

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY

Thomas A. Russo, Circuit Court Judge

 ORIGINAL

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

JACOB HEYWARD SEAY,

APPELLANT

APPELLATE CASE NO. 2014-001024

RECORD ON APPEAL

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State of South Carolina
County of Lexington

Court of General Sessions

State	)	
	)	
	)	Transcript of Record
v.	)	2012-GS-32-349
	)	
Jacob Heyward Seay	)	
	)	
<u>Defendant.</u>	)	

May 5-7, 2014
Lexington, South Carolina

B E F O R E:

The Honorable Thomas Russo, Judge; and a jury.

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Circuit Court Reporter

1 point you'll then be in a position to go back into
2 the jury room and decide this case.

3 Now, before I turn it over to the attorneys,
4 let me first inquire of the State; are there any
5 objections or exceptions to the Court's opening
6 remarks to the jury?

7 MR. ELAM: Nothing from the State, Your Honor.

8 THE COURT: Anything from the defense?

9 MR. WILLIAMS: Nothing from the defense.

10 THE COURT: All right. Thank you.

11 Now, ladies and gentlemen, if you would please
12 give the lawyers your undivided attention as they
13 address you with their opening remarks.

14 MR. BELL: Thank you, Your Honor. May it
15 please the Court.

16 Ladies and gentlemen, at the conclusion of this
17 trial, the evidence will have proved one thing:
18 Jacob Seay is the burglar. Now, over the next
19 couple of days the State is going to bring to you
20 everything that we know about this case and give you
21 the opportunity to do your job, which is come to
22 your own conclusion about the truthfulness of that
23 statement. Now, I want to be transparent. In
24 saying that we're going to bring to you everything
25 that we know, that honestly also includes things

1 that we know we don't know. I know that's a little
2 confusing, but I'm going to go on to that in a
3 minute. Over the course of the trial you're going
4 to hear from multiple witnesses, but I want to give
5 you the Monday night highlight version of what
6 you're going to hear.

7 You're going to have an opportunity to hear
8 from the victim, Ms. Dianna Owens, and she's going
9 to tell you that on August 29th, 2011, she came home
10 to a life forever changed; changed in only the way
11 that being a victim of burglary can change. She's
12 going to tell you that on an otherwise typical
13 Monday night, she got off work, picked up her two
14 young children ages two and seven at the time, and
15 she headed home. She arrives home, drives around
16 the back of her house and parks, like any other
17 night come home from work. She gets out of the
18 vehicle and she does like any other parent does and
19 that's pretend like they have eight arms and legs to
20 try to corral two young children and get them
21 inside. They go inside, the kids run off and do
22 what kids do, Ms. Owens decides she's going to tidy
23 up the house. She goes in the kitchen, decides
24 she's going to wash some dishes. She lines up at
25 the kitchen sink and it doesn't take long before she

1 gets that feeling I'm sure we've all felt, that
2 something is not quite right. She's going to tell
3 you that something caught her eye, a smudge, a red
4 smudge, on the blinds of the window above the sink.
5 She's going to tell you that she thought for sure it
6 was blood.

7 Now, after she makes that observation, she then
8 realizes, wait a second, more is wrong here, there's
9 also broken glass on the counter and in the sink.
10 Did she break a glass while she was washing the
11 dishes? She's going to tell you she didn't. She's
12 going to tell you that she pushed away the blinds,
13 and what does she see? A hole in that window. And
14 it's at that point in time she knows someone has
15 broken into her house. She knows she's not
16 bleeding, she knows her children aren't bleeding and
17 if they are bleeding, they certainly didn't reach up
18 over the kitchen and grab those blinds. So she does
19 what any parent would do, she runs back to her
20 children and check on them. At the same time, she's
21 calling 911. She checks on her children and thank
22 goodness they're okay. But when she gets into the
23 children's bedroom, she does notice two things; one,
24 another red smudge on the wall, and right near that
25 smudge is a missing laptop. In other words, her

1 child's laptop which is usually right there on the
2 desk where that smudge is, is gone, it's missing,
3 even though it was there that morning when she left
4 for work.

5 I told you she called 911. And they arrived
6 shortly thereafter, and you're going to hear from
7 several officers in this case and what they did.
8 You're going to hear from one officer who tells you
9 that he came there, looked around, and then he began
10 to process the broken window. And that's a fancy
11 word for basically look at it and see what the heck
12 happened. He begins lifting fingerprints off the
13 broken shards of glass and the remaining parts of
14 the window. He's going to tell you that he got nine
15 potential prints off of that window and those shards
16 of glass.

17 He's going to go on to tell you that he turned
18 those in to evidence and then a gentleman named
19 Duane Johnson, a 30-plus-year veteran of the FBI who
20 spent most of that time in fingerprint analysis,
21 looks at those prints that were lifted. He's going
22 to tell you that of those nine prints, five were
23 deemed useable and four of them match ed a certain
24 defendant. And how did he come about this? He's
25 going to tell you that he did two things; one is

1 that he plugged those prints into a system called
2 AFIS, and that's just a fancy acronym for
3 fingerprint matching program. So he puts in the
4 subject print here and it scrolls through until it
5 finds a match here. Duane Johnson is going to tell
6 you that that match that pops up on all four prints
7 that he deemed usable matched one person and one
8 person only, Jacob Seay. He's going to get into the
9 science and he's going to tell you all of those
10 interesting tidbits about how you go about lifting
11 fingerprints and how accurate the analysis software
12 is and all that good stuff. But I'll let you hear
13 that from his mouth. Now, what you're also going to
14 hear from Ms. Owens is that she's never seen Jacob
15 Seay before in her life and that there isn't one
16 single reason he should have ever been on the
17 property.

18 Now, let's bring it in. Why exactly are we
19 here today? You heard the judge read that notice
20 document, that indictment, and it said that we're
21 here today on a charge of burglary first. Now I
22 want to tell you a little bit about what that means.
23 And you're going to hear exactly what that means
24 from the best source of the law in this courtroom,
25 the judge. What burglary first is, the burglary

1 portion means that he broke in somebody's home
2 without their permission and that he intended to
3 commit a crime while he was inside that home. We're
4 telling you here that the crime we believe that was
5 committed was the theft of that laptop.

6 Now, the first degree part adds something too.
7 In this particular case, the first degree is reached
8 because there's two prior convictions for burglary.
9 You're going to hear madam clerk, Hope Frick, get up
10 on the stand, and she's going to read the sentencing
11 sheets to prove that there are two prior convictions
12 for burglary.

13 Ladies and gentlemen, I stand by my earlier
14 statement, and I genuinely believe that at the end
15 of this trial, if you objectively look at the
16 evidence we have, including what we don't have,
17 you're going to come to the same conclusion. And I
18 told you earlier and I don't want to be a liar, but
19 I was going to mention two things that we don't
20 have. So let me touch on those real quick. We
21 don't have pictures from the incident. The officers
22 didn't take a camera and didn't snap pictures of the
23 broken window, they didn't snap pictures of the
24 smudges of blood on the wall. We don't have
25 pictures to show you, at least not from the actual

1 incident date. I just want to be honest with you on
2 that. Second, and the other absence you're probably
3 going to be curious about, is we didn't take samples
4 of those red smudges that were on the blinds and on
5 the wall.

6 Now, I can make excuses all day and you're
7 going to hear from the officers that they aren't too
8 pleased with themselves that they didn't do it, but
9 they're also going to give you reasons as to why
10 they didn't. Once again, ladies and gentlemen, take
11 what we have, fingerprints, take what we don't have,
12 and you're still going to agree with my initial
13 statement that the evidence proves that Jacob Seay
14 is the burglar.

15 THE COURT: Thank you, Mr. Bell.

16 Mr. Williams?

17 MR. WILLIAMS: May it please the Court.

18 THE COURT: Yes, sir.

19 MR. WILLIAMS: Ladies and gentlemen of the
20 jury, you know, opening statements are where the
21 attorneys who represent the various parties get
22 their chance to first talk to you as a jury, to
23 explain to you what they view the case is about.
24 Obviously we're not presenting any evidence because
25 we haven't been sworn, there are no physical items

1 that we're handing up. The judge has spent quite
2 some time explaining what your purpose is in the
3 jury system, that being the factfinders. I thought
4 I'd be remiss if I didn't touch upon, since there
5 was such an expansion here earlier about what they
6 were going to show and what they were not going to
7 show, to tell you that you're not here to administer
8 watered-down justice either. So you're not to make
9 a decision based on the fact that the poor State
10 doesn't have pictures and that's why you should
11 accept something less; you're not here to make a
12 decision on the fact that the State doesn't have DNA
13 evidence that would connect my client to the scene
14 because, you see, that would be watered-down
15 justice.

16 The standard in a criminal case is that that
17 evidence presented to you that convinces you beyond
18 a reasonable doubt the guilt of my client for the
19 crime of which he's charged with, and that is this
20 charge that supposedly happened on August 29th of
21 2011. You're not here to judge whether or not he's
22 committed some other crime at some other time.
23 You're here to evaluate that crime.

24 I'm sure you've heard a lot of things that have
25 to do with hearsay and about rulings and things like

1 that. Well, you have to keep focused on evidence
2 which is true, you have to keep focused on what
3 you're supposed to judge and what evidence that is
4 presented which you can evaluate that leads you to a
5 conclusion based on this charge. It's kind of hard
6 to do sometimes. You're not to be swayed by a story
7 about some young lady who brought her children home
8 and opened up the door and there she finds the
9 broken glass and realizes something is wrong and
10 there's blood here. This is not a contest between
11 who can tell the best story; it's a contest about
12 what evidence that can be presented in a trial that
13 convinces you beyond a reasonable doubt as to
14 whether my client is guilty or not guilty. And I'll
15 tell you right now that they won't have, period.

16 What you will learn is that the investigator --
17 there's several police officers that come to the
18 scene. And when they come to the scene, they take
19 pictures of the events. You want to know how I know
20 this? Well, obviously we find things out in
21 discovery. They take pictures of the events, at
22 least of how the house looked, how the window
23 looked, how far off the road it was. They also
24 acknowledge the blood splatter. So this is not just
25 a situation where somebody forgot to do something.

1 They know about it, they see the broken glass, they
2 see the blood, but they don't take a DNA sample,
3 they don't take a blood sample. They take, off the
4 windowsill of the kitchen, four prints. And of
5 course they make a determination that based on those
6 four prints, that must be my client, Jacob Seay, who
7 committed the crime. It's kind of like in Bogart;
8 he rounded up the usual suspects.

9 What I want you to do is I want you to listen
10 to what the fingerprint analysis person says and how
11 he conducts a fingerprint analysis and what he can
12 determine from that fingerprint analysis because you
13 are the evaluators, aren't you? You're the ones who
14 make the determination of the truth of the case.
15 And once you get all that, even if you determine
16 that the fingerprints do match up with my client,
17 you have to determine that my client put them on the
18 windowsill and actually broke the window and went
19 inside the house and stole something on that
20 occasion. So you are the evaluator.

21 I want you to pay close attention as you listen
22 to this and determine whether or not the Lexington
23 County Sheriff's Department actually has any process
24 by which they evaluate fingerprint analysis, whether
25 or not they have manuals on it, whether or not they

1 tests on it, whether or not there's a standard that
2 they use at the Lexington County Sheriff's
3 Department. You know, we've grown up -- our
4 generation has grown up with the idea that
5 fingerprint analysis is just, well, it's there. But
6 I want you to use your minds and listen to what
7 these people say, these experts say, and then once
8 you determine that, find out whether or not the
9 fingerprint could have been transferred, whether or
10 not they're 100-percent sure that this fingerprint
11 is my client's. You see, the true indication of the
12 guilt or innocence of my client really would have
13 been whether or not they had done a blood analysis,
14 a DNA analysis. Then we wouldn't even be here
15 today.

16 So having said all of that, I'd ask that you
17 not be swayed by any fancy story -- I can tell a
18 good story too -- but that you focus on what your
19 job here is today, and that is to evaluate that
20 evidence. If you do that, that's all we can ask
21 for.

22 THE COURT: Thank you, Mr. Williams.

23 You may call your first witness.

24 MR. BELL: Thank you, Your Honor. The State
25 would call Ms. Dianna Owens to the stand.

1 THE COURT: Ma'am please come around and be
2 sworn.

3 DIANNA OWENS

4 being first duly sworn, testified as follows:

5 THE WITNESS: I do.

6 THE CLERK: Once you're seated, ma'am, speak up
7 loud and clear, state your full name, spelling your
8 last, on the record, please.

9 THE WITNESS: My name is Dianna Stanfield
10 Owens, O-W-E-N-S.

11 DIRECT EXAMINATION

12 BY MR. BELL:

13 Q. Good afternoon, Ms. Owens.

14 A. Hello.

15 Q. Ms. Owens, where do you currently live?

16 A. Old Orangeburg Road in Lexington.

17 Q. Okay. And that's in what county?

18 A. That's Lexington County.

19 Q. Okay. And who do you live there with?

20 A. Myself and I have two small children.

21 Q. Okay. Now, on August 29th of 2011, what
22 address were you living at?

23 A. The same address.

24 Q. Okay. Now, on that date, did you have reason
25 to contact the police?

1 A. Yes, I did.

2 Q. And very, very generally, what was that reason?

3 A. Well, because when I got home, as you stated
4 earlier, I noticed that the window was broken and
5 there was blood on the blinds. So I knew something
6 obviously was not right.

7 Q. Okay. Now, on that same date, August 29th,
8 2011, do you remember roughly what time you arrived
9 home?

10 A. Yeah. Well, I mean, my days are routine, so
11 normally around 6:00 or so, give or take a little
12 bit.

13 Q. And where were you coming from?

14 A. From their daycare in South Congaree.

15 Q. And I heard you say daycare. Who was with you?

16 A. Who was with me when I arrived home?

17 Q. That's correct.

18 A. Me and my two children.

19 Q. Okay. And where did you park when you got
20 home?

21 A. I always park in the back on a concrete slab.

22 Q. Okay. Now, when you pulled up on that slab,
23 did you notice anything unusual?

24 A. I did not.

25 Q. Okay. So after you parked your vehicle, where

1 did you go?

2 A. Well, I went inside and just did normal stuff;
3 take off my shoes and, you know, the kids were
4 crazy, just running around, you know, normal,
5 typical, normal stuff.

6 Q. After you got settled in a few minutes, what
7 did you do?

8 A. Well, I went to the kitchen to start dinner and
9 went to the sink just to wash dishes.

10 Q. Okay. Now, as you're washing dishes, did
11 anything unusual happen?

12 A. Right. Well, when I was washing the dishes,
13 that's when I noticed on the blinds that there were
14 blood -- like, different blood splotches on the
15 blinds.

16 Q. Now, were you bleeding?

17 A. No.

18 Q. As far as you know, were your children
19 bleeding?

20 A. No.

21 Q. Had you and your children been bleeding that
22 day or the days leading up to it?

23 A. I don't -- no.

24 Q. Okay. After you noticed that blood, what is
25 your first thought?

1 A. Well, obviously I knew that something wasn't
2 right, so I just kind of started, you know, looking
3 around, like, looking in that area.

4 Q. And what did you see, Ms. Owens?

5 A. Well, that's when I noticed the glass, because
6 I didn't notice it, you know, in the beginning. I
7 wasn't looking for glass. I was just, you know,
8 doing my normal stuff. But then that's when I saw
9 the little pieces of glass behind the -- behind the
10 sink.

11 Q. Could you expand on that a little bit? Did you
12 see big shards? little shards? a mixture?

13 A. Uh-huh, both.

14 Q. And could you say roughly where they were
15 located?

16 A. Behind my sink, and then I have, like, potted
17 plants and things on my kitchen counter, so then I
18 started to notice -- when I started moving things, I
19 started noticing more glass.

20 Q. Okay. After you saw the smudge on the blinds
21 and saw the glass around the sink and in the sink,
22 what did you do?

23 A. Well, that's when I pulled back the blinds.
24 And then that's when I noticed that the window was
25 broken.

1 Q. Now, when you first saw the window was broken,
2 how did you react?

3 A. I was panicked, I was scared.

4 Q. Did you know of any other reason why that
5 window might be broken?

6 A. No. No.

7 Q. Now, did you see a baseball?

8 A. No.

9 Q. Did you see anything that might have
10 accidentally gone through the window and broke it?

11 A. No.

12 Q. Okay. So you said you were a little panicked.
13 What did you do at that point?

14 A. I started walking around the house. Well, I
15 mean, I had my children there with me, so I started
16 walking from room to room.

17 Q. And did you find anything of note?

18 A. Right. It was the last room I went into, which
19 was my son's room, and that's when I noticed that
20 the laptop was gone.

21 Q. Okay. How old is your son?

22 A. Now he's eight.

23 Q. How old was he on the incident date; do you
24 remember?

25 A. Well, three -- he would have been five.

1 Q. Okay. Five. Is your son at the age where he
2 carries that laptop around with him?

3 A. No.

4 Q. Did he typically take it with him?

5 A. No.

6 Q. Did you ever take his laptop anywhere with you?

7 A. No.

8 Q. Is there any reason that you know of, of why
9 that laptop wouldn't be where it should be on that
10 desk?

11 A. No.

12 Q. Now, you said you also saw a smudge; is that
13 correct?

14 A. Yeah, near that outlet on the wall.

15 Q. And what wall is that?

16 A. On the wall where the computer would have been
17 plugged into, there was blood there as well.

18 Q. What did you think when you saw that smudge?

19 A. Well, I mean, obviously I knew that he had
20 taken it. You know, I felt like if there was blood
21 on the wall, then he obviously cut himself trying to
22 get in the house. So...

23 Q. You're referring to whoever --

24 A. Right.

25 Q. Who are you referring to when you say that?

1 A. The person who broke into my house.

2 Q. Okay. Now, did you call police?

3 A. I called 911. I was on the phone with 911 as I
4 was walking around the house.

5 Q. Do you know roughly how long it took for them
6 to respond?

7 A. Maybe ten, fifteen minutes. It wasn't long.

8 Q. Okay. And in the meantime while you're waiting
9 on police to arrive, did you go and pick up the
10 glass in the kitchen?

11 A. No. I didn't touch anything. I know better
12 than that.

13 Q. Did you try to clean up or --

14 A. No.

15 Q. -- move anything at all?

16 A. No.

17 Q. Did you manipulate the window itself at all?

18 A. No.

19 Q. Now, as far as you know, did your children mess
20 with the glass --

21 A. No.

22 Q. -- or the window?

23 A. No.

24 Q. Okay. After police arrived, what did you do?

25 A. Well, I just sat there with my children. My

1 son -- my daughter was too young, she didn't know
2 what was going on, but my son did and he was -- he
3 was panicked. It shook him up. So, you know, I
4 just sat there with him.

5 Q. Okay.

6 MR. BELL: Your Honor, if I could beg the
7 Court's indulgence for a moment.

8 THE COURT: Yes, sir.

9 BY MR. BELL:

10 Q. Ms. Owens, I'm going to show you two pictures.
11 The first is marked as State's 22 for identification
12 purposes. Do you recognize what this poster is
13 depicting?

14 A. Right. That's my house.

15 Q. Okay. And does -- your house and the area
16 around your house, is that fairly and accurately
17 represented in this picture?

18 A. Yes.

19 Q. Okay. Ms. Owens, I'm now showing you what's
20 marked as State's 23 for identification purposes.
21 What is this a picture of?

22 A. Right. That's my house, another shot of it.

23 Q. Does this picture also fairly and accurately
24 depict the area around your house?

25 A. Yes.

1 Q. Okay.

2 MR. BELL: Your Honor, at this point in time,
3 we'd request to move State's 22 and 23 into
4 evidence.

5 THE COURT: Any objection?

6 MR. WILLIAMS: The only objection that I would
7 have, Your Honor, is from questioning. The question
8 is whether or not the house looks the same at the
9 time that the alleged offense was committed. He
10 asked if it looks like the house, in essence, today.
11 So I think if he could clarify that...

12 MR. BELL: I'll be happy to clarify it, Your
13 Honor.

14 BY MR. BELL:

15 Q. Ms. Owens, is this an exact picture of the day
16 the incident happened?

17 A. Yes.

18 Q. I'm going to help you out a little bit.
19 This --

20 MR. WILLIAMS: Your Honor, I'd object to
21 leading.

22 MR. BELL: I'm not leading yet.

23 THE COURT: Go ahead.

24 BY MR. BELL:

25 Q. Ms. Owens, when I say is this a picture of the

1 actual incident date, I just mean, is this how your
2 house looked on the incident date?

3 A. Yes. Nothing has changed about my house.
4 That's it. I mean --

5 Q. Is this a picture of the exact date of the
6 incident?

7 A. I mean, I don't know when that photograph was
8 taken. All I can tell you is that that's what my
9 house looked like then and that's what it looks like
10 now.

11 WILLIAMS: We now have no objection, Your
12 Honor:

13 THE COURT: All right. Without objection, it's
14 in evidence.

15 MR. BELL: Your Honor, I'd apply that line of
16 questioning to both State's 22 and 23.

17 THE COURT: Okay. They're in evidence.

18 (State's Exhibit Nos. 22 and 23 admitted into
19 evidence.)

20 MR. BELL: Thank you. Request permission to
21 publish to the jury.

22 THE COURT: Yes, sir.

23 MR. BELL: Thank you, Your Honor.

24 Your Honor, if I may ask the witness to briefly
25 step down.

1 THE COURT: Ms. Owens, all I'd ask is that you
2 keep your voice up when you're away from the
3 microphone so the court reporter can hear you.
4 Okay?

5 THE WITNESS: Okay.

6 BY MR. BELL:

7 Q. Ms. Owens, what I'm presenting before the jury
8 is what is now marked as State's 22 in evidence.
9 And once again, what is this a picture of,
10 Ms. Owens?

11 A. My house.

12 Q. Okay. Would you explain to the jury the basic
13 orientation of your house? Where is the front of
14 your house?

15 A. This is the front. And this is my driveway and
16 this is where I park.

17 Q. Would you point -- or what is the name of this
18 road down here?

19 A. This is Old Orangeburg Road.

20 Q. Okay. And you pointed at the front. I know
21 this redundant, but would you please point to where
22 the back of the house is.

23 A. Right. It's back here.

24 Q. Where is the window broken located on your
25 house?

1 A. In the back.

2 Q. Okay. And where did you park your vehicle?

3 A. In the back.

4 Q. Okay. And I'm going -- this is State's 23 in
5 evidence. One more time, Ms. Owens, what does this
6 appear to be a picture of?

7 A. My house.

8 Q. And one more time, where is the front of your
9 house?

10 A. Okay. That's the front.

11 Q. Okay. And where is the back?

12 A. Right here.

13 Q. All right. Would you please explain to the
14 jury again where you parked.

15 A. Okay. Back here.

16 Q. Okay. And what is that little area back there?

17 A. It's just a concrete slab. There's nothing
18 back there.

19 Q. And would you just roughly point to where the
20 window was that was broken?

21 A. In the middle here, sort of right here.

22 (State's Exhibit Nos. 1-9 marked for
23 identification.)

24 Q. Okay. Ms. Owens, you can take a seat. I'm
25 handing you a stack of photographs labeled State's 1

1 through 9 for identification purposes. Would you
2 please take a moment to look through those pictures?

3 A. Okay.

4 Q. If I may borrow those from you to show defense
5 counsel.

6 MR. WILLIAMS: Your Honor, provided there's a
7 proper foundation laid, the only ones we'd have an
8 objection to would be State's Exhibit No. 8 and 9.

9 THE COURT: What's the basis of the objection?

10 MR. WILLIAMS: It would appear to be the
11 solicitor performing some sort of investigative work
12 on his own. I can't cross-examine the solicitor,
13 Your Honor.

14 THE COURT: Well, I'll allow the solicitor to
15 question the witness and see if the appropriate
16 foundation is laid.

17 MR. BELL: Thank you, Your Honor.

18 THE COURT: And I'll withhold ruling on that
19 while we go through that.

20 MR. BELL: I beg the Court's indulgence one
21 moment.

22 BY MR. BELL:

23 Q. Ms. Owens, I handed you what's marked as
24 State's 1 through 9 for identification. Did you
25 have an opportunity to look through those pictures?

1 A. Yes.

2 Q. Okay. Now, were you present when assistant
3 solicitor Robert Elam, myself, an investigation, and
4 Sergeant Todd Garrick arrived at your home?

5 A. Yes.

6 Q. Were you there when the pictures were taken by
7 that investigator?

8 A. Yes.

9 Q. Okay. Do those pictures fairly and accurately
10 represent your house and surroundings on the day
11 those pictures were taken?

12 A. Yes.

13 MR. BELL: Your Honor, at this time, we would
14 move for State's 1 through 9 into evidence.

15 THE COURT: All right. And what were the two
16 that you objected to?

17 MR. WILLIAMS: Your Honor, the two I objected
18 to, I believe, were 8 and 9 which were a picture of
19 the solicitor doing something. In regards to the
20 question on the other exhibits, again the objection
21 is he's just asked about if these pictures
22 accurately depict how her residence --

23 THE COURT: All right. From now on, your
24 questions need to relate to the scene at the time of
25 the crime. Do these fairly and accurately represent

1 what it looked like at the time of the incident,
2 that's the question that needs to be answered, not how
3 it looked today.

4 MR. BELL: Your Honor, these pictures, just for
5 clarification purposes, were not taken on the
6 incident date. They were taken here recently. Are
7 you --

8 THE COURT: I understand that. But there's a
9 whole difference if, for example, a crime scene is
10 at my house and out behind my house and my house is
11 completely wooded at the time but then you come
12 three years later and take pictures and I've
13 cleared my property.

14 MR. BELL: I understand your point, Your Honor.

15 THE COURT: That's what I'm talking about. It
16 doesn't be taken at the time, but that it accurately
17 reflects what it looked like at the time.

18 MR. BELL: I understand, Your Honor.

19 THE COURT: Okay.

20 BY MR. BELL:

21 Q. Ms. Owens, we're going to revisit this question
22 real quick. Once again in State's 1 through 9 for
23 identification, do -- the pictures there that were
24 taken, do they accurately and fairly represent your
25 house and the surroundings, even on the incident

1 date, August 29th, 2011?

2 A. Yes.

3 MR. BELL: Your Honor, at this point in time
4 we'd move State's 1 through 9 into evidence.

5 THE COURT: Okay. And let me look at the two I
6 had in my hand.

7 MR. BELL: This is State's 8 and 9.

8 THE COURT: Y'all come up here.

9 (Sidebar conference.)

10 THE COURT: I'm going to sustain the objection
11 as to 8 and 9 and allow 1 through 7 in. So 1
12 through 7 is without objection.

13 (State's Exhibit Nos. 1 - 7 admitted into
14 evidence.)

15 MR. BELL: I beg the Court's indulgence one
16 more moment.

17 Your Honor, we'd request permission to publish
18 these pictures to the jury.

19 THE COURT: Sure.

20 MR. BELL: Thank you, Your Honor.

21 BY MR. BELL:

22 Q. Ms. Owens, I appreciate you being patient with
23 me. As soon as this heats up, I'm going to go
24 through some of these pictures you just had a chance
25 to review.

1 That's not a fantastic picture. Ms. Owens,
2 this is marked as State's No. 1. What is this a
3 picture of?

4 A. My home.

5 Q. And what side of your home is that?

6 A. The front.

7 Q. Okay. This is marked as State's No. 2. What
8 is this a picture of, Ms. Owens?

9 A. The back of my home.

10 Q. Okay. Now, starting from that door on the far
11 left of the home, would you count over the windows
12 and say which window it was that was broken.

13 A. It's the first window after the door on the
14 left.

15 Q. Okay. And I apologize for reaching, but I
16 think I left my laser pointer. Is it this one
17 straight above me?

18 A. Right. Yes.

19 Q. Ms. Owens, roughly how long have you lived in
20 that home?

21 A. Now about five years or so.

22 Q. Do you know roughly how high that window is off
23 the ground?

24 A. Well, it's taller than me and I'm five-six.
25 I'm going to say about six foot or so.

1 Q. If you wanted to reach out and touch the bottom
2 portion of that glass, how would you hold your arm?

3 A. I'd have to reach above me like that.

4 (Demonstrating)

5 Q. Could you hold your arm straight out and touch
6 it?

7 A. No.

8 Q. Are you indicating that you have to hold your
9 arm at an upward angle?

10 A. Yes.

11 Q. Now, in the time that you've lived in this
12 house, especially with your children, have you ever
13 noticed your children running by and touching that
14 window?

15 A. No, because they could not reach it.

16 Q. Have you ever seen their friends run by and
17 touch that window?

18 A. No.

19 Q. Has it ever stood out to you that maybe one of
20 their friend's parents walked by and touched that
21 window?

22 A. No.

23 Q. In the entire time that you've lived in that
24 house, have you ever seen somebody just walk by and
25 sort of nonchalantly touch that window?

1 A. No.

2 Q. Ms. Owens, this is State's No. 3, technology at
3 its finest. Once again, what is this a picture of?

4 A. The back of my house.

5 Q. Okay. I'm going to do the same thing I did a
6 moment ago. Starting from that far porch area, can
7 you count over and identify which window was the one
8 that was broken?

9 A. Right. It's the first window after the door.

10 Q. Okay. Are you indicating this window straight
11 above my finger?

12 A. Yes. Uh-huh.

13 Q. I apologize for doing that.

14 Now, you testified earlier that you went up to
15 your kitchen sink and that's when you started
16 noticing -- you noticed a red smudge and broken
17 glass. What is this a picture of? This is marked
18 as State's No. 6.

19 A. That's my kitchen window.

20 Q. Okay. Is that the sink that you were standing
21 at?

22 A. Yes.

23 Q. Okay. Are those the same blinds you had? I
24 know you can't see them well.

25 A. They are, yes.

1 Q. This is State's No. 7. What is this a picture
2 of?

3 A. That's my window.

4 Q. Well, this is the window that was broken?

5 A. Yes.

6 Q. Roughly where in that window was the break?

7 A. Towards the bottom left-hand -- like, in the
8 corner.

9 Q. Are referring --

10 A. Where that sticker is. You see it?

11 Q. Right in this area?

12 A. Yes. Uh-huh.

13 Q. How big of a hole was it?

14 A. I'd say the size of a ball, like a volleyball
15 or something.

16 Q. Okay. Now, could a person get their body
17 through that hole?

18 A. No.

19 Q. Roughly what size was that hole? Do you know
20 what you could get through that hole?

21 A. Well, a hand.

22 Q. And what would be the purpose of getting your
23 hand through that hole?

24 A. To open that window, I'm assuming.

25 Q. Was that window locked?

1 A. Yes.

2 Q. This is State's No. 4. What is this a picture
3 of?

4 A. That's my son's bedroom.

5 Q. Would you very generally refer to where the
6 laptop was located?

7 A. Where the window is in the room, on the desk
8 right below that.

9 Q. You're referring to this general area?

10 A. Yes.

11 Q. This is State's 5. You really cannot see that
12 worth a lick, but what is that a picture of?

13 A. That's the area where the desk is where the
14 laptop was.

15 Q. Okay. And did you see anything else other than
16 the missing laptop in that area?

17 A. No, that's it.

18 Q. You testified earlier that you saw a red smudge
19 somewhere else in the room. Where was that red
20 smudge located?

21 A. On the outlet on the wall.

22 Q. Is that picture in this picture? Is the
23 location pictured in this picture?

24 A. No.

25 Q. In any of the pictures I've showed you, was

1 that area located?

2 A. No.

3 Q. Okay. As far as the outlet, where in the
4 house, if you were looking around from this picture,
5 would it be located?

6 A. Towards the right on the right side on the
7 other wall.

8 Q. Okay. Ms. Owens, have you had a chance to
9 think back through anybody that you might have let
10 on your property in the months or even years
11 preceding this incident?

12 A. Oh, yeah. Yeah. But, I mean, there's no one
13 that really ever comes on my property.

14 Q. Okay. Have you ever hired contractors to come
15 out to your house prior to this incident day?

16 A. There was a guy that would come out and cut my
17 grass in the summer.

18 Q. Did you know that gentleman?

19 A. Yes.

20 Q. Do you know his name?

21 A. Yeah. Uh-huh. Lee Nelson.

22 Q. Okay. Now, is he the same one that always did
23 the lawn care for you?

24 A. Yes.

25 Q. Were you present and home when he was doing

1 that lawn care?

2 A. Oh, yeah. Uh-huh.

3 Q. Did you ever catch him on your property when he
4 shouldn't have been there?

5 A. No.

6 Q. Did he have any additional crew members that
7 worked with him?

8 A. No.

9 Q. Did he ever send somebody instead?

10 A. No.

11 Q. Now, we touched on it earlier, but are there
12 any friends or family that you can think of that
13 have been to your house that would have put their
14 hands on that window?

15 A. No.

16 Q. Did you typically put your hands on the
17 exterior of that window?

18 A. No.

19 Q. Now, did you build this house?

20 A. No.

21 Q. Do you know who you purchased it from?

22 A. Yes.

23 Q. Did you personally know them?

24 A. No. Not before I bought the house, no.

25 Q. Did you have a chance to get to know them

1 during the purchase of your house?

2 A. Yes.

3 Q. Did you spend any time with them?

4 A. Just if I saw them outside, out and about or
5 something like that, but it was very rare.

6 Q. Okay. And without telling me what anybody else
7 has told you, as far as you know did those
8 individuals have any relationship to Jacob Seay?

9 A. No.

10 MR. WILLIAMS: Objection hearsay, Your Honor.

11 It's calling for hearsay.

12 THE COURT: Sustained as to hearsay. She can
13 testify as to what she knows.

14 BY MR. BELL:

15 Q. Had you ever seen Jacob Seay on the property
16 prior to moving in?

17 A. No. I'd never met him. I don't know him.

18 Q. In any of your business dealings leading up to
19 the purchase of that house, did you ever see Jacob
20 Seay?

21 A. No.

22 Q. Okay. Ms. Owens, how has this incident
23 affected you?

24 A. Well, obviously, it brings up a lot of
25 suppressed memories. Mainly it affects my son

1 because he still has nightmares that somebody is
2 going to break in and kidnap him. And he still
3 sleeps with me randomly. So that affects me in the
4 way that it affects him.

5 Q. As far as the broken glass and the red smudges
6 go, who had to clean those up?

7 A. Me.

8 Q. Now, did you clean them up the night of the
9 incident or did you wait some time?

10 A. Well, I cleaned it up after everybody had left
11 and, you know, got what they needed to get out. You
12 know, I just didn't want to leave that there for
13 them to look at.

14 Q. Ms. Owens, since this incident occurred, were
15 you made aware that someone was accused and arrested
16 on this charge?

17 A. Yes.

18 Q. Has -- have you been shown a picture of that
19 suspect?

20 A. Yes.

21 Q. Do you see anybody in this courtroom who
22 matches the person that you saw in that picture?

23 A. Yes.

24 Q. Would you please point in their general
25 direction?

1 A. Right there. (Indicating)

2 Q. Could you describe an article of clothing they
3 might be wearing?

4 A. A black jacket, button-down shirt.

5 Q. You're referring to the gentleman sitting with
6 defense counsel?

7 A. Yes.

8 Q. Have you ever seen him before?

9 A. No.

10 Q. Is there any reason he should ever be on your
11 property?

12 A. No.

13 MR. BELL: I beg the Court's indulgence one
14 moment.

15 Ms. Owens, if you'd please answer any questions
16 defense counsel has for you.

17 MR. WILLIAMS: May it please the Court.

18 THE COURT: Yes, sir.

19 CROSS-EXAMINATION

20 BY MR. WILLIAMS:

21 Q. Ms. Owens, so you don't recognize my client,
22 Jacob Seay, do you? You've never seen him before?

23 A. No.

24 Q. So he's never been to your house, as far as you
25 know?

1 A. Not with me there, no.

2 Q. Let me ask you about the pictures that you were
3 identifying. Your son who has nightmares, have you
4 taken him to a doctor to have him helped out because
5 of the nightmares?

6 A. No.

7 Q. Referring to Plaintiff's [sic] Exhibit No. 4,
8 that's a picture of the desk, right --

9 A. Yes.

10 Q. -- where the computer was taken?

11 A. Yes.

12 Q. What's there sitting on the desk?

13 A. Right now in the picture?

14 Q. What's on the -- yes.

15 A. Well, that's another laptop that I purchased.

16 Q. And what was the distinguishing characteristic
17 of the laptop that was taken out of your house
18 versus the laptop which is on this desk today?

19 A. Can you rephrase that?

20 Q. What kind of laptop is this? What's the name
21 of this laptop that your son has now?

22 A. HP, I think. I don't even know. HP, I guess.

23 Q. And what's the name of the laptop that was
24 stolen from your house?

25 A. A Toshiba.

1 Q. And did you tell the police officer that it was
2 a Toshiba when he came and investigated the
3 burglary?

4 A. Yeah. I'm pretty sure that I did, yeah.

5 Q. All right. Do you remember the police officer
6 that you talked to?

7 A. No.

8 Q. Was it the first officer that came on the
9 scene?

10 A. I feel -- yeah. I feel sure it was, yeah.

11 Q. All right. Does the name Reggie Ward sound
12 familiar?

13 A. I think so.

14 Q. And would he have gotten the information about
15 the stolen laptop?

16 A. Yes, sir.

17 Q. So he'll be able to testify to the information
18 he got; right?

19 A. Right.

20 Q. Now, referring to plaintiff's -- I'm sorry. I
21 keep saying Plaintiff's --

22 MR. WILLIAMS: I'm sorry, Your Honor. It's a
23 sticker issue.

24 BY MR. WILLIAMS:

25 Q. State's Exhibit No. 7, which is the picture of

1 the kitchen window, correct --

2 A. Yes.

3 Q. -- you said this picture looks just like it did
4 back in August of, what, 2011?

5 A. Right. Yes.

6 Q. It looks the same?

7 A. Uh-huh.

8 Q. The blinds that are in this -- you said these
9 are the same blinds.

10 A. Yes.

11 Q. They're vertical blinds, aren't they?

12 A. Yes.

13 Q. And they're the same blinds that were there
14 when someone came through the window; correct?

15 A. Yes.

16 Q. And they still have the same red smudge on them
17 that they had back when the break-in occurred?

18 A. Not today, no.

19 Q. And how is the smudge no longer on the blinds?

20 A. Well, because I wiped it off.

21 Q. When did you wipe it off?

22 A. After I knew the detectives had gotten
23 everything that they needed to get.

24 Q. And had they gotten everything that they needed
25 to get?

1 A. As far as I knew, yeah. Uh-huh.

2 Q. Now, the picture which is referred to as
3 State's Exhibit No. 7 does not appear to be a broken
4 window, obviously.

5 A. Right.

6 Q. So the window that we're referring to would be
7 broken at the time that you came home; right?

8 A. Right.

9 Q. And you did point to the panel, the left lower
10 panel, as being the one that was broken?

11 A. Yes.

12 Q. And you described it as the size of a baseball?

13 A. Like a volleyball size.

14 Q. Volleyball size?

15 A. Well, you know, something like that. It was
16 bigger than a baseball. (Demonstrates)

17 Q. Do you know how big a volleyball is? Let me
18 ask you to look at that again.

19 A. Something like that. Uh-huh.

20 Q. You're telling me that the break was as big as
21 a volleyball?

22 A. It was bigger than a baseball, so there were a
23 lot of broken pieces out of it.

24 Q. But even though there were a lot of broken
25 pieces out of it, when you came into the kitchen,

1 you didn't see it immediately; right?

2 A. No. No, not at first.

3 Q. Now, you've already talked about the height of
4 the window being approximately six-feet tall?

5 A. Right.

6 Q. All right. So from the ground up to the window
7 ledge is about six feet?

8 A. Right.

9 Q. And you've seen the questioning dealing with --
10 I guess about how you would have to reach your arm
11 up.

12 A. Right.

13 Q. Did you see the police officer collect
14 fingerprints from the scene?

15 A. Yes.

16 Q. Where did he collect those fingerprints from?

17 A. Looked like from both inside and outside.

18 Q. So there was black stuff on the inside and
19 black stuff on the outside?

20 A. Yes.

21 Q. Now, obviously, you're not a fingerprint
22 analysis, so you don't know where the prints were
23 that he would read were -- whether or not they were
24 inside or outside. He'll have to testify to that.

25 A. Right.

1 Q. The lock which is on the window is at least one
2 other pane beyond the pane which was broken, isn't
3 it?

4 A. Okay. Repeat that.

5 Q. You have two panes before you get to the middle
6 of the window?

7 A. Uh-huh.

8 Q. You said the one that was broken was the one on
9 the bottom; is that correct?

10 A. Uh-huh. Yeah.

11 Q. So you start off with the proposition that the
12 bottom of the window is six feet off the ground;
13 right?

14 A. Right.

15 Q. And then there's the broken windowpane and then
16 there's another windowpane; is that correct?
17 There's one above it.

18 A. Right. Right.

19 Q. And then you get to the lock?

20 A. Uh-huh.

21 Q. So how tall do you think a person would have to
22 be to be able to unlock the lock?

23 A. Well, there was a chair right underneath the
24 window, so -- I mean, there was a plastic chair.
25 So, you know, I was assuming that someone had used

1 that chair to get in there.

2 Q. So you were assuming someone used the plastic
3 chair because nobody really could get up there and
4 reach through that without standing on something
5 like the plastic chair?

6 A. Probably.

7 Q. Tell me about this plastic chair. What did the
8 plastic chair look like?

9 A. Just a plastic chair that you would keep on
10 your lawn.

11 Q. Well, is it a woven chair? Is it a --

12 A. No.

13 Q. All right. Is it a lounge chair?

14 A. No. Just -- just a, you know, cheap chair
15 you'd find at Walmart, I guess, just plastic.

16 Q. Would it be one of those -- is it white by any
17 means?

18 A. It's tan.

19 Q. Okay. Would the officer -- I assume the
20 officer would have fingerprinted that also, wouldn't
21 he? Since you said he probably stood on that or she
22 stood on that, did you observe that?

23 A. No.

24 Q. Did you point out to the officer that they must
25 have used the chair to get inside the kitchen

1 because the height would be too tall without
2 standing on something? Did you point that out to
3 the officer?

4 A. I -- yes. I think I might have mentioned that.
5 Yes.

6 Q. So there would be a reflection in the incident
7 report as well as from the testimony of the officer
8 that that discussion was carried on; right?

9 A. Right.

10 Q. And that would be Officer Ward again?

11 A. Yes.

12 Q. Did you tell that information to Investigator
13 Garrick, the nice-looking gentleman in the striped
14 tie and the blue blazer?

15 A. Did I tell him what; about the --

16 Q. That same information. Didn't he come out to
17 the house that same day?

18 A. Yes.

19 Q. So he would have been presented when you were
20 having these discussions about standing on the chair
21 and -- like that?

22 A. I think so. I -- yeah, I guess.

23 Q. Would he also have been present when the
24 fingerprint analysis was being done?

25 A. Honestly, I don't know. There were several

1 people there.

2 Q. Did you tell him about the type of computer
3 that was taken?

4 A. Who?

5 Q. Investigator Garrick.

6 A. I don't remember. I do not remember.

7 Q. Do you remember who you talked to?

8 A. I talked to several people.

9 Q. Now, when you made your 911 call -- do you know
10 if there's a recording of your 911 call?

11 A. I don't know.

12 Q. Well, obviously if you made your 911 call, it
13 would be -- whatever was going on would be immediate
14 at the time you said it, right, as opposed to three
15 years later; right?

16 A. Right. Uh-huh.

17 Q. So you don't know if we're going to have a
18 recording to listen to about your 911 call?

19 A. I don't know if there is one. I don't know.

20 Q. Let me ask you about the glass. Obviously you
21 said the glass was behind the sink. So it wasn't in
22 the sink; right?

23 A. No.

24 Q. It was behind the sink. How much of a
25 splashboard do you have behind the sink? How tall

1 is your splashboard?

2 A. I'd say like that. (Indicating)

3 Q. And what's the gap between your sink and your
4 splashboard?

5 A. Between the sink and the splashboard?

6 Q. Yes.

7 A. Oh, you mean -- oh. I don't know. It was
8 something like this, I guess. (Indicating)

9 Q. So you're pointing out about six inches from
10 your sink to your splashboard?

11 A. Uh-huh.

12 Q. So all the glass that you would have fallen out
13 from that broken window would be between the sink
14 and the splashboard; right?

15 A. Yeah. It was all -- it was all on the counter.
16 It was all over it.

17 Q. So it was on the counter also?

18 A. On the counter, but most of it was behind
19 stuff.

20 Q. Okay. And it's your testimony that you didn't
21 touch anything when you got there, but you left that
22 to law enforcement to deal with?

23 A. Right.

24 Q. So do you recall watching whether or not law
25 enforcement moved any items around or how they

1 conducted their fingerprint analysis?

2 A. I don't know.

3 Q. Well, was your window still locked?

4 A. I don't -- I don't know.

5 Q. Well, you're indicating to the jury and to the
6 Court that what happened was somebody stepped on the
7 plastic chair, broke the bottom windowpane, stuck
8 their arm up through the window and attempted to
9 unlock the window, came in through the window, and
10 then stole your son's computer; right?

11 A. Yeah. I mean, that's what it appears. Yeah.

12 Q. But the window was down, wasn't it?

13 A. My window? Yes.

14 Q. And you don't recall whether or not the window
15 was locked or unlocked?

16 A. It was locked when I left because I never
17 unlock my windows.

18 Q. Now, how did the perpetrator get out of the
19 house?

20 A. I don't know.

21 Q. Was your door unlocked?

22 A. When I got home?

23 Q. Yes.

24 A. I can honestly answer that I don't know. And
25 the reason that I don't know is because when I put

1 my key in my lock, I don't know if it was -- I don't
2 know if this is making sense. But I didn't just
3 grab my door to go in. Like, I always just put my
4 key in and turn it to get in. So if it was
5 unlocked, I wouldn't have known. The dead bolt was
6 not; I don't ever lock the dead bolt.

7 Q. So someone could have come in through the door,
8 couldn't they?

9 A. Could have come in through the door?

10 Q. Right.

11 A. No, they couldn't have come in through the
12 door. They could have gone out of the door.

13 Q. Well, you can't testify that you can tell the
14 difference between it being locked and unlocked in
15 regards to when you touched the doorknob with the
16 key, can you?

17 A. They couldn't come in because when I leave my
18 home, I always lock my door.

19 Q. But you don't remember checking it that
20 particular day when you left or after the police
21 left or, I guess, when you got home, any of those
22 three occasions, to see whether or not it was locked
23 or unlocked; is that right?

24 A. When I got -- I don't know. You're confusing
25 me a little bit.

1 Q. Did you ever check the doorknobs to see if they
2 were all locked when you were walking around the
3 house?

4 A. No.

5 Q. Do you have screens on your windows?

6 A. Yes.

7 Q. Did someone cut the screen before they broke
8 the window over the kitchen window [sic]?

9 A. I don't know.

10 Q. Well, you can't get through the window if the
11 screen is still attached unless you remove the
12 screen, can you?

13 A. Right. Uh-huh.

14 Q. Do you recall when you came in whether the
15 screen was still attached or not?

16 A. I don't -- oh, gosh. I don't recall the screen
17 being attached, no.

18 Q. Is there a screen there now?

19 A. There is now, yeah. I had to go buy another
20 one.

21 Q. Are you saying that there was something wrong
22 with the screen because of someone breaking through
23 the screen?

24 A. Yeah, because there wasn't one there when I --
25 yeah. When I -- I mean, there wasn't one there

1 anymore.

2 Q. Anymore?

3 A. Uh-huh.

4 Q. So you're saying there was a screen there at
5 one point in time?

6 A. Yeah. Uh-huh.

7 Q. And do you remember if that screen was there
8 before someone went through the window?

9 A. Yes.

10 Q. So did you tell the police officer that someone
11 took your screen off your window before they broke
12 the window?

13 A. I don't remember.

14 Q. Did you look around the house to see if there
15 was a screen around the house?

16 A. No. There was no screen.

17 Q. Did you look?

18 A. Yeah. I mean, I would have seen it.

19 Q. Did you see the police looking for the screen
20 which had been removed?

21 A. I don't know.

22 Q. Were there any pry marks on the window frame
23 that would enable someone to remove the screen?

24 A. I don't know. Not that I'm aware of, no.

25 Q. Well --

1 A. Well, there -- in the pane -- there was a
2 little bend mark in the pane though.

3 Q. In the where?

4 A. One of the little white things. I don't know.
5 Whatever you call that in the window, the little
6 divider things. There was a white piece that was
7 bent. Yeah.

8 Q. How do your screens attach to your window to
9 your house?

10 A. I don't know. I think they just pop in and
11 out, as far as I know.

12 Q. Well, don't you have a little metal -- I guess
13 it's not really a U. But don't you have a little
14 metal pice which hooks to a screw which is in the
15 window frame?

16 A. Huh-uh. My screens just kind of pop in and
17 out.

18 Q. All right. So you can just pop them in and pop
19 them out from the outside without using a
20 screwdriver or anything like that?

21 A. I think so, yeah.

22 Q. Would the screen that you had on your kitchen
23 window be identical to the screens which are on your
24 window now?

25 A. Probably not. I mean, because I had to buy --

1 someone had to go buy -- I got someone to replace
2 the window and everything on it.

3 Q. Okay. So I guess what I'm asking -- you're
4 saying that the screens which are on your kitchen
5 window are different from the other screens on your
6 house; is that what you're telling me?

7 A. I don't know much about screens. I didn't put
8 it on; I got somebody to put it on for me.

9 Q. Referring to State's Exhibit No. 6, is that an
10 accurate depiction of the distance between your sink
11 and the splashboard?

12 A. Yes. Uh-huh.

13 Q. Now, the screens that you had put on, you just
14 had one screen put on your kitchen window?

15 A. Right. Uh-huh.

16 Q. Did you ever clean your windows?

17 A. No. I need to.

18 Q. Outside, you never pressure-washed your vinyl
19 or your windows or anything?

20 A. Not with pressure, no. Huh-uh.

21 Q. How did you do it?

22 A. I had one of those spraying things like you
23 would use to kill bugs and things like that, and I
24 would just, you know, put stuff in there, like a
25 solution in there, to do it.

1 Q. Did you ever wipe it off?

2 A. No.

3 Q. In the pictures that the solicitor was asking
4 you about, the aerial depiction of your house,
5 there's a house right across from your house, isn't
6 there?

7 A. Yes.

8 Q. With a gentleman who has a white either
9 Explorer or some sort of --

10 A. Right. Uh-huh.

11 Q. Who lives there?

12 A. Hutchins, David Hutchins.

13 MR. WILLIAMS: That's all of the questions I
14 have, Your Honor.

15 THE COURT: Anything on redirect?

16 MR. BELL: Thank you, Your Honor. Briefly.

17 REDIRECT EXAMINATION

18 BY MR. BELL:

19 Q. Ms. Owens, what was the date of this incident
20 again?

21 A. August 29th of '11.

22 Q. Roughly how many years ago is that?

23 A. About three.

24 Q. Admittedly, is your memory a little foggy on
25 details?

1 A. Very much.

2 Q. Typically when you were to leave your house for
3 the day, would you lock the doors?

4 A. Yes.

5 Q. Now, there's some argument as to what size the
6 hole is. But when it comes down to it, was that
7 hole big enough for someone to stick their arm
8 through?

9 A. Yes.

10 Q. Would it have to be a tiny person?

11 A. When you say tiny, what do you mean?

12 Q. In other words, could an average-size human
13 being get their arm through?

14 A. Yes. Yes. Uh-huh.

15 Q. Okay. Now, if there was a screen on the
16 window, could something have busted through from the
17 outside?

18 A. Well, yeah. Yeah. I mean, I guess if they had
19 an instrument or something to cut through it, they
20 could. Yeah. But...

21 Q. But as far as you remember, there was no damage
22 to the screen?

23 A. Huh-uh.

24 Q. Okay. And do you know for a fact that your
25 son's laptop was in his room when you left to go to

1 work that day?

2 A. It was there that morning. Right.

3 Q. Was it missing when you came home?

4 A. Yes.

5 MR. BELL: No further questions.

6 MR. WILLIAMS: Just one question, Your Honor.

7 RECROSS-EXAMINATION

8 BY MR. WILLIAMS:

9 Q. The solicitor was just asking you about no
10 damage to a screen. Did you tell me that there was
11 a screen on and that you saw the screen?

12 A. The screen issue -- when I got home, there
13 wasn't a screen there. There wasn't a screen.

14 Q. So you don't know anything about anything
15 cutting through a screen or --

16 A. No. No. Huh-uh. Huh-uh.

17 MR. WILLIAMS: That's all I have, Your Honor.

18 THE COURT: All right. Thank you very much,
19 ma'am. You may step down.

20 Call your next witness.

21 MR. BELL: Your Honor, the State would call
22 Master Deputy Reginald Ward.

23 THE COURT: All right. Sir, please come around
24 to be sworn.

25 REGINALD WARD

1 being first duly sworn, testified as follows:

2 THE WITNESS: I do.

3 THE CLERK: Have a seat up there. Speak up
4 loud and clear and state your full name, spelling
5 your last on the record, please.

6 THE WITNESS: Reginald Lloyd Ward, W-A-R-D.

7 DIRECT EXAMINATION

8 BY MR. BELL:

9 Q. Good morning.

10 A. Good morning.

11 Q. Judging by your uniform, who are you currently
12 employed with?

13 A. Lexington County Sheriff's Department.

14 Q. What's your current rank and title?

15 A. Master deputy.

16 Q. Okay. On August 29th of 2011, were you
17 employed with Lexington County Sheriff's Department?

18 A. Yes, I was.

19 Q. Do you remember what your rank and title was on
20 that date?

21 A. Master deputy.

22 Q. Okay. Now, on that date did you have reason to
23 respond to Old Orangeburg Road?

24 A. Yes, sir, I did.

25 Q. Do you know what town that's in?

1 A. It's in the upper Edmond community of Lexington
2 County.

3 Q. And is that within Lexington County Sheriff's
4 Department's jurisdiction?

5 A. Yes, sir, it is.

6 Q. Okay. Now, would you mind telling the jury a
7 little about your background?

8 A. I've been employed by Lexington County
9 Sheriff's Department for approximately 32 years.
10 During that time I spent most of that on road
11 patrol. And I've been in several different
12 capacities while employed with the sheriff's
13 department on the road patrol.

14 Q. And would you just briefly comment on some of
15 the training and continuing education that you go
16 through for your job?

17 A. Well, I've been through a number of courses
18 that the South Carolina Criminal Justice Academy
19 provides for; basic training and advanced training
20 in certain areas such as burglary investigation, a
21 few other areas pertaining to other criminal type of
22 investigations, some independent training also from
23 other agencies, some training from other entities
24 that provide training.

25 Q. Thank you.

1 Now, on August 29th, 2011, why did you respond
2 to Old Orangeburg Road?

3 A. I was dispatched by our communications center
4 to go and meet a Ms. Dianna Owens in reference to a
5 break-in to her residence at that address.

6 Q. Do you recall where you parked?

7 A. She had a driveway. If you're looking at the
8 front of her house from the road, she has a driveway
9 that goes up the right side of her house. I drove
10 up that driveway and parked close to the house but
11 not passing the house, so I would say I'd be in the
12 front yard.

13 Q. Did you meet with the homeowner when you came
14 up?

15 A. I did. She met me at the front door.

16 Q. Okay. Where did you enter the house through?

17 A. The front door.

18 Q. Anything unusual on the outside?

19 A. Not from that vantage point.

20 Q. Okay. After you went inside the house, what
21 happened?

22 A. Ms. Owens showed me about the house. She took
23 me into one of her children's bedrooms. And while
24 in there, as we looked about the room, I noticed a
25 small smear of what appeared to be a bloodstain,

1 probably an inch but no bigger. It was probably
2 about chest high on one of the bedroom walls just
3 behind the small television set.

4 Q. Anything else of note in that room?

5 A. Nothing outstanding in that room.

6 From there we went into a common kitchen dining
7 room area. I noticed the kitchen window which was
8 right above the sink, the blinds were a little bit
9 disarrayed and I noticed broken pieces of glass that
10 were in the sink and some more pieces of broken
11 glass laying on the countertops on either side of
12 the sink.

13 Q. We'll get into that a little bit more in a
14 minute. But briefly, did Ms. Owens point out
15 anything that was missing from the home?

16 A. She indicated to me at that point in time that
17 she could tell that there was a small laptop that
18 was removed from the house.

19 Q. And did she indicate what room that laptop is
20 usually located in?

21 A. In the child's bedroom.

22 Q. Okay. Is that the same bedroom that had the
23 smudge in it?

24 A. Yes, sir, it was.

25 Q. Okay. Now, you said you saw a window, that

1 there was some broken glass. Would you talk a
2 little more about that.

3 A. When we went into the kitchen and dining room,
4 it's a common area, really big room, and that's
5 where her dining room table was located and that's
6 where we picked to talk about her situation a little
7 bit further where I could get information and create
8 an incident report. And it was right there, no more
9 than 15 feet from that window, so I noticed that.
10 She indicated that to me also when we were in the
11 room.

12 As I looked further at the window, I realized
13 that this would probably be a point of entry if
14 anyone were forcing their way into the house, based
15 on what I was looking at. And I looked at the glass
16 on the inside of the house and evaluated that glass
17 to determine, okay, there's some indication here
18 that I'm looking at that this glass may have latent
19 fingerprints on it. It --

20 Q. I'm sorry to interrupt you. You mention that
21 you recognize that window as being a potential point
22 of entry. Would you talk a little bit more about
23 why you thought that?

24 A. When I looked at the kitchen window, she had
25 indicated to me that the doors were secure when she

1 had gotten home. And I'm looking for a potential
2 point of entry. How did somebody get into this
3 house? What would be an opportunity to get into the
4 house? With the window glass inside the house in
5 the sink, it appeared to me that the glass was
6 broken from the outside in. And I walked outside
7 onto a patio area which is directly behind this
8 particular window, and there was very little, if
9 any, glass on the ground under that window. The
10 majority of the broken glass was inside the
11 residence which indicated to me that the glass was
12 broken from the outside in.

13 Q. While you're outside looking for any remnants
14 of glass, did you happen to take note of whether or
15 not there was a screen on the window?

16 A. I don't recall at this time whether there was a
17 screen actually in the window at that point or
18 whether it was on the ground underneath the window.
19 I'm sorry. I just don't recall that information.

20 Q. Certainly.

21 Now, the damage to the window that caused the
22 shards of glass to fall inside of the house, do you
23 remember roughly how big that hole was?

24 A. It was sufficiently big enough for me to
25 immediately determine that I could reach into this

1 window and unlock this window through this hole.

2 The window was probably about this wide consisting
3 of two sashes, a big sash at the bottom you could
4 slide up and another sash kind of a t the top, and
5 the broken glass was from the bottom sash panel,
6 pushed in with a common lock holding the two sashes
7 together. So it would have been very easy for me to
8 just reach in and open that window.

9 Q. Do you recall the condition of the locking
10 mechanism of that window by chance?

11 A. I did not because I didn't actually manipulate
12 that window at the point I decided that we were
13 going to try to raise latent fingerprints off of it.
14 I didn't actually handle the window or really get
15 that close to it. I wanted to let my fingerprint
16 technician that I was going to use do that.

17 Q. That brings me to my next point. Why didn't
18 you process the window yourself?

19 A. Very simple reason: I didn't think I had
20 enough lifting tape with me to actually do the job.
21 If I was going to several prints off of this one,
22 I'd prefer to call another deputy down that I knew
23 was equipped for that task.

24 Q. Who did you contact?

25 A. Deputy Creech.

1 Q. Do you remember how long it took him to respond
2 to the scene?

3 A. Not very long. He was in the immediate area,
4 somewhere within 10 or 15 minutes.

5 Q. During that 10 or 15 minutes, did you
6 manipulate or move that glass in any way?

7 A. I looked at it, but I didn't handle any of the
8 pieces of glass.

9 Q. Never touched it?

10 A. No, sir.

11 Q. Did you manipulate the exterior or the interior
12 of that window?

13 A. No, sir. I just looked, and that was all.

14 Q. Did you attempt to stick your arm through the
15 hole?

16 A. I didn't need to do that. I could see what I
17 needed to just visually inspecting the window.

18 Q. Now, you mentioned earlier that you had a
19 chance to go outside and sort of look at the
20 exterior of the window. Can you remember roughly
21 the height of that window?

22 A. It was probably about -- I'm fairly tall. But
23 it was probably chest high, a little bit higher,
24 with me standing beside it.

25 Q. If you wanted to put your hands on the center

1 of the windowpane, how would you have to reach out
2 to do so?

3 A. At a slightly upward angle.

4 Q. And if you wanted to -- assuming the window was
5 unlocked, if you wanted to open that window, how
6 would you go about that?

7 A. Based on what I was looking at?

8 Q. Correct.

9 A. I could have reached the lock from standing on
10 the ground. It wasn't that much higher than my head
11 where the lock was in the center of the window. But
12 just if I were going to do it, I'd probably want to
13 step on something to get up a little higher to crawl
14 in the window.

15 Q. And how tall are you again?

16 A. Six-two-and-a-half.

17 Q. Now, as far as actually physically lifting that
18 window up, how would you go about manipulating it
19 with your hands?

20 A. Stick my arm in, unlock the lock and then
21 manually push the bottom sash up.

22 Q. Now, when you say manually push the bottom sash
23 up, would you expand on that a little bit? What
24 exactly does that mean?

25 A. Well, putting your hands on either side of the

1 bottom sash and pushing upward, whereby raising the
2 bottom sash.

3 Q. Now, in making a determination that you needed
4 to get somebody there with a sufficient amount of
5 lifting tape, did you see with your eyes that there
6 was prints?

7 A. In a lot of instances you can look at a surface
8 and make a determination that there's something
9 there that you can probably lift when you dust it.
10 There's a number of surfaces that will contain
11 latent prints, but they aren't really visible just
12 looking at it with the naked eye.

13 Q. Just to actually nail the point, did you see
14 any prints that night?

15 A. Yes, I did.

16 Q. Okay. Now we're going to move on here and talk
17 about things we don't have. First, after you called
18 Master Deputy Anthony Creech to come, what did you
19 do the rest of the time that you were there?

20 A. I just kept track of what he was doing as far
21 as the fingerprinting process he was engaged in.
22 The majority of the time I spent talking to
23 Ms. Owens to get further information to complete the
24 incident report that I was writing.

25 Q. When you say you sort of looked over or watched

1 after Master Deputy Creech as he was lifting prints,
2 did that involve you actually putting your hands on
3 anything?

4 A. Usually in that process it can be done quite
5 sufficiently with one person, but sometimes you may
6 hold the roll of tape while somebody cuts a piece
7 off or, you know, hold the flashlight for him to use
8 both hands to do something else. But it doesn't
9 require you manually handling the evidence. You're
10 sort of assisting to speed the process along, more
11 or less.

12 Q. So in this particular case, did you actually
13 put your hands on those pieces of glass?

14 A. No, sir, I did not.

15 Q. Now I want to talk about the elephant in the
16 room, and that's going to be, why didn't you take
17 pictures that night?

18 A. Well, it wasn't our standard practice at that
19 time to take pictures that we didn't necessarily
20 deem evidentiary. And what I mean by that is, you
21 can take a picture of, let's say, a footprint, a
22 foot track tread of a shoe, and that may point you
23 in the direction of a suspect at some point in the
24 future. But a picture of damage such as vandalism
25 and things like that aren't necessarily evidentiary.

1 While they can be documentary, they don't
2 necessarily point you in the direction of a
3 particular suspect.

4 Q. Now, could you have taken pictures?

5 A. We could have.

6 Q. In your opinion, would taking pictures of a
7 broken window added anything to evidence?

8 A. Not necessarily because they're broken windows,
9 they're broken windows, they're broken windows. It
10 doesn't indicate to me who may have broken this
11 window. I have a picture of a broken window.

12 Q. Now, would a picture of that broken window and
13 the remaining portions of the window, would that
14 depicted fingerprints?

15 A. Not with what I was -- with -- I don't have a
16 camera system that is commonly issued to road patrol
17 deputies that have enough detail to actually
18 photograph something as small as a ridge pattern on
19 a fingerprint. That would require a much more
20 complicated camera than what we're commonly issued.

21 Q. Master Deputy, why no blood DNA?

22 A. Well, this was 2011, and while DNA was
23 certainly being used at that time, it wasn't a
24 commonly-used-evidence-collection tactic that we had
25 available to us. We didn't have an established

1 protocol in 2011 as to when, where and how we were
2 going to use the DNA sampling. At that point in,
3 time the only persons in our department that were
4 equipped to do that were our crime scene
5 investigators. And while up to that point we had
6 used DNA evidence, it had been primarily for
7 homicides, aggravated assaults and sex offenses. It
8 was an extreme rarity that that would even be a
9 topic of conversation in a property crime.

10 Q. Okay. Now, sort of combining the two issues,
11 if you had taken pictures of the red smudges on the
12 blinds and the on that wall near the outlet which
13 was near the laptop that was missing, would a
14 photograph have captured DNA evidence?

15 A. No, sir, it would not. I wouldn't even be able
16 to tell if that would be a blood smear from a
17 photograph because there's just no way to make that
18 determination, there's no chemical analysis involved
19 with photographs.

20 Q. In your 30-plus years of experience and in your
21 training are you taught that one form of evidence
22 trumps another form of evidence?

23 A. Well, at that point in time what we commonly
24 used as evidence collection was primarily
25 fingerprints, if we had a situation where we thought

1 we could actually collect a fingerprint sample from
2 a surface. And that was usually what we keyed on
3 would be fingerprint evidence at that point in time.

4 MR. BELL: I beg the Court's indulgence one
5 moment.

6 THE COURT: Yes, sir.

7 BY MR. BELL:

8 Q. Master Deputy, do you remember anything else
9 worth mentioning to this jury from that night?

10 A. Other than when I looked at the window, it was
11 kind of obvious to me at that point that, yes, this
12 surface definitely should be dusted for latent
13 prints. We have plenty of situations where we
14 obviously know something has been handled, the
15 possibility is there for prints to be on a surface,
16 but we can't see them or, for one reason or another,
17 they're not liftable prints that we can use. But in
18 this particular case, when looking at the broken
19 glass, yes, we definitely needed to dust the
20 surface.

21 Q. And just to clarify in closing with you, did
22 you have any meaningful interaction with the prints
23 that were lifted and turned into evidence?

24 A. No, sir. I didn't handle, touch or have any
25 contact with the prints.

1 MR. BELL: Master Deputy, please answer any
2 questions the defense may have for you.

3 CROSS-EXAMINATION

4 BY MR. WILLIAMS:

5 Q. Deputy Ward, you said you had some advanced
6 burglary investigation courses; is that correct?

7 A. Yes.

8 Q. What did you learn in those advanced burglary
9 investigation courses?

10 A. That particular course was also put on by the
11 South Carolina Criminal Justice Academy, and it
12 centered on methods of forcibly entering a house,
13 what to potentially look for, just an A-to-Z
14 rendition of how to do a burglary and what to look
15 for in the aftermath.

16 Q. Okay. And did they say anything about looking
17 and checking the doors to see if the doors were all
18 locked or unlocked?

19 A. Yes, sir.

20 Q. And did you check all the doors when you were
21 there to see if they were locked or unlocked?

22 A. Not when I first arrived because Ms. Owens had
23 been home. Had she not been home or we arrived at
24 the same time together, we would have certainly
25 looked at those things at the same time.

1 Q. So the answer to my question is that you never
2 checked the doors to see if they were locked or
3 unlocked?

4 A. Not at that time, no, sir.

5 Q. Well, how about any time? Did you check them
6 at any time?

7 A. No, sir, not while I was present.

8 Q. Well, could you have checked them when you
9 weren't present?

10 A. I don't see how --

11 Q. You didn't check them, did you?

12 A. No, sir.

13 Q. But that was one of the things you learned in
14 reference to your advanced burglary investigation;
15 right?

16 A. Yes, sir.

17 Q. Let me ask you about CSI. You said you have a
18 crime scene unit at Lexington Sheriff's Department
19 and that that is the only group of individuals that
20 are involved in DNA sampling; is that correct?

21 A. They're the only ones equipped to take samples
22 at this point.

23 Q. And when you say take samples, you're talking
24 about getting blood and checking it to verify
25 whether or not the blood came from a particular

1 individual or not; right?

2 A. They collect the samples and they submit it for
3 testing.

4 Q. And they're called crime scene investigators,
5 but you don't bring them out to a burglary crime
6 scene; right?

7 A. At that point in time, generally, no, that was
8 not our common practice.

9 Q. Do you have a manual or some sort of policy
10 which designates when you bring the crime scene
11 investigators to a crime scene?

12 A. Well, there's some degree of discretion
13 involved; if you think they can be useful in
14 collecting evidence that you weren't capable of
15 collecting.

16 Q. So did you think that the blood which was on
17 the window, blinds, and the blood which was on the
18 wall would not be useful in determining who the
19 perpetrator of the crime was?

20 A. I'm sure it could have been. But, again, as I
21 stated earlier, at that point in time, that was not
22 our common practice for investigating a crime scene
23 of that nature.

24 Q. I thought it was discretionary?

25 A. It is.

1 Q. So you could have done it?

2 A. I could have asked. Whether it would have
3 happened would have been another story.

4 Q. Did you ask?

5 A. I did not.

6 Q. When you were out there, did you see
7 Investigator Garrick there also?

8 A. No, sir.

9 Q. When you got there, who was there? Ward and
10 yourself and that's basically it on law enforcement?

11 A. I was there and Deputy Creech who I called to
12 the scene.

13 Q. So you never saw Investigator Garrick there?

14 A. No, sir.

15 Q. And you were talking about cameras and taking
16 pictures. And I think you said that they don't have
17 a camera that would take a picture to show the ridge
18 prints, in which you're talking about ridges on
19 fingerprints; right? That's what you were referring
20 to?

21 A. I don't have a camera personally that will do
22 that. CSI certainly does.

23 Q. Would it be important to have a camera just to
24 take a picture of the window so that you can
25 memorialize what the condition of the window was

1 when the alleged break-in occurred?

2 A. Yes, sir. That would have been helpful. But,
3 again, it wasn't a common practice to do that.

4 Q. Well, if you have a car wreck, you're going to
5 take a picture of what your car looks like after the
6 wreck is done aren't you?

7 A. Not necessarily to complete an accident report.
8 It certainly would be helpful for the insurance
9 companies, but it's not absolutely required to take
10 a picture of a wrecked car if you can thoroughly
11 explain it another way possibly.

12 Q. Well, your point at coming to a crime scene is
13 to discover evidence, memorialize that evidence and
14 use that evidence in a court of law when it comes to
15 the trial of the individual charged; right?

16 A. Yes, sir.

17 Q. Now, you've indicated to us that you're
18 six-two; right?

19 A. Yes, sir.

20 Q. And you said that the window frame hit you
21 about your chest; is that right?

22 A. As best I recall, yes.

23 Q. And that you could easily stick your arm up
24 through the window and unlock the lock which is in
25 the center of the window?

1 A. Yes, sir.

2 Q. Well, let's just start with part of this. Let
3 me ask you to look at State's Exhibit No. 7 and tell
4 me if you recognize State's Exhibit No. 7.

5 A. Yes, sir. It appears to be the window over the
6 kitchen sink in the house.

7 Q. Where is the lock?

8 A. In the center of the sash across the top
9 divider.

10 Q. It's in the center?

11 A. Well, the center partition that separates the
12 two sashes of the mechanism on either side of that.

13 Q. It's actually on the left-hand side, isn't it?

14 A. Well, there's two locking mechanisms; they're
15 on the center sash.

16 Q. But it's not the center. It's on the left,
17 isn't it?

18 A. Well, there's one on the left and there appears
19 to be one on the right also across the center sash.

20 Q. Okay. So there are two locking mechanisms. So
21 do you recall, again looking at the photograph, if
22 the -- where the broken windowpane was?

23 A. The bottom sash.

24 Q. Which side of the bottom sash? Can I ask you
25 to step down and show the jury where the break was

1 on the windowpane.

2 A. (Witness steps down).. Across the bottom of the
3 sash.

4 Q. Where was the break? Where was the windowpane
5 that was broken?

6 A. This section right there in the middle of the
7 sash. (Indicating)

8 Q. So you're saying that all of these windowpanes
9 were broken out?

10 A. Well, the curious thing about this one, they
11 aren't individual panes.

12 Q. They're not?

13 A. It's not a big piece of glass and these
14 partitions are actually a classic overlay.

15 Q. All right. So where was the damage to the
16 window?

17 A. The whole central portion of this bottom glass
18 area. (Indicating)

19 Q. So there was no breakage of the glass just in
20 this corner?

21 A. No.

22 Q. Because if there was a breakage just in the
23 bottom left of the corner, it would be impossible to
24 unlock both sashes, wouldn't it? I mean, if you're
25 reaching up, you've got a lock over here, you got a

1 lock over here, don't you?

2 A. Yes, sir.

3 Q. So you basically have to blow out the whole
4 bottom of the window before you can unlock both
5 windows?

6 A. A big portion of it, yes, sir.

7 Q. How much glass you reckon there would be?

8 A. There was several big chunks of glass.

9 Q. All right. Now, when you got there, where was
10 the glass?

11 A. In the kitchen sink and on the countertops,
12 pieces of glass on either side of the sink.

13 Q. Was there any broken glass behind the sink and
14 before you got to the splashboard?

15 A. Specifically I don't recall the sink, but it's
16 up real close to the wall, as far as the actual
17 indented portion of the sink. But specifically
18 where each piece of glass was, no, sir, I can't give
19 you that.

20 Q. Well, how much glass was behind the sink to the
21 splashboard?

22 A. That, I can't answer specifically.

23 Q. Tell me about the chair that the burglar stood
24 on to break into the window. Did you see the chair
25 that the homeowner told you about?

1 A. As best I can recall, I didn't spend very much
2 time outside on the patio. I knew there were some
3 items on the patio, the lawn furniture was -- but
4 there again, I went out there primarily to see if
5 there was any glass on the ground under the window.

6 Q. Do you recall telling the homeowner about
7 standing on the plastic chair -- about someone
8 standing on the plastic to break into her house?

9 A. I don't specifically recall having that
10 conversation.

11 Q. You don't specifically recall seeing a chair
12 out there, do you?

13 A. Not that I can absolutely say, yes, sir, I did
14 or didn't.

15 Q. Let me ask you about the screen. Did you see a
16 screen there?

17 A. There again, I can't answer that either. I
18 wasn't really looking for that outside.

19 Q. Well, did the rest of the windows have screens?

20 A. I didn't examine the rest of the windows around
21 the outside perimeter of the house.

22 Q. Well, now, if you're examining a burglary, why
23 wouldn't you check the doors and check the locks of
24 the various windows and the screens? Why wouldn't
25 you check that?

1 A. Because we're getting a lot of information from
2 the homeowner as far as what's different when they
3 came home as far as what was normally there. There
4 could have been a broken window pre-existing that I
5 wouldn't have known about. So when I get there and
6 the homeowner is there, I say, okay, this is your
7 house, what's different, and kind of go from there.

8 Q. You don't know that she's checked all of the
9 other windows, do you?

10 A. No, sir.

11 Q. Well, maybe he came in through -- maybe it's
12 like the Beatles, he came in through the bathroom
13 window. If you don't check them, you don't know, do
14 you?

15 A. I'm getting a lot of information that I'm
16 counting on the homeowner to tell me. And when I
17 speak to her and she says, my kitchen window is
18 blown out and this is not how I left it, that would
19 be a focus.

20 Q. Well, she showed you where the missing computer
21 was; right?

22 A. She indicated it came out of her child's
23 bedroom.

24 Q. Did she show you where the missing computer
25 came from in the child's bedroom?

1 A. Specifically, I don't recall as far as
2 identifying a particular piece of furniture or
3 whether it was on the floor or whatever. I don't
4 recall that.

5 Q. You saw blood splatter inside the child's
6 bedroom, didn't you?

7 A. Yes, sir, I did.

8 Q. Where was it in proximity to the computer that
9 was supposedly missing?

10 A. I don't know where the computer was in the room
11 to give you that. I can tell you where I saw it in
12 the room; it was right behind a small television set
13 that was still in the room.

14 Q. So you saw the blood splatter. And how close
15 was that to the missing computer area?

16 A. Well, there again, I don't know where the
17 computer was in the room.

18 Q. Now, were you given any identifying information
19 on the computer?

20 A. The information I got that I completed my
21 report with that night was preliminary information,
22 and all she could tell me was that it was a black HP
23 laptop.

24 Q. Well, as part of your advanced burglary
25 investigation, did you learn about taking serial

1 numbers in reference to stolen items?

2 A. Yes, sir, we do, if they're available to us.

3 Q. Did you ask her to check her invoices to see if
4 she had any warranty information or anything that
5 would indicate what the serial number was on the
6 computer?

7 A. If there was any way possible she could provide
8 that information, we'd certainly try to get it from
9 her.

10 Q. And did you do that?

11 A. She didn't have it available for me at that
12 point in time. I wasn't able to put it on the
13 incident report at that time.

14 Q. Did you ask her?

15 A. I'm sure I did. It's part of our normal
16 conversation, do you have any serial numbers.

17 Q. And part of the reason for that is so that you
18 can check pawn shops and determine if this --
19 whatever was pawned came from a break-in; right?

20 A. Yes, sir.

21 Q. Did you follow up with her about the serial
22 number?

23 A. No, sir, I did not.

24 Q. Now, you were there when Creech took the
25 fingerprints; right?

1 A. Yes, sir.

2 Q. Now, you've been trained in fingerprint
3 analysis, haven't you?

4 A. I've been trained on how to lift those prints
5 for comparative purposes. I haven't received any
6 advanced comparative training.

7 Q. Right. And to be trained in regards to lifting
8 fingerprints, essentially what you have to know is
9 you put down a piece of tape and you roll it over
10 the area you suspect is a print --

11 A. Uh-huh.

12 Q. -- and it should show something if you put some
13 powder down; right?

14 A. Not quite in that order. But, yes, sir,
15 that's.--

16 Q. Put the powder down first?

17 A. Yes, sir.

18 Q. How much more training did you have other than
19 that?

20 A. As far as what? Analyzing --

21 Q. Did you learn what types of materials
22 fingerprints could be lifted from?

23 A. Well, it's kind of subjective. There are many
24 surfaces that will retain a print.

25 Q. How many areas in that house did you see

1 Officer Creech lift fingerprints from?

2 A. The only place I requested him to lift prints
3 from was from the point of entry to include the
4 glass fragments that were in the kitchen.

5 Q. So the bedroom where the item that was actually
6 taken, you didn't ask him to examine the wall, like,
7 where the blood splatter was -- it wasn't blood
8 splatter; blood mark --

9 A. Smear.

10 Q. Smear -- to see if there were any fingerprints
11 on maybe the light switch?

12 A. No, sir. We found that the light switch itself
13 isn't really a good surface because there's not
14 enough area on the switch to get a big enough
15 section of print to compare.

16 Q. How about the plate around the light switch?

17 A. Usually you don't really get a good print
18 there. You may get a partial or a fingertip.
19 But...

20 Q. Did you attempt to take any type of fingerprint
21 off the plate of the light switch?

22 A. No, sir.

23 Q. How about off the wall?

24 A. No, sir.

25 Q. How about next to where the computer was?

1 A. Well, there again, I'm not entirely sure where
2 the computer was.

3 Q. It's hard to take the print if you don't know
4 where the computer was, isn't it?

5 A. Right.

6 Q. Did you take any prints off the doorknobs?

7 A. No, sir, just the area around the point of
8 entry.

9 Q. And again, you don't remember the screen?

10 A. As far as absolutely giving you an answer, no,
11 sir, I don't recall if or where there may have been
12 a screen.

13 Q. You know how the screens go on and come off?

14 A. I know they slide in a track. But that
15 particular model, I'm not entirely sure how it fits.

16 Q. Well, it wouldn't be much of a screen if you
17 just slid it in and slid it out, would it? You'd
18 have to have something to secure it to the house,
19 wouldn't you?

20 A. I would presume some manner of securing it.

21 Q. Like maybe a latch?

22 A. I don't know. I'm not familiar with that
23 particular window.

24 Q. Did you check the window for pry marks?

25 A. Specifically, no, sir.

1 MR. WILLIAMS: That's all I have, Your Honor.

2 MR. BELL: Thank you, Your Honor.

3 REDIRECT EXAMINATION

4 BY MR. BELL:

5 Q. As far as the break in the glass of the window,
6 roughly where was that break located on that window?

7 A. As best I can recall from looking at it, the
8 central portion of the piece of glass that made up
9 the bottom of the sash.

10 Q. How many locks did you indicate are on that
11 window?

12 A. Two; one on each side across the center
13 partition of the window.

14 Q. Was the break in the window large enough to
15 reach through to each of those locks?

16 A. Absolutely.

17 Q. When you arrived at the residence, were you
18 told whether or not the house had been cleared?

19 A. As in?

20 Q. Did you have any idea of whether or not the
21 victim had looked around the house?

22 A. I presumed she had because she came from
23 outside the house onto the porch to talk to me and
24 began telling me about the situation. I didn't have
25 any suspicions that somebody was still in that house

1 at that time.

2 Q. Did she indicate any other areas in the house
3 where there was damage?

4 A. When we talked, she could only tell me at that
5 point that she was missing the laptop and what
6 particular room the laptop was located in. We
7 talked further and I asked her, is there anything
8 else you can tell me? Is it tampered with or
9 missing? And she indicated no, as best I can
10 recall.

11 Q. Now, there's been some issue made about where
12 the laptop was located. Did you have an opportunity
13 to go in the room where the laptop was allegedly
14 missing from?

15 A. Yes, sir, I did.

16 Q. Is it a large room?

17 A. No, not very large. No, sir.

18 Q. Does it take very much to reach from one wall
19 to another wall?

20 A. I don't recall in exact distances as to how
21 wide the dimensions of the room are. I just recall
22 it wasn't a very big room.

23 Q. Would it take more than a few steps?

24 A. I'd guess so, yes, sir.

25 Q. In your training is it protocol to dust an

1 entire house?

2 A. No, sir.

3 Q. How do you typically make your decision as to
4 what to dust for fingerprints?

5 A. Well, we look for items that the owner of the
6 house can tell us have definitely been moved because
7 we would presume that if it wasn't moved by someone
8 living in the house, it could have been moved from
9 pur perpetrator, so to speak. And we're really
10 counting on our homeowner to tell us what is
11 different, what has been moved, because us going
12 into a house we've never been in before, we
13 certainly don't know what's different from when we
14 got there to before we got there. So a good bit of
15 our information as far as trying to collect evidence
16 comes from the homeowner.

17 Q. Do you typically dust every doorknob?

18 A. No.

19 Q. Do you typically dust every light switch?

20 A. No. We don't -- we don't go on fishing
21 expeditions when we go into a person's house because
22 it damages property. Most of the time, it's
23 counterproductive. We don't often get fingerprints,
24 that's why it's wonderful when we have a surface
25 that we see, okay, this looks like we can get a

1 fingerprint. That's a good day.

2 Q. Why was the window the one thing that you
3 decided to fingerprint?

4 A. Well, it would obviously be an accessible entry
5 point and, two, right off the bat our homeowner
6 says, this is different, which would indicate to us
7 this is probably how they got into the house.

8 MR. BELL: No further questions Your Honor.

9 MR. WILLIAMS: No questions, Your Honor.

10 THE COURT: Thank you very much, sir. You may
11 step down.

12 MR. BELL: Your Honor, at this time may we
13 approach?

14 THE COURT: Sure.

15 (Sidebar conference.)

16 THE COURT: All right. Ladies and gentlemen,
17 we're going to recess for the evening.

18 Now, you've heard some of the testimony and
19 you're fixing to go home and be with family, friends
20 loved ones, whoever, and they're going to be curious
21 as to whether or not you were selected to be on a
22 jury. And you can tell them that you were and that
23 you're sitting on a case, which of course is going
24 to heighten their curiosity and they're going to
25 want to know what type of case it is and things of

1 that nature.

2 It's very important that you have no
3 conversation about the case. You can tell them that
4 you've been chosen and that have to be back in
5 morning and that the case is going to continue.
6 Saying something as innocent as, well, it's a case
7 that involves a burglary or some case that happened
8 out in the Red Bank area or whatever, saying
9 something very innocent could possibly elicit a
10 response that may compromise your ability to be fair
11 and impartial.

12 So it's just very important that you just tell
13 your family, friends and loved ones that you're not
14 allowed to have any conversation at all, not even
15 what the charge is or what the case is about. But
16 ask them to be patient and then when the case is
17 over you can tell them everything that they want to
18 know. So please adhere to that.

19 Do not make any attempts to do any
20 investigation on your own. You know, we have a lot
21 of resources available to people through computers
22 and Google and all of that other stuff. But it's
23 very important and under your oath that you've
24 taken -- and I tell people all the time, you would
25 want a jury that would adhere strictly to the law

1 and strictly to the judge's instructions about
2 deciding this case based solely on the evidence that
3 is presented during the course of this trial and on
4 nothing else. So please don't do any individual
5 investigation. Just -- I just tell juries all the
6 time, go home and relax. Put this out of your mind
7 for the evening, relax, try to get a good meal if
8 you can, get a good night's rest. And when you come
9 back in the morning, we'll resume the trial.

10 Now I'm going to ask you to be back in the jury
11 room so we can start at 9:30. So allow for the
12 distance you have to travel and for parking and
13 everything. But if everybody will be back in the
14 jury room, ready to go at 9:30, when everybody is
15 reassembled, we'll start back. Okay? So everyone
16 else remain seated and, ladies and gentlemen, we'll
17 see you tomorrow morning at 9:30.

18 (The jury exits the courtroom at 4:52 PM.)

19 THE COURT: All right. Anything we need to
20 take up before we adjourn?

21 MR. BELL: Nothing from the State, Your Honor.

22 MR. WILLIAMS: Nothing from the defendant, Your
23 Honor.

24 THE COURT: We'll start back at 9:30. I'll be
25 here before then if you need anything.

1 Mr. Seay, you're still on your bond and your
2 ankle monitoring or whatever, so just adhere to
3 whatever those conditions are as you've done up to
4 this point. And we'll start back at 9:30.

5 (Court in recess for the evening.)

6 THE COURT: All right. Anything we need to
7 take up before we bring the jury out?

8 MR. BELL: No, Your Honor.

9 THE COURT: All right. Let's bring the jury
10 out.

11 (The jury enters the courtroom at 10:10 AM.)

12 THE COURT: Ladies and gentlemen, thank you for
13 your patience. I think they told you I was up on
14 I-20 stuck in traffic. So I apologize for the
15 delay.

16 If you recall yesterday when we took our break,
17 we were on the State's case, the State was
18 presenting their case. So we'll pick up where we
19 left off yesterday and would recognize the State for
20 your next witness.

21 MR. BELL: Thank you, Your Honor. May it
22 please the Court. Give me a moment to step outside.

23 THE COURT: Yes, sir.

24 MR. BELL: At this time the State calls Master
25 Deputy Anthony Creech to the stand.

1 ANTHONY CREECH

2 being first duly sworn, testified as follows:

3 THE WITNESS: I do.

4 THE CLERK: Once you're seated, state your full
5 name spelling your last on the record.

6 THE WITNESS: Anthony Adam Creech, C-R-E-E-C-H.

7 DIRECT EXAMINATION

8 BY MR. BELL:

9 Q. Anthony, what is your current rank and title?

10 A. I'm a master deputy in the west region patrol
11 district of Lexington County Sheriff's Department.

12 Q. Okay. And on August 29th of 2011, who were you
13 employed by?

14 A. Lexington County Sheriff's Department.

15 Q. Okay. On that date did you have any reason to
16 respond to Old Orangeburg Road?

17 A. Yes. I was contacted by phone by Master Deputy
18 Ward who was supervisor at the time and he asked me
19 to come assist him with processing a crime scene for
20 a burglary that he was working.

21 Q. And that address, what county is it in?

22 A. It's in Lexington County.

23 Q. And is that within Lexington County Sheriff's
24 Department's jurisdiction?

25 A. It is.

1 Q. Okay. Now, would you mind giving the jury a
2 little bit about your background in law enforcement?

3 A. Certainly. I've been employed with Lexington
4 County Sheriff's Department since August 24th of
5 2009. Since that day I've served as a patrol deputy
6 of the west region my entire time at the sheriff's
7 department. Aside from being a basic patrol deputy,
8 I've also served as a field training officer for the
9 last approximately year and a half. I've also been
10 a master deputy which is an assistant shift
11 supervisor; answers to a sergeant and basically
12 performs all of the same duties in the absence of a
13 sergeant.

14 Q. Now I want to ask about a particular part of
15 your training. Would you mind telling the jury a
16 little bit about any fingerprint training that you
17 might have gone through.

18 A. Yes. All deputies with the sheriff's
19 department, regardless of their role, are required
20 during pre-service at the sheriff's department to
21 undergo a fingerprinting class that's taught by the
22 sheriff's department by Duane Johnson who handles
23 most of our AFIS and fingerprinting analysis.

24 Q. Would you go into a little bit more about what
25 you have to do to qualify? Do you have to take a

1 test, things of that nature?

2 A. It's basically just a hands-on instructional.
3 You actually fingerprint several items after
4 lengthy, basically, instructional about how to --
5 the science behind fingerprinting and how it works.
6 It's actually pretty basic. Probably anybody in
7 this room could probably be taught how to
8 fingerprint a basic surface in probably about 30
9 minutes.

10 Q. And upon completion of this course and that
11 training, what does that enable you to do with the
12 sheriff's department?

13 A. It enables me to detect services at a crime
14 scene that may be conducive to fingerprints and how
15 to detect and lift those fingerprints for further
16 analysis.

17 Q. Does it enable you to carry any special
18 equipment you otherwise wouldn't be certified to
19 carry?

20 A. It does. Once you've been certified in
21 fingerprinting through the sheriff's department,
22 you're issued a fingerprinting kit which contains
23 clear lifting tape, fingerprint cards and what we're
24 told to just call black powder for fingerprinting.

25 Q. Okay. Now, in your time with the sheriff's

1 department leading up to August 29th of 2011, did
2 you ever work any cases where you had to lift
3 fingerprints?

4 A. I did.

5 Q. Could you estimate roughly how many that was?

6 A. It's been so long ago. But probably a couple
7 dozen or so.

8 Q. Is it something that you consider to be
9 complex?

10 A. Yes and no. Personally I think it's pretty
11 simple to do. But I know a lot of officers have
12 trouble with it.

13 Q. Now when you say have trouble with it, would
14 you explain that a little bit?

15 A. I think a lot of officers are intimidated by
16 it. It is a lot of work to do fingerprints. The
17 procedure itself is actually fairly straightforward,
18 but it tends to be very labor-intensive, takes a lot
19 of time, you get pretty dirty doing it, not to
20 mention the paperwork associated at the back end.

21 Q. Do you feel comfortable doing it?

22 A. I feel very comfortable doing it.

23 Q. Have you ever had any problems lifting prints?

24 A. Not that I could say were not due to just a
25 particular surface or scene.

1 Q. Now, on the date in question, you mentioned
2 earlier that you responded to Old Orangeburg
3 Road. One more time, why did you respond there?

4 A. Master Deputy Ward called me and told me that
5 his fingerprint kit -- he was out of clear lifting
6 tape, so he needed some assistance in processing the
7 burglary that he was working. I think he'd been out
8 there probably about 45 minutes or so before calling
9 me.

10 Q. When you arrived at the location, where did you
11 park your cruiser?

12 A. I parked my cruiser in the driveway behind
13 Master Deputy Ward's vehicle.

14 Q. How did you approach the house?

15 A. I just walked up the driveway and met him at
16 the rear of residence.

17 Q. Okay. Now, as you were in the rear of the
18 residence, did you noting anything unusual outside?

19 A. To be honest, I can't say I was in real
20 investigative mode at the time because he had called
21 me with this pretty specific task. So I was
22 basically just seeking him out to find out what he
23 needed from me at the time.

24 Q. In your basic observations of being in the rear
25 of the residence, did you walk across any glass on

1 the ground?

2 A. I did not.

3 Q. Did you happen to see a chair in that back
4 patio area?

5 A. I did.

6 Q. Do you remember roughly where it was located?

7 A. I remember it was close to the window that I
8 would end up being instructed was the broken window.

9 Q. Do you have any --

10 A. I'm sorry. Being a little bit more specific,
11 it was several feet away.

12 Q. Do you have any recollection of a screen being
13 present anywhere back there?

14 A. I want to say I remember a screen present on
15 the ground, but I couldn't state that with any
16 absolutely certainly.

17 Q. We'll get into this more in a moment, but at
18 that point in time did you notice whether or not
19 there was a screen on the window?

20 A. I do know there was not a screen on the window.

21 Q. Now, after you had a chance to walk that patio
22 area and you entered the house, what happened?

23 A. Master Deputy Ward showed me the crime scene as
24 it pertained to the kitchen area, just where the
25 broken window was and he showed me the broken glass

1 that was littering the sink and the countertop area.
2 He showed me where he had already seen some possible
3 latent prints that looked like they would have been
4 great candidates for processing and lifting. And
5 then I put on a pair of gloves and did my own
6 cursory investigation of those same pieces of glass,
7 and then I went about the process of processing
8 those pieces of glass. We actually moved them
9 outside to do that so that we wouldn't get that
10 black fingerprint dust all over and --

11 Q. Let me slow you down so we don't get too far.

12 A. Okay.

13 Q. When you first entered the house, did you have
14 a chance to look anywhere else in the house other
15 than the kitchen?

16 A. I did not.

17 Q. So you testify that you went straight to
18 working on that kitchen window?

19 A. Straight to the kitchen window.

20 Q. And why was that?

21 A. Because Master Deputy Ward, that was the only
22 thing he needed my assistance with was processing
23 the window. Since he didn't need me for anything
24 further, I didn't interfere with his investigation
25 outside of that.

1 Q. Did Master Deputy Ward indicate to you what he
2 had accomplished prior to you arriving?

3 A. He just told me briefly what he had going on,
4 but he didn't go into an extreme amount of detail,
5 not that I can recall.

6 Q. Is it typical for you as a cover officer or a
7 secondary responding officer to check behind what
8 the prior responding officer has done?

9 A. No, it's not.

10 Q. Now, you said that Master Deputy Ward pointed
11 out the glass to you. In your basic observation,
12 what did you see in that kitchen area?

13 A. The kitchen window itself was broken and there
14 were several, what I would call, medium-sized pieces
15 of glass lying inside the residence on the kitchen
16 counter and in the sink just in front of the window
17 in question.

18 Q. Would you expand on how much glass there was?
19 Was it a lot? A little? Not much?

20 A. I'd say it was probably about a third or more
21 of the lower pane of glass for the lower portion of
22 the window.

23 Q. Would you consider that to be a significant
24 break in the window?

25 A. I would.

1 Q. Now, you briefly mentioned that you went and
2 did your own investigation or your own review of the
3 scene. How did you start processing the break in
4 that window?

5 A. You can take a flashlight against a surface
6 like glass and you can kind of bounce it off at an
7 angle, and you can usually see fingerprints with the
8 naked eye. So basically what we did is we looked at
9 all of the broken glass that's in the window, and
10 after seeing any piece that had what looked like
11 clear latent prints, we then took those pieces of
12 glass outside and went to the back -- because like I
13 said, dusting for fingerprints makes a pretty severe
14 mess and it's hard to clean up, that's why a lot of
15 our officers don't do it, in addition to getting the
16 victim's house filthy, you get it all over yourself,
17 you end up with a black face before you're done, if
18 you're doing it right -- we took the -- all the
19 pieces of glass outside that looked like they were
20 great candidates and then we applied the black
21 fingerprint powder. In my case, I have a horsehair
22 brush that was issued to me.

23 You basically just dab the brush in the
24 fingerprint powder and then I use a swirling motion
25 just gently to brush the surface of the glass. And

1 what happens is, the oils in the latent prints
2 absorb that latent powder. You can gently blow off
3 the excess, and that leaves you with your latent
4 prints that are just right there.

5 Q. Okay. I appreciate the overview. I want to
6 take it step by step now. You mentioned that you
7 take a flashlight to initially identify prints. How
8 do you determine what side of that glass that you're
9 investigating is the inside versus the outside of
10 the glass?

11 A. In this case it was very easy because you still
12 had some glass that was in the window frame, and you
13 could clearly tell that the glass that was still in
14 the frame, the inside, was much cleaner than the
15 outside. It kind of had sort of a -- I guess I
16 could describe it as a dusty, pollen, grimy sort of
17 surface to it. But it was certainly much dirtier.

18 Q. And what side of those pieces of glass did you
19 identify prints on?

20 A. The dirty side.

21 Q. Now, after you identified some prints with your
22 flashlight, how many different pieces did you end up
23 taking outside; do you remember?

24 A. Shoot, it was probably a dozen or so. And I
25 think I ended up getting prints off of nine pieces.

1 Q. Do you remember how many prints off of those
2 nine pieces?

3 A. I remember I pulled nine cards worth of prints,
4 but I think some of the cards had multiple prints on
5 them. I can't recall exactly how many prints there
6 were in total.

7 Q. What precautions do you take while you're
8 dealing with this messy black powder to not
9 contaminate any potential prints?

10 A. I just wears gloves myself because really the
11 only risk of contamination is your own fingerprints.
12 So as long as you're not exposing your own
13 fingerprints to the objects in question, then
14 there's really no risk of contamination. Worst-case
15 scenario if there is some contamination and it's
16 your own prints, then those would come up in
17 analysis as well because my prints are on file just
18 like any other member of the department's.

19 Q. So now you've identified potential prints, you
20 dusted with black powder. After you've got to that
21 point, how do you preserve or lift those prints?

22 A. Once you've exposed the prints and you can see
23 them just with the naked eye, without need of a
24 light, they -- it's basically like a black outline
25 of the print printed on that object. We've got a

1 clear lifting tape that basically is the equivalent
2 of almost -- a hand-tearable packing tape is the
3 nearest equivalent. And you take that tape and you
4 pull a section and you basically just gently lay it
5 over the print, you apply pressure, you make sure
6 there are no air bubbles. I use whatever plastic
7 gift card or grocery card I tend to have that I
8 don't mind getting dirty at the time and you press
9 out the air bubbles. And when that's done, you just
10 gently lift that tape right off that surface and you
11 can apply it directly to a white gloss fingerprint
12 card and it transfers the print.

13 Q. Does that process of pushing out air bubbles,
14 does that contaminate the prints?

15 A. It does not.

16 Q. Does it smudge the prints?

17 A. It does not.

18 Q. Does it in any way degrade the quality of those
19 prints?

20 A. It does not. In fact, sometimes if you don't
21 get a good lift the first time, you can re-expose
22 that same print to white powder. Additionally, you
23 get another chance to pull it if you had problems
24 the first time.

25 Q. Now, after you had identified those prints,

1 done the black powder, pushed the air bubbles out,
2 did you have any doubt what you were looking at?

3 A. Absolutely not.

4 Q. And what were you looking at?

5 A. A series of latent prints.

6 Q. Okay. And for clarification, all of those
7 prints were located on what side of the glass?

8 A. It was the exterior surface of the window.

9 Q. Now, we've talked about shards of glass and
10 we've heard testimony about remaining parts of the
11 glass. Would you please tell the jury where you
12 located the fingerprints. Were they just on the
13 shards? Just on the glass? Where did you find the
14 fingerprints?

15 A. They were just on the glass on the outside
16 surface of the glass. I believe one set of the
17 prints -- it's hard to recall exactly -- I believe
18 actually were on a piece of glass that was still
19 present in the frame, on the lower right side of the
20 frame. So we actually had to pull that piece of
21 glass out to process it.

22 Q. In your training and in your personal
23 experience, did you do anything out of the ordinary
24 in lifting these prints?

25 A. I did not.

1 Q. Did you do anything that you were worried might
2 contaminate those prints?

3 A. I did not.

4 Q. Now, after you've laid the tape down on top of
5 these prints that you had found, what happens at
6 that point?

7 A. Then after you've laid the tape down and
8 pressed out any air bubbles or inconsistencies and
9 you lift the tape, then you just simply gently apply
10 it to the white-gloss-backed fingerprint cards.

11 Q. And what is the purpose of those cards?

12 A. Those cards on one side preserves the
13 fingerprint as you lifted it with the tape and on
14 the other side you basically put the date, the case
15 number, the incident location, your name and any
16 other relevant information that you need at the time
17 to indicate where that print was obtained and who
18 obtained it.

19 Q. Does the transfer from the tape to those glossy
20 cards cause smudging?

21 A. It does not.

22 Q. Does it in any way affect the prints?

23 A. It does not.

24 Q. Are you trained as to -- or told how long those
25 glossy cards will preserve those prints?

1 A. I believe it's my understanding that those will
2 preserve those prints indefinitely at that point.

3 Q. Is there any chance of damaging those prints
4 through the normal course of a day after they've
5 been preserved on that glossy card?

6 A. No. You'd have to damage the card itself; I
7 mean, tearing, burning, pretty extreme circumstance.

8 Q. Now, you said you labeled these cards. Would
9 you give an example of how you labeled them.

10 A. Yes. In this particular instance I labeled
11 these cards by case number, date, the incident type.
12 I placed what surface -- indicated what surface of
13 glass I obtained the prints off of and I indicated
14 my name. And I believe that was it. There may have
15 been some additional information though.

16 Q. Once you take those cards and you've labeled
17 them, what do you do with them at that point?

18 A. In this case, I secured them in the trunk of my
19 patrol car, and at the end of shift -- this was a
20 Monday night that we collected them. I believe it
21 was the 29th. That following morning I was still
22 working, it would have been the 30th at that time,
23 before I went home, I went to evidence at the
24 sheriff's department and I secured all nine of those
25 fingerprint cards in evidence and submitted a lab

1 request for them to be analyzed.

2 Q. Would you expand a little bit on what exactly
3 goes into logging that evidence?

4 A. Yes. They're placed in a sealed bag with our
5 current evidence system that had gone in place, I
6 believe, shortly before this incident. Actually,
7 they're indicated -- placed in a bag that's labeled
8 as Bag 1 along with the case number. After placing
9 the cards inside the bag, the bag is sealed with
10 tape and I date and initial that tape.

11 Q. Did you make any markings on the bag itself,
12 the plastic bag?

13 A. I believe I put at least Bag 1 on there.

14 Q. Okay. Now, backing up a little bit, you
15 mentioned that you stored those cards from the scene
16 in the trunk of your cruiser.

17 A. Yes. That's correct.

18 Q. Did anybody have access to that trunk?

19 A. Nobody but myself.

20 Q. How long after they were in your trunk did you
21 take them to evidence?

22 A. I believe it was approximately seven or eight
23 hours.

24 Q. Was that within your same shift?

25 A. It was.

1 Q. And during that period of time, did anybody
2 else have access to the trunk of your vehicle?

3 A. Nobody else did.

4 Q. Was there any evidence or signs that anybody
5 had tampered with the trunk of your vehicle?

6 A. There was not.

7 Q. From the scene you went back on the shift.
8 Where did you take that bag again at the end of your
9 shift?

10 A. I took it to the evidence facility at Lexington
11 County Sheriff's Department.

12 Q. And while you were there logging that evidence,
13 did anybody else have any sort of interaction with
14 that bag?

15 A. Nobody but myself.

16 Q. So from the incident location to your trunk,
17 from your trunk to the evidence room, was it in your
18 sole care, custody and control for that entire
19 period of time?

20 A. It was.

21 Q. Were there any signs in looking at those cards
22 or that plastic bag that anybody had tampered with
23 it?

24 A. There was not.

25 Q. Where did you deposit that plastic bag when you

1 were at the evidence room?

2 A. There's a gray box that we typically will
3 submit flat items and paperwork like that. It
4 was -- I either submitted it in there or inside a
5 secure evidence locker. Either place would have
6 been locked and secured from anybody else to access.

7 Q. After you dropped that bag off in that locker
8 or drop box, is there any way for you to access it
9 again?

10 A. There's not.

11 Q. Prior to today, have you seen that bag again?

12 A. I have not.

13 MR. BELL: I beg the Court's indulgence.

14 THE COURT: Yes, sir.

15 BY MR. BELL:

16 Q. Master Deputy, I'm handing you what is marked
17 as State's 10 through 19. Would you, for a moment,
18 just take a look at what's marked as 19 and tell me
19 when you've had a second to look at it.

20 A. Okay.

21 Q. What do you have in your hand?

22 A. I have the evidence bag that would have
23 admitted these fingerprint cards in on the 30th of
24 August, 2011.

25 Q. Is that bag in the same condition as you

1 remember it on the night you turned it in?

2 A. It does appear to be.

3 Q. What is that red stripe on the top of that bag?

4 A. The red stripe on the top of this bag would be
5 the evidence tape that I would have secured the bag
6 with and dated and initialed it. I've got it dated
7 8/30/2011, I've got it indicated as Bag 1 and I have
8 my initials.

9 Q. And what's the purpose of that evidence tape?

10 A. To indicate that there's no other outside
11 tampering with this bag before it reaches the hands
12 of the evidence custodians the following day.

13 Q. Now, aside from the evidence tape, are there
14 any other indications on that bag of punctures or
15 holes or any other tampering?

16 A. There are not.

17 Q. Now, as far as the markings on that bag, would
18 you tell the jury a little about what those
19 indicate.

20 A. Certainly. The only other markings on this bag
21 would be where I wrote the case number to the
22 incident, which is actually not required by policy,
23 but I do it just as a matter of common sense to make
24 things easier down the road. It's also got Bag
25 No. 1 indicated here, which is part of our current

1 policy for evidence labeling, and then it's also got
2 my initials and the date. Looks like I must have
3 written the wrong date on there initially and had to
4 scratch it out and remark it.

5 Q. Okay. Now, I want you to take a minute and
6 open that bag and examine what's marked as State's
7 10 through 18. And please don't show those to the
8 jury at this point.

9 Have you had a chance to review those?

10 A. I have.

11 Q. What do those appear to be?

12 A. These are the nine fingerprints that submitted
13 into evidence on 8/30/2011.

14 Q. Are they the exact cards that you turned in?

15 A. They appear to be. Yes.

16 Q. Do you have any doubt that those are the same
17 cards?

18 A. I personally have no doubt.

19 Q. Any signs of tampering with those cards?

20 A. None whatsoever.

21 Q. What kind of condition do they appear to be in?

22 A. They appear to be in the exact same condition
23 that I submitted them in.

24 Q. Okay. Now, will you take a look at how you
25 marked those cards.

1 A. Certainly.

2 Q. One moment please.

3 Master Deputy, would you please recite some of
4 the indicators that you put on one of those cards.

5 A. Certainly. The date is indicated, which is
6 8/29/2011; the crime that we were investigating is
7 indicated, which in this case would be a B&E or a
8 breaking-and-entering; the case number is indicated,
9 which in this case is Lexington County Sheriff's
10 Department, Case No. 10 -- 11028382; the victim's
11 name is indicated, which in this case was Dianna
12 Owens; the address of the incident is indicated,
13 which in this case was Old Orangeburg Road; the
14 location of latent prints lifted, which in this case
15 is indicated as the exterior surface of kitchen
16 window; prints lifted by is indicated, which in this
17 case is myself, A. Creech is indicated on each card,
18 and my ID number is indicated, which at the time my
19 radio number was 934.

20 Q. Now, did you mark those same markings or at
21 least very similar markings on each one of those
22 nine cards?

23 A. I did.

24 Q. And once again, where did you indicate that
25 those were taken from?

1 A. The exterior surface of the kitchen window.

2 Q. If I can get that bag back from you.

3 A. Certainly.

4 MR. BELL: I beg the Court's indulgence one
5 moment.

6 THE COURT: Yes, sir.

7 BY MR. BELL:

8 Q. Master Deputy, while we're waiting, at any
9 point last night did you talk to any of the
10 witnesses that testified yesterday in this case?

11 A. I did not.

12 Q. Master Deputy, this is marked as State's No. 3.
13 What does that appear to be a picture of?

14 A. That is the back side of the residence at
15 Old Orangeburg Road.

16 Q. Now I'm going to hand you this laser pointer
17 and I'd like you to please point out to the jury
18 where you remember seeing a chair, as best as you
19 can recall.

20 A. Roughly in this area right here. (Indicating)

21 Q. Now, from that picture, can you identify which
22 one of the windows it was that was broken?

23 A. I can. It would be this window right here.
24 (Indicating)

25 Q. And that window leads into where in the house?

1 A. The kitchen area, just above the sink.

2 Q. Did you have an opportunity to examine the
3 exterior of the house at all?

4 A. I did.

5 Q. Okay. And in your examination did you find
6 glass on the ground outside?

7 A. I did not.

8 Q. Where was the majority of the glass found?

9 A. The majority of the glass was found just inside
10 the residence on the countertop and inside the
11 kitchen sink.

12 Q. And what does that indicate to you?

13 A. It indicates to me that the window was broken
14 from the outside in.

15 Q. During your time inside of the house, did you
16 see anything on the kitchen floor or counter that
17 could have explained the break?

18 A. I did not.

19 Q. Didn't find -- did you find a baseball?

20 A. I did not.

21 Q. Did you find a volleyball?

22 A. I did not.

23 Q. Okay. Now, you talked a little bit about the
24 significant -- or that you considered it a
25 significant break in that window. What does this

1 appear to be a picture of?

2 A. It appears to be the window in question in this
3 case. It appears to be repaired at this time.

4 Q. Now, as best as you can remember, would you
5 please use the laser pointer to indicate the broken
6 portion of the window.

7 A. Roughly this middle section of the window
8 appeared to be broken.

9 Q. Now, to clarify, are each of those squares
10 individual glass panes?

11 A. They are not individual glass panes. It's one
12 solid pane of glass with a -- basically, a cosmetic
13 lattice work attached.

14 Q. In your examination of that window, was it
15 large enough for you to stick an arm through?

16 A. Absolutely.

17 Q. In looking at this picture, are you able to
18 indicate how many locks are on this window?

19 A. I can. It appears there are two locks on the
20 window.

21 Q. From where the break in the window was located,
22 would you have been able to stick your arm through
23 and unlock those locks?

24 A. Certainly.

25 Q. This is what's marked as State's 6. What does

1 this appear to be a picture of?

2 A. It's the same window, this time backed up a
3 little bit to also include the kitchen sink and the
4 counter area.

5 Q. Would you indicate to the jury where you saw
6 most of the glass?

7 A. Certainly. Most of the glass was in the sink
8 here and on the counter in this general area.

9 (Indicating)

10 Q. And is that the glass that you used for the
11 purposes of lifting prints?

12 A. It is.

13 Q. This is what's marked as State's No. 2. What
14 does that appear to be a picture of?

15 A. That's another picture of the back of the same
16 residence at Old Orangeburg Road.

17 Q. One more time for the jury, would you point out
18 the window that was broken?

19 A. Certainly. It would be this window right here,
20 the smaller one. (Indicating)

21 Q. Now, this area, this line right here, what is
22 that?

23 A. Just for clarification, you mean this area
24 here? (Indicating)

25 Q. Yes, sir.

1 A. I believe it was a brickwork -- I don't know
2 what the proper terms would be. But it was kind of
3 built up. It's several feet higher than the actual
4 back patio area.

5 Q. So that picture is a little bit of an optical
6 illusion?

7 A. Yes.

8 Q. You mentioned earlier you had a chance to
9 examine the outside of the house. Do you remember
10 roughly how high that broken window was off the
11 ground?

12 A. It was high enough that I could reach it, but I
13 had to stand on a chair to actually do any proper
14 dusting and actually be able to see the window at
15 eye level.

16 Q. How tall are you, Master Deputy?

17 A. Approximately six-foot-one-inch.

18 Q. Now, you said you'd have to stand on a chair.
19 Did you have a chair available?

20 A. I used the chair that -- some sort of plastic
21 chair that was present near the window.

22 Q. And when you say near the window, would you
23 indicate again with the laser pointer where it was
24 located.

25 A. Certainly. (Indicating)

1 Q. Did you have to move that chair from off of the
2 lawn?

3 A. I did not. It was -- it was on the concrete
4 patio area.

5 MR. BELL: I beg the Court's indulgence.

6 THE COURT: Yes, sir.

7 BY MR. BELL:

8 Q. Master Deputy, we've talked some about a chair.
9 Would that chair have been conducive to lifting
10 prints off of?

11 A. Potentially, but I can't recall the exact
12 surface of the chair. I believe it was just a
13 standard plastic chair. But we did not process that
14 chair.

15 Q. Any reason you didn't process that chair?

16 A. To be honest, sheer lack of consideration at
17 that time. Kind of had tunnel vision; we had a
18 broken window, clear point of entry and enough
19 prints that we kind of got bogged down dealing with
20 that, that we kind of missed it.

21 Q. Was there any overt indicator that that chair
22 at that time might have been involved?

23 A. Just simply from the same point of view that I
24 saw it there as a tool to access the window. It's
25 reasonable that somebody else could have done the

1 same.

2 Q. At the time did that thought hit you though?

3 A. It did.

4 Q. Now I want to talk about something else, and
5 that is lack of pictures from the incident night.

6 Why didn't y'all take any pictures?

7 A. For lack of better words, procedurally, we
8 should have taken photographs of the incident. The
9 problem we ran into is in an ideal world we would
10 have taken photographs. Master Deputy Ward called
11 me to respond to his scene where he had already been
12 out there a considerable amount of time. I got
13 there, I immediately got to the task of analyzing
14 and lifting the fingerprints in question.

15 The problem we ran into is, I think he just
16 assumed I was going to take pictures since I was
17 handling the fingerprints and I just assumed since
18 he had already been on the scene for some time that
19 he had taken the pictures. So, procedurally, we
20 just jointly assumed the other was doing it, which
21 is terrible to do. But it was just an honest
22 mistake and we forgot to do so.

23 Q. Now, would those pictures have been helpful to
24 have?

25 A. They certainly would have been very helpful to

1 have at this point.

2 Q. But would have taking pictures of the broken
3 window have added anything physical to this case?

4 A. It would have clarified whether or not there
5 was a screen on the floor, but it wouldn't have
6 changed the nature of the fingerprints themselves.

7 Q. Did you make a mistake?

8 A. I did.

9 Q. Have you been trained that the absence of
10 photographs affects the validity of fingerprints?

11 A. I have not.

12 Q. Now, we're not only missing photographs. Why
13 are we also missing samples of that blood?

14 A. The blood evidence is an interesting question.
15 When I responded, there was a -- I do recall there
16 being a small amount of blood on the blinds hanging
17 in the window. I would later be told there.--

18 MR. WILLIAMS: Objection to hearsay, Your
19 Honor.

20 THE COURT: Sustained.

21 BY MR. BELL:

22 Q. Just testify to what you personally knew.

23 A. There was a small amount of blood on the window
24 blinds. When it comes to DNA collection, Lexington
25 County Sheriff Department don't do a whole lot of

1 DNA analysis; it's very is expensive, it's very
2 time-consuming. Per policy, at the time and
3 currently, crime scene investigators are required to
4 respond without doing any kind of DNA collection.
5 We're not trained or equipped as patrol deputies to
6 do DNA collection; we can handle processing and
7 fingerprints and most other aspects of the crime
8 scene investigation, but when it comes to DNA
9 collection, we're not allowed to that by policy and
10 we're not regularly trained or instructed to contact
11 CSI out to do so.

12 In this case, that would have been Master
13 Deputy Ward's decision if he wanted to call them
14 about, and I could not testify as to why he chose to
15 do or not do so.

16 Q. Do you remember what time of night, roughly,
17 you responded to the scene?

18 A. I believe -- I recall that I responded
19 approximately 8:40.

20 Q. Now, you mentioned contacting CSI. What is
21 your policy on contacting them after normal hours?

22 A. If it's after hours, typically we don't contact
23 them to respond out unless it's a critical incident
24 that usually major crimes is already responding for.

25 Q. Now, what kind of incident did you consider

1 this to be?

2 A. This was a burglary incident, which is
3 definitely a serious crime; however, it's not a
4 critical incident in the likes of a major assault or
5 homicide or sexual assault, things that major crimes
6 typically has to respond to deal with.

7 Q. Please answer any questions the defense may
8 have for you.

9 MR. WILLIAMS: May it please the Court.

10 THE COURT: Yes, sir.

11 CROSS-EXAMINATION

12 BY MR. WILLIAMS:

13 Q. So are you saying by that, that it's not
14 critical, that the accurate arrest and conviction of
15 the person for the charge is not a critical process?

16 A. That's certainly not what I'm saying.

17 Q. What do you mean by it's not a critical
18 decision whether or not CSI is called out or not?

19 A. What I mean is that within normal procedure of
20 the department, that as patrol deputies we were able
21 to adequately process the scene in question.

22 Q. Are you saying that the CSI individuals and the
23 DNA collection would have been a more accurate
24 collection?

25 A. DNA collection would not have been my decision,

1 so I can't testify as to what it would have provided
2 one way or another.

3 Q. You indicated that CSI is a critical condition.
4 Why do you say it's critical?

5 A. I never used the words critical condition. CSI
6 typically responds when major crimes responds for
7 major incidents, which are usually occurring at that
8 very time and require resources that patrol units
9 cannot sustain on their own.

10 Q. I'm going to see if I can simplify it. Are you
11 saying it's a question of money?

12 A. I wouldn't say it's a question of money. It's
13 not my decision to make.

14 Q. But you would say it's a question of money?

15 A. I can't say that it would be a question of
16 money.

17 Q. Is it more expensive to have CSI out there?

18 A. It's like anything else; we have a very limited
19 number of CSIs. We've got to be intelligent about
20 when we call them out, because just like anything
21 else, we're trying to do more with less when it
22 comes to manpower.

23 Q. So since you didn't have CSIs out there to
24 collect the blood, you said it would have been
25 important, that it would have been procedure to take

1 photographs of the scene; right?

2 A. That's correct.

3 Q. Because everybody can take a picture off their
4 cell phone at the scene, can't they?

5 A. Well, the problem with taking pictures on your
6 cell is we've got no way of logging cell phone
7 pictures into evidence. So that would not be as
8 simple as that.

9 Q. But you had a procedure which you could have
10 taken pictures, don't you?

11 A. I certainly do have a County-issued digital
12 camera. As I previously stated, that was a simple
13 accidental lapse on our part.

14 Q. So the chair which you said you noted but that
15 you didn't really pay a lot of attention to, if you
16 noted it, you would have put it in your reports that
17 are filed with the sheriff's department, wouldn't
18 you?

19 A. Typically, yes.

20 Q. And did you note the chair in any of the
21 incident reports that were filed in this case?

22 A. In this case, I wrote a very brief
23 supplemental, which is actually unusual for me.
24 Usually my reports are very long and very lengthy
25 and very detailed. In this case, I was a very young

1 officer at the time. I would go as far as to say I
2 was still very much a rookie at the time, and my
3 methodology has evolved greatly since then.

4 Q. So the answer is no?

5 A. Yes, the answer would be, no, I did not mention
6 it at that time in my report.

7 Q. Did any officer note existence of a chair, as
8 far as you know?

9 A. I can only testify to what I wrote in my
10 supplemental report.

11 Q. Well, the solicitor was asking about whether or
12 not you had talked to any of the witnesses
13 yesterday. Did you talk to anybody last night or
14 yesterday afternoon in reference to your testimony
15 in the trial of this case?

16 A. I did.

17 Q. And who did you talk to?

18 A. I talked to Mr. Gill Bell. He called me last
19 night.

20 Q. Let me ask you about the items not placed into
21 evidence yet, but which you were identifying. I
22 believe you were identifying the cards; is that
23 correct?

24 A. Yes, I was.

25 Q. And on each and every one of the cards -- you

1 said the cards are in the same shape as they were on
2 that particular occasion; right?

3 A. They are.

4 Q. Now, are these pictures of smears or are they
5 the actual fingerprints that are -- or alleged
6 fingerprints that you took off the window?

7 A. I believe that would probably be a question
8 best answered by somebody more expert in the actual
9 science behind fingerprints.

10 Q. I'm sorry. I thought you said that these cards
11 that are placed into evidence are the ones which you
12 placed into evidence and that you sealed it with
13 this red tape.

14 A. That's correct. I may not have been
15 understanding your question.

16 Q. Well, my question is whether or not these cards
17 are the actual residue-produced cards; meaning, is
18 it the powdered cards or is this a photograph of the
19 powdered cards?

20 A. I understand the question now. My apologies.
21 Those are the actual cards that I collected on
22 that night. They are not a representation of such.

23 Q. Now, as I understand your training -- well,
24 tell me something about your training. How long
25 have you been with the sheriff's department?

1 A. I've been with the sheriff's department
2 approximately four years and nine months.

3 Q. So in August of 2011, how long had you been
4 with the sheriff's department?

5 A. I had been with the sheriff's department about
6 two years probably. If you were actually counting
7 actual street time, probably less than a year and a
8 half.

9 Q. Where had you worked before you were with the
10 sheriff's department?

11 A. Before I worked at the sheriff's department, I
12 worked for the American Red Cross in blood
13 processing; before that, I worked at Veterinary
14 Medicine as a veterinary technician; before that, I
15 spent two and a half years at USC in molecular
16 biology research.

17 Q. So you have a background, if you will, of
18 dealing with blood and dealing with the importance
19 of analysis of blood; right?

20 A. You could say that, yes.

21 Q. So when you saw that blood on those blinds, you
22 thought at that time that that would be an important
23 item that could be assessed for identification,
24 didn't you?

25 A. The issue with that would be that would have

1 been a supervisory decision, and I was not the
2 supervisor on scene at the time.

3 Q. Did you mention to your supervisor that you had
4 had special training or that you at least had two
5 years at USC in molecular biology and that you had
6 worked at the Red Cross dealing with blood?

7 A. It wouldn't have been extremely relevant
8 because by policy, patrol officers are not allowed
9 to collect DNA.

10 Q. And you're not allowed to suggest to your
11 supervisor that that might be a good idea?

12 A. My supervisor was aware of the blood. He could
13 have made an informed decision on his own.

14 Q. Tell me about that chair. What kind of chair
15 was it?

16 A. It was a plastic lawn chair with four legs and
17 a back and arms, but I can't recall a whole lot past
18 that. It just kind of looked like your average
19 plastic chair.

20 Q. And is it your testimony that you used that
21 chair to access the alleged crime scene?

22 A. I did. I had to stand on the chair. Like I
23 said, I'm approximately six-foot-one. And I could
24 reach the window, but to actually stand high enough
25 to properly dust the exterior surface of the window

1 for fingerprints, I needed that added elevation to
2 be able to do so effectively.

3 Q. So you're six-one. Would a person who is
4 six-two have needed the chair also?

5 A. More than likely, yes.

6 Q. So that chair would not have been about your
7 midchest, would it? I mean, the windowsill would
8 not have been where your chest is, would it?

9 A. Standing in the chair it would have been, yes.

10 Q. Standing in the chair it would have been.

11 Now, the chair was not directly underneath
12 window, was it?

13 A. I recall it being within several feet of the
14 window. But again, without having taken pictures, I
15 can't recall exactly where the chair was.

16 Q. Well you had to move the chair, didn't you?

17 A. I think I had to move it a couple feet.

18 Q. When you moved the chair, did you have to use
19 your hands?

20 A. I'm sure I would have used my hands. Yes.

21 Q. In your dealings with fingerprint-taking, you
22 don't analyze fingerprints, do you?

23 A. No. I just collect fingerprints.

24 Q. And everybody at the Lexington County Sheriff's
25 Department takes a course where they learn to look

1 at a surface and take some black powder and they put
2 it on the surface and then they take some tape and
3 they put it over where the black powder was to lift
4 off what you call prints?

5 A. That is correct.

6 Q. Would it kind of be like what you learned in
7 kindergarten where you take a pencil and you use the
8 pencil to go over the indentions in the paper? Is
9 it kind of like that?

10 A. It's similar, but I wouldn't say that they're
11 the same.

12 Q. It's the same point though, isn't it?

13 A. Similar concept, yes.

14 Q. But now with fingerprints, when you collect the
15 fingerprints, you have better or clearer
16 fingerprints depending on, what, the condition of
17 the area, the condition of the weather?

18 A. Certainly the weather and the cleanliness of
19 the surface and smoothness of the surface does
20 impact fingerprints, yes.

21 Q. Type of the surface that you're touching?

22 A. Yes, it does.

23 Q. How about the amount of pressure which is
24 applied to the surface? Do you leave a better
25 fingerprint if your press it down versus you just

1 touch it?

2 A. That's based more on an individual person's --
3 myself, for example, I actually have very clammy
4 hands. I can leave phenomenal fingerprints just
5 barely touching a surface. People who have drier
6 hands, they have to apply more pressure to leave
7 equivalent fingerprints. That's sort of a halfway
8 point; it's probably 50 percent the person's own
9 biology and 50 percent the actual surface you're
10 touching.

11 Q. So what is the point when you have your
12 fingerprints taken that they roll your fingers and
13 apply -- and they put their hands on your fingers to
14 apply pressure to the card? What is the point of
15 applying pressure to your fingers if it's not to get
16 a better print?

17 A. Well, in that case, that's actually taking
18 somebody's fingerprints for putting them on file.
19 And I know what they're trying to there is they're
20 trying to get a maximum surface of that print as
21 opposed to when we're checking a surface for
22 fingerprints, if I touch this water bottle, my
23 prints are on that bottle now; if I was to do this,
24 certainly it would be a bigger print, but it doesn't
25 change the fact that my prints are on there from

1 just gently touching it and they still could be
2 identifiable.

3 Q. I understand. But you probably get a better
4 print if you applied a little bit more pressure?

5 A. Not necessarily. Maybe, maybe not.

6 Q. Well, if you lifted a chair where you actually
7 had to use your hands to lift something, wouldn't
8 you expect to get a better print from applying
9 pressure to the chair?

10 A. It's possible.

11 Q. But even though it went in your mind and you
12 actually had to use the chair, you didn't think you
13 needed to fingerprint the chair?

14 A. Again, I kind of had tunnel vision. We were
15 dealing with a window, broken glass, we had a point
16 of entry or what we believed to be a point of entry,
17 we knew we had sufficient fingerprints on the glass
18 itself. You don't typically go through your mind,
19 hey, let me throw fingerprint dust and process this
20 chair. If it is, we pulled nine fingerprint cards
21 from the glass window. That's a lot of fingerprint
22 cards to pull from a single scene. That took about
23 an hour to do as it was.

24 In hindsight, yes, it would have been great to
25 have thrown some dust in that chair. The plastic

1 chair may or may not have yielded any good results.
2 It's just one of those things that just -- we just
3 didn't do it. But I don't think it was a
4 deal-breaker one way or the other. I think the
5 window was kind of our chief point of interest, and
6 I stand by that at this time.

7 Q. Well, now, the fingerprints were all taken off
8 of glass, weren't they?

9 A. They were.

10 Q. Was the window closed or open when you got
11 there?

12 A. I do believe it had been closed back when I got
13 there.

14 Q. So it was closed. Was it locked?

15 A. That, I can't recall.

16 Q. So from looking at the window, there was no
17 evidence that the window had ever been opened, was
18 there?

19 A. I couldn't say that one way or the other.

20 Q. Well, the window was closed, wasn't it?

21 A. The window was closed, but it doesn't mean it
22 hadn't been closed back. I mean, you could say that
23 one way or another.

24 Q. What if it was locked?

25 A. I don't recall if it was locked. But if

1 somebody opened the window, physically they could
2 shut it as well. And if they unlocked it, they
3 could have locked it back. That argument goes both
4 ways.

5 Q. Isn't it important to know the answers to those
6 questions?

7 A. Again, I'd like to clarify that I was not the
8 primary officer investigating this incident. I was
9 contacted to assist in processing some glass for
10 fingerprints, and that's exactly what I did.

11 Q. Well, if you unlock the window, where do you
12 expect the fingerprints to be?

13 A. Since that person has touched the window, I'd
14 expect them to be on the glass surfaces of the
15 window.

16 Q. What about on the lock?

17 A. I have -- in my almost five years in law
18 enforcement, I have never been able to obtain
19 fingerprints from a lock or a windowsill surface of
20 a window where known fingerprints were found
21 elsewhere.

22 Q. What about when you lift the window? Wouldn't
23 you expect to find it on the window frame?

24 A. I've never successfully pulled fingerprints
25 from a window frame or seen fingerprints on a window

1 frame.

2 Q. You've never seen them?

3 A. Most residential window frames are wood and
4 they're painted. Typically, for example, this desk
5 wrap, whereas this I could tell you is a great
6 surface for fingerprints, it's smooth plastic, not
7 very porous, I can tell you by comparison, a surface
8 like this less or something more wooden, less
9 laminate in nature, you're not going to find
10 fingerprints.

11 Q. But this window was not wooden, was it?

12 A. The window itself was glass and, of course, the
13 frame components were some sort of painted metal or
14 plastic. But usually when you're talking latches on
15 a window, it's such a small surface that the problem
16 is, there's just not enough contact to really be
17 able to properly process anything like that for
18 fingerprints.

19 Q. But you could examine the frame which was not
20 wood and get prints off of it, couldn't you?

21 A. I dusted the frame. I always dust the frame if
22 I'm processing a window for prints. That's actually
23 one of the reasons I had to actually stand in the
24 chair and process the outside portion. There were
25 not prints detected anywhere else except for the

1 glass on the window.

2 Q. So there being no prints on the frame, is that
3 an indication that no one touched the window or is
4 that an indication that you just couldn't lift the
5 prints?

6 A. There were prints on the outside surface of the
7 glass of the window. To me, that would indicate
8 that someone touched the window and attempted to
9 open it.

10 Q. Because there were prints on the outside on the
11 glass that was broken?

12 A. That's correct.

13 Q. When were the prints placed there?

14 A. Would be my educated understanding that those
15 prints were likely placed before the window was
16 broken.

17 Q. How long had the prints been there?

18 A. I would assume those prints would have been
19 there since whatever incident time we're looking at.
20 I believe the victim was last there approximately
21 7:00 a.m. that morning, and I think we were called
22 7:00 or 8:00 p.m. that night.

23 Q. So it's your understanding that you can
24 determine how long fingerprints are on a window
25 based on when someone notices a broken window?

1 A. No. I'm not an expert that can tell you how
2 long those prints had been on that window. However,
3 as dirty as the surface of that window was and the
4 fact that it's a -- exterior surface that's
5 routinely exposed to weather conditions, it would be
6 my guess, as clear as the prints were when we lifted
7 them that they were very recent prints.

8 Q. So I want to get this straight. You're telling
9 me you're not an expert in it, but you want to
10 hazard a guess anyway; is that right?

11 A. I'm saying my day-to-day understanding, seeing
12 prints to the incidents that were freshly committed,
13 the prints that we observed, appeared consistent
14 with what you would expect with an incident that had
15 just recently happened.

16 Q. Could it have been -- could the prints have
17 been there the day before?

18 A. I would expect the day before would be
19 possible. But...

20 Q. What about two days before?

21 A. Again, I can't recall what weather conditions
22 were those few days leading up to this incident.
23 But it's certainly possible.

24 Q. But the short answer is you don't know, do you?

25 A. I don't know.

1 Q. Does the Lexington County Sheriff's Department
2 have outside individuals such as S.L.E.D. or
3 independent testers who come in to verify that the
4 officers who were conducting these fingerprint
5 classes are learning everything that they're
6 supposed to learn?

7 A. That would be a question I don't have an answer
8 to.

9 Q. Well, you took the class. You would know if
10 somebody was there, wouldn't you?

11 A. I know nobody from S.L.E.D. was there, but I'm
12 not sure if you're asking me if somebody from
13 S.L.E.D. was present in the class or if they get --
14 have to provide any kind of documentation or
15 auditing to S.L.E.D. on the back end.

16 Q. Well, who taught you?

17 A. I believe it was Mr. Duane Johnson, if I recall
18 correctly.

19 Q. So it's just you and Mr. Johnson together?

20 A. There were a couple other new-hires in the room
21 at the time.

22 Q. Did you take a test?

23 A. To be honest, that's been so long ago, I can't
24 remember if I did or not. We take tests for
25 everything else though, so it wouldn't surprise me

1 if I did.

2 Q. Did you get graded on it?

3 A. If I took a test, I would assume that it was
4 graded.

5 Q. But you don't even remember taking a test on
6 it?

7 A. Again, it was five years ago and law
8 enforcement was very new to me, very daunting. You
9 know, we take multiple-choice tests for just about
10 every element of our training. I took one for
11 training yesterday. It's possible, but I can't
12 recall for absolute certainly.

13 Q. How do you know that you're a good
14 fingerprint-taker if you don't get graded on it?

15 A. Well, personally, I'd say I'm a good
16 finger-print taker because as a patrol deputy within
17 my first three years, I think I had four positive
18 identifications through AFIS, which would be
19 positive, which what that means is, I would have
20 taken fingerprints at scenes, submitted them for
21 analysis and they would have come back positive for
22 individuals whose fingerprints were on file.

23 It's my understanding that's a very rare
24 accomplishment for patrol deputies, because a lot of
25 times, I'd say, 90 percent of the fingerprints that,

1 as a department, we collect, don't come back to
2 anybody or they're not of good enough quality.
3 Having four that have come back with notices that,
4 hey, not only did you collect these prints, but they
5 positively identified a potential suspect based on
6 these prints, I've gotten accommodations from
7 members of our CSI division and my own captains and
8 lieutenants that say, hey, that's a great job, keep
9 up the good work.

10 Q. Well, that doesn't mean that the person that
11 you got the AFIS hits on was the person who
12 perpetrated the crime, does it?

13 A. I indicated that it's indicative of potential
14 suspects.

15 Q. So it's an indication that somebody has ridge
16 prints similar to somebody else, doesn't it?

17 A. No. It means that those identifications are
18 for that person's exact ridge prints. You're not
19 going to get a mistaken identification on
20 fingerprints, is my understanding.

21 Q. You're not going to get what now?

22 A. Fingerprints are unique to each individual
23 human being.

24 Q. Okay. And how many ridge prints does a human
25 being have on his fingerprint?

1 A. That would not be an answer I could provide --
2 a question I could provide an answer to.

3 Q. Well, you're speculating on a lot of things.
4 You don't really know the answer to that question
5 about fingerprint analysis at all, do you?

6 A. Which question was that?

7 Q. An AFIS hist just simply means that somebody
8 has similar fingerprints to another individual;
9 isn't that what that means?

10 A. You're not going to mistake somebody else's
11 fingerprints for somebody else's. I mean, that's --
12 my understanding is when they come back with the
13 analysis, it's an exact match. You can have two
14 people genetically identical, twins, they're going
15 to have different fingerprints. Every person's
16 fingerprints cannot be replicated; they're very
17 unique.

18 Q. Are you familiar with the Madrid train bombing
19 in March the 11th of 2004?

20 A. I'm not even remotely familiar with that.

21 Q. So you'd say at least in terms of whether or
22 not your qualifications as an expert and whether or
23 not there's uniqueness or not are based on solely
24 what you've heard as opposed to what you actually
25 know?

1 A. I never indicated that I was a qualified expert
2 on the subject.

3 Q. What other areas of the house did you perform
4 fingerprint analysis on?

5 A. My analyses, as previously indicated, was
6 focused on the window itself, the glass from the
7 window, and I check the interior and exterior
8 sections of the window.

9 Q. Did you check any part inside the house to see
10 if there were fingerprints?

11 A. The only areas that I investigated for
12 fingerprints were the kitchen window inside and
13 outside and the glass that was removed from the
14 countertops and the kitchen sink.

15 Q. I'm sorry. Did you find any prints from inside
16 the house?

17 A. I never processed any other portion of the
18 house.

19 Q. And the glass that you examined was for the
20 exterior part of the glass; is that correct?

21 A. That is correct.

22 Q. So you found no fingerprints inside the house,
23 did you?

24 A. I didn't, but I wasn't looking inside the
25 house.

1 Q. Well, if you're examining a
2 breaking-and-entering or a burglary, isn't your
3 concern being what happened inside the house?

4 A. Again, I was contacted by a supervisor to
5 assist him with a very specific goal. I responded.
6 He needed help obtaining fingerprints that he had
7 already located visually on some glass. I assisted
8 him to the best of my ability in pulling those
9 fingerprints from that glass in question. He
10 required no other assistance from me.

11 MR. WILLIAMS: That's all of the questions I
12 have.

13 THE COURT: Anything on redirect?

14 MR. BELL: Thank you, Your Honor.

15 REDIRECT EXAMINATION

16 BY MR. BELL:

17 Q. Master Deputy, I'd like you to make one thing
18 very clear to this jury. Were you instructed not to
19 talk to the witnesses in this case?

20 A. Yes.

21 Q. Were you instructed not to talk to me?

22 A. No.

23 Q. Now, when we talked last night, did I tell you
24 anything to say today?

25 A. You did not. You simply clarified some

1 potential questions that were things we had already
2 talked about.

3 Q. At any point in time, did I even imply
4 something that you should say today?

5 A. You did not.

6 Q. Did our conversation go very much like it's
7 going right now?

8 A. I'd say it was very similar. Yes.

9 Q. Now, there's been some talk about CSI not
10 coming to the scene. Would CSI have better
11 recovered those fingerprints?

12 A. I'd say they wouldn't have done any more of a
13 job than we did as far as the fingerprints go.

14 Q. Do they have some other fancy method of lifting
15 prints?

16 A. If CSI had responded to that same scene, they
17 would have used an identical black and identical
18 methods to obtain the fingerprints.

19 Q. Now, you've talked a little bit about the
20 texture of the chair and we don't quite know what it
21 was. Even if you had lifted prints off of that
22 chair, would that have changed the quality or the
23 validity of the nine prints that you did lift?

24 A. It wouldn't have made a difference.

25 Q. You may not know this about me, but I'm about a

1 year into this job myself. So I can -- I can
2 understand being a rookie. But the --

3 MR. WILLIAMS: Objection to the form of the
4 question, Your Honor.

5 THE COURT: All right. Sustained.

6 MR. BELL: Thank you, Your Honor.

7 BY MR. BELL:

8 Q. The issue of being a year in, we covered it
9 earlier. How many fingerprint cases had you worked
10 in your first year or so?

11 A. To be honest, that's probably when I did the
12 majority of my fingerprint cases. As low man on
13 shift, typically I'd get stuck with those kind of
14 calls involving fingerprinting and more work. Since
15 the last year and a half being a supervisor, I
16 probably can count on one hand the number of times
17 I've had to pull fingerprints. At that time,
18 probably I'd done a couple dozen, give or take.
19 It's really hard to say.

20 Q. And that was prior to August 29th, 2011?

21 A. That's correct.

22 Q. So was this particular incident the first time
23 you lifted fingerprints?

24 A. It was not.

25 Q. Were the prints that you turned in from this

1 case given back to you as being unusable?

2 A. They were not.

3 Q. In an ideal world would you have every bit of
4 evidence?

5 A. Absolutely.

6 Q. In your four-plus years of law enforcement, do
7 you typically have everything?

8 A. No. Even in the best cases where I've got all
9 the time in the world to work, it seems like we
10 always miss some vital piece. It's just -- it's the
11 complex nature of what we do.

12 Q. Does missing one piece ruin your case?

13 A. It does not.

14 Q. Do you always do your best?

15 A. I always do my best.

16 Q. Now, we talked about the window frame and there
17 not being any fingerprints on the frame. Once
18 again, where did you find the fingerprints?

19 A. I found the fingerprints on the -- what we
20 determine to be the exterior surface of the glass.

21 Q. And how do you think that window was pushed up
22 if they weren't touching the frame?

23 MR. WILLIAMS: Objection; speculation.

24 MR. BELL: Your Honor, I think he opened the
25 grounds by going into testimony regarding whether or

1 not the frame was manipulated.

2 THE COURT: Overruled. I'll allow it.

3 MR. BELL: Excuse me, Your Honor?

4 THE COURT: Overruled. I'll allow it.

5 MR. BELL: Thank you, Your Honor.

6 THE WITNESS: In my experience, if somebody is
7 trying to open a window before you want to go
8 breaking the window, unlock it, what are you going
9 to do? You're going to try to push a window open.
10 You know, if you touch it, you push on it, if it's
11 locked, then you go about some other means if you're
12 trying to get in. That was my interpretation of the
13 scene as it was presented to me.

14 BY MR. BELL:

15 Q. You said it a minute ago. Have you been
16 qualified as an expert in fingerprinting?

17 A. I have not.

18 Q. But you were trained -- have you been trained
19 in lifting fingerprints?

20 A. I have. And as I indicated much earlier in my
21 testimony, it's fairly easy to do. My wife actually
22 one afternoon, I taught her how to do fingerprinting
23 and it took about 30 minutes. The neighbors got a
24 good show out of it. But she has just recently gone
25 into law enforcement with Lexington County as well,

1 and that was my way of saying -- you know, she was
2 stressing about learning fingerprints. I told her,
3 I said, trust me, it's that easy. And we went
4 outside, touched our cars, the glass and the bodies,
5 and we took black dust and -- it's amazing how easy
6 it can be to actually procedurally do.

7 Q. Have you been trained in the detailed breakdown
8 and analysis of the prints that you've lifted?

9 A. That, I have not.

10 Q. Does that affect your ability to lift prints?

11 A. It does not affect my ability to lift prints
12 whatsoever.

13 MR. BELL: No further questions, Your Honor.

14 MR. WILLIAMS: Just one question, Your Honor.

15 RE CROSS-EXAMINATION

16 BY MR. WILLIAMS:

17 Q. You were asked by the solicitor about how you'd
18 go about opening the window. You indicated that
19 you'd push on it and then if it didn't lift up,
20 you'd break the pane, I guess, to get to the lock?

21 A. I think that's a very reasonable explanation.
22 Yes.

23 Q. Well, if it had a screen on it, wouldn't you
24 take the screen off first?

25 A. Well, certainly.

1 Q. And did you examine the screen in this case?

2 A. As I testified earlier, I can't definitively
3 recall the presence of a screen, but I do know there
4 was not a screen on the window when I processed the
5 window.

6 Q. So that would have been the only window that
7 didn't have a screen?

8 A. It would have been, I'd assume. But I didn't
9 investigate the other windows at the residence.

10 Q. You think the burglar took the screen with him
11 when he left?

12 A. I'll clarify. There's been some discussion
13 about the screen. Most of us involved in that
14 incident seem to recall that there may have been a
15 screen laying on the ground; however, because we
16 didn't take pictures, as we indicated, none of us
17 are going to testify to any absolute certainty that
18 there was or was not a screen present. Again,
19 that's one of the advantages that would have been
20 indicative of us taking pictures. Obviously if we
21 had taken pictures, it would make our jobs a lot
22 easier at this point because we could have
23 remembered things a little clearer. I can say I
24 think I remember there being a screen, but I would
25 not testify to it with any certainty. I can say

1 when I did get there, the broken window itself,
2 there was not a screen on the window.

3 Q. So you have talked about all this with the
4 other officers; the screen and everything?

5 A. This case has been preparing for trial for well
6 over two years now, I believe, since I had my first
7 interview with Mr. Elam. And all of us involved
8 have discussed this matter in detail prior to the
9 trial this week.

10 MR. WILLIAMS: That's all the questions I have,
11 Your Honor.

12 MR. BELL: One question, Your Honor.

13 FURTHER DIRECT EXAMINATION

14 BY MR. BELL:

15 Q. Have you been told at any point in time by
16 those officers what to say today?

17 A. I have not.

18 MR. BELL: Thank you, Your Honor.

19 THE COURT: Thank you very much, sir. You may
20 step down.

21 All right. You may call your next witness.

22 MR. ELAM: Your Honor, at this time the State
23 would call Sergeant Bryan Todd Garrick.

24 BRYAN TODD GARRICK

25 being first duly sworn, testified as follows:

1 THE CLERK: Once you're seated state your full
2 name, spelling your last.

3 THE WITNESS: My name is Bryan Todd Garrick.
4 Garrick is spelled G-A-R-R-I-C-K. I would like to
5 clarify that I'm not a sergeant. I wish I was, but
6 at this point I'm not.

7 MR. ELAM: I apologize. I promoted you
8 prematurely.

9 Your Honor, before I get into the direct
10 examination of Detective Garrick, may Deputy Creech
11 be excused?

12 MR. WILLIAMS: I have no objection, Your Honor.

13 THE COURT: Absolutely.

14 DIRECT EXAMINATION

15 BY MR. ELAM:

16 Q. All right. Can you tell the ladies and
17 gentlemen of the jury where you work, sir?

18 A. I'm employed with the Lexington County
19 Sheriff's Department.

20 Q. And what's your title there?

21 A. Currently I'm a detective assigned to the Major
22 Crimes Unit.

23 Q. And what's your duty as a detective?

24 A. In simplistic form, as a detective, when a case
25 is assigned to you, it's basically up to you to

1 figure out what kind of case you're looking at and
2 then basically follow leads and evidence to
3 hopefully locate property and/or locate the person
4 who actually -- or subject who actually perpetrated
5 the crime.

6 Q. Does the sheriff's department have roads
7 deputies?

8 A. Yes.

9 Q. And how does your job differ from that of a
10 road deputy in a case?

11 A. Deputies work 12-hour shifts, they ride the
12 roads, they answer calls. My position, I'm assigned
13 to headquarters at this point, which means I have an
14 office at headquarters. And once reports are
15 written by the road from the previous shifts,
16 they're gone through by supervisors and then they're
17 assigned to different detectives.

18 Q. And just to really simplify this, who is most
19 frequently a first responder to a crime scene?

20 A. The road units.

21 Q. Road deputy?

22 A. Yes.

23 Q. So you generally, as part of your duties,
24 follow up on cases?

25 A. Yes, sir.

1 Q. Okay. How long have you been a detective?

2 A. Approximately three years. I spent two years
3 in property crimes in the west region and I've been
4 in major crimes for about a year now.

5 Q. How long have you been in law enforcement
6 altogether?

7 A. Approximately 24 years.

8 Q. And where all have you worked in law
9 enforcement?

10 A. Out of college I worked at the Department of
11 Probation and Patrol. I worked there for about ten
12 years. From there I went to the local circuit
13 solicitor's office, I was there approximately a
14 little over five years, and I've been with the
15 sheriff's department nine years.

16 Q. Nine years at the sheriff's department?

17 A. Yes, sir.

18 Q. Okay. Turning to this case, are you familiar
19 with Lexington County Sheriff's Department Case
20 No. 11028382?

21 A. Yes, sir. That's the case involving a burglary
22 at Old Orangeburg Road.

23 Q. And when and how did you get assigned or
24 involved in this case?

25 A. That case was assigned to me -- looking back at

1 my notes, it was assigned to me approximately the
2 30th, I believe -- August 30th of 2011.

3 Q. August 30th, 2011. And what do you normally do
4 when you first get assigned a case?

5 A. When the case is first assigned, you look over
6 the incident report and make -- to see exactly what
7 you're dealing with, you make contact with the
8 victims and --

9 Q. And in this case it would be the incident
10 report written by whom?

11 A. Road units that were at the scene that night.

12 Q. All right. How many cases do you have open at
13 any one time?

14 A. In property crimes it's nothing to have 20 to
15 30 cases open at one given time.

16 Q. Did you actually review the incident reports in
17 this particular case?

18 A. I did.

19 Q. And again, who specifically -- whose incident
20 report did you look at?

21 A. The incident report written by Master Deputy
22 Reggie Ward.

23 Q. So what crime was involved in this case again?

24 A. The burglary of Old Orangeburg Road.

25 Q. Whereabouts is Old Orangeburg Road.

1 geographically?

2 A. Geographically it's in the Edmond Red Bank area
3 of Lexington County.

4 Q. And is Old Orangeburg Road a residence?

5 A. It is.

6 Q. Or a dwelling?

7 A. It is.

8 Q. Okay. What county is that in?

9 A. Lexington County.

10 Q. And who was the victim in the case?

11 A. Dianna Owens.

12 Q. So when you got this case to follow up on, did
13 you go by the residence?

14 A. I can't recall if I went by the day that I got
15 the report. I know I try to make contact with all
16 my victims within a day or two. I did go by the
17 house within a day or two and talk with Ms. Owens.

18 Q. All right. So at some point you did go by
19 there?

20 A. I did.

21 Q. And do you recall who all lived in that
22 residence?

23 A. At the time it was Ms. Owens and I know she had
24 two children. I can't recall if she was married at
25 the time or not. But I do know that her children

1 and her were at the house at the time.

2 Q. At the time you received the case or were
3 assigned this case, had any forensic evidence been
4 developed in the case?

5 A. It had not.

6 Q. And when I say forensic evidence, I guess I
7 better make sure you and I are on the same
8 frequency. What is forensic evidence?

9 A. From reading the report, I did see where
10 fingerprints were lifted at the scene. But any
11 reports on those fingerprints have not been
12 generated or not been done yet.

13 Q. Okay. So you're changing your answer. You're
14 saying there was forensic evidence?

15 A. Well, just reading the report, I did see the
16 fingerprints were lifted from the scene. But as far
17 as the results of those, no, we did not have that.

18 Q. What is forensic evidence anyway?

19 A. Fingerprints, any DNA swabs, anything dealing
20 with body fluids; I mean, just anything that you can
21 recover from a crime scene.

22 Q. Okay. And was there potentially any other
23 forensic evidence at Old Orangeburg Road that
24 could have been collected?

25 A. From what I understood from reading the report,

1 there were some blood swabs -- or some blood smears
2 in the house.

3 Q. And you saw that in the incident report?

4 A. I did.

5 Q. And did you talk to Reginald Ward or did you
6 talk to Anthony Creech about the case at that
7 particular point?

8 A. No. I think I spoke to Ms. Owens first to find
9 out exactly where those blood smears were. She
10 showed me, but she had also informed me that she had
11 already cleaned those.

12 Q. Okay. You anticipated my next question, and
13 that was, was it possible for you personally
14 following up on the case to collect any additional
15 forensic evidence?

16 A. No. It had already been cleaned up.

17 Q. All right. Now, when you were first assigned
18 this case, did you have any suspects?

19 A. I did not.

20 Q. And as a result of talking to Dianna Owens, the
21 victim in the case, did you immediately develop any
22 suspects in the case?

23 A. I did not.

24 Q. Did you eventually develop a suspect in the
25 case?

1 A. I did.

2 Q. And tell us how that came about.

3 A. Received notification that a match had come
4 back on the fingerprints that were lifted at the
5 scene.

6 Q. And where were they lifted from at the scene,
7 your understanding of that?

8 A. The window in the back of the house that
9 overlooked the kitchen sink.

10 Q. Was that the point of entry for the burglary
11 that you're investigating?

12 A. What we believe so, yes, sir.

13 Q. Okay. Now, who was this suspect whose name
14 arose?

15 A. Jacob Heyward Seay.

16 Q. Could you spell that last name?

17 A. I believe it's S-E-A-Y.

18 Q. And other than first name, middle name and last
19 name, did you get any other identifiers for Jacob
20 Heyward Seay?

21 A. We got a date of birth and a social security
22 number.

23 Q. What is the date of birth?

24 A. of 1990.

25 Q. And the social?

1 A.

2 Q. And did you at some point, knowing that you had
3 fingerprints at the point of entry of this burglary
4 and knowing that you had a suspect, did you try to
5 find out whether those fingerprints had a legitimate
6 reason for being where they were found?

7 A. Yes. Once we developed a name, I ran
8 Mr. Seay's South Carolina driver's license photo and
9 his record, found out an address for him and then I
10 went to that address to attempt to talk to Mr. Seay.

11 Q. What address was that?

12 A. Peachtree Rock Road.

13 Q. All right. Did you present that name or that
14 photograph you're talking about to the victim in the
15 case?

16 A. I did. I went by and spoke to Ms. Owens,
17 showed her the DMV photo of Mr. Seay and asked her
18 if she knew that individual. She said she did not.
19 I asked her if she remembered if he'd done any work
20 or had been over at the house at any point, and she
21 said she had never seen that individual and didn't
22 know him.

23 Q. So just to summarize, she didn't know the name?

24 A. Didn't know the name.

25 Q. And she didn't know the face?

1 A. Did not know the face.

2 Q. Now, you mentioned going by an address of
3 Peachtree Rock Road. Just generally, whereabouts is
4 that address?

5 A. Generally in the same area. I think
6 technically it's in the Edmond area of Lexington
7 County. But in reference to the -- where this
8 incident took place, it's two to three miles away,
9 probably.

10 Q. Okay. Is it in Lexington County?

11 A. It is.

12 Q. Okay. And what was the result of your going to
13 Peachtree Rock Road again?

14 A. I went to that address, knocked on the door,
15 nobody was home. I left a card on the door asking
16 them to contact me once they came home. I think I
17 went next door, spoke to a neighbor, showed them a
18 picture of Mr. Seay to see if they could identify if
19 they've ever seen that individual at that address;
20 said they did believe they'd seen him there, but
21 could not recall when the last time they had saw
22 him.

23 Q. All right. Did -- let me at this time show you
24 an item that's previously marked -- It says
25 Plaintiff's Exhibit No. 25, but it's State's Exhibit

1 No. 25 -- and ask if you've seen this item before.

2 A. Yes, sir.

3 Q. Just in general, can you tell us what that is?

4 A. It's a general map of the area of Red Bank and
5 the -- part of the Edmond community.

6 Q. Are you familiar with the Red Bank Edmond
7 community area?

8 A. Very.

9 Q. Very. Can you tell me if that map fairly and
10 accurately depicts the roads --

11 A. It does.

12 Q. -- of the -- just the layout of the area that
13 we're talking about?

14 A. It does.

15 MR. BELL: Your Honor, at this time the State
16 seeks to move State's Exhibit No. 25 into evidence.

17 THE COURT: Any objection?

18 MR. ELAM: Actually, before I move it into
19 evidence, let me ask you to do something. Something
20 just occurred to me.

21 BY MR. ELAM:

22 Q. Could you -- before I publish this, let me ask
23 you if you can find the victim's address on that.

24 A. The victim's address is here. (Indicating)

25 Q. Is there any doubt in your mind about that?

1 A. No.

2 Q. Okay. Is it marked by anything on that
3 exhibit?

4 A. It's a red A.

5 Q. Red A? Letter A?

6 A. Letter A.

7 Q. All right. Is the address of Peachtree
8 Rock Road depicted on that exhibit?

9 A. No, it's not.

10 Q. Can you -- is it possible for you to mark it on
11 there for us? Do you feel comfortable doing that?

12 A. I can.

13 Q. Do you need a pen?

14 A. I do.

15 Q. Okay.

16 A. It's approximately in this area here.

17 (Indicating)

18 Q. All right. Could you put your initials by
19 that.

20 A. (Witness complies).

21 MR. ELAM: All right. Again, Your Honor, at
22 this time the State moves Exhibit No. 25 into
23 evidence.

24 MR. WILLIAMS: No objection, Your Honor.

25 THE COURT: All right. Without objection.

1 (State's Exhibit No. 25 admitted into
2 evidence.)

3 BY MR. ELAM:

4 Q. Also I'd like to show you State's Exhibit No.
5 24. Have you seen this before, sir?

6 A. I have.

7 Q. And just in general terms, what's depicted in
8 it?

9 A. It's a blown-up of the same area that was on
10 the smaller map.

11 Q. And again you've testified that you're very
12 familiar with this area of Red Bank?

13 A. I am.

14 Q. Does this map fairly and accurately depict the
15 layout of the streets?

16 A. It does.

17 Q. And does it fairly and accurately depict the
18 location of the victim's house?

19 A. It does.

20 Q. How is it designated on this map?

21 A. By a number -- a black number -- a black spot
22 with a 1 in it.

23 Q. And does it also depict the location of
24 Peachtree Rock Road?

25 A. It does.

1 Q. And how is that designated?

2 A. Looks like a purple marker.

3 MR. ELAM: Your Honor, at this time the State
4 moves Exhibit No. 24 into evidence.

5 MR. WILLIAMS: Without objection, Your Honor.

6 THE COURT: Without objection.

7 (State's Exhibit No. 24 admitted into
8 evidence.)

9 BY MR. ELAM:

10 Q. Would you step down briefly. This will be
11 brief, so I don't think I need the easel. If you'll
12 stand on this side of me and talk towards the court
13 reporter.

14 Now again, point out on this map the victim's
15 home.

16 A. The victim's home is here. (Indicating)

17 Q. Old Orangeburg Road labeled?

18 A. Yes.

19 Q. And the address that you associated with the
20 defendant?

21 A. Peachtree Rock Road, which is located here.
22 (Indicating)

23 Q. Okay. Thank you.

24 You said when you went by Peachtree Rock
25 Road you did not encounter Mr. Jacob Heyward Seay.

1 A. I did not.

2 Q. Did you at some point develop another address
3 for him?

4 A. We later developed an address -- a possible
5 address of Old Chapin Road, Apartment F1.
6 That's in the Lexington area of Lexington County.

7 Q. And were you actually able to meet with
8 Mr. Seay at some point?

9 A. I went by that address. The first time I went
10 by there, there was nobody home. I left a card
11 asking for them to contact me. A few hours later, I
12 believe, that day, I received a phone call from a
13 Ms. Watts. I identified myself, asked her if
14 Mr. Seay was living there. She identified herself
15 as his grandmother --

16 MR. WILLIAMS: Objection to hearsay, Your
17 Honor.

18 THE COURT: Sustained.

19 Q. You don't necessarily need to say what the
20 grandmother said. But just tell us, did you
21 eventually meet with Mr. Seay?

22 A. I did. I did eventually meet him at that
23 address.

24 Q. At that address? That's Old Chapin Road,
25 Apartment F1?

1 A. Yes, sir.

2 Q. When was this meeting?

3 A. November 1st of 2011.

4 Q. And where specifically did you meet with
5 Mr. Seay?

6 A. Inside that residence. I believe we were in
7 the den/living room area.

8 Q. All right. Did you arrest him when you met
9 with him in his living room?

10 A. I did not.

11 Q. Was he in custody?

12 A. He was not.

13 Q. Did you ask him questions?

14 A. I did.

15 Q. Did he agree to talk to you?

16 A. He did.

17 Q. Was he free to stop talking at any time?

18 A. He was.

19 Q. Could he ask you to leave at any time?

20 A. Did he ask me to leave at any time?

21 Q. Could he ask you to leave at any time?

22 A. Yes, he could ask me to leave at any time he
23 wanted.

24 Q. Were there other police officers with you?

25 A. No.

- 1 Q. You were by yourself?
- 2 A. I was.
- 3 Q. Did you drive up with your blue light flashing?
- 4 A. I did not.
- 5 Q. Were you in a squad car even?
- 6 A. No. I was in my unmarked patrol vehicle.
- 7 Q. Did you have a weapon?
- 8 A. I did.
- 9 Q. Was it drawn or holstered?
- 10 A. Holstered.
- 11 Q. Were you in uniform or plain clothes?
- 12 A. Plain clothes.
- 13 Q. Okay. Now, did the man that you met in that
- 14 living room confirm that he was indeed Jacob Heyward
- 15 Seay?
- 16 A. He did.
- 17 Q. And was that the person you were looking for?
- 18 A. It was.
- 19 Q. Did you ask him about the presence of his
- 20 fingerprints on the victim's window?
- 21 A. I did. I asked him had he ever been to that
- 22 address. He stated he did not -- had never to that
- 23 address. I asked him had he possibly could have
- 24 done some work there in the past and he said he had
- 25 not done any work there and he had never been to

1 that address before.

2 Q. And we're talking Old Orangeburg Road?

3 A. Correct.

4 Q. All right. What about the Peachtree Rock
5 Road? Did you ask him about that?

6 A. I did. He stated he did live there at one
7 point and had moved, I believe, sometime around the
8 end of August, first of September.

9 Q. Why did you ask him about that address?

10 A. Because of the close proximity to the victim's
11 house, and that address was on his driver's license
12 photo record.

13 Q. All right. And you looked at State's Exhibit
14 No. 25, the smaller map of the vicinity. What --
15 and I'll show you on 24 now. This is just a small
16 section blown up of the other map; is that correct?

17 A. Correct.

18 Q. What is north of this section? What's depicted
19 on the smaller map north of this section?

20 A. North you're getting into Red Bank and then
21 further forth you're coming into Lexington.

22 Q. Okay. And what would the -- if you lived down
23 in the south part of this map and you were to go to
24 town, the Red Bank or Lexington, what route would
25 you take or could you take?

1 A. The two quickest -- the two possible routes,
2 two quickest routes, is either hit Number 6, South
3 Lake, and go straight into Red Bank or you could hit
4 Old Orangeburg and Old Orangeburg would take you
5 straight into Red Bank also.

6 Q. Would one of those major routes take you right
7 past the victim's house?

8 A. Old Orangeburg Road would.

9 Q. Did you have that in mind when you were asking
10 the defendant about Old Peachtree Rock Road?

11 A. I did.

12 Q. You said that he indicated to you that he lived
13 at Peachtree Rock Road at the time the burglary
14 happened. You indicated a time period that covered
15 the time of the burglary.

16 A. Correct.

17 Q. All right. Now, the person that you talked to
18 in the living room that day, the person who
19 confirmed he was Jacob Heyward Seay, is he present
20 in the courtroom today?

21 A. He is.

22 Q. Can you point him out?

23 A. The gentleman sitting at the defense table with
24 black jacket and grey shirt.

25 MR. ELAM: Your Honor, let the record reflect

1 that Detective Garrick has identified the defendant
2 in this case.

3 THE COURT: So reflected.

4 BY MR. ELAM:

5 Q. Detective Garrick, when you met with him, did
6 he resemble the photograph that you had shown to the
7 victim?

8 A. He did.

9 Q. Okay. Now, you said he wasn't arrested or in
10 custody when you talked to Mr. Seay. Was there a
11 time that you decided to arrest him?

12 A. I did.

13 Q. When was that?

14 A. I believe the warrant was issued November 29th
15 of 2011.

16 Q. All right. So as the investigator on the case,
17 as the person following up and summing up
18 everything, what evidence did you have against
19 Mr. Seay at the time?

20 A. We had fingerprints at the scene, point of
21 entry that we believe -- that came back to Mr. Seay.
22 He lived in the general area of the burglary at the
23 time. He made statements that he had never been at
24 that residence before and the victim had stated that
25 she didn't know Mr. Seay and had never seen him

1 before.

2 Q. And again, what was the significance of his
3 statement that he had never been to Old
4 Orangeburg Road? How was it significant to you?

5 A. Stated he had never been there, but his
6 fingerprints were on the window.

7 Q. So was therefore, was there any excuse for
8 those fingerprints to be there; any legitimate
9 excuse?

10 A. No.

11 Q. All right. Now let me ask you about the blood
12 that we briefly touched on earlier. It was noted by
13 Master Deputy Reginald Ward in the incident report.

14 A. Right.

15 Q. Would it have been better to collect that
16 blood?

17 A. It would have been nice to have it. Yes, sir.

18 Q. What would the possible results of collecting
19 the blood have been?

20 A. Three possible; it could have come back to
21 Mr. Seay, couldn't have come back to Mr. Seay or
22 could have come back to someone else.

23 Q. In your experience, have blood swabs been done
24 in some of the cases that you've been involved with?

25 A. Not that I've been involved with, no.

1 Q. Is it that rare?

2 A. You see it in major-crime-type instances.

3 Q. You said you've been with the sheriff's
4 department for, what, nine years?

5 A. Nine years.

6 Q. Okay. Is it possible -- to your knowledge, is
7 it possible to do a blood swab for potential DNA and
8 just not have anything?

9 MR. WILLIAMS: Objection; no foundation.

10 THE COURT: Ask the question again.

11 MR. ELAM: I'll lay a foundation.

12 BY MR. ELAM:

13 Q. Do you have some familiarity with --

14 THE COURT: Come up here.

15 (Sidebar conference.)

16 THE COURT: You may proceed.

17 MR. ELAM: Thank you, Your Honor. I'm going to
18 withdraw that question.

19 BY MR. ELAM:

20 Q. Just tell me this: If the blood -- and I guess
21 maybe we're speculating here a little bit. But if
22 the blood had come back to someone other than
23 Mr. Seay, how would that have affected your case?

24 A. Wouldn't have affected it much, just to tell me
25 that possibly there was two people at the scene

1 instead of just one.

2 Q. Does the idea that the blood might have come
3 back to somebody else affect the validity of the
4 prints that were in this case?

5 A. It does not. It does not.

6 Q. Okay. Now, who actually procured or drew the
7 arrest warrant in this case?

8 A. I wrote up the arrest warrant.

9 Q. And what identifying information did you record
10 in it?

11 A. Name, date of birth, social security number,
12 height, weight. I'd have to look at the warrant
13 to --

14 Q. Would you repeat those for me one more time?
15 Full name...

16 A. Full name, address, social security number,
17 gender, height, weight; in this case I had his DL,
18 so I put his DL number on there.

19 Q. What was the full name that you reported?

20 A. Jacob Heyward Seay.

21 Q. And what was the date of birth you recorded?

22 A. /1990.

23 Q. And what was the social security number?

24 A. .

25 Q. Okay. I believe you said 85 earlier.

1 A. I did. I couldn't read my own writing. It's
2 95.

3 Q. That was, obviously, an error.

4 A. It was.

5 Q. Did you yourself serve this arrest warrant on
6 Mr. Seay?

7 A. I did not.

8 Q. Did you get word that he had been arrested?

9 A. I did.

10 Q. Do you know when he was arrested?

11 A. I don't know if I know the exact date. From
12 looking at my notes, it looks like he was arrested
13 December 14th of 2011.

14 Q. Thank you.

15 Did you yourself have any more involvement in
16 this case after his arrest?

17 A. Other than getting the case all together, no.

18 Q. And other than getting ready for trial?

19 A. And getting ready for trial, yes, sir.

20 Q. And as part of that, did you have a chance --
21 did you ever touch the latent prints evidence before
22 Mr. Seay was arrested?

23 A. I did not.

24 Q. At some point in time did you have occasion to
25 put your hands on that evidence?

1 A. I put my hands on the evidence for the first
2 time yesterday morning signing it out from evidence
3 to bring here to court.

4 Q. So you're part of the chain of custody. You
5 signed it out, brought it to court, and we've been
6 using it since?

7 A. Yes.

8 Q. Okay. Do you work a lot of burglary cases?

9 A. I do not now. I did when I worked property
10 crimes.

11 Q. Is it fair to say that you've got a good bit of
12 experience with burglary cases?

13 A. I'd say so.

14 Q. When do most home burglaries happen, in your
15 experience?

16 A. My experience, based on the cases I've worked,
17 most of them occurred during the daytime hours.

18 Q. Daytime hours?

19 A. Daytime hours.

20 Q. Why is that?

21 A. Most people are at work or at school, it's
22 easier to find people not at home during the day
23 than it is at night.

24 Q. Okay. Detective, I'm just going to show you
25 one picture --

1 A. Okay.

2 Q. -- as soon as it boots up. The picture that
3 I've laid down here on the projector is State's
4 Exhibit No. 2. I'll ask if you -- are you familiar
5 with that?

6 A. I am.

7 Q. It's in evidence already. Do you have a good
8 understanding -- even though you weren't there when
9 the first responders were there when the
10 fingerprints were taken, do you have a good
11 understanding of which window was involved in this
12 burglary?

13 A. I do.

14 Q. All right. I just want to put to rest then
15 something that everybody has been talking about,
16 talking around. Did you ever have occasion yourself
17 when you went out to the scene of the crime to
18 measure for yourself the distance from the ground to
19 the sill of that window?

20 A. I did not personally measure, but I was there
21 on scene when a measurement was taken.

22 Q. Okay.

23 MR. WILLIAMS: Your Honor, I'm going to object
24 to any inquiry as to how tall that was if he wasn't
25 individually the one who measured it.

1 BY MR. ELAM:

2 Q. But you witnessed the window being measured
3 from floor to sill?

4 THE COURT: I'm going to let him continue to
5 see what he actually observed.

6 BY MR. ELAM:

7 Q. Did you witness this distance being measured?

8 A. I did.

9 Q. What was used to measure it?

10 A. A tape measurer.

11 Q. Did it extend from the bottom -- from the floor
12 all the way to the sill?

13 A. It did.

14 Q. And what was the height?

15 THE COURT: All right. Now, he can testify if
16 he personally viewed the measuring tape and saw what
17 the measurement was.

18 BY MR. ELAM:

19 Q. Did you personally view the measuring tape to
20 see what the height was?

21 A. I did.

22 Q. And what was the height?

23 A. Five foot, nine inches.

24 Q. Thank you. And just out of clarification now,
25 when I talk about the sill, what am I talking about?

1 A. The bottom part of the window right there.

2 (Indicating)

3 Q. Not the glass?

4 A. Not the glass.

5 Q. Okay. The glass is above that?

6 A. Right.

7 Q. Thank you.

8 MR. ELAM: No further questions.

9 THE COURT: Mr. Williams.

10 MR. WILLIAMS: May it please the Court.

11 CROSS-EXAMINATION

12 BY MR. WILLIAMS:

13 Q. Investigator Garrick, when did you visualize
14 the measuring of the windowsill to the ground?

15 A. I cannot recall the exact date. It was
16 approximately a month, month and a half ago.

17 Q. So April of 2014?

18 A. I believe it was more of March probably.

19 Q. March 2014?

20 A. Yes.

21 Q. So to your knowledge, from August of 2011 until
22 March of 2014, no one had ever measured that?

23 A. Not to my knowledge.

24 Q. Now, the solicitor corrected you on a social
25 security number that you had made a mistake on.

1 A. I did.

2 Q. What is the importance of making a mistake on a
3 social security number?

4 A. You get a completely different person.

5 Q. Pretty easy to do right here in the courtroom,
6 wasn't it?

7 A. It was.

8 Q. I wonder how many times that happens.

9 A. Couldn't tell you.

10 Q. Your involvement with this case, you went to
11 this scene right here; is that right? (Indicating)

12 A. Correct.

13 Q. Did you walk around in the backyard and
14 everything?

15 A. I can't recall. Seems like we might -- myself
16 and Ms. Owens might have walked outside. I can't
17 recall if when I came to the residence if I came to
18 the back door or the front door.

19 Q. How many times did you come to the residence?

20 A. Twice that I can recall.

21 Q. And were both times in the year of 2011 or was
22 one time in 2011 and one would be in March of 2014?

23 A. Twice in 2011 to speak to Ms. Owens and then
24 once back in March of this year.

25 Q. Did you go to the residence at any other time

1 other than that?

2 A. No.

3 Q. Well, clearly in this picture -- do you know
4 when this picture was taken?

5 A. I did not take that picture. I couldn't tell
6 you when that picture was taken.

7 Q. There's no chair there, is there?

8 A. No, sir.

9 Q. And when you went out there twice in 2011, did
10 you see a chair there?

11 A. Honestly, I can't recall if I saw a chair out
12 there that night or not.

13 Q. Well, you said you went twice in 2011. If you
14 didn't see it that night when you went out there,
15 did you see it the second time when you came out
16 there in 2011?

17 A. Honestly, I wasn't looking for it, so I can't
18 say that I saw it or not.

19 Q. In terms of -- tell the jury again what your
20 background is in law enforcement.

21 A. Ten years with Probation and Patrol,
22 approximately five years with the solicitor's
23 office.

24 Q. Which solicitor's office?

25 A. 11th Circuit Solicitor's Office.

1 Q. This solicitor's office?

2 A. Yes, sir.

3 Q. All right. And then what?

4 A. Approximately nine years with the Lexington
5 County Sheriff's Department.

6 Q. In your capacity today, you're the supervising
7 officer, is that correct, the case agent over this
8 file?

9 A. Lead investigator.

10 Q. Lead investigator. So we've heard a discussion
11 about a master deputy. Your authority or your
12 obligations as a lead investigator on this file are
13 what?

14 A. I'm sorry. Can you repeat that?

15 Q. What are you charged with doing?

16 A. Investigating the cases that are assigned to
17 me.

18 Q. And are you in charge of keeping up with all of
19 the evidence?

20 A. No, I'm not.

21 Q. All right. That's a separate -- that's a
22 separate division of the sheriff's department, isn't
23 it?

24 A. It is.

25 Q. That's the evidence department.

1 A. Correct.

2 Q. Are you charged with knowing about the evidence
3 that's involved in your case?

4 A. I need to know what evidence is in the evidence
5 room.

6 Q. And are you charged with making sure that the
7 case which you're handling has all of the evidence
8 which is necessary for the truthful prosecution of
9 the case?

10 A. Repeat that again. I'm sorry.

11 Q. Whose job is it to put all this stuff together,
12 to keep it together and present it, if you will, to
13 the solicitor or the prosecutor?

14 A. Ultimately it's my decision.

15 Q. Okay. And the reason you decided not to do the
16 DNA testing is because when you got there, all of
17 the blood had already been gone; right?

18 A. There was --

19 Q. There was no blood.

20 A. There was no blood.

21 Q. Did anyone at that time tell you about the
22 chair?

23 A. I can't recall. I -- it was in the incident
24 report and I cannot recall whether Ms. Owens --
25 asking Ms. Owens if that chair had been out there

1 when we met.

2 Q. So there is nothing recorded anywhere about a
3 chair in any of the incident reports or any of your
4 files, are there?

5 A. No, sir.

6 Q. When you took over this case, did you note
7 there was the total absence of photographs?

8 A. I did notice that there was no photographs of
9 the scene.

10 Q. When you got there, was there anything to
11 photograph?

12 A. No, sir.

13 Q. Because you got there, what, a day or two
14 later --

15 A. Yes, sir.

16 Q. -- in essence, there was nothing you could do
17 as a police officer other than put together the
18 evidence that you had; is that correct?

19 A. Correct. Correct.

20 Q. If you would, would you step down here one
21 second, please. Could I get you to please hold one
22 side? Let me get on this side because, of course,
23 you're going to need to speak towards the court
24 reporter.

25 Now, there's a mark here of Old Orangeburg

1 Road.

2 A. Correct.

3 Q. Is that where the alleged break-in occurred?

4 A. Yes, sir.

5 Q. Now, down here at Peachtree Rock Road, is
6 that the location where my client lived at some
7 point in time?

8 A. Yes, sir.

9 Q. Now, what is the distance from Old
10 Orangeburg Road to Peachtree Rock Road?

11 A. Honestly, I don't know the exact measurement
12 between those two. From working the area, I'd
13 estimate it was approximately two, two and a half,
14 three miles.

15 Q. How many houses are there along in this area?

16 A. Depends on what section you're talking about.

17 Q. Okay. Would you call this the Red Bank area or
18 would you call this the Edmond community area?

19 (Indicating)

20 A. I consider this part Red Bank. I don't
21 consider Edmond until right here around the split.

22 (Indicating)

23 Q. So are you saying my client lived in different
24 area than Red Bank? My client lived in the Edmond
25 community whereas the even occurred in the Red Bank

1 area?

2 A. Correct.

3 Q. How many individuals do you think live in the
4 Red Bank area?

5 A. I could not tell you. I don't know what the
6 population of Red Bank is right now.

7 Q. Thousands?

8 A. I'd say thousands.

9 Q. How many people you think live in the Edmond
10 community; thousands?

11 A. Possibly.

12 Q. So you thought it was important because my
13 client had lived at one point in time in his
14 lifetime at Peachtree Road and that there was a
15 way to get to Old Orangeburg Road by getting on
16 the road and driving the highway?

17 A. And because of the close proximity. I mean --

18 Q. How far is it?

19 A. Two and a half, three miles.

20 Q. You can have your seat. Thank you.

21 What do you think would be more relevant, the
22 two and a half miles that he lived to the incident
23 location or where the chair was if it was used for
24 the break-in?

25 A. At which point in the investigation?

1 Q. The chair would have been real important in the
2 first part of the investigation, wouldn't it?

3 A. It would have been nice to know that one
4 existed.

5 Q. Would have been nice to fingerprinted or
6 attempted to fingerprint that chair, wouldn't it?

7 A. I can't say. I guess the road deputy --

8 Q. Well, you're in charge of the file, aren't you?

9 A. I mean, it would have been nice to have it.

10 Q. It would have been nice to check all of the
11 doorknobs inside the house to see if somebody had
12 touched any of the doorknobs, wouldn't it?

13 A. Again, it would have been nice.

14 Q. Would have been nice to check all of the locks
15 inside the house, wouldn't it?

16 A. Yes.

17 Q. Been nice to have gotten that DNA and tested
18 that DNA, wouldn't it?

19 A. Yes.

20 Q. Would have been nice to have pictures of
21 everything, wouldn't it?

22 A. Yes.

23 Q. Been nice to have the screen, wouldn't it?

24 A. Yes.

25 Q. But without that, we settled on the distance

1 between where my client lived and the location?

2 A. And other things.

3 MR. WILLIAMS: That's all I have, Your Honor.

4

5

REDIRECT EXAMINATION

6

BY MR. ELAM:

7

Q. Just for clarification, Detective, that

8

address, Peachtree Rock Road, which we've

9

indicated on the southern part of the map, did the

10

defendant clearly indicate that he lived at that

11

address at the same time that the burglary happened?

12

A. He did.

13

Q. All right. And Mr. Williams asked you about

14

the possibility that there might be lots of houses

15

in between that two-or-three-miles' distance between

16

the two residences, the defendant's and the victim's

17

residence?

18

A. Uh-huh.

19

Q. How many of those other residents in that area

20

had their fingerprints on the broken window at the

21

scene of the burglary at Old Orangeburg Road?

22

A. None.

23

Q. The measuring that you did you said was about

24

two or three months ago. You said maybe March?

25

A. I believe that's when we went out there.

1 Q. Okay. Does the fact that it was measured in
2 March of 2014 versus August of 2011 affect the
3 validity of that measurement?

4 A. No.

5 Q. Has the house settled?

6 A. Not that I know of.

7 MR. ELAM: Thank you. That's all.

8 MR. WILLIAMS: Only one question, Your Honor.

9 THE COURT: All right.

10 RE CROSS-EXAMINATION

11 BY MR. WILLIAMS:

12 Q. And of course you haven't fingerprinted all of
13 the residents that live in the Red Bank and Edmond
14 community, have you?

15 A. No, sir.

16 Q. So you don't know what their fingerprints look,
17 do you?

18 A. No, sir.

19 MR. WILLIAMS: Thank you. That's all I have,
20 Your Honor.

21 THE COURT: All right. Thank you very much,
22 sir, you may step down.

23 Fellows, come up here a second, please.

24 (Sidebar conference.)

25 THE COURT: All right. You may call your next

1 witness.

2 MR. ELAM: Thank you, Your Honor. The State
3 calls Candy Kyzer.

4 THE COURT: All right. Just tell her to hold
5 tight. We're going to take a short break.

6 Ladies and gentlemen, please have no
7 conversation about the case. Step back into your
8 jury room. We'll take a short break and then we'll
9 start back up.

10 (The jury exits the courtroom at 12:11 PM.)

11 THE COURT: Let's bring the jury back in.

12 (The jury enters the courtroom at 12:30 PM.)

13 THE COURT: All right. Call your next witness.

14 MR. ELAM: Thank you, Your Honor. May it
15 please the Court. The State calls Candy Kyzer to
16 the stand.

17 CANDY KYZER

18 being first duly sworn, testified as follows:

19 THE WITNESS: I do.

20 THE CLERK: Once you're seated state your full
21 name, spelling your last on the record, please.

22 THE WITNESS: Candy Kyzer, K-Y-Z-E-R.

23 DIRECT EXAMINATION

24 BY MR. ELAM:

25 Q. Ms. Kyzer, tell us where you work, please.

1 A. I work at the Lexington County Sheriff's
2 Department.

3 Q. What's your title there?

4 A. I'm an evidence custodian.

5 Q. And how long have you been an evidence
6 custodian?

7 A. I've been an evidence custodian for 11 years.

8 Q. At the sheriff's department?

9 A. Yes.

10 Q. Okay. What are your duties as an evidence
11 custodian?

12 A. We get in all of the evidence that the deputies
13 or investigators turn in. We check it with the
14 paperwork that comes in with it, check it in to the
15 system that we have in the computer, print out the
16 barcode labels and then store it in its proper
17 location until it's time for it to be signed out to
18 be checked by the crime scene investigator or sent
19 to S.L.E.D. or to court.

20 Q. Sounds like y'all do a lot of work.

21 A. We do.

22 Q. Okay. Are you just a warehouse or are you a
23 warehouse -- super warehouse plus?

24 A. Probably a super warehouse plus.

25 Q. What is it that you guys are really there for?

1 What are you there for as an evidence custodian at
2 the sheriff's department?

3 A. Mainly to keep the evidence intact and just to
4 store it until it's ready for court purposes.

5 Q. All right. Do you keep the bad guys from
6 tampering with it?

7 A. Yes.

8 Q. When an item of evidence is received by -- is
9 it fair to say your department --

10 A. Yes.

11 Q. -- at the sheriff's department --

12 A. Yes.

13 Q. There's a record kept of that action. Deputy
14 comes in, he's got some evidence, and he turns it
15 over to y'all. Do you keep a record of that
16 transaction turning over the evidence to you?

17 A. We do. We have a computer system, it's the RMS
18 system. And whenever they come in, they have to sit
19 down and enter it into the RMS system. And then at
20 that time, once they're finished with it, they have
21 to print out a voucher, and that voucher is turned
22 in along with the evidence.

23 The voucher states where they got it, the date
24 and time that they took custody of it, the date and
25 time that they actually turned it in to us or if

1 they turned it into a locker or handed it to us.

2 Q. Okay. Sounds like you're all about records.

3 A. We are.

4 Q. Okay. Why is that important? Why do you want
5 to keep records?

6 A. We -- you actually need a good chain of custody
7 for court purposes.

8 Q. Again, is it to be able to say what happened to
9 that evidence when you got it and the whole time
10 that y'all had it?

11 A. Yes, sir.

12 Q. Okay. Now, such records that you're referring
13 to, are they kept regularly by your department for
14 each piece of evidence you receive?

15 A. Yes. The RMS system that we have allows us to
16 do that. Any time it changes hands, whether we sign
17 it out for court purposes or if it needs to be
18 tested or anything like that, it shows that
19 movement, tracks that movement, in the computer
20 system.

21 Q. All right. And those records that y'all keep,
22 are they made at or near the time of the actual
23 event that occurs, like the transfer of evidence or
24 the receipt of evidence?

25 A. It does. It actually timestamps it once we

1 change it into the computer system.

2 Q. Okay. So if an item comes into evidence at
3 your department, the evidence department at the
4 sheriff's department, where does it go?

5 A. Once we get the item in and we make sure that
6 everything is properly stored and packaged, we check
7 the computer paperwork, sign it in, print out
8 barcode labels, and then we store it in its proper
9 location.

10 Q. And where it's stored, is that a secure
11 facility?

12 A. Yes, it is.

13 Q. Can somebody, like, walk in off of the street
14 and access the stuff that you have?

15 A. No, sir.

16 Q. Who has access to the stuff that y'all store?

17 A. Just the three evidence custodians.

18 Q. And that's you and who else?

19 A. Myself, Sergeant Novak and Beth Holliman.

20 Q. Beth Holliman. Is there security equipment for
21 intruders?

22 A. There is. We have locks on all of the doors,
23 plus there's a security alarm for each building that
24 we have.

25 Q. All right. Now, if someone wants to checkout a

1 piece of evidence that you have, how do you do that,
2 just generally?

3 A. Usually it's deputies or investigators.
4 They'll come in, tell us that they need to sign it
5 out -- or even crime scene investigators -- they
6 tell us what the purpose is for signing it out and
7 then we'll sign it out to them on the computer
8 system. Once we notate who we're giving it to, our
9 system allows us to do a signature pad. So we have
10 to sign it and it notates the signature and the time
11 that they sign is.

12 Q. All right. And the person who signs the
13 evidence out, does that have to be an authorized
14 person --

15 A. Yes. It --

16 Q. Can a man walk in off the street and say, I
17 want to check out some evidence?

18 A. No. Has to be an authorized person.

19 Q. All right. And the secured area that we were
20 talking about, could your head man, Sheriff Metts,
21 walk back there any time he wanted to?

22 A. The only way that he would be able to walk
23 through is if one of us with him and we have to have
24 him sign in to the building that he is wanting to
25 walk through.

1 Q. Okay. No one goes back there alone without
2 y'all?

3 A. No.

4 Q. Now, when somebody checks out evidence to look
5 at it again, is a record made of that?

6 A. Yes, it is.

7 Q. And with a little more particularity now, can
8 you describe that process? What happens if I walk
9 up and I'm an authorized person to look at the
10 evidence, what do I have to do exactly?

11 A. Well, you would have to -- you would come in
12 and, of course, a lot of the investigators we're
13 familiar with, our crime scene investigators or even
14 the deputies, we'll get their name, we'll go into
15 the computer system and show a chain-of-custody
16 movement, and then we'll notate for what reason that
17 they're signing it out. And then we'll type in our
18 name and then type in their name and then it prompts
19 us to come up and sign. And we have to sign and then
20 the investigator will have to sign.

21 Q. All right. And where are all of these records
22 of receipt to transfer kept? Again, you talked
23 about when someone drops off evidence, there's a
24 record; if someone picks it up and looks at it,
25 there's a record. Where do you keep all these

1 records?

2 A. They're stored in the RMS computer system.

3 Q. Is that a safe system?

4 A. Yes, it is.

5 Q. Do you consider it tamperproof?

6 A. Yes.

7 Q. Okay. If you wanted to, could you print out a
8 history of an item of evidence?

9 A. Yes, I could.

10 Q. Did you do so for are case -- and this is

11 Lexington County Sheriff's Department Case No.

12 11028382?

13 A. Yes, I did.

14 Q. And did you bring that to court with you?

15 A. Yes, I did.

16 Q. Does your record indicate what type of evidence
17 was submitted for that particular case?

18 A. Yes, it does. We had nine latent print cards
19 turned in for this case.

20 Q. Nine latent print cards. All right. I'm going
21 to approach you and show you State's Exhibit No. 28.
22 And let me ask if you're familiar with what I've
23 just handed you?

24 A. Yes, I am.

25 Q. What did I just hand you?

1 A. The envelope that we put and store the latent
2 print cards in for cases.

3 Q. That envelope is from your department?

4 A. Yes, it is.

5 Q. Okay. What's on the outside of it besides the
6 State's identification sticker? What else is on it?

7 A. Our barcode label is on it that gives us the
8 case number and what the item is and where it's
9 located. And then also we have the AFIS stamp on
10 it.

11 Q. Okay. Let's talk about the barcode. Why is
12 there a barcode? Do y'all actually scan stuff?

13 A. Yes, we do.

14 Q. So if evidence is changing hands, you scan the
15 entire envelope?

16 A. We can scan it or enter it by the PR number. A
17 lot of times it's easier to scan if they're smaller
18 items.

19 Q. Okay. And I apologize, my memory is horrible.
20 This is Exhibit No. 28. What is inside Exhibit No.
21 28?

22 A. It's a plastic bag that's containing latent
23 print cards.

24 Q. Okay. And what's the red strip at the top of
25 the bag?

1 A. It's sealed -- the seal's on it that we use to
2 tape to store the evidence in the package.

3 Q. Is it a tamperproof seal?

4 A. Yes, it is.

5 Q. What does that mean? How do you know it's
6 tamperproof?

7 A. Well, if somebody messes with it, we'll be able
8 to tell that it's been cut or tried to be opened
9 whenever we get it in.

10 Q. All right. Those latent fingerprint cards that
11 are within that bag -- and by the way, what's --
12 since we're talking about that bag, what is the
13 State's exhibit number on that for the record?

14 A. It's number 19.

15 Q. Thank you. Number 19. Was that bag received
16 by your department in substantially the shape that
17 you're seeing it right there in front of you but for
18 the fact that the red seal is broken?

19 A. Yes, sir.

20 Q. So when your department received it, was the
21 red seal intact?

22 A. It was.

23 Q. If had not been intact, what would have
24 happened?

25 A. We would have ended up rejecting the voucher

1 and calling the deputy back in to come in and
2 correct the matter.

3 Q. Would there have been a record of that?

4 A. Yes, there would have been.

5 Q. Seeing as there's no record of that, that
6 didn't happen?

7 A. That's correct.

8 Q: Okay. The -- that specific plastic bag that
9 you're holding, how was that received into evidence?
10 Can you tell me who dropped it off and how and who
11 received it?

12 A. Deputy Creech is the one that dropped it off.
13 He put it in, I believe, a locker. And then a
14 coworker -- Beth Holliman is the one that signed it
15 back in -- or signed it in.

16 Q. How do you know Deputy Creech is the one who
17 dropped it off?

18 A. The voucher tells me that he's the one that
19 dropped it. And then it says that it was submitted
20 by him. And then he actually -- at the bottom, if
21 he would have -- he -- if this would have actually
22 been the actual voucher, he would have signed it.

23 Q. Okay. Now you're talking about a voucher.
24 What is a voucher?

25 A. It's whenever they enter evidence into the RMS

1 system. They have to print out a voucher and turn
2 that in along with the evidence.

3 Q. Okay. And is that one of the records you
4 brought to court with you today?

5 A. Yes, sir.

6 Q. And how did you receive that record?

7 A. I printed it off of our RMS system.

8 Q. Okay. And is there an exhibit number displayed
9 on that voucher?

10 A. It is. It's 26.

11 Q. Number 26. All right. Again, that voucher
12 shows you that Deputy Creech dropped the evidence
13 off in a locker; is that correct?

14 A. That's correct.

15 Q. And when was the item retrieved from the
16 locker?

17 A. Beth Holliman signed it in. And she signed it
18 in August 31st, 2011.

19 Q. Okay. And the time that the item was in the
20 locker, was it safe there?

21 A. Yes, sir.

22 Q. Are those lockers away from the public, away
23 from anybody else who might want to tamper with the
24 items in the locker?

25 A. Yes, sir. The lockers actually have -- when

1 they shut them, they have to push a button on them
2 at the front. And the only people that can get into
3 those lockers are us from our side and we have to
4 use a key to get into them.

5 Q. All right. And you said Ms. Holliman --

6 A. Yes.

7 Q. -- is that H-O-L-L-I-M-A-N --

8 A. That's correct.

9 Q. -- retrieved it from the locker. And she's one
10 of the employees in the evidence department?

11 A. That's correct.

12 Q. And what did she did do with it at that point
13 in time with those nine latent prints?

14 A. Yes. She checked and made sure that everything
15 would have been secure like it was supposed to have
16 been and then she printed out the barcode labels and
17 put them on the packages and then stored them in its
18 proper location.

19 Q. Okay. And that's the secure location we were
20 talking about earlier?

21 A. Yes, sir.

22 Q. Was the evidence subsequently checked out by
23 anybody?

24 A. It was.

25 Q. And do you have record of that?

- 1 A. I do.
- 2 Q. Can you tell me who checked it out?
- 3 A. Duane Johnson.
- 4 Q. Do you know who he is?
- 5 A. He is or was employed by the sheriff's
- 6 department. He's since retired.
- 7 Q. Okay.
- 8 A. But he was one of the guys that crime scene
- 9 investigations, we could get to come and look at
- 10 latent print cards for us.
- 11 Q. And therefore, was he an authorized person to
- 12 check it out?
- 13 A. Yes, he was.
- 14 Q. All right. When did he check out that plastic
- 15 bag with those nine latent cards?
- 16 A. He checked it out on September 14th, 2011.
- 17 Q. What time?
- 18 A. At 9:48.
- 19 Q. Okay. So you guys keep detailed records?
- 20 A. Actually it's 10:48.
- 21 Q. 10:48?
- 22 A. Yes, sir.
- 23 Q. Is that military time?
- 24 A. Yes, it is military time.
- 25 Q. Okay. You even record it down to the minute

1 when --

2 A. Yes, we do.

3 Q. Now, which evidence custodian would have
4 controlled that transaction? When he checked it
5 out, he had to deal with somebody in your
6 department; is that correct?

7 A. That's correct.

8 Q. All right.

9 A. Beth Holliman is the one who signed it out to
10 him.

11 Q. And how do you know that?

12 A. Her name and signature is on the line with him.

13 Q. Is that reflected in a record that you brought
14 with you here today in court?

15 A. Yes, sir.

16 Q. Is that her actual signature on what you
17 brought or is that a facsimile of it?

18 A. It's her actual signature.

19 Q. Okay. And how is it recorded?

20 A. On our signature pad. It saves it on the
21 computer system.

22 Q. So whenever there's a transaction, something is
23 changing hands in the evidence, they sign a pad, you
24 said?

25 A. Yes, sir.

1 Q. And is it like supermarkets where you sign your
2 name on a pad and that electronic signature gets
3 transferred somewhere else? Is that what it --

4 A. Yes, sir, it is.

5 Q. Okay. And that's in your records?

6 A. Yes, sir.

7 Q. How many of the cards did Mr. Johnson transfer
8 to himself?

9 A. He signed all nine of them out.

10 Q. Okay. And once he signed them out, who is
11 responsible for them?

12 A. Mr. Johnson is.

13 Q. Did he subsequently return the cards to
14 evidence?

15 A. He did.

16 Q. When?

17 A. On October 13th, 2011.

18 Q. What time?

19 A. At a 15:18.

20 Q. 3:18 p.m.?

21 A. Yes, sir.

22 Q. Who in your department witnessed that transfer
23 of the cards back to you?

24 A. Myself.

25 Q. And did you both sign anything to witness that

1 transfer?

2 A. Yes, sir, we did.

3 Q. Okay. And have the cards remained in evidence
4 since that time until yesterday?

5 A. Yes, sir.

6 Q. Who checked them out yesterday?

7 A. Investigator Garrick.

8 Q. All right. Now, can I see the records that you
9 brought with you? Which one is the one you call the
10 voucher?

11 A. That's the voucher.

12 Q. Exhibit 26. And that shows that the evidence
13 was dropped off in the locker and was retrieved by
14 Ms. Holliman from the locker?

15 A. That actually shows that the evidence was
16 dropped off in the locker by Deputy Creech and it
17 shows the date and time that he did that and where
18 he took custody of it from. This paperwork actually
19 shows that Beth Holliman signed it in.

20 Q. Okay. And that's in State's Exhibit No. 27?

21 A. Yes, sir.

22 Q. And what is that collection of papers called in
23 that record?

24 A. It's a property report.

25 Q. All right. And it shows your actual receipt,

1 your actual touching of the property, any transfers
2 of the property?

3 A. Yes, sir.

4 Q. Okay. All the way to the end?

5 A. Yes, sir.

6 Q. And are both of these records, State's 26 and
7 27, records kept in the ordinary course of your
8 business?

9 A. Yes.

10 Q. You routinely keep these records?

11 A. Yes.

12 MR. ELAM: Your Honor, at this time, we move
13 State's 26 and 27 into evidence.

14 MR. WILLIAMS: I don't have any objection to
15 State's Exhibit No. 27. I do have an objection to
16 State's Exhibit No. 26 in that it doesn't appear to
17 be an original.

18 BY MR. ELAM:

19 Q. Is this a record you printed out today from
20 your system?

21 A. Yes, it is.

22 Q. Is it as good as an original?

23 A. Yes, it is.

24 Q. All right.

25 THE COURT: Let her review it and see if it --

1 she's familiar with the original, familiar with
2 that, make sure it's the same.

3 THE WITNESS: It's the same.

4 BY MR. ELAM:

5 Q. Would any of the information about receipt or
6 transfer of the property be any different in either
7 document?

8 A. No, sir.

9 MR. ELAM: Okay. I resubmit that exhibit, Your
10 Honor.

11 THE COURT: I'm going to overrule the objection
12 and let it in.

13 (State's Exhibit Nos. 26 and 27 admitted in to
14 evidence.)

15 MR. ELAM: Thank you. That's all of the
16 questions I have for you.

17 MR. WILLIAMS: May it please the Court.

18 THE COURT: Yes, sir.

19 CROSS-EXAMINATION

20 BY MR. WILLIAMS:

21 Q. Ms. Kyzer, on State's Exhibit No. 26, this is a
22 copy of the original; is that correct?

23 A. It's what I printed out this morning from the
24 computer system.

25 Q. Where is the original?

1 A. The original, we have it in a stack. We're
2 trying to go through -- and our system allows us to
3 scan in the originals and keep them attached there.
4 And then we're able to actually to shred the
5 paperwork so we won't have to continuously file all
6 the time. So it's in a stack that's to be scanned
7 in, in our office.

8 Q. Well, the form that you say is the same as the
9 original, it's not signed, is it?

10 A. The original is signed; that one is not.

11 Q. But you don't possess the original in court
12 here today for us to review to see if it was signed
13 by the officer?

14 A. No, sir.

15 Q. And that would have been the document that is
16 attached to whatever evidence that the, for lack of
17 a better word, deputy or whoever is submitting the
18 evidence, that would be the document which is
19 attached to that evidence which is submitted by the
20 person who is giving you, the evidence custodian,
21 the evidence?

22 A. Yes, sir.

23 Q. Just one other question too. When you were
24 giving -- do you have copies in front of you?

25 A. No, I don't.

1 Q. State's Exhibit No. 27, you indicated a history
2 of the evidence. You indicated that Mr. Johnson had
3 checked it out for about a month.

4 A. Yes, sir.

5 Q. So it was in his possession for about a month?

6 A. Yes, sir.

7 Q. And he'd be the person who does handwriting
8 analysis --

9 A. He's not the one who --

10 Q. Not handwriting. Fingerprint analysis?

11 A. Yes. Yes.

12 MR. WILLIAMS: That's all I have, Your Honor.

13 MR. ELAM: Nothing on redirect, Your Honor.

14 THE COURT: Thank you very much, ma'am.

15 MR. ELAM: May Ms. Kyzer be excused?

16 MR. WILLIAMS: No objection, Your Honor.

17 THE COURT: Thank you. You're excused. You
18 may step down.

19 All right. Ladies and gentlemen, we're going
20 to break at this time for lunch. I'm going to ask
21 you to be back in your jury room at 2:15. And when
22 everybody has reconvened, we'll get started back.
23 Please have no conversation about the case, do not
24 allow anybody to talk with you. We'll see you back
25 at 2:15.

1 (A luncheon recess transpired.)

2 THE COURT: All right. Anything we need to
3 take up from the State before we start?

4 MR. ELAM: Yes, Your Honor. This is moment
5 that I alluded to yesterday and, I guess, earlier
6 today where more out of an abundance of caution than
7 anything else, I wanted to bring up some issues to
8 the Court that might involve the next two witness.

9 The very next witness is a Sammy Haftoglou from
10 S.L.E.D. He's going to -- the main job is lay the
11 foundation for the ten-print card that was used for
12 the comparison that was made by the final witness,
13 Duane Johnson. There are some issues. I guess I
14 just want to be cautious about certain things that
15 they're going to talk about.

16 For example, Sammy Haftoglou testifying just
17 exactly the same way that Lieutenant Joe Means did
18 in the Richard Anderson case in 2009, and that's
19 Chief Justice Beatty's opinion about how you can
20 bring the man in charge of AFIS from S.L.E.D. -- Joe
21 Means back then and now it's Mr. Haftoglou -- to
22 come in without meeting the presence of the actual
23 person who rolled the fingerprints on the ten-print
24 card that's used for the identification because of
25 the unique nature of the AFIS system, how it's set

1 up. The director of the AFIS system comes in as a
2 record-keeper and lays the foundation for the
3 ten-print card that's printed out from that system
4 and that's used.

5 When they talk about where AFIS prints come
6 from, the truth most AFIS prints come from bookings,
7 arrests. So we're talking about with the defendant
8 in this case, the fact that a ten-print card was
9 produced -- if Mr. Haftoglou can speak candidly
10 about where this big collection of fingerprints
11 comes from, and he should be able to mention that it
12 mostly comes from bookings and arrests.

13 THE COURT: Well, that shouldn't be an issue.
14 I mean, that's one of the elements that you're going
15 to have to prove anyway, is the two prior
16 convictions.

17 MR. WILLIAMS: I think actually the print they
18 intend on using was done at Kirkland after he had
19 actually been sentenced.

20 THE COURT: Okay.

21 MR. ELAM: They rolled the prints at Kirkland.
22 The card -- and the way you put it out in the
23 hallway -- we just tried to see if we could hash
24 this out in the hallway. The way he put it was
25 pretty good: There's no, per se, original on paper

1 for these ten-print cards. The original is
2 electronic and it's kept on a computer. You can
3 print out what you call an original day by day by
4 day, you can print out a thousand copies of an
5 original from that -- from what's electronically on
6 file.

7 So Duane Johnson has the one that he printed
8 out that he actually eyeballed and made the match
9 with in 2011. He's got that original. On the back
10 it shows sentencing from Kirkland. And, I mean, I
11 expect Sammy Haftoglou, when he brings his copy or
12 his original, again, a reprint of that that he did
13 recently, he redacted the sentencing on the back
14 because I think maybe that's something probably the
15 jury shouldn't see if it's in evidence.

16 THE COURT: Sure.

17 What about with Mr. Johnson's?

18 MR. ELAM: Well, he's got his copy. I think
19 when he testifies, he can look at the one I've
20 entered through -- or expect to enter through
21 Mr. Haftoglou and say they're identical. I mean,
22 there's a reference card number that appears that
23 shows it can be a thousand prints of the same thing
24 that's exactly the same prints and exactly the same
25 information on them. He can say that they match and

1 we can proceed from the card that's entered in
2 evidence without redacting the original.

3 THE COURT: Okay.

4 MR. ELAM: The original just in the sense of
5 the one he looked at in 2011.

6 THE COURT: All right.

7 MR. ELAM: And we'll mention that it was
8 produced at Kirkland Correctional Institution.

9 MR. WILLIAMS: Your Honor -- and the only
10 objection that I'm going to make during any of this
11 will be the fact that there is no original. And
12 obviously it's been ruled on before, but I'd like to
13 preserve that objection since there's no one here
14 that can actually testify that these fingerprints
15 were rolled by him or are the same ones. He's
16 testifying as a records keeper. And I understand
17 that, obviously, a lot of times records come in that
18 are not done by the person who actually does them.

19 MR. ELAM: I gave a copy of --

20 MR. WILLIAMS: And I've read the case.

21 THE COURT: Okay.

22 MR. ELAM: Your Honor, if I can approach and
23 hand you a copy. This is exactly the formula, this
24 is exactly the issue that --

25 THE COURT: You just want your objection

1 noted --

2 MR. WILLIAMS: I do.

3 THE COURT: -- for the record to have it
4 possibly reviewed, if need be.

5 MR. WILLIAMS: Yes, sir.

6 MR. ELAM: That's exactly the holding of that
7 case: You don't need the person who rolled the
8 prints if you've got the director of the AFIS
9 program in there to testify where they came from.

10 MR. WILLIAMS: Your Honor, I actually think
11 it's an impossibility to introduce the original.

12 MR. ELAM: I think they're all originals.
13 Every time you print one, you get another original
14 because it's a --

15 THE COURT: It's digitally --

16 MR. ELAM: Yes.

17 THE COURT: I mean, yeah, it's now digital
18 media not print media --

19 MR. ELAM: Yes.

20 THE COURT: -- whereas we all grew up in print
21 media.

22 MR. ELAM: Yes. I'd also like Mr. Haftoglou --
23 he brought numerous ten-print cards with him for
24 this defendant, basically from all of his arrests.

25 The ten-print card that he brought in for

1 December 14th of 2011 is when this defendant was
2 actually arrested and booked in this case. The
3 unique thing about that card is you'll hear
4 testimony that there's two right index finger
5 matches, one thumb, two index finger matches, and
6 then on the other hand, a ring finger match. You'll
7 hear that the latents were intact, but the booking
8 you'll hear that there was an injury on the finger
9 when he's booked three and a half months after
10 this -- after this crime happened. And I would seek
11 to introduce that card as well through the same
12 means.

13 MR. WILLIAMS: Your Honor, I'm not sure he's
14 going to be able to testify if there -- obviously if
15 they're going to sneak in some injury and say he
16 must have cut his finger or something like that. I
17 don't know that he's going to be able to do the
18 foundation for that.

19 THE COURT: Well, what relevance is that? If
20 you've already got the cards that identify this
21 defendant's fingerprints and he or Mr. -- whoever is
22 going to be the one doing that testimony, what's the
23 need for the card with the cut finger on it?

24 MR. ELAM: Well, the person who perpetrated
25 this burglary bled inside this house. I got

1 curious. I said, did anybody look at his prints to
2 see if he had any injuries on his prints? You know,
3 using your hands to get in there, the theory of the
4 case is you're trying to open the window from the
5 outside, you leave -- that's probably the last
6 moments of his life that he had intact left index
7 finger. Break the window, reach in, crawl in, the
8 glass is sharp, it's dangerous, it cuts his finger.
9 Anybody look to see if there was an injury? Lo and
10 behold, yeah, they pulled the card and there is an
11 injury on there.

12 MR. WILLIAMS: But there's no foundation for
13 that issue, meaning that none of the detectives who
14 were involved in his arrest indicated that they
15 saw -- that they saw evidence of a recent injury.
16 All we know is that this is some old scar. And no
17 one can testify as to how long that scar has been
18 there.

19 MR. ELAM: Well, we know --

20 THE COURT: Well, you just note that it was
21 since the last booking.

22 MR. ELAM: You've got the Kirkland booking from
23 2009. And actually I wasn't going to get into this,
24 but two months before the burglary there's a booking
25 that shows that finger intact. We didn't mention

1 that one. But that shows it intact. So --

2 MR. WILLIAMS: Well, if that's true --

3 THE COURT: That's incredibly speculative since
4 no one can testify -- in other words -- and I don't
5 know what the testimony is or what they've shared
6 with you. That card that has the deformity or the
7 disfigure --

8 MR. ELAM: The ten-print card from when he's
9 booked in this case?

10 THE COURT: Yeah. Can somebody actually say,
11 well, that's from a cut versus that's from trash on
12 his hand or --

13 MR. WILLIAMS: Your Honor, he just said that
14 there --

15 MR. ELAM: Yes.

16 MR. WILLIAMS: -- was a fingerprint analysis
17 done two months before he was booked in the jail.
18 That would put it in September.

19 MR. ELAM: No; two months before the burglary.

20 MR. WILLIAMS: Oh.

21 THE COURT: But the concern I've got is, who's
22 going to be able to testify that that's a cut on his
23 finger?

24 MR. ELAM: Well, we start getting into 404 (b),
25 other bad acts. And here's why I say this: Because

1 this young man was also booked February of 2014
2 twice in Myrtle Beach and on other occasions, and on
3 those occasions you see the same injury but it's
4 healed up into kind of a deformed pattern. I wasn't
5 going to get that far into it. But my fingerprint
6 expert is satisfied, looking at all those cards,
7 this young man cut his finger and had an injury
8 subsequent to him touching that window. I wasn't
9 going to get to all of the other bookings because,
10 again, that's 404 (b), that's implying other bad
11 acts.

12 MR. WILLIAMS: How can that fly when the
13 arresting officer never testified to any type of
14 injury to his hands?

15 THE COURT: Well, it wasn't like he was caught
16 at the scene.

17 MR. WILLIAMS: Yeah. But --

18 THE COURT: The arresting officer --

19 MR. WILLIAMS: --- he was interviewed -- he was
20 interviewed on at least two other occasions. He was
21 eventually picked up and taken to the jail. And no
22 one has testified to any scarring or any cuts. And
23 I think Officer Garrick -- Investigator Garrick
24 talked to him at least within a month.

25 THE COURT: Well, as many times as you and I

1 have had conversations, can you testify to any scar
2 I have on my hands?

3 MR. WILLIAMS: I absolutely cannot.

4 THE COURT: Sure you can. That's not relevant.
5 Here's what I'm trying to -- I understand what
6 you're saying. I don't know that you got the people
7 in place that will allow you to do it, but you
8 might. I don't know, because my question was who
9 can testify that that mark on the card -- I haven't
10 seen it -- that that's a cut, that that's a breaking
11 of the skin, a cut, versus it being something else.

12 MR. ELAM: Duane Johnson said he can as an
13 expert in this case. That's someone who's done
14 countless fingerprints, over 36-year career in the
15 FBI. He's the gentleman who testified two weeks
16 ago. But, obviously, he'll be on the stand a lot
17 longer in this case than that one.

18 All I was seeking to do, Your Honor, was bring
19 in -- he's obviously been arrested and booked in
20 this case -- bring in that one to show the injury on
21 his finger in that case without even getting into
22 the fact that it appeared to be the expert to be a
23 raw injury, that it solidifies it in the later
24 arrest, without even getting into that. I'll
25 concede that.

1 THE COURT: Well, it --

2 MR. ELAM: The reason I brought it up now is I
3 didn't want to get bogged down in front of the jury.

4 THE COURT: Oh, I know.

5 MR. WILLIAMS: Seems like a lot of speculation,
6 Your Honor.

7 MR. ELAM: If Your Honor is not inclined to go
8 along with it, I'm not even going to pursue that
9 avenue. I just wanted to bring it up now just to
10 see if --

11 THE COURT: Well, I don't know that it's
12 speculation depending on his expertise and what he
13 can testify to. But it's certainly open for
14 cross-examination and basically get him to admit
15 that he doesn't know when that cut occurred.

16 MR. ELAM: He doesn't know when the cut
17 occurred, but he does know there was a cut
18 because -- his hands are going to be tied a bit
19 because he's not going to be able to talk about all
20 the cards he saw. And when you see consecutive
21 cards, it really --

22 MR. WILLIAMS: We have no testimony that the
23 blood splatters are directly related to the person
24 who broke the window either. There's been no DNA
25 done. So how do we know that there was actual blood

1 there? I mean, they brought it out, but there's no
2 relationship to that.

3 MR. ELAM: The real simple thing, Your Honor,
4 is the defendant is in the courtroom. I mean, we
5 can offer -- I don't think it's testimonial to look
6 at his fingertip to see if it's --

7 THE COURT: Sure it is. You can't force the
8 defendant to put in evidence. That's what you would
9 be asking him to do. That would be completely
10 improper. You're talking about having him show the
11 jury his hand?

12 MR. ELAM: Allow an officer to look at his
13 hand.

14 THE COURT: No. That's completely improper.
15 And I'm just stating the obvious to you: Mr. Elam,
16 he has no burden to put anything into this case and
17 that would be putting evidence in this case. He
18 can't be required to do that.

19 MR. ELAM: All right.

20 THE COURT: Well, I don't know what the
21 testimony would be. At this point, I don't even
22 know what the qualifications are. But assuming that
23 the witness qualifies as an expert with regards to
24 fingerprint analysis and all the things surrounding
25 that, and if that -- you know, that expertise allows

1 him to make that opinion as to the fingerprint, I'm
2 inclined to allow it for whatever weight it's worth
3 subject to the cross-examination of which he's not
4 going to be able to speak to at all probably. I
5 don't know. I mean, it's up to y'all how y'all want
6 to attack it.

7 MR. ELAM: Yes, sir. And just again out of
8 clarity, Mr. Haftoglou, I expected as the record
9 keeper to introduce and lay the foundation for,
10 obviously, the main card, but possibly the second
11 card, the booking card.

12 Mr. Haftoglou is what they call an inked-print
13 examiner. He's not a latent print examiner, but
14 he's an inked-print examiner and he's testified to
15 that in court as an expert in the past. As an
16 expert he can say that there was an injury. He's
17 used to comparing the ten-print cards for quality
18 control, among other things, so he can testify
19 there's an injury that appears on the booking card.
20 He would be one.

21 And then Duane Johnson in his expertise -- his
22 many years of expertise just in dealing with the
23 studying of latent prints and also inked prints
24 could say that's an injury on the cards. So
25 actually, both of them could. So it wouldn't be

1 mere matter of me putting a card in through
2 Haftoglou and then waiting for Duane to talk.
3 Haftoglou himself could talk about it.

4 MR. WILLIAMS: And, Your Honor, before the cat
5 is out of the bag before the jury, we'd request an
6 in limine -- a hearing in camera outside of the
7 presence of the jury because if some witness up
8 there just automatically says, well, there's a cut
9 on his finger, there's a scar on his finger from a
10 cut, then it's a little late to put that genie back
11 in the bag. And if they're going to go through
12 some --

13 THE COURT: Well, let's go ahead and do that
14 now.

15 MR. ELAM: All right. I'm going to bring in
16 Mr. Haftoglou.

17 THE COURT: We'll go ahead and proffer that
18 testimony now.

19 MR. ELAM: Thank you, Your Honor.

20 Your Honor, the State calls Seraphim Haftoglou
21 to the stand.

22 SERAPHIM HAFTOGLOU

23 being first duly sworn, testified as follows:

24 THE WITNESS: Yes, I do.

25 THE CLERK: Once you're seated state your full

1 name, spelling your last, please.

2 THE WITNESS: Okay. Seraphim Aesop Haftoglou,
3 H-A-F-T-O-G-L-O-U.

4

5 EXAMINATION

6 BY MR. ELAM:

7 Q. Mr. Haftoglou, would you tell the Judge Russo
8 where you work, please.

9 A. I work for South Carolina Law Enforcement
10 Division. I'm the AFIS supervisor there.

11 Q. All right. And I just want to make it clear
12 that I'm really going to abbreviate the questions
13 for you. I want to talk something we discussed
14 earlier, and that's the booking print, the ten-print
15 card.

16 A. Yes, sir.

17 Q. The booking prints, that's from December 14th
18 of 2011?

19 A. Yes. Yeah, the booking print is December 14th,
20 2011.

21 Q. Did you produce that record yourself?

22 A. Yeah. I was able to pull it up. It was sent
23 to us by Lexington County Detention Center.

24 Q. All right. And is that through the AFIS
25 center?

1 A. Yeah, it was submitted through the system. And
2 we store all prints on our AFIS system.

3 Q. And you're expecting you're going to testify
4 about what the AFIS system is and where the records
5 come from?

6 A. Yeah, and how it comes in to us.

7 Q. You're actually in charge of the statewide AFIS
8 system yourself?

9 A. Yeah. I'm the keeper of the record at S.L.E.D.

10 Q. And in your capacity, in the job that you do,
11 what's your exact title?

12 A. AFIS supervisor. My main job is to make sure
13 all the cards come in to us securely and correctly,
14 manage the AFIS system and also all cards, applicant
15 and criminal.

16 Q. Are you a latent print examiner?

17 A. No, sir.

18 Q. Are you an inked-print examiner?

19 A. Yes, inked-ten-print examiner.

20 Q. What is ink print?

21 A. Ink print is when you roll fingerprints onto a
22 card. Ink is the older way of doing it. That's how
23 I was originally trained to do fingerprint cards.
24 Now everything is -- the majority of everything is
25 done electronically. It's still the same process,

1 except for rolling a finger in ink, you're now
2 rolling it now on an electronic screen.

3 Q. Have you received training in comparing
4 inked-print cards with each other or looking at
5 inked-print cards?

6 A. Yes. I've been trained in ink at S.L.E.D. and
7 also taken classes last summer.

8 Q. Can you detail that training a little bit for
9 us.

10 A. Yes. At S.L.E.D. we had a couple-day course
11 taught by, at that time, Joseph Means who was the
12 supervisor of the CJIS area. And he was the one who
13 trained me and a couple other individuals how to
14 identify prints, how to roll prints, and how to
15 compare prints.

16 Q. And what's the use of that, in your --

17 A. Prints are unique to each individual. Each
18 person has their own unique set of prints. We have
19 ten fingers and they're all unique to yourself. No
20 one has the same prints as someone else. That's the
21 best way to identify people. We use it at State,
22 FBI uses it and several other -- you know, all
23 around the United States uses it and countries use
24 it all around the world.

25 Q. All right. Of the records that you're in

1 charge of, these electronic records that show
2 prints, let's describe that real quick. How is the
3 record set up, if you visually look at it?

4 A. Okay. The way it's set up is, you know, the
5 first time someone is arrested, they're taken at the
6 Live Scan station or the detention or correctional
7 facility, wherever they're at; they roll the prints
8 with all of the demographics. They hit a submit
9 button, it goes through what a T1 line is, which is
10 a very secure electronic way to submit to S.L.E.D.
11 And once -- you have to have a T1 line to submit to
12 S.L.E.D. as well.

13 Once that gets submitted to S.L.E.D., it goes
14 through our AFIS system which is comparing similar
15 prints to itself to see if it matches on anyone. If
16 it doesn't match on anyone, it creates a unique
17 South Carolina identification number. Each
18 person -- or each person has their own unique
19 identification number at S.L.E.D. Either it creates
20 a new one for a first-time offender or it attaches
21 to an existing one.

22 Once we do our process, we submit it up to the
23 FBI, the FBI does a similar process as well.

24 Q. What is the good or the value of you being able
25 to look at those so-called ink prints, individual

1 prints now, I guess?

2 A. The value I have is I get to see all ten
3 fingers. We see all ten fingers. We see how --
4 one, they're rolled, and then we have what we call
5 slaps at the very bottom of the print card. That
6 tells us the order of the prints. So you see, you
7 know, the pinky on the very outside left hand to the
8 index finger, both thumbs, and then all the way to
9 the right hand pinky. So it tells us in what order
10 the prints should be rolled in.

11 Q. Can you briefly hold up a sample for the judge
12 just to show him what you're talking about when it
13 comes to the slaps.

14 A. Sure.

15 Q. Slaps and the -- what is it called?

16 A. Slaps and then these are rolled. Even actually
17 at the Live Scan station, when you're rolling -- you
18 take the slaps first. And then when you roll in a
19 print, if it doesn't match, it will pop a little red
20 bar saying not identified to. So it's basically
21 telling the officer you may have rolled one out of
22 order, hit rescan and roll the correct finger.

23 Q. So that's an indication of how sensitive the
24 machine is, right, by the way you roll it?

25 A. Yes. Correct.

1 Q. Have you testified before in court as an
2 inked-print examiner?

3 A. Yeah. I've testified a few times in court,
4 about four or five times about this subject.

5 Q. You talked about some training you received.
6 Did you give everything to the judge? Did you tell
7 them everything about your training?

8 A. Outside the training I received at S.L.E.D., I
9 also -- our vendor, MorphoTrak, also has a
10 conference every year and they provide training
11 there as well. I took about one class on AFIS
12 training, a class on testimony and another class on
13 our -- the system itself.

14 Q. All right. And you say you've testified a few
15 times in the past. Were you qualified as an expert
16 in inked-print examinations?

17 A. No, sir.

18 Q. How did you get to testify about that?

19 A. Because I'm the keeper of the records. So
20 there's no one else at S.L.E.D. who talks about
21 this. I am the main person about this. I've been
22 at my position for about a year and a half as the
23 keeper of the record at S.L.E.D.

24 Q. And what was the issue when you talked about
25 inked-print comparisons or examinations? Did you

1 compare inked prints to each other?

2 A. Now or --

3 Q. When you testified in the past.

4 A. Oh, no. I have in two cases; I testified once
5 for the ATF about a comparison I did for them. ATF
6 actually requests a lot of comparisons through
7 S.L.E.D. We provide it for them because our office
8 is a lot quicker for them in support. And also the
9 solicitor's office in Charleston; they ask for them
10 every once in a while. And Charleston, I testified
11 back last October, and ATF I appeared twice, only
12 testified once, and that was two months ago for
13 comparison-wise. Coming to testify about how cards
14 come through our system, I've done about -- this
15 would be, I think, my fifth time testifying about
16 that.

17 Q. Okay. Are you qualified to look at subsequent
18 ten-print records of the same individual?

19 A. Yes, sir. We do --

20 Q. I say they're the same. Is that part of your
21 quality control?

22 A. Yes, it's part of quality control. It's part
23 of my job I do now. As I said, doing comparisons
24 for ATF, I probably average about ten a year -- ten
25 a month. I do comparison for them. So maybe about

1 120 I did last year for ATF, roughly, give or take.
2 I don't know the exact amount. And then plus a
3 couple for the Charleston Solicitor's Office. That
4 was just last year itself. We also do -- have to do
5 verification at S.L.E.D. sometimes, which is
6 basically when a print comes in and the point system
7 is kind of mediocre, our AFIS system can't quite
8 identify that print or not, who it belongs to, so an
9 examiner itself has to look at it. And I do the
10 majority of that right now.

11 Q. And you do most of that?

12 A. Yes, sir.

13 Q. Have you encountered situations where
14 subsequent ten-print cards of the same individual
15 look different?

16 A. Yeah. We have had -- they're always going to
17 be somewhat different from when they're rolled. You
18 may have some where there wasn't a previous scar or
19 mole or wart on a finger and then it appeared later
20 on in an arrest. You can see some where years ago
21 even had a scar and then over time the scar may have
22 healed and then the scar has gone away. So you have
23 it both ways; scars appearing for the first time and
24 scars that have gone away.

25 Q. So let me cut to the chase on this case then.

1 Have you had occasion to compare Jacob Heyward
2 Seay's ten-print card from October 15th of 2009 with
3 a subsequent ten-print card for the same individual
4 for December 14th of 2011?

5 A. Yeah, I have looked at them and compared them.

6 Q. And did you see an injury on any of the fingers
7 on the cards?

8 A. Yeah. I guess it would be the booking card on
9 the 12/14/2011, we noticed an abrasion on his
10 finger.

11 Q. Okay.

12 A. Looks like a cut on it. And I believe the card
13 before that that came in from the detention center,
14 Kirkland, there wasn't one. We do know that they do
15 belong to the same person.

16 Q. And have you actually seen other prints from
17 the same individual?

18 A. Yes. Prior to the December 14th, all his
19 fingerprints did not have a cut. The ones after the
20 fact all had a scar from that mark.

21 Q. Same place, same finger?

22 A. Same finger, same spot. That is from an
23 abrasion that turned into a scar, so we could assume
24 that it was a cut, he cut his finger.

25 Q. Could that be a smudge on his finger?

1 A. No, sir. A smudge wouldn't appear this way. A
2 smudge would be a darker image or it would be a
3 blurred image. If it's ink, a smudge would be black
4 because the person just kind of moved their hand too
5 much. On the Live Scan machine, it comes -- when
6 you're moving the hand, it's a blurred vision where
7 it kind of -- the finger -- the ridges extend a
8 little bit longer and a little bit blurry.

9 Q. Are you certain that what appears on his Jacob
10 Heyward Seay's booking ten-print card is an injury?

11 A. Yes, sir.

12 Q. And it's on his left index finger?

13 A. Correct.

14 MR. ELAM: No further questions, Your Honor.

15 MR. WILLIAMS: May it please the Court.

16 THE COURT: Yes, sir.

17 EXAMINATION

18 BY MR. WILLIAMS:

19 Q. When and where were you qualified as an expert?

20 A. At S.L.E.D. I've been there for, gosh, seven
21 years now. Time is flying by. I'm sorry. But, no,
22 been there five years previous so, yeah, almost
23 seven years July -- June, sorry.

24 Q. And when were you qualified as an expert?

25 A. My first year there, within the first couple

1 months.

2 Q. By which court?

3 A. I was certified by my instructor, Lieutenant
4 Joseph Means.

5 Q. Which Court in the state of South Carolina has
6 qualified you as any type of expert to testify in
7 regards to causation of scars or the basis for
8 fingerprints as the foundation and scars comparison?

9 A. I've never been classified as an expert, sir.

10 Q. So you could never testify as to causation;
11 right?

12 A. My experience tells me it is.

13 Q. All right. Let's talk about your experience.
14 What type of -- do you have a college degree?

15 A. Yes, sir.

16 Q. Anything postcollege?

17 A. No, sir.

18 Q. Have you -- what type of plastic surgery
19 classes have you taken or medical classes have you
20 taken?

21 A. None.

22 Q. What type of anatomy --

23 A. None.

24 Q. -- classes have you taken?

25 A. None.

1 THE COURT: Before we go down several deep
2 rabbit trails, no one -- my understanding is no one
3 is presenting this gentleman to speak as to an
4 expert on anatomy or medical conditions or anything
5 of that nature, based on his experience as -- in the
6 area of print analysis. I mean, I'm not stopping
7 you from doing your cross, but you're going off on a
8 tangent.

9 MR. WILLIAMS: The reason I'm going in that
10 tangent, Your Honor, is because the only thing that
11 this witness can testify to is the fact that there's
12 a difference between two cards. He can't give
13 causation, he can't elicit as to what may have
14 caused the difference in the cards because he's not
15 qualified to do that.

16 THE COURT: Unless -- and I don't know what the
17 testimony is. Unless there's some testimony that of
18 the hundreds of cards he's examined and he has
19 cards -- known injuries to a hand and observed how
20 that appears on a card versus something else -- I
21 don't know. At this point I agree with you. But, I
22 mean, I don't know what the basis of that testimony
23 is, and that's the crux of the whole thing.

24 MR. WILLIAMS: Yes, sir.

25 BY MR. WILLIAMS:

1 Q. Over how many times have you testified in
2 comparing cards to indicate that there was an injury
3 which made the person's finger appear to be
4 different than it was before?

5 A. I haven't.

6 MR. WILLIAMS: There's your answer. We
7 would --

8 THE COURT: How simple was that?

9 MR. WILLIAMS: He's not qualified.

10 THE WITNESS: I haven't testified --

11 THE COURT: And he's not being -- you know,
12 it's a road that the State was going to attempt to
13 go down. I don't believe a proper foundation has
14 been laid that -- now, don't get me wrong;
15 Mr. Haftoglou can clearly testify to the difference
16 in the cards, but I don't think that there's been a
17 foundation sufficient to lay -- laid that he can
18 testify that that's a cut.

19 MR. WILLIAMS: That was my only issue, Your
20 Honor.

21 THE COURT: But to query if there's a
22 difference in the cards, he can testify to that. He
23 can do that. And if you move the cards in, you
24 know, they are what they are.

25 MR. ELAM: My co-counsel just asked a good

1 question. Can we still clarify that he can testify
2 that there's a physical difference between the two
3 cards?

4 THE COURT: Sure, assuming there is. And I'm
5 assuming there --

6 THE WITNESS: Yeah. There is a -- I mean --

7 THE COURT: He can testify to that, yeah.

8 MR. WILLIAMS: Your Honor, he used the phrase
9 physical difference. He can --

10 THE COURT: Physical meaning this is different
11 from this.

12 MR. WILLIAMS: Meaning that there is a
13 difference in the appearance, Your Honor. I don't
14 want to get into semantics, but when he uses a --

15 THE COURT: Isn't your appearance a physical --

16 MR. WILLIAMS: Your perception is the
17 appearance; your physical is something which is
18 never changed.

19 THE COURT: Okay. That's semantics. We're not
20 going to get into that. He can testify if there's a
21 difference in the two cards --

22 MR. WILLIAMS: Yes, sir.

23 THE COURT: -- and what that is. Not what it
24 is as far as, like, a cut, but that there is a
25 difference in the two cards.

1 MR. BELL: Your Honor, may I ask for
2 clarification on one thing? In referencing the
3 difference in the cards, will he be allowed to state
4 that this is -- that this means -- the difference in
5 the cards means there's a change in the print
6 itself? Because that is what he is qualified to do.

7 THE COURT: If that's his testimony.

8 MR. BELL: We won't ask for, does that indicate
9 a cut, but it just doesn't indicate that his
10 fingerprint has changed.

11 THE COURT: If Mr. Haftoglou's examination
12 shows him, through his expertise, that the prints
13 taken on this date and the prints taken on this date
14 indicate a change in the defendant's print, then
15 that's what it is. But to say it's a cut or an
16 injury that would cause bleeding or whatever, that
17 would not be proper.

18 MR. BELL: Understood, Your Honor. Thank you.

19 THE COURT: Okay? All right?

20 MR. ELAM: Thank you, Your Honor. Whether or
21 not I go down that trail probably depends on my
22 asking Mr. Johnson one question. I'm going to ask
23 him one question out in the hallway, and then I'll
24 decide whether I go down that trail or not.

25 THE COURT: Okay. All right.

1 MR. ELAM: If I can be excused for just a
2 moment to --

3 THE COURT: Sure. Sure.

4 MR. ELAM: Mr. Haftoglou is the first witness
5 up, so I guess he can --

6 THE COURT: Mr. Haftoglou, you can have a seat
7 here in the courtroom. You don't have to go back
8 out there since you're the next witness.

9 All right. Where are we at? We've got a jury
10 who's been sitting back there for 45 minutes. Are
11 we ready for the jury?

12 MR. ELAM: The State is ready, Your Honor.

13 MR. WILLIAMS: The defense is ready, Your
14 Honor.

15 THE COURT: All right. Let's bring the jury
16 in.

17 (The jury enters the courtroom at 2:55 PM.)

18 THE COURT: All right. Ladies and gentlemen, I
19 hope you had a good lunch. I'm sorry you sat back
20 there for a little while, but we took up a couple of
21 matters that we think will help things move along
22 more quickly as we get back into the testimony. So
23 it prevented us from having to get started, then
24 stop, send you out, take up a matter. So we took
25 care of all that and are ready to proceed now.

1 The State may call your next witness.

2 MR. ELAM: Thank you, Your Honor. The State
3 calls Seraphim Haftoglou to the stand.

4

5 SERAPHIM HAFTOGLOU

6 being first duly sworn, testified as follows:

7 THE WITNESS: I do.

8 THE CLERK: Have a seat, please, sir. Once
9 you're seated state your full name, spelling your
10 last, please.

11 THE WITNESS: Seraphim Aesop Haftoglou,
12 H-A-F-T-O-G-L-O-U.

13 DIRECT EXAMINATION

14 BY MR. ELAM:

15 Q. All right. Before we get any further, where
16 does that name come from?

17 A. It's Greek. It's my grandfather's name.

18 Q. And the first name is Seraphim like the angel?

19 A. Yes, sir, just like the angel.

20 Q. Sir, where do you work?

21 A. I work for South Carolina Law Enforcement
22 Division. I'm their AFIS supervisor.

23 Q. Also known as S.L.E.D.?

24 A. Yes, sir.

25 Q. Are you working at the main headquarters, Broad

1 River Road, or elsewhere?

2 A. Yeah, I'm located over there on that campus.

3 Q. And what is your job there now?

4 A. AFIS supervisor. I'm also considered the
5 keeper of the records there.

6 Q. Okay. How long have you worked at S.L.E.D.?

7 A. This June will be seven years.

8 Q. And how long have you been there in your
9 current position as an AFIS supervisor?

10 A. About a year and a half.

11 Q. About a year and a half.

12 Is your position as an AFIS supervisor the same
13 as it was previously held by Lieutenant Joe Means?

14 A. Yes, sir.

15 Q. Did he actually train you in your job?

16 A. Yeah. He's the one -- when I first started
17 working there, he trained me to be a ten-print
18 examiner.

19 Q. All right. What did you do the prior five
20 years at S.L.E.D. that you were there before you
21 became the AFIS supervisor?

22 A. I started off there as a temp and as an
23 administrative assistant for a couple months and
24 then I moved into ten-print examiner that June.

25 Q. Slow down now. You said ten-print examiner?

1 A. Yeah. Or -- ten-print examiner is what we call
2 it or ink examiner. It's when all ten fingers are
3 rolled, and that's what we call ten prints. What
4 you see on a booking card or applicant card that get
5 submitted to S.L.E.D., those are considered
6 ten-print cards.

7 Q. Okay. So all ten --

8 A. All ten fingers.

9 Q. When you're talking about prints, you're
10 talking about fingerprints?

11 A. Yes, sir.

12 Q. And when you talk about them getting rolled,
13 what does that mean?

14 A. When we ask to roll fingerprints, you're
15 rolling from nail to nail and past the first joint
16 to get as much detail as possible.

17 Q. Now, as the AFIS supervisor, first, can you
18 spell AFIS for us.

19 A. AFIS. It stands for the Automated Fingerprint
20 Identification System.

21 Q. And briefly tell me what that is. What is
22 AFIS?

23 A. AFIS is what, in South Carolina, stores all
24 criminal and -- not all applicant, but applicant
25 fingerprint cards. That allows us to store it. We

1 store all criminal cards that are electronically or
2 mailed to S.L.E.D., and we enter them into our
3 system and store them for identification purposes
4 and to create criminal history rap sheets.

5 Q. So essentially it's just this big collection of
6 fingerprints?

7 A. Yes, sir. We have about over 1.9 [sic]
8 individuals in our system and four million
9 fingerprint cards.

10 Q. Individual prints, people, or what?

11 A. 1.9 people and then over four million
12 fingerprints in our system.

13 Q. 1.9 million people?

14 A. Correct.

15 Q. And that's just the South Carolina AFIS system?

16 A. That's just South Carolina criminal and
17 applicants that are stored.

18 Q. And is this number static or is it growing?

19 A. It's continuously growing every day.

20 Q. Okay. Now, are you the statewide supervisor
21 over AFIS?

22 A. There's only one AFIS, so, yeah, I'm the one in
23 charge of it all.

24 Q. Okay. And as such, what are your duties
25 concerning AFIS? What do you do to supervise AFIS?

1 A. Make sure it's up to date, doing it's proper
2 job, which is to identify an individual, also to
3 make sure everything that's coming in to us is done
4 securely as well, make sure -- our IT department
5 makes sure every agency that submits to us goes
6 through that rigorous -- make sure everything is
7 done properly. They -- before they even submit to
8 us, they have to be approved by our CJIS department
9 and our IT department.

10 Q. Okay. IT means?

11 A. IT or technical side of S.L.E.D. They're the
12 ones -- we have one guy who mainly does the
13 approval, making sure that the area of the Live Scan
14 machine is in a proper area, the connection to us,
15 which is through a T1 line which has to be -- for
16 security-wise and quickness is sent through S.L.E.D.
17 in a proper area, proper order.

18 Q. Okay. We covered a lot of jargon there. CJIS,
19 what is that?

20 A. CJIS is the area I work in. It's Criminal
21 Justice Identification System. It's what each
22 agency has as state law enforcement and FBI has it.
23 It's where you create your criminal history rap
24 sheets, where your AFIS or ten-prints are stored in,
25 dispositions are entered in, expungement,

1 departments, all that stuff is located in the CJIS
2 area.

3 Q. Okay. You talked about a particular kind of
4 line. What was that again, a T something?

5 A. A T1 line. It's a very secure line that we
6 require our Live Scans to connect to do the scans.
7 It's a very up-to-date, secure ethernet line that
8 connects to S.L.E.D.

9 Q. Okay. We're getting there now. What is a Live
10 Scan? You said it connects your Live Scans.

11 A. A Live Scan machine, you know, visually it kind
12 of looks like -- or at the least the one we have
13 here at S.L.E.D. is about the size of a video game.
14 You know the old arcade games? It's about the size
15 of that. It's what -- has a PC, a screen and a -- a
16 monitor and a screen -- scanning machine on the
17 top -- table top. It's where those prints are
18 rolled on to submit to S.L.E.D.

19 Q. So the Live Scan is source of prints?

20 A. Yes. It's what --

21 Q. Prints get rolled on it?

22 A. Prints get rolled on it to submit to us to
23 S.L.E.D.

24 Q. And is there a procedure or protocol for
25 collecting prints on a Live Scan machine, you do one

1 thing first and then another?

2 A. Correct. The first thing -- what the agency
3 does is they bring the person up, they actually --
4 they take the slaps, which is your hands, and they
5 lay it flat on the screen to capture all four
6 fingers, that way we understand what order the
7 prints should be taken. They also do the thumbs, do
8 each hand. And then they roll each fingerprint from
9 nail to nail.

10 So when the officer is rolling the prints and
11 if a, what we call, red box lights up, it lets the
12 officer know you possibly rolled the finger out of
13 the position. The officer may have grabbed the ring
14 finger instead of the middle finger. And it pops up
15 and says, this is not ident to what we have below,
16 please rescan that finger -- or grab the correct
17 finger and rescan it.

18 Q. All right. I got to back up a little bit just
19 so I can keep up with you. Live Scan machine is
20 just like it says, scan?

21 A. Yeah, it scans.

22 Q. So we're not using old fashioned ink anymore in
23 most places?

24 A. Not in most place. South Carolina is -- about
25 98-percent fingerprints cards are sent to us

1 electronically. Only about two percent are --
2 either have a Live Scan machine but can't afford the
3 T1 line so they print the cards out and mail it to
4 us or they still do it the old-fashioned way with
5 ink.

6 Q. Okay. So your big collection of fingerprints,
7 1.9 million so far, comes from Live Scan machines
8 around the state; right?

9 A. Yeah. It comes from law enforcement agencies
10 and our state vendor.

11 Q. State vendor. The Live Scan machine, does it
12 communicate with S.L.E.D. through the internet?

13 A. It communicates through that T1 line. That's
14 the only way you're allowed to connect to us.

15 Q. What's a T-1 line?

16 A. A T1, as I said, it's similar to the internet
17 but it's -- it's like an ethernet, but a very secure
18 type of way of submitting information. It's also
19 the way we submit to the FBI is through T1 lines.
20 It's mandatory.

21 Q. And the reason I ask about is it part of the
22 internet is you hear a lot these days about
23 hackings. Is the T1 line secure from being hacked?

24 A. Yes, sir. We also make sure with agencies how
25 they're submitting to us. It's part of the reason

1 why our IT department looks at their diagram, how
2 they're submitting to us, what's connected to that
3 system that's coming to us. We want to make sure
4 it's on a separate line by itself to us on that --
5 for the Live Scan machine.

6 Q. So is there any sign that any of your records
7 were ever hacked?

8 A. No, sir.

9 Q. Or that there were ever any attempts to hack?

10 A. Not that I'm aware of. That would be our
11 security liaison would have to...

12 Q. Okay. And again, your records are all stored
13 in the computer?

14 A. Right. They're all stored in our AFIS system.

15 Q. They're all digital?

16 A. Yes, sir.

17 Q. At some point we have to be able to use those
18 records. If they're just out there digitally, I
19 don't think we can. So how do we make the records
20 you store useful?

21 A. Each fingerprint that comes in to us runs
22 through our system. If it's a first-time arrest, it
23 creates a new unique South Carolina identification
24 number or what we call SID number. It's unique to
25 each person. So if you have a previous existing

1 arrest, it will attach to it. So each person has
2 one identification number. Each time that person is
3 arrested afterwards, it just adds to that based on
4 its fingerprints; not based on name, but based on
5 fingerprints.

6 We also -- once we do our portion of searching
7 the prints, identifying who it is, create that
8 criminal history, we also forward it to the FBI.
9 The FBI does a very similar process. Each print
10 that we send up there, criminal-wise, creates an FBI
11 number which is unique to each person. The FBI will
12 take that fingerprint, look at the State's record
13 and attach their FBI number to our South Carolina
14 identification number.

15 Q. Let me stop you right there. I don't want to
16 get into the FBI right now and all of that stuff. I
17 just want to know, if you have this digital
18 information stored in your system, how is it -- how
19 does it become use physically to somebody? How can
20 they access it and use the information that --

21 A. Okay. We store all the prints that are
22 searched against -- each time someone gets arrested,
23 it gets searched against. Also, our latent -- our
24 crime scene individuals, they're allowed -- they
25 submit latent prints to -- through our system to get

1 possible matches. We just send them back a list of
2 whatever they ask for. If they ask 20 or 15 or 10,
3 30 possible matches, we send that back to them for
4 that latent examiner to look at to identify
5 themselves. If our AFIS system doesn't identify the
6 individual, we -- for latent purposes, we just say,
7 here's some possible suspects.

8 Q. And how do latent-print examiners who want to
9 access your fingerprints so they can study their
10 latent prints and make comparisons, how do they get
11 the prints out of your digital storage?

12 A. Yeah. They actually have to purchase a --
13 what's called an AFIS system or a latent station
14 work station. They -- each -- I think we have about
15 26 or so out in South Carolina right now that -- or
16 counties that have their own latent station. They
17 actually have a certified latent user, they submit
18 the prints to our AFIS system connected to us, and
19 then once they make the identification, they
20 actually can pull up that individual's card and then
21 make a physical match on it.

22 Q. All right. We talked about the procedure for
23 rolling prints.

24 A. Uh-huh.

25 Q. You said first you do the slaps?

1 A. Yep.

2 Q. That's over the scanner?

3 A. Yep. You do all of your slaps over the
4 scanner. And then once that's done, you start with
5 your right hand, your right thumb, and you roll it.
6 So your thumb is one -- Finger 1, right index finger
7 is Finger 2, right middle is 3, ring is 4, right
8 pinky is 5. And --

9 Q. And you said when -- if the person operating
10 the machine and rolling the prints for somebody
11 mixes up the order of the prints after doing the
12 flats --

13 A. Uh-huh.

14 Q. -- the machine will catch it?

15 A. Yes, sir. Well, what it'll do is it pops up --
16 when you do a correct print or a quality print, it
17 kind of does a self-check on itself when you're
18 rolling it, compares it to the slaps, makes sure
19 they're identified. It will show a green bar
20 saying, yep, this is good.

21 If you roll the wrong fingerprint it will show
22 up red box saying, we don't see the match for you to
23 either re-roll the print to get a better quality or
24 you may have rolled the wrong finger.

25 Q. So is it fair to say that -- and the reason you

1 did the flats first, is that to help identify what
2 print on what hand comes next?

3 A. Correct, sir.

4 Q. You know, because we know that the index finger
5 on the left hand is going to be the first real
6 finger after the thumb, et cetera?

7 A. Yeah. So, yeah, when you put your slaps down,
8 your hand is down. And then the way it's rolled,
9 it's reading down from the bottom. So when it --
10 the Finger 1 is looking at image, actually, Finger
11 11 or Image 11 on the Live Scan machine. So 11 is
12 supposed to match to 1. And then you have Image 12,
13 which is the slaps, and it's comparing to how
14 they're rolled in order from -- on your right hand
15 and make sure that they match down below.

16 Q. Okay. And to create a digital image of those
17 prints, I guess I'm stating the obvious, but the
18 Live Scan machine is actually taking measurements,
19 calculating --

20 A. Yeah.

21 Q. -- analyzing the print that it's receiving to
22 such a degree that if --

23 MR. WILLIAMS: Objection to the leading.

24 THE COURT: Sustained.

25 You need to ask the questions.

1 MR. ELAM: Well, I just wanted to be clear on
2 this.

3 BY MR. ELAM:

4 Q. Does the machine start calculating and start
5 analyzing the print immediately?

6 A. Yes. The Live Scan machine does some type of
7 calculation to make sure you are doing the prints in
8 the correct order and getting good quality.

9 Q. Okay. It's that sensitive?

10 A. Yes, sir.

11 Q. Now, these prints that are produced at Live
12 Scan machines that come through the T1 line, is
13 it --

14 A. Yes, sir.

15 Q. -- to your data base at S.L.E.D., are they
16 collected by the Live Scan machines simultaneously
17 to the time they're created?

18 A. Within, you know, seconds or minutes, depending
19 on the area, how it's coming to us, the electronic
20 image is coming to us fairly quickly. And each
21 submission has a unique incident number or
22 transaction number, as we call it, and the way we
23 know each agency submitting to us is by its first
24 four digits. There's a 12-digit number; the first
25 four digits tells us who is submitting that -- which

1 Live Scan machine is submitting that to S.L.E.D.

2 Q. And the prints so collected, are they
3 maintained in the AFIS database in the condition in
4 which they arrive?

5 A. Yes, sir.

6 Q. Do you do anything to change them?

7 A. No, sir. We just make sure they identify to
8 the correct person, if we have to.

9 Q. Do those machines need to be certified? I
10 mean, couldn't --

11 A. Yes, sir. Live Scan machines are certified.
12 To sell one in South Carolina, first you have to be
13 certified by the FBI before you even try to attempt
14 to sell one in South Carolina. Once you've been
15 certified by the FBI, then we make sure that your
16 Live Scan machine can communicate with our AFIS
17 system. Once that -- you prove that that happens,
18 then you're allowed to sell that Live Scan machine
19 in South Carolina.

20 Q. Does S.L.E.D. ultimately sell the Live Scan
21 machine?

22 A. No, sir. There's vendors out there that do
23 that.

24 Q. Vendors do that?

25 A. Yes, sir. And the vendors are the ones that

1 have to be approved.

2 Q. Do you certify those machines?

3 A. Yes, sir. After they have been certified by
4 the FBI, we certify them by making sure they can
5 communicate with the back end approximately.

6 Q. What's the approximate cost of a Live Scan
7 machine?

8 A. Anywhere from 20- to \$40,000.

9 Q. And how many Live Scan machines are connected
10 with S.L.E.D. and the AFIS database?

11 A. We have over 120 that are connected to S.L.E.D.

12 Q. Now, I'm asking this question statutorily, I
13 guess: Why does S.L.E.D., using Live Scan machines,
14 collect and store prints at AFIS?

15 A. Because fingerprints is the best way to
16 identify people.

17 Q. Okay. And is there any directive out there
18 telling you to do that?

19 A. Yeah. I mean, we follow the FBI standards.
20 They create requirements level to reach and we make
21 sure we reach or exceed those standards.

22 Q. And are you directed by statute to do that?

23 A. Yes, sir. The statute requires South Carolina,
24 all agencies, to submit their fingerprint cards to
25 S.L.E.D. within three business days. Live Scans get

1 that to us immediately.

2 Q. And that's 23-3-120?

3 MR. WILLIAMS: Objection; leading, Your Honor.

4 BY MR. ELAM:

5 Q. Well, can you tell me -- can you cite the
6 statute?

7 THE COURT: Here, step up here.

8 (Sidebar conference.)

9 BY MR. ELAM:

10 Q. You were testifying about the fingerprints.
11 You were saying something about them being unique.
12 Can you expound on that?

13 A. Yes, sir. Each fingerprint is unique to each
14 individual. We all have ten fingers, they're all
15 unique to each other. No one has the same prints as
16 the person next to you or the person across the
17 street or the person across town, across the
18 country. They're all unique to themselves.

19 Q. Is every print on every finger of every person
20 different?

21 A. Yes, sir.

22 Q. I asked about the statute. Are your
23 fingerprints public records?

24 A. Yeah. We are an open state, which means our
25 criminal history is open to the public for a fee.

1 Q. Not just anybody in the public can look at your
2 prints, but --

3 A.. Correct.

4 Q. -- it's publicly mandated that you keep them;
5 right?

6 A. Yes, sir.

7 Q. Now, how are the records, slash, fingerprints
8 organized in your database?

9 A. They are organized by a unique SID number, the
10 South Carolina identification number. As I said,
11 each person has their own one. That creates -- that
12 starts the criminal history on someone.

13 Q. Okay. And no two people have the same number?

14 A. Correct.

15 Q. Okay. So every single person of those 1.9
16 million people you mentioned who has prints on
17 record at AFIS has a unique -- has their own unique
18 State identifying number; is that correct?

19 A. That is correct, sir.

20 Q. As the caretaker or as the supervisor over
21 AFIS, is it your duty to see that those prints that
22 are received are not altered or changed in any way?

23 A. Yes, sir.

24 Q. Now, can terminals print out a hard copy of
25 those electronic records that you have?

1 A. Yeah. We can print out the fingerprint cards
2 at S.L.E.D. and then also agencies that have a
3 latent station or an AFIS station, they can print
4 out hard copies as well.

5 Q. Did you bring such a hard copy with you in
6 court today?

7 A. Yes, sir.

8 Q. Specifically referencing a -- and you call it
9 a -- when you print that out, it's called a
10 ten-print card?

11 A. Yes, sir.

12 Q. Did you bring a ten-print card that was
13 produced on October 15th of 2009?

14 A. Yes, sir.

15 Q. And can you tell me where this particular
16 ten-print card was created?

17 A. Yes, sir. This particular card came from
18 Kirkland Detention Center.

19 Q. All right.

20 MR. ELAM: Your Honor, at this time I'd like to
21 have this ten-print card marked for identification.

22 (State's Exhibit No. 29 marked for
23 identification).

24 BY MR. ELAM:

25 Q. All right. We've marked that as State's

1 Exhibit No. 29. Is this a card that you yourself
2 printed recently?

3 A. Yes, sir.

4 Q. Is it as such an original?

5 A. Yes, sir. These prints are stored
6 electronically, so when we print one out, it's
7 considered the original.

8 Q. Okay. If you printed another one tomorrow,
9 would that also be an original?

10 A. Yes, sir. It would look exactly the same as
11 the one I printed out.

12 Q. All right. Can you tell me what the unique
13 State identifying number on that particular card
14 that you're holding is? I think it's Exhibit 29.

15 A. Yes, sir. This person's State identification
16 number is SC01778866.

17 Q. Can you tell me the name of the person assigned
18 to that unique number?

19 A. Yes, sir. It's Jacob Heyward Seay.

20 Q. How do you spell the last name?

21 A. S-E-A-Y.

22 Q. All right. Do you have a date of birth on your
23 card associated with that name?

24 A. Yes, sir. The date of birth I have is
25 7/30/1990.

1 Q. And do you have a social security number?

2 A. Yes, sir. I have it as .

3 Q. These are -- this is, again, a print of the
4 records that you keep in the ordinary course of your
5 business every day?

6 A. Yes, sir.

7 MR. ELAM: Your Honor, at this time we move
8 State's Exhibit No. 29 into evidence.

9 MR. WILLIAMS: Your Honor, my only objection
10 would be the fact that there's original existing.
11 This is obviously an electronic copy.

12 THE COURT: All right.

13 MR. WILLIAMS: And I understand what he's
14 testified.

15 THE COURT: Overruled.

16 MR. ELAM: Thank you, Your Honor.

17 (State's Exhibit No. 29 admitted into
18 evidence.)

19 BY MR. ELAM:

20 Q. Now, there's a number on the left front of the
21 card. Can you read that number?

22 A. Yes, sir. That number is 50D200001518.

23 Q. And if you were to reprint the card for the
24 October 15th, 2009 roll of those prints, would that
25 same number appear on the reprint?

1 A. Yes, sir. It would appear every single time.

2 Q. So is that a number associated with the date
3 and the place where that specific card was produced?

4 A. Yes, sir. That's the transaction number.

5 Q. All right.

6 MR. ELAM: I beg your indulgence, Your Honor.

7 BY MR. ELAM:

8 Q. Have you also brought with you another
9 ten-print card that was produced on December 14th,
10 2011?

11 A. Yes, sir, I did.

12 Q. And can you tell us where that was produced.

13 A. That was produced at Lexington County Sheriff's
14 Office.

15 Q. Just as with everything we've been talking
16 about so far, is that electronic information that
17 came to you --

18 A. Yes, sir. It's all done electronic.

19 Q. -- secure, kept at AFIS?

20 A. Yes, sir.

21 Q. You printed out that card as well recently?

22 A. Yes, sir.

23 Q. What is the unique identifying number on that
24 card?

25 A. The SID number on this card is SC01778866.

1 Q. And again, who was the individual that that
2 card belongs to or is attached to?

3 A. Jacob Heyward Seay, S-E-A-Y.

4 Q. All right. Is there a -- you testified earlier
5 that in the five years before you became the AFIS
6 director that you were an inked-print examiner.
7 What exactly did that mean? What did you do as an
8 inked-print examiner?

9 A. Basically we entered in mailed new cards to us,
10 verified prints that had a low minutia. So we had
11 to physically look at those prints and make sure
12 that we said ident, meaning it was the same person,
13 or not ident, meaning it's not the same person.
14 That's mainly what my job described.

15 Q. Okay. Is an inked-print examiner the same as
16 latent examiner?

17 A. No, sir.

18 Q. Briefly, what's the difference between those?

19 A. Ten-print, we actually look at all ten fingers
20 plus the slaps; the latent examiner is only looking
21 at a partial print or multiple partial prints.

22 Q. Like, for example, taken from a crime scene?

23 A. Taken from a crime scene, yeah. That -- crime
24 scene evidence picks up. That's what a latent
25 examiner would be looking at. It could be

1 fingerprints, palms.

2 Q. So is an inked-print examiner someone who looks
3 at the original ten-print cards that were rolled at
4 Live Scan machines -- through Live Scan machines?

5 A. Yeah. They identify to ten prints.

6 Q. It's probably a little easier job?

7 A. Ten prints, yes, sir, because I, again, compare
8 all ten fingers to all ten fingers. So it's a much
9 easier way to identify people.

10 Q. And you've done this before, you've compared
11 ten-print cards to ten-print cards?

12 A. Yes, sir.

13 Q. And you've testified in court before on this?

14 A. Yes, sir.

15 Q. All right. Comparing the ten-print card from
16 October 15th of 2009 to the ten-print card for
17 December 14th of 2011, is there --

18 MR. WILLIAMS: Your Honor, we would object to
19 any questions regarding that because the second item
20 has not been placed in evidence, Your Honor.

21 THE COURT: What second item?

22 MR. ELAM: He's correct.

23 THE COURT: Okay.

24 MR. ELAM: We need to mark that.

25 THE COURT: Gotcha. Sustained.

1 MR. ELAM: Let me get that and mark it. Sorry
2 about that, Your Honor.

3 MR. WILLIAMS: And, Your Honor, we object now
4 to the introduction of the second item in that
5 there's been no testimony from this particular
6 witness that he is aware as to how this particular
7 card was originated. It's from Lexington County
8 Sheriff's Department, from what I can understand
9 from his testimony, but there's no testimony in
10 regards to how AFIS received that card.

11 (State's Exhibit No. 30 marked for
12 identification.)

13 BY MR. ELAM:

14 Q. All right. I'll hand you State's Exhibit
15 No. 30. Go ahead and tell us again how AFIS and
16 S.L.E.D. received the information on that card,
17 State's Exhibit 30.

18 A. It was submitted by Lexington County Sheriff's
19 Office Live Scan machine.

20 Q. And did it come through the secure T1 line --

21 A. Yes.

22 Q. -- like every other card we've talked about?

23 A. Yes, sir.

24 MR. ELAM: Your Honor, at this time I renew my
25 motion to place State's Exhibit 30 in evidence.

1 THE COURT: All right. I'm going to allow it
2 into evidence and note your objection, Mr. Williams.

3 (State's Exhibit No. 30 admitted into
4 evidence.)

5 BY MR. ELAM:

6 Q. Now tell me if there's a difference between the
7 two cards.

8 A. Yes, there's a difference. On the left index
9 finger, there's a marking on his hand that didn't
10 appear prior.

11 Q. And does the marking appear on the first card
12 or the second card; the 2009 card or the 2011 card?

13 A. It appears on the 2011 card.

14 Q. All right. That's all I have for you. Please
15 answer any questions that Mr. Williams has.

16 MR. WILLIAMS: May it please the Court.

17 THE COURT: Yes, sir.

18 CROSS-EXAMINATION

19 BY MR. WILLIAMS:

20 Q. As I understand, whenever an individual has an
21 occasion to be locked up, arrested, what have you,
22 or incarcerated, at that point in time then there is
23 a fingerprint which is taken. And it's your
24 testimony that in South Carolina now, that there are
25 no ink-print cards that are used, but now the cards

1 are done by electronics, meaning that you do it on a
2 screen?

3 A. No, sir. I said we're 98-percent electronic.

4 Q. All right. And do you know whether or not
5 Lexington County submits their items electronically
6 or whether or not they actually use ink-print cards?

7 A. They submit electronically.

8 Q. And you know that because you've received them
9 electronically; is that correct?

10 A. Yes, sir.

11 Q. Now, in you're referring to the -- and you're
12 referring to a live ink-print -- a live taking of
13 the fingerprints, I guess. So what you're saying is
14 that, I guess, when you go into booking or something
15 like that, somebody in the booking office would be
16 putting the hands down first. --

17 A. Yeah.

18 Q. -- and then they would do --

19 A. They roll the right hand and then roll the left
20 hand.

21 Q. And part of the reason why they at least put
22 both hands down and then they roll them is so that
23 the machine knows that you're dealing with ten
24 fingers; right?

25 A. Yeah. I mean, you could have an amputee.

1 Q. That's right. So the machine, because it is a
2 machine, has to know how many items it's going to be
3 looking at. So you put both hands down so that it
4 has ten items showing so it's going to be looking
5 for ten fingers; right?

6 A. Correct.

7 Q. And the only reason why a green bar versus a
8 red bar would show up would be location on the card,
9 meaning your little pinky finger has to come first,
10 is that's the way you're doing it --

11 A. No. You start with your thumbs.

12 Q. Your thumb has to go first, then your second
13 finger?

14 A. You roll your thumbs, index, middle, ring,
15 pinky. Same thing with your left hand.

16 Q. And it's a balancing system, if you will, so
17 that you check all ten fingers, you have all ten
18 fingers recorded.

19 A. Make sure the images match each other.

20 Q. Now, when those items are sent to AFIS -- which
21 is a big computer; right?

22 A. Pretty much yes, sir.

23 Q. -- does that computer make a check of the
24 number of Galton points or the number of ridges that
25 are reflective on each finger?

1 A. It does it's own mathematical situation; it
2 judges ridges and points of interest.

3 Q. So it counts the number of ridges?

4 A. Yes, sir. Each AFIS system has its own way of
5 doing it. Our vendor, MorphoTrak, has a unique
6 special way of doing it, which also the FBI uses as
7 well.

8 Q. And tell me what that special way is of doing
9 it.

10 A. Their mathematical situation. It's their
11 information they keep. It's mathematical situation
12 of judging ridges, detail, minutia.

13 Q. Would the short answer to this be that you
14 don't know?

15 A. I didn't create it, so, no, sir, I don't.

16 Q. So you don't know how many ridges -- and you're
17 an inked-print --

18 A. Ten-print examiner. Yes, sir.

19 Q. -- examiner?

20 And am I correct to understand that when you
21 learned how to do ink prints that you learned to
22 focus on three different areas of the fingerprinting
23 analysis; meaning ridges -- what other items do you
24 look for on the fingerprints?

25 A. You look for core, delta, ridges and points of

1 detail.

2 Q. Right. And meaning you would look at where
3 ridges where they would end, if you examined them?

4 A. You have ridges, you have bifurcation ridges.
5 I mean, you look for multiple unique identification.

6 Q. Okay. And back when you used ink-print cards
7 and -- since that's how you became an ink-print guy.
8 Now you don't use ink-print cards any more; right?
9 You use this new computerized --

10 A. Ink cards are still mailed in to us.

11 Q. So you still have to know how to do it; right?

12 A. Yeah. I mean, our -- yeah. We still have to
13 do it. Our AFIS system does the math for us,
14 the comparison for us. If it doesn't see it as a
15 comparison, we either create a new identification
16 number or ask an examiner to do it for it.

17 Q. All right. Well, if you don't know how many
18 points that the machine looks at or how many points
19 there are to look at when it examines the
20 fingerprints, as a person, do you know how many
21 ridges or how many points that you can look at on
22 the finger? Are there 30? 40? 50?

23 A. I mean, there are several. If you're counting
24 from your core to delta on a loop, there's any
25 number. You can have from one to 30 to 50. Each

1 person is different, that's why prints are unique to
2 each individual.

3 Q. So you can have up to 50? You say --

4 A. No. I'm not -- I don't know what the max is
5 for ridges.

6 Q. So you really don't know how many ridges you
7 can have on the fingerprint; right?

8 A. Correct.

9 Q. Now, you're trained in South Carolina as a
10 fingerprint ink-print analysis person. Are you
11 trained -- when you make an examination that there
12 have to be a certain number of matches or certain
13 number of ridges that --

14 A. No, sir.

15 Q. -- before you can call it a match?

16 A. No, sir. There's no direct number of points of
17 interest you have to have. It's up to each
18 individual to identify that. If you feel
19 comfortable at five, you can stop at five points of
20 interest. If you want to go further, you can go
21 further.

22 Q. So if you're examining two people's
23 fingerprints or a print off of, I don't know, one
24 that's generated by a machine or one that's
25 generated by a man, and if you're going to match

1 those two particular items to say whether or not
2 it's the same person, there's no standard as to the
3 number of ridges that have to be identical; it could
4 be one, two, three, four or five? It's what you
5 decide; right?

6 A. Points of interest.

7 Q. Points of interest. What is a point of
8 interest?

9 A. Points of interest are any ridges, bifurcations
10 ridges, little dots as you see in them, just
11 different things that stand out to you. Your ridges
12 count is when you count a loop from the core to the
13 delta. You're allowed to be plus or minus one on
14 those when you're identifying them.

15 Q. Now, who decides that you're allowed to be plus
16 or minus one on that?

17 A. Well, it's the FBI standards that says you can
18 be plus or minus one.

19 Q. Now say that again.

20 A. The FBI says plus or minus one, that's their
21 standard, because one person may not see a line
22 based on pressure of ink. If one person pushes
23 hard, you may not see a line. The other person,
24 next time you roll it, you'll see it. That's why we
25 want all rolled prints stored in our system because

1 each print is rolled differently.

2 Q. So there are no standards in regards to the
3 number of matches -- points of interest that you
4 have to meet before you can declare that it is a
5 match?

6 A. Correct.

7 Q. Well, if there are no points, no number of
8 points that you have to match up, then how is the
9 machine able to make any determination of matches if
10 you don't know how it works?

11 A. Because you're using all ten fingers and
12 identifying them all to each other. We're not
13 looking at one fingerprint, we're looking at all ten
14 to identify themselves with each other.

15 Q. What about examining, I don't know, prints off
16 of crime scenes?

17 A. We get possible matches back to that individual
18 that -- when they request it. We don't give a
19 match, we give possible.

20 Q. So you could -- you could never determine a
21 match, really?

22 A. On latents, no, we don't do that. That's up to
23 a latent examiner to do that.

24 Q. Then you couldn't because you have no
25 standards, do you? I mean, you already said it's

1 whatever you determine, one to five; right?

2 A. Correct. But latent examiners do their job
3 differently; they create the points of interest when
4 they submit it our AFIS system. And then we send
5 back, depending on how many results they want back,
6 we send possible matches to them. That latent
7 examiner either makes an identification or not. And
8 when he does, he pulls out the ten-print card and
9 it's a lead for that investigator.

10 Q. Now the card -- if I can look at this.

11 A. Which one are you wanting to see?

12 Q. Do you have 30, the most recent?

13 A. Yes.

14 Q. If I could see both of those, please.

15 Both of these cards are produced not with ink,
16 but by going through the machine that you've
17 referenced; right?

18 A. Yeah.

19 Q. Took a picture of it?

20 A. Correct.

21 Q. And there are -- there is no original other
22 than what you have. Everything is stored in -- I
23 think we've already established that. There's just
24 a picture sitting somewhere?

25 A. Yeah, stored electronically.

1 Q. What type of special training did you have to
2 be an ink-print examiner?

3 A. S.L.E.D. certified me and gave me the training
4 I needed.

5 Q. Were you ever examined by an outside agency?

6 A. No, sir.

7 Q. Did you ever -- were you ever -- meaning either
8 FBI or an independent agency to determine your
9 accuracy of your evaluations?

10 A. No, sir.

11 MR. WILLIAMS: That's all I have, Your Honor.

12 REDIRECT EXAMINATION

13 BY MR. ELAM:

14 Q. Is S.L.E.D. certified by an outside agency?

15 A. Yes, sir. S.L.E.D. is certified by CALEA.

16 Q. And what does CALEA stand for?

17 A. I'm afraid I'm sorry. I don't know exactly
18 what it stands for. But they certify all state
19 agencies around the United States. It's a group of
20 law enforcement agencies. They go around and look
21 at what each agency does, how they do it, perform
22 securely, all nine yards. They go to each
23 department and once they reach their standards, then
24 you become certified.

25 MR. ELAM: Thank you.

1 THE COURT: Anything further?

2 RECROSS-EXAMINATION

3 BY MR. WILLIAMS:

4 Q. Do you know when S.L.E.D. was last evaluated?

5 A. It was, I want to say, roughly two years ago --
6 a year or two years ago. I can't remember the exact
7 date. They come around -- I don't know exactly how
8 often they come around. But they come around every
9 so often to keep our certification up.

10 Q. And how do they certify you? What do they do?

11 A. They examine everything we do.

12 MR. WILLIAMS: I don't have anything further,
13 Your Honor.

14 THE COURT: All right. Thank you very much,
15 sir. You may step down.

16 Any objection to this witness being excused?

17 MR. WILLIAMS: No objection, Your Honor.

18 MR. ELAM: None from the State.

19 THE COURT: All right. You may call your next
20 witness.

21 MR. ELAM: The State calls Wilber Duane
22 Johnson.

23 WILBUR DUANE JOHNSON

24 being first duly sworn, testified as follows:

25 THE WITNESS: I do.

1 THE CLERK: Have a seat. Once you're seated,
2 state your full name, spelling your last on the
3 record, please.

4 THE WITNESS: Wilber Duane Johnson,
5 J-O-H-N-S-O-N.

6 DIRECT EXAMINATION

7 BY MR. ELAM:

8 Q. Mr. Johnson, can you tell us where you
9 currently live?

10 A. Where I currently what?

11 Q. Live, sir.

12 A. I live in Lexington County.

13 Q. And what is your current occupation?

14 A. I'm retired.

15 Q. And where are you retired from?

16 A. From the FBI and also Lexington County
17 Sheriff's Department.

18 Q. How long did you work at the FBI?

19 A. About 36 and a half years.

20 Q. And how long did you work at the Lexington
21 County Sheriff's Department?

22 A. A little over ten years.

23 Q. Which one is more recent?

24 A. Lexington County Sheriff's Department.

25 Q. Okay. I'll deal with that first, then. What

1 basis did you work at the Lexington County Sheriff's
2 Department? Was it full-time? Part-time?

3 A. I was a part-time civilian employee.

4 Q. All right. And how many years did you say you
5 worked at the FBI?

6 A. Thirty-six and a half years.

7 Q. What did you do at the FBI?

8 A. My entire time was spent in the field of
9 fingerprints.

10 Q. Tell me what year you started.

11 A. I started in 1964.

12 Q. 1964 to what year?

13 A. Til 2000.

14 Q. All right. And you said your entire career
15 dealt with fingerprints?

16 A. Yes.

17 Q. Considering -- tell me about your educational
18 background then.

19 A. My secondary education was Public School System
20 in Saluda County, South Carolina and I have a
21 Bachelor of Science degree from the University of
22 Maryland.

23 Q. All right. And what specialized training and
24 education did receive to become -- to do the work
25 that you did with the FBI with fingerprints?

1 A. In 1964 when I began my employment with the
2 FBI, I was assigned to the identification division.
3 And at that time, I went through approximately
4 one-year training period which consisted of
5 classroom training and on-the-job type training
6 where I worked out on the fingerprint file cabinets
7 under the supervision of a training officer.

8 In 1972 I was afforded the opportunity to move
9 into the latent print section of the FBI, and again
10 I went through approximately one-year training
11 period again of classroom and on-the-job type
12 training where I worked in the unit working cases.
13 I was taught how to handle evidence, recognize
14 certain prints that are left at crime scenes and to
15 make comparisons of those prints. And all of the
16 training consisted of a year.

17 In addition to the formal training I have for
18 the FBI, I've attended many International
19 Association For Identification training classes
20 throughout the country and participated in some of
21 those myself. I also have trained local and federal
22 law enforcement officers in the matters of
23 fingerprints.

24 Q. When you say participated with some of those,
25 do you mean you actually taught in some of those?

1 A. Yes, I did.

2 Q. All right. Have -- and you were just now
3 saying you've actually trained individuals and
4 organizations in fingerprint work?

5 A. I have.

6 Q. Can you tell us a little about that?

7 A. Sure. When I was with the FBI, I think it was
8 1982, I went to the FBI Instructors Academy at
9 Quantico, Virginia and I was certified as an FBI
10 instructor. And after that, I would go out to
11 various locations throughout the U.S. and I would
12 teach advanced latent fingerprint techniques to law
13 enforcement officers. Fortunately I was able to
14 come to Columbia and teach at the Criminal Justice
15 Academy on the average of two to three times a year
16 for my last four or five years with the FBI.

17 When I started my employment with Lexington
18 County, I saw a need that the road deputies within
19 the department needed to be trained. And I had a
20 meeting with my major at that time, Major Harris,
21 and it was my suggestion that we put fingerprint
22 kits in each of the deputy's cards so that when they
23 respond to an incident, if it was something that the
24 deputy could do within their training, they could
25 process the scene because it kept us from having to

1 send a crime scene officer to every crime.

2 At that time we only had three crime scene
3 officers in employment with the Sheriff's Office.

4 Q. What year was that?

5 A. Sir?

6 Q. What year was that?

7 A. 2001, 2002.

8 Q. Okay.

9 A. And I eventually trained all of the deputies
10 from the rank of sergeant on down to the lowest
11 rank. And as new deputies came to work for the
12 sheriff's office, during their initial training
13 phase, I also gave them four hours of training on
14 the same matters; how to process for latent prints
15 and lift latent prints.

16 I also trained the correctional officers in the
17 jail how to roll fingerprints and take ink
18 fingerprints also. And when the agency obtained the
19 Live Scan, I was involved with an individual from
20 the company and S.L.E.D. in training the
21 correctional people how to record fingerprints and
22 palm prints because that was a new feature that came
23 with the Live Scan.

24 Q. All right. Back when you were with the FBI,
25 did the FBI maintain certified fingerprint lab?

1 A. Yes, we did.

2 Q. And what certification did the lab have?

3 A. The FBI lab is an ASCLD-certified lab. It
4 was -- I don't exactly remember what year, but it
5 was probably close to year 1998 or so that it became
6 a certified lab. And since, every five years, it
7 has gone through a recertification process. What
8 prompted this to happen, I feel, was the things that
9 happened in the OJ Simpson case where the police
10 were caught short, prosecutors were cut short --

11 MR. WILLIAMS: Your Honor, I have an objection
12 to the reference of the OJ Simpson case. There's no
13 relevance to this particular trial.

14 THE COURT: He's just comparing his -- what he
15 compares it to. I don't find this to be -- I mean,
16 this isn't OJ Simpson, we all know that.

17 MR. WILLIAMS: My objection is to relevance,
18 Your Honor.

19 THE COURT: Well, I'm -- overruled.

20 MR. ELAM: Thank you, Your Honor.

21 BY MR. ELAM:

22 Q. Talk to us about your experience in --

23 A. Yes. And because of things that happened in
24 that trial, certain agencies certainly needed to
25 change the way that they did business, and the FBI

1 was one of those agencies that needed to change the
2 way we did business. We were not a certified lab.
3 We later became a certified lab because of some
4 things that happened with our own examiners during
5 that trial. So, you know, that was -- as far as I
6 know, they have been recertified each instance they
7 have come up for recertification.

8 Q. All right. And you yourself, do you know the
9 requirements of certification? The recertification,
10 it implies standards, doesn't it?

11 A. Yes. It requires standards that are set forth
12 by the ASCLD group which is the Association of Crime
13 Laboratory Directors. And they have their own
14 rules; how we are to conduct business, how we are to
15 handle evidence, how we are to document our
16 examinations, how we are to document, how we process
17 evidence, compare prints, and everything from the
18 very beginning of the case to very end.

19 Q. All right. Now, to gauge the level off your
20 expertise, have you yourself ever inspected a
21 fingerprint lab?

22 A. Yes, I have.

23 Q. Can you tell us about that briefly?

24 A. In 2008, I was hired by an individual here in
25 South Carolina to go out and inspect the Montana

1 State lab that is located in Billings, Montana. And
2 the primary reason --

3 MR. WILLIAMS: Objection to relevance, Your
4 Honor.

5 THE COURT: What's the relevance, Solicitor?

6 MR. ELAM: He's talking about the time he
7 himself inspected a fingerprint lab.

8 THE COURT: And that is --

9 MR. ELAM: That's going to his expertise, Your
10 Honor. They asked him to go look at labs.

11 THE COURT: Is there any objection to this
12 witness being an expert witness in the area -- and
13 what would the area be, Solicitor? What is the area
14 you're looking to qualify this witness in?

15 MR. ELAM: We'd seek to have him accepted by
16 the Court as an expert of fingerprint analysis,
17 latent print analysis --

18 THE COURT: Is there any objection to that?

19 MR. WILLIAMS: No, sir.

20 MR. ELAM: -- and in general, fingerprint
21 science. He knows more than -- he can talk about a
22 lot more based on his experience than simply
23 comparing the latent prints to an inked-print or a
24 ten-print card.

25 THE COURT: Okay. I'm going to allow him to

1 testify as an expert. And I'm going to give you
2 some leeway as far as his experience and his
3 expertise. But -- so I'm going to give you some
4 leeway in regards to that. Okay?

5 MR. ELAM: Thank you, Your Honor. I beg your
6 indulgence.

7 BY MR. ELAM:

8 Q. Mr. Johnson, how many times have you testified
9 in court before as an expert in fingerprint
10 analysis?

11 A. In excess of 150 times.

12 Q. How many states have you testified in across
13 the nation?

14 A. 38 states and two territories of Puerto Rico
15 and the Virgin Islands.

16 Q. Is it safe to say that your 36 years at the FBI
17 and the following years at Lexington County
18 Sheriff's Department, you've looked at and examined
19 a lot of prints?

20 A. Yes, I have.

21 Q. You ever made a mistake?

22 A. Yes, I have.

23 Q. Tell us about that.

24 A. In 1987 I was involved with another examiner in
25 the FBI in misidentifying a latent print. I would

1 like to be able to lay that excuse for some lame
2 reason, but, simply, I got lax in my duties and I
3 made a mistake. Since then I have -- it woke me up.
4 I have been more careful than ever to not make that
5 same mistake.

6 Q. How many years all together have you worked in
7 the fingerprint sciences?

8 A. Roughly 47 years.

9 Q. All right. 47 years, one mistake?

10 A. One of those mistakes, yes.

11 Q. Now, after you retired from the FBI you went to
12 the Lexington County Sheriff's Department, as you
13 testified. I believe you said part-time.

14 A. Yes, sir.

15 Q. Does the Lexington County Sheriff's Department
16 actually have a fingerprint lab?

17 A. The Lexington County does not have a
18 fingerprint lab such as we had in the FBI. They
19 have a laboratory in which they can process evidence
20 for fingerprints, shoe impressions, tire
21 impressions, inspect evidence for the fluids that
22 may be on clothing, blood and those type of things.
23 But as far as the fingerprints, none of the
24 fingerprint comparisons are done in that lab; it's
25 in a separate room in the building, separate

1 location..

2 Q. Is the -- during the time you were there, was
3 the fingerprint operations of the sheriff's
4 department certified by any outside agency?

5 A. No.

6 Q. Why not?

7 A. Well, the only discipline there -- well, maybe
8 there was one other discipline that could have been
9 certified, would have been the latent prints. And
10 we had a chemist onboard that did drug analysis.
11 The two of us could have been certified, but doing
12 that for two disciplines would have been very
13 expensive and very time consuming. And that would
14 have been the decision that the sheriff would have
15 made.

16 Q. All right. And during the time that you worked
17 at the Lexington County Sheriff's Department, were
18 you cognizant of the requirements of FBI
19 certification that you just testified about?

20 A. Yes, I was, because when I was with the FBI, I
21 worked under the ASCLD certification, I was familiar
22 with all of the rules and regulations of it. And
23 when I came to Lexington, I tried as best I could to
24 conduct my examinations in the same fashion that I
25 did with the FBI, following the same guidelines that

1 I had learned and practiced in the FBI.

2 Q. Okay. What certifications have you held in
3 your lifetime?

4 A. Presently I'm a certified latent print examiner
5 by the FBI, I'm a certified AFIS examiner by the
6 State of South Carolina, I'm a certified fingerprint
7 instructor by the FBI. Until 2012 I was a certified
8 latent print examiner with the International
9 Association For Identification.

10 In 2012 I relinquished that certification
11 because it expired and I was not in a position
12 anymore that I could meet the qualifications to
13 renew for certification, so I let that certification
14 expire.

15 Q. Okay. And finally, any memberships in forensic
16 organizations? Do you hold any?

17 A. I'm a member of the International Association
18 For Identifications' parent body, I'm a member of
19 the International Association's state body for the
20 state of South Carolina, and I'm a life member of
21 the Chesapeake Bay Division for the International
22 Association, and that covers the states of Virginia,
23 West Virginia, District of Columbia, Maryland and
24 Delaware.

25 Q. Okay. Tell us, what is a latent print?

1 A. A latent print generally is a print that is not
2 visible to the eye. And depending upon the surface
3 that has been touched, will require some type of
4 development for this to become visible to the
5 individual.

6 Q. All right. And you've already testified that
7 you trained officers in lifting of such prints.

8 A. I did.

9 Q. And how do you relate to -- how did you, before
10 you retired, relate to a latent print? How did you
11 deal with latent prints in your career?

12 A. How did I deal with them?

13 Q. Yes, sir.

14 A. I was very serious.

15 Q. All right. Is a latent print generally a
16 who-done-it kind of clue?

17 A. Can be, yes.

18 Q. What is the value of the latent print?

19 A. Well, it depends on what you're talking about.
20 If it's the type of offense that might have been
21 committed, it depends on what the print was
22 developed on; if it was a point of entry to a house
23 or a building or if it was on paper documents that
24 may have been taken and other things within the area
25 of a specific crime.

1 Q. Is it useful in identifying people?

2 A. It is.

3 Q. How is it useful in identifying people? Is
4 there something about latent prints or something
5 about fingerprints that --

6 A. Fingerprints are the positive means of personal
7 identification. The ridge arrangement on every
8 finger of every person is different. The ridge
9 arrangement on every person's bottom of the toe and
10 sole of the foot is different. No two people have
11 the same ridge arrangements on their fingers, hands
12 or feet.

13 Q. All right. And when they touch a surface, they
14 leave potentially a latent print behind on the
15 surface?

16 A. It depends on the surface that has been
17 touched. And what happens is that the finger has
18 ridges in it that line the -- has ridges and pours
19 on the fingers that exude perspiration. People,
20 when they get excited, their fingers get clammy and
21 wet, and this is from the perspiration coming out
22 through glands on those ridges. And they may have
23 come in contact with some other material such as
24 potato chips or food stuff that you eat that you can
25 pick up greasy or oily stuff from that coat the

1 ridges. And generally when an object is touched, an
2 outline of the ridges will be left on the object.
3 Sometimes these prints are visible, especially on
4 glass and mirrors and reflective sources such as
5 chrome and things like that. You can see a visible
6 print on there.

7 Sometimes you do not see them at all. It's
8 just a matter of taking the item and going through
9 the steps of processing it with the proper
10 techniques and seeing if the print can be developed.

11 Q. And once you've located a latent print, what,
12 briefly, are the steps that you go about in
13 retrieving a latent print?

14 A. Okay. A latent print that has been developed
15 with powder, say a print that's on a smooth door, I
16 would use a -- depending on the color of the door,
17 either a white or light powder, if it's a dark door,
18 or I would use a black powder if it's a light door.
19 I use a powder that contrasts to the background.

20 If I develop a print, then I use a piece of
21 lifting tape similar to Scotch tape, I place that
22 over the latent print, I remove the print from the
23 surface and I apply it to the backing on the lift
24 card and to the side of the card that has the
25 treated surface or a slick side. And if I was in a

1 position to have all of the photography available to
2 me, I would photograph every print prior to lifting
3 it as a backup. In the FBI, I had that; in the
4 sheriff's office, I didn't have the advantage of the
5 features that the FBI afforded.

6 Q. All right. Once you lift a print, is there a
7 standard kit you can use, a standard type paper that
8 you stick it onto, a standard tape that you use to
9 go over the latent print?

10 A. Well, the -- as I just mentioned, the print
11 would be developed on a surface and I would use
12 what's referred to as fingerprint lifting tape. It
13 can be bought from commercial vendors that sell
14 fingerprint products. And I'd use that type of tape
15 because it's designed for that. It's similar to
16 what you would know as Scotch tape, but it's a much
17 higher grade, higher quality type and it's a clearer
18 tape. And I would remove the print using the tape
19 and mounting it to a lift card so I could do my
20 examinations from there.

21 Q. All right. And most of your practice is
22 receiving those kind of cards; is that correct?

23 A. With the Lexington County Sheriff's Department,
24 that was most of my practice; in the FBI, I did a
25 lot of both.

1 Q. All right. Once a latent card is made, is it
2 time sensitive? Will it degrade over time?

3 A. No. It's permanent.

4 Q. And what about prints at a crime scene? Can
5 they degrade over time?

6 A. Prints at a crime scene can degrade over time.

7 Q. What factors does that depend on?

8 A. The primary factor is weather; heat, humidity,
9 rain, cold weather, all of those have an effect on a
10 print remaining on a surface. Certainly in South
11 Carolina with our hot humid summers, you know, that
12 is detrimental to latent prints lasting for an
13 extended period of time.

14 Q. Okay. Are you familiar with Lexington County
15 Sheriff's Department Case No. 11028382?

16 A. I am.

17 Q. Did you have occasion to work that case?

18 A. I did.

19 Q. Do you know when you started working that case?

20 A. I received the case on September 8th, 2011.

21 Q. And on September 8th, 2011, did you have a
22 suspect on this case?

23 A. No.

24 Q. All right. So this case was a complete
25 who-done-it?

1 A. That's correct.

2 Q. All right. Now, did you get access to any
3 latent prints lifted in this case?

4 A. I did. On that same date, I had the latent
5 prints that were on the request form. We have a
6 crime lab request form that the deputies or the
7 crime scene people will complete and they turn in.
8 An assignment is made to me to pull the evidence and
9 examine the evidence.

10 In this case, there were nine fingerprint cards
11 indicated on the request form that Deputy Creech
12 submitted.

13 Q. All right. And how long did you keep those
14 cards?

15 A. I had those in my possession until October 6th
16 of 2011, so almost a month.

17 Q. All right. Let me show you an item marked
18 State's Exhibit No. 28 and ask if you've seen that
19 item before.

20 A. Yes, I have. I recognize it by -- there's a
21 stamp that I placed in the lower right corner on the
22 envelope. It says do not destroy, AFIS entry. I
23 signed and dated it October 6th, 2011. And above
24 the date I wrote the notation, AFIS hit.

25 Q. Is that an envelope you received when you went

1 to evidence and checked out the latent cards in this
2 case?

3 A. Yes, it is.

4 Q. All right. Would you open up the envelope and
5 look at the contents, please.

6 A. (Witness complies).

7 Q. Do you see a plastic bag?

8 A. I do.

9 Q. And that's marked as State's Exhibit No. 19.
10 Was that plastic bag what you received in that
11 envelope when you began working this case?

12 A. It was. It is.

13 Q. And was that plastic bag sealed at the time?

14 A. Yes, it was. It was sealed by the individual
15 that collected these lifts. That individual placed
16 his initials or her initials on the red evidence
17 tape, AAC, and dated it 8/30/11 and marked it Bag 1.

18 Q. When you received that bag from evidence, was
19 the integrity of that bag compromised in any way?

20 A. No.

21 Q. No holes in it?

22 A. No.

23 Q. Red seal not broken?

24 A. No.

25 Q. All right. And go ahead, if you would, and

1 take out the contents of the bag.

2 A. (Witness complies).

3 Q. What's inside the bag?

4 A. Inside the bag is seven lift cards that are
5 approximately four inches by six inches in size and
6 two other lift cards that are approximately
7 three-by-five inches for a total of nine lift cards.

8 Q. Nine lift cards. And are those the same lift
9 cards that you looked at back when you checked the
10 evidence out in 2011?

11 A. It is.

12 Q. All right. I beg your pardon just a moment.

13 MR. ELAM: Your Honor, at this time I'd like to
14 go ahead and move State's Exhibits 28 and 19 into
15 evidence. The chain is complete.

16 THE COURT: Any objection?

17 MR. WILLIAMS: I have no objection to the bag
18 going into evidence, and the envelope.

19 THE COURT: All right.

20 (State's Exhibit Nos. 28 and 19 admitted into
21 evidence.)

22 BY MR. ELAM:

23 Q. Let's talk about the latent cards now. That's
24 the evidence you were looking for in the case; is
25 that correct?

1 A. Yes, sir. This evidence request was made for
2 me to examine.

3 Q. All right. When you receive those cards,
4 what's the first thing you did with them? How do
5 you go about doing your job?

6 A. Well, the first thing I do is I look at the
7 crime lab request form and I determine that what is
8 supposed to be in the evidence bag is there as far
9 as the number of lifts, the type of evidence, and
10 then I make a count of those to see if they
11 correspond to what the request stated. In this
12 case, they did. The deputy listed nine that there
13 were nine fingerprint cards, and that's what was in
14 the bag and still is in the bag. And I confirmed
15 those.

16 I also confirmed the case number that's on the
17 request form that it is the same case number that
18 the deputy has written on the back of the lift
19 cards. And in this case, the case number did
20 correspond to each other.

21 Q. All right. Every -- all of the recordkeeping
22 seeming regular, what do you do with those cards?
23 What's the first thing you really do when you get
24 down to the nitty-gritty?

25 A. Okay. The first thing I do is I take a

1 general, casual look at them. I flip through the
2 cards, see what's on there. I look at the back and
3 see how -- there's certain blocks on the back of the
4 card that the deputy or whoever is lifting the
5 prints are supposed to complete. I make sure that
6 those things are completed. Next, I go through and
7 look at the individual latent prints that are on
8 each card using a fingerprint magnifier. It's about
9 a four-power magnifier system that sits on the stand
10 and is about three or four inches high.

11 And what I'm looking for are latent prints and
12 whether or not they're fingerprints, palm prints,
13 toe prints, footprints, and I make a determination
14 how many prints there are. I make a determination
15 if they are of value. And by value I mean that they
16 have a sufficient number of characteristics present
17 in each print that I can make a comparison at that
18 time or some time in the future.

19 Q. And in comparison with what? What are you
20 going to compare them to?

21 A. Well, I can do two things with this; first,
22 since this case -- the suspect for this case on the
23 request form is listed as unknown. So as the
24 solicitor has indicated, this is a who-done-it case.
25 So it's up to me to try to determine whose prints

1 those belong to. And the first opportunity that I
2 have is to run an automated computer search on the
3 AFIS system to try to identify that person. In some
4 instances, cases I have received, they have known
5 suspects, I am provided information, I will pull the
6 records of those individuals and make a direct
7 comparison. But with this one, it was strictly an
8 unknown individual.

9 Q. So how do you go about tracking down a
10 potentially unknown individual? What do you do with
11 those cards?

12 A. Okay. In this case, the best latent print on
13 there is the card that bears the sticker that's got
14 Plaintiff's Exhibit No. 10 on it. And that sticker
15 is in the lower right corner. And in my opinion,
16 that latent print on there was the best print of all
17 of the prints on the other cards. And I determined
18 what type of print it was, it was a fingerprint. I
19 determined that it was a left slope loop.

20 In fingerprints there are three basic patterns;
21 there are arches, loops and whorls. And whorls is
22 W-H-O-R-L-S. And in this case, this is a left slope
23 loop, that mean s the ridges came in from the left
24 side of the print, moved to the center of the print
25 and exited the same side from which they entered.

1 And I completed a search sheet for my own notes
2 for the AFIS search, and on it I -- I marked this
3 particular lift, it is Item No. 60841.1. I added
4 the .1 to it. It the first part of the number I got
5 from the envelope and that number is 60041 -- I
6 think I said 608, it's 60041 -- was on the envelope.
7 And that sticker was placed on there by the evidence
8 room. And I added the dot numbers to it, .1 through
9 .9 because I had nine lifts. And --

10 Q. Each card got a separate number then?

11 A. Each card got a separate number.

12 Q. Okay.

13 A. And as a general rule, I pick best print I can
14 to do the search on. And I did that in this case.
15 I ran one search and I made a match. From that
16 point, I took a copy of the fingerprint card that
17 corresponded to this match on this card and then I
18 went through all of the remaining cards that had
19 latent prints of value on it and did a side-by-side
20 comparison, and I was able to make other
21 identifications against that individual.

22 Had I not matched this print on the first
23 search, I would have always conducted additional
24 searches. I may have conducted an additional search
25 on the same print or other prints that are present.

1 But totally, I identified four prints off the nine
2 lift cards.

3 Q. So you found the best card, the best latent
4 print, and went with that?

5 A. Yes, I did.

6 Q. And how did you go about -- that's what you
7 gave to the AFIS system to search; is that correct?

8 A. Yes. I -- the AFIS system that I had in my
9 office and they still have is very similar to a
10 computer or desktop computer that you'd have in your
11 home. The AFIS system consists of a CPU, it has a
12 keyboard, a mouse, it has a monitor, about a 21-inch
13 monitor that I look at the prints on, and it has a
14 digital camera. I placed this print underneath the
15 camera and I captured the image through the camera
16 up to the screen of the computer screen, and then
17 from there, I would look at the latent print, I
18 would encode certain characteristics such as any
19 ridges bifurcation -- that's the ridge that splits
20 into two ridges -- and then I would launch the
21 search once I've put all those in. And in this
22 particular print, I encoded 11 characteristics, and
23 that's what my search was based on.

24 Q. Tell us about how you got the result back.
25 What does that look like?

1 A. Well, the result looks similar to this right
2 here. I know I'm quite a ways from you. But on the
3 left side is the latent print that is on --

4 Q. I'll tell you what. Before we publish it to
5 the jury, let's get that marked.

6 A. Okay.

7 (State's Exhibit No. 31 marked for
8 identification.)

9 Q. We've marked it on the back so it wouldn't
10 cover anything. It's actually State's Exhibit
11 No. 31.

12 A. Okay.

13 Q. All right. Now tell us about that. What is
14 that?

15 A. Is it entered?

16 Q. Just tell me in general, is that something
17 that --

18 A. Okay. This is a copy of the prints that were
19 on my computer in a side-by-side fashion. It was a
20 latent print that I searched and then the print that
21 is on the right side is the known print that was in
22 the fingerprint database that's contained at
23 S.L.E.D.

24 Q. How did you get the copy?

25 A. I printed it on the printer that I have with my

1 AFIS --

2 Q. In other words, is that just a print-screen
3 option?

4 A. It's a print-screen option, yes.

5 Q. Is that the very one you printed?

6 A. It is the very one I printed.

7 MR. ELAM: Your Honor, at this time we'd like
8 to move State's Exhibit No. 31 into evidence.

9 MR. WILLIAMS: No objection.

10 THE COURT: All right.

11 (State's Exhibit No. 31 admitted into
12 evidence.)

13 BY MR. ELAM:

14 Q. Okay. You obviously printed it for a reason.

15 A. What was that?

16 Q. You obviously printed it for a reason; to
17 memorialize your search?

18 A. I printed it for my case notes.

19 Q. All right. And once -- how does that show you
20 got a match? How do you interpret that?

21 A. Okay. When I got -- when searches are returned
22 through the system -- and this is usually within a
23 matter of minutes -- the first thing I look at --
24 there's a list of candidates in the lower right
25 corner of this picture of the screen. And I

1 generally take a look at the numerical score that
2 that candidate obtained.

3 And in this particular instance, the number-one
4 candidate had a numerical score of 8,724. For an
5 AFIS search, that is a very high score, in my
6 opinion. Then I would compare the two prints that
7 were on the screen side by side on the screen. I
8 was able to determine by looking at the screen and
9 determined that the two prints did match each other.
10 And to further verify that they did, I made a copy
11 of the fingerprint card that corresponded to the
12 print that's on the right, and then I did a
13 side-by-side comparison of the print that's on the
14 lift card against the fingerprint card.

15 Q. So are you testifying that you got an AFIS
16 match first, and then you verified it by getting a
17 copy of the actual ten-print card to --

18 A. That's correct.

19 Q. To do another visual evaluation?

20 A. To do a comparison of that print and the
21 remaining prints that I had in that case.

22 Q. All right. I'd like to show you State's
23 Exhibit No. 29. If you would, would you compare
24 that with -- you said you received a ten-print card.

25 A. I did.

1 Q. Would you compare State's Exhibit 29 with the
2 print card that you received?

3 A. Okay.

4 Q. How do they compare?

5 A. The ink fingerprint or known fingerprints on
6 the two cards are made by the same individual. It's
7 a copy of the same card.

8 Q. And referencing this unique number here at the
9 top, are they indeed the same card?

10 A. They are. They're -- you can print as many as
11 these as you want to. They come out of a database
12 and they never change from one copy to the next.

13 Q. All right. Strictly speaking, the only
14 difference is some redaction on the back?

15 A. That's correct.

16 Q. All right. I'll let you refer to State's
17 Exhibit No. 29 then, if that's the identical card.
18 So that's the card you used to compare to the
19 latents that you had at your disposal; is that
20 correct?

21 A. That's correct.

22 Q. All right. Now summarize for us again the
23 result that you had for each of the nine latent
24 cards.

25 A. Okay. The one that I conducted a search on, I

1 designated that lift card as the one that has the
2 decimal point 1 at the end of the number; on the
3 card that has decimal point 2, there is a latent
4 print on that one also, it's the tip impression of a
5 finger. And that latent print also appears on the
6 card that is decimal point 3. What happened in this
7 case is that the deputy lifting the prints lifted
8 the same print twice.

9 Q. So that would be a redundant card?

10 A. It's a redundant card, yes.

11 Q. All right.

12 A. On the card as designated -- I need to back up.
13 Do you want me to cover the results of the cards as
14 I go through them or are you going to --

15 Q. Actually, if you would, go ahead. With
16 reasonable scientific certainty, if you could give
17 us an opinion on the results of your comparisons --

18 A. Okay.

19 Q. -- that might save some time.

20 A. On the card that's designated decimal 3, there
21 are two latent prints on that card; one of them is a
22 tip impression, it would be a finger if you placed
23 it straight down on the tip, and that print also
24 appears on decimal point 2. The second print on
25 that card identified as an impression of the right

1 ring finger on this fingerprint card which is
2 Exhibit No. 29. On the card that's designated
3 decimal point 4, there's one latent print on there
4 and I identified it as an impression of the left
5 index finger on the fingerprint card that's marked
6 State's Exhibit 29.

7 On .8 there was another latent fingerprint of
8 value that I identified. And .8 is one of the
9 smaller three-by-five cards, and I identified the
10 fingerprint on that as an impression of the left
11 thumb of the individuals whose fingerprints are on
12 Plaintiff's Exhibit 29. The remaining lift cards
13 which are designated .5, .6, and .7, I didn't have
14 any latent prints of value that I could compare on
15 those. There were no usable latent prints on those.

16 Q. To summarize, you found in .1, left index
17 finger; is that correct?

18 A. On .1 I found the left index finger.

19 Q. Of what individual?

20 A. Jacob Heyward Seay.

21 Q. And .2, you found...

22 A. On .3 and .2, there's a duplication of lifts
23 there. So I used .3 because it was the better of
24 the two lifts. And identified the right ring finger
25 of Mr. Seay.

1 Q. All right.

2 A. And on the lift that's designated .4, I
3 identified the left index finger again of Mr. Seay.

4 Q. But not a redundant one this time; this is a
5 separate --

6 A. That's a separate lift. That's a separate
7 print.

8 Q. All right.

9 A. And on the lift designated .8, I identified the
10 left thumb of Mr. Seay. So out of -- I had a total
11 of five latent prints on these cards, four of those
12 I positively matched to the fingerprint card of
13 Mr. Seay. There's one latent print that remains
14 unidentified, it's the tip -- the latent print that
15 is from the tip impression, extreme tip.

16 And when fingerprint cards are made, these are
17 made for record purposes. They aren't made for
18 latent print examiners such as myself. So they're
19 only trying to get the center portion of the
20 fingerprint for record purposes. So generally with
21 tip impressions, we have to go back and reprint
22 the -- or print the individual again or, hopefully,
23 sometimes, you might be able to pick up a portion.
24 But in this case, I didn't have enough ridge detail
25 to conclusively make a match on that print.

1 Q. All right. What is a print of no value?

2 A. What's that?

3 Q. What is a print of no value, just to be clear
4 on that?

5 A. A print of no value is a print that does not
6 have a significant number of characteristics. These
7 could be ridge endings, single ridges that divide
8 into two ridges, or a dot. A dot is a ridge that
9 has no direction. It's like .com. It's that
10 simple. And on those of no value, there was nothing
11 I could compare. I didn't have something that I
12 could comfortably make a comparison with and reach a
13 conclusion. So those I consider to be of no value.

14 Q. These aren't prints that came back to somebody
15 else, these are prints that you just flat out
16 couldn't use?

17 A. They were non-usable. They went back in the
18 file as what prints on there are no good.

19 MR. ELAM: Your Honor, at this time I would
20 move State's Exhibit Nos. 10 through 18 into
21 evidence, please.

22 MR. WILLIAMS: Subject to any prior objections
23 I've made in reference to those.

24 THE COURT: All right, sir. They're in
25 evidence, and your objections are noted.

1 (State's Exhibit Nos. 10-18 admitted into
2 evidence.)

3 BY MR. ELAM:

4 Q. During your long career with the FBI and with
5 the sheriff's department, have you had occasion to
6 work cases where prints changed because of certain
7 reasons; for example, like injuries?

8 A. Sure. I've had cases where I have worked --
9 that people have injuries on their fingers. They
10 could be from cuts, that's a permanent scar, and it
11 cuts so many ridges and disfigures the fingerprint
12 significantly, where there burn marks on the
13 fingers. I have -- on one of my fingers I have a
14 burn mark that was made from when I was a child.
15 And I have seen instances where people have lost
16 fingers in accidents. I mean, I may have worked a
17 case, five years before that the person had all ten
18 fingers, later on they had lost a finger or two.

19 Q. Does your experience leave you qualified to
20 give an opinion as to whether or not a print on a
21 ten-print card shows an injury or not?

22 A. Yes, it does.

23 Q. All right. At this time I'd like to --

24 MR. WILLIAMS: Your Honor, I would object to
25 that. And I'd like the right -- because he's only

1 been qualified in regards to being a fingerprint
2 analysis, not in regards to causation of injuries to
3 the hand.

4 THE COURT: All right. Let me do this: Ladies
5 and gentlemen of the jury, I'm going to get y'all to
6 step out of the courtroom. Please have no
7 conversations about the case. I need to handle a
8 matter of law.

9 (The jury exits the courtroom at 4:26 PM.)

10 THE COURT: Yes, sir?

11 MR. WILLIAMS: Your Honor, there's been no
12 special questions asked of this witness that would
13 indicate he knows anything about causation of
14 injuries to the hand other than the fact that there
15 are injuries. He can't designate a cut, a burn,
16 what have you, that has caused a change in the
17 fingerprint. He's admitted in the question that he
18 has seen changes in the fingerprints.

19 But regards to causation of fingerprints,
20 there's been no foundation established that this
21 person, this fingerprint expert, can testify to
22 causation of injuries to the hand and how it
23 reflects on their fingers. He can say that there's
24 something wrong.

25 EXAMINATION

1 BY MR. ELAM:

2 Q. Mr. Johnson, does fingerprint analysis involve
3 sometimes changes in fingerprints due to injuries?

4 A. Yes, it does, because it's not unusual to see
5 an injury on -- that somebody would have on their
6 finger. And I certainly have seen enough latent
7 prints or known prints to recognize the difference
8 between a burn scar and a cut scar.

9 Q. You do recognize the difference?

10 A. Yes, I do.

11 Q. And, in fact, would an injury on a fingerprint
12 be something useful in an identification in a case?

13 A. Yes, it would. If I have a latent print that
14 has an injury on it like that, I immediately look to
15 the known print cards to see if I can find that
16 injury. And if it's on the known print card, on
17 both cards, then I certainly will use that scar as
18 part of my opinion to arrive -- or identification or
19 non-identification.

20 Q. Is this judgment part of your discipline of
21 being a latent-print examiner?

22 A. Yes, it is.

23 MR. ELAM: Thank you.

24 MR. WILLIAMS: Your Honor, I can do that. What
25 he's saying, I can do that. Because what he's

1 saying is --

2 THE COURT: We'll have a challenge on that.

3 But go ahead.

4 MR. WILLIAMS: Your Honor, he's saying that
5 he's looking at two pictures of items and that one
6 item indicates a mark on the picture. That doesn't
7 mean that he knows the causation of the mark. I
8 mean, he can say he knows, but there's no basis for
9 him to say that.

10 THE COURT: Let me ask this: Mr. Johnson, if
11 my prints were taken and they were clean and regular
12 prints and then they were taken again subsequent and
13 on, say, my ring finger there was a line across or
14 whatever, obviously you can detect that the
15 prints -- and I don't want to use the word alter.
16 But the print has changed.

17 THE WITNESS: That's correct.

18 THE COURT: But in viewing the print, the
19 changed print, can you determine whether that change
20 occurred from an improperly taken print versus a cut
21 versus a burn versus some other type of deformity?

22 THE WITNESS: I can.

23 THE COURT: Okay. Through your training and
24 experience?

25 THE WITNESS: Yes, sir.

1 THE COURT: Okay.

2 THE WITNESS: And one thing I look for when I
3 see these new differences is that I look at the
4 ridges surrounding the wounded area. And as a
5 general rule, cuts, generally the ridges are pulled
6 and twisted and not straight. They never will be
7 straight again, they'll always look like that. And
8 there's something the cutting pulls those ridges in,
9 where a burn scar generally does not. It just
10 leaves little round marks on the finger.

11 THE COURT: Is there something else that could
12 cause that -- is there something other than a cut
13 that could cause that result on a fingerprint card?

14 THE WITNESS: No, sir. It has to be an injury
15 of some type, a cut. Now, sometimes we get paper
16 cuts on fingers. Paper cuts are very minute. They
17 tend to heal over and you never see them again
18 because the ridges will heal themselves. But with
19 jagged cut that is deep, that ridge is never going
20 to go back to its original appearance.

21 THE COURT: You wish to --

22 MR. WILLIAMS: Again, Your Honor, he hasn't
23 testified as to whether or not it's possible that
24 the paper cut would have been done immediately prior
25 to the taking of the fingerprint. He talks about

1 the fact that there's a line, but he can't tell us
2 how much time has been evolved with the finger to
3 how it would have healed or not haled.

4 THE COURT: Well, I think -- and what it
5 appears is that there is a latent card that he
6 examined, and then there is another one, so you can
7 obviously determine it happened somewhere in that
8 timeframe. But I gree with you. I don't believe
9 he -- I don't believe he can testify that it
10 happened last Thursday.

11 THE WITNESS: No, sir. I can't tell -- I can't
12 tell you --

13 THE COURT: How old it is.

14 THE WITNESS: I can't tell you how old it is.
15 But in this case, I can tell you that the print that
16 I matched on the AFIS system, that scar was not on
17 that finger at the time that finger touched the
18 glass. It was created after that time. And this
19 print was lifted on August 29, 2011, so that finger
20 was cut after the depositing of these latent prints.

21 MR. WILLIAMS: As an additional argument, the
22 probative value of that is highly outweighed by the
23 prejudicial effect of it because we've got it
24 between the year that he's referencing, which is
25 2009, to some sort of print that was taken in 2011.

1 And we can't even prove that there was blood which
2 was -- that there was glass which was broken which
3 would have caused an injury to my client's hand.

4 THE COURT: Do what now?

5 MR. WILLIAMS: Aside from his expertise --

6 THE COURT: The print was pulled off of broken
7 glass.

8 MR. WILLIAMS: Okay.

9 THE COURT: Am I mistaken?

10 MR. WILLIAMS: I thought he was --

11 MR. ELAM: You're right, Your Honor.

12 MR. WILLIAMS: I thought he was comparing the
13 fact that there was no injury on my client in 2009.

14 THE COURT: From based on the print card?

15 MR. WILLIAMS: Right. And there was no injury
16 reflected on the latent print. There's no injury
17 reflected on the latent print. The injury he's
18 referencing is the print from 2011. Had he found a
19 latent print which had a cut on it, my argument
20 wouldn't be quite as good. But what he's talking
21 about is a time span of two years --

22 THE COURT: I'm missing something.

23 THE WITNESS: No, sir, it's not two years.
24 August -- the print was deposited on that broken
25 glass and lifted on August 29th of 2011.

1 THE COURT: All right. And that print was
2 clean.

3 THE WITNESS: That print did not bear an
4 injury. It was clean.

5 THE COURT: All right. And then you --

6 THE WITNESS: Okay. Subsequently to that, when
7 the individual was arrested for this incident, that
8 finger had a scar on it. So that was from August to
9 December.

10 MR. WILLIAMS: I understand what he's saying
11 now. He's saying there was no injury on the latent
12 print versus the time when he was taken -- when he
13 went to Kirkland -- I mean, when he was arrested, I
14 guess.

15 THE COURT: Well --

16 MR. WILLIAMS: On the same finger.

17 THE COURT: -- if the injury appeared -- in
18 other words, the latent print that was pulled from
19 the glass was clean; the print when he was arrested
20 and printed had the injury. And that was some
21 months later --

22 THE WITNESS: Three months.

23 THE COURT: Three months later. I think that's
24 the testimony --

25 MR. WILLIAMS: Okay. I guess that's true.

1 THE COURT: Okay.

2 MR. WILLIAMS: I still don't think he's got the
3 qualifications to make that, Your Honor.

4 THE COURT: And I want to note that exception
5 and objection. But I'm going to overrule it. I
6 think, based on the testimony of his expertise
7 and -- I think he's qualified to make that opinion.

8 MR. ELAM: Thank you, Your Honor.

9 THE WITNESS: And, furthermore, if I was
10 allowed to look at his client's finger, left index
11 finger now, that scar will still be on there.

12 THE COURT: Right. But let's make this clear
13 before we bring the jury back in: We don't go down
14 that road at all.

15 THE WITNESS: Okay. Well --

16 THE COURT: Because -- and I explained it
17 earlier when the solicitor had even asked about
18 that -- a person has the right to remain silent.
19 And that right to remain silent goes beyond simply
20 audio or verbal. It's also -- he doesn't -- he has
21 the right not to put any evidence into this
22 record --

23 THE WITNESS: I understand.

24 THE COURT: -- and by presenting that, that
25 would be putting evidence in the record. So we

1 won't even mention that.

2 MR. ELAM: Yes, sir.

3 THE COURT: All right. Does anyone need to
4 take a short break while the jury is out? Here's
5 what we're going to do -- well, I'm going to ask
6 you. Can we adjourn at this time and you can pick
7 up with the balance of your direct examination in
8 the morning and then we can go to cross? Are there
9 any other witnesses?

10 MR. ELAM: Yes, sir.

11 THE COURT: Okay. All right. So I'm going to
12 bring the jury out and I'm going to excuse them for
13 the evening. So let me do that and then we're going
14 to talk briefly about charge and stuff like that.

15 All right. Let's bring the jury in, please.

16 (The jury enters the courtroom at 4:44 PM.)

17 THE COURT: All right, folks. I appreciate
18 your patience while we did that. I'm -- you've
19 worked hard today. I'm going to let you leave a
20 little early. We're going to adjourn right now. I
21 have some matters that I have to take up that have
22 nothing to do with this case, so tomorrow when you
23 return, I'm going to ask you to be back in your jury
24 room at 10:30. I'm going to start the morning off
25 with other matters that have nothing to do with this

1 case because we have some folks from the department
2 of corrections, I've got to get them in and out of
3 here. So if you would be here at 10:30, we'll start
4 at 10:30.

5 Again, when you go home, please tell your
6 friends, family and loved ones that you're not
7 allowed to talk about the case. I would anticipate,
8 just for your planning purposes, that at some point
9 tomorrow you will get the case for your
10 deliberations. So I anticipate that happening
11 tomorrow. So you can tell your folks, if they're
12 curious tonight, that -- just hang in there. You
13 can talk to them sometime tomorrow when it's over
14 and you can tell them everything they want to know.
15 But up until that time, you're not allowed to talk
16 about the case. So everyone remain seated. Ladies
17 and gentlemen, we'll see back at 10:30 tomorrow.

18 (The jury retires to the jury room at 4:46 PM.)

19 THE COURT: Okay. Now, Mr. Johnson, we'll pick
20 up with your testimony tomorrow morning at 10:30.
21 Between now and then, of course, have no
22 conversation about your testimony with anybody. You
23 can talk to people, but just don't talk about your
24 testimony. And we'll start back then.

25 So for purposes of whatever -- is there

1 anything we need to take up on the record before we
2 adjourn for the evening?

3 MR. ELAM: Nothing from the State, Your Honor.

4 THE COURT: All right. So for the record,
5 we're adjourned at this time.

6 (Trial adjourned for the evening at 4:47 PM.)

7 THE COURT: Anything we need to take up before
8 we bring the jury out?

9 MR. ELAM: Nothing from the State, Your Honor.

10 MR. WILLIAMS: Nothing from the defense, Your
11 Honor.

12 THE COURT: Now we've got Mr. Johnson on the
13 stand?

14 MR. WILLIAMS: We do.

15 THE COURT: Let's go ahead and get him in to
16 retake the stand.

17 MR. ELAM: Thank you, Your Honor.

18 THE COURT: All right. Let's bring the jury
19 out, please.

20 (The jury enters the courtroom at 11:00 AM.)

21 THE COURT: All right. Thank you, ladies and
22 gentlemen, for being prompt this morning. And I
23 apologize that we're not. There were matters that I
24 was handling that took a little longer than I
25 anticipated. I need to address something. And I

1 know this is going to seem somewhat random, and it
2 is, but I'll explain it further.

3 Ma'am, your name?

4 MS. TAYLOR: Stephanie Taylor.

5 THE COURT: Would you be so kind as to serve as
6 the foreperson of the jury?

7 MS. TAYLOR: Okay.

8 THE COURT: Let me explain that a little bit
9 further. The foreperson of the jury, ladies and
10 gentlemen, is -- it's not a heavy-lifting job.
11 Okay? Some people get concerned about it.

12 All it is, is this: When you deal with a group
13 of folks, it's just easier to deal with one person
14 on behalf of the group than to deal everybody
15 individually. So the foreperson really basically
16 the communicator between the jury panel and the
17 Court. So if at any time any of you have any
18 questions about anything, the forelady, in this
19 case, would write that question down and just pass
20 it out to the Court. I'll look at the question and
21 depending on the question, I may just respond by
22 writing my answer back and sending it in to you or I
23 may bring you out as a panel and respond to the
24 question. But that's really the main role of the
25 foreperson; to be the communicator between the panel

1 and the Court.

2 When you begin your deliberations, obviously
3 you got a group of folks. Somebody needs to start
4 and stop the deliberations, and the foreperson
5 typically does that. And what I mean by that is
6 this: I will tell you, when you begin your
7 deliberations, everyone must be present for those
8 deliberations so that if while you're discussing the
9 case, when the time comes, if someone needs to
10 excuse themselves to use the restroom or whatever,
11 the foreperson would say, okay, let's stop our
12 discussions, and when that person returns, okay,
13 let's start back. You need somebody to start and
14 stop the deliberations, depending on what's going on
15 in the jury room. Okay?

16 What's important for everyone to understand is
17 this: Your verdict must be unanimous. So the
18 foreperson's vote, the foreperson's opinion carries
19 no more weight than anyone else on the jury. You're
20 all equal members of the jury. I tell jurors all
21 the time that when you're in there deliberating, you
22 need to be open-minded, you need to listen to other
23 folks' opinions and thoughts and then to listen to
24 yours. It's a going back and forth and hearing
25 everybody out and arriving at a common ground. So I

1 say that to tell you that the -- there's not a more
2 important person on the jury. You're all equal
3 members of the jury. It's just when you have a
4 group of folks, it's easier to deal with one person
5 on behalf of the group than to deal with everybody
6 individually. Okay? So, Ms. Taylor, thank you for
7 your willingness to do that. We'll proceed now.

8 If you recall, when we ended yesterday I was
9 taking up a matter of law, Mr. Johnson was on stand
10 and the State was on their direct examination. I've
11 handled those matters and now we're ready to
12 proceed.

13 And, Solicitor, I hope you've noted where
14 you're at in your questioning.

15 MR. ELAM: I did, Your Honor.

16 THE COURT: You may proceed with that.

17 MR. ELAM: If I could beg the Court's
18 indulgence briefly, I'd like to ask Mr. Williams a
19 question.

20 THE COURT: That's fine.

21 DIRECT EXAMINATION

22 (Continued)

23 BY MR. ELAM:

24 Q. Good morning, Mr. Johnson.

25 A. Good morning.

1 Q. It's good to see you back, sir.

2 A. Thank you.

3 Q. When we were last talking, I was asking you
4 about your experience as a fingerprint
5 identification expert.

6 A. Yes.

7 Q. And I was asking if your experience in that
8 field includes instances where prints, fingerprints,
9 that is, or palm prints, are altered due to
10 injuries. And does your experience cover such
11 injuries, sir?

12 A. Yes, it does.

13 Q. And have you in the past dealt with cases where
14 you were able to identify an injury to a finger,
15 either in an inked print or in a latent print?

16 A. I have in both.

17 Q. At this time I'd like you to take a look at
18 Mr. Seay's ten-print card from October 15th, 2009,
19 and take a look at the latent print -- I believe
20 it's labeled State's Exhibit No. 10 -- those two on
21 the one hand, and on Mr. Seay's booking card from
22 December 14th of 2011 on the other hand, and tell us
23 if you see any material difference between any of
24 the prints on those three items.

25 MR. WILLIAMS: Your Honor, I ask the Court to

1 note my objection.

2 THE COURT: Yes, sir, your objection is noted.

3 A. Yes, I do.

4 Q. And with reasonable scientific certainty, do
5 you have an opinion that you could express to this
6 Court describing the cause of that difference,
7 exactly what it is?

8 A. Yes, I can. I see differences in two fingers;
9 in the right thumb and in the left index finger.
10 And the right thumb on the card that is dated
11 12/14/2011, there's two white marks like slashes
12 going from the center of the print towards the left
13 that are not present on the card that was taken on
14 October 15, 2009. And in my opinion, those two
15 white marks are creases.

16 Sometimes, depending on how much pressure is
17 applied to the finger when the print is recorded, if
18 there's not enough pressure or too much pressure, it
19 creases because the skin on the finger is pliable,
20 it can cause these creases. And in my opinion,
21 that's what happened in the right thumb.

22 On the card that was recorded December 14,
23 2011, Exhibit No. 30, in the left index finger, I
24 see a scar that goes from just outside of the delta
25 area of the finger up and including the core area of

1 the finger. And I mention those two terms, delta
2 and core, because those are focal points that appear
3 in fingerprints and certain pattern types, and this
4 is a left loop pattern type. And this scar has
5 obliterated both of those focal points.

6 I can tell by the twisting and stretching of
7 the ridges that surround the scar and the pulling,
8 it's consistent with a cut of some type.

9 Q. All right. I'd like you to take a look at
10 State's Exhibit 10 one more time now. And I'm going
11 to approach you, if you don't mind, so I can point
12 out something.

13 What is all of this black on the latent print
14 card?

15 A. Well, the black is caused by the fingerprint
16 pattern that the person that was lifting the prints
17 applied to the surface. And the reason it has that
18 appearance is that there's slippage there. Like if
19 a hand or something touched it and it slid, then the
20 pattern has highlighted that area.

21 Q. All right. As a 36-year veteran in the FBI and
22 ten-year veteran in the Lexington County Sheriff's
23 Department, is it safe to assume that you have --
24 even though you have devoted your career to
25 fingerprints, is it safe to assume that you have

1 some familiarity with DNA?

2 A. Yes, I do.

3 Q. And do you have an opinion as to whether DNA
4 evidence or fingerprint evidence is better? Is one
5 better than the other?

6 MR. WILLIAMS: Your Honor, I'm going to object
7 to that on foundation. He hasn't been qualified as
8 a DNA expert.

9 THE COURT: I'm going to sustain that
10 objection.

11 BY MR. ELAM:

12 Q. Mr. Johnson, how could Jacob Seay's
13 fingerprints get on the glass from which those
14 latents were lifted that you studied?

15 A. The only way they could have gotten on there is
16 that he touched the glass.

17 Q. And finally let me ask you -- let me approach
18 and show you State's Exhibit No. 32 and ask if
19 you're familiar with this two-page document.

20 A. Yes, I am. It's a copy of my report that
21 states the results of my findings.

22 Q. Is it different in any material aspect from
23 your original?

24 A. Yes. The plaintiff's sticker is on there,
25 that's the only thing.

1 Q. That's the only difference?

2 A. Yes, sir.

3 Q. All right. And this is your report?

4 A. That's a copy of my report.

5 MR. ELAM: Your Honor, at this time the State
6 moves State's Exhibit No. 32 into evidence.

7 MR. WILLIAMS: No objection.

8 THE COURT: Without objection.

9 (State's Exhibit No. 32 admitted into
10 evidence.)

11 MR. ELAM: Thank you very much, sir. That's
12 all of the questions I have.

13 MR. WILLIAMS: May it please the Court.

14 THE COURT: Yes, sir, Mr. Williams.

15 CROSS-EXAMINATION

16 BY MR. WILLIAMS:

17 Q. Mr. Johnson, yesterday I think we learned
18 something about, I guess, your extensive law
19 enforcement career, where you had worked, things of
20 that nature. And one of the remarks you made was
21 that in your fingerprinting unit, I guess, with the
22 FBI, that things changed in 1998 because of some
23 trial that was held in California.

24 A. That's correct.

25 Q. And then you went on to reference, I want to

1 say, some sort of accreditation?

2 A. Accreditation.

3 Q. It's hard for me to say that word. And you're
4 from Saluda, so it should be hard for you too.

5 A. No. I've been away from Saluda a long time.
6 I've been up north for a few years.

7 Q. Okay. Well, the accreditation that you
8 reference when you talk about the FBI, the CALEA
9 thing, that's a general accreditation for various
10 law enforcement agencies dealing with
11 professionalism and things of that nature, isn't it?

12 A. That's correct.

13 Q. Is there anything specific in reference to, I
14 want to say, fingerprint certifications; meaning, is
15 there a division of that which certifies fingerprint
16 work to say that they're doing it properly and that
17 kind of thing?

18 A. Yes. Under the International Association For
19 Identification that I mentioned yesterday, there's a
20 latent print certification program within that.

21 Q. All right. But that's not with the agency,
22 that's with the individual --

23 A. That's the individual, yes, it is.

24 Q. So it would only be applicable in regards to
25 the individual who's actually doing the work and not

1 in reference to the procedures that are being
2 enacted by FBI, S.L.E.D., Lexington County, what
3 have you?

4 A. Well, it's up to the individual agencies to
5 adhere to those rules if they're requiring them
6 under the ASCLD certification. They sort of
7 interconnect and, yes, a lot of those rules and
8 regulations do cross over from one to the other.
9 All examiners do not have to be certified.

10 Q. And a lot are not?

11 A. A lot of them are not.

12 Q. In reference to what you were referencing with
13 the FBI in 19- -- was it 1998?

14 A. 1998.

15 Q. Well, you're familiar with the Madrid train
16 bombing in 2004, aren't you?

17 A. I am.

18 Q. And in that particular case, three FBI experts
19 identified the wrong person, didn't they?

20 A. They did.

21 Q. Now, this was after all this accreditation that
22 was going on; right?

23 A. Yes.

24 Q. So even the beginning of this doesn't mean that
25 they're going to do good work, does it?

1 A. No. The accreditation is just a set of
2 standards that, you know, their examiner has to meet
3 and follow. And errors are made.

4 Q. Matter of fact, you told us about one that you
5 made.

6 A. I did.

7 Q. And in that capacity, you were actually
8 reviewing the work of another fingerprint person,
9 weren't you?

10 A. I was.

11 Q. So -- and I never -- were you wrong, was he
12 wrong, or were you both wrong in that situation?

13 A. We were both wrong.

14 Q. So not only did the person's work that you were
15 reviewing, he made a mistake, when you reviewed your
16 other agent's work, you made a mistake, and then
17 subsequently you determined that there was a
18 mistake?

19 A. Yes. The original person handling the case
20 discovered the mistake later.

21 Q. Now, do you know of any other mistakes that you
22 might have made in your -- I guess, the time that
23 you've done fingerprint analysis?

24 A. I've not made a mistake of that nature before.
25 I've made other mistakes when I worked in the

1 records part of the files classifying fingerprint
2 cards. I may have miscounted a ridge count on a
3 loop, I may have missed a tracing on a whorl. I had
4 a supervisor that checked behind me on those and if
5 I missed it, you know, they could have scored me an
6 error or they could have simply given it back to me
7 and have me redo it.

8 Q. What was the error you messed up on, the one
9 that you acknowledge?

10 A. Oh, it was a person erroneously identified on a
11 fingerprint.

12 Q. Well, you talk about you may have made some
13 mistakes in regards to ridge counts or where the
14 match points are. What you do, correct me if I'm
15 wrong, when you examine fingerprints or latent
16 prints, if you will, is you examine similarities of
17 locations of ridge prints on whatever you're
18 examining; correct?

19 A. I do.

20 Q. Now, how many years did you work at Lexington
21 County?

22 A. Ten.

23 Q. And were you in charge of the fingerprint unit?
24 I think you trained all of them, didn't you?

25 A. Well, we didn't have a fingerprint unit. We

1 had -- Lexington County has an AFIS terminal located
2 in a secure office, and I was moved to that office
3 to operate that machine. Generally within the
4 department if there was ever a question about my
5 fingerprints, I was the go to person in the
6 department for that. I certainly had more
7 experience than most of them. There are several
8 people working there that have a lot of experience
9 currently. But my experience in the field exceeds
10 theirs.

11 Q. Well, the sheriff's department though, they had
12 no accreditation in fingerprint analysis, did they?

13 A. No. They have an accreditation, but it's
14 called CALEA accreditation. And that's for a
15 general accreditation that police departments,
16 sheriff's offices have through an organization. It
17 does not include forensic work.

18 Q. And they have not been externally audited, have
19 they?

20 A. Who?

21 Q. Lexington County Sheriff's Department.

22 A. On their CALEA? Oh, yes, they have.

23 Q. On their fingerprints.

24 A. Not on the fingerprints because they're not
25 accredited on the fingerprints.

1 Q. So, essentially, nobody is overlooking the
2 fingerprints, how the fingerprints are taken and how
3 they're examined, other than the people working at
4 the Lexington County Sheriff's Department?

5 A. That's right. I was the one who overlooked it.

6 Q. And that's important though, isn't it?

7 A. It is.

8 Q. Because that's how we discovered the error that
9 you had made, because in the FBI you have two people
10 looking over your shoulder and stuff, don't you?

11 A. Well, the error I made was not discovered by an
12 external person. It was discovery internally and
13 reported internally.

14 Q. Let me ask you about this particular case. Did
15 you have somebody overlooking your work on this
16 case?

17 A. Yes. I had this print verified by another
18 person.

19 Q. Who was that?

20 A. D.I. Blackwell.

21 Q. Is D.I. Blackwell going to testify today?

22 A. Not to my knowledge.

23 Q. Where does D.I. Blackwell work?

24 A. He works part-time for Lexington County
25 Sheriff's Department.

1 Q. And did he give any type of report?

2 A. No.

3 Q. So his name is not referenced on any form
4 that's included in the investigative report on my
5 client, is he?

6 A. Not on the report. But his name is included on
7 my case notes.

8 Q. So we really don't know what Mr. Blackwell
9 would say if he doesn't come to testify, do we?

10 A. You might not, but I know. He said that he
11 concurred with my findings.

12 MR. WILLIAMS: Your Honor, I would object to
13 the hearsay. I didn't call for hearsay. I just
14 said we wouldn't know, meaning it's a general
15 statement.

16 THE COURT: Sustained.

17 BY MR. WILLIAMS:

18 Q. Now let me take you back through the -- I know
19 you're from Saluda and I'm, like, from Marion County
20 originally. So I'm going to go -- and I'm sure the
21 jury might be from Lexington County. But this is
22 complicated stuff a little bit, so I'm going to take
23 you step by step from how you got involved and how
24 you arrived at your decision.

25 When did you get involved in your latent print

1 examination?

2 A. On this case?

3 Q. On this case.

4 A. Okay. I became involved September 8th, 2011.

5 Q. How did you become involved?

6 A. I was assigned a lab request form to examine
7 the evidence, which was nine fingerprint cards. And
8 I had those -- the evidence pulled through the
9 evidence section and they were in my possession
10 until I released them on October 6th of 2011.

11 Q. So when we go back to State's Exhibit No. 27,
12 which is the chain of custody --

13 A. Right.

14 Q. -- you would have gone by the evidence room and
15 checked those cards out on that date; is that
16 correct?

17 A. I should have checked them out on the 8th of
18 September or somewhere a day or so within that --
19 after that date.

20 Q. Well, you pick them up when you check them out,
21 don't you?

22 A. I do. Whatever date I signed on the
23 chain-of-custody card is the date I picked them up.

24 Q. Okay.

25 A. The request was assigned to me on the 8th.

1 Q. And who signed the request?

2 A. Generally one of the crime scene investigators
3 in crime scene investigations. I'm not sure which
4 one it was. They are -- there were several people
5 in there that had that task. One of them was a
6 crime scene -- was Investigator Garrick, could have
7 been Investigator Hickman when he was working there.
8 But that person, that was one of their duties that
9 was assigned to them by the lieutenant over there.

10 Q. So there's somebody else involved in this that
11 actually assigns whatever lab work that is done?

12 A. Generally if it is -- that's correct, it is
13 somebody that signs it. But they assign it based on
14 what the request is. The lab request form has --
15 the one in front of me is approximately 14 different
16 request things on there. One is latent comparison,
17 one is latent examination, one is AFIS comparison.
18 If they know that that is what the request is going
19 to be, I'm usually the person that did it. There
20 were other people that could do AFIS examinations in
21 addition than myself.

22 Q. Let me get you to look at State's Exhibit
23 No. 27 and tell me based on that that you'd like to
24 change the date of when you actually got the
25 fingerprint information.

1 A. Well, first of all, I have not -- I've never
2 seen this particular form. This is a printout that
3 I'm not familiar with and --

4 Q. Are you saying the form is inaccurate?

5 A. No, I'm not saying it's inaccurate. I'm saying
6 I'm not familiar with the form.

7 Q. Well, looking at the form, it's got a section
8 which reports to be the transference of evidence
9 from somebody in the evidence department to you.

10 A. That's correct.

11 Q. What's the date on that?

12 A. It's 9/14/2011.

13 Q. So you don't really know exactly what date you
14 got it, whether it's September the 8th or if it
15 actually occurred on the 14th or if the form is
16 wrong, you know.

17 A. Well, I know that the case was assigned to me
18 on September the 8th. And according to my notes, I
19 conducted my examination on September the 28th,
20 started by examination, and I completed it on
21 October the 6th.

22 Q. All right.

23 A. The signatures on here by my name are not my
24 signatures.

25 Q. So the signature on the evidence report, which

1 has been submitted, is not your signature?

2 A. No. I always sign W.D. Johnson. These have
3 Duane Johnson.

4 Q. So somebody else signed your name?

5 A. Looks like it on there.

6 Q. Well -- so using your statements then, you
7 would have picked it up on September the 8th --

8 A. I said September the 8th or sometime after
9 that.

10 Q. And you started your work on September the
11 28th?

12 A. That's correct.

13 Q. And you completed your work on October the 6th?

14 A. That's correct.

15 Q. And when is it that you let Officer Garrick
16 know that you had zeroed-in on my client as being
17 the person who actually touched the glass?

18 A. Officer who?

19 Q. Investigator Garrick.

20 A. I never let Investigator Garrick know anything.

21 Q. Well, you would have done your report and given
22 it to somebody else?

23 A. I did.

24 Q. And somebody else would have told Investigator
25 Garrick --

1 A. Exactly.

2 Q. So whoever you gave your report to on October
3 the 6th would have shared that information with
4 Officer Garrick?

5 A. That person would, not me.

6 Q. Because you hadn't had that conversation with
7 Officer Garrick?

8 A. I've not talked to Officer Garrick about this.
9 The person that my report went to, if you refer to
10 page 1, went to Sergeant Brad Melton.

11 Q. Okay.

12 A. He was a sergeant in the west region. And all
13 of my reports went to region sergeants because at
14 the time that I conducted my examination, most of
15 the time I did not know the investigator who had
16 been assigned to the case, and that person would
17 have sometimes not been assigned until the report
18 had been generated. So --

19 Q. How long -- I'm sorry.

20 A. Okay. So my original report went to Sergeant
21 Melton and a copy of my report went to Deputy Creech
22 because I always felt that the deputies that were
23 lifting and working the cases, that they should know
24 what the results of their work is.

25 Q. Makes sense, doesn't it?

1 A. Makes sense. It's a good practice.

2 Q. Well, now, how long did you work at Lexington
3 County Sheriff's Department?

4 A. Ten years.

5 Q. You were in charge of the fingerprints there?

6 A. I was the fingerprint man.

7 Q. And I assume you had other duties at Lexington
8 County Sheriff's Department. Is that all you did?

9 A. Oh, I worked crime scenes, I went to autopsies,
10 I trained.

11 Q. So you're familiar with the inner workings of
12 Lexington County Sheriff's Department, I would hope?

13 A. Yes, I am.

14 Q. How would Officer Garrick know to go talk to
15 the alleged victim on October the 3rd about Jacob
16 Seay?

17 A. I don't know.

18 Q. Well, clearly he would have been talking to the
19 victim at least three days prior to your report
20 having been done.

21 A. That's correct. But I don't know how he would
22 have known to do that because I didn't make the
23 match until October the 6th.

24 Q. Let me talk to you about, I guess, how you do
25 what you do.

1 A. Can I go back and correct something I just
2 said?

3 Q. Sure.

4 A. I did not produce the report until October the
5 6th.

6 Q. And you didn't talk to anybody about it --

7 A. I did not talk to Officer Garrick about this at
8 all.

9 Q. You didn't talk to anybody about it until after
10 you did the report, did you?

11 A. And probably didn't talk to anybody after I did
12 the report.

13 Q. So the only way somebody would have known about
14 it would have been -- gotten your report after
15 October the 6th; right?

16 A. Yeah.

17 Q. So if an investigator went and talked to my
18 client on October the 3rd, just a lucky guess or a
19 hunch or something; right?

20 A. Could have been divine intervention.

21 Q. Could have been. Could have been.

22 Let me take you back to how you processed this
23 information. You received the prints or the print
24 cards that somebody else had prepared taken off of
25 the glass that was found at the alleged incident

- 1 site --
- 2 A. That's right.
- 3 Q. -- fair enough? You never received the broken
- 4 glass to look at, did you?
- 5 A. I did not.
- 6 Q. So to your knowledge, there was no testing done
- 7 on the broken glass, to your knowledge?
- 8 A. Not to my knowledge.
- 9 Q. You never saw any broken glass?
- 10 A. I did not.
- 11 Q. Of course, you didn't do it, there was no
- 12 testing, as far as you know, of the blood on the
- 13 broken glass either; right?
- 14 A. No. No. I never saw the glass.
- 15 Q. And the items that you had, which are State's
- 16 Exhibit Nos. 11, 12, 13, 14, 15, 16, 17 and 18 --
- 17 did I say enough of them? It's 11 through 18.
- 18 That's seven, not nine.
- 19 A. Well, you should have included 10 in there. I
- 20 have 10 here.
- 21 Q. Okay. So 10 through 18.
- 22 A. Right.
- 23 Q. Nine prints, the nine latent prints that you
- 24 had that you dealt with.
- 25 A. There were nine latent lift cards.

- 1 Q. Lift cards.
- 2 A. Lift cards, not prints.
- 3 Q. Which is different from prints.
- 4 A. Right.
- 5 Q. Because we don't know they're prints until
- 6 after we test them.
- 7 A. That's correct.
- 8 Q. And there are pictures -- there are pictures of
- 9 the fingerprints, right, of something on the -- that
- 10 was tested with the black powder?
- 11 A. No, those are not pictures. Those are actual
- 12 lifts of the print from a surface. It's transferred
- 13 from --
- 14 Q. Oh, I see.
- 15 A. -- a surface to the card.
- 16 Q. There's something on the top of this, isn't
- 17 there?
- 18 A. That's lifting tape.
- 19 Q. Right. The lifting tape is actually stuck onto
- 20 a card.
- 21 A. It is. It's stuck on the slick side of the
- 22 card.
- 23 Q. To keep it from moving around and stuff like
- 24 that?
- 25 A. And to preserve it.

1 Q. And to preserve it.

2 So you take a picture of that and you send it
3 through this dedicated line to AFIS?

4 A. Right.

5 Q. And since you started your work on that on
6 September the 28th, you would have gotten whatever
7 results back fairly quickly, right, because it's a
8 computer?

9 A. Yes, sir.

10 Q. And I think we've already introduced what's
11 been -- State's Exhibit No. 31 as being what you
12 actually received back. Is this what you received
13 back from AFIS?

14 A. What I received back from AFIS was the
15 impression that is on the right side. It's the
16 known print that was in S.L.E.D.'s files, a digital
17 impression of it.

18 Q. I gotcha. So you don't actually receive
19 anything back. What you do is you hit print?

20 A. Right. I actually looked at this on the
21 screen --

22 Q. Okay.

23 A. -- and I made the match. The first thing I did
24 click before I clicked print was I went up in the
25 upper right corner -- and there's a section up there

1 called ident, non-ident. When it comes back from
2 S.L.E.D., every one of them says non-ident. It's up
3 to the examiner to determine if that is correct. In
4 this situation, I clicked ident and ident was
5 printed at the top of the right impression, and then
6 I printed it for my records.

7 Q. I gotcha. So you're actually looking at a
8 computer screen or looking at a screen and you're
9 looking at what S.L.E.D. has and you're looking at
10 what you have. And once you look at that, then you
11 press the button and then you print that out. It
12 doesn't actually come from S.L.E.D., you print that
13 piece of paper out just like a --

14 A. From my screen.

15 Q. From your screen. Okay. Now --

16 A. I need to correct something on my testimony.

17 Q. Okay.

18 A. My report was published on October 6th. I'm
19 looking at my AFIS worksheet, and I conducted this
20 search on September 28th. I made the match on
21 September 28th.

22 Q. Okay.

23 A. So that may account for why the deputy knew
24 about it because I could have seen his sergeant and
25 told his sergeant about it verbally. But I didn't

1 make an official report til later.

2 Q. Or it could have been like you say, divine
3 intervention?

4 A. It could have been divine intervention. A lot
5 of those guys tended to stop by my office and talk a
6 lot too. But the actual match was made on September
7 28th. I didn't finish the rest of the comparisons
8 until the 6th of October.

9 Q. So what were you doing between September the
10 28th and October the 6th?

11 A. Well, since I was a part-time employee, I was
12 not at work most of the time. I only worked three
13 days a week. I worked Tuesday, Wednesday and
14 Thursday, generally. I was not permitted to work
15 more than 30 hours a week by the County. And I was
16 working other cases when I was at work. This was
17 not the only case that I worked during that
18 timeframe. I generally carried a caseload of 20 to
19 30 cases.

20 Q. Well, if you almost instantaneously get this
21 report back from AFIS, how long does it take you to
22 finish out your report?

23 A. Well, in this case, it took me about a week
24 because I was busy with other cases and could have
25 had another case that was a higher priority to the

1 sheriff's department and -- I don't know.

2 Q. Well, you wouldn't have told some officer that
3 an individual was a likely suspect until you had
4 completed your work, would you? That would be
5 sloppy police work.

6 A. I already knew it was the match. And I didn't
7 tell the officer, I told the supervisor, the
8 sergeant, if I told him. And I don't recall telling
9 him either way.

10 Q. All right. Let's pick back up here with --

11 A. Okay. I just wanted to correct that.

12 Q. I appreciate that -- State's Exhibit No. 31.
13 Now, when you sent the print to AFIS, what you did
14 was you sent the best print that you had; right?

15 A. Exactly.

16 Q. And you called it a what?

17 A. A left loop.

18 Q. A left loop. Because there are essentially,
19 what, three different types of general patterns on
20 the fingerprints?

21 A. That's correct.

22 Q. And tell the jury what those three general
23 patterns are on the prints?

24 A. The general patterns are arches -- A-R-C-H --
25 loops -- L-O-O-P -- and whorls -- W-H-O-R-L. Within

1 each of those groups there are subgroups; within the
2 arch group, there are plain arches and tinted arches
3 based on their appearance; within the loop group,
4 there's two different types of loops. In computer
5 terminology, it's either a left loop, slope loop or
6 right slope loop. And in the whorl pattern group,
7 there are plain whorls, accidental whorls, double
8 loop whorls, there are essential pocket loop whorls.

9 Q. And for the --

10 A. So essentially, altogether, there are eight
11 different individual fingerprint patterns.

12 Q. But just to simplify it for the jury, when you
13 talk about a left loop, you're talking about a ridge
14 pattern that starts on the left-hand side of
15 whatever finger you have, whichever one you're
16 dealing with, it goes around to the right-hand side
17 and comes back to the left side?

18 A. Correct.

19 Q. And that's why they call it a loop.

20 A. A left loop.

21 Q. A left loop. Because if it had gone to the
22 right, what would it have been called?

23 A. A right loop.

24 Q. Very good. So you take the best picture that
25 you have and you determine that it is a left loop

1 and you send that to AFIS. And what you get back
2 is -- and I'm going to need some help. On the
3 bottom right-hand chart of this, there's a bunch of
4 numbers down on the bottom right-hand chart. What
5 are those numbers?

6 A. Okay. This is the scoring -- the ranking of
7 candidates by score. And it shows the position
8 number that that particular candidate ranked, it
9 shows the identification number to identify the
10 person by, it shows the numerical score that was
11 attained based on the algorithms in the search, and
12 it also shows the finger number, that's the F
13 number.

14 Well, even though I requested that left index
15 finger, number 7 fingers be searched, a lot of times
16 other fingers will come back on the scoring sheet.

17 Q. I think it would help the jury to see what
18 you're talking about.

19 A. Okay.

20 Q. That way they can understand what you're
21 saying.

22 A. All right.

23 Q. Let me see if I can put this on there, see if
24 it shows up. What you're referencing right now is
25 this little section right here --

- 1 A. That's right.
- 2 Q. -- that you're reading the numbers from?
- 3 A. That's correct.
- 4 Q. And I know the jury can't read it, so that's
- 5 not going to help us any way at all.
- 6 A. Well, you can leave it up there. It'll help.
- 7 Q. Okay.
- 8 A. Because I can talk about it and they'll have an
- 9 opportunity to see --
- 10 Q. Do you have you copy with you?
- 11 A. No, I don't.
- 12 Q. Well, I want you to tell me, at the very top --
- 13 there's a highlighted portion up here at the very
- 14 top. And that's what is marked out as being the
- 15 most likely candidate?
- 16 A. By the computer.
- 17 Q. By the computer.
- 18 A. That's correct.
- 19 Q. And then you have -- well, the machine stops
- 20 with like 11 or 12 possibilities; right?
- 21 A. Well, that's all that was printed on there --
- 22 MR. ELAM: May I ask what exhibit number that
- 23 is?
- 24 MR. WILLIAMS: It's Exhibit No. 31.
- 25 A. Back to your question.

1 Q. Yes, sir.

2 A. The computer actually lists the top 20
3 candidates, and that is preset by S.L.E.D. to review
4 the top 20 candidates. And it just happened that
5 only 12 of those were able to print with that
6 particular image.

7 Q. Okay. So the number that it assigns, 8724 --
8 you would agree that's the number, 8724, that the
9 machine has assigned?

10 A. That's correct.

11 Q. And that's the most likely candidate. What
12 does that number represent?

13 A. Well, the way the AFIS is set up is sort of
14 like if you were taking algebra and you were dealing
15 with the X-Y areas in algebra on a grid and you were
16 plotting points in an algebra class. What the
17 machine sees are the characteristics that I plotted
18 on the latent print. It did not see the fingerprint
19 itself. It only saw the characteristics that I
20 plotted. Then goes through all of the fingers that
21 I requested on the number 7 finger, the left index
22 finger, and it compares those plotting minutia
23 points against what is in their database. And
24 that's how the score is arrived at.

25 Q. Well, now, is that the number of points or is

1 that some arbitrary number that the machine uses?

2 A. That's a number that the machine uses.

3 Q. So it doesn't equate to the number of points
4 which are identical, it's just some number like -- I
5 don't know. It could be a million numbers, couldn't
6 it? I mean, it's just some number that --

7 A. Well, the highest I've ever seen that number go
8 is on a palm print, and it was like 23,000.

9 Q. So it could, you say, up to at least 23,000;
10 right?

11 A. But it's not 23,000 characteristics.

12 Q. I understand. And what's the number on the
13 left-hand side of that? Is that the identifying
14 number to Jacob Seay?

15 A. Well, under our ID number, that number
16 corresponds to Jacob Seay.

17 Q. Okay. Then what's on the right-hand side?
18 What's the number in the right-hand column?

19 A. The right-hand column is the F number. That's
20 the finger number that I requested.

21 Q. All right. So that stands for one of the ten
22 digits?

23 A. This digit, let index. Fingers are numbered 1
24 through 5 starting with the thumb to the little
25 finger, 6 through 10 on the left hand. And that's

1 7.

2 Q. Okay. So the next number on that list was how
3 much?

4 A. Well --

5 Q. Just what's the number on the list? What's the
6 second number? 8,000 what?

7 A. 8,093.

8 Q. And what was the number assigned to Jacob Seay?

9 A. 8,724.

10 Q. So the second number represents some other
11 individual that the machine has decided to pick out
12 based on whatever print you sent in?

13 A. You want me to answer that?

14 Q. I certainly do.

15 A. That second number is also Jacob Seay's number
16 on another arrest.

17 Q. Did you check all of these numbers?

18 A. No, I did not.

19 Q. So there's some other number out of these 20
20 numbers which is fairly close to Jacob Seay which is
21 an arbitrary number which is chosen by the machine;
22 right?

23 A. The first five numbers on that list correspond
24 to him.

25 Q. And they're all different, aren't they?

1 A. They're all different scores because the
2 quality of each print that was taken during the
3 booking process, the qualities were not the same
4 quality.

5 Q. As much as over 1,500 points off?

6 A. Sure. The computer is doing that. It's
7 nothing I do.

8 Q. Well, what about the other individuals that the
9 computer gave the numbers on?

10 A. Well, I only -- at that time I only looked at
11 the number-one candidate because I made the match.
12 And fingerprints are a positive means of
13 identification; no two people have the same
14 fingerprint. So based on the science, it was not
15 necessary for me to look at any other candidates.

16 Q. Let's start with that proposition that no two
17 people have the same fingerprint. Now, we know, as
18 a general basic premise, that everybody in the world
19 have not had their fingerprints taken, have they?

20 A. That's correct.

21 Q. So for you to make a statement like that,
22 you're taking an assumption, aren't you?

23 A. I'm not taking an assumption. This has been
24 proven through hearings that have been conducted to
25 prove that fingerprint science is a science and I'm

1 basing it based on studies of other people prior to
2 me and also during my career.

3 Q. But you say it's a science. But to actually be
4 a science, it has to be subject to testing, doesn't
5 it, and standards?

6 A. It has. Fingerprints has been subjected to
7 testing and standards and we've had Daubert hearings
8 in the federal court on fingerprints. To my
9 knowledge, there's have been 42 of those. And in 42
10 instances, the fingerprints won.

11 Q. Well, if that's true then how did that poor
12 individual get arrested after the bombing in Madrid?

13 A. Because those three individuals you're talking
14 about made a mistake. Now, if you want me to talk
15 about the case, I was not working with the FBI, but
16 I know the three individuals, I know some of the
17 surrounding things based on conferences I went to
18 and what I had seen.

19 Q. Let me talk about this case. How many points
20 did you determine from the forensic -- I guess from
21 the latent prints that you took, how many points
22 were in common with whatever fingerprint cards that
23 you had?

24 A. Okay. I encoded 11 characteristics when I
25 conducted the search. As a general rule, I do not

1 count the number of characteristics when I make a
2 make, because under SWIGFAST rules, they prefer that
3 we get away from the point rule.

4 Q. What is SWIGFAST rule?

5 A. SWIGFAST is a working group, a scientific
6 working group, for friction ridge analysis training
7 and testing and it also is part of that
8 accreditation process that you mentioned earlier.

9 Q. But Lexington County does not operate
10 underneath the SWIGFAST, do they?

11 A. The department doesn't, but Mr. Johnson does.

12 Q. Do you have any manuals at the Lexington County
13 Sheriff's Department dealing with fingerprint
14 standards?

15 A. No, I don't.

16 Q. It's arbitrary, isn't it? You determine how
17 many points you want to say match somebody and
18 that's what it is if it's 1 to 53?

19 A. You're right, it's opinion testimony. And some
20 other examiner may come behind me and look and say
21 it doesn't match or something. And if that person
22 said in this case it didn't match, I'd have to
23 seriously consider his or her qualifications.

24 Q. Because he could be wrong like you were earlier
25 in your career?

- 1 A. He would be wrong.
- 2 Q. Like you were earlier in your career?
- 3 A. He would be wrong.
- 4 Q. You said the 11 characteristics. Is that on
- 5 the one finger?
- 6 A. That was on that finger I searched.
- 7 Q. How many fingerprints did you pull off?
- 8 A. What do you mean by pull off?
- 9 Q. How many did you examine? Were there three
- 10 fingerprints?
- 11 A. There were a total of five fingerprints, latent
- 12 prints.
- 13 Q. How many different fingers were involved with
- 14 the five latent fingerprints?
- 15 A. Three different fingerprints -- three different
- 16 fingers, but four different fingerprints.
- 17 Q. And it would have been, so the jury remembers,
- 18 the ring finger?
- 19 A. Okay. The left index finger was identified on
- 20 two of the lifts --
- 21 Q. Okay.
- 22 A. -- two separate lifts.
- 23 Q. Okay.
- 24 A. The left thumb was identified on another lift.
- 25 Q. Okay.

1 A. And the right ring finger was on another lift.
2 So there's three different fingers.

3 Q. Am I holding up the correct fingers? This one
4 and these two?

5 A. That's correct. And then there was one
6 fingerprint that I did not identify.

7 Q. Well, you couldn't come up with whose that one
8 was?

9 A. No, I couldn't. I didn't have enough ridge
10 detail on the known prints to conclusively compare.

11 Q. That could have been the person that went
12 inside the house, couldn't it?

13 A. Yes, it could have been.

14 Q. And on none of the -- you had no evidence to
15 look at -- as far as you know, on none of the
16 evidence was there any blood, was there?

17 A. No, sir. The only thing I looked at was the
18 lifts.

19 Q. And you still don't remember talking to anyone
20 about the results of your examination?

21 A. I don't specifically remember. I could have.

22 Q. And the only way they would have gotten any
23 written information would have been from your report
24 dated October the 6th?

25 A. That's correct.

1 MR. WILLIAMS: That's all I have, Your Honor.

2 THE COURT: Redirect?

3

4

5

REDIRECT EXAMINATION

6

BY MR. ELAM:

7

Q. I think Mr. Williams' last question was, the

8

only way they could have gotten a written report was

9

from your -- or written conclusion was from your

10

report October 6th?

11

A. That was the only report issued in this case

12

relative to the fingerprints.

13

Q. Written being the keyword in that question?

14

A. Yes.

15

(State's Exhibit No. 33 marked for

16

identification.)

17

BY MR. ELAM:

18

Q. I'm going to hand you a document that's been

19

marked for identification as State's Exhibit No. 33.

20

Are you familiar with that document?

21

A. I am. It's a copy of my notes I made during

22

the examination.

23

Q. All right. And is that a document that you

24

referenced during the cross-examination of

25

Mr. Williams?

1 A. I don't think Mr. Williams asked me about that
2 document.

3 Q. But did you refer to it?

4 A. I did. I referred to it to get dates from it.

5 Q. All right. Is this a copy of your original?

6 A. It is. The only difference in the copy is that
7 I have some red writing on my original notes and
8 they appear in black because they are Xeroxed copy.

9 Q. Other than that, is this an accurate copy of --

10 A. It is an accurate copy.

11 Q. Tell us what this State's Exhibit No. 33 is.

12 A. It's a latent fingerprint examination worksheet
13 for the Lexington County Sheriff's Department.

14 Q. And did you give us a copy of that so we could
15 turn it over to Mr. Williams during the regular
16 discovery process?

17 A. Yes, I did.

18 Q. All right. And does it reference the date that
19 you did the actual -- got the actual results on this
20 case?

21 A. Well, I did not finish it until -- I started it
22 on the 28th of September. And according to my AFIS
23 worksheet, I made the AFIS match on September 28th.

24 Q. All right.

25 A. I did not compare the remaining prints, finish

1 comparing the remaining prints, until October 6th of
2 2011.

3 Q. And is it possible for word to have gotten out
4 concerning your AFIS match that was done on
5 September 28th so that an investigator could talk
6 to --

7 MR. WILLIAMS: Your Honor, objection to
8 speculation.

9 THE COURT: Sustained.

10 MR. ELAM: Your Honor, that's not speculation.

11 THE COURT: What's the question again?

12 BY MR. ELAM:

13 Q. Explain -- if an investigator spoke to a victim
14 about Jacob Seay on October 3rd and your AFIS match
15 was done on September 28th, is it possible that your
16 results got out to the investigator before then?

17 A. It would have gotten out -- it could have
18 gotten out to the investigator by the way of the
19 region sergeant, Sergeant Melton. That would have
20 been the only person I would have talked to about
21 this case.

22 MR. WILLIAMS: Same objection, Your Honor.
23 He's testified he doesn't remember talking to
24 anyone.

25 THE COURT: It's possible. Overruled.

1 MR. ELAM: Thank you, Your Honor.

2 BY MR. ELAM:

3 Q. What other possible way would the investigator
4 have had the name of Jacob Seay?

5 A. No other way.

6 MR. WILLIAMS: Same objection on speculation to
7 that last question.

8 THE COURT: Overruled.

9 Q. Now you testified that you had -- you were part
10 of the misidentification in 1997. I hate to bring
11 up a sore subject, but a fact is a fact.

12 A. Fact is a fact.

13 Q. Was that misidentification self-reported?

14 A. Yes, it was.

15 Q. How many identifications have you done in your
16 46-year career as a fingerprint expert?

17 A. Thousands and millions. It's hard to say.. I
18 mean, I've compared millions of prints in my life.
19 For an example, on one case alone that I worked on
20 for 13 years, I had over 6,000 identifications in
21 that case.

22 Q. And have you made any other misidentifications?

23 A. Not of that nature.

24 Q. Not of that nature. Mr. Williams made much of
25 a train bombing that it seems like the FBI maybe got

1 a black eye for.

2 A. Yes.

3 Q. Train bombing case?

4 A. Yes.

5 Q. You said you were familiar with the people in
6 that in the FBI.

7 A. Yes. I've worked with all three of the
8 individuals at one time.

9 Q. What did they get wrong?

10 A. What happened, according to my information,
11 this happened in Madrid, Spain --

12 MR. WILLIAMS: Your Honor, I would object
13 unless he knows from his own personal knowledge
14 exactly what happened wrong.

15 MR. ELAM: Well, he opened the door. He's
16 asking --

17 THE COURT: I know he opened the door, but he
18 still can't testify to hearsay.

19 MR. WILLIAMS: I have no objection if he
20 actually knows. But I believe he's testifying from
21 hearsay, Your Honor.

22 THE COURT: All right. And I'll sustain it if
23 it's based on hearsay.

24 BY MR. ELAM:

25 Q. Do you have a good-faith basis for knowing what

1 happened in that case?

2 A. Yes, I do.

3 Q. Okay. What happened?

4 MR. WILLIAMS: Same objection.

5 THE COURT: All right. Solicitor, I got to
6 know how he knows.

7 BY MR. ELAM:

8 Q. Tell us how you know about the case.

9 A. Well, I know because it was in the news, I read
10 it in the news, I --

11 THE COURT: All right. That's hearsay.
12 Sustained.

13 MR. ELAM: I'll withdraw, Your Honor.

14 BY MR. ELAM:

15 Q. Regarding the identification of Jacob Seay in
16 this case, as the source of the latents you examined
17 in this case, is there any doubt at all in your mind
18 that he is the source of those latents that you
19 studied?

20 A. There's no doubt in my mind that he's the
21 source of four of the latent fingerprints that I
22 identified.

23 Q. And on --

24 MR. ELAM: I beg your indulgence a moment.

25 BY MR. ELAM:

1 Q. And just for clarification, the other five
2 latents that you were presented with, did they come
3 back and match somebody else?

4 A. I don't understand what other five latents
5 you're talking about. There are only five latent
6 prints total; four of those match Mr. Seay. The
7 remaining print is unidentified, is from the extreme
8 tip area of a finger, and it remains unidentified to
9 this date.

10 Q. And the other four that you testified --

11 A. The other four are fingerprints of Mr. Seay.

12 Q. And were there some prints of no value?

13 A. There were a lot of prints of no value. If
14 they were of no value, they didn't have enough
15 characteristics to make a comparison and I did
16 nothing with them.

17 Q. And that's the point I'm trying to stress:
18 They didn't come back to anybody. They couldn't be
19 compared to come back to anybody.

20 A. Right. They couldn't be compared to anybody.

21 MR. ELAM: Your Honor, I'm not sure if I moved
22 State's Exhibit 33 into evidence. I so move it into
23 evidence at this time.

24 MR. WILLIAMS: Your Honor, I would object to
25 that because he testified that I did not question

1 him about that, if it's the worksheet.

2 THE COURT: I don't know what it is.

3 MR. ELAM: Your Honor, he referenced this sheet
4 to answer one of Mr. Williams' questions. So I
5 would move this worksheet into evidence now.

6 THE COURT: Your objection is you didn't
7 question him about it?

8 MR. WILLIAMS: He asked whether or not I
9 questioned him about the worksheet. What the
10 witness testified to was that I looked at that
11 information my own notes when I was answering some
12 questions.

13 THE COURT: Okay. Here's what I'm trying to
14 decide: The admissibility of a document.

15 MR. WILLIAMS: Yes, sir.

16 THE COURT: And your objection to that document
17 is --

18 MR. WILLIAMS: It's hearsay.

19 THE COURT: The document is what?

20 MR. ELAM: Would you tell the Court what that
21 document is.

22 THE WITNESS: That is my personal notes in the
23 case, case notes.

24 THE COURT: All right. Overruled. I'll allow
25 it in.

1 MR. ELAM: Thank you, Your Honor.

2 (State's Exhibit No. 33 admitted into
3 evidence.).

4 BY MR. ELAM:

5 Q. And it does indicate that you had someone check
6 behind your work in this case?

7 A. It does.

8 MR. WILLIAMS: Objection to the form of the
9 question. Actually, it's leading.

10 THE COURT: Sustained.

11 Q. Does the document indicate that there was
12 anybody who checked behind your work?

13 A. It does.

14 Q. And who is that?

15 A. That individual is D.I. Blackwell.

16 Q. If there had been a problem, would you have
17 heard about it?

18 A. Oh, yes, I would have heard about it.

19 Q. And could you do me a favor and highlight on
20 that document the date that you did the results --

21 MR. WILLIAMS: I would object to manipulating
22 an item that's been placed in evidence.

23 THE COURT: Sustained. You cannot mark on that
24 document. The document is what it is. It's in
25 evidence, it will be back there for the jury.

1 MR. ELAM: Nothing else, Your Honor.

2 MR. WILLIAMS: No questions on recross, Your
3 Honor.

4 THE COURT: All right. Thank you very much,
5 sir. You may step down. Any objection to
6 Mr. Johnson being excused?

7 MR. WILLIAMS: No objection, Your Honor.

8 MR. ELAM: None from us, Your Honor.

9 THE COURT: All right. You may call your next
10 witness.

11 MR. BELL: At this time, Your Honor, the State
12 would call Madam Clerk Hope Frick to the stand.

13 THE COURT: All right. Ms. Frick, please come
14 around and place your left hand on the Bible and
15 raise your right.

16 JOYCE HOPE FRICK

17 being first duly sworn, testified as follows:

18 THE WITNESS: I do.

19 THE COURT: Thank you very much.

20 Take the stand, spell your last name for the
21 court reporter, please.

22 THE WITNESS: Joyce Hope Frick, F-R-I-C-K.

23 DIRECT EXAMINATION

24 BY MR. BELL:

25 Q. Good morning, Madam Clerk.

1 do all of the calculations, make sure the jail gets
2 copies of convictions or dismissals, cases remanded
3 back due to a guilty plea. We also call the cases
4 before the circuit court judge, put defendants under
5 oath. As y'all have seen, I've put witnesses under
6 oath. That's part of our proceedings.

7 Q. Now, all of these documents that you handle,
8 how do you store them and maintain their integrity
9 over time?

10 A. Since 2007 we've been on a case management
11 system that was ordered by the Chief Justice Toal.
12 We not only have the paper documents, but we have to
13 scan them in and index them to the case. And once
14 the cases scanned and indexed, right now we're
15 working on the 1990 cases so they can be boxed up
16 and transferred.

17 According to the law and court administration,
18 these peeper documents have to be kept for infinity.
19 We at one time, when I first started here, had
20 records that dated from 1873 to present. We have
21 since then been able to convert those records from
22 1873 to 1950 to archives. Right now we're still
23 maintaining legal custody of the records from 1951
24 to present.

25 Q. What sort of procedures do you have to make

1 sure that those records stay where they're supposed
2 to be? How do they remain in your custody?

3 A. I guard them like a watch dog.

4 MR. WILLIAMS: Your Honor, if he'll present the
5 exhibit to the clerk --

6 THE COURT: Yeah, let's do that.

7 MR. ELAM: That's fine, Your Honor.

8 BY MR. BELL:

9 Q. I'm going to hand you what's marked as Court's
10 2 and 3. Would you take a moment to look at those
11 documents.

12 A. Yes, sir.

13 MR. BELL: Your Honor, I'd ask the defense if
14 he has any problems stipulating to what a true copy
15 is.

16 MR. WILLIAMS: Your Honor, I have no objection
17 to, I guess, the introduction of State's Exhibit
18 No. 20 and 21.

19 THE COURT: All right. 20 and 21 without
20 objection.

21 (State's Exhibit Nos. 20 and 21 admitted into
22 evidence.)

23 BY MR. BELL:

24 Q. Now I'm handing you what's marked as State's 20
25 and 21. I'd like you to take a look at those for me

1 and tell me when you've had a moment.

2 A. Okay.

3 Q. What do those appear to be?

4 A. These are redacted sentence sheets.

5 Q. Okay. When you say redacted, what exactly does
6 that mean?

7 A. Certain information has been blacked out, has
8 been blanked out.

9 Q. Does that materially change it from the
10 originals?

11 A. No. In fact, I made those copies and then
12 these copies were true-certified by me from the ones
13 I had already true-certified.

14 Q. Okay. Now who is the defendant that is listed
15 on both of those sentence sheets?

16 A. Jacob Heyward Seay, S-E-A-Y.

17 Q. Okay. Now, is there a driver's license number
18 on those two sentencing sheets?

19 A. Yes, sir.

20 Q. Would you take a look at that. Do they match?

21 A. Yes, sir.

22 Q. The exact same driver's license on both
23 sentencing sheets?

24 A. Yes, sir.

25 Q. Is there a home address?

1 A. Yes, there is, but they're two different
2 addresses.

3 Q. Okay. As far as the charge on those sentencing
4 sheets, would you refer to State's 20 and read to
5 the jury what the charge on that sentencing sheet
6 is.

7 A. The charge is burglary second degree.

8 Q. And in reference to State's 21, what is the
9 charge listed on that sentence sheet?

10 A. Burglary second degree.

11 Q. Now, do you see an indictment number listed on
12 those two sheets?

13 A. Yes, sir.

14 Q. Okay. Are they different indictment numbers?

15 A. Yes, sir.

16 Q. Do you see warrant numbers on those two
17 sentence sheets?

18 A. Yes, sir.

19 Q. Are they different warrant numbers?

20 A. Yes, sir.

21 Q. What does that indicate to you, Madam Clerk?

22 A. These are two separate incidences, two separate
23 warrants, two separate cases.

24 Q. Do you see a line that says statute on those
25 sheets?

1 A. Yes, sir.

2 Q. What does that line typically indicate?

3 A. These are the state statutes. One indicates
4 one charge and one indicates another charge.

5 Q. Okay. Do you see any boxes on those sheets
6 that are labeled pleas?

7 A. Yes, sir.

8 Q. And are those boxes marked?

9 A. Yes, sir, on both sentences.

10 Q. What does that box being marked indicate to
11 you?

12 A. That box is marked when a defendant decides to
13 plead guilty to a charge. That box is marked, the
14 defendant has to sign it along with -- if he has
15 counsel. Counsel signs, the solicitor signs and the
16 defendant signs saying, yes, this is what I'm
17 pleading to.

18 Q. And that box -- is that box marked on both
19 sentence sheets?

20 A. Yes, it is.

21 Q. Okay. Do you see a signature on the bottom
22 right of those sentence sheets?

23 A. Yes, sir, I do.

24 Q. And what is that labeled as?

25 A. That is the judge's signature. That's the

1 presiding judge in circuit court.

2 Q. Madam Clerk, in reviewing these two sentencing
3 sheets, is there any doubt in your mind whatsoever
4 that they reflect two separate convictions for
5 burglary?

6 A. Oh, no, there's no doubt. There wouldn't be
7 two sheets for the same thing. They would be two
8 separate independent cases.

9 MR. ELAM: No further questions.

10 MR. WILLIAMS: Just one question, Your Honor.

11 THE COURT: Yes, sir.

12 CROSS-EXAMINATION

13 BY MR. WILLIAMS:

14 Q. And both State's Exhibit No. 20 and 21 indicate
15 that Mr. Seay pled guilty to both charges on the
16 same day on October the 14th of 2008?

17 A. Yes, sir, he did. He pled guilty to both.

18 MR. WILLIAMS: That's all I have, Your Honor.

19 THE COURT: Thank you very much, ma'am. You
20 may step down.

21 Call your next witness.

22 MR. ELAM: Your Honor, the State rests.

23 THE COURT: All right. Ladies and gentlemen,
24 the State has rested their case. At this time, I
25 have to take up matters of law at the close of the

1 State's case, so I'm going to ask you to step back
2 into your jury room.

3 All right. If you would, ladies and gentlemen,
4 step back into the jury room. We're going to have
5 lunch brought in, but if you need anything before
6 then, just let the bailiffs know. Okay?

7 (The jury retires to the jury room at 12:15
8 PM.)

9 THE COURT: All right. At this time I'll take
10 up any motions at the close of the State's case.

11 MR. WILLIAMS: Your Honor, I'd move for
12 directed verdict of not guilty. And the basis of
13 that being that any evidence that's been presented
14 is entirely circumstantial. I'd call to the Court's
15 attention, if I may approach, *State vs. Mitchell*.

16 Your Honor, that case is -- if it's not
17 identical, it's within a hair of being identical,
18 because in that particular case the big question was
19 a screen. And the only evidence that they had
20 indicating that there was a burglary was a
21 fingerprint where the -- which came off the screen.
22 It's this case, Your Honor, in essence. It's this
23 case. The only difference is the fingerprint was on
24 the screen and not on the glass.

25 THE COURT: Okay. But in this case you have

1 some evidence of a cut and you've got blood inside
2 the house. Albeit, it wasn't tested, all of that,
3 it's still there and there's still -- I mean, again,
4 it's just evidence, Mr. Williams. It's not -- and
5 as you well know, at this stage of the case, the
6 Court is not concerned about what weight to give
7 evidence, simply the existence of evidence. And the
8 testimony in this case from the last witness was
9 that when the print was made on the glass, there was
10 no cut; then couple weeks later when this defendant
11 submitted himself for printing, there was a cut.

12 So -- and again, I'm not drawing conclusions
13 from that, I'm just noticing the existence of
14 evidence. And then in this case, there was
15 testimony that inside the house there were blood
16 smears on the blinds in two different places. I
17 agree with you as you're shrugging your shoulders,
18 but it is the existence of evidence.

19 MR. WILLIAMS: I guess I was concerned about
20 there not being a relationship, Your Honor. Had the
21 blood been on glass -- but there's been no
22 relationship to when the blood got there.

23 THE COURT: I understand. And that's all
24 subject to argument. But I think for purposes of a
25 directed verdict, I think there is evidence in the

1 record and, therefore, I would respectfully deny
2 your motion.

3 MR. WILLIAMS: And, Your Honor, generally, I'd
4 move for directed verdict that the evidence taken as
5 a whole is just generally insufficient.

6 THE COURT: Okay. And again, it's really the
7 jury's province to give what weight and
8 consideration to give to the evidence and the
9 testimony. So I think it's appropriate for them to
10 make the call.

11 MR. WILLIAMS: Your Honor, my client will not
12 be testifying, if you want to query him.

13 THE COURT: Yes, I would. Mr. Seay, if you
14 would, listen carefully. I'm going to discuss with
15 you -- every person that is accused of a criminal
16 offense has constitutional rights. And you know
17 those, you've talked with Mr. Williams. But what
18 I'm going to discuss with you now is your right to
19 remain silent. You have that right. You understand
20 that, sir?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: And a person's right to remain
23 silent, it's a very special right that all of us
24 have. And what it basically provides is that we're
25 not required to prove our innocence, therefore we're

1 not required to say anything. And the burden is on
2 the State. So a person clearly has the right to
3 testify, as well as the right not to. You
4 understand that you do have the right to testify if
5 you chose to? You understand that?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Okay.

8 MR. WILLIAMS: Your Honor, maybe I was too
9 early. Can we have about five minutes?

10 THE COURT: Absolutely. Take that time. We'll
11 be at ease while they discuss that.

12 (Brief pause in the proceedings.)

13 THE COURT: All right. Mr. Williams?

14 MR. WILLIAMS: Your Honor, I've consulted with
15 my client and he indicates to me that he understands
16 and that he does not want to take the stand. And I
17 assume Your Honor will continue with --

18 THE COURT: Yes. Okay.

19 All right. Mr. Seay -- and I say this to you
20 now and at any time that we're together talking
21 about this case. If you ever need to stop me and
22 talk to Mr. Williams, you always just let me know
23 and I'll give you whatever time you need. Okay?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: All right. But as I was saying

1 earlier, all of us have the right to testify and we
2 have the right not to. The -- what I wanted to talk
3 with you about with regards to your right to testify
4 is that if you did decide that you did want to
5 testify, that's fine, you have that right. But you
6 need to understand that not only would you be
7 required to answer questions from Mr. Williams, but
8 the State's attorneys would have an opportunity to
9 cross-examine you and ask you questions, and you'd
10 be required to answer their questions. You
11 understand that?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: A lot of people think they can hide
14 behind the Fifth Amendment and not answer any
15 questions, but you wouldn't be able to do that; you
16 would have to answer their questions. You
17 understand, sir?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Now, I know we've discussed, just
20 based on what happened during the course of this
21 trial, that you have the two prior convictions for
22 burglary. I don't know if you have any other prior
23 record. But you understand that the State could ask
24 you about those prior convictions; you understand
25 that?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: And I would not allow them to go
3 into any detail about them or anything of that
4 nature. They simply would be able to ask as to
5 whether or not you've been convicted of those
6 offenses. Do you understand that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Okay. Now, if you did decide to
9 testify, then that would be what would occur.

10 You also have the right to not testify. And if
11 you do decide to not take the stand, I will then
12 instruct the jury -- and Mr. Williams, I apologize,
13 I meant to mention it to you when you walked in,
14 I've put a proposed charge on your table. It's a
15 draft. So we'll talk about it later in more detail.
16 But it's there for you to review it. And one of the
17 things in that proposed draft is a charge that I
18 would tell the jury when I charge them on the law.
19 And it basically says that as a person accused or
20 charged of a criminal offense, you have no duty or
21 no obligation to prove your innocence. The burden
22 of proof is on the State in this case and you don't
23 have to prove anything. And you have the right to
24 remain silent. If you exercise that right to remain
25 silent, I tell the jury that they could not hold

1 that against you in any way, they could not consider
2 that at all in their deliberations as to your guilt
3 or innocence.

4 I think I even take it further in that
5 instruction and tell them that the fact that you
6 chose to remain silent cannot even be discussed in
7 the jury room at all. It's not a factor for them to
8 consider because you as well as all of us have a
9 constitutional right to remain silent. And I'd give
10 them that instruction. Do you understand, sir?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Okay. Now, with a lot of things
13 involving cases and involving lawyers, a lawyer, in
14 this case Mr. Williams, and you've got an excellent
15 lawyer, he's there to provide to you -- sometimes we
16 refer to lawyers as counselors. And that's what a
17 lawyer does, they give you counsel. And they give
18 you their thoughts and their opinions as to what
19 should occur, what things you should and shouldn't
20 do and things of that nature.

21 But here's the thing that's important for you
22 to understand: When you're dealing with someone's
23 constitutional right, no one can make that decision
24 other than you. Mr. Williams can give you his
25 thoughts, he can give you his opinions as to whether

1 or not you should or should not testify and how that
2 works into his scheme of defending your case and all
3 of that. But the bottom line is this: Mr. Seay,
4 that's the decision that only you can make. It has
5 to be your decision, not his or anyone else's. You
6 understand that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Now, you've indicated that you're
9 not going to testify; you're going to exercise your
10 right to remain silent. Is that correct?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Now, is that your decision?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: I realize you've talked to
15 Mr. Williams about it and you may have talked to
16 other folks about it, and that's a good thing, you
17 should talk to people and bounce it around. But
18 it's kind of like when it comes down to the short
19 rose, whether or not you testify or don't testify
20 has to be your call and not someone else's. So is
21 this in fact your decision?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Has anyone threatened you or
24 coerced you or forced you in any way to make this
25 decision?

1 THE DEFENDANT: No, sir.

2 THE COURT: All right. And it is a decision
3 that you've made of your own free will?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: All right. Well, I'll certainly
6 honor that and we'll proceed accordingly.

7 Mr. Williams, does the defense have any other
8 witnesses to present?

9 MR. WILLIAMS: No, Your Honor.

10 THE COURT: All right. At this time then,
11 before we resume anything, what I propose is to let
12 me move on and take up motions at the close of all
13 of the evidence while the jury is out so that we
14 don't bring them out, you rest, we send them back
15 out, and kind of yo-yo them.

16 MR. WILLIAMS: And obviously, Your Honor, we
17 would renew those prior motions that were made at
18 the end of the State's case. Obviously since we're
19 presenting no evidence, there's a different
20 standard, and that would be, as a matter of a
21 whole -- as the entire testimony as a whole is
22 insufficient. And again, we just renew all of the
23 motions we made before.

24 THE COURT: All right. And I respectfully
25 again deny those motions based on, as I said

1 earlier, I think these are all questions of fact for
2 the jury to decide.

3 Now, we've got some other things to talk about,
4 but before I get to that, just for your purposes,
5 when we do finish discussing the things we need to
6 discuss, I'll bring the jury back out.

7 Mr. Williams, I'll recognize you on behalf of the
8 defense and let you rest on the record. I'll
9 explain to the jury that I've taken up the matters
10 and that we're now ready to proceed with regards to
11 the charge and closing arguments.

12 So for the purposes of the record, we can just
13 go off the record for now and just relax a little
14 bit.

15 (Off the record.)

16 MR. ELAM: Your Honor, in *State vs. Mitchell*,
17 that is a case where the defendant had actually been
18 in the house and known to be in the house a few
19 times. It's a case where a fingerprint, a sole
20 fingerprint, was on a screen that nobody knew how it
21 got down off the window. But the fact is, the print
22 was on a screen, not on the window itself at the
23 point of entry. The window had just been freshly
24 painted. Those are huge differences between our
25 case and the Mitchell case, Your Honor.

1 In our case we have a window that wasn't broken
2 that's suddenly broken, glass inside indicating the
3 break came from the outside, we have blood inside
4 and, of course, when a window is broken and there's
5 sharp glass, glass is a danger, so the blood inside
6 is presumable from the sharp glass. There was a
7 computer missing that was there that morning and
8 blood in that room where the computer is missing
9 from. So we submit to the Court that there's
10 substantial circumstantial evidence of a
11 breaking-and-entering, that is a burglary in this
12 case, with the intent to commit a crime evidenced by
13 the larceny that we have.

14 THE COURT: All right, sir. Now, I'm adding a
15 charge, and it's a standard charge, just on expert
16 witnesses and that they should give that testimony
17 whatever consideration they feel is appropriate and
18 that a person should not -- basically should not get
19 any greater weight that the testimony deserves
20 simply because the person is classified as an expert
21 and that they can ignore an expert's testimony if --
22 just basically they view it how they view any other
23 testimony in a case and give it whatever weight they
24 think it deserves. But I'll explain to them that a
25 person is classified as a witness because of their

1 education and experience in some art, science or
2 profession that would cause them to be considered a
3 witness and can give opinions as to the relevant
4 material matter of the testimony. So I've added
5 that charge in there.

6 Is there anything else from the State regarding
7 the jury charge?

8 MR. ELAM: Nothing from the State.

9 THE COURT: All right. Mr. Williams, have you
10 had a sufficient opportunity to look over?

11 MR. WILLIAMS: I have, Your Honor. It's short
12 precise and to the point.

13 THE COURT: Okay. So you're okay with the
14 charge other than me adding the expert witness
15 language?

16 MR. WILLIAMS: Yes. It's a good charge.

17 THE COURT: All right. Well, what we'll do is
18 we'll remain at ease for a few minutes. I'm going
19 to change that opening paragraph to reflect that.

20 (Brief pause in the proceedings.)

21 THE COURT: Is the State ready to proceed?

22 MR. ELAM: State is ready.

23 THE COURT: Is the defense ready?

24 MR. WILLIAMS: Defense is ready.

25 THE COURT: And as I said, I'll recognize you

1 on the record and then we'll get started.

2 Let's bring the jury in.

3 (The jury enters the courtroom at 12:55 PM.)

4 THE COURT: All right. Ladies and gentlemen,
5 when we took that break, as you recall, the State
6 rested their case and I had matters of law to take
7 up with the attorneys, which I've done, so we're now
8 ready to proceed. We'll recognize Mr. Williams for
9 the defense.

10 MR. WILLIAMS: Your Honor, we have no evidence
11 and we're prepared to go to the jury and argue.

12 THE COURT: Ladies and gentlemen, the defense
13 has rested. Mr. Williams was kind enough to inform
14 me of that at the close of our legal arguments at
15 the end of the State's case. And so, since he
16 allowed -- gave me that information, we went
17 ahead -- because what happens procedurally is, when
18 the State rests their case, there's matters of law
19 that I have to take up, then we go to the defense.
20 If the defense puts up a case, we do that; if they
21 don't, as Mr. Williams has indicated, then we take
22 up matters at the close of all of the evidence.
23 Well, we were able to go ahead and do that while you
24 were out so that I wouldn't have to now turn right
25 around and send you back out to take up those

1 matters of law. So we've done all of that.

2 So now we've reached the portion of the trial
3 where it's -- you're going to get the charge of the
4 law as well as the arguments of counsel. And I'm
5 going to address you first and give you a charge on
6 the law, and then you'll hear from the attorneys.

7 So ladies and gentlemen, I told you when we
8 started this case that you were the judges of the
9 facts and that no one other than you can have any
10 input as to the facts. So it's been appropriate,
11 during the trial, that I've been up here on the
12 bench out of the way while the attorneys have
13 addressed you with the facts and they've presented
14 the facts to you. But we're now at the portion of
15 the trial where you and I are in this together; you
16 as the judges of the facts and me as the judge of
17 the law. So I think it's only appropriate that I
18 come down here and be with you to give you that
19 charge.

20 Madam forelady and members of the jury, it's
21 now my duty as the trial judge to instruct you on
22 the law applicable to this case. After doing so,
23 the lawyers will address you in presenting their
24 closing arguments or closing statements. As I told
25 you about their opening statements, what the lawyers

1 tell you in their closing arguments is not evidence.
2 The evidence in this case is closed. It is the
3 testimony of the witnesses and then any exhibits or
4 stipulations of counsel or agreements of counsel
5 that came in during the trial. It is going to be
6 your duty as jurors to accept and to apply the law
7 as I now state it to you. Further more, it is your
8 exclusive to decide all of the issues of fact in
9 this case and to determine the effect, value, weight
10 and truth of that evidence.

11 Now, the indictment charges the defendant,
12 Jacob Heyward Seay, with the offense of burglary in
13 the first degree. I remind you that the fact that
14 the defendant was arrested, charged and indicted in
15 this case is not evidence in this case and cannot be
16 considered by you as evidence of guilt in this case,
17 nor does it create any presumption or inference of
18 guilt. The indictment is simply the formal written
19 instrument which contains the charge made against
20 the defendant. It is the formal document by which
21 this case is brought into this court.

22 Now, I'm going to give you a copy of these
23 instructions in written form to have with you in the
24 jury room. During your deliberations, you may refer
25 to these instructions to guide you in your

1 decision-making. You must consider these
2 instructions as a whole and not follow some and
3 ignore others.

4 Now, the defendant has pled not guilty to this
5 charge, and that plea puts the burden on the State
6 prove the defendant guilty. A person charged with
7 committing a criminal offense in South Carolina is
8 never required to prove him or herself innocent. I
9 charge that it is an important rule of law that a
10 defendant in a criminal trial, no matter what the
11 seriousness of the charge may be, will always be
12 presumed to be innocent of the crime for which the
13 indictment was issued unless guilt has been proven
14 by evidence satisfying you of that guilt beyond a
15 reasonable doubt. This presumption of innocence
16 does not end when you begin your deliberations, but
17 it accompanies the defendant throughout the trial
18 until you reach a verdict of guilt based on evidence
19 satisfying you of that guilt beyond a reasonable
20 doubt. The presumption of innocence is not a mere
21 legal theory, it's not just a legal phrase, but it
22 is a substantial right to which every defendant is
23 entitled unless you the jury are satisfied from the
24 evidence of the defendant's guilt beyond a
25 reasonable doubt.

1 Now, the State, as I said, has the burden of
2 proving the defendant guilty beyond a reasonable
3 doubt. Some of you may have served as jurors in
4 civil cases where you were told that it is only
5 necessary to prove that a fact is more likely true
6 than not true, such as by the greater weight or the
7 preponderance of the evidence. In criminal cases
8 the State's proof must be more powerful than that;
9 it must be beyond a reasonable doubt. Proof beyond
10 a reasonable doubt is proof that leaves you firmly
11 convinced of the defendant's guilt. There are very
12 few things in this world that we know with absolute
13 certainty, and in criminal cases the law does not
14 require proof that overcomes every possible doubt.
15 If, based on your consideration of the evidence, you
16 are firmly convinced that the defendant is guilty of
17 the crime charged, you must find the defendant
18 guilty. If on the other hand you think there's a
19 real responsibility that the defendant is not
20 guilty, you must give the defendant the benefit of
21 that doubt and find him not guilty.

22 I remind you during this trial you and I have
23 certain duties to perform. As the trial judge it's
24 my responsibility to preside over the trial of this
25 case, and I also have the duty to rule on the

1 admissibility of the evidence offered during this
2 trial. You are to consider only the competent
3 evidence that's before you. You are to consider
4 only the testimony which has been presented from the
5 witness stand, any exhibits which may have been made
6 a part of this record, and any stipulations or
7 agreements of counsel.

8 I have the additional duty to charge you the
9 law applicable to this case. As the presiding
10 judge, I'm the sole judge of the law in this case.
11 And it's your duty as jurors to accept and to apply
12 the law as I now state it to you. If you already
13 have any ideas to what the law is or what you think
14 the law ought to be and it does not agree with what
15 I now tell you the law is, you must abandon your
16 idea because you are sworn to accept the law and
17 apply the law exactly as I state it to you.

18 In every case tried before this Court in front
19 of a jury, the jury becomes the sole and exclusive
20 judges of the facts. The trial judge cannot
21 intimate, state, comment on or make any statement to
22 a trial jury about the facts in a case. Since you
23 the jury are the sole judges of the facts in this
24 case, you are not to infer from what I have said
25 during the progress of this trial in ruling on

1 admissibility of evidence or otherwise or anything
2 that I say now during the course of this instruction
3 to you that I have any opinion about the facts in
4 this case. The law does not allow me to have an
5 opinion about the facts. This is a matter solely
6 for you the jury to determine. As jurors it's your
7 duty to determine the effect, value, weight and
8 truth of the evidence that's been presented.

9 Now, there are two types of evidence which
10 generally are presented in a trial; there's direct
11 evidence and there's circumstantial evidence.
12 Direct evidence is the testimony of a person who
13 claims to have actual knowledge of a fact such as an
14 eyewitness. It is evidence which immediately
15 establishes the main fact to be proved.
16 Circumstantial evidence is proof of a chain of facts
17 and circumstances indicating the existence of a
18 fact. It is evidence which immediately establishes
19 collateral facts from which the main fact may be
20 inferred. Circumstantial evidence is based on
21 inference and not on personal knowledge or
22 observation.

23 Now, the law makes absolutely no distinction
24 between the weight or the value to be given to
25 either direct or circumstantial evidence, nor is a

1 greater degree of certainty required of
2 circumstantial evidence than of direct evidence.
3 You should weigh all of the evidence in this case.
4 And after weighing all of the evidence, if you're
5 not convinced of the guilt of the defendant beyond a
6 reasonable doubt, then you would find the defendant
7 not guilty. However, after weighing all of the
8 evidence if you are convinced of the defendant's
9 guilt beyond a reasonable doubt, then you would find
10 the defendant guilty. So necessarily, you must
11 determine the credibility of the witnesses who have
12 testified in this case. And, ladies and gentlemen,
13 credibility simply means believability. It becomes
14 your duty as jurors to analyze and to evaluate the
15 evidence and determine which evidence convinces you
16 of its truth.

17 In determining the believability of witnesses
18 who have testified in this case, you may believe one
19 witness over several, several witnesses over one;
20 you may believe a part of the testimony of a witness
21 and reject the remaining part of that same
22 testimony; you may believe the testimony of a
23 witness in its entirety or reject that testimony in
24 its entirety; you may consider whether any witness
25 has exhibited to you any interest, bias, prejudice

1 or other motive in this case; you may consider
2 whether a witness is seeking a personal gain as well
3 as the appearance or manner of the witness while on
4 the witness stand.

5 Now, the rules of evidence ordinarily do not
6 permit witnesses to testify to opinions or
7 conclusions. There's an exception to this rule that
8 exists for witnesses that we call expert witnesses.
9 A witness who by education and experience has become
10 an expert in some art, science, profession or
11 calling may state an opinion as to the relevant and
12 material matter in which that witness claims to be
13 an expert and may also state the reasons for that
14 opinion. You should consider any expert opinion
15 received in evidence in this case and like any other
16 evidence, give it the weight that you think it
17 deserves. An expert witness' testimony is to be
18 given no greater weight than that of any other
19 witness simply because the witness is an expert.
20 Further, you're not required to accept an expert's
21 opinion even though it's not contradicted.

22 Now, I instruct you and I emphasize the fact
23 that the defendant in this case did not testify is
24 not to be considered by you in any way in your
25 deliberations and in your consideration on the

1 question of guilt or innocence of the defendant. It
2 must not be considered by you in any matter
3 whatsoever. The defendant has a constitutional
4 right to remain silent and the assertion of this
5 right must not be considered by you in your
6 deliberations. I repeat, under your oath you are to
7 draw no conclusion whatsoever to the fact that the
8 defendant in this case did not testify. The fact
9 that this defendant did not testify should not even
10 be discussed in the jury room. The burden of proof,
11 as I have stated to you, is on the State. The
12 defendant is not required to prove his innocence.
13 The burden of proof remains on the State to prove
14 guilt beyond a reasonable doubt.

15 Now, the defendant is charged with first-degree
16 burglary. The State must first prove beyond a
17 reasonable doubt that the defendant entered a
18 dwelling without consent. A dwelling is any
19 building or portion of a building in which a person
20 ordinarily sleeps. A building constructed as a
21 dwelling that has never been occupied cannot be
22 considered a dwelling for purposes of burglary. But
23 if a building is occupied, it is a dwelling, even if
24 the residents are temporarily absent from the
25 building. In order to prove that the defendant

1 entered the dwelling, the State does not have to
2 show that the defendant's entire body entered the
3 dwelling. The smallest entry is sufficient. It may
4 be any part of the body such as a hand or a foot or
5 even an instrument such as a hook or other
6 instrument.

7 In addition, the State does not have to prove
8 that force was used to gain entry. If a person
9 enters a building by using deception, artifice,
10 trick or misrepresentation to get consent to enter,
11 this would be an entry without consent. Next, the
12 State must prove beyond a reasonable doubt that the
13 defendant intended to commit a crime, either a
14 felony or misdemeanor, at the time of the entry.
15 The mere entry into a dwelling without consent is
16 not burglary. If the intent to commit a crime is
17 formed after the entry, it is not a burglary. On
18 the other hand, if the defendant intended to commit
19 a crime at the time of the entry, it is a burglary
20 even if the intent was abandoned after the entry.
21 It does not matter that the intended crime was not
22 completed. Intent may be shown by acts and conduct
23 of the defendant and other circumstances from which
24 you may naturally and reasonably infer intent.

25 Finally, the State must prove beyond a

1 reasonable doubt that the defendant has a prior
2 record of two or more convictions for burglary
3 and/or housebreaking. Evidence of prior offenses
4 committed by the defendant is not offered to prove
5 the defendant has bad character or to prove that the
6 defendant committed the burglary on this occasion.
7 The prior convictions may be considered by you only
8 for the purpose of determining whether or not it
9 satisfies that element of the offense that makes a
10 burglary a first-degree burglary by entering a
11 dwelling without consent to commit a crime and you
12 have two prior convictions for burglary and/or
13 housebreaking. Before you can, even consider the
14 evidence of the defendant's prior burglary and/or
15 housebreaking convictions, you must first find that
16 the State has proved beyond a reasonable doubt that
17 a burglary was committed by the defendant. If you
18 find beyond a reasonable doubt that the burglary was
19 committed, then you may consider the evidence of the
20 prior convictions as evidence of one of the
21 circumstances which would make the burglary a
22 first-degree burglary. If you do not find beyond a
23 reasonable doubt that the defendant committed these
24 alleged prior offenses, then you cannot return a
25 verdict of first-degree burglary.

1 Now, madam forelady and ladies and gentlemen of
2 the jury, as you retire to begin your deliberations,
3 I want to express to you the hope that each of you
4 will be mindful of the importance of your
5 responsibility. You're not called upon to serve as
6 jurors very often and the proper performance of the
7 duty requires each of you to reach the height of
8 freeing your minds of all the improper influences.

9 As the presiding officer of this court, I'm
10 vitally concerned that whatever verdict you find
11 will be the result of your going into the jury room
12 and confining your consideration to the evidence and
13 to the law that you've heard in this courtroom,
14 weighing it fairly and impartially, as I have every
15 confidence you will do. Your verdict in this case
16 cannot be based on sympathy, compassion, prejudice
17 or emotion or some other consideration that's not
18 found in the evidence. And remember, as I told you
19 earlier, your verdict in this case must be
20 unanimous.

21 Now, Ms. Taylor, this notebook will be in the
22 jury room with y'all, along with the exhibits. In
23 the front coverer is where the verdict form is. As
24 a body, you will discuss and deliberate the case.
25 Once you have arrived at a unanimous verdict,

1 Ms. Taylor, you'll take this form and you'll mark
2 the appropriate box. There's two options, ladies
3 and gentlemen, either not guilty or guilty. And
4 there's no -- there is no -- as far as the order
5 they're listed in, that has no meaning; it simply
6 means that when you list more than one thing, you
7 have to list one before the other. They're just
8 listed as not guilty or guilty. You'll consider
9 those as your options and you'll mark whichever the
10 jury arrives at and sign the verdict form.

11 Once you've reached a verdict, if you'll knock
12 on the door and let the bailiff know you've reached
13 a verdict, we'll bring you back in and receive that.
14 We have ordered lunch, and when it gets here,
15 they'll bring it in to you. It will be up to you as
16 a jury how you want to do it. You can eat and
17 deliberate while you eat or you can stop the
18 deliberations and eat and then start back. I'll
19 leave that up to y'all. I'm going to send you back
20 into the jury room. Do not start the deliberations
21 yet. I'm going to confer with the attorneys to make
22 sure I've included everything that needs to be here,
23 if I've left anything out or if I need to change or
24 alter anything, I'll bring you back out and do that.
25 If the charge is good as-is, we'll collect all this

1 evidence and your cue to begin is when you receive
2 the evidence and this notebook. So please, if you
3 would retire to your jury room and we'll send this
4 stuff in shortly.

5 MR. BELL: Judge --

6 THE COURT: Oh. Have a seat. Ladies and
7 gentlemen, let me explain something to you:
8 Historically it usually goes that the lawyers
9 address you with their closing arguments, and when
10 they're done, I give you the charge on the law and
11 then I do what I've just done, I send you back to
12 deliberate. We've changed it a little bit. And I'm
13 stuck in the old ways. And I told the attorneys,
14 because we all agree that we think it's a better
15 way, to give you the charge on the law and then let
16 them argue so that they can argue to you the law of
17 the case. This is first time I've done it this way
18 and of course I've dropped the ball terribly and was
19 going to send you back there without letting them
20 argue. When it comes time, that's still the same
21 instruction; don't start till you get all of this
22 stuff. But at this time now, I'm going to turn it
23 over to the attorneys and I'll let them address you
24 with regards to their closing arguments.

25 Gentlemen, thank you.

1 MR. ELAM: Thank you, Your Honor. May it
2 please the Court.

3 THE COURT: Yes, sir.

4 MR. ELAM: Ladies and gentlemen, my wife tells
5 me that I'm too complicated, believe it or not. My
6 daughters tell me that I'm too complicated, my boss
7 occasionally reminds me to K-I-S-S: Keep it simple,
8 Solicitor. And yesterday during the direct
9 examination of that fascinating witness from the
10 sheriff's department who was the evidence custodian
11 and during my direct examination of scintillating
12 director of the AFIS program who testified
13 yesterday, my partner just about bruised my ribs
14 reminding me to simplify. So let me simplify and
15 let me leave the complicating to someone else.

16 What do we know in this case? We know that
17 there was a break-in, a sneaky break-in. It
18 happened while the victim was at work, away from her
19 house, like most break-ins. That's when they
20 happen, when people are away. There's no eyewitness
21 to it, we don't have any witness here to tell you
22 what happened. But let me assure you, without any
23 doubt, there was a break-in. Some baseball didn't
24 come break the window, there was no meteorite that
25 came down from the celestial Heavens, it wasn't a

1 large ball of hail that broke the window and melted.
2 There was a break-in. Well, if no one saw it, how
3 do we know that? Just common sense. Look at the
4 facts as produced by the witnesses in this case.
5 You have a window that wasn't broken before that's
6 broken; you have glass inside the kitchen, so the
7 break was from the outside; broken windows produce
8 sharp glass and sharp glass is dangerous; you have
9 blood inside the kitchen at the point of entry very
10 likely related to that sharp glass. The victim
11 wasn't bleeding, her two young children weren't
12 bleeding, and they were the only people who lived in
13 that house, that dwelling. There was blood in the
14 back bedroom where the computer that had been there
15 that morning was missing, had been taken from. So I
16 submit to you, ladies and gentlemen, it's painfully
17 clear that we're dealing with a break-in in this
18 case.

19 Now, there's some questions about how the
20 perpetrator got out once he got in. Not exactly
21 clear. The victim told you that her habit when she
22 gets home is to just immediately stick her key in
23 the knob of the back door. Whether locked or
24 unlocked, that door is going to open. At that point
25 you can't tell if the door is locked or unlocked,

1 that's just her habit. It's the victim telling you
2 the truth. She's not embellishing things to make
3 the case look better, she's telling you the truth.
4 Seems likely to me though that if you break into a
5 house and cut yourself coming in, you're going to
6 find another exit, you're not going to go back out
7 that window, especially if you're carrying
8 something. We don't exactly know what the exit was.
9 But again, it doesn't take a rocket scientist to
10 figure out in this case the window is broken,
11 somebody crawls into the house and somebody steals a
12 computer. So we have a burglary. And in this case,
13 we have a who-done-it being a sneaky burglary and no
14 eye witnesses to what happened.

15 The first responding officers on the scene,
16 very professional, very well-intentioned, missed
17 several things. And I guess my philosophy of life
18 is real life is sloppy, things happen. They missed
19 several things. We regret that, I'm sure they
20 regret that. But they got one thing really, really
21 right. And the thing they got really right, they
22 knocked the ball out of the park with it. What they
23 did was they focused on the point of entry, the
24 obvious point of entry of an obvious burglary.

25 Many pictures of that window. Here's the one

1 I'm going to use right now. It's tiny on this
2 picture, but what I want to point out to you and
3 emphasize to you is the isolated nature of this
4 house. Look at what's around or not around it. The
5 officers chose to see if they could find any
6 fingerprints at the obvious point of entry. If they
7 found fingerprints at that window in this isolated
8 location and the window five feet, nine inches off
9 the ground, that's where the sill is, if they find
10 somebody's prints there, well, whoever's prints they
11 find, that person is going to be in a bit of a bad
12 situation because there's no legitimate reason for
13 prints, maybe other than the homeowner's, to be
14 there, if she's messing with her windows at that
15 great height.

16 So Deputy Anthony Creech came in and actually
17 was called in working a hunch, found some prints,
18 lifted them, and did a good job. He got some great
19 quality latent prints. He lifted nine; five of them
20 were actually usable, four others not enough detail.
21 Not his fault. Sometimes the print -- if you touch
22 a window or a surface, sometimes the print is really
23 good and sometimes other factors intervene and the
24 print is not so good. But in this case, Deputy
25 Creech did a great job and he deserves accommodation

1 for that. He lifted five great prints and those
2 prints eventually came back, as you've heard, with
3 an AFIS match to Mr. Jacob Seay who is sitting in
4 this courtroom, this Mr. Jacob Seay.

5 Now, AFIS, the computer system, is not Hal from
6 the movie 2001 Space Odyssey. AFIS does not have
7 consciousness and AFIS is not out to get anybody, so
8 I really don't understand Mr. Williams', the defense
9 attorney's, statement in the opening when he said,
10 let's round up the usual suspects. As you see, AFIS
11 doesn't know who the usual suspects are, but AFIS
12 picked the suspect in this case. And you've heard
13 about that testimony especially through our
14 fingerprint expert, Mr. Duane Johnson. He came in,
15 picked the best latent print, submitted it to AFIS
16 and he got a result, a strong result. AFIS
17 database, 1.9 million people in South Carolina,
18 match comes back. Is it matched to somebody in
19 Greenville? Myrtle Beach? Hilton Head? Nope. The
20 match comes back to a fellow who lives here.

21 Being a conscientious professional, Mr. Johnson
22 follows up on the AFIS match, he produces the
23 ten-print card that was the result of the AFIS
24 match -- and I don't want to get too technical. I'm
25 trying to simplify it. But he takes that ten-print

1 card and he does the old-fashioned thing, he
2 eyeballs that with the latent to make sure it's a
3 match. You've heard he's got 36 years of experience
4 doing it for the FBI, ten more years with the
5 Lexington County Sheriff's Department. He knows his
6 stuff. He's certain that he has a match on that
7 first finger that came in, and that was the left
8 index finger. Not only does he have a match on the
9 left index finger which would have been enough --
10 that would have been enough because every print on
11 every finger of every individual in this world is
12 unique and different, one is enough -- but he takes
13 that ten-print card and he compares it with some of
14 the other latent cards that he's received and he
15 finds another print of the index finger in a
16 different location and he actually finds a
17 duplicate. There's redundancy where the same print
18 was lifted twice. We won't count that other one, so
19 there's not three but two matches to the index
20 finger on the left hand. He finds another match on
21 the left hand and finds another match, ring finger
22 on the right hand. You've got both hands on that
23 remote window, both hands.

24 Only way for those prints to get there is that
25 window being touched. Why were both hands touching

1 that window? Very likely before it was broken,
2 possibly to see if the window is unlocked already to
3 slide it open. Remember Mr. Johnson's testimony
4 about the smear? I'm referring to some of the
5 exhibits that we put into evidence during this
6 trial. Some of them very -- few, I think, got
7 passed around the jury box during the trial and I
8 kind of did it on purpose. I've found that when we
9 pass evidence among the jurors, they tend to focus
10 on that and sometimes they don't listen to what's
11 being said. So I try to avoid that as much as
12 possible. But I assure you that anything that was
13 duly marked into evidence and entered into evidence
14 is going to go with you back into the jury room and
15 you'll have all of the time in the world to look at
16 it there.

17 Now, in focusing on the prints on the window,
18 the deputies in this case -- I think one of them,
19 Anthony Creech, admits they possibly developed
20 tunnel vision. I think that's the term he used.
21 They had these prints on the window, they look at
22 the screen, probably a screen there, they didn't
23 look much at the chair. The chair was probably used
24 to get -- with a window of that height, to get in
25 the window. I said, you must admit, you've got to

1 be in pretty good shape to get into that window.
2 We're not talking somebody elderly committing this
3 type of crime, for example. But they had tunnel
4 vision. And like I said before, they missed several
5 things.

6 I know they were thinking if they had a match
7 at the point of entry the other stuff would pale in
8 comparison. Rightfully, it would. That doesn't
9 mean the other stuff wasn't worth following up on.
10 But as I said, real life is sloppy, and some of the
11 police work on this case was sloppy too. I'm not
12 going to catalog all of the possible sloppy police
13 work in this case, because then you'd have to listen
14 to it twice. I think I can rely on Mr. Williams to
15 oblige me in that respect.

16 But I simply tell you this: When you hear
17 these questions about, well, while didn't you try
18 the light switch? I think you heard a good answer
19 to that. They haven't had success with that, but
20 still. Why didn't you try the doorknobs? Why
21 didn't you try the chair? We don't know what kind
22 of surface the chair was; don't know if it was
23 smooth or some kind of dull matte that wouldn't be
24 susceptible to prints. We should have known that,
25 but we didn't. So when you hear the second-guessing

1 or the would have, should have, could have, some of
2 that is probably right, especially when it deals
3 with the blood and the potential DNA. But the lack
4 of that particular evidence does not negate the fact
5 that Mr. Seay's both hands were in that place where
6 they should not have been. And again, think how
7 intimately connected the break in the window and the
8 theft of the computer that they are. Again, I wish
9 we had the blood. That doesn't negate the
10 fingerprints, doesn't negate the fact that a window
11 was broken and house was burglarized.

12 Now, Mr. Seay was approached, approached by
13 Investigator Garrick, given a chance maybe to
14 explain the prints, if there was a reason for them,
15 probable as it might sound that high up on a window.
16 Mr. Seay had an opportunity to talk to Investigator
17 Garrick and he said, I was never at that address.
18 He denied he was ever there.

19 Judge Russo talked to you about the elements of
20 burglary first degree. That's the crime we're
21 charged with proving to you. A lot of people are a
22 little nervous about serving on juries. They don't
23 have Juror 101 in high school or college and a lot
24 of you were probably wondering how do I do this job.
25 I submit to you that you are uniquely qualified to

1 do this job because you have a tool that you brought
2 with you, and that tool is called common sense.

3 Common sense helps you determine what's
4 reasonable. And reasonableness is the hallmark of
5 this and indeed every criminal case. The State's
6 burden of proof, in fact, is phrased in terms of
7 reasonableness. We have to prove this case beyond a
8 reasonable doubt; not all doubt, not a shadow of a
9 doubt, but a reasonable doubt. And we embrace that.

10 So regarding the elements of burglary in the
11 first degree, the elements are that a home is
12 entered. Clearly this is a home. You heard
13 Ms. Dianna Owens talk about living there with her
14 children. You've heard kitchen mentioned, bedroom
15 mentioned, it's a home. A home is entered without
16 consent. You've heard Diana Owens testify that
17 looking at the picture of Mr. Seay and also looking
18 at him live in the courtroom, she never met him
19 before. He had no business being on her property or
20 in her house. And with an intent to commit a crime
21 therein. Whoever broke that window, left that
22 little bit of blood there, stole a computer. Most
23 burglaries, the intent of the crime of a burglary is
24 to steal something, it's a larceny. There could be
25 some others, but most are larcenies. And here

1 that's borne out by the fact that the computer is
2 missing.

3 Now, in his cross-examination of Ms. Dianna
4 Owens on the witness stand, Mr. Williams, I guess
5 for lack of a better phrase, gave her the third
6 degree about was it a Toshiba, was it an HP? She
7 didn't really seem to know. Well, if that's
8 implying she's making this up, that a computer
9 wasn't really stolen, then I invite you to cut
10 Mr. Seay loose if you think she's lying about
11 something like this. I submit to you it's very
12 possible for you to have an appliance and maybe not
13 quite know what the brand of that appliance was.

14 One of the exhibits -- and I mentioned they're
15 going to go back into the jury room with you -- the
16 10/15/2009 ten-print card is the card, the 2009,
17 that is the card that Mr. Johnson used to make a
18 match in this case. This is the one that was
19 produced by Kirkland Correctional. The Exhibit
20 No. 10 shows left latent -- that is left index
21 finger of the defendant, the card shows the same
22 thing. And we've made mention of another ten-print
23 card. Mr. Haftoglou, by the way, came in and set
24 the foundation for these cards. He's the
25 record-keeper; no tampering, no monkey business

1 going on with the cards. We brought this card in,
2 this is the booking card of Mr. Seay for this
3 burglary crime, and the index finger shows a cut, a
4 heeled cut. The booking is about three and a half
5 months after the crime. Evidence you can consider
6 and give it the weight you think proper.

7 Now, I've really tried to simplify in this
8 closing. It's against my nature. I'm sorry. I'm
9 human too. Why didn't I simplify when I was
10 direct-examining Seraphim Haftoglou? Why didn't I
11 simplify then? Why did I ask him how much does a
12 Live Scan machine cost? 20- to \$40,000. Why did I
13 ask him why S.L.E.D. collects fingerprints? Why is
14 it so important for you to hear that? It's
15 State-mandated. So not only was Mr. Haftoglou here
16 to set the foundation -- it's a legal foundation we
17 have, but I wanted him to impress upon you -- I was
18 hoping the message got through that, to be blunt,
19 fingerprints are a big deal, they're used
20 nationwide. You heard testimony about the FBI, of
21 course. A lot of money, a lot of time and a lot of
22 expense has been spent developing the science and
23 using the science, and that's one reason I went into
24 the things like how much does one of these machines
25 cost.

1 Sometimes lawyers can get a little longwinded
2 because there's a fear here, at least in South
3 Carolina, you and the jury don't get to ask
4 questions, we don't get the dialogue. So sometimes
5 we do go overboard trying to make sure we hit on
6 something that you might want to ask about. And if
7 we fail to be thrilling in the process, my apologies
8 for that. But again, I just want to be thorough,
9 maybe overthorough.

10 And finally, just a minute ago I gave you a
11 simplified definition of course based on Judge
12 Russo's definition of burglary first degree. It's
13 almost an a clinical definition. I left one point
14 out on the doubt of course, I didn't finish; the
15 intent to commit a crime and the defendant has a
16 conviction of two prior burglaries. You heard that
17 through Hope Frick. Enough said about that.

18 It almost seems like a mathematical formula
19 when you talk about burglary that way. And lot of
20 this trial seems mechanical, kind of rote. I want
21 to say this: The victim in this case, Dianna Owens,
22 she knows that emotion has no place in a courtroom.
23 Your verdict is going to be based on cold, hard
24 facts. But still, sometimes it's hard to divorce
25 yourself of your emotions. You saw her on the

1 stand. She's a confident, vibrant young lady, but
2 you saw that this has affected her, it's affected
3 her son. We take this case very seriously.
4 Sometimes we forget that in talking about the
5 legalities and arguing about whether stuff comes in
6 or doesn't come in. Sometimes we forget the human
7 aspect of the case. And I at least wanted to end
8 with the human aspect of the case, and I guess that
9 makes it get a little more complicated.

10 You saw that when she had to relive this, as
11 she testified on the stand, Ms. Owens didn't ask for
12 this. Mr. Jacob Seay broke into her house and stole
13 her computer. He didn't just steal her computer, he
14 stole her peace of mind. Don't stand for this.
15 Tell Mr. Seay he's not going to get away with it and
16 find him guilty of burglary in the first degree.
17 Thank you.

18 THE COURT: Mr. Williams.

19 MR. WILLIAMS: May it please the Court.

20 THE COURT: Yes, sir.

21 MR. WILLIAMS: I hate going last, but I don't
22 hate going last. I hope y'all are not that tired
23 yet. You know, I told you at the beginning about
24 watered-down justice. I probably spent my entire
25 lifetime, my working lifetime, I guess, being a

1 lawyer, mostly representing criminal defendants.

2 And I think it's important to consider facts in a
3 case.

4 You know, we have a system for a reason. We
5 have a system that requires jurors to determine the
6 facts in the case for a reason. We have witnesses
7 testify for a reason. We have judges who make a
8 decision on the evidence for a reason. And it's all
9 pointed at making sure that before someone is
10 convicted, that there's evidence to prove that
11 they're guilty. It's that simple. You want to talk
12 about simple? It's that simple. But it's real
13 complicated.

14 You know, it seems like everybody wants to say
15 that, you know, we got these good police officers,
16 they're just doing their job and, you know, I'm
17 sorry we didn't take the photographs, I'm sorry we
18 didn't check the doorknobs, I'm sorry that we don't
19 know where the screen is, I'm sorry that we didn't
20 follow up on the computer to see who might have
21 pawned it, I'm sorry that we didn't check the blood,
22 but regardless of all of that, I want you to
23 consider the victim has suffered.

24 Your job is not here to punish anyone or to
25 reward anyone. Your job is to make a cold,

1 calculating decision based on what the facts are in
2 this case, because your decision affects Jacob Seay
3 right over there. Jacob Seay. I'm going to just
4 run through a litany of things that was testified to
5 just to point some things out. It may not be as
6 pretty as what you'd like in a closing argument, but
7 to a certain extent, I think you need it. Once you
8 hear it all at one time, you just say, what is this
9 all about? We have Dianna Owens testifying that the
10 glass was behind the sink. You remember all that,
11 splashboard and all that. You get Reggie Ward who
12 is the first witness on the scene, he testifies the
13 glass is in the sink. He says that there's also
14 glass outside. Now mind you, he's the only one to
15 talk about the glass outside.

16 You hear Dianna Owens talk about the blood on
17 the blinds and the blood near the outlet. Reggie
18 Ward testifies about the blood behind the TV set and
19 the blood on the blinds. You got Dianna Owens
20 talking about the bottom left-hand portion of the
21 window that was broken. And for a long time, I
22 thought it was like the windows in my house that
23 have a wooden deal and you break out the bottom
24 portion of that pane. But then you get Reggie Ward
25 who testifies that it's the bottom section. And

1 there's a lot of description about how you unlock a
2 window, about how you break into that bottom part,
3 you have to stand on a chair and you reach up there
4 and unlock it. Then as we get into the story, it
5 turns out it's a whole section that's glass and
6 there's not one lock, but there's two locks.

7 There was some testimony by Reggie Ward that
8 he's six-two, so everything hits him in the middle
9 of chest. And he doesn't recall a screen, yet
10 Ms. Owens recalls a screen but she said there was no
11 damage to the screen. I guess we could assume that
12 there was no screen on the house. If you look at
13 the picture -- most people put screens on all their
14 windows.

15 We asked him about the doors. Well, we assume
16 the door is -- yeah, it is kind of important how you
17 get in and get out. They don't even remember, none
18 of the witnesses who came there remember if the
19 stupid window was up or down. That would probably
20 be the first thing I'd notice. Locked or unlocked,
21 if the door was locked or unlocked. You know, if we
22 had just taken a picture, we might have solved a lot
23 of problems.

24 So we talk about pry marks. What's the
25 importance of pry marks? If it had a screen, how do

1 you get the screen off? Does it hook on there? Do
2 you pop it up? But nobody knows anything about pry
3 marks. And there's a lot to do about whether or not
4 the victim knows my client or doesn't know my
5 client. Why didn't somebody ask her when she moved
6 in? There was testimony that she knew the guy that
7 lived there before her.

8 So did anybody ever answer the question about
9 how long fingerprints, if there are fingerprints,
10 could remain on a piece of glass? Well, we move to
11 Deputy Creech and he said, well, you know,
12 fingerprints, anybody can do fingerprints. A lot of
13 times you don't do fingerprints because you learn
14 that you get dirty doing fingerprints. You remember
15 him saying you get dirty because of the powder?
16 Well, I'm sure my client thought that would be very
17 entertaining to him if he's convicted about the fact
18 that somebody was concerned about how dirty they
19 got. There was nothing in the investigator notes
20 from Deputy Creech about a chair whatsoever. He
21 comes out there and all he does, all he does, is he
22 gets the glass and he does some sort of fingerprint
23 analysis on the glass; he doesn't take photographs,
24 he doesn't look at anything else. You ask him about
25 fingerprints, he says, I don't know how many points

1 are showing on there, I don't know how many points
2 constitutes a match. I guess the only important
3 thing about the whole thing is that the prints, if
4 there are prints, are on the outside of the glass,
5 not on the inside of the glass.

6 So now the blood comes in because, you know, I
7 guess the issue is blood. I don't know what the
8 blood means. I mean it's one of those -- I don't
9 want to use the phrase red herrings, but it
10 certainly is a piece of information which we all
11 just assume because we take -- we take this little
12 bit of blood on a blind and we drive it down this
13 chain and then we have somebody who deals with
14 fingerprints and he says, well, there's a scar on
15 Jacob Seay's finger, so we take that, put it in the
16 train and we just drive it all the way around the
17 block. If there's blood on the blinds, if there's
18 blood behind the TV set, if there's blood behind the
19 switch, if it had been analyzed, it would have told
20 us whose blood it was. I don't know that we know
21 that somebody cut their hand from breaking in there.
22 There's no blood on the piece of glass that was
23 analyzed.

24 You see, this is not simplifying a case; this
25 is assuming. People's lives are not based on

1 assumptions, they're based on evidence and facts and
2 considering the evidence. If you know that somebody
3 stands on a chair -- you remember Creech? He's the
4 one that talks about standing on the chair. He's
5 six-one, the other officer was six-two, and he
6 didn't have to stand on a chair, didn't know
7 anything about a chair. Hes six-one, he stands on a
8 chair to do his work. Well, you saw me move that
9 chair over there. It wasn't complicated. If you
10 lift something up, you put more pressure on it. How
11 do you take a fingerprint? You roll your finger,
12 you put pressure on it. Why not take a fingerprint
13 impression of the chair if you think that's how the
14 person got into the house?

15 You know, I'm no fingerprint analysis person.
16 I don't take fingerprints. I'm trying to use what I
17 hope all 12 or 13 of y'all have and that's common
18 sense. It makes sense to do that. He says
19 procedurally they should have taken photographs.
20 Again, he doesn't know if it's locked or not locked.
21 Well, the red herring here really is Investigator
22 Garrick. It's his file, it's his case file. He
23 gets involved after everybody else screws the case
24 up. I mean, he does. He gets out there, the blood
25 is already washed off, two or three days later, he

1 can't take fingerprints now. He's got a report
2 about somebody stealing a computer. He doesn't go
3 to a pawnshop, he doesn't try to find out if there's
4 some sort of serial number. Do you think law
5 enforcement goes to pawnshops and asks them about
6 computers that are turned in? Because it's not a
7 question of whether or not somebody stole a computer
8 or didn't steal a computer, it has to do with
9 identifying the correct culprit. Maybe if he went
10 to a pawnshop, somebody turned it in and it was
11 somebody else, then we'd say, oh, either Jacob Seay
12 did it and had it turned in by somebody -- well,
13 maybe it's the other guy that did it. But we can't
14 even prove that because no one even checked on that.
15 Did you hear someone say that?

16 Garrrick, he's testifying, Investigator Garrrick,
17 and he talks about -- I don't know if you picked up
18 on that -- we got the social security number wrong.
19 And then he was corrected by the solicitor and he
20 said, well, that would have been a different person.
21 People make mistakes. But we don't convict people
22 because we just figure they must be guilty. What he
23 contributes though is he says Jacob Seay lives two
24 and a half miles away and he does this deal about
25 showing you where Jacob Seay lives and where he did

1 live. He says two and a half miles, he must have
2 done it. How many thousands of people live there?
3 Oh, yeah, there's thousands. Would it have been
4 more beneficial to the have the photographs, the
5 fingerprints, the blood, all the other things we
6 talked about? Well, yeah, he admits that it would
7 have been good to have that. But, I don't know,
8 since he lives two and a half miles away, that's
9 proof enough.

10 And he says that he confronted my client. My
11 client said, I don't think I've been to 190 whatever
12 that address was, I haven't been there. It would be
13 nice if he kind of expanded on that about what the
14 house looked like, where it was. I can't tell you
15 what the number of the house that's next to my house
16 is. But he said he hadn't been there.

17 You know, there's one thing that really bugs me
18 in this case and I've yet to hear an explanation for
19 it. You know what I can do? Sunday when I'm in
20 church, you know what I can do? I can ask about it
21 because the answer is obviously divine intervention.
22 That was the remark of the expert, divine
23 intervention. How does the investigator go out and
24 interview the alleged victim before he gets the
25 report? Divine intervention. I hope I'm not being

1 sacrilegious to you, because I'm not trying to be.
2 But that is no answer. If there were a legitimate
3 answer to that question, that investigator could
4 have taken the stand right after that came out. Did
5 you hear him do that? Did you hear him testify why
6 he was interviewing my client before he even knew my
7 client could possibly be involved? Yeah, I kind of
8 think Casablanca might apply here a little bit.

9 Some of the other stuff is concerning. Candy
10 Kyzer, when she introduces the chain of custody
11 items -- and Candy has been over there a long time.
12 I just don't like the procedure, and hopefully it's
13 not one that's going to stay in place. She hands in
14 a document and she says, well, this is not signed by
15 the officer who turned in the evidence, but his
16 would have been signed, the original is going to be
17 scanned in or something like that. Been nice to
18 look at that written signature, wouldn't it? You
19 say, why, Theo? Why? Why is it important to sign
20 stuff? Well, lo and behold when we start checking
21 that chain of custody and I have the expert on the
22 stand, he says, I didn't receive that evidence on
23 that date and that's not my signature. Did you hear
24 him say, that was not my signature? I don't know.

25 Well, I guess what really bugs me, what really

1 bugs me -- and this is going to offend some people,
2 I know. I went to Clemson and I was going to be a
3 school teacher. I happen to know that the judge
4 might have been a teacher at one point in his life,
5 my mama was a teacher, and I took a lot -- I went
6 through school, I took a lot of tests, because I
7 learned in life that the way you judge something is
8 you take a test on it. That's how you determine
9 whether or not you know the information or don't
10 know the information. I'm finding out that people
11 don't test anymore. People don't test fingerprint
12 people, people don't have standards anymore. They
13 say a match of one is just as good as a match of 50.
14 See, that's what really bugs me, if it got down to
15 it. You know, if the whole thing is that there are
16 no standards anymore. We don't have a test to show
17 things. Well, how do you know if it's true? We
18 just assume.

19 Well, Mr. Haftoglou, who is the guy with
20 S.L.E.D. and AFIS, he testified that there were no
21 standards on the match. He said there could be one
22 or 50. So what they do, and that's why I took some
23 time and let the fingerprint guy talk about whatever
24 he want to talk about, I asked him -- because the
25 AFIS guy had let it out of the bag. They don't just

1 pick out one suspect, they print out a list of
2 suspects. See, I bet when you watch CSI and you
3 watch NCIS, you're thinking, oh, my goodness, that's
4 marvelous, they can just do all this stuff. Well,
5 that just picks out a list of people. This
6 particular list of people who this latent print
7 matches with AFIS, it doesn't match, doesn't match
8 at all. They assign a number.

9 And as you look at the numbers, depending on
10 how good -- I guess you thought I screwed up. I
11 know a lot of my colleagues thought I screwed up
12 when the guy was talking about, well, the one that's
13 second down there happens to be your client too.
14 Well, of course I knew that. I knew that he had
15 pled guilty to two charges, but it's a different
16 number, it's a lower number. And I said, well, why
17 would it be a lower number? He said, well, maybe
18 the print wasn't as good, maybe that's why you got a
19 lower number. That's the key. The key is the
20 number, the arbitrary number that AFIS comes up
21 with. So if you look at these numbers, it's some
22 8,000, some 7,000, some 6,000, what the heck does
23 that mean? Nobody knows. See that's the key:
24 Nobody knows, it's a secret. I guess it's covered
25 by the patent on the machine. The fingerprint guy

1 can't tell you what it means. He doesn't know what
2 that number means. It's a random number assigned to
3 what the machine picks up depending on how good the
4 print is. And we're only dealing right here with
5 anybody who's been in jail. What about all those
6 other people?

7 Well, I guess the last one that testified was
8 Johnson. One of the comments by the solicitor was
9 there's no monkey business going on with the
10 evidence. I was looking on my computer this morning
11 and it was talking about fingerprint analysis and
12 experts on fingerprint analysis, and it talked about
13 whether it's a science or not a science, whether or
14 not you can rely on it or not rely on it. And it
15 started off with an amusing quote because it was in
16 Chinese. And I read the English translation of it
17 and it was, even a monkey falls out of a tree. I
18 thought to myself, what an unusual translation of a
19 Chinese phrase. Well, the next sentence underneath
20 it says, pride goeth before the fall. The point the
21 guy was making is that experts are people and we all
22 make mistakes. You heard Johnson testified that,
23 well, yeah, he made a mistake several years ago and
24 he did it when he was -- he was reprimanded for it,
25 but he's never made another mistake since then,

1 never, at least insofar as analysis. Well, we all
2 make mistakes. I've been married three times. We
3 all make mistakes. Nobody is perfect. All you can
4 testify to is what you know. You can't just take
5 the stand and say, well, I've never made another
6 mistake. Well -- and I guess you thought it was
7 kind of cute when I started talking about the Madrid
8 thing. Well, this is right after he started talking
9 about, well, we changed all of the procedures with
10 the FBI. Yet you have three guys with the FBI come
11 down there and they analyze it and they say -- or
12 he's the one, turns out, two weeks later that the
13 true culprit is some terrorist lawyer in Portland.
14 What are the odds of that? I don't know what that
15 means; either all terrorists are lawyers or all
16 lawyers are terrorists. But he does remark that
17 there's no certification on the lab in Lexington,
18 there's no manual for the lab in Lexington, couldn't
19 explain how someone talked to the victim before he
20 did his work, and he again says there's no number of
21 matches that qualify, and again no testimony as to
22 how long the prints were there. I could go on and
23 on, but I'm not.

24 This is a serious job. I may have made a
25 little light, that's my nature a little bit, to

1 say -- you may say it's sarcasm or what have you.
2 This is a serious job. My client's future is in
3 your hands. All I ask is that you apply the law
4 that his Honor has given you and you make the
5 decision that the State has proven this case beyond
6 a reasonable doubt, because that's the only thing
7 that protects us is this jury system and that
8 concept. Thank you.

9 THE COURT: All right. Ladies and gentlemen,
10 if you would step back into the jury room. Don't
11 begin your deliberations until you receive the
12 exhibits and the notebook.

13 (The jury retires to the jury room at 2:07 PM.)

14 THE COURT: All right. First, are there any
15 exceptions or objections to the charge that the
16 Court gave the jury earlier?

17 MR. ELAM: None from the State.

18 MR. WILLIAMS: No, Your Honor.

19 THE COURT: All right. If you get with
20 Bethanie, make sure that all of the exhibits are in.
21 I know there were some on the podium. Make sure
22 they get back over here.

23 (The jury begins deliberations at 2:07 PM.)

24 THE COURT: I had the jury pass out a note.
25 And I can read the first question, and the second

1 one I don't even think is a question, I don't even
2 know what it is, but I'll let y'all look at it.

3 The first question, it says: If we have to
4 make an assumption on the facts that were given,
5 does that constitute reasonable doubt? And I think
6 the only response I can give them -- I think it says
7 in my charge that they're entitled to make whatever
8 inferences that they feel are appropriate to make
9 based on the evidence. But reasonable doubt, they
10 just need to go to the section in my charge on
11 reasonable doubt and revisit it. I mean, I guess
12 what I'm saying is, I can't answer that yes or no.
13 That's not a yes-or-no question, or at least it's
14 not appropriate for me to respond to it in a
15 yes-or-no fashion. They have a copy of the charge
16 back there with them. I think all I can do is
17 instruct them to revisit the charge as to dealing
18 with reasonable doubt and have them make the call.
19 I don't think I can give them any further guidance
20 on that.

21 MR. WILLIAMS: I agree, Your Honor.

22 THE COURT: Solicitor, do you agree with that?

23 MR. BELL: Your Honor, did you have a specific
24 section dedicated towards both direct and
25 circumstantial evidence? I can't remember.

1 THE COURT: My charge is broken down. There's
2 a section on direct and circumstantial evidence and
3 there's a section on reasonable doubt.

4 MR. BELL: Your Honor, I would just request if
5 you direct them towards reasonable doubt, you also
6 direct them towards direct and circumstantial
7 evidence portion as well.

8 MR. WILLIAMS: Your Honor, I'm concerned about
9 the use of the juror's word assumption. And I'd be
10 content with a charge referring them to the
11 reasonable doubt issue because that's what they're
12 referring to is how they make decisions, it appears
13 on the face of it.

14 THE COURT: Yeah. I mean, it doesn't mention
15 direct and circumstantial evidence.

16 MR. WILLIAMS: It doesn't question how they --
17 it doesn't question whether something is direct or
18 whether or not it's something that is
19 circumstantial. So they've got those matters at
20 least resolved in their head. I think a comment on
21 that would be going further than what they've asked.
22 So I have no objection to the reasonable doubt.
23 What's the other sentence after that, Your Honor?

24 THE COURT: All right. I'm going to just
25 verbatim -- and I don't know that I can even read

1 part of it. It just says: To D-E-F of B-U-R,
2 something, something, degree. So I'm wondering if
3 they're trying to ask for the definition of burglary
4 first.

5 MR. WILLIAMS: That's in the charge.

6 THE COURT: I can only direct them to that as
7 well.

8 But y'all look at this to tell me if y'all
9 think -- I mean, I hate to -- maybe I should send it
10 back and say clarify your second question.

11 MR. WILLIAMS: I would be willing to stipulate,
12 if the solicitor would, that D-E-F of B-U-R in first
13 degree is definition of burglary. I mean, it
14 appears to be.

15 MR. BELL: I can't argue with that.

16 THE COURT: Well, what I'll do is I'll just
17 respond by saying: If Question 2 is asking for a
18 definition on burglary first, please refer to the
19 charge.

20 MR. WILLIAMS: Yes, sir.

21 THE COURT: Basically for both of those
22 questions, I have to ask them, I think, to refer to
23 the charge.

24 MR. WILLIAMS: Yes, sir.

25 MR. BELL: Your Honor, I would like an

1 opportunity to respond.

2 THE COURT: Go ahead.

3 MR. BELL: I think as it pertains to the issue
4 of assumption and exactly what they mean, I think
5 under circumstantial evidence your charge does point
6 out that circumstantial evidence is proof of a chain
7 of facts which indicate the existence of a fact. It
8 goes on to say that it may establish collateral
9 facts from which the main fact may be inferred,
10 that's why I think that's irrelevant.

11 THE COURT: And then it specifically states
12 circumstantial evidence is based on inference and
13 not on actual personal knowledge.

14 MR. BELL: And that's only why I'd request if
15 you do point them to reasonable doubt, you also
16 point them to review the definitions of types of
17 evidence.

18 MR. WILLIAMS: Your Honor, they're only asking
19 for two items; reasonable doubt and definition of
20 burglary first.

21 THE COURT: Well, the -- I don't know if that's
22 what they're doing because this is kind of a
23 two-part question. It's like if we have to make
24 assumptions on the facts that were given, does that
25 constitute reasonable doubt?

1 MR. WILLIAMS: Well, the short answer is yes.

2 THE COURT: Well, that would be incorrect.

3 That would be the incorrect answer.

4 MR. WILLIAMS: I understand. We can't tell
5 them that.

6 THE COURT: The short answer would be, no, it
7 doesn't.

8 MR. WILLIAMS: Oh, you're right. You're right.
9 I'm taking it the wrong way.

10 THE COURT: Well, you're taking it from a
11 defense standpoint. I get that.

12 No. But the correct answer is no. But to say
13 no with no explanation is --

14 MR. WILLIAMS: Well, they're not supposed to
15 assume anything, Your Honor. See, that's what
16 bothers me, because using this word assume --

17 THE COURT: You can infer from circumstances
18 though. That's what circumstantial evidence is all
19 about. They're using the word assume; you could
20 easily substitute the word infer. I mean, it would
21 be a lot easier if she was out here explaining to me
22 exactly what she means. But when they just write it
23 like this, I don't know what to say.

24 Here's what I'm going to do: I'm just going to
25 refer them to the charge. I'm going to refer them

1 to the charge on circumstantial evidence and
2 reasonable doubt, and then I'm going to say if
3 Question 2 is asking for the definition of
4 first-degree burglary, please refer to that section
5 of the charge. I don't know what else to do.

6 MR. WILLIAMS: I have no objection, Your Honor,
7 if you refer them to re-read the charge. But to
8 point out circumstantial evidence, you're choosing a
9 type of evidence which you want them to look at
10 verses direct evidence.

11 THE COURT: No, no. I'm not telling them to
12 look at circumstantial evidence. I was going to
13 refer them to the section on direct/circumstantial
14 evidence, because that's how it's captioned.

15 MR. WILLIAMS: The whole section?

16 THE COURT: The whole section. What I was
17 going to say is the exact way I've got it -- because
18 they're got these areas captions. And I would say
19 refer to the direct evidence/circumstantial evidence
20 section of the charge as well as the reasonable
21 doubt section of the charge in responding to
22 Question 1.

23 MR. BELL: No objection from the State, Your
24 Honor.

25 THE COURT: And Question 2, please refer to the

1 burg first section of the charge.

2 MR. WILLIAMS: What about credibility of
3 witnesses, Your Honor?

4 THE COURT: What about it? They didn't ask
5 about that.

6 MR. WILLIAMS: Well, I guess it's just easier
7 for me, Your Honor. I guess I would -- I have no
8 objection if the Court --

9 THE COURT: I'd do it by captions, not by
10 directing them to a particular sentence or a
11 particular part of the section. I'd just say, your
12 question seems to address -- your question would
13 seem to be addressed by the Court's charge under
14 caption direct and circumstantial evidence as well
15 as the definition of reasonable doubt.

16 MR. WILLIAMS: Your Honor, from the defendant's
17 point of view, they're asking what is reasonable
18 doubt.

19 THE COURT: Well, that would be if you just
20 looked at the second half of the question.

21 Their question is: If we have to make an
22 assumption on the facts that were given, does that
23 constitute reasonable doubt? Now, as we discussed,
24 the short answer is no; the lengthy answer is, well,
25 tell me what it is you need to assume, da, da, da,

1 and all of that, which is improper.

2 MR. WILLIAMS: Yes, sir.

3 THE COURT: But you yourself, you even argued
4 in your motion for directed verdict that this is a
5 circumstantial evidence case. It's actually both.
6 You've got both. But -- and so it seems to me to
7 respond fully to their question that they need to
8 look at the law as it relates to direct and
9 circumstantial evidence and reasonable doubt to
10 answer their query, because I don't know what they
11 mean. I just don't know what they mean by that.

12 MR. WILLIAMS: Could we ask them to define
13 their question more clearly?

14 THE COURT: I think you definitely need to do
15 that on number two. Well, see, no, because on
16 number one I don't want them to write and tell me
17 what it is they're doing. I mean, that would not be
18 proper.

19 MR. WILLIAMS: Yes, sir.

20 THE COURT: I'm going to do that. And if you
21 object to the direct or circumstantial evidence,
22 I'll certainly note that objection. And for
23 purposes of responding to them, I'm going to assume
24 that number two is asking for the definition, and
25 they can send something back out if it doesn't.

1 MR. BELL: No problem from the State.

2 THE COURT: I'M going to write my response and
3 read it to y'all before I send it back.

4 What I've written here is: As to Question 1, I
5 can only direct you to the sections of my charge
6 captioned direct evidence/circumstantial evidence
7 and the, quote, reasonable doubt, end quote, to give
8 you guidance. As to Question 2, if the question is
9 to define burglary first degree, I would direct you
10 to the section captioned burglary first degree.

11 And we may get something back. So I don't
12 know.

13 If you could return this and ask the Madam
14 Forelady, after they've looked at it, to please keep
15 that with the notebook where my charge is because I
16 need that back.

17 THE BAILIFF: Yes, sir.

18 THE COURT: As a matter of fact, real quick,
19 Bethanie, let me go ahead and get you to mark this
20 as Court's Exhibit 4.

21 All right. We'll remain at ease then and I'll
22 let you know what, if anything, we get back. Just
23 for the record, I want to again note the defense's
24 objection to the reference to the direct and
25 circumstantial evidence section.

1 (Court's Exhibit No. 4 marked for
2 identification.)

3 MR. WILLIAMS: Thank you, Your Honor.

4 MR. BELL: Thank you, Judge.

5 (The jury continues deliberations at 4:26 PM.)

6 THE COURT: All right. We've got word that
7 they are -- where's Mr. Williams?

8 MR. BELL: Your Honor, I believe he had to run
9 to the restroom.

10 THE COURT: I got word that they're deadlocked
11 or they're -- so I'm going to bring them out, I'm
12 going to give them an Allen charge and see if that
13 may help.

14 Does the State have any objection to that?

15 MR. BELL: No, Your Honor.

16 THE COURT: Defense, any objection to that?

17 MR. WILLIAMS: I have no legal objection to
18 that, Your Honor. You know, from all these years,
19 I've never known it to be good for me, but, you
20 know, it is what it is. I think that's what we do.

21 THE COURT: Yeah. Oddly enough, I went for
22 many, many years and never had one work. I mean,
23 after you give them the charge, they remain
24 deadlocked. But recently I've had it come back both
25 ways; they've had decisions and, you know -- so.

1 MR. WILLIAMS: I meant they never come back in
2 my favor.

3 THE COURT: That's what I'm saying. I've had
4 them come back as a defense verdict, I've had them
5 come back as a State's verdict. So I don't know.
6 But anyway, I think it's appropriate. Let's get
7 them out.

8 (The jury enters the courtroom at 6:45 PM.)

9 THE COURT: Okay, folks. I got your note. And
10 what I'm going to do is -- we have -- I have a
11 charge that Court Administration has developed for
12 this very situation. I'm going to share this charge
13 with you and ask you to just please give me your
14 attention as I share this with you.

15 Ladies and gentlemen, you've stated that you've
16 been unable to agree on a unanimous verdict in this
17 case. And as I instructed you earlier, the verdict
18 of the jury must be unanimous. Now, when a matter
19 is in dispute, it's not always easy for even two
20 people to agree. So when 12 people must agree,
21 obviously it becomes more difficult. In most cases,
22 absolute certainty cannot be reached nor is it
23 expected; however, you have a duty to make every
24 reasonable effort to reach a unanimous verdict.

25 In doing this, you should consult with one

1 another, express your own views, listen to the
2 opinions of your fellow jurors, tell each other how
3 you feel and why you feel that way, and discuss
4 those differences and do so with open minds.
5 Although the verdict of a jury must be unanimous,
6 every one of you has the right to your own opinion.
7 The verdict that you agree on must be your verdict
8 and the result of your own convictions, and you
9 should not give up your firmly held beliefs merely
10 to be in agreement with your fellow jurors.
11 However, the majority of you should consider the
12 minority of you's opinion and your position, and the
13 minority of you should consider the majority's
14 opinion. You should carefully consider and respect
15 the opinions of each other and then re-evaluate your
16 position for reasonableness, correctness and
17 impartiality. You must lay aside all outside
18 matters and re-examine the questions before you
19 based on the law and the evidence in this case.

20 Your verdict in the case cannot be based, as I
21 told you earlier, on sympathy, compassion, prejudice
22 or emotion or some other consideration that's not
23 found in the evidence. If you do not agree on a
24 verdict in this case, then I must declare a
25 mistrial. In that case, it does not mean that

1 anybody wins. It simply means this: That at some
2 point in the future, I will try this case with some
3 other jury sitting right where you're sitting right
4 now, the same participants will come and same
5 lawyers will ask basically the same questions and
6 get basically the same answers. And we'll go
7 through this whole process again.

8 Now, you were selected in the same manner and
9 from the same source as any future jury will be
10 selected. And there's no reason for me to suppose
11 or to believe that this case will ever be submitted
12 to 12 more intelligent, impartial, conscientious and
13 competent jurors than yourselves or that a more
14 clearer picture of evidence will be produced from
15 one side or the other. Therefore, I'm going to ask
16 you, if you would, to return to your deliberations
17 with this -- these thoughts and this charge in mind,
18 with the hope that you can arrive at a verdict
19 within a reasonable period of time.

20 That's the charge that Court Administration has
21 approved and which I wanted to share with you based
22 on your last note. So if you would, Madam Forelady,
23 and members of the jury, if you go back in the jury
24 room, keep in mind the things that I just shared
25 with you and make it -- make another effort, if you

1 can, to reach unanimous verdict.

2 If you cannot, Madam Forelady, if the consensus
3 of the panel after a reasonable period of time is
4 that you are hopelessly deadlocked, then you need to
5 inform that matter to the Court. But I would ask
6 that you please return back to the jury room with
7 these thoughts in mind in hopes that you may be able
8 to reach a unanimous verdict. Okay?

9 (The jury retires to the jury room at 6:50 PM
10 to continue deliberations.)

11 THE COURT: Any objections or exceptions to the
12 Allen charge from the State?

13 MR. BELL: No, sir.

14 THE COURT: Anything from the defense?

15 MR. WILLIAMS: Your Honor, I think I would be
16 remiss if I didn't move for a mistrial on the basis
17 that -- I'm sure the Court saw what I saw. One of
18 the jurors was crying.

19 THE COURT: In all candor, I did not see that,
20 but I wasn't really studying their faces. I was
21 pretty much focused on reading this.

22 MR. WILLIAMS: I don't know how you address
23 that issue. Obviously you have a juror in distress.
24 It was the young lady on the front row, Your Honor.

25 MR. BELL: Your Honor, I have no problem on

1 behalf of the State saying she was crying. We
2 certainly don't think that that's a factor that can
3 play into a mistrial, of course. In the course of
4 debating a topic or discussing facts in a case,
5 things may get heated or otherwise emotional, but I
6 certainly don't think it's prejudicial to that one
7 juror in any way.

8 THE COURT: Well, here's the thing: And I
9 didn't notice that. My law clerk at first noticed
10 that and thought that that may be the case, but then
11 she said the more she looked at her, she may have
12 looked like that she was just tired. But in any
13 case, whether she was or not, I'm going to
14 respectfully deny your motion.

15 What I would expect is that, you know -- and as
16 it says in the charge, you know, you're not to give
17 up your firmly held beliefs. And so I just think at
18 some point -- and that's why I said at the end, let
19 me know if you're hopelessly deadlocked, because if
20 that's the case, if I got word that they're
21 hopelessly deadlocked, I'm not going to expect them
22 to sit back there and continue to deliberate. So we
23 may get that message shortly, depending on that
24 juror. And, again, I don't know what that situation
25 is.

1 And let me ask this -- and I certainly note
2 your exception, Mr. Williams, to that ruling. But
3 as to the charge itself, is there any objection?

4 MR. WILLIAMS: No, sir. The charge was
5 properly worded.

6 THE COURT: Okay. And I certainly understand
7 your motion, and I'm going to respectfully deny that
8 at this time and note that exception.

9 MR. WILLIAMS: Yes, sir.

10 THE COURT: Okay. Let me tell you my thought
11 process, folks, just -- and if you have a different
12 thought about it, let me know. I was going to give
13 them about 15, 20 minutes or so, and if we don't
14 hear anything from them, then I was going to ask
15 Hope to just poke her head in and say, I don't want
16 to interrupt your deliberations, however, the Judge
17 is just inquiring does he need to order some food or
18 do you think you'll have a verdict in a reasonable
19 amount of time, and get their response to that.
20 Because I don't want them to sit back there, you
21 know, thinking, we're hungry and they're not going
22 to let us eat until we get a verdict. So, as a
23 matter of fact, I'm thinking about not waiting too
24 terribly long.

25 Hope -- and speak up, either side, if you got

1 an objection to this. My thought is maybe go on
2 back there and just say, I don't mean to interrupt
3 your discussion, but the Judge has asked me to ask
4 y'all if you think you're going to need some food,
5 he's happy to order it at this time. Okay?

6 MR. WILLIAMS: We have no objection to that,
7 Your Honor.

8 THE COURT: How about it, Solicitor? Any
9 objection to that?

10 MR. BELL: No, sir.

11 THE COURT: She's going to ask them right
12 now -- or basically just inform them that if they
13 think they're going to need food, that I'll order
14 it.

15 MR. BELL: Nothing from the State, Your Honor.

16 THE COURT: Okay.

17 (Pause in the proceedings from 6:55 PM - 9:02
18 PM while the jury continues deliberations.)

19 THE COURT: All right.. I'm told the jury has a
20 verdict. I sit here, as all of you do, and have no
21 idea what it may be. But I just ask that whatever
22 the verdict of the jury is, that it just be received
23 with the proper professionalism and respect that the
24 jury deserves. I say this all the time: I don't
25 ask anyone to agree with the jury, I just ask that

1 the verdict be received in a professional manner,
2 even if you disagree with them.

3 But anyway, is the State ready to receive the
4 jury's verdict?

5 MR. BELL: The State is ready, Your Honor.

6 THE COURT: Is the defense ready?

7 MR. WILLIAMS: The defense is ready, Your
8 Honor.

9 THE COURT: All right. Please bring the jury
10 in.

11 (The jury enters the courtroom at 9:04 PM.)

12 THE COURT: Ladies and gentlemen, Ms. Taylor,
13 has the jury reached a unanimous verdict?

14 MS. FORELADY: Yes, Your Honor.

15 THE COURT: Would you please pass that to the
16 clerk. Thank you.

17 All right. Madam Clerk, if you would publish
18 the jury's verdict.

19 THE CLERK: Indictment 2012-GS-32-349, *The*
20 *State vs. Jacob Heyward Seay*, indicted for burglary
21 in the first degree, we the jury find the defendant,
22 Jacob Heyward Seay, guilty of burglary in the first
23 degree, and is so signed by the forelady, dated May
24 7th, 2014.

25 Madam Forelady, ladies and gentlemen of the

1 jury, if this is your verdict, please indicate, each
2 of you, by raising your right hand.

3 THE JURY (collectively): (Hands raised).

4 THE CLERK: All hands raised, Your Honor.

5 THE COURT: All right. Thank you very much
6 ladies and gentlemen.

7 Anything further for the jury?

8 MR. WILLIAMS: Yes, Your Honor. We would
9 request polling.

10 THE COURT: All right. Madam Clerk, if you
11 would, please.

12 THE CLERK: By number?

13 THE COURT: Yes, by number.

14 THE CLERK: Okay. Ladies and gentlemen, what
15 I'll do is I'll call your jury number. Hold your
16 hand up where I can recognize you. I will ask you,
17 as to the verdict, was this is your verdict and is
18 it still your verdict? At that time, please
19 respond.

20 Number 298?

21 JUROR NO. 298: Yes.

22 THE CLERK: As to the verdict, was this your
23 verdict and is it still your verdict?

24 JUROR NO. 298: I'm -- I'm giving you the final
25 verdict?

1 THE CLERK: Yes.

2 THE COURT: Yes, ma'am.

3 JUROR NO. 298: Yes.

4 THE CLERK: 271, as to the verdict, was this
5 your verdict and is it still your verdict?

6 JUROR NO. 271: Yes.

7 THE CLERK: 164, as to the verdict, was this
8 your verdict and is it still your verdict?

9 JUROR NO. 164: Yes.

10 THE CLERK: 150, as to the verdict, was this is
11 your verdict and is it still your verdict?

12 JUROR NO. 150: Yes.

13 THE CLERK: 289, as to the verdict, was this
14 your verdict and is it still your verdict?

15 JUROR NO. 289: Yes.

16 THE CLERK: 187, as to the verdict, was this
17 your verdict and is it still your verdict?

18 JUROR NO. 187: Yes.

19 THE CLERK: 58, as to the verdict, was this
20 your verdict and is it still your verdict?

21 JUROR NO. 58: Yes.

22 THE CLERK: 288, as to the verdict, was this
23 your verdict and is it still your verdict?

24 JUROR NO. 288: Yes.

25 THE CLERK: 193, as to the verdict, was this

1 your verdict and is it still your verdict?

2 JUROR NO. 193: Yes.

3 THE CLERK: 268, as to the verdict, was this
4 your verdict and is it still your verdict?

5 JUROR NO. 268: Yes.

6 THE CLERK: 116, as to the verdict, was this
7 your verdict and is it still your verdict?

8 JUROR NO. 116: Yes.

9 THE CLERK: 244, as to the verdict, was this
10 your verdict and is it still your verdict?

11 JUROR NO. 244: Yes.

12 THE CLERK: All jurors polled, Your Honor.

13 THE COURT: All right. Thank you very much,
14 Madam Clerk.

15 Ladies and gentlemen, I want to thank you for
16 your work this week. It's -- I've never served on
17 jury duty, so I can't relate to how difficult the
18 task is, but I just imagine what it would be like.
19 But I will tell you this, that the service that you
20 give to your community by working on jury duty is --
21 some people have said that it's second only to
22 serving your country in the military. And I think
23 I'm one of those people that would probably agree
24 with that. Our system of justice in this country is
25 the best there is in the world, and it's that way

1 because of folks like you.

2 What I'm going to do in just a moment is I'm
3 going to proceed to sentencing. And I always tell
4 members of the jury, you worked this case, you heard
5 this case, I'll recognize the solicitor and the
6 solicitor can then share with the Court if there's
7 any prior record other than what you've heard here,
8 if there's any other prior record, and then the
9 State's position with regards to sentencing. And
10 then I'll hear from the defense and anything they
11 wish to share with the Court. If you'd like to stay
12 and be here for sentencing, I welcome that. I also
13 know that you've worked hard all day and the hour is
14 late and if you'd like to be excused, you are
15 excused as well. I always want to make that
16 available to jurors and I don't -- and I always say
17 this too, because when I first started doing this,
18 some jurors would look around and if most of the
19 jurors stayed but you could tell some wanted to
20 leave, they would all stay, or if some wanted to
21 stay but most of them got up and left, then
22 everybody got up and left. So I tell people, you
23 know, you worked this case. If you'd like to remain
24 while we go through the process of sentencing, I
25 welcome you to do that; I also welcome you to go

1 home, if that's what you want to do. I don't expect
2 anyone to stay and I don't expect anyone to leave.
3 I really want it to be a decision that you make.

4 But I want to thank you for your service. I
5 want to tell you that this concludes your service
6 for the week. We don't have any other cases to try
7 this week. We do have work to do; we still have
8 guilty pleas and things of that nature that we're
9 going to be taking care of. But the things that are
10 left or remain on docket do not require the jury for
11 that purpose.

12 So anyway -- and, Hope, have you already, as
13 far as any work excuses, things of that nature
14 that -- okay. So, folks, I'm going to -- is the
15 State ready to proceed?

16 MR. BELL: Your Honor, may we approach?

17 THE COURT: Yes.

18 (Sidebar conference.)

19 THE COURT: I'm going to hear from Mr. Williams
20 with regards to any motions to the reading of the
21 jury's verdict.

22 Mr. Williams, I'll be happy to hear from you,
23 sir.

24 MR. WILLIAMS: Your Honor, we'd renew all of
25 our prior motions that we made; that would be the

1 motions for directed verdict at the end of the
2 State's case at the conclusion of all the evidence,
3 as well as renewing the motions that we made for
4 mistrial. And the basis being that the evidence
5 presented only raised a mere suspicion of guilt and
6 falls far from the standard that should have been
7 applied in regards to the guilt of my client.

8 In regards to the mistrial motion, Your Honor,
9 it has to do with -- had to do with the fact that I
10 think it was acknowledged that one of the jurors was
11 under stress during the deliberations, because she
12 was crying about it. And we just felt that at that
13 time a mistrial should have been called. And we
14 would -- and of course when I say renew all motions,
15 I guess that would also apply to -- in regards to
16 any instructions that the Court may have given
17 during any questions that came from the jury.

18 THE COURT: Sure. Okay.. Well, with regards to
19 the motion regarding a mistrial, I'm going to
20 respectfully deny that. As I acknowledged to the
21 jury, jury service is difficult and it's not unusual
22 to see people who are emotional. It's a difficult
23 job to do.

24 As to the evidence in the case and -- you know,
25 I'm -- it doesn't matter what the Court thinks

1 because the Court is not the trier of fact. But now
2 that the case is over and done with and the motion's
3 been made, I'd say that I believe the evidence that
4 was presented supports the jury's verdict. And I
5 think, of course, the jury gives the weight to
6 testimony and to evidence, and I think that the
7 verdict, based on the evidence that was presented
8 during the course of this trial, is an appropriate
9 verdict. And so I'd respectfully deny the motion as
10 to that. And I certainly would note for the record,
11 all of your previous objections and exceptions are
12 noted for the record. Anything further?

13 MR. WILLIAMS: Nothing from the defendant, Your
14 Honor.

15 THE COURT: All right. Solicitor, you still
16 need a minute or two on waiting for that -- let me
17 do this: Let me go ahead and -- if you've got
18 everything else you need as far as to proceed with
19 sentencing --

20 MR. ELAM: I do.

21 THE COURT: All right. I'm going to go ahead
22 and hear from you on that. And then whenever Gill
23 gets back with the sentencing sheet, then that can
24 be passed up to me later.

25 MR. ELAM: Your Honor, you've certainly heard

1 all of the facts in the case, you're intimately
2 aware of what happened in this particular burglary.
3 It's clear that the victim was upset by what
4 happened to her. I'm very sorry that she's not here
5 right now; she has young children and child care
6 issues.

7 THE COURT: Yes. I was going to mention to the
8 folks that Ms. Owens had family issues that she
9 couldn't avoid and had to leave, that's why she's
10 not here right now. Go ahead, sir.

11 MR. ELAM: Your Honor, as you know further from
12 the facts of this case, the defendant has a prior
13 record of two burglaries. Looking at his rap sheet,
14 I don't see any other prior convictions on his rap
15 sheet, Your Honor. I'm content just to let it rest
16 with those two prior burglaries he has. I
17 understand he's still on parole for those at this
18 time, and that may be an issue for the Court to be
19 aware of.

20 THE COURT: All right.

21 MR. ELAM: If I may confer with my co-counsel
22 for just a moment to make sure.

23 THE COURT: Sure. Absolutely.

24 MR. ELAM: Unless you have any other questions
25 of us, Your Honor, we're content to proceed with

1 sentencing.

2 THE COURT: All right. Thank you, Mr. Elam. I
3 appreciate that.

4 Mr. Williams, I'll be happy to hear, obviously,
5 from you. If Mr. Seay would like to address the
6 Court, he's certainly welcome to, and anyone else on
7 his behalf. I'll just make it clear that no one has
8 to address the Court, but I'm happy to hear from
9 anyone that wishes to. Okay?

10 MR. WILLIAMS: Your Honor, I'll start off with
11 the fact that Mr. Seay was born on July 30th of
12 1990, which would put him 23 years old -- not 24
13 years old, but 23 years old. I'm not sure he's able
14 to sign the sentencing sheet, Your Honor.

15 THE COURT: That's fine. I don't require that.

16 MR. WILLIAMS: As you know, he pled to two
17 burglary seconds when he was 19 years of age and he
18 got two YOAs. That's an awful lot of time that's
19 getting ready to be imposed on a young man.

20 THE DEFENDANT: I haven't violated my house
21 arrest once. I've been on it for three years. I
22 haven't messed up one time. I've been on parole or
23 probation for three years. I've been paying \$350 a
24 month, half the time I was unemployed. I haven't
25 violated once. I've been paying \$20,000 in the last

1 three years. I'm not a flight risk. I haven't got
2 in any trouble. I don't want any trouble. I'm
3 trying to straighten out my life and here it's about
4 to be taken from me. I haven't messed up. I know I
5 haven't met her and I'm so sorry what happened to
6 her family. I'm only 23 years old. I haven't
7 messed up in years of my life and now I'm about to
8 do at least 15 --

9 THE COURT: All right. Mr. Seay, any comments
10 that you have to make --

11 THE DEFENDANT: Yes, sir.

12 THE COURT: -- you make this to this Court.

13 THE DEFENDANT: Yes, sir.

14 THE COURT: You don't address them to anyone
15 else.

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Now, I sat here and listened to the
18 evidence --

19 THE DEFENDANT: Yes, sir.

20 THE COURT: -- and there's no doubt in my mind
21 that you went in that lady's house that --

22 THE DEFENDANT: It wasn't just me there, sir.

23 THE COURT: I didn't say it was just you. I'm
24 sure that there was someone else.

25 THE DEFENDANT: I never entered that house, I

1 never took nothing.

2 THE COURT: It's clear from the evidence that I
3 heard that you were a part of it; whether you stole
4 the laptop, your fingerprints were on that house and
5 there's no doubt -- there's no doubt.

6 Now, my suggestion, because I've got to impose
7 sentencing -- and the Court considers many things in
8 sentencing. And part of that is -- well, you're
9 entitled to your feelings, you're entitled to your
10 emotions, because I don't expect you to be a robot.
11 And I expect that and I know this is emotional.

12 THE DEFENDANT: Nobody deserves this.

13 THE COURT: But -- and I'll hear anything you
14 want to tell me. But I need you to address me and
15 not the members of the jury, because there's no
16 question, at least in this person's mind, that they
17 nailed it.

18 Now, I'm not saying that you're the head guy,
19 I'm not saying you're the lead guy, I'm not saying
20 you're the only guy. But there's no question you
21 were there when this occurred and those are your
22 fingerprints in that house. And so --

23 THE DEFENDANT: Your Honor, I stress alone the
24 last three years, the things that I -- the stress on
25 my family, this has been beyond a lesson learned,

1 enough to drive me mentally insane, literally. I
2 would question myself if I was even going to be able
3 to bounce back from this. I've been facing this and
4 stressing over it for three years where I've lost
5 sleep, where I've suffered more than anybody I could
6 imagine. People say, I don't see how you do it
7 every day. I learned to be positive in situations,
8 I learned a lot. And this situation has taught me
9 so much. And I feel like it was for nothing.

10 THE COURT: But --

11 THE DEFENDANT: My life is almost over, at
12 least 15.

13 THE COURT: Has it taught you to take
14 responsibility for your actions?

15 THE DEFENDANT: Yes, sir. It also taught me
16 about second chances and forgiveness and it's taught
17 me about the attitude looking towards every respect
18 of your life and how every decision you make affects
19 your life. And I made a decision to keep my nose, I
20 made a decision to work every day to pay my bills, I
21 made a decision to do what's right, to wake up every
22 morning with a positive attitude and thank God for
23 everything I have.

24 THE COURT: Over these last three years, have
25 you had opportunities to take responsibility for

1 your actions?

2 THE DEFENDANT: Yes, I have.

3 THE COURT: And have you?

4 THE DEFENDANT: Yes, sir. But in the majority
5 of the cases that's a life decision, I've taken full
6 responsibility. I show up every month, I drive
7 three hours to report --

8 THE COURT: All right. I'm not just talking
9 about that. I'm talking about negotiating to
10 resolve this case in some way other than through a
11 jury trial.

12 THE DEFENDANT: The most -- the only offer I've
13 ever had was at least 15 or the -- they offered a
14 second degree to punish me. I mean, years of my
15 life will be taken that I have flipped around. My
16 life that I have flipped around, I'm being still
17 punished no matter for back then. I've changed.
18 I'm not that person. I'm not a criminal.

19 THE COURT: But, Mr. Seay, my question relates
20 to your actions in this case, because it sounds to
21 me that you're still not willing to take
22 responsibility that you were involved in this case.

23 THE DEFENDANT: Your Honor, I will take
24 responsibility, but half of my life taken away
25 because of this is not fair. This is beyond -- like

1 I told you, the mental abuse. For three years I
2 have suffered. I can't even describe in words how
3 bad it's literally, emotionally messed me up. My
4 emotions, the way I act towards people, how to do
5 the right thing, it has messed me up. And I have
6 did right. I have did everything in my power to
7 change my life and it has changed dramatically where
8 I wake up happy of who I am and the things that I
9 do.

10 THE COURT: Let me ask you a simple question --

11 THE DEFENDANT: I don't deserve this.

12 THE COURT: -- were you a part of the break-in
13 of Ms. Owens' house?

14 THE DEFENDANT: I was with a group. I had no
15 intentions -- I had no idea that nobody -- honestly,
16 I never even seen nobody enter that house. I know
17 for a fact I didn't. I did not enter that house.

18 THE COURT: How did -- how did your
19 fingerprints --

20 THE DEFENDANT: If my blood was there, it --
21 I -- I --

22 THE COURT: How did your fingerprints get on
23 that house?

24 THE DEFENDANT: Sir, I was -- I don't --
25 honestly, to be dead honest, no emotion, I don't

1 even recall that house. When they showed me the
2 pictures, I was looking around, looking at the
3 roads, looking where that house was at. They said I
4 lived on Peachtree Rock Road when Detective Todd
5 Garrick came to question me at my grandma's house.
6 I didn't live on Peachtree Rock Road for two years
7 prior.

8 THE COURT: All right. Your fingerprints were
9 on that house and you don't know how they got there?

10 THE DEFENDANT: I do not --- I -- like, I
11 remember me riding around with a specific group of
12 people, and I remember back when I used to be a part
13 of stuff like that and I remember when I started
14 getting out and when I started turning against them
15 and when they started talking crap to me. I
16 remember not being a part of them no more and how
17 running with dogs you get flees and everything my
18 parents taught me that I obviously was blinded just
19 like the attitude, it all starts with attitude. I
20 never took that into consideration until one day. I
21 remember that day. Everything came clear,
22 everything that everybody ever taught me was there.
23 And I quit talking to the people.

24 Do I remember specific incidences where I --
25 where I didn't want to be a part of it and I was

1 just sitting in the car? Yes. Do I remember
2 specific incidents where I touched the glass? No, I
3 don't remember. But obviously I did touch the
4 glass. And at the time, even Theo can tell you,
5 when I was 17 years old and I was getting in
6 trouble, I was on prescription medication. They had
7 to lock me in his office when I was 17 years old
8 because they didn't want to bring me into court
9 because I showed up and don't remember nothing. I
10 don't remember them locking me in the office. But I
11 remember ever since then, it was about when I was 20
12 years old when I finished my YOA, I got out and
13 that's when everything clicked, that's when I
14 realized that I didn't want to be a part of that, I
15 didn't want to be a person in jail, I didn't want to
16 adapt to that, I didn't want to be any part of any
17 of them animals because they're all pieces of crap.
18 I did not want none of that in my life. I wanted a
19 life like my mother and father taught me that I
20 always ignored. I didn't want to be the kid that
21 had to sit in front of the teacher because he got in
22 trouble every day and had to sit outside, I didn't
23 want to be the outcast, I didn't want to be the
24 troublemaker. I didn't want people to -- I don't
25 want to be around him. I --

1 THE COURT: And I appreciate that, and I
2 appreciate that you've learned that through this
3 process.

4 THE DEFENDANT: And now it's setting me back
5 and I'm afraid I'm going to adapt and turn back into
6 that person. And I don't -- I know I don't want
7 to --

8 THE COURT: Here, listen, and if this will
9 help, I'm going to throw this out there: My hands
10 are tied to some extent. I have -- I fully intend
11 to give you the minimum.

12 THE DEFENDANT: I know that, sir, but --

13 THE COURT: This carries up to life in prison.

14 THE DEFENDANT: And I know and --

15 THE COURT: And I have no intention of
16 sentencing you to life in prison.

17 THE DEFENDANT: Your Honor, I respect that.
18 And I also want you to consider that I do think it's
19 unfair and I do think I deserve a retrial. I'm not
20 a flight risk. This can stay on me. I will suffer
21 more. Can we please get another jury considering
22 they was -- they wasn't stable? The one woman was
23 crying; she didn't want to plead guilty. I believe
24 the majority convinced her otherwise.

25 THE COURT: Mr. Seay, you were part of this

1 burglary. This jury got it right and you're upset
2 about it.

3 THE DEFENDANT: I'm not upset that they said
4 that I was there at the place, but I was convicted
5 of being part of a burglary, being involved, being
6 inside the house where the crime took place.

7 THE COURT: No, no, no, sir. See --

8 THE DEFENDANT: Sir --

9 THE COURT: Let's switch it up. And Mr.
10 Williams can tell you this: If you were there and
11 participated in any way and every one else did the
12 crime --.

13 THE DEFENDANT: The hand of one is the hand of
14 all.

15 THE COURT: Absolutely. You are just as guilty
16 as the guy who took the laptop.

17 THE DEFENDANT: I'm not asking for a retrial to
18 get completely off. I'm asking for a retrial to be
19 able to fix what is left of my life and to be able
20 to have the opportunity to do what is right so I
21 don't get sucked back in that life, so I don't get
22 resentment and anger towards the system or the
23 people that put me there. I don't want none of
24 that. And I'm begging you for an opportunity for a
25 retrial. I'm pleading with you with every ounce of

1 my body for forgiveness and a retrial so I can do
2 what I can in my power and pray to God that he can
3 do what he has in his power and that people will
4 listen and see the change and take that into
5 consideration and then be sentenced. I'm begging
6 you for that opportunity.

7 I have proven myself this far. I turned myself
8 in when I heard about this. I was out of town
9 working. I heard that the cops was looking for me.
10 I turned myself in a week before Christmas because I
11 wanted to know what was going on and how to resolve
12 it because by then the lessen was already learned.
13 Three years house arrest, the brokenness, the stress
14 on me and my family, me going out of my mind, the
15 lesson has been far from learned. Leave me on house
16 arrest to assure you I won't be a flight risk, to
17 assure that I can do everything that I can, to pay
18 what I need to pay and another opportunity so my
19 life won't be wasted, please.

20 THE COURT: I don't have any legal to grant a
21 retrial. Now, there are other avenues that -- and
22 Mr. Williams can tell you what they are. But I'm --

23 THE DEFENDANT: Please, sir.

24 THE COURT: I'm not granting a retrial. I
25 think the case was well-tried. I think the

1 attorneys for the State as well as Mr. Williams did
2 an outstanding job.

3 THE DEFENDANT: But --

4 THE COURT: And I think the jury did an
5 outstanding job.

6 THE DEFENDANT: -- they didn't get to hear
7 mine. I'll never have a chance to let the people
8 know without them being distressed and their clouded
9 memory -- without their clouded judgment. I'm just
10 asking for an opportunity for me to take the stand,
11 for me to have a jury that's not emotionally
12 involved and distressed, for me to have the
13 opportunity for people to see me, not that. Please,
14 Your Honor.

15 THE COURT: Mr. Seay, I sat here and spoke to
16 you at length about your right to take the stand and
17 your right to remain silent. And you convinced me
18 that you wanted to exercise your right to remain
19 silent, you didn't want to take the stand. I asked
20 you again, now, Mr. Seay, is this your decision?
21 Yes, sir. No one has forced you into this? No,
22 sir. No one has pressured you, no one has coerced
23 you? You said, no, sir. And I said, is this
24 decision to not testify, is this of your own free
25 will? You said, yes, sir, it is. And I honored

1 that. And I would always honor a person's rights.
2 And so now that it didn't go as you had hoped, now
3 you want a retrial and now you want to take the
4 stand.

5 THE DEFENDANT: It's not just because it didn't
6 go the way I hoped. I want a retrial because I want
7 it to be fair. I want the jurors not to be
8 distracted --

9 THE COURT: This is fair.

10 THE DEFENDANT: -- and for me to have a chance
11 to speak my mind.

12 THE COURT: This was fair.

13 THE DEFENDANT: But it all has to come down to
14 one juror. And that one juror was distressed, that
15 one juror was --

16 THE COURT: No. I don't know who convinced you
17 of that --

18 THE DEFENDANT: Nobody did. I seen it.

19 THE COURT: -- but let me tell you something.
20 Just like you're upset now and you're emotional --

21 THE DEFENDANT: Yes, because my life has been
22 taken away and the lesson has been learned and I'm
23 being punished for --

24 THE COURT: And the job that a jury has to do
25 and the work that they have to do, it can become

1 emotional for them too. But don't mistake emotion
2 for not being sure of their verdict.

3 THE DEFENDANT: I don't --

4 THE COURT: It's -- let me tell you something.
5 I'm guessing, because I've never done, I would guess
6 it's hard to vote guilty --

7 THE DEFENDANT: Your Honor, may I --

8 THE COURT: -- and that could be emotional.
9 But if it's the right thing to do, you do it.

10 THE DEFENDANT: Your Honor, that's why I've
11 been -- the -- the only opportunity I'm asking is
12 for me to keep doing that. Do you know what,
13 like -- I don't know if you understand that if
14 somebody gets put in a place like that, you can't
15 put somebody like me in a room full of a thousand
16 retards and expect them to come out that smart. You
17 put somebody in there and they adapt, they become
18 somebody that -- and this is my life that's going to
19 be ruined forever.

20 THE COURT: And I'm going to share with you
21 about that issue right there before you go anywhere.
22 You are wrong. I've seen countless people -- and
23 let me tell you why that's bad thinking. And I'll
24 guarantee you, your parents would tell you the same
25 thing.

1 Mr. Seay, you're here as a result of making bad
2 decisions. That doesn't mean you're a bad person,
3 that doesn't mean -- but you've made bad decisions.

4 THE DEFENDANT: Which cost me 15 years.

5 THE COURT: When you go -- when you or anyone
6 goes into the department of corrections, just like
7 on the street, you have decisions to make to do the
8 right thing or do the wrong thing. You're going to
9 have the same decisions in the department of
10 corrections. You don't have the to do the wrong
11 thing.

12 THE DEFENDANT: 15 years.

13 THE COURT: And I've known many people who have
14 done more time than you're going to do and have come
15 out as outstanding people. So you need to purpose
16 it in your heart that you're not going to revert
17 back to whatever it was you were before..

18 THE DEFENDANT: I know somebody like me doesn't
19 deserve to be with people like them. Somebody --
20 they -- I mean, the lessons have been far from
21 learned. This is not just --

22 THE COURT: I know that you do not want to
23 receive this, but -- I know you don't want to
24 receive this. And this is going to sound harsh and
25 I don't mean to be harsh, but when you talk about, I

1 don't deserve to be with people like them, you
2 understand that you are a three-time convicted
3 felon?

4 THE DEFENDANT: I was 18 years old. I'm --

5 THE COURT: I don't care if you were three
6 years old. If you were convicted of a felony, you
7 are a three-time convicted felon. So before you
8 start putting yourself on a higher pedestal than
9 other people, -

10 THE DEFENDANT: I wasn't judging them.

11 THE COURT: What you need to understand is
12 this: Be -- look, you're a good guy; right? You've
13 learned a lot from this; correct? I mean, I'm
14 asking seriously. You have. I can see by what
15 you're sharing with me that you've -- don't lose all
16 of that.

17 THE DEFENDANT: That's 15 years of my life
18 away. Everything I've worked for -- I just became
19 manager at the job I'm at. I mean, everything that
20 I worked for for the last three years, trying to
21 straighten out and trying to prove to people so they
22 see a change is gone. I'm going to be about 40
23 years old when I get out. My dad and my mom is
24 probably going to be dead. I'm losing my life, my
25 loved ones and everything else that I've done in the

1 process, the stress and the money and everything.

2 THE COURT: And did any of that --

3 THE DEFENDANT: It's kind of hard to be
4 positive when --

5 THE COURT: And did any of that go through your
6 mind --

7 THE DEFENDANT: Every day.

8 THE COURT: -- when you were breaking into this
9 house or with the people who did that? Did any of
10 that go through your mind?

11 THE DEFENDANT: A lot of stuff never entered my
12 mind back then.

13 THE COURT: I understand. And that's the
14 problem. That's the problem.

15 THE DEFENDANT: But that's a problem that got
16 resolved years ago.

17 THE COURT: Well, unfortunately, now is the
18 time to pay the consequence for those bad decisions.

19 THE DEFENDANT: How about the consequences I
20 done suffered because of it? Are those not taken
21 into consideration? Is that not seen or shown in
22 myself now? Your Honor, I'm telling you, everything
23 that I love and work for will be gone. I'm begging
24 you.

25 THE COURT: No, they won't. Your parents will

1 never go. They'll always be there for you.

2 THE DEFENDANT: I won't get a chance to -- I
3 mean, you don't see it? It's kind of hard --

4 THE COURT: I'm not insensitive to it,
5 Mr. Seay.

6 THE DEFENDANT: I'm begging you for a retrial.

7 THE COURT: No, sir. That's not appropriate
8 and the law doesn't provide for that.

9 THE DEFENDANT: Can it -- since it was
10 enhancement, can it be dropped to a second?

11 THE COURT: No, sir.

12 Mr. Williams?

13 MR. WILLIAMS: Judge, I don't think there's
14 much more I can say. I think you've met Mr. Seay.
15 I can tell you no more than what you've heard from
16 him.

17 THE DEFENDANT: Can I at least hug my mom one
18 last time, Your Honor, without handcuffs?

19 THE COURT: All right, sir.

20 THE DEFENDANT: He just said yes.

21 THE COURT: No. It's up to the officers.
22 Security is in their hands.

23 MR. ELAM: May it please the Court, Your Honor.

24 THE COURT: Yes, sir.

25 MR. ELAM: We've heard the defendant say things

1 that may not be entirely accurate. And I don't mean
2 to kick the defendant while he's down -

3 THE COURT: No. I --

4 MR. ELAM: -- but at the same time I feel as an
5 officer of the court, if I hear something that's not
6 quite accurate, that I have a duty in the courtroom
7 to set the record straight.

8 THE COURT: All right. I'm going to take the
9 role of your wife: Get to it. Brief, and get to
10 it. And I agree with you.

11 MR. ELAM: January 4th, 2014 he was arrested by
12 Myrtle Beach Highway Patrol driving under
13 suspension, giving false information, DUI, driving
14 under the influence; February 14th, 2014, just a few
15 months ago, arrested by Myrtle Beach Police
16 Department breach of trust, fraudulent contempt;
17 February 19th, 2014, arrested by the Horry County
18 Police Department for shoplifting.

19 Now, we don't have dispositions on those and
20 that's why I didn't mention them earlier. But it is
21 not fair and accurate to say he has not been in
22 trouble to the extent that an arrest is, for most
23 people, trouble. I want to set the record straight
24 on that.

25 THE DEFENDANT: And, Your Honor, may I please

1 have something to say to that?

2 THE COURT: Let me say just this before you say
3 a word -- are those matters pending matters,
4 Solicitor?

5 MR. ELAM: They appear to be pending matters.

6 THE COURT: Then I would suggest you not speak
7 to those.

8 THE DEFENDANT: I want to, please.

9 THE COURT: I would -- I'm not going to hear --
10 it's in his best interest not to speak to those.

11 Mr. Seay, let me share this with you. Okay?

12 Because I'm going to do the minimum under the law,
13 so anything you have to say won't change what I, by
14 law, have to do. And I don't want you to
15 incriminate yourself on charges that are pending.

16 THE DEFENDANT: I'm not worried about that,
17 that's why I want to explain.

18 THE COURT: Well, I know you're not worried
19 about that but I'm going to worry about it for you.
20 All right? And it's not going to -- it won't change
21 anything that, by law, I have to do. So I'm going
22 to give you the minimum and there's nothing else
23 that can be said. And I don't -- even though you
24 don't care, I care enough that I don't want you to
25 incriminate yourself, because those are pending

1 charges. And so I'm not going to hear from you as
2 to that.

3 On indictment 2012-GS-32-349, sentence of the
4 Court is that you be committed to the state
5 department of corrections for a period of 15 years.
6 You're going to be given credit for every day that
7 you have served under this case. So whatever time
8 you're entitled to, you're to be given credit for
9 all off that. Good luck to you, sir.

10 THE DEFENDANT: Can I speak to mom?

11 THE COURT: Ladies and gentlemen, again, I just
12 want to thank you for your service. I know that
13 this is not easy. I understand that. I just hope
14 that -- because I've been doing this for a long time
15 and I don't find this even remotely easy. And I
16 have a heart, even though it may not appear so. I
17 have a heart for that young man and for the mistakes
18 he's made.

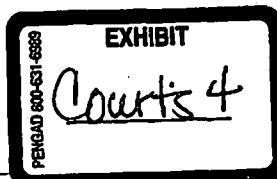
19 But what I want to share with you is this:
20 Regardless of the emotion and what Mr. Seay's going
21 through, you did your service and you did it
22 properly, and I just commend you on your hard work
23 in this case. And no one likes to see a young man
24 have to go to the department of corrections, but
25 it's just -- I don't know. I just want you to know

1 that regardless of what you experience here during
2 this sentencing process, that your decision, I
3 believe, was the correct decision. And I hope that
4 you can feel for him as well, and I do, but also
5 understand that you were correct and your decision
6 was correct. And I hope you find comfort in that.

7 But as I said, your jury service has been
8 concluded for this week. Now, you have exemption
9 that you've earned. If you're called for jury duty
10 here in circuit court the balance of this year,
11 2015, and 2016, if you receive a summons for circuit
12 court jury duty, you can exercise that exemption and
13 be excused from service. Now, I do tell people
14 this: It is just an exemption. That doesn't mean
15 you're not qualified to serve. And if you get that
16 summons and you'd like to serve, I would encourage
17 you to do so. But thank you again for your service.
18 And unless you need anything from us, if you could
19 just give the badges to Tommy as you go out, you're
20 free to go.

21 (Jury excused.)

22 THE COURT: I want to thank the three lawyers
23 for the courtesy and the professionalism that y'all
24 showed all week. It -- I don't know that I've had
25 the pleasure of trying any cases with you, Mr. Elam,



1. If we have to make an assumption on the facts that were given, does that constitute reasonable doubt?

2. Def. & Bur. is 1st degree

As To Question #1, I CAN only direct you To The sections of my charge captioned "Direct Evidence / Circumstantial Evidence" And The "Reasonable Doubt," To give you guidance.

As To Question #2, if The question is To Define Burglary 1st Degree I would direct you To The section captioned "Burglary 1st."

WITNESSES

Lexington County Sheriffs Department

Bryan Todd Garrick

Law Enforcement Case #:

RJEARREST WARRANT NUMBER

J827479

ACTION OF GRAND JURY**TRUE BILL***Donald A. Seale*

Foreperson of Grand Jury

Date: 6/3/13

VERDICTGuilty*Steph...*

Foreperson of Petit Jury

Date: 5/7/14

DOCKET NO. 2012GS3200349**The State of South Carolina****County of Lexington**COURT OF GENERAL SESSIONSJUNE TERM 2013THE STATE

vs.

Jacob Hayward Seay

CDR #: 0079

Indictment for

Burglary First Degree

§ 16-11-0311

DONALD V. MYERS, SOLICITOR

STATE OF SOUTH CAROLINA)

COUNTY OF LEXINGTON)

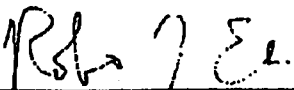
INDICTMENT FOR
Burglary First Degree

§ 16-11-0311

At a Court of General Sessions, convened on June 2013, the Grand Jurors of Lexington County present upon their oath:

That **Jacob Heyward Seay** did in Lexington County, South Carolina, on or about August 29, 2011 did knowingly and willfully enter a dwelling, to wit: [REDACTED] Old Orangeburg Road in the Red Bank area of Lexington County, being the dwelling of Diana Owens, without consent and with the intent to commit a crime therein and the defendant has a prior record of two or more convictions for burglary or housebreaking or a combination of both, in violation of § 16-11-311 of the Code of Laws of South Carolina, 1976, as amended.

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



ASSISTANT SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

May 13th, 2015


John H. Strom
Appellate Defender

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SC Court of Appeals

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

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County

Thomas A. Russo, Circuit Court Judge

 ORIGINAL

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MAY 13 2015

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

JACOB HEYWARD SEAY,

APPELLANT

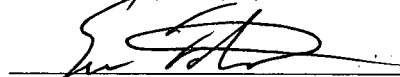
APPELLATE CASE NO. 2014-001024

CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Christina Catoe Bigelow, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 this 13th day of May, 2015.


Cruise Mitchell
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 13th day of May, 2015.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: October 30, 2022.