

21679

ANDERS

STATE OF SOUTH CAROLINA

In The Court of Appeals

ANDERS RESPONSE BRIEF

APPEAL FROM CHARLESTON COUNTY

William Jeffrey Young, Circuit Court Judge

RECEIVED

AUG 14 2014

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

LENARD BRIGHTMAN,

APPELLANT

APPELLATE CASE NO. 2014-000313

RECORD ON APPEAL

ROBERT M. PACHAK
Appellate Defender

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

Attorney for Appellant

ALAN WILSON
Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211
(803) 734-3727

Attorneys for Respondent

INDEX

INDEX.....	i
TRIAL TRANSCRIPT (FEBRUARY 6 – 7, 2014).....	1
<u>NEIL V. BIGGERS</u> HEARING.....	36
TESTIMONY	
DOUG ARMSTEAD	37
OPENING STATEMENT BY MR. COMPTON	65
OPENING STATEMENT BY MR. KOWALSKI.....	71
TESTIMONY	
KEVIN PONDER.....	77
MATT KIRK	131
DOUG ARMSTEAD	156
JEROME CLEMENS.....	181
LISA KUBISCKO	189
CHRIS CARAWAY	210
ANITA BENTON	216
MOTION FOR A DIRECTED VERDICT BY MR. KOWALSKI.....	228
CHARGE CONFERENCE.....	241
CLOSING ARGUMENT BY MS. YOUNG	247
CLOSING ARGUMENT BY MR. KOWALSKI	254
CHARGE ON THE LAW.....	266

VERDICT	280
SENTENCING	296
INDICTMENT	298
CERTIFICATE OF COUNSEL.....	300

STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSIONS
COUNTY OF CHARLESTON)

STATE OF SOUTH CAROLINA)
)
 v.) Case No. 11-GS-10-4166
)
LEONARD BRIGHTMAN,)
)
 Defendant)

TRANSCRIPT OF JURY TRIAL

The within Jury Trial in the above-captioned matter was held on February 5th & 6th, 2014, , before The Honorable W. Jeffrey Young in Courtroom 3B of the Charleston County Courthouse, 100 Broad Street, Charleston, South Carolina; attended by counsel as follows:

APPEARANCES:

Spencer Compton, Assistant Solicitor
Kelly Flynn Young, Assistant Solicitor
9TH CIRCUIT SOLICITOR'S OFFICE
100 Broad Street, Suite 400
Charleston, South Carolina 29402
Appearing for State of South Carolina

John Kowalski, Public Defender
CHARLESTON COUNTY PUBLIC DEFENDER
100 Broad Street, Suite 500
Charleston, South Carolina 29402
Appearing for Defendant

Deborah Garrison
Circuit Court Reporter – 9th Judicial Circuit
P O Box 901
Johns Island, South Carolina 29457
dgarrison@sccourts.org

State of South Carolina versus Leonard Brightman
Case No. 11-GS-10-4166
Jury Trial of February 5-6, 2014
Before The Honorable W. Jeffrey Young

2

INDEX

Index of Testimony	3
Index of Exhibits	4
Jury Qualification & Selection	5
Motion to Sequester (granted in chambers)	
Neal v. Biggers Hearing	36
Testimony of Doug Armstead	37
Welcome by The Court	54
Opening Statement by Solicitor	65
Opening Statement by Defense Counsel	71
Defense Motion for Directed Verdict	228
Stipulation	239
Charge Conference	241
Closing Argument by Solicitor	247
Closing Argument by Defense Counsel	254
Court's Charge	266
Verdict	280
Sentence	296
Certificate of Court Reporter	297

State of South Carolina versus Leonard Brightman

3

Case No. 11-GS-10-4166

Jury Trial of February 5-6, 2014

Before The Honorable W. Jeffrey Young

INDEX OF TESTIMONY

NEAL V. BIGGERS HEARING

Doug Armstead

37

TESTIMONY BEFORE JURY

Witness	Direct	Cross	Redirect	Recross
Kevin Ponder	77	126	129	
Matt Kirk	131	140		
Doug Armstead	156	169	177	179
Jerome Clemens	181			
Lisa Kubicko	189	201		
Chris Caraway	210	214		
Anita Benton	216	222		

State of South Carolina versus Leonard Brightman

4

Case No. 11-GS-10-4166

Jury Trial of February 5-6, 2014

Before The Honorable W. Jeffrey Young

INDEX OF EXHIBITS

1	Photograph	84
1A	Copy of Exhibit 1 with markings by Ponder	105
1B	Copy of Exhibit 1 with markings by Armstead	179
2	Arial Photograph	86
3	Photograph of Power Station transformer	86
4	Photograph of gate to power station	93
5	Photograph of male in ambulance	99
6	Photograph of cut wire	103
7	Photograph of cut wire	103
8	Photograph	103
9	Headlamp with bank	166
10	Ski mask (black)	197
11	Goggles	197
12	Bow saw	193
13	Photograph of saw on ground	193
14	Photograph of goggles on ground	ID Only
15	March schedule	ID Only
16	Inventory Log	ID Only
17	Codes List	

INDEX OF DEFENDANT'S EXHIBITS

(None Entered)

INDEX OF COURT'S EXHIBITS

1	Stipulation	240
2	Jury Charge	266

State of South Carolina versus Leonard Brightman
Case No. 11-GS-10-4166
Jury Trial of February 5-6, 2014
Before The Honorable W. Jeffrey Young

5

(STATUTORY QUALIFICATION)

(IN CHAMBERS CONFERENCE)

(DEFENDANT PRESENT)

THE COURT: This is Brightman,
correct?

SOLICITOR COMPTON: Yes, sir.

THE COURT: Let me make sure that I can
pronounce everyone's name: Spencer Compton.

SOLICITOR COMPTON: Yes, sir.

THE COURT: Kelly Flynn?

SOLICITOR KELLY FLYNN: Yes, sir.

THE COURT: John Kowalski?

JOHN KOWALSKI: That's correct, Your
Honor.

THE COURT: And Ms. Runey?

MARTHA RUNEY: Yes, sir.

THE COURT: Okay, let's bring the jury
up. Are there any objections to the
defense's voir dire questions?

SOLICITOR KELLY FLYNN: No, Your Honor.

THE COURT: Remind the witnesses that
they need to have their cellphones turned
off. I was lenient in the last case (when
phone went off) because I am not in my home
circuit. In my home circuit, it's a hundred

State of South Carolina versus Leonard Brightman

6

Case No. 11-GS-10-4166

Jury Trial of February 5-6, 2014

Before The Honorable W. Jeffrey Young

1 dollars to your favorite charity. That is
2 for anyone: lawyers, witnesses, deputies,
3 anyone.

4 (JURY PANEL IN @ 12:05 P.M.)

5 THE COURT: Good afternoon, ladies and
6 gentlemen. Solicitor, call your next case.

7 SOLICITOR COMPTON: The State calls
8 the case of the State of South Carolina
9 versus Leonard Brightman, Indictment 2011-GS-
10 10-4168 on the charge of

11 THE COURT: Thank you. Ladies and
12 gentlemen, I apologize for the wait. It's
13 not that we have been sitting here twiddling
14 our thumbs. We have another case going on,
15 that jury is out deliberating. There was a
16 question by them that we had to answer, so we
17 appreciate your patience.

18 We are about to try the case of the State
19 of South Carolina versus Mr. Leonard
20 Brightman on the charge of interfering with a
21 public utility service.

22 A public utility service is any home
23 phone, electrical utility systems, satellite
24 dish or other cable system, including:
25 poles, cables, wires, fixtures, antennas,

State of South Carolina versus Leonard Brightman

7

Case No. 11-GS-10-4166

Jury Trial of February 5-6, 2014

Before The Honorable W. Jeffrey Young

1 amplifier(s) or other apparatus or appliances
2 or that obstruct, impede or impair the
3 services or transmission or that aid, agree
4 with, employ or conspire with the person to
5 do or cause to be done any of the
6 aforementioned acts; in violation of Section
7 16-11-740 of the South Carolina Code of Laws,
8 1976 as amended.

9 Now, ladies and gentlemen, let me remind
10 you that what is contained in this indictment
11 is not evidence. The fact that the Defendant
12 was arrested, charged and indicted, in no way
13 is reflective of the fact that the Defendant
14 is guilty.

15 The Defendant has pled not guilty. And,
16 therefore, the State has the burden of
17 proving the Defendant guilty beyond a
18 reasonable doubt.

19 It will be your job to determine whether
20 or not the State has met that burden.

21 Now, ladies and gentlemen, I'm going to
22 need to ask you some questions before we
23 strike the jury. So would you please place
24 the jury under oath.

25 (WHEREUPON JURY PANEL SWORN)

State of South Carolina versus Leonard Brightman

8

Case No. 11-GS-10-4166

Jury Trial of February 5-6, 2014

Before The Honorable W. Jeffrey Young

1 THE COURT: Was there anyone who
2 is unable to take the -- (no response). All
3 right. Thank you.

4 Now, ladies and gentlemen, the
5 reason that you're under oath is because this
6 is such a crucial stage of the trial. And
7 for those who might have been here the other
8 day, you know, just like a building must be,
9 kind of have a firm foundation to protect
10 those who live in it, so must the jury be
11 strong and have a strong basis for a fair and
12 impartial trial for those who participate:
13 the Solicitor's office for the State, and the
14 Defendant who is on trial.

15 And your answers to these questions will
16 be part of the firm foundation that these
17 attorneys use to build a jury who they
18 believe will listen to the evidence,
19 deliberate fairly and deliver a true and just
20 verdict.

21 Now, the first question, I have though,
22 has anyone ever been related by blood or
23 marriage or have a close personal or business
24 relationship with the Defendant, Leonard
25 Brightman who is sitting on my left, your

State of South Carolina versus Leonard Brightman

9

Case No. 11-GS-10-4166

Jury Trial of February 5-6, 2014

Before The Honorable W. Jeffrey Young

1 right, in the red tie and blue shirt? If so
2 -- would you please stand, Mr. Brightman?
3 Please stand.

4 DEFENDANT: (Complies)

5 THE COURT: So if anyone has a
6 close personal or business relationship with
7 Mr. Brightman or is related by blood or
8 marriage, please stand? (No response). All
9 right. Thank you. You may be seated.

10 DEFENDANT: (Complies)

11 THE COURT: Now, ladies and
12 gentlemen, this is a list of possible
13 witnesses in this case. I'm going to go
14 through the list and I'm going to ask you if
15 you have any knowledge of these people.

16 Kevin Ponder of Allied Barton.

17 Office Doug Armstead, of the North
18 Charleston Police Department.

19 Officer Matt Kirk of the North
20 Charleston Police Department.

21 Officer Jerome Clemens of the North
22 Charleston Police Department.

23 Investigator Lisa Kubicsko of the
24 North Charleston Police Department.

25 Ken Bogan of the State Law

State of South Carolina versus Leonard Brightman

10

Case No. 11-GS-10-4166

Jury Trial of February 5-6, 2014

Before The Honorable W. Jeffrey Young

1 Enforcement Division.

2 Bonita Benton of SCANA Corporation.

3 Officer Christopher Caraway of
4 Allied Barton.

5 Is any member of the jury panel
6 related by blood or marriage or have a close
7 personal or business relationship with any of
8 the potential witnesses in this case? If so,
9 please stand. (No response). All right.
10 Thank you. No one is standing.

11 Ladies and gentlemen, the attorneys
12 who are involved in this case are Ms. Kelly
13 Young -- and Ms. Young, since you're the lead
14 attorney, I'll allow you to introduce your
15 team.

16 SOLICITOR YOUNG: Thank you, Your
17 Honor. Good afternoon, y'all. My name is
18 Kelly Flynn Young on behalf of the State.

19 You'll also see Ms. Compton sitting
20 next to me. And my investigator, David
21 Watson will be in and out of the courtroom as
22 well. Thank you.

23 THE COURT: Mr. Kowalski, would
24 you like to introduce your ---

25 MR. KOWALSKI: Thank you, Your

State of South Carolina versus Leonard Brightman

11

Case No. 11-GS-10-4166

Jury Trial of February 5-6, 2014

Before The Honorable W. Jeffrey Young

1 Honor. My name is John Kowalski, I'm an
2 Assistant Public Defender here in Charleston
3 County for the Public Defender's Officer.
4 I'm representing Mr. Brightman. Standing
5 beside me is Martha Kent Runey, also a public
6 defender in our office.

7 THE COURT: Thank you. Has any
8 member of the jury panel ever been represent-
9 ed by any of these attorneys or been
10 represented by the Charleston County Public
11 Defender's Office or the Ninth Circuit
12 Solicitor's Office, or related by blood or
13 marriage to any of these attorneys. If so,
14 please stand? (No response). All right.
15 Thank you. No one is standing.

16 Have you or any of your family
17 members ever had any criminal charges
18 adjudicated or currently pending with the
19 Charleston County Solicitor's Office? If so,
20 please stand. (No response). All right.
21 Thank you. No one is standing.

22 Have you or any member of your
23 family ever been represented by the Public
24 Defender's Office for the Ninth Circuit? If
25 so, please stand? (No response). Thank you.

State of South Carolina versus Leonard Brightman

12

Case No. 11-GS-10-4166

Jury Trial of February 5-6, 2014

Before The Honorable W. Jeffrey Young

1 No one's standing.

2 Would you or any member of the jury
3 panel have any problem following the law as I
4 cite it to you, even if you believe that it
5 would be inappropriate or unfair? If so,
6 please stand? (No response). Thank you. No
7 one's standing.

8 Has any member of the jury panel had
9 the experience of law enforcement, legal
10 system or the penal system that would render
11 that person incapable of being fair and
12 impartial? If so, please stand. (No
13 response). Thank you. No one's standing.

14 Do you have any personal, political
15 or religious beliefs or convictions that
16 would make it difficult for you to sit in
17 judgment of another person? If so, please
18 stand? (No response). Thank you.

19 Do you know of any reason why you
20 cannot render this Defendant or the State a
21 fair and impartial verdict? If so, please
22 stand? (No response). All right. Thank
23 you.

24 Are you a former law enforcement
25 employee or any member of your immediate

State of South Carolina versus Leonard Brightman

13

Case No. 11-GS-10-4166

Jury Trial of February 5-6, 2014

Before The Honorable W. Jeffrey Young

1 family or close personal friends employed by
2 any law enforcement agency? If so, please
3 stand. (No response). Thank you. No one's
4 standing.

5 Do you or any members of your
6 immediate family or close personal friends
7 work for any public utility? And this might
8 include, but is not limited, to Charleston
9 Water System, South Carolina Electric & Gas
10 or Berkeley Co-op. If so, please stand.

11 JUROR NUMBER 102: (Stands).

12 THE COURT: Yes, ma'am. Please
13 state your name and jury number?

14 JUROR NUMBE 102: Juror 102, Sylvia
15 Green.

16 THE COURT: Okay. Ms. Green?

17 JUROR NUMBER 102: Charleston Water
18 System.

19 THE COURT: All right. The fact
20 that you work with Charleston Water System,
21 would that make it so that you can't be fair
22 and impartial to both parties?

23 JUROR NUMBER 102: No.

24 THE COURT: Thank you. Have you
25 or any of your relatives or close friends

State of South Carolina versus Leonard Brightman

14

Case No. 11-GS-10-4166

Jury Trial of February 5-6, 2014

Before The Honorable W. Jeffrey Young

1 ever been the victim of a violent crime? If
2 so, please stand? (No response). Thank you.

3 Have you or any -- have any
4 particular opinion or feeling about the crime
5 of malicious injury to a public utility,
6 which would make it difficult for you to
7 serve on a jury where the Defendant is
8 charged with this crime? If so, please
9 stand? (No response). Thank you.

10 Has any member of the jury panel
11 read or heard any about this case? If so,
12 please stand? (No response).

13 Has any member of the jury panel
14 formed or expressed any opinion about any
15 issue or matter involved in this case? If
16 so, please stand? (No response).

17 Is member of the jury panel aware of
18 any bias or prejudice towards either the
19 State or the Defendant in this case? If so,
20 please stand? (No response).

21 Is there any member of the jury
22 panel who is also a member of the Grand Jury
23 that indicted this case? If so, please
24 stand? (No response).

25 Is there any member of the jury

State of South Carolina versus Leonard Brightman

15

Case No. 11-GS-10-4166

Jury Trial of February 5-6, 2014

Before The Honorable W. Jeffrey Young

1 panel who is a member of or contributor to
2 any group, who has as its primary concern the
3 promotion of law enforcement or victims'
4 rights? These groups would include, but
5 certainly would not be limited to:

6 Mothers Against Drunk Driver's

7 Students Against Drunk Drivers or

8 Citizens Against Violent Crime.

9 If so, please stand? (No response).

10 Thank you. No one's standing.

11 Does any member of the jury panel
12 know of any reason whatsoever why he or she
13 should not serve as a juror in this case,
14 with particular emphasis being placed on your
15 ability to be fair and impartial to both the
16 State and the Defendant? If so, please
17 stand. (No response). All right. Thank
18 you.

19 Does the State have any additional
20 questions it would like for me to ask?

21 SOLICITOR YOUNG: Your Honor, may we
22 approach at this time?

23 THE COURT: You may.

24 SOLICITOR YOUNG: Thank you.

25 (OFF RECORD BENCH CONFERENCE)

State of South Carolina versus Leonard Brightman

16

Case No. 11-GS-10-4166

Jury Trial of February 5-6, 2014

Before The Honorable W. Jeffrey Young

1 THE COURT: All right. Ladies and
2 gentlemen, what's going to happen now -- and
3 those of you who've been on another jury this
4 week, when your name is called, please come
5 forward this time and stand in front of the
6 podium, face the audience, and the attorneys
7 for the State and the attorneys for the
8 Defendant with have the opportunity to
9 strike.

10 Now, ladies and gentlemen, please do not
11 take it personally if you're stricken as a
12 juror. Each side has some idea as to what
13 they think the optimum juror might be. So
14 it's nothing against you. They can strike
15 you for any reason or no reason, except for
16 your gender or your race.

17 All right. Are we ready?

18 SOLICITOR YOUNG: Yes, sir.

19 MR. KOWALSKI: Thank you, Your
20 Honor.

21 THE COURT: All right. Thank you.
22 Just for y'all's information, after the jury
23 is struck, I'm going to release everyone for
24 lunch and then -- it won't take but just a
25 few minutes to strike the jury, so we are

State of South Carolina versus Leonard Brightman

17

Case No. 11-GS-10-4166

Jury Trial of February 5-6, 2014

Before The Honorable W. Jeffrey Young

1 going to be in here that long.

2 CLERK: Thank you, Your Honor.

3 THE COURT: Yes, sir.

4 CLERK: Ladies and gentlemen, as
5 the Judge has instructed, whenever your name
6 is called, if you would, please gather your
7 belongings, make your way to the podium in
8 the middle of the courtroom.

9 Once you reach the podium, then turn and
10 face the back of the courtroom, and I will
11 instruct from that point on.

12 Juror Number 280, Daisy Washington.

13 (JUROR, BLACK FEMALE, BEFORE COUNSEL)

14 JUROR NUMBER 280: Turn around?

15 CLERK: Turn around. Right there. Thank
16 you very much. What say you for the State?

17 SOLICITOR YOUNG: Please seat this juror.

18 CLERK: What say you for the Defendant?

19 MR. KOWALSKI: Please seat this
20 juror.

21 CLERK: Ma'am, if you would, please
22 make your way to the jury box. You've been
23 selected as a juror in the trial of this
24 case.

25 (JUROR NUMBER 280 SEATED)

State of South Carolina versus Leonard Brightman

18

Case No. 11-GS-10-4166

Jury Trial of February 5-6, 2014

Before The Honorable W. Jeffrey Young

1 CLERK: Juror number 39, Reed

2 Bunzel.

3 (JUROR, WHITE MALE, BEFORE COUNSEL)

4 CLERK: What say you for the State?

5 SOLICITOR YOUNG: Please present
6 this juror.

7 CLERK: What say you for the
8 Defendant?

9 MR. KOWALSKI: I beg the Court's
10 indulgence. Please seat this juror.

11 CLERK: Sir, if you will please
12 make your way to the jury box. You've been
13 selected as a juror in the trial of this
14 case.

15 (JUROR NUMBER 39 SEATED)

16 CLERK: Juror Number 56, Jennifer
17 Stevens.

18 (JUROR, WHITE FEMALE, BEFORE COUNSEL)

19 CLERK: What say you for the State?

20 SOLICITOR YOUNG: Please present
21 this juror.

22 CLERK: What say you for the
23 Defendant?

24 MR. KOWALSKI: Please excuse Ms.
25 Stephens.

State of South Carolina versus Leonard Brightman

19

Case No. 11-GS-10-4166

Jury Trial of February 5-6, 2014

Before The Honorable W. Jeffrey Young

1 CLERK: Ma'am, if you will please
2 return to your seat. You've been excused
3 from the trial of this case.

4 (JUROR NUMBER 56 EXCUSED)

5 CLERK: Juror number 140, Kimberly
6 Kirby.

7 (JUROR, WHITE FEMALE, BEFORE COUNSEL)

8 CLERK: What say you for the State?

9 SOLICITOR YOUNG: Please excuse this
10 juror.

11 CLERK: Ma'am, if you will please
12 return to your seat. You've been excused
13 from the trial of this case.

14 (JUROR NUMBER 140 EXCUSED)

15 CLERK: Juror number 115, John L.
16 Hills, Jr.

17 (JUROR, WHITE MALE, BEFORE COUNSEL)

18 CLERK: What say you for the State?

19 SOLICITOR YOUNG: Please present
20 this juror.

21 CLERK: What say you for the
22 Defendant?

23 MR. KOWALSKI: Please excuse this
24 juror.

25 CLERK: Sir, if you would please

State of South Carolina versus Leonard Brightman

20

Case No. 11-GS-10-4166

Jury Trial of February 5-6, 2014

Before The Honorable W. Jeffrey Young

1 return to your seat. You've been excused
2 from the trial of this case.

3 (JUROR NUMBER 115 EXCUSED)

4 CLERK: Juror Number 270, Edwin
5 Tuffs. Number 2-7-0.

6 (JUROR, WHITE MALE, BEFORE COUNSEL)

7 CLERK: What say you for the State?

8 SOLICITOR YOUNG: Please present
9 this juror.

10 CLERK: What say you for the
11 Defendant?

12 MR. KOWALSKI: Please seat this
13 juror.

14 CLERK: Sir, if you would please
15 make your way to the jury box. You've been
16 selected as a juror in the trial of this
17 case.

18 (JUROR NUMBER 270 SEATED)

19 CLERK: Juror Number 109, Michael
20 Herrin.

21 (JUROR, WHITE MALE, BEFORE COUNSEL)

22 CLERK: What say you for the State?

23 SOLICITOR YOUNG: Please present
24 this juror.

25 CLERK: What say you for the

State of South Carolina versus Leonard Brightman
Case No. 11-GS-10-4166
Jury Trial of February 5-6, 2014
Before The Honorable W. Jeffrey Young

21

1 Defendant?

2 MR. KOWALSKI: Please seat this
3 juror.

4 CLERK: Sir, if you would please
5 make your way to the jury box. You've been
6 selected as a juror in the trial of this
7 case.

8 (JUROR NUMBER 109 SEATED)

9 CLERK: Juror number 247, Tawnya
10 Smith.

11 (JUROR, WHITE FEMALE, BEFORE COUNSEL)

12 CLERK: What say you for the State?

13 SOLICITOR YOUNG: Please present
14 this juror.

15 CLERK: What say you for the
16 Defendant?

17 MR. KOWALSKI: Please excuse this
18 juror.

19 CLERK: Ma'am, if you would please
20 return to your seat. You've been excused
21 from the trial of this case.

22 (JUROR NUMBER 247 EXCUSED)

23 CLERK: The Defendant has exhausted
24 three of his five strikes. Juror 178,
25 Catherine McGhee.

State of South Carolina versus Leonard Brightman

22

Case No. 11-GS-10-4166

Jury Trial of February 5-6, 2014

Before The Honorable W. Jeffrey Young

1 (JUROR, WHITE FEMALE, BEFORE COUNSEL)

2 CLERK: What say you for the State?

3 SOLICITOR YOUNG: Please present
4 this juror.

5 CLERK: What say you for the
6 Defendant?

7 MR. KOWALSKI: Please seat this
8 juror.

9 CLERK: And if you would please
10 make your way to the jury box. You've been
11 selected as a juror in this case.

12 (JUROR NUMBER 178 SEATED)

13 CLERK: Juror number 143, Andrew
14 Lanfersiek.

15 (JUROR, WHITE MALE, BEFORE COUNSEL)

16 CLERK: What say you for the State?

17 SOLICITOR YOUNG: Please present
18 this juror.

19 CLERK: What say you for the
20 Defendant?

21 MR. KOWALSKI: Please present the
22 juror.

23 CLERK: Sir, if you would please
24 make your way to the jury box. You've been
25 selected as a juror in the trial of this

State of South Carolina versus Leonard Brightman

23

Case No. 11-GS-10-4166

Jury Trial of February 5-6, 2014

Before The Honorable W. Jeffrey Young

1 case.

2 (JUROR NUMBER 143 SEATED)

3 CLERK: Juror number 294, Deborah
4 Wolff-McClure.

5 (JUROR, WHITE FEMALE, BEFORE COUNSEL)

6 CLERK: What say you for the State?

7 SOLICITOR YOUNG: Please excuse this
8 juror.

9 CLERK: Ma'am, if you would please
10 return to your seat. You've been excused
11 from the trial of this case.

12 (JUROR NUMBER 294 EXCUSED)

13 CLERK: Juror number 188, Richard
14 Miller.

15 (JUROR, WHITE MALE, BEFORE COUNSEL)

16 CLERK: What say you for the State?

17 SOLICITOR YOUNG: Please excuse this
18 juror.

19 CLERK: Sir, if you would please
20 return to your seat. You've been excused
21 from the trial of this case.

22 (JUROR NUMBER 188 EXCUSED)

23 CLERK: The State has exhausted
24 three of their five strikes. Juror number
25 164, Lauren Manaker.

State of South Carolina versus Leonard Brightman

24

Case No. 11-GS-10-4166

Jury Trial of February 5-6, 2014

Before The Honorable W. Jeffrey Young

1 (JUROR, WHITE FEMALE, BEFORE COUNSEL)

2 CLERK: What say you for the State?

3 SOLICITOR YOUNG: Please present
4 this juror.

5 CLERK: What say you for the
6 Defendant?

7 MR. KOWALSKI: Please seat this
8 juror.

9 CLERK: Ma'am, if you would please make
10 your way to the jury box. You've been
11 selected as a juror in the trial of this
12 case.

13 (JUROR NUMBER 164 SEATED)

14 CLERK: Juror number 181, Leomy
15 McKelvey.

16 (JUROR, BLACK FEMALE, BEFORE COUNSEL)

17 CLERK: What say you for the State?

18 SOLICITOR YOUNG: Please seat this
19 juror.

20 CLERK: What say you for the
21 Defendant?

22 MR. KOWALSKI: Please present Ms.
23 McKelvey.

24 CLERK: Ma'am, if you would please
25 make your way to the jury box. You've been

State of South Carolina versus Leonard Brightman

25

Case No. 11-GS-10-4166

Jury Trial of February 5-6, 2014

Before The Honorable W. Jeffrey Young

1 selected as a juror in the trial of this
2 case.

3 (JUROR NUMBER 181 SEATED)

4 CLERK: Juror number 118, Joseph
5 Holland.

6 JUROR, WHITE MALE, BEFORE COUNSEL)

7 CLERK: What say you for the State?

8 SOLICITOR YOUNG: Please present
9 this juror?

10 CLERK: What say you for the
11 Defendant?

12 MR. KOWALSKI: I beg the Court's
13 indulgence for just a moment -- (pause).
14 Please excuse this juror.

15 CLERK: Sir, if you would please
16 return to your seat. You've been excused
17 from the trial of this case.

18 (JUROR NUMBER 118 EXCUSED)

19 CLERK: The Defendant has one
20 strike remaining.

21 Juror number 273, Annie Vincent.

22 (JUROR, WHITE FEMALE, BEFORE COUNSEL)

23 CLERK: What say you for the State?

24 SOLICITOR YOUNG: Please present
25 this juror.

State of South Carolina versus Leonard Brightman

26

Case No. 11-GS-10-4166

Jury Trial of February 5-6, 2014

Before The Honorable W. Jeffrey Young

1 CLERK: What say you for the
2 Defendant?

3 MR. KOWALSKI: Please present
4 this juror.

5 CLERK: Ma'am, if you would please
6 make your way to the jury box. You've been
7 selected as a juror in the call of this case.

8 (JUROR NUMBER 273 SEATED)

9 CLERK: Juror Number 26, Mark
10 Bradley.

11 (JUROR, WHITE MALE, BEFORE COUNSEL)

12 CLERK: What say you for the State?

13 SOLICITOR YOUNG: Please present
14 this juror.

15 CLERK: What say you for the
16 Defendant?

17 MR. KOWALSKI: Please present
18 this juror.

19 CLERK: Sir, if you would please
20 make your way to the jury box. You've been
21 selected as a juror in the trial of this
22 case.

23 (JUROR NUMBER 26 SEATED)

24 CLERK: Juror number 295, John
25 Works.

State of South Carolina versus Leonard Brightman

27

Case No. 11-GS-10-4166

Jury Trial of February 5-6, 2014

Before The Honorable W. Jeffrey Young

1 (JUROR, WHITE MALE, BEFORE COUNSEL)

2 CLERK: What say you for the State?

3 SOLICITOR YOUNG: Please present
4 this juror.

5 CLERK: What say you for the
6 Defendant?

7 MR. KOWALSKI: Please seat this
8 juror.

9 CLERK: Sir, if you will please
10 make your way to the jury box. You've been
11 selected as a juror in the trial of this
12 case.

13 (JUROR NUMBER 295 SEATED)

14 CLERK: Juror number 42, Theodore
15 Byerly.

16 (JUROR, WHITE MALE, BEFORE COUNSEL)

17 CLERK: What say you for the State?

18 SOLICITOR YOUNG: Please present
19 this juror.

20 CLERK: What say you for the
21 Defendant?

22 MR. KOWALSKI: Please seat the
23 juror.

24 CLERK: Sir, if you would please
25 make your way to the jury box. You've been

State of South Carolina versus Leonard Brightman

28

Case No. 11-GS-10-4166

Jury Trial of February 5-6, 2014

Before The Honorable W. Jeffrey Young

1 selected as a juror in the trial of this
2 case.

3 (JUROR NUMBER 42 SEATED)

4 CLERK: Your Honor, how many
5 alternates would you like to select?

6 THE COURT: Two.

7 CLERK: Thank you. Now selecting
8 for our alternates, strikes are one and one.
9 Juror number 85, William Flowers.

10 (JUROR, WHITE MALE, BEFORE COUNSEL)

11 CLERK: What say you for the State?

12 SOLICITOR YOUNG: Please present
13 this juror.

14 CLERK: What say you for the
15 Defendant?

16 MR. KOWALSKI: Please strike this
17 juror.

18 CLERK: Sir, if you would please
19 return to your seat. You've been excused
20 from the trial of this case.

21 (JUROR NUMBER 85 EXCUSED)

22 CLERK: Juror number 102, Sylvia
23 Green.

24 (JUROR, BLACK FEMALE, BEFORE COUNSEL)

25 CLERK: What say you for the State?

State of South Carolina versus Leonard Brightman

29

Case No. 11-GS-10-4166

Jury Trial of February 5-6, 2014

Before The Honorable W. Jeffrey Young

1 SOLICITOR YOUNG: Please excuse this
2 juror.

3 CLERK: Ma'am, if you would please
4 return to your seat. You've been excused
5 from the trial of this case.

6 (JUROR NUMBER 102 EXCUSED)

7 CLERK: Juror number 202, Willie
8 Parker.

9 (JUROR, BLACK MALE, BEFORE COUNSEL)

10 CLERK: Any challenges from the
11 State?

12 SOLICITOR YOUNG: No.

13 CLERK: Any challenges from the
14 Defendant?

15 MR. KOWALSKI: No.

16 CLERK: Sir, if you would please
17 make your way to the jury box. You've been
18 selected as the first alternate in the trial
19 of this case.

20 (JUROR NUMBER 202 SEATED)

21 CLERK: Now, striking for our
22 second alternate. Strikes are one and one.
23 Juror number 95, Charlotte Gerhardt.

24 (JUROR, WHITE FEMALE, BEFORE COUNSEL)

25 CLERK: What say you for the State?

State of South Carolina versus Leonard Brightman

30

Case No. 11-GS-10-4166

Jury Trial of February 5-6, 2014

Before The Honorable W. Jeffrey Young

1 SOLICITOR YOUNG: Please present
2 this alternate.

3 CLERK: What say you for the
4 Defendant?

5 MR. KOWALSKI: Please present
6 this juror.

7 CLERK: Ma'am, if you will please
8 make your way to the jury box. You've been
9 selected as the second alternate in the trial
10 of this case.

11 (JUROR NUMBER 95 SEATED)

12 CLERK: Thank you, Your Honor.

13 THE COURT: All right. Call out
14 the names on the jury.

15 CLERK: Absolutely. If the parties
16 would follow along.

17 THE COURT: You're just going to
18 raise your hand.

19 CLERK: Juror number 280, Daisy
20 Washington.

21 THE COURT: Please raise your
22 hand, Ms. Washington.

23 CLERK: Continuing:

24 Juror number 39, Reed Bunzel

25 Juror number 270, Edwin Tuffts

State of South Carolina versus Leonard Brightman

31

Case No. 11-GS-10-4166

Jury Trial of February 5-6, 2014

Before The Honorable W. Jeffrey Young

1 Juror Number 109, Michael Herrin
2 Juror Number 178, Catherine McGhee
3 Juror Number 143, Andrew Landersick
4 Juror Number 164, Lauren Manaker
5 Juror Number 181, Leomy McKelvey
6 Juror Number 273, Annie Vincent
7 Juror Number 26, Mark Bradley
8 Juror Number 295, John Works
9 Juror Number 42, Theodore Byerly
10 Juror Number 202, Willie Parker, and
11 Juror Number 95, Charlotte Gerhardt

12 THE COURT: All right. Ladies and
13 gentlemen, y'all have been selected for the
14 jury for the trial.

15 I'm going to send you back to the jury
16 room for just a few minutes while we take up
17 a few matters here. While you're back there,
18 if y'all could please select who you want to
19 be the foreperson of your jury. It can be
20 any of the primary twelve, first twelve, but
21 it can't be either of the two alternates.
22 I'm sorry. So if y'all would pick who you
23 want to have, and I'll bring you back out
24 here in about five minutes and then I'm going
25 to release you for lunch. Thank you.

State of South Carolina versus Leonard Brightman

32

Case No. 11-GS-10-4166

Jury Trial of February 5-6, 2014

Before The Honorable W. Jeffrey Young

1 (JURY OUT @ 12:05 P.M.)

2 THE COURT: Is there any objection
3 to the jury that has been selected and the
4 manner in which they have been selected?
5 From the State?

6 SOLICITOR YOUNG: None from the
7 State, Your Honor.

8 THE COURT: From the Defense?

9 MR. KOWALSKI: None from the
10 defense, Your Honor.

11 THE COURT: Okay. Then that will
12 be our jury.

13 Now, ladies and gentlemen, you were
14 very fortunate again, I guess. You have not
15 been selected to serve on a jury, but that
16 doesn't mean your week is over with. So I'm
17 going to release you now with instructions
18 that you call back -- after 6:00?

19 CLERK: Yes, sir.

20 THE COURT: Okay. Thank you
21 ladies and gentlemen; hope you have a
22 nice afternoon.

23 (JURY PANEL EXCUSED)

24 THE COURT: All right. As I
25 stated, if y'all can be back here at 2:00.

State of South Carolina versus Leonard Brightman

33

Case No. 11-GS-10-4166

Jury Trial of February 5-6, 2014

Before The Honorable W. Jeffrey Young

1 I'm going to bring the jury back in and tell
2 them -- be back here at 2:00. I'll have them
3 come back at 2:30 and we'll start.

4 SOLICITOR YOUNG: Thank you, Your
5 Honor.

6 THE COURT: Do you want to see if
7 they've selected a foreperson and are ready
8 to come back in?

9 BAILIFF: If they could have a couple
10 more minutes, Your Honor.

11 THE COURT: Okay. All right.
12 We'll give them a couple more minutes.
13 Anything else that we want to take up before
14 they come in?

15 How long do you think it's going to take?
16 Two days? What do you think?

17 SOLICITOR YOUNG: I think if we move
18 quickly tomorrow we might be able to finish.

19 MR. KOWALSKI: Hopefully, Your
20 Honor. Last time, last trial it took about
21 three days with deliberations and whatnot.
22 But I think that we can do it in two.

23 THE COURT: Okay. Well, I mean,
24 if you can, if you could, at least finish all
25 of the testimony by the end of business

State of South Carolina versus Leonard Brightman

34

Case No. 11-GS-10-4166

Jury Trial of February 5-6, 2014

Before The Honorable W. Jeffrey Young

1 tomorrow. And then come back with opening
2 and charge on Friday morning. And hopefully,
3 we'd just have lunch here, rather than send
4 them outside.

5 SOLICITOR YOUNG: Thank you, Your
6 Honor.

7 MR. KOWALSKI: And, Your Honor,
8 now that the jury's sworn.

9 THE COURT: Well, they haven't
10 been sworn yet.

11 MR. KOWALSKI: Oh, I -- okay. I
12 was going to make a Motion that Mr. Brightman
13 would be allowed to remain out on bond?

14 THE COURT: Do y'all have any
15 objection?

16 SOLICITOR YOUNG: No, Your Honor.

17 THE COURT: That's fine.

18 BAILIFF: They're ready, Your
19 Honor.

20 THE COURT: Okay. Let's bring
21 them in.

22 (JURY IN @ 12:40 P.M.)

23 THE COURT: Y'all may be seated.

24 All right. Mr. Bunzel, you have been
25 selected as the -- or duly elected as the

State of South Carolina versus Leonard Brightman

35

Case No. 11-GS-10-4166

Jury Trial of February 5-6, 2014

Before The Honorable W. Jeffrey Young

1 foreperson of the jury.

2 FOREMAN: Yes, Your Honor.

3 THE COURT: Now, ladies and
4 gentlemen, I'm going to release you now to go
5 to lunch so that you can enjoy the downtown
6 Charleston cuisine, with instructions that
7 you be back here at 2:30.

8 At that time, you will then be sworn.
9 We'll start the trial and go until about 4:30
10 or 5:00 this afternoon and then start back
11 tomorrow morning.

12 We hope to finish all the testimony by
13 the end of tomorrow, with there being
14 deliberations on Friday morning. I don't
15 think anybody expects it's going to go into
16 the weekend. I certainly am not expecting
17 that.

18 So be back here at 2:30 so that we can
19 get started right on time. And the sooner we
20 finish, the sooner we all go home. All
21 right?

22 Thank you, ladies and gentlemen. Please
23 do not discuss anything about the case while
24 you're at lunch.

25 (JURY OUT @ 12:43 P.M.)

State of South Carolina versus Leonard Brightman

36

Case No. 11-GS-10-4166

Jury Trial of February 5-6, 2014

Before The Honorable W. Jeffrey Young

1 THE COURT: Is there anything else
2 we need to take up before 2:00?

3 SOLICITOR YOUNG: Nothing from the
4 State, Your Honor.

5 THE COURT: Anything from the
6 Defendant?

7 MR. KOWALSKI: Nothing from the
8 Defense, Your Honor.

9 THE COURT: Okay. Good deal.
10 I'll see y'all at 2:00. And I understand
11 that the Motion to sequester has been
12 resolved?

13 JOHN KOWALSKI: Yes, sir.

14 THE COURT: Thank you. See you at 2:00
15 o'clock.

16 (LUNCH RECESS)

17 (DEFENDANT PRESENT)

18 THE COURT: Are we ready to do the
19 *Biggers* hearing?

20 MR. KOWALSKI: Yes, Your Honor.

21 THE COURT: All right. Is the
22 State ready?

23 SOLICITOR YOUNG: Yes, Your Honor.

24 THE COURT: Call your first
25 witness.

State of South Carolina versus Leonard Brightman

37

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014 - Neil v Biggers Hearing
Before The Honorable W. Jeffrey Young

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

SOLICITOR YOUNG: Thank you, Your Honor. The State calls Officer Doug Armstead.

(WITNESS TAKES STAND)

DOUGLAS ARMSTEAD, having been duly sworn to tell the truth, and nothing but the truth, testified as follows:

THE COURT: You may proceed.

SOLICITOR YOUNG: Thank you, Your Honor. May it please the Court?

THE COURT: Yes, ma'am.

DIRECT EXAMINATION

BY SOLICITOR YOUNG:

Q. Officer Armstead, in light of the fact that this is pretrial, I am just going to skip directly to the incident at hand.

Did you have an occasion to respond to the Naval Yard Substation at 1857 Marine Avenue on March 9th, 2011?

A. I did.

Q. And at that time, what was going on?

A. I was responding for -- an alarm went off in the SCE&G Power Substation.

Q. Okay. And what was your involvement

State of South Carolina versus Leonard Brightman

38

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014 - Neil v Biggers Hearing
Before The Honorable W. Jeffrey Young

1 in that response?

2 A. I was just the responding unit.
3 And I went around to the back side of the
4 perimeter of that location, being I'm
5 familiar with that area.

6 Q. Okay. And did you locate any
7 suspects that day?

8 A. I did.

9 Q. Okay. And at some point was that
10 suspect arrested?

11 A. Yes, ma'am.

12 Q. All right. Were you involved in
13 that arrest?

14 A. I was.

15 Q. Okay. What happened after the
16 arrest?

17 A. EMS was called due to the subject
18 male having chest pains.

19 Q. Okay. And did you have to bring him
20 anywhere after that?

21 A. I took him back around to, I guess
22 St. John's Avenue, which is right off of
23 McMillan Avenue. It was in front of the
24 substation. That's an easy place for EMS to
25 respond to.

State of South Carolina versus Leonard Brightman

39

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014 - Neil v Biggers Hearing
Before The Honorable W. Jeffrey Young

1 Q. Okay. And where had the actual
2 arrest take place?

3 A. In a drainage pond next to the
4 substation.

5 Q. And can you estimate about how many
6 yards away from the substation you were at
7 the time of the arrest?

8 A. Just about a hundred (100) yards or
9 so.

10 Q. Now, so at the time you brought him
11 back around to the substation, was he under
12 arrest?

13 A. He was.

14 Q. Okay. At any point did you ask
15 Lieutenant Ponder or any other witnesses
16 there for any identifications?

17 A. Identification was made by him
18 seeing him in the back of the ambulance.

19 Q. And when you say "him," can you
20 clarify who you mean?

21 A. The defendant.

22 Q. I'm sorry. Who actually made an
23 identification?

24 A. Oh, the security guard, Lieutenant
25 Ponder.

State of South Carolina versus Leonard Brightman

40

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014 - Neil v Biggers Hearing
Before The Honorable W. Jeffrey Young

1 Q. Okay. Did you have an understanding
2 of what his involvement had been?

3 A. He was responding out there due to
4 the alarm company and the Allied Barton was
5 the -- Coastal, I believe as the security at
6 at the time. But he responded out there.
7 His duties were security for that area.

8 Q. Okay. And you indicated to him that
9 you had made an arrest and it was the same
10 person?

11 A. I did not indicate to him. He was
12 there. He observed the subject flee upon my
13 arrival. I just happened to be in the area.

14 Q. And did you say anything to him to
15 suggest to him this was the same person that
16 he had chased?

17 A. No.

18 Q. Did you say anything to suggest to
19 him that he needed to make an identification?

20 A. No.

21 SOLICITOR YOUNG: I don't have
22 anything further of this witness.

23 THE COURT: Mr. Kowalski.

24 MR. KOWALSKI: Your Honor, may it
25 please the Court?

State of South Carolina versus Leonard Brightman

41

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014 - Neil v Biggers Hearing
Before The Honorable W. Jeffrey Young

1 THE COURT: Yes, sir.

2 CROSS EXAMINATION

3 BY MR. KOWALSKI:

4 Q. Good afternoon, Officer Armstead?

5 A. How are you, sir?

6 Q. Good. You said on March 9th you came
7 to the substation at 1857 Marine Avenue?

8 A. I did, sir.

9 Q. Okay. And you said you went around
10 back, but is that technically the front of
11 the substation where you came in?12 A. Negative, sir. The gates are on
13 front, but they're closest to McMillan
14 Avenue. I went around to the back side, due
15 to knowing the area. It turns off Turnbull
16 Avenue back there. The roads may have been
17 changed up now. But I responded there,
18 thinking that if there was something going
19 on, that would be the path that someone would
20 probably take to try to flee the area.21 Q. Okay. So the entrances are off St.
22 Johns, but you're around back and there's no
23 entrances there?

24 A. Correct.

25 Q. When you got to the scene, you

State of South Carolina versus Leonard Brightman
Case No. 11-GS-10-4166
Jury Trial of February 4-5, 2014 - Neil v Biggers Hearing
Before The Honorable W. Jeffrey Young

42

1 arrived at around the same time as Officer
2 Kirk; correct?

3 A. Correct.

4 Q. And he was on the opposite side?

5 A. Correct, sir.

6 Q. Okay. And did you immediately see
7 Mr. Brightman?

8 SOLICITOR YOUNG: Objection.
9 Outside the scope of the *Biggers* hearing.

10 THE COURT: I'm going to give him
11 a little leeway.

12 CROSS EXAMINATION

13 BY MR. KOWALSKI:

14 A. I received a description from the
15 dispatcher prior to our arrival because of
16 the camera systems inside the location. And
17 they described a subject wearing a black ski
18 mask, a green plaid vest, black shirt, khaki
19 pants.

20 I went around the back side of it because
21 they said that the subject was fleeing. I
22 observed a subject matching that description
23 run into the drain pond.

24 Q. So you saw Mr. Brightman and he was
25 wearing a green plaid vest?

State of South Carolina versus Leonard Brightman

43

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014 - Neil v Biggers Hearing
Before The Honorable W. Jeffrey Young

1 SOLICITOR YOUNG: Objection. Again,
2 Your Honor, outside the scope.

3 THE COURT: Yeah. This is outside
4 the scope of this hearing. I'll let you go a
5 little ways, and I'll let you go a little bit
6 further with that.

7 MR. KOWALSKI: Your Honor, this
8 entire identification hinges on the articles
9 of clothing this person was wearing. So ---

10 THE COURT: I'm sure a lot of
11 people would argue that's a very important
12 part of a person.

13 MR. KOWALSKI: Yes, Your Honor.
14 And we're not trying to dispute that, but we
15 are trying to say there are discrepancies in
16 here. And the identification was never made
17 on the subject's face.

18 I know we've already been through this
19 trial once, but Mr. Ponder never says that he
20 sees the subject's face that he's chasing
21 beside the substation. So the identification
22 ---

23 THE COURT: I mean, I think that's
24 your argument to be made to the jury on this,
25 as to whether it's him or not.

State of South Carolina versus Leonard Brightman

44

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014 - Neil v Biggers Hearing

Before The Honorable W. Jeffrey Young

1 I mean, if he's got the same clothes on
2 that somebody had said, and he sees him come
3 in and out, you know, to me, that's pretty
4 good. I mean, it's not -- it's good enough
5 to start a trial. It may not be good enough
6 to get a conviction.

7 MR. KOWALSKI: Yes, Your Honor.
8 But I don't think that the articles of
9 clothing are the same as to each person's
10 description.

11 THE COURT: All right. Well, that
12 may be where we differ.

13 CROSS-EXAMINATION CONTINUED

14 BY MR. KOWALSKI:

15 Q. So when you initially saw Mr.
16 Brightman, he was wearing a green and black
17 vest?

18 A. He had a black, what I thought
19 appeared to be a skully cap at the time. It
20 was later found out to be a ski mask. And a
21 green and black vest with a black shirt on
22 and the khaki pants that was described by the
23 dispatcher to us.

24 Q. And you chased after him, ---

25 A. Correct.

State of South Carolina versus Leonard Brightman

45

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014 - Neil v Biggers Hearing
Before The Honorable W. Jeffrey Young

1 Q. --- and you sort of tackled him
2 down?

3 A. Correct.

4 Q. A take-down?

5 A. (No verbal response).

6 Q. Is what you would call it?

7 A. Yes, sir.

8 Q. And at that point, you handcuffed
9 him?

10 A. Yes, sir.

11 Q. Okay. You said you called EMS next
12 because he was complaining he had chest
13 pains?

14 A. Yes, sir.

15 Q. And about how long was he on the
16 ground?

17 A. Not long on the ground.

18 Q. Not long. About how long was he in
19 the arresting area where you originally
20 arrested him?

21 A. Where he was originally arrested at
22 until the time that we moved to where EMS met
23 him?

24 Q. Yes?

25 A. No more than ten (10) minutes.

State of South Carolina versus Leonard Brightman

46

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014 - Neil v Biggers Hearing
Before The Honorable W. Jeffrey Young

1 Q. Okay. So -- and you're about a
2 hundred yards away?

3 A. Correct.

4 Q. So you go to the back of the
5 substation again, where your cruiser was
6 located?

7 A. Yes. There was a little gate right
8 there that goes to that drainage ditch. We
9 went through there, back to the cruiser,
10 drove back around to McMillan Avenue.

11 Q. Okay. And at this point Mr. Bright-
12 man was handcuffed?

13 A. Correct.

14 Q. And he's in the back of your patrol
15 car?

16 A. Correct.

17 Q. Okay. And you were also in the car
18 with Officer Clemens?

19 A. Correct.

20 Q. Okay. And you were sort of -- you
21 were his supervisor or supervising ---

22 A. I was his field training officer at
23 the time.

24 Q. Okay. And drove back around the
25 front on Saint Johns?

State of South Carolina versus Leonard Brightman
Case No. 11-GS-10-4166
Jury Trial of February 4-5, 2014 - Neil v Biggers Hearing
Before The Honorable W. Jeffrey Young

47

1 A. Correct.

2 Q. And you were followed by Officer
3 Kirk?

4 A. Kirk was already on the scene at
5 that time.

6 Q. Okay. He was already at the front
7 of the substation?

8 A. Right.

9 Q. Okay. And had EMS already arrived?

10 A. I do not remember if they were
11 already on the scene when I pulled up there
12 or not.

13 Q. Okay. All the people there, that
14 are standing in the entrance of the
15 substation are uniformed officers?

16 A. Correct. Everyone was in uniform.
17 There was no civilians there.

18 Q. Okay. And you're real familiar with
19 your department policy on show-up identifi-
20 cations?

21 A. Correct.

22 Q. And when you do a show-up, you are
23 supposed to call a supervising officer,
24 supervisor?

25 A. We can do a show-up. We have a

State of South Carolina versus Leonard Brightman
Case No. 11-GS-10-4166
Jury Trial of February 4-5, 2014 - Neil v Biggers Hearing
Before The Honorable W. Jeffrey Young

48

1 show-up form that we fill out if we're going
2 to do a show-up.

3 Q. Okay. And so you don't have to
4 advise your, any supervising officer if
5 you're about to conduct a show-up?

6 A. No.

7 Q. All right. And you said you had
8 to fill out some identification or some
9 documentation?

10 A. We do not fill out any documentation
11 as far as the show-up form or any of that.

12 Q. Okay. While Mr. Brightman was in
13 the back of your patrol car, Mr. Ponder
14 stated that that was the person he was
15 chasing?

16 A. I believe he said that once he was
17 in the back of the ambulance, not the back of
18 the patrol car.

19 Q. And was he still handcuffed when he
20 was in the ---

21 A. Once he got into the ambulance, the
22 handcuffs were removed from behind his back
23 and handcuffed to the edge of the gurney. So
24 that he could be in a position to where it's
25 not uncomfortable, in the back of the

State of South Carolina versus Leonard Brightman

49

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014 - Neil v Biggers Hearing
Before The Honorable W. Jeffrey Young

1 ambulance, and they can do what they need to
2 do as far as the blood pressures, IVs or
3 whatever is needed.

4 Q. Okay. So the handcuffs were
5 visible, but relocated?

6 A. Correct.

7 Q. And from the time of the arrest to
8 the time that Mr. Brightman was put into the
9 back of the EMS ambulance, was about fifteen
10 (15) minutes?

11 A. Between ten and fifteen minutes.
12 EMS is close. Their station is right down
13 there, I believe on Spruill Avenue. They
14 were close. It was not long at all.

15 MR. KOWALSKI: I beg the Court's
16 indulgence, please?

17 THE COURT: Yes, sir.

18 JOHN KOWALSKI: (Sidebar with Ms.
19 Runey and defendant), I have no further
20 questions.

21 THE COURT: Thank you. Any
22 redirect?

23 SOLICITOR YOUNG: Your Honor, just
24 one brief question.

25 REDIRECT EXAMINATION

State of South Carolina versus Leonard Brightman

50

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014 - Neil v Biggers Hearing
Before The Honorable W. Jeffrey Young

1 BY SOLICITOR YOUNG:

2 Q. Officer Armstead, was your under-
3 standing of Mr. Ponder, Lieutenant Ponder,
4 the security guard that day, that he was also
5 law enforcement personnel?

6 A. Correct.

7 Q. And did that have any influence over
8 your, the need to fill out any forms or
9 follow policy?10 A. Correct. We normally -- normally,
11 we wouldn't do anything between police
12 officers.

13 Q. Thank you.

14 THE COURT: You may step down.

15 (WITNESS STEPS DOWN)

16 THE COURT: On the other case,
17 let's take a quick break. I've got a
18 question from the jury.

19 (BRIEF RECESS)

20 (DEFENDANT PRESENT)

21 THE COURT: Yes, ma'am.

22 SOLICITOR YOUNG: And, Your Honor,
23 as to the *Biggers* Hearing, at this time, the
24 State would actually move or argued that, in
25 fact, the first prong of the *Biggers'* test

State of South Carolina versus Leonard Brightman

51

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014 - Neil v Biggers Hearing
Before The Honorable W. Jeffrey Young

1 has not been met, that there's not been any
2 coercion shown by law enforcement.

3 And further that Mr. Ponder, who was
4 actually making the identification, was
5 trained law enforcement and that this was not
6 a traditional show-up identification, where,
7 say, a victim who had no understanding of the
8 law and the justice system.

9 And, Your Honor, at this time we would
10 move that the show-up identification be
11 permitted.

12 THE COURT: Mr. Kowalski?

13 MR. KOWALSKI: Thank you, Your
14 Honor. First off, to claim that Mr. Ponder,
15 Security Officer Ponder, is a trained officer
16 of the law, I don't think there's been any
17 foundation laid for that, other than it was
18 what Officer Armstead said he was a security
19 officer. So I don't -- even with respect to
20 that, I don't know if a security officer or
21 even a police officer is better at recogniz-
22 ing faces and making positive identifica-
23 tions than, you know, a layman. We're still
24 dealing with an identification.

25 And that identification, we believe the

State of South Carolina versus Leonard Brightman

52

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014 - Neil v Biggers Hearing
Before The Honorable W. Jeffrey Young

1 process was an unduly suggestive show-up.

2 I think if we get more into Mr. Ponder's
3 testimony, you're going to see more of where
4 our identification issues are coming.

5 THE COURT: At this stage of the
6 game, I find it's not unduly suggestive and
7 I'm going to allow it in. You'll be able to
8 make in court identification.

9 SOLICITOR YOUNG: Thank you, Your
10 Honor.

11 THE COURT: All right. Thank you.
12 Any other questions?

13 MR. KOWALSKI: I don't believe at
14 this time, Your Honor. Thank you.

15 THE COURT: All right. We'll just
16 stand at-ease for a few minutes and once all
17 of our jurors get here ---

18 BAILIFF: They're here.

19 THE COURT: They are?

20 BAILIFF: Yes, sir.

21 THE COURT: I also want to wait
22 about five minutes to see if that other jury
23 has any other question.

24 SOLICITOR YOUNG: I believe that's a
25 good idea.

State of South Carolina versus Leonard Brightman

53

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014 - Neil v Biggers Hearing
Before The Honorable W. Jeffrey Young

1 THE COURT: Yeah. I mean, I don't
2 want to have to break immediately. So why
3 don't we take a ten-minute break and then we
4 will begin our opening arguments.

5 SOLICITOR YOUNG: All right. Thank
6 you.

7 (BRIEF RECESS)

8 (DEFENDANT PRESENT)

9 THE COURT: All right. Let's
10 bring our jury in.

11 (JURY IN @ 2:38 P.M.)

12 THE COURT: For the alternates, it
13 really doesn't matter. They can sit anywhere
14 they want.

15 BAILIFF: All jurors are
16 present.

17 THE COURT: I have found, every-
18 where I go across the State -- y'all can sit
19 anywhere you want but, sir, you need to sit
20 there. The rest of y'all can sit anywhere
21 you want. I have found that jurors are real
22 territorial, after just a short period of
23 time, as to that's their seat.

24 Thank you for your promptness today,
25 ladies and gentlemen. Y'all were right on

State of South Carolina versus Leonard Brightman

54

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014 - Neil v Biggers Hearing
Before The Honorable W. Jeffrey Young

1 time and I appreciate that. And that helps
2 everything move much smoother. Would you
3 please place the jury under oath?

4 CLERK: Absolutely, Your Honor.

5 Please have the defendant rise.

6 DEFENDANT: (Complies)

7 (WHEREUPON JURY SWORN)

8 CLERK: If there any juror who did
9 not take this oath, if they would please
10 stand aside? (No response).

11 Please let the record reflect that all
12 jurors took the oath.

13 THE COURT: Thank you. You may be
14 seated. All right.

15 Ladies and gentlemen, before we begin
16 this trial, I'm going to tell you that this
17 trial may be different from what you might
18 expect. You know, most people never have the
19 opportunity to actually participate in an
20 actual court session as you are today. And
21 they think from watching TV, movies or
22 reading books that trials are always full of
23 high drama, intense action and riveting
24 circumstances. Now, while all these things
25 might be true at times, this trial is not for

State of South Carolina versus Leonard Brightman
Case No. 11-GS-10-4166
Jury Trial of February 4-5, 2014 - Welcome by The Court
Before The Honorable W. Jeffrey Young

55

1 entertainment.

2 This is a real trial, which is a
3 fundamental part of our democracy and it's a
4 search for the truth to ensure, make sure
5 that justice is done. Searching for the
6 truth and ensuring that justice is done, is
7 often slow, deliberate, repetitive, the exact
8 opposite of what you may have seen in movies,
9 TVs, or read in books.

10 Now, this courtroom is a place of honor
11 that is dedicated to the protection and the
12 preservation of our citizens' rights, through
13 what has been called, and what I truly
14 believe to be the greatest justice system
15 ever created by mankind.

16 The attorneys, who are appearing before
17 you, are advocates for the parties that they
18 represent. But first and foremost, they are
19 officers of this Court who are sworn to
20 uphold the integrity and the fairness of our
21 judicial system, and to help you, as jurors,
22 in your search for the truth.

23 Ladies and gentlemen, you should expect
24 them to be professional, competent, and
25 ethical in representation of their clients'

State of South Carolina versus Leonard Brightman
Case No. 11-GS-10-4166
Jury Trial of February 4-5, 2014 - Welcome by The Court
Before The Honorable W. Jeffrey Young

56

1 interest. And remember, you just took an
2 oath a few minutes ago to listen to the
3 evidence in this case and to reach a fair and
4 just verdict. And you are expected to be
5 professional, reasonable, and ethical as
6 well.

7 And, again, I want to thank you for
8 accepting this very important responsibility
9 of jury duty and contributing to our justice
10 system.

11 Now, ladies and gentlemen, what I'm going
12 to tell you now is just intended to serve as
13 an introduction to the trial of this case.
14 These remarks are not a charge on the law.
15 I'll charge you on the law that's applicable
16 in this case at the end of all the evidence.
17 This is merely an explanation of the
18 procedures that you will follow so that you
19 may better understand what is happening.

20 Let me say up front, ladies and
21 gentlemen, that you will not be allowed to
22 take notes during this trial. Therefore,
23 it's very important that you listen through-
24 out this trial.

25 Now, ladies and gentlemen, this defen-

State of South Carolina versus Leonard Brightman

57

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014 - Welcome by The Court
Before The Honorable W. Jeffrey Young

1 dant, Mr. Leonard Brightman, is charged with
2 malicious injury to electrical utility
3 systems. And ladies and gentlemen, specific
4 elements of that charge will be explained to
5 you later. Now, ladies and gentlemen, I do
6 remind you again that the indictment charging
7 the Defendant is simply the document by which
8 this case is brought into court, and is not
9 in any sense evidence of any of the
10 allegations contained therein.

11 The Defendant has pled not guilty to the
12 charge contained in the indictment, so the
13 State has the burden of proving each and
14 every element of the charge of the indictment
15 beyond a reasonable doubt. And it will be
16 your duty as jurors to decide whether or not
17 the State has met that burden.

18 Now, ladies and gentlemen, your purpose
19 is to determine the facts in this case. And
20 you'll determine the facts from the testimony
21 you hear from that witness stand and any
22 other evidence that is introduced here in the
23 courtroom. It will be up to you to determine
24 the inferences which you feel may be properly
25 drawn from the evidence.

State of South Carolina versus Leonard Brightman

58

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014 - Welcome by The Court

Before The Honorable W. Jeffrey Young

1 And ladies and gentlemen, let me remind
2 you and tell you that it's especially
3 important that you perform your duty
4 diligently and conscientiously, because
5 ordinarily there is no way to correct an
6 erroneous determination of facts by a jury.
7 On the other hand, the same law that makes
8 you the finders of the facts, the judges of
9 the facts, makes me the judge of the law.
10 And the law as given to you by me is the only
11 law that you may consider. You must accept
12 the law as I give it to you and follow it
13 even though you might disagree.

14 And I'll make an agreement with you, that
15 I cannot tell you what the facts are and you
16 cannot disagree with me about what the law is
17 or what the law should be. Your job is to
18 take the facts -- or take the law as I give
19 it to you, and apply it to the facts as you
20 find them, from the testimony of the witness
21 and any other evidence that is presented.

22 And after hearing the evidence, you will
23 deliberate and render a true and just verdict
24 under the solemn oath that you just took as
25 jurors.

State of South Carolina versus Leonard Brightman

59

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014 - Welcome by The Court
Before The Honorable W. Jeffrey Young

1 Now, ladies and gentlemen, until I advise
2 you to begin your deliberations at the
3 conclusion of this case, you must not discuss
4 the case with others, including your fellow
5 jurors. You may not use a computer, a cell
6 phone, or any other electronic device with
7 communications capabilities while in
8 attendance in court or during your delibera-
9 tions.

10 Now, you may use these devices when you
11 break for lunch or when you go home for the
12 evening. But even then, they can't be used
13 to disclose any information about the case or
14 when you're not in court.

15 And information about the case would
16 include, but certainly wouldn't be
17 exclusively, information about a party, a
18 witness, an attorney, or court officer, any
19 news accounts about the case, any information
20 collected through juror research on any topic
21 raised in testimony or any topic that you
22 think would be helpful in deciding the case.

23 Now, ladies and gentlemen, after the case
24 is handed to you, you must discuss it only in
25 the jury room with your fellow jurors.

State of South Carolina versus Leonard Brightman
Case No. 11-GS-10-4166
Jury Trial of February 4-5, 2014 - Welcome by The Court
Before The Honorable W. Jeffrey Young

60

1 The attorneys and the parties in this
2 case are advised that they are not to talk to
3 you in any way. So if you run into one of
4 them in this small courthouse square that we
5 have down here at the corner of Broad and
6 Meeting, and they don't even say hello.
7 Well, you know, they're not being unfriendly.
8 They're just following my instructions.

9 And ladies and gentlemen, it's very
10 important that you keep an open mind and not
11 decide any issue in this case until all of
12 the evidence has been presented, the
13 attorneys have made their closing arguments
14 and I have instructed you on the law that is
15 applicable to this case.

16 And it's your solemn responsibility,
17 ladies and gentlemen, to determine the guilt
18 or the innocence of the Defendant.

19 Your verdict must be based solely on the
20 evidence that is presented in this courtroom
21 and the law as I give it to you at the close
22 of the trial.

23 Now, ladies and gentlemen, in just a
24 moment the Solicitor will make what is called
25 an opening statement, in which she will

State of South Carolina versus Leonard Brightman

61

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014 - Welcome by The Court
Before The Honorable W. Jeffrey Young

1 explain to you what she believes the issues
2 are in this case. The attorney for the
3 Defendant may also make an opening statement.
4 Of course, he's not required to do.

5 Let me remind you that what the attorneys
6 say during their opening statements is not
7 evidence. It is only their contention as to
8 what they believe the evidence will be and
9 what the issues are in this case.

10 Now, from time to time during the trial,
11 you may hear one of the attorneys say
12 something like, 'Your Honor, I believe we
13 have a question on a matter of law that we
14 need to discuss with you' or 'Your Honor,
15 may we approach the bench?' Or sometimes I
16 might decide that it's necessary to excuse
17 you from the courtroom for a short period of
18 time while the attorneys and I discuss
19 matters of law. And the reason for this is
20 that, as I've said, you are the judges of the
21 facts. And sometimes when we're discussing a
22 matter of law, it may be necessary for me to
23 comment on the facts in connection with
24 making a ruling as to whether or not a
25 particular law applies.

State of South Carolina versus Leonard Brightman

62

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014 - Welcome by The Court

Before The Honorable W. Jeffrey Young

1 And like I said, I'm not supposed to tell
2 you what the facts are, so I'll excuse you
3 from the courtroom, from the conversation
4 while these discussions take place so you
5 will in no way be influenced by anything that
6 I might say or do in connection with the
7 facts.

8 Now, ladies and gentlemen, also during
9 the trial, you might hear one of the
10 attorneys make an objection to certain
11 evidence that is about to be presented.

12 Now, whether or not I sustain, which
13 would be to grant the objection, or overrule,
14 which would be to deny the objection, should
15 not be construed that I favor one side over
16 the other. And I do not. Nor should you
17 consider that the objecting party is trying
18 to hide something from you.

19 You know, this courtroom, as in all
20 situations in life, there's specific rules
21 that must be followed. And the attorneys, as
22 officers of this Court, are merely trying to
23 follow the rules of evidence in this court in
24 making their objection. And I am only ruling
25 on what I believe the law in the State of

State of South Carolina versus Leonard Brightman

63

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014 - Welcome by The Court
Before The Honorable W. Jeffrey Young

1 South Carolina to be, concerning the evidence
2 that is about to be presented.

3 Now, ladies and gentlemen, in determining
4 what the true facts are, you must decide
5 whether or not the testimony from the witness
6 is believable.

7 It will be my responsibility as the
8 presiding Judge to rule as a matter of law,
9 as to whether certain testimony or evidence
10 is admissible, but once the testimony is
11 admitted, whether or not you decided to
12 believe it, is solely for you, as jurors, to
13 determine.

14 In deciding whether to believe a witness,
15 you have a right to consider the interest of
16 any witness, the bias of any witness, the
17 prejudice of any witness and the opportunity
18 for the witness to have actually observed the
19 matters and things about which the witness
20 may testify.

21 And you may also consider how the witness
22 acts on the witness stand.

23 Now, ladies and gentlemen, you have a
24 right to consider anything that is in the
25 record that will help you evaluate the

State of South Carolina versus Leonard Brightman
Case No. 11-GS-10-4166
Jury Trial of February 4-5, 2014 - Welcome by The Court
Before The Honorable W. Jeffrey Young

64

1 testimony of the witness. That means it's
2 your responsibility and you need to pay close
3 attention to the witnesses, to observe the
4 witnesses, and to listen to the witnesses.
5 And pay close attention to the attorneys and
6 the Court, ladies and gentlemen.

7 Please don't let your thoughts wander,
8 but give strict attention to the testimony so
9 at the end of all the testimony, after the
10 charge on the law by me, and the argument of
11 counsel, you will then be in a position to
12 determine what the true facts are and to
13 apply the law to those facts, and thus render
14 a true and just verdict.

15 Now, Mr. Foreman, in addition, it will be
16 your responsibility to be the jury spokes-
17 person here in the court. And you will
18 preside over the jurors in the jury room.
19 You'll also be required to write down the
20 verdict. But I'll give you more instructions
21 on that at the appropriate time.

22 Now, in order to preserve everyone's
23 right, I'll give the parties an opportunity
24 to object to anything that I have stated to
25 you.

State of South Carolina versus Leonard Brightman

65

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014 - Welcome by The Court
Before The Honorable W. Jeffrey Young

1 Does the State have any objection to
2 anything I've said?

3 SOLICITOR YOUNG: No, Your Honor.

4 THE COURT: Does the Defense have any
5 objection?

6 MR. KOWALSKI: No, Your Honor.

7 THE COURT: Okay. Thank you. We'll
8 now begin the trial. Is the State ready?

9 SOLICITOR COMPTON: Thank you, Your
10 Honor. May it please the Court?

11 THE COURT: Yes, ma'am.

12 SOLICITOR COMPTON: Mr. Kowalski, Mr.
13 Brightman, Judge Young, ladies and gentlemen
14 of the jury.

15 I want to start off thanking you. Some of
16 you may have been here every day this week.
17 I appreciate your commitment. And the State
18 of South Carolina appreciates your commit-
19 ment, and Mr. Brightman appreciates your
20 commitment.

21 Now, you heard the Judge tell you the
22 Defendant is charged with malicious injury to
23 an electric utility system.

24 No, we have not gotten you down here for
25 a murder case, but it's an important case for

State of South Carolina versus Leonard Brightman
Case No. 11-GS-10-4166
Jury Trial of February 4-5, 2014 - Opening Statement by Solicitor
Before The Honorable W. Jeffrey Young

66

1 Mr. Brightman. It's an important case to the
2 community, and I think an important case to
3 everyone who relies on SCE&G for their power,
4 who pays SCE&G an electric bill.

5 Now, SCE&G -- you may have some prior
6 knowledge of it, and you'll hear some
7 witnesses today explain to you how it works.
8 I was learning this for the first time when I
9 started working on all of this.

10 But SCE&G has a large -- when their power
11 is generated, it comes out in large voltages
12 that can't be used for homes or businesses,
13 and so they rely on substations. And you may
14 have seen them in your community. They're
15 large groups of transformers, usually kept
16 within a fence with Danger signs posted on
17 them. These transformers take the
18 electricity that has been generated, and they
19 reduce it down to a smaller voltage that can
20 be used in your homes, your businesses.

21 Now, SCE&G has to rely on copper to
22 conduct this electricity, ground the
23 electricity. It's the best and easiest way
24 to conduct electricity and it last the
25 longest.

State of South Carolina versus Leonard Brightman
Case No. 11-GS-10-4166
Jury Trial of February 4-5, 2014 - Opening Statement by Solicitor
Before The Honorable W. Jeffrey Young

67

1 Unfortunately, the community and SCE&G
2 has had a problem because copper is very
3 valuable. You'll hear witnesses testify
4 about it. This has been an ongoing problem.
5 Copper can be sold as scrap metal for up to
6 four dollars (\$4.00) an pound.

7 And the State of South Carolina, the
8 Legislature, in an attempt to address this
9 problem, made it a crime of malicious injury
10 to an electric utility system, makes it
11 illegal to destroy or damage an electric
12 utility system or any component thereof.

13 Fortunately, we don't have a complicated
14 case here today, hanging on the minutia of
15 what a component of an electric utility
16 system is. Fortunately the defendant was
17 caught on the scene.

18 We'll hear from a lot of witnesses today.

19 The first one is Lieutenant Ponder. He
20 works security for SCE&G. SCE&G has a hired
21 security force to maintain security for these
22 substations and the copper they contain.

23 Lieutenant Ponder was notified by the
24 alarm system that SCE&G has also had to have
25 to protect against theft and damage. Now,

State of South Carolina versus Leonard Brightman
Case No. 11-GS-10-4166
Jury Trial of February 4-5, 2014 - Opening Statement by Solicitor
Before The Honorable W. Jeffrey Young

68

1 this alarm system is triggered by motion
2 sensors and it takes a small, instant picture
3 of what it sees when it's triggered. And
4 Lieutenant Ponder is called out because of a
5 blip of someone in a green or blue, greenish
6 blue plaid shirt or vest. Just a blip.

7 He's called out to respond. And he
8 arrives, and lo and behold finds someone
9 wearing a green plaid, green and blue plaid
10 vest, up, climbed up on one of the
11 transformers. And he carries a saw.

12 Now, when he responded on March 9th, 2011
13 and when he arrived, the Defendant jumped
14 down off of the transformer. He and
15 Lieutenant Ponder went a little bit of a
16 goose chase throughout this enclosed
17 substation. Walls, four walls, transformers,
18 chasing in and out; he'll tell you all about
19 it.

20 Lieutenant Ponder gets a good look at
21 him. At one point, they're face-to-face,
22 just like this. He took a look at his face.
23 He took a look at his build.

24 At that point, he's wearing a ski mask.
25 That's pretty odd. I told you it was about

State of South Carolina versus Leonard Brightman
Case No. 11-GS-10-4166
Jury Trial of February 4-5, 2014 - Opening Statement by Solicitor
Before The Honorable W. Jeffrey Young

69

1 noon in March. He was wearing a ski mask.

2 He's also got a headlamp. It's noon.
3 The sun is out. He's wearing a headlamp and
4 a ski mask.

5 As Lieutenant Ponder is chasing him, the
6 Defendant is able to slip under a little
7 opening in the gate, was able to slip out.

8 Lieutenant Ponder's not also able to fit
9 under that gate, and so he has to run around
10 to the next gate, open -- you'll see a
11 picture of all this.

12 Fortunately, right as all of this is
13 happening, three officers from North
14 Charleston arrive: Officer Armstead, Officer
15 Clemens and Officer Kirk. They arrive and
16 see the Defendant wearing the blue and green
17 plaid shirt, the ski mask and the headlamp,
18 running in the drainage ditch nearby, within
19 the fenced-in area. There's no one else
20 around. It's just the Defendant.

21 He's arrested and on his person they
22 recover the ski mask and headlamp.

23 He comes back around. He says he's
24 experiencing chest pains so they called EMS.
25 He's brought back around to the front of the

State of South Carolina versus Leonard Brightman
Case No. 11-GS-10-4166
Jury Trial of February 4-5, 2014 - Opening Statement by Solicitor
Before The Honorable W. Jeffrey Young

70

1 substation, right where he'd slipped under
2 that gate. Lieutenant Ponder says, 'yes,
3 that's him.' They arrest him and move on.

4 Crime scene comes out. They come out.
5 They do pictures. We'll hear from her. She
6 looks for fingerprints, DNA, things like
7 that. The kind of things you see on TV.
8 This isn't TV. You don't always get the
9 exact fingerprint in a heat-sensing,
10 geothermal spot. We've got to rely on
11 things like touch DNA and fingerprints on
12 certain surfaces. She'll tell you about
13 that.

14 Unfortunately there's not a lot of
15 forensic evidence here, but we really don't
16 need it because Lieutenant Ponder will tell
17 you 'that's the guy.' He saw him. He's
18 wearing the same outfit, the same ski mask,
19 the same headlamp. He was running in a
20 fenced in area. He's the only one around.
21 This is not rocket science, ladies and
22 gentlemen.

23 At the end of all the evidence, we will
24 ask you to hold Mr. Brightman accountable,
25 accountable to the community, accountable to

State of South Carolina versus Leonard Brightman
Case No. 11-GS-10-4166
Jury Trial of February 4-5, 2014 - Opening Statement by Solicitor
Before The Honorable W. Jeffrey Young

71

1 SCE&G. Thank you.

2 THE COURT: Thank you. Mr.
3 Kowalski.

4
5 MR. KOWALSKI: Thank you, Your Honor.
6 May it please the Court?

7 THE COURT: Yes, sir.

8 MR. KOWALSKI: Ms. Compton just
9 talked to you about how important it is, that
10 we get our power from SCE&G, that we even pay
11 their bills. I think we all probably
12 realized that this last week when we had that
13 ice storm. Everybody was running to the
14 grocery stores, stocking up on water, beer
15 and wine, whatever they've got to do.

16 I have a friend of mine who's a bachelor,
17 he probably had only ice cubes in his
18 'fridge. He's worried about what he's going
19 to do to cook. You know, all the places are
20 going to be closed down. So I told him to
21 get some frozen pizzas. And the power goes
22 out. Well, we've just got bigger problems.

23 And the bigger problems that I'm talking
24 about is something that was brought up to me
25 by my fiancée. She tells me, 'what about the

State of South Carolina versus Leonard Brightman
Case No. 11-GS-10-4166
Jury Trial of February 4-5, 2014 - Opening Statement by Defense
Before The Honorable W. Jeffrey Young

72

1 homeless people?' I was sort of struck by
2 this because my client is homeless. I'm
3 thinking, you know, 'I don't know.' There's
4 the shelters, they can only do so much. They
5 can only take in so many people. There's
6 under bridges. Storms, ice storms. I don't
7 know.

8 And it was this type of predicament that
9 Mr. Brightman found himself in in 2011. He
10 was homeless. And as a homeless person, he
11 sort of struggled to find someplace to sit
12 down, to rest, without having somebody and
13 confront him about, 'Hey, what are you doing
14 here? Why are you sleeping here?'

15 It was the best place to be, in that
16 enclosed area where he doesn't think he's
17 going to be bothered.

18 So Mr. Brightman goes into this
19 substation, but he's not the only one there.

20 What you'll hear is that on March 9th,
21 2011, that somebody in SCE&G's central video
22 monitoring station sounds an alarm that
23 somebody or some thing is inside the
24 substation. So they sent out a dispatch:
25 'Go check this out. See what this is.'

State of South Carolina versus Leonard Brightman
Case No. 11-GS-10-4166
Jury Trial of February 4-5, 2014 - Opening Statement by Defense
Before The Honorable W. Jeffrey Young

73

1 So the first to arrive on the scene is
2 Security Officer Ponder. So he goes into the
3 substation and hears something. He moves
4 around until he is able to see this man
5 standing up on a transformer, wearing blue
6 jeans and a ski mask, sawing away.

7 Now, I think you've got to be thinking
8 that's not the smartest thing in the world.
9 It's not. But, you know, desperate people do
10 desperate things.

11 So officer Ponder then orders the person
12 to get down on the ground. The person jumps
13 down on the ground and he runs. He ran from
14 one corner of the substation to the other
15 corner of the substation, taking him around,
16 as Ms. Compton said, on a wild goose chase,
17 running all around for about five minutes.

18 And while this is going on, Mr. Bright-
19 man, who was hidden from the security officer
20 is able to slip away out the fence, and he
21 runs. He does. He runs because he knows
22 there's a security officer on the scene. And
23 he knows if he gets caught, it's an arrest;
24 what some people have called three hots and a
25 cot. They'd send him to jail, and he gets

State of South Carolina versus Leonard Brightman

74

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014 - Opening Statement by Defense
Before The Honorable W. Jeffrey Young

1 three warm meals in a day. Maybe it's better
2 than being homeless, but I am not to say.

3 But he ran. By the time the police
4 arrived all they see is a man running from
5 the scene where they were called to, who
6 vaguely matches the description. So they
7 chase that man. They don't canvass the
8 surrounding area.

9 But before the police arrives, this blue
10 jean bandit, I'll call him, was able to get
11 away from Officer Ponder, get under the gate,
12 walk across the street, never to be seen
13 again.

14 So the police don't canvas the area.
15 They see somebody running, they run after
16 them and tackle them.

17 They bring him back up, handcuffed and
18 all, back to the patrol car. 'Yeah, that's
19 the guy.'

20 But what Ms. Compton told you is that
21 they had a video which was monitoring the
22 substation? Why not view the video? Why not
23 look and see what it has to show? It's a
24 critical piece of evidence to have something
25 like a video of when a crime occurs.

State of South Carolina versus Leonard Brightman
Case No. 11-GS-10-4166
Jury Trial of February 4-5, 2014 - Opening Statement by Defense
Before The Honorable W. Jeffrey Young

75

1 What would this video have shown?

2 But there is no explanation, or at least
3 I haven't heard one to date as to why they
4 never got this video, a critical piece of
5 evidence that could have pretty much proven
6 this case. And I hope at some point during
7 this trial they explain why they didn't get
8 the video, because they've told you they
9 don't have any forensic evidence.

10 This isn't C.S.I., but he "was caught at
11 the scene." Gotta be the guy. So I'm going
12 to ask you to keep your minds open and to
13 listen to all these witnesses and where they
14 are and at what points they come into this
15 scene. And where all the players are,
16 whether a hundred yards away, fifty yards
17 away, to see if it is possible to make those
18 leaps in such a short period of time. Use
19 your common sense.

20 Thank you, ladies and gentlemen.

21 THE COURT: Thank you, Mr. Kowalski.
22 All right. Ladies and gentlemen, we have
23 been informed that the other jury has reached
24 a verdict. So I'm going to excuse you from
25 the courtroom and ask that you go back to

State of South Carolina versus Leonard Brightman

76

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014 - Opening Statement by Defense

Before The Honorable W. Jeffrey Young

1 your jury room while I bring the other jury
2 back in. Thank you.

3 Please do not discuss anything about the
4 case while you're back there.

5 (JURY OUT @ 3:10 P.M.)

6 (BRIEF RECESS)

7 (DEFENDANT PRESENT)

8 THE COURT: You going to bring the
9 jury back?

10 BAILIFF: Yes, sir.

11 THE COURT: Defendant is present.
12 State ready?

13 SOLICITOR COMPTON: Yes, sir.

14 THE COURT: Defense ready?

15 JOHN KOWALSKI: Yes, Your Honor.

16 (JURY IN @ 3:50 P.M.)

17 THE COURT: Please take your
18 seats.

19 BAILIFF: The jury is all
20 present, Your Honor.

21 THE COURT: All right. Thank you.
22 Ladies and gentlemen, I apologize for the
23 delay. Believe me, while y'all were sitting
24 back there we were still out here working.

25 Is the State ready to call its first

State of South Carolina versus Leonard Brightman
Case No. 11-GS-10-4166
Jury Trial of February 4-5, 2014 - Opening Statement by Defense
Before The Honorable W. Jeffrey Young

77

1 witness?

2 SOLICITOR COMPTON: We are, Your
3 Honor.

4 MR. KOWALSKI: We have a brief
5 matter. Do you mind if we approach, Your
6 Honor?

7 THE COURT: No.

8 (OFF RECORD BENCH CONFERENCE)

9 THE COURT: All right. Is the
10 State ready to proceed and call their first
11 witness?

12 SOLICITOR COMPTON: Thank you,
13 Your Honor. The State calls Lieutenant Kevin
14 Ponders.

15 (WITNESS TAKES STAND)

16 KEVIN PONDER, having been duly sworn to
17 tell the truth and nothing but the truth,
18 testified as follows:

19 THE COURT: Will you go ahead and
20 pull that microphone a little closer to you.

21 WITNESS: (Complies).

22 THE COURT: Thank you. You may
23 proceed.

24 SOLICITOR COMPTON: Thank you,
25 Your Honor.

State of South Carolina versus Leonard Brightman

78

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Kevin Ponder - Direct Examination

1

DIRECT EXAMINATION

2

BY SOLICITOR COMPTON:

3

4

Q. Lieutenant Ponder, can you tell the jury where you're employed?

5

6

7

8

9

A. At this time, I'm employed with Allied Barton. At the time of the incident, I was employed with Coastal International Security. We did contract security for SCE&G.

10

11

Q. Okay. Now, what are your duties within Allied Barton?

12

13

14

15

A. I'm a supervisor. I supervise about thirty different officers. I also go out and assist officers investigating thefts and various things in the substations.

16

17

Q. Thank you. Now, how long have you been in this position, security in general?

18

19

20

A. Security, approximately ten years. I've been with Allied Barton and Coastal for, right at six years.

21

22

Q. And all that time you're providing security for SCE&G?

23

A. Correct.

24

25

Q. Thank you. Are you trained in security practices?

State of South Carolina versus Leonard Brightman

79

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Kevin Ponder - Direct Examination

1 A. Yes, ma'am.

2 Q. Can you tell the jury a little bit
3 about that, please?

4 A. Whenever you become a security
5 officer you go through training. You go
6 through, of course, your weapons qualify-
7 cation and defensive tactics training,
8 handcuffing -- just pretty much like a police
9 officer does, to become an armed security
10 officer. So we go through that. And we
11 recertify every year with weapons and
12 handcuffs.

13 Q. Why does SCE&G need to hire
14 security?

15 A. Well, they have officers at all the
16 business offices. And also we have rovers
17 that go out to substations, and they're on
18 the road 24/7, checking each substation
19 making sure they're not being vandalized and
20 nobody's inside the substation. And a lot of
21 the substations have cameras and sensors that
22 -- where they go out and check those and
23 they're also monitored.

24 Q. In your six or seven years as
25 security for SCE&G, why are substations

State of South Carolina versus Leonard Brightman

80

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Kevin Ponder - Direct Examination

1 vandalized?

2 A. Mostly because of the copper,
3 because of its real high value. And you have
4 to have ground wires and all of the ground
5 wires inside the substation are copper and
6 it's a valuable metal. And people cut
7 through the fence and cut the wire from the
8 facility, take it to the scrap yard and sell
9 it for good money.

10 Q. Lieutenant Ponder, did you become
11 involved in an investigation on March the 9th
12 of 2011?

13 A. Yes, ma'am.

14 Q. Could you tell me a little bit about
15 that?

16 A. I was at the office. The rover at
17 the time, he was at another substation down
18 near Edisto. The call came in from dispatch
19 that the alarm was going off inside the
20 substation, asking that the rover go
21 investigate it. The rover, like I say, he
22 was out of the area, so I told him I would
23 take the call.

24 On the way to the call, I got more
25 information on the call. And they said that

State of South Carolina versus Leonard Brightman

81

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Kevin Ponder - Direct Examination

1 one of the cameras ---

2 MR. KOWALSKI: Objection.

3 THE COURT: What's your objection?

4 MR. KOWALSKI: Your Honor,

5 hearsay.

6 THE COURT: He can say what he
7 did. He can't say what he said.

8 SOLICITOR COMPTON: Thank you.

9 THE COURT: Sustained.

10 DIRECT EXAMINATION

11 BY SOLICITOR COMPTON:

12 Q. Without saying what anyone else told
13 you, what did you do that day?

14 A. I went to the substation to check on
15 the alarm and see what triggered the alarm.

16 Q. And did you observe anything related
17 to that alarm yourself that day?

18 A. I did.

19 Q. What was that?

20 A. Upon entry to the substation, I
21 observed the subject up on one of the
22 transformers with a hacksaw cutting copper
23 wiring.

24 Q. Okay. And with regard to the alarm
25 itself ---

State of South Carolina versus Leonard Brightman

82

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Kevin Ponder - Direct Examination

1 A. Okay.

2 Q. --- do you know how that was
3 triggered?

4 A. There are photo sensory cameras and
5 sensors inside the substations. That one
6 probably has probably at least six inside of
7 it. And if you get in certain areas of it,
8 close enough to it, it triggers the sensors
9 and activates the cameras.

10 Q. And what happens when the cameras
11 are activated?

12 A. It shows a video image of what is
13 going on in the substation.

14 Q. And did you have an opportunity to
15 observe any of that?

16 A. I briefly -- they have just a quick
17 blip, and they send it out. And I observed a
18 -- it was probably a second long.

19 I observed a shirt. It was a green and
20 bluish plaid shirt, and then the video went
21 away.

22 Q. Okay. Now, do you know where the
23 substation that you were called to respond to
24 is located?

25 A. 1865, 1855-65 Marine Avenue, but the

State of South Carolina versus Leonard Brightman

83

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Kevin Ponder - Direct Examination

1 entrance off of Saint Johns Avenue.

2 Q. All right. And do you know what
3 county that's in?

4 A. It's in Charleston County.

5 Q. Thank you.

6 SOLICITOR COMPTON: Your Honor,
7 at this time I ask permission to approach the
8 witness.

9 THE COURT: You may.

10 DIRECT EXAMINATION CONTINUED

11 BY SOLICITOR COMPTON:

12 Q. Lieutenant Ponder, I'm showing you
13 what's been marked for identification only as
14 State's Exhibit 1. Do you recognize the
15 contents of this picture?

16 A. I do, yes. That's the substation at
17 the corner of Saint Johns and McMillan.

18 Q. Are you familiar with the substation
19 in that area?

20 A. Yes, ma'am.

21 Q. And is that picture an accurate
22 representation of the area?

23 A. It is.

24 Q. Is it an accurate representation of
25 the area as it appeared on March 9th, 2011?

State of South Carolina versus Leonard Brightman

84

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Kevin Ponder - Direct Examination

1 A. It appears that the driveway is the
2 same. It has been paved since then. But the
3 substation is the same.

4 Q. Okay.

5 SOLICITOR COMPTON: Your Honor,
6 at this time, I would move to introduce
7 State's Exhibit 1 into evidence.

8 THE COURT: Any objection?

9 MR. KOWALSKI: No objection.

10 THE COURT: Without objection,
11 State's Exhibit Number 1 is in evidence.

12 (SO ENTERED AS STATE'S EXHIBIT 1)

13 SOLICITOR COMPTON: Thank you,
14 Your Honor.

15 THE COURT: You may publish it.

16 SOLICITOR YOUNG: You may publish
17 it.

18 DIRECT EXAMINATION CONTINUED

19 BY SOLICITOR COMPTON:

20 Q. Lieutenant Ponder, can you orient
21 the jury as to what's going on in this
22 picture? Where the streets that you
23 mentioned are and where the substation is?

24 A. This is Saint Johns and this is
25 McMillan. And there's the three entrances to

State of South Carolina versus Leonard Brightman

85

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Kevin Ponder - Direct Examination

1 the substation (indicating).

2 Q. And where is the actual substation?

3 A. (Indicating).

4 Q. Thank you. All right. Now, can you
5 explain to the jury a little bit more about
6 what a substation is and what it does?

7 A. A substation, they have high-voltage
8 lines that come into the substation.
9 Transformers reduce the power at a level down
10 to put out on feeder lines. The transformers
11 transform high energy to low energy to
12 houses. They can't put hot, big wires
13 straight to houses, so the transformers
14 transform the power into a lower voltage.

15 Q. I'd like to turn to another exhibit
16 at this time. I'm going to show you what's
17 been marked for identification as State's 2
18 and 3. If you could take a look at these and
19 just let me know if you recognize their
20 contents, please?

21 A. Yes.

22 Q. Okay. And do these pictures appear
23 to be accurate representations of what they
24 depict?

25 A. Yes.

State of South Carolina versus Leonard Brightman

86

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Kevin Ponder - Direct Examination

1 Q. What is State's Exhibit 2?

2 A. That's a view of the substation.

3 Q. And what is State's Exhibit 3?

4 A. That is the transformer that the
5 person was up on, where they were cutting the
6 copper.

7 Q. Thank you.

8 SOLICITOR COMPTON: Your Honor, at
9 this time, I'd move to admit State's Exhibits
10 2 and 3 into evidence.

11 THE COURT: Any objection?

12 MR. KOWALSKI: No objection, Your
13 Honor.

14 THE COURT: Without objection
15 State's Exhibit 2 and 3 are admitted.

16 SOLICITOR YOUNG: Thank you, Your
17 Honor.

18 (SO ENTERED AS STATE'S EXHIBIT 2)

19 (SO ENTERED AS STATE'S EXHIBIT 3)

20 DIRECT EXAMINATION CONTINUED

21 BY SOLICITOR COMPTON:

22 Q. Lieutenant Ponder, is that the
23 correct orientation?

24 A. Yes.

25 Q. That would make sense to look at it.

State of South Carolina versus Leonard Brightman

87

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Kevin Ponder - Direct Examination

1 A. Yeah. If you slide it over, you can
2 see the top drive.

3 Q. (Adjusting), better?

4 A. Yes.

5 Q. Thank you. I apologize for the
6 technology here. Now, Lieutenant Ponder can
7 you describe for the jury what you mean when
8 you say the front of the substation versus
9 the entrance of the substation?

10 A. The front is -- Marine Avenue is up
11 here. This is considered the front because
12 it's the main entrance off of Saint Johns.

13 Q. All right. And where do you
14 actually enter into the substation.

15 A. You can enter -- there's three
16 gates: here, here and here.

17 Q. Okay. So those three dots on --
18 that you've drawn three dots that can
19 represent the three gates?

20 A. Correct.

21 Q. That someone could actually enter
22 the physical substation?

23 A. Right, vehicles and all.

24 Q. Okay. About what time on March 9th
25 did you get this call from the alarm company?

State of South Carolina versus Leonard Brightman

88

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Kevin Ponder - Direct Examination

1 A. Probably twelve o'clock.

2 Q. Twelve o'clock in the daytime or
3 nighttime?

4 A. Daytime.

5 Q. Thank you. So that would be noon?

6 A. Afternoon, yes, ma'am. Noon.

7 Q. And on that day, are you aware of
8 whether or not the substation was functioning
9 at full capacity at that time?

10 A. It was not. Half the substation was
11 closed down. They was doing maintenance on
12 half of it and the other half was powered up.

13 Q. Now, I know you briefly mentioned
14 this before, but I'd like to return to what
15 you testified to before. What happened when
16 you arrived?

17 A. When I arrived, I parked here.

18 I went in this gate. I opened it. It's
19 got a key lock on the outside, a padlock.

20 Went in here.

21 When I got in, I heard noise, sounded
22 like a saw going, somebody sawing. I came
23 into approximately right here and I saw the
24 subject, somebody right in here, with a
25 hacksaw, sawing copper.

State of South Carolina versus Leonard Brightman

89

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Kevin Ponder - Direct Examination

1 Q. All right. I'm going to move now to
2 show you State's Exhibit 3. I believe that's
3 the picture you indicated were transformers?
4 Please explain to the jury what State's
5 Exhibit 3 is?

6 A. This is the transformer that he is
7 on. He was standing on this box, reaching
8 up, cutting here.

9 Q. Okay. Now, let's return to State's
10 2. I want you to show me what happened at
11 that point. Well, would it be easier on
12 State's 3, on this one or the last one?

13 A. The last one.

14 Q. Okay. I'm showing you State's
15 Exhibit 2. Tell the jury what happened.

16 A. Okay. I came here. I observed him.
17 I ordered him to get off the transformers and
18 get on the ground. He runs. He jumps off
19 the transformer, runs from here and goes in
20 behind this battery house.

21 Q. And at that point -- I'm sorry. Let
22 me stop you there just for a second. At that
23 point, did you believe it could have been an
24 employee working?

25 A. No, ma'am.

State of South Carolina versus Leonard Brightman
Case No. 11-GS-10-4166
Jury Trial of February 4-5, 2014
Testimony of Kevin Ponder - Direct Examination

90

1 Q. Why not?

2 A. Well, upon my arrival, all three
3 gates were secured from the outside. Also
4 all the SCE&G employees wear SCE&G shirts or
5 hats. And they don't usually wear ski masks
6 on seventy degree days.

7 Q. Okay. I'm sorry. I didn't mean to
8 interrupt you. Please continue to tell me
9 what was happening after he jumped down.

10 A. Okay. I pursued him to here
11 (indicating) and was not sure if he -- I
12 thought he came to this corner and might have
13 got out because I couldn't -- I lost visual
14 of him. So I came to here, was looking in
15 behind the battery house, about the time he
16 looks -- he was in this corner. He looked
17 around the battery house at me, sees me,
18 takes off running this way. And I cut across
19 here. He goes to this corner and attempts to
20 jump the wall here, without success.

21 Q. Was there any -- was that the end of
22 the pursuit or did he keep on?

23 A. No, ma'am. Like I said, he
24 attempted to jump wall at this corner.

25 And when I started to pursue him, I drew

State of South Carolina versus Leonard Brightman

91

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Kevin Ponder - Direct Examination

1 my weapon because I didn't know if he was
2 armed with a weapon or anything. So I had my
3 firearm in my right hand, had my pepper spray
4 in my left hand.

5 And so whenever I got to this corner, he
6 tried to jump the wall. He came back down
7 and was standing there. We was face-to-face,
8 about probably ten to twelve feet apart. He
9 had a ski mask on with goggles on top of his
10 head.

11 At this point, I looked, he had his hands
12 on his knees. I saw that he had no weapon,
13 so I knew that I couldn't -- that I didn't
14 need the weapon. I went to holster my weapon
15 and was going to go for my baton, because if
16 I sprayed him, I didn't know if he would
17 charge or whatever. So as soon as I
18 holstered my weapon, he takes off running. I
19 spray him as he runs by but to no effect.

20 He runs by, goes through here and goes
21 underneath the gate and -- I pursued him to
22 here.

23 Q. Now, was there anyone else in the
24 substation during this time?

25 A. No, ma'am, not that I observed.

State of South Carolina versus Leonard Brightman

92

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Kevin Ponder - Direct Examination

1 Q. I'm going to ask you to stop me the
2 minute I get as close to you as the Defendant
3 was to you that day, (approaching witness).

4 A. About there.

5 Q. At this point, what were you able to
6 see about him?

7 A. Like I said, he had the ski mask on.
8 I observed, you know, his build. At that
9 point, he did not have gloves on. I could
10 tell it was a black male, shorter than I was.
11 He had on a green, bluish green plaid shirt.
12 And he had a green, like, LED headlamp around
13 his neck.

14 Q. Okay. Were you able to see where he
15 went after sliding under the gate?

16 A. Yes. From here, I could see when he
17 went underneath the gate, he ran this way. I
18 could see his feet and shadow underneath the
19 fence. Also there is a section of fence that
20 joins the wall. There's a small section
21 there that you can see, you can see out to
22 the street. So he ran to the left towards
23 McMillan.

24 Q. Thank you. Now, I'm going to stop
25 you there and I'm going to show you State's

State of South Carolina versus Leonard Brightman

93

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Kevin Ponder - Direct Examination

1 Exhibit 4. Just like before, tell me if you
2 recognize this?

3 A. Yes.

4 Q. What does it depict?

5 A. That's one of the gates. That's the
6 gate that I parked at.

7 Q. Okay. Is this a fair and accurate
8 representation of the gate on March 9th of
9 2011?

10 A. Yes.

11 SOLICITOR COMPTON: Your Honor,
12 at this time, I move to introduce State's
13 Exhibit 4.

14 THE COURT: Any objection?

15 MR. LEWOSKI: No objection.

16 THE COURT: Without objection,
17 State's Exhibit 4 into evidence.

18 (SO ENTERED AS STATE'S EXHIBIT 4)

19 DIRECT EXAMINATION CONTINUED

20 BY MS. COMPTON:

21 Q. Lieutenant Ponder, I believe you
22 just testified that this was the gate that
23 you entered from?

24 A. Correct.

25 Q. All right. Tell me about -- is it

State of South Carolina versus Leonard Brightman

94

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Kevin Ponder - Direct Examination

1 similar to the gate where the Defendant went
2 under it?

3 A. Yes. All three of the gates are the
4 same size. The middle gate, it don't have
5 quite as much gravel here, so there was
6 probably an eighteen to twenty-four inch
7 clearance underneath the -- it doesn't look
8 her like there is that much, but there's an
9 eighteen-inch to twenty-four inch clearance
10 there, to where he could get underneath the
11 gate. And as you can see down through here
12 the crack that I was telling you about, where
13 I could see him as he ran down towards
14 McMillan.

15 Q. Now, during this time, or at any
16 point did North Charleston Police Department
17 arrive?

18 A. Yes.

19 Q. Tell me what happened when they
20 arrived?

21 A. I actually met him at this gate
22 whenever the subject went under the middle
23 gate. I came over to this gate and met
24 Officer Kirk here, gave him a description of
25 the subject and told him that he ran toward

State of South Carolina versus Leonard Brightman

95

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Kevin Ponder - Direct Examination

1 McMillan.

2 Q. And you can describe what the
3 suspect was wearing -- that may be a
4 repetition, I apologize, but can you describe
5 just what he was wearing?

6 A. He was wearing the green, blue,
7 greenish blue plaid shirt and a ski mask.

8 Q. What else?

9 A. He had pants on but I put in my
10 report he had jeans. But since then, I found
11 out he was wearing khakis.

12 Q. I only want you to testify to what
13 you observed.

14 A. Oh, I'm sorry.

15 Q. What happened after you told the
16 North Charleston police officer which
17 direction he went?

18 A. He got in his cruiser. He went back
19 down toward McMillan. I went back down the
20 substation to the corner. He got in his
21 cruiser and he went out to McMillan.

22 When I got to the corner I could see the
23 subject in the plaid shirt and the ski mask.
24 He was going away from the substation. And
25 when he was probably fifty yards past the

State of South Carolina versus Leonard Brightman

96

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Kevin Ponder - Direct Examination

1 substation, that's when two other officers
2 came in from McMillan and took him down.

3 Q. Lieutenant, I'm going to stop you
4 again. I'm sorry. I'm going to return to
5 State's Exhibit 1, please, sir. I'm sorry to
6 do this, but I'm going to get you to repeat
7 what you just told me using the map.

8 A. All right. Sergeant Kirk came down
9 here and here.

10 I came from here down to here, saw the
11 subject right in this area here. He was
12 going this way. Whenever I observed, he come
13 across -- there's a concrete, like a little
14 dam or something here. And the other two
15 officers came over here and took him down in
16 this area right here.

17 Q. And how long would you say you lost
18 sight of the suspect?

19 A. Probably a minute.

20 Q. And was there anyone else in either
21 the substation or that area?

22 A. No one was out there, no.

23 Q. Does that area have any sort of
24 enclosure to it?

25 A. Yes. It's twelve-foot walls around

State of South Carolina versus Leonard Brightman

97

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Kevin Ponder - Direct Examination

1 it. It's enclosed.

2 Q. Meaning around the substation?

3 A. Right.

4 Q. Okay. Now, how far from the
5 substation, in yards if you can, in your best
6 estimation, how far would you say he was from
7 the substation at the time of his arrest or
8 at the time you saw him?

9 A. Approximately a hundred yards,
10 because I observed him here and then from
11 here to -- here to here is probably fifty
12 yards. The substation is about fifty yards.
13 And he was about twice as far away when they
14 took him down.

15 Q. Thank you. Okay. Now, at any point
16 did he or the police officers come back
17 around to where you entered the substation?

18 A. Yes. They brought the subject back
19 over and called EMS for him because he was
20 complaining of chest pains.

21 Brought him back to here around the gate
22 where I entered. They came right here and
23 took him out of the police cruiser and asked
24 me was this the subject that was inside the
25 substation? I said, yes. And then they put

State of South Carolina versus Leonard Brightman
Case No. 11-GS-10-4166
Jury Trial of February 4-5, 2014
Testimony of Kevin Ponder - Direct Examination

98

1 him into the ambulance.

2 Q. Okay. And I'm sorry. Did you --
3 would you please just repeat your testimony?
4 You came back around. Were you able to
5 observe him again at that point?

6 A. Yes, ma'am, when they took him out
7 of the police car and put him in the
8 ambulance, I observed him and it was the
9 subject that was, you know, wearing the green
10 and bluish plaid shirt.

11 Q. Okay. And is that subject in court
12 today?

13 A. Yes, ma'am.

14 Q. Will you please point him out so the
15 jury will know him?

16 A. The man in the light blue shirt and
17 red tie.

18 SOLICITOR COMPTON: Your Honor,
19 may the record reflect he's identified the
20 Defendant?

21 THE COURT: The record will
22 reflect that the witness identified the
23 Defendant.

24 DIRECT EXAMINATION CONTINUED

25 BY SOLICITOR COMPTON:

State of South Carolina versus Leonard Brightman

99

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Kevin Ponder - Direct Examination

1 Q. Now, Lieutenant Ponder, did you take
2 any photos with your cell phone then?

3 A. I did.

4 Q. I'm showing you what's been marked
5 for identification as State's Exhibit 5. Do
6 you recognize this photo?

7 A. Yes, ma'am.

8 Q. And what does that depict?

9 A. That depicts the subject that was
10 placed in the back of the ambulance.

11 Q. And this is a picture you, yourself,
12 took?

13 A. Yes, ma'am.

14 Q. Is it an accurate representation of
15 the scene or the person that day?

16 A. Yes.

17 Q. Thank you.

18 SOLICITOR COMPTON: Your Honor, I
19 move at this time to admit State's Exhibit 5?

20 THE COURT: Any objection?

21 MR. KOWALSKI: No objection, Your
22 Honor.

23 THE COURT: Without objection,
24 State's Exhibit Number 5 is admitted.

25 (SO ADMITTED AS STATE'S EXHIBIT 5)

State of South Carolina versus Leonard Brightman

100

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Kevin Ponder - Direct Examination

1 SOLICITOR COMPTON: Thank you,
2 Your Honor.

3 DIRECT EXAMINATION CONTINUED

4 BY SOLICITOR COMPTON:

5 Q. Can you tell the jury what's happen-
6 ing here in State's Exhibit 5?

7 A. That's, the paramedics was getting
8 him onto the stretcher and I took this
9 picture just before he kicked at me.

10 Q. Okay. Can you point out what he's
11 wearing in this picture?

12 A. The bluish, bluish green plaid
13 shirt. He's still got the headlamp around
14 his head, around his neck. It's actually
15 green -- it looks blue there, but it's a
16 green headlamp, three-bulb LED.

17 Q. I'm going to ask you just -- the
18 last few things I'm going to ask you, I'll
19 wrap up my questions. Were you familiar with
20 the substation at that time?

21 A. Yes, ma'am.

22 Q. And were you familiar with the
23 damage that was done as a result of this
24 incident?

25 A. Yes, ma'am.

State of South Carolina versus Leonard Brightman

101

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Kevin Ponder - Direct Examination

1 Q. At this time, I'm showing you
2 State's Exhibit 6, 7, and 8. Please take a
3 moment to look at each of these and let me
4 know whether or not you recognize them?

5 A. (Upon review), I do.

6 Q. And what do each of them depict?
7 Begin with State's 6.

8 A. It's the ground wires going from the
9 structure down to the ground wire themselves
10 that's been cut.

11 Q. Okay. And State's Exhibit 7?

12 A. This depicts the wire he was
13 actually cutting whenever I saw him. And it
14 shows another one that had already been cut.

15 Q. State's Exhibit 8?

16 A. Exhibit 8, that is the wire that was
17 connected to the -- the connection there that
18 was cut.

19 Q. Now, while I'm walking over here,
20 can you tell the jury why it's important that
21 the substation was not fully functioning that
22 day?

23 A. They closed down one bank for
24 maintenance and repairs, and that's what they
25 was doing at that time. So there was

State of South Carolina versus Leonard Brightman

102

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Kevin Ponder - Direct Examination

1 employees in and out that week. And, like I
2 said, they was working on it. So it they was
3 in and out quite a bit. They shut it down
4 to, you know, going to replace old wires;
5 which it was a fairly new station, but they
6 was also setting more transformers and more
7 structures on the site.

8 Q. And if the substation had been fully
9 functioning that day ---

10 THE COURT: Are you admitting the
11 exhibit?

12 SOLICITOR COMPTON: Oh, All
13 right. I'm just so sorry. I apologize.
14 Your Honor, at this time, pursuant to
15 Lieutenant Ponder's earlier identification, I
16 would move to admit State's Exhibits 6, 7,
17 and 8.

18 THE COURT: Any objection?

19 MR. KOWALSKI: No, objections to
20 the pictures being admitted into evidence,
21 Your Honor. I would like a little more
22 foundation be laid as to the workings of
23 SCE&G before he testifies as to the
24 consequences.

25 THE COURT: Yeah. Okay. The

State of South Carolina versus Leonard Brightman

103

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Kevin Ponder - Direct Examination

1 pictures come in 6, 7, and 8, admitted
2 without objection.

3 (SO ENTERED AS STATE'S EXHIBIT 6)

4 (SO ENTERED AS STATE'S EXHIBIT 7)

5 (SO ENTERED AS STATE'S EXHIBIT 8)

6 THE COURT: He's just the security
7 officer, he's not here to explain the
8 workings of SCE&G.

9 SOLICITOR COMPTON: Your Honor,
10 may we approach for just a second?

11 THE COURT: You may.

12 (OFF RECORD BENCH CONFERENCE)

13 DIRECT EXAMINATION CONTINUED

14 BY SOLICITOR COMPTON:

15 Q. Lieutenant Ponder, here on State's
16 Exhibit 6, can you indicate where you see
17 damages -- the differences in this picture
18 from the usual?

19 A. There's ground rods here, here,
20 here, here, here. All these casings is
21 ground wires that come down. They are
22 usually attached to these ground rods. And
23 all of them, all these were cut.

24 Q. Okay. Showing you State's Exhibit
25 7, can you how us what you observed here that

State of South Carolina versus Leonard Brightman

104

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Kevin Ponder - Direct Examination

1 has been damaged?

2 A. This is where the subject was on
3 the transformer cutting. And this is another
4 one that had already been cut.

5 Q. And finally, State's Exhibit 8?

6 A. This is the one that I just said had
7 already been cut. That was it going to the
8 transformer.

9 Q. The transformer we observed in
10 State's Exhibit 7?

11 A. No, ma'am. It's a transformer
12 across from it, it was a transformer to these
13 with different ground wires going from the
14 structures to different transformers.

15 Q. Okay. All right. Thank you. Do
16 these wires contain copper?

17 A. Oh, yes, copper.

18 SOLICITOR COMPTON: Your Honor, I
19 beg the Court's indulgence just for a moment?

20 THE COURT: Yes, ma'am.

21 DIRECT EXAMINATION CONTINUED

22 BY SOLICITOR COMPTON:

23 Q. Lieutenant Ponder, how often would
24 you say you come over to this substation?

25 A. Myself, probably two to three times

State of South Carolina versus Leonard Brightman

105

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Kevin Ponder - Direct Examination

1 a month. But we have rovers that run
2 different zones. And they visit, they visit
3 the substation every -- at least once in any
4 twenty-four hour period.

5 Q. And your two or three times a month
6 that you're over there, is this something --
7 is this a place you've ever observed anyone
8 living?

9 A. No, ma'am.

10 Q. Sleeping?

11 A. No, ma'am.

12 Q. Just hanging out?

13 A. No, ma'am.

14 SOLICITOR COMPTON: Your Honor,
15 I would also move to admit the printout of
16 Mr. Ponder's drawings of the area at this
17 time, Your Honor, so the jury may have that
18 to observe.

19 THE COURT: All right. Is there
20 any objection?

21 MR. KOWALSKI: No objection.

22 THE COURT: Without objection, it
23 is entered. What number is that, do you
24 know?

25 COURT REPORTER: Exhibit 1-A

State of South Carolina versus Leonard Brightman

106

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Kevin Ponder - Direct Examination

1 (SO ENTERED AS STATE'S EXHIBIT 1A)

2 SOLICITOR COMPTON: Thank you
3 very much. And, Your Honor, nothing further
4 at this time.

5 Please answer any questions that the
6 defense may have.

7 THE COURT: Cross-examination.

8 MR. KOWALSKI: Thank you, Your
9 Honor.

10 CROSS EXAMINATION

11 BY MR. KOWALSKI:

12 Q. Good afternoon, Officer Ponder.
13 How are you doing today?

14 A. Fine.

15 Q. Before we talk about what happened
16 on March 9th, I wanted to get into a little
17 bit about -- you were talking with Ms.
18 Compton about your experience and training as
19 a security Officer. You said you did forty
20 hours of training initially, and then they
21 taught you how to use your gun, your baton?

22 A. That you have to be State-certified.

23 Q. It would help if you could just
24 speak up because this nice woman over here
25 (court reporter) is taking down what we are

State of South Carolina versus Leonard Brightman

107

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Kevin Ponder - Cross Examination

1 both saying.

2 A. Okay.

3 Q. And you said OC spray, which is a
4 pepper spray?

5 A. Correct.

6 Q. Do they teach you how to write
7 reports?

8 A. Yes, sir.

9 Q. Okay. So they taught you how to
10 write reports because it's valuable to the
11 prosecution and to make sure that they get
12 their money back if there is damage; correct?

13 A. Correct.

14 Q. And they want you to do those as
15 close to the time of the incident as you can?

16 A. Correct.

17 Q. The same date, or as close in time
18 as possible?

19 A. Correct.

20 Q. And you even said earlier that you
21 had had some issue with your memory about
22 remembering the light?

23 A. I said that today?

24 Q. Yeah. Do you not remember talking
25 about that?

State of South Carolina versus Leonard Brightman

108

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Kevin Ponder - Cross Examination

1 A. No. I said he had a headlamp around
2 his neck. I don't remember saying ---

3 Q. Okay. We'll get to that.

4 A. Okay.

5 Q. So when you write these reports, you
6 do them as close to the incident as you can?

7 A. Correct.

8 Q. And you want to put down as much as
9 you can, as much as you remember?

10 A. Correct.

11 Q. And you want to make sure that what
12 you put down is fair and accurate?

13 A. Correct.

14 Q. Because SCE&G relies on it?

15 A. Correct.

16 Q. And the solicitors rely on it?

17 A. Correct.

18 Q. And you want to make sure that these
19 reports are complete in that, you know, you
20 don't want to tell part of the story because
21 if you leave something out, it doesn't really
22 give context to something?

23 A. Okay, (affirmative nod).

24 Q. Is that a yes?

25 A. Yes.

State of South Carolina versus Leonard Brightman

109

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Kevin Ponder - Cross Examination

1 Q. Okay. Basically, what I'm saying
2 is, you want to tell the whole truth?

3 A. Yes, sir.

4 Q. And about an hour after this
5 incident, North Charleston PD asked you to do
6 the report for that; is that correct?

7 A. Correct.

8 Q. Okay. And you filled that out and
9 signed it on the bottom?

10 A. Yes, sir.

11 Q. Now, we'll get to March 9th. You
12 testified earlier that you received a call
13 from dispatch and then you saw a blip, a
14 short video?

15 A. Correct.

16 Q. Could you elaborate on that a little
17 more from where you saw that blip?

18 A. It was after it was over with.
19 Myself and actually the coordinator from
20 SCE&G, he got ahold of the dispatcher who
21 actually video-dispatched the call and she
22 sent it to him. And I don't have a clue
23 where it got to. But we don't have it.

24 Q. You saw it at some point?

25 A. Correct.

State of South Carolina versus Leonard Brightman

110

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Kevin Ponder - Cross Examination

1 Q. And did you tell the police about
2 it?

3 A. The video?

4 Q. Right.

5 A. No, I didn't know because I didn't
6 know that they had it on video until, you
7 know, a few days later.

8 Q. Okay. So the video you saw, you saw
9 after the fact?

10 A. Correct.

11 Q. It wasn't before you were dispatched
12 there?

13 A. No. But the dispatcher told me what
14 the subject was wearing.

15 Q. So a few days later after the fact,
16 they said they had this video and you got to
17 see it?

18 A. Yeah. Just -- like I said, it's
19 just a blip.

20 Q. Now, you get a dispatch and you
21 arrive on scene and you check all the gates?

22 A. Correct.

23 Q. And all the gates are locked that
24 you can see?

25 A. Correct.

State of South Carolina versus Leonard Brightman

111

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Kevin Ponder - Cross Examination

1 Q. So you still go in and check out the
2 scene, to see what is going on?

3 A. Correct.

4 Q. So you open the first gate and you
5 walk through?

6 A. Correct.

7 Q. And at first you hear something?

8 A. Yes.

9 Q. Something that sounds like somebody
10 sawing something?

11 A. Yes.

12 Q. You don't see anybody?

13 A. Not at that time.

14 Q. Okay.

15 A. There was a structure inbetween me
16 and them.

17 Q. Yeah. A transformer there.

18 A. Yeah.

19 Q. So you move and you position
20 yourself to where you could see what's going
21 on?

22 A. Correct.

23 Q. And you see a man standing on top of
24 the box, hacksawing away at a transformer?

25 A. Yes.

State of South Carolina versus Leonard Brightman

112

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Kevin Ponder - Cross Examination

1 Q. Obviously not the smartest thing in
2 the world.

3 A. No.

4 Q. At this point you draw your weapon?

5 A. Well, whenever I was recognizing it
6 was not an SCE&G employee and I, you know, I
7 told him to get down and he jumps and runs,
8 that's when I unholstered my weapon to pursue
9 him, because I didn't know if he had a
10 weapon.

11 Q. And you said SCE&G people normally
12 wear hardhats?

13 A. Yeah. And SCE&G clothes, it's got
14 the name of SCE&G on it and, you know,
15 usually hardhats when they're working inside
16 the substation.

17 Q. And do you ever wear hats?

18 A. Most of the time.

19 Q. Okay. And was this person who was
20 sawing on top of the transformer, was he
21 wearing a hardhat?

22 A. I didn't see the hardhat on him.

23 Q. Okay. And you never told the police
24 that you saw him with a hardhat on; did you?

25 A. Not as I recall, because the hardhat

State of South Carolina versus Leonard Brightman

113

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Kevin Ponder - Cross Examination

1 was laying -- it was a hardhat there, but it
2 was laying down on the ground, below where he
3 was at.

4 Q. Okay. So the person who's standing
5 up there, wearing blue jeans, ---

6 A. Yeah.

7 Q. --- wearing a flannel shirt?

8 A. A bluish green flannel shirt.

9 Q. And he jumps down but doesn't get
10 down on the ground like you ask him to?

11 A. Correct.

12 Q. He gets up, runs away, behind the
13 power house?

14 A. Battery house.

15 Q. Battery house?

16 A. Battery house, switch house.

17 Q. Okay. And you draw your weapon and
18 you have it up in the low ready?

19 A. Correct.

20 Q. You're not pointing it?

21 A. No, sir.

22 Q. Because you don't know if this
23 person's armed?

24 A. Correct.

25 Q. So you've got to prepare yourself?

State of South Carolina versus Leonard Brightman

114

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Kevin Ponder - Cross Examination

1 A. Exactly.

2 Q. So you go and you position yourself
3 by this power station?

4 A. Yeah, I'm a little bit of distance
5 off of him because you don't want to go right
6 to the corner to look around.

7 Q. You're on the opposite side,
8 probably, what, twenty feet away?

9 A. Probably about thirty at that time.

10 Q. Okay. Thirty.

11 A. I was about ten feet away when I saw
12 him on the other side of the building.

13 Q. And the subject looks back at you?

14 A. He's on the other side of the build-
15 ing. I'm looking down behind the building,
16 and when I'm looking down behind the
17 building, he looks around the other side.
18 So I knew then he was still inside the
19 substation. I thought he might have jumped
20 the wall and got out, but he looked back. He
21 looked around the building at me and that's
22 when he saw and realized I was right there
23 and he took off running again.

24 Q. Okay. And you pursued him to the
25 other corner of the substation?

State of South Carolina versus Leonard Brightman

115

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Kevin Ponder - Cross Examination

1 A. Correct.

2 MR. KOWALSKI: Your Honor,
3 permission to approach ---

4 THE COURT: Certainly.

5 CROSS-EXAMINATION CONTINUED

6 BY MR. KOWALSKI:

7 Q. I'm going to put up here what has
8 been marked as State's Exhibit 2. I've got
9 it upside down. Try my luck with technology.

10 All right. So you come in this gate and
11 you hear -- and you finally get into position
12 and the person is right here?

13 A. Correct.

14 Q. He jumps down, runs back into here,
15 into the corner, and you pursue him and stop
16 right there?

17 A. He runs behind this building. This
18 is the battery house right here.

19 Q. Okay.

20 A. It doesn't go all the way to the
21 corner.

22 Q. And he peeks his head around the
23 corner ---

24 A. Right.

25 Q. --- still wearing a mask over his

State of South Carolina versus Leonard Brightman
Case No. 11-GS-10-4166
Jury Trial of February 4-5, 2014
Testimony of Kevin Ponder - Cross Examination

116

1 face; correct?

2 A. Right.

3 Q. Then runs over to this corner?

4 A. Yes, sir.

5 Q. And you attempt to cut him off in
6 the corner?

7 A. Correct.

8 Q. And then this person tries to leap a
9 twelve-foot wall?

10 A. Yeah. He put up a foot and tried to
11 get over. He was too short to reach the top
12 of the wall.

13 Q. That's probably why he had his hands
14 on his knees?

15 A. He was tired.

16 Q. And all this time that you're on
17 him, did you ever look behind you?

18 A. No, sir. I mean, I've got the
19 subject in view.

20 Q. You look at where you're going?

21 A. I was aware of what was around, and
22 I was pointing my gun at the ground but I was
23 looking at the subject that I was chasing.

24 Q. Okay. And when you get into this
25 corner, you also get out your OC spray?

State of South Carolina versus Leonard Brightman

117

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Kevin Ponder - Cross Examination

1 A. Correct.

2 Q. Okay. And you've seen this guy,
3 with a mask on and blue jeans, hands on his
4 knees, out of breath?

5 A. (Affirmative nod).

6 Q. Is that a yes?

7 A. Yes.

8 Q. And you notice he's not armed?

9 A. Correct.

10 Q. He doesn't have any weapons on him?

11 A. Correct.

12 Q. And so you attempt to holster your
13 weapon and get out your baton, you pull the
14 baton?

15 A. Right.

16 Q. And when you attempt to do this, the
17 subject runs from this corner and just runs
18 pretty much right down the middle of the
19 substation, goes under the gate?

20 A. True.

21 Q. Okay. And you came ---

22 A. He came back around this way because
23 I was here and he came to my left. He came
24 here and then back to the gate.

25 Q. Okay. And I guess this person has

State of South Carolina versus Leonard Brightman

118

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Kevin Ponder - Cross Examination

1 not seen that gate is open over here?

2 A. I don't know.

3 Q. But he slides underneath?

4 A. He slid underneath it. Yes, sir.

5 Q. Okay. And you're following him and
6 then you decide, 'hey, I'm not going to slide
7 under the gate?'

8 A. I knew I could get through up here.
9 But I wasn't sure about right here. That was
10 my easier, easiest escape route to get
11 outside the substation.

12 Q. And you testified that you saw him
13 through the cracks in the doors?

14 A. Right. And underneath the -- it was
15 eighteen -- probably a good eighteen to
16 twenty-four inches. When he stood up, I saw
17 him go this way through this here.

18 Q. So you're saying there was about a
19 two-foot gap?

20 A. Maybe a little lower than that. You
21 know, I said eighteen to twenty-four.

22 Q. Okay. Does that keep a lot of the
23 animals out of the substation?

24 A. No, -- it could.

25 Q. So you watch him for a bit and then

State of South Carolina versus Leonard Brightman

119

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Kevin Ponder - Cross Examination

1 you say you go to the left?

2 A. Right.

3 Q. And then you decide to go out this
4 end?

5 A. Correct.

6 Q. Okay. And by the time that you get
7 to the door (sic), you said Officer Kirk was
8 rolling up?

9 A. Well, he was -- actually, he was
10 coming in. He met me at the gate. He was
11 already out of his cruiser. He'd parked his
12 cruiser and was out of his cruiser and he'd
13 came through the gate, and I met him at the
14 gate.

15 Q. Already out of his cruiser and I
16 guess parked by your patrol car?

17 A. Well, he was parked out on the
18 street on the sidewalk.

19 Q. Okay. So he was parked out on the
20 street. And you testified that the person
21 who slid under the gate went left and then, I
22 guess, jumped the fence? Because there's a
23 fence right along here.

24 A. There is a fence actually right in
25 here. The barbed wire rather than the chain

State of South Carolina versus Leonard Brightman

124

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Kevin Ponder - Cross Examination

1 Exhibit 5. This is a picture you identified
2 when Ms. -- that's a picture you took of my
3 client, Mr. Brightman; correct?

4 A. Correct.

5 Q. And that's when he was being loaded
6 into the ambulance?

7 A. Yes.

8 Q. Okay. And you just took it from the
9 chest up?

10 A. No, I was just getting a picture and
11 that was what I got.

12 Q. Okay. You also mentioned that light
13 during your direct examination with Ms.
14 Compton. You said that you saw the person on
15 the structure with a light. Is that what you
16 testified to?

17 A. Well, I did say on the structure
18 with the light. But when we was in the
19 corner, I observed it then. Yes, sir.

20 Q. Okay. And you never put anything in
21 about the person having a light around their
22 neck in your statement; did you?

23 A. Oh, no, sir.

24 Q. Do you remember the first time that
25 I stood up and here and questioned you about

State of South Carolina versus Leonard Brightman

120

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Kevin Ponder - Cross Examination

1 link fence that comes -- it came down here to
2 the substation.

3 Q. Okay. And in order to get in this
4 area, he would have had to have jumped the
5 fence?

6 A. Correct.

7 Q. The barbed wire fence that they
8 have?

9 A. Chain link.

10 Q. And that chain link fence goes all
11 the way around this -- like it's a drainage
12 ditch?

13 A. Yeah, that big drainage ditch.

14 Q. Okay. And this drainage ditch, it's
15 filled with heavy, heavy grass?

16 A. Yeah. It's grown up.

17 Q. So it is grown up. It's not trimmed
18 or anything?

19 A. No.

20 Q. Water drains into it?

21 A. Right.

22 Q. And I'm going to show you an aerial
23 map so we can get a better picture. I'm
24 going to show you State's Exhibit 1.

25 A. That's upside down.

State of South Carolina versus Leonard Brightman

121

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Kevin Ponder - Cross Examination

1 Q. Thank you. So he jumps over this
2 fence, you said?

3 A. Yes, sir.

4 Q. Officer Kirk -- where's Officer
5 Kirk?

6 A. Officer Kirk is back in here, this
7 way.

8 Q. Well, when you come out of the gate,
9 where is Officer Kirk?

10 A. He's here with me, at this gate.

11 Q. Okay. He's already parked.

12 A. His cruiser was out in this area.

13 Q. He's out of his cruiser?

14 A. Right.

15 Q. And you meet him at the gate in
16 front of the ---

17 A. Right.

18 Q. Then you run down to the corner?

19 A. Like this, down to the corner.
20 Because I can't pursue off of SCE&G property.

21 Q. Okay.

22 A. So fifteen feet or so around the
23 substation is still considered SCE&G
24 property. So I came down to this corner and
25 observed him running through this area in

State of South Carolina versus Leonard Brightman

122

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Kevin Ponder - Cross Examination

1 here (indicating).

2 Q. You saw him being pursued by an
3 officer?

4 A. Actually the officer came through --
5 there is a gate along in here, and they came
6 through the gate, they came around here, and
7 took him down about halfway across this
8 concrete area here.

9 Q. That's when you see the takedown?

10 A. Correct.

11 Q. And then you went back up to your
12 patrol car?

13 A. Correct.

14 Q. And about fifteen minutes later they
15 drive back around, all the way to the front
16 of the building?

17 A. Right.

18 Q. Okay. And that's when you see Mr.
19 Brightman in the back of the police car?

20 A. Correct.

21 Q. Okay. He's got his hands cuffed
22 behind his back?

23 A. Correct.

24 Q. Okay. And he's got a flannel shirt
25 on?

State of South Carolina versus Leonard Brightman

123

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Kevin Ponder - Cross Examination

1 A. Right.

2 Q. Okay. But he's not wearing a ski
3 mask?

4 A. No, sir, not at that time.

5 Q. And you told the police that was the
6 man you were chasing?

7 A. By the clothes description; yes,
8 sir.

9 Q. So you did it by the shirt that he
10 was wearing?

11 A. Correct.

12 Q. You never saw the person's face?

13 A. No.

14 Q. And they loaded him into an
15 ambulance; is that ---

16 A. Yes, sir.

17 Q. Okay. And then they cuffed him to
18 the stretcher?

19 A. I'm not real sure, not too sure on
20 that but he was, he was inside working with
21 them. I don't know if that picture detects
22 him cuffed to the stretcher or not. I don't
23 know if he was cuffed to the stretcher or if
24 they just strapped him down or what.

25 Q. I'm going to show you State's

State of South Carolina versus Leonard Brightman

125

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Kevin Ponder - Cross Examination

1 what happened?

2 A. Correct.

3 Q. And I asked you if there was any
4 other features about this person that would
5 stand out?

6 A. Yes, sir.

7 Q. You never told me -- you didn't tell
8 me the first time that you saw the light?

9 A. Correct.

10 Q. And that's just one of those memory
11 things.

12 A. Correct.

13 MR. KOWALSKI: I beg the Court's
14 indulgence, Your Honor.

15 THE COURT: Yes, sir.

16 CROSS EXAMINATION CONTINUED

17 BY MR. KOWALSKI:

18 Q. One last question, Officer Ponder.
19 In all of your dealings with me and in your
20 statement, you've been pretty positive that
21 this person was wearing blue jeans; correct?

22 A. That's what I put in the statement,
23 yes, sir.

24 Q. Okay. Every time I have asked you
25 what pants this person in the substation

State of South Carolina versus Leonard Brightman

126

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Kevin Ponder - Redirect Examination

1 that you were chasing was wearing, you told
2 me blue jeans; correct?

3 A. Yes, sir.

4 Q. Thank you.

5 MR. KOWALSKI: No further
6 questions, Your Honor.

7 THE COURT: Any redirect?

8 SOLICITOR COMPTON: Yes, Your
9 Honor, only a few.

10 REDIRECT EXAMINATION

11 BY SOLICITOR COMPTON:

12 Q. I just want to ask you about a
13 couple of things quickly that Mr. Kowalski
14 asked you about. Mr. Kowalski talked about
15 this video. How many seconds would you
16 estimate it was?

17 A. Probably a half second. I mean, it
18 wouldn't be "one thousand one." It would be
19 like "one thousand." I mean, it was just a
20 quick blip and that was it.

21 Q. All right. And then we'll just move
22 on to another item. You also testified on
23 cross and on direct that your immediate
24 impression that day was that individual was
25 wearing blue jeans; correct?

State of South Carolina versus Leonard Brightman

127

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Kevin Ponder - Redirect Examination

1 A. Correct.

2 Q. Were his pants your primary focus
3 that day?

4 A. No, ma'am. I was concentrating on
5 getting the subject.

6 Q. You and Mr. Kowalski also talked
7 about the drainage ditch, the chase, right,
8 through the drainage ditch. And there is
9 also enclosure around that?

10 A. There is.

11 Q. And what is that?

12 A. It's a chain link fence.

13 Q. Okay. And that's the chain link
14 fence you discussed with Mr. Kowalski?

15 A. Yes.

16 Q. Okay. And that encloses the area
17 where ---

18 A. That encloses the drainage ditch
19 down along the building.

20 Q. Okay. Now, at the time that you
21 were chasing the Defendant, were you able to
22 observe anything else about him other than
23 just his clothing?

24 A. Well, I just, you know, like I said,
25 whenever he was there, you know, I could see

State of South Carolina versus Leonard Brightman

128

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Kevin Ponder - Redirect Examination

1 his eyes and could see his hands. He's
2 definitely shorter than me, the clothes he
3 had were pretty baggy, so I couldn't really,
4 you know -- he was somewhat broad shoulders,
5 but I couldn't tell what kind of build he was
6 because of the loose clothing and all.

7 Q. So when you saw Mr. Brightman later
8 that day, were you able to rely on a few
9 other things besides just his clothing in
10 making identification?

11 A. I mean, I observed that he was --
12 whenever they brought him back, he was sweaty
13 and, you know, not like he was just sitting
14 out there and -- you know, that he had been
15 running. The clothing he had on was the
16 subject that I was chasing the inside the
17 substation.

18 Q. One last set of questions here.
19 When you first entered the substation -- you
20 testified, to me and Mr. Kowalski that you
21 could hear what was going on; is that right?

22 A. Correct.

23 Q. You also testified it was daytime;
24 right?

State of South Carolina versus Leonard Brightman

129

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Kevin Ponder - Recross Examination

1 A. Correct.

2 Q. So were you able to see what was
3 going on?

4 A. Yeah. I saw him up on the structure
5 with the hacksaw, arm motion, cutting the
6 copper grounders.

7 Q. And were there any other people
8 around that day?

9 A. I did not see anyone.

10 Q. Even if they were very sneaky?

11 A. I don't think so. I mean, if there
12 was, you know, the cameras probably picked
13 them up too, but -- no.

14 Q. Thank you.

15 SOLICITOR COMPTON: Nothing
16 further.

17 THE COURT: Any recross based upon
18 her redirect?

19 MR. KOWALSKI: Briefly, Your
20 Honor.

21 RECCROSS EXAMINATION

22 BY MR. KOWALSKI:

23 Q. You identified my client based on
24 the shirt he was wearing; correct?

25 A. And his build. Like I said, his

State of South Carolina versus Leonard Brightman

130

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Kevin Ponder - Recross Examination

1 broad shoulders, shorter than I was. And
2 that's what I was dispatched to, a subject
3 wearing a blue-greenish plaid shirt and that
4 the subject was in the substation, and I ---

5 MR. KOWALSKI: Objection, Your
6 Honor. I believe he's being nonresponsive.

7 THE COURT: Well, rephrase your
8 question.

9 CROSS-EXAMINATION

10 BY MR. KOWALSKI:

11 Q. When the police brought Mr. Bright-
12 man back up to the front of the substation
13 and he was handcuffed in the back of the car,
14 you saw this green -- you said bluish flannel
15 jacket. And you said 'that's the guy?'

16 A. And I was told that they had ---

17 Q. I'm only asking you how you
18 identified him, not what other people told
19 you?

20 A. At that point, I identified him by
21 his shirt. That's the person I was chasing
22 in the substation and that's the person they
23 brought back for me that I saw them take
24 down. You know.

25 MR. KOWALSKI: No further

State of South Carolina versus Leonard Brightman

131

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Matt Kirk - Direct Examination

1 questions, Your Honor.

2 THE COURT: Okay. You may step
3 down.

4 (WITNESS STEPS DOWN)

5 SOLICITOR COMPTON: Your Honor,
6 we'd ask permission for this witness to be
7 excused.

8 THE COURT: Okay. No objection?

9 MR. KOWALSKI: No objection, Your
10 Honor.

11 SOLICITOR COMPTON: And, Your
12 Honor, we do have one more witness, a brief
13 witness, for today.

14 THE COURT: All right.

15 SOLICITOR COMPTON: Okay.

16 SOLICITOR YOUNG: Thank you. The
17 State calls Officer Matt Kirk.

18 THE COURT: All right.

19 (WITNESS TAKES STAND)

20 MATTHEW KIRK, having been duly sworn
21 to tell the truth, and nothing but the truth,
22 testified as follows:

23 DIRECT EXAMINATION

24 BY SOLICITOR YOUNG:

25 Q. Good afternoon, Officer Kirk.

State of South Carolina versus Leonard Brightman

132

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Matt Kirk - Direct Examination

1 A. Good afternoon.

2 Q. Where are you currently employed?

3 A. The City of North Charleston.

4 Q. And what are your duties there?

5 A. I am a police officer on the central
6 day shift unit.

7 Q. And how long have you been with law
8 enforcement?

9 A. A little over five years.

10 Q. And were you called to a substation
11 at 1857 Marine Avenue on March 9th, 2011?

12 A. Yes, ma'am.

13 Q. And why were you called to respond
14 at that location?

15 A. There was a dispatch call in refer-
16 ence to an unauthorized person trespassing on
17 the facility.

18 Q. And what happened when you arrived
19 on the scene?

20 A. I arrived on the scene. I was met
21 by Lieutenant Ponder with their security. He
22 advised me he was just in a foot chase with a
23 subject, that he'd fled out the gate.

24 MR. KOWALSKI: Objection, Your
25 Honor, hearsay.

State of South Carolina versus Leonard Brightman

133

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Matt Kirk - Direct Examination

1 THE COURT: Who stated that?

2 SOLICITOR YOUNG: Lieutenant Ponder,
3 Your Honor. I'll move on.

4 THE COURT: Okay.

5 DIRECT EXAMINATION CONTINUED

6 BY SOLICITOR YOUNG:

7 Q. When you arrived and you spoke with
8 Lieutenant Ponder, without saying what he
9 said, did you see anybody else outside of the
10 substation when you first arrived?

11 A. No, ma'am.

12 Q. So where did you -- when you
13 arrived, where did you see Lieutenant Ponder?
14 Where did you first meet with him?

15 A. I met with Lieutenant Ponder at one
16 of the gates.

17 Q. And he advised you at that point,
18 you said, that there was a suspect that he
19 was chasing?

20 A. Yes, ma'am.

21 Q. Did he give you a description of
22 that suspect?

23 A. He did, yes, ma'am.

24 Q. What did you do once you got that
25 description?

State of South Carolina versus Leonard Brightman

134

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Matt Kirk - Direct Examination

1 A. I radioed it to the other responding
2 unit. Then I got back in my patrol car and
3 went to where Lieutenant Ponder said that the
4 suspect had ran.

5 Q. And what was the description you
6 radioed?

7 A. It was a male subject wearing a
8 plaid style shirt, khaki pants, with a mask.

9 Q. What color was the mask?

10 A. Black.

11 Q. Now, you said Lieutenant Ponder --
12 what direction did you go next, after
13 Lieutenant Ponder and you discussed it?

14 A. I went to the right side of the
15 facility. I got in my police cruiser, drove
16 in the direction to the right side of the
17 facility.

18 SOLICITOR YOUNG: May I approach,
19 Your Honor.

20 THE COURT: You may.

21 DIRECT EXAMINATION CONTINUED

22 BY SOLICITOR YOUNG:

23 Q. I'm showing you what's already been
24 admitted as State's Exhibit 1.

25 A. Yes, ma'am.

State of South Carolina versus Leonard Brightman

135

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Matt Kirk - Direct Examination

1 Q. Do you recognize this?

2 A. I do, yes, ma'am.

3 Q. What do you recognize about this?

4 A. It's the facility that we responded
5 to.

6 Q. Okay. I don't need you to comment
7 any further. In fact, this might be a better
8 picture?

9 A. Yes, ma'am.

10 Q. So when you arrived, could you point
11 to where you met Lieutenant Ponder?

12 A. I met Lieutenant Ponder at this gate
13 around here.

14 Q. And then in what direction -- what
15 happened next in your investigation?

16 A. I arrived at the scene and met
17 Lieutenant Ponder, who advised me that the
18 suspect was fled. I radioed the description
19 that I received, got back in my cruiser, and
20 I proceeded out Saint Johns to McMillan
21 Avenue, which is where I, you know, I saw the
22 suspect and my assisting officer chasing him.

23 Q. Now, who were the other officers on
24 the scene that day?

25 A. Officer Armstead and Officer

State of South Carolina versus Leonard Brightman

136

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Matt Kirk - Direct Examination

1 Clemens.

2 Q. And where did they arrive on scene?

3 A. They arrived to -- the address for
4 the facility is a Marine Avenue address,
5 which is going to have -- it's listed as --
6 this is Marine Avenue (indicating). So they
7 arrived to the other side of the facility,
8 that's where they arrived (indicating).

9 Q. Now, when you said you backed your
10 car up to McMillan Avenue, what did you
11 observe after you did that?

12 A. I observed the suspect fleeing
13 through this field and Officer Armstead
14 closing in on him. He was chasing him on
15 foot.

16 Q. And when you say the suspect, did
17 you observe what he was wearing?

18 A. Yes, ma'am.

19 Q. And what was he wearing?

20 A. Khaki pants, a plaid style shirt and
21 had, what was later found to be the mask,
22 pulled up on his head that appeared to be
23 like a stocking cap.

24 Q. Now, did you see anybody else in the
25 area?

State of South Carolina versus Leonard Brightman

137

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Matt Kirk - Direct Examination

1 A. No, ma'am.

2 Q. Other than Officer Armstead and
3 Officer Clemens, Lieutenant Ponder?

4 A. Yes, ma'am.

5 Q. And the suspect?

6 A. Yes, ma'am.

7 Q. Now, how long would you estimate
8 between the time that you talked to
9 Lieutenant Ponder and backed your car up and
10 you saw the suspect, how long are we talking
11 here?

12 A. Within a minute, thirty seconds. I
13 mean, it was very fast.

14 Q. Was the suspect when you saw him,
15 was he running, walking?

16 A. He was running.

17 Q. And what happened after that?

18 A. He ran across the field. There's a
19 drainage ditch right here. My drawing's not
20 the best.

21 Q. That's okay.

22 A. He ran. He fell into the drainage
23 ditch. Armstead, Officer Armstead was right
24 behind him. And that's where he was taken
25 into custody.

State of South Carolina versus Leonard Brightman

138

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Matt Kirk - Direct Examination

1 Q. Now, what happened once he was taken
2 into custody?

3 A. He was walked back to Officer
4 Armstead's vehicle, which was right over
5 here.

6 Q. And was this the extent of your
7 involvement in this case?

8 A. Yes, ma'am. I drove around to meet
9 with them to, you know, see if I could help
10 in any way, officer's training. And they
11 drove him back to the front of the facility,
12 which would be over here, and I followed.

13 Q. And why is he doing that?

14 A. That's where -- that's just the, you
15 know, the initial spot where our responding
16 officer responded to. I mean, that's where
17 Officer Ponder was at. It's just sort of an
18 area that, you know, we can get our paperwork
19 done and just finish the case.

20 Q. And did he complain of chest pains?

21 A. He did.

22 Q. Is that where EMS arrived?

23 A. Yes, ma'am, that is where EMS
24 arrived.

25 Q. Now, are you familiar with this

State of South Carolina versus Leonard Brightman

139

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Matt Kirk - Direct Examination

1 substation, this area?

2 A. Yes, ma'am.

3 Q. Is this a place where the general
4 public hangs out?

5 A. No, ma'am. It's completely fenced
6 off with a stone wall, two tall gates.
7 There's no reason for anybody to be in there.

8 Q. Is this a place that people sleep
9 overnight?

10 A. No. No, ma'am, not to my knowledge.
11 There's no structure, there's no soft ground.
12 Inside the facility, when I was there, it was
13 just gravel and cement pads with no -- towers
14 on them.

15 Q. Does it seem feasible to live there?

16 A. No, ma'am.

17 SOLICITOR YOUNG: The Court's
18 indulgence.

19 THE COURT: Yes, ma'am.

20 DIRECT EXAMINATION CONTINUED

21 BY SOLICITOR YOUNG:

22 Q. Now, briefly, were you able -- you
23 said that you drove back out to McMillan.
24 Were you able to get out of your vehicle and
25 go in the drainage ditch?

State of South Carolina versus Leonard Brightman

140

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Matt Kirk - Cross Examination

1 A. There's a fence that runs alongside
2 the drainage. I stopped at the fence. The
3 subject, he was running in my general
4 direction. There was no need for me to jump
5 the fence. Officer Armstead, he's fast. I
6 wasn't worried -- basically I was only
7 standing at that point.

8 Q. So would the suspect have had to
9 jump the fence to get out?

10 A. Yes, ma'am, he was.

11 Q. The whole area's enclosed?

12 A. Yes, on my side it is; yes, ma'am.

13 SOLICITOR COMPTON: Thank you.

14 No further questions.

15 THE COURT: Mr. Kowalski?

16 MR. KOWALSKI: Thank you, Your
17 Honor.

18 CROSS EXAMINATION

19 BY MR. KOWALSKI:

20 Q. Good afternoon, Officer Kirk?

21 A. Good afternoon.

22 Q. I think you were a little under the
23 weather last time we spoke?

24 A. I was.

25 Q. Now you look to be doing okay?

State of South Carolina versus Leonard Brightman

141

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Matt Kirk - Cross Examination

1 A. I'm good.

2 Q. Okay. I was just going to talk to
3 you briefly about your experience as a police
4 officer. Before you became a police officer,
5 you had to go to the police academy?

6 A. Yes, sir.

7 Q. Okay. And did they teach you all
8 about guns and weaponry.

9 A. Yes, sir.

10 Q. And did they also teach you how to
11 write reports?

12 A. Yes, sir.

13 Q. And how important these reports are?

14 A. Yes, sir.

15 Q. Because everybody relies on them?

16 A. Yes, sir.

17 Q. Including the solicitors here?

18 A. Yes, sir.

19 Q. And even defense attorneys?

20 A. Absolutely.

21 Q. Okay. Did you write a report in
22 this case?

23 A. I did not.

24 Q. And that's primarily because you
25 were the assisting officer?

State of South Carolina versus Leonard Brightman

142

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Matt Kirk - Cross Examination

1 A. Yes, sir.

2 Q. Okay. I'm going to briefly show you
3 -- it might still be up there. I just want
4 to briefly talk to you about the area that
5 this substation is in?

6 A. Yes, sir.

7 Q. Ms. Young alluded to that this isn't
8 a place that homeless people would want to
9 sleep or stay in?

10 A. Yes, sir.

11 Q. Okay. But there are a lot of
12 homeless people in that area, aren't there?

13 A. Not -- I'd worked this side of the
14 city for two years at this time, this area
15 and it's not frequented with the homeless
16 there. Farther down McMillan onto the actual
17 Navy base, there is abandoned structures.

18 Q. Okay. And the Navy base is down
19 this way?

20 A. Yes, sir. It would be down that way
21 and out of the picture. Where the, you know,
22 where homeless people have been in the past
23 is off down here, about a half mile.

24 Q. As far as the homeless people?

25 A. Yes, sir.

State of South Carolina versus Leonard Brightman

143

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Matt Kirk - Cross Examination

1 Q. But this is a high crime area?

2 A. Yes, sir. It is a high crime area.

3 Q. You have Spruill Avenue right here.

4 A. Yes, sir.

5 Q. And even McMillan runs down to meet
6 Rivers?

7 A. Yes, sir.

8 Q. You make a lot of arrests there?

9 A. I have. Yes, sir.

10 Q. And these structures right here,
11 these are nightclubs?

12 A. Yes, sir. That one and this one
13 right here.

14 Q. Okay. And then around here is the
15 duplexes, homes?

16 A. Yes, sir, there's a street that runs
17 back there called Redden Road. There's a
18 abandoned apartment complex here.

19 Q. Okay. And this is just a, this area
20 right here, that's just a neighborhood?

21 A. No, sir. At the time, the base was,
22 it was home -- to the best of my knowledge,
23 everything over there's been converted to
24 businesses. I don't believe, to the best of
25 my knowledge, that anybody resides in these

State of South Carolina versus Leonard Brightman

144

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Matt Kirk - Cross Examination

1 homes.

2 Q. Okay. Now, when you arrive on the
3 scene, you're coming from the south; right?

4 A. Uh-huh, (affirmative nod).

5 Q. From Rivers?

6 A. From Spruill. I turned onto
7 McMillan from Spruill.

8 Q. Okay. And you turn onto Saint Johns
9 and go up this third driveway, as you call
10 it?

11 A. Yes, sir. Well, I pulled in just
12 off the side of the road.

13 Q. Okay. And as you're driving down
14 here, are you ---

15 A. Uh-huh.

16 Q. --- canvassing the surrounding
17 areas?

18 A. I was listening to the radio, trying
19 to figure out, you know, the point of access
20 that I needed to go to, to get inside the
21 facility.

22 Q. Okay. I guess maybe you'd use your
23 GPS to get to the substation, to get you
24 through this neighborhood here.

25 A. If you use the Marine Avenue

State of South Carolina versus Leonard Brightman

145

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Matt Kirk - Cross Examination

1 address, yes, you have to -- you have to go
2 -- I mean, it's -- everything's -- mostly
3 everything's abandoned office building use.
4 But, yes, you just have to kind of snake your
5 way through there.

6 Q. And, uh, you are waiting to hear a
7 description of the suspect -- or you see
8 something?

9 A. I was, yeah. I was, you know, the
10 last I'd heard on the radio there was a
11 subject inside this facility. I arrived on
12 scene and as I said, I was wanting to get in
13 there to see who it was. And at the gate I
14 was met with Lieutenant Ponder.

15 Q. Okay. So when you turn onto this
16 road, you were concentrating on the subject?

17 A. Yes, sir.

18 Q. Okay. And you pulled up into this
19 driveway.

20 A. Right.

21 Q. Did you ever see somebody jump over
22 the barbed wire fence?

23 A. No, sir. At the time -- I don't
24 believe the barbed wire fence is connected to
25 the building. I did not see anybody jump

State of South Carolina versus Leonard Brightman

146

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Matt Kirk - Cross Examination

1 over a barbed wire fence.

2 Q. But there is a fence?

3 A. There is a fence, but I believe at
4 the time -- since this has taken place, they
5 have restructured some of the area. At the
6 time, I believe there was a break in the
7 fence right at the side or right at the
8 building.

9 Q. Okay. And you didn't see anybody at
10 this point. And you weren't really
11 canvassing the surrounding areas. But
12 Lieutenant Ponder, Officer Ponder told you
13 that he went behind the substation.

14 A. He told me that he rolled underneath
15 this gate right here. There's a gate here, a
16 gate here. He told me he rolled underneath
17 this gate.

18 Q. Okay. And you didn't see him run
19 out of there?

20 A. I did not, no, sir.

21 Q. You didn't see anybody walk across
22 the street?

23 A. No, sir. I didn't see anybody walk-
24 ing.

25 Q. You didn't see anybody in this area

State of South Carolina versus Leonard Brightman

147

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Matt Kirk - Cross Examination

1 up here?

2 A. No, sir.

3 Q. You weren't looking in this area
4 here either?

5 A. No, sir.

6 Q. And you just went back down and came
7 back on McMillan to where Ponder had said?

8 A. Yeah. Because I came in this way.
9 Yeah, I came in at Spruill, you know, I
10 didn't see anybody running or walking across
11 these fields. So I backed up and immediately
12 went in that direction.

13 Q. Okay. And when you saw the person
14 running, they were about right there?

15 A. Yes, sir. They were inside the
16 field running away -- whether it was exactly
17 that location, they were in the general area.

18 Q. Okay. They're in this general area?

19 A. Yes, sir.

20 Q. And that's the drainage ditch?

21 A. Yes. They're running in this
22 direction.

23 Q. And that's filled with tall grass?

24 A. It was just unmanicured terrain,
25 rocky, grass. It's not manicured.

State of South Carolina versus Leonard Brightman

148

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Matt Kirk - Cross Examination

1 Q. It's not easy to run through?

2 A. No, sir. It's not easy to run
3 through.

4 Q. It would be hard to run a hundred
5 yards through that?

6 A. Without falling, yes, sir.

7 Q. Okay. And there's a gate through
8 here that Armstead, Officer Armstead came
9 through and intersected ---

10 A. Yes, sir. He came -- he came --
11 yes, sir, he came from this direction. Like
12 I said, I'm not a hundred percent (100%) sure
13 on exactly how the fence structure was over
14 here, because I drove around and never
15 actually made it to here. He came from this
16 direction running, yes, sir.

17 Q. And then you saw Officer Armstead
18 take him down?

19 A. Yes. They both -- the suspect fell
20 and Officer Armstead, you know, got down on
21 top of him in this drainage ditch.

22 Q. And then they spent about five to
23 ten minutes there?

24 A. No, no. It was an instant handcuff.

25 Q. Oh, right. They handcuffed him.

State of South Carolina versus Leonard Brightman

149

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Matt Kirk - Cross Examination

1 A. He handcuffed him then. You know,
2 obviously, once he's handcuffed, you know,
3 the subject's our responsibility to safely
4 walk him back up. So it took a small amount
5 of time to get him back to the car, but I
6 would not say it was five minutes.

7 Q. Okay. Would you say it took about
8 ten to fifteen to get him back to the front?

9 A. I'm not sure on the exact time. I
10 wasn't looking at my watch. You know, it
11 wasn't an extended amount of time. It was
12 just enough time to walk him to the car, you
13 know, and drive around.

14 Q. Okay. And when you got to the
15 front, the ambulance was waiting?

16 A. They arrived on the scene very
17 shortly. I'm not sure if they were waiting
18 or got there just after we drove him around,
19 but they were there, I would say, a quick
20 response.

21 Q. Okay. And so you and Officer
22 Armstead and Officer Clemons and Officer
23 Ponder ---

24 A. Yes, sir.

25 Q. --- and all these officers ---

State of South Carolina versus Leonard Brightman

150

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Matt Kirk - Cross Examination

1 A. And the supervisor. Yes, our
2 supervisor was there.

3 Q. The supervisor, was he uniformed as
4 well?

5 A. Yes, sir.

6 Q. And Mr. Brightman is getting out of
7 Officer Armstead's car. He went into the ---

8 A. So he was taken out of the car and
9 he was placed in the ambulance, yes, sir.

10 Q. And he had his cuffed behind the
11 back?

12 A. I believe so, yes, sir.

13 Q. Okay. And then do you know whether
14 or not they uncuffed him and then cuffed him
15 to the stretcher?

16 A. Yes, sir, that he was uncuffed. I
17 couldn't see if he was handcuffed to the
18 gurney or -- I doubt that he was handed to
19 the back. When they are transported to the
20 hospital, normally, they're uncuffed and one
21 cuff is placed onto the side, you know, the
22 armrest of the stretcher.

23 MR. KOWALSKI: I beg the Court's
24 indulgence.

25 THE COURT: Yes, sir.

State of South Carolina versus Leonard Brightman

151

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Matt Kirk - Cross Examination

1 MR. KOWALSKI: No further
2 questions, Your Honor.

3 THE COURT: Any redirect in
4 response to his cross?

5 SOLICITOR YOUNG: No, Your Honor.

6 THE COURT: Thank you.

7 WITNESS: Yes, sir, Your Honor.

8 (WITNESS STEPS DOWN)

9 SOLICITOR YOUNG: May this witness
10 also be excused, Your Honor.

11 THE COURT: The witness is
12 excused. Anything further for today?

13 SOLICITOR COMPTON: No, Your
14 Honor.

15 THE COURT: Okay. Ladies and
16 gentlemen, I was wanting to work until about
17 9:00 or 10:00 tonight, but these attorneys
18 are trying to be kind to you and only wanted
19 to work until about 5:00. So I'm going to
20 follow their lead and I'm going to let y'all
21 go.

22 Now, ladies and gentlemen, when you
23 go home tonight and when you see somebody,
24 you know, the easiest way not to talk about
25 what we are doing is just don't tell anybody

State of South Carolina versus Leonard Brightman

152

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Matt Kirk - Cross Examination

1 what we're doing. You know, I used to be a
2 reservist for the National Security Agency.
3 They always said, just don't say -- never say
4 anything. And so if you go and tell somebody
5 you have jury duty and it's about this case,
6 well, what's going to inevitably happen is
7 that person is going to say, 'you know, I was
8 on a jury one time. And, you know, this is
9 what happened in my case.' Well, you don't
10 need to hear that, okay?

11 Everything that you're going to need
12 to decide in this case is going to come from
13 within the four walls of this courtroom.

14 So just, you know, family members,
15 you know, they may know you're on jury duty,
16 but don't tell anybody else because they're
17 going to try to tell you what happened in
18 their situation. And it's going to be
19 totally different from what's happening in
20 this case.

21 So ladies and gentlemen, get a good
22 night's rest, get a good supper tonight and
23 get a good breakfast tomorrow morning because
24 we're going to have a lot of testimony
25 tomorrow.

State of South Carolina versus Leonard Brightman

153

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Matt Kirk - Cross Examination

1 Please don't discuss the case with
2 anyone.

3 Now, I understand, Mr. Foreman, that
4 several of the jurors were wondering if they
5 could bring their lunches tomorrow. Is that
6 correct?

7 JURY FOREMAN: That is correct.

8 THE COURT: Certainly, you may
9 bring you may bring your lunch. And if y'all
10 want to eat it in the jury room -- I guess we
11 could allow them to do that?

12 CLERK: There's an issue with that,
13 Your Honor. Just simply because the bailiffs
14 need to have lunch as well.

15 THE COURT: They can bring their
16 lunch and there's a place they can eat.

17 CLERK: There's a snack bar.

18 THE COURT: 'Snack bar downstairs
19 where they can eat it at. But there's a
20 refrigerator that we'll allow you to keep it
21 in, okay? Thank you, ladies and gentlemen.
22 Have a nice evening. We'll see y'all
23 tomorrow morning at 9:30.

24 (JURY OUT @ 5:10 P.M.)

25 THE COURT: All right. Is there

State of South Carolina versus Leonard Brightman

154

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Matt Kirk - Cross Examination

1 anything we need to take up at this time?

2 SOLICITOR YOUNG: Nothing from the
3 State, Your Honor.

4 MR. KOWALSKI: Not from the
5 Defense, Your Honor.

6 THE COURT: All right. And I
7 believe the State has consented to the
8 Defendant staying out of jail; is that
9 correct?

10 SOLICITOR YOUNG: That is correct.

11 THE COURT: All right. Very well.
12 9:30 tomorrow morning.

13 Defendant, if you don't show up, we're
14 going to go ahead without you being present.

15 SOLICITOR COMPTON: Thank you,
16 Your Honor.

17 THE COURT: Thank you.

18 (COURT IN RECESS)

19 (TRANSCRIPT CONTINUED NEXT PAGE)

20

21

22

23

24

25

State of South Carolina versus Leonard Brightman

155

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Matt Kirk - Cross Examination

1
2 FEBRUARY 5, 2014

9:30 A.M.

3
4 (DEFENDANT PRESENT)

5 THE COURT: Anything before we
6 bring our jury in?

7 SOLICITOR YOUNG: Nothing from the
8 State, Your Honor.

9 MR. KOWALSKI: No, Your Honor.

10 THE COURT: Okay. Very good.
11 Let's bring in our jury.

12 (JURY IN @ 9:35 A.M.)

13 THE COURT: Please be seated.

14 BAILIFF: All jurors are
15 present, Your Honor.

16 THE COURT: Thank you. Good
17 morning, ladies and gentlemen. I hope y'all
18 had a nice evening. It started clearing up
19 last night. It's just a beautiful day.

20 We're going to have a full day today so
21 we're going to get started. And I want to
22 tell you, I appreciate you being on time.

23 You know, nothing makes a machine work
24 better than starting right when they're
25 supposed to. So I appreciate your

State of South Carolina versus Leonard Brightman

156

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Doug Armstead - Direct Examination

1 promptness.

2 Is the State ready to proceed?

3 SOLICITOR COMPTON: We are, Your
4 Honor.

5 THE COURT: Is the Defense ready
6 to proceed?

7 MR. KOWLESKI: Yes, Your Honor.

8 THE COURT: All right. The State
9 may call its next witness.

10 SOLICITOR COMPTON: Thank you,
11 Your Honor. The State calls Officer Doug
12 Armstead.

13 (WITNESS TAKES STAND)

14 DOUGLAS ARMSTEAD, having been duly
15 sworn to tell the truth, and nothing but the
16 truth, testified as follows:

17 DIRECT EXAMINATION

18 BY SOLICITOR COMPTON:

19 Q. Good morning, Officer Armstead. How
20 are you?

21 A. Good morning.

22 Q. Office Armstead, can you tell the
23 jury where you're employed?

24 A. I'm employed with the City of North
25 Charleston.

State of South Carolina versus Leonard Brightman

157

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Doug Armstead - Direct Examination

1 Q. And what do you do for them?

2 A. I'm a police officer.

3 Q. Okay. How long have you been in law
4 enforcement?

5 A. Over ten years.

6 Q. And what are your general duties for
7 North Charleston?

8 A. I answer radio calls and respond to
9 calls.

10 Q. So are you out on the street most
11 days?

12 A. Yes, ma'am.

13 Q. Okay. Were you called to the sub-
14 station at 1857 Marine Avenue on March 9th,
15 2011?

16 A. I was.

17 Q. Tell the jury about what happened
18 that day?

19 A. We were dispatched to an alarm, in
20 which the alarm company stated that they
21 observed a subject ---

22 MR. KOWALSKI: Objection, Your
23 Honor.

24 THE COURT: Sustained. Rephrase
25 your question.

State of South Carolina versus Leonard Brightman

158

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Doug Armstead - Direct Examination

1 DIRECT EXAMINATION CONTINUED

2 BY SOLICITOR COMPTON:

3 Q. Without saying what anyone else told
4 you, were you called to respond that day?

5 A. I was.

6 Q. And what happened upon your arrival?

7 A. We were given a description of the
8 subject that had fled from the substation. I
9 had responded to the back of the substation
10 and observed the subject running through the
11 drainage pond.12 Q. Okay. When you first saw a subject,
13 about how far was he or she from the
14 substation?

15 A. Thirty yards or so.

16 Q. Okay. Was this person walking,
17 running?

18 A. He was running.

19 Q. Out for a jog?

20 A. Negative. No, ma'am.

21 Q. Okay. Officer Armstead, on the
22 screen here that's going to be right in front
23 of you, I'm going to show you what's been
24 admitted as State's Exhibit 1. Does that
25 scene look familiar to you?

State of South Carolina versus Leonard Brightman

159

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Doug Armstead - Direct Examination

1 A. Yes, ma'am.

2 Q. All right. Can you tell the jury
3 where you arrived that day?

4 A. I had drove around to the back of
5 the substation. I came in back through here.
6 There's a gate right here. There's a culvert
7 that runs through right here.

8 Q. And what's the name of the street
9 where you entered from?

10 A. This is Marine Avenue.

11 Q. Okay. And so you arrived, where did
12 you see the subject?

13 A. He was running through this drainage
14 pond here.

15 Q. Okay. And that was a matching
16 description to what you had been given?

17 A. Yes, ma'am.

18 Q. Now, tell me -- you testified you
19 went over a fence. Show me where that is?

20 A. There is a gate area right here and
21 that's where we came across.

22 Q. Okay. And where did you interact
23 with the subject?

24 A. Right here.

25 Q. Okay. Was there a chase within this

State of South Carolina versus Leonard Brightman

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Doug Armstead - Direct Examination

160

1 area?

2 A. Yes, ma'am. We had come down and
3 chased him back. He had come down to this
4 area here and I chased him back down to this
5 area right here.

6 Q. What's the terrain like right there?

7 A. There's like small scrubs and marsh
8 grass and stuff through here. And then
9 there's like a culvert right about there.

10 Q. Okay. And were you ever --
11 eventually able to catch up with him?

12 A. I was.

13 Q. What happened then?

14 A. We had a brief struggle and he was
15 detained.

16 Q. All right. Was it the same person
17 from beginning to the end of this chase?

18 A. Yes, ma'am.

19 Q. About how long did the chase last?

20 A. Not very long.

21 Q. Can you estimate?

22 A. A minute.

23 Q. Okay.

24 SOLICITOR COMPTON: I beg the
25 Court's indulgence, Your Honor.

State of South Carolina versus Leonard Brightman

161

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Doug Armstead - Direct Examination

THE COURT: Yes, ma'am.

DIRECT EXAMINATION CONTINUED

BY SOLICITOR COMPTON:

Q. While they're working on that, was there anyone else in the area that day when you arrived?

A. Other than police officers, no.

Q. Okay. And how long have you been patrolling this area?

A. Throughout my career, at that time probably five years.

Q. Okay. Now, is this area a place where people live?

A. No, ma'am.

Q. What if -- even they're homeless?

A. No.

Q. Is it a place where they hang out?

A. No, ma'am.

Q. Without publishing the items to the jury, I'm going to ask you to take a look here. Contained in this bag are State's 9, and State's 10. I ask you to tell me -- just take a look in that and tell me if those items look familiar to you?

A. They do.

State of South Carolina versus Leonard Brightman

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Doug Armstead - Direct Examination

162

1 Q. Okay. What do you recognize them to
2 be?

3 A. A black ski mask and a ---

4 Q. Okay. And what kind of bag is this
5 that they're in?

6 A. That's the evidence bags that we use
7 to store evidence.

8 Q. Okay. And is there identifying
9 information on this evidence bag?

10 A. Yes, ma'am.

11 Q. Okay. Tell me about that, please?

12 A There is the description, where it
13 was recovered from, who it was recovered by,
14 the subject it was taken from, victims,
15 whatever the offense is. And then it states
16 who it was received from and the date.

17 Q. And did you testify earlier, were
18 you the actual arresting officer in this
19 case?

20 A. Yes, ma'am.

21 Q. And as part of that, was it your
22 responsibility to catalogue the property
23 found on the Defendant?

24 A. Yes, ma'am.

25 Q. Okay.

State of South Carolina versus Leonard Brightman

163

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Doug Armstead - Direct Examination

1 SOLICITOR COMPTON: Your Honor,
2 at this time, I move to admit State's Exhibit
3 9 and 10 into evidence.

4 THE COURT: Any objection?

5 MR. KOWALSKI: Your Honor, I
6 don't know if the sufficient chain of custody
7 has been established just to say that it is
8 the actual item that -- that he seized this
9 item off of Mr. Brightman.

10 THE COURT: Ask him a few more
11 questions.

12 SOLICITOR COMPTON: Okay.

13 DIRECT EXAMINATION CONTINUED

14 BY SOLICITOR COMPTON:

15 Q. When you arrested him that day, were
16 there any items on his person?

17 A. Yes, ma'am.

18 Q. Tell me about that?

19 A. He had a headlamp. It was around
20 his neck. And a ski mask on top of his head.
21 And a plaid vest, green plaid vest.

22 Q. Now, when you say "a ski mask on top
23 of his head," is it covering his face?

24 A. At that time, no.

25 Q. Okay. Tell me about that.

State of South Carolina versus Leonard Brightman
Case No. 11-GS-10-4166
Jury Trial of February 4-5, 2014
Testimony of Doug Armstead - Direct Examination

164

1 A. It was pulled up more like a skully
2 cap.

3 Q. Okay. And when you recovered the
4 item, you determined it to be what?

5 A. A ski mask.

6 Q. Okay. And as part of your arrest,
7 had y'all been down on the ground at all?

8 A. Do you mean in the drainage ditch or
9 in the ---

10 Q. Right after the chase, when you
11 first apprehended the suspect?

12 A. Oh, yes, ma'am.

13 Q. Okay.

14 SOLICITOR COMPTON: Your Honor,
15 at this time, I would move to admit State's
16 Exhibits 9 and 10 as nonfungible items that
17 he

18 THE COURT: Any objection?

19 MR. KOWALSKI: Your Honor, we
20 would object with the nonfungible. We think
21 it is a fungible object. And it's just a
22 regular mask. I don't think -- I don't know
23 if Ms. Compton has asked him whether he
24 actually seized, if he took it off of Mr.
25 Brightman at the scene.

State of South Carolina versus Leonard Brightman

165

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Doug Armstead - Direct Examination

1 THE COURT: Well, ask a few more
2 questions.

3 SOLICITOR COMPTON: Okay. Your
4 Honor. Thank you.

DIRECT EXAMINATION CONTINUED

BY SOLICITOR COMPTON:

6 Q. I believe you testified that you
7 were the arresting officer?

8 A. Yes, ma'am.

9 Q. And it was your responsibility to
10 take the property from the suspect?

11 A. Yes, ma'am.

12 Q. Did you actually seize these items?

13 A. Yes, ma'am.

14 Q. And what did you do with them?

15 A. I logged them into evidence and put
16 them in the evidence locker.

17 Q. Okay. Can you tell me whose name is
18 on this evidence bag?

19 A. That is mine.

20 Q. Okay. So what did you do with the
21 items once you logged them into evidence?

22 A. Once you log it into evidence, you
23 drop it in a secure lockbox or locker and the
24 Evidence custodian takes care of it.
25

State of South Carolina versus Leonard Brightman

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Doug Armstead - Direct Examination

166

1 Q. Thank you.

2 SOLICITOR COMPTON: I'd move to
3 admit at this time.

4 THE COURT: Any Objections?

5 MR. KOWALSKI: No objection.

6 THE COURT: No objection. This is
7 exhibit what?

8 SOLICITOR COMPTON: Your Honor,
9 these are exhibits -- permission to publish
10 to the jury at this time.

11 THE COURT: Yes, ma'am.

12 SOLICITOR COMPTON: These are
13 Exhibits 10 -- I'm sorry. State's Exhibits 9
14 and 10.

15 THE COURT: Okay.

16 (SO ENTERED AS STATE'S EXHIBIT 9)

17 (SO ENTERED AS STATE'S EXHIBIT 10)

18 DIRECT EXAMINATION CONTINUED

19 BY SOLICITOR COMPTON:

20 Q. Okay. So -- I'm sorry. Let's go
21 back for just a minute here. Will you tell
22 me again what the suspect -- we discussed
23 those items, but on his person what was he
24 wearing, what clothing?

25 A. A green plaid vest over a black

State of South Carolina versus Leonard Brightman

167

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Doug Armstead - Direct Examination

1 shirt.

2 Q. Okay. After you arrested the
3 Defendant, what happened next?

4 A. He was complaining of chest pains,
5 so we called EMS.

6 Q. All right. What happened? Did you
7 -- were you able to ---

8 A. He was transported back around to
9 Saint Johns Avenue, over here. That's the
10 easiest place for EMS to meet up with us.
11 It's right over here. But that was the
12 easiest place for EMS to meet up with us. He
13 was transported around there.

14 Q. Okay. Who all was present at the
15 time he was brought back around there?

16 A. There was law enforcement and a
17 security guard. Lieutenant Ponder was the
18 security. It was he, myself, and Officer
19 Clemens.

20 Q. Was there any interaction between
21 Lieutenant Ponder himself with the suspect?

22 A. As far as interaction, not really
23 interaction. He was there. He was present
24 on scene.

25 Q. Was there any identification made at

State of South Carolina versus Leonard Brightman

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Doug Armstead - Cross Examination

168

1 that time?

2 A. He stated that that was the suspect.

3 MR. KOWALSKI: Objection, Your
4 Honor.

5 THE COURT: Sustained.

6 SOLICITOR COMPTON: I'm sorry. I
7 apologize.

8 DIRECT EXAMINATION CONTINUED

9 BY SOLICITOR COMPTON:

10 Q. In your ten years in patrol, is it
11 common to see people in the substation?

12 A. No, ma'am.

13 Q. Are there many thefts in the
14 substation?

15 A. They do occur.

16 Q. Okay. In your experience, are
17 people there for any other reason typically?

18 A. Not unless they're working.

19 Q. Thank you.

20 SOICITOR COMPTON: Nothing further,
21 Your Honor.

22 THE COURT: Thank you. Cross-
23 examination?

24 CROSS EXAMINATION

25 BY MR. KOWALSKI:

State of South Carolina versus Leonard Brightman

169

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Doug Armstead - Cross Examination

1 Q. Good morning, Officer Armstead.

2 A. Good morning, sir. How are you?

3 Q. Good. I want to talk to you just
4 briefly about what it means to be a cop.

5 Your job is to investigate crimes; correct?

6 A. Yes, sir, that's part of it.

7 Q. Okay. And when you investigate, you
8 want to be sure you arrest the right person?

9 A. Absolutely.

10 Q. And you collect evidence to sort of
11 convict the guilty?

12 A. Yes, sir.

13 Q. Okay. And sometimes you collect
14 evidence that excludes people; right?

15 A. Correct.

16 Q. It's called exculpatory evidence?

17 A. Yes.

18 Q. Another thing you do is you write
19 reports?

20 A. Yes, sir.

21 Q. And that's to help you to refresh
22 your recollection about cases?

23 A. Yes, sir.

24 Q. You handle a lot of cases?

25 A. Yes, sir.

State of South Carolina versus Leonard Brightman

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Doug Armstead - Cross Examination

170

1 Q. Okay. About the three-year period
2 from when this happened, you've had probably
3 hundreds of arrest?

4 A. Absolutely.

5 Q. And so it's important when you write
6 those reports that they give an accurate
7 description of what you saw; right?

8 A. Yes, sir.

9 Q. Okay. And that's because people
10 rely on those reports, like the Solicitor?

11 A. Yes, sir.

12 Q. Even I rely on those reports?

13 A. Correct, sir.

14 Q. Okay. So you want to make sure you
15 don't leave anything out?

16 A. I apologize, sir?

17 Q. You want to make sure you don't
18 leave anything out of this report?

19 A. Right. No, sir.

20 Q. Okay. All right. Now, I want to
21 talk to you a little bit about the area
22 surrounding the -- this area surrounding the
23 substation. This is a fairly high-crime
24 area; isn't it?

25 A. Yes, sir.

State of South Carolina versus Leonard Brightman

171

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Doug Armstead - Cross Examination

1 Q. It's right there off Spruill Avenue?

2 A. Yes, sir. The Spruill and Saint
3 Johns area.

4 Q. And Rivers is right up the street?

5 A. Correct.

6 Q. And there's also homes in here?

7 A. Yes, sir.

8 Q. Okay. A lot of them down by or
9 close to the old Navy base?

10 A. Yes, sir.

11 Q. Now, when you arrived at the scene
12 you came from the back side where there are
13 some abandoned homes?

14 A. The back side of that area there's
15 an old abandoned office building back there.
16 And, yeah, there's actually like a medical
17 assisted place right there. In that
18 particular area it is just is an abandoned
19 office building back there.

20 Q. When you said medical thin, you're
21 not talking about the clinic, the free
22 clinic?

23 A. No, there's a clinic, but there's
24 also like, where elderly people stay, there's
25 a ---

State of South Carolina versus Leonard Brightman

172

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Doug Armstead - Cross Examination

1 Q. Like an assisted living?

2 A. Yes, sir.

3 Q. Okay. And in the back of that
4 substation, there's no doors to get out of
5 the substation?

6 A. No, sir.

7 Q. Okay. So anybody leaving the sub-
8 station would have to go out the other side,
9 the opposite side? I mean, on the Saint
10 Johns side?

11 A. Yes, sir.

12 Q. And when you arrived, you arrived at
13 the same time that Officer Kirk arrived?

14 A. Correct, sir.

15 Q. Almost simultaneous?

16 A. Yes, sir.

17 Q. And you saw Mr. Brightman running
18 from -- running in the drainage ditch?

19 A. Yes, sir. He was running in that
20 general direction, yes.

21 Q. And you were in pursuit?

22 A. Yes, sir.

23 Q. And it didn't take you long to catch
24 up to him?

25 A. No, sir.

State of South Carolina versus Leonard Brightman

173

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Doug Armstead - Cross Examination

1 Q. Okay. And you talked about with Ms.
2 Compton -- or actually before that, you
3 initiated what they call a level three
4 takedown?

5 A. Yes, sir.

6 Q. And there was somewhat a scuffle, I
7 guess?

8 A. Yes, sir.

9 Q. And that's because you -- you told
10 Ms. Compton, I think you seized a red razor
11 blade?

12 A. Yes, sir, a box cutter, a box cutter
13 style razor blade.

14 Q. A box cutter. And I mean, did you
15 -- I mean, you could see it? It wasn't ---

16 A. Yes, sir. It was clipped to his ---

17 Q. It was clipped to his khakis?

18 A. Yes, sir.

19 Q. And after this arrest, you probably
20 had him in five, less than ten minutes,
21 brought him up to your car?

22 A. Yes, sir. I took him ---

23 Q. And then you drove him around to the
24 front where ---

25 A. The ambulance. He was taken around

State of South Carolina versus Leonard Brightman

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Doug Armstead - Cross Examination

174

1 to the front; yes, sir.

2 Q. Okay. I want to briefly talk to you
3 about another part of being a police officer,
4 and that's knowing your policies in your
5 department?

6 A. Yes, sir.

7 Q. And there are policies on a wide-
8 range of things:

9 A. Yes, sir.

10 Q. You know, there's policies on how to
11 do reports?

12 A. Yes, sir.

13 Q. How to request advancements?

14 A. Yes, sir.

15 Q. A lot of it is just mundane things?

16 A. Yes, sir.

17 Q. Okay. But there are also important
18 policies that deal with legal requirements?

19 A. Yes, sir.

20 Q. Okay. And one of those is, say
21 you're patrolling a private -- or you're
22 patrolling -- that you have a crime scene and
23 you want to secure that crime scene?

24 A. Yes, sir.

25 Q. Okay. And there's also a policy on

State of South Carolina versus Leonard Brightman

175

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Doug Armstead - Cross Examination

1 identifications?

2 A. Yes, sir.

3 Q. Okay. One of those policies is
4 regarding show-up identifications?

5 A. Yes, sir.

6 Q. Okay. And that's when you bring a
7 suspect back to the scene of the crime and
8 you have somebody identify him?

9 A. Yes, sir.

10 Q. Okay. They have these procedures in
11 place to ensure that these identifications
12 that are made are reliable; correct?

13 A. Yes, sir.

14 Q. Okay. That's that they hold up in a
15 court of law?

16 A. Absolutely, yes, sir.

17 Q. Okay. And generally it's favored to
18 do, say, a photo lineup or some sort of line-
19 up rather than doing a show-up?

20 A. Correct, sir.

21 Q. But obviously you can't do that all
22 the time. Sometimes it's more convenient to
23 do it right there?

24 A. Yes, sir, it is, depending on the
25 timeframe whenever the incident occurs.

State of South Carolina versus Leonard Brightman
Case No. 11-GS-10-4166
Jury Trial of February 4-5, 2014
Testimony of Doug Armstead - Cross Examination

176

1 Q. Yes, sir. And when you choose to do
2 a show-up, you do have certain procedural
3 safeguards in place to make sure that this
4 identification is reliable; correct?

5 A. Yes, sir.

6 Q. Okay. And one of those is that if
7 at all possible, the suspect shouldn't be
8 handcuffed?

9 A. Can you repeat that?

10 Q. One of the policies put in place
11 when you're going to do a show-up is that the
12 suspect shouldn't be in handcuffs?

13 A. Depending on the circumstances at
14 the time, if he was a flight risk, or if he
15 was a fighter, anything like that, those come
16 into play.

17 Q. Okay. Another policy is that the
18 suspect should be accompanied by as few
19 uniformed officers as possible?

20 A. Yes, sir.

21 Q. Because being surrounded by officers
22 usually suggests he's the guilty party?

23 A. Correct.

24 Q. And another policy is that you don't
25 want to do a show-up in the back of a police

State of South Carolina versus Leonard Brightman
Case No. 11-GS-10-4166
Jury Trial of February 4-5, 2014
Testimony of Doug Armstead - Cross Examination

177

1 car?

2 A. Correct.

3 Q. You might have them stand up and
4 identify full features?

5 A. Yes, sir.

6 Q. And if possible, if there's going to
7 be an identification, you want to try to get
8 that on your camera, your dash cam?

9 A. If you have one available, yes.

10 Q. Did you not record this?

11 A. I did not record it.

12 Q. Well, there was a video of this
13 identification?

14 A. Not that I'm aware that there was.

15 MR. KOWALSKI: I beg the Court's
16 indulgence.

17 THE COURT: Yes, sir.

18 MR. KOWALSKI: No further
19 questions, Your Honor.

20 THE COURT: All right. Any
21 redirect?

22 SOLICITOR COMPTON: Briefly, Your
23 Honor. Thank you.

24 REDIRECT EXAMINATION

25 BY SOLICITOR COMPTON:

State of South Carolina versus Leonard Brightman

178

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Doug Armstead - Redirect Examination

1 Q. Officer Armstead, Mr. Kowalski asked
2 you about homeless living near the
3 substation?

4 A. Correct.

5 Q. Have you ever seen any homeless
6 people living in the substation?

7 A. No, ma'am.

8 Q. Now, he also asked you about your
9 identification procedures with North
10 Charleston. Are these policies for lay
11 witnesses?

12 A. Outside of law enforcement; correct.

13 Q. And were you required to follow
14 those policies that day?

15 A. There was no one out there, to me,
16 that was outside of law enforcement except
17 the security guard and I would consider him
18 to be part of law enforcement.

19 Q. So policy wouldn't apply to a fellow
20 law enforcement agent?

21 A. Correct.

22 Q. Before I left you off the stand, at
23 this time, I am going to seek to admit --

24 SOLICITOR COMPTON: I need to
25 mark this. I beg the Court's indulgence.

State of South Carolina versus Leonard Brightman

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Doug Armstead - Recross Examination

179

1 COURT REPORTER: I'm going to
2 marked it as State's Exhibit 1B

3 (SO MARKED AS STATE'S EXHIBIT 1-B)

4 SOLICITOR COMPTON: Thank you. I
5 am going to seek to admit State's Exhibit 1B
6 containing your drawings.

7 THE COURT: All right. Any
8 objection?

9 MR. KOWALSKI: No objection to
10 that, Your Honor.

11 THE COURT: Okay.

12 (SO ENTERED AS STATE'S EXHIBIT 1B)

13 SOLICITOR COMPTON: Nothing
14 further.

15 Q. Thank you.

16 THE COURT: Any redirect [sic]
17 based upon this cross-examination [sic]?

18 MR. KOWALSKI: Briefly. Briefly,
19 Your Honor.

RE CROSS EXAMINATION

20
21 BY MR. KOWALSKI:

22 Q. Officer Armstead, had you ever met
23 Security Officer Ponder before this incident
24 took place?

25 A. No, sir.

State of South Carolina versus Leonard Brightman

180

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Doug Armstead - Recross Examination

1 Q. Okay. And have you ever spoken to
2 him afterwards?

3 A. Only here.

4 Q. Okay. And so you don't know as far
5 as training what he'd gone through to become
6 a security officer?

7 A. No.

8 Q. So he wouldn't necessarily be a
9 better eyewitness than, say, a lay witness;
10 right?

11 SOLICITOR COMPTON: Objection,
12 Speculation.

13 MR. KOWALSKI: I'll withdraw it.
14 Thank you.

15 THE COURT: Thank you. You may
16 step down.

17 WITNESS: Thank you.

18 (WITNESS STEPS DOWN)

19 THE COURT: Any objection to this
20 witness being excused?

21 MR. KOWALSKI: No, Your Honor.

22 THE COURT: Thank you. Have a
23 good day, Officer.

24 WITNESS: Thank you, Your Honor.

25 (WITNESS STEPS DOWN)

State of South Carolina versus Leonard Brightman
Case No. 11-GS-10-4166
Jury Trial of February 4-5, 2014
Testimony of Jerome Clemens

181

1 THE COURT: Yes, Ms. Young.

2 SOLICITOR YOUNG: Thank you, Your
3 Honor. The State calls Officer Jerome
4 Clemens.

5 THE COURT: All right.

6 (WITNESS TAKES STAND)

7 JEROME CLEMENS, having been duly
8 sworn to tell the truth, and nothing but the
9 truth, testified as follows:

10 DIRECT EXAMINATION

11 BY SOLICITOR YOUNG:

12 Q. Good morning, Officer Clemens.

13 A. Good morning.

14 Q. Where are you currently employed?

15 A. North Charleston Police Department.

16 Q. And how long have you worked there?

17 A. Approximately three years.

18 Q. Were you working in that position on
19 March 9th, 2011?

20 A. I was.

21 Q. And did you respond to 1857 Marine
22 Avenue to the substation there on that day?

23 A. I did.

24 Q. And can you explain to the jury why
25

State of South Carolina versus Leonard Brightman
Case No. 11-GS-10-4166
Jury Trial of February 4-5, 2014
Testimony of Jerome Clemens

182

1 you responded there?

2 A. We responded there for an alarm.
3 Dispatch advised that a camera system at that
4 time was observing the subject ---

5 MR. KOWALSKI: Objection, Your
6 Honor.

7 THE COURT: What's your objection?

8 MR. KOWALSKI: It's the same
9 objection, as to whether the camera system.

10 THE COURT: You need to correct
11 the foundation. Sustained.

12 SOLICITOR YOUNG: Yes, Your Honor.

13 DIRECT EXAMINATION CONTINUED

14 BY SOLICITOR YOUNG:

15 Q. Without telling us the description
16 of the subject, why did you respond to the
17 location?

18 A. An alarm.

19 Q. Did you ever come upon a subject
20 when you got there?

21 A. Not initially. It was after a
22 couple of minutes.

23 Q. Do you know approximately how long
24 after the call went out that you arrived onto
25 the scene when you saw the subject, kind of

State of South Carolina versus Leonard Brightman

183

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Jerome Clemens

1 the timeframe for us?

2 A. Maybe five minutes.

3 Q. Okay. Now, without telling us what
4 the description of the subject was, did you
5 receive a description to look for that day?

6 A. I did.

7 Q. And did you see anyone on scene that
8 matched that description you were given?

9 A. Yes, ma'am.

10 Q. Where did you observe the subject?
11 Actually, let me I'm showing you what's
12 already been admitted into evidence as
13 State's Exhibit 1. Is this the substation
14 you arrived to that day?

15 A. Yes, ma'am.

16 Q. And can you kind of describe for the
17 jury, explain where you were when you
18 arrived?

19 A. We were in this area over here.

20 Q. And did you arrive by yourself?

21 A. I was with Officer Armstead.

22 Patrolman Kirk was on Saint Johns Avenue
23 whenever we arrived.

24 Q. Okay. So after you and Officer
25 Armstead arrived, you said on Marine Avenue,

State of South Carolina versus Leonard Brightman

184

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Jerome Clemens

1 what did you do next?

2 A. We observed the subject matching
3 that description running from the rear of the
4 complex in this drainage area. And he was
5 given loud verbal commands to stop.

6 Q. Okay. And can you show us on that
7 where Officer Kirk was?

8 A. He was at the front of the complex.
9 He met with the security personnel.

10 Q. Okay. Can you explain kind of what
11 went down once you and Armstead got there and
12 you saw the suspect that matched the
13 description, what happened next?

14 A. Like I said, he was given loud
15 verbal commands to stop. He continued
16 running and actually -- at one point,
17 actually looked up at us. We were clearly
18 visible police officers. He continued
19 running, a foot chase ensued. Eventually,
20 he fell to the ground and he was taken into
21 custody.

22 Q. And is there a drainage ditch in
23 that area?

24 A. Yes, ma'am. That's the area that we
25 could see him running.

State of South Carolina versus Leonard Brightman

185

Case No. 11-GS-10-4166
Jury Trial of February 4-5, 2014
Testimony of Jerome Clemens

1 Q. Okay. And you have indicated that
2 he was running through the drainage ditch.
3 Is that where the chase took place?

4 A. Yes, ma'am. The drainage ditch
5 pretty much backs up to the back of complex.

6 Q. And you indicated that the
7 description matched. What was the suspect
8 wearing when he was apprehended?

9 A. It was a green vest, khaki pants,
10 boots, ski mask, and he had a -- he was
11 wearing a headlamp, hanging -- dangling
12 around his neck.

13 Q. And when you saw that suspect at
14 first, was he walking, running or what was he
15 doing?

16 A. He was running.

17 Q. How close would you estimate he was
18 to the substation that day?

19 A. Maybe five to ten yards. He wasn't
20 far from there.

21 Q. How long do you think the chase
22 lasted?

23 A. Thirty seconds. It wasn't a long
24 chase.

25 Q. And after the subject was detained,

State of South Carolina versus Leonard Brightman
Case No. 11-GS-10-4166
Jury Trial of February 4-5, 2014
Testimony of Jerome Clemens

186

1 what did you do next?

2 A. I took him from the area we were in,
3 the drainage pond, back to my vehicle. He
4 was complaining of chest pains. EMS was
5 called. They were going to meet us on the
6 Saint Johns Avenue. I drove him from Marine
7 Avenue where my vehicle was -- or Patrolman
8 Armstead's vehicle was -- drove him back to
9 the front to meet with EMS.

10 Q. And were you training that day under
11 Officer Armstead?

12 A. I was. I was in field training.

13 Q. And was that the extent of your
14 involvement in the case?

15 A. Yes, ma'am.

16 Q. Thank you.

17 SOLICITOR YOUNG: No further
18 questions.

19 THE COURT: Mr. Kowalski?

20 MR. KOWALSKI: Thank you, Your
21 Honor.

22 CROSS-EXAMINATION

23 BY MR. KOWALSKI:

24 Q. Good morning, Officer Clemens.

25 A. Good morning.

State of South Carolina versus Leonard Brightman

187

Case No. 11-GS-10-4166
Jury Trial of February 4-5, 2014
Testimony of Jerome Clemens

1 Q. Just a few questions for you. You
2 didn't write a report in this case?

3 A. No, I didn't.

4 Q. Okay. But Officer Armstead did?

5 A. Yes, sir.

6 Q. Okay. And your name is actually on
7 that report too?

8 A. Yes, sir.

9 Q. Okay. And that's because you were
10 the officer in training?

11 A. Yes, sir.

12 Q. So when he wrote the full report and
13 you put your name on it, it accurately
14 reflects what you observed at the scene?

15 A. Yes, sir, because we were together
16 the entire time.

17 Q. So it might as well be your report
18 too?

19 A. Yes, sir.

20 Q. And in that report, they listed Mr.
21 Brightman's address as [REDACTED]?

22 A. Sounds accurate. I can't be sure.

23 Q. That's the homeless shelter?

24 A. I'm not familiar with that address.

25 Q. Now, just briefly. You just

State of South Carolina versus Leonard Brightman
Case No. 11-GS-10-4166
Jury Trial of February 4-5, 2014
Testimony of Jerome Clemens

188

1 testified that you saw him running with that
2 ski mask on his head?

3 A. Yes, sir.

4 Q. Okay. He didn't have it over his
5 head?

6 A. It was not pulled down, no. It was
7 pulled over ---

8 Q. He was wearing it as a hat?

9 A. Kind of like a toboggan or a skull
10 cap.

11 Q. Okay. It was a hat?

12 A. Right.

13 Q. And he's running through this
14 drainage ditch?

15 A. Uh-huh.

16 Q. And this drainage ditch has got this
17 tall grassy area, I guess, if you drain your
18 pond, that's what you'd see, that kind of
19 stuff?

20 A. I guess to some degree, yes.

21 Q. It's never really manicured or any-
22 thing like that. It's pretty tough terrain
23 to run through?

24 A. Yes, sir.

25 Q. Okay.

State of South Carolina versus Leonard Brightman
Case No. 11-GS-10-4166
Jury Trial of February 4-5, 2014
Testimony of Lisa Kubicsko - Direct Examination

189

1 MR. KOWALSKI: No further
2 questions, Your Honor.

3 THE COURT: Anything on redirect?

4 SOLICITOR YOUNG: No, Your Honor.

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

7 (WITNESS STEPS DOWN)

8 THE COURT: Any objection to this
9 witness being excused?

10 MR. KOWALSKI: No, Your Honor.

11 SOLICITOR YOUNG: No.

12 THE COURT: Thank you. Have a
13 good day, Officer.

14 SOLICITOR YOUNG: Thank you, Your
15 Honor. The State calls Investigator Lisa
16 Kubicsko.

17 (WITNESS TAKES STAND)

18 LISA KUBICKSKO, having been duly
19 sworn to tell the truth, and nothing but the
20 truth, testified as follows:

21 DIRECT EXAMINATION

22 BY SOLICITOR YOUNG:

23 Q. Good morning. How are you doing
24 today?

25 A. Good morning.

State of South Carolina versus Leonard Brightman

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Lisa Kubicko - Direct Examination

190

1 Q. Where are you currently employed?

2 A. North Charleston Police Department
3 as a civilian crime scene technician.

4 Q. And how long have you been in law
5 enforcement.

6 A. I hit my three-year mark in
7 December.

8 Q. What type of training do you have as
9 a crime scene technician?

10 A. I have a bachelor's in forensic
11 investigative science. I've also done a lot
12 of training working through the department
13 and other agencies.

14 Q. Were you working in that same
15 position back in March 9th, 2011?

16 A. Yes.

17 Q. In what capacity?

18 A. Civilian crime scene technician.

19 Q. And can you explain kind of for the
20 jury, what were your duties at that time?

21 A. My duties are to respond to criminal
22 investigations. I take photographs, collect
23 evidence, process that evidence, prepare it
24 for further testing, usually it will go to
25 SLED. DNA. I process for fingerprints as

State of South Carolina versus Leonard Brightman

191

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Lisa Kubicsko - Direct Examination

1 well. I also am a latent examine, so I will
2 enter those latent prints into the database.
3 And I also present my findings in court.

4 Q. Now I turn your attention to March
5 9th, 2011. Did you respond to the 1856 Marine
6 Avenue?

7 A. I did.

8 Q. And why did you respond there that
9 day?

10 A. I was called over the radio to
11 respond -- usually a sergeant is the one who
12 calls. I was told that it was a case of
13 malicious injury to a utility system.

14 Q. And did you meet with anybody on the
15 scene when you got there?

16 A. I did. I met with Officer Kirk.

17 Q. And what was the purpose of this
18 meeting?

19 A. Just to get an idea of what had
20 happened, what they knew so far.

21 Q. Right when you got on the scene,
22 what's the first thing you did?

23 A. I started taking pictures after I
24 met with them.

25 SOLICITOR YOUNG: Your Honor, may I

State of South Carolina versus Leonard Brightman
Case No. 11-GS-10-4166
Jury Trial of February 4-5, 2014
Testimony of Lisa Kubicsko - Direct Examination

192

1 approach?

2 THE COURT: You may.

3 DIRECT EXAMINATION CONTINUED

4 BY SOLICITOR YOUNG:

5 Q. I'm showing you what's been
6 previously marked for identification, State's
7 Exhibit 13 and 14. Do you recognize these?

8 A. I do.

9 Q. Why do you recognize them?

10 A. They're photographs I took that day
11 when I arrived. One is a saw that was found
12 on the ground and another is a pair of
13 goggles that was found outside of one of the
14 doors to the substation. I was told that the
15 suspect ---

16 MR. KOWALSKI: Objection, Your
17 Honor.

18 THE COURT: Sustained.

19 DIRECT EXAMINATION CONTINUED

20 BY SOLICITOR YOUNG:

21 Q. Without saying what you were told by
22 anyone else, ---

23 A. Okay.

24 Q. Just do you recognize those?

25 A. Yes.

State of South Carolina versus Leonard Brightman

193

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Lisa Kubicko - Direct Examination

1 Q. And does it fairly and accurately
2 depict the scene as it was that day on March
3 9th, 2011?

4 A. Yes.

5 SOLICITOR YOUNG: Your Honor, at
6 this time, the State would seek to admit
7 State's exhibit numbers 13 and 14 into
8 evidence.

9 THE COURT: Any objection?

10 MR. KOWALSKI: No, objection.

11 THE COURT: All right. Thank you.

12 13 and 14 ---

13 SOLICITOR YOUNG: Permission to
14 publish.

15 THE COURT: You may. 13 and 14
16 are admitted without objection.

17 (SO ENTERED AS STATE'S EXHIBIT 13)

18 (SO ENTERED AS STATE'S EXHIBIT 14)

19 DIRECT EXAMINATION CONTINUED

20 BY SOLICITOR YOUNG:

21 Q. Okay. Looking at State's 13, can
22 you explain what that depicts?

23 A. Yes. That is -- if I remember
24 correctly, the door is to the left that
25 enters the substation, which was closed. And

State of South Carolina versus Leonard Brightman

194

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Lisa Kubicko - Direct Examination

1 that's kind of the driveway that leads out to
2 the main road. And his goggles were in the
3 road.

4 Q. Okay. And State's 14?

5 A. This was within the closed-in sub-
6 station.

7 Q. And what is that picture of?

8 A. A saw.

9 Q. And what are the other items in the
10 background at the substation? What are those
11 pictures of right here? What is that
12 showing?

13 A. Just the wire, the different parts
14 of a substation, transformers -- I'm not
15 really familiar with the terms of their
16 equipment and stuff.

17 Q. Basically the transformers?

18 A. Yeah.

19 Q. Okay. And the saw was located right
20 next to the transformers?

21 A. Correct.

22 Q. Okay. Now, after you took photo-
23 graphs, did you collect any forensic
24 evidence?

25 A. I did. I collected the saw, the

State of South Carolina versus Leonard Brightman

195

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Lisa Kubicko - Direct Examination

1 goggles. There was also a yellow hardhat in
2 the area that said Utilities Construction
3 Company. I didn't know if that was something
4 that that was related to this or possibly
5 left there from before. And inside the hat
6 was a black bag and inside the bag was a
7 glove.

8 SOLICITOR YOUNG: Your Honor, may I
9 approach?

10 THE COURT: You may. And you
11 don't have to ask me before.

12 SOLICITOR YOUNG: Okay. Thank you.

13 THE COURT: Neither of you do. I
14 don't think there's any nefarious dealings
15 going on.

16 SOLICITOR YOUNG: Thank you.

17 DIRECT EXAMINATION CONTINUED

18 BY SOLICITOR YOUNG:

19 Q. I'm showing you what's been
20 previously marked for identification only as
21 State's 11 and 12. Could you please review
22 these, those two items?

23 A. Yes.

24 Q. What do you recognize these to be?

25 A. One is the saw that I packaged. It

State of South Carolina versus Leonard Brightman

196

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Lisa Kubicsko - Direct Examination

1 has my name on it in my handwriting.

2 The other is the pair of goggles that was
3 in the photograph that I also packaged. It
4 has my name on it.

5 Q. So explain to us when you collect
6 the evidence, kind of what you do and how you
7 know that you're the one that collected it?

8 A. What I'll do is take it back to the
9 office. If there's any kind of processing,
10 I'm going to do, whether it be DNA or
11 fingerprints, I'll do it that then.

12 And then I'll package the items, seal it
13 with tape. Or in this case, I stapled it.
14 Close it up for a chain of custody so that I
15 can account for it at all times, and submit
16 it into evidence.

17 SOLICITOR YOUNG: At this time, Your
18 Honor, the State would seek to admit State's
19 11 and 12 into evidence?

20 THE COURT: Any objection?

21 MR. KOWLESKI: No objection, Your
22 Honor.

23 THE COURT: Without objection, 11
24 and 12 are admitted.

25 (SO ENTERED AS STATE'S EXHIBIT 11)

State of South Carolina versus Leonard Brightman

197

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Lisa Kubicko - Direct Examination

1 (SO ENTERED AS STATE'S EXHIBIT 12)

2 DIRECT EXAMINATION CONTINUED

3 BY SOLICITOR YOUNG:

4 Q. Would you mind publishing or showing
5 the jury what this item is?

6 A. This is the pair, a pair of goggles.

7 Q. And is that what we saw on State's
8 13?

9 A. Yes. The goggles.

10 Q. And then what's in the other bag?

11 MR. KOWALSKI: Your Honor, may we
12 briefly approach?

13 THE COURT: You may.

14 (OFF RECORD BENCH CONFERENCE)

15 DIRECT EXAMINATION CONTINUED

16 BY SOLICITOR YOUNG:

17 A. Would you like for me to show ---

18 Q. Yes.

19 A. This is the saw that was found at
20 the scene that day.

21 Q. Okay. After you collected the
22 goggles and saw, did you seek out any
23 forensic evidence in this case?

24 A. I did. At the station before
25 packaging I processed the hat, the saw, and

State of South Carolina versus Leonard Brightman

198

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Lisa Kubicko - Direct Examination

1 the goggles for fingerprints. And I also
2 swabbed all four of the items, collected for
3 DNA.

4 Q. Can you kind of explain to the jury
5 what clues you look at to decide what
6 forensic evidence might be available?

7 A. Yes. A lot of the time we think
8 about how someone will use an object.
9 Normally everyone will pick things up or put
10 them, down, or move them kind of in the same
11 manner.

12 If someone's going to put on a hat, you
13 know, a hardhat, they might touch the sides.
14 If they're working, you know, they might
15 touch the front to adjust it. So we would
16 process those areas that could be touched
17 for fingerprints.

18 Q. And how do you process fingerprints?

19 A. With that, we use black powder and a
20 fiberglass brush, bristles with a wand, just
21 kind of lightly twist it, twirl it, they say,
22 on the object, which develops fingerprints.
23 The powder will adhere to the oils and sweat
24 glands that you deposited in that latent
25 print.

State of South Carolina versus Leonard Brightman

199

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Lisa Kubicko - Direct Examination

1 Q. And what is a latent fingerprint?

2 What is a fingerprint?

3 A. It's a latent impression, invisible
4 print of your fingerprint. It is deposited
5 by your sweat and oils.

6 Q. Did you recover any fingerprints in
7 this case?

8 A. I did not.

9 Q. And does someone leave a fingerprint
10 in every case?

11 A. No. If they were wearing gloves,
12 they're not going to leave prints. Sometimes
13 if they sweat a lot when they nervous, they
14 might leave more smudges and sweat basically.
15 Or if they're someone that doesn't sweat a
16 lot, they might not leave one at all.
17 Sometimes we'll see some ridge detail, you
18 know, the lines that make up the pattern of
19 your fingerprint. We might see some lines,
20 but to us it's not enough to do anything
21 with.

22 Q. What other types of evidence did you
23 attempt to collect in this case?

24 A. I also swabbed for DNA.

25 Q. And how does a person leave DNA on

State of South Carolina versus Leonard Brightman

200

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Lisa Kubicko - Direct Examination

1 an item?

2 A. It's the same thing, through sweat
3 or oils. You shed your skin cells constant-
4 ly. So touching an object repeatedly would
5 leave those skin cells, and that's what we're
6 looking to get.

7 Q. And how do you attempt to collect
8 that DNA?

9 A. We use basically a Q-tip with a
10 wooden stick on it. We'll wet it with a few
11 drops of distilled water and swab the area
12 that we're interested in. Sometimes, we'll
13 focus on crevices because that's where it
14 might, you know, collect more of the sweat or
15 skin cells.

16 Q. And where is it sent after you take
17 the swabs?

18 A. We package them, put them in
19 evidence, and then do a request for that to
20 go to SLED so that they'll do the actual DNA
21 analysis.

22 Q. And through the course of your
23 investigation, were you aware of whether the
24 lab was able to identify any DNA from the
25 swabs you took?

State of South Carolina versus Leonard Brightman

201

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Lisa Kubicsko - Direct Examination

1 A. Yes. They outsource it. And there
2 was no results, no DNA found. In non-violent
3 cases, we have certain protocols that we have
4 to follow. So, in this case, we can only
5 sent two items of DNA, and the known
6 standards that we have. So in this case, I
7 sent the swab from the glove and swab from
8 the hat. Both came back no DNA.

9 Q. Thank you.

10 SOLICITOR YOUNG: No further
11 questions.

12 THE COURT: Mr. Kowalski?

13 CROSS EXAMINATION

14 BY MR. KOWALSKI:

15 Q. Crime Scene Technician Kubicsko, how
16 are you doing today?

17 A. Good morning.

18 Q. Could I shorten that by calling you
19 -- you go by investigator, technician.

20 A. It doesn't matter. Lisa will be
21 fine.

22 Q. Okay. I want to talk to you a
23 little bit about what it is to be a crime
24 scene technician?

25 A. Uh-huh.

State of South Carolina versus Leonard Brightman

202

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Lisa Kubicsko - Cross Examination

1 Q. It's a very important job. You
2 collect evidence to identify specific ---

3 A. Uh-huh.

4 Q. I'm sorry. Could you, please ---

5 A. Yes. I'm sorry.

6 Q. This woman (court reporter) is
7 taking down the record of ---

8 A. Okay.

9 Q. Thank you. And you're also trained
10 in how to protect a crime scene?

11 A. Yes.

12 Q. And your training also involves
13 other specialized techniques like finger-
14 printing and preserving evidence?

15 A. Yes.

16 Q. And then you also talked about DNA
17 evidence. If could be blood or bodily
18 fluids?

19 A. Yes.

20 Q. And touch DNA?

21 A. Yes.

22 Q. Which basically is if you just touch
23 anything, it will leave DNA.

24 A. Yes.

25 Q. So pretty much the most important

State of South Carolina versus Leonard Brightman

203

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Lisa Kubicko - Cross Examination

1 part of your job is collecting evidence?

2 A. Yes.

3 Q. And you were called to this crime
4 scene on March 9th?

5 A. Yes.

6 Q. And when you first arrived, you took
7 some photographs?

8 A. Yes.

9 Q. And you collected some cut wires.

10 A. Yes.

11 Q. And you would say there were
12 probably about five cut wires?

13 A. I couldn't even tell you, to be
14 honest.

15 Q. Okay. In taking photographs, you
16 also collected other pieces of evidence that
17 you talked about?

18 A. Yes.

19 Q. Okay. And you collected a saw?

20 A. Yes.

21 Q. You collected the goggles?

22 A. Yes.

23 Q. You collected a hardhat?

24 A. Yes.

25 Q. And inside the hardhat was the black

State of South Carolina versus Leonard Brightman

204

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Lisa Kubicsko - Cross Examination

1 plastic bags, or a plastic bag?

2 A. Yes.

3 Q. And there was, I guess, a glove
4 inside the black plastic bag you found?

5 A. Yes.

6 Q. So you collected a glove as well?

7 A. Yes.

8 Q. Now, also on the scene in one of
9 your pictures, there is a large plastic trash
10 bag?

11 A. Yes.

12 Q. I think it's just basically right in
13 the middle of the substation. And you took a
14 picture of that?

15 A. Yes.

16 Q. Okay. And inside the bag there were
17 some miscellaneous items?

18 A. Yes.

19 Q. Some wires?

20 A. I don't recall.

21 Q. Do you recall the roll of duct tape?

22 A. I don't recall it. I'd have to see
23 the photo I took.

24 Q. Okay. So you don't remember a
25 Gatorade bottle or anything like that?

State of South Carolina versus Leonard Brightman

205

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Lisa Kubicko - Cross Examination

1 A. I don't.

2 Q. Okay. But you didn't collect that
3 bag?

4 A. No.

5 Q. So after the scene, you went back to
6 your office and started processing the
7 evidence?

8 A. Yes.

9 Q. Okay. You processed the hardhat?

10 A. Yes.

11 Q. And the saw?

12 A. Yes.

13 Q. You used the black powder?

14 A. Yes.

15 Q. You just dusted for fingerprints?

16 A. Yes.

17 Q. And you didn't find any prints on
18 that?

19 A. No. None that would be sufficient
20 for any kind of analysis.

21 Q. And you didn't find any prints on
22 the saw?

23 A. No.

24 Q. You didn't dust the goggles, did
25 you?

State of South Carolina versus Leonard Brightman

206

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Lisa Kubicsko - Cross Examination

1 A. I did.

2 Q. You did?

3 A. Yes.

4 Q. Did you find any prints on those?

5 A. No.

6 Q. Okay. And you didn't dust the
7 glove, I guess?

8 A. No. It was fabric.

9 Q. That makes sense. You say you
10 didn't collect any trash bag or anything in
11 it, so you did not test anything from that?

12 A. No.

13 Q. And then you spoke about on direct
14 how you took the swabs of DNA from ---

15 A. Yes.

16 Q. --- the hardhat?

17 A. Yes.

18 Q. The glove?

19 A. Yes.

20 Q. The goggles?

21 A. Yes.

22 Q. And the saw?

23 A. Yes.

24 Q. And you also -- I don't know if it
25 was you, but somebody took a DNA sample from

State of South Carolina versus Leonard Brightman

207

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Lisa Kubicko - Cross Examination

1 Mr. Brightman?

2 A. Correct.

3 Q. And that's to compare it?

4 A. Correct.

5 Q. And then when you take these swabs,
6 you store them so they're preserved?

7 A. Correct.

8 Q. And you did that in this case?

9 A. Yes.

10 Q. And then you sent the swab of --
11 from the glove?

12 A. Yes.

13 Q. And then you sent a swab from the
14 hardhat?

15 A. Yes.

16 Q. Okay. And you sent that along with
17 a swab from Mr. Brightman?

18 A. Yes.

19 Q. To compare.

20 A. If it'd be possible to see the I-lab
21 from SLED, I just want to confirm that that's
22 what it was saying.

23 Q. (Tenders).

24 A. (Upon review), yes. That's what was
25 sent. The swab from the glove and the swab

State of South Carolina versus Leonard Brightman

208

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Lisa Kubicko - Cross Examination

1 from the yellow hardhat and reference sample
2 the Defendant.

3 Q. Okay. So you didn't send away the
4 swab from the goggles?

5 A. No.

6 Q. And you didn't send the swab from
7 the saw?

8 A. No.

9 Q. So we don't have reports for either
10 of those?

11 A. No. That's SLED protocol. For
12 anything less than a violent crime, we send
13 two items. And then once we get the results
14 back, we can then send more; however, because
15 of the time it takes to get those initial
16 results back, also time just to send
17 additional items, it doesn't happen.

18 Q. So you got these results back and
19 they were negative; correct?

20 A. Yes.

21 Q. But then you didn't send off the
22 other two items?

23 A. No.

24 Q. Okay. You still have them?

25 A. Yes.

State of South Carolina versus Leonard Brightman

209

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Lisa Kubicko - Cross Examination

1 Q. And they could still have some of
2 his DNA on them?

3 A. Yes.

4 Q. Or potentially the DNA of someone
5 who is not my client?

6 A. Potentially.

7 MR. KOWALSKI: I beg the Court's
8 indulgence?

9 THE COURT: Yes, sir.

10 MR. KOWALSKI: I have no further
11 questions, Your Honor.

12 THE COURT: All right. Thank you.
13 Any redirect?

14 SOLICITOR YOUNG: No, Your Honor.

15 THE COURT: Thank you. You may
16 step down.

17 (WITNESS STEPS DOWN)

18 THE COURT: May this officer be
19 excused?

20 SOLICITOR YOUNG: Yes.

21 THE COURT: Thank you.

22 SOLICITOR COMPTON: The State
23 calls Officer Christopher Caraway.

24 THE COURT: Let me see the
25 attorneys for just a moment.

State of South Carolina versus Leonard Brightman
Case No. 11-GS-10-4166
Jury Trial of February 4-5, 2014
Testimony of Chris Caraway - Direct Examination

210

1 (OFF RECORD BENCH CONFERENCE)

2 (WITNESS TAKES STAND)

3 CHRISTOPHER CARAWAY, having been
4 duly sworn to tell the truth, and nothing but
5 the truth, testified as follows:

6 DIRECT EXAMINATION

7 BY SOLICITOR YOUNG:

8 Q. Good morning, Officer Caraway.
9 Where are you currently employed?

10 A. With Allied Barton on SCE&G SCANA
11 contract.

12 Q. What are your duties as a security
13 officer with Allied Barton?

14 A. My duties are as a -- what we call a
15 patrol rover. I actually check certain sites
16 consisting of substations, business offices,
17 answer alarm calls, handle anything that
18 deals with or concerns SCE&G employees,
19 vehicles, property, equipment.

20 Q. And were you in that position back
21 in March of 2011?

22 A. Yes, ma'am.

23 Q. And you said specifically part of
24 your duties then included patrolling the
25 different substations with SCE&G?

State of South Carolina versus Leonard Brightman

211

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Chris Caraway - Direct Examination

1 A. Correct.

2 Q. Why would you be hired to patrol
3 these substations?

4 A. Due to the fact of -- to keep
5 unauthorized individuals out. For mainly the
6 actions of theft, anything along that line.

7 Q. Why are their systems targeted?

8 A. Due to the type of equipment. Also,
9 mainly due to the large amount of various
10 kinds of copper.

11 Q. Did you ever patrol the Navy Yard
12 substation at 1857 Marine Avenue?

13 A. Yes, ma'am.

14 Q. Would you say you patrolled that
15 substation regularly?

16 A. At least two to three times a week.

17 Q. I'm showing you what's been admitted
18 as State's Exhibit 1. Is that the substation
19 that we're talking about here?

20 A. Yes, ma'am.

21 Q. So would you -- is that a high-crime
22 area? Is that why you regularly patrol it?

23 A. I believe so. I'm not quite sure on
24 the statistics of criminal activity in that
25 area, but it is, like I stated, for SCANA or

State of South Carolina versus Leonard Brightman
Case No. 11-GS-10-4166
Jury Trial of February 4-5, 2014
Testimony of Chris Caraway - Direct Examination

212

1 SCE&G property, should be considered like any
2 other area or target of interest of
3 individuals.

4 Q. Because of copper theft?

5 A. Correct.

6 Q. Were you the security officer
7 patrolling that substation on March 9th, 2011?

8 A. Yes, ma'am.

9 Q. What time did you enter that sub-
10 station that morning?

11 A. That morning was 0500 hours or 5:00
12 A.M., in the morning.

13 Q. And when you got there, did you
14 observe anything improper?

15 A. No, ma'am.

16 Q. Anything out of place?

17 A. No, ma'am.

18 Q. Were you the only one there?

19 A. Yes, ma'am.

20 Q. You didn't see anybody else around?

21 A. No, ma'am.

22 MR. KOWALSKI: Objection, Your
23 Honor, just to the relevancy as to this line
24 of questioning.

25 THE COURT: Overruled.

State of South Carolina versus Leonard Brightman

213

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Chris Caraway - Direct Examination

1 SOLICITOR YOUNG: Thank you, Your
2 Honor.

3 DIRECT EXAMINATION CONTINUED

4 BY SOLICITOR YOUNG:

5 Q. So you got there at 5:00 A.M.?

6 A. Correct.

7 Q. And nobody else was there?

8 A. Nobody.

9 Q. What did you do -- what time did you
10 leave the substation?

11 A. About 0508 or 5:08 A.M. in the
12 morning.

13 Q. And when you get there, talk us
14 through what you do?

15 A. When a patrol rover arrives on
16 scene, we actually -- what we'll do is we'll
17 go ahead and notify our metroplex officer and
18 inform them that we're on scene. We actually
19 tell them that we're 1023, which indicates
20 that we are physically at that location. You
21 know, we tell them we're 1023 or scene at,
22 whatever the location is.

23 Q. So 1023 is just a code that you use?

24 A. Correct.

25 Q. To kind of shorten it up?

State of South Carolina versus Leonard Brightman

214

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Chris Caraway - Cross Examination

1 A. Correct.

2 Q. So 1023 means you got there at 5:00
3 A.M.?

4 A. Yes, ma'am.

5 Q. All right. And you left at 5:08.

6 A. Yes.

7 Q. Did you log it in as in proper
8 condition when you left?

9 A. Yes, ma'am.

10 Q. And what does that mean?

11 A. It means that after completion of
12 our site check, there was no criminal
13 activity, no break-ins, no vandalism, no
14 unauthorized individuals on site of any kind.

15 Q. So at 5:08 A.M. on March 9th, 2011,
16 nobody was sleeping there?

17 A. No, ma'am.

18 SOLICITOR YOUNG: No further
19 questions?

20 THE COURT: Mr. Kowalski?

21 CROSS-EXAMINATION

22 BY MR. KOWALSKI:

23 Q. Officer Caraway, this substation has
24 motion sensor cameras in it?

25 A. Correct. It has some type of a

State of South Carolina versus Leonard Brightman

215

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Chris Caraway - Cross Examination

1 alarm system in it.

2 Q. And on the outside of the substation
3 there is also signs that say No Trespassing,
4 violators will be prosecuted?

5 A. Yes, sir. Signs that say it's SCE&G
6 or SCANA property, no trespassing. "WARNING,
7 HIGH VOLTAGE, Possible death or bodily
8 injury."

9 Q. Thank you.

10 A. In English and in Spanish.

11 MR. KOWALSKI: No further
12 questions, Your Honor.

13 THE COURT: Thank you. Any
14 redirect?

15 SOLICITOR YOUNG: No, Your Honor.

16 THE COURT: All right. Thank you.
17 You may step down.

18 WITNESS: Thank you, sir.

19 (WITNESS STEPS DOWN)

20 THE COURT: Any objection to this
21 witness being excused?

22 SOLICITOR YOUNG: No, Your Honor.

23 THE COURT: All right. Ladies and
24 gentlemen, why don't we take a ten-minute
25 recess, restroom break, coffee break.

State of South Carolina versus Leonard Brightman

216

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Bonita Benton - Direct Examination

1 Please do not discuss anything about the
2 case while you're out. Thank you.

3 (JURY OUT @ 10:40 A.M.)

4 THE COURT: All right. Court will
5 be in recess for about ten minutes.

6 (BRIEF RECESS)

7 (DEFENDANT PRESENT)

8 THE COURT: Bring in the jury.

9 (JURY IN @ 10:55 A.M.)

10 BAILIFF: All jurors are pre-
11 sent, Your Honor.

12 THE COURT: All right. Thank you.
13 Please take your seats. Is everybody all
14 refreshed? (Various affirmative responses
15 from jurors). All right. The State may call
16 its next witness.

17 SOLICITOR COMPTON: Thank you,
18 Your Honor. The State calls Investigator
19 Bonita Benton.

20 (WITNESS TAKES STAND)

21 BONITA BENTON, having been duly
22 sworn to tell the truth, and nothing but the
23 truth, testified as follows:

24 DIRECT EXAMINATION

25 BY SOLICITOR COMPTON:

State of South Carolina versus Leonard Brightman

217

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Bonita Benton - Direct Examination

1 Q. Good morning. Investigator Benton,
2 can you please tell the jury where you're
3 employed?

4 A. I am employed with SCANA Corporation
5 as Corporate Security Investigator.

6 Q. Okay. And SCANA is the parent
7 company of SCE&G?

8 A. It is.

9 Q. Okay. And you told me that you were
10 a corporate investigator; right?

11 A. That's correct.

12 Q. What do you do with them as a
13 corporate investigator?

14 A. As a corporate investigator, I'm an
15 internal investigator for our company, for
16 twenty-two years. We investigate property
17 crimes, issues that involve our employees,
18 internal issues that may deal with compliance
19 issues, customer issues. We're like a
20 detective agency, but just internal.

21 Q. Okay. Now, are you pretty familiar
22 with SCE&G and its equipment?

23 A. Yes, I am.

24 Q. Please tell the jury what a sub-
25 station is and what it does?

State of South Carolina versus Leonard Brightman

218

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Bonita Benton - Direct Examination

1 A. In a nutshell, a substation is just
2 a location where power is generated and the
3 voltage is taken down to a level where it is
4 safe to distribute to our customers and to
5 our commercial customers.

6 Q. Okay. Now, is a substation a
7 component of a public electric utility
8 system?

9 A. Yes, it is.

10 Q. And are these substations accessible
11 to the public?

12 A. No. No, they're not.

13 Q. Why not?

14 A. Because it's separated from the
15 general public by a perimeter fencing.

16 Q. And why do you have to put fencing
17 up?

18 A. To prevent someone from going into
19 that location.

20 Q. Okay. Why do you want to prevent
21 them from going in?

22 A. Because it's dangerous.

23 Q. Okay. All right.

24 A. That's where electricity is
25 generated.

State of South Carolina versus Leonard Brightman

219

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Bonita Benton - Direct Examination

1 Q. Okay. Now, does SCANA or SCE&G have
2 any problems with theft of electrical
3 systems?

4 A. Yes, they do.

5 Q. And why is that?

6 A. Because they're generally after the
7 copper wire.

8 Q. Why?

9 A. Because the wire has value to it.

10 Q. And how does that work?

11 A. Well, they steal the copper and
12 they'll take it to a scrap dealer and
13 generally the cost of that swap is about four
14 dollars a pound.

15 Q. Okay. Do the substations have
16 cameras installed?

17 A. At SCE&G if our substations are
18 high-risk, considered high-risk locations,
19 then we do put cameras in those sites.

20 Q. Okay. Is the substation at 1857
21 Marine Avenue considered a high-risk
22 substation?

23 A. Yes, it is.

24 Q. Tell me about the cameras and how
25 they work?

State of South Carolina versus Leonard Brightman

220

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Bonita Benton - Direct Examination

1 A. Well, at that location, we have what
2 are referred are video-fi cameras. And these
3 are cameras that are monitored by dispatch,
4 what we refer to as a corporate security
5 operations center.

6 And whenever there is an alarm that is
7 activated at that site, based on those
8 visuals from the cameras, then someone is
9 dispatched to that location to check it out.

10 Q. Okay. And what kind of thing would
11 trigger the alarm or the cameras?

12 A. Movement. Unauthorized -- well,
13 movement in that area. Now, generally, the
14 video-fi camera in the daytime is deactivated
15 for certain -- between certain hours. But if
16 it is triggered, we do -- the camera itself
17 has a way of pulling up a visual of what's
18 going on. And if our dispatchers determine
19 that it doesn't look legitimate, then someone
20 in security is dispatched to that location to
21 verify.

22 Q. Okay. Now, were the cameras active
23 on March 9th, 2011 at the substation?

24 A. Yes, they were.

25 Q. And were they triggered?

State of South Carolina versus Leonard Brightman

221

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Bonita Benton - Direct Examination

1 A. Yes, they were.

2 Q. Okay. Now, would it be possible for
3 somebody to be living, hanging out inside the
4 substation?

5 A. No, it's not an area that -- like I
6 said, the perimeter fencing prevents someone,
7 the average Joe, from going into that site.

8 Q. And what happens if they do get into
9 the site, under a gate or something?

10 A. The video-fi would alert and
11 security would respond to that location.

12 Q. Did the video-fi alarm go off back
13 in March of 2011?

14 A. Yes, I was.

15 Q. And did your office respond to the
16 break-in at the Navy Yard Substation on that
17 date?

18 A. Yes, they did.

19 Q. Are you aware, have you come to
20 learn whether the substation was fully
21 functioning at that time?

22 A. I believe parts of it were still
23 under construction.

24 Q. Okay. So were some of these
25 transformers not on that day?

State of South Carolina versus Leonard Brightman

222

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Bonita Benton - Direct Examination

1 A. That's correct.

2 Q. And would an ordinary member of the
3 public be able to discern which ones were on
4 and which ones were off?

5 A. Not generally. Not unless you've
6 got that kind of experience or background.
7 But with the humming noises and, you know,
8 those type things that come from that site,
9 it would make the average person want to stay
10 away.

11 Q. Okay. Did the defendant have
12 permission to be in the substation that day?

13 A. No, he did not.

14 Q. And was SCANA required to come in
15 and repair these structures as a result of
16 the actions on March 9th?

17 A. Yes, we did.

18 Q. What was that damage?

19 A. The damage, I believe, was about
20 twenty-eight hundred dollars (\$2,800).

21 Q. Thank you. Please answer anything
22 that the defense has.

23 A. Okay.

24 SOLICITOR YOUNG: Nothing further.

25 THE COURT: Mr. Kowalski?

State of South Carolina versus Leonard Brightman

223

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Bonita Benton - Cross Examination

1 CROSS EXAMINATION

2 BY MR. KOWALSKI:

3 Q. Good morning, Ms. Benton?

4 A. Good morning.

5 Q. You just testified on direct you
6 were part of the investigation team in this
7 incident?

8 A. Yes.

9 Q. Okay. But you weren't the lead
10 investigator?

11 A. No, I was not.

12 Q. Okay. So you didn't actually
13 respond to the scene?

14 A. No, I did not.

15 Q. Okay. But you did do some
16 investigation as to what was brought back to
17 you?

18 A. At that time, the person that did
19 respond to that, the investigator and I
20 discussed it.

21 Q. And there had been found that some
22 wires had been cut?

23 A. That's correct?

24 Q. Okay. And those wires were still on
25 the scene?

State of South Carolina versus Leonard Brightman
Case No. 11-GS-10-4166
Jury Trial of February 4-5, 2014
Testimony of Bonita Benton - Cross Examination

224

1 A. I can't answer that. I don't have
2 knowledge of that.

3 Q. Okay. You don't know whether the
4 items were taken?

5 A. I don't -- I don't believe -- as a
6 matter of fact, I don't know if he got away
7 with the items. I believe that when we
8 responded he got away from our security
9 personnel without any copper wire.

10 Q. And when you say "he," I mean, you
11 obviously weren't there to see who cut these
12 wires?

13 A. No, I was not.

14 Q. Okay. You don't know necessarily
15 when all these wires were cut?

16 A. No.

17 Q. Okay. And is it possible that the
18 construction crews could have cut some of
19 these wires?

20 A. No. The construction crew would not
21 have cut grounding wire to that substation.
22 The grounding wire is there to -- for safety
23 reasons, for our crew when they go into the
24 site. So they would not have left copper
25 wire that was considered grounding wire in

State of South Carolina versus Leonard Brightman

225

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Bonita Benton - Cross Examination

1 that condition, no.

2 Q. Okay. So what you're saying it's
3 not possible while they're doing construction
4 that they could cut these wires?

5 A. I'm saying that I don't believe that
6 they would have, no.

7 Q. You don't believe they would have,
8 but it's possible?

9 A. I don't think so.

10 Q. I want to briefly talk to you about
11 the camera system that you testified to on
12 direct. This substation was equipped with
13 the motion sensor cameras?

14 A. That's correct.

15 Q. Okay. And it's an integrated video
16 camera to record the protected area?

17 A. Yes.

18 Q. And these recordings are then saved
19 to a Frontell Server computer?

20 A. I don't have that information.

21 Q. Okay.

22 A. I don't have the answer to that.

23 Q. These motion-sensor cameras are
24 there for security reasons; correct?

25 A. That's correct.

State of South Carolina versus Leonard Brightman

226

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Bonita Benton - Cross Examination

1 Q. And you're the security investiga-
2 tor?

3 A. Yes.

4 Q. So did you ever take the opportunity
5 to review this video?

6 A. No, I did not review the video.

7 Q. But there was a video?

8 A. There was a video.

9 Q. Okay. And it was kept on a server
10 at the corporate security operations center?

11 A. With our technical systems group;
12 yes.

13 Q. Okay. And that's kept for at least
14 thirty days?

15 A. That's correct.

16 Q. And then it's either overwritten by
17 the ---

18 A. Correct.

19 MR. KOWALSKI: I beg the Court's
20 indulgence.

21 THE COURT: Yes, sir.

22 CROSS EXAMINATION CONTINUED

23 BY MR. KOWALSKI:

24 Q. One last question, Ms. Benton. Did
25 the North Charleston Police Department ever

State of South Carolina versus Leonard Brightman

227

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Bonita Benton - Cross Examination

1 ask your office for the video?

2 A. I'm sure that they did. I was not
3 the lead investigator on that. And so I
4 don't have that information.

5 Q. Okay. So you don't know?

6 A. No. I don't.

7 Q. Thank you.

8 MR. KOWALSKI: No further
9 questions.

10 THE COURT: Thank you. And
11 redirect?

12 SOLICITOR YOUNG: No, Your Honor.

13 THE COURT: Thank you. You may
14 step down.

15 WITNESS: Thank you.

16 (WITNESS STEPS DOWN)

17 THE COURT: Any objection to this
18 witness being excused?

19 SOLICITOR YOUNG: None from the
20 State.

21 THE COURT: From the Defense? Any
22 objection to this witness being excused?

23 MR. KOWALSKI: No, Your Honor.

24 SOLICITOR COMPTON: Your Honor,
25 at this time, the State rests.

State of South Carolina versus Leonard Brightman

228

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Testimony of Bonita Benton - Cross Examination

1 THE COURT: Okay. All right.

2 Ladies and gentlemen, I'm going to send you
3 out of the courtroom for just a few more
4 minutes while we take up a few matters of
5 law. Please do not discuss anything about
6 the case while you're back there.

7 (JURY OUT @ 11:03 A.M.)

8 THE COURT: You may be seated.

9 Are there any Motions by the State?

10 SOLICITOR YOUNG: Nothing from the
11 State.

12 MR. KOWALSKI: Your Honor, at
13 this time we would ask for a

14 directed verdict. And we're making that
15 on two grounds. First is on the *State v.*
16 *Owens*. It was a recent case. I believe it's
17 a 2009 case. It's actually one of the only
18 cases I could find dealing with malicious
19 injury to an electrical utility. But in that
20 case there was a subject who had escaped or
21 allegedly was in the getaway car. People in
22 the getaway car ran from the police on a stop
23 The defendant in that case went into a lady's
24 home and asked her to lie to the police about
25 who he was, what he was doing. And the court

State of South Carolina versus Leonard Brightman

229

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Defense Motion for Directed Verdict

1 in that case said that this wasn't enough to
2 -- it wasn't enough circumstantial evidence
3 to rise to a conviction. I think it's very
4 similar to this case.

5 THE COURT: You do?

6 MR. KOWALSKI: I think he had a
7 person running from the police at the scene,
8 but it's -- you know, I ---

9 THE COURT: There's a couple of
10 intervening factors compared to this case.
11 One, they get out of the car and then they go
12 into the house and you have a lot of links
13 there. There's very few links in this one.
14 Don't you believe?

15 MR. KOWALSKI: I think it's still
16 hot pursuit, Your Honor. You know, the
17 timing. There might be a little less harm
18 with this if that case was ninety minutes. I
19 think we're talking about maybe in this case,
20 maybe there's about ---

21 THE COURT: Five.

22 MR. KOWALSKI: --- five. So it
23 is, you know, less time. But we would still
24 like to make that motion.

25 The other directed verdict motion ---

State of South Carolina versus Leonard Brightman

230

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Defense Motion for Directed Verdict

1 THE COURT: Would you like to
2 respond to that one first and then we'll move
3 to the next one?

4 SOLICITOR YOUNG: Thank you, Your
5 Honor. I think that case is really off-point
6 with the case we have at hand. Here,
7 Lieutenant Ponder testified that he chased
8 the Defendant for a few minutes inside the
9 facility. And he was detained, Lieutenant
10 Ponder said, he only lost sight of him for
11 less than a minute. He was detained.
12 Lieutenant Ponder is a trained security
13 officer. He was able to identify him that
14 day on scene, in the perimeter of the
15 substation, not even over a hundred yards
16 away, Your Honor. And he was also able to
17 identify him for us here in court.

18 THE COURT: I agree with her.

19 I believe this is much different from
20 *State v Owens*. In that case they said it was
21 an hour and a half time away from the
22 facility. Here we've got maybe not being out
23 of the officer's sight for thirty seconds.
24 Still on the facility. He was still within
25 the immediate area. I don't think that

State of South Carolina versus Leonard Brightman

231

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Defense Motion for Directed Verdict

1 pertains. I respectfully deny your motion.

2 MR. KOWALSKI: Thank you, Your
3 Honor. The other motion for directed verdict
4 that we're making, just briefly, is that
5 because this substation, particularly that
6 the transformer not deactivated, was not in
7 working condition. We argue that this was
8 not functioning as an electrical utility and
9 thus there could be no malicious injury to
10 it.

11 THE COURT: Yes, ma'am, Ms. Young?

12 SOLICITOR YOUNG: Thank you, Your
13 Honor. The requirements of the statute don't
14 require it to be fully functioning. It also
15 requires only to destroy, damage, or in any
16 way injure the electric utility system or its
17 component. In this case, Ms. Benton
18 testified that it was partially functioning
19 at that time. So the State would argue that
20 it does meet that burden.

21 THE COURT: But you would agree
22 this is part of the utility system; is that
23 correct? Just because the light's not on
24 doesn't mean it's still not a light.

25 MR. KOWALSKI: Well, I think --

State of South Carolina versus Leonard Brightman

232

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Defense Motion for Directed Verdict

1 I'm not sure if the decommission was -- if I
2 could use that. I know it was in the first
3 trial. I don't know if it was used in this.
4 But that word makes it sound like it wasn't
5 being used as a ---

6 THE COURT: Well, I think it's
7 stipulated it wasn't on.

8 MR. KOWALSKI: Right. But if
9 something's decommissioned, it means it's out
10 of -- to me, it sounds like that it's not in
11 use or not being used.

12 THE COURT: Well, I guess when
13 your car's not on or it's at the shop, it's
14 decommissioned.

15 MR. KOWALSKI: Yes, Your Honor.

16 THE COURT: I respectfully deny
17 your motion.

18 MR. KOWALSKI: I don't know if
19 it's -- but I make that argument for
20 arguments sake.

21 THE COURT: Thank you. You're
22 protected on the record.

23 And I'll go ahead and question your
24 client now about his willingness to testify.
25 Please place the Defendant under oath.

State of South Carolina versus Leonard Brightman

233

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Examination of Defendant

1 CLERK: Raise your right hand. Do you
2 swear or affirm that the testimony that you
3 give will be the truth and nothing but the
4 truth, so help you God?

5 LEONARD BRIGHTMAN: Yes, I do.

6 THE COURT: All right. Your are
7 Mr. Leonard Brightman; is that correct?

8 DEFENDANT: Yes, sir.

9 THE COURT: All right. Mr.
10 Brightman, at this time I'm going to explain
11 to you certain of your rights. If you do not
12 understand anything that I say, please let me
13 know. If you want me to explain in greater
14 detail, I'll be happy to do that. Do you
15 understand that?

16 DEFENDANT: Yes, sir.

17 THE COURT: Now, Mr. Brightman,
18 we've reached the stage of your trial where
19 you may present your defense.

20 Now, you have a right to claim the
21 protections given to you by the Fifth
22 Amendment of the United States Constitution,
23 which states in part, that no person shall be
24 compelled in any criminal case to be a
25 witness against himself. Now, this means

State of South Carolina versus Leonard Brightman

234

Case No. 11-GS-10-4166
Jury Trial of February 4-5, 2014
Examination of Defendant

1 that you cannot be required to testify in
2 this case.

3 You have a right to testify on your own
4 behalf. However, no one can make you
5 testify.

6 This is a personal right and no one can
7 waive this right except for you.

8 Now, if you decide to testify, you will
9 be subjected to the same rules that govern
10 other witnesses in this case. And you may be
11 examined and cross-examined on any relevant
12 issue in this case.

13 Further, if you have any convictions
14 involving dishonesty, false statements or for
15 crimes punishable by imprisonment of more
16 than one year, and I determine that the
17 probative value of admitting the convictions
18 outweigh its prejudicial effect on you, the
19 Solicitor will be able to produce your record
20 to attack your credibility.

21 Madam Solicitor, do you have any -- does
22 he have any record that y'all would intend to
23 put in should he take the stand?

24 SOLICITOR COMPTON: He does, Your
25 Honor.

State of South Carolina versus Leonard Brightman

235

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Examination of Defendant

1 THE COURT: Okay. What is that?

2 SOLICITOR COMPTON: All right.

3 We go back to 1979. I don't know if that
4 would be admissible, but he does have a
5 strong arm robbery at that point.

6 THE COURT: That would not be
7 admissible.

8 SOLICITOR COMPTON: Okay. I can
9 start more recently. He does -- there's a
10 string of offenses. But we would argue
11 because of the fact that they're kind of
12 moral turpitude, despite their distance in
13 time, should be admissible. But starting
14 within the ten-year timeframe, he does have:

15 a 2007 grand larceny;

16 2008 burglary third; and a

17 2011 resisting arrest. I don't
18 believe that's admissible, though.

19 THE COURT: Do you understand the
20 Solicitor would be entitled to bring those
21 in. Grand larceny is a theft. And what was
22 the burglary?

23 SOLICITOR COMPTON: Third degree,
24 Your Honor.

25 THE COURT: Third degree. That's

State of South Carolina versus Leonard Brightman

236

Case No. 11-GS-10-4166
Jury Trial of February 4-5, 2014
Examination of Defendant

1 questionable. But the grand larceny will
2 certain come in. Do you understand that?

3 DEFENDANT: Yes, sir.

4 THE COURT: Now, if you decide to
5 testify, the decision on your part must be
6 freely and voluntarily and intelligently made
7 with the knowledge of the protections given
8 you by the Fifth Amendment.

9 Now, if you decide not to testify, I will
10 instruct the jurors that they do not give the
11 fact that you did not testify any considera-
12 tion whatsoever. And there's to be
13 absolutely no prejudice to you because you
14 did not testify.

15 It is left entirely up to you whether or
16 not you want to testify. I'll give you some
17 time to talk with your attorney, any family
18 or friends or anyone else, but the final
19 decision will be left entirely up to you.

20 Why don't I give you about a ten-minute
21 break, let you talk with your attorney,
22 unless you know for sure right now what you
23 want to do. But I'm going to give you ten
24 minutes, just to be sure on the record that
25 you have your right to talk to him. All

State of South Carolina versus Leonard Brightman

237

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Examination of Defendant

1 right. And then I'll come back in ten
2 minutes and ask you about it, okay? Let's
3 take ten minutes.

4 SOLICITOR YOUNG: Thank you, Your
5 Honor.

6 THE COURT: And just time sake, if
7 he does not testify, y'all want to go ahead
8 and break and then come back about 1:30 for
9 the closing arguments?

10 MR. KOWALSKI: Yes, Your Honor.
11 That's fine.

12 THE COURT: Or do y'all want to go
13 ahead and close?

14 MR. KOWALSKI: We can go ahead,
15 and I think break for lunch. I've discussed
16 this with Mr. Brightman ---

17 THE COURT: Mr. Brightman, you've
18 had an opportunity to speak with your
19 attorney about this?

20 DEFENDANT: Yes, sir.

21 THE COURT: And y'all have gone
22 through all the consequences and the rights
23 you have and everything like that; is that
24 correct?

25 DEFENDANT: Yes, sir.

State of South Carolina versus Leonard Brightman
Case No. 11-GS-10-4166
Jury Trial of February 4-5, 2014
Examination of Defendant

238

1 THE COURT: Do you want to
2 testify?

3 DEFENDANT: No, sir.

4 THE COURT: Are you sure?

5 DEFENDANT: Yes, sir.

6 THE COURT: Okay. All right.

7 Very well. Now, why don't we bring the jury
8 back in, I'll let you rest on the record. Do
9 you have any other ---

10 MR. KOWALSKI: The only other --
11 just for preservation issues, just to object
12 to the identification process. And that is
13 just for preservation of the issue.

14 THE COURT: All right. Your
15 objection is noted. Let's bring our jury
16 back in. He can rest on the record. And
17 then we will break and instruct the jury to
18 be back at 1:30 or do y'all ---

19 SOLICITOR YOUNG: Your Honor, what
20 about the stipulation?

21 THE COURT: Well, after he rests,
22 there's no more evidence and then I'm going
23 to get to the stipulation.

24 SOLICITOR YOUNG: Okay. Thank you.

25 THE COURT: All right. Let's

State of South Carolina versus Leonard Brightman

239

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Publication of Stipulation of the Parties

1 bring our jury back.

2 (JURY IN @ 11:25 A.M.)

3 BAILIFF: All present, Your
4 Honor.

5 THE COURT: Thank you. Please be
6 seated. Mr. Kowalski.

7 MR. KOWALSKI: Your Honor, the
8 Defense rests.

9 THE COURT: All right. Thank you.
10 All right. Ladies and gentlemen, all the
11 testimony that you have heard, you're going
12 to hear in this case has now been presented
13 to you.

14 I also have an additional stipulation
15 between the State and the Defendant. The
16 stipulation reads as follows, (reading):

17 The State and Defendant agree that:

18 *One, three items were sent to Sorensen*
19 *Forensics, a laboratory that does DNA*
20 *testing;*

21 *Two, one of these items was a swab*
22 *containing Leonard Brightman's known DNA,*
23 *collected from the Defendant after the*
24 *incident;*

25 *Three, one item was a swab taken*

State of South Carolina versus Leonard Brightman

240

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Publication of Stipulation of the Parties

1 *from a glove by L. Kubicsko on -- I think I*
2 *got that right -- on March 9th, 2011;*

3 *Four, one item was a swab taken from*
4 *a yellow hardhat by L. Kubicsko on March 9th,*
5 *2011;*

6 *Five, no other items were tested;*

7 *Six, after lab testing there were no DNA*
8 *profiles found on the two swabs submitted by*
9 *the North Charleston Police Department.*

10 All right. Ladies and gentlemen, that's
11 it. That is their agreement. This will go
12 back with the other evidence to you as a
13 Court's Exhibit.

14 (SO ENTERED AS COURT'S EXHIBIT 1)

15 THE COURT: Now, ladies and
16 gentlemen, as I said, all the testimony and
17 evidence to be presented to you has been
18 presented to you.

19 The parties will now move to their
20 closing arguments, but I'm going to give them
21 a little break and give y'all a break with
22 instructions that you be back here at 1:30,
23 where we'll have closing arguments and then
24 you'll have the afternoon to deliberate.

25 And if you need to deliberate until

State of South Carolina versus Leonard Brightman

241

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Charge Conference

1 tomorrow, you're welcome to do that as
2 well. But be back here just a little bit
3 before 1:30 so we can proceed with the trial.
4 Thank you.

5 (JURY OUT @ 11:35 A.M.)

6 THE COURT: Anything else?

7 SOLICITOR YOUNG: Nothing from the
8 State, Your Honor.

9 THE COURT: All right. Y'all be
10 ready at 1:30.

11 SOLICITOR YOUNG: Thank you, Your
12 Honor.

13 THE COURT: To Dazzle. Right
14 before -- do y'all want to have a charge
15 conference right before we start?

16 SOLICITOR YOUNG: Be back at 1:15?

17 THE COURT: That's good.

18 (LUNCH RECESS)

19 (DEFENDANT PRESENT)

20 THE COURT: Are y'all fine for the
21 State?

22 SOLICITOR COMPTON: No objection
23 from the State, Judge.

24 MR. KOWALSKI: The only objection
25 I have, Your Honor, is the ex-spoliation

1 charge. And the reason we object to that, as
2 you've seen throughout this trial, the video
3 in this case has been mentioned, I think, by
4 every single witness in the case. I just
5 don't see how the police did not think to get
6 this video recording.

7 And, although, we will admit that we
8 don't see any allegations of bad faith, and
9 that is the standard under the *Arizona*
10 *Youngblood* standard, we would ask this Court
11 to consider a different standard. And the
12 reason why ---

13 THE COURT: Why should I apply a
14 standard that's not in the law?

15 MR. KOWALSKI: Well, Your Honor,
16 a lot of jurisdictions that are -- well, I
17 say "a lot", I think that there are about ten
18 jurisdictions that have gone away from the
19 *Youngblood* standard to -- because that's a
20 baseline for the process.

21 And under different state constitutions,
22 and I think including our own Constitution,
23 that Mr. Brightman should be entitled to have
24 a balancing of factors in assessing whether
25 or not this expropriation charge should be

State of South Carolina versus Leonard Brightman

243

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Charge Conference

1 given.

2 And we reason that we think that in the
3 *Youngblood* standard is not appropriate in
4 this case, and just inherent problems with
5 it, is that this could encourage the
6 destruction of evidence.

7 Also, bad faith is extremely difficult to
8 prove. It's hard to prove in some of these
9 intentionally destroying evidence.

10 And the third thing is that it fails to
11 consider the evidence as materiality and its
12 effect upon the Defendant's case.

13 We would ask this Court to consider
14 adopting a standard much like that as a bell-
15 weather standard by using a three-pronged
16 balancing test that would examine the type of
17 the evidence.

18 I think in this case, the type of
19 evidence was readily accessible to them.
20 It's a video. Everybody seemed to know about
21 it. But the police didn't do anything.

22 And I don't think that was aided by
23 SCE&G. I'm not sure -- I'm still very
24 unclear as to Officer Ponder's interaction
25 with this video. He seems to say he saw it

State of South Carolina versus Leonard Brightman

244

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Charge Conference

1 after the fact. I guess that means that
2 somebody had it to show to him.

3 I don't know what happened with that
4 video. It is still unexplained. But we did
5 learn that there was a video that existed for
6 at least thirty days before it was -- and we
7 are arguing that that video would have showed
8 our side of the story, that Mr. Brightman was
9 a third party in there and he was able to
10 sneak out while Officer Ponder was running
11 around the station.

12 THE COURT: Would the State like to
13 rebut that?

14 SOLICITOR COMPTON: Briefly, Your
15 Honor. First of all, the video in question
16 is actually a half-second blip of a t-shirt
17 taken, you know, in response to ---

18 THE COURT: I understand that.

19 SOLICITOR COMPTON: And second of
20 all, as to the bad faith issue, the State
21 would argue that the bad-faith standard as
22 articulated by our -- we would argue, of
23 course, there was no bad faith as determined
24 by Judge McDonald at an earlier hearing.

25 THE COURT: That's not a ---

State of South Carolina versus Leonard Brightman

245

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Charge Conference

1 SOLICITOR COMPTON: Right. And I
2 think there's also some question that was
3 raised at that hearing as to whether or not
4 this type of camera even preserves it for a
5 long period of time at all. Even, you know,
6 any period of time really long enough for the
7 police to request it. We certainly don't
8 think -- the State would really love to have
9 that evidence. I think it would be helpful
10 to at least be able to have it and overcome
11 the other arguments to the contrary. But
12 unfortunately, it doesn't exist and we
13 believe that the jury should not be permitted
14 to ----

15 THE COURT: If this was showing
16 something different, other than a half-second
17 blip of the defendant. If it was actions, a
18 videotape of him allegedly sawing off the
19 copper cable, I would tend to agree with you.

20 But this would be only for ancillary
21 identification because the identification, to
22 a large extent, had already been made before
23 they even looked at the video. So I don't
24 think the video is crucial here.

25 I don't think there's any allegations

State of South Carolina versus Leonard Brightman
Case No. 11-GS-10-4166
Jury Trial of February 4-5, 2014
Charge Conference

246

1 that it contains exculpatory evidence. So I
2 don't think the charge is appropriate and I'm
3 going to respectfully deny your motion,
4 understanding your request.

5 Now, you'll get last argument because you
6 presented no evidence. The State will go
7 first. And I don't believe -- let me see the
8 lawyers up here.

9 (OFF RECORD BENCH CONFERENCE)

10 THE COURT: Let's bring in the
11 jury. While they're getting the jury, I
12 generally send the charge back with the jury.
13 Do y'all have any objection to that?

14 SOLICITOR COMPTON: None from the
15 State.

16 THE COURT: That always cuts out a
17 lot of questions.

18 MR. KOWALSKI: Except for
19 yesterday.

20 THE COURT: (Affirmative nod),
21 except for yesterday.

22 (JURY IN @ 1:42 P.M.)

23 BAILIFF: The jurors are all
24 present, Your Honor.

25 THE COURT: Thank you. Please be

State of South Carolina versus Leonard Brightman

247

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Closing Argument by Solicitor

1 seated. All right.

2 Ladies and gentlemen, as I said, all the
3 evidence has been presented to you. Now is
4 the time where the Solicitor and the Defense
5 will give their closing arguments. I will
6 then charge you with the law and send you
7 back to start your deliberations. Is the
8 State ready to proceed?

9 SOLICITOR YOUNG: Yes, Your Honor.

10 THE COURT: Is the Defense ready
11 to proceed?

12 MR. KOWALSKI: We are, Your
13 Honor.

14 THE COURT: All right. Madam
15 Solicitor.

16 SOLICITOR YOUNG: Thank you, Your
17 Honor. May it please the Court? Mr.
18 Kowalski.

19 Good afternoon, ladies and gentlemen.
20 And thank you for your time and attention
21 over the past few days. I know it's been
22 tough to sit there and listen to the
23 testimony and view the evidence, but it's
24 important.

25 I'm here today to tell you why it's

State of South Carolina versus Leonard Brightman

248

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Closing Argument by Solicitor

1 important. It may not be a murder case, but
2 this type of case directly impacts me, you,
3 and our community. We rely on SCE&G to
4 provide us with electricity. And the way
5 they provide us with this electricity is
6 through these electric utility systems or
7 substations.

8 Now, how they do that is they use copper
9 wire with these transformers, they basically
10 break it down for us, so that it's safe that
11 we can have electricity in our businesses,
12 schools, at our houses.

13 And, unfortunately, when people like the
14 Defendant break into these substations, it
15 impacts. We can't get electricity there. It
16 may impact our bills. And it also impacts
17 SCE&G. It causes them to have to waste money
18 more resources, labeling these substations as
19 "DANGER", "HIGH RISK". They have to hire
20 security officers to prevent or apprehend
21 people like the Defendant to prevent them
22 from committing more crimes in this area.

23 That's exactly why our Legislature
24 created this law, malicious injury to an
25 electric utility system, to prevent people

State of South Carolina versus Leonard Brightman

249

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Closing Argument by Solicitor

1 like the Defendant from affecting our
2 community and showing a complete lack of
3 respect for its need for electricity.

4 Now, he's charged with malicious injury
5 to an electric utility system. As the Judge
6 mentioned, at the end of closing arguments,
7 he's going to explain to you what the law is.
8 Let me briefly kind of break it down.

9 The State has the burden of proof to
10 prove each element beyond a reasonable doubt.
11 Basically, what that means in this case is
12 that the evidence we have presented and shown
13 to you that the Defendant on March 9th, 2011
14 broke into a substation, the Navy Yard
15 substation, which you heard is an electric
16 utility system. He was seen sawing that
17 wire, copper wire and damaging components of
18 that system.

19 Now, how do we know he's guilty? He was
20 caught red-handed on the scene by Lieutenant
21 Ponder, sawing away at that copper wire.

22 And here's how we proved that to you:

23 You heard from Officer Caraway. He was
24 on scene; he regularly patrols that sub-
25 station. He was there at 5:00 A.M. on March

State of South Carolina versus Leonard Brightman
Case No. 11-GS-10-4166
Jury Trial of February 4-5, 2014
Closing Argument by Solicitor

250

1 9th, 2011. Guess what? Nobody was there.
2 Nobody was sleeping there.

3 Secondly, the motion sensor gets a hit
4 around noon. A blue'ish plaid vest is seen.
5 Security officers respond.

6 North Charleston officers respond as
7 well.

8 Now, you heard from the security officer.
9 The Defendant was there when he gets there.
10 He's just sawing away at that copper wire,
11 trying to steal it to take it and make a
12 profit on the street.

13 Now, a chase ensues. And you heard
14 Officer Ponder testify. He got close to him.
15 He saw him standing there, no gloves. He saw
16 him. It was a black male, a little bit
17 shorter than him. And what did he tell us?
18 He told us the description. He had a bluish
19 green plaid vest, a black ski mask and a
20 headlamp.

21 Now, the Defense may try and make a big
22 deal, Lieutenant Ponder couldn't remember
23 whether it was jeans, whether it was khakis
24 that day. That's not the point. Officer
25 Ponder told you what the point was.

State of South Carolina versus Leonard Brightman

251

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Closing Argument by Solicitor

1 Let's think about it. Black ski mask,
2 and a headlamp, and a heavy bluish flannel
3 vest. It was March. It was seventy degrees
4 outside. That's pretty uncommon. That's
5 pretty unnatural.

6 Now, he explains to you that the defen-
7 dant slid under the gate after this chase
8 around the substation. So as soon as he left
9 that front gate, lucky for us North
10 Charleston's already on the scene.

11 Officer Kirk is able to immediately radio
12 to Officer Armstead and Officer Clemens the
13 description. Black male, black ski mask,
14 bluish plaid vest, last seen by Lieutenant
15 Ponder within about a minute heading left out
16 of the facility.

17 As soon as Officer Kirk backs up his
18 vehicle to McMillan Avenue, what does he see?
19 He tells us what he sees. It's the
20 defendant running, from the left side of the
21 facility, just like Lieutenant Ponder told
22 us, within minutes, matching the description
23 that was just relayed over.

24 Armstead and Clemens give chase and the
25 Defendant is apprehended on the scene. He's

State of South Carolina versus Leonard Brightman
Case No. 11-GS-10-4166
Jury Trial of February 4-5, 2014
Closing Argument by Solicitor

252

1 still inside the gate of the facility, next
2 to the substation, within a minute.

3 You heard from them. There were no
4 civilians there. There were no other
5 homeless people there that day.

6 Ladies and gentlemen, the description
7 matches up. The timeframe matches up. The
8 proximity to the substation matches up. He's
9 caught within a hundred yards, matching the
10 same description.

11 If that's not enough, Lieutenant Ponder
12 is able to confirm that day, 'yep, that's the
13 guy. That was the one I just chased in the
14 substation and that I saw this close. That's
15 him.' He's a trained security officer.

16 Not only did he ID him that day, he came
17 into court for us yesterday. He pointed him
18 out. It was him.

19 It's your job as jurors to use your
20 commonsense in every day experiences, from
21 listening to the testimony, and reviewing all
22 the evidence.

23 Now, the Defense alluded in opening and
24 throughout the trial, they knew the Defendant
25 was homeless and perhaps he was living there

State of South Carolina versus Leonard Brightman

253

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Closing Argument by Solicitor

1 or had stayed the night there. You heard
2 from Officer Kirk, you heard from Officer
3 Armstead, there's not really many abandoned
4 areas right there. We're talking about a
5 substation. And so there's not many homeless
6 people around there, they patrol those areas.

7 And you heard from Officer Caraway, he
8 checked it that morning at 5:00 A.M. That's
9 his job to monitor that area. He was in
10 there and nobody was in there. Nobody was
11 sleeping there.

12 What's reasonable? A totally separate
13 guy in there cutting wire and the Defendant
14 just happened to come in there at 5:00 A.M.
15 after Officer Caraway had left, to take a
16 nap? That the Defendant just happens to run
17 away and during that same time and slip out
18 the back, going the same direction that the
19 wire copper guy did, wearing the same outfit,
20 at the same time? They really want us to
21 believe it was just a coincidence? It's just
22 some random guy running there, running from
23 the cops with the same outfit, at the same
24 time, at the same place? That's not
25 reasonable.

State of South Carolina versus Leonard Brightman

254

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Closing Argument by Defense Counsel

1 Ladies and gentlemen, there was only one
2 person in that facility that day, that
3 damaged that substation, tried to steal that
4 copper wire. It was the Defendant. That's
5 why I'm up here asking you to do your job as
6 jurors, to uphold the oath you've taken. We
7 ask you to hold the Defendant accountable for
8 his actions and render a guilty verdict in
9 this case. Thank you.

10 MR. KOWLESKI: Ladies and gentlemen,
11 Leonard Brightman is a poor man, but he's not
12 poor in spirit, because today he hopes for
13 you to set him free.

14 And why should you set him free? Because
15 Mr. Brightman didn't do it.

16 Now, before I get into the facts about
17 why he didn't do it, I want to talk to you a
18 second about some protections that we all
19 have, that the Judge is going to charge on
20 here when I finish.

21 And the first is that Mr. Brightman's
22 innocent according to the law. And if you
23 remember the oath you took, he is innocent as
24 he sits here now.

25 Now, the Judge is going to discuss

State of South Carolina versus Leonard Brightman

255

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Closing Argument by Defense Counsel

1 reasonable doubt in many different ways and
2 you should pay very close attention to what
3 he says. But I want you to pay particular
4 attention to the one thing that's he going to
5 say. And that is that if you think that
6 there's a real possibility that he's not
7 guilty, then you must give him the benefit of
8 the doubt and find him not guilty.

9 Here's why Mr. Brightman is not guilty:

10 The State got up here and they gave you
11 what is a good-enough for them prosecution.
12 They said that he wasn't sleeping there
13 because seven hours earlier the security
14 guard checked.

15 And they asked a lot of the officers, 'is
16 this a place that you would want to make a
17 home?' We're not saying he was trying to
18 make this his home. We're saying he's home-
19 less. He's trying to get out of a high-crime
20 area. I mean, if you want to go lie down on
21 Spruill Avenue, you can go for it, but I
22 wouldn't recommend it.

23 And they also talk about him matching the
24 description of this blue/green shirt, vest,
25 jacket, bluish green, greenish blue. I'm not

State of South Carolina versus Leonard Brightman
Case No. 11-GS-10-4166
Jury Trial of February 4-5, 2014
Closing Argument by Defense Counsel

256

1 sure what it is. It's identified and there
2 is a picture of it. I think Officer Ponder
3 said, 'well, it's actually kind of greener.'
4 Well, why don't you take it into evidence?
5 If it was that important, if this is, you
6 know, the crux of your case, you're
7 identifying this person by their shirt, why
8 didn't you take the shirt into evidence?

9 Well, they didn't do it. They didn't do
10 a lot of things.

11 They also talked about the green head-
12 lamp. And that Officer Ponder said the
13 person he was chasing had a green headlamp.
14 And you heard me talk to him about, you know,
15 'well, in the statement you gave about an
16 hour after the fact, why didn't you put that
17 in there?' They just didn't put it in. 'I
18 don't know.'

19 And I had Officer Ponder in here earlier,
20 outside y'all's presence and I asked him, is
21 there any other identifying features about
22 this person that they were chasing? The
23 blue-jeaned bandit and he said no. Now he
24 says that there was a green headlamp.

25 Do I think Officer Ponder is lying? No.

State of South Carolina versus Leonard Brightman

257

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Closing Argument by Defense Counsel

1 I think he went back and he reviewed the
2 picture that he took of Mr. Brightman after
3 the fact. He said, 'hey, he's got a green
4 lamp, it must have been there.' And he's
5 under a lot of pressure. To be honest with
6 you, it's got to be a little bit
7 embarrassing. I mean, you chase this guy
8 around the substation for five minutes and
9 couldn't get him. He slid under the door.
10 He says he loses track of him for about a
11 minute.

12 So the police bring around the guy.

13 And we talked a little bit about that
14 with Officer Armstead about these show-up
15 procedures. And if you're going to have
16 somebody identify him, you want to follow
17 these procedures so you know that they
18 reliable.

19 And what do the procedures say? The
20 procedures said, don't have the suspect
21 handcuffed. Sometimes you have to, but it is
22 best not to have him in handcuffs.

23 Don't have him in your patrol car. He's
24 in the patrol car. That kind of indicates
25 that they are guilty.

State of South Carolina versus Leonard Brightman
Case No. 11-GS-10-4166
Jury Trial of February 4-5, 2014
Closing Argument by Defense Counsel

258

1 Don't surround him by uniformed officers
2 because that's another indication that he's
3 the main suspect.

4 So what do they do? They drive him
5 around to the front, handcuffed, in the back
6 of the car, surrounded by four uniformed
7 officers; exactly what they say not to do in
8 their policies and procedures manual.

9 And who else is Office Ponder going to
10 pick? He never saw his face. It's his
11 shirt. The shirt looked familiar, 'that's
12 the guy.' It is unfortunate.

13 But the Judge will also charge you that
14 if you have a reasonable doubt as to the
15 accuracy of his identification, then you must
16 find Mr. Brightman not guilty. We would
17 submit that it was unduly suggestive.

18 Another thing that Ms. Young talked about
19 was, he was running. He was running from the
20 scene. Why did he run? Well, kind of they
21 explained that to you and you heard some
22 testimony from Officer Caraway and all the
23 other officers that there's No Trespassing
24 signs all over the place, Violators Will Be
25 Prosecuted.

State of South Carolina versus Leonard Brightman

259

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Closing Argument by Defense Counsel

1 Mr. Brightman is a homeless man. But he
2 was able to run and he was able to get out of
3 the substation.

4 Officer Ponder testified that when he was
5 chasing the man, he didn't know if he was
6 armed. 'I saw this man, I didn't know if he
7 was armed.'

8 I asked him, 'Did you turn around to look
9 for anyone else?' He said, 'Nope, I was
10 focused on where I was going.' He never
11 looked back.

12 Remember, he said that when he first got
13 there that he could only hear it. He
14 couldn't see him because there were so many
15 obstructions in the way. There were
16 transformers in the way. So he had to move
17 to position himself until he could see him.

18 These are giant transformers. So anyone
19 could easily hide.

20 Lastly is the ski mask, and I'll admit,
21 that doesn't look good. I mean, why is he in
22 a ski mask? When you're poor and you're
23 homeless, you wear what you got. I mean,
24 you're sleeping outside, not protected from
25 the bugs, you want to protect yourself from

State of South Carolina versus Leonard Brightman

260

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Closing Argument by Defense Counsel

1 other elements. But when they were chasing
2 Mr. Brightman, he wasn't wearing it as a ski
3 mask. He was wearing it as a hat, a skull
4 cap.

5 And let me ask -- just ask yourselves
6 this question, if you were caught cutting
7 wires and you ran away and you discarded a
8 saw, you discarded the goggles, why in the
9 world would you not discard the most in-
10 criminating piece of evidence you have?
11 You're not really going to lift it up and
12 show your face when you know that they are
13 pursuing you. You're either going to throw
14 it away or you're going to keep it over your
15 face.

16 Let's talk about some of the things that
17 the State tried to brush to the side. The
18 blue jeans and the khaki pants, it's
19 obviously conflicting. Officer Ponder said
20 he saw a man wearing blue jeans and a bluish
21 flannel jacket. That was the cornerstone of
22 his testimony.

23 I think he said he'd had training in
24 weapons. He has all sorts of weapons on his
25 belt: Mace, he's got his gun, he's got a

State of South Carolina versus Leonard Brightman

261

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Closing Argument by Defense Counsel

1 baton.

2 When he gets this blue-jean bandit in the
3 corner, he says 'I saw that he was unarmed,
4 and so I started to holster the gun and he
5 ran out."

6 But then we heard Officer Armstead say
7 Mr. Brightman when he was running and he took
8 him down, he saw that he had a red razor
9 blade knife hooked to his khaki pants.

10 That's a different person, in different
11 pants.

12 Now, I want to talk to you a second about
13 the forensics. At the very beginning, they
14 said that there no forensics, but we learned
15 why there were no forensics. They did some
16 fingerprinting, tried to do the hardhat and
17 the saw. They didn't find anything. Didn't
18 find anything on the goggles.

19 They didn't even test the big bag of
20 trash that was sitting there in the middle of
21 the substation with cut wires hanging out of
22 it. Didn't test it.

23 They also took some DNA from the hardhat,
24 the glove that was located in the hardhat.
25 From the small plastic bag. Now, she even

State of South Carolina versus Leonard Brightman

262

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Closing Argument by Defense Counsel

1 told you that, that she could only send two
2 items -- only two, and if they came back
3 negative she would send some more. Why in
4 the world are you going to send two items
5 that have nothing to do with the person who
6 is up there sawing on the transformer?
7 Nobody said that this person was wearing a
8 yellow hardhat. Officer Ponder specifically
9 said, 'no, I never told anybody that he was
10 wearing a hardhat. I said he was wearing
11 goggles, a ski mask.'

12 Up there hacking on the saw, he wasn't
13 wearing gloves. Well, why wouldn't we test
14 the saw handle where he was touching it? Why
15 wouldn't you have touched -- or test the
16 goggles? They're on his head. I mean, it's
17 sweat that gets -- any sort of residue on it.

18 But you test the two objects that have
19 nothing to do with this case? And then when
20 those results come back negative, you don't
21 send off the other two. Why?

22 'Why didn't you send it out?

23 Well, it takes too long.'

24 It's been three years. Three years and
25 they haven't tested it. I mean, I'm sorry to

State of South Carolina versus Leonard Brightman

263

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Closing Argument by Defense Counsel

1 inconvenience you to do your job. But what's
2 on that handle and what's on those goggles,
3 these goggles that they found on the way to
4 the main road in the opposite direction of
5 where Mr. Brightman was running. If you want
6 to look at that where she said she found
7 goggles on the way towards the main road,
8 that's opposite of the direction of Mr.
9 Brightman. Why wouldn't you test those? The
10 ones you knew were in contact? That seems
11 sufficient. But they didn't and they still
12 haven't. It could have set Mr. Brightman
13 free, and they did nothing about it.

14 The timing, timing is another issue.
15 Now, as Officer Ponder is chasing this man
16 around from one corner to -- I'm trying to
17 make it simultaneous. The guy runs out of
18 here. Officer Ponder says he runs to this
19 door. By the time he gets there, Officer
20 Kirk is already there. He's outside his
21 patrol unit.

22 Officer Kirk says -- you know, I don't
23 know how long it would take to run twenty
24 yards. Officer Kirk says he didn't see
25 anybody come out here or jump this fence on

State of South Carolina versus Leonard Brightman

264

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Closing Argument by Defense Counsel

1 the way in. That's because when Officer Kirk
2 arrives here, and Officer Armstead arrives
3 back here, they arrive simultaneously,
4 Officer Armstead sees the suspect running and
5 gives chase right here.

6 So in that short period of time, less
7 than sixty seconds, Mr. Brightman, what
8 they're alleging he did was, slide under
9 here, jump over a fence and run into this
10 drainage ditch, which is filled with heavy,
11 high grass that you can't run through without
12 falling down. He runs over a hundred yards
13 until he's pursued by Officer Armstead and
14 taken down. That just doesn't make sense.
15 Oh, yeah, and he changed pants. It just
16 doesn't make sense.

17 Lastly, I want to talk about the video.
18 I asked you at the very beginning -- well, I
19 really asked the assistant solicitors to
20 explain what happened with this video. Every
21 person you saw that was up there talked about
22 this video in the central monitoring station,
23 what this video -- that was the whole reason
24 for the call. Somebody was seen on video.
25 What happened to the video? We know they had

State of South Carolina versus Leonard Brightman

265

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Closing Argument by Defense Counsel

1 it. Officer Ponder said he saw it after the
2 fact or who knows. Why didn't he get it?
3 Why didn't they? That's the best piece of
4 evidence we have. Maybe, from what we
5 learned, it showed Mr. Brightman's side of
6 the story. That he was innocent.

7 It is simply inexcusable. I know it's
8 good enough for them, but is it good enough
9 for you? For your verdict to speak the
10 truth? Is this going to be good enough for
11 future prosecutions? Because you're on that
12 scene; that's good enough?

13 The last thing I want to talk about is
14 the last charge that the judge will give you,
15 about mere presence. And mere presence at a
16 crime is not sufficient to prove that someone
17 committed the crime.

18 This case doesn't make sense.

19 There was another man, another man that
20 they didn't look for, that they didn't care
21 about, somebody wearing blue jeans. Thank
22 you.

23 THE COURT: Please secure the
24 Courtroom. All right. Ladies and gentlemen,
25 all the testimony has been presented to you,

State of South Carolina versus Leonard Brightman

266

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Charge by The Honorable W. Jeffrey Young

1 the attorneys have made their closing
2 arguments to you, now is the time where I
3 will give you the law that you have to apply
4 it in this case.

5 Now, ladies and gentlemen, I remind you
6 that during this trial, you and I have
7 certain duties to perform. As the trial
8 Judge, it is my responsibility to preside
9 over the trial of this case. And I also have
10 the duty to rule on the admissibility of
11 evidence that has been offered during this
12 trial.

13 Now, you are to consider only the
14 competent evidence which is before you and
15 any testimony that was presented to you.

16 Any testimony that was ordered stricken
17 from the record in this case, you must dis-
18 regard in its entirety. You're to consider,
19 like I said, only the testimony presented and
20 the evidence that has been made part of this
21 record, and a stipulation from counsel, which
22 is a Court's Exhibit, which will go back with
23 the jury when you deliberate.

24 I'll remind you that anything you might
25 have heard anywhere else or anything like

State of South Carolina versus Leonard Brightman

267

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Charge by The Honorable W. Jeffrey Young

1 that, anything you thought before you came in
2 here, really needs to be erased from your
3 mind, with the exception of what's right
4 here.

5 Now, ladies and gentlemen, I also have
6 the additional duty to charge you the law
7 that is applicable in this case. As the
8 presiding judge, I am the sole judge of the
9 law in this case.

10 And as jurors, who were sworn to follow
11 the law, you must accept and apply the law
12 exactly as I now state it to you. If you
13 have any idea as to what the law is or what
14 the law ought to be and it does not agree
15 with what I now tell you the law is, you must
16 abandon that idea. As I said, you're sworn
17 to accept and apply the law exactly as I
18 state it to you.

19 Now, in every case tried before a jury,
20 you, the jury, become the sole and exclusive
21 judges of the facts.

22 As the trial Judge, I cannot intimate,
23 state, comment or in any way make any
24 statement to a trial jury about the facts.
25 You are the jury. Therefore, you're the sole

State of South Carolina versus Leonard Brightman

268

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Charge by The Honorable W. Jeffrey Young

1 judges of the facts. So do not infer by
2 anything that I might have said during the
3 progress of the trial or in ruling upon the
4 admissibility of evidence or otherwise, that
5 I -- or anything that I say now during these
6 closing arguments, that I have any opinion
7 about the facts of the case. The law simply
8 does not allow me to have opinion about the
9 facts of a case. As I said, this is a matter
10 solely for you as jurors. And as jurors, it
11 will be your responsibility to determine the
12 effect, the value, the weight of the evidence
13 that has been presented during this trial.

14 Now, ladies and gentlemen, the indictment
15 in this case, indictment 2011-GS-10-4166
16 charges and alleges that on or about March
17 9th, 2011 the Defendant, Leonard Brightman,
18 committed the offense of malicious injury to
19 an electric utility.

20 And I remind you, as I did before, the
21 fact that the Defendant was arrested, charged
22 and indicted is not evidence in this and
23 cannot be considered by you as any evidence
24 of the Defendant's guilt, nor does it create
25 any inference of guilt or presumption of

State of South Carolina versus Leonard Brightman

269

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Charge by The Honorable W. Jeffrey Young

1 guilt. The indictment is simply the formal
2 written document by which the charges were
3 made and which bring the case into this
4 court.

5 Now, ladies and gentlemen, the Defendant
6 has pled not guilty to the charge of the
7 indictment. And that plea puts the burden on
8 the State to prove the Defendant guilty.

9 A person charged with committing a
10 criminal offense in South Carolina is never
11 required to prove his innocence.

12 I charge you this is an rule of law that
13 a Defendant in a criminal trial, no matter
14 how serious the charge might be, is always
15 presumed to be innocent of the crime, which
16 the indictment was issued, unless it has been
17 proven by evidence satisfying you of that
18 guilt beyond a reasonable doubt. The
19 presumption of innocence does not end when
20 you begin your deliberations, but it
21 accompanies the Defendant throughout the
22 trial until you reach a verdict of guilt,
23 based upon evidence that satisfies you of
24 that guilt beyond a reasonable doubt.

25 Presumption of innocence is like a robe

State of South Carolina versus Leonard Brightman

270

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Charge by The Honorable W. Jeffrey Young

1 of righteousness that is placed about the
2 shoulders of the Defendant and remains with
3 the Defendant until it has been stripped from
4 him by evidence that satisfy you of his guilt
5 beyond a reasonable doubt. The presumption
6 of innocence is not just a mere legal theory.
7 It is not just a legal phrase that we use,
8 but is a substantial right to which ever
9 Defendant is entitled to, unless you, again,
10 the jury, are satisfied from the evidence of
11 the Defendant's guilt beyond a reasonable
12 doubt.

13 Ladies and gentlemen, there are two types
14 of evidence which are generally presented
15 during a trial. There's direct evidence and
16 there's circumstantial evidence.

17 Direct evidence is the testimony of the
18 person who claims to have actual knowledge of
19 a fact, such as an eyewitness. It is
20 evidence which immediately establishes the
21 main fact to be proved.

22 Circumstantial evidence is proof of a
23 chain of facts and circumstances indicating
24 the existence of a fact. It is evidence
25 which immediately establishes collateral

State of South Carolina versus Leonard Brightman

271

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Charge by The Honorable W. Jeffrey Young

1 fact, from which the main fact can be
2 inferred. Now, circumstantial evidence is
3 based upon inference and not on personal
4 knowledge or observation.

5 The law makes absolutely no distinction
6 between the weight or value to be given to
7 either direct or circumstantial evidence.
8 However, to the extent that the State relies
9 on circumstantial evidence, all of the
10 circumstances must be consistent with each
11 other, and when taken together, point
12 conclusively to the guilt of the accused
13 beyond a reasonable doubt. If these
14 circumstances merely portray the Defendant's
15 behavior as suspicious, the proof has failed.

16 The State has the burden of proving the
17 Defendant guilty beyond reasonable doubt, and
18 this burden rests with the State, regardless
19 of whether the State relies on direct
20 evidence or circumstantial evidence or some
21 combination of the two. And you should weigh
22 all of the evidence in this case. And after
23 weighing all the evidence, if you are not
24 convinced of the guilt of the Defendant
25 beyond a reasonable doubt, you must find the

State of South Carolina versus Leonard Brightman

272

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Charge by The Honorable W. Jeffrey Young

1 Defendant not guilty.

2 Necessarily, ladies and gentlemen, you
3 must determine the credibility of witnesses
4 who have testified in this case. And
5 credibility simply means believability. And
6 it becomes your duty as jurors to analyze and
7 to evaluate the evidence and determine which
8 evidence convinces you of its truth.

9 In determining the believability of
10 witnesses who have testified, you may believe
11 one witness over several witnesses or several
12 witnesses over one witness.

13 You may believe a part of the testimony
14 of a witness and reject the remaining parts
15 of the testimony of that same witness. You
16 may believe the testimony of a witness in its
17 entirety or reject the testimony of a witness
18 in its entirety.

19 You may consider whether any witness has
20 exhibited to you any interest, bias,
21 prejudice or motive in this case.

22 You may also consider the appearance of
23 the witness on the witness stand.

24 Now, ladies and gentlemen, I instruct you
25 and emphasize the fact that the Defendant did

State of South Carolina versus Leonard Brightman

273

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Charge by The Honorable W. Jeffrey Young

1 not testify is not a factor to be considered
2 by you on the question of guilt or innocence
3 of the Defendant. It must not be considered
4 by you in any manner whatsoever. A Defendant
5 has the Constitutional right to remain
6 silent. The assertion of this right must not
7 be considered by you in your deliberations.
8 And I repeat, under the oath that you took,
9 you are to draw no conclusion whatsoever that
10 the fact that the Defendant in this case did
11 not testify. The fact that the Defendant did
12 not testify should not even be discussed in
13 our jury room.

14 The burden of proof, as I stated, is on
15 the State. The Defendant is not required to
16 prove his innocence.

17 As I said, the burden of proof remains on
18 the State to prove guilt beyond a reasonable
19 doubt. Ladies and gentlemen, we have
20 discussed reasonable doubt throughout this
21 trial. And this begs the question, you know,
22 what is a reasonable doubt in the law? A
23 reasonable doubt is the kind of doubt that
24 would cause a reasonable person to hesitate
25 to act. The State has the burden of proving

State of South Carolina versus Leonard Brightman

274

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Charge by The Honorable W. Jeffrey Young

1 the Defendant guilty beyond a reasonable
2 doubt.

3 Some of you may have served as jurors in
4 civil cases where you were told it was only
5 necessary to prove that a fact was more
6 likely true than not true, such as, by the
7 greater weight or the preponderance of the
8 evidence. In criminal cases, the State's
9 proof must be more powerful than that. It
10 must be beyond a reasonable doubt.

11 And proof beyond a reasonable doubt is
12 proof that leaves you firmly convinced of the
13 Defendant's guilt. And ladies and gentlemen,
14 there are very few things in this world that
15 we know with absolutely certainly. And in
16 criminal cases, the law does not require
17 proof that overcomes every possible doubt.
18 If, based upon your consideration of
19 evidence, you are firmly convinced that the
20 Defendant is guilty of the crime charged, you
21 must find the Defendant guilty. If, on the
22 other hand, you think there's a real
23 possibility that the Defendant is not guilty,
24 then you must give the Defendant the benefit
25 of the doubt and find him not guilty.

State of South Carolina versus Leonard Brightman

275

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Charge by The Honorable W. Jeffrey Young

1 Now, ladies and gentlemen, an issue in
2 this case is the identification of the
3 Defendant, as the person who committed the
4 crime charged. And the State has the burden
5 of proving the identity beyond a reasonable
6 doubt. And you must be satisfied beyond a
7 reasonable doubt that the accuracy of the
8 identification of the Defendant before you
9 may convict the Defendant. And identifica-
10 tion testimony is an expression of belief or
11 impression by a witness and you must
12 determine the accuracy of the identification
13 of the Defendant. And you must consider the
14 believability of each identification, which
15 is in the same way as any other witness. You
16 may consider whether the witness had an
17 adequate opportunity to observe the offender
18 at the time of the offense. This would be
19 affected by things like how long or short of
20 time was available. How far or close the
21 witness was. The lighting conditions and
22 whether the witness had the chance to see or
23 know the person in the past.

24 Once again, I instruct you that the
25 burden of proof is on the State and extends

State of South Carolina versus Leonard Brightman

276

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Charge by The Honorable W. Jeffrey Young

1 to every element of the crime charged. And
2 this simply includes the burden of proving
3 beyond a reasonable doubt the identity of the
4 Defendant as the person who committed the
5 crime.

6 And if, after examining the testimony,
7 you have a reasonable doubt as to the
8 accuracy of the identification, you must find
9 the Defendant not guilty.

10 The Defendant is charged with malicious
11 injury to an electrical utility system. To
12 prove this charge the State must prove beyond
13 a reasonable doubt that the Defendant
14 willfully:

15 One, destroyed, damaged or in any
16 way injured a telegraph, telephone, or
17 electrical utility system, including poles,
18 cables, wires, fixtures, antennas,
19 amplifiers, or other apparatus, equipment or
20 appliances; and

21 Two, willfully means voluntarily and
22 intentionally with the specific intent to do
23 something the law forbids.

24 Ladies and gentlemen, mere presence at
25 the scene is not sufficient to prove someone

State of South Carolina versus Leonard Brightman

277

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Charge by The Honorable W. Jeffrey Young

1 guilty of a crime. The Defendant's presence
2 where a crime is being committed or mere
3 association with a person who commits a
4 crime, does not make a Defendant an
5 accomplice or an aider and abettor of the
6 person committing the crime. The burden is
7 on the State to prove every element of the
8 crime charged.

9 If after reviewing all of the evidence
10 the State has proved the Defendant was the
11 only person at the scene of the crime, then
12 they have -- was not the only person at the
13 scene of the crime, then they have not proved
14 beyond a reasonable doubt any other
15 participation in the crime, then you must
16 find the Defendant not guilty.

17 The law is that proof of the Defendant
18 present at the scene of a crime is not
19 sufficient to find someone guilty.

20 Now, ladies and gentlemen, there are two
21 possible verdicts that you may find in this
22 case under indictment 2011-GS-10-4166, Count
23 1, malicious injury to an electrical utility,
24 not guilty or guilty.

25 Now, ladies and gentlemen, there is no

State of South Carolina versus Leonard Brightman

278

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Charge by The Honorable W. Jeffrey Young

1 significance whatsoever in the order in which
2 I state these possible verdicts. It's just
3 that one must be stated first. Now, ladies
4 and gentlemen, your verdict must be
5 unanimous. All twelve of you must agree on a
6 verdict and your decision must not be based
7 on sympathy, passion, prejudice, emotion or
8 any other consideration that is not in
9 evidence in this case.

10 Mr. Foreman, when the jury reaches a
11 verdict, you'll check the block that's
12 appropriate for you as your verdict, then
13 sign your name, knock on the jury room door,
14 inform the bailiff that you have reached a
15 verdict, and then you will be received back
16 here in the courtroom for publication of your
17 verdict.

18 Now, ladies and gentlemen, I'm going to
19 send you back, but please do not begin your
20 deliberations because there are still some
21 matters I need to take up with the attorneys.
22 Thank you, ladies and gentlemen.

23 (JURY OUT @ 2:26 P.M.)

24 THE COURT: You may be seated.
25 Are there any objections to the charge that

State of South Carolina versus Leonard Brightman

279

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Charge by The Honorable W. Jeffrey Young

1 was made that have not already been made?

2 SOLICITOR YOUNG: None from the
3 State, Your Honor.

4 MR. LOWESKI: No, Your Honor.

5 THE COURT: All right. The court
6 will be at-ease pending the call of the case.
7 If you would, separate the alternates and
8 bring them back in here.

9 (ALTERNATE JURORS EXCUSED)

10 (COUNSEL APPROVAL OF EXHIBITS)

11 (JURY IN DELIBERATIONS @ 2:30 P.M.)

12 (NOTIFIED OF VERDICT @ 3:18 P.M.)

13 THE COURT: I understand that we have
14 a verdict.

15 (DEFENDANT PRESENT)

16 THE COURT: Bring them back.

17 (JURY IN @ 3:20 P.M.)

18 BAILIFF: All jurors are
19 present, Your Honor.

20 THE COURT: All right. Thank you.
21 Please be seated. Mr. Foreman, has the jury
22 reached a verdict?

23 FOREMAN: Yes, sir, Your Honor.

24 THE COURT: Is it unanimous.

25 FOREMAN: Yes, it is.

State of South Carolina versus Leonard Brightman

280

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Verdict

1 THE COURT: All right. Please
2 pass it towards the bailiff.

3 FOREMAN: (Tenders)

4 BAILIFF: (Tenders verdict form
5 to the judge).

6 THE COURT: (Upon review), please
7 publish the verdict.

8 CLERK: Thank you, Your Honor.
9 Indictment number 2011-GS-10-04166, State of
10 South Carolina versus Leonard Brightman, as
11 to the charge of malicious injury to an
12 electric utility, *"We, the jury, unanimously*
13 *find the Defendant guilty."* Dated the 6th of
14 February 2014, signed by the Foreperson.

15 THE COURT: Thank you. Does the
16 Defendant wish to poll the jury?

17 MR. KOWALSKI: Yes, Your Honor.

18 THE COURT: Please poll the jury.

19 CLERK: All right. Ladies and
20 gentlemen of the jury, whenever I call your
21 juror number, please raise your hand to
22 indicate that that is you. I will ask you
23 two questions. Please respond to each
24 question appropriately.

25 Starting with the Foreperson, Juror

State of South Carolina versus Leonard Brightman

281

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Verdict

1 number 39, is this your verdict?

2 JUROR NUMBER 39: Yes, it is.

3 CLERK: Is this still your verdict?

4 JUROR NUMBER 39: Yes, it is.

5 CLERK: Thank you. Juror number

6 280, is this your verdict?

7 JUROR NUMBER 280: Yes, it is.

8 CLERK: Is this still your verdict?

9 JUROR NUMBER 280: Yes.

10 CLERK: Juror 270, is this your

11 verdict?

12 JUROR NUMBER 270: Yes.

13 CLERK: Is it still your verdict?

14 JUROR NUMBER 270: Yes.

15 CLERK: Thank you. Juror 109, is

16 this your verdict?

17 JUROR NUMBER 109: Yes.

18 CLERK: Is it still your verdict?

19 JUROR NUMBER 109: Yes.

20 CLERK: Thank you. Juror 178, is

21 this your verdict?

22 JUROR NUMBER 178: Yes.

23 CLERK: Is it still your verdict?

24 JUROR NUMBER 178: Yes.

25 CLERK: Thank you. Juror 143, is

State of South Carolina versus Leonard Brightman
Case No. 11-GS-10-4166
Jury Trial of February 4-5, 2014
Verdict

282

1 this your verdict?

2 JUROR NUMBER 143: Yes.

3 CLERK: Is it still your verdict?

4 JUROR NUMBER 143: Yes.

5 CLERK: Thank you. Juror 164, is
6 this your verdict?

7 JUROR NUMBER 164: Yes.

8 CLERK: Is it still your verdict?

9 JUROR NUMBER 164: Yes.

10 CLERK: Thank you. Juror 181, is
11 this your verdict?

12 JUROR NUMBER 181: Yes.

13 CLERK: Is it still your verdict?

14 JUROR NUMBER 181: Yes.

15 CLERK: Thank you. Juror 273, is
16 this your verdict?

17 JUROR NUMBER 273: Yes.

18 CLERK: Is it still your verdict?

19 JUROR NUMBER 273: Yes.

20 CLERK: Thank you. Juror 26, is
21 this your verdict?

22 JUROR NUMBER 26: Yes.

23 CLERK: Is it still your verdict?

24 JUROR NUMBER 26: Yes.

25 CLERK: Thank you. Juror 295, is

State of South Carolina versus Leonard Brightman

283

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Verdict

1 this your verdict?

2 JUROR NUMBER 295: Yes, sir.

3 CLERK: Is it still your verdict?

4 JUROR NUMBER 295: Yes, sir.

5 CLERK: Thank you. Juror 42, is

6 this your verdict?

7 JUROR NUMBER 42: Yes.

8 CLERK: Is it still your verdict?

9 JUROR NUMBER 42: Yes.

10 CLERK: Thank you, sir. Your

11 Honor, the jury has been polled and the

12 verdict stands.

13 THE COURT: All right. Thank you.

14 Ladies and gentlemen, let me take this

15 opportunity to thank you for participating in

16 the court system and being on this jury. You

17 know, there are a lot of important things

18 going on in Charleston yesterday and today,

19 but I can assure you that there was nothing

20 more important than what's going on here and

21 allowing the justice system to work.

22 And it's never easy to hold the life of a

23 fellow citizen in your hands, but you didn't

24 veer from that responsibility and you took

25 the responsibility on. You listened to the

State of South Carolina versus Leonard Brightman

284

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Verdict

1 evidence and you were an attentive jury
2 throughout this thing. Thank you for doing
3 what you've done.

4 And I would have told you the same thing
5 if you found the Defendant not guilty. It
6 makes no difference to me as far as that.
7 But you took the time and looked at the
8 evidence.

9 Now, ladies and gentlemen, throughout
10 this trial, I told you you couldn't talk to
11 anybody about the case. Well, you can talk
12 to anybody you want to. It's over with. If
13 somebody persistently wants to talk to you,
14 let me know and I'll make sure that doesn't
15 go on any longer.

16 Let me remind you that this counts as
17 your service as a juror so you can't serve as
18 a juror over the next. And if you don't want
19 to, you don't have to serve as a juror for
20 the next three (3) years. So -- but that'll
21 be up to you.

22 Now, ladies and gentlemen, they're going
23 to pay you ten dollars (\$10) a day plus a few
24 cents a mile to drive -- to drive here. And
25 I can just -- I just want to remind you that

State of South Carolina versus Leonard Brightman

285

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Verdict

1 that is nothing compared to the service that
2 you have given to Charleston County and to
3 the State of South Carolina by taking on this
4 awesome responsibility.

5 And, you know, there's a lot of things
6 that people try to say, what makes America
7 great? And I'm telling you, that what makes
8 America great is people like y'all who get
9 taken out of their lives, their ordinary
10 lives, their routines, and come in and do
11 something that is so different from what you
12 normally do. You brought your common sense
13 in here. I tell people I have the greatest
14 job in the world, because I get to sit
15 between these two great flags -- and this
16 flag right here, this is a piece of cloth,
17 but what it represents is something far
18 greater than that. It represents the freedom
19 that individuals at least have an opportunity
20 to have a trial and to have twelve of their
21 peers decide their guilt or innocence. And
22 as you leave here, I want you to think of
23 yourselves as one of the threads that makes
24 this a great banner and what makes this a
25 great country.

State of South Carolina versus Leonard Brightman
Case No. 11-GS-10-4166
Jury Trial of February 4-5, 2014
Verdict

286

1 So ladies and gentlemen, you have found
2 him guilty. It will now be my responsibility
3 to sentence the Defendant. And you're
4 welcome to come back in the courtroom for
5 that. I mean, you've been here from the
6 beginning. And as I release you, if you want
7 to come back in, the bailiff will show you
8 how to get in that door so that you can and
9 see what sentence I deem to be appropriate.

10 But ladies and gentlemen, as you leave
11 out of here today, it will be my honor to
12 shake your hand and thank you for the time
13 that you have given to Charleston and to the
14 State of South Carolina. Ladies and
15 gentlemen, thank you very much.

16 (JURY DISMISSED)

17 THE COURT: Are there any motions
18 to be made?

19 SOLICITOR YOUNG: None from the
20 State?

21 MR. KOWALSKI: Your Honor, we just
22 renew all of our previous motions made.

23 THE COURT: All right. I think
24 the jury took this under advisement and they
25 asked the question, I think it came down to

State of South Carolina versus Leonard Brightman

287

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Verdict

1 who they thought that it was, and so the
2 verdict stands. Y'all want a few minutes to
3 think about what you want to tell me before I
4 sentence him?

5 SOLICITOR YOUNG: The State's ready
6 to proceed.

7 THE COURT: Let me give you five
8 or ten minutes to think about what you want
9 to say. And that will give the jury time to
10 -- we'll, see you in five minutes.

11 (BRIEF RECESS)

12 (DEFENDANT PRESENT)

13 THE COURT: All right. Madam
14 Solicitor, what was his record again, please?

15 SOLICITOR COMPTON: Thank you,
16 Your Honor. It dates back to 1979. He was
17 convicted of strong arm robbery; 1980 grand
18 larceny; 1987 possession of a sawed-off
19 shotgun, failure to stop for a blue light,
20 two counts of assault and battery with intent
21 to kill, and voluntary manslaughter. By my
22 calculation the sentence is seventeen years
23 on that with each charge running consecutive
24 to one another. At some time during that
25 sentence, he was sentenced or convicted of

State of South Carolina versus Leonard Brightman
Case No. 11-GS-10-4166
Jury Trial of February 4-5, 2014
Verdict

288

1 possession of contraband by an inmate. I
2 don't know exactly what date he was released,
3 Your Honor, but then in 2007 he was convicted
4 of grand larceny; 2008 he was convicted of
5 burglary in the third degree; and, in 2011 he
6 was convicted of resisting arrest. Your
7 Honor, he also has two other pending ---

8 THE COURT: When was the resisting
9 arrest?

10 SOLICITOR COMPTON: I'm sorry.
11 2011, Your Honor. I can get the exact date
12 for you.

13 THE COURT: Okay.

14 SOLICITOR COMPTON: He also has
15 two other pending charges with our office,
16 Your Honor. Your Honor -- I'm sorry, Your
17 Honor, it's actually pursuant to this arrest
18 he was charged with resisting arrest.

19 THE COURT: Oh, you know, I was
20 kind of curious about that.

21 SOLICITOR COMPTON: It was yours,
22 Your Honor. He was convicted of that and
23 with trespassing March 22nd, pursuant to his
24 arrest.

25 THE COURT: Mr. Kowalski, do you

State of South Carolina versus Leonard Brightman

289

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Verdict

1 agree that that would be his correct rap
2 sheet?

3 MR. KOWALSKI: Yes, Your Honor.

4 THE COURT: Would you like to say
5 anything before I sentence him?

6 MR. KOWALSKI: Your Honor, Mr.
7 Brightman is fifty-two (52) years old. He's
8 obviously spent a great deal of his life
9 behind prison bars. I think this is somewhat
10 institutionalized. I mean, there is I think
11 a bit of criminality there, but ---

12 THE COURT: You think?

13 MR. KOWALSKI: I don't think it's
14 -- so much as a violent criminality. As of
15 that -- so far as I have found, I wasn't
16 originally his attorney. I did pick up his
17 case after Cody Groeber of our office left.

18 But honestly, Leonard's been one of my
19 best clients. He's kept in constant contact
20 with me over the last year. I think during
21 this time he was dealing with drug issues. I
22 think he was addicted to crack and he's
23 homeless, as the testimony elicited. I can
24 tell you in the past year since I've met him
25 he -- he was so very frail.

State of South Carolina versus Leonard Brightman

290

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Verdict

1 THE COURT: Well, what concerns
2 me, you know, this is something that took
3 some planning. You know, this wasn't
4 something that he just smashed a door in and
5 took something. I mean, he had the hacksaw.
6 He had it arranged, a mask, he had gloves.
7 He was doing all he could to make sure he
8 wasn't going to caught. So this was not
9 something that was unplanned and just
10 happened. He planned this.

11 MR. KOWALSKI: I agree with you,
12 Your Honor. Your Honor, it's -- I won't
13 think that it had to do with planning more so
14 than -- I think he was driven by an urge to
15 get a fix and get the drug.

16 THE COURT: Well, he's real lucky
17 he didn't get cured of drug addiction in
18 about a millisecond if that thing had been
19 on, hot.

20 MR. KOWALKI: I completely agree,
21 Your Honor. And this was -- we had talked
22 about a plea. We had on-going negotiations
23 with the Solicitor's office and I believe the
24 offer was originally five years. And then he
25 went to trial on this. As you know, the jury

State of South Carolina versus Leonard Brightman

291

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Verdict

1 hung and it went back down and they actually
2 offered a year. I encouraged him to try to
3 take that offer but I think he wanted to
4 stick to his guns. All this ---

5 THE COURT: Well, I'm glad the
6 police officer stuck to his gun and didn't
7 pull it out, because he would have probably
8 been within his right had he shot him. And
9 then, again, that's something that concerns
10 me, is the fact that he put other people in
11 jeopardy and put a good officer in jeopardy
12 of maybe having to shoot him, and then there
13 would have been some, Lord have mercy, the
14 poor police would have had hell reigning down
15 on him because he shot some man who was
16 supposedly unarmed. But yet the evidence,
17 you know -- I mean, he put -- this wasn't
18 just him, you know, cutting copper wire. He
19 put a lot of people in jeopardy by his
20 actions.

21 MR. KOWALSKI: Your Honor, I
22 would agree with that. And I would go back
23 to his addiction. I think it was driving him
24 to commit this crime. Over the past year,
25 I've sat down and worked with him almost on a

State of South Carolina versus Leonard Brightman
Case No. 11-GS-10-4166
Jury Trial of February 4-5, 2014
Verdict

292

1 weekly basis. He's healthy today, looks
2 healthy. He wasn't like he is now. He's
3 been working steady at a job. He's actually
4 the super at the hotel that he stays in. And
5 he gets paid, he tells me two hundred and
6 twenty dollars (\$220) a week to live there,
7 at a really rundown hotel that he's staying
8 in.

9 THE COURT: Well, where did he get
10 his two hundred and twenty dollars (\$220)?

11 MR. KOWALSKI: Well, you know, he
12 works, Your Honor. He's a day laborer. He
13 works wherever he can and he also the super
14 for the Stayover Lodge and they deduct his
15 rent there. But he's -- I've talked to him
16 yesterday. I gave him a ride home and he
17 said, "I finally realized these drugs are
18 keeping me down."

19 He's come to this realization, but I
20 think it's maybe a little too late. I hope
21 that you have a bit of leniency on him and
22 that.

23 THE COURT: Mr. Brightman,
24 anything you would like to say to the Court?

25 DEFENDANT: Yes, sir.

State of South Carolina versus Leonard Brightman

293

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Verdict

1 THE COURT: Yes, sir. Please
2 stand.

3 DEFENDANT: Like my lawyer said,
4 back then I was on drugs real bad. I was
5 literally eating out of trash cans.

6 I was there, Your Honor, and honestly I
7 have always accepted my guilt when I did
8 something. I always did. And nobody -- the
9 officer didn't ask me if I seen somebody.
10 I'm not going to say I haven't done, you
11 know, things in my past but this time I just
12 was in the wrong place at the wrong time.

13 THE COURT: Well, you put yourself
14 in the wrong place at the wrong time.

15 DEFENDANT: Yes, sir. Yes, sir.

16 THE COURT: This was a planned
17 thing. You came in with the tools to do it.
18 So, I mean, it's not like you were standing
19 there and they came up and accused you. You
20 were there cutting the wire. I know you --
21 you don't have to admit that.

22 DEFENDANT: Yes, sir.

23 THE COURT: The jury has found it.

24 DEFENDANT: Yes, sir.

25 THE COURT: Anything further?

State of South Carolina versus Leonard Brightman

294

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Verdict

1 DEFENDANT: Since this happened,
2 I've cleaned up, working and I'm working for
3 the Stayover Lodge. I live there and I'm
4 trying to do the right thing.

5 THE COURT: Thank you.

6 MR. KOWALSKI: I think, Your
7 Honor, all these other charges and the pleas
8 ---

9 THE COURT: Well, I don't know
10 what the evidence was on those, but I know
11 he's got a thirty-something year history of
12 crime, you know.

13 Mr. KOWALSKI: I think that's
14 all.

15 THE COURT: Anything further from
16 the State?

17 SOLICITOR COMPTON: Your Honor,
18 just to say that is his record and the fact
19 that he's ---

20 THE COURT: Mr. Brightman, you may
21 be seated.

22 SOLICITOR COMPTON: --- still
23 even at this late hour has not accepted any
24 responsibility. The State would seek active
25 time.

State of South Carolina versus Leonard Brightman

295

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Verdict

1 THE COURT: Is there any restitu-
2 tion or has that been resolved?

3 SOLICITOR COMPTON: Your Honor,
4 we're not going to seek restitution. And I
5 do believe that SCE&G was out the twenty-
6 eight hundred dollars (\$2,800) that it cost
7 them in damages.

8 THE COURT: Did he serve some time
9 when he was arrested?

10 MR. KOWLESKI: He did. Thirty-
11 seven (37) days, Your Honor.

12 THE COURT: All right. Mr.
13 Brightman, please stand?

14 DEFENDANT: (Complies)

15 THE COURT: Mr. Brightman, you are
16 lucky to be here today. You are lucky that
17 you have an opportunity to be tried by twelve
18 citizens of your county because you could
19 have been dead. And that would have been
20 tragic, so I'm glad that you are here, and
21 that's a good thing. But you have a long
22 history of committing crimes. And I don't
23 know what it's going to take to get you to
24 stop. But you've been committing violent
25 crimes since 1979. But I'm willing -- you

State of South Carolina versus Leonard Brightman

296

Case No. 11-GS-10-4166

Jury Trial of February 4-5, 2014

Sentence

1 know, I just don't know what's going to
2 stop you, so I need to -- I have no reason to
3 give you anything, other than the maximum.

4 The sentence is that you be committed to
5 the State Department of Corrections for a
6 period of ten (10) years. I think this town
7 just needs a rest from you, and you need a
8 rest. So good luck to you, sir.

9 SOLICITOR COMPTON: Thank you,
10 Your Honor.

11 SOLICITOR YOUNG: Thank you.

12 (CONCLUDED)

13

14

15

16

17

18

19

20

21

22

23

24

25

State of South Carolina versus Leonard Brightman

297

Case No. 11-GS-10-4166
Jury Trial of February 4-5, 2014
Certificate of Court Reporter

CERTIFICATE OF COURT REPORTER

I, the undersigned Deborah Garrison,
Circuit Court Reporter for the 9th Judicial
Circuit, hereby certify that the foregoing is
a complete and accurate transcript of the
hearing held in the within action heard on
February 4th and 5th, 2014, before The
Honorable W. Jeffrey Young;

I further certify that I am neither
kin nor counsel to any of the parties and
have no interest in the outcome of this
action.



Deborah Garrison

Charleston, South Carolina

June 20, 2014

GRD20110801351

WITNESSES

Robert Stone
North Charleston Police Department

AGENCY CASE NUMBER

2011008792

ARREST WARRANT NUMBER

M610154

DATE OF ARREST

March 10, 2011

ACTION OF GRAND JURY

TRUE BILL

J. O. A.
Foreperson of Grand Jury
Date:

JUL 13 2011

VERDICT

Guilty

Paul E. Bond
Foreperson of Petit Jury

Date:

2/6/2014

INDICT

DOCKET NO. 2011-CS1204166

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

July Term 2011

THE STATE

vs.

LEONARD BRIGHTMAN

DOB: [REDACTED]

B/M

Indictment for

Malicious Injury to Electrical Utility
Systems

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., C.S. & F.C.
By *[Signature]*
DEPUTY CLERK

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)

INDICTMENT

At a Court of General Sessions, convened on July 11, 2011 the Grand Jurors of Charleston County present upon their oath:

Malicious Injury to Electrical Utility Systems

LEONARD *esc 1/2*

That in Charleston County, on or about March 9, 2011, the defendant, LEONARD BRIGHTMAN, did destroy, damage, or injure a telegraph, telephone, electric utility system, satellite dish, or cable television system, including poles, cables, wires, fixtures, antennas, amplifiers, or other apparatus, equipment, or appliances, or did obstruct, impede, or impair their services or transmissions or did aid, agree with, employ, or conspire with a person to do or cause to be done any of the aforementioned acts. This is in violation of Section 16-11-740 of the South Carolina Code of Laws (1976) as amended.

ATTEST: A TRUE COPY
 JULIE J. ARMSTRONG (SEAL)
 CLERK, C.P., D.S. & F.C.
 By *[Signature]*
 DEPUTY CLERK

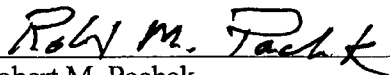
Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

[Signature]
 G. RUTLEDGE DURANT
 ASSISTANT SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

August 15, 2014


Robert M. Pachak
Appellate Defender

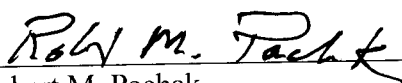
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

August 15, 2014


Robert M. Pachak
Appellate Defender

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

ATTORNEY FOR APPELLANT

RECEIVED

AUG 15 2014

SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County

William Jeffrey Young, Circuit Court Judge

RECEIVED

AUG 15 2014

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

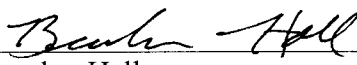
LENARD BRIGHTMAN,

APPELLANT

APPELLATE CASE NO. 2014-000313

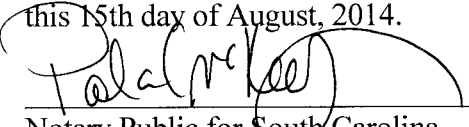
CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 15th day of August, 2014.



Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 15th day of August, 2014.



(L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022.