

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Pickens County

James R. Barber, III, Circuit Court Judge

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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

The State -vs- Reginald Nance (2010-GS-39-354, 355, 356, 357, 358 and 360)
Johnny Parks - Direct Examination by Ms. Hamaker

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1 bins, it was a bunch of change, money rolled up,
2 quarters and stuff like that. But I didn't bother with
3 it, I left it in there. So while I was filling the box
4 with cigarettes, Reggie came behind me and showed that
5 to me. I said, yeah, I saw that, but I didn't want to
6 bother with it, you know. But he took it anyway. He
7 went and placed it out in the car. I don't know where
8 he placed it in the car.

9 Q. What was the point of gathering the cigarettes?

10 A. Well, I got greedy. I got greedy and I said, well,
11 there were a lot of cigarettes in there. I just said,
12 I'll take them and sell them to people or just give them
13 to somebody.

14 Q. How much cash do you think you got out of there?

15 A. Well over two thousand dollars.

16 Q. All right. He shows you the coin -- the container
17 containing the rolled coins, and then what happened?

18 A. Like I said, he took them and he went and made the
19 decision to go ahead and take them. I continued to fill
20 the box with cigarettes and then I roamed around the
21 store some more. While we were -- while I was roaming,
22 I saw some headlights come into the parking lot.

23 Q. Okay. We're going to stop there. When you ripped
24 all those wires out, what was the purpose of that?

25 A. So that the alarm company wouldn't be notified when

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1 the alarm went off.

2 Q. Did you think you had sufficiently disabled that
3 alarm?

4 A. I thought I did. I wasn't quite sure and there at
5 one point, there was a little clicking sound still going
6 on. And then Reggie asked me what that was. I told
7 him, oh, it was nothing. I said, I took care of that
8 with the phone lines. But part of me wasn't sure. And
9 I don't think he was sure either, but we, we were -- we
10 stayed in there too long.

11 Q. What -- with your experience at breaking into
12 places, what does that clicking sound mean?

13 A. The alarm was going off somewhere.

14 Q. So you see these headlights coming in. Tell me
15 about that.

16 A. I saw headlights come into the parking lot and when
17 I saw -- it didn't take long to see who it was. And I
18 said, Reggie, the police is out there. When I said
19 that, he shot out the back door and I was, I was still
20 in there. I had the crowbar and the sledgehammer in
21 there with me. And I just jumped up and I ran out the
22 door and left them. I ran over by the tree line. And I
23 got there and I noticed that I had left those tools
24 inside of there, so I ran back inside and I got them.
25 While I ---

1 Q. Well, why did you go back inside for the tools?

2 A. I didn't want anything to have my fingerprints on
3 it. I knew that I had a prior record and I knew they
4 had fingerprints on file and I wasn't sure if I had
5 touched anything without gloves on or not. So I went
6 back and I got them.

7 Q. The tools that you used in the burglary that you
8 threw into the woods, whose tools were those?

9 A. Well, I would say ours, but we went and purchased
10 them from Wal-Mart. The sledgehammer came from
11 somewhere else, but the crowbar we purchased from Wal-

12 Mart along with that red, that red sledgehammer thing.
13 Q. Okay. How would you describe the lighting in the
14 front of the strip mall?

15 A. It was lit in one area but dark in another.

16 Q. What about the back of the strip mall?

17 A. It was a street light back there. But you really
18 couldn't -- it was enough trees around it, really no one
19 could see us back there.

20 Q. Now, I'm going to zoom in on an area of this
21 photograph. Does that -- is that the strip mall?

22 A. Yes, it is.

23 Q. If you could come down off the stand. Will you
24 point to the jury where the car was parked?

25 A. Around in here.

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- 1 Q. Do you want to use my pen?
- 2 A. It was about right here.
- 3 Q. And where was the door from the Local Cash Advance?
- 4 A. That's the door right here.
- 5 Q. What about Tobacco Warehouse?
- 6 A. Right here.
- 7 Q. Okay. You can get back up there. Thank you. So
- 8 you went back inside to get the tools that y'all had
- 9 accumulated together, and then what happened?
- 10 A. Once I got the tools in my hand, I noticed that the
- 11 officer was still at the front door as he was shining
- 12 his flashlight in the building, but he didn't -- he was
- 13 basically on the other side of the building where he
- 14 couldn't see me. When I saw him flashing a light in the
- 15 building, I ran out of the door. When I ran out of the
- 16 door, I ran to the right towards the tree line. There
- 17 was a tree line over there. About that time, Reggie ran
- 18 up to me and we was just, like you know, in a panic. We
- 19 were in a panic and -- it's just that we had gotten, you
- 20 know -- something happened that was unexpected, so we
- 21 were trying to figure out what to do. And we know -- we
- 22 knew that the car was there and our IDs was in the car
- 23 as well. And he said he had to get his car. And I was
- 24 hoping he got his car. But by the time he started to go
- 25 towards the car, then the officer came around the

1 building shining his flashlight and there was nothing we
2 could do. So it -- only one place to go and there was a
3 -- it was like a twenty-five foot drop and we made a
4 decision to leap down.

5 Q. All right. When you said that you yelled to Mr.
6 Nance, the cops, or the police are here and then you ran
7 outside, remembered the tools, came back inside, what
8 was Mr. Nance doing during that time period?

9 A. I don't know.

10 Q. Would he have had access to the car during that
11 time period?

12 A. Could have, yes. I thought -- actually I thought
13 he was in the car and -- I really did. And when -- it
14 surprised me, he ran -- when I was over by the tree
15 line, he was over by the tree line, and I was like -- I
16 thought he had the car. I wanted to kind of make a run
17 for it in the car, but like I said, neither of us was in
18 the car.

19 Q. The officer, do you recall where he parked when he
20 pulled in?

21 A. No. It was in the front, that's all I know.

22 Q. Are there two ways to get out of that parking lot
23 on either side of the building?

24 A. Yes, it is.

25 Q. But his car was facing towards Dodgens Road?

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- 1 A. Whose car, Reggie's?
- 2 Q. Yes, Mr. Nance's car?
- 3 A. Yeah, I mean, it was at the end of -- the edge of
- 4 the building, you know. So I mean, it's kind of, you
- 5 know, at the edge of the building where the Check
- 6 Advance place is at. It wasn't -- I can't say facing
- 7 out toward the highway but it was facing toward -- just
- 8 about ---
- 9 Q. Okay.
- 10 A. -- is the way to put it.
- 11 Q. So bring me to this cliff. During your path to the
- 12 cliff, was Mr. Nance with you?
- 13 A. Yes.
- 14 Q. I call it a cliff, you might want to call it
- 15 something else. How far was that drop?
- 16 A. I'd say it was twenty-five feet.
- 17 Q. And you made the decision to jump?
- 18 A. Yeah.
- 19 Q. Did you get hurt?
- 20 A. No.
- 21 Q. What about Mr. Nance, what decision did he make?
- 22 A. To jump as well, but it took him a little longer.
- 23 Once I got down, there was some trailers, some truck
- 24 trailers, in a parking lot. It was on the same place
- 25 where, where -- when we hit the bottom there was some

1 trailers right there. See them right there.

2 Q. Right there?

3 A. Right.

4 Q. And those were there?

5 A. They were there. I went -- and once I got down I
6 went and hid behind one of them waiting for him. And he
7 took a while to come down and I kind of got afraid, I
8 thought that he had gotten caught, so I started back
9 after -- I was going back towards the, towards the ledge
10 we had jumped down, and then he was coming down it then.
11 After that we ran. We ran across the road.

12 Q. Would it be easier for you to come show the jury?

13 THE COURT: Hang on just a minute. You don't
14 have a laser that you can have him show that with?

15 MS. HAMAKER: Unfortunately, Your Honor, I
16 don't. We can get one.

17 THE COURT: All right.

18 MS. HAMAKER: I'm sorry. If you'll come on
19 down.

20 THE COURT: All right. If you can get all
21 this done at this time, please, with what you need him
22 to show for a description.

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

24 A. Okay. We ran ---

25 Q. Be loud because they are way over there.

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1 A. We ran and hid behind the trees here. We crossed
2 the road. I'm not sure what -- just what I'm looking
3 at. Is this the Hot Spot? Okay. We were behind the
4 Hot Spot ---

5 Q. Really loud. Pretend like I'm not here and I'm
6 over there.

7 A. We ran behind the Hot Spot, came down. We ran all
8 behind here, came down through here. There were like
9 some concrete barriers back down in here. We didn't
10 know which way to go. There was water over here, there
11 was water, so we went on over here.

12 Q. Show me the incident location, the strip mall, on
13 this one. Okay. So show me where you ran to.

14 A. That we ran. Up in this area. We came down, came
15 down right behind these trailers. Came down here, kept
16 going behind the Hot Spot, along this tree line and came
17 down right here. I think these are concrete barriers
18 right here. Okay. And like I said, there was water
19 over here. We weren't sure which way to go, so we had
20 to weigh -- we were wanting to cross the highway but
21 traffic was coming, too much traffic was coming. So we
22 had to wait. And once the traffic ceased, we ran across
23 the street.

24 Q. Okay. We'll do the rest from the witness stand.
25 If you'll take the jury past that map as to where you

1 went. Try to describe it as much as possible.

2 A. We crossed the street, crossed the highway. There
3 were like some storage buildings across the highway. We
4 ran between the storage buildings, behind that area. We
5 ran behind that area and up into the woods. I didn't
6 know what to do. I was in a state of panic, trying to
7 keep my composure. Reggie just encouraged me and said
8 just keep going, keep going. You know, we got to get
9 out of here. So he was leading the way. And we ran
10 into the woods. I remember we had to get as far away
11 from there as we could, as quickly as possible, so we
12 ran through the woods. It was kind of a steep area.
13 There was some steep embankments back there and we was
14 slipping because it was wet, it had been raining. As we
15 ran through the woods, I was wanting to give up and he
16 kept telling me come on, come on, soldier, we got to
17 keep going.

18 Q. Soldier? Why did he call you soldier?

19 A. Well, I was in the military, you know, so we had
20 military experience and we ---

21 Q. Both of you were in the military?

22 A. Yes.

23 Q. So y'all have that thing in common?

24 A. Right.

25 Q. All right. So he tells you to come on, soldier,

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1 and then what happens?

2 A. We ran -- there was, like I said, steep embankments
3 and we were slipping on -- slipping. So I kind of help
4 -- I pushed him on up the bank. Once we got up the
5 bank, we were behind Bi-Lo and we stayed as far to the
6 rear of Bi-Lo as we possibly could. And we kept just --
7 I was getting tired. You know, it don't take much for
8 me to get out of breath. But we kept going. And once
9 we got behind Bi-Lo, we ran -- there was a yard, there
10 was a house, we just started jumping fences, running
11 through yards, staying off the road as much as possible.
12 While we ran, we got, I would say maybe a quarter mile
13 away and I heard dogs barking. And I told him, I said,
14 you hear that, don't you? He said, yeah. So he ---

15 Q. This is after you are behind Bi-Lo?

16 A. This is after we had passed Bi-Lo. Okay?

17 Q. Okay.

18 A. And we went on the road, along the tree line as
19 much as possible. And whenever a car came down the
20 road, we would duck down and blend in with the tree line
21 as much as we could. We were looking for a way to get
22 out of there.

23 Q. Let me ask you this. Did you see any other
24 officers arrive? Were you still around at that point?

25 A. Yes. So, as a matter of fact, when we first

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1 started fleeing before we ever crossed the road, we saw
2 officers coming. That's what made -- that's when we
3 really gave up on the car as well. More officers
4 started coming to the parking lot, coming onto the
5 scene. And we had -- we just had to get out of there as
6 quick as we could.

7 Q. Did you and Mr. Nance ultimately end up finding a
8 way out of there?

9 A. From that area?

10 Q. Yes, sir.

11 A. Yes, we did.

12 Q. And how was that?

13 A. About four miles down the road, there was a body
14 shop down there and we -- we knew that there were cars
15 out there. He kept telling me, as long as we could find
16 a body shop, we could find a car. The whole time we
17 were walking, we were looking for a vehicle to get into
18 so we could get out of there. We couldn't find one. We
19 damaged a few vehicles along the way trying to call
20 myself hot wiring and I never knew -- didn't know what I
21 was doing. I just messed those up. But we eventually
22 ran upon this body shop at the base -- at the foot of a
23 street we were on, the highway. And we wanted to get
24 the keys, and I wasn't willing to go into any place
25 else. I had had enough alarms for that night. I was

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1 kind of shook up. I'm tired and I was cold, and it was
2 wet, and it was raining, but we were desperate. We had
3 to get out of there. And so we kicked -- the window
4 actually was already -- had evidently -- was gone.
5 There was a piece of wood blocking this window in this
6 body shop. And as we -- we took a chance and pushed the
7 wood out of the way and fortunately there wasn't an
8 alarm in the building, not in that area, so we went
9 inside the body shop and went in and opened the door. I
10 came in after. We went into the office looking for keys
11 and -- because there was two vehicles out front. And I
12 noticed there was a rack of keys on the wall. I told
13 him, get the keys, I said. Which ones he asked me,
14 Reggie asked me. I said, get them all. And then while
15 we got the keys, we had to -- we needed a license plate,
16 so we started looking around in there for a license
17 plate. We found a license plate. I believe it was a
18 dealer tag, but it had '07 on it. Nevertheless, we used
19 it anyway. While he was trying to mount the plate on
20 the vehicle, we chose the -- it was a Ford, you know,
21 like it was like a Ford Taurus outside in the front. It
22 was right on the front of the street. And while he was
23 trying to put the tag on, I started trying to find out
24 which key would fit the door. I found one about on the
25 second or third try, one that opened the lock. I told

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1 him, I got one that would open the door, I found the
2 key. So once we -- well, the whole time while we were
3 trying to do that, the cars were riding by. And
4 eventually I think a couple of police officers rode by
5 going slow. So we would have to go and hide ourselves,
6 conceal ourselves from them until they passed by. We
7 waited until the road was clear, you know, we could
8 proceeded to do what we were doing. Once he got the tag
9 on, I went and I -- they had the price of the car on the
10 windshield. I took the sleeve of my jacket and I wiped
11 the price off. It was like -- that was some kind of
12 paint or polish or something like that. We got in the
13 car and we left.

14 Q. Have you ever been charged with any crime such as
15 breaking into that body shop or stealing that vehicle?

16 A. No.

17 Q. So nobody has -- has anybody questioned you about
18 that?

19 A. No, they haven't.

20 Q. Are you coming forth today telling the jury that
21 you did do that?

22 A. We did do it, yes.

23 Q. Mr. Nance helped you?

24 A. Yes, he did.

25 Q. Who drove the vehicle off the lot?

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1 A. He did.

2 Q. When you drove the vehicle off the lot, what
3 happened after that?

4 A. Well, it was cold. Turned some heat on and was
5 trying to warm up. My hands were almost numb. It was
6 very cold out there. When I started -- we started --
7 well, actually back up a little bit. While we were
8 walking, while we were walking, we were wondering what
9 are we going to do, what are we going to do, how are we
10 going to get out of this? And so we started forming a
11 plan that -- saying that the car was stolen. And so
12 once we actually got this car, we talked more in detail
13 to say, you know, about Reggie was going to tell Tisha
14 to have the car reported stolen. Okay? And while we
15 was going through that, I took the money out and I
16 started dividing up the money. I didn't count it. I
17 just -- what I had, whatever it was, I just took it and
18 split it, a dollar for you, dollar for me, you know,
19 such and so on. But we, again, we decided to say that
20 the car was stolen and he said he would take care of
21 it.

22 Q. The car that Mr. Nance had purchased earlier that
23 day?

24 A. Right. I said all our IDs are in the car, Reggie.
25 Our ID's are in the car, our telephone's in the car.

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1 They're going to know it was us. How we going to get
2 away? You know, neither of us were wanting to go back
3 to prison and neither of us wanted to be caught. You
4 know, and -- you know, it was the wrong thing to do, but
5 nevertheless we did do it. And I guess our luck ran
6 out. We pushed our luck too far that time.

7 Q. Okay. Where did you go in that car that you
8 stole?

9 A. We went to Greenville. We came up -- eventually I
10 think we came up -- ended up -- came up Church Street
11 and we ended up downtown. We came by way of McBee
12 Avenue to Washington Street in Greenville. Then we came
13 -- we rode through the Nickeltown area, which I'm from,
14 that we used to go that way. We rode through there just
15 to stay off the main road. And we ended back over in my
16 neighborhood, [REDACTED] And he dropped me off at
17 my house, at my mother's house at [REDACTED]
18 We had -- I had finished dividing up the money and I
19 told him, because I was trying to keep my hands -- I had
20 lost my gloves along the way, throwing a lot of things
21 out, and I lost my gloves. So I didn't want to touch
22 anything in the car. But in the end I got ready to open
23 the door and I said, make sure you wipe my fingerprints
24 off the car. He said he was going to wipe everything
25 down when he got rid of the car. I don't know what he

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1 did with the car. Once I got out, I don't know which
2 way he went, I don't know.

3 Q. Do you know what Mr. Nance did with his gloves?

4 A. I think he had them on while he was driving. I'm
5 not sure.

6 Q. When you were let out of the vehicle, what did you
7 do?

8 A. I went into the house. I was looking around. And
9 I got into the house. I didn't have a key, but my
10 nephew was in the living room. I asked him had the
11 police been there looking for me. He said, yeah, they
12 had been there. And it kind of surprised me that the
13 answer was yes. And he said they had been circling the
14 block. So at that point, I decided not to stay there
15 that night. I put some clothes -- got some clothes
16 together. Ms. Aavik was still in my room. We got some
17 things together and I had my sister drive me to a motel
18 and I stayed there for two days.

19 Q. When you got done staying at the hotel, what did
20 you do?

21 A. I called my sister to come and pick me up.

22 Q. Why did you call her to pick you up?

23 A. I was ready to go, and I was out of money.

24 Q. How much money do you think was your share?

25 A. Probably about a thousand dollars.

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1 Q. Where did it go?

2 A. Went to the drug dealer.

3 Q. Your sister came and picked you up, and then what
4 happened?

5 A. Ms. Aavik, she was coughing. She kept coughing a
6 lot and I had told her she needed to go to the hospital.
7 So I came home for a minute and I took her to the
8 hospital.

9 Q. You said she was coughing a lot?

10 A. Yeah, she was coughing. She had bronchitis, come
11 to find out. You know, she didn't really want to take
12 care of herself. I had to make her go to the hospital,
13 you know.

14 Q. Well, we are going to stop right there and not go
15 much further with that. Did you see Mr. Nance after
16 this incident?

17 A. That day, it was a Thursday.

18 Q. Two days, three days after?

19 A. Two days after.

20 Q. And where did you see him?

21 A. He came to my house, my mother's house on [REDACTED]

22 [REDACTED]

23 Q. Did he say anything to you in regards to this
24 burglary?

25 A. Well, he came inside and then he and I, we went

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1 outside and we started talking. We wanted to get our
2 stories together, because, like I said, we hadn't seen
3 each other in two days. So, again, so we formulated
4 that day was that we would say that he picked me up
5 around six o'clock. He had purchased a new vehicle and
6 he picked me up around six o'clock and we went riding
7 and we were supposed to been riding for a couple hours,
8 up and down the interstate, drove into the
9 neighborhoods, you know, just riding around visiting
10 people. At one point I'm supposed to say that I drove
11 the car, that I drove that day, but I didn't. And we
12 agreed to say that I had gotten back home around ten
13 o'clock. And then from there, that was it. I don't
14 know which way he was supposed to have gone from there,
15 but that was the story we had put together, as well as,
16 I think I said that the car was supposed to be reported
17 stolen.

18 Q. Do you know if he ever in fact got Tisha to report
19 it stolen?

20 A. Yes, matter of fact, he said that she had reported
21 the car stolen and that the person that came to take the
22 report was somebody that knew her, that had went to
23 school with her. At first he took the report, and then
24 later on he came back and told her that he could not
25 take that report because that car had been used in a

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1 burglary ---

2 MR. DEJONG: Objection, Your Honor.

3 THE COURT: Yeah, sustained.

4 Q. You just can't say what anybody says. You can only
5 what you said and what Mr. Nance said. Okay?

6 A. Okay.

7 Q. Did y'all happen to take a road trip down to
8 Richland?

9 A. Yes.

10 Q. Did you and Mr. Nance, were you getting along at
11 that point?

12 A. Yes.

13 Q. How close to this burglary did that occur?

14 A. Two days later. It's the same day he came to my
15 house.

16 Q. And you were getting along fine?

17 A. Yes.

18 Q. I'm going to show you a few things that were found
19 in the car Mr. Nance purchased that day. State's
20 Exhibit Number 37 and 35. Of these two phones, will you
21 pick up the one that belongs to you and show it to the
22 jury? That other phone, will you pick that up and show
23 it to the jury? And what's the number on the back of
24 it?

25 A. 35.

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- 1 Q. State's Exhibit Number 35 for the record?
- 2 A. Yes.
- 3 Q. Is that phone yours?
- 4 A. No.
- 5 Q. Whose phone is that?
- 6 A. This is Reggie's phone.
- 7 Q. Is this phone -- how much did you pay for this
- 8 phone?
- 9 A. About twenty-five dollars.
- 10 Q. Do you have an estimate value of this phone?
- 11 MR. DEJONG: Objection, Your Honor.
- 12 THE COURT: I sustained the --
- 13 A. No.
- 14 THE COURT: Hang on just a minute. I sustain
- 15 the objection without a foundation.
- 16 Q. Have you ever seen Mr. Nance make any phone calls
- 17 on this phone?
- 18 A. Yes.
- 19 Q. When you went in the store, do you know where those
- 20 phones were placed?
- 21 A. In the console. I placed mine in the console along
- 22 with my billfold.
- 23 Q. Why did you not take your billfold and your cell
- 24 phone into the store with you?
- 25 A. I didn't want to drop anything while I was inside

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1 of the business.

2 Q. Do you know what Mr. Nance did with his phone or
3 his wallet?

4 A. Put it in the console as well, as far as I know.

5 Q. Did you actually see it in the console?

6 A. No, I can't say that I saw his in the console. It
7 was either between the console or the arm rest. He
8 didn't have it on. We both placed our phones somewhere
9 in the car. And our IDs.

10 Q. All right. Did you ever see Mr. Nance with the
11 wallet that day of the burglary?

12 A. No.

13 Q. I'm sorry, everything's taken out of here. This is
14 State's Exhibit Number 36. Whose wallet is that?

15 A. That's mine.

16 Q. Can you look through it? I'm mostly concerned
17 about the identification in there.

18 A. What do you want me to take out?

19 Q. If you'll just lay it out and pick out all the
20 identification, just read the names off them.

21 A. This is a South Carolina driver's license. It's an
22 old CDL license that's mine.

23 Q. That's yours?

24 A. Johnny Parks, yeah.

25 Q. Okay.

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1 A. Capital One platinum credit card is mine, Johnny
2 Parks. Social Security card is Lillian Aavik's. I have
3 a South Carolina driver's license that's Reginald
4 Nance's. I have another -- have a debit card, Visa
5 debit card. That's mine, Johnny Parks. Have a Wachovia
6 check card, debit card, that's mine, Johnny Parks. Have
7 a South Carolina Department of Corrections ID is mine,
8 Johnny Parks. Social Security card is mine, Johnny
9 Parks. And a ID card, South Carolina ID card, that's
10 mine, Johnny Parks. I have another driver's license, a
11 South Carolina driver's license, which is more current.
12 That's mine, Johnny Parks. Have another Social Security
13 card, the one I've had from the very, very beginning
14 since I've had a Social Security card, that's mine,
15 Johnny Parks. I have a Visa debit card that's Reginald
16 Nance's.

17 Q. Do you see anything else in your -- in those
18 contents that belong to Mr. Nance?

19 A. Just his debit card and his ID. And I guess --
20 this is not mine.

21 Q. What is that?

22 A. It looks like a little billfold cardholder.

23 Q. Okay. Let me grab all of that from you. Thank
24 you. Did it surprise you to see Ms. Lilly's, or
25 Lillian's, Social Security card or driver's license in

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1 your wallet?

2 A. No.

3 Q. Did it surprise you to see Mr. Nance's bank card
4 and driver's license in your wallet?

5 A. Yes.

6 Q. Did you put it in there?

7 A. No.

8 Q. Do you know how it got in there?

9 A. No. I see the blue, the blue deal, none of that
10 stuff was with my -- our stuff. It was not with my
11 stuff when I placed it in his car.

12 Q. And do you recall Mr. Nance -- not knowing his
13 whereabouts at certain points when you were inside the
14 store?

15 A. Right.

16 Q. Has the State ever shown you any pictures of people
17 before?

18 A. No, they haven't.

19 Q. Do you happen to know who that is?

20 A. That's Quan Griffin.

21 Q. Who? Say it loud.

22 A. Quan Griffin. Quan Griffin.

23 Q. Who is that to Mr. Nance?

24 A. That's his girlfriend.

25 Q. I thought Ms. Brown was his girlfriend.

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- 1 A. I think he was seeing both of them.
- 2 Q. Did Ms. Brown know about that?
- 3 MR. DEJONG: Objection, Your Honor.
- 4 A. I can't say.
- 5 MR. DEJONG: Relevancy.
- 6 THE COURT: What's your objection?
- 7 MR. DEJONG: Relevancy.
- 8 THE COURT: I sustain the objection.
- 9 Q. Do you know who that is?
- 10 A. No, I don't know who that is.
- 11 Q. Do you know who that is?
- 12 A. That's Quan and Reggie.
- 13 Q. Same lady?
- 14 A. Yes.
- 15 Q. What's Quan's last name?
- 16 A. Her name is Singleton-Griffin.
- 17 Q. Do you know who that is?
- 18 A. That's Tisha and her daughter, Jenia.
- 19 Q. And that?
- 20 A. That's her daughter. That's Tisha's daughter,
- 21 Jenia.
- 22 Q. Have you ever seen State's Exhibit Number 34
- 23 before?
- 24 A. Yes.
- 25 Q. When did you see it?

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1 A. Reggie carried it around in the car with him and
2 then each time he got out of the car at Tisha's
3 apartment, he brought that in with him.

4 Q. State's Exhibit Number 44. Recognize this?

5 A. Yes.

6 Q. What is it?

7 A. It's a light jacket. Reggie actually purchased
8 that for me at a Family Dollar Store in Laurens.

9 Q. So it's your jacket?

10 A. Yes, it is.

11 Q. Did Ms. Brown ever write you letters after this
12 incident?

13 A. While I was at Richland County Detention Center,
14 Alvin S. Glenn Detention Center in Columbia.

15 Q. While you were down there, did Mr. Nance contact
16 you directly or indirectly by any means?

17 A. Indirectly through Quan, letters from Quan, and a
18 few letters from -- a couple letters from Tisha.

19 Q. Anyone else?

20 A. Some -- a friend of his named Carl Mitchell.

21 Q. Did you ever contact Mr. Nance directly or
22 indirectly?

23 A. Yes, via the same means, through Quan, but mostly
24 through Quan.

25 Q. Did y'all ever communicate together directly?

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- 1 A. I mean, I received a couple of letters written by
- 2 him, yes.
- 3 Q. And whose name would be on the outside of those
- 4 envelopes?
- 5 A. Always Quan. Quan and Tisha. Carl.
- 6 Q. What was the general nature of those letters? What
- 7 was the purpose behind them?
- 8 A. We were trying to stay ahead of what was going on.
- 9 Just getting general information about each of the cases
- 10 that we ---
- 11 Q. About -- were you -- about the charges brought
- 12 against you here -- not you, Mr. Nance, today?
- 13 A. Yeah.
- 14 Q. Let me ask you this, have you been tried or pled
- 15 guilty to any of the charges that we are discussing, or
- 16 the incident that we're discussing today?
- 17 A. No.
- 18 Q. Are you still incarcerated?
- 19 A. Yes, I am.
- 20 Q. This is State's Exhibit Number 33. I'm going to
- 21 show you the contents. This is a secured gun. Have you
- 22 ever seen this before?
- 23 A. I've seen a gun like that. I'm not going to say
- 24 that was the one, but I've seen a gun like that.
- 25 Q. Where have you seen a gun like this?

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1 A. It was in the black zip case you just showed me.

2 Q. And Mr. Nance carried that case around?

3 A. Yes, he did.

4 Q. Did he always carry this gun in that case?

5 A. When he opened it that day, the gun was in there.

6 I can't say it was always in there because he never

7 opened it with me.

8 Q. He showed it to you that day?

9 A. He showed it to me when we -- one of the very first

10 times that we went to LaTisha's apartment.

11 Q. But did you see the gun the day of this incident?

12 A. No. I wasn't aware the case or the gun was in the

13 car.

14 Q. Did you ever carry guns?

15 A. No.

16 Q. This hammer, is this yours?

17 A. No.

18 Q. Did you see this hammer that night?

19 A. That was in the trunk as well.

20 Q. What about this?

21 A. A screwdriver. In the car, in the trunk.

22 Q. Did you specifically remember seeing it that

23 night?

24 A. No. There was various tools.

25 Q. Flashlight, recall seeing it that night?

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1 A. That -- we had a few flashlights, and that is one
2 of them that we used.

3 Q. Remember seeing this box of vinyl gloves that
4 night?

5 A. No, I don't.

6 Q. Did you see this box containing these items that
7 night?

8 A. No, I didn't see that box, to be honest with you.

9 Q. Do you know this picture? Have you seen this scene
10 before?

11 A. No, I haven't.

12 Q. Does that look familiar to you?

13 A. Well, I can't really say.

14 Q. Okay. Fair enough. What about that picture?

15 A. Yes.

16 Q. Is that the hole that you made through the wall
17 between the two stores?

18 MR. DEJONG: Objection, Your Honor, ---

19 A. Yes, it is.

20 MR. DEJONG: -- she's leading.

21 THE COURT: I sustain the objection. Rephrase
22 your question.

23 Q. What is this a picture of?

24 A. It's a hole in the bathroom where I came in at.

25 Q. Did you make this hole or did Mr. Nance make this

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1 hole?

2 A. I made the hole.

3 Q. What about State's Exhibit Number 14, the top

4 portion, is that the hole -- I'm sorry, do you recognize

5 that?

6 A. Yes, it's the hole that I made through the wall.

7 Q. State's Exhibit Number 15. Recognize that?

8 A. It's inside of the Tobacco store.

9 Q. Who placed those cigarette cartons on the floor?

10 A. I did.

11 Q. You recognize that?

12 A. Yes.

13 Q. What is that?

14 A. That's the box that I was loading up with

15 cigarettes.

16 Q. The one you said you were being greedy about?

17 A. Yes.

18 Q. Why did you say you were being greedy?

19 A. Because I came for money. I didn't come for

20 anything else other than money. I got what I wanted and

21 I stayed and started taking more. Had I left I wouldn't

22 be sitting here -- well, maybe I would be, if I kept

23 going. Probably would.

24 Q. Recognize that?

25 A. Yes.

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- 1 Q. What is it?
- 2 A. It's the same area of the store.
- 3 Q. Recognize that?
- 4 A. Yes.
- 5 Q. Did you take any money from any of the areas in
- 6 this picture?
- 7 A. The bottom portion, there is a metal door right
- 8 there. There was a little plastic bag inside of it
- 9 containing a bunch of ---
- 10 Q. Inside there?
- 11 A. Yes.
- 12 Q. Recognize that photograph?
- 13 A. That's the other side of the -- well, inside the
- 14 Check Advance where I actually punched through the wall
- 15 with a sledgehammer.
- 16 Q. Do you recognize that?
- 17 A. Not in the light, but that's the Check Advance
- 18 store, drawers and stuff that we were going through.
- 19 Q. Did you pull the drawers open?
- 20 A. I pulled some open, he pulled some open. I can't
- 21 be specific which ones I did.
- 22 Q. And that, were those papers like that when you got
- 23 there?
- 24 A. No, they weren't.
- 25 Q. Who moved them to that position?

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1 A. I don't know. One of us did.

2 Q. This photograph?

3 A. None of this stuff was like that when we came in.

4 Q. This photograph?

5 A. We pulled the drawer out. I don't know which one
6 of us did.

7 Q. This drawer or that drawer? Or this drawer? The
8 first one?

9 A. All of them.

10 Q. Okay. What is that a picture of?

11 A. That looks like the storage room where I got the
12 little television from.

13 Q. Do you recognize that wire hanging down from the
14 ceiling?

15 A. Oh, okay, I see where it is now. That is the --
16 that's the Tobacco Store where the alarm -- that was the
17 alarm, the audible alarm.

18 Q. Was it like that when you entered the store?

19 A. No, it wasn't.

20 Q. Who made it like that?

21 A. I did.

22 Q. What is that a picture of?

23 A. It's the inside of a car. I don't know which car
24 it is, though.

25 Q. Do you recognize that phone?

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- 1 A. That's my telephone and that's my billfold.
- 2 Q. Do you bank with Bank of America?
- 3 A. No, I don't.
- 4 Q. Does that card along to you?
- 5 A. No, it doesn't.
- 6 Q. Is it sticking out further than any of the other
- 7 cards?
- 8 A. Yes, it is.
- 9 Q. What's this?
- 10 A. That's the television that I picked up out of the
- 11 Advance store.
- 12 Q. What's that?
- 13 A. That's the fruit drink that I picked up as well.
- 14 Q. What's that?
- 15 A. That is the big, large sledgehammer that we
- 16 purchase from Wal-Mart.
- 17 Q. Did you use that in the burglary?
- 18 A. No, we didn't use that at all that night.
- 19 Q. You used the one that you threw in the woods?
- 20 A. Yes.
- 21 Q. That hammer, did you use that that night?
- 22 A. No, we didn't.
- 23 Q. Did you bring these two tools into the vehicle when
- 24 Mr. Nance picked you up?
- 25 A. No, they were already in there.

1 Q. Did you take those towels?

2 A. Yes, we took those towels.

3 Q. Was that you or Mr. Nance that took them?

4 A. I believe I gave them to him. I might have loaded
5 them in there myself, I'm not sure on that one.

6 Q. What's that?

7 A. That's my jacket.

8 Q. The one we just showed to you?

9 A. Yes, ma'am.

10 Q. What's this?

11 A. That's one of the plastic bins that was in the
12 office at the Tobacco Warehouse.

13 Q. What's inside of it?

14 A. That is rolled-up money.

15 Q. Who took that?

16 A. Reggie took it.

17 Q. Did it come out of that drawer?

18 A. I'm not sure. Evidently it did. I can't say.

19 Q. That's okay if you can't say. What's that?

20 A. That's the rolled-up money that I chose to leave
21 behind.

22 Q. Did you ever see Mr. Nance with this box,
23 container?

24 A. I saw him with the bag, or the plastic bag, but the
25 entire container, I didn't actually see him with it.

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- 1 Q. This crowbar, is that the one you used in the
- 2 burglary?
- 3 A. No, we didn't.
- 4 Q. What's this?
- 5 A. That's the black case you showed me a minute ago.
- 6 Q. Do you recognize any of the items in this picture?
- 7 A. I mean, this -- I didn't mess with any of that
- 8 stuff. Other than the paper towels, I don't recognize
- 9 it.
- 10 Q. You recognize anything in that photograph?
- 11 A. The gun, the black case there.
- 12 Q. And how do you recognize it?
- 13 A. I mean, it's the one that he showed me.
- 14 Q. Who showed you?
- 15 A. It's the one Reggie showed me. If it's not that
- 16 gun, it's very similar to it.
- 17 Q. Recognize any of those items?
- 18 A. I don't know. Other than -- I didn't touch it, I
- 19 didn't take it. If I did, I don't remember it.
- 20 Q. Do you recall what that is?
- 21 A. No, I don't know what that is.
- 22 Q. Or that?
- 23 A. I can't -- I don't know what that is either. Oh,
- 24 put it back up here. What area, I don't know ---
- 25 Q. A little louder.

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1 A. I'm trying to figure out what area of the store
2 that is. It's just off the back door, I still don't
3 know what it is. I can't tell you what it is.

4 THE COURT: Solicitor, I think this might be a
5 good time for us to take a lunch break. Let the jury go
6 for a while. We'll finish this testimony when you come
7 back. I'll remind you again, as I have, don't discuss
8 the case. Don't let anyone discuss it with you. If
9 you'll be back at two thirty, we'll be ready to proceed
10 at that time. Have a good lunch, ladies and gentleman.

11 (WHEREUPON, the jury exited the open court at
12 approximately 1:21 p.m.)

13 MS. HAMAKER: Your Honor.

14 THE COURT: Yes, ma'am.

15 MS. HAMAKER: I know they already know to do
16 this, but can we make sure he is separate from Mr.
17 Nance?

18 THE COURT: Yeah, they'll know to keep him
19 separate from Mr. Nance. They'll know to do that, but
20 thank you for reminding us. We'll take a short break,
21 or lunch break, until two thirty. Be ready then to
22 proceed with the trial.

23 MR. DEJONG: Thank you, Your Honor.

24 THE COURT: Mr. DeJong.

25 MR. DEJONG: Yes, Your Honor?

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1 THE COURT: If y'all could wait just a minute.
2 I just wanted to make sure that both of you know outside
3 of your presence yesterday, I put on -- I told the court
4 reporter that I wanted the exhibit on the weapon to be
5 separated so that the weapons would be 35 or 33 or
6 whatever the number is -- A, B, C. So that's the way
7 she's going to mark that. Y'all can make sure all your
8 exhibits are properly marked in the end, and so forth.

9 But what I'm saying, we're not going to let the
10 weapons go back at the same time the ammunition does.
11 So rather than renumbering everything, we're just going
12 to have an A, B, C, after that. Any objection to that?

13 MS. HAMAKER: Not from the State.

14 MR. DEJONG: None, Your Honor.

15 (WHEREUPON, the Court stood at recess for a lunch
16 break.)

17 THE COURT: Ready to proceed again, Solicitor?

18 MS. HAMAKER: Yes, sir, Your Honor. Your
19 Honor, before we bring the jury in ---

20 THE COURT: Yes, ma'am.

21 MS. HAMAKER: -- one of the things Mr. DeJong
22 and I spoke about -- well, we spoke about two things
23 during the break. The first thing is I got in the
24 elevator with Tracy on the second floor, noticed a male
25 in the elevator, asked him if he was going up and he

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1 said yes, and being a little sleep deprived I said,
2 well, what are you going up to the third floor ... And
3 at that time in my mind I realized that he was also a
4 jury, or a juror, and he said, well, I'm a jurist. We
5 stopped the conversation at that point.

6 THE COURT: Rode the elevator up with him?

7 MS. HAMAKER: Yes, sir.

8 THE COURT: All right.

9 MR. DEJONG: Well, if we're disposing all
10 that, I've ridden up with two or three jurors, although
11 we haven't talked about anything. I tried to be
12 sensitive ---

13 THE COURT: I think I explained all that to
14 them to begin with.

15 MR. DEJONG: I told Ms. Hamaker that was up to
16 her whether she wanted to put it on the record. I'm not
17 perturbed about that at all, Your Honor.

18 THE COURT: All right. The second thing?

19 MS. HAMAKER: The second thing is, Mr. DeJong
20 asked me not to speak with my witness during the lunch
21 break and I honored that. However, when he comes back
22 on the stand, I plan on asking him did he know if the
23 defendant had his driver's license when they were down
24 in Richland on their road trip, which was actually a
25 burglary that they both have been charged with.

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1 I just want to make sure that I'm able to tell him
2 not to go into that burglary or why they were down in
3 Richland.

4 THE COURT: Okay.

5 MR. DEJONG: That's fine. I would ---

6 THE COURT: ... verifying that question ---

7 MR. DEJONG: Your Honor, I think the thing is,
8 she says she needs to talk to him to caution him and I
9 certainly don't want a mistrial at this point.

10 THE COURT: Why don't you just meet him back
11 there as he comes in, discuss that -- just that one item
12 ---

13 MS. HAMAKER: It'll just take a second.

14 THE COURT: -- and then they can bring him on
15 back.

16 (WHEREUPON, the Court stood at recess for a short
17 break.)

18 THE COURT: Mr. Parks, let me remind you,
19 you're still under oath, sir.

20 MR. PARKS: Yes, sir.

21 THE COURT: Let's have the jury come in if
22 they're ready.

23 (WHEREUPON, the jury entered the open court at
24 approximately 2:47 p.m.)

25 THE COURT: Solicitor, you may continue your

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1 examination of the witness.

2 DIRECT EXAMINATION CONTINUED

3 BY MS. HAMAKER:

4 Q. Mr. Parks, when you and Mr. Nance went down to
5 Richland on your road trip together, did you happen to
6 notice if Mr. Nance had a driver's license on him?

7 A. Yes, he did.

8 Q. State's Exhibit Number 33, the locked handgun. You
9 said you saw Mr. Nance with a gun like this before, but
10 you can't be certain if this is the gun?

11 A. Yes.

12 Q. But it looks like this?

13 A. Yes.

14 MS. HAMAKER: Your Honor, at this time the
15 State would like to introduce State's Exhibit Number 33
16 into evidence.

17 THE COURT: All right. Any objection to
18 Exhibit 33?

19 MR. DEJONG: Without objection, Your Honor. I
20 thought it had already been introduced anyway.

21 THE COURT: Does that have any other parts to
22 it at all? Are you asking that all ---

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

24 THE COURT: I think that's Exhibit 33, 33A,
25 33B?

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

2 MR. DEJONG: All without objection.

3 THE COURT: All right. Without objection
4 those exhibits will be entered into evidence.

5 MS. HAMAKER: A, B, and C, Your Honor?

6 THE COURT: A, B, and C.

7 (WHEREUPON, State Exhibit Numbers 33, 33A, 33B, and
8 33C were admitted into evidence.)

9 WITNESS: Excuse me, I need to say one thing.

10 MS. HAMAKER: Yes.

11 WITNESS: In the past, when we had mentioned
12 like the prior record, the 2003.

13 MS. HAMAKER: Yes, sir.

14 WITNESS: Everything I've done in the past,
15 I've always cooperated with the authorities. And no one
16 has ever had to twist my arm to get a confession out of
17 me. I've always known that telling the truth about the
18 matter would always be beneficial to me. That's why I
19 just let you know that -- I mean, that's just the way
20 that I am. Once I get in trouble, which I wish that I
21 never have, but once that I do, there's no point in
22 carrying it any farther. Let's just go ahead and
23 cooperate and try to get the best that I can get out of
24 it. And unfortunately I haven't been able to stay out
25 of trouble. I should have, but I haven't. Prayerfully

1 this will be the last time.

2 And also that I don't take pleasure in having to
3 sit in here today and do this, that had Mr. Nance been
4 the one that confessed first, I wouldn't have taken the
5 trial. I would have gone ahead and cooperated. You
6 know, I just want to put that out there. Okay. I don't
7 want to hurt nobody. Just telling you this is how I am.
8 I wish that I were by myself, that I would not have to
9 sit here and do this. I would have done it, I would
10 have done it anyway.

11 MS. HAMAKER: Thank you, Mr. Nance. I'm
12 sorry, Mr. Parks.

13 Q. Can you tell the jury where -- well, you said that
14 you and Mr. Nance were coworkers at one point?

15 A. Yes.

16 Q. Do you know if he was still working at that place
17 that y'all worked together on January 27th, 2009?

18 A. I'm not sure.

19 Q. Where did you work together?

20 A. We were working together at Dispoz-o Plastics in
21 Fountain Inn, South Carolina.

22 Q. And where in Fountain Inn? Where's the location?

23 A. It's off of Old Laurens Road.

24 Q. Are you familiar with the Upstate of South
25 Carolina?

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1 A. Yes.

2 Q. Do you know if that's near Clinton?

3 A. It's near there. It's in the same -- I would say
4 in the same vicinity, so to speak.

5 Q. Did -- you said that this phone belonged to Mr.
6 Nance?

7 A. Yes.

8 Q. State's Exhibit Number 35. If this was found in
9 the car and Mr. Nance told you that he was going to have
10 Ms. Brown report the car stolen, how would he be able to
11 get in contact with Ms. Brown if his phone wasn't there?
12 Do you know?

13 A. No, I don't know.

14 Q. Do you know if Mr. Nance -- well, did Mr. Nance say
15 anything to you about whether he had her number
16 memorized or not?

17 A. I don't think that he could remember the number
18 without going too far. He couldn't remember the number
19 off the top of his head.

20 Q. Is that what he told you?

21 A. Yes. I mean, he can't remember the number off --
22 all his telephone numbers. He didn't even know my
23 telephone number. Everything was in the telephone. So
24 when he needed to call me he would pull me up on the
25 phone and call me that way.

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

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

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

7 CROSS EXAMINATION

8 BY MR. DEJONG:

9 Q. So if I've got this right, Mr. Parks, you have in
10 the past been convicted of some fifteen, sixteen,
11 seventeen felonies; right?

12 A. Yes, sir.

13 Q. Most of which were burglary seconds, and one safe
14 cracking; right?

15 A. Maybe more than one, more than one safe cracking,
16 yes, sir.

17 Q. All right, sir. Now, you've known Mr. Nance for
18 what, some five years?

19 A. I'd say seven years.

20 Q. Seven years?

21 A. Seven to five years, but seven would be more
22 accurate to me.

23 Q. And on occasion you went to him several times
24 trying to borrow money; haven't you?

25 A. I have borrowed money from him, yes, I have, sir.

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- 1 Q. On more than one occasion?
- 2 A. Yes, sir.
- 3 Q. Well, you have shared with this jury that you have
- 4 a drug addiction?
- 5 A. Yes, sir.
- 6 Q. Crack addiction?
- 7 A. Yes, sir.
- 8 Q. And during this period of time you also have a
- 9 girlfriend that had a crack addiction?
- 10 A. Yes, sir.
- 11 Q. Now, in the seven years that you knew Mr. Nance,
- 12 did you ever know him to use drugs?
- 13 A. Not a thing.
- 14 Q. Drink alcohol?
- 15 A. No, sir.
- 16 Q. Smoke cigarettes?
- 17 A. No, sir.
- 18 Q. Nothing at all?
- 19 A. Nothing.
- 20 Q. All right, sir. So you say on January the 27th you
- 21 needed money; right?
- 22 A. Yes, sir.
- 23 Q. Did -- on January the 27th did you try to borrow
- 24 money from Reggie?
- 25 A. No, I didn't borrow money and attempt to either.

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- 1 Q. You didn't?
- 2 A. I didn't attempt to borrow any money from him.
- 3 Q. You didn't ask Reggie for a loan?
- 4 A. No, I didn't.
- 5 Q. All right. And the car Reggie normally drove was a
- 6 what?
- 7 A. A Land Rover.
- 8 Q. Did you ride in that car a good bit?
- 9 A. Yes, sir.
- 10 Q. Did you ever have any breakdowns?
- 11 A. Yes, sir.
- 12 Q. When?
- 13 A. It ran hot a few times.
- 14 Q. Okay. Other than that, it was a reliable vehicle?
- 15 A. Yes, it was.
- 16 Q. Okay. How many times did you say you rode in that
- 17 Land Rover?
- 18 A. Well, we used -- when we started working at Dispoz-
- 19 o, my car, the one that I had, was -- it needed engine
- 20 repairs. It had some oil -- some problems. So I rode,
- 21 I rode to work with him for about a month. Okay. So
- 22 that was, you know, five days a week, six days a week,
- 23 something to that extent. And so I would say I've
- 24 ridden in that car plenty of times. I'm going to say
- 25 more than thirty times.

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- 1 Q. That Land Rover was kind of his pride and joy;
2 wasn't it?
- 3 A. Yes, it was.
- 4 Q. All right, sir. Let me back up a little bit. When
5 you first started testifying and Ms. Hamaker was asking
6 you questions about promises for testimony, you started
7 to answer a question and I don't think you ever finished
8 it. She asked you if they made promises. You said yes,
9 but I didn't hear the follow-up on that. What was the
10 promise?
- 11 A. The only thing that I was told, that they would
12 take into consideration my cooperation.
- 13 Q. All right. Well, let's talk about your cooperation
14 a little bit, now. This happened in January of 2009;
15 right?
- 16 A. Yes, sir.
- 17 Q. And that cooperation finally started in February or
18 March of 2010; didn't it?
- 19 A. When?
- 20 Q. February or March of 2010?
- 21 A. Actually January.
- 22 Q. January?
- 23 A. Yes, sir.
- 24 Q. Is that when you went to the Easley Police
25 Department and gave a statement?

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- 1 A. No, they came and picked me up.
- 2 Q. Right. And Lane Byers was there; right?
- 3 A. Yes, he was.
- 4 Q. And you gave a statement at that point in time?
- 5 A. Later that day I did.
- 6 Q. Okay. And you say -- well, let me ask you this.
- 7 On January the 27th before you say Mr. Nance came to
- 8 your house, had you talked to Reggie?
- 9 A. We talked quite often.
- 10 Q. Well, on that day had you talked?
- 11 A. We always talk before we decide to go out.
- 12 Q. And you said that Reggie was familiar with the
- 13 Easley area?
- 14 A. Yes, sir.
- 15 Q. Do you know what restaurant he worked at in Easley?
- 16 A. No, sir, I do not know.
- 17 Q. Do you know when he worked at that restaurant in
- 18 Easley?
- 19 A. I sure don't.
- 20 Q. So what time did you say that Reggie picked you up
- 21 in Greenville?
- 22 A. Around six. It was dark. It had started getting
- 23 -- it was still, it was still -- it wasn't daylight
- 24 savings time yet, so ---.
- 25 Q. So around six o'clock?

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- 1 A. Six -- between six and seven.
- 2 Q. Okay. And what time did you leave your house?
- 3 A. Between six and seven.
- 4 Q. Okay. So he came -- your testimony is he came, you
5 got in the car and y'all left?
- 6 A. Yes, we did.
- 7 Q. And once you left your house -- now, when we say
8 leaving your house, that was on [REDACTED] or
9 [REDACTED], whatever?
- 10 A. [REDACTED]
- 11 Q. [REDACTED] All right. Then where did you -- when you
12 left [REDACTED] where did you go?
- 13 A. We hit the interstate. We -- to the interstate.
14 We came out of -- when I came out of the house, I was
15 taken by surprise because I hadn't seen that car before.
- 16 Q. Okay.
- 17 A. Okay.
- 18 Q. All right. Well, you later on found out that he
19 had just bought that car that day; right?
- 20 A. Yes.
- 21 Q. Okay. So you drove down 85. Did you drive towards
22 Easley?
- 23 A. Yes, we did. We went South on 85.
- 24 Q. Well, after you left the house on [REDACTED] did
25 you make any stops before you got to Easley?

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1 A. I don't remember making any stops.

2 Q. So then you get to Easley and you go right to the
3 Wal-Mart?

4 A. No, sir. We don't. We ride -- we're riding, the
5 whole time we're riding we're scanning the area. From
6 the moment we got off the interstate we're scanning the
7 area. You know, our goal wasn't specifically Easley.
8 It was any available area.

9 Q. All right. Well, how long did it take you to get
10 from [REDACTED] to Easley?

11 A. I wasn't keeping up at the time, but no more --
12 less than thirty minutes.

13 Q. All right.

14 A. It didn't take that long to get there.

15 Q. So within thirty minutes then, are you at Wal-Mart?

16 A. Well, in thirty minutes we're in Easley, in the
17 Easley area. Maybe forty, forty-five minutes we are
18 rounding up to the Wal-Mart area.

19 Q. So that would put you in the Wal-Mart area about
20 seven thirty or seven forty-five?

21 A. I imagine. I'm not sure. I didn't look at the
22 clock.

23 Q. Well, I understand that.

24 A. So I can't tell you. I don't know.

25 Q. It's not a trick question. You said it took thirty

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1 to forty-five minutes and you were at Wal-Mart; right?

2 A. Well, like I said, I never kept up with time with
3 how long it took to get anywhere. So I can't -- that's
4 a difficult question for me to answer.

5 Q. Well, if you've left at seven, and it took forty-
6 five minutes ---

7 MS. HAMAKER: Your Honor, I object. He's
8 already answered.

9 THE COURT: I'll let him ask the question.

10 Q. If you left at seven and it took forty-five minutes
11 to get to Wal-Mart, that's seven forty-five in the
12 nighttime; right?

13 A. That's seven forty-five, that's forty-five minutes,
14 but I'm not aware of the time.

15 Q. Yes, sir.

16 A. Okay. I'm not watching my clock to see how far --
17 how long it takes to get there. I'm not -- I wasn't
18 looking for that.

19 Q. I understand.

20 A. Okay.

21 Q. Now, then you say you go into Wal-Mart?

22 A. No. I didn't say I went into Wal-Mart.

23 Q. You didn't go into Wal-Mart?

24 A. No. I never said that.

25 Q. Okay. Well, then I misunderstood something you

1 said.

2 A. Apparently.

3 Q. I understood, Mr. Parks, that when you were shown
4 State's Exhibit Number 42, which appears to be a Go
5 Devil, that you said it was bought at Wal-Mart?

6 A. It was. Not that night.

7 Q. Oh, I see.

8 A. Uh-huh (affirmative).

9 Q. So when did you buy that?

10 A. I didn't purchase it. Reggie did.

11 Q. All right. Well, then I gather I also
12 misunderstood when -- what I thought I heard you say,
13 you went into Wal-Mart to buy tools?

14 A. We went to Wal-Mart a few times, okay.

15 Q. I'm not asking you about a few times. I'm asking
16 you about on the evening of January the 27th of 2009?

17 A. We did not go to Wal-Mart on January 27th, 2009,
18 sir.

19 Q. Well, where were you when you say Mr. Nance was
20 talking to this police officer in the parking lot of
21 Wal-Mart?

22 A. You didn't hear what I said. I said that Reggie's
23 car was parked near the Check Advance place. He was
24 outside of the car talking. In that area there was a
25 photo place. That was one of the things we were looking

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1 at alongside the check place. The check place was not
2 doable because there was not enough concealment there.
3 While we were in the process of looking at the photo --
4 the photography studio, the police officer drove up. I
5 was around the side of the building. The police officer
6 never saw me. Reggie went out to meet him at the car
7 and he told him that he was having problems with the
8 car. I had walked off. I was on the other side of the
9 street headed towards Wal-Mart. He told the police
10 officer that he had a passenger with him that was
11 walking over toward Wal-Mart to use the phone. After
12 the officer left, I returned.

13 Q. Well, let me ask you this, Mr. Parks. Do you
14 remember when you were talking to Detective Byers in
15 Easley in January or February or March of this year and
16 you gave that statement?

17 A. Yes.

18 Q. Do you remember the statement you gave?

19 A. As much as I can.

20 Q. Pardon me?

21 A. As much as I can. I'm not ...

22 Q. Do you remember telling Detective Byers anything at
23 all about this Wal-Mart business?

24 A. No. I didn't go into details about the Wal-Mart.

25 Q. Okay. Indeed you told Ms. Hamaker that Mr. Nance

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1 picked you up in a Ford Probe; right?

2 A. A Probe, yes.

3 Q. All right.

4 A. I wasn't sure of the make. Looked like the same
5 model car to me.

6 Q. All right. And when you were answering questions
7 for Ms. Hamaker, you shared with her that you knew Tisha
8 Brown; is that correct?

9 A. Absolutely.

10 Q. And indeed, you had been in Laurens at her
11 apartment on more than one occasion; right?

12 A. Yes, sir.

13 Q. When you were in Easley giving that statement, when
14 you were asked about Tisha Brown, do you remember your
15 response?

16 A. If they asked me about her, I would have said that
17 I'd known her, that I knew her.

18 Q. So if that is not what you said, you would be
19 surprised, is that what you're telling me?

20 A. Yes. I would be surprised.

21 MR. DEJONG: Your Honor, may we approach?

22 THE COURT: Yes, sir.

23 (WHEREUPON, Ms. Hamaker and Mr. DeJong approached
24 the bar.)

25 Q. Mr. Parks, as we go through my examination of you,

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1 I've got a number of questions to ask you about that
2 statement that you gave to Lieutenant Byers in January
3 or February of this year. You understand what I'm
4 saying?

5 A. Yes, sir.

6 Q. And you -- have you ever heard your statement?

7 A. No, sir.

8 Q. All right. And in fairness to you, would it help
9 you to answer my questions if you heard that statement?

10 A. I mean, in specific areas it would, but for the
11 majority of the statement I kind of know, I know what I
12 said.

13 Q. Well, there's going to be some specific areas. So
14 do you need to listen to the tape?

15 A. Yeah, if you want to just play it, that's up to
16 you.

17 Q. Okay.

18 THE COURT: Mr. Foreman, ladies and gentlemen,
19 I need to have you go back to the jury room just for a
20 few moments. We need to take care of a legal matter. I
21 don't believe it will take very long. It may take a few
22 minutes. Just make yourselves comfortable there. If
23 you need any snacks for you, whatever. We need to get
24 this matter resolved and we'll call you back in just a
25 few moments. Don't discuss the case at this time.

1 (WHEREUPON, the jury exited the open court at
2 approximately 3:08 p.m.)

3 THE COURT: All right. I understand -- the
4 jury's now out. I understand from the bench conference
5 that the statement was not a written statement of this
6 witness but rather an audio statement that was recorded.
7 I also understood from the bench conference that the
8 audio statement might have been a lengthy statement and
9 might have had matters that are irrelevant to this
10 particular case that we're trying now. Is the audio
11 statement markable by time sequences?

12 MR. DEJONG: It is, Your Honor. And what I
13 have noted the last time on my copy of it, I would
14 assume it would do the same on both copies, and on my
15 computer, which has very poor sound quality, but it
16 starts about the thirty-eight minute mark and we can ---

17 MS. HAMAKER: I believe Mr. DeJong to be
18 correct on that. We're working on getting our laptop up
19 here.

20 THE COURT: Okay. And there aren't other --
21 it runs continuously from whatever point to the next
22 point is what you need to examine him on?

23 MR. DEJONG: Yes, sir.

24 THE COURT: Rather than skipping?

25 MR. DEJONG: All I want to ask him questions

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1 about is from thirty-eight on, and there's a little bit
2 on the tail end of it that is not relevant to this
3 either.

4 THE COURT: All right. We'll let him refresh
5 himself with that. And then once we get the equipment
6 to play it, if you need to play it before the jury after
7 he answers questions in front of the jury, then we'll
8 have -- we'll do that.

9 MR. DEJONG: Yes, sir.

10 THE COURT: All right. We'll just be at ease
11 until we get the equipment up here and Mr. Parks gets to
12 listen to the tape.

13 MR. DEJONG: Thank you, Your Honor.

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

16 THE COURT: All right. Ready to proceed?

17 MS. HAMAKER: Yes sir, Your Honor.

18 MR. DEJONG: I'm ready, Your Honor.

19 THE COURT: All right. Let's have our jury
20 come in, if they're prepared.

21 (WHEREUPON, the jury entered the open court at
22 approximately 4:09 p.m.)

23 THE COURT: Thank you for your patience,
24 ladies and gentlemen. We are now ready to proceed after
25 taking care of this legal matter. Appreciate your

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1 indulgence with us.

2 You may proceed with your cross examination, Mr.

3 DeJong.

4 MR. DEJONG: Thank you, Your Honor.

5 CROSS EXAMINATION CONTINUED

6 BY MR. DEJONG:

7 Q. Mr. Nance, have you now have an opportunity to
8 review your statement that was given to Detective Byers
9 in February, January of this year?

10 A. I'm Mr. Parks.

11 Q. Mr. Parks, I'm sorry.

12 A. Yes, I have.

13 Q. You have?

14 A. Yes.

15 Q. All right. On that tape or in that statement did
16 you say you knew Tisha Brown?

17 A. Yes, I did.

18 Q. All right. At the beginning of that statement you
19 were asked to tell the truth; weren't you?

20 A. Yes.

21 Q. Were you specifically asked about seeing Mr. Nance
22 with a gun?

23 A. Yes.

24 Q. And did you share with the officers in January or
25 February this year that you had seen Mr. Nance with a

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1 gun?

2 A. In that statement I said no because ---

3 Q. I didn't ask you because ---

4 MS. HAMAKER: Your Honor, I ask that he let my
5 witness finish.

6 THE COURT: I'll -- answer the question.

7 I'll give you a chance to explain your answer. If

8 you'll just answer his question, did you tell them, and

9 if you wish to explain it, I'll allow you to do so, Mr.

10 Parks.

11 MR. PARKS: Yes, sir.

12 Q. Did you tell them that you ever saw Mr. Nance with
13 a gun?

14 A. I said I didn't.

15 Q. Right. Said you had never seen him with a gun?

16 A. I said that.

17 Q. Right. Now, ---

18 MS. HAMAKER: Your Honor, can he now explain
19 the first part.

20 THE COURT: If he wishes to. I told him he'd
21 have a right to explain it if he wishes to. Sir, you
22 may ---

23 A. I said that -- I didn't clarify myself. When he

24 asked that question I was in regards to that specific

25 night. He said had I ever seen that gun and I said no.

1 The line of questioning at that time was specifically
2 about that night, and that was what I was talking
3 about.

4 Q. Did you also say you had never seen him with a
5 gun?

6 A. I said that. I said that. And may I explain one
7 more thing?

8 Q. All right.

9 A. I have always dealt truthfully. I explained that
10 to you before. If I were lying, I would be sitting at
11 that table with my lawyer today, instead of on this
12 witness stand.

13 Q. Well, let's jump to the back end. In that
14 statement did you ever tell Lane Byers that y'all stole
15 a car on Highway 8?

16 A. No, I didn't.

17 Q. That would have been the truth, what you're telling
18 me now; right?

19 A. I was trying to protect Reggie that night.

20 Q. I'm sorry?

21 A. I was trying to protect my -- I really didn't want
22 to give the complete statement. But in order for this
23 -- cause I knew it would come up, that's why I went
24 ahead and I told the truth about the car.

25 Q. Well, you were asked to tell the truth then too;

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- 1 weren't you?
- 2 A. Yes, I was.
- 3 Q. And you didn't tell the truth; did you?
- 4 A. Not completely.
- 5 Q. According to your statement?
- 6 A. Not completely, not that day, I didn't.
- 7 Q. No, sir. And did you ever share with Detective
- 8 Byers that you were at Tisha Brown's apartment?
- 9 A. Yes. But he never asked, did he, in that
- 10 statement?
- 11 Q. I'm asking you, did you ever share it with him?
- 12 A. No. He didn't ask.
- 13 Q. Okay. So, now you say that -- none of the Wal-Mart
- 14 business was in your statement to Detective Byers; was
- 15 it?
- 16 A. No, it wasn't.
- 17 Q. None of that, the police officer, or any of that,
- 18 none of that was in your statement?
- 19 A. No. I wasn't specific and no one specifically
- 20 asked me all those things.
- 21 Q. And so now you leave Wal-Mart in Easley, where do
- 22 you go?
- 23 A. We ride.
- 24 Q. Where did you ride?
- 25 A. Around the Easley, Pickens area.

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1 Q. Where?

2 A. If I knew I could tell you.

3 Q. How long did you ride?

4 A. We going to go back in time again. I can't tell
5 you how long we rode. I wasn't looking at no clock,
6 sir. I didn't have a watch on. The only clock was on
7 my phone. Again, I'm not paying attention to what time
8 it is. I'm just looking at what's available and what's
9 not.

10 Q. Did you say you were on your phone?

11 A. I said the only clock that was available was on my
12 phone.

13 Q. It was right there; wasn't it?

14 A. No. It was down in the dash and like I said, I
15 never keep looking at the clock. It wasn't important.

16 Q. Well, there's no question about the fact that's
17 your wallet; right?

18 A. Yeah, no question.

19 Q. That was introduced, so we're clear, that was
20 introduced as State's Exhibit Number 36?

21 A. Right.

22 Q. And all of those items were in your wallet; were
23 they not?

24 A. They were in the wallet that they said, but all
25 those things that -- his ID wasn't in my wallet when I

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- 1 was in that car.
- 2 Q. Well, when you rode around with Reggie in the Land
3 Rover, was his wallet in the vehicle?
- 4 A. I'm not sure. I never asked him, do you have your
5 wallet. I assumed that he did.
- 6 Q. All right. Today you testified that you went up
7 side streets before you actually went in Cash Advance or
8 Tobacco Warehouse; right?
- 9 A. Went up side streets?
- 10 Q. Yeah. If I understood you when Ms. Hamaker was
11 asking you questions, you said you went and checked
12 around what was back there.
- 13 A. Went up one side street.
- 14 Q. All right. Did you share that with Detective Byers
15 in your statement?
- 16 A. No.
- 17 Q. Okay. Then you went -- when did you get the tools
18 out of the trunk?
- 19 A. When did I get the tools out of the trunk? When we
20 got there. When I got ready to go -- to actually go
21 into the business.
- 22 Q. In the front parking lot?
- 23 A. Yeah.
- 24 Q. So in the front parking lot of Cash Advance you got
25 the tools out?

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1 A. I told you we were in an area where nobody could
2 really see us.

3 Q. When what?

4 A. We were in an area where no one could really see
5 us. It was a dark portion right in the corner of the
6 parking lot.

7 Q. Was there anything across the street from that?

8 A. Burger King.

9 Q. All right. How about a little down from Burger
10 King, anything across the street in there?

11 A. Across from -- I mean there's the Hot Spot down the
12 street.

13 Q. Okay. Bi-Lo?

14 A. That is behind Burger King.

15 Q. Shopping center?

16 A. Yeah.

17 Q. And lights, parking lot lights?

18 A. Yeah.

19 Q. All right. I believe there is at least one light
20 there in the Cash Advance parking lot.

21 A. Yeah. But it was in the front off in the other
22 corner. Sir, that was a shady darkened area which is
23 the part we were in.

24 Q. How did you open the trunk?

25 A. He opened the trunk, Reginald.

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1 Q. Did he get out and open the trunk?

2 A. Yes, he did.

3 Q. All right. And so then, you're carrying a
4 sledgehammer and a crowbar through the parking lot,
5 around to the back of this building?

6 A. No. I'm not stupid. I had it concealed, sir.

7 Q. I'm sorry?

8 A. I'm not stupid. I had it concealed. I had it down
9 by my leg.

10 Q. Well, I understand that. But you got it out of the
11 trunk and now you're carrying it -- hand carrying it
12 around the back of the building?

13 A. That's the only way it was going to get there.

14 Q. Well, the car was actually, according to you, as I
15 understand it, the car was parked almost right behind
16 Cash Advance; was it not?

17 A. It was afterwards.

18 Q. All right. And you then pried open the back door
19 of Cash Advance?

20 A. Yes, I did.

21 Q. And you went in Cash Advance?

22 A. Yes, sir.

23 Q. And you couldn't find any money?

24 A. Right.

25 Q. Now, you told us today that Reggie was telling you

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1 to break through the wall; right?

2 A. Right.

3 Q. Did you ever tell Detective Byers that in your
4 statement?

5 A. There's a few things I didn't tell him in the
6 statement, just simply because I just didn't remember
7 them.

8 Q. All right. So your memory's better today than it
9 was in January of 2010?

10 A. Absolutely. I've had a couple of months to think
11 about everything.

12 Q. Yes, sir. I certainly understand that. Before
13 going into Cash Advance you tore the wires off the back
14 of the building or what you thought was the alarm box;
15 right?

16 A. The telephone.

17 Q. Pardon me?

18 A. I thought it was the telephone line.

19 Q. Telephone line. Okay. And Reggie -- where was
20 Reggie when you were doing that?

21 A. Standing right there.

22 Q. Okay. And then you go into Cash Advance. What are
23 you doing?

24 A. I'm looking for money. I mean ...

25 Q. What's Reggie doing?

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- 1 A. He's doing the same thing.
- 2 Q. All right. Where is he?
- 3 A. He's in there with me.
- 4 Q. Where is he looking?
- 5 A. In the drawers, wherever there's something to look
- 6 in. I was not watching him.
- 7 Q. What did you use to knock the hole through the wall
- 8 with?
- 9 A. A small sledgehammer.
- 10 Q. How big of a sledgehammer was that?
- 11 A. It was about the same size as a claw hammer. I'm
- 12 going to say it was about a five-pound sledgehammer.
- 13 Q. Long handle, short handle?
- 14 A. Short handle.
- 15 Q. Now, you went through the wall; right?
- 16 A. Yes, sir.
- 17 Q. And you said Reggie wasn't in there when you went
- 18 through the wall?
- 19 A. He was behind me while I knocked a hole in the
- 20 wall.
- 21 Q. Okay.
- 22 A. When I went through into the other business, he
- 23 went outside.
- 24 Q. And what he was doing then, you don't know?
- 25 A. No. I assumed he was waiting for me to open the

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1 door.

2 Q. Okay. Well, now you get in to Tobacco Warehouse --
3 well, let me back up. Out of Cash Advance, did you ever
4 see Mr. Nance carry anything out of there?

5 A. I saw him carry things. I just wasn't specific on
6 what he was carrying.

7 Q. All right. You go into Tobacco Warehouse. Is that
8 an audible alarm or you just heard clicking, which was
9 it?

10 A. It was an audible alarm.

11 Q. Okay. Well, at some point when Ms. Hamaker was
12 asking you questions, I think you said something about a
13 clicking; right?

14 A. Yes.

15 Q. And you indicated that that would be, I believe, a
16 sign that the alarm was working; correct?

17 A. I assumed that the alarm was going off, but I
18 wasn't sure that it was going -- that it was actually
19 going out.

20 Q. Well, the fact that an alarm was going off didn't
21 bother you?

22 A. No, because having disarmed -- having -- excuse me,
23 taking the phone lines apart, broke, tearing them off
24 the wall and whatnot, the phone lines wouldn't call in.

25 Q. Even though it was clicking?

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- 1 A. Yeah.
- 2 Q. Now you get into Tobacco Warehouse, you demolish
- 3 the alarm system; right?
- 4 A. Yes.
- 5 Q. Now you kick the back door open?
- 6 A. Yes. Well, I kicked the back door open before all
- 7 of that.
- 8 Q. Before all of that?
- 9 A. Yes.
- 10 Q. Okay. So when do you say Mr. Nance came in?
- 11 A. As soon as I got the door open.
- 12 Q. Okay. So you're saying Mr. Nance came in and then
- 13 you demolished the alarm system?
- 14 A. Yes.
- 15 Q. Well, what was he doing, if you know, while you
- 16 were doing that?
- 17 A. I don't know. Running around in the place. I
- 18 mean, we were automatically -- we didn't have much time.
- 19 From the time that alarm started going off, I knew
- 20 somebody may have heard something. I was trying to get
- 21 it off and then while I'm doing that, Reggie's looking
- 22 for stuff. The first thing is to start looking.
- 23 There's no sense in -- no point in standing around
- 24 watching me.
- 25 Q. I understand that. But you got -- as far as you

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1 know, you got all the money out of the place; didn't

2 you?

3 A. No.

4 Q. Other than the coins?

5 A. That's right.

6 Q. So other than the rolled coins, as far as you know,
7 you got all the money out?

8 A. Right.

9 Q. And that, you say later on, you split with Reggie;
10 right?

11 A. Yes, I did.

12 Q. Okay. And did he get anything out of Tobacco
13 Warehouse, to your knowledge?

14 A. Nothing but that money. And I didn't see him put
15 that in the car. He showed it to me, but I didn't see
16 him put it in the car.

17 Q. Well, you say you didn't have much time. But yet
18 you stopped to box up cigarettes?

19 A. I said I started looking around for stuff. I'm
20 trying to go as fast as I can. Assuming that I have
21 successfully disarmed the alarm, it allowed me to go
22 ahead and do that, which I knew better than to do, but I
23 did it anyway.

24 Q. Well, at one time -- point in time when you were
25 talking with Ms. Hamaker, you said you were roaming

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1 around the store; didn't you?

2 A. I said I looked around the store as quick as I
3 could to get what I could.

4 Q. All right. And after that, then you were the first
5 one to go to the office?

6 A. Excuse me?

7 Q. After you disabled the alarm system, or thought
8 you had, then you were the first one to go to the
9 office?

10 A. Yes.

11 Q. Okay. When you were talking to Detective Byers
12 back in January or February, did you tell Detective
13 Byers anything about gloves?

14 A. I'm not sure. If he asked, I would have said
15 something about gloves.

16 Q. So you were only going to tell the truth as to what
17 questions they asked, is that what you're sharing with
18 me?

19 A. No. It's what I could remember. He didn't ask
20 about gloves. Someone else asked about gloves. You
21 know, I wore gloves, period. In the interview -- in the
22 statement that I made in January, I specifically said
23 that I, you know, that I didn't want to mess with the
24 DNA and other things like that. I knew I had a record.
25 I knew he had a record. You know, we're not trying to

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1 leave anything around there that's going to say that we
2 were in there.

3 Q. All right. With regard to that, you gave a
4 statement in January or February; right?

5 A. January, yes, sir. I did.

6 Q. All right. We're right on January. I'll go with
7 you on that. Well, how many times have you talked to
8 somebody since that time about this case?

9 A. How many times?

10 Q. Yeah.

11 A. No more.

12 Q. No more?

13 A. Not that I remember, no.

14 Q. Okay. When you went out of Cash Advance carrying
15 whatever you were carrying, was the trunk open or
16 closed?

17 A. The trunk -- in my statement I remember I said I
18 wasn't sure whether the trunk was open or closed or not.
19 But I said that I put that television, more that likely,
20 in the trunk, so it was open.

21 Q. But you don't remember?

22 A. I didn't put anything in the back seat -- trunk --
23 I put it in the trunk.

24 Q. You put nothing in the back seat?

25 A. I didn't put anything in the back seat, no.

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1 Q. How about your shirt?

2 A. I tossed that in there before we even started.

3 Q. Okay. So you say now that you had gloves on on
4 January the 27th?

5 A. Yes.

6 Q. What was your concern about fingerprints? You said
7 you went back in to get the tools because you were
8 worried about fingerprints?

9 A. We handled those tools without gloves. The only
10 time we wore gloves is when we actually did a crime. So
11 other than that, when we may have moved those tools
12 anywhere that night, I might have picked them up
13 without gloves. I wasn't sure. And I wasn't taking any
14 chances.

15 Q. And before coming in the courtroom today, have you
16 ever seen any aerial photographs of the area?

17 A. No, sir.

18 Q. You hadn't?

19 A. No.

20 Q. And yet you quickly pointed out where Tobacco
21 Warehouse was when the solicitor asked you; right?

22 A. I've ridden down that road several times since then
23 and I know exactly -- I saw it today. I know how the
24 road looked back there. I know the area I traveled in
25 that night.

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1 Q. Well, you say you went behind the Hot Spot?

2 A. Yes, sir.

3 Q. You ever tell Detective Byers that?

4 A. I don't believe I told him that, I don't know. I
5 don't think that I told him that.

6 Q. All right. And where you started up with Detective
7 Byers was behind Bi-Lo; was it not? That's where you
8 started in your statement with Detective Byers.

9 A. Behind Bi-Lo.

10 Q. Behind Bi-Lo?

11 A. Well, maybe I did.

12 Q. Is that right?

13 A. Nevertheless, we had to get there one way or the
14 other. We didn't run across the street in front of that
15 police.

16 Q. Right. Well, why did you have to run across that
17 street?

18 A. We were trying to get away.

19 Q. Well, you could have kept going behind Tobacco
20 Warehouse?

21 A. And go to where?

22 Q. Well, I don't know.

23 A. Right. Exactly. Which, we'd taken a road to get
24 out of there. And the only road that was out of there
25 was the one we came in on.

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1 Q. And then you say you went behind the mini
2 warehouses?

3 A. Yeah.

4 Q. Okay. Well, let me ask you this. When did you
5 hear the dogs barking?

6 A. After we got on the other side of Bi-Lo we had
7 crossed into someone's front yard, running along the
8 tree line.

9 Q. Well, how long did it take you to get to Bi-Lo,
10 behind Bi-Lo?

11 A. We're on the time again.

12 Q. Pardon me?

13 A. I had left my clock in the car, remember? That's
14 -- I don't know how long it took.

15 Q. Well, estimate?

16 A. I don't know. I can't estimate. I mean, what do
17 you want me -- it took me -- we were taking our time.
18 We had to watch to see where the police were at. We had
19 to wait for traffic to stop. We had to climb -- we had
20 to make our way through the woods. So at that time I'm
21 not saying, Reggie, how long do you think we been going?
22 I'm not asking those questions. Would you ask those
23 questions?

24 Q. When you were behind the Bi-Lo, did you hear the
25 dogs barking?

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- 1 A. No.
- 2 Q. Where were you?
- 3 A. I just said I was in someone's front yard.
- 4 Q. How far from Bi-Lo?
- 5 A. About a yard or two away from Bi-Lo. And when I
- 6 say a yard, I mean a front yard, not a foot yard.
- 7 Q. You say you -- well, I don't know. How did you --
- 8 what direction did you go in?
- 9 A. I went the direction that I came from.
- 10 Q. All right.
- 11 A. Now I don't know if that's north, south, east, or
- 12 west. I left my compass at home, too.
- 13 Q. All right. And to -- you were headed towards
- 14 Easley, I gather; right?
- 15 A. I imagine.
- 16 Q. Pardon?
- 17 A. I imagine.
- 18 Q. All right. Well, do you know?
- 19 A. No, I don't know.
- 20 Q. Well, you said you were going back in the direction
- 21 you came from?
- 22 A. Yeah.
- 23 Q. You came from Easley; didn't you?
- 24 A. Well, yeah.
- 25 Q. Well, were you headed back towards Easley?

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1 A. Evidently I was.

2 Q. How far did you go before you came to this car
3 lot?

4 A. About four miles.

5 Q. Okay. Now, as I understood you, you said you went
6 in there and you found some keys; right?

7 A. Right.

8 Q. That Reggie was putting a tag on a car; right?

9 A. We went in together. Not I. He went in first. He
10 went in, he opened the door, then I came in. We went
11 into the office. He went behind a desk. I was up in
12 the front of the desk. Keys were hanging on the wall.
13 He didn't know which key to get. I suggested we get
14 them all. We didn't know which one -- we would have
15 time to just take a key out and run back and forth so we
16 took them all. We grabbed a license plate while we were
17 in there. It was in a divider on the desk, had papers -
18 in it, and there was a tag in there. We took the tag.
19 We went out. We never went back in that building after
20 that.

21 Q. Understood. When Ms. Hamaker was asking you
22 questions, you said he was trying to put a tag on a
23 car; right?

24 A. Right.

25 Q. What car was he putting the tag on?

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1 A. On the car we took.

2 Q. Well, it took you -- you said you had to go through
3 a bunch of keys before you could figure out which car
4 that it was going to be. Right?

5 A. Yeah. No, no, no, no, no, no. We decided to take
6 the car that was nearest to the street. We decided to
7 take that Ford car that was sitting right on the front.
8 While he was putting the tag on it, I was trying to find
9 out which key opened the door.

10 Q. I see.

11 A. There were two cars there. I don't know the make
12 of the other one.

13 Q. So you get in a car. Where do you go?

14 A. We drive towards home.

15 Q. Whose home?

16 A. Greenville, to my home.

17 Q. All right. And is that in the old McAlister Square
18 area?

19 A. Yes, sir.

20 Q. Okay. Now, what time did you get there?

21 A. Around one thirty?

22 Q. And when you got there, only your nephew was up?

23 A. Yes.

24 Q. That's not what you shared with Detective Byers; is
25 it? You said your family didn't know where you were,

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1 they had asked where you had been.

2 A. After I had come in the house and woke everybody
3 else up -- I didn't go into detail about everything I
4 did in that house. My nephew was up, he was the first
5 one I encountered. I asked him had the police been
6 there. He said yes. I went into my room. Vivian was
7 in there. I started -- I said, I'm going -- we got to
8 get some stuff and we're going to get out of here for
9 the night. Okay. By that time the rest of my family
10 had gotten up. I didn't want my mother to worry about
11 me. I didn't want to put her through that.

12 Q. All right. So then you went to a motel or a hotel?

13 A. Yes, sir.

14 Q. Which one?

15 A. I went to the Sands Motel on Poinsett Highway.

16 Q. Poinsett Highway?

17 A. Yes.

18 Q. Did you ever go to a motel at the intersection of
19 Congaree Road and Roper Mountain Road in Greenville?

20 A. Yes, I did.

21 Q. When did you do that?

22 A. That was earlier in January.

23 Q. All right. So you would deny that you ever had a
24 meeting with Mr. Nance at a hotel at the intersection of
25 Congaree Road and Roper Road on January the 28th?

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Johnny Parks - Cross Examination by Mr. DeJong

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1 A. Yeah.

2 Q. You're saying that didn't happen?

3 A. No, it didn't happen.

4 Q. And on January the 28th at a motel at the
5 intersection of Congaree Road and Roper Mountain Road
6 did you have a conversation with Mr. Nance in which you
7 told him that you took the car from Laurens and thought
8 you could get it back before it was missed?

9 A. No.

10 Q. All right. When you went back to Greenville after
11 you say you stole this car, where did you end up?

12 A. Say that one more time, please.

13 Q. You say you went back to Greenville after you stole
14 this car?

15 A. Yes, sir.

16 Q. Where did you end up in Greenville?

17 A. At my mother's house.

18 Q. Well, didn't, didn't at one point in time you say
19 you drove around McBee Avenue and Nickeltown?

20 A. That is the route that we took to get back to
21 Greenville.

22 Q. So you didn't exactly take the shortest route to
23 get back to you mother's house; did you?

24 A. He's the one that drove the car. I mean, I was the
25 rider. And, yes, we did take the shortest route, as far

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1 as I know.

2 Q. So if I understand your testimony, and I want to be
3 perfectly clear on this, you're saying you had no
4 conversations with Mr. Nance until either the 29th or
5 the 30th of January?

6 A. It was the 29th.

7 Q. The 29th?

8 A. Thursday afternoon.

9 Q. All right. But not on Wednesday?

10 A. No.

11 Q. Do you recall having a conversation with Mr. Nance
12 at a motel at the intersection of Congaree Road and
13 Roper Mountain Road on January the 28th where you asked
14 him to establish an alibi for you?

15 A. No. Why would we need to go to a motel to do
16 that?

17 Q. Did you have an account on -- bear with me one
18 second. Do you have an account on MySpace?

19 A. Yes.

20 Q. Reggie have an account on MySpace?

21 A. Yes.

22 Q. Did he post pictures on there?

23 A. Yes.

24 Q. Those pictures you identified earlier, were they on
25 MySpace?

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Johnny Parks - Cross Examination by Mr. DeJong

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1 A. Not that I know of.

2 Q. The crowbar that has been marked as State's Exhibit
3 Number 38 - thank you, sir -- where was that in the car
4 on the night of January the 27th?

5 A. In the trunk.

6 Q. Okay. Did you move it from the trunk to the back
7 seat?

8 A. No.

9 Q. And the trunk on that Mercury Sable, did it have a
10 light on it when you opened the trunk lid?

11 A. Yes.

12 Q. And there's no doubt about it that you put the
13 fruit punch and the television in the trunk?

14 A. I gave things to Reggie to put in the trunk.

15 Q. Pardon me?

16 A. I gave things to Reggie to put in the trunk also.

17 Q. I did ---

18 A. I put the television in the trunk. I went back. I
19 had the fruit punch. When I got ready to go through
20 that wall, I gave him the punch and said, put this in
21 the car. The crowbar was in the trunk already. It got
22 -- the reason it may have been moved, it was moved, as a
23 matter of fact, while I was disarming the phone lines,
24 taking the phone lines loose from the wall, I told Reggie
25 to bring me the crowbar. And I told him to bring me the

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- 1 sledgehammer. And he brought me the big sledgehammer.
- 2 I said no, not that one, the small one.
- 3 Q. Well, the point of it is, you went into the trunk
- 4 of that vehicle; right?
- 5 A. Right.
- 6 Q. On at least two occasions?
- 7 A. And so -- yes, sir.
- 8 Q. Pardon?
- 9 A. Yes, sir.
- 10 Q. And you say you never saw this box.
- 11 A. I didn't see the box. I didn't pay no attention to
- 12 it.
- 13 Q. All right. I think the solicitor showed you some
- 14 pictures of where the TV was in the trunk; right?
- 15 A. Right.
- 16 Q. And I think she showed you where the fruit punch
- 17 was in the trunk; right?
- 18 A. Yes, sir.
- 19 Q. Do you need to see the picture again?
- 20 A. You can show it to me.
- 21 Q. Well, the point of that is was there a light in the
- 22 trunk?
- 23 A. Yes, there was a light.
- 24 Q. And you never saw that box?
- 25 A. I didn't see the box, no. The spare tire was in

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1 there too, I didn't see it.

2 Q. I'm sorry?

3 A. I said the spare tire was in the trunk too, I
4 didn't see it. I can't tell you where it was at, but I
5 know there had to be one.

6 Q. Do you know where Mr. Nance lived during this
7 period of time?

8 A. His address is [REDACTED] in Greenville. He
9 also spend time in Laurens at Tisha's apartment.

10 Q. All right, sir. Now, with regard to that 1999
11 Mercury Sable, you're saying the first time you ever saw
12 that was when Reggie came to your house?

13 A. Yes, sir.

14 Q. Okay. Did you ever ride to Laurens with him in
15 that vehicle?

16 A. No, I didn't.

17 Q. Okay.

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

19 Q. When y'all were at that hotel, motel, whatever it
20 was, did you ever call Reggie and ask him to bring you
21 some food?

22 A. That was earlier, earlier in January, he brought me
23 some food to the Days Inn out on Roper Mountain Road and
24 85. But that was not on January 28th. That was not on
25 January 27th. That was around earlier -- earlier part

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Johnny Parks - Cross Examination by Mr. DeJong

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- 1 of January, the first week of January.
- 2 Q. Well, you're telling us you went to the Sands Motel
- 3 on Poinsett Highway; right?
- 4 A. That's right.
- 5 Q. Well, did you take your girlfriend with you?
- 6 A. Yeah.
- 7 Q. But the reason you went to the motel is because you
- 8 thought the cops were looking for you; didn't you?
- 9 A. Exactly.
- 10 Q. But you took your girlfriend with you anyway?
- 11 A. That's right.
- 12 Q. All right. Now, you burned a lot of money up on
- 13 drugs; didn't you, Mr. Parks?
- 14 A. Sure have. Yes, sir.
- 15 Q. And you have an addiction?
- 16 A. Yes, sir.
- 17 Q. And you would do whatever it took to get money to
- 18 feed your addiction; wouldn't you?
- 19 A. Not whatever. Whatever would be a number of
- 20 things.
- 21 Q. Pardon me?
- 22 A. I said whatever would be a number of things. And
- 23 not whatever it took, no.
- 24 Q. All right. But to the extent that you would lie,
- 25 cheat, and steal to get what you needed?

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1 A. I wouldn't lie and cheat. I'm not a liar, and I
2 don't have to cheat. I did steal though.

3 Q. All right, sir. So the four miles it took you to
4 get where you say you stole this car, did you walk
5 there?

6 A. Yes, sir.

7 Q. But you were already wore out at Bi-Lo; weren't
8 you?

9 A. Sure was.

10 Q. All right, sir. Dare I ask how long it took y'all
11 to walk that four miles?

12 A. Well, since you dared, I'll attempt to answer you.
13 But I can't tell you. It'll be like I said, every time
14 a car came up the road we went down in the bushes on the
15 side of the road. Whenever we ran out of the tree line
16 on one side of the road, we crossed over to the other
17 side of the road. Every time a car came we went as far
18 as we could. We laid down in the graveyard, some place
19 I said -- something I thought I would never do. But I
20 did it when the police was looking for me.

21 Q. Okay.

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

23 Q. Have you ever known Mr. Nance, other than what you
24 say on January 27th, to drive any vehicle other than the
25 Land Rover?

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- 1 A. I saw him on a Sunday in his mother's car.
- 2 Q. What kind of car was that?
- 3 A. I don't know. I believe it's, I want to say a
- 4 Cadillac. It's silver. I'm not sure. It may have been
- 5 a Mercedes. I believe it's a Mercedes. I think someone
- 6 else in his family has a white Mercedes Benz. I believe
- 7 that belongs to his father. Those are the other
- 8 vehicles. I haven't been in either one of them.
- 9 Q. On -- you quit Dispoz-o when?
- 10 A. About January -- excuse me, July 7th.
- 11 Q. July when?
- 12 A. Around July 7th.
- 13 Q. Of '09?
- 14 A. '09, yeah.
- 15 Q. All right. And did you have a car then?
- 16 A. Oh, excuse me, it wasn't in '09. '08.
- 17 Q. '08. Did you have a car then?
- 18 A. Yes.
- 19 Q. What kind?
- 20 A. I have a 2002 Dodge Intrepid.
- 21 Q. Okay. Did you have that 2002 Dodge Intrepid on
- 22 January the 27th of '09?
- 23 A. No, I didn't.
- 24 Q. And did you wreck that car?
- 25 A. Yes.

1 Q. Okay. Did you replace that with a Ford F150 pickup
2 truck?

3 A. Yes, I did.

4 Q. Okay. Did you have the Ford F150 pickup truck on
5 January the 27th?

6 A. No, I didn't.

7 Q. Well, these times you went down to see Tisha Brown
8 in Laurens at her apartment, how did you get there?

9 A. Reggie drove me there with him.

10 Q. And when he drove you, what did he drive you in?

11 A. His Land Rover.

12 Q. Okay. Do you know what time of the day it was that
13 Mr. Nance bought that Mercury Sable? Did he share that
14 with you?

15 A. You know, he shared it with me, but I'm not sure.

16 It was daytime. Sometime at that point in that day. I
17 had talked with him earlier, he said he was busy, but he
18 didn't tell me what he was doing. When he got to my
19 house and I saw the car, he told me that's what he was
20 doing earlier in the day, that's why he couldn't talk
21 with me on the phone when I had called him. I had
22 called him earlier in the day.

23 Q. Thank you, Mr. Parks.

24 A. You're welcome.

25 THE COURT: Any redirect?

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1 MS. HAMAKER: Yes, sir, Your Honor. One
2 second.

3 MR. DEJONG: Excuse me, Ms. Hamaker, I'll get
4 my pad and pen out of your way here. Thank you.

5 REDIRECT EXAMINATION

6 BY MS. HAMAKER:

7 Q. Mr. Parks.

8 A. Yes, ma'am?

9 Q. After you gave your statement to Lieutenant Byers,
10 did you ever talk to law enforcement about this
11 incident?

12 A. No.

13 Q. Since that point?

14 A. No.

15 Q. Did you speak with the solicitor's office about
16 that, about this case after that interview with
17 Lieutenant Byers?

18 A. When you came, you came to the place where I'm
19 being housed at now.

20 Q. Where did I come to?

21 A. Newberry.

22 Q. Did this lady behind Lieutenant Byers come with
23 me?

24 A. Yes, she did.

25 Q. And did you speak with us about this case?

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- 1 A. Yes, I did.
- 2 Q. Where did you stay last night?
- 3 A. Easley County Jail.
- 4 Q. And how did you come here today?
- 5 A. Pickens transportation.
- 6 Q. When you came here today did you happen to pass the
- 7 crime scene?
- 8 A. Yes, I did.
- 9 Q. It was on your right or your left?
- 10 A. Coming here, it was on my lefthand side.
- 11 Q. What happened to that pickup truck?
- 12 A. The transmission went bad in it, the flywheel went
- 13 bad and it, everything went bad in it. I gave it back
- 14 to the guy I had gotten it from, Adam's Junkyard. He's
- 15 a friend of mine. I gave it back to him. It was no
- 16 problem.
- 17 Q. Did you purchase that pickup truck?
- 18 A. Yes. I wasn't finished paying for it, and I didn't
- 19 have to pay anymore on it.
- 20 Q. How much did you pay for it?
- 21 A. Eight hundred and fifty dollars.
- 22 Q. What year was it?
- 23 A. It was a '74.
- 24 Q. Would you consider it a reliable automobile?
- 25 A. Oh, no.

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

3 THE COURT: I thank you, sir. The witness may
4 step down.

5 Could I see the attorneys here just for a moment?

6 (WHEREUPON, Ms. Hamaker and Mr. DeJong approached
7 the bar.)

8 THE COURT: Mr. Foreman, ladies and gentlemen,
9 there's a brief matter of the law I need to take care of
10 with the attorneys outside of your presence. I'll ask
11 you to go back to your jury room just for a brief time.
12 I'll call you back in a few moments. Don't discuss the
13 case while you're out.

14 (WHEREUPON, the jury exited the open court at
15 approximately 4:51 p.m.)

16 MS. HAMAKER: Your Honor, while they're
17 speaking may I step outside quickly?

18 THE COURT: You need to have more
19 conversation?

20 MR. DEJONG: I'm sorry?

21 THE COURT: You need to have another -- longer
22 conversation with your client?

23 MR. DEJONG: I'm sorry, Your Honor. I didn't
24 know I was holding -- that you were holding up because
25 of me. I am so sorry.

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1 THE COURT: Do you need to take a short break
2 anyhow?

3 MS. HAMAKER: Very short.

4 THE COURT: All right.

5 MR. DEJONG: I'll discontinue -- we will be
6 ready to go when Ms. Hamaker gets back in the courtroom.
7 I apologize, Your Honor.

8 THE COURT: That's okay.

9 MR. DEJONG: I appreciate it. But I wasn't
10 aware of it.

11 THE COURT: Well, I wanted to make sure you
12 had a chance to talk to your client.

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

15 MR. DEJONG: I'm sorry, Your Honor, we're
16 ready.

17 THE COURT: All right. I understand from the
18 bench conference that the State is now prepared to rest
19 its case. I thought we could get a little housekeeping
20 done while the jury is out.

21 First of all, I need to go over the rights of
22 testimony with your client, Mr. DeJong. If you and he
23 would come forward, please.

24 MR. DEJONG: Thank you, Your Honor.

25 THE COURT: Mr. Nance, if you would, just

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1 stand there by your attorney and raise your right hand,
2 please, sir.

3 Do you swear or affirm the testimony you are about
4 to give me will be the truth, the whole truth and
5 nothing but the truth, so help you God?

6 DEFENDANT: Yes, sir.

7 THE COURT: In just a moment the State is
8 going to rest its case, which means that I need to go
9 over certain rights that you enjoy as a citizen. I want
10 to make sure that you understand those rights. I'm sure
11 that you've had a chance to talk with your attorney and
12 I'll give you a chance to talk with him further if you
13 need to, but we've reached the stage, as soon as the
14 State rests in just a few moments, where you can present
15 a defense.

16 Our Constitution in South Carolina and the United
17 States Constitution both have provisions that say that
18 no person in a criminal case can be compelled to be a
19 witness against himself. This means you can't be
20 required to testify in this case. You have a right to
21 testify in your own behalf if you want to. Nobody can
22 make you testify. It's a personal right that you enjoy
23 and nobody can waive this right except you.

24 Obviously you have a choice to testify. If you
25 choose to do that, you'd be subject to the same rules

1 that govern any other witness who's testified, and you
2 can be examined and cross examined on any relevant
3 issue. Any convictions you have involving dishonesty or
4 those that may involve false statements, any crimes
5 punishable by imprisonment for more than one year, and
6 the court determines that the probative value of
7 admitting this evidence outweighs its prejudicial
8 effect, then the solicitor would be able to introduce
9 your record to attack your credibility.

10 Now, Mr. Nance, if you decide to testify in the
11 case, that decision must be voluntarily made by you,
12 freely made by you, intelligently made by you with the
13 knowledge that you enjoy under the Fifth Amendment to
14 our United States Constitution, with the full knowledge
15 and intelligence about the consequences of your decision
16 to testify.

17 You may choose not to testify. If you choose not
18 to testify, I'll instruct the jury that they cannot give
19 that fact that you exercised your right not to testify
20 any consideration whatsoever during their deliberations.
21 There can be no prejudice to you because you chose to
22 exercise that right not to testify. Whether you want to
23 testify or not testify is left entirely up to you. You
24 can talk to your attorney, you can talk with family,
25 with friends, with anyone else, but ultimately that's a

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1 decision that you and you alone have to make.

2 Do you understand what I've explained to you, sir?

3 DEFENDANT: Yes, I do.

4 THE COURT: Do you have any questions at all
5 of me?

6 DEFENDANT: No, sir.

7 THE COURT: Have you had a chance to talk with
8 your attorney?

9 DEFENDANT: Yes, sir.

10 THE COURT: Do you need to talk with your
11 attorney further about this?

12 DEFENDANT: No, sir.

13 THE COURT: Do you intend to testify or not
14 testify?

15 DEFENDANT: I intend to testify.

16 THE COURT: All right. Thank you. You may
17 return to your seat.

18 Do y'all believe we can get the testimony in this
19 afternoon?

20 MR. DEJONG: I don't think so, Your Honor.

21 MS. HAMAKER: The State would like to, Your
22 Honor.

23 MR. DEJONG: Well, I'm not necessarily adverse
24 to it. We've got thirteen people sitting over there
25 that have lives, too. I said we have thirteen people

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1 sitting over there that have lives. They may have more
2 of a life than you or me, Ms. Hamaker.

3 THE COURT: Well, I need to be mindful of
4 that. But other than your client and possibly Mr.
5 Duncan, that would be all you ---

6 MR. DEJONG: Mr. Duncan will not testify, Your
7 Honor.

8 THE COURT: We'll need to see if there's any
9 reply witnesses. We can surely get it to the jury
10 tomorrow.

11 MS. HAMAKER: Surely, Your Honor, Mr. DeJong
12 could at least do his direct of his client today.
13 Yesterday, I believe it was yesterday, I'm getting my
14 dates confused, Ms. Brown's testimony went clear after
15 six o'clock. The State feels that Mr. -- I'm sorry, Mr.
16 Nance will have the opportunity to fabricate his story a
17 little bit more if we were to give some more time.

18 THE COURT: Well, I don't want to break up the
19 testimony of direct and cross, but ...

20 Have the jury come back out if they're ready.

21 I'll leave it up to the jury. If they don't have
22 any conflicts, we might try to get the testimony in
23 today.

24 (WHEREUPON, the jury entered the open court at
25 approximately 5:05 p.m.)

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1 THE COURT: Mr. Foreman, ladies and gentlemen,
2 you've worked hard this week and it's five o'clock now.
3 I understand from the lawyers that we may have testimony
4 that may last another hour, hour and fifteen minutes.
5 That might conclude all the testimony. I don't want to
6 keep you here too late, but I know that you're involved
7 in this case as well.

8 If any of you have a particular need to be gone
9 earlier this evening, now, rather than an hour, hour and
10 fifteen minutes from now, could you please let me know
11 that? I'm certainly willing to accommodate you any way
12 that I can, but if we can get all the testimony in then
13 we'll just have the closing arguments and charge on the
14 law tomorrow.

15 Anybody that's got a conflict now that feels like
16 they couldn't stay another hour or so?

17 I don't hear anyone, so we'll proceed on with the
18 case then.

19 Solicitor, you may call your next witness.

20 MS. HAMAKER: Your Honor, the State rests.

21 THE COURT: Mr. Foreman, ladies and gentlemen,
22 I need to ask you to go back for one short minute. You
23 might not even have to sit down at first, but I need to
24 at least take care of one other legal matter just
25 briefly, before, that I overlooked. I'll call you right

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1 back after that.

2 (WHEREUPON, the jury exited the open court at
3 approximately 5:06 p.m.)

4 THE COURT: Any motions?

5 MR. DEJONG: May it please the court, Your
6 Honor.

7 THE COURT: Yes, sir.

8 MR. DEJONG: At this point in time I would
9 move for a directed verdict on behalf of Mr. Nance on
10 all charges. But more specifically on the possession of
11 a weapon during the commission of a violent crime. That
12 one I need to argue a little more specifically.

13 Generally on all of the charges, Your Honor, I
14 realize the court has to take the testimony and evidence
15 in the light most favorable to the State. However, I
16 believe the law says there must be substantial credible
17 evidence from which a jury could find a verdict of
18 guilty, and I submit in this case there is not
19 substantial credible evidence from which they could find
20 a verdict.

21 Specifically, Your Honor, with regard to the
22 possession of weapon during the commission of a violent
23 crime, which would be under, I believe, 16-23-490 of the
24 South Carolina Code of Laws, as amended, 1976 Code of
25 Laws as amended. Your Honor, I don't believe that the

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1 testimony and evidence in any way in this case falls
2 within the parameters of 16-23-490. I think that the
3 intent of the Legislature was and is, with regard to 16-
4 23-490, that that possession of a firearm must be more
5 than a general possession and I believe, Your Honor,
6 there must be some *mens rea* of a criminal intent with
7 regard to the weapon during a commission of a violent
8 crime.

9 For purposes of this argument I would submit that
10 the State has proved that there was a weapon in the back
11 seat of the car in a black binder, all of which have
12 been introduced during the course of this trial. But
13 there would be nothing to -- and there is no evidence,
14 not the first shred of evidence, that that weapon ever
15 came out of the black binder, that Mr. Nance was armed
16 while he went into the building or buildings, if he did.
17 We say he didn't, but for purposes of this argument,
18 we'll say he did. He was never armed. There's no
19 testimony whatsoever that the gun was even ever
20 displayed on the night of January the 27th. The only
21 testimony even anyone ever having seen Mr. Nance with a
22 weapon, even prior to January the 27th of 2009, was the
23 codefendant who just testified and he said that was some
24 one week earlier.

25 I simply submit, Your Honor, that looking at the

1 language of 16-23-490 and the testimony in this case
2 with specific regard to that case, my client is entitled
3 to a directed verdict.

4 THE COURT: Thank you, sir. Does the State
5 disagree?

6 MS. HAMAKER: No sir, Your Honor.

7 THE COURT: All right. Motion's granted.

8 MR. DEJONG: Thank you, Your Honor.

9 THE COURT: You said you disagree? I said
10 does the State ---

11 MS. HAMAKER: I'm sorry, I must have misheard
12 you. I disagree with the motion that he is making.

13 THE COURT: Okay. I thought I said does the
14 State disagree, and you said no. So I -- maybe you
15 thought I said agree.

16 All right. Tell me why you feel like it's a part
17 of this offense based on the evidence that I have before
18 me.

19 MS. HAMAKER: Your Honor, State versus
20 Jennings, 335 S.C. 82, it cites a case by the name of
21 Halyard; I hope I'm pronouncing that right. It's
22 spelled H-a-l-y-a-r-d. It says in Halyard, the South
23 Carolina Supreme Court resolved the issue of whether a
24 person not in actual possession of a firearm could
25 nevertheless be convicted for possession of the firearm.

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1 The case goes on to say that proof of constructive
2 possession, along with knowledge of the presence of a
3 firearm is sufficient to support a conviction for
4 possession of a firearm. To prove constructive
5 possession the State must show that the defendant had
6 dominion and control or the right to exercise dominion
7 and control over the vehicle.

8 THE COURT: That was with a codefendant?

9 MS. HAMAKER: Yes, sir, this case was with a
10 codefendant.

11 THE COURT: Is that how that case -- one of
12 them had to go and then one of them didn't?

13 MS. HAMAKER: Yes, sir.

14 THE COURT: Okay.

15 MS. HAMAKER: And that case is different from
16 this case in that the codefendant got charged and --
17 well, the case was about the codefendant. He had -- he
18 did not have a gun on him, but his defendant displayed
19 the gun and the codefendant was convicted of possession
20 of a gun during commission of a violent crime.

21 THE COURT: But this crime is taking place in
22 the building or at the door of the building; right? Is
23 there any evidence that the gun was ever anywhere other
24 than in the car?

25 MS. HAMAKER: No, sir. There is no other

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1 evidence that it was anywhere other than the car. But
2 the defendant -- there is testimony throughout this
3 trial that this defendant left Ms. Brown's residence and
4 then went and picked up Mr. Parks. And when he picked
5 up Mr. Parks, he called Mr. Parks beforehand and said
6 let's go do a lick. He brings the gun with him to go do
7 a lick, along with burglary tools. Ms. Brown testified
8 that there was nothing in the car when she looked in it.
9 Now, all of a sudden, that's in the car.

10 To go and do a burglary Mr. Brown would have no
11 purpose to bring a folder with his personal information
12 in it. If anything, the evidence has shown that Mr.
13 Brown -- I'm sorry, Mr. Nance tried to hide his personal
14 information in Mr. Parks' wallet.

15 That gun was loaded. If something had been in
16 there and put Mr. Nance under citizen's arrest, there's
17 no doubt in my mind, the State's mind, that Mr. Nance
18 would have had access to that gun and that binder, which
19 was in his car, that's his binder, in his constructive
20 possession and control while he is committing the
21 burglary. He was going back and forth from the store,
22 putting things into the car from the store. He was
23 using that vehicle to commit the burglary and without
24 that vehicle he would not have been able to commit the
25 burglary.

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1 THE COURT: All right. Any other matters, Mr.
2 DeJong, specifically on any of the other charges?

3 MR. DEJONG: No, Your Honor.

4 THE COURT: I'll respectfully deny your motion
5 as to -- all but that one. I'll take that under
6 advisement. I don't think that will affect the
7 examination of your witness or the cross examination.

8 But I think there is substantial circumstantial
9 evidence as to the -- all the charges but the weapon.
10 And again I'll take that under advisement. That could
11 reasonably prove to -- tend to prove the accused guilty
12 of the offenses charged. I don't -- certainly don't
13 think there's a total failure of competent evidence.
14 I'll hold the weapon under advisement at this time.

15 MR. DEJONG: Very well, Your Honor.

16 THE COURT: Anything else?

17 MR. DEJONG: Nothing further from the defense,
18 Your Honor.

19 THE COURT: Ready to proceed?

20 MS. HAMAKER: The State is, Your Honor.

21 MR. DEJONG: The defense is ready to proceed.

22 THE COURT: Have the jury come back, please.

23 (WHEREUPON, the jury entered the open court at
24 approximately 5:15 p.m.)

25 THE COURT: Thank you very much, ladies and

1 gentlemen.

2 Mr. DeJong, you may call your first witness.

3 MR. DEJONG: Thank you, Your Honor. May it
4 please the court. The defense will call Mr. Reginald
5 Antonio Nance 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. NANCE: I do.

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

14 MR. NANCE: Reginald Nance.

15 MR. DEJONG: Okay. Mr. Nance, get a little
16 closer to the microphone. Pull it up to you if you have
17 to.

18 REGINALD ANTONIO NANCE,

19 BEING DULY SWORN, TESTIFIED AS FOLLOWS:

20 DIRECT EXAMINATION

21 BY MR. DEJONG:

22 Q. Okay. How old are you, Mr. Nance?

23 A. I'm thirty-one -- I'm sorry, forty-one.

24 Q. Forty-one? Married or single?

25 A. I am single.

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- 1 Q. You have any children?
- 2 A. Yes, I do.
- 3 Q. How many?
- 4 A. I have three girls and two boys.
- 5 Q. All right. Do they live with you?
- 6 A. No, they don't.
- 7 Q. Well, what is your address?
- 8 A. [REDACTED] Greenville, South Carolina.
- 9 Q. Ever served in the military?
- 10 A. Yes, I have.
- 11 Q. Which branch?
- 12 A. I was in the U.S. Army.
- 13 Q. How many years?
- 14 A. Five years.
- 15 Q. Discharged?
- 16 A. Yes, I was.
- 17 Q. What kind of discharge?
- 18 A. I had an honorable discharge.
- 19 Q. Do you know one Johnny Parks?
- 20 A. I couldn't tell you.
- 21 Q. Do you know Johnny Parks?
- 22 A. Oh, oh, yes, I know him.
- 23 Q. I switched gears on you quickly there. How long
- 24 have you known Johnny Parks?
- 25 A. I would say approximately six to seven years.

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- 1 Q. All right, sir. What's the nature of your
- 2 relation? Friends, good friends?
- 3 A. We're pretty good friends.
- 4 Q. All right. Did you ever have occasion to loan him
- 5 money?
- 6 A. On several occasions.
- 7 Q. Okay. Now, on January the 27th of 2009 in the
- 8 afternoon hours, mid afternoon hours, do you remember
- 9 where you were, Mr. Nance?
- 10 A. Yes, I was in Greenville, South Carolina.
- 11 Q. And was anyone with you?
- 12 A. Yes.
- 13 Q. Who was with you?
- 14 A. Tisha Brown.
- 15 Q. And were you seeing Ms. Brown at that point in
- 16 time?
- 17 A. Yes, I was.
- 18 Q. How did you know Ms. Brown?
- 19 A. She was a coworker with me at Dispoz-o.
- 20 Q. All right. And at this point in time were you
- 21 working for Dispoz-o?
- 22 A. Yes, I was.
- 23 Q. And was Ms. Brown working for Dispoz-o?
- 24 A. Yes, she was.
- 25 Q. And how long did you -- well, when did you go to

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- 1 work for Dispoz-o?
- 2 A. In -- it was about June the 6th of 2008.
- 3 Q. All right. Did you work there full-time?
- 4 A. Full-time.
- 5 Q. Now, how many hours a week did you work?
- 6 A. That's forty hours a week.
- 7 Q. What shift did you normally work?
- 8 A. Third.
- 9 Q. What were the hours of third shift?
- 10 A. From twelve till eight. Yeah, twelve to eight.
- 11 Well, sometimes it's twelve to eight, then sometimes you
- 12 do eleven to seven. They move it back and forth.
- 13 Q. Okay. When you say -- let's use the twelve to
- 14 eight. Was that twelve noon to ---
- 15 A. No, that's twelve at night till eight in the
- 16 morning.
- 17 Q. Twelve midnight till eight o'clock in the morning?
- 18 A. Yes.
- 19 Q. Did you ever work any other shift there?
- 20 A. That's the only shift I worked.
- 21 Q. Did you have any days off?
- 22 A. Yes. There was rotating days off. You might --
- 23 you'd be off Monday and Tuesday one week, then Tuesday
- 24 and Wednesday the following week, Wednesday, Thursday.
- 25 It just moved on. It doesn't stay the same.

1 Q. January the 27th of 2009,. do you recall what day of
2 the week that was?

3 A. It was a Tuesday.

4 Q. Were you off that day?

5 A. Yes, I was.

6 Q. All right. So you were in Greenville with Ms.
7 Brown in the mid afternoon hours?

8 A. Yes, I was.

9 Q. And where did you and Ms. Brown go?

10 A. In Greenville, we went to three car lots looking to
11 purchase a vehicle for her.

12 Q. And was she going to buy a car?

13 A. No. I was going to purchase the vehicle for her.

14 Q. And -- so you already testified that you had a
15 relationship with her. Was there any other reason you
16 were going to buy this vehicle for her?

17 A. Yes. Because the area that she lives in, there is
18 no public transportation there and she actually -- if
19 anybody needed a way around, she needed a way around
20 because even though I met her at work, as the
21 relationship developed, I noticed that she had a greater
22 need. Because the individual that was bringing her to
23 work couldn't no longer do it and so she was going to,
24 basically, lose her job. And so I started going to get
25 her because she was on my shift, we just had different

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- 1 days off. And after a while it just became a burden.
2 Because especially when I was off and she was on then I
3 would still have to go at twelve, drive from Greenville
4 to Laurens and pick her up. So it was like I wasn't
5 never off. And then have to come back at eight o'clock,
6 pick her up to just take her home. So I said it would
7 be best if we just get you a car for your own.
8 Q. Well, during the course of your relationship with
9 her did y'all live together on a daily basis?
10 A. No.
11 Q. Did you ever spend the night there?
12 A. I've been known to.
13 Q. All right, sir. So you were in Greenville in the
14 mid afternoon hours of January the 27th of 2009. You
15 went to three car lots?
16 A. Yes.
17 Q. Did you ever buy a car?
18 A. Yes, I did.
19 Q. Do you remember the name of the car lot?
20 A. It was Everett's or Evette's, something like that,
21 car lot.
22 Q. All right. Do you remember where it was located in
23 Greenville?
24 A. Yes. It's on Poinsett Highway.
25 Q. How much did you pay for the vehicle?

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- 1 A. Twenty-two hundred.
- 2 Q. All right. And did you pay cash money for it?
- 3 A. Yes, I did.
- 4 Q. Okay. And when we say cash money, we're talking
- 5 about American greenback dollars; is that right?
- 6 A. Yes.
- 7 Q. All right.
- 8 A. If you pay cash for a vehicle you'll get a better
- 9 deal. Because if you got the cash right there you can
- 10 negotiate the price.
- 11 Q. Did Ms. Brown contribute any money toward the
- 12 purchase of that vehicle?
- 13 A. No, she didn't.
- 14 Q. And indeed, in whose name was the Bill of Sale?
- 15 A. Mine.
- 16 Q. Okay. Have you had an opportunity to see the Bill
- 17 of Sale that was introduced into evidence?
- 18 A. Yes. I've seen it.
- 19 Q. Is that the Bill of Sale that you got?
- 20 A. Yes, it is.
- 21 Q. Okay. Now, when you got that vehicle -- well, did
- 22 you test drive the vehicle?
- 23 A. Yes, we did. Well, initially we test drove a
- 24 Cavalier that I liked it, but she didn't really care for
- 25 it. And she basically picked out the Mercury Sable.

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1 But the problem with it was, it had a nice price but the
2 dealer had said that something -- the battery was dead,
3 something was wrong with the battery. But then I didn't
4 like the fact because it said as is and so I understand
5 that as is, that's basically what it is. So, and, but
6 it did look like a nice vehicle. So he charged the
7 battery up, it had nice power in it, we drove it around,
8 it handled well. A few of the gauges didn't work right,
9 like the panel for the radio thing and, like, some of
10 the display lights on the thing, like, you could turn it
11 up and down. Because, basically, I was just checking
12 the operational parts of the it, the lights, the
13 flashers, the brake lights, putting it in gear and
14 everything. Because we, basically, drove off the lot,
15 went to an area on a back street -- if you're familiar
16 with Greenville, it's San Souci. It's Cherrydale now,
17 but Sans Souci is what I know it as. We was behind
18 Cherrydale Middle School, not middle school, it's a
19 elementary school. But there's a road behind it there,
20 not too much traffic there, and so basically did some
21 things there and came right back.

22 Q. So did they have to start the vehicle before you
23 ---

24 A. Yeah, they had to jump it off. And that was the
25 problem I had going in.

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1 Q. All right. In order for you to test drive the
2 vehicle did you have to leave a deposit or anything with
3 them before you could test drive the vehicle?

4 A. Only thing that they required was that you turn
5 over your license to them.

6 Q. All right. So while you were test driving the
7 vehicle they had possession of your license?

8 A. No. First he gave it back to me then we test drove
9 it. But when I got back he asked for it again because
10 he wanted to make a copy of it. He brought it back to
11 the table and that's when he had all the paperwork.

12 Well, prior to that we negotiated a price.

13 Q. Right.

14 A. Because he said that he would drop the price
15 because I had agreed to put a battery in it. Because
16 even though he had to jump it off after we got in it, it
17 handled well. And he dropped the price even more when I
18 said that I would go myself and get the title
19 transferred over and get it registered, get a
20 registration for it. So that's how we really wound up
21 with the price of twenty-two hundred.

22 Q. All right, sir. So when you -- well, how many sets
23 of keys were there?

24 A. Initially there was one. I was -- the guy that
25 testified, I remember him, I can't remember his name,

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1 but he was the one that I was dealing with. He had the
2 key there, and he was doing the paperwork and he was
3 explaining to me, as he said, if you lose this
4 particular set of paperwork then you're just out of
5 luck. But this part right here, make sure y'all keep it
6 in the vehicle. Well, there was an older fellow there
7 that walked off and then he came back and said, well,
8 here's another key. And so -- but they was identical
9 keys. Everybody's questioning it, but they were
10 identical keys, the same key, the same remote thing on
11 the bottom of it. And so he said, well, you got an
12 extra key here. And so he went on to explain to me that
13 when you go to the DMV just turn this original part
14 over. But if you get pulled over by the police, show
15 him this paperwork right here, and he had wrote on it,
16 and leave it inside the vehicle.

17 Q. So were those put in any kind of folders or
18 anything?

19 A. Yes. He had two envelopes that he had wrote on,
20 one saying for the DMV, and the other one for to remain
21 in the car. So at that time I took the keys and I
22 picked my license up and I stuck the key and my license
23 in the envelope that said keep in the vehicle, and took
24 the other one and put them together and went on out to
25 the car. I stuck them in the glove compartment and then

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1 got in the car and told Tisha we fixing to go back to
2 Laurens. But once we got going back toward Laurens I
3 noticed that it wasn't, it wasn't even a quarter tank
4 worth of gas in there. So we stopped at the gas
5 station, I filled it up, and then we proceeded to go to
6 Laurens.

7 Q. Other than stopping -- well, let me back up here a
8 little bit. So you put your driver's license and the
9 spare set of keys in one of those envelopes?

10 A. Yeah. The one that said remain inside the
11 vehicle.

12 Q. All right. And where did you put the envelopes?

13 A. I put both envelopes inside the glove compartment.

14 Q. All right, sir. Who was driving the Sable back
15 from the car lot to Laurens?

16 A. I was.

17 Q. Okay. Other than stopping for gas, did you make
18 any other stops?

19 A. No. We stopped at the Spinx on 291. But I had her
20 follow me. And the reason I had her follow me is
21 because the car had a paper tag. And if you're from
22 Greenville, you got a paper tag, you're going to get
23 pulled over. So I said, you just get behind me and just
24 follow me all the way back to Laurens. That way I know
25 we going to get back to Laurens without going through

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- 1 the hassle of getting pulled over.
- 2 Q. Let me ask you this. To get to the car lot what
- 3 kind of vehicle were you driving?
- 4 A. I was driving my Land Rover.
- 5 Q. What color is your Land Rover?
- 6 A. It's black, all black.
- 7 Q. All right. And that's your vehicle?
- 8 A. Yes, it is.
- 9 Q. Okay. So Ms. Brown was following you back to
- 10 Laurens in the Land Rover?
- 11 A. Yes, she was.
- 12 Q. All right. When you got to Laurens where did you
- 13 go?
- 14 A. Straight to her apartment.
- 15 Q. I'm sorry?
- 16 A. Straight to her apartment.
- 17 Q. Okay. And who lived there?
- 18 A. She did.
- 19 Q. Okay. When you got to the apartment what did you
- 20 do, what did Ms. Brown do?
- 21 A. Well, she proceeded to go into the house. I stayed
- 22 out still, played around with the car. When I noticed
- 23 how the display on the console where the entertainment
- 24 center is, it was just like a bubble-shape, had a bunch
- 25 of buttons on it, so I'm sitting there trying to --

1 actually I was trying to set the clock, but it wasn't
2 working for me. And then I noticed that it had a CD
3 player. And I was, like, well, this ain't no place to
4 actually put a CD in, so I looked in the glove box, and
5 I said, well, it ain't there. I looked under the seats,
6 said, well, it ain't there. So when I popped the trunk,
7 I said, oh, it's back here. So if you have a picture,
8 you can see it sitting in the corner, it's a little
9 black thing. But at that point I opened it up. There
10 wasn't no CDs in it. So I went to the Land Rover and I
11 got two gospel CDs out of the black case that they have
12 over there and four CDs out the inside of my compartment
13 that I have sitting in the middle, because it was a six
14 CD changer. And I put all six in there and went back to
15 the front, kept playing with it. It wouldn't work. So
16 I went back, turned all of them around, then one of them
17 would work, but I couldn't get the other one to work so
18 I'm basically back and forth trying to get the CD player
19 to work.

20 Q. When you got the CDs did you take that black case
21 and put it in the Sable or where was it?

22 A. Actually I set it in the trunk of the Sable when I
23 got the two gospel CDs out of it. Because I keep two
24 gospel CDs in it because some of the paperwork in there
25 deals with some religious things that I do with other

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1 people.

2 Q. While you were doing that what was Ms. Brown doing,
3 if you know?

4 A. She was in the apartment. I couldn't even begin to
5 tell you what she was doing at that time.

6 Q. I'm sorry?

7 A. She was in the apartment. I couldn't even tell you
8 what she was doing.

9 Q. All right. While you were out there messing around
10 with that car, was she there the whole time?

11 A. She was in the apartment. She wasn't with me.

12 Q. Okay. Where was your Land Rover at that point in
13 time?

14 A. Right beside me, side by side, right in front of
15 her apartment.

16 Q. All right. On January the 27th, 2009 did -- well,
17 let me ask you this. Do you recall about what time you
18 got back to Laurens?

19 A. We got there about, I'd say, three forty-five,
20 fixing to go on four. Somewhere in that time. I stayed
21 out in the parking lot playing with the car about
22 twenty minutes, being frustrated with the CD player.
23 And by that time, I'm still playing around, she comes
24 out, she says she wants to go somewhere, but she wants
25 to take the car. But I'm still playing with the car.

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1 I'm a male so I'm tinkering. So I tell her just go
2 ahead, take the Land Rover, and I'll be here when you
3 get back.

4 Q. Did you ever give her a set of keys to that car?

5 A. Yeah.

6 Q. Which set did you give her?

7 A. The one that I had in the ignition.

8 Q. Okay. Now, when she left with your Land Rover, at
9 that point in time did she have keys to the Sable?

10 A. No, not at that time.

11 Q. Okay. Now, while you were messing around with that
12 car -- with that -- with the Sable, did you have
13 occasion to get a call from Johnny Parks?

14 A. Yes, I did.

15 Q. And as a result of that call what did you do?

16 A. I told him that I would be there to see him.

17 Q. All right. And is that the only call you got from
18 Johnny Parks that evening?

19 A. No, it wasn't.

20 Q. Did he call -- well, how many times did he call
21 you?

22 A. He called me three times in about a span of fifteen
23 minutes. Because, initially, when he called, I told him
24 I would be right there, but I didn't tell him where I
25 was at. And so when I didn't get there he called me

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1 back, asking me where I was at, why I hadn't got there
2 yet. And that's when I told him I was in Laurens. And
3 then he say, well, are you on your way? And I say, I'll
4 be there in a minute, because I was actually waiting on
5 Tisha to get back because I wanted to take the Land
6 Rover.

7 Q. And did you ultimately go to Johnny Parks' house or
8 home or wherever he lived?

9 A. Well, after waiting for Tisha and seeing that she
10 wasn't getting back in a timely manner, and I got the
11 third call from him, I say, well, I'll just be there and
12 I took the Sable to him.

13 Q. All right. So you drove the Mercury Sable to
14 Johnny Parks?

15 A. Yeah.

16 Q. Where does he live?

17 A. In -- I found out it's [REDACTED] but he
18 stays on [REDACTED]

19 Q. Can you place that anywhere within Greenville by
20 way of a landmark?

21 A. Well, if you're familiar with Greenville, that's
22 McAlister Square area, or Greenville Tech, if you go
23 down further.

24 Q. All right, sir. So when you got to [REDACTED]
25 [REDACTED], Johnny Parks' house, what did you do?

- 1 A. Well, when I got there he came out and he looked,
2 because he didn't recognize me by the car. He came a
3 little closer and he said, man, you got you a new car.
4 And I said, no, I didn't get a new car. I say, I
5 actually bought the car for Tisha. And he was surprised
6 by that because he was like, ain't no way in the world
7 you bought that girl a car. And I was like, well she
8 needed a car. And so that's when I find out what the
9 purpose of the call was all about. Because at that
10 particular moment he wanted to borrow some money.
11 Because he was like, if you got money to buy some cars,
12 I know you got money that you can give me.
- 13 Q. At that point in time did you loan him any money?
- 14 A. Not at that moment.
- 15 Q. All right. Then after that, where did you go, what
16 did you do?
- 17 A. Well, he got in because he said he wanted to look
18 at the car. So he was looking at the car and we're
19 pretty much just sitting there. And I said, well, I'm
20 going to go on back. Because I want my Land Rover at
21 this point, because even though I told her she could
22 drive it, I really don't put people behind the wheel too
23 much if I ain't around. So we headed back towards
24 Laurens.
- 25 Q. We being who?

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1 A. Me and Johnny Parks.

2 Q. All right, sir. And did you then go back to
3 Laurens?

4 A. Yes. We eventually made it back there.

5 Q. Was it just a regular uneventful trip back to
6 Laurens?

7 A. Well, not totally uneventful. Because on the way
8 back the check engine light came on. And so now I'm
9 looking at it like, wait a minute, it's still driving
10 good but what's the check engine light doing on? So by
11 the time we get back, Tisha is back, because the Land
12 Rover's back. So she done backed in, but I done pulled
13 straight in. And so I get out at that point and I
14 popped the hood because I'm trying to figure out -- it
15 say check engine, so I'm going to look at the engine.
16 And, but it ain't making no strange noises, ain't making
17 no -- nothing out of the ordinary that I would think
18 that an engine would make. I'm not a mechanic, but I
19 can tell when something's making a noise or not. And so
20 I found out that it had two little -- well, if you're
21 familiar with engines now, you know they got the cover
22 on top of them. You've got to take the cover off in
23 order to actually look at the engine. And so I went
24 around -- I cut the car off, put the little thing off
25 where you could see the belts and what not. So I'm

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1 playing with the belts, moving the belts around. And so
2 I cranked the car back up with the cover off. It still
3 sounds like it's workable, ain't nothing wrong. So I
4 cut it back off, put the cover back on. And so Johnny
5 said, well, maybe you need to change the oil. And so I
6 said, well, yeah, maybe I'll get that done. And so he
7 volunteered to do it. Since I wasn't being cooperative
8 at that particular moment to give him no money, he's
9 volunteering. He say, well, if you just get the filter
10 and the oil I can do it at my house. Because if you've
11 ever been at -- well, you probably haven't been out
12 there. He has a elevated driveway. You got the
13 driveway here, but he has a second driveway that's
14 elevated that you can actually pull the car up in and it
15 will hang over, if you pull the wheels up to it, to
16 where you can actually get up under there to do an oil
17 change.

18 Q. Did you do that?

19 A. No.

20 Q. All right. Now, while you were fiddling or
21 checking with the engine under the hood, what was Johnny
22 Parks doing?

23 A. Well, he was on the passenger side. He had turned
24 the radio up one time, and he had turned -- he was
25 pushing buttons, I was hearing the music change so I

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1 knew he was playing with the CD changer. But outside of
2 that I couldn't tell you physically what he was doing,
3 but I could hear what the music was doing.

4 Q. Could you see what he was doing?

5 A. No. I had the hood up on the other side.

6 Q. Then how long did you stay at Laurens at Tisha
7 Brown's house?

8 A. I would say another -- from that moment, five, six
9 minutes. Johnny asked me -- well, he inferred he wanted
10 to borrow some money again. I told him at this point I
11 would do it now, but tomorrow I'm going to take the car
12 to get it transferred over to her. I don't know how
13 much it's going to cost for me to get the title
14 transferred over to her name. I don't really know what
15 else I have to do to this car. Because I know I've got
16 to get the battery back for it if the battery don't act
17 right. And I say with this check engine light on, I
18 might have to take it to a mechanic that I know that's
19 down the street from my home that my family normally
20 uses. I said, and he likes to charge you an arm and a
21 leg, but he's good. And so if he could wait to Friday,
22 because we get paid every Friday, I said, if you could
23 wait till Friday, I'll give it to you then, but right
24 now I just don't know what it's going to cost me on this
25 car to get everything done what I need done.

1 Q. So after that then -- were you still in Laurens
2 when that took place?

3 A. For that conversation, yes.

4 Q. All right, sir. After that conversation what did
5 you do?

6 A. Well, I cut the car off, told him to go ahead and
7 get in the Land Rover. I locked the door, I took the
8 key to Tisha, told Tisha that she shouldn't drive the
9 car, not unless she actually needs to, and that I'd be
10 back.

11 Q. All right, sir. Now, where was Johnny when you
12 went in to speak to Tisha?

13 A. Sitting in the Land Rover.

14 Q. Okay. I think you told me, but when you are
15 fooling with the engine, where was Johnny?

16 A. Sitting on the passenger side playing with the ---

17 Q. Was he inside the vehicle?

18 A. Yeah.

19 Q. So then you leave Laurens in the Land Rover?

20 A. Yeah.

21 Q. And when you leave in the Land Rover, where do you
22 go?

23 A. Well, we head back towards Greenville. But on our
24 way back to Greenville I stop at Murphy's on 385,

25 Murphy's where Wal-Mart's in that. I stopped there. I

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1 get, I think about, like, twenty dollars worth of gas
2 and a jug of antifreeze.

3 Q. All right, sir. The Mercury Sable, did you know at
4 that point in time how, or if, it was going to be
5 reliable transportation?

6 A. Well, I was hoping. I can't say what it -- like I
7 say, I'm not a mechanic so I can't tell you if it was
8 top notch, but that's why I was going to take it to
9 Tim. Because I know Tim. And like I say, even though
10 he'll charge you an arm and a leg, he's going to tell
11 you the truth about the matter. And so basically, I was
12 going off the signs I was getting, the check engine
13 light coming on, and that it needed a battery.

14 Q. How about your Land Rover, was it reliable
15 transportation?

16 A. Yes, it was.

17 Q. Okay. Did you -- or was it in good running order
18 on January the 27th of 2009?

19 A. Yes, it was.

20 Q. All right. So you stopped at Murphy's. Did you go
21 in Wal-Mart that night?

22 A. No. Murphy's is outside. Wal-Mart is here, then
23 you got that all the Wal-Mart parking lot, then you got
24 the Murphy's gas station.

25 Q. So you just got about twenty dollars worth of gas

1 and a gallon of antifreeze.

2 A. Well, I think it's like -- what is it, five gallon
3 jug or something like that? It's not a gallon.

4 Q. All right, sir. After you leave Murphy's where do
5 you go?

6 A. Well, we're proceeding on towards Greenville and he
7 said, well, you done got gas -- well, we back on the
8 money issue. Because he done say, well, you done got
9 gas, you done bought all this other stuff there, you
10 talking about doing the car here, any other time you
11 would give me some money. But as I'm trying to explain
12 to him, you got to look at what I just spent. You know,
13 if you had got me earlier, maybe. But I done already
14 committed myself here and so just let me work this out.
15 But if not, just wait till Friday. Because you know
16 without a doubt I'll give it to you Friday, but just
17 hold up now.

18 Q. Were you in any desperate need of money on January
19 the 27th of 2009?

20 A. No, I wasn't.

21 Q. Okay.

22 A. I was short a few dollars that I could've still
23 had, but I was ---

24 Q. Did you have enough to live on?

25 A. Well, I actually have to -- I still stay with my

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1 parents, so I really didn't have no bills because ---

2 Q. Do you recall -- I'm sorry, go ahead.

3 A. Because basically, as long as I referee between my
4 mother and my father I'm all right.

5 Q. Did you have a car payment?

6 A. No. The Land Rover is paid for.

7 Q. Pay car insurance?

8 A. No. Don't have to. It's on the family plan. My
9 mother pays for it. But I did, back in September -- it
10 was September '08 when my second daughter, she lives in
11 Atlanta and she goes to Clark University down there, she
12 found herself in a bind and she asked for a large amount
13 of money that I didn't totally have on hand at that
14 time. So I took a car title loan out on the Land Rover
15 just so she'd have the money that she needed, because I
16 didn't have the kind of money that she was asking for at
17 that time.

18 Q. Well, was that land -- title loan paid off in
19 January of 2009?

20 A. I think I owed like three or four ---

21 MS. HAMAKER: Your Honor, I'm going to object.
22 He's leading the witness.

23 THE COURT: All right. Rephrase your
24 question.

25 Q. Was there any money owed on the title loan in

1 January?

2 A. I think I owed about like five more payments.

3 About thousand dollars, it'll be over with.

4 Q. All right. So after you leave Murphy's, where do
5 you go?

6 A. We was continuing ahead towards Greenville. I
7 asked Johnny, do he want to go home. He's like, nah, I
8 want to hang with you. And I say, well, we ain't going
9 to be discussing this money issue, I said, but you can
10 hang with me if you want to hang with me. So we
11 basically bypassed his house and goes through the
12 Nickeltown area, shoot through uptown, ride by my
13 grandmother's house, went through West Greenville.
14 Basically, we just made a loop and came right back
15 towards his house.

16 Q. What time did you get him home?

17 A. I'd say about seven fifteen, maybe.

18 Q. All right, sir. Did you stay at his house?

19 A. No.

20 Q. All right. Once you dropped him off, where did you
21 go?

22 A. At that time we pretty much parted on bad terms --
23 well, not bad terms, just not agreeable terms. And I
24 told him I would holler at him probably Friday, and I
25 went back towards my grandmother's house. Because,

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1 basically, what I do when I'm off, I'll ride by my
2 grandmother's house. I'll ride by the church that our
3 family basically goes to. It's in the Sterling area of
4 Greenville. Lot of things go on over there. Because we
5 have the church, but then we have a house that's on the
6 land of the church that individuals like to park behind
7 and do unsavory things. And so, basically I'll ride
8 through there, run people off from around there. And so
9 from there, I roll around a little bit more. I stopped
10 by one of my partner's house, that stays up from my
11 grandmother, that I know. He details cars. He'll do it
12 for you good, but you got to get him ahead of time,
13 because that is what he does. I talked to him about
14 getting the Land Rover detailed, but he couldn't get me
15 in until that Sunday, and so I figured that I would get
16 that done while I'm at church.

17 Q. Well, let me ask you this. When you left Laurens
18 with Johnny Parks in the Land Rover on January the 27th,
19 did you ever go back to Laurens?

20 A. Not that night.

21 Q. All right. Were you with Johnny Parks when he said
22 he went to the Tobacco Warehouse and the Local Cash
23 Advance in Pickens on January the 27th?

24 A. No, I wasn't.

25 Q. Did you ever go back to Laurens and get that

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- 1 vehicle?
- 2 A. No, I didn't.
- 3 Q. Do you know who got the vehicle?
- 4 A. I have my assumptions.
- 5 Q. All right. Now, the -- do you have a prior record,
- 6 Mr. Nance?
- 7 A. Yes, I do.
- 8 Q. I think that in 2001, you had criminal sexual
- 9 conduct, third degree?
- 10 A. Yes, I did.
- 11 Q. And you had three felonies?
- 12 A. Yes, I did.
- 13 Q. All of which carried over more than one year in
- 14 prison; right?
- 15 A. Yes, they did.
- 16 Q. Now, so you didn't ever go back to Laurens?
- 17 A. Not that night.
- 18 Q. When did you go back to Laurens again?
- 19 A. I went back to Laurens at about a little after
- 20 nine, I would say nine twenty to nine thirty area
- 21 period, I went back to Laurens.
- 22 Q. All right. And when you got there -- well, let me
- 23 ask you this. You say -- did you see Johnny Parks
- 24 again after you dropped him off at his house on the
- 25 27th?

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1 A. No, I didn't.

2 Q. About what time did you drop him off at his house?

3 A. It had to be seven twenty, seven thirty, seven
4 twenty, seven thirty.

5 Q. I'm sorry?

6 A. Seven twenty, seven thirty, seven twenty.

7 Q. All right. And then you checked on your
8 grandmother. Did you go home after all of that?

9 A. No.

10 Q. What did you do?

11 A. Well, while I was out and about I came across a
12 friend of mine that we pretty much have a understanding.
13 She decided that she wanted to go out to eat, so we went
14 out to -- what's the name of that restaurant in
15 Cherrydale? Ruby Tuesdays. And we sat there, we
16 talked, ate, caught up because I hadn't seen her in
17 about four weeks, if that. And we chatted for a little
18 while, decided that we could spend a little more time
19 together. So she said since I paid for the meal, she
20 would pay for the room. So that's pretty much ...

21 Q. Where did you go?

22 A. To the -- I think it's the Harbor Inn, or Hobb's
23 Inn. It's right there where 85 and 291 and Augusta
24 Road all come together. It's a hotel sitting right
25 there, got a Burger King and a gas station beside it.

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1 Q. Did you have your cell phone with you?

2 A. I thought I did.

3 Q. Did you?

4 A. Come to find out, I didn't. But I didn't find that
5 out till that morning.

6 Q. What morning?

7 A. The morning that I woke up to go back to Laurens.

8 Q. Okay.

9 A. Because once the evening was over, I had got up, we
10 went and had breakfast because there's a Waffle House
11 right across the street. I took her back to the hotel.
12 I told her I'd holler at her next time I got to see her.
13 I got in the Land Rover. And I normally keep -- the
14 Land Rover got -- you know how you got the center
15 compartment that you can raise up and you got that
16 compartment there? Well, that's where I normally keep
17 my phone at. And I didn't want to take it with me
18 because I was with an individual that you don't
19 interrupt at the time that you spend it with those
20 particular people.

21 Q. All right. Did you realize after the fact where
22 your cell phone was?

23 A. Not then.

24 Q. All right.

25 A. I just know I didn't have it.

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1 Q. All right. When did you figure out where or what
2 had happened to your cell phone?

3 A. Well, I didn't figure that out till even later.
4 Because when I get back to Laurens and I see the car
5 ain't there. I say, well, she must have went somewhere
6 while I was gone. But I've got a key to the apartment,
7 so I went on in. And when I go in, there she stands.
8 So I'm like, well, where the car at? That's when she
9 say the car been stolen. She say she done already
10 reported it stolen. And I'm like, well, how did it get
11 stolen? I said, did you leave it somewhere, I mean,
12 what happened? She say, it was outside, and it's gone.

13 MS. HAMAKER: Your Honor, I'm going to object.
14 Hearsay.

15 THE COURT: I sustain the objection.

16 Q. Don't tell us what she said, just ... As a result
17 of that, did you figure out where your cell phone was?

18 A. Well, from that, she say ---

19 Q. Now, don't tell us what she said, okay?

20 A. Well, she spazzed out on me, basically. Because
21 she like, well, where you been ---

22 MS. HAMAKER: Your Honor, hearsay.

23 A. Well, I got questioned about my whereabouts and
24 because I couldn't get in touched with. And at that
25 point I was like, well, where is my phone? Because I

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1 know where I left it at. And so I'm thinking, well, I
2 don't think nobody took it because I know it's nothing
3 actually randomly missing out the Land Rover. But I
4 know ain't nobody been in there but Johnny Parks. But I
5 don't want to believe that my friend would actually take
6 something from me, not like that.

7 Q. Are you speaking of your cell phone now?

8 A. Yeah.

9 Q. All right. Once you learned that the Sable had
10 been reported stolen -- well, let me back up. After --
11 well, let's go back to the 27th. Once you got to
12 Laurens did you remove any item from the glove
13 compartment?

14 A. Say again?

15 Q. After -- on the 27th, when you got back to Laurens
16 from purchasing the vehicle, did you remove any items
17 from the glove compartment?

18 A. No.

19 Q. All right. When you left Laurens on the 27th did
20 you have your driver's license?

21 A. No.

22 Q. Where were they?

23 A. In the glove compartment of the Mercury.

24 Q. Did you ever take the spare set of keys?

25 A. No.

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1 Q. Okay. So now let's jump back up to the morning of
2 the 28th. Once you learned that the Mercury Sable had
3 been reported stolen what did you do, Mr. Nance?
4 A. I headed back towards Greenville because I got
5 tired of hearing the yip-yap in my ear. And so on the
6 way back to Greenville, I'm thinking about my license
7 being in the vehicle, so I'm going to the highway
8 department. But then as I'm going on 385, I remembered
9 there's a highway department right there in Simpsonville
10 that's below the hospital. So I go up in there, and
11 when I go in the lady asked me what do I need. Because
12 there they have a customer service before you ever get
13 to the counter. And I said, I need to get my license
14 replaced. And she asked me why. And I say, well, my
15 car was stolen with my license in it. I said, and I
16 need to get them replaced. So she ask me do I have any
17 other type of ID. I said, well, I have a Social
18 Security card and my birth certificate. And she said,
19 well, you going to need some mail with your address on
20 it. And I said, okay, because I didn't have nothing
21 else. And she gave me a number, I sat there, I went to
22 the counter, I gave the lady the form that I filled out.
23 And she said, well, you don't have to take another
24 picture because I got your picture already here. And
25 she gave me another set of license.

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- 1 Q. All right. The State has introduced a form, I
- 2 believe, where it shows that your license were lost. Do
- 3 you recall seeing that form?
- 4 A. Yes, sir.
- 5 Q. Did you write lost on that form?
- 6 A. No, sir.
- 7 Q. Who wrote lost on the form, if you know?
- 8 A. I couldn't tell you.
- 9 Q. You simply went out and asked for a replacement
- 10 driver's license?
- 11 A. Yeah. Like I said, the customer service woman
- 12 stopped me and asked me what I wanted. And I said,
- 13 well, I need to get my license replaced. And I
- 14 explained to her that my license was in a vehicle that
- 15 had been stolen, and it ...
- 16 Q. Did you ever report your license stolen?
- 17 A. Well, I didn't know you actually reported your
- 18 license been stolen. I mean, you go get -- your license
- 19 gone, you go to the highway department.
- 20 Q. Well, did they issue you another license?
- 21 A. Yes, they did.
- 22 Q. And what day was those license issued?
- 23 A. The 28th, the day that I was there.
- 24 Q. Okay. And was it that one at the Simpsonville or
- 25 Fountain Inn Department of Motor Vehicles?

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1 A. Yes. It's in Simpsonville. Below the hospital in
2 Simpsonville.

3 Q. All right, sir. So after you left the Department
4 of Motor Vehicles on the 28th, where did you go next?

5 A. Well, at that point I'm still trying to figure out
6 where my phone at. So I have to go back to my parents'
7 house because I'm trying to get with the girl to try to
8 figure out if my phone is with her. Cause I'm like,
9 well, I might have just actually left it there and she
10 might've picked it up trying to be funny, because she
11 knows I get a lot of calls. But really I wouldn't have
12 been so worried about the phone but that particular
13 phone I had just purchased. And I purchased for the
14 reason because -- dealing with Tisha Brown, she's
15 younger than me. So she likes to go on my phone, see
16 who I done text, see who done called me, see what
17 pictures I got. So I got that phone because it have a
18 password on there. I could just lock the phone, I could
19 sit down and don't have a worry about it no more.

20 Q. Let me show you what's been marked State's Exhibit
21 Number 35. Do you recognize that, Mr. Nance?

22 A. Well, to be honest with you I would say that this
23 is the Blackberry that I purchased. But like I said, I
24 had just purchased this phone. I mean, this is the one
25 that I did get. I did have this case. So I would say

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1 that this is the one that I had. But I only had it,
2 like I said, I ain't even had it a good four or five
3 days. I had a Motorola Razor and -- but needless to
4 say, this does look like the one that I did purchase.
5 So I would say it's mine.

6 Q. So again, after you left the Department of Motor
7 Vehicles, where did you go?

8 A. Well, from there I went home because I knew I had a
9 list of numbers inside my computer that I could always
10 go to to rely on just in case I did lose my phone.
11 Because, once again, this individual deleted the numbers
12 in my phone. So I had to go back, because I'm stranded
13 because I didn't have the numbers. So I had to go on my
14 computer to find the numbers that I was looking for.
15 And when I found the young lady that I was looking for
16 her, I called her, asked her about my phone, asked that
17 she was playing games with my phone. And so she's like,
18 no. And so I'm like, well, you sure? I said, because I
19 don't want to be going through all of this runaround
20 about it. And so I was told that they was sure that
21 they didn't have it. It ain't even like that. And I
22 said, all right back. So at that time I decided to go
23 to the AT&T store because I figured I can get my phone
24 replaced.

25 Q. Which one did you go to?

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1 A. It's the AT&T store in Cherrydale Plaza. Because
2 the reason I used that particular one, there's a
3 customer service representative there named Kip. And
4 Kip could work miracles for you. That's how I even got
5 the Blackberry in the beginning.

6 Q. Did they replace your Blackberry?

7 A. No, they didn't. Because it wasn't part of my
8 contract, because I bought the Blackberry outright. And
9 since -- you can get a new phone after a certain period
10 of time, but if you try to get it before that time, then
11 you either have to pay the actual price of the phone or
12 either you have to pay a percentage of the phone, and
13 all that there.

14 Q. On January the 28th of 2009 did you see Johnny
15 Parks?

16 A. On the 28th, yes, I did.

17 Q. And where did you see him?

18 A. At that particular time I seen him at the hotel on
19 Congaree Road.

20 Q. Do you know the name of the motel?

21 A. I couldn't, I couldn't remember. To save my life I
22 couldn't tell you what the name of it was.

23 Q. You say on Congaree Road. Where was it in
24 relationship to Roper Mountain Road?

25 A. Well, actually that's where it is. It's Congaree

1 and Roper Mountain. It's Roper Mountain Road. That's
2 -- well, if you're familiar with Greenville, if you're
3 coming from the Greenville Mall it's on that road right
4 there. Congaree will run into it.

5 Q. All right. And when you went to the -- well, let
6 me ask you. Had you talked to him by telephone or
7 anything before going ---

8 A. No. What happened was he called my parents' house.
9 Initially, I was not there. And they called again and
10 said that he wanted to talk to me. So I stayed and
11 waited. And that's when he called and told me where he
12 was at.

13 Q. Okay. Then did you go see him?

14 A. Yes. I did.

15 Q. On the way over -- you left from your parents'
16 house, I guess; right?

17 A. Yes, I did.

18 Q. That's the [REDACTED] ---

19 A. [REDACTED]

20 Q. Did you stop anywhere?

21 A. Yeah. I was asked to bring something to eat. And
22 so I stopped at Little Caesar's and got a pepperoni
23 pizza and I got some hot wings for myself.

24 Q. When you got to the motel, did you see Mr. Parks?

25 A. Yes, I did.

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1 Q. Was anyone else there?

2 A. I couldn't tell you. Because when I drove in there
3 -- because he basically explained to me how to get in
4 there, that you have to drive in, and ride around, and
5 then there's a pool area, and that he would be standing
6 in the pool area. But in actuality he was standing up
7 on the second floor area with the door open.

8 Q. Did you ever see Johnny Parks at Sands Motel?

9 A. I don't even know where Sands Motel is. Not by
10 name.

11 Q. All right. So on the 28th, did you and Mr. Parks
12 have a conversation about the preceding evening?

13 A. Yes, we did.

14 Q. All right. And what was that?

15 A. He wanted my cooperation.

16 Q. How?

17 A. He wanted me to say that he had been with me that
18 day. And that when I came to see him, that he had on
19 some sweat pants. And that the reason that he had the
20 sweat pants on because I had just abruptly came by to
21 show him off the car that I had just purchased, so he
22 grabbed his wallet and his phone and we went riding
23 around. That we had been on 291, 85, made a little
24 loop, coming back around 385, back to 291 and that after
25 we've seen how the car actually operated and that how

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- 1 things was going with it, that he proceeded to jump out
2 of the car and left his license and wallet behind.
- 3 Q. So basically he asked you to alibi him?
- 4 A. Basically cover for him, yes.
- 5 Q. All right. Was there any discussion about the
6 Mercury Sable?
- 7 A. Yes, it was.
- 8 Q. What was that discussion?
- 9 A. The discussion was that I wanted to know how you
10 wind up with it and why you took it? He told me that he
11 thought he could get it back before anybody knowed that
12 it was missing. But he got jammed up.
- 13 Q. All right, sir. Is there any doubt in your mind
14 that that occurred on January the 28th, that
15 conversation?
- 16 A. No, it's not.
- 17 Q. After January the 28th of 2009 when is the next
18 time you saw Mr. Parks?
- 19 A. Sometime that afternoon at his parents' house.
- 20 Q. On the -- again on the 28th?
- 21 A. No, that's the 29th.
- 22 Q. 29th, ---
- 23 A. Yeah.
- 24 Q. -- the following day. That would be on Thursday;
25 correct?

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1 A. Yeah.

2 Q. All right. And on that one don't get into any
3 conversations, but did you and Johnny make any plans
4 together?

5 A. Yeah.

6 Q. And what were the plans?

7 A. Well, prior to the plan, he had told me what he was
8 going to do. And he said that he had an appointment
9 with Pickens County Sheriff's Office for that Friday
10 about the vehicle. So at that point I'm thinking, it
11 can't be really that serious if the police done talk to
12 you on the phone at your house, so they know where you
13 at, but yet they going to make an appointment to come
14 pick you up at your house the next day to bring you to
15 the Pickens County Sheriff's Office.

16 Q. All right, sir. So did you stay in Greenville on
17 the 29th?

18 A. Not the whole day.

19 Q. Where did you go?

20 A. Later on that evening, when I got back with Parks,
21 he said that he might need some money to make bond if
22 anything go wrong in Pickens and would I take him to
23 Columbia to get some money so he can have some money to
24 make bond in Pickens.

25 Q. And did you do that?

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- 1 A. Yes. We went to Columbia.
- 2 Q. All right, sir. Mr. Nance, you have seen what
- 3 appears to be a Go Devil or a sledgehammer that was
- 4 introduced into evidence.
- 5 A. Yes.
- 6 Q. Did you put that in that vehicle?
- 7 A. No.
- 8 Q. Did you ever purchase that Go Devil or
- 9 sledgehammer?
- 10 A. No.
- 11 Q. You've seen a crowbar that has been introduced into
- 12 evidence that they say came out of that vehicle. Are
- 13 you familiar with that?
- 14 A. Yes.
- 15 Q. Did you put that crowbar in there?
- 16 A. No.
- 17 Q. Did you purchase the crowbar?
- 18 A. No.
- 19 Q. Have you ever had the crowbar?
- 20 A. No.
- 21 Q. All right. There was a plastic tub in there that
- 22 says inclement weather on it. Did you see that tub
- 23 being introduced into evidence?
- 24 A. Yes, I did.
- 25 Q. Have you ever seen that tub?

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1 A. No, I haven't.

2 Q. I'm sorry?

3 A. No, I haven't.

4 Q. Have you ever seen the contents of that tub?

5 A. No, I haven't. Not until it was shown here.

6 Q. All right. On the top of that lid, I believe it
7 says, inclement weather.

8 MR. DEJONG: Thank you so much, Mr. Clerk. I
9 appreciate it.

10 Q. I'm referring to State's Exhibit Number 43. It
11 says inclement weather box; right?

12 A. Uh-huh (affirmative).

13 Q. Is that your handwriting?

14 A. No.

15 Q. Have you ever been to Tobacco Warehouse in Pickens,
16 South Carolina?

17 A. No.

18 Q. Have you ever been to a Local Cash Advance in
19 Pickens, South Carolina?

20 A. No.

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

22 THE COURT: Yes, sir.

23 Q. Anything else you wish to share with this jury, Mr.
24 Nance?

25 A. Well, during this time when things was going on

1 with the car, Detective Mike Baker came to my parents'
2 house, and -- but at that time I wasn't there. And when
3 I got there my father had informed me that Detective
4 Mike Baker had been there questioning them about me with
5 the vehicle. And, but he had -- it was stated that I
6 was down in Pickens running in the woods. And so my
7 father thought it was a joke. And so he gave me the
8 number and ---

9 Q. Who gave you the number to who?

10 A. My father gave me the number that Michael Baker had
11 left. And I tried to call him and I got an answering
12 service. I tried to call him again from -- where was I?
13 I was in Simpsonville when I called him the second time
14 and I didn't get him again. And the next time I see
15 him, I was in Pickens County.

16 Q. Anything else?

17 A. Outside the fact that, amazingly so, I guess they
18 say no good deed is left undone, because Johnny --
19 Johnny is my friend and basically, I guess, I was his
20 facilitator. I knew he had a problem and any time I
21 could help him, I helped him. I don't know, this might
22 bite me in the end, but I'm going to just tell you how
23 it happened. We was in prison together and basically
24 that's where I met him. And when you're in prison you
25 got to be a man. And there's an unspoken code, and it's

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1 basically is, you going to look out for each other or
2 you're going to perish. And so I looked out for him.
3 And I continually looked for him because he wasn't in a
4 position to where his people could help him. And I was
5 just fortunate enough to where -- where we was at you
6 could work for prison industries which is basically
7 working for a company. I work for a company which is
8 actually in the world. Well, if you're in prison it's
9 the world, but I work for Anderson Hardwood Floors, and
10 it's in Clinton. But I was in prison. And I got paid
11 seven dollars -- seventy-five dollars -- seven dollars
12 and ninety-five cent an hour. So you got to think,
13 being in prison for the amount of time I was, five years
14 worth of working every day, but yet you don't have no
15 bills, no responsibilities, so I was all right. Because
16 you get the majority of that money. They put the rest
17 of that in your savings so you would have something when
18 you get out. Twenty-five percent of that, you can
19 actually spend. So Johnny had created some situations
20 behind the fence that was basically life-threatening.
21 And so I paid off a lot of his debts, and so -- because
22 I liked him. But I knew he had nobody to help him. And
23 so that's why this situation right here is, you know, it
24 hurts. But needless to say, you know, I couldn't -- I
25 don't even understand why he would do it to me. Not

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1 like this. Because I've been there for him. And you
2 know if I hadn't been doing good when I got out, it
3 wouldn't even bother me. Because I admit in the past I
4 did wrong. But I had changed my life and this is crazy
5 because I was doing right at that time. I mean, you got
6 to understand. Out of all of this what really shocked
7 me -- you know, I understood what they was putting out
8 there, but when they said -- when I seen that he had my
9 -- when he had my -- man, let me get my thoughts
10 together. When they said that my license -- I knew my
11 license was in his wallet when I got the stuff and they
12 were showing it to me, but I had no knowledge that my
13 debit card and my insurance card was in his wallet.
14 Because I was like, I know I leave that in the Land
15 Rover and it would be in my ashtray. Because I don't
16 smoke or nothing like this, so I just sit it there. I
17 had got sick around about January 22nd, somewhere in
18 there, that's why my medical card was there. They had
19 showed a thing out my case with my name on it and
20 basically it showed the medical thing. I had a medical
21 appointment for January the 6th. Because, you know,
22 whenever you trying to get a doctor, you know, not a lot
23 of doctors like to take new patients and that's what
24 that form was about, for me becoming a patient. Because
25 the big thing now is healthcare insurance, you know.

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1 And so Dispoz-o -- that's the one reason that I was even
2 staying there is because they gave you the health
3 insurance, the dental insurance, the life insurance
4 policy, and then you can start getting into a retirement
5 thing with the company. So, you know, I was like, this
6 is a job, with my background I basically shouldn't even
7 have, but I'm there. And I was like, well, they
8 basically, gave me a chance. And so, like I said, I was
9 doing good. And so I shouldn't be penalized for doing
10 good, even though it was on the individual that I knew
11 he had a problem. But I still felt I could help him.
12 Like I said, I probably was just a facilitator for him
13 because I would help him. And you know, the money that
14 he quote, unquote, borrowed from me, yeah, I knew that
15 all of it wasn't going for what he said. And if Mr.
16 DeJong would ask him, did you ever pay him back? Nah,
17 he never paid me back, because I didn't want it back.
18 Because it didn't matter. But like I said, this is
19 absolutely crazy at this point.

20 Q. One last question, Mr. Nance, I meant to ask you
21 earlier. How much did you make at Dispoz-o?

22 A. Ten dollars an hour.

23 Q. You worked forty hour weeks?

24 A. Yeah.

25 MR. DEJONG: Witness is with you, Madam

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1 Solicitor.

2 THE COURT: You doing okay?

3 DEFENDANT: Yeah, I'm all right.

4 THE COURT: Y'all doing okay? You may cross
5 examine.

6 CROSS EXAMINATION

7 BY MS. HAMAKER:

8 MS. HAMAKER: Mr. Nance, you got plenty of
9 water up there?

10 DEFENDANT: I don't think so.

11 MR. DEJONG: I just set that cup up there for
12 you, Mr. Nance. You may not have seen it.

13 Q. Mr. Nance, can you please tell me about your
14 friendship relationship with Mr. Parks?

15 A. We was friends. We still are friends, as far as
16 I'm concerned. I mean it -- I understand the principle,
17 because you say you want me, okay, I delivered it, so I
18 understand why on his behalf, so -- but like I said ---

19 Q. Can you describe the nature of that friendship to
20 the jury?

21 A. Like I said, we met while we was in penitentiary.
22 I seen that he was going through some things that was
23 pretty volatile while you in prison. And because he had
24 -- amazingly so, you can create debts in prison. And so
25 I paid off some debts that he had for some individuals

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1 that you just got to pay, there's repercussions behind
2 it. And from there -- well, you know, at first he
3 thought I had an ulterior motive behind it, but I just
4 knew that his people really wasn't doing it. Because I
5 done got to talk to him a few times and he had started
6 explaining to me his home life and everything. So we
7 just bonded.

8 Q. How long did y'all know each other?

9 A. Well, basically what happened was we was together
10 for, I would say, two and a half years or so, and he got
11 out, came back. But he didn't come back to where I was
12 at. And when I got out he was already out. And when he
13 found out that I was out, he came to my parents' house,
14 because he knew where they stayed at, and he knew what
15 time that I was actually supposed to be out. And he
16 showed up there and he asked me if I had a job yet and I
17 had said no. And he told me about Dispoz-o, because he
18 had been trying to get on out there. So he gave me the
19 number to the lady to call out there. I called her. I
20 called on a Thursday, she gave me the job that Friday.
21 And when I told him about it, he was like, man, I've
22 been trying to get on out there since I been out. I
23 said, obviously they're hiring, they hired me. So he
24 went out there the following Wednesday, I believe it
25 was, and she hired him. And initially we was both on

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1 third shift, but our schedules were different. And he
2 went in and explained to the people that he didn't
3 really have a constant way of getting back and forth,
4 and so he asked them will they changed his schedule to
5 fit mine to where I could take them back and forth to
6 work, and they allowed it to happen.

7 Q. Your relationship Ms. Brown, will you tell the
8 jury a little bit more detail about that? How did you
9 meet?

10 A. Well, basically, I met her at Dispoz-o and she ---

11 Q. How long had y'all been dating up until this
12 incident date, January 27th?

13 A. I think I met her in August. Think we got together
14 in August. It was August, September, yeah, about four
15 months.

16 Q. Did you meet her daughter?

17 A. Yeah.

18 Q. Did you care for her daughter?

19 A. Yeah. She was a nice little girl.

20 Q. Did you ever provide anything for the daughter?

21 A. Yeah. She likes -- what's that -- the Hannah
22 Montana things. And so I -- matter of fact, at
23 Christmas she wanted the guitar, it was the guitar with
24 the little headset thing to it. And I got her that, a
25 Hannah Montana comforter that you put on the bed, and I

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1 helped her purchase a bike for her.

2 Q. Did Ms. Brown's daughter like you?

3 A. Yeah.

4 Q. Did you help Ms. Brown care for her daughter at
5 all?

6 A. Not as caretaker, not to that point. Because
7 basically, when I was there, Jenia would be in school.
8 Because with us working third shift, we was there in the
9 daytime, and by the time she got home I was gone. But
10 like, if we was off -- because basically, what our
11 schedule was to where if she off Monday and Tuesday, I
12 be off Tuesday and Wednesday. So we had that one day
13 off together. And you know, now, we might spend that
14 day together with Jenia, once she get out of school, or
15 else she's not in school as -- because we got the
16 rotation now, so we might get a weekend day off and do
17 something then. But outside of that it was basically
18 when I'm there and she's there at the same time we would
19 interact. But it wasn't a continual thing.

20 Q. Did you ever stay the night at Ms. Brown's house?

21 A. Yes, I have.

22 Q. So in order to stay the night, would she be there
23 as well?

24 A. Well, it all depends on the situation. If it's
25 going to be a night that where Tisha got to actually go

1 to work and I'm off, or if we both going to work but I'm
2 staying there for -- to where -- because like I said, it
3 got inconvenient with me getting up, then driving all
4 the way to Laurens, getting her and then have to back up
5 to come to Fountain Inn. So either I would come there
6 and go to sleep there, but Jenia would either go to
7 Tisha's sister's house or to a neighbor's house on
8 certain nights.

9 Q. The day that you purchased the vehicle for Ms.
10 Brown, you were off work?

11 A. Yeah. What had happened was I had got off, but I
12 was going to be off for that day. Because I had got off
13 work that morning at eight, but I was going to be off
14 for that Tuesday and that Wednesday.

15 Q. So you were off on Tuesday and Wednesday?

16 A. Yeah.

17 Q. Was Ms. Brown off Tuesday?

18 A. No. She had to go to work that Tuesday and she
19 would have been off with me that Wednesday. Or either
20 she would have been off with me that day or go back that
21 Wednesday. We had that one day. It was either going to
22 be that day off together or it would have been ---

23 Q. The day you bought the car together, was she off?

24 A. She had to be because I got off and went there and
25 she was at home. Yeah. She was off.

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1 Q. And she -- what are her hours?

2 A. Well, she had the same hours that I did. That's
3 what I was saying. She had to be off because for me to
4 get off and go home and she's there, she was off that
5 day.

6 Q. So from midnight to eight a.m?

7 A. For me?

8 Q. Her?

9 A. No. I was at work the following -- you see ---

10 Q. I'm asking about the hours. The hours that you
11 ---

12 A. Oh, yeah. She works twelve to eight with me,
13 yeah.

14 Q. Okay. And so did she go into work that night that
15 you purchased that vehicle for her?

16 A. No. She was off.

17 Q. So she would have been off on Tuesday and on
18 Wednesday?

19 A. Yeah.

20 Q. And you were off on Tuesday and Wednesday as well?

21 A. No. That's what I'm saying. That's what I'm
22 thinking about, because if I was off that day -- well,
23 if I was working and got off, so I was going to be off,
24 she was there. So we was going to be off Wednesday
25 together, and she go back Thursday and I will be off

1 Thursday. Either I was going to be off -- there's some
2 way in there that we're going to be off together.
3 Because ---

4 Q. Well, Mr. Nance, I'm confused. I'm sure the jury
5 is confused.

6 A. Yeah, well, see that's what I'm saying, because
7 see, how our schedule worked -- like I was saying, we
8 work together. But then when it comes to us being off,
9 I would be off like on a Monday, Tuesday, where she
10 would have the Tuesday off with me and then the
11 Wednesday. But I'll be back to work that Wednesday, as
12 it's moving. You see what I'm saying, our days don't
13 stay the same.

14 Q. So you took Tuesday and Wednesday off?

15 A. Yeah. I'm off -- I'm going to be off Tuesday and
16 Wednesday, though I'm getting off from the Monday
17 shift.

18 Q. Who took the days off work? Because y'all never
19 worked together. Who took the day off work for y'all to
20 both be off work Tuesday and Wednesday?

21 A. Well, see that's just it. I'm fixing to come off.
22 See, I'm at work. Twelve o'clock to eight, which goes
23 into the 27th. Now my day off is fixing to start, my
24 first day off. So I'm fixing to be off. I'm going to
25 be off Monday and Tuesday. So she's going to be off the

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1 Tuesday and the Wednesday. Let me get that right. If
2 I'm off Monday, is Monday going into Tuesday? Tuesday.
3 I'm fixing to be off Tuesday and Wednesday. So she's
4 going to be off Wednesday and Thursday. Monday,
5 Tuesday, Tuesday, Wednesday. I get off Tuesday, I'm in
6 on Monday. She's going to be off Tuesday and Wednesday
7 because I'm fixing to be off -- no, I'm off Tuesday and
8 Wednesday. She's going to be off Wednesday and
9 Thursday. That's how it's going to work out.

10 Q. But you just said she was off on Tuesdays and
11 Wednesdays.

12 A. That was -- see -- no, see, I'm getting off. See,
13 what I'm saying is I'm getting off from work at eight
14 o'clock ---

15 Q. On Tuesday?

16 A. -- on Tuesday, that morning. She's at home, so
17 she's off that day. Her day -- she's already off.
18 While I'm at work she's already off. That's what I'm
19 saying, she's off.

20 Q. So she wasn't there in the morning?

21 A. No, she's there when I get there. So she's off.
22 While I'm working at twelve o'clock that night instead
23 of her being there with me, I'm at work, she's off
24 during that day, I'm saying from twelve to eight.

25 Q. I got you. So when you got off work that morning

1 did you go over to Ms. Brown's house?

2 A. Yeah.

3 Q. What time did you start going around looking at
4 three different car lots for cars and test driving and
5 looking and ...

6 A. Well, see -- at eight o'clock that morning I done
7 got there. I get off at eight. It takes me about
8 fifteen minutes to get there, so it was about eight
9 fifteen. I go in, I'm there, we spending about four,
10 five hours. We leave about twelve, because she's asleep
11 and I wake her up to go. Because see, she don't even
12 know I'm going to get her a car today. Because I done
13 already made up my mind previously that I'm going to get
14 this car. She had no prior knowledge of it.

15 Q. You get to Ms. Brown's house around eight o'clock,
16 eight thirty in the morning.

17 A. Yeah.

18 Q. What time did you begin to look for cars?

19 A. We went at about -- we left her apartment about
20 twelve, twelve fifteen.

21 Q. Did you happen to get a cat nap in there?

22 A. Huh?

23 Q. Did you happen to get a cat nap in there?

24 A. Yeah.

25 Q. How long was that cat nap?

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1 A. That's what I was saying, between the time I was
2 there, that's what I was saying, because she went to
3 sleep. I know I laid down and I was back up by twelve.

4 Q. And since y'all worked opposite shifts that day
5 that you bought the car, that night who started the
6 twelve to eight o'clock shift?

7 A. She would start to work, because I was going to
8 have -- I would have the rest of that day off, she would
9 start.

10 Q. Just a one name answer.

11 A. Okay.

12 Q. Tuesday night, the 27th ---

13 A. Yeah.

14 Q. -- when it turned to Wednesday night at midnight,
15 or I'm sorry, Wednesday morning at midnight, whose shift
16 started?

17 A. No, her shift would start the next day. Because we
18 going to be off together.

19 Q. No. You said you worked opposite schedules.

20 A. Yeah. I'm ---

21 Q. Let me finish.

22 A. Okay.

23 Q. When you weren't working, she was working. And
24 when she wasn't working, you were working?

25 A. Yeah.

1 Q. That Tuesday night, one name, yours or Ms. Brown's,
2 who started working at twelve a.m. the morning of
3 January 28th?

4 A. Well, see, that's just it. That's the one day that
5 we're going to actually -- from when I'm off, getting
6 off at eight o'clock, I'm fixing to be off with her all
7 the way up from that day together. We're going to spend
8 the whole day together. We're off together. So she is
9 going to be off until the following day, and at twelve
10 o'clock that following day she will start to work. But
11 I'm still -- and my day off will continue.

12 Q. So there's only one day a week where you and she
13 have the same night off?

14 A. Yeah. That's what I'm trying to get you to see.
15 It's one day a week that we will have off together.

16 Q. I'll go with that. So this relationship that you
17 had with Ms. Brown, would you consider yourselves
18 close?

19 A. Well, yeah, we're close enough to where I'm
20 learning things about her. She's ---

21 Q. And buying a two thousand dollar car for her;
22 right?

23 A. Yeah.

24 Q. Okay. So you're buying a two thousand dollar car
25 for her, you're buying her daughter gifts, you're

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1 spending the night at her house. One night a week is
2 all you have together and you didn't stay the night with
3 her that night?

4 A. Say again?

5 Q. You didn't stay the night with her on Tuesday
6 night, that one night a week that y'all have together.
7 And instead, you chose to spend it with another female
8 at dinner?

9 A. Yeah. We -- as you found -- that's a whole other
10 conversation.

11 Q. But y'all were close enough for you to spend two
12 thousand dollars to buy her a car, liked her daughter,
13 her daughter liked you, buy toys for her daughter, and
14 you didn't stay the night that one night a week that you
15 have with her?

16 A. No.

17 Q. Okay. What was the budget that you had in mind
18 before you went out buying a car?

19 A. Say again?

20 Q. What was the budget that you had in mind for the
21 price of the car that you were willing to pay for?

22 A. The farthest I was going to go was twenty-five
23 hundred.

24 Q. And how much did you buy it for?

25 A. Twenty-two.

1 THE COURT: I think this might be a good
2 stopping place for the evening, ladies and gentlemen. I
3 don't know that we'll need to stay any longer today.
4 I'll let Ms. Hamaker finish up with her cross
5 examination and any redirect that the defense may have.
6 You've worked hard today. I'm going to dismiss you
7 for the evening. I'll remind you again not to discuss
8 the case, not to do any investigation about the case,
9 don't let anyone discuss the case with you.

10 We'll be ready to finish the testimony in the
11 morning. We'll be able to have the argument and charge
12 tomorrow, I'm confident.

13 Have a good evening, ladies and gentlemen. I'll
14 ask if you would be back at nine o'clock in the morning.
15 We'll be ready to start then.

16 Everyone please remain seated while the jury is
17 dismissed for the evening.

18 (WHEREUPON, the jury exited the open court at
19 approximately 6:26 p.m.)

20 THE COURT: Mr. Nance, you may step down now.

21 If there are any requests to charge that anybody
22 has, I'd be glad to accept them now or in the morning.
23 If you have any prepared I'll be glad to review them,
24 otherwise we can talk about it tomorrow.

25 MS. HAMAKER: I don't have one prepared.

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1 THE COURT: Y'all can be thinking about that.

2 I'll have a verdict form for you tomorrow too. But
3 we'll start back at nine o'clock in the morning and
4 continue the cross examination.

5 Y'all have a good evening.

6 MS. HAMAKER: Thank you, Your Honor, you too.

7 (WHEREUPON, Court adjourned for the day at
8 approximately 6:46 p.m.)

9 April 30, 2010

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

12 THE COURT: Everybody ready to proceed?

13 MS. HAMAKER: State is, Your Honor.

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

16 THE COURT: All right. You can come back
17 around, Mr. Nance, and assume the witness chair.

18 If the jury is ready, they may come in.

19 (WHEREUPON, the jury entered the open court at
20 approximately 9:15 a.m.)

21 THE COURT: Good morning, ladies and
22 gentlemen. We're now ready to proceed. I'm going to
23 remind you, Mr. Nance, you're still under oath. You may
24 continue your cross examination, Solicitor.

25 CROSS EXAMINATION CONTINUED

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1 BY MS. HAMAKER:

2 Q. Mr. Nance, when did you say that you went to go see
3 Johnny Parks at that hotel?

4 A. That was the 28th.

5 Q. About what time?

6 A. Within the evening time because it was dark
7 outside. I had stopped -- well, he called me at my
8 parents' house. He asked for me to get, get him
9 something to eat and I had stopped at Little Caesar's to
10 get us a pizza and I got the hot wings and then I met
11 him there.

12 Q. So it was after dark on the 28th that you went over
13 to the hotel to see Mr. Parks?

14 A. Yeah, the sun was down.

15 Q. Is that the first time you saw him after this
16 incident?

17 A. Yeah.

18 Q. How much did you say you made an hour at your job?

19 A. If I was doing the machines it was nine fifty. If
20 I was doing the floor, it was ten o'clock -- ten
21 dollars.

22 Q. Sure about that?

23 A. Yeah, the -- because I had just got from being in
24 -- I had to be there for the ninety day period and I got
25 it. I went from eight seventy-five to the third shift

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1 incentive pay, which was at nine dollars. And then, if
2 I did the floor, it went from nine fifty to ten dollars,
3 if I was on the floor, if I had to work on the machines.
4 Q. A lot different than what you just told me ---

5 A. But I'm just explaining to you what's going on.
6 Because, see, when you first start -- see, I only had
7 been there from June to December and then this January.
8 So I had just started working there.

9 Q. So you started working in June?

10 A. Yeah.

11 Q. So the ninety day period, that would have been over
12 when?

13 A. In September. So that, that qualified me for the
14 health insurance and the dental and something else.

15 Q. So after September is when you would be making the
16 nine fifty or ten dollars an hour?

17 A. No, that took me from the initial eight. It was
18 eight, eight -- eight seventy-five -- it was eight
19 something to where then you get the incentive for
20 actually working third shift. Because third shift made
21 more than first shift and second shift.

22 Q. When did your salary go from eight seventy-five to
23 the next amount?

24 A. It had to go up after the ninety day period because
25 that's when they give you the ---

1 Q. Isn't that just what I asked you?

2 A. Well, I'm just saying, that's when they give you
3 the evaluation to where they'd jump you up a quarter in
4 pay, fifty cent in pay, and based off the supervisor who
5 does it.

6 Q. Answer my question with a one word answer.

7 A. Okay.

8 Q. When did your salary go from eight seventy-five to
9 the next level?

10 A. It had to be after the ninety, after the ninety day
11 period.

12 Q. I'm asking you when?

13 A. After the ninety day -- I mean, from -- after ---

14 Q. When after the ninety day period? September?

15 A. It had to be somewhere in September.

16 Q. And in September, what did it go up to?

17 A. Well, from whatever I was making from starting
18 there to -- I know my initial raise was fifty cents. I
19 know I got that.

20 Q. So in September, it went from eight seventy-five
21 plus fifty cents. Would you agree that that's nine
22 dollars and a quarter?

23 A. Somewhere, yeah.

24 Q. When did it jump up to ten dollars an hour?

25 A. Well, see, now that's, that's what I'm talking

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1 about. If I worked on the machine, because, see they
2 kept moving me back and forth because as a operator you
3 do the straws. But you can make more money working on
4 the floor. And I was being shifted back and forth at
5 that time, from working on the machine or either being
6 on the floor, so I could -- the pay would be different.

7 Q. So at the time of this incident, what was your --
8 incident what was your salary?

9 A. Once again, if I was working on the floor, it would
10 be up to the ten dollars grade, but, if I'm not working
11 -- if I'm working the machine, then it was in the nine,
12 nine -- nine twenty-five to nine fifty area.

13 Q. So at the time of the incident, you were making
14 between nine twenty-five and ten dollars an hour?

15 A. I should have been.

16 Q. What do you mean you should have been?

17 A. I'm saying that based off where I was working at.
18 If I was on the floor or if I was working on -- working
19 the machine.

20 Q. Did you just say that in September your salary
21 increased to fifty cents, which is nine twenty-five and
22 it would depend if you're -- where you're working, so it
23 would be between nine twenty-five and ten dollars?

24 A. And with the third shift incentive.

25 Q. Okay. And that would have been at the time of the

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1 incident?

2 A. It should have been, yes.

3 Q. What do you mean it should have been? This is ---

4 A. From, from my ---

5 Q. -- just a yes or no answer.

6 A. I'm saying from my recollection, that's what it
7 should have been.

8 Q. You said that Ms. Brown borrowed your Land Rover to
9 go somewhere when you fixed it for her. Where did she
10 go?

11 A. I didn't fix her Land Rover. She ---

12 Q. No, when you fixed the new Mercury Sable when you
13 were messing with the CD player.

14 A. Yeah.

15 Q. She borrowed your Land Rover.

16 A. Uh-huh (affirmative).

17 Q. Where did she go?

18 A. Well, initially she said she was going to do some
19 stuff for the laundry that she had to ---

20 Q. I ---

21 A. -- go get.

22 Q. I'm not ask -- all right.

23 A. Well, she was out of my sight, so I can't say
24 physically where she went.

25 Q. She just asked to borrow your Land Rover?

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1 A. But I -- we'll have to go into the conversation.

2 Q. Okay. Go into the conversation.

3 A. Well, she was talking about she needed to do
4 laundry and so, without her having the clothes, I was
5 under the impression that she might have been going to
6 get some detergent or something. But I didn't know what
7 was up. Outside of the laundry, I didn't know what her
8 whole purpose was, other than she left.

9 Q. How long was she gone?

10 A. I can't say how long she was truly gone because
11 when I left, she hadn't got back. But when I came back,
12 she was there.

13 Q. Do you have Mr. Parks' cell phone number memorized
14 by heart?

15 A. No, I couldn't tell you by heart what it is.

16 Q. How were you able to call him before your phone was
17 stolen?

18 A. By phone.

19 Q. Is it fair to say that he probably doesn't have
20 your number memorized?

21 A. I couldn't tell you that because he called me more
22 than I called him.

23 Q. You probably called Ms. Brown a whole lot; didn't
24 you?

25 A. No, basically I text her. I've called, but I'm

- 1 saying we text more than we talk.
- 2 Q. How often do you think you would text her in a
3 given day?
- 4 A. Depend on whatever we want -- what's going on.
5 It's -- I can't give you a -- it ain't like I just sat
6 and text and text her, but depending on what's going on
7 throughout that day, that's how much I text her.
- 8 Q. Say a normal day, nothing big happens, she's your
9 girlfriend, you're just trying to communicate with her.
10 Say how's your day going, thinking about you ---
- 11 A. Well, see ---
- 12 Q. -- let's do something.
- 13 A. -- if I'm with, if I'm with her, I'm not texting
14 her. If I'm not with her, I'm somewhere else and she
15 want to know where I'm at or what I'm doing, we might
16 text four or five times right there and then get me back
17 up there. It all depends on what's going on. It's not
18 no set time or nothing.
- 19 Q. But y'all would text regularly in a day?
- 20 A. I will get -- throughout the day, I know I -- I
21 will get something from her throughout the day. It --
22 there's not going to be a day that I don't get a phone
23 call or a text from her.
- 24 Q. What about at night?
- 25 A. Well, if we together, nothing but ---

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- 1 Q. If you're apart, would you get a phone call or a
- 2 text from her?
- 3 A. Pretty much.
- 4 Q. Would you respond to those?
- 5 A. Depending on where I was at and who I was with.
- 6 Q. So if you're with another female friend, you
- 7 probably wouldn't?
- 8 A. I'm not going to text her, no.
- 9 Q. Have you had contact with Ms. Brown since this
- 10 incident?
- 11 A. Yes.
- 12 Q. How many times?
- 13 A. I will say I -- I've written her about ten, fifteen
- 14 times, if that. I've, I've called her more than I've
- 15 written, but we lost touch about four -- the last actual
- 16 letter I got from her might have been six months ago or
- 17 five months ago or six months. It's been, it's been a
- 18 while.
- 19 Q. How many times did y'all call back and forth?
- 20 A. Well, she couldn't call me, but ---
- 21 Q. How many times did you call her?
- 22 A. I -- it's been a while since I even called her
- 23 because basically I lost her number, so I -- well, I
- 24 didn't lose it. The number she -- that I have for her
- 25 ---

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- 1 Q. Sir, the question is, how many times did you
2 contact her?
- 3 A. I would say about ten, fifteen times.
- 4 Q. The same amount of times that you wrote her?
- 5 A. Yeah, or called, what not, just to see if she got
6 the letter.
- 7 Q. But you just told the jury that you wrote her more
8 than you called her?
- 9 A. No. I'm talking about when I actually -- but I'm
10 saying the thing is ---
- 11 Q. What are you talking about?
- 12 A. Well, basically it's the same thing. I wrote her
13 and I called her and ---
- 14 Q. But you told the jury that you wrote her ---
- 15 A. Well, see ---
- 16 Q. -- more than you called her.
- 17 A. I'm thinking, I'm thinking six months back because,
18 see, I know, I know I haven't actually been able to
19 contact her, so I'm basically just estimating how much
20 time it is that I've been in contact with her.
- 21 Q. When did you get out of prison?
- 22 A. June the 2nd.
- 23 Q. What year?
- 24 A. 2008.
- 25 Q. How much money did Mr. Parks want to borrow that

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1 day?

2 A. If I'm not mistaken, he said about forty dollars
3 because -- what's her name -- Lillian, yeah, Ms. Aavik
4 said he -- she needed some medicine because he had some
5 kind of codeine medicine, cough medicine that she wanted
6 to get.

7 Q. Did you know she was in the hospital?

8 A. You talking about on the 28th or the 27th? I don't
9 know what day you talking about.

10 Q. About the time he asked you to borrow the money.

11 A. Well, ---

12 Q. That would have been the 28th?

13 A. No, I'm saying which incident because, see, he's
14 asked to borrow money many times I'm saying, so what
15 particular instance are you referring to?

16 Q. On the 28th, when he asked you for forty dollars,
17 did you know that Ms. Lillian was in the hospital?

18 A. No, she was -- she wasn't in the hospital that day,
19 not from my understanding.

20 Q. So do you know if she was in the hospital or not?

21 A. No, not in the hospital. From my understanding,
22 she was at the hotel that I met him at.

23 Q. How many nights a week would you spend with Ms.

24 Brown?

25 A. It all depends on basically where I was going, what

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- 1 I was doing. Because see if -- you got to realize, I
2 live in Greenville, she stays in Laurens. And I was
3 seeing someone else at that time as well so I really --
4 it wasn't a continual time for me to be there or any
5 place. Because see, if I -- if we -- when we working,
6 I'm going to stay there every night because I'm her
7 ride. But that doesn't mean I'm going to stay there.
- 8 Q. You said when you're working every night, you were
9 her ride. But ---
- 10 A. I'm saying when she ---
- 11 Q. But yesterday you told the jury, did you not, that
12 when you worked, she was off, and when she was off, you
13 worked.
- 14 A. No.
- 15 Q. Did you not tell the jury that yesterday?
- 16 A. No, what I told them -- I was explaining our day
17 off system to where we got two days off a week. And the
18 way ours was set up to where I would be off -- well, she
19 would be off a day, then we would have a day off
20 together and then she would be back to work, but I'm
21 still off.
- 22 Q. Mr. Nance, if you need the court reporter to replay
23 yesterday's testimony, we will do that. Did you or did
24 you not tell the Court and the jury yesterday that when
25 you were working, she was off, and when she was off, you

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1 were working?

2 A. No, what I was referring to was our day off. Now
3 that's, that's where we got, you know, where we was
4 talking about trying to get from the 27th, 28th. Well,
5 that's what I was actually referring to.

6 Q. Well, that's how you calculated that day off that
7 y'all had together.

8 A. Yeah. Well, see, that's what I was talking about.

9 Well, what I was trying to get y'all to understand was
10 our day off, not our actual work schedule. We worked
11 the same schedule as third shift together. But when it
12 came to us being off, our days off was what was the day-
13 on-day-off thing to where she'll be off, I will be at
14 work. Then I will get off and, for my two days off,
15 we'll have that one day off together. Then she will go
16 back to work while I'm off. That's what I meant by the
17 one-day-off-on scenario.

18 Q. So when she was working, you were off. And she was
19 off, you were working?

20 A. When it comes for days off. But as for the five-
21 day schedule, we worked third shift together, the same
22 hours together. But when -- if -- because you got to
23 remember all the days off move. So when she's off
24 throughout that -- to get her two days off during that
25 week, and I'm to get my two days off that week, she will

1 get off -- a day off before I do. I'm at work. Then I
2 will get a day off and she just have her second day off.
3 That'll be the day off that we have together. Then
4 she'll go back to work and I'm still off. That's what I
5 mean by the day-on-day-off scenario, not as in she off
6 and I'm on. I'm -- she off and I'm on.

7 Q. Mr. Nance, you just told the jury before you got
8 into this little day-on-day-off thing, what you told the
9 jury was that it depended on the day -- or the week, and
10 what you had going on as to how many nights a week you
11 would spend with Ms. Brown. Yesterday you told the jury
12 that you only had one night a week with Ms. Brown and
13 you chose to spend it with your other girlfriend at Ruby
14 Tuesday.

15 A. Yeah, but see ---

16 Q. How do you explain that?

17 A. Because, what I'm referring to, is that when she's
18 saying spend a night with Ms. Brown, I'm with her every
19 night because we work together throughout the week. So
20 I'm with her every night from twelve till eight. But
21 when we are off, as in off from work after five days,
22 she'll be off before I'm off throughout the week.
23 She'll get that day off. I'm still working. Then I get
24 off. But when I'm off, it'll be her second day off.
25 And then we'll have that day together as in okay, now we

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1 can be together if you want to say we together for the
2 night or we can be together all day. Then I'll be off
3 the following day, but she'll be going back to work.
4 That's how that -- that's what I mean by the day-on-day-
5 off scenario. But as -- I would be with her every night
6 from twelve to eight throughout the week because we
7 worked the same shift, the same time.

8 Q. The days of the week, the days of the week that you
9 worked, did they ever change?

10 A. Yes, they changed. And -- but mine changed more
11 different than hers because she was just a operator as
12 for the machine. But, with me, I could actually work
13 the operating machine or, if the floor man was off, I
14 could get his job and that's where I -- my date, my date
15 could change from being off and when my pay could change
16 from being off, by taking his position when he's not
17 there.

18 Q. In the month of January -- you said yesterday that
19 you had an assumption about who took the car. You told
20 Mr. DeJong that. Tell the jury who you assume took the
21 car.

22 A. Johnny Parks.

23 Q. When did you make that assumption?

24 A. Based off when ---

25 Q. When?

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- 1 A. The 28th.
- 2 Q. Tell me about this CD player that you tried to
3 install into Ms. Brown's Mercury Sable.
- 4 A. I didn't try to install it. It was already there.
- 5 Q. You were just trying to repair it?
- 6 A. No. What was going with it is that -- well, if you
7 had a picture, it got a -- the front is just -- the
8 console is a bubble-type scenario, so there's no slot
9 for a CD that you can just push in on a console. But
10 you put the CDs in the trunk and it's a multi-CD player.
11 And so I'm -- it's got a button that says CD, but you --
12 it's like not a slot that you can just put the CD in
13 right there in the car. And so I pushed the button for
14 CD and it did not work, so I, I looked for the CD
15 player. So I was like, well, is it in the glove box and
16 sometimes it would be up under the seat, sometimes it
17 would be up under the back seat. So I looked in those
18 spots. And then I went to the trunk and that's when I
19 see it. If you showed the picture, you can see it in
20 the trunk in the corner.
- 21 Q. The actual -- are you talking about a CD changer?
- 22 A. Yeah, the changer. The changer is what's in the
23 trunk. But the player -- to activate the player is in
24 the console.
- 25 Q. Well, what does a car look like that doesn't have a

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1 CD changer, it's just a regular CD player?

2 A. Well, that's when you got the slots. You can just
3 slide the CD right there.

4 Q. Is that not what we have in this vehicle?

5 A. The slots she's fixing to show you is actually the
6 cassette player. It has a cassette player as well.

7 MS. HAMAKER: Your Honor, I apologize. It's
8 warming up a little bit.

9 THE COURT: Okay. You can ask him another
10 question if you want to.

11 Q. That's not a CD player?

12 A. No. You have a better picture. If, if you go to
13 the picture where that shows the TV and the jug of juice
14 in the back, you'll see the CD changer in the corner.
15 It'll be a long black strip on the other side of it
16 where you just pull the cover back and slip the CDs down
17 inside of it. Yeah, you see over here behind -- yeah,
18 that right there. That's the CD changer. That's where
19 you put the CDs down inside, in that slot.

20 Q. That came with the vehicle?

21 A. Yes, it did.

22 Q. If you'll take a second and tell me about your Land
23 Rover. I know Mr. DeJong was asking a bunch of

24 witnesses, that was your pride and joy. Was it?

25 A. Pretty much, yeah.

1 Q. Why was it your pride and joy?

2 A. Well, not simply because it's the Land Rover but
3 because of the way I got it. Because my father actually
4 sold it to me and it was his primary vehicle. But when
5 I got out of prison, he sold it to me. And so I knew
6 how he felt about it, therefore, I had to -- it was a
7 sentimental thing more than just my pride and joy.
8 Because I knew it took a lot out of him just to do
9 that.

10 Q. How much did you pay for it?

11 A. I gave him twenty-five hundred dollars, amazingly
12 so. And that's what he -- he signed it over to me for
13 that. And he signed the title to me.

14 Q. When did you get it?

15 A. When did I get it?

16 Q. Yes, sir.

17 A. You mean when he physically gave it to me?

18 Q. When it became your car?

19 A. It legally became mine the day that we got the
20 title changed over. I drove it about a week after I got
21 out of prison, but he wouldn't basically let me do what
22 I wanted to until I started paying for it. And I gave
23 him the first initial fifteen hundred for it, I would
24 say, thirty days after I got out of prison because I had
25 to report -- because, when I got out of prison, I was on

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1 six months house arrest. But now, let me explain --

2 well, I have to go into how I got my money because ---

3 Q. Sir, you just told the jury you paid twenty-five
4 dollars for the vehicle.

5 A. No, twenty-five hundred.

6 Q. No, you said twenty-five dollars amazingly enough.

7 A. I meant twenty-five hundred.

8 Q. You said twenty-five dollars amazingly enough, did
9 you not?

10 MR. DEJONG: I know this is cross examination,
11 but she's arguing with the witness.

12 THE COURT: Just, just ask -- he said he
13 corrected that, so you can ask him another question.

14 Q. When did it become legally yours?

15 A. The day that I signed the title and got it
16 transferred over into my name at the DM -- the DMV put
17 the title in my name.

18 Q. And what day was that?

19 A. Honestly, I, I -- you got a slip. I think you got
20 a thing with the vehicle ---

21 Q. But this car meant a lot to you because of all the
22 ---

23 A. Yeah, but as for the day that I got the title, I
24 couldn't even tell you the day that I got the title. It
25 was within the six-month period of me actually getting

- 1 all the money back that I made while I was incarcerated.
- 2 Q. So six months after getting out of being
3 incarcerated?
- 4 A. It's somewhere in between that period that it
5 actually became legally mine.
- 6 Q. So between June 2, 2000 ---
- 7 A. All right, hold up. I can tell -- wait a minute, I
8 can tell you when it was mine. I just thought about it.
9 It was before September because in September, I had the
10 actual title for it. Because I had -- I got a title
11 loan on it. So I had to have the title in my name to do
12 that, so I know I had the title by that time.
- 13 Q. So before September of 2008, you paid your father
14 the entire twenty-five hundred dollars.
- 15 A. Yes, I did.
- 16 Q. How old are you?
- 17 A. Forty-one.
- 18 Q. And how old is Tisha?
- 19 A. Twenty-five.
- 20 Q. I'm sorry, I should have said Ms. Brown. You said
21 on the 27th, after you dropped Mr. Parks off at his
22 residence after y'all were driving all around
23 Greenville, that y'all didn't leave on good terms.
- 24 A. Yes.
- 25 Q. Why didn't you leave on good terms?

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1 A. Because of the money issue.

2 Q. Because you wouldn't give him the forty dollars?

3 A. Yeah. And he felt ---

4 Q. Even though you explained to him the situation you
5 were in?

6 A. Well, that and the fact that I was -- he, he felt I
7 was dismissing him because of the female.

8 Q. You said you brought your Land Rover to a guy and
9 that you were planning on detailing your car that
10 Sunday.

11 A. Yes.

12 Q. And you refer to him as your partner.

13 A. Yeah.

14 Q. What -- why?

15 A. Due to the fact that I've known him since we was in
16 kindergarten. He stays a block up the street from my
17 grandmother. I grew up with him.

18 Q. You call Mr. Parks your partner?

19 A. Not to that extent because we didn't grow up
20 together. Now, we're friends and we're friendly. I
21 would call him -- I would say partner. I mean, that's
22 just a general term as friendship, friend. You know
23 like homey, my boy. I mean, it's not -- it don't have a
24 sentimental term to it or endearment term. It's just a
25 regular term.

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- 1 Q. Back to the Land Rover. It had sentimental value
2 to you because of all the work your dad did to get it
3 and then to give it to you for twenty-five hundred;
4 correct?
- 5 A. Right. He didn't worked hard to get it. But I'm
6 saying that I knew how he felt about it.
- 7 Q. So it had sentimental value for you?
- 8 A. Yeah.
- 9 Q. You said you took a loan out and you used your car
10 to guarantee that loan to help your daughter out of some
11 trouble ---
- 12 A. Yeah.
- 13 Q. -- yesterday.
- 14 A. Yeah.
- 15 Q. What kind of trouble was she in?
- 16 A. She got pulled over in a car with some other
17 friends from college and there was some marijuana found
18 in the car.
- 19 Q. How much money did you need to give her to get her
20 out of this trouble?
- 21 A. Well, she needed a lot of money. I didn't have the
22 kind of money she wanted, but in cooperation of, of
23 talking to her mother, I don't -- to be honestly with
24 you, I don't even know if that's where she actually used
25 the money for totally ---

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1 Q. How much was it that you gave her?

2 A. I gave her five -- about five hundred dollars. I
3 got it -- the loan for like six -- I think it was six
4 sixty-one, six -- it was six, it was six something. It
5 was the less that you could actually get for a title
6 loan, but it had to be a couple of dollars over six
7 hundred dollars to actually do it.

8 Q. So six fifty?

9 A. It -- now, see there -- that was a strange number
10 to it. That's what I'm trying to remember, because it
11 was over six hundred dollars, but it's not a zero
12 number, but for them to be able to give you this loan.

13 Q. Right. So it was six fifty something?

14 A. Yeah.

15 Q. Do you recall when you took out that title loan?

16 A. I would say, if I'm not mistaken, it was in the
17 month of September.

18 Q. September of '08?

19 A. It should be.

20 Q. What do you mean it should be?

21 A. If my recollection is right, it should have been in
22 September of '08.

23 Q. That girl you took to Ruby Tuesday's that night,
24 January 27th of 2009, what time did y'all get to Ruby
25 Tuesday?

1 A. I will say eight, if that. It, it had to be around
2 eight, eight oh five or eight, eight fifteen somewhere
3 in there.

4 Q. But you didn't drop Mr. Parks off at his house
5 until eight thirty; did you?

6 A. No, I dropped him off at seven fifty. And no, --
7 seven -- it -- seven twenty, seven thirty, if I'm not
8 mistaken.

9 Q. But you just said seven fifty?

10 A. No. I'm saying it was seven twenty to seven thirty
11 is actually when I dropped him off at that time.

12 Q. So is it seven twenty to seven thirty or seven
13 fifty or eight thirty?

14 A. Seven twenty to seven thirty is when I might have
15 -- when I probably dropped Johnny Parks off.

16 Q. This girl you have the date with, how long had this
17 date been set for?

18 A. It wasn't -- you see, that's the thing. It wasn't
19 a set date. This is somebody -- I seen her, pulled up
20 and started talking to her. And this is somebody I
21 know, but it's not like we are ---

22 Q. Where did you see her?

23 A. At the Pumpers gas station.

24 Q. Where?

25 A. On 291. You know, if you're familiar with -- it's

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1 Greenwood Tech and then there's a Pumpers station
2 there.

3 Q. Was she walking down the road?

4 A. No. She wasn't walking down the road. She has a
5 -- it's a Toyota or -- it's either a Camry or a Avalon
6 or something like that.

7 Q. What color?

8 A. It's all white.

9 Q. So you see her at the gas station?

10 A. Yes.

11 Q. How did you know her?

12 A. By her actually standing there pumping. I mean,
13 you know ---

14 Q. But you just said this is a girl you'd known for a
15 while.

16 A. Oh, you mean how I know her know her?

17 Q. That's the question I asked you.

18 A. I thought you meant how I knew that was her at a
19 gas station.

20 Q. No. The question that I asked you was how did you
21 know her. And you said just met her at the Pumpers gas
22 station.

23 A. No, that's -- I was talking about -- I thought you
24 knew at -- referring to how I know her as in did I know
25 her from ---

1 Q. How do you know her?

2 A. From the beginning or how our relationship
3 started? That's what I'm saying. Do you want to know
4 how our relationship started, how I met her?

5 Q. Yes, I want to know how you met her.

6 A. Okay.

7 Q. How did you know her?

8 A. This is how I met her. I met her coming out of a
9 church at Sterling. I -- it's a -- we go to church in
10 Sterling. And I came out. And it's a recreational
11 thing across the street from this little park. And I
12 was standing out there and I was talking to some other
13 members. And I looked across over there and she was out
14 there. And so I went over there and got to talking to
15 her. That's how we initially met.

16 Q. How long before this incident did that happen?

17 A. I would say -- at the time, I was still under house
18 arrest, so it had to be in August, September, somewhere
19 in there.

20 Q. Of '08?

21 A. Yes.

22 Q. By the time of the incident, you had known her for
23 a while?

24 A. Yeah. But it wasn't like we had a continual ---

25 Q. Well, how did the relationship start?

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1 A. Well, from that conversation.

2 Q. Okay.

3 A. And I sat down and then talked to her for a while.

4 We exchanged numbers. And from there I talked to her a

5 little while. And then found out we was both on

6 MySpace. We would chat every now and then. And when

7 she found out that I -- that we was actually going to

8 church there, I invited her there. She never showed up,

9 but we met up again, matter of fact, at the same park.

10 And it just went from there basically.

11 Q. Y'all just hang out at the park?

12 A. No, not basically just hang out at the park.

13 Q. What do you do at the park?

14 A. Well, no, I'm just saying that's -- we went back

15 there. I've met her back there before. But from there,

16 other things have occurred.

17 Q. Where does she live?

18 A. That I couldn't tell you. I can give you her

19 number. But she couldn't tell you where I live either.

20 Q. So you met her at the Pumpers gas station. How far

21 away is that from Mr. Parks' house?

22 A. If you go on up the street a block or two, you can

23 -- you'll get at a light, you can take a right, you'll

24 get to a intersection ---

25 Q. How long does it take you?

- 1 A. No more than three, four minutes, if that.
- 2 Q. What was she doing at a gas station?
- 3 A. Now that's, that's what I thought. We was at the
- 4 light coming -- you familiar with Greenwood Tech? Well,
- 5 there is a light right there, you can see Pumpers right
- 6 here. And they got the gas things right there. Well,
- 7 she was there and I seen her, and that's when I shot
- 8 over there to talk to her.
- 9 Q. And you took her out to dinner?
- 10 A. Yeah, we went to Ruby Tuesday.
- 11 Q. What did you have for dinner?
- 12 A. Now I, I can tell you exactly what I had. I had a
- 13 -- I think it was a ten ounce sirloin with the Louisiana
- 14 something flavored shrimps and a strawberry ice -- a
- 15 strawberry lemonade, that's what it is, because I like
- 16 the little strawberry thing.
- 17 Q. Do you remember what she had?
- 18 A. Yeah, she had a salad, half of my shrimp, and a
- 19 apple martini.
- 20 Q. What was your bill?
- 21 A. I gave forty dollars for it to include the tip. I
- 22 just put the forty dollars down when it -- total. I had
- 23 lousy service, but I still left a tip.
- 24 Q. The same amount of money that Mr. Parks asked you
- 25 for to buy his girlfriend cough medicine that you didn't

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1 have?

2 A. Not to give him.

3 Q. That you told the jury that you wanted to give him,

4 but you just didn't have it, you spent on this random

5 girl that you saw at the gas station?

6 A. Yes, I did because I do not like Lillian Aavik.

7 Q. So did you lie to Mr. Parks about not having that

8 money?

9 A. No.

10 Q. Oh, so you had the money?

11 A. Yes. But I wasn't going to give it to him for

12 Lillian.

13 Q. But the reason you told Mr. Parks you couldn't give

14 him the money was why?

15 A. Because I had other things to do.

16 Q. No. The reason why you told this jury yesterday

17 that you told Mr. Parks you couldn't give him the forty

18 dollars ---

19 A. I explained to ---

20 Q. -- was why?

21 A. I told -- I said because I had other things that I

22 had to do for the car. I knew I had to get the battery

23 done. I knew there was other things going on. I had to

24 get the bill of sale turned over and -- not the bill of

25 sale, the title turned over. And with me not ---

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- 1 Q. But the forty dollars you didn't spend on ---
- 2 MR. DEJONG: Your Honor, I'm going ---
- 3 Q. -- any of that stuff; did you?
- 4 MR. DEJONG: -- to ask the Solicitor to allow
- 5 the witness to finish answering the question.
- 6 THE COURT: Let him finish answering and then
- 7 if you would let her finish her question.
- 8 MS. HAMAKER: Whose turn is it?
- 9 THE COURT: Ask your question.
- 10 Q. That forty dollars you told Mr. Parks that you
- 11 didn't have because you needed to spend it on car stuff?
- 12 A. Yes.
- 13 Q. But you had it to buy this girl you happened to
- 14 meet at Pumpers a forty dollar dinner?
- 15 A. Yes, I did.
- 16 Q. What's that girl's name?
- 17 A. Her name is Sandra Williams. I call her San.
- 18 Q. Sandra Williams?
- 19 A. Yes, it is.
- 20 Q. Have any kids?
- 21 A. Yeah, she has a little girl.
- 22 Q. What's her name?
- 23 A. I couldn't tell you.
- 24 Q. But you had been seeing her since August of 2008?
- 25 A. Well, once again, this is not what you would call a

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1 ongoing relationship. This is a ---

2 Q. Sir, did you not just tell this jury that you spoke
3 with her over MySpace, that you met her at least two
4 times in the park ---

5 A. Yes.

6 Q. -- and you had dinner with her that evening ---

7 A. Yes.

8 Q. -- and you don't know the name of her child?

9 A. No.

10 Q. What did you have for dinner last Friday?

11 A. Last Friday. I had two chocolate chip cookies,
12 some Coke, some whole kernel corn, seven tater tots, a
13 glass of water.

14 Q. What about two days before that?

15 A. Two days before that, Wednesday? I didn't eat
16 dinner. I ate lunch. I had two chicken patty
17 sandwiches with lettuce, tomatoes, four chocolate chip
18 cookies. That's about it because I don't -- on
19 Wednesday I don't do the breakfast or dinner.

20 Q. What about this past Saturday, what did you have
21 for breakfast?

22 A. Saturday? I didn't -- I had two bowls of cereal
23 and for dinner I had two hamburgers.

24 Q. What about today? What did you have for breakfast?

25 A. I don't eat breakfast too often. The only time I

- 1 eat breakfast is on Monday and Saturday.
- 2 Q. Why is that?
- 3 A. Because that's when I eat cereal.
- 4 Q. You told the jury yesterday that the Pickens County
- 5 Sheriff's office left messages with your father to give
- 6 them a call.
- 7 A. No, they left messages with my father to give --
- 8 for me to give them a call.
- 9 Q. Correct.
- 10 A. Yeah.
- 11 Q. Did you call them?
- 12 A. Yes, I did.
- 13 Q. When did you call them?
- 14 A. I called Mike Baker sometime that day. I couldn't
- 15 tell you the exact time it was, but I know who, I know
- 16 who I called, but I can't tell you what time I called.
- 17 The sun was up when I called him.
- 18 Q. Did you get in contact with him?
- 19 A. No, I got a answering service.
- 20 Q. You said you called him during the daytime?
- 21 A. Yes. Matter of fact, he reminded me that I called
- 22 him because he told me where I called him from. And I
- 23 called him from Simpsonville.
- 24 Q. Was it during a weekday or during the weekend?
- 25 A. When I called him?

1 Q. Yes, sir.

2 A. It was a week day. It was a Wednesday, if I'm not
3 mistaken.

4 Q. So if we're able to play you that voicemail, would
5 it say that you called him during the day time or that
6 you called him during non-business hours?

7 A. I wouldn't know. Because, see, I called him more
8 than once.

9 Q. You did?

10 A. Yeah, I didn't call him just one time. I called
11 him more than once.

12 Q. When I asked you before, you said you did leave him
13 a message during the day time during the work week. Now
14 you left him more than one message?

15 A. No, I'm saying I've called him more than once. Now
16 what message I left during this time, I couldn't tell
17 you what I said. But I know I did call him and leave a
18 message.

19 Q. Did you ever leave a message at night time?

20 A. Now, when -- if I did -- I might have did -- I
21 can't say if I actually left him a message at night.

22 Q. But you can remember what you ate every single day
23 ---

24 A. Yes, I can. But if I tell you why I can remember
25 that, then we going to have go into other things.

- 1 Because my, my menu is continually the same thing,
- 2 therefore, I know what I eat.
- 3 Q. But you remember exactly what you ate at Ruby
- 4 Tuesdays and then you remember exactly what ---
- 5 A. Yes, because ---
- 6 Q. -- you ate ---
- 7 A. -- at Ruby Tuesday, that's the only thing I eat
- 8 there that they have.
- 9 Q. And then on Thursday, you remember exactly what you
- 10 got that Thursday that you went to go visit Mr. Parks in
- 11 his hotel room.
- 12 A. Yes, because due to the fact I don't eat pork. And
- 13 the pizza that I got was a pepperoni pizza and I got
- 14 some hot wings. That's why I remember that.
- 15 Q. So anything that's not pork, you're going to
- 16 remember what you ordered?
- 17 A. Yeah, when I actually order pork for somebody else.
- 18 That's why I can remember what it is, because I do not
- 19 eat pork.
- 20 Q. What did you order that was pork?
- 21 A. Pepperonies. If I'm not mistaken, pepperoni has a
- 22 -- is a pork, a pork by-product.
- 23 Q. So anytime you order something for somebody and
- 24 it's pork, you remember it?
- 25 A. Yes.

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1 Q. Did you ever order anything for somebody that had
2 pork in it before?

3 A. Yes, I have.

4 Q. Who?

5 A. I did something for my grandmother.

6 Q. And when was that?

7 A. Matter of fact, I could tell you, we was having a,
8 a fish fry at our church on -- well, it was, it was
9 youth people. It was youth Sunday, so it was on a
10 second Sunday and it had to be in the month of August
11 because that's young people's month. And the reason I
12 remember the -- even the pork sandwich because it was a
13 fish fry and she wanted a porkchop sandwich with
14 lettuce, tomato and brown mustard.

15 Q. What was the date that that happened? What was
16 that date?

17 A. Whatever the second week of August is, the second
18 Sunday of August of 2008, that's, that's what date it
19 is.

20 Q. And you remember every order of pork that you've
21 ordered for someone, but you don't remember leaving more
22 than one voicemail for Mr. -- or, I'm sorry, for Deputy
23 Michael Baker?

24 A. I know I called him. Now what I said and when I
25 said it, because my thing was this, he -- my concern

1 was, he had told my father that I was running around in
2 the woods in Pickens County, when I'm standing right
3 there in front of my father. So therefore, when he --
4 my father had mentioned to me that he said that Johnny
5 had something to do with this, that's when my assumption
6 of Johnny and this whole scenario of he took the car
7 came into conclusion. So now, what -- Johnny has called
8 my, my -- see, that's the thing about it. Johnny is
9 calling my parents' house looking for me. And see,
10 that's where my suspicion at. Why are you calling my
11 parents' house looking for me? Because you know how to
12 get in touch with me outside of that. So he's calling
13 my parents' house.

14 Q. Not if you don't have your cell phone he doesn't.

15 A. Exactly. So that's my suspicion. You calling my
16 parents' house. If you really wanted me, you would be
17 calling my cell phone. So why you calling my parents'
18 house?

19 Q. How many times did you call Michael Baker? I'm not
20 asking how many times you left voicemails. How many
21 times did you call him?

22 A. I would say at least three times.

23 Q. And what time of day were each of those three phone
24 calls?

25 A. I know, I know at least two of them, the sun had to

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1 still be up because the only one I can remember vividly
2 is because he told me where I was at when I called him.
3 And I was at a gas station in Simpsonville and I used a
4 phone that was right there at the pump.

5 Q. You're sure remembering a lot for not remembering
6 when you left that voicemail.

7 A. Well, see, that's just it. I can't tell you what I
8 actually said when I called him.

9 Q. How many kids do you have?

10 A. Five.

11 Q. What are their ages?

12 A. Twenty-three, twenty-three, twenty, nineteen and
13 nineteen.

14 Q. Were you involved in their lives?

15 A. Say again?

16 Q. Were you involved in their lives?

17 A. Off and on.

18 Q. Were you involved in their lives when they were
19 kids?

20 A. When they were, when they ---

21 Q. About seven?

22 A. When they were smaller, no. Because, when they
23 were small, I was in the military and then I got
24 incarcerated.

25 Q. When you were in the military, were you overseas?

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1 A. Yes.

2 Q. All -- how many years, four years?

3 A. Well, no, not the whole time. Initially, I was
4 stationed in Fort Huachuca, Arizona. All my children --
5 well, the majority of them were on the east coast at
6 that time. Then I, I went to Tegucigalpa, Honduras. I
7 was there for a while. Then I got sent to Panama for
8 Operation Just Cause with Noriega. Then I got sent to
9 Desert Storm. And then I got sent to Fort Bragg.

10 Q. That six hundred fifty something dollars that you
11 had to borrowed against your car, did you have to pay
12 those back in payments?

13 A. Yeah.

14 Q. How much were your payments?

15 A. I -- I'll have to tell you, what I remember vividly
16 about it, it was over -- I had a year or two to pay it
17 back, but what the actual sum was, I couldn't tell you.

18 Q. You had an entire year or two to pay back six
19 hundred fifty dollars?

20 A. No. See, that's the catch. When, when you --
21 don't believe the commercial, because to get six hundred
22 sixty-one dollars you going to pay three times that
23 back.

24 Q. I thought you had said that it was five hundred
25 dollars that you borrowed ---

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1 A. No, that's ---

2 Q. Let me finish my question.

3 THE COURT: Let her finish her question, then
4 you can answer.

5 Q. I thought you said that it was five hundred dollars
6 that you borrowed and you had to pay six fifty-one to
7 the title company in order to get that loan. So what's
8 this three times about?

9 A. That's not what I said.

10 Q. That's not what you said?

11 A. No, what I said was, the loan was six hundred and
12 six something -- it was a odd number behind the six
13 hundred in order to get the loan. I gave my daughter
14 five hundred out of that six hundred and odd-something
15 number that you had to get. But that's what they
16 physically give you in money. But what you have to pay
17 back is three times that six hundred and something-odd
18 dollars.

19 Q. We'll just say you said six fifty something before.

20 A. It's a odd number, I can tell you, after the six
21 hundred.

22 Q. Well, all right. We'll do your six hundred times
23 three. Eighteen hundred dollars?

24 A. It will be that. It -- I, I -- mathematically,
25 yeah, but when you, when you start putting in the

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- 1 interest and everything -- I will have to actually get
2 the contract of agreement to tell you the amount of it.
3 Q. But you said it was around three times the amount;
4 ---
5 A. Yeah.
6 Q. -- right?
7 A. Yeah.
8 Q. So we'll just say -- we'll round it down from the
9 six fifty you said earlier to the six hundred something
10 you say now, so we'll just go to six hundred time three,
11 that's eighteen hundred; is it not?
12 A. Yes, it is. But I didn't have to pay it back.
13 Q. You didn't have to pay it back?
14 A. No, not me physically.
15 Q. Who had to pay it back?
16 A. My mother.
17 Q. Your mother had to pay back your ---
18 A. Well, she didn't have to, she did.
19 Q. But you said yesterday that you weren't having any
20 money problems, that you lived ---
21 A. At ---
22 Q. -- at your parents' house ---
23 A. Exactly.
24 Q. -- and you didn't have any bills.
25 A. At that time, I was. But there shortly after, I

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1 got arrested. Therefore, I wasn't able to pay back the
2 loan, so my mother paid back the loan for me.

3 Q. How much of it had you started to pay back or you
4 were going to just ---

5 A. From September I had paid -- September I had -- the
6 first payment was in October. I paid the October,
7 November, and the December. I paid three -- matter of
8 fact, from -- it was that year loan from October to
9 October. That's because that's what she had to pay
10 back. It was, it was for a year that you had to pay the
11 money back. That's what it was because -- that's what
12 she -- I remember she complaining about it that, that
13 she had to pay back the -- from the first payment that I
14 made that she had to pay back to.

15 Q. So you paid in October, November, and December?

16 A. Yeah.

17 Q. And how much did you pay back before you got
18 incarcerated?

19 A. Those three payments. Whatever the payments were,
20 I paid those three payments.

21 Q. You don't remember how much you were paying?

22 A. Not at that point because, see, I can, I can tell
23 you why. Because, see, not only do -- did I have to pay
24 it, I had got -- from being incarcerated -- okay, I got
25 five children. Well, I have to pay child support for

1 one of them. But that, that child support came from
2 when I was in the military. Well, they, they
3 established the child support based off my military pay
4 at that time. So it started from three hundred
5 seventeen dollars a month, but as my pay grade went up,
6 it went up. So it went from three seventeen to four
7 something. So I was -- even though I wasn't in the
8 military no more, I was still required to pay that
9 amount. So even when I was incarcerated, I had to pay
10 the amount.

11 Q. How much child support you were paying?

12 A. When I was out, it went up to four forty something
13 a month.

14 Q. This is -- when you say out, you mean before you
15 were incarcerated ---

16 A. Yes.

17 Q. -- for this incident?

18 A. Not, not this incident, prior to this. I'm saying
19 from, in passing, we're going -- you got to realize, my,
20 my -- the child that I'm paying child support for is now
21 nineteen years old. I'm just saying from when I got put
22 on child support, this is what the payments were.

23 Q. When you were incarcerated for this incident, were
24 you paying any child support?

25 A. Yes.

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1 Q. How much was that a month?

2 A. It fluctuated.

3 Q. Why would it fluctuate?

4 A. Because, at this time, remember I told you I was
5 working in -- while I was incarcerated. Well, I was
6 able to -- since I was behind, I was able to even pay
7 into it. So therefore -- because see, I'm not a -- if
8 you know anything about child support, I'm not on the
9 same type of child support that you have in DSS. I'm on
10 what you call long arm, which is a federal child
11 support. So, therefore, you can pay and your payment
12 will back up if you pay more instead of what the actual
13 payment is. And so if you pay more into it, the
14 payment will come down. And if you don't pay -- long as
15 you keep it current. Well, when you're working in the,
16 in the -- and when I was incarcerated, I was able to pay
17 into it. But now, I get out and, what I was actually
18 trying to do is arrange with -- well ---

19 Q. Sir, I don't think you're answering my question.

20 A. Yeah.

21 Q. My question is, how much were you paying exactly
22 right before you were incarcerated for this incident
23 that occurred January 27th. That month of January and
24 that month of December, what was your average payment
25 for child support?

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1 A. Well, if you, if you get my leave and earnings

2 statement ---

3 Q. Sir, if you could just give me a number.

4 A. Well, it's based off what I got paid. Whatever I
5 got paid that week ---

6 Q. What was the average?

7 A. A hundred and something out my -- a week out my
8 check. It -- if -- it's in that area. It was, it was a
9 hundred and more, based off what I made that week.

10 Q. We're going to go back to that loan. Six hundred
11 times three is eighteen hundred dollars. You had one
12 year to pay it off. Eighteen hundred divided by twelve
13 is a hundred and something a month; is it not?

14 A. Yes, but that's -- yes.

15 Q. It is a hundred, give or take a month?

16 A. Yeah.

17 Q. We'll say a hundred a month. We'll go down. You
18 said you had just purchased your Blackberry when it was
19 taken from you involving this incident. How much did
20 that Blackberry cost?

21 A. Actual price, or what I paid for it?

22 Q. What did you pay for it?

23 A. Well, I paid a -- less than the actual price for
24 it.

25 Q. How much did you pay for it?

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1 A. I paid about seventy-five dollars for it.

2 Q. How much is it worth?

3 A. I don't know, you'll have to ask Kip. Well, the
4 sales rep that sold it to me.

5 Q. You asked me did I want the amount that you
6 actually paid for it or that it cost. So how much did
7 it cost?

8 A. Well, when I seen it on the shelf, it said three,
9 three something. Three hundred fifty or three, three
10 fifty-nine, three forty-nine. It was something with a
11 nine on the end.

12 Q. How did you get such a good deal?

13 A. Well, that's what -- earlier yesterday I had
14 mentioned Kip could work miracles. It's a -- the
15 Blackberry is not actually new. It's a refurbish. In
16 fact -- I think that's what they did, refurbished the
17 phone. Somebody had said something was initially wrong
18 with it, and so it's, it's not a new -- it's new but
19 it's not new basically. It's, it's refurbished the way
20 that -- what he said, it's refurbished. That's all that
21 is.

22 Q. When do you sleep on the days that you get off at
23 eight a.m.? What time do you go to sleep when you get
24 off at eight a.m. when you've been working the night
25 before?

1 A. It's, it's not even a constant -- depending on
2 where I'm at is what time I go -- if I go directly home,
3 I sleep the majority of the day away. If, if I'm
4 somewhere else then, depending on what I'm doing, that's
5 when I go to sleep.

6 Q. How much of the time, on average, are you at home?

7 A. Well, I spend a lot of time at home. The majority
8 of my time is in Greenville. When I'm saying home, I
9 mean in Greenville. I spend the majority of my time in
10 Greenville compared to outside of Greenville.

11 Q. So the majority of the time you sleep during the
12 day?

13 A. It would be in the daytime, yes.

14 Q. What about the days when you know you're going to
15 go on at twelve o'clock?

16 A. Well, even with me knowing I'm going on at twelve
17 o'clock, I can survive if -- long as I can get me four
18 or five hours sleep, I can be right back up and ready to
19 go.

20 Q. But if you get off at eight o'clock, for the most
21 part you're going to be sleeping during the day?

22 A. I go to sleep, like I said, long as I can find me a
23 five-hour block in there, I'm okay. Look, I can find a
24 five ---

25 Q. But didn't you just say during the day?

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- 1 A. Yeah.
- 2 Q. So is it during the day?
- 3 A. Yes, it's during the day.
- 4 Q. Thank you. How much did you pay to get Mr. Parks
- 5 out of trouble that you mentioned in prison?
- 6 A. Now, that was a continual battle, so ...
- 7 Q. But the whole time you were there how much did you
- 8 pay?
- 9 A. Well, it was based off who he owed. I know I got
- 10 -- well, you got to understand ---
- 11 Q. On average, what is the amount you paid Mr. Parks
- 12 before ---
- 13 A. Well, it's not, ---
- 14 Q. -- you left prison?
- 15 A. -- it's not -- see, that's what I'm saying, it's
- 16 not cash money. Because you don't have physical cash
- 17 money. So it's in, in products like soap is in there,
- 18 can goods is in, things that you could just -- what is
- 19 it? Consumable goods, you know, that ---
- 20 Q. Mr. Parks -- go ahead, I'm sorry.
- 21 A. So, you know, he might owe this one guy over here
- 22 five dollars. He might owe this other guy -- see,
- 23 that's what you got to understand. It -- it's not
- 24 necessarily a large amount that will get you in a
- 25 situation, so it's like five dollars here, twenty-one

1 dollars over here, thirty dollars over here. You know,
2 it depend on who he owed.

3 Q. But you only paid in goods?

4 A. Yeah. If, if -- when you go to -- it's like going
5 to the store. You, you purchase the goods that you want
6 and then you just pay the person off in the goods.

7 Q. Where did you purchase these items?

8 A. At the canteen.

9 Q. With the money you made from your job while you
10 were in prison?

11 A. Yeah.

12 Q. All right. Mr. Parks -- I'm sorry, Mr. Nance, this
13 is going to be your opportunity, because I know there's
14 been a lot of confusion about your work schedule. But
15 the week, couple days leading up before the incident,
16 couple days leading after the incident -- we will give
17 you a pen as well -- and I'm going to give you an
18 example how I want you to do this.

19 MR. DEJONG: Your Honor, this has been asked
20 and answered.

21 THE COURT: Well, I don't know what the
22 question is yet, Mr. DeJong, to rule on. Let me ---

23 MS. HAMAKER: I don't know what the answer is.

24 THE COURT: -- go further into the question.

25 MR. DEJONG: I'll wait for ---

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1 THE COURT: All right, sir.

2 MR. DEJONG: I'll see where we're going. I'm

3 ---

4 THE COURT: If you would, wait for the
5 question, Counsel, ---

6 MR. DEJONG: I'm sorry, Your Honor.

7 THE COURT: -- before you make the objection.

8 Q. All right. Mr. Nance, if you work, just for
9 example -- I'm not saying this is what you did. Just
10 for an example this is how I want you to mark. Say you
11 worked Saturday starting, you know, you go into work,
12 you start at midnight and you go into Sunday because
13 your shift is from twelve to eight. If that's the shift
14 you worked, put your initials. If this is the shift
15 that Ms. Brown worked, put her initials. Will you do
16 that?

17 MR. DEJONG: I think I'll renew my objection,
18 Your Honor. This has been ---

19 THE COURT: Overruled.

20 MR. DEJONG: Thank you, Your Honor.

21 A. Okay.

22 Q. Will you do that, Mr. Nance?

23 A. I will be able to do that if I, if I -- if you can
24 back me up. If you can give me a day.

25 Q. Tuesday is the ---

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- 1 A. Oh, so ---
- 2 Q. -- day that the car was purchased.
- 3 A. Okay. Well, I'm -- this is, this is what I'm
- 4 trying to get you -- I would actually have to know
- 5 physically what day she was off in order to know when
- 6 I'm off.
- 7 Q. Mr. ---
- 8 A. I'm going to get ---
- 9 Q. Mr. Nance, you've been telling this jury all along
- 10 that you were very sure about it and you've been going
- 11 through this elaborate process and now you're telling
- 12 the jury that you don't know?
- 13 A. No, I'm just saying this right here. If she's off
- 14 Tuesday, and I know she's -- then I'm off ---
- 15 Q. If you'll just write it down, think about it, take
- 16 your time if you need to, make sure you get it right so
- 17 the jury knows exactly what you're talking about.
- 18 A. You want mine? No, I see it.
- 19 Q. Make sure it's correct.
- 20 A. As far as my recollection.
- 21 Q. As far as your recollection?
- 22 A. Yeah.
- 23 Q. Let's hope it's as good as your recollection about
- 24 pork, Mr. Nance.
- 25 A. About what?

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1 Q. So you worked the Sunday twelve to eight shift?

2 A. This is what I'm remembering. Oh, excuse me. I
3 remember now. That's, that's why I wrote down here. I
4 actually had to be to work on Wednesday. So really, the
5 off -- her off days were behind mine because I had, I
6 had to be to work that Wednesday on the 28th.

7 Q. I guess the question I meant to ask you is, those
8 bridges help signify which shift it worked because I
9 know it gets confusing between midnight and eight a.m.
10 You put your name here as having worked. Are you
11 talking about Saturday night you go all the way to
12 eleven fifty-nine, then it becomes Sunday morning at
13 twelve to eight. Are you saying you worked that shift?

14 A. What I, what I was putting up, that was -- I'm
15 looking at the bottom. I'm coming forward. I knew I
16 had to be to work on ---

17 Q. Mr. Nance, I'm going to give you this paper back,
18 if you will do the bridges like I had asked. Because
19 when you describe it, you're confusing me and I want to
20 make sure I have it right. Will you write down the
21 shifts that you actually worked by doing the bridges
22 thing, the twelve a.m. to eight a.m., as I had asked?

23 Q. Tisha Brown only works two nights a week?

24 A. No. When I was -- what I put down there -- look at
25 the, the bottom where you see that off, off, off. If I

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1 -- the way I -- I'm remembering now is, this is how this
2 went off. This was my actual three day -- because I'm
3 thinking back, this was -- if I'm not mistaken, this is
4 the day that I actually did the floor man job. And I
5 had a three day, if I'm not mistaken, I had a three day
6 weekend because I was actually scheduled ---

7 Q. Sir, I asked you if Ms. Brown only worked two
8 nights a week?

9 A. No, her, her thing was -- that up there is her days
10 off, I'm sorry.

11 Q. So that's one day -- one shift she works. She
12 starts ---

13 A. No, no, no, no. That's -- I put that up there.
14 From my recollection she was off that time. That she
15 was off that -- from that Monday and Tuesday. That's
16 why I put it like that.

17 Q. Well, Mr. Brown, -- I'm sorry ---

18 A. I'm Mr. Nance.

19 Q. Mr. Nance, I asked you to put bridges on each of
20 your schedules.

21 A. Yeah, the bridge ---

22 Q. Is this the day -- the shift she worked for the
23 day, ---

24 A. That's, that's ---

25 Q. -- or the shift she had off?

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- 1 A. That's her off.
- 2 Q. So, in actuality, she would have worked that
- 3 shift?
- 4 A. Yeah, she should have been, she ---
- 5 Q. That shift?
- 6 A. -- should have been ---
- 7 Q. That shift? That shift? Tell me if I'm doing
- 8 something wrong. Keep going?
- 9 A. Let's see, that's one.
- 10 Q. Because you said you only marked the ones she had
- 11 off.
- 12 A. Yes, so she should have been at work. And so she
- 13 -- oh, one, two, three, four -- she should be off
- 14 somewhere again after this point here.
- 15 Q. We're going to cross this out so we don't confuse
- 16 everybody. Now these offs, are -- is that for you?
- 17 A. Yeah, I was thinking I came up my three-day
- 18 weekend, and I started back to work.
- 19 Q. So you worked Tuesday the -- the Monday you go in
- 20 at eleven fifty-nine, you get off at eight o'clock on
- 21 Tuesday shift. On Tuesday you worked the -- you go in
- 22 on Tuesday at eleven o'clock, or eleven fifty-nine, get
- 23 off at eight o'clock Wednesday morning?
- 24 A. Yeah.
- 25 Q. The same ---

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1 A. The same.

2 Q. -- for Wednesday at eleven fifty-nine till eight?

3 A. You see, that's just it. That's why I wrote down

4 schedule down here. I was scheduled to work, but I

5 didn't go to work. That's why I just, that's why I just

6 wrote schedule down there. See I did go to work -- I

7 came off -- I got off at -- I went to start -- focus in

8 there so I can see the date so I can explain to you.

9 Okay. That Monday I was at work. I went to work at

10 twelve which bled over into eight o'clock Tuesday.

11 MS. HAMAKER: Judge Welmaker, because this

12 sheet's so messed up because the defendant didn't do as

13 I had asked him, can we take a break so I can get a new

14 sheet so he can do it?

15 THE COURT: All right. Let's take a short

16 break, ladies and gentlemen. I ask you to go back to

17 your jury room. Don't discuss the case. We'll call you

18 back in just a few moments. We'll take a short break.

19 (WHEREUPON, the jury exited the open court at

20 approximately 10:33 a.m.)

21 THE COURT: Mr. Nance, you may step down.

22 MR. DEJONG: Are we at ease for the moment,

23 Your Honor?

24 THE COURT: We'll take a short break. Well,

25 you need to -- I don't know, are you going to re-do one

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1 and let him do it at his desk? How do you want to do

2 that, Ms. Hamaker?

3 MS. HAMAKER: We can do it that way, Your

4 Honor.

5 THE COURT: Well, ---

6 MS. HAMAKER: Well, Your Honor, actually I

7 would -- I hate to waste the jury's time like this, but

8 I would like him to do it up there because it's showing

9 the jury how he was so sure before, but he's not sure

10 now.

11 THE COURT: Well, why don't you just make ever

12 how many copies you need and then we'll take a ten

13 minute break and be ready to ---

14 MS. HAMAKER: They're getting made, Your

15 Honor.

16 MR. DEJONG: Your Honor, he's on the witness

17 stand. I don't particularly want to be at counsel table

18 with him ---

19 THE COURT: Right.

20 MR. DEJONG: -- since he is on the witness

21 stand.

22 THE COURT: Well, he can take a break too.

23 You can take a break, sir.

24 (WHEREUPON, the Court stood at recess for a short

25 break.)

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1 THE COURT: Ready to proceed?

2 MS. HAMAKER: The State is ready, Your Honor.

3 THE COURT: If the jury is ready, have them
4 come back in.

5 (WHEREUPON, the jury entered the open court at
6 approximately 10:45 a.m.)

7 THE COURT: You may continue your cross
8 examination, Solicitor.

9 CROSS EXAMINATION CONTINUED

10 BY MS. HAMAKER:

11 Q. Mr. Nance, we're not going to do that calendar
12 thing anymore. I don't want to waste anymore time with
13 that. Take me through the morning of January 27th as
14 soon as you got off work around seven thirty or eight
15 o'clock that morning. What did you do?

16 A. Since you don't want to do that calendar thing, I
17 was at Tisha Brown's house. Well, I went there. And
18 ---

19 Q. Straight after work?

20 A. No. That's just it. Since we done with the
21 calendar, it, it dawned on me, I was off Sunday and
22 Monday. My, my confusion was I thought Tisha Brown was
23 off with me. And see that's, that's why because I was
24 thinking she was off when I got there because I knew she
25 was home. But it just dawned on me why it was confusing

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1 me. Because see, I was actually off Monday and -- or
2 Sunday and Monday and had to be to work Tuesday,
3 Wednesday. And I was trying to see why all the days was
4 off, but it hit me because I remembered. I can't put
5 her time there because, at this particular point, ---

6 Q. Mr. Nance, ---

7 A. Wait, all right.

8 Q. -- you're not answering my question.

9 A. All right.

10 Q. Yesterday you told the jury that on Tuesday
11 morning, the day you bought the car, you had got off
12 around seven thirty or eight and you went to Ms. Brown's
13 house, took a little cat nap, then you went looking for
14 cars at three different dealerships.

15 A. Yeah. Yes, ma'am.

16 Q. Are you saying that yesterday you didn't tell the
17 truth, or today that you didn't tell the truth about
18 getting off work Tuesday morning ---

19 A. That ---

20 Q. Let me finish. When you're -- getting off Tuesday
21 morning at seven thirty, eight and going to Ms. Brown's
22 house. Which day are you telling the truth, today or
23 yesterday?

24 A. The reason I said that Tisha Brown was off is
25 because, when I went to her house ---

- 1 Q. Sir, today -- if you'll answer my question, I'll
- 2 let you explain your answer.
- 3 A. Okay.
- 4 Q. Yesterday did you tell the truth, or today are you
- 5 telling the truth about getting off work Tuesday morning
- 6 between seven thirty and eight o'clock a.m.?
- 7 A. Today I'm telling the truth.
- 8 Q. So yesterday you weren't telling the truth?
- 9 A. Well, it's not that I wasn't telling the truth ---
- 10 Q. Yes or no?
- 11 A. Okay. No.
- 12 Q. So you weren't telling the truth yesterday?
- 13 A. No, I wasn't.
- 14 Q. Okay. Now explain your answer.
- 15 A. The reason why is because when I got to Tisha's
- 16 house, she was home. So with her being home, I
- 17 automatically assumed she was off when I got there. But
- 18 then it dawned on me because, when I -- since I thought
- 19 she was off and when the Solicitor told me to put her
- 20 time off there, I started putting her time off for that
- 21 Tuesday because I knew she off that Monday, whatever day
- 22 the 27th is on. It's a Tuesday?
- 23 Q. Yes, sir.
- 24 A. Okay. So I thought since she was home when I got
- 25 there that morning, I figured she was off. I

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1 automatically assumed she was off. So I started
2 calculating my time off with her, but it hit me that I
3 -- when you started questioning me when I was trying to
4 do the calendar, I was saying, well, this ain't right
5 because I know I'm supposed to have been to work
6 Wednesday. And so this is not going to match up. So
7 now I understood that I was actually off Sunday and
8 Monday and was going to work Tuesday, Wednesday,
9 Thursday and Friday. But now I know why she was home.
10 Because when it -- when I couldn't understand why she
11 was there, it hit me that the following week Tisha had
12 got fired from Dispoz-o because she stayed out of work.
13 Because the week prior to that, I had got sick and she
14 stayed out with me and didn't call in and they fired her
15 for not calling in. Because they have a no-call, no-
16 show policy. If she had called in, she could have
17 stayed, but she didn't call in. She just stayed with me
18 because I had got sick. That's, that's what had
19 confused me ---

20 Q. Mr. Nance, you're saying Tisha got fired on the
21 Friday before you bought her the car?

22 A. It was either the Friday before -- it was the
23 Friday before that -- the Friday prior to that. If I
24 ---

25 Q. In other words, before you bought her the car?

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1 A. Yeah.

2 Q. But wasn't the reason why you bought her the car in
3 the first place was so that she could drive to work so
4 you didn't have to drive her there any more?

5 A. And so she could do things in Laurens. So she
6 could get around, yes.

7 Q. Did you not tell the jury the whole purpose was so
8 she could drive to Dispoz-o so you didn't have to drive
9 her there anymore?

10 A. That's not the sole purpose. Once again ---

11 Q. Is that the purpose you told the jury yesterday?

12 A. And I ---

13 Q. Yes or no?

14 A. Yes.

15 Q. Now explain your answer.

16 A. Okay. But just to have the car just to go to work
17 would be useless. She stays in Laurens. Laurens does
18 not have public transportation. Once again, I live in
19 Greenville. So anytime she needs to go somewhere, I
20 would have to drive from Greenville to Laurens to take
21 her two blocks, three blocks to the grocery store or to
22 take her to pay her light bill or to take -- so I'm
23 driving all the way from Greenville to Laurens to go
24 around the corner basically or -- well, not walking
25 distance, so she still need a car to do things that you

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1 have to do, to pay bills, to, to ---

2 Q. Mr. Nance, so when you told the jury yesterday that
3 the reason why you bought her the car was that she could
4 go to work, were you lying?

5 A. I wasn't lying because it's not like the car --

6 Q. Sir -- I'm sorry, I'll let you explain your answer.

7 A. The reason -- the sole reason for the car wasn't
8 just for work. I mean, she tried as if -- the only
9 reason I bought the car so you can go to work.

10 Q. Sir, you said yesterday that you bought the car so
11 she could go to work. If she didn't have a job, how can
12 that be the truth?

13 A. Do y'all have a car and the only place you go is to
14 work in it? I mean, I bought her the car so she could
15 have a way around, not just solely to go to work. But
16 you got to understand, I was also her transportation to
17 other places. So irregardless, if she had a job or not,
18 she was going to need a car.

19 Q. Sir, how can you buy a car for someone and tell the
20 jury the purpose behind it was for her to go to work
21 when she had been fired before you purchased the car?

22 A. The sole purpose for the car was not just to go to
23 work. If -- it's just like saying, well, I'll buy you a
24 bike but you can only ride in the yard, don't go out the
25 fence. Well, I want to go out the fence too. But it's

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1 -- that's not the sole purpose for the car. And it's
2 not like she had to make no payments on the car, because
3 I bought the car outright. So now, she still going to
4 need a job. She still going to need to get around. So
5 if she's not at Dispoz-o anymore, she still going to
6 have to get a job. So when she get another job, guess
7 whose responsibility it's going be to take her to
8 another job? It will fall right back to me. Therefore,
9 get her a car. Because what if she get on first shift,
10 then what I'm going do? What if she get on second
11 shift? Then what I'm going do? I'm still going to aid
12 her.

13 Q. Mr. Nance, if you didn't get off work on the 27th
14 at eight thirty, what time was it that you went to Ms.
15 Brown's house ---

16 A. It was ---

17 Q. -- to pick her up?

18 A. It was still at morning time when I got there.

19 Q. What time did you go pick her up?

20 A. Well, see that's just -- well, I didn't go to pick
21 her up. I went there.

22 Q. What time did you go there?

23 A. It, it was early that morning.

24 Q. Around what time?

25 A. It still had to be around about eight, eight

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1 thirty, nine o'clock.

2 Q. When you went to her house, where were you coming

3 from?

4 A. Most likely Greenville, because I was off.

5 Q. You were coming from Greenville?

6 A. Yeah.

7 Q. Your mother's house? A girl's house?

8 A. At that -- well, at that time of morning, it most

9 likely probably would have been a female's house, with

10 it being that early.

11 Q. So you left the female's house. So did you stay

12 the night at a female's house?

13 A. Well, no. Your witness yesterday identified some

14 pictures. And he identified another female that he said

15 that was -- I was associated with, which is Quan

16 Griffin. She stays in Greenville. So normally when I

17 take Tisha home, I could catch her and talk to her

18 before I actually go home.

19 Q. Sir, I'm asking you, on the morning of the 27th,

20 where did you wake up that morning?

21 A. Well, I probably woke up at home but stopped by her

22 house on the way to Tisha's.

23 Q. Okay. So you woke up that morning at your mother's

24 home, which is also your home?

25 A. Yeah.

1 Q. What time did you wake up?

2 A. It could have been any amount of time because at
3 that -- you got to understand. With me working third
4 shift, even when I'm off, I'm up at twelve o'clock. I
5 mean, because that's just my daytime.

6 Q. You ---

7 A. But I would lay down, you know, just do around, but
8 I would still go to sleep. I mean, I don't know how
9 y'all are, but if you got a schedule that you're use to,
10 even though you off, you still wake right back up at
11 that time. You know you have to get -- say, well, I'm
12 off. You can't just go on and lay back down. So
13 basically, I could have been coming from home, or I
14 could have been coming from Quan's. But it -- with it
15 being that time of morning, most likely I was coming
16 from Quan's house.

17 Q. Mr. Brown, ---

18 A. Nance.

19 Q. Mr. Nance, I apologize. If you will just take the
20 jury through detail, don't leave anything out, from when
21 you woke up the morning of January 27th.

22 A. Well, see, that's -- I know I woke up somewhere.
23 See, what's prevalent about it -- what makes me remember
24 the day is the simple fact that I went to Tisha house
25 and I knew I was going to buy a car for her that day.

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1 Irregardless of it, I knew I was going to buy the car

2 because I had the money with me when I went.

3 Q. You're not answering my question.

4 A. I woke up. Nine times out of ten, I woke up at

5 home. But on my way to Tisha's house, with it being

6 that time of morning, I knew what I would do. By

7 routine, I would stop by Quan Griffin's house, the

8 female that Johnny Parks said was on the picture. By

9 routine, if I am off and I'm in Greenville, that's what

10 I would do.

11 Q. Okay. After you would stop by Ms. Quan's house --

12 I'm sorry, I don't know her last name -- you would go on

13 to Ms. Brown's house?

14 A. Go to Ms. Brown's house, yes.

15 Q. And you said you arrived at Ms. Brown's house

16 between eight and nine in the morning?

17 A. Yes.

18 Q. When you arrived at Ms. Brown's house, since you

19 didn't work the night before, I'm assuming that that cat

20 nap you spoke about yesterday didn't happen?

21 A. No, it still happened.

22 Q. And so, you woke up, you went to Ms. Quan's house

23 ---

24 A. Yes.

25 Q. -- then you went to Ms. Brown's house. You got

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- 1 there between eight and nine?
- 2 A. Yes.
- 3 Q. Did you make any stops besides Quan's house that
- 4 day?
- 5 A. No.
- 6 Q. You got to Ms. Brown's house?
- 7 A. Yes.
- 8 Q. How long did you nap for?
- 9 A. We, we was in the bed up until, I would say, twelve
- 10 o'clock.
- 11 Q. Okay. So you didn't make any stops besides at Ms.
- 12 Quan's house on the way to Ms. Brown's house. You got
- 13 there around eight or nine, got out of the bed around
- 14 noon, and then what happened?
- 15 A. Well, she -- at that particular time, she did not
- 16 know that I was going to purchase her a vehicle. So I
- 17 told her let's just go. So she got in the vehicle with
- 18 me, we got to riding around. Initially, we went to
- 19 Simpsonville. As we went through Simpsonville ---
- 20 Q. Let me stop you there. I'm sorry. But what time
- 21 do you think you left the house?
- 22 A. I would say no later than twelve thirty, twelve
- 23 forty-five, somewhere in that time. It had, had to be
- 24 right before one o'clock.
- 25 Q. Okay.

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1 A. And I, and I can explain why before one o'clock

2 because we wound up at Simpsonville.

3 Q. So you left her house between twelve thirty and

4 twelve forty-five. Did you go directly to the first car

5 dealership that ---

6 A. See that, that's what I just said. We stopped at a

7 dealership in Simpsonville.

8 Q. What time?

9 A. Now that's why it had to be around one o'clock

10 because the guy that was there, he wanted to -- he, he

11 was -- he tried to give me a fair exchange. He said, if

12 you give me the Land Rover, and I'll give you a car out

13 here. And I was like, that's not what I'm here for.

14 Q. What time did you leave that dealership?

15 A. We stayed there no more than twenty -- twenty,

16 twenty-five minutes.

17 Q. You left about one twenty to one twenty-five? We

18 can even go to one thirty if you like?

19 A. Well, we'll say one thirty.

20 Q. Did you stop anywhere before you got to that car

21 dealership?

22 A. No, I went straight there.

23 Q. After you got done with that car dealership, where

24 did you go?

25 A. I proceeded on down -- well, I proceeded on down

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1 that road which will take you up under the bridge and
2 you'll wind up in Mauldin and -- which take you to a
3 curve and you be on Laurens Road. So I went on down
4 Laurens Road. She was asking me now -- because at this
5 point, at this point she understands that I'm fixing to
6 purchase her a car. So it was a four-door Saturn that I
7 was interested in at that point for her.

8 Q. Let me ask you this. Did you -- so that car
9 dealership, that first one, did you go to a second one
10 before you went to the one that you bought the Sable
11 from?

12 A. Yeah. I went to two other ones. You familiar with
13 Poinsett Highway?

14 Q. I am.

15 A. All right, all right. You know where Evette's at?

16 Q. No, sir.

17 A. Well, it's two car lots across, across the street
18 from it ---

19 Q. Okay.

20 A. -- and fenced in.

21 Q. What time do you think you arrived ---

22 A. Well, see, we ---

23 Q. -- at that second car lot?

24 A. That's just it. We didn't go straight to that car

25 lot ---

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1 Q. Okay.

2 A. -- because I had ---

3 Q. Sir, the question is, what time did you arrive at
4 that second car lot?

5 A. We had to get there at two, two fifteen, somewhere
6 in there.

7 Q. Two or two fifteen, the second car lot?

8 A. Yeah.

9 Q. Where did you stop in between?

10 A. That's just it, when I -- when -- I wanted to get
11 that Saturn because the Saturn was a pretty good car.

12 She didn't like it, but I liked it because I know a
13 Saturn can be a pretty good car and they look, not to be
14 gender-specific, but it looked like a female car. And
15 so I was like, well, this will be a nice car for you.

16 And she wasn't jiving with the idea, but I was like, I'm
17 the one paying for it. It shouldn't be a problem. And
18 so we, like I said, we headed and got on Mauldin Road.

19 And so the first time I ever took her out, I took her to
20 the bridge downtown. So when she realized that we was
21 that close to downtown, she said she wanted to go to see
22 the bridge, because when I took her, it was dark and so
23 she didn't get to see what was down there. She didn't
24 get to -- she heard the water but couldn't see down and
25 what was beneath all that. So that's what she said, she

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1 said she wanted to see what it looked like and we wound
2 up down at the bridge.

3 Q. You drove from Simpsonville. You left the car lot
4 around one-thirty. You got to the second car lot around
5 two or two-fifteen, and you stopped at Falls Park in
6 between?

7 A. Yeah.

8 Q. How long were you at Falls Park?

9 A. We didn't even get out. You know how you can drive
10 in front of it and then you have to ---

11 Q. I thought you had to get out to go see the water.

12 A. Well, see, that's just it, when we got there, they
13 had -- there was a bunch of people out there, and so
14 she wanted to go. And at this particular point, I knew
15 I had something else to do. And I was like, I need to
16 get you a car as soon as possible because if I don't
17 get it done today, then we're going to have to put this
18 off.

19 Q. What other stuff did you have to do that day?

20 A. It was someone else I wanted to go see.

21 Q. Who did you want to go see?

22 A. I knew Quan would be getting home around about five
23 o'clock, so I wanted to see Quan at five o'clock.

24 Q. Well, you said you dropped Mr. Parks off at seven-
25 twenty to seven-thirty that evening?

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1 A. Well, see that's because I wanted to see Quan. But
2 see, I didn't know if we was going to get the car
3 purchased by that time.

4 Q. All right. You're at the second car dealership.
5 What time are you at now? You're at two fifteen. Two
6 to two fifteen you arrive there. Before you got to that
7 second car dealership, besides Falls Park, was there any
8 other place that you stopped?

9 A. No.

10 Q. You get to the car -- second car dealership. What
11 time did you leave?

12 A. Well, we didn't even stay there a good three
13 minutes because, if you know that car lot there, that's,
14 that's a straight rip-off as soon as you get there.
15 Because the way they was talking already, I knew this
16 wasn't about to happen.

17 Q. But you wanted to buy her a Saturn from there?

18 A. No. That was the third -- oh, I thought you meant
19 the first car lot on Poinsett, not the first car lot we
20 stopped at.

21 Q. The first one you stopped at was in Simpsonville;
22 right?

23 A. Yeah.

24 Q. The second one was right next to the one that you
25 ended up buying the Sable from?

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1 A. No. That's the -- actually, that's the fourth car
2 lot. See, what I was saying -- what happened was, we
3 stopped -- the first car lot we stopped at, to actually
4 look at a car, was in Simpsonville where the Saturn is
5 at. But there are three car lots on Poinsett. And the
6 one, like I was explaining to you, Evette's sits right
7 here where we actually purchased the Mercury, but we
8 stopped at the two on the other side of the road before
9 we got to Evette's.

10 Q. Mr. Nance, you told the jury yesterday that you
11 only stopped at two prior dealerships before going to
12 Evette's.

13 A. Yeah, that was the other two on Poinsett Highway.

14 Q. But you weren't counting the one in Simpsonville?

15 A. No, because I didn't purchase the car there.

16 Q. But you didn't purchase a car at the other two on
17 Poinsett ---

18 A. No, because that was useless. Because of the price
19 that they were talking about for the type car.

20 Q. So yesterday you said only two other dealerships
21 besides Evette's, and today you're saying three other
22 dealerships besides Evette's; correct?

23 A. Well, that's just the one that I knew we stopped
24 at.

25 Q. Is that what you said or is that not what you said

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1 yesterday, that you only stopped at two before Evette's?

2 A. If that's what you say I said, then that's what I
3 said.

4 Q. Oh, we can play it for you, Mr. Nance. Is that
5 what you said yesterday?

6 A. I probably did, but I was referring to the two
7 across the street from that particular one when I said
8 two car lots. Because I know all three of them was
9 there together.

10 Q. So you stopped at the second car lot. You stayed
11 there for about three minutes. You don't want to buy
12 that silver Saturn from them because they're not acting
13 right for you. After you got done with the second car
14 lot, what time did you get to the third one?

15 A. Now, that's the one we got -- like I say, we
16 stopped. I walked over to the other one seeing if the
17 same thing, and I got back in ---

18 Q. Sir, I asked you what time?

19 A. To give you a specific time, I couldn't tell you
20 specifically what time.

21 Q. About what time?

22 A. It was after two. Two fifteen, two twenty, two
23 twenty, two twenty-five.

24 Q. We'll do two fifteen to twenty-five then. Did you
25 stop anywhere in between those two car lots?

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- 1 A. No. Went straight across to Evette's.
- 2 Q. How long were you on the -- how long were you at
3 the third one?
- 4 A. Like I say, I just walked from -- when I seen the
5 dude acting crazy there, I walked over there because
6 they right there together basically. I looked around in
7 there. I got back in the Land Rover and drove right
8 across the street.
- 9 Q. How long were you at the third one?
- 10 A. I just walked in and walked out, couldn't even been
11 a minute.
- 12 Q. Not ---
- 13 A. Not even a good minute. Like I said, I just walked
14 there, turned around, came back.
- 15 Q. What time did you get to Evette's? I'm sorry. Did
16 you go anywhere between that third car lot and to
17 Evette's?
- 18 A. No. I went straight ---
- 19 Q. Okay.
- 20 A. Because Evette's is right across the street.
- 21 Q. What time did you get there?
- 22 A. A minute after I got back in the vehicle from
23 walking from the second car lot.
- 24 Q. Did you make any other stops besides the one you
25 mentioned?

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1 A. Straight there.

2 Q. That whole day, besides going from your house to
3 Quan's house, to Ms. Brown's house, car lot one to car
4 -- I'm sorry -- from car lot one to Reedy River Falls,
5 to car lot two, to car lot three, to car lot four, any
6 other stops?

7 A. Not that I can think of.

8 Q. Think hard.

9 A. Pretty much that's about it.

10 Q. You said you budgeted twenty-five hundred dollars
11 for the car?

12 A. Yeah.

13 Q. You were going to pay cash?

14 A. Yeah.

15 Q. Because that's the cheapest way to do it you said?

16 A. Yeah.

17 Q. You had twenty-five hundred dollars in your pocket?

18 A. Well, actually, in my glove box.

19 Q. In your glove box?

20 A. Wait, no. Did I go by my home?

21 Q. Sir, you said you didn't make any other stops.

22 A. No, because I'm thinking. That, that, that was the
23 problem with the Saturn. That's why I was -- the price
24 of it. That's really what it was, the price. Now that
25 I'm thinking about it. Because at the time, even though

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- 1 I had twenty-five hundred that I wanted to spend, I had
2 the whole twenty-two hundred with me.
- 3 Q. Okay. So you had twenty-two dollars in cash on
4 you?
- 5 A. Twenty-two hundred.
- 6 Q. Twenty-two hundred?
- 7 A. Yeah.
- 8 Q. Twenties or ones?
- 9 A. It was in different denominations.
- 10 Q. I didn't mean ones. I meant twenties or one
11 hundreds?
- 12 A. That's what I mean, it was different denominations,
13 twenties and ---
- 14 Q. So you had twenties and hundreds?
- 15 A. I had twenties. I had -- to break it down to you,
16 I know you if you count it, if you count it up, it's
17 going to be twenties, because the dude counted the money
18 that I had with me at that time.
- 19 Q. Sir, what type of bills did you pay the twenty-two
20 hundred dollars with?
- 21 A. It was cash money I give him. If I could ---
- 22 Q. Hundreds, twenties, tens, fives, all of them?
- 23 MR. DEJONG: Your Honor, he said he couldn't
24 answer the question.
- 25 THE COURT: I think he's answered it as best

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1 he can. You can just ask the next question.

2 Q. Where did you have this money?

3 A. In the vehicle with me.

4 Q. In your pocket?

5 A. I had partial of, partial of it in my pocket. The

6 rest of it was in the glove box.

7 Q. I'd imagine it'd be a pretty thick bunch of bills;

8 wouldn't it?

9 A. Not really. Twenty-two hundred dollars really

10 ain't that big, you know. Now, if I had a bunch of

11 ones, then yeah. But I didn't have a bunch of ones.

12 Q. Well, if they're all hundreds, that would be

13 twenty-two different bills to make twenty-two hundred.

14 If there's some twenties in there, if they're all

15 twenties ---

16 A. That's still not a great wad of money.

17 Q. Okay. So you've got some in your pocket and some

18 in your glove compartment.. Did you keep any in your

19 wallet?

20 A. I don't carry no wallet.

21 Q. No money clip?

22 A. I don't carry a money clip.

23 Q. Have any credit cards?

24 A. Yes, I do.

25 Q. You have credit cards?

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- 1 A. I have a VISA card, but I keep it at the house.
- 2 Q. I'm not talking about your bank card.
- 3 A. No. I have an actual credit card, but I don't keep
- 4 it ---
- 5 Q. You keep it at the house?
- 6 A. Yeah.
- 7 Q. Do you ever keep it with you?
- 8 A. No.
- 9 Q. Well, then how do you use it?
- 10 A. Because I don't.
- 11 Q. You don't use it?
- 12 A. No. I got it -- actually, once again, I just got
- 13 out of being incarcerated. So what I was trying to do
- 14 was reestablish my credit. So the credit card was
- 15 actually a secured credit card, to actually get my
- 16 credit started back. So I wasn't going to use it
- 17 anyhow. But I got it to get my credit established so I
- 18 could start working on my credit.
- 19 Q. Could you use the credit card or could you not?
- 20 A. No. I never used it. I just got it to start my
- 21 credit.
- 22 Q. Do you always keep a large sum of money in your
- 23 glove compartment?
- 24 A. Depending on if I'm going to do something.
- 25 Q. Did you take that money out of that house that

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1 morning? When you left your mother's house that

2 morning, before you went to pick up Quan, did you take

3 the twenty-two hundred out of the house, or was it in

4 your car in your glove compartment?

5 A. No. It also was in the house.

6 Q. Did you ever have Tisha Brown contact Johnny Parks

7 on your behalf?

8 A. Yes, I did.

9 Q. Why?

10 A. Because I wanted to know how he was doing.

11 Q. That's all?

12 A. Talk to him. See what's going on with him. See

13 what's happening with him down there, keeping him

14 abreast of what's going on with me.

15 Q. You never tried to keep your story straight with

16 him?

17 A. No.

18 Q. Never? You're positive?

19 A. I have no story to keep straight with him. The

20 only thing I could tell him was, hey, you know what

21 happened. I took -- I explained to you what, what I

22 would do. I took -- because I wasn't going to go all

23 the way out there like that for you.

24 Q. You never had Ms. Brown send money down to Mr.

25 Parks in an attempt to bribe him not to say anything?

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1 A. No. I -- why would I have to bribe somebody that I
2 already give money to?

3 Q. Well, you didn't give them that forty dollars that
4 night.

5 A. No, because it was for who it was for. If he had
6 -- if I had knowed it was just for him, I wouldn't have
7 had a problem for it.

8 Q. And you wouldn't have lied to him about needing it
9 for the car?

10 A. Nope. But without knowing who it was for, he
11 wasn't going to get it nohow.

12 Q. And you wouldn't have lied to the jury about the
13 reason why you wouldn't give Mr. Parks that money?

14 A. I didn't lie about the reason for why I wouldn't
15 give it to him. I just told him that I was not going to
16 give it to him because of the things I had to do. But I
17 knew what he was going to do with the money because it
18 was basically for Lillian Aavik. And that's why I
19 didn't want to contribute to Lillian Aavik.

20 Q. You said yesterday that while you were in prison
21 together, you had each other's backs and that's just
22 what y'all did together; correct?

23 A. Yeah.

24 Q. You were having some money problems; weren't you?

25 A. Not really. I mean, I had problems, but once

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1 again, I had a support system. I had my mother. I had
2 my father. I had the Nance family I could go to. And
3 like I said, I don't -- basically, I was working to get
4 my child support caught up and to make ---

5 Q. Mr. Nance, how much did that new phone that you had
6 to purchase the next day after your first one was taken
7 from you at the AT&T in Cherrydale, how much did that
8 cost you?

9 A. Say again?

10 Q. That new phone you had to buy when your first one
11 was taken, the one you bought on the 28th, how much did
12 that cost you?

13 A. Nothing.

14 Q. You got it for free?

15 A. No, I didn't get it for free.

16 Q. Well, how did you get it?

17 A. I already had it. They gave me -- what they did,
18 basically what Kip did, he gave me a SIM card. Because
19 what he told me is that the Blackberry was not covered
20 under the contract, because you only get a phone at
21 specific times, every -- I think it's like annually you
22 can get a new phone or whatever. And at that time, the
23 contract wasn't to where I could get a new phone.

24 Because I could have got the Blackberry, I think he
25 said, if I would have waited until March or something.

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1 And that's when the contract would have been to where I
2 could have got a new phone. But like I said, I wanted
3 the Blackberry now because I was tired of individuals
4 going in my phone and looking at my text messages and
5 everything like that.

6 Q. So you never got a new phone?

7 A. What I got was another -- the phone that I actually
8 had, I got a, I got a new number, which is -- I think it
9 was 553-11 something.

10 Q. Last question. You knew that Ms. Brown needed your
11 help financially and that's why you bought her the car;
12 correct?

13 A. Well, I knew she needed a ride, yeah.

14 Q. And she couldn't afford one on her own?

15 A. Not without any assistance.

16 Q. And you knew that she would lie for you and do
17 exactly what she did and report that car stolen as you
18 had asked. Isn't that correct?

19 A. That's not correct.

20 MS. HAMAKER: That's all the State has for
21 this witness.

22 THE COURT: Any redirect?

23 MR. DEJONG: Nothing on redirect, Your Honor.

24 THE COURT: Thank you, sir. You may step
25 down.

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1 MR. DEJONG: May I have one moment, please,
2 Your Honor?

3 THE COURT: Yes, sir.

4 MR. DEJONG: The Defense rest, Your Honor.

5 THE COURT: Anything in Reply?

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

7 THE COURT: Mr. Foreman, ladies and gentlemen,
8 we have a legal matter we need to take care of at this
9 time. I'll ask you, if you would, go back to your jury
10 room, and we'll call you back just as quick as we can.
11 Don't discuss the case while you're back there.

12 (WHEREUPON, the jury exited the open court at
13 approximately 10:33 a.m.)

14 THE COURT: All right. Any matters we need to
15 take care of before we talk about a -- instruction and
16 the verdict forms?

17 MS. HAMAKER: Your Honor, to be honest with
18 the Court, the State hasn't prepared any, but the State
19 would request a ---

20 MR. DEJONG: We're not doing ---

21 MS. HAMAKER: I'm sorry. You're asking about
22 verdict forms.

23 MR. DEJONG: We're not doing a jury request.

24 THE COURT: I was just seeing if there was
25 anything before that we need to take care. Mr. DeJong?

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1 MR. DEJONG: Your Honor, yesterday, at some
2 point in time, I don't remember exactly when, when the
3 State rested, I do know that much, I made a motion for a
4 directed verdict as to all charges, and specifically
5 with the regard to the possession of a weapon during a
6 commission of violent crime. You graciously denied my
7 motion as to all of the charges with the exception of
8 possession of a weapon during commission of a violent
9 crime. You took, as I understand it, you took that
10 under advisement, Your Honor. I'm not trying to be
11 disrespectful to the Court, but I'm kind of in a
12 position that I'm either asking the Court for a ruling
13 or I'll réargue that motion, Your Honor.

14 THE COURT: Do you have any other motions at
15 this time?

16 MR. DEJONG: My motion as to all charges would
17 be for -- it would be a motion for a directed verdict on
18 all charges, Your Honor. And the same argument I made
19 yesterday at the close of the State's case. I have no
20 additional argument with regard to the possession of a
21 weapon during the commission of a violent crime.

22 THE COURT: Anything else the State wishes to
23 say about any of the weapons charge, other than what you
24 said yesterday?

25 MS. HAMAKER: Yes, Your Honor. The State

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1 started doing some thinking about it, and the name of
2 the charge is possession of a weapon during the
3 commission of a violent crime. That commission of that
4 violent crime did not end until the defendants ran off.
5 They used that car to go into the store, to bring the
6 merchandise out, to bring the money out, loading it up,
7 back and forth. That's during the commission of the
8 violent crime. They were using that car to commit that
9 crime. That car brought them there. They aided -- that
10 car aided them in trying to get the merchandise and take
11 it home, and the money and take it home. If Your Honor
12 would like an argument as to constructive possession,
13 the State can do that as well. But I know your concern
14 was the building.

15 THE COURT: All right. I have studied this,
16 Mr. DeJong, and I think under *State v. Jennings*, that
17 would be sufficient to find constructive possession, in
18 particular with the evidence of the use of the vehicle
19 to load, to load some of the goods in there. I'll
20 respectfully deny your motion on that.

21 And, again, on other issues, I think certainly
22 sufficient evidence has been established for the jury to
23 make a determination of all the other issues factually
24 on the other charges. I'm denying your motion on those,
25 as well. I have verdict forms that I'll be glad for you

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1 to look at. Let each of them see that, and then we'll
2 talk a little bit about the charge.

3 MS. HAMAKER: Do you want to look at them
4 first, Mr. DeJong?

5 MR. DEJONG: Huh?

6 MS. HAMAKER: Do you want to look first?

7 MR. DEJONG: Oh, I've got a pretty good idea
8 of what they ---

9 THE COURT: I was hoping y'all would look at
10 it together, but if you need to look at it individually,
11 that'll be fine, too.

12 MR. DEJONG: I've got a pretty good idea of
13 what they look like. On behalf of the defense, Your
14 Honor, there's no objection to the jury verdict form.

15 MS. HAMAKER: None from the State either, Your
16 Honor.

17 THE COURT: All right. There's a -- as far as
18 charges are concerned, obviously, I'll charge the -- you
19 each know generally the charges I give. I'll charge the
20 statutes, obviously. Would either of you be interested
21 in a -- I'm trying to formulate the charge on what I've
22 heard in the evidence. But some of the charges, I
23 guess, could be omitted. I think there's been some
24 evidence, particularly yesterday I guess, about prior
25 inconsistent statements. I have a charge about that.

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1 If they find that, is that something that the defense
2 would want?

3 MR. DEJONG: You may have been reading my
4 mind, Your Honor, because that was a request I was going
5 to ask the court for, a prior inconsistent statement
6 charge.

7 THE COURT: And I'll also give the jury a
8 charge about the fact that a witness has a prior record
9 is not disqualifying a person. That's for credibility.
10 The same on the prior record of the Defendant, that the
11 fact that he's been committed of a -- convicted of a
12 crime. He's not now on trial. The evidence to be
13 considered by them would only be towards the
14 believability and that alone. I'll charge that on the
15 witness and on the defendant. Any other specific
16 requests that anybody would have?

17 MS. HAMAKER: Your Honor, the State would ask
18 for charges on constructive possession and hand of one
19 hand is of all. I'm sorry. Hand of one, hand of all.

20 THE COURT: Well, I think certainly
21 constructive possession would need to be charged, or at
22 least a form of it, with the weapons charge.

23 MS. HAMAKER: Your Honor, the reason for the
24 hand of one, hand of all, is because Mr. Parks is the
25 one who made entry into Local Cash Advance. And he's

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1 the one who did all the damage. And he's the one who
2 kicked the door open -- in the Tobacco Warehouse open so
3 Mr. Nance could come in. But Mr. Nance was acting
4 willingly and with him, and wanted Mr. Parks to do those
5 things so that they could do what they came there to
6 do.

7 THE COURT: Okay. I believe that would be an
8 appropriate charge.

9 MS. HAMAKER: Sir?

10 THE COURT: I believe that will be an
11 appropriate charge.

12 MS. HAMAKER: Thank you, Your Honor.

13 THE COURT: Anything else anyone? How long do
14 you expect to address the jury, Ms. Hamaker?

15 MS. HAMAKER: Since I have the pleasure of
16 going after Mr. DeJong, some of it would depend on how
17 long he plans on going and what he says. I would like
18 to keep mine relatively short. I don't expect going
19 over twenty minutes.

20 MR. DEJONG: Your Honor, this jury has been
21 sitting there a long time. I can't give you a precise
22 time, but my anticipation is I will not be quite as
23 verbose as I normally am.

24 THE COURT: We'll -- you know I'm not going to
25 limit you ---

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1 MR. DEJONG: Yes, sir. I understand.

2 THE COURT: -- in anyway. But I'll be glad to
3 help you if y'all want me to be your timekeeper, but ...

4 I think what I might do is have the clerk go ahead
5 and contact the jury now about ordering lunch for them,
6 and then we'll do our argument and charge. We'll take
7 about a five minute break to get your thoughts together,
8 a ten minute break, and then we'll order their lunch,
9 have it here by about twelve thirty then we'll be ready
10 to ... Okay. It's already ordered.

11 Let's take about a ten minute break and then we'll
12 be ready for our closing statements.

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

15 (WHEREUPON, the jury entered the open court at
16 approximately 11:45 a.m.)

17 THE COURT: Mr. Foreman, ladies and gentlemen,
18 you've heard all the testimony in the case. We're now
19 ready to start that stage of the trial where the
20 attorneys have a chance to address you in their closing
21 statements.

22 Throughout the trial I've instructed you and told
23 you from the beginning that what they say to you is not
24 evidence. You've heard the evidence. You've heard the
25 testimony, had a chance to examine some of the evidence

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1 or see it. You will have a further chance later. While
2 this is not evidence that's being presented to you, I
3 urge you to listen carefully as these attorneys address
4 you. They will give you, certainly, their view of the
5 case. Perhaps can give you some insights to help you in
6 your deliberations that will take place soon. After
7 they've had a chance to address you, I'll instruct you
8 on the law, then it will be yours to decide.

9 Mr. DeJong, you may address the jury.

10 MR. DEJONG: Thank you, Your Honor. May it
11 please the court, Madam Prosecutor.

12 **CLOSING STATEMENT**

13 **BY MR. DEJONG:**

14 This has been a long trial. Y'all have been
15 sitting here for pretty close to three days now, I guess
16 if we get a time count. Time seems to be elusive,
17 however. But it's been a long trial. So I'll put you
18 at ease. I'm not going to stand here and talk to you
19 very long. Okay?

20 This -- we have learned at least three things in
21 this trial. Number one, we have learned about Mr.
22 Nance's dietary habits. He ain't on trial for his
23 dietary habits. We have learned that Mr. Nance likes
24 women. He ain't on trial for that. And we have learned
25 that Mr. Nance gets confused about his work schedule,

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1 and he ain't on trial for that.

2 What he's on trial for, ladies and gentlemen, is
3 two burglary second degrees, two malicious damage to
4 real property, one petit larceny, one grand larceny, and
5 one possession of a weapon during the commission of a
6 violent crime. You've sat here and listened to the
7 testimony. I am not going to stand here this morning
8 and rehash that testimony with you. You've been more
9 than attentive. I've observed you. We've all observed
10 you, and thank you for that attentiveness. We truly
11 appreciate it.

12 What this case basically boils down to, ladies and
13 gentlemen, is basically two witnesses, possibly three.
14 I say that -- and, again, I'm not going to rehash the
15 testimony. I'm going to take you back to Detective Lane
16 Byers who was the chief investigating detective in this
17 case. I asked the question, what physical evidence,
18 other than a vehicle, a driver's license, I think a
19 debit card and an insurance card, that was found in
20 Johnny Parks wallet by his own admission, what other
21 physical evidence was there at the scene of the burglary
22 at Tobacco Warehouse and Local Cash Advance? As I
23 recall, his answer was none.

24 So anything law enforcement did we can certainly
25 take into consideration, but I submit to you there was

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1 no evidence found by law enforcement, other than those
2 four items that I've mentioned that would even tie Mr.
3 Nance to those burglaries and those other crimes. I
4 said it basically boils down to the testimony of two
5 witnesses. It could possibly be three witnesses.
6 That's -- of course, they're all for you to decide.
7 But in my view of two witnesses, possibly three, those
8 three witnesses would be Reginald Nance, Tisha Brown,
9 and Johnny Parks. And I say two, not three. Tisha
10 Brown was called by the State as a witness in their
11 case, and the State then proceeded to absolutely
12 obliterate her credibility to you as the jurors. And
13 that is one thing that you have into consideration is
14 credibility. So that leaves two witnesses that you have
15 heard from. Obviously, very diverse, divergent,
16 opposite ends of the spectrum, whatever you want to call
17 it.

18 So the case really, as I see it, ladies and
19 gentlemen, boils down to a matter of credibility. His
20 Honor will give you a charge on the credibility of
21 witnesses. I am not here to give you the law. I'm
22 going to talk about it just very briefly. But you take
23 the law from His Honor as he gives it.

24 Credibility of witnesses is one of the jobs that
25 you have in deciding this case. And in deciding the

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1 credibility of witnesses -- I'm not going to go through
2 the whole list His Honor goes through -- it's demeanor,
3 it's forthrightness, how they answer questions, all of
4 -- various other things, and what the witness may have
5 to gain or lose, either one, by their testimony.

6 Now in that regard, I would ask you to remember one
7 thing about Johnny Parks when you look at his
8 credibility. Well, two things actually. Number one, he
9 is a fifteen time convicted felon. Number two, is that
10 when he said he gave his statement back in January and
11 decided to cooperate with law enforcement -- my mind
12 totally went blank on me there. At any rate, that when
13 he was going to cooperate with law enforcement, that
14 that's what he did. And although it took him almost a
15 year after the fact to do this, when he was asked about
16 promises -- now I'm back on track -- when he was asked
17 about promises, he said, yes, he was promised something.

18 Now, what I'm going to ask you to remember is this.
19 He has not -- his charges in this case have not been
20 disposed of, which means he has neither been to trial,
21 nor has he pled guilty, nor does he have to plead
22 guilty. But his charges have not been disposed of.

23 So he said the Solicitor would tell the Judge, if
24 he pled guilty or if he were convicted, whatever the
25 case might be, of his cooperation. Certainly, he has a

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1 lot to gain by coming in here and telling you some type
2 of story because he wants to look more and more and more
3 like he had been cooperating with the State. So I ask
4 you to take that into consideration.

5 Obviously, I'd be a fool if I didn't stand here --
6 because you heard my client also has a record. He was
7 very forthright with you, telling you about being in
8 prison, and all of those things. He came across very
9 openly about that. So take all of those things into
10 consideration.

11 And I've got only two more things I would like to
12 mention very briefly. When I talked to you Tuesday
13 afternoon, I believe it was, I had talked to you about
14 presumption of innocence. I asked you to remember that
15 that is such a fundamental part of our law. And I asked
16 you to remember reasonable doubt. Now, His Honor is
17 going to charge you on both of them. I talked about
18 them Tuesday. I'm not going to go in-depth again with
19 you.

20 Again, I thank you for your attentive --
21 attentiveness -- I can never say that. Your attention,
22 okay, and your patience on behalf of Mr. Parks -- or,
23 excuse me, Mr. Nance, and all of us. And I ask you
24 after you weigh this case, you look at the credibility
25 of those witnesses, that you return a verdict of not

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1 guilty on all charges.

2 Thank you so much, ladies and gentlemen.

3 THE COURT: Solicitor, you may address the
4 Jury.

5 MS. HAMAKER: Mr. DeJong, Your Honor.

6 CLOSING STATEMENT

7 BY MS. HAMAKER:

8 Mr. Nance, the defendant, he has said a lot of
9 things at this trial. A whole mouthful of things. But
10 basically, what he has said boils down to this, this one
11 thing. He had a saying, well, that's just it. Well,
12 actually, that's just it. Well, actually, the sky is
13 green. He has told you lie after lie after lie. You
14 know the sky is not green. He's admitted lies on the
15 stand. He would try to move around, not answer it.
16 Take twenty minutes to answer a question that's a yes or
17 a no, or a he or a she, or an eleven twenty or an eleven
18 thirty. He's all over the place. You can't change the
19 truth. Mr. Parks told you the truth. He never once got
20 caught in a lie. Mr. DeJong, trust me, he would catch
21 Mr. Parks in a lie, just as the State caught Mr. Nance
22 in several lies.

23 The reason why Mr. DeJong didn't catch Mr. Parks in
24 any lies, is because Mr. Parks was telling the truth.
25 You cannot change the truth. When he didn't know, he

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1 said, I didn't know. When he said -- when I asked him
2 what he stole, he said these are items that I stole.
3 Who stole these items? I didn't take them. He never
4 said, well, the defendant did this. He never said, this
5 is all the defendant's idea. He took ownership of his
6 part.

7 Why would Mr. Parks come in here and tell you about
8 a crime that the sheriff's office doesn't know who
9 committed it. No charges have been pressed against
10 anybody for it. Mr. Parks wasn't even asked about it.
11 He came up here on the witness stand and told you he
12 broke into an automobile body shop and stole a car. He
13 did not have to tell you that. He did not have to
14 confess to that. Why would he come into this courtroom
15 on the record and say, my nephew let me in. I got a
16 ride over to a hotel, and my sister drove me home. What
17 he told you was that his family was trying to cover up
18 for him because the officers were out looking for him.
19 That's accessory after the fact to a felony. Why would
20 he come in here and say on the record, and put his
21 family in danger of criminal prosecution, if he wasn't
22 telling the truth?

23 The defense had a lot of inconsistencies, and I'm
24 not going to waste your time on a Friday morning, almost
25 the afternoon, I'm not going to waste your time by

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1 pointing them out. You've heard them. You sat there.
2 You listened to Mr. Nance try to fumble his way through
3 these inconsistencies and explain things. Mr. Nance
4 could remember his diet all this time. And the reason
5 why that was brought out, the reason why it was brought
6 out is to show that he has selective memory. He
7 remembers things that can't hurt him, and he forgets the
8 things that can. He was very sure yesterday afternoon,
9 yesterday evening when you were sitting in here, of his
10 work schedule. He spoke about it. He tried to describe
11 it in detail to me, tried to help me understand his work
12 schedule. This morning he did the same thing. When he
13 had to do it on paper, where he couldn't change his
14 mind, he could not follow simple instructions. Not
15 instructions he had to read, not instructions that were
16 confusing, but steps that the State took to show him
17 exactly what she wanted him to do. And he couldn't do
18 it, because he couldn't allow himself to be locked in on
19 an answer that the State could be using against him.
20 Yesterday you heard the defendant say, no, I wasn't
21 having money problems. I wasn't having any money
22 problems at all. That loan was taken care of before all
23 of this stuff happened. He told you that yesterday.
24 Now he's telling you his mom paid it off for him. Don't
25 know which. No money problems.

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1 This has been marked as State's Exhibit Number 34.
2 It's Mr. Nance's book. It has his stuff in it. He
3 admitted that it was his folder. This is his paycheck
4 from his folder. Remember when he told you that he made
5 ten dollars an hour? Remember that? At the time of
6 this incident, between nine twenty-five and ten dollars.
7 September his salary went from eight seventy-five to
8 nine twenty-five.
9 Okay. Let's see if we can get a date on this. He
10 was in prison until June of 2008. So these must be 2009
11 numbers. Twelve twenty-eight, twelve twenty-nine,
12 twelve twenty-nine, twelve-thirty, twelve thirty-one.
13 Sorry, these would be 2008, before the new year. What
14 was his salary? Eight seventy-five. That's his salary.
15 What's the amount of that paycheck? One sixty-one
16 fifty-four for a week's worth of work. You add that
17 number up, give or take, it's a little over six hundred
18 dollars.
19 Lucky for us, there's another paycheck in here.
20 Again, what's the salary? Eight seventy-five. His
21 gross pay is three fifty-six after taxes. After his
22 hundred dollars a week, not a month, child support -- a
23 hundred dollars for his child support a week, because
24 the date's on here, for the entire week, his end salary
25 is one sixty-seven. The date of work, January 4th

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1 through January 10th. That's the Friday and Saturday he
2 took off. Maybe that would give us a clue as to his
3 schedule.

4 Six hundred dollars a month, ladies and gentlemen,
5 when you just get out of prison June 2008, you owe your
6 father twenty-five hundred dollars, you buy a new car
7 for two thousand dollars, pay forty dollars to take some
8 random woman out to dinner, pay a hundred dollars a
9 month to pay off that loan that he had against his
10 sentimental vehicle that he cared so much about. That's
11 three hundred dollars. You can just go down the list,
12 cost, cost, cost. At the end of it, that amount is
13 priceless, because it shows you that he had money
14 problems. He had money problems and he needed Mr.
15 Parks, who is an expert into breaking into facilities,
16 to have his back, and teach him how to rob and
17 burglarize, then take money to help pay off these debts.
18 He can't possibility expect his mother, at the age of
19 forty-five to pay off all these debts for him. Cannot
20 expect that.

21 And he keeps mentioning church, going to church. I
22 went to church. Somebody who goes to church that much
23 wouldn't be seeing all those female friends. I'll tell
24 you that.

25 Now, Mr. Nance told you that he drove from the car

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1 dealership to Ms. Brown's residence, started working on
2 the CD player. Went from Ms. Brown's residence to Mr.
3 Parks' residence to pick him up. And then Mr. Parks
4 called him three times, pretty much in a row, in a
5 fifteen -- I can't remember the time period -- but was
6 insistent on being picked up. He never said why Mr.
7 Nance wanted -- I'm sorry -- Mr. Parks wanted to be
8 picked up.

9 And this car that he cares so much about, this
10 sentimental car, he loaned it to Ms. Brown, not knowing
11 why she needed it. He had left to go to Mr. Parks'
12 house. He could have waited for Ms. Brown to get back
13 to take the Land Rover to the home. But he goes over,
14 picks up Mr. Parks, stops what's he's doing fixing
15 things, for some unknown reason, picks Mr. Parks up so
16 Mr. Parks can watch him fix the CD player for whatever
17 amount of time. If Mr. Parks had his own
18 transportation, he would have just driven himself. But
19 Mr. Parks didn't have his own transportation. He told
20 you that. Gave the car that he bought back -- the truck
21 -- because it's not what he wanted. It didn't work. He
22 got his money back. His other vehicle had been in a car
23 collision. There's no way he could have gotten the keys
24 out of the Sable, Mr. Parks, gotten the keys out of the
25 Sable when Mr. Nance wasn't looking and later got back

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1 to Ms. Brown's residence, because he didn't have a ride.
2 He didn't have a ride. That's why Mr. Nance had to stop
3 what he was doing to go pick up Mr. Parks in Greenville
4 to take him back.

5 We're going to go with Mr. Nance's story for a
6 little bit. These are the mileages that Mr. Byers and
7 all the evidence showed yesterday. Well, this whole
8 week. What Lieutenant Byers testified to was if we were
9 to take the trip -- remember there's a hundred and ten
10 miles that was put on the vehicle from the time it was
11 purchased until the time it made its way to the law
12 enforcement center. If Mr. Parks' story made sense,
13 along with all the law enforcement officers, and they're
14 all tying together, Mr. Nance purchased the car, drove
15 it to Ms. Brown's. Then from Ms. Brown's house he came
16 later on, picked it up, went either to his house or he
17 either went to Mr. Parks' house. Or he either went from
18 his house to Mr. Parks' house, and then picked Mr. Parks
19 up, drove to the crime scene, and then the car was later
20 driven to the LEC. Those two mileages on either of
21 those two paths, whether Mr. Nance chose to go by his
22 house before he picked up Mr. Parks, if he went by his
23 own house before picking up Mr. Parks would have been a
24 hundred and two miles, according to Lieutenant Byers'
25 testimony. If the defendant went straight to Mr. Parks'

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1 house from Ms. Brown's house, it would have been ninety-
2 two point five miles.

3 Now, if we go with Mr. Nance's story, from the car
4 dealership to Ms. Brown's house is thirty-six point
5 five. From Ms. Brown's house -- I'm sorry -- yes. From
6 Ms. Brown's house to Mr. Nance's house -- Mr. Parks'
7 house, when Mr. Nance left Ms. Brown's house to go pick
8 up Mr. Parks from Greenville, that would have been
9 thirty point five miles. Then he picked up Mr. Parks,
10 went back to Ms. Brown's house, that's another thirty
11 point five. And according to Mr. Nance's story, he
12 would like you to believe that Mr. Parks then went over
13 to Ms. Brown's house, picked up the car, and drove to
14 the crime scene. We don't know how much that is,
15 because it's not into evidence. If you're familiar with
16 that area, use your common sense. How long does it take
17 to get from Laurens to Pickens? How many miles is
18 that?

19 The miles that have been entered into evidence is
20 ninety-eight miles. If you add the distance from
21 Laurens to Pickens, the crime scene, how much is that?
22 Your common sense would tell you that is over a hundred
23 and ten miles. The numbers to Mr. Nance's story simply
24 do not make sense. Numbers, odometers have no reason to
25 lie.

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1 Another person who has no reason -- well, person --
2 odometers don't have reasons to lie and DMV employees
3 don't have reasons to lie. She wrote missing or lost --
4 she wrote lost driver's license on the form. She never
5 wrote stolen driver's license. That's when Mr. Nance
6 went to get a new driver's license. He didn't tell her
7 it was stolen, because it wasn't stolen. It was
8 missing. Because it was found in the car where he left
9 it when he went to commit the burglary.

10 And I told you in the opening that I was going to
11 ask you questions -- or I was going to ask questions
12 that would leave you wondering why I was asking them.
13 Why was I asking about that Bank of America Card
14 sticking out so far, Mr. Nance's Bank of America Card
15 missing or sticking out so far. The reason why the
16 State made a point about that is because Mr. Nance,
17 while Mr. Parks was making entry into the store or when
18 the police officers showed up, when Mr. Parks ran out,
19 remembered the tools, ran back in, Mr. Nance knew the
20 police officers were there. He knew they were there and
21 he knew he was going to get caught. The State will give
22 Mr. Nance this, he is a very smart individual. He put
23 that in there when the officers, the police officers
24 showed up, so he could say today exactly what he's
25 saying today, and blaming it on Mr. Parks. He put his

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1 ID and his card in Mr. Parks' wallet when the police
2 officer showed up, when Mr. Nance -- I'm sorry -- when
3 Mr. Parks was inside the store trying to gather up
4 evidence to save him and his friend.

5 You cannot leave your common sense at the door. A
6 person who knows their friend is a crack addict, and
7 that crack addict friend has asked over and over and
8 over and over again to borrow money, why would you leave
9 your debit card in the car, leave him by himself, the
10 card is in the console, leave it there for that person
11 to steal? He didn't. Why would you leave your driver's
12 license in an envelope when you just bought a car, when
13 you could put it where your debit card is, which is
14 allegedly in the center console. You can't. Mr. Nance
15 puts money in his pocket. He would put his ATM card and
16 his driver's license. He wouldn't leave a large amount
17 of cash in the vehicle. Why? Because it might get
18 stolen. He wouldn't leave a debit card in the vehicle
19 because it would get stolen by his crack addict friend.

20 Mr. Nance would like you to believe that he had
21 this relationship with Ms. Brown, that he just cared
22 about her and wanted her to get to and from work, even
23 though she was fired. So making only a hundred and
24 sixty-seven dollars for the week, with all of those
25 bills, he wanted to buy her a car so she could get to

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1 the workplace that she -- doesn't exist any more. Just
2 in case she might ever get a job again. Does that make
3 sense? It doesn't make sense.

4 He didn't buy that car for her. He bought that car
5 for himself so he could go do this burglary, so he
6 wouldn't get caught. He didn't want his car to be
7 recognized and traced back to him. It did get traced
8 back to him. He knew Ms. Brown would not turn him in or
9 give any incriminating statements against him. He
10 bought her the car. He bought presents for her
11 daughter. He was helping her out.

12 This lady, Ms. Brown, can't blame her for coming up
13 here and telling you lies. You cannot blame her. She's
14 twenty-four years old. She has a seven year old
15 daughter. She's trying to make it on her own, and she
16 needs Mr. Nance. And Mr. Nance took advantage of that
17 by asking her to do a criminal act, which was to file a
18 false police report.

19 This is what really happened that night -- the
20 evidence has shown this already -- what happened that
21 night was the vehicle had been purchased by Mr. Nance.
22 They drove it to Ms. Brown's house. Mr. Nance left. He
23 never told Ms. Brown about the second set of keys
24 because he was going to come back that night. Left
25 around fiveish, came back, got the car, drove it over to

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1 Mr. Parks' house. He might have stopped at his own
2 house to get the burglary tools that they shared
3 together and put them in the trunk of the vehicle.
4 Either way, he either went to his house or to Mr. Parks'
5 house, after Ms. Brown's house. Then they proceeded on
6 to commit this crime.

7 After they committed the crime, they stole a
8 vehicle. Mr. Nance said, I'm going to get Ms. Brown to
9 say that the car was stolen. He doesn't have a phone
10 because it is in the car. He had to drive to Ms.
11 Brown's house to get in contact with her, because he
12 didn't have her number memorized. We hardly have
13 numbers memorized. He goes in, swings by Ms. Brown's
14 house, said, Tisha, this is what just happened. I need
15 your help. Tisha says, I don't want my baby to go to
16 prison again because I need him here to help me support
17 my child. Yes, I will help you. From Laurens there's
18 Clinton, they're very close to each other. That's where
19 the stolen vehicle was found.

20 Again, Mr. Nance -- Mr. Parks doesn't have a
21 vehicle. He had no way to get all the way over there
22 because he would be stranded there. So Ms. Brown takes
23 the Land Rover that Mr. Nance parked that night when he
24 took the Mercury to go do this little crime. She
25 follows Mr. Nance to where the stolen vehicle was found,

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1 picks Mr. Nance up, and the rest is history.

2 Mr. DeJong has spoken about this robe of
3 righteousness. At this point in time, the State and all
4 of its witnesses has snipped away at that robe. All
5 that is left are shreds, shreds of evidence that point
6 to his guilt. When you take all those shreds and you
7 put them together, it becomes a very strong rope on
8 which you can find this defendant guilty.

9 Thank you for your time.

10 CHARGE

11 BY THE COURT:

12 Mr. Foreman, ladies and gentlemen, it is now my
13 responsibility to instruct you on the law of the case.

14 Let me remind you these indictments that I
15 presented to you and announced to you at the start of
16 this case, they're not evidence. The fact that the
17 defendant in this case has been arrested and charged,
18 indictments have been issued, are not to be considered
19 by you in any way of evidence in this case. It doesn't
20 create any presumption or inference of guilt. It's the
21 documents by which this case is brought before this
22 court. It's a formal paper by which the defendant has
23 been charged.

24 Now, there are several indictments. There's six
25 indictments and each of those charges a separate and

1 distinct offense. You must consider each indictment
2 separately on the evidence and the law applicable to it
3 uninfluenced by your decision on the other indictments.
4 In other words, you'll be asked to write separate
5 verdict forms for each of the indictments, either to
6 find guilt, if the State has met its burden of proof, or
7 not guilty if the State has failed to meet its burden of
8 proof.

9 The defendant has entered a plea of not guilty, as
10 I've stated to you earlier, and that plea places the
11 burden on the State to prove his guilt on each of the
12 indictments. When I talk about this, I'm talking about
13 each of them individually, throughout the instructions.
14 Please bear that in mind.

15 A person charged with committing a criminal offense
16 in South Carolina is never required to prove himself
17 innocent. That's an important rule of law that a
18 defendant in a criminal trial, no matter how serious the
19 charge may be, will always be presumed innocent of the
20 crime for which the indictment was issued, unless that
21 guilt has been proven by evidence satisfying you of that
22 guilt beyond a reasonable doubt.

23 The presumption of innocence doesn't end when you
24 begin your deliberations. It continues and accompanies
25 the defendant throughout the trial, until you've reached

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1 a verdict of guilt based upon evidence satisfying you of
2 that guilt beyond a reasonable doubt. The presumption
3 of innocence isn't a mere legal theory. It's a
4 substantial legal right that a defendant is entitled to,
5 unless you, the jury, are satisfied by the evidence that
6 the defendant is guilty beyond any reasonable doubt.

7 You may ask yourself, what is a reasonable doubt
8 in the law? A reasonable doubt is the kind of doubt
9 that would cause a reasonable person to hesitate to act.
10 By the State having the burden of proof beyond a
11 reasonable doubt, let me distinguish for you. Some of
12 you may have served as jurors before in a court, and the
13 Judge told you it was only necessary to prove a fact was
14 more likely true than not true, such as by what was
15 called the greater weight or the preponderance of the
16 evidence. In criminal cases, the State's proof is more
17 powerful than that. It must be proof beyond a
18 reasonable doubt.

19 Proof beyond a reasonable doubt is proof that
20 leaves you firmly convinced of the defendant's guilt.
21 There are very few things in this world, ladies and
22 gentlemen, that we know with absolute certainty, and in
23 criminal cases the law doesn't require proof that
24 overcomes every possible doubt. If, based upon your
25 consideration of the evidence, you're firmly convinced

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1 of the defendant's guilt of the crime charged, then you
2 must find the defendant guilty. If, on the other hand,
3 you think there's a real possibility that the defendant
4 is not guilty, then you must give the defendant the
5 benefit of that doubt, and find him not guilty.

6 Now I remind you, ladies and gentlemen, that during
7 the course of the trial you and I have had certain
8 duties to perform. As the trial judge, it's been my
9 responsibility to preside over the trial of the case, to
10 rule on the admissibility of evidence that's been
11 offered during the course of the trial. You're to
12 consider only the competent evidence before you, the
13 testimony that's been offered, the tangible evidence
14 that's made a part of the record. If there's any
15 evidence that was excluded by me as a matter of law,
16 being it testimony or other evidence, then, of course,
17 you cannot consider that.

18 And while we're talking about evidence, ladies and
19 gentlemen, let me remind you again that one of the
20 pieces of evidence is a weapon. The weapon, for safety
21 precautions, we'll not allow the weapon and the
22 ammunition to be back in the jury room at the same time.
23 You can examine one. If you need to examine the
24 ammunition, we have that marked separately, we'll be
25 glad for you to do that if you choose to. Under our

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1 Court procedures we want to make sure of the safety of
2 all persons, including jurors, and we will not allow the
3 ammunition to be back in your jury room with you at the
4 same time the weapon is. You can examine those, if you
5 wish to, separately. Just let the bailiff know and
6 we'll substitute each for the other at the appropriate
7 time that you desire.

8 My job also is to instruct you on the law that's
9 applicable in this case. As the Presiding Judge, I'm
10 the sole Judge of the law. It's your duty as jurors to
11 accept the law and apply the law exactly as I state it
12 to you. You may already have an idea of what the law is
13 in a case like this. You may have a notion of what the
14 law ought to be in a case like this. If you have such
15 an idea, and it's in conflict with what I now tell you
16 the law is, then you must disregard, abandon such an
17 idea, because under your oath, you've sworn to accept
18 the law and apply the law just as I state it to you now.

19 Every case that's tried in this courtroom before a
20 jury, that jury becomes the sole and exclusive judges of
21 the facts in a case. The trial judge can't intimate, or
22 state, or comment on, or make any statement whatsoever
23 to a trial jury about the facts in the case.

24 Since you, the jury, are the sole judges of the
25 facts, please do not infer from what I've said during

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1 the course of the trial, any rulings I've made upon the
2 admissibility of evidence or otherwise, anything I say
3 to you now during the course of this instructions to
4 you, that I have an opinion about the facts. I don't
5 have an opinion about the facts, ladies and gentlemen.
6 Our Constitution in South Carolina prohibits a trial
7 judge from having an opinion about the facts. The facts
8 are totally, exclusively up to jurors to decide. You're
9 going to make a decision as to the effect and the value,
10 the weight, and the truth of the evidence that's been
11 presented during the trial.

12 Now, there's two types of evidence that are
13 generally presented. There's direct evidence and
14 circumstantial evidence. Direct evidence is the
15 testimony of a person who claims to have actual
16 knowledge of a fact, such as an eyewitness. It's
17 evidence which immediately establishes the main fact to
18 be proved. Circumstantial evidence is proof of a chain
19 of facts and circumstances that indicate the existence
20 of a fact. It's evidence which immediately establishes
21 collateral facts from which the main fact may be
22 inferred. Circumstantial evidence thus is based on
23 inference and not on personal knowledge or observation.
24 The law makes absolutely no distinction between the
25 weight or the value to be given either direct evidence

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1 or circumstantial evidence, nor is a greater degree of
2 certainty required of circumstantial evidence than of
3 direct evidence. You should weigh all the evidence,
4 ladies and gentlemen. And after weighing all the
5 evidence, if you're not convinced of the guilt of the
6 defendant beyond a reasonable doubt, then you must find
7 the defendant not guilty.

8 Necessarily, ladies and gentlemen, you must
9 determine the credibility of witnesses who've testified
10 in the case. Credibility simply means believability.
11 It's your duty as jurors to analyze and evaluate the
12 evidence and determine which evidence convinces you of
13 its truth. In determining the believability of
14 witnesses who've testified in this case, you can believe
15 one witness over several witnesses. You can believe
16 several witnesses over one witness. In your discretion,
17 you can believe part of the testimony of a witness. You
18 can reject the testimony of that very same witness. You
19 can accept the testimony of a witness in its entirety.
20 You can reject the testimony of a witness in its
21 entirety. You can consider whether any witness
22 exhibited to you an interest or a bias or a prejudice or
23 any other motive in the case. You may also consider the
24 appearance of the witness while on the witness stand.
25 The demeanor of that witness. Was the witness

1 straightforward or hesitant in answering, how consistent
2 or inconsistent was the witness's testimony. Was it
3 made weaker or stronger by other testimony that was
4 presented or other evidence? It's up to you, ladies and
5 gentlemen, to determine just what the credibility of
6 each witness was during your evaluation.

7 Now, I explained briefly, let me explain in more
8 detail that the rules of evidence ordinarily would not
9 permit a witness to testify as to opinions and
10 conclusions, but there is an exception for what we call
11 expert witnesses. And that's a witness who, by
12 education and experience, has become an expert in some
13 art or science or profession, or a calling. And that
14 witness may express an opinion as to relevant material
15 matter in which that witness claims to be an expert.
16 They can also give an -- state a reason for why they
17 give that opinion. Now, you should consider an expert's
18 opinion received into evidence in the case, and like any
19 other evidence, give it the weight that you think it
20 deserves. If you decide that the opinion of the expert
21 is not based on sufficient education and experience or
22 if you conclude that the reasons given by the expert in
23 support of that opinion are not sound, or the opinion is
24 outweighed by other evidence, you can disregard that
25 opinion entirely. An expert witness testimony is to be

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1 given no greater weight than that of any other witness
2 simply because the witness is an expert. Furthermore,
3 you're not required to accept an expert's opinion, even
4 though it may be uncontradicted.

5 Now, there's been evidence presented that a witness
6 may have made, or witnesses have made prior statements,
7 which are not consistent with a witness's present
8 testimony. You may use this evidence to decide whether
9 to believe the witness. You may also use the evidence
10 of earlier contradictory statements to determine the
11 truth of those statements. It's up to you to decide
12 whether to believe the earlier statements or the
13 statement or the testimony given at trial. If a witness
14 has shown to have knowingly testified untruthfully
15 concerning a material matter, you may consider this in
16 determining whether to trust the witness's testimony on
17 other matters. You may reject all the testimony of that
18 witness or give all or part of the testimony the weight
19 that you think it deserves.

20 Now, a person who has a past criminal record is
21 competent to testify in a trial. A past record does not
22 affect the ability of that witness to testify. It may
23 be considered by you, if at all, in determining that
24 witness's believability.

25 Likewise, you've heard evidence that the defendant

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1 in this case had prior convictions of a crime. This
2 evidence may be considered by you if you conclude it's
3 true, only in deciding whether the defendant's testimony
4 is believable and for no other purpose. Of course, you
5 must not consider the defendant's prior record as any
6 evidence of the defendant's guilt of the charge we're
7 trying today. Remember, ladies and gentlemen, you're
8 the sole judge of the facts in the case and of the
9 believability of any and all of the witnesses who
10 testified.

11 In order to establish criminal liability, criminal
12 intent is required and must be proven by the State
13 beyond a reasonable doubt. Criminal intent is always a
14 matter that must be determined by a jury from the
15 circumstances surrounding a situation. There's no way
16 to prove intent to a mathematical certainty. There's no
17 way that medical science can dissect a person's brain
18 and determine what that person had in mind, so the law
19 says that criminal intent may be inferred from the
20 circumstances shown to have existed. It's not necessary
21 to establish intent by direct and positive evidence, but
22 intent may be established by inference in the same way
23 as any other fact, by taking into consideration the acts
24 of the parties, all of the facts and circumstances of
25 the case. Criminal intent is a mental state. It's a

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1 conscious wrongdoing. It's up to you to determine what
2 the defendant intended to do, based upon the
3 circumstances shown to have existed.

4 Now, as I stated to you, ladies and gentlemen,
5 there's different indictments here, there's different
6 charges. I'll try to go through those now with you.
7 The one charge is that the defendant maliciously injured
8 real property. Now, to prove this charge the State must
9 establish beyond a reasonable doubt that the defendant
10 willfully and maliciously cut or mutilated or defaced or
11 otherwise injured a house, a tree, outside fencing, a
12 fixture of another person's or committed any trespass on
13 the real property of another person. Willfully means
14 that it was voluntarily and intentionally done with
15 specific intent to do something the law forbids.

16 Maliciously means involving malice, and malice is
17 hatred or ill will or hostility toward another person.
18 It's the intentional doing of a wrongful act, without
19 just cause or excuse, and with the intent to inflict an
20 injury or other circumstances that the law will infer an
21 evil intent. Malice may be expressed or implied. These
22 terms expressed inferred -- excuse me. Malice may be
23 expressed or inferred and these terms, expressed or
24 inferred, do not mean different kinds of malice. It's
25 merely the manner in which the malice may be shown,

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1 either by direct evidence or by inference from the facts
2 and circumstances which were proved. Malice may be
3 inferred through conduct showing a total disregard for
4 the human life or property of another.

5 Now, to prove this charge also, the State must
6 prove beyond a reasonable doubt that the value of the
7 property was more than one thousand dollars, but less
8 than five thousand dollars.

9 There's also two indictments in this case for
10 second degree burglary. Now to prove this charge the
11 State must prove beyond a reasonable doubt that the
12 defendant entered a building without consent with the
13 intent to commit a crime in the building. Now, a
14 building is any structure or vehicle or water craft, an
15 aircraft, where any person lodges or lives or where a
16 person or other people assemble for the purpose of a
17 business, government, education, religious or
18 entertainment, public transportation or public use or
19 where goods are stored. In order to prove that the
20 defendant entered the building, the State does not have
21 to show that the defendant's entire body entered the
22 building. The smallest injury is sufficient. It may be
23 any part of the body such as a hand or a foot. In
24 addition, the State does not have to prove that force
25 was used to gain entry.

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1 Next, the State must prove beyond a reasonable
2 doubt that the defendant intended to commit a crime,
3 either a felony or a misdemeanor at the time of the
4 injury, to be guilty of the burglary. The mere entry
5 into a building without consent is not burglary. If the
6 intent to commit a crime is formed after the entry, it's
7 not a burglary. On the other hand, if the defendant
8 intended to commit a crime at the time of entry, it is
9 burglary even if the intent was abandoned after the
10 entry. It doesn't matter that the intended crime was
11 not completed. Intent may be shown by acts and conduct
12 of the defendant and other circumstances from which you
13 may naturally and reasonable infer intent.

14 Finally, the State must prove beyond a reasonable
15 doubt that the defendant entered or remained in the
16 building in the nighttime. Nighttime, is the period
17 between sunset and sunrise, during which there's not
18 enough daylight to recognize a person's face, except by
19 artificial light or moonlight.

20 The defendant in this case is also charged with
21 grand larceny and petit larceny. To prove grand
22 larceny, the State must prove, beyond a reasonable
23 doubt, that the defendant took and carried away the
24 property of another, against the will and without the
25 consent of that other person. The slightest removal of

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1 the property or the complete possession of the property,
2 even for an instant by the defendant, is enough to show
3 a taking and carrying away of the property. The State
4 must also prove beyond a reasonable doubt that the
5 defendant intended to permanently deprive the owner of
6 the property. Finally, to prove grand larceny, the
7 State must prove that the value of the thing taken was
8 one thousand dollars or more.

9 There's also a charge that you'll be considering
10 for petit larceny. The same elements are applicable,
11 except the State would not have the burden of proving
12 that the value of the thing taken was a thousand
13 dollars or more. Petit larceny would be the same,
14 except for that particular element of the thousand
15 dollars or more.

16 Finally, ladies and gentlemen, the defendant is
17 charged with possession of a weapon during the
18 commission of, or attempt to commit a violent crime.
19 The State must prove beyond a reasonable doubt that the
20 defendant was in possession of a firearm, or visibly
21 displayed what appeared to be a firearm, during the
22 commission of a violent crime.

23 Now, firearm means a -- can mean an automatic
24 rifle, a revolver, a pistol, any weapon which will or is
25 designed to or may be readily converted to expel a

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1 projectile. In order to find the defendant guilty of
2 possession of a weapon during the commission of a
3 violent crime, you must first find the defendant guilty
4 of either committing the violent crime or attempting to
5 commit the violent crime. Under the law of South
6 Carolina, burglary is a -- considered a violent crime.

7 Now, to prove possession, the State must prove
8 beyond a reasonable doubt that the defendant had both
9 the power and the intent to control the firearm, that
10 the possession of the firearm could be either actual or
11 constructive. Actual possession means that the weapon
12 was in the actual, physical custody of the defendant.
13 Constructive possession means that the defendant had
14 dominion and control or the right to exercise dominion
15 or control over the firearm itself. The defendant's
16 knowledge and possession may be inferred when the item
17 is found on the property of the -- under the defendant's
18 control. This inference is simply an evidentiary fact
19 to be taken into consideration by you, along with other
20 evidence in the case and be given the weight that you
21 think it should have.

22 Now, if a crime is committed by two or more people
23 who are acting together in committing a crime, the act
24 of one is the act of all. A person who joins with
25 another to commit an unlawful act is criminally

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1 responsible for everything done by the other person
2 which happens as a probable and a natural consequence of
3 the acts done in carrying out the common plan and
4 purpose. In other words, if two or more people are
5 together, acting together, and assisting each other in
6 committing the offense, the act of one is the act of
7 all, or as sometimes said, the hand of one is the hand
8 of all.

9 Now, Mr. Foreman and ladies and gentlemen, on each
10 of these indictments I have prepared a verdict form for
11 you. I believe it will be self-explanatory as to the
12 verdict form. On each charge you -- again, I told you
13 you should consider them individually. There is no
14 significance whatsoever in the way the options are
15 listed. One has to be listed above the other. But as
16 to each of these, I have a verdict form and if you find
17 the State has met its burden of proof beyond a
18 reasonable doubt, then, of course, your check would be
19 guilty. If you find the State on any of the charges,
20 considering them individually, has not met its burden of
21 proof, then, of course, your verdict would be not guilty
22 of the charge.

23 On each of these, I'll ask Mr. Foreman if you
24 would, sign your name on behalf of your fellow jurors as
25 the foreperson, date it. And obviously, there's two

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1 different verdict forms for burglary. There's burglary
2 in the second degree, and there's a petit larceny
3 charge, there's a burglary in the second degree, a grand
4 larceny charge, and of course, the possession of a
5 weapon during the commission of a violent crime.

6 As I stated to you earlier, if you find that
7 there's not been a violent crime committed, the
8 burglary, then, of course, your verdict, of necessity,
9 would have to be not guilty on possession of the weapon,
10 because it has to be commission of a violent crime.

11 All twelve of you must agree upon a verdict, Mr.
12 Foreman. Your verdict cannot be based upon sympathy or
13 passion, or prejudice, emotion or any other
14 consideration not in evidence in the case. Once you've
15 reached a unanimous verdict, then I'll ask you if you
16 would let the bailiff know that you have. We'll then
17 receive the verdict back here in the courtroom.

18 I'll remind you again, you are the fact finders. I
19 can answer any questions related to the law that you may
20 have. Remember, however, it's impermissible for me to
21 answer any questions that you may have regarding the
22 facts of the case. It's your duty to determine what the
23 facts are, based upon the evidence that has been
24 presented to you.

25 At this time, ladies and gentlemen, I'm going to

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1 ask you if you will go back to the jury room. There's a
2 final matter of law I need to take care of with the
3 attorneys. Don't begin the deliberations just yet. In
4 just a few moments I'll have the bailiff bring the
5 verdict forms back with the evidence for you, with
6 instruction to begin your deliberations. But right now,
7 don't discuss the case.

8 I'll ask you to retire back to your jury room.

9 (WHEREUPON, the jury exited the open court at
10 approximately 12:42 p.m.)

11 BAILIFF: Your Honor, the alternate stays in
12 here; right?

13 THE COURT: She'll go back, too. She'll go
14 back with them right now. They're not going to be
15 discussing the case.

16 BAILIFF: All right.

17 THE COURT: Any exceptions to the charge, from
18 the State?

19 MS. HAMAKER: Your Honor, just -- and I might
20 not have heard right, but did your description of what
21 constitutes real property include a building?

22 THE COURT: I think it said that in -- it said
23 real property.

24 MS. HAMAKER: I don't know if the jury's sure
25 of what real property means.

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1 THE COURT: Well, if they have a question,
2 I'll try to, I'll try to clarify it for them. Any other
3 exceptions?

4 MS. HAMAKER: Your Honor, I guess what I'm
5 afraid of is them not knowing to ask you what real
6 property is, and them not knowing that they can convict
7 for a building.

8 THE COURT: Well, it says a fixture of any --
9 or a fixture -- trespassing upon any real property of
10 another person. I think I covered the building with the
11 burglary well enough. I think they know what it is.
12 Any other exceptions?

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

14 THE COURT: All right. Any exceptions from
15 the Defense?

16 MR. DEJONG: No exceptions on behalf of Mr.
17 Nance, Your Honor.

18 THE COURT: All right. Y'all make sure the
19 evidence is in order, and everything is marked
20 appropriately.

21 Have the alternate come out, please, sir.

22 (WHEREUPON, the verdict form and exhibits were
23 delivered to the jury after which court stood at
24 recess awaiting the verdict of the jury at
25 approximately 12:52 p.m.)

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1 THE COURT: We're at ease except for me
2 dismissing the alternate if y'all want to hang around
3 for that.

4 MR. DEJONG: I'll stay here for that, Your
5 Honor. Thank you.

6 THE COURT: All right. Ms. Chappell, thank
7 you very much for your service this week. You've had a
8 full week. You haven't had a day off. Fortunately your
9 other jurors survived. So they'll be deliberating and
10 you can't do that, but I think you did get a lunch.
11 You're welcome to stay with us. You're welcome to ---

12 BY JUROR: Well, I think I will.

13 THE COURT: -- go. Whatever suits you.

14 JUROR: It's been a very interesting week, and
15 it's given me a greater appreciation about what a fine
16 judicial system we have.

17 THE COURT: Well, that's what our hope is.
18 But you're free to come and go anywhere you want to
19 after you finish your meal and turn your badge in. If
20 you need anything for your employer about you being
21 here, they'll give you that at the clerk's office.

22 JUROR: I think I checked that in my ...

23 THE COURT: Well, thank you. You're dismissed
24 for now, though. You can finish your lunch and you can
25 come and go as you please on the outside.

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1 All right. We'll be at ease until we hear from our
2 jury then.

3 (WHEREUPON, the Court stood at recess awaiting the
4 verdict of the jury.)

5 THE COURT: All right. We've received two
6 inquiries from the jury. The first one is, define
7 possession of a gun during a violent crime. Does it
8 have to be on the person. I propose to you again to
9 charge to the jury possession, constructive possession
10 and actual possession.

11 The next question is, there is a question to what
12 is malicious damage to real property. Define malicious
13 damage to real property. I read the statute before. It
14 says, tree, house, outside fence or fixture of another,
15 or commit any trespass upon real property of another.
16 The Solicitor asked for clarification and I refused it
17 at the time, obviously, waiting for this question. Any
18 objection from anyone if I just add the word building
19 into that definition that I've already given?

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

21 MR. DEJONG: I didn't exactly hear ---

22 THE COURT: All right. Let me just read it
23 for you, Mr. DeJong.

24 MR. DEJONG: Okay.

25 THE COURT: Must prove that the defendant

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1 willfully and maliciously cut, mutilated, defaced, or
2 otherwise injured a tree, house, outside fence or
3 fixture of another person, or committed any other
4 trespass on the real property of another person. That's
5 the statute.

6 MR. DEJONG: That's what you're going to
7 recharge?

8 THE COURT: Well, I'm going to -- no. That's
9 what I did charge.

10 MR. DEJONG: Yes, sir.

11 THE COURT: They have a question about the
12 meaning of that. I can either tell them -- I could add
13 building in, or structure, a house, a structure or I can
14 try to define for them about real property compared to
15 personal property. We can talk about fixtures. I don't
16 know what else I could do to them or for them, other
17 than -- they obviously did not understand the charge
18 that I read earlier from the statute. It says fixture.
19 I can try to define for them what a fixture is on a
20 piece of property.

21 MR. DEJONG: So what you propose to do is just
22 basically recharge what you charged, but put building in
23 there?

24 THE COURT: Just say -- or a structure, you
25 know, a tree, a house, a building, a structure of any

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1 kind, outside fence, fixture.

2 MR. DEJONG: When you charge -- when you get
3 to structure, which would include a building?

4 THE COURT: I could do that. Yeah. A
5 structure would include a building. Okay. All right.
6 I'll do that.

7 And on the possession, I'll just recharge the
8 actual and constructive as I did before. If they're
9 ready, have them come in.

10 (Whereupon, the jury entered the open court at
11 approximately 2:36 p.m.)

12 THE COURT: Mr. Foreman, ladies and gentlemen,
13 you've had a couple of inquiries for me. I'll be glad
14 to recharge you on those matters. The first was about
15 defining possession of a gun during the commission of a
16 violent crime. Let me again explain to you what
17 possession is under the law.

18 To prove possession, the State must prove beyond a
19 reasonable doubt that the defendant had both the power
20 and the intent to control the use of that firearm.

21 Possession can either be actual or constructive. Actual
22 possession means that the firearm was in the actual,
23 physical custody of the defendant. Constructive
24 possession means that the defendant had dominion and
25 control, or the right to exercise dominion and control

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1 over the weapon.

2 Now, the defendant's knowledge and possession may
3 be inferred when the item is found on the property under
4 the defendant's control. Now, this inference is simply
5 an evidentiary fact to be taken into consideration by
6 you, along with other evidence in the case, and be given
7 the weight that you decide it should have.

8 I hope that somewhat clarifies for you the
9 possession inquiry that you made.

10 There's also an inquiry about the -- defining
11 malicious damage to real property. Again, to prove this
12 particular charge, the State must, beyond a reasonable
13 doubt, prove that the defendant willfully and
14 maliciously cut, mutilated, defaced or otherwise injured
15 a tree, a structure, building, house, an outside fence,
16 a fixture of another person, or committed any other
17 trespass on real property of another person.

18 I also defined for you what willfully meant, that
19 that would be the voluntary and intentional, with
20 specific intent, to do something that the law forbids.
21 And maliciously means involving malice. That's hatred,
22 ill will or hostility toward another person. It's the
23 intentional doing of a wrongful act without just cause
24 or excuse, and with the intent to inflict injury or
25 under circumstances that the law would infer an evil

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1 intent. I also mentioned that malice could be expressed
2 or inferred. And those aren't different kinds of
3 malice, but just the manner in which the malice may
4 exist. That is either by direct evidence or by
5 inference from the facts and circumstances which are
6 proved. It may be inferred from the conduct, showing a
7 total disregard for human life or property.

8 And, of course, for the malicious damage to real
9 property, the other element the State must prove to you
10 beyond a reasonable doubt is that the property was
11 valued at more than one thousand dollars, but less than
12 five thousand dollars.

13 I hope this gives some clarification to you, ladies
14 and gentlemen. If you need any additional instructions
15 on the law, I'll be glad to help you. I'll ask you now
16 to go back to your jury room and continue your
17 deliberations.

18 (WHEREUPON, the jury exited the open court at
19 approximately 2:43 p.m.)

20 THE COURT: Any exceptions from the State?

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

22 THE COURT: From the Defense?

23 MR. DEJONG: No exceptions on behalf of the
24 defense, Your Honor.

25 THE COURT: I'll have these marked as Court

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1 Exhibits, the next numbers, 3 and 4.

2 (WHEREUPON, Court Exhibit Numbers 3 and 4 were
3 marked for identification.)

4 THE COURT: We'll be at ease until we hear
5 from our jury.

6 (WHEREUPON, the court stood at recess awaiting the
7 verdict of the jury.)

8 THE COURT: I understand the jury has reached
9 a verdict. Is there anything we need to take care of
10 before we accept the jury's verdict?

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

12 MR. DEJONG: Not on behalf of Mr. Nance, Your
13 Honor.

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

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

18 THE COURT: Mr. Foreman, ladies and gentlemen,
19 I understand the jury has reached a verdict. Is that
20 correct?

21 MISTER FOREMAN: Yes, sir.

22 THE COURT: Is it a unanimous verdict as to
23 each of the charges?

24 MISTER FOREMAN: Yes, sir.

25 THE COURT: If you would, please hand the

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1 verdict forms to the bailiff.

2 Mr. Clerk, you may publish the verdicts of the
3 jury.

4 MISTER CLERK: This is the Case Number 2010-
5 GS-39-360, State versus Reginald Antonio Nance, as to
6 the charge of malicious damage to real property, we, the
7 jury, unanimously find the defendant, Reginald Antonio
8 Nance, guilty.

9 This is Case Number 2010-GS-39-357, State versus
10 Reginald Antonio Nance, as to the charge of burglary
11 second degree, we, the jury, unanimously find the
12 defendant, Reginald Antonio Nance, guilty.

13 Case Number 2010-GS-39-355, State versus Reginald
14 Antonio Nance, as to the charge of petit larceny, we,
15 the jury, unanimously find the defendant, Reginald
16 Antonio Nance, guilty.

17 Case Number 2010-GS-39-356, the State versus
18 Reginald Antonio Nance, as to the charge of burglary
19 second degree, we, the jury, unanimously find the
20 defendant, Reginald Antonio Nance, guilty.

21 Case Number 2010-GS-39-354, State versus Reginald
22 Antonio Nance, as to the charge of grand larceny, we,
23 the jury, unanimously find the defendant, Reginald
24 Antonio Nance, guilty.

25 Case Number 2010-GS-39-358, the State versus

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1 Reginald Antonio Nance, as to the charge of possession.
2 of a weapon during the commission of a violent crime,
3 we, the jury, unanimously find the defendant, Reginald
4 Antonio Nance, guilty.

5 Is this your verdicts and still your verdicts so
6 say you all by raising your right hands?

7 (WHEREUPON, all jurors' right hands were raised.)

8 MISTER CLERK: Thank you very much.

9 THE COURT: Any matters we need to take care
10 of with the jury before they're discharged in this case?
11 Anything from the State?

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

13 THE COURT: From the Defendant?

14 MR. DEJONG: Nothing on behalf of Mr. Nance,
15 Your Honor.

16 THE COURT: Mr. Foreman, ladies and gentlemen,
17 thank you very much for your service this week. Some of
18 you -- all of you have worked very hard and very
19 diligent. You have been conscientious, you've been
20 attentive as a jury. I appreciate so much the
21 opportunity I've had to work with you. It's been an
22 honor for me. You've been a fellow judge and you've
23 done your duty well and I appreciate it so much.

24 You may never have an opportunity to serve as a
25 juror again. I hope that what you've learned this week

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1 has been educational for you, and as best it could, to
2 be enjoyable for you. I hope that you now can
3 understand a little more about how our system of justice
4 works because of your presence here this week.

5 We remember from our days of old, in school, civics
6 lessons of the three branches of government. You may
7 have an opportunity one day or maybe even now to be a
8 member of the legislative branch. You may get elected
9 to your city council or county government or go to the
10 State House in Columbia, even to Congress. You can pass
11 laws. You can legislate and make the laws that we
12 operate under. You can get elected to mayor of your
13 town, you can be the executive and execute those laws
14 that are passed. You can, maybe, get in the Governor's
15 seat one day and do it on a statewide level. Short of
16 that, all we can do in those branches of government is
17 to petition our legislators, our Governor, our
18 President, our Mayor, whoever else is in office to pass
19 laws or to execute laws or change laws or repeal laws.
20 But we can't have any direct impact.

21 The third branch of government, the Judicial Branch
22 of Government, you've directly participated in. You've
23 been judges this week, judges of the facts, and for
24 which I'm grateful. I told you at the beginning of this
25 week the importance of jury service and how our system

The State -vs- Reginald Nance (2010-GS-39-354, 355, 356, 357, 358 and 360)
Charge

797

1 really, with the flaws that it has, is the best that
2 mankind has ever devised, and I'm grateful that we have
3 citizens willing to serve, good conscientious citizens
4 that are willing to serve along with us.

5 Some of you may need a statement for your employer.
6 If that's the case, the fact that you've been on jury
7 service this week, you certainly can stop by the Clerk's
8 office, if you haven't already, and get that statement.
9 You remember what I told you on Monday, you will be
10 exempted from jury service the next two calendar years,
11 if you want to claim that exemption. Hopefully, you'll
12 want to serve if you were to get called again. I hope
13 that you would.

14 You're dismissed for the week. Thank you very much
15 for your service to us. I know that you've had some
16 long days and a long hard week for many of you. And I'm
17 grateful for that. Thank you for your participation
18 this week. You're dismissed at this time.

19 Mr. Foreman, I would ask if you would, please stay
20 in the back just for a moment. The Clerk has some
21 additional papers he needs for you to sign.

22 (WHEREUPON, the jury exited the open court at
23 approximately 3:21 p.m.)

24 THE COURT: The Clerk will be back in a
25 moment.

The State -vs- Reginald Nance (2010-GS-39-354, 355, 356, 357, 358 and 360)
Charge

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1 Is there anything we need to take care of before
2 sentencing is imposed?

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

4 MR. DEJONG: Your Honor, at this point in
5 time, on behalf of Mr. Nance, I would move for a new
6 trial in that the evidence in this case does not
7 substantiate the verdict as to any of the charges upon
8 which he was found guilty, Your Honor.

9 THE COURT: Again, Mr. DeJong, I respectfully
10 deny your motion. I find that there was sufficient
11 evidence. The jury has weighed the evidence. I think
12 even viewing it in the light most favorable to the
13 defendant in this case, there was sufficient evidence
14 for the jury to make its determination. I respectfully
15 deny your motion.

16 MR. DEJONG: Thank you, Your Honor.

17 THE COURT: Anything else we need to ...

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

20 THE COURT: Are the sentencing sheets
21 prepared?

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

23 THE COURT: Mr. DeJong, you may come forward
24 with your client.

25 MR. DEJONG: May I have a moment to sign these

The State -vs- Reginald Nance (2010-GS-39-354, 355, 356, 357, 358 and 360)
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1 sentencing sheets, Your Honor.

2 THE COURT: Yes, sir.

3 MS. HAMAKER: Your Honor, I might be able to
4 explain it. The reason why there's more ...

5 THE COURT: Right.

6 MS. HAMAKER: And I didn't know if we might
7 have a lesser included for malicious injury under a
8 thousand or that grand larceny could have been a petit
9 larceny, and I included those. And I did not mean to
10 hand those up. I'm sorry, Your Honor.

11 THE COURT: Okay. Let me let you get them
12 back, the ones that you don't want, okay?

13 MS. HAMAKER: Yes, sir, Your Honor. Sorry
14 about that, Your Honor.

15 THE COURT: Okay. All right. Mr. Dejong,
16 I'll be glad to hear from you. I'll be glad to hear
17 from your client or anyone else who would like to
18 address the Court before I impose sentence.

19 MR. DEJONG: Your Honor, there's really not a
20 great deal I can add. I'm sure Your Honor heard the
21 personal information on Mr. Nance during the course of
22 the trial. I'll be happy to go over that again, but I
23 don't -- I'm sure Your Honor heard it and I don't really
24 feel a need for that.

25 Mr. Nance is forty-one, Your Honor. He's a

The State -vs- Reginald Nance (2010-GS-39-354, 355, 356, 357, 358 and 360)
Charge

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1 relatively -- a lot younger than I am. That's for sure.
2 He's a young man by all stretch of the imagination. He
3 does have a prior record. Your Honor heard about that.
4 I will say this, Mr. Nance has been a pleasure to
5 represent. We've spent a good bit of time together over
6 the last few weeks and he's been nothing but a gentleman
7 with me, and been just really a nice person to
8 represent. And I appreciate that, Your Honor. I would
9 just ask for the mercy of the Court and be as lenient as
10 you can be, Your Honor.

11 THE COURT: Thank you, Mr. DeJong. Anything
12 you want to tell me, Mr. Nance? I'll be glad to hear
13 from you, sir?

14 DEFENDANT: I accept the judgment of the Court
15 because I was found guilty by a jury of my peers. So
16 whatever the Court decides I'm willing to accept that
17 which the Court sentences me on, Your Honor.

18 THE COURT: Anything from the State?

19 MS. HAMAKER: No, sir, Your Honor. You've
20 already heard his prior record.

21 MR. DEJONG: Your Honor, the only thing I
22 would share with the Court is, he's been in jail,
23 incarcerated, since February the 2nd of '09.

24 THE COURT: Mr. Nance, I'm grateful for the
25 service you rendered to us as a military man so that we

The State vs- Reginald Nance (2010-GS-39-354, 355, 356, 357, 358 and 360)
Charge

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1 can conduct court, so that we have the freedoms that we
2 have. And I'm grateful that you participated in that
3 service to your country. I'm grateful that all -- I'm
4 sure you're aware there's a lot of drugs out there on
5 the streets, all over the place, and you've refrained
6 from being involved in drugs, according to the testimony
7 I heard, and I'm grateful for that. You've shown good
8 judgment doing that. You, obviously, are an intelligent
9 man who's got a lot of potential, that you've had a lot
10 of potential in your life. But somehow it's been
11 misdirected. I'm sorry for that.

12 Some of your friends that are around have created
13 their own prisons, as you're well aware, obviously. Mr.
14 Parks was in prison, but not just in the Department of
15 Corrections, imprisoned by the drug use that he has. I
16 hope and pray that the State imposed incarceration that
17 you have, I hope that you understand that you'll have
18 the opportunity to -- all of us can have our different
19 prisons, but while the State puts you behind a jail cell
20 that you still have some other freedoms that you can
21 exercise, as you well know, and have some opportunities
22 while incarcerated to better yourself in many ways and
23 to help other people perhaps, too, in a positive way.

24 This is Case 2010-GS-39-356, the sentence of the
25 Court is defendant be committed to the State Department

The State -vs- Reginald Nance (2010-GS-39-354, 355, 356, 357, 358 and 360)
Charge

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1 of Corrections for a period of eleven years, be given
2 credit for his time served.

3 Case 2010-GS-39-357, the sentence is commitment to
4 the State Department of Corrections for a period of
5 eleven years. This is to be a consecutive sentence to
6 that previously imposed.

7 2010-GS-354, the sentence is commitment for five
8 years. It's to be consecutive to that as previously
9 imposed.

10 Case 2010-358, the sentence is five years to be
11 concurrent.

12 2010-39-360, a five year sentence to be
13 concurrent.

14 2010-355, a thirty day sentence to be concurrent.

15 All those, credit for time served and restitution
16 on the amount that was set forth in the restitution
17 order to be paid.

18 I wish you the best, sir.

19 MR. DEJONG: Thank you, Your Honor.

20 MS. HAMAKER: Thank you, Your Honor.

21 THE COURT: All right. Court is adjourned for
22 the week.

23

24 (END OF REQUESTED TRANSCRIPT OF RECORD)

1 CERTIFICATE OF REPORTER

2

3 I, the undersigned Danette P. Hanks, Official Court
4 Reporter for the Thirteenth Judicial Circuit of the
5 State of South Carolina, do hereby certify that the
6 foregoing is a true, accurate, and complete transcript
7 of record of all the proceedings had and evidence
8 introduced in the trial/hearing of the captioned case,
9 relative to appeal, in the Circuit Court for Pickens
10 County, South Carolina, on the 26th day of April, 2010.

11 This transcript may contain quoted material. Such
12 material is reproduced as read by the speaker.

13 I do further certify that I am neither of kin,
14 counsel, nor interest to any party hereto.

15 November 15, 2010

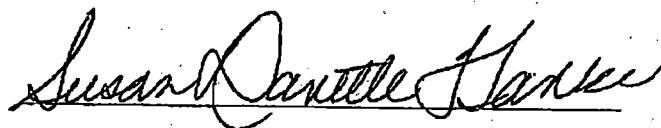
16

17

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Circuit Court Reporter

FORM 5

2013 JUN 19 AM 9 35
STATE OF SOUTH CAROLINACOUNTY OF Pickens CLERK OF COURT
PICKENS COUNTY

IN THE COURT OF COMMON PLEAS

Reginald A. Nance #275742
Full name and prison number (if any) of Applicant.2013-CP-39- 1189

v.

State of South Carolina

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay fees and costs of the proceedings. When the application is completed the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Broad River Correctional Institution
2. Name and location of Court which imposed sentence Pickens Co. General Sessions
3. Name(s) of co-defendant(s) (if any) Johnny Noel Parks
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2010-GS-39-354, 355, 356, 357, 358, and 360
 - (b) 2nd degree burglary (2x); grand larceny; petit larceny
 - (c) possession of a firearm; malicious injury to real property
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 4-30-2010; 11yrs. (consecutive) 11yrs. (consecutive)
 - (b) 5yrs. total 27yrs.

Revised 3/2003

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty xx _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes _____
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Affirmed _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. Heard May 6, 2013-Filed May 22, 2013 _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Unpublished Opinion No. 2013-UP-215 _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Ineffective Assistance of Counsel

(b) Prosecutorial Misconduct

(c) Due Process Violation

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

See Attachment

(a) _____

(b) _____

(c) _____

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? N/A

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A

(d) any other petitions, motions or applications in this or any other Court? N/A

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. _____

ii. _____

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. _____

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

Attachment Sheet

1. Trial counsel was ineffective for failure to object to perjured testimony.
2. Trial counsel was ineffective for eliciting bad act testimony.
3. Trial counsel was ineffective for failure to object to impermissible questioning.
4. Trial counsel was ineffective for failure to request proper jury charge.
5. Trial counsel was ineffective for failure to object to closing argument.
6. Trial counsel was ineffective for failing to investigate the charges against the applicant.
7. Prosecutorial Misconduct: presented perjured testimony; failed to correct perjured testimony; committed fraud on the court; violated due process.
8. Violated Due Process by denying a fair trial
9. Actual Innocence

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. _____

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) This is initial PCR

(b) _____

(c) _____

17. Were you represented by an attorney at any time during the course of:

Revised 3/2003

- (a) your arraignment and plea? _____
- (b) your trial, if any? Yes
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
 - i. John DeJong 214 East Main St. Pickens, SC 29671
 - ii. Susan B. Hackett 1330 Lady St. Ste. 401 Cola, SC 29201
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. Trial and Sentencing
 - ii. Direct Appeal
 - iii. _____

19. State clearly the relief you seek in filing this application:

Conviction and Sentence reversed & remanded

20. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA 2013 JUN 19, AM 9 35

County of Pickens

CLERK OF COURT
PICKENS COUNTY

VERIFICATION

Reginald A. Nance #275742 SOUTH CAROLINA
I, , being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

SWORN to and subscribed before me this 13
day of June, 2013.

Eugene Kott (L.S.)
Notary Public

My Commission Expires April 4, 2018

My Commission Expires: _____

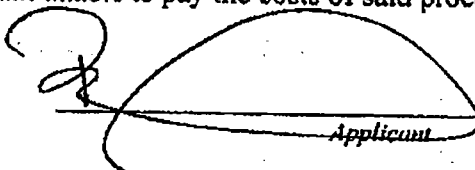
APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

2013 JUN 19 AM 9 35

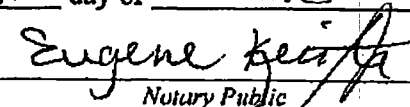
Reginald A. Nance #275742
I, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.


Applicant

SWORN or affirmed to and subscribed before me this
13 day of June, 2013.


Notary Public

My Commission Expires April 4, 2016

My Commission Expires: _____

STATE OF SOUTH CAROLINA)

COUNTY OF PICKENS)

IN THE COURT OF COMMON PLEAS

2013-CP-39-0789

Reginald Antonio Nance,
S.C.D.C. No. 275742,
Applicant,

v.

RETURN

State of South Carolina,

Respondent.

The Respondent, making its Return to the Application for Post-Conviction Relief filed June 19, 2013, would respectfully show this Court:

I.

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Pickens County. The Applicant was indicted at the March 2010 term of the Pickens County Grand Jury for grand larceny (2010-GS-39-0354), petit larceny (2010-GS-39-0355), two counts of second-degree burglary (2010-GS-39-0356, -0357), possession of a weapon during the commission of a crime (2010-GS-39-0358), and malicious injury to real property (2010-GS-39-0360). John W. DeJong, Esquire represented the Applicant.

After the State called the case to trial, the Applicant was found guilty. On April 30, 2010, the Honorable G. Edward Welmaker sentenced the Applicant to concurrent terms of thirty days for petit larceny, eleven years for one count of second-degree burglary (2010-GS-39-0356), five years for possession of a weapon during the commission of a crime, and five years for malicious injury to real property. Judge

Welmaker levied consecutive sentences of five years for grand larceny and eleven years for the second count of second-degree burglary.

A Notice of Appeal was filed at the South Carolina Court of Appeals. Tristan M. Shaffer, Esquire of the South Carolina Office of Appellate Defense perfected the appeal. The Court of Appeals affirmed the Applicant's convictions and sentences. State v. Nance, Op. No. 2013-UP-215 (S.C. Ct. App. filed Feb. May 22, 2013). The remittitur was sent June 14, 2013.

Attached herewith and incorporated herein by reference are the records of the Pickens County Clerk of Court regarding the subject convictions, the Applicant's records from the Department of Corrections, the trial transcript, and the appellate records.

II.

In his Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel:
 - a. "[F]ailure to object to perjured testimony"
 - b. "[E]liciting bad act testimony"
 - c. "[F]ailure to object to impermissible questioning"
 - d. "[F]ailure to request proper jury charge"
 - e. "[F]ailure to object to closing argument"
 - f. "[F]ailing to investigate the charges against the applicant"
2. Prosecutorial misconduct:
 - a. "[P]resented perjured testimony; failed to correct perjured testimony; committed fraud on the court; violated due process"
3. Violated due process by denying a fair trial:
 - a. "Actual innocence"

III.

The Applicant alleges that he received ineffective assistance of trial counsel. The Respondent contends that the Applicant's counsel rendered adequate assistance and

provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief proceeding, the Applicant bears the burden of proving the allegations in his application. Id. Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

The proper measure of performance is whether the attorney provided representation "within the range of competence required in criminal cases." Strickland, 466 U.S. at 687. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. at 690. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 688). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

The Respondent submits that the Applicant cannot satisfy either requirement of

the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Applicant also asserts that he was denied due process of law. However, the Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant "specifically set forth the grounds upon which the application is based." S.C. Code Ann. § 17-27-50 (2003). In an application for post-conviction relief, it is incumbent upon the Applicant to make at least a *prima facie* showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since the Applicant has failed to make even a *prima facie* showing, the Respondent would submit that this allegation should be dismissed for failing to meet the requirements of the Uniform Post-Conviction Procedures Act. This allegation is so vague that it is impossible for the State to respond.

V.

Applicant also alleges prosecutorial misconduct. Prosecutorial misconduct is not an issue for post-conviction relief. Rather, this allegation is a direct appeal issue that is procedurally barred by S.C. Code Ann. § 17-27-20(b) (2003). Post-conviction relief is not a substitute for an appeal. Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). A post-conviction relief application cannot assert any issues that could have been

raised at trial or on appeal. Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993). The Applicant could have raised this issue on appeal. The failure to do so has waived this allegation as grounds for relief. Regardless, it is applicant's burden to prove actual prosecutorial misconduct. Alabama v. Smith, 490 U.S. 794, 109 S. Ct. 2201 (1989).

VI.

The Respondent denies each allegation that is not expressly admitted, qualified or explained.

VII.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held and counsel appointed to represent the Applicant.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN RATIGAN
Senior Assistant Deputy Attorney General

By: Karen Ratigan
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

Dec. 3, 2013

STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

REGINALD ANTONIO NANCE, 275742

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

2013-CP-39-0789

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Reginald Antonio Nance, 275742
Tyger River Correctional Institution
100-200 Prison Road
Enoree SC 29355

DATED this 3rd day of December, 2013.


Judy A.C. Carey, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

IN THE COURT OF COMMON PLEAS

REGINALD ANTONIO NANCE,

PLAINTIFF,

-VS-

STATE OF SOUTH CAROLINA,

DEFENDANT.

2013-CP-39-00789

AUGUST 25, 2014

TRANSCRIPT OF RECORD

BEFORE:

THE HONORABLE JAMES R. BARBER, III, JUDGE

APPEARANCES:

MILLS ARIAIL, ESQUIRE
ATTORNEY FOR THE PLAINTIFF

KAREN RATIGAN, ESQUIRE
ATTORNEY FOR THE DEFENDANT

DANETTE P. HANKS
CIRCUIT COURT REPORTER

Reginald Antonio Nance -vs- State of South Carolina (2013-CP-39-00789)
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2

1

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Reginald Antonio Nance -vs- State of South Carolina (2013-CP-39-00789)
Exhibit List

3

PLAINTIFF'S EXHIBITS

NO	DESCRIPTION	ID	EV
	(NONE)		

DEFENDANT'S EXHIBITS

	(NONE)		

COURT'S EXHIBITS

	(NONE)		

1

AUGUST 25, 2014

2

(WHEREUPON, court convened with all parties

3

present and the following proceedings were had.)

4

THE COURT: All right. Ms. Ratigan, you

5

ready to go?

6

MS. RATIGAN: Yes, Your Honor, thank you.

7

May it please the court.

8

This is the case of Reginald Antonio Nance versus

9

the State of South Carolina. Docket number is 2013-CP-

10

39-0789. Mr. Nance was indicted for grand larceny,

11

petit larceny, two counts of second degree burglary,

12

possession of a weapon during the commission of a

13

violent crime and malicious injury to real property.

14

He was represented on these charges by Mr. DeJong.

15

The case was brought to trial in April of 2010.

16

Mr. Nance was found guilty. Judge Welmaker sentenced

17

him on April 30th of 2010 to concurrent terms of thirty

18

days for petit larceny, eleven years for one count of

19

second degree burglary, five years for possession of a

20

weapon during the commission of a violent crime and

21

five years for malicious injury to real propeerty. The

22

judge then levied consecutive sentences of five years

23

for grand larceny and eleven years for the second count

24

of burglary second. Judge that's a total of twenty-

25

seven years sentence for all these charges. The case

Reginald Antonio Nance -vs- State of South Carolina (2013-CP-39-00789)
Reginald Antonio Nance - Direct Examination by Mr. Ariail

5

1 was appealed. The Court of Appeals affirmed his
2 convictions and sentences in May of 2013. His
3 application was timely filed. And we're ready to
4 proceed.

5 THE COURT: All right. Mr. Ariail.

6 MR. ARIAIL: Yes, Your Honor. We're ready to
7 proceed. I call Mr. Nance to the stand.

8 THE COURT: Mr. Nance, come up here, please.

9 THE CLERK: Place your left hand on the bible
10 and raise your right hand, please.

11 Do you solemnly swear or affirm the testimony
12 you're about to give in this case will be the truth,
13 the whole truth and nothing but the truth, so help you
14 God?

15 THE WITNESS: Yes, ma'am.

16 THE CLERK: State your full name for the
17 record.

18 THE WITNESS: Reginald Antonio Nance.

19 THE CLERK: Please be seated.

20 REGINALD ANTONIO NANCE,

21 HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

22 DIRECT EXAMINATION

23 BY MR. ARIAIL:

24 Q. Mr. Nance, please state your name again for the
25 record?

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- 1 A. Reginald Antonio Nance.
- 2 Q. Okay. And you were represented by Mr. DeJong; is
- 3 that correct?
- 4 A. That's true.
- 5 Q. And you heard Ms. Ratigan talk about the charges
- 6 you had. He represented you on all those charges;
- 7 correct?
- 8 A. Yes, sir.
- 9 Q. Okay. Now, when were you -- I guess he was
- 10 appointed as your public defender; is that correct?
- 11 A. Yes, sir.
- 12 Q. Okay. When was he appointed; do you remember?
- 13 A. I would say approximately about two weeks after I
- 14 was originally arrested in February.
- 15 Q. Okay. These charges are for -- I guess they all
- 16 happened on January 27, 2009; is that correct?
- 17 A. Yes, sir.
- 18 Q. Okay. When were you arrested?
- 19 A. I think it was February the 3rd of 2009.
- 20 Q. Okay. So once you were arrested then you were
- 21 put here in, I guess, the Pickens County Detention
- 22 Center; is that correct?
- 23 A. Yes, sir.
- 24 Q. Okay. And he was appointed as your PD?
- 25 A. Yes, sir.

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1 Q. Did you have a preliminary hearing in regards to
2 this?

3 A. Yes. I had -- matter of fact, I had three
4 preliminary hearings because I had multiple charges.
5 So I wound up having three preliminary hearings
6 altogether.

7 Q. Okay. And he represented you on all the charges?

8 A. Yes, he did.

9 Q. Okay. In the preliminary hearing I guess they
10 found probable cause and it moved forward; is that
11 correct?

12 A. Yes..

13 Q. Okay. Now, when was the first time you talked
14 with him?

15 A. I would say about two weeks after I was arrested.
16 I think I spoke with him then.

17 Q. Okay. At that time did y'all have discovery or
18 did you just talked about the specifics of the crime?

19 A. I think I had a few incident reports and we
20 discussed what was going on ---

21 Q. Okay.

22 A. --- at the time.

23 Q. Okay. So you just gave him specifics and he --
24 back and forth talk about the ---

25 A. Yeah. We basically just talked about what took

1 place and what was my thoughts on everything.

2 Q. Okay. And after that -- so when was the next
3 time you met with him?

4 A. I met with him a couple more times. And then
5 after that it was -- mostly I talked to him over the
6 phone and through letters. And we had about three or
7 four days before trial that we sat down and talked. It
8 might have been even five days. It was between three
9 to five days we sat down before trial.

10 Q. It was tried in April 2010; correct, April 30th?

11 A. Yes, it was.

12 Q. That week. I guess that was when you were
13 convicted. So I guess he was on your case for
14 approximately about a year and two months or so; is
15 that right?

16 A. Yes.

17 Q. How many times during that period do you think
18 you met with him or an investigator from his office?

19 A. Physically I would say about ten, fifteen times
20 during that time.

21 Q. Okay. Did he answer all your questions during
22 that time that you needed answered?

23 A. Pretty much. Clearly he answered things on
24 matters I had outside -- the only thing that really
25 didn't get resolved was an issue I had about an alibi.

1 At that time he sent his investigator out. But at that
2 time the video that was needed had already been erased,
3 if I'm not mistaken. That's what had to have
4 transpired.

5 Q. Okay. And we'll go back through this. But there
6 was an alibi in this. When did you ask him to go get
7 the video from the hotel?

8 A. Oh, that was I think the first time we met was
9 when we discussed it. And from that he wrote me a
10 letter about it saying that he would send his
11 investigator out there to check it out.

12 Q. Okay. So he had a video and it was from the
13 hotel. Is it ---

14 A. No. It was from a gas station that was right
15 down from it.

16 Q. Okay. So did you ever receive any information
17 about whether, when he went out to look for that video,
18 what he found?

19 A. Basically he informed me later on that the people
20 stipulated that the video had -- since there was no
21 crime committed at the store at the time, that they
22 automatically erased it.

23 Q. How did you find out about this video or did you
24 ask him to go look for this video?

25 A. Well, see, I told him to go out there because I

1 knew the place had several video cameras. And I knew
2 at the time that I went in there that I had to be on
3 camera, because I sat and talked to the clerk. And so
4 that automatically put me right there at the place.
5 And so I knew that would show where I was at during
6 that time.

7 Q. Okay. So that was one thing you had asked him --
8 I want to divide it up a little bit. There's pretrial
9 and then there's trial matters. Before you went to
10 trial, you asked him to look for a video?

11 A. Yeah.

12 Q. Okay. And that's the only -- what I'm trying to
13 do is kind of narrow it down to what we're looking at
14 and how he was ineffective. The pretrial matters, what
15 I understand about going out and getting this video,
16 that's the one issue that you had?

17 A. Yeah.

18 Q. Okay. Any other issues you've got pretrial that
19 you asked him to do; talk to witnesses?

20 A. None that I could think of at the time as for
21 pretrial.

22 Q. Okay. And I want to get a little background in
23 regards to this case. It involved, I guess, two
24 alleged burglaries here in Pickens, I guess a Cash
25 Advance and another store next to it. And evidence was

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1 there -- I guess you testified. You had a Co-Defendant
2 who testified. And that was kind of the synapse of the
3 case, was your testimony, his testimony and then some
4 officers that testified in regards to it. Is that kind
5 of ---

6 A. Yeah.

7 Q. --- the understanding? Now, the main issue, and
8 I guess I want to kind of narrow it down a little bit,
9 you had discussions with him prior to the trial. Was
10 any plea offer ever given to you or any offer to plead
11 guilty; do you remember?

12 A. There was no direct plea offer offered to me.
13 One time he asked me could I do five years? He asked
14 me could I do five years or he asked me would I accept
15 five years. But as for a plea that was offered to me,
16 there was no plea actually offered other than the fact
17 he stipulated -- he asked me could I do five years.

18 Q. But he never said the solicitor's office is
19 willing to offer you five years?

20 A. No. He just asked me what I could do.

21 Q. And what did you tell him when he said can you do
22 five years?

23 A. I said, I still want to see what the trial looked
24 like because I hadn't even got all the evidence yet.

25 Q. Okay. So going into trial, you made a decision

- 1 that you wanted to have a trial ---
- 2 A. Yeah.
- 3 Q. --- and plead not guilty to this?
- 4 A. Yeah.
- 5 Q. Okay. So you felt you were -- you had enough
- 6 information, you had all the evidence as to what they
- 7 were going to present against you at trial; correct?
- 8 A. Yeah.
- 9 Q. Okay. Did he go over all the elements of each of
- 10 the crimes and -- that you were facing?
- 11 A. Well, yeah, he explained to me basically what the
- 12 charges were. He felt that he could present to --
- 13 basically see what the state had to offer and we'll go
- 14 from there and see how it play out.
- 15 Q. Okay. So you felt like you were adequately
- 16 informed as to what the state had to prove to convict
- 17 you on these charges?
- 18 A. Well, I felt that he gave me -- he told me enough
- 19 to basically -- for me to go forward to trial. I felt
- 20 by what he was saying that -- about going forward, that
- 21 I stood a good chance of being found not guilty.
- 22 Q. Okay. So you put your hand -- I guess you wanted
- 23 to have a trial to see if the jury would make the
- 24 decision?
- 25 A. Yeah.

1 Q. Okay. Now, I want to go through the trial a
2 little bit and just kind of get your understanding of
3 what you believe he did that was ineffective. I know
4 we've talked and you put as part of your PCR
5 application, I want to kind of, you know, inform the
6 court and inform the Judge in regards to what some of
7 these are. You put some bad -- eliciting bad act
8 testimony. That, from what I understand is, the
9 solicitor elicited some testimony that you felt that
10 Mr. DeJong should have objected to; is that correct?

11 A. Yeah. Basically what you're referring to, the
12 elicitation of the bad acts, this was during a cross-
13 examination of the lead investigator. Basically what
14 took place is that while Lane Byers was on the stand,
15 he was cross-examining him. And during this cross-
16 examination -- I'll read this. During the cross-
17 examination of lead detective Lane Byers, trial counsel
18 questioned whether there was some confusion over the
19 vehicle found at the crime scene and the vehicle that
20 was stolen the same night. It say, this opened the
21 door for the redirect examination on this line of
22 questioning. It say, Lane Byers testified that he had
23 no knowledge of the stolen vehicle because it was not
24 -- it was assigned to another detective. It says,
25 while the court was in recess, the state informed trial

1 counsel that they wanted to recall the previous
2 witness. It says, after hearing the arguments from the
3 state and trial counsel, the court allowed to recall
4 Mike Baker for re-examination on a matter of the stolen
5 vehicle because he was the assigned detective on the
6 case. It say, during his re-examination, Detective
7 Baker testified that the vehicle in question was stolen
8 from a Tri-City Body Shop on Highway 8, approximately
9 two miles from the crime scene. The vehicle was
10 recovered February the 10th, 2009, in Clinton, South
11 Carolina, fourteen days after the crime. There was no
12 forensic evidence found, nor was anyone charged with
13 the theft of the vehicle. It says, armed with this new
14 information, the state proceeded to change its strategy
15 after talking with Parks during the court's recess. It
16 say, thereafter Parks would testify that he, along with
17 the applicant, broke into the body shop and stole a
18 Ford Taurus to evade capture. This implicating the
19 applicant in another burglary in the theft of a
20 vehicle. During its closing the state would use this
21 testimony of the burglary and the stolen vehicle to
22 bolster the credibility and trustworthy of Parks, as
23 well as formulate the ending point in its summation
24 against the applicant that he solicited Tisha Brown's
25 aid to help him dispose of the incriminating evidence.

1 and the stolen vehicle, though none of which the state
2 asserted in its closing argument of the stolen vehicle
3 was in the record. The trial counsel neglected to
4 object to any of the testimony Parks presented before
5 the jury for consideration, though he had knowledge of
6 Parks' previous statement to the prosecution and law
7 enforcement officers that applicant supposedly walked
8 from the crime scene and eventually hitched a ride back
9 to Greenville from an unknown individual, which is
10 totally different from the events Parks was testifying
11 to on the stand. Instead counsel allowed Parks to
12 implicate him into another burglary, which eventually
13 related to the theft of a vehicle which he had
14 previously opened the door for during cross
15 examination. Because at that time the state had no
16 knowledge -- well, the state wasn't presenting nothing
17 about another vehicle. But when he questioned Lane
18 Byers about it, that opened the door for the state to
19 come in. And when the state -- because the state
20 stipulated, well, hold up, we now believe that this
21 stolen vehicle that Mr. Young had just brought up to
22 the jury's attention was used by the -- by me later on
23 that night. Because originally their version was that
24 me and Parks walked away from the crime scene, walked
25 about four miles down the road, then we hitched a ride

1 back to Greenville. But once he opened the door for
2 that, the state said, well, no, Mr. Nance and Mr. Parks
3 broke into another establishment, stole a vehicle, then
4 drove back to Greenville.

5 Q. All right. So what -- I'm trying to get what the
6 bad act is. Did Mr. Parks testify, the co-defendant,
7 testify that you had gone down the road after you had
8 -- the facts that I remember from the transcript were,
9 there was a car that was running outside of the
10 establishment, the Tobacco Warehouse.

11 A. Yeah.

12 Q. It apparently was left there. The officer said
13 it was running when they got there.

14 A. Yeah.

15 Q. Then Mr. Parks testified y'all had to leave the
16 car to go down the road to get -- and when you were
17 walking down the road, y'all went to a, I guess, body
18 shop and stole a car from there?

19 A. Yeah.

20 Q. Okay. So then you took that car and then drove
21 back to Laurens or Clinton where it was found later; is
22 that correct?

23 A. Yeah. Well, no, see, initially Parks, in his
24 initial statement to law enforcement and the solicitor,
25 he stipulated that when the police arrived me and him

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1 evaded law enforcement; we evaded two K-9 units. We
2 walked about four miles down the road. We ran into
3 somebody, this unknown individual, and then we hitched
4 a ride back to Greenville. That's what was in his
5 initial statement to the law enforcement agency.

6 Q. Okay.

7 A. Well, during the course of the trial, though,
8 Lane Byers was on the stand first. Well, during the
9 cross examination, Mr. DeJong asked, wasn't there some
10 confusion; because they was talking about the vehicle
11 behind -- that was found behind the crime scene. And
12 he said, well, wasn't there some confusion about that
13 particular vehicle and another vehicle that was found
14 that night? And Lane Byers stipulated, well, I have no
15 knowledge about that because I was not the officer
16 assigned to it. Well, during redirect, the solicitor
17 came in and said, well -- she started questioning Lane
18 Byers about that same vehicle. She said, well, why
19 don't you have any knowledge of it? He said, because I
20 wasn't the one assigned to it. He said, the only
21 vehicle I was worried about was the one that was parked
22 behind the crime scene. Well, the court asked for a
23 recess. When the recess was over, they was arguing
24 about something else, but then Mr. DeJong said, well,
25 it was just brought to my attention that the solicitor

1 wanted to call Michael Baker because he was their lead
2 detective on the stolen vehicle that was allegedly used
3 now by Mr. Nance and his co-defendant to evade law
4 enforcement officers. So it was an argument about
5 that. She raised -- well, he raised that it was in
6 violation of Rule 611, if I'm not mistaken. The court
7 agreed to the state that she could recall Mike Baker
8 particularly about the stolen vehicle. Michael Baker
9 gets on the stand stipulating that a stolen vehicle was
10 stolen from a burglary that was committed at the Tri
11 Body Shop, that it was found in Clinton, South
12 Carolina. That there was no physical evidence linking
13 anybody to the crime. That there was no physical
14 evidence found in the car. All right. At that point
15 he left the stand. They brought Johnny Parks up.
16 Johnny Parks gets to testifying to the events that took
17 place that night. He said, well, we was walking down
18 -- what's 123, I'm not sure -- Gentry Highway. And at
19 the time she said, well, did y'all eventually find a
20 way to get out of there? He said, yeah, we went down
21 two or three miles down the road, we broke into a body
22 shop. There we found the keys to a Ford Taurus. He
23 goes into that we got the Ford Taurus, put a tag on it,
24 took the keys, drove back to Greenville, rode around
25 Greenville. Finally got back to his house. It was

1 sometime later that he don't know what happened to me
2 after that point. He say that I dropped him off and
3 that he hasn't seen me for two days. Then in its
4 closing, though, the state would bring that right back
5 up, stipulating that -- at this time they said -- they
6 even went further and say, well, that I drove the car
7 back to Laurens and talked to Ms. Brown, told Ms. Brown
8 what just occurred that same night and that I needed
9 her help in disposing of the stolen vehicle. Then the
10 state say, well, Ms. Brown stipulated, well, I don't
11 want Mr. Nance to go back to jail because I need him
12 here to help me. Yes, I'll help you dispose of this
13 vehicle. That she then proceeded to jump inside my
14 Landrover that I had initially parked there and she
15 followed me to dispose of the vehicle. And the rest is
16 history. Well, none of this was in the record. I
17 mean, because he had a closing argument which Mr.
18 DeJong did not object to, as well. Because Ms. Brown
19 was -- the state offered Ms. Brown's testimony. Ms.
20 Brown never spoke anything about me soliciting her aid
21 and helping me dispose of a stolen vehicle. There was
22 no evidence stipulated that I went back to Laurens and
23 requested her assistance. There was no clear and
24 convincing evidence. I've never been charged with it.
25 It's not a part of a conviction. But yet, during the

1 closing argument, Mr. DeJong didn't object to that
2 either. Though he opened the door for this testimony
3 to even be brought forth.

4 Q. All right. So let me understand what you're
5 saying he did wrong with regards to this stolen
6 vehicle. First, he opened the door in regards to, I
7 take it, was ---

8 A. Yeah. He put ---

9 Q. --- Lane Byers is the first one. Second of all,
10 he didn't object to it or try to keep it out later when
11 it came in?

12 A. Yeah, when it resurfaced.

13 Q. Okay. Then the next thing is, you don't think he
14 did an adequate job cross examining the witnesses in
15 regards to this stolen vehicle?

16 A. Well, when it came to Johnny Parks, he allowed
17 the whole testimony to come in. I mean, from the
18 beginning of another -- because I'm already on trial
19 for a burglary. Now you've got me committing another
20 burglary, the same thing I'm on trial for. I'm not on
21 trial for the Tri Body burglary. But now you've got me
22 on trial -- you bring before the jury that I committed
23 the same crime again, stolen another vehicle, which is
24 another charge, then I enlisted the aid of somebody
25 else. I done effectively made Ms. Brown a co-defendant

1 and an accessory after the fact because the state is
2 stipulating that I tell her everything that done
3 happened that night. Then I elicit her aid in
4 disposing of the vehicle. But yet I've never been
5 charged with the burglary of Tri County. I've never
6 been charged with the theft of a vehicle. I've never
7 been charged with -- neither has she. And you're
8 talking about something that was fourteen months after
9 the fact. But yet the state stipulated that I
10 committed these crimes.

11 Q. Okay.

12 A. But they put it before the jury by my counsel
13 opening the door for that by cross examining Lane Byers
14 about this vehicle. The state didn't bring this
15 vehicle out. They was talking about the vehicle behind
16 the Tobacco Warehouse. But in the process of him cross
17 examining Lane Byers, he opened the door for the state
18 to bring all this other information in. And then in
19 its closing he didn't object to them bringing in
20 testimony about the aftereffect of me going to Laurens.
21 Because the solicitor started making statements,
22 talking about this is what Tisha Brown said; this is
23 what I said during all this time. There was no way
24 possible for her to even have this type of evidence
25 that would stipulate that we was making these

1 statements to one another. He never objected to that,
2 as well.

3 Q. Okay. Now, one of the other issues we've
4 discussed and I want to get your take on it, is in this
5 case in the vehicle when it was found it was running?

6 A. Yeah.

7 Q. And in the vehicle there was information, I guess
8 in Mr. Parks' wallet, that had your identification in
9 the wallet, along with I think there was a debit card
10 for you?

11 A. Yeah, debit card.

12 Q. So you discussed this with me as the -- I'm
13 trying to understand exactly. You say there's a CAD
14 report as to how the officers showed up.

15 A. Yeah.

16 Q. And then you and Mr. DeJong discussed about that
17 information and how -- you had some issue in regards to
18 how law enforcement did a search of the vehicle and
19 things you could bring up to show that your wallet
20 wasn't in there, information wasn't in there, how it
21 was related. Can you go into that?

22 A. Yeah. All right. That deals with the testimony
23 of all the officers. All right. Basically what I'm
24 saying is the state presented false evidence. From the
25 beginning of the trial throughout the end of the trial,

1 the state presented testimony about the applicant's
2 license that was found inside the vehicle parked
3 outside the scene of the two burglaries. The state
4 theory was that at some point throughout the crime,
5 either while entry was being made or when police
6 officers showed up, applicant placed his license and
7 bank card inside his alleged accomplice, Johnny Parks'
8 wallet, to deflect suspicion from himself and place all
9 the blame on Parks. There was no physical evidence
10 connecting applicant to the burglaries. Rather the
11 state case rested on the direct testimony of Parks.
12 Law enforcement officers, the South Carolina Department
13 of Vehicles records custodian and through the testimony
14 of Deputy Baker, Burkhold, K-9 Units Fricks and Durham
15 and crime scene investigator Lieutenant Robinson. It
16 was alleged that no one entered the vehicle at any time
17 until K-9 units arrived to -- sent the vehicle for
18 tracking purposes and that the vehicle was secured at
19 all times. Once the K-9 unit scented the seat of the
20 vehicle, they began tracking for possible suspects. At
21 that time Lieutenant Robinson began to inventory the
22 vehicle for evidence. The first thing he does is
23 photograph the vehicle as found. All right. The
24 testimony was extensive and precise as to the
25 activities of all law enforcement officers responding

1 to the scene. Well, they went step-by-step, all the
2 officers that was in the courtroom at this time. They
3 all heard each other's testimony. They verified --
4 they kept their stories just the same. Cory Baker got
5 up there, he stipulated that he showed up, the vehicle
6 was running while he was there. There was a Pickens
7 City Police, he showed up. They showed there
8 simultaneously. That when he stepped around the
9 corner, he seen the vehicle running, the two back doors
10 open. So in his mind they done caught a crime in
11 progress. All right. At that time Lieutenant
12 Robinson, he heard it over the radio. He shows up.
13 They have him stand right there at the vehicle. He
14 said that he guarded that vehicle and secured it for
15 the possibility of somebody who had perpetrated the
16 crime might come back to get into the vehicle. So he
17 made sure nobody could get back in the vehicle; while
18 the other two officers cleared the building. All
19 right. From that point there, they stipulate, other
20 officers started showing up. He done called in for the
21 K-9 unit. That nobody never touched the vehicle.
22 Every officer get up there and say the same thing; we
23 never entered the vehicle; we never entered the
24 vehicle. Nobody touched the vehicle. Lieutenant
25 Robinson had the vehicle secured. That was everybody's

1 testimony. All right. Lieutenant Robinson gets on the
2 stand, he say, well, the first person to enter the
3 vehicle is the first arriving K-9 unit, which is, if
4 I'm not mistaken, is Durham. He say he allowed him
5 just to open the door and cut the car off because the
6 car was running and the scent from the vehicle might
7 disturb the dog tracking. So he allowed him to cut it
8 off. All right. He said now at that point they
9 waiting on Fricks to show up because he's the actual --
10 the officer on call for K-9. So he say it takes him a
11 while to get there. He don't get there till like
12 eleven fifty-five. He say he let his dog out. He said
13 he let his dog walk around, stretch, have different
14 bowel movements, whatever, and then they start tracking
15 at around about anywhere from twelve ten till twelve
16 fifteen. That's when they started tracking. At that
17 point, Lieutenant Robinson say, well, once they scented
18 the vehicle, got the scent off the vehicle, then he
19 enters the vehicle and the first thing he does is take
20 pictures as the crime scene is found. And so then
21 you've got a set of pictures that the state offered up
22 to show exactly what Lieutenant Robinson did. Well,
23 the state kept offering up the one picture that they
24 had of the license, the way they found the billfold
25 sitting inside the car. Well, they questioned

1 Lieutenant Robinson about it. Lieutenant Robinson
2 stipulated that no officer ever entered the vehicle
3 except him. Mr. DeJong questioned him about it. He
4 said, well, is this the way you found the vehicle? He
5 say, yes, it is. He say, to your knowledge other than
6 the person that was in this vehicle, he say, law
7 enforcement, non-law enforcement -- he went through a
8 list of individuals that could have possibly been in
9 the vehicle. Lieutenant Robinson said, no, nobody in
10 the vehicle other than me to search what's in this
11 vehicle. He said, okay, fine. On cross examination,
12 the state would ask, is this how you found the vehicle?
13 He say, yeah, this is how I found it. She said, well,
14 is this how you found the wallet? He say, yes. He
15 say, well, was the wallet secured at all times? He
16 say, yes. Okay. Then she will go on to say in her
17 closing that at some point, either while entry was
18 being made or while the crime was going on or when a
19 police officer showed up, that I took my license and my
20 bank card, stuck it inside Johnny Parks' wallet to say
21 that he committed the crime and I had no dealings with
22 it. And she say, Mr. Nance, you can't be fooled by Mr.
23 Nance. He's a very intelligent man. He's trying to
24 deflect suspicion. Because she even brought it to the
25 court's attention earlier in the trial that I had

1 placed my license inside the wallet to deflect
2 suspicion from myself and that I was using Ms. Brown to
3 further deceive and -- I forgot how she put it. To
4 further deceive and something else to the court so I
5 couldn't get caught. Well, in her closing, that's what
6 she focused on. She brought it back to the jury's
7 attention, say, remember, why did I ask you about this
8 bank card? She say, I had told you about it from the
9 beginning. She say, now, remember why I told you that.
10 Why is it sticking out so far? She goes on to say,
11 well, the reason why the state brought that to your
12 attention is because Mr. Nance knew that he was going
13 to get caught and so he put it in there like that and
14 that's what he did. Well, that was her theory the
15 whole time; that I personally put that there. That I
16 planted this evidence. Well, when you go back through
17 the CAD report, though, you will see that the first
18 responding officer, the K-9 Officer Fricks, he done
19 called the license in. He done called my license in.
20 And he called Johnny Parks' license in. But he called
21 it in as soon as he arrived at the crime scene. Though
22 he say he never entered the vehicle. Now, that was his
23 testimony; he never entered it. But the CAD report
24 shows him -- I'll get it out for you.
25 Q. What I'm getting to, I want to get your testimony

1 as to what you're believing that Mr. DeJong did that
2 was ineffective? Did he not object? Did he not cross
3 examine someone? I mean, what ---
4 A. Well, see, that was just it. He didn't object to
5 this testimony -- to this evidence being offered up
6 because, see, you've got to realize if you're
7 stipulating that I placed this in here, now you're
8 effectively putting me at the crime scene. Remember, I
9 have an alibi. But now at this time, with the evidence
10 that the state is offering up, they're offering up
11 evidence that I done committed this crime and now all
12 of a sudden I'm trying to deflect suspicion from this
13 crime from myself to somebody else. That I placed my
14 license inside Mr. Parks' wallet. That I placed my
15 bank card inside Mr. Parks' wallet. Well, if Mr. ---
16 Q. What I'm trying to find out, I mean, the
17 testimony, what I remember reading, part of it was this
18 was what your -- what it looked like. Not saying that
19 you put it in there. She brought that up in closing
20 argument.
21 A. Yeah. Well, she brought it up previously to the
22 court that I put my wallet -- she say -- before she
23 even did it in closing, she brought it up to the court
24 that I had placed my -- before I even took the stand on
25 the argument about the gun charge, he say, if anything

1 -- if you go to page 601, line 12 through 14, say, if
2 anything, the evidence have shown that Mr. Nance tried
3 to hide his personal information in Mr. Parks' wallet.
4 That's on page 601, lines 12 through 14. But this is
5 before I even took the stand that she was already
6 stipulating this; that that's what I tried to do.

7 Q. I'm trying to figure -- that's 601, if I'm
8 reading correctly, that was ---

9 A. Page 601.

10 Q. Right. But you're having a discussion in regards
11 to whether or not -- I mean, this is outside the
12 presence of the jury; correct?

13 A. Yeah, I'm saying this is her theory at the time,
14 but it's outside the presence of the jury.

15 Q. Yeah, but she's not making that ---

16 A. No. She's not making that allegation before the
17 jury at this time. But I'm saying, this is what her
18 theory is of how everything went down that night.

19 Okay. Now, before the jury, that's when she come in
20 with why was I asking you about the Bank of America
21 card. If you go to page 764, it'll bring out, I think
22 starting at line 13, she say, why was I asking about
23 the Bank of America card sticking out so far, Mr.
24 Nance's Bank of America card missing or sticking out so
25 far. The reason why the state made a point about that

1 is because Mr. Nance, while Mr. Parks was making entry
2 into the store or when the police officer showed up,
3 while Mr. Parks ran out, remembered the tools, ran back
4 in. Mr. Nance knew the police officer was there. He
5 knew they were there. He knew he was going to get
6 caught. The state will give Mr. Nance this; he's a
7 very smart individual. He put that in there when the
8 officers -- the police officer showed up so he can say
9 today exactly what he's saying today and blame it on
10 Mr. Parks. He put his ID and his card in Mr. Parks'
11 wallet when the police officer showed up. Now, that's
12 her testimony in closing before the jury.

13 Q. Yeah, and what I'm -- you're saying he should
14 have objected?

15 A. Yeah. He should have objected to this.

16 Q. Shouldn't have allowed her to go into an argument
17 about what she believed to evidence ---

18 A. Yeah, because he already had -- because in our
19 discovery, he had the CAD report. The CAD report shows
20 that police officers had previously ran my license
21 number and Parks' license number prior to Lieutenant
22 Robinson ever getting in the vehicle.

23 Q. And I'm going back. We're here on what Mr.
24 DeJong didn't do.

25 A. Yeah.

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1 Q. I thought he cross examined the officers in
2 regards to the CAD report and when everybody showed up,
3 he did a pretty thorough job on that from my review of
4 the ---

5 A. Yeah. Now, see, that's just it. He cross
6 examined them all about what time they got there, so he
7 got knowledge of what time they did and what time --
8 like I say, it's extensive testimony about what every
9 officer did when they got there and what they did when
10 they got there. But now, with that extensive testimony
11 about what everybody did, well, if you go to the CAD
12 report, it'll let you know that at eleven fifty-six
13 Johnny Parks' license is being ran. At eleven fifty-
14 eight, my license is being ran. Well, there's no way
15 possible for this officer to physically have my license
16 in his hand, running my license, before the crime scene
17 man has took this picture. Because if he done ran my
18 license and Johnny Parks' license, he done been in this
19 wallet. So how he going to say I put it in there when
20 somebody else done already been in there.

21 Q. Okay. So I guess then we go back and now you're
22 saying at eleven fifty-eight, there's no way he should
23 have your wallet because he hasn't done a search of the
24 car yet. Did Mr. DeJong -- did y'all discuss that?
25 Did he bring that up to the jury? Is that one of

1 y'all's focal points?

2 A. Yeah, see, this was never brought up to the jury
3 because once they presented this evidence that this is
4 what I did, there's no cross examine about asking these
5 officers, okay, well, if you never touched the vehicle,
6 then -- if you've never been in the vehicle, how you
7 running Mr. Nance's license? If you've never been in
8 the vehicle, how you running Mr. Parks' license? If
9 you never touched nothing, if this wallet had been
10 secured all the time, if nobody never been in the
11 vehicle except you saying the people that committed
12 this crime, then how is law enforcement officer before
13 even the crime scene getting there to do it -- because
14 you've got to remember, crime scene, they saying didn't
15 nobody get into this vehicle until twelve fifteen.

16 Q. Okay. So what I'm asking, if he shouldn't have
17 been in the car, shouldn't -- you're saying that should
18 be suppressed and there was no suppression motion?

19 A. No. I'm not saying that it shouldn't have been
20 -- I'm saying that the state offered up false evidence
21 that I did this. Because, see, I testified to this
22 fact, that my license was inside the glove compartment
23 wrapped up inside the bill of sale and the title to the
24 vehicle. That's where my license was at. Now, there's
25 testimony about me putting it there, even Lieutenant

1 Robinson, he testifies that, yeah, there was two
2 envelopes inside the glove compartment that contained
3 the bill of sale and the title to the vehicle. All
4 right. Now, if you go -- if you get the evidence sheet
5 that we had, just as well of everything that was
6 inventoried that night by Lieutenant Robinson, there's
7 a picture up here. Like I say, I got pictures.
8 There's a picture of everything that he took a picture
9 of except where I say my license is at.

10 Q. Okay.

11 A. Now see, and that's a whole other argument just
12 as well that he went through everything because the
13 state presents these pictures to the jury, they show,
14 well, I did this, I did this, this is how it was found,
15 this is how it was found. But when it came to where I
16 said my license was at, there's no picture of that.
17 Now, Mr. DeJong did question them, saying, well, did
18 you fingerprint the envelopes that the bill of sale and
19 title was in? He said, well, no, because it looked
20 like it was legitimate and it looked like it belonged
21 to the owner. Well, that's where my license was at. I
22 testified to that's where my license was at. But now
23 here in the state's presenting, they talking about,
24 well, no, Mr. Nance, you put your license inside Mr.
25 Parks' wallet and you put your bank card in Mr. Parks'

1 wallet in order to deflect suspicion.

2 Q. Okay. So I think we've -- the Judge can go
3 through the transcript and review all that and make
4 sure what you're discussing. I want to go through the
5 one last point I think we've discussed is this alibi
6 that you said you had and that Mr. DeJong did not
7 request an alibi charge or some type of instruction to
8 the jury about you had an alibi.

9 A. Yeah, well, with the alibi ---

10 Q. I guess it goes into his review of what he found
11 and other issues we kind of talked before.

12 A. Yeah, like I say, following the state's case, I
13 presented an alibi because I told them -- when they
14 questioned me about my whereabouts, I explained to them
15 that that night I ran into a female that I knew. We
16 got up with each other. We decided to have dinner at
17 Ruby Tuesday's. We had dinner at eight o'clock. I
18 agreed to pay for the dinner. She agreed to pay for
19 the room. We windup spending the rest of the evening
20 in the room. The state would later, in cross examining
21 me about it, they said, well, what time did you have
22 dinner? I told them what time I had dinner. They
23 asked me, how much did I pay for it? I told them how
24 much I paid for it. Okay. Then she say, well, so
25 you're trying to tell me the one night that you had off

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1 to spend with somebody else, you decide to spend with
2 this female? I said, well, yes, I did. All right.
3 She got Lane Byers on the stand and Tisha Brown, they
4 both testified to the fact that the vehicle that they
5 -- in question that I was even supposed to be in was in
6 Laurens County at eight o'clock while I was in
7 Greenville County at eight o'clock. All right. So
8 there's no way possible their chief witness, Johnny
9 Parks, stipulated that I picked him up in the vehicle
10 at seven thirty and that we proceeded to come down to
11 Pickens County.

12 Q. Who was the lady you were with?

13 A. Sandra Williams.

14 Q. Was she going to testify? Did she talk to Mr.
15 DeJong?

16 A. Well, no, she never talked to Mr. DeJong, because
17 I was focusing on the videotape, because I knew the
18 videotape would show the time and the date -- the time
19 and date that I was sitting right there at the gas
20 station.

21 Q. Did you ever talk to him about how meaningful it
22 would be to have another individual ---

23 A. No. I just told him about what I did that night.
24 We never went into the -- to get this individual or to
25 bring this individual. We just pretty much discussed

1 what happened that night; where was you at? And so
2 after I told him about the video, that was the last
3 that we pretty much talked about that particular aspect
4 of the crime. We went into then what was the
5 discrepancies between the testimony that Mr. Parks had.
6 Because, see, I realized Mr. Parks didn't give a
7 statement until thirteen, fourteen months later.

8 Q. All right.

9 A. So that's what we really focused on because, see,
10 that statement that he gave also implicated me in other
11 crimes. And so we was going through, well, what parts
12 should have been -- that could be used, what parts he
13 can't bring in, what the state can use, what the state
14 can't use, because when it was actually brought out at
15 trial, it came right back up again because that
16 statement couldn't be played before the jury because it
17 was so intertwined with other crimes that, you know,
18 they would just have to say that this part can be
19 heard, when to stop it, when to play it, things like
20 that. That's what we mostly focused on, was basically
21 just challenging the state's case of Parks.

22 Q. Now, back to the alibi. Did you give him a name
23 or number or any contact information for Ms. Williams?

24 A. No. I never did because we never went back to
25 that. Because once -- like I said, once we initially

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1 talked about the alibi with the video, that came out,
2 that came out in -- he wrote me a letter about it back
3 in October of '09 about that. But I had initially told
4 him about the alibi when we first talked. And so he --
5 but I kept -- because if I think he's going to call, if
6 I remember correctly, you can only call on Wednesday or
7 something. But anyhow, I kept talking to him about
8 that. And he kept telling me that he would send -- I
9 forgot the name of his investigator at the time. He
10 was at the trial. Anyhow, he was there. But like I
11 said, we didn't even get back to that alibi until the
12 day of trial because it wasn't even put in that I was
13 going to take the stand. Because initially I wasn't
14 going to take the stand. It wasn't decided I was going
15 to take the stand until after Parks got off the stand
16 he was saying, well, the jury's going to want to hear
17 from you. Say, because Parks' testimony was so
18 damaging that the only way -- at this point they're
19 going to have to hear from you.

20 Q. Uh-huh (affirmative).

21 A. And so that was when it was decided that I would
22 take the stand.

23 Q. Okay.

24 MR. ARIAIL: Your Honor, I have no further
25 questions.

1 MS. RATIGAN: I have no cross examination,
2 Your Honor.

3 THE COURT: Mr. Ariail, let me understand
4 this. The date of the incident was when?

5 MR. ARIAIL: I've got January 27, 2009.

6 THE COURT: And he was arrested when?

7 MR. ARIAIL: About two weeks later. Sometime
8 the beginning of February 2009. I don't have the exact
9 date. I can look at the warrants if you need me to.

10 THE COURT: And then Mr. DeJong saw him about
11 two weeks after that?

12 MR. ARIAIL: Yes, Your Honor. I've got
13 February 2nd, 2009, it looks like when the arrest
14 warrant was served on him.

15 THE COURT: And by the time they went to
16 investigate, according to your client's testimony, the
17 tape had already been destroyed?

18 MR. ARIAIL: Correct, Your Honor.

19 THE COURT: Thank you. You may step down.

20 MR. DEJONG: Your Honor, could I run around
21 the corner just very, very quickly before I take the
22 stand?

23 THE COURT: Yes, sir.

24 MR. DEJONG: Thank you, sir.

25 (WHEREUPON, the court stood at recess for a short

1 break.)

2 THE COURT: Do you intend to call Mr. DeJong
3 or is that your case?

4 MR. ARIAIL: That's my case.

5 MS. RATIGAN: Your Honor, the state would
6 call Mr. DeJong.

7 THE CLERK: Place your left hand on the bible
8 and raise your right hand.

9 Do you solemnly swear or affirm the testimony
10 you're about to give in this case will be the truth and
11 the whole truth and nothing but the truth, so help you
12 God?

13 THE WITNESS: I do.

14 THE CLERK: State your full name for the
15 record.

16 THE WITNESS: John William DeJong.

17 JOHN WILLIAM DEJONG,

18 HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

19 DIRECT EXAMINATION

20 BY MS. RATIGAN:

21 Q. Mr. DeJong, do you recall representing Mr. Nance
22 on these charges?

23 A. I do.

24 Q. And where are you employed?

25 A. Pickens County Public Defender's Office.

1 Q. And were you appointed as the public defender in
2 this case?

3 A. I was.

4 Q. And do you recall around when you would have been
5 appointed?

6 A. Date-wise, it was -- would have been -- I can't
7 say the exact date, but probably around February the
8 24th of 2009.

9 Q. And why do you come up with that date?

10 A. My -- well, actually I can give you the exact --
11 well, no, I can't. Different appointments. That would
12 have been the day that my investigator made initial
13 contact with Mr. Nance at the jail based on an
14 interview sheet that we fill out and date. I'm not
15 saying that's when I made contact with him, but it
16 would appear that would be about the time we were
17 appointed.

18 Q. Okay. And did you file the usual Brady and Rule
19 5 motions in this case?

20 A. I did, indeed.

21 Q. And did you receive those materials from the
22 state?

23 A. Well, Ms. Ratigan, as far as I know, I did.
24 That's kind of the old Yogi Berra's I can't know what I
25 don't know, but

1 Q. Was there anything you asked for that you didn't
2 receive?

3 A. I don't think there was. There's something that
4 sticks in my mind in this case about the vehicle that
5 was found in Laurens County. I want to say that came
6 in late or maybe not even until trial. But I can't say
7 that for certain.

8 Q. And the discovery you did receive, did you review
9 that with Mr. Nance?

10 A. I believe we reviewed that on more than one
11 occasion, if my memory serves me correctly.

12 Q. And did you review the charges with him, the
13 elements, the penalties, things of that nature?

14 A. I did.

15 Q. And did Mr. Nance tell you his version of what
16 had happened that day?

17 A. He did.

18 Q. And did he tell you about a potential alibi?

19 A. Well, in terms of potential alibi, I remember him
20 talking about a potential tape. In terms of an alibi
21 that would meet what I would consider the requirement
22 for filing notice to the state under Rule 5, I did not
23 have that alibi.

24 Q. Did he ever tell you he had spent time that night
25 with Sandra Williams?

1 A. He denied having been at the scene. I do not
2 remember the name Sandra Williams.

3 Q. Did you send your investigator to try and recover
4 a videotape that would have possibly helped with an
5 alibi defense?

6 A. I did.

7 Q. And what was the result of that?

8 A. The results -- I want to say that was a service
9 station. I don't know if it was a Sunoco or not.
10 That's what kind of sticks in my mind. By the time we
11 got to the business establishment to try to find the
12 tape, as is the normal course unless you get there
13 very, very quickly, those are basically loop tapes and
14 they record over themselves. And it was not available.

15 Q. And did you explain that to Mr. Nance?

16 A. As memory serves me, I did.

17 Q. And even when you told him this tape would not be
18 available, he still didn't give you the name of any
19 particular person to contact?

20 A. As memory serves me, he did not.

21 Q. Were there any plea offers made in this case?

22 Mr. Nance referenced an informal request or informal
23 conversation?

24 A. Actually there was. There was a plea offer that
25 came in on October the 26th of 2009 in which the offer

1 was made of if Mr. Nance pled to petit larceny, grand
2 larceny over a thousand less than five thousand, pled
3 to burglary -- pled down from burglary first to
4 burglary second violent, burglary first to burglary
5 second violent, the state would dismiss numerous other
6 charges that were not directly involved in the case
7 that we tried, for a recommendation of five years with
8 restitution.

9 Q. And did you convey that offer to Mr. Nance?

10 A. As memory serves me, I did.

11 Q. And by virtue of the fact you went to trial, I
12 assume he rejected it?

13 A. Well, Mr. Nance was quite adamant from day one
14 that he wanted a trial on these charges. Of course, I
15 don't know -- we didn't know until late in the game,
16 again, as memory serves me, that Parks was going to
17 testify against Mr. Nance. But nonetheless, Mr. Nance
18 was quite adamant he wanted to go to trial on these
19 charges.

20 Q. When you say late in the game, maybe a couple of
21 months before trial, you mean Mr. Parks was going to
22 ---

23 A. I think so. And I don't have the exact date. I
24 think Mr. Nance alluded to the fact when Mr. Parks gave
25 another statement, which was, shall we say, a long time

1 after the alleged incident.

2 Q. And Mr. Nance referenced a CAD report. Is that
3 something you received in discovery?

4 A. It is.

5 Q. And did you discuss that with him, that you ---

6 A. I have no independent recollection as to the CAD
7 report itself, Ms. Ratigan. But in going over his
8 discovery, I'm sure we would have discussed it. And I
9 believe Mr. Nance had a copy of all of his discovery,
10 as well.

11 Q. In reviewing the CAD report at the time, did you
12 perceive there to be any inconsistencies?

13 A. Not so much in the CAD report. I think that more
14 came out during testimony itself. I can't honestly say
15 I picked it up from the CAD report. I know Mr. Nance
16 and I had discussions over the driver's license and the
17 debit card, whatever it was, and that's when he told me
18 that it was actually in the glove compartment.

19 Q. And at trial did you cross examine those officers
20 about inconsistencies in terms of timing and whatnot?

21 A. I believe I did. To be very candid, I did not
22 read the entire transcript, Ms. Ratigan.

23 Q. Okay. And Mr. Nance has also brought up the
24 issue he believes that you opened the door during cross
25 examination to have the jury know that he had been

1 involved in a second burglary. Do you recall any of
2 that?

3 A. Yes, ma'am. To answer your question directly, I
4 recall that Mr. Nance's testimony, that's what's
5 leading me to believe, again, that there was something
6 on that vehicle that was recovered in Laurens County
7 that came in pretty much late after -- did not come
8 with the original discovery, shall we say. And then
9 when it did, it was not really clear on what, if any,
10 evidence they had on that. So, yes, I did go into
11 that. Not to show that he had committed another crime,
12 but certainly to try to get away from this particular
13 crime. And again, that's why Parks then testified that
14 that vehicle was stolen on Highway -- I want to say
15 Highway 8, but I'm not sure about that.

16 Q. And during Mr. Nance's tesitmony, it was brought
17 up before the jury that he had prior felony
18 convictions; is that correct?

19 A. I believe it was, yes. I think we had a
20 discussion with the court over whatever that rule is.
21 I can't remember the rule number right now.

22 MS. RATIGAN: That's all I have, Your Honor.

23 THE COURT: Anything, Mr. Ariail?

24 MR. ARIAIL: Yes, Your Honor.

25 CROSS EXAMINATION

1 BY MR. ARIAIL:

2 Q. Mr. DeJong, in regards to the alibi, I guess this
3 tape, do your notes show when you sent your
4 investigator out there?

5 A. I do not have an exact date on that, Mr. Ariail.

6 Q. Okay, sir. From your -- and this is what I'm
7 trying to get an understanding. You were appointed
8 sometime, February 24th, 2009. Your office had a
9 conversation with Mr. Nance and at some point in time
10 they went out and tried to find a tape. And I guess
11 what I'm asking is, I mean, do you recall or is there
12 anything in your file showing how long this loop would
13 have been? I mean, if it would have been thirty days
14 or would have been sixty days, would have been forty
15 days?

16 A. I frankly think it would have been more than
17 thirty days. I don't know about sixty. I don't think
18 it was quite that long.

19 Q. Okay.

20 A. But I would say thirty days probably would not be
21 outside of the realm.

22 Q. Okay. So at the time I guess your investigator
23 went, they said it was not available. When you came
24 back and had a discussion about the tape not being
25 available, that it had been taped over, did Mr. Nance

1 at any time, say, hey, here's Sandra Williams' contact
2 information. Here's who to get in touch with?

3 A. I don't recall ever having gotten any such
4 information from Mr. Nance.

5 Q. Okay. I mean, just from your standpoint, would a
6 tape or an individual be better to have at trial?

7 A. An individual, I think, would be better to have
8 at trial. The tape would be a snapshot of time, but
9 not necessarily for the entire evening.

10 Q. Okay. So do you remember asking him, hey, we
11 don't have the tape, can you give me some contact
12 information?

13 A. I can't honestly say I asked him for that, Mr.
14 Ariail.

15 Q. Is that your standing process, probably, to do
16 that if you can?

17 A. Usually the client will volunteer that. I don't
18 -- I can't say that that is my usual practice to ask.
19 I probably ask if they were any place else, if we have
20 witnesses, but not beyond that.

21 Q. Okay. Now, the plea offer, you specifically -- I
22 mean, is there anything you have in your file that he
23 signed off on it or received a copy; anything like
24 that?

25 A. No.

1 Q. Okay. So in your -- I guess your recollection,
2 he was adamant to go forward and have a trial under any
3 circumstances, is that ---

4 A. Yes, sir.

5 Q. Now, the CAD report, I'm trying to understand a
6 little bit more about that. I know there was some
7 inconsistencies in testimony possibly when the car was
8 searched. Did you see any way to get that, I guess,
9 information on the car suppressed or did you -- I mean,
10 anyway to keep that out based upon the search?

11 A. No. I couldn't see in the search any Fourth
12 Amendment issues, any suppression issues there. In my
13 opinion that was a matter for cross examination.

14 Q. Okay. And so that's what you -- I know you had
15 -- in reviewing the transcript, I think you did an in-
16 depth cross in regard to that CAD report, if I'm not
17 mistaken?

18 A. I believe I did.

19 Q. Okay. The stolen vehicle -- and I know -- I'm
20 trying to figure out. The stolen vehicle we're talking
21 about is the one that was apparently taken from a body
22 shop and found in Laurens. Do you remember -- I know
23 you said there was some question about that car. Do
24 you remember anything -- what I'm trying to get at, is
25 there something that came up during trial that you

1 potentially could have kept that out because it was
2 presented to you at a late stage of the game or at
3 trial?

4 A. I don't know specifically about keeping it out,
5 Mr. Ariail. In reviewing the transcript, I think we
6 got into an argument about that, if I'm not mistaken,
7 around page -- I'm not sure. There was some argument
8 between myself and the state when -- then Ms. Hamaker,
9 now Ms. Barwick -- wanted to recall Michael Baker to
10 the stand, and I objected to him coming back onto the
11 stand. Obviously, I was not successful in my
12 objection.

13 Q. Okay. And you think -- as far as the transcript,
14 you think Mr. Baker was coming back in to testify about
15 the car or ---

16 A. Yes.

17 Q. Were you -- I guess going back, was there
18 anything that you felt like you weren't provided
19 beforehand about the car which could have led to some
20 type of suppression or potential ---

21 A. No.

22 Q. --- exclusion -- okay.

23 A. I can't say I got it, again, immediately. But
24 then it wasn't as -- it wasn't handed to me during
25 trial.

1 Q. And I'm trying to just recall. There was nothing
2 found in the car that would have linked Mr. Nance to
3 that vehicle, if I'm ---

4 A. When Baker was recalled and testified, I think I
5 asked him about forensics on that vehicle. I think the
6 Clinton Police Department actually recovered that
7 vehicle. As memory serves me, Baker testified that
8 there were no forensics with regard to fingerprints or
9 anything else. Not his words; mine, that would link
10 Mr. Nance to that vehicle.

11 Q. Going back and trying to remember this, was there
12 anyway you thought you could have kept out the
13 information about the second burglary of the stolen car
14 that was taken down to Clinton?

15 A. No. I don't think so. And having that
16 information, you know, I guess it is possible that I
17 opened the door. But having that information, if it
18 was Byers that I was cross examining, and I think it
19 was, certainly having my shot at Byers on cross
20 examination, I had to take it when I could.

21 Q. Right. Do you think you should -- I'm trying to
22 figure out. If you hadn't opened the door then, was
23 there anyway to exclude it when Mr. Parks got up?

24 A. No.

25 Q. So it was coming out at some point during the

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1 trial based upon what they did after the, I guess,
2 burglary, and then went down to get the car?

3 A. Yes, sir.

4 Q. So you didn't feel there was any way to keep that
5 out?

6 A. No.

7 MR. ARIAIL: Your Honor, I have no further
8 questions.

9 THE COURT: All right.

10 MS. RATIGAN: I have no redirect, Your Honor.

11 THE COURT: Thank you, sir. You may step
12 down.

13 MS. RATIGAN: The state would rest at this
14 time.

15 THE COURT: Anything in response?

16 MR. ARIAIL: No, Your Honor.

17 THE COURT: All right. I'll take the matter
18 under advisement.

19 MR. ARIAIL: Thank you, Your Honor.

20 MS. RATIGAN: Thank you, Your Honor.

21

22 [END OF REQUESTED TRANSCRIPT OF RECORD]

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CERTIFICATE OF REPORTER

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I, the undersigned Danette P. Hanks, Official
Court Reporter for the Tenth Judicial Circuit of the
State of South Carolina, do hereby certify that the
foregoing is a true, accurate, and complete transcript
of record of all the proceedings had and evidence
introduced in the trial/hearing of the captioned case,
relative to appeal, in the Court of Common Pleas for
Pickens County, South Carolina, on the 25th day of
August, 2014.

This transcript may contain quoted material. Such
material is reproduced as read by the speaker.

I do further certify that I am neither of kin,
counsel, nor interest to any party hereto.

January 14, 2015



Circuit Court Reporter

STATE OF SOUTH CAROLINA)

COUNTY OF PICKENS)

Reginald Antonio Nance,
S.C.D.C. No. 275742,)

Applicant,)

v.)

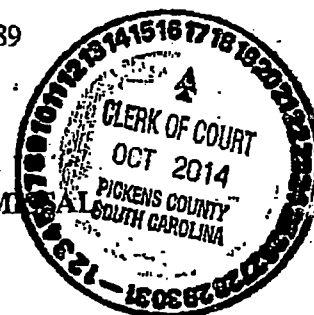
State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS

2013-CP-39-0789

ORDER OF DISMISSAL



This matter comes before the Court by way of an application for post-conviction relief (PCR) filed June 19, 2013. The Respondent made its return on December 3, 2013. An evidentiary hearing into the matter was held on August 25, 2014 at the Pickens County Courthouse. The Applicant was present and represented by R. Mills Ariail, Jr., Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying was the Applicant's trial counsel, John W. DeJong, Esquire. The Court had before it the trial transcript, the Pickens County Clerk of Court records, the Applicant's South Carolina Department of Corrections records, the PCR application, the return, and the appellate records.

PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Pickens County Clerk of Court. The Applicant was indicted at the March 2010 term of the Pickens County Grand Jury for grand larceny (2010-GS-39-0354), petit larceny (2010-GS-39-0355), two counts of second-degree burglary (2010-GS-39-0356, -

0357), possession of a weapon during the commission of a crime (2010-GS-39-0358), and malicious injury to real property (2010-GS-39-0360). He was represented by John W. DeJong, Esquire.

After the State called the case to trial, the Applicant was found guilty. On April 30, 2010, the Honorable G. Edward Welmaker sentenced the Applicant to concurrent terms of thirty days for petit larceny, eleven years for one count of second-degree burglary,¹ five years for possession of a weapon during the commission of a crime, and five years for malicious injury to real property. Judge Welmaker levied consecutive sentences of five years for grand larceny and eleven years for the second count of second-degree burglary.

A Notice of Appeal was filed at the South Carolina Court of Appeals. Tristan M. Shaffer, Esquire of the South Carolina Commission on Indigent Defense, Division of Appellate Defense perfected the appeal. The Court of Appeals affirmed the Applicant's convictions and sentences. State v. Nance, Op. No. 2013-UP-215 (S.C. Ct. App. filed May 22, 2013). The remittitur was sent June 14, 2013.

ALLEGATIONS

In his application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel:
 - a. "[F]ailure to object to perjured testimony"
 - b. "[E]liciting bad act testimony"
 - c. "[F]ailure to object to impermissible questioning"
 - d. "[F]ailure to request proper jury charge"
 - e. "[F]ailure to object to closing argument"
 - f. "[F]ailing to investigate the charges against the applicant"
2. Prosecutorial misconduct:
 - a. "[P]resented perjured testimony; failed to correct perjured testimony; committed fraud on the court; violated due process"

¹ 2010-GS-39-0356.

3. Violated due process by denying a fair trial:
 - a. "Actual innocence"

At the PCR hearing, the Applicant proceeded solely upon allegations of ineffective assistance of trial counsel.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly.

Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). In order to prove prejudice, an applicant must show "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). "A reasonable probability is a probability sufficient to undermine

confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052).

The Applicant stated he had meetings and phone calls with trial counsel and that they also exchanged letters. The Applicant stated they discussed the charges and that trial counsel "pretty much" answered all of his questions. The Applicant stated he reviewed the CAD report with trial counsel and that it showed the State presented false evidence. The Applicant stated he told trial counsel at the first meeting that a video from the gas station would assist with his alibi. The Applicant stated, however, that the investigator could not retrieve the video because it had been erased. The Applicant stated he was with Sandra Williams the night of the offense but that he did not give this information to trial counsel because he was focused on obtaining the video. The Applicant stated trial counsel elicited bad act testimony about the stolen vehicle² and that this opened the door to allow the State to recall Baker. The Applicant stated there were no direct plea offers in his case, but that trial counsel asked if he would accept a five year sentence. The Applicant stated he still had not received the evidence and wanted a trial.

Trial counsel testified he filed discovery motions, received those materials,³ and reviewed them with the Applicant several times. Trial counsel testified he and the Applicant also reviewed the charges, the elements of the offenses, the sentence ranges, and the Applicant's version of events. Trial counsel testified he received the CAD report in the discovery materials but has no independent recollection of it. Trial counsel testified there were no inconsistencies in the report and that details from the report were matters for cross-examination. Trial counsel testified the Applicant denied being at the scene. Trial counsel testified he sent his investigator to look for a

² This was repeatedly referred to as the Laurens vehicle.

³ Trial counsel did state he received some discovery about the Laurens vehicle late in his representation.

videotape at the service station but that it had been recorded over. Trial counsel testified he did not recall Williams. Trial counsel testified there was an issue with the Laurens vehicle, but he could not recall what it was. Trial counsel testified there was no basis to object to the evidence about the Laurens vehicle. Trial counsel testified it was possible he opened the door but that he had to take the opportunity to attack Lt. Byers on cross-examination. Trial counsel testified the State made a plea offer on October 26, 2009 for the Applicant to plead guilty to petit larceny, grand larceny, and two counts of second-degree burglary for five years. Trial counsel testified he conveyed this offer to the Applicant, who rejected it as he was always adamant that he wanted a jury trial.

Initially, this Court finds trial counsel reviewed the evidence, charges, and possible penalties with the Applicant and also discussed his version of events. This Court finds trial counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in his representation.

This Court finds the Applicant failed to meet his burden of proving trial counsel did not properly challenge the State's evidence with information from the CAD report. Trial counsel received the CAD report as part of the discovery materials. Trial counsel testified there were no inconsistencies in the CAD report and this Court notes he cross-examined witnesses about inconsistencies in their testimony and the timeline of events. Given trial counsel's thorough cross-examination of the State's witnesses, this Court finds the Applicant has failed to demonstrate his performance was deficient. Further, this Court cannot speculate on whether trial counsel could have used elements from the CAD report for more effective cross-examination because this document was not entered into evidence at the PCR hearing. Cf. *Palacio v. State*, 333 S.C. 506, 513, 511 S.E.2d 62, 66 (1999) (holding that, since the contents of challenged

documents were not presented at the PCR hearing, the Applicant could not demonstrate how the failure of counsel to obtain these documents prejudiced the defense).

This Court finds the Applicant failed to meet his burden of proving trial counsel should have investigated and presented an alibi defense. This Court notes trial counsel sent his investigator to retrieve a videotape from a gas station that may have been helpful, but the video had already been erased. While the Applicant stated he spent the night in question with Sandra Williams, he admitted he did not convey this information to trial counsel. This Court finds the Applicant has failed to demonstrate trial counsel was deficient in his handling of the alibi issue. He attempted to retrieve the videotape and was unable to do so. Trial counsel cannot be found deficient for failing to contact Williams, as the Applicant never told him about this purported alibi witness. See Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (holding the PCR applicant bears the burden of proving the allegations in their application).⁴

This Court finds the Applicant failed to meet his burden of proving trial counsel did not properly handle the issue of the Laurens vehicle. During cross-examination, trial counsel asked Lt. Byers about whether there was confusion over a stolen vehicle. (Trial transcript, p.445). Over trial counsel's objection, the assistant solicitor explained to the trial judge that she would recall Detective Baker to because "it is believed that the vehicle was stolen and used by the defendant and codefendant to drive back to Greenville." (Trial transcript, p.471). Detective Baker testified this vehicle was stolen near the crime scene and recovered in Laurens County. (Trial transcript, pp.473-74). The Applicant's co-defendant subsequently testified they stole a

⁴ Further, this Court cannot speculate on the potential impact of Williams as an alibi witness because she did not testify at the PCR hearing. See Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (the South Carolina Supreme Court "has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial.") (emphasis in original).

vehicle in order to escape. (Trial transcript, pp.512-13). This Court finds the Applicant has failed to prove either error or prejudice. The Applicant argues trial counsel opened the door to damaging testimony when he asked Lt. Byers about a stolen vehicle. Trial counsel testified he questioned Byers about it, but not to show the Applicant committed another crime. Trial counsel testified he wanted to "take a shot at Byers" when he could. This Court finds trial counsel used a valid trial tactic in asking Byers whether there was confusion about the stolen vehicle, as this could have created uncertainty about this facet of the State's case. See Roseboro v. State, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995) (finding where trial counsel articulates a valid reason for employing a certain strategy, such conduct should not be deemed ineffective assistance of counsel). This Court does not find trial counsel opened the door to damaging testimony. Further, the Applicant cannot prove he was prejudiced by this testimony, as the co-defendant is the witness who testified they stole this vehicle. As the co-defendant ultimately testified about the vehicle theft, there is no reasonable probability the result of the proceeding would have been different if trial counsel had not questioned Lt. Byers about the stolen vehicle. See Cherry v. State, 300 S.C. at 117-18, 386 S.E.2d at 625.

This Court finds the Applicant failed to meet his burden of proving trial counsel did not convey a plea offer. The Applicant stated he never received a formal plea offer. Trial counsel, however, has a note in his file about the date of the five-year offer and a specific recollection of relaying the offer. Trial counsel also testified the Applicant has always adamant about going to trial. This Court specifically finds trial counsel is more credible than the Applicant on this issue. This Court notes trial counsel's file contained documentation of the offer and also notes trial counsel had a specific recollection of relaying the offer to the Applicant and the Applicant opting to refuse it. This Court finds trial counsel fulfilled his responsibilities in this regard. Cf. Davie

v. State, 381 S.C. 601, 675 S.E.2d 416 (2009) (holding counsel's failure to convey the State's plea offer to defendant constituted deficient performance).

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that trial counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that trial counsel committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by trial counsel's performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Counsel was not deficient and the Applicant was not prejudiced by counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

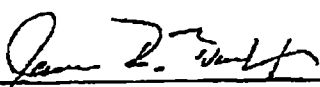
This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules

for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 24 day of SEPTEMBER, 2014.



James R. Barber, III
Presiding Judge
Thirteenth Judicial Circuit

WITNESSES

Lafie Byers

Pickens County Sheriff's Office

2/2/2009

ARREST WARRANT NUMBER

1684203

TRUE BILL ACTION OF GRAND JURY

Date MAR 9 2010

Mary H. Smith
Foreperson of Grand Jury

VERDICT

Melvin Beerton 4/30/10
Foreperson of Petit Jury Date:

DOCKET NO. 2010-GS-39-

JLH

0354

VAG

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

MAR 09 2010 TERM 2010

THE STATE

vs.

REGINALD ANTONIO NANCE

Indictment for

0478

GRAND LARCENY

VIOLATION § 16-13-0030(B)(1)

STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)

INDICTMENT FOR
GRAND LARCENY

At a Court of General Sessions, convened on

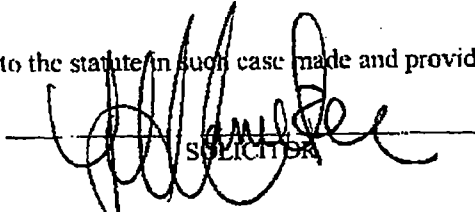
MAR 09 2010

the Grand Jurors of Pickens

County present upon their oath:

That REGINALD ANTONIO NANCE did in Pickens County, on or about the 27th day of January, 2009, feloniously take and carry away the personal property of TOBACCO WAREHOUSE of the value of more than One Thousand Dollars, described as follows: cash and merchandise, with intent to deprive the owner permanently of such property. This is in violation of §16-13-30 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

WITNESSES

Lane Byers

Pickens County Sheriff's Office

2/2/2009

ARREST WARRANT NUMBER

1684200

TRUE BILL

ACTION OF GRAND JURY

Date: MAR 9 2010

Mary H. Smith
Foreperson of Grand Jury

VERDICT

Melvin Cureton 4/29/10
Foreperson of Petit Jury Date:

DOCKET NO. 2010-GS-39-

JLH

0355

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

MAR 09 2010 TERM 2010

THE STATE

vs.

REGINALD ANTONIO NANCE

Indictment for

0480

PETIT LARCENY

VIOLATION § 16-13-0030(A)

STATE OF SOUTH CAROLINA)

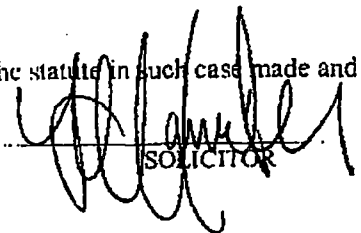
COUNTY OF PICKENS)

INDICTMENT FOR
PETIT LARCENY

At a Court of General Sessions, convened on **MAR 09 2010** the Grand Jurors of Pickens
County present upon their oath:

That REGINALD ANTONIO NANCE did in Pickens County, on or about the 27th day of January, 2009,
feloniously take and carry away the personal property of CASH ADVANCE, to wit: cash and miscellaneous items
with a total value of less than One Thousand Dollars (\$1,000.00) with intent to deprive the owner permanently of
such property. This is in violation of §16-13-30 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

WITNESSES

Lane Byers

Pickens County Sheriff's Office

2/2/2009

ARREST WARRANT NUMBER

1684199

TRUE BILL

ACTION OF GRAND JURY

Date MAR 9 2010

Mary H. Smith
Foreperson of Grand Jury

VERDICT

Melvin Curran 4/30/10
Foreperson of Petit Jury Date:

DOCKET NO. 2010-GS-39-0356
JLH

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

MAR 09 2010 TERM 2010

THE STATE

vs.

REGINALD ANTONIO NANCE

Indictment for

0086

BURGLARY SECOND DEGREE VIOLENT

VIOLATION § 16-11-0312(B)

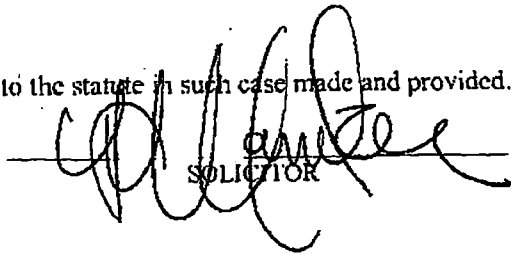
STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)

INDICTMENT FOR
BURGLARY SECOND DEGREE VIOLENT

At a Court of General Sessions, convened on **MAR 09 2010** the Grand Jurors of Pickens
County present upon their oath:

That REGINALD ANTONIO NANCE did in Pickens County, on or about the 27th day of January, 2009,
willfully and unlawfully enter business belonging to CASH ADVANCE located at 2701 Gentry Memorial
Highway, Pickens, South Carolina, without consent and with the intent to commit a crime therein and said crime
did occur in the nighttime. This is in violation of §16-11-312(B) of the South Carolina Code of Laws (1976) as
amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

WITNESSES

Lane Byers

Pickens County Sheriff's Office

2/2/2009

ARREST WARRANT NUMBER

1684196

TRUE BILL ACTION OF GRAND JURY

Date MAR 9 2010

Alan A. Smith
Foreperson of Grand Jury

VERDICT

Melvin Luster 4/30/10
Foreperson of Petit Jury Date:

DOCKET NO. 2010-GS-39-^{JLH} 0357

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

MAR 09 2010 TERM 2010

THE STATE

vs.

REGINALD ANTONIO NANCE

Indictment for

0086

BURGLARY SECOND DEGREE VIOLENT

VIOLATION § 16-11-0312(B)

STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)

INDICTMENT FOR
BURGLARY SECOND DEGREE VIOLENT

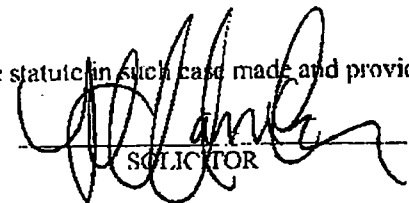
At a Court of General Sessions, convened on
County present upon their oath:

MAR 09 2010

the Grand Jurors of Pickens

That REGINALD ANTONIO NANCE did in Pickens County, on or about the 27th day of January, 2009, willfully and unlawfully enter a business belonging to TOBACCO WAREHOUSE located at 2701 Gentry Memorial Highway, Pickens, South Carolina, without consent and with the intent to commit a crime therein and said crime did occur in the nighttime. This is in violation of §16-11-312(B) of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

WITNESSES

Lane Byers

Pickens County Sheriff's Office

2/2/2009

ARREST WARRANT NUMBER

DIRECT PRESENTMENT

DOB:06-07-68

SS# 250-27-8370

TRUE BILL

ACTION OF GRAND JURY

MAR 9 2010

Mary H. Smith
Foreperson of Grand Jury

VERDICT

Melvin C. Watson
Foreperson of Petit Jury

Date: 4/30/10

DOCKET NO. 2010-GS-39-0358
JLH
The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

MAR 09 2010 TERM 2010

THE STATE

vs.

REGINALD ANTONIO NANCE

Indictment for

0549

POSSESSION OF A WEAPON DURING THE
COMMISSION OF A CRIME

VIOLATION § 16-23-0490

STATE OF SOUTH CAROLINA)
COUNTY OF PICKENS)

INDICTMENT FOR
POSSESSION OF A WEAPON DURING THE COMMISSION OF A
CRIME

At a Court of General Sessions, convened on

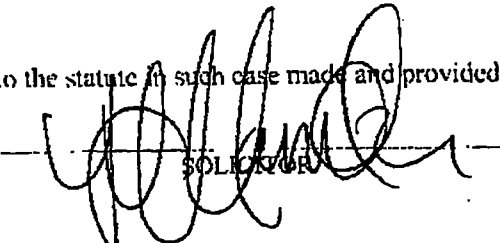
~~MAR 09 2010~~

the Grand Jurors of Pickens

County present upon their oath:

That REGINALD ANTONIO NANCE did in Pickens County, on or about the 27th day of January, 2009, possess or visibly display a 9 mm pistol during the commission or attempted commission of a violent crime, to wit: Burglary and Larceny. This is in violation of §16-23-490 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

WITNESSES

Lane Byers

Pickens County Sheriff's Office

2/2/2009

ARREST WARRANT NUMBER

1684204

TRUE BILL

ACTION OF GRAND JURY

Date: MAR 9 2010

May M. Smith
Foreperson of Grand Jury

VERDICT

Malvin C. Carter
Foreperson of Petit Jury

Date: 4/30/10

DOCKET NO. 2010-GS-39-

J.L.H.

0360

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

MAR 09 2010 TERM 2010

THE STATE

VS.

REGINALD ANTONIO NANCE

Indictment for

0510

MALICIOUS DAMAGE TO REAL PROPERTY

VIOLATION § 16-11-0520(B)(2)

STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)

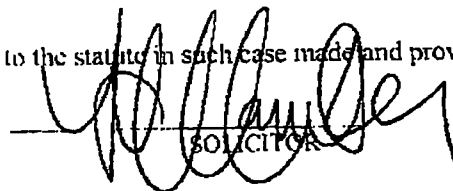
INDICTMENT FOR
MALICIOUS DAMAGE TO REAL PROPERTY

At a Court of General Sessions, convened on **MAR 09 2010** the Grand Jurors of Pickens

County present upon their oath:

That REGINALD ANTONIO NANCE did in Pickens County, on or about the 27th day of January, 2009, maliciously and willfully cut, mutilate, deface or otherwise damage the real property of GRAVELY AGENCY, located at 2701 Gentry Memorial Highway, Pickens, South Carolina, to wit: the defendant did committed burglary and larceny by prying open a rear door as well as damaging an interior bathroom wall and plumbing, as well as the buglar alarm and telephone lines and which resulted in damage valued in excess of One Thousand dollars. This is in violation of §16-11-520 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR