

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Clarendon County
Ralph F. Cothran, Circuit Court Judge

RECEIVED

FEB 26 2015

S.C. Supreme Court

Opinion No. 2014-UP-463 (S.C. Ct. App. filed 12/17/2014)
11-GS-14-0068

THE STATE,

RESPONDENT,

V.

VICTOR WELDON,

PETITIONER

APPELLATE CASE NO. 2015-000340

APPENDIX

ROBERT M. DUDEK
Chief Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

DAVID SPENCER
Assistant Deputy Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211

ATTORNEY FOR PETITIONER

(803) 734-3727

ERNEST A. FINNEY, III
Solicitor, Third Judicial Circuit
Sumter County Courthouse
141 N. Main Street
Sumter, SC 29150-4965
(803) 436-2185

ATTORNEYS FOR RESPONDENT

INDEX

INDEX.....	i
OPINION FROM THE COURT OF APPEALS (Filed December 17, 2014).....	1
PETITION FOR REHEARING (Filed December 31, 2014).....	3
ORDER DENYING PETITION FOR REHEARING (Filed January 23, 2015).....	10

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Victor Weldon, Appellant.

Appellate Case No. 2012-212563

Appeal From Clarendon County
R. Ferrell Cothran, Jr., Circuit Court Judge

Unpublished Opinion No. 2014-UP-463
Submitted November 1, 2014 – Filed December 17, 2014

AFFIRMED

Chief Appellate Defender Robert Michael Dudek, of
Columbia, for Appellant.

Attorney General Alan McCrory Wilson and Senior
Assistant Deputy Attorney General David A. Spencer,
both of Columbia; and Solicitor Ernest Adolphus Finney,
III, of Sumter, for Respondent.

PER CURIAM: Weldon appeals his convictions for first-degree burglary, armed robbery, kidnapping, grand larceny, and possession of a weapon during the

commission of a violent crime, arguing the State failed to present substantial circumstantial evidence of his involvement in any of the crimes charged and, therefore, the trial court erred in denying his motion for a directed verdict. We affirm.¹

We find the trial court did not err in denying the motion for a directed verdict because the State presented substantial circumstantial evidence of Weldon's guilt. *See State v. Odems*, 395 S.C. 582, 586, 720 S.E.2d 48, 50 (2011) ("On appeal from the denial of a directed verdict, [the appellate court] must view the evidence in the light most favorable to the State."); *id.* ("[I]f there is any direct or *substantial* circumstantial evidence reasonably tending to prove the guilt of the accused, an appellate court must find the case was properly submitted to the jury."). Here, Edward "Slick" Gibbons (Victim) was jumped by three men as he exited his garage. The three men robbed Victim of approximately \$840, beat him, and wrapped duct tape around his head. At trial, the State presented evidence that Weldon's DNA was found on duct tape removed from Victim's face following the burglary. This evidence constituted substantial circumstantial evidence of Weldon's guilt because the only logical explanation for his DNA being found on duct tape used in the Victim's robbery was that he participated in the robbery. *See State v. Schrock*, 283 S.C. 129, 133, 322 S.E.2d 450, 452 (1984) (stating the State has the burden of proving "the accused was at the scene of the crime when it happened and that he committed the criminal act"). Therefore, viewing the evidence in the light most favorable to the State, we find the DNA evidence constituted substantial circumstantial evidence of Weldon's guilt, and the trial court did not err in refusing to grant a directed verdict.

AFFIRMED.

WILLIAMS, GEATHERS, and McDONALD, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

 COPY

THE STATE,

V.

VICTOR WELDON,

RECEIVED
DEC 31 2014
RESPONDENT,
SC Court of Appeals

APPELLANT

APPELLATE CASE NO. 2012-212563

Appeal from Clarendon County

Ralph F. Cothran, Circuit Court Judge

Opinion No. 2014-UP-463

PETITION FOR REHEARING

Pursuant to Rule 221(a), SCACR, appellant requests rehearing because this Court may have overlooked the fact that appellant's DNA being found on duct tape, which is impossible to date, in a small community is *substantial circumstantial evidence* that appellant participated in the burglary, armed robbery, kidnapping and grand larceny. The trial judge and this Court both found that appellant's DNA being found on the duct tape *by itself* was sufficient to constitute *substantial circumstantial evidence* of appellant's guilt to this very serious crime which resulted in a sixty year prison term. DNA found on a piece of duct tape -- left at some point somehow -- invited a verdict based on speculation based on that single shred of evidence.

The victim in this case said he saw three black men in his garage with masks over their faces. R. 12, ll. 2-17. He was robbed of his wallet -- which he said had about eight hundred dollars in it -- and his money clip (with contained thirty to forty dollars). R. 13, l. 7 – 14, l. 19.

The victim was never able to identify the robbers. He was thrown to the ground “and one [of them] jumped on top of me and sat across my chest and was beating me there. And then one was sitting across my legs and the bigger guy was kicking me in the side and stomping me in the chest and . . .” R. 15, ll. 4-13.

He acknowledged he never saw a gun during the robbery. However, he speculated that one or more of the men could have been armed. At one point he saw something that could have been a weapon. He recalled: “They tried to put tape around you know, wrap it around my face . . . I kept kicking them - - I kept kick moving my legs and stuff. They never did get it wrapped around my feet so I could move. But they did get it around my face.” R. 17, l. 8 – 18, l. 22.

According to a police witness co-defendant Pearson “adamantly denied knowing Mr. Gibbons.” However, they stated their investigation led them to know that co-defendant Pearson had done yard work for Gibbons in the past. R. 115, l. 6 – 117, l. 18. Co-defendant Pearson’s fingerprints -- his right thumb actually -- was matched to Gibbons’ garage according to Marie Hodge of the Sumter Police Department. R. 124 l. 1 – 136, l. 18.

Appellant’s fingerprints were *not* found anywhere on the property owned by Gibbons. The state’s case against appellant was appellant’s DNA was found on the same duct tape that had been tied around the head of Gibbons. R. 176, l. 17 -180, l. 2. The state also put in evidence that appellant said he did not know co-defendant Pearson, but appellant and Pearson allegedly worked briefly for a Vocational Rehabilitation sponsored facility for a short time. Again, this was in

Manning, South Carolina and it appeared strangers were few. R. 174, l. 21 – 175, l. 17; R. 244, l. 17 – 245, l. 6.

Directed verdict motion

An extensive directed verdict motion was made in this case. Defense Counsel Knobloch for appellant cited State v. Mitchell, State v. Bostick and State v. Arnold in support of his argument that a directed verdict should be granted in this case. Defense counsel noted that the state's case against Arnold was actually stronger than the evidence in this case against appellant. Yet the Supreme Court direct a verdict of acquittal for Arnold. R. 271, l. 19 – 278, l. 3. In Arnold the defendant was placed in the victim's car in another state a short time after the crime. R. 277, l. 22 – 278, l. 3.

The judge here ultimately ruled "it's a number of facts they've (the jury) has got to struggle with. But I'm going to let them make that call." The judge opined he thought there was more evidence in this case "than the Mitchell, Arnold, or Bostick cases." R. 283, l. 10 – 285, l. 3.

Pearson was later granted a verdict of acquittal by this Court. State v. Pearson, 410 S.C. 392, 401-403, 764 S.E.2d 706, 711-712 (2014). The panel of this Court reasoned that the most damaging evidence against Pearson was his fingerprint being found on the victim's automobile. This Court nonetheless correctly reasoned that Pearson's fingerprint could have innocently been placed on the vehicle at an earlier time. Respectfully, nothing extremely consequential or substantial separates appellant's DNA being found on the duct tape from Pearson's fingerprint being found on the victim's car.

"Mere suspicion" of guilt is insufficient to take the case to the jury, and beyond a directed verdict motion. State v. Lollis, 343 S.C. 580, 541 S.E.2d 254 (2001). Again, the state's evidence against appellant is that his DNA at some point, somehow, got on the duct tape. From there the jury

was asked to speculate that because appellant worked with Pearson at the same place for a short time, that appellant knew him, and participated in this violent crime with him. Therefore, appellant should be convicted based on that circumstantial evidence.

Case Law

Where, as here, the state fails to produce substantial circumstantial evidence the defendant committed the particular crime the defendant is entitled to a directed verdict. State v. Rothschild, 351 S.C. 238, 569 S.E.2d 346 (2002); State v. Walker, 349 S.C. 49, 562 S.E.2d 313 (2002).

In State v. Bostick, 392 S.C. 134, 708 S.E.2d 774 (2011), the Supreme Court held the state failed to produce substantial circumstantial evidence Bostick killed his neighbor, Ms. Polite, and set her house on fire. The state's case was that Ms. Polite worked at her church and always brought the collection proceeds home on Sunday afternoon.

The state presented evidence that investigators found the decedent's personal items, burned by an accelerant, including a watch and two sets of car keys belonging to Ms. Polite in a burn pile on Bostick's *next door property*. Bostick's mother testified she never used accelerants in the family burn pile.

The Supreme Court noted that the evidence above as well as the fact Bostick had a pattern of gasoline on his shoes and *gasoline was the accelerant used to start the fire* at the Polite home. The Court held this evidence raised a suspicion that Bostick may have been guilty but it was not sufficient for the case to have gone to the jury.

Earlier, and similarly, in State v. Martin, 340 S.C. 597, 533 S.E.2d 572 (2000) the Supreme Court held that the state's circumstantial evidence against Martin was insufficient to take the case to the jury. In Martin the defendant borrowed his girlfriend's car which was later placed near the scene of the murder.

On the morning after the murder the manager of a restaurant found several bags of garbage near the bar where defendant Martin and co-defendant Wilson picked up Martin's girlfriend late the prior night. Inside the trash were items belonging to the victim. Also found were inside were latex gloves similar to those Martin's girlfriend used to clean her dogs.

When Martin girlfriend's asked him why he and co-defendant Wilson were so late in picking her up from the bar, defendant Martin replied "some shit happened" and co-defendant Wilson added "someone may have died tonight."

The Supreme Court held that this circumstantial evidence was not substantial circumstantial evidence, and it was insufficient to take the case to the jury. The Court in Martin cited State v. Schrock, 283 S.C. 129, 322 S.E.2d 450 (1984) which was a case which provided a strong suspicion of the defendant's guilt.

In State v. Schrock, Schrock admitted to the police that he smoked Marlboro brand cigarettes – the same brand as the cigarette butts found at the murder scene. However, a saliva test could not match a cigarette butt to the defendant. A similar footprint to Schrock's was found at the scene and nearby the scene. Schrock apparently later disposed of the clothes and shoes he had been wearing and he did not present an alibi. The Supreme Court held this evidence only raised a suspicion of Schrock's guilt and that he was entitled to a directed verdict.

In State v. Arnold, 361 S.C. 386, 605 S.E.2d 529 (2004), the Supreme Court affirmed the holding of this Court that a directed verdict should have been issued. The victim, Cox, was shot, and his body found off of a road in *Colleton County*. On the last day Cox was seen alive he borrowed a friend's BMW Z3 to go to the dentist's office. *The car was found in a parking lot in Johnson City, Tennessee and there was evidence the defendant telephoned a friend from 10 miles away from the car. The defendant's fingerprints were found inside the car.* The Supreme Court

reasoned the state only proved that the defendant was in the BMW on the last day that Cox was seen alive, and that was insufficient evidence to make this a jury question.

Similarly, in State v. Mitchell, 341 S.C. 406, 409 S.E.2d 126 (2000) a home was burglarized and two guns were stolen. Mitchell had been a guest at their several times. The day after the burglary was reported, investigators found a fingerprint on a screen leaning up against the house which matched Mitchell. *Id.* Mitchell was arrested and convicted of burglary; during his trial, Mitchell moved for a directed verdict, which was denied by the circuit court. *Id.*

The Supreme Court noted that the fingerprint was the only evidence linking Mitchell to the burglary. The Court wrote that the evidence presented was entirely circumstantial. “The fact that [Mitchell's] fingerprint was on a screen that was propped up against the house does not prove entry where [Mitchell] had been in and around [Mathis's] house at least three times prior to the burglary.” *Id.* The State did not produce any evidence concerning whether the screen was on the window when the window was broken or when the screen had been removed. *Id.*” Accordingly, the Supreme Court agreed with this Court that Mitchell was entitled to a directed verdict.

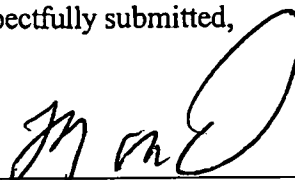
In this case there was evidence that Pearson did yard work for the victim, and Pearson had been in his garage. The state tried to make much of the fact that appellant and Pearson knew each other. The state’s witnesses admitted there was not any way too date when Pearson’s fingerprint was placed, and no way too similarly date when appellant’s DNA got on the duct tape -- or how. If appellant’s sweat or saliva or whatever else could cause a DNA “match” was transferred by Pearson onto the duct tape then appellant risked being convicted on this one false piece of seemingly damning evidence.

Unlike Mitchell, there was no evidence appellant had ever been to the victim’s house. To the extent that cuts in the state’s favor here in distinguishing Mitchell, it also differentiates

appellant's case from the state's alleged case against Pearson as for notice, opportunity and prior presence in the victim's house and garage. The Supreme Court granted a directed verdict in yet another case where the evidence was stronger against the defendant than here in State v. Odems, 395 S.C. 582, 720 S.E.2d 48 (2011).

In Odems the defendant was in a car with the stolen property, fled from the police, and lied to attempt to have a woman cover from him. The Court nonetheless said this very suspicious behavior was not sufficient for the case to go to the jury. The DNA, which cannot be dated, being found on a piece of duct tape was not *substantial circumstantial evidence* of appellant's guilt. Rehearing, and oral argument should respectfully be granted. State v. Mitchell; State v. Arnold; State v. Bostick; State v. Schrock; State v. Odems, *supra*.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R. M. Dudek', written over a horizontal line.

Robert M. Dudek
Chief Appellate Defender

This 31st day of December, 2014

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

 Appeal from Clarendon County
 Ralph F. Cothran, Circuit Court Judge

RECEIVED
 DEC 31 2014
 SC Court of Appeals

THE STATE,

RESPONDENT,

V.

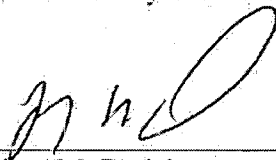
VICTOR WELDON,

APPELLANT

APPELLATE CASE NO. 2012-212563

 \ CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon David Spencer, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 31st day of December, 2014.


 Robert M. Dudek
 Chief Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 31st day
 of December, 2014.

Rhonda Denise Spaworth, S.
 Notary Public for South Carolina
 My Commission Expires: October 17, 2021.

The South Carolina Court of Appeals

The State, Respondent,

v.

Victor Weldon, Appellant.

Appellate Case No. 2012-212563

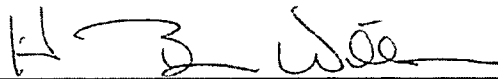
ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

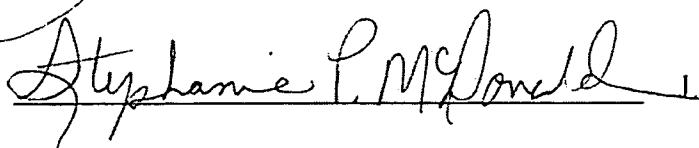
RECEIVED

JAN 23 2015

SC OFFICE OF
APPELLATE DEFENSE

 J.

 J.

 J.

Columbia, South Carolina

cc:

Robert Michael Dudek, Esquire
David A. Spencer, Esquire
Alan McCrory Wilson, Esquire
Ernest Adolphus Finney, III, Esquire
The Honorable R. Ferrell Cothran, Jr.

FILED

January 23, 2015

STATE OF SOUTH CAROLINA

In The Court of Appeals

RECEIVED

FEB 26 2015

APPEAL FROM CLARENDON COUNTY

Ralph F. Cothran, Circuit Court Judge

S.C. Supreme Court

THE STATE,

RESPONDENT,

V.

VICTOR WELDON,

APPELLANT

APPELLATE CASE NO. 2012-212563

RECORD ON APPEAL

ROBERT M. DUDEK
Chief Appellate Defender

ALAN WILSON
Attorney General

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

DAVID SPENCER
Assistant Deputy Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211

Attorney for Appellant

(803) 734-3727

ERNEST A. FINNEY, III
Solicitor, Third Judicial Circuit
Sumter County Courthouse
141 N. Main Street
Sumter, SC 29150-4965
(803) 436-2185

Attorneys for Respondent

INDEX

INDEX.....	i
TRIAL TRANSCRIPT.....	1
TESTIMONY	
EDWARD GIBBONS	
Direct Examination by Mr. Finney	2
Cross Examination by Mr. Knobeloch	44
Cross Examination by Mr. Devoe.....	48
Redirect Examination by Mr. Finney.....	60
KAY GIBBONS	
Direct Examination by Mr. Finney	63
CORPORAL CREIGHTON CHEEK	
Direct Examination by Mr. Finney	71
CECIL EADDY	
Direct Examination by Mr. Corbett	78
WALTER BUSH	
Direct Examination by Mr. Corbett	85
RICKY RICHARDS	
Direct Examination by Mr. Finney	88
Cross Examination by Mr. Devoe.....	100
LIN HAMM	
Direct Examination by Mr. Finney	103
Cross Examination by Mr. Devoe.....	118
MARIE HODGE	
Direct Examination by Mr. Corbett	123
Cross Examination by Mr. Devoe.....	139
BARBARA PROCTER	
Direct Examination by Mr. Corbett	145
KENNETH CLARK	
Cross Examination by Mr. Knobeloch	183
Cross Examination by Mr. Devoe.....	197

Redirect Examination by Mr. Finney.....	215
RICHARD GAMBLE	
Direct Examination by Mr. Corbett	219
Cross Examination by Mr. Devoe.....	226
JOHN HORNSBY	
Direct Examination by Mr. Corbett	232
Cross Examination by Mr. Knobeloch	235
Cross Examination by Mr. Devoe.....	236
CATHERINE LEISY	
Direct Examination by Mr. Corbett	239
Cross Examination by Mr. Knobeloch	251
Cross Examination by Mr. Devoe.....	260
Redirect Examination by Mr. Corbett.....	262
ANDRENNNA BELTON	
Direct Examination by Mr. Corbett	265
BARBARA PROCTER (RECALLED)	
Direct Examination by Mr. Corbett	269
MOTION FOR DIRECTED VERDICT.....	271
CLOSING ARGUMENT BY MR. CORBETT	291
CLOSING ARGUMENT BY MR. FINNEY.....	298
CLOSING ARGUMENT BY MR. KNOBELOCH.....	306
CLOSING ARGUMENT BY MR. DEVOE.....	315
CHARGE ON THE LAW.....	327
VERDICT	354
POLLING OF THE JURY	355
DEFENDANT ADDRESSES COURT.....	357
SENTENCING	359
INDICTMENT	361
CERTIFICATE OF COUNSEL.....	363

STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	
COUNTY OF CLARENDON	)	DOCKET NO. 2011-GS-14-0068
	)	
	)	
THE STATE OF SOUTH CAROLINA	)	
	)	
Plaintiff	)	
	)	
vs.	)	
	)	
MICHAEL PEARSON and	)	
VICTOR WELDON	)	
	)	
Defendants	)	
	)	
	)	
	)	
	)	TRANSCRIPT OF RECORD
		May 14, 2012
		Manning, South Carolina

VOLUME 1 OF 5

B E F O R E:

THE HONORABLE RALPH F. COTHRAN, JUDGE

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

ERNEST A. FINNEY, III, ESQ.
JASON CORBETT, ESQ.
Attorneys for the State

JOHN KNOBELOCH ESQ.
LAURA KNOBELOCH, ESQ.
Attorneys for the Defendant Weldon

HARRY DEVOE, ESQ.
Attorney for Defendant Pearson

Melissa R. Singletary
Court Reporter

1 [Whereupon, the witness takes the witness stand]

2 - - - - -

3 EDWARD GIBBONS,

4 Having been first duly sworn,

5 Was examined and testified as follows:

6 DIRECT EXAMINATION

7 BY MR. FINNEY:

8 Q. Good morning Mr. Gibbons.

9 A. Good morning.

10 Q. Your name is Edward Gibbons?

11 A. Yes, it is.

12 Q. Do you have a nickname?

13 A. Slick.

14 Q. All right, sir. And tell us what you do for a
15 living.

16 A. I own Clarendon Auto Parts in Manning --

17 Q. How long have you run that business?

18 A. About 45 years.

19 Q. All right. And are you married?

20 A. I am.

21 Q. How long you been married?

22 A. 50 years.

23 Q. All right. And you all have lived here in
24 Clarendon the whole 50 years you've been married?

25 A. We have.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 3 (of 5) - May 16, 2012

1 Q. All right. Do you live -- where do you live in
2 Clarendon County?

3 A. , right out of Manning, a
4 couple of miles out of Manning.

5 Q. All right, sir. Could you give the jury a little
6 physical description if we were leaving here today going
7 to your house for lunch how would we get there?

8 A. You'd go down by the hospital and you'll cross the
9 branch of Scott's -- take a left, go to the first paved
10 road back to the left and that comes into the backside of
11 the Country Club.

12 Then you go down to the first stop sign and take a
13 right, second stop sign take a left, there is a -- take a
14 left and then back to the right and that will be 1251
15 Country Club Circle.

16 Q. Now Mr. Gibbons in preparation for this case today
17 have you been shown an aerial photograph of the area
18 where you live?

19 A. I have, yes sir.

20 Q. And I believe it's been marked as State's Exhibit
21 number 2.

22 [Whereupon, the witness is shown photo]

23 Q. Have you been able to look at this and see on this
24 display where your house is located?

25 A. Yes, sir [indicates].

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 3 (of 5) - May 16, 2012

1 Q. All right.

2 A. -- lake.

3 Q. You say your house is on a lake?

4 A. Yes. The backside of my house is on the ---

5 Q. --- point to the jury again where your house is

6 located on State's exhibit number 2.

7 A. This is it right here [indicates]. That's the

8 little small lake back there.

9 Q. All right. And the country club it has a golf

10 course?

11 A. Yes, it does.

12 Q. Can you see the golf course on that map?

13 A. Yes, sir. There's the golf course across the front.

14 Q. All right, sir. And how long have you lived in that

15 house?

16 A. I've been there 30 years.

17 Q. All right, sir. Did you build it or bought it?

18 A. Yes, sir.

19 Q. You built it?

20 A. Yes, sir.

21 Q. All right. Now Mr. Gibbons, this is State's

22 exhibit number 2.

23 [Whereupon, the witness is shown photo]

24 Q. You have neighbors in front of you and beside you?

25 A. Yes, sir.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 3 (of 5) - May 16, 2012

1 Q. But you have a pond in back?
2 A. Yes, sir.
3 Q. So there is no neighbor in the back?
4 A. No, sir.
5 Q. All right. And the front of your house faces
6 Country Club Drive?
7 A. It does.
8 Q. And the back of your house faces the pond?
9 A. That's right.
10 Q. All right. Now where is your garage on your house?
11 A. Looking at the front of the house it would be on the
12 right hand side.
13 Q. All right, sir. And is it a single garage or double
14 garage?
15 A. It's a double garage.
16 Q. All right. Let me show you another blow up
17 picture. It's State's exhibit number 1.
18 [Whereupon, the witness is shown photo]
19 Q. Do you see your house on State's exhibit number 1?
20 A. Yes, sir. That's it right there [indicates].
21 Q. All right. And can you point to Country Club
22 Drive?
23 A. Country Club Drive would be right in front of --
24 right across there [indicates].
25 Q. All right. Country Club Drive is marked on here?

1 A. That's right.
2 Q. All right. And the house is facing Country Club
3 Drive?
4 A. That's right.
5 Q. Now in the back do you see your garage doors on that
6 picture?
7 A. Just barely, right there [indicates].
8 Q. Yes sir, right there, two garage doors?
9 A. Two garage doors. This is a garage that is not
10 hooked to the house.
11 Q. All right. It's a separate dwelling?
12 A. No, it's just a separate garage.
13 Q. All right. And I also see -- I think there is a
14 swimming pool on the property.
15 A. Swimming pool...
16 Q. Now you have a large backyard.
17 A. Yes, sir.
18 Q. That goes down to a dock and to the lake?
19 A. That's right.
20 Q. All right. And you say you've been there for 30
21 years.
22 A. Yes, sir.
23 Q. Now you're still living there today?
24 A. Yes, sir.
25 Q. Two years ago when this case was made had you made

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 3 (of 5) - May 16, 2012

1 any changes to the house since that time or is the house
2 still today the same way it was then?

3 A. Yes, sir.

4 Q. All right.

5 MR. FINNEY: Your Honor, we would move to admit
6 State's 1 and 2 into evidence.

7 THE COURT: What sayeth the defense?

8 MR. KNOBELOCH: Without objection.

9 MR. DEVOE: No objection.

10 THE COURT: Okay. State's 1 and 2 are in without
11 objection.

12 [Whereupon, State's exhibit numbers 1 and 2 are
13 entered into evidence by the court]

14 Q. [Mr. Finney] Now Mr. Gibbons, tell us a little bit
15 about your schedule as far as being a business man. Do
16 you run your auto parts store six days a week?

17 A. Yes sir, I do.

18 Q. Are you closed on Sunday?

19 A. Yes, sir.

20 Q. All right. And taking you back to the events of
21 May the 15th, 2010 do you remember what day of the week
22 that was?

23 A. Saturday.

24 Q. What is your usual course or conduct on Saturday
25 morning? Do you go and open the business?

1 A. Well, no I don't open it. Usually -- I got a guy,
2 Ken Hodge is there a little before me. But I get -- I
3 try to be there by 6:30 or 7:00.

4 Q. All right. And were you operating your normal
5 schedule that morning as far as getting up and getting
6 out of the house to be at work?

7 A. Yes, sir.

8 Q. All right. What time would you say you got to --
9 got dressed and was leaving the house -- preparing to
10 leave the house?

11 A. Probably between 6:00 and 6:30 maybe quarter after
12 6:00 or 20 after 6:00.

13 Q. All right, sir. In your own words please sir would
14 you tell us a little bit about what happened when you
15 were on your way out of the house that particular morning
16 two years ago in May.

17 A. Well, I came out of the garage. I've got steps that
18 go around about three foot high. And when I come out I
19 usually leave my shoes on the back and I was bend down to
20 put my shoes on because I closed the door. I usually
21 close the door and lock when I leave because my wife is
22 there and usually she's not up when I leave in the
23 morning.

24 And I locked the door and bent down to put my shoes
25 on and as soon as I shut the door and bent down to put my

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 3 (of 5) - May 16, 2012

1 shoes on three guys came out of a little storage room
2 that I got under the carport that is approximately 12
3 feet away from the steps. My steps has got an iron rail
4 on the back of it and the side of it you know to hold on
5 to to walk down the steps.

6 Well, when I shut the door and bent down three guys
7 came out of that little closet room in there and that's
8 when they jumped me; and it's a miracle I'm still here
9 after that.

10 Q. Mr. Gibbons, in order for the jury to see these
11 exhibits I believe you're going to have to come off the
12 witness stand.

13 But I'm going to need you to come down here and
14 stand by me. And I'm going to need you to keep your
15 voice up so that lady in the last seat back there can
16 hear you.

17 A. Okay.

18 [Whereupon, the witness steps down from the witness
19 stand]

20 Q. This is exhibit 3-H. This is a color photograph.
21 Do you recognize what is shown in this color photograph?

22 [Whereupon, the witness views photo]

23 A. This is the room that -- the storage room that they
24 came out of right there [indicates].

25 Q. All right. This is located in your garage?

1 A. Yes, sir. That's -- the garage.

2 Q. Now on exhibit 3-H you actual have two photographs
3 on one sheet of paper. Do you know what those represent
4 there?

5 A. That's the car port door for the car port, under the
6 car port.

7 Q. You have two garage doors on that garage?

8 A. Yes, sir.

9 Q. All right, sir. When you came out that morning were
10 both of them down like they are in this picture?

11 A. They were, yes.

12 Q. All right. And this other picture on exhibit 3-H
13 shows the storage room?

14 A. Yes, sir.

15 Q. And it also shows the metal rail of the steps coming
16 down from the kitchen ---

17 A. --- that's right ---

18 Q. --- from the inside of the house?

19 A. Yes, sir.

20 Q. All right. And this is the area [indicates] that
21 you were coming out of on that Saturday morning?

22 A. I was coming out of that door there [indicates] down
23 those steps and you can see they are approximately three
24 foot high from -- about three steps down to the bottom --
25 to the concrete floor on that.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 3 (of 5) - May 16, 2012

1 Q. When you came down those steps or came out into the
2 garage that morning was there any indication that anybody
3 was in that house in that garage; any strangers?

4 A. No, not at the time until they jumped ---

5 Q. --- All right, sir. And did you have an automobile?
6 Was it -- this picture shows no automobile in the garage.
7 Is that the way it was that morning or was there an
8 automobile in the garage?

9 A. No, my wife's car was in the other part of the
10 garage, which would be right up coming up to the steps
11 where I came down.

12 Her car was pulled up on that side of the garage. I
13 usually keep my other little pickup under this side, but
14 it -- one of my grandsons had borrowed it and it wasn't
15 there.

16 Q. All right, sir. Once you got out on the steps you
17 were sitting in this area [indicates] on the steps. Let
18 me see if there is a better picture of the steps area. I
19 show you now what has been marked as State's exhibit 3-J.

20 [Whereupon, the witness is shown photo]

21 A. Yes, sir.

22 Q. Do you recognize that?

23 A. It is. That's where I came out of the back door and
24 that's where I went to put my shoes on right there
25 [indicates]. And of course they came from around here

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 3 (of 5) - May 16, 2012

1 [indicates].
2 Q. All right. And how many men did you say you
3 reported in the garage?
4 A. Three.
5 Q. Did you have a description of the men in terms of
6 what race they were?
7 A. Well at that particular time I didn't know. But
8 then after they were on top of me beating me and kicking
9 me and stuff I could tell that they were black.
10 Q. So there were three black men?
11 A. Yes.
12 Q. Could you tell anything about their features whether
13 they had beards or light skin or dark skin?
14 A. No.
15 Q. Why not?
16 A. They had masks over ---
17 Q. --- all three?
18 A. Yes, sir.
19 Q. All right, sir. Now again looking at exhibit 3-J
20 this picture shows the area. This would have been taken
21 after the police arrived?
22 A. Yes, sir.
23 Q. Your wife's car was in this area right here
24 [indicates]?
25 A. Right there [indicates]. And of course that chair

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 3 (of 5) - May 16, 2012

1 wasn't there. I think my wife must have bought that
2 after she came down and she was trying to help me until
3 the ambulance got there.
4 Q. All right, sir. Let me show you what's been marked
5 as State's exhibit 3-I.
6 [Whereupon, the witness is shown photo]
7 Q. Can you tell us whether you see your wife's
8 automobile in this picture?
9 A. That's just the very front of it right there
10 [indicates]. That's the front bumper of it right there
11 [indicates].
12 Q. And is that where the car was located when you came
13 out that morning?
14 A. It was.
15 Q. All right. And is that normally where she parks
16 her car?
17 A. All the time.
18 Q. What is this item on the floor here [indicates] in
19 the middle of exhibit 3-I?
20 A. That's my wallet.
21 Q. Did you have your wallet in your pocket when you
22 came out that morning?
23 A. I did.
24 Q. All right, sir. Were you carrying cash on you that
25 morning?

- 1 A. Yes, sir.
- 2 Q. How do you normally carry your cash?
- 3 A. In my pocketbook.
- 4 Q. In that wallet?
- 5 A. In that wallet.
- 6 Q. Did you have any cash in another place in your
- 7 pants?
- 8 A. Well, I usually keep a little money clip like that
- 9 just keep a little money clip.
- 10 Q. Did you have your money clip with you?
- 11 A. Yes, sir.
- 12 Q. About how much money would you say was in the money
- 13 clip?
- 14 A. Probably 30 or 40 dollars.
- 15 Q. All right. And did you have a larger amount of
- 16 money in your wallet?
- 17 A. I did.
- 18 Q. How much would you estimate that you had?
- 19 A. Probably somewhere around 800 dollars.
- 20 Q. All right, sir. Now you didn't put the wallet on
- 21 the floor here [indicates]?
- 22 A. No, sir.
- 23 Q. This is where the wallet was left after you were
- 24 robbed?
- 25 A. Yes, sir.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 3 (of 5) - May 16, 2012

1 Q. All right. Now you've said to us this morning that
2 the men came out of the storage closet.

3 A. Yes, sir.

4 Q. And once they came to where you were did they do
5 anything to you?

6 A. Yes. When they come around they caught me by
7 surprise I was up on the top step. Well, they grabbed
8 me. When they throwed me down my hip hit the ground at
9 that time and one jumped on top of me and sat across my
10 chest and was beating me there.

11 And then one was sitting across my legs and then the
12 bigger guy was kicking me in the side and stomping me in
13 the chest and...

14 Q. As a result of the injuries that they -- that you
15 sustained that day were you left on the garage floor by
16 the gentlemen after they left?

17 A. Yes, down by the car.

18 Q. I'm showing you exhibit 3-Q at this point.

19 [Whereupon, the witness is shown photo]

20 Q. Does that look like how your garage looked after the
21 gentlemen left?

22 A. This was the car here [indicates].

23 Q. That's your wife's car?

24 A. That's my wife's car. And that was the other wall
25 and they had down between there. And that's where I was

1 left.

2 Q. All right, sir. You sustained injuries that caused
3 you to bleed that amount?

4 A. Yes, sir.

5 Q. Mr. Gibbons, I'm going to ask you -- let me show you
6 one more picture while we're here. This is exhibit 3-P.

7 [Whereupon, the witness is shown photo]

8 Q. Does this also show the side of your wife's car in
9 that garage area?

10 A. It does.

11 Q. All right.

12 A. And that's the same location, yes sir.

13 Q. And where would the steps be in this position?

14 A. Be up there [indicates].

15 Q. At the top?

16 A. Yes, sir.

17 Q. All right. Very good. If you would take a seat
18 back up on the witness stand.

19 [Whereupon, the witness returns to the witness
20 stand]

21 Q. Mr. Gibbons, I put a cup of water up there if you
22 need something to drink.

23 A. Thank you.

24 Q. Mr. Gibbons, tell the ladies and gentlemen of the
25 jury what injuries you received?

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 3 (of 5) - May 16, 2012

1 A. Well, you know all my face was all beat up. They
2 broke my nose, messed my hip up; in fact I'm still
3 limping everyday from that hip. My left leg is shorter
4 than my right leg...

5 Q. Now during this attack in your garage did you have a
6 chance to fight back?

7 A. Not -- no, sir.

8 Q. All right. Did you have any information whether or
9 not these people that were robbing you had any weapons?

10 A. Well, when they first came around a guy had -- I
11 didn't see the gun but I -- you know he had something
12 that could have been his finger; I'm not sure about that.
13 But he had something in his hand but I couldn't see it;
14 it was covered too.

15 But after they started beating me the guy that had
16 the -- it looked like a pistol, he was on my chest. He
17 was sitting across my chest and then he started beating
18 me in the face and beating and beating me.

19 And the other one was sitting on my legs. And then
20 the bigger guy he was just kicking me in the side and
21 stomping me in the chest and the stomach.

22 Q. Mr. Gibbons, at some point did they try to restrain
23 you on the floor? Was any type of object used to
24 restrain you on the floor?

25 A. Yes. They tried to put tape around you know, wrap

1 it around my face.

2 Q. Yes, sir.

3 A. And put it on my feet.

4 Q. Did they get the tape around your legs?

5 A. No, sir. I kept kicking them -- I kept kick moving
6 my legs and stuff. They never did get it wrapped around
7 my feet so I could move. But they did get it around my
8 face.

9 Q. I heard you tell the jury that you were on your back
10 on the floor?

11 A. I was.

12 Q. And then so your hands were in front of you and you
13 were able to try to resist with your hands?

14 A. Yes, somewhat. I was just trying to keep them from
15 beating me in the face -- just had my hands over my face.

16 Q. All right. So the tape that was applied to your
17 head was while you were down on the floor?

18 A. Yes, sir.

19 Q. All right. And as a result of this robbery did the
20 men rob you of personal property? Did they take your
21 personal property that day?

22 A. Yes, they did.

23 Q. How long would you say that this attack from the
24 time you were first noticed these men in the garage until
25 they left? How long if you have a time period?

1 A. I don't know. I can't say exactly how long it was
2 but it felt like forever they were beating on me and
3 beating on me. I kept telling them not...

4 Q. Drink some water sir.

5 A. I told them to don't kill me and they didn't have to
6 beat me in the floor.

7 Q. Were you able to hear any of these people talking to
8 one another about what they should do to you or how they
9 should treat you?

10 A. Well, during the beating me in the face and all one
11 of them said are we going to shoot him. And then another
12 one said Slick, you know that we know that you got money
13 and where is the rest of it. I said this is all I got.

14 I said there's no use to beat me anymore for money
15 so just shoot me because this is all I got. I said this
16 is it that I got on me. I don't have any more. I said
17 if I had it I'd give to you. I said I've given you all I
18 got and please don't beat me anymore.

19 Q. Now Mr. Gibbons at this time of day on May the 15th
20 were you home alone?

21 A. No, my wife was inside the house.

22 Q. Was she up?

23 A. No, sir.

24 Q. All right. And were you able to call out to her or
25 call out to help?

1 A. No, sir. She was on the other end of the house.

2 She couldn't have heard me anyway. I didn't want them to
3 know. I prayed to God that He not let them get in the
4 house with my wife.

5 Q. All right, sir. After the attack was over did the
6 men leave?

7 A. They did.

8 Q. Did they leave together?

9 A. Yes.

10 Q. All right. And where were you in position to that
11 garage area -- the steps -- where were you when you were
12 left by them?

13 A. On the floor.

14 Q. All right, sir. Were you bleeding?

15 A. Yes, sir.

16 Q. Were you in pain?

17 A. Yes sir, lots.

18 Q. All right, sir. You said something a minute ago
19 about hitting your hip on the floor. Did the doctors
20 tell you later what had happened to your hip?

21 A. Yes, sir.

22 Q. What happened?

23 A. It bruised it and cracked a bone where the hip hooks
24 together. And he asked me if I wanted to replace the hip
25 or try to let it heal. He said you're going to always

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 3 (of 5) - May 16, 2012

1 limp. But he said that's your option and I told him
2 just try to let it heal because I knew I had to go back
3 to work. I didn't want to be...

4 Q. All right. Now Mr. Gibbons, when the men left that
5 day where did -- did you see them leave the garage area?

6 A. Well when they left they went out that -- not the
7 garage door but there is an entrance door there on the
8 side of the garage. And they went out of there.

9 And I was still conscious and I pulled up on the
10 side of my wife's car and got up and caught that iron
11 rail and stood up.

12 When they were leaving in my El Camino I thought
13 that maybe they had driven a car there and I was going to
14 try to look out that window that's in that go-cart room
15 to see what kind of car they were driving.

16 And when I got up -- when they were leaving one of
17 them said he's up, he's up, he's getting up and he jumped
18 out of the back of my El Camino and run back in there and
19 hit me with something. And then I don't know exactly how
20 long I stayed on the ground before I got my wife to the
21 door. I'm not sure ---

22 Q. --- I understand ---

23 A. --- what time that would have been. I don't know
24 how much longer I was unconscious.

25 Q. Mr. Gibbons, if you don't mind I'd like for you to

1 come down and show the jury a little bit more information
2 about your house.

3 [Whereupon, the witness steps down from the witness
4 stand]

5 Q. This is a picture that has been marked 3-E for the
6 State's exhibit.

7 [Whereupon, the witness is show photograph]

8 A. Yes, sir.

9 Q. Is that an accurate representation of how your house
10 looked that day?

11 A. It is.

12 Q. And is that the position of your wife's silver car
13 in the garage where it was when the robbery occurred?

14 A. It is.

15 Q. All right. Now the garage doors when the attack
16 occurred were they up or down?

17 A. The garage doors were down.

18 Q. Down. So not like in this picture. But this is the
19 garage?

20 A. That's right.

21 Q. Now this door here [indicates] this side entrance
22 door is that the door that you say you looked out?

23 A. That's the -- that's when I was standing up there
24 [indicates] and the El Camino was parked crossways right
25 here [indicates].

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 3 (of 5) - May 16, 2012

1 And when they -- I seen them over there [indicates]
2 getting in my car. So you know that's when they came
3 back in and hit me again.

4 Q. All right. Now the El Camino is the car that you
5 drive, your personal car?

6 A. Yes, sir.

7 Q. You had it parked out here [indicates] on the
8 driveway?

9 A. Yes, sir.

10 Q. And would -- can you point to where it would have
11 been in exhibit 3-E?

12 A. It would have been parked across this way
13 [indicates] right behind that and kind of in front of
14 that door and I usually just pull around that way
15 [indicates] and get out and walk right in that door.

16 Q. When you got out of the car Friday night to go into
17 the house for the evening did you lock the car and take
18 the keys?

19 A. No, sir.

20 Q. You usually leave the car in the driveway with the
21 keys in it?

22 A. Yes, sir.

23 Q. All right. This door right here [indicates] the
24 entrance door, is it usually locked at night?

25 A. No, sir.

1 Q. So it would have been open?
2 A. Maybe open but never closed, never locked anything.
3 Q. All right. Now the go-cart room is the storage
4 room inside the garage?
5 A. Yes, sir.
6 Q. Is it in this area [indicates] on this photograph
7 3-E back in there?
8 A. I see it right there [indicates].
9 Q. Right there. So how -- is there any other way for
10 these robbers to have gotten into your garage that night?
11 A. No, sir.
12 Q. Other than using this door [indicates]?
13 A. That's right.
14 Q. All right. And according to you can you testify
15 how they left you after the robbery? How did they leave
16 the garage area?
17 A. Well...
18 Q. Did they leave through that same door?
19 A. You know -- yes -- yes sir, they went through this
20 door [indicates], two of them got in the truck. The
21 other one jumped across in the back of the El Camino.
22 Q. Just in case some of the jurors don't know tell the
23 ladies and gentlemen what an El Camino is.
24 A. It's kind of a car pickup. It's low to the ground
25 and it's like a regular car but it's got a place in the

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 3 (of 5) - May 16, 2012

1 back you can haul some stuff; not a lot of stuff, but
2 it's like a little car pickup really.
3 Q. And have you had that car for a long time?
4 A. Yes, sir.
5 Q. Now the El Camino what color was it?
6 A. Black.
7 Q. All right. And in the back where it's like a pickup
8 truck were there any seats?
9 A. No, no seats.
10 Q. All right. How many seats are in the front area
11 where the driver sits?
12 A. Just two.
13 Q. So it would be a bench seat?
14 A. Yes sir, with an armrest in the center you know for
15 two -- two people.
16 Q. And you described two of the men getting in the El
17 Camino?
18 A. Yes.
19 Q. And you described one man getting on the back of the
20 El Camino?
21 A. Yes.
22 Q. All right. Now when you got up and you were
23 pulling yourself up on the rail you say one of the men
24 came back in the garage and hit you again?
25 A. Yes. The one that was on the back of the truck he

1 was hollering he's up, he's up. And he jumped out of the
2 truck and come back in there and of course at that time I
3 couldn't put up any kind of defense. I was just barely
4 holding on and they hit me again and that's when they
5 knocked me out.

6 Q. All right. Now this is exhibit 3-E ---

7 A. --- but just one came back in.

8 Q. Just one? The other two stayed in the car. Now let
9 me just show you while you are standing here. This is
10 exhibit 3-E.

11 [Whereupon, the witness is show photograph]

12 Q. This is exhibit 3-H now on the machine. Is that a
13 view from inside the garage going out?

14 A. Yes. That's going out the door there.

15 Q. And do you see in this picture there is a Clarendon
16 Sheriff's car in this picture?

17 A. Yes, sir.

18 Q. Is that about the area where the El Camino would
19 have been -- your car?

20 A. My car was turned cross -- you know when I pulled
21 around coming in the gate I just pull in this way
22 [indicates]. The front of my car would have been over
23 this way [indicates] and the driver's door would have
24 been about right at that door.

25 Q. All right. Very good. Now after you got hit for

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 3 (of 5) - May 16, 2012

1 the second time by the one gentleman did you see him get
2 back in the back of the El Camino?

3 A. No, sir.

4 Q. I understand.

5 A. I was on the floor.

6 Q. Did you hear the El Camino leave?

7 A. [Nods affirmatively]

8 Q. And you say you're not sure if you blacked out.

9 You're not sure how long you were on the floor, but it
10 took you a while to get back to your senses?

11 A. Yes, sir.

12 Q. At that point were you able to get to the door and
13 contact your wife?

14 A. Well, I got to those iron steps and I pulled up and
15 finally managed to get up there and I couldn't reach the
16 door -- so I just beat on the door.

17 Q. All right, sir. And your wife came?

18 A. Yes.

19 Q. All right, sir. You can go back and sit down Mr.
20 Gibbons.

21 [Whereupon, the witness returns to the witness
22 stand]

23 Q. Mr. Gibbons, I want to show you what has been marked
24 as State's exhibit 17-H. Would you take a look at that
25 and tell us if you can identify that?

1 [Whereupon, the witness is show photograph]
2 A. Yes. It's my El Camino.
3 Q. What year Chevrolet is that?
4 A. '87.
5 Q. And have you had it for quite some time?
6 A. Yes, sir.
7 Q. And is that picture can you tell from where -- look
8 at the surrounding areas. Where is that location of that
9 El Camino?
10 A. That's in front of my store. Cross in front of the
11 hospital and Mill Street.
12 Q. You said it was white. This is the condition it was
13 in after it was recovered?
14 A. Yes, sir.
15 Q. All right, sir.
16 MR. FINNEY: Any objection? We would like to
17 publish exhibit 17-H a picture of the El Camino.
18 THE COURT: Any objection from the defense?
19 MR. DEVOE: No objections.
20 THE COURT: It's admitted without objection.
21 [Whereupon, State's exhibit number 17-H is entered
22 into evidence by the court]
23 Q. [Mr. Finney] So Mr. Gibbons that's a picture of
24 your El Camino. It's a two-door Chevrolet automobile?
25 A. Yes, sir.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 3 (of 5) - May 16, 2012

- 1 Q. And it has the pickup truck back on it?
- 2 A. That's right.
- 3 Q. Now you say you've had this vehicle for a long time.
- 4 Let me ask you this. When you bought the car how much
- 5 did you pay for it?
- 6 A. More than 5,500 I think.
- 7 Q. And how long had you had it when this robbery took
- 8 place in May of 2010?
- 9 A. Probably 12 years.
- 10 Q. All right, sir. And had you done anything to it to
- 11 change it or modify it during the time you owned it?
- 12 A. Oh yes, I painted it and put the rims and tires on
- 13 it, put a new motor in it and a new transmission in it.
- 14 I probably spent 5,000 to 6,000 dollars.
- 15 Q. So you paid 5,500 I believe you said for it and you
- 16 spent over 5,000 dollars customizing it?
- 17 A. Yes, sir.
- 18 Q. What would you say the value of it was on the day
- 19 you got robbed?
- 20 A. Probably 6,500.
- 21 Q. All right. Are you in the car business?
- 22 A. Yes, sir.
- 23 Q. Do you from time to time sell cars, trade cars?
- 24 A. Oh, yes.
- 25 Q. Tell the ladies and gentlemen how many El Caminos do

1 you own?

2 A. Eight.

3 Q. You own eight of them? You bought all eight of
4 them? Sometimes you sell them?

5 A. Yes, sir.

6 Q. All right. Is it a car that is readily available
7 on the market? Do they still make them?

8 A. No, sir.

9 Q. What was the last year they did make them?

10 A. '87.

11 Q. And that's the model of this car?

12 A. Yes, sir.

13 MR. FINNEY: Your Honor, may it please I would like
14 to move into evidence the exhibits that we have shown
15 thus far during Mr. Gibbons testimony.

16 THE COURT: I'll call them out once they have been
17 reviewed by defense counsel.

18 [Whereupon, counsel reviews the exhibits]

19 MR. FINNEY: Without objection, Your Honor. This
20 is State's exhibits 3-H, 3-Q, 3-I, 3-K, 3-J, 3-P, and
21 3-E.

22 THE COURT: That's without objection from counsel
23 for the defendants. All right. They are in without
24 objection.

25 [Whereupon, State's exhibit numbers 3-H, 3-Q, 3-I,

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 3 (of 5) - May 16, 2012

1 3-K, 3-J, 3-P, and 3-E are entered into evidence by the
2 court]

3 Q. [Mr. Finney] Mr. Gibbons, you said that one of the
4 gentlemen that robbed you that morning made a statement
5 to the other fellows that were there about a gun?

6 A. He didn't talk about the gun. He just asked are we
7 going to shoot him.

8 Q. All right, sir. You heard that statement?

9 A. Yes, sir.

10 Q. And then later on you heard another statement by one
11 of the gentlemen about Slick, we know you got money

12 A. Yes, sir.

13 Q. And they asked for more money?

14 A. Asked me if I had anymore or did I have any in the
15 house and I said no.

16 Q. Mr. Gibbons, after your wife got to you and got you
17 settled down did the police and the emergency vehicles
18 ambulance arrive at your house?

19 A. Yes, sir.

20 Q. All right. And to your knowledge when you left
21 your house going to the hospital were you still wearing
22 the tape that had been placed around you?

23 A. Yes, sir.

24 Q. You didn't take it off and your wife didn't take it
25 off?

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 3 (of 5) - May 16, 2012

1 A. No, sir.

2 Q. Once you were taken to Clarendon Memorial Hospital
3 were you treated there?

4 A. No. Then they took me by helicopter to Columbia.

5 Q. And once you got to Columbia by the helicopter you
6 were put in the hospital over there?

7 A. Yes, sir.

8 Q. Were you in intensive care?

9 A. Yes, sir.

10 Q. And were you there for more than a week?

11 A. A week and more. When we left there and went to a
12 Rehab in Sumter.

13 Q. The hospital released you in Columbia you went to
14 the Rehab Center in Sumter?

15 A. Sumter, yes sir.

16 Q. You stayed there for how long?

17 A. A week.

18 Q. All right. And after that you had doctor's
19 appointments and were taking medication?

20 A. Yes, sir.

21 Q. And you say you still have lingering injuries now
22 from that attack?

23 A. Yes, sir.

24 MR. FINNEY: Beg the court's indulgence.

25 Q. [Mr. Finney] Just a few more questions, sir. We

1 have a sketch that's been marked as State's exhibit
2 number 9. Can you tell us if you recognize what that
3 diagram shows?

4 [Whereupon, the witness is shown diagram]

5 A. Yes, sir. That's the diagram of the inside of my
6 carport.

7 Q. All right, sir. And do you recognize that it is
8 showing the house door and the steps over in the corner
9 on the right hand side of State's Exhibit number 9?

10 A. This is coming out of the foyer going down to the
11 garage area.

12 Q. All right. And it's a two car garage?

13 A. Yes.

14 Q. And usually your wife's car is closest to the steps?

15 A. Yes, sir.

16 Q. All right. There is a closet door over here
17 [indicates].

18 A. Yes, sir.

19 Q. Is it storage area?

20 A. Storage area.

21 Q. And would you tell the ladies and gentlemen of the
22 jury where the attack on you took place on this sketch
23 number 9?

24 A. It was between the bottom of steps [indicates] and
25 the side of her car, which I handled when I was down kind

1 of in front of these doors [indicates] down in the floor.

2 Q. And the first time you saw or heard any noise of
3 other people being in the garage where did you see them
4 coming from?

5 A. The storage room right there [indicates].

6 Q. All right. At the time there was only one car in
7 the garage? There wasn't another car in the garage at
8 the time?

9 A. No.

10 Q. You have two garage doors?

11 A. Yes, sir.

12 Q. Both of them were down?

13 A. Yes, sir.

14 Q. And you had an exit door over here [indicates].

15 A. Yes, sir.

16 Q. Does this sketch represent very reasonably of what
17 was going on in your garage that morning?

18 A. Exactly.

19 Q. Can you give us an estimation of how far it was from
20 the closet door over to the steps?

21 A. Well, I'd say approximately 12 feet from the door to
22 the steps.

23 Q. All right. And the gentlemen that came out of the
24 closet door that morning caught you by surprise. They
25 didn't make any noise, they didn't say anything, you

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 3 (of 5) - May 16, 2012

1 didn't hear them coming until they were on you?

2 A. That's right.

3 MR. FINNEY: We move State's exhibit number 9 into
4 evidence.

5 MR. KNOBELOCH: No objection.

6 THE COURT: In without objection.

7 [Whereupon, State's exhibit number 9 is admitted
8 into evidence by the court]

9 Q. [Mr. Finney] Mr. Gibbons, where did this attack
10 occur?

11 A. In my home at 1251 Country Club Circle.

12 Q. Is that in Clarendon County?

13 A. Yes, sir.

14 Q. All right. Based on the time that you got up that
15 morning, that Saturday morning, was it dark when you got
16 up that morning?

17 A. No, sir. Not completely dark. This time of year
18 around 6:30 is pretty much daylight.

19 Q. All right. And do you know whether or not there
20 were -- do you have any idea if these people entered your
21 garage at night?

22 A. I'm not sure. I don't have any reason to know that.
23 But I know they were there when I got there.

24 Q. They were already there when you came out the house?

25 A. Yes, sir.

1 Q. And you hadn't heard anything, any disturbance
2 otherwise?

3 A. No, sir.

4 Q. All right. Did you have any occasion to believe
5 that these people were armed at the time that they were
6 committing this robbery?

7 A. Well, other than what I saw when they first come out
8 -- when I first looked around -- when I heard them coming
9 I looked around and something looked like a pistol in the
10 fellow at first in his hand.

11 Q. And he was the first one to get to you?

12 A. Yes.

13 Q. Mr. Gibbons just so we'll have this for the jury to
14 watch later on I would like to put these other pictures
15 into evidence.

16 And I'll need you to come down and identify these
17 pictures as we go through them so we can put them into
18 evidence.

19 [Whereupon, the witness steps down from the witness
20 stand]

21 THE COURT: Let him identify them before you
22 publish them.

23 Q. [Mr. Finney] All right. Would you look at these
24 photographs and tell me do they represent the garage area
25 of your house as it was on May the 15th 2010.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 3 (of 5) - May 16, 2012

1 [Whereupon, the witness is reviews photos]
2 A. All of them do.
3 Q. All right.
4 MR. FINNEY: We would move these color photographs
5 in.
6 THE COURT: Give the exhibit number.
7 MR. FINNEY: Exhibits 3-F, 3-R, 3-C, 3-D, 3-O, 3-G,
8 3-L, 3-A, 3-N, 3-M, 3-D, 3-S, 3-T, and 3-B.
9 I have 3-B as in boy, and then 3-S, and then 3-T,
10 and then 3-V as in Victor.
11 THE COURT: What sayeth the defense?
12 MR. DEVOE: I have no objections.
13 MR. KNOBELOCH: No objection.
14 THE COURT: All right. They are all in without
15 objection.
16 [Whereupon, State's exhibit numbers 3-F, 3-R, 3-C,
17 3-D, 3-O, 3-G, 3-L, 3-A, 3-N, 3-M, 3-D, 3-S, 3-T, and 3-B
18 are admitted into evidence by the court]
19 Q. [Mr. Finney] Mr. Gibbons, if you would get back on
20 the stand I'm going to ask you to answer any questions.
21 [Whereupon, the witness returns to the witness
22 stand]
23 Q. [Mr. Finney] Answer any questions defense may have.
24 MR. CORBETT: Your Honor, may we approach just
25 briefly?

1 [Whereupon the jury re-enters the courtroom at 11:51
2 a.m.]

3 MR. FINNEY: If it pleases the court Your Honor, we
4 recall Mr. Gibbons to ask him a few more questions
5 regarding evidence.

6 EDWARD GIBBONS,
7 Having been previously duly sworn,
8 Testified as follows:

9 CONTINUED DIRECT EXAMINATION

10 BY MR. FINNEY:

11 Q. Mr. Gibbons, that afternoon -- that morning when you
12 were put in the ambulance were you wearing the clothes
13 you were going to wear to work?

14 A. Yes, sir.

15 Q. And do you remember what you had on that morning?

16 A. I'm not sure ---

17 Q. --- I'm going to show you what's been marked as
18 State's exhibit number 4.

19 [Whereupon, the witness is shown exhibit]

20 Q. And do you recognize these men's pants?

21 A. Yes sir, they got my name on them.

22 Q. All right. On the laundry tag?

23 A. Yes, sir.

24 Q. S.G?

25 A. Yes, sir.

1 Q. All right. And those are you khaki pants that you
2 would have had on that morning?

3 A. Yes, sir.

4 Q. Now the pants seem to have been cut up. Were they
5 cut up by the emergency technicians when you were taken
6 into the ambulance?

7 A. Yes, sir.

8 Q. All right. You didn't take them off yourself?

9 A. No, sir.

10 Q. All right. And also in State's exhibit number 4
11 was the shirt. You recognize this white print shirt?

12 [Whereupon, the witness is shown exhibit]

13 A. Yes, sir.

14 Q. And is that the shirt that you had on when you were
15 attacked that morning?

16 A. It is.

17 Q. It's also been cut up because of the emergency
18 medical technicians?

19 A. Yes, sir.

20 Q. All right. I want to ask you if you would look at
21 what is entered as State's exhibit number 5?

22 [Whereupon, the witness is shown exhibit]

23 Q. Tell us if you know what those are?

24 A. Those are my shoes.

25 Q. These are the shoes that you were trying to put on

1 that morning on the steps?
2 A. Yes, sir.
3 Q. All right. And the shoes were taken into evidence.
4 Did you have the shoes on when you went to the hospital?
5 A. I'm not real sure.
6 Q. All right. Very good. Also in State's exhibit
7 number 5 is a men's one sock?
8 A. Yes, sir.
9 Q. That look like yours?
10 A. Yes, sir.
11 Q. And what about this exhibit here.
12 [Whereupon, the witness is shown exhibit]
13 Q. Can you identify that for the jury?
14 A. Yes, sir. Those are my -- were my glasses.
15 Q. These are the eyeglasses you had on at the time?
16 A. Yes, sir.
17 Q. And also in State's exhibit number 5 was a United
18 States quarter and two ink pens?
19 A. Yes, sir.
20 Q. Do they look like yours?
21 A. Yes, sir.
22 Q. Did you wear glasses back during that time regular?
23 A. Yes sir, all the time.
24 Q. All right. Now I want to let you look at State's
25 exhibit number 6.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 3 (of 5) - May 16, 2012

1 [Whereupon, the witness is shown exhibit]

2 Q. Tell the jury if you can identify these two items
3 that are in that bag?

4 A. Yes, sir. That's my old ---

5 Q. --- speak up a little bit, sir.

6 A. I said yes, this is the tape measure I usually tote
7 in the pocket...

8 Q. You had a handkerchief in your pocket as well?

9 A. Yes, sir.

10 Q. All right. State's exhibit number 7 can you tell
11 the jury whether or not you can identify this item?

12 [Whereupon, the witness is shown exhibit]

13 A. Yes. That's a handkerchief of mine that I had in my
14 pocket.

15 Q. All right. State's exhibit number 8?

16 [Whereupon, the witness is shown exhibit]

17 A. Yes, sir. That's a -- knife that I usually tote it
18 in my pocket.

19 Q. Was it in your pocket that morning?

20 A. It was.

21 Q. All right. State's exhibit number 11 I'd ask you
22 to look at this item and tell the ladies and gentlemen
23 whether you can identify this?

24 [Whereupon, the witness is shown exhibit]

25 A. Yes, sir. That's my wallet that I had that morning.

1 Q. All right. Now this wallet as it appears today is
2 empty. Did you receive the content of the wallet back
3 from the police later on?
4 A. I did.
5 Q. And the wallet was taken into evidence?
6 A. Yes, sir.
7 Q. This is the wallet that you had that morning?
8 A. It is.
9 Q. Now inside that wallet did you have any -- you
10 testified you had money.
11 A. Yes, sir.
12 Q. Did you have anything else of value in the wallet?
13 A. No, just credit cards and driving license and stuff
14 like that.
15 Q. Do you remember there being any personal checks in
16 the wallet?
17 A. They would have -- you talking about...
18 Q. Checks made out to you?
19 A. Yes, sir.
20 Q. All right. I want to show you what has been marked
21 as State's exhibit number 15 and ask if you can identify
22 this?
23 [Whereupon, witness is shown exhibit]
24 A. Yes, sir. That's one...
25 Q. Is that a check made out to you?

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 3 (of 5) - May 16, 2012

1 A. Yes, sir.

2 Q. One of your customers gave you that check?

3 A. Exactly.

4 Q. It was in your wallet?

5 A. Yes, sir.

6 Q. All right. And is that the same check Mr. Gibbons
7 that is identified in the color photograph of the items
8 on your garage floor exhibit number 3-N as in Nancy? Do
9 you see that check in that photograph?

10 [Whereupon, the witness is shown photo]

11 A. Yes, sir. That's it right there [indicates].

12 Q. And is it on the garage floor.

13 A. Yes, it is.

14 Q. All right. Referring back to exhibit number 6 I
15 showed you a minute ago that exhibit number 6 had a
16 handkerchief in it and you identified the handkerchief?

17 A. Yes, sir.

18 Q. You also identified...

19 A. The tape.

20 Q. The tape measure?

21 A. Yes, sir.

22 Q. In the bottom of the bag there was also one more
23 item. Do you know what that is?

24 A. That's part of my glasses.

25 Q. All right. Is that part of the lens that came out

1 of the glasses?

2 A. Yes ---

3 Q. --- that were in exhibit number 5?

4 A. Yes, sir.

5 Q. This is the matching other lens that comes out of
6 those set of glasses?

7 A. Yes, sir.

8 Q. And you didn't do any of the collection on these
9 items is that correct? You were on your way to Columbia
10 to the intensive care?

11 A. Yes, sir.

12 Q. All right. But those items all belong to you that
13 we've just gone over.

14 A. They do.

15 Q. All right. Thank you, Mr. Gibbons. Answer any
16 questions the other side may have.

17 MR. KNOBELOCH: May it please the court?

18 THE COURT: Yes, sir.

19 CROSS-EXAMINATION

20 BY MR. KNOBELOCH:

21 Q. Mr. Gibbons, you may have heard in opening statement
22 certainly you were the victim of a violent crime and
23 we're very sorry for what you and your family have gone
24 through. We're not denying that today.

25 But I do need to cross-examine you and ask some

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 3 (of 5) - May 16, 2012

1 questions about the facts of what happened that night.
2 You -- when you -- you had testified that you looked out
3 the side door at the front of the garage and could see
4 your El Camino?
5 A. Yes, sir.
6 Q. Could you see it clearly?
7 A. Not the whole El Camino. It was parked right cross-
8 ways by the door; the entrance door which is only about
9 three foot wide. I could see a little.
10 Q. But the part that you could see you could see
11 clearly?
12 A. Yes, sir.
13 Q. There was enough light for you to see it?
14 A. Yes, sir.
15 Q. It was daylight outside?
16 A. Yes, sir.
17 Q. And you said you saw something that may have been a
18 pistol but you never saw a pistol, is that correct?
19 A. That's correct.
20 Q. You also testified that there was a struggle. You
21 were fending off the three assailants. During that time
22 they never pointed a pistol at you to get you to quit
23 struggling against them?
24 A. I don't remember them doing that. They were just
25 beating me and kicking me.

1 Q. But they never pointed a gun at you and said be
2 still, quit struggling?
3 A. No, sir.
4 Q. Did your wife have jewelry?
5 A. She does.
6 Q. Is it valuable?
7 A. To her I'm sure. To me I don't know.
8 Q. Does she keep it in the house?
9 A. Yes, sir.
10 Q. Does she have silverware?
11 A. Yes, sir.
12 Q. Does she keep that in the house?
13 A. Yes, sir.
14 Q. Do you have T.V.'s in the house?
15 A. Yes, sir.
16 Q. Do you have any shotguns, rifles; anything like that
17 in the house?
18 A. Not shotguns or rifles, no sir.
19 Q. The assailants never attempted to enter your house?
20 A. No, sir.
21 Q. They stayed in the garage?
22 A. Yes, sir.
23 Q. Did you give a statement to investigators from the
24 Sheriff's Department?
25 A. Yes, sir.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 3 (of 5) - May 16, 2012

1 Q. On the -- this incident took place on May 15. On
2 May 17 did you tell Officer Clark that as you were at the
3 back door of your garage suspect number 1 approached you
4 and said give me your money. You began to struggle and
5 then later two more suspects came from the adjacent -- I
6 think you called it the golf cart room.

7 A. No, sir. They all came at the same time.

8 Q. Is -- do you know why Investigator Clark would have
9 put in his notes that you said that one man approached
10 you and said give me your money. And then after you
11 struggled with him two more came from the...

12 A. I don't think ---

13 MR. FINNEY: --- objection to the question, Your
14 Honor.

15 THE COURT: Okay.

16 MR. KNOBELOCH: It's a statement against interest.

17 MR. FINNEY: It's not a statement against interest,
18 Your Honor.

19 THE COURT: I'll sustain the objection -- to the
20 form of the question. You'll have to ask it a different
21 way.

22 Q. [Mr. Knobloch] Did you describe the three black
23 males to Officer Clark as being between 19 and 20 years
24 of age and being 5'8 to 5'9 in height?

25 A. I wouldn't have any way of knowing how old they

1 were. Again, I didn't see their faces and I wouldn't
2 have had -- I don't recall saying that but I wouldn't
3 have had any way of knowing that by just the size of
4 them. I wouldn't have had any way of knowing how old
5 they were. And don't recall having said anything like
6 that.

7 Q. Okay. Well not age, what about height? Do you
8 recall giving that description to Officer Clark?

9 A. Yes, sir. I told him two of them were about the same
10 size and there was one that was bigger and taller.

11 MR. KNOBELOCH: No further questions, Your Honor.

12 MR. DEVOE: May it please the court.

13 THE COURT: Yes, sir.

14 CROSS-EXAMINATION

15 BY MR. DEVOE:

16 Q. Good morning. You mentioned your car the El Camino
17 being an '87 -- '68?

18 A. '87.

19 Q. '87, I'm sorry. How many miles does that car has on
20 it?

21 A. The speedometer never worked -- maxed.

22 Q. It's maxed over it?

23 A. Many times.

24 Q. Would you say 200,000 miles would be about right?

25 A. Probably more than that.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 3 (of 5) - May 16, 2012

1 Q. 300,000? How many miles have you put on it since
2 you put a new motor in it?
3 A. Probably 50,000.
4 Q. You didn't get it back to zero when you put the new
5 motor in?
6 A. No, sir...
7 Q. And you got the car 12 years ago?
8 A. I'm not real sure but I've had it a long time now...
9 Q. You put 5,000 miles a year on it; that's it?
10 A. 5,000 miles a year? No, sir.
11 Q. You said 50,000 miles since the new motor?
12 A. The new motor has just been -- probably 9 months
13 ago.
14 Q. Oh, that's a lot of miles.
15 A. -- motor is in it.
16 Q. Looking at the pictures and your testimony I think
17 you said that the garage doors were down on the garage at
18 the time you were attacked?
19 A. Yes, sir.
20 Q. And that one door was open?
21 A. The entrance door in the garage.
22 Q. Right. And you were in the garage pretty much as I
23 understand between the wall of the garage as you come
24 down your stairs from the house along the left of your
25 wife's car.

1 A. I didn't come down the stairs. They threw me down
2 the stairs.
3 Q. But I'm talking about later on when you were down
4 there looking out.
5 A. Yes, sir.
6 Q. It was between the wall and your wife's car?
7 A. Yes, sir.
8 Q. And that angle it was an oblique angle across the
9 doorway?
10 A. Yes, sir.
11 Q. And so you also testified the El Camino was parked
12 outside that same door but at an angle to it.
13 A. Straight across from the door.
14 Q. Straight across from blocking the doors almost.
15 A. Blocking the doors yes, sir.
16 Q. Were the drivers parked with the front of the car at
17 the door?
18 A. What I do when I come down the driveway when I'm
19 coming home is I turn the El Camino and I stop -- the
20 door of my El Camino partial to the door that goes in. I
21 want the door -- walk in the door of the garage.
22 Q. Which way is the tail of the car pointing?
23 A. Back.
24 Q. Back which way?
25 A. Towards the driveway.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 3 (of 5) - May 16, 2012

1 Q. The driveway circles around the house and comes up
2 from the back.

3 A. Yes, sir.

4 Q. And you're going -- you're coming to the garage at a
5 90 degree angle to the garage. Do you keep on going to
6 the left a little bit?

7 A. No, it's crossways by the entrance door. You're
8 going to have to drive your car up and get out and walk
9 right into the door and walk around the car and just walk
10 right into ---

11 Q. --- I can only imagine a European car with right
12 hand drive that does that unless you get out of your car
13 and walk around the front of the El Camino to get to the
14 door.

15 A. Can you ask that question again?

16 Q. If you are coming down and going around to the
17 garage and swinging around by the garage and the front of
18 the car is at the door...

19 A. Facing toward the house the door is right at the
20 door of the entrance. When I open the door I just step
21 out and walk in the door ---

22 Q. --- so you're perpendicular to the house?

23 A. That's right.

24 Q. So you're not blocking any of the garage doors?

25 A. Yes, sir.

1 Q. You are blocking it sort of?
2 A. Yes --
3 Q. So you get out and go right in; no problem. And
4 when you're inside the garage and look out the door how
5 much of the El Camino can you see?
6 A. You can see the door and maybe a part right behind
7 it.
8 Q. Just the door. I think you testified that you saw
9 one of the three defendants jump into the back of the
10 truck. So how did you do that exactly? How could you
11 see it?
12 A. When you look out the door you can see a part of the
13 back of the El Camino.
14 Q. You just said ---
15 A. --- I'm at the door you can see behind the door.
16 You're looking at the open part of the body when you look
17 behind the door. I couldn't see the door behind me
18 though I couldn't see the complete back of it but I could
19 see enough to see the back of the El Camino.
20 Q. I'm going to use this as a prop. But if you see --
21 if you're parked at the garage door this way...
22 A. That's the door [indicates] to get into the garage.
23 That's the entrance door [indicates] the El Camino was
24 parked this way [indicates] and I was over here
25 [indicates] and looking through there you can see the

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 3 (of 5) - May 16, 2012

1 door and part of the back of the El Camino right through
2 that door.

3 Q. So the driveway continues over here [indicates]?

4 A. Yes, sir.

5 Q. The door -- your -- from the ground and the angle
6 would come this way into the garage.

7 A. It's comes -- the driveway -- there is grass between
8 the house and the driveway. The driveway comes down here
9 [indicates] comes around and all of this [indicates] is
10 paved back here by the basketball court right there
11 [indicates].

12 The El Camino was pulled up right by the door. I
13 get out the El Camino and walk in the door. The whole
14 backyard is paved concrete.

15 Q. In this picture there is your house [indicates].
16 This is your house.

17 A. You can see my house right here [indicates].

18 Q. This is the driveway coming down [indicates].

19 A. The driveway coming down.

20 Q. So you could swing around.

21 A. Well all of this [indicates] is concrete all the way
22 over there [indicates].

23 Q. Except at the -- I could make a mark here
24 [indicates] at the very top right in here [indicates].

25 A. That's correct.

1 Q. Comes out like that?

2 A. No, it doesn't come out. It goes straight cross
3 there like that [indicates]. And the grass is on that
4 side and you come through that gate right there
5 [indicates] and all of this is concrete right here
6 [indicates]. And I come through that gate right there
7 [indicates] and swing back to the left and park behind
8 the garage.

9 Q. And you're saying you parked here [indicates] on
10 this angle just like that [indicates]?

11 A. Just like that. That's exactly right. And I pulled
12 up here [indicates].

13 Q. And the door of your car...

14 A. Is right at the door when I shut --

15 Q. So you get right out.

16 A. That's right.

17 Q. And you're saying you can see part of the back at
18 that angle you're talking about?

19 A. Yes, sir.

20 Q. I can mark this up as an exhibit so this is what
21 we're talking about right here [indicates].

22 A. Exactly.

23 Q. But you're saying that's no grass right there
24 [indicates]?

25 A. That's correct. Look down the side and it don't go

1 past the house; the grass stops right there [indicates]
2 and there is a brick fence there [indicates], there's an
3 iron gate there [indicates], a brick fence all the way
4 across here [indicates]. I drive in here and turn and
5 park right there [indicates] and get out of the truck and
6 open that door.

7 Q. Do you have to back and forth to make that turn or
8 you can do it in one angle?

9 A. No, sir. Just the one --

10 Q. And you're saying that your angle from the beyond
11 your wife's car in the garage you can see enough of that
12 car to see the back of the car?

13 A. You can see half of it but not all of it. You can't
14 see ---

15 Q. --- so if somebody got in the very back of the car
16 you couldn't see them could you?

17 A. The very back ---

18 Q. --- a truck driver -- the bed?

19 A. If they were in the very back of it?

20 Q. Yes.

21 A. I don't understand exactly what you're saying.

22 Q. If somebody got ---

23 A. --- you can't see the whole car ---

24 Q. --- in the very very back of the El Camino ---

25 A. --- but you can see the door and about half of the

1 back part of it. You couldn't see the whole car, the
2 hood you couldn't see.

3 Q. So if somebody got in the truck in the tailgate you
4 couldn't see it could you?

5 A. The tailgate? I couldn't see the tail gate, no.

6 Q. Okay. I think you also -- or talked to
7 Investigator Clark and Lieutenant Ham at the hospital two
8 days after this all happened, do you remember that?

9 A. I did, yes.

10 Q. And didn't you describe to them the height and the
11 age of these -- of the suspects?

12 A. No, sir. I told the other gentleman I wouldn't have
13 had no way of knowing how old they were.

14 Q. What?

15 A. I said I told him I said there were two of them
16 about the same size and one that was taller and bigger.

17 Q. So if they said quote the suspects are described as
18 three black males between 19 and 20 of age 5'8 to 5'9 in
19 height ---

20 MR. FINNEY: --- objection, Your Honor ---

21 A. --- I never told them ---

22 Q. --- if you're saying ---

23 THE COURT: --- y'all got to quit talking.

24 MR. DEVOE: He was saying ---

25 THE COURT: --- he objected and I sustained the

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 3 (of 5) - May 16, 2012

1 objection. You've got to ask a different question.

2 Q. [Mr. Devoe] And how is it you could tell the
3 difference in height of the third one to the other two?

4 A. Well, when I was down there putting on my shoes and
5 then I saw them right before they got to me. I mean the
6 one that was in the rear was bigger and taller and the
7 two front ones were approximately the same size.

8 Q. So they didn't all come at once? One came and then
9 the others came?

10 A. No, sir. They all came at one time.

11 Q. At one time?

12 A. Yes, sir.

13 Q. And you were down trying to put your shoes on?

14 A. I looked up and I seen them when they came through
15 the door and I seen them I looked up and they were coming
16 around that cast iron hand rail is they had to come
17 around in front there.

18 Q. You couldn't get up and get back in the house in
19 time?

20 A. No, sir.

21 Q. Isn't it like 20 feet from that door to the...

22 A. 15 -- 12 -- 10 or 12 feet.

23 Q. How wide is your garage?

24 A. What?

25 Q. How wide is your garage?

1 A. I'm not sure. It's a double car garage.
2 Q. And you're saying they came out of this closet door
3 right here [indicates] right?
4 A. That's right. That's exactly right.
5 Q. And this is a scale I presume.
6 A. A scale, that's exactly right.
7 Q. All the way over to here [indicates] and you're at
8 the top of the steps. There is an iron railing there.
9 A. That's right.
10 Q. It's four steps. You saw them and couldn't get back
11 in the house?
12 A. I mean they ran out of that garage. I didn't have
13 time to do anything. You imagine how much time it would
14 take them running to get from that 10 feet or 12 feet. A
15 second and a half; I couldn't do anything.
16 Q. -- running for the first time. It looks like to me
17 that this is a scale and a car length is this wall
18 [indicates] about 20 feet ---
19 MR. FINNEY: --- objection ---
20 THE COURT: --- sustained ---
21 A. --- you're looking at it wrong there. The car is
22 coming this way [indicates].
23 Q. From this way?
24 A. That's right.
25 Q. The car is wider than --

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 3 (of 5) - May 16, 2012

- 1 A. I'm not sure.
- 2 Q. And you're saying this is a scale?
- 3 A. It's a scale, yes sir. It don't have no
4 measurements on it but it's approximately 10 to 12 feet
5 from this door [indicates] to that step.
- 6 Q. That's a big variation from 10 to 12. Is it closer
7 to 20 ---
- 8 A. --- it's 2 feet. That's 2 feet. It's 10 or 12 not
9 10 or 20. It's 10 or 12; that's two feet ---
- 10 Q. --- so that closet door -- if you drive a second car
11 in, not your wife's car but the other car in, wouldn't
12 that face that closet door?
- 13 A. It would. It that part -- there's not a car in that
14 part.
- 15 Q. I'm just trying to figure out the difference of
16 length and widths. And are there -- a car stop is in
17 your garage?
- 18 A. Yes, sir.
- 19 Q. So they don't crash...
- 20 A. Right.
- 21 Q. And there is a few feet beyond that too. When the
22 car stopper is here maybe about 5 feet beyond that before
23 the wall is there?
- 24 A. Yes, sir.
- 25 Q. Now you had money in a money clip also?

1 A. Yes, sir.

2 Q. So they got money from you in a money clip and then
3 also from your wallet?

4 A. Yes, sir.

5 Q. And I think you were saying that it was daylight
6 when this all happened?

7 A. Yes, sir.

8 Q. It was around 6:30 when you were out there?

9 A. I'm going to say somewhere around 6:15. Between 6
10 and 6:30; I'd say 6:10 or 6:15.

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

12 THE COURT: Anything further, Mr. Solicitor?

13 REDIRECT EXAMINATION

14 BY MR. FINNEY:

15 Q. Mr. Gibbons, let me just ask you a couple of
16 questions. I'll show you State's exhibit number 17-H.
17 That's the picture of the El Camino that you owned and
18 was in your driveway at the time?

19 [Whereupon, the witness is shown photo]

20 A. It is, yes sir.

21 Q. Now when you were telling Mr. Devoe that you could
22 see the driver's door of the El Camino you could also see
23 part of the back of the El Camino?

24 A. Yes, about -- probably half of the body.

25 Q. All right. And in -- and you were standing on the

1 steps of your garage.
2 A. Yes, sir.
3 Q. And from the garage inside the garage looking at
4 State's 3-H.
5 A. Yes, sir.
6 Q. Is that about the same amount of...
7 A. Yes, sir.
8 Q. Was the El Camino parked closer to the building --
9 to the door than that police car is in that picture?
10 A. No, sir. But it was parked this way [indicates].
11 Q. All right. Parked more closer to the house?
12 A. Yes, sir.
13 Q. And you could see the driver's door of the El
14 Camino?
15 A. Driver's door and about half of the back ---
16 Q. --- about half of the back?
17 A. Yes, sir.
18 Q. What we call the bed of the El Camino?
19 A. That's right.
20 Q. And you did see a man get in the back of the El
21 Camino?
22 A. When they left the first time.
23 Q. Somebody got in the back?
24 A. In the back, yes.
25 Q. Did that man get out of the El Camino?

1 A. He got out.

2 Q. And he came back and hit you again?

3 A. Yes, sir.

4 Q. And -- although after that you don't know what
5 happened.

6 A. No.

7 Q. Would there have been room for him to get in to the
8 main part of the car?

9 A. Not really. It's a two seater car.

10 Q. All right. Thank you, Mr. Gibbons, nothing
11 further.

12 THE COURT: You can step down.

13 [Whereupon, the witness is excused and exits the
14 witness stand]

15 MR. FINNEY: I have a short witness, Your Honor.

16 THE COURT: Okay.

17 MR. FINNEY: I call Ms. Kay Gibbons.

18 [Whereupon, Ms. Gibbons comes forward]

19 CLERK OF COURT: Raise your right hand and place
20 your left hand on the Bible for me and repeat your name
21 please?

22 MS. GIBBONS: Kay Gibbons.

23 [Whereupon, the witness is duly sworn by the Clerk
24 of Court as follows: do you solemnly swear the testimony
25 you are about to give will be the truth and nothing but

1 the truth so help you God]

2 MS. GIBBONS: I do.

3 [Whereupon, Ms. Gibbons takes the witness stand]

4 - - - - -

5 KAY GIBBONS,

6 Having been first duly sworn,

7 Was examined and testified as follows:

8 DIRECT EXAMINATION

9 BY MR. FINNEY:

10 Q. Good morning.

11 A. Good morning.

12 Q. Tell us your name please?

13 A. Kay Gibbons.

14 Q. And Ms. Gibbons, you're the wife of Mr. Gibbons that

15 just testified?

16 A. I am.

17 Q. You live at Lane in Clarendon County?

18 A. I do.

19 Q. All right. Are you employed? Do you have a

20 career?

21 A. Yes, I do. I'm self-employed. I work with my

22 husband at Clarendon Auto Parts.

23 Q. And what do you do there?

24 A. I'm the office manager; do a little bit of

25 everything.

1 Q. All right. Have you worked there a long time you
2 and your husband together?

3 A. I have; we have.

4 Q. All right. On this particular day that we are
5 talking about back in May of 2010 did you have the
6 occasion to be home with your husband that Saturday
7 morning?

8 A. I was.

9 Q. Is it your practice to get up early with him on
10 Saturday morning when he leaves for work?

11 A. No sir, it's not.

12 Q. All right. Were you out of the bed at the time he
13 left to go to work that morning?

14 A. No, sir.

15 Q. All right. What do you remember happening that
16 called your attention to getting out of bed that Saturday
17 morning?

18 A. I heard the doorbell and I jumped up and went to the
19 door and when I opened the door and saw him it didn't
20 take long to know -- you know realize what had happened.

21 Q. Yes, ma'am. Tell the ladies and gentlemen just in
22 your own words what you saw and how did he appear to you
23 at that time.

24 A. Well, he was bloody. He had tape on him. He was
25 trying to stand up and really he couldn't stand up. He

1 was holding on the wrought iron rail.

2 And when I got to him -- I was trying to get him,
3 trying to get him down, you know settled down on the
4 garage so I could go in and call somebody.

5 Q. All right. I want to show you what's been marked
6 into evidence as exhibit 3-R.

7 [Whereupon, the witness is shown photo]

8 Q. Is that a picture of your car in the garage?

9 A. Yes sir, it is.

10 Q. And I believe that's a silver Mercedes?

11 A. It is.

12 Q. In that picture also was a wooden chair. Was that
13 chair kept in the garage?

14 A. It was -- it was somewhere not there. I got it...

15 Q. You went and got the chair?

16 A. I did.

17 Q. To put Mr. Edward in?

18 A. Yes, sir.

19 Q. But it wasn't at that location when you went to bed
20 Friday night?

21 A. No, it wasn't.

22 Q. Now you say you described Mr. Gibbons as being
23 bloodied and having something on this head. Tell the
24 ladies and gentlemen about that.

25 A. Well, he had tape wrapped around his head. And he

1 was -- had a lot of blood on it.

2 Q. All right. I'm going to show you what has been
3 marked as State's exhibit 3-V as in victory. Can you
4 tell me -- have you looked at that. Can you tell me
5 what's in that picture?

6 [Whereupon, the witness is shown photo]

7 A. This is the -- this is a picture of how he looked.

8 Q. All right. And is the tape on him in this picture?

9 A. Yes, sir.

10 MR. FINNEY: Permission to publish the document?

11 THE COURT: Okay. Permission granted.

12 Q. [Mr. Finney] After you got Mr. Edward in the chair
13 and got him calmed down did you do anything to remove
14 that tape from his head?

15 A. No, sir.

16 Q. All right. Who or what did you do after that? Who
17 did you call or what did you do?

18 A. I was real upset and I ran back in the house. I
19 wanted my daughter and I called her.

20 Q. All right. Tell me what your daughter does?

21 A. She's a family nurse practitioner.

22 Q. Where does she practice?

23 A. At Clarendon Memorial.

24 Q. Right here in Manning. And has she been doing that
25 kind of work a long time?

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 3 (of 5) - May 16, 2012

1 A. Yes, sir. A long time.

2 Q. What is her name?

3 A. Geena Wilson.

4 Q. All right. Did you call Ms. Wilson? Did you get
5 her on the phone?

6 A. I did.

7 Q. What did you tell her?

8 A. I told her what had happened. And she came and she
9 called 911.

10 Q. All right. Let me be clear. During the few
11 minutes that you were with Mr. Gibbons in the garage did
12 he do much talking to you or telling you what had
13 happened? Was he able to speak clearly and tell you
14 things that had happened?

15 A. He tried to tell me. He tried to talk to me.

16 Q. Were you understanding -- were you able to
17 understand much?

18 A. I could understand some that he said.

19 Q. All right. Now, did you have a conversation with
20 Geena about getting help sent to the house?

21 A. Yes sir, I did.

22 Q. And as far as you know did you receive help as a
23 result of calling Geena?

24 A. I did.

25 Q. Can you tell the ladies and gentlemen of the jury

1 who arrived first at the house?

2 A. I think the first ones to arrive was somebody with
3 law enforcement.

4 Q. You don't know if that was ambulance, or sheriff or
5 city; you're not sure?

6 A. No, I think law enforcement got to my house before
7 the ambulance did.

8 Q. All right. And do you remember making a call to
9 Ken, a fellow named Ken that works at the store?

10 A. I did.

11 Q. And did you call Ken to let him know what had
12 happened also?

13 A. I did.

14 Q. All right. He was informed then?

15 A. Yes sir, he was.

16 Q. Now based on the situation in the garage from the
17 time you found Mr. Gibbons to the time the first law
18 enforcement officer arrived other than bringing that
19 chair out there for him to sit in, did you touch
20 anything, move anything, add anything, take anything away
21 from that scene?

22 A. No, sir.

23 Q. Did you move your car?

24 A. No.

25 Q. Did you put the garage doors up?

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 3 (of 5) - May 16, 2012

1 A. No.

2 Q. All right. So if we see pictures that are in
3 evidence where the garage doors were up or the Mercedes
4 had been moved those things would have done as a result
5 of the police investigating and moving things?

6 A. Somebody other than me. I did not.

7 Q. Very good. Going back to that description you gave
8 the jury about the tape being on Mr. Gibbons head to your
9 knowledge did anybody move that tape or alter that tape
10 or try to do anything with that tape before the ambulance
11 people and the medical people got there?

12 A. No, sir.

13 Q. All right. Did you go to the hospital with Mr.
14 Gibbons?

15 A. I went to the hospital. I didn't ride -- I didn't
16 go in the ambulance.

17 Q. All right. And when you got the hospital at
18 Clarendon Memorial you stayed with your husband until the
19 decision was made to put him in the helicopter?

20 A. I did.

21 Q. And then you drove with some family members over to
22 Columbia?

23 A. I did.

24 Q. And he went in the helicopter?

25 A. That's right.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 3 (of 5) - May 16, 2012

1 Q. Thank you, Ms. Gibbons. Answer any questions these
2 lawyers have.

3 MR. KNOBELOCH: No questions from the defense.

4 MR. DEVOE: No questions, Your Honor.

5 THE COURT: Okay. Thank you, ma'am. You can step
6 down.

7 [Whereupon, the witness is excused and exits the
8 witness stand]

9 MR. FINNEY: Thank you, Your Honor. We can take a
10 lunch break...

11 THE COURT: Okay. Ladies and gentlemen, we will
12 break for lunch and I'll ask you to be back at 2 o'clock.
13 And I will remind you please do not discuss this case or
14 allow anyone to discuss it with you.

15 If you're out eating in a restaurant and someone is
16 sitting by you discussing you this case you -- you are on
17 the jury and they can't talk about it in your presence.
18 Please don't read anything, do get on the Internet. Have
19 a nice lunch and I'll see you at 2 o'clock. When you
20 come back if you'll come straight to the jury room.
21 Thank you.

22 [Whereupon, the jury exits the courtroom at 12:32
23 p.m.]

24 THE COURT: Anything before we break for lunch?
25 Anything from either side before we break for lunch?

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 3 (of 5) - May 16, 2012

1 [Whereupon, the witness is duly sworn by the Clerk
2 of Court as follows: do you solemnly swear the testimony
3 you're about to give will be the truth and nothing but
4 the truth so help you God]

5 MR. CHEEK: I do.

6 [Whereupon, the witness takes the witness stand]

7 - - - - -

8 CREIGHTON CHEEK,

9 Having been first duly sworn,

10 Was examined and testified as follows:

11 DIRECT EXAMINATION

12 BY MR. FINNEY:

13 Q. Corporal, please spell your last name.

14 A. C-H-E-E-K.

15 Q. All right. And you are a Corporal with the Manning
16 Police Department?

17 A. Yes, sir.

18 Q. How long have you been employed in that position?

19 A. With Manning for six months now.

20 Q. All right. And prior to being with Manning where
21 were you employed?

22 A. Clarendon County Sheriff's Office.

23 Q. All right. And how long were you a Sheriff's
24 Deputy?

25 A. From January of '09 until December of this year.

1 Q. All right ---
2 A. --- of last year.
3 Q. All right. And were you assigned to any particular
4 duties at the Clarendon County Deputy...
5 A. Patrol.
6 Q. Patrol officer?
7 A. Yes, sir.
8 Q. Did you cover a section or all of Clarendon County?
9 A. Well, we cover sections and each day you come into
10 work you might work a different section whenever you come
11 in.
12 Q. All right. Do you have a recollection of
13 responding to a call to Country Club Drive back in May of
14 2010?
15 A. Yes, sir.
16 Q. And as a result of your responding to that call were
17 you the first officer on the scene that morning?
18 A. There was two of us at the scene at the same time.
19 Q. And which one of you wrote the report of the call?
20 A. I did.
21 Q. All right. And what does your report reflect in
22 terms of what you got the 911 call or the dispatch call?
23 A. Around 6:40 a.m.
24 Q. 6:40 a.m.?
25 A. Yes, sir.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 3 (of 5) - May 16, 2012

1 Q. On what day?

2 A. It was the 15th of -- I'm not sure what the day is.

3 Q. The 15th of May?

4 A. Yes, sir.

5 Q. 2010?

6 A. Yes, sir.

7 Q. All right. When you arrived at Country Club what
8 can you tell the ladies and gentlemen of the jury you
9 saw?

10 A. I just from what I can remember I saw Mr. Gibbons in
11 the garage and he had duct tape wrapped around his head
12 and face area.

13 Q. All right. Did you know Mr. Gibbons before you
14 arrived there that day?

15 A. I knew of him.

16 Q. All right. And when you got to the garage area
17 could you tell that it appeared to be a crime scene?

18 A. I mean with the tape around his head, yes sir.

19 Q. All right. Can you give me any other description?
20 Did he have blood on his clothing?

21 A. I can't remember.

22 Q. All right, sir. I want to show you what's been put
23 in as State's exhibit 3-V.

24 [Whereupon, the witness is shown photo]

25 Q. Can you look at that and tell me if that fairly

1 represents how Mr. Gibbons looked that morning when you
2 got there?
3 A. Yes, sir.
4 Q. All right. And what kind of tape is that? Can you
5 tell from what you observed what kind of tape ---
6 A. --- it looked like duct tape.
7 Q. A dark colored duct tape?
8 A. Yes, sir.
9 Q. Wrapped around his head?
10 A. Yes, sir.
11 Q. All right. Did you in your arriving at the scene
12 you say you had another officer with you? Do you know
13 who that was?
14 A. Yes sir, Sergeant Micha Joseph.
15 Q. All right. As far as you know is he still with the
16 Clarendon County ---
17 A. --- no, sir.
18 Q. He's not with the Clarendon County Sheriff's
19 Department. Did you all do anything in particular to
20 give aid to Mr. Gibbons or move anything or touch
21 anything or photograph anything?
22 A. No, sir. E-M-S was there right behind us within
23 just a couple of minutes.
24 Q. All right. They were giving medical treatment?
25 A. They did and they took him from the scene. He

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 3 (of 5) - May 16, 2012

1 wasn't there long while we were there.

2 A. All right. Were you able to tell, maybe using your
3 report to refresh your memory, were there items located
4 around the inside of the garage; wallet, glasses, tape,
5 anything like that you recollect or remember?

6 A. No, sir.

7 Q. You've been working patrol for a while at this
8 point?

9 A. Yes, sir.

10 Q. Was your primary responsibility to secure the scene?

11 A. Yes, sir. On a scene like that I would secure it and
12 call investigations in.

13 Q. Now, do you request an investigator to report to the
14 scene or does dispatch do that?

15 A. Well, we would call -- depending on the scene either
16 we'll make the call or ask dispatch to call for us. But
17 one way or the other they are contacted and they respond
18 to the scene.

19 Q. All right. Let me ask you this. Does the
20 investigator call out the crime scene photographs and
21 fingerprint persons or do you do that?

22 A. The investigator does. The investigator is going to
23 take some photographs...

24 Q. Now were you on the scene when the investigator
25 arrived?

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 3 (of 5) - May 16, 2012

- 1 A. Yes, sir.
- 2 Q. Who do you remember that being?
- 3 A. I don't recall who was there. There were several of
4 them out there I believe but I don't recall which one
5 took the case.
- 6 Q. And I know you may not remember this or not but I
7 have a picture of a Manning Sheriff's car in one of our
8 exhibits. I just wondered if this might be your car,
9 State's exhibit 3-B.
- 10 [Whereupon, the witness is shown photograph]
- 11 Q. Can you look at that to refresh your memory as to
12 whether or not that is you in that picture or are
13 those...
- 14 A. That's me and Sergeant Dozier. It looks like there
15 are two patrol cars. I couldn't tell you who was in
16 which one from this view here.
- 17 Q. That is you and your ---
- 18 A. --- it looks like Sergeant Joseph and Investigator
19 Ham. I believe that's who that is.
- 20 Q. One of the investigators is in that picture?
- 21 A. Yes, sir.
- 22 Q. All right. That was taken in the morning shortly
23 after you arrived?
- 24 A. Yes, sir.
- 25 Q. Does your report reflect how long you were there

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 3 (of 5) - May 16, 2012

1 that morning?

2 A. I was there until 11:49 a.m.

3 Q. All right. And then you were released by the

4 investigator to go back to duty?

5 A. Yes, sir.

6 Q. All right. Was anything -- as far as you know

7 anybody or anything added or removed from that area while

8 you were there?

9 A. No, sir.

10 Q. Thank you, Officer. I appreciate you coming.

11 THE COURT: Any questions?

12 MR. KNOBELOCH: No questions.

13 THE COURT: Mr. Devoe?

14 MR. DEVOE: No questions, Your Honor.

15 THE COURT: Thank you, sir. You can step down.

16 [Whereupon, the witness is excused and exits the

17 witness stand]

18 THE COURT: Mr. Finney?

19 MR. FINNEY: I call Mr. Mack Eaddy.

20 MR. CORBETT: Your Honor, Officer Cheek is on duty.

21 May he be excused?

22 THE COURT: Any objection?

23 MR. KNOBELOCH: No objection.

24 MR. DEVOE: No objection.

25 THE COURT: Yes, sir.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 3 (of 5) - May 16, 2012

1 [Whereupon, Mr. Eaddy comes forward]

2 CLERK OF COURT: If you'll raise your right hand
3 and place your left hand on the Bible and repeat your
4 name, please?

5 MR. EADDY: Cecil Eaddy, Jr.

6 [Whereupon, the witness is duly sworn by the Clerk
7 of Court as follows: do you solemnly swear the testimony
8 you are able to give will be the truth and nothing but
9 the truth so help you God]

10 MR. EADDY: Yes, ma'am.

11 [Whereupon, the witness takes the witness stand]

12 - - - - -

13 CECIL EADDY,

14 Having been first duly sworn,

15 Was examined and testified as follows:

16 DIRECT EXAMINATION

17 BY MR. CORBETT:

18 Q. Mr. Eaddy, good afternoon.

19 A. Good afternoon.

20 Q. Tell us your full name please?

21 A. Cecil Eaddy, Jr.

22 Q. And Mr. Eaddy do you live here in the Manning area?

23 A. Yes.

24 Q. And how long have you lived in the Manning area?

25 A. My whole life.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 3 (of 5) - May 16, 2012

1 Q. So back in 2010 you were in this area?
2 A. Yes, sir.
3 Q. And what do you do here in the Manning area?
4 A. I farm.
5 Q. Okay. Is there a particular part of the county or
6 area that you farm in?
7 A. The south side of Manning.
8 Q. The south side of Manning, okay. Are you familiar
9 with what I would call Oak Grove Church Road?
10 A. Yes, sir.
11 Q. Okay. Do you farm in that vicinity?
12 A. Yes, sir.
13 Q. Okay. Now do you have recollection of being
14 involved in this case, which took place on May 15th of
15 2010?
16 A. Yes, sir.
17 Q. Okay. How did you become to be involved?
18 A. I found Slick's car in the road that morning when I
19 left the house.
20 Q. Now, when you say Slick's car are we talking about
21 Edward Gibbons?
22 A. Yes, sir.
23 Q. Okay. You know him as Slick?
24 A. That's right.
25 Q. Okay. You say you found his car that morning?

1 A. Yes, sir.

2 Q. Okay. Do you know about where you found his car?

3 A. Yes, sir.

4 Q. Okay. Where was that?

5 A. Right past Gary Lee's house on the right hand side
6 of the road.

7 Q. Okay. Now, I'm going to do this with you if you
8 may --

9 MR. CORBETT: Your Honor, may I have the witness
10 step down?

11 THE COURT: Yes, sir.

12 [Whereupon, the witness steps down from the witness
13 stand]

14 Q. [Mr. Corbett] Mr. Eaddy, I'm going to get you to
15 stand kind of beside here and we're going to hold this
16 map up. Now aerial maps can be a little tricky but if
17 you will take a moment to kind of get yourself acclimated
18 to this map.

19 [Whereupon, the witness views the map]

20 A. Yes, sir.

21 Q. Now just as an aside do you know where Mr. Gibbons
22 lives?

23 A. Yes, sir.

24 Q. Which area of the County does he live in?

25 A. He lives in the Country Club.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 3 (of 5) - May 16, 2012

1 Q. All right. In the Country Club.

2 A. Somewhere right down here [indicates].

3 Q. Now on this map are you able to tell where you found
4 his car?

5 A. Yes sir, pretty close. About right there
6 [indicates].

7 Q. Okay. I'm going to get you to just take my pen and
8 just make a little circle in the general area where you
9 found the car.

10 [Whereupon, the witness complies]

11 Q. Right about there [indicates]?

12 A. Yes, sir.

13 Q. All right. If you can return to the witness stand
14 for me please?

15 [Whereupon, the witness returns to the witness
16 stand]

17 MR. CORBETT: Your Honor, for the record the
18 witness was referring to State's exhibit number 2 and
19 marked it.

20 Q. [Mr. Corbett] Now Mr. Eaddy, if you would please
21 tell us about the condition of the car when you found it
22 and what struck you about it.

23 A. About the back right tire was touching the white
24 line and the nose of the car was headed next to the ditch
25 sort of. But it was pretty much in the road.

1 And the passenger door was open on the car. And I
2 slowed up by it and I knew it was Mr. Gibbons' car. So I
3 got out because I thought something might have been wrong
4 with him since the passenger door was open and the car
5 was running. I looked around and ---

6 Q. --- sir, hold up. The car was running?

7 A. Yes, sir.

8 Q. All right. So the engine was cranked?

9 A. Yes, sir.

10 Q. Okay. Continue please.

11 A. And I looked around and I hollered for him to see if
12 he was in the edge of the woods or something. Then I
13 called the store and Ken answered the phone. And I asked
14 if he was there and he said no, he wasn't there.

15 And then I told him I found the car. And he told me
16 he had just been beaten up at his house. I told him I
17 found the car. So I pulled it out of the road and
18 switched it off and took the keys out. That's when I
19 took on up there to the store.

20 Q. So you took the keys with you to the store?

21 A. Yes, sir.

22 Q. Okay. If you know do you know about how far it is
23 from where you found the car to the store?

24 A. Maybe a mile and a half.

25 Q. So do you know about what time of morning this was?

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 3 (of 5) - May 16, 2012

1 A. Roughly about twenty minutes to 7.

2 Q. Twenty minutes to 7. 6:40 a.m.?

3 A. Yes, sir.

4 Q. All right. What happened when you took the keys to
5 the store?

6 A. Ken had told me that Ms. Kay had called him and said
7 that he had been beaten up. And then a fellow that
8 worked for Mr. Gibbons, we call him Roadpack [phonetic]
9 walked in.

10 And I was going back that direction so he just said
11 he would come get the car and drive it back to the store
12 because neither one -- none of us knew what had taken
13 place. So I took Roadpack back up with me and he drove
14 the car from there back to the store.

15 Q. Now you're saying Roadpack. That's the nickname of
16 one of Mr. Gibbons' employees?

17 A. Yes, sir. That's what I've always known him as. I
18 couldn't tell you his real name.

19 Q. All right. So then he rode from the store with you
20 back to where the car was?

21 A. Yes, sir.

22 Q. Okay. What happened then?

23 A. He got in the car and turned around and rode back to
24 the store and I went on out to the farm.

25 Q. Thank you, Mr. Eaddy. That's all the questions that

1 we have for you. If you'll remain right there in case
2 these gentlemen have some questions for you.

3 MR. KNOBELOCH: No questions.

4 THE COURT: Mr. Devoe?

5 MR. DEVOE: No questions of this witness.

6 THE COURT: You may step down. Any reason he can't
7 be excused?

8 MR. CORBETT: None from the State, Your Honor.

9 THE COURT: Defense?

10 MR. KNOBELOCH: No, sir.

11 THE COURT: Thank you, Mr. Eaddy. You can be
12 excused.

13 [Whereupon, the witness is excused and exits the
14 witness stand]

15 THE COURT: Next?

16 [Whereupon, an individual come forward]

17 CLERK OF COURT: If you could raise your right hand
18 and place your left hand on the Bible and repeat your
19 name, please?

20 MR. BUSH: Walter Bush.

21 [Whereupon, the witness is duly sworn by the Clerk
22 of Court as follows: do you solemnly swear the testimony
23 you are about to give will the truth and nothing but the
24 truth so help you God]

25 MR. BUSH: Yes.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 3 (of 5) - May 16, 2012

1 [Whereupon, the witness takes the witness stand]
2 - - - - -
3 WALTER BUSH,
4 Having been first duly sworn,
5 Was examined and testified as follows:
6 DIRECT EXAMINATION
7 BY MR. CORBETT:
8 Q. Mr. Bush, good afternoon.
9 A. How you doing?
10 Q. I'm doing fine, thank you. Mr. Bush, do you go by a
11 nickname?
12 A. Yes, sir. Packem [phonetic]
13 Q. Packem?
14 A. Packem.
15 Q. Okay. I'm going to call you Mr. Bush today, okay?
16 A. Yes.
17 Q. All right. Mr. Bush, ease back from that
18 microphone just a little bit.
19 [Whereupon, the witness complies]
20 Q. There you go. Mr. Bush, I wanted to turn your
21 attention back to May 15th, 2010. Did you have occasion
22 to pick up Mr. Gibbons car that day?
23 A. Yes, sir.
24 Q. Now were you an employee of Mr. Gibbons?
25 A. Yes, sir.

1 Q. And how long have you been an employee?

2 A. About 25 or 30 years.

3 Q. Okay. A long time?

4 A. A long time.

5 Q. Okay. Now you came into work that morning. Tell
6 us how it was that you ended up going out there to get
7 the car.

8 A. Well, Mack Eaddy came by the -- well, called Ken at
9 the store and told him he seen Mr. Gibbons El Camino
10 sitting in the road on Oak Grove Church Road; about
11 middle ways the road.

12 Ken told him to move it out the road and bring him
13 the keys. And he did. He moved it and brought the keys
14 to the store. Ken asked me to get back in there with
15 Mack and run back down there and pick it up.

16 Q. So you actually got in the vehicle with Mr. Eaddy?

17 A. Yes, sir.

18 Q. And where did y'all go?

19 A. Back down there on Oak Grove Church Road.

20 Q. Okay. And then what did you do next?

21 A. Brought it back to the store.

22 Q. All right.

23 A. Straight back to the store.

24 Q. You didn't go anywhere else in the meantime?

25 A. Uh-uh. He followed me back to the store.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 3 (of 5) - May 16, 2012

1 Q. All right. And then did you park it there at the
2 store?
3 A. Right there in front right where Mr. Gibbons parks
4 it.
5 Q. Now when you say -- is that right there near the
6 front door of the store?
7 A. Yes, sir.
8 Q. Okay. Mr. Bush, please answer any questions that
9 these gentlemen may have.
10 A. Okay.
11 MR. KNOBELOCH: No questions.
12 MR. DEVOE: No questions of this witness.
13 THE COURT: Thank you, sir. You can step down.
14 Any reason he can't be excused?
15 MR. CORBETT: None from the State, Your Honor.
16 MR. KNOBELOCH: No, sir.
17 THE COURT: You can go.
18 [Whereupon, the witness is excused and exits the
19 witness stand]
20 [Whereupon, an individual comes forward]
21 CLERK OF COURT: Raise your right hand and place
22 your left hand on the Bible and repeat your name, please?
23 MR. RICHARDS: Ricky Richards.
24 [Whereupon, the witness is duly sworn by the Clerk
25 of Court as follows: do you solemnly swear the testimony

1 you are about to give will be the truth and nothing but
2 the truth so help you God]

3 MR. RICHARDS: I do.

4 [Whereupon, the witness takes the witness stand]

5 - - - - -

6 RICKY RICHARDS,

7 Having been first duly sworn,

8 Was examined and testified as follows:

9 DIRECT EXAMINATION

10 BY MR. FINNEY:

11 Q. Good afternoon.

12 A. Afternoon.

13 Q. Tell us your full name, sir?

14 A. It's Ricky Richards.

15 Q. And by whom are you employed?

16 A. Clarendon County Sheriff's Office.

17 Q. How long have you been there, sir?

18 A. I've been there about six years.

19 Q. All right. Did you have prior law enforcement
20 experience before that?

21 A. Yes sir, at Sumter County for a little under five
22 years.

23 Q. And are you assigned to a particular division now?

24 A. Yes, sir. Right now I am an investigator.

25 Q. And were you so assigned back in 2010?

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 3 (of 5) - May 16, 2012

1 A. Yes, sir.

2 Q. All right. Do you remember whether or not you were
3 the primary investigator on this case involving Mr.
4 Gibbons?

5 A. No, sir. I was just called to assist.

6 Q. All right. And did you get a call early Saturday
7 morning?

8 A. Yes, sir.

9 Q. All right. In Clarendon County do the
10 investigators -- they have an on call system?

11 A. Yes, sir. We're usually on call every fifth week.

12 Q. Okay. So it rotates around?

13 A. Yes, sir.

14 Q. All right. Let me ask you this. Did you know Mr.
15 Gibbons before this incident?

16 A. I knew who he was but we've never really had a
17 personal relationship.

18 Q. All right. Have you ever been to his house before?

19 A. This time ---

20 Q. --- this time? So you were called out to the house
21 and you arrived to respond to a basically a 911 call?

22 A. I got ---

23 Q. --- I'm sorry. You did not respond to the house did
24 you?

25 A. I actually went to the house but I was only there a

1 few minutes at most.

2 Q. All right. Did you get a call to go to some other
3 location?

4 A. Yes, sir. Investigator Ham was there at the house
5 and he advised me that the vehicle had been found and
6 that it was at Mr. Gibbons' business. And I went right
7 there to try to process that vehicle for any evidence.

8 Q. When you say process the vehicle what were you
9 looking for?

10 A. My primary thing first was I dusted the vehicle for
11 fingerprints.

12 Q. All right. And do you have expertise in doing
13 that? Have you been trained for that?

14 A. Yes, sir.

15 Q. All right. And when you dusted were you able to
16 find any prints there were readable?

17 A. Yes, sir. I found enough prints to put on two cards
18 to have sent to Sumter to Marie Hodge for her to analyze
19 the prints.

20 Q. All right. And is that -- Marie Hodge is a
21 fingerprint technician?

22 A. Yes, sir. She runs the AFIS machine for Sumter
23 Police Department.

24 Q. Can you tell the ladies and gentlemen what AFIS
25 means?

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 3 (of 5) - May 16, 2012

1 A. Automatic -- automated fingerprint identification
2 system.

3 Q. All right. And that's a national computer system?

4 A. Yes, sir. That's a national database for
5 fingerprints of anyone that has been booked in, had a
6 concealed weapons permit, law enforcement. Any time your
7 fingerprints are taken they are normally put into that
8 system.

9 Q. All right. And if you found fingerprints on Mr.
10 Gibbons' car and you sent them over there what were you
11 trying to accomplish by doing that?

12 A. To find the owner of those fingerprints --

13 Q. Now I want to show you a color photograph that is
14 marked as 17-G, State's exhibit 17-G is a color
15 photograph of the -- do you know what that is?

16 [Whereupon, the witness is shown photograph]

17 A. Yes, sir. It looks like it's the rear of Mr.
18 Gibbons' El Camino.

19 Q. All right. And where did you first come in contact
20 with the El Camino?

21 A. It was at his business.

22 Q. On what street?

23 A. I think that's Mill Street still out that way or
24 260; some people call it Highway 260.

25 Q. All right. And was the car in the condition that

1 you see it presented in this photograph?

2 A. Actually in this photo there was already some
3 fingerprint powder done. But other than that -- the
4 doors were closed when I got there but other than that it
5 was in the same condition.

6 Q. All right. Now were you able to recover
7 fingerprints from this vehicle that you thought you could
8 transfer over to Marie Hodge in Sumter?

9 A. Yes, sir.

10 MR. FINNEY: And 17-G is the document that I showed
11 the witness. I'd like to move that into evidence.

12 Q. [Mr. Finney] Officer, this is already in evidence.
13 This is 17-H.

14 [Whereupon, the witness is shown photograph]

15 A. Yes, sir.

16 Q. What does that show in that picture?

17 A. This is going to be like a rear view of the driver's
18 side of the vehicle.

19 Q. All right. And based on the sketch that is
20 presented in 17-A do you have an opinion as to where you
21 found fingerprints on that vehicle?

22 A. Yes, sir. I'd say the rear quarter on the driver's
23 side.

24 Q. Would you show the jury?

25 A. Right here I know it's hard to see the little dots

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 3 (of 5) - May 16, 2012

1 [indicates] but that is actually where the fingerprints
2 were right near the rear corner of the car.
3 Q. And based on your sketch that's in 17-A did you lift
4 prints from another part of the car also?
5 A. Yes, sir. From the driver's side it would have been
6 right at the door jamb area of the vehicle.
7 Q. Point that out, please sir?
8 A. It would have been right here [indicates].
9 Q. All right.
10 MR. FINNEY: I move, Your Honor, for the admission
11 of 17-A, which is the sketch of the witness.
12 THE COURT: Any objection?
13 MR. KNOBELOCH: No objection.
14 MR. DEVOE: No objection.
15 THE COURT: Okay. 17-A is in without objection.
16 [Whereupon, State's exhibit number 17-A is entered
17 into evidence by the court]
18 MR. FINNEY: 17-G is a picture of the rear of the
19 car. In without objection?
20 MR. KNOBELOCH: No objection.
21 THE COURT: All right. Both of them are in
22 without objection.
23 [Whereupon, State's exhibit number 17-G is entered
24 into evidence by the court]
25 Q. [Mr. Finney] Now Officer I've got 17-J and 17-I.

1 Could you look at those photographs and tell me what they
2 depict?

3 [Whereupon, the witness is shown photographs]

4 A. Yes, sir. These are going to be pictures of the
5 actual fingerprints, which is kind of a normal practice
6 that we try to take a picture of the print before you
7 lift it. And that's just a practice.

8 These right here [indicates] are going to be the
9 ones from the rear of the vehicle. And that's going to
10 be from the cross member of the vehicle.

11 Q. Cross member is up near the ---

12 A. --- that's right up there by the door.

13 Q. All right. So which one is that?

14 A. That is going to be the one that is out of focus.
15 That's going to be 17-J.

16 Q. 17-J is the prints from near the driver's door?

17 A. The other driver's door 17-I are going to be the
18 prints from the rear driver's side of the vehicle.

19 MR. FINNEY: Move to admit them into evidence.

20 THE COURT: Any objection?

21 MR. KNOBELOCH: No objection.

22 MR. DEVOE: No objection.

23 THE COURT: In without objection.

24 [Whereupon, State's exhibit numbers 17-J and 17-I
25 are admitted into evidence by the court]

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 3 (of 5) - May 16, 2012

1 Q. [Mr. Finney] Now Officer, did you fill out an
2 evidence chain of custody form?
3 A. Yes, sir.
4 Q. And what sticker number is on that one?
5 A. 17-F.
6 Q. Did you sign that form?
7 A. Yes, sir.
8 Q. Is that standard procedure in Clarendon County to
9 fill out that after you've taken prints from a crime
10 scene?
11 A. Yes, sir. For prints and any other evidence any
12 time it changes hands we...
13 Q. Where did you take the evidence cards and -- do with
14 -- where did you take them?
15 A. I gave them directly to Investigator Clark as it
16 states on there.
17 Q. And he is the -- and it states that on the form?
18 A. Yes, sir.
19 Q. All right. Investigator Clark was the investigator
20 in charge of this case?
21 A. Yes, sir.
22 MR. FINNEY: 17-F move to admit the custody form.
23 MR. KNOBELOCH: No objection.
24 MR. DEVOE: No objection.
25 THE COURT: In without objection.

1 [Whereupon, State's exhibit number 17-F is entered
2 into evidence by the court]

3 Q. [Mr. Finney] Would you please sir tell the ladies
4 and gentlemen of the jury before you get off the stand
5 the process of how you go about identifying what's a
6 fingerprint and what's not and how you lift the
7 fingerprint so that you can preserve it?

8 A. Yes, sir. Normally we use a fingerprint powder.
9 There are numerous kinds. In this case I just used what
10 is a regular black fingerprint powder.

11 You put it on a brush, which is not unlike what you
12 see T.V. they do all the time, you put it on a brush
13 lightly and you go over the vehicle or whatever you are
14 fingerprinting very lightly and it sticks to the oils
15 that are left on the fingerprint. And that gives you the
16 detail.

17 Usually with visual inspection of it you can see if
18 the ridges or if there is a smear or something of that
19 nature that would constitute -- you actually pull it off.

20 Now to pull it off you are going to have a card,
21 which is just a plain white card on one side and use a
22 clear tape. You can use a 2 inch, or a 3 or a 4. You
23 put it on smooth.

24 And you always try to get it immobile so it doesn't
25 distort the print, pull that tape off and that transfers

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 3 (of 5) - May 16, 2012

1 that print or that powder that shows the detail of the
2 print onto the tape and you put it on that white back
3 card, which in this case was white. They also make them
4 in black. But you put it on that card and that helps you
5 to see just that print what you've lifted off.

6 Q. Did you dust the entire car looking for prints?

7 A. Yes, sir.

8 Q. Inside and out?

9 A. Yes, sir.

10 Q. And the prints that you were able to actually lift
11 and put on a card were both on the driver's side?

12 A. Yes, sir.

13 Q. One near the door and one in the back?

14 A. Yes, sir.

15 Q. And those prints were sent off to the lady in Sumter
16 at the AFIS center?

17 A. Yes, sir.

18 Q. All right. Officer, would you tell the ladies and
19 gentlemen of the jury a little bit how fingerprints are
20 affected by environmental things?

21 For example, if I drove the car at 12 o'clock and
22 got out and you came in or somebody else came in and
23 drove the car after me would it be likely that you are
24 going to be able to find my prints?

25 A. Depending on the surface, yes sir. Prints will stay

1 on even if the car had been driven. Normally what really
2 affects them is a heavy rain. Being out in the sun for
3 an extended period of time the heat will evaporate the
4 oil off the car, or bake it off is what we like to say
5 sometimes. But yes, it can be affected especially with
6 a prolonged exposure to them.

7 Q. Now you said the basis of the fingerprint is the oil
8 that is left after a person touches something?

9 A. Yes, sir.

10 Q. So if the oil is moved that's going to disturb the
11 fingerprint?

12 A. Yes. As far as protecting a print like if I was to
13 take a print and try to move a print that is -- I've only
14 seen that on T.V.; I've only heard of that on a
15 television show.

16 Q. All right. I want to show you 17-A again, the
17 color photograph showing the Gibbons' car.

18 [Whereupon, the witness is shown photograph]

19 Q. Do you have on that particular card -- is that a
20 picture of the prints that you lifted off the back rear?

21 A. Yes, sir.

22 Q. And those were the ones that were sent to Columbia,
23 these -- sent to Sumter?

24 A. Yes, sir. That was more -- that was just a stand --
25 off for you to get more area and then the next photo

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 3 (of 5) - May 16, 2012

1 which we looked at was a closer up.

2 Q. I'm sorry. I identified it as A, but that is
3 actually 17-H.

4 A. Yes, sir.

5 MR. FINNEY: Beg the court's indulgence.

6 Q. [Mr. Finney] This is 17-A.

7 [Whereupon, the witness is shown photograph]

8 Q. This is the sketch. And on the back what is that
9 that appears on the back of that card?

10 A. That's going to be the fingerprints that I pulled
11 off the right rear of the vehicle.

12 Q. And they were sent to Sumter?

13 A. Yes, sir.

14 Q. After Sumter analyzed them did they send them back
15 here?

16 A. Yes, sir. They always do -- Ms. Hodge always does a
17 report for us whether she finds something or not. There
18 is usually a report with it and she sends the report back
19 to us.

20 Q. So these are the actual tapes -- that's the tape you
21 talked about showing the fingerprints that were lifted
22 off the car?

23 A. Yes, sir.

24 Q. Thank you, Officer. Answer any questions the
25 defense may have.

1 A. Yes, sir.

2 MR. DEVOE: May it please the court?

3 THE COURT: Yes, sir.

4 CROSS-EXAMINATION

5 BY MR. DEVOE:

6 Q. On the fingerprint analysis you did or at least
7 taking off of the car is there any way for you to tell
8 when those fingerprints got on the car?

9 A. No, sir.

10 Q. Not at all, okay. So they could have been on two
11 days before, three days before, you just don't know --

12 A. There is no -- I don't know of any way you can tell.

13 Q. But you did testify that after a period of time the
14 oil dissipates and the fingerprints disappear.

15 A. Yes, sir. And that's just from experiencing stuff
16 of prints that have --

17 Q. Of course. Could it be due to heavy rain for
18 example?

19 A. Heavy rain, the sun baking them off; yes sir.

20 Q. Driving in the desert with sand coming up against the
21 car and stuff like that?

22 A. I would imagine, sir.

23 Q. Is there any reason you didn't take fingerprints on
24 the inside of the car?

25 A. I did attempt to get fingerprints. I just didn't

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 3 (of 5) - May 16, 2012

1 find any that were able to be pulled off; any prints that
2 I saw that were good enough at all to be pulled off. And
3 that's normally due to the texture of the dash, which
4 makes it really hard or the texture of the inside of the
5 door.

6 There were no prints on the inside of the glass or
7 the mirror, steering wheel. Again, with the texture of
8 the steering wheel even putting fingerprint powder on it
9 -- I don't believe I've ever pulled a print off of a
10 steering wheel or a dash.

11 Q. So you were told that the passenger door of the car
12 was open at one point?

13 A. Yes, sir.

14 Q. It was left open. So it stands to reason that
15 somebody was driving and a passenger sitting in the
16 passenger?

17 A. Yes, you would think so, on the passenger side, yes
18 sir.

19 Q. They had opened the door?

20 A. Yes, sir.

21 Q. Is there a chrome door handle or is it fabric?

22 A. I believe it is chrome on it -- on the inside or the
23 outside?

24 Q. The inside?

25 A. On the inside the actual handle was some type of

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 3 (of 5) - May 16, 2012

1 metal. I don't know if it's chrome. It was some type of
2 metal.

3 Q. And you dusted that also?

4 A. Yes, sir.

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

6 THE COURT: Anything further from the State?

7 MR. FINNEY: No, Your Honor, not for this witness.

8 We ask that he be excused.

9 THE COURT: Any objection to him being excused?

10 MR. DEVOE: No objection.

11 MR. KNOBELOCH: No objection, Your Honor.

12 THE COURT: Thank you, sir.

13 [Whereupon, the witness is excused and exits the
14 witness stand]

15 MR. FINNEY: We'd call Mr. Lin Ham.

16 [Whereupon, Mr. Ham comes forward]

17 CLERK OF COURT: Raise your right hand and place
18 your left hand on the Bible and repeat your name, please?

19 MR. HAM: Thomas Ham.

20 [Whereupon, the witness is duly sworn by the Clerk
21 of Court as follows: do you solemnly swear the testimony
22 you are about to give will be the truth and nothing but
23 the truth so help you God]

24 MR. HAM: Yes, ma'am.

25 [Whereupon, the witness takes the witness stand]

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 3 (of 5) - May 16, 2012

1 THOMAS HAM,
2 Having been first duly sworn,
3 Was examined and testified as follows:
4 DIRECT EXAMINATION
5 BY MR. FINNEY:
6 Q. Mr. Ham?
7 A. Yes, sir?
8 Q. Tell the ladies and gentlemen of the jury what you
9 do for a living?
10 A. I'm a criminal investigator with the Clarendon
11 County Sheriff's Office.
12 Q. How long have you been employed in that capacity?
13 A. With the Sheriff's Office I've been there since
14 2002. Prior to that I was with the City of Manning and
15 began in 1994.
16 Q. And how long have you been an investigator?
17 A. I've been an investigator since 2002.
18 Q. Prior to that were you a deputy on patrol?
19 A. I was a patrolman with the City of Manning, yes.
20 Q. Do you have recollection of being called out to Mr.
21 Gibbons' house on May the 15th, 2010?
22 A. Yes, I do.
23 Q. Did you know Mr. Gibbons at that time?
24 A. I've know Mr. Slick and Ms. Kay and all of them all
25 my life.

1 Q. All right. Have you been to the house before?
2 A. Yes, I have.
3 Q. All right. You responded to a call to the house,
4 is that correct?
5 A. Yes, sir.
6 Q. All right. Were you at any time the lead
7 investigator on the case?
8 A. No, I was not.
9 Q. All right. What was your participation as far as
10 collection of evidence once you got to the crime scene?
11 A. Basically I was called to assist Investigator Clark
12 with the whole case, that being a major case per se.
13 Kenneth had been an investigator with us a short period
14 of time. He had been a law enforcement officer for a
15 while.
16 I was there to kind of oversee things; kind of like
17 in a supervisory capacity. And just kind of see how
18 things were going and make sure we didn't overlook
19 anything. And sent people where they needed to go.
20 Q. Do you know who was in charge of taking photographs
21 that day?
22 A. I think Investigator Clark was.
23 Q. All right. Have you been able to look at the
24 photographs that were taken?
25 A. I have seen them, yes sir.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 3 (of 5) - May 16, 2012

1 Q. Has it been a while since you've seen them?

2 A. Yes, sir.

3 Q. Let me ask you to look through them and answer a few
4 questions after you've had a chance to look through them.
5 First of all when you got there was Mr. Gibbons there?

6 A. He was not. He had already been transported to the
7 hospital.

8 Q. All right. So I'll come back to that question.
9 Did you later leave the house and go to the hospital?

10 A. Yes, I did.

11 Q. And did you have a chance to see Mr. Gibbons and
12 talk to him at that time?

13 A. Yes, I did.

14 Q. All right. Are you familiar with the fact that Mr.
15 Gibbons drove an El Camino, a white [phonetic] El Camino?

16 A. Yes, sir. I was -- I've been familiar with Mr.
17 Gibbons El Camino for a while.

18 Q. All right. Let me ask you showing you the back of
19 the garage in State's Exhibit 3-E does that appear to be
20 a fair representation of Mr. Gibbons' house?

21 [Whereupon, the witness is shown photograph]

22 A. Yes, sir. When I arrived though the garage doors
23 were closed.

24 Q. Right.

25 A. And this door [indicates] was actually open when I

1 arrived; I remember that.

2 Q. That's the side door?

3 A. Yes, sir -- the regular.

4 Q. When you got there was the silver Mercedes inside
5 the garage?

6 A. Yes, sir.

7 Q. All right. Look at exhibit 3-I please sir and tell
8 me do you remember there being articles and items that
9 belonged to Mr. Gibbons on the floor of the garage?

10 [Whereupon, the witness is shown photograph]

11 A. Yes, sir. Kenneth and I walked through there and he
12 pointed out some things that he had found in there. We
13 looked around to see if anything appeared to be out of
14 place, disturbed, what wasn't where it was supposed to
15 be.

16 Q. Also, in 3-Q that's the side of the garage where Mr.
17 Gibbons says he was attacked.

18 [Whereupon, the witness is shown photograph]

19 Q. Did you notice that area and see that area?

20 A. Yes, sir I did. I noticed there was a lot of blood
21 there and the shoes. And as a matter of fact the -- you
22 can see the blue and white tarp where it's not -- I
23 remember the one that Mr. Slick had given us when we were
24 in Cub Scouts many years ago.

25 Q. The same similar ---

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 3 (of 5) - May 16, 2012

1 A. --- yes, sir.

2 Q. Look at exhibit 3-T and tell me what you see in that
3 color photograph.

4 [Whereupon, the witness is shown photograph]

5 A. This is beside the steps. It's the black duct tape,
6 some blood spots.

7 Q. Is that the way the black duct tape was located when
8 you got there?

9 A. Yes, sir.

10 Q. All right. Did you happen to see other pieces of
11 black duct tape that afternoon, that morning as you were
12 doing your investigation?

13 A. That morning, yes sir when I went to the hospital
14 and walked into the trauma room they had Mr. Slick on the
15 table in the trauma room.

16 Mr. Slick still had tape around his head that looks
17 similar to the one that was in the -- that was left in
18 the carport.

19 Q. I want to show you what has been marked as State's
20 exhibit 3-B.

21 [Whereupon, the witness is shown photograph]

22 Q. It's a color photograph. Can you tell us what that
23 is?

24 A. That's a picture of Mr. Slick. He was still on the
25 -- he was still on the bed. It shows the duct tape on

1 his hair or on his head and it had peeled up just a
2 little bit so he could see. He was -- apparently still
3 got the neck collar in place. You can see the rail of
4 the hospital bed. There is some their equipment in the
5 trauma room --

6 Q. All right. Tell me if you know what happened to
7 the duct tape that was around his head in this
8 photograph.

9 [Whereupon, the witness is shown photograph]

10 A. Yes, sir. The nurse began to try to take it off and
11 Mr. Slick started hollering so I stepped up and got on a
12 pair of gloves and started helping get the duct tape off
13 of there.

14 I was talking to Mr. Slick telling him to calm down.
15 We were trying to calm him down just a little bit. I
16 figured he knew me. He would respond a little bit better
17 to me so I proceeded to take the duct tape off his head.

18 Q. What did you do with it once you removed it from his
19 head?

20 A. I took the duct tape into custody and I kept it. I
21 put it in a bag and took it back to the office and turned
22 it over to Investigator Clark. He was in charge of this
23 whole case. The reason I did that is so he could -- we
24 were planning on taking all of the evidence up to SLED
25 that Monday morning to go ahead and get it processed. We

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 3 (of 5) - May 16, 2012

1 don't do any D-N-A or anything like that in house. So we
2 sent it to SLED for analysis.

3 Q. All right. I'm going to show you what has been
4 marked as exhibit number 10 for the State.

5 [Whereupon, the witness is shown exhibit]

6 Q. Can you identify what is in the plastic bag there?

7 A. It appears to be a piece of duct tape.

8 Q. All right. Is that the same duct tape that you
9 removed from his head?

10 A. It is -- I can say it looks just like it. I can say
11 it's got hair on it. I'm pretty sure that's the one.

12 Q. All right. Did you fill out any kind of paperwork
13 to put this into the evidence?

14 A. Yes, sir. We would fill out a chain of custody.

15 Q. All right. And you would have signed it into
16 evidence on the same day that you went to the hospital
17 and took this off his head?

18 A. I would have to look at the evidence sheet. This
19 has been two years ago.

20 Q. All right. Officer, as it regards State's exhibit
21 10 and the black tape, did you fill out an evidence
22 sheet? Do you see your name on there?

23 [Whereupon, the witness is shown document]

24 A. Yes sir, right here [indicates].

25 Q. All right. Tell us what that reflects.

1 A. It's got right here [indicates] description of
2 evidence is black tape from the victim's head.

3 Q. All right.

4 A. Mr. Slick's head. It's got the victim Edward and
5 I've got in quotes Slick Gibbons where recovered would be
6 the C-M-H-E-R, which is Clarendon Memorial Hospital
7 Emergency Room.

8 Right here [indicates] this little chicken scratch
9 here is my signature. It's got right here [indicates]
10 where it's from me to Kenneth Clark and he's got his
11 initials right there [indicates]. It was on 5-17-2010 at
12 approximately 10 a.m.

13 Q. All right. The 17th was two days after the
14 incident. But that note is for when Mr. Clark took
15 custody of it?

16 A. Yes, sir.

17 Q. And as far as you know -- did you yourself send it
18 to SLED or carry it to SLED?

19 A. I actually rode with Kenneth up to Columbia to SLED
20 to turn all this in.

21 Q. All right.

22 A. And we planned on stopping by and seeing Mr. Slick
23 at Richland Memorial up there and talking with him to see
24 if he remembered anything else.

25 MR. FINNEY: I want to put this evidence sheet in as

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 3 (of 5) - May 16, 2012

1 an exhibit. 10-A, Your Honor.

2 [Whereupon, State's exhibit number 10-A is marked by
3 the court reporter]

4 MR. FINNEY: Any objection?

5 MR. KNOBELOCH: No objection.

6 THE COURT: All right. 10-A is in without
7 objection.

8 [Whereupon, State's exhibit number 10-A is entered
9 into evidence by the court]

10 Q. [Mr. Finney] Mr. Ham?

11 A. Yes, sir?

12 Q. Let me fast forward about five days. I want to show
13 you what has been marked as State's exhibit 17-E.

14 [Whereupon, the witness is shown exhibit]

15 Q. Could you look over that and tell the ladies and
16 gentlemen of the jury can you recognize that?

17 A. Yes, sir. It's what we call a 10 print fingerprint
18 card. This is one from Michael Wilson Pearson. It's got
19 his social down here .

20 It's got a date of birth of . It's got his
21 sex, race, his height 6'1, weight 198, eyes brown, hair
22 black. It's got 8 rolled fingerprints.

23 Q. Is that the standard procedure for taking
24 fingerprints from somebody who is being investigated?

25 A. Yes, sir.

1 Q. All right. And did you do the ink rolling and
2 prepare that fingerprint card?

3 A. Yes, sir. Again, it's my handwriting.

4 Q. And is your name on the back of it?

5 A. On the back, yes sir.

6 Q. What date was that card filled out?

7 A. On May the 20th, 2010.

8 Q. May the 20th, 2010. And would that process have
9 taken place at the law enforcement center or at the jail?

10 A. No, this would have taken place at our office.

11 Q. All right. So Mr. Pearson was in your office at
12 the law enforcement center on May the 20th?

13 A. At the Sheriff's Office.

14 Q. And he was -- and he had his fingers inked and
15 rolled so that they could be placed on that card?

16 A. Yes, sir. His fingers were rolled.

17 Q. And you attested to it because you did it?

18 A. Yes, sir.

19 MR. FINNEY: I'd like to move that into evidence,
20 please?

21 MR. KNOBELOCH: No objection, Your Honor.

22 MR. DEVOE: No objection.

23 MR. FINNEY: 17-E.

24 THE COURT: It's in without objection.

25 [Whereupon, State's exhibit number 17-E is entered

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 3 (of 5) - May 16, 2012

1 into evidence by the court]

2 Q. [Mr. Finney] Now once this card was prepared do you
3 know if it was sent off anywhere or anything was done to
4 it?

5 A. That would have been given to Investigator Clark who
6 had some fingerprints that were identified by Ms. Marie
7 Hodge.

8 Q. All right. Very good. Mr. Ham, as a result of
9 this investigation I guess everybody in Manning was
10 looking for the people that committed this crime against
11 Mr. Gibbons?

12 A. Yes, sir.

13 Q. And as a law enforcement officer do you have
14 occasion from time to time to ask people questions, to
15 check out leads, to try to investigate the case?

16 A. Yes, sir.

17 Q. All right. And did you have occasion to talk to a
18 Mr. Lewis Mendes regarding this case?

19 A. Yes, sir. I have.

20 Q. And did you call up or go see Mr. Mendes or did he
21 come to you?

22 A. Mr. Mendes actually came to my house.

23 Q. All right. To your personal house?

24 A. That's correct.

25 Q. And did he get to speak with you?

1 A. Yes, sir.

2 Q. And as a result of speaking with you did you give
3 him some instructions on what to do?

4 A. I put him in touch with Investigator Clark since he
5 was the lead investigator on the case.

6 Q. And he was the lead investigator on the case and
7 that's why you referred Mr. Mendes over to Investigator
8 Clark?

9 A. Yes.

10 Q. And the information concerned this case?

11 A. Yes, sir.

12 Q. And to your knowledge did Mr. Mendes and Mr. Clark
13 talk about...

14 A. Yes, sir. They did.

15 Q. How do you know Mr. Mendes?

16 A. Mr. Mendes I've known him through law enforcement,
17 through seeing him in the area where I live. He was --
18 he lived a short distance down the road from me.

19 Q. So somebody in the community?

20 A. Yes.

21 Q. That you knew? All right. When you had the
22 occasion to do the fingerprints for Mr. Pearson ---

23 A. --- yes, sir ---

24 Q. --- did you get a chance to know him? Did you know
25 who that was when you were doing the fingerprints?

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 3 (of 5) - May 16, 2012

1 A. Mr. Pearson?
2 Q. Yes?
3 A. Yes, sir.
4 Q. Do you see him in court today?
5 A. Yes, sir.
6 Q. Would you tell the ladies and gentlemen of the jury
7 which one of the gentlemen he is?
8 A. He's the gentlemen at the end of the table over
9 there [indicates] in the blue long sleeve shirt.
10 Q. All right. And you knew him before you had seen
11 him that day with the fingerprint card?
12 A. Yes sir, I knew him by the nickname Foots.
13 Q. Foots?
14 A. Yes, sir.
15 Q. That's the name he goes by in the community?
16 A. Yes, sir.
17 Q. How long would you say you've known him? Months?
18 A. Several years.
19 Q. Years, all right. Did you have the occasion to be a
20 witness or a participant in an interview that was done by
21 Investigator Clark? Were you present for an interview
22 done by Investigator Clark with Mr. Michael Pearson?
23 A. Yes, I was.
24 Q. And was that -- was that done at the law enforcement
25 center?

1 A. It was done at the Sheriff's office.
2 Q. Was it done the same day that the fingerprint card
3 was done?
4 A. I would have to look and see. I don't have...
5 Q. All right. But you do recollect having the
6 opportunity to talk with him and interview him regarding
7 this case with Mr. Gibbons?
8 A. Yes, sir.
9 Q. And was it your understanding from that interview
10 that he knew Mr. Gibbons or did not know Mr. Gibbons?
11 A. He adamantly denied knowing Mr. Gibbons.
12 Q. All right. Did he adamantly deny being at that
13 house on the day of the robbery?
14 A. He told me he didn't know where Mr. Slick lived. He
15 had never been there. He had never been to Mr. Slick's
16 place of business. He had never come into contact with
17 Mr. Slick's vehicle.
18 Q. All right.
19 A. I guess -- he said that he didn't know him.
20 Q. All right. And do you remember having more than
21 one interview with Mr. Michael Pearson or just that one?
22 A. I talked with him on more than one occasion.
23 Q. All right. Very good. How about the other
24 gentleman, Mr. Weldon? Did you have a chance to be
25 inside an interview room where there was an interview

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 3 (of 5) - May 16, 2012

1 being conducted with Mr. Weldon?

2 A. I actually don't recall whether I was in the
3 interview or whether I was just in the office. But I was
4 there when he was brought into the interview.

5 Q. Do you have any recollection of any of the questions
6 or the answers that were given in that?

7 A. I just remember that he didn't want to talk.

8 Q. Very good.

9 A. He didn't know anything about the whole incident.

10 Q. All right. Very good. Were you in any way
11 connected with the paperwork that was issued when a
12 warrant was issued for the arrest of these two gentlemen
13 or was that for another investigator to do?

14 A. There are several things that go on along during the
15 investigative process. Anytime that Investigator Clark
16 needed my help I would help him out. If he had asked me
17 to work or something anything like that I would have to
18 look at the warrants that are --

19 Q. All right. Very good.

20 MR. FINNEY: Beg the court's indulgence.

21 Q. [Mr. Finney] Thank you, Officer. Please answer any
22 questions the defense may have.

23 MR. DEVOE: May it please the court?

24 THE COURT: Yes, sir.

25 - - -

1 CROSS-EXAMINATION

2 BY MR. DEVOE:

3 Q. When you went to the hospital, Manning Memorial
4 Hospital to see Mr. Gibbons?

5 A. Yes, sir.

6 Q. And you took -- you took a picture at the hospital?

7 A. I believe I did, yes sir.

8 Q. All right. So this picture accurately represents
9 what he looked like when you were there, is that correct?

10 [Whereupon, the witness is shown photograph]

11 A. Yes, sir.

12 Q. His eyes were -- they looked closed?

13 A. Yes, sir. He's squinting in pain.

14 Q. He's squinting in pain?

15 A. Yes, sir.

16 Q. He sort of recognized you?

17 A. Yes, sir. He knew who I was.

18 Q. By voice or by sight?

19 A. I guess by both.

20 Q. And how soon after the situation happened did you
21 see him? How many hours?

22 A. It wasn't that long later. I did not look at my
23 watch when I was in there. I don't have a time that I
24 was in there.

25 Q. Well, apparently this thing happened around 6:30.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 3 (of 5) - May 16, 2012

1 A. Yes, sir.

2 Q. And when he -- what time did you get involved in it?

3 A. It was shortly thereafter when the call came out. I
4 was called at my residence. It was a Saturday, I wasn't
5 on call.

6 I answered the phone and I was told about the
7 situation and I came straight in. I don't know what time
8 I got there. It wasn't much later after the call. But I
9 don't know what time the call came in.

10 I met Investigator Clark there. Also I got him
11 started on the crime scene. Slick had already gone to
12 the hospital.

13 Q. Well, assume for a moment that you got there around
14 7 o'clock. Would that be about right?

15 A. That could be, yes sir.

16 Q. And you got to the hospital at maybe 7:30?

17 A. Maybe. Like I said I was more in tuned to kind of
18 make sure everything was taken care of. That was
19 basically my role that day.

20 Q. Was that taking care of there at the scene or at the
21 hospital?

22 A. At both. I made sure I got Kenneth started on the
23 crime scene there. We walked through the crime scene and
24 looked at different things and I called another
25 investigator Ricky Richards I think was up here just a

1 minute ago. And he was supposedly responding to the
2 hospital to begin with. While we were there on the scene
3 we got the call that said Mr. Slick's vehicle had been
4 found on Oak Grove Church Road and it had been taken back
5 to Mr. Slick's place of business.

6 I talked with Ricky Richards after that. And I
7 turned him away from going to the hospital and go ahead
8 and process the vehicle there at Mr. Slick's to go ahead
9 and get that out of the way.

10 And I went myself onto the hospital to see Mr. Slick
11 to see if there was any evidence that we needed to get
12 there, which the duct tape on his head was evidence. So,
13 yes sir, I went to the hospital and took that off his
14 head.

15 Q. That's when you took off the duct tape?

16 A. Yes, sir.

17 Q. And the hospital let you do that?

18 A. Yes, sir. Mr. Slick was -- I really can't imagine
19 because I've probably not ever been in that much pain;
20 I've never been beat up like this before. And Mr. Slick
21 was basically laying down there on the bed hollering and
22 screaming.

23 And they started pulling and I imagine it was
24 pulling on his skin and pulling on his hair. I imagine
25 it hurt a lot worse so.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 3 (of 5) - May 16, 2012

- 1 Q. So this picture was taken before the pulling?
- 2 A. Oh, yes sir.
- 3 Q. And not date time stamped is it?
- 4 A. I don't think that picture is, no sir.
- 5 Q. Do you have the ability to do that?
- 6 A. Date and time stamp those pictures?
- 7 Q. Yes, sir?
- 8 A. No, sir. We did print and -- print some pictures
- 9 just like that.
- 10 Q. All right. At the crime scene itself did you do
- 11 anything about measuring various dimensions or the garage
- 12 itself, or the distance from certain places? Did any of
- 13 that get done for the crime scene situation?
- 14 A. No, sir. Everything was photographed like it was.
- 15 Everything was marked as evidence and photographed in.
- 16 By that I mean we put these little markers up beside them
- 17 and go around and take a picture. And you've got your
- 18 note pad and you log in where everything was in the crime
- 19 scene per se. And...
- 20 Q. For example, exhibit 9 in the State's case is a
- 21 picture -- is a diagram of the garage.
- 22 A. Yes, sir.
- 23 Q. There are no dimensions at all?
- 24 A. None.
- 25 Q. Did somebody need to do that?

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 3 (of 5) - May 16, 2012

1 A. We did not measure the garage, no sir.
2 Q. It's still there isn't it?
3 A. Yes, sir.
4 Q. And did you go back before you went to the hospital
5 -- when you went to the hospital to talk to Slick did you
6 ask any questions about the crime itself?
7 A. I actually don't recall whether I asked specific
8 questions. I know that what I was doing there was to
9 look to see what we had, see how bad Mr. Slick was hurt,
10 collect any evidence there that was at the hospital.
11 Just by knowing Mr. Slick I tried to comfort him some.
12 Q. All right.
13 A. I figured a familiar voice would kind of --
14 Q. You're saying he recognized your familiar voice?
15 A. Yes, sir.
16 Q. And you went to Richland Memorial a couple of days
17 later?
18 A. Yes, sir.
19 Q. Did you ask any questions there?
20 A. Investigator Clark and I did, yes.
21 Q. All right. I have no further questions. Thank
22 you.
23 MR. KNOBELOCH: No questions.
24 THE COURT: Anything from the State?
25 MR. FINNEY: Nothing further. We'd ask that the

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 3 (of 5) - May 16, 2012

1 THE COURT: Bring the jury in.
2 [Whereupon, the jury re-enters the courtroom at 3:37
3 p.m.]
4 THE COURT: Ready --
5 MR. CORBETT: Thank you, Your Honor. The State
6 will call Marie Hodge.
7 [Whereupon, Ms. Hodge comes forward]
8 THE COURT: You come up please ma'am and put your
9 left hand on that Bible and raise your right.
10 CLERK OF COURT: Repeat your name, please?
11 MS. HODGE: Marie A. Hodge.
12 [Whereupon, the witness is duly sworn by the Clerk
13 of Court as follows: do you solemnly swear the testimony
14 you are about to give will be the truth and nothing but
15 the truth so help you God]
16 MS. HODGE: I do.
17 [Whereupon, the witness takes the witness stand]
18 - - - - -
19 MARIE HODGE,
20 Having been first duly sworn,
21 Was examined and testified as follows:
22 DIRECT EXAMINATION
23 BY MR. CORBETT:
24 Q. Ms. Hodge, good afternoon.
25 A. Good afternoon.

1 Q. Ms. Hodge, if you would please tell us by whom are
2 you employed?

3 A. I work for the Sumter Police Department in Sumter.

4 Q. And how long have you been with the Sumter Police
5 Department?

6 A. Thirty eight years.

7 Q. And what is your current assignment within the
8 Sumter Police Department?

9 A. I am the AFIS examiner, and AFIS stands for
10 Automated Fingerprint Identification System.

11 Q. Now when you say you are the AFIS administrator tell
12 us what that means?

13 A. That means that basically I take in latent
14 fingerprints from different agencies; not just the Sumter
15 Police Department but also the Sheriff's Department,
16 surrounding agencies will often bring things to us also.

17 I get those latent fingerprints in from crime scenes
18 and enter that information into the AFIS system to see if
19 we can determine if we have a match.

20 Q. And if you would please tell me a little bit about
21 both your training and your experience in this field?

22 A. Originally my fingerprint training came in on a --
23 this is going to date me -- in 1968 I worked for the FBI
24 in Washington, D.C. for the identification division.
25 That required for schooling for three months; that's

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 3 (of 5) - May 16, 2012

1 eight hours a day, five days a week, before we could go
2 out and actually work on fingerprints with the FBI. So I
3 did that for about almost two years, then started to work
4 in 1973 with Sumter Police Department.

5 My job title at that time was the identification
6 records person. In other words I had to get the
7 fingerprint records in and match them to identification
8 folders for people who had been arrested to see if they
9 had a prior record and make sure they were the same
10 person as was entered into that record.

11 So I did that for quite some time and then went into
12 the investigative services division or detective division
13 of the Sumter Police Department and was basically
14 responsible for doing all the case folders and case files
15 for General Sessions Court.

16 Also, I guess you'd say the tentative identification
17 of latent fingerprints at that time everything that was
18 done had to be sent to SLED for verification -- the State
19 Law Enforcement Division. And they did the majority of
20 all the fingerprint work as far as the court was
21 concerned.

22 After that in 1989 I worked for over 16 years as the
23 victim advocate for the Sumter Sheriff's Department and
24 Sumter Police Department. Also during that time I still
25 worked with the investigative services division in

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 3 (of 5) - May 16, 2012

1 matching fingerprints for that division; just for the
2 Police Department not for other departments. In 19 --
3 excuse me, in 2005 is when we received a grant for the
4 AFIS system; I like to call that my CSI machine so we got
5 the grant.

6 And part of the grant requirements were that you do
7 fingerprint examinations for other agencies, not just our
8 own. And that's why we do the surrounding area also. It
9 saves a lot of time.

10 Q. Now, from 1968 to 2005 before actually starting with
11 the AFIS system you had occasion to examine fingerprints?

12 A. Correct.

13 Q. Which would number in the?

14 A. Hundreds.

15 Q. So you have looked at hundreds of fingerprints
16 through the years?

17 A. Yes. If you want to count the time with FBI now
18 that was different; that would be thousands.

19 Q. So you have literally looked at thousands of
20 fingerprints through the years?

21 A. Yes.

22 Q. Now you are currently the AFIS administrator for
23 Sumter Police Department, is that correct?

24 A. Correct.

25 Q. And have you testified in court before as an expert

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 3 (of 5) - May 16, 2012

1 witness?

2 A. Yes, I have.

3 Q. What is your field of expertise?

4 A. Fingerprint identification.

5 Q. And you have been qualified as an expert on no less
6 than a half dozen occasions, is that correct?

7 A. At least -- I believe it's six now.

8 Q. Now you were telling me about some experience but
9 you've also had formal training in this field?

10 A. Yes. The first formal training course came with the
11 FBI on fingerprint identification. I've had various
12 schools since then as listed in my resume; it's hard for
13 me to quote all of them, but the Forensic Ridgeology,
14 Advanced Ridgeology, which was a weeklong school.

15 There has also been two and three day schools in
16 palm print comparison, courtroom testimony, various
17 fields of identification.

18 Q. So you've had continuing education through the
19 years?

20 A. Yes.

21 MR. CORBETT: Your Honor, at this time we would
22 offer Marie Hodge as an expert in the field of
23 fingerprint identification.

24 THE COURT: What sayeth the defense?

25 MR. KNOBELOCH: No objection, Your Honor.

1 THE COURT: The court finds she is an expert in
2 fingerprint identification.

3 Q. [Mr. Corbett] Now Ms. Hodge, you have already told
4 us that on occasion you work with agencies in the
5 surrounding area, is that correct?

6 A. Yes.

7 Q. Okay. Now you are familiar with why we have you
8 here today, is that correct?

9 A. Yes.

10 Q. Is Clarendon County one of the agencies that you
11 assist from time to time?

12 A. I do.

13 Q. Okay. And did you receive a latent fingerprint
14 from Clarendon County with regard to this case?

15 A. Yes, I did.

16 Q. Okay. I'm going to show you what has been marked
17 as State's exhibit 17-A as in alpha and ask if you -- if
18 that looks familiar if you can tell us what that is?

19 [Whereupon, the witness is shown item]

20 A. Yes, this is a latent fingerprint card and you will
21 see I've got my initials here and the date that I did the
22 examination.

23 In this particular latent fingerprint is labeled
24 latent image 5.1, which was the fifth card that I looked
25 at and the first fingerprint on that card that I looked

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 3 (of 5) - May 16, 2012

1 at.

2 Q. Now you actually personally examined that card, is
3 that correct?

4 A. Yes, I did.

5 Q. Now if you would please tell us a little bit about
6 how you go about making comparisons with -- that is known
7 as a latent print, correct?

8 A. Correct. The first thing we do is of course I'm
9 going to put this under my camera and it kind of
10 magnifies it so I can see it.

11 And I examine that latent fingerprint for quality,
12 clarity, to see if it's good enough to even enter into
13 the AFIS system.

14 We have to be able to see the sufficient ridge
15 detail before we can enter it. So that's the first thing
16 I do is examine it.

17 Once I put it into the AFIS system we have to mark
18 the different identification points to tell the computer
19 what to look for and then it's sent through the system to
20 search.

21 Q. Now I'm going to stop you right there for just a
22 moment because you talked about identification points.

23 A. Correct.

24 Q. Tell us a little bit about what that means.

25 A. Okay. On your fingers, and you might be able to

1 see them on your own hands you have what we call ridges.
2 These are friction ridges and they occur on your fingers
3 of course and the palms of your hands and the soles of
4 your feet. They are called friction ridges.

5 And it's basically a little raised section that
6 looks like a ridge. If you were a farmer and you put a
7 plow through the fields you'd have a furrow and on each
8 side of that furrow you would have two ridges. That's
9 basically what a fingerprint looks like and what a ridge
10 looks like.

11 And it goes sometimes it will go in a loop and
12 sometimes they will go in a circle and sometimes they
13 will just go sort of in a little wiggly line. And that's
14 called ridge. On some of those ridges may be some
15 identification points.

16 In other words you might have one ridge that is
17 going along and all of a sudden they split and it becomes
18 two. And right there where it splits would be an
19 identification point.

20 You might have a ridge that's going along and all of
21 a sudden it stops abruptly. Right there where it stops
22 is considered an identification point. So that's what we
23 mean by points on the ridges that would be identification
24 points.

25 Q. So for example with this latent image you put it

1 under your camera and then identify these identification
2 points.
3 A. Correct.
4 Q. Or you mark or note it?
5 A. Yes.
6 Q. Okay. And you then compare it to what?
7 A. Compare it to the existing prints that are on file
8 in the system.
9 Q. All right. Did you have occasion to do that in
10 this case?
11 A. Yes, I did.
12 Q. Okay. And what did your results indicate at that
13 time?
14 A. My results indicated at first that I did not get an
15 identification on any of the prints that I actually
16 entered into the system. There were 1, 2, 3, 4, 5, 6
17 that were entered and I did not get identification at
18 first.
19 Q. Okay. What was your next step?
20 A. The next step was to actually print out the
21 fingerprints of persons of interest from the AFIS system.
22 So I did that and compared each set one on one to the
23 individual fingerprint and managed to get an
24 identification on that at that time.
25 Q. Now once you used that card and were able to get an

1 identification are you able to tell the jury how you go
2 about making that positive match?

3 A. Yes. You actually put the latent fingerprint side
4 by side with each fingerprint on a card. Of course there
5 are ten fingerprints on the card. You start with the
6 left one all the way through -- I mean excuse me, the
7 right thumb all the way to the left little finger.

8 So you've actually had to compare that one print
9 side by side with each of those ten prints on each card.
10 And you actually go to those identification points and
11 they have to match up exactly.

12 Not only do the identification points have to match
13 up, but if there is a ridge that doesn't have any breaks
14 in between those that has to be the same too.

15 Q. Now is this something you're looking at side by side
16 comparisons, is that correct?

17 A. Correct.

18 Q. Okay. Is this something you're seeing with your
19 own eyes? Is there some visual representation of how you
20 do this? I mean is there a chart or an example or
21 anything like that that you use?

22 A. Yes, there is.

23 Q. Now tell us how that works.

24 A. Once an identification has been made, which I made
25 in this particular case, then we actually chart those

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 3 (of 5) - May 16, 2012

1 points so that we can present that to you side by side.
2 And we actually do a chart that compares the two prints
3 side by side with one through however many points of
4 identification there are to be compared.

5 Q. Did you have an occasion to do a chart in this
6 particular case?

7 A. Yes, I did.

8 Q. Do you have that with you?

9 A. Yes, I do.

10 Q. May I hold that for a moment?

11 [Whereupon, the witness complies]

12 MR. CORBETT: Your Honor, at this time if I could
13 mark this for identification. And if I may mark this as
14 17-K as in kilo.

15 THE COURT: Okay.

16 [Whereupon, State's exhibit number 17-K is marked by
17 the court reporter]

18 Q. [Mr. Corbett] Now Ms. Hodge, if you would please as
19 best you can show the jury how you go about making that
20 match.

21 A. May I step down?

22 Q. Yes, ma'am.

23 [Whereupon, the witness steps down from the witness
24 stand]

25 A. It's kind of hard to see so far away --

1 THE COURT: Ma'am, can you speak up just a little
2 bit for the court reporter?

3 A. I'm sorry. As you can see they are side by side.
4 This side [indicates] is what is called the latent print.
5 It was taken from the crime scene. And this side over
6 here [indicates] is the known print that came from an ink
7 rolled -- card, okay.

8 So each one of these numbers [indicates] correspond
9 and they represent a point of identification either a
10 bifurcation like I talked about before when the ridge
11 splits and goes into two or it could be an ending ridge.
12 Or it could even what's called an enclosure.

13 Enclosure is where you've got a ridge that comes and
14 splits into two and goes back into one. So that would
15 be two points of identification on both hands, okay.

16 It's a little hard to see but that's what we do is
17 we do them side by side and we actually do a chart and
18 chart each one of the points so that it can be clearly
19 seen.

20 [Whereupon, the witness returns to the witness
21 stand]

22 MR. CORBETT: Your Honor, at this time we would
23 offer 17-K into evidence.

24 THE COURT: What sayeth the defense?

25 MR. KNOBELOCH: No objection.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 3 (of 5) - May 16, 2012

1 THE COURT: Okay. It's in without objection.

2 [Whereupon, State's exhibit number 17-K is entered
3 into evidence by the court]

4 Q. [Mr. Corbett] Now Ms. Hodge I'm going to show you
5 what has been marked as State's exhibit 17-B as in Bravo
6 and ask if you can identify that for us?

7 [Whereupon, the witness is shown document]

8 A. Yes. This is the original report that I generated
9 on May the 20th, 2010.

10 Q. And as a result of your examination what were you
11 able to determine about the latent print supplied to you?

12 A. I was able to determine that Michael Wilson Pearson
13 was identified as having contributed the latent image
14 labeled 5.1. This was identified as finger number 1,
15 which is the right thumb.

16 Q. Now, I'm also going to show you what was previously
17 marked as State's exhibit number 17-E as in Echo and ask
18 if you can tell us what that is?

19 [Whereupon, the witness is shown exhibit]

20 A. Yes. This is an ink rolled fingerprint card therein
21 the name of Michael Wilson Pearson and it also has my
22 initials and the date 12/9/11.

23 Q. Now with the first report you printed -- you took
24 prints from the AFIS system, is that correct?

25 A. Correct.

1 Q. And matched them to Mr. Pearson?

2 A. Correct.

3 Q. Okay. Then at a subsequent point in time you
4 received an actual printed card, which purports to be Mr.
5 Pearson's prints?

6 A. Correct.

7 Q. Now, I'm going to show you what has been marked as
8 State's exhibit 17-C as in Charlie and ask if you can
9 tell us what that is?

10 [Whereupon, the witness is shown document]

11 A. This is the report that I generated based on my
12 having examined the actual ink rolled fingerprint card of
13 Michael Pearson dated December 9th, 2011.

14 Basically on today's date I prepared the ink rolled
15 prints bearing the name of Michael Wilson Pearson as
16 provided by Investigator Clark to the latent image
17 labeled 5.1. I have reaffirmed that this latent image
18 was made by the right thumb of Michael Wilson Pearson.

19 MR. CORBETT: Your Honor, at this time we would
20 move to admit State's exhibit 17-C as in Charlie.

21 THE COURT: What sayeth the defense?

22 MR. DEVOE: No objection.

23 THE COURT: 17-C is in without objection.

24 [Whereupon, State's exhibit number 17-C is entered
25 into evidence by the court]

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 3 (of 5) - May 16, 2012

1 MR. CORBETT: Your Honor, if I may confer with the
2 Solicitor for just one moment.

3 [Whereupon, Mr. Corbett and Mr. Finney confer]

4 Q. [Mr. Corbett] Now Ms. Hodge, earlier you were
5 showing us the chart. If you could get that in front of
6 you?

7 [Whereupon, the witness complies]

8 Q. When you were talking about the identification
9 points. Is there a standard that you use in terms of
10 looking for identification points, quality, number;
11 anything of that nature?

12 A. There's no standard of number of points that you
13 have to have to make a positive identification. And the
14 reason there is really no standard is because everything
15 has to match.

16 Not just the points but as I said before each ridge
17 that is on there that you can see has to be the same as
18 what you see on the rolled print. So everything becomes
19 part of the identification.

20 You even use things as the thickness of a ridge,
21 which can vary and the amount of space between the
22 ridges. But there is no standard number of points.
23 There are 14 points on this one.

24 Q. But you look beyond the points is what you're
25 telling me?

1 A. Yes. Everything has to be the same. It's not just
2 the points.

3 Q. Now if you would please tell us a little bit about
4 the individuality of the fingerprints.

5 A. Fingerprints are unique. They are unique to the
6 individual. And what makes them unique is number one
7 they don't change from birth until after death.

8 The only way you're going to obliterate a
9 fingerprint would be to -- you can scar a fingerprint and
10 change its perception a little, but it's still going to
11 remain -- the ridges are still going to remain the same,
12 but outside that scaring isn't.

13 Q. So individuals do not share fingerprints?

14 A. They do not share fingerprints. There have been
15 studies done even with identical twins over the years.
16 They have never found two to be identical to be just
17 alike.

18 Q. Now Ms. Hodge I know that we've sort of touched on
19 this but let me ask it in this fashion please.

20 If we take item number 17-A, the latent print, and
21 we take item 17-E, the prints of Michael Pearson in your
22 expert opinion does that latent print match to Michael
23 Pearson?

24 A. The latent print labeled 5.1 on 17-A is identified
25 with the right thumb on this fingerprint card of Michael

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 3 (of 5) - May 16, 2012

1 Pearson.

2 Q. Ms. Hodge, thank you. Please answer any questions
3 these gentlemen may have.

4 CROSS-EXAMINATION

5 BY MR. DEVOE:

6 Q. Ms. Hodge, I guess I'm this gentleman. My name is
7 Harry Devoe. I'm the attorney representing Michael
8 Pearson in this case.

9 If my accent throws you off and you can't understand
10 me, let me know. The judge tells me that from time to
11 time. You also examined I think palm prints in this
12 case?

13 A. Yes, I did.

14 Q. And supposedly they are the palm prints of among
15 others Michael Pearson?

16 A. Yes.

17 Q. And the report I see that you have here says you
18 were unable to identify those palm prints as belonging to
19 Michael Pearson.

20 A. That's correct. The palm prints that I had was not
21 identified as Michael Pearson.

22 Q. And that was found on the same car I suppose and was
23 submitted to you by the --

24 A. I'm not familiar with where they were located on the
25 -- from the crime scene I'm not familiar with the...

1 Q. Okay. And the thumb print in question from Michael
2 was that a flat print on the surface you got it from or
3 an edge print or what?

4 A. You know I don't know. The only thing that I
5 received is going to be the actual latent lift card. The
6 officer that lifted the print could tell you what the
7 surface looked like. But the only thing that I get is
8 just this card, and of course it's flat.

9 Q. You can't tell from the print itself would be a
10 little bit different on the ridge versus the flat versus
11 the other ridge?

12 A. No, I couldn't tell you what the surface looked like
13 that the print was sitting on.

14 Q. One interesting thing about your testimony is you
15 never testified to us what the age of that print is did
16 you?

17 A. No, sir. You can't age a fingerprint. It could be
18 there from two years on up to two days. You can't date a
19 print or age a print.

20 Q. All right.

21 A. Unless it's wiped off. In other words you would
22 actually have to clean something off for it to go away --
23 a fingerprint to get it to go away. If it's left at
24 someplace and left undisturbed, then it can be there for
25 quite some time.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 3 (of 5) - May 16, 2012

1 Q. Some people said that some weather might get rid of
2 the print.

3 A. You would have to wipe it. Say that if it rained or
4 something like that you would have to actually wipe that
5 fingerprint off with something. The rain would not
6 affect it.

7 Q. So if it came from a car, for example, would a car
8 wash take care of it?

9 A. If it was rubbed off, yes it would.

10 Q. Rubbed off?

11 A. Yes, it would be. If you went through a car wash
12 and I guess those little things that turn around and it
13 brushed it then yes, it would wash it off.

14 Q. All right. There's one other question to clarify
15 one thing for me. On your report you stated that I think
16 you had seven suitable latent images were searched
17 through South Carolina AFIS?

18 A. Yes.

19 Q. With negative results?

20 A. Yes.

21 Q. Now why would that be?

22 A. There are many reasons that you wouldn't get
23 results. The -- sometimes the latent image doesn't
24 contain the same part of the fingerprint that may be on
25 the fingerprint card. Sometimes the quality of the

1 fingerprints that are in the system are not as good as
2 the quality of the latent prints so they are or more
3 simply there is not anyone in the system to match that
4 particular latent print. So there are many reasons for
5 not getting them.

6 Q. But one of -- or that the print you used was a bad
7 print compared to one in the AFIS system. Could that
8 work out that way, the reverse way?

9 A. If the one that we used was the bad one?

10 Q. If your print was not as good as the one in the AFIS
11 system would it show up in the AFIS system or not?

12 A. If you had -- if you had something that was of such
13 poor quality that you couldn't use it you wouldn't even
14 enter it in the AFIS system.

15 It has to be a certain -- you have to have a certain
16 number of -- you have to have a certain quality and
17 clarity to be able to enter it into the AFIS system. So
18 if it's that poor you wouldn't even enter it.

19 Q. But why would it be in the AFIS system as a bad
20 quality print?

21 A. Some prints that they are -- some of the ten prints
22 that were put in the AFIS system originally when they
23 first started with the AFIS system were rolled maybe a
24 while ago and their quality of the actual rolled prints
25 aren't as good. I could point out that even some of the

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 3 (of 5) - May 16, 2012

1 these that are not rolled -- in my opinion if they are
2 not rolled properly there are portions of the fingerprint
3 missing. So sometimes that particular portion is
4 missing. It might be the piece that you got on your
5 latent print so therefore you're not going to get a match
6 because it's not in there.

7 Q. But the more recent prints that go in are better I
8 take it?

9 A. The more recent prints that are going in now are
10 done usually by live scanning and they are much better.

11 Q. I notice in this report you had seven prints and
12 none of them came out.

13 A. Correct.

14 Q. Is that unusual?

15 A. No, that's not unusual.

16 Q. All right. So I guess my last question would be
17 that you're saying on the age situation the only way to
18 get rid of the print on a surface is to wipe it off?

19 A. Yes, sir. You would have to disturb it in some
20 manner. In other words to wipe it, to smear it, to wash
21 it, you would have to disturb it. As long as it's not
22 disturbed then that fingerprint can stay there.

23 Q. Let's go further then. Would heavy rain take it
24 off?

25 A. It should not. The heavy rain should not take it

1 off because you're not disturbing the print. You're not
2 wiping it or smearing it.

3 Q. And a light drizzle certainly wouldn't take it off?

4 A. It should not.

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

6 THE COURT: Anything further from the State?

7 MR. CORBETT: Nothing from the State, Your Honor.

8 THE COURT: Thank you. Any reason she can't be
9 excused?

10 MR. FINNEY: No, Your Honor.

11 [Whereupon, the witness is excused and exits the
12 witness stand]

13 MR. CORBETT: Your Honor, are you ready for us to
14 call the next witness?

15 THE COURT: Yes.

16 MR. CORBETT: Your Honor, the State would call
17 Barbara Procter.

18 [Whereupon, Ms. Procter comes forward]

19 CLERK OF COURT: Raise your right hand and place
20 your left hand on the Bible and repeat your name, please?

21 MS. PROCTER: Barbara Procter.

22 [Whereupon, the witness is duly sworn by the Clerk
23 of Court as follows: do you solemnly swear the testimony
24 you are about to give will be the truth and nothing but
25 the truth so help you God]

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 3 (of 5) - May 16, 2012

1 MS. PROCTER: I do.

2 [Whereupon, the witness takes the witness stand]

3 - - - - -

4 BARBARA PROCTER,

5 Having been first duly sworn,

6 Was examined and testified as follows:

7 DIRECT EXAMINATION

8 BY MR. CORBETT:

9 Q. Ms. Procter, good afternoon. Tell us by whom are
10 you employed?

11 A. Clarendon County Sheriff's office.

12 Q. And how long have you been with the Clarendon County
13 Sheriff's office?

14 A. Fifteen years.

15 Q. And what is your current duty with the Clarendon
16 County Sheriff's office?

17 A. I'm the evidence custodian.

18 Q. And how long have you been the evidence custodian?

19 A. Fifteen years.

20 Q. So obvious question but May the 15th of 2010 you were
21 the evidence custodian?

22 A. That's correct.

23 Q. Okay. Now as evidence custodian tell us a little
24 bit about what it is that you do?

25 A. It's my responsibility to keep up with every piece

1 of evidence that is turned in to the Sheriff's office.
2 As our officers are out on -- the road guys and traffic
3 stops or anything else they may acquire evidence we have
4 lockers that they can put them in.

5 And they have a key; they open it up, put the
6 evidence in, lock it and drop the key. And I have to go
7 around to the back side, no one else has a key, I go
8 around to the back side and retrieve it, log it in.

9 I have set places that I put certain things and it's
10 my job to keep up with it; either carry it to SLED, bring
11 it to court, or let it sit.

12 Q. Now in this particular case there are items of
13 evidence here that you've handled and then some that the
14 investigation division handled, is that correct?

15 A. That's correct.

16 Q. Now are you ever responsible for collecting
17 evidence?

18 A. I am.

19 Q. Now with regard to this case I'm going to show you
20 what has been marked I believe that's number 22, is that
21 correct?

22 [Whereupon, the witness is shown item]

23 A. It is.

24 Q. And if you would please tell us what is item 22?

25 A. It is a buccal swab from Michael Pearson.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 3 (of 5) - May 16, 2012

1 Q. Okay. Now tell us if you would please what a
2 buccal swab is.

3 A. It comes in a kit and it goes back in a kit. It
4 comes with instructions. You just read and follow the
5 instructions.

6 It's basically like swab -- Q-tip swabs almost. You
7 go inside the sides of a person's mouth and swab it
8 really good. It comes with a little box with holes.

9 You stand those swabs up and let them dry for just a
10 matter of minutes, place them back inside, seal it up,
11 and then it's carried to SLED for analysis.

12 Q. Now with regard to item 22 you indicated that was a
13 buccal swab from Mr. Pearson, is that correct?

14 A. That's correct.

15 Q. And did you personally take that swab from Mr.
16 Pearson?

17 A. I did.

18 Q. And did you then submit that item to SLED?

19 A. I did.

20 Q. Now you personally don't do any type of analysis of
21 it, is that correct?

22 A. That's correct.

23 MR. CORBETT: Your Honor, at this time we would
24 move item number 22 into evidence.

25 THE COURT: What sayeth the defense?

1 MR. DEVOE: No objection, Your Honor.

2 THE COURT: It's in without objection.

3 [Whereupon, State's exhibit number 22 is entered
4 into evidence by the court]

5 Q. [Mr. Corbett] Now Ms. Procter, in this particular
6 case you indicated that there are times where you do
7 evidence collection, is that right?

8 A. That's right.

9 Q. Other than the buccal swab did you do evidence
10 collection in this case?

11 A. No, I did not.

12 Q. But you did maintain custody and control of evidence

13 ---

14 A. --- care, custody, and control of it.

15 Q. Okay. So when we see these paper bags here those
16 are things that would be stored in your area?

17 A. That's correct.

18 Q. Okay. Now are these items that you brought here to
19 court things that were logged into evidence?

20 A. Right. They were logged into evidence. Some had
21 been carried to SLED, some I carried to SLED, and then I
22 picked up everything as they finished, brought it back,
23 logged it back in, and had a set place for it all.

24 Q. And from the time that it was brought to you it then
25 goes and is left with SLED, so in between that time does

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 3 (of 5) - May 16, 2012

1 anybody else come into your area and do anything with
2 these items?

3 A. No.

4 Q. Once it comes back from SLED does it stay secured in
5 your area?

6 A. That's correct.

7 Q. Does anyone else access those items of evidence at
8 this time?

9 A. No one else has a key to that room.

10 Q. So when evidence is turned in to you it goes to SLED
11 in the same condition as when it was turned in?

12 A. That's right.

13 Q. And when it comes back from SLED it stays in the
14 same condition until we get up here and start pulling it
15 apart?

16 A. That's correct.

17 Q. Ms. Procter, thank you. Please answer any questions
18 these gentlemen have.

19 MR. DEVOE: I have no questions, Your Honor.

20 MR. KNOBELOCH: No questions.

21 MR. FINNEY: Your Honor, please can we approach?

22 [Whereupon, an off the record bench conference is
23 held]

24 THE COURT: Ladies and gentlemen, after conferring
25 with counsel we are probably going to have to quit for

STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	
COUNTY OF CLARENDON	)	DOCKET NO. 2011-GS-14-0068
	)	
	)	
THE STATE OF SOUTH CAROLINA	)	
	)	
Plaintiff	)	
	)	
vs.	)	
	)	
MICHAEL PEARSON and	)	
VICTOR WELDON	)	
	)	
Defendants	)	
	)	
	)	
	)	
_____	)	TRANSCRIPT OF RECORD

May 17, 2012
Manning, South Carolina

VOLUME 4 OF 5

B E F O R E:

THE HONORABLE RALPH F. COTHRAN, JUDGE

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

ERNEST A. FINNEY, III, ESQ.
JASON CORBETT, ESQ.
Attorneys for the State

JOHN KNOBELOCH ESQ.
LAURA KNOBELOCH, ESQ.
Attorneys for the Defendant Weldon

HARRY DEVOE, ESQ.
Attorney for Defendant Pearson

Melissa R. Singletary
Court Reporter

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 4 (of 5) - May 17, 2012

1 KENNETH CLARK,
2 Having been first duly sworn,
3 Was examined and testified as follows:
4 DIRECT EXAMINATION
5 BY MR. FINNEY:
6 Q. Good morning, sir.
7 A. Good morning.
8 Q. Tell us your full name, please?
9 A. Investigator Kenneth Clark.
10 Q. And where are you employed?
11 A. Clarendon County Sheriff's Office.
12 Q. How long have you been connected with the Sheriff's
13 Office?
14 A. I began with the Sheriff's Office in 1990.
15 Q. And do you have law enforcement experience before
16 you joined the Sheriff's Office?
17 A. No, sir. Not prior to 1990.
18 Q. All right. And you live here in Clarendon County?
19 A. Yes, all my life.
20 Q. All right. How long have you been an investigator?
21 A. I've been an investigator for approximately two and
22 half years.
23 Q. All right. And the case that we are talking about
24 today, the Gibbons case, it occurred in May of 2010. How
25 long had you been an investigator when this case arose?

1 A. Approximately six months.

2 Q. All right. Would you say that this is probably the
3 first big case you worked on as an investigator?

4 A. It was.

5 Q. All right. Tell us a little bit about what an
6 investigator does. What was your training? I think we
7 had testimony yesterday from Mr. Ham that he helped give
8 you some of the ropes, learned the ropes as how to do an
9 investigation. What do you do -- some of the things you
10 do as an investigator?

11 A. Basically your role is to evaluate and process the
12 crime scene and thereafter to gather evidence and from
13 thereafter to have that evidence with the help of outside
14 agents to have that evidence analyzed into -- involvement
15 in the particular case in order to -- in order to bring
16 about an arrest.

17 We gather the evidence. We seek -- solicit help
18 from SLED to get the evidence analyzed where it's not
19 done here in Clarendon County in hope to bring about an
20 arrest.

21 Q. Do you find that most cases track along the same
22 lines or is every case different?

23 A. Some cases are different. Some cases it's harder to
24 get evidence on the scene. In some cases evidence is
25 just there.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 4 (of 5) - May 17, 2012

1 Q. Let me ask you this. Did you know Mr. Ed Gibbons
2 prior to this assault and robbery on May the 15th?

3 A. Yes, I did.

4 Q. And did you know him well?

5 A. I know him very well. As a matter of fact I learned
6 to know Mr. Gibbons when I bought my first car and
7 started doing business at this parts place.

8 Q. Did you have occasion to go to the house before or
9 did you know the area at Country Club Road?

10 A. I was familiar with the area; not per se familiar
11 with his residence but I was familiar with the area.

12 Q. All right. Now on the morning of May the 15th when
13 you got the call you were the investigator on call?

14 A. Yes, I was. I was the investigator on call.

15 Q. It was a Saturday morning.

16 A. Yes.

17 Q. What time would you say you arrived at the house?

18 A. I arrived approximately 6:50.

19 Q. All right. And at that time was Mr. Gibbons there?

20 A. Mr. Gibbons was in the ambulance when I arrived on
21 the scene. I did not get to see him.

22 Q. All right. How about Ms. Gibbons, did you have any
23 chance to meet her or talk to her?

24 A. For a second. And I really didn't talk with her.
25 She was with family and she was getting in a vehicle to

1 follow the ambulance.

2 Q. All right. Now what was your first official thing
3 you did at the crime scene that morning?

4 A. To try to gather as much information as possible on
5 what happened. And that was kind of hard because we
6 didn't have the victim there at the time.

7 Family members were concerned about the victim; they
8 were going to the hospital. We knew that at that time
9 that there was a burglary, a home invasion type incident.

10 But from there on we started -- I started to
11 evaluate the crime scene. And we start doing that by
12 taking photos.

13 We try to take photos as quick as possible so
14 nothing is disturbed -- what, if anything had been
15 disturbed try to keep everything in place.

16 And you try to do an out view of a crime scene as
17 you start taking your pictures going inward. So the
18 first shot would be like the mailbox to establish the
19 incident location.

20 Q. All right. I'm going to show you a stack of color
21 photographs that have been introduced into evidence as
22 State's exhibits 3-A through 3-V.

23 [Whereupon, the witness is shown photos]

24 Q. Would you just look at them and maybe if you see
25 things that you want to point out to the jury -- what is

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 4 (of 5) - May 17, 2012

1 in 3-A?

2 A. 3-A is an overview of the home. And that
3 [indicates] would be the front of the home.

4 Q. And did you take all these photographs we're about
5 to talk about?

6 A. Yes, I did.

7 Q. All right. What happens after 3-A?

8 A. Exhibit 3-B shows facing the residence this would be
9 the right side [indicates] actually the driveway going
10 into the rear of the residence.

11 Q. That photograph shows that by the time that picture
12 was taken law enforcement had already responded?

13 A. Yes.

14 Q. All right. I believe we've gone through most of
15 these photographs. But you took all of these?

16 A. Yes sir, I did.

17 Q. All right. Did you have the occasion to take some
18 photographs as the house was found and then later on you
19 had to move vehicles, open doors, things like that to
20 take other photographs?

21 A. Yes. That's our first thing is to take a photo as
22 the scene is before doing any marking we take a
23 photograph as the scene is.

24 Q. All right. Did you take this photograph State's
25 exhibit 3-V of Mr. Gibbons?

1 A. Not that particular photograph. That wasn't taken
2 by me.

3 Q. Did you happen to go to the hospital to see Mr.
4 Gibbons at the hospital after you left the crime scene?

5 A. Not on that particular day.

6 Q. All right. Did you learn that he had been
7 Medevaced over to the hospital in Richland County?

8 A. Yes. I stayed in contact there from May the 15th on
9 the day of the incident with the family because we had
10 concern on his well being and how he was getting along.

11 Q. All right. Now, want to show you 3 color
12 photographs. One is State's exhibit 18-C, one is 18-B,
13 and one is 18-A; A, B, and C.

14 [Whereupon, the witness is shown photographs]

15 Q. Would you look at those photographs and tell us what
16 you see in them?

17 A. Exhibit 18-C is mark number 5 -- marker number 5,
18 which placed -- the photo of a piece of black duct tape.

19 Q. And tell us about the yellow markers with the
20 numbers on them.

21 A. The yellow markers is used to display evidence where
22 you can actually be able to go back from the photos and
23 also from drawings to show where a particular object was.

24 Q. All right. And what about 18-B?

25 A. 18-B is marker number 6, which shows a pair of

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 4 (of 5) - May 17, 2012

1 broken eyeglasses and also a blood spot. And around
2 marker number 6 is a pair of shoes and also an ink pen
3 and also a quarter, and also a chair.

4 Q. All right. Thank you, sir. In the next exhibit
5 18-A?

6 A. 18-A is an overall picture of majority of all the
7 markings that was placed inside the garage area.

8 Q. Would it have been one of your duties to place the
9 markers down where you saw things that you thought were
10 evidentiary and then take pictures of them?

11 A. Yes, that's part of my duty.

12 Q. And those items were not moved by anybody when you
13 took those pictures; that's how you found the scene?

14 A. They were marked as they were found.

15 Q. All right.

16 MR. FINNEY: Move to introduce 18-A, B, and C.

17 MR. KNOBELOCH: Without objection.

18 THE COURT: Without objection.

19 MR. DEVOE: No objection, Your Honor.

20 THE COURT: 18-A, B, and C are in without
21 objection.

22 [Whereupon, State's exhibit numbers 18-A, 18-B, and
23 18-C are admitted into evidence by the court]

24 MR. FINNEY: Permission to publish?

25 THE COURT: Yes.

1 Q. [Mr. Finney] Now Investigator after you photographed
2 and did your markers did you take measurements also?

3 A. Not at the time.

4 Q. All right. Were you in charge of actually
5 collecting evidence?

6 A. Yes.

7 Q. All right. Can you tell us for example what you
8 collected? Do you have any notes that will help us show
9 what you collected that day?

10 All of the things, glasses, shoes, penknife, tape
11 measure; all those things that were found in the garage
12 that have been testified to, did you collect them all and
13 put them in evidence?

14 A. Yes. All those were marked and they were placed on
15 a chain of evidence form.

16 Q. All right. Did you testify earlier that you
17 collected certain black tape that was found on the garage
18 floor?

19 A. Yes, sir.

20 Q. All right. I want to show you what has been marked
21 as State's exhibit number 12 and ask if you can identify
22 that item?

23 [Whereupon, the witness is shown exhibit]

24 A. Yes. This appears to be some of the black tape that
25 was found on the scene that was marked in the exhibits.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 4 (of 5) - May 17, 2012

1 Q. All right. And the black tape was collected by
2 you, is that correct?

3 A. Yes.

4 Q. Was it transferred to the evidence room at Clarendon
5 County?

6 A. Yes -- well, at first this was on a Sunday. It was
7 locked away in a secure area and on the Monday morning
8 took all the evidence myself and Investigator Ham on the
9 17th and that's when it went to SLED.

10 Q. All right. This is State's exhibit number 13,
11 another plastic bag. Can you tell us what's in there?

12 [Whereupon, the witness is shown exhibit]

13 A. Yes. It appears to be part of a black duct tape
14 that was also found on the scene.

15 Q. All right. And State's exhibit 14?

16 [Whereupon, the witness is shown exhibit]

17 Q. Can you tell us what that is?

18 A. This is also black duct tape that was found on the
19 scene.

20 Q. All right. Collected by you?

21 A. Yes.

22 Q. And you transferred all of these items over to SLED?

23 A. Yes, I did.

24 [Whereupon, Mr. Finney shows exhibit to Mr.

25 Knobeloch and Mr. Devoe]

1 MR. FINNEY: Without objection, Your Honor.

2 State's 13, 14 -- excuse me State's 12, 13, and 14 into
3 evidence.

4 THE COURT: In without objection.

5 [Whereupon, State's exhibit numbers 12, 13, and 14
6 are admitted into evidence by the court]

7 Q. [Mr. Finney] Once you had recovered the evidence you
8 say you had to wait until Monday to transfer some of the
9 evidence over to SLED?

10 A. Yes.

11 Q. And they were going to do the processing for
12 fingerprints, D-N-A; they were going to look at the
13 evidence you collected?

14 A. That's correct.

15 Q. All right. While you were in Columbia dropping off
16 the evidence did you also have a chance to go by and see
17 Mr. Gibbons at the hospital?

18 A. Yes, that was part of the plan of the trip on the
19 17th.

20 Q. And as a result of going in and having an interview
21 with him what were you able to learn about the people who
22 had perpetrated this crime?

23 A. After talking with Mr. Gibbons there at the hospital
24 we learned that the suspects were of mid age, medium
25 build, they were black -- three black males. And we

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 4 (of 5) - May 17, 2012

1 learned that it was an attack there at the residence. He
2 did -- got beaten. We also learned from him that they
3 took his vehicle.

4 And most of what we learned from him just
5 reiterating what -- parts of what we already knew; that
6 they took his vehicle, they took cash away from him, his
7 life was threatened.

8 Q. All right. Now that was the first meeting May
9 17th?

10 A. Yes, it was.

11 Q. Did you have other meetings with Mr. Gibbons in the
12 days and weeks that followed?

13 A. Yes. Occasionally, yes I would meet up with him.

14 Q. All right. Now did you take notes that first
15 meeting as to what he said happened?

16 A. Yes. That was actually -- the first meeting was
17 audio; it was taking into a cassette recording.

18 Q. All right. What happened to that cassette
19 recording?

20 A. That cassette recording was passed on to the
21 investigator coordinator and evidence custodian, Ms.
22 Barbara Procter.

23 Q. And as a result did Ms. Procter type up what was on
24 the tape?

25 A. Yes.

1 Q. Did you save the tape after you had the typed
2 document?

3 A. No. She did not save the tape after -- those tapes
4 are...

5 Q. And what is that typed document called as far as
6 your case file?

7 A. They're called case notes.

8 Q. So after talking with Mr. Gibbons on the 17th of May
9 you had some case notes?

10 A. Yes.

11 Q. And in those case notes he told you there were three
12 black males. He told you they were of medium build.

13 A. Correct.

14 Q. Did he tell you anything about what they had on or
15 how they -- identity, could he see hair, beards, teeth,
16 skin tone?

17 A. He stated that they were wearing masks and they were
18 wearing dark clothing.

19 Q. All right. Now were you able to determine what
20 time Mr. Gibbons came out of his house that morning?

21 A. It was approximately 6:15 -- 6:15 to 6:20.

22 Q. All right. And that would have been when he exited
23 his house to come into the garage area?

24 A. Yes.

25 Q. All right. At that point do you believe or does

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 4 (of 5) - May 17, 2012

1 your investigation show you whether or not a sunrise had
2 occurred?

3 A. Yes. I did some checking on that at that particular
4 year -- we're talking about two years, 2010 -- if I can
5 refer back to some notes.

6 [Whereupon, the witness reviews his notes]

7 A. On May 15, 2010 sunrise at 6:21 a.m.

8 Q. All right. And based on your investigation at 6:21
9 would Mr. Gibbons have been coming out of the house on
10 the steps getting ready to go to work?

11 A. Yes.

12 Q. And did he testify or tell you in an interview with
13 you that the gentlemen were already in his storage room
14 at the time he came out?

15 A. Yes, he did.

16 Q. Did he have any way of knowing or did he tell you
17 how long they had been in there?

18 A. No, sir.

19 Q. All right. Now based on the interviews that you
20 had with Mr. Gibbons you found out three men, dark
21 clothing with masks on. You had already submitted the
22 evidence to SLED.

23 A. Yes.

24 Q. All right. The 17th, the 18th, the 19th, the 20th of
25 May, those days, did you have a suspect?

1 A. No, sir.

2 Q. What were you doing in the community as far as this
3 case was concerned?

4 A. Well, I was following up all the leads and I was
5 receiving a lot of phone calls. I was on the street
6 interviewing persons that may any information -- Mr.
7 Gibbons is a business man. There are people in and out
8 of his business all day.

9 I was interviewing anyone that would have any
10 information leading to this crime; and also again,
11 following up all the leads that were coming in. We had
12 several phone calls that was coming in naming possibly
13 persons of interest that they want us to check out.

14 Q. All right. And when did you get your first big
15 break in this case?

16 A. The first -- leading up to the first big break I
17 received a phone call dealing with three individuals that
18 was spending a lot of money.

19 The first person that was interviewed to look at I
20 talked with Michael Pearson. We met on the back of
21 Family Court.

22 Q. This is the Michael Pearson who is sitting in the
23 blue shirt?

24 A. We met on the back of Family Court. I received the
25 information, and I didn't know Michael prior to this, I

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 4 (of 5) - May 17, 2012

1 received information and they told me what he was wearing
2 and they said he just went around near Family Court. I
3 met him in the parking lot and asked him if he would mind
4 talking to me; I'm doing investigation on a case. And he
5 just sat and talked with me.

6 Q. All right. Based on that interview or that
7 conversation did you take any action against Mr. Pearson
8 at that time?

9 A. Not at that time.

10 Q. All right. On the 20th of May did you receive some
11 information concerning evidence that had been collected
12 at the scene?

13 A. Yes. Subsequently -- coincidentally we received on
14 the 20th we received information back from Marie Hodge
15 that works at Sumter County -- Sumter City. She is a
16 fingerprint analyst.

17 We received information back from a latent print
18 card that we sent up there to be analyzed that the
19 fingerprint came back as a positive hit on Michael
20 Pearson.

21 Q. And that was the same Michael Pearson you had
22 interviewed over at Family Court a day or two earlier?

23 A. Yes.

24 Q. All right. And you didn't have any way of knowing
25 where -- who that fingerprint card that was sent off to

1 Marie Hodge you didn't know whose fingerprint was on it,
2 did you?

3 A. No, sir.

4 Q. Do you remember -- can you tell the ladies and
5 gentlemen of the jury where that fingerprint card came
6 from in terms of the crime scene?

7 A. Yes, from Investigator Richardson. And I didn't
8 lift that particular print. It was on the driver's side
9 rear quarter panel of the bed of Mr. Gibbons El Camino.

10 Q. And that's the El Camino that was taken by the
11 robbers from the house and later found over on the
12 abandoned road.

13 A. Yes, on Oak Grove Church Rd.

14 Q. Let me ask you this. I'm not sure the jury has been
15 told this. Can you tell the jury how far it is in
16 distance from Mr. Gibbons' house to where the car was
17 abandoned on Oak Grove Rd.?

18 A. Yes, it's approximately two and half miles.

19 Q. And driving at a normal rate of speed how long would
20 it take a person to drive from Mr. Gibbons house over to
21 where that car was found?

22 A. At a normal rate I would say 8 to 10 minutes.

23 Q. And if they were in a hurry they could do it faster?

24 A. Yes.

25 Q. Now once you got the notice that you had a

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 4 (of 5) - May 17, 2012

1 fingerprint that matched Michael Pearson what did you do
2 then?

3 A. Yes. After we got the notice that it was a positive
4 hit we did at that time had a warrant drawn up for the
5 arrest to bring Michael Pearson in.

6 Q. All right. Now at that time did you go out and
7 search for him and arrest him?

8 A. Yes, we did.

9 Q. And did you interview him?

10 A. Yes.

11 Q. As a result of that interview did any statements get
12 made?

13 A. Yes. During the audio interview with Mr. Pearson he
14 stated that he did not even -- he was not well familiar
15 with Mr. Gibbons. He had heard of him but he had never
16 been around any of his property or vehicle, didn't know
17 where he stayed and never been to his house.

18 Q. All right. So Mr. -- let me ask this. When those
19 statements were taken by you did you inform Mr. Pearson
20 of his rights to an attorney?

21 A. Yes, I did.

22 Q. His rights to remain silent and all that?

23 A. Yes, before the interview.

24 Q. And so he denied knowing anything about this case?

25 A. Yes.

1 Q. At that time did you tell him that his fingerprint
2 had been found on the vehicle?

3 A. Yes, I did. And I gave him the opportunity to
4 reveal any information that he had on this case, his
5 involvement to be open and be truthful.

6 Q. And he declined to say anything?

7 A. Yes, he declined.

8 Q. Now let me ask you this. As a result of your
9 investigation and the evidence you had put together at
10 that point when you sent out the warrant on Michael
11 Pearson did you send out warrants charging him with all
12 of the counts that are now contained in the indictment?

13 A. Yes, sir.

14 Q. Let's go through this a little bit. You charged him
15 with Burglary First?

16 A. Yes.

17 Q. Why -- tell the jury why did you charge Michael
18 Pearson with Burglary in the First Degree?

19 A. Because it was revealed that he entered the
20 residence to commit a crime.

21 Q. And what was the crime?

22 A. The crime was robbery.

23 Q. All right. And did he enter -- was it a residence
24 or a business that he entered?

25 A. He entered a residence.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 4 (of 5) - May 17, 2012

1 Q. And was it in the nighttime so far as your
2 investigation was concerned?

3 A. My investigation revealed that it was nighttime.

4 Q. And that's because of what?

5 A. Because of the hour of the sunset, the time of the
6 attack.

7 Q. Did you also charge Mr. Pearson with Attempted
8 Murder?

9 A. Yes.

10 Q. And based on what evidence had you collected about
11 that?

12 A. The evidence revealed and the investigation the way
13 -- how the attack came about that they did have a weapon.
14 It was mentioned of a weapon during -- gathering a
15 statement from Mr. Gibbons.

16 They stated that should we kill him. So that led me
17 to believe that they had the means to carry out that
18 threat. And also was mentioned that one of the gentlemen
19 had the object in his hand that possibly could have been
20 a handgun.

21 Q. Did Mr. Gibbons detail to you that after the first
22 beating when the gentlemen jumped in the El Camino to
23 leave that somebody saw him getting up and they said he's
24 up, he's up?

25 A. Yes. And thereafter one of the gentlemen came back

1 inside and they struck him several more times completely
2 knocking him out.

3 Q. All right. The other warrant that you issued
4 against Michael Pearson would have been for Armed
5 Robbery?

6 A. Yes.

7 Q. What was that based on?

8 A. They did take cash from his person to -- location.
9 It was found out that he had cash in his wallet. And
10 also it was a money clip with his initials on it that
11 cash was taken from.

12 Q. All right. And that robbery was affected --
13 according to your investigation did you believe that
14 robbery was affected with a weapon?

15 A. Yes.

16 Q. What was the weapon that you thought was used?

17 A. A handgun.

18 Q. All right. Now as to the next count that would
19 have been Grand Larceny. You charged Michael Pearson
20 with Grand Larceny in this case?

21 A. Yes.

22 Q. Based on what? He did took the vehicle from the
23 residence, which was valued over 2,000 dollars.

24 Q. And that would have been the El Camino automobile?

25 A. That would have been the El Camino.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 4 (of 5) - May 17, 2012

1 Q. All right. Now the next warrant that was served
2 wad Kidnapping.

3 A. Yes.

4 Q. What were the facts that led you to believe that he
5 was guilty of kidnapping?

6 A. Yes. They by wrapping duct tape around his body
7 they did restrict his movement. Mr. Gibbons could not
8 leave the residence -- he couldn't -- so they actually
9 restrained him and restricted his movement, up to
10 Kidnapping.

11 Q. All right. And the last count was Possession of a
12 Weapon During a Violent Crime.

13 A. Yes.

14 Q. Why did you charge him with that?

15 A. Yes, because we do believe and evidence revealed in
16 testimony that they did -- believed to have a weapon, did
17 mention of a weapon, and then had means to use a weapon.

18 Q. All right. After Mr. Pearson was served with all
19 those warrants did your investigation continue?

20 A. Yes, it did.

21 Q. How many men were you looking for at that point?

22 A. We were looking for approximately three.

23 Q. All right. Did you ever have occasion to think
24 that maybe more than three were involved?

25 A. Yes.

1 Q. Tell us why.

2 A. Because three was actually -- three was on the scene
3 and this came from the testimony of the victim and we do
4 believe they had to have been dropped off and they had to
5 have been picked up. So there had to a fourth person
6 involved and maybe a fifth person.

7 Q. All right. So you were open to the possibility
8 that there were more than three people involved in this
9 crime?

10 A. Yes.

11 Q. Now as a result of your investigation after May the
12 20th when was the next big break that came along that
13 identified a suspect in this case?

14 A. If I can refer to my notes.

15 [Whereupon, the witness reviews notes]

16 A. On May the 25th, which was exactly 10 days later we
17 received information -- I received information of a young
18 lady by the name of Loretta Green that had information.

19 I met with her and she stated to me that she
20 overheard a conversation that Slick Gibbons was beat up.
21 And this information came from what she said James --
22 Clark. And in the conversation he said they -- they
23 beat up Slick.

24 Q. All right. And after you got that information did
25 you start checking on leads for those people?

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 4 (of 5) - May 17, 2012

1 A. Yes. I started checking leads on James Clark and
2 his involvement, anyone who would have been in the circle
3 meaning anyone who hangs around him I did all the
4 background checks on James, and we continued. And then I
5 had another meeting with Loretta.

6 Q. All right. So you were pursuing information to try
7 to get information about what was being said in the
8 community?

9 A. Yes.

10 Q. Did you have occasion about a month later, the 23rd
11 of June to receive D-N-A information from the crime
12 scene?

13 A. Yes. Around the 23rd of June we received
14 information from SLED with another positive hit that came
15 off the black duct tape that was wrapped around the
16 victim, Mr. Gibbons, head.

17 Q. Before June 23rd the only person that you had
18 arrested and charged with anything was Mr. Pearson?

19 A. Yes.

20 Q. You were still looking for other suspects?

21 A. Yes.

22 Q. Once the June hit came in from SLED saying there was
23 D-N-A who did that D-N-A point you to?

24 A. Victor Weldon.

25 Q. All right. And Mr. Weldon is in court today in the

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 4 (of 5) - May 17, 2012

1 white shirt?
2 A. With the white shirt on.
3 Q. Did you know him?
4 A. No, sir.
5 Q. Had you received any information before June 23rd
6 that led you to believe that Victor Weldon was a suspect
7 or a person of interest in the Gibbons case?
8 A. Not in the Gibbons case.
9 Q. All right. Now once you got that hit did you go
10 out and look for Mr. Weldon?
11 A. Yes, we did.
12 Q. Did you find him and charge him?
13 A. Yes.
14 Q. And did you charge him with the same charges that
15 you had placed against Mr. Pearson?
16 A. Likewise.
17 Q. Those are Burglary First, Attempted Murder, Armed
18 Robbery, Grand Larceny, Kidnapping, and Possession of a
19 Weapon During a Violent Crime?
20 A. Yes, sir.
21 Q. All right. Did you interview Mr. Weldon?
22 A. Yes.
23 Q. And as a result of that interview did you learn any
24 information?
25 A. He was adamant about he really -- he didn't know Mr.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 4 (of 5) - May 17, 2012

1 Gibbons, wasn't on the scene, didn't know what we were
2 talking about in reference to a robbery.

3 Q. And did he tell you during that interview that he
4 knew or did not know Mr. Pearson?

5 A. He stated that he did not know Mr. Pearson; never
6 heard of him.

7 Q. So now you've got two matches; one is a fingerprint,
8 one is D-N-A?

9 A. Yes.

10 Q. And are you continuing to look now for the third
11 person?

12 A. Yes.

13 Q. As of today, two years later, have you identified
14 enough evidence to charge another person with the
15 commission of the robbery against Mr. Gibbons?

16 A. Not as of today but I'm not giving up. We're still
17 looking.

18 Q. Now once the fingerprint came back with a positive
19 match for Mr. Pearson did you double check that result by
20 submitting more fingerprints?

21 A. Yes, we did. Mr. Pearson while he was incarcerated
22 we did get a roll print of Mr. Pearson and that was
23 submitted to Ms. Marie Hodge also.

24 Q. And so she checked the results that she came up with
25 the first time with another set of prints that came from

1 Mr. Pearson?
2 A. Yes.
3 Q. And the results of those was a confirmation?
4 A. Yes. It was affirmation that those prints did
5 belong to Mr. Michael Pearson.
6 Q. All right. Did you arrest Mr. Weldon on this
7 charge?
8 A. Yes.
9 Q. Did you take a buccal swab from Mr. Weldon as a
10 result of his arrest?
11 A. Yes, we did receive a consent form a judge ordered,
12 and we did a D-N-A buccal swab of Mr. Weldon.
13 Q. So once he was arrested you asked the Solicitor's
14 office to get you a court order to take a buccal swab
15 from Mr. Weldon?
16 A. Yes.
17 Q. What were you trying to get with the buccal swab?
18 A. Well I wanted to make sure. I wanted to be certain
19 that this was Mr. Weldon's D-N-A that was in CODIS.
20 Q. All right.
21 A. I wanted to confirm to make sure.
22 Q. Did you get the court order?
23 A. Yes.
24 Q. And you took the buccal swab?
25 A. Yes.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 4 (of 5) - May 17, 2012

- 1 Q. Are you familiar with the buccal swab kit?
- 2 A. Yes.
- 3 Q. I'm going to show you State's exhibit number 21.
- 4 [Whereupon, the witness is shown exhibit]
- 5 Q. Can you tell us whether that's the kit that you took
- 6 on Mr. Weldon?
- 7 A. Yes, sir. It appears to be.
- 8 Q. And after you took that kit on Mr. Weldon did you
- 9 put the sample of his swab in an evidence envelope and
- 10 turn it over to Ms. Barbara Procter?
- 11 A. Yes.
- 12 Q. And as far as you know Mr. Procter took it to SLED
- 13 for analysis?
- 14 A. Yes.
- 15 Q. This is State's exhibit number 21. As a result of
- 16 your sending the buccal swab over to SLED did you get any
- 17 report from SLED back concerning Mr. Weldon's D-N-A?
- 18 A. Yes. It was reaffirmed from SLED through a report
- 19 that it was -- that a D-N-A tested again with a positive
- 20 match.
- 21 Q. And it was a match to the D-N-A that was found on
- 22 the duct tape?
- 23 A. Yes.
- 24 Q. And that duct tape was around Mr. Gibbons head?
- 25 A. Yes.

1 Q. Have you come up with any other leads since you've
2 arrested Mr. Weldon to help you put together what
3 happened to Mr. Gibbons that day as far as the third man
4 in the garage or the possibility of a getaway driver who
5 picked them up after dropping them off near the house?

6 A. Not at this present time.

7 Q. Let me ask you this. I don't know that this has
8 been put in evidence. Was there any sign of forced entry
9 at Mr. Gibbons house in terms of how they got in the
10 garage that day?

11 A. No. The entrance door to Mr. Gibbons house -- and
12 this is information we received from him, it wasn't
13 locked; the entrance door wasn't locked.

14 Q. Now as a result of your investigation and your
15 arrest of these two gentlemen have you been able to go
16 out and talk to other people in the community about
17 whether or not their story to you was truthful?

18 A. Yes. I did follow each of the defendant's stories.
19 Michael Pearson stated that he'd never been to Mr.
20 Slick's residence. He's not familiar -- he did not know
21 Slick Gibbons. He'd never been around his vehicle.

22 When I went out to investigate his statement it led
23 me to a person who can testify that he had been to Slick
24 Gibbons house and that he is familiar with it.

25 Q. How did you -- what information have you learned

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 4 (of 5) - May 17, 2012

1 about him being at Mr. Gibbons house previous to or prior
2 to May 15?

3 A. There is a gentleman that occasionally do
4 landscaping. And at the time of the incident in question
5 this gentleman took Mr. Michael Pearson on several
6 occasions to put down straw at the victim's residence.
7 So he has been at the residence before.

8 Q. And can you give, based on your investigation can
9 you give us a time period as to how long before May the
10 15th, 2010 Mr. Pearson was over there doing landscaping
11 work?

12 A. Yes. It was early spring.

13 Q. Of the same year?

14 A. Of the same year; 2010.

15 Q. And that person was basically the owner of the
16 landscape company that took Mr. Pearson over there?

17 A. Yes.

18 Q. How many times would you say he had been over there
19 with Mr. Pearson to do landscaping work ---

20 MR. DEVOE: --- Your Honor, I object to this line
21 of questioning. Unless they are going to bring the
22 witness in; the one they are referring to that will
23 testify to it?

24 THE COURT: Okay. You -- what grounds are you
25 objecting on?

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 4 (of 5) - May 17, 2012

1 MR. DEVOE: Hearsay.

2 THE COURT: Okay. I sustain it.

3 Q. [Mr. Finney] All right. Besides information
4 showing that Mr. Pearson was familiar with Mr. Gibbons
5 property did you learn of any information that Mr.
6 Gibbons -- excuse me, Mr. Pearson was familiar with Mr.
7 Weldon?

8 A. Yes. I further investigated the story of not
9 knowing each other that they gave and it led me to -- the
10 investigation led me to Voc Rehab.

11 Q. Tell us what Voc Rehab is?

12 A. Voc Rehab is a rehabilitation to the point where
13 someone to develop their skills where they can get back
14 into the work field.

15 Q. This is a State agency run by South Carolina?

16 A. Yes. It's in Sumter County.

17 Q. South Carolina Vocational Rehabilitation Center?

18 A. Yes, that's the proper name.

19 Q. Located in Sumter County?

20 A. Yes.

21 Q. What did you find out as a result of your
22 investigation concerning Voc Rehab and these two
23 gentlemen?

24 A. Records revealed that they were there at the same
25 time. I was able to get their time card and their work

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 4 (of 5) - May 17, 2012

1 schedule.

2 Q. Very good. Do you have any other information or
3 evidence that you would -- that you've been able to put
4 together to put these gentlemen as being the suspects and
5 responsible for the robbery of Mr. Gibbons?

6 A. No, I don't at this time.

7 MR. FINNEY: Beg the Court's indulgence.

8 Q. [Mr. Finney] Mr. Clark, as part of your
9 investigation did you also take a buccal swab from Mr.
10 Gibbons, the victim in this case?

11 A. Yes. The point of my investigation with SLED all
12 the evidence is sent up to SLED so when they start their
13 analyzing of the evidence that was submitted that they
14 would have the victim buccal swab so they can
15 differentiate any other D-N-A that they found on any part
16 or partial of any evidence that was sent up.

17 Q. Let me show State's exhibit number 20 and ask if you
18 can indentify that as being Mr. Gibbons buccal swab kit?

19 [Whereupon, the witness is shown exhibit]

20 A. Yes, it appears to be.

21 Q. And was it also sent by Ms. Procter over to SLED for
22 analysis?

23 A. Yes.

24 Q. All right. Now just to clarify when you did your
25 investigation preliminarily you were trying to determine

1 what time the robbery took place. I think you might have
2 said that the sun set at 6:21. I just want to clarify
3 what was your information as to when sunrise was on May
4 15th, 2010?

5 A. Sunrise at 6:21, sunset at 8:12.

6 Q. In the evening?

7 A. In the evening.

8 Q. And based on that information and based on the
9 testimony that Mr. Gibbons gave you about coming out to
10 sit on the steps did you believe that the robbers were
11 already in his house before 6:20?

12 A. Yes.

13 Q. Before sunrise?

14 A. Before sunrise.

15 Q. All right. Answer any questions defense may have.

16 MR. KNOBELOCH: Your Honor, may we approach?

17 THE COURT: Yes, sir.

18 [Whereupon, an off the record bench conference is
19 held]

20 MR. KNOBELOCH: Officer Clark can I review the
21 notes you were using to refresh your memory?

22 [Whereupon, the witness complies]

23 MR. KNOBELOCH: Thank you. May it please the
24 court?

25 THE COURT: Yes, sir.

CROSS-EXAMINATION

1
2 BY MR. KNOBELOCH:

3 Q. Officer Clark you testified that what led you to the
4 arrest of Victor Weldon was a D-N-A match. You also
5 testified that you collected evidence at the crime scene.

6 Did you swab for D-N-A at the crime scene?

7 A. No, sir. All the evidence was submitted to SLED.

8 Q. But did you collect the evidence at the crime scene?

9 A. I collected evidence and submitted it to SLED.

10 Q. And you collected evidence for D-N-A analysis from
11 the wall of the garage, the floor of the garage, the
12 trunk of the car, side panels on the car, the duct tape;
13 three separate pieces of duct tape found on the floor,
14 the duct tape on the victim's head, the wallet, shoes
15 belonging to defendant -- and a check, is that correct?

16 A. Let me back up. I apologize sir, you mentioned one
17 swab. The dusting of the fingerprint on the Mercedes
18 after that was fingerprinted I did swab for D-N-A after
19 the fingerprint.

20 Q. Okay.

21 A. And that was submitted to SLED.

22 Q. But -- so all of those areas I just mentioned were
23 swabbed for D-N-A analysis?

24 A. Not all of -- not all of them by me.

25 Q. But they were swabbed and D-N-A evidence was

1 collected from all those areas?

2 A. Yes.

3 Q. Okay. And you said there were four total pieces of
4 duct tape, correct, that were collected?

5 A. I think it was approximately four, yes.

6 Q. And only one of those had a potential D-N-A match,
7 is that correct?

8 A. Yes, it's the one from the head of the victim.

9 Q. Who collected that particular D-N-A sample?

10 A. Who collected?

11 Q. Collected? Not analyzed but actually collected that
12 D-N-A?

13 A. Okay. The tape from the head was collected by
14 Investigator Lin Ham.

15 Q. Now we heard yesterday about areas that were dusted
16 for fingerprints but you also dusted some of the areas at
17 the crime scene for fingerprints, correct?

18 A. Yes.

19 Q. And the areas that were dusted at the crime scene
20 for fingerprints include the right side front upper part
21 of the car door, front right side front and lower part of
22 the car door, right front fender, lower rear, front, and
23 back of the car, and the right side door at the hood of
24 the car above the grill, the right side of the hood above
25 the headlight, the driver's side window of the car, the

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 4 (of 5) - May 17, 2012

1 driver's side bed of the car, driver's door, center trunk
2 lid, left rear door on the top of the car, a check found
3 at the scene, a wallet found at the scene, and three
4 pieces of duct tape found at the scene is that correct?

5 A. When you say that is correct you related back to
6 what was dusted?

7 Q. I'm asking you if those areas were dusted for
8 fingerprints?

9 A. No sir, that's not correct in the order that you
10 gave. You included the check; I did not dust the check
11 for fingerprints.

12 Q. With the exception of the check were those other
13 areas dusted for fingerprints?

14 A. Yes, sir. I dusted -- mainly what I dusted was the
15 Mercedes that belonged to Ms. Kay Gibbons.

16 Q. And none of those items mentioned was there a D-N-A
17 -- excuse me, I mean a fingerprint match for Victor
18 Weldon?

19 A. No, sir.

20 Q. And you executed a search warrant for Mr. Weldon's
21 house after you arrested him is that correct?

22 A. Yes.

23 Q. Did you find a roll of duct tape which matched the
24 duct tape from the scene?

25 A. No, sir.

1 Q. Did you find a mask?
2 A. No, sir.
3 Q. Did you find a gun?
4 A. No, sir.
5 Q. Did you find the money clip with the victim's
6 initials?
7 A. No, sir.
8 Q. Did you find anything which belonged to the victim
9 at the defendant's house -- Victor Weldon?
10 A. No, sir.
11 Q. You also -- when you executed the search warrant one
12 of the items you took from his house was a pair of boots
13 is that correct?
14 A. Yes.
15 Q. And those were analyzed for D-N-A?
16 A. Yes, those were sent off to SLED.
17 Q. And they showed a match for the owner of boots,
18 Victor Weldon, but no match for the victim, Mr. Gibbons?
19 A. That is correct.
20 Q. Was there a lot of blood at the crime scene?
21 A. Yes, it was.
22 Q. And were there bloody footprints at the crime scene?
23 A. Yes.
24 Q. Did any of the Victor Weldon's shoes match the
25 footprints found at the crime scene?

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 4 (of 5) - May 17, 2012

1 A. No, sir. There was one set of bloody print that
2 shows in the photograph but it did not match to the boots
3 that we recovered from him.

4 MR. KNOBELOCH: May I approach the witness?

5 THE COURT: Yes, sir.

6 [Whereupon, the witness is show document]

7 Q. [Mr. Knobeloch] Officer Clark, can you identify the
8 document I've handed you?

9 A. Yes. This is a document that was typed up by
10 Coordinator Barbara Procter that talked into the
11 recording.

12 Q. And the caption says that these are case notes and
13 they are from Investigator Clark.

14 A. It says case file up top and the date and it gives
15 the crime, the victim, and then my name. It does not say
16 case notes.

17 Q. And can you tell me the date on these notes here
18 that are halfway down?

19 A. Yes. That's May 17th, 2010. That's the day we
20 visited Mr. Gibbons at ---

21 Q. --- that was two days after the incident and as you
22 testified earlier just now this is the day you visited
23 Mr. Gibbons at the hospital.

24 A. Right.

25 Q. Can you read the part that I've underlined here

1 [indicates] which states the time of the incident?
2 A. Yes. [Reading] Approximately 6:28.
3 Q. Okay. So two years later your testimony is that it
4 was at 6:15 but on May 17 your notes say at approximately
5 6:28?
6 A. Yes, approximately when -- at the time that's an
7 approximate time that the incident may have occurred.
8 Q. Not approximately 6:30 but approximately 6:28?
9 A. Approximately; give or take.
10 Q. I'd also like you if you would to read these next
11 two sentences that I've marked here [indicates].
12 A. [Reading] Suspect number one, a black male approach
13 him. The suspect stated give me your money.
14 The next one that you have underlined: [Reading] He
15 grabbed the suspect about the chest area. He then
16 discovered that there were two more suspects in the tool
17 room adjacent to underneath the garage. They came out
18 and assisted he tried to push him down.
19 Q. So according to your notes all three suspects did
20 not approach the victim at the same time?
21 A. What I have there is what was talking to a
22 recording. And before you go any further there is some
23 variation there. There is some variation because that
24 was talked in a recorder. Later I typed in, which would
25 have a heading case notes. This was my first big case.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 4 (of 5) - May 17, 2012

1 Going about how to document things was kind of new to me.
2 With the guidance of a senior Investigator, Lin Ham, I
3 later started to type my notes in. But there are some
4 variations in the statements in my case notes versus what
5 I talked into a recording.

6 Q. Okay. Let's look at another variation. Will you
7 read the final sentence that I've underlined here
8 [indicates]?

9 A. Yes. [Reading] The main variation -- the suspects
10 were described as three black males between 19 and 20
11 years of age, 5'8 to 5'9 in height. The victim said that
12 one of the boys sounded familiar.

13 Q. Okay. So is that also approximate 5'8 or 5'9 like
14 the time 6:28?

15 A. It didn't say on there what I just read
16 approximately. I read it as its typed there, sir.

17 Q. How tall is Victor Weldon?

18 A. I would give a guess, and I'm not good at that, I
19 would give him approximately 5'8 or 5'9; approximately.

20 MR. KNOBELOCH: May I have Mr. Weldon stand, Your
21 Honor?

22 THE COURT: Yes, sir.

23 [Whereupon, defendant Weldon stands]

24 MR. KNOBELOCH: Okay. You can sit.

25 [Whereupon, defendant Weldon sits down]

1 A. And I'm not the victim. I'm not the one that's
2 judging the defendants that attacked him.

3 Q. [Mr. Knobeloch] You testified earlier about getting
4 information from Voc Rehab where the two defendants
5 worked at Voc Rehab at the same time?

6 A. Yes.

7 Q. Did you review documents from Voc Rehab?

8 A. Yes, I did.

9 Q. And those documents showed that there was a five day
10 period in December of 2008 where they both were working
11 at Voc Rehab?

12 A. I can't say that it was a five day period. It would
13 give the time and the punch card. They were there at the
14 same time. That put both of them there at the same time
15 that should have been familiar with each other and they
16 were in the same work area.

17 Q. Can you review these documents please Officer Clark?

18 [Whereupon, Mr. Clark is shown documents]

19 A. Okay. This is a letter from South Carolina
20 Vocational Rehabilitation department addressed to me from
21 Mr. John Hornsby who acknowledging the search warrant
22 that was sent to him.

23 And it says: [Reading] Regarding Victor Weldon and
24 Michael Pearson the following information is a copy of
25 time cards of Mr. Weldon and Mr. Pearson along with the

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 4 (of 5) - May 17, 2012

1 daily production sheet for the time and attendance
2 And I did receive their production sheet and I did
3 receive their timecard, which two of them right here are
4 dated around the same time December the 12th, 2008.

5 And also is their production sheet that shows that
6 both of them on December the 9th both of them have the
7 same date at the basic wood shop: December the 11th the
8 same day at the wood shop. And also December the 12th at
9 the wood shop, and December the 9th.

10 Q. Okay. So December 9, 10, 11, and 12 of 2008 they
11 worked at the same time. Did you receive any other
12 timecards where they worked together at the same time at
13 Voc Rehab?

14 A. I haven't.

15 Q. Did you review records showing the total time when
16 Victor Weldon worked at Voc Rehab?

17 A. No. Only what you have there is what was sent to
18 me. That particular -- Mr. Hornsby will be subpoenaed to
19 come in and he will testify on their behalf.

20 Q. Did you ask how many employees work at the same time
21 in the wood shop?

22 A. No. Back when we asked -- when -- we subpoenaed
23 them here to testify on their behalf.

24 Q. Now, you testified earlier that you spoke with
25 members of the community while you were developing your

1 case. Did you speak with Jimmie Cagle?
2 A. Yes, on several occasions.
3 Q. Jimmy Timms [phonetic]
4 A. Jimmy Timms? Yes, yes, yes.
5 Q. Solomon Sheroid?
6 A. Yes.
7 Q. Gregory Bradfords ---
8 A. --- Brailsford, yes.
9 Q. Loretta Green?
10 A. Yes.
11 Q. Lewis Mendes?
12 A. Yes.
13 Q. Richard Lee Gamble?
14 A. Yes.
15 Q. Did any of them indicate that Victor Weldon was
16 involved in this incident?
17 A. The only one that I interviewed that came close to
18 association would be ---
19 Q. --- not association. Was he involved in this
20 incident?
21 A. If I may explain? You want a yes or no first?
22 Q. I want a yes or no answer. Was he involved in this
23 incident -- did any of them indicate he was involved in
24 this incident?
25 A. No...not your client.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 4 (of 5) - May 17, 2012

1 Q. You mentioned earlier there -- well, was George
2 Frierson one of the people that -- I want to make sure I
3 remember your testimony.

4 In the course of your investigation did you learn
5 that George Frierson was spending a large amount of money
6 soon after the incident?

7 A. Yes --

8 Q. Within 24 or 48 hours of the incident?

9 A. Yes.

10 Q. And you learned that within 24 or 48 hours of the
11 incident he was spending a large amount of money. And
12 you also learned this information within 24 or 48 hours
13 of the incident?

14 A. Yes.

15 Q. Did -- 24 hours after the incident did you learn
16 that George Frierson tried to avoid a traffic stop -- a
17 license check?

18 A. I don't have a document to that that he tried to
19 avoid. I have documents that he came to a traffic stop
20 with the Manning Police Department.

21 I was given that information and his time was
22 stamped. I caught that information verbally from the
23 officer stating what time he was out and the hour of
24 night and who his passenger was.

25 MR. KNOBELOCH: May I approach?

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 4 (of 5) - May 17, 2012

1 THE COURT: Yes, sir.

2 Q. [Mr. Knobloch] Do you recognize these notes?

3 [Whereupon, the witness is shown documents]

4 A. Yes.

5 Q. Are those case notes or part of your case notes?

6 A. Let me compare it to mine.

7 [Whereupon, the witness reviews his documents]

8 A. Yes.

9 Q. And will you read this paragraph [indicates]
10 beginning on May 18th?

11 A. [Reading] On May 18 it was verified by Sergeant
12 Micha Joseph that subject George Frierson was ---

13 MR. CORBETT: Objection, Your Honor.

14 THE COURT: Okay.

15 MR. CORBETT: I believe he's got him reading
16 somebody else's statement. He didn't qualify it but it
17 sounds as if it is an out of court statement being
18 offered in court.

19 THE COURT: Your objection is hearsay?

20 MR. CORBETT: That's correct.

21 THE COURT: I sustain it.

22 MR. KNOBELOCH: Judge, it is not a -- these -- the
23 paragraph is from Officer Clark's notes. There is no
24 quotation contained in here; just an incident that
25 happened.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 4 (of 5) - May 17, 2012

1 THE COURT: But my understanding is this is
2 information -- if it's something he did or he said its
3 fine ---

4 MR. KNOBELOCH: --- I'll withdraw it ---

5 THE COURT: --- but the information ---

6 MR. KNOBELOCH: --- I'll withdraw it.

7 Q. [Mr. Knobeloch] You mentioned earlier that you
8 issued a search warrant for Victor Weldon's house. When
9 you issue a search warrant or when you request a search
10 warrant from a Magistrate you have to issue an affidavit
11 to support why you want the search warrant is that
12 correct?

13 A. Yes.

14 Q. Can you identify this document please?

15 [Whereupon, the witness is shown documents]

16 A. Yes, that's a part of the search warrant on the day
17 that was issued by a judge from Sumter County.

18 Q. Is that your signature at the bottom?

19 A. Yes, it is.

20 Q. And that statement -- that's your statement,
21 correct?

22 A. Yes, that was typed in the affidavit.

23 Q. And it sworn under oath?

24 A. Yes.

25 Q. When you give that statement you swear that

1 everything in there is truthful?

2 A. Yes.

3 Q. Can you read the handwritten part? It's mostly
4 typed but there is a handwritten part here [indicates].

5 MR. FINNEY: Your Honor, please? May I ask that we
6 approach the bench for a moment?

7 THE COURT: Okay.

8 [Whereupon, an off the record bench conference is
9 held]

10 THE COURT: Ladies and gentlemen, I need to take up
11 a matter of law outside your presence. I will remind you
12 please don't discuss this case and I'll get you back out
13 in just a few moments.

14 [Whereupon, the jury exits the courtroom at 10:54
15 a.m.]

16 THE COURT: We will take a five minute break and
17 then come back.

18 [Whereupon, the court takes a brief recess]

19 MR. KNOBELOCH: Judge, the Solicitor is absolutely
20 correct. I don't want to open the door into other
21 pending charges. And I think I'd just like to read one
22 sentence. I'd like to see if this opens the door. It
23 says: [Reading] Suspect -- and they refer to him as
24 McCoy, which is his middle name but he's referred to as
25 Victor Weldon -- suspect McCoy has made statements

1 questions of this witness.

2 THE COURT: Okay. Ms. Johnson, bring in the jury
3 if they are ready. Mr. Devoe, are you going you have any
4 questions of the witness?

5 MR. DEVOE: Yes, Your Honor, I have several.

6 THE COURT: All right.

7 [Whereupon, the jury re-enters the courtroom at
8 11:12 a.m.]

9 THE COURT: Yes, sir?

10 MR. KNOBELOCH: Thank you, Your Honor. I have no
11 further questions of this witness.

12 THE COURT: All right. Mr. Devoe?

13 MR. DEVOE: Thank you, Your Honor. May it please
14 the court?

15 THE COURT: Yes, sir.

16 CROSS-EXAMINATION

17 BY MR. DEVOE:

18 Q. I'm going to say good morning but it's almost
19 noontime. Mr. Clark, we've talked several times about
20 this case in the past haven't we?

21 A. Yes sir, we have.

22 Q. And you were kind enough to give me your notes to
23 make sure I have full sets of all those notes. I guess
24 during the last couple of days there were some additions
25 to make to them.

1 A. Yes, sir.
2 Q. And I appreciate it.
3 A. You're welcome, sir.
4 Q. On your notes you talked about the garage here in
5 the exhibit -- exhibit number 9 I think it is. You
6 mentioned on the garage that you really made sure that
7 you flagged all the various pieces of information from
8 the garage and the floor?
9 A. Yes, sir.
10 Q. The garage floor in this exhibit there is nothing on
11 it showing where the flags were.
12 A. Not on that there, no sir.
13 Q. Not a -- in the picture.
14 A. Right. But I do have an exhibit where the markings
15 are on ---
16 Q. --- the pictures?
17 A. No, not the pictures, a drawing you should have.
18 Q. Is that an exhibit next to this case?
19 A. No sir, it's in my file.
20 Q. Not in the case? You've not identified that and
21 made it an exhibit in this case for the jury to see?
22 A. Well, you were asking -- no I didn't make none of
23 the exhibits that you see. That's the attorney's job.
24 But in my case file there is a drawing and it does show
25 the markings.

1 Q. And you didn't in the garage measure the width and
2 depth and that sort of situation?

3 A. Well, Mr. Devoe I heard you mention this on
4 yesterday I did went back and measured from the go-kart
5 room where the defendants came out of to the step because
6 that seemed to be an issue with you. And it is 12 feet
7 from the step back to the go-kart room.

8 Q. Which is the go-kart room in the garage?

9 [Whereupon, the witness views drawing]

10 A. What is shown here [indicates] is a closet door.
11 Mr. Gibbons called this the go-kart room. Mr. Gibbons
12 was right here [indicates] on this step.

13 The distance between the step and the go-kart room
14 is 12 feet. Mr. Gibbons was dead on it when he said it
15 was 12 feet. I went back out and measured it.

16 Q. Was the go-kart room with the closet door properly
17 represented where it is in this picture -- in this
18 drawing?

19 A. Yes. This is a good position.

20 Q. Are you basically saying that's 12 feet and the
21 whole garage width is 15 feet?

22 A. I did not measure the whole garage. I measured from
23 the step to the go-kart room that was an issue with you.

24 Q. And high wide are the steps?

25 A. I did not measure the width of the steps.

1 Q. Well, let's assume that's 3 feet or 4 feet; I'll be
2 generous about it, 4 and 12 is 16 and maybe another 5 is
3 21 feet the whole double garage plus the door coming in,
4 is that correct?

5 A. No, sir. I can only testify to what I did. I
6 measured from the go-kart room to the step and its 12
7 feet. Any other measurement I cannot testify to.

8 Q. Okay. But in this garage on the floor several
9 things were identified as being either fibers from the
10 victim or blood?

11 A. Yes.

12 Q. Things of that type?

13 A. Yes.

14 Q. Including that was a wallet?

15 A. Yes, it was a wallet.

16 Q. I assume that wallet was Mr. Gibbons wallet?

17 A. Yes, it was identified as his wallet.

18 Q. And I assume that in that wallet at one time would
19 be money?

20 A. Yes.

21 Q. And I therefore assume that you fingerprinted that
22 wallet is that correct?

23 A. That wallet was sent to SLED, yes.

24 Q. Was it fingerprinted?

25 A. No, sir. All the analysis on that wallet was done

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 4 (of 5) - May 17, 2012

1 by SLED lab.

2 Q. Well, wouldn't you think that the wallet, which was
3 taken from Mr. Gibbons pocket and transferred by someone
4 else, i.e. one of these three persons who did the crime,
5 would have a fingerprint of that person on the wallet?

6 A. We solicited help from SLED. That wallet was sent
7 to be analyzed to be swabbed for D-N-A, which I'm pretty
8 sure it was. Our analyst on D-N-A will testify to that.

9 Q. Well, did the analyst ever testify for fingerprints?

10 A. She will be on the stand and you can ask her that
11 question. I can't say what she did.

12 Q. Well, I'm asking you because you're the chief
13 investigator on the case. Was it analyzed for
14 fingerprints?

15 A. I do not have any reports on that...

16 Q. So the absence ---

17 A. --- but it was analyzed.

18 Q. In the absence of you saying yes I'd assume the
19 answer is no.

20 A. I can't tell you what she did; what her job was. It
21 was sent to her to be analyzed.

22 Q. And who is her?

23 A. Ms. Catherine Leisy.

24 Q. Okay. And since she is not testified apparently we
25 have no answer other than the fact you don't know.

1 A. I don't know. You will get an answer from her.
2 Q. But you didn't follow up on that?
3 A. I got a report from the analyst.
4 Q. Were there any reports about the wallet?
5 A. Yes. It was mentioned in the report of the wallet.
6 Q. What did it say?
7 A. The wallet was tested for D-N-A.
8 Q. I'm asking ---
9 A. --- there is no mention in there for fingerprints on
10 the wallet.
11 Q. Or D-N-A?
12 A. And to answer that question any items that we are
13 going to send to SLED they don't want us examining it and
14 sending it to them.
15 If we are going to let SLED do it out of respect, of
16 an expert you send it to them. You don't mess with it
17 and then turn around and send it to someone else to
18 analyze it. You're tainting the evidence.
19 Q. And yet fingerprints are an important element of
20 this case certainly as far as my client is concerned.
21 And you're telling me there is no evidence one way or the
22 other who took the wallet?
23 A. No, sir. No sir, I can't testify to -- it's in
24 evidence.
25 Q. Now you also read in the testimony of the booking

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 4 (of 5) - May 17, 2012

1 report of my client and his co-defendant?
2 A. The booking report?
3 Q. The arrest warrant, I'm sorry.
4 A. Yes, the arrest warrant.
5 Q. And on the arrest warrant -- do you have a copy of
6 the arrest warrant with you?
7 A. No sir, I do not.
8 Q. On the arrest warrant it doesn't show the height and
9 the weight of the individuals who are involved in the
10 crime.
11 A. You're saying it doesn't?
12 Q. I'm asking you.
13 A. I don't have it in front of me, sir.
14 Q. You've seen arrest warrants before?
15 A. Yes, yes. That's the personal data information that
16 on the front of ---
17 Q. --- it has a place for the name, the address, the
18 sex, the race, height, weight. It would be there
19 wouldn't it?
20 A. Yes, sir.
21 Q. And will be there?
22 A. Yes.
23 Q. Can you remember on that arrest warrant what was the
24 height and weight of my client?
25 A. No, sir. I can't remember back two years what was

1 on the face of that warrant.

2 Q. You don't -- that warrant, you just read it.

3 A. No, I don't have the warrant. I didn't read it from
4 the stand here today.

5 Q. You didn't?

6 A. No, sir.

7 Q. The arrest warrant -- is that arrest warrant in
8 evidence? It was read to the jury by the Solicitor. All
9 the arrest warrants were read by the Solicitor to the
10 jury; every one.

11 It went from Burglary First all the way down to
12 Kidnapping, had the name, address, sex, date of birth,
13 social security number; all that and height and weight.
14 And you signed these. You signed these arrest warrants.

15 A. Yes, sir.

16 Q. Is this one you signed right here?

17 [Whereupon, the witness is shown documents]

18 A. Yes, sir.

19 Q. Well on the arrest warrant can you see where it says
20 height and weight ---

21 MR. CORBETT: --- Your Honor, at this point I would
22 interpose an objection. I don't know what information he
23 intends to elicit from the warrant. But at this point I
24 would allege lack of foundation as to what he's asking
25 this witness and how they know it.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 4 (of 5) - May 17, 2012

1 THE COURT: Both of you got to keep your voice up
2 so the court reporter can get it down. And just ask the
3 question. What do you want to do -- what question do you
4 want to ask?

5 MR. DEVOE: I want to read from the arrest warrant
6 what was put down for my client's height and weight.

7 MR. FINNEY: We would object, Your Honor, unless
8 the witness put that information on the warrant.

9 THE COURT: Did you put that information on the
10 warrant?

11 THE WITNESS: No, sir. These warrants are
12 generated through the Magistrate's office. We give them
13 an affidavit and this is generated from their computer
14 system.

15 THE COURT: Okay.

16 Q. [Mr. Devoe] Did you review the arrest warrant before
17 you signed it?

18 A. Yes, sir.

19 Q. Every bit of it?

20 A. I would say I reviewed the arrest warrant as
21 thoroughly as possible.

22 Q. You say as thoroughly as possible. So in your
23 opinion you thought the information in the arrest warrant
24 was accurate?

25 A. To the best of my knowledge?

1 Q. Yes?

2 A. And mostly I'm concentrating on the narrative ---

3 Q. --- I understand that ---

4 A. --- of the affidavit that is of the ---

5 Q. --- but even the essential facts of who the person

6 is on there?

7 A. That's the facts of the arrest warrant is the

8 affidavit. If you're referring to the person with data

9 information, that may have some importance. But most so

10 the weight of a arrest warrant is the affidavit.

11 Q. Any information on the arrest warrant before you

12 sign it and before you issue it is verified by somebody,

13 obtained from someplace correct?

14 A. Yes, from my report.

15 Q. I mean including the data on the person's name, his

16 social security number and so on.

17 A. That would be in the system. We only can put what's

18 in the system.

19 Q. Right. In the system and on this arrest warrant has

20 listed his height and his weight.

21 A. Yes, it does.

22 Q. And you're saying if it says in the arrest warrant

23 the height was 6' ---

24 MR. CORBETT: --- Your Honor, this is an attempt to

25 read off an arrest warrant for which we interpose an

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 4 (of 5) - May 17, 2012

1 objection. Now if the witness can answer that question,
2 fine. But it's not proper for the person asking the
3 question to read off it then see if it can be
4 authenticated.

5 MR. DEVOE: Well, Your Honor, I would say that the
6 event -- I was overcome when the Solicitor actually read
7 the arrest warrant to the jury.

8 THE COURT: But you didn't object.

9 MR. DEVOE: Well ---

10 MR. FINNEY: --- and I didn't read it. I read the
11 indictment to the jury, Your Honor.

12 THE COURT: You can ask him what information that
13 he knows and it -- if he knows the answer to that he can
14 answer it.

15 MR. DEVOE: All right.

16 Q. [Mr. Devoe] Do you know of it personally that among
17 the information -- and I'll go right back to the same
18 question I guess, what Mr. Pearson's height is?

19 A. No, sir. I can only verify that the affidavit in
20 the warrant is a true affidavit.

21 Q. Mr. Clark, how tall are you?

22 A. I'm five foot seven and a half.

23 Q. When you're standing next to Mr. Pearson is he your
24 height?

25 A. No, sir.

1 Q. Is he shorter than you?
2 A. He's taller, sir.
3 Q. How much taller do you think he is?
4 A. Approximately about four or five feet taller.
5 Q. Four or five --
6 A. --- I'm sorry. He's approximately 1 -- about a feet
7 and about three inches taller.
8 Q. How tall?
9 A. About a feet and three inches taller.
10 Q. Is he ---
11 A. --- he's approximately -- I would give him around 6.
12 As you saw earlier I'm not good at measurement; that's
13 one of my weaknesses is a person's height.
14 I never was good at that so if you're looking for me
15 to give you an accurate answer on that I'm just -- that's
16 one of my weaknesses. I can look at you Mr. Devoe and
17 tell you -- I'm not good at guessing ages neither height.
18 Q. I know what I used to be -- I don't know ---
19 A. --- what was placed in this arrest warrant is what's
20 in the system.
21 Q. I refuse to give my height anymore because I've
22 shrunk so much recently. As long -- getting around to it
23 in one of your reports I believe you mentioned that this
24 crime was committed by three black males, averaging
25 height 5'8 to 5'9.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 4 (of 5) - May 17, 2012

1 A. Yes, I testified to that earlier the variation.

2 Q. And the age between 19 and 20?

3 A. Yes, I testified to that earlier, sir.

4 Q. And that was your initial impression or additional
5 information about this whole situation?

6 A. Yes sir, I testified to that earlier that's what was
7 talked into a recorder.

8 Q. And recorders never lie do they? They're always
9 correct and they reflect what you said?

10 A. Yes.

11 Q. It's not like some handwriting you can never know if
12 you wrote down until later and you can't read it
13 yourself. You ever been in a situation where you take
14 notes down and later on you can't read it?

15 A. No, sir. That's not one of my weakness areas.

16 Q. Good ---

17 A. --- that's probably one of your weakness areas.

18 Q. It is. You learn in law school to take notes and
19 you learn if you don't look at it an hour later you don't
20 know what you put down because it gibberish.

21 You also in your notes mention some place about your
22 first meeting with Mr. Pearson about -- my understanding
23 -- did he call you or did you call him?

24 A. I approached him.

25 Q. And? Why did you approach him?

1 A. I had information that led me to Michael Pearson and
2 I wanted to talk to him and we had the conversation
3 behind the Family Court building.

4 Q. At the Family Court building? Are you talking about
5 right over in the -- Chevrolet ---

6 A. --- yes sir. That's where he was doing business
7 that day and that's where we met.

8 Q. And you interviewed him three different times here
9 at the Sheriff's Department?

10 A. After his arrest.

11 Q. After his arrest you brought him up here three
12 different times?

13 A. Yes sir, it was approximately three times.

14 Q. And he was always adamant about the fact he wasn't
15 involved in that case ---

16 MR. CORBETT: --- objection, Your Honor.

17 MR. DEVOE: I'm asking a question.

18 THE COURT: What's your objection?

19 MR. CORBETT: He's asking this witness what someone
20 else said.

21 Q. [Mr. Devoe] You interviewed him. Did he ever
22 confess to you that he did this crime?

23 MR. CORBETT: Your Honor, if I may? My objection
24 is still there.

25 THE COURT: Y'all approach.

1 [Whereupon, an off the record bench conference is
2 held]

3 Q. [Mr. Devoe] I'm going to stand further away so the
4 jury can hear me because I've lost my voice since I was
5 sick. I used to have a strong voice and somehow or
6 another I maybe mumbled in the old days so now I'm
7 mumbling...

8 You issued a search warrant on Mr. Pearson's
9 residence also?

10 A. Yes, sir.

11 Q. Were there results from that search warrant?

12 A. No, sir. We recovered a pair of sneakers from the
13 result of the search warrant.

14 Q. And those sneakers did they have some blood on them?

15 A. They were sent to SLED to be analyzed.

16 Q. Wouldn't you notice if a cutting made -- for some
17 shoes because there is some blood?

18 A. I have to refer back to the analyst report.

19 Q. So you don't know the results of that?

20 A. It's in the report. I'll have to refer back to the
21 report.

22 Q. Well, if the results have been positive wouldn't you
23 know about it?

24 A. Yes, sir.

25 Q. So we can assume that the -- if there was blood it

1 was not the blood of the victim?

2 A. Yes, sir.

3 Q. All right. Now the Voc Rehab situation do you know
4 how many people were at the Voc Rehab place every day or
5 the days you were talking about?

6 A. No, sir. The result of the search warrant that was
7 served on them did not give me that information.

8 Q. Did you ask for the information?

9 A. We did not ask for that specifically a count of how
10 many clients they had if that's your question.

11 Q. But it's certainly more than two people?

12 A. We had an interest in Victor Weldon and Michael
13 Pearson. That was the interest in the search warrant;
14 not how many clients were there and so forth.

15 Q. Did you find out in that search warrant or the
16 request to Voc Rehab as to what the dates that Mr. Weldon
17 worked there and what dates Mr. Pearson worked there
18 other than the one week that you're talking about?

19 A. Yes, the dates that were recovered resulted in the
20 search warrant that was put out earlier.

21 Q. And one week, the four days?

22 A. I think it was -- it was four days.

23 Q. Four days in December?

24 A. I think it was, Mr. Devoe.

25 Q. Would it make a difference of knowledge of people if

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 4 (of 5) - May 17, 2012

1 there were say 30 people there rather than three?

2 A. I couldn't tell you that it would make a difference
3 on the number of clients there versus a large member,
4 smaller member. I can tell you that they were there
5 during the same time and it's a good possibility that
6 they would have been familiar with each other.

7 Q. There's also a possibility depending on the size of
8 the building and how many work rooms there were and the
9 age difference that they wouldn't know each other at all?

10 A. It's a greater possibility that they would have.

11 Q. Do you know how many people -- how big the building
12 was they worked at?

13 A. No, sir. I did not measure that building.

14 Q. But you've seen it.

15 A. Yes, sir.

16 Q. Who supervised the taking of the fingerprints off
17 the truck?

18 A. The fingerprint was recovered from the truck through
19 -- in reference to the victim Mr. Gibbons truck?

20 Q. Yes?

21 A. That was done by Investigator Rick Richards.

22 Q. So you weren't there at all when that was ---

23 A. --- no I was not. I'm messy...

24 Q. Do you have any idea whether or not that truck is
25 parked in front of Mr. Gibbons store most of the time?

1 A. I can only -- most of the time not. The morning
2 when the truck was fingerprinted is that your question?
3 Q. Yes?
4 A. Occasionally when I pass there it's always parked in
5 front of the coke machine.
6 Q. As you face the store is it the...
7 A. On the right corner.
8 Q. The right corner?
9 A. The right corner.
10 Q. So if you're going down 260 and the store is on the
11 right hand side right across from the hospital.
12 A. Yes, sir.
13 Q. Then you turn right and the store is -- the truck is
14 on the far right of the lot?
15 A. Yes. That's where I normally notice it's parked at.
16 Q. It's not behind closed gates?
17 A. No, sir.
18 Q. So it's available for anybody to look at as you walk
19 by to go in the store?
20 A. Right. And your client stated he had never been to
21 Mr. Slick's business. He heard of him; he's not familiar
22 with him. So it's not a business that Michael Pearson go
23 in and out of daily or do business with Mr. Gibbons.
24 Q. But it's in an area that people walk by all the
25 time? So I'm just -- it's in an area where the China

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 4 (of 5) - May 17, 2012

1 Buffet is near it to the right hand side?

2 A. Yes. And again your client stated that he never
3 touched the vehicle. He had never been around Mr.
4 Slick's vehicle.

5 Q. I'll go back to one last thing. On your notes, the
6 first notes you wrote -- it's a 2-page note you're
7 talking about the one you can transcribe later.

8 A. Yes, sir.

9 Q. I believe didn't you underline the height of 5'8 to
10 5'9 in those notes?

11 A. Yes. I have underlined the three black males
12 between 19 and 20 of age and 5'8 to 5'9 in height. That
13 was underlined today by me because I know that was an
14 issue.

15 Q. I have no further questions. Thank you.

16 MR. FINNEY: May it please the court?

17 THE COURT: Yes, sir.

18 REDIRECT EXAMINATION

19 BY MR. FINNEY:

20 Q. Investigator, did you give me a copy of that
21 statement that Mr. Devoe was asking you about?

22 A. Yes.

23 Q. Is it underlined in my statement?

24 A. No, sir.

25 Q. According to Mr. Weldon's lawyer you didn't find any

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 4 (of 5) - May 17, 2012

1 evidence at Mr. Weldon's house when you executed the
2 search warrant. You didn't?
3 A. No, sir.
4 Q. When was the crime at Mr. Gibbons house?
5 A. Yes.
6 Q. When was it?
7 A. Oh, May 15th 2010.
8 Q. When was the search warrant?
9 A. May -- I'm sorry let me go back to my notes here.
10 On July 15th.
11 Q. July the 15th?
12 A. Yes.
13 Q. Two months after Mr. Gibbons got robbed?
14 A. Yes.
15 Q. Did you go there looking to see if there was a --
16 some boots or a mask there at the house? You were hoping
17 to find it right?
18 A. Yes.
19 Q. But how many -- 8 weeks had gone by?
20 A. Yes. Easily evidence could have been destroyed by
21 then.
22 Q. All right. You went to Mr. Pearson's house looking
23 for the same thing?
24 A. Yes, sir.
25 Q. And was that sooner in time after the robbery?

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 4 (of 5) - May 17, 2012

1 A. Yes, 5 days.

2 Q. You didn't see any dark clothes; you didn't see any
3 mask there either?

4 A. No, sir.

5 Q. You said that there were some differences between
6 these statements that you -- I think you called them case
7 notes?

8 A. Yes, sir.

9 Q. When Mr. Gibbons talked to you at the hospital did
10 he tell you 5'9 to 5'9?

11 A. No, sir.

12 Q. Did he tell you medium height?

13 A. Yes, sir.

14 Q. So when you transcribed your notes you heard at the
15 hospital medium height but you wrote down 5'8 or 5'9?

16 A. Yes, sir.

17 Q. Is 5'8 or 5'9 medium height in your opinion?

18 A. In my opinion -- and I testified to the point that
19 is one of my weaknesses in measuring height and weight by
20 looking at it.

21 Q. All right. Mr. Weldon's lawyer asked you about
22 George Frierson and checking him out?

23 A. Yes.

24 Q. Did you take George Frierson to the lab and swab his
25 mouth with a buccal swab?

1 A. Oh, yes.
2 Q. Did you send it in?
3 A. Oh, yes.
4 Q. Did you roll his fingerprints and send those in?
5 A. Yes, it was.
6 Q. Did you come back with anything on those?
7 A. No, sir.
8 Q. And as far as Mr. Pearson's fingerprints on this
9 wallet, which is State's exhibit number 11, you sent that
10 to the experts at SLED?
11 A. Right.
12 Q. And they processed this?
13 A. Yes, they did.
14 Q. Is it possible for somebody to pick up something
15 like this book and before I put it down I could do
16 something to the book to take the fingerprints off?
17 A. Of course.
18 Q. What would I have to do?
19 A. Just wipe them off.
20 Q. Just wipe it off and put it down?
21 A. Yes.
22 Q. Nothing further.
23 THE COURT: You can step down.
24 [Whereupon, the witness is excused and exits the
25 witness stand]

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 4 (of 5) - May 17, 2012

1 THE COURT: Mr. Solicitor, you may call your next
2 witness.

3 MR. FINNEY: Your Honor, our next witness will be
4 Mr. Richard Gamble.

5 THE COURT: All right.

6 [Whereupon, Mr. Gamble comes forward]

7 CLERK OF COURT: Step right here, Mr. Gamble.
8 Raise your right hand and place your left hand on the
9 Bible and repeat your name please?

10 MR. GAMBLE: Richard Gamble.

11 [Whereupon, the witness is duly sworn by the Clerk
12 of Court as follows: do you solemnly swear the testimony
13 you are about to give will be the truth and nothing but
14 the truth so help you God]

15 MR. GAMBLE: Yes, ma'am.

16 [Whereupon, the witness takes the witness stand]

17 - - - - -

18 MR. RICHARD GAMBLE,

19 Having been first duly sworn,

20 Was examined and testified as follows:

21 DIRECT EXAMINATION

22 BY MR. CORBETT:

23 Q. Mr. Gamble, good morning.

24 A. Good morning.

25 Q. Mr. Gamble if you would please tell us where you

1 live -- I mean in just general?
2 A. New Zion.
3 Q. In the New Zion area?
4 A. Yes, sir.
5 Q. And do you know an individual named Edward Gibbons
6 who goes by the nickname Slick?
7 A. Yes, sir.
8 Q. Now do you have recollection of an incident where
9 Mr. Gibbons was beaten and robbed?
10 A. Yes, sir.
11 Q. Have you known or known of Mr. Gibbons for some
12 time?
13 A. All -- practically all my life.
14 Q. Okay. Is that from living in the community and
15 doing business at the parts store?
16 A. I did a lot of landscaping for him all through the
17 years.
18 Q. Now do you know an individual named Michael Pearson?
19 A. Yes, sir.
20 Q. Do you see him here today?
21 A. Yes, sir.
22 Q. And tell me what color shirt he's wearing please?
23 A. That blue shirt right on your right.
24 Q. Now do you know him by any nickname?
25 A. Yes, sir. Footie [phonetic]

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 4 (of 5) - May 17, 2012

1 Q. Now has Mr. Pearson ever had any occasion to help
2 you out in terms of doing work?

3 A. Yes, sir he did. We were working at a car cash a
4 few summers ago, and Ed come up there to get us to do
5 some landscaping.

6 Q. Now you say Ed came up there and when you reference
7 Ed who do you mean?

8 A. Ed, Mr. Gibbons son.

9 Q. Mr. Gibbons son?

10 A. Yes, sir.

11 Q. Mr. Gibbons son that has since passed away?

12 A. Yes, sir.

13 Q. Now where did you do this landscaping?

14 A. We done some at Ed's house and some at Mr. Gibbons
15 house.

16 Q. Are those in close proximity?

17 A. Yes, sir. They are one house apart.

18 Q. Now when doing that landscaping there at both Ed
19 Gibbons house and the residence of Slick Gibbons did
20 Michael Pearson do any work in those yards with you?

21 A. Yes, sir. He helped me at Ed's house and Slick's.

22 Q. If you would just tell us a little bit about the two
23 of you being out in that area and about Mr. Pearson and
24 what type of work he was doing in that area?

25 A. He was doing trim and helped push -- he was doing

1 the clean up and stuff.

2 Q. And do you know how many occasions did you and -- or
3 when Mr. Pearson was with you that you would have been
4 out to those two residences?

5 A. I don't know -- those two houses probably we was
6 there for at least 5 days; I think we were there all
7 week.

8 Q. Would y'all have seen both the front and the rear of
9 the residences?

10 A. Yes sir, we did both of them.

11 Q. I'll ask you first and then expand the question a
12 little bit? Have you ever had any occasion to be in Mr.
13 Gibbons garage?

14 A. Yes, sir. When we were landscaping all the tools
15 were in the garage. We were in both of them; we were in
16 the garage.

17 Q. Now when you say we what do you mean we?

18 A. Me and Michael.

19 Q. So to your knowledge Mr. Pearson has actually been
20 in Mr. Gibbons garage?

21 A. Yes, sir.

22 Q. And this was prior to this robbery and beating?

23 A. Yes, sir.

24 Q. Now if I tell you that this incident took place on
25 May 15th of 2010 would it have been that spring?

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 4 (of 5) - May 17, 2012

1 A. I think so. I think that's right.

2 Q. One moment please, sir. Now in terms of who you had
3 contact with specifically you and Mr. Pearson would y'all
4 have contact with Ed Gibbons or who I'm going to call
5 Slick Gibbons?

6 A. We'd talk to Ed personally. But we all went up to
7 the store in the afternoon when we finished up. Mr.
8 Gibbons always -- every time we would pull in there -- so
9 I'm sure we made contact with him --

10 Q. But in terms of payment that was handled by Ed?

11 A. That's right.

12 Q. While working there in the yard did Slick Gibbons --
13 did he ever come and personally direct any of y'all's work
14 or who handled that?

15 A. No. It was his house and he told us what he wanted
16 done in the yard.

17 Q. And who is this now?

18 A. Slick.

19 Q. And when would he have told you that? I mean at the
20 store, at the yard?

21 A. In the yard.

22 Q. And that would have been -- Mr. Pearson would have
23 been with you there as well?

24 A. Yes, sir.

25 Q. And you said this stretched over a period of

1 probably somewhere in the neighborhood of five days?

2 A. That's right.

3 Q. Sir, I'm going to ask you first of all if you can
4 recognize this or if you have enough familiarity with Mr.
5 Gibbons garage to recognize this drawing?

6 [Whereupon, the witness is shown drawing]

7 A. Yes, sir.

8 Q. Okay. Do you have any recollection from this where
9 the tools would have been?

10 A. That his house?

11 Q. Yes, sir?

12 A. Those are his tools. This is the garage [indicates]
13 coming up to the house right here [indicates].

14 Q. Two garage doors and a small door ---

15 A. --- this door right here [indicates] takes you all
16 the way to the -- he's got a storage room at the front
17 end of the garage and he kept all the tools in the front
18 so we all had to go in this door [indicates] to go to the
19 storage area to get the tools out.

20 Q. The storage area here [indicates]?

21 A. That's right.

22 Q. If you would step down for me just a moment.

23 [Whereupon, the witness steps down from the witness
24 stand]

25 Q. It's going to be a little difficult standing there

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 4 (of 5) - May 17, 2012

1 at the side but if you would try to tell me about which
2 door and which closet?

3 A. Right here [indicates]. This door right here takes
4 you inside the garage and takes you back to the storage
5 room here [indicates] and all the tools -- in the garage
6 on this side over here [indicates] tools would be here
7 [indicates].

8 Q. And to your knowledge both you and Mr. Pearson
9 retrieved tools from this area?

10 A. I'm sure I sent him in there a couple of times while
11 I was cutting -- get tools for me.

12 Q. Thank you very much.

13 [Whereupon, the witness returns to the witness
14 stand]

15 Q. Now I'm going to show you what has been marked or
16 has been admitted as State's exhibit 3-D and ask if you
17 recognize that?

18 [Whereupon, the witness is shown exhibit]

19 A. Yes sir, I sure do. That's the back of Slick's
20 house.

21 Q. So when we are talking about this garage here on
22 this chart [indicates] ---

23 A. --- right there ---

24 Q. --- that's this page [indicates]?

25 A. That picture --

1 Q. Thank you, sir. Please answer any questions these
2 gentlemen have.

3 CROSS-EXAMINATION

4 BY MR. DEVOE:

5 Q. Mr. Gamble, I believe you said you were from New
6 Zion?

7 A. Yes, sir.

8 Q. What part?

9 A. I live on .

10 Q. You do?

11 A. Right down to the subdivision.

12 Q. ?

13 A. Yes, sir.

14 Q. Do you know where I live?

15 A. Yes, sir.

16 Q. About four miles the other direction.

17 A. That's right.

18 Q. This is the dates you say you worked with -- or
19 Michael Pearson worked with you?

20 A. That's right.

21 Q. What year was this?

22 A. What year was it?

23 Q. What year -- you don't remember what year it was?

24 A. I know it was summer. I don't know exactly what
25 year it was.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 4 (of 5) - May 17, 2012

1 Q. Were there other people involved working with you
2 besides Mr. Pearson?

3 A. No, sir.

4 Q. Do you know a man named Boo [phonetic] Parker?

5 A. Boo Parker?

6 Q. Yes?

7 A. No, sir.

8 Q. You don't?

9 A. No. -- If I saw him again -- I might know him if I
10 see him.

11 Q. He never worked with you?

12 A. Boo?

13 Q. Yes?

14 A. I just know a short guy named Boo -- he has a house
15 of West --

16 Q. I'm sorry. I can't hear you?

17 A. I said Boo worked with me some but he didn't work
18 with me at Slick's house. He worked with me at Wes
19 Jackson's house -- back there by the jail.

20 Q. Over there by Lincoln Park?

21 A. That's right.

22 Q. Did you ever work with a guy named Scooter
23 [phonetic]?

24 A. No, sir.

25 Q. At the car wash?

1 A. At the car wash? Maybe, you might be right.
2 Q. And did you ever work with a Gerald Frierson or
3 Charlie Frierson?
4 A. The name don't sound familiar but maybe I did at the
5 carwash.
6 Q. What did you do? Did you work mostly in Manning or
7 New Zion or what?
8 A. I work in Columbia, Florence, Manning, New Zion.
9 Q. All over the place?
10 A. Exactly. Santee.
11 Q. And you pick up people to help as casual labor or
12 what?
13 A. No, sir. We worked at Ed's house. I was working at
14 the carwash when he hired me --
15 Q. The carwash out by Jerry's truck stop?
16 A. No, sir. Right there off -- road --
17 Q. Okay.
18 A. And it's a sign -- he put a sign -- we was washing
19 cars there -- but we washed all of Ed's cars. Everything
20 he bought we washed. And he come up there one day and
21 needed landscaping and he wanted me to cut some bushes
22 for him, edge around house and his daddy's house and all
23 that. He was there working with --
24 Q. He what? I couldn't hear you.
25 A. -- worked with me because he wanted to make some

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 4 (of 5) - May 17, 2012

1 money.

2 Q. Nothing wrong with making some money.

3 A. Absolutely not.

4 Q. But you say he worked with you for how long?

5 A. With Slick's house or Ed's house?

6 Q. At any house, anyplace?

7 A. I'm not sure exactly how long he worked. But I know
8 he was working -- I want to think he was working with us
9 at the car wash for a couple of weeks -- and we done the
10 work for Ed. I think he might have worked about a week
11 or so after that.

12 Q. Worked with you after that you say?

13 A. Yes, sir.

14 Q. Where would he work after that?

15 A. At the car wash.

16 Q. At the carwash?

17 A. Yes, sir.

18 Q. Did he ever work with you in Alcolu?

19 A. I don't know. I don't really know. I don't think
20 so.

21 Q. No houses in Alcolu?

22 A. No, sir.

23 Q. So your business wasn't just maintaining yards was
24 it?

25 A. My business?

1 Q. Yes?

2 A. No, my business was washing cars.

3 Q. Washing cars, right. So how did you happen to get
4 into the yard maintenance business?

5 A. I been doing it all my life. I was probably doing
6 washing and cutting bushes all my life; landscaping.

7 Q. I understand doing your own yard and other
8 neighbors, but how did you get the business in Manning?

9 A. Manning? Because I was -- when I bought my first
10 vehicle to start landscaping I bought it from Ed.

11 Q. Do what?

12 A. And I started landscaping. I was young then. I was
13 like 15 or 16 when I started landscaping and I started
14 cutting bushes for him and -- that knew me and wanted
15 their bushes cut.

16 Q. So how old are you now?

17 A. I'm 44.

18 Q. So for 30 years you've been landscaping?

19 A. Yes, sir.

20 Q. And you do it still everyday ---

21 A. --- still every day ---

22 Q. --- or you're washing cars, which is it?

23 A. No, I cut bushes now. I ain't washing cars no more.
24 That only lasted for maybe a year or so then I went back
25 in the landscaping.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 4 (of 5) - May 17, 2012

1 Q. What?

2 A. I was back in the landscaping.

3 Q. When did you do the washing cars?

4 A. I guess that was about 3 years ago, 2 years ago?

5 Q. Well, which is it?

6 A. About 3 years ago?

7 Q. 3 years ago and that's when you say Michael Pearson

8 helped you out?

9 A. Yes, sir. Whenever I was washing cars he helped me

10 then.

11 Q. I'm not talking about washing cars I mean side ---

12 A. --- cutting bushes.

13 Q. You testified about going to Mr. Gibbons place and

14 cleaning up his yard?

15 A. Yes, sir.

16 Q. I'm asking that was when you were washing cars also?

17 A. Yes, sir.

18 Q. So about 3 years ago?

19 A. Yes, sir.

20 Q. I have no further questions, thank you.

21 THE COURT: Anything further from the State?

22 MR. CORBETT: Nothing further.

23 THE COURT: Thank you, sir. You may step down.

24 [Whereupon, the witness is excused and exits the

25 witness stand]

1 MR. CORBETT: Your Honor, may we approach?

2 THE COURT: Yes, sir.

3 [Whereupon, an off the record bench conference is
4 held]

5 MR. CORBETT: The State calls John Hornsby, Your
6 Honor.

7 [Whereupon, Mr. Hornsby comes forward]

8 CLERK OF COURT: Raise your right hand and place
9 your left hand on the Bible and repeat your name, please?

10 MR. HORNSBY: John Hornsby.

11 [Whereupon, the witness is duly sworn by the Clerk
12 of Court as follows: do you solemnly swear the testimony
13 you are about to give will be the truth and nothing but
14 the truth so help you God]

15 MR. HORNSBY: Yes, ma'am.

16 [Whereupon, the witness takes the witness stand]

17 - - - - -

18 JOHN HORNSBY,

19 Having been first duly sworn,

20 Was examined and testified as follows:

21 DIRECT EXAMINATION

22 BY MR. CORBETT:

23 Q. Mr. Hornsby, good morning.

24 A. Good morning, sir.

25 Q. I'm sorry, good afternoon I guess. Mr. Hornsby,

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 4 (of 5) - May 17, 2012

1 tell us by whom are you employed?
2 A. With South Carolina Vocational Rehabilitation in
3 Sumter.
4 Q. In Sumter?
5 A. Yes, sir.
6 Q. And what is your title or what is job duties there?
7 A. I'm the area supervisor.
8 Q. And in connection with that do you have access to
9 the Voc Rehab records?
10 A. Yes, sir.
11 Q. At our request did you pull attendance records for
12 Victor Weldon and Michael Pearson?
13 A. Yes, but due to Federal confidentiality I cannot
14 disclose any information unless I'm court ordered to do
15 so.
16 THE COURT: And I so order you to do so.
17 THE WITNESS: Yes, sir.
18 Q. [Mr. Corbett] Now do you personally know those
19 individuals?
20 A. No sir, I do not.
21 Q. Okay. Now do your time records indicate a period
22 of overlap where the two of them had timecards at Voc
23 Rehab over the same period?
24 A. Yes, sir.
25 Q. Do you have those records available today?

1 A. I do. Those records would be December 9th through
2 December 12th of 2008 is when those times did overlap.

3 Q. And what do those time records indicate in terms of
4 area and hours?

5 A. Well those individuals they were assigned to our
6 wood shop. We have a job readiness training program
7 where these individuals attend and they work in a
8 facility where we build specialized pallets and shipping
9 crates. And they were assigned to that workshop there.

10 Q. And your records indicate that they both attended
11 and worked at that wood shop from December 9 through
12 December 12?

13 A. Yes, sir.

14 Q. At the same time?

15 A. Yes, sir.

16 Q. Just one moment please. Now Mr. Hornsby, do you
17 have any knowledge of the workings of the what I will
18 call the wood shop as you described in terms of its size,
19 number of people who work there at any given point in
20 time?

21 A. The facility is about 150 square foot by about 250
22 square foot. It is -- under is a I guess you could say a
23 metal warehouse type facility where we do build the
24 pallets and crates. It's an open floor plan split into 2
25 different sides. I have about 25 individuals there on a

1 daily basis. And our hours usually depending upon the
2 time of year usually runs from 8:30 to about 2:30 or
3 3:00.

4 Q. Now do your records -- you had given me the
5 timeframe of December 9 through December 12th. Do your
6 records indicate their start and end times? For example,
7 do you know when Mr. Weldon started with Voc Rehab and
8 when he ended?

9 A. As far as when he applied for services?

10 Q. Yes, sir?

11 A. I do not have any of that information with me, sir.

12 Q. How about for Mr. Pearson?

13 A. I do not have any information...

14 Q. But you do know that during that December 9th through
15 12th they were there at the same time?

16 A. Yes, sir.

17 Q. Mr. Hornsby, thank you very much.

18 MR. KNOBELOCH: May it please the court?

19 THE COURT: Yes, sir.

20 CROSS-EXAMINATION

21 BY MR. KNOBELOCH:

22 Q. Mr. Hornsby?

23 A. Yes, sir.

24 Q. Before attending today did you review the records
25 from Mr. Weldon and Mr. Pearson to see when they did work

1 at Voc Rehab?

2 A. Yes, sir.

3 MR. KNOBELOCH: May I approach?

4 THE COURT: Yes, sir.

5 Q. [Mr. Knobeloch] Would it refresh your memory --

6 [Whereupon, the witness is shown documents]

7 Q. The Solicitor asked you earlier if you knew the
8 start date and end date for Mr. Pearson and the start
9 date and end date for Mr. Weldon.

10 And now that you've reviewed that document to
11 refresh your memory could you answer that question?

12 A. Yes. I mean the start date of our job readiness
13 training program for Mr. Pearson began on December 9th
14 2008 and he was discharged from that training program on
15 December -- I mean April 8th, 2009. And Mr. Weldon began
16 on May 13th, 2008 and discharged on December 12th, 2008.

17 Q. No further question.

18 THE COURT: Mr. Devoe?

19 CROSS-EXAMINATION

20 BY MR. DEVOE:

21 Q. Just to summarize I take it that Mr. Weldon's last
22 week on the job was Mr. Pearson's first week on the job?

23 A. Yes, sir.

24 Q. And I think you said the dimensions of the building
25 is approximately 250 square feet?

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 4 (of 5) - May 17, 2012

1 A. Somewhere around that, sir.

2 Q. And how many different work areas do you have in
3 that building?

4 A. It is basically like I said an open floor plan with
5 a partial wall between 2 different work areas.

6 Q. And a new hire or a new person coming in would work
7 in a more basic area that someone who has been there for
8 a while?

9 A. No, sir. It just depends upon the contract the
10 individual is assigned to.

11 Q. Sorry?

12 A. It depends upon the contract that the individual is
13 assigned to.

14 Q. And do you have any work records for the week in
15 question as to which contract which was one was assigned
16 to?

17 A. At that time in 2008 sir we did not have them -- how
18 would you say -- we did not have records of who was
19 assigned to each one of those contracts.

20 Q. And do you have any records as to how many people
21 were there any one time to work?

22 A. About 25. We usually have an individual maintained
23 there is about 25 individuals.

24 Q. And they all work a 6 hour work day or 8 hour work
25 day?

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 4 (of 5) - May 17, 2012

1 A. 6 hours.
2 Q. And they eat in the same area?
3 A. Yes, sir.
4 Q. And they came to work at the same time? One
5 restroom?
6 A. Yes, sir.
7 Q. And left the same time?
8 A. [No response]
9 Q. I have no further questions. Thank you.
10 THE COURT: Anything further from the State.
11 MR. CORBETT: Nothing further, Your Honor.
12 THE COURT: Any reason why he can't be excused?
13 MR. CORBETT: Nothing from the State.
14 MR. KNOBELOCH: Nothing.
15 THE COURT: Thank you, sir.
16 [Whereupon, the witness is excused and exits the
17 witness stand]
18 MR. CORBETT: Your Honor, the State would call
19 Catherine Leisy.
20 [Whereupon, Ms. Leisy comes forward]
21 CLERK OF COURT: Raise your right hand and place
22 your left hand on the Bible and repeat your name, please?
23 MS. LEISY: Catherine Leisy.
24 [Whereupon, the witness is duly sworn by the Clerk
25 of Court as follows: do you solemnly swear the testimony

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 4 (of 5) - May 17, 2012

1 you are about to give will be the truth and nothing but
2 the truth so help you God]

3 MS. LEISY: Yes, I do.

4 [Whereupon, the witness takes the witness stand]

5 - - - - -

6 CATHERINE LEISY,

7 Having been first duly sworn,

8 Was examined and testified as follows:

9 DIRECT EXAMINATION

10 BY MR. CORBETT:

11 Q. Ms. Leisy, good afternoon.

12 A. Good afternoon.

13 Q. If you would please tell us your full name?

14 A. Catherine Leisy L-E-I-S-Y.

15 Q. And by whom are you employed?

16 A. I work for the South Carolina Law Enforcement
17 Division; also known as SLED.

18 Q. In what capacity?

19 A. I am a forensic scientist assigned to the D-N-A and
20 Serology unit.

21 Q. If you would please tell us a little bit about both
22 your education and your training to prepare you for that
23 assignment?

24 A. I have a Bachelor of Science degree in Genetic
25 Engineering from Cedar Crest College in Allentown,

1 Pennsylvania. I have received in house training at SLED
2 pertaining to all the different types of tests and
3 analysis I'm required to perform.

4 Prior to my employment with SLED I spent
5 approximately 4 years working as a forensic D-N-A analyst
6 at a private testing facility known as --

7 I also have approximately 2 years of experience as a
8 research associate in -- laboratory.

9 Q. Now specifically at SLED what do your duties
10 include?

11 A. My responsibilities include processing forensic
12 cases, generating reports based on the results and
13 conclusions drawn, and testifying to those reports as
14 necessary. I'm also responsible in assisting in the
15 training of new hires, our new analysts to be hired.

16 Q. Have you ever testified in court as an expert
17 witness?

18 A. Yes, I have.

19 Q. In what field of expertise?

20 A. In the field of forensic D-N-A identification
21 testing.

22 MR. CORBETT: Your Honor, at this time we would
23 offer Ms. Leisy as an expert in the field of D-N-A
24 analysis and testing.

25 THE COURT: What sayeth the defense?

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 4 (of 5) - May 17, 2012

1 MR. KNOBELOCH: No objection.

2 MR. DEVOE: No objection, Your Honor.

3 THE COURT: I so find she is an expert in D-N-A
4 analysis without objection.

5 Q. [Mr. Corbett] Ms. Leisy, correct me if I'm wrong but
6 SLED is sometimes referred to as an assisting agency, is
7 that correct?

8 A. Yes, it is.

9 Q. Okay. So it's not uncommon for you to receive
10 items of evidence from other law enforcement agencies?

11 A. That's correct.

12 Q. Then as part of that process you test and perform
13 analysis on those items submitted?

14 A. Yes.

15 Q. Bear with me for just a moment. Now, I'm going to
16 show you what has been marked for identification as
17 State's exhibit number 10.

18 [Whereupon, the witness is shown exhibit]

19 Q. And if you can tell us what that item is?

20 A. This particular item did not come into my custody at
21 any point. It does contain the SLED identification number
22 for this particular case. I only received swabs taken
23 from several of the items. I don't believe this
24 particular item was in my custody.

25 Q. All right. If you'll hold on to that for just one

1 moment. If I may let me hand you what has been marked
2 for identification as State's exhibit number 19.

3 [Whereupon, the witness is shown exhibit]

4 Q. Can you tell us what that is?

5 A. This is a heat sealed pouch that contains the SLED
6 case number for this particular case. It also contains
7 my initials indicating that it was in my custody as well
8 as my initials and the date when the seal on each side
9 was cut and was sealed up after I completed my testing.

10 Q. Now if you would please tell us what is contained
11 within that envelope -- I'm sorry, before I go there let
12 me ask it this way if I may. Now what we're looking at
13 here is a sealed envelope from SLED is that correct?

14 A. Yes, it is.

15 Q. Now who puts it back in this envelope?

16 A. If an analyst receives a larger item such as an
17 article of clothing or a larger item than we can
18 physically process in the laboratory the technician or
19 analyst that takes a swabbing or cutting of that
20 particular item for D-N-A testing will place it first
21 into what we call a coin envelope or a small manila
22 envelope that contains the case the item numbers.

23 Those envelopes are then placed into this heat
24 sealed pouch, sealed, dated, and initialed and then
25 transferred to my custody.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 4 (of 5) - May 17, 2012

1 Q. So it's packaged each time it comes through the lab?

2 A. Correct. Items are only transferred in heat sealed
3 pouches so that we can show there has been no tampering.
4 We can tell if somebody has been in the pouch.

5 Q. And then do you send it back to the local agency in
6 a pouch such as it is now?

7 A. That's correct. I would seal it up inside the same
8 heat sealed pouch that I received it in and it will be
9 transferred back to the custody of the submitting agency.

10 Q. Now, with regard to that particular pouch and you
11 indicated -- what were the items contained in that pouch?

12 A. Would you like me open it or should I just refer to
13 the numbers that are on it.

14 Q. Whichever way is more convenient for you or easier
15 for you.

16 A. This pouch indicates that it contains several swabs
17 that were taken from pieces of duct tape that were
18 submitted for testing.

19 There is also a wallet -- there is a swab from a
20 wallet, a swab from duct tape found near a garage door, a
21 swab from duct tape taken near step.

22 There is also a swab taken from a check as well as a
23 swab of duct tape taken from the victim's head.

24 Q. Now did you conduct the D-N-A analysis of those
25 swabs?

1 A. Yes, I did.

2 Q. Now did you generate a report with regard to that
3 analysis?

4 A. I did.

5 Q. Do you have a copy of that available to you?

6 A. Yes, sir.

7 Q. Okay. If you would, please locate that report.

8 [Whereupon, the witness complies]

9 Q. Do you have that available?

10 A. Yes.

11 Q. All right. Now during the -- your report were
12 there any of the swabs matched to any other known
13 standards?

14 A. The D-N-A profiles that I developed from the swabs
15 from the duct tape and the swab from the wallet were
16 compared to several known standards, yes.

17 Q. And what were your findings?

18 A. For what was identified as SLED item 5.1, which was
19 a swab from duct tape taken from the victim's head I
20 determined that the D-N-A obtained from this item is a
21 mixture of at least two individuals.

22 That the partial D-N-A profile developed from the
23 major contributor to this mixture matches -- excuse me,
24 matches the D-N-A profile of Victor Weldon. The
25 probability of randomly selecting an unrelated individual

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 4 (of 5) - May 17, 2012

1 having a profile matching the major contributor to this
2 mixture is approximately 1 in 670 billion. Edward
3 Gibbons cannot be excluded as a possible minor
4 contributor to this mixture. Michael Pearson, George
5 Frierson, and Matthew Weldon are excluded as possible
6 contributors to this mixture.

7 I also developed a D-N-A profile from the swab of
8 the duct tape found beside the garage door. The D-N-A
9 profile developed from that item matches the D-N-A
10 profile of Edward Gibbons. The probability of randomly
11 selecting an unrelated individual having a D-N-A profile
12 matching this item is approximately 1 in 780 quintillion.
13 Excuse me, that's 1 in 780 quadrillion.

14 I also developed a D-N-A profile from the swab taken
15 from the duct tape that was found beside the step. The
16 D-N-A profile developed from this swab is a mixture of at
17 least two individuals.

18 The D-N-A profile developed from the major
19 contributor to this mixture also matches the D-N-A
20 profile of Edward Gibbons and the partial D-N-A profile
21 developed from the minor contributor to this mixture is
22 insufficient for reliable interpretation.

23 I was also able to develop D-N-A profile taken from
24 the swabs from a wallet that was submitted. The D-N-A
25 obtained from the wallet is a mixture of at least 2

1 individuals. The D-N-A profile developed from the major
2 contributor to this mixture also matches the D-N-A
3 profile of Edward Gibbons. And Michael Pearson, George
4 Frierson, Matthew Weldon, and Victor Weldon are excluded
5 as possible contributors to this mixture. No analysis
6 was performed on the swabs submitted to me taken from the
7 check.

8 Q. Now with regard to item 5.1 if I could go back to
9 that for just a moment. And if you would tell us a
10 little bit about how you do that analysis there in
11 particular with regard to 5.1 because you indicated it
12 was a mixture?

13 A. Correct. When I develop a D-N-A profile from an
14 item if there is D-N-A present from more than one
15 individual we refer to it as a mixture.

16 If one of those individuals who contributed D-N-A
17 contributed significantly more than the other individual
18 we have what we call a major profile.

19 Basically it just means that the signals given off
20 by that particular set of D-N-A is much stronger and
21 allows me to essentially pull it out of the mixture and
22 identify a single profile from that mixture.

23 I can then compare that major profile to a known
24 individual to determine whether or not they may be the
25 contributor. I can also compare a known individual to

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 4 (of 5) - May 17, 2012

1 the minor contributor to determine if it's possible that
2 they were also a contributor.

3 Q. Now Ms. Leisy I'm going to show you what's been
4 marked as State's exhibit number 20 and State's exhibit
5 number 21 and I'm going to ask if you can identify those.
6 And if you need to open them let us know.

7 [Whereupon, the witness is shown exhibits]

8 A. State's exhibit 20 is a heat sealed pouch containing
9 the known standard of Edward Gibbons. And State's exhibit
10 21 is a heat sealed pouch containing the known standard
11 of Victor Weldon.

12 MR. CORBETT: Your Honor, at this time the State
13 would move into evidence State's exhibit 20 and State's
14 exhibit 21.

15 THE COURT: Is that the --

16 MR. CORBETT: I'm sorry, Judge. Number 20 is the
17 standard from Edward Gibbons. Number 21 is the standard
18 from Victor Weldon.

19 THE COURT: What sayeth the defense?

20 [No response]

21 THE COURT: Any objection?

22 MR. KNOBELOCH: No objection.

23 THE COURT: They are in without objection.

24 [Whereupon, State's exhibit numbers 20 and 21 are
25 admitted into evidence by the court]

1 Q. [Mr. Corbett] Now Ms. Leisy, with regard to item 5.1
2 you indicated that that was described as duct tape from
3 victim's head is that correct?

4 A. Correct. That's the description I received...

5 Q. And then that swab is contained here in an envelope
6 marked as State's exhibit 19?

7 A. Correct.

8 MR. CORBETT: Your Honor, we would offer State's
9 exhibit number 19 into evidence.

10 THE COURT: What sayeth the defense?

11 MR. KNOBELOCH: No objection.

12 MR. DEVOE: No objection.

13 THE COURT: All right. It is in without
14 objection.

15 [Whereupon, State's exhibit number 19 is admitted
16 into evidence by the court]

17 Q. [Mr. Corbett] Ms. Leisy I apologize. I feel like
18 I've kind of bounced you around here a little bit.

19 Going back to 5.0, and again the reason I'm
20 specifying that is because you talked through a number of
21 different profiles that were developed.

22 A. Yes, sir.

23 Q. Many of which had evidence linking it back to Mr.
24 Edward Gibbons?

25 A. That's correct.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 4 (of 5) - May 17, 2012

1 Q. With particular to 5.1 you told us a little bit
2 about the mixture of it and then it produces the
3 likelihood of another individual having that. Based on
4 what you were able to determine in 5.1 how does it match
5 to Victor Weldon?

6 A. The partial D-N-A profile I developed from the major
7 contributor to this item matches that of Victor Weldon.
8 Again, the probability of randomly selecting an unrelated
9 individual having a D-N-A profile matching a major
10 contributor to this mixture is approximately 1 in 670
11 billion.

12 That number basically means that if you randomly
13 selected a person out on the street and developed their
14 D-N-A profile the chance that it would match this
15 particular profile is approximately 1 in 670 billion.

16 Q. Now 670 billion that's more people than have ever
17 lived on the earth, right?

18 A. It's quite a bit more than currently live on the
19 earth. I can't tell you exactly how many have ever lived
20 on earth.

21 Q. But with regard to D-N-A talk to us a little bit
22 about the individual nature of D-N-A.

23 A. D-N-A stands for deoxyribonucleic acid. It's the
24 genetic material found in all of our body cells with the
25 exception of our red blood cells. We receive half of

1 our D-N-A from our mother and half from our father and
2 therefore have two copies of every gene. We have
3 approximately 99.9 percent in common with everyone else.
4 And it's a variation in that remaining point 1 percent of
5 our D-N-A that allows us to tell different people apart.

6 Q. Now when you're looking at D-N-A analysis it's
7 particular to an individual correct?

8 A. With the exception of identical twins an
9 individual's profile, D-N-A profile, will be unique to
10 that individual.

11 Q. Now Ms. Leisy you examined these items in the
12 laboratory is that correct?

13 A. Yes.

14 Q. You didn't actually come out and work the crime
15 scene?

16 A. No, we don't go to crime scene --

17 Q. One moment please. Just a little bit of background
18 about the sampling. And I'm not a scientist so if I use
19 the right term you correct me, okay. D-N-A obviously
20 is coming from skin, from bodily fluid, from things of
21 that nature is that correct?

22 A. Correct.

23 Q. Within your testing do you attempt to identify that
24 type of source or is it the D-N-A, that acid word you
25 were telling us about that you're looking for?

1 A. It depends largely on the sample and on exactly what
2 the agency is requesting. If an agency requests just
3 what they call touch D-N-A meaning D-N-A that has been
4 left just by physical contact with an item we'll just go
5 ahead and do straight D-N-A testing on that unless it
6 appears when I process it that there may be positive
7 there.

8 If they request a test for blood we will perform
9 what we call serology tests that try to identify
10 different bodily fluids that may be present in others.

11 Q. And this swab was characterized as touch D-N-A or
12 how was it characterized?

13 A. Correct. The request made on the duct tape from the
14 victim's head was just for touch D-N-A. When I processed
15 the swab I didn't see anything indicating that I should
16 test for bodily fluids so it was only tested for touch.

17 Q. Ms. Leisy, please answer any questions these
18 gentlemen have.

19 MR. KNOBELOCH: May it please the court?

20 THE COURT: Yes, sir.

21 CROSS-EXAMINATION

22 BY MR. KNOBELOCH:

23 Q. Ms. Leisy, I'm in the same boat as the Solicitor I'm
24 not a scientist so forgive me if I don't ask the
25 questions correctly. I'll try to ask them so that they

1 make sense. When you analyze a D-N-A sample and then
2 you give a probability of it being a match; a 1 out of a
3 billion numbers that you gave earlier, it is correct
4 there are two parts to that analysis.

5 The first part is where you physically isolate the
6 D-N-A. You look at a particular part of the D-N-A and
7 address if you will on the D-N-A that particular address
8 as identifying information.

9 You can compare that identifying information on one
10 piece of D-N-A with identifying information on the same
11 address on a separate sample of D-N-A. And you get a
12 quantitative number is that correct?

13 A. Yes, sir.

14 Q. And then the second part of your analysis is math,
15 is the probability. And probability math is that the
16 math where if I flip a coin a certain number of times
17 you'll tell me the probability of on the fifth time if
18 it's heads or tails?

19 A. Essentially, yes.

20 Q. So when you come up with the probability there is a
21 part -- do y'all use a microscope? I don't know how you
22 actually see the low side of the D-N-A. But somehow you
23 are physically examining the D-N-A; a sample?

24 A. Correct. We're making copies of the locations in
25 the D-N-A that we're interesting in testing and then

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 4 (of 5) - May 17, 2012

1 examining the data on those.

2 Q. But then to complete your testimony you've got to do
3 the math. Is the next card going to be a face card or is
4 it going to be heads or tails?

5 A. The math again basically an estimate of how common
6 or rare this profile will be in the general population.

7 Q. You also testified that some items excluded an
8 individual as being a contributor to that D-N-A sample.

9 A. Correct.

10 Q. When you exclude someone you can say that with 100
11 percent certainty can't you?

12 A. Correct. An exclusion is definitive in a way that I
13 can say conclusively that I feel he's excluded as a
14 possible contributor to the mixture --

15 Q. So if it doesn't match you could testify with 100
16 percent certainty this person did not contribute to this
17 sample?

18 A. I can say that if I can exclude them as a
19 contributor to what I'm seeing.

20 Q. You can exclude them to the contributor to the
21 sample that collected ---

22 A. --- correct. I can exclude them from the profile
23 that I developed.

24 Q. But you can never say it the other way. You can
25 never say with 100 percent certainty this person

1 contributed this sample, which is why we use the
2 probabilities is that correct?

3 A. Correct. The strongest statement I would ever be
4 able to make with a match that is within a reasonable
5 degree of scientific certainty it is my opinion that an
6 individual is a contributor.

7 Q. You also testified that humans -- that our D-N-A is
8 99 percent identical. The one percent that is not
9 identical how many building blocks of D-N-A would make up
10 one percent of our D-N-A?

11 A. It's still quite a large amount if you want to count
12 specific D-N-A bases there is a fair amount of
13 information.

14 Q. And I know there's not an exact number but is it
15 hundreds or thousands?

16 A. Well, the locations that we are testing are called
17 short standard repeats or S-T-R's. They are locations in
18 our D-N-A where a short -- of D-N-A repeats a certain
19 number of times.

20 And there are potentially thousands of S-T-R
21 locations. We test selected 15 that are partially
22 available as far as what kits we can use and are readily
23 acceptable within the forensic community.

24 Q. Those locations -- and I forgot what was the word
25 you used again?

1 A. They are short standard repeats or S-T-R's.

2 Q. The S-T-R's in a human's D-N-A are there tens of
3 thousands of S-T-R's?

4 A. Potentially yes, there are going to be.

5 Q. And you test 15?

6 A. That's the system that we use, correct. We test 15
7 locations.

8 Q. So when you use your probability you're testing 15
9 out of tens of thousands of locations on a D-N-A sample.

10 A. That's correct.

11 Q. Do you wear gloves in your laboratory?

12 A. Yes, sir.

13 Q. Why do you wear gloves in your laboratory? Is that
14 because you don't want to contribute your D-N-A to a
15 sample?

16 A. It's actually for quite a few reasons. One is that
17 I certainly don't want to transfer my D-N-A to a sample
18 as I'm processing it. I also want to protect myself from
19 that sample.

20 We deal with what are commonly considered
21 potentially infectious biohazards; any type of bodily
22 fluid could potentially be dangerous to us.

23 We also wear the gloves because it's easy for us to
24 change gloves in between handling different samples; so
25 we're not cross-contaminating or carrying D-N-A over from

1 one sample to the next as we process.

2 Q. So every time you move from one sample to another
3 you would change gloves is that correct?

4 A. Not necessarily in between every single but quite
5 frequently; anytime I feel I need to to try to prevent
6 contamination.

7 Q. What about your laboratory itself? Do you clean it
8 or sterilize it occasionally.

9 A. The bench space and what we call good space that I
10 use for my examinations are cleaned daily. I also run a
11 U.V. light in the hood space overnight to degrade any
12 D-N-A that may still be present to cause contamination.
13 And we are required to perform regular decontamination
14 processes in all the lab spaces that we use.

15 Q. And is that for the same reason that you wear the
16 gloves then that you don't want to get some D-N-A that is
17 laying on your work bench on the item that you are
18 examining?

19 A. That's correct. We want to do everything we can to
20 make sure we are not introducing D-N-A to the evidence
21 once they...

22 Q. Earlier there was mention of a buccal swab, which is
23 where you get a D-N-A sample from a person. I'm more
24 familiar with it in Family Court doing paternity tests
25 but I assume it's the same in this type of case?

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 4 (of 5) - May 17, 2012

1 A. Yes, sir.

2 Q. When you're gathering a D-N-A sample from a person
3 do you use a scalpel?

4 A. No, what we commonly receive are either buccal
5 swabs, which are basically are just sterile Q-tips that
6 have been rubbed against the inside of someone's cheek to
7 collect skin cell.

8 And we may also receive tubes of blood that we pour
9 in -- cutting out to process. I'm not familiar with any
10 technique that would require someone to be cut or excised
11 with a scalpel.

12 Q. So you can get a D-N-A sample from me by rubbing a
13 Q-tip type swab inside of my mouth?

14 A. Correct.

15 Q. Is it possible that I am leaving D-N-A on this
16 podium by placing my hands on it?

17 A. Yes sir, you will be.

18 Q. And then the same would be true of the duct tape.
19 If someone touched the duct tape they would be
20 potentially leaving a D-N-A sample on the duct tape?

21 A. It would be possible to transfer just by touching,
22 yes.

23 Q. D-N-A analysis doesn't indicate the race of the
24 donor, is that correct?

25 A. This particular type does not identify race of

1 donor.

2 Q. Does it indicate the age of the donor?

3 A. No, it does not.

4 Q. Does it indicate how long it has been on the surface
5 of the item you're examining?

6 A. It does not. As D-N-A is left on an item over time
7 it can degrade or break down, but I can't pinpoint
8 exactly when an item is left -- excuse me, when D-N-A was
9 left on an item.

10 Q. It can degrade or break down with exposure to
11 sunlight for example; I believe we did that is that
12 correct?

13 A. Yes, it would.

14 Q. But it doesn't necessarily degrade or break down if
15 they had gotten D-N-A samples from the iceman or from
16 mummies?

17 A. D-N-A can be very stable under the right conditions
18 for quite a long time.

19 Q. So it could last -- it could be there for a year,
20 two years?

21 A. I can be there up to several decades depending again
22 on how a sample is collected and kept.

23 Q. And I hope I'm not being redundant but we -- your
24 analysis doesn't tell us if it's skin, blood, semen,
25 saliva?

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 4 (of 5) - May 17, 2012

1 A. On the in particular item 5.1 or?

2 Q. Yes, we'll just talk about 5.1.

3 A. Again, for 5.1 there was no request made to
4 determine bodily fluid and I didn't see any reason when I
5 examined the item too.

6 So I can't necessarily say whether or not this D-N-A
7 is from just the skin cells or the transfer through
8 saliva or even sweat.

9 Q. Do you have any information as to whether the sample
10 came from the inside or the outside of the duct tape?

11 A. The description I received was a swab from outside
12 and inside area of the black duct tape from the victim's
13 head.

14 Q. So the swab was taken on both sides of the duct
15 tape?

16 A. Based on the information I received, yes sir.

17 Q. Did you receive a swab from the duct tape or did you
18 receive the duct tape itself?

19 A. I received swabs that were taken from the duct tape.

20 Q. Did you also receive the duct tape itself?

21 A. No, I did not.

22 Q. Okay. So only one sample of that particular 5.1
23 was examined?

24 A. As far as what I examined there was just the swabs
25 taken from the duct tape, correct.

1 MR. KNOBELOCH: No further questions, Your Honor.

2 THE COURT: Okay. Mr. Devoe, do you have any
3 questions?

4 MR. DEVOE: Thank you. I have several questions,
5 Your Honor.

6 CROSS-EXAMINATION

7 BY MR. DEVOE:

8 Q. Good afternoon. I'm Harry Devoe. I represent
9 Michael Pearson in this matter. I just want to summarize
10 two or three questions on your analysis. I believe you
11 looked at a black wallet.

12 A. I received swabs that were taken from a black
13 wallet, yes sir.

14 Q. And I take it my client was not involved in that --
15 he was excluded as a contributor of D-N-A on that black
16 wallet?

17 A. That's correct. He was excluded as a possible
18 donor.

19 Q. But you don't do any fingerprint analysis do you?

20 A. That is not my area of expertise, sir.

21 Q. So if any fingerprints were on that black wallet you
22 wouldn't know anything about it?

23 A. Correct. That's not something I can answer.

24 Q. The other place he is mentioned, my client is
25 mentioned in your report I believe is 11.1?

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 4 (of 5) - May 17, 2012

1 A. Yes, sir ---

2 Q. --- that was a cutting from a sneaker or a shoe?

3 A. I received what was marked as SLED 11.1, which was
4 cutting from a left shoe of Mr. Pearson.

5 Q. And you found blood on that left shoe?

6 A. The serology test I performed did indicate the
7 possible presence of blood, yes sir.

8 Q. And those -- that D-N-A blood matches that of
9 Michael Pearson?

10 A. Again, I had a mixture and the major D-N-A profile
11 developed from that item did match the D-N-A profile of
12 Mr. Pearson, yes.

13 Q. And no one else?

14 A. No, the major is just a match to Mr. Pearson.

15 Q. And I believe that my client was excluded from the
16 D-N-A on item 2.1?

17 A. Yes, he was.

18 Q. And actually wasn't included in any of your lab --

19 A. The only item I could make a comparison or cause a
20 comparison to Mr. Pearson was item 11.1, which again was
21 a cutting from a shoe.

22 Q. Thank you. No more questions.

23 THE COURT: Mr. Solicitor?

24 MR. CORBETT: Brief follow up, Your Honor.

25 ---

REDIRECT EXAMINATION

BY MR. CORBETT:

Q. Now Ms. Leisy, with regard to your report there is a number of items that you tested, correct?

A. That's correct.

Q. Not everything is going to give you a usable sample.

A. Correct.

Q. Does your report indicate some items that were -- no analysis was performed?

A. Yes, there were several items that I did not perform analysis on.

Q. Okay. Is that just a sample is not good enough to work on or how -- tell us a little bit about the process if you would.

A. In this particular case we did receive quite a few items. We tried to limit or restrict to just the most important or most potentially probative items when we begin our testing.

We ask the submitting agency to tell us what items they wanted us to start with what they believed would be the most useful. Those are the items that I started with.

And there was no further request on the other items to perform D-N-A testing. So at that point I stopped testing on the case and returned the items that I hadn't

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 4 (of 5) - May 17, 2012

1 done any processing on.

2 Q. Just one moment please. Now let me go back to 5.1
3 for just a moment if I may. When were you able to
4 develop 5.1 as a match to Victor Weldon?

5 A. I actually issued several reports in this case. My
6 first case identified that major as coming from an
7 unidentified male individual.

8 I later received a standard taken from Mr. Weldon at
9 which point I did my comparison, made the match, and
10 generated a supplemental report to reflect that match.

11 Q. Do you have that supplemental report available?

12 A. I do.

13 Q. Indicating that match?

14 A. Yes, sir.

15 Q. May I take a look at that please, ma'am?

16 MR. KNOBELOCH: Judge, may we approach briefly?

17 [Whereupon, an off the record bench conference is
18 held]

19 Q. [Mr. Corbett] Now Ms. Leisy, may I see a copy of
20 that report?

21 [Whereupon, the witness provides document to Mr.
22 Corbett]

23 Q. And this is the supplemental report indicating your
24 analysis with particular to 5.1?

25 A. Correct. That particular report includes the

1 results the results from -- all the testing that I did in
2 this case.

3 Q. Do you have any objections to us using this as an
4 exhibit?

5 A. No, sir.

6 Q. Okay.

7 MR. CORBETT: Your Honor, at this time we would
8 offer this as State's exhibit 28.

9 THE COURT: What sayeth the defense?

10 MR. KNOBELOCH: Judge, I'd just like to put my
11 objection on the record. Judge, I'd like to put it on
12 the record but I'd like to put outside the presence of
13 the jury.

14 THE COURT: Okay. Is your objection the same
15 objection you had at the bench?

16 MR. KNOBELOCH: It is. And I just want to preserve
17 it at the proper time. I don't mind it coming ---

18 THE COURT: --- let me see the report.

19 [Whereupon, the report is handed up to the court]

20 THE COURT: You say -- you call this a
21 supplemental. Is there another report in evidence?

22 MR. CORBETT: Judge, there is currently not any
23 other report in evidence.

24 THE COURT: Okay. Y'all approach one more time.

25 [Whereupon, an off the record bench conference is

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 4 (of 5) - May 17, 2012

1 spell it please?

2 MS. BELTON: Andrena Belton. A-N-D-R-E-N-A
3 B-E-L-T-O-N.

4 [Whereupon, the witness is duly sworn by the Clerk
5 of Court as follows: do you solemnly swear the testimony
6 you are about to give will be the truth and nothing but
7 the truth so help you God]

8 MS. BELTON: Yes.

9 [Whereupon, the witness takes the witness stand]

10

11 ANDRENA BELTON,

12 Having been first duly sworn,

13 Was examined and testified as follows:

14 DIRECT EXAMINATION

15 BY MR. CORBETT:

16 Q. Ms. Belton, good afternoon.

17 A. Hello.

18 Q. Tell us by whom are you employed please, ma'am?

19 A. South Carolina Law Enforcement Division also known
20 as SLED.

21 Q. And in what capacity?

22 A. I'm a latent print fingerprint -- latent print
23 examiner. I'm a special agent in the crime scene latent
24 print department.

25 Q. And do you have occasion to review items of evidence

1 submitted?

2 A. Yes.

3 Q. Now with regard to this case did you bring any notes
4 or reports generated as a result of that?

5 A. Yes. I have my worksheet and my report.

6 Q. I'm going to show you what has previously been
7 marked as State's exhibit number 19.

8 [Whereupon, the witness is shown exhibit]

9 Q. And I believe those are swabs that you forwarded the
10 D-N-A?

11 A. Yes.

12 Q. And in particular I believe item 5.1? I'm sorry,
13 5.1 that was taken from black duct tape from the victim's
14 head is that correct?

15 A. That's correct.

16 Q. And can you tell us what that appears to be there?

17 [Whereupon, the witness is shown exhibit]

18 A. This is marked item 14 on the outside bag and its
19 black duct tape, yes.

20 Q. Okay. Now when you swab an item -- when you swab
21 an item for D-N-A, in particular this duct tape here,
22 tell us what it is you're doing?

23 A. I'm just swabbing it for touch D-N-A.

24 Q. Now were there other items, other tests that you did
25 as well?

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 4 (of 5) - May 17, 2012

1 A. Other items or other tests?

2 Q. Both?

3 A. Yes, there were other items and tests that I did on
4 these items.

5 Q. And part of that was you were looking for
6 fingerprints is that correct?

7 A. That's correct.

8 Q. And I'll show you what's previously been marked as
9 State's exhibit number 11.

10 [Whereupon, the witness is shown exhibit]

11 A. Okay.

12 Q. And did you have occasion to test this?

13 A. Yes, I did.

14 Q. Okay. And were you able to develop any type of
15 fingerprints?

16 A. No, I didn't.

17 Q. And I believe you also attempted to recover
18 fingerprints from a check that was submitted?

19 A. Yes.

20 Q. And did you have any luck developing any useful
21 prints from that?

22 A. There were two latent prints on the check. And it
23 looks -- if you'll give me one second -- it looks like
24 they were developed on the front and the back of the
25 check. But both those latents that were developed were

1 of no value.

2 Q. And occasionally you look for prints but they just
3 aren't of good enough quality is that correct?

4 A. That's correct.

5 Q. So you do that work, sometimes it just doesn't turn
6 out?

7 A. That's correct.

8 MR. CORBETT: Your Honor, if I may have just one
9 moment please?

10 [Whereupon, Mr. Corbett reviews documents]

11 MR. CORBETT: I'm sorry Your Honor, if you'll give
12 us just one moment.

13 [Whereupon, counsel confer]

14 MR. CORBETT: No further questions.

15 THE COURT: Any questions from the defense?

16 MR. KNOBELOCH: No, Your Honor.

17 THE COURT: Mr. Devoe?

18 MR. DEVOE: No questions, Your Honor.

19 THE COURT: Thank you, ma'am. You can step down.

20 MR. FINNEY: We'd ask that the witness be excused?

21 THE COURT: Any objection?

22 MR. KNOBELOCH: No objection.

23 [Whereupon, the witness is excused and exits the
24 witness stand]

25 THE COURT: Ladies and gentlemen we're going to

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 4 (of 5) - May 17, 2012

1 motions. And dealing with those motions and/or potential
2 charges -- and I guess what we can do is just get this
3 last witness in and send the jury out for a few minutes
4 to see where we stand as far as motions and legal
5 arguments are concerned and then make the call whether
6 we're going tonight.

7 MR. FINNEY: That will be fine, Your Honor.

8 THE COURT: We'll do that. Anything before I bring
9 the jury in?

10 [No response]

11 [Whereupon, the jury re-enters the courtroom at 2:30
12 p.m.]

13 THE COURT: Mr. Solicitor?

14 MR. CORBETT: Thank you, Your Honor. The State
15 would recall Barbara Procter.

16 THE COURT: Okay.

17 [Whereupon, the witness comes forward and retakes
18 the witness stand]

19 - - - - -

20 BARBARA PROCTER,

21 Having been previously duly sworn,

22 Was examined and testified as follows:

23 DIRECT EXAMINATION

24 BY MR. CORBETT:

25 Q. Now Ms. Procter, I'm going to show you what has been

1 marked as State's exhibit number 10.

2 [Whereupon, the witness is shown exhibit]

3 Q. Now, is that an item that was in your care, custody,
4 and control upon being returned from SLED?

5 A. Yes, it is.

6 Q. And maintained securely there at your facility?

7 A. That's correct.

8 Q. And this being described as tape from victim's head?

9 A. That's correct.

10 MR. CORBETT: Your Honor, at this time we would
11 move into evidence State's number 10.

12 THE COURT: All right. What sayeth the defense?

13 MR. KNOBELOCH: No objection.

14 MR. DEVOE: No objection.

15 THE COURT: All right. Exhibit 10 is in without
16 objection.

17 [Whereupon, State's exhibit number 10 is entered
18 into evidence by the court]

19 MR. CORBETT: That's all that I have, Your Honor.

20 THE COURT: All right. Any questions?

21 MR. KNOBELOCH: No, Your Honor.

22 THE COURT: All right. You can step down.

23 [Whereupon, the witness is excused and exits the
24 witness stand]

25 MR. FINNEY: Your Honor, the State rests at this

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 4 (of 5) - May 17, 2012

1 time.

2 THE COURT: Okay. Ladies and gentlemen, you've
3 heard all the evidence you can hear on behalf of the
4 State. I've got to deal with some legal matters now so
5 I've got to send you back to the jury room and I'll get
6 you back out just as quick as I can.

7 I won't leave you back there too long; we won't take
8 too long. I'll -- let me talk to these lawyers and deal
9 with the legal matters and I'll meet you back out. I'll
10 remind you, don't start discussing this case. Thank you.

11 [Whereupon, the jury exits the courtroom at 2:49
12 p.m.]

13 THE COURT: Okay. Anything from either side? Any
14 motions that you have or -- I assume the State doesn't
15 have anything?

16 MR. FINNEY: I do not, Your Honor.

17 THE COURT: Okay. Yes, sir.

18 MOTION FOR DIRECTED VERDICT

19 MR. KNOBELOCH: Your Honor, we would move for a
20 directed verdict. We are -- in our motion we are
21 primarily relying on three cases. State v Mitchell,
22 which is 341 S.C. 406, 535 S.E.2d 126 that's a 2000
23 Supreme Court case, then State v Bostic, which is 392
24 S.C. 134, 788 S.E.2d 774. It's also a Supreme Court case
25 2011, and State v Arnold 361 S.C. 386, 605 S.E.2d 529;

1 also a Supreme Court case from 2004. All of those cases
2 have to do with whether or not -- evidence arises to a
3 level where it's proper to send a case to the jury. In
4 the Mitchell case very briefly the facts were -- the
5 defendant was tried for burglary. State presented
6 fingerprint evidence that was on a screen, which was
7 removed from a window that appeared based on broken glass
8 to be the point of entry into the home.

9 However, the State -- the court responded to the
10 fact that respondent's fingerprint was on a screen that
11 was propped up against the house does not prove entry.
12 And a directed verdict was granted in that case.

13 In State v Bostic the victim was robbed and was
14 burned alive in her home. In that case several of the
15 victim's personal items were found in the defendant's
16 family burn pile. The defendant had traces of gasoline
17 on his shoes, which was also shown to be the accelerant
18 which was used in the burning of the home. And there was
19 blood on the defendant's pants. Analysis of the blood
20 was inconclusive. But with all three of those items the
21 court again determined that a directed verdict should be
22 granted.

23 And then finally we get to State v Arnold. In that
24 case the defendant -- it was shown the defendant and
25 victim were introduced to each other in South Carolina

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 4 (of 5) - May 17, 2012

1 and had consensual sex. The defendant -- there was
2 testimony the defendant at that time had a pistol in his
3 possession. Several days after being introduced the
4 victim's body was found shot to death. Several days
5 after that the victim's car, in fact the car he was
6 borrowing but the car the victim was driving was found in
7 Tennessee as was the defendant who lived in Tennessee and
8 who had told his friend in South Carolina if you need me
9 I'll be in Tennessee.

10 In that case there was a coffee cup in the victim's
11 car with the defendant's fingerprint on it. And once
12 again under those facts the Supreme Court stated that a
13 directed verdict should be granted.

14 In this case as it pertains to Mr. Weldon the
15 evidence that was presented does show that his D-N-A was
16 found on duct tape. It wasn't found on any other items
17 and there is nothing that -- there is nothing that puts
18 him at the crime; there's certainly nothing that shows
19 that he committed the crime.

20 I don't believe there is any other evidence other
21 than the D-N-A probability of a match on the duct tape.
22 For all of those reasons and based on those cases we move
23 for a directed verdict.

24 THE COURT: All right. Mr. Devoe?

25 MR. DEVOE: Thank you, Your Honor. I would refer

1 you to the same three cases for my client. The facts as
2 given to you by Mr. Knobeloch are essentially correct and
3 I think you have the sites in front of you and you can
4 look these cases up. The only difference in the cases in
5 my client's situation is that the only evidence that they
6 have against him is the fingerprint found on the -- head
7 in the El Camino that was located at Mr. Gibbons place of
8 business.

9 There is no evidence of my client being at the scene
10 of the crime, no direct evidence, -- no eyewitness and no
11 forensic evidence. My client lived a block and half from
12 the store. My client walks the neighborhood and recently
13 put the fingerprint on the -- at that store and no other
14 place.

15 The expert witness from the State testified that if
16 a fingerprint was placed somewhere it could stay there
17 almost -- she said from two days to two years; a lot of
18 time. But rain would not take it off. The only thing
19 that would take it off would be a hand washing and a hand
20 rubbing in that area of the truck to remove it.

21 So we don't know when the fingerprint got there. It
22 could have been well before this whole thing happened.
23 But certainly not afterward because the truck was found
24 right away and it was -- right away. But before that
25 there is no evidence the State as to that truck being

1 taken to a car wash or being hand washed by anybody. So
2 you don't know the last time the car was washed. And
3 therefore, you don't when the fingerprints came on the
4 truck. But certainly there is nothing -- that my client
5 -- so I would ask for the same situation of the unique --
6 of my client's case for a directed verdict. Thank you.

7 THE COURT: Mr. Solicitor, do you want to respond?

8 MR. FINNEY: May it please the court? None of the
9 cases that have been cited by the defense, Your Honor, go
10 to the totality of the circumstances that we have in this
11 case.

12 We have Mr. Gibbons who is a resident in his own
13 home who was attacked in the early morning hours who was
14 tied up with duct tape. And it is that duct tape, not
15 from somewhere else in the house or somewhere in the bed
16 of the car, but that duct tape on his head that led to
17 the hit and the identification of one of the defendants.

18 Also, the fingerprint was in the area of the car
19 where Mr. Gibbons testified that one of the men, and I
20 believe he testified the larger of the men got into the
21 bed of the El Camino not one time, not two times, but by
22 the testimony we had here four times.

23 He got in the first time at the house. He yelled
24 out he's getting up, he's getting up. He got out of the
25 El Camino and came back into the garage, got back in the

1 El Camino again to leave the residence and got out of the
2 El Camino again when he abandoned the car about two miles
3 away. Plenty of evidence for the jury to infer that his
4 presence at the scene of the crime led to that
5 fingerprint being placed on the car.

6 We also have a situation, Your Honor, where through
7 good police investigation we were able to tie people in
8 the community to these gentlemen knowing that they went
9 to class together at Voc Rehab in Sumter, which they
10 either forgot about or lied about to the police officers,
11 and to the gentleman, Mr. Pearson, who says he didn't
12 know Mr. Gibbons, had never been around Mr. Gibbons, his
13 co-worker in the landscaping business took him over to
14 the house several times and took him into the shed where
15 the tools were stored where Mr. Gibbons saw the robbers
16 emerge from that morning.

17 I believe there is sufficient evidence is in the
18 record to let the jury have the case and we ask to deny
19 the motion by the defense.

20 THE COURT: Okay.

21 MR. DEVOE: If I could respond to...

22 THE COURT: Okay.

23 MR. DEVOE: We had Mr. Gamble who testified today
24 testified that you could not see the victim -- could not
25 see that part the top -- could not see the -- properly

1 back on that. So I heard the witness say he identified
2 the man getting out of the truck, on or off the truck.
3 Normally you get out of a truck not the side of the truck
4 where you see from the back of the truck. So I think
5 that's a -- the jury will have to decide that. And I
6 would -- in that situation -- in the car.

7 There are no fingerprints there. There is no other
8 indication of them being there. Mr. Gamble really
9 appeared to my client as being a casual worker for a
10 brief period of time. He is not a co-worker.

11 I'm not sure that my client said that he knew where
12 he was -- in addition to where he was -- once again I
13 think the fingerprint was the only hard evidence the
14 State has against my client found on that truck.

15 MR. KNOBELOCH: Your Honor, very briefly. As far
16 as the nexus between the co-defendants that was at least
17 18 months prior to this and very tenuous at best. What I
18 would like to focus on is the duct tape and just point
19 out that it's the duct tape itself is one of those items
20 that it doesn't -- the D-N-A on the duct tape doesn't put
21 the defendant at the crime scene.

22 He knows that at some point he was with the duct
23 tape. But comparing it the Arnold case in that case you
24 have evidence that puts the defendant in the victim's car
25 in another State within I think days of the crime.

1 Certainly a much more -- that one bit of physical
2 evidence ties that defendant much more closely to that
3 crime that this does.

4 THE COURT: Okay. Do you have a copy of the
5 cases?

6 MR. KNOBELOCH: I do, Your Honor.

7 THE COURT: If you do that I'll read them real
8 quick. Any other issues we need to deal with?

9 [Whereupon, Mr. Knobloch provides documents to the
10 court]

11 THE COURT: Any other legal issues?

12 MR. DEVOE: We have some legal issues I guess on
13 the indictment.

14 THE COURT: Well, I guess now is the time to deal
15 with them.

16 MR. FINNEY: Your Honor, on behalf of the State it
17 has been brought to our attention that the indictment
18 reflects that the defendants were charged with Attempted
19 Murder and that that statute was implemented after the
20 date of the crime.

21 We would after having reviewed our notes feel that
22 the proper way to handle that at this point would be for
23 all parties state a defense to stipulate that the proper
24 charge based on the evidence that has been presented in
25 the record would be Assault and Battery of a High and

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 4 (of 5) - May 17, 2012

1 Aggravated Nature under the common law statute and that
2 that charge be supplemented or replaced -- replace the
3 count two Attempted Murder and that we go forward to the
4 jury on that charge.

5 THE COURT: What's the defense position?

6 MR. DEVOE: Your Honor, I would argue that the
7 Attempted Murder charge ought to be dropped -- a
8 jurisdictional issue.

9 MR. KNOBELOCH: And we would join in that request.

10 THE COURT: All right. Anything else?

11 MR. FINNEY: I would mention for the record that
12 the charge of Assault and Battery of a High and
13 Aggravated Nature is a statutory lesser included offense
14 under the statutory language and the indictment also
15 carries the language at the bottom that it is against the
16 peace and dignity of the State therefore would be allowed
17 to be supplemented by the fact that it is a common law
18 offense.

19 THE COURT: I'm going to take a quick recess and go
20 read these cases.

21 [Whereupon, the court takes a brief recess]

22 THE COURT: I'm kind of inclined as late as it is
23 we aren't going to get this to the jury tonight because
24 it will be after 5 o'clock I think realistically before
25 they get it. And I've had some bad experiences giving

1 jury the cases -- so I'll bring them out and send them
2 home and bring them back at 9:30 in the morning and do
3 closing arguments and charge and then I'll rule on these
4 motions afterwards. Bring the jury back in.

5 [Whereupon, the jury re-enters the courtroom at 3:18
6 p.m.]

7 THE COURT: Ladies and gentlemen, what we have to
8 do to finish this case is do the closing arguments of the
9 attorneys and I charge you on the law. And once I do
10 that y'all can't go home; you've got to decide this case.

11 And as late as it is you're probably not going to
12 get this case until 5 o'clock so -- and I have no idea
13 how long you are going to take and you don't have any
14 idea how long you're going to take.

15 So, the safest thing to do is just come back in the
16 morning at 9:30 and do the closing arguments and Charge.
17 I've still got some legal matters that I need to deal
18 with and I didn't want to keep you locked up back there
19 while I dealt with them.

20 So I'm going to send you home and we'll deal with
21 all those legal matters I have to and when you get back
22 in the morning we'll hear the closing arguments of the
23 attorneys and I'll charge you on the law and give you
24 this case to decide. I remind you please don't discuss
25 this case yet. Don't allow anyone to discuss it with

1 you. I will see you at 9:30 in the morning. Thank you.

2 [Whereupon, the jury is excused for the evening at
3 3:22 p.m.]

4 THE COURT: I was making all the assumptions based
5 on my understanding is y'all are not going to put up a
6 case is that correct?

7 MR. KNOBELOCH: That's correct.

8 THE COURT: You're not going to put up any evidence
9 correct?

10 MR. DEVOE: That's correct, Your Honor.

11 THE COURT: Okay. Now as far as the directed
12 verdict I have read the cases you've submitted to me.
13 And after reading these cases I respectfully deny your
14 motion for directed verdict.

15 I think in this particular case the burden is
16 whether the existence of any evidence and whatever weight
17 this jury gives it. The evidence in this case as far as
18 Mr. Weldon is concerned his D-N-A was found on the duct
19 tape that was placed around the victim's head.

20 I certainly think -- and there has been no other
21 explanation as how his fingerprint got on that duct tape
22 other than him being at the scene that morning -- and the
23 jury certainly may find based on the evidence before them
24 that there is sufficient evidence or least existence of
25 credible evidence. And I find that it is unlikely that

1 his D-N-A was found on some odd -- or some place that he
2 had a right to be. The fact that it's on the duct tape
3 on the victim's head in his garage that morning gets to
4 the jury.

5 As far as Mr. Pearson's fingerprint the evidence in
6 this case that has come before this jury that I recall he
7 told the police officer he did not know Mr. Gibbons. He
8 had not been at his house or his place of business.

9 His vehicle was taken that morning. Within 30
10 minutes the vehicle was found abandoned a mile and a half
11 or two miles away. The vehicle was processed and was
12 carried to the auto parts place and processed. That day
13 his fingerprint was found on the vehicle.

14 And I certainly think at least that's sufficient
15 evidence for the jury to make a determination of guilt or
16 innocence in this case. And I respectfully deny your
17 motion. Yes, sir?

18 MR. DEVOE: As to recognize, I'd like to point out
19 that there's no indication as to why Mr. Gibbons car was
20 not broke down or -- and therefore he had no idea -- the
21 fingerprints that are on the car.

22 THE COURT: I understand that and the jury has got
23 to deal with that issue. But part of the testimony
24 before this jury is has you client ever had contact with
25 that car. And he -- believed that he never had contact

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 4 (of 5) - May 17, 2012

1 with the car so that fingerprint could have gotten there
2 some -- lawfully. I understand later there is also
3 evidence that he worked in Mr. Gibbons yard and was
4 familiar with his house. And there was no testimony that
5 the car was there at that time or that in fact he touched
6 the car or had anything to do with the car. But that's a
7 question of fact this jury is going to have to decide.

8 MR. DEVOE: Your Honor, the evidence -- on the
9 house was a year before this all happened --

10 THE COURT: My recollection is the Solicitor asked
11 him that question. He said it was the spring of the year
12 the incident happened. When you asked him that question
13 you asked him was it two years or three years and he said
14 it could have been either one.

15 And you came back and said was it three years; it
16 could have been. So it's conflicting testimony as to the
17 time whether it happened three years earlier or two years
18 earlier. And he told the Solicitor it happened in the
19 spring of the incident in which Mr. Gibbons was
20 assaulted. There was some testimony it happened April of
21 2010 versus this happened in May of 2010.

22 MR. DEVOE: --- but there's no testimony that the
23 car was there when he broke into that house either.

24 THE COURT: I understand that. There was no
25 testimony from -- he was working at his house so

1 therefore there's no testimony his print could have
2 accidentally gotten on that car. Now those are all
3 questions of fact this jury is going to have to struggle
4 with. But at this point in the game whether the
5 evidence exists that they could make this determination
6 and in fact circumstances that this prints are on the car
7 within 30 minutes of the crime being occurred is at least
8 sufficient to have placed him at the scene.

9 It depends on -- I understand that the jury is going
10 to have to make this determination as to whether they
11 think the State has met its burden of proof. But at this
12 point it's the existence of evidence and I think there is
13 at least credible evidence in this record that the jury
14 could make a finding of guilt.

15 It's a number of facts they've got to struggle with.
16 But I'm going to let them make that call. I'm sure both
17 sides will argue what the evidence does or does not show.
18 But at least at this point I think it goes further than
19 the Mitchell, Arnold, or Bostic case. And in fact the
20 D-N-A is on the tape on the victim's head or like found
21 somewhere else certainly has the potential of placing Mr.
22 Weldon at the crime scene.

23 And your client's fingerprint was found on the
24 stolen vehicle within 30 minutes of the crime. They can
25 at least -- they can decide if the State has not proved

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 4 (of 5) - May 17, 2012

1 that he was there at the time of the crime or not; I
2 don't know. There is at least evidence of that. All
3 right. Anything else?

4 [No response]

5 THE COURT: As far as the second count of the
6 indictment of Attempted Murder. Since this is not going
7 to the jury -- I'm going to think about it another night.
8 It has created a unique legal issue and the question is
9 whether I can Charge Assault and Battery of a High and
10 Aggravated Nature based on this or not.

11 I want -- now that I have the luxury of thinking
12 about it overnight I'd like to think about it again
13 because I don't think -- there's no case law on this at
14 all. This has never come up in the courts of South
15 Carolina that I'm aware of.

16 And I don't think I can do my best guess to see what
17 the Supreme Court has said about everything, but I'd like
18 to try and get it right. So I'll let y'all know in the
19 morning. Anything else?

20 MR. DEVOE: Your Honor, the only -- he mentions the
21 count 1 Burglary First in the indictment also.

22 THE COURT: Well -- and I understand that. Y'all
23 made no objection prior to the jury being sworn. At
24 least there is evidence. The question is whether it
25 occurred in the nighttime. The evidence in the record

1 that Mr. Gibbons was assaulted somewhere -- he said he
2 gets up around 6 or 6:30 and he leaves Sumter between
3 6:15 and 20 minutes to 7. The testimony from the
4 officer was that sunrise was 6:21 that morning. And
5 clearly from the evidence that Mr. Gibbons was assaulted
6 he said it was light outside.

7 But the real issue is when the entry occurred and
8 whether they entered the garage during darkness. And
9 that's a question I think that the jury is going to get
10 to decide as to how long they had been there and whether
11 they had been there before sunrise.

12 I will give them the definition of Burglary and the
13 only aggravated circumstances I can give them I feel
14 because of the way the indictment was written is it
15 happened at nighttime and give them the definition of
16 nighttime and they will have to make the call to whether
17 they think the State has proved that beyond a reasonable
18 doubt.

19 MR. DEVOE: Correction, Your Honor. The sunrise
20 was at 5:53 that day.

21 THE COURT: No, that ---

22 MR. DEVOE: --- yes.

23 THE COURT: That ain't in the record, Mr. Devoe.

24 MR. DEVOE: It is --

25 THE COURT: That ain't in the record. The only

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 4 (of 5) - May 17, 2012

1 record I got and the only evidence I got is 6:21.

2 MR. DEVOE: [Inaudible]

3 THE COURT: I understand. You could have put in
4 any evidence you wanted to but what's in the record right
5 now is 6:21. So that's the record the jury is going to
6 have to go by. There is no other evidence in this record
7 that the jury could consider except 6:21.

8 Now, if you had evidence that the sun came up at
9 some other time you should have put it in. But right now
10 you can't tell them it came up at some other time because
11 all that is in the record is 6:21.

12 Now if you did your independent research you are not
13 a witness in this case. You could have called somebody
14 from the National Weather Service I guess and got him to
15 testify.

16 But I doubt seriously it happened at 5:53 though
17 because I know exactly at this time of year I get up
18 about that time every morning and the sun doesn't come up
19 at 5:53. It might be starting the crack of day and
20 starting to get daylight but it doesn't come up -- anyway
21 that's not in this record here.

22 Anything else?

23 MR. CORBETT: Your Honor, if I may make an inquiry
24 of defense with regard to count one just for planning
25 purposes if they intend to request a lesser included

STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	
COUNTY OF CLARENDON	)	DOCKET NO. 2011-GS-14-0068
	)	
	)	
THE STATE OF SOUTH CAROLINA	)	
	)	
Plaintiff	)	
	)	
vs.	)	
	)	
MICHAEL PEARSON and	)	
VICTOR WELDON	)	
	)	
Defendants	)	
	)	
	)	
	)	
	)	
	)	TRANSCRIPT OF RECORD

May 18, 2012
Manning, South Carolina

VOLUME 5 OF 5

B E F O R E:

THE HONORABLE RALPH F. COTHRAN, JUDGE

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

ERNEST A. FINNEY, III, ESQ.
JASON CORBETT, ESQ.
Attorneys for the State

JOHN KNOBELOCH ESQ.
LAURA KNOBELOCH, ESQ.
Attorneys for the Defendant Weldon

HARRY DEVOE, ESQ.
Attorney for Defendant Pearson

Melissa R. Singletary
Court Reporter

INDEX TO PROCEEDINGS

	PAGE
PROCEEDINGS	4
CLOSING ARGUMENT BY MR. CORBETT	4
CLOSING ARGUMENT BY MR. FINNEY	11
CLOSING ARGUMENT BY MR. KNOBELOCH	19
CLOSING ARGUMENT BY MR. DEVOE	28
CHARGE OF THE COURT	40
VERDICT	67
POLLING OF THE JURY	68
DEFENDANT WELDON ADDRESSES COURT	74
REMARKS BY MR. DEVOE	74
DEFENDANT PEARSON ADDRESSES COURT	75
REMARKS BY MR. KNOBELOCH	75
SENTENCING	76
CERTIFICATE OF THE COURT REPORTER	78

INDEX TO EXHIBITS

[No exhibits were introduced in this volume]

1 PROCEEDINGS

2 [Whereupon, the jury enters the courtroom at 9:40
3 a.m.]

4 THE COURT: The Clerk has informed me that we have
5 lost one of our jurors overnight. She is ill and could
6 not attend. So I had her put the two alternate names in
7 the box and draw out one of them and Ms. Carter you were
8 the one that was drawn to seat so I need you to move from
9 your alternate chair to the jury panel please.

10 [Whereupon, the juror complies]

11 THE COURT: Counsel?

12 MR. KNOBELOCH: Defense rests.

13 MR. DEVOE: Defense rests, Your Honor.

14 THE COURT: All right. Ladies and gentlemen that
15 means you've heard all the evidence you're going to hear
16 in this case. What I need you to do at this point is to
17 go back into the jury room for a minute and select a
18 foreperson. I found out that jurors do a lot better job
19 of selecting their foreperson than I do.

20 You've been together a day or two. You know each
21 other to some degree. The foreperson has no greater
22 authority than anyone else or no greater vote. Your
23 verdict will have to be unanimous. That person will
24 simply preside over the deliberations and fill out the
25 verdict forms that have been handed in to the Clerk. So

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 5 (of 5) - May 18, 2012

1 if you'd go back to the jury room. We need you to select
2 a foreperson. If you'll knock on the door and let the
3 bailiff know I'll bring you back out. Then you will hear
4 the closing arguments of the attorneys and I will charge
5 you on the law and give you this case to decide. As soon
6 as you select a foreperson if you'll come let us know.
7 Thank you.

8 [Whereupon, the jury exits the courtroom at 9:47
9 a.m.]

10 THE COURT: Anything before I bring the jury out?
11 Are y'all ready to proceed? Bring the jury out.

12 [Whereupon, the jury re-enters the courtroom at 9:50
13 a.m.]

14 THE COURT: Mr. Troutman, you've been selected?

15 MR. TROUTMAN: Yes, sir.

16 THE COURT: All right, gentlemen?

17 MR. CORBETT: Your Honor, may it please the court?

18 THE COURT: Yes, sir.

19 CLOSING ARGUMENT BY MR. CORBETT

20 MR. CORBETT: Ladies and gentlemen of the jury good
21 morning. Let me begin by thanking you for your time and
22 attention during this at times long week. In a few
23 moments Solicitor Finney will have an opportunity to come
24 up here and talk to you about the facts of these brutal
25 and evil acts on the morning of May 15th, 2010. But if I

1 may I want to begin in talking to you a little bit about
2 the law that applies in this case. At the conclusion of
3 arguments the Judge will charge you on the law of the
4 case.

5 And it is from the Judge that you must take that
6 law. And I do not want to say anything different than
7 the Judge. If I do it is his law that you must follow.
8 But I do want to take a few moments and talk with you
9 about the law in this case and the charges in this case.

10 In just a little bit you're going to hear about the
11 charges in this case one of which is Burglary in the
12 First Degree. Burglary in the First Degree is when a
13 person enters a dwelling without consent. A dwelling is
14 your house. It's your home.

15 If there is a garage attached to your home that is
16 your dwelling. Even though it does not apply in this
17 particular case the law even recognizes detached building
18 within a short distance of your house as being a part of
19 your dwelling.

20 So there is absolutely no doubt and no question that
21 that garage attached to the Gibbons home part of that
22 house was the dwelling of Mr. Gibbons. That it was
23 without consent from the facts and circumstances of this
24 case that's obvious it is without consent, and with the
25 intent to commit a crime. Yes, they did commit a crime.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 5 (of 5) - May 18, 2012

1 Throwing someone to the concrete and beating them and
2 robbing them that's a crime. And that this occurred or
3 the entering took place in the nighttime. Now here this
4 morning, and you will hear a little more facts about
5 this, but quite an issue was made about the nighttime
6 portion of it.

7 But you heard testimony from the victim that he left
8 his house that morning between 6 and 6:30. You heard
9 testimony from the officers about their arrival. And you
10 also heard testimony that sunrise that day was 6:20 a.m.
11 6:20. You've seen the maps and you know where the house
12 is.

13 Ladies and gentlemen these individuals they came in
14 the nighttime and they laid in wait. They were lying in
15 wait in that room for Mr. Gibbons to come out. He had
16 been out since before day. And they were in that go-cart
17 room waiting on him to come out and they entered that
18 residence in the nighttime.

19 Now it's somewhat commonplace the judge often times
20 charges jurors on other portions of law what are known as
21 lesser included offenses. So the Judge may also charge
22 you and you may hear language about Burglary in the
23 Second Degree. The reason being is the facts of your
24 problems. You members of the jury you determine what the
25 facts are and how they apply to the laws that the Judge

1 charges you. So you may hear the lesser included offense
2 but I believe that what the evidence will show you is
3 that this was Burglary in the First Degree. You will
4 have the option of Burglary in the Second Degree, which
5 is basically the same thing. It determines your -- it's
6 based on your determination of nighttime.

7 You're also going to hear the charge of Armed
8 Robbery. Armed Robbery is just what is says; that I take
9 a weapon and I come up to you and I rob you of your
10 belongings. Armed Robbery. Now will issue be made of
11 the gun? Of course it will. But I want you to hear
12 something in the law.

13 A person who commits robbery while armed with a
14 pistol is -- it references to other weapons but let's
15 leave it at pistol for a moment. And here's an important
16 part or while alleging either by action or words he was
17 armed while using a representation of a deadly weapon.

18 The victim told you the truth. He didn't get a good
19 look at the gun; that it was obscured. Do you remember
20 his testimony how he even gestured how it was pointed at
21 him as they came to him and the struggle began and that
22 during the course the beating that he took one of him
23 said are we going to shoot him. That's an Armed Robbery.
24 Now again, the Judge under the law charges lesser
25 included offenses. And there is another crime known as a

1 Strong Arm Robbery. We also call it Common Law Robbery
2 and it's basically just like an Armed Robbery except the
3 person doesn't have a weapon. Again, the facts of the
4 case are within your providence and for your
5 determination.

6 But ladies and gentlemen I submit to you that you've
7 heard testimony that there was a gun there or at the very
8 least there was a representation of that gun and words
9 and deeds used to convey to that victim that they were
10 armed. Armed Robbery.

11 You will hear about the crime of Grand Larceny in
12 this case. Larceny, once again, it's no need to make it
13 more complicated than it is, after robbing Mr. Gibbons
14 there in his garage they went out and jumped in his car
15 and took it.

16 One of the elements is what is the value of that car
17 and Mr. Gibbons told you 6,500 dollars. There is no
18 question his El Camino was stolen; absolutely not. We
19 call it Larceny; the easiest way of saying it is it was
20 stolen. Mack Eaddy found it two and a half miles away.
21 That's a Grand Larceny.

22 Now we also come to the charge of Kidnapping. Now I
23 want to take a moment here and talk to you about
24 kidnapping because there is a common perception of what
25 Kidnapping is but then there's the legal definition which

1 by your oath you're bound to follow. Many people when
2 they hear the word Kidnapping they think of a television
3 show where somebody is put in the truck of a car and they
4 drive them to an abandoned house or barn out in the
5 middle of nowhere and they send the family a ransom note.
6 That's what people's belief Kidnapping is.

7 But this is what the law of Kidnapping is and I'm
8 only going to read a portion of it but I'm going to read
9 the portion that is pertinent: [Reading] Whoever shall
10 unlawfully seize, confine -- and it goes on to talk about
11 -- decoy, abduct, carry away -- but whoever seizes or
12 confines a person.

13 Ladies and gentlemen, when three people jump on you
14 in your garage and hold you down and beat you you've been
15 seized. When three people throw you down in your garage
16 and start trying to tape you up you have been confined.
17 And under the law that is Kidnapping.

18 The law does not require that you get stuffed into
19 the trunk of the car and driven somewhere. It is the law
20 is what you must follow and that is how a Kidnapping is
21 defined in the law.

22 You're also going to hear the charge in the law of
23 Possession of a Weapon During the Commission of a Violent
24 Crime. And once again a person is in possession of a
25 firearm or visibly displays what appears to be a firearm.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 5 (of 5) - May 18, 2012

1 We covered this just a few minutes ago in Armed Robbery.
2 Not only did they come there to commit a violent crime
3 but it is a separate offense to bring that weapon with
4 you. Possession of a Weapon During the Commission of a
5 Violent Crime.

6 Ladies and gentlemen, those are the statutes that
7 the Judge will be charging you on in just a few moments.
8 You will also hear from the law the concept of the hand
9 of one is the hand of all. In technical parlance we call
10 it accomplice liability. Why is that important? Because
11 when three people come into your garage all three of them
12 don't have to have a gun in their hand.

13 If you go with the man that has the gun and he's
14 holding the gun and you're doing the kicking or the man
15 that you've already thrown to the concrete or you're
16 holding as they are putting the tape on him you're just a
17 guilty of Armed Robbery as the man who had the gun.
18 You're just as guilty. We all know; the getaway driver
19 is just as guilty. The hand of one is the hand of all.

20 Ladies and gentlemen, thank you. Mr. Finney is
21 going to talk to you about the facts and the evidence
22 that you've heard today. But I greatly appreciate your
23 attention.

24 MR. FINNEY: May it please the court, Your Honor.

25 THE COURT: Yes, sir.

1 CLOSING ARGUMENT BY MR. FINNEY

2 MR. FINNEY: Good morning ladies and gentlemen. I
3 want to take an opportunity also not only to thank you on
4 behalf of the Solicitor's office for giving us your time
5 and attention this week.

6 You all have had an opportunity to serve this week
7 in a very important case and in a very important system.
8 Our judicial system works on a multitude of levels. And
9 I wanted to, and I told you on Monday, I wanted to let
10 you know that it's not just my job to come over here and
11 make the cases, but I want you to understand how
12 important the other people are. Not only the judges and
13 the clerks and the court reporters but these law
14 enforcement officers.

15 We have in this case seen what happens when an
16 officer takes his responsibility seriously. And I want
17 to thank Mr. Clark on behalf of my office and I know on
18 behalf of the Gibbons family for the work that he put in
19 along with the other officers.

20 Officers get paid a salary. They don't get paid by
21 the hour. This unit, this investigative unit has spent
22 untold hours after 5 o'clock working leads and trying to
23 help the Gibbons family come to some conclusion about
24 what had happened that day. You understand that when Mr.
25 Gibbons got on that helicopter and went to Richland

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 5 (of 5) - May 18, 2012

1 Memorial nobody knew who had done this. But the officers
2 dedicated themselves to coming back there and picking up
3 every piece of evidence, sending things off to the labs;
4 looking for a break.

5 You got to remember that the three or four guys or
6 how many guys committed this robbery they planned it;
7 they thought about it. They made preparation.

8 Mr. Gibbons told you they had on dark clothes;
9 that's because they didn't want to be seen in the middle
10 of the morning at 4 or 5 or 6 o'clock in the morning
11 going over to that house. They didn't have a car waiting
12 for them outside. They walked over there more than
13 likely or got dropped off close by the scene.

14 When they got there they had masks on Mr. Gibbons
15 said so they could conceal their identity because
16 according to Mr. Gibbons one of them said Slick, we know
17 you've got money. Give us your money. They knew him.
18 They planned this. They took steps.

19 Ladies and gentlemen ask yourself this. Why is it
20 that the only fingerprint taken off Mr. Gibbons car was
21 Mr. Pearson's? Why is it that nobody else when they came
22 out there and put that black fingerprint powder all over
23 that car on both sides, inside and out, they came up with
24 one fingerprint? Sure some other people had driven the
25 car that day. When they found it abandoned and they

1 brought it back to Mr. Gibbons one or two people had
2 driven it. The guy from Mr. Gibbons shop had driven it.
3 They didn't even find his fingerprints in the car. It's
4 hard to find fingerprints. It's hard to find evidence
5 sometimes because everything has to work together.

6 A person has to touch it in the right way and leave
7 the oils from their fingers and then it doesn't have --
8 it has to be left undisturbed. You can't disturb it
9 because if you disturb it by somebody else getting in
10 there or the surface of the car wasn't right it won't
11 leave a fingerprint; they can't find it.

12 You have to leave enough for them to trace. You can
13 leave a partial print but a partial print is not enough.
14 These officers who testified and Ms. Hodge from Sumter
15 says that she has to have identifiable point enough to
16 confirm before she is going to come up here and put her
17 reputation on the line.

18 I also wanted to come and thank you on behalf of the
19 Gibbons family because you are their voice at this point
20 in this case. We have been that voice for them for the
21 last two years; now we give the case to you.

22 You saw Mr. Gibbons tell you that he came outside
23 about 6:15, 6:20 in the morning to put on his work
24 clothes and go to work. And he was met by people that he
25 did not know that he could not identify and they brutally

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 5 (of 5) - May 18, 2012

1 beat him. Took his property and then took his car.
2 At some point during this attack not only did they put
3 him down on the ground but after awhile when they were
4 trying to leave he got up to see what kind of car they
5 were in so he could help identify to the police what kind
6 of car they were in, they were taking his car.

7 They saw him looking and somebody said he's up, he's
8 up. And the guy in the back of the car got out, came
9 back and knocked Mr. Gibbons down again. The good thing
10 about it is by this time in the morning it was light
11 enough for him to see where that man came from.

12 Now consider this. The fingerprints that we talked
13 about in this case that show that Michael Pearson was in
14 this robbery that fingerprint was on the back of the El
15 Camino. You've got a picture of it in evidence. It's on
16 the right driver's side -- that would be the left -- the
17 left rear quarter panel.

18 Mr. Gibbons told you that one of the men got in the
19 back of the El Camino when they were getting away. He
20 had to get in the car; that's number one. Then Mr.
21 Gibbons saw the man just out of the car, number two, to
22 come and beat him down on the ground again. Then the man
23 escaped with the other guys when they left; that's number
24 three. Then they went over to Oak Grove and abandoned
25 the car. He had to get out of the car, that's four times

1 that robber had a chance to come into contact with that
2 back panel of that car; four times. What are the chances
3 that he wouldn't have left a fingerprint on the car if he
4 had contact with it four times?

5 What are the chances that that fingerprint was
6 sitting there on that car one or two or three or four
7 days before that because he had some casual contact with
8 it. What's more reasonable?

9 What did I ask you to do when I asked you to come
10 into this jury room and listen to the evidence? Use your
11 common sense. This is not about trying to manufacture
12 evidence. The evidence was there. The officers worked
13 hard and they dug it up for us. That fingerprint belongs
14 to that man. It was put on the car that morning.

15 Even if you take the forensic evidence, the D-N-A,
16 the fingerprint and sit it on the table and say we're not
17 going to consider that. What else do you have? Consider
18 this. Both of those gentlemen once they were made
19 suspects in the case came to law enforcement and they
20 were interviewed.

21 Michael Pearson said I don't know Slick Gibbons.
22 I've never been to his house. I don't know anything
23 about this case. What about that? What about Mr. Gamble
24 who got on this witness stand and told you yes, he knows
25 Mr. Gibbons. Mr. Gibbons has been an employer of his,

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 5 (of 5) - May 18, 2012

1 helped him make money, and gave him work to do at the
2 house. And guess who was with Mr. Gamble when he went to
3 the house to cut the bushes? Guess who was going into
4 the garage at Country Club Road to get tools out of the
5 garage? Michael Pearson. The same room that the robbers
6 came out and knocked Mr. Gibbons down to the garage on
7 May 15th.

8 You don't think the fingerprint is enough? You
9 don't think the D-N-A is enough? What about that story?
10 Mr. Weldon? I don't know anything about this case. His
11 D-N-A is on the tape. Not the tape on the floor. Not
12 the tape that somebody found in the storage room. His
13 D-N-A is on the tape that is wrapped around Mr. Gibbons
14 head while he's in the hospital trying to be looked
15 after.

16 What about the other evidence that they didn't want
17 us to know about that this officer dug up over at the Voc
18 Rehab Center in Sumter where they told the officers no, I
19 don't know Michael Pearson. That's what Mr. Weldon said.
20 Mr. Weldon said no, I don't know Michael Pearson. Mr.
21 Pearson says no, I don't know Mr. Weldon.

22 Both of them at the Voc Rehab Center December the
23 9th, December the 10th, December the 11th, December the
24 12th, 2008 working in the same workshop with 25 other
25 people. What are the chances ladies and gentlemen that

1 two men from the Manning area go over to Voc Rehab work
2 together for a week and they don't know each other? And
3 later on within a year or two when they get interviewed
4 by the officer they deny knowing each other.

5 We ask you to convict these gentlemen based on the
6 evidence that has been brought into this court. We don't
7 ask you to convict because you like one side or the other
8 or you feel sorry for Mr. Gibbons. Put all that aside.
9 Look at the evidence.

10 How many times do you think people would have been
11 able to get to that house if it hadn't been dark?
12 Burglary First is the proper crime in this case because
13 they were laying in wait. They were in that storage room
14 waiting for him to come out that day. It was dark when
15 they got in that house. And that's the key time; not
16 when Mr. Gibbons saw them leave when did they get in that
17 room?

18 It was an Armed Robbery. Not only from the
19 standpoint of what Mr. Gibbons felt and what they
20 demonstrated by their actions but also by what they said.
21 Are we going to shoot him? It was a Grand Larceny
22 because that was his vehicle and they did take it away
23 and we know that because it was found two miles away. It
24 was Kidnapping because he couldn't move, he couldn't get
25 up, he couldn't defend himself with a man sitting on his

1 chest and two other people beating on him. It was
2 Possession of a Weapon during a Violent Crime because
3 they did threaten him and they already had committed the
4 Armed Robbery. They used a weapon; they brought a weapon
5 with them. You should find them guilty of that.

6 When I took this case and got it ready for court
7 Jason Corbett and I had worked on this case a lot. We
8 went through the evidence and it struck me that when you
9 look at exhibit number 5 you're going to see the glasses
10 that Mr. Gibbons had on that day.

11 That right there should be enough to tell you what
12 he went through. That right there should be enough to
13 tell you the pain and the misery that this has caused
14 this family for two years. Nobody in their own house
15 ought to have to go through that.

16 But ladies and gentlemen, the guys that came in and
17 broke in on Mr. Gibbons that morning, they had planned
18 it. They had worked out what they thought was every
19 detail and they thought they had it right. But they
20 forgot about one thing. And that is that Mr. Gibbons was
21 not going to let them get away with this without a fight.

22 He fought for his life. He fought for his wife.
23 And he fought for his honor in his own home. He stood
24 his ground. And now I'm asking you to do the same thing.
25 Find these gentlemen guilty based on the evidence. Find

1 these gentlemen guilty because they are responsible for
2 the crimes with which they have been charged. Thank you,
3 very much.

4 MR. KNOBELOCH: May it please the court?

5 THE COURT: Yes, sir.

6 CLOSING ARGUMENT BY MR. KNOBELOCH

7 Ladies and gentlemen, like everybody else today I
8 want to the thank you for your service. And in any case
9 you'll hear the attorneys and judge thank you and
10 especially in a long case. This was a relatively long
11 case and we sincerely appreciate you giving it your
12 attention. You were chosen for a reason. We think
13 you're going to evaluate the testimony and the evidence
14 and you're going to do the right thing in this case.

15 You heard Solicitor Corbett talk to you about the
16 law. And he raised issues about was it daytime or
17 nighttime or was there a gun, yes or no, was the victim
18 confined. In all of those are things I have concerns
19 about also.

20 The judge is going to charge you about that and I
21 trust that you are going to follow those charges and
22 you're going to evaluate the evidence as it needs to be
23 so I'm not going to spend time on that. He also raised
24 the issue of the hand of one is the hand of all. The
25 judge is going to charge you on that as well. The hand

1 of one is the hand of all says if you are all involved in
2 the crime together but only one of you pulls the trigger
3 the hand of one is the hand of all you're all guilty of
4 that crime.

5 Sitting at the table together doesn't mean hand of
6 one, hand of all. Being involved in the crime together
7 means hand of one, hand of all. And it's important that
8 when you do evaluate the testimony and the evidence that
9 you keep separate it's not an amalgamation of
10 fingerprints and D-N-A. You've got to keep the evidence
11 as it applies to one in one pile and the evidence that
12 applies to another in another pile.

13 In his opening Solicitor Finney implied that defense
14 attorneys use smoke and mirrors; that's our trick. I
15 believe what he said was if he points at the ceiling
16 don't let me point at the floor. Well, this is the
17 evidence. I'm not going to point at the ceiling or the
18 floor. I want you to look at this. I want you to
19 remember the testimony and I want you to look at the
20 evidence.

21 We've said this was a long trial. We've heard two
22 or three days of testimony and we had two or three days
23 of presenting this evidence. Solicitor Finney spoke for
24 ten or fifteen minutes. And he did a good job of
25 recounting what happened. There is no question it was a

1 violent crime. There is no question I wouldn't want that
2 to happen to me. But look at this table. All these
3 bags, all these photographs, all these documents how do
4 they link Victor Weldon to this crime. That's the
5 question. We know a crime happened. Did Victor Weldon
6 have anything to do with it? That's what we want you to
7 focus on.

8 Now obviously, there is a lot of stuff here that
9 says there was a crime. There is a lot of stuff here
10 that was taken from the garage. What y'all are going to
11 have a question from me about is the D-N-A. That's the
12 piece of evidence I need to address as far as Victor
13 Weldon.

14 And as far as that D-N-A goes I want you to think
15 about what the State's witness said. There were some
16 items where she tested the D-N-A and she was able to say
17 that was not Victor Weldon's D-N-A. That was not Slick
18 Gibbons D-N-A. That was not Michael Pearson's D-N-A.
19 Anytime she said that was not someone's D-N-A she was
20 able to say that 100 percent absolutely certain that is
21 not their D-N-A.

22 But on the flip side when she said is this someone's
23 D-N-A. Well, she can't say 100 percent certain. She has
24 to say and I don't remember the exact numbers but they
25 were big numbers this is a one out of a billion or one

1 out of a trillion chances it's their D-N-A. But she
2 cannot say with 100 percent certainty that it is. She
3 also testified that there were two parts. There is the
4 actual scientific analysis and then there is coming up
5 with probability.

6 As far as the scientific analysis she said that they
7 physically look at a piece of the D-N-A and compare that
8 location to another sample D-N-A. And she said that
9 those locations, I believe she called them S-R-P or S-R-
10 T's that there are tens of thousands of those locations
11 on a piece of D-N-A. And in this analysis she looked at
12 fifteen.

13 Then we get to the second part of her analysis,
14 which is the math; the math of probability. The math of
15 probability says if I flip this coin what's the chance of
16 it being heads? If I turn over this deck of cards what's
17 the chance of it being a face card?

18 And you'll notice that even though on every single
19 thing they tested they always looked at fifteen spots.
20 You'll see it on the report. The victim's D-N-A, Victor
21 Weldon's D-N-A, the D-N-A from any item they find they
22 look at fifteen spots. And yet sometimes that
23 probability is one in 200 billion and sometimes one is
24 500 billion. I think the math of probability raises a
25 question of whether you can find beyond a reasonable

1 doubt that Victor Weldon had anything to do with it. But
2 for the moment we'll assume that that was Victor Weldon's
3 D-N-A found on item 5.1. It was the duct tape on the
4 victim's head. It's the only they found a possible match
5 on.

6 My first point is you will notice on that report
7 that they took a swab from the outside of the duct tape
8 and from the inside of the duct tape, but they didn't
9 test them separately. They jumbled them up and tested
10 them together.

11 Certainly if they were able to show that Victor
12 Weldon's D-N-A was on the dead center middle sticky side
13 of the duct tape five feet into the roll, we'd have a
14 much more difficult case today. That evidence is not
15 there. There is evidence that there may be his D-N-A on
16 the duct tape; possibly from the outside and possibly
17 from the inside.

18 You'll also remember that she testified that when
19 they get a sample of D-N-A in a criminal case and a
20 paternity case they don't take a scalpel and cut it out.
21 They rub the inside of your mouth with a Q-tip. That's
22 how easy it is to get D-N-A. My D-N-A is all over this
23 podium. You heard her say that.

24 Another issue I have with this one piece of evidence
25 trying to connect Victor Weldon to this crime is they

1 didn't find the D-N-A on some Samurai sword or a hunting
2 knife or something that really ties to the crime. They
3 didn't find the D-N-A on a rare coin collection that it
4 would be unusual for anyone to touch. They found it on a
5 piece of duct tape.

6 I've got duct tape in my truck, in my boat, in my
7 kitchen drawer, in my tool box; and I don't know if that
8 duct tape in my boat is my duct tape or if it's my
9 buddy's duct tape from the last time we went fishing. It
10 wasn't a rare form and it wasn't Samurai sword; it's a
11 piece of duct tape.

12 So we've talked about the probability. We've talked
13 about how easy it is if you touch an item. She also said
14 that the duct tape could survive for years. She talked
15 about mummies. At any point on any fishing trip, hunting
16 trip, home project; if someone has touched that duct tape
17 they can contribute their D-N-A to it.

18 You will also recall that she talked about gloves.
19 Now she testified that one reason she wears gloves is she
20 doesn't want to get her D-N-A on a sample that she is
21 analyzing. But then she also said she doesn't want to
22 cross contaminate. She doesn't want to touch this sample
23 [indicates] and then touch this sample [indicates]
24 because she's got this D-N-A on this D-N-A. So we don't
25 even know with 100 percent certainty that Victor ever

1 touched the D-N-A. Someone could have brushed up against
2 blood, saliva, hair, skin cell and then touch sticky
3 D-N-A. So we've got the issue of the probability, the
4 math that's used, we've got the issue of even if he did
5 touch it what does that mean? That someone touched a
6 piece of D-N-A at some unknown time.

7 And then we've really got the issue of do we even
8 know if he ever touched them? Now, the Solicitor again
9 said the defense attorneys are going to say look at the
10 ceiling; I don't want you to look at the floor. That's
11 not the case.

12 The Solicitor said in his closing even if we set
13 aside the D-N-A we still have evidence. The evidence
14 that he presented, the other evidence they have in
15 addition to the D-N-A is that a year and a half prior to
16 this incident Michael Pearson and Victor Weldon had a job
17 that overlapped for four days.

18 Now one thing about that is you heard that Victor
19 Weldon had worked there for several months. Those four
20 days were his last four days. He's done. That's what
21 he's got on his mind.

22 You also heard it was Michael Pearson's first four
23 days. He started, he's excited, and it's a new job.
24 Four days eighteen months ago I don't know if I would
25 remember somebody that I spent four days with eighteen

1 months ago. But there is another point that I want to
2 make with that evidence. It's not the defense attorney
3 saying look at the ceiling, don't look at the floor.
4 It's the Solicitor's looking for any evidence.

5 That's there -- ladies and gentlemen, even if we set
6 aside the D-N-A. Let's look at else what we have. That
7 one other thing they have is that two people worked
8 together for four days eighteen months prior to this
9 happening.

10 I want to talk a little bit about the testimony now.
11 And the Judge will instruct you on the fact that you
12 can't make an inference from the fact that Victor Weldon
13 didn't testify. Well, this is one of those cases where
14 what is there to say? The State has not met their burden
15 of proof.

16 You remember Officer Clark's testimony. The only
17 evidence they have linking Victor Weldon and Michael
18 Pearson is the incident I was just talking about. Four
19 days of employment eighteen months before it happened.

20 Nobody put up any evidence that there was any
21 connection between Victor Weldon and Slick Gibbons or
22 with Slick's house or with Slick's car. We did hear
23 testimony that Officer Clark had in his notes that the
24 assailants were between 5'8 and 5'9 -- lying in his notes
25 -- he doesn't want them in there now. Two years later

1 the State doesn't want to say they are 5'8 and 5'9. But
2 the notes that were taken on May 17, 2010 48 hours after
3 the incident they say 5'8 and 5'9. And they are
4 underlined.

5 The issue of daylight, whether it's daylight or not
6 is an issue. We clearly heard the victim say it was
7 daylight when he was up. But going back to Officer
8 Clark's testimony his testimony was 6:15. His notes were
9 approximately 6:28. He doesn't like the contemporaneous
10 -- he doesn't like the notes he took at the time this
11 happened.

12 His notes say 19 to 20 years old. The victim said I
13 never said that. They don't like the notes they took
14 when it happened. The testimony two years later and the
15 notes taken two years ago are not the same. The notes
16 say one person came out and then a moment later two more
17 people came in. Now the testimony is all three came out.

18 We're not saying this didn't happen. But the
19 investigation gets the D-N-A and says that's it, I've
20 stopped. You also heard testimony from Officer Clark
21 that talked to several people; you know what's the word
22 on the street? He spoke with Jimmie Cagle, Jimmie Timm,
23 James Bradford, Soloman Sherard, Latoya Green, Mr.
24 Mendes, Mr. Gamble; it may have been others. But there
25 were several people that he spoke to. When asked did any

1 of those people implicate Victor Weldon and the answer is
2 no. This was without question a horrible crime. And
3 it's without question that it happened. And it's without
4 question that we've got lots of bags, and lots of
5 photographs, and lots of things that prove that it
6 happened.

7 And it's without question the Solicitor spent a long
8 time in his closing recounting those events. But there
9 is nothing that links Victor Weldon to this crime. Thank
10 you.

11 THE COURT: Mr. Devoe?

12 MR. DEVOE: Thank you, Your Honor. May it please
13 the court?

14 THE COURT: Yes, sir.

15 CLOSING ARGUMENT BY MR. DEVOE

16 MR. DEVOE: I apologize to the jury for coming up
17 late because I was looking for fingerprints and pictures
18 that are in evidence. Four days ago I introduced myself
19 as Harry Devoe. Until last -- until different --

20 I think you've been a very good jury. You've been
21 listening I can see by speaking. It is always hard for
22 the jury but I'm glad this jury but I'm glad this jury
23 has been listening. What happened two years ago this
24 week was a tragic event. I feel sorry that Mr. Gibbons
25 got hurt. I feel sorry his house was broken into; it was

1 a traumatic situation I know -- once in Philadelphia --
2 the back door or the front door. The same you do after
3 the fox gets in the chicken coop, you're going to lock
4 the chicken coop and we're going to get a security alarm
5 after a break-in. And so I understand full well what
6 Mr. Gibbons is going through.

7 However, however my client and actually not the --
8 is standing before you telling you he didn't do this
9 crime. And he's been sitting in jail for two years
10 because of them confusing him.

11 He's being accused of someone who is 5'8 or 5'9.
12 My client is standing -- you see him stand, he's the one
13 who is standing right there [indicates]. I don't think
14 he's 5'8 or 5'9. He's taller than I am; I used to be,
15 don't tell my wife. As time goes on with age gravity
16 comes. I guess I'm 5'-- almost 5'10.

17 We put a lot of weight on what -- the point is
18 everybody changes as time goes on. But he is not 5'8 or
19 5'9. He hasn't been that I suppose since he was in
20 junior high school. And he's not 20 years old. By
21 looking at him he is more middle aged than he is young.

22 So how does he get arrested? He gets arrested
23 through one thing. Fingerprint and that's all. His
24 fingerprint was found in the back of Mr. Gibbons El
25 Camino, which was stolen. It was abandoned; abandoned

1 | apparently within a mile of driving in the little Country
2 | Club area of Manning. You know coming in that used to be
3 | come right off of 260 straight in. But since they have
4 | the dam there the folks -- wanted to reopen it and they
5 | made a secure entrance there. So to get to it by driving
6 | You have to go all the way around.

7 | And when I do it my wife had a cousin right near Mr.
8 | Gibbons. And I sometimes would take a long drive and get
9 | lost. But they -- after this happened and the stole the
10 | car they drove more than -- mile -- whoever they is.

11 | They're saying there were three people. Where is
12 | the third person? Where is the second person and where
13 | is the first person who really did it? I think the three
14 | of them are the ones who ought to be in front of you
15 | today; not my client -- my client is accused of knowing
16 | the co-defendant. He certainly didn't meet him in jail.

17 | That jail makes very sure that if two co-defendants
18 | are kept away from each other in different cells. Did
19 | they meet in Manning? I don't believe the co-defendant
20 | -- did they meet at the rehab center -- the Voc Rehab
21 | Center? I think Mr. Knobloch told you that there were
22 | 20 -- it was testified yesterday there were 20 or so
23 | people working there. The building is about 3,500 square
24 | feet. They are doing wood-working there and so -- if you
25 | don't pay attention to what you're doing. And one of

1 them is the last four days of work. I'm sure if I was
2 there for four months I would be anxious to get out. I
3 don't mean jail doing this; it's a voluntary situation.
4 Still you're looking to the future and doing things and
5 my mind would be elsewhere.

6 The bus come in for the first time I would be
7 looking at what goes on and what am I supposed to do?
8 How can I work safely? The wood-working machine if you
9 don't know much about wood-working the machine could be
10 very, very dangerous.

11 So to say that they met each other is a real stretch
12 by the State. And they say after meeting each in
13 December of 2008 that they got together in May of 2010
14 seventeen months later to do this crime. And there is no
15 indication anywhere they had met each other or knew each
16 other anytime between those two times.

17 And I know that Mr. Clark and others have --
18 hundreds of people in Clarendon County about this case
19 and various people fit the age level and the height level
20 and so on. There is nothing in anyone's notes indicating
21 that either Mr. -- my client and the co-defendant ever
22 contacted each other, never ran in the same crowd, never
23 worked again with each other. Nothing, absolutely
24 nothing. So go back in your lives. If you worked with
25 somebody eighteen months ago or seventeen months ago

1 temporarily with twenty five other people at a different
2 age and lived in the same area and the same neighborhoods
3 would you get to know those people necessarily? I didn't
4 hear they had coffee together or anything like that. I
5 just heard they were working together in the same
6 facility in Sumter County for a period of time.

7 My client is here only for one reason; a
8 fingerprint. That's it. Nothing else. The State would
9 have you think they've got one fingerprint and they've
10 got one match. But there are other fingerprints in that
11 car. I know they tested at least three other
12 fingerprints and they didn't match anybody. Not the
13 fingerprints, excuse me; the people. They didn't match
14 any fingerprints.

15 You have to have a person to match a fingerprint to
16 in order to match a fingerprint. You just can't take a
17 latent -- fingerprint and -- identify everybody out of
18 those fingerprints. You could if you have the people
19 with the fingerprints on it or had them in the system.

20 But you notice the system has millions of
21 fingerprints -- or at least thousands. And they are not
22 going through every fingerprint trying to match it to
23 some identifiable person. It's the other way around.
24 You take the person and match it to the fingerprint.
25 They didn't find any person, other person to match to any

1 fingerprint on that car. I'm going to go back to that in
2 a second. But think of the house itself in that garage
3 and that room they supposedly hid. Did they take off
4 everyone for fingerprints? Did they dust that door for
5 fingerprints? Not to my knowledge. Why not?

6 You have to open the door by using a door knob;
7 fingerprints go on it. Or you push a door open and
8 fingerprints are on it. There is no indication that
9 these people were wearing gloves. So why did any
10 fingerprints or any attempt to make fingerprints come to
11 the garage?

12 They did the car certainly but nothing else. And
13 they didn't do the car -- apparently. I asked first
14 about the door knobs and the door locks. They didn't
15 touch those. Of course inside the car the fabric is not
16 suitable I guess for taking fingerprints. I guess that's
17 so; I don't know.

18 They also asked Mr. Clark why the wallet where the
19 money was wasn't tested for fingerprints. They tested --
20 but not for fingerprints. What's the -- this is not a
21 case that is being done the day after it happened. This
22 was done two years later. The investigation stopped
23 contrary to what Mr. Clark says they had other jobs to do
24 also when they arrested my client and the co-defendant.
25 I guess two out of three is good enough. You know the

1 fingerprint person said a fingerprint stays on a car for
2 a long time. They don't just go away by age. They don't
3 go away by rain. The only way they go away is when a car
4 is washed by hand or any other place. There is no
5 testimony in this case of when that truck was ever
6 washed.

7 I'm sure it was washed from time to time; it's not a
8 dirty looking truck. But I don't know when it was washed
9 and you don't either. So you can assume for the moment
10 of anything that all the fingerprints in that car that
11 were there after the last car wash stay on it until the
12 next car wash.

13 Now they found one fingerprint made by my client.
14 Its evidence on exhibit 17-H the record I'll point out to
15 you the fingerprint that they say is my client's
16 fingerprint. It's this fingerprint right here
17 [indicates]. It's in the left -- the rear left side of
18 the car, the passenger side.

19 The second -- the last fingerprint of the right
20 thumb. The top of the thumb was towards the car --
21 towards the top of the car. I'm --trying to imagine how
22 as was testified that somebody jumped in the rear of the
23 car because right in that pickup truck if I get in the
24 rear of the car I'd go by the tailgate and the bumper and
25 step on it; not from the side of the car. My -- is still

1 very, very good. I don't -- but the right thumb is at
2 the top. I don't know how you put a right thumb on the
3 side of the car without putting other fingers ---

4 MR. CORBETT: --- Your Honor?

5 THE COURT: Yes?

6 MR. CORBETT: I'm going to impose an objection to
7 arguing facts that are not in evidence. The order ---

8 MR. DEVOE: --- Your Honor, I think this fact is in
9 evidence. There are pictures in evidence.

10 THE COURT: I understand. And you can argue what
11 is in evidence.

12 MR. DEVOE: That's correct.

13 THE COURT: I think he's concerned about the
14 orientation.

15 MR. DEVOE: The orientation is number 17-I is
16 another fingerprint of the same area -- and this is --
17 and this is the fingerprint. It's the thumb -- that
18 fingerprint is not identified through Mr. Pearson in any
19 way --

20 Mr. Gibbons store is right across from the hospital
21 -- most of you know where it is. It's on 260. I don't
22 know where y'all live but if you go down by the hospital,
23 the I-G-A or the other place the China Buffet it's on the
24 right hand side. It was testified to Mr. Gibbons truck
25 was always parked it faced the store on the very right

1 side of the store. I'll bet if you go by there on
2 Saturday his car is probably right there. My client
3 lives in Manning. He walks around Manning like -- he
4 walks here, he walks there -- he may go into a thrift
5 store around the same area. He may go in the I-G-A. He
6 could go in the other direction.

7 And who is to say that he walked he didn't come by
8 and look at the strange looking car because his car was
9 an enigma. That is why it's valued not as a throw away
10 car but as a decent car. You heard Mr. Gibbons testify
11 he has eight of them about the only existence in
12 Clarendon County. If it goes up for sale --

13 The point is that the car was there exposed to the
14 public in which my client is one. And his fingerprint is
15 on it. From where? Where did the other fingerprints
16 come from and when? We are saying the State cannot prove
17 when those fingerprints got on the car.

18 They're trying to say they got on the car when he
19 jumped on the truck back at the house -- when he jumped
20 on it the second time or the third time; whatever it is.
21 They can say all they want to say. It's not been proven
22 by anybody at anytime. There is no age -- you can't age
23 when a fingerprint is there. You can't insert other
24 things in a time capsule and figure out the carbon --
25 testing of various things of age. It doesn't work with

1 fingerprints. Fingerprints -- there is no -- you can't
2 tell the age -- and this whole case and my client
3 revolves around that situation. We have a -- I don't
4 represent the co-defendant; he's not my case. We sit
5 together at the same table and we have certain things in
6 common and we're both are trying to help our clients out.

7 My client's only piece of evidence is something they
8 can't prove as to when it got there. If they can't prove
9 that, they can't prove anything because they can't prove
10 that they knew each other. My client seemingly knew each
11 other somehow and someplace.

12 They're trying to say my client worked through Mr.
13 Gamble and they're tried to prove that he worked at that
14 house in the yard. That is not -- Mr. Gamble did not say
15 that you or my client was working -- just working in
16 somebody's yard. He also said it happened three years
17 ago. Three years ago. You heard me say -- about two
18 years ago.

19 So those are the only linkage no matter how remote
20 they are my client has with this whole situation.
21 Everybody in Manning -- I guess everybody knows Mr.
22 Gibbons one way or the other. I know him. He was -- I
23 was just doing my job. I'm just representing my client
24 and my client -- no one has proven my client -- if you
25 worked here some -- and he is standing trial in front of

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 5 (of 5) - May 18, 2012

1 you today and he's been sitting in jail for two years
2 because he's telling you that he is not guilty. Now when
3 the judge reads the law to you as one of the things to
4 you there are several things for you to think about.

5 And on a daytime and nighttime situation of when
6 they broke in there is no proof as to when they actually
7 went into that garage. They might have gone in at
8 midnight like the State would like you to believe and
9 take a snooze or something. They might have gone in at 3
10 o'clock in the morning. They might have gone at 6:15; we
11 don't know. We don't know.

12 There is no way to prove when they went in. We know
13 when the situation happened. The clock said 6:28, 6:30,
14 6:28 -- is that too exact -- he wasn't there when it
15 actually happened. We also know that daylight -- sunrise
16 was at 6:21.

17 To make it a nighttime event they had to start the
18 event as far as breaking in, the judge will tell you when
19 that is but it's -- had to be visible light. And visible
20 light -- you know this week two years ago this happened.
21 You know what time its light in the morning. You get --
22 and time to get up -- but to get here in time and get all
23 prettied up and everything you have to get up a little
24 bit ahead of time. And some people can read at 6:10. Is
25 that not visible light? I know that this is a very

1 serious case. It's serious to Mr. Gibbons. It's serious
2 to my client. It's serious to his co-defendant. I'd
3 just repeat that my client is telling you he did not know
4 his co-defendant.

5 He did not go into the victim's house. He did not
6 try to beat him up. He did not -- in the car. And I
7 would ask you when you go back to deliberations that you
8 find my client not guilty. Thank you.

9 THE COURT: Ladies and gentlemen, we're going let
10 y'all take about -- you've been in here an hour and a
11 half. We're going to take a short break. I'll send you
12 to the jury room and when you come back out I'll charge
13 you with the law that you -- at this point you still
14 can't talk about it. I'll get you back out in just a
15 minute.

16 [Whereupon, the jury exits the courtroom at 10:52
17 a.m.]

18 THE COURT: All right. Gentlemen, while we're on
19 this break if y'all will make sure all the evidence is
20 together and you can coordinate that with the court
21 reporter and look at the verdict -- the possible verdict
22 form and be sure you don't have a problem with it. And
23 I'll be back in a minute.

24 [Whereupon, the court takes a brief recess]

25 THE COURT: All right. Is there anything before I

1 bring the jury in for me to decide? Have y'all had an
2 opportunity to review the verdict form?

3 [No response]

4 THE COURT: Any objection to the form of the
5 verdict?

6 MR. FINNEY: Everything is fine, Your Honor.

7 MR. KNOBELOCH: No objections.

8 THE COURT: Mr. Devoe?

9 MR. DEVOE: No objection, Your Honor.

10 THE COURT: Okay. And my understanding from the
11 court reporter that y'all have gone over the evidence and
12 -- is present to the presented to the jury is that
13 correct? Bring in the jury.

14 [Whereupon, the jury re-enters the courtroom at
15 11:22 a.m.]

16 CHARGE OF THE COURT

17 THE COURT: Thank you ladies and gentlemen. Now
18 that you've heard all the evidence in this case as well
19 as the arguments of both the State and Defense attorneys
20 I am going to instruct you on the law that you are to
21 apply in this case.

22 Under our Constitution and Code of Law only the jury
23 can make a finding of fact. I am not permitted as I
24 indicated to you earlier to have an opinion about the
25 facts. So if I said anything or have done anything in

1 this trial that you think I had an opinion about the
2 facts you are to disregard that because you and only you
3 are to determine what the true facts are in this case.

4 The same Constitution and Code of Law that
5 designates you the exclusive judges of the facts
6 designates me as the exclusive judge of the law.
7 Therefore, you should take the law exactly as I give it
8 to you.

9 You may have an opinion that the law should be
10 different or it's not what you interpret the law to be
11 but you are to set aside that under your oath and accept
12 the law as I give it to you and apply it to the facts
13 that you deem to be true to come out with a true verdict
14 in this case.

15 The fact that the defendants in this case were
16 arrested charged and indicted is not evidence in this
17 case and cannot be considered by you as evidence of guilt
18 in any way. Nor does it create any presumption or
19 inference of guilt.

20 The indictment is simply a formal legal document
21 that brings these charges to court. It serves as the
22 formal document to process the paperwork through the
23 court. The defendants in this case have entered a plea
24 to this indictment of not guilty. Therefore, it places
25 the burden on the State of South Carolina to prove each

1 and every element of the indictment beyond a reasonable
2 doubt. A person charged with committing a criminal
3 offense in South Carolina is never required to prove
4 himself or herself innocent. And I instruct you and
5 emphasize to you the fact that the defendants in this
6 case did not testify is not a fact to be considered by
7 you in any way in your deliberations.

8 The State has the burden of proving them guilty
9 beyond a reasonable doubt and they do not have to prove
10 anything. So you must not consider in any manner
11 whatsoever the fact that they exercised their
12 constitutional right to remain silent and their assertion
13 of this right cannot be considered by you in your
14 deliberations.

15 I'll repeat under your oath you are to draw no
16 conclusions whatsoever from the fact that the defendants
17 in this case did not testify. The fact that the
18 defendants did not testify should not even be discussed
19 in the jury room.

20 The burden of proof that I've stated to you is from
21 the State of South Carolina for each and every element of
22 the indictment beyond a reasonable doubt. Now it's an
23 important rule of law the defendant in a criminal trial
24 will always be presumed innocent of the crime in which he
25 or she is charged unless or until that guilt has been

1 proven to you be evidence that satisfies you beyond a
2 reasonable doubt. The presumption of innocence is not
3 mere legal theory. It is not just a legal phrase. It is
4 a substantial constitutional right which every defendant
5 is entitled to.

6 This presumption of innocence accompanies the
7 defendant from the time he or she is charged throughout
8 the trial until you reach a verdict of guilt based upon
9 evidence that satisfies you of that guilt beyond a
10 reasonable doubt.

11 A reasonable doubt is a doubt which makes honest,
12 sincere conscientious juror in search of truth to
13 hesitate to act. Proof beyond a reasonable doubt must
14 therefore be proof of such a convincing character that a
15 reasonable person would not hesitate to rely upon and act
16 upon it in a most important his or her own affairs.

17 Proof beyond a reasonable doubt can be described as
18 proof that leaves you firmly convinced of the defendant's
19 guilt. And there are very few things in this world that
20 we know with absolute certainty.

21 And in a criminal case the law does not require
22 proof that overcomes every possible doubt. If based on
23 your consideration of the evidence you are firmly
24 convinced that the defendants or defendant is guilty of
25 the crime charged you must find him guilty. On the other

1 hand if you think there is a real possibility that he or
2 she is not guilty you must give them the benefit of that
3 doubt and find him not guilty.

4 In determining what the facts are in a case you must
5 necessarily pass upon creditability, which simply means
6 the believability of the witnesses and give whatever
7 weight and value you think is appropriate to their
8 testimony. You alone must decide the force and effect of
9 the truth of that testimony.

10 In making the decision there are many things that
11 you may and should take into consideration such as the
12 appearance and the manner of the witness on the stand;
13 sometimes referred to as the demeanor of the witness.
14 Was the witness forthright or hesitant? Was the
15 witnesses testimony consistent or did it contain
16 discrepancies?

17 What was the ability of the witness to know the
18 facts about which he or she testified? Did a witness
19 have cause or reason to be biased or prejudiced in favor
20 of the testimony he or she gave? Was the testimony of a
21 witness corroborated or made strong by other evidence and
22 testimony? Or was it made weaker or -- by other evidence
23 or testimony? Now the rules of evidence don't ordinarily
24 permit a witness to testify to an opinion or conclusion.
25 An exception to this rule exist for witnesses we call

1 expert witnesses. A witness who by education and
2 experience has become an expert in some art, science,
3 profession, or calling may state an opinion as to the
4 relevant material matter in which the witness claims to
5 be an expert. They may also give the reasons for that
6 opinion.

7 You should consider any expert opinion received into
8 evidence in this case like any other evidence; give it
9 the weight you think it deserves. If you decide that the
10 opinion of an expert is not based on sufficient education
11 and experience or if you conclude the reasons given in
12 support of the opinion are not sound or that the opinion
13 is outweighed by other evidence you may disregard the
14 opinion in its entirety.

15 An expert witness's testimony is to be given no
16 greater weight than that of any other witness simply
17 because the witness is an expert. And further you are
18 not required to accept an expert's opinion even though it
19 is not contradicted.

20 As jurors you have a right to believe a small
21 portion of a witness's testimony and disregard the larger
22 or vice versa. You may believe the testimony of a single
23 witness against that of many or the other way around.
24 Now criminal intent is a necessary element of each crime
25 and must be proven by the State beyond a reasonable

1 doubt. Criminal intent is always a matter than must be
2 determined by the jury with circumstances surrounding
3 situations. There is no way to prove intent to a
4 mathematical certainty. There is no way medical science
5 can dissect a person's brain and determine what he or she
6 had in mind.

7 So the law states criminal intent may be inferred
8 through circumstances shown to have existed both before
9 and after the fact. This is how you, the jury, make a
10 determination of whether or not the elements requiring
11 intent were present.

12 Criminal intent is a state of mind that operates
13 jointly with an act or omission in the commission of a
14 crime. Criminal intent is a mental state of conscious
15 wrongdoing. So it is up to you, the jury, to determine
16 what the defendants intended to do based on the
17 circumstances shown to exist. And I tell you the State
18 must prove criminal intent just as the State must prove
19 everything beyond a reasonable doubt.

20 Now there are two types of evidence which are
21 generally presented at the trial; direct evidence and
22 circumstantial evidence. Direct evidence is the
23 testimony of a person who asserts or claims to have
24 actual knowledge of a fact such as an eye witness.
25 Circumstantial evidence is proof of a chain of

1 circumstances or facts indicating the existence of a
2 fact. Yesterday we were in this courtroom most of the
3 day. I came out after the trial and it had rained
4 substantial. There was water all over the ground. And
5 we were in here and didn't look out the window and didn't
6 see it raining but when we go outside and the ground is
7 covered in water that is circumstantial evidence.

8 I didn't see it. But if I had seen it rain that
9 would be direct evidence. But if I go outside at the end
10 of the day and the ground is covered in water then I can
11 assume sometime during the day we were in this courtroom
12 it rained. That's circumstantial evidence.

13 The law makes absolutely no distinction between the
14 weight or value to be given either to direct or
15 circumstantial evidence, nor is there a greater degree of
16 certain requirements of circumstantial evidence and not
17 direct evidence. You should weigh all the evidence in
18 the case and after weighing all the evidence if you're
19 convinced of the guilt of the defendants beyond a
20 reasonable doubt you must find the defendants guilty.

21 If on the other hand you think there is a reasonable
22 doubt you must find them not guilty. If a crime is
23 committed by two or more people who are acting together
24 in committing a crime the act of one is the act of all.
25 A person who joins with another to commit an unlawful act

1 is criminally responsible for everything done by the
2 other person, which happens as a probable and natural
3 consequence of the acts done in carrying out the common
4 plan and purpose.

5 For example, two people can be guilty of killing
6 another person when only one of the two had a gun, there
7 was only one bullet and only one of the two fired a shot
8 that caused the death. If two or more people are acting
9 together assisting each other in the commission of a
10 crime, the act of one is the act of all. Sometimes
11 referred to as the hand of one is the hand of all.

12 Prior knowledge that a crime is going to be
13 committed without more is not sufficient to make a person
14 guilty of that crime. The mere knowledge that another is
15 going to commit a crime, even if the defendant is present
16 when the crime is committed is not sufficient to convict
17 a defendant --

18 Guilt is a principle shown by actual or constructive
19 presence at the scene as a prior result of an
20 arrangement. Therefore, finding a prior arrangement or
21 plan or common scheme is necessary for finding the guilt
22 as a principle. The State must prove beyond a reasonable
23 doubt with competent evidence theory of a hand of one is
24 the hand of all. A principle in a crime is one who
25 either acts and commits the crime or who is present,

1 aiding, or abetting, or assisting in the commission of
2 the crime. When a person doesn't act in the presence of
3 and with the assistance of another the act is done by
4 both. But if two or more acted with a common plan or
5 intent or present at the commission of the crime it does
6 not matter who actually committed the crime. All are
7 guilty; the hand of one is the hand of all.

8 Presence at the commission of a crime means to be
9 sufficiently near to aid, abet, or assist in the
10 commission of a crime. However, mere presence at the
11 scene of a crime is not sufficient to convict one as a
12 principle in theory from aiding and abetting.

13 Intent is also a necessary element that must have
14 been a common design or intent to commit a crime and the
15 crime must have been committed pursuant thereto with a
16 person aiding and abetting by some overt act.

17 Intent means intending the results that actually
18 occurred; not accidentally or involuntarily. Intent may
19 be shown by acts and conduct of the defendant and other
20 circumstances which may naturally and reasonably infer
21 intent. The State must prove these elements beyond a
22 reasonable doubt.

23 The defendants in this case are charged with the
24 crime of Burglary in the First Degree. The State must
25 prove beyond a reasonable doubt that the defendants

1 entered a dwelling without consent. A dwelling is any
2 building or portion of a building which a person
3 ordinarily sleeps.

4 A building constructed this way that has never been
5 occupied cannot be considered be a dwelling for the
6 purposes of a Burglary. But a building is a dwelling
7 even if the residents are temporarily absent from the
8 building.

9 In order to prove that the defendant entered the
10 dwelling the State does not have to show the defendant's
11 entire body entered the dwelling; the smallest entry is
12 sufficient in making any part of the body such as the
13 hand or foot or even an instrument such as a hook or
14 other instrument.

15 In addition the State does not have to prove that
16 force was used to gain entry. Next the State must prove
17 beyond a reasonable doubt the defendant intended to
18 commit a crime either a felony or a misdemeanor at the
19 time of entry.

20 The mere entry into a dwelling without consent is
21 not Burglary. If intent to commit a crime is borne after
22 the entry it is not Burglary. On the other hand if the
23 defendant intended to commit a crime at the time of the
24 entry it is burglary; even if intent was abandoned after
25 the entry. It does not matter that the intended crime

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 5 (of 5) - May 18, 2012

1 was not completed. Intent may be shown by acts of
2 conduct of the defendant or other circumstances which you
3 may naturally and reasonably infer.

4 The State must also prove Burglary First that the
5 defendant intended and remained in the dwelling in the
6 nighttime. Nighttime is the period between sunset and
7 sunrise during which there is not enough daylight to
8 recognize a person's face except by artificial light or
9 moonlight.

10 If you find that the State has failed to prove
11 beyond a reasonable doubt the defendant committed
12 Burglary in the First Degree you may consider whether the
13 State has proven beyond a reasonable doubt that the
14 defendant committed Burglary in the Second Degree.

15 Burglary in the Second Degree includes all the
16 evidence of Burglary in the First Degree except the
17 nighttime. If you find the State has not proved beyond a
18 reasonable doubt that the burglary occurred in the
19 nighttime then you may find the defendant guilty of
20 Burglary in the Second Degree.

21 If you do not find the State has proved beyond a
22 reasonable doubt the defendants entered the dwelling with
23 intent to commit a crime therein anytime then you would
24 find the defendants not guilty on the crime of Burglary
25 in the First or Second Degree. Now the defendants are

1 also charged with the crime of Armed Robbery. In order
2 to prove this offense the State must prove beyond a
3 reasonable doubt that the defendant took personal
4 property from the person or presence of another person.
5 The property is in the presence of a person.

6 It is within that person's reach, inspection,
7 observation, or control so that a person could if not
8 overcome with violence or prevented by fear kept the
9 possession of the property.

10 The State must prove beyond a reasonable doubt the
11 defendant carried the property away intending to
12 permanently deprive the owner of the property and to keep
13 the property from the defendant's own use. The slightest
14 removal of the property or the completion or possession
15 of the property even for an instant by the defendant is
16 sufficient to show intent in carrying away the property.

17 The taking and carrying away of the property must
18 have been done with violence or by putting the owner of
19 the property in fear of violence. And finally the State
20 must prove beyond a reasonable doubt that the defendant
21 or defendants were armed with a deadly weapon during the
22 commission of the robbery.

23 A deadly weapon is any article or substance, which
24 is likely to cause death or great bodily harm. Whether
25 an instrument has been used as a deadly weapon depends on

1 the facts and circumstances of each case. The following
2 are examples of instruments which may be deadly weapons:
3 a pistol, a shotgun, a rifle -- a dagger, a knife, a
4 sling shot, metal knuckles, a razor, gasoline, a fire
5 bomb or Molotov cocktail, lighter fluid. A gun may be a
6 deadly weapon even if it's not operating.

7 A hand or a fist is not normally considered a deadly
8 weapon; however under the circumstances depending on the
9 manner and means of issuance the wounds inflicted and
10 other relevant factors a hand or fist may be considered a
11 deadly weapon. And it is for you to decide based on the
12 facts that you determine to be the truth in this case as
13 whether or not a hand or a fist is a deadly weapon.

14 Ordinarily objects may become deadly weapons when
15 facts show that they had been used to inflict serious
16 bodily harm or death. Whether a toy gun, which has the
17 appearance of or believed to be a real gun, is a deadly
18 weapon, is a factual question for you to determine.

19 Now if you find the State has failed to prove the
20 defendant or defendants were armed with a deadly weapon
21 you may then consider whether the defendants has proven
22 beyond -- the State has proven beyond a reasonable doubt
23 the defendants had committed the robbery. A robbery
24 includes all the offenses I just explained to you under
25 armed robbery except that you can find that the

1 defendants were not armed with a deadly at the time of
2 the commission of the robbery, and just as I explained to
3 you in armed robbery of another person.

4 Now the defendants have also been charged with the
5 crime of Grand Larceny. The State must prove beyond a
6 reasonable doubt the defendants took and carried away the
7 property of another person against the will or without
8 the consent of the other person. The slightest removal
9 of the property or the complete possession of the
10 property, even for an instant by the defendant, is enough
11 to show a taking and carrying away of property.

12 The State must prove beyond a reasonable doubt that
13 the defendant intended to permanently deprive the owner
14 of the property. And finally the State must prove the
15 value of the thing taken was 1,000 dollars or more.

16 Now the defendants were also charged with the crime
17 of Kidnapping. The State must prove beyond a reasonable
18 doubt that the defendant or defendants knowingly and
19 unlawfully seized, confined, inveigled, decoyed,
20 kidnapped or abducted or carried away another person
21 without the authority of law. To do a thing unlawfully
22 is to do it willfully against the law.

23 Knowingly means with knowledge consciously and not
24 accidentally. Seize means to take hold suddenly of a
25 person. Confined means to limit or restrict or enclose

1 within bounds imprison, or shut in, or keep. Inveigle
2 means to lure, entice, or lead astray by false
3 representations or promises or other equal means. Decoy
4 means to lure by or -- if by decoy is something to entice
5 a person into a trap.

6 Kidnapping is to remove a person against his will by
7 unlawful force or by fraud. Abduct means to carry off
8 secretly or by force for an illegal purpose. Carry away
9 means to remove.

10 The State does not have to prove the defendant did
11 all of these things. Instead if you find beyond a
12 reasonable doubt that the defendant or defendants did any
13 of these things you may find the defendant or defendants
14 guilty of Kidnapping.

15 The Kidnapping does not have to be for any personal
16 or monetary gain -- it only has to be for some illegal
17 purpose. The defendants are also charged with the crime
18 of Possession of a Deadly Weapon during the Commission of
19 a violent crime.

20 The State must prove beyond a reasonable doubt that
21 the defendant or defendants possessed a firearm or
22 visibly displayed what appeared to be a firearm or
23 visibly displayed a knife during the commission of a
24 violent crime. A firearm means any machine gun or a
25 rifle, revolver, pistol or any weapon which will or is

1 designed to or may be readily converted to expel a
2 projectile. A knife means any instrument or tool with a
3 sharp cutting blade whether or not -- which can be used
4 to inflict cut, slash, or wound.

5 In order to find the defendants guilty of Possession
6 of a Weapon during the Commission of a Violent Crime you
7 must first find the defendants guilty of either
8 committing a violent crime or attempting to commit a
9 violent crime.

10 And I instruct you that Burglary in the First
11 Degree, Armed Robbery, and Kidnapping are considered
12 violent crimes under State law. Now the indictments in
13 this case allege several different offenses against the
14 defendants.

15 And I have gone over those charges and they will be
16 on the verdict form for you. Each count charges a
17 separate and distinct offense. You may decide -- you
18 must decide each count on the indictment separately from
19 the evidence of the law -- to it uninfluenced by decision
20 you have had to any other count of the indictment.

21 The defendants may be convicted or acquitted on any
22 and all of the offenses charged. You will be asked to
23 write a separate verdict of guilty or not guilty on each
24 count of the indictment. I charge you that there are two
25 defendants in this case; each of whom are charged with

1 the crimes that I have gone over with you listed on the
2 indictment. The case of each defendant and the evidence
3 and law concerning that defendant should be considered
4 separately and individually.

5 Your verdict does not have to be the same for both
6 or all of the defendants. The fact that you may find one
7 defendant guilty or not guilty should not control your
8 verdict as to the other defendant.

9 Moreover when one person is charged with the crime
10 if the evidence warrants it you may convict him and
11 acquit the other. You may acquit both or you may
12 convict both. It will depend upon your view of the
13 testimony and evidence. You must take each defendant and
14 consider the evidence as to that defendant and my
15 instructions on the law as to that defendant.

16 You will then write a separate verdict of guilty or
17 not guilty on each count on each defendant. Now ladies
18 and gentlemen you are not advocates or partisans of the
19 State of South Carolina of these defendants. You don't
20 serve as jurors to reward your friends or punish your
21 enemies. The -- of justice simply will not be tolerated.
22 You have been selected by both the State and this
23 defendant as a fair and impartial juror. It is your duty
24 then by your joint deliberations to determine the truth
25 in this case giving to these defendants the benefit of

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 5 (of 5) - May 18, 2012

1 every reasonable doubt on each and every issue. And then
2 to the facts that you determine to be true you are to
3 apply the law that I have given you and arrive at a
4 verdict that speaks the truth in this case. When you
5 have accomplished this you would have satisfied your oath
6 as jurors and discharged your duty to this court.

7 Now I have had my law clerk draw up possible verdict
8 forms in this case. And I have -- at the top of the form
9 is just the caption of the case. And I -- you will have
10 the verdict for each defendant. And the verdict form
11 says the State of South Carolina County of Clarendon
12 State Michael Pearson and Victor Weldon; that is simply
13 the title of the case.

14 The verdict is one, we the jury now do find the
15 defendant Victor Weldon guilty of Burglary First or not
16 guilty of Burglary First or we the jury now do find
17 Victor Weldon guilty of Burglary in the Second Degree or
18 not guilty of Burglary in the Second Degree.

19 If you find him on the charge of Burglary if the
20 State has proven to you the guilt beyond a reasonable
21 doubt on Burglary First you would find him guilty of
22 Burglary First. If you find that they have not proven
23 beyond a reasonable doubt that he is guilty of Burglary
24 First you could consider the lesser included offense of
25 Burglary Second and then you will apply the same facts if

1 they have proven to you beyond a reasonable doubt he is
2 guilty of Burglary Second you may find him guilty. If
3 they have not you must find him not guilty. But you
4 can't find him guilty of both; it's just one or the other

5 It's the same thing on the offense of Armed Robbery.
6 The verdict form says we the jury now do find the
7 defendant guilty of Armed Robbery or not guilty of Armed
8 Robbery. If you find him guilty of Armed Robbery and
9 each defendant stands on his own you would not consider
10 the second of Robbery.

11 If you find him not guilty, if you find the State
12 has not proven the facts beyond a reasonable doubt you
13 may go to the lesser included offense of Robbery to
14 determine whether they have proven that. If you feel
15 they have not you would find him not guilty.

16 So you can't find him guilty of either one of Armed
17 Robbery and of Robbery; you've got to pick one of the
18 two. And I've put that in a sheet accordingly. And the
19 third count is Grand Larceny.

20 The options are we the defendant -- we the jury find
21 the defendant of Grand Larceny or not guilty of Grand
22 Larceny. And the same situation with Kidnapping guilty
23 or not guilty of Kidnapping. He is guilty or not guilty
24 of Possession of a Weapon During a Violent Crime. Now
25 I've given you a sheet on each one of these defendants

1 and you're to treat each one separately on each count.
2 And the order I've placed them in you are to draw no
3 inference whatsoever. We just simply had to put them in
4 some order. But your job is to determine each one of
5 these counts on each defendant individually.

6 And Mr. Foreman, your job is once you have reached a
7 verdict on each count and it must be unanimous verdict;
8 all twelve of you must agree, then you are to check to
9 the appropriate box and at the end sign your name to
10 these forms knock on the door and we will bring you out
11 and receive your verdict.

12 Now if at any time during your deliberations one of
13 you needs to be excused and one of you leave the table
14 and go to the restroom or whatever, you've got to stop
15 your deliberations. You can only talk about this case
16 when all twelve of you are sitting there in the room and
17 can hear each other. So if somebody needs to be excused,
18 stop talking about the case until they come back resume
19 your deliberations until you reach a verdict.

20 Then if you will knock on the door we will bring you
21 out procedurally. If you have some question of me and
22 you -- you need to write that question on a piece of
23 paper and knock on the door and give it to the Bailiff.
24 I can tell you right now I can only answer questions of
25 law. If you have a question about the law in this case

1 or the instructions I have given you I can answer that.
2 I can't answer a question about the facts. So if you are
3 asking me a question about the evidence or facts you have
4 all the evidence you will hear and you've got to decide
5 that. I can't answer a question about any particular
6 fact. I can only clarify the law to you.

7 So having said that I am going to send you to the
8 jury room. I've got to review my charge with these
9 attorneys to be sure I've not missed anything or left
10 something out. If I have I will bring you back out and
11 charge you further on the law. If I've not then I will
12 have the Bailiff bring in the evidence along with these
13 verdict form.

14 When you receive this verdict form that will be your
15 indication then to begin your deliberations and knock on
16 the door when you receive the verdict. So if you will go
17 to your jury room right now.

18 Madame alternate, if you'll stay with me. I want
19 you to sit there and if it looks like everybody is going
20 to make it I only will need you if I'm losing one of
21 them. We lost one this morning but it looks like
22 everybody is going to get me through the day so if you
23 will stay right where you are seated but everybody else
24 can go to the jury room.

25 [Whereupon, the jury exits the courtroom at 11:55

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 5 (of 5) - May 18, 2012

1 a.m.]

2 THE COURT: Any exceptions or additions on behalf
3 of the State?

4 MR. FINNEY: May I have a moment, Your Honor?

5 THE COURT: Yes, sir.

6 MR. FINNEY: Your Honor, we did have a question
7 about your charge on the Armed Robbery as to whether or
8 not you informed the jury that the person who allegedly
9 commits the robbery could be guilty if they were alleging
10 either by action or words that he was armed by using a
11 representation of a deadly weapon or any object which --
12 present during the commission of the robbery reasonably
13 believed to be a deadly weapon. And that language comes
14 from section 16-11-330.

15 THE COURT: I did not charge that particular
16 language. I charged a fist can be a deadly weapon or any
17 objects can be a deadly weapon. And tell me -- and that
18 is not in my charge but tell me what...

19 MR. FINNEY: We believe that you charged correctly
20 Your Honor that a person can be guilty of robbery when he
21 is armed with and then you named five or six things.

22 THE COURT: Right.

23 MR. FINNEY: And then we believe that you went on
24 to talk about I remember you talked about the toy pistol
25 and it would be up to them.

1 THE COURT: I talked about any deadly weapons or
2 any -- a deadly weapon is any article, instrument or such
3 which is likely to cause death or great bodily injury
4 whether an instrument has been used as a deadly weapon
5 depends on the facts and circumstances of each case and
6 the following are examples -- and I let out gun, knife --

7 Then I said a hand or fist is not normally
8 considered a deadly weapon however under some
9 circumstances depending on the manner and means it is
10 used will lose -- the other relevant factors a hand or a
11 fist may be considered a deadly weapon. It is for you to
12 decide. Then I went on as to ordinary objects and of toy
13 guns. Now what do you think I've left out?

14 MR. FINNEY: We believe there is a section in 16-
15 11-330, which informs the jury that a person who was
16 armed while using a representation of a deadly weapon or
17 any object which a person present during the commission
18 of a robbery reasonably believed to be a deadly weapon
19 would be guilty of the felony of Armed Robbery. And
20 obviously while we didn't want you to make a comment on
21 the facts ---

22 THE COURT: --- and you think that's in the statute
23 of what section?

24 MR. FINNEY: 16-11-330.

25 THE COURT: All right, let me look. So you want me

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 5 (of 5) - May 18, 2012

1 just read section 8 of the statute: a person who commits
2 robbery while armed with a -- sling shot, metal knuckles,
3 razor or other deadly weapons while alleging either by
4 action or word he has armed -- he was armed while using a
5 representation of a deadly weapon or any object with a
6 person present during the commission of a robbery
7 reasonably believed to be a deadly weapon is guilty of a
8 felony.

9 MR. FINNEY: Yes, sir.

10 THE COURT: All right. Anything else from the
11 defense?

12 [No response]

13 THE COURT: Anything from the defense?

14 MR. DEVOE: Your Honor, you made a statement they
15 could not come out and ask about any testimony in the
16 case. I believe the court asked them -- the court
17 reporter can look it up and we could --

18 THE COURT: Well, if I conveyed that I didn't mean
19 it. I said he could ask me for factual questions. They
20 certainly can hear testimony played back. I will clear
21 that up when I bring them back out.

22 MR. DEVOE: Thank you.

23 THE COURT: Anything else?

24 [No response]

25 THE COURT: All right. Bring them back out.

1 [Whereupon, the jury re-enters the courtroom at
2 12:02 p.m.]

3 THE COURT: Thank you ladies and gentlemen. I'm
4 sorry, the attorneys have pointed out that I left out a
5 portion of the definition of Armed Robbery so I am going
6 to supplement my charge on Armed Robbery and give you
7 that additional definition.

8 A person who commits robbery while armed with a
9 pistol, -- sling shot, metal knuckles, razor, or any
10 other deadly weapon while alleging either by action or
11 words that he was armed while using a representation of a
12 deadly weapon or any object which a person present during
13 the commission of a robbery would reasonably believe it
14 to be a deadly weapon. I added that to the definition
15 I've already given you to Armed Robbery.

16 And one of -- I told you when you went back I could
17 answer questions of law but I could not answer questions
18 of fact. However, that doesn't mean that if you want to
19 hear testimony again of any question asked. I can't
20 answer any questions after -- or you ask -- you want to
21 hear some witness's testimony have a right to come back
22 out and the court reporter would have to replay portions
23 or all of any witness's testimony. And if that becomes
24 an issue I just can't answer questions if you want to
25 ask. But I can certainly allow you to review whatever

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 5 (of 5) - May 18, 2012

1 evidence is in the record as well as additional
2 testimony. Then, I assume I've covered everything. I'm
3 going to send you back to the jury room and I'll talk to
4 these lawyers again. If I have covered everything I will
5 send the verdict form and the evidence to the room and
6 you can begin your deliberations. If I haven't I'll
7 bring you back in again. Thank you. Madame Alternate,
8 if you'll stay with us still.

9 [Whereupon, the jury exits the courtroom at 12:05
10 p.m.]

11 THE COURT: Anything further?

12 MR. FINNEY: Nothing from the State.

13 MR. KNOBELOCH: Nothing from us.

14 THE COURT: All right. If you will carry these
15 verdict forms and get the evidence in there. Its 12
16 o'clock you might can start talking by lunch. At 12:30
17 we'll knock on the door and ask them if they want to
18 start ordering lunch. And if they say yes it will take
19 it about 30 to 35 minutes to get here so I'll send Ms.
20 Beulah or one of her staff in there to take lunch orders
21 at 12:30 if we haven't reached a verdict. Any objection
22 to that?

23 MR. FINNEY: No objection from the State.

24 MR. KNOBELOCH: No, Your Honor.

25 MR. DEVOE: No.

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 5 (of 5) - May 18, 2012

1 THE COURT: Okay. Then we'll stand at ease for a
2 few minutes and see if the Solicitor has got anything
3 else he wants me to do while we're waiting on them.

4 [Whereupon, the court is in recess]

5 MS. ROBERTS: I understand the jury has a verdict.

6 [Whereupon, the jury re-enters the courtroom at 2:00
7 p.m.]

8 VERDICT

9 THE COURT: You may publish the verdict.

10 MS. ROBERTS: On indictment number 2011-GS-14-68 we
11 the jury unanimously find the defendant Victor Weldon
12 guilty of Burglary in the First Degree.

13 We the jury unanimously find the defendant Victor
14 Weldon guilty of Armed Robbery.

15 We the jury unanimously find the defendant Victor
16 Weldon guilty of Grand Larceny more than 1,000 dollars.

17 We the jury unanimously find the defendant Victor
18 Weldon guilty of Kidnapping.

19 We the jury unanimously find the defendant Victor
20 Weldon guilty of Possession of a Weapon during a Violent
21 Crime. Signed Martin D. Troutman as Foreperson.

22 As to the indictment number 2011-GS-14-68 we the
23 jury unanimously find the defendant Michael Pearson
24 guilty of Burglary First Degree.

25 We the jury unanimously find the defendant Michael

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 5 (of 5) - May 18, 2012

1 Pearson guilty of Armed Robbery.

2 We the jury unanimously find the defendant Michael
3 Pearson guilty of Grand Larceny of more than 1,000
4 dollars.

5 We the jury unanimously find the defendant Michael
6 Pearson guilty of Kidnapping.

7 We the jury unanimously find the defendant Michael
8 Pearson guilty of Possession of a Weapon During a Violent
9 Crime. Signed Martin D. Troutman, Foreperson.

10 THE COURT: Anything from the State as far as it
11 relates to the jury?

12 MR. FINNEY: Nothing from the State, Your Honor.

13 THE COURT: From the defense?

14 MR. KNOBELOCH: No, Your Honor.

15 MR. DEVOE: I'd like the jury polled.

16 THE COURT: All right, Ms. Beulah?

17 POLLING OF THE JURY

18 MS. ROBERTS: Ladies and gentlemen of the jury
19 beginning with the foreperson I'm going to ask you -- I'm
20 going to call your name and ask you to stand and I'm
21 going to ask you two questions I need you to answer for
22 me, okay. Beginning with our foreperson Mr. Martin D.
23 Troutman.

24 [Whereupon, Mr. Troutman stands]

25 MS. ROBERTS: Is this your verdict?

1 with me this week, go downstairs to my office. My office
2 is right down the middle of the stairs -- in the middle
3 of the hallway. It says Clerk of Court and the young
4 ladies down there will give you a statement, okay. All
5 right, thank you.

6 [Whereupon, the jury is excused and exits the jury
7 box]

8 THE COURT: Is the State ready? Do you need time
9 to...

10 MR. FINNEY: Just a few minutes, Your Honor. I'm
11 going to pass up the prior records.

12 MR. CORBETT: Your Honor, may I approach to hand up
13 our sentence sheets?

14 [Whereupon, documents are handed up to the court]

15 THE COURT: Gentlemen, either one of y'all want to
16 tell me anything?

17 MR. DEVOE: On their sentence?

18 THE COURT: Huh?

19 MR. DEVOE: Sentence?

20 THE COURT: Do you want to tell me anything before
21 I pass sentence?

22 MR. KNOBELOCH: Judge, the defendants would also
23 like to address the court at this time.

24 THE COURT: Okay.

25 MR. KNOBELOCH: Mr. Weldon would like to address

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 5 (of 5) - May 18, 2012

1 the court.

2 THE COURT: Yes. Come forward and stand at the
3 microphone right here [indicates]. How about both of you
4 come forward.

5 [Whereupon, Mr. Weldon and Mr. Pearson come forward]

6 THE COURT: Yes, what do you want to tell me?

7 MR. WELDON: It really is a misunderstanding of what
8 happened. I'm sorry that this had to happen to Mr.
9 Gibbons. But I hope that it will out when he gets home
10 tonight -- I'm sorry it happened to the man. I
11 understand it did happen; I'm not trying to deny that.
12 It's not that I like, it's just how it is.

13 THE COURT: I understand. Is there anything you
14 want to tell me Mr. Devoe?

15 MR. DEVOE: Yes. Mr. Pearson has a minor record.
16 He's 39 years old and he's been in jail for exactly two
17 years tomorrow on this charge. I'd ask that you give
18 concurrent sentences and I would ask you to be -- it was
19 a trial, it was a meaningful trial and I'm surprised the
20 jurors were out as short of a time they were.

21 However, my client has had a breathing problem for
22 quite some time. It just happened because of the -- and
23 his record his only major conviction was 2007 and he was
24 convicted of taking -- and he -- it looks like its two
25 convictions but it's just one -- but it still counts and

1 he got three years on each -- he wants to say a few words
2 too, Your Honor.

3 THE COURT: Okay. Yes, sir.

4 MR. PEARSON: Also like Mr. Weldon I know a crime
5 was committed. And I know it was a bad crime committed
6 to Mr. Gibbons. Also, I am an innocent man and as he
7 said hopefully we can get this resolved with the appeal
8 that we'll put in.

9 I'm asking for leniency also because of a situation
10 that they found us guilty. But I'd still like to as Mr.
11 Devoe said, don't quite understand with the evidence that
12 we presented was that -- they presented against us that
13 we were found guilty. But I'm just asking you for
14 leniency. That's all. Thank you.

15 THE COURT: All right.

16 MR. KNOBELOCH: Your Honor, may I briefly? Mr.
17 Weldon has his father and his sister here. I'm sorry,
18 his girlfriend is here. His mother was unable to be here
19 because she could not get off work.

20 Mr. Weldon has I believe it was a burglary but it is
21 a juvenile offense; something that happened when he was
22 15 or 16 and that's his only prior conviction on his
23 record.

24 He's the only member of his family who graduated
25 high school. When he was in high school he participated

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 5 (of 5) - May 18, 2012

1 in ROTC and he was in the Saber Guard and Color Guard.
2 He regularly attends church in his neighborhood. We'd
3 also ask that you run any sentences concurrent and I'd
4 ask for leniency from the court. Thank you.

5 SENTENCING

6 THE COURT: Okay. All right Mr. Weldon and Mr.
7 Pearson. You know the legislature set Burglary at 15
8 years to life and this is as serious a crime as you can
9 get. You go to a man's house, you lay in wait for him,
10 he comes out in the morning and you beat him and you rob
11 him. And I'll give you as much leniency as I can under
12 the circumstances.

13 The Burglary First the sentence of the court is you
14 are committed to the State Department of Corrections for
15 a term of 30 years. On the Armed Robbery the sentence of
16 the court is you are committed to the State Department of
17 Corrections for a term of 30 years to run consecutive to
18 the Burglary First.

19 On the Grand Larceny the sentence is five years to
20 run concurrent and I'm giving you credit for the time
21 served on all of these. On the Kidnapping the sentence
22 is 20 years to run concurrent with credit for time
23 served. And on the Possession of a Weapon during a
24 Violent Crime is five years to run concurrent with the
25 time served. Mr. Pearson, your sentence is Burglary

State v Michael Pearson, Victor Weldon (2011-GS-14-0068)
Volume 5 (of 5) - May 18, 2012

1 First is 30 years; Armed Robbery is 30 years to run
2 consecutive to Burglary First. Grand Larceny is five
3 years, Kidnapping is 20 years. Possession of a Weapon
4 during a Violent Crime is 5 years. The Armed Robbery and
5 the Burglary is consecutive and everything else is
6 concurrent. And I am giving you credit for time served
7 for each one of them.

8 MR. DEVOE: Thank you, Your Honor.

9 THE COURT: Yes, sir.

10 MR. DEVOE: They got credit for time served?

11 THE COURT: Huh?

12 MR. DEVOE: Credit for time served?

13 THE COURT: Yes. I gave them both credit for time
14 served. Then they got to do 60 years.

15 MR. FINNEY: Thank you, Your Honor.

16 THE COURT: Thank you.

17 [Whereupon, the jury trial concludes]

18

19

20

21

22

23

24

25

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CLARENDON)

INDICTMENT FOR
 BURGLARY 1ST; ATTEMPTED MURDER; ARMED ROBBERY;
 GRAND LARCENY (\$2,000-\$10,000); KIDNAPPING;
 POSSESSION OF A WEAPON DURING A VIOLENT CRIME

At a Court of General Sessions, convened on January 26, 2011 the Grand Jurors of
 CLARENDON County present upon their oath:

COUNT ONE - BURGLARY 1ST

That MICHAEL WILSON PEARSON AND VICTOR MCCOY WELDON did in Clarendon County on or about May 15, 2010, enter the dwelling of Edward "Slick" Gibbons, without consent and with the intent to commit a crime therein and said defendant entered or remained in said dwelling in the nighttime, in violation of Section 16-11-311, South Carolina Code of Laws (1976), as amended.

COUNT TWO - ATTEMPTED MURDER

That MICHAEL WILSON PEARSON AND VICTOR MCCOY WELDON did in Clarendon County on or about May 15, 2010, feloniously, willfully and with malice aforethought, either expressed or implied, attempt to murder one Edward "Slick" Gibbons.

COUNT THREE - ARMED ROBBERY

That on or about May 15, 2010, in Clarendon County, South Carolina, at , the Defendants, MICHAEL WILSON PEARSON AND VICTOR MCCOY WELDON, by use of force, threats or intimidation and while armed with a deadly weapon, to wit: a handgun, did attempt to take and carry away goods and/or monies from the person or immediate presence of with the intent to permanently deprive they of possession thereof, in violation of Section 16-11-330(B) of the South Carolina Code of Laws, 1976, as amended.

COUNT FOUR - GRAND LARCENY (\$2,000 - \$10,000)

That MICHAEL WILSON PEARSON AND VICTOR MCCOY WELDON did in Clarendon County on or about May 15, 2010, take and carry away the personal goods of Edward "Slick" Gibbons, having a value of more than two thousand (\$2,000.00) dollars, described as follows: money, with the intent to deprive the owner permanently of such property and to convert the goods to his/her own use, in violation of Section 16-13-0030(B)(2), S. C. Code of Laws, 1976, as amended.

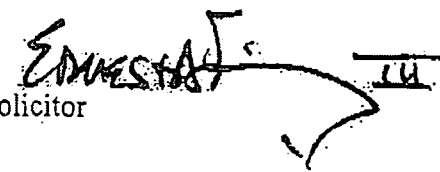
COUNT FIVE - KIDNAPPING

That in Clarendon County, South Carolina, on or about May 15, 2010, the Defendants, MICHAEL WILSON PEARSON AND VICTOR MCCOY WELDON, unlawfully did seize, confine, inveigle, decoy, kidnap, abduct or carry away the victim, Edward "Slick" Gibbons, without authority of law; all in violation of Section 16-3-910 of the Code of Laws of South Carolina, (1976, as amended)

COUNT SIX - POSSESSION OF A WEAPON DURING A VIOLENT CRIME

That MICHAEL WILSON PEARSON AND VICTOR MCCOY WELDON did in Clarendon County, on or about May 15, 2010, possess a firearm, or visibly display what appeared to be a firearm, during the commission or attempted commission of a violent crime, in violation of Section 16-23-0490, S. C. Code of Laws, 1976, as amended.

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


 Solicitor

WITNESSES

Kenneth Clark Clarendon County Sheriff

DOCKET NO. 2011-GS-14-0068

The State of South Carolina

County of CLARENDON

COURT OF GENERAL SESSIONS

JANUARY TERM 2011

THE STATE

vs.

MICHAEL WILSON CHARLIE PEARSON
VICTOR MCCOY WELDON

ARREST WARRANT NUMBER

M084242, M084531 (1) M084243, M084530 (2)

M084244, M084528 (3) M084245, M084529 (4)

M084247, M089533 (5) M084246, M084532 (6)

ACTION OF GRAND JURY

True Bill

Robert Stephens

Foreperson of Grand Jury

Date:

1/28/11

VERDICT

Foreperson of Petit Jury

Date:

Indictment for

BURGLARY 1ST; ATTEMPTED MURDER; ARMED
ROBBERY; GRAND LARCENY (\$2,000-\$10,000);
KIDNAPPING; POSSESSION OF A WEAPON DURING
A VIOLENT CRIME

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

February 19th, 2014



Robert M. Dudek
Chief Appellate Defender

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

ATTORNEY FOR APPELLANT

 **COPY**

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Clarendon County

Ralph F. Cothran, Circuit Court Judge

RECEIVED

MAR 11 2014

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

VICTOR WELDON,

APPELLANT

APPELLATE CASE NO. 2012-212563

FINAL BRIEF OF APPELLANT

ROBERT M. DUDEK
Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

RECEIVED

MAR 11 2014

**SC OFFICE OF
APPELLATE DEFENSE**

TABLE OF CONTENTS

TABLE OF CONTENTS	1
TABLE OF AUTHORITIES.....	2
STATEMENT OF ISSUES ON APPEAL.....	3
STATEMENT OF THE CASE	4
ARGUMENT	
The court erred by refusing to direct a verdict of acquittal on the charges of burglary in the first degree, armed robbery, kidnapping, and grand larceny, since the only evidence that appellant participated in this crime was his DNA was found on a piece of duct tape -- left at some point somehow -- since sending this case to the jury on that single shred of evidence invited a verdict based on speculation.	5
Relevant Facts	5
Directed Verdict Motion	8
Discussion	8
CONCLUSION.....	13

TABLE OF AUTHORITIES

Cases

<u>State v. Arnold</u> , 361 S.C. 386, 605 S.E.2d 529 (2004).....	8, 10, 12
<u>State v. Bostick</u> , 392 S.C. 134, 708 S.E.2d 774 (2011).....	8, 9, 12
<u>State v. Lollis</u> , 343 S.C. 580, 541 S.E.2d 254 (2001).....	8, 9
<u>State v. Martin</u> , 340 S.C. 597, 533 S.E.2d 572 (2000).....	9, 10
<u>State v. Mitchell</u> , 341 S.C. 406, 409 S.E.2d 126 (2000).....	8, 11, 12
<u>State v. Odems</u> , 395 S.C. 582, 720 S.E.2d 48 (2011)	12
<u>State v. Rothschild</u> , 351 S.C. 238, 569 S.E.2d 346 (2002).....	9
<u>State v. Schrock</u> , 283 S.C. 129, 322 S.E.2d 450 (1984).....	10, 12
<u>State v. Walker</u> , 349 S.C. 49, 562 S.E.2d 313 (2002).....	9

STATEMENT OF ISSUE ON APPEAL

Whether the court erred by refusing to direct a verdict of acquittal on the charges of burglary in the first degree, armed robbery, kidnapping, and grand larceny, since the only evidence that appellant participated in this crime was his DNA was found on a piece of duct tape -- left at some point somehow -- since sending this case to the jury on that single shred of evidence invited a verdict based on speculation?

STATEMENT OF THE CASE

Appellant was indicted by the Clarendon County Grand Jury for the offenses of burglary in the first degree, armed robbery, kidnapping, and grand larceny. R. 361. Michael Pearson was the co-defendant in this case. He was indicted for the same offenses, and also possession of a weapon during a violent crime.

Their joint cases were called to trial on May 14, 2012 before the Honorable Ralph F. Cothran, and a jury. Ernest A Finney, III and Jason Corbett were the prosecutors. John Knobeloch and Laura Knobeloch represented appellant, Victor Weldon. Michael Pearson was represented by Harry Devoe. R. 1.

On May 18, 2012 the jury found Appellant Weldon and co-defendant Pearson guilty on all counts. R. 354, l. 10 – 355, l. 9. Co-defendant Pearson was also found guilty of possession of a weapon during a violent crime. R. 355, ll. 7-9.

Judge Cothran sentenced Appellant Weldon to thirty years imprisonment for burglary in the first degree, thirty years *consecutive* for armed robbery, twenty years concurrent for kidnapping, and five years concurrent for grand larceny. Co-defendant Pearson received the same sentence with an additional five years concurrent for possession of a weapon during a violent crime. R. 359, l. 6 – 360, l. 7.

This appeal follows.

ARGUMENT

The court erred by refusing to direct a verdict of acquittal on the charges of burglary in the first degree, armed robbery, kidnapping, and grand larceny, since the only evidence that appellant participated in this crime was his DNA was found on a piece of duct tape -- left at some point somehow -- since sending this case to the jury on that single shred of evidence invited a verdict based on speculation.

Relevant Facts

Edward "Slick" Gibbons owned the Clarendon Auto Parts store in Manning, South Carolina. He had operated that business for forty-five years. R. 2, l. 8 – 4, l. 11.

The front of the Gibbons home faced Country Club Drive and the back of his house faced a pond. The garage was separate from the house. Gibbons had neighbors on both sides of his house. R. 4, l. 3 – 6, l. 12.

The Auto Parts store was open six days a week and was closed on Sunday. That was also the victim's work schedule. He remembered on May 15, 2010, a Saturday, he was preparing to leave the house between 6:00 a.m. and 6:30 a.m. to go to work. R. 7, l. 14 – 8, l. 12.

That morning Gibbons went out in his garage to put his shoes on. He usually locked the door when he left for work because his wife was usually not out of bed. "When I shut the door and bent down three guys came out of that little closet room in there and that's when they jumped me; and it's a miracle I'm still here after that." R. 8, l. 8 – 9, l. 9.

The victim, Gibbons, said he saw three black men in his garage with masks over their faces. R. 12, ll. 2-17. He was robbed of his wallet -- which he said had about eight

hundred dollars in it -- and his money clip (with contained thirty to forty dollars). R. 13, l. 7 – 14, l. 19.

The victim was never able to identify the robbers. He was thrown to the ground “and one [of them] jumped on top of me and sat across my chest and was beating me there. And then one was sitting across my legs and the bigger guy was kicking me in the side and stomping me in the chest and . . .” R. 15, ll. 4-13.

He acknowledged he never saw a gun during the robbery. However, he speculated that one or more of the men could have been armed. At one point he saw something that could have been a weapon. He recalled: “They tried to put tape around you know, wrap it around my face . . . I kept kicking them - - I kept kick moving my legs and stuff. They never did get it wrapped around my feet so I could move. But they did get it around my face.” R. 17, l. 8 – 18, l. 22.

Gibbons said one of the men said: “Slick, you know that [we] know that you got money and where is the rest of it? I said this is all I got. I said there’s no use to beat me any more for money so just shoot me because this is all I got.” R. 19, ll. 7-18.

The three unknown men stole his El Camino and drove away. R. 21, l. 16 – 30, l. 10. He remembered that he was taken to Clarendon Memorial Hospital and then taken by helicopter to a Columbia hospital where he was in intensive care before going to a rehabilitation center in Sumter for a week. R. 32, ll. 2-23.

On cross-examination Gibbons admitted he never saw a gun during the robbery. He also thought it was daylight outside when the robbery occurred “between 6 and 6:30 in the morning.” R. 60, ll. 5-10.

Cecil Eaddy had lived in the Manning area his whole life. He knew Gibbons as "Slick." He found the stolen El Camino shortly after the incident that morning in the road near his farm. R. 78, l. 18 – 82, l. 5.

Eaddy said: "I knew it was Mr. Gibbons' car . . . then I called the store and Ken answered the phone. And I asked if he [the victim] was there and he said no, he wasn't there. And then I told him I found the car. And he told me he [the victim] had just been beaten up at his house. . . . so I pulled it out of the road and switched it off and took the keys out. That's when I took it on up there to the store." R. 81, l. 7 – 82, l. 18.

An employee from the Auto Parts store came and picked up the car "and rode back to the store and I went on out to the farm." R. 83, ll. 4-24.

According to a police witness co-defendant Pearson "adamantly denied knowing Mr. Gibbons." However, they stated their investigation led them to know that co-defendant Pearson had done yard work for Gibbons in the past. R. 115, l. 6 – 117, l. 18. Co-defendant Pearson's fingerprints -- his right thumb actually -- was matched to Gibbons' garage according to Marie Hodge of the Sumter Police Department. R. 124 l. 1 – 136, l. 18.

Appellant's fingerprints were *not* found anywhere on the property owned by Gibbons. The state's case against appellant was appellant's DNA was found on the same duct tape that had been tied around the head of Gibbons. R. 176, l. 17 -180, l. 2. The state also put in evidence that appellant said he did not know co-defendant Pearson, but appellant and Pearson allegedly worked briefly for a Vocational Rehabilitation sponsored facility for a short time. Again, this was in Manning, South Carolina and it appeared strangers were few. R. 174, l. 21 – 175, l. 17; R. 244, l. 17 – 245, l. 6.

Directed verdict motion

An extensive directed verdict motion was made in this case. Defense Counsel Knobloch for appellant cited State v. Mitchell, State v. Bostick and State v. Arnold in support of his argument that a directed verdict should be granted in this case. Defense counsel noted that the state's case against Arnold was actually stronger than the evidence in this case against appellant. Yet the Supreme Court direct a verdict of acquittal for Arnold. R. 271, l. 19 – 278, l. 3. In Arnold the defendant was placed in the victim's car in another state a short time after the crime. R. 277, l. 22 – 278, l. 3.

The judge here ultimately ruled “it's a number of facts they've (the jury) has got to struggle with. But I'm going to let them make that call.” The judge opined he thought there was more evidence in this case “than the Mitchell, Arnold, or Bostick cases.” R. 283, l. 10 – 285, l. 3.

Discussion

The judge erred by deferring his duty to make the call on the directed verdict motion to the jury as seen above. The judge also incorrectly opined there was more evidence in this case against appellant than there was against the defendants in Mitchell, Arnold, or Bostick. “Mere suspicion” of guilt is insufficient to take the case to the jury, and beyond a directed verdict motion. State v. Lollis, 343 S.C. 580, 541 S.E.2d 254 (2001).

The state's evidence against appellant is that his DNA at some point, somehow, got on the duct tape. From there the jury was asked to speculate that because appellant worked with Pearson at the same place for a short time, that appellant knew him, and participated in this violent crime with him. Therefore, appellant should be convicted based on that circumstantial evidence.

Where the state relies exclusively on circumstantial evidence, the trial judge is only required to submit the case to the jury if there is any **substantial** circumstantial evidence which reasonably tends to prove the guilt of the accused, or from which his guilt may be fairly and logically deduced. State v. Lollis, 343 S.C. 580, 541 S.E.2d 254 (2001) If the state fails to produce substantial circumstantial evidence the defendant committed the particular crime the defendant is entitled to a directed verdict. State v. Rothschild, 351 S.C. 238, 569 S.E.2d 346 (2002); State v. Walker, 349 S.C. 49, 562 S.E.2d 313 (2002).

In State v. Bostick, 392 S.C. 134, 708 S.E.2d 774 (2011), the Supreme Court held the state failed to produce substantial circumstantial evidence Bostick killed his neighbor, Ms. Polite, and set her house on fire. The state's case was that Ms. Polite worked at her church and always brought the collection proceeds home on Sunday afternoon.

The state presented evidence that investigators found the decedent's personal items, burned by an accelerant, including a watch and two sets of car keys belonging to Ms. Polite in a burn pile on Bostick's *next door property*. Bostick's mother testified she never used accelerants in the family burn pile.

The Supreme Court noted that the evidence above as well as the fact Bostick had a pattern of gasoline on his shoes and *gasoline was the accelerant used to start the fire* at the Polite home. The Court held this evidence raised a suspicion that Bostick may have been guilty but it was not sufficient for the case to have gone to the jury.

Earlier, and similarly, in State v. Martin, 340 S.C. 597, 533 S.E.2d 572 (2000) the Supreme Court held that the state's circumstantial evidence against Martin was insufficient to take the case to the jury. In Martin the defendant borrowed his girlfriend's car which was later placed near the scene of the murder.

On the morning after the murder the manager of a restaurant found several bags of garbage near the bar where defendant Martin and co-defendant Wilson picked up Martin's girlfriend late the prior night. Inside the trash were items belonging to the victim. Also found were inside were latex gloves similar to those Martin's girlfriend used to clean her dogs.

When Martin girlfriend's asked him why he and co-defendant Wilson were so late in picking her up from the bar, defendant Martin replied "some shit happened" and co-defendant Wilson added "someone may have died tonight."

The Supreme Court held that this circumstantial evidence was not substantial circumstantial evidence, and it was insufficient to take the case to the jury. The Court in Martin cited State v. Schrock, 283 S.C. 129, 322 S.E.2d 450 (1984) which was a case which provided a strong suspicion of the defendant's guilt.

In State v. Schrock, Schrock admitted to the police that he smoked Marlboro brand cigarettes – the same brand as the cigarette butts found at the murder scene. However, a saliva test could not match a cigarette butt to the defendant. A similar footprint to Schrock's was found at the scene and nearby the scene. Schrock apparently later disposed of the clothes and shoes he had been wearing and he did not present an alibi. The Supreme Court held this evidence only raised a suspicion of Schrock's guilt and that he was entitled to a directed verdict.

In State v. Arnold, 361 S.C. 386, 605 S.E.2d 529 (2004), the Supreme Court affirmed the holding of this Court that a directed verdict should have been issued. The victim, Cox, was shot, and his body found off of a road in *Colleton County*. On the last day Cox was seen alive he borrowed a friend's BMW Z3 to go to the dentist's office. *The car*

was found in a parking lot in Johnson City, Tennessee and there was evidence the defendant telephoned a friend from 10 miles away from the car. The defendant's fingerprints were found inside the car. The Supreme Court reasoned the state only proved that the defendant was in the BMW on the last day that Cox was seen alive, and that was insufficient evidence to make this a jury question.

Similarly, in State v. Mitchell, 341 S.C. 406, 409 S.E.2d 126 (2000) a home was burglarized and two guns were stolen. Mitchell had been a guest at their several times. The day after the burglary was reported, investigators found a fingerprint on a screen leaning up against the house which matched Mitchell. *Id.* Mitchell was arrested and convicted of burglary; during his trial, Mitchell moved for a directed verdict, which was denied by the circuit court. *Id.*

The Supreme Court noted that the fingerprint was the only evidence linking Mitchell to the burglary. The Court wrote that the evidence presented was entirely circumstantial. "The fact that [Mitchell's] fingerprint was on a screen that was propped up against the house does not prove entry where [Mitchell] had been in and around [Mathis's] house at least three times prior to the burglary." *Id.* The State did not produce any evidence concerning whether the screen was on the window when the window was broken or when the screen had been removed. *Id.*" Accordingly, the Supreme Court agreed with this Court that Mitchell was entitled to a directed verdict.

In this case there was evidence that Pearson did yard work for the victim, and Pearson had been in his garage. The state tried to make much of the fact that appellant and Pearson knew each other. The state's witnesses admitted there was not any way too date when Pearson's fingerprint was placed, and no way too similarly date when appellant's

DNA got on the duct tape -- or how. If appellant's sweat or saliva or whatever else could cause a DNA "match" was transferred by Pearson onto the duct tape then appellant risked being convicted on this one false piece of seemingly damning evidence.

Unlike Mitchell, there was no evidence appellant had ever been to the victim's house. To the extent that cuts in the state's favor here in distinguishing Mitchell, it also differentiates appellant's case from the state's alleged case against Pearson as for notice, opportunity and prior presence in the victim's house and garage. The Supreme Court granted a directed verdict in yet another case where the evidence was stronger against the defendant than here in State v. Odems, 395 S.C. 582, 720 S.E.2d 48 (2011).

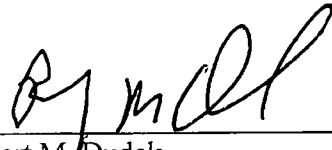
In Odems the defendant was in a car with the stolen property, fled from the police, and lied to attempt to have a woman cover from him. The Court nonetheless said this very suspicious behavior was not sufficient for the case to go to the jury.

Appellant was entitled to a directed verdict of acquittal. State v. Mitchell; State v. Arnold; State v. Bostick; State v. Schrock; State v. Odems, supra.

CONCLUSION

By reason of the foregoing arguments, a directed verdict of acquittal should be issued.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R. M. Dudek', is written over a horizontal line.

Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 11th day of March, 2014.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Clarendon County
Ralph F. Cothran, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

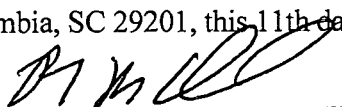
VICTOR WELDON,

APPELLANT

APPELLATE CASE NO. 2012-212563

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 11th day of March, 2014.


Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 11th day of March, 2014.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: October 24, 2021



SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332
Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

March 3, 2014

Salley W. Elliott, Esquire
Senior Assistant Deputy Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211

Re: The State v. Victor Weldon

Dear Salley:

Enclosed are two copies of the Final Brief of Appellant in the above-entitled case, which I have filed today with the South Carolina Court of Appeals.

Please call me if you have any questions.

Sincerely,

Robert M. Dudek
Chief Appellate Defender

RMD/brr

Enclosure

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Clarendon County
Ralph F. Cothran, Circuit Court Judge

THE STATE,

Respondent,

vs.

VICTOR WELDON,

Appellant.

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

DAVID SPENCER
Senior Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ERNEST A. FINNEY, III
Solicitor, Third Judicial Circuit

Sumter County Courthouse
141 N. Main Street
Sumter, SC 29150
(803) 436-2185

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
STATEMENT OF ISSUES ON APPEAL	1
STATEMENT OF THE CASE.....	1
STATEMENT OF THE FACTS	2
ARGUMENTS	
DNA evidence established substantial circumstantial evidence sufficient for a reasonable juror to find Appellant guilty as one of the three perpetrators of the brutal burglary, armed robbery, kidnapping, and grand larceny	6
CONCLUSION.....	14

TABLE OF AUTHORITIES

Cases:

<u>Holland v. United States</u> , 348 U.S. 121 (1955)	7-8
<u>Jackson v. Virginia</u> , 443 U.S. 307 (1979).....	6, 7, 8
<u>State v. Arnold</u> , 361 S.C. 386, 605 S.E.2d 529 (2004)	11
<u>State v. Bostick</u> , 392 S.C. 134, 708 S.E.2d 774 (2011).....	10, 11
<u>State v. Cherry</u> , 361 S.C. 588, 606 S.E.2d 475 (2004)	7, 8
<u>State v. Hepburn</u> , 406 S.C. 416, 753 S.E.2d 402 (2013)	7, 8
<u>State v. Lane</u> , 406 S.C. 118, 749 S.E.2d 165 (Ct. App. 2013).....	8
<u>State v. Martin</u> , 340 S.C. 597, 533 S.E.2d 572 (2000)	9, 10
<u>State v. McGowan</u> , 347 S.C. 618, 557 S.E.2d 657 (2001)	6
<u>State v. Mitchell</u> , 341 S.C. 406, 535 S.E.2d 126 (2000).....	12
<u>State v. Odems</u> , 395 S.C. 582, 720 S.E.2d 48 (2011).....	12, 13
<u>State v. Robinson</u> , 310 S.C. 535, 426 S.E.2d 317 (1992).....	6
<u>State v. Schrock</u> , 283 S.C. 129, 322 S.E.2d 450 (1984)	9, 10
<u>State v. Walker</u> , 349 S.C. 49, 562 S.E.2d 313 (2002).....	6

STATEMENT OF ISSUE ON APPEAL

DNA evidence established substantial circumstantial evidence sufficient for a reasonable juror to find Appellant guilty as one of the three perpetrators of the brutal burglary, armed robbery, kidnapping, and grand larceny.

STATEMENT OF THE CASE

Appellant Weldon was indicted by the Clarendon County Grand Jury for first degree burglary, armed robbery, kidnapping, and grand larceny. Weldon was tried with his co-defendant, Michael Pearson, before a jury on May 14-18, 2012. Both defendants were found guilty as charged. The Honorable Ralph F. Cothran sentenced Weldon to thirty years' imprisonment for burglary and armed robbery, to be served consecutively. In addition, Weldon was sentenced to concurrent sentences of twenty years' imprisonment for kidnapping and five years' imprisonment for grand larceny.

STATEMENT OF FACTS

Small businessman Edward "Slick" Gibbons (Victim)¹ was about to leave for his auto parts store on the morning of May 15, 2010, a Saturday, when three men hidden in his carport jumped him, beat him, robbed him, and stole his El Camino. ROA. III pp. 8-9.

Victim testified he was leaving his house around 6:00 to 6:30 a.m. when he bent over to put on his shoes outside his garage. Victim was jumped by three men who were hiding in the storage room in his carport. ROA. III pp. 8-9. They took approximately \$840 and beat him, asking where the rest of the money was. One of the men called him by his nickname. The men sat on him, kicked him, stomped on his chest and stomach, and wrapped duct tape around his face.² Victim saw one man with what he thought was a gun and he heard one of the robbers ask if they were going to shoot Victim. He heard the men leaving and rose to see what kind of car they had. One of the robbers said, "He's up, he's up," and a robber jumped out of the back of Victim's El Camino, beat Victim back down, and knocked him out. ROA. III pp. 14-19; pp. 24-26; p. 162.

Victim testified his El Camino was worth approximately \$6,500. ROA. III p. 29. He travelled by ambulance to the Clarendon Memorial Hospital and by helicopter to Columbia where he was in intensive care for a week and a rehabilitation center for another week. ROA. III, pp. 31-32. Victim's hip was bruised and the "bone where the hip hooks together" was cracked. Victim testified his doctor asked him if wanted to replace the hip or let it heal. His doctor told him he was "going to always limp. But [the doctor] said

¹ Victim owned Clarendon Auto Parts, a business he operated for forty-five years. His store is open six days a week and closed on Sunday, so naturally, he works six days a week. ROA. III, pp. 2-4; pp. 7-8.

² All three robbers were engaged in the lynching. As Victim explained: "[O]ne jumped on top of me and sat across my chest and was beating me there. And then one was sitting across my legs and then the bigger guy was kicking me in the side and stomping me in the chest" ROA. III, p. 15, lines 9-13.

that's your option and [Victim] told him just to try to let it heal because I knew I had to go back to work." ROA. III p. 20, line 23 – p. 21, line 3.

Victim's wife, Kay Gibbons, testified she was in bed that morning when she heard the doorbell ring. She opened the door to find her husband bloodied and wrapped in tape, struggling to stand. ROA. III pp. 64-66. She called her daughter, who called 911 and came to their house. An ambulance and law enforcement arrived and Victim was taken to the hospital. ROA. III pp. 66-68.

Cecil "Mac" Eaddy, Jr., testified he found the El Camino in the road near his farm. The car was running and the passenger door was open at 6:40 a.m., a mile and half from Victim's store. Eaddy knew Victim and knew it was Victim's car. Eaddy pulled the car off the road and took the keys to Victim's store. An employee went with him back to the car to retrieve it. ROA. III, pp. 78-83.

Investigator Ricky Richards, from the Clarendon County Sheriff's Office, testified he processed the vehicle after it was found. Investigator Richards found fingerprints on the rear quarter on the driver's side of the car, and also on the driver's side door jamb. He sent the prints to Marie Hodge, a fingerprint technician with the Sumter Police Department. ROA. III pp. 90-92. Hodge testified she examined the latent print sent by Investigator Richards and determined it matched Pearson's right thumb. ROA. III p. 131, p. 135, pp. 138-139.

Investigator Thomas "Lin" Ham, also from the Clarendon County Sheriff's Office, testified he was called to the scene on May 15, 2010. He knew Victim all his life. ROA. III, p. 103. Investigator Ham identified photographs from the crime scene depicting the black duct tape that was used and Victim at the hospital while duct tape was still wrapped

around his head. ROA. p. 107. Ham wore gloves to assist the nurse in removing the duct tape from Victim. The tape was put in a bag as evidence for SLED to process. ROA. III, pp. 108-109.

Pearson was interviewed by Investigator Kenneth Clark. Investigator Ham testified he was present for the interview. Pearson adamantly denied knowing Victim and claimed he did not know where Victim lived. He claimed to never been to Victim's home or place of business and never came into contact with Victim's vehicle. ROA. III pp. 115-116.

Investigator Kenneth Clark testified Victim described the robbers as three black males, of mid-age and medium build, who wore dark clothing and masks. ROA. IV pp. 160-162. Investigator Clark testified as to law enforcement's diligent efforts to find the perpetrators of the heinous crime. The first big break was a phone call about three individuals that were spending a lot of money. ROA. IV p. 164.

Investigator Clark testified he interviewed Pearson and Pearson denied being around Victim's property or vehicle. ROA. IV p. 167 A month later, a positive DNA hit was found which made Weldon a suspect. ROA. IV p. 173.

Investigator Clark subsequently interviewed Weldon, who prior to the DNA match had not been a suspect. Weldon denied knowing Victim, denied being around the scene, and denied knowledge of the robbery. He also claimed not to know Pearson. ROA. IV pp. 174-175. Weldon was arrested and a DNA sample was taken. Testing once again matched Weldon's DNA to the DNA left on the duct tape wrapped around Victim's head. ROA. IV pp. 176-177.

Investigator Clark discovered from landscaper Richard Gamble that Pearson had

been to Victim's house when he did landscaping work for Victim. ROA. IV pp. 178-179.

While Pearson and Weldon claimed to not know each other, Investigator Clark discovered that both men worked at the South Carolina Vocational Rehabilitation Center (Voc Rehab) in Sumter for an overlapping period of time. ROA. IV pp. 180-181.

John Hornsby testified that Pearson and Weldon worked at Voc Rehab during an overlapping time period of December 9-12, 2008. He described the facility as a metal warehouse about 150 feet by 250 feet facility with an open floor plan split into two sides. About 25 people work at the facility from 8:30 a.m. to 2:30 or 3:00. ROA. IV pp. 234-235.

Gamble testified he took Pearson with him to Victim's house to do yard work. Pearson worked with Victim doing landscaping projects at Victim's home and next door, where Victim's son lived. Gamble estimated they worked at both homes for about a week during the spring of 2010. Gamble recalled that Pearson went into Victim's garage to retrieve tools when working. ROA. IV pp. 221-225.

The duct tape removed from Victim's head was tested and found to be a one in 670 billion match with Weldon's DNA. ROA. IV pp. 244-245; p. 249.

Weldon's directed verdict motion was based solely on whether the State provided substantial circumstantial evidence to establish his identity as the perpetrator. Judge Cothran found: "The fact that [Weldon's DNA] is on the victim's head in his garage that morning gets to the jury." ROA. p. 282, lines 2-4.

ARGUMENT

DNA evidence established substantial circumstantial evidence sufficient for a reasonable juror to find Appellant guilty as one of the three perpetrators of the brutal burglary, armed robbery, kidnapping, and grand larceny.

Duct tape wrapped around Victim's head by one of the robbers contained Weldon's DNA. This evidence is some of the strongest circumstantial evidence possible to establish Weldon's presence and participation in the robbery. The trial court ruled: "The fact that [Weldon's DNA is] on the duct tape on the victim's head in his garage that morning gets to the jury." ROA. IV p. 282, lines 2-4. The trial court's ruling is not error as the DNA evidence is more than sufficient to establish Weldon's identity as one of the robbers.

When considering a motion for directed verdict, the trial court is concerned with the existence of evidence, not its weight. State v. Walker, 349 S.C. 49, 53, 562 S.E.2d 313, 315 (2002). In reviewing the denial of a motion for a directed verdict, the reviewing court must view the evidence in the light most favorable to the State. Id. If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, an appellate court must find that the case was properly submitted to the jury. State v. McGowan, 347 S.C. 618, 622, 557 S.E.2d 657, 659 (2001).

Ultimately, the question is whether, in view of the evidence in the light most favorable to the State, a rational trier of fact could find all the elements beyond a reasonable doubt. State v. Robinson, 310 S.C. 535, 426 S.E.2d 317 (1992) (finding any rational trier of fact could have found all the elements of the crime beyond a reasonable doubt in affirming the denial of a motion for directed verdict and citing Jackson v. Virginia, 443

U.S. 307 (1979)).

The United States Supreme Court noted the following:

[T]he relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. . . . This familiar standard gives full play to the responsibility of the trier of fact fairly to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts.

Jackson, at 319 (second emphasis added).

Our Supreme Court recently articulated the following concerning the standard of review:

The trial court should grant the directed verdict motion when the evidence merely raises a suspicion that the accused is guilty as suspicion implies a belief or opinion as to the guilt based upon facts or circumstances which do not amount to proof. On the other hand, a trial judge is not required to find that the evidence infers guilt to the exclusion of any other reasonable hypothesis.

State v. Hepburn, 406 S.C. 416, 753 S.E.2d 402, 409 (2013) (quoting State v. Cherry, 361 S.C. 588, 593, 606 S.E.2d 475, 478 (2004)) (citations and internal quotations omitted).

This is consistent with the United States Supreme Court's observation concerning circumstantial evidence:

Admittedly, circumstantial evidence may in some cases point to a wholly incorrect result. Yet this is equally true of testimonial evidence. In both instances, a jury is asked to weigh the chances that the evidence correctly points to guilt against the possibility of inaccuracy or ambiguous inference. In both, the jury must use its experience with people and events in weighing the probabilities. If the jury is convinced beyond a reasonable doubt we can require no more.

Holland v. United States, 348 U.S. 121, 137-38 (1955) *cited with approval in Jackson*, at 317 n.9.

“The State has the burden of proving beyond a reasonable doubt the identity of the defendant as the person who committed the charged crime or crimes.” See State v. Lane, 406 S.C. 118, 749 S.E.2d 165, 167 (Ct. App. 2013). Weldon’s DNA is on the duct tape cruelly wrapped around Victim’s head during the robbery. The most obvious inference from this evidence is that Weldon was one of the three robbers atop Victim during the crime. Hepburn and Cherry advise that the trial court does not need to find the evidence infers guilt to the exclusion of any other reasonable hypothesis.³ This Court does not need to pursue alternate theories of how Weldon’s DNA ended up on the duct tape. The most obvious inference readily supports the charges going to the jury.

Sticking to the custom of appellants as of late, Weldon argues his directed verdict case by arguing the evidence was “stronger” in other cases where the Supreme Court has reversed a conviction based on the failure to grant a directed verdict. This analysis misses the point. The determination is whether evidence supports each and every element of the offense, including the element of identity. Lane, supra. The presence of Weldon’s DNA on duct tape left on Victim’s head during the commission of the crime establishes substantial circumstantial evidence that he was one of the three robbers. In the cases Weldon relies on, there was a lack of evidence placing those appellants at the crime scene

³ The State submits Weldon’s alternate explanation is not even a reasonable hypothesis: “. . . appellant’s sweat or saliva or whatever else could cause a DNA ‘match’ was transferred by Pearson on to the duct tape . . .” (Br. of App. p. 12) (emphasis added). The State is not sure how an accidental transfer or otherwise from Pearson could place Weldon’s DNA on the duct tape wrapped around Victim’s head during the commission of the crime. Such a transfer would not even be inconsistent with guilt.

during the commission of the crime. Not so in the present case.

In State v. Martin, 340 S.C. 597, 533 S.E.2d 572 (2000), Martin borrowed his girlfriend's car the day before the murder and a similar car was seen near the murder scene, around the time of the murder. By the bar where Martin and his co-defendant picked up Martin's girlfriend, a restaurant manager found several bags of garbage containing items belonging to the victim and latex gloves similar to those Martin's girlfriend used. Martin told his girlfriend "some shit happened" and his co-defendant added "someone may have died tonight" when asked why they were late picking her up from the bar. Id., 340 S.C. at 600-01, 533 S.E.2d at 573-74.

In finding the evidence was insufficient to constitute substantial circumstantial evidence of Martin's guilt, the Supreme Court noted the following:

Most significantly, the State's evidence failed to place either defendant inside the apartment. The Solicitor himself summed up the State's failure of proof by confessing to the trial judge "we don't know which person actually held [Victim's] head in the pan of water" and "Your Honor, the whole point is we don't know if they acted in concert." Put another way, unlike the usual accomplice liability case or aiding and abetting situation, here the State had no proof that either defendant held Victim's head under water and the State had no proof that the defendants were working together to bring about the Victim's death.

Id., 340 S.C. at 602-03, 533 S.E.2d at 574-75.

Further, the Supreme Court then compared Martin to State v. Schrock, 283 S.C. 129, 322 S.E.2d 450 (1984), as follows:

In Schrock, the State presented evidence the defendant was in the area of the murders and that footprints at the scene of the crime were similar to footprints found in the area which Schrock admitted he had been walking. In this case, the

black car seen at the apartment is not identified as [girlfriend's] car. Like the footprints in Schrock, the possibility that it was the same car, without any other evidence placing the defendants at the scene is not enough evidence to place Defendant inside Victim's apartment.

Id., 340 S.C. at 602-03, 533 S.E.2d at 574-75.

While the State's admissions at trial, as noted in the Martin opinion, expose the possibility of Martin being not present or merely present during the murder, in the instant case, the reasonable inference is Weldon was present and participating in the crime. The one piece of evidence, Weldon's DNA on the duct tape, accomplishes far more than the various evidence presented in Martin to establish Weldon's presence and participation.

Martin's analysis of Schrock also exposes how the evidence in the present case is stronger than Schrock. Schrock admitted being near the crime scene and footprints were similar to footprints in the area where Schrock was walking. No evidence put Schrock at the crime scene. Schrock, supra. Weldon's DNA puts him at the scene during the robbery. Weldon's DNA left on the duct tape is far stronger evidence than the claim of "similar" footwear found in Schrock.

For similar reasons, Weldon's reliance on State v. Bostick, 392 S.C. 134, 708 S.E.2d 774 (2011) is misplaced. In Bostick, the Supreme Court found the State failed to show substantial circumstantial evidence of guilt. The victim died of carbon monoxide poisoning from arson in her house, but she had also been struck by a blunt force object. Some of her items were found in a burn pile in the yard of Bostick's mother, but no evidence established Bostick's control over the burn pile. His mother's yard was about a quarter mile away from the victim's house. He had blood on a pair of jeans. However,

when analyzed for DNA evidence, the expert was able to exclude ninety-nine percent of the population and could not actually match the blood to the victim. Accelerant was used in the arson and on the items in the burn pile, and traces of fresh gasoline were found on Bostick's shoes. The Supreme Court noted no evidence established Bostick's control over the burn pile. Id.

In the instant case, unlike Bostick, DNA evidence matches Weldon and puts him at the crime scene. The burned items could not be linked to Bostick, but the duct tape is linked to Weldon. The instant case is both markedly different and stronger than Bostick.

The evidence presented in State v. Arnold, 361 S.C. 386, 605 S.E.2d 529 (2004), likewise suffers from the inability to place the defendant at the murder scene. In that case, the murder victim, a doctor, had a clandestine affair, first with the State's chief witness and then with Arnold, in Savannah. The victim borrowed a BMW that day from a co-worker and then disappeared and was subsequently found dead off a road in Colleton County. The BMW was found abandoned in Tennessee. Arnold's thumbprint was found on a coffee cup lid found in the BMW. At the time these events occurred, Arnold travelled from Savannah to Tennessee, although the State failed to present any evidence to the jury of how close to where he was staying the abandoned car was found. Accordingly, the only evidence the jury had was that Arnold had a sexual relationship with the victim, he was in the BMW the day that the victim went missing, and he was in the same state where the BMW was found. Id., 361 S.C. at 389-90, 605 S.E.2d at 530-31.

The majority in Arnold noted that no evidence placed Arnold at the scene of the crime in Colleton County. Id., 361 S.C. at 390, 605 S.E.2d at 531. The evidence in the

present case puts Weldon at the scene of the crime during the crime. The evidence is far stronger in the instant case.

Weldon also compares this case to State v. Mitchell, 341 S.C. 406, 535 S.E.2d 126 (2000). In Mitchell, the appellant was present at the burglary victim's house on three prior occasions. The sole evidence regarding identity was a fingerprint found on a window screen propped up against the house near the broken window that was apparently the point of entry. No evidence was presented that the screen was on the window at the time the window was broken. The Supreme Court found "the fact that respondent's fingerprint was on a screen that was propped up against the house does not prove entry where respondent had been in and around the victim's house on at least three times prior to the burglary." Id., 341 S.C. at 409, 535 S.E.2d at 127.

Unlike Mitchell, no evidence suggests Weldon was ever present at Victim's house for an innocent reason. Further, because the DNA was on the duct tape wrapped around Victim's head during the crime, and not some random item outside the house, it is clear that the DNA was left during the commission of the crime.

In State v. Odems, 395 S.C. 582, 588, 720 S.E.2d 48, 51 (2011), the last case analyzed by Weldon, no evidence was presented that Odems was even at the scene of the burglary – instead he was found by law enforcement in a car with stolen goods and two burglars, and he fled. The burglars testified they picked Odems up at a gas station **after** the burglary. The burglars' prints were found on stolen items, but no fingerprints matching Odems were found. Id. Unlike Odems, Weldon is linked to the scene by DNA evidence. Evidence in this case is considerably stronger than the evidence presented in

Odems.

The trial court did not err in denying the motion for directed verdict because as the trial court aptly noted, Weldon's DNA was wrapped around Victim's head during the robbery. This evidence leads to the more than reasonable inference that Weldon was one of the three participants in this horrific crime.

CONCLUSION

For all of the foregoing reasons, the judgment and conviction of the lower court should be affirmed.

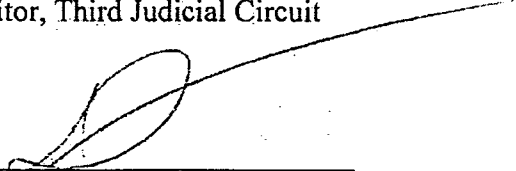
Respectfully submitted,

ALAN WILSON
Attorney General

DAVID SPENCER
Senior Assistant Attorney General
Bar # 68571

ERNEST A. FINNEY, III
Solicitor, Third Judicial Circuit

BY:



DAVID SPENCER

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

March 7, 2014

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Clarendon County
Ralph F. Cothran, Circuit Court Judge

THE STATE,

Respondent,

vs.

VICTOR WELDON,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR.

ALAN WILSON
Attorney General

DAVID SPENCER
Senior Assistant Attorney General

By: _____

DAVID SPENCER
Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

March 7, 2014

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Clarendon County
Ralph F. Cothran, Circuit Court Judge

THE STATE,

Respondent,

vs.

VICTOR WELDON,

Appellant.

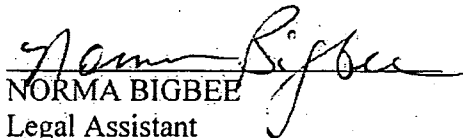
PROOF OF SERVICE

I, Norma Bigbee, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Robert M. Dudek, Esquire
Chief Appellate Defender
SC Commission on Indigent Defense
Division of Appellate Defense
P. O. Box 11589
Columbia, S. C. 29211

I further certify that all parties required by Rule to be served have been served.

This 7th day of March, 2014.


NORMA BIGBEE
Legal Assistant

Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727