

VOLUME I of II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Pickens County

James R. Barber, III, Circuit Court Judge

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JUN 29 2015

S.C. Supreme Court

REGINALD A. NANCE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-002302

APPENDIX

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STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF PICKENS

STATE OF SOUTH CAROLINA,)

PLAINTIFF,)

-VS-)

REGINALD NANCE,)

DEFENDANT.)

2010-GS-39-354, 355, 356, 357, 358 AND 360

TRANSCRIPT OF RECORD

BEFORE:

THE HONORABLE G. EDWARD WELMAKER, JUDGE

APPEARANCES:

JENNY HAMAKER, ESQUIRE
ATTORNEY FOR PLAINTIFFJOHN DEJONG
ATTORNEY FOR DEFENDANTDANETTE P. HANKS
CIRCUIT COURT REPORTER

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Jury Voir Dire

Juror #	Name	Race	Sex	<u>Strikes</u>			Accept
				Court	Plaintiff	Def.	
30	Durham, Gerald L	W	M				x
81	Mussro, Robert J	W	M				x
126	Watson, Jennifer C	W	F				x
	Tamsin, Christine M	W	F			x	
5	Attaway, Candace E	W	F			x	
82	Jenkins, Anne M	W	F			x	
25	Cureton, Melvin E	W	M				x
114	Sloan, Gloria D	B	F				x
6	Bader, Lisa A	W	F				x
125	Watson, Dalton R	W	M				x
111	Sheriff, Carolyn F	W	F			x	
91	Perry, Joshua G	W	M			x	
34	Gallimore, Baker A	W	M			x	
98	Rahn, Henry J	W	M				x
44	Hamilton, Timothy P	W	M			x	
86	Pace, Tammy L	W	F				x
102	Richards, Erica A	W	F			x	
101	Rhodes, Robin W	W	F				x
26	Cutrer, Christopher O	W	M			x	
57	Keenen, Brenda Y	A	F			x	
17	Bryant, Timothy R	W	M				x
71	McJunkin, Walter S	W	M				x
21	Chappell, Sherrill A	W	F				x

1 (WHEREUPON, Court convened with all parties present
2 and the following proceedings were had.)

3 (WHEREUPON, State Exhibit Numbers 1 through 50 were
4 marked for identification.)

5 THE COURT: Ms. Hamaker, anything we can take
6 care of with your case before we -- how many witnesses
7 do you have on the *Jackson Denno*?

8 MS. HAMAKER: On today's?

9 THE COURT: On today's.

10 MS. HAMAKER: Your Honor, I'm hoping to get
11 through eleven, but being realistic I don't think we'll
12 get through more than ten.

13 THE COURT: On the *Jackson Denno* hearing?

14 MS. HAMAKER: On the *Jackson Denno* hearing I
15 only have one.

16 THE COURT: One. Okay. Good. Are there any
17 other matters that we need to take care of on this case,
18 this is the *Nance* case that we're here on now. Your
19 client is still not here?

20 MR. DEJONG: Still not here, Your Honor. I
21 can take up one matter without him.

22 THE COURT: Okay. What is that?

23 MR. DEJONG: And that is, I don't know who
24 designed this courtroom, and I'm not even talking about
25 the loud fan right now. I'm talking about where the

1 jury goes out and where the holding cell is. My client
2 is obviously incarcerated. That is obviously a jail
3 holding cell. And every time the jury goes in and out
4 of this courtroom, they walk right beside that holding
5 cell.

6 Now, I do know that somebody graciously taped up
7 two sheets of copy paper over the window. To me that
8 only exacerbates the whole situation. We make an issue
9 of bringing our people in this courtroom in street
10 clothes. Obviously the Court says it is prejudicial to
11 bring them in here in jail clothes, which that's one
12 thing I certainly agree with the high court on. But
13 then we have a courtroom designed where the jury passes
14 right by the holding cell where presumptively my client
15 is going to be held.

16 I'm simply asking the Court for some mechanism to
17 assure that during this trial that jury is not, paper or
18 no paper, going to be able to see my client in that
19 holding cell.

20 THE COURT: As the jury progresses in and out,
21 won't your client always be in the courtroom?

22 MR. DEJONG: If I can be assured of that, Your
23 Honor, and if I can ask courtroom security to be sure of
24 that, yes, sir.

25 But for example, we take a lunch break. The jury

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1 comes back to the jury room. My client is going to be
2 in the holding cell unless they transport him back to
3 the LEC, which I don't foresee. Or take him downstairs
4 to the downstairs holding cell.

5 But on those types of situations, in the morning
6 when they come in, presumptively my client is going to
7 be in the holding cell. Presumptively that jury is
8 going to be going into the jury room walking right by
9 that holding cell.

10 THE COURT: Well, I'll talk with the Clerk of
11 Court. I believe we can accommodate that either by
12 having him downstairs or we can get a piece of plywood
13 and put over the door so that he don't even see it's a
14 holding cell.

15 MR. DEJONG: That's kind of the argument I
16 made two or three trials ago when we draped the tables
17 in butcher paper.

18 THE COURT: We'll try to -- we draped both
19 tables though; didn't we?

20 MR. DEJONG: Yes, sir. And I understand that.
21 But like I say, it -- of course, that becomes an issue
22 even with security. I don't know. I don't have a dog
23 in security's fight about not being able to see in
24 there. I know there's a camera in there. But the paper
25 only draws attention to the fact that it is a holding

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1 cell.

2 THE COURT: We'll address that. If we have to
3 use the holding cell downstairs or if we have to do
4 whatever we have to. We'll get a partition up so that
5 the jury can walk by without seeing it.

6 MR. DEJONG: Thank you, Your Honor.

7 THE COURT: We'll take care of that for you,
8 sir. Is your client in transit?

9 MR. DEJONG: I'm sorry, Your Honor?

10 THE COURT: Is your client in transit here or
11 is he in the courthouse?

12 MR. DEJONG: It's a he, Your Honor, and I have
13 no clue how security anticipates bringing him in.

14 THE COURT: Okay. Let's see if he's here yet.
15 He's downstairs on the second floor?

16 MR. DEJONG: Your Honor asked the question if
17 he was in chains or not. I don't know. We seem to have
18 set a new trend over a couple of terms of court, at
19 least in trials that I've been able to see, where we're
20 keeping them in shackles and handcuffs while they're in
21 trial.

22 I say that's a new trend, but I was involved in the
23 Jerry Buck Inman capital case, and they did keep him in
24 chains and shackles in that case. But I would simply
25 bring to the Court's attention, there was no jury

1 involved in that case.

2 And my experience in ten and a half years here as
3 Public Defender that we've had situations where there
4 was security, but not in terms of visible security.
5 We've had the knee brace that locks if somebody tries to
6 run. We've had the shock belt. We've had all that
7 stuff. I don't dispute. But never in front of a jury
8 except within the last term or two that we've kept them
9 in chains and shackles during the trial with the jury.

10 THE COURT: We'll take note of that.

11 (WHEREUPON, the Court stood at recess for a short
12 break.)

13 THE COURT: Ready to proceed?

14 MS. HAMAKER: Yes, sir, Your Honor.

15 MR. DEJONG: Ready for the defense, Your
16 Honor.

17 THE COURT: All right. I understand we have a
18 hearing on a statement under *Jackson v. Denno*. I'll be
19 glad to hear from your first witness, Solicitor.

20 MS. HAMAKER: The State would call Detective
21 Lane Byers to the stand.

22 THE COURT: Come around to be sworn, please.
23 If you would, place your left hand on the Bible, raise
24 your right hand. Do you swear or affirm the testimony
25 you're about to give the Court will be the truth, the

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1 whole truth and nothing but the truth, so help you God?

2 MR. BYERS: I do.

3 THE COURT: Please be seated. State your name
4 for the record.

5 MR. BYERS: Lane C. Byers.

6 LANE C. BYERS,

7 BEING DULY SWORN, TESTIFIED AS FOLLOWS:

8 VOIR DIRE DIRECT EXAMINATION

9 BY MS. HAMAKER:

10 Q. Lieutenant Byers, can you please tell me who you
11 work for?

12 A. I'm employed by the Pickens County Sheriff's
13 Office.

14 Q. And what are your duties there?

15 A. I'm a lieutenant of the detective division which is
16 an investigation division.

17 Q. And how long have you been there?

18 A. Twenty-six years.

19 Q. Did you have a chance to speak with Reginald Nance
20 about this matter?

21 A. Briefly, yes.

22 Q. And when was that?

23 A. It was in the first of February when we spoke, of
24 2009.

25 Q. You said the first of February?

1 A. Yes.

2 Q. I'm going to show you what's been pre-marked as
3 State's Exhibit Number 32. Can you identify for the
4 Court what this is?

5 A. This is a copy of the waiver of rights that was
6 advised to Mr. Nance on February the 3rd, 2009 at seven
7 thirty-five a.m.

8 Q. What time did he get picked up on the charges that
9 are pending here today, date and time?

10 A. It was late in the evening. I'm not sure of the
11 time without my paperwork here, but it was the day
12 before. It was on the 2nd of February, 2009 that he was
13 actually booked in at the Pickens County Sheriff's
14 Office.

15 Q. Did you speak with him on the 3rd of February,
16 2009?

17 A. I did.

18 Q. And can you tell the Court the circumstances
19 leading up to you speaking with him? Where did the
20 conversation take place?

21 A. In my office which is downstairs at the sheriff's
22 office in the detective division. I've got a separate
23 office that's not a cubicle, it's actually an enclosed
24 office. And we were in my office area, I was sitting at
25 my desk and Mr. Nance was seated right in front of me at

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1 the -- in the chair there in front of the desk.

2 Q. And when he sat down what was the first thing that
3 you did?

4 A. I told him I needed to talk to him. I told him I
5 was going to advise him of his *Miranda* Rights, which I
6 did. As I advised each step I took the -- I checked off
7 that I would -- I had advised him of that. All the way
8 down I read him his -- the waiver on the *Miranda*. I
9 asked him if he understood, he said he did. I asked him
10 if he would go through the rights and on each line on
11 each step of the *Miranda* if he'd put his initials that
12 he read them and that he understood them. And I said if
13 you're willing to talk to me, if you'll sign, and he
14 did.

15 Q. So you read each of the *Miranda* ---

16 A. Steps.

17 Q. -- steps to him out loud?

18 A. I did.

19 Q. And he read it himself?

20 A. He did.

21 Q. Did the defendant appear to understand his rights?

22 A. He did. He did.

23 Q. Was he under the influence of any drugs or alcohol,
24 did he appear to be?

25 A. He didn't appear to be.

1 Q. Did he appear to be excited or extremely nervous
2 where it would prohibit him or make him not as easy to
3 understand those rights or anything like that?

4 A. No. He, he appeared to be calm and attentive.

5 Q. After you read him those rights or advised him of
6 his rights, what happened then?

7 A. I advised him that we had had a burglary we were
8 investigating, that he was a suspect that was being
9 charged in the matter and I was wanting to see if he was
10 willing to sit and talk with us and discuss the matter
11 and us get on the same page maybe and get them -- get
12 the differences worked out and get this thing worked
13 out.

14 Q. That burglary, does that -- is that the burglary
15 involved in this case?

16 A. It is. I explained where it was and the name of
17 the businesses.

18 Q. And what did he do at that point?

19 A. As I -- I explained to him and I explained what I
20 was doing and he said that he felt that he might need to
21 speak to an attorney that -- for advisement before he
22 talked with us. And we told him that would be something
23 he could do.

24 Q. All right. I am going to show you a copy of
25 personal notes that has already been provided to Mr.

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1 DeJong and myself. Does this help to refresh your
2 recollection about the conversation that you had with
3 him?

4 A. This is a portion of the summary that I typed up
5 back during the time that this was occurring and it's in
6 reference to this waiver and this conversation.

7 Q. Okay. Did those notes help you refresh exactly
8 what he told you?

9 A. Yes. He -- Mr. Nance never made statements of
10 guilt of any crime that he committed, but he did want to
11 talk to us about maybe to see if there was any deals
12 that could be considered, that he had a couple of fence
13 dealers that was in Greenville County and city that he
14 would be willing to talk to and turn.

15 Q. And when you say fence dealers what do you mean?

16 A. That's what he said. I -- we didn't go any
17 further.

18 Q. And did he talk about maybe making any deals after
19 he was able to come in contact with an attorney?

20 A. He agreed and -- that he was going to speak to his
21 attorney, that he would have his attorney to call me or
22 someone in the detective division to speak to us and to
23 reset up a meeting if, if he decided he was going to
24 talk with us.

25 Q. And what would the purpose of that meeting be? Did

1 he say?

2 A. To, to discuss the case.

3 Q. Was it in relationship to making any deals or
4 anything of that nature?

5 A. He didn't -- he just said if he was going to talk
6 any further. He didn't get any further with that.

7 Q. Okay. After he said that he wanted to consult with
8 an attorney did the questioning stop?

9 A. Yes. There was no -- we never questioned anything
10 else.

11 Q. And how long did the questioning take?

12 A. From the time we started till we finished, it was
13 -- max time would have been fifteen minutes at the most.
14 I mean, that would have been him getting up and leaving,
15 getting back to his room too.

16 Q. Did the defendant -- was he denied water, bathroom
17 breaks, food, anything of that nature?

18 A. No. He never made any requests and we really
19 weren't the -- we weren't there long enough really. And
20 he never said anything about needing that.

21 Q. Did the defendant appear rational and responsive to
22 you?

23 A. Yes. He did.

24 Q. Did he ever make a statement in writing?

25 A. No. He did not, not to us.

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1 MS. HAMAKER: That's all the State has for
2 this witness, Your Honor.

3 THE COURT: You may cross examine, Mr. DeJong.

4 MR. DEJONG: Thank you, Your Honor. May it
5 please the Court.

6 CROSS EXAMINATION

7 BY MR. DEJONG:

8 Q. Mr. Byers, may I see that document that was marked
9 for identification, please, sir? I believe it's this
10 one right here. Okay. You and -- I know we don't both
11 have a copy here, so if you need to look at it, you tell
12 me. But this document is dated on February the 3rd of
13 '09; is that correct?

14 A. Yes.

15 Q. At seven thirty-five in the morning?

16 A. Yes, sir.

17 Q. When did Mr. Nance go to the Pickens County Law
18 Enforcement center?

19 A. February the 2nd. I'm not sure of the exact time
20 without a booking report, but it was like in the evening
21 sometime. I wasn't there when he come in.

22 Q. Okay. Do you know how much sleep he had had before
23 you questioned him on the 3rd at seven thirty-five?

24 A. I do not.

25 Q. All right, sir. Do you know where he came from to

1 get to the Pickens County Law Enforcement Center?

2 A. The day before I think he had been in Richland
3 County Detention Center.

4 Q. Did Richland transport him to Greenville or did
5 Pickens -- wrong county. Did Richland transport him to
6 Pickens County or did Pickens County go pick him up?

7 A. We had a detective pick him up.

8 Q. All right. Now, you *Mirandized* him right?

9 A. Yes, sir.

10 Q. And he said he understood?

11 A. Yes, sir.

12 Q. Now what -- at that point in time it was your
13 intention to question Mr. Nance; right?

14 A. Yes, sir. It was.

15 Q. And you shared that with him?

16 A. Yes.

17 Q. And you shared with him that you wanted to talk
18 with him about a burglary?

19 A. Yes, sir.

20 Q. And at that point in time he said he needed to talk
21 to a lawyer; didn't he?

22 A. At the time that I got through explaining what we
23 needed to do, he listened, he was attentive. And when I
24 got through telling him what I was doing, he said he
25 needed to speak with an attorney as far as -- for

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1 advisement.

2 Q. Right. And then you continued to question him?

3 A. No. I did not.

4 Q. Well, you certainly continued to have a
5 conversation with him?

6 A. He had a conversation.

7 Q. You asked him no more questions?

8 A. I didn't ask him any more questions.

9 Q. You just sat there?

10 A. That was it. I told him to get his attorney and
11 have his attorney to call us. I did ask him who his
12 attorney would be in case I got a call from one. But I
13 didn't -- we didn't question him about -- anything about
14 the crime.

15 Q. All right. And you're saying he just went on and
16 said this?

17 A. He did make the Statement that he would be willing
18 if we could work out some kind of agreement with drug
19 dealers and, and fences out of Greenville and all that.

20 Q. But nothing about what he would say?

21 A. No.

22 Q. Nothing of it even had anything to do with this
23 burglary?

24 A. No.

25 Q. So that statement, at best, was very ambiguous; was

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1 it not?

2 A. I documented what was said for the court purposes.

3 Q. Yes, sir. But you can't say that that statement
4 had anything to do with the burglary that you were
5 talking to him about?

6 A. No. I can't say that.

7 Q. So if I understand you, what you -- the document
8 you were looking at to refresh your memory -- and you
9 have that document in front of you; right?

10 A. I do.

11 Q. He said he needed to talk to an attorney?

12 A. Yes.

13 Q. And then you left him sitting there in front of
14 you?

15 A. No. That -- we were, we were through at that time.
16 That was the end of it and we were done.

17 Q. Okay. And what you said, I don't know if this is
18 in quotations, it doesn't appear that it is, as
19 consideration for him cooperating, that's in one of the
20 lines; right? Well, let me back up. He did not make
21 any statements of guilt and asked that we consider him
22 turning two drug dealers in Greenville County as
23 consideration for him cooperating..

24 A. That's his statement.

25 Q. But cooperation, you don't know what it would be?

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1 A. I have no idea what it was about.

2 Q. Thank you, sir.

3 MR. DEJONG: No further questions.

4 THE COURT: Any redirect?

5 MS. HAMAKER: No, sir, Your Honor.

6 THE COURT: Officer Byers, for my benefit I
7 need to have a little sequence here. I don't have the
8 benefit of your summary. You read him his rights, he
9 checked off as you went down, he signed at the bottom.
10 Did you say that when he signed he was then agreeing to
11 talk with you?

12 WITNESS: I asked him as I read them did he
13 understand his rights and I read him the waiver and I
14 explained to him that he would also be reading his
15 rights. I said if you understand your rights and you're
16 willing to talk with me, sign that you -- down here that
17 you understand your rights and you're willing to talk to
18 me without a lawyer present.

19 THE COURT: Is that when he said I want a
20 lawyer?

21 WITNESS: No, sir. He didn't -- that was --
22 he didn't make that till after I talked to him for just
23 a couple of minutes there.

24 THE COURT: And as you talked with him,
25 that's when he told you something about drugs and

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1 fencing?

2 WITNESS: After I was through he made the
3 Statement that if there was -- a consideration could be
4 done he had, he had drug dealers and fences that were in
5 Greenville County and city that he would be considered
6 for that if there was some kind of deal that could be
7 worked out. But we never got into -- we never discussed
8 anything about --

9 THE COURT: Did he make that statement before
10 he said, I want to talk to a lawyer?

11 WITNESS: He made that afterwards.

12 THE COURT: After he said he wanted to talk to
13 a lawyer?

14 WITNESS: Right. This was right before we
15 left. I actually told him that that was not something
16 that we had, that we had any dealings with. That would
17 be something for the courts to do, for the Solicitor's
18 office to do.

19 THE COURT: All right. Thank you, sir. Any
20 follow up questions from either one of you?

21 **REDIRECT EXAMINATION**

22 BY MS. HAMAKER:

23 Q. Lieutenant Byers, after he said he wanted an
24 attorney and then proceeded to say maybe we could work
25 something out if I were to turn in some drug dealers,

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1 did you elicit that second response after the attorney
2 or did he voluntarily just keep saying it as an
3 extension on to I want an attorney?

4 A. My instructions to him was he wanted an attorney
5 and he said he was going to get his attorney and get
6 back with us and I was waiting for that attorney. I
7 told him you speak with your attorney. And that was it,
8 we were done.

9 Q. After he said he wanted -- I guess what Judge
10 Welmaker and I and the Court are all confused about is,
11 did he say maybe we can work it out in a deal, I want an
12 attorney or I want an attorney, maybe we can work out a
13 deal?

14 A. He had already said he wanted an attorney for
15 advisement. But he made the Statement that -- along the
16 lines where we had some, some dope dealers that he could
17 turn in if this thing went on further with his attorney
18 involved, that he may be able to work out something
19 through an -- with, with this as an offering.

20 Q. Okay. That statement that you just spoke about,
21 was that elicited, did you ask him about that ---

22 A. No, I didn't. No, I didn't.

23 Q. -- or he voluntarily told you?

24 A. He voluntarily told me that. I wouldn't have known
25 anything about dealers anyway.

1 Q. So after he asked for an attorney you didn't ask
2 any further questions?

3 A. No. I was careful not to go any further.

4 MS. HAMAKER: That's all from the State for
5 now.

6 THE COURT: Mr. DeJong.

7 MR. DEJONG: Thank you, Your Honor. May it
8 please the Court.

9 **RE CROSS EXAMINATION**

10 **BY MR. DEJONG:**

11 Q. But this is all one continuous string. You read
12 him his rights, you say he signed, you talked to him, he
13 says I wants a lawyer -- I want a lawyer, but then it
14 was just all one continuous string that was induced by
15 your initial remarks?

16 A. Sure.

17 Q. Very good. Thank you, sir.

18 MR. DEJONG: Nothing further.

19 THE COURT: Thank you, sir. You may step
20 down. Any other witnesses?

21 MS. HAMAKER: No, sir, Your Honor.

22 THE COURT: Anything from the defense?

23 MR. DEJONG: Nothing as far as witnesses, Your
24 Honor. I'd like to be heard.

25 THE COURT: Yes, sir. Be glad to hear from

1 you. Ms. Hamaker first. You're the moving party. Be
2 glad to hear from you as to why it should be admissible.

3 MS. HAMAKER: Your Honor, the --

4 THE COURT: And again, so that we know what
5 we're talking about, what you're asking to be admissible
6 is that I can provide you drugs and fencing operation
7 information?

8 MS. HAMAKER: Yes, sir, Your Honor.

9 THE COURT: All right. Be glad to hear from
10 you.

11 MS. HAMAKER: Your Honor, Lieutenant Byers
12 read the defendant his rights, advised him of his
13 rights. It's Lieutenant Byers' testimony that the
14 defendant understood his rights, wasn't acting
15 emotional, wasn't acting under the influence. He was
16 calm and rational at that point in time. After
17 Lieutenant Byers read the rights, Lieutenant Byers then
18 began speaking with the defendant. Once the defendant
19 asserted his right to an attorney, Lieutenant Byers
20 didn't ask any more questions. Case law is very -- case
21 law lays it out that the defendant at any point in time
22 after asking for an attorney can continue the
23 conversation if he wishes. And he did it within mere
24 seconds, if not simultaneously, with asking for that
25 right.

1 THE COURT: Mr. DeJong?

2 MR. DEJONG: Thank you, Your Honor. May it
3 please the Court. I think the point we have to look at
4 here was the very last question I asked Mr. Byers. That
5 was, this question was in response, was induced by your
6 initial comments.

7 Now, I understand what Mademoiselle Solicitor is
8 talking about, but nonetheless the questioning and the
9 response was induced by law enforcement in this case.
10 And being induced by it, once he invoked his rights to
11 an attorney, which I submit he did, don't think there's
12 any question about that, it's done. And if any more
13 statements were made that were induced, even if they
14 were induced before he invoked his rights to an
15 attorney, if it was induced by law enforcement, I submit
16 it would, it would violate the very substance of
17 *Miranda*. To say, well you invoked your right, but we
18 induced the conversation, we induced the questioning and
19 you invoke your right but then you're still responding
20 to me, to what I induced, I would submit, Your Honor, is
21 not admissible.

22 THE COURT: Well, it comes in play the *Edwards*
23 analogy. I'll mull this over over lunch. I'll let you
24 know. Any other motions for us now that we need to take
25 care of? Give you a lunch break until one thirty when

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1 the jury comes in.

2 MS. HAMAKER: But, Your Honor, I would like to
3 be heard on Mr. DeJong's last comment.

4 THE COURT: Sure. Sure. I'll be glad to hear
5 from you.

6 MS. HAMAKER: What he's proposing just doesn't
7 make any logical sense. What he's proposing is against
8 all precedent that's ever been set. What he's saying is
9 once *Miranda* Rights have been read, an officer starts
10 speaking with the defendant, before he invokes any kind
11 of rights whatsoever just because that officer
12 questioned him, anything that the defendant might say
13 anywhere down the line at any point in time might be
14 because the officer invoked it and that would, that
15 would just eliminate all the case law that's already
16 been -- set precedent that once the defendant invokes
17 his right and then waives his right by starting
18 conversation again that evidence is admissible.

19 THE COURT: Well, I think he was talking about
20 something different towards the end when he said even
21 his *Miranda* had been given. I appreciate his argument.
22 I'm not sure that really goes with the issue that I have
23 before me, whether or not the Statement given was
24 voluntary or after the invokement of rights. Any
25 statements ---

1 MR. DEJONG: Your Honor.

2 THE COURT: Yes, sir.

3 MR. DEJONG: I don't mean to interrupt you.

4 I'm just dealing with the *Jackson v. Denno* now. Even if

5 Your Honor lets it in, all we have dealt with in my

6 understanding is *Miranda*. We haven't dealt with the

7 substance of the probative value or anything else ---

8 THE COURT: Right. Relevance.

9 MR. DEJONG: -- of the Statement itself.

10 THE COURT: Right. Just whether or not it's

11 voluntary.

12 MR. DEJONG: Yes, yes, sir. And I certainly

13 don't want to leave the Court with the impression that

14 if you let it in I'm done. I'm not.

15 THE COURT: I -- I'm well aware you wouldn't

16 be done, I don't think.

17 MS. HAMAKER: I believe Mr. DeJong also wanted

18 us to go ahead and consider what prior record we wanted

19 to bring in. I didn't know if you wanted to deal --

20 THE COURT: Yeah, we -- have y'all talked

21 about that? Are y'all in agreement or are there any

22 conflicts on that?

23 MR. DEJONG: We -- there's not really a

24 conflict, Your Honor. We need to refine a couple of

25 issues. There were some burglaries that Mr. --

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1 burglaries and larcenies that Mr. Nance was convicted of
2 in 2003. I don't think there's any question that the
3 convictions could be used as -- for impeachment
4 purposes.

5 My problem with that is he is being tried for a
6 burglary and a larceny in this particular case. I
7 cannot give the Court the cite, but there is a Fourth
8 Circuit Court of Appeals that was a drug case. I'll be
9 happy to try to find it over lunch if Your Honor will
10 allow me. In the Fourth Circuit Court of Appeals, in
11 that case, as I recall, when you are being tried for, in
12 that case it was a drug distribution case, and the
13 Fourth Circuit said and you're trying to get in for
14 impeachment purposes prior drug convictions, that is
15 highly prejudicial to the defendant.

16 I think what the Fourth Circuit said was you can
17 get in the convictions but not what the convictions were
18 for. And in this case I can't argue that the
19 convictions can't come in, but I would argue the
20 convictions cannot come in for burglary and larceny. It
21 would simply be that he was convicted of crimes in 2003.
22 However many I don't -- I -- I'm not disputing the
23 number. We would have to get that. And that those
24 crimes carried in excess of one year. I don't argue
25 over that. I just argue ---

1 THE COURT: Just basically you are saying that
2 you would agree that he be asked about prior felonies
3 that he's been convicted of?

4 MR. DEJONG: Yes, sir.

5 THE COURT: I think there's even a South
6 Carolina case on that with a footnote but not a case on
7 point. But I think the footnote refers to the Fourth
8 Circuit. What about that, Ms. Hamaker?

9 MS. HAMAKER: Your Honor, I would agree with
10 Mr. DeJong. I can't bring in his record from 1992 and
11 1993 because that's the ten year mark. As far as the
12 2001 convictions, he was convicted of CSC third,
13 unlawful carrying of a firearm, burglary second and
14 grand larceny. The CSC third, Your Honor, under 609(a),
15 it says that evidence that the accused has been
16 convicted of such a crime shall be admitted if the court
17 determines that the probative value of admitting this
18 evidence outweighs its prejudicial effect. CSC third is
19 so far distant from burglary, grand larceny, malicious
20 injury to real property, use of gun during commission of
21 a violent crime, where I don't see where the prejudicial
22 effect would be. As far as unlawful carrying of a
23 firearm, burglary second degree and grand larceny, those
24 are the crimes that he is basically charged with today
25 and the State would concede that those should not come

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1 in as being unduly prejudicial and the State would
2 concede to, if the defendant would admit to having been
3 convicted of three felonies in addition to the CSC third
4 in 2001.

5 THE COURT: Again, before he testifies I'll
6 let you know my ruling on those. Anything else? Yes,
7 sir.

8 MR. DEJONG: May it please the Court, Your
9 Honor. On March the 3rd of this year, I served on Ms.
10 Hamaker and filed in the office of the Clerk of Court a
11 Notice of Motion and Motion to Reveal Grant of Immunity
12 or other concessions that arose out of, Your Honor, the
13 Solicitor telling me and obvious -- well maybe not
14 obvious, but she shared with me a CD in which a co-
15 defendant made a statement in this case. That motion
16 was simply for the State to reveal any grants of
17 immunity, any concessions, any promises, any trust, any
18 agreements, anything else that was shared with the co-
19 defendant to induce the Statement.

20 And I would take that perhaps one step further,
21 Your Honor. It's my understanding that the co-defendant
22 has multi-county charges and if the solicitor in Pickens
23 County was involved in any way in obtaining or getting
24 concessions from any other county prosecutors or law
25 enforcement as to sentencing on charges that were not in

1 Pickens County but charges that were pending against the
2 co-defendant to disclose that. I am not asking that Ms.
3 Hamaker take the witness stand. She is an officer of
4 the court and I would certainly expect her to conduct
5 her answers as an officer of the court and would accept
6 her answer as an officer of the court, Your Honor.

7 THE COURT: Ms. Hamaker, any multi-county
8 deals made with other solicitor's officers or law
9 enforcement as far as this particular witness?

10 MS. HAMAKER: No, sir, Your Honor, there
11 hasn't been. I did go down to Newberry County about two
12 weeks ago to the detention center to speak with the
13 defendant. The defendant -- I wanted to make sure I
14 knew where he was because he's been bouncing around. I
15 wanted to know where he was for transport order
16 purposes. I asked him where he thought he was going to
17 be and he said, well I have a court date next week and
18 I'm not sure if that's going to result in me going to
19 SCDC or coming up to seeing you. He said -- he asked me
20 to call the solicitor and see what was going on and to
21 let the solicitor know that he's presently cooperating
22 in a case for me that's going on the trial docket next
23 week.

24 I did call the solicitor from that county, can't
25 remember his name right now, but I did call his

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1 solicitor. I said, he is going to testify in a trial
2 for me against his co-defendant. I understand he's up
3 for a trial that week. I'm not sure what you're
4 planning on doing with him. I know that solicitor is
5 leaning towards a time served sentence because Mr. Parks
6 has been incarcerated for so long and he said he would
7 not convey that to Mr. Parks because he knew the
8 pressure I was under not to make any promises. But he
9 never conveyed that to Mr. Parks. And in fact he was
10 never reached that week or -- at court that week
11 because apparently Judge Hill's father passed away that
12 week.

13 THE COURT: So that's never been disposed of
14 as far as you know, that case?

15 MS. HAMAKER: It still has not been disposed
16 of, Your Honor.

17 THE COURT: Is that satisfactory information
18 for you, Mr. DeJong?

19 MR. DEJONG: In terms of the, of the county,
20 Your Honor, I would ask Ms. Hamaker if there were any
21 trust me agreements, where we're going to tell the judge
22 you cooperated or anything along those lines. I think
23 those are promises of sort to induce a statement and
24 that's what I'm looking for if that was done.

25 MS. HAMAKER: Your Honor, as far as any other

1 counties go, I have not spoken with any solicitors about
2 Johnny Parks' case. I believe I spoke, and I don't want
3 to say for sure or not, I believe it was Oconee County
4 and I spoke about Mr. Nance's case and we came to the
5 agreement if he didn't accept our plea offer that that
6 attorney was going to seek LWOP on him. But other than
7 that, no -- nothing about Johnny Parks was communicated
8 to any other solicitors on my behalf.

9 THE COURT: Were you asking about this
10 solicitor's office?

11 MR. DEJONG: This solicitor's office --

12 THE COURT: Yeah. Any promises made through
13 this county toward Mr. Parks?

14 MS. HAMAKER: No, sir, Your Honor. I did tell
15 Mr. Parks, I said, I need to hear your testimony.
16 Depending on the truthfulness of it and the details of
17 it, I will consider that in making my recommendation to
18 the judge when you go to plea.

19 THE COURT: Satisfactory, Mr. DeJong?

20 MR. DEJONG: I'll take Ms. Hamaker's word,
21 Your Honor.

22 THE COURT: All right. We'll be ready to
23 strike a jury at one thirty.

24 MS. HAMAKER: Thank you, Your Honor.

25 THE COURT: Strikes will be at ten and five,

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1 five and ten.

2 MR. DEJONG: Thank you, Your Honor.

3 MS. HAMAKER: Do we have enough for my five,
4 Your Honor?

5 THE COURT: We'll see.

6 (WHEREUPON, the Court stood at recess for a lunch
7 break.)

8 THE COURT: Thank you very much, ladies and
9 gentlemen, for being patience with us. We're now ready
10 to start the trial of the next case.

11 First of all, some of you were here yesterday or
12 maybe when Judge McIntosh qualified. We have a record
13 of proceedings, the court reporter's taking down
14 everything that's said. I hope you understand I have to
15 ask many of the same questions I asked of you earlier
16 that you might have responded to or might not have, but
17 please understand it's not that I'm forgetful or forgot
18 what you told us yesterday, but it's just that for
19 purpose of this trial and this record, we need to make
20 sure that we keep an accurate record.

21 Also for those of you who haven't been here earlier
22 I would like to introduce Judge Frank Addy, sitting
23 beside me. He's a recently elected judge. When judges
24 are elected they sometimes sit with other judges for a
25 month or so before they get on the bench individually.

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1 He'll be hearing some matters even this week for me, but
2 he'll be sitting with me some during the course of this
3 trial, I'm sure maybe even later this week. I wanted
4 you to know who he was.

5 We're about to begin the next trial, ladies and
6 gentleman, and this is a case that's been brought by the
7 State of South Carolina against Mr. Reginald Antonio
8 Nance. I have several indictments before me.

9 One says that on or about January the 27th, 2009
10 that Mr. Nance did maliciously and willfully damage
11 certain real property of the Gravely Agency located at
12 2701 Gentry Memorial Highway in Pickens County. That he
13 pried open a rear door, as well as damaging an interior
14 bathroom wall and plumbing, as well as telephone lines
15 and burglar alarm, that resulted in damages to this
16 property. That constitutes the offense of malicious
17 damage to real property.

18 I have another indictment that states that on the
19 same date of 27 January, 2009 that he committed a
20 burglary by unlawfully and willfully entering a business
21 belonging to Tobacco Warehouse, same address on Gentry
22 Memorial Highway in Pickens County, without consent,
23 with the intent to commit a crime therein. That
24 constituting a burglary in the second degree.

25 I also have a grand larceny indictment that says

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1 that Mr. Nance on that same date entered the Tobacco
2 Warehouse and took away certain property, personal
3 property, being valued at more than a thousand dollars,
4 that being cash and merchandise and he intended to
5 permanently deprive the lawful owner of that property.

6 I also have an indictment for another burglary
7 charge that says on or about that same date that he
8 willfully and unlawfully entered the Cash Advance at the
9 same address, 2701 Gentry Memorial Highway in Pickens
10 County without consent, again with the intent to commit
11 a crime therein, this constituting burglary in the
12 second degree.

13 I also have an indictment that says on or about
14 that same date that from Cash Advance he took certain
15 miscellaneous property, personal property, with the
16 intent of depriving the owner permanently of the use of
17 that property, that being less than one thousand
18 dollars, constituting the offense of petit larceny.

19 And I also have an indictment that says on or about
20 that same date that the defendant, Mr. Nance, visibly
21 displayed a nine millimeter pistol during the commission
22 or attempted commission of a violent crime, that being a
23 burglary and a larceny.

24 These indictments are merely the charging papers by
25 which this case has been brought to this court. Mr.

1 Nance has entered a plea of not guilty to each and every
2 one of the charges and that places the burden on the
3 State of South Carolina to prove his guilt beyond a
4 reasonable doubt because he, as any accused person,
5 would be presumed innocent until the State meets that
6 burden. I'm going to be the judge of law in this
7 particular case. We need to find twelve fair and
8 impartial jurors to be judges of the facts in this case
9 to determine just what the facts are based upon the
10 evidence that's presented to you. The State of South
11 Carolina, Mr. Nance, they desire to have fair and
12 impartial jurors. They deserve to have fair and
13 impartial jurors to hear this case. While you've been
14 qualified yesterday to serve as a juror, I now need to
15 ask you some additional questions to determine your
16 eligibility to serve on this particular case that we're
17 about to start.

18 First of all, ladies and gentlemen, I need to know
19 if there's any member of the jury panel who has any
20 prior information about these particular allegations
21 that's been made against Mr. Nance, either by reading
22 about it in the newspaper, by being a neighbor, hearing
23 about it indirectly through the media. If any of you
24 have any prior knowledge, first or secondhand, about
25 these particular events that are in the indictment,

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1 would you please stand?

2 (No response.)

3 THE COURT: Thank you. There is no response.

4 Is there any member of the jury panel related by
5 blood or marriage to Mr. Reginald Antonio Nance? If so,
6 would you please stand?

7 (No response.)

8 THE COURT: Is there any member of the panel
9 who has a close business, a social or a personal
10 relationship with Mr. Nance? If so, would you please
11 stand?

12 (No response.)

13 THE COURT: Thank you. There is no response.

14 Is there any member of the jury panel who has any
15 bias or prejudice that would interfere with your ability
16 to be a fair juror in the case? If so, would you please
17 stand?

18 (No response.)

19 THE COURT: Is there any member of the panel
20 who has formed or expressed any opinion about the facts
21 in this case in any way? If so, would you please
22 stand?

23 (No response.)

24 THE COURT: Thank you. There is no
25 response.

1 At this time, ladies and gentlemen, I'm going to
2 read a list of potential witnesses who may be called
3 upon to testify in this case, after which I'll ask some
4 follow-up questions. From the Pickens County Sheriff's
5 Office, potential witnesses would possibly be Lieutenant
6 Tony Robinson, Deputy Corey Baker, Detective Michael
7 Baker, Deputy Roman Fricks, Lieutenant Lane Byers,
8 Deputy Kevin Durham, Deputy John Berghold. From the
9 Richland County Sheriff's Office, Deputy Russell Bantz.
10 From the Laurens County Sheriff's Office, Sergeant Heath
11 Copeland. In addition, potential witnesses might
12 possibly be Johnny Duncan, Johnny Noelle Parks, April
13 Dryman, James Wilson, Annie Mabe, Louise Gravely, Marie
14 Wearing, Tisha Brown.

15 Is there any member of the jury panel related by
16 blood or marriage to any of these potential witnesses?
17 If so, would you please stand?

18 (No response.)

19 THE COURT: Is there any member of the panel
20 who has a close business, a social or a personal
21 relationship with any of these potential witnesses? If
22 so, would you please stand?

23 (No response.)

24 THE COURT: Thank you. There is no response.

25 Is there any member of the jury panel or member of

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1 your immediate family working in law enforcement in any
2 way? If so, would you please stand? If you or a member
3 of your immediate family is in law enforcement.

4 Yes, ma'am, your name, please?

5 JUROR: Pam Jenkins.

6 THE COURT: And what relative is it that you
7 have in law enforcement?

8 JUROR: My father is a retired police officer.

9 THE COURT: All right. If you would remain
10 standing just a moment.

11 Yes ma'am, your name, please.

12 JUROR: Anna Aikens. My brother is in law
13 enforcement.

14 THE COURT: And what agency is he with?

15 JUROR: Investigator.

16 THE COURT: In what area?

17 JUROR: Anderson.

18 THE COURT: Anderson County. If you'd remain
19 standing.

20 Yes, ma'am, your name please.

21 JUROR: Lyna Whaley. My husband is in law
22 enforcement in Greenville County.

23 THE COURT: Greenville, all right.

24 And yes, ma'am, in the back, your name, please.

25 JUROR: Brenda Keenan. My husband is a

1 retired police officer.

2 THE COURT: And where did he retire from?

3 JUROR: New York City.

4 THE COURT: All right. Those of you who are
5 standing who have various relatives involved in law
6 enforcement, this case will be presented through
7 testimony, there might be some tangible evidence, I'll
8 certainly give you the law, we need jurors who will make
9 a decision based upon the facts that are presented in
10 this courtroom and the law that I give you and that
11 alone. If, for any reason, you believe because of the
12 relationship that you have with a relative, that would
13 interfere with your ability to be a fair and impartial
14 juror in this case, I would ask if you would to please
15 remain standing, and if you believe that you could be a
16 fair juror, I'll ask if you would be seated at this
17 time.

18 Thank you. Let the record reflect that all the
19 jurors have been seated.

20 Is there any member of the jury panel who is a
21 contributing member of any organization having its
22 primary responsibility that concerning the promotion of
23 law enforcement, victim's rights, such as MADD, SADD,
24 CAVE, PARR, Sheriff's Association, any such organization
25 as that. If you would, please stand if you're a

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1 contributing member.

2 (No response.)

3 THE COURT: Thank you. There is no response.

4 Is there any member of the jury panel or member of
5 your immediate family ever been accused of -- or a
6 complaining witness, either accused of a burglary or a
7 property crime, you've ever been the complaining witness
8 concerning that or if you've ever been the victim of a
9 theft or burglary, would you please stand? If you've
10 been a victim, complaining witness or a -- been accused
11 yourself of that.

12 All right. Let me start with this lady. Yes,
13 ma'am, your name, please.

14 JUROR: Mary C. Green. I've been a victim of
15 a theft, but it was in like about 1979 in New Orleans.

16 THE COURT: All right. Yes, sir, your name,
17 please.

18 JUROR: I've been a victim of theft also
19 myself.

20 THE COURT: And how long ago was it, sir?

21 JUROR: About around four years ago.

22 THE COURT: All right. And your name,
23 please, sir. Your name, Mr. Ladd, if you'd state your
24 name, please, sir, for the record.

25 JUROR: Joseph Ladd.

1 THE COURT: Yes, sir, thank you, sir. Yes,
2 sir, if you'd state your name for the record.

3 JUROR: I've been the victim of a theft.

4 THE COURT: And how long ago would have --
5 that have been?

6 JUROR: The last one was about a week ago.

7 THE COURT: Those of you who have been
8 victims, that are standing now who have been victims of
9 thefts, would that interfere with your ability to be a
10 fair juror in this case? Particularly, Mr. Hamilton,
11 I'll ask you if it's now ongoing, do you believe that
12 that would affect your ability in any way to be a fair
13 juror?

14 JUROR: No, sir.

15 THE COURT: You can be fair to the State, you
16 can be fair to the defendant in this case?

17 JUROR: I could be fair to anyone.

18 THE COURT: And for the other two that have
19 had more distant thefts, do you believe you could be
20 fair to both the State and to the defense and if you're
21 called to be a juror you could render a verdict just
22 based on the evidence that you hear in the courtroom,
23 the law that I give you and that alone without any other
24 prior involvement that you've had with -- as being a
25 victim. Do you believe you could be fair, sir?

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1 JUROR: Yes, sir, I do.

2 THE COURT: Ma'am, you ---

3 JUROR: Yes, sir.

4 THE COURT: All right. Thank you very much.

5 You three may be seated.

6 Is there any member of the jury panel or a member
7 of your immediate family have any financial or
8 employment or a customer in any way with Cash Advance
9 located at 2701 Gentry Memorial Highway? If so, any
10 other check cashing business, regardless of location, if
11 anybody has any affiliation with any such organization
12 would you please stand?

13 (No response.)

14 THE COURT: Thank you. There is no response.

15 Is there any member of the jury panel or member of
16 your immediate family who has any employment or
17 financial connection in any way with the Tobacco
18 Warehouse at Gentry Memorial Highway in Pickens County.
19 If so, would you please stand?

20 (No response.)

21 THE COURT: Thank you. There is no response.

22 At this time I'll ask the attorneys if you would,
23 please stand and introduce yourselves to the jury. Ms.
24 Hamaker.

25 MS. HAMAKER: Good afternoon. My name is

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1 Jenny Hamaker and I'm an Assistant Solicitor of the
2 Thirteenth Circuit, which includes Greenville and
3 Pickens Counties.

4 THE COURT: Mr. DeJong.

5 MR. DEJONG: Thank you, Your Honor. May it
6 please the Court.

7 Good afternoon, ladies and gentlemen. My name is
8 John DeJong. I practice law here in Pickens County.
9 Seated beside me is my client. Seated on the far side
10 of my client is Mr. Johnny Duncan, who is my
11 investigator.

12 THE COURT: Thank you. Is there any member of
13 the jury panel related by blood or marriage to either of
14 these attorneys? If so, would you please stand?

15 (No response.)

16 THE COURT: Is there any member of the panel
17 who has a close business, a social or a personal
18 relationship with either of these attorneys. If so,
19 would you please stand.

20 (No response.)

21 THE COURT: Is there any member of the jury
22 panel ever been involved in any litigation in which
23 either of these attorneys represented you or represented
24 the opposing side. If so, would you please stand.

25 (No response.)

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1 THE COURT: Thank you. There is no response.

2 Ladies and gentlemen, it bears repeating, these
3 parties deserve to have fair jurors. Is there any
4 member of the jury panel aware of any reason whatsoever
5 that in this particular case you believe you could not
6 be fair to either the State of South Carolina, to Mr.
7 Nance, render a verdict that would speak the truth just
8 based on the evidence that you hear, the law that I give
9 you and that alone. If for any reason you believe you
10 could not be a fair juror in this case would you please
11 stand?

12 (No response.)

13 THE COURT: Thank you. There is no response.

14 Any other questions from the State?

15 MS. HAMAKER: Not from the State, Your Honor.

16 THE COURT: From the defense.

17 MR. DEJONG: Nothing on behalf of Mr. Nance,
18 Your Honor.

19 THE COURT: All right. Let's empanel a jury.
20 We'll get one alternate.

21 MR. DEJONG: You indicated earlier, Your
22 Honor, five and ten; is that correct?

23 THE COURT: Yes, sir.

24 MR. DEJONG: Thank you.

25 MISTER CLERK: As I call your name, if would

1 you just please stand so the attorneys can see you.

2 Juror Number 30, Gerald L. Durham. What says the
3 State.

4 MS. HAMAKER: Please present the juror.

5 MISTER CLERK: And the defense.

6 MR. DEJONG: Please swear the juror.

7 MISTER CLERK: If you would come forward,
8 please, sir.

9 Juror Number 81, Robert J. Mussro. What says the
10 State.

11 MS. HAMAKER: Please present the juror.

12 MISTER CLERK: And the defense.

13 MR. DEJONG: Please swear the juror.

14 MISTER CLERK: If you would come forward,
15 please, sir.

16 Juror Number 126, Jennifer C. Watson. What says
17 the State.

18 MS. HAMAKER: Please present the juror.

19 MISTER CLERK: And the defense.

20 MR. DEJONG: Please swear the juror.

21 MISTER CLERK: If you would come forward,
22 please, ma'am.

23 Christine M. Tamsin. There's no juror number.

24 MR. DEJONG: What is the last name, please,
25 Mister Clerk?

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1 MISTER CLERK: Tamsin, T-a-m-s-I-n.
2 MR. DEJONG: Thank you.
3 MISTER CLERK: What says the State.
4 MS. HAMAKER: Please present the juror.
5 MISTER CLERK: And the defense.
6 MR. DEJONG: Please excuse this juror from the
7 trial of this case.
8 MISTER CLERK: Juror Number 5, Candace E.
9 Attaway. What says the State.
10 MS. HAMAKER: Please present the juror.
11 MISTER CLERK: And the defense.
12 MR. DEJONG: Please excuse this juror from the
13 trial of this case.
14 MISTER CLERK: Juror Number 82, Anne M.
15 Jenkins. What says the State.
16 MS. HAMAKER: Mr. Welborn, can you repeat that
17 number?
18 MISTER CLERK: 82.
19 MS. HAMAKER: And the name.
20 MISTER CLERK: Anne M. Jenkins.
21 MS. HAMAKER: Please present the juror.
22 MISTER CLERK: And the defense.
23 MR. DEJONG: Please excuse this juror from the
24 trial of this case.
25 MISTER CLERK: Juror Number 25, Melvin E.

1 Cureton. What says the State.

2 MS. HAMAKER: Please present the juror.

3 MISTER CLERK: And the defense.

4 MR. DEJONG: Please swear the juror.

5 MISTER CLERK: If you would, come forward,
6 please, sir.

7 Juror Number 114, Gloria D. Sloan. What says the
8 State.

9 MS. HAMAKER: Please present the juror.

10 MISTER CLERK: And the defense.

11 MR. DEJONG: Please swear the juror..

12 MISTER CLERK: If you would, come forward,
13 please, ma'am.

14 Juror Number 6, Lisa A. Bader. What says the
15 State.

16 MS. HAMAKER: Please present the juror.

17 MISTER CLERK: And the defense.

18 MR. DEJONG: Please swear the juror.

19 MISTER CLERK: If you would, come forward,
20 please, ma'am.

21 Juror Number 125, Dalton R. Watson. What says the
22 State.

23 MS. HAMAKER: Please present the juror.

24 MISTER CLERK: And the defense.

25 MR. DEJONG: What is the number again, please,

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1 Mister Clerk.

2 MISTER CLERK: 125.

3 MR. DEJONG: Thank you, sir. Please swear the
4 juror.

5 MISTER CLERK: If you would, come forward,
6 please, sir.

7 Juror Number 111, Carolyn F. Sheriff: What says
8 the State.

9 MS. HAMAKER: Please present the juror.

10 MISTER CLERK: And the defense.

11 MR. DEJONG: Please excuse this juror from the
12 trial of this case.

13 MISTER CLERK: Juror Number 91, Joshua G.
14 Perry. What says the State.

15 MS. HAMAKER: Please present the juror.

16 MISTER CLERK: And the defense.

17 MR. DEJONG: Please excuse this juror from the
18 trial of this case.

19 MISTER CLERK: Juror Number 34, Baker A.
20 Gallimore. What says the State.

21 MS. HAMAKER: Please present the juror.

22 MISTER CLERK: And the defense.

23 MR. DEJONG: Please excuse this juror from the
24 trial of this case.

25 MISTER CLERK: Juror Number 98, Henry J. Rahn.

1 What says the State.

2 MS. HAMAKER: Please present the juror.

3 MISTER CLERK: And the defense.

4 MR. DEJONG: Please swear the juror.

5 MISTER CLERK: If you would come forward,
6 please, sir.

7 Juror Number 44, Timothy P. Hamilton. What says
8 the State.

9 MS. HAMAKER: Please present the juror.

10 MISTER CLERK: And the defense.

11 MR. DEJONG: Please excuse this juror from the
12 trial of this case.

13 MISTER CLERK: Juror Number 86, Tammy L. Pace.
14 What says the State.

15 MS. HAMAKER: Please present the juror.

16 MISTER CLERK: And the defense.

17 MR. DEJONG: Please swear the juror.

18 MISTER CLERK: If you would, come forward,
19 please, ma'am.

20 Juror Number 102, Erica A. Richards. What says the
21 State.

22 MS. HAMAKER: Please present the juror.

23 MISTER CLERK: And the defense.

24 MR. DEJONG: Please excuse this juror from the
25 trial of this case.

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1 MISTER CLERK: Juror Number 101, Robin W.
2 Rhodes. What says the State.
3 MS. HAMAKER: Please present the juror.
4 MISTER CLERK: And the defense.
5 MR. DEJONG: Please swear the juror.
6 MISTER CLERK: Come forward, please, ma'am.
7 Juror Number 26, Christopher O. --
8 JUROR: Cutrer.
9 MISTER CLERK: Sorry. What says the State.
10 MS. HAMAKER: Please present the juror.
11 MISTER CLERK: And the defense.
12 MR. DEJONG: Please excuse this juror from the
13 trial of this case.
14 MISTER CLERK: Juror Number 57, Brenda Y.
15 Keenan. What says the State.
16 MS. HAMAKER: Please present the juror.
17 MISTER CLERK: And the defense.
18 MR. DEJONG: Please excuse this juror from the
19 trial of this case.
20 MISTER CLERK: Juror Number 17, Timothy R.
21 Bryant. What says the State.
22 MS. HAMAKER: Please present the juror.
23 MISTER CLERK: And the defense.
24 MR. DEJONG: Please swear the juror.
25 MISTER CLERK: If you would, come forward,

1 please, sir.

2 Juror Number 71, Walter S. McJunkin. What says the
3 State.

4 MS. HAMAKER: Please present the juror.

5 MISTER CLERK: And the defense.

6 MR. DEJONG: Please swear the juror.

7 MISTER CLERK: If you would, come forward,
8 please, sir.

9 This would be for the alternate.

10 MR. DEJONG: Your Honor, we are striking one
11 alternate?

12 THE COURT: One.

13 MR. DEJONG: Thank you, sir.

14 MISTER CLERK: Juror Number 21, Cheryl A.
15 Chappell. What says the State.

16 MS. HAMAKER: Please present the juror.

17 MISTER CLERK: And the defense.

18 MR. DEJONG: Please swear the juror.

19 MISTER CLERK: If you would, come forward,
20 please, ma'am.

21 THE COURT: Any other legal matters we need to
22 take care of as far as selecting a jury in this case.
23 Anything from the State?

24 MS. HAMAKER: No, sir, Your Honor.

25 THE COURT: From the defense.

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1 MR. DEJONG: Not on behalf of Mr. Nance, Your
2 Honor.

3 THE COURT: Thank you. Those of you who were
4 not selected, I don't know what's happening downstairs.
5 I don't know how much progress they're making in that
6 trial. I'm going to ask if you would call back tonight
7 after six o'clock. There will be instructions for you
8 then on the telephone message as to when you need to
9 report back or when you need to call back tomorrow.

10 Thank you very much for your service today, ladies
11 and gentlemen. You are dismissed at this time. Call
12 back tonight after six.

13 (WHEREUPON, the jury panel was dismissed.)

14 THE COURT: Ladies and gentlemen, you've seen
15 the process by which you were selected. I'm going to
16 ask if you would now -- I'm going to send you back to
17 your jury room, let you get familiarized with it. We
18 have one other matter we need to take care of that
19 doesn't involve this case. It won't take very long,
20 I've been assured, just briefly to take care of that.
21 We'll then call you back and be ready to proceed with
22 the opening statements of the attorneys.

23 Let me remind you, ladies and gentlemen, you
24 shouldn't be discussing this case with each other, with
25 anyone else until the case is over and completed,

1 certainly not while it's progressing. You can get to
2 know each other, you can talk about other things, but
3 not about the case while you're back in your jury room.
4 We'll call you back in just a few minutes. We'll be
5 ready to start the case then.

6 At this time, I'll ask you to go with Mr. Duncan.
7 He'll show you where your jury room is.

8 (WHEREUPON, the jury exited the open court at
9 approximately 2:32 p.m.)

10 MR. DEJONG: Are we at ease on this case, Your
11 Honor?

12 THE COURT: We are, sir.

13 (WHEREUPON, the Court stood at recess for a short
14 break.)

15 THE COURT: Solicitor, do you anticipate the
16 witness that took the statement to be testifying early
17 on or later in the trial?

18 MS. HAMAKER: Later on in the trial, Your
19 Honor.

20 THE COURT: Okay. There will be no mention of
21 the statement now. Then we'll revisit that then if it's
22 not coming up in the first couple of witnesses,
23 particularly as to Mr. DeJong's position about the
24 relevance and the other issues, not just the
25 voluntariness. We'll address that at the end of the day

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1 maybe if you don't anticipate anything being said about
2 that now.

3 MS. HAMAKER: No, sir, Your Honor.

4 THE COURT: Okay. All right. Anything we
5 need to take care of before the jury comes in and is
6 sworn.

7 MS. HAMAKER: Not from the State, Your Honor.

8 MR. DEJONG: Can't think of anything on behalf
9 of Mr. Nance, Your Honor.

10 THE COURT: All right. Let's have our jury
11 come back if they're ready.

12 (WHEREUPON, the jury entered the open court at
13 approximately 3:15 p.m.)

14 THE COURT: Thank you very much, ladies and
15 gentlemen, for bearing with us while we took care of
16 that other matter. We are now ready to proceed with the
17 trial. Judge Addy will be here in a moment. He'll be
18 coming in. He's been working on another matter actually
19 and he'll be joining us in just a few moments.

20 Let me make just a couple of observations for you.
21 I wanted to let you know that I'm aware of the sacrifice
22 you're making to be here. We're going to do everything
23 we can to keep the court -- the trial running. I
24 apologize for the other issue that came up on another
25 matter that was scheduled today through Columbia that we

1 had to take care of.

2 But I look forward to working with you, ladies and
3 gentlemen. You're going to be the judge of the facts
4 and I'm going to be the judge of the law. We'll be
5 working together on this case. You're going to need to
6 apply your good common sense, the everyday experiences
7 that you have to be a judge of the facts because you're
8 going to be judging the credibility of the witnesses
9 who testify and decide the believability of that
10 testimony. I'm going to be the judge of the law. I'm
11 going to make decisions as far as the law that I'll
12 instruct you.

13 Sometime during the course of the trial there
14 might be objections made. The lawyers might make an
15 objection to a particular piece of evidence or a
16 particular statement that may be made. I'll rule upon
17 that. Sometimes if there's a legal matter that comes
18 up it may necessitate that I have you go back to your
19 jury room. When legal matters come up it often happens
20 that I've got to hear some legal treatises or cases or
21 statutes that might be applicable and sometimes it
22 happens that I've got to hear testimony. That would
23 not be testimony applicable to the issues that you have
24 and would not be properly submitted to a trial jury.
25 But I want to make the best decision I can as a judge

1 of the law, as I'm sure you want to make the best
2 decision you can as a judge of the facts. And
3 sometimes as a judge of the law, I have to hear matters
4 that wouldn't be properly presented to you. And I hope
5 you'll understand if you do have to leave the courtroom,
6 that'll be the reason, so we can get those matters
7 resolved.

8 Cases take process in stages. In a few moments,
9 the attorneys will make an opening statement to you.
10 Let me remind you that what the attorneys say to you is
11 not evidence. The evidence will come from the witness
12 stand, from any exhibits that may be offered into
13 evidence during the course of the trial. But I urge
14 you to listen carefully. They'll give you an overview
15 of what in their view is important for you to listen to,
16 particularly as the case develops. After witnesses are
17 called to testify and examined and cross examined then
18 there'll be an opportunity for them again to address
19 you in a closing statement. I'll then have an
20 opportunity to give you instructions on the law. The
21 case will be yours to decide at that time.

22 Let me remind you that you're about to take an
23 oath. You've been under oath during the selection
24 process. The Clerk's going to administer an oath to you
25 and you're going to swear that you will well and truly

1 try this case. And that's a high honor, high
2 responsibility that you have. And let me remind you
3 again of the importance that you not discuss the case
4 with anyone, because the process, the purity of the
5 process is important because it would be improper for
6 you to be getting information from any source
7 whatsoever, from a family member, a business associate,
8 from each other until this case is over and concluded
9 because that's when you'll have a chance to discuss it
10 and not in the meantime.

11 Likewise, as you see the attorneys and staff coming
12 and going in the hallway in the morning or whenever it
13 may be to -- that they see you and if they seem a little
14 unfriendly to you and want to avoid you, it's not that
15 they are unfriendly by nature, it's just the fact that
16 that's their training. They want to make sure that
17 there's no appearance of any impropriety whatsoever if
18 they come in contact with you and if someone were to
19 accuse them of trying to talk to a juror about the case
20 they would not do that. And if they seem distance --
21 distant to you, I trust that you will not hold that
22 against them in any way but understand that that's the
23 nature of their training to do that.

24 We'll take periodic breaks, ladies and gentlemen.
25 We normally will go for an hour, hour and a half at a

1 time and then we'll take breaks as we need them.
2 Normally we'll start at nine o'clock in the morning.
3 We'll be ready to hopefully proceed at that time. We'll
4 take a morning break. We'll usually take a lunch hour
5 around one o'clock or so. Hopefully we'll be finished
6 by five o'clock. That's our goal. Sometimes it goes
7 later. I hope you understand that when we have
8 witnesses available, we need to get the work done. But
9 if you need to make a call to your family at home if we
10 run late, we'll certainly give you that opportunity.
11 We'll let you know if we are going to be running late
12 during that time.
13 Obviously it's vitally important you be a good
14 listener, that you watch what's going on in the
15 proceedings. If, at any time, you need a break and I
16 haven't called for a break, please let us know, let me
17 know if you can get my attention. If you can't, I've
18 introduced some of the folks already to you, this is Ms.
19 Anna Lake, a recent law school graduate, this is my law
20 clerk sitting beside me or beside Judge Addy now.
21 You've met the bailiffs around, Mr. Hendrix, Mr. Wilson
22 over this way, Mr. Duncan over here. They'll certainly
23 assist you in any way. Obviously your fine Clerk of
24 Court, Mr. Welborn, will do anything he can to help
25 you. And seated in front of you with her back to you is

1 Ms. Danette Hanks. She's the court reporter and she's
2 taking down everything that's said to make sure we
3 preserve a record. She'll be marking exhibits if there
4 are any to be introduced into evidence later. Any of
5 these folks will be glad to help you in any way that
6 they can, I'm sure.

7 It makes me proud that you've accepted this
8 responsibility to be a fair and impartial juror. That
9 you've committed to both sides to render justice in this
10 case. And I certainly look forward to working with you,
11 ladies and gentlemen.

12 At this time, I will ask the Clerk, if he would
13 administer the oath to you. If you'd please stand for
14 that, and after which the attorneys will make their
15 opening statements.

16 MISTER CLERK: After the oath is administered
17 please answer by saying I will. Raise your right hand.
18 You shall well and truly try the issue joining this case
19 of the State vs. Reginald Antonio Nance and a true
20 verdict rendered according to law and evidence, so help
21 you God.

22 (WHEREUPON, all jurors answered I will and the jury
23 was duly sworn.)

24 MISTER CLERK: Thank you very much. You may
25 be seated.

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Opening Statement by Ms. Hamaker

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1 THE COURT: Solicitor, you may address the
2 jury MS. HAMAKER: Thank you, Your Honor. Mr.
3 DeJong.

4 OPENING STATEMENT

5 BY MS. HAMAKER:

6 Good afternoon. I see that some of y'all seem to
7 have won the lottery twice this week and hopefully for
8 you it will be the last time. Mr. DeJong and I suspect
9 that this trial is going to last probably about two
10 days, maybe a little bit more, so hopefully it is your
11 last one.

12 My name again is Jenny Hamaker. I'm the Assistant
13 Solicitor from Pickens County. In other states they
14 call us DA's or district attorneys or prosecutors.
15 We're all the same. We all represent the State and the
16 people in the State in which we live. What we do is we
17 seek justice and we try to make those who commit
18 criminal actions within our state responsible for their
19 actions and have them face the consequences for those
20 actions.

21 My job as a solicitor is to prove the defendant
22 guilty beyond a reasonable doubt. He has been charged
23 with six different charges, two counts of burglary
24 second. The judge is going to describe that at the end
25 of the trial and let you know what that exactly is and

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Opening Statement by Ms. Hamaker*

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1 if I've proven it or not. The next one is petit
2 larceny. Petit larceny is when someone steals
3 something that's less than one thousand dollars. He's
4 also been charged with grand larceny which is if you
5 steal over a thousand dollars. Malicious injury to
6 real property. Well, there's real property and then
7 there's personal property. Real property is the land
8 on which your house sits or your house itself.
9 Personal property is some jewelry or cash, something
10 that you can actually move. He is charged with
11 malicious injury to real property. The final charge he
12 is charged with is use of a weapon or possession of a
13 weapon during the commission of a violent crime. The
14 judge has already told you that burglary is a violent
15 crime and he's charged with two counts of burglary.

16 Now notice I said that the defendant is charged
17 with burglary. He is not convicted, yet. The State has
18 not proven him guilty beyond a reasonable doubt, yet.

19 You've heard me say beyond a reasonable doubt.
20 Some of you might have already heard this speech just a
21 few hours before, but what beyond a reasonable doubt
22 means is it's my burden of proof, it's the State's
23 burden of proof, it's what we have to prove to you
24 before you can convict him. We have to convince you
25 that he's guilty beyond a reasonable doubt.

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Opening Statement by Ms. Hamaker

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1 Now beyond a reasonable doubt is not beyond all
2 doubt. There's still going to be some doubt, it's
3 beyond a reasonable doubt. A reasonable doubt is
4 something that would cause you to hesitate in acting in
5 your own personal affairs, something that you said, not
6 quite there, something's just not right, he's not
7 guilty. If you do have that reasonable doubt, the State
8 encourages you to let this man go, let him go. It's my
9 burden, it's the State's burden to prove him guilty.
10 But if you do find that he is guilty, I encourage you to
11 find him guilty and let him be held accountable to the
12 full extent of the law.

13 I already told you what he was charged with.
14 You're wondering, well tell me about this case, what is
15 this about. I don't know how many of you are familiar
16 with the area, it's a strip mall across the street from
17 Burger King on Highway 8 heading from Pickens to Easley,
18 it's on your right hand side. That's the place that's
19 involved in this crime. The evidence is going to show
20 that on January 27th, 2009, I get my year's mixed up
21 sometimes, in 2009, that two stores were broken into in
22 this strip mall at about eleven, eleven thirty at night.
23 The officers received an alarm call saying that the
24 alarm at Tobacco Warehouse had been activated. The
25 first officer got there quickly, followed by a backup

1 officer. Couldn't see anything wrong at first. Well,
2 they drove around the store and they quickly found what
3 was going on. There's a car there, it was running, the
4 doors were unlocked. The evidence is going to show
5 this. The evidence is also going to show that Mr.
6 Nance, the defendant, seated right there at that table,
7 his ID was found in the car, his gun was found in the
8 car, and a lot of his personal items, a notebook,
9 several personal items, his cell phone, were found in
10 that car.

11 Not only will the evidence show that a gun was
12 found in the car, the gun has the capability of holding
13 eight bullets and one in the chamber. The gun was fully
14 loaded and ready to go with nine bullets in it in
15 conducting this burglary.

16 The evidence is also going to show that this same
17 day at three o'clock that afternoon this defendant
18 purchased that car. The evidence is going to show
19 that. Now this sounds a lot like an episode of World's
20 Dumbest Criminals. But there's going to be some twists
21 and turns in here, some twists and turns. I made it
22 sound simple, but everything is more complicated than it
23 is simple.

24 You're going to hear several witnesses come here
25 on the stand. A lot of times trials are like bad

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Opening Statement by Mr. DeJong

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1 jokes. It takes a long time to get to the punch line.
2 You're going to wonder why is she asking this question,
3 what relevance does this have, what's going on? What I
4 urge you to do is to listen carefully. Don't get lost
5 in the details. Look at the witnesses. All your
6 evidence is going to come right here from the witness
7 stand. People have to testify. You can't take what I
8 say or what Mr. DeJong says and come up with a guilty
9 verdict. We have to present evidence. Look at all the
10 witnesses. Look at them in the eyes. Watch their body
11 language. See how they react. Listen to what they
12 say. Are they trustworthy and do they make sense.
13 At the end of trial, although it might look a
14 little confusing at first, I'm going to come back to
15 you in my closing statements and bring everything back
16 together and show you why I was asking the questions I
17 was asking and how all those questions and all those
18 answers leave you without a reasonable doubt that this
19 defendant is guilty of the crimes he's been charged
20 with. Thank you for your time.

21 THE COURT: Mr. DeJong, you may address the
22 jury.

23 MR. DEJONG: Thank you, Your Honor. May it
24 please The Court. Madam Solicitor.

25

OPENING STATEMENT

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Opening Statement by Mr. DeJong

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1 BY MR. DEJONG:

2 About a hour and a half, two hours ago, we were in
3 the courtroom, His Honor asked us to introduce
4 ourselves, which we did. And I shared with you that
5 Mr. Nance was sitting beside me, that I represent him.
6 I would like to reintroduce you to Mr. Nance and the
7 fact that I represent him. Sitting beside me at counsel
8 table is Mr. Reginald Antonio Nance. And today, ladies
9 and gentlemen, I have the pleasure of representing the
10 innocent Reginald Antonio Nance. And you may say, well
11 what in the world are we here for then? How can you say
12 that he is innocent? I can say that, ladies and
13 gentlemen, because that is the law. That is one of the
14 most fundamental principles of law that we have in this
15 country. And that fundamental principle of law is known
16 as presumption of innocence.

17 You could well say how can you say he's innocent?
18 He was arrested for these offenses. And yes, indeed,
19 he was. But you see, ladies and gentlemen, but for the
20 fact that our society now needs a paper trail of
21 everything or an electronic trail of everything, but
22 for that we would take those arrest warrants and rip
23 them in pieces or put them through the paper shredder
24 because the fact that Mr. Nance was arrested on these
25 charges is meaningless to us today.

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1 Well, okay, the arrest warrants are meaningless.
2 His Honor read us indictments that were handed down by
3 the Pickens County Grand Jury. The same thing, ladies
4 and gentlemen, we could take those indictments but for
5 the fact of the paper trail or the electronic trail, hit
6 the delete button, put them through the paper shredder
7 because they are meaningless to us today.

8 And they are meaningless, ladies and gentlemen,
9 because they are not evidence against Mr. Nance. You
10 have heard, at this point in time, no evidence against
11 Mr. Nance. You have heard no evidence period. You
12 have heard the indictments read, but those again are
13 merely allegations. It is not proof.

14 And those three words, ladies and gentlemen,
15 presumption of innocence, that is not legal theory, it
16 is not legal mumbo jumbo that lawyers talk about. It
17 is a fundamental right of every citizen of Pickens
18 County, every citizen of the State of South Carolina,
19 every citizen of the great United States of America.
20 And sometimes that presumption of innocence is --
21 sometimes you will hear it -- people say it is likened
22 to a cloak of righteousness.

23 So if you have a look at Mr. Nance, he's dressed
24 neatly, but what I would ask you to look at more closely
25 is the cloak of righteousness that covers him from the

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1 very soles of his feet to the very top of his head and
2 that is the presumption of innocence. And that
3 presumption of innocence, ladies and gentlemen, remains
4 throughout the trial. It does not end after the State
5 puts up their first witness, second witness, third
6 witness. It does not end even after His Honor charges
7 you on the law.

8 Indeed, after all of that is done and you walk
9 back into the jury room and His Honor instructs you to
10 start your deliberation, that presumption of innocence
11 follows Mr. Nance right back into the jury room with
12 you.

13 Now the Solicitor and I, we don't agree on many
14 things, but we agree on one thing, and that is the
15 burden of proof in this case is right here. This is the
16 case of the State of South Carolina versus Reginald
17 Antonio Nance. The great State of South Carolina, with
18 all of its resources, versus Reginald Antonio Nance.
19 And this is where the burden of proof lies, solely on
20 the State.

21 And that, ladies and gentlemen, we'll come back and
22 talk about that at the end of the case. That's what you
23 are ultimately going to decide, whether the State has
24 carried their burden of proof.

25 Mr. Nance has nothing to come into this courtroom

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1 and prove to you today, nothing whatsoever. Mr. Nance
2 may testify, Mr. Nance may not testify. But I share
3 with you that is not relevant because he has nothing to
4 prove to you. It's not relevant whether he doesn't
5 testify because he has nothing to come into this
6 courtroom and prove to you today. The burden of proof
7 is entirely on the State.

8 Ladies and gentlemen, on behalf of Mr. Nance, I
9 would like to thank you for being here. It's three
10 thirty-five in the afternoon. I bet you if we could
11 poll you, which we can't, I bet there's a thousand and
12 one places all of y'all would rather be. But your
13 importance to this trial and to our entire system is so
14 phenomenal sometimes it's hard to grasp. Because
15 without you, without the thirteen of you sitting in that
16 jury box right now, meaning no disrespect to His Honor,
17 but there would be no need for His Honor, certainly no
18 need for the Solicitor, nor myself, because you are what
19 we call the finders of fact in this case.

20 Now I would caution you when we use the word the
21 finder of fact, it's not a gut feeling, it's not
22 something you think, it's not something you feel. Go
23 back to what we just talked about, that is the burden of
24 proof is on the State to prove guilt beyond a reasonable
25 doubt by competent evidence and testimony. So it is not

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1 a feeling.

2 The great Winston Churchill, I believe one time
3 said, jury service is the highest duty a citizen can
4 render for their county in peace time. We're not at
5 peace. Perhaps we could rephrase it a bit and say it is
6 the highest service any citizen can afford and give
7 their county as a non-combatant, because it is that
8 important. It is the very cornerstone of our system.

9 I am not, at this point in time, going to discuss
10 the facts or what I believe the facts to be. I am
11 going to be like the thirteen of you. I am going to
12 sit in this courtroom and we're going to see how the
13 case unfolds, because the burden of proof is on the
14 State. Once we see how it unfolds, and the State has
15 rested, and the defense has rested, then we will get
16 back together, then we'll talk about the evidence in
17 this case. I don't know what it's going to be, don't
18 know what it's going to show.

19 But I do believe, ladies and gentlemen, whatever
20 the State puts up, once they have put it up, once you
21 have heard closing arguments, once you have heard the
22 charge on the law from His Honor and you go back to the
23 jury room and you consider what you have heard and seen,
24 that you can say, State of South Carolina with all your
25 resources, Mr. Nance still has that cloak on, and return

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Corey Baker - Direct Examination by Ms. Hamaker

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1 a verdict of not guilty on all charges.

2 Thank you so much for your time and your patience
3 with me.

4 THE COURT: Solicitor, you may call your first
5 witness.

6 MS. HAMAKER: The State would call Deputy
7 Corey Baker to the stand.

8 MISTER CLERK: Place your left hand on the
9 Bible and raise your right hand. Do you solemnly swear
10 or affirm the testimony you're about to give in this
11 case to be the truth, the whole truth and nothing but
12 the truth, so help you God?

13 MR. BAKER: I do.

14 MISTER CLERK: Thank you, sir. If you would
15 have a seat and state your name for the record.

16 MR. BAKER: Corey Baker.

17 COREY BAKER,

18 BEING DULY SWORN, TESTIFIED AS FOLLOWS:

19 DIRECT EXAMINATION

20 BY MS. HAMAKER:

21 Q. Deputy Baker, who do you work for?

22 A. I work for the Pickens County Sheriff's Office.

23 Q. And how long have you been working there?

24 A. Almost four years.

1 Q. What division are you in?

2 A. I work for the Uniform Road Patrol.

3 Q. What kind of educational background do you have?

4 A. I graduated in '03 from Pickens High School and
5 completed about two thirds of my criminal justice degree
6 from Tri County Tech.

7 MR. DEJONG: Your Honor, I apologize for
8 interrupting. Can we get him a little closer to the
9 microphone, please?

10 THE COURT: Make sure you speak up loudly,
11 Officer, so that the jury and all the parties can hear
12 you, sir.

13 Q. There's a fan back there a little, so ...

14 A. Okay.

15 Q. Please describe your duties as a road patrol
16 officer.

17 A. It ranges from answering your routine road calls
18 which would be larcenies, domestic violence, assaults,
19 and of course we work traffic too, you know, pulling
20 cars over for traffic infractions.

21 Q. About how many calls do you go out on in a given
22 year? An estimate's fine.

23 A. I would say two, three hundred, maybe more.

24 Q. How many of those are involving property offenses?

25 A. The majority. Well, I would say over half.

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1 Q. Have you ever testified in court before?

2 A. I have.

3 Q. How many times?

4 A. I wouldn't, I wouldn't even be able to put a number
5 on it.

6 Q. Moving to the incident, were you involved in an
7 incident that occurred January 27th, 2009?

8 A. I was.

9 Q. And what time of day did it occur?

10 A. This was after eleven p.m. at night, approximately
11 fifteen minutes after eleven or so.

12 Q. How did you become involved in the incident?

13 A. I was doing an incident report at the law
14 enforcement center and I overheard them, or dispatch,
15 just giving the call out to my partner in the Pickens
16 area that night and it was at the Tobacco Warehouse
17 which is just right up the road from where I was, so I
18 decided to take the call for him since I was so close to
19 it.

20 Q. Who's your partner?

21 A. Deputy Jodie Berghold.

22 Q. Is he in the courtroom today?

23 A. He is.

24 Q. Can you point him out?

25 A. He's sitting right there.

- 1 Q. Were you able to get there before your partner?
- 2 A. Yes, I was there in a matter of minutes.
- 3 Q. Okay. And the Tobacco Warehouse that you're
- 4 talking about, which county is that located in?
- 5 A. That's located in Pickens County.
- 6 Q. And what kind of call was it that came in?
- 7 A. It was an alarm call, a burglary alarm activation,
- 8 which we have, you know, a lot of those, too.
- 9 Q. Do you happen to know the exact time that the
- 10 dispatch call went out?
- 11 A. It was eleven fourteen p.m.
- 12 Q. What time did you actually arrive?
- 13 A. I arrived three minutes later, at eleven seventeen
- 14 p.m.
- 15 Q. Is that pretty quick?
- 16 A. For, for a county, yeah, that's some good response.
- 17 Q. Were you there first?
- 18 A. I was.
- 19 Q. And what did you see when you showed up?
- 20 A. Everything appeared to be normal, you know. When
- 21 I pulled up I -- you know, the first thing I did as
- 22 soon as I pulled in the parking lot was looked at the
- 23 front doors. I didn't see anything busted out, no
- 24 doors standing open, no lights on the inside or
- 25 anything. I had my window down as I was pulling in,

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1 that's just something I normally do, I didn't hear any
2 audible alarms going off. And you know, I pulled up,
3 it -- and it being a strip mall, there's four or five
4 businesses there, and I scanned all of them with my
5 spotlight and everything appeared to be normal. And
6 that was when I pulled up to right in front of the door
7 and got out and had my flashlight and I walked up to the
8 Tobacco Warehouse, which is the second business from the
9 left end of the store. And I started looking inside
10 with my flashlight and everything appeared to be normal.
11 And then I started walking around the back of the
12 building, and as I did Officer Thompson with the
13 Pickens City Police Department, he showed up on the
14 scene too because it was so close to the city limits
15 just, just in case, which was a good thing. And as I
16 walked around behind the building, I started hearing
17 something that sounded like a fan running. And as soon
18 as I turned the corner on the back, there's a car
19 sitting there running just right in front of me. And
20 that was when I noticed the rear doors of the business
21 were open.

22 Q. When you said the rear doors did you mean one or
23 two?

24 A. There were two doors open and both had damage on
25 them. I could instantly see as soon as I shined my

1 light on them, both doors were damaged and I could tell
2 they had been forced open.

3 Q. Was it only to Tobacco Warehouse or ---

4 A. No. It was to Tobacco Warehouse and the Cash
5 Advance store which is the one on the very end.

6 Q. So you're saying they're located adjacent to each
7 other?

8 A. They're right side by side.

9 Q. What was the lighting like that night?

10 A. There was no lighting. I think there was a light
11 out in the front parking lot, but as far as inside the
12 stores or around back of the businesses there was no
13 lighting at all other than my flashlight.

14 Q. Now Cash Advance and Tobacco Warehouse, are they
15 under the same roof or different roofs?

16 A. They are. They're in, they're in the same,
17 separated by just sheetrock walls on the inside.

18 Q. So there's no door going from one to the other from
19 the inside?

20 A. No.

21 Q. What did you do when you saw the car running?

22 A. Well, as soon as I saw the car running, I turned
23 around and motioned for Officer Thompson to hurry up
24 and go on because he was kind of still at the front of
25 the building, and I also radioed to Deputy Berghold and

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1 told him to, you know, step it up a little bit because I
2 didn't know if they were -- I figured -- I assumed they
3 could still be inside, given that the car was sitting
4 there running. And that -- at that time, myself and
5 Officer Thompson moved closer to the first door that was
6 open. And shortly thereafter we started to -- we went
7 ahead and started to make our entry into the first door
8 to clear the businesses. And about that time Lieutenant
9 Robinson showed up as well and he secured the vehicle.
10 Since it was sitting there running he secured it to make
11 sure, you know, no one jumped in it while we were
12 clearing the businesses.

13 Q. What did the vehicle look like?

14 A. It was a blue four-door car. It was a Mercury car,
15 kind of like a Ford Taurus looking ---

16 Q. Older or newer?

17 A. It was a -- it looked like it was maybe late
18 nineties, early two thousand model.

19 Q. Did you notice anything wrong or amiss inside the
20 Local Cash Advance?

21 A. Well, as soon as we walked in the Local Cash
22 Advance, the first thing I noticed was a big hole in
23 the wall on the left side as soon as -- you know, where
24 it was pretty obvious that someone had went through the
25 wall and there was some stuff, you know, as we were

1 going in. I wasn't necessarily checking to see that
2 things were missing at the time as I was just to make
3 sure that the suspects weren't still, suspect or
4 suspects, weren't still inside. So I did notice some
5 things were scattered. But as I stated my main concern
6 was making sure that whoever had done this wasn't still
7 there.

8 Q. The hole in the wall, where in the Cash Advance was
9 it?

10 A. It was in the bathroom.

11 Q. And the hole led into another store?

12 A. Yeah, it -- the hole led into the -- it was big
13 enough for a person to fit through and it led into the
14 Tobacco Warehouse. And you could tell immediately which
15 way it went because the sheetrock was pushed toward the
16 Tobacco Warehouse. You could tell that it had been
17 pushed that way.

18 Q. And that hole in the wall in Tobacco Warehouse,
19 where was it located?

20 A. Into the bathroom of the Tobacco Warehouse.

21 Q. So the bathrooms ---

22 A. The bathrooms backed up to each other.

23 Q. After you cleared the scene, you made sure everyone
24 was all right and nobody else was there, did you call
25 for any backup of any sort?

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1 A. Just the officers who, who came -- I called for the
2 canine, for the dogs, to track. And my lieutenant which
3 was at the time was Todd Underhill, and Sergeant Tony
4 Gilstrap, they both arrived and Deputy Berghold showed
5 up. Lieutenant Robinson is the lieutenant over our ID
6 division, forensics, so they do all our, you know,
7 fingerprinting and all that. So he was already there,
8 so I didn't have to call him.

9 Q. The canine officers, who are they, what are their
10 names?

11 A. It was Deputy Durham and Deputy Fricks.

12 Q. Are they in the courtroom today?

13 A. The two on the end there.

14 Q. Did anyone from either of the two stores show up?

15 A. Yes. We had the manager from both stores showed --
16 show up. And I, I didn't get their names because I
17 wasn't the one taking the report, but we did have a key
18 holder from each store show up.

19 Q. Before Lieutenant Robinson and the canine units
20 arrived, did anyone touch the vehicle?

21 A. None of us did. No. They -- the only people who
22 touched the vehicle were the canine units and the --
23 Lieutenant Robinson from ID.

24 Q. Was it light or dark inside the stores?

25 A. It was dark.

1 Q. Were you able to turn on the lights?

2 A. No.

3 Q. Why was that?

4 A. I didn't try. I -- because as soon -- when I went
5 in initially I wasn't really concerned with trying to
6 find a light switch. I had a flashlight and another
7 officer with a flashlight and we just wanted to make
8 sure there was no one in there. So I never actually
9 tried the lights. But, I mean, I did notice, as I was
10 going in, there was wiring on the back of the building
11 that were -- was exposed and there was also some wiring,
12 what appeared to be, I'm not an alarm specialist, but
13 what appeared to be maybe a speaker from a burglar,
14 burglar alarm, the audio speaker, was in the floor
15 hanging from a wire to where it -- you could tell it had
16 been tampered with.

17 Q. And when you showed up did you hear an alarm?

18 A. No. There was no audible alarm at all.

19 MS. HAMAKER: That's all the State has for the
20 witness at this time.

21 THE COURT: You may cross examine the witness,
22 Mr. DeJong.

23 MR. DEJONG: Thank you, Your Honor. May it
24 please The Court.

25

CROSS EXAMINATION

The State -vs- Reginald Nance (2010-GS-39-354, 355, 356, 357, 358 and 360)
Corey Baker - Cross Examination by Mr. DeJong

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1 BY MR. DEJONG:

2 Q. Let's try to get a feel for the area we're talking
3 about if we can, Deputy. Local Cash Advance and Tobacco
4 Warehouse, they face on Highway 8 or Gentry Memorial
5 Highway; correct?

6 A. They do.

7 Q. And how far off of Highway 8 to the fronts of those
8 -- are the fronts of those buildings?

9 A. I would say, I've never measured it, I would say
10 maybe twenty, twenty-five yards.

11 Q. All right. Well, could we do it in car lengths?
12 Would it be two car lengths, three car lengths, four car
13 lengths?

14 A. Maybe eight or ten, give or take a few.

15 Q. All right. Is that from the driveway to the ---

16 A. From, from Highway 8 to the front door of the
17 building.

18 Q. And that would be counting the right of way and all
19 of that good stuff; right?

20 A. From the edge of the asphalt of the roadway to the
21 front door of the building.

22 Q. All right, sir. Now across the street from Local
23 Cash Advance and Tobacco Warehouse, what's across the
24 street?

25 A. There's Burger King and a shopping center that has

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1 a Bi-Lo and other assorted stores.

2 Q. All right. And you say there wasn't much lighting,
3 as I recall your testimony, in front of Tobacco
4 Warehouse or Local Cash Advance; correct?

5 A. I said that there wasn't -- there was not a lot out
6 front in the parking lot, but as far as in the store or
7 around back, no, there was not.

8 Q. All right. Well, was Burger King still open?

9 A. I'm not sure. I don't, I don't recall that. I
10 didn't check.

11 Q. All right. Well, let's go around the back now.

12 What's located to the back of these buildings?

13 A. Come around the back door of the building, there's
14 a little pull around that drives -- where you could
15 drive all the way around the back of the building and
16 then it goes straight up through some bushes and into
17 thick woods.

18 Q. Are there any residences back there?

19 A. They're few and far between. There's none directly
20 behind it that I'm aware of.

21 Q. How close is the nearest residence, would you say?

22 A. Straight shot through the woods, maybe an eighth of
23 a mile.

24 Q. Okay. Now, let's face Local Cash Advance and
25 Tobacco Warehouse. What is to the left as you face ---

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Corey Baker - Cross Examination by Mr. DeJong

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1 A. To the left there's a road that I'm not sure the
2 name of and there's a house on the left side of that
3 road.

4 Q. All right, sir. Now let's go down to, I guess we
5 should call it the end more appropriately, what is to
6 the right end of Local Cash Advance and Tobacco
7 Warehouse?

8 A. A vacant gravel parking lot that sometimes they
9 hold a flea market in. I'm not sure what days. And
10 then across that road, which is Evergreen Acres, is the
11 Hot Spot.

12 Q. And do you know whether or not the Hot Spot is a
13 twenty-four hour store or not?

14 A. The Hot Spot is a twenty-four hour store.

15 Q. And is it well lit?

16 A. It is.

17 Q. All right. Now Gentry Memorial Highway, in that
18 particular area, is that a four lane, two going towards
19 Easley and two coming out of Easley, road?

20 A. It is.

21 Q. Okay. Is it a fairly heavily traveled road?

22 A. It is.

23 Q. All right, sir. Now, you get there and everything
24 appears to be okay; correct?

25 A. From the front of the store, yes.

1 Q. All right. When you arrived did you see anyone?

2 A. I did not.

3 Q. Throughout the course of the evening that you were
4 there other than law -- other law enforcement officers
5 that arrived, did you see anyone?

6 A. No. Other than the key holders of the stores that
7 eventually showed up.

8 Q. Yes, sir. I understand. Now, you say there was a
9 car around back running; correct?

10 A. Yes.

11 Q. Did you look inside the car?

12 A. As I came back out, there was -- as I went by the
13 car I checked it, officer safety, make sure there was no
14 one inside it. And then of course when I just glanced
15 and saw there was no one inside it, my concern was
16 checking inside the business.

17 Q. And I gather there was no one inside it?

18 A. There was no one inside it.

19 Q. Okay. Was the trunk open, closed or do you
20 recall?

21 A. The doors were closed.

22 Q. Pardon me?

23 A. The doors were closed on the car. It was, it was
24 just sitting there with the engine running.

25 Q. Well, actually I, I asked about the trunk. The

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Corey Baker - Cross Examination by Mr. DeJong

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1 doors was -- doors were the next question, so you got
2 ahead of me on that. Was the trunk open?

3 A. No.

4 Q. Okay. Nothing was open on the vehicle?

5 A. No.

6 Q. All right. Did you check to see whether the
7 vehicle was locked or not?

8 A. I did not check it.

9 Q. All right. So one thing you said I want to be
10 sure of, you said that you noticed when you went around
11 to the back, two doors were open. Now I'm not talking
12 about the vehicle, I'm talking about the businesses
13 now.

14 A. Correct.

15 Q. And you said it appeared that they had been forced
16 open?

17 A. It did.

18 Q. Okay. And which -- well you got there first;
19 right?

20 A. Yes.

21 Q. And then your partner, Mr. Berghold, I guess he got
22 there second?

23 A. Actually Officer Thompson got there to back me up.

24 He was -- Lieutenant Robinson was actually the second
25 officer from the Sheriff's Office there.

1 Q. All right. And thank you for reminding me of that.

2 How far is Tobacco Warehouse and Local Cash Advance from
3 the Pickens County Sheriff's Office?

4 A. Maybe a mile.

5 Q. Okay. So you arrived. Now Lieutenant Robinson, is
6 he a road patrol officer?

7 A. He is part of the Uniform Road Patrol. He is over
8 the identification department.

9 Q. Did you call Lieutenant Robinson?

10 A. Lieutenant Robinson was, if I recall correctly,
11 getting off around midnight that night and he was
12 getting ready to head home. And he also has -- you
13 know, carries a radio and he heard the traffic and
14 stopped to assist.

15 Q. Okay. Well, you said he got off at midnight and
16 was headed home. You said you got there at eleven
17 seventeen; right?

18 A. Right. He was finishing up there at the office. I
19 believe he was at the office as well. I can't testify
20 for him though because I had other concerns that -- at
21 that point in time.

22 Q. Right. Well, you said you got there at eleven
23 seventeen. What time did Lieutenant Robinson arrive?

24 A. I'm not -- I can tell you. Hold on a second. He
25 got there at eleven twenty-two.

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1 Q. All right, sir. I notice that you are obviously
2 referring to some notes that you have there on the
3 witness stand. What are those notes?

4 A. This is a copy of our CAD sheet from Pickens County
5 Dispatch that shows the times that everything was called
6 in to dispatch.

7 Q. That report, was that generated by you?

8 A. This CAD sheet?

9 Q. Uh-huh (affirmative).

10 A. No. It's just what's in the computer for
11 centralized dispatch.

12 Q. All right.

13 A. So any time we log on scene or in route or clear
14 something up, that's the printout of the time that that
15 was done.

16 Q. All right. Now, so then Lieutenant Robinson gets
17 there, according to your CAD sheet, at eleven twenty-
18 two. That is almost now ten -- correction, eight
19 minutes have elapsed since you were dispatched; right?

20 A. Yes.

21 Q. Then who's the next officer on the scene? Now
22 before you answer that, I see you referring to your
23 notes again. Is that on the CAD report also you're
24 looking at?

25 A. This is the same piece of paper.

1 Q. All right.

2 A. This -- the CAD sheet shows every officer that was
3 there and what time they were there and what time they
4 left, how long they were there.

5 Q. What time does the CAD report say Thompson got
6 there?

7 A. They're -- our CAD will not show an officer from
8 another agency.

9 Q. He was from Pickens city?

10 A. Yes, sir.

11 Q. Okay. But he got there after ...

12 A. He got there, he got there second. Approximately,
13 I would say, eleven eighteen. He probably got there a
14 minute after me, if that, because he was pulling in the
15 parking lot behind me before I even turned the first
16 corner to walk around to the back of the building.

17 Q. Well, when you responded to that call, you left
18 from the law enforcement center; right?

19 A. Yes.

20 Q. Did you use your blue lights?

21 A. I did not.

22 Q. Okay. Did you use sirens?

23 A. I did not.

24 Q. Okay. So you get there and from the front you say
25 everything looks normal?

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1 A. Yes.

2 Q. You don't see anyone?

3 A. No.

4 Q. And then you go into which business first?

5 A. We went into the Cash Advance first.

6 Q. Okay. You say we went into Cash Advance, you and
7 who?

8 A. Officer Thompson. He, I wouldn't say necessarily
9 progressed entirely into the business. He covered -- he
10 was my cover officer as I proceeded all the way into the
11 store. He stayed at the door pretty much.

12 Q. Well now that we're clear, so that we're clear,
13 these two businesses are outside Pickens city limits;
14 are they not?

15 A. They are.

16 Q. Well, when you went into the Cash Advance place did
17 you try to turn on any lights there?

18 A. I did not attempt to turn any lights on in either
19 business.

20 Q. Okay. But you had your flashlight?

21 A. I did.

22 Q. And did you see anything in the Cash Advance other
23 than the hole in the wall?

24 A. As I said, I didn't, I didn't check a whole lot in
25 the Cash Advance. I didn't really check to see if

- 1 anything was missing from there, as I was just checking
2 to see if the suspect was still inside.
- 3 Q. Well, now, I gather the bathroom was as a separate
4 room; right?
- 5 A. It had the ability to the close the door, yes.
- 6 Q. All right. So as you come in the back door of Cash
7 Advance, where is the bathroom?
- 8 A. On your left.
- 9 Q. All right. Now, does it sit -- does one of the
10 walls of that bathroom sit on the outside wall?
- 11 A. Of the business?
- 12 Q. Yes.
- 13 A. Yes.
- 14 Q. Okay. And was the door to the bathroom open or
15 closed?
- 16 A. Open.
- 17 Q. Completely?
- 18 A. I can't recall if it was completely open.
- 19 Q. Pardon me?
- 20 A. I can't recall if it was completely open.
- 21 Q. Well, did you have to push it open to see this hole
22 in the wall?
- 23 A. No.
- 24 Q. Did you go into the bathroom?
- 25 A. To check behind the door, yes, to make sure there

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1 was no one behind it.

2 Q. Well, when you went in the bathroom did you see or
3 find any tools of any kind?

4 A. Not in that bathroom, I didn't.

5 Q. Okay. Now, how long did you stay in the Cash
6 Advance?

7 A. As I stated before just long enough to make sure
8 there wasn't a suspect in there.

9 Q. Basically what we commonly refer to as you clearing
10 the building; right?

11 A. Exactly.

12 Q. All right, sir. And in clearing the building you
13 found no human beings other than yourself and Officer
14 Thompson outside the building; right?

15 A. Yes.

16 Q. When you first went around, let me back up here a
17 little bit, I apologize getting out of sequence, but
18 when you first went around that vehicle that you say was
19 running was it -- can you describe to me and this jury
20 in reference to these two businesses where it was
21 sitting in the back?

22 A. Absolutely. As I said before, there's a little
23 pull around where you can drive around behind the
24 business. However, the car, the way the business is set
25 up there's really only one way in and one way out. You

1 could get back out on the other side, but it would be
2 difficult. The way the car was faced, I don't know if
3 it had been backed in or turned around or what, but the
4 car was sitting running facing out so whenever you come
5 out of the front parking lot to go around the gravel
6 little road to go around behind the business, all right,
7 as soon as you make your first right to go around behind
8 the business, as you turn that right the car is sitting
9 there facing out ready to go.

10 Q. All right, sir. And you didn't see any individuals
11 around there though even -- you saw the car, but you
12 didn't see any people, sir?

13 A. No people.

14 Q. Okay. So you cleared the Cash Advance store and
15 then what did you do next?

16 A. Came back out and then went into the Tobacco
17 Warehouse and cleared it.

18 Q. At that point in time had Lieutenant Robinson
19 arrived?

20 A. He had. And that was when he stood by the car.

21 Q. All right. Well, did he go into Tobacco Warehouse
22 with you?

23 A. No. I went in and cleared that one the same way
24 that we cleared the Cash Advance. It is Officer
25 Thompson standing back and me going in and clearing the

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1 business.

2 Q. So at that point in time it's just a Pickens city
3 officer, you and Lieutenant Robinson?

4 A. Yes.

5 Q. When you went in to clear Tobacco Warehouse, did
6 you find any tools of any kind in Tobacco Warehouse?

7 A. Not that I can recall. As I said, I mainly just
8 cleared the business.

9 Q. After you cleared the businesses how much longer
10 did you stay on the scene?

11 A. Well, according to my CAD it shows that I cleared
12 at one oh eight a.m.

13 Q. Okay. So you were there till probably eleven,
14 twelve -- what time? One?

15 A. Yes. Almost two hours.

16 Q. Almost two hours; correct?

17 A. About ten minutes short of two hours.

18 Q. Well, now did you say Lieutenant Underhill came out
19 there?

20 A. He did.

21 Q. Is he here today?

22 A. No.

23 Q. Okay. And who else came out there, some -- one of
24 your officers or someone?

25 A. Sergeant Gilstrap is listed on the CAD as coming

1 out there, but it -- he never actually signed out. He
2 just came and rode around to check the immediate area.

3 Q. All right. How about Officer Thompson with Pickens
4 city, is he here today?

5 A. No.

6 Q. Okay. Did you have anything to do, other than
7 clearing the building, with gathering any evidence?

8 A. No.

9 Q. Did you ever have occasion to go into that vehicle?

10 A. No, I didn't.

11 Q. And you described that vehicle as a Ford Taurus
12 looking vehicle; right?

13 A. Yes. I recall it being a Mercury, but it was the
14 style like a Ford Taurus.

15 Q. All right.

16 A. I believe it's a Mercury Sable.

17 MR. DEJONG: One moment, please, Your Honor.

18 THE COURT: Yes, sir.

19 Q. Once you've cleared the building, buildings, what
20 did you do after, after that?

21 A. After I cleared the buildings that was when I
22 called for the canines, you know, for the tracking dogs.

23 Q. When you called for the canines, then what if
24 anything did you do after that?

25 A. I mainly just hung around and waited on them so I

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1 could assist ---

2 Q. All right, sir.

3 A. -- when they did get there so I could assist them.

4 Q. Did you ever look for any suspects?

5 A. I would say I did by just, from the back of the
6 business, shining my light in the edge of the woods.

7 But we didn't actually proceed into the woods until, you
8 know, the canines got there, because you don't want to
9 mess up the scent trail.

10 Q. All right. So if you would, please, refer back to
11 your CAD sheet again and tell me what time the canine
12 unit got there.

13 A. The first one arrived on scene at twenty-three
14 forty-five, which is eleven forty-five p.m.

15 Q. Did I understand you to say the first one?

16 A. Yes. We had two.

17 Q. Two canine units?

18 A. Two canine units which was Deputy Durham and Deputy
19 Fricks.

20 Q. And one was Durham ---

21 A. Yes. Deputy Durham was the first to arrive at
22 eleven forty-five and Deputy Fricks arrived at eleven
23 fifty-five.

24 Q. Deputy Fricks. That's the one I couldn't hear.

25 All right. So they arrived almost a half hour after the

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1 call came in?

2 A. Yes. I'm sure they were both in the bed and had to
3 get up, get their uniforms on and Deputy Fricks had to
4 come from the other side of the county just about.

5 Q. Okay. So while you're waiting that half hour for
6 the canine unit to get there, nobody is, other than you,
7 flashing your light into the tree line, looking for
8 anybody?

9 A. No. We weren't -- we were -- I believe some
10 officers were riding around in their cars on the roads
11 surrounding that area, but no one was on foot proceeding
12 into the woods or anything.

13 Q. Those cars riding around the area, do they have
14 their blue lights on?

15 A. No.

16 Q. All right. Well, those cars riding around in the
17 area, were they marked Pickens County Sheriff's Office
18 cars?

19 A. Yes.

20 Q. I mean Pickens County Sheriff's Office has their
21 own emblems, own insignia, whatever, on them?

22 A. Yes.

23 Q. Pretty visible?

24 A. Yes.

25 Q. Has the light bars on top; right?

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1 A. Yes.

2 Q. All right, sir. I thank you, Officer.

3 THE COURT: Any redirect?

4 MS. HAMAKER: No, sir, Your Honor.

5 THE COURT: Thank you, Officer. You may step
6 down.

7 MR. DEJONG: No objection to him being
8 excused, Your Honor.

9 THE COURT: Without objection, he may be
10 excused. You may call your next witness, Solicitor.

11 MS. HAMAKER: The State would call Deputy
12 Jodie Berghold.

13 MISTER CLERK: Place your left hand on the
14 bible and raise your right hand. Do you solemnly swear
15 or affirm the testimony you're about to give in this
16 case to be the truth, the whole truth and nothing but
17 the truth, so help you God?

18 MR. BERGHOLD: I do.

19 MISTER CLERK: If you would have a seat and
20 state your name for the record.

21 MR. BERGHOLD: Joey Berghold.

22 JOEY BERGHOLD,

23 BEING DULY SWORN, TESTIFIED AS FOLLOWS:

24 DIRECT EXAMINATION

25 BY MS. HAMAKER:

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- 1 Q. Deputy Berghold, where do you work?
- 2 A. For the Pickens County Sheriff's Office.
- 3 Q. And how long have you worked there?
- 4 A. I've been there for two years.
- 5 Q. What's your educational background?
- 6 A. I have a high school education, graduated from the
- 7 Criminal Justice Academy in '93.
- 8 Q. What are your duties as a deputy?
- 9 A. I also enforce the laws, county ordinances, state
- 10 laws, traffic, answer complaints of burglaries, property
- 11 crimes, domestics.
- 12 Q. And I know this might be hard. Just guesstimating
- 13 for the jury, how many property crimes have you worked?
- 14 A. Would you say in a year? I've got seventeen years
- 15 law enforcement experience, so it ---
- 16 Q. We'll do in a year.
- 17 A. Again, property crimes that's -- I respond -- I
- 18 would say respond probably fifty to sixty property
- 19 crimes.
- 20 Q. A year?
- 21 A. Myself, personally.
- 22 Q. Times seventeen?
- 23 A. That's correct.
- 24 Q. Well, I'm not very good at math, so we'll just
- 25 leave that number for the jury. Have you ever testified

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1 in court before?

2 A. Yes, ma'am, I have.

3 Q. How many times?

4 A. Again in my seventeen years, it's numerous times.

5 Q. Okay. Moving to the incident. Were you involved
6 in the incident involving this case on January 27th,
7 2009?

8 A. Yes, ma'am, I was.

9 Q. And what was the incident location?

10 A. It was at the Tobacco Warehouse located on Gentry
11 Memorial Highway within Pickens County jurisdiction.

12 Q. How did you become involved in the incident?

13 A. Deputy Baker was supposed to be going home at
14 midnight that night so he was there at the office doing
15 paperwork. I was at the Crow Creek boat ramp located,
16 you know, a good ways out when they give me the call of
17 the burglary alarm there at the Tobacco Warehouse. So I
18 responded and give my location and Deputy Baker, you
19 know, he stepped up and took the call for me, so I
20 responded as backup.

21 Q. Did you get there as quickly as possible?

22 A. Yes, I did.

23 Q. About what time did you get there?

24 A. Eleven twenty-four.

25 Q. What did you see when you arrived?

1 A. Whenever I first got there I noticed Deputy Baker's
2 patrol vehicles, they were off to the front ---

3 MR. DEJONG: Objection to what Deputy Baker
4 told him, Your Honor, if that's what he said. I can
5 hardly hear him.

6 THE COURT: I think he was saying what he saw.

7 MR. DEJONG: Okay. I don't have an objection
8 to what he saw.

9 THE COURT: All right.

10 MR. DEJONG: I have an objection if somebody
11 told him something.

12 THE COURT: Yes, sir.

13 Q. Go ahead, say what you were saying.

14 A. I saw the patrol vehicles there at the front of the
15 store, of the businesses, so I went around to the back
16 and that's when I seen, you know, Deputy Baker. I'm
17 sure Officer Thompson was still there and as well as
18 Lieutenant Robinson there at the rear of the stores.

19 Q. Did any other officers show up?

20 A. Lieutenant Underhill did arrive and the canine
21 officers also responded.

22 Q. Did you see Sergeant Gilstrap there as well?

23 A. No, I did not.

24 Q. But you saw Lieutenant Underhill?

25 A. Yes, I did.

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- 1 Q. What, if anything, was he doing?
- 2 A. He was just there just making sure that we were
- 3 doing what we were supposed to be doing.
- 4 Q. Did you see a vehicle behind the store?
- 5 A. Yes, ma'am, I did.
- 6 Q. What did it look like?
- 7 A. It was kind of a lightish blue color, 1999 model
- 8 Mercury Sable, four-door.
- 9 Q. And was it running or not?
- 10 A. It was running.
- 11 Q. Did you touch the vehicle?
- 12 A. No, ma'am, I did not.
- 13 Q. Did you see anyone besides the canine units and
- 14 Lieutenant Robinson touch the vehicle?
- 15 A. No, I did not.
- 16 Q. What did you do? What was your part in the whole
- 17 scheme of things?
- 18 A. Well, because Deputy Baker was supposed to be going
- 19 home at midnight, I stayed there on scene to, to meet
- 20 with the victims, the managers from both Tobacco
- 21 Warehouse and the Local Cash Advance to get their
- 22 information for the report.
- 23 Q. Do you remember the name of the person you met with
- 24 from Tobacco Warehouse?
- 25 A. I do.

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1 Q. And what was that person's name?

2 A. It was a Han Raj.

3 Q. Now Mr. Raj, did he speak English?

4 A. Not very well. He was -- I would say he was Indian
5 and so there was some conflict. I couldn't understand
6 him very well. Very hard to understand.

7 Q. And did someone show up from the Local Cash Advance
8 as well?

9 A. Yes, they did.

10 Q. And who is that?

11 A. It was April Dryman.

12 Q. Is she in the courtroom today?

13 A. Yes, she is.

14 Q. Can you point her out for the jury?

15 A. Kind of behind you ---

16 Q. I'm in the way.

17 A. -- right back there in the black shirt, third row.

18 Q. Did they tell you about anything that might have
19 been stolen?

20 A. Yes. They, they told me some things that they
21 believed were probably missing.

22 MR. DEJONG: Your Honor, again, I'm going to
23 object to what they told him.

24 MS. HAMAKER: I'm not asking what they told
25 him. I'm asking if they told him.

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1 THE COURT: All right. I sustain your
2 objection if it gets into statements. Otherwise you may
3 proceed, Solicitor.

4 Q. Did they tell you what was stolen?

5 A. They told me some things that they believed were
6 stolen, yes.

7 Q. Was it light or dark inside the ---

8 A. It was very dark inside. The electrical system was
9 down there at the back door. The -- you know, the
10 alarm, everything, I guess, where the alarm had went
11 off, I guess, the suspect ---

12 MR. DEJONG: Your Honor, I'm going to object
13 about him guessing.

14 THE COURT: I sustain the objection.

15 A. It was very dark inside.

16 Q. Could you tell -- did the, did the electricity
17 work?

18 A. No.

19 Q. Did you see any wires down?

20 A. Yes, I did.

21 Q. Did you see anything abnormal about the alarm
22 system?

23 A. Again it looked like it had been torn down from
24 there -- like I said, again, Deputy Baker stated that
25 there was a speaker box. I also observed a speaker box

1 I looked like from the alarm system.

2 Q. Besides speaking with those two individuals, what
3 else did you do, if anything?

4 A. I just stayed there and met with them, got their
5 information and all for the reports.

6 Q. Did you see any holes in any of the walls between
7 the stores?

8 A. Yes, I did.

9 Q. And did the -- could you tell one way or the other
10 which way the holes come from and into?

11 A. Yes. It appeared that the subjects entered through
12 the Local Check Cash Advance and knocked the hole
13 through the bathroom door or the wall, excuse me, into
14 the bathroom of the Tobacco Warehouse, because you could
15 see the sheetrock laying on the floor and so forth
16 inside the Tobacco Warehouse.

17 MS. HAMAKER: That's all the State has for
18 this witness, Your Honor.

19 THE COURT: You may cross examine the witness.

20 MR. DEJONG: Thank you, Your Honor. May it
21 please The Court.

22 CROSS EXAMINATION

23 BY MR. DEJONG:

24 Q. So, Mr. Berghold, you arrived at eleven twenty-four
25 and you told Ms. Hamaker you got there as quickly as you

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1 could. Did you run your blue lights?

2 A. Yes, sir. Deputy Baker asked for me to step it up
3 and at that time I advised that I would be responding
4 code which activated my blue lights and siren.

5 Q. All right, sir. So you arrived then some seven
6 minutes -- well. my math is not worth a flip -- about
7 ten minutes after the dispatch call actually went out?

8 A. That's correct.

9 Q. All right. And when you get there and Baker's
10 there, Thompson from Pickens city is there and
11 Lieutenant Robinson is there?

12 A. Correct.

13 Q. That's it?

14 A. Correct.

15 Q. And how far is this place from the Pickens County
16 Sheriff's Office?

17 A. Approximately a mile.

18 Q. All right. There are several road patrol units out
19 at night time; is there not?

20 A. Well, we're assigned to areas and it was just
21 myself and Deputy Baker who were assigned to the Pickens
22 area.

23 Q. All right. But my question is, there are other
24 road patrols certainly in Pickens County; aren't they?

25 A. Yes, sir. In the Clemson and Easley areas.

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1 Q. All right, sir. Did you go around the back of the
2 building?

3 A. Yes, sir, I did.

4 Q. Did you go in the vehicle?

5 A. No, sir, I did not.

6 Q. All right. When you got there was Lieutenant
7 Robinson in the vehicle?

8 A. No, sir.

9 Q. Okay. Was anybody?

10 A. No, sir.

11 Q. The -- behind the building, you would agree with me
12 that there is a tree line of some sort or another;
13 right?

14 A. That's correct.

15 Q. And did you ever look for anybody in the tree line?

16 A. No, sir. Not other than just shining my flashlight
17 from the rear of the store. It was very heavily wooded.

18 Q. Well, when you say the rear of the store, were you
19 standing in the rear doorway of the store?

20 A. Yes, the vicinity of the rear doorway of the store.

21 Q. All right. And then there's some gravel roadway
22 or something between the rear door and that tree line;
23 right?

24 A. That's correct.

25 Q. And how many feet wide is that?

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John Berghold - Cross Examination by Mr. DeJong

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1 A. I would say maybe ten, twelve feet, I would say,
2 maybe.

3 Q. Okay. So other than twelve feet away from the tree
4 line, you didn't do anything other than shine your light
5 in from twelve feet away?

6 A. That's correct.

7 Q. All right. At any point in time that night did you
8 go into that tree line?

9 A. No, sir, I did not.

10 Q. At any point in time did you get out of the parking
11 lot of where Tobacco Warehouse and Local Cash Advance
12 are located, other than to leave, I guess?

13 A. No.

14 Q. Okay. So you're facing the building, you didn't go
15 look at or for anything on the left?

16 A. Just right there in the vicinity of the building.

17 Q. Okay. Facing the building to the right, you didn't
18 go to the right end of the building; correct?

19 A. Correct.

20 Q. All right. And how long were you there?

21 A. I believe I left, according to the CAD sheet, at
22 one seventeen. So ---

23 Q. All right.

24 A. -- a little less than two hours.

25 Q. You left shortly after Baker left?

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- 1 A. That's correct.
- 2 Q. Okay. When you left who was on the scene?
- 3 A. I believe I was the last to leave, along with, I
- 4 believe, with Lieutenant Underhill.
- 5 Q. With who?
- 6 A. Lieutenant Underhill.
- 7 Q. All right. You were able to look at the car in
- 8 very poor lighting or dark lighting and say that was a
- 9 1999 Mercury Sable?
- 10 A. No. I wasn't able to tell that at that time, no.
- 11 Q. Right. That was information you gathered
- 12 afterwards; right?
- 13 A. Yes. The vehicle displayed a ---
- 14 Q. Pardon me?
- 15 A. The vehicle displayed a paper tag on it.
- 16 Q. Right.
- 17 A. And someone had ran the, I guess, the VIN number.
- 18 Q. I'm not asking you about that.
- 19 A. Okay.
- 20 Q. You didn't look at the vehicle and say that's a
- 21 1999 Mercury Sable?
- 22 A. No. I could tell it was a Mercury.
- 23 Q. Which looks a lot like a Ford Taurus?
- 24 A. That's correct.
- 25 Q. Did you ever attempt to turn the power or -- well,

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1 let me rephrase that. Did you ever attempt to turn the
2 lights on -- well, let me back up a little further. Did
3 you ever go into Local Cash Advance?

4 A. Yes, sir, I did.

5 Q. Did you attempt to turn the lights on in there?

6 A. I don't believe that I did.

7 Q. Okay. And did you go into Tobacco Warehouse?

8 A. That's correct.

9 Q. Did you attempt to turn the lights on there?

10 A. No, I don't believe I did there either. Like I
11 said, I was advised and I could see the electrical
12 wiring and all in the back.

13 Q. So you just made the assumption that it didn't
14 work?

15 A. That's correct. Using my flashlight along with
16 everyone else.

17 Q. All right. Did you look at the hole that was in
18 the bathroom?

19 A. Yes, sir, I did.

20 Q. Did you ever measure that hole?

21 A. No, sir, I did not.

22 Q. All right. Now you were in both Cash Advance and
23 Tobacco Warehouse?

24 A. That's correct.

25 Q. With a ranking of people going in there, where

1 would you have been, third, fourth, fifth, sixth?

2 A. Probably about fourth.

3 Q. All right. Did you see any tools in there?

4 A. I can't say that I did. I wasn't really looking
5 for the tools.

6 Q. Well, did you ever look for tools?

7 A. No, I -- again my, my thing was meeting with the
8 victims to be able to get their side of what may be
9 missing or whatever they needed to report.

10 Q. Had you ever responded -- well, let's put that a
11 little differently. Had you responded to either Cash
12 Advance or Tobacco Warehouse within the preceding six
13 months?

14 A. I believe I had responded to the Tobacco Warehouse
15 maybe for a shoplifting.

16 Q. Okay. So you had no reason to go around back; did
17 you?

18 A. No, sir.

19 Q. So what the condition of either the back of Cash
20 Advance or Tobacco Warehouse was before January the 27th
21 of 2009, you don't know; do you?

22 A. Well, other than patrolling the area and pulling
23 around the back checking the back side of the business
24 with a spotlight.

25 Q. Well, when's the last time you'd done that?

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1 A. I can't say that we do it nightly. But, you know,
2 but I mean it is in our patrol area and that is part of
3 our job, so I would say, you know, a couple times a
4 week.

5 Q. When you were coming up -- you said you were at
6 some landing when you got the call; right?

7 A. That's correct.

8 Q. I'm not familiar with that. But when you came to,
9 excuse me, Tobacco Warehouse, what would have been your
10 road of approach other than Highway 8?

11 A. I believe, if I'm not mistaken, I came and I turned
12 down Evergreen Acres, turned by the Sheriff's Office on
13 J and D Drive and Evergreen Acres to see if I might see
14 someone maybe fleeing the area as I pulled in.

15 Q. Okay. Now would -- and again, I'm not particularly
16 familiar with those roads, but those roads you just
17 described, would they be more to the back of Tobacco
18 Warehouse and Cash Advance?

19 A. They'd be to the side. There was -- there's no
20 road that's real close as in to the back of Tobacco
21 Warehouse.

22 Q. All right. Well, then let's go a different route
23 here. If you're facing Tobacco Warehouse and Cash
24 Advance, those roads, would they have been to the right
25 or to the left?

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1 A. They would have been to the right between the Hot
2 Spot and the vacant lot.

3 Q. All right, sir. All right. So did you come down
4 Evergreen?

5 A. Yes, sir, I believe that I did.

6 Q. All right. Did you use a spotlight or anything?

7 A. Yes, sir. I had my blue lights as I had already
8 stated that I responded.

9 Q. You also have a spotlight on your vehicle?

10 A. That's correct.

11 Q. Were you using that?

12 A. Yes, sir.

13 Q. Okay. How fast were your driving?

14 A. At that time, once there were units on scene and
15 they had cleared the building, I had slowed down and I
16 would say at a slow speed, you know, ten miles per hour
17 maybe, shining my spotlight.

18 Q. Ten miles per hour?

19 A. Yes, sir.

20 Q. Did you see anybody?

21 A. No, sir, I did not.

22 Q. Nobody running, walking, hiding, no nothing?

23 A. No, sir.

24 Q. Thank you, Officer.

25 THE COURT: Any redirect?

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1 MS. HAMAKER: No, sir, Your Honor.

2 THE COURT: Thank you, Officer. You may step
3 down.

4 MR. DEJONG: No objection to him being
5 excused, Your Honor.

6 THE COURT: Ladies and gentlemen, I think this
7 would be a good time for us to take a short break for
8 the afternoon. I'll ask you to go back to your jury
9 room. Let me remind you not to discuss the case.

10 When you come back in there's a seat that's empty
11 right now. That'll be the foreman's seat. The rest of
12 you can sit in any seat that you like but for the
13 alternate, she'll always occupy one of the last two
14 seats on the back row. She's every bit as much a part
15 of the jury as anyone else because in case something
16 were to happen of an emergency nature with one of you
17 first twelve then she'll take that position, so she'll
18 be a part of the jury as well.

19 I'm going to appoint Mr. Cureton to be the foreman,
20 so he'll occupy that seat. For the benefit of the jury,
21 the foreperson, that's going to be the one who'll be the
22 liaison with the Court. While you're back in your jury
23 room you may have a special need that you have for the
24 Clerk to respond to, for me as the judge to respond to.
25 He'll be the one who'll be the communicator for us if

1 one of you have a need that you need to make sure you
2 get a call to pick up a child or whatever, then the
3 foreperson will write that note down on behalf of
4 whatever juror it is, give it to the bailiffs, the
5 bailiffs will make sure it gets to the right person and
6 then we'll respond to it.

7 What the foreperson will also do is sometimes when
8 cases are presented, evidence might be introduced and
9 might be offered to pass around or publish to the jury
10 and the lawyer may want to give it to the foreperson to
11 look at and pass around to others. Ultimately what the
12 foreperson will do will be to facilitate the discussion.
13 When you have heard all the evidence, the State has
14 rested, the defense has rested, I've instructed you on
15 the law, they've made their closing statements to you,
16 then and only then will you start that deliberative
17 process of discussing the case. What the foreperson
18 will do will be the facilitator of those discussions,
19 help each of you to have an opportunity to give your
20 input into the various aspects of the facts as you see
21 them, and on behalf of his fellow jurors write out the
22 verdict form for the court. So I'll ask Mr. Cureton to
23 occupy that seat. The alternate will occupy one of the
24 back two seats. The rest of you can fill in as you come
25 and go.

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1 We'll take about a ten minute break. We'll be
2 ready to have some more testimony in just a little bit.
3 Don't discuss the case while you're back in your jury
4 room. You may retire to your jury room at this time.

5 (WHEREUPON, the jury exited the open court at
6 approximately 4:33 p.m.)

7 THE COURT: All right. We'll take about a ten
8 minute break. You got a couple more witnesses we can
9 get in this afternoon, you think?

10 MS. HAMAKER: Yes, sir, I have several. I can
11 keep going as long as you'll let me.

12 THE COURT: All right. We'll do a few more
13 this afternoon.

14 MR. DEJONG: My dance ticket isn't full
15 tonight, Your Honor. We're in luck. So I'll stay here
16 till midnight if you like.

17 THE COURT: Mr. DeJong wants to work late
18 tonight.

19 MS. HAMAKER: That's fine with me, Your Honor.
20 How late do you think you want to work?

21 THE COURT: Do you have another case on the
22 docket that you're wanting to get to?

23 MR. DEJONG: No, Your Honor. I would never
24 get into that big a rush.

25 THE COURT: All right. We'll take a short

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1 break. We'll -- maybe about five forty-five or quarter
2 till six or so. We don't need to keep them here much
3 longer than that. Maybe two, three more witnesses,
4 depending on cross examination.

5 MS. HAMAKER: I think I'm going to excuse all
6 the witnesses I called today but two of them.

7 (WHEREUPON, the Court stood at recess for a short
8 break.)

9 THE COURT: You ready to proceed, Solicitor?

10 MS. HAMAKER: Yes, sir, Your Honor.

11 THE COURT: Mr. DeJong?

12 MR. DEJONG: Ready for the defense, Your
13 Honor.

14 THE COURT: If the jury's ready have them come
15 in, please.

16 MS. HAMAKER: Your Honor, may we approach?

17 THE COURT: Yes, ma'am.

18 (WHEREUPON, Ms. Hamaker and Mr. DeJong approached
19 the bar.)

20 THE COURT: You may call your next witness.

21 MS. HAMAKER: The State would call Deputy
22 Russell Bantz to the stand.

23 MISTER CLERK: Place your left hand on the
24 bible and raise your right hand. Do you solemnly swear
25 or affirm the testimony you're about to give in this

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1 case to be the truth, the whole truth and nothing but
2 the truth, so help you God?

3 MR. BANTZ: Yes, sir.

4 MISTER CLERK: If you would have a seat and
5 state your name for the record.

6 MR. BANTZ: Russell Bantz.

7 RUSSELL BANTZ,

8 BEING DULY SWORN, TESTIFIED AS FOLLOWS:

9 DIRECT EXAMINATION

10 BY MS. HAMAKER:

11 Q. Deputy Bantz, who do you work for?

12 A. Richland County Sheriff's Department.

13 Q. And how long have you worked there?

14 A. A little over three years.

15 Q. And what division do you work in?

16 A. I work in Region Four, Uniform Division. I do
17 burglary suppression for our area.

18 Q. Okay. Do you ever come in contact with civilians
19 for non-criminal matters?

20 A. Of course.

21 Q. And what are those?

22 A. We'll walk -- we'll canvass around the

23 neighborhoods, we'll advise people that they've left

24 windows open or car doors open, windows down, that sort

25 of thing, you know, help them keep from being victims of

1 crime.

2 Q. On January 30th of 2009, did you come in contact
3 with the defendant?

4 A. Yes, ma'am, I did.

5 Q. And where was that?

6 A. That was on Broad River Road.

7 Q. That's good. And that's down in Richland County?

8 A. Yes, ma'am, it is.

9 Q. Okay. And was the defendant with anybody?

10 A. Yes, he was.

11 Q. Who was he with?

12 A. Johnny Parks.

13 Q. Johnny Parks. Were they in or near a vehicle?

14 A. They were near a vehicle.

15 Q. And can you describe that vehicle to the jury?

16 A. Yes. It was a black Land Rover Discovery, four-
17 door SUV type vehicle.

18 Q. Did you have the opportunity to observe the
19 interactions between Mr. Johnny Parks and the defendant?

20 A. Yes, I did.

21 Q. How did they act towards each other?

22 A. They were friendly.

23 Q. They didn't seem at odds with each other or
24 anything?

25 A. No, ma'am, they did not.

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1 Q. And the dates again?

2 A. That was January 1st, 2009. Or, I'm sorry, January
3 30th, 2009.

4 Q. Did the defendant when you spoke with him did you
5 ask for any identification?

6 A. Yes, I did.

7 Q. Did he have it on him?

8 A. Yes, he did.

9 Q. And what was that -- what kind of identification?

10 A. It was a driver's -- South Carolina driver's
11 license.

12 Q. What about Mr. Johnny Parks, did he have any?

13 A. No, ma'am.

14 Q. He didn't -- wasn't able to provide any?

15 A. No, ma'am. He had no visual identification on him.

16 MS. HAMAKER: That's all the State has for
17 this witness, Your Honor.

18 THE COURT: Any cross examination.

19 CROSS EXAMINATION

20 BY MR. DEJONG:

21 Q. You asked Mr. Nance for identification?

22 A. Yes, I did, sir.

23 Q. And he gave you identification?

24 A. Yes, sir.

25 Q. What was it?

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1 A. It was a South Carolina driver's license.

2 Q. All right, sir. Did you look at the issue date on
3 it?

4 A. No, sir.

5 Q. All right. Do you know how long he had had that
6 driver's license?

7 A. No, sir.

8 Q. And I'm speaking of that particular driver's
9 license?

10 A. Yes, sir.

11 Q. Do you have any idea how long he had it?

12 A. No, sir, didn't cross my mind.

13 Q. Thank you, sir.

14 MR. DEJONG: No further questions.

15 THE COURT: Thank you, sir. You may step
16 down. Any objection to this witness being excused?

17 MR. DEJONG: Not on behalf of the defense,
18 Your Honor.

19 THE COURT: Thank you, sir. You may step
20 down. You may call your next witness, Solicitor.

21 MS. HAMAKER: The State would call James
22 Wilson to the stand.

23 MISTER CLERK: Place your left hand on the
24 bible and raise your right hand. Do you solemnly swear
25 or affirm the testimony you're about to give in this

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1 case to be the truth, the whole truth and nothing but
2 the truth, so help you God?

3 MR. WILSON: Yes, sir.

4 MISTER CLERK: If you would have a seat and
5 state your name for the record.

6 MR. WILSON: James Wilson.

7 JAMES WILSON,

8 BEING DULY SWORN, TESTIFIED AS FOLLOWS:

9 DIRECT EXAMINATION

10 BY MS. HAMAKER:

11 Q. Mr. Wilson, where did you work?

12 A. Evette's Used Cars.

13 Q. Where is that located?

14 A. It's at 624 Poinsett Highway.

15 Q. Which county?

16 A. Greenville.

17 Q. How long have you worked there?

18 A. Since 2003.

19 Q. How many people work there?

20 A. Two.

21 Q. You and ...

22 A. Mr. Evette.

23 Q. And who is he?

24 A. He's the owner of the car lot.

25 Q. Did you happen to sell a vehicle to Mr. Nance on

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1 January the 27th of 2009?

2 A. Yes, ma'am.

3 Q. And that person you sold the vehicle to, is he
4 located in the courtroom?

5 A. Yes, ma'am.

6 Q. Will you point him out?

7 MS. HAMAKER: Let the record reflect he is
8 pointing at the defendant.

9 Q. Do you happen to know the VIN number on the car
10 that you sold to him?

11 A. I have ---

12 Q. Maybe this will help. One second. Mr. Wilson, let
13 me show you what's been pre-marked as State's Exhibit
14 Number 45. What, what is that document?

15 A. It's a copy of the Bill of Sale.

16 Q. For the vehicle that Mr. Nance purchased that day?

17 A. Yes, ma'am.

18 Q. And can you tell the jury the VIN Number on that
19 vehicle?

20 A. It's 1, m as in Mary, e as in Edward, e as in
21 Edward, m, 5, 3, s as in Sam, 2, x as in x-ray, a as in
22 apple, 6, 1, 6, 1, 5, 0.

23 Q. Did you attach a temporary tag to that vehicle?

24 A. Yes, ma'am.

25 Q. Can you describe it?

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1 A. It's an Evette's Used Cars tag. It's got a --
2 about a five inch -- about that -- about two and a half,
3 three inches tall, five inches long, that you'd put with
4 a black magic marker forty-five days later from the date
5 of the purchase.

6 Q. I'm going to show you what's been pre-marked as
7 State's Exhibit Number 2. That bottom picture there, is
8 that the picture of the paper tag that you placed on the
9 vehicle?

10 A. Yes, 'ma'am.

11 Q. How did you know that Mr. Nance was the person who
12 came and bought the car from you that day?

13 A. He had -- we -- every car we sell or test drive, we
14 always get a copy of their South Carolina driver's
15 license or whatever driver's license it may be.

16 Q. Let me show you what's been marked as State's
17 Exhibit Number 46. Is that the copy of the driver's
18 license you made?

19 A. Yes, 'ma'am.

20 MS. HAMAKER: Your Honor, at this time, the
21 State would like to introduce Exhibit Number 46 into
22 evidence.

23 THE COURT: Any objection?

24 MR. DEJONG: Without objection, Your Honor.

25 THE COURT: Without objection, Exhibit 46 is

1 into evidence.

2 MS. HAMAKER: And, Your Honor, also at this
3 time the State would like to introduce State's Exhibit
4 Number 45, the Bill of Sale, into evidence.

5 THE COURT: Any objection to that?

6 MR. DEJONG: Without objection, Your Honor.

7 THE COURT: 45 is admitted into evidence
8 without objection.

9 (WHEREUPON, State Exhibit Numbers 45 and 46 were
10 admitted into evidence.)

11 Q. Can you describe what the vehicle looked like that
12 you sold Mr. Nance?

13 A. It was a blue '99 Mercury Sable. It's, it's the
14 sidekick of -- I mean, kind of looks just like the
15 Tauruses.

16 Q. Okay. Have you ever seen Detective Lane Byers
17 before?

18 A. That's the gentleman that came out and got me to
19 write a statement.

20 Q. Did he show you a picture?

21 A. Yes.

22 Q. And when he showed you that picture were you able
23 to identify that person as the person you sold the
24 vehicle to?

25 A. Yes, ma'am.

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- 1 Q. And was that person Mr. Nance?
- 2 A. Yes, ma'am.
- 3 Q. Did the vehicle have anything inside of it when it
- 4 left the car lot when you sold it to him?
- 5 A. No. No, ma'am.
- 6 Q. Jackets, crow bars, tools, money, anything?
- 7 A. It, it should have had a spare tire and jacks and
- 8 stuff in the trunk. Other than that it should not have
- 9 had nothing.
- 10 Q. Do you remember about the time of day you sold him
- 11 the vehicle?
- 12 A. It was around three o'clock that afternoon.
- 13 Q. How much did he pay for it?
- 14 A. We had marked it -- we -- it was priced at twenty-
- 15 two ninety-five, but seeing that it needed a battery and
- 16 he agreed to put -- get a new battery, we sold it for
- 17 twenty ninety-five.
- 18 Q. And how much with taxes total was it?
- 19 A. The total came to twenty-two even.
- 20 Q. How did he pay for it?
- 21 A. Cash money.
- 22 Q. How many -- well, did you give him a set of keys so
- 23 he could drive it off the lot?
- 24 A. We had two sets of keys we had given him.
- 25 Q. Two sets of keys?

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1 A. Yes, ma'am.

2 Q. Did -- how did Mr. Nance get to your lot? Was he

3 ---

4 A. He was driving a Land Rover, it was dark colored,
5 light blue, or something like that.

6 Q. Was he with anybody?

7 A. He was with some lady.

8 Q. Can you describe her for the jury?

9 A. No, I cannot. Honestly, I cannot. I mean, she was
10 a black lady. Other than that, that was in -- that's
11 been a long time ago, so ...

12 Q. I understand, sir. Did you gather from watching
13 those two whether the vehicle was purchased for Mr.
14 Nance or for the lady?

15 A. He was supposed to be purchasing it for her.

16 Q. Do you recall who drove the used/new Mercury Sable
17 off the lot?

18 A. Mr. Nance did.

19 Q. Do you recall who drove the Land Rover off the lot?

20 A. I suppose she did.

21 MS. HAMAKER: That's all the State has for
22 this witness at this time.

23 THE COURT: You may cross examine the witness.

24 MR. DEJONG: Thank you, Your Honor. May it
25 please the Court.

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1

CROSS EXAMINATION

2 BY MR. DEJONG:

3 Q. So on January the 27th of 2009, around three
 4 o'clock, you say Mr. Nance came to your lot?

5 A. Yes, sir.

6 Q. And he came with a lady?

7 A. Yes, sir.

8 Q. Were they both in the Land Rover?

9 A. Yes, sir.

10 Q. And as you progressed through the afternoon --

11 well, let me ask you this. How long did this

12 transaction take?

13 A. Probably less than an hour.

14 Q. All right, sir. And during that period of time,

15 that, that less than an hour, did Mr. Nance and this

16 lady, did they stay together?

17 A. Up until they purchased the vehicle, yes, sir.

18 Q. All right. Well, how much of that less than an

19 hour did it take to purchase the vehicle? Was that what

20 you're saying, it took somewhat less than an hour?

21 A. When they arrived on my car lot they looked at the

22 Mercury because of the price. I took the key out to

23 them and it would not start. It needed a battery. I

24 jumped it off, they test drove it, they come back and

25 then they said, you know, can you help me some on the

1 price. I said seeing that you're going to have to
2 purchase a new battery, you agree to purchase your own
3 battery, we'll sell it to you for twenty ninety-five.
4 And they agreed upon that and then they come in the
5 office and I wrote up the deal and then they went their
6 way.

7 Q. All right. So the point of all that is this lady
8 and Mr. Nance were together the whole time that you were
9 selling this car; right?

10 A. Yes.

11 Q. And you come to court and you very quickly point
12 out Mr. Nance and you don't remember what the lady looks
13 like; right?

14 A. Due to the fact that I did not have a copy of her
15 driver's license.

16 Q. Well, I understand that.

17 A. If I had came to court without a copy of his
18 driver's license I would not recognize him because I
19 sell a hundred fifty cars a year.

20 Q. That's the point I'm making, you would not have
21 recognized him. Now, when did Mr. Byers come and talk
22 to you?

23 A. The next day.

24 Q. All right, sir. And when he came to talk to you,
25 he showed you one picture; right?

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1 A. Yes, sir. And that was the very next day and I
2 remembered it then.

3 Q. It wasn't a group of five or six pictures and you
4 had to pick somebody out; was it?

5 A. You asked a question that I'm not for sure of.

6 Q. All right. Well, do you ever remember marking
7 somebody's picture or did he just show you a picture or
8 what did he do?

9 A. I remember picking him out, but I don't remember if
10 it was three or four pictures or not, to be honest with
11 you.

12 Q. Well, did you look at Mr. Nance's -- that copy of
13 Mr. Nance's driver's license that's been introduced, I
14 believe, as State's Exhibit Number 46, did you look at
15 that before or after Mr. Byers showed you the picture?

16 A. I have not looked at his driver's license after we
17 made the deal until, I think, two months ago when I was
18 subpoenaed to court.

19 Q. So when Lane Byers came to see you, you didn't look
20 at the driver's license?

21 A. Not the next day, no. I remembered him the very
22 next day.

23 Q. Did you give him a copy of -- a photocopy of the
24 photocopy you had of the driver's license?

25 A. Not to my knowledge, I didn't. Not at that time.

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- 1 Q. All right. I apologize. I asked -- didn't listen
- 2 to your answer. When did he come out?
- 3 A. The very next day.
- 4 Q. Pardon me?
- 5 A. The very next day.
- 6 Q. That would have been January the 28th?
- 7 A. Yes, sir.
- 8 Q. All right, sir. Well, when these two people came
- 9 to your lot on January the 27th, did they talk to each
- 10 other?
- 11 A. You talking about Mr. Nance and ...
- 12 Q. I'm talking about Mr. Nance and this lady.
- 13 A. Yes. They talked back and forth to each other,
- 14 yes, sir.
- 15 Q. Were they cordial with each other?
- 16 A. They were friendly.
- 17 Q. Did they appear to like each other?
- 18 A. Yes, sir.
- 19 Q. All right. And you said it was fairly apparent, if
- 20 I recall your testimony correctly, that Mr. Nance was
- 21 buying the car for the lady; right?
- 22 A. Correct.
- 23 Q. All right, sir. Now, you sold the car, filled out
- 24 the paperwork -- well, I guess you got a copy of Mr.
- 25 Nance's driver's license first; right?

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- 1 A. Correct. Before they could take it for a test
2 drive.
3 Q. Right. Before they could take it for a test drive.
4 Now, how long were they gone to test drive the vehicle?
5 A. Not over ten minutes.
6 Q. Pardon me?
7 A. Not over ten minutes.
8 Q. Okay. Well, when they came back were they still
9 cordial with each other?
10 A. Yeah, they were ready to purchase the car.
11 Q. Did you ever hear any cross words between them?
12 A. No, sir.
13 Q. All right. Now, share with me, if you would.
14 please, Mr. Wilson, and look at what's been marked as
15 State's Exhibit Number 45, what was the mileage on that
16 vehicle?
17 A. One fifty-one one ninety-five.
18 Q. All right, sir. And do you remember about that
19 particular vehicle, did it have what we would call a
20 digital odometer on it or one of the old fashioned kind
21 that clicks around and is always visible?
22 A. I have no clue.
23 Q. All right, sir. All right. Now, when they left
24 they took the Mercury Sable or the Mercury Sable left
25 with one of them; right?

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- 1 A. Correct.
- 2 Q. And who was driving the Mercury Sable?
- 3 A. Mr. Nance.
- 4 Q. Okay. And who was driving the Land Rover?
- 5 A. The lady had driven the Land Rover.
- 6 Q. But when they pulled up who was driving the Land
- 7 Rover?
- 8 A. Mr. Nance.
- 9 Q. And you're sure that Mr. Nance left driving the
- 10 Sable?
- 11 A. Correct.
- 12 Q. Okay. All right. Now, two sets of keys. Did this
- 13 car really have a key that you unlock the door with and
- 14 you put in the ignition to start or did it have one of
- 15 those flipper jiggers?
- 16 A. Both.
- 17 Q. Pardon me?
- 18 A. Both.
- 19 Q. Both. And was there one of each -- well, let me
- 20 try to ask that a little different. When you say there
- 21 were two sets of keys, there was a remote and a key with
- 22 each one?
- 23 A. I'm not for sure if there were two clickers or not,
- 24 but I do know there was one clicker on the main key.
- 25 Q. All right. The paperwork -- well, let me back up

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1 a little bit. On this vehicle were you going to
2 transfer the title, get the new registration and tag and
3 all that?

4 A. No, sir. I gave him all the paperwork. And just
5 as I tell everyone, I give him two sets of paperwork and
6 I put them in envelopes. On one I put on it, keep in
7 car. On the other I put, goes to the DMV. And I tell
8 everybody the same thing that buys a car that takes
9 their paperwork. You're old enough, you know what SOL
10 means. If you lose anything out of the one that goes to
11 the DMV, you're SOL because without any of those papers,
12 if you lose them, you're SOL.

13 Q. All right. So you put the paperwork in two
14 separate envelopes?

15 A. Correct.

16 Q. All right. And did you then write on one keep in
17 vehicle and write on one DMV?

18 A. Yes, sir.

19 Q. Okay. Now once they left the lot, Mr. Wilson, you
20 don't know where they went; do you?

21 A. No, sir.

22 Q. And what happened to the vehicle after that, you
23 would have no way of knowing?

24 A. No, sir.

25 Q. And what happened to either set of those keys you

1 would have no way of knowing; would you?

2 A. No, sir.

3 Q. Now you say you weren't sure whether the one had
4 the -- if there were two clickers or not?

5 A. Correct. I'm not for sure.

6 Q. But with that particular vehicle, that being a 1999
7 Mercury Sable, a key would open doors, start the
8 ignition, open the trunk, you wouldn't need a clicker
9 necessarily; would you?

10 A. No. You would not need a clicker, but you do need
11 a chip key. It did have a chip key in it. Like if you
12 just go out and get a -- one regular key, yeah, it may
13 would get in there, but it may not start it. So one of
14 them could have been that, but I'm pretty sure --
15 because usually what it is, when we get keys when we buy
16 our cars they'll have two or three keys on them and
17 we'll take them off and put them to the side just in
18 case a finance company finances it, because they'll want
19 an extra key. And a lot of times that second key is
20 just a door key. And what the door key does, it will
21 unlock the door but not run the car.

22 Q. Right. But now you're talking about the key
23 itself, not the clicker; right?

24 A. Correct.

25 Q. So you said you gave two sets of keys, and when we

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1 say two sets of keys that would be keys that would
2 unlock the door, go in the ignition and start the
3 vehicle; right?

4 A. He got two sets of keys. I'm not saying both of
5 them would unlock the car and start the car.

6 Q. Okay. So they would have left your lot about what
7 time?

8 A. Probably around four.

9 Q. Okay. And do you remember what Mr. Nance was
10 wearing that day?

11 A. As of this moment, no. But the next day when I put
12 my statement down, I remembered it and it's been written
13 down in my statement, if you want me to read it to you.

14 Q. At what point in time did you return Mr. Nance's
15 license to him?

16 A. Right after he -- when I made the -- you talking
17 about after I made the copy of it? When a customer
18 wants to make a test drive, I make a copy of them and
19 before they go back out, I'll put a magnet tag on it,
20 which in this case I don't think I put a magnet on it.
21 We have another tag that we stick in the back of a
22 window because a magnet won't stick to it and they fall
23 off easy. And when I bring the dealer tag out back to
24 them that's when I turn the driver's license back over
25 to them.

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1 Q. So while they're test driving the vehicle you keep,
2 you keep the actual driver's license?

3 A. No, sir. He gets his driver's license back,
4 because that would be illegal.

5 Q. All right. Well, once he purchased the vehicle did
6 you need his driver's license again?

7 A. No, sir. I already had a copy of it.

8 Q. Thank you, Mr. Wilson.

9 THE COURT: Any redirect?

10 MS. HAMAKER: No, sir, Your Honor.

11 THE COURT: Thank you, sir. You may step
12 down.

13 MR. DEJONG: No objection to this witness
14 being excused, Your Honor.

15 THE COURT: Without objection, you may be
16 excused. Thank you, sir, for coming.

17 Mr. Foreman, ladies and gentlemen, I think we've
18 reach a good time to break for the evening. We didn't
19 go quite as long as I told some of you last night. Let
20 me remind you again, while you're at your home, with
21 your loved ones, family and friends, and socially, that
22 you shouldn't be discussing this case.

23 You'll have plenty of opportunity when this case is
24 over and concluded to share your experience with your
25 family and your friends. But while the trial is

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1 proceeding is not the time to do that. It would be
2 improper for you to discuss it with fellow jurors in the
3 morning when you come back, with friends, family, anyone
4 else.

5 Also, let me remind you, I don't expect there would
6 be any media coverage in this case, but if there were to
7 be and there would be something on the news tonight or
8 morning paper or radio or television, you should refrain
9 from watching that. If there's an interesting item that
10 you feel like that you've just got -- have to see, then
11 you can have a family member or a loved one or a friend
12 to copy that, duplicate a news article or copy a
13 newscast and you can see that when it's over. While the
14 trial is going on, I remind you that the purity of the
15 process is important and we need to make sure that the
16 commitment that you've made to these parties is
17 fulfilled, that you don't have any other influences.

18 I need to also remind you that you should not try
19 to conduct any kind of independent investigation. That
20 would be improper under your oath to check the internet
21 to find out any news articles of the past or check names
22 or check on anything that you've heard relating to this
23 case, that would be improper for you to do.

24 These fine attorneys are going to present
25 everything that you need to make a good valid decision

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1 as to what the facts are right here in this courtroom.

2 I'll certainly give you the law. That's all you're

3 going to need to make a factual finding.

4 With that in mind I'll excuse you for the evening.

5 If you would be back at nine o'clock in the morning.

6 We'll be ready for the next witness at that time. Have

7 a good evening, ladies and gentlemen, I'll see you back

8 in the morning, nine o'clock.

9 Please remain seated while the jury is dismissed.

10 (WHEREUPON, the jury exited the open court at

11 approximately 5:19 p.m.)

12 THE COURT: Mr. DeJong, for the matters you

13 raised earlier, security has assured me that there will

14 not be any occasion in which your client will be held in

15 the holding cell when the jury is there. Might be other

16 times, but the jury won't be passing that. When the

17 jury comes in in the morning, she'll make sure that he's

18 out of their presence either in a different holding cell

19 or even in the courtroom here with the deputy.

20 MR. DEJONG: We're so fortunate to have

21 Officer Daniels doing the transport and the security.

22 She has been on the ball today. I'm not trying to sound

23 silly. I want to thank her. She has done a good job.

24 THE COURT: I think we're going to be blessed

25 to have her again tomorrow, so that'll be good.

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1 MR. DEJONG: Well, then we will be blessed and
2 I don't anticipate any problems, Your Honor.

3 THE COURT: All right. As far as the
4 statement, I've reviewed my notes and the testimony, and
5 I think the statement that Officer Byers got from the
6 defendant, I believe that under the standard of *Jackson*
7 *v. Denno* that it is a voluntary statement. I think
8 based on all the evidence that I heard it would be a
9 voluntary statement. We could cross the bridge now or
10 if y'all want to think it over overnight or first thing
11 in the morning, as to relevance of the issue of the
12 statement of any prejudicial effect of whether it needs
13 to be admitted or not, that what Mr. DeJong alluded to
14 earlier. But I think it is a voluntary statement.
15 Certainly it was a custodial statement, but I think
16 warnings were given. It was obviously knowledgeable on
17 the part of Mr. Nance, he knew to ask for a lawyer and
18 he did, so I think it was clear that he understood his
19 rights and that the statement was a voluntary statement
20 even though it was a custodial, custodial situation.
21 But I'll be glad to hear from you tomorrow about
22 any relevance or prejudicial effect of that coming in.
23 And I don't know how -- what other testimony I may hear,
24 other evidence, but if -- at the appropriate time before
25 that testimony is offered, Solicitor, you need to make

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1 sure that we address that before it's elicited. Just
2 because I'm finding it a voluntary statement, I haven't
3 ruled on its admissibility as far as relevance.

4 MR. DEJONG: And I would like to sleep on that
5 tonight, Your Honor.

6 THE COURT: All right, sir. All right. We'll
7 be ready to start back at nine o'clock in the morning.

8 Good evening.

9 (WHEREUPON, the Court stood adjourned for the day
10 at approximately 6:00 p.m.)

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12 (WHEREUPON, the Court convened with all parties
13 present and the following proceedings were had.)

14 THE COURT: Any matters -- Ms. Hamaker here?

15 MR. DEJONG: Ms. Hamaker's playing with the
16 machine over here.

17 THE COURT: Okay. Yeah, there she is. Any
18 matters we need to take care of before the jury comes
19 in?

20 MS. HAMAKER: Not that I know of, Your Honor,
21 unless you wanted to go ahead and talk about the
22 relevancy of the defendant's statement or Detective
23 Byers.

24 THE COURT: Is he, is he going to be
25 testifying regardless, or is that the only testimony he

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1 has?

2 MS. HAMAKER: He is going to be testifying
3 regardless, ---

4 THE COURT: Okay.

5 MS. HAMAKER: -- but it's going to ---

6 THE COURT: All right.

7 MS. HAMAKER: -- not be any time soon.

8 THE COURT: He'll be -- he won't be this
9 morning.

10 MS. HAMAKER: Not this morning, Your Honor.

11 MR. DEJONG: We'll go either way you want to
12 go, Your Honor.

13 THE COURT: Well, maybe we'll see more
14 relevance as the case develops. The longer we can wait
15 the more I can maybe know about the case. So we'll put
16 that off.

17 One of the jurors, this morning, reported to the
18 bailiff a possible relationship that he was not aware
19 of. I'll be glad to have him in and voir dire him or
20 you can voir dire him.

21 MR. DEJONG: Relationship to whom, Your Honor?

22 THE COURT: To Mr. Byers.

23 MR. DEJONG: Oh, okay.

24 THE COURT: Let me see if I've got this right.
25 This is hearsay, and of course, we can bring him in.

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1 I'll let you ask him questions either way, but I
2 understand that Mr. Byers' daughter's husband is either
3 maybe the nephew of this juror or the nephew of the
4 juror's wife. He didn't even realize that there was any
5 relationship whatsoever until he reported to Mr. Duncan
6 today. I'll be glad to ---

7 MR. DEJONG: I think, Your Honor, since the
8 issue has now been brought up, that the juror needs to
9 be *voir dire*d, but I would ask, and I certainly
10 appreciate Your Honor offering to let me question that
11 witness or that juror, excuse me, but that puts me in
12 kind of an awkward position at this point in time ---

13 THE COURT: Well, ---

14 MR. DEJONG: -- because if he stays on the
15 jury, assuming that it is a he, I certainly wouldn't try
16 to alienate him, but I may alienate him or her in the
17 process of my questions.

18 THE COURT: Well, when I said you *voir dire*, I
19 meant that you could present questions to me. I'll ask
20 the questions, obviously, and then if there's others,
21 I'll ask y'all to come to the bench, and I can ask other
22 questions if you think I haven't covered them all for
23 him. But I'll bring him out. We'll go through that.
24 Obviously, he didn't -- well, I'll find out whether he
25 forgot about it yesterday or didn't know about it

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1 yesterday, either way. All right. Ask Mr. Bryan to
2 come out, please.

3 (WHEREUPON, Mr. Bryan approached the bar.)

4 THE COURT: Mr. Bryan, thank you very much for
5 coming out just a moment. I understand from the bailiff
6 that you realized all of a sudden that you may have some
7 -- through marriage, a relationship to one of the
8 potential witnesses. If you would, explain to me
9 exactly what that relationship is.

10 JUROR: Well, my nephew's wife is Lane Byers'
11 daughter.

12 THE COURT: Your nephew's wife is his
13 daughter.

14 THE JUROR: Correct.

15 THE COURT: All right. Obviously, you didn't
16 know that yesterday or you forgot about it or ...

17 THE JUROR: It didn't hit me. We've rarely
18 seen him.

19 THE COURT: Okay. You don't have any contact
20 with Mr. Byers on a regular basis in any way?

21 THE JUROR: No, sir. No.

22 THE COURT: The fact that you're now aware of
23 that relationship, will that affect your ability in any
24 way to be a fair juror?

25 THE JUROR: No, sir.

1 THE COURT: If Mr. Byers actually does testify
2 will that influence you in any way that he's testifying
3 and this relationship is there?

4 THE JUROR: No, sir, not at all.

5 THE COURT: You can still be fair to both
6 sides, in your judgment?

7 THE JUROR: Yes, sir.

8 THE COURT: Any other questions? Our lawyers
9 need to approach me for anything? If you would, just
10 come -- hang on just a minute, Mr. Bryan.

11 (WHEREUPON, Ms. Hamaker and Mr. DeJong approached
12 the bar.)

13 THE COURT: Mr. Bryan, do any other jurors in
14 any way know about this relationship?

15 THE JUROR: Well, there were a couple in the
16 room when I mentioned it to the bailiff.

17 THE COURT: That overhead --

18 JUROR: Yes.

19 THE COURT: -- when you mentioned the
20 relationship?

21 JUROR: Yes.

22 THE COURT: When did you first become aware of
23 the relationship?

24 JUROR: He looked familiar to me yesterday,
25 and after I got home, it just clicked on me who he

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1 actually was.

2 THE COURT: Okay. Yesterday when you were
3 sitting at the table?

4 JUROR: Yeah. Well, it was later when I
5 realized who he actually was, after we had already been
6 dismissed.

7 THE COURT: And the jurors who overheard this
8 conversation with the bailiff, was there any further
9 discussion in the -- about that once you relayed the
10 information to the bailiff?

11 JUROR: No, sir.

12 THE COURT: All right, sir. Thank you very
13 much. You may go back to the jury room.

14 (WHEREUPON, Mr. Bryan returned to the jury room.)

15 THE COURT: All right. Anything else we need
16 to take care of? Mr. DeJong?

17 MR. DEJONG: Your Honor, I have a bit of a
18 problem. Not so much with the answers of the jury --
19 juror that we just voir dired. The problem I have and
20 the concern I have is that the information was shared
21 with at least two other jurors.

22 And I don't know -- and what concerns me is the
23 dynamics of that information once the jury starts
24 deliberating in this case. I've always thought I'd like
25 to be a fly on the wall and see a jury deliberate. I've

1 never had that pleasure. But the fact that now we have
2 a juror on the panel that shared this information of his
3 relationship with two other jurors, whether that was
4 directly or indirectly, I'm not real sure based on what
5 the answers to the -- Your Honor's questions during the
6 voir dire, but now my concern is we have a tainted jury,
7 based on that information and again when you get into
8 the dynamics of the deliberation in the jury room.

9 If it were only him I would not have as much
10 concern. I have concern. He says he can be fair and
11 impartial, and we have to take his word for that, but we
12 don't know what effect it had on the other two jurors,
13 if it was limited to two jurors, and we don't know
14 whether those two jurors, if we're in some sort of
15 geometric progression here, whether that's been shared
16 with any of the other jurors.

17 And I feel like I have no alternative other than to
18 ask for a mistrial at this point in time because there
19 has been a taint in the jury, I think, as a result of
20 this. I realize people forget things, but you have a
21 nephew married to Lane Byers' daughter, that's a fairly
22 close relationship, Your Honor. That means that this
23 juror's brother or sister's child is married to Lane
24 Byers' daughter. I think that is a very close
25 relationship. And again, I don't know what effect it

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1 will have on the other jurors. So therefore I
2 respectfully move for a mistrial at this time.

3 THE COURT: Well, I'll be glad if you wish to
4 voir dire the entire jury panel about that. I don't --
5 I respectfully deny your motion for the mistrial. I
6 don't believe that relationship is such that -- based
7 upon his testimony, that he can be fair and competent,
8 and whatever jurors have had a chance to work with him
9 would respect him as a fellow juror. But I'll be happy
10 to voir dire the entire panel if that's your desire. I
11 believe that the juror's qualified and that your
12 mistrial motion is noted but respectfully denied.

13 MR. DEJONG: Your Honor, I appreciate that
14 offer. I would still take the position that the jury is
15 tainted. You have ruled on my motion for a mistrial.
16 I'm not arguing that point. I respectfully take issue
17 with it, but I'm not arguing it.

18 But I think even in light of Your Honor's generous
19 offer, under my position that they are tainted, now to
20 bring them out and voir dire the entire panel would only
21 taint them more. So I am in a Catch 22 position. I
22 either have to deal with the taint that I say is there
23 or run the risk of taking Your Honor's offer and
24 tainting them even more. So I'm going to respectfully
25 decline Your Honor's offer to voir dire the entire

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1 group.

2 THE COURT: Of course, I can do that as a
3 whole or individually, but ...

4 MR. DEJONG: I appreciate that.

5 THE COURT: All right. Let's -- if the jury's
6 ready, let's have them come in please.

7 (WHEREUPON, the jury entered the open court at
8 approximately 9:28 a.m.)

9 THE COURT: Good morning, ladies and
10 gentlemen. We're now ready to proceed with the trial of
11 the case.

12 Solicitor, you may call your next witness.

13 MS. HAMAKER: The State would call Deputy
14 Roman Fricks to the stand.

15 MISTER CLERK: Place your left hand on the
16 bible and raise your right hand. Do you solemnly swear
17 or affirm the testimony you're about to give in this
18 case to be the truth, the whole truth and nothing but
19 the truth, so help you God?

20 MR. FRICKS: I do.

21 MISTER CLERK: If you would have a seat and
22 state your name for the record.

23 MR. FRICKS: My name is Roman Fricks.

24 ROMAN FRICKS,

25 BEING DULY SWORN, TESTIFIED AS FOLLOWS:

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DIRECT EXAMINATION

2 BY MS. HAMAKER:

3 Q. Good morning, Deputy Fricks. Who do you work for?

4 A. Pickens County Sheriff's Office.

5 Q. And how long have you worked there?

6 A. Been there five years.

7 Q. What division are you in?

8 A. Uniform Road Patrol.

9 Q. Do you have any law enforcement experience outside
10 of your time with the sheriff's office?11 A. Right. Two and a half years at Liberty Police
12 Department.

13 Q. So seven and a half years total?

14 A. Yes, ma'am.

15 Q. What is your educational background?

16 A. Got a high school diploma.

17 Q. Do you have any specialized training in law
18 enforcement?19 A. I do. I work with canines, so I've got some canine
20 schooling.

21 Q. Can you tell me about that canine schooling?

22 A. I've been to tracking school in Aiken County put on
23 by the Aiken County Sheriff's Office and Department of
24 Public Safety. It was a one week school. And I've also
25 been to one week tracking -- man tracking school put on

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1 by York County Sheriff's Office in coordination with
2 National Police Bloodhound Association. Both of those
3 schools are accredited by the South Carolina Criminal
4 Justice Academy.

5 Q. And how long have you been on the canine division?

6 A. About two and a half years.

7 Q. And I assume you have a canine?

8 A. I do.

9 Q. What type of dog is that?

10 A. It's a tracking dog, it's a bloodhound.

11 Q. And how long have you had the bloodhound?

12 A. Two years.

13 Q. And what's the dog's name?

14 A. Bingo.

15 Q. Bingo. And when you did the training, did you have
16 Bingo with you?

17 A. Yes, I did.

18 MS. HAMAKER: Your Honor, at this time the
19 State would like to present this witness as an expert in
20 canine tracking.

21 THE COURT: Any voir dire or any objections?

22 MR. DEJONG: One moment please, Your Honor. A
23 couple of questions on voir dire, if I might, Your
24 Honor.

25 THE COURT: Yes, sir.

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1 VOIR DIRE EXAMINATION

2 BY MR. DEJONG:

3 Q. You attended one week of classroom work, I gather?

4 A. It was a combination of class work and field
5 training.

6 Q. All right. And what year was that in?

7 A. 2008.

8 Q. 2008. What part of 2008?

9 A. The first class I went to in Aiken County was in
10 February of 2008 ---

11 Q. All right.

12 A. -- or it may have been March. And the York County
13 class was in November.

14 Q. All right. And how about the second week, when was
15 it?

16 A. It was one week Aiken, one week York County.

17 Q. The same time?

18 A. No. The Aiken class was in March or April of '08,
19 and the York County class was in November of '08.

20 Q. Okay. So when you went to the tracking class, did
21 you have this particular dog with you?

22 A. I did.

23 Q. Okay. And what's that dog's name, I missed that?

24 A. Bingo.

25 Q. What?

1 A. Bingo, was his name O.

2 Q. That's B-I-N-G-O, Bingo? Bingo was his name.

3 Well, in working -- well, let me rephrase this, we're on

4 voir dire right now. So you had only worked with this

5 dog for, as far as training, two weeks, and then you

6 actually started working the dog with Pickens County

7 Sheriff's Office in November; is that correct?

8 A. I had worked with another dog handler prior to this

9 dog, and I actually had that dog when he ---

10 Q. The question is had you worked with Bingo?

11 A. Prior to this incident?

12 Q. Yes.

13 A. Oh, yes.

14 Q. But when did you start working with Bingo?

15 A. It was probably about a year prior to that.

16 Q. Okay. That's, that's my question.

17 MR. DEJONG: Nothing further, Your Honor.

18 THE COURT: Any objection ---

19 MR. DEJONG: Without objection.

20 THE COURT: All right. Without objection this

21 witness will be considered an expert in the field of

22 tracking.

23 Ladies and gentlemen, let me just explain a little

24 bit to you about expert witnesses. Normally a person

25 can't give opinions when they come and testify, but

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1 there are exceptions to that when a person, because of
2 training and background and experience, can be qualified
3 in some discipline as an expert. They're allowed to
4 give an opinion, they're allowed to give a basis for
5 that opinion. This is testimony, as any other witness.
6 You can take the testimony for the value that you see
7 that it ought to have as with any other testimony that
8 comes in.

9 You may proceed, Solicitor.

10 Q. Were you involved in the incident on January 27,
11 2009?

12 A. I was.

13 Q. And where was that incident?

14 A. At Tobacco Warehouse here in Pickens.

15 Q. Did you get a call to come out there?

16 A. I did.

17 Q. What time around did you get that call?

18 A. Pickens County Dispatch called me at home at
19 twenty-seven minutes after eleven p.m.

20 Q. And after they called you, how long did it take you
21 to get there?

22 A. It took me fourteen minutes to get ready, and it
23 took me fourteen minutes to get from home to the Tobacco
24 Warehouse.

25 Q. So were you on duty that night?

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1 A. No.

2 Q. What were you doing when that dispatch called?

3 A. I was in bed.

4 Q. Were you asleep?

5 A. Yes.

6 Q. Deputy Fricks, I'm going to show you some pictures.

7 If you need to come down off that stand to draw on them

8 or anything, feel free to do so. Come on down.

9 THE COURT: Officer Fricks, let me remind you
10 while you're down away from the mike you need to make
11 sure your voice is projected. We want to make sure the
12 jury hears you, the defense hears you and the court
13 reporter hears you for our record.

14 Q. Can you show the jury where Tobacco Warehouse and
15 Local Cash Advance, that strip mall is on that map?

16 A. Okay. The Tobacco Warehouse is right here. That's
17 the building.

18 Q. And what's across the street from the Tobacco
19 Warehouse?

20 A. That's the Burger King, and that's the Bi-Lo
21 Shopping Center there.

22 Q. Now it looks a lighter shade next to the strip
23 mall. What is that?

24 A. This?

25 Q. Yes, sir.

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1 A. A big parking lot that they use for -- a big
2 parking lot they use for something like a flea market on
3 occasion. There's trucks parked here. But it's just an
4 empty parking lot.

5 Q. And what's across the street from that empty
6 parking lot area?

7 A. That's the Hot Spot.

8 Q. Now, where the Hot Spot is located, if you were to
9 be parked there or even at the flea market, would you be
10 able to see behind the strip mall?

11 A. No.

12 Q. What if you were at the Burger King across the
13 street, would you be able to see behind the strip mall?

14 A. No.

15 Q. Okay. I'm going to show you another picture.
16 What's that a picture of?

17 A. Excuse me.

18 Q. What's that a picture of?

19 A. This is the building that the Tobacco Warehouse is
20 in again. This is the Burger King. That over there is
21 the Hot Spot. Well, this is the -- still the parking
22 lot at the Hot Spot. This is not visible in this
23 picture.

24 Q. Just a little bit louder so the jury can hear.

25 A. I'm sorry. This building here is the building the

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1 Tobacco Warehouse is located in. It's on this end of
2 the building. This is Highway 8. The Burger King is
3 right here and the Bi-Lo Shopping Center is behind it.
4 The vacant lot is here and the Hot Spot is not visible
5 across the street from it.

6 Q. Now that dark area behind the Tobacco Warehouse
7 building, what's all that dark stuff?

8 A. That's just woods and brush. Patch of woods.

9 Q. So if you are looking at the Tobacco Warehouse
10 facing the front, what's to the left of the building?
11 What are those dark spots?

12 A. This?

13 Q. Yes, sir.

14 A. That's a tree line and that's another little road
15 that runs along this side of the Tobacco Warehouse,
16 Dodgens Road.

17 Q. Okay. If you could go ahead and take a seat, I'm
18 going to ask you some more questions from up there on
19 the stand. It'd be a little more comfortable for you.
20 Did you use your canine, Bingo, to do any tracking in
21 this incident?

22 A. I did.

23 Q. Okay. Can you tell the jury what you did when you
24 arrived on the scene that evening.

25 A. Yeah. We -- I got there and my partner that tracks

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1 with me, he got there a little earlier, he was already
2 waiting on me. We ---

3 Q. Who's your partner?

4 A. Kevin Durham.

5 Q. Kevin Durham.

6 A. He was waiting on me. We decided that we were
7 going to use Bingo that day. He had his dog with him as
8 well. We went to the back of the building. At some
9 point, he -- someone had opened the car, the vehicle was
10 there. I usually walk the dog around a little bit after
11 he's been in the car. He needs to kind of maybe relieve
12 himself some and that way kind of avoid that while
13 running the track. You want the least amount of
14 distractions while you're on a track. And so during
15 this time Kevin must have opened the car, and I heard
16 ---

17 Q. When you say the car, which car?

18 A. It was the vehicle that was parked behind the Hot
19 Spot.

20 Q. Can you describe that vehicle for the jury?

21 A. I can just describe it as a four door sedan.

22 Q. Do you remember what color?

23 A. Not a very new car.

24 Q. Do you remember the color?

25 A. Light color.

1 Q. Light color. I'm going to show you what's been
2 pre-marked as State's Exhibit Number 1. Is that the
3 vehicle you saw outside that evening?

4 A. Yeah, that looks like the vehicle.

5 Q. Okay. I'm going to take it back from you. So
6 after you let your dog relieve himself, you brought him
7 over to that vehicle in State's Exhibit Number 1?

8 A. Right.

9 Q. Okay. You can go forward.

10 A. We usually ask people, the other officers that may
11 be around, to step back so we can scent the dog off on a
12 scent article. In this case, we didn't really have an
13 article laying around so we used the driver's side seat
14 of the vehicle. The door was open, you know, there are
15 different ways to scent a dog off. In my case, I point
16 at what I want, want him to smell, and he smells. And
17 as soon as he smells, you basically -- you strike the
18 dog, you tell the dog, you give him the find command or
19 whichever word you use. We use the word find. And then
20 he knows that that's what I'm wanting him to do, I'm
21 wanting him to find this scent. And, and then we -- the
22 dog will either lead your way immediately. If he
23 doesn't then you just kind of wait, and the dog will try
24 to find that scent because he knows that's what I'm
25 wanting him to do. He'll, he'll just lift his nose up,

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1 and he'll start what we call casting, and he'll turn
2 around, and he'll try to find what it -- what -- that
3 scent. In this case, we walked behind the car, and he
4 picked up a track pretty quick.

5 Q. And, now if it will be easier for you to come
6 point?

7 A. It is.

8 Q. Okay. If you'll show the jury the direction that
9 y'all tracked towards and how the tracking went.

10 A. Okay.

11 Q. If you need -- do you need my pen?

12 A. I can draw on this little paper. I'd say the
13 vehicle was probably parked somewhere in this area here
14 where I've made the little mark. Once we scented the
15 dog off, we went behind the car, we went along the
16 little road that the car was parked on and went in the
17 woods somewhere right around there maybe. The dog's
18 going to track and he's going to follow that scent. If
19 there's no track, the dog's going to take -- if he's
20 just walking, and let's say I can't tell that he's
21 actually smelling something, he's going to take the path
22 of least resistance and he's just going to just keep
23 walking on the little road. So when he went up into the
24 bushes here, I was pretty sure that we were on a track.
25 Once we got up into the bushes, into the woods, we went

1 through the woods, and I can't really explain exactly,
2 it's dark, it's like the officer said yesterday, we --
3 we've got a flashlight, and I've got the lead in one
4 hand because we, we run the dogs on a lead, and we're
5 shining the light with the other hand. So I can't
6 remember the exact path we took. Can I get that other
7 picture because then I can kind of -- because we, we
8 went through the woods here, and it's going to, it's
9 going to go on. Okay. This would be the patch of woods
10 right here. As we came through the woods, the dog
11 eventually led us to this side of the patch of woods and
12 to a drop-off around this area. It's, it's probably
13 maybe forty, fifty yards from the building from where we
14 started the track.

15 Q. You mentioned a drop-off. How tall is that drop-
16 off or how low does it go?

17 A. The drop-off, and I wasn't expecting it either, but
18 it's a steep drop-off. It drops off probably twenty to
19 twenty-five foot, I would say. So it's a -- the dog
20 didn't see it either. I saw it before him, and I
21 thought it was just a ditch, it's dark, but then I
22 noticed that it was nothing there so I held him back and
23 when we got to looking it was a steep drop-off.

24 Q. You said how many -- how deep?

25 A. I'd say twenty to twenty-five feet. Pretty good --

1 pretty much straight down, there's not much of a slope.
2 Q. Okay.
3 A. When you get to that point it's a pretty good
4 track. Based on training with the dog you kind of know,
5 you know, when he comes off the track or if he starts
6 tracking an animal instead of what you were looking for:
7 My dog, he'll -- he pulls twice as hard, if he gets off
8 a man trail and he's tracking a racoon or something else
9 that may have just went through the woods as soon as we
10 came, he gets off of tracking. I can tell immediately
11 if he's on an animal track because he pulls much harder
12 going after an animal than he does after a human.
13 Anyway, we had a pretty good track from here to here, I
14 was confident. You know, at the time I thought whoever
15 came through the woods here may have fell off of this
16 cliff, you know, off of this little drop off. It was
17 too high for me to jump down. So the only possibility
18 was just to bring the dog from this point to the bottom
19 of the, of the drop off. And the closest way at the
20 time appeared to be to come back around because this
21 drop off goes -- this is a ridge here, and it runs all
22 along all the way to the Tobacco Warehouse and then
23 there's a few buildings. So we had to come back all the
24 way along there and then into the parking lot and then
25 to the spot where I had just stood above. And at that

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1 time, we fired the dog up again. We gave him a find
2 command again. Sometimes that works and sometimes it
3 doesn't. In this case, he never picked up another track
4 at the bottom of the drop off. Which at this point
5 could mean maybe whoever it was didn't come over the
6 cliff, maybe there is nothing here. It's -- you know,
7 if the dog could talk that would be great because then
8 -- because I'm interested one way or the other if he's
9 doing good, if, if I've made a mistake. But in that
10 particular situation that was, that was really the only,
11 the only possibility is to take the dog to where he left
12 off. It'd be the same thing if we were in a pasture,
13 and there was a barbed wire fence. Somehow I've got to
14 get him over the fence. He's ninety-five, a hundred
15 pounds. So I've got to get him across, I've got to get
16 across, or I have to go around. And once you do that
17 you interrupt the dog, once you pull him off the track
18 because he doesn't know that this thing is twenty-five
19 foot deep and that we could both get hurt falling off of
20 it. So he thinks I was doing what I was supposed to be
21 doing, and now he's pulling me back and we're walking
22 back through the woods, and I'd say it probably took ten
23 minutes to get from the top to the bottom. So it's very
24 possible that he didn't realize that I was wanting him
25 to smell the same smell that we got off the car seat.

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1 Now if I'd had a t-shirt or maybe a ball cap or
2 something like that as a scent article instead of the
3 car seat, then I could have taken that with me, and I
4 could have thrown it down at the bottom of the cliff and
5 let him smell that and it's very possible that he would
6 have maybe picked up the track if that's where the track
7 was.

8 Q. You want to go ahead and ---

9 A. Yeah, I'm fine here too, if everybody can hear
10 good.

11 Q. Now are you saying that you think, in your expert
12 opinion, and with knowing how your dog reacts, that it
13 was a human or an animal?

14 A. Oh that, that wasn't an animal track there. That
15 was -- we were just going at a steady pace.

16 Q. Did Deputy Durham also use his canine to track?

17 A. Deputy Durham was with me as we did this track and
18 also as we went around and attempted to start at the
19 bottom. At the bottom, when I realized that we really
20 didn't have a track, we just kind of started looking
21 around in the parking lot. There was several trailers,
22 these were transfer truck trailers that were there and
23 other items that someone could hide under or on top of,
24 so we checked that parking lot pretty good. At this
25 time, I'm just walking the dog. He's just with me.

1 Keeping the dog with me so if I get a visual on somebody
2 maybe running then the dog's going to react to that. So
3 anyway, we walked around the parking lot, and at this
4 time we had no track anymore. Eventually I, I continued
5 just looking, walking up Evergreen Acres Road here, and
6 I looked. There's a lot of kudzu and brush over here on
7 the other side and, and so I was looking on both sides
8 of the road, and I just made my way up the road. At
9 this time, Deputy Durham wasn't with me anymore. He
10 went back to his vehicle. And as far as I know he may
11 have gotten his dog out and tried running the same track
12 or just tried to scent the dog off. I wasn't with him.
13 When I got back, Deputy Durham had already finished what
14 he was doing with his dog, and so I never saw his dog on
15 the ground.

16 Q. Do you remember about the time you left?

17 A. Close to about two or three minutes after one.

18 Q. In the morning?

19 A. Yeah. The reason I remember these times is
20 because I looked at them after hearing the officers
21 testify yesterday. We were talking about the CAD sheet.
22 The CAD sheet is a computer generated dispatch log, and
23 it's a tool for us for this purpose, so that we don't
24 have to, while we're driving or while we're doing
25 something, write the times down that we've done so. We

1 use it constantly. And like I say, it's a tool for us

2 to prove what we've done or to prove that a suspicious

3 vehicle was in the courthouse parking lot at eleven

4 p.m. We'll log that, the officer that drives by here,

5 he's going to notice the vehicle, it's out of the

6 ordinary, there's no one it, he's going to run the tag

7 and he's going to log ---

8 MR. DEJONG: Your Honor, I object. This is

9 not responsive to the Solicitor's question. This is an

10 editorial.

11 THE WITNESS: Oh, I'm sorry.

12 THE COURT: Okay. I sustain the objection.

13 Just answer the question.

14 Q. Officer Fricks, ---

15 A. It was one on three a.m.

16 Q. Okay. All right. If you'll answer any questions

17 that Mr. DeJong has to ask you. Thank you.

18 THE COURT: You may come back to your seat,

19 Officer Fricks.

20 CROSS EXAMINATION

21 BY MR. DEJONG:

22 Q. So Officer Fricks, not only do they teach you how

23 to track dogs, they teach you how dogs think?

24 A. Do they teach me how dogs think? No, I guess you

25 just kind of work with the dog, and you can tell what

1 his demeanor is.

2 Q. I'm sorry, sir, I didn't mean to interrupt you.

3 You were testifying a while ago and telling this jury
4 how your dog was thinking.

5 A. I don't remember saying that.

6 Q. Well, you get out there, and it's -- this CAD sheet
7 you were telling us all about, the call came in at
8 eleven seventeen; right?

9 A. Yes, sir.

10 Q. You get out to the scene approximately forty
11 minutes later; correct?

12 A. Eleven forty-one -- eleven fifty p.m. is when I got
13 there.

14 Q. Now Durham's already there?

15 A. Yes, sir.

16 Q. Now do I understand there were two dogs out there
17 that night?

18 A. Yes, sir.

19 Q. You had Bingo and who did Durham have?

20 A. Daisy.

21 Q. Who?

22 A. Daisy.

23 Q. Daisy. All right. Well, we'll come back to Bingo
24 and Daisy. But on this -- Tobacco Warehouse is about
25 right in here somewhere; right?

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1 A. Yes.

2 Q. Okay. Now this is, you say, some trees. Are there
3 any houses back there that are not in this picture?

4 A. There's a house that's right outside the picture.

5 Q. Back this way?

6 A. Yes, sir.

7 Q. All right. What is this right here?

8 A. I'm not familiar with that area at all. Well, I
9 never went over in that direction.

10 Q. You never went over in this direction?

11 A. No, sir.

12 Q. So you don't know what's over there?

13 A. I know that there's a road right along the Tobacco
14 Warehouse. That's Dodgens Drive. I never even went to
15 that road.

16 Q. You never went to that road?

17 A. No.

18 Q. All right. So you concentrated in this area right
19 in here?

20 A. Yes.

21 Q. All right. Now when you -- what time -- well,
22 strike that. When you get there how many officers are
23 there?

24 A. I'd say four or five.

25 Q. Were they inside the buildings or outside the

1 buildings?

2 A. Several of them were in front of the building and
3 maybe one or two behind the building where the vehicle
4 is.

5 Q. Okay. And how many were around the vehicle?

6 A. I, I don't remember. Maybe one or two.

7 Q. All right. And when you get there the vehicle is
8 open; right?

9 A. Yes.

10 Q. By the way, does Bingo, does Bingo have a
11 certification?

12 A. Outside the training that he's attended with me.

13 Q. So who certifies the dog?

14 A. I really don't know how that works.

15 Q. I see. You've been a handler for how long?

16 A. Two years.

17 Q. All right. Well, when you get there with Bingo and
18 Durham is already there, is Daisy out of, out of
19 Durham's vehicle at that point in time?

20 A. No.

21 Q. Okay. And how soon do you bring Bingo out once you
22 get there?

23 A. Within a few minutes.

24 Q. All right. Is there any particular reason for
25 having two dogs there?

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1 A. No.

2 Q. Just two canine units responded then is what you're
3 telling me?

4 A. That's right.

5 Q. Okay. When you say, if I understood you correctly,
6 that Durham was your partner, do you run these dogs
7 together?

8 A. On the track, two dogs at the same time?

9 Q. Yes, sir.

10 A. We don't.

11 Q. By the way is Bingo a male or a female?

12 A. He's a male.

13 Q. Daisy a male or a female?

14 A. She's a female.

15 Q. All right, sir. Where was Durham's vehicle parked
16 when you got there?

17 A. In front of the store.

18 Q. Where did you park your vehicle?

19 A. At the same location.

20 Q. Next to Durham's car?

21 A. Close to it probably.

22 Q. And the dogs, they stay in the back seats or the
23 back area of your patrol vehicles?

24 A. My dog stays in the patrol vehicle. He's --

25 there's a dog cage in it. Kevin Durham came with a

1 truck that has a dog box in it, and Daisy was in the dog
2 box.

3 Q. Now you say you have to look for a scent item or
4 scent article; right?

5 A. Preferably.

6 Q. Now the car's -- car is open when you finally get
7 Bingo out to look for the scent item; right?

8 A. Yes, sir.

9 Q. Did you look for the -- through the car for a scent
10 item?

11 A. No.

12 Q. You didn't?

13 A. No.

14 Q. But for your dog to track you have to have
15 something to scent on; right?

16 A. Well, I used the car seat.

17 Q. Right. But did you look in the car for anything
18 else?

19 A. No. Anything else would -- could have belonged to
20 someone that hasn't been in the car for a week. Whoever
21 drove the car there, more than likely, you know, was in
22 the driver's seat.

23 Q. Well, was there a wallet in the car?

24 A. I didn't notice.

25 Q. Well, if there were a wallet in the car would you

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1 get a scent item -- get a scent off of that?

2 A. I would have used the seat. It's -- it would be
3 the best item. We trained on car seats, and I would
4 have used that.

5 Q. Well, ---

6 A. Unless I would have known one hundred percent Jimmy
7 is missing and that's Jimmy's shirt and he had it on
8 fifteen minutes ago.

9 Q. All right, sir. So you used the car keys for your
10 ---

11 A. Seat.

12 Q. -- in want of a better term, your scent item;
13 right?

14 A. The seat, car seat.

15 Q. All right. Now you -- I'm a little confused on
16 this point. You've got Bingo, Durham has Daisy, but
17 Daisy doesn't get out of the car. Does Durham go with
18 you and Bingo?

19 A. Yes, sir.

20 Q. Okay. So you're coming -- you, you come from where
21 you say behind the car from behind Tobacco Warehouse
22 somewhere about right in here. You go up into this tree
23 line.

24 A. Yes.

25 Q. Well, let me ask you this, Mr. Fricks, if somebody

1 -- you got this scent, and you're tracking -- well, let
2 me ask it as a bit of a hypothetical. Let me say you
3 get a scent out of this car, and we'll say, for the
4 moment, it's my scent, not that the dog would know whose
5 scent it is; right?

6 A. Right.

7 Q. It's just a scent?

8 A. It's just a scent.

9 Q. But let's say in this case it's mine, and let's say
10 I have handled a crowbar, a sledgehammer, would that
11 have my scent on them?

12 A. That's possible.

13 Q. All right. Well, my question is, as you are then,
14 getting away from that hypothetical, getting back to
15 reality, as you were tracking through these woods did
16 you find any physical items by way of evidence?

17 A. No.

18 Q. All right, sir. Now I think I threw it in a bit
19 parenthetically, but as far as a scent goes a dog
20 doesn't know whose scent it is; does he?

21 A. Not at all.

22 Q. It could be mine, yours, anybody's?

23 A. Yes, sir.

24 Q. All they know is the scent and they are looking for
25 that scent?

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- 1 A. Right.
- 2 Q. So you followed it how far back into the tree
- 3 line?
- 4 A. I'd say fifty, sixty yards.
- 5 Q. All right. Coming back -- from starting here
- 6 coming back into here?
- 7 A. Yes, sir.
- 8 Q. More or less on the diagonal?
- 9 A. Diagonally and then further beyond the border of
- 10 that picture there. We were at the back edge of the
- 11 parking lot when -- where we came to the cliff.
- 12 Q. And then you get to this drop-off somewhere, I
- 13 believe you said, out in here someplace?
- 14 A. Little further back.
- 15 Q. Back this way?
- 16 A. Yes, sir.
- 17 Q. All right. So you get here. Now you say you can't
- 18 get down the bank; right?
- 19 A. No.
- 20 Q. Okay. Well, the scent just stops there?
- 21 A. Well, the dog wanted to go over the cliff.
- 22 Q. Okay. Well, then you can't get down there so you
- 23 have to come back around, as I understand it?
- 24 A. Yes.
- 25 Q. And come back?

- 1 A. Right.
- 2 Q. Is there any markings or anybody where you stopped
- 3 in the woods up here?
- 4 A. We didn't notice any.
- 5 Q. Pardon me?
- 6 A. We didn't notice any.
- 7 Q. I'm sorry, sir. I didn't hear you.
- 8 A. We didn't notice any markings.
- 9 Q. Well, what I'm saying is you say you have a scent
- 10 that got to the cliff ---
- 11 A. Right.
- 12 Q. -- for lack of a better term. Now when you came
- 13 back around was there any way of you knowing where,
- 14 where you had left the scent on top of the cliff?
- 15 A. Oh, yeah. I, I remembered where I was in relation
- 16 to the trailers back there. Because I knew I was going
- 17 to come right back to that spot.
- 18 Q. So anyway you come back to that spot and you hit --
- 19 you, you tell Bingo -- give the find command; right?
- 20 A. Right.
- 21 Q. And sometimes it works and sometimes it doesn't?
- 22 A. Right.
- 23 Q. So it's not really an -- a very exact science; is
- 24 it?
- 25 A. No, it's not at all.

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1 Q. All right, sir. Once you came back around, you
2 stopped here at the top of the cliff, went back around,
3 went back, you couldn't get a find; right?

4 A. No.

5 Q. Okay. Now then you, you just started walking the
6 dog?

7 A. Yes, sir.

8 Q. Okay. Do you ever go to the other side of Highway
9 8, Gentry Memorial Highway, to try to pick up a scent
10 there?

11 A. I didn't.

12 Q. All right. And I think if we go to this picture --
13 it's not much better on this picture. This is the Bi-Lo
14 Shopping Center right in ---

15 A. Right.

16 Q. -- here; right. And back in this area right here
17 and behind Bi-Lo more this way and off of the picture,
18 there's woods and a tree line there as well; is there
19 not?

20 A. I'm not -- I mean I -- it looks like it from here,
21 but I'm not familiar with that, with that area.

22 Q. But you never went over there?

23 A. Never crossed Highway 8.

24 Q. All right, sir. And this would be the Hot Spot
25 right here.

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1 A. Yes.

2 Q. To your knowledge, is the Hot Spot twenty-four
3 hours?

4 A. Yes.

5 Q. Do you know how many gas bays they have at Hot
6 Spot?

7 A. At least fifteen.

8 Q. All right, sir. Is that lit?

9 A. Yeah.

10 Q. Is it well lit?

11 A. Yes, sir.

12 Q. You can see it for quite a distance off; can't
13 you?

14 A. You can see the Hot Spot, yeah.

15 Q. All right, sir. That illumination from the Hot
16 Spot illuminates a lot of that area, does it not?

17 A. I don't know if it would illuminate the, the
18 Tobacco Warehouse. It's about a hundred yards from the
19 Tobacco Warehouse crossing that parking lot there.

20 Q. And then across the street -- let me get oriented
21 here. This is Tobacco Warehouse; right?

22 A. Yes.

23 Q. And across the street is ...

24 A. Burger King.

25 Q. Burger King, thank you. Was it open?

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1 A. I don't know.

2 Q. All right. Well, the upshot of all that is did you
3 ever find anybody?

4 A. No.

5 Q. So you -- as you're facing the Tobacco Warehouse
6 you never went to the left? Never went to the road?

7 A. Never crossed over that Dodgens Road, no.

8 Q. Okay. And you're telling me you don't know if
9 there are houses in that vicinity or not?

10 A. I, I wouldn't know.

11 Q. Okay. Well, there's a road -- as you're facing
12 Tobacco Warehouse, there would be a road to the left and
13 to the right?

14 A. Right.

15 Q. Now which one did you go down?

16 A. When I got done in the parking lot checking all the
17 trailers and -- I continued up Evergreen Acres which
18 runs right to the corner of the page there.

19 Q. But you never went to the other road?

20 A. No. I went all the way up Evergreen Acres, and I
21 checked behind the houses and in the vehicles.

22 Q. While you were walking the dog were there other
23 police vehicles in the area?

24 A. They, they may have been circling around still
25 looking for suspects.

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1 Q. Would they have had their emergency equipment on or
2 did you see any vehicles with emergency equipment on at
3 that point in time?

4 A. No.

5 MR. DEJONG: One moment, please, Your Honor.

6 THE COURT: Yes, sir.

7 Q. From the time you got Bingo out of the car until --
8 how much time went by from the time you got Bingo out of
9 the car till you got to the edge of the drop-off, how
10 much time went by?

11 A. Maybe twenty minutes.

12 Q. All right. And then you had to go back and circle
13 around and then how long -- well, from the time you got
14 to the drop off, then how much more time elapsed?

15 A. After I got back to the, to the bottom ---

16 Q. Yes.

17 A. -- and just started walking the dog?

18 Q. Yes.

19 A. I'd say probably another twenty-five minutes.

20 Q. So a total of some forty-five minutes; is that
21 right?

22 A. Yeah.

23 Q. Okay. All right. Thank you, sir.

24 THE COURT: Anything on redirect.

25 MS. HAMAKER: Yes, sir, Your Honor.

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REDIRECT EXAMINATION

1

2 BY MS. HAMAKER:

3 Q. Deputy Fricks, when you were telling Mr. DeJong
4 about why you didn't have him sniff fabrics or anything
5 that might have been in the vehicle and then the reason
6 why you had him sniff the seat was because you could be
7 sure that the person who'd driven the vehicle had sat in
8 the seat and that would give you a better scent, better
9 identifying scent?

10 A. Right.

11 Q. I'm going to show you what's State's Exhibit Number
12 3. That bottom picture, is that the seat?

13 MR. DEJONG: Your Honor, it may be a technical
14 point, but for the record, the Solicitor keeps referring
15 to these as marked as State's exhibits. They are not
16 exhibits at this point in time. It's my understanding
17 they've only been marked for identification at this
18 point in time.

19 MS. HAMAKER: Yes, sir.

20 MR. DEJONG: They have not been offered.

21 MS. HAMAKER: That's right.

22 THE COURT: Are you offering these as ---

23 MS. HAMAKER: No, sir, not yet, Your Honor,
24 not through this witness.

25 THE COURT: Okay. For identification then,

- 1 it's Exhibit 3.
- 2 Q. That bottom portion, is that the seat you had Bingo
- 3 sniff?
- 4 A. To be honest, I couldn't identify the ---
- 5 Q. That's all right. Did you have Bingo sniff the
- 6 driver's seat or the passenger's seat?
- 7 A. It was the driver's seat.
- 8 Q. It was the driver's seat. Also, Mr. DeJong, in his
- 9 hypothetical, spoke about a scent maybe being placed on
- 10 a crowbar.
- 11 A. Yes.
- 12 Q. Is it -- does your dog pick up easier on scents on
- 13 metal or on fabric such as the car seat?
- 14 A. It would be fabric. There's going to be more scent
- 15 particles, skin particles is what, what they are
- 16 actually -- are left on material than on a smooth
- 17 surface.
- 18 Q. Behind the strip mall that evening, how would you
- 19 describe the lighting?
- 20 A. Where the vehicle was or in the woods?
- 21 Q. In -- where the vehicle was?
- 22 A. I remember them talking about that yesterday. I, I
- 23 don't ---
- 24 Q. That's okay.
- 25 A. -- can't really remember.

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1 Q. And the woods, would you consider them dense or
2 light or medium?

3 A. It's pretty dense.

4 Q. Was it dark in the woods?

5 A. Yes.

6 Q. Now, also for hypothetical saying, this is the
7 Tobacco Warehouse that you mentioned earlier?

8 A. Yes.

9 Q. Okay. If say some tools or crowbars or something
10 along that nature were placed right about there, I don't
11 know if you can see, maybe my finger will be better,
12 right about there, would the trail be stronger where the
13 person went to or where the tools were just left?

14 A. Well, in order for the tools to get there, there
15 must have been a trail going there as well.

16 Q. I guess the better question that I should ask you
17 is, does your dog track objects or paths where people
18 went?

19 A. He's going to try to track the person, but now he
20 may come across a t-shirt or something that someone left
21 while they were walking or running.

22 Q. But in order to -- for him to find an object that
23 somebody had touched, that person would have had to drop
24 -- walk and drop that object.

25 A. Right.

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1 Q. Okay.

2 MS. HAMAKER: That's all the State has for the
3 witness, Your Honor.

4 THE COURT: Well, thank you, Mr. Fricks. You
5 may step down.

6 MR. DEJONG: No objection to him being
7 excused, Your Honor.

8 THE COURT: Solicitor, you may call your next
9 witness.

10 MS. HAMAKER: Your Honor, can we take a short
11 break?

12 THE COURT: All right. Let's take a short
13 break while we get our witnesses arranged. And let me
14 remind you, ladies and gentlemen, don't discuss the case
15 while you're back in your jury room. We'll call you
16 back in just a few moments.

17 (WHEREUPON, the jury exited the open court at
18 approximately 10:14 a.m.)

19 (WHEREUPON, the Court stood at recess for a short
20 break.)

21 THE COURT: You ready to proceed, Solicitor.

22 MS. HAMAKER: Yes, sir, Your Honor.

23 THE COURT: If the jury's ready, have them
24 come in please.

25 (WHEREUPON, the jury entered the open court at

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1 approximately 10:31 a.m.)

2 THE COURT: You may call your next witness,
3 Solicitor.

4 MS. HAMAKER: The State would call Deputy
5 Kevin Durham to the stand.

6 MISTER CLERK: Place your left hand on the
7 bible and raise your right hand. Do you solemnly swear
8 or affirm the testimony you're about to give in this
9 case to be the truth, the whole truth and nothing but
10 the truth, so help you God?

11 MR. DURHAM: I do.

12 MISTER CLERK: If you would have a seat and
13 state your name for the record.

14 MR. DURHAM: Kevin Durham.

15 KEVIN DURHAM,

16 BEING DULY SWORN, TESTIFIED AS FOLLOWS:

17 DIRECT EXAMINATION

18 BY MS. HAMAKER:

19 Q. Who do you work for?

20 A. I work for Pickens County Sheriff's Office.

21 Q. And how long have you worked for them?

22 A. About two months shy of six and a half years.

23 Q. Did you work for any other law enforcement agencies
24 beforehand?

25 A. No, I haven't.

1 Q. What specialized training have you had to become a
2 police officer?

3 A. I graduated the Criminal Justice Academy in, I
4 believe it was 2000 -- no, 2001. And I have went to
5 York, as well as Deputy Fricks, for the week seminar for
6 bloodhound tracking, man tracking.

7 Q. And that was in November of 2008?

8 A. 2008, yes.

9 Q. What division in the Sheriff's Office do you work
10 with?

11 A. I work for the Uniform Road Patrol.

12 Q. And you have a canine as well?

13 A. I -- at the present time I don't, but at the time
14 of the incident I did.

15 Q. And what was the name of your canine?

16 A. Daisy.

17 Q. What type of dog was she?

18 A. She's also a bloodhound.

19 Q. How long had you had her prior to this incident?

20 A. I'd had her just a little less than a year.

21 Q. You received that training in York for a year --

22 I'm sorry, I'm sorry, for a week back in 2008 in

23 November before this January incident?

24 A. Yes, ma'am.

25 Q. Were you involved in this incident?

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1 A. I was.

2 Q. And where did it take place?

3 A. The Tobacco Warehouse on Highway 8 within Pickens
4 County.

5 Q. How did you become involved in it?

6 A. Received a phone call from dispatch advising there
7 had been a burglary, and they needed a canine.

8 Q. Were you working?

9 A. I was at home sleeping.

10 Q. About what time, do you remember, that that call
11 came in?

12 A. The exact time I got the call was eleven twenty-
13 four p.m.

14 Q. And what time did you arrive on the scene?

15 A. I arrived on scene at eleven forty-five.

16 Q. That training that you received in York County, did
17 you have to have classroom time and practical
18 application time?

19 A. Yes, ma'am. We had classroom as well as field
20 training.

21 MS. HAMAKER: Your Honor, the State would like
22 to present this witness as an expert witness in dog
23 tracking.

24 THE COURT: Any voir dire or any objections?

25 MR. DEJONG: Neither one.

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1 THE COURT: Without objection, he'd be
2 considered an expert in dog tracking.

3 Q. When you arrived on the scene what did you do?

4 A. When I arrived on the scene, I parked in front of
5 the building, made contact with the initial officer that
6 was there, he told me what was going on as far as why he
7 called me out, believed that the suspects may still be
8 on the scene due to the car still running behind the
9 Tobacco Warehouse.

10 Q. Did you see that car?

11 A. I did.

12 Q. What did it look like?

13 A. Blue, four door sedan.

14 Q. And when you saw the car, what did you do after
15 that point?

16 A. Due to training, the exhaust from a car will
17 actually kill the scent, so the first thing I did was
18 initially turn the car off. There's no sense in it
19 sitting there running killing the possible scent that we
20 could track from.

21 Q. Okay. And then what did you do?

22 A. Waited on Deputy Fricks. If I recall, he was the
23 one on call. We both came to the incident location. I
24 wanted to give him first opportunity to run his dog.

25 Q. And what was the purpose of that?

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1 A. He's just -- he's on call, and I wasn't. It was
2 just really his call instead of mine.

3 Q. When officers run dogs on a track, what's the --
4 well, do they normally have more than one officer?

5 A. Yes, ma'am. It's -- I wouldn't run a track just by
6 myself just for officer safety.

7 Q. And explain officer safety a little bit for the
8 jury?

9 A. Well, when you're running a dog, like he said,
10 you've got a flashlight in one hand at night and the
11 leash in the other hand. I mean, if something happens,
12 you've got to drop one of them. And with another
13 officer, if it's possible, two, three, four, as many as
14 you can have to go with you, it just keeps more light in
15 the area, if something was to pop up. It just gives the
16 handler -- lets him do the tracking, pay attention to
17 the dog, make sure the dog's not on some -- an animal or
18 a different track. It just gives the handler and the
19 dog that relationship that they need while they're
20 tracking.

21 Q. And when you said the handler has the dog leash in
22 one hand and the flashlight in the other hand, and if
23 something were to happen they would have to drop
24 something, what do you mean? Why would they have to
25 drop something?

- 1 A. You don't have any protection in your hand. The --
- 2 I mean the dog's not going to attack someone.
- 3 Q. And the protection is?
- 4 A. Your gun.
- 5 Q. So when you're walking the line with Deputy Fricks,
- 6 did you have your gun on you?
- 7 A. I did.
- 8 Q. So when Deputy Fricks got there, tell me in detail
- 9 what you did from that point onward?
- 10 A. Once Deputy Fricks got there, I, in turn, told him
- 11 what we had, the situation, that I'd turned the car off.
- 12 We got his dog -- or he got his dog out, walked him
- 13 around, like he said, to just stretch his legs and make
- 14 sure that he didn't have anything on his mind other than
- 15 working. When we train our dogs, once we put the
- 16 harness on the dog, he knows he's working. He or she
- 17 knows he's working. He put the harness on, we came to
- 18 the car, scented Bingo off the driver's side seat.
- 19 After ---
- 20 Q. Let me ask you this. Had you let Daisy out of the
- 21 car before Bingo was able to get out of the car?
- 22 A. No, ma'am.
- 23 Q. And why not?
- 24 A. She stayed in the truck just to keep -- the more
- 25 people, things, animals on the ground, the more

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1 distractions that the, the dog's going to have. So I

2 just left my dog in the truck just for that purpose.

3 Just to ---

4 Q. And how far away was Deputy Fricks' vehicle

5 compared to where your vehicle was?

6 A. I don't recall exactly where he parked. I mean,

7 the parking lot's not very big. I mean it could have

8 been, could have been real close, could have been just a

9 few feet or yard away.

10 Q. Okay. So Deputy Fricks lets his Bingo out of the

11 vehicle and then what happened?

12 A. Like I said, we -- he got her -- got him harnessed

13 up, and we walked around the back to where the blue car

14 was at. We scented Bingo off of the driver's side seat.

15 Once we did that, we walked behind the car, and like he

16 said into the, into the wooded area.

17 Q. Would it help if I showed you the diagram to

18 explain? Well, you walked the tree line like Deputy

19 Fricks said?

20 A. As he said, he was, he was in front of me. I

21 didn't want to get out in front of Bingo. We were -- he

22 was either in front of me or I was right beside him.

23 Never did I get in front of them.

24 Q. Okay. And did you walk along the edge of that

25 cliff like Deputy Fricks said?

1 A. We walked -- yes, ma'am, we walked up to the, I
2 call it the bank, some people call it a drop-off cliff.
3 It was a big steep bank. We walked up to that bank to
4 where we all knew that we couldn't go over it without
5 getting hurt ourselves.

6 Q. And then what did you do?

7 A. We then came back down the tree line. All the way
8 -- almost all the way to Highway 8 there's trees in
9 between that parking lot where they have the flea market
10 and the Tobacco Warehouse. We had to go all the way
11 almost to Highway 8 to come into the parking lot or the
12 flea market area to walk back to where we last had the
13 scent.

14 Q. And then did Bingo alert on any scent at the bottom
15 of the drop-off?

16 A. No, ma'am.

17 Q. And what did you and Deputy Fricks do at that
18 point?

19 A. At that point, we, as he said, checked under some
20 big trailers. I think there was two or three tractor
21 trailers there. We checked inside, on top, underneath,
22 just checking the immediate area. Not always, sometimes
23 when you're close to whatever you're looking for, as far
24 as a suspect, there's a scent pool, and me and him spoke
25 at that time, you know, we should -- we could have been

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1 so close that the dog didn't know where -- what he was
2 looking at or, you know, he could have been overwhelmed
3 with scent. So that's why we checked that immediate
4 area real, real well.

5 Q. Okay. And then what did you do after that?

6 A. Deputy Fricks continued on Evergreen. I, in turn,
7 went back to my truck and got Daisy out.

8 Q. And then what did you do?

9 A. I took her to the car as well scented her off the
10 driver's side seat just to, just to run another track to
11 see if she maybe went a different way or the same way.

12 Q. Did you run the track by yourself?

13 A. I did.

14 Q. And did you -- where did you run that track?

15 A. We went in -- can I show you?

16 Q. Yes, sir.

17 A. Like I said, we, we started from the car, myself
18 and Daisy, which is my dog. We didn't go as far into
19 this wooded area as the first trip when me and Deputy
20 Frick and Bingo went. She just -- she came into this
21 wooded area and didn't track anymore. I don't know if
22 it was just from us already being there, she already
23 smelled my track, maybe even Bingo's track, it's just I
24 never felt that I was on the right track. To be honest,
25 I think she was just tracking where I had been, maybe

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1 even where Bingo had just went. But when, when we got
2 up in that far, and I knew she wasn't on the track, I
3 pulled her out. In turn went back to this parking lot,
4 really just having her with me looking for a suspect not
5 really trying to track anyone. I went behind this Hot
6 Spot. Hot Spot being here. There's a lot of kudzu in
7 the woods here. I walked behind the Hot Spot, looked in
8 the dumpster, looked in the back parking lot, really
9 just canvassing the area.

10 Q. And did you find anyone?

11 A. I didn't.

12 Q. What time did you leave the scene?

13 A. I left at twelve fifty-five a.m.

14 MS. HAMAKER: That's all the State has for
15 this witness, Your Honor.

16 THE COURT: Any cross examination?

17 MR. DEJONG: Thank you, Your Honor. May it
18 please the Court.

19 CROSS EXAMINATION

20 BY MR. DEJONG:

21 Q. So you got to the scene at what time?

22 A. At eleven forty-five.

23 Q. And do you know what time Fricks got there?

24 A. I believe it was eleven fifty-five, ten minutes
25 after me.

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1 Q. Well, you're the first person on the scene with the
2 dog; right?

3 A. Yes.

4 Q. Let me digress for just a moment. We talked about
5 this CAD report. How can you tell, looking at that CAD
6 report, when you did something?

7 A. It has my unit number, which is Bravo 30, the
8 dispatcher who logged it, and out beside it the time
9 that it was logged.

10 Q. All right, sir. So you get there at eleven forty-
11 five with the dog, with the tracking dog; right?

12 A. Yes, sir.

13 Q. And then you wait another ten minutes before Fricks
14 gets there before anybody starts trying to do any
15 tracking at all?

16 A. Yes, sir.

17 Q. Why didn't you start with Daisy?

18 A. The manpower was not there.

19 Q. Well, how many officers were there when you arrived
20 on the scene?

21 A. I'd say five.

22 Q. Five?

23 A. Yes, sir. By, by manpower, I'd say with knowledge
24 in tracking.

25 Q. Well, as I understood your testimony a moment ago,

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1 it wasn't the manpower issue, you have one dog handler;

2 right? One person's going to handle the dog?

3 A. Yes, sir.

4 Q. Everybody else there is more for -- basically, for
5 officer security?

6 A. Yes, sir.

7 Q. All right. Well, when you get there, have the
8 buildings been cleared to your knowledge?

9 A. To my knowledge, yes.

10 Q. Okay. And there's some other five officers on the
11 scene when you get there; correct?

12 A. Yes.

13 Q. All right. To the best of your recollection, what
14 were those officers doing?

15 A. Like I said, I only made contact, that I remember,
16 with the initial officer who told me basically what the
17 situation was.

18 Q. All right, sir. And then after that you basically
19 waited until Fricks got there?

20 A. Yes, sir. I knew he was coming from the time that
21 I got the call because once I got the call, I had them,
22 in turn, call Fricks as well if they hadn't already, and
23 they had.

24 Q. Well, at some point in time, you shared with us
25 that you turned a vehicle off. What vehicle did you

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- 1 turn off?
- 2 A. I turned off the blue car that was running behind
3 the Tobacco Warehouse.
- 4 Q. Were you the first person to enter that vehicle, to
5 your knowledge?
- 6 A. To my knowledge.
- 7 Q. All right. Were the lights on or off?
- 8 A. On the vehicle?
- 9 Q. Yes, sir.
- 10 A. I don't recall.
- 11 Q. All right. Well, just so I'm sure, you had to use
12 the keys to turn the vehicle off; didn't you?
- 13 A. Yes, sir.
- 14 Q. And then did you take the keys out or leave them in
15 the vehicle?
- 16 A. I'm sure I left them in it. I'm ---
- 17 Q. All right. Did you ever take the keys out and look
18 at them?
- 19 A. No, sir. Not that I, not that I recall.
- 20 Q. All right. Did, did you look at them in the
21 ignition?
- 22 A. I'm sure I did to turn it off.
- 23 Q. Were they made of fabric or were they made of
24 metal?
- 25 A. Keys?

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1 Q. Yes, sir.

2 A. Metal.

3 Q. Okay. Was Lieutenant Robinson there when you got
4 there?

5 A. Yes, sir.

6 Q. And where was he?

7 A. I'm not sure exactly where he was at. He was, I'm
8 sure, either in the building or standing near it because
9 it was raining that night.

10 Q. Did you have any contact with Lieutenant Robinson
11 when you got there?

12 A. Yes, sir.

13 Q. At what time did you and -- well, let me back up
14 here. So way after the fact, as I understand it, you
15 got Daisy out and you did some tracking?

16 A. Yes, sir.

17 Q. Okay. All -- but when Fricks got there, then you
18 were with Fricks doing the tracking; right?

19 A. Yes, sir.

20 Q. And what time did y'all start tracking?

21 A. He got there five minutes till twelve. It was
22 fifteen, twenty minutes before we got started tracking.

23 Q. All right. So that fifteen, twenty minutes before
24 you got started tracking, that was just to kind of get
25 everything in place and all that good stuff; right?

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1 A. Yes, sir.

2 Q. Well, at that point in time, there was merely an
3 assumption that this vehicle was involved in a burglary;
4 correct?

5 A. Yes, sir.

6 Q. Simply because it happened to be there and happened
7 to have the motor running; right?

8 A. Yes.

9 Q. But other than that, at that point in time, there
10 was nothing to tie that vehicle to a burglary; was
11 there, to your knowledge?

12 A. No, sir.

13 Q. Now did you ever go into either Cash Advance or
14 Tobacco Warehouse?

15 A. Yes, sir.

16 Q. And were you able to observe whether or not there
17 was a hole in the bathroom wall?

18 A. Yes, sir.

19 Q. Do you recall what the substance was made of, that
20 wall was made up of?

21 A. They were sheetrock.

22 Q. Sheetrock. I see. Did you ever take Bingo or
23 Daisy in either Local Cash Advance or, in particular
24 with regard to that hole in the wall, to try to get a
25 scent off of that?

- 1 A. No, sir.
- 2 Q. All right. It's my understanding now that the keys
- 3 of this car were used as the scent article?
- 4 A. No, sir.
- 5 Q. Pardon?
- 6 A. No, sir.
- 7 Q. What was used?
- 8 A. It -- I believe you've misunderstood. It's the car
- 9 seat, s-e-a-t.
- 10 Q. Oh, car seat?
- 11 A. Yes, sir.
- 12 Q. I'm hard of hearing. Well, that's very probable
- 13 that I misunderstood then. Okay. That fan roaring back
- 14 there doesn't help any. Okay, car seat.
- 15 A. Yes, sir.
- 16 Q. Well, did you sit in the car when you turned the
- 17 car off?
- 18 A. No, sir.
- 19 Q. Did you lean into the vehicle?
- 20 A. Yes, sir.
- 21 Q. Well, you, you said that, and I gather, that dogs
- 22 can be distracted and that there can be quite a few
- 23 distractions; right?
- 24 A. Right.
- 25 Q. Well, there was less distraction when you and Daisy

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1 got there than there was when Fricks and Bingo got

2 there; right?

3 A. Don't understand. Less distraction where?

4 Q. Well, there were fewer people there. At least

5 there was one dog less and one person less; right?

6 A. There was never any distraction near that car

7 though. We hadn't had any dog near the car. I guess

8 what I'm saying is the dog knows my scent, my dog does,

9 and his dog knows his scent, so our scents are not a

10 distraction to, to them. My scent's not a distraction

11 to my dog.

12 Q. You say when Fricks got there that you and he

13 hooked up and you immediately started working, started

14 the tracking process; right?

15 A. Not immediately, no. He got his dog out to walk

16 around and relieve himself and then we went.

17 Q. Well, at what point in time did -- how long after

18 Fricks got there did you start working with Fricks and

19 Bingo?

20 A. Like I said, maybe twenty minutes, fifteen, twenty

21 minutes.

22 Q. I'm confused or I confused you with my question,

23 I'm not sure which. Fricks got there at eleven fifty-

24 five; correct?

25 A. Correct.

1 Q. And now you, if I understand, or maybe you
2 misunderstood my question, but the answer you just gave
3 me, it was another twenty minutes before y'all started
4 working and tracking?

5 A. Close, fifteen.

6 Q. Okay, okay. So before you ever start tracking,
7 from the time the call came in or the first officer
8 arrived, being eleven seventeen, it would have been some
9 time well after midnight before y'all ever started
10 trying to track?

11 A. Maybe ten minutes after midnight. Because like I
12 say, he arrived about five minutes till midnight, and
13 fifteen, twenty minutes would put it ten to fifteen
14 after twelve.

15 Q. All right. And what were you doing once Fricks got
16 there in that fifteen or twenty minutes before you
17 started doing it? Anything with regard to tracking?

18 A. In regards to tracking, nothing.

19 Q. You weren't doing anything?

20 A. In regards to tracking, no, sir.

21 Q. Anything else other than tracking?

22 A. Knowing that he needed to get his dog out, I was
23 waiting on him.

24 Q. Okay.

25 MR. DEJONG: Madam Solicitor, I hate to ask to

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1 impose on you. Could you turn this machine on for me
2 please, ma'am? Or is it already on? And then could I
3 impose on you for those pictures you've been using?

4 MS. HAMAKER: Certainly, Mr. DeJong.

5 MR. DEJONG: Thank you so much, ma'am.

6 Q. I don't know that -- when Ms. Hamaker was asking
7 you questions did she have this picture up?

8 A. No, sir.

9 Q. Okay. Are you familiar with this picture? Or take
10 a moment to familiarize yourself with it.

11 A. I'm familiar.

12 Q. Let's -- this would be, this would be Tobacco
13 Warehouse right in here; right?

14 A. Right.

15 Q. All right. A vacant lot?

16 A. Yes, sir.

17 Q. Hot Spot?

18 A. Yes, sir.

19 Q. Okay. Now tell me, tell me what -- Officer Fricks
20 told me. Tell me what you did and where you went as far
21 as the tracking is concerned?

22 A. On both trips?

23 Q. First trip first?

24 A. Can I show you?

25 Q. Sure. Please come down. Just keep your voice up,

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1 please, sir. You've got one?

2 A. Yes, sir. Like I said before, this being the
3 Tobacco Warehouse, the road being behind it there, on
4 the first trip we tracked through this wooded area along
5 until we came to this bank, this steep bank, almost to
6 the end of the parking lot, but not quite, because once
7 we got to the edge there, we could see these trailers
8 that are parked there. That's how we referenced our
9 point where we were going to come back to.

10 Q. All right, sir. Now that was both you and Fricks
11 and Bingo; right?

12 A. Yes, sir.

13 Q. Now, when you left there did you stay with Fricks
14 and Bingo?

15 A. You talking about on the trip to come back?

16 Q. Yes, sir.

17 A. Yes, sir. I stayed with them.

18 Q. All right. So it was you, Fricks and Bingo that
19 went almost all the way to Highway 8, kind of did a u-
20 turn on the bottom side of the bank and went back toward
21 those trailers; right?

22 A. Yes, sir. There's tall trees on this steep bank
23 all the way to Highway 8.

24 Q. Well, behind where those trailers are, are there
25 any trees there?

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- 1 A. Looks like there's one here.
- 2 Q. All right. But no tree line?
- 3 A. Not a tree line, no, sir.
- 4 Q. That white blotch where that tree is a little bit
- 5 to -- would be to the left, is that a house?
- 6 A. This?
- 7 Q. Yes, sir.
- 8 A. Appears to be.
- 9 Q. All right. Did y'all ever go to the house?
- 10 A. We did.
- 11 Q. Did you talk to anybody?
- 12 A. No, sir.
- 13 Q. All right. You're looking for a suspect and you --
- 14 did you ever knock on the door and see if anybody was
- 15 home?
- 16 A. No, sir.
- 17 Q. Didn't attempt to talk to anyone?
- 18 A. No, sir.
- 19 Q. Well, while you're here, let's save me a few steps.
- 20 So y'all go into that area, then somehow you end up back
- 21 at Tobacco Warehouse; right?
- 22 A. Yes, sir.
- 23 Q. By yourself?
- 24 A. Yes, sir.
- 25 Q. Do you know, if you know, where was Bingo and

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- 1 Fricks at this point in time?
- 2 A. No, sir.
- 3 Q. You don't know?
- 4 A. (Negative nod.)
- 5 Q. Okay. So then you're telling me somewhere along
- 6 the line you just lost Fricks and Bingo?
- 7 A. No, I left on purpose.
- 8 Q. Okay. The question is where were Fricks and Bingo
- 9 when you left, when you left them?
- 10 A. At this house.
- 11 Q. All right, sir. Then you go back to Tobacco
- 12 Warehouse; correct?
- 13 A. Correct.
- 14 Q. How do you get back to Tobacco Warehouse?
- 15 A. I walked.
- 16 Q. What's your route?
- 17 A. It would have to be back through the parking lot
- 18 here, due to this bank.
- 19 Q. All right. Now, at that point in time, that's when
- 20 you get Daisy out of your vehicle; right?
- 21 A. Yes, sir.
- 22 Q. What do you use for a scent, scent article?
- 23 A. I used the seat.
- 24 Q. All right. Never took the dog into the warehouse?
- 25 A. No, sir.

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1 Q. Never checked the wall, the hole in the wall?

2 A. No, sir.

3 Q. All right, sir. And then where -- show us the
4 route that you and Daisy took?

5 A. Again, from the car, we came into this wooded area,
6 not as far as we went initially on the first tracking.

7 Q. All right.

8 A. Like I said, I didn't believe she was on any track.
9 Her actions wasn't showing me that she was on what I
10 wanted her ...

11 Q. Wasn't doing what you wanted her to do; right?

12 A. Right.

13 Q. All right. So then you -- well, tell me what you
14 did after that?

15 A. Again, we came into this parking lot here, like I
16 said, not tracking, I just had Daisy with me, came into
17 this parking lot here, checked around, I think this is a
18 fireworks stand or some sort of pull behind trailer,
19 checking around it, walked behind Hot Spot, there's some
20 dumpsters, containers back behind Hot Spot. Just more
21 or less canvassing the area.

22 Q. Did you ever cross Highway 8?

23 A. No, sir.

24 Q. Could you show us where the Bi-Lo Shopping Center
25 is on that picture?

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- 1 A. Bi-Lo's here.
- 2 Q. Looking to the left of that as you're facing Bi-Lo,
3 would you say that is a tree line in there?
- 4 A. This here, yes, sir.
- 5 Q. All right. You familiar with that area?
- 6 A. No, not familiar, no sir. I know there's trees
7 there just from going to Bi-Lo.
- 8 Q. Did you ever take Daisy into that tree line?
- 9 A. No, sir. We never crossed Highway 8.
- 10 Q. All right, sir. Well, when you got Daisy out, you
11 went -- you, you did, I guess, a second tracking, for
12 want of a better term. Did you find anything at all?
- 13 A. No, sir.
- 14 Q. Tools, implements, shirts, money, anything?
- 15 A. No, sir.
- 16 Q. Come on back and have a seat, please, officer. The
17 upshot of all of that is you never found anyone; did
18 you?
- 19 A. No, sir.
- 20 Q. And the -- you could not tell based on this
21 tracking whether there -- it would be one person or five
22 people you were tracking; could you?
- 23 A. No, sir.
- 24 MR. DEJONG: One moment please, Your Honor.
- 25 Q. When you and Officer Fricks got to where that drop-

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1 off is, did you look at it, visually look at it?

2 A. Yes, sir.

3 Q. Okay. You had lights, I gather; right?

4 A. Flashlights, yes, sir.

5 Q. All right. And Hot Spot was open; right?

6 A. Yes, sir.

7 Q. It was well lit; right?

8 A. Yes, sir.

9 Q. Was there any light bleeding over from the Hot Spot
10 into that area?

11 A. I'm sure there was.

12 Q. Okay. Well, when you get to that drop-off, did you
13 observe or see anything that would indicate anyone went
14 down that drop off?

15 A. Like I said, I never was in front of Bingo nor
16 Fricks. The dog went right up to the bank. So that's
17 what I saw. I mean, whether he was on top of any kind
18 of track or not, I don't know.

19 Q. I'm not asking about tracks. I'm talking about
20 what you, not your dog, could smell or see. Did you see
21 anything that would indicate to you as a police officer
22 that anybody went over that bank?

23 A. Like I said, the dog had already disturbed the
24 ground there. That's what -- by track, I'm not saying
25 smelling track, I'm talking about a foot track or some

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1 kind of disturbance on the ground. The dog had already
2 went out and back trying to go over that bank.

3 Q. All right. Well, then y'all walked back around
4 almost to Highway 8, come down the vacant lot and came
5 to the spot where you said you stopped up here; right?

6 A. Yes.

7 Q. Did you see anything at the bottom of that bank
8 that would indicate anybody had come off of there?

9 A. You could see where some pine needles were on the
10 -- to best describe that bank, it come over those pine
11 trees there, it bellied under, and, and kind of come
12 back. There was no slope whatsoever. So when we got
13 down there, there was some old pine needles and stuff
14 that were kicked off from the top.

15 Q. When y'all got to that drop-off, the -- did the dog
16 stop or did you stop or did Fricks stop? How did that
17 happen?

18 A. We all three stopped.

19 Q. All right. Did y'all ever attempt to go down that
20 way?

21 A. No, sir.

22 Q. Would it have been dangerous?

23 A. Yes, sir.

24 Q. Would it pose a danger for you to -- and Fricks,
25 forget the dog for a moment, would it have been

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1 dangerous for y'all to go down there?

2 A. Yes, sir.

3 Q. Would it have posed a danger for anybody to go down
4 there?

5 A. Yes, sir.

6 Q. Thank you, sir.

7 THE COURT: Any redirect?

8 MS. HAMAKER: Just briefly, Your Honor.

9 REDIRECT EXAMINATION

10 BY MS. HAMAKER:

11 Q. Mr. DeJong stated earlier that, and he did it in
12 the form of a question, that you pulled Daisy off the
13 track because she wasn't doing what you wanted her to
14 do. What was it you were wanting her to do?

15 A. I wanted her to pick up the possible track, the
16 scent trail.

17 Q. And was she or was she not picking it up?

18 A. No. I don't believe -- in my training and
19 experience, I don't believe that she had picked up what
20 I wanted her -- what I scented her off of, which was the
21 seat. I don't think she was on that scent.

22 Q. Was she -- did she appear to be on any scent?

23 A. She walked the same trail as we'd walked before. I
24 think she was just tracking possibly Bingo or Roman.
25 Like I said that was the freshest scent through that

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1 woods.

2 Q. So you were just trying to find the person who was
3 in the car, and she didn't appear to be doing that
4 scent?

5 A. No, ma'am.

6 MS. HAMAKER: That's all for the State.

7 THE COURT: Thank you, sir. You may step
8 down.

9 MR. DEJONG: No objection to him being
10 excused, Your Honor.

11 THE COURT: You may call your next witness.

12 MS. HAMAKER: The State would call Tony
13 Robinson to the stand.

14 MISTER CLERK: Place your left hand on the
15 bible and raise your right hand. Do you solemnly swear
16 or affirm the testimony you're about to give in this
17 case to be the truth, the whole truth and nothing but
18 the truth, so help you God?

19 MR. ROBINSON: I do.

20 MISTER CLERK: If you would have a seat and
21 state your name for the record.

22 MR. ROBINSON: Tony Robinson.

23 TONY ROBINSON,

24 BEING DULY SWORN, TESTIFIED AS FOLLOWS:

25 DIRECT EXAMINATION

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1 BY MS. HAMAKER:

2 Q. Mr. Robinson, -- I guess I should say Lieutenant

3 Robinson, who do you work for?

4 A. I'm with the Pickens County Sheriff's Office.

5 Q. And how long have you worked with them?

6 A. I was -- twenty -- about twenty-four years,

7 counting about three years reserve time.

8 Q. So how much time total?

9 A. Twenty-four. Twenty years full-time.

10 Q. Okay. What is your job at the Sheriff's Office?

11 A. I'm a lieutenant in the I.D. division which is also

12 known as the crime scene unit, and we do property and

13 evidence.

14 Q. Explain to the jury what, Lieutenant, that title

15 means. Are you over people or people over you?

16 A. I'm a lieutenant over two other men. We're -- we

17 compose the I.D. unit which is the unit responsible for

18 going to crime scenes.

19 Q. So you're the boss of the I.D. unit?

20 A. I have a captain over me, but yes, I'm the direct

21 boss.

22 Q. What's your educational background?

23 A. I have an Associate's Degree from North Greenville

24 College. I have basic law enforcement from the South

25 Carolina Criminal Justice Academy, plus numerous courses

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1 related to forensic type work from photography,
2 fingerprinting, evidence collection.

3 Q. So your main job is to collect evidence?

4 A. Yes.

5 Q. Explain to the jury, I know you've had numerous
6 classes, but how -- give them an around about how many
7 classes you've taken in regards to evidence collecting?

8 A. Fifteen to twenty classes, most of them will last
9 either from one week to two weeks in duration at various
10 locations. A lot of them were in Columbia at the South
11 Carolina Criminal Justice Academy. Some of them are off
12 site training. The furthest course I went to was in
13 Maryland.

14 Q. How many different cases, in your career, if you
15 could just guess, not guess, but estimate for the jury
16 have you worked for identification purposes?

17 A. I've been doing I.D. for twenty years. I respond
18 to probably two hundred and fifty or more crime scenes
19 per year. So it's thousands.

20 Q. Have you ever received any specialized training in
21 the taking of fingerprints and analyzing fingerprints?

22 A. Yes. I've attended several courses, basic
23 fingerprinting through the Criminal Justice Academy, an
24 FBI Advanced Latent Fingerprint School which was two
25 weeks.

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1 Q. How many times, if you could estimate for the jury,
2 have you attempted to lift fingerprints?

3 A. Thousands.

4 Q. And how many times have you had to conduct a
5 fingerprint analysis where you compared that print to
6 another print?

7 A. That would also be, in twenty years, that would be
8 thousands probably.

9 MS. HAMAKER: Your Honor, at this time, the
10 State would like to move this witness in as an expert in
11 fingerprinting and scene processing.

12 THE COURT: Any voir dire or any objections?

13 MR. DEJONG: Neither one, Your Honor.

14 THE COURT: Okay. Without objection, he's
15 considered as an expert in those fields of
16 fingerprinting and crime scene.

17 Q. Lieutenant Robinson, did you in fact arrive at the
18 Tobacco Warehouse on January 27th, 2009?

19 A. I did.

20 Q. How did you become involved?

21 A. I saw Officer Baker, Corey Baker, who testified
22 yesterday, I saw him leaving the law enforcement center.
23 I was working night shift, and I had heard them give out
24 a call of an alarm. I knew it was on Gentry Memorial
25 Highway, but I wasn't placing exactly where at. That

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1 runs from Pickens to Easley. A short time later I
2 realized that it was right near the law enforcement
3 center, so I left the center to go as his back-up.

4 Q. Do you know about the time you arrived?

5 A. I arrived at eleven twenty-two p.m.

6 Q. Lieutenant Robinson, did you take any pictures of
7 the crime scene?

8 A. I did.

9 Q. Did you take several photographs or just a few?

10 A. I don't remember the number. I took quite a few, I
11 think.

12 Q. When you arrived at the crime scene did you see
13 anything behind the strip mall?

14 A. Yes. When we -- when I arrived, as I said, about
15 the time I was pulling in, Officer Baker radioed that
16 there was a car behind the building, and he wanted me to
17 secure that vehicle. It was at that point we realized
18 we're -- we've probably rolled up on a burglary in
19 progress. And I walked around to the right side of the
20 building and looked down across the strip mall and saw a
21 car, a Blue Mercury Sable, running behind the door that
22 enters the back of the Local Cash Advance.

23 Q. Did you enter that vehicle right then?

24 A. I did not enter the vehicle right then. At that
25 point, Officer Baker and the Pickens police officer had

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1 already gone in to determine if anyone was in the
2 building. My concern at that point was is somebody
3 fixing to try to get in that vehicle and, and take off
4 from the scene, and are they going to -- and what -- how
5 desperate are they to get to it. So officer safety was
6 my first thoughts at that moment, at that point.

7 Q. When did you actually end up going to the vehicle
8 and touching it?

9 A. I went close to the vehicle immediately, as I said,
10 to keep anybody from getting in it and leaving the
11 scene. But I stayed away from it at that point while
12 they were clearing the buildings. Once they determined
13 there was no one in the buildings, we -- that's when we
14 determined we needed to go ahead and call the canine
15 units.

16 Q. Okay. And when did you actually -- did you
17 actually go into the vehicle?

18 A. I didn't go in the vehicle at all until after the
19 canine units got there.

20 Q. Why?

21 A. I didn't want to disturb anything that they might
22 need to scent off of.

23 Q. I am going to show you what's been marked as
24 State's Exhibit 1 -- 1 through 20.

25 A. These are all photographs I took.

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1 Q. Of the crime scene and the vehicle?

2 A. The vehicle, the -- and the stores.

3 MS. HAMAKER: Your Honor, at this time, the
4 State would like to introduce State's Exhibit 1 through
5 20.

6 MR. DEJONG: Without objection, Your Honor.

7 THE COURT: Without objection, Exhibits 1
8 through 20 are into evidence.

9 (WHEREUPON, State Exhibit Numbers 1 through 20 were
10 admitted into evidence.)

11 Q. Lieutenant Robinson, you took this photo?

12 A. I did.

13 Q. State's Exhibit Number 1? What is that top photo
14 showing?

15 A. It's showing the car parked behind the back door
16 that enters the Local Cash Advance.

17 Q. Are my eyes playing games on me or are the back
18 tail lights lit?

19 A. I don't think they were lit. That's probably the
20 flash bouncing off of them. I'm not sure, but I don't
21 think they're lit because the headlights are not lit.

22 Q. Okay. I'm also going to show you what's been
23 entered into evidence as State's Exhibit Number 2. Can
24 you tell the jury what that bottom picture is?

25 A. The bottom picture's a photograph of the paper tag

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1 from Evette's Used Cars.

2 Q. I'm not sure how much I can zoom in. Can you tell
3 the jury the -- what that is a picture of?

4 A. It's a picture of the door placard that has the car
5 VIN number on it.

6 Q. Is that the VIN number?

7 A. It is.

8 Q. So once the canine units arrived, did you in fact
9 process the vehicle?

10 A. I went ahead and started looking for evidence
11 inside the vehicle. I didn't do any fingerprinting or
12 anything, but I did go ahead and start looking through
13 the vehicle to see what was in it.

14 Q. State's Exhibit Number 3, what is that top picture
15 of?

16 A. That is a container inside the vehicle. I think
17 that was in the trunk.

18 Q. And what -- what's inside that container?

19 A. Plastic bags. I think there was some other things
20 in it, two flashlights, some trash bags.

21 Q. And what's that bottom picture of?

22 A. That's a picture inside the, the driver's
23 compartment.

24 Q. Of the vehicle found behind the store?

25 A. Yes.

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1 Q. Let me show you what's been marked as State's

2 Exhibit Number 43. What is that?

3 A. This is that plastic container and its contents.

4 Q. That plastic container?

5 A. Yes.

6 Q. I'm going to grab that from you first to show Mr.

7 DeJong. Can I see that?

8 A. I'm sorry.

9 MR. DEJONG: Without objection, Your Honor.

10 MS. HAMAKER: The State would like to enter
11 into evidence State's Exhibit Number 43.

12 THE COURT: Without objection, 43 is into
13 evidence.

14 (WHEREUPON, State Exhibit Number 43 was admitted
15 into evidence.)

16 Q. Can you tell the jury what's in that box?

17 A. There's a box of latex free vinyl gloves, several
18 ziplock type bags, some black trash bags, and two
19 flashlights.

20 Q. Now those rubber gloves aren't in that photograph?

21 A. No. I think had already removed them to take a
22 picture of what was in the box. There may be another
23 photograph that shows the entire contents.

24 MR. DEJONG: Your Honor, I apologize.

25 Lieutenant Robinson, could you stay a little closer to

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1 the microphone. Your voice is fading out.

2 WITNESS: I apologize.

3 MR. DEJONG: Thank you, sir.

4 Q. Do you remember where you found those ---

5 A. That ---

6 Q. -- rubber gloves?

7 A. -- that -- the gloves were -- all the stuff was in
8 this box in the trunk of the vehicle.

9 Q. In the trunk of the vehicle?

10 A. Yes.

11 Q. This is State's Exhibit Number 4. Can you tell the
12 jury what this is a picture of?

13 A. That's the transmission lever inside that vehicle,
14 and there's a wallet laying in front of it.

15 Q. Do you see that wallet in the top or the bottom?

16 A. I can see it in both.

17 MR. DEJONG: Without objection, Your Honor.

18 Q. Okay. Can you tell the jury what State Exhibit
19 Number -- what's been marked as State's Exhibit Number
20 36 is?

21 A. This is the wallet you see in that photograph.

22 THE COURT: All right. It's admitted without
23 objection, Exhibit 36.

24 (WHEREUPON, State Exhibit Number 36 was admitted
25 into evidence.)

1 Q. Did you -- when you got that wallet, did you ever
2 have it out of your sight?

3 A. No.

4 Q. What does an evidence custodian do with the
5 evidence that they receive? Do they keep it secure?

6 A. Yes.

7 Q. Was that wallet always secure?

8 A. Yes.

9 Q. So everything that was in the wallet when you found
10 it is still in it?

11 A. It is.

12 Q. Can you tell the jury what's in it?

13 A. It's got numerous I.D., identification cards and
14 things. You want specifics to ---

15 Q. Yes, sir. Yes.

16 A. Let me be clear. You want me to go through item by
17 item of what's in the wallet?

18 Q. Yes, please.

19 A. It'll take a few minutes.

20 Q. Yes, please.

21 A. All right. We have a Social Security card
22 belonging to a Lillian Nicole Aavik. We have a driver's
23 license or identification card belong to a Lillian
24 Aavik. We have a Bi-Lo bonus card, a CVS pharmacy card.
25 We have a Carolina Care, looks like an insurance card

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1 for a Johnny Parks. I have an old South Carolina
2 driver's license for Johnny Parks. I have a Visa,
3 Capital One Visa card for Johnny Parks, another Visa
4 debit card for Johnny Parks, a Wachovia card for Johnny
5 Parks, a Department of Corrections card for Johnny
6 Parks, a Social Security card for Johnny Parks, an
7 identification card from South Carolina DMV for Johnny
8 Parks, another driver's license for Johnny Parks, and a
9 Social Security card for Johnny Parks. I have a Visa
10 Bank of America card for Reggie Nance, a Spinx card.
11 Let's see, there must be -- no name on that. Here's a
12 Blue Cross Blue Shield insurance card for Reginald
13 Nance, and a South Carolina driver's license for
14 Reginald Nance.

15 Q. Can I grab that South Carolina driver's license for
16 Mr. Nance?

17 A. Do you want me to continue now or ---

18 Q. Yes, keep going, please.

19 A. Here's some papers, looks like receipts from Auto
20 Zone, various business cards. A South Carolina High
21 School diploma card for Johnny Parks, a voter
22 registration card for Johnny Parks, Allstate card, D.P.
23 Carter Used Car Lot card, Health Department card for
24 Johnny Parks, photograph of two children. South
25 Carolina JobLink paper with Johnny Parks' name on it,

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1 appointment card for Probation, Parole and Pardon
2 services, but it doesn't say who it's for.

3 Q. Mr. Robinson, if -- that's good enough. The jury
4 will have that back in the deliberation room. Thank you
5 for suffering through that with me. This is State's
6 Exhibit Number 5. What is that a picture of, the top
7 portion?

8 A. The top portion's a photograph of the trunk, the
9 way it looked when I first opened it.

10 Q. You opened the trunk?

11 A. Yes.

12 Q. What's the bottom portion?

13 A. That's the photograph of the box before I took the
14 gloves out to see what was under the gloves. You can
15 see the box in the top photograph over there on the
16 upper part of the top picture.

17 Q. With the blue lid?

18 A. Yes.

19 Q. What's that next to the tool with the red handle?

20 A. A hammer. Is that -- are you referring to the
21 other tool, the hammer?

22 Q. Just the hammer for now.

23 A. Yeah, hammer.

24 Q. State's Exhibit Number 39, is that the hammer that
25 you found in the trunk?

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1 A. Yes.

2 MS. HAMAKER: The State would ask that that
3 exhibit be entered into evidence, Your Honor.

4 MR. DEJONG: What is the exhibit number,
5 please.

6 THE COURT: 39.

7 MR. DEJONG: 9?

8 THE COURT: 39.

9 MR. DEJONG: 39. Thank you, Your Honor.
10 Without objection.

11 THE COURT: Without objection, 39 is into
12 evidence.

13 (WHEREUPON, State Exhibit Number 39 was admitted
14 into evidence.)

15 Q. State's Exhibit Number 42, is this the Go Devil
16 that was found in the trunk that day?

17 A. It is.

18 MS. HAMAKER: The State would like to enter it
19 into evidence.

20 THE COURT: Without objection, 42 is entered
21 into evidence.

22 MR. DEJONG: Without objection, Your Honor.

23 (WHEREUPON, State Exhibit Number 42 was admitted
24 into evidence.)

25 Q. And do you recall what that silver thing is next to

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- 1 the box with the blue lid?
- 2 A. It's a television, small television.
- 3 Q. Are those instruments in your expert -- not your
- 4 expert opinion, but in your experience as a police
- 5 officer, are those instruments used for burglaries?
- 6 A. They can be, yes.
- 7 Q. State's Exhibit Number 6, the top portion only.
- 8 A. This is the back seat of the blue Sable and showing
- 9 what's in the back seat, in the floorboard area.
- 10 Q. And what are those items in the box?
- 11 A. Rolled coins.
- 12 Q. And what's this item?
- 13 A. A shirt.
- 14 Q. This is State's Exhibit Number 7. What's the top
- 15 portion?
- 16 A. That's a closer shot of the, the boxes, actually a
- 17 drawer that came out of one of the businesses full of
- 18 rolled coins.
- 19 Q. The bottom portion?
- 20 A. That's a crowbar and a notebook that was in the
- 21 floorboard, the back floorboard.
- 22 Q. Did you have to remove these paper towels to take
- 23 that next photo in State's Exhibit Number 7?
- 24 A. I did.
- 25 Q. What is that?

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1 A. A crowbar.

2 Q. State's Exhibit Number 38, is this the crowbar you
3 removed?

4 A. It is.

5 MS. HAMAKER: The State would to enter State's
6 Exhibit Number 38 into evidence.

7 MR. DEJONG: No objection.

8 THE COURT: Without objection, Exhibit 38 is
9 into evidence.

10 (WHEREUPON, State Exhibit Number 38 was admitted
11 into evidence.)

12 MR. DEJONG: Without objection, Your Honor.

13 MS. HAMAKER: The State would like to offer
14 State's Exhibit Number 34 into evidence.

15 THE COURT: Without objection, Exhibit 34 is
16 into evidence.

17 (WHEREUPON, State Exhibit Number 34 was admitted
18 into evidence.)

19 Q. Is that the same binder that was found in the
20 bottom photo?

21 A. Yes, it is.

22 Q. State's Exhibit Number 7?

23 A. Yes, it is.

24 Q. Can you look inside the binder? What's inside of
25 it?

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- 1 A. There's some papers, some handwritten notes.
- 2 Q. Any of those papers have any identifying
3 information on them?
- 4 A. This one is a -- this one has the name Reginald on
5 it. There's a photograph. There's some, looks like
6 thank you cards. Blank -- there's some blank paper.
7 Some of this appears to be notes from a Bible study,
8 some mention of some Bible verses. There's an envelope
9 with some paperwork in it with Reginald Nance's name.
- 10 Q. Will you speak up a little bit?
- 11 A. There's an envelope with the name Reginald Nance
12 inside.
- 13 Q. Okay. Will you open that envelope?
- 14 A. It's an earnings statement from Dispoz-o Products.
- 15 Q. And who's it to?
- 16 A. Reginald Nance.
- 17 Q. Okay. Is there any other documents in that folder?
- 18 A. I think I've about covered it. There's just
19 various papers.
- 20 Q. The initial document that you said had the name
21 Reginald on it, may I have that piece of paper? Do you
22 have any idea what the document appears to be?
- 23 A. Some type of medical appointment.
- 24 Q. Okay. If you'll put all that back together in
25 there for the jury. Can you pull the driver's license

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1 for those two other individuals out of there?

2 A. I'll have to dump it all back out.

3 Q. We'll just leave it alone at this point then.

4 A. Okay.

5 Q. Thank you. This is State's Exhibit Number 8. Can
6 you tell the jury what that top picture is?

7 A. Some more items in the back seat.

8 Q. Those are items you found in the back seat?

9 A. Yes. Invitations, a basket with some items in it.

10 I think that -- that's some of the stuff that had come
11 out from inside the buildings.

12 Q. Okay. And that bottom portion, what's that?

13 A. That's what I found when I opened the notebook that
14 I just looked at.

15 Q. So when you opened the notebook in State's Exhibit
16 Number 7, that gun in State's Exhibit Number 8 was
17 inside of it?

18 A. Yes, it was.

19 MR. DEJONG: This weapon cleared, Lieutenant?

20 THE WITNESS: It is. It is cleared and has
21 zip ties running through the barrel and through the
22 magazine area.

23 MR. DEJONG: Let me see it. I just wanted to
24 know if it was cleared before I opened the box.

25 Q. Will you take a look into the box marked as State's

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1 Exhibit Number 33?

2 A. This is the pistol seen in that photograph.

3 Q. And is it secured?

4 A. It is secured. There -- it's zip tied to where
5 there's no way it could be loaded.

6 Q. What else is in that box?

7 A. The magazine and the ammunition that was found
8 inside the pistol.

9 Q. How many bullets were found in the pistol?

10 A. A total of nine, there were eight rounds in the
11 magazine and one round I removed from the chamber.

12 Q. This is State's Exhibit Number 9. What is that top
13 photograph of?

14 A. That's the magazine, or clip, that I pulled out of
15 the pistol showing the round in it.

16 Q. Just so you don't have to pick those driver's
17 licenses out, the two suspects, can you describe them
18 for the jury, their sex and their color of skin?

19 A. As in Mr. Nance, Reginald Nance?

20 Q. As in the Johnny Parks subject you spoke of?

21 A. Johnny Parks is a black male. Reginald Nance is a
22 black male.

23 Q. And the Lillian?

24 A. I'd have to look again. I don't -- I didn't pay
25 that any attention.

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1 Q. Will you go ahead and look for me, please?

2 A. Lillian Aavik's identification card's in here.

3 She's a white female.

4 Q. Thank you.

5 MR. DEJONG: Without objection, Your Honor.

6 MS. HAMAKER: The State would like to enter
7 into evidence State's Exhibit Numbers 47, 49, and 48.

8 THE COURT: Exhibits 47 through 49 are
9 admitted into evidence without objection.

10 (WHEREUPON, State Exhibit Numbers 47, 48 and 49
11 were admitted into evidence.)

12 Q. Can you please tell the jury what Exhibit Number 47
13 is?

14 A. 47 is the key that was in the Mercury Sable.

15 Q. And Exhibit 48 and 49, where were those items
16 located?

17 A. In the glove compartment.

18 Q. Did you write that?

19 A. No.

20 Q. It was already written?

21 A. It was already written.

22 Q. What about State's Exhibit Number 49, did you write
23 that information?

24 A. No, I did not.

25 Q. Can you please tell the jury what each of these

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1 envelopes contain, just a general description of the
2 documents and any identifying information you can find
3 in them.

4 A. Bill of Sale information where the car had
5 recently been purchased. It was sold to, according to
6 this paperwork, it was sold to Reginald A. Nance, '99
7 Mercury Sable, on the 27th of January, 2009.

8 Q. Thank you. And the other document or the other
9 envelope?

10 A. It's the same paperwork. It just says keep in car
11 on ---

12 Q. So a duplicate?

13 A. -- on that. Yes, it's the same type paperwork.

14 Q. Did you ever get a chance to process the vehicle
15 for fingerprints?

16 A. I did.

17 Q. And when did you do that?

18 A. I think it was -- it started raining or drizzling
19 very heavily about the same the time I arrived on the
20 scene. I processed items inside the car the next day.
21 But due to the car getting wet I couldn't process the
22 outside of it until it was able -- till I was able to
23 let it dry off. You can't process for fingerprints,
24 anything, when it's wet. You have to let it be dry. So
25 I had to wait about two days for that to happen. It

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1 rained, I think, the entire day after the crime.

2 Q. And did you try to get those fingerprints?

3 A. I tried.

4 Q. Were you able to?

5 A. I didn't find any fingerprints that would -- I
6 didn't find any identifiable fingerprints all over the
7 car or in the stuff in the car.

8 Q. What about any of the items I presented to you,
9 were there any fingerprints ---

10 A. No.

11 Q. -- found on those?

12 A. No. I didn't find any fingerprints.

13 Q. This is State's Exhibit Number 44.

14 MR. DEJONG: Without objection, Your Honor.
15 What's the number please, Madam Solicitor.

16 MS. HAMAKER: 44.

17 THE COURT: Without objection Exhibit 44 is
18 admitted into evidence.

19 (WHEREUPON, State Exhibit Number 44 was admitted
20 into evidence.)

21 Q. Lieutenant Robinson, can you tell me what's in this
22 box marked as Exhibit Number 44?

23 A. It's the shirt that was in the back seat.

24 Q. That you took the photo of?

25 A. Yes.

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1 Q. Did you have the opportunity to go inside the
2 Tobacco Warehouse and the Local Cash Advance?

3 A. I did.

4 Q. Did you take pictures inside?

5 A. I did.

6 Q. State's Exhibit Number 9, what is that, the bottom
7 portion?

8 A. That's some of the items that we took out of the
9 car and that had been taken from out -- inside one of
10 the businesses. I think that stuff came out of the Cash
11 Advance.

12 Q. State's Exhibit Number 10. Can you tell the jury
13 what that top photograph is?

14 A. The top photograph's a photograph of the back door
15 to the Tobacco Warehouse.

16 Q. Why did you take that picture?

17 A. That picture is taken from the inside of -- of the
18 inside door knob. And I was taking that picture to show
19 that based on what appeared to be dirt around the door
20 knob, I felt like that door had been kicked open from
21 inside the store.

22 Q. And this is the door, I'm sorry, in which store?

23 A. That's the Tobacco Warehouse store.

24 Q. The bottom portion, what is that a picture of?

25 A. That's a picture of the door, the back door of --

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1 that goes into the back of the Local Cash Advance store.

2 Q. And why did you take that picture?

3 A. That door had been pried open to gain entry.

4 Q. And what's all this?

5 A. That's an electrical wiring, power.

6 Q. Is that how you normally see electrical wiring?

7 A. No. Some of that looks like it's been cut. It --

8 it's in disarray. I'm not an electrical expert, but

9 there's a problem with that.

10 Q. Did you happen to try the light switches when you

11 entered the -- either store?

12 A. I believe we did try to turn the lights on and

13 nothing, nothing would work. I think I waited till the

14 owner of the Tobacco Warehouse got there, Mr. Raj, and

15 we couldn't get any lights to work.

16 Q. State's Exhibit Number 11, what's that a picture

17 of?

18 A. That's another photograph of the back door to the

19 Local Cash Advance.

20 Q. Why did you take that picture?

21 A. I'm just trying to show what I saw.

22 Q. What about that picture, what is that a picture of?

23 A. That picture shows the back door. The one closest

24 to you is the Cash Advance back door, and the other door

25 that you see in the background is the Tobacco Warehouse

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1 back door.

2 Q. State's Exhibit Number 12, top portion, what is
3 that a picture of?

4 A. That's a picture of the breaker box. I think that
5 one -- that's inside the Tobacco Warehouse.

6 Q. Okay.

7 A. And that's the way I found it. That door was open.

8 Q. This door or that door?

9 A. The door to the breaker box was open.

10 Q. Okay. And what is this in here?

11 A. That's the bathroom that -- the bathrooms to the
12 two buildings butt up to each other. That's the
13 bathroom on the Tobacco Warehouse side.

14 Q. This bottom picture, why did you take that picture?

15 A. That's some type of electronic -- I think that was
16 part of the alarm system. I'm not an alarm expert
17 either, but that was -- something had been messed with
18 about the alarm system, and I think that was part of
19 that.

20 Q. State's Exhibit Number 13, the top portion, what's
21 that a picture of?

22 A. That's the back door coming out of the Tobacco
23 Warehouse.

24 Q. Was there any significant reason why you took that
25 photo?

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1 A. Same as always. I'm just trying to document the
2 scene.

3 Q. Is that the breaker box?

4 A. Yes.

5 Q. What about this bottom portion, what is that a
6 picture of?

7 A. That's looking into the bathroom of the Tobacco
8 Warehouse. That's the Tobacco Warehouse bathroom
9 showing the hole in the wall that ---

10 Q. And what's that hanging down?

11 A. Sheetrock.

12 Q. State's Exhibit Number 14, top portion?

13 A. That's a closer shot of that, that same photograph,
14 just showing that hole in the wall.

15 Q. Is that you in the reflection?

16 A. Yes.

17 Q. And the bottom portion?

18 A. That's a piece of the sheetrock from the wall.

19 Q. What's, what's it laying on?

20 A. The floor.

21 Q. State's Exhibit Number 15, what's this a picture
22 of?

23 A. That's some of what had been done inside the
24 Tobacco Warehouse. There were some cigarette cartons on
25 the floor, there's a cash box laying on the floor.

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1 Q. What's that a picture of?

2 A. That's a box of cigarettes that, I guess they had
3 been boxed up to take out, but they were left inside the
4 store.

5 Q. State's Exhibit Number 16, top portion?

6 A. Just another view of the same thing.

7 Q. Bottom portion?

8 A. Just showing that some drawers had been opened, and
9 -- or doors and cabinet doors had been opened.

10 Q. Which store is this located in?

11 A. That's the Tobacco Warehouse.

12 Q. What's that?

13 A. The safe, I believe.

14 Q. What's that?

15 A. Cash register.

16 Q. State's Exhibit Number 17, top portion, what's that
17 a picture of?

18 A. That's the Cash Advance door that was pried. No --
19 I think. Yes, that's the Cash Advance door, I'm pretty
20 sure.

21 Q. Maybe the bottom portion might help you.

22 A. Yes. That's the Cash Advance store door. It had
23 been pried open.

24 Q. Where would all the wiring be, over here or over
25 here?

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- 1 A. It would be to the left.
- 2 Q. Here?
- 3 A. Yes.
- 4 Q. State's Exhibit Number 18, top portion, what's that
- 5 a picture of?
- 6 A. That's the hole in the wall from the Local Cash
- 7 Advance side in the bathroom.
- 8 Q. Was there any sheetrock hanging?
- 9 A. It was all hanging on the other side.
- 10 Q. What about the bottom picture, what is that of?
- 11 A. That's the desk inside the Cash Advance store area.
- 12 You can see all the drawers were -- had been opened and
- 13 some plundering.
- 14 Q. State's Exhibit Number 19, top portion, what's that
- 15 a picture of?
- 16 A. That's a -- I think that's a different desk in the
- 17 same -- in the Cash Advance.
- 18 Q. The bottom portion?
- 19 A. That's in the Cash Advance also.
- 20 Q. Exhibit Number 20, what's that a picture of?
- 21 A. That -- I think I'm trying to show that drawer is
- 22 missing, and I think that's the drawer that was in the
- 23 back seat of the car, in that plastic ---
- 24 Q. Right here?
- 25 A. Yeah.

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1 Q. What about Exhibit Number 20, what's that a picture

2 of?

3 A. That wire hanging down ...

4 Q. This wire?

5 A. Yeah. That's part of the alarm.

6 Q. Which store is that in?

7 A. The Tobacco Warehouse.

8 MR. DEJONG: Without objection, Your Honor.

9 MS. HAMAKER: The State would ask to admit
10 State's evidence Exhibit Numbers 35 and 37.

11 THE COURT: 35 and 37 are admitted without
12 objection.

13 (WHEREUPON, State Exhibit Numbers 35 and 37 were
14 admitted into evidence.)

15 Q. Can you tell the jury what Exhibit Number 35 is?

16 A. 35 is a Blackberry cell phone.

17 Q. Where did you find that?

18 A. In the console area, front console area of the
19 Mercury Sable.

20 Q. In that area, on the bottom portion of State's
21 Exhibit Number 4?

22 A. Yes, I believe that's it.

23 Q. And State's Exhibit Number 37, what is that?

24 A. It's a Nokia cell phone. All, all this was found
25 in the front console area.

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1 Q. In this area and this area?

2 A. Yeah. And I think there may be a, a console
3 storage compartment there.

4 Q. Okay. Did you have the opportunity to process both
5 stores for fingerprints?

6 A. I did.

7 Q. Did you find any usable fingerprints?

8 A. I didn't find any usable fingerprints.

9 MR. DEJONG: Without objection, Your Honor.

10 MS. HAMAKER: Your Honor, the State would ask
11 that State's Exhibit Numbers 41 and 40 are introduced
12 into evidence.

13 THE COURT: 40 and 41 are admitted into
14 evidence without objection.

15 (WHEREUPON, State Exhibit Numbers 40 and 41 were
16 admitted into evidence.)

17 Q. Where did you find those items?

18 A. 41's a small flashlight. It was found in the front
19 console area also. I don't remember where I found that
20 screwdriver at this point.

21 Q. Okay.

22 A. Somewhere in the vehicle, but I don't remember
23 exactly where.

24 Q. Can you tell the Court what ---

25 A. May I correct something right quick?

1 Q. Yes.

2 A. I did find that screwdriver in the trunk.

3 Q. In the trunk?

4 A. Yes.

5 Q. Of that car?

6 A. Yes.

7 Q. State's Exhibit Number 21, can you tell the jury
8 what that document is?

9 A. It's a Pickens County Sheriff's Office property
10 report. That's where I list all the evidence that I
11 collect at a crime scene.

12 Q. And all the evidence you collected, where was the
13 evidence located?

14 A. It was either -- the car itself is listed on the
15 report, and all the evidence here is listed either --
16 was in the car.

17 MS. HAMAKER: Your Honor, the State would like
18 to admit State's Exhibit Number 21 into evidence.

19 MR. DEJONG: Your Honor, I don't understand
20 the relevance of that. This witness has already
21 testified, he testified where it was, he testified what
22 he took. I don't see the relevance of that. At best I
23 can only see the bolstering -- attempt to bolster this
24 witness's testimony.

25 MS. HAMAKER: Your Honor, if he doesn't want

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1 the jury to see it, I --

2 THE COURT: Well, I -- I'm going to overrule
3 your judgment. I think it might help the jury to be
4 able to be aware of the evidence. But if you're
5 withdrawing it, then we'll ---

6 MR. DEJONG: Then I'm going to object to
7 anything on that property and evidence list that has not
8 been introduced into evidence today.

9 THE COURT: She's withdrawing it. We'll
10 sustain your objection.

11 MR. DEJONG: Thank you.

12 Q. In your experience as a law enforcement officer who
13 collects fingerprints, is it unusual not to find a
14 suitable fingerprint?

15 A. No, it's not unusual.

16 Q. How -- if you could give the jury an approximate
17 percentage. Of the times you try to find a fingerprint,
18 what's the percentage of finding a good, usable
19 fingerprint to compare for analysis?

20 A. Maybe twenty-five percent of the time, we'll find
21 some prints that we can, we can try to compare to
22 someone. That doesn't mean I match them twenty-five
23 percent of the time, it just means that sometimes I do
24 try.

25 Q. And what kinds of things could hinder you in being

1 able to find a good fingerprint?

2 A. A fingerprint is, if you look at your fingers
3 closely, you're going to see ridges on the ends of your
4 finger. We call this friction skin. If you look very
5 close you'll see that those ridges end, some of them
6 split off into two ridges, some of them are very short
7 ridges, and you'll also see that there's a pattern to
8 the ridges, some swirling type pattern or looping
9 pattern is the most common. Those are the
10 characteristics that I'm trying to, to look at with
11 magnification to determine if a print matches a certain
12 individual. You have to have enough of that print to
13 look at. The print's left by the moisture in your skin
14 that's transferred onto a surface. Sometimes you, you
15 -- I guess you could say you always transfer some
16 moisture from your skin onto a surface, but you don't
17 always transfer me a usable fingerprint onto the
18 surface.

19 Q. Do surfaces or moisture, do any of those things
20 impact the ability to get a fingerprint?

21 A. Yes. A smooth surface is easier to print than a
22 rough surface. Some people, some people leave better
23 prints than other, depends on how much oil and waters
24 you secrete from your hands. If you've ever touched
25 someone with a sweaty hand, they secrete more oil and

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1 water from their fingers than other people do who have

2 -- maybe have very dry skin.

3 Q. What about these gloves from State's Exhibit Number

4 43, would these prevent a fingerprint?

5 A. Absolutely.

6 MR. DEJONG: Your Honor, I object to that.

7 There is no evidence, there is no foundation the gloves

8 were used. None.

9 THE COURT: I overrule your objection. You'll

10 have a chance to cross examine.

11 MR. DEJONG: Thank you, Your Honor.

12 Q. So these would prevent a fingerprint from being

13 left?

14 A. They do.

15 Q. And these were found in that vehicle?

16 A. They were.

17 Q. Along with all those tools?

18 A. Yes.

19 Q. How did -- what happened to the vehicle after you

20 processed it?

21 A. I brought it to the Pickens County Law Enforcement

22 Center impound yard.

23 Q. How did you bring it there?

24 A. I drove it.

25 Q. Why did you drive it?

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1 A. Because I was very close to the LEC. I normally
2 would call a tow truck, but it was late at night and
3 there was no traffic. And if I'd called a tow truck,
4 it's going to cost a hundred and fifty, two hundred
5 dollars, which the county's going to have to pay. I was
6 just so close that I felt like I could get it there with
7 minimal risk and save us that trouble.

8 Q. You said there was no traffic. This is between
9 eleven -- eleven and one o'clock at night. Was there a
10 lot of traffic on the highway or ...

11 A. No. There was not. And I didn't finish up what I
12 was doing at the scene until almost one thirty.

13 Q. When you got to the LEC with the vehicle, has
14 anyone touched that vehicle ---

15 A. No.

16 Q. -- besides you without your supervision?

17 A. No.

18 Q. What's the mileage on that vehicle?

19 A. After I, after I parked it, it's one fifty-one
20 three zero five.

21 Q. If you'll say it for me one more time?

22 A. After I parked it at the -- in the impound yard, it
23 was showing one five one three zero five.

24 Q. This is State's number -- Exhibit Number 45, which
25 is the Bill of Sale for the vehicle. Does this have the

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1 mileage on it?

2 A. It does.

3 Q. And what's the mileage?

4 A. One fifty-one one ninety-five.

5 Q. Lieutenant Robinson, you're probably better at math
6 than me. Do you think you can figure it out?

7 A. It's a hundred and ten miles.

8 Q. So from the time that car was purchased, according
9 to that Bill of Sale, to the time you got it at the LEC
10 parking lot, a hundred and ten miles was put on it?

11 A. Yes.

12 MS. HAMAKER: Your Honor, that's all the State
13 has for this witness at this time.

14 THE COURT: Mr. Foreman, ladies and gentlemen,
15 I think this would be a good time to take a break before
16 we start the cross examination. I'll ask you to go back
17 to your jury room. We'll take about a ten minute break.
18 Don't discuss the case while you're back. You may be
19 excused at this time.

20 Everyone else remain seated please while the jury's
21 going out.

22 (WHEREUPON, the jury exited the open court at
23 approximately 12:04 p.m.)

24 THE COURT: All right, Mr. Robinson, you may
25 step down. Let me remind you, you should not be

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1 discussing your testimony with anyone during the break.

2 We'll take a short break and be ready for the cross
3 examination.

4 (WHEREUPON, the Court stood at recess for a short
5 break.)

6 THE COURT: For planning purposes, after this
7 witness is there another witness that will be short?

8 MS. HAMAKER: Yes, Your Honor, there is. I'd
9 like to squeeze her in. They drove up here from
10 Columbia.

11 THE COURT: Okay. We'll do that and then
12 break for lunch.

13 MS. HAMAKER: Yes, sir, Your Honor.

14 THE COURT: All right. We'll do that.

15 MR. DEJONG: Might be a late lunch, Your
16 Honor.

17 THE COURT: Well, we'll see. If not, we'll do
18 it first thing after lunch.

19 Anything else before the jury comes in?

20 MR. DEJONG: Ready for the defense, Your
21 Honor.

22 THE COURT: If they're ready, let the jury
23 come in.

24 (WHEREUPON, the jury entered the open court at
25 approximately 12:20 p.m.)

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1 THE COURT: Mr. DeJong, you may cross
2 examination the witness.

3 MR. DEJONG: Thank you, Your Honor. May it
4 please the court.

5 CROSS EXAMINATION

6 BY MR. DEJONG:

7 Q. So your main job, Lieutenant, is to basically
8 collect evidence?

9 A. Document crime scenes and collect evidence, yes,
10 sir.

11 Q. Now, you were the, what, second officer at the
12 scene on the 27th of January of '09?

13 A. I think the Pickens Police Officer may have got
14 there slightly before me. I may have been third.

15 Q. You were the second Pickens County Officer to get
16 there?

17 A. Yes, sir.

18 Q. Okay. Now, as I understand it, you said you arrived
19 at eleven twenty-two?

20 A. I believe that's right. Yes, sir.

21 Q. Okay. And that as far as the vehicle was concerned
22 the only thing you did was looked in the vehicle?

23 A. We looked to make sure there was no one in the
24 vehicle.

25 Q. Yes, sir. And -- well, when you got there, do you

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1 have any recollection of whether the vehicle was running
2 or not running?

3 A. It was running.

4 Q. Were the lights on or off?

5 A. I don't believe the lights were on.

6 Q. Okay. But you don't know that one way or the
7 other?

8 A. I'm ninety-nine percent sure they were not.

9 Q. Okay. Now who finally turned the vehicle off?

10 A. Deputy Durham.

11 Q. Okay. So Deputy Durham got in the vehicle before
12 you did; right?

13 A. He arrived at the scene, he said the exhaust could
14 be messing up any chance of the dog tracking, so I told
15 him to turn it off.

16 Q. All right. And then after that you got into the
17 vehicle?

18 A. After the dog scented off the seat, I did get into
19 the vehicle.

20 Q. And you started doing your thing?

21 A. Yes.

22 Q. Let's talk a minute, just generally, with regard to
23 any or all of those items -- or -- you found in the
24 vehicle. You cannot testify how they got there; can
25 you?

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1 A. No, sir.

2 Q. Or some individual could have put those items in
3 the vehicle, you could not say when?

4 A. No, sir.

5 Q. All right. Now jumping way back over to the other
6 end, you say you drove the vehicle back to the law
7 enforcement center?

8 A. I did.

9 Q. Did you adjust the seat to drive it back to the law
10 enforcement center?

11 A. I don't recall doing that, no, sir.

12 Q. Okay. So when you get to the -- what's the first
13 thing you do, you take pictures or what do you do?

14 A. The first thing I do is, in regards to processing
15 to scene, is take photographs.

16 Q. So did you take more photographs than what have
17 been introduced, or less? Well, obviously not less, but
18 how many photographs did you take?

19 A. I think they've all been introduced.

20 Q. All right.

21 A. I'm not sure. I don't have the exact number.

22 Q. How long did it take you to take the pictures?

23 A. Probably ten minutes.

24 Q. Okay. Now if I understood you correctly, you said
25 it started raining a little bit?

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1 A. It did.

2 Q. Okay. Now that would affect fingerprinting the
3 exterior of the car; right?

4 A. Yes, sir. It delayed it.

5 Q. Pardon me?

6 A. It delayed it.

7 Q. Delayed it. So when did you actually attempt to
8 lift latents off of the vehicle?

9 A. Off the outside of the car, it was two days later.

10 Q. Well, when you try to lift a fingerprint, share
11 with us what you do? What you use? How you go about
12 that?

13 A. There's different methods for processing different
14 things, but on the exterior of a vehicle, if that's what
15 you're referring to, I'm going to use fingerprint
16 powder. And fingerprint powder is dust that basically
17 we brush on and it adheres to the moisture that you've
18 transferred from your finger and left a fingerprint, if
19 you've left any.

20 Q. Would you use that same thing for any other type
21 thing other than the exterior of the car?

22 A. You can do that on -- that's the process I use on
23 anything that I can't take with me, such as the back
24 door and things inside the store.

25 Q. All right. Well, let's talk about what kind of

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- 1 items fingerprints can be lifted off of. Can you lift
- 2 fingerprints off of metal?
- 3 A. Yes, sir.
- 4 Q. Wood?
- 5 A. Yes, sir.
- 6 Q. Glass?
- 7 A. Yes, sir. Now wood being more difficult than metal
- 8 and glass, but yes.
- 9 Q. Paper?
- 10 A. Theoretically, you can lift fingerprints off
- 11 anything.
- 12 Q. All right. Now, you said that you used dusting
- 13 powder, if I understood you correctly, for anything you
- 14 couldn't take with you?
- 15 A. Yes.
- 16 Q. Did you dust inside the Cash Advance?
- 17 A. I did.
- 18 Q. And there were metal desks in there?
- 19 A. There were.
- 20 Q. And there were papers in there?
- 21 A. Yes, sir.
- 22 Q. Did you take any papers out of Cash Advance and
- 23 take them back to ---
- 24 A. No.
- 25 Q. -- your office?

1 A. No.

2 Q. How about Tobacco Warehouse?

3 A. I didn't take any back to the office. I did dust
4 those, those cigarette cartons that you saw on the
5 floor.

6 Q. All of them?

7 A. Yes.

8 Q. Okay. And you say there were no fingerprints?

9 A. I didn't find any usable fingerprints, any that I
10 could identify.

11 Q. All right, sir. Now with regard to the tub,
12 Solicitor asked you about the wearing of gloves, and
13 there was an exhibit that was introduced that had some
14 gloves in it; is that correct?

15 A. There was.

16 Q. I don't know the number right now, but that's not
17 particularly that important. Do you know, of your own
18 knowledge, where those gloves came from?

19 A. No, sir.

20 Q. Do you know where that tub came from?

21 A. No, sir.

22 Q. All right. It could have come from Cash Advance?

23 A. No, it did not come from Cash Advance because I
24 returned everything that belonged to Cash Advance and
25 the Tobacco Warehouse that was in the car.

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1 Q. All right, sir. But again you don't know where it
2 came from or when it was placed in the car?

3 A. No, sir. But I know it was not identified as
4 coming from the Cash Advance or the Tobacco Warehouse.

5 Q. All right, sir. Now other than the desk and the
6 cigarette cartons that were in Tobacco Warehouse, what
7 else did you check for fingerprints in either of those
8 establishments?

9 A. I checked everything in both establishments that I
10 felt like the perpetrators had touched.

11 Q. All right, sir.

12 A. So I didn't, I didn't go around dusting things that
13 I didn't feel like were relevant to the crime. I just
14 did the things that they -- that I felt like they
15 touched.

16 Q. You don't know how many people went in there; do
17 you? It could have been one, it could have been five?

18 A. How many officers went in or ...

19 Q. You said perpetrators.

20 A. No. Oh, yes. No, I do not know how many
21 perpetrators were involved.

22 Q. Did you dust the cash register?

23 A. Yes, sir.

24 Q. The safe?

25 A. Yes, sir.

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1 Q. All those plastic tubs?

2 A. Yes, sir.

3 Q. Now once -- when you got back to the office, what
4 method or system did you use for checking fingerprints
5 back at the office?

6 A. I think I used -- I think I pretty much determined
7 that powder was probably my best way to do those things
8 too.

9 Q. All right, sir. Well, once you dust for
10 fingerprints, it normally leaves a powder residue on the
11 item; does it not?

12 A. It does.

13 Q. So did you dust the -- what's been introduced as
14 State's Exhibit 42, a Go Devil, sledgehammer or whatever
15 you want to call it?

16 A. I dusted -- I'm sure I dusted parts of it. I don't
17 know that I dusted the entire thing. But in regards to
18 the residue, I did clean some of that because I knew I
19 was going to bring it to court.

20 Q. All right. And how about the crowbar?

21 A. Yes, sir.

22 Q. Nothing there either?

23 A. Nothing there.

24 Q. Okay. And again as to how the -- those items got
25 in the vehicle, you don't know?

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1 A. I do not know.

2 Q. So in the trunk, when you opened the trunk, there
3 was -- excuse me, State's Exhibit 42, the Go Devil. I
4 don't know the exhibit number, and I can't read through
5 it, the screwdriver, a hammer. Now how many hammers did
6 you find that day?

7 A. Just the one, that I recall.

8 Q. Was that the one in the trunk?

9 A. I'm sorry there were two, but one was -- there was
10 another hammer and screwdriver that were identified as
11 coming out of the Local Cash Advance.

12 Q. And where did you find those?

13 A. They were in the back seat, the floorboard area.

14 Q. All right, sir. Now, let's go back to the trunk.
15 You found a hammer and that would be State's Exhibit
16 Number ...

17 A. 39.

18 Q. 39. The screwdriver, State's Exhibit ...

19 A. 40.

20 Q. Go Devil?

21 A. Yes.

22 Q. Sledgehammer?

23 A. Yes.

24 Q. Now there were other items in there as well. There
25 was a plastic tub in there?

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1 A. Yes, sir.

2 Q. And what else?

3 A. In the trunk?

4 Q. Yes, sir.

5 A. A TV.

6 Q. And what else?

7 MS. HAMAKER: Your Honor, ---

8 A. A jug of fruit punch.

9 MS. HAMAKER: -- the State has already offered
10 to admit the property report into evidence. Mr. DeJong
11 did not want it. If he wants to do that, we can skip
12 this whole step.

13 THE COURT: Thank you. I'll allow him to
14 cross examine.

15 MR. DEJONG: Thank you, Your Honor.

16 Q. Where were we?

17 A. A jug of fruit punch.

18 Q. Okay. That was it?

19 A. That was it.

20 Q. All right, sir. Now, we go to the back seat of the
21 car, whether the -- did you attempt to dust the TV, the
22 jug of punch and all that?

23 A. I did.

24 Q. Nothing?

25 A. Nothing.

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- 1 Q. All right. Did you ever find any gloves?
- 2 A. Any gloves?
- 3 Q. Yeah, other than what was in ---
- 4 A. No, sir.
- 5 Q. -- the box?
- 6 A. No, sir.
- 7 Q. Now let's -- well, the -- there was a wallet in
- 8 there; right?
- 9 A. Yes.
- 10 Q. Were you ever able to determine who that wallet
- 11 belonged to?
- 12 A. No, sir. It's got several different people's I.D.s
- 13 in it. It's a man's wallet, so I think I can narrow it
- 14 down to two.
- 15 Q. Well, by identifying papers in there, what name was
- 16 in that wallet most?
- 17 A. Johnny Parks.
- 18 Q. How about the female, Lillian Avery, Avera,
- 19 whatever?
- 20 A. Aavik, I believe.
- 21 Q. Did you ever determine -- ever talk to her, have
- 22 any dealings with her?
- 23 A. I did not talk to her, no, sir.
- 24 Q. Okay. All right, sir. So as I understand it the
- 25 bulk of the items in that wallet had the name of Johnny

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1 Parks on it; right?

2 A. I believe that's correct, yes.

3 Q. All right. And there were three items -- well, let
4 me make sure. You mentioned three items that had the
5 name Reginald Nance on it, one was a driver's license,
6 one was, I believe, a credit card and an insurance card;
7 is that correct?

8 A. I think that's correct.

9 Q. Did you attempt to dust anything that came out of
10 the wallet?

11 A. I don't believe I did, no, sir.

12 Q. All right, sir. How about the items that came out
13 of the glove compartment, those two envelopes, did you
14 attempt to lift any fingerprints off of them?

15 A. No, sir.

16 Q. Wasn't it important as to who may have handled
17 those papers?

18 A. They looked legitimate, so I assumed that that car
19 had been sold to Mr. Reginald Nance. And I didn't see
20 any reason that anybody else's fingerprints may be on
21 them, so I didn't bother.

22 Q. Well, hypothetically, let's say if the car had been
23 stolen, would that make any difference to you if you'd
24 fingerprinted those items?

25 A. If they had been laying in the floorboard, I may

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- 1 have fingerprinted them. But since they looked like
2 they were in the place where they were probably put by
3 the buyer, I left them alone.
- 4 Q. All right, sir. So you didn't attempt to
5 fingerprint them?
- 6 A. I did not.
- 7 Q. Okay. Now with regard to this wallet, can you
8 share with me, and if we have to we'll try to get the
9 pictures up, but if we don't have to I don't want to
10 sort through all of that. The wallet, if you were
11 sitting -- well, let me back up a little bit on the car.
12 The car had a console; right?
- 13 A. Yes, it did.
- 14 Q. With a gearshift in the middle?
- 15 A. Yes.
- 16 Q. Most of them do; right?
- 17 A. Yes, sir.
- 18 Q. If you were sitting on the -- behind the steering
19 wheel, would that wallet have been on the side of the
20 console closest to the steering wheel or more on the
21 passenger side?
- 22 A. It's in front of the gearshift. It's pretty much
23 in the center. I don't know how else to describe that.
- 24 Q. All right. Maybe we do need to look at the
25 pictures. Where are the pictures? I'm looking at what

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1 has been identified and introduced as State's Exhibit

2 Number 4, Lieutenant Robinson, and this being the bottom

3 picture of State's Exhibit Number 4. So is there kind

4 of a -- what am I trying to say here, a little

5 compartment or something there in front of the

6 gearshift?

7 A. Yes.

8 Q. Okay. This would be the driver's side, I gather;

9 right?

10 A. Yes, sir.

11 Q. And this is where the wallet was located?

12 A. Yes, sir.

13 Q. Now, at this point in time, when you took the

14 picture, to your knowledge had anybody, law enforcement

15 officer or non law enforcement officer, other than

16 whoever the suspect may have been, been in that vehicle?

17 A. To my knowledge, no.

18 Q. So this is the way you found it is what you're

19 sharing?

20 A. Yes.

21 Q. Okay. And while we're on that subject, I gather --

22 well, I don't want to gather. What is this right here?

23 A. I think it's one of these cell phones.

24 Q. Do you know which one?

25 A. I think it's this one.

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1 Q. And which one is that?

2 A. Which is Exhibit 37.

3 Q. Okay. Exhibit Number 37, which cell phone is that?

4 A. That's the Nokia, regular cell phone, I guess you
5 would say.

6 Q. Did you ever attempt to find out who that Nokia
7 phone belonged to?

8 A. I did not.

9 Q. Okay. Now, there was another cell phone that was
10 found in the vehicle as well; right?

11 A. It was -- there was, yes.

12 Q. And that one you can't exactly remember where it
13 came from; right?

14 A. I can now because I actually, after I said that, I
15 saw it on the photograph when Ms. Hamaker was showing
16 it, but I didn't get to say it.

17 Q. Okay. Where was it?

18 A. If you want to put that photograph back up, I'll be
19 glad to show you.

20 Q. I'll be happy to. Can you tell me which exhibit
21 number?

22 A. The one you just -- I think it might be the one you
23 just had, the bottom.

24 Q. Okay. We'll try that one.

25 A. Of the top, try the top.

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- 1 Q. Okay. I'm not very good with this stuff. Is that
2 the way it -- is that the way?
- 3 A. Turn it, there you go. That'll work.
- 4 Q. This'll work? Okay.
- 5 A. Push it up a little further towards ---
- 6 Q. Scoot it up?
- 7 A. There it is. Right there on the bottom.
- 8 Q. Okay. You're saying this is the Blackberry right
9 here?
- 10 A. Yes.
- 11 Q. So the Blackberry was separate and apart and some
12 distance away, not a great distance away, but it was
13 away from the wallet and the Nokia?
- 14 A. Yes, sir.
- 15 Q. Okay. And this area where you say the Blackberry
16 was, is that like a cup holder or a little compartment
17 in there?
- 18 A. There's a compartment of some type. I'm not sure.
- 19 Q. All right. Did you ever attempt to determine who
20 the Blackberry belonged to?
- 21 A. I did not, no, sir.
- 22 Q. All right, sir. When you drove that vehicle back
23 to the law enforcement center, did it start?
- 24 A. Yes.
- 25 Q. Okay. Did you ever lift the hood on that vehicle?

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1 A. Not that I recall.

2 Q. The notebook that you say was in the -- well, where
3 was that located?

4 A. Back floorboard, driver's side.

5 Q. All right. Was that -- that was the same side of
6 the State's Exhibit Number 38, the crowbar; is that
7 correct?

8 A. Yes, sir.

9 Q. All right. Was there anything else on that side?

10 A. Some paper towels, the shirt.

11 Q. All right. Well, let me go a different way. Was
12 there anything on the passenger side?

13 A. I didn't get that specific in my notes of, of where
14 exactly it was. I think there was some more property
15 from inside the stores on the passenger side.

16 Q. There was a basket in there, do you recall that?

17 A. Yes.

18 Q. Which side was that on?

19 A. It was -- it would have to have been on the
20 passenger side.

21 Q. Why do you say it would have to ---

22 A. Because it didn't -- I didn't see it in my photo
23 from the driver's side.

24 Q. Okay. All right. I guess that makes sense. Was
25 there anything else on the passenger side?

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1 A. Not that I recall at this moment.

2 Q. Okay. That other hammer, there was a picture of
3 that other hammer, was that in the vehicle or was that
4 in ...

5 A. That was in the vehicle.

6 Q. That was in the vehicle?

7 A. Yes, sir.

8 Q. Where was it in the vehicle?

9 A. That was in the back seat, floorboard area.

10 Q. All right. The notebook, going back to the
11 notebook, was it lying flat on the floorboard?

12 A. It was lying as you saw it in that photograph. I
13 think it was kind of standing up against the seat when I
14 first saw it.

15 Q. Okay. Was -- the other items, were they kind of
16 surrounding that notebook or ...

17 A. Yeah. I had, I had to move those paper towels off
18 the top of it so you could see it.

19 Q. All right. So State's Exhibit Number 7, let me
20 just show it to you, that was after you had moved
21 certain items?

22 A. Right. I'm photographing as I go along, and as I'm
23 moving things and seeing things, I'm taking photographs
24 to show what, what can't be seen in the previous
25 photographs.

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1 Q. Well, for the benefit of the jury, let me put it up
2 here. I'm showing you what's been marked State's
3 Exhibit Number 7, Lieutenant Robinson. Now, the bottom
4 picture, that was the one I just showed you, that was
5 after you had moved certain items; correct?

6 A. Correct.

7 Q. All right. And one of the items you had moved, I
8 believe was -- well, let's look at the top one and maybe
9 that'll answer the question. Now the top one, is that
10 the way you found the vehicle when you first
11 photographed it?

12 A. Yes. That drawer's in the seat, that shirt's
13 laying across part of the drawer, and if you look at the
14 very left corner of that photograph, you'll see those
15 paper towels in the floorboard. Right there.

16 Q. Okay. All right. Now did you ever determine who
17 the shirt belonged to?

18 A. No, sir.

19 Q. All right. And did you -- this tub, you say you
20 attempted to fingerprint it, but there were no
21 fingerprints on it?

22 A. Correct.

23 Q. How about the rolled coins themselves?

24 A. I didn't. I don't usually do those.

25 Q. All right, sir. That notebook, when you observed

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1 it, was it zipped, was it closed?

2 A. It was.

3 Q. And no -- well, you would have no independent
4 knowledge of how it got there, who put it there, or
5 anything else?

6 A. No, sir.

7 Q. The gun itself, did you ever attempt to fingerprint
8 it?

9 A. Yes, sir.

10 Q. And the clip?

11 A. Yes, sir.

12 Q. And no fingerprints?

13 A. No, no luck.

14 Q. All right. The car keys, which I think was Exhibit
15 47, 48 or 49, I'm not sure which, but the way they were
16 shown to you and you identified them today, that's the
17 way you found them?

18 A. Yes, sir.

19 Q. And were those the keys that were in the ignition?

20 A. They are.

21 Q. With one key and a little remote I think; is that
22 correct?

23 A. That's correct.

24 Q. All right, sir.

25 A. And a key tag.

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1 Q. And a key tag, all right. And probably a redundant
2 question, but I'll ask it anyway, did you attempt to
3 fingerprint the keys?

4 A. I recall I think I tried to fingerprint that
5 little key tag. The key itself is not something I've
6 ever had any lot of luck with, but I believe I did try
7 the tag.

8 Q. Well, now that blue shirt, and I'm putting that
9 exhibit up again, you said that blue shirt was laying
10 partially over that plastic tub when you first looked at
11 the car; right?

12 A. It -- yes.

13 Q. Just as the way that ---

14 A. Yes.

15 Q. -- exhibit, that picture portrays?

16 A. Yes.

17 Q. Let's talk a little bit now about the -- well,
18 before I go there, let me ask you this question. Other
19 than the vehicle itself, or the interior or the exterior
20 of these two businesses, did you look for any evidence
21 anyplace else?

22 A. I looked around in the dark. I did not go back in
23 the day light, but I did look around in the dark after
24 the dogs started their trail. Didn't see anything
25 laying out in the open. The woods around there were

1 pretty thick. I did not go in the woods.

2 Q. Well, looking around in the dark, where did you
3 look?

4 A. Behind the businesses.

5 Q. Okay. Did you ever go in the tree line anywhere?

6 A. I did not, no, sir.

7 Q. Basically you looked on the outside of the
8 building, along the building, ---

9 A. Yes, sir.

10 Q. -- excuse me, and the little road that was back
11 there; right?

12 A. Yes.

13 Q. All right. Let's talk a little bit about the
14 exterior or the doors to the building. On one of these
15 exhibits you said you took that picture, and I believe
16 that was Local Cash Advance. If I recall -- we'll put
17 the picture up if we have to -- that you took that
18 picture to show pry marks on Local Cash Advance;
19 correct?

20 A. Yes.

21 Q. And there, there were, what you would testify to
22 and what you observed, pry marks on the Local Cash
23 Advance door?

24 A. Yes.

25 Q. Now, you did not testify, as I recall, that there

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1 were any pry marks on the Tobacco Warehouse door?

2 A. I didn't notice any pry marks on the Tobacco

3 Warehouse door.

4 Q. All right, sir.

5 A. I don't think it was opened by prying.

6 Q. And after twenty-four years of experience in I.D.,

7 if there would have been pry marks, you probably would

8 have noticed them; wouldn't you?

9 A. I believe I would, yes, sir.

10 Q. Yes, sir. But there weren't. So there were no pry

11 marks on the outside of Tobacco Warehouse?

12 A. Correct.

13 Q. So that door was opened -- well, let me not ask the

14 question that way. There was evidence that that door

15 had been opened from the inside?

16 A. I felt it had been kicked open from the inside.

17 Q. Right. Was the -- that feeling was based on that

18 one picture that you showed us that there were some

19 black marks on the door; right?

20 A. There was, there was dirt. It was like debris off

21 the bottom of your shoe on the side of the door knob.

22 Q. And was there any kind of shoe imprint on the door?

23 A. No, sir. No. I tried to dust that. Sometimes

24 that works if we take latent powder and dust it,

25 sometimes we can develop a shoe print, but it doesn't

1 work every time. As you have gathered, there are no
2 exact sciences in this business.

3 Q. How many -- could you, could you observe or could
4 you tell by looking how many times the door had been
5 kicked?

6 A. I could not tell, no, sir.

7 Q. Okay. In a -- well, it appeared that that door had
8 what I would call a push bar. Are we communicating if I
9 say that?

10 A. I don't think that one had a push bar. It had a
11 door knob and a deadbolt.

12 Q. Okay. And you may be right.

13 A. I think the other one is the one with the push bar.

14 Q. I'm not sure. We'll try this one. We have a
15 little glare on that.. I don't know if you can see it or
16 not. By looking at State's Exhibit Number 13, which
17 appears to be a door, can you ---

18 A. That's the, that's the Tobacco Warehouse.

19 Q. That's the Tobacco Warehouse. It does not have a
20 push door, a push bar on it?

21 A. No, sir.

22 Q. Okay. So it appears that it had a latch ---

23 A. It's got ---

24 Q. -- handle on the inside?

25 A. It's got a door knob on the inside and a deadbolt.

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1 Q. And the deadbolt is what was securing the door?

2 A. Yes.

3 Q. Okay.

4 A. And the deadbolt's bent.

5 Q. I'm sorry?

6 A. And it's bent.

7 Q. All right. And bent in such a fashion that would

8 lead you to believe that the door was opened from the

9 inside?

10 A. Yes, sir.

11 Q. The hole in the bathroom, did you do any

12 measurements on that?

13 A. I did not.

14 Q. Okay.

15 A. But I could -- it -- the hole was between the

16 studs.

17 Q. And did you measure and see what the studs were on?

18 A. No. But I'm sure they're sixteens.

19 Q. Sixteen on center?

20 A. Yes, sir.

21 Q. All right. Do you know when that building was

22 built?

23 A. No, sir.

24 Q. Okay. All right. You left the scene at about one

25 thirty in the morning of the 28th?

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1 A. I think it was around one twenty, one thirty, yes,
2 sir.

3 Q. All right. And checking the mileage on that car
4 from the Bill of Sale to the time you parked it at the
5 law enforcement center it was a hundred and ten miles?

6 A. That's correct.

7 Q. Now, where or how those hundred and ten miles were
8 put on you have no idea; do you?

9 A. No, sir.

10 Q. Or who put those hundred and ten miles on it?

11 A. I have no idea, sir.

12 Q. No idea. That breaker box, did you dust it for
13 fingerprints?

14 A. Yes.

15 Q. And nothing there either I guess; huh?

16 A. No, sir.

17 Q. What time did you actually start inventorying the
18 car? I might have asked you that, but I forget.

19 A. I don't know if I completely inventoried it -- it
20 may have been the next day before I completely

21 inventoried it. It was one o'clock in the morning, I
22 needed to get the businesses turned back over to the
23 owners and get the car secured.

24 Q. When you get -- well, the stuff that you say was
25 inside the vehicle, the Go Devil, the crowbar, the

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1 screwdriver, plastic tubs, and all that, did you leave
2 them in the vehicle while -- did you leave them in the
3 vehicle -- were they in the vehicle when you drove the
4 vehicle back to the law enforcement center?

5 A. Yes.

6 Q. Okay. You didn't take anything out?

7 A. No, sir, other than the wallet.

8 Q. Okay. Now once you get to the law enforcement
9 center, when you start handling evidence, do you use
10 gloves?

11 A. I do.

12 Q. Okay. And was all that removed with gloves?

13 A. Yes.

14 Q. I noticed there was a picture of the clip or the
15 magazine of the gun that somebody is holding. Their
16 bare -- there's no gloves on that hand as I recall?

17 A. If that's true -- I'd have to see the picture. If
18 that's true, then we almost always wear gloves, I guess
19 would be my answer to that one.

20 Q. Other than me going through all those, let me get
21 mine. I think copies of the pictures that I've got are
22 laid out a little differently, but let me show you that.
23 Are those copies of the pictures that you made?

24 A. They are.

25 Q. Is one of those pictures a copy of a clip or a

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1 magazine being held by a human hand?

2 A. He is holding it by a human hand, yes, sir.

3 Q. Any gloves on that human hand?

4 A. No, sir. But he is holding it at the bottom of the
5 clip where I wouldn't expect to find any prints.

6 Q. But you -- if you load a clip aren't you going to
7 hold it at the bottom?

8 A. While you're loading it, you're going to be pawing
9 it pretty good.

10 Q. Pardon me?

11 A. You're going to be pawing it pretty good while
12 you're loading a clip. He's just, he's just got two
13 fingers on the bottom of the clip.

14 Q. Did you fingerprint the rounds at all?

15 A. I don't recall.

16 Q. By not recalling ---

17 A. Probably not.

18 Q. Probably not. Thank you, sir. On the interior of
19 the car, aside from items that you found in the car, did
20 you dust anything on the interior of the vehicle?

21 A. There's a lot of places on the interior such as
22 cloth seats, leather, vinyl, difficult to print, more
23 difficult than other items. There are certain areas
24 inside a car that I do check, rear view mirror is a
25 great place to find fingerprints in a car, gearshift if

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1 it's made out of the right surface. So I did -- that's

2 a standard for me, I would have done all of those.

3 Q. Did you fingerprint the gear shift?

4 A. I did.

5 Q. No fingerprints?

6 A. No, sir.

7 MR. DEJONG: One moment please, Your Honor.

8 Q. Did you check the mileage from Tobacco Warehouse to

9 the law enforcement center?

10 A. I did not personally check it. I know what it is,

11 if you'd like me to testify to that.

12 Q. My question is ---

13 A. No, sir.

14 Q. -- did you check, did you check the odometer on the

15 vehicle before you drove it off ---

16 A. No.

17 Q. -- to the law enforcement center?

18 A. No, sir.

19 Q. Okay. So the reading you got included whatever

20 distance it is from Tobacco Warehouse to the law

21 enforcement center?

22 A. Yes, sir. Less than a mile.

23 Q. Thank you, Lieutenant Robinson.

24 THE COURT: Anything on redirect?

25 MS. HAMAKER: Quickly, Your Honor.

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1 REDIRECT EXAMINATION

2 BY MS. HAMAKER:

3 Q. You testified when I spoke with you, State's
4 Exhibit Number 36, the wallet, was there a Visa Bank of
5 America card in there with the name of Reginald Nance on
6 it?

7 A. Yes, there is.

8 Q. What is that card?

9 A. What is that card, ---

10 Q. Yes.

11 A. -- you said? It's, it's a Visa. I think that may
12 be it.

13 MR. DEJONG: Your Honor, I object to what he
14 thinks.

15 THE COURT: I sustain the objection.

16 MR. DEJONG: Thank you, Your Honor.

17 Q. All right. Let's see if I can -- does that little
18 symbol right there match that symbol?

19 A. It does.

20 Q. Does that Visa match that wording right there?

21 A. Yes, sir. I mean, yes, ma'am.

22 Q. Is there another Visa card in that wallet or Bank
23 of America card? You might need to see the wallet.

24 A. I don't. There's so many things in there, I ---

25 Q. I know you're about tired of looking at this. I'm

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1 sorry about that.

2 A. I don't think there's one like that in there.

3 Q. Any Visa or Bank of America card in there?

4 A. This blue one.

5 Q. Does it say Bank of America? Is it the same
6 color?

7 A. No, it's, it's a Wachovia. This is a silver one.

8 Q. Is it Bank of America?

9 A. It's not Bank of America. I think that's all of
10 the Visas without pouring all of this out.

11 Q. This is the wallet exactly how you found it?

12 A. Yes.

13 Q. Were there any other cards that were sticking out a
14 little bit like that?

15 A. No.

16 Q. When you took the vehicle to the law enforcement
17 center did you lock it?

18 A. Yes.

19 Q. Did you put it in a secured parking area?

20 A. We have a fenced in impound yard.

21 Q. Does anybody have access to it besides law
22 enforcement?

23 A. No.

24 Q. Have you seen that vehicle after you investigated
25 this incident?

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1 A. I see it every day.

2 Q. Does it appear to be tampered with in any way?

3 A. No.

4 MS. HAMAKER: That's all the State has for
5 this witness, Your Honor.

6 THE COURT: Thank you, Lieutenant Robinson.
7 You may step down.

8 MR. DEJONG: No objection to him being
9 excused, Your Honor.

10 THE COURT: I'd like to see the attorneys for
11 just a minute.

12 (WHEREUPON, Ms. Hamaker and Mr. DeJong approached
13 the bar.)

14 THE COURT: You may call your next witness,
15 Solicitor.

16 MS. HAMAKER: The State would call Marie
17 Wearing to the stand.

18 MR. DEJONG: Your Honor, I apologize. I
19 didn't know who this witness was. May we approach?

20 THE COURT: Yes, sir.

21 (WHEREUPON, Ms. Hamaker and Mr. DeJong approached
22 the bar.)

23 MISTER CLERK: Place your left hand on the
24 bible and raise your right hand. Do you solemnly swear
25 or affirm the testimony you're about to give in this

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1 case to be the truth, the whole truth and nothing but
2 the truth, so help you God?

3 MS. WEARING: I do.

4 MISTER CLERK: If you would have a seat and
5 state your name for the record, please.

6 MS. WEARING: Marie Wearing.

7 MARIE WEARING,

8 BEING DULY SWORN, TESTIFIED AS FOLLOWS:

9 DIRECT EXAMINATION

10 BY MS. HAMAKER:

11 Q. Ms. Wearing, who do you work for?

12 A. South Carolina Department of Motor Vehicles.

13 Q. And how long have you worked for them?

14 A. Twenty-two years.

15 Q. Wow. What's your position with them?

16 A. Custodial Driver's Records.

17 Q. So what, what are your duties, what do you do?

18 A. I oversee the driver's records department.

19 MR. DEJONG: Without objection, Your Honor.

20 Q. Ms. Wearing, can you tell the jury what State's
21 Exhibit Number 27 is?

22 A. It's a affidavit for a lost surrendered driver's
23 license.

24 Q. Does the DMV keep those kind of records ---

25 MR. DEJONG: May I ask this witness to get a

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1 little closer to the microphone, please, Your Honor. I
2 can't hear her.

3 THE COURT: If you would just speak up, ma'am.

4 A. Okay. It's a affidavit for a lost surrendered
5 driver's license.

6 Q. Does the DMV keep those records in the normal
7 course of their business?

8 A. Yes.

9 MS. HAMAKER: Your Honor, at this time, I'd
10 like to admit State's Exhibit Number 20 -- I'm sorry,
11 27.

12 THE COURT: 27, without objection, is admitted
13 into evidence.

14 (WHEREUPON, State Exhibit Number 27 was admitted
15 into evidence.)

16 Q. That paper, what does it -- what information does
17 it give you?

18 A. That Reginald Nance, [REDACTED] applied for a
19 lost driver's license.

20 Q. And what day did he apply for that lost driver's
21 license?

22 A. January 20, 2009.

23 Q. Okay. Court's Exhibit Number 48, I believe that's
24 the next one. Is that the number at the bottom of it?

25 A. 28.

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1 Q. 28?

2 A. Yes.

3 MS. HAMAKER: The State would like to admit
4 that into evidence as well, Your Honor.

5 THE COURT: Without objection Exhibit 28 is
6 admitted into evidence.

7 (WHEREUPON, State Exhibit Number 28 was admitted
8 into evidence.)

9 Q. What is that?

10 A. Application for credential, South Carolina
11 credential.

12 Q. What is a South Carolina credentials?

13 A. Driver's license.

14 Q. Does the DMV keep that in the normal course of
15 their business?

16 A. Yes.

17 Q. And I believe on the second page of that document,
18 what information are you provided?

19 A. Reginald Nance, January 20, 2008, for a lost
20 driver's license.

21 Q. Okay. Can I see that document from you. We're
22 just going to show it to the jury and then you can
23 explain it. This is the second page of State's Exhibit
24 Number 28. Don't worry, I can zoom back in if you need
25 to. Is that that second page?

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- 1 A. Yes.
- 2 Q. Is there any writing towards the top of it?
- 3 A. Yes.
- 4 Q. Handwriting?
- 5 A. Yes.
- 6 Q. Down here I'll zoom in on it. What does this say
- 7 right there?
- 8 A. Lost DL.
- 9 Q. And DL stands for?
- 10 A. Driver's license.
- 11 Q. And is this a section that only employees fill out?
- 12 A. Yes.
- 13 Q. Does it say anything about stolen driver's license?
- 14 A. No.
- 15 Q. What's that date?
- 16 A. January 28th, 2009.
- 17 Q. What's that date?
- 18 A. January 28th, 2008.
- 19 Q. Who would have filled this out?
- 20 A. Reginald Nance.
- 21 Q. Who would have filled this area out?
- 22 A. The DMV clerk.
- 23 Q. What's the correct date for when the defendant came
- 24 in and applied for a new driver's license because it was
- 25 lost?

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- 1 A. January 20, 2009.
- 2 Q. But he wrote 2008.
- 3 A. But the license was issued 2009.
- 4 Q. And how do you know it was issued in 2009?
- 5 A. By his driver's license.
- 6 Q. Say it again.
- 7 A. By his driver's license.
- 8 Q. By his driver's license?
- 9 A. Yes, what's on his driver's license.
- 10 Q. It would say it on the driver's license?
- 11 A. That's correct.
- 12 Q. Does any other DMV records show that that's the day
- 13 he did it?
- 14 A. In his driver's license credential, I mean file,
- 15 driver's license record file.
- 16 Q. Okay. Is that what you found to be correct?
- 17 A. That's correct.
- 18 MS. HAMAKER: The State would like to
- 19 introduce State's Exhibit Number 29 into evidence.
- 20 MR. DEJONG: Without objection, Your Honor.
- 21 THE COURT: Without objection Exhibit 29 is
- 22 into evidence.
- 23 (WHEREUPON, State Exhibit Number 29 was admitted
- 24 into evidence.)
- 25 Q. Ma'am, can you tell me what that document is?

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1 A. This is the registration information.

2 Q. And is it registration information for Mr. Nance?

3 A. Yes, Mr. Nance.

4 Q. And what does it show, what information does it
5 contain?

6 A. A 1997 Land Rover Discovery.

7 Q. Being registered to Mr. Nance?

8 A. Yes.

9 MS. HAMAKER: That's all the State has for
10 this witness at this time, Your Honor.

11 THE COURT: You may cross examine the witness,
12 Mr. DeJong.

13 MR. DEJONG: Thank you, Your Honor. May it
14 please the Court.

15 CROSS EXAMINATION

16 BY MR. DEJONG:

17 Q. I apologize, ma'am, I was having a hard time
18 hearing you. State's Exhibit Number 22, now what is
19 that?

20 A. It's a affidavit for loss or surrendered driver's
21 license.

22 Q. Now does that go in conjunction with what's been
23 marked State's Exhibit Number 28?

24 A. Yes.

25 THE COURT: I believe the first one is 27 ---

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1 WITNESS: 27.

2 THE COURT: -- instead of 22.

3 Q. I'm sorry, 27. 27?

4 A. Yes.

5 Q. I think I'd better get glasses too. Okay. State's
6 Exhibit Number 27, does that go in conjunction with
7 State's Exhibit Number 28?

8 A. Yes. You fill that out to obtain a driver's
9 license. Once you've misplaced it, you fill that out.

10 Q. Now, let me get this straight. You are the keeper
11 of the records; ---

12 A. That's ---

13 Q. -- right.

14 A. Yes, sir.

15 Q. You didn't fill these documents out?

16 A. Excuse me?

17 Q. You didn't fill these documents out?

18 A. No, sir. Mr. Nance filled them out.

19 Q. Pardon me?

20 A. Mr. Nance.

21 Q. Well, were you there when he filled them out?

22 A. No, sir, I was not there.

23 Q. That's my question.

24 A. Oh, no.

25 Q. You are the keeper of the records?

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1 A. That's correct.

2 Q. These records are made in the normal course of
3 business, and you'd bring them in as a records keeper;
4 right?

5 A. That's correct.

6 Q. So however or whatever conversations or anything
7 else that took place between Mr. Nance and whoever
8 filled these papers out, you don't know?

9 A. That's correct.

10 Q. And State's Exhibit Number 29, that just shows that
11 he owned a Land Rover; right?

12 A. That's correct.

13 Q. And again you didn't obtain any of this
14 information, you just brought the records to court
15 today?

16 A. That's correct.

17 Q. Do you need, to your knowledge, if you know, ma'am,
18 do you need an incident report if you are saying that
19 your driver's license has been stolen?

20 A. No, sir.

21 Q. Okay. You just -- I can go to the DMV and say that
22 my license was stolen?

23 A. And fill out, fill out the affidavit form.

24 Q. Okay. Thank you, ma'am.

25 THE COURT: Any redirect?

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1 MS. HAMAKER: Briefly, Your Honor.

2 REDIRECT EXAMINATION

3 BY MS. HAMAKER:

4 Q. Ms. Wearing, let me show you what came out of the
5 wallet. It's Exhibit Number 36. Can you tell me if
6 this is a valid driver's license?

7 MR. DEJONG: Your Honor, I'm going to object
8 to that. I don't think this is proper redirect.

9 THE COURT: How does that apply, how does that
10 apply to his cross examination?

11 MS. HAMAKER: Your Honor, what he was saying
12 was that she wasn't there, she didn't watch this get
13 filled out, and I'm simply trying to compare the
14 signature from the driver's license to the signatures on
15 these pieces of paper.

16 THE COURT: I'll overrule your objection.

17 Q. Is that a valid driver's license?

18 A. Yes.

19 Q. Do the signatures look alike to you?

20 A. Yes.

21 Q. State's Exhibit Number 27, do the signatures look
22 alike to you?

23 A. Yes.

24 MS. HAMAKER: Nothing further for this
25 witness, Your Honor.

1 THE COURT: Okay. Mr. DeJong, anything else
2 you wish to ask?

3 MR. DEJONG: May I have one moment, please,
4 Your Honor. No questions, Your Honor.

5 THE COURT: All right. Thank you. Thank you,
6 ma'am, you may step down.

7 MR. DEJONG: No objection to her being
8 excused, Your Honor.

9 THE COURT: Mr. Foreman, ladies and gentlemen,
10 I think you're overdue for a lunch break. I'll let you
11 go to lunch at this time. Let me remind you again not
12 to discuss the case while you're out during lunch.
13 Don't let anybody talk with you about it. Make sure
14 that you maintain the oath that you've committed to
15 these parties to well and truly try this case based on
16 what happens in this courtroom and not anywhere else.
17 If you would be back in your jury room at twenty-
18 five after, we'll be ready to start back then, twenty-
19 five after two. We'll be ready to start with further
20 testimony. You're dismissed at this time. Everyone
21 else please remain seated.

22 (WHEREUPON, the jury exited the open court at
23 approximately 1:15 p.m.)

24 THE COURT: All right. I'd be glad to hear
25 from either one of you on the relevance issue of Officer

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1 Byers' testimony. Ms. Hamaker?

2 MS. HAMAKER: Yes, sir, Your Honor. You want
3 me to do the relevancy?

4 THE COURT: Well, as indicated, it's a
5 voluntary statement. I understand Mr. DeJong wants to
6 object to the statement, and maybe I should hear his
7 objection first of all as to why, since it's a voluntary
8 statement, do you believe it's inadmissible evidence.

9 MR. DEJONG: Well, Your Honor, I think it has
10 no probative value to what we're here for. It is
11 obviously not an admission. I think Mr. Byers testified
12 at the *Jackson v. Denno* that there was no admission of
13 guilt. What I think -- what makes it doubly bad is,
14 number one, it has no probative value. Mr. Nance
15 invoked his right to an attorney, which I don't know how
16 jurors think, but in the few I have talked to over the
17 years when people don't want to talk, they infer it as
18 some sort of indication of guilt even though it is an
19 absolute constitutional right somebody has to invoke
20 that right. There being no guilt, he talks about
21 cooperating. Again, Mr. Byers did not indicate that
22 there -- it went any further than that. What that might
23 mean, we can sit here and speculate and go through all
24 sorts of conjecture and maybe we could come up with
25 plausible answers. But therein lies the problem.

1 If we do it, if you let it in, Your Honor, then
2 that's exactly what the jury's going to do with it,
3 speculate, go through all sorts of conjecture as to what
4 that may have meant, and I think -- I just don't see any
5 probative value. And I think the prejudicial effect,
6 especially of him invoking his right to an attorney,
7 certainly outweighs any probative value that there is in
8 that statement.

9 THE COURT: Solicitor.

10 MS. HAMAKER: Thank you, Your Honor. I have a
11 case, I apologize for not having anything more recent or
12 an extra copy for you or Mr. DeJong, but the case number
13 is 68 SC 133. It's *State versus Rucker*, R-u-c-k-e-r.
14 It's from May 14, 1910, and it's a South Carolina case.
15 And I think the reason why I had to go so far to get it
16 is because it's common sense and it's so ingrained in
17 our judicial system.

18 That case, the relevant part states, and you can
19 read the case. It is a little humorous to look back to
20 see how people worded things, but it says and I quote,
21 the evidence of an attempt to compromise in a criminal
22 case is competent it's -- it being for the jury to
23 decide whether the effort indicated, one, a
24 consciousness of guilt or, two, merely fear or anxiety
25 to avoid the risk of miscarriage of justice.

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1 So it's a jury question for them to decide. By the
2 statement, was the defendant admitting guilt, or was he
3 aware that there was enough evidence against him that
4 justice might not be carried out. And that's a jury
5 question.

6 This statement the defendant made that's in
7 question is an admission, it's a confession. The
8 defendant, he invoked his constitutional right, but
9 afterwards he never said, I did not do this. What he
10 said was, let's see if we can work something out here.
11 That's a confession, nothing short of a confession.

12 Now, we have to go on to the 403 analysis, and as
13 the Court very well knows, if something has probative
14 value and it's relevant, it's admissible unless the
15 unfair, not just prejudice, unfair prejudice way
16 outweighs the danger of prejudice.

17 In this case, a confession is extremely probative.
18 The fear of anything prejudicial coming out, one, I
19 don't see the prejudicial effect, the jury can decide
20 how the defendant meant that. But the probative value
21 far outweighs any danger of unfair prejudice. And to be
22 honest with Your Honor, I don't believe Mr. DeJong has
23 stated unfair prejudice. Anything the State intends to
24 introduce in trial is going to be prejudicial. The
25 question is, is the jury drawing an assumption from

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1 something that they have no right to draw an assumption
2 against, such as a prior record. That's the State's
3 argument, Your Honor.

4 Would you like me to hand up the case or present
5 ---

6 THE COURT: I'll look it up. Thank you. I
7 might even have that book in the library. All right.
8 Let's take a lunch break. I'll do a little studying.
9 We'll be back at two twenty-five.

10 MR. DEJONG: Thank you, Your Honor.

11 MS. HAMAKER: Thank you, Your Honor.

12 (Whereupon, the Court stood at recess for a lunch
13 break.)

14 THE COURT: All right. Just for the record, I
15 had a brief conversation with the attorneys, but I want
16 to put on the record as far as -- I talked with them
17 about the -- how much longer we've got to try the case
18 and how many witnesses and trying to work out a little
19 bit of a schedule.

20 I've also, over the lunch hour, checked the case
21 that you cited, Ms. Hamaker, along with some of its --
22 the cases upon which it relied, particularly you cited
23 the Rucker case. I reviewed the Mitchell case and the
24 Wideman case. I believe the cases speak well of the
25 issue that you have before me now, but -- in fact the

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1 Rucker case is only two weeks away from its century
2 birthday. But I believe the context of those cases and
3 what we're presented is quite a bit different from what
4 we have in this case. And from what I remember the
5 statement being, it was proffered by Officer Byers.

6 I believe we really have to look at the -- our
7 present rules of evidence. I have to put more reliance
8 on that than I do the case law of a century ago or more.
9 I think under the relevance of Rule 401 and 402 and even
10 403, I think that I'll respectfully have to deny your
11 motion to offer that evidence. I don't -- whatever
12 relevance it has, I think the speculative nature of what
13 was said could create more confusion for the jury than
14 help them in this. I think there is unfair prejudice to
15 the defendant because of that speculation.

16 And I can appreciate Mr. DeJong's argument over the
17 prejudicial effects of invoking the rights. And I don't
18 make my ruling on that ground, but I do on the other.
19 So I respectfully deny your motion to put this in and
20 grant the defense motion to suppress the statement from
21 the defendant to Officer Byers.

22 Anything else we need to take care of before we
23 start back?

24 MS. HAMAKER: Not from the State, Your Honor.
25 Thank you for considering that.

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1 MR. DEJONG: Not for the defense, Your Honor.

2 THE COURT: If the jury's ready, let's have
3 them come in, Mr. Duncan.

4 (WHEREUPON, the jury entered the open court at
5 approximately 2:48 p.m.)

6 THE COURT: Thank you for your patience with
7 us, ladies and gentlemen, while we worked out a few
8 legal matters we needed to take care of in the trial of
9 the case. We are now ready to proceed with further
10 witnesses, evidence. The State may call its next
11 witness.

12 MS. HAMAKER: The State would call April
13 Dryman to the stand.

14 MISTER CLERK: Place your left hand on the
15 bible and raise your right hand. Do you solemnly swear
16 or affirm the testimony you're about to give in this
17 case to be the truth, the whole truth and nothing but
18 the truth, so help you God?

19 MS. DRYMAN: I do.

20 MISTER CLERK: If you would have a seat and
21 state your name for the record.

22 MS. DRYMAN: April Dryman.

23 APRIL DRYMAN,

24 BEING DULY SWORN, TESTIFIED AS FOLLOWS:

25 DIRECT EXAMINATION

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1 BY MS. HAMAKER:

2 Q. Ms. Dryman, where are you from?

3 A. Originally from Florida.

4 Q. And are you living in Pickens County now?

5 A. Yes.

6 Q. And how long have you been living in Pickens
7 County?

8 A. Almost seventeen years.

9 Q. Did you work at the Local Cash Advance the night of
10 the incident that took place on January 27th, 2009?

11 A. Yes, I did.

12 Q. What was your position there?

13 A. Manager.

14 Q. That evening did you get a phone call?

15 A. I did.

16 Q. And who called you?

17 A. I'm not quite sure of her name, but she was from
18 dispatch at the Pickens County Sheriff's Department.

19 Q. And in response to that phone call what did you do?

20 A. I then proceeded to the office where there were
21 several police officers outside waiting for me to speak
22 to them about the incident.

23 Q. When you said the office, do you mean Local Cash
24 Advance?

25 A. Yes. I'm sorry.

1 Q. That's okay. Have you ever testified at trial
2 before?

3 A. No.

4 Q. A little nervous?

5 A. Little bit.

6 Q. When you got to the office what did you do?

7 A. First off I got my office key out and I was then
8 told that I didn't need the key. And then they took me
9 around to the back where I seen that the door had been
10 pried open.

11 Q. Did you try to turn the lights on when you went
12 inside?

13 A. When I walked in initially I did not because our
14 lights were in the front of the office and we walked in
15 through the back.

16 Q. Okay.

17 A. So by the time I had gotten to the front, I had
18 already been told that the lights and everything were
19 not working.

20 Q. Were you able to identify any items as missing?

21 A. In the very beginning, no, because it was dark in
22 there. I did notice that the computers and the printers
23 and the fax machine and everything were intact. After a
24 little bit, you know, I did look around and notice that
25 there were some things that were not where they were

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1 left.

2 Q. Do you remember what those things were?

3 A. Since it was shortly after Christmas, we had some
4 marketing products left from our Christmas which
5 included things like a really big basket full of candy
6 canes that was some of our marketing things. That was
7 not there. I had a couple boxes of wedding invitations
8 for my niece in the back room that were not, that were
9 not there either. Things like paper towels, trash bags.
10 I had a ratchet set in the front desk that was no longer
11 there.

12 Q. Were these items ever returned to you?

13 A. They were.

14 Q. Do you recall who returned them to you?

15 A. Lieutenant Robinson, yes.

16 Q. I'm going to show you some pictures. Is that part
17 of your office?

18 A. Yes, it is.

19 Q. State's Exhibit Number 19, what is -- what's that?

20 A. That right there is the filing cabinet on the side
21 of the desk. That was not locked. That doesn't get
22 locked.

23 Q. Was there anything missing from inside there?

24 A. There was. The, the little change drawer was not
25 there. We don't keep cash in the office overnight. The

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1 only thing that was in there was some change.

2 Q. Do you have an approximate amount?

3 A. In that little spot it was anywhere between eight

4 and ten dollars. And I had a little container of

5 change on the other side that was our little petty

6 cash. So total, in all, I think it was probably

7 somewhere in the vicinity of eleven dollars in change in

8 the office.

9 Q. Is that also part of your store?

10 A. That is not.

11 Q. That's not?

12 A. No.

13 Q. Now the bottom portion of State's Exhibit Number 9,

14 this portion right here, what is that?

15 A. That is some of the things that were, were actually

16 recovered in the car that was still outside. When I had

17 gotten there this was stuff that was within the trunk

18 and in the back seat. They asked me to just kind of

19 lean in and look, if I recognized any of it, and I did.

20 Some of the stuff that was in there was from the Tobacco

21 Warehouse.

22 Q. Are these the candy canes you ---

23 A. They are.

24 Q. -- were talking about earlier?

25 A. They are.

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- 1 Q. What's that?
- 2 A. That is a label making machine that did come out of
- 3 our office.
- 4 Q. What's that?
- 5 A. A box of trash bags.
- 6 Q. What's that?
- 7 A. The ratchet set.
- 8 Q. That's what was taken?
- 9 A. Yes.
- 10 Q. What's that?
- 11 A. I believe that is a small container of Nesquik.
- 12 Q. Was that taken as well?
- 13 A. It was.
- 14 Q. Is that the coin box you were talking about?
- 15 A. Yes.
- 16 Q. Was that yours as well?
- 17 A. Yes. Yes.
- 18 Q. All these things were taken?
- 19 A. Yes.
- 20 Q. What are these?
- 21 A. Those are the wedding invitations.
- 22 Q. Were those taken?
- 23 A. Uh-huh (affirmative). Yes, they were.
- 24 Q. That hammer, was that taken?
- 25 A. Yes, it was.

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1 Q. There was a small TV in the car. Do you recall if
2 that was from your store?

3 A. It was.

4 Q. Are these the invitations?

5 A. Yes.

6 Q. What's that?

7 A. That appears to be the paper towels.

8 Q. Were those taken from your store?

9 A. Yes.

10 Q. What's that?

11 A. Trash bags.

12 Q. Taken?

13 A. Yes.

14 Q. You know what that is?

15 A. That may possibly be the side of the label making
16 machine.

17 Q. That picture I showed you with the change, was that
18 the extent of the change that was taken?

19 A. To my knowledge. I -- we did have a small
20 container of petty cash that just me and my assistant
21 had. Ee never counted it, don't know what was in there,
22 so I would say yes.

23 Q. This was in your store?

24 A. That was not ours, no.

25 Q. Was that the television that was stolen?

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1 A. Yes.

2 MR. DEJONG: Objection, Your Honor. She's
3 leading.

4 THE COURT: Sustained.

5 Q. What's that a picture of?

6 A. That is a small television set.

7 Q. Did that come from your store?

8 A. It did.

9 Q. What's that a picture of?

10 A. A gallon of fruit punch.

11 Q. Did that come from your store?

12 A. That also did.

13 Q. Anything else in this picture come from your store?

14 A. No, ma'am.

15 Q. Did that come from your store?

16 A. No.

17 Q. Can you think of anything else taken from your
18 store?

19 A. Not to my knowledge. The things that were taken
20 were just, I guess, things that could be taken on your
21 way out. Like I said, we didn't keep any cash or
22 anything of value in the office. None of the computers
23 or anything like that were displaced.

24 MS. HAMAKER: Your Honor, that's all the State
25 has for this witness.

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1 THE COURT: You may cross examine the witness,
2 Mr. DeJong, if you desire.

3 MR. DEJONG: One moment, please, Your Honor.

4 Thank you, Your Honor. May it please The Court.

5 CROSS EXAMINATION

6 BY MR. DEJONG:

7 Q. How long did you work for Cash Advance, Ms. Dryman?

8 A. Total or up until that date?

9 Q. That was your last day?

10 A. No. Do you want the total or ---

11 Q. Total.

12 A. I was working there for about nine months up until
13 that point.

14 Q. Okay. Are you still with Cash Advance?

15 A. No, I'm not.

16 Q. With this Cash Advance, do you know if it's still
17 in the same location or not?

18 A. No, it's not. He shut all of the South Carolina
19 stores down.

20 Q. All right, ma'am. Do you recall what time you got
21 the call on ---

22 A. I'm going to say it was somewhere around -- between
23 twelve thirty and twelve forty.

24 Q. Twelve thirty and twelve forty?

25 A. Yes. Yes.

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1 Q. Which would have actually been Wednesday morning

2 ---

3 A. Yes.

4 Q. -- on the 28th; that is correct?

5 A. Yes. Yes.

6 Q. Okay. So when you went into Cash Advance you went
7 around the back. You were directed to the back by an
8 officer; right?

9 A. Yes. I pulled up in the front, and I was getting
10 my key and he said you don't -- don't go in that way.
11 We need to bring you around to the back.

12 Q. Okay. Bring you around to the back?

13 A. Uh-huh (affirmative).

14 Q. Did you ever try the lights?

15 A. No. No, I, I never did until the next -- well,
16 later on Wednesday morning I should say when I went in
17 to the open up the office. I did not try the lights
18 that night, no.

19 Q. Okay. So what you were doing then was either by
20 street lighting or flashlights on that particular
21 evening?

22 A. Yes. It was flashlights.

23 Q. Okay. Now the garbage bags that you say came out
24 of there, were they white or black or do you know?

25 A. They were white.

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1 Q. Okay. And so you say it was garbage bags, fruit
2 punch, little TV, hammer?

3 A. Yes. There was a hammer.

4 Q. Okay. And a basket of candy?

5 A. Yes.

6 Q. And some change?

7 A. Yes.

8 Q. I forgot the change. Okay. Now, when were those
9 items returned to you?

10 A. I would say within a week.

11 Q. All right.

12 A. It was probably about a week, they brought them
13 back.

14 Q. How long did you stay there that evening?

15 A. I stayed until approximately one fifteen, one
16 twenty, somewhere in that area.

17 Q. Other than police officers, was there anyone else
18 there?

19 A. The only other gentleman was the manager of the
20 Tobacco Warehouse.

21 Q. Other than the hammer were there -- and the
22 ratchets, were there any other tools taken from ---

23 A. I had a small, very inexpensive screwdriver that I
24 had that was in the drawer that was in the same place as
25 ---

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1 Q. Let me show you what's been marked as State's

2 Exhibit 40. Is that the screwdriver?

3 A. No, it is not.

4 Q. That's not the screwdriver?

5 A. No, it is not.

6 Q. Okay. Thank you, Ms. Dryman.

7 THE COURT: Any redirect?

8 MS. HAMAKER: No, sir, Your Honor.

9 THE COURT: Thank you, ma'am. You may step
10 down. Without objection the witness may be excused.

11 MR. DEJONG: No objection, Your Honor.

12 THE COURT: You may call your next witness.

13 MS. HAMAKER: The State would call Ms. Annie
14 Mabe to the stand.

15 MISTER CLERK: Place your left hand on the
16 bible and raise your right hand. Do you solemnly swear
17 or affirm the testimony you're about to give in this
18 case to be the truth, the whole truth and nothing but
19 the truth, so help you God?

20 MS. MABE: I do.

21 MISTER CLERK: Thank you, ma'am. If you would
22 have a seat and state your name for the record.

23 MS. MABE: Annie Mabe.

24 ANNIE MABE,

25 BEING DULY SWORN, TESTIFIED AS FOLLOWS:

1 DIRECT EXAMINATION

2 BY MS. HAMAKER:

3 Q. Good afternoon, Ms. Mabe. Where do you work?

4 A. I did work at Tobacco Warehouse. Last Saturday was
5 my last day.

6 Q. Where are you from?

7 A. I was born in Alabama. I lived in Florida forty-
8 seven years. Moved to Pickens in 2006.

9 Q. Back on January 27th of 2009 where were you
10 employed?

11 A. Yes.

12 Q. Where?

13 A. At Tobacco Warehouse.

14 Q. At Tobacco Warehouse. You said you no longer work
15 at Tobacco Warehouse. Why is that?

16 A. I'm moving to Alabama.

17 Q. You're moving to Alabama. Have you ever come to
18 court and testified before?

19 A. No.

20 Q. This is your first time?

21 A. Yes.

22 Q. Were you called out to Tobacco Warehouse the night
23 of the incident?

24 A. No.

25 Q. Who -- do you know who was called out?

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1 A. Han Raj. He was the manager.

2 Q. What, what's your position? Well, at the time of
3 the incident, what was your position at Tobacco
4 Warehouse?

5 A. I was a cashier and he called me at one thirty in
6 the morning, and this is ---

7 Q. Ms. Mabe, don't say what he said. Okay?

8 A. Okay. Okay.

9 Q. Describe your manager for me.

10 A. He speaks very little English. You cannot
11 understand anything he says hardly. I had a hard time
12 communicating with him. So ...

13 Q. Did -- when did you find out that the store had
14 been burglarized?

15 A. At one thirty in the morning.

16 Q. In the morning?

17 A. At night, yeah.

18 Q. When did you go to the store?

19 A. It was around eight o'clock in the morning after
20 ...

21 Q. Did you notice anything out of the ordinary?

22 A. I had to open the door. No one -- Han was not
23 there. The people were waiting outside to get in to
24 survey the damage and everything to the building. And
25 yes, cigarettes and boxes and, you know, the office door

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1 had been broken into.

2 Q. Does Tobacco Warehouse -- do they have an alarm
3 system?

4 A. Yes, they do. The alarm system was pulled out of
5 the wall laying on the floor. The telephone wires had
6 been cut. I had to use my cell phone to -- in order to
7 call the phone company.

8 Q. You said the alarm system had been damaged. Was
9 that an audible alarm system?

10 A. We have a code that we set and then it starts
11 beeping. And then once you get out and lock the door
12 then you hear the little sound that it's been set. And
13 then if you unlock the door and go back in, the little
14 beeping sounds until you put the code in, then it comes
15 on, the green light.

16 Q. Well, how does the alarm system know when someone's
17 come back in?

18 A. If, if they have not waited long enough to come
19 back in, then the alarm will go off immediately when --
20 once the door is opened.

21 Q. Are there any kind of motion detectors or ---

22 A. Yes. We have motion detectors in the front room
23 and the back room.

24 Q. And you also have a camera system in there?

25 A. Yes.

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1 Q. Normally when does that camera -- when is it on
2 recording?

3 A. Twenty-four hours a day.

4 Q. Twenty-four hours a day.

5 A. And it does re-record. It rewinds itself and re-
6 records over.

7 Q. When you say re-record do you mean it automatically
8 puts a new tape in or does it ---

9 A. No. It re-records over the original tape that's in
10 there, if it doesn't get changed.

11 Q. Do you know if that night whether your manager gave
12 the sheriff's office a video tape?

13 A. I don't know. I didn't ask and I wasn't told.

14 Q. Did your manager sufficiently understand the camera
15 system?

16 MR. DEJONG: Your Honor, I'm, I'm going to
17 object to that without laying some foundation.

18 THE COURT: I sustain the objection as the
19 question is asked, without a foundation.

20 Q. Have you ever had to pull the video tape before for
21 any reason?

22 A. Yes.

23 Q. Were you able to pull the video tape?

24 A. Yes.

25 Q. And you were able to look at it?

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1 A. I never looked at them, but I had to give -- I had
2 to turn one over to a police officer.

3 Q. Have you ever seen your manager attempt to do such
4 a task?

5 A. No.

6 Q. Do you keep records of how much cash comes into the
7 store on a daily basis?

8 A. Yes.

9 Q. You do keep those. And is that something your
10 business does every day?

11 A. Yes.

12 Q. And what are your hours of operation?

13 A. Monday through Friday, eight to seven. Saturday,
14 eight to five.

15 Q. No Sunday?

16 A. No.

17 Q. Ms. Mabe, I'm going to show you State's Exhibit
18 Number 50. Do you recognize it?

19 A. Yes.

20 Q. And what is it?

21 A. It's a daily sheet that we keep records of the
22 credit cards, the checks that we take in that are
23 written for cigarettes people buy, the pay outs, if
24 there's any pay outs, the cash that's taken in and the
25 net sales.

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1 Q. And when you say pay outs, what do you mean?

2 A. Well, for instance, on this one I got paid seventy-
3 eight dollars and that was -- went as a pay out. That
4 was my ...

5 Q. I understand.

6 A. I only worked part-time then.

7 Q. And y'all keep those records on a daily basis in
8 normal business ---

9 A. Yes.

10 Q. -- activities?

11 A. Yearly.

12 MS. HAMAKER: Your Honor, at this time, the
13 State would like to introduce State's Exhibit Number 50
14 into the record.

15 THE COURT: Any objection to Exhibit 50?

16 MR. DEJONG: Your Honor, the witness has
17 testified that these records are made, but they appear
18 to be made by different individuals, for one thing.
19 They also appear to span from January the 23rd of '09
20 through January the 27th of '09. I don't have an
21 objection to what would purport to be two made by this
22 witness except possibly as to -- well, not possibly --
23 except as to relevance. One is the 23rd, one is the
24 26th. That may have relevance.

25 There's no testimony, Your Honor, that this woman

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1 is the -- was the records keeper for this business.
2 That may have been generated for this business. But I
3 would take the position that the two were -- that were
4 actually generated by this witness -- well, one as to
5 the 26th, I would have no objection to. The one as to
6 the 23rd, I would object to on relevance. And the other
7 two, I would object to, that this witness is not the
8 records keeper of the business and therefore not
9 admissible, Your Honor.

10 MS. HAMAKER: Your Honor, the State will go
11 ahead and lay the relevance foundation.

12 THE COURT: All right. If you would lay a
13 foundation for the admission of the document.

14 Q. Ms. Mabe, who takes the money that y'all accumulate
15 to the bank?

16 A. Sometimes I did take it. And -- when I get off,
17 you know, I work part-time. And sometimes Han would
18 take it.

19 Q. Now the burglary happened on January 27th of 2009.
20 Before that date do you know when the last time it was
21 that the money was taken to the bank?

22 A. I -- it was on Friday, the 23rd, when I got off.
23 I took the money to the bank on Friday. That did not
24 include Friday's take-ins.

25 Q. What time did you go to the bank on Friday?

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1 A. It was about eleven thirty.

2 Q. So the money collected -- what you're saying is the
3 money collected on Friday would have still been in the
4 building at the time the ---

5 A. Yes.

6 Q. -- burglary occurred?

7 MS. HAMAKER: Your Honor, ---

8 THE COURT: Friday was the 23rd; is that
9 right?

10 MS. HAMAKER: Yes, sir.

11 THE COURT: I'll overrule any objection you
12 have, Mr. Dejong. I'll allow the evidence in based upon
13 her making the deposit.

14 MR. DEJONG: I'm sorry, Your Honor. Didn't
15 mean to interrupt you. It was a two fold objection.
16 Are you going to allow all of them in that she has
17 proffered?

18 THE COURT: You were asking for the 23rd. Is
19 that the one you were asking about?

20 MS. HAMAKER: The 23rd through the night of
21 the robbery which was the 27th as to Mr. Dejong's
22 argument that she isn't the records keeper.

23 THE COURT: How about the other dates?

24 Q. Ms. Mabe, after the 27th, when was the next time --
25 I'm sorry, after the 23rd, the money was taken to the

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1 bank on the 23rd, was there any other trips to the bank
2 with the money in the store before the night of the
3 burglary?

4 A. No. We usually -- was on Tuesday and Fridays was
5 our usual dates to go to the bank.

6 Q. Tuesday and Friday?

7 A. Yes.

8 Q. Do you know if the day of the burglary, which was
9 the 27th, do you know if a trip had been made to the
10 bank?

11 A. No. I'm sorry, on Wednesdays and Fridays was our
12 deposit dates. This also includes the lottery take-ins
13 that was never mentioned. This -- that's what the
14 bottom of these sheets are, is where we kept up with the
15 lottery money that was taken in.

16 Q. Yes, ma'am.

17 MS. HAMAKER: Your Honor, that establishes
18 that that money was in the store at the time of the
19 burglary.

20 THE COURT: Anything else, Mr. DeJong?

21 MR. DEJONG: Nothing than what I've already
22 argued to the Court as to who actually made the record,
23 Your Honor.

24 THE COURT: I overrule the objection. I'll
25 allow you to cross examine her on that. But I'll allow

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1 the exhibit into evidence over your objection. Exhibit
2 50 is admitted.

3 (WHEREUPON, State Exhibit Number 50 was admitted
4 into evidence.)

5 Q. All right, Ms. Mabe. I'm going to take those from
6 you real quick and I'm just going to put them on the
7 big screen so the jury knows what you're talking about.

8 A. Okay.

9 Q. All right. Ms. Mabe, is this the amount -- is this
10 sheet for the day's business on January 23rd, 2009?

11 A. Yes.

12 Q. Is that the amount of cash that was in the store?

13 A. Yes.

14 Q. And how much is that?

15 A. Fourteen ninety-three.

16 Q. One thousand four hundred dollars and ninety-three
17 cents?

18 A. Yes.

19 Q. And what day was that, the 23rd?

20 A. Yes.

21 Q. What day of the week?

22 A. Friday.

23 Q. What about this sheet, what's the date on it?

24 A. Saturday. And I was not at the store that day. I
25 did not work that day.

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- 1 Q. Okay. And the actual date, January ...
- 2 A. The 24th, '09.
- 3 Q. And how much money was left in the store that day?
- 4 A. Seven hundred and fifty-three dollars.
- 5 Q. And what's the date on this?
- 6 A. January 26th, '09, Monday.
- 7 Q. And how much money was left in the store?
- 8 A. Is that a one or a six?
- 9 Q. I can zoom in for you a little bit.
- 10 A. Okay. That's a thousand six hundred and twenty-two
- 11 dollars and ninety-eight cents.
- 12 Q. What about the amount of the cash?
- 13 A. Oh, a thousand and eighty.
- 14 Q. What about this day, what day is that?
- 15 A. The 27th of '09, January 27th, '09, and there was
- 16 eight hundred and twenty-five dollars in cash.
- 17 Q. And that would be the day of the burglary?
- 18 A. Yes.
- 19 Q. Ms. Mabe, besides this amount of money, was there
- 20 any other missing money or items from the store?
- 21 A. I believe the checks that we had taken in for
- 22 cigarettes, they were also missing. And ...
- 23 Q. Okay. Any of your personal items stolen?
- 24 A. I had, I believe, approximately a hundred and
- 25 fifty-four, fifty-five, maybe fifty-four dollars in

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1 change in -- of my own personal money, because the
2 office had to stay locked when the manager was gone, you
3 know, I was by myself. So I kept change there, when I
4 ran out of change in the cash register, I could replace
5 it with my own money.

6 Q. All right, Ms. Mabe. I'm going to show you some
7 pictures. If you know what it is, that's great. If you
8 don't know what it is, that's okay too, but if you'll
9 help explain it to the jury. Ms. Mabe, is this picture
10 belonging to the Tobacco Warehouse?

11 A. Yes. That's in the office.

12 Q. And what's this?

13 A. That is the little cabinet that Han Raj kept all
14 the paperwork, our daily reports and the money in that
15 cabinet.

16 Q. Was anything missing from here?

17 A. Well, I don't know if that was ...

18 Q. Ms. Mabe, if you'll speak a little bit louder for
19 us.

20 A. Okay.

21 Q. Thanks. What about State's Exhibit Number 7, top
22 portion, do you recognize this?

23 A. Yes.

24 Q. What is it?

25 A. That is one of the drawers out of the cabinet.

1 Q. Is that the correct cabinet that you're referring
2 to?

3 A. Yes.

4 Q. And whose change is that, yours or the store's?

5 A. I don't -- I couldn't say. I'm not ...

6 Q. Is that the Tobacco Warehouse?

7 A. Yes.

8 Q. And what's this thing hanging down there?

9 A. That is either a telephone -- I believe that's the
10 monitoring system wire or the telephone wire, one.

11 Q. Say it again for me Ms. Mabe.

12 A. Pardon?

13 Q. What did you say?

14 A. I think it's either the telephone wire or the alarm
15 system wire.

16 Q. Is that your store?

17 A. Yes.

18 Q. What's, what's it a picture of?

19 A. It's all the cigarettes on -- and everything on the
20 floor and that is -- I think that's the -- yeah, that's
21 the office, I think. Yes, it is. That's the office and
22 the one below is the office area. Yeah, that's the
23 office.

24 Q. What's that?

25 A. That's the safe.

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1 Q. Is that where the money you spoke about was kept?

2 A. In the bottom of the safe is where my money was at.

3 Q. Okay. Exhibit Number 5. Did these rubber gloves
4 belong to Tobacco Warehouse?

5 A. No.

6 Q. Do you know if any merchandise was taken?

7 A. I had just filled up what they call the dip racks
8 and those -- most of those were empty and Han said he
9 did not sell them.

10 MR. DEJONG: Objection to what Han said, Your
11 Honor.

12 THE COURT: I sustain the objection.

13 Q. Thank you, Ms. Mabe.

14 THE COURT: You may cross examine the witness,
15 Mr. DeJong.

16 MR. DEJONG: Thank you, Your Honor. May it
17 please The Court.

18 CROSS EXAMINATION

19 BY MR. DEJONG:

20 Q. So you got a call from someone at one thirty in the
21 morning on January the 28th. Is that correct, Ms. Mabe?

22 A. Yes.

23 Q. Okay. Now as a result of that phone call did you
24 do anything right then at one thirty?

25 A. No.

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1 Q. You just stayed home?

2 A. Yes.

3 Q. All right. Now you did not go to Tobacco Warehouse
4 until eight o'clock the next morning?

5 A. That is correct.

6 Q. And when you got to Tobacco Warehouse at eight
7 o'clock the next morning, were there any police officers
8 there?

9 A. Not that I know of. The people were there to get
10 into the building to survey the damage.

11 Q. Did you go in the front door?

12 A. Yes.

13 Q. Do you know what the condition of the back door was
14 when you got there that morning?

15 A. I didn't immediately go to the back door.

16 Q. So when you got there on the morning of January the
17 28th you don't know when you got there whether the back
18 door was locked, unlocked, open, or whatever?

19 A. No, sir. I don't.

20 Q. All right. And the -- let me ask you this. On
21 the night of January the 26th of 2009, who closed the
22 store?

23 A. Han closed it.

24 Q. Okay. But you say you worked there part-time
25 right?

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1 A. At that time, yes, sir.

2 Q. Okay. And when you say you worked part-time can
3 you tell us a little bit more about what you mean that
4 you worked part-time.

5 A. Well, when I first started working there, I worked
6 from around -- well, I got -- I worked two weeks full-
7 time when I first started. That was so he could have
8 his eye operated on. Then I worked from eleven till
9 two. And then he had me start opening in the morning,
10 usually from eight till eleven and sometimes from eight
11 till twelve. And if, you know, if he had business to
12 take care of I worked longer.

13 Q. Okay. So on January the 26th of 2009, do you
14 remember what your hours were?

15 A. Probably from eight till eleven or twelve.

16 Q. You say eight till eleven, is that eight in the
17 morning till eleven in the morning?

18 A. Yes, sir.

19 Q. So somebody else would have been there the rest of
20 the day?

21 A. Yes, sir, Han would.

22 Q. Who, if you know, Ms. Mabe, actually owns Tobacco
23 Warehouse? The business?

24 A. Owns the business?

25 Q. Yes, ma'am.

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- 1 A. Nardev Sihgn.
- 2 Q. Okay. And did he work there at all?
- 3 A. He does now, some, part-time.
- 4 Q. Back then, January the ---
- 5 A. No. He did not.
- 6 Q. All right. So there were motion detectors in that
- 7 store, there was an alarm system and there was a video
- 8 camera?
- 9 A. Yes, sir.
- 10 Q. Now, when you went in on January the 28th, you
- 11 said, I believe, that the telephones didn't work; right?
- 12 A. No, sir. The wires had been cut.
- 13 Q. All right. Did you check the video equipment?
- 14 A. No, sir. I didn't.
- 15 Q. All right. To your knowledge on the 26th when you
- 16 were there at the store was the video equipment working?
- 17 A. To my knowledge, yes.
- 18 Q. And when you closed the store, would, would you --
- 19 well, let me ask that question differently. To your
- 20 knowledge do the video cameras run twenty-four hours a
- 21 day?
- 22 A. Yes, sir.
- 23 Q. And do you know how long the video or the tape was
- 24 in there before it started printing over itself? That
- 25 question's not very clear, so if you don't understand

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1 I'll try to ask it differently; okay?

2 A. I don't know how many hours the tape would go
3 before it rewound and Han usually changed the tapes
4 every morning. And -- but if it didn't get changed, if
5 he forgot or whatever, it would rewind and re-record.

6 Q. Okay. Did Han come in on the 28th? On January the
7 28th of '09, did Han come in?

8 A. Yes.

9 Q. What time did he get there?

10 A. It was about eleven, eleven -- between eleven and
11 twelve, I believe.

12 Q. Eleven in the morning and noon time; right?

13 A. Yes.

14 Q. Okay. Now, when you were there on the morning of
15 the 28th, Ms. Mabe, did you have any contact with any
16 police officers at all?

17 A. Only, I believe, Lieutenant Byers.

18 Q. All right. While you were there, to your
19 knowledge, were any video tapes recovered?

20 A. Not to my knowledge.

21 Q. All right. You said when Han came in he usually
22 changed the tapes; is that correct?

23 A. He usually changed them at night before he left.

24 Q. All right, ma'am. So that I am clear, let's say
25 there would have been a tape for January, part of

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1 January the 25th and part of January the 26th, and then
2 he would have come in and he would have changed the
3 tape, put a new tape in but kept that tape for some
4 period of time. Would that be correct?

5 A. Yes.

6 Q. All right. All right, ma'am. Now, were you the
7 bookkeeper for Tobacco Warehouse, Ms. Mabe?

8 A. No, sir.

9 Q. To your knowledge was there a bookkeeper?

10 A. I think the records are turned over monthly to a
11 CPA.

12 Q. All right. And to your knowledge other than these
13 daily reports that have been submitted -- well, let me
14 ask that question differently. To your knowledge did an
15 accountant ever come in to audit the records of Tobacco
16 Warehouse after this incident?

17 A. I'm not sure. They didn't come while I was there.

18 Q. All right, ma'am. And kind of in the same line,
19 after January the 27th of 2009, did you ever inventory
20 the merchandise in Tobacco Warehouse?

21 A. I didn't.

22 Q. All right, ma'am. Well, at any time you worked
23 there was the merchandise ever inventoried?

24 A. Yes, sir.

25 Q. How long before this particular -- before January

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1 the 27th?

2 A. I'm not sure.

3 Q. All right. Now did Han make bank deposits?

4 A. Occasionally he did.

5 Q. All right. And so you didn't -- you left Tobacco
6 Warehouse about eleven o'clock in the morning on January
7 the 27th; correct?

8 A. Yes, sir.

9 Q. All right. So if Han had made a deposit in the
10 afternoon of the 26th, you wouldn't know it; would you?

11 A. No, sir. But he couldn't leave the store
12 unattended to go make a bank deposit. It was just he
13 and I, employees.

14 Q. All right. But the question remains -- I
15 understand what you're saying. I'm not trying to be
16 harsh with you. But the question remains, you wouldn't
17 know if he had made ---

18 A. No, I wouldn't.

19 Q. All right. When you got there on the morning of
20 January the 28th, was the safe open or closed?

21 A. The top part of the safe never got opened. They
22 didn't know the combination to it.

23 Q. I see.

24 A. I'm sorry to say that, but it's true.

25 Q. I see.

1 A. The bottom part had keys and the keys were left in
2 it at all times.

3 Q. Twenty-four hours a day?

4 A. Twenty-four hours a day. That's where my money was
5 at. The other money was all kept in the office.

6 Q. Okay. So there was a safe there but it was never
7 used, is that what you're telling us?

8 A. It is now.

9 Q. At that point in time? Was it used at that point
10 in time?

11 A. No. It was not.

12 Q. Thank you so much, Ms. Mabe.

13 MR. DEJONG: No objection to this witness
14 being excused if Ms. Hamaker's through with her, Your
15 Honor.

16 THE COURT: Any redirect?

17 MS. HAMAKER: No, sir, Your Honor.

18 THE COURT: Thank you. You may be excused.
19 Thank you, ma'am, for coming. You may call your next
20 witness.

21 MS. HAMAKER: Louise Gravely.

22 MISTER CLERK: Place your left hand on the
23 bible and raise your right hand. Do you solemnly swear
24 or affirm the testimony you're about to give in this
25 case to be the truth, the whole truth and nothing but

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1 the truth, so help you God?

2 MS. GRAVELY: I do.

3 MISTER CLERK: If you would have a seat and
4 state your name for the record.

5 MS. GRAVELY: I'm Louise Gravely.

6 LOUISE GRAVELY,

7 BEING DULY SWORN, TESTIFIED AS FOLLOWS:

8 DIRECT EXAMINATION

9 BY MS. HAMAKER:

10 Q. Ms. Gravely, where are you from?

11 A. Pickens.

12 Q. How long have you been in Pickens?

13 A. Fifty-three years.

14 Q. How did you become involved in this whole
15 incident?

16 A. I own the building.

17 Q. The whole strip mall?

18 A. Yes.

19 Q. And did you happen to go by and look at all the
20 damage?

21 A. No.

22 Q. You didn't see the damage?

23 A. No.

24 Q. Did you ever send anyone out to repair the damage?

25 A. Oh, yes.

1 Q. And did you keep any records of the cost it was to
2 repair it?

3 A. I did.

4 Q. Ms. Gravely, I'm going to show you State's Exhibit
5 Number 22, 23, 24, 25 and 26. Are those the receipts
6 and the records you kept on the damages?

7 A. They are.

8 Q. And you record them in your, I'm sorry, normal
9 course of business?

10 A. Yes.

11 Q. I'll take these back from you. Thank you.

12 MS. HAMAKER: Your Honor, at this time, the
13 State would like to enter into exhibit -- or I'm sorry,
14 into evidence State's Exhibit Number 22, 23, 24, 25, and
15 26.

16 MR. DEJONG: Without objection, Your Honor.

17 THE COURT: Without objection, Exhibits 22
18 through 26 are into evidence.

19 (WHEREUPON, State Exhibit Numbers 22 through 26
20 were admitted into evidence.)

21 Q. Ms. Gravely, is this one of your receipts?

22 A. Yes. It is.

23 Q. And what's the cost on it? What does this sheet
24 show?

25 A. Looks like a receipt for a lock from Bivens

- 1 Hardware, a deadbolt.
- 2 Q. And how much did it cost you?
- 3 A. Eleven dollars and thirty-five cents. That's labor
- 4 performed by Terry Mack for the -- installing the lock.
- 5 Q. Okay. If you could just speak a little louder
- 6 because there's that ---
- 7 A. Okay. All right.
- 8 Q. -- fan back there. What -- say it again.
- 9 A. That was from labor.
- 10 Q. And how much did that cost you?
- 11 A. Forty-eight dollars and six cents.
- 12 Q. And State's Exhibit Number 26, can you tell the
- 13 jury what this is?
- 14 A. Yeah. That's labor from Mack's Maintenance. I
- 15 can't really see which ---
- 16 Q. I'll zoom in.
- 17 A. Just labor for repairing the lock.
- 18 Q. Now, is this your handwriting?
- 19 A. Yes.
- 20 Q. And how much did that cost you?
- 21 A. Forty dollars.
- 22 Q. Do you know what that extra five dollars was added
- 23 on for?
- 24 A. Yeah. He charged me that for extra expense of
- 25 maintenance on his truck.

- 1 Q. What about this, what's this for?
- 2 A. I can't read it. Replacing the door.
- 3 Q. Is that for labor or parts?
- 4 A. It'd be for -- I really can't read it.
- 5 Q. Okay. I'll bring it close to -- closer to ---
- 6 A. I'm sorry. Replace back door and repair wall and
- 7 repair bathroom in Unit 4 in Azalea Plaza, seven hundred
- 8 dollars.
- 9 Q. Thank you. Is Azalea Plaza the name of the ---
- 10 A. Yes.
- 11 Q. -- strip mall? Well, I'm just not going to put
- 12 this up here. I'll just show it to you. And what's
- 13 that a receipt for?
- 14 A. That's a receipt for purchasing the steel door to
- 15 replace the torn up one.
- 16 Q. And how much did that cost you?
- 17 A. Two hundred and thirty-five dollars and sixty-two
- 18 cents.
- 19 Q. I'm just going to show it to the jury. This is the
- 20 receipt for replacing the door?
- 21 A. Uh-huh (affirmative).
- 22 MS. HAMAKER: Your Honor, that's all the State
- 23 has for this witness.
- 24 THE COURT: You may cross examine the witness,
- 25 Mr. DeJong.

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1 MR. DEJONG: Thank you, Your Honor. May it
2 please the Court.

3 CROSS EXAMINATION

4 BY MR. DEJONG:

5 Q. Ms. Mabe, how many units totally are in that ---

6 A. Four.

7 Q. Four?

8 A. Uh-huh (affirmative).

9 Q. All right. And you designate each unit by number?

10 Like Unit 1, 2, 3, and 4.

11 A. Yes.

12 Q. How were the units, how were the units numbered?

13 A. It would be 3 and 4.

14 Q. 3 and 4. Well, I'm a little confused because I'm

15 looking at what has been entered as State's Exhibit

16 Number 26. And let me show it to you so you can look at

17 it. That says that was to repair Unit 2; does it not?

18 A. Well, sometimes you start ... I didn't put those

19 numbers there.

20 Q. All right. So ---

21 A. I just know what I spent for repairing the walls

22 and the door.

23 Q. Okay. You had to do maintenance on those units

24 fairly routinely; didn't you?

25 A. Not too much.

- 1 Q. Well, let me ask you this ---
- 2 A. But yeah, I did routine repairs.
- 3 Q. Yeah. Did Mack's Maintenance do all those repairs?
- 4 A. He did on this.
- 5 Q. Okay. Did he normally do all your repairs?
- 6 A. Not all of them. I have a plumber, electrician.
- 7 Q. Okay. You said these two would be Units 3 and 4;
- 8 right?
- 9 A. Well, that's what I thought ---
- 10 Q. Pardon me?
- 11 A. Well, that's what I thought they were. Sometimes
- 12 we start 1 on one end or the other.
- 13 Q. All right. Well, I'm looking here at what's been
- 14 ---
- 15 A. They're not posted.
- 16 Q. -- marked as State's Exhibit Number 25 and that one
- 17 was to replace a back door; is that correct?
- 18 A. Yeah. This was labor and all.
- 19 Q. I'm sorry. I did not mean to interrupt you, ma'am.
- 20 A. It is to replace the back door and repair the
- 21 bathroom unit of the other one, for purchasing the steel
- 22 door.
- 23 Q. All right. Now did that include the materials?
- 24 A. It did not include the steel door.
- 25 Q. All right. So what you're saying is you replaced

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1 one door?

2 A. Uh-huh (affirmative).

3 Q. Let's forget unit numbers for a minute.

4 A. Yeah. I guess so.

5 Q. To your knowledge was that on the business then
6 known as Local Check Cashing or Tobacco Warehouse?

7 A. Local Cashing.

8 MR. DEJONG: One moment, please, Your Honor.

9 Q. I thank you so much, Ms. Gravely.

10 THE COURT: Anything in redirect?

11 MS. HAMAKER: No, sir, Your Honor.

12 THE COURT: Thank you, Ms. Gravely. You may
13 be excused without objection.

14 MR. DEJONG: Without objection.

15 THE COURT: Mr. Foreman, ladies and gentlemen,
16 we might ought to take a short break at this time. I'll
17 let you go back to your jury room. I remind you again
18 not to discuss the case. We'll call you back in about
19 ten minutes. We'll take a short break and be ready to
20 proceed with the next witness.

21 (WHEREUPON, the jury exited the open court at
22 approximately 3:44 p.m.)

23 THE COURT: All right. We'll take about a ten
24 minute break. Be ready to proceed with the next
25 witness.

1 Again scheduling-wise, do you expect to get a
2 couple more witnesses in today or -- how many more
3 witnesses would you say you have? Four?

4 MS. HAMAKER: Let me check, Your Honor. Five,
5 Your Honor. I hope to get the two witnesses who
6 traveled from Laurens in today.

7 THE COURT: Okay. All right. Two from
8 Laurens?

9 MS. HAMAKER: Yes, sir, Your Honor.

10 THE COURT: Okay. And then you'd have three
11 more?

12 MS. HAMAKER: Yes, sir, Your Honor.

13 THE COURT: I'm trying to decide what to tell
14 the jury about whether we'll start another case tomorrow
15 afternoon.

16 MR. DEJONG: May we approach, Your Honor?

17 (WHEREUPON, Ms. Hamaker and Mr. DeJong approached
18 the bar.)

19 (WHEREUPON, the Court stood at recess for a short
20 break.)

21 THE COURT: If the jury's ready, Mr. Duncan,
22 then have them come in.

23 (WHEREUPON, the jury entered the open court at
24 approximately 4:17 p.m.)

25 THE COURT: Thank you, ladies and gentlemen.

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1 We are now ready to proceed after taking care of some
2 other administrative duties. We apologize for keeping
3 you waiting. You may call your next witness.

4 MS. HAMAKER: The State would call Tisha Brown
5 to the witness stand.

6 MISTER CLERK: Place your left hand on the
7 bible and raise your right hand. Do you solemnly swear
8 or affirm the testimony you're about to give in this
9 case to be the truth, the whole truth and nothing but
10 the truth, so help you God?

11 MS. BROWN: Yes, sir.

12 MISTER CLERK: If you would have a seat and
13 state your name for the record, please.

14 MS. BROWN: Tisha Brown.

15 MISTER CLERK: Sit close to the microphone,
16 please.

17 TISHA BROWN,

18 BEING DULY SWORN, TESTIFIED AS FOLLOWS:

19 DIRECT EXAMINATION

20 BY MS. HAMAKER:

21 Q. Ms. Brown, the courtroom has a fan up here and Mr.
22 DeJong's been having a hard time hearing today, so just
23 make sure you speak loud into the microphone, okay? Is
24 this your first time being in a courtroom?

25 A. Yes, ma'am.

The State -vs- Reginald Nance (2010-GS-39-354, 355, 356, 357, 358 and 360)
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- 1 Q. You ever testified before?
- 2 A. No, ma'am.
- 3 Q. Feeling a little nervous?
- 4 A. Yes, ma'am.
- 5 Q. Well, let's just start off with some basic
- 6 questions about yourself. Where do you currently live,
- 7 what's the street address?
- 8 A. [REDACTED] Laurens, South Carolina.
- 9 Q. How long have you lived there?
- 10 A. Maybe a year, year and a half.
- 11 Q. On January 27th of 2009, where did you live?
- 12 A. [REDACTED] [REDACTED]
- 13 Q. Are both of these addresses in Laurens County?
- 14 A. Yes, ma'am.
- 15 Q. How long did you live at [REDACTED] past the
- 16 date of the incident?
- 17 A. Four and a half months.
- 18 Q. So when did you move out?
- 19 A. The end of May, the beginning of June.
- 20 Q. Where did you move after that?
- 21 A. I stayed at [REDACTED] Laurens.
- 22 Q. When did you move from that?
- 23 A. Within that month.
- 24 Q. So within June of '09?
- 25 A. Yes, ma'am.

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- 1 Q. And where did you go after that?
- 2 A. [REDACTED]
- 3 Q. And that's where you presently reside?
- 4 A. Yes, ma'am.
- 5 Q. How old are you?
- 6 A. Twenty-five.
- 7 Q. So how old would you have been at the time of the
- 8 incident?
- 9 A. Twenty-four.
- 10 Q. Are you working right now?
- 11 A. Yes, ma'am.
- 12 Q. Where do you work?
- 13 A. I do private sitting.
- 14 Q. Say that again.
- 15 A. Private sitting.
- 16 Q. Like babysitting?
- 17 A. But for the elderly, yes, ma'am.
- 18 Q. Well, I guess that would be adults. I apologize
- 19 about that. Do you know a Reginald Nance?
- 20 A. Yes, ma'am.
- 21 Q. Is he in the courtroom?
- 22 A. Yes, ma'am.
- 23 Q. Can you point to him?
- 24 A. (Indicating.)
- 25 MS. HAMAKER: Let the record reflect that

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- 1 she's pointing at the defendant.
- 2 Q. Do you know how old he is, around?
- 3 A. Forty something.
- 4 Q. Older than you?
- 5 A. Yes, ma'am.
- 6 Q. How do you know him?
- 7 A. I used to date him.
- 8 Q. Back around the time of this incident did you date
- 9 him?
- 10 A. Yes, ma'am.
- 11 Q. How did you meet?
- 12 A. At work.
- 13 Q. How long had y'all been dating before this
- 14 incident?
- 15 A. A few months.
- 16 Q. Like two months or more like six months?
- 17 A. Not quite six.
- 18 Q. Almost six?
- 19 A. Maybe three.
- 20 Q. Three months?
- 21 A. Maybe.
- 22 Q. Do you have any children?
- 23 A. Yes, ma'am.
- 24 Q. And how old?
- 25 A. She's seven.

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- 1 Q. And what's her name?
- 2 A. Jenia.
- 3 Q. Her father, is he in the scene anymore?
- 4 A. No, ma'am.
- 5 Q. Back on the date of the incident, was he in the
- 6 scene?
- 7 A. No, ma'am.
- 8 Q. Are you your daughter's sole care giver and
- 9 provider?
- 10 A. Yes, ma'am.
- 11 Q. You're doing it on your own?
- 12 A. Yes, ma'am.
- 13 Q. You said you met Mr. Nance at work?
- 14 A. Yes, ma'am.
- 15 Q. And y'all developed a relationship?
- 16 A. Yes, ma'am.
- 17 Q. Do you know a gentleman by the name of Johnny
- 18 Parks?
- 19 A. Heard of him.
- 20 Q. Did you ever meet him?
- 21 A. No, ma'am.
- 22 Q. Have you ever spoken with him?
- 23 A. No, ma'am.
- 24 Q. Any communications with him?
- 25 A. No, ma'am.

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- 1 Q. Before or after the incident?
- 2 A. No, ma'am.
- 3 Q. Has he ever been to your house?
- 4 A. Not to my knowledge.
- 5 Q. How did you hear of his name?
- 6 A. Through Reginald.
- 7 Q. Did he talk about Johnny ever, Johnny Parks, or how
- 8 did you hear that name through Reginald?
- 9 A. I just knew that that was his friend.
- 10 Q. How did you know they were friends?
- 11 A. I just heard him on the phone with him.
- 12 Q. Did they talk often?
- 13 A. Now I couldn't tell you that. I mean I -- I'm not
- 14 sure.
- 15 Q. Okay. On January 27th of 2009, were you with
- 16 Reginald that day?
- 17 A. I don't know. I mean ---
- 18 Q. The night that this incident happened, the day
- 19 before, did you ever report a vehicle missing?
- 20 A. Yes, ma'am.
- 21 Q. What was the date on that?
- 22 A. I can't remember the exact date.
- 23 Q. Okay. Did you ever go with Mr. Nance to go buy a
- 24 vehicle?
- 25 A. Yes, ma'am.

The State -vs- Reginald Nance (2010-GS-39-354, 355, 356, 357, 358 and 360)
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1 Q. Was that around January of 2009?

2 A. Yes, ma'am.

3 Q. And you went with him to buy the vehicle?

4 A. Yes, ma'am.

5 Q. Do you remember the name of the place you bought
6 the vehicle from?

7 A. No, ma'am.

8 Q. Do you remember where the location was?

9 A. In Greenville.

10 Q. Are you familiar with the Greenville area?

11 A. A little bit.

12 Q. Do you know -- remember the name of the road it was
13 on?

14 A. No, ma'am.

15 Q. And how did y'all get over to the car dealership?

16 A. In his car.

17 Q. And what kind of car does he drive?

18 A. A Land Rover.

19 Q. Dark or light in color?

20 A. Dark.

21 Q. Did he drive or did you drive?

22 A. He did.

23 Q. Does he usually drive?

24 A. Yes, ma'am.

25 Q. Did you ever drive his vehicle?

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- 1 A. Sometime.
- 2 Q. How often?
- 3 A. In spells.
- 4 Q. Okay. The vehicle that he purchased that day, can
- 5 you remember what it looked like?
- 6 A. It was -- I think it was like a Ford Taurus or
- 7 something like that.
- 8 Q. What color?
- 9 A. I want to say blue, if I'm not mistaken.
- 10 Q. This is State's Exhibit Number 1. They're going to
- 11 turn the lights down a little bit for you so you can see
- 12 it better. Is that the vehicle?
- 13 A. Yes, ma'am.
- 14 Q. The microphone kind of got in your way there. Does
- 15 that -- did you ever see this before?
- 16 A. Yes, ma'am.
- 17 Q. Where did you see that?
- 18 A. On that car.
- 19 Q. Will you talk a little louder.
- 20 A. On the car. That's the tag. That's the dealership
- 21 tag.
- 22 Q. Is -- did you see anybody put that tag on the
- 23 vehicle?
- 24 A. The man at the place, I'm assuming, did it.
- 25 Q. Is that the vehicle he purchased that day?

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1 A. Yes, ma'am.

2 Q. Do you have any idea how much he paid for it?

3 A. No, ma'am.

4 Q. Do you know if he paid with cash, credit card,
5 check?

6 A. No, ma'am.

7 Q. Who did he buy the vehicle for?

8 A. Me.

9 Q. He bought it for you?

10 A. Yes, ma'am.

11 Q. Did he tell you it was for you?

12 A. Yes, ma'am.

13 Q. Did he ever buy you any other gifts?

14 A. No, ma'am.

15 Q. Just the vehicle?

16 A. Yes, ma'am.

17 Q. Would you consider that a big gift or a small gift?

18 A. A big gift.

19 Q. Why did he buy it for you?

20 A. Because I didn't have a car.

21 Q. Who drove the new car home?

22 A. He did.

23 Q. What did you drive home?

24 A. The Land Rover.

25 Q. Where did y'all go after you left the car lot?

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- 1 A. Back to my house.
- 2 Q. And that would be the -- can you tell me the
3 address again?
- 4 A. [REDACTED] [REDACTED]
- 5 Q. Laurens?
- 6 A. Yes, ma'am.
- 7 Q. Once you got to the house did Mr. Nance stay for
8 the remainder of the evening?
- 9 A. No, ma'am. He left.
- 10 Q. Where did he go?
- 11 A. He said he was going home.
- 12 Q. After he left your residence -- what time do you
13 think he left?
- 14 A. It was in the afternoon, around five or six maybe.
- 15 Q. Did he leave you with the new car?
- 16 A. Yes, ma'am.
- 17 Q. Did he leave you any keys?
- 18 A. I had, I had the key on my key chain.
- 19 Q. Do you know if that was the only set of keys to the
20 car?
- 21 A. I'm not sure. I didn't go on the inside when they
22 did the paperwork and stuff. I was outside.
- 23 Q. So did you only -- at that point in time did you
24 only know about the one set of keys?
- 25 A. Yes, ma'am.

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1 Q. On January 28th of 2009, did you report the vehicle
2 stolen?

3 A. Yes, ma'am.

4 Q. What time of day was that?

5 A. It was that morning.

6 Q. About what time? Do you remember?

7 A. No, ma'am.

8 Q. Did Mr. Nance ever ask for you to report the
9 vehicle stolen for him?

10 A. No, ma'am.

11 Q. He never asked you to do that?

12 A. No, ma'am.

13 Q. When was the last time you recall seeing the
14 vehicle before you reported it stolen?

15 A. The night before. Before I went to bed it was out
16 there.

17 Q. About what time did you go to bed?

18 A. Well, I went in the house maybe around eight
19 something, nine.

20 Q. And what time do you normally go to sleep?

21 A. I didn't come back out. I don't come back out like
22 that at night.

23 Q. Now, did Mr. Nance call you that evening, the
24 evening you bought the car?

25 A. Yes, ma'am. I had spoke with him.

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- 1 Q. You spoke with him?
- 2 A. Uh-huh (affirmative).
- 3 Q. What time?
- 4 A. I'm not sure.
- 5 Q. You spoke with him after he left your house?
- 6 A. Yes, ma'am.
- 7 Q. Phone to phone?
- 8 A. Yes, ma'am.
- 9 Q. You had words with him?
- 10 A. Yes, ma'am.
- 11 Q. Do you remember if it was light outside or dark
- 12 outside?
- 13 A. I'm not sure.
- 14 Q. Do you remember what you spoke about?
- 15 A. No, ma'am.
- 16 Q. Were you and Mr. Nance pretty close at this time?
- 17 A. Yes, ma'am.
- 18 Q. So it wasn't unusual -- or was it usual or unusual
- 19 for Mr. Nance to call you?
- 20 A. It was usual.
- 21 Q. How many times would you estimate that he would
- 22 call an evening?
- 23 A. We would call and text back and forth.
- 24 Q. Did you do that this evening?
- 25 A. We did.

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- 1 Q. How much?
- 2 A. I'm not sure how many times.
- 3 Q. Was it a usual thing, about ---
- 4 A. Yes, ma'am.
- 5 Q. -- maybe ten times, twenty times?
- 6 A. Text, yeah, I think we might -- I think -- I know
- 7 -- I think we spoke like once after he left, but we text
- 8 a few times.
- 9 Q. So you texted a few times back and forth. Do you
- 10 -- it's okay if you don't remember. You don't remember
- 11 the time that you went to bed?
- 12 A. No, ma'am.
- 13 Q. When you went in the house did you lock the
- 14 vehicle?
- 15 A. Yes, ma'am.
- 16 Q. But Mr. Nance drove the vehicle home?
- 17 A. Uh-huh (affirmative).
- 18 Q. What made you go out there and lock the vehicle?
- 19 A. I was just excited about it and went out there and
- 20 looked around in it.
- 21 Q. So you went and looked inside of it to see your new
- 22 car?
- 23 A. Yes, ma'am.
- 24 Q. Did you see anything inside of it?
- 25 A. No, ma'am.

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1 Q. Did you look in any of the compartments or

2 anything?

3 A. No, ma'am.

4 Q. Did you look in the trunk?

5 A. No, ma'am.

6 Q. Did you see anything in the center console area

7 that didn't come with the car?

8 A. No, ma'am.

9 Q. Are you sure you didn't see anything?

10 A. Yes, ma'am.

11 Q. You didn't see Mr. Nance's phone in there?

12 A. No, ma'am.

13 Q. Or his wallet?

14 A. No, ma'am.

15 Q. Did you attempt to contact Mr. Nance later on in

16 the night after you went to bed?

17 A. No, ma'am. Not once I went to sleep.

18 Q. You didn't wake up or call him or anything?

19 A. No, ma'am.

20 Q. Did Mr. Nance stay at your house overnight

21 sometimes?

22 A. Yes, ma'am.

23 Q. And when would he do that?

24 A. When I would be off.

25 Q. And did y'all still work together at this time?

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- 1 A. Yes, ma'am.
- 2 Q. So would he have to be off work as well for y'all
- 3 to -- for him to come and stay the night at your house?
- 4 A. Yes, ma'am.
- 5 Q. Do you know if he was off work that night?
- 6 A. I'm not sure.
- 7 Q. Did you have any missed calls from Mr. Nance that
- 8 evening?
- 9 A. No, ma'am.
- 10 Q. When did you get up the next morning?
- 11 A. When I got my baby up for school.
- 12 Q. About what time was that?
- 13 A. I think around six forty-five.
- 14 Q. What time does she get on the bus?
- 15 A. A little after seven.
- 16 Q. And when did you notice the car was missing?
- 17 A. When I got up to go across the hall to my
- 18 neighbor's house.
- 19 Q. What time was that around?
- 20 A. Might have been eight something, maybe nine
- 21 something. I'm not sure.
- 22 Q. Where is your daughter's bus stop located?
- 23 A. She had to go out our building and up.
- 24 Q. She would have been six at the time?
- 25 A. Yes, ma'am.

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1 Q. Was the bus stop along a busy road?

2 A. No, ma'am.

3 Q. Did you walk your daughter to the bus stop or did
4 she walk herself?

5 A. No, ma'am. It'd be her and her friends.

6 Q. Did you go outside with her?

7 A. No, ma'am.

8 Q. To see her off to school?

9 A. No, ma'am.

10 Q. What made you go outside around late eight, early
11 nine o'clock?

12 A. I was going across the hall to my neighbor's house.

13 Q. And you noticed the car was missing?

14 A. Yes, ma'am.

15 Q. What did you do?

16 A. I tried to call Antonio and text him, but I didn't
17 get no response, so I called 911.

18 Q. And you reported the car stolen?

19 A. Yes, ma'am.

20 Q. How many times did you try to call Mr. Nance or
21 text him?

22 A. I'm not sure.

23 Q. How long did you wait between discovering the car
24 was gone before calling 911?

25 A. Maybe about an hour, maybe. I'm not sure.

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1 Q. Did you notice any glass on the ground where the
2 car had been parked?

3 A. No, ma'am.

4 Q. Did you speak with a detective from the Pickens
5 County Sheriff's office?

6 A. Yes, ma'am.

7 Q. And who was that?

8 A. I don't remember their name. That one right there.

9 Q. Does he look familiar to you?

10 A. Yes, ma'am.

11 Q. Does the name Lieutenant Byers ring a bell?

12 A. Yes, ma'am.

13 Q. Is that who came out and spoke with you?

14 A. Yes, ma'am.

15 Q. Did you give Lieutenant Byers a cell phone number
16 for Reginald Nance?

17 A. I might have did. I'm not sure.

18 Q. What kind of phone did he have at that point in
19 time?

20 A. I'm not sure.

21 Q. Did you speak with the Laurens city police
22 officer?

23 A. Yes, ma'am.

24 Q. Is that who you reported the car stolen to?

25 A. Yes, ma'am.

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- 1 Q. Did he come out to your house?
- 2 A. Yes, ma'am.
- 3 Q. About what time, do you recall?
- 4 A. No, ma'am.
- 5 Q. Did you give him a written statement?
- 6 A. Yes, ma'am.
- 7 Q. Lieutenant Byers, did he come out to your house?
- 8 A. Yes, ma'am.
- 9 Q. And did you give him another written statement?
- 10 A. Yes, ma'am.
- 11 Q. Ms. Brown, I'm going to show you some items.
- 12 First of all, do you recognize this, State's Exhibit
- 13 Number 34?
- 14 A. That's his case.
- 15 Q. The defendant's case?
- 16 A. Yes, ma'am.
- 17 Q. Did he carry it around with him often or
- 18 sometimes?
- 19 A. Sometime.
- 20 Q. Did you see him with this that day y'all went to go
- 21 buy the car?
- 22 A. I'm not sure.
- 23 Q. Was this in the car when you went to go check out
- 24 your new vehicle?
- 25 A. No, ma'am.

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- 1 Q. Did you ever see Mr. Nance with a gun?
- 2 A. (Negative nod.)
- 3 Q. Do you know if he owned one?
- 4 A. No, ma'am.
- 5 Q. These came out of State's Exhibit Number 34 in the
- 6 folder. I'm going to show you some pictures. Actually
- 7 I'm going to show them to the jury. Will you help me
- 8 explain them to the jury? Who ---
- 9 A. That's me, me and Jenia.
- 10 Q. Your daughter?
- 11 A. Yes, ma'am.
- 12 Q. Do you remember when that picture was taken?
- 13 A. [REDACTED] on my niece birthday.
- 14 Q. [REDACTED]?
- 15 A. [REDACTED].
- 16 Q. Did you give Mr. Nance this photograph?
- 17 A. Yes, ma'am.
- 18 Q. What about that photograph?
- 19 A. That's Jenia.
- 20 Q. Did you give Mr. Nance this photograph?
- 21 A. Yes, ma'am.
- 22 Q. If you'll speak up a little bit. Well, that makes
- 23 it kind of blurry. I'm just going to show it to you.
- 24 Is Mr. Nance in that photograph?
- 25 A. Yes, ma'am.

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1 Q. Who is that?

2 A. Mr. Nance.

3 Q. Make sure to speak up just a tiny bit. It's --
4 you're facing me and the jury's behind there, it kind of
5 hurts a little bit.

6 MR. DEJONG: I'm going to ask Ms. Hamaker to
7 keep her voice up a little bit. She's got her back to
8 me and she's fading off.

9 MS. HAMAKER: We'll both keep our voices up,
10 Your Honor.

11 THE COURT: Make sure the jury and the court
12 reporter can hear everything, and the defendant's
13 counsel.

14 Q. Ms. Brown, who is in this photograph, who's the
15 gentleman?

16 A. Mr. Nance.

17 Q. Do you know any people in this photograph?

18 A. No, ma'am.

19 Q. What about that photograph?

20 A. Mr. Nance.

21 Q. Do you know the lady?

22 A. No, ma'am.

23 Q. Do you know either of those people?

24 A. No, ma'am.

25 Q. Have you ever met any of Mr. Nance's family or

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1 friends?

2 A. No, ma'am.

3 MS. HAMAKER: Beg the Court's indulgence.

4 MR. DEJONG: May we approach, Your Honor?

5 THE COURT: Yes.

6 (WHEREUPON, Ms. Hamaker and Mr. DeJong approached
7 the bar.)

8 Q. Do you recall either the Laurens City Police
9 Department or Detective Byers asking you to call them if
10 you ever came back in contact with Mr. Nance or if he
11 contacted you?

12 A. Yes, ma'am.

13 Q. Did you ever call, did you ever call Detective
14 Byers or the Laurens city police officer to let them
15 know if Mr. Nance had contacted you?

16 A. When I had got in touch with them, that's when they
17 told me he was locked up.

18 Q. So after this incident took place did Mr. Nance
19 ever contact you or you contact him?

20 A. Yes, ma'am.

21 Q. Did you ever call either officer to let them know
22 about that?

23 A. No. When I did talk to -- when I had called to
24 Pickens that's when they informed me that he was locked
25 up.

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1 Q. And after you were informed about that did Mr.

2 Nance ever contact you or you contact him?

3 A. He wrote me and I wrote him back.

4 Q. Any other contacts?

5 A. He would call sometime.

6 Q. Did you tell Detective Byers or the Laurens City

7 Police Department officer about this contact?

8 A. No, ma'am.

9 Q. You said you gave a statement to the Laurens City

10 Police Department officer that came out to see you?

11 A. Yes, ma'am.

12 Q. You said you didn't know how much Mr. Nance paid

13 for the car because they were in the office doing it and

14 you weren't there?

15 A. Yes, ma'am.

16 Q. Do you recall telling Lieutenant Byers that you

17 paid twenty-two hundred dollars for the vehicle?

18 A. I'm not sure.

19 Q. Do you recall in your statement to Lieutenant Byers

20 telling him that Mr. Nance didn't call or text and

21 that's not like him?

22 MR. DEJONG: May I suggest if she's going to

23 cross examine her from a statement let the witness have

24 a copy of the Statement.

25 THE COURT: Let her have a copy of it to

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1 refresh her memory to review. Again she doesn't need to
2 read it aloud. She can read it to herself.

3 Q. Did you have a chance to read it?

4 A. Yes, ma'am.

5 Q. Do you recall stating that to Lieutenant Byers?

6 A. Yes, ma'am.

7 Q. Just a little while ago did you say to the jury
8 that y'all had been exchanging texts and ---

9 A. I did.

10 Q. -- phone calls? Do you see -- do you remember
11 telling Lieutenant Byers that you called him around two
12 a.m. and he didn't answer?

13 A. Yes, ma'am.

14 Q. Is that different than what you said earlier?

15 A. Yes, ma'am.

16 Q. Do you recall telling Lieutenant Byers that Mr.
17 Nance called you at seven fifty on the 27th and that you
18 missed the call?

19 A. Yes, ma'am.

20 Q. Do you recall telling him, Mr. -- I'm sorry,
21 Lieutenant Byers that Mr. Nance, it's not like him to
22 not answer?

23 A. Yes, ma'am.

24 Q. Was Johnny Parks with you the day that you
25 purchased the vehicle?

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1 A. No, ma'am.

2 Q. And y'all never spoke before?

3 A. No, ma'am.

4 Q. Mr. Nance never asked you to call that car in
5 stolen?

6 A. No, ma'am.

7 Q. Did you or did you not write these letters to
8 Johnny Parks while he was in the Richland County
9 Detention Center?

10 A. Yes, ma'am.

11 Q. But you had no contact with Mr. Parks?

12 A. Them two -- I mean not no phone conversation.

13 Q. Did you or did you not say that you'd never had any
14 contact with Mr. Parks ever?

15 A. I did, but I was meaning in phone conversation.

16 Q. Is phone conversation -- are letters contact with
17 an individual?

18 A. Yes, ma'am.

19 MS. HAMAKER: I'm not intending to introduce
20 this right now, Your Honor.

21 Q. State's Exhibit Number 51, can you tell me the post
22 date on that letter?

23 A. February the 17th.

24 Q. What year?

25 A. 2000 and -- I'd say nine, it's wrote over. It's

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- 1 got ink wrote over on top of it.
- 2 Q. Do you recall when you wrote him that letter?
- 3 A. I don't know the exact day.
- 4 Q. Do you know the exact year?
- 5 A. It was 2009.
- 6 Q. Shortly after this incident?
- 7 A. Yes, ma'am.
- 8 Q. Can you tell me the date, the postmark date on that
- 9 letter?
- 10 A. April the 16th.
- 11 Q. Does it say a year?
- 12 A. 2009.
- 13 Q. Is your writing on the envelope, State's Exhibit
- 14 Number 51?
- 15 A. My writing?
- 16 Q. Speak up.
- 17 A. My writing?
- 18 Q. Yes, ma'am. The address to Johnny Parks.
- 19 A. I'm not understanding the question.
- 20 Q. Did you address that envelope?
- 21 A. Oh, yes, ma'am.
- 22 Q. State's Exhibit Number 52, did you address that
- 23 envelope?
- 24 A. Yes, ma'am.
- 25 Q. Does the writing appear to be the same or different

1 to you?

2 A. One wrote big and one wrote small.

3 Q. What was the purpose behind these letters to Mr.

4 Parks, a gentleman that you never met?

5 A. Antonio asked me to.

6 Q. Mr. Nance asked you to?

7 A. Yes, ma'am.

8 Q. Did he ask you to report the car stolen?

9 A. No, ma'am.

10 Q. What did you write in the first letter?

11 A. I can't remember.

12 Q. Besides Mr. Nance asking you to write these letters

13 -- what was the purpose behind Mr. Nance asking you to

14 write these letters? Did he convey that to you?

15 A. I guess he was just wanting to check on him.

16 Q. Okay. And can you tell me the general conversation

17 that you had with Mr. Parks when you wrote him -- them

18 -- wrote him these letters?

19 A. I can't remember.

20 MS. HAMAKER: Your Honor, at this time the

21 State would like to introduce State's Exhibit Number 51

22 and 52 into evidence.

23 MR. DEJONG: Your Honor, I have an objection

24 as to one, Your Honor.

25 THE COURT: All right. Let me look at the

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1 exhibits.

2 MR. DEJONG: I have to see it, which one is
3 marked how. I'm sorry. So can we get the contents
4 marked somehow so we know which letter goes into which
5 envelope with which exhibit number. May I have a
6 moment, please, Your Honor?

7 THE COURT: Yes, sir.

8 (WHEREUPON, State Exhibit Numbers 51, 51A, 52, 52A
9 were marked for identification.)

10 MR. DEJONG: May we now approach, Your Honor?

11 THE COURT: Yes, sir.

12 (WHEREUPON, Ms. Hamaker and Mr. DeJong approached
13 the bar.)

14 THE COURT: Mr. Foreman, ladies and gentlemen,
15 sometimes legal matters come up. I've told you before I
16 -- sometimes I have to hear matters that would not be
17 properly presented based on legal rulings. I need you
18 to go back to your jury room just briefly. We'll take
19 care of this matter and call you back in just a few
20 moments. Don't discuss the case.

21 (WHEREUPON, the jury exited the open court at
22 approximately 4:57 p.m.)

23 THE COURT: Mr. DeJong.

24 MR. DEJONG: Thank you, Your Honor. My first
25 objection to these letters, Your Honor, it's quite some

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1 time ago. I'm looking for my copy of the discovery
2 motion at this point in time. I moved the court -- I
3 mean I moved -- filed a motion for discovery under both
4 *Brady* and Rule 5 of the Criminal Rules of Criminal
5 Procedures in the State of South Carolina.

6 The State -- my letter dated March the 28th of 2010
7 provided me copies of these letters today. I filed for
8 discovery, Your Honor, on July the 8th of 2009. The
9 prejudice is, Your Honor, I am charged with representing
10 my client effectively. And realizing that Rule 5
11 requires the State the requirement to comply with Rule 5
12 is an ongoing -- there's an ongoing process that they're
13 supposed to -- evidence comes in and they're supposed to
14 give it to me.

15 I submit, Your Honor, that when we're in the middle
16 of a trial and I'm given evidence that the State plans
17 to use is in and of itself prejudicial. And often there
18 is the question that is asked, well, Mr. DeJong, how is
19 it prejudice to you? Well, it prejudices, Your Honor,
20 from the very outset in the defense of the case.

21 Obviously we devise a defense and we work on the
22 defense. And that in my opinion is part of that trying
23 to effectively represent our client. When this
24 discovery is dribbled to us -- and this is not the first
25 discovery I've gotten since this trial started. I

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1 didn't raise an objection to other things that I have
2 gotten. I had discovery given to me yesterday after we
3 struck the jury. And this discovery is dribbled to me
4 and I'm supposed to represent my client effectively and
5 the State is charged with providing discovery and then
6 they provide me discovery in the middle of the trial.

7 That is prejudicial, Your Honor, whatever it is.
8 And this to me is highly prejudicial. So my first
9 argument is as to the violation of Rule 5. With regard
10 to -- if you want to go ahead and hear my next argument.

11 THE COURT: Yes, sir, I'll hear you on the
12 others.

13 MR. DEJONG: That would be with regard to what
14 has been marked 51B, the State's Exhibit 51B. This
15 letter purports -- and I'll hand it up to you, Your
16 Honor, if you can bear with me just a minute. There's a
17 lot of hearsay from -- if Ms. Brown wrote this letter
18 there's hearsay in this letter of what somebody else
19 told her. That's number one.

20 Number two, there is a reference to being picked
21 out of a video. There is nothing in this case with
22 regard to anybody picking anybody out of a video.
23 Indeed, as far as we know, law enforcement never went to
24 get a video. So there's nothing about a video in here.
25 That's getting into prior bad acts which the State has

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1 assured me that they are not going to get into.

2 MS. HAMAKER: The State would agree to redact
3 that portion, Your Honor.

4 THE COURT: All right.

5 MR. DEJONG: And the rest of it, you know,
6 from, from about the -- from the part about keep your
7 head up, you can do all things through Christ who
8 strengthens you, put God first, I don't mind that. But
9 everything else above that I submit is either hearsay or
10 the solicitor going back on her word as to not getting
11 into prior bad acts.

12 THE COURT: Any other objections to this
13 letter, Mr. DeJong?

14 MR. DEJONG: Beg your pardon, Your Honor.

15 THE COURT: Any other objections to this
16 letter?

17 MR. DEJONG: Not to that one, Your Honor. I'm
18 still working on this one. I apologize to the Court.

19 THE COURT: Well, I'll give you a moment. All
20 right. Let me hear you on the other exhibit now, Mr.
21 DeJong.

22 MR. DEJONG: On Exhibit 51A, same thing on my
23 Rule 5 argument, Your Honor. But as to this, again I
24 would submit, Your Honor, that this is a -- this letter
25 is a situation where if I've got to cross examine on

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1 this letter or cross examine effectively, I have no
2 choice but to open the door to prior back acts. I don't
3 want to do that. I can't. This -- I'll be happy to
4 tender my client under oath on this. And his suggestion
5 is that if it deals with anything, that deals with a
6 charge that stemmed out of Richland County.

7 Now if I've got to subject this young lady to cross
8 examination, I've got to open that door on this level
9 and that puts me in an untenable position. Again it
10 puts me in a highly prejudicial position on the Rule 5
11 issue because now I don't know what I'm fighting here.
12 And I don't particularly feel like it should be
13 incumbent upon me to let that tiger out of the box.

14 THE COURT: Okay. Ms. Hamaker, be glad to
15 hear from you about the admissibility of these two
16 exhibits, 51A and 51B.

17 MS. HAMAKER: Your Honor, as far as Rule 5
18 violations or as far as admissibility of the evidence
19 themselves?

20 THE COURT: I need to hear about both.

21 MS. HAMAKER: Your Honor, as far as Rule 5
22 violation is concerned, the State was made aware Monday
23 by Johnny Parks, late that evening, that he had some
24 letters that Ms. Brown had sent to him. On Tuesday, the
25 State came to the office, decided to see what kind of

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1 Rule 5 issues were going to show up and pop up if the
2 State was required to give these documents over to the
3 defense.

4 At this point in time, the State was making the
5 decision whether they were going to put Ms. Brown on the
6 stand or hope that Mr. DeJong were to put Ms. Brown on
7 the stand. If Mr. DeJong put Ms. Brown on the stand
8 those documents would not be discoverable through Rule
9 5.

10 Yesterday evening after closing hours, after
11 sitting down and looking at the rule again and looking
12 at the case and making a strategic decision, the State
13 decided that they were in fact going to call Mrs. Brown.
14 I'm sorry, Ms. Brown. The State called Mr. Parks and
15 said, do you still have those letters? Let me back up.
16 On Monday Mr. Parks did not have letters on him when the
17 State was speaking with him. They were still locked in
18 his cell. Tuesday evening about nine thirty, the State
19 called Mr. Parks. Mr. Parks told the State, I have the
20 letters with me, because the State had previously
21 instructed dispatch to make sure the letters were on Mr.
22 Parks. The State asked Mr. Parks to read those
23 statements over the phone and to make sure to bring them
24 from Clemson to the courthouse when he was transported.

25 This morning the State received those letters. The

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1 State can't turn over things that they don't have. The
2 State turned those letters over to Mr. DeJong as soon as
3 the paperwork was done and there was a break.

4 THE COURT: All right. How about the other
5 issue?

6 MS. HAMAKER: As far as the other issue, Your
7 Honor, I apologize, I don't have copies of those.

8 THE COURT: I'm going to let you look at them
9 again.

10 MS. HAMAKER: Thank you. And before I read
11 them, Your Honor, Mr. DeJong's objection to hearsay
12 because the letters are based on what somebody else told
13 her to tell Mr. Parks is not hearsay. Any statement by
14 a party opponent is admissible and it's not hearsay.

15 THE COURT: What's the purpose of offering the
16 letters?

17 MS. HAMAKER: Your Honor, ---

18 THE COURT: Maybe I'm missing something here.

19 MS. HAMAKER: -- the relevancy behind it is
20 the State has asked this witness if Mr. Nance called her
21 or made contact with her and told her to report the car
22 stolen.

23 Mr. Parks is going to later testify that Mr. Nance
24 told Mr. Parks on the way back to Greenville that he was
25 going to have Ms. Brown call the car in stolen. These

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1 letters show a consistent pattern of behavior of Mr.
2 Nance trying to cover up evidence and cover up his
3 tracks and use Ms. Brown to do so.

4 THE COURT: What part of the letter -- find
5 me the part of the letter that does that. Either
6 letter. I've read them briefly and I may need to get
7 them back.

8 MS. HAMAKER: I was told to tell you to hold
9 on. At this point, I believe Mr. Nance knew that the
10 State was trying to have one or the other turn on the
11 other person. He said to get a transcript of the 911
12 call and compare it to the witness statement given that
13 night.

14 THE COURT: What witness statement would that
15 be?

16 MS. HAMAKER: Your Honor, I'm not sure which
17 witness statement Mr. Nance is talking about at this
18 present time.

19 THE COURT: That could very well be the
20 Richland County case that Mr. DeJong talks about.

21 MS. HAMAKER: Yes. It could be. If Mr. Nance
22 wants to ---

23 THE COURT: Well, I mean, the jury's out, he's
24 indicated that. I understand there might be some other
25 charges pending anyhow. That's been brought to me

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1 already.

2 MS. HAMAKER: Your Honor, it also shows
3 somewhat of Mr. Nance trying to make sure Mr. Parks
4 isn't going to turn on him. It says, he will handle
5 everything on that end and not to panic.

6 THE COURT: And who is he?

7 MS. HAMAKER: Y'all are good.

8 THE COURT: Who does the he ---

9 MS. HAMAKER: I have not had the opportunity
10 to ask the witness about that yet.

11 THE COURT: What other items in the letter ---

12 MS. HAMAKER: That's as far as ---

13 THE COURT: -- would relate to that theory of
14 a cover up?

15 MS. HAMAKER: As far as that letter, that's
16 over.

17 THE COURT: Is that the April letter or the
18 February letter?

19 MS. HAMAKER: Your Honor, that's Exhibit 51A
20 and that is the February letter.

21 THE COURT: All right. Tell me, ---

22 MS. HAMAKER: The April ---

23 THE COURT: -- tell me about the other one
24 now.

25 MS. HAMAKER: And also, Your Honor, the tone

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1 of voice she uses is that of an intimate friend. And
2 she just got done testifying that she never met with Mr.
3 Nance. In this letter, Dear Johnny, how are you doing?
4 Good, I hope. I talked with him and told him what's
5 going on with you. Going back and forth. You should
6 get some money. I was told to tell you that. I'm
7 sorry, I was told to tell you that your girlfriend, the
8 white girl, is against your favor. That can be
9 redacted, Your Honor. But the, you should get some
10 money, Mr. Parks is later going to testify that he ran
11 out of money in Richland. He did not have any money on
12 him and he didn't have any money for the canteen and he
13 had no one from the outside to send it to him and that
14 Mr. Nance provided it to him, again asking for favors,
15 trying to get Mr. Parks not to talk. Bribery if you
16 will.

17 THE COURT: Is that not extrinsic evidence?

18 MS. HAMAKER: Yes, Your Honor, it is extrinsic
19 evidence. But she was given the opportunity to explain
20 these letters and she's saying that she doesn't remember
21 anything about those letters. And now is the
22 opportunity to prove prior inconsistent ---

23 THE COURT: Have you -- has she had an
24 opportunity to review the letters now? Has she even
25 looked at the letter on the stand here?

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1 MS. HAMAKER: Not on the stand.

2 THE COURT: Okay.

3 MS. HAMAKER: She wrote them.

4 THE COURT: Okay. But ---

5 MS. HAMAKER: And she's denying knowing what
6 she wrote them about.

7 THE COURT: Well, you're going to have an
8 opportunity to examine her and certainly you can impeach
9 your own witness under the rules now. I'm having a
10 hard time understanding how the letters themselves need
11 to come into evidence. You -- you've marked the
12 envelopes. Obviously you've established that she's
13 written Mr. Parks when she said she didn't. But what --
14 what of the content of the letter relates to this
15 particular charge?

16 MS. HAMAKER: Your Honor, she told me -- I
17 said, so before when you said you contacted him, and now
18 you're saying -- you said you didn't contact him and now
19 you're saying you did contact him. And she said I
20 didn't contact him by phone.

21 THE COURT: I understand the impeachment. I'm
22 fully aware and I'm going to give you as much leeway as
23 you need on that if there has been contact. But the
24 content of the letters, how do they relate to the
25 charges pending today?

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1 MS. HAMAKER: She didn't completely admit to
2 her lying, Your Honor.

3 THE COURT: Okay. Well, I'll ---

4 MS. HAMAKER: And ---

5 THE COURT: -- let her read the letters. I'll
6 let you ask her questions about that, but to ---

7 MS. HAMAKER: But, Your ---

8 THE COURT: -- admit the letters themselves at
9 this stage, I don't see the relevance of those letters,
10 how they tie into this case.

11 MS. HAMAKER: Your Honor.

12 THE COURT: Yes.

13 MS. HAMAKER: If I may. She partially
14 admitted to telling the not truth. She said he didn't
15 -- I didn't count the telephone -- I didn't count the
16 letter as contact between us. If you also take her
17 testimony that she didn't know Mr. Parks, that they
18 were not friends, that she never met him, the tone of
19 these letters establishes that she has met him and Mr.
20 Parks is going to testify that she has met him. And the
21 key to my case is the credibility of Mr. Parks'
22 testimony. And she's giving contradictory testimony as
23 to that.

24 THE COURT: Okay. I'm going to allow you to
25 examine her on the letters as to how's it going. But

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1 the -- you know, that -- you can follow up with that,
2 that she did know or she has the familial relationship
3 that you -- but the, but the other content of the
4 letter, I see no relevance as to sending money or he --
5 and all that right now. You can certainly show that she
6 knew who that person was and she had communicated with
7 him and they had a familial relationship by either
8 letter. Do you object to that?

9 MR. DEJONG: Your Honor, if what she's trying
10 to establish is this witness had contact with Johnny
11 Parks, I'll withdraw my objection as to the envelopes.

12 MS. HAMAKER: It's also the way Mr. Nance is
13 trying to purposely deceive and cover up his tracks,
14 just like he did when he asked her to report the vehicle
15 stolen.

16 THE COURT: I'm not going to allow the letters
17 into evidence. I will allow the envelopes into
18 evidence. I will allow you to examine her in spite of
19 Rule 5 and I -- we haven't even addressed Rule 5. But
20 the innocuous matter of the introduction to the letters,
21 I will allow that. But hopefully you know how far --
22 the first two lines probably, I'll -- read me the letter
23 that you're holding in your hand.

24 MS. HAMAKER: Dear Johnny, how are you doing?
25 Good, I hope. I talked with him and told him what's

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1 going on with you. You should get some money.

2 THE COURT: Okay. Good, I hope. That ought
3 to be enough to show the familial relationship.

4 Nothing, ---

5 MS. HAMAKER: Can I ask her ---

6 THE COURT: -- nothing about money.

7 MS. HAMAKER: Will I be able to -- okay.

8 THE COURT: Nothing about money with her.

9 Obviously you'll have another witness. How about the
10 other letter. Do you want to read that one to me?

11 MS. HAMAKER: Your Honor, if I may, that same
12 letter, my number is ... and she writes her number.
13 Write me back and let me know what's up on your end and
14 about court. Keep your head up. You can do all things
15 ... I would like that in as well.

16 THE COURT: The last part, not the first part
17 of that letter then. Are you still on the first letter?

18 MS. HAMAKER: Yes, sir.

19 THE COURT: Okay. Any objection to that?

20 Tell her what the number was and that -- the religious
21 reference.

22 MR. DEJONG: My understanding is unclear. I'm
23 not arguing with Your Honor. I just want to be clear.

24 51B is going to be, how are you doing, good, I hope.

25 Everything else she is not going to talk about,

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1 understanding the letter is not coming in. Then
2 starting back up, my number, phone number, write me
3 back, let me know what's up on your end about court,
4 keep your head up, you can do all things through Christ
5 who strengthens you, put God first, Love, Tisha. I
6 don't have any objection to that.

7 MS. HAMAKER: Your Honor. Do you want me to
8 ---

9 MR. DEJONG: But I still have an objection to
10 the whole letter coming in.

11 THE COURT: Yeah, right. Well, the letter's
12 not coming in ---

13 MR. DEJONG: Yes, sir.

14 THE COURT: -- as an exhibit.

15 MR. DEJONG: Yes, sir.

16 THE COURT: So we're just talking about cross
17 -- or examination of the witness then?

18 MR. DEJONG: Yes, sir.

19 MS. HAMAKER: How are we to go about blacking
20 out a piece of evidence?

21 THE COURT: We don't need -- you can let her
22 read it and nobody's going to ask her any questions
23 about it.

24 MS. HAMAKER: Yes, sir, Your Honor.

25 THE COURT: And that's not going to be before

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1 the jury, so we don't need to black out anything. And
2 we can make these court exhibits for either one of you
3 if you desire.

4 MS. HAMAKER: The letter of February 17th of
5 2009 that has his address where he's located and it
6 says, Dear Johnny, how are you? Me, I'm good. Just
7 checking up on you. I was told to tell you to hold on.
8 That's the part that comes out?

9 THE COURT: That comes out.

10 MS. HAMAKER: You want -- can I mark these as
11 exhibits?

12 THE COURT: Well, let me hear the, let me hear
13 the context. Go ahead.

14 MS. HAMAKER: I was told to tell you to hold
15 on. That both of you just go to sit and wait.

16 THE COURT: All right. Read on.

17 MS. HAMAKER: The longer you all wait the
18 better chance you will have.

19 THE COURT: Read on.

20 MS. HAMAKER: He said to get a transcript of
21 the 911 call and compare it to the witness statement
22 given that night.

23 THE COURT: Okay.

24 MS. HAMAKER: All of your things are still in
25 the Land Rover. He will handle everything on that end.

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1 Not to panic, y'all are good. If you need anything I am
2 gone give you my address and phone number and you can
3 write or call me. If you need me to get in touch with
4 somebody just let me know and I will. Take care of
5 yourself and just hold on. It will all work out for the
6 good of those that love God. And then she wrote her
7 address and signed it.

8 THE COURT: All right. I'm trying to go by
9 memory now. The first two lines, read those again to
10 me.

11 MS. HAMAKER: How are you? Me, I'm good.
12 Just checking up on you ---

13 THE COURT: All right. All right. That's
14 three lines. Those three are okay.

15 MS. HAMAKER: I was told to tell you to hold
16 on.

17 THE COURT: Do you object to that, Mr. DeJong?

18 MR. DEJONG: Well, if we're going -- if
19 there's not going to be any examination, then yes, I do
20 object to it because it leaves a speculation who told
21 her to tell him to hold on.

22 THE COURT: Okay. All right. That one's
23 deleted. The rest are -- is deleted until -- how about
24 the Land Rover, all your things are in the Land Rover.
25 Do you object to that?

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1 MR. DEJONG: I do, Your Honor because the Land
2 Rover hasn't been involved in this case at all. The
3 only involvement in this case the Land Rover's had is
4 the gentleman from the car lot who said he saw Mr. Nance
5 driving a Land Rover.

6 So it has no involvement with this case whatsoever
7 other than for that. The State's already introduced
8 evidence that he owned a Land Rover. That came in
9 through the Department of Motor Vehicles lady. So I do
10 object to it because again we're getting into that
11 Columbia situation.

12 THE COURT: I'm not sure that's not innocuous,
13 but I don't know that that's a help one way or the
14 other. The first lines that I said and then toward the
15 end where ---

16 MS. HAMAKER: Your ---

17 THE COURT: -- the closing of the letter.
18 Salutation will come in, the first three lines and then
19 the end of the letter where it starts talking about my
20 number and all.

21 MS. HAMAKER: Your Honor, I don't want to say
22 something I'm not supposed to say, so I'm just going to
23 make it very clear ---

24 THE COURT: Okay.

25 MS. HAMAKER: -- what you're asking. How are

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1 you -- and if you'll hold up your hand and let me know
2 when to stop.

3 THE COURT: That's okay.

4 MS. HAMAKER: How are you? Me, I'm good.
5 Just checking up on you. I was told to tell you to hold
6 on.

7 THE COURT: Just checking up on you. That
8 ends, that ends it.

9 MS. HAMAKER: Can I mark on the exhibit?

10 THE COURT: You may. Well, no, it's going to
11 be a court exhibit. You can remember -- I guess if
12 y'all want it to be a court exhibit.

13 MR. DEJONG: I won't object to your markings.
14 It's only a slash.

15 THE COURT: All right. And then go to the
16 bottom after the Land Rover.

17 MS. HAMAKER: Your Honor, I just want to make
18 sure. The both of you just got to sit and wait. That's
19 her talking to him friendly.

20 THE COURT: Both of you have to sit and wait?
21 No. That's out.

22 MS. HAMAKER: The longer you all wait, the
23 better chance you will have.

24 THE COURT: Out.

25 MS. HAMAKER: He said to get a transcript of

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1 the ---

2 THE COURT: Out.

3 MS. HAMAKER: All of your things are still in
4 the Land ---

5 THE COURT: Out.

6 MS. HAMAKER: He will handle everything on
7 that end.

8 THE COURT: Out.

9 MS. HAMAKER: If you need anything I am gone
10 give you my address and phone number.

11 THE COURT: In.

12 MS. HAMAKER: And you can write or call me.
13 If you need to get in touch with somebody just let me
14 know and I will. Take care of yourself and just hold
15 on. It will all work out for the good of those that
16 love God.

17 THE COURT: All the rest is in. And if you
18 want to take a moment and let the clerk make a quick
19 copy of that so that you can mark on yours and then you
20 can let -- the witness will be having it. And your
21 record is noted for the Rule 5 as well.

22 MR. DEJONG: Thank you, Your Honor. Now while
23 the clerk's doing it if I may clarify one point. Do you
24 intend on introducing the envelopes?

25 MS. HAMAKER: Yes.

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1 MR. DEJONG: Then I have withdrawn my

2 objection as to that.

3 THE COURT: Okay, yeah. The envelopes,

4 they're allowed in ---

5 MR. DEJONG: Yes, sir. .

6 THE COURT: -- to show the contact.

7 MR. DEJONG: Right.

8 THE COURT: And then she can ask questions

9 about the letters and let her have the letter, but don't

10 let her read from the letter other than those particular

11 points.

12 MR. DEJONG: Either examination or cross

13 examination would be limited only to those parts of the

14 letter that ---

15 THE COURT: And if cross examination goes

16 beyond that then ---

17 MR. DEJONG: I've opened the door.

18 THE COURT: -- the door is open.

19 And ma'am, you need to understand you need to

20 answer the questions that are asked of you only.

21 THE WITNESS: Yes, sir.

22 (WHEREUPON, the Court stood at recess for a short

23 break.)

24 MS. HAMAKER: Your Honor, do you want me to

25 cross these out so that the ---

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1 THE COURT: Yeah. If you have any hesitancy
2 you need to mark yours for what you want to do and then
3 we'll give the originals to the witness again to let her
4 look at. If y'all want -- I don't know if y'all want
5 them as court exhibits. We can go ahead and -- pretty
6 much, it's all of the top and all of the bottom; isn't
7 it?

8 MS. HAMAKER: I just want to make sure she
9 doesn't read the portion she's not supposed to.

10 THE COURT: Right. Well, she's not going to
11 read anything aloud. You're just going to ask her,
12 didn't you say, and she can read it to herself and say,
13 yes I did or no I didn't.

14 MS. HAMAKER: She's not reading the friendly
15 part out loud.

16 MR. DEJONG: If the solicitor wants to do
17 that, I'm sorry, Your Honor, then I would suggest we
18 mark the originals as Court exhibits. We do a redacted
19 copy ---

20 THE COURT: Okay. Let her read -- okay ---

21 MR. DEJONG: -- to give to the witness. Mark
22 that as a court exhibit, but not as a State's exhibit
23 going to the jury.

24 THE COURT: I thought you just ask the
25 question, didn't you say this in the letter, didn't you

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1 say this in the letter.

2 MS. HAMAKER: I can do that as well.

3 THE COURT: And then that way she doesn't have
4 to be reading anything.

5 MS. HAMAKER: I'll do that, Your Honor. I
6 like your idea better.

7 THE COURT: Ready to proceed?

8 MS. HAMAKER: Yes, sir, Your Honor.

9 THE COURT: If the jury's ready have them come
10 back in, please, sir.

11 (WHEREUPON, the jury entered the open court at
12 approximately 5:33 p.m.)

13 THE COURT: Thank you very much for being
14 patience with us, ladies and gentleman.

15 Solicitor, you may proceed.

16 DIRECT EXAMINATION CONTINUED

17 BY MS. HAMAKER:

18 Q. Ms. Brown, State's Exhibit Number 51 is the one I'm
19 going to refer to. In that letter did you write, Dear
20 Johnny, how are you? Me, I'm good. Just checking up on
21 you?

22 A. Yes, ma'am.

23 Q. Did you also write, if you need anything I'm going
24 to give you my address and phone number and you can
25 write or call me. If you need me to get in touch with

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1 somebody just let me know and I will. Take care of
2 yourself and just hold on. It will all work out for the
3 good of those that love God. And then your address at
4 the bottom?

5 A. Yes, ma'am.

6 Q. And then the next letter in front of you, did you
7 write in that letter, Dear Johnny, how are you doing?
8 Good, I hope.

9 A. Yes, ma'am.

10 Q. Did you also write, my number is, and then you
11 wrote your number, write me back and let me know what's
12 up on your end. Keep your head up. You can do all
13 things through Christ who strengthens you. Put God
14 first. Love, Tisha.

15 A. Yes, ma'am.

16 Q. I'm going to ask you one more time. This is your
17 opportunity to tell the jury the truth and tell them
18 the truth. Did Mr. Nance ask you to call the car in
19 stolen?

20 A. No, ma'am.

21 MS. HAMAKER: That's all the State has for
22 this witness.

23 THE COURT: You may cross examine the witness,
24 Mr. DeJong.

25 MR. DEJONG: Thank you, Your Honor.

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1 CROSS EXAMINATION

2 BY MR. DEJONG:

3 Q. So in January of 2009 you lived at the [REDACTED]

4 [REDACTED] address; is that right, Ms. Brown?

5 A. Yes, sir.

6 Q. Now you and Mr. Nance actually worked together; did
7 you not?

8 A. Yes, sir.

9 Q. And where did you work together?

10 A. Dispoz-o.

11 Q. And where is that located?

12 A. In Fountain Inn.

13 Q. All right. Is it actually in the Greenville County
14 side or the Laurens County side?

15 A. I think ---

16 Q. Or do you know?

17 A. I think Laurens County.

18 Q. Okay. So do you remember when Nance -- Mr. Nance
19 started working at Dispoz-o?

20 A. No, sir.

21 Q. Okay. Were you already working there when he
22 started working there, to your knowledge?

23 A. I think he started before I did.

24 Q. Okay. Did y'all work the same shift?

25 A. Yes, sir. We both was on third, just sometimes

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1 different nights.

2 Q. Yes, ma'am. Until this car was purchased. Mr.

3 Nance would come and pick you up in Laurens and take you
4 to work and then take you home after work?

5 A. Sometimes.

6 Q. Yes, ma'am. Okay. And in part that was one reason
7 he wanted to help you out with this car; wasn't it?

8 A. Yes, sir.

9 Q. Okay. Now, so I'm clear, did you contribute any
10 money to the car, Ms. Brown?

11 A. No, sir.

12 Q. And to your knowledge was the Bill of Sale and
13 everything in his name?

14 A. Yes, sir.

15 Q. Okay. Now, there's been a big -- well, let me not
16 go there. You obviously wrote Johnny Parks a couple
17 letter; right?

18 A. Yes, sir.

19 Q. Now, you told the solicitor that you really didn't
20 know him; right?

21 A. I don't. I mean, the letter, that don't make me
22 know him.

23 Q. Yes, ma'am. Now, when you lived at [REDACTED]
24 that was an apartment complex; right?

25 A. Yes, sir.

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1 Q. Was it a fairly large complex?

2 A. It was like eight buildings.

3 Q. And then so many apartments in each building?

4 A. Yes, sir.

5 Q. Does it have a parking lot there?

6 A. Yes, sir.

7 Q. And could Johnny Parks have been on the apartment
8 complex and you not have known that?

9 A. Yes, sir.

10 Q. Okay. Now you said, if I understood you correctly,
11 you never knew Mr. Nance to carry a gun; is that
12 correct?

13 A. Yes, sir.

14 Q. Okay. The call on -- well, let me back up. You
15 say when the car was bought that Mr. Nance drove the car
16 back to Laurens?

17 A. Yes, sir.

18 Q. Did you follow him in the Land Rover?

19 A. Yes, sir.

20 Q. Did you have any knowledge that anything was wrong
21 with the car that had just been purchased?

22 A. Not to my knowledge.

23 Q. Okay. From the time you left the car lot, Ms.

24 Brown, till the time you got back to your apartment, did
25 you make any stops in there?

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- 1 A. We stopped at the gas station.
- 2 Q. All right. What did you do at the gas station?
- 3 A. We got gas.
- 4 Q. Okay. Other than stopping at the gas station, did
- 5 you make any other stops?
- 6 A. No, sir.
- 7 Q. Now, did you ever drive this car, Ms. Brown?
- 8 A. No, sir.
- 9 Q. Okay.
- 10 A. I did. I test drove it on the lot.
- 11 Q. Yes, ma'am. I -- I'm sorry. Thank you for
- 12 clarifying that. After that ---
- 13 A. Oh, no, sir.
- 14 Q. -- did you ever drive the vehicle?
- 15 A. No, sir.
- 16 Q. Okay. And then on that day you say you went to bed
- 17 about eight thirty or nine o'clock?
- 18 A. I was in the house. I ain't going to say I went to
- 19 bed, but I was in the house.
- 20 Q. In the house. Do you recall what time you went to
- 21 bed?
- 22 A. Not sure.
- 23 Q. The -- you say you had a key on your key chain;
- 24 right?
- 25 A. Yes, sir.

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1 Q. Did you have a key and the remote or just a key?

2 A. I think I had the -- I'm not sure. I'm not sure.

3 Q. Okay. All right, ma'am. Now, so Mr. Nance drove
4 the car back to Laurens. Now what time did you go out
5 there and look at the car?

6 A. I went -- I left out to go the dryer. I knew -- I
7 did, I left out to go to the dryer and it was there.
8 When I got up the next morning it was gone. I can't say
9 what time it left.

10 Q. Okay. That's fine. When you say you went out,
11 left to go to the dryer, what was that, to dry clothes?

12 A. Yes, sir.

13 Q. Did you have to drive to get there?

14 A. No, sir.

15 Q. Okay. So you carried your clothes to the dryer?

16 A. (Affirmative nod.)

17 Q. I'm sorry. Please answer out loud.

18 A. Yes, sir.

19 Q. Our court reporter's got to get all this down.

20 Okay? Now, that Land Rover, was Mr. Nance kind of picky
21 about that Land Rover?

22 A. Yes, sir.

23 Q. To your knowledge did he let many people drive that
24 Land Rover?

25 A. No, sir.

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1 Q. And when you drove it was he happy about it?

2 A. I'm not sure.

3 Q. Okay. All right. So you were in the house from
4 eight thirty for the rest of the night?

5 A. Yes, sir.

6 Q. All right. So I'm gathering that -- did you get
7 back with the -- with your laundry about eight thirty at
8 night?

9 A. Well, I just had to dry. That's all.

10 Q. Okay. All right. So where did Mr. Nance live at
11 this point in time?

12 A. Greenville.

13 Q. Do you know who he lived with?

14 A. He said his mama.

15 Q. Okay. And did -- I'm not trying to embarrass you,
16 Ms. Brown, but did he stay at your house more often
17 than not or did he go to -- go back to Greenville more
18 often?

19 A. It was back and forth.

20 Q. Okay. Would you say one more than the other?

21 A. I'm not sure, really.

22 Q. All right. Well, it certainly wasn't unusual for
23 him to go to Greenville and spend the night; was it?

24 A. If both of us was off he would stay. Well,
25 sometime he would go home, sometime he would stay.

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1 Q. All right. Okay. So when you went out to look at
2 the vehicle did you take the keys with you?

3 A. Yes, sir.

4 Q. Okay. Did you attempt to start the vehicle?

5 A. No, sir.

6 Q. Do anything else to the vehicle?

7 A. No, sir.

8 Q. So now you shared with the solicitor that at seven
9 fifty you had a missed call from Mr. Nance; is that
10 correct?

11 A. Yes, sir.

12 Q. Now that was seven fifty in the night time?

13 A. Yes, sir.

14 Q. On the 27th; correct?

15 A. Yes, sir.

16 Q. And at that point in time, was the car still
17 there?

18 A. Yes, sir.

19 Q. To your knowledge?

20 A. To my knowledge.

21 Q. Okay. Were you upset that the car was missing?

22 A. Yes, sir.

23 Q. All right. That's why you called law enforcement;
24 right?

25 A. Yes, sir.

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1 Q. When you worked at Dispoz-o, to your knowledge did

2 Mr. Nance lay out of work?

3 A. When he was sick.

4 Q. But just to lay out, to your knowledge?

5 A. Oh, no, sir.

6 Q. Okay. This other set of keys that you exist -- say

7 existed, Ms. Brown, do you know actually who had those

8 keys?

9 A. I wasn't aware of two sets until Pickens County

10 came down and said it was two sets.

11 Q. Okay. You didn't know about another set of keys?

12 A. No, sir.

13 Q. Until then, until Pickens County made you aware of

14 it; right?

15 A. Yes, sir.

16 Q. But as to -- from the time y'all left the lot

17 buying that car until later on you didn't know there was

18 another set of keys?

19 A. No, sir.

20 Q. And you certainly didn't know who would have had

21 those set of keys?

22 A. No, sir.

23 Q. All right. Now, did you happen to see Mr. Nance on

24 the morning of January the 28th after you were --

25 reported the car stolen?

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1 A. No, sir.

2 Q. He did not come to Laurens?

3 A. Not to my house.

4 Q. Okay. All right. Let me show you what's been

5 marked as State's Exhibit 44. Did you ever see Mr.

6 Nance wear that?

7 A. I don't remember.

8 Q. All right. You just don't remember that he ever

9 wore it; right?

10 A. I don't remember.

11 Q. Okay. When you got up the next morning and the car

12 was gone, did you see the Land Rover?

13 A. No, sir.

14 Q. Okay. And when Mr. Nance left your place on the

15 27th, how did he leave?

16 A. In his Land Rover.

17 Q. Did Mr. Nance normally carry a wallet, to your

18 knowledge?

19 A. I think so.

20 Q. Did you ever see him carry this wallet that's been

21 marked as State's Exhibit Number 36? And you can't see

22 it; can you?

23 A. I can't say yeah, I can't so no. I'm not sure. I

24 didn't just go in stuff like that.

25 Q. All right. Thank you so much, Ms. Brown.

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1 THE COURT: You may redirect, Solicitor.

2 MS. HAMAKER: Your Honor, the State has no
3 further questions for this witness.

4 THE COURT: All right. Thank you, ma'am. You
5 may step down.

6 MR. DEJONG: No objection to her being
7 excused, Your Honor.

8 THE COURT: Without objection, she may be
9 excused.

10 Thank you, ladies and gentlemen. I think we've
11 reached the time that we need to stop for the evening.
12 Thank you very much for your attention in this case.
13 I'll ask you if you would be back in your jury room
14 again tomorrow at nine o'clock, we'll be ready to start
15 at nine with the next witness.

16 I remind you again the importance of your not
17 talking to anyone about this case. Don't let anyone
18 talk to you. Again if there's any media report tonight
19 please refrain from seeing any of that. Don't do any
20 independent investigation of any kind. That would be
21 against your oath to do that. You remember the
22 commitment you've made to these parties that you'll try
23 this case on the law and the evidence that takes place
24 in this courtroom and that alone. That's very
25 important to, as I say, maintain the purity of the

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1 process. Both parties are depending on you to do that.

2 And I know you will fulfill your oath.

3 We'll be back at nine o'clock in the morning. Have
4 a good evening, ladies and gentlemen. See you in the
5 morning at nine. Everyone else please remain seated
6 while the jury retires.

7 (WHEREUPON, the jury exited the open court at
8 approximately 5:50 p.m.)

9 THE COURT: All right. I think while the jury
10 was out, based on my ruling, I just want to make sure
11 the exhibits are correct for the record. I think the
12 envelopes have been admitted. I don't think they were
13 offered particularly in front of the jury, but the
14 envelopes say which is to introduce the envelopes?

15 MS. HAMAKER: Yes, sir, Your Honor.

16 THE COURT: Okay. They are marked as Exhibit
17 51 -- 51A, 51B, or 51 and 52, what is that?

18 MS. HAMAKER: Your Honor, it just says 51 and
19 52.

20 THE COURT: All right. The envelopes have
21 been -- will be admitted without objection.

22 MR. DEJONG: Right, sir. And that's without
23 objection, Your Honor.

24 (WHEREUPON, State Exhibit Numbers 51 and 52 were
25 admitted into evidence.)

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1 MS. HAMAKER: And Your Honor, can 51A and 51B

2 ---

3 THE COURT: We'll mark those as court exhibits
4 for appellate purposes that either one of you may have
5 as far as that. Those will not go the jury and ...

6 (WHEREUPON, Court Exhibits 1 and 2 were marked for
7 identification.)

8 THE COURT: Any other matters we need to take
9 care of this evening before we break?

10 MS. HAMAKER: Not from the State, Your Honor.

11 MR. DEJONG: Your Honor, I can't think of any
12 right now. I might get five minutes down the road and

13 ---

14 THE COURT: Well, you can bring it up first
15 thing in the morning. We'll be ready to start back at
16 nine o'clock in the morning.

17 MS. HAMAKER: Thank you, Your Honor.

18 THE COURT: Have a good evening.

19 MR. DEJONG: Thank you, Your Honor.

20 (WHEREUPON, the Court adjourned for the day at
21 approximately 6:15 p.m.)

22 April 29, 2010

23 (WHEREUPON, Court convened with all parties present
24 and the following proceedings were had.)

25 THE COURT: Any matters we need to take care

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1 of before the jury comes in?

2 MR. DEJONG: Your Honor, I was speaking with
3 the Solicitor prior to Your Honor taking the bench. I
4 think in the event Mr. Nance testifies, we are in
5 agreement as to how that would be handled. So I'm
6 really not approaching that issue now.

7 With regard to the testimony of the alleged
8 codefendant in this case, we were talking about --
9 what's that Rule? Anyway, impeachment evidence ---

10 MS. HAMAKER: 609.

11 MR. DEJONG: Pardon?

12 MS. HAMAKER: 609.

13 MR. DEJONG: Thank you, ma'am. -- Rule 609 as
14 to impeachment evidence. And the question arose -- I
15 guess it was more of a mild argument between myself and
16 Ms. Hamaker. This Mr. Parks has about fourteen
17 burglaries, without trying to -- fifteen burglaries,
18 without trying to get into time frame, grand larceny and
19 safe cracking.

20 I take the position that the defense can ask him
21 specifically about those being burglaries and grand
22 larcenies. That's what I am moving the Court that we be
23 allowed to do. I think Ms. Hamaker has an issue with
24 that. I don't know if you want to hear that now or if
25 you want to hear that at the time before Mr. Parks

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1 testifies, Your Honor.

2 THE COURT: Is Mr. Parks going to be the one
3 testifying now?

4 MS. HAMAKER: Not right now, Your Honor. He's
5 going to ---

6 THE COURT: Okay. We'll take a break before
7 that and work it out. All right. Ready otherwise?

8 MR. DEJONG: Ready for the defense, Your
9 Honor.

10 MS. HAMAKER: The State's ready, Your Honor.

11 THE COURT: Okay. Have the jury come in, if
12 they're ready, sir.

13 (WHEREUPON, the jury entered the open court at
14 approximately 9:17 a.m.)

15 THE COURT: Good morning, ladies and
16 gentlemen. We are now ready to proceed. Madam
17 Solicitor, you may now call your next witness.

18 MS. HAMAKER: The State would call Sergeant
19 Heath Copeland to the stand.

20 MISTER CLERK: Place your left hand on the
21 bible and raise your right hand. Do you solemnly swear
22 or affirm the testimony you're about to give in this
23 case to be the truth, the whole truth and nothing but
24 the truth, so help you God?

25 MR. COPELAND: I do.

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1 MISTER CLERK: If you would have a seat and
2 state your name for the record, please.

3 MR. COPELAND: I'm Sergeant Heath Copeland,
4 Laurens City Police Department.

5 HEATH COPELAND,

6 BEING DULY SWORN, TESTIFIED AS FOLLOWS:

7 DIRECT EXAMINATION

8 BY MS. HAMAKER:

9 Q. Sergeant Copeland, who do you work for?

10 A. The Laurens City Police Department.

11 Q. And how long have you worked there?

12 A. It will be ten years in October.

13 Q. What division do you worked in?

14 A. I'm in patrol.

15 Q. Have you always been in patrol?

16 A. Yes, ma'am. I love it.

17 Q. What are your duties as a road patrol officer?

18 A. We are front line officers. We respond to
19 everything from dog calls to we're the first ones to get
20 there when major scenes happen. Basically, my job is to
21 keep the public safe as best I can from day to day.

22 MR. DEJONG: Your Honor, could I get Sergeant
23 Copeland just a little closer to the microphone.

24 WITNESS: Oh, sorry.

25 Q. On January 28th of 2009 did you respond to a call?

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1 A. Yes, ma'am.

2 Q. And where did you respond to?

3 A. It's the [REDACTED] apartment complex, it's [REDACTED]

4 [REDACTED] It was in reference to a stolen

5 vehicle.

6 Q. And that's Laurens City?

7 A. Yes, ma'am.

8 Q. And who did you speak with?

9 A. A Ms. Tisha Brown.

10 Q. Is that the lady who testified last yesterday?

11 A. Yes, ma'am.

12 Q. Who did -- who actually called the car in as

13 stolen?

14 A. She did. She would have called our dispatcher and

15 they dispatched us to the location.

16 Q. And what type of car was called in stolen?

17 A. It was a blue in color Mercury Sable, four door, I

18 believe is what she said. She didn't have the

19 information, the VIN information, when I got there. I

20 had to get that from other means.

21 Q. I'm just going to move this microphone a little

22 closer, if it will stretch, for Mr. DeJong.

23 MR. DEJONG: Thank you, Madam Solicitor.

24 A. Sorry.

25 Q. Is this your first time testifying in General

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1 Sessions Court?

2 A. Yes, ma'am.

3 Q. When you arrived on the scene, how was Ms. Brown
4 acting?

5 A. She was nervous, kind of jittery, normal for a
6 stolen vehicle, but somewhat suspicious.

7 Q. Did she show you where the car had been parked?

8 A. Yes, ma'am.

9 Q. Did you see anything on the ground where the car
10 had been parked?

11 A. There was no indication of forced entry other --
12 outside of -- not seeing the actual vehicle where
13 somebody could have jimmied a lock or something to get
14 into it. There was no glass or anything like that.

15 Q. Did Ms. Brown give you a written statement?

16 A. Yes, ma'am, she did.

17 Q. Did she show you a set of keys or anything
18 belonging to the vehicle?

19 A. She still had one set of keys that she had.

20 Q. Did she show it to you?

21 A. Yes, ma'am.

22 Q. Do you remember if it happened to have a key and
23 one of those ---

24 A. I do not remember.

25 Q. -- remotes?

1 A. No, ma'am.

2 Q. Would the vehicle have been entered into any kind
3 of system saying it was stolen?

4 A. Yes, ma'am. It would have been entered into NCIC.
5 As soon as we get vehicles that are stolen or breach of
6 trust vehicles, it's standard for us to notify our
7 dispatcher and they're the ones that usually enter the
8 vehicle in through NCIC.

9 Q. So after you spoke with Ms. Brown, did you do
10 anything to investigate?

11 A. Yes, ma'am. I actually -- to back up one second,
12 when I told my dispatcher -- the original information I
13 would have given my dispatcher was only that it was a
14 blue in color Mercury Sable. Because, at the time, she
15 said that she didn't have any of the paperwork because
16 all the paperwork was in the car because she had just
17 bought the car the day before. But she did remember
18 that it was Evette's or Everett's Used Car lot is where
19 she bought it from. Well, I said, common sense, I
20 called Evette's because they just made the sale the day
21 before. They're still going to have the vehicle
22 information. That's how I got the VIN number. That's
23 how my dispatcher would have put it in NCIC. And that's
24 how Pickens County had already had contact with the
25 vehicle. So they called us pretty quickly after it went

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1 through the system.

2 Q. Does the person seated to my right look familiar to
3 you?

4 A. Yes, ma'am

5 Q. Who's that?

6 A. That's Detective Byers.

7 Q. Did you speak with Lieutenant Byers on January 28,
8 2009?

9 A. Yes, ma'am.

10 Q. Did you see Lieutenant Byers that day?

11 A. Yes, ma'am. He -- they -- as soon as I spoke with
12 him over the phone, because we -- entering the vehicle
13 into the system and getting a phone call, he said, well,
14 we've have the vehicle here. And he said, I would like
15 to speak to the lady that is calling the car in stolen.
16 They came down, it was probably within three or four
17 hours of the original call when we all spoke together
18 with her.

19 Q. When did the original call come in that the car was
20 stolen?

21 A. Approximately nine a.m. in the morning.

22 Q. After the day, January 28, 2009, did Ms. Brown ever
23 get back in contact with you?

24 A. No, ma'am, she never again called me.

25 Q. Did you serve a subpoena on Ms. Brown in March --

1 I'm sorry, for the March 2010 term of Court?

2 A. Yes, ma'am. It was served on her, I believe, her
3 roommate at the time. But she was -- spoke with her
4 over the phone. Ms. Brown was at work at a place called
5 Renfro that day. I spoke with her over the phone with
6 -- I forget the roommate's name. And we served her and
7 she showed up, I'm assuming, for court.

8 Q. Before you get ahead, who did you serve?

9 A. In the term of ---

10 Q. For the March term?

11 A. For the March ---

12 MR. DEJONG: I'm going to object to anything
13 about a March term of court. There's no relevancy.

14 MS. HAMAKER: Your Honor, I will show ---

15 THE COURT: What is the relevance?

16 MS. HAMAKER: I will show the relevance
17 shortly. But I would be leading the witness if I were
18 to do so, so maybe we can approach.

19 THE COURT: All right, if you would.

20 (WHEREUPON, Ms. Hamaker and Mr. DeJong approached
21 the bar.)

22 MR. DEJONG: Your Honor, for the record as to
23 my objection as to relevancy at this point in time, are
24 you sustaining or overruling?

25 THE COURT: I'm overruling. I will allow her

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1 to lay a foundation for that.

2 MR. DEJONG: Thank you, Your Honor.

3 Q. Were you able to serve her with a subpoena for the
4 March 2010 term of court?

5 A. Yes, ma'am.

6 Q. Where did you serve her?

7 A. I served, like I said, the roommate at her
8 residence, which was [REDACTED] ---

9 Q. At whose residence?

10 A. Ms. Brown's residence, [REDACTED] in
11 Laurens County.

12 Q. Can you tell the jury the process you went through
13 to be able to serve Ms. Brown with her subpoena?

14 A. The first time, for the March term of court, we had
15 an address. The first address was 112, I believe it was
16 Golden Wood. I know it starts with a gold. I can't
17 remember the back side of it ---

18 Q. That's okay.

19 A. -- which is her grandmother's house, and it's just
20 outside the city. I went there, spoke with grandmother
21 in the morning. Grandmother said she lived ---

22 MR. DEJONG: Objection, Your Honor.

23 THE COURT: Sustained.

24 MS. HAMAKER: Don't say what grandmother said.

25 Q. So you spoke with the grandmother in regards to

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1 what?

2 A. I spoke with the grandmother in regards to the
3 location of Ms. Brown.

4 Q. After you had that conversation with the
5 grandmother, did you do anything in response to that
6 conversation?

7 A. Yes, ma'am. I went to a different residence at [REDACTED]
8 [REDACTED] attempting to locate Ms. Brown at that
9 residence.

10 Q. Do you know if that's in fact Ms. Brown's
11 residence?

12 A. I do now. There was a possibility at the time that
13 that was her residence.

14 Q. Okay. So you went to her residence?

15 A. Yes, ma'am. She was not there. So I then again
16 tried at the grandmother's residence because most of the
17 time people will speak with their grandmother. It was
18 raining that day and I went to ---

19 Q. Just a little bit louder.

20 A. Oh, sorry. It was raining that day, so I went back
21 to the grandmother's residence and there were three
22 vehicles in the yard, where there was only two earlier.
23 And I knocked on the door and nobody would come to the
24 door. I was pretty sure somebody was inside, but did
25 not locate anybody.

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1 Q. Did the grandmother know that you were trying to
2 locate Ms. Brown?

3 A. Yes, ma'am.

4 Q. Did you leave any of your contact information?

5 A. I told her to have Ms. Brown contact the Laurens
6 City Police Department in reference to a subpoena.

7 Q. How many times total, between the grandmother's
8 house and Ms. Brown's house, did you go out trying to
9 make contact to serve a subpoena?

10 A. Six. Four at the grandmother's and two at [REDACTED]

11 [REDACTED]

12 Q. Would you consider that an easy way to serve a
13 subpoena or a difficult way to serve a subpoena?

14 MR. DEJONG: Your Honor, I'm going to object
15 to that. I'm not sure of the tenor of her question. If
16 it's mechanics, I guess, but if she's asking him for an
17 opinion as to ---

18 THE COURT: Rephrase your question, Ms.
19 Hamaker.

20 MR. DEJONG: Thank you, Your Honor.

21 Q. Was Ms. Brown cooperative or uncooperative in
22 receiving the subpoena?

23 A. I would say uncooperative.

24 Q. Now moving on to this term of court. I'm sorry,
25 let me move back. When you were able to get in contact

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1 with Ms. Brown finally to serve the subpoena, were you
2 given any contact information for her?

3 A. Yes, ma'am. I got a phone number, I cannot
4 remember what the phone number was, then passed it on
5 your office.

6 Q. This term of court, did you again have to serve Ms.
7 Brown with a subpoena?

8 A. Yes, ma'am.

9 Q. Can you tell the jury the process you took to serve
10 that subpoena?

11 A. Being that I learned that her residence was [REDACTED]
12 [REDACTED] I went by it several times. The first
13 couple of times I went by, there was several newspapers
14 on the front porch, also three or four oxygen tanks on
15 the front porch, which the roommate, I knew, was on
16 oxygen from the last time. It appeared to have -- may
17 have been abandoned, but a lot of those houses on that
18 street kind of look like that sometimes. I continued to
19 try to serve her. I called her work twice, where she
20 worked at the previous month, which was Renfro, a
21 business in Clinton, South Carolina, which is a town
22 just below us. Spoke to the supervisor the second time
23 and they said that she ---

24 MR. DEJONG: Objection, Your Honor.

25 THE COURT: Sustained.

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1 Q. Don't tell what the supervisor said. You had a

2 conversation with the supervisor about Ms. Brown?

3 A. Yes, ma'am.

4 Q. After that conversation, what did you do?

5 A. I continued to try to locate her at [REDACTED]

6 [REDACTED], because that was the last known, and I also went

7 back to the grandmother's house twice. No response from

8 anybody at the residence.

9 Q. Were there any cars in the driveway when you went

10 over to grandmother's house?

11 A. I do not remember.

12 Q. Did Ms. Brown still have that same telephone

13 number?

14 A. No, ma'am.

15 Q. Did she notified you of a change?

16 A. No, ma'am.

17 Q. Would you consider for the April term of court

18 whether Ms. Brown was cooperative or uncooperative?

19 A. Uncooperative.

20 Q. Okay.

21 MS. HAMAKER: That's all the State has for

22 this witness, Your Honor.

23 THE COURT: Any cross examination?

24 MR. DEJONG: Thank you, Your Honor. May it

25 please the Court.

1 CROSS EXAMINATION

2 BY MR. DEJONG:

3 Q. With regard to the report that you filed, Sergeant
4 Copeland, the call came in -- and if you don't have a
5 copy, I'll share my copy with you -- the call came in at
6 nine oh two in the morning. Would that be correct?

7 A. Yes, sir.

8 Q. And you were dispatched at nine oh six?

9 A. No, sir. I was dispatched at nine oh two. I
10 arrived at nine oh six.

11 Q. I'm sorry, you arrived at nine oh six?

12 A. Yes, sir.

13 Q. My eyes were crossed. And you left at nine twenty-
14 five?

15 A. Yes, sir.

16 Q. All right, sir. Now, did you ever see this
17 vehicle?

18 A. No, sir, I have never seen the vehicle.

19 Q. All right. So you took this report on January 28,
20 somewhere between nine oh six and nine twenty-five?

21 A. Yes, sir.

22 Q. And you actually went out to [REDACTED]

23 A. Yes, sir.

24 Q. Okay. When you took the report, did you take it in
25 the parking lot, or the apartment, or where did you take

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Heath Copeland - Cross Examination by Mr. DeJong

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1 it?

2 A. In the parking lot of the apartment complex.

3 Q. So I gather Ms. Brown came out to your vehicle?

4 A. Yes. She was actually waiting outside when I
5 pulled in.

6 Q. And, as I recall, you said she was a little bit
7 agitated; right?

8 A. Yes, sir.

9 Q. And that's not unusual for people that have their
10 cars stolen?

11 A. No, sir, it's not.

12 Q. Most people aren't happy when they get their car
13 stolen?

14 A. No, sir.

15 Q. Okay. Then I note on your form, Sergeant Copeland,
16 where -- I don't know whether you did that or the
17 approving officer did, but if you look on the very
18 bottom of that, you checked unfounded; is that correct?

19 A. Yes, sir. And that would have been me to do that,
20 sir.

21 Q. Beg your pardon?

22 A. It would have been me that unfounded the report,
23 sir.

24 Q. You just checked it unfounded as a stolen vehicle;
25 right?

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1 A. Correct.

2 Q. All right, sir. Now, in March, you say you tried
3 to serve the subpoena; right?

4 A. Yes, sir.

5 Q. Okay. You got it served?

6 A. Yes, sir.

7 Q. Okay. And this time around, that being for the
8 April term of court, you said you went to [REDACTED]
9 [REDACTED] several times?

10 A. Yes, sir.

11 Q. Newspapers by the front door?

12 A. Yes, sir.

13 Q. Which would give a pretty good indication that
14 nobody lived there; right?

15 A. Correct, or you're on vacation or gone.

16 Q. You went to grandmother's twice?

17 A. Yes, sir.

18 Q. And a different cell phone number?

19 A. Yes sir. She now has a different cell phone
20 number.

21 Q. The solicitor asked you if Ms. Brown ever advised
22 you of her new cell phone number?

23 A. Correct.

24 Q. There was no duty for her -- or no reason for her
25 to advise you of that new cell phone number; was there?

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1 A. Not to me, no.

2 Q. So with the newspapers laying on [REDACTED]
3 and two trips to grandma's, and the change of phone
4 number that she had no reason to tell you about, you
5 still say she was uncooperative?

6 Q. Yes.

7 Q. Do you serve a lot of subpoenas?

8 A. Yes, sir.

9 Q. Many people really happy to see you when you show
10 up with a subpoena?

11 A. Not really, sir.

12 Q. Right. Yes, sir. Thank you, Sergeant Copeland.

13 THE COURT: Any redirect?

14 MS. HAMAKER: Yes, sir.

15 REDIRECT EXAMINATION

16 BY MS. HAMAKER:

17 Q. Mr. DeJong just asked you if she acted agitated, as
18 most people do when their car is stolen. But you said
19 earlier that she acted nervous; is that correct?

20 A. Yes, ma'am.

21 Q. And why did you mark the vehicle as unfounded?

22 A. After speaking with Detective Byers and speaking
23 with Ms. Brown -- I'm sorry -- and learning that the
24 vehicle was indeed up in Pickens County, and that
25 supposedly the vehicle belonged to Mr. Nance also, the

1 vehicle in my determination couldn't have been stolen
2 from her.

3 Q. Did Ms. Brown tell you anything that caused you to
4 mark it as unfounded?

5 MR. DEJONG: Your Honor, I'm going to object
6 to that. That's calling for hearsay.

7 THE COURT: Well, I think the way the question
8 is phrased, it doesn't. Again, you may answer the
9 question, sir, but you cannot state what another person
10 told you. I think that the question was properly
11 asked.

12 Q. Did she ask you, or did she tell you anything that
13 caused you to mark it as unfounded?

14 A. Yes. She still had the one set of keys, she knew
15 it was.

16 MS. HAMAKER: Your Honor, at this time the
17 State would like the witness to explain to the jury what
18 Ms. Brown said. It's not for the truth of the matter
19 asserted. It's why he marked it as unfounded.

20 THE COURT: Any objection?

21 MR. DEJONG: I do object, Your Honor. He's
22 already explained, in my opinion, why it was unfounded.
23 He said it was unfounded because Lane Byers called him
24 and said they had recovered the vehicle. And that Mr.
25 Nance was part owner of the vehicle, or the owner, I'm

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Heath Copeland - Redirect Examination by Ms. Hamaker

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1 not sure which.

2 THE COURT: State your question, Solicitor,
3 for the witness.

4 Q. What is it that Ms. Brown told you that caused you
5 to mark unfounded on your incident report?

6 THE COURT: I sustain the objection.

7 MS. HAMAKER: That's all the State has for
8 this witness, Your Honor.

9 THE COURT: All right. Thank you. You may
10 step down.

11 MR. DEJONG: No objection to him being
12 excused, Your Honor.

13 THE COURT: Okay. You may call your next
14 witness.

15 MS. HAMAKER: The State would call
16 Investigator Michael Baker to the stand.

17 MISTER CLERK: Place your left hand on the
18 bible and raise your right hand. Do you solemnly swear
19 or affirm the testimony you're about to give in this
20 case to be the truth, the whole truth and nothing but
21 the truth, so help you God?

22 MR. BAKER: I do.

23 MISTER CLERK: If you would have a seat and
24 state your name for the record, please.

25 MR. BAKER: Michael Baker.

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Michael Baker - Direct Examination by Ms. Hamaker

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1 MICHAEL BAKER,

2 BEING DULY SWORN, TESTIFIED AS FOLLOWS:

3 DIRECT EXAMINATION

4 BY MS. HAMAKER:

5 Q. Detective Baker, where do you work?

6 A. Pickens County Sheriff's office.

7 Q. And how long have you worked there?

8 A. About seven and a half years.

9 Q. What division are you in?

10 A. I'm in investigations.

11 Q. When did you start with the investigating?

12 A. About a year and a half ago.

13 Q. Where did you work before then?

14 A. I was a sergeant over one of the road patrol shifts
15 for about three and a half years before that.

16 Q. Please describe for the jury your duties as a
17 detective?

18 A. I investigate anything from petit larcenies to
19 homicides. I'm given several cases a day, and I
20 investigate them to the fullest extent.

21 Q. Who is this gentleman seated to my right?

22 A. That's my lieutenant, Lane Byers.

23 Q. When you say your lieutenant, is he your boss or
24 your supervisor?

25 A. He's my boss.

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Michael Baker - Direct Examination by Ms. Hamaker

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1 Q. You said you've been a detective for a year and a
2 half. At the time of this incident, were you a
3 relatively new detective?

4 A. I was. I'd only been there for a month -- been
5 downstairs for a month.

6 Q. Did you do a lot with this case?

7 A. No, I had very little to do with this case.

8 Q. What was your involvement in this whole case?

9 A. On January 28th, Lieutenant Byers asked me to call
10 a number, phone number, area code [REDACTED] to see
11 if it would make an AT&T Blackberry cell phone, which
12 had been seized from the Mercury Sable, ring. I dialed
13 the number twice and it did ring twice, both showing my
14 cell phone number as the caller.

15 Q. I'm going to show you what's been entered as
16 State's Exhibit Number 35. Is that the cell phone you
17 called?

18 A. It is.

19 Q. When you called that cell phone, where did you get
20 it from?

21 A. I got it out of our evidence room. I had ID
22 Sergeant Bryan Gibson retrieve it for me.

23 Q. And you said you called that phone?

24 A. I did, twice.

25 Q. And you knew that the number that you called was

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Lane Byers - Direct Examination by Ms. Hamaker

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1 the number on that phone, because why?

2 A. Lieutenant Byers had given me the number.

3 Q. Did your number pop up on that phone?

4 A. Yes, my phone number popped up as the caller.

5 MS. HAMAKER: That's all the State has for
6 this witness.

7 THE COURT: Any cross examination?

8 MR. DEJONG: No questions of this witness,
9 Your Honor.

10 THE COURT: All right. Thank you, sir. You
11 may step down, Mr. Baker.

12 You may call your next witness.

13 MS. HAMAKER: The State would call Lieutenant
14 Lane Byers to the stand.

15 MISTER CLERK: Place your left hand on the
16 bible and raise your right hand. Do you solemnly swear
17 or affirm the testimony you're about to give in this
18 case to be the truth, the whole truth and nothing but
19 the truth, so help you God?

20 MR. BYERS: I do.

21 MISTER CLERK: If you would have a seat and
22 state your name for the record.

23 MR. BYERS: Lane Byers.

24 LANE BYERS,

25 BEING DULY SWORN, TESTIFIED AS FOLLOWS:

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1

DIRECT EXAMINATION

2 BY MS. HAMAKER:

3 Q. Lieutenant Byers, where do you work?

4 A. At the Pickens County Sheriff's office.

5 Q. And how long have you worked there?

6 A. Twenty-six years. I worked a couple years reserve
7 before that.8 Q. And did you work for any other sheriff's department
9 or agency?

10 A. No, this is the only agency I've worked for.

11 Q. What is your position?

12 A. Now I'm a lieutenant of Criminal Investigation
13 Divisions at the Pickens County Sheriff's Office.

14 Q. What are your duties?

15 A. Several. I do investigations myself. I'm also
16 over the investigations of at least several detectives.
17 I keep up with the meetings that we have to go to, and I
18 coordinate with other agencies, if they call and need
19 help from us or we need help from them, I keep that
20 coordinated, too. And then there's various other daily
21 issues that we handle.22 Q. How long have you had that position as the
23 supervisor over all the detectives?24 A. I believe it was late 1990 when I started in the
25 detective division.

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Lane Byers - Direct Examination by Ms. Hamaker

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1 Q. And when did you move up to lieutenant?

2 A. It's been five and a half years ago.

3 Q. How many detectives work under you?

4 A. I've got seven direct detectives that's under me,
5 and I supervise sometimes, like, if I had been at work
6 this week, if the other lieutenant's out over juveniles,
7 I supervise them too.

8 Q. How many cases do you work a year?

9 A. It varies. We average three hundred to three fifty
10 a detective per year, which is sometimes like thirty a
11 month or better, cases that's assigned.

12 Q. And what about the detectives that work under you,
13 how many do they get a year?

14 A. We all get about the same number. I work cases
15 just like they do.

16 Q. And you're involved in their cases?

17 A. Many times I'm involved in their cases because of
18 the questions they may have or issues that may come up.

19 Q. So how many did you say you get a year, again?

20 A. Three hundred, three hundred and fifty. We try to
21 keep a list of that sometimes, but it varies from time
22 to time.

23 Q. So three hundred times eight, that's how many
24 you're responsible to look over?

25 A. Yes.

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Lane Byers - Direct Examination by Ms. Hamaker

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1 Q. How would you classify your job in hours that you
2 keep?

3 A. It's from daylight to daylight, and it never ends.
4 Obviously, the phone rings at night, you know, when
5 you're trying to sleep. Try to go home sometimes at
6 night and you're still there. So it's, it's one of
7 those jobs that goes with the territories. It's one of
8 those that you got to do when the crime comes in.

9 Q. What time do you normally come in in the morning?

10 A. Usually we're there -- I'm there by seven thirty in
11 the morning, but we start at eight.

12 Q. What time do you normally leave on a normal day?

13 A. I leave five to five thirty, maybe going on six
14 sometimes in the afternoon. I think four thirty is the
15 actual -- that's when they quit paying us.

16 Q. Have you received any specialized training in law
17 enforcement?

18 A. We've had the, of course, the Criminal Justice
19 Academy where you go through your basic training. And
20 I've had training in investigations back in the early
21 nineties and homicide school. Then we get periodic
22 times that we go to a class here and there for some
23 other training, like counterfeiting or something like
24 that.

25 Q. Does your department cover all of Pickens County?

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1 A. Yes. The cities have their own independent
2 investigators. We cover everything outside of the
3 cities. There are times that the city opts out of an
4 investigation for a reason of, of whatever, and we've
5 got to take that case too, since it's in the county.

6 Q. How do you record things in a report?

7 A. How do we take a report?

8 Q. Yes. I'm sorry.

9 A. Usually a crime's committed, an officer -- they're
10 going to call the Sheriff's office, an officer is sent
11 out and he documents on a report the crime and the
12 perpetrators, if he has any, or any information he has
13 that would be pertinent to that case, if possible.

14 Q. Say information were to come up later, how would a
15 -- would a brand new incident report be created? How
16 does that work?

17 A. No. If it's relevant to that case, it's added on
18 as a supplemental report to that case. Like if somebody
19 has a burglary and they found out that it's not a twenty
20 dollar burglary, they got a two thousand dollar ring
21 they found missing, we need to add that. So we add that
22 as a supplemental and that changes the values on items
23 like that.

24 Q. Well, say, for example, an officer is the first
25 arriving officer, then other officers arrive, will all

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Lane Byers - Direct Examination by Ms. Hamaker

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1 their reports be in the incident report or in the
2 supplemental report?

3 A. Usually one officer will be designated as the one
4 to write the report, and any others that add their
5 portion to that, they would add that as a supplemental
6 report.

7 Q. Do officers always immediately put in all the
8 information they obtain right then into a typed report?

9 A. No. There's times that information comes in later.
10 Sometimes they have to delay writing the report. You
11 know, we may get three or four calls back to back
12 sometimes and there may be three or four burglaries.
13 So, you know, it might be they worked a twelve hour
14 shift, so it may be actually the next day when they get
15 that report started.

16 Q. And are all these reports typed?

17 A. They are now. We have got a system now where we've
18 gone to the computer system.

19 Q. You said you had a busy, high case work schedule.
20 What do you do when you don't have a chance to get to a
21 computer to write something into a report or a
22 supplemental?

23 A. I started back when we had a clipboard and pencil,
24 and that's the way I still do things sometimes. And I
25 write myself hand notes, and they -- sometimes the notes

1 that I write are scribbled and I have to type them in
2 later into -- we've got an investigative summary --
3 investigative report in there that's where we type our
4 information into.

5 Q. Do you take notes for your own benefit that are
6 never entered into your report?

7 A. Yeah, personal notes of an investigator sometimes
8 are just our feelings, our hunches, our -- strange
9 things in the case, stuff that we don't understand yet
10 because we don't know. We're just human like everybody
11 else, so we're trying to figure it out. So we'll write
12 down maybe something so we don't forget it, because
13 we've got maybe several other burglaries we're working
14 that day. So we've got to keep them separate, if
15 possible.

16 Q. You mentioned an investigative summary. Is that
17 different from an incident report or a supplemental
18 report?

19 A. In the system that we've got at the Sheriff's
20 office now, there is a -- there was a report, then there
21 was supplemental report, then there was what was called
22 an investigative report. And that's where we put our
23 investigative notes for our benefit. And it was really
24 done for us to be able to get into the computer, put
25 everything there and have it there.

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1 Q. That computer that you put into, do other officers
2 have access to it?

3 A. Yes. At the Sheriff's office it has access to
4 that, to that step.

5 Q. So if another officer wanted to look at your case
6 to see what's going on to fill himself in, he would be
7 able to access that computer and fill himself in?

8 A. Actually, that's part of the reason they did that.
9 Our captain likes to, at times, view the reports
10 himself. I mean, I'm not the only one checking the
11 reports, and sometimes he'll go through them, and mine
12 too, and he'll read what we've done on a case to see if
13 we are investigating it, or if we've missed a step, or
14 if we're not doing anything. And that's another thing,
15 just to check and make sure everybody's doing what
16 they're supposed to do.

17 Q. Did you do an investigative summary in this case?

18 A. I did.

19 Q. And don't tell me what you put into your
20 investigative summary. I'm talking about your
21 investigative summaries in general, not just for this
22 case. What's the purpose for you to write that?

23 A. I try -- and everybody does investigations a
24 little different. I mean, it's just what's comfortable
25 for us. But I try to do a time line; a chronological

1 order time line. I type mine up, since I'm a terrible
2 typist, I type mine up in a Microsoft Word program, and
3 I keep that with my computer. And then when I'm done
4 later on, when I've pretty much got it to a point that
5 it needs to go in the investigative side, I'll copy and
6 paste it over to the investigative part of the report.

7 Q. And did you do that in this case?

8 A. I did.

9 Q. Do you remember the date that you did that?

10 A. That I typed it?

11 Q. That you put it into the system.

12 A. No, it was later on. It was probably in warm
13 weather time of '09.

14 Q. Could you estimate how many months after the
15 incident?

16 A. I'd say June, July, somewhere in there?

17 Q. Let's move on to this incident. Were you involved
18 in it?

19 A. Yes.

20 Q. What was your role?

21 A. I was the investigator.

22 Q. When you say the investigator, Mr. Baker was an
23 investigator too. Was your role larger or smaller than
24 his?

25 A. Actually, I assign the cases pretty much there at

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1 the office. So I assigned myself this case. We assist
2 out and back with each other. Sometimes when one can't
3 get to every place, sometimes one will stop -- another
4 detective will go by and maybe interview somebody for
5 you or something, try to help each other out.

6 Q. But the case was assigned to you?

7 A. It was mine.

8 Q. Were you on scene the night of the burglary?

9 A. No, I didn't even know about it until the next
10 morning.

11 Q. When you came in?

12 A. Yes.

13 Q. When did you find out about it that morning?

14 A. The report was filed, you know, like I said I get
15 up about seven thirty. Lieutenant Robinson met with me
16 and briefed me a little bit on what had happened the
17 night before since he had been out there.

18 Q. And what's the first thing you did to investigate
19 it?

20 A. Well, after we read through the report and I looked
21 through some paperwork that Lieutenant Robinson had
22 given me, which included some photocopies of a driver's
23 license that was found in the vehicle, I first called --
24 I ran the VIN number. It came back to a, I think, a
25 Gregory and Alicia Hatcock. I looked in 411.com and got

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1 a phone number for that home. I called that home to try
2 and see if -- the car was still registered to them, so
3 to track and see if it was still their car.

4 Q. Did you have a conversation with them?

5 A. I did.

6 Q. In response to that conversation what did you do?

7 A. Oh, I learned that they no longer had the car, that
8 it had been traded off months earlier.

9 Q. And then what did you do?

10 A. I then called Evette's used cars, which was the tag
11 on the back of a car, and I spoke to a Mr. Wilson that
12 was here this week.

13 Q. Did you ever go out to Mr. Wilson's place of
14 business?

15 A. Yes. I made arrangements to meet with him at his
16 office. I viewed the folder, which he had folders in
17 his office of the business transactions. And I viewed
18 the folder of the transaction and the documents he had
19 in that folder.

20 Q. Do you remember the address for Evette's Used Cars,
21 the physical address?

22 A. The 600 block of Poinsettia Highway in Greenville.
23 It's either 604 or 624. I don't know here.

24 Q. And what time do you think you went there that
25 day?

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1 A. Somewhere around eleven o'clock that morning, the
2 day after the burglary.

3 Q. Did he tell you who he sold the car to?

4 A. His documents were there. Actually when I'd
5 called, I already had the information from him and -- of
6 a name, and I had run a South Carolina driver's license
7 picture of that person.

8 Q. And who was that person?

9 A. It was Reginald Nance.

10 Q. Is he seated in the courtroom?

11 A. Yes. The picture on the ID was this gentleman
12 sitting beside Mr. DeJong.

13 Q. Did Mr. Wilson provide you with a Bill of Sale?

14 A. Yes, he provided me with a copy of all the
15 documents he had in that folder.

16 Q. After you spoke with Mr. Wilson, what did you do?

17 A. While I was there, we received a call from our
18 communications -- actually there was a detective with me
19 at that time, he rode over there with me. He received a
20 call. But we received instructions that Laurens County
21 -- Laurens City was attempting to enter the car in NCIC
22 when it didn't get what we call a hit, that we had the
23 vehicle and he was wanting to speak to someone. So I
24 called and spoke to Sergeant Copeland.

25 Q. And after you spoke with Sergeant Copeland, what

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1 did you do?

2 A. After we were through speaking to Mr. Wilson and
3 obtaining what we needed to obtain there, we left
4 immediately from Greenville and drove to Laurens with
5 Mr. Copeland's phone number. I didn't know where I was
6 going down there, so he was going to meet us and lead us
7 in.

8 Q. Did he lead you in?

9 A. He took us to an apartment complex off of [REDACTED]
10 [REDACTED] in Laurens somewhere.

11 Q. And then you went into -- did you speak with anyone
12 at the apartment complex?

13 A. I met with Ms. Tisha Brown, that was here earlier
14 or late yesterday afternoon, at her apartment.

15 Q. Did she give you a written statement?

16 A. Yes. We spoke and she gave me a written statement
17 there in the apartment.

18 Q. How long do you estimate you spent at that
19 apartment complex?

20 A. By the time we got there, and we talked there for a
21 minute, when we met Mr. Copeland and we spoke there with
22 him a minute or two, I know by the time I took the
23 statement, it was around one thirty. So we probably
24 spoke thirty, forty-five minutes prior to that.

25 A. Did you and Ms. Brown discuss Mr. Nance's cell

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1 phone?

2 A. Yes, we did.

3 Q. And did she give you a number for Mr. Nance's cell
4 phone?

5 A. She did.

6 Q. And once you got that number did you do anything
7 with it?

8 A. Well, as I got back to the office I instructed
9 Detective Baker to go have the forensics guy to take it
10 out and then to call the number to see if that was the
11 correct number that made that phone ring.

12 Q. When you were out at Ms. Brown's residence, did she
13 show you any sets of keys?

14 A. I asked for her to check to just to be sure that
15 the keys were there, make sure she didn't leave the keys
16 in the door or something, messing with the car that
17 night. And she brought out her set of keys and said
18 this is the set of keys that goes with that car.

19 Q. Did you inform her that there were two sets of keys
20 to the vehicle?

21 A. I told her that we had been told earlier about a
22 set of keys and I asked if she had those keys, and she
23 said ---

24 MR. DEJONG: Objection, Your Honor, as to what
25 she said.

1 Q. What was her reaction to that knowledge?

2 A. She seemed surprised that there was another set.

3 Q. Did you give Ms. Brown's any follow-up instructions
4 before you left that day?

5 A. Yes, I instructed her that I felt confident that if
6 -- we were investigating at that point, we'd started to
7 develop a suspect of Mr. Nance. And I told her if he
8 called to please call me and let me know that he had
9 called, so we could make contact with him.

10 Q. Did she ever contact you?

11 A. To my knowledge I've never heard from her since
12 until now. I saw her here.

13 Q. Did you know the address for Mr. Nance's residence
14 that he was living in at the time of this incident?

15 A. The address on the license was [REDACTED],
16 [REDACTED] in Greenville.

17 Q. And what about Mr. Johnny Parks? Do you know where
18 his residence was?

19 A. It was -- I believe it was [REDACTED] in
20 Greenville.

21 Q. I'm going to ask you some questions in the
22 meantime, while this hopefully ---

23 A. Okay.

24 Q. -- is warming up. I'm going to ask you for some
25 estimates of some distances. From Evette's Used Car

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1 dealership to Ms. Brown's residence at the time of the
2 incident, about how far is that?

3 A. Oh, about thirty-six and a half miles.

4 Q. From Ms. Brown's residence to the defendant's
5 residence, how far would you guess that to be about?

6 A. Approximately thirty-five miles, plus a little
7 bit.

8 Q. Thirty-five?

9 A. Yeah.

10 Q. All right. What about from Mr. Nance's residence
11 to Mr. Park's residence?

12 A. About twenty-five miles. Wait a minute, wait a
13 minute, about five miles. I'm sorry, I'm sorry. I've
14 got my miles messed up here.

15 Q. And what about from, what about from Mr. Park's
16 residence to the crime scene?

17 A. From Mr. Parks to 2701 Gentry Moore Highway, would
18 be about twenty-five miles.

19 Q. And what about from the crime scene to the LEC?

20 A. It's between half a mile and seven-tenths of a
21 mile, something like that. Depends on if you're in the
22 parking lot or not.

23 Q. Okay. Well, let's just suppose a different route.

24 We'll say thirty-six point five miles from the car place
25 to Ms. Brown's.

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- 1 A. Okay.
- 2 Q. And we'll say from Ms. Brown's to the defendant's
- 3 house would be thirty-five miles. I'm sorry.
- 4 A. Yeah.
- 5 Q. That's not the route I want to go. Say we -- say
- 6 from the car dealership to Ms. Brown's house, and then
- 7 Ms. Brown's house to Mr. Park's house?
- 8 A. It would be about thirty and a half miles.
- 9 Q. Thirty and a half?
- 10 A. Yes.
- 11 Q. All right. Let's say from Mr. Park's house to the
- 12 crime scene?
- 13 A. It would be about twenty-five miles.
- 14 Q. And the crime scene to the LEC is half a mile;
- 15 correct?
- 16 A. Yes.
- 17 Q. I'm going to show you what's already been admitted
- 18 into evidence as State's Exhibit Number 45.
- 19 A. Okay.
- 20 Q. How many miles were on the car when the car was
- 21 purchased?
- 22 A. Here it says 151195.
- 23 Q. Now I'm sure you can't, and I can't, remember what
- 24 Lieutenant Robinson said yesterday as the final amount
- 25 of the mileage. Do you happen to remember that?

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- 1 A. I recall a hundred and ten, is what ...
- 2 Q. A hundred and ten being placed from the ---
- 3 A. Oh, I don't remember the other mileage there, but I
- 4 remember the total being, I think, a hundred and ten.
- 5 That's my recollection.
- 6 Q. The amount of mileage that was put on it since it
- 7 was purchased?
- 8 A. Yes. I don't remember the other.
- 9 Q. Did you add up the total distance for trip number
- 10 one?
- 11 A. For the first set of trip, if you went that route,
- 12 it would be a hundred and two miles and a half maybe.
- 13 Q. We'll just say a hundred and two.
- 14 A. Yeah.
- 15 Q. We'll give some credit. What about the second
- 16 trip?
- 17 A. It would be like ninety-two and a half miles.
- 18 That's averaging it.
- 19 Q. So for trip one, if that route was taken, there is
- 20 approximately eight miles that are unaccounted for?
- 21 A. Yes, yes, according to that, yes.
- 22 Q. If trip two was taken, there's about seventeen and
- 23 a half miles not accounted for?
- 24 A. Yes.
- 25 Q. Has Mr. Nance or Mr. Parks, have they ever reported

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1 cell phones or vehicles stolen in regards to this
2 incident?

3 A. No, not that I know of. Matter of a fact, the car,
4 it was reported stolen by Ms. Brown, but we've never
5 heard of any other items being reported by these guys.

6 Q. What about South Carolina driver's licenses?

7 A. I haven't heard of them being stolen.

8 MS. HAMAKER: That's all the State has for
9 this witness.

10 THE COURT: You may cross examine.

11 MR. DEJONG: Thank you, Your Honor. May it
12 please the Court.

13 CROSS EXAMINATION

14 BY MR. DEJONG:

15 Q. You got the report on Local Cash Advance and
16 Tobacco Warehouse on the morning hours of January the
17 28th; right?

18 A. Yes, sir.

19 Q. Now, so perhaps a dumb question, but sometimes I do
20 ask dumb questions. You never went out to the scene on
21 January the 27th?

22 A. The night of the incident, no. I was never there.

23 Q. And did you go to the scene on January the 28th?

24 A. Not the -- I think I went out there the 29th.

25 Q. Okay. So about two days after the fact?

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1 A. Yeah, it was -- when they opened the next morning,

2 I believe I was -- on the 29th, I was there.

3 Q. Okay. And you filed your report on this in June or

4 July of '09?

5 A. I added my summary to the report, ---

6 Q. Okay.

7 A. -- which is our notes. I added to the -- our

8 section of it.

9 Q. Did you use your notes to refresh your memory for
10 this trial?

11 A. Parts of them, yes.

12 Q. Do you have them with you?

13 A. I have my summary notes, yes.

14 Q. May I see them, please?

15 A. Sure.

16 Q. That is the same summary you forwarded to the
17 Solicitor's office?

18 A. Yes.

19 Q. All right, sir. Now, you made quite a few
20 statements about Mr. Nance and running his driver's
21 license and this vehicle; correct?

22 A. I did those, yes.

23 Q. Yes, sir. This morning you have; right?

24 A. Sure, sure.

25 Q. Now, let's talk a little bit about the vehicle and

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1 what was retrieved from the vehicle. There was a wallet

2 retrieved from the vehicle; correct?

3 A. That was my understanding, yes.

4 A. Well, did you ever look at it?

5 A. I have not opened the wallet or done anything with

6 that. I got the copy of the -- some of the contents

7 that was in it, the picture IDs and any IDs that had

8 names on them, stuff like that, he gave me a copy of

9 that.

10 Q. Well, so as the lead detective on this, you never

11 looked at the evidence?

12 A. I never opened the wallet, no. I never messed with

13 the wallet.

14 Q. All right. So I gather then, you can't tell me

15 what the contents of the wallet were?

16 A. I know that the, the picture and IDs that you made

17 a copy of that for me, a photo static copy of that for

18 me, I got that.

19 Q. Well, how about other picture IDs that were in

20 there?

21 A. There were several in there.

22 Q. They weren't all of Mr. Nance; were they?

23 A. No, no, they weren't.

24 Q. There was one of Mr. Nance; wasn't there?

25 A. It was Mr. Nance's driver's license picture in

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1 there.

2 Q. Yes, sir.

3 A. Yes.

4 Q. There were pictures of Johnny Parks in there, IDs?

5 A. Yes, there was.

6 Q. Did you run them?

7 A. Sure.

8 Q. All right. There was an ID of a Lillian somebody

9 or other; right?

10 A. Yes.

11 Q. All right. And as far as that wallet goes, you

12 don't know who the wallet belonged to; do you?

13 A. I just know we had a wallet with several IDs in

14 it.

15 Q. Right. And how Mr. Nance's ID got into -- his

16 driver's license got into that wallet, you don't know

17 that; do you?

18 A. Or any of them.

19 Q. Correct. But you don't know?

20 A. I don't know.

21 Q. All right. So just to say that you ran Mr. Nance,

22 or Mr. Nance's ID, that's misleading to this jury; isn't

23 it? That's what you told the Solicitor. You didn't say

24 anything about Parks or anything else when you were

25 answering her questions.

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1 A. Well, I ran everybody's and I -- but I was dealing
2 with Mr. Nance at that time.

3 Q. All right. How about the contents of the vehicle,
4 did you ever look at those?

5 A. I looked at the list that listed those items.
6 Lieutenant Robinson already had those put up in
7 evidence.

8 Q. He already had a phone put up in evidence too;
9 didn't he?

10 A. Yes, he did.

11 Q. You managed to get that out of evidence; didn't
12 you?

13 A. I never saw it. I sent a detective to call that,
14 but I never looked at it.

15 Q. Well, another detective got it out of evidence
16 then; didn't he?

17 A. He got it out with the help of the ID tech, yes,
18 sir.

19 Q. So certainly because it's in evidence doesn't mean
20 the chief of investigative detectives can't look at it;
21 does it?

22 A. No, we can look at it.

23 Q. Did you ever look at paperwork on this vehicle that
24 was supposedly found in the glove compartment?

25 A. No. I spoke to Mr. Wilson and got a copy of the

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- 1 Bill of Sale from him. I didn't ---
- 2 Q. But you never looked at the paperwork yourself?
- 3 A. No -- from the car?
- 4 Q. Yes, sir.
- 5 A. No, I didn't.
- 6 Q. Now, the car had been reported stolen to Laurens
- 7 County on January 28th; right?
- 8 A. Laurens city.
- 9 Q. Laurens city, excuse me.
- 10 A. Yes, sir.
- 11 Q. All right. And wasn't there some confusion over
- 12 that car and perhaps a Ford Taurus that had been stolen
- 13 on the night of the 27th or the morning of the 28th in
- 14 Pickens County?
- 15 A. I had no confusion over it. I was tracking that
- 16 car sitting behind the Cash Advance.
- 17 Q. I'm sorry?
- 18 A. I was tracking this car, this blue Sable that was
- 19 sitting behind Cash Advance to see where it went. Who
- 20 was associated with it.
- 21 Q. All right. Now, is there any evidence, physical
- 22 evidence, any physical evidence that Mr. Nance was
- 23 driving that vehicle on January 27th of 2009?
- 24 A. Such as fingerprints and DNA?
- 25 Q. I'm just asking if you -- any physical evidence

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1 ---

2 A. I don't have any of that, no.

3 Q. All right, sir. And you determined, I believe,
4 somewhere along the line that there were two sets of
5 keys to that vehicle?

6 A. That's what we learned, yes.

7 Q. All right. But where that second set of keys went
8 after that vehicle left the lot, you don't know; do
9 you?

10 A. He had a set of keys in the car and she had a set
11 of keys. We believed that may be the other set ---

12 Q. I didn't ask you what you believed. I said you
13 don't know what happened to that second set of keys; do
14 you?

15 A. I don't know where the other set went.

16 Q. Yes, sir.

17 A. There is no identifier on that key.

18 Q. Until you found them at Tobacco Warehouse; right?

19 A. True.

20 Q. All right. The keys that were found in that
21 vehicle were on a, for want of a better term, a
22 dealership key ring? And if you need to look at them I
23 will find them for you.

24 A. They had a yellow tag, like most car dealers will
25 leave on their cars when they sell them. Or the keys,

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1 rather.

2 Q. And other than that -- and again Detective Byers,
3 if you need to look at them, I'll get them out for you.

4 A. That's all right.

5 Q. You want to look at them?

6 A. No.

7 Q. Was there any other identifying information on that
8 key ring?

9 A. Well, I guess I better look at them then. I don't
10 know ...

11 Q. Let me hand you what's been marked State's Exhibit
12 Number 67, which purports to be the keys that were taken
13 from that vehicle.

14 A. The only information on the tag that's attached to
15 the keys, were the information about the car.

16 Q. And that's it?

17 A. That's all that shows here. There's a number under
18 the color, but I don't know what that means.

19 Q. Apparently at some point in time you had Detective
20 Baker call a telephone number; correct?

21 A. Yes, I did.

22 Q. And the number that was called, you retrieved from
23 Tisha Brown?

24 A. Yes.

25 Q. Now, other than calling that number from, I guess

1 one detective's phone, dialing that number, he did that;

2 correct?

3 A. He did, yes. He said he did. He told me he did.

4 Q. Okay. That's cool. Did you ever get any records
5 on that telephone?

6 A. No.

7 Q. Did you ever know really who that telephone
8 belonged to?

9 A. No, I don't. The telephone is actually locked. We
10 didn't have a code to get in it. You couldn't get in it
11 to check anything on the inside.

12 Q. Yes, sir. I understand. But you didn't go to
13 Verizon, Alltel, Sprint or somebody and try to get phone
14 records?

15 A. No, we didn't get that.

16 Q. Or even determine ownership?

17 A. No.

18 Q. So you cannot sit here and testify under oath that
19 that is Reginald Nance's phone?

20 A. That's the number that we received from her that --
21 to get his number. And we called that.

22 Q. The question is, you cannot testify that that is
23 Reginald Nance's phone?

24 A. I can't say that that's Reginald's phone.

25 Q. Yes, sir. Now, you went through this long litany

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1 of distances and all that good stuff from here to there,
2 and hither and yon. The first question I'd have, those
3 are estimates that you made; correct?

4 A. They were MapQuest. Instead of saying 36.44, I
5 just rounded it to the closest.

6 Q. All right. That's fair enough. Now, as to any
7 places that vehicle was driven from Evette's to until it
8 was recovered at Tobacco Warehouse ... This question is
9 going to get too long. Let me see if I can break it
10 down. On the morning of January the 28th, as far as we
11 know that vehicle was in Laurens County. No,

12 correction. On the evening of the 27th, --

13 A. Okay.

14 Q. -- as far as we know, that vehicle was in Laurens
15 County?

16 A. We learned probably around eight o'clock.

17 Q. Yes, sir. Now, between eight o'clock -- well, let
18 me back up. It obviously left the car lot in
19 Greenville?

20 A. Okay.

21 Q. And it obviously went to Laurens?

22 A. Okay.

23 Q. Correct?

24 A. Uh-huh (affirmative).

25 Q. Now, from the time it got to Laurens until the time

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1 that it was recovered at Tobacco Warehouse, you have --
2 there's no evidence of what route, or where it was
3 driven, or anything else; correct?

4 A. That's correct. That's the reason we tried to play
5 with some numbers there to see what we could come up
6 with.

7 Q. Right. That's what you're doing, you were playing
8 with numbers. But we can't say those numbers are
9 accurate by any stretch of the imagination?

10 A. Not a hundred percent.

11 Q. All right. Now, [REDACTED], wherever
12 that is, do you know where that is located?

13 A. It's in Greenville. Another detective went to that
14 house.

15 Q. Are you familiar with old McAlister Square?

16 A. Yes, I am.

17 Q. Are you familiar with a quite old subdivision in
18 Greenville called [REDACTED] on [REDACTED]
19 [REDACTED]?

20 A. I do.

21 Q. Do you know whether or not [REDACTED] was in that
22 subdivision?

23 A. I don't know. I'm not that familiar with
24 Greenville.

25 Q. All right. Now, how about [REDACTED], where is

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1 that located?

2 A. That I don't know.

3 Q. All right. The Solicitor asked you if a phone was
4 ever reported stolen, I think, here in Pickens County by
5 Reginald Nance?

6 A. If there's a -- or any reports on that phone, I
7 don't have any reports on it.

8 Q. Well, let me ask you this. If I lived in
9 Greenville County, would I report my phone stolen to
10 Pickens County?

11 A. Not unless you knew it was here.

12 Q. Exactly. But if you didn't know it was here, you
13 wouldn't report it in Pickens County; would you?

14 A. You would report it, at some point in time, you
15 would, to wherever.

16 Q. If I lived in Greenville, I would ---

17 A. If you live in Greenville you would report it to
18 Greenville.

19 Q. Exactly. But not Pickens County?

20 A. Correct.

21 Q. Not being familiar with Greenville, Detective
22 Byers, from [REDACTED] to [REDACTED] in
23 Laurens County, how many ways can you get there?

24 A. I have no idea. It depends on if you stop
25 somewhere, if you're going a different route. If you go

- 1 down I-85, you know, there's several things.
- 2 Q. Well, I'm not so much talking about stopping and
3 time, I'm just saying -- we're talking about routes.
- 4 A. Routes.
- 5 Q. So there certainly could be more than one route to
6 get to [REDACTED] in Laurens from [REDACTED],
7 Road, in Greenville; wouldn't there?
- 8 A. That's possible. Sure.
- 9 Q. And what you did at MapQuest -- I don't know if you
10 take the most convenient or the shortest or the longest,
11 or what did you do?
- 12 A. Direct routes is what we -- just trying to get a
13 mileage, distance or something to get some idea to it.
- 14 Q. Certainly there is more than one route?
- 15 A. Sure.
- 16 Q. You would agree with that?
- 17 A. Yes, sir.
- 18 Q. Same thing with regard to [REDACTED]
- 19 A. To ---
- 20 Q. Pardon?
- 21 A. To anywhere?
- 22 Q. Or from Laurens to Tobacco Warehouse?
- 23 A. Okay. Yes, sir.
- 24 Q. The vehicle itself, did you ever check out the
25 physical condition of the vehicle?

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1 A. As far as what?

2 Q. Well, did you ever look to see if it had a new
3 battery in it, or look at the engine?

4 A. I've never been in the car.

5 Q. Okay. Did you have anybody else do that?

6 A. No.

7 Q. So we don't even know if the odometer was
8 functioning properly; do we?

9 A. I don't know. I haven't driven it or done anything
10 -- any kind of work with the car.

11 Q. Other than this vehicle, and the ID that was found
12 in some wallet, was there any other evidence at the
13 crime scene that linked Mr. Nance to this crime?

14 MS. HAMAKER: Your Honor, I'm going to object.
15 Lieutenant Byers already said he wasn't at the crime
16 scene.

17 MR. DEJONG: He's the chief investigative
18 officer, Your Honor.

19 THE COURT: I will allow him to ask the
20 question. You can redirect.

21 Q. I'm speaking physical evidence?

22 A. Well, as far as physical evidence, we had no
23 fingerprints, no DNA, we had nothing like that. There
24 was nothing there to get.

25 Q. So I gather the answer to that question is you

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1 didn't find any other physical ---

2 A. There's no physical evidence.

3 Q. Yeah.

4 A. I answered that earlier.

5 Q. Thank you, Detective Byers.

6 A. Yes, sir.

7 THE COURT: Any redirect?

8 REDIRECT EXAMINATION

9 BY MS. HAMAKER:

10 Q. Lieutenant Byers, Mr. DeJong mentioned a Ford

11 Taurus or a Ford Probe being stolen that night. I'm

12 sorry, he mentioned a Ford Taurus being stolen that

13 night. Was a Ford Taurus stolen that night?

14 A. I don't know if it was a Ford Taurus stolen that

15 night. There was a car stolen that night down the road

16 several -- well, not several miles, about a couple

17 miles. I don't have that report. I don't know what

18 kind of car it is. I just knew there was a car that was

19 assigned to another detective. I don't have any

20 information on that.

21 Q. So when he said Ford Taurus, you don't know if it

22 was ---

23 A. I don't know what it was.

24 Q. -- what it was?

25 A. I don't know what kind of car it was.

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1 Q. Was anyone ever arrested for that?

2 A. No, to my knowledge. I've never seen any details
3 on that.

4 Q. Mr. DeJong asked you if somebody had something
5 stolen and they lived in Greenville, would they report
6 it in Greenville, and you said yes. The car was stolen
7 from Laurens, but yet Laurens had access to your NCIC on
8 a Pickens account. Does NCIC run throughout the State?

9 How does NCIC work?

10 A. The NCIC, and I don't know all the workings of
11 NCIC, it's a computer system that's set up to record,
12 like, missing persons, numbers like on items like cars
13 or items that -- any kind of serial numbered item or a
14 VIN number. If you got missing persons, stolen items,
15 you enter that into NCIC. It's a national -- nationwide
16 data bank that we can access to see if this -- say, a
17 weapon is stolen and find that it's stolen out of
18 another state. That's another way for all of us to keep
19 that out there for us to do recoveries.

20 Q. NCIC, does it say the description of that item that
21 went missing?

22 A. They're entered under a category type, like cars
23 would be in their own category. Everything's got some
24 category. And then there's a number. Usually the
25 number system is what triggers it.

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1 Q. Do you recall if any items were entered into NCIC
2 such as a phone or driver's license that belonged to
3 either Mr. Nance or to Mr. Parks?

4 A. I don't know. Lieutenant Robinson, being the ID
5 guy for that -- officer for that, he would take care of
6 all that. We have different divisions, everybody's got
7 their jobs to do, so he would have taken care of all of
8 that.

9 Q. When you calculated the distances from all those
10 different locations, you said you used MapQuest. Do you
11 remember the route MapQuest would have taken for those
12 distances?

13 A. I think I went with -- you can go shortest, you
14 know, different things. I think I just went with most
15 direct route. I don't think I really checked. It's
16 just it was a direct route, the best I could do.

17 Q. Did that route take 123 or 85, do you remember?

18 A. I don't remember. I read down the list there, but
19 I didn't really -- it just -- I was trying out basically
20 looking for the distances and the times it took to
21 travel it, is what I was looking for.

22 Q. In your experience as an officer, if something is
23 stolen in a different county -- well, I'll rephrase it.
24 As your experience as an officer, does Pickens and
25 Greenville Sheriffs' Departments tend to communicate?

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1 A. Yes. We have different forms of communications.

2 I mean, e-mails is one and we've got meetings that we go
3 to that we share information to the best of our
4 ability.

5 Q. Have you ever, when something went missing in
6 Pickens, called over to Greenville Sheriff's Office to
7 figure out if they might have come in contact with it.

8 A. We frequently call and ask them to check their pawn
9 list, or -- for different agencies. We do that for a
10 lot of agencies. We check -- check your pawn list. Or
11 if we are looking for specific items, sometimes we ask
12 them if they have that. Of course, without a number,
13 they'd have to go with somebody's name or an address or
14 something.

15 Q. And have you ever received any calls from
16 Greenville asking you to return the favor?

17 A. As far as looking for items, yes, I -- we call each
18 other frequently.

19 Q. Did you receive any such calls like that about a
20 missing phone or a missing driver's license belonging to
21 Mr. Nance or Mr. Parks?

22 A. I have never received a call about that.

23 MS. HAMAKER: That's all the State has for
24 this witness.

25 THE COURT: Thank you, sir. You may step

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1 down.

2 Mr. Foreman, ladies and gentlemen, this might be a
3 good time for us to take a short break. I'll ask you to
4 go back to your jury room and I'll remind you again not
5 to discuss the case at this time. You may retire from
6 the courtroom.

7 (WHEREUPON, the jury exited the open court at
8 approximately 10:31 a.m.)

9 THE COURT: Does the State have one more
10 witness?

11 MS. HAMAKER: It does, Your Honor. The State
12 would also request about a ten, fifteen minute recess.
13 I haven't been able to speak with him this morning. I
14 need to warn him about not going into the contents of
15 the letter and any incidents that he and Mr. Nance got
16 involved in outside of this case.

17 MR. DEJONG: There might be one other issue
18 there, Madam Solicitor. As I recall, listening to his
19 taped statement, he talks about that they met in Tyger
20 River, I believe, I believe it was Tyger River.

21 MS. HAMAKER: And I also need to tell him
22 about that.

23 THE COURT: As far as your impeachment of him,
24 we probably need to get that resolved, too, on the prior
25 records before we take the break, or after we take the

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1 break. You want to ---

2 MR. DEJONG: If we could do it after we take a
3 break.

4 THE COURT: Well, then for her preparing the
5 witness, she might need to ---

6 MR. DEJONG: We can do it now.

7 THE COURT: -- know what ---

8 MR. DEJONG: I can hang on.

9 THE COURT: All right, sir.

10 Ms. Hamaker, I gather from what Mr. DeJong alluded
11 to, you feel like that the goose and gander argument,
12 that if we're going to say felony for one person, we
13 ought to say felony for the other? Is that the gist of
14 your argument, or you've got more legal ---

15 MS. HAMAKER: That's exactly my argument. You
16 just made it shorter and sweeter than mine.

17 THE COURT: Why should that be -- why should
18 it not apply, Mr. DeJong?

19 MR. DEJONG: If you look at Rule 609, it
20 doesn't even apply to my client in 609. 609 has been
21 refined by the Court as to the defendant and prejudice
22 to the defendant. I don't believe that any of that case
23 law refers to any prejudice to the State. I don't
24 believe that's ever been discussed by the Courts, Your
25 Honor. I think under Rule 609, without a refinement by

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1 the Court, I'm entitled to go into it.

2 THE COURT: Yes, ma'am?

3 MS. HAMAKER: Your Honor, 609 also says,
4 evidence of a witness, other than an accused, has been
5 convicted of a crime shall be admitted subject to Rule
6 403.

7 The same argument that Mr. DeJong made yesterday is
8 the one I would like to invoke today, that the crimes
9 are so similar that it would be extremely prejudicial to
10 the State's case.

11 THE COURT: Wouldn't that be true, Mr. DeJong?
12 In other words ---

13 MR. DEJONG: Beg your pardon?

14 THE COURT: Wouldn't that be true that the
15 State's witness is being impeached on, I think you said,
16 fifteen prior burglaries?

17 MR. DEJONG: Something like that, yes, sir.

18 THE COURT: And your accused is -- the citizen
19 you're representing, has prior burglaries that should
20 not come in because of the prejudicial effect to him.

21 MR. DEJONG: Correct.

22 THE COURT: But do you believe that there is
23 no prejudicial effect to the opposing side?

24 MR. DEJONG: I never worried about prejudice
25 to the State, Your Honor.

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1 THE COURT: Well, that's my job, of course.

2 MR. DEJONG: Yes, sir, I understand that.

3 THE COURT: But did I understand your
4 statement that the Rule was geared only toward
5 defendants and not to the other side? I didn't
6 understand you saying that; did I?

7 MR. DEJONG: 609 is. 403, if you want to read
8 403 in conjunction with 609, I'm certain Your Honor
9 could rule that way. I'm saying under 609, under the
10 way that the Court has limited that, that limitation is
11 only as to the defendant, not as to any prejudice to the
12 State. And with that limitation, just looking at 609
13 and not looking at 403, then I'd say I am so -- I am
14 entitled to go into the burglaries as far as he's
15 concerned. I think, Your Honor, if you look at that as
16 prejudice, the prejudice is, for example on Mr. Nance, I
17 can't say on the criminal sexual conduct third degree
18 that it is -- that the State couldn't bring out the
19 criminal sexual conduct in the third degree, because it
20 is not closely akin to what he's being tried for.

21 Any other charge could be brought out. Where the
22 Courts have refined this is the horrible prejudicial
23 effect on the defendant where you're being tried for
24 very similar charges. I don't think that applies to the
25 State's witnesses in this case because, as I said, any

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1 other charge, if it was not a similar charge, if it is
2 not a similar charge, it can be brought out for
3 impeachment purposes. This witness is not on trial.
4 The State is calling this witness and I think ---

5 THE COURT: But I'm assuming this witness,
6 while not on trial, is going to be, from a defense
7 standpoint, the likely person who committed the offense?

8 MR. DEJONG: Yes, sir.

9 THE COURT: All right.

10 MR. DEJONG: I think that's a safe statement,
11 Your Honor.

12 THE COURT: So is -- I'm having a hard time
13 understanding then how it wouldn't apply. You're
14 basically saying in your cross examination, you're a
15 convicted burglar, so therefore you must have done this
16 one.

17 MR. DEJONG: No, sir. I'm not trying to go
18 there. I am only using it for impeachment.

19 THE COURT: And so why not just as a prior
20 felony? Why would that not do -- serve your same
21 purpose for impeachment, that you'd been convicted of
22 sixteen felonies?

23 MR. DEJONG: I'm sorry, Your Honor, I didn't
24 mean to interrupt you. I apologize for that. Because I
25 think under the Rule, I'm entitled to do that.

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1 THE COURT: But the State's not entitled to do
2 that against your client?

3 MR. DEJONG: No, sir. Not by -- by precedent
4 the case law.

5 THE COURT: And is the case law there because
6 the State has never appealed one?

7 MR. DEJONG: That, I could not begin to
8 venture a guess, Your Honor.

9 THE COURT: When you say case law, is there a
10 case that says, in a situation like this, that it would
11 be prejudicial to the defendant, but it would be
12 prejudicial to the defendant not to let them go into the
13 elements of the prior crime against a witness? In other
14 words, y'all talked about the Fourth Circuit. You
15 brought that up. That doesn't apply to witnesses?

16 MR. DEJONG: I don't -- it's been a while
17 since I've read that case. In all honesty, Your Honor,
18 I would have to read it again before I could honestly
19 answer your question. My inclination is that it did
20 not, but I could be wrong.

21 THE COURT: What is the prior record of the
22 witness?

23 MS. HAMAKER: 2003, thirteen counts of
24 burglary second, one count of burglary third, one count
25 of grand larceny, one count of fraudulent check. 2006,

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1 burglary second degree, one count, safe cracking, one
2 count. 2010 burglary second, one count.

3 MR. DEJONG: As far as the fraudulent check,
4 Your Honor, there is no argument over that. I have
5 agreed with the Solicitor that would not come in as a
6 crime of moral turpitude. I will not talk about it. I
7 think fraudulent checks are just fraudulent checks.

8 MS. HAMAKER: Your Honor, evidence was
9 confusing to me in law school, but I don't think that
10 this evidence can be -- these Rules can be any more
11 clear that any witness, their prior record when it's
12 over a year, is subject to a 403 analysis. When we
13 conduct a 403 analysis, the crime is burglary second.
14 The crimes he's wanting to introduce are burglary
15 seconds and, I believe, one burglary third. It's
16 extremely prejudicial.

17 I don't -- the State does not understand how Mr.
18 DeJong can say it's prejudicial at one point and now
19 say it's not prejudicial now. It's extremely
20 prejudicial. 609 says we must consider 403. When we
21 consider 403, the prejudicial value extremely outweighs
22 the probative value, especially when Mr. DeJong can
23 simply say, have you been convicted of felonies? There
24 is no probative value to gain by saying burglary second,
25 as Your Honor has already pointed out.

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1 THE COURT: Yes, sir?

2 MR. DEJONG: Then that being the case, let's
3 not say it was criminal sexual conduct in the third
4 degree. We'll just lump them altogether as felonies.

5 MS. HAMAKER: Your Honor, criminal sexual
6 conduct in the third degree is nothing like a burglary.
7 They are two completely separate crimes. It doesn't
8 allow for the inference that because he did a criminal
9 sexual conduct, that now he's doing the burglary. It's
10 strictly for impeachment purposes.

11 MR. DEJONG: All right. Accepting that
12 argument, though, and if His Honor were to rule that
13 way, I still think I can ask about safe cracking.

14 MS. HAMAKER: Your Honor, there was a safe in
15 this case that didn't lock. And again, that would be
16 extremely prejudicial. And Mr. DeJong himself admitted
17 yesterday that the criminal sexual conduct, he doesn't
18 have a way to keep it out, because it's not even closely
19 related. He didn't object to it yesterday and I don't
20 understand why he's objecting to it today.

21 MR. DEJONG: I'm not. I'm only using it as an
22 analogy.

23 THE COURT: Well, I think he's talking about
24 options now. And the -- Mr. Nance's prior record,
25 again, was the criminal sexual conduct in 2002 or '3?

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1 MS. HAMAKER: Your Honor, in 1992 the burglary
2 from Georgia, the obtaining property under false
3 pretenses in North Carolina, and the two counts of
4 receiving stolen goods. '93, lewd act on a minor,
5 possession of drug paraphernalia, nine counts of
6 burglary second, eight counts of grand larceny. 2001,
7 CSC third, unlawful carrying of a firearm, burglary
8 second and grand larceny.

9 THE COURT: All in the same year? Did you say
10 all in 2001?

11 MS. HAMAKER: 2001 was CSC third, unlawful
12 carrying of a firearm, burglary second, and grand
13 larceny.

14 THE COURT: Everything is 2001 then?

15 MS. HAMAKER: That I'm able to bring in, yes
16 sir, Your Honor.

17 THE COURT: All right. Let's take a short
18 break. Let me study that. I'll let you know, Ms.
19 Hamaker, about -- or I'll let you both know about my
20 ruling so that you can prepare your witnesses.

21 MR. DEJONG: Thank you, Your Honor.

22 MS. HAMAKER: Thank you, Your Honor.

23 (WHEREUPON, the Court stood at recess for a short
24 break.)

25 THE COURT: All right. As far as the

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1 impeachment evidence under 609, I've tried to conduct an
2 analysis under the case law of the value of the prior
3 crime as to whether -- the issue being whether or not
4 the burglaries on behalf of the non-accused witness be
5 allowed to come in.

6 Obviously, the impeachment value of the prior crime
7 is not one of veracity point blank. But burglary, I
8 think, would have a close -- would be a crime closer to
9 those involving veracity than other crimes for
10 impeachment purposes. Certainly I need to weigh the
11 witnesses. The time of the conviction has been stated
12 on the record, and the subsequent history. I think that
13 certainly would have to weigh favorably toward the use
14 of the offenses.

15 Similarity, of course, of the past crime to the
16 crime charged is similar. The exactness of that
17 certainly is a factor I must weigh on the other side as
18 well. The importance of the defendant's testimony, I
19 haven't heard the testimony of this witness, but I
20 presume that, based upon what -- how the trial has
21 transpired and from the development, I feel like the
22 defendant's testimony might possibly be important,
23 again, speculating on to what this witness may say. The
24 centrality of the credibility issue, I think, is going
25 to be very central here.

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1 As I read Rule 609, and I want to be sure that I
2 try as best I can to articulate my understanding of the
3 Rule for the purposes of these fine attorneys here today
4 and for any appellate Justices who may want to at least
5 know the thought process of this trial judge. I find
6 that Rule 609(a) really has two parts. One, of course,
7 relating to when an accused testifies. The other's when
8 a witness, who is not an accused, testifies. The
9 analysis for a non-accused goes to Rule 403. As we
10 know, Rule 403 has the substantial outweigh language for
11 which is required under the Rule that the probative
12 value must substantially outweigh any unfair prejudice.
13 That being a high standard to allow the evidence.

14 As I read Rule 609(a), when it refers to an accused
15 has been convicted of such a crime shall be admitted if
16 it determines that the probative value of admitting the
17 evidence outweighs its prejudicial effect of the
18 accused. Not substantially outweighs.

19 I believe that the defendant should be allowed to
20 cross examine this witness on the prior convictions of
21 burglary by name. Based upon the 403 analysis, I
22 believe the standard is different, based on substantial
23 prejudice versus the simply outweigh when it refers to
24 the accused. So I will allow the defense to bring out
25 the nature of the prior offenses. I find that under 403

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1 analysis in light of 609, that the probative value of
2 allowing that would outweigh the prejudicial effect to
3 the State.

4 I'm not unmindful also of the rights of an accused
5 under confrontation clause, the Crawford analysis, and
6 otherwise, to have a right to fully confront the
7 witnesses against him. On those bases, I will allow the
8 defense to cross examine.

9 Ready to call your next witness?

10 MS. HAMAKER: Yes, sir, Your Honor. One quick
11 matter, Mr. DeJong said he would not be seeking to
12 introduce the fraudulent check charge -- conviction, I'm
13 sorry.

14 MR. DEJONG: Do what now? I didn't hear you,
15 ma'am.

16 MS. HAMAKER: You agreed not to want to
17 introduce the fraudulent check conviction?

18 MR. DEJONG: Yeah, unless you want to. I just
19 don't really think fraudulent check is moral turpitude.

20 THE COURT: I think she wants to make sure
21 that she doesn't -- I presume if you bring it out and
22 then he ---

23 MR. DEJONG: No. I have agreed to that, Ms.
24 Hamaker. Without the Judge's ruling, I agree with that.

25 MS. HAMAKER: Okay. Well, on the record the

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1 door is open, so go ahead and ask him about the
2 fraudulent check. Our strategy is going to change up a
3 little bit.

4 MR. DEJONG: Okay. Whatever.

5 THE COURT: All right. Let's have our jury
6 come in, if they're ready.

7 MR. DEJONG: Your Honor, we may have ---

8 THE COURT: Hang on just a minute, Mr. Duncan.

9 MR. DEJONG: We may have another issue here.

10 THE COURT: All right, sir.

11 MR. DEJONG: I'm not trying to run Ms.

12 Hamaker's case, but rather than keep the jury bouncing
13 up and down, she has just shared with me over this
14 recess that she is going to attempt to recall a witness
15 that's already put on -- has been on the stand. I'll
16 let her get into that. I would be asking her further,
17 but under Rule 611(d), I'm going to object to that.
18 Obviously, it is discretionary with Your Honor. But
19 until I really know the purpose and everything else, I
20 can't really fully argue it, but I think it was an issue
21 that we needed to address before the jury came back in.

22 THE COURT: All right. Thank you, Mr. DeJong.
23 Maybe we can approach that now. I don't know how long
24 this witness may take, but rather than having the jury
25 go back out, which witness do you need to recall, Ms.

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1 Hamaker?

2 MS. HAMAKER: Your Honor, I need to recall
3 Deputy -- I'm sorry, Investigator Michael Baker. He is
4 not going to testify as to the subject of his first
5 testimony. On cross examination of Lieutenant Byers,
6 John DeJong -- I'm sorry, Mr. DeJong, brought to the
7 attention of the jury that there was a vehicle stolen
8 that night that was a Ford Taurus.

9 Lieutenant Byers agreed that a vehicle had been
10 stolen that night, but it wasn't his case that he
11 worked. That vehicle being stolen, it was in close
12 proximity to where this crime occurred and it is
13 believed that that vehicle was stolen and used by the
14 defendant and the codefendant to drive back to
15 Greenville. Detective Michael Baker is going to testify
16 that it was his case and he worked it. He's going to
17 describe the vehicle and then he's going to say where it
18 was ultimately found.

19 THE COURT: Where was it ultimately found?

20 MS. HAMAKER: It was ultimately found in
21 Clinton, South Carolina, which is close to ---

22 THE COURT: But not at his address or
23 anything?

24 MS. HAMAKER: No, sir, Your Honor. It's close
25 to the defendant's place of work.

1 And, Your Honor, as far as 611(d), it says a
2 witness may be re-examined as to the same matters to
3 which he testified only in the discretion of the Court,
4 but without exception, he may be re-examined as to any
5 new matter brought out during cross examination.

6 THE COURT: I'll allow you to recall the
7 witness on that limited topic only, not any other topics
8 that he's ---

9 MS. HAMAKER: Yes, sir, Your Honor.

10 THE COURT: Okay.

11 MR. DEJONG: And, respectfully, my objection
12 is noted for the record.

13 THE COURT: Yes, sir. I believe that meets
14 the criteria of 611, what she had stated. If the
15 testimony stays within those parameters, I will allow
16 it. Now we're ready, Mr. Duncan.

17 (WHEREUPON, the jury entered the open court at
18 approximately 11:53 p.m.)

19 THE COURT: Thank you for your patience with
20 us, ladies and gentleman. We had a legal matter that I
21 needed to take care of, and I apologize for keeping you
22 waiting, but hopefully we've got that resolved now.

23 Solicitor, you may call your next witness.

24 MS. HAMAKER: The State would recall Michael
25 Baker to the stand.

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1 THE COURT: Let me remind you, sir, you are
2 still under oath.

3 WITNESS: Yes, sir.

4 MICHAEL BAKER,

5 HAVING PREVIOUSLY BEEN SWORN, TESTIFIED AS FOLLOWS:

6 REPLY DIRECT EXAMINATION

7 BY MS. HAMAKER:

8 Q. Detective Baker, did you work a case about a stolen
9 vehicle in Pickens County that occurred somewhere
10 between the 19 -- or the nighttime hours of January 27,
11 2009 and January 28, 2009?

12 A. I did. I received a stolen vehicle case the
13 morning of the 28th.

14 Q. And what kind of vehicle was stolen?

15 A. It was a 1998 Ford Taurus, silver in color.

16 Q. Was that vehicle ever recovered?

17 A. It was recovered.

18 Q. Where was it recovered?

19 A. It was recovered by Clinton P.D. in Clinton on East
20 Carolina Avenue behind some mini warehouses.

21 Q. Do you know where Fountain Inn is? Fountain Inn,
22 South Carolina?

23 A. I do know where Fountain Inn is.

24 Q. Is that close to Clinton, South Carolina?

25 A. Yes.

1 Q. The place where the vehicle was stolen from, where
 2 is that in location to the Tobacco Warehouse?
 3 A. I would say it's about two miles towards Easley on
 4 Highway 8, ---
 5 Q. That's all --
 6 A. -- Gentry Memorial.
 7 Q. Sorry.
 8 MS. HAMAKER: That's all the State has for
 9 this witness.
 10 THE COURT: Any cross examination?
 11 REPLY CROSS EXAMINATION
 12 BY MR. DEJONG:
 13 Q. I'm sorry, Detective Baker, I didn't hear where you
 14 said the car was taken from.
 15 A. It was taken from Tri-City Body Shop on Highway 8,
 16 Gentry Memorial Highway. The exact address is 1426.
 17 Q. And what was the date of recovery?
 18 A. The date of recovery was February 10th.
 19 Q. Of 2009?
 20 A. Yes, sir.
 21 Q. Do you know where [REDACTED] is in Greenville?
 22 A. Yes, sir. I've been there before.
 23 Q. Clinton is a pretty good haul from [REDACTED]
 24 isn't it?
 25 A. Yes, sir.

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Michael Baker - Reply Cross Examination by Mr. DeJong

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1 Q. Do you know if any forensics were done on that
2 vehicle?

3 A. I want to check to be sure. After talking to
4 Clinton P.D., I believe there was, but nothing was
5 found.

6 Q. Was anybody ever charged with the theft of that
7 vehicle, to your knowledge?

8 A. No, sir.

9 Q. Thank you, sir.

10 THE COURT: Any redirect?

11 MS. HAMAKER: No, sir, Your Honor.

12 THE COURT: Thank you, Mr. Baker. You may
13 step down.

14 MR. DEJONG: No objection to him being
15 excused, Your Honor.

16 THE COURT: You may call your next witness,
17 Solicitor.

18 MS. HAMAKER: The State would call Johnny
19 Parks to the stand.

20 MISTER CLERK: Place your left hand on the
21 bible and raise your right hand. Do you solemnly swear
22 or affirm the testimony you're about to give in this
23 case to be the truth, the whole truth and nothing but
24 the truth, so help you God?

25 MR. PARKS: I do.

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Johnny Parks - Direct Examination by Ms. Hamaker

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1 MISTER CLERK: If you would have a seat and
2 state your name for the record.

3 MR. PARKS: Johnny Parks.

4 JOHNNY PARKS,

5 BEING DULY SWORN, TESTIFIED AS FOLLOWS:

6 DIRECT EXAMINATION

7 BY MS. HAMAKER:

8 Q. Mr. Parks, have you been in here at all during this
9 trial?

10 A. No, I haven't.

11 Q. Have you heard anything the witnesses have said?

12 A. No, I haven't.

13 Q. Well, since you haven't been in the Court, you
14 wouldn't know that Mr. DeJong is having a hard time
15 hearing. He's the defense attorney seated right over
16 there on the right. So if you will move up to the
17 speaker phone a little bit and make sure everything you
18 say is loud.

19 A. Okay.

20 Q. Because there's also a fan back here that's been
21 bothering people.

22 A. All right.

23 Q. Mr. Parks, do you know the man seated over here at
24 this table?

25 A. Yes, I do.

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Johnny Parks - Direct Examination by Ms. Hamaker

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- 1 Q. And who is he?
- 2 A. That's Reginald Nance.
- 3 Q. How long have you known Reginald Nance?
- 4 A. About seven years.
- 5 Q. Would you consider him a friend?
- 6 A. Absolutely.
- 7 Q. Before the incident that we're going to discuss
- 8 today, were you friends?
- 9 A. Yes, we were.
- 10 Q. And after the incident until today, were you
- 11 friends?
- 12 A. Absolutely.
- 13 Q. Did you and Mr. Nance ever -- were you ever in the
- 14 same place at the same time?
- 15 A. Be more specific.
- 16 Q. Were you and Mr. Nance physically together or phone
- 17 friends?
- 18 A. Oh, physically friends.
- 19 Q. Physically friends?
- 20 A. Yes.
- 21 Q. Well, I'm not trying to imply anything like that,
- 22 ---
- 23 A. Yeah, I understand.
- 24 Q. -- but friends that would see each other face-to-
- 25 face.

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1 A. Right.

2 Q. When y'all would see each other face-to-face, did
3 you ever go anywhere?

4 A. I think we may have just rode around a little bit
5 and whatnot, but actually hanging out, no.

6 Q. But y'all would go places together?

7 A. Yeah, yeah.

8 Q. When you would go places together, who would drive?

9 A. He would.

10 Q. Why would he drive?

11 A. Well, my vehicle wasn't -- I had a truck at one
12 time but it wasn't very reliable. He just had a better
13 vehicle than me most of the time.

14 Q. At the time of this incident, what about your
15 vehicle? Was it working, or not working, or sometimes
16 working?

17 A. It was sometimes then and -- well, at the time of
18 the incident I didn't have it at all. I had given it
19 back to where I had gotten it from.

20 Q. Mr. Nance's vehicle, was it nicer than your
21 vehicle?

22 A. Yes.

23 Q. More reliable than your vehicle?

24 A. Yes, it was.

25 Q. I'm going to shift gears a little bit. Are you

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1 here today to testify against Mr. Nance?

2 A. Yes, I am.

3 Q. Did the State promise you anything in exchange for
4 your testimony against Mr. Nance?

5 A. No, they haven't.

6 Q. Did the State tell you anything that they would do
7 for you in exchange for your testimony against Mr.
8 Nance?

9 A. No.

10 Q. What did the State tell you about your testimony
11 against Mr. Nance?

12 A. I mean ---

13 Q. Speak up.

14 A. What has the State told me about my testimony? I
15 mean, ---

16 Q. Did the State say whether they would consider your
17 testimony in any recommendations they may make to a
18 judge in a plea deal?

19 A. Yes.

20 Q. And what did the State say they would do, or not
21 do, or recommend to the judge in exchange for your
22 testimony?

23 A. They haven't said they would do anything to the
24 judge. I mean, as far as anybody else, just the -- what
25 I'm trying to say ---

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- 1 Q. Well, let me ask you this.
- 2 A. Yeah, this has got me confused.
- 3 Q. What has the State asked you to do when you came in
- 4 here today to testify against these -- to these jurors,
- 5 what are the two things the State has told you to do?
- 6 A. Just be truthful.
- 7 Q. What's the other thing?
- 8 A. And specific in detail.
- 9 Q. Mr. Parks, were you involved in a burglary at a
- 10 Tobacco Warehouse and a Local Cash Advance in Pickens
- 11 County?
- 12 A. Yes, I was.
- 13 Q. Was there anybody else with you?
- 14 A. Yes.
- 15 Q. Who?
- 16 A. Mr. Nance was with me.
- 17 Q. Anybody else with you?
- 18 A. No.
- 19 Q. Okay. I'm going to hand the reins over to you a
- 20 little bit, and I want you to tell this jury what
- 21 happened that night. Be truthful and be as specific as
- 22 you possibly can.
- 23 A. Okay. About, let's say between six thirty and
- 24 seven o'clock, Reggie picked me up from my house. We
- 25 were going out to do a lick.

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1 Q. What's a lick?

2 A. It's a crime. And we didn't know exactly where we
3 were going to, but we came -- we took 85 and we got off
4 at the Easley exit. We -- I don't know the names of the
5 highway. We came down the highway.

6 Q. I'm going to interrupt you periodically. You said
7 you didn't know the names of the highways?

8 A. Right.

9 Q. Did Mr. Nance -- would he have known?

10 A. I imagine he would know some names.

11 MR. DEJONG: Your Honor, I'm going to object.

12 A. I can't say.

13 THE COURT: I sustain the objection.

14 Q. Mr. Parks, did you know the area -- well, the
15 Easley/Pickens area?

16 A. No, not very well.

17 Q. Did Mr. Nance?

18 A. He seemed to know, yes.

19 Q. And why did he know it?

20 A. I think he said he worked down in that area once.

21 MR. DEJONG: Objection to what he thinks, Your
22 Honor. He can testify to what he knows. Thinking is
23 speculation. And I object to it.

24 THE COURT: I think the answer wasn't -- that
25 he was giving now wasn't about what he thought. I'll

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1 allow him to answer what he knows about in response to
2 the question.

3 Q. Mr. Parks, did Mr. Nance seem to know the area
4 well?

5 A. He knew the area well.

6 Q. And do you know why he knew the area well?

7 A. He worked there before.

8 Q. He worked where before?

9 A. He worked at a restaurant in Easley before.

10 Q. Just make sure you are speaking loud. I know
11 you're a little soft spoken, but Mr. DeJong -- I see him
12 holding his ear over there. Can you go ahead and
13 continue about from the time Mr. Nance picked you up?

14 A. We continued on and we rode through Easley. We
15 passed the McKinney -- McKinney car lot area.

16 Normally that's the way we came through Easley. We
17 just rode through there. And we were just riding
18 around. We rode probably about fifteen or twenty miles
19 into Easley, the Easley area, Easley/Pickens area. I'm
20 not -- wasn't specific exactly where I was at at that
21 time. But we came to a area and it was like a Wal-Mart
22 or something and a fire station and stuff like that. We
23 had saw a Check Advance place and I said that might look
24 like a good place to -- you know, we might be able to
25 do. And I got out the car and I went to check it out.

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1 While I was outside of the car -- I think he was
2 actually keeping a watch out -- and I was walking around
3 the building and a police officer drove up. And he
4 asked -- and I was off in -- I kind of -- I walked away
5 and the officer, come to find out, he just wanted to
6 know what was going on. He told him that he was having
7 car trouble, he had just purchased that car that day
8 and he told him he had a passenger and the passenger
9 was going to make a call to try to get some help or
10 whatnot.

11 Q. All right, Mr. Parks. There's a lot of hes in
12 there. If you will say ---

13 A. Reggie?

14 Q. Okay. So start from when the officer pulled up.

15 A. Well, the officer pulled up and I wasn't right
16 there. Like I said, I was -- I had -- I was off in the
17 distance. The officer never saw me. And then he asked
18 Reggie what was going on and he told him ---

19 Q. Reggie told him?

20 A. Yes.

21 Q. Reggie told the officer?

22 A. The officer asked him what was going on and he told
23 him the car was acting up. He had just purchased it
24 that day. And he also told -- Reggie also told him that
25 he had a passenger and he told him that I was walking

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1 toward Wal-Mart, you know, to, I think, to use the
2 phone.

3 Q. Is this the Easley Wal-Mart?

4 A. Yes, Easley Wal-Mart. And ---

5 Q. Let me stop and back you up a little bit. I'm
6 sorry to keep interrupting you, but I want the jury to
7 have all the details. When Mr. Nance picked you up that
8 night, you said it was around six thirty or seven?

9 A. Right.

10 Q. When he picked you up, what did he pick you up in?

11 A. Oh, picked me up in a Ford. I think it was a
12 Probe. I think that was a Probe. I'm not sure of the
13 make and the model of the car. It was, it was a new
14 car.

15 Q. State's Exhibit Number 1, is that the car Mr. Nance
16 picked you up that day in?

17 A. Yes.

18 Q. When he picked you up that day, did you notice
19 anything that was in the vehicle?

20 A. No. No, there was nothing in the vehicle that I
21 know of.

22 Q. I'm just talking about when he first picked you up,
23 did you notice this in the vehicle?

24 A. No. Because that was in the trunk.

25 Q. So you didn't see this when he picked you up?

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- 1 A. No.
- 2 Q. But you recognize this?
- 3 A. Yes.
- 4 Q. So Mr. Nance picked you up. Did he say anything
- 5 about the vehicle he picked you up in?
- 6 A. He said he had just purchased it that day.
- 7 Q. Did he say whether it belonged to anybody other
- 8 than himself?
- 9 A. He purchased it for Tisha.
- 10 Q. And who is Tisha?
- 11 A. His girlfriend in Laurens, Tisha Brown.
- 12 Q. Speaking of Tisha, have you ever met Tisha before?
- 13 A. Yes, I have.
- 14 Q. Do you know Tisha's last name?
- 15 A. Brown.
- 16 Q. Ms. Brown, you've met her before. When -- on those
- 17 occasions when you met her, was Mr. Nance with you?
- 18 A. Yes.
- 19 Q. And where did you see her?
- 20 A. At her apartment.
- 21 Q. Do you know if she has any children?
- 22 A. Yes, she has one daughter that I know of.
- 23 Q. Have you seen the daughter?
- 24 A. Yes, I have.
- 25 Q. About old do you think she is?

- 1 A. I'd say about seven or eight.
- 2 Q. Was Ms. Brown in the vehicle when Mr. Nance came to
3 pick you up?
- 4 A. No, she wasn't.
- 5 Q. Did Mr. Nance say anything about where he was
6 coming from?
- 7 A. From Laurens.
- 8 Q. He said he was coming from Laurens?
- 9 A. Yeah, he always called me before he would come and
10 let me know where he was at. And he had dropped her off
11 down in Laurens.
- 12 Q. Do you know where Ms. Brown lives, or lived at a
13 time?
- 14 A. She lived in an apartment complex down there, but I
15 don't know the name of it.
- 16 Q. When you say down there, where do you mean?
- 17 A. In Laurens.
- 18 Q. Okay. So he said he was coming from Laurens, he'd
19 dropped her off, and then he came to pick you up?
- 20 A. Right.
- 21 Q. Did he say he made any stops along the way?
- 22 A. No, I didn't ask and he didn't tell me.
- 23 Q. Did he say if there is anything wrong with the
24 vehicle?
- 25 A. No, he did it.

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- 1 Q. So he picks you up, you go and you're at the check
2 cashing place near the Wal-Mart in Easley and the
3 officer pulls up. Will you continue from that point?
4 A. All right. After showing the officer the car, the
5 officer made a few comments about, or recommendations,
6 about the vehicle. I'm not sure exactly what he said.
7 But anyway, he went on and he drove on off. I came
8 back, I came back to the vehicle and got in. The
9 officer never saw me. And he just told me -- the things
10 that I just said is what Reggie said the officer had
11 told him. We continued on and we drove and just was
12 riding around just looking for a place to hit. And we
13 happened upon -- we came down into this Pickens area and
14 ---
15 Q. Let me stop you there. You were looking for a
16 place to rob. What was the purpose of -- I'm sorry, you
17 were looking for a place to do what?
18 A. To break in to.
19 Q. And what was the purpose of breaking in?
20 A. To find some money.
21 Q. Did you need money?
22 A. Well, I had a drug habit and I needed some money.
23 And I don't know how much money he needed, and he needed
24 some too.
25 Q. Did Mr. Nance have a drug problem?

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- 1 A. No.
- 2 Q. But you had a drug problem?
- 3 A. Yes, I did.
- 4 Q. We're going to get a little personal. Can you tell
- 5 the jury the nature of your drug problem?
- 6 A. I smoked crack.
- 7 Q. How does -- how did crack affect your life?
- 8 A. Well, it destroyed my life, more than once.
- 9 Q. In order to get high, how much would it cost to
- 10 you?
- 11 A. Well, I mean you can start off very small, you
- 12 know, but eventually I developed a high tolerance, so I
- 13 went through a lot of money. Easily, easily a hundred
- 14 dollars in a couple of hours.
- 15 Q. And how long would the high last?
- 16 A. As long as there was crack there. I mean, the high
- 17 itself, you know, it doesn't last very long. But I had
- 18 a person -- I don't like to call her my girlfriend but
- 19 that's what she was at the time, and she was no good to
- 20 me but nevertheless she was there. And we went through
- 21 a lot of money. She -- it helped to bring my life down.
- 22 Q. This female that you had a relationship with, did
- 23 she have a crack problem?
- 24 A. Yes, she did.
- 25 Q. What was that female's name?

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1 A. Lillian Aavik.

2 Q. Can you describe her for the jury, physically?

3 A. She's about five feet tall, white, red hair.

4 Q. Is that her?

5 A. Yes.

6 Q. Her ID, who carries that around?

7 A. She had it. She would carry it, but I would carry
8 it because she didn't have -- she always stuck it in her
9 pants pocket and I didn't want her to lose it.

10 Q. So was it unusual for you to have this in your
11 wallet, if it were to be in your wallet?

12 A. No.

13 Q. Did she live with you?

14 A. She stayed with me at my house -- at my mother's
15 house at [REDACTED] for about two months.

16 Q. Was she involved in this incident?

17 A. No.

18 Q. How long had you had a relationship with her before
19 this incident?

20 A. About four months.

21 Q. So you knew Mr. Nance longer than you knew Ms.
22 Lillian?

23 A. Right.

24 Q. I'm going to call her Ms. Lillian because I have a
25 hard time with her last name.

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- 1 A. All right.
- 2 Q. Another thing that you talked about, this drug
- 3 habit of yours, did it lead to any criminal charges
- 4 being brought against you?
- 5 A. Yes, it has.
- 6 Q. Any convictions?
- 7 A. Yes.
- 8 Q. For 2004 -- well, actually, your entire life --
- 9 we'll start off with 2003, did you receive any
- 10 convictions then?
- 11 A. Yes, I did.
- 12 Q. What were those?
- 13 A. Burglary.
- 14 Q. How many?
- 15 A. I'm really not sure of the exact amount of them.
- 16 Q. A lot or a few?
- 17 A. There were a few, but not over -- I mean, when I
- 18 say a few we're talking at least about fifteen
- 19 convictions.
- 20 Q. Do you have any other convictions besides the
- 21 burglaries?
- 22 A. Safe cracking, grand larceny.
- 23 Q. Well, let's talk about 2003. Did you get convicted
- 24 of a grand larceny and a fraudulent check in 2003 as
- 25 well?

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Johury Parks - Direct Examination by Ms. Hamaker

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1 A. Yes, I have.

2 Q. What about 2006, what were those convictions for?

3 A. I had a burglary and safe cracking as well.

4 Q. And then again in 2010?

5 A. Burglary or attempted burglary.

6 Q. Do you have any other criminal record?

7 A. No.

8 Q. Besides speeding tickets and that kind of thing,

9 obviously?

10 A. No. I mean, no, I don't have anything other than

11 that.

12 Q. Mr. Parks, those were all property crimes and such.

13 Were those a result of your drug habit?

14 A. Yes.

15 Q. Because you needed money to get crack to get high?

16 A. Right.

17 Q. You were mentioning -- I'm going to go back to your

18 story that you were telling the jury of how everything

19 happened. Once you left the check cashing place in

20 Easley by the Wal-Mart, when you started looking for

21 different places that were good to break into, tell me

22 what happened then.

23 A. Well, we happened upon the Check Advance store over

24 here in Pickens. And I told him -- I noticed it, I

25 believe I noticed it first, and I told him to turn

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1 around and let's check this place out. We drove up into
2 the parking lot. We drove into the farthest corner, the
3 darkest part of the parking lot. I got out and I walked
4 up to the building, looked inside, and then actually
5 Reggie got out, as well. And we started observing where
6 cameras might be positioned at. And we looked and we
7 saw that, well, maybe we could try this place. It was
8 dark enough. There was nothing really around. Then we
9 got -- get back in the car, we rode up -- we went out
10 the parking lot. There is a side street right there, so
11 we went up the street to see what was back there and
12 what could be seen from there. When we saw that
13 everything was okay, we went ahead and we came back to
14 the same place. I got out. I got the tools out of the
15 back of the trunk, and I went to the back of the
16 building. I took with me a sledgehammer and a crowbar.
17 I went to the back, I went to the back, and I proceeded
18 to pry the door open. While I was doing that, he pulled
19 the car around the back of the building. He backed it
20 in, Reggie did. And then I was -- I hit the door right
21 there where the lock was at and I got the door open.
22 Once I -- once inside, the first thing I did, I turned
23 off the power, and then I went and I saw the alarm box
24 sitting on the wall, so I went up to -- attempted to
25 open it up. It wouldn't open and it actually came off

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1 the wall, and I was trying to disarm it as -- and when I
2 did, the whole thing came out of the wall, and I messed
3 the wall up.

4 Q. All right. I'm going to stop you there as well.

5 Has anyone ever shown you this picture before? Actually
6 shown you the picture?

7 A. I saw that once.

8 Q. This picture, the top picture, can you tell the
9 jury what that is?

10 A. That's the lock -- the door, actually, that I pried
11 open with a crowbar.

12 Q. I'm going to show you another one. Is that the one
13 you pried open with the crowbar?

14 A. As far as I know, yes, it is.

15 Q. I know you didn't take these pictures, but is this
16 the interior side of the door or the exterior side of
17 the door?

18 A. I can't see. I mean ---

19 Q. Okay.

20 A. -- I mean, it's hard to say.

21 Q. What's all this?

22 A. Those are the phone wires that we -- I tore out.

23 Q. You tore those out?

24 A. Yes, I did.

25 Q. Did Mr. Nance tear them out?

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- 1 A. No, he didn't. I did that.
- 2 Q. Did you pry that door open?
- 3 A. Yes, I did.
- 4 Q. Did Mr. Nance pry it open?
- 5 A. No.
- 6 Q. Is that the electrical box you used to turn off the
- 7 lights?
- 8 A. Yes.
- 9 Q. Did Mr. Nance turn off those lights?
- 10 A. I wish -- is that the check building?
- 11 Q. That's the Tobacco Warehouse.
- 12 A. Okay. No. I mean -- yes, I did that. Nance
- 13 didn't have anything to do with that.
- 14 Q. Okay. So you went into the Local Cash Advance.
- 15 Did you see anything you wanted?
- 16 A. There was nothing in there for me to get. I went
- 17 in for money, period. When there was no money, I just
- 18 started picking up anything of value. The only thing
- 19 that I saw of value was a little portable television. I
- 20 don't know, I might have picked up some other things. I
- 21 know I picked up some juice, some edible things.
- 22 Q. So you picked up the television, too?
- 23 A. I picked up a small television, yes.
- 24 Q. After you got what you needed -- well, where was
- 25 Mr. Nance while you were inside that Local Cash

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1 Advance?

2 A. We were both inside just looking around, taking
3 things. I don't know exactly what he picked up, but
4 ---

5 Q. And who went into Local Cash Advance first?

6 A. I did, when I opened the door.

7 Q. What was Mr. Nance doing when you were opening the
8 door?

9 A. Just standing behind me.

10 Q. When y'all went to the Local Cash Advance and you
11 didn't see the money that you wanted, what did you do?

12 A. Like I said we started -- Reggie and I started
13 picking up things of value. And I don't know exactly
14 what he picked up.

15 Q. Did you ultimately end up entering the Tobacco
16 Warehouse?

17 A. Yes, we did.

18 Q. And how did y'all do that?

19 A. Well, we -- I was going to go pry the door open,
20 and then Reggie suggested -- and he said, go through the
21 wall. And, yeah, I said, well, no problem with that, so
22 I went through the wall.

23 Q. Did that seem better to you than going through the
24 door?

25 A. Yes, it did.

- 1 Q. What is that?
- 2 A. Well, less chance of triggering the alarms.
- 3 Q. Well, how would one go through a wall?
- 4 A. Simply, most of the walls are sheet rock, you know.
- 5 So pick any point and you can kick your way through,
- 6 smash your way through with anything.
- 7 Q. How did you get through that wall?
- 8 A. I used the sledgehammer and my arm and I just
- 9 knocked a hole in the bathroom.
- 10 Q. This?
- 11 A. Didn't use that.
- 12 Q. What did you do with the sledgehammer that you
- 13 used?
- 14 A. When I was cleaning the scene, I tossed that one
- 15 into the woods.
- 16 Q. Going back, y'all start going through the wall.
- 17 Did y'all get through the wall? .
- 18 A. Yes, but he didn't go through the wall. I went
- 19 through the wall. He went on the outside of that -- the
- 20 door. While I -- when I got through, through the wall,
- 21 I went -- I was in another -- it was actually a
- 22 bathroom, and I went from one bathroom into another
- 23 bathroom. And I had to look and see where the motion
- 24 detectors were in the building. I spotted them. And I
- 25 told him, I said, I'm going to set this alarm off

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1 because I don't see the alarm box. I was yelling that
2 back out to him. And, when I got ready, I cut the power
3 off and I stepped out. And sooner than I knew it was
4 going to go off, so I started kicking the door, just
5 kicked it as much as I could and finally it came open.
6 While I was kicking it, the alarm did go off. Then we
7 -- he came in. And I tried to -- I had to find out
8 where the -- the alarm itself was the part that was
9 making all the noise. And I found it. It was through
10 another door in the store and I took the crowbar and I
11 beat it off the wall till it went off.

12 Q. Was this the crowbar?

13 A. No, it's not.

14 Q. What happened to the crowbar that you used?

15 A. I tossed it in the woods with the other -- the
16 sledgehammer.

17 Q. Now, why does the State have this crowbar and this
18 sledgehammer if they're not the ones that you used?

19 A. Those were in the car, already in the car. Reggie
20 placed them in the car because I know -- I didn't see
21 him place them in the car, but they were in the car when
22 he picked me up.

23 Q. So you get through the wall. You kicked the door
24 open. You hit the alarms off. Was there any point in
25 time that Mr. Nance would have had access to the vehicle

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1 while you were in the store?

2 A. Yes.

3 Q. Was the car -- how did y'all leave the car before
4 you started entering the store?

5 A. How did we leave the car?

6 Q. Yes, sir.

7 A. I think the trunk was open. I don't know about the
8 passenger door. I know the trunk was open. I placed
9 that television in the trunk, I think. I'm not sure
10 where I placed that television at. But I think he did
11 more back and forth to the car than I did. Okay.

12 Q. Was the car left running or off?

13 A. I don't know.

14 Q. Which way was the car facing?

15 A. Facing out so we could just get in and leave
16 without having to go -- without having to turn around.

17 Q. Seems like you put a lot of thought into this whole
18 process in planning how to do this burglary and to get
19 away with it; correct?

20 A. I mean, the -- it just came along as we went along.

21 It was -- just made sense things, you know, common
22 sense, you know, why would you pull into something --
23 why back out of something you could pull straight out
24 of, if we had to leave as quickly as possible.

25 Q. Okay. When you kicked the alarm speakers, did you

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1 in fact shut off the audible -- I'm sorry, the audible
2 alarm?

3 A. When I kicked it?

4 Q. Yes, sir.

5 A. Okay, I didn't ---

6 Q. You used the crowbar?

7 A. Yes.

8 Q. Did it shut the noise off?

9 A. It shut the noise off, yeah.

10 Q. Okay. So after that happened, what did you do?

11 A. We proceeded to look around trying to find where
12 the rest of the money was at. We kicked the door open
13 to the office. I kicked the door open to the office and
14 -- I don't know where he was at that point in the store,
15 but I went into the office and started searching around
16 in the office. They had some like little plastic bins
17 in there, and I started opening them up. With each one
18 that I opened, I found a stack of money and I just
19 shoved it in my pocket.

20 Q. Okay. I'm going to stop you again. Who was the
21 person driving in the driver's seat when y'all got to
22 the strip mall?

23 A. Reggie was driving.

24 Q. At any point did you sit yourself in the driver's
25 seat?

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1 A. Never.

2 Q. When y'all went in the store, did you have anything
3 to prevent fingerprints?

4 A. Gloves.

5 Q. What kind of gloves?

6 A. They were a cloth glove, gray, more like made out
7 of a sweater-like material. We used them when we worked
8 together at Dispoz-o.

9 Q. Did y'all have any rubber gloves?

10 A. I didn't see any rubber gloves. I didn't use any.

11 Q. Did you see what was on Mr. Nance's hands?

12 A. The same gloves that I had on.

13 Q. From when you worked together?

14 A. Right.

15 Q. Did you ever work with Ms. Brown?

16 A. No.

17 Q. So you make the alarm turn off and then what
18 happened? I'm sorry, the audible alarm sound off.

19 A. Again, after the alarm went off, like I said, we
20 proceeded to search the premises for money. And, like I
21 said, once we started finding money, I just put it in my
22 pocket. Then I just kept searching for the money. And
23 once I found all that I could find I proceeded filling a
24 box with cigarettes from the place. While I was filling
25 the box with cigarettes, I had found a -- in one of the