14 committed the crime because he's already been identified
15 by the victim. So he goes and Investigator Sanders takes
16 the statement. Christopher Herndon is willing to talk to
17 him. Christopher Herndon -- maybe he is not willing at
18 first, but he finally decides, well, I am just going to
19 give it up. I am pretty much caught here.. So, he tells
20 Investigator Sanders what happened.

21 Well, it is important to consider very Investigator
22 Sanders told you. He told you that what Christopher
23 Herndon told him, you know, just a short while after the
24 crime had happened was in line and followed along with
25 what the victim told him happened. Well, I know you're

(Closing Statement by Mrs. Young)

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1 probably telling yourself, well, that makes sense because
2 they were both there. They both know what happened.
3 Well, I'd like also ask you to extend that thought of why
4 that's important a little further. It makes sense that
5 Christopher Herndon knew what happened and he told
6 Investigator Sanders what happened and it makes sense
7 because what he told him was the truth and the truth was
8 Rusty Dunbar was there. Rusty Dunbar with with him.
9 Rusty Dunbar was just as involved as Christopher Herndon.
10 Now, I'm sure you don't like Christopher Herndon
11 because of what he did. The things he did are
12 reprehensible, and the fact is Mr. Mims is correct --
13 Mr. Herndon is not over in that defendant seat today, but
14 that doesn't mean he is not going to be. You heard what
15 he said. He has been given no promises. He has every
16 charge pending against him, and he is going to have to
17 have his turn to face this as well, but what we are today
18 here about is Rusty Dunbar. So, don't be confused by
19 that. Even if you don't like Christopher, I mean, you
20 have to look at his testimony and consider the
21 circumstances about what he told Investigator Sanders, how
22 that was consistent with what the the victim had said and
23 that was immediately after the crime.
24 He immediately says Rusty Dunbar. There is no
25 hesitation. He doesn't have to pull a name out of the

(Closing Statement by Mrs. Young)

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1 air. He doesn't have to think of Craig or whoever this
2 mystical person is and that's a very simple explanation
3 for that, ladies and gentlemen. The reason he didn't have
4 to go through all of those mental acrobatics is because
5 what he said was the truth. Rusty Dunbar was with him.
6 That's what makes the most sense. That's what happened
7 that night.

8 All right. Well, let's talk about -- before we get
9 to what they saw all say let's talk about Jerry Thornton.
10 When I talk about witnesses I probably wouldn't want to
11 come put before you Jerry Thornton might be A-number-one
12 on my list. I saw Jerry Thornton just like you did, and
13 when he came in here the best thing I could say about him
14 is he looked like a cat in a roomful of rocking chairs.
15 He was not comfortable. He did not want to be here. He
16 was -- he had convenient memory lapses that probably
17 served himself. Was he minimizing what happened? It is
18 very likely.

19 You know, he had to admit some things that were
20 pretty reprehensible. It is a Tuesday. Everybody else is
21 hard at work doing productive things as a citizen and the
22 first thing he and his buddy Chris do is they get up and
23 go to the liquor store first thing in the morning right
24 when it opens and get some liquor and the whole day to
25 them is about partying and they have no purposeful goal

(Closing Statement by Mrs. Young)

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1 except to sell things to get money so they can buy more
2 beer and keep on partying and keep on having a good time.

3 So, Jerry doesn't have the best work ethic or
4 sensibility or things of that nature, but he told you what
5 happened. He told you they pawned a brick saw. It
6 belonged to him. He told you that they pawned it at
7 Harrison Hardware. He told you that they then went or at
8 some point in time that Rusty and Laura got involved and
9 that they had been working -- Rusty had been working with
10 them; that Laura kind of came along with him. She was his
11 sidekick or whatever -- and that Rusty knew somebody that
12 might buy this cement mixer.

13 Well, Jerry is having such a good time at this point,
14 you know, you keep hearing him talk about they don't have
15 money. They keep having to put gas in the trunk. Putting
16 gas in the truck happens every five minutes because
17 they're just getting enough gas in to go from point A to
18 point B because really they don't want to spend their
19 money on gas. They want to spend their money on beer and
20 other substances. So, it's somewhat incredible to me that
21 he would buy 500 -- I mean, excuse me, \$100 worth of beer,
22 but I mean, you saw him. Maybe he can drink \$100 worth of
23 beer especially if he is splitting it with Chris and also
24 Rusty when Rusty comes into the picture.

25 But at some point they get this great idea we're

(Closing Statement by Mrs. Young)

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1 going to sell this cement mixer. It doesn't belong to me,
2 but that's, you know, a side matter, and he hemmed and
3 hawed about that and tried to act like it wasn't his idea,
4 but, you know, he admitted he knew what was happening. He
5 is a grown man. He was part of it. He was just as part
6 of it as everybody else was and he told you that they went
7 to see this guy named Nathan Hamilton to sell this mixer.
8 He told you that he and Chris waited in the room; that
9 Rusty, Laura, and Nathan took the cement mixer, put it on
10 Nathan's van, and drove off and tried to sell it.

11 Well, ladies and gentlemen, I would submit to you
12 that Nathan Hamilton came in here. He told you the exact
13 same thing -- that the the four of them came to his room,
14 that Rusty and Laura were the ones that went with him to
15 try to sell it, and that Jerry and the big guy I think is
16 what he called him -- excuse me, Chris and the big guy sat
17 back at the hotel room. Chris told you the same thing.
18 Laura told you the same thing. Rusty told you the same
19 thing. So at this point they're all in agreement about
20 what happened that day. They're all in this together.
21 They are together trying to sell this cement mixer because
22 Rusty, Jerry, and Chris, they want to go get some crack,
23 and, apparently, Laura is okay with that.

24 So, again, they're out of money so quickly and they
25 have to go borrow money from this guy's mom that finally

(Closing Statement by Mrs. Young)

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1 agrees to sell this -- excuse me, buy this mixer from
2 them. So she gives them some gas money. I mean, it
3 almost sounds pitiful if it weren't for the fact that you
4 knew that they had money and they were spending it on dope
5 and beer, basically. I mean, they were just -- they were
6 partying. That was the whole point of their day.

7 So Jerry, Chris, Laura, and Rusty all came in here
8 and testified under oath they were together that day; that
9 Jerry, Chris, and Rusty were drinking. They went two
10 places to sell the mixer. They eventually sold it to Jody
11 Chavis for either 250 or \$300 depending on who you
12 believe, and after that they bought crack several times.

13 Now, it struck me as I'm sure it struck you and maybe
14 surprising that Chris and Rusty both spoke about buying
15 crack like it was rather offhand. It was something that
16 they knew how to do. Clearly, they had done it before.
17 They knew how to smoke crack. They described smoking
18 crack. Jerry was smoking crack with them whether or not
19 he really wants to say that. That's what they did. They
20 went and bought crack and smoked it.

21 And then at some point as the day progresses all
22 three of them -- Jerry, Chris, Laura, and Rusty -- they
23 all tell you the same thing. Well, Jerry doesn't. He is
24 a little hazy at this point. He is having one of those
25 convenient memory lapses. The three of them Chris, Rusty,

(Closing Statement by Mrs. Young)

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1 and Laura say they went to Laura's Dad's house. It gets a
2 lot of confusing with all of these names thrown in there
3 and Jerry says I think we went somewhere; I am not really
4 sure where it was, but, yea, I think we went some other
5 place. So, they're all there at Laura's Daddy's house
6 over by East Aiken Elementary School. Are they over there
7 to visit Laura's grandma? Are they over there to eat
8 supper? No. They're over there to party under the
9 drinking tree. They told you about that. They went out
10 and bought some Mad Dog on the way and they were partying
11 and I think Rusty himself said it quite eloquently that he
12 partook of a little reefer. So, clearly partying was
13 still going on at this point. I mean, the theme of the
14 day is let's have a good time.

15 So, they tell you they're all there together -- the
16 four of them and they tell you that they all four leave
17 together. Chris Byars came in. He testifies. He says,
18 yea, I was there. I live right across the way. I know
19 Laura's daddy. I go and drink with him after work. I
20 have known him for a long time. I saw them all there and
21 I think they left together. He said he knew they left
22 together, but he thought it was around midnight and the
23 times are important, obviously, because the time of the
24 crime was memorialized once Daniel called 9-1-1 and you'll
25 hear it. I believe it was 12:36. So, the crime had to

(Closing Statement by Mrs. Young)

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1 have happened in the moments leading up to 12:36. So
2 times start getting important.

3 Chris Byars doesn't have a dog in the fight. He
4 comes in and says, yea, I think they left at 12. Well,
5 Jerry -- he is not even sure they were there. He just
6 knows they left. Rusty doesn't really know what time it
7 is because he doesn't wear a watch. Laura says it's
8 10:30. Chris says I think it was around 12. We're
9 talking about a bunch of people that -- except for
10 Laura -- had been drinking and doing dope all day long.
11 Do they really know what time they left? I'd submit to
12 you that Chris Byars is the most reliable source because
13 he didn't say anything about smoking crack. He said he
14 had a few beers, but he certainly hadn't been on an
15 all-day party bender. He at least went to work that day
16 and was productive.

17 So at this point in time I'd like to go into Rusty's
18 testimony a little bit because it's pretty interesting.
19 He doesn't wear a watch because time -- he doesn't need to
20 know what time it is, but he knows what time they left.
21 He said it was 10:45. He knows that because wrestling was
22 on, but the main event hadn't happened yet. So, Rusty and
23 I when I was questioning him we had a little discussion
24 about the time and I would submit to you that the time
25 just doesn't make sense the the way Rusty describes it.

(Closing Statement by Mrs. Young)

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1 He says that they didn't go to Bull's Bar immediately like
2 Laura said. He said that they stopped at the the store.
3 Then he gave me up to I believe he said 11:20 to take him
4 to get all of the way to Bull's Bar which is way out on 19
5 from East Aiken Elementary School and at that point is
6 where things start getting really interesting and even
7 though Rusty doesn't have a watch and you know what he has
8 been doing all day, he is able to tell you that it was
9 probably three minutes later that he wasn't able to find
10 his friend or his source that he knew was always there
11 buying dope from and that this mythical Craig came up and
12 the first time they had ever seen him, last time they've
13 ever seen him and he said, well, I can go with you and get
14 some dope and he got in the truck. He says that they
15 dropped -- that they got dropped off at his brother's
16 house.

17 So, that's Rusty's version of events based on his
18 estimation of the time, based on what he was doing that
19 day even though he didn't have on a watch. He also says
20 that he got there at 11:30 and he's basing that on what
21 his brother told him about watching the news. He admitted
22 he didn't see the news because his brother's TV is in the
23 bedroom and not the the main room, but his brother said,
24 yea, I was watching the news.

25 So we get to the alibi witnesses who have testified

(Closing Statement by Mrs. Young)

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1 on behalf of Rusty Dunbar. We had his brother Tommy who's
2 obviously been related to him his whole life. We have
3 girlfriend Laura Smith. She's a young girl. She's been
4 with him for three years she said. She has a 10-month-old
5 baby with him. She lives with his mama. She doesn't have
6 a way of getting around except for his family. She loves
7 Rusty. She is reliant on Rusty and the Judge is going to
8 instruct you about the credibility of the witnesses and
9 the things or the motives that witnesses might have and
10 that you can consider all these things in your mind. You
11 can choose to believe all of what a witness tells you,
12 some of what a witness tells you, or none of what a
13 witness tells you and that you'll have that option that
14 you, as a jury, will go back there and collectively
15 decide, but if you consider the testimony of the alibi
16 witnesses, first of all, they contradict each other and
17 they also contradict Rusty.

18 Let's start with Tommy because he's the easiest. He
19 wasn't up there for very long. Tommy very clearly said
20 that Rusty was at his house from 11:30 until one and that
21 he never left his sight the whole time which is just not
22 believable and he actually conceded that when I said,
23 well, you know, was he sitting next to you? You had your
24 eyes on him the whole time? He said, no, but then
25 curiously even though he was watching him from 11:30 until

(Closing Statement by Mrs. Young)

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1 one, he said that he Tommy went to bed at a quarter 'til
2 one because he had to get up the next day and get the
3 young'uns ready to school and go to school and help his
4 girlfriend he had to go to work. So while he's up on the
5 the stand he's already contradicting himself because he
6 wasn't even awake until one if you believe his later
7 testimony that he went to bed at a quarter 'til one.

8 Laura's testimony about the times contradicts what
9 Rusty says. Everything -- everybody is in agreement what
10 happened and that's an important point. All four of them
11 are in agreement up until the time they leave Laura
12 Smith's Daddy's house and I submit to you there is a
13 reason for that because the time after that is the most
14 important time because the time after that is when the
15 crime occurred. So, Laura has them leaving earlier. She
16 is trying to give them a little more fishing room and, you
17 know, she just, basically, says the the same thing -- they
18 went to Bull's Bar and she gives you generally the same
19 story that Rusty did about picking up the mythical Craig
20 as I like to call him, and that's what they did, but
21 neither Tommy nor Laura and the whole time felt it
22 important enough -- Laura said she tried to tell the
23 police -- it doesn't sound to me like she tried very
24 hard -- that there is just no way Rusty could have done
25 this because he wasn't even there. He was with them.

(Closing Statement by Mrs. Young)

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1 They had their eyes on him.

2 I found it curious that both Rusty -- excuse me,
3 Laura and Tommy said the same thing: Rusty was with me
4 all day. I never left his side. I had my eyes on him the
5 whole time. That's just not believable, ladies and
6 gentlemen. I mean, I know they were together and they
7 were riding around in the car, but Rusty himself told you
8 that when he went to buy crack at the first place behind
9 DSS he didn't take Laura in the crack house with him. He
10 didn't. I mean, he smoked it in front of her, but she
11 didn't go in the crack house.

12 So there were several times that Rusty was not in
13 Laura's sight and at those times I submit to you it is
14 possible that Chris and Rusty had a chance to discuss this
15 because as I stated previously the whole point of this day
16 is partying and, you know, they sold the brick saw to get
17 beer. The brick saw he actually owned. They get to the
18 point where they're selling the cement mixer that they
19 don't own because they're out of money, and Rusty said
20 some interesting things about having money and keeping
21 money back, but I'd like to point out one thing about
22 Jerry Thornton's testimony that I thought was remarkable
23 because it just to me is very believable.

24 First of all, he says that, you know, even though his
25 memory is hazy and whether or not you choose to believe

(Closing Statement by Mrs. Young)

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1 that or maybe, you know -- Jerry knew something was going
2 to happen. He knows he told you he dropped off Rusty and
3 Chris. For him to just, you know, deny that he didn't
4 think anything was going to happen, well, that's not
5 believable. You know, he is trying to protect himself,
6 but did he know something was going to happen? Sure
7 because they said, Just drop us out here at the road and
8 go to the gas station. That's a little suspicious
9 considering that the rest of the day they had just been
10 parking in the driveway and waiting on them to go buy
11 their crack or do whatever they were going to do.

12 But Jerry said he dropped them off. When he dropped
13 them off he was referring to two people: Rusty and Chris.
14 He said he dropped them off at Daniel's house and went to
15 the gas station and now he's mad because he has to drive
16 and he doesn't have a driver's license and he's been
17 drinking all day and he's kind of tired of all of this and
18 he is impatient and he goes to this gas station that's out
19 on Highway 1 which is parallel to Wire Road and that he
20 leaves to go pick them up and they get a phonecall and the
21 result of the phonecall is not going back to Daniel's
22 house to pick them up. We're going to go to this railroad
23 track area and they testify or -- excuse me, I think
24 Investigator Sanders testified about this, but what Jerry
25 said was was he was told to go pick up Rusty next to the

(Closing Statement by Mrs. Young)

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1 railroad tracks on Rutland Drive and Investigator Sanders
2 marked that with this white arrow and he also -- he being
3 Investigator Sanders -- and Sergeant Looney marked the
4 Wrights Mill Grocery.

5 Now, on this map I am not good with distances and on
6 this map that looks like a super long way away, but
7 Investigator Sanders told you that he marked that distance
8 and that he measured it with his car and it was exactly
9 one mile. Well, you can look at this and you'll be able
10 to see it. There is some kind of little bike path and,
11 you know, all that, and there is also some woods. There
12 is several ways that Rusty could have avoided detection.
13 He had an advantage. It's dark. Police lights are blue.
14 He can see them from far away. If you believe what Chris
15 tells you he is wearing a black t-shirt and he could have
16 just stayed in the edge of these woods or jumped back in
17 there when needed but all he has to do is get up here to
18 where this gas station and these business are. Then he
19 didn't have to worry about being seen because there are
20 other people there and that would be normal and I submit
21 to you that it's completely plausible and believable that
22 Rusty decides I am going to ditch this car back here, the
23 the police have seen me in this car. I mean, they've seen
24 the car. The police are going to be looking for the car.
25 His first instinct is going to be get rid of the car. I

(Closing Statement by Mrs. Young)

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1 am going to get rid of this car. Chris has gone his own
2 way. He doesn't have to worry about him anymore. All he
3 has to do is get up, get to one of these gas stations and
4 call Laura, and that's, in fact, what he does in this
5 case.

6 He ends up getting picked up by Jerry and Jerry
7 confirms that in his testimony and when Jerry was asked
8 about Bull's Bar, to me he had the most believable
9 reaction of all. It was like he never heard that before.
10 Bull's Bar wasn't something he was expecting and I submit
11 that to you because -- that that's because Jerry never
12 took them to Bull's Bar that night. Jerry did exactly
13 what he told you he was going to. He dropped them off at
14 Daniel's house and Chris and Rusty got out and he left
15 like he was told to do.

16 There's been a lot of talk about people making
17 decisions. Well, you know, Jerry might not be the
18 sharpest knife in the drawer and it sounds to me like
19 Rusty and Chris are both capable of getting their way and
20 kind of bossing him around, but he told you what he did.
21 He went to the gas station and waited even though he was
22 mad. He got another beer and drank it and put some air in
23 the tire and then he goes and picks up Rusty and he
24 doesn't say he doesn't know where he dropped him off.
25 What he said was I don't know the exact street name, but I

(Closing Statement by Mrs. Young)

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1 he recall his testimony to be that when he picked up Rusty
2 he dropped off Rusty and Laura up 19 some road that was
3 past the interstate.

4 So, he just doesn't know the street name, but he did
5 say he dropped them off somewhere. So I submit to you,
6 ladies and gentlemen, that, you know, Rusty and Laura did
7 get dropped off at his brother's house. That fact is
8 true, but the timing of when they got dropped off is what
9 is not true in this case.

10 All right. Finally, we have the testimony of Rusty
11 Dunbar which I've already referred to briefly. Mr. Mims
12 says that Mr. Dunbar is not on trial because he uses crack
13 and that's very true in this case. He's not on trial
14 because he uses crack. He told you that he used crack
15 since he was 13 years old, but I disagree with Mr. Mims
16 when he said this trial is not about crack. Well, it's
17 not about crack. It is about Daniel Hynes getting his
18 home burglarized, getting a knife held to his throat,
19 having, you know, things taken from him while that knife
20 is held to his throat, being held against his will at
21 knifepoint. That's what this trial is about, but crack is
22 important.

23 I mean, y'all heard it. Crack was the reason behind
24 the whole day. You can't just take crack out of the
25 equation because that's what they were doing. They were

(Closing Statement by Mrs. Young)

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1 getting crack. The whole purpose of the day was smoking
2 crack. The whole point of the day was getting crack. You
3 know, they sold the brick saw and then they sold the
4 cement mixer. Well, at that point in time they bought
5 some more beer. There is a discussion about that because
6 they were drinking J.R.'s beer and you don't drink J.R.'s
7 beer.

8 Ladies and gentlemen, at the time they left Laura's
9 Daddy's house they didn't have any more money, but Rusty
10 and Chris wanted some more crack. So crack is important
11 in this case, and I think you should bear that in mind.
12 Rusty has been using crack since he was 13. They wanted
13 more crack that night and they were going to do whatever
14 it took to get it even if that meant breaking into
15 somebody's home, tying them up, holding a knife to their
16 throat and taking their things, even if that was somebody
17 they knew. They didn't care about that. They just wanted
18 to get more crack. That's what the whole day was about.

19 Rusty told you several times on the stand that he's a
20 liar. He told you in his own testimony before I even got
21 to cross examine him he was claiming to lie to Chris and
22 Jerry and hold back on them -- not give them all their
23 crack -- because, you know, that's what you do in the
24 crack business. I might not know about it -- that's what
25 he told me -- but that's what you do. Then he said he was

(Closing Statement by Mrs. Young)

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1 going to lie to them about getting extra crack at Bull's
2 when they supposedly went out there, but he told you that
3 he lies when it's convenient, and I asked him, well, this
4 would be a pretty convenient time to lie, and he agreed
5 with me that while he is up on the stand testifying before
6 you and telling you what happened that that would be a
7 pretty convenient time to lie.

8 Ladies and gentlemen, I just don't know what to say
9 about that. It speaks for itself. You heard it from his
10 own lips.

11 I do think it's important to note that although he
12 says he knew the victim and he's been to his house and it
13 was four times and then it was six times, then I am not
14 really sure, he himself admitted he had never been in the
15 victim's car. He said a lot of things, but he said he had
16 never been in the victim's car.

17 So, then you get down to the DNA. DNA is the one
18 thing in this case that has no motive. It's not a person.
19 It is a test. It is a test that's done. DNA does not
20 have a motive. DNA does not lie. Agent Leisy got up here
21 and she testified. DNA kind of confuses me. She broke it
22 down as best she could, but what I heard her testimony to
23 be was that she had received samples of Rusty Dunbar's
24 DNA, samples of Daniel Hynes' DNA, and samples of
25 Christopher Herndon's DNA and that she used the samples

(Closing Statement by Mrs. Young)

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1 she had received to compare with various items that she
2 was sent by Aiken County Sheriff's Office and it's very
3 telling and very, to me, compelling evidence.

4 Christopher Herndon's DNA is found in the car on the
5 passenger door handle and it's an exact match, and like
6 Mr. Mims said it is some huge number like one in 12
7 quadrillion. Well, I submit to you there is a very
8 reasonable explanation for that. If Daniel Hynes lives by
9 himself like he told you he does, he drives people around
10 occasionally but mostly he's going to go driving himself.
11 You know, that passenger door handle is not getting
12 touched nearly as much as the driver's door handle or the
13 steering wheel. It is just not. So when Christopher
14 touched the door to get out of the car like he told you
15 when it was wrecked the second time, he left his DNA and
16 it was very clearly found there.

17 Now, she also testified to you that Rusty's DNA was
18 found in the car and she said that it was a mixture of DNA
19 samples and because it was a mixture and one of the
20 samples she could say that Daniel Hynes was the major
21 contributor. Well, that, obviously, makes sense. It is
22 his own car. His DNA is going to be in the car. Then she
23 says Rusty Dunbar's DNA cannot be excluded and there are
24 many different ways to interpret that. Mr. Mims suggested
25 some to you and thrown out some things about the numbers,

(Closing Statement by Mrs. Young)

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1 but if you just focus on the fact that Rusty Dunbar's DNA
2 cannot be excluded from being in that car or you can flip
3 it around and say Rusty's DNA is included as being found
4 in that mixture, ladies and gentlemen, I submit to you
5 that that is very compelling evidence. It found in three
6 places, not just one place. It's found on the driver's
7 door handle and two places on the steering wheel.

8 Now, there's been a lot of talk about this transfer
9 of DNA and if you touched -- you know, if I touched
10 Jessie's hand and then touched somebody else's clothes I
11 could transfer her DNA and that's very possible. Agent
12 Leisy testified that that was possible. You can transfer
13 somebody else's DNA, but what she told you after that was
14 the most important thing. She told you that she would
15 expect if somebody's DNA was being transferred from a
16 person to also find the person who was transferring or
17 carrying the DNA as what's being suggested here -- she
18 would expect to find the carrier's DNA as well and I would
19 ask you to reflect back on her testimony where she
20 specifically told you that from the three samples that are
21 the mixture Christopher Herndon was excluded, completely
22 excluded as being a contributor to any of that DNA.

23 So it's just not reasonable to think that Christopher
24 Herndon carried the DNA or got it from the shorts and left
25 them on the steering wheel without leaving any of

(Closing Statement by Mrs. Young)

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1 Christopher Herndon behind. Ladies and gentlemen, I
2 submit that is not how it works, but I think the final
3 point I have up there -- and you can kind of see it coming
4 through the line -- it is absolutely the most compelling
5 thing to me about this case and why I told you before that
6 timing was important. When Christopher Herndon told J. D.
7 Sanders that he and Rusty Dunbar broke into Daniel Hynes'
8 house, rummaged through his things, Rusty held him at
9 knifepoint, that Christopher cut him on the back and that
10 they hog-tied him and kicked him in the head and told him
11 they were going to kill him, when he told him that he did
12 that and that Rusty did that he had no way in the world of
13 knowing that Rusty's DNA was going to be found in that
14 car. He had no way of knowing that, and, ladies and
15 gentlemen, I would submit to you that that is very
16 important fact for you to consider while you're
17 considering the case back there, considering whom to
18 believe and who not to believe.

19 You know, you can't believe what everybody said.
20 Clearly, somebody was not telling the truth because there
21 were so many different stories and conflicting versions of
22 events given, but I ask you to strongly consider the
23 motives that Tommy Dunbar and Laura Smith who are very
24 closely either related to or in a relationship with
25 Mr. Dunbar -- what motives they would have to lie or to

(Closing Statement by Mrs. Young)

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1 change the story to benefit him and what motives
2 Mr. Dunbar himself would have when he sat up there and
3 testified and told you all the things that he told you.
4 They just weren't very believable.

5 When I told you at the beginning of the case that
6 everything was going to be connected like a dot what I
7 really hoped I would be able to do -- we have this little
8 magnet pin. I call it a magnet pen. You can write on
9 this. What I was going to do is I was going to circle all
10 of that and connect all together and show you how it was
11 connected, but y'all can do that in your own head, but
12 it's very important, ladies and gentlemen, to consider you
13 don't have to rely on any one piece of evidence. You
14 don't have to rely on just what Christopher Herndon says.
15 What he says is important, but it's not the only thing you
16 have to consider. You also have to consider the testimony
17 of Jerry Thornton. You have the DNA. You have all of
18 those things to the consider, and when you put it all
19 together you're going to use your common sense like I told
20 you before.

21 You make decisions every day. You think about
22 things. You analyze information. You come up with what's
23 reasonable, and in my mind when you look at the evidence
24 in this case there is only one reasonable explanation that
25 explains the state of the evidence and that was -- is,

(Jury Charge)

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1 rather, that Rusty Dunbar is guilty. He was there. He
2 was with Chris. He did it. He's guilty, and I ask you
3 that when you go back there and consider all of these
4 charges that you will come back and find him guilty as
5 charged in all four counts. Thank you.

6 THE COURT: Mr. Foreman, ladies and gentlemen, my
7 charge 12 to 15 minutes. Everybody comfortable? Do you
8 want a bathroom break before I do it? Everybody okay?

9 JURY CHARGE

10 THE COURT: Mr. Foreman, ladies and gentlemen, what I
11 want to do is the first part of the charge or the
12 instructions deals with sort of general propositions in
13 criminal cases. We try criminal cases all over the state,
14 and whether it's a murder case or a simple possession of
15 marijuana or anything in between, the first charges are
16 general law that applies to all criminal cases and then
17 when I finish that I'll go into four specific charges in
18 this case.

19 Let me remind you the fact that the Defendant in this
20 case Mr. Dunbar has been indicted with charged of burglary
21 in the first degree, armed robbery, kidnapping and
22 possession of a weapon during the commission of a violent
23 crime -- the fact that he was charged in these and
24 arrested and indicted, that is not evidence in the case
25 and cannot be considered by you as evidence of guilt in

(Jury Charge)

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1 the case, nor does it create any presumption or inference
2 of guilt. The indictments are simply the formal written
3 instrument which contains the charges made against the
4 defendant. It is the formal document by which these cases
5 are brought into the courtroom.

6 As I told you they are four indictments which I just
7 read to you. Each indictment charges a separate and
8 distinct offense. You must decide each indictment
9 separately on the evidence and the law applicable to it
10 uninfluenced by I your decision as to any other
11 indictment. The Defendant may be convicted or found not
12 guilty on any or all the charges. You'll be asked to
13 write a separate verdict of guilty or not guilty for each
14 indictment. I will explain that to you as we get close to
15 the end.

16 To each of these indictments the Defendant has plead
17 not guilty. A plea of not guilty puts the burden on the
18 state of South Carolina to prove the Defendant guilty
19 beyond a reasonable doubt. A person charged with
20 committing a criminal offense in South Carolina is never
21 ever required to prove himself innocent. I charge you
22 that it is an important rule of law or constitutional
23 right that a Defendant in a criminal trial no matter how
24 serious the charges may be will always be presumed to be
25 innocent of the crimes for which the indictments were

(Jury Charge)

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1 issued unless guilt was proven by the state by evidence
2 satisfying you of that guilt beyond a reasonable doubt.

3 Presumption of innocence does not end when you begin
4 your deliberations, but it stays with the Defendant
5 throughout the trial until you reach a verdict of guilt
6 based on evidence satisfying you of that guilt beyond a
7 reasonable doubt. The presumption of innocence is not a
8 mere legal theory. It is not just a legal phrase. It is
9 a substantial right to which every Defendant is entitled
10 unless you, the jury, are satisfied from the evidence of
11 the Defendant's guilt beyond a reasonable doubt.

12 Reasonable doubt has been defined by our courts. It
13 is very simple. What is a reasonable doubt? A reasonable
14 doubt is the kind of doubt that would cause a reasonable
15 person to hesitate to act. A reasonable doubt is the kind
16 of doubt that would cause a reasonable person to hesitate
17 to act.

18 Let me remind you, ladies and gentlemen, that you and
19 I have two separate and distinct functions to perform
20 throughout the trial. As I told you at the beginning of
21 the trial my Judge -- my role as Judge is to rule on the
22 admissibility of evidence and to charge or instruct you on
23 the law. You have the much more important function
24 because you are the judges of the facts in the case. You
25 determine what are the true facts. So, if at any time

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1 during the trial of this case I have smiled, frowned,
2 yawned, scratched my head, or did anything that you may
3 think I have an opinion on the facts, please disregard
4 that. The law does not allow me to have any opinion
5 whatsoever about the facts. You are the sole finders of
6 the facts of the case and it is your duty to determine
7 what the true facts are in the case.

8 Our law recognizes two types of evidence. We have
9 direct evidence and circumstantial evidence. Direct
10 evidence is something that you see, feel, touch, you know,
11 that's direct. I saw the car run into the other car.
12 That's direct evidence. The other kind of evidence is
13 circumstantial evidence and that is proof of a chain of
14 facts and circumstances indicating the existence of a
15 fact. The law makes absolutely no distinction between
16 circumstantial evidence and direct evidence.

17 We oftentimes illustrate what direct evidence is and
18 circumstantial evidence by, for example, I go outside and
19 it's raining and I get wet and it's pouring down and I see
20 the raindrops, that's direct evidence that it is raining.
21 It is raining. If I am sitting in here and I hear it
22 thundering and it's dark outside and I go outside and
23 there is mud puddles and rain puddles everywhere but it's
24 not raining, obviously, that's circumstantial evidence
25 that it has rained. Those are the two types of evidence

(Jury Charge)

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1 and you can give each of those whatever weight you deem
2 necessary in the trial of the case.

3 Your most important function in the trial of this
4 case and any jurors in any trial of any case but
5 particularly in this case is you must determine the
6 credibility of the witnesses who have testified in the
7 case. Credibility simply means believability. Who do you
8 believe? Who told the truth? Who didn't tell the truth?
9 It becomes your duty as jurors to analyze and evaluate the
10 evidence and determine which evidence convinces you of its
11 truth.

12 In determining the believability or the credibility
13 of witnesses who have testified in the case you can
14 believe one witness over several witnesses. You can
15 believe several witnesses over one witness. You can
16 believe a part of the testimony of a witness and reject
17 the remaining part. You can believe everything a witness
18 says or you can reject everything a witness says. You may
19 consider whether any witness has exhibited to you any
20 interest, bias, or prejudice or other motive in the case.
21 You can also consider the appearance and manner of a
22 witness while on the witness stand.

23 As I told you in my opening remarks determining the
24 believability or credibility of witnesses is your major
25 decision. Don't leave your common sense in here when you

(Jury Charge)

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1 go back to start your deliberations. As I told you
2 earlier you deal with husbands. You deal with wives,
3 boyfriends, girlfriends. You deal with children. You
4 deal with fellow workers all of your life. You know how
5 to judge the believability and credibility of witnesses.
6 Use that common sense in fulfilling that task in this
7 case. Once you decide, obviously, who you believe, you
8 then determine what the true facts are in the case and you
9 will apply it to the law as I'm giving it to you now.

10 We heard a couple of witnesses -- two or three --
11 that testified as experts. As I told you earlier normally
12 our rules of evidence do not allow witnesses to form or
13 testify about opinions or conclusions. An exception to
14 that rule applies to people we call expert witnesses. A
15 person who by education and experience has become an
16 expert in some science, field, or profession may render an
17 opinion as to any relevant or material matter in the trial
18 of the case. You should consider any expert opinion
19 received in evidence in this case like any other evidence.
20 Give it the weight you think it deserves. If you decide
21 that the the opinion of an expert is not based on
22 sufficient education or experience or if you conclude that
23 the reason given in support of the opinion is not sound or
24 that the opinion is outweighed by other evidence you may
25 disregard the opinion entirely. An expert witness's

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1 testimony is to be given no greater weight than that of
2 other witnesses simply because the witness was qualified
3 as an expert. Further, you're not even required to accept
4 an expert's opinion even though it's not contradicted.

5 There is a principal of law that may be applicable in
6 the case. It is called the hand of one is the hand of
7 all. If a crime is committed by two or more persons or
8 people who are acting together in committing a crime, the
9 act of one is the act of all. The person who joins with
10 another to accomplish an illegal purpose is criminally
11 responsible for everything done by the other person which
12 occurs as a natural consequence of the acts done in
13 carrying out the common plan and purpose.

14 And one last proposition -- general proposition that
15 applied in this case. I think some of the witnesses who
16 testified had a past criminal record. The Defendant who
17 testified had a past criminal record. A person who has a
18 past criminal record is competent to testify in a trial.
19 A past record does not affect the ability of that witness
20 to testify. The past record may only be considered by
21 you, if at all, in determining the believability or
22 credibility of the witnesses.

23 That same principal applied to the Defendant who had
24 been convicted of a felony. That evidence could be
25 considered by you only in determining his credibility and

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1 for no other reason. Remember, you're the sole judges of
2 the facts in the case and the believability of any and all
3 the witnesses. You determine who was telling the truth in
4 this case. Then you apply those facts to the law as I
5 have just given it to you.

6 Mr. Foreman, ladies and gentlemen, that goes through
7 pretty much the general propositions of criminal law
8 dealing with all trials that we try. Let's turn our
9 attention now to the indictments in this case, and as I
10 told you there were four indictments, and I am just going
11 to read them or give it to you in a random way. Don't put
12 any emphasis on the order in which I give them to you.
13 Obviously, something has to go first.

14 So, I am going to talk to you about burglary in the
15 first degree. He has been indicted for burglary in the
16 first degree. That is codified in our laws in section
17 16-11-311. He is charged with first degree burglary. In
18 order to prove that the state must first prove beyond a
19 reasonable doubt that the Defendant entered a dwelling
20 without consent. A dwelling is defined as any building or
21 a portion of a building in which a person ordinarily
22 sleeps. In order to prove that the Defendant entered the
23 the dwelling the state does not have to show that the
24 Defendant's entire body entered the dwelling but the
25 smallest entry is sufficient.

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1 Next in addition to proving beyond a reasonable doubt
2 that the Defendant entered a dwelling without consent the
3 state must prove beyond a reasonable doubt that the
4 Defendant intended to commit a crime whether it be a
5 felony or misdemeanor at the time of the entry. The mere
6 entry into a dwelling without consent is not burglary if
7 the intent to commit a crime is formed after the entry is
8 not burglary. On the other hand, if the Defendant
9 intended to commit a crime at the time of the entry, it is
10 a burglary even if the intent was abandoned.

11 Finally, the state must prove to you beyond a
12 reasonable doubt that while entering the dwelling and
13 while in the dwelling or when fleeing the Defendant or an
14 accomplice was armed with a deadly weapon. A deadly
15 weapon is defined as an instrument which is likely to
16 cause death or great bodily harm. Examples of deadly
17 weapons include a knife.

18 The state further can prove beyond a reasonable doubt
19 that while or when entering the -- while in the dwelling
20 or when fleeing the Defendant or accomplice caused
21 physical harm to anyone not participating in the crime or
22 they can prove beyond a reasonable doubt that while
23 entering or while in the dwelling or when fleeing the
24 Defendant or the accomplice used or threatened to use a
25 dangerous object such as a knife or prove to you beyond a

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1 reasonable doubt that when entering or while in the
2 dwelling or when fleeing the Defendant or accomplice
3 displayed what appeared to be a deadly weapon such as a
4 knife or, finally, the state can prove to you beyond a
5 reasonable doubt that the Defendant entered or remained in
6 the dwelling in the nighttime. The nighttime, obviously,
7 is the period between sunset and sunrise.

8 So, that's what burglary in the first degree is. You
9 have to prove -- the state has to prove to you beyond a
10 reasonable doubt that the Defendant entered a dwelling
11 without consent and that while entering without consent
12 those other factors that I just gave you were in
13 existence.

14 Kidnapping is codified in section 16-3-910. He is
15 charged with kidnapping. The state must prove to you
16 beyond a reasonable doubt that the Defendant knowingly and
17 unlawfully seized, confined, inveigled, decoyed,
18 kidnapped, abducted, or carried away another person
19 without authority of law. To do a thing unlawfully is to
20 do it willfully against the law. Knowingly, obviously,
21 means with knowledge, consciously, not accidentally.
22 Seized means to take hold of suddenly or forcibly.
23 Confine means to limit, restrict, or enclose within
24 bounds, imprison or shut or keep in. Inveigle means to
25 lure, entice, lead astray by false representations,

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1 promises or other deceitful means. Decoy means to lure by
2 or as if by decoy. Kidnap is to remove a person against
3 his will by unlawful force or by fraud. Abduct means to
4 carry off secretly or by force for an illegal purpose and
5 carry away means to remove.

6 The state does not have to prove that the Defendant
7 did all of these things. Instead, if you find beyond a
8 reasonable doubt that the Defendant did any of these
9 things you may find the Defendant guilty of kidnapping.
10 Kidnapping does not have to be for any personal or
11 monetary gain or for any illegal purpose, but it may be
12 for any reason whatsoever.

13 So that's the law on kidnapping. Simply, the state
14 must prove beyond a reasonable doubt that the Defendant
15 knowingly and unlawfully abducted or carried away or
16 confined or seized another person without authority of
17 law.

18 The next indictment I will talk to you about is armed
19 robbery. Armed robbery is codified in section 16-11-330.
20 In order to prove the offense of armed robbery the state
21 must first prove beyond a reasonable doubt that the
22 Defendant took personal property from the person or
23 presence of another person. Personal property is in the
24 presence of a person if it is within the person's reach,
25 inspection, observation, or control, so that the person

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1 could if not overcome with violence or prevented by fear
2 keep possession of the property.

3 The state must also prove beyond a reasonable doubt
4 that the Defendant carried the property away intending to
5 permanently deprive the owner of the property and to keep
6 the property for the Defendant's own use. The slightest
7 removal of the property or the complete possession of the
8 property even for an instance by the Defendant is
9 sufficient to show a taking and carrying away of the
10 property. The taking and carrying away of the property
11 must have been done with violence or by putting the owner
12 of the property in fear of violence.

13 Finally, the state must prove beyond a reasonable
14 doubt that the Defendant was armed with a deadly weapon
15 during the robbery, and as I said before a deadly weapon
16 is any instrument which is likely to cause death or great
17 bodily harm, and, of course, a knife is an example of a
18 deadly weapon.

19 And last he is indicted for the offense of possession
20 of a weapon during the commission of or attempt to commit
21 a violent crime. That is set forth in section 16-23-490.
22 That simply means that the Defendant had in possession a
23 weapon during the commission of a violent crime. The
24 state must prove to you beyond a reasonable doubt that the
25 Defendant was in possession of a deadly weapon during the

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1 commission of a violent crime. A deadly weapon has been
2 defined as a knife.

3 In order to find the person guilty of possession of a
4 weapon during the commission of a violent crime you must
5 first find the Defendant guilty of either committing a
6 violent crime and I charge you that kidnapping, armed
7 robbery, and first degree burglary are all classified as
8 crimes of a violent -- as being a violent crime.

9 So, those are the four indictments which he's charged
10 with. Those are the four elements of each of the
11 indictments on each of the charges. You must consider
12 each one separate and apart from the other. I have four
13 verdict forms: One for the kidnapping, one for the armed
14 robbery, one for burglary first. If you find him guilty
15 of any of those three or all three or two of the three or
16 one of the three, then you would consider whether or not
17 he was in possession of a weapon during the commission of
18 a violent crime. Obviously, if you find him not guilty of
19 the three violent crimes, then you wouldn't consider the
20 possession of a weapon.

21 Your verdict must be unanimous. It must be based
22 solely on the evidence that you've heard in the courtroom
23 taking that evidence as you find it to be true and
24 applying it to the law as I gave it to you. It cannot be
25 the result of passion or prejudice. Just leave all of

(Jury Charge)

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1 that out of it. Make your decision based solely on what
2 you heard in the courtroom. As I said your verdict must
3 be unanimous as to each of the four indictments.

4 It is very simple task. Once you reach your decision
5 -- I am not saying your decision is simple, but it's
6 simply if you find him not guilty, put a check there. If
7 you find him guilty, put a check there. Sign your name as
8 the foreperson. Do that on all four indictments.

9 I am going to ask you now in just a few minutes to
10 retire to the jury room. I am going to ask you not to
11 start your deliberations quite yet. I have to ask the
12 lawyers if I have left anything out. If I have, then I'll
13 bring you back out and I'll tell you a little bit more. I
14 also have to make sure that we have all of the evidence
15 because they'll bring that back to the jury room with you.
16 Once the bailiff brings you the verdict forms and the
17 evidence, then you may start your deliberations.

18 If at any time during your deliberations you have a
19 question or a concern or a need, write it on a piece of
20 paper. Knock on your door. He'll hand it to me.
21 Sometimes I can answer it. Sometimes I can't depending on
22 what the question is. If at any time during the
23 deliberations someone has to use the bathroom or if you
24 need a smoke break, while that person is absent from the
25 room please stop deliberating until you have the full

1 compliment of 12.

2 It is 5 after 11. If you want me to order you some
3 lunch, I will be glad to do that. We can go ahead and get
4 the lunch order sent, and if you're still deliberating
5 when lunch comes you can eat and continue deliberating.
6 If you finish by the time lunch comes, you can wait around
7 and have your lunch once again on the county -- however
8 you want to do that. Just let Mert know in just a few
9 minutes on that.

10 So I am going to let you go back to the jury room.

11 Mert, put my alternate over there. Separate.

12 Don't start deliberating until I send everything
13 back.

14 (Whereupon, the jury exited the courtroom at 11:05.)

15 THE COURT: Any objections, requested -- any
16 additional charge by the state?

17 MRS. YOUNG: Your Honor, with regard to your charge
18 on burglary in the first degree I don't believe it was
19 clear that it could be any or one of those factors. I am
20 not sure that was --

21 THE COURT: Anything else?

22 MRS. YOUNG: -- clearly stated. And additionally I
23 don't know if this is pertinent -- I think it probably
24 is -- with regard to possession of a knife during the
25 weapon of a violent crime we only indicted that as the

1 crime of armed robbery.

2 THE COURT: Thank you. I didn't realize that.

3 Mr. Mims?

4 MR. MIMS: Nothing, Your Honor.

5 THE COURT: Let them step right back in for me
6 including the alternate.

7 THE BAILIFF: We got a few in the bathroom.

8 MRS. YOUNG: And, Your Honor, I have one more thing
9 further. Regarding the burglary first we only indicted
10 that in the nighttime. So, I don't know if that affects
11 your charge in any way.

12 THE COURT: Beth Ann, Mr. Mims, y'all come on up and
13 while we're waiting make sure we got all of the evidence.

14 (Whereupon, the attorneys looked at the evidence.)

15 (Whereupon, the jury came into open court at
16 approximately 11:10.)

17 THE COURT: I made a mistake on one of them. I told
18 you on the possession of a weapon during the commission of
19 a violent crime that if you found him guilty of kidnapping
20 or burglary first or armed robbery. The indictment is
21 simply on the armed robbery charge. So just consider the
22 possession of the weapon during the commission of a
23 violent crime with the armed robbery. If you find him
24 guilty of armed robbery, then you would consider the
25 possession of the weapon. If you find him not guilty of

1 armed robbery, then you would not consider that charge. I
2 told you while ago it relates to all three of them. It
3 just relates to the armed robbery. Okay. Clear?

4 And then while ago when I read out about burglary in
5 the first degree I told you that the state must prove
6 beyond a reasonable doubt that the Defendant entered a
7 dwelling without consent and then the other portions that
8 they must prove about the commission of crimes and all of
9 that. The indictment simply has one of those listed so
10 you would only consider whether or not the state proved to
11 you beyond a reasonable doubt that the Defendant entered a
12 dwelling without consent and that it was the last
13 condition that it occurred during the nighttime. So
14 that's just the only thing you have to consider there, not
15 those other conditions I read to you.

16 I should have read the indictment. My mistake. All
17 right. Have y'all looked at the evidence? Is everything
18 okay?

19 MRS. YOUNG: I think it is, Judge. We maybe need one
20 moment.

21 THE COURT: Sure. All right. I think we're going to
22 give it to you right now in just a second. So, go on
23 back. Don't start until I send all of this back. Thank
24 you.

25 (Whereupon, the jury exited the courtroom at 11:12.)

1 THE COURT: Did that correction satisfy the state?

2 MRS. YOUNG: Yes, sir, Your Honor. Thank you.

3 THE COURT: Mr. Mims, any objection to the
4 correction?

5 MR. MIMS: No, Your Honor.

6 THE COURT: All right. Y'all please come and let's
7 make sure we have all the evidence.

8 (Whereupon, the attorneys looked at the evidence.)

9 THE COURT: Let the record reflect that both defense
10 counsel and the solicitor's office have examined all of
11 the exhibits and they are in agreement that we have all
12 accounted for and they will go to jury along with the
13 verdict form.

14 Agreed, state?

15 MRS. YOUNG: Yes, sir.

16 THE COURT: Mr. Mims?

17 MR. MIMS: Agreed, Your Honor.

18 THE COURT: Given to the jury at 11:17.

19 (Whereupon, deliberations begin at 11:17.)

20 THE COURT: All right. Let the record reflect that
21 defense counsel was gracious enough this morning to allow
22 us to move forward so we could get more accomplished and I
23 told them to please do their motions nunc pro tunc -- the
24 motions that would have been done at the conclusion of the
25 case. The reason they were not done is because they were

1 complying with my wish to make things move efficiently and
2 so that the jury would not have to wait around for us.

3 Mr. Mims?

4 MR. MIMS: That's correct, Your Honor. At this time
5 we would renew our motion for directed verdict for the
6 reason I previously put on the record.

7 THE COURT: All right. Any additional reasons?

8 MR. MIMS: No, Your Honor.

9 THE COURT: All right. Respectfully denied for the
10 same reasoning that I expressed at the conclusion of the
11 the state's case. It is just, obviously, for lack of a
12 more artful term, it is a swearing contest to some degree
13 and it's obviously a question of fact for the jury to
14 decide. So, respectfully denied.

15 (Whereupon, a break was taken.)

16 (Whereupon, a bench conference was held.)

17 THE COURT: All right. Let the record reflect I
18 received a note from the jury. Question: Does hand of
19 one, hand of all apply to the possession of a weapon
20 charge? Signed by the foreperson. I have conferenced
21 with the the defense lawyer, solicitor. We are of -- they
22 are of the agreement and I agree as well that the answer
23 to the question is yes. I have put that on the note and
24 resubmitting it to the jury.

25 Is that correct on behalf of the state?

1 MRS. YOUNG: It is, Your Honor.

2 THE COURT: Mr. Mims?

3 MR. MIMS: Yes, Your Honor.

4 (WHEREUPON, Court's Exhibit No. 2 was marked for
5 identification only.)

6 (Whereupon, a break was taken.)

7 THE COURT: All right. Is the state ready to receive
8 the verdict?

9 MRS. YOUNG: The state is ready.

10 THE COURT: Is the defense ready?

11 THE DEFENDANT: Yes, sir.

12 MR. MIMS: Yes, sir.

13 THE COURT: All right. Mr. Victim, I don't have any
14 idea what the verdict is, but we will have no outbursts
15 whatsoever. If you don't think you can control your
16 emotions I am going to ask you to leave now. I am not
17 suggesting that you would otherwise. I say that at the
18 end of all cases. I don't see anybody here from the
19 Defendant's family.

20 All right. Mr. George, bring the jury in.

21 (Whereupon, the jury came into open court at
22 approximately 1:59.)

23 THE COURT: Mr. Foreman, have y'all reached a
24 verdict?

25 THE FOREPERSON: Yes, we have.

1 THE COURT: If you would, hand it to Ms. Barbara,
2 please. Thank you.

3 THE COURT: Mr. Mims, stand up please.

4 THE CLERK: Your Honor, in the case of 2009-GS-02-93,
5 the State of South Carolina versus Rusty Merritt Dunbar,
6 as to the offense of kidnapping we the jury find the
7 Defendant guilty. Foreperson Jacob Harrison, December 17,
8 2009.

9 As to the case of 2009-GS-02-92, the State of South
10 Carolina versus Rusty Merritt Dunbar, as to the offense of
11 burglary in the first degree, we the jury find the
12 Defendant guilty, signed foreperson Jacob Harrison,
13 December 17, 2009.

14 As to the case 2009-GS-02-91, the State of South
15 Carolina versus Rusty Merritt Dunbar, as to the offense of
16 armed robbery, we the jury find the Defendant guilty,
17 foreperson Jacob Harrison, December 17, 2009.

18 As to case number 2009-GS-02-90, the State of South
19 Carolina versus Rusty Merritt Dunbar, as to the offense of
20 possession of a knife during the commission of a violent
21 crime, we the jury find the Defendant guilty. Foreperson
22 Jacob Harris, December 17, 2009.

23 Ladies and gentlemen of the jury, if this is still
24 your verdict, please indicate by raising of your right
25 hand. All hands raised. Thank you. You may put them

1 down.

2 THE COURT: Mr. Mims, anything for the jury before I
3 release them?

4 MR. MIMS: No, Your Honor.

5 THE COURT: Thank you. You may be seated.

6 Mr. Foreman, ladies and gentlemen, I can't thank you
7 enough. It's not an easy task, particularly coming in
8 here sort of not having -- not doing it everyday like we
9 do to sit and decide something as sordid as this was. I
10 agree with your decision 100 percent. It's hard for me to
11 conceive or believe that right here in our own
12 neighborhood or on our own streets that we have people who
13 act like this and conduct their lives with total disregard
14 for the law and I hope it's drugs that created this
15 problem with this man. I hope he wouldn't do it in his
16 right mind, but you know twelve of you and me and
17 everybody in this courtroom, we shouldn't have to worry
18 about that on our daily lives. These kind of people just
19 need to be separated from good ordinary citizens. He will
20 be separated for a while.

21 I want to thank you for serving. We couldn't conduct
22 criminal court without jurors.

23 How many cases have we moved this week, Stephanie?

24 THE CLERK: About 34 this week, plus motions and
25 we'll do another 15 or 20.

1 THE COURT: We got the rest of the afternoon full
2 with probation violation and we'll do more pleas tomorrow,
3 but we couldn't get any pleas or couldn't get anything
4 moving unless citizens agreed to serve on juries. I
5 suspect 85 to 90 percent of our cases are handled by way
6 of people admitting their guilt and pleading guilty and
7 then the rest of them are jury trials, but we wouldn't get
8 those pleas if we didn't have jurors ready, willing, and
9 able to sit.

10 I want to thank you. You paid attention all the way
11 through, and I know sometimes it get lengthy and sometimes
12 it was rather difficult to listen to, but I want to thank
13 you. You did an excellent job. I am going to now release
14 you. Checks will --

15 THE CLERK: In the mail.

16 THE COURT: But they'll go out today, tomorrow?

17 THE CLERK: Yes, sir.

18 THE COURT: You should have the checks by the end of
19 the week. I wish it were more, but we'll get those. I
20 want to thank you. So, I am going to release you now. I
21 hope each one of you have a happy holiday season. Thank
22 you very much.

23 Everybody else remain seated.

24 Mr. Foreman, you did an excellent job.

25 (Whereupon, the jury exited the courtroom at 2:04.)

1 THE COURT: All right. Take him on back. I'll
2 sentence him mid-afternoon. Is that okay with you?

3 MRS. YOUNG: I can get the paperwork.

4 THE COURT: We need sentence sheets and all that.

5 (Whereupon, a break was taken.)

6 RUSTY DUNBAR, after being duly sworn, testified
7 as follows:

8 THE COURT: All right. Mr. Dunbar, the jury has
9 found you guilty on all four indictments. Indictment 91
10 was an indictment for armed robbery. That carries minimum
11 of 10 up to 30 years. The burglary first carries 15 to
12 life. The kidnapping carries not more than 30 and
13 possession of a weapon during the commission of a violent
14 crime carries up to five.

15 All right. I will hear from your lawyer first then
16 you and anybody else and then victim or whoever. Is he on
17 probation?

18 THE PROBATION OFFICER: Yes, sir, he is.

19 THE COURT: What is he on probation for?

20 THE PROBATION OFFICER: Mr. Dunbar is on probation
21 for burglary second and --

22 THE COURT: Hold on. Burg second.

23 MRS. YOUNG: Violent.

24 THE PROBATION OFFICER: Violent, yes, sir, and he was
25 sentenced to 12 years suspended to five years -- service

1 of five years and five years probation.

2 THE COURT: When was that, please, ma'am?

3 THE PROBATION OFFICER: That was done --

4 MRS. YOUNG: I believe it is July 15, 2003.

5 THE PROBATION OFFICER: Yes. July 15, 2003 by Judge
6 James Williams here in Aiken County.

7 THE COURT: Okay. When did you max that out, Mr.
8 Dunbar?

9 MALE SPEAKER: Sir, I was released in '05.

10 THE COURT: When did you get out?

11 THE DEFENDANT: '05.

12 THE PROBATION OFFICER: November 5, 2005.

13 THE COURT: All right. Prior record, please?

14 MRS. YOUNG: Your Honor, he has a prior conviction or
15 three prior convictions in 1992. That is grand larceny
16 and two counts of burglary second; 1995, disorderly
17 conduct; 1996, simple possession of marijuana. In 1996 he
18 also has an additional grand larceny and three counts of
19 burglary second non-violent. In 1999 he had a probation
20 revocation. In 2001 disorderly conduct and in 2003 he was
21 convicted for this burglary second violent for which he is
22 on probation as well as attempting to influence the
23 lottery by tampering.

24 THE COURT: And I think somebody mentioned to me that
25 he has some charges currently pending?

1 MRS. YOUNG: He does. He has a -- There was a
2 corresponding assault and battery with intent to kill for
3 this case which I've already not prosed and he also an
4 additional outstanding assault and battery with intent to
5 kill that happened when he was out on bond for prior for
6 this incident occurring.,

7 THE COURT: The same victim or another victim?

8 MRS. YOUNG: It is a completely different case.

9 THE COURT: Mr. Mims?

10 MR. MIMS: Thank you, Your Honor. Mr. Dunbar is 36
11 years old. He's been in jail since October 10 of 2008,
12 433 days now. He's the father of two children -- an
13 8-year-old girl from his first marriage and then he's got
14 a 9-month-old boy with Miss Laura Smith who was in court.
15 He's done a million different types of jobs in his life.

16 The -- He tells me that regarding his record the
17 burglaries in 1996 were actually a probation violation
18 but --

19 THE COURT: Okay.

20 MR. MIMS: And I would ask you to not consider that
21 assault and battery -- that assault and battery with
22 intent to kill that's being not prosed.

23 THE COURT: I will not. I won't consider it.
24 Anything else?

25 MR. MIMS: No, Your Honor.

1 THE COURT: Mr. Dunbar?

2 THE DEFENDANT: Well, I'd like to say I'm sorry all
3 of this happened. To Mr. Hynes, I'm sorry it happened to
4 him. I am just sorry.

5 THE COURT: Well, you sound like a halfway
6 intelligent guy. You know you can't conduct a life that's
7 conducive to living with all of us if you're going to
8 smoke enough crack to build a wing onto this courthouse.

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: Son, you just -- your life is -- your
11 priorities are totally out of kilter.

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Just think what you could have been if
14 you would have used that money for constructive purposes.

15 THE DEFENDANT: That's true.

16 THE COURT: I am not going to preach to you. You've
17 chosen this type of life.

18 THE DEFENDANT: Yes, sir.

19 THE COURT: You see what it's caused you.

20 MRS. YOUNG: Your Honor, the victim would like to
21 speak at the appropriate time.

22 THE COURT: Just give me one second.

23 MRS. YOUNG: Certainly.

24 THE COURT: There's so much stuff to sign.

25 Mr. Hynes?