

VOLUME ONE OF TWO

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Richland County

Robert E. Hood, Circuit Court Judge

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S.C. Supreme Court

DARRELL WILLIAMS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-000071

APPENDIX

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STATE OF SOUTH CAROLINA	)	GENERAL SESSIONS
	)	
County of Richland	)	08-GS-40-13175
	)	
State	)	
	)	
Plaintiff,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
Darrell Williams	)	
	)	
Defendant.	)	

January 7 & 14th, 2008
Columbia, South Carolina

BEFORE:

The Honorable J. Michelle Childs, Judge

APPEARANCES:

Heather Weiss, Assistant Solicitor
Attorney for the State

Darrell Williams,
Appearing Pro Se

KAREN TRACY
Official Court Reporter

C O N T E N T SEXHIBITS

(There were no exhibits introduced.)

CERTIFICATE OF REPORTER

66

1 MS. WEISS: May it please the court, Your Honor.

2 THE COURT: Thank you.

3 MS. WEISS: The State calls Darrell Williams,
4 representing himself.

5 He is charged with two counts of burglary, a count
6 of petit larceny and -- two petit larcenies, but one -- I
7 know at least one count of petit larceny and another -- and
8 a grand larceny.

9 The -- he has got one burglary first. That
10 investigator is Investigator Protoski, who is standing
11 here with me, just because I was not sure exactly what
12 we were going to be addressing today, and I wanted to make
13 sure I had the investigator present.

14 The burglary second was Investigator Paul Mead.
15 That is being directly presented to the grand jury as a
16 burglary first based on the same reasons that
17 Investigator Protoski is with a burglary first. So that
18 is going to the grand jury as a burglary first.

19 This month they're being presented to the grand
20 jury. He was arrested August 17th, 2007, on these
21 burglaries. He also confessed to several other
22 burglaries for which he was not charged due to the fact
23 they were based on his confessions.

24 And we are here to address Mr. Williams' motions
25 since he was -- did have all of his counsel relieved and

1 was told by the judge he could proceed pro se.

2 At this point, he has filed several motions. I have
3 provided copies of the ones I'm aware of that I got from
4 the clerk's office, as well as received in my file.

5 So that can try to address, if he wants to address
6 today, I don't know -- and Your Honor, I would just leave
7 it in your discretion as to whether or not today is the
8 appropriate time or if we need to file -- go towards trial
9 or whatever, but I wanted to go ahead and let him have
10 the opportunity to address the court and to try to start
11 resolving some of these issues so we can prepare towards
12 a trial.

13 At this point, it appears that he is going to be -- that
14 I'm going to be required to seek life without parole due
15 to his prior record, but that has not been served at this
16 time and that will be forthcoming.

17 I'm waiting on certified convictions before I'm
18 going to serve that, but I wanted that to be in the arena
19 before we begin these discussions.

20 THE COURT: Okay. Mr. Williams, how are you?

21 THE DEFENDANT: I'm fine.

22 THE COURT: Okay. You are representing yourself; is
23 that correct?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: Have you attempted to try to get legal

1 counsel to represent you?

2 THE DEFENDANT: During the time when we first -- when
3 we first initially went before Judge Kinard, when we
4 first filed a motion, I did request at that time that
5 Judge Kinard appoint standby counsel.

6 THE COURT: Okay.

7 THE DEFENDANT: And he informed me at the time that
8 standby counsel would not be appointed at the time, as
9 the Order says, until the day of trial.

10 I was under -- as I informed Judge Kinard, I was under
11 the impression that standby counsel was supposed to be
12 appointed.

13 After I made the request to represent myself, I was
14 supposed to be appointed standby counsel. I was informed
15 by Judge Kinard that wasn't true; that was a matter of
16 discretion upon the court. That's where we are now as
17 far as that goes, but yes. Yes, I did try to get counsel,
18 as far as other counsel, yes.

19 THE COURT: Okay. And I think what he is referring
20 to is that if you're going to have counsel, it's for the
21 purpose of you having counsel at trial because you're
22 either having counsel to assist you along the way with
23 the various motions and the decisions --

24 THE DEFENDANT: Uh-huh.

25 THE COURT: Which -- which --

1 THE DEFENDANT: Oh, that's on me. That's --

2 THE COURT: Which means that they would be appointed
3 now, or you're just needing them to assist you with the
4 method and procedure for trial itself. You're saying
5 that you're represented yourself.

6 THE DEFENDANT: Right. See -- okay. I didn't mean
7 to cut you off, but what I -- I believe what I didn't make
8 clear to Judge Kinard, I was trying to get my point across
9 to him at the time is that what I wanted counsel to do
10 is to have standby counsel just in case I needed to conduct
11 an investigation or anything like that to help me out,
12 because if I needed to talk to any witnesses, there's no
13 way I can do that now.

14 THE COURT: Right.

15 THE DEFENDANT: So that's -- that was my -- that was
16 my main purpose of looking for standby counsel if we do
17 that, if I needed to do that. And unless I got the -- once
18 I got all the documents from the State, I don't have
19 enough -- I was -- after I go through it, if I see that
20 there is somebody that -- maybe a witness I want to talk
21 to, whatever, if it's the victim, you know, I would have
22 the opportunity to have counsel at least do that on my
23 part for me.

24 THE COURT: Okay. So essentially, you wanted
25 it -- he declined it, obviously, based on his reasons,

1 but you want it for purposes of investigating --

2 THE DEFENDANT: Yes.

3 THE COURT: -- the witnesses?

4 THE DEFENDANT: Yes.

5 THE COURT: Okay.

6 THE DEFENDANT: Because since -- because since -- I'm
7 not in a position to do that because I'm in here. I mean,
8 not unless -- not unless the State is going to pretty
9 much -- pretty much bring them to --

10 THE COURT: Why aren't you --

11 THE DEFENDANT: -- the jail.

12 THE COURT: Why aren't you trying to just -- I mean,
13 you understand that she says that eventually, she is
14 seeking life without parole.

15 THE DEFENDANT: Yeah.

16 THE COURT: That is a huge, you know, task in terms
17 of what you're facing. You understand that?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: Why do you not want counsel to represent
20 you?

21 THE DEFENDANT: Well, it's -- well, at the time I
22 was represented by Ms. Payne with the Defender's
23 Office.

24 THE COURT: Okay.

25 MS. PAYNE: That's true.

1 THE COURT: Okay.

2 THE DEFENDANT: At the time, we were going through
3 basically the same thing. She was going with the --

4 THE COURT: All right.

5 THE DEFENDANT: At the time, like I said, I requested
6 that, you know, she be, you know, relieved as counsel and
7 I represent myself.

8 THE COURT: Okay.

9 THE DEFENDANT: And that's where --

10 THE COURT: Have you given consideration to just
11 being conflicted out or relieving the Public Defender's
12 Office, but then getting someone off their conflict list
13 or someone else from their --

14 THE DEFENDANT: Well, see --

15 THE COURT: -- office?

16 THE DEFENDANT: -- they have someone else from their
17 office representing me.

18 THE COURT: Right.

19 THE DEFENDANT: I think --

20 THE COURT: Was there a second attorney?

21 THE DEFENDANT: Ms. Lee.

22 THE COURT: Okay.

23 THE DEFENDANT: Essentially -- if I may.

24 Essentially, what happened was on September 10th, the
25 Order was signed by Judge Kinard relieving Ms. Payne on

1 all four warrants.

2 In error, our office reopened the case and assigned
3 it to me. I discovered the Order, and we did close it
4 again.

5 THE COURT: Okay. All right. So you weren't
6 technically represented then by Ms. Lee.

7 THE DEFENDANT: No.

8 THE COURT: Okay. Did you desire to have other
9 counsel appointed that is not within that office?

10 THE DEFENDANT: Well, I mean, really my thing was
11 I just didn't want Ms. Payne at the time representing
12 me. I didn't say nothing about the office, but when I
13 got appointed Ms. Lee to represent me -- I didn't say
14 nothing about the office.

15 I was -- when she came up here, she came up to the
16 county jail to see me. I was talking to her. I didn't -- I
17 figured -- I thought that she was going to represent me.
18 I was going to, at least -- you know, once I get the
19 paperwork and things, I would have a chance to go through
20 it and see what was there just like --

21 THE COURT: Okay. Do you want other counsel?

22 THE DEFENDANT: Standby counsel, yes. I mean --

23 THE COURT: Yeah, but you understand there is a
24 difference on that.

25 THE DEFENDANT: Okay.

1 THE COURT: When you say "counsel", I'm talking about
2 someone who is going to represent you, speak with you,
3 but they take the lead on your case.

4 They're the ones who are addressing the court and
5 doing that. I mean, you can't essentially have a counsel
6 who you're asking to do all the work, so to speak, but
7 they technically don't represent you.

8 THE DEFENDANT: Okay.

9 THE COURT: It can't work both ways.

10 THE DEFENDANT: I understand that. I understand.

11 THE COURT: Because you're going to develop some
12 conflicts, you know, just naturally about what advice
13 they may be giving you along the way --

14 THE DEFENDANT: Uh-huh.

15 THE COURT: -- or procedures that they won't engage
16 in because they are representing -- they are not
17 representing you or they think they represent you, you
18 know.

19 THE DEFENDANT: I understand that. I mean -- I mean,
20 really, I have this -- it is just -- I don't know.

21 THE COURT: You've got a lot facing you. You
22 understand that?

23 THE DEFENDANT: Yeah, I understand. I understand
24 that there are the charges, but like I said, at this point,
25 I'm kind of like -- kind of like -- kind of just inclined

1 to represent myself right now, for now.

2 THE COURT: Okay. And you understand that this case
3 could be called at any moment, you know, because the
4 Solicitor will control the docket.

5 I mean, I assume that it would come after the first
6 six weeks, because we're pretty full on that docket.

7 THE DEFENDANT: Uh-huh.

8 THE COURT: You've got, you know, those issues to
9 contend with. So I really need more of an answer from
10 you, first, about do you want to try to get other counsel
11 because you said that you thought you were going to be
12 assigned someone else.

13 (Pause).

14 Would you at least like to speak to someone and be
15 assigned someone, and then you could make that
16 decision?

17 THE DEFENDANT: Are you talking about -- I mean, yeah.
18 It -- yeah, I'm open in places. I'm open for the idea
19 to have counsel.

20 THE COURT: To have counsel representing you.

21 THE DEFENDANT: Yeah.

22 THE COURT: Okay. Not standby counsel, but counsel
23 actually representing you.

24 THE DEFENDANT: Like now -- I mean -- I got to be -- I
25 mean, I'm looking -- I'm not looking for, like I said,

1 Ms. Payne in the office, they're dealing -- they're
2 dealing with a bunch of cases also, I know.

3 And what I was looking for her to do, it wasn't -- I
4 don't know. Maybe she thought I was trying to be a little
5 too bossy, but this is my life here.

6 THE COURT: I understand.

7 THE DEFENDANT: And I was just trying to get her to
8 do -- you know, there are certain things that I -- I mean,
9 I understand, like this. There are certain things that
10 I wanted her to do that she was just, you know, it was
11 like -- it was like she had like a real, real laid back
12 attitude towards the case.

13 THE COURT: Okay. But she is not in the case anymore.
14 I'm talking about new, other counsel.

15 THE DEFENDANT: What -- what -- what I'm trying to
16 get you involved with -- basically, what I'm saying is
17 that any attorney that represents -- has the same -- that
18 takes the same attitudes from the case, I'm going to feel
19 the same way about it.

20 THE COURT: I know, but I don't know who that is,
21 and I don't know if they're going to take that attitude.
22 So I can't be presumptuous.

23 THE DEFENDANT: And I don't -- that's the way you're
24 going to be, I'm not -- I'm not expecting that from you,
25 but right now, if it's all right with you, first, what

1 I'd like to do, really, is since we do have a couple of
2 motions to deal with, I want to deal with them, and then
3 maybe after it's -- after it's over with, I can probably
4 just go ahead and make a decision then.

5 THE COURT: I guess my concern about that is that
6 I don't want you then later on to tell me that you want
7 counsel, and then you're asking the counsel to undo
8 perhaps rulings that may or may not be favorable to you.

9 THE DEFENDANT: No, I mean, if I --

10 THE COURT: I don't want you to just --

11 THE DEFENDANT: No.

12 THE COURT: -- wait and see, so to speak. You need
13 to make a decision.

14 THE DEFENDANT: No, no. If I -- I'm not -- whatever
15 I -- whatever I -- whatever motions we deal with right
16 at the present time and whatever rulings are made, the
17 rulings are made..

18 It's going to be -- the next -- the next thing is
19 we're going to be -- but if she says trial, then that's
20 what me and counsel will be prepared for, but whatever
21 rulings are made, they're going to be made. And if
22 there's -- I mean, if there's -- I mean, later on --

23 THE COURT: But I need -- I need -- because there's
24 a point in time at which you cannot ask for counsel.

25 THE DEFENDANT: Oh, I know.

1 THE COURT: That's not an open invitation just
2 forever and again. There's got to be a point in time in
3 which you decided and made your decision that you're
4 going to represent yourself.

5 THE DEFENDANT: Uh-huh.

6 THE COURT: And so that's why I'm asking you from
7 that point in time to come now. Because there seems to
8 have been some confusion that you thought that you were
9 going to be reassigned to someone else --

10 THE DEFENDANT: That's --

11 THE COURT: -- either the Richland County Public
12 In--- Offender's (sic) Office or through the conflict
13 list.

14 Because as the Order stands right now, it's indicated
15 that they were relieved. You will proceed pro se, and
16 when the case is called for trial, at that time standby
17 counsel is appointed.

18 THE DEFENDANT: Uh-huh.

19 THE COURT: I cannot undo his Order --

20 THE DEFENDANT: I understand.

21 THE COURT: -- in that regard, but if you decide that
22 you want counsel, now is the time to say so and then we
23 go forward.

24 Otherwise, a circuit court judge who is sitting at
25 my level has already determined that standby counsel will

1 only be appointed at the time you go to trial.

2 THE DEFENDANT: Okay.

3 THE COURT: So that will answer a lot of your
4 questions about the investigation and getting assistance
5 and all of that, the answer is no because the circuit court
6 has already ruled on that issue.

7 THE DEFENDANT: Okay, so if I understand you,
8 since -- okay. Since standby counsel is not going to be
9 appointed and we --

10 THE COURT: Until trial.

11 THE DEFENDANT: Until the day of trial, what are the
12 chances -- case -- assume, for the sake of argument, that
13 there is investigations that I want to -- that I do want
14 to conduct.

15 THE COURT: Right.

16 THE DEFENDANT: And so then being that I am pro se,
17 how would -- I mean, there is -- there has to be some type
18 of avenue or procedure open for me to at least pursue that,
19 right?

20 THE COURT: Perhaps, yes.

21 THE DEFENDANT: Okay.

22 THE COURT: First of all, you would start with what
23 -- that the State would give you anything that they have
24 in terms of discovery.

25 THE DEFENDANT: Okay. Well...

1 THE COURT: And then look at those documents and,
2 you know, see those types of things and then, you know,
3 we will go from there.

4 THE DEFENDANT: Well, I've already got everything
5 that they have dealing with one charge. That was the
6 first degree burglary charge from him.

7 THE COURT: Okay.

8 THE DEFENDANT: But now, as far as the other documents
9 go, that's the other charge. The paperwork -- I believe
10 I wrote you a letter on the 26th. Is it the 26th?

11 I asked her for those documents because I haven't
12 received them.

13 THE COURT: Uh-huh.

14 THE DEFENDANT: And this is concerning the charge
15 that she says -- the first degree burglary.

16 THE COURT: I understand.

17 THE DEFENDANT: Okay. That was -- that's
18 the -- that's the file that I'm -- that's the only file
19 that I'm waiting for now.

20 THE COURT: Okay.

21 THE DEFENDANT: All that -- I mean, as far as the --

22 THE COURT: Okay. But answer the question. Do you
23 want counsel, or are you going to proceed on your own?

24 THE DEFENDANT: For the purposes here, I'm going to
25 proceed, I'm going to proceed on my own.

1 THE COURT: Okay, okay.

2 THE DEFENDANT: For the purposes here, I'm
3 proceeding on my own.

4 THE COURT: But what I'm saying is you have to answer
5 that question now. You can't at the end of the hearing
6 say, "Now I want counsel."

7 You either are going to have counsel, or you're going
8 to represent yourself. Because right now, you
9 represented to Judge Kinard that you're going to
10 represent yourself and your standby counsel will be
11 appointed at trial.

12 The only reason I even revisited the issue is because
13 you indicated that you thought that you were going to be
14 appointed other counsel when there was a mistake in the
15 Public Defender's Office about that counsel within their
16 office was appointed.

17 THE DEFENDANT: Uh-huh. I tell you what. We can
18 have -- let me think about this.

19 THE COURT: Okay. Well, let's just -- where are you
20 located?

21 THE DEFENDANT: I'm in the county jail right now.

22 THE COURT: Alvin S. Glenn. Okay. Well, how much
23 time do you need? Do you know to reconvene next week?

24 THE DEFENDANT: We can come back this afternoon.
25 That would give me enough time, this afternoon. This

1 afternoon would be fine or do you want to wait until next
2 week?

3 THE COURT: No. I can do it later in the week. I'm
4 just saying that we got a little behind today, so I don't
5 want to say today.

6 THE DEFENDANT: Okay.

7 THE COURT: Let's do this on Thursday morning at
8 9:30.

9 MS. WEISS: Yes, Your Honor.

10 THE COURT: Okay.

11 MS. WEISS: Thank you.

12 (The proceedings were concluded in this matter for
13 the day.)

14 (The following was heard on January 14, 2008.)

15 MS. WEISS: I want to take this opportunity to give
16 Mr. Williams discovery that he said was missing on the
17 second.

18 Thank you, Your Honor.

19 THE COURT: Okay. Mr. Williams, when we last met,
20 which was last week, I do recall that the issue before
21 me was whether or not you wished to continue to represent
22 yourself or have someone appointed to you.

23 When you were you were before Judge Kinard before,
24 apparently, you indicated that you wanted to continue
25 to represent yourself, and then Judge Kinard signed an

1 Order indicating that you wanted to represent yourself
2 but that at trial, you would be allowed standby counsel
3 so that you could deal with any procedural issues and
4 things of that nature.

5 You then told me that at some point, there apparently
6 was some confusion in the Public Defender's Office such
7 that they sent another lawyer to come down and speak with
8 you, and you thought that you were getting appointed
9 another lawyer. So you might have been in confusion with
10 his ruling.

11 I then told you the reason why we continued this case
12 is you had to have an either or. You either are
13 representing yourself or you are not representing
14 yourself, and last week you indicated you may still wish
15 to represent yourself, but you also wanted counsel to
16 assist you for things like your investigation or things
17 of that nature.

18 But I told you it has to be either or. You cannot
19 have counsel who just kind of does your leg work, so to
20 speak, but yet you're representing yourself.

21 You would have to represent yourself, and then at
22 trial have that standby counsel available to you. Having
23 that as kind of a background and the fact that Ms. Weiss
24 as the assistant solicitor has now also given you, also,
25 your discovery, have you had a chance to think through

1 those decisions? Because I cannot undo Judge Kinard's
2 order.

3 If you intend to represent yourself, you would have
4 to leave that order in place where you get standby counsel
5 at trial.

6 If you are indicating that there was some confusion
7 that you weren't sure about your choices in how you would
8 have to represent yourself, then that's a whole other
9 matter that we can revisit.

10 THE DEFENDANT: Okay. Well, I have -- okay. Let me
11 just -- just go back briefly. When Judge Kinard issued
12 an order, like I said, I had originally explained to Judge
13 Kinard that I was always under the impression from me
14 being just -- maybe just -- I might have misunderstood
15 about something, but when it came down to the law, it was
16 not a matter of discretion with -- as far as appointing
17 standby counsel at my side.

18 Now, like I said, that is where my biggest
19 confusion comes in with the order of Judge Kinard. When
20 he refused to -- he said it was a matter of discretion
21 with the Court to appoint standby counsel, so that's what
22 my confusion is.

23 Basically, it's based on not so much the order with
24 representing myself, but it's just the order which he said
25 that he was -- that standby counsel would only be -- would

1 only -- should -- as he stated to me, that judge -- that
2 standby counsel is only supposed to be appointed during
3 the course of trial, and that's a matter of discretion
4 for the Court. That's my -- that's where my probable
5 cause comes into play.

6 THE COURT: Okay. I can't undo his order.

7 THE DEFENDANT: Okay.

8 THE COURT: So if you intend to continue representing
9 yourself, then that order will stand in terms of standby
10 counsel being appointed only at trial.

11 THE DEFENDANT: Okay.

12 THE COURT: Because I'm the same level circuit court
13 judge as he.

14 THE DEFENDANT: I understand. I understand. Well,
15 at this time, what I would like to do is just -- we could
16 continue. I'm going to continue as pro se then.

17 THE COURT: Okay. That will be fine. Okay.

18 Now, that having been in mind, you have gotten the
19 discovery..

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: Would you like to just wait and hold any
22 other issues in abeyance or, you know, continue until you
23 have a chance to review all of that and then you can let
24 the court know if you need to discuss any further matters
25 since you have just now gotten that?

1 THE DEFENDANT: Okay. As far as this goes -- well,
2 there was -- well, the one motion that I did want to
3 address, I'm going to let you know what I would like to
4 do. There is no need to keep bringing -- going back and
5 forth.

6 THE COURT: Oh, okay.

7 THE DEFENDANT: Let's see.

8 The one dated -- I got one motion that was dated
9 August 27th.

10 MS. WEISS: Okay.

11 THE DEFENDANT: There was really two of them: The
12 August 27th motion and the September 11th motion.

13 MS. WEISS: September 11?

14 THE DEFENDANT: The other one or --

15 MS. WEISS: What's the September 11th one?

16 THE DEFENDANT: Okay. The September 11th one was
17 dealing with -- it was a motion to prevent you from using
18 the prior burglaries.

19 MS. WEISS: Okay. I think that was kind of in some
20 of the others, as well. I've read it. Let me see if I
21 can just -- we can do ahead and I'll find that.

22 Okay. I've got that one.

23 THE DEFENDANT: Okay. You got that? Okay.

24 Those are the only two that I really -- outside
25 of the other ones that I wanted to really address the

1 court.

2 The other one, like I said -- I don't know what
3 case -- I don't know what case he's going to use, which
4 case is -- bring -- which case you're going to try first,
5 that one or the other one, but however that goes, that
6 would be fine, Your Honor.

7 Those were just two motions that I wanted to
8 get -- get out of the way before we start trial. Those
9 are the ones I want to deal with.

10 MS. WEISS: And, Your Honor, I would ask that if he
11 intends to make his bond reduction motion while I have
12 my investigator here --

13 THE COURT: Okay.

14 MS. WEISS: -- that we go ahead and deal with that.

15 THE COURT: Okay.

16 MS. WEISS: I that's an important thing to go ahead
17 and settle, but...

18 THE COURT: Okay. What is the bond, and what are the
19 charges?

20 MS. WEISS: Your Honor, the defendant is currently
21 charged with one count of burglary first and petit
22 larceny and a count of burglary second, grand larceny.

23 The burglary second is being directly presented as
24 a burglary first. Primarily for the same reason that the
25 burglary first is a burglary first because he has at

1 least two prior burglary convictions, which I think is
2 what Mr. Williams wishes to address at this time.

3 As I stated before, he has a prior burglary first,
4 as well, which is why this is potentially a life without
5 parole case with convictions for -- more convictions for
6 burglary in the first degree.

7 He confessed to numerous burglaries. Actually one,
8 two, three, four, five, six, seven, eight, nine, ten, 11,
9 12, 13, 14, 15, 16, 17, 18, 19, 20 different burglaries,
10 Your Honor. However, he was only charged with two because
11 the basis of these -- of knowing this -- he committed these
12 was his confession.

13 So -- you know, but for purposes of a bond reduction,
14 he has confessed to 20 burglaries. He has been charged
15 with two burglaries, as well as a prior record.

16 THE COURT: And let me stop you there.

17 MS. WEISS: Yes, Your Honor.

18 THE COURT: Having confessed to the other ones, when
19 you say that you're only charging with two, is it because
20 you have not gone back and been able to match up the dates
21 or seeing if the confessions were real or --

22 MS. WEISS: No, because it was the -- giving him the
23 benefit of the fact --

24 THE COURT: Okay.

25 MS. WEISS: -- that he confessed to all of these

1 burglaries.

2 THE COURT: Okay. Okay. All right. I'm sorry.

3 MS. WEISS: As far as a prior record, he has 1994,
4 burglary second degree for which he was sentenced to 15
5 years and possession of burglary tools, which he was
6 sentenced to ten years, as well as a grand larceny, which
7 he was sentenced to ten years. That was on May 3rd of
8 '95.

9 Also, it appears he was convicted of a burglary first
10 grand larceny at the same time. He was convicted of
11 another grand larceny in 2006, and then he has these
12 charges, as well, pending which in my understanding was
13 probably from getting sentenced in 1995 and then
14 resentenced in 1996 -- in 2006, I'm sorry, Your Honor.

15 I'm guessing that was approximately the time he was
16 released on that 15-year sentence. He also has an
17 out-of-state conviction for sexual abuse, third degree,
18 from '83, which was in Queens, New York.

19 He has a petit larceny, assault on -- an assault on
20 a nonparticipating party during a felony, and I
21 guess -- I don't know if that's -- I beg the Court's
22 indulgence because I am reading an out-of-state --

23 THE COURT: Sure.

24 MS. WEISS: -- rap sheet. It appears there was a
25 robbery, second, as well that was from 1985.

1 He was convicted upon a plea of guilty. He had an
2 illegal entry with criminal intent burglary. He was
3 sentenced to three to nine years in 1987 in Queens, New
4 York.

5 And then he has a -- I'm trying to see what year this
6 is, Your Honor: 1986, unlawful imprisonment endangering
7 the welfare of a child, sexual abuse first, two offenses,
8 and a rape first, where he was sentenced from 28 months
9 to seven years in Queens, New York.

10 Those, obviously, were before he came to South
11 Carolina, and once he came to South Carolina, he seems
12 to have consistently been involved in burglaries. Once
13 he was released for the grand larceny that he was
14 sentenced to in November of 2006, he immediately, it
15 appears, went and committed approximately 20 burglaries.

16 So you asked what his bond is. I'm not sure. I'm
17 looking for that, Your Honor. It appears it was \$100,000
18 surety on one of them and then -- and, Your Honor, I --

19 THE DEFENDANT: One is supposed to be --

20 MS. WEISS: \$250,000?

21 THE DEFENDANT: Supposed to be thousand dollars
22 surety.

23 MS. WEISS: -- surety bond on the second one.

24 But we think those are very appropriate considering
25 the number of offenses, the threat that he is to the

1 community, the possibility of his flight risk due to his
2 out-of-state connections, as well as his prior record.

3 I think that those bonds are very appropriate, Your
4 Honor, and should remain in place.

5 THE COURT: Okay. Mr. Williams?

6 THE DEFENDANT: According to the Solicitor, just to
7 clarify a few things: First, in 2006, it wasn't a
8 situation where I was just recently released from -- from
9 prison and then committed the crime.

10 That's -- you know, that's -- that's not how it went,
11 but that also -- that involves something totally
12 different from -- from all the other crimes, but as far
13 as me being a flight risk, that's not a -- I'm not a
14 flight -- I've been down here in South Carolina for a
15 considerable amount of time.

16 I've worked down here. I have continued to work
17 down here. As a matter of fact, before -- I mean, during
18 the time that I was arrested, I was working down over
19 there at Whaley Mill doing -- doing drywall, hanging
20 drywall.

21 I was on the verge of also beginning to work where
22 they have -- right behind -- over there on Assembly
23 Street, they've got a new building that they're going up
24 on. I was going to start working over there.

25 So as far as me being a flight risk, all -- most of

1 my work that I've done so far since -- since coming out
2 of prison, has been -- has been down here in South
3 Carolina.

4 THE COURT: Do you have any family here?

5 THE DEFENDANT: Yes, I do.

6 THE COURT: And what's the type of family?

7 THE DEFENDANT: I have my mother down here. My
8 father stays -- my father also stays down here, and I got
9 two brothers down here.

10 THE COURT: Okay. Okay. Anything further?

11 THE DEFENDANT: No, that's it.

12 MS. WEISS: Your Honor.

13 THE COURT: And you understand that?

14 MS. WEISS: I also argue that there is no change of
15 circumstances to even justify considering reducing the
16 bond.

17 THE DEFENDANT: I think -- I think there has.

18 THE COURT: Who is the -- who is the -- who set the
19 bond? Burglary first doesn't usually come here.

20 MS. WEISS: It was, Your Honor.

21 THE COURT: In circuit court.

22 THE DEFENDANT: Judge Cooper.

23 THE COURT: Okay. So then I wouldn't be able to
24 change Judge Cooper's order, because you actually would
25 ask for a reconsideration in front of him.

1 THE DEFENDANT: Okay.

2 THE COURT: I would be able to change it if it was
3 coming from the magistrate judge. That would be a
4 different thing. That's what she was referring to, the
5 change in circumstances.

6 THE DEFENDANT: Right.

7 THE COURT: Okay. So then that would be denied.

8 Any other motions that you would like the Court to
9 take up today for you -- now that you're now --

10 THE DEFENDANT: Okay.

11 THE COURT: For sure now representing yourself?
12 Of course, you can bring any motions at a later date.

13 THE DEFENDANT: All right. Well, one -- okay.
14 Let's -- let's start with this here first: Based on
15 the fact that I don't have standby counsel, what I'd like
16 to do, make a motion for the Court to have an investigator
17 to have an investigator do an investigation for me.

18 What I'd like to get it get a -- I have a company
19 for -- Info Incorporated Investigations located in
20 Columbia. I would like for them to do an investigation
21 for me.

22 I've got -- there's certain things what I read -- what
23 I read from the first charge, the first burglary charge.
24 There's certain things that I wanted them to look into
25 for me, and I would like for the court, if possible, to

1 consider that as one of my motions.

2 THE COURT: Okay. So motion for investigative
3 services?

4 THE DEFENDANT: Yes. Yes, ma'am.

5 THE COURT: And then this is -- what's the name of
6 the company?

7 THE DEFENDANT: Info, Inc. Info, Inc. Info
8 Incorporated Investigations.

9 THE COURT: Okay. Where did you come up with them?

10 THE DEFENDANT: That came from -- from one of the
11 fellows down inside the detention center. I wrote to him
12 already. I'm waiting for a response back from the office
13 to let them know that I was going to possibly be asking
14 the court -- I didn't know when I was going to be coming
15 back, asking the Court if they can be assigned to, you
16 know, to go ahead and to an investigation for me.

17 THE COURT: Okay. And you haven't been in contact
18 with them yet to know what their fee or charges are?

19 THE DEFENDANT: I wrote -- I wrote to them.

20 MR. COLLINS: Judge, that's a valid investigations
21 company. Lee Connolly is the investigator. She does
22 numerous investigations --

23 THE COURT: Okay.

24 MR. COLLINS: -- for our office, so she could --

25 THE COURT: It's a valid unit, you mean.

1 MR. COLLINS: Huh?

2 THE COURT: You said it's a valid unit.

3 MR. COLLINS: It's -- Lee Connolly is the only
4 investigator with Info Incorporated --

5 THE COURT: Okay.

6 MR. COLLINS: -- and she does numerous
7 investigations for us, as well, so I don't believe there
8 would be a problem.

9 THE COURT: Okay. Okay. All right. Lee Collins?

10 MR. COLLINS: Connolly.

11 THE COURT: Connolly.

12 MR. SCHNEE: If Your Honor wants, I have, actually,
13 have a document from her --

14 THE COURT: Okay.

15 MR. SCHNEE: -- if you want her address and --

16 THE COURT: Okay.

17 MR. SCHNEE: -- any --

18 THE COURT: That would be great. Okay.

19 MR. SCHNEE: Obviously, it's an unrelated case, but --

20 THE COURT: Okay.

21 MR. SCHNEE: -- the letterhead has --

22 THE COURT: Okay.

23 THE DEFENDANT: On that note also, Your Honor, I
24 don't know if it would be appropriate, but I have an order
25 with the same address on here, but I have it with a P.O.

1 Box on it is all.

2 MR. SCHNEE: That's her mailing address.

3 THE DEFENDANT: Okay.

4 THE COURT: Okay.

5 The State, response?

6 MS. WEISS: Your Honor, I leave that up to the court
7 and the discretion of the court.

8 THE COURT: Okay. Let's go through whatever all the
9 motions are. Is there anything else for today?

10 MS. WEISS: Your Honor, do you have copies of two
11 he mentioned earlier, the August 27th motion to dismiss
12 warrant, and the September 11th motion to prevent use of
13 prior burglaries for enhancement.

14 THE COURT: I'm sure I do --

15 MS. WEISS: Okay.

16 THE COURT: -- but given the lateness of Friday, I
17 have got several papers up here right at this moment.

18 Can I borrow your copy?

19 MS. WEISS: Sure. I think I may have another copy
20 of this.

21 THE COURT: Okay. Let's deal with the motion to
22 dismiss warrant.

23 You have great penmanship. Did you write these?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: Okay.

1 THE DEFENDANT: If it's all right with the Court,
2 what I want to do is first, the September 11th motion,
3 can I respond? I want to do that one first. I think it
4 would be better.

5 THE COURT: Okay. That's fine, the motion to prevent
6 the use of prior burglaries for enhancement.

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: Okay. Go forward.

9 THE DEFENDANT: Okay. Let me see.

10 All right. Now, do you have the motion? I assume
11 you have the motion.

12 THE COURT: Yes. She let me borrow hers. I've got
13 it.

14 THE DEFENDANT: Well, you can have mine.

15 MS. WEISS: Thank you.

16 THE DEFENDANT: I know it by heart anyway.

17 You can have this one.

18 MS. WEISS: Okay. Thank you.

19 THE DEFENDANT: Okay. With this -- with this
20 one -- on that particular motion, Your Honor, what I'm
21 seeking to do is this is something most like, I would
22 say, is a whole lot different than what has already been
23 presented to the Court as a whole.

24 In other cases that I've heard so far with the courts,
25 they always run into situations where the defendants have

1 always asked to have their -- the state and the defendant
2 stipulate to certain provisions being submitted.

3 With this one here, I'm not asking for any
4 stipulations. I'm not asking for the State to be
5 absolutely stopped from submitting the burglaries, but
6 what I'm asking is that, from what I understand, if my
7 understanding is correctly -- is correct, is that in the
8 State of South Carolina, they consider first degree
9 burglary to be almost classified as a capital offense.

10 If it's classified as a capital offense, what I'm
11 asking for them to do now instead of submitting
12 during -- I'm asking for -- and also, I'm reading where
13 it's a situation where -- on the first degree burglary
14 charge, you can have the jury decide the sentence, if I'm
15 correct about that.

16 I remember reading somewhere where the jury can
17 decide the sentence on an individual.

18 THE COURT: In our State, the jury actually is the
19 one who determines the conviction --

20 THE DEFENDANT: Uh-huh.

21 THE COURT: -- and then the judge decides the
22 sentence.

23 THE DEFENDANT: Okay. Because I -- like I say, I
24 mean, this is an additional case that I'm going to deal
25 with. They're saying that the jury -- that they -- they're

1 giving that same -- that same grounds for the jury to decide
2 on the first degree burglary.

3 THE COURT: In a South Carolina --

4 THE DEFENDANT: Yeah.

5 THE COURT: -- case? Okay.

6 THE DEFENDANT: Yeah. It was a South Carolina case
7 I remember reading like that. I wish I had the case. I
8 would -- I would -- I would sure like to, you know, submit
9 it to the court so you could see, but what I'm asking for,
10 really, in this situation here is for the first degree
11 burglary charge to be extreated (sic) in that same manner
12 where I'm not precluding the State from using the prior
13 burglary, but not decide whether -- whether someone is
14 like having a capital -- some type -- like a capital murder
15 case.

16 You got the guilt phase, and you got the sentencing
17 phase. If -- if -- if we got two different -- if we have
18 two different phases -- if the Court -- if I'm correct
19 at what I stated that the Court is allowing on a first
20 degree burglary charge for the jury to determine a
21 sentence, then what I'm asking is for the -- for the
22 State to be precluded from using that during the guilt
23 or innocent phase and just use it -- do it during
24 sentencing and not stopping -- I'm not stopping them from
25 doing it, but I'm saying that only when -- during the -- in

1 the phase of the trial, really going after the guilt or
2 the innocence, for them to stop using it then, but then
3 when it's time for sentencing when it has to go before
4 the jury for them to then bring it up.

5 THE COURT: Okay. Well, let me ask you this: Part
6 of when prior records and things of that nature come in --

7 THE DEFENDANT: Uh-huh.

8 THE COURT: -- it's, you know, basically based on
9 the type of offense. It's just our statute has governed
10 when and how and what type of prior records may come in,
11 as well.

12 THE DEFENDANT: Right, I understand that.

13 THE COURT: Okay. But you're indicating that during
14 the guilt phase, you suggest that it not come in at all?

15 THE DEFENDANT: Exactly.

16 THE COURT: Okay.

17 THE DEFENDANT: Exactly. That's why -- that's why
18 this is something different, because if -- like I
19 said -- and -- I'm looking at it in the sense where if
20 their -- if --

21 THE COURT: Well, let me ask you this: Do you -- well,
22 you don't have to make that decision now, but if you
23 know that you intend to testify, then they can
24 cross-examine you on many matters.

25 THE DEFENDANT: Oh, they -- oh, I understand that,

1 but now -- all of you also have to look at this fact, too,
2 that even if I do do this, it's like I testified --

3 THE COURT: Uh-huh.

4 THE DEFENDANT: -- but there is a limitation as to
5 how far certain convictions they can bring in on other
6 things.

7 THE COURT: There is.

8 THE DEFENDANT: Okay. So --

9 THE COURT: But then I'm referring to the same
10 statute and Rules of Evidence and --

11 THE DEFENDANT: Right, okay.

12 THE COURT: -- things that are governing all of
13 that.

14 THE DEFENDANT: All right. All right.

15 THE COURT: Whether you testify or not, okay.

16 Okay. But the -- but your whole argument on this
17 particular issue is that you want there to be a
18 limitation on what can come in on the guilt phase as opposed
19 to when you're being sentenced, if at all.

20 THE DEFENDANT: Yeah. Yes, because I'm -- like I
21 said, I'm basically basing this on the fact that
22 they -- like I said, this is -- if you --

23 MS. WEISS: Your Honor --

24 THE DEFENDANT: -- take --

25 MS. WEISS: -- I hate to stop.

1 THE COURT: Sure.

2 MS. WEISS: And I'm -- and I want to finish discussing
3 this. Investigator Protoski has to leave --

4 THE COURT: Okay. Sure.

5 MS. WEISS: -- in about five minutes. If we could
6 just discuss the warrant.

7 THE COURT: Okay.

8 MS. WEISS: Because I think that would be where he
9 would come in and be --

10 THE COURT: Okay. That would be helpful. You
11 can --

12 MS. WEISS: His motion to dismiss the warrant, if
13 we could just talk about that.

14 THE DEFENDANT: Okay. That's why I said he can
15 leave, because see, he has nothing to do with this. That
16 that -- that -- that case there --

17 THE COURT: Uh-huh.

18 THE DEFENDANT: -- that motion there is dealing with
19 the second degree burglary warrant. Not --

20 THE INVESTIGATOR: I can still discuss it, though.

21 MS. WEISS: He can discuss it because he was there
22 for the whole --

23 THE COURT: Let's go ahead and do that.

24 THE DEFENDANT: Okay.

25 THE COURT: So motion to dismiss the warrant,

1 particularly K-265884.

2 MS. WEISS: Yes, Your Honor.

3 THE COURT: And that warrant was for what?

4 THE DEFENDANT: Whoa, wait a minute. He's talking
5 about August 27th?

6 MS. WEISS: That was the September...

7 THE DEFENDANT: No, that was August -- that's
8 August 27th. That's what we -- that's what we said, the
9 August 27th.

10 MS. WEISS: The August 27th one.

11 THE DEFENDANT: Yeah. That's what -- that's why I
12 said particularly, we're not going to deal -- I wasn't
13 going to deal with that one yet.

14 MS. WEISS: So you're not going to deal -- you don't
15 want to deal with this one, the September 24th one, you
16 don't want to deal with?

17 THE DEFENDANT: No, just the one for August 27th.

18 THE COURT: Okay. And it was a warrant for what?

19 MS. WEISS: Burglary second degree?

20 THE DEFENDANT: Yes.

21 MS. WEISS: Do you have the same one I have?

22 THE COURT: It was August 27. What year?

23 MS. WEISS: 2007. Is that the same one? Okay.

24 THE DEFENDANT: Yeah.

25 MS. WEISS: All right. They were all different.

1 THE DEFENDANT: Yeah.

2 MS. WEISS: All right.

3 THE COURT: Okay. Yeah. I've got a different --

4 THE DEFENDANT: Excuse me.

5 THE COURT: -- one so you're not worried about the
6 K-265884, that one -- that warrant number?

7 THE DEFENDANT: No. No. No. No. I'm not worried
8 about that one yet.

9 THE COURT: Okay.

10 THE DEFENDANT: I'm not worried about --

11 THE COURT: So we're on K-265405?

12 THE DEFENDANT: Yes.

13 MS. WEISS: So are we denying that motion? We're
14 going to go ahead? Because I mean, it's filed, so I don't
15 want --

16 THE COURT: Yeah, that's right. She doesn't want you
17 to leave without that. Are you withdrawing this
18 motion?

19 THE DEFENDANT: Yeah. For now, yeah. At this time,
20 I'm going to withdraw that motion because like I said,
21 I would like to deal with the -- there is some information
22 I need to get, and I'm not -- I don't have all the
23 information I really need right now to deal with that.

24 THE COURT: Okay. All right. Then --

25 THE DEFENDANT: That's why I said he -- there's no

1 need for him -- because like I said, that's on that second
2 burglary warrant, that one there, I...

3 THE COURT: So now we're dealing with K-265405 and
4 K-265406?

5 THE DEFENDANT: Yes.

6 THE COURT: Okay. And then what are those warrants
7 for?

8 MS. WEISS: Burglary second and grand larceny, Your
9 Honor.

10 THE COURT: And then what are the dates of the
11 warrants? Are they both August 27, '07?

12 THE INVESTIGATOR: They're dated 7/12/07.

13 MS. WEISS: July 12th of '07.

14 THE COURT: Okay. All right. Okay.

15 THE DEFENDANT: Hold on.

16 (Pause).

17 Give me -- give me just one second, Your Honor,
18 please.

19 (Pause).

20 All right.

21 (Pause).

22 THE COURT: All right. I'm sorry?

23 THE DEFENDANT: Okay. Is it -- is it possible I
24 could ask two questions, Your Honor?

25 THE COURT: Asking questions -- direct the questions

1 to the Court.

2 THE DEFENDANT: Okay. Well, basically, I'm going
3 to -- it's like I said, I won't have -- I think the
4 question I want to find out is when -- when did the police
5 actually get back? When was this? I wonder if I got the
6 indictment. Give me a second.

7 This -- I want to know if I've got the date. Because
8 I don't see that in here yet.

9 I just -- I just -- said that would go through, you
10 know, all the way through, but I want to find out when
11 they actually got -- you know, when they sent them in.

12 THE COURT: Okay. I don't know that.

13 THE INVESTIGATOR: Your Honor, what we do is we have
14 a separate crime scene unit that comes out. So generally,
15 the officer who goes to the scene doesn't necessarily
16 process the prints.

17 THE COURT: Uh-huh.

18 THE INVESTIGATOR: The crime scene investigator
19 will process the prints, tag them into evidence. As time
20 permits, we have another officer who sits on the A.F.I.S.
21 machine and just runs fingerprints.

22 THE COURT: Okay.

23 THE INVESTIGATOR: They would get those fingerprints
24 as they come in, kind of in order, in order of importance,
25 and run them so it may take two or three days before they're

1 entered into the A.F.I.S.

2 The defendant did have prior arrests, so his
3 fingerprints were in A.F.I.S., and it was a positive
4 match.

5 The crime scene investigator would actually have to
6 testify as to their chain of custody on the print itself,
7 when they got it, when they entered it, and how they made
8 the match.

9 THE COURT: Okay.

10 THE INVESTIGATOR: But it would have been -- you know,
11 the report was taken on the 13th of July. The warrant
12 was signed on the 18th, so it was only about a five-day
13 turnaround on the return of the fingerprints because the
14 fingerprint was the basis of the warrant.

15 THE COURT: Okay. All right. So hopefully that
16 answers some of your questions.

17 THE DEFENDANT: Uh, honestly, no, no. I need more
18 than --

19 THE INVESTIGATOR: Actually, I do -- I have a crime
20 scene report from Rose -- Crime Scene Investigator, Rose,
21 where he did an investigative report on the 17th
22 showing that he entered the print into A.F.I.S., but that
23 he went to the house on the 12th, the day that this burglary
24 was reported, and lifted the print -- or lifted a number
25 of prints.

1 They made a match, it looks like, on the 17th.
2 That's just from what I show on the notes here. It may
3 be --

4 THE COURT: Okay.

5 THE INVESTIGATOR: A little bit different when he
6 testifies to it.

7 THE COURT: Okay. Now, what is your motion to
8 dismiss the warrants about?

9 THE DEFENDANT: You said the 17th?

10 THE INVESTIGATOR: It shows that he did his final
11 report on the 17th showing an A.F.I.S. match and did the
12 report on the 17th, but that would be up to him to say
13 differently.

14 THE DEFENDANT: Okay. My motion -- okay. Okay.
15 I'm going to deal with -- on page -- on page two of the
16 motions. You know, go to page two of the motions.

17 The motion for the warrant to be dismissed that the
18 police -- let me -- I'm looking at this. It's my argument
19 that the police failed to establish probable cause on
20 arrest warrants within 48 hours as required.

21 Now, the case that I'm using is a U.S. Supreme Court
22 decision. The name of the case is River Service McLaughlin
23 (sic). The cite is 500 U.S. 44.

24 In this case, the U.S. Supreme Court states that the
25 police, from the time of arrest -- the police had 48 hours

1 to establish probable cause on the warrant, and that
2 within a 48-hour period, the police must -- that the police
3 have -- had only the 48-hour period to establish probable
4 cause.

5 My argument is that the police failed to do this
6 within -- within a time limit. Now, he is stating that
7 this took place on the -- the crime took place on the -- let
8 me see...on the 12th --

9 THE INVESTIGATOR: Between the 12th and 13th.

10 THE DEFENDANT: On the 12th and 13th, and I -- really,
11 I would like to continue this motion, but I would like
12 to have the person that -- not this officer here, but the
13 person who actually did the test here.

14 This is -- I didn't know -- I didn't know this was
15 going to come up. This is -- this is something -- I'd
16 like to deal with this at another time if possible, Your
17 Honor.

18 This was something new I found out. Like I said,
19 I didn't have this, and I wish I would have known this
20 before then, but yes.

21 THE COURT: Okay. So you want to continue --

22 THE DEFENDANT: Yeah.

23 THE COURT: -- the motion for --

24 MS. WEISS: Your Honor --

25 THE COURT: -- dismissal of the warrants.

1 MS. WEISS: -- just for the record, I really don't
2 think that's necessary. I think we could probably
3 dispose of this primarily because I'm going forward to
4 the grand jury on the direct presentment.

5 THE COURT: Okay.

6 MS. WEISS: So the warrant for burglary second is
7 really moot at this point because I'm not using that
8 warrant as a basis for what I'm going forward with the
9 grand jury.

10 It's the same facts. Obviously, those can be
11 addressed at trial --

12 THE COURT: Okay.

13 MS. WEISS: -- but as far as the warrant, even if
14 you were to dismiss that warrant, I'm going forward on
15 a direct presentment anyway, because of the burglary first
16 so --

17 THE COURT: Okay.

18 MS. WEISS: -- probably that would be addressed -- if
19 he wanted to address it at trial, the dismissal of the
20 indictment or something along those lines, but as far as
21 the warrant, I don't know. It may be moot as far as
22 continuing that motion.

23 THE COURT: Okay.

24 MS. WEISS: It's also been bound over by -- at
25 prelims, as well. I know he has made a motion to appeal

1 the preliminary hearing, but that's just my suggestion
2 for the record.

3 THE COURT: Okay. Okay.

4 THE DEFENDANT: All right.

5 THE COURT: Okay. All right then. That takes care
6 of the warrant issues. The officer can be released.

7 MS. WEISS: The only other thing, he did make a
8 motion -- the defendant made a motion for a bill of
9 particulars.

10 I don't think that's an appropriate motion, but I
11 want to make sure that we're not going to need that because
12 that would be the -- one other thing that this
13 investigator -- I would need him for.

14 THE COURT: Okay.

15 MS. WEISS: And this is your motion from -- let's
16 see, October 15th motion for --

17 THE DEFENDANT: It's...

18 MS. WEISS: I don't know if you want to waive that
19 or what you want to, but I just don't -- I want to make
20 sure that I don't need my investigator.

21 THE COURT: Right.

22 THE DEFENDANT: Basically, all I'm asking for in
23 that motion is that they -- instead of using the "on or
24 about", they at least come to a reason -- come to a
25 reasonable conclusion as to when the crime actually took

1 place. That's what I'm asking for.

2 This is not a situation where the investigator is
3 particularly needed. This is just something where I'm
4 asking instead of using "on or about date" this is actually
5 to give me a date as to when exactly, is it the 18th or
6 28th?

7 THE COURT: So that you can use your alibi witness?

8 THE DEFENDANT: Yeah.

9 THE COURT: Okay. And that's not uncommon that they
10 would say on or about.

11 MS. WEISS: Correct, Your Honor.

12 THE COURT: But did you narrow it down so it's over
13 a two-day period?

14 THE INVESTIGATOR: Right. The one from K-265405,
15 you know, the report was taken, it says between July 12th
16 at 20:00 hours and July 13th at 00:15 hours --

17 THE COURT: Okay.

18 THE INVESTIGATOR: -- the burglary was committed.
19 So the warrant reflects the same during --

20 THE COURT: Okay.

21 THE INVESTIGATOR: Between those dates and times.

22 THE COURT: And it gives you enough time period to
23 still deal with your alibi as to where you were during
24 those certain hours.

25 I do find that's sufficient.

1 MS. WEISS: Your honor --

2 THE COURT: Okay. And then the last one is just the
3 enhancement issues?

4 THE DEFENDANT: This one is --

5 MS. WEISS: Yes, Your Honor. I think that covers
6 everything --

7 THE COURT: In that case.

8 MS. WEISS: Other than he did do the appeal from
9 magistrate court, which I -- I don't know if you want to
10 deal with that just to --

11 THE COURT: Okay.

12 MS. WEISS: -- I just want to cover everything he's
13 read --

14 THE COURT: Sure.

15 MS. WEISS: -- just to make sure. But you're --

16 THE INVESTIGATOR: I'm good?

17 MS. WEISS: You're good.

18 THE INVESTIGATOR: Okay.

19 MS. WEISS: You can go on.

20 THE COURT: This is an appeal from magistrate's court
21 as to what issues?

22 THE DEFENDANT: On the preliminary hearing.

23 THE COURT: And what is your argument with respect
24 to this?

25 THE DEFENDANT: Basically, my argument is basically

1 the same as the -- as it was in my August 27th motion.

2 THE COURT: Okay.

3 THE DEFENDANT: It seems like it's
4 presented -- presented in the -- same argument presented
5 in my appeal from the Court.

6 THE COURT: Okay. Are all your issues outlined
7 here? Because you just essentially are saying it's based
8 on the fact of failure to obtain the warrant within 48
9 hours.

10 THE DEFENDANT: Right, that's --

11 THE COURT: The warrants were based on hearsay
12 evidence, then binding over your position --

13 THE DEFENDANT: Uh-huh.

14 THE COURT: And denied by your confrontation in the
15 warrant that was sought.

16 THE DEFENDANT: Right.

17 THE COURT: What do you mean by evidence binding?

18 THE DEFENDANT: Well, basically -- okay. What I want
19 to say is that -- is when the magistrate made the decision,
20 I don't -- I believe -- well, my argument is that there
21 was not enough evidence basically, really, to bind the
22 case over to General Sessions because when he --
23 initially, when he bound the case over, it was just a basis
24 to where there was -- in my -- in my view nothing
25 really -- nothing really to -- nothing

1 established -- there was any cooperation whatsoever
2 between he -- unless -- that he submitted that he had
3 basically went off the arrest warrant.

4 And what I'm saying is that when he was testifying
5 during -- during the course of the preliminary hearing,
6 it was not -- in my -- in and what I saw, there was not
7 enough evidence to really bind that case over to General
8 Sessions, because it was just basically -- I mean, as I
9 look at it, as I said, my opinion was that the warrants
10 were based on hearsay, and that if the hearsay was used
11 as the basis to send the case over, there's not really
12 enough evidence for that.

13 THE COURT: Okay.

14 All right. Ms. Weiss?

15 MS. WEISS: Your Honor, I think that the preliminary
16 hearing, obviously -- I was not present, however, the
17 defendant was present in the preliminary hearing.

18 The officer presented the evidence he had, and a
19 magistrate -- or a municipal judge found that was
20 sufficient to bind it over. I think that was in the
21 discretion of the municipal judge.

22 Clearly, there was evidence to support what was in
23 the warrant, but I think the warrant itself puts out
24 that there is -- I mean, his fingerprint was found at the
25 scene.

1 The victim stated he had no reason to be at his
2 residence. I think that's sufficient probable cause at
3 that point to believe that he was a suspect in the
4 burglary second.

5 THE COURT: Okay. Okay.

6 MS. WEISS: Plus we have his confession, as well.

7 THE COURT: Okay. And that was part of that
8 preliminary hearing, as well?

9 MS. WEISS: Your Honor, I believe -- I believe it
10 was. I don't even know if that was part of the preliminary
11 hearing, to tell you the truth.

12 I know that the warrant itself was based on the fact
13 of the print, so we do have the prints, but I know we also
14 do the confession.

15 THE COURT: Okay.

16 MS. WEISS: So I'm guessing that was probably
17 presented, as well, but I was not there.

18 THE COURT: Okay. But the warrant was based on the
19 prints and then the testimony of the --

20 MS. WEISS: Officer.

21 THE COURT: -- or victim or officer.

22 MS. WEISS: Yes, Your Honor.

23 THE COURT: Okay. Okay. I'll find that it is
24 sufficient.

25 MS. WEISS: Thank you, Your Honor.

1 THE COURT: Okay. And then the last thing is the
2 prior burglaries for enhancement. You want to respond
3 to that argument?

4 MS. WEISS: Your Honor, I think a lot of this falls
5 into a trial issue. I think the burglaries
6 themselves -- what it sounds like is he's not actually
7 arguing now using the burglaries for enhancement.

8 He -- he's saying the burglaries are appropriate to
9 be used. He had six counts of burglary first and four
10 counts of burglary second just in South Carolina.

11 They were at one time at separate events, and then
12 he has the burglary -- the robbery and a burglary out of
13 Queens, New York. He has the burglary out of Queens, New
14 York, so he has at least two different sets. Then within
15 the one set out of South Carolina, he has multiple
16 offenses, at that time, in 1994.

17 I think there are clearly burglaries that can be
18 used to enhance. However, if he's talking about the
19 appropriate time to present those burglaries, I think that
20 really comes down to the trial, whether or not he's
21 going to stipulate to his two prior burglaries as far as
22 being used to enhance if he doesn't stipulate.

23 I think by law I have to enter them because they're
24 the basis of my indictment for burglary first. So I think
25 that's an issue to be addressed at trial, depending on

1 Mr. Williams' decision whether or not to stipulate.

2 If he stipulates that he has two prior burglaries
3 and doesn't testify, then he may be in a situation where
4 that's what's going to happen. It would be used in a
5 sentencing phase. However, I just -- I can't predict the
6 future of what's going to happen at trial.

7 As far as the -- you know, if he has -- if he wants
8 to challenge his burglaries, I think that is -- I think -- I
9 don't think that this is the appropriate time.

10 I don't -- I think he -- the appropriate time is when
11 he pled guilty to all of his burglaries, which he chose
12 to do freely and voluntarily both in South Carolina and
13 Queens, New York.

14 They are both guilty pleas, so I think -- you know,
15 from that -- from that standpoint, they're appropriate
16 to be used. He would have been given his rights at the
17 time that he pled guilty, and he knows that he committed
18 those burglaries so...

19 THE COURT: Okay.

20 MS. WEISS: I just think --

21 THE COURT: Go ahead.

22 MS. WEISS: He made some arguments about P.C.R.,
23 but I think that was the time to address them. They
24 stood -- withstood P.C.R. They have withstood their
25 hearings. I think they are appropriate burglary

1 convictions, and then as far as --

2 THE COURT: That's what I want to know.

3 A couple of things: One is there is nothing pending
4 at this moment in the sense of his having pled guilty or
5 been convicted of any of these issues at trial or that
6 there's a P.C.R. proceeding that's still pending from
7 which we're waiting a decision.

8 MS. WEISS: Not to the best of my knowledge.

9 THE COURT: Okay.

10 MS. WEISS: I mean, according to his motions, he
11 states he has been through this P.C.R. hearings.

12 THE COURT: Okay. So all of your burglary first,
13 all of appellate-type issues are -- have been dealt with.
14 These are the convictions that stand.

15 THE DEFENDANT: Yeah. These are the convictions
16 that are standing.

17 THE COURT: Okay.

18 THE DEFENDANT: Okay. But see -- all right. Now,
19 let me go further.

20 There's this -- she is right. I haven't -- I
21 haven't even brought that out. I was -- I was going to
22 deal with the first part, because like I said, there is
23 different part of that motion I want to deal with.

24 THE COURT: Uh-huh.

25 THE DEFENDANT: And the first one -- like I said --

1 THE COURT: Well --

2 THE DEFENDANT: Now --

3 THE COURT: -- she shortened it. Just so you'll
4 understand, she would be right in terms of the trial judge
5 will need to make that decision.

6 THE DEFENDANT: Okay.

7 THE COURT: I can't tell you how the trial judge is
8 going to handle that particular issue --

9 THE DEFENDANT: Uh-huh.

10 THE COURT: -- but at that appropriate time, you at
11 least know the conviction stands, and then that is
12 something that they're going to try to get before the
13 trial judge. So at the appropriate time, you and your
14 standby counsel at trial would have that as one of the
15 motions that you would make to the trial judge in terms
16 of how that information can be used against you.

17 THE DEFENDANT: Okay. Well, the reason why I'm
18 wanting to deal with this now, because there is no
19 stipulation.

20 The court, this court -- the state courts have
21 already decided there is -- that there is -- there is no
22 reason whatsoever for -- the State does not have to
23 agree to it, and there is no stipulation as to what can
24 be used as far as the prior burglaries go.

25 THE COURT: Right.

1 THE DEFENDANT: So let's -- like I said, that's going
2 to clarify that. There is -- there is case law that says
3 that that's not going to happen, so just -- just to deal
4 with that issue -- I'm saying that now I would like to
5 deal with the issue because see, it's based on a
6 situation that's going -- like I said, it's not -- it's
7 not about a trial.

8 It's a matter that has to be taken care of before
9 trial because they still contend no matter what's going
10 to happen, the evidence still -- it's still going to come
11 out because what all -- all I'm -- all I'm saying is you
12 can use the evidence.

13 THE COURT: Uh-huh.

14 THE DEFENDANT: You can -- if you want to use the
15 prior burglaries as a -- as a forum that you said you want
16 to use that to prove your case, that's fine.

17 I'm -- I'm -- I can't say that you -- I'm not going -- I'm
18 not trying to stipulate. I'm not trying to say you can't
19 use it. At this time I'm not saying you can't use it.

20 THE COURT: Okay.

21 THE DEFENDANT: Let's make that clear, I'm not --

22 THE COURT: You're not --

23 (Talking over each other.)

24 THE DEFENDANT: -- waiving that --

25 THE COURT: Right.

1 THE DEFENDANT: But what I am saying is that you -- I'm
2 saying -- that's all I'm asking her to do is you got
3 to -- this --

4 THE COURT: Guilt in a sentencing phase.

5 THE DEFENDANT: Right.

6 THE COURT: But at trial, the judge is going to have
7 to determine --

8 THE DEFENDANT: Okay.

9 THE COURT: -- how to handle that issue is what I'm
10 saying.

11 THE DEFENDANT: Now --

12 THE COURT: Because a -- that's -- that's not
13 typically how it's done. We have a -- death penalty
14 cases, and then that has a guilt and sentencing phase,
15 but just generally speaking, for the other crimes, it's
16 all -- the jury hears what the trial judge is going to
17 allow into evidence, and then the trial judge, if found
18 convicted, the trial judge would do the sentencing.

19 THE DEFENDANT: Uh-huh. Now, I have the -- her
20 point of view is that -- I believe you said something to
21 the effect of that -- even though I didn't have the P.C.R.
22 hearing and all that stuff like that, that there's issues
23 of --

24 THE COURT: In other words, there's nothing out there
25 left to be overturned. If the appeals are done, there

1 is nothing left to be overturned so that the burglary first
2 and your other record --

3 THE DEFENDANT: Uh-huh.

4 THE COURT: All of that is -- your record is what
5 your record is. There is nothing left to be overturned
6 because everything -- the processes are through; is that
7 correct?

8 THE DEFENDANT: The process are through, yeah, yeah.

9 THE COURT: That's what I meant.

10 THE DEFENDANT: Yeah.

11 THE COURT: So the record is as it stands. You're
12 not challenging the record. It's just -- you're
13 challenging at what point it can be presented and how it
14 can be presented.

15 THE DEFENDANT: Right. Like I said -- I mean,
16 because there is still the question -- like I said,
17 unfortunately, right now where I am at, I can't really
18 get to the library like I want to for a couple of days.

19 Just to inform the Court and the Solicitor,
20 according to -- from what I can remember reading -- like
21 I said, I could be wrong. I'm not saying I'm wrong -- I'm
22 not saying I'm right about this, but if you intend to use
23 the charges that you say you want to use, you have now
24 allowed me to open the door because as -- at my point -- at
25 one point in time, I'll make it -- I'll make it clear.

1 Those charges of prior convictions -- if the
2 individual, accordingly, challenges those prior
3 convictions at any time that the State intends to use
4 them --

5 THE COURT: Uh-huh.

6 THE DEFENDANT: -- if the individual makes the claim
7 that those prior charges are unconstitutional, there
8 has to be some type of avenue. If you intend to use
9 charges -- like I said, even though --

10 THE COURT: And that's why I asked you --

11 THE DEFENDANT: Yeah.

12 THE COURT: -- are you through with your appellate
13 procedures --

14 THE DEFENDANT: I'm through with --

15 THE COURT: -- so how can you be claiming --

16 THE DEFENDANT: Oh, okay. Okay. That's --

17 THE COURT: So how can you be claiming they are
18 unconstitutional if you're through with all of your
19 appellate process on those convictions?

20 THE DEFENDANT: I need to make this -- I'm still not
21 making this clear. I want to --

22 THE COURT: There was an opportunity before now to
23 challenge it is what the State is saying.

24 THE DEFENDANT: An opportunity --

25 THE COURT: Before now to challenge the actual

1 convictions.

2 THE DEFENDANT: Okay. That -- that's what you're
3 saying.

4 THE COURT: Yeah, that's what I meant.

5 THE DEFENDANT: All right. All right.

6 THE COURT: If that whole appellate process is over
7 with respect to challenging the actual conviction, then
8 you all are in agreement as the record is as it is, what
9 you are now challenging is how, when, and if the trial
10 court judge would allow them in for purposes of her using
11 them for enhancement.

12 THE DEFENDANT: Okay. I -- okay. I understand what
13 your point is but -- okay. The point I'm trying to make
14 is -- I hope I'm making it clear is that -- um. Let me
15 see here. I'm trying to remember where I read this.

16 I'm going based on -- based on they were some --

17 THE COURT: Sure.

18 THE DEFENDANT: -- things I read. So like I said,
19 I could be wrong. Like I said, maybe the things have
20 changed.

21 THE COURT: Uh-huh.

22 THE DEFENDANT: Okay. Taking that into
23 consideration, but in considering the fact that for the
24 sentence enhancement purposes of using the prior
25 conviction, what I'm saying is that if the State -- I

1 believe the statute gives me the right to challenge it
2 then if the State is -- is intending to use those same
3 convictions as a -- like I said --

4 THE COURT: Oh, yeah, yeah, yeah. There is no
5 doubt that you are challenging their use of them.

6 THE DEFENDANT: Uh-huh.

7 THE COURT: You're just saying that you agree that
8 they still exist on your record --

9 THE DEFENDANT: Right, right.

10 THE COURT: -- and that the appellate process is to
11 challenge them by constitutional issues, evidentiary
12 issues --

13 THE DEFENDANT: Uh-huh.

14 THE COURT: -- for the fact that they -- you know,
15 the elements of the crime, just whatever, the trials
16 themselves.

17 That -- all of those processes are over, and
18 they're staying on your record. Right now you're just
19 challenging their use of them at trial for purposes of
20 enhancement.

21 THE DEFENDANT: Right, okay.

22 THE COURT: Okay. That particular proceeding would
23 occur later in front of the trial judge. You need to
24 prepare your case as if, though, the State would win.

25 I'm not saying that they will, but you need to just

1 assume that those may come in and be preparing your case
2 accordingly because you always want to prepare it for the
3 worst, obviously.

4 THE DEFENDANT: Yes.

5 THE COURT: Okay. But the trial judge would be the
6 appropriate judge to determine if and when and how those
7 would come in. So you are -- you are not waiving that
8 argument. It's just -- I'm holding it in abeyance and
9 continuing that because that's for a later day.

10 THE DEFENDANT: All right. Okay.

11 THE COURT: Yeah. Okay. So does that take care of
12 your business with the Court for today?

13 THE DEFENDANT: Yes, it does.

14 THE COURT: Okay. And what --

15 THE DEFENDANT: I'd --

16 THE COURT: -- I'd like then, Ms. Weiss --

17 MS. WEISS: Yes, Your Honor.

18 THE COURT: -- we will work with a -- an order for --

19 MS. WEISS: Yes, Your Honor. I've started --

20 THE COURT: -- all the things that we've done --

21 MS. WEISS: I've started writing it down.

22 THE COURT: Okay.

23 MS. WEISS: I just need to --

24 THE COURT: Okay. And the only thing I haven't
25 done is the investigation piece. I just want to look into

1 that further --

2 MS. WEISS: Yes, Your Honor.

3 THE COURT: -- about how I would handle in terms of
4 giving a budget. You know, all of that in there. Okay.

5 MS. WEISS: Thank you.

6 THE DEFENDANT: Excuse me, Your Honor. If
7 possible --

8 THE COURT: Yes.

9 THE DEFENDANT: -- I have an order -- I have an order
10 for the investigator's services, if you would like to take
11 a look at it.

12 THE COURT: Okay. That's fine. You can hand that
13 up. Okay. And like I said, I will look at this one
14 further, but in the meantime, we've dealt with all the
15 other motions.

16 THE DEFENDANT: Okay.

17 THE COURT: But I will look at this as you giving
18 me a proposed order on that issue.

19 THE DEFENDANT: All right.

20 MS. WEISS: I'm going to try to just clean this up,
21 and I'll attach the motions.

22 THE COURT: Okay. That would be great. So that way
23 I can look at those again. Okay.

24 MS. WEISS: Thank you.

25 THE COURT: All right.

1 MS. WEISS: And then I'll just go ahead and --

2 THE COURT: I'll go ahead let you attach this
3 proposed order. Okay. All right. Thank you.

4 MS. WEISS: Thank you.

5 THE COURT: All right. Thank you, Mr. Williams.

6 THE DEFENDANT: Thank you.

7 THE COURT: Okay.

8 MS. WEISS: Thank you, Your Honor.

9 THE COURT: Take care. Okay.

10 (Whereupon, the proceedings were concluded.)

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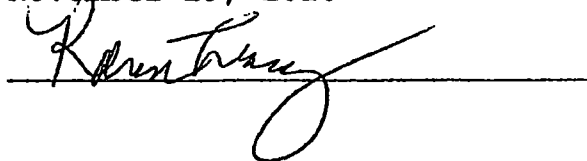
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CERTIFICATE OF REPORTER:

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

I, Karen Tracy, Official Court Reporter for the 5th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the General Sessions for Richland County, South Carolina, on the 7th and 14th days January, 2008.

November 29, 2010

A handwritten signature in cursive script, appearing to read "Karen Tracy", is written over a horizontal line.

Karen Tracy, Court Reporter

My Commission Expires: 04/01/14

STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
COUNTY OF RICHLAND) 2008-GS-40-13175, 06965

State of South Carolina)
)
 vs.) (Trial)
)
 Darrell O. Williams,)
)
 Defendant.)

September 23 - 24, 2008
Columbia, South Carolina

BEFORE:

THE HONORABLE J. MICHELLE CHILDS, JUDGE; and a jury

APPEARANCES:

HEATHER WEISS, ASSISTANT SOLICITOR
DOLLY J. GARFIELD, ASSISTANT SOLICITOR
Attorneys for the State

DARRELL O. WILLIAMS, PRO SE DEFENDANT
HANS PAULING, ATTORNEY AT LAW, ADVISORY COUNSEL
Attorney for the Defendant

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Official Circuit Court Reporter
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Tuesday, September 23, 2008

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18 identification.)

19 (WHEREUPON, State's Exhibit No. 24 is marked for
20 identification.)

21 (WHEREUPON, State's Exhibit No. 25 is marked for
22 identification.)

23 **THE COURT:** Okay. Good morning again. We would
24 like to resume with the trial of The State vs. Darryl
25 O. Williams. We are going to proceed with jury

1 selection unless you all let me know that there are
2 any other issues the Court needs to take up.

3 **MS. GARFIELD:** Your Honor, I believe Mr.
4 Williams still had a pre-trial matter that he wanted
5 to bring up.

6 **THE COURT:** That's correct. Thank you so much.

7 **MR. WILLIAMS:** Respectfully, what I'd like to do
8 if possible, if Your Honor has no problem with it, if
9 we could just go ahead with the jury selection, if we
10 can just pick the jury, I'll put that off. It is not
11 that important to bring that up right now. I just
12 want to deal with jury selection.

13 **THE COURT:** Okay. It's not anything that's
14 going to affect openings or anything?

15 **MR. WILLIAMS:** No, no. No, no. No, Your Honor.

16 **THE COURT:** We can do that and then give them a
17 break and then proceed along that line. And I've
18 already gone over the voir dire questions. I'll look
19 back at those. And then, Mr. Williams, you've been
20 given the State's potential witness list?

21 **MR. WILLIAMS:** Yes, I have.

22 **THE COURT:** Do you have any witnesses to add?
23 Because I reminded you yesterday that while up to the
24 trial you can be secretive about your strategies and
25 who you might call, but for purposes of jury

1 selection the State gets to know who the witnesses
2 are because we have to ask the potential jury pool
3 about them. You are not obligated to put up a
4 defense or call any other witnesses, but everybody
5 has to know, including the Court, so that I can
6 question the jurors about the witnesses.

7 **MR. WILLIAMS:** No, Your Honor. I will have no
8 witnesses to be called.

9 **THE COURT:** Nothing other than maybe what they
10 have?

11 **MR. WILLIAMS:** No. Exactly.

12 **THE COURT:** Okay.

13 **MS. GARFIELD:** Your Honor, if I can just bring
14 this to your attention. I told the defense we'd have
15 a certified conviction of grand larceny from
16 Lexington County. I am providing to the defense at
17 this time a copy of that certified conviction. And I
18 believe Ms. Weiss brought it to your attention. The
19 witness list should reflect petit larceny as opposed
20 to grand larceny.

21 **THE COURT:** Okay. Anything else? Okay. Madam
22 Clerk, are we ready to receive the jurors?

23 **THE CLERK:** Yes, Your Honor.

24 **THE COURT:** Okay. Thank you.

25 (Pause)

1 **THE COURT:** And let the record reflect Mr. Hans
2 Pauling will be shadow counsel for Mr. Williams
3 throughout today. Is that correct?

4 **MR. PAULING:** Yeah. I should be available
5 tomorrow as well, Your Honor. I mean, I made sure I
6 was.

7 **THE COURT:** Okay. I appreciate that. And have
8 you had a chance to speak with Mr. Williams to catch
9 up to speed about yesterday's proceedings?

10 **MR. PAULING:** Yes, ma'am.

11 **THE COURT:** Okay. Thanks.

12 (Pause)

13 **MS. GARFIELD:** Your Honor.

14 **THE COURT:** Yes.

15 **MS. GARFIELD:** Just to clarify for Mr. Williams,
16 the State has five strikes and the defense has ten.

17 **THE COURT:** Yes.

18 **MS. GARFIELD:** Thank you.

19 **THE COURT:** Mr. Williams, while they're coming
20 up, I will introduce myself to the jury panel, make
21 them understand today's proceedings, and then we will
22 go through the voir dire asking them certain
23 questions. At the conclusion of me, during the voir
24 dire I will ask both counsel, yourself, you
25 representing yourself and the State, are there any

1 additional questions? And then I'll determine if
2 those questions are appropriate and then I will ask
3 them to the jurors.

4 At the conclusion of those proceedings, that's
5 when we'll take a short break or so. And then after
6 that we either go ahead with the selection or deal
7 with your motions. You have the potential strike
8 sheet?

9 **MR. WILLIAMS:** Yes, ma'am.

10 **THE COURT:** The jurors are not aware that this
11 is in your hands. So of course you want to listen to
12 the answers more particularly from the jurors who are
13 actually potentially going to be jurors for your
14 case. And then you all will have strikes. Yours
15 will be ten and the State's will be five.

16 **MR. WILLIAMS:** Okay.

17 **THE COURT:** Okay.

18 (Pause)

19 **THE COURT:** Good morning, ladies and gentlemen
20 of the jury panel. My name is Michelle Childs and
21 I'm a Circuit Court judge here in Richland County,
22 considered an at large judge. So I'm not a resident
23 judge. I generally travel the state. But now I'm
24 serving as chief judge of General Sessions.

25 I want to thank you again for your jury service.

1 And I'm sure as you were qualified for your service
2 yesterday that you were thanked lots of times. And
3 you'll hear me say that a lot, because we really do
4 appreciate your service. It makes a difference in
5 our system, one of the best systems in the world with
6 respect to jury service. And it's one of the highest
7 callings to public service. So we certainly
8 appreciate your time. We know that it interrupts
9 your personal and professional lives, but it is very,
10 very much appreciated.

11 We are going to proceed with a trial in criminal
12 court which is General Sessions court. And it is the
13 trial of The State vs. Darryl Williams for
14 indictments for burglary first and petit larceny.
15 You will hear me say this again, but the indictments
16 are just the manner and method by which a case is
17 brought to court. It's just a notice document to let
18 a potential defendant know what he is being called
19 upon to respond to in court.

20 The defendant has chosen to plead not guilty to
21 these offenses, which is his absolute right to do so;
22 and then further has chosen to exercise his
23 Constitutional right to a jury trial. So the
24 defendant will have a trial and we are going to
25 proceed with jury selection for our purposes for this

1 particular case.

2 Now, Mr. Darrell Williams has decided to
3 represent himself pro se, which means in his own
4 individual capacity. He will serve as his own
5 attorney in this case. He is qualified to do so.
6 The Court has found him competent, that he has
7 intelligently and voluntarily waived his right to
8 actually have counsel, because he could have had one
9 appointed for him.

10 Standing next to Mr. Williams or sitting next to
11 Mr. Williams is Mr. Hans Pauling. And I'll have him
12 stand up in a moment. But he is serving as his
13 shadow counsel essentially. Mr. Pauling is a
14 licensed attorney in South Carolina who does a lot of
15 criminal court work, and he will serve to advise Mr.
16 Williams along the way with the proceedings.

17 So I don't want you to in any way hold that
18 against Mr. Williams, because that's his right to
19 have counsel, but it's also his right to
20 intelligently, voluntarily, and as long as the Court
21 finds him competent, to proceed pro se. That's his
22 absolute right to do so.

23 We are going to begin with the jury selection in
24 this case. And I'm going to have the clerk swear you
25 in and then we'll give you some further instructions.

1 **THE CLERK:** Ladies and gentlemen of the jury
2 panel, if you'll please stand and raise your right
3 hands to be sworn.

4 (Whereupon, the jury is sworn).

5 **THE COURT:** Okay. Ladies and gentlemen of the
6 jury, as I ask you certain questions, and these
7 questions will be more related to the trial of this
8 case and the offenses that are alleged herein, I'm
9 going to ask you to stand at your seat and then state
10 your full name as well as your juror number so that
11 we can record that with our court reporter.

12 I will advise you in advance that some of the
13 questions may tend to be embarrassing. You may not
14 wish to speak about those matters in front of your
15 fellow jurors. And if that be the case, then I'm
16 going to ask you to just raise your hand kindly and
17 then proceed to either aisle and you'll have an
18 opportunity to come up and speak with me and also the
19 counsel for the various cases with the court reporter
20 who has to take all of this down.

21 So it will be out of the earshot of your fellow
22 jurors. But it is information that we need because
23 we want you to be very forthcoming with all
24 information so that they can have the best
25 information upon which to make their decisions to

1 select you.

2 Okay. I will now proceed. First of all, let's
3 introduce Mr. Darrell Williams. If you would please
4 stand and face the jurors. Mr. Williams is the
5 defendant on trial. And do any of you know him by
6 blood, marriage, are related to him or have any close
7 personal or social relationship? And that would
8 include you or any members of your immediate family
9 or personal close friends. If so, please stand.
10 Okay. Thank you, Mr. Williams.

11 Then I'll next proceed to Mr. Hans Pauling who I
12 indicated will be his shadow counsel or his advisory
13 counsel. Have any of you ever been represented by
14 Mr. Pauling as well as been related to him by blood
15 or marriage or have a close personal or social
16 relationship with Mr. Pauling? If so, please stand.

17 And the persons who will be representing the
18 Richland County Solicitor's Office bringing this
19 matter on behalf of the State are Heather Weiss and
20 Dolly Garfield. Does anyone know either of these
21 attorneys? Have they ever been a victim of the --
22 and indicated by the Richland County Solicitor's
23 Office and represented by these attorneys
24 particularly or anyone in the entire Richland County
25 Solicitor's Office; either you have been a victim or

1 your family, both close personal friends has had some.
2 business with the Richland County Sheriff's Office.
3 If so, please stand.

4 Okay. Thank you all. And then now I will go
5 down the potential witnesses that may be called in
6 this case. Listen very closely to their names. To
7 the extent that any of those persons are here and
8 available in the courtroom, then I would ask them to
9 stand.

10 Investigator Paul Mead with the Columbia Police
11 Department. And the same questions will apply with
12 respect to all witnesses; whether or not you have a
13 close personal or social relationship with the
14 witnesses or you're related by blood or marriage.
15 And that would include you, close members of your
16 family or even any close personal friends.

17 Investigator Trevor Petosky, Columbia Police
18 Department. Officer Walter Rose, Columbia Police
19 Department I.D. technician. Peter Sederberg.
20 Officer Robert --

21 **JUROR:** Excuse me.

22 **THE COURT:** I apologize. Juror name and number?

23 **JUROR:** I am juror 56.

24 **THE COURT:** And your name?

25 **JUROR:** Sarah Cross.

1 **THE COURT:** Okay.

2 **JUROR:** My father knows him. And my brother and
3 his son were friends when they were little.

4 **THE COURT:** Okay. Okay. And would that affect
5 your ability to be a fair and impartial juror in this
6 case?

7 **JUROR:** No, ma'am.

8 **THE COURT:** In other words, being able to listen
9 to all the testimony and evidence in this particular
10 case and not hold anything against either party as a
11 result of that relationship?

12 **JUROR:** No, ma'am.

13 **THE COURT:** It would affect your ability?

14 **JUROR:** No. It would not.

15 **THE COURT:** Would not. Okay. Thank you. We'll
16 allow you to remain with us. Okay. Officer Robert
17 Calby, Columbia Police Department. Officer Deirdre
18 Priester, Columbia Police Department. Jimmy Lee
19 Bowman. Joli Rish, Alvin S. Glenn Detention -- Joli
20 Rish. Excuse me.

21 **MS. GARFIELD:** Your Honor, it's Joe-lee
22 (phonetic).

23 **THE COURT:** Joli Rish. That's correct. I
24 wasn't looking at it right and I didn't know Joli.
25 Okay. Records custodian of the Marlboro County Clerk

1 of Court.

2 Okay. And just in case, as attorneys may have
3 conflicts, but Mr. Pauling, Hans Pauling has
4 indicated that he would be able to stay with us
5 throughout the day and we hope throughout the trial.
6 But: Other attorneys who have also served as shadow
7 counsel or advisory counsel for Mr. Williams include
8 Josh Kendrick; or who also may potentially serve,
9 John Delgado. And of course I've introduced you to
10 Mr. Hans Pauling. Others are Jason Perry and Brad
11 Kirkland.

12 Does anyone have any relationships with them or
13 have been represented by them or their immediate
14 families, friends with respect to those attorneys?
15 Yes. Juror name and number.

16 **JUROR:** I have a family member. Mine was
17 represented by an attorney at John Delgado's office.

18 **THE COURT:** What's your name?

19 **JUROR:** Rosamond McLeod, juror 171. I believe
20 the charges were dismissed, but they did meet with
21 someone in his office.

22 **THE COURT:** Okay. And would that affect your
23 ability to serve as a fair and impartial juror in
24 this case?

25 **JUROR:** No, ma'am.

1 **THE COURT:** Okay. Thank you for that
2 information. Yes, ma'am.

3 **JUROR:** Ma'am, I just remember -- I'm sorry.
4 Carolyn Scott, juror 219. I was represented by the
5 Solicitor's Office maybe more than 15 years ago for a
6 break-in in my home.

7 **THE COURT:** Okay. All right. Would that affect
8 your ability to proceed as a fair and impartial juror
9 in this case?

10 **JUROR:** I think not.

11 **THE COURT:** Okay. Thank you very much. Okay.
12 And because Mr. Williams was neither present
13 yesterday as you went through certain jury
14 qualifications, I'm going to ask that we get a little
15 bit more information from you that we normally would
16 have already had if we had had everybody being able
17 to be present yesterday.

18 So I'm going to ask that each juror stand up and
19 state their name and juror number and just tell me
20 the type of work that you do and how long you've been
21 employed in that particular type of work. And I'll
22 start over here on my left.

23 **JUROR:** My name is Andrew Atkins. I'm juror
24 number 14. I'm an attorney with Cheryl Ruth Milner,
25 and I've been there for about a year and a half.

1 **THE COURT:** Okay. Thank you.

2 **JUROR:** My name is Anthony Artis. I'm juror
3 number 11. I'm an employee of the Department of
4 Veterans Affairs regional office in Columbia. I've
5 been there about four years.

6 **JUROR:** Cynthia Alford, juror number 3. I work
7 for Regions Bank. I have been there about six and a
8 half years and in banking a total of about 15.

9 **JUROR:** Michelle Chin, number 47. I'm
10 self-employed. I do interior design. I've been in
11 business for eight years.

12 **JUROR:** David Ellison, juror number 76. And I'm
13 a real estate broker, and I've been one for about a
14 year and a half.

15 **JUROR:** Shanett Cole. I'm juror number 49. And
16 I work for Palmetto Health and for about 17 years
17 moved from collections into the information
18 technology department.

19 **JUROR:** Porsche Henson, juror 114. I work for
20 South Carolina Department of Social Services. I have
21 been there for a little over a year.

22 **JUROR:** Sheila English, juror number 118. I
23 work for the CM Tucker Nursing Care Center, and I've
24 been employed there for ten years.

25 **JUROR:** Number 125. My name is Frederick

1 Jacobs. I am the owner of Jacobs Barbershop, 7217
2 Parklane. I have been a barber for 29 years.

3 **JUROR:** Juror 82, David Ferguson, United States
4 Postal Service in the county, five years.

5 **JUROR:** Juror 12, Teresa Asbury. I've been a
6 manager of a UPS store for one year.

7 **JUROR:** Juror number 69, Laura Draper. I work
8 for the Richland County School District Two, been
9 there about four years.

10 **JUROR:** Clare McKay, juror number 168. I am a
11 fifth grade teacher at Irmo elementary, and I've been
12 teaching for 14 years.

13 **JUROR:** Juror 160, Marilyn Maness, retired
14 educator.

15 **JUROR:** I'm Shannon Livengood, number 151. I
16 work for the Richland County Public Library as a
17 graphic designer for about a year and a half now.

18 **JUROR:** I'm Nancy LaPointe. I have been
19 teaching for 14 years, the past two at Heathwood Hall
20 Episcopal School. I'm juror 149.

21 **JUROR:** 138, Jerome Joyner. I work at Harsco
22 Track Technologies. I've been there about two years.

23 **COURT REPORTER:** I didn't hear him.

24 **THE COURT:** State it again, please.

25 **COURT REPORTER:** Where you work.

1 **JUROR:** Harsco Track technologies.

2 **COURT REPORTER:** Thank you.

3 **JUROR:** Juror 116, Brenda Hickman. I work for
4 Riley Auto Parts. I've been there for almost two
5 years.

6 **JUROR:** I'm juror 115, Karen Herring. I'm a
7 teacher. I've taught for 24 years, 25 years, the
8 last 18 at the Department of Juvenile Justice.

9 **JUROR:** Karen Jefferson, 129. I'm a registered
10 nurse at Providence Hospital. I've been there two
11 years.

12 **JUROR:** Hilda Dinkins, juror 67. I'm a
13 certified nursing assistant at Heartland of
14 Lexington. I've been there seven years.

15 **JUROR:** I'm Sarah Cross, number 56. I'm a
16 social worker at Southern Care Hospice. I've been
17 there almost two months.

18 **JUROR:** Lynn Fralick, juror 88. I work at
19 Spirit Telecom. I've been there ten years.

20 **JUROR:** Trevor Boyles, juror 29. I'm a delivery
21 driver for Sears. I've been there two years.

22 **JUROR:** Gwen McLean, juror 170. I've worked in
23 health care for 13 years.

24 **JUROR:** I'm Ashley Morris, 182. I work at a dry
25 cleaners.

1 **JUROR:** Melanie Murray, number 185. I am the
2 owner of Murray's Lawn Care and Landscape Design,
3 self-employed. I've been doing that for seven years.

4 **JUROR:** I'm Kathy Lott, juror 155. I am a
5 courtesy coach at Dutch Fork High School.

6 **JUROR:** I'm Rosamond McLeod, juror 171. I'm a
7 district sales manager for Abbott Laboratories. And
8 I've been in pharmaceutical sales for 13 years.

9 **JUROR:** Sandy Rawlings, juror 214. And I work
10 with Richland County Treasury Department, managing
11 the tax processing department.

12 **JUROR:** Michelle Horner, number 203. I work for
13 Alltel. I've been there 12 years.

14 **JUROR:** Stacey Philgreen. I've been at
15 Portfolio Art Gallery for three months. And I'm
16 number 198.

17 **JUROR:** Kenneth Thomas, juror number 244. I
18 work at Southern Wine and Spirits. I've been there
19 three years.

20 **JUROR:** Larry Williams, number 258. I've worked
21 at Office Depot for four years.

22 **JUROR:** Bob Medlock, number 172. I have been in
23 marketing and public relations my entire life and
24 currently am unemployed.

25 **JUROR:** Christopher Stevens, number 239.

1 Windows development supervisor at the Seibels Bruce
2 Group. I've been there about a month. I spent 14
3 years in IT as a software developer.

4 **JUROR:** I'm Demetrica Smith, number 267, a
5 manager with Smart Trust High Loans. I've been there
6 a year and a half.

7 **JUROR:** Juror number 195, Brenda Percy. I'm
8 currently employed by Washington Street United
9 Methodist Church in the child care center. I have
10 been there 11 years but in child care for 24.

11 **JUROR:** Juror number 237. I'm Patricia Stegura.
12 I'm a stay-at-home mom, a former teacher. And my
13 kids are nine and seven.

14 **JUROR:** Number 219, Carolyn Scott, licensed
15 social worker about 17 years. I'm currently employed
16 with senior resources, local Richland County Council
17 on Aging for ten years.

18 **JUROR:** Minge Wiseman, juror 263. And I've been
19 in the child rearing business for 25 years.

20 **JUROR:** Pete Uszkay, 250. I have been an IT
21 professional for 25 years and medical professor for
22 15 years, currently retired, happily.

23 **JUROR:** Malendia Taylor, juror 242. I'm an
24 assistant principal in Richland County School
25 District Two. I've been there for 15 years and in

1 education for 8.

2 **JUROR:** I'm Vernon E. Trapp. I work for MB
3 Kahn. I've been with MB Kahn for over 20 years. I'm
4 a foreman.

5 **JUROR:** Yasmeen Scott, juror 223. I work for
6 House Real Estate Services in property management and
7 I've been doing that for the last three years.

8 **THE COURT:** Okay. I believe that is everyone.
9 Thank you all for accommodating with us that
10 situation. With respect to other questions; do you
11 or do any of your friends or family members, do they
12 work in law enforcement? If so, please stand. Juror
13 name and number.

14 **JUROR:** Lynn Fralick, 88. My husband, Lawrence,
15 works for SLED.

16 **THE COURT:** And would that affect your ability
17 to proceed as a fair and impartial juror in this
18 case?

19 **JUROR:** No, ma'am, it would not.

20 **THE COURT:** Okay. Thank you.

21 **JUROR:** Hilda Dinkins, number 67. My nephew
22 works for the Columbia Police Department.

23 **THE COURT:** Okay. And you understand that there
24 may be some witnesses testifying from the Columbia
25 Police Department. Would that affect your ability to

1 be a fair and impartial juror in this case?

2 **JUROR:** No, it won't.

3 **THE COURT:** Thank you.

4 **JUROR:** Shannon Livengood, 151. I have two step
5 brothers that are policemen in Springfield, Illinois.

6 **THE COURT:** Would that affect your ability to be
7 a fair and impartial juror in this case?

8 **JUROR:** No.

9 **THE COURT:** Okay. Yes.

10 **JUROR:** Melanie Murray, juror 185. My mother
11 works for Richland County.

12 **THE COURT:** And would that affect your ability
13 to be a fair and impartial juror in this case?

14 **JUROR:** No.

15 **THE COURT:** Okay.

16 **JUROR:** Yasmeen Scott, juror 223.

17 Brother-in-law, U.S. Field Marshal.

18 **THE COURT:** Would that affect your ability to be
19 a fair and impartial juror in this case?

20 **JUROR:** No.

21 **THE COURT:** Okay. Thank you. I indicated to
22 you earlier that the charges that you all would be
23 hearing are dealing with burglary first and petit
24 larceny. Has any member of the jury panel formed or
25 expressed an opinion about any matter in this case,

1 particularly the subject matter of those offenses?

2 If so, please stand.

3 Is there any member of the jury panel aware of
4 any bias or prejudice toward either the State or the
5 the defendant in this case? If so, please stand.

6 Was there any member of the jury panel that was
7 a member of the Grand Jury which issued the
8 indictment in this case? If so, please stand.

9 Is there any member of the jury who is a member
10 of, contributor to, or a board member of any agency
11 whose mission it is to have law enforcement rights?
12 And that could be MADD, Mothers Against Drunk
13 Drivers, SADD, CAVE which is Citizens Against Violent
14 Crime, just any member regarding any law enforcement
15 group? If so, please stand.

16 Has any member of the jury heard anything about
17 this case, whether it be in public media, radio,
18 television or written media? If so, please stand.

19 Okay. And then the State, if you would look at
20 defendant's proposed voir dire questions number 7 and
21 8, I believe you all are okay with those, but I just
22 want to make sure.

23 (Pause)

24 **MS. GARFIELD:** We don't have an issue, Judge.

25 **THE COURT:** Okay. Do you have any ill will

1 towards the defendant because he has been charged in
2 this case?. If so, please stand.

3 And as you sit there now, do you have any
4 feelings that this defendant is guilty or he would
5 not have been indicted in this case?. If so, please
6 stand.

7 Okay. And these are now going into some of the
8 questions that might be a little more personal. And
9 I'm happy for you to stand at your seat and then
10 exercise your right to go down toward the podium, and
11 we'll hear from you there.

12 Have you ever been the victim of a burglary,
13 petit larceny or other crime in which something was
14 potentially taken from you? If so, please stand.
15 Okay. And I'm going to ask you not to speak from
16 your seats. I would like to hear this information
17 out of the earshot of the rest of the jurors. For
18 our purposes, go down to the podium. And then Mr.
19 Williams as well as the State, you all can come over
20 here with me by the court reporter.

21 (Whereupon, the following side bar conferences
22 are had)

23 **THE COURT:** Okay. And just be mindful of the
24 fact that you'll need to speak toward the court
25 reporter. But your juror name and number?

1 **JUROR:** Number 12, Terry Asbury.

2 **THE COURT:** What's your situation?

3 **JUROR:** Once someone broke in my house, stole my
4 purse. And two other times people have broken in my
5 garage and stolen a lot of things out of the garage.

6 **THE COURT:** Okay.

7 **JUROR:** And that's it.

8 **THE COURT:** Okay. And would you be able to be a
9 fair and impartial juror in this case?

10 **JUROR:** Sure.

11 **THE COURT:** That means you would be able to
12 listen to all the evidence and testimony as presented
13 by the State and then also what may be potentially
14 presented by the defendant before making up your
15 mind?

16 **JUROR:** Definitely.

17 **THE COURT:** Okay. Thank you. Juror number 12
18 will remain with us. Okay. Juror name and number.

19 **JUROR:** 114, Porsche Henson.

20 **THE COURT:** Okay.

21 **JUROR:** I have been a victim of burglary. My
22 car was broken into and items were stolen. And my
23 father-in-law was -- his house was broken into and
24 was murdered.

25 **THE COURT:** Okay. Would that affect your

1 ability to be a fair and impartial juror in this
2 case?

3 **JUROR:** No.

4 **THE COURT:** Would you be able to listen to all
5 of the testimony and the evidence as presented by the
6 State as well as the defense before making up your
7 mind?

8 **JUROR:** No.

9 **THE COURT:** You would or wouldn't?

10 **JUROR:** Oh, I'm sorry. Yes. I would be able
11 to. Excuse me.

12 **THE COURT:** Okay. Thank you. Juror number 114
13 will remain with us. Your juror name and number?

14 **JUROR:** My name is Chenin Livengood. My number
15 is 151.

16 **THE COURT:** Okay.

17 **JUROR:** And about five years ago my house was
18 broken into.

19 **THE COURT:** Okay. Would you be able to be a
20 fair and impartial juror in this case?

21 **JUROR:** Yes.

22 **THE COURT:** Okay. And that means listening to
23 all the testimony and evidence presented by both the
24 State and the defense before making up your mind?

25 **JUROR:** I would.

1 **THE COURT:** Okay. Thank you. Juror number 151
2 will remain with us.

3 **JUROR:** Juror 242, Malendia Taylor.

4 **THE COURT:** Okay.

5 **JUROR:** I had my wallet stolen from my purse at
6 school. I filed a police report.

7 **THE COURT:** Would you be able to be a fair and
8 impartial juror in this case?

9 **JUROR:** I think I would.

10 **THE COURT:** Listening to all the evidence by the
11 State as well as the defense before making up your
12 mind?

13 **JUROR:** Yes.

14 **THE COURT:** Thank you. Juror number 242 will
15 remain with us.

16 **MR. WILLIAMS:** Is it 242?

17 **THE COURT:** Yes. One moment. Step back just a
18 second. Okay. Juror name and number?

19 **JUROR:** Yasmeen Scott, 223.

20 **THE COURT:** Okay. All right.

21 **JUROR:** Last year I had an investment property
22 where the AC unit had been stolen off of it.

23 **THE COURT:** Okay. Would you be able to be a
24 fair and impartial juror in this case?

25 **JUROR:** I think so.

1 **THE COURT:** Listening to all the testimony and
2 evidence as presented by both the State and the
3 defense?

4 **JUROR:** Yes.

5 **THE COURT:** Okay. Thank you. Juror number 223
6 will remain with us.

7 **MS. GARFIELD:** I didn't hear her. What did she
8 say?

9 **THE COURT:** She had investment property broken
10 into.

11 **MS. WEISS:** Okay.

12 **THE COURT:** How you doing? Hello.

13 **JUROR:** Back here about four months ago I had
14 rims stole off my car. Back in '99 --

15 **THE COURT:** I'm sorry. Back up. Juror name and
16 number?

17 **JUROR:** Kenneth Thomas, juror number 244.

18 **THE COURT:** Okay.

19 **JUROR:** Yeah. And back in '99 I owned a
20 restaurant. It was vandalized and robbed.

21 **THE COURT:** Okay. And would you be able to be a
22 fair and impartial juror in this case?

23 **JUROR:** Yeah, I think so.

24 **THE COURT:** And you can listen to the testimony
25 and evidence as presented by both the State and the

1 defense before making up your mind?

2 **JUROR:** Yes.

3 **THE COURT:** No hesitation?

4 **JUROR:** No.

5 **THE COURT:** Okay. Thank you. Juror number 244
6 will remain with us. Juror name and number?

7 **JUROR:** It's Peter Uszkay, 250.

8 **THE COURT:** Okay.

9 **JUROR:** A couple of years ago, about nine, ten
10 years ago, our house had been burglarized. Nothing
11 valuable was taken, just minor stuff. It was
12 probably just kids from the neighborhood.

13 **THE COURT:** Okay.

14 **JUROR:** And it was not a fun experience.

15 **THE COURT:** Okay. Would you be able to be a
16 fair and impartial juror --

17 **JUROR:** Absolutely.

18 **THE COURT:** -- in this case?

19 **JUROR:** Absolutely.

20 **THE COURT:** And listen to the testimony and
21 evidence --

22 **JUROR:** Yes.

23 **THE COURT:** -- in the case?

24 **JUROR:** Only that.

25 **THE COURT:** Okay. Thank you. Juror number 250

1 will remain with us. Okay. Juror name and number?

2 **JUROR:** 219, Carolyn Scott.

3 **THE COURT:** Okay. And your situation?

4 **JUROR:** I have been a victim of break-in's
5 twice.

6 **THE COURT:** Okay. Would you be able to be a
7 fair and impartial juror in this case?

8 **JUROR:** I think I can. I had items stolen,
9 but --

10 **THE COURT:** Okay. And would you be able to
11 listen to the testimony and evidence as just
12 presented from this courtroom before making up your
13 mind?

14 **JUROR:** I believe I could.

15 **THE COURT:** Okay. Thank you.

16 **JUROR:** I'll give it a try.

17 **THE COURT:** Okay. Juror number 219 will remain
18 with us.

19 **JUROR:** 115. And my house was broken into.

20 **THE COURT:** What's your name?

21 **JUROR:** Karen Herring.

22 **THE COURT:** Okay. All right. Would you be able
23 to be a fair and impartial juror in this case?

24 **JUROR:** Definitely. Absolutely.

25 **THE COURT:** Listening to the testimony and

1 evidence presented from this courtroom to make your
2 decision?

3 **JUROR:** Absolutely.

4 **THE COURT:** Okay. Thank you. Juror number 115
5 will remain with us. Yes, sir.

6 **JUROR:** Hi. How are you?

7 **THE COURT:** Fine. Juror number 172?

8 **JUROR:** 172.

9 **THE COURT:** And your name again?

10 **JUROR:** Medlock.

11 **THE COURT:** Okay. All right.

12 **JUROR:** My mother interrupted a burglar coming
13 in the house in the mid sixties. After my mother's
14 death her house was burglarized. And I was
15 burglarized about six years ago.

16 **THE COURT:** Okay. Would you be able to be a
17 fair and impartial juror in this case even though
18 you've had that happen to you?

19 **JUROR:** Probably.

20 **THE COURT:** Okay. And I need to be more
21 definitive. That means listening to the testimony
22 and the evidence as presented just in this courtroom
23 and making a decision only based on what has been
24 heard in this courtroom.

25 **JUROR:** I would certainly try to.

1 **THE COURT:** Okay. Are you able to do that
2 definitively?

3 **JUROR:** I think so.

4 **THE COURT:** Okay. All right. I need to make
5 sure that there is no hesitation. Is there a --

6 **JUROR:** Well, I hate the crime, but I have
7 nothing against this man.

8 **THE COURT:** Okay. But, I mean, the State would
9 be presenting a case and so would the defense. And I
10 need to make sure that you're being fair to the State
11 in terms of knowing that they have the burden of
12 proof but then also understanding the defense has the
13 ability to put up a defense but isn't required to.
14 It's the State's burden of proof. And that means
15 listening to the testimony and evidence as presented
16 here.

17 **JUROR:** I would do that.

18 **THE COURT:** You would do that?

19 **JUROR:** (Nods head affirmatively).

20 **THE COURT:** Okay. Juror number 172 will remain
21 with us.

22 **JUROR:** Number 258.

23 **THE COURT:** 258. And your name?

24 **JUROR:** Larry Williams.

25 **THE COURT:** Okay.

1 **JUROR:** My parents gave me a radio as a gift for
2 my birthday, and before I put it in there, it was
3 stolen.

4 **THE COURT:** Would you be able to be a fair and
5 impartial juror in this case, listening to the
6 testimony and evidence presented from this courtroom
7 and making up your mind just based on what is
8 presented here?

9 **JUROR:** I'm not sure. I don't think I would.

10 **THE COURT:** Okay. Thanks for being honest.
11 Juror number 258 will be excused from the trial of
12 this case.

13 **JUROR:** Hi.

14 **THE COURT:** Yes.

15 **JUROR:** 168, Clare McKay.

16 **THE COURT:** Okay.

17 **JUROR:** A victim of identity theft.

18 **THE COURT:** Okay. Would you be able to be a
19 fair and impartial juror in this case, listening to
20 just the testimony and evidence presented in this
21 courtroom and making your decision based on that
22 information?

23 **JUROR:** Yes.

24 **THE COURT:** Juror number 168 will remain with
25 us.

1 **JUROR:** Hi. 129, Erin Jefferson. I had my
2 purse stolen at knife point like eight, nine years
3 ago.

4 **THE COURT:** Okay. Would you be able to be a
5 fair and impartial juror, listening to the testimony
6 and evidence presented from this courtroom and make
7 your decision based on that information?

8 **JUROR:** I will.

9 **THE COURT:** Okay. Thank you.

10 **JUROR:** Thanks.

11 **THE COURT:** Juror number 129 will remain with
12 us.

13 (Whereupon, the side bar conferences are
14 concluded)

15 **THE COURT:** I believe most of you have answered
16 this question in response to the last question I gave
17 you; but just in case, do you know anyone who has
18 been a victim of burglary? Many of you talked about
19 your personal situation as well as other families or
20 family members. But to the extent that you know of
21 anyone else that you were in a close personal or
22 social relationship with, the Court would also like
23 to know that. I'm going to ask that these questions
24 be out of the earshot of all of the other jurors as
25 well. If you would approach again.

1 (Whereupon, the following side bar conferences
2 are had)

3 **THE COURT:** Okay. Juror name and number?

4 **JUROR:** 239, Christopher Stevens.

5 **THE COURT:** Okay.

6 **JUROR:** I have a neighbor who owns a convenience
7 store and he's subject to frequent burglaries.

8 **THE COURT:** Okay. Would that interfere with
9 your ability to be a fair and impartial juror?

10 **JUROR:** No, ma'am.

11 **THE COURT:** And you could listen to the
12 testimony and the evidence as presented in this
13 courtroom and make your decision based on that
14 information?

15 **JUROR:** Yes, ma'am.

16 **THE COURT:** Okay. Thank you. Juror number 239
17 will remain with us. Juror name and number?

18 **JUROR:** 229. And it's Celeste LaPointe or Nancy
19 LaPointe.

20 **THE COURT:** Okay.

21 **JUROR:** Most recently, the past three weeks,
22 we've had neighbors and friends around us with car
23 thefts and house break-ins.

24 **THE COURT:** Okay. Would that affect your
25 ability to be a fair and impartial juror in this

1 case, listening to the testimony and evidence
2 presented in this courtroom?

3 **JUROR:** No, ma'am.

4 **THE COURT:** Okay. Thank you very much. Juror
5 number 149 will remain with us. Juror name and
6 number?

7 **JUROR:** 171.

8 **THE COURT:** Okay.

9 **JUROR:** My sister --

10 **THE COURT:** Name again?

11 **JUROR:** Oh. Rosamond McLeod.

12 **THE COURT:** Okay.

13 **JUROR:** My sister lives in Baltimore, Maryland,
14 and her car was broken into and they took a lot of
15 personal things out of her car. And my daughter's
16 car was broken into probably ten years.

17 **THE COURT:** Okay. And would that affect your
18 ability to be a fair and impartial juror in this
19 case?

20 **JUROR:** No.

21 **THE COURT:** So you can listen to the testimony
22 and evidence and make your decision based on what
23 goes on in this courtroom?

24 **JUROR:** Oh, absolutely.

25 **THE COURT:** Thank you.

1 **JUROR:** Thanks.

2 **THE COURT:** Juror number 171 will remain with
3 us.

4 (Whereupon, the side bar conference are
5 concluded)

6 **THE COURT:** Okay. And this is my last question
7 which I generally call the "speak now or forever hold
8 your peace" section. And essentially I'm asking you
9 do you know of any reason whatsoever as to why you
10 could not be a fair and impartial juror in this case.

11 And a fair and impartial juror is one who could
12 listen to all the testimony and other evidence
13 presented in this courtroom and make your decision
14 based on your common sense but based on the testimony
15 and evidence presented in this courtroom, not
16 bringing into the decision your personal biases or
17 other prejudice or other negative experiences, but
18 being fair to the State as they present their case;
19 and if the defendant should decide to present a case,
20 also being fair to whatever presentation of evidence
21 the defendant has as well. So if there is any reason
22 you can just think of, anything that makes you
23 hesitate in that very important role, please stand.

24 Okay. And then finally as a sub part to that
25 question, have any reason that you could not render

1 fair and efficient jury service? And that means do
2 you have back surgery or heart surgery scheduled this
3 week, you know, and you need to be there? You've got
4 some class or some kind of pre-date that you had
5 prior to knowing that you're going to come to jury
6 service that's been a long-standing appointment; just
7 anything that would have you sitting in the jury box
8 and just thinking and having your mind somewhere else
9 and not fully participating with being in this
10 courtroom. Just anything that would make you
11 restless. Just anything. I'll just give you a
12 chance to speak up now. This is your opportunity.
13 Mr. Pauling. Yes.

14 **MR. PAULING:** Your Honor, if we could adjourn at
15 least between 5 and 5:15, I have child care issues.

16 **THE COURT:** Yes. Certainly. And that would be
17 my intention with respect to all jurors. The only
18 thing that would be an exception is if we have an
19 expert or somebody on the stand who had time
20 constraints. But I would accommodate you as best as
21 possible with the necessary breaks, the necessary
22 lunch hour times. And to the extent that you'd like
23 breaks more frequently, then perhaps what the Court
24 would offer, you would have the opportunity do that
25 through your foreperson or your bailiff. So that

1 will go understood.

2 Okay. I will deem you all so qualified to hear
3 this matter in this case. And what I'd like to do
4 now, ladies and gentlemen, is just take a short break
5 so that the lawyers can review their notes with
6 respect to your responses. So report back towards
7 your jury room and we'll be with you shortly.

8 **THE BAILIFF:** Jurors, please return within 15
9 minutes.

10 (Whereupon, the jurors take a break)

11 **THE COURT:** And I'm going to make Mr. Williams's
12 proposed voir dire Court's Exhibit 1.

13 **MS. GARFIELD:** No objection.

14 (WHEREUPON, Court's Exhibit No. 1 is marked for
15 identification.)

16 **THE COURT:** And then the State's witness list
17 will be Court's Exhibit 2.

18 (WHEREUPON, Court's Exhibit No. 2 is marked for
19 identification.)

20 **THE COURT:** Are there any proposed exceptions to
21 the juror voir dire questions by either party other
22 than as noted by Mr. Williams earlier in pre-trial?

23 **MS. GARFIELD:** It's up to Your Honor. The only
24 other question was the reversal question of: Has
25 anyone been charged with burglary?

1 **THE COURT:** Thank you. And I wrote that on my
2 little sticky note. Okay. So we'll ask that when
3 they come back. I wrote it right there. Sorry.
4 Okay.

5 (Off the record)

6 **THE COURT:** All right. Do we want to go ahead
7 and proceed then now with your motions? Any other
8 motions you might have, Mr. Williams?

9 **MR. WILLIAMS:** No. I'm trying to get past this
10 here first.

11 **THE COURT:** Okay. That's understandable. Okay.
12 Well, you all can be at ease for about ten minutes or
13 so yourselves.

14 **MS. WEISS:** Okay. Thank you, Your Honor. May I
15 approach?

16 **THE COURT:** Sure.

17 (Whereupon, a bench conference is had between
18 the Court, Ms. Weiss and Mr. Pauling)

19 (Whereupon, a break is taken)

20 **THE COURT:** Okay. Ladies and gentlemen, before
21 we actually go to your actual selection, I have one
22 more question for you. I did ask you whether or not
23 you or any members of your family or close personal
24 social friends were actually victims of a burglary,
25 petit larceny or had something taken from you.

1 I'd also like to ask that same question but just
2 ask whether or not any of you have been charged with
3 burglary, even if that case had later on been
4 dismissed and a trial, plea, conviction or even
5 dismissed by the Solicitor's Office and never got
6 prosecuted. So if you would please stand, and you
7 can come down and talk to me about the circumstances.
8 Okay.

9 (Whereupon, a side bar conference is had as
10 follows)

11 **THE COURT:** You can come forward. All right.
12 Juror name and number again?

13 **JUROR:** 171. Rosamond McLeod.

14 **THE COURT:** Okay.

15 **JUROR:** About 20 years ago I had a boyfriend who
16 got into a domestic dispute. And I jumped in his car
17 to leave and he charged me with -- I forgot what it
18 was. Something because the car's value was over, you
19 know, a certain amount. But it was dismissed.

20 **THE COURT:** Dismissed. Okay. All right. Would
21 that affect your ability --

22 **JUROR:** No.

23 **THE COURT:** -- to proceed as a fair and
24 impartial juror?

25 **JUROR:** No. It was so long ago.

1 **THE COURT:** Okay. Thank you so much.

2 **JUROR:** Thanks.

3 (Whereupon, the side bar conference is
4 concluded)

5 **THE COURT:** Juror number 171 will remain with
6 us.

7 I also remember I'm asking that question about
8 you knowing of a close personal friend or also a
9 family member or immediate friendship of some sort,
10 not just that question as to yourself. Okay. You
11 all step up here. Did you have something?

12 **MR. WILLIAMS:** Yes, I do.

13 (Whereupon, a bench conference is had)

14 **THE COURT:** Okay. One other question to you all
15 as jurors. During the break, certain of the parties,
16 witnesses may have been looking at some potential
17 evidence that may come into the trial. And I'll let
18 you know right up; when we as Circuit Court judges
19 come into a courtroom, unless there has been some
20 pre-trial motions that actually tell us a little bit
21 more about the case, I don't know anything more about
22 this case than you all do. So I'll be hearing the
23 intricate details for the first time myself.

24 But to the extent that you all overlooked or
25 overheard any discussions about anything related to

1 the case, you saw any potential evidence that may be
2 posed to the Court, none of which I have seen; I just
3 want to know first of all if you saw it and then,
4 secondly, if that is affecting your ability to
5 proceed in this case.

6 If anybody just overheard anything, any
7 conversations in the hall, you know, with respect to
8 people just talking about, you know, potentially
9 their testimony or saw any documents, saw any photos
10 of anything, just anything that may be asked for me
11 to admit into evidence that I have not even seen
12 myself; but I just want to make sure you're not
13 tainted in any way in that regard. If so, please
14 stand.

15 Okay. Thank you all. Now we will resume our
16 jury selection, and I'm going to turn it over to the
17 clerk for your further instruction.

18 **THE CLERK:** Ladies and gentlemen of the jury
19 panel, as I call your name, please come to the
20 microphone located here at the center. And please
21 bring any personal items that you may have with you.
22 Juror number 237, Patricia Stegura.

23 (White female)

24 **THE CLERK:** You don't have to say anything.
25 What says the State?

1 **MS. WEISS:** Please present Ms. Stegura.

2 **THE CLERK:** What says defense?

3 **MR. WILLIAMS:** Please present the juror.

4 **THE CLERK:** Please have a seat in the jury box.

5 Juror number 244, Kenneth Thomas.

6 (Black male)

7 **THE CLERK:** What says the State?

8 **MS. WEISS:** Please present Mr. Thomas.

9 **THE CLERK:** What says defense?

10 **MR. WILLIAMS:** Please strike the juror. Strike.

11 **THE CLERK:** Please return to the back of the
12 courtroom. Juror number 168, Clare McKay.

13 (White female)

14 **THE CLERK:** What says the State?

15 **MS. WEISS:** Please present Ms. McKay.

16 **THE CLERK:** What says defense?

17 **MR. WILLIAMS:** Please present the juror.

18 **THE CLERK:** Please have a seat in the jury box.

19 Juror number 114, Porsche Henson.

20 (Black female)

21 **THE CLERK:** What says the State?

22 **MS. WEISS:** Please present Ms. Henson.

23 **THE CLERK:** What says the defense?

24 **MR. WILLIAMS:** Please excuse the juror.

25 **THE CLERK:** Please return to the back of the

1 courtroom. Juror number 76, David Ellison.

2 (White male)

3 **THE CLERK:** What says the State?

4 **MS. WEISS:** Please present Mr. Ellison.

5 **THE CLERK:** What says defense?

6 **MR. WILLIAMS:** Please seat the juror.

7 **THE CLERK:** Please have a seat in the jury box.

8 Juror number 171, Rosamond McLeod.

9 (Black female)

10 **THE CLERK:** What says the State?

11 **MS. WEISS:** Please excuse Ms. McLeod.

12 **THE CLERK:** Please return to the back of the
13 courtroom. Juror number 239, Christopher Stevens.

14 (White male)

15 **THE CLERK:** What says the State?

16 **MS. WEISS:** Please present Mr. Stevens.

17 **THE CLERK:** What says defense?

18 **MR. WILLIAMS:** Please present the juror.

19 **THE CLERK:** Please have a seat in the jury box.

20 Juror number 69, Laura Draper.

21 (White female)

22 **THE CLERK:** What says the State?

23 **MS. WEISS:** Please present Ms. Draper.

24 **THE CLERK:** What says defense?

25 **MR. WILLIAMS:** Please excuse the juror.

1 **THE CLERK:** Please return to the back of the
2 courtroom. Juror number 198, Stacey Philgreen.

3 (White female)

4 **THE CLERK:** What says the State?

5 **MS. WEISS:** Please present Ms. Philgreen.

6 **THE CLERK:** What says defense?

7 **MR. WILLIAMS:** Please excuse the juror.

8 **THE CLERK:** Please return to the back of the
9 courtroom. Juror number 12, Teresa Asbury.

10 (White female)

11 **THE CLERK:** What says the State?

12 **MS. WEISS:** Please present Ms. Asbury.

13 **THE CLERK:** What says defense?

14 **MR. WILLIAMS:** Please present the juror.

15 **THE CLERK:** Please have a seat in the jury box.
16 Juror number 182, Ashley Morris.

17 (Black female)

18 **THE CLERK:** What says the State?

19 **MS. WEISS:** Please excuse Ms. Morris.

20 **THE CLERK:** Please return to the back of the
21 courtroom. Juror number 151, Shannon Livengood.

22 (White female)

23 **THE CLERK:** What says the State?

24 **MS. WEISS:** Please present Ms. Livengood.

25 **THE CLERK:** What says defense?

1 **MR. WILLIAMS:** Please excuse the juror.

2 **THE CLERK:** Please return to the back of the
3 courtroom. Juror number 116, Brenda Hickman.

4 (Black female)

5 **THE CLERK:** What says the State?

6 **MS. WEISS:** Please present Ms. Hickman.

7 **THE CLERK:** What says defense?

8 **MR. WILLIAMS:** Please present the juror.

9 **THE CLERK:** Please have a seat in the jury box.
10 Juror number 119, Carolyn Scott.

11 (Black female)

12 **THE CLERK:** What says the State?

13 **MS. WEISS:** Please present Ms. Scott.

14 **THE CLERK:** What says defense?

15 **MR. WILLIAMS:** Please present the juror.

16 **THE CLERK:** Present?

17 **MR. WILLIAMS:** Yes, ma'am.

18 **THE CLERK:** Please have a seat in the jury box.

19 **MR. WILLIAMS:** Yes. I'm sorry.

20 **THE CLERK:** Juror number 160, Marilyn Maness.

21 (White female)

22 **THE CLERK:** What says the State?

23 **MS. WEISS:** Please present Ms. Maness.

24 **THE CLERK:** What says defense?

25 **MR. WILLIAMS:** Please present the juror.

1 **THE CLERK:** Please have a seat in the jury box.
2 Juror number 195, Brenda Percy.

3 (Black female)

4 **THE CLERK:** What says the State?

5 **MS. WEISS:** Please excuse Ms. Percy.

6 **THE CLERK:** Please return to the back of the
7 courtroom. Juror number 11, Anthony Artis.

8 (Black male)

9 **THE CLERK:** What says the State?

10 **MS. WEISS:** Please present Mr. Artis.

11 **THE CLERK:** What says defense?

12 **MR. WILLIAMS:** Please present the juror.

13 **THE CLERK:** Please have a seat in the jury box.
14 Juror number 3, Cynthia Alford.

15 (White female)

16 **THE CLERK:** What says the State?

17 **MS. WEISS:** Please present Ms. Alford.

18 **THE CLERK:** What says defense?

19 **MR. WILLIAMS:** Please excuse the juror.

20 **THE CLERK:** Please return to the back of the
21 courtroom. Juror number 247, Vernon Trapp.

22 (Black male)

23 **THE CLERK:** What says the State?

24 **MS. WEISS:** Please excuse Mr. Trapp.

25 **THE CLERK:** Please return to the back of the

1 courtroom. Juror number 267, Demetrica Smith.

2 (Black female)

3 **THE CLERK:** What says the State?

4 **MS. WEISS:** Please excuse Ms. Smith.

5 **THE CLERK:** Please return to the back of the

6 courtroom. Juror number 170, Gwen McLean.

7 (White female)

8 **THE CLERK:** Does the State challenge for cause?

9 **MS. WEISS:** No.

10 **THE CLERK:** What says defense?

11 **MR. WILLIAMS:** Please excuse the juror.

12 **THE CLERK:** Please return to the back of the

13 courtroom. Juror number 203, Michelle Poyner.

14 (White female)

15 **THE CLERK:** Does the State challenge for cause?

16 **MS. WEISS:** No.

17 **THE CLERK:** What says defense?

18 **MR. WILLIAMS:** Please excuse the juror.

19 **THE CLERK:** Please return to the back of the

20 courtroom. Juror number 49, Shanett Cole.

21 (White female)

22 **THE CLERK:** Does the State challenge for cause?

23 **MS. WEISS:** No.

24 **THE CLERK:** What says defense?

25 **MR. WILLIAMS:** Please present the juror.

1 **THE CLERK:** Please have a seat in the jury box.
2 Juror number 172, Robert Medlock.

3 (White male)

4 **THE CLERK:** Does the State challenge for cause?

5 **MS. WEISS:** No.

6 **THE CLERK:** What says defense?

7 **MR. WILLIAMS:** Please excuse the juror.

8 **THE CLERK:** Please return to the back of the
9 courtroom. Juror number 88, Lynn Fralick.

10 (White female)

11 **THE CLERK:** Does the State challenge for cause?

12 **MS. WEISS:** No.

13 **THE CLERK:** What says defense?

14 **MR. WILLIAMS:** Please present the juror.

15 **THE CLERK:** Please have a seat in the jury box.
16 Juror number 263, Minge Wiseman.

17 **JUROR:** Minge.

18 **THE CLERK:** Minge Wiseman.

19 (White female)

20 **THE CLERK:** Does the State challenge for cause?

21 **MS. WEISS:** No.

22 **THE CLERK:** What says defense?

23 **MR. WILLIAMS:** Please present the juror.

24 **THE CLERK:** Please have a seat in the jury box.

25 **THE COURT:** We'll go with one alternate. Is

1 that sufficient?

2 **MS. WEISS:** Yes, Your Honor.

3 **THE COURT:** One alternate sufficient?

4 **MR. WILLIAMS:** Yes, ma'am.

5 **THE COURT:** Okay.

6 **THE CLERK:** Juror number 82, David Ferguson.

7 (Black male)

8 **THE CLERK:** What says the State?

9 **MS. WEISS:** Please present Mr. Ferguson.

10 **THE CLERK:** What says defense?

11 **MR. WILLIAMS:** Please present the juror.

12 **THE CLERK:** Please have a seat in the jury box.

13 **THE COURT:** All right. Will the parties have

14 any exceptions with respect to jury selection?

15 **MS. WEISS:** Not from the State, Your Honor.

16 **THE COURT:** Anything from the defense?

17 **MR. WILLIAMS:** No, Your Honor.

18 **THE COURT:** Okay. All right. Ladies and
19 gentlemen of the jury pool who did not make the
20 qualification for selection on this particular jury,
21 thank you for your service. I'm going to ask you to
22 report with the bailiff for further instructions for
23 the week. And if the parties will approach.

24 (Whereupon, a bench conference is had)

25 **THE COURT:** Okay. Ladies and gentlemen of this

1 particular jury panel, I want to thank you for your
2 service and just kind of give you a little of the
3 rules of the game for the week. I am going to try
4 to -- when we have testimony, we'll take breaks at
5 about 45 minutes to an hour's worth of testimony. It
6 just kind of depends on where the break falls.
7 Should you need any breaks sooner than that, of
8 course let your bailiff know.

9 Lunch can be anywhere from about an hour to an
10 hour and a half long. Generally what I try to do is
11 best accommodate your time. So sometimes I'll have
12 the attorneys and, you know, Mr. Williams, we will
13 stay in and do as much of the legal matters as we can
14 so that we don't have you come back. And I know it's
15 like sitting in a box when you're going into the jury
16 room. So I try to respect and appreciate that time.
17 And we try to get as much work as we can done between
18 breaks as well so that we don't have to bring you in
19 and just keep sending you out. But we'll talk about
20 that a little further.

21 I do have just a couple of minor pre-trial
22 matters that we still need to deal with. They should
23 not be long. So I'm going to ask you all to be
24 excused to your jury room for a moment. And you all
25 can be at ease for about 15 minutes and take any

1 comfort breaks as necessary. We'll be back with you
2 shortly.

3 (Jury out at 11:33 a.m.)

4 **THE COURT:** Okay. I'm ready to resume with the
5 pre-trial matters. I believe, Mr. Williams, you have
6 a few other things?

7 **MR. WILLIAMS:** Yes, ma'am. Thank you, Your
8 Honor. First --

9 **DEPUTY:** Excuse me, Judge.

10 **THE COURT:** Yes.

11 **DEPUTY:** He said he's got to go.

12 **THE COURT:** Absolutely. Take a comfort break
13 yourself.

14 **MR. WILLIAMS:** Okay.

15 **THE COURT:** Okay. And then as I indicated to
16 you all at a side bar, so it's not unfair, since Mr.
17 Williams is representing himself, I'm going to ask
18 both parties to approach the podium for all
19 questioning. And then if you have documents that you
20 want to tender to a witness or have admitted into
21 court, you'll need to give those to the bailiff so
22 that the jury does not have the perception of it
23 being -- you know, that everything will be even
24 handed with the way we deal with the trial.

25 They have been advised of his right to represent

1 himself and he's, you know, exercised his
2 Constitutional right to a jury trial. But for safety
3 and precaution reasons and just to make things a
4 little more even handed, we're going to have the
5 solicitor -- so I know you're not used to doing that,
6 but just to try constantly remind yourself of that as
7 well. Okay. Be at ease.

8 (Whereupon, a break is had)

9 **THE COURT:** All right. Are the parties ready to
10 resume with pre-trial matters?

11 **MS. GARFIELD:** Yes, ma'am.

12 **THE COURT:** Okay, Mr. Williams.

13 **MR. WILLIAMS:** Yes, Your Honor. Again, the
14 first thing I'd like to do is respectfully request
15 the Court to sequester witnesses during the course of
16 the trial.

17 **THE COURT:** That will be fine. The State is
18 entitled to have a law enforcement officer present
19 and the victim present.

20 **MR. WILLIAMS:** Yes, ma'am.

21 **THE COURT:** And outside of that, the other law
22 enforcement officers who are not their designee, then
23 they will be sequestered. That will be fine.

24 **MR. WILLIAMS:** Okay. And the one other thing,
25 Your Honor, I wanted to deal with also is, a while

1 back the Solicitor's Office had informed me about
2 some evidence that I think is going to be part of
3 what I might consider to be Lyle evidence they're
4 going to present during the course of the trial. I
5 wanted to deal with that at this time.

6 Accordingly, I think it was the State told me
7 that they intended to use some prior -- some burglary
8 charges that were not -- that I was never charged
9 with that they was intending to use during the course
10 of the trial. And I want to make sure, I want to see
11 if that is the case, I want to deal with that now.

12 **THE COURT:** Okay. Now, there is two issues.
13 One is the one that we indicated yesterday about.

14 **MR. WILLIAMS:** Yeah.

15 **THE COURT:** A burglary first. And an element of
16 that crime for which they are bringing forth is the
17 hours of darkness and two prior convictions.

18 **MR. WILLIAMS:** Okay.

19 **THE COURT:** You're talking about something
20 outside of that?

21 **MR. WILLIAMS:** Yes. I'm talking about something
22 else on the outside of that.

23 **THE COURT:** Okay. And they can let us know what
24 their intentions are.

25 **MS. WEISS:** Your Honor, at this point, in the

1 State's case in chief, we do not intend to bring in
2 the other burglaries. They were part of the
3 confession. However, we reserve the right if he
4 opens the door to anything like that to then
5 re-address this at that time.

6 **MR. WILLIAMS:** Yes, ma'am.

7 **THE COURT:** Okay.

8 **MR. WILLIAMS:** Okay. That's fine.

9 **THE COURT:** Their statement is as officers of
10 the court. So we'll proceed accordingly.

11 **MR. WILLIAMS:** Oh. And the other thing, Your
12 Honor, is that during the course -- and in some of
13 the papers, in some of the police reports that were
14 submitted by the Solicitor's Office there is some
15 written notes concerning the fact that the officer
16 had showed the victim my photograph after this had
17 taken place.

18 And I want to respectfully ask that no mention
19 of that be ever made during the course of this trial
20 since there was no identification made by the victim
21 concerning -- like there was nothing where the victim
22 seen me at the scene of the crime where they can say
23 positively that I was the one that committed the
24 crime.

25 In other words, what I'm asking basically is

1 that since there is no real identification issue in
2 this case, I would ask that any testimony concerning
3 the victim viewing the photograph of me shown by the
4 officer be excluded during the course of this trial.

5 **THE COURT:** Okay. And you all will have to tell
6 me what happened.

7 **MS. GARFIELD:** Yes, ma'am. To give you some
8 information. After there was a fingerprint hit and
9 it came back that the fingerprint hit belonged to
10 Mr. Darrell Williams and he was developed as a
11 suspect concerning this burglary, at that point
12 Investigator Mead did obtain a photo of Mr. Williams.
13 He did present it to both Dr. Sederberg and his
14 daughter but not for purposes of identification, for
15 purposes of: Has this person had a reason to be on
16 your property; for instance, have you employed this
17 person to cut your grass or do any maintenance work
18 or whatever.

19 So it was just presented, in all fairness to Mr.
20 Williams, as a process of elimination. Because if he
21 had indeed had permission to be on the property, then
22 that would explain why his fingerprints were on the
23 property, and law enforcement would have to continue
24 to look for another suspect. It was not presented
25 for identification purposes.

1 **THE COURT:** Okay. So it was not as part of a
2 photo line-up, like a single show-up line-up?

3 **MS. GARFIELD:** No, ma'am.

4 **THE COURT:** Okay.

5 **MS. GARFIELD:** They were not asking him --

6 **THE COURT:** To identify him.

7 **MS. GARFIELD:** -- the victims, to identify the
8 defendant. They were just asking -- I don't even
9 know if they presented his name. They just showed a
10 photograph to him and said: Do you know this person
11 as to have been anyone that should have been on your
12 property?

13 **THE COURT:** Okay. And so you're not using that
14 to show that they identified the defendant ahead of
15 time and then asking to also make an in-court ID?

16 **MS. GARFIELD:** No, ma'am. There was no
17 identification made of the defendant otherwise except
18 from fingerprints and the confession.

19 **THE COURT:** And then at the time of the alleged
20 events, was anyone even at home to be able to
21 identify the defendant?

22 **MS. GARFIELD:** There was no one home during the
23 burglary. Dr. Sederberg returned home. Just to give
24 you --

25 **THE COURT:** In other words, it's not as if this

1 person saw the defendant.

2 **MS. GARFIELD:** Oh. Correct. There is no eye
3 witness in this case.

4 **THE COURT:** No eye witness. Thank you for
5 succinctly giving me what I was trying to say. So
6 there is no eye witness to the case. They are
7 indicating that the photo was shown for purposes of
8 indicating whether you had the right to be on the
9 property but not for purposes of identification,
10 because nobody was there to know anything. There was
11 no eye witness.

12 **MR. WILLIAMS:** Right. I mean, because basically
13 I was just trying to -- because, like I said, I read
14 the reports, and I was just trying to basically
15 figure it out because I didn't want this to come out
16 or the question be asked, you know, to the victim or
17 maybe the officers or anything like that concerning
18 and they possibly put in the minds of the jury that
19 there was an identification actually done where the
20 victim might have, you know, came home and seen me at
21 the residence --

22 **THE COURT:** Right.

23 **MR. WILLIAMS:** -- and then made an
24 identification later on by an officer showing them
25 the photograph. I just wanted to make sure that

1 is -- it's within those lines. And I'm basically
2 trying to avoid that line of questioning coming out
3 and just, you know, trying to give the jury the wrong
4 impression about that there was an identification
5 that was positive of me at the scene.

6 **THE COURT:** They've indicated no eye witness at
7 the scene. But you also if it went that way are
8 entitled to question them along that lines, that
9 there was no eye witness there; you know, they didn't
10 have anything in that regard.

11 **MR. WILLIAMS:** Okay.

12 **THE COURT:** But they're indicating that they had
13 no photo show-up, so to speak, or single show-up as
14 we call them, just a one photograph shown to a
15 witness. So as we stand right now, I wouldn't
16 exclude it if that's the purposes of the intent of
17 using it. But obviously if they cross that line,
18 then we can discuss it during the trial.

19 **MR. WILLIAMS:** Okay. One second, Your Honor.

20 **THE COURT:** Okay.

21 (Pause)

22 **MR. PAULING:** Your Honor, I wasn't here
23 yesterday. You already did a Jackson v. Denno
24 hearing with regard to his statement?

25 **THE COURT:** Yes, we did.

1 (Pause)

2 **MR. WILLIAMS:** Just one other small little
3 matter. This has to do with the witness list that
4 the State has presented.

5 **THE COURT:** Okay.

6 **MR. WILLIAMS:** I mean, there's basically -- let
7 me see -- one, two, about three or four witnesses
8 that I can't really understand. I mean, maybe -- I
9 don't know if it's improper, but maybe I'm just
10 trying to figure out what is the purpose of having
11 all these officers come and testify concerning in
12 this case here.

13 And, you know, I know like some of them had,
14 according to what I see in the document, only limited
15 involvement in the case. Now, I do remember Officer
16 Petosky. And I know Investigator Mead. He is hands
17 on. So this is -- I can understand him testifying.
18 But I just can't understand why Officer Petosky,
19 Officer Calby and Officer Preister. Is that the
20 correct way to pronounce it? Preister?

21 **MS. WEISS:** Mm-hmm (affirmative).

22 **MR. WILLIAMS:** Okay. All of them testifying in
23 this matter when their involvement was limited. And
24 it's basically a thing where basically the State is
25 just basically presenting evidence over. It's like

1 repeating the same thing over again; that, yes, there
2 was a burglary that took place, it happened at this
3 residence. I mean, there is --

4 **THE COURT:** Cumulative evidence.

5 **MR. WILLIAMS:** Yeah.

6 **THE COURT:** Okay. And the Court at that time --
7 I mean, right now the officers have to be relevant to
8 a matter. They have to have some personal
9 observation or some involvement in the case. So
10 right now you're at least acknowledging that you're
11 familiar or you saw something in the reports as to
12 these people. So they're relevant.

13 **MR. WILLIAMS:** Right.

14 **THE COURT:** But the issue will become whether or
15 not it's going to be prejudice because they're
16 cumulative. I won't know that until we see how the
17 pattern of events comes. I don't know what specific
18 purpose they are being offered, but that would be an
19 issue we could take up at that time if it seems like
20 all they're doing is repeating themselves. And so
21 you would have an appropriate objection at that time.

22 **MR. WILLIAMS:** Okay. Okay.

23 **THE COURT:** State, do you have anything to add
24 to that?

25 **MS. GARFIELD:** The only comment I would make is

1 that these are potential witnesses. We won't
2 necessarily be calling them all.

3 **MR. WILLIAMS:** Okay.

4 **THE COURT:** Good point. Thank you.

5 **MR. WILLIAMS:** Other than that, Your Honor, I
6 know I may have mentioned it yesterday I wanted to
7 bring up the other motion that I had. But based on
8 the fact -- because, see, that motion that I wanted
9 to bring up also has to deal with the Order that we
10 need from the past conviction from Marlboro County
11 because some of the details that I will go into when
12 I get into that motion is going to come in that
13 Order.

14 And at the time, I don't want to go into it
15 right now because basically what I'll be doing is
16 making a comment about it without nothing or, you
17 know, no offense to you, to, you know, have something
18 to, you know, either object to or be able to show
19 that, you know, I'm wrong in some area of it. So I'd
20 rather just, if it's all right, we'll do it with
21 everybody. We'll wait until if we do get the stuff.

22 **THE COURT:** Okay. As long as it's not going to
23 affect the proceedings of how the State is going to
24 put up their case.

25 **MR. WILLIAMS:** No, no, no. No, no. Because

1 basically what I am going to do is not going to
2 affect them at all. It's not going to affect their
3 presentation of the case and everything. It will
4 just keep everything moving.

5 **THE COURT:** Okay.

6 **MS. WEISS:** Your Honor, my understanding of his
7 prior motions were, one, that he wanted to have the
8 statute itself declared unconstitutional.

9 **MR. WILLIAMS:** Mm-hmm (affirmative).

10 **MS. WEISS:** I mean, I think that needs to be
11 addressed. Obviously if Your Honor declared it
12 unconstitutional, then there would be a need for an
13 appeal. There could be some serious issues, serious
14 ramifications. I think we need to go ahead and take
15 up that one and decide that one.

16 And then he had a whole list of questions that
17 went on for a page and a -- well, a total of about a
18 page that involves the charge as well. I just think
19 we need to settle these for the record before we
20 swear the jury to go on with the trial.

21 **THE COURT:** Sure.

22 **MS. WEISS:** I don't know what --

23 **THE COURT:** What has the PCR transcript or
24 anything of that nature got to do with these issues?

25 **MR. WILLIAMS:** Because basically some of the

1 argument that I made in the other motion, the first
2 motion that we went over yesterday, some of the
3 argument in there covers that to an extent where --
4 hold on one second.

5 **THE COURT:** Sure. We've got copies of -- you
6 don't have a copy with you?

7 **MR. WILLIAMS:** Yeah. I have one original one,
8 but the other one I don't have. I think it's the one
9 where it's copied on both sides of the paper. That's
10 the one I don't have.

11 **THE COURT:** Okay.

12 **MS. GARFIELD:** Your original?

13 **MR. WILLIAMS:** Yes. This is it right here.
14 Okay. The argument that I'm going to refer to begins
15 on page 9. It begins on page 9 of this, of the one
16 with the copies on both sides.

17 And the reason why I say that transcript and the
18 Order would be relevant for this, because during the
19 time of that conviction in Marlboro County there was
20 an agreement made between at the time the solicitor
21 and myself and counsel that under 17-25-50 all the
22 convictions should be considered to be one.

23 And while I agree that most of the documents
24 that they have, that they have submitted certified
25 copies from Marlboro County show they were concurrent

1 sentences, at the time when the solicitor was
2 intending -- we had intended to have a trial at that
3 time. But what happened is, when the solicitor was
4 going through pre-trial hearings, I remember the
5 solicitor was trying to have all the charges combined
6 under 17-25-50 as being one. He was trying to make
7 them all one of my closely connected offenses.

8 But now when the offer was made, the agreement
9 between the solicitor, defense counsel and myself was
10 that under the same statute all these would be
11 considered to be one charge and that there would be
12 one conviction and one sentence for everything.
13 Under 17-25-50 they'd be considered one charge.

14 That's why I was saying that basically the
15 transcript would -- basically the guilty plea
16 transcript would support this.

17 **THE COURT:** Are you talking about the actual
18 sentencing?

19 **MR. WILLIAMS:** Yes, I am. Yes, I am.

20 **THE COURT:** Okay. But the jury would not be
21 informed of the sentencing for purposes of the two
22 prior convictions that would lead to burglary first.
23 They won't be given that information. They are
24 merely going to be given copies of the indictments.
25 They won't know anything about that sentencing.

1 **MS. WEISS:** Your Honor, I think I can clarify.
2 I think I know what he's talking about. He's
3 actually talking about the most serious offense which
4 is the strike that leads to life without parole. And
5 actually we are considering that as one offense.

6 Under the most serious, two-strike law, if
7 you're convicted of one most serious offense and then
8 you are convicted of a second, this is the second,
9 not any of those priors. Those are one most serious
10 offense; where all those burglary firsts and
11 everything, we're considering that as one as your
12 first strike.

13 This, if we convict you of this case, this would
14 be the second strike which triggers life without
15 parole, not the fact that there are multiple
16 burglaries. It's the fact that you had one burglary
17 first in that string of burglaries to trigger the
18 life without parole. That's the statute you're
19 referring to.

20 And it did. Because at that time because you
21 pled to four separate burglary firsts at the same
22 time, each one of those could have triggered life
23 without parole. And so you could have gotten life
24 without parole back in 1995. They chose not to do
25 that. And so that counted as one strike, and this,

1 repeating the offense again in 2006 -- or 2007; I'm
2 sorry -- 2007 is the second strike.

3 So you're not talking about actually what
4 enhances to the burglary first. You're talking about
5 the most serious strikes. And we are in fact doing
6 that. That is one strike. They did treat that as
7 one strike at that time as opposed to seeking life
8 without parole at that time.

9 **MR. WILLIAMS:** Okay.

10 **MR. PAULING:** Your Honor, if I may?

11 **THE COURT:** Sure.

12 (Pause)

13 **MR. WILLIAMS:** One second, Your Honor.

14 **THE COURT:** Sure.

15 (Pause)

16 **MR. PAULING:** Your Honor.

17 **THE COURT:** Yes.

18 **MR. PAULING:** Can I approach with the State,
19 please?

20 **THE COURT:** Sure.

21 (Whereupon, a bench conference is had with the
22 Court, Mr. Pauling, Ms. Weiss and Ms. Garfield)

23 **THE COURT:** Okay. Ms. Weiss, if you'll continue
24 on first with what it is that you are using as the
25 most serious offense to proceed to get to a potential

1 life without parole upon conviction in this case so
2 that it is very clear that he understands which
3 particular offenses you're relying on.

4 **MS. WEISS:** Your Honor, as far as seeking life
5 without parole; and we attached this to the Order
6 that we handed up to him when we served him, there
7 were --

8 **THE COURT:** Let me stop you all from a moment.
9 This presentation may go back and forth for about 15
10 or so minutes at least, do you think?

11 **MS. WEISS:** I don't know that -- I don't know,
12 Your Honor.

13 **THE COURT:** I am just thinking that I don't want
14 to hold the jurors up. So maybe I should just go
15 ahead and release them to lunch and just bring them
16 back let's say 2:00.

17 **MS. WEISS:** That's fine.

18 **MR. PAULING:** That will be fine.

19 **THE COURT:** Let's do that. Tell them they're
20 released until 2:00. Just don't discuss the case.

21 **THE BAILIFF:** Just tell them to be back at 2:00?

22 **THE COURT:** Yes.

23 **THE BAILIFF:** Thank you, ma'am.

24 **MS. WEISS:** Your Honor, according to the
25 records, the State was able to get the certified

1 convictions, he was convicted under 95-GS-34-454,
2 burglary first; 95-GS-34-457, burglary first;
3 95-GS-34-459, burglary first; 95-GS-34-460, burglary
4 first; 95-GS-34-461, burglary first; and
5 95-GS-34-463, of burglary in the first degree. Any
6 and all of those are eligible as burglary first as
7 most serious offenses to be used in the two strike
8 for life without parole.

9 **THE COURT:** Okay. And eligible how so?

10 **MS. WEISS:** Because they are burglary in the
11 first degree which is a most serious offense under
12 the statute.

13 **THE COURT:** Okay. And was designated as most
14 serious at that time as well?

15 **MS. GARFIELD:** If I can intervene, Your Honor.
16 And I rely on State vs. Washington, a very similar
17 case where a burglary occurred in 1996 and the State
18 sought life without parole based on prior burglaries
19 previous to 1996.

20 If Your Honor is familiar, it was in 1996 when
21 our Legislature recodified what we know today as
22 violent. They, the Supreme Court, Justice Toal,
23 actually opined that even though before 1996 burglary
24 first was not classified as violent as we know it
25 today, because the elements of the crime are the

1 same, it will be considered adequate convictions for
2 the State to seek life without parole. And that is
3 what we're introducing. We are introducing any and
4 all of those prior burglary firsts to proceed with a
5 life without parole option.

6 **THE COURT:** Okay.

7 **MS. GARFIELD:** And we have a copy of that case
8 if Your Honor would like to review it.

9 **THE COURT:** Sure.

10 **MS. GARFIELD:** I know that Mr. Williams is
11 familiar with the case because he cited the case in
12 his motion to declare the code unconstitutional.

13 **THE COURT:** Okay.

14 **MS. WEISS:** And we're making that same argument
15 for the prior burglaries as well as for the serious,
16 most serious strike; the violent, non-violent,
17 serious, most serious. And I believe that case
18 actually addresses both terms, both categories.

19 **THE COURT:** This case is supportive of your
20 position?

21 **MS. GARFIELD:** Yes, ma'am.

22 **THE COURT:** Okay.

23 (Document handed to the Court)

24 **THE COURT:** Thank you.

25 **MS. GARFIELD:** And I guess, Your Honor, if

1 you'll read the cite into the record.

2 **THE COURT:** It's State vs. Washington, 526 SC2d,
3 709 and 338 SC 392, a 2000 case from the Supreme
4 Court of South Carolina. Okay. Do you want to
5 respond, Mr. Williams?

6 **MR. WILLIAMS:** Yes, Your Honor. During the time
7 of the 1995 conviction, as I pointed out, all right,
8 during the time of my PCR hearing, then counsel,
9 Mr. Bullard -- and I know we talked about it -- he
10 was -- one of the main arguments he made during the
11 time was that most -- some of the offenses were
12 unclassified. Most of the offenses were unclassified
13 at the time.

14 Now, mind you, during 1995, South Carolina
15 Department of Corrections was giving out credits for
16 good time and everything else like that. And what
17 happened is during the course of time when I had got
18 incarcerated in South Carolina Department of
19 Corrections some of my offenses were not classified.
20 And what they did in essence was, what South Carolina
21 Department of Corrections has a habit, what it has a
22 procedure of doing it for themselves, is that any
23 offenses that are not classified, they then classify
24 them according to maybe -- what they say -- certain
25 elements of the crime.

1 Now, during that course of the time, what I did,
2 and I brought it to the attention that these offenses
3 that there was no classification, these offenses are
4 considered to be non-violent, after I obtained the
5 Order from the PCR court showing that these
6 convictions were non-violent, this is the way they
7 were classified now; they were classified as
8 non-violent offenses.

9 Now, if during the time in 1996 that the
10 Legislature did turn around and change the law and
11 then made a first degree burglary what they might
12 consider a most serious offense, my basis of my
13 argument is based on the fact that whatever was the
14 law concerning the time when I got my conviction,
15 that's what applied to me then.

16 Anything after 1995, after my conviction, you
17 know, I mean, I cannot -- I am not held -- I am not
18 responsible for what happens after 1995. Whatever
19 law was in effect during the time when I got
20 convicted, that should be the relevant law that
21 should be applied to this case, not what took place
22 afterwards.

23 While State vs. Washington uses that, I still
24 believe that in 1995 the law that applied to me then
25 is the only law that was relevant. If they was -- if

1 first degree burglary was never considered to be as
2 quote, unquote the most serious offense enough to
3 trigger the life without parole, then this is the
4 statute that should be applied, not what happened,
5 not after 1995. Because in 1996 this is when they
6 abolished parole for violent offenders.

7 And at the same time, they also abolished parole
8 for non-violent offenders, they also enacted the law
9 that anybody with two or more violent offenses could
10 not obtain parole. And at the same time while I was
11 in the Department of Corrections, I also went through
12 this same argument with them because during the time
13 I also challenged them about -- because they sent me
14 a notice at one point saying that being under the
15 Omnibus Crime Bill, being that I had two prior
16 violent offenses for burglary, and what they did by
17 classifying them as violent, they looked at the
18 convictions that I was under when they didn't have no
19 classification on them.

20 When I later challenged them, then and only at
21 that time did the South Carolina Department of
22 Probation, Parole and Pardon Services then change
23 their tune about, okay, yeah, you're right; since
24 your convictions are considered non-violent at the
25 time, you still are eligible for parole. But,

1 however, at the time when I did that, I was on my way
2 out the door. So parole really didn't matter by the
3 time they made the decision.

4 Now we're stuck with the same thing here in
5 2008. Yes, in 1996 the Legislature might have
6 changed this law. But in 1995, when I was convicted,
7 the law that was in effect was the law that applied
8 to me. When my counsel, PCR counsel chose to have
9 the law conformed, have an Order written up to
10 address this, this is what was based on the law
11 during the time.

12 **THE COURT:** Okay. And I'm looking over this
13 case, because the same argument apparently was
14 presented there about the State not being able to use
15 prior convictions of common law burglary and
16 housebreaking to seek a life sentence when those
17 prior offenses were not considered most serious or
18 serious offenses.

19 **MR. WILLIAMS:** Mm-hmm (affirmative).

20 **THE COURT:** Okay. So let me just read the
21 Court's analysis and holding in that case, because
22 they disagreed with it. So let me look at this.
23 Okay. In this particular case, State vs. Washington
24 again, while the law had changed and, you know, the
25 prior offenses were not listed as most serious or

1 serious offenses, the case seemed to turn on the fact
2 that the elements of the common law burglary at that
3 time now constituted burglary first.

4 And since those elements didn't change, even
5 though the categorization of the offense was
6 different at that time, it was proper for the State
7 to use those prior offenses which have the same
8 elements as burglary first now for purposes, you
9 know, in this regard of seeking life without parole.
10 Is that the way the State reads the case?

11 **MS. GARFIELD:** Yes, ma'am.

12 **THE COURT:** And so I've got Supreme Court
13 precedent indicating that it is sufficient in this
14 case. So they could have used these prior burglary
15 first offenses, although not deemed a violent offense
16 or most serious at that time, that they would be
17 eligible for the purposes here because the elements
18 of the offenses are the same.

19 So this issue has already been studied by our
20 Supreme Court. So they're basically deeming that
21 although your '95 convictions were violent offenses
22 but maybe not considered most serious at that time,
23 they would be considered most serious for purposes of
24 this statute.

25 And they're not -- they are using the

1 combination of them. They're not taking each one of
2 those. Because each one of them would stand alone as
3 a most serious. So they're using the combination of
4 all of them to get to the most serious, I mean, as
5 one offense. And then you would have to be convicted
6 of another most serious, which burglary first would
7 be most serious. And then it would lead to life
8 without the possibility of parole.

9 So I would just, you know, follow the guidance
10 of the Supreme Court which has already decided this
11 issue. Anything further on this issue?

12 **MS. WEISS:** Not from the State, Your Honor.

13 **THE COURT:** Okay.

14 **MR. WILLIAMS:** Excuse me one second, Your Honor.

15 **THE COURT:** Sure.

16 (Pause)

17 **MR. WILLIAMS:** Excuse me, Your Honor.

18 **THE COURT:** Yes.

19 **MR. WILLIAMS:** What we're going to do is, we
20 addressed this not all the way yesterday because we
21 got into the argument -- well, basically our argument
22 concerning having the trial, the jury decide the
23 guilt and innocence phase, then sentencing. But what
24 I'd like to do right now is just -- because I did
25 speak about it yesterday. I just want to make sure

1 it's clear on the record and address this fully.

2 In dealing with South Carolina rules of evidence
3 404(b), I believe we talked about that briefly
4 yesterday. I'd like to go more into that at this
5 time.

6 **THE COURT:** Okay.

7 **MR. WILLIAMS:** Basically what my argument is
8 based on, is coming from, which is dealing with Rule
9 404(b) about using past prior convictions, you know,
10 to prove an element of the offense, this also would
11 deal with my argument coming on this other motion at
12 the same time. So basically what's going to happen
13 basically, and if I'm not going try to confuse myself
14 or the Court or anybody else. So if I seem to -- if
15 it seems like everybody is lost in the process,
16 please let me know because I want to make sure we all
17 understand.

18 But basically what's happening, what our
19 argument is is this, is that under Rule 404(b), this
20 would make in my view or my judgment the South
21 Carolina Rule 16-11-311 (a)(2) to be unconstitutional
22 because what's happening now is that during the
23 course of the time when you're allowing the jury to
24 draw inferences or decide the accused's guilt based
25 on a prior conviction, then because -- let me make

1 sure I get this right.

2 Use of the defendant's prior burglary charges
3 truly does not prove he committed the crime of
4 burglary but only that he has a tendency or one might
5 say a propensity to commit the crime of burglary.
6 Because when you use two prior burglary charges which
7 are the same thing that the defendant is on trial
8 for, now, to use that to establish it as an element
9 of the offense, which also goes back to this case,
10 State vs. Moyer which is cited at 468 SC2, page 7.

11 And basically the argument, the courts say: If
12 the State would prove the entirety of the conduct
13 previously prosecuted to establish such an element of
14 the offense, then basically what the Court is saying
15 in that case is that the prosecution at that time,
16 the charge with which he's on trial for at that time
17 would be barred under the double jeopardy clause,
18 because you're using a prior -- you're using prior
19 charges to establish the element of the offense.
20 This is coming out of State vs. Moyer.

21 And in this case, and as I argued before, that
22 it would mean that I would have to basically while --
23 let me make sure I say this right. When the State
24 presents prior convictions for the basis to establish
25 the element of the offense, then I am at a loss to

1 see how this does not hedge on a defendant's right to
2 be free from double jeopardy.

3 Once evidence of the prior convictions is before
4 the jury, now it is basically a thing where the
5 inference is drawn, the jury is going to draw all, in
6 my view, conclusions as to the guilt of the
7 individual. While this is an element of the offense,
8 this is an element of the offense for first degree
9 burglary, there is no need; and this would make the
10 statute unconstitutional because you have to use
11 prior convictions to use in order to establish that
12 this is what the defendant did.

13 In the same way and at the same time when we go
14 back and we look at, if we deal with Rule 404(b),
15 which is part of the argument as a whole, all of this
16 evidence of the prior criminal acts which are
17 independent of this crime here and they're not
18 connected, this is evidence that should not be
19 admitted during the course of the trial to prove the
20 defendant's guilt.

21 The State should be allowed -- with just that
22 section, just that section alone, when reading that
23 particular section, not the particular statute as a
24 whole, but that section there itself is
25 unconstitutional, because you are using -- because

1 based on Rule 404(b) as a whole, you're using the
2 prior convictions to establish the elements of the
3 offense which should not be used.

4 The defendant should not be made or be subjected
5 once again to convictions that he's already been
6 convicted of, not to have the State make their case.
7 Which basically, in reality, what happens is, it
8 makes a case for the State that much easier because
9 we can't -- I mean, there is no denying that
10 sometimes jurors hear about convictions from
11 individuals automatically. While they may say they
12 don't, reality is they do develop prejudice
13 discerning certain things that they hear.

14 And it's hard to erase out of the minds of the
15 jurors and tell them to overlook this, with the
16 limited instructions that the Court would give them,
17 it's hard to say these jurors are actually going to
18 follow it, according to the law, according to the way
19 the Court charges them. Because the jury could very
20 well at some point just disregard the judge's charge
21 to the jury and accept it and say, okay, and say,
22 well, listen, there may not be no proof that he did
23 this, but because he got prior convictions, we're
24 going to find him guilty anyway.

25 If this is the only elements of the offense that

1 they have to prove the defendant guilty, then the
2 rights to a fair trial for the defendant is not there
3 any more. And again, this makes it much easier for
4 the State to have a conviction based on this.

5 404(b) should be applied to exclude any evidence
6 of any past prior convictions that either the
7 defendant has been convicted of or he has not been
8 convicted of. But in this case we're dealing with
9 convictions that the State intends to use which I
10 have been convicted of. This would violate -- again,
11 this would violate --

12 **THE COURT:** I totally understand your argument.
13 Okay.

14 **MR. WILLIAMS:** Yes. I'm finished.

15 **THE COURT:** That's okay. No. I mean, I
16 understand exactly what you're saying. Let me hear
17 from the State.

18 **MS. WEISS:** Your Honor, I think it's very clear
19 in the case law that not only we're agreeing to
20 stipulate to the fact that he has the two prior
21 burglaries and just put in those two sheets and not
22 discuss it beyond that. I mean, in State vs. Benton,
23 we're not even required to do that. We could even
24 put in the information to prove that he was convicted
25 of the two prior burglaries.

1 The case law, the courts have already weighed
2 the prejudicial versus probative effect of the
3 burglaries and specifically related to the statute,
4 and originally had even said in State vs. James that
5 extras could come in and they would not be
6 prejudicial. However, that's been changed in State
7 vs. Keenan, that beyond the two that are required for
8 the statute, that it then decreases the probative
9 effect and increases the prejudicial effect.

10 Therefore, as we already stated in the
11 beginning, limiting us to the two prior burglaries,
12 unless he takes the stand, which then opens the door
13 to his crimes of dishonesty.

14 So, basically you do have to argue, you do have
15 to explain to the jury, and there will be a limiting
16 instruction, that the two prior burglaries can only
17 be used for that element; it cannot be used to
18 determine his guilt or innocence. I think that's
19 something that the defendant is arguing. They cannot
20 be used to determine his guilt or innocence. They
21 must use the evidence of his guilt or innocence.
22 Those two prior burglaries can only be used for an
23 enhancing effect.

24 And we cannot be forced according to State
25 vs. -- let's see. I'm sorry. Beg the Court's

1 indulgence one minute. I just read it as well,
2 that -- oh. And in State vs. Cheatham, there is
3 also -- you know, the defense is arguing that we have
4 the element of nighttime. Therefore -- and I think
5 it kind of goes back to yesterday -- we do not need
6 to have the two burglaries.

7 But in State vs. Cheatham the opposite argument
8 was made, that because they had the two burglaries,
9 they didn't have to argue the nighttime. And the
10 court said no, that the State has the burden of
11 proof, has presented both of those in the indictment
12 and has the right to present evidence as to both the
13 two prior burglaries as well as the nighttime. And
14 that's the same situation we're in here.

15 The case law is clearly on the State's side on
16 all of these elements. It has been decided and been
17 re-decided that the statute itself requires or lists
18 as an element in the two prior burglaries. That is
19 what the State intends to seek the enhancement to the
20 burglary first on. And the State with the burden of
21 proof has the right to then present the evidence of
22 that enhancement, not of the defendant's guilt but of
23 the enhancement.

24 And he can only be -- the crimes under 404(b)
25 can only be brought in if he takes the stand. Those

1 are for prior bad acts. And those can be used for
2 his character at that point. They can be used. But
3 until that time, until he chooses whether or not to
4 take the stand, the only thing that can be admitted
5 are the two prior burglaries. But I think by law we
6 have the burden and the right to present those two
7 prior burglaries.

8 **THE COURT:** Anything in response?

9 **MR. WILLIAMS:** Yes, Your Honor. Just briefly.
10 The fact that, yes, they have presented -- that, you
11 know, they have argued that they are going to present
12 the 19th element as an offense of the crime, that's
13 not what's on the challenge. I want to make it clear
14 my challenge is basically to the two prior
15 convictions that they can use as the basis of
16 establishing the element of the crime.

17 I think it was unfair because if you look at it,
18 it would make it much easier, it can be seen to be
19 said if you take the same thing and said, okay,
20 here's what we're going to do: In order to make the
21 crime armed robbery, if you've got two or more prior
22 convictions for armed, then you are guilty. If the
23 jury can find that you have had two or more prior
24 convictions for armed robbery, then they can find you
25 guilty of the charge.

1 And this is the same scenario that's being
2 charged here, is the first degree burglary charge.
3 If the jury finds beyond a reasonable doubt that,
4 yeah, there is evidence presented by the State that
5 the defendant had in this case two or more prior
6 burglary convictions, then that establishes the basis
7 for the jury to find, yes, we have the evidence.

8 Now that we have the evidence, now again let's
9 deal with just guessing. Well, this leads to believe
10 that the jury now would look at an offense and say,
11 okay, he has never challenged this. So basically the
12 Court would instruct the jury a stipulation that's
13 made that the parties are agreeing to this.

14 So now we're in court and inform the jury that,
15 listen, the defense has stipulated to this. So
16 basically it is being said that, yeah, I'm agreeing
17 that I've been convicted of these charges. That's
18 fine. But when you use those elements, you use those
19 prior convictions as a basis to allow the State to
20 get a conviction, that is something that, I mean, I
21 don't know. Maybe it's just me. But I just can't
22 see how that would basically make -- the State's job
23 shouldn't be made that much easier to get a
24 conviction on the accused based on his prior
25 convictions.

1 If they want to now again go back to the same
2 argument as yesterday, it's fine if they want to seek
3 the life sentence on the accused because he's got two
4 or more prior convictions that they consider under
5 the statute to be most serious. That's fine on a
6 separate proceeding. But in a trial where the
7 accused has to face the jury and the jury has to
8 decide whether or not those convictions can either
9 give him a conviction or not give him a conviction,
10 it would be the same way, basically now you're asking
11 for trouble because now you're asking the jury to
12 say, okay, we've got this. There is no rebuttal to
13 it. There is no evidence -- basically since he's
14 saying he agrees that these convictions took place,
15 we've got to make it that much easier.

16 Whether we agree, whether I agreed to stipulate
17 to that or not, the State by law is still required
18 to -- if the State can present it irregardless [sic]
19 of whether I stipulate to it or not. They have read
20 Cheatham just like I have read it. None of them
21 cases say that the State has agree to the
22 stipulation. So whether I agree to it or not, it
23 never would have made a difference; that would still
24 come in because by law, that's what they have to
25 present. This is the argument. The stipulation

1 matters not. It's the fact they're using those
2 convictions for a conviction.

3 **THE COURT:** Okay. The Court would state that
4 under the burglary first degree elements, this proof
5 of two or more convictions of burglary or
6 housebreaking or a combination of both, that's one of
7 the elements of the crime that is necessary to even
8 get this to be a burglary first degree offense. And
9 that's ordered by the statute. So that's something
10 that the State has to prove.

11 I respect, Mr. Williams, your argument about the
12 unconstitutionality of it because you're essentially
13 indicating that you feel like with the jury having
14 heard that, it kind of invades their province to
15 decide the matters herein. But the Court will have
16 to offer a limiting instruction to state that they
17 cannot use it for any purpose other than the State
18 meeting that particular element of the statute and
19 that before they even get to that they have to decide
20 whether the actual burglary in this case was
21 committed before they even get to that next element
22 of the statute.

23 So they're going to be getting that instruction.
24 But right now it is an element of the offense that
25 has already been decided by statute and then ruled

1 upon by our appellate courts, you know, in that same
2 regard. So it would not be up to me at this juncture
3 to be able to the determinate the constitutionality
4 of that.

5 **MR. WILLIAMS:** Understand.

6 **THE COURT:** Because prior precedent has already
7 apparently addressed the issues generally that it is
8 an element of the offense and it must still be
9 charged in that regard.

10 **MR. WILLIAMS:** Well, just briefly, I'd just like
11 to make a note for the record.

12 **THE COURT:** Sure.

13 **MR. WILLIAMS:** That, yeah, it has been
14 challenged; but the challenge has never been
15 concerning whether or not that particular statute
16 would violate -- there has been due process
17 challenges to that statute. It's sort of case law.
18 But never to the extent where the basis argument is
19 that this particular statute would violate the
20 defendant's right to double jeopardy. This is part
21 of what -- this is basically what -- you know, that
22 the State said. Yes, I agree it has been challenged,
23 but not on the grounds that this statute violates
24 double jeopardy.

25 **THE COURT:** But the Court can also not assume

1 that there is an automatic consideration or
2 determination by the jury that you would be found
3 guilty of burglary first degree by merely having
4 committed the prior crimes. I mean, the Court can
5 personally speak to that the same issue has come up
6 in prior trials where the defendant was found not
7 guilty. But yet those presentations of the prior
8 crimes was actually submitted to the jury.

9 So, you know, I do all that I can to make sure
10 that they understand what their role is in giving
11 that limiting instruction, that this is merely an
12 element of the offense and it not to be attributed to
13 you for purposes of the facts and evidence presented
14 in this case in the courtroom this week on this
15 particular offense. Okay. So, respectfully, I do
16 respect your argument, but that would be how the
17 Court would rule. Okay. Anything further?

18 **MR. WILLIAMS:** No. That's it, Your Honor.

19 **THE COURT:** Okay. And then you have the other
20 one, a motion to argue new questions of law?

21 **MR. WILLIAMS:** Yeah. That's basically been
22 covered. With the rule 404(b) and everything else,
23 we covered that. You gave me a ruling on that one.

24 **THE COURT:** Okay. And I will make the
25 handwritten motion that you have given me now your

1 Court's Exhibit. We'll make these one exhibit,
2 Court's Exhibit 3. So defense motions.

3 **MR. WILLIAMS:** Okay.

4 (WHEREUPON, Court's Exhibit No. 3 is marked for
5 identification.)

6 **MS. GARFIELD:** Can I just put something on the
7 record?

8 **THE COURT:** Sure.

9 **MS. GARFIELD:** For the defendant's information,
10 in order to avoid any undue prejudice to the
11 defendant, we just want make him aware as far as our
12 witnesses, specifically Officer Rose, Investigator
13 Mead, when they testify regarding his fingerprints,
14 we will be referring to AFIS as a previously
15 fingerprint rolled database to avoid any undue
16 prejudice to the defendant.

17 **THE COURT:** Do you understand that?

18 **MR. WILLIAMS:** I missed something in the course
19 of it.

20 (Pause)

21 **MR. WILLIAMS:** Okay. I understand now. Okay.

22 **THE COURT:** Is that all right?

23 **MR. WILLIAMS:** Yes. That's fine.

24 **MS. GARFIELD:** And just a procedural question,
25 since this is new to all of us; will we be doing

1 openings at the podium as well?

2 **THE COURT:** Yes. Because all the limitations
3 that I have to have on Mr. Williams will have to
4 apply to the State. So you can point your podium and
5 then come no further essentially than the microphone.

6 **MS. GARFIELD:** I can move the podium over?

7 **THE COURT:** Yeah. That's fine. But just do it
8 from the podium so that there is a buffer between
9 you.

10 **MS. GARFIELD:** Okay.

11 **MR. PAULING:** She likes to tap on the side of
12 the box.

13 **THE COURT:** And then you can walk around. But
14 just let that podium be your barrier.

15 **MS. GARFIELD:** Be my base.

16 **THE COURT:** Yeah. Okay. Anything further at
17 this time?

18 **MS. GARFIELD:** Nothing from the State.

19 **THE COURT:** Okay. Mr. Williams?

20 **MR. WILLIAMS:** No.

21 **THE COURT:** Okay. So we're going to conclude
22 until 2:00. You'll have a recess. And then at that
23 time the Court will instruct the jury, have them
24 sworn in. Then we'll proceed with opening and the
25 trial of the case. Thank you all.

1 **MR. WILLIAMS:** Thank you.

2 (Whereupon, a lunch break is taken)

3 **THE COURT:** All right. We are ready to proceed
4 with opening statements. But before we do that,
5 Mr. Bullard, the attorney, Mr. Allen Bullard that Mr.
6 Williams had asked for some documents with respect to
7 his underlying PCR, Mr. Bullard, if you'll represent
8 to the Court what you have with you.

9 **MR. BULLARD:** I've got my entire file here. I
10 have everything that I would have had in the PCR, a
11 transcript of his guilty plea. I have the results of
12 the PCR. Of course I have some attorney/client
13 privilege matters from our discussions.

14 **THE COURT:** Okay. So for your purposes --

15 **MR. BULLARD:** But I don't know exactly what he
16 wants.

17 **THE COURT:** -- Mr. Williams, you wanted the
18 transcript and then I guess the Orders?

19 **MR. WILLIAMS:** Yes, ma'am.

20 **THE COURT:** Okay. So transcripts of the actual
21 guilty plea proceeding I guess and then the
22 underlying PCR proceeding.

23 **MR. BULLARD:** I don't have transcripts of the
24 PCR. That would have not been something I would have
25 ordered. It would have been ordered on the appeal.

1 **THE COURT:** Right.

2 **MR. BULLARD:** That's the matters that the
3 Attorney General's Office would have.

4 **THE COURT:** But you have the underlying Orders.

5 **MR. BULLARD:** I have the Order from the PCR,
6 yes.

7 **THE COURT:** Okay. That should be sufficient.

8 **MR. WILLIAMS:** Yes. I did say that yesterday.
9 I believe I said that if he had the guilty plea
10 transcript and the Order, all of that would be fine.

11 **THE COURT:** So if you can just tender those two
12 pieces of information.

13 **MR. BULLARD:** These are the originals. I don't
14 want to misplace them.

15 **THE COURT:** We'll make copies.

16 **MR. BULLARD:** I'll let him have whatever he
17 wants out of it. It's his file.

18 **THE COURT:** State, do you want to receive a
19 reciprocal copy?

20 **MS. WEISS:** Yes. We can make two copies.

21 **THE COURT:** Okay. That will be fine. Thank
22 you.

23 **MS. WEISS:** And I was going to state for the
24 record; but it sounds like he is fine with that, I
25 spoke to the Court of Appeals at lunchtime just to

1 see what would be out there. I also spoke to
2 appellate defense because he had said that they had
3 represented him after Mr. Bullard. The Court of
4 appeals said it did appear, that the Supreme Court
5 did scan in all the documents that they had and that
6 the Supreme Court could possibly provide scanned --
7 they may have it already scanned in and be able to
8 access it. I have the name of two people at the
9 Supreme Court. I could not reach them at lunchtime.

10 **THE COURT:** Okay.

11 **MS. WEISS:** But if this is sufficient, I think
12 we can stop with this.

13 **THE COURT:** Okay.

14 **MS. WEISS:** But if it's not, there is
15 information. I did it because Your Honor asked me to
16 look into it. So I did that.

17 **THE COURT:** Sure. I appreciate it. Yes.

18 **MR. WILLIAMS:** Excuse me, Your Honor. I wanted
19 to make one thing clear. We're going over this now.
20 And we have the Orders but they're not signed. It's
21 not a signed Order. That's the only thing that
22 isn't. But the Order that I did receive, the Order
23 was signed by the judge. But the ones he has in his
24 file are not signed. That's the only thing.

25 **THE COURT:** Okay.

1 **MR. BULLARD:** There would have been a signed
2 Order that looks like it was sent to Appellate
3 Defense.

4 **THE COURT:** Do you believe that the Proposed
5 Order was signed verbatim?

6 **MR. BULLARD:** No, because I had to --

7 **THE COURT:** Make provisions?

8 **MR. BULLARD:** I had to send a letter to the
9 judge asking him to consider some additional
10 information.

11 **THE COURT:** Okay. Should the Order not be
12 online somewhere?

13 **MS. WEISS:** I don't know. But I would believe
14 because cert was denied by the Supreme Court, so
15 nothing was changed after it was sent to the Supreme
16 Court, your clerk may have better luck calling from a
17 judge.

18 **THE COURT:** Okay.

19 **MS. WEISS:** I mean, I'm sure they would have
20 called me back except for the fact it was lunchtime.
21 But since I'll be in the courtroom, if you want
22 somebody to call these people, they maybe have it on
23 a computer system where they can just pull up the
24 Order and print it out or email it to you.

25 **THE COURT:** Because what we'd be looking for is

1 the underlying Order, not just the denial of cert.

2 **MS. WEISS:** Right. They have the entire file.

3 **THE COURT:** File.

4 **MS. WEISS:** File.

5 **THE COURT:** All right. If you'll write those
6 numbers down, we'll take those down. And then if you
7 can direct your assistant if you receive that call
8 that she needs to get a message to you.

9 **MR. BULLARD:** Your Honor, the appendix on the
10 appeal --

11 **MS. WEISS:** All of my assistants are in the
12 courtroom. So there will be nobody at my phone. But
13 I will be glad to check during breaks.

14 **THE COURT:** Okay. That's fine. Okay. If
15 somebody would just get word to you that you've
16 gotten a message from the Supreme Court.

17 **MS. WEISS:** It's just on my personal phone.

18 **THE COURT:** Oh, okay. I thought you left an
19 office number.

20 **MS. WEISS:** I didn't.

21 **THE COURT:** That's okay.

22 **MR. WILLIAMS:** Here it is. Hang on. We have
23 it.

24 **THE COURT:** You have the signed order?

25 **MR. WILLIAMS:** Yes. We have a signed Order

1 right here, Your Honor.

2 **MR. BULLARD:** All right.

3 **THE COURT:** Mr. Williams is very diligent.
4 Okay. So we have the transcript and the signed
5 Order.

6 **MR. WILLIAMS:** The signed Order; yes, ma'am.

7 **THE COURT:** Does this satisfy your request?

8 **MR. WILLIAMS:** Yes, it does.

9 **THE COURT:** So we are done with that pursuit.
10 Okay. Thank you so much. If you could hand over
11 those copies to the Solicitor's Office, they indicate
12 they would make the appropriate copies. Two, yes.
13 One for the solicitor and one for Mr. Williams. And
14 actually three. Just in case it becomes an issue, it
15 may need to be a Court's Exhibit, if you wouldn't
16 mind.

17 **MR. WILLIAMS:** Excuse me, Your Honor.

18 **THE COURT:** Yes.

19 **MR. WILLIAMS:** Would it be okay to excuse him at
20 this time?

21 **THE COURT:** Yes. Yeah. That's fine. And we
22 will give the documents to Mr. Pauling and he will
23 work out getting them back to you.

24 **MR. BULLARD:** Okay. Thank you.

25 **THE COURT:** Or through my office. I didn't say

1 you. But you can forward it, however it gets done.

2 **MS. WEISS:** Your Honor, if we may.

3 **THE COURT:** Yes.

4 **MS. WEISS:** This is a bound copy of the
5 transcript that is all glued together and would be --
6 would take a while to copy. Can we take just a
7 moment and see if there's anything in particular Mr.
8 Williams is looking for in here? If it's just a
9 couple of parts of this, then we would make copies of
10 those pages, as opposed to this entire transcript
11 which is 90 pages long.

12 **THE COURT:** I don't know that -- well, if you
13 can. But I don't want to put you on the spot and
14 hold the jury up for you to figure that out.

15 **MR. WILLIAMS:** No, no. Because I think I can
16 pick out the parts we need.

17 **MS. WEISS:** Your Honor, if I may approach, we
18 did get to that point. This is that phone number.

19 (Pause)

20 **THE COURT:** Is that issue going to come up any
21 time soon?

22 **MR. WILLIAMS:** No, no, no.

23 **THE COURT:** Well, let's do that. Mr. Pauling
24 will be responsible for getting the document back to
25 Mr. Bullard anyway. So I will give you the chance to

1 look at it. We just don't need to do it right now if
2 the issue won't come up this afternoon. But we can
3 take care of it before the day ends. Okay. All
4 right. Ready for the jurors?

5 **MS. GARFIELD:** The State's ready.

6 **MR. WILLIAMS:** Yes. I'm ready, Your Honor.

7 **THE COURT:** Okay. Jurors, please.

8 (Jury in at 2:12 p.m.)

9 **THE BAILIFF:** Your Honor, the jury is present.

10 **THE COURT:** Thank you. Good afternoon, ladies
11 and gentlemen of the jury. And I welcome you back to
12 the trial of the State vs. Darrell Williams. I
13 appreciate your accommodating us because I did have
14 to give you an extended break. Once I saw that the
15 legal issues were going to last a lot longer, I did
16 not want to keep you cooped up in the room. So we
17 allow you to have an extended break while we
18 continued to work here and then of course allowed the
19 parties to recess for a brief lunch hour themselves.

20 We are now about to begin the trial of this
21 case. So the clerk is going to swear you in for your
22 oath as jurors for this particular case, and then I
23 will give you some instructions for the trial. Madam
24 Clerk.

25 **THE CLERK:** Ladies and Gentlemen of the Jury,

1 please stand and raise your right hand and be sworn.

2 (Whereupon, the jury is sworn).

3 **THE CLERK:** You may be seated.

4 **THE COURT:** Ladies and gentlemen of the jury
5 panel, I thank you again for your most important
6 service and one of your highest callings to public
7 service, jury duty, in the service of this case.

8 Before we begin the trial of this case I want
9 you to know that it is probably going to be something
10 unlike what you might have experienced by reading
11 various drama books as well as looking at television
12 on various things like Law and Order, crime scenes,
13 and things of that nature.

14 The big difference is that those are actors.
15 What we have here are real live people and whose
16 lives and liberties may be affected by your decisions
17 obviously. So I want you to give full time and
18 attention to both the State and the defense in what
19 is a very serious matter.

20 You are one of the most important people in the
21 room because you are the sole and exclusive judge of
22 the facts in this case. Necessarily, when you hear
23 various testimony from witnesses or other evidence,
24 to the extent that any of it is conflicting, that is
25 your sole province as jurors in this case, to make

1 those determinations with respect to how you perceive
2 those facts and any credibility issues with respect
3 to the witnesses in this case.

4 The way we will proceed in this trial is that
5 the State who has the burden of proof in this case,
6 it is their duty to prove beyond a reasonable doubt
7 that Mr. Darrell Williams in fact committed the
8 crimes of burglary first and petit larceny.

9 As I indicated to you earlier, the indictment is
10 just a notice document. It is the document which
11 brings this case to trial. It is not evidence of
12 guilt. That is the State's burden of proving this
13 case to you beyond a reasonable doubt based on what
14 will be elicited from witnesses as facts, evidence
15 and other testimony in this case.

16 The defendant has pled not guilty and has
17 exercised his Constitutional right to a jury trial.
18 And as I indicated to you earlier, he has also waived
19 his right to have counsel and instead will proceed
20 what we call pro se; in other words, representing
21 himself. And he has the absolute right to do that
22 because at prior proceedings the Court found that he
23 was competent, voluntarily and intelligently waived
24 his right to counsel. So he will proceed alone
25 representing himself as his own attorney and have the

1 ability to conduct cross examination and other
2 examinations of the witnesses.

3 The State will go first. We will have opening
4 statements from both parties. And during those
5 opening statements they will just be giving you a
6 general statement or their version of how they
7 believe the facts will play out during the trial.

8 The State will go first, then the defense.
9 After that they will begin examination of the
10 witnesses. The State will go first in that regard
11 and then the defense has the opportunity to cross
12 examine any of those witnesses.

13 At the conclusion of the State's case the Court
14 has to take up legal matters inbetween both parties'
15 cases. Then the defendant will have the opportunity
16 to decide whether or not he wishes to put up a case.
17 You will be instructed again that it's not his duty
18 to do so. He can stand on what the State has
19 presented or choose to present some additional
20 evidence. And then the State would have that same
21 opportunity to cross examine any of the defendant's
22 witnesses.

23 Throughout the trial we ask you to pay close
24 attention not only to just what the witnesses are
25 stating but to what the Court's direction may be with

1 respect to some rulings in the case. You may hear
2 objections. Sometimes, I'm sure if you've watched
3 TV, you've heard some of that. All lawyers as well
4 as anybody proceeding even in pro se are responsible
5 for their professional ethics and respecting
6 courtroom decorum but also abiding by rules of
7 evidence, our rules of criminal procedure. So they
8 all have to abide by those rules.

9 And the Court is the judge of the law of this
10 case while you are the judge of the facts. And I
11 have to make sure that what is presented to you is
12 within the rules. So while I will try to deal with
13 some of those matters right here on the record, to
14 the extent it becomes extensive, every so often I
15 might have to ask you to excuse yourself to your jury
16 room and take those matters up with the court
17 reporter recording everything but outside of your
18 presence.

19 We try to limit that; but also, in fairness to
20 the parties, I have to do it. So I just apologize in
21 advance to the extent it becomes a little
22 inconvenient for you to come in and out of the room
23 in that regard. But that is how the Court must
24 proceed along with the case.

25 I do remind you that you are the sole and

1 exclusive judge of the facts. Please give your time
2 and attention to both sides as they present the case.
3 I will be the judge of the law. At the conclusion of
4 the case I will tell you what the law is and remind
5 you to throw out any ideas as to what somebody told
6 you it is, what you think it is and what you think it
7 ought to be. It will be as I tell you it is, and
8 that will be the law that you apply to the facts of
9 this particular case.

10 Thank you again for your time and attention to
11 this matter and for accepting your serious
12 responsibility as jurors. I will now direct you to
13 the State who will proceed with the opening
14 statements in this case. State.

15 **MS. GARFIELD:** Thank you, Your Honor. May it
16 please the Court, Mr. Williams, ladies and gentlemen
17 of the jury. This is a case about choices. And with
18 all choices come consequences.

19 On the evening hours of Thursday, July 12th,
20 2007, Dr. Peter Sederberg left his home that he
21 shared with his wife and daughter and went to see a
22 movie with some friends. When he came home around
23 midnight he found that his home had been burglarized.
24 Ladies and gentlemen of the jury, Darrell Williams
25 committed burglary at Dr. Sederberg's home while he

1 was away.

2 Ladies and gentlemen of the jury, Darrell
3 Williams is charged with burglary in the first degree
4 and petit larceny. Burglary in the first degree is
5 the unlawful entry of a dwelling or a home with the
6 intent to commit a crime in that home, either during
7 the hours of darkness or if that particular defendant
8 has two prior convictions for burglary.

9 He is also charged with petit larceny. And
10 petit larceny simply means taking items that don't
11 belong to you that are valued less than \$1,000.

12 Ladies and gentlemen, I am Dolly Justice
13 Garfield. I am a prosecutor here in Richland County.
14 And seated to my right is Ms. Heather Savitz Weiss
15 who is also a prosecutor. We represent the State of
16 South Carolina here in Richland County, and it is our
17 job to prove to you ladies and gentlemen that Darrell
18 Williams committed these crimes.

19 How will we do that? Well, first of all, as
20 Judge Childs already suggested, this is a lot like
21 Law and Order and CSI. And oftentimes I have friends
22 that I haven't seen in years and I run into them and
23 they ask me what am I doing for a job now, and I
24 explain to them that I'm a prosecutor. And they
25 often say: Do you mean like on Law and Order? And I

1 always reply and kind of laugh back and say: Yes.

2 And while I do a lot of the same things that you
3 see on television, we deal with the same issues on a
4 daily basis, the big difference between those
5 television shows and what you will see in the course
6 of this trial is that this is real. What you see on
7 television are paid actors, but what you will see in
8 this courtroom are real victims, real law enforcement
9 officers and a real crime.

10 We will present this case to you and prove the
11 charges of burglary in the first degree and petit
12 larceny by calling a series of witnesses to the
13 stand. You will first hear from Dr. Sederberg who
14 will tell you the account of his events as he
15 recalled them that occurred that night and what he
16 found to be missing in his home.

17 You will also hear from the responding officer,
18 Robert Calby of the Columbia Police Department. You
19 will subsequently hear from Officer Buddy Rose who is
20 a crime scene analyst with the Columbia Police
21 Department who will explain to you how he compared
22 fingerprints that were lifted off of glass that was
23 found on the ground outside the Sederberg home and
24 inside a bedroom, how he compared those fingerprints
25 and found them to match the fingerprints of Darrell

1 Williams.

2 You will then hear from Investigator Paul Mead
3 who is the head crime scene investigator -- I'm
4 sorry -- head crime investigator on this case. And
5 he will testify how the defendant confessed to him
6 that he was present at that particular location.

7 Now, as Judge Childs has also mentioned to you,
8 Darrell Williams has chosen to represent himself.
9 That is not anything in the course of this trial that
10 you should take into account when making a decision
11 at the end of this case. That is Mr. Williams's
12 decision. He has been offered the opportunity to
13 have counsel and he has decided to go represent
14 himself and to continue through this case without
15 counsel. That is his decision.

16 Now, as I said at the beginning, this is a case
17 about choices. And with all choices we face certain
18 consequences. I'm sure you or someone you know has
19 often gotten a parking ticket, especially if you park
20 anywhere in the City of Columbia. And with that
21 parking ticket, because you knew you didn't put money
22 in the meter, you face the consequence of having to
23 pay that parking ticket.

24 Or perhaps you haven't turned a movie in on
25 time. Even though you knew it was due that day, you

1 just didn't have time, and you knew you faced the
2 consequences of turning that movie in and facing a
3 late fee.

4 Well, ladies and gentlemen, your job, and you've
5 taken an oath in this case, is to listen to the
6 evidence. And at the conclusion of the case it will
7 be your job not to forgive the defendant and not to
8 punish him but to determine was a law broken in our
9 state.

10 At the conclusion, the State of South Carolina
11 would submit to you and ask you to render a verdict,
12 guilty of burglary first and petit larceny. We will
13 ask you to send a message to Darrell Williams that we
14 will not tolerate burglaries of our homes in our
15 community. We will ask you to send a message to
16 Darrell Williams that he must accept the consequences
17 for the choices he made on July 12th when he chose to
18 break the laws of the State of South Carolina. Thank
19 you.

20 **THE COURT:** Okay. Mr. Williams, you may
21 proceed.

22 **MR. WILLIAMS:** Yes. Thank you, Your Honor.
23 Assistant Weiss, Assistant Solicitor Garfield, ladies
24 and gentlemen of the jury, my name is Darryl
25 Williams. As the solicitor told you and the judge

1 told you, I have decided to represent myself here in
2 this trial today.

3 Now, this trial, as the solicitor put it, is
4 about consequences. But a reality is this trial is
5 about one thing. There was a game years ago, they
6 called it Clue. And in this game you had to put all
7 the clues together and based on the facts that the
8 little cards gave you.

9 Now, the little cards in this particular trial
10 is the testimony that the State will present.
11 Concerning the facts that they present and the law as
12 the judge instructs you on it, I am asking you, and
13 the solicitor has asked you, to decide fairly between
14 the both of us whether or not beyond a reasonable
15 doubt they have proved their case.

16 We are asking you to be fair between both
17 parties. Don't look at one side as being more
18 favorable because this is their job. Don't look at
19 the other side as saying, okay, well, this is what he
20 is doing on his own. Decide the facts based on the
21 clues that are going to be presented.

22 You are going to hear testimony from numerous
23 witnesses from the victim, from police officers
24 concerning this case here. All I'm asking is for
25 you, the jurors, ladies and gentlemen of the jury, to

1 look at the clues and determine for yourself whether
2 or not again they have proven -- they have proved
3 their case. Then, as they say, the consequences, if
4 they have failed to prove their case, come back with
5 a verdict of not guilty, because all the clues that
6 they have put together and presented before you have
7 not proved my guilt.

8 The consequences that the State wants you to
9 look at is that what they say they're going to prove
10 what I did. The only consequences that should be
11 considered here is what the clues show; nothing else,
12 nothing more. And that's all I'm asking you ladies
13 and gentlemen of the jury to do for me today. And
14 for them. Consider the clues. Thank you.

15 **THE COURT:** Thank you, Mr. Williams. State, you
16 may present your next witness.

17 **MS. WEISS:** Thank you, Your Honor. The State
18 calls Dr. Peter Sederberg.

19 PETER SEDERBERG, after affirming to tell the
20 truth, testifies as follows:

21 **WITNESS:** I so affirm.

22 **THE CLERK:** Please have a seat. State your full
23 name for the record.

24 DIRECT EXAMINATION

25 **BY MS. WEISS**

- 1 Q Good afternoon, Dr. Sederberg.
- 2 A Good afternoon.
- 3 Q Dr. Sederberg, where are you currently employed?
- 4 A I am currently employed at Emory University in
- 5 Atlanta.
- 6 Q What's your position there?
- 7 A My position, formal title, is Special Assistant to
- 8 the Provost for Undergraduate Initiatives.
- 9 Q And how long have you been working for Emory?
- 10 A A little over 14 months.
- 11 Q At what time did you finally move to Atlanta?
- 12 A Our final move was on August 13th.
- 13 Q Of ...?
- 14 A Of 2007.
- 15 Q Okay. And prior to that where were you living?
- 16 A I lived, my family lived at [REDACTED] in
- 17 Columbia.
- 18 Q Is that in Richland County?
- 19 A Yes, ma'am.
- 20 Q And how long did you live at that address?
- 21 A Approximately 35 years.
- 22 Q When you lived in Columbia, what did you do here?
- 23 A I was a professor and then dean at the University of
- 24 South Carolina.
- 25 Q And you said you were a Dean. What were you a dean

1 over?

2 **A** I was the dean of the South Carolina Honors College.

3 **Q** And how many years did you do that?

4 **A** Eleven.

5 **Q** Did you eventually retire from that position?

6 **A** Yes.

7 **Q** And when was that?

8 **A** I retired from full-time administering,
9 administrating in 2005. I stayed on one more year as
10 a full-time professor in the Department of Political
11 Science, and then I stepped down from full-time
12 teaching responsibilities in 2006 and continued part
13 time for one more year.

14 **Q** And when did your professor duties end at the
15 University of South Carolina? On what date?

16 **A** As a full-time professor, they ended on June 30th,
17 2006. As part time, June 30th, 2007.

18 **Q** And as of June 30th, 2007, you said you had shared
19 the home at Edisto with your family. At some point
20 did they move to Atlanta?

21 **A** Yes, they did; in a somewhat surreal fashion. My
22 daughter was off at college. My wife took a position
23 at Emory University in January of 2007. And that
24 summer of 2007 my daughter was spending most of her
25 time in Atlanta.

1 Q And your wife was living pretty much full time in
2 Atlanta?

3 A That's correct.

4 Q And so your house in Columbia, you were the primary
5 resident?

6 A Yes.

7 Q Did anyone live with you?

8 A My dog and my cat and on occasion my daughter.

9 Q And your daughter would come back to visit but she
10 was mostly staying in Atlanta?

11 A That's correct. She had a part-time job there.

12 Q Excuse me. I have just a little bit of a cough. I
13 hope it doesn't bother anybody. Did you at some
14 point put your house on the market in Columbia?

15 A Yes, we did. And I can't remember the exact date,
16 but I think it was sometime in the middle of June.

17 Q And did you have a sign out in front of your home?

18 A Yes, we did.

19 Q And did you eventually sell that home?

20 A Yes, we did.

21 Q And when was that?

22 A The formal closing was on August 31st.

23 Q Okay. But during the time that it was on the market
24 you were still living there?

25 A Up until --

1 Q Up until --

2 A -- the second week in August.

3 Q Okay. Now, July 12th of 2007, you were living in
4 that home?

5 A Yes.

6 Q And was anyone staying with you? Was your daughter
7 in town the night of July 12th?

8 A No.

9 Q Okay. Dr. Sederberg, I'm going to ask you to talk a
10 little bit about how your house was laid out and go
11 over some questions. Mr. Whittle, if you would, if
12 you could just place these close to the witness. If
13 you could move it over towards the witness.

14 THE BAILIFF: Do you want the jury to be able to
15 see it as well?

16 MS. WEISS: The jury to see it but over towards
17 the witness so that he can stand close to the witness
18 stand and describe it. I need to be able to see it,
19 too.

20 THE BAILIFF: How is that?

21 MS. WEISS: I need to be able to see it as well.
22 Thank you.

23 THE COURT: Do you need a pointer?

24 MS. WEISS: He does.

25 THE BAILIFF: Let me ask you to step down.

1 **MS. WEISS:** Actually, Mr. Whittle, he doesn't
2 need to step down. I believe Officer Rose may have
3 it. Beg the Court's indulgence one moment. We did
4 get, acquire a laser pointer to help with this. If
5 you can hand this to the witness.

6 **THE BAILIFF:** I don't have a clue how that thing
7 works.

8 **Q** (By Ms. Weiss) Dr. Sederberg, if you can just try
9 out the pointer and see if it can -- okay. We know
10 how it works. Now, before we get started I want to
11 show a little bit about the outside of your home.
12 Mr. Whittle, if you could hand the witness what's
13 been marked as State's Exhibits 9, 3 and 4. If you
14 would look at these and then see if you can identify
15 them?

16 **A** Okay. State Exhibit 9 is the front of my house from
17 the street level on Edisto. And you will be able to
18 see that the house is raised up on a hill.

19 **Q** Is that picture taken from about street level?

20 **A** It is taken I believe at street level. Obviously the
21 person was standing. But, yes, it's at street level.
22 And you can see the retaining wall that keeps the
23 house from falling down into the street.

24 Exhibit No. 3 is the back of the house, and this
25 will indicate that the house was actually built

1 partly into the hill so that the level of the windows
2 is quite low to the ground at that point.

3 Q Okay.

4 THE COURT: And as to the witness, I need you to
5 just answer her questions in terms of what exhibits,
6 but they've not been admitted into evidence, so they
7 can't be published to the jury yet.

8 A Okay. All right. And this is -- Exhibit No. 4 is a
9 close up of the back of the house.

10 THE COURT: Sir, you'll just need to explain it
11 to yourself until it's submitted into evidence.

12 Okay.

13 A I'm sorry.

14 Q Would you say those are accurate depictions of how
15 the house looked as of July 12th, 2007?

16 A Yes.

17 MS. WEISS: Your Honor, at this time we would
18 ask to enter those State's Exhibits into evidence.

19 THE COURT: Okay. Any objection, Mr. Williams?

20 MR. WILLIAMS: No. No objection, Your Honor.

21 THE COURT: Have you seen them?

22 MR. WILLIAMS: I believe those are the same
23 ones --

24 THE COURT: Okay. Let's just make sure you've
25 seen them before you answer that question.

1 **COURT REPORTER:** I'll need the numbers again,
2 too, please.

3 **MS. WEISS:** State's Exhibits 4, 3 and 9.

4 **MR. WILLIAMS:** Yes, Your Honor. I have seen
5 those.

6 **THE COURT:** Any objections?

7 **MR. WILLIAMS:** No. No objections.

8 **THE COURT:** Okay. They will be admitted then.

9 (WHEREUPON, State's Exhibit No. 3 is admitted
10 into evidence.)

11 (WHEREUPON, State's Exhibit No. 4 is admitted
12 into evidence.)

13 (WHEREUPON, State's Exhibit No. 9 is admitted
14 into evidence.)

15 **Q** So, as you indicated, your house is built somewhat
16 onto a hill and then it's shorter in the back and
17 these are rooms in the back of the house. Can you
18 show using your pointer where the rooms in the back
19 of the house are on that diagram?

20 **A** Yes. The rooms at the back of the house are all
21 along here. There are three bedrooms, the master
22 bedroom and then the back dressing room, hallway and
23 entry to the second bedroom, middle bedroom, and then
24 a hallway that leads to an entrance to a second bath
25 and then an entrance to a third bedroom. And then

1 the back, the carport door is on this side. And you
2 can -- in order to get to this hallway, you have to
3 go through the laundry room and the hallway.

4 **MS. WEISS:** And if we can mark this diagram as
5 State's Exhibit whatever the next exhibit would be.

6 **COURT REPORTER:** 26.

7 **MS. WEISS:** State's Exhibit 26 for
8 identification. Mr. Whittle.

9 (WHEREUPON, State's Exhibit No. 26 is marked for
10 identification.)

11 **MS. WEISS:** State's Exhibit 26.

12 **COURT REPORTER:** For I.D.

13 **MS. WEISS:** For I.D.

14 **Q** (By Ms. Weiss) And do you recognize this diagram?

15 **A** Yes. I drew it.

16 **Q** You drew it. And is this an accurate, not to scale,
17 but a generally accurate depiction of the layout of
18 your house when you lived in it in July of 2007?

19 **A** Yes, it is.

20 **MS. WEISS:** Mr. Whittle, if you would please
21 show the diagram to the defendant.

22 **MR. WILLIAMS:** Thank you.

23 **MS. WEISS:** Your Honor, at this time the State
24 would move State's Exhibit 26 into evidence.

25 **THE COURT:** Any objection?

1 **MR. WILLIAMS:** No. No objections, Your Honor.

2 **THE COURT:** Okay. Thank you. That will be
3 admitted.

4 (WHEREUPON, State's Exhibit No. 26 is admitted
5 into evidence.)

6 **Q** Okay. Now, if we can explain a little bit about the
7 layout of your house. Where is it that you enter
8 your house?

9 **A** On that particular night?

10 **Q** Well, --

11 **A** Or normally?

12 **Q** -- typically, where do you come in and out?

13 **A** Well, normally, I should add that the reason why this
14 is open is that there are two more rooms in the
15 front, a dining room and a formal living room that go
16 out in that direction. But normally I drive into the
17 carport, park my car and enter here.

18 **Q** And when you enter, is it possible to enter your
19 house and go all the way back to your master bedroom
20 without going through your daughter's bedroom or the
21 third bedroom?

22 **A** Yes. Just go over to the kitchen, around this
23 divide, and there is a wide opening. It's not a
24 door. It's just a gap between the kitchen divider
25 from the family room; walk through the family room

1 into this door and then into the hallway outside the
2 master bedroom and then through this door into the
3 master bedroom.

4 **MS. GARFIELD:** Your Honor, may we approach?

5 **THE COURT:** Yes, you may. Mr. Williams.

6 **MS. GARFIELD:** Mr. Williams.

7 (Whereupon, a bench conference is had)

8 **THE COURT:** You can take your notebook with you
9 if you want.

10 **MS. WEISS:** Mr. Whittle, if you can just handle
11 it a little bit more so Mr. Williams can see it as
12 well. Can you see it?

13 **MR. WILLIAMS:** Yes. I can see it.

14 **Q** (By Ms. Weiss) Okay. If you can just show that path
15 one more time?

16 **A** Right. I entered from the carport door into this
17 hallway here, around through the kitchen, into the
18 family room and then through this door into the
19 hallway and then into the master bedroom.

20 **Q** Okay. And taking you back now to July 12th of 2007,
21 when you arrived home before you went out that night,
22 when you first arrived home, do you recall if you
23 went throughout the house, if you walked throughout
24 the house when you were home?

25 **A** I do not recall that I walked throughout the house.

1 It was daylight. I was coming home to have a light
2 dinner before going out. And I would -- I fed and
3 walked my dog and then --

4 **Q** Was there anything amiss or awry in your house,
5 anything out of place when you were home prior to --

6 **A** I noticed nothing awry.

7 **Q** And is it typical that you would have walked around?
8 Would you have been able to see the back windows of
9 the house, being daylight, when you came home earlier
10 in the day?

11 **A** I would have been able to see them, but I did not
12 walk around the back of the house.

13 **Q** Okay. Are you aware as to whether anything had been
14 broken or damaged during the day?

15 **A** No. I mean, I'm not aware of any damage at that
16 time.

17 **Q** Okay. And now, when you would go from your master
18 bedroom to leave the house, which way would you
19 typically leave, would you go to leave the house?

20 **A** Typically?

21 **Q** Yes.

22 **A** The same way I came; out this door and then through
23 the family room and out the kitchen to the car.

24 **Q** Okay.

25 **A** And the reason is is that that was sort of my

1 daughter's private space.

2 Q Okay. What time did you leave on July 12th of 2007?

3 A My recollection is that I left approximately at 8:30.

4 Q Do you recall --

5 A P.M.

6 Q I'm sorry. Go ahead.

7 A Yeah. No.

8 Q Do you recall whether or not it was daylight or dark
9 at that time?

10 A It was still light.

11 Q Do you recall how light it was when you left?

12 A Light enough so that I didn't need the lights on my
13 car to drive to where I was going.

14 Q And are you aware as to whether or not you turned on
15 any outside lights or any inside lights?

16 A I always left inside lights on. I usually, since
17 there was only one car in the carport, the one I was
18 driving, my wife and daughter being in Atlanta at the
19 time, my habit is not to turn the light on in the
20 carport if there is no car standing there. So my
21 recollection is that I did not leave a light on, but
22 I cannot say for sure.

23 Q Okay. And where would -- the lights that you leave
24 on inside, where would you typically leave on lights
25 inside?

1 **A** There would have been a light in the kitchen and a
2 light in the family room.

3 **Q** And those would be in the front of the house?

4 **A** No. Well, the front of the house is here. So in
5 fact --

6 **Q** They'd actually be the middle of the house?

7 **A** -- from the front the house would have appeared dark
8 because there were no lights left on in the dining
9 room which is right here or the formal living room
10 which is on -- right there.

11 **Q** So from this view, from the street, it would have
12 appeared dark?

13 **A** It would have appeared dark.

14 **Q** And from the back of the house, since there are all
15 those rooms on the other side of the family room and
16 the kitchen, what would it appear like?

17 **A** From the back of the house, these rooms here probably
18 would have appeared dark. There might have been some
19 light from the light in the kitchen coming around and
20 through, and from the family room coming around and
21 through. But those two rooms were dark. I had left
22 them dark. So it would have been -- it would have
23 appeared relatively dark from the back. You would
24 have noticed a light if you'd walked up the driveway
25 because there would have been a light in the kitchen

1 window, which I didn't draw here. Kitchen window.

2 Q But from the street it definitely would have appeared
3 dark and there would have been a For Sale sign in the
4 front yard?

5 A That's correct.

6 Q When you returned that night what time did you
7 return?

8 A I think it was approximately 11:30.

9 Q And what was it like outside? What were the
10 conditions outside?

11 A Undisturbed.

12 Q Was it light or dark?

13 A It was dark.

14 Q And when you came inside, do you remember where you
15 went?

16 A Yes. I took my normal route which was to go through
17 this door, around the kitchen, through the family
18 room, into the hallway and into the master bedroom.

19 Q Okay. And how long were you in the master bedroom
20 before you came out and went around to the rest of
21 your house?

22 A Probably somewhere between 20 and 30 minutes because
23 I was getting ready for bed.

24 Q And what did you do after you got ready for bed?

25 A After I finished getting ready for bed I decided -- I

1 normally check the doors. And so at this point I
2 walked through here. And since my daughter wasn't
3 here, I went in through her bedroom.

4 Q Okay. And did you make it any further than her
5 bedroom?

6 A No. Of course I was coming from a lit room to a
7 darkened room. And so my eyes were not used to the
8 dark. And I noticed that there were -- there was
9 something on her bed which I knew wasn't there
10 before. I mean, there were shapes on her bed and
11 that startled me. And so I turned on the light and
12 discovered that the window, there are two large
13 windows along the side here, the one toward this side
14 of the bed right as you're facing the wall had
15 been -- the upper window, two awning type windows,
16 the upper one of which was broken. The broken screen
17 that was on the inside was lying sort of partly on
18 the bed and on the floor. And then there were a few
19 things scattered on her bed.

20 Q Okay.

21 A Should I continue? The main one, the one I clearly
22 remember seeing was my daughter's large plastic
23 dragon-shaped savings bank.

24 Q And was that something she had had for a long time?

25 A Yes.

1 Q And did it have anything in it to the best of your
2 recollection?

3 A Oh, pounds of change.

4 Q And so you cut on the light at some point?

5 A I turned it -- well, as soon as I noticed the shapes,
6 I knew that was wrong. The light switch that I was
7 closest to is right here next to the dresser. So I
8 just walked over, turned on the light and saw what
9 had happened.

10 Q I'm going to show you what have been marked as
11 State's Exhibits 7, 10 and 12 for identification. If
12 you can look at these without publishing them to the
13 jury and just tell me what they depict?

14 A Exhibit 7 is my daughter's bedroom. Exhibit 10 is
15 the corner of that bedroom, the corner made by the
16 wall and the dresser showing the bank. And Exhibit
17 12 is the dresser itself.

18 Q Do those pictures fairly and accurately depict
19 basically the way the room was when you turned on
20 that light on July 12th of 2007?

21 A No. When these pictures were taken, the upper window
22 had been repaired with a piece of plywood.

23 Q Okay.

24 A And the bank had been removed from the bed and put
25 back on the floor.

1 **Q** Other than those discrepancies, is the room in the
2 same condition?

3 **A** Well, and the other -- the glass that was inside and
4 the screen had been cleaned up.

5 **Q** Okay. And --

6 **A** I think that's it.

7 **Q** -- do you know approximately when those pictures were
8 taken?

9 **A** Yes. They were taken by the insurance adjuster who
10 came out. Well, within 48 hours; possibly the day
11 after the event. But it was not -- it was not
12 immediate.

13 **Q** But it was within approximately 48 hours of the break
14 in?

15 **A** Yes. And I believe after the crime scene had been
16 investigated. I'm almost certain of it, but I don't
17 have it in a date book.

18 **MR. WILLIAMS:** No objections to those, Your
19 Honor.

20 **THE COURT:** Okay. Thank you.

21 **MS. WEISS:** Your Honor, at this time the State
22 would move to enter State's Exhibits 7, 10 and 12
23 into evidence.

24 **THE COURT:** Okay. With no objection by the
25 defendant, they are so admitted.

1 (WHEREUPON, State's Exhibit No. 7 is admitted
2 into evidence.)

3 (WHEREUPON, State's Exhibit No. 10 is admitted
4 into evidence.)

5 (WHEREUPON, State's Exhibit No. 12 is admitted
6 into evidence.)

7 Q Now, Dr. Sederberg, using those photos, can you show
8 them to the jury and explain what exactly you were
9 just talking about? Describe the important aspects
10 of the room and what you saw that night?

11 A All right. This is the picture of my daughter's bed
12 backed up against the two windows.. You can see that
13 it's a double hung type window, the top one which was
14 the plywood board over where it was broken in. I
15 would have been walking in approximately here, and it
16 was on the bed that I first noticed that there was
17 something lying there. This is a bookcase that runs
18 across the wall on the master bedroom side of the
19 bedroom.

20 Q Okay. And can you using the next picture ...

21 A This is a picture of the piggybank I guess, dragon
22 bank that my daughter had been collecting coins in
23 for a number of years.

24 Q And that bank was found where?

25 A On the bed.

1. Q And in what condition was that bank found?

2. A It had been opened and there were a few coins
3. scattered around on the bed around it.

4. Q Okay. And do you know approximately how many coins
5. were in there before that night?

6. A All I can say is that there were pounds. It was
7. fairly heavy. I would say at least five pounds. But
8. I have no idea what the value was. We estimated it
9. for insurance purposes at between 50 and \$100. But
10. that's just a --

11. Q But what was left in it when you found it was just a
12. few coins?

13. A Just, you know, a handful of coins.

14. Q And the next picture?

15. A The next picture shows the top of the dresser and
16. essentially like I found it. But again, this was I
17. think two days later. So it probably -- I'm almost
18. certain I straightened it up. She is a teen-aged
19. girl and it wasn't all that straight to begin with.
20. But I can't recall if there were more things on the
21. floor that I picked up after the crime investigator
22. had come.

23. Q Okay. Thank you. I'm going to show you what's been
24. marked as State's Exhibits 5, 6 and 8. Do those
25. photographs fairly and accurately depict --

1 **A** Yes.

2 **Q** -- the window?

3 **A** Exhibit 5 is the photograph of the window, one angle
4 of the window that was broken into from the outside.
5 Exhibit 6 is a slightly different angle of the same
6 window. And Exhibit 8 is an interior shot of the
7 same window.

8 **MS. WEISS:** Your Honor, at this time the State
9 would move to enter Exhibits 5, 6 and 8 into
10 evidence.

11 **MR. WILLIAMS:** No objection, Your Honor.

12 **THE COURT:** Okay. They're admitted.

13 (WHEREUPON, State's Exhibit No. 5 is admitted
14 into evidence.)

15 (WHEREUPON, State's Exhibit No. 6 is admitted
16 into evidence.)

17 (WHEREUPON, State's Exhibit No. 8 is admitted
18 into evidence.)

19 **Q** And if you can, show the picture to the jury and show
20 them what those depict?

21 **A** All right. These two take a little explanation. You
22 can see this is from the exterior and you can see the
23 plywood board and you can see that it appears to be
24 stickers on it. Immediately after reporting the
25 break in I had a wide open window. I have -- these

1 windows are a version of Pella windows where you have
2 an interior storm window. So to close it up for the
3 night, I moved the interior storm window from the
4 other window and put it and the brackets on this
5 window. And then the next day the emergency plywood
6 man came by and put in the plywood on the inside over
7 the storm window.

8 Q Now, is that storm window a secure window?

9 A No, it's -- well, no, it's not.

10 Q It's just clipped in?

11 A It's clipped in. It was mainly to keep things from
12 flying or crawling in.

13 Q And was there also a screen on the inside of that
14 window?

15 A There was no screen on the upper window. There is a
16 screen on the lower window. That was the one that
17 opened and that was the one that was damaged.

18 Q So the screen was damaged as well as the two windows
19 on the top?

20 A That's correct.

21 Q And where did you find the screen?

22 A Inside.

23 Q Okay.

24 A It was just bent. These screens are very fragile and
25 if they're not in their frame they just get bent.

1 Q And is there anything left of the original window on
2 that photo?

3 A Just a few shards of glass that on a close inspection
4 you will see are still sticking into the window
5 frame.

6 Q And if you can just show the other two pictures
7 briefly. Basically they're the same?

8 A This one, in the corners of the window you can see
9 the remains of the glass more clearly. Here and
10 here.

11 Q Okay.

12 A And this is the interior shot. And you can see that
13 the plywood is covering the window and that the
14 decals are on it.

15 Q And when you turned on that light, how much glass did
16 you see inside your residence?

17 A Some, but not a lot.

18 Q Okay. So did you --

19 A There was some on the bed, some on the floor.

20 Q Were they large pieces or small or a combination of
21 both?

22 A I recall seeing hand size I guess and smaller are the
23 ones I recall seeing.

24 Q And did you at that time have the opportunity to go
25 look outside?

1 **A** I had the opportunity. I'm trying to --

2 **Q** Did you actually go?

3 **A** I really don't recall if I did. I might very well
4 have gone out with a flashlight and looked at what
5 was there. But basically I called the police and
6 waited for the responding officer.

7 **Q** So when you found that after you cut on the light and
8 found the break in, your first reaction was to call
9 the police?

10 **A** Exactly.

11 **Q** And did the police respond that night?

12 **A** They did.

13 **Q** And do you recall who responded to your house?

14 **A** No, I don't at the time.

15 **Q** But it was an officer?

16 **A** It's in the police report, but I don't have the --

17 **Q** And did you file a report that night?

18 **A** I gave the full report that night to him. And then I
19 believe I had to go downtown and file a report. I'm
20 a little fuzzy on that frankly.

21 **Q** Okay. And when you talked to the first officer, did
22 you talk to that first officer about what was missing
23 from your residence?

24 **A** I did.

25 **Q** And what information did you give the first officer?

1 **A** I said that it appeared that, well, that the bank had
2 been broken into and that I thought that my
3 daughter's graduation ring may have been among the
4 things stolen. I didn't -- I didn't notice anything
5 of great significance, you know. I did check the
6 house to see if the TV or my computer or anything
7 like that had been taken. And everything else was
8 undisturbed. So I was really trying to figure out
9 without disturbing the scene if anything small had
10 been taken.

11 **Q** And after you gave that initial report, did you find
12 out that something else had been taken?

13 **A** I found out that I had a small wooden box, kind of a
14 jewelry box on the top of the dresser in the master
15 bedroom which I didn't notice had been disturbed at
16 all. And I later found it on the floor in the
17 bedroom and the contents had been emptied.

18 **Q** And is anything else disturbed in the master bedroom?

19 **A** Nothing that I found. And as I said, that was so
20 small I didn't even notice it even while I was
21 wandering around getting ready for bed that that
22 small wooden box was missing.

23 **Q** And if you can use the pointer again. From your
24 daughter's bedroom, how would you get to the master
25 bedroom? How would a person get there?

1 **A** I would assume they would go through this door and
2 then through that door into the master bedroom.

3 **Q** And where would --

4 **A** And this is the dresser.

5 **Q** So then pretty much right inside the master bedroom
6 once you --

7 **A** Yes. I mean, to the left several -- several steps.

8 **Q** I show you what's marked as State's Exhibit 11. Do
9 you recognize this photograph?

10 **A** Yes. That's photograph of the small wooden box on
11 the dresser.

12 **MS. WEISS:** Your Honor, at this time --

13 **A** Where it normally sits.

14 **MS. WEISS:** Your Honor, I would move to admit
15 State's Exhibit 11 into evidence.

16 **MR. WILLIAMS:** No objection, Your Honor.

17 **THE COURT:** Okay. So admitted.

18 (WHEREUPON, State's Exhibit No. 11 is admitted
19 into evidence.)

20 **Q** And if you can just show the jury what's on State's
21 Exhibit 11?

22 **A** This is the dresser in the master bedroom, and that's
23 the box that I did not initially notice.

24 **Q** And was anything in that box when you found it on the
25 floor?

1 **A** There were lots of odds and ends. The two things of
2 value --

3 **Q** When you found it on the floor, was there anything in
4 there?

5 **A** Oh, on the floor. No, there was nothing. I'm sorry.

6 **Q** You found it empty? Okay. And what was missing out
7 of that box?

8 **A** There were a lot of little things in there that I had
9 just tossed in there. But the two things of value
10 were my high school graduation ring and a phi beta
11 kappa key.

12 **Q** And what was that phi beta kappa key made out of?

13 **A** Gold.

14 **Q** And your high school ring?

15 **A** Gold.

16 **Q** And your daughter's high school ring?

17 **A** Gold.

18 **Q** And that along with the coins in the bank are the
19 primary things that you found missing?

20 **A** That's correct.

21 **Q** And they were there prior to the night of July 12th?

22 **A** Yes.

23 **Q** And when you gave that report to Officer Calby,
24 you're able to say that this incident occurred from
25 the time you left at 8:30 until the time you returned

1 at 11:30?

2 **A** Yes.

3 **Q** Your daughter's room is not disturbed prior to your
4 leaving that night?

5 **A** Yes.

6 **Q** Going back to your daughter's room, did your daughter
7 have any other collections or any collections other
8 than the bank obviously?

9 **A** She had a lot of other collections. She had had a
10 longish -- there was bookshelves. She had
11 collections of horses, of her books, something where
12 she had a small collection of knives that had been
13 passed down from her brother and father to her. She
14 had paper weights.

15 **Q** She had a collection of knives?

16 **A** A small collection.

17 **Q** Okay. Of several different knives that had been
18 passed down to her?

19 **A** That's correct.

20 **Q** Or that she had found, different things?

21 **A** Mm-hmm (affirmative).

22 **Q** And did she have a table in her room anywhere or
23 anything that could be perceived as a table?

24 **A** The closest thing that I would describe as a table
25 was a desk that we -- basically an unfinished wood

1 desk that we had -- or rather, she had painted a
2 bright blue I believe. And that had a table-like
3 surface. So that was on the wall where the bookcase
4 is.

5 Q And would she have left -- and she left generally, as
6 you stated, on the bookshelves, her collections were
7 laid out in different places, her horses and her --

8 A Yeah. They would be collected in various places. I
9 don't want to give the impression that this was
10 carefully laid out like a museum. But, yes. She had
11 a variety of things piled up on this desk and for
12 that matter on her dresser. It was not in any neat
13 order. But, yes. And, in fact, she never used the
14 desk because there were all those things piled up on
15 top of it.

16 Q And, for example, could the knives have been on that
17 desk?

18 A It's very possible.

19 Q Okay. Beg the Court's indulgence one moment. Dr.
20 Sederberg, you said you had the opportunity to talk
21 to the investigator at a later date?

22 A Yes.

23 Q Were you ever shown a picture of Darrell Williams
24 when you talked to Investigator Mead?

25 A Not in the initial conversation. Several weeks later

1 they -- after he was arrested for the crime and he --

2 Q You saw him?

3 A -- the investigator came out, showed me a picture.

4 Q Okay. And did you recognize Mr. Williams?

5 A I did not.

6 Q And had Mr. Williams ever been to your home, invited
7 to your home?

8 A No.

9 Q And would he have had any reason to be in your house
10 that you can think of?

11 A None whatsoever.

12 Q And do you recognize Mr. Williams today?

13 A No.

14 Q And you've never seen him as far as you know, any
15 lengthy contact? I mean, we're not talking about
16 passing him on the street in Five Points or
17 something. But --

18 A To my knowledge, no.

19 Q -- to your knowledge, you've never seen him. He's
20 never come around your house, been invited around
21 your house?

22 A To my recollection, no.

23 Q Thank you. No further questions. Please answer any
24 questions that Mr. Williams may have for you.

25 CROSS EXAMINATION

1 **BY MR. WILLIAMS**

2 **Q** Good afternoon, Mr. Sederberg. How you doing? I
3 said good afternoon.

4 **A** Good afternoon.

5 **Q** Basically I want to clarify a few things before we go
6 on. It is your testimony here today that you said
7 that when you left home it was still daylight
8 outside?

9 **A** It is.

10 **Q** So basically when you say daylight, you mean you can
11 actually like normally see the sun still was
12 partially out or not all the way out but partially
13 still out? Would you say so?

14 **A** Well, it was somewhere about 8:30 on July, you know,
15 in early July. I can't say that I could see the sun.
16 The back of the house is wooded. And so the sun
17 might have already been below --

18 **Q** The trees?

19 **A** -- the trees.

20 **Q** Excuse me. Could I see the photographs?

21 **A** Which?

22 **THE COURT:** Bailiff, you can get the photographs
23 from the witness.

24 **MS. WEISS:** These pictures?

25 **MR. WILLIAMS:** Yes.

1 **MS. WEISS:** There are some more up on the table.

2 **Q** What I'm going to do is show you what's been marked
3 as State's Exhibits 3, 4 and 9. And I'm going to
4 ask, Mr. Bailiff, will you hand these to him, please.

5 Now, in those photos, with those photos there,
6 you testified a few minutes ago, you said that -- I
7 believe you was making reference to it being dark
8 within that area. When you made reference to it
9 being dark, okay, what I'm trying to get at, is when
10 the solicitor asked you based on those photos what
11 you see there, what you've got written there in the
12 diagram, the area by the carport, you said that you
13 know you wouldn't leave the light on, or you would
14 leave it off?

15 **A** I normally -- when I leave the house and I'm going to
16 be gone at night --

17 **Q** Mm-hmm (affirmative).

18 **A** -- I normally do not leave the carport light on when
19 there's no other car parked there. Oftentimes my
20 wife or my daughter's car might be there, in which
21 case I would leave it on. I cannot say for sure
22 which way, but my recollection is that since it was
23 daylight when I left that I did not leave it on.

24 **Q** Okay. That's what I was trying -- I was basically
25 trying to clarify it. Because you did mention that

1 it was dark, and I wanted to make sure that you
2 wasn't referring to it being dark when, as you
3 stated, when you left it was still light?

4 **A** It was still light.

5 **Q** Yes. Okay.

6 **A** It was still light.

7 **Q** But normally, what I'm getting at is that, normally
8 let's say you come home about 9:00?

9 **A** Yes, sir.

10 **Q** Let's say at 9:00 you come home and it's dark
11 outside. If you didn't leave a light on, that area
12 would be -- that's what you would be referring to
13 when you talk about that area would be dark, correct?

14 **A** If I came home after sunset, that area would be dark.

15 **Q** Okay. That's it then. And let's see. Excuse me,
16 Your Honor.

17 **THE COURT:** Certainly.

18 (Pause)

19 **MR. WILLIAMS:** That's all the questions I have
20 at this time for the witness.

21 **THE COURT:** Okay. Thank you. Sir, you can --
22 is there anything from the State?

23 **MS. WEISS:** Nothing more from the State, Your
24 Honor.

25 **THE COURT:** Okay. You can step down. All

1 right. The State may proceed.

2 **MS. GARFIELD:** Thank you, Your Honor. The State
3 would call Robert Calby with the Columbia Police
4 Department. And, Your Honor, may I request on behalf
5 of Ms. Weiss, if Dr. Sederberg needs to leave for
6 prior commitments in Atlanta, will that be okay in
7 the course of the trial?

8 **THE COURT:** That's fine.

9 **MR. WILLIAMS:** Yes. Yes. That's fine.

10 **THE COURT:** Okay.

11 **MS. GARFIELD:** Thank you.

12 **THE COURT:** Just let Mr. Williams know prior to
13 that happening.

14 **MS. GARFIELD:** Yes, ma'am.

15 **THE COURT:** Okay.

16 ROBERT CALBY, after being duly sworn, testifies
17 as follows:

18 **THE CLERK:** Please have a seat. State your full
19 name.

20 **WITNESS:** Robert Calby. I'm employed with the
21 Columbia Police Department.

22 DIRECT EXAMINATION

23 **BY MS. GARFIELD**

24 **Q** Officer Calby, how long have you been with the
25 Columbia Police Department?

1 **A** I've been with the Columbia Police Department for
2 about two years now. September 11th actually is my
3 hire date. So two years.

4 **Q** And what did you do prior to your involvement with
5 the Columbia Police Department?

6 **A** I was with the Department of Corrections here in
7 South Carolina. I worked there for approximately
8 three years in their Super Max facility.

9 **Q** And prior to the Department of Corrections stint,
10 what did you do?

11 **A** I was a retail store manager at a local store called
12 Gadzooks which sold older teens and twenties apparel,
13 baggy pants, things like that.

14 **Q** And were you working at that retail job here in
15 Columbia?

16 **A** Yes, I was; actually at the Columbia Mall on Two
17 Notch Road.

18 **Q** Are you a native of Columbia?

19 **A** You could say that. My father was in the military.
20 So I'm kind of a native to everywhere.

21 **Q** Did you ever entertain the possibility of going in
22 the military?

23 **A** You know, growing up in it, you know, you see that
24 lifestyle. You like the structure of it. But I
25 wanted something with more roots to it rather than

1 the moving around and constantly having to make new
2 friends; and when I do get a family, then having to
3 develop new friends. So I chose law enforcement as
4 to keep that same structure but have some roots.

5 Q Well, what are your duties with the Columbia Police
6 Department?

7 A Right now I'm actually on a specialized team, the
8 CRT, where we go and investigate, assist in
9 investigating and following up on crimes. But at the
10 time of this incident I was a line unit where my
11 primary duties included responding to calls as calls
12 came out, calls for service, active patrol in the
13 neighborhoods, getting out, talking with community
14 members and addressing community concerns as they
15 arise.

16 Q Were you specifically assigned to any specific area
17 of the city?

18 A The city is broken up into different regions. In
19 this particular instance I was in the south region
20 which is the Five Points/Shandon area all the way up
21 to Leesburg/Garners Ferry, that area. My specific
22 patrol area was Five Points and the surrounding
23 areas, to include the Shandon neighborhood.

24 Q And part of your region would also include Edisto
25 Avenue?

1 **A** Yes, ma'am.

2 **Q** On the early morning hours of July 13th; when I say
3 early morning, I'm talking like 12:30 early morning,
4 did you receive a call to a location on Edisto
5 Avenue?

6 **A** Yes, I did.

7 **Q** And specifically what kind of call were you
8 responding to?

9 **A** It was a home invasion, burglary call. We received a
10 call from the homeowner saying that he believes his
11 house was just broken into and burglarized.

12 **Q** And do you recall who that victim was?

13 **A** Yes. Excuse me. The gentleman here. I can't recall
14 his name. Dr. Schronan (phonetic)? I'm sorry. I
15 dealt with so many people in the day. It's hard to
16 remember names.

17 **Q** Officer Calby, did you have the opportunity after
18 reporting to this incident location to fill out an
19 incident report?

20 **A** Yes, I did.

21 **Q** Would a copy of that incident report help refresh
22 your memory with some major details?

23 **A** Yeah. I've got a copy here. I wasn't sure if I'm
24 allowed to look at it or not.

25 **Q** Officer, I just ask to you review that and see if you

1 can tell the court the exact location you responded
2 to?

3 **A** This particular incident occurred at [REDACTED]
4 Avenue which is in the City of Columbia, to include
5 my patrol area. So I was dispatched. And I was
6 dispatched at 12:15 in the a.m. on 7-13 of 2007.

7 **Q** And what time did you arrive at that location?

8 **A** About five minutes later, about 12:20 in the a.m.

9 **Q** And would you have been one of the first responding
10 officers on the scene?

11 **A** I was the first one on the scene, yes.

12 **Q** And at that time when you got there, what did you
13 observe?

14 **A** I observed a bedroom window in the rear of the
15 building was completely broken out. And, like I
16 said, I did make contact with the complainant, Mr.
17 Sederberg. And, you know, he said that that window
18 wasn't broken when he left and he noticed that it was
19 broken out when he --

20 **Q** And what did you observe, just concerning for
21 purposes of this question, the outside area of the
22 house?

23 **A** Oh. Around back, I'm assuming you're referring to
24 the back of the building where this incident occurred
25 at?

1 Q Yes.

2 A There was glass on the outside of the building which
3 I'm assuming came from the window that was broken.
4 It was a double paned window. Both panes were broken
5 out. There was glass on the inside of the room and
6 glass on the outside in kind of a brush area.

7 Q And did you have the opportunity to go inside the
8 home?

9 A Yes, I did.

10 Q And specifically, did you observe anything out of the
11 ordinary inside the home?

12 A Inside the home, like I stated, there was glass
13 inside there. And there were some other items that
14 Dr. Sederberg stated were moved around, things like
15 that. Those are typically questions that we ask on a
16 burglary so we can get our investigation and I.D.
17 unit out there to process the scene.

18 Q Once you responded to the scene, what did you do next
19 as far as investigative purposes?

20 A At that time I spoke with the complainant and asked
21 him if he immediately identified anything that was
22 missing, requested that he didn't touch or move
23 anything, wrote down that information, notified my
24 supervisor and notified our I.D. tech personnel.

25 Q And what was the purpose of notifying an I.D. tech?

1 **A** So they could come out and dust for any prints, take
2 any photographs, do any -- you know, their aspect of
3 it. I can't really answer on their job because I
4 don't know exactly what they do. But I know they do
5 come out and do the more detailed investigation
6 aspect of it, primarily dust for fingerprints.

7 **Q** After you make those procedural phone calls, what do
8 you do next on a typical scene like this?

9 **A** Make sure nobody comes in on it. In this particular
10 incident I know that an I.D. tech was coming later
11 on. So I just do the standard report and turn it
12 into my supervisor.

13 **Q** And do you go about interviewing any witnesses?

14 **A** Aside from the complainant or anybody who is readily
15 available, at this point Dr. Sederberg was the only
16 person on scene. So he was the only one that I spoke
17 with.

18 **Q** And were you there when anyone from the I.D. team
19 came?

20 **A** No, I was not.

21 **Q** And approximately how long would you say you stayed
22 at this location?

23 **A** On the report I put my departure time at 12:45. So
24 about 25 minutes I was out there.

25 **MS. GARFIELD:** Beg the Court's indulgence.

1 **THE COURT:** Certainly.

2 **MS. GARFIELD:** Thank you, Officer Calby. Please
3 answer any questions Mr. Williams may have for you.

4 **MS. GARFIELD:** Thank you.

5 **MR. WILLIAMS:** Your Honor, I have no questions
6 for this witness.

7 **THE COURT:** Okay. Sir, you can step down. And
8 any reason why this witness can't be excused?

9 **MR. WILLIAMS:** No.

10 **MS. GARFIELD:** Thank you.

11 **THE COURT:** Okay. You can be excused. Thank
12 you for coming.

13 All right. We will take a short break at this
14 time. I will remind you not to discuss the case in
15 any shape, form or fashion. You will hear me say
16 this a lot because even when you go home this
17 evening, don't even talk about the subject matter
18 because we know as you bring up subjects people tend
19 to inject their personal opinions to you, and we want
20 you to contain yourself with what goes on in this
21 courtroom and let that be the only thing that factors
22 into your decision making. Thank you, and we'll be
23 with you shortly.

24 (Jury out at 3:20 p.m.)

25 **THE COURT:** Anything that the parties need for

1 the Court to take up at this time?

2 **MS. WEISS:** Not from the State, Your Honor.

3 **MR. WILLIAMS:** No, Your Honor.

4 **THE COURT:** Okay. You all be at ease about 15
5 minutes.

6 **MS. GARFIELD:** Thank you.

7 **MS. WEISS:** Thank you, Your Honor.

8 (Whereupon, the proceedings are concluded)

9 (Whereupon, a break is taken)

10 **THE COURT:** Okay. During that break I received
11 a note from the jurors, one juror: Are we allowed to
12 take notes during the testimony? If so, can we get
13 pen and paper?

14 Generally speaking, the Court's policy is that
15 note taking is okay, but I always like it to be done
16 at the beginning of a proceeding. Usually when I
17 perceive a short trial of one to two days or it's not
18 so factually intensive, like a medical malpractice or
19 something like that, then I generally won't have them
20 take notes because I think it's just better to
21 listen. It is a juror's question. So let me hear
22 from the parties as to your feelings on it.

23 **MS. WEISS:** Your Honor, of course we leave it in
24 the discretion of the Court. However, I do agree the
25 testimony is at this point half way over, and we do

1 intend on hopefully finishing the State's witnesses
2 by the end of today. So at that point we should
3 finish the entire trial by tomorrow at lunch at the
4 latest depending on what the defense chooses to do.

5 So at this point I would think that it would
6 probably not be necessary, using your same rationale,
7 that this is a relatively short trial although very
8 important short trial and that it's almost over. I
9 mean, it's half way over at this point and could end
10 up weighing more heavily on the written notes other
11 than the memory from the beginning of the trial.

12 **THE COURT:** Okay. Mr. Williams.

13 **MR. WILLIAMS:** Well, basically it would just, I
14 think about listening, some of the jurors might have
15 short-term memory spans. They may not remember it
16 all. I mean, some people may remember all of the
17 evidence, but then you might have jurors that might
18 not be able to remember. But I think, I mean, I
19 would have to leave that up to you to decide whether
20 or not they're going to do it. I have no problem
21 with them really doing it.

22 **THE COURT:** And the only thing, my concern is
23 that it's not been done at the beginning. And so for
24 them to be further emphasized here, while I do agree
25 with the short-term memory spans, the jurors

1 collectively would then be relying on each other.
2 And then even if I had allowed them to take notes,
3 the instruction would be that the note taking should
4 not be used over what they recall because we all know
5 that we shorthand and that we don't write everything
6 down and we don't want them to detrimentally rely on
7 their notes.

8 So at this juncture I believe given the
9 shortness of the trial that's been indicated by the
10 State, then my inclination is to decline their
11 request. And I will explain to them why. But I
12 would hate for that to kind of interfere with how the
13 procedure has gone to date. So, thank you all.
14 Anything further?

15 **MR. WILLIAMS:** Yes, Your Honor. During our
16 little short break I took the transcript apart.

17 **THE COURT:** Oh, okay.

18 **MR. WILLIAMS:** And I have the pages that --

19 **THE COURT:** Ahh. Are you sure that that's all
20 you want? Is that for sure?

21 **MR. WILLIAMS:** Well, what I have seen in here
22 during a short time --

23 **THE COURT:** Because you're also focusing on the
24 trial, I don't want to hold you to that. So if you
25 want a little more time or just to have them copy the

1 whole thing since it's now apart anyway, that was the
2 only consideration, is that -- let's just have them
3 make copies of the entire thing.

4 **MS. WEISS:** Can you just take the transcript in
5 its entirety?

6 **THE COURT:** And you can just make yourself a
7 note as to which pages you thought were important if
8 that would be easier.

9 **MR. WILLIAMS:** I took it apart. Let me put it
10 back together.

11 **MS. WEISS:** We've got the copies of the order
12 actually. You can go ahead.

13 (Whereupon, Ms. Weiss requests her paralegal to
14 make three copies of a transcript).

15 **THE COURT:** And then give the original to Mr.
16 Pauling.

17 **MS. WEISS:** Your Honor.

18 **THE COURT:** And you are welcome to orchestrate
19 that in my office. I just felt like it was better to
20 hand it to the defense.

21 **MS. WEISS:** Would you like it? If I may
22 approach?

23 (Document handed to the Court)

24 **THE COURT:** Okay. Anything further? You ready
25 to proceed? Okay.

1 **MS. WEISS:** The State's ready, Your Honor.

2 **THE COURT:** Okay. The jury, please.

3 (Jury in at 3:47 p.m.)

4 **THE BAILIFF:** Your Honor, the jury is present.

5 **THE COURT:** Okay. Thank you, ladies and
6 gentlemen of the jury. During the break I did
7 receive a note indicating from one juror: Are we
8 allowed to take notes during the testimony? If so,
9 can we get pen and paper?

10 Generally speaking, the Court makes a decision
11 at the beginning of the trial about note taking.
12 Because this trial was indicated to the Court that it
13 would be a short trial and not so factually intensive
14 as perhaps a medical malpractice case where they have
15 all these medical terms and, you know, things of that
16 nature that might not be familiar, I made a decision
17 early up front to not allow note taking.

18 I believe that it would potentially be
19 prejudicial to one party or the other if we started
20 it now because I didn't want you to go back and try
21 to recall that and put it to pen or paper.

22 Even if the Court were to allow you to take note
23 taking, my instruction to you would be that don't let
24 the notes take over what is in your memory, because
25 when you go back and deliberate, you're going to rely

1 on the collective memory of all of you. And just
2 because you didn't write it down doesn't mean it
3 wasn't so.

4 And we all know that we shorthand, you know,
5 because people might be talking faster than another
6 and you might write something down that you feel is
7 more or less important, you know, just depending on
8 that.

9 So with due respect I'm going to decline that
10 request at this time and just ask you to listen very
11 carefully to both sides and rely on your collective
12 memories as jurors. Thank you.

13 This will be made Court's next Exhibit. Which
14 one is that?

15 **COURT REPORTER:** No. 4, Your Honor.

16 **THE COURT:** No. 4. Thank you.

17 (WHEREUPON, Court's Exhibit No. 4 is marked for
18 identification.)

19 **THE COURT:** Okay. State, you may proceed with
20 your case.

21 **MS. WEISS:** Thank you. The State calls Officer
22 Buddy Rose.

23 WALTER B. ROSE, after being duly sworn,
24 testifies as follows:

25 **THE CLERK:** Please have a seat. State your full

1 name for the record.

2 **WITNESS:** My name is Walter Rose.

3 DIRECT EXAMINATION

4 **BY MS. WEISS**

5 **Q** Officer Rose, where are you currently employed?

6 **A** With the City of Columbia.

7 **Q** What is your position there?

8 **A** I am assigned to the crime scene unit.

9 **Q** And are you considered an officer? Is that your
10 title?

11 **A** Yes, ma'am.

12 **Q** Okay. Do you have specialized training to be in the
13 crime scene unit?

14 **A** I do.

15 **Q** How many years have you been a law enforcement
16 officer?

17 **A** I started in 1990. I'm on my 19th year.

18 **Q** Prior to going into law enforcement, what did you do?

19 **A** I was civil service out of McEntire in the Air Guard.

20 **Q** In 1990 where did you start in law enforcement?

21 **A** I was assigned to District Four then.

22 **Q** So you came straight to the City of Columbia Police
23 Department?

24 **A** Yes, ma'am.

25 **Q** And in District Four, what was your primary job at

1 that time?

2 **A** I was road patrol.

3 **Q** As you progressed through over the next few years,
4 did your assignments change?

5 **A** Oh, they did. I kind of moved around through the
6 city, different areas.

7 **Q** At some point were you taught to process
8 fingerprints?

9 **A** Yes, ma'am. In 2000.

10 **Q** And please explain to the jury how that came about?

11 **A** I was interested in lifting fingerprints, processing
12 scenes as a road patrolman. They sent me to a class
13 in 2000. It was sponsored by the City. They would
14 teach officers that worked the street to help the
15 crime scene unit deal with property crimes, mainly
16 burglaries and auto breakings.

17 **Q** And how long was that training?

18 **A** That was an eight-hour class.

19 **Q** And after that were you then able to lift
20 fingerprints from crime scenes?

21 **A** Yes, ma'am.

22 **Q** Were you able to then process those fingerprints,
23 compare those fingerprints?

24 **A** No, ma'am. That was just for lifting, collecting,
25 send it to the crime scene unit, and they will do the

1 analysis on it.

2 Q And after that did you then have the opportunity to
3 move to the crime scene unit?

4 A Yes, ma'am.

5 Q And what year was that?

6 A It was five years later. It was 2005.

7 Q Once you moved to the crime scene unit, were you then
8 trained to do more than just lift those prints?

9 A Yes. That's when they teach you to analyze a
10 fingerprint or compare it.

11 Q And did you go through courses in 2005 to prepare you
12 to be a crime scene investigator?

13 A Yes, ma'am. In '06, actually August '06, I had the
14 basic fingerprint class which teaches you to compare
15 fingerprints that were lifted from different scenes.

16 Q So that was the first time in 2006. So you had been
17 trained in 2000 in how to lift them, and then in 2006
18 you were trained in how to compare them in a basic
19 course?

20 A Yes.

21 Q And then did you receive more specific training later
22 that year?

23 A I did.

24 Q And when was that?

25 A And that was in November. And that is -- that wasn't

1 actually a course. That was a test that you would go
2 to SLED and take. It's an all-day test for comparing
3 fingerprints.

4 **Q** An all-day test. And SLED qualified you at that
5 point --

6 **A** Yes, ma'am.

7 **Q** -- to be able to analyze and identify people through
8 fingerprints?

9 **A** Yes, ma'am.

10 **Q** Okay. And have you received any more training since
11 that time?

12 **A** On fingerprints, no, ma'am. Just on other aspects of
13 crime scenes.

14 **Q** Well, since 2000, approximately how many fingerprints
15 have you had the opportunity to lift or process?

16 **A** Oh, hundreds of prints.

17 **Q** Hundreds of prints?

18 **A** Oh, yes. I couldn't give you a specific number.

19 **Q** And since 2005, approximately how many fingerprints
20 have you been able to analyze?

21 **A** Oh, whew. Again, probably 100 or so or maybe two. I
22 mean, it's several.

23 **Q** Now, when you actually go through and analyze those
24 prints, is there a quality control check for that?

25 **A** There is.

1 Q And is there somebody in your unit that specifically
2 checks your work?

3 A Yes, ma'am.

4 Q And who is that?

5 A Pete Currie. Officer Currie was the person I
6 normally go to. We offset shifts. So he relieves
7 me, and he would be the person that I would show a
8 fingerprint to compare, to confirm after a match is
9 made or all the points are found.

10 Q Now, you said you've lifted hundreds of prints and
11 you've lifted to compare hundreds of prints since
12 2005. Every time you will lift prints, do you find a
13 match to those prints?

14 A No, ma'am.

15 Q And is it more often than not that you do or do not
16 find matches?

17 A I couldn't give you a number on it. We don't find --
18 we find quite a bit, but it's definitely not every
19 fingerprint we pull.

20 Q So you've pulled some and never found anybody to
21 match it, and then you've pulled some and had
22 positive matches?

23 A Yes.

24 Q In your training -- Your Honor, at this time I would
25 like to offer Officer Rose as an expert in

1 fingerprint identification.

2 **THE COURT:** Any objection?

3 **MR. WILLIAMS:** Excuse me one second, Your Honor.

4 (Pause)

5 **MR. WILLIAMS:** Your Honor, basically for the
6 record, I would like to post my objection. Since he
7 is not the one that makes the final determination as
8 to the prints, based on his testimony, I would object
9 to him being classified as an expert witness in this
10 case.

11 **THE COURT:** Okay. Would you like to voir dire
12 him, basically question him as to his qualifications
13 first before the Court would rule?

14 **MR. WILLIAMS:** Yes. If I may.

15 **THE COURT:** You may.

16 VOIR DIRE EXAMINATION

17 **BY MR. WILLIAMS**

18 **Q** Mr. Rose, you just testified that you had to go
19 through somebody else before you -- when you lift
20 prints, you testified that you had to go to somebody
21 else basically to verify the accuracy of the prints
22 or whether or not -- I mean, basically what I'm
23 trying to get at, what's the purpose of you going to
24 somebody else and having the prints checked?

25 **A** Well, it's not to have it checked, sir. It's to

1 confirm the match. We have checks and balances on
2 everything that we do. So two sets of eyes are
3 better than one set of eyes, the way we look at it.
4 Everything we do is double-checked by another crime
5 scene officer.

6 Q Okay. Now, I don't know if it was clear. How long
7 have you been doing that? How long have you been in
8 the field of lifting prints?

9 A Of lifting prints?

10 Q Yes.

11 A Since 2000.

12 Q 2000?

13 A August of 2000.

14 Q And you've been doing it for -- let's see. Since
15 2000 you have been basically conducting the same
16 thing, by going back, having the prints checked
17 before you actually confirm whether or not these are
18 valid or invalid?

19 A No, sir. Between 2000 and 2005 I lifted prints to
20 turn into the crime scene section to be analyzed. At
21 2005 is when I was put into the unit and went into
22 training in '06 and passed that training and then
23 later in '06 took another test at SLED that certifies
24 me to do that, to make the comparisons. Once the
25 comparison is made by myself --

1 Q Mm-hmm (affirmative).

2 A -- I take that print and all the information I have
3 with that print, hand it to another crime scene
4 officer to confirm my findings.

5 Q Okay. Is there any other way that you can confirm
6 those prints without going to somebody else?

7 A That's our procedure and that's how we do it.

8 MR. WILLIAMS: Okay. That's it, Your Honor.

9 THE COURT: Okay. All right. Over defendant's
10 objection I am going to allow this gentleman to be
11 qualified as a fingerprint identification expert
12 based on the qualifications and experience that have
13 been so indicated.

14 MS. WEISS: Thank you, Your Honor.

15 DIRECT EXAMINATION

16 BY MS. WEISS

17 Q Officer Rose, I want to go through the procedure that
18 you use on a daily basis in order to take a
19 fingerprint from where it is originally left at a
20 crime scene and then matching it and eventually
21 identifying a possible suspect in that case. Just to
22 lay a foundation, in your training and experience and
23 your expert knowledge, do any two people have the
24 same fingerprint?

25 A No, ma'am.

1 Q And when you say fingerprint, are you talking about
2 the print from each individual finger?

3 A Yes, ma'am. Each separate finger has a different
4 print.

5 Q And so no two people have the same fingerprints from
6 hand-to-hand or finger-to-finger match between any
7 two people?

8 A Yes, ma'am. That's correct.

9 Q So when you find a print, are you able to do a match
10 based on just one fingerprint match?

11 A Yes.

12 Q A match from just one finger?

13 A Yes.

14 Q Okay. Now, when you first go out to a scene --
15 actually, I'm going to just go directly to the scene.
16 We'll go through it step-by-step on this case. On
17 July 13th of 2007, do you recall being sent out to a
18 crime scene?

19 A I do.

20 Q And do you know what time you were sent to that
21 scene?

22 A It was early morning. Our shift, day shift which is
23 what I was on starts at 6:30. I am normally there by
24 6. As soon as I turned the radio on, I told them I
25 was working, the midnight shift supervisor advised me

1 that there was a burglary at [REDACTED] that it
2 happened later that night he needed me to go process.
3 So that was the first call I went to.

4 **Q** Now, do you have a copy of your investigative report?

5 **A** I do.

6 **Q** Referring to your report, it says on July 12th, W. C.
7 Rose responded to the above location. Is that a
8 typo?

9 **A** It's not. We went to this new paperless computer
10 system. And it takes the first time off the incident
11 report. And on the incident report is a timeframe
12 from the 12th through the 13th. And it automatically
13 takes that 12th and puts it on there.

14 **Q** So you didn't actually type out those words in the
15 body of it?

16 **A** Oh. I'm sorry. Yes, ma'am. I did type those words.
17 I thought you were talking about up here at the top.
18 That was my mistake. I used the first date that's on
19 there because of that. I mean, it uses that first
20 date in all the report.

21 **Q** But you didn't actually respond on the 12th?

22 **A** No.

23 **Q** You responded on the 13th?

24 **A** It was on the 13th.

25 **Q** Because the report was actually made the early

1 morning of the 13th?

2 **A** Yes, ma'am.

3 **Q** So on the 13th, approximately sometime after 6:30 in
4 the morning, you responded to the scene?

5 **A** Yes.

6 **Q** And who did you come in contact with?

7 **A** With the owner, the victim, Mr. --

8 **Q** Sederberg?

9 **A** Mr. Sederberg.

10 **Q** And what is your common practice? When you came into
11 contact with him, what did you ask? What did do you?

12 **A** I asked him to show me the point of entry and what
13 had happened inside of his house. And he took me
14 inside and gave me the whole tour of the area, every
15 area that the subject had broke in, went to,
16 everything that was disturbed and the point of entry.

17 **Q** And once he did that, what was your next process?

18 **A** To start processing everything that had been
19 disturbed.

20 **Q** And when you say process, can you explain to the jury
21 what you do to process the scene?

22 **A** I can. I use a black fingerprint powder. It's a
23 very fine black dust. I use it on a nylon brush or a
24 feather brush. And everything that the subject
25 touched, disturbed when they got in it could be

1 processed with the dust. And if it comes in contact
2 with any of their body oils, fingerprints, water, any
3 moisture, it sticks to it and it stands out real
4 bold.

5 **Q** And what areas were you able to process? Do you
6 recall?

7 **A** It was a bedroom.

8 **Q** At this time do you recall whether Mr. Sederberg told
9 you about anything in his bedroom that may have been
10 touched?

11 **A** I don't recall.

12 **Q** Okay. And that's why there would be no mention of
13 the bedroom in your report?

14 **A** Yes, ma'am.

15 **Q** Okay. So if he reported that on a later date, you
16 didn't go back on a later date?

17 **A** No, ma'am.

18 **Q** So you processed the bedroom?

19 **A** Yes, ma'am.

20 **Q** Mr. Whittle, if you would, please hand me the
21 photographs that have been marked as exhibits. Thank
22 you. I'm going to show you what's been entered as
23 State's Exhibit 7. Do you recognize this room? He
24 doesn't need --

25 **A** Yes, ma'am, I do.

1 Q Okay. Showing the jury, can you show them where
2 there were items that you were able to process in
3 that room? Now, that is a photograph that was taken
4 48 hours after you left. So it's not there. I just
5 want you to say basically where they were when you
6 got there.

7 A Yeah. There -- there was a piece of glass here on
8 the bed that was processed. And I don't -- I don't
9 recall small stuff, but it seems like there was small
10 stuff there on the dresser or chest of drawers,
11 something. But there was no prints on it when I
12 processed it.

13 Q Okay. I'm going to show you State's Exhibits 12 and
14 10. This may refresh your memory.

15 A Different areas. The dresser here, different things
16 up here on top of the dresser had been disturbed.

17 Q Okay. And on the next photograph, the dragon bank?

18 A Yes.

19 Q Did you have an opportunity --

20 A That was that, too. And I couldn't find any usable
21 prints on any of that stuff.

22 Q And are there some surfaces that are better as far as
23 retaining prints than others?

24 A Yes.

25 Q So is it unusual that you would not have found

1 prints --

2 **A** Not at all.

3 **Q** -- on the dresser or the dragon?

4 **A** Not at all. There was nothing identifiable as a
5 fingerprint on any of that stuff. So it wasn't
6 lifted or taken.

7 **Q** And what would explain why there wouldn't be prints
8 even if he did touch -- if somebody did touch those
9 items?

10 **A** Well, it could be a smear if you slip with it when
11 you hold it. If you had something over your hands,
12 when you go to pick it up, you won't leave a print.
13 If it's dusty or dirty, I mean, you will not leave a
14 good print. And a lot of this stuff that was
15 developed was an impression of a finger, a smear of a
16 finger, but none of that can be used for any kind of
17 comparison.

18 **Q** Okay. Now, is glass a surface that is more likely to
19 retain prints?

20 **A** Yeah. That's a great surface for a fingerprint.

21 **Q** And why is that?

22 **A** It's smooth. Usually one side of it, if it's an
23 exterior glass, one side of it is very clean. Any
24 moisture, any kind of oil, anything on your finger is
25 going to help leave a fingerprint.

1 Q And were you able to process the glass in this house?

2 A Yes.

3 Q And from that broken window?

4 A Yes, ma'am.

5 Q And you said there was some glass on the bed. Where
6 else was there glass?

7 A There was glass here on the bed, a large piece of
8 glass. From the broken window here, outside the
9 window on the outside was two smaller pieces of --
10 well, I say smaller. Several small pieces. But
11 there were some, you know, as large as this here that
12 was at the bottom of the window. And it had
13 fingerprints on it also. This was the one that was
14 processed. It was inside. It was only one that was
15 laid here across the bed, and it was a large piece of
16 glass.

17 Q A large piece of glass was laid across the bed?

18 A Yes, ma'am.

19 Q Okay. And then you said you processed a couple that
20 were outside?

21 A Yes, ma'am. Outside this window here.

22 Q And so once you saw that glass, did you process it
23 right there in the bedroom?

24 A I did not.

25 Q So explain to the jury what you did once you

1 determined you wanted to process that?

2 **A** I secured this piece of glass because it's going to
3 have a fingerprint on it. There's no way. I took
4 that piece of glass, secured it in my car, locked it
5 up.

6 **Q** Now, did you have on gloves or anything to protect
7 your fingerprints from --

8 **A** I did. Rubber gloves. And you would handle it from
9 the edges so that you wouldn't disturb, ruin or smear
10 any evidence that's on the front of it. So taking it
11 to my car, I secured it inside the car. Then I
12 walked to the back and collected the rest of the
13 glass that was outside, the larger pieces that I
14 could process. I wouldn't process it back there
15 because it was so cramped, there was bushes back
16 there, and it's just not a good environment to work
17 in.

18 **Q** I'm going to show you State's Exhibit 4. Is that the
19 back of the house you are talking about?

20 **A** Yes, ma'am.

21 **Q** Okay. Keep going. I'm sorry.

22 **A** The glass was back here. It was, you know, dark. I
23 took those pieces of glass. And these were the last
24 things I did process. I took those out to the car
25 and put them on a wall.

1 Q Is it that wall that's in that picture?

2 A No. There is at the front of the house --

3 Q At the front of the house?

4 A In his driveway, there's a --

5 THE COURT: Hold on one moment. Mr. Williams.

6 MR. WILLIAMS: Yes, Your Honor. Excuse me.

7 What I've noticed, that some of these jurors are
8 trying to lean over and look. I was wondering if the
9 officer can stand up when he does it to just show
10 them the picture when he stands up and does it.

11 THE COURT: Okay. Thank you.

12 A There is a -- well, I don't have a picture of the
13 front of the house. There's a wall on the driveway
14 that goes down the driveway. It's a brick wall. And
15 that's where I processed the glass.

16 Q State's Exhibits 3 and 9, I don't know if those will
17 help you.

18 A No.

19 Q Okay.

20 A No. That's not it. It's just a brick wall that goes
21 down his driveway. Then it gave me the perfect place
22 to process the glass out in the open. And it's a
23 little higher than desk height.

24 Q And when you did that, what did you discover?

25 A Oh, several, several fingerprints. On the large

1 piece of glass from the bed there was one -- I was
2 able to collect six fingerprint cards. On each card
3 could be one finger, could be four fingers, five
4 fingers. On the first card I was able to collect
5 three fingerprints off of the one lift. And on the
6 second card it was only one finger. And on the third
7 card there was three fingers on it. And the fourth
8 card had two fingers on it. So there were several
9 fingerprints just on that one piece of glass.

10 Q Okay. And on that one piece of glass, were those
11 fingerprints consistent with a certain way of
12 somebody holding that glass?

13 A Yes, ma'am. They were at the edges like they were
14 picked up.

15 Q Holding one of those photos, if you could show the
16 jury?

17 A Like they were picked up.

18 Q Okay.

19 A Like either out of the frame or off the ground and
20 placed somewhere.

21 Q But they were intentionally moved somewhere?

22 A Yes, ma'am.

23 Q And once you threw the dust and you were able to get
24 definite prints, what did you do at that point?

25 A Use a lifting tape. It's a clear tape that looks

1 like packing tape, like your two-inch packing tape.
2 It goes over the print. You rub it over the print,
3 try to get all the air bubbles out. And the dust
4 that's stuck to the fingerprint sticks to the tape in
5 the shape of the friction ridges or the lines on the
6 finger. You lift it. You peel it off and you put it
7 on a piece of -- we use white, it's a glossy card.
8 And we place it on it. And it's in contrast with the
9 dust and it gives you a nice clear print.

10 Q I'm going to show you what's been marked as State's
11 Exhibits -- and if you can, just tell me if you
12 recognize these -- 25, 24, 23, 22, 21, 20, 19, 18,
13 17, 16 and 15. And just tell me if you recognize
14 what this is?

15 A Yes, ma'am. These are the latents that I lifted off
16 the glass.

17 Q Okay. If I may have them back for a moment. Your
18 Honor, at this time the State would move State's
19 Exhibits 20, 19, 18, 17, 16, 15, 21, 22, 23, 24 and
20 25 into evidence.

21 **THE COURT:** Any objection, Mr. Williams? And
22 are you aware -- have you seen all of those
23 documents?

24 **MR. WILLIAMS:** Yes. Could you call them out?
25 I'm sorry. I was writing the numbers down.

1 **MS. WEISS:** It's 19 through 25.

2 **MR. WILLIAMS:** Okay.

3 **MS. WEISS:** 15 through 25. I'm sorry.

4 **MR. WILLIAMS:** 15 through 25. Oh. No
5 objection, Your Honor.

6 **THE COURT:** Okay. Then those will be admitted.

7 (WHEREUPON, State's Exhibit No. 15 is admitted
8 into evidence.)

9 (WHEREUPON, State's Exhibit No. 16 is admitted
10 into evidence.)

11 (WHEREUPON, State's Exhibit No. 17 is admitted
12 into evidence.)

13 (WHEREUPON, State's Exhibit No. 18 is admitted
14 into evidence.)

15 (WHEREUPON, State's Exhibit No. 19 is admitted
16 into evidence.)

17 (WHEREUPON, State's Exhibit No. 20 is admitted
18 into evidence.)

19 (WHEREUPON, State's Exhibit No. 21 is admitted
20 into evidence.)

21 (WHEREUPON, State's Exhibit No. 22 is admitted
22 into evidence.)

23 (WHEREUPON, State's Exhibit No. 23 is admitted
24 into evidence.)

25

1 (WHEREUPON, State's Exhibit No. 24 is admitted
2 into evidence.)

3 (WHEREUPON, State's Exhibit No. 25 is admitted
4 into evidence.)

5 Q Officer Rose, if you could, if you could step down
6 from the witness stand. And just stand in front of
7 the jury box. If you would, just go through those
8 cards using the exhibit identification number and
9 show the jury what the card is, tell them where you
10 got that print and just so they can see what each one
11 is?

12 A If I could sort them --

13 Q Sure.

14 A -- real quick? Yeah. These are the latent cards I
15 was explaining earlier, the backing tape on the
16 glossy cards. This is the first card which has three
17 fingers on it. And there's a partial of another, a
18 small little area over here.

19 Q If you can refer to it by the exhibit number so
20 they're on the record?

21 A I'm sorry. It's Exhibit No. 15.

22 Q Thank you. Where did you get those prints?

23 A Oh. This one came off the large piece of glass that
24 was on the bed that was inside the house. This is
25 the second card. The second card is Exhibit No. 16.

1 Again, this came off the glass that was inside the
2 house. It's one fingerprint on it. 17, again, this
3 come off the inside, the glass that was on the inside
4 of the house on the bed. And there's three fingers
5 on it. And then this is card number -- I'm sorry.
6 This is Exhibit No. 18, again, off the same glass off
7 the bed. You kind of have to look close at that one.
8 It has two fingers on there. They're just not as
9 clear. Those were all found on the inside.

10 The rest of these were found on the outside of
11 the house. Exhibit 19, the rotation this way of the
12 finger. And again, this is one finger on a glass on
13 the outside, Exhibit No. 20. This is 24. And there
14 is two fingers on here. It's in two different
15 orientations. One is this way and one is this way.
16 That is No. 24, outside glass.

17 This is 23. And there is two -- actually
18 there's really only two fingerprints on there. One
19 is a double. That's outside, the piece of outside
20 glass. I'm sorry. That's the outside frame of the
21 window is where this one come from, No. 23.

22 And 22 came from the outside glass. And this
23 one not only has a fingerprint on it, but there's a
24 lot of dirt on the window that it picked up. That's
25 why it looks not as clear as the others. And this

1 one is No. 21, and this was the frame on the outside
2 of the house. And it's tough to see, but it's
3 actually a smear of three fingers.

4 **Q** Once you got those prints, what was your next step in
5 your process?

6 **A** This was to go back to our office and analyze them.

7 **Q** And do you analyze all of them at one time, or do you
8 pick out the best print to begin your analyzing?

9 **A** You pick out one of the better prints. In this case
10 it was the first card. And it's -- Exhibit 15 is the
11 one we used, the middle. This impression on this
12 card is what we used, or what I used.

13 **Q** And what do you do with that print? Do you have to
14 go through every card and random fingerprints, or do
15 you have a method of trying to narrow down who that
16 print may belong to?

17 **A** We narrow it down. This fingerprint, we enter this
18 into a known database of fingerprints. We have
19 charted out the different characteristics in a
20 fingerprint. Each fingerprint is different. What
21 makes them unique is the characteristics.

22 If you look at them close, you'll have ridges or
23 lines that will split. They're called bifurcations.
24 You'll have lines that stop. Those are ending
25 ridges. You'll have little dots and they're called

1 dots. Circles, they are called enclosures, those are
2 the things we're looking for. And on this particular
3 print it's crystal clear. I mean, it's perfect to do
4 that type of analysis on. And that's what we're
5 looking for. And we chart that out and run it
6 against that known database.

7 **Q** Now, when you put it in that database, does that
8 database give you one possible match?

9 **A** No, ma'am. It will come back with 18, 20 or whatever
10 you want to set it up for. And we have ours set up
11 for 18. It gives us 18 fingerprints that have those
12 characteristics. Some are close. Some aren't. But
13 the computer can't -- it cannot look at this and go
14 this is definitely it right here. So it gives us 18
15 of them to look at. And once we get those 18, then
16 we have to manually compare those.

17 **Q** And you either include or exclude those fingerprints?

18 **A** Yes, ma'am.

19 **Q** And were you able to get 18 possibles on this case?

20 **A** Oh, yes.

21 **Q** And what did you do? Do you take them one at a time,
22 just start with the first one?

23 **A** I do.

24 **Q** And if that wasn't a match move on to the next one?

25 **A** Yes.

1 Q Okay. And in this case, I show you just -- it's not
2 for evidence, just for identification. But is this
3 basically what your screen would look like?

4 A Yes, ma'am.

5 Q And does it just -- it just spits out -- this is what
6 you put in?

7 A That's the latent. And on the other side is a known
8 fingerprint that it's looking at.

9 Q Okay. And then do you print these out, or do you
10 compare them on the screen?

11 A On that database we compare it on the screen first.

12 Q Okay.

13 A If we find all the characteristics in the same
14 positions, we stop at that point. We look for a
15 ten-print card which is a fingerprint card that has
16 been physically rolled.

17 Q Okay.

18 A Of fingerprints, somebody's fingerprints. Pull that.
19 And we take a glass, a magnifying glass. And we will
20 fold these cards, set them side-by-side for that
21 known fingerprint with that glass and we'll start
22 looking for those specific characteristics.

23 Q And between the possible and the one that you had,
24 the known suspect fingerprint, did you find anything
25 between those two in your initial analysis that did

1 not match?

2 **A** No. Every one of them matched.

3 **Q** And at that point does the computer give you a name
4 or just a number?

5 **A** It gives a number.

6 **Q** So when you're looking at these, you don't have any
7 idea who these prints belong to?

8 **A** No, ma'am.

9 **Q** Just anybody in this database?

10 **A** Right.

11 **Q** And then you're able to take that number and get a
12 name from it?

13 **A** Yes, ma'am.

14 **Q** Okay. And were you able to obtain a name that
15 matched this fingerprint?

16 **A** Yes.

17 **Q** Okay. And who is that name? What was that name?

18 **A** Darryl. And it's on my analysis. Darryl Williams.

19 **Q** Yes.

20 **A** Owens. Darryl Owens Williams.

21 **Q** Okay. And were you able to find one of those
22 cards --

23 **A** Yes.

24 **Q** -- that had the ten prints on it to identify him?

25 **A** Yes.

1 Q Okay. Officer Rose, at this time I would ask Your
2 Honor if he could step down and step over to the
3 computer just to show how you made that match once
4 you got that fingerprint.

5 THE COURT: That will be fine.

6 A On the sheet --

7 Q Can everyone see that clearly?

8 A On the sheet we were just talking about that was
9 showing the several different fingerprints we take,
10 once we make that confirmation, we come back and we
11 produce this chart. And what happens, this is the
12 latent print that was lifted. That was on the first
13 card, the middle impression or the middle fingerprint
14 we had.

15 These are the different characteristics here.
16 What we're looking for is where the lines would
17 split. Or some lines will stop, like right here. So
18 we will map these out on the latent fingerprint. And
19 then on the fingerprint that we match it to, we will
20 find them here. And they're in the same exact areas.

21 And the way we do that is, once we find the
22 starting point, we'll start counting these ridges and
23 trying to find the same characteristics. So here is
24 a bifurcation where two lines, where the friction
25 ridge comes down and splits, and we'll find it here.

1 And the way that we can confirm that that's the same
2 one we're looking at is we can count, count the
3 ridges to the center print, we can use it and make
4 sure it's the same amount of ridges.

5 We do that on every one of these. There is 15
6 of them. We'll start with A. A was a bifurcation
7 here and it matches here. And then we went down to
8 B. And if you just count one down, you have another
9 bifurcation, another bifurcation where the lines
10 split, split in two. And we keep counting that way.

11 The next line, we went down two ridges; one,
12 two, for a bifurcation. We did it on the latent
13 print: One, two, the second bifurcation, there is
14 your -- the second ridge down is a bifurcation. The
15 same thing was here. On each one of those
16 characteristics we have to go through and count every
17 one of them, which we did.

18 On that there's a large ridge count. We had
19 one, two, three, four, five, six, seven, eight ridges
20 and there is an ending ridge where the line just
21 stopped. And the same thing applies here once you
22 did your ridge count all the way down. It's the
23 exact same amount of ridges. And each one of these
24 we did the very same thing.

25 Two ridges down there is an ending ridge. Here

1 we have another ending ridge right here. Here and
2 here on the other side of it of course. We went up
3 two from your ridge; one, two, got an ending ridge,
4 an ending ridge. Then you have another bifurcation.

5 You still count and do your count, ridge count
6 one, two followed up to a bifurcation. And the same
7 thing happened here. From your ending ridge, I
8 counted one, two; followed up to a bifurcation. All
9 these, as long as the ridge count is there, these
10 characteristics are in the same spot.

11 Here again we went one -- oh, I'm sorry. One,
12 two, went over two ridges, came back up to a
13 bifurcation. One, two; following it up, there is
14 that bifurcation. If you followed it up and go up
15 one, there is another bifurcation. The same thing,
16 the same bifurcation is in the same place.

17 Here is where you were. You followed it up.
18 You went over one, and there is your bifurcation. On
19 that one we followed it around to an ending ridge.
20 On that bifurcation, you follow it around, there is
21 the ending ridge. If you follow it up one, there is
22 a bifurcation right there. Up one, there is your
23 bifurcation. And that's what's indicated here again.

24 N takes you up one, up one ridge; there you have
25 another bifurcation. The same thing applied here.

1 We went up one for your bifurcation. And 0 which is
2 the last one where we counted down. We were here.
3 One, two, three, four, for your bifurcation. And we
4 were here one, two, three, four, there's your
5 bifurcation.

6 There is 15 of them there. If you can -- let me
7 see. And there is where they're all together. This
8 is the number eight finger which is the middle finger
9 left hand which is indicated here, finger number 8.
10 And the way we count that to figure out which finger
11 that is, the right hand, the thumb starts as finger
12 number 1 which goes to five, your pinkie, one, two
13 three, four, five. Then you start with your left
14 thumb as 6, 7, 8.

15 That's the eighth finger. That was the inked
16 print in the database of the number eight finger for
17 Mr. Owens [sic]. And that's the latent print that
18 was left on that piece of glass that was inside the
19 house on the bed.

20 Q Thank you. You can just leave that up there and
21 return to the witness stand. You may want to take
22 the pointer with you just in case. Now, Officer
23 Rose, that's a very detailed 15 prints. In your
24 training and your knowledge, what is considered --
25 how many points, matching points are considered a

1 match in the field of fingerprint identification?

2 **A** There is no standard. At the police department we
3 want at least ten.

4 **Q** And is that what SLED requires as well?

5 **A** No. You can do it with three. They'll take three.

6 **Q** They'll take three?

7 **A** Yeah. They'll do it with -- it has a lot to do with
8 the quality of the print, the experience of the
9 operator. And there is no standard. But at the
10 police department, our policies at minimum is ten.

11 **Q** And on here you have 15?

12 **A** 15. Yes, ma'am.

13 **Q** So this is a very good print?

14 **A** Oh. It's an excellent print.

15 **Q** And that analysis that you just went through with
16 those 15 points, do you then do that with -- once you
17 take this print and compare it to your ten-print
18 card, do you go through that same analysis on that
19 eight fingerprint to verify that the print off the
20 computer, that came off of the computer was the same
21 eight fingerprint that's on the card?

22 **A** Yes. We don't chart it out, but we do a manual
23 comparison with a magnifying glass.

24 **Q** And I'm going to show you what's been marked as
25 State's Exhibit 14. Do you recognize that?

1 **A** Yes, ma'am.

2 **Q** And what is that?

3 **A** It's a ten-print card from the database.

4 **Q** From your file?

5 **A** Yes, ma'am.

6 **Q** Okay. If I can have that back.

7 **MS. WEISS:** Your Honor, I'm going to ask that
8 State's Exhibit 14 be allowed to be used for
9 identification by Officer Rose, but after
10 consultation with the defense not to be sent back to
11 the jury.

12 **THE COURT:** So it's identification only at this
13 point.

14 **MS. WEISS:** Yes. I think that's -- is that okay
15 with the defense?

16 **MR. WILLIAMS:** Yes.

17 **THE COURT:** Okay.

18 **Q** And that ten-print card, is that what you compared --
19 that's what you compared to the computer print?

20 **A** Yes.

21 **Q** Okay. And each and every one of those small cards
22 that you took from the glass at the residence, did
23 you compare those to that ten-print card?

24 **A** Yes, ma'am.

25 **Q** And you used the same method that you just described

1 for the jury here?

2 **A** Yes. The only difference being I didn't chart it. I
3 only went through it.

4 **Q** But you went through and made sure you had at least
5 ten matches on each one?

6 **A** Oh, yes.

7 **Q** Okay. And ten of those points were on each one of
8 the ones that you declared a match --

9 **A** Yes.

10 **Q** -- in your report? Okay. And using those prints,
11 how many matches, positive matches were you able to
12 find?

13 **A** 11 out of the 19.

14 **Q** Out of the 19 fingerprints, separate fingerprints --

15 **A** Yes.

16 **Q** -- you were able to find 11 that matched that card?

17 **A** Yes, ma'am.

18 **Q** Okay. And of the 11 fingerprint matches, how many
19 different fingers were identified on that card?

20 **A** I believe it was five. Five fingers.

21 **Q** Five different fingers?

22 **A** Yes, ma'am.

23 **Q** And which fingers were those that were identified on
24 that card?

25 **A** The number 8 finger.

1 **Q** Hold on one second.

2 **A** The one we just talked about.

3 **Q** One second. If you can hand this pen to the officer.
4 If you can just step down and write on that board
5 which fingers? If you would just draw two hands very
6 quickly.

7 **A** Sure.

8 **MR. WILLIAMS:** Excuse me.

9 **THE COURT:** Yes.

10 **MR. WILLIAMS:** I can't even see that.

11 **A** This would be number one.

12 **THE COURT:** Okay. One moment. Is there a
13 better marker or pen or something?

14 **Q** So my black marker wasn't big enough?

15 **A** This would be number one, two, three.

16 **Q** Can you retrace your fingers, please?

17 **A** I can.

18 **Q** If you can just put a mark over each finger that you
19 were able to identify that matched the ones on the
20 glass?

21 **A** It was 8, 9, 6, 7, 2 and 7. That was them.

22 **Q** So of those eleven prints, those five separate
23 fingers were positively identified from the glass
24 found at Dr. Sederberg's house and the fingerprints
25 on that ten-print card?

1 **A** Yes, ma'am.

2 **Q** Okay. And in your expert opinion, is there any doubt
3 that those five fingers are the same five fingers
4 from that card that were found on that glass?

5 **A** Oh, there's no doubt.

6 **Q** Okay. Now, Officer Rose, do you have any idea if
7 that ten-print card, if the prints on that card
8 belong to Darrell Williams?

9 **A** Oh, I don't know.

10 **Q** No.

11 **A** For the rolled?

12 **Q** Yes.

13 **A** These cards here? Yeah. These are his.

14 **Q** Those are Darrell Williams's?

15 **A** From the database is what it says.

16 **Q** Now, were you able to verify that those prints came
17 from Darrell Williams?

18 **A** Yes.

19 **Q** And how were you able to do that?

20 **A** I was able to roll Mr. Williams's fingerprints on
21 another ten-print card to match to this one that
22 someone else had rolled.

23 **Q** Okay. I'm going to show you what's been marked -- I
24 show you what's been marked as State's Exhibit 13 for
25 identification. Do you recognize that card?

1 **A** Yes, ma'am.

2 **Q** Okay. And how do you recognize that card?

3 **A** This is the card that I physically rolled Mr.
4 Williams's prints on this card.

5 **MS. WEISS:** Your Honor, at this time we would
6 like to admit State's Exhibit 13 into evidence.

7 **MR. WILLIAMS:** No objection, Your Honor.

8 **THE COURT:** Okay. Admitted.

9 (WHEREUPON, State's Exhibit No. 13 is admitted
10 into evidence.)

11 **Q** And did you personally meet with Mr. Williams and
12 roll those prints?

13 **A** I did.

14 **Q** And does it have a signature on that card?

15 **A** It does. Mr. Williams's signature on the front and
16 mine.

17 **Q** And did you have an opportunity to compare that
18 ten-print card to the other one that you compared to
19 the prints in this case?

20 **A** Yes. And they all match these prints.

21 **Q** And you matched all ten of those fingerprints that
22 you took from Darrell Williams to that ten-print
23 card?

24 **A** Yes.

25 **Q** And you did it using the same process you just

1 explained to the jury?

2 **A** Yes, ma'am.

3 **Q** And is there any doubt that the ones on the card that
4 you compared are the same prints that you took from
5 Darrell Williams himself?

6 **A** No doubt at all.

7 **Q** So in your expert opinion, whose prints were on the
8 glass at Peter Sederberg's house?

9 **A** Mr. Williams's prints.

10 **MS. WEISS:** Your Honor, I have no more questions
11 at this time. Please answer any questions that Mr.
12 Williams may have.

13 CROSS EXAMINATION

14 **BY MR. WILLIAMS**

15 **Q** Mr. Rose, how you doing?

16 **A** Fine, sir.

17 **Q** Okay. Let me basically just start off. What day did
18 you go to the crime scene?

19 **A** That was on the 13th.

20 **Q** On the 13th? And exactly what time did you arrive at
21 the crime scene?

22 **A** I don't know the exact time, sir. It was early
23 morning.

24 **Q** Okay. I just want a little clarification of some of
25 this so I'll know. Would you show this to him? Yes.

1 If you notice on the top of the paper where I've got
2 it circled, are you familiar with military time?

3 A Yes, sir.

4 Q Okay. What's that? 00:15?

5 A Yes, sir.

6 Q Okay. What time would that be?

7 A Fifteen minutes after midnight.

8 Q Fifteen minutes after midnight?

9 A Yes, sir.

10 Q Okay. Now, when you arrived at the home did you
11 check -- did you just check for the entry, or did you
12 check for both exit and entry?

13 A I checked for that entry point --

14 Q Yes, sir.

15 A -- and everything else that had been disturbed.

16 Q Basically, as a crime scene investigator, you -- let
17 me make sure I can -- I want to make sure I don't
18 want to -- your job as a crime scene investigator is
19 to obtain prints or to go and look at the whole,
20 entire crime scene?

21 A It's to document, collect, preserve and analyze
22 evidence at a crime scene.

23 Q Okay. Now, when you arrived at the crime scene, did
24 you just -- okay. Once again, did you just check the
25 window, or did you check the doors and everything

1 else like that in there?

2 **A** I checked what was disturbed or what was pointed out
3 to me that was disturbed.

4 **Q** Okay. So you were never -- so basically, you
5 wouldn't have known whether or not if, let's say, for
6 instance, the person might have gained entry by the
7 window but maybe later on exited through the door?

8 **A** Yes. There is a way to tell.

9 **Q** And basically what I'm asking, did you make that
10 determination for yourself?

11 **A** No, I did not determine -- it was not determined
12 there at the scene right there.

13 **Q** Can a contaminated crime scene alter fingerprints?

14 **A** No, sir. They can destroy them. But it wouldn't
15 alter them.

16 **Q** Yes. That's what I mean. Could they to a point --

17 **A** There is a difference, sir. They could destroy them,
18 but there is no way you're going to alter it. The
19 ridges are there.

20 **Q** No. I'm not saying alter. Excuse me. I'm not
21 saying alter. I'm saying, for instance, let's say,
22 for instance, it might have rained outside. It was
23 raining outside. And let's say the evidence that
24 you -- like okay. You go to a crime scene yourself.

25 **A** Yes, sir.

1 Q And there might be fingerprints at the crime scene,
2 but during the time that the fingerprints are out
3 there it is raining?

4 A Yes, sir.

5 Q Could you be able to still, even though it's raining,
6 be able to obtain prints?

7 A Absolutely. You would use small particle reagent.
8 It's a liquid fingerprint powder would be the easiest
9 way to describe it. A fingerprint is not going to
10 wash away, sir, not just because of rain.

11 Q What would cause the prints to be, so to speak, like
12 you said, altered to the point where you wouldn't be
13 able to tell what --

14 A To destroy fingerprints sir?

15 Q Yes.

16 A If they were wiped off.

17 Q That's the only way?

18 A Pretty much. There'd have to be contact made.

19 Q You mean --

20 A Contact to wipe it off.

21 Q Now, you basically, a few minutes ago you also
22 testified that it seemed like, as you say, that the
23 individual picked up the glass with basically his
24 fingers, like the tips of his fingers like this? Is
25 that how you're saying he did it?

1 **A** Well, no. The full fingers are on there. So it was
2 just like I demonstrated earlier, picked it up in
3 this fashion.

4 **Q** Okay. Are there any prints that you obtained where
5 it appears that the individual might have picked up
6 the piece of glass like this?

7 **A** I would have to go through them, sir. It could be.
8 Do you want me to go through card-by-card?

9 **Q** Yes. Please do.

10 **A** May I stand up? On this first card, sir, --

11 **Q** Yes, sir.

12 **A** -- it was obvious where it was picked up at the edge
13 of the glass. If you lay the card flat, where the
14 edge of the glass is, if you look at the tape, the
15 clean spot here where the line is, that shows you
16 where the break of the glass is. And you can lay
17 your hands on top of these prints like so.

18 And if this was the glass that was broken, those
19 three fingers and part of that one was touching it.
20 This was laying -- this piece of glass was laying on
21 the bed. So it had to be picked up and placed on the
22 bed and let go.

23 Number 2, which is the bottom part of that
24 glass, again, you can see the imprint of the edge of
25 the glass, where the glass was. That's a thumb,

1 number 6 finger which is this thumb here that's on
2 the bottom half of the glass that was held. It
3 wasn't held by the edges, sir. It was held right
4 here inside the glass.

5 Number 3, part number 3 which is State's Exhibit
6 17, the same thing. We draw on the back of the card
7 what we're looking at. It actually identifies where
8 the fingerprint was. And if you look at the print,
9 you can see where the glass was broken. And again,
10 there's three fingers holding it, again picking it
11 up. But it was in a different area to that. So one
12 was on one side and one was on the other.

13 This is card 4, Exhibit 18, again, the same
14 thing. There's a whole lot more of the finger there.
15 It's almost the whole length of the finger.

16 That's fingers 7 and 8 which are these two
17 fingers right here on the left hand. And you can see
18 where the glass is broken here and up here. Right
19 here is the fifth card which is Exhibit 19. This was
20 glass that was on the outside of the house. On this
21 one you can't -- well, it's kind of tough to see.

22 This is the dirty part of the window. This part
23 here where it's obviously broken, there's no powder
24 on it, that's a thumb again. And it's on the glass.
25 It's not on the edge to hold it. It's on the glass,

1 the flat part of the glass.

2 Number 7 which again indicated on the back by
3 the picture is Exhibit No. 20. This one is kind of
4 tough. This finger, this is where someone has picked
5 it up and kind of repositioned his finger. That's
6 why it's not, you know, the pronounced shape of a
7 finger. You would have to get a closer look at it.
8 You can see the finger, and then off to the side, the
9 print, looks like it's kind of smeared. And that's
10 what causes that. So it was held and it's a
11 reposition. He might have lost his balance on it.
12 In here it's kind of tough to see. But right there
13 is the edge of the glass. It comes right across
14 there.

15 Card 7 which is Exhibit 24 which is the outside
16 of the glass, too; and, again, that's a reposition of
17 a finger on it. Number 8 which is State's Exhibit
18 23, this is on the outside frame of the window. You
19 don't pick the glass up here. And it's kind of tough
20 to see from a distance I'm sure. But you see this
21 straight edge? That straight line that comes across,
22 that's the part of the frame, part of a window frame.
23 And here you just see the fingerprints where they're
24 just pushed up against it.

25 And 9, card 9, Exhibit No. 22 is the outside

1 glass and it's the pointed part. The pointed part
2 here, you see where the glass is broken where the
3 straight edges are; and here, these again, these are
4 kind of tough, too. There's a good fingerprint in
5 here and here. And when I say a good fingerprint,
6 there is ridge detail in those fingerprints. And
7 those would be the ones that we analyzed. That's on
8 the outside, and it's obvious that it's on the flat
9 part of the glass.

10 This is number 10, Exhibit 21. This one came
11 off the frame. It's not on the glass, but it's
12 obvious where the straight line is. And it's a hand
13 that laid across the frame.

14 Q Okay. Thank you.

15 A Yes, sir.

16 Q I was looking at this video you have up there. Now,
17 you said that you looked at -- correct me if I'm
18 wrong -- 16 different cards or fingerprint cards at
19 that time? When you took it back to the lab and had
20 them tested, you looked at 15 different sets of
21 prints?

22 A No, sir. There is 15 characteristics on that one
23 fingerprint.

24 Q Basically what I'm asking you, when you did a check,
25 when you say that you put the prints inside, you say

1 you put them inside your computer and they basically
2 gave you a whole bunch of different possible matches?

3 **A** No, sir. They give us 18 fingerprints with similar
4 characteristics.

5 **Q** Okay.

6 **A** It cannot give us a fingerprint with the same
7 characteristics, but it will give us a group that
8 have similar characteristics. Then it's our job to
9 physically look at each fingerprint that it comes
10 back with similar characteristics and manually check
11 them by a ridge count, what I was explaining earlier.
12 You find a characteristic, you count down the ridges
13 to the next characteristic, and that print that
14 you're looking at for comparison, those
15 characteristics have to be in that same location.

16 **Q** Okay. Because basically, okay, so you're saying that
17 there were 18 different types of characteristics that
18 were printed out to you?

19 **A** No, sir. That's not what I'm saying. There are 18
20 fingerprints --

21 **Q** I understand that. But just what I'm saying --

22 **A** -- that came back with similar characteristics. The
23 similar characteristics on that second print on the
24 sheet that I was shown may have only had one
25 characteristic that was in common.

- 1 Q Okay.
- 2 A The third one could have had three.
- 3 Q But that's what I'm saying. Excuse me. I don't mean
- 4 to interrupt you. But basically what I'm trying to
- 5 get at is; when you say it was 18 different, 18
- 6 possible ones that could match the prints that you
- 7 collected at the crime scene, you follow me so far?
- 8 A There was 19 -- yes, sir. There was 19 latent prints
- 9 lifted.
- 10 Q So basically what I'm getting at is that you had to
- 11 look at all 19 or 18 of them?
- 12 A Yes, sir.
- 13 Q Okay. Now, the point I'm trying to make is this. I
- 14 mean, I don't know. I can't speak for nobody else
- 15 here. But looking at that made my eyes tired.
- 16 A Yes, sir.
- 17 Q It's just like reading a book. What I'm asking you
- 18 is; during the course of that time your eyes didn't
- 19 get tired in looking at all that?
- 20 A No, sir. We don't sit there and look at 19 cards all
- 21 at one time, sir. The fingerprint match was made on
- 22 this one. That one was confirmed by another officer.
- 23 Then that print is taken and it's again looked at by
- 24 an inked fingerprint.
- 25 Q Okay.

1 **A** Once that's done, the chart is made, and then I go
2 back and look at every single fingerprint. I may get
3 it done in one shift. I may get it done in three
4 shifts. I don't know how long it took me to do all
5 these, because I have calls inbetween also. But
6 every one of them was confirmed with the inked
7 ten-print card and then later confirmed with another
8 ten-print card that I rolled.

9 **Q** Mm-hmm (affirmative). Basically, okay, being what I
10 was getting at is that if you have to look at all
11 those, like you said, you might have like did it on
12 one shift?

13 **A** Right.

14 **Q** But it's like, for instance, a person reading a book,
15 right? This stuff is like reading a book. Would you
16 agree or disagree?

17 **A** Oh, I disagree, sir. I could read a book all day
18 long. Without the training, sir, that right there
19 would probably cause you to get cross eyed, without
20 the training. That's pretty tough training.

21 **Q** Right.

22 **A** Those 40 hours is probably one of the longest classes
23 I've ever had. Once you learn it, it's very simple,
24 very simple. And when you're looking at a ten-print
25 card, sir, it's really easy. Maybe the computer

1 screen is a little tough sometimes. If you had to do
2 every one of them on a computer screen, I'd probably
3 agree with you, sir; but we don't do it that way. On
4 the ten-print card, it's just a whole lot easier on
5 your eyes because you can adjust the lighting, and
6 the lines are just so bold and contrasting with that
7 white, it's very simple to find at least ten of the
8 characteristics.

9 Q A couple more questions. Based on the way you're
10 saying that the person picked up the glass, would
11 that be consistent or inconsistent with a person that
12 was trying to be careful with picking up the glass,
13 the way the prints are laid out, if you can tell?
14 And if you can tell by looking, can you tell by
15 looking at the glass whether the person was trying to
16 be careful in picking up the glass or he was just
17 basically being reckless when he picked up the glass?

18 A Oh, I can't tell. I can just tell that someone
19 lifted the glass intentionally and placed it
20 somewhere else. It's pretty obvious.

21 MR. WILLIAMS: No further questions, Your Honor.

22 THE COURT: Okay. All right. Any redirect?

23 MS. WEISS: Nothing further, Your Honor.

24 THE COURT: Okay. You can step down. Any
25 reason this witness can't be excused?

1 **MR. WILLIAMS:** No.

2 **MS. WEISS:** No, Your Honor.

3 **THE COURT:** Okay. You can be excused. Thank
4 you for coming. Will the State at this time have any
5 brief witness, or would you like to conclude for the
6 day?

7 **MS. WEISS:** May we approach?

8 **THE COURT:** Sure.

9 (Whereupon, a bench conference is had)

10 **THE COURT:** Okay. Ladies and gentlemen of the
11 jury, after questioning the attorneys about just kind
12 of the time constraints, I think it would be best to
13 conclude for the evening. And so I'm going to remind
14 you not to discuss the case in any shape, form or
15 fashion, and that you all report back to your jury
16 room at 9:30 in the morning, and then we will resume
17 with the trial at that time. You all have a great
18 evening and drive home safely.

19 **MS. GARFIELD:** Your Honor, before the jury is
20 excused, may I just ask, because the trial has lasted
21 a lot longer than I anticipated and Dr. Sederberg
22 does have a commitment in Atlanta, that he be
23 excused.

24 **THE COURT:** That would be fine. And that won't
25 be necessary. It's still the State's case.

1 **MS. GARFIELD:** Thank you.

2 **THE COURT:** All right. Thank you. Have a good
3 evening.

4 (Jury out at 4:50 p.m.)

5 **MS. GARFIELD:** Judge, if I can just ask about
6 scheduling matters because I know our office has bond
7 estreatments scheduled before you in the morning.

8 (Off-the-record discussion about tomorrow's
9 court schedule)

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1 Wednesday, September 24, 2008

2 **MS. GARFIELD:** The last thing we intend to do is
3 to introduce his two prior convictions from the
4 County of Marlboro. And he has copies. We have a
5 certified copy of the sentencing sheet, the warrants
6 and the indictment. The indictment does reflect that
7 the defendant pled guilty to these charges. So we
8 want to avoid any prejudice. Do you want me to just
9 introduce the indictment?

10 **THE COURT:** Yes. I do not want the sentencing
11 sheet or the warrant because it goes into the fact of
12 the other cases. And that's so as not to prejudice
13 Mr. Williams.

14 **MS. GARFIELD:** No problem. I'm going to go
15 ahead and get these pre-marked.

16 **THE COURT:** And then Mr. Williams's objections
17 to them coming in, based on your prior objections,
18 they are noted for the record.

19 **MR. WILLIAMS:** Okay.

20 (WHEREUPON, State's Exhibit No. 27 is marked for
21 identification.)

22 (WHEREUPON, State's Exhibit No. 28 is marked for
23 identification.)

24 **THE COURT:** Okay. Anything else? We'll need
25 Ms. Weiss. I tell you what. While we're waiting on

1 Ms. Weiss, bring them out. I'm going to ask them to
2 select their foreperson. I'll bring them back out.
3 And that way that will be done.

4 (Jury in at 9:50 a.m.)

5 **THE BAILIFF:** The jury is seated, Your Honor.

6 **THE COURT:** Okay. Ladies and gentlemen of the
7 jury, good morning. We are going to -- you all have
8 ordered your lunch. And that's just for the purpose
9 that we will continue on with the proceedings and
10 all. But of course you will be able to take
11 appropriate breaks.

12 What I'm going to ask you to do now before we
13 start the trial this morning, I usually like to let
14 jurors get a chance to get to know each other. But
15 I'm going to ask you all to select a foreperson. I
16 tell you that this person gets no more pay. So don't
17 get excited in that regard. But the foreperson
18 essentially is going to guide you through the
19 deliberations, just be the organizer of the group.

20 Their vote counts no more than any other person
21 in the group. The only person who is not eligible is
22 the alternate at this point in time. Of course the
23 alternate needs to continue to listen to the case
24 because I have had to replace jurors through the
25 alternate. So you need to be just as conscientious

1 with respect to these proceedings.

2 But it's basically the person who is going to
3 guide the deliberations and be the organizer and then
4 be responsible for filling out the verdict form and
5 then receiving the evidence into the jury room and
6 then you all take it over as you wish. None of us
7 will be in there. You will be at the province of
8 yourselves in that regard.

9 So I'm just going to ask you to step to your
10 jury room and select that person. Write the person's
11 name and jury number on the sheet and then give it to
12 the bailiff and then we'll proceed.

13 (Jury out at 9:52 a.m.)

14 **THE COURT:** All right. Any other matters to be
15 taken up at this time?

16 **MS. GARFIELD:** Nothing from the State, Judge.

17 **THE COURT:** And, Madam Court Reporter, I trust
18 that you have a distinction with your exhibits
19 between what's been marked for I.D. versus admitted
20 into evidence?

21 **COURT REPORTER:** Yes, ma'am.

22 **THE COURT:** Okay. And you all may wish to
23 review that just in case there was something you
24 intended to admit so that there is no omission. And
25 then of course you'll be responsible for checking it

1 all before it goes back to the jury, too.

2 **MS. GARFIELD:** I've made a list of everything
3 we've introduced. So we'll coordinate with Jenny
4 when we finish.

5 **THE COURT:** Okay. And, Mr. Williams, once the
6 State rests, then of course we'll take up any motions
7 and things of that nature. So I'll send the jury out
8 during that time, make those decisions, and then I'll
9 wait at that time to advise you of your rights as to
10 whether or not you wish to proceed with testifying.

11 **MR. WILLIAMS:** Okay.

12 **THE COURT:** And we'll just deal with all of that
13 at that time and whether or not you wish to put up a
14 case at all. And then you'll have the appropriate
15 time to then rest on the record as well. And then
16 there will be a motions portion, legal motions after
17 that, and then we'll proceed on.

18 **MR. WILLIAMS:** All right.

19 **THE COURT:** Depending on how prior motions turn
20 out.

21 **MR. WILLIAMS:** Okay.

22 **THE COURT:** You can bring them in.

23 (Jury in at 9:55 a.m.)

24 **THE BAILIFF:** The jury is seated, Your Honor.

25 **THE COURT:** Okay. And thank you, Mrs. Shanett

1 Cole, juror number 49, who has taken on the
2 responsibility of being our foreperson. I appreciate
3 your responsibility in doing so. Thank you. Okay.
4 We will proceed with the State's case.

5 **MS. GARFIELD:** Thank you, Your Honor. The State
6 calls Investigator Paul Mead.

7 PAUL J. MEAD, after being duly sworn, testifies
8 as follows:

9 **THE CLERK:** Please have a seat. State your full
10 name for the record.

11 **WITNESS:** Paul James Mead.

12 DIRECT EXAMINATION

13 **BY MS. GARFIELD**

14 **Q** Investigator Mead, where are you employed?

15 **A** The City of Columbia Police Department.

16 **Q** And are you originally from Columbia?

17 **A** No, ma'am.

18 **Q** Where are you originally from?

19 **A** Upstate New York just outside of Syracuse.

20 **Q** And where did you go to school?

21 **A** I went to Phoenix High School which is just outside
22 of Syracuse between Oswego and Syracuse. And then I
23 went to Onondaga Community College which is right in
24 Syracuse, New York.

25 **Q** Did you get any type of degree from there?

1 **A** Yes. I got an associates degree in criminal justice
2 from Onondaga Community College.

3 **Q** And from then, upon graduation, did you enter the
4 field of criminal justice?

5 **A** I did.

6 **Q** And when did you do that?

7 **A** I joined the Columbia Police Department in 1988.

8 **Q** And did you do anything before you went into the
9 criminal justice field?

10 **A** I did. I worked for a contract company. Essentially
11 I dug holes.

12 **Q** And did you do that in South Carolina as well?

13 **A** I did. I did that for about five years and then came
14 to Columbia, and that's when I joined the Columbia
15 Police Department.

16 **Q** And what year was that?

17 **A** 1988.

18 **Q** And presently what is your rank with the Columbia
19 Police Department?

20 **A** I'm an investigator.

21 **Q** And what are you assigned to investigate?

22 **A** Originally I started as a major crime investigator
23 where I investigated homicides, sexual assaults,
24 aggravated assaults and robberies. I did that for
25 about 12 years. And then the last years I have been

1 doing mostly property crimes, burglaries, auto
2 breakings and things like that.

3 Q How are you assigned a case to investigate?

4 A I have a sergeant that's over the unit that I work
5 for. As the cases come in, he reviews them and
6 assigns them to us.

7 Q Are you normally the first to respond to a burglary?

8 A No. The line units would respond. They'll take the
9 initial incident report. After they get the report,
10 there may be a crime scene unit that goes out and
11 does their work. After all that is done, the
12 information is sent back to investigations and then
13 we would follow up after that.

14 Q Were you assigned -- I'm sorry. Were these your same
15 duties back in July of 2007?

16 A Yes, they were.

17 Q And were you assigned to work a burglary or to
18 investigate a burglary that occurred on Edisto Avenue
19 in July of 2007?

20 A Yes. I was assigned a burglary at [REDACTED] Avenue.
21 The information had come in that they had made a
22 print match on the burglary. And after that print
23 match was done the case was assigned to me.

24 Q And about how long after the burglary was reported
25 were you assigned?

1 **A** The burglary occurred between the 12th and early
2 morning of the 13th of July of 2007. I got the case
3 on the 17th of July where I was notified that the
4 print match had been made, and I was given the case
5 at that point.

6 **Q** Who notified you of a print match?

7 **A** Officer Rose of the crime scene unit.

8 **Q** And who was that print match made on?

9 **A** Darrell Williams.

10 **Q** And at that time what did you do as an investigator?

11 **A** After that, the next day I took a photograph of Mr.
12 Williams to Mr. Sederberg's residence. I met with
13 him. I showed him and his daughter the photograph,
14 asking them if they knew this individual, if this
15 individual had any reason to be in their house, if he
16 worked for them or did any kind of work for them.
17 Both indicated that they didn't know Mr. Williams,
18 had never seen him before, and he had no reason to be
19 in the residence.

20 **Q** And at that time did you seek an arrest warrant?

21 **A** I did.

22 **Q** And what did you seek that arrest warrant for?

23 **A** Burglary and larceny.

24 **Q** Investigator, I'm going to hand you what's already
25 been introduced into evidence as State's Exhibit

1 No. 5. Do you recall what that's a photograph of?

2 **A** Yes, ma'am. That's a photograph of the window in the
3 back of Mr. Sederberg's residence. This is the entry
4 point for the burglary. The photograph was taken
5 several days afterwards.

6 **Q** Did you have the opportunity to observe that window?

7 **A** Yes.

8 **Q** And that's when you went to Dr. Sederberg's home?

9 **A** That's correct.

10 **Q** Can you describe for the jury what that window -- the
11 height of that window? And if you need to stand up,
12 please do so.

13 **A** Actually the residence itself is almost --

14 **Q** If you can, stand up. I'm sorry to interrupt you.
15 Just so everyone can see it. Thank you.

16 **A** The residence itself is almost built into a hill. So
17 when you walk to the back of the residence which is
18 back in here, these windows are almost waist high.
19 This window here would just be about right where my
20 hands are here. Instead of normally where the
21 windows would be up higher, these windows are
22 extremely low in the back, and the embankment comes
23 right down right to these windows. There's not a lot
24 of room back there.

25 **Q** So would it make sense for a taller person to

1 actually if they're trying to break into this home to
2 go through that top window?

3 **A** Probably the most accessible window would be the top
4 window.

5 **Q** Thank you. Investigator, what zip code is this
6 location in?

7 **A** That area is 29205.

8 **Q** And that is in the City of Columbia?

9 **A** It is.

10 **Q** Is that also in Richland County?

11 **A** Yes, ma'am.

12 **Q** Thank you. When was Mr. Williams arrested on the
13 warrants that you issued?

14 **A** He was arrested July 31st of 2007.

15 **Q** And when did you become aware of the arrest?

16 **A** I'm not absolutely sure when I was told he was
17 arrested, but I know that I contacted him, had him
18 brought to see me on the 15th of August.

19 **Q** And you weren't the arresting officer?

20 **A** No, I was not.

21 **Q** And you said you had him brought to you. What was
22 the purposes of you having him brought to you?

23 **A** To conduct an interview with him.

24 **Q** And at that time did you observe his demeanor?

25 **A** Yes, I did.

1 Q And can you explain to the jury how he acted to you?

2 A Mr. Williams was very calm. He understood everything
3 that I was saying to him. He appeared very
4 intelligent. He was able to communicate with me and
5 respond to any questions that I asked him.

6 Q At that time did you read him his rights?

7 A I did.

8 Q And can you explain to the jury how you go about
9 going over a person's rights with them?

10 A We have a form. It's called an advice of rights
11 form. The top part of the form indicates the
12 location that the rights were read. There is a date
13 and also a time when the dates were read. Then I go
14 through and each line or each section of the advice
15 of rights form I read to the individual. After I
16 read that I check it off and go all the way down
17 through.

18 After I've read the entire rights to him, I
19 asked him if he understood everything that I've read
20 time. He indicated that he did. Then I tell him or
21 ask him if he will sign the form. There's a place
22 for the individual to sign. I also get an education
23 level, you know, the last grade that individual
24 completed. They'll give me that information and
25 where they went to school. And then I ask them just

1 to read the top line of the form to me just to make
2 sure that they're able to read and understand what
3 I'm saying.

4 Q Investigator, I will have handed to you what's been
5 marked as State's Exhibit No. 1 for identification.
6 When you get that, can you tell the jury if you
7 recognize that document?

8 A Yes, ma'am. This is the advice of rights form that I
9 went over with Mr. Williams.

10 Q And is your signature on that document?

11 A Yes, it is.

12 Q And who else's signature is on that document?

13 A Darrell Williams.

14 Q And can you just read that to the jury, the rights
15 that you just explained to them?

16 A Sure. Where I've indicated before, there is a place,
17 location on there. It's 1 Justice Square which is
18 police headquarters. The date was August 15th of
19 2007. The time was 3:39 in the afternoon.

20 Before I ask you any questions, you must
21 understand your rights. At that point I checked that
22 one off. You have the right to remain silent.
23 Anything you say can be used against you in court.
24 After each one of these I would check that section
25 off.

1 You have the right to talk to a lawyer for
2 advice before we ask you any questions and to have
3 him with you during questioning. If you cannot
4 afford a lawyer, one will be appointed for you before
5 any questions if you wish. If you decide to answer
6 questions now without a lawyer present, you still
7 have the right to stop answering at any time. You
8 also have the right to stop answering at any time
9 until you talk to lawyer.

10 I then advised him, the next section deals with
11 the waiver of these rights that I have read. I have
12 read this statement of my rights. I understand what
13 my rights are. I am willing to make a statement and
14 answer questions. I do not want a lawyer at this
15 time. I understand and know what I am doing. No
16 promises or threats have been made to me. No
17 pressure or coercion of any kind has been used
18 against me.

19 After I've read all that and checked each one of
20 them off, I asked to make sure that he understood
21 what his rights were and if he is willing to talk to
22 me at this time. Mr. Williams indicated that he was
23 willing to talk to me.

24 At that point I asked him to sign the form.
25 There is a location for him to sign. I asked him his

1 education level, what grade he has completed. He
2 indicated he completed the 12th grade at Franklin K.
3 Lane in Brooklyn, New York. After that I signed the
4 form as a witness and put the date or the time that
5 the form was completed which was 3:42 p.m.

6 **Q** At any time, investigator, did you make any promises
7 to Mr. Williams if he spoke to you?

8 **A** No, ma'am.

9 **Q** Did you make any threats?

10 **A** No.

11 **Q** Did you deprive him of anything like food or water?

12 **A** No, ma'am.

13 **Q** Did you deprive him of anything like having to go to
14 the bathroom?

15 **A** No.

16 **Q** Did he appear to want to freely speak with you?

17 **A** He did.

18 **MS. GARFIELD:** Your Honor, at this time I would
19 like to introduce State's Exhibit No. 1 into
20 evidence.

21 **THE COURT:** Any objection?

22 **MR. WILLIAMS:** No. No, Your Honor. No
23 objections.

24 **THE COURT:** Okay.
25

1 (WHEREUPON, State's Exhibit No. 1 is admitted
2 into evidence.)

3 Q After Mr. Williams waived his rights to you, did he
4 talk to you about what had happened?

5 A Yes, he did.

6 Q And at first was this is a written confession, or did
7 you all just speak about it?

8 A The initial interview was oral. We discussed it to
9 start with. And then during that discussion he
10 agreed to put it in writing.

11 Q And what is the format of the written statement?

12 A Normally there's two different ways that I will do a
13 statement. One, the individual can agree to write
14 his own statement. Or I will do a question and
15 answer statement. I will write the question and then
16 write their response to the question. In this
17 particular case it was a combination of both. Mr.
18 Williams wrote the majority of the statement and then
19 I asked and wrote his responses to several questions
20 after that.

21 Q Investigator, I'm going to hand you what's been
22 marked as State's Exhibit No. 2. And if you can tell
23 me if you recognize that document?

24 A Yes, ma'am. This is the statement for Darrell
25 Williams.

1 Q And can you just please -- I'm sorry. Is his
2 signature on that statement?

3 A Yes. In several places.

4 Q And did you witness him sign that statement?

5 A I did.

6 Q Did you also sign the statement?

7 A I did.

8 Q Investigator, if you can, please read into the record
9 what that statement consists of?

10 A The statement was dated August 15th of 2007 at
11 4:15 p.m. at 1 Justice Square. This top section
12 indicates that the individual giving the statement is
13 Darrell Williams. His date of birth is [REDACTED].
14 My address and phone number are [REDACTED] South Beltline
15 Boulevard. I'm giving this statement concerning a
16 burglary to Paul Mead who has identified himself as a
17 police investigator.

18 Mr. Williams wrote: On 7-12-07 I met a friend
19 while coming from Labor Finders whose name is Jimmy
20 Bowman. As I was coming down the street he stopped
21 me and asked if I would give him a hand cleaning the
22 yard. And while coming from back, I noticed he had a
23 plastic bag but it was empty. And once in back he
24 asked if I needed gloves and said no.

25 What he was having me do was put some of the

1 glass in the bag, and this went on for about five or
2 ten minutes. When I asked whose house it was, he
3 said it belonged to his girlfriend and thought he was
4 telling the truth.

5 Jimmy is about five-nine, brown skin, and I know
6 him to date white women. So as I was doing this I
7 did touch glass, and this was when I saw him pick up
8 a box about the size of a case for not jewelry but
9 maybe a radio size. I do not have anything because
10 Jimmy gave me \$10 for helping him and left.

11 After he said: Fuck that bitch, let's go, he
12 went towards Five Points. I went home and talked to
13 my friend in West Columbia to tell her I was on my
14 way to her house, which she was in Orangeburg. So I
15 stayed in. This is what took place on this day. And
16 if I remember correctly, Jimmy was staying at some
17 hotel down the block from DSS.

18 At that point I started the question and
19 answers. I wrote the question:

20 "Q Did you ever go inside the house?

21 His response was:

22 "A Yes. He told me to go inside the house and
23 help him clean up the glass inside.

24 I then wrote the question:

25 "Q How did you get inside?

1 He answered:

2 "A He told me to climb through the window. Jimmy
3 told me he already had the door open.

4 I then asked:

5 "Q What else did you touch inside the house?

6 Mr. Williams responded:

7 "A The table. One table had a bunch of knives on
8 it. That's all I remember.

9 I then asked him:

10 "Q What property do you have from this house?

11 Mr. Williams responded:

12 "A I have a silver school graduation ring in my
13 property at the jail.

14 I asked Mr. Williams:

15 "Q Did Jimmy Bowman go inside the house with you?

16 He stated:

17 "A Yes.

18 I asked the question:

19 "Q Do you know what he took?

20 Mr. Williams responded:

21 "A No. He had a small pouch in his hand but I
22 don't know what was in it.

23 I then asked the question:

24 "Q Who broke the glass window?

25 Mr. Williams responded:

1 "A Jimmy before I got back there.

2 Q Is that the end of the statement?

3 A Yes, it is.

4 Q And in the narrative portion of that statement, whose
5 handwriting is that in?

6 A That's Mr. Williams's.

7 Q And in the question/answer portion, whose handwriting
8 is that in?

9 A That's my handwriting.

10 Q And was this statement given freely by Mr. Williams?

11 A Yes, it was.

12 Q Investigator, do you see the person that gave you
13 that statement in the courtroom today?

14 A I do.

15 Q And can you please point him out for the record?

16 A Yes. Mr. Darrell Williams sitting at the table right
17 there.

18 MS. GARFIELD: Your Honor, may the record
19 reflect that Investigator Mead has identified the
20 defendant for the record?

21 THE COURT: Yes.

22 MS. GARFIELD: Thank you.

23 Q Investigator, were you able -- did you have an
24 opportunity to view that ring that was in his
25 property?

1 **A** I did.

2 **Q** And what color was that ring?

3 **A** It was silver in color.

4 **Q** Did you find it -- do you know if it belonged to the
5 Sederberg family?

6 **A** It did not belong to them.

7 **Q** Thank you. At any time did you have the opportunity
8 to take Mr. Williams to Edisto Avenue?

9 **A** I did.

10 **Q** And what was the purpose of that?

11 **A** We took Mr. Williams around to identify the location
12 of the house he went into.

13 **Q** And was he able to identify the location?

14 **A** Yes, he was.

15 **Q** What did he point out?

16 **A** ██████████ Avenue.

17 **MS. GARFIELD:** Your Honor, at this time I'd like
18 to introduce that statement into evidence, State's
19 Exhibit No. 2.

20 **MR. WILLIAMS:** No objection, Your Honor.

21 **THE COURT:** Okay.

22 (WHEREUPON, State's Exhibit No. 2 is admitted
23 into evidence.)

24 **Q** Investigator Mead, because you work burglaries, is it
25 important for you to be familiar with the

1 sunrise/sunset schedules?

2 **A** It is.

3 **Q** And can you explain to the jury why that's important?

4 **A** The burglary statute has several degrees to it. The
5 degree of the burglary can depend upon several
6 factors, one of which whether or not the incident
7 occurred in the hours of darkness. There are several
8 other factors, but that is one of them and one of the
9 reasons we tend to check the sunset/sunrise time.

10 **Q** Did you check when the sunset time was on July 12th,
11 2007?

12 **A** Yes. It was 8:37 in the evening.

13 **Q** Thank you. Beg the Court's indulgence. Investigator
14 Mead, the property that the victim reported taken,
15 can you give an approximate value of what that
16 property would be?

17 **A** Yes. The approximate value was less than \$1,000.

18 **Q** Thank you. Please answer any questions Mr. Williams
19 may have for you.

20 CROSS EXAMINATION

21 **BY MR. WILLIAMS**

22 **Q** Good morning.

23 **A** Good morning.

24 **Q** Based on this statement, what according -- based on
25 that statement was the defendant doing before he came

1 to the crime scene? If you have to look at it again,
2 please do to refresh your memory.

3 **A** Walking with Mr. Bowman down the street.

4 **Q** Before he came to the crime scene?

5 **A** The statement says that I met a friend while coming
6 from Labor Finders whose name is Jimmy Bowman. I was
7 coming down the street.

8 **Q** Okay. When the defendant -- so basically, before --
9 before I met Mr. Bowman I was coming from some place
10 else. Would that be correct according to the
11 statement?

12 **A** I would assume so. Yes, sir.

13 **Q** Okay. Based on the statement also, if I was coming
14 from some place else, then that means that Mr. Bowman
15 was at the place before I got there? Wouldn't that
16 be correct?

17 **A** According to the statement; yes, sir.

18 **Q** So when -- according to also based on that statement,
19 as you testified to the statement, that when the
20 defendant arrived -- when I arrived at the crime
21 scene the window was already broken, correct?

22 **A** That's what you said. Yes, sir.

23 **Q** I'm asking what's in the statement. I'm asking you
24 what's in the statement. Is that what the statement
25 is saying? Is that what you testified to based on

1. what's in the statement?

2. **A** Yes. The statement said the window was broken.

3. **Q** Okay. What other proof do you have that showed that
4. the defendant knew what was going on before he came
5. to the crime scene?

6. **A** I don't understand what you're asking for.

7. **Q** In other words, I'm asking what other proof outside
8. the statement that would show that the defendant knew
9. what was going on when he came to the crime scene?

10. **A** The proof that we have is your fingerprints all over
11. the broken glass and your admission that you went
12. inside the residence.

13. **Q** Okay. But what I'm asking is, based upon evidence
14. that you have, is there any proof to show that the
15. defendant knew what was going on when he came to the
16. crime scene?

17. **A** According to your statement, no.

18. **Q** That's the question I'm asking. So if the
19. defendant -- if an individual, you comes to the crime
20. scene; based on the proof, once the defendant came to
21. the crime scene, which is myself which came to the
22. crime scene because I came to the crime scene, if I
23. didn't know what was going on and the window was
24. already broken, wouldn't that be after everything
25. took place?

1 **A** After what took place?

2 **Q** If I already came to the crime scene -- follow me
3 closely -- if I come to the crime scene and I already
4 see the window broken out, then that would mean
5 whatever took place took place before I got there.
6 True or false?

7 **A** According to the statement, you said the window was
8 broken when you got there. Therefore, it would have
9 had to have been broken before you got there.

10 **Q** Yes, sir.

11 **A** According to the statement.

12 **Q** What was my reason for being at the residence
13 according to the statement?

14 **A** You said that Mr. Bowman asked you to help him clean
15 some glass up.

16 **Q** Okay. How did the defendant gain consent to enter
17 the residence?

18 **A** You went through the window.

19 **Q** How did he gain consent?

20 **A** The statement says that Mr. Bowman gave you consent.

21 **Q** Who did the defendant deceive in order to gain entry
22 into the building?

23 **A** I'm sorry? I didn't hear you, sir.

24 **Q** Who did the defendant deceive to get into the
25 building?

1 **A** Who did you deceive to get into the building?

2 **Q** Yes. That's what I'm asking you.

3 **A** The victim.

4 **Q** Based on the statement, based on the statement that
5 has been -- based on that statement that has been
6 admitted into evidence, according to that statement,
7 who did the defendant deceive to gain entry into the
8 building? If you need to look at the statement to
9 refresh your memory, please do so.

10 **A** I know the statement, sir.

11 **Q** Okay.

12 **A** I don't know exactly what you're asking.

13 **Q** In other words, --

14 **A** The person deceived in all this is the victim, Mr.
15 Sederberg.

16 **Q** No, no, no. According to the statement, you're
17 saying that based on the evidence that has been
18 presented here today in this courtroom that the
19 defendant did not have consent to enter the
20 residence. Now, what I'm asking clearly is, who
21 based on the statement did the defendant deceive in
22 order to gain entry when he was there at the
23 residence that day?

24 **A** I don't understand what you mean by deceive. But the
25 statement says that Mr. Bowman told you to go in the

1 residence.

2 Q Okay. If Mr. Bowman gave me consent to go into the
3 building, then that would mean; true or false, that I
4 did not deceive him or anybody else to gain entry
5 into the building? Would that be correct?

6 A According to the statement, true.

7 Q What proof based on the statement that has been
8 submitted as evidence would show that the defendant
9 tricked somebody to gain entry into the building?

10 A I don't have --

11 Q In other words, basically what I'm asking you is
12 this. If according to the statement, we're saying
13 based on the statement, okay, that was submitted as
14 evidence, that has been submitted as evidence by the
15 State, that Mr. Bowman gave me consent to enter the
16 building, then that would mean; one, the defendant
17 did not deceive anybody to enter the building, the
18 defendant did not trick anybody to get into the
19 building. True or false?

20 A According to the statement, true.

21 Q So if the defendant did not either trick somebody to
22 enter the building or deceive somebody to enter the
23 building, that would mean based on what somebody else
24 told him, would it be fair to say that the defendant
25 had reason to believe that by entering the house he

1 had legal consent based on the statement, based on
2 his statement that's been submitted as evidence?

3 **A** I can't tell you what he believed at the time.

4 **Q** According to the statement?

5 **A** According to the statement, you went in the house.

6 **Q** According to the statement, doesn't that statement
7 state what the defendant believed at the time while
8 he was there at the residence?

9 **A** Yes. According to the statement, you said that you
10 were there because Mr. Bowman asked you to help him
11 pick up glass.

12 **Q** Okay. But going further down into the statement,
13 does the statement not say -- I'm going to mark this
14 off. Your Honor, if I may, I want to show this to
15 the witness.

16 **THE COURT:** Certainly.

17 **MR. WILLIAMS:** I'm going to mark something off
18 right here and I want to show it to the witness.

19 **THE COURT:** Mr. Bailiff, if you would approach
20 Mr. Williams, please.

21 **MR. WILLIAMS:** Just show him that, please.

22 **THE COURT:** Mr. Williams, do you want to see the
23 exhibit so you'd have a copy in front of you as well?

24 **MR. WILLIAMS:** Yes, ma'am. Please.

25 **THE COURT:** And if you would give to Mr.

1 Williams the actual exhibit, the statement. Okay.

2 **MR. WILLIAMS:** Thank you, sir. Oh, excuse me,
3 Your Honor. I'll only show it to Ms. Weiss so they
4 know exactly what I'm talking about.

5 **THE COURT:** Does the State have a copy of the
6 exhibit as well?

7 **MR. WILLIAMS:** Yes, they have a copy. But I
8 want to show them which part I'm talking about so
9 they will know.

10 **THE COURT:** Okay.

11 **Q** Now, based on the statement that have I marked off in
12 there, would that not be an indication as to what the
13 defendant believed at the time he was there?

14 **A** According to your statement; yes, sir.

15 **Q** Okay. Now, could you just read off that brief little
16 section right there to them?

17 **A** I asked whose house it was. He said it belonged to
18 his girlfriend and thought he was telling the truth.

19 **Q** Okay. Now, so if the defendant reasonably believed
20 at the time that this was his girlfriend's house,
21 would it not be fair to say that based on your
22 experience as an investigator who knows about
23 burglary, would this not make it consent if this
24 individual believed that it was lawful for him to
25 enter residence once he was told to do so?

1 **A** Mr. Williams, working burglaries as long as I have, I
2 know that people don't usually break into windows and
3 enter residences through the window.

4 **Q** I'm not asking you that. I am not asking that. What
5 I'm asking you is, is based on that statement,
6 whether or not it can be said that this was given --
7 he was given consent? It's not a matter of what you
8 think. I'm talking about based on the evidence. In
9 that statement would it not be reasonable to believe
10 based on that statement in evidence that's been
11 presented, because that's all that matters, that the
12 individual believed that he had consent to enter the
13 residence based on his statement?

14 **A** Based on the statement, you said that Mr. Bowman gave
15 you permission to enter the residence.

16 **Q** Okay. If Mr. Bowman gave me permission to enter the
17 residence, would it not still be required for me to
18 know whether or not that person had the legal right
19 to give me consent or not?

20 **A** Would you ask the question again, sir?

21 **Q** Would not in order for the person to reasonably
22 believe that this individual did not have, let's say,
23 the authority to tell a person -- okay. Well, let's
24 give you a perfect example. We're going to use the
25 bailiff here and this young lady right here. Now,

1 you and this young lady are sitting here in the
2 house. Right. She leaves out. This is her house
3 now.

4 Now, he comes along and comes inside the house.
5 Now, if you invite him into her house, would that be
6 giving him consent? This is your friend now. This
7 is your friend that you've known for maybe what? 70
8 years. I'm not saying you're that old, sir. Please
9 don't get me wrong. I'm saying you're that old. But
10 you've known him that long, and now you come to
11 this -- you're at her house and you get the consent
12 to enter. Would that consent be legal?

13 **A** If he asked me into the house?

14 **Q** No. If you told -- you met him and you said, hey,
15 how you doing? Long time no see. Come on in the
16 house for a minute; would that be legal or illegal?

17 **A** That would depend. It's her house and if she gave
18 permission for me to bring somebody in there, that
19 would be fine. But I would normally bring him
20 through the front door and not through the back
21 window.

22 **Q** Now, and based on -- okay. You -- it's not a matter
23 legally of where the person -- the question we're
24 trying to get at, right, is did the individual know
25 whether or not this person here had legal authority

1 to tell him whether he should enter or not enter?

2 Based on the evidence, which is all that matters
3 again, because it's the statement there, then based
4 on that statement, could it be reasonably said that
5 the person believed that this individual had legal
6 consent to tell him to enter the residence?

7 A Mr. Williams, I can't tell you that. I know that if
8 I walk up and there is a broken window in the back of
9 somebody's house, I would seriously wonder whether or
10 not they could give me permission to go into the
11 residence.

12 Q Okay. Based on that fact, the statement, does not
13 the statement also say that the door was open?

14 A The statement says that Mr. Bowman said the front
15 door was open.

16 Q So if the door was open, if the door was open, then
17 some how, some way there had to be a reasonable
18 belief because the person believed that if you see
19 this individual walking through the door or walk
20 through a door you didn't see them enter into and --
21 okay. Let's go back from there. When you went --
22 when the crime scene investigator did an
23 investigation of the house, there was no other area,
24 there was no other windows broken out, there were no
25 doors kicked in, correct?

1 **A** That's correct.

2 **Q** So if this door was open or if this individual based
3 on the evidence of the statement entered through
4 this, came through this door, then according to the
5 statement, the defendant did not see him go into the
6 house any other way, how was it did he get in? What?
7 Did he walk through the door?

8 **A** Mr. Williams, I don't have any evidence that there
9 was anyone else there or that anybody went through
10 the door.

11 **Q** But this statement, this same statement that you are
12 submitting as evidence, this same statement shows
13 clearly that if there was somebody else there at the
14 residence; now, keeping in mind that the only
15 evidence that shows that there was -- that I -- that
16 based on that the fingerprint evidence that was
17 recovered at the crime scene is the only evidence
18 there; now, if the individual -- if you're going to
19 pick up glass, if you're the only individual picking
20 up this glass, whose fingerprints would be on the
21 glass?

22 **A** If you picked up the glass, then your fingerprints
23 would probably be on the glass.

24 **Q** All right. So at any time has the defendant ever --
25 based on the statement, has the defendant ever denied

1 that he was at the residence, based on the statement?

2 **A** No.

3 **Q** So if at any time the defendant has not denied being
4 at the residence, his statement basically is going on
5 the fact that when he arrived at the residence while
6 coming back from Labor Finders, which is a labor
7 agency, from working that particular day, if he was
8 doing that at the time, coming back from somewhere
9 and he met him and the individual told him, listen,
10 help me out, gaining consent would mean that the only
11 person that the person there at the time is the
12 person who believed that this is what actually
13 happened, if this is what he believed; again, true or
14 false, would the consent be legal as long as a person
15 reasonably believed that this was what was happening?

16 **A** I can't answer that, sir.

17 **Q** Based on the statement, what was -- based on the
18 statement that was submitted as evidence, what was
19 the defendant -- what was the defendant -- what was
20 the defendant's actions -- excuse me. What was the
21 defendant's actions when he entered the residence?

22 **A** I'm sorry?

23 **Q** Based on the statement, what was the defendant's
24 actions once he entered the residence?

25 **A** I don't have the whole statement here, but I

1 understand they went in and touched a table inside
2 the house that had a bunch of knives on it.

3 **Q** That was it? Do you need the whole statement? Oh,
4 I'm sorry. I've got it.

5 **A** I mean, according to the statement.

6 **Q** Based on the statement, based on this statement,
7 you're saying that -- it's your testimony that the
8 defendant touched the table with a bunch of knives on
9 it, correct?

10 **A** Yes, sir.

11 **Q** Touching a table with a bunch of knives on it, is
12 that a crime? If the individual has consent to enter
13 the residence and he goes and touches a table that
14 has knives on it; I mean, it might have been
15 displayed, maybe a bunch of Barbie dolls, whatever
16 the case may be, but if the individual entered the
17 residence had consent to enter the residence, would
18 touching that table with knives make it a crime?

19 **A** No. If the victim, Mr. Sederberg, had told you it
20 was okay to go in there and touch the table, that
21 would have been fine.

22 **Q** Now, you testified that you showed or you told Mr.
23 Sederberg about me being arrested for this crime,
24 correct?

25 **A** Eventually Mr. Sederberg was notified that you were

1 arrested.

2 **Q** Okay. Did you ask Mr. Sederberg about whether he had
3 given anybody else consent or whether or not anybody
4 else had consent or his permission to enter the
5 residence?

6 **A** No, I didn't ask him that. I asked him if you had
7 permission to be there.

8 **Q** Okay. But while at the same time -- so basically
9 what you're saying is that you don't know without
10 asking Mr. Sederberg himself whether or not this
11 other individual had consent or his permission to be
12 at the residence? True or false?

13 **A** I can't answer that true or false.

14 **Q** I'm going to show you something but first I'm going
15 to show it to the solicitor. Now I'm about done
16 asking questions. Based on that list that you have
17 in front of you, going through the whole list, is
18 there anything listed on there that belongs to the
19 victim?

20 **A** No.

21 **MS. GARFIELD:** Objection, Your Honor. Not
22 really. But just for procedural purposes, if Mr.
23 Williams can ask the investigator to identify what
24 he's referring to.

25 **MR. WILLIAMS:** Oh, I'm sorry. I'm sorry.

1 **MS. GARFIELD:** And if Mr. Williams would like to
2 introduce this into evidence, the State has no
3 objection.

4 **Q** Could you identify what you have there, what's in
5 there?

6 **A** It's a memo. It goes: To file from Lee T. Connelly.
7 It's a memo that says: Here is the description of
8 the property belonging to Darrell Williams which is
9 being held at the Richland County Detention Center
10 located at 201 John Mark Dial Drive in Columbia,
11 South Carolina. And it's a list of maybe 15 items.

12 **Q** Now, on all the items that are listed there, do any
13 of those items belong to the victim?

14 **A** As far as I know, no.

15 **Q** So now, basically, how long have you been an
16 investigator?

17 **A** Almost 15 years.

18 **Q** Fifteen years doing the same thing or investigating
19 just one particular crime or a whole bunch of
20 different crimes at the same time?

21 **A** I've been a burglary investigator for about three
22 years. I was a major crime investigator for 12
23 years.

24 **Q** Being that you've been investigating burglaries, so
25 basically you've been almost like essentially been

1 just doing the burglaries by itself, basically, you
2 would say this is your specialty. Would that be fair
3 to say?

4 **A** This is what I do most of the time now, yes.

5 **Q** Okay. Now, when -- so you basically, as you
6 testified earlier, if I'm correct -- correct me if
7 I'm wrong -- but you testified that you basically
8 know pretty much what would constitute burglary and
9 what would not. Is that correct?

10 **A** I have a fair knowledge of it; yes, sir.

11 **Q** Do you recall during the time that you and I talked
12 on August 15th, August 15th, 2007, do you recall
13 telling me the reason why you did not charge him with
14 a first degree burglary charge?

15 **A** No. I never told you.

16 **Q** You don't recall telling me that the only reason why
17 you never charged me with an first degree burglary
18 charge is because you could not figure out the time
19 that the crime took place?

20 **A** I told you that it could be a first degree burglary
21 charge if I knew exactly what time it occurred.

22 **Q** Okay.

23 **A** But that wasn't the reason that you weren't charged.

24 **Q** But being that you didn't know, would it be a fair
25 and accurate statement to say that this is the reason

1 why I was originally charged with the second degree
2 burglary charge and not the first degree burglary
3 charge?

4 **A** There is other aggravating factors that can make a
5 burglary second a burglary first.

6 **Q** But your rationale at the time we talked, it wasn't
7 based on -- would it be true or false, that it wasn't
8 based on any factors, it was just based on that one
9 particular factor that you yourself could not
10 determine when the crime took place?

11 **A** That particular factor, I could not, because the
12 timeframe for the incident was somewhere's around
13 8:30 to midnight or a little after and the actual
14 time for sunset was 8:37. I wasn't going to split
15 hairs at that particular point on that particular
16 incident or that particular aggravating circumstance.

17 **Q** So based -- now, likewise, based on your experience,
18 would it be a fair enough statement to say that it's
19 basically a thing for a burglary, to make a burglary,
20 it has to be based on what the defendant -- not what
21 his intentions were before he had entered the house
22 but when entering the house? Would that be true or
23 false? If you know.

24 **A** I don't understand what you're asking.

25 **Q** In other words, what I'm asking is, if a person comes

1 up to a house and he is just standing there looking
2 at it, would that constitute a burglary?

3 **A** If he enters a house --

4 **Q** No, no. What I'm saying about it, if this is the
5 house right here and the person walks up to a house
6 right here and stands here looking at the house like
7 this, is that burglary?

8 **A** Possibly not.

9 **Q** So basically the burglary has to be committed. In
10 other words, it has to be an actual breaking and it
11 has to be based on what the defendant or the
12 individual does once he enters the residence. True
13 or false?

14 **A** It doesn't actually have to be the break in. It's
15 the entering and then the intent to commit a crime
16 once inside.

17 **Q** Okay.

18 **A** In this case the larceny of items.

19 **Q** So assuming that the individual enters the residence,
20 and let's say -- you know, I don't know -- maybe you
21 know more than I do. But let's say he enters this
22 residence and takes nothing out of there; would that
23 still make it a burglary?

24 **A** It depends on whether he committed a crime of some
25 other type inside the residence.

- 1 Q Okay. Let's say -- let me put in another example.
2 This is the house. The house is empty. Nobody is
3 home but maybe the dog and the cat. He enters the
4 residence, there is no nobody in there, he don't take
5 nothing; is that burglary?
- 6 A Depending on what his intent for going in the house
7 was, it could be a burglary.
- 8 Q Depending on what his intent was. Well, okay. Let's
9 say he fed the cat and the dog. Is that a crime, or
10 is it just trespassing?
- 11 A It could be trespassing.
- 12 Q So by an individual entering the residence and taking
13 nothing, doing nothing, nothing else illegal but
14 entering the residence without consent and taking
15 nothing out of there, would that be trespassing or
16 would that be burglary?
- 17 A It could possibly be a trespassing. It probably
18 would not be a burglary.
- 19 Q Why is that?
- 20 A Because there was no crime or no intent to commit a
21 crime once inside the residence. In this particular
22 case, we have the larceny, so there is a burglary.
- 23 Q Now, what proof do you have to show that the
24 defendant took property out of the house?
- 25 A The defendant made the statement that he may have a

1 ring that belonged to the victim, Mr. Sederberg, in
2 his property, and Mr. Sederberg has made the
3 statement that several items of jewelry were taken
4 from his residence.

5 Q But you have now -- being that you say that you
6 checked and you had a chance, if you look at the
7 property of the defendant and you found no
8 property -- as the defendant said in his statement,
9 as you testified to just a few minutes ago, based on
10 the statement that the defendant said he may; not
11 that he did, he may have something that belonged to
12 the victim. And upon you checking it, did that
13 particular statement turn out to be true or false?

14 A What statement true or false, sir?

15 Q The statement concerning where you say the defendant
16 upon questioning said he may have something in his
17 property that belongs to the victim. Did that
18 statement, once you checked and -- once you checked
19 and determined that, was that to be a true statement
20 or was that false?

21 A The property had an Airport School ring, but it was
22 not the ring that belonged to Mr. Sederberg or his
23 daughter.

24 Q So, therefore, that would mean clearly that the
25 defendant himself did not have no property as you

1 checked that belonged to the victim. True or false?

2 **A** True. You did not have property that belonged to the
3 victim, but you thought you might have.

4 **Q** So, therefore, if the defendant has no property
5 whatsoever, based on that statement, based on the
6 statement that's been entered into evidence, if the
7 defendant has no property that belongs to the victim,
8 then what crime outside of entering that residence
9 did he commit?

10 **A** The incident occurred on the 12th of July. Mr.
11 Williams was arrested on the 31st of July. The
12 property taken during the burglary could easily have
13 been disposed of in that timeframe.

14 **Q** But you have no proof.

15 **A** I have Mr. Sederberg and the break in at his
16 residence --

17 **Q** You have no proof that the defendant has that
18 property, do you?

19 **A** I have --

20 **Q** Do you have any proof that the defendant has that
21 property?

22 **MS. GARFIELD:** If he can allow the witness to
23 answer the question.

24 **MR. WILLIAMS:** Yes. I'm sorry, Your Honor.

25 **THE COURT:** Certainly so.

1 **A** I have proof --

2 **THE COURT:** Don't respond before you give the
3 next question.

4 **Q** Okay.

5 **A** I have proof that you entered Mr. Sederberg's
6 residence. Property was taken at that time. I don't
7 have any evidence to show that you have that property
8 at this time.

9 **Q** That's the question. Just a few more questions.
10 Now, once again, based on the statement that's been
11 submitted as evidence by the State, if there is
12 nothing, personally let's -- let me rephrase that.
13 In that statement, would it be fair to say according
14 to what the defendant believed during the time all
15 this was going on that a reasonable person would
16 believe based on the narrative that's been presented
17 by the defendant in his statement to you that he
18 reasonably believed that what he was doing was legal?

19 **A** Do I believe that?

20 **Q** No. I didn't say whether you believe that. I said
21 based on the statement, would it be fair to say that
22 the defendant reasonably believed, based on his
23 statement, that he believed, reasonably believed
24 within himself that what he was doing was legal?

25 **A** Mr. Williams, I can't tell you what you believed at

1 the time. I can give you the statement, but I don't
2 know what you believed.

3 **Q** But the statement itself, the statement itself
4 basically indicates that, one, he was given consent
5 by somebody else who he believed to have authority to
6 do so. Would that be true or false?

7 **A** Possibly, yes.

8 **Q** Two, the intentions of the defendant during the time
9 that he entered the residence, based on the
10 statement, based on his statement, what did the
11 defendant say that he did upon entering the residence
12 at the time?

13 **A** Picked up some glass and touched the table inside
14 where some knives were located.

15 **Q** Okay. If he just touched the glass that was inside
16 the residence and touched the table where the knives
17 might have been laying on it, going back, what crime
18 did he commit?

19 **A** By touching those items?

20 **Q** Mm-hmm (affirmative).

21 **A** He made unlawful entry into the residence and there
22 was items stolen out of the residence which makes it
23 a burglary.

24 **Q** What did the defendant -- I'm sorry. That's not the
25 question. I think you're missing the point. The

1 intentions of the defendant when he entered the
2 residence was to pick up the glass? True or false,
3 based on his statement?

4 **A** The statement says he picked up the glass when he
5 entered.

6 **Q** If he picked up the glass, if he picked up the glass
7 based on the consent that he had from somebody else,
8 is that committing a crime?

9 **A** No.

10 **Q** If he went in the house based on the consent that he
11 had from somebody else and touched a table where the
12 knives were, is that a crime?

13 **A** No.

14 **Q** If he did all this with consent, then basically the
15 question falls down to: What crime did he commit if
16 he had consent to enter the residence? It is not a
17 matter -- yes, Mr. Sederberg -- there is no question
18 about the testimony concerning Mr. Sederberg not
19 being there at the residence. There is no disputing
20 that. But the thing is, when he -- according to the
21 evidence that's been presented by you through
22 testimony that when Mr. -- when the defendant came to
23 the residence there was somebody else there who he
24 believed to have consent or have the authority to
25 tell him to enter the residence. True or false?

1 **A** That's what you said.

2 **Q** Based on the same statement, if the defendant is
3 entering a residence based on somebody he believes
4 that has legal authority to tell him to do so, then
5 if the defendant enters the residence, enters the
6 residence based on what this person has asked him to
7 do, sitting there cleaning up; then basically, all
8 the defendant basically did would actually be is try
9 to cover up a crime for somebody else. Would that be
10 true or false?

11 **A** That's possible.

12 **Q** It is also possible that if he was there helping the
13 individual clean up what might be considered to be a
14 crime scene to hide evidence from somebody else, then
15 that would basically mean that the defendant was
16 basically -- what's the term? Excuse me one second,
17 Your Honor.

18 **THE COURT:** Sure.

19 **Q** So, one last question. The defendant's entrance was
20 based on consent. Based on the statement that's been
21 presented as evidence, the defendant's entry was
22 based on consent from somebody else he believed to
23 have authority to enter the residence. True or
24 false?

25 **A** That's true. That's what you put in your statement.

1 **MR. WILLIAMS:** No further questions, Your Honor.

2 **MS. GARFIELD:** May it please the Court?

3 **THE COURT:** Yes.

4 REDIRECT EXAMINATION

5 **BY MS. GARFIELD**

6 **Q** Just a few questions, Investigator Mead, to clear up
7 any confusion. You're a burglary investigator,
8 correct?

9 **A** I am.

10 **Q** Does a boyfriend necessarily have the authority to
11 give consent to enter a girlfriend's home?

12 **A** No.

13 **Q** Would a boyfriend have the authority to let someone
14 else enter a girlfriend's home?

15 **A** No.

16 **Q** Based on Mr. Williams's statement and giving Mr.
17 Williams the benefit of the doubt, does he report
18 Jimmy Bowman taking anything from this house? And if
19 you need to review the statement to remember --

20 **A** I believe he says that Mr. Bowman had a white bag but
21 did not know if there was anything in it.

22 **Q** And did Mr. Williams make any reference in his
23 statement to Jimmy Bowman saying anything about his
24 girlfriend?

25 **A** Just the statement where he writes in there that Mr.

1 Bowman told him it was his girlfriend's house.

2 Q Does Mr. Bowman say anything when they are leaving
3 the residence in the statement? And I'll refer you
4 to about five lines up from the narrative in
5 quotations.

6 A Fuck that bitch, let's go. He went towards Five
7 Points.

8 Q Making that statement: Fuck that bitch, let's go;
9 does that sound like a hostile relationship?

10 A Yes, ma'am.

11 Q So a person could infer that that boyfriend and
12 girlfriend weren't exactly on good terms at that
13 time?

14 MR. WILLIAMS: Objection. Speculation.

15 MS. GARFIELD: Your Honor, I am just asking
16 could someone infer. He has asked that a hundred
17 times.

18 THE COURT: I'll allow it.

19 MS. GARFIELD: Thank you.

20 A Yes, ma'am. You could.

21 Q Mr. Williams just asked you about if someone was
22 there cleaning up a crime scene. Based on your
23 knowledge as an investigator, if someone is assisting
24 in cleaning up a crime scene, can they still be
25 charged with burglary?

1 **A** Absolutely.

2 **Q** And under what reasoning?

3 **A** My understanding is the hand of one is the hand of
4 all. If you assist with the commission of a crime,
5 you can be charged as a principal in the crime.

6 **Q** And did Mr. Williams say either in his statement that
7 he received anything for his assistance in cleaning
8 up this scene?

9 **A** He said he received ten dollars from Mr. Bowman.

10 **Q** And, Investigator Mead, you didn't charge Mr.
11 Williams based just on the contents of his statement.
12 Is that correct?

13 **A** That's correct.

14 **Q** And, Investigator Mead, what other factors can one
15 consider in charging someone with burglary in the
16 first degree?

17 **A** Some of the other factors include whether or not the
18 individual has two or more prior convictions for
19 burglary, whether the individual was armed when they
20 entered or become armed once inside the residence.
21 If somebody becomes injured inside the residence.
22 There is a couple of others.

23 **Q** And on this particular case, what were the factors
24 that led to Darrell Williams being charged with
25 burglary in the first degree?

1 **A** Two prior convictions for burglary.

2 **MR. WILLIAMS:** Your Honor, objection.

3 **THE COURT:** You all approach, please.

4 (Whereupon, a bench conference is had)

5 **THE COURT:** My understanding from the parties is
6 that the defendant is renewing his objection based on
7 some pre-trial motions. And the Court has ruled on
8 those and will stand by the ruling. So I'll allow
9 you to proceed.

10 **MS. GARFIELD:** Thank you, Your Honor.

11 **Q** And what other factors was he used in charging
12 burglary first?

13 **A** The nighttime.

14 **Q** And does the State have to prove both of those
15 elements?

16 **A** No, ma'am. Just one.

17 **Q** Thank you. I have nothing further.

18 **THE COURT:** Any further questions?

19 **MR. WILLIAMS:** Yes, ma'am.

20 RECROSS EXAMINATION

21 **BY MR. WILLIAMS**

22 **Q** You just stated a few minutes ago in testimony the
23 State doesn't have to prove the nighttime element?
24 Is that your testimony?

25 **A** That's correct. They can prove one or the other.

1 They do not need both.

2 Q Now, is it also -- okay. Is it also your testimony
3 that you say, as you say, the hands of one, hands of
4 all, correct? You just mentioned that a few minutes
5 ago.

6 A There is that in the law, yes.

7 Q Okay. Now, if you know, what constitutes -- what
8 makes -- what constitutes accessory after the fact?

9 A I don't have the statute with me, sir.

10 Q Okay. Would it not be accessory after the fact if
11 the individual, after he comes to a crime scene the
12 crime is already committed?

13 A If he assists after the crime has been committed, he
14 could be charged with accessory after the fact.

15 Q So based on the statement, would it not be the same
16 thing where according to the statement the defendant
17 came after the breaking and entering had occurred?

18 A According to the statement, you came after the window
19 was broken but you were there during the commission
20 of the burglary which is going in and stealing items
21 out of the residence.

22 Q Now, this is the fact -- this is based on the
23 statement. If Mr. Bowman entered the residence
24 through the door, then the only way he could have got
25 in there -- if the window was already broke when the

1 defendant came to the crime scene and Mr. Bowman
2 entered the door, through the doorway, then it would
3 be fair to say that Mr. Bowman had already entered
4 the residence long before Mr. Williams got there.
5 True or false?

6 **A** You're going to have to ask the question again, sir.

7 **Q** If the window was already broken and according to the
8 statement which you read, Mr. Williams, the
9 defendant, seeing Mr. Bowman inside of the house,
10 that would mean one of two things. Either Mr. Bowman
11 had the key to enter the residence through the door,
12 or he kicked the door in; or, three, Mr. Bowman had
13 already been there, unlocked the door and used that
14 door as the basis for him to gain entry and exit the
15 building.

16 Now, if he had did that, that would mean that
17 Mr. Bowman himself is the one that once he came back
18 to the residence the crime of breaking and entering
19 had already occurred after Mr. Williams had got
20 there. True or false?

21 **A** Based on all of that, there is a possibility that the
22 crime occurred. But the fact that you went in during
23 the same time period could also mean that you
24 committed a burglary at the time also.

25 **Q** But the -- but the -- excuse me, Your Honor, one

1 second. No further questions, Your Honor.

2 **THE COURT:** Okay. All right, sir. You can step
3 down. Okay, ladies and gentlemen of the jury. This
4 is a good time for us to take a break. I remind you
5 not to discuss the case in any shape, form or
6 fashion. And we'll be with you momentarily.

7 (Jury out at 11:05 a.m.)

8 **THE COURT:** Anything the Court needs to take up
9 before we proceed to break?

10 **MS. GARFIELD:** Not from the State.

11 **MR. WILLIAMS:** No, Your Honor.

12 **THE COURT:** Okay. You all be at ease for about
13 15 minutes.

14 **MS. WEISS:** Thank you, Your Honor.

15 **MR. PAULING:** Thank you, Your Honor.

16 (Whereupon, a break is taken)

17 **THE COURT:** Are we ready to proceed?

18 **MS. GARFIELD:** The State's ready.

19 **MR. WILLIAMS:** Yes, Your Honor.

20 **THE COURT:** Okay. Bring our jurors, please.

21 (Jury in at 11:35 a.m.)

22 **THE BAILIFF:** The jury is seated, Your Honor.

23 **THE COURT:** Okay. Thank you. It took a little
24 longer because I had gotten a call from a fellow
25 judge during the break. And so I needed to take care

1 of that. But we are ready to continue with the
2 State.

3 **MS. GARFIELD:** Thank you, Your Honor. The State
4 calls Joli Rish.

5 JOLI RISH, after being duly sworn, testifies as
6 follows:

7 **THE CLERK:** Please have a seat. State your full
8 name for the record.

9 **WITNESS:** Officer Joli Rish.

10 DIRECT EXAMINATION

11 **BY MS. GARFIELD**

12 **Q** Ms. Rish, where are you employed?

13 **A** The Alvin S. Glenn Detention Center.

14 **Q** And is that known as the jail?

15 **A** Yes.

16 **Q** And what are your duties at the Alvin S. Glenn
17 Detention Center?

18 **A** Custodian of records.

19 **Q** And as custodian of records, do you keep up with
20 bookings of inmates?

21 **A** Yes, I do.

22 **MR. WILLIAMS:** Objection, Your Honor. May we
23 approach?

24 **THE COURT:** Yes, you may.

25 (Whereupon, a bench conference is had)

1 **THE COURT:** Ladies and gentlemen of the jury,
2 I'm going to need you to step to your jury room just
3 to take up a legal matter. I remind you not to
4 discuss the case.

5 (Jury out at 11:40 a.m.)

6 **THE COURT:** Okay.

7 **MR. WILLIAMS:** Yes, Your Honor. For the
8 purposes of this hearing, could I also respectfully
9 ask that the witness be excused for a few minutes,
10 please?

11 **THE COURT:** You talking about just to put your
12 legal arguments on the record?

13 **MR. WILLIAMS:** Yes.

14 **THE COURT:** Okay. We'll do that. Thank you.
15 (Whereupon, the witness leaves the courtroom).

16 **THE COURT:** Okay, Mr. Williams.

17 **MR. WILLIAMS:** Yes, Your Honor. Basically, Your
18 Honor, what the State is attempting to do with this
19 witness here is basically show that the statement
20 that I made to the police was false. What that goes
21 into now is that goes into my credibility concerning
22 whether or not the jury themselves should believe or
23 not believe my statement.

24 By putting evidence such as that, challenging my
25 credibility based on the statement, by try to show

1 that information that I gave to the officer at the
2 time was false, that falls in line with my
3 credibility. Therefore, I view that as being
4 basically for the purpose of impeaching my statement
5 that I made, a prior statement that I made without me
6 testifying concerning whether or not -- without them
7 allowing my testimony, that statement itself is
8 basically impeachment purposes, because that --

9 **THE COURT:** Okay. Wait a minute. Back up. You
10 say without allowing your testimony?

11 **MR. WILLIAMS:** Well, excuse me. I meant to say,
12 what I'm saying is, by allowing this witness here to
13 testify, that basically their allowing this witness
14 to impeach my statement and that reflects on my
15 credibility. The main focus point, the main focus
16 point of this whole case right now is based on my
17 credibility. Without me first putting my credibility
18 into play, which I did not; I never asked any witness
19 any questions whether or not they believe what I say
20 or anything else like that matter, that now brings my
21 credibility into play.

22 The credibility that I'm basing it on is the
23 statement that the jury will believe or not. It's up
24 to the jury's province based on this evidence itself
25 to believe the statement. If the State is allowed to

1 put up evidence concerning my credibility, that's
2 going to destroy everything that I'm basically
3 building my defense on. And this is why I'm
4 basically asking that this witness not be allowed to
5 testify concerning that.

6 **THE COURT:** Okay. Let's hear from the State as
7 to what their intentions are with respect to this
8 witness.

9 **MS. GARFIELD:** Thank you, Your Honor. May it
10 please the Court. Ms. Rish is custodian of records,
11 and her testimony will be that there was an inmate in
12 the Alvin S. Glenn Detention Center by the name of
13 Jimmy Bowman who was incarcerated on a misdemeanor
14 offense -- we won't go into the offense -- for a
15 period of time, I believe from July 4th to July 20th.
16 And that would be the extent of her testimony.

17 Now, all the weight of that testimony will be
18 decided by the jury to determine whether or not they
19 believe the contents of the statement or believe that
20 the Jimmy Bowman that was incarcerated is the Jimmy
21 Bowman that Mr. Williams refers to. The State is not
22 introducing any evidence directly towards any
23 wrongdoing of Mr. Williams.

24 **THE COURT:** Right. But I guess out of concern
25 for him, did the State need to have any further

1 verification of it? In other words, is this Jimmy
2 Bowman going to match the description?

3 **MS. GARFIELD:** Yes, ma'am.

4 **THE COURT:** Okay. And then whether or not any
5 other such black male would match that description by
6 the name of Jimmy Bowman. How do we know? You know
7 what I'm saying? I mean, this could be very
8 coincidental.

9 **MS. GARFIELD:** It very well could be, Your
10 Honor. But this is information that we are providing
11 for the jury to consider. And that's certainly
12 something the defense can go into.

13 **THE COURT:** But do we have that Jimmy Williams
14 [sic] touching any alleged documents at the crime
15 scene? Well, obviously not.

16 **MS. GARFIELD:** We have his statement that he
17 gave him permission to be there.

18 **THE COURT:** Right. This one. Okay. I see what
19 you're saying. If you're point is that Jimmy
20 Williams-- I mean Jimmy Bowman -- was incarcerated,
21 then he is not going to have any prints at the scene
22 and all of that.

23 **MS. GARFIELD:** That he would not have been there
24 to begin with.

25 **THE COURT:** Right. Would not have been there.

1 Okay. But your position would be that you'd be going
2 into enough of it to have narrowed it to this
3 particular Jimmy Bowman.

4 **MS. GARFIELD:** Yes, ma'am.

5 **THE COURT:** You're not just throwing out some
6 odd person that just kind of --

7 **MS. GARFIELD:** We keep saying Williams. I mean
8 Bowman. But, yes, ma'am. That is correct.

9 **THE COURT:** Bowman. Okay.

10 **MR. WILLIAMS:** If I may be heard, Your Honor?
11 There is no actual way for them to determine whether
12 or not these are -- the Bowman I mentioned in my
13 statement and this one here are the same. There is
14 no way for them to make that determination.
15 Basically what they're doing right now if they
16 present that evidence right now is speculating who
17 this person is.

18 They're bringing this individual out saying,
19 okay, this is the Jimmy Bowman we assume he is
20 talking about in his statement. There is no actual
21 proof that this is the actual person. Nobody never
22 showed -- now, even though, mind you, I received a
23 photo inside the motion of discovery from the
24 prosecution of this individual, but this is not the
25 same that -- and there is nothing or any evidence to

1 show that I actually said, yeah, that's the
2 individual right there. There is nothing to support
3 that.

4 So by submitting that evidence, now they're
5 asking the jury to speculate: Okay, well, listen, he
6 says that Jimmy Bowman, we mentioned a Jimmy Bowman;
7 they know a picture. But there is no way, there is
8 no verification as to whether or not the defendant
9 himself has said, yes, this is the individual right
10 here.

11 So basically by allowing them to go into that,
12 that basically is going to create a whole lot of
13 unnecessary problem. What I'd like to do is, Your
14 Honor, request that you not allow this witness to
15 testify about this, because there is no proof about
16 this, as to who this individual is.

17 **THE COURT:** You're indicating that it forces you
18 to the stand?

19 **MR. WILLIAMS:** Yes.

20 **THE COURT:** Which you obviously have the
21 opportunity to do regardless. But right now we're on
22 the State's burden of proof. It's always the State's
23 burden of proof, and you don't have to do anything.

24 **MS. GARFIELD:** Well, Judge, I would just argue
25 there is no prejudice, because all the questions he's

1 just submitted to the Court that are problematic he
2 can address on cross examination. And it is his
3 right to take the stand. His whole deal right now is
4 that he doesn't want to take the stand. He's trying
5 to create it in a fashion where he doesn't have to.
6 It's still his right. And we do have the burden of
7 proof. And it is our job to prove the case beyond a
8 reasonable doubt.

9 We have a situation where the defendant has made
10 a statement to law enforcement and extensively cross
11 examined I believe the investigator concerning that
12 statement to try to persuade this jury that he had
13 consent from Jimmy Bowman to enter this residence.
14 It is our burden to prove that that is not true, and
15 that is why we seek to introduce this evidence.

16 **THE COURT:** And I guess before you respond, Mr.
17 Williams, my duty is to make sure that the trial is
18 fair to you, no doubt; but then also to make sure
19 that the State can meet their duty that this is not a
20 speculative person, you know, that essentially it is
21 somebody who potentially meets your description.

22 If they were bringing me a white male Jimmy
23 Bowman, then we'd have an issue, you know, because
24 you never said white male. But if they're bringing
25 me somebody who potentially meets your description,

1 you can cross examine and, you know, break away
2 potentially who that is without still being forced to
3 the stand.

4 I know it sounds like you're being forced to the
5 stand, but it's still their burden of proof. And
6 they've just got to get there, you know, essentially
7 as best as they can but as long as their means seem
8 to be legitimate by narrowing down the scope of who
9 this person actually would be.

10 **MS. GARFIELD:** And, Your Honor, just also in
11 reference to what he said, that he knew he got a copy
12 of the mug shot of Jimmy Bowman in the discovery, in
13 addition to that, Your Honor, on the day of the
14 Schmerber hearing I went to the holding cell to give
15 him a copy of his fingerprints. And at that time I
16 verbally informed him that we would be calling
17 someone from the jail to give this testimony.

18 **THE COURT:** Okay. And I don't think he's --

19 **MS. GARFIELD:** I just want to make sure that's
20 clear.

21 **THE COURT:** -- surprised. Yeah. I don't think
22 he's indicating that he's surprised. It's just a
23 matter of, you know, me feeling comfortable that,
24 number one, it's your burden of proof. So you have
25 to get there the best, fairest means possible; but

1 that you've also done your due diligence in narrowing
2 down potentially that this could be the person and
3 not just giving us a spectrum of people.

4 **MS. GARFIELD:** And just for Your Honor's
5 information, this is obviously something that can't
6 come in, information for the jury. But we did do a
7 due diligence search. We searched B&B records as
8 well. There were three Jimmy Williams -- I mean
9 Jimmy Bowmans -- in Richland County, one of which is
10 this Jimmy Bowman that we will be testifying about in
11 jail. The other two were white males. So obviously
12 we would not bring that into the court.

13 **THE COURT:** Right. And then also because the
14 Jimmy Bowmans may not have a driver's license.

15 **MS. GARFIELD:** Absolutely. This particular
16 Jimmy Bowman was in custody at the time of the
17 offense. He is a black male. And he is reported to
18 be five-nine -- I'm sorry. Five-nine. He said --

19 **MS. WEISS:** He said five-nine.

20 **MS. GARFIELD:** He said five-nine, and he is
21 five-eleven. And it's our argument that's close
22 enough to match the description that the defendant
23 gave of this individual that gave him the consent to
24 enter Dr. Sederberg's home.

25 **THE COURT:** Okay. Mr. Williams.

1 **MR. WILLIAMS:** Your Honor.

2 **THE COURT:** Yes.

3 **MR. WILLIAMS:** Could we -- basically what I want
4 to do is to basically before the court try this to
5 establish who the individual is they're talking
6 about. Because during my time with my investigator I
7 obtained a rap sheet from a Jimmy Bowman. Right.
8 And to determine whether or not these are one and the
9 same individuals, all we have to do is, I believe
10 they've got social security numbers. If they have
11 social security numbers, we can check with the rap
12 sheet because the rap sheet will have the social
13 security numbers to match them up on them.

14 **MS. GARFIELD:** I will certainly look for a
15 social security number, Your Honor. My question is:
16 What's the relevance of Jimmy Lee Bowman's rap sheet?

17 **MR. WILLIAMS:** Because, see, they're saying at
18 the time -- see, my point is this. They're going
19 into speculation. And by them saying that this is
20 one of the same individuals, by them being two
21 different people, that would mean that, therefore, I
22 mean, we're just going, just presenting testimony
23 that really, I mean, is something that is really
24 bolstering their case to the point where it's making
25 my credibility look like it's nothing.

1 And basically under the rule that I'm applying
2 this under which is Rule 607, they cannot use -- they
3 cannot allow -- this cannot be allowed to go on if
4 they're going to -- because basically what happens
5 now is they're impeaching their own officer's
6 testimony. Because, I mean, basically to --

7 **THE COURT:** How are they impeaching the officer?

8 **MR. WILLIAMS:** Because he is testifying from the
9 stand that he basically in his own --

10 **THE COURT:** They're just tendering your
11 statement through him.

12 **MR. WILLIAMS:** Through him. And basically by
13 accepting -- by this being a case based on the
14 credibility, what I'm trying to put out, I am basing
15 it on, yes, he went through the statement, he has
16 tendered that statement as being proof that this is
17 what happened. And now, like I said, this is a
18 strong credibility issue to allow the State to
19 speculate on who this individual is, it goes into too
20 much.

21 I am trying to -- this witness shouldn't even
22 be -- I am just -- I have to justify the record for
23 this because I don't believe this witness here will
24 have any testimony or have any proof that this is one
25 of the same individuals.

1 **THE COURT:** Well, and that's what you would be
2 able to do on cross. But you would have to make them
3 jump through all the hoops to see if this is
4 potentially the same individual. I mean, this person
5 might not even have a record, may not be part of the
6 DMV motor, I mean, database. I mean, you would just
7 have to attack it down that it's not the same person.
8 But as long as I feel like they've gone through their
9 due diligence and efforts, that they've narrowed it,
10 that it's potentially, you know ...

11 **MS. GARFIELD:** Your Honor, Mr. Pauling has
12 presented me the rap sheet he is referring to. It is
13 the rap sheet of Jimmy Lee Bowman.

14 **THE COURT:** The same Bowman that you're talking
15 about?

16 **MS. GARFIELD:** Yes, ma'am.

17 **THE COURT:** Okay.

18 **MS. GARFIELD:** I just preliminarily want to
19 know, is he intending to use this rap sheet.
20 Because, for his information, Jimmy Lee Bowman was
21 incarcerated at the Alvin S. Glenn Detention Center
22 during this time period on a bench warrant. So it
23 would not necessarily reflect as an arrest in the rap
24 sheet. There are several arrests he has that's not
25 reflected on the rap sheet. So I just wanted him to

1 be aware of that.

2 **THE COURT:** How would -- why wouldn't the arrest
3 be on the rap sheet?

4 **MS. GARFIELD:** They don't always show up. Just
5 like his rap sheet, all of his convictions have not
6 shown up. We've had to go to the individual Clerk of
7 Court's offices and get -- that's why we never rely
8 on a rap sheet for impeachment purposes.

9 **THE COURT:** But that's even more, further
10 grounds on cross examination on that issue, too,
11 because that's not your problem, you know, in terms
12 of the defense of how stuff gets on there and not on.

13 **MR. WILLIAMS:** Respectfully, Your Honor, it
14 might be -- like I said, this is just -- when my
15 investigator did the investigation itself, she was
16 basically going by what was submitted by the State.

17 **THE COURT:** Right.

18 **MR. WILLIAMS:** There was like no representation
19 from me concerning this individual as being the same
20 individual that I was talking about inside the
21 statement. Now, as they already stated, that
22 basically they are coming to a general description of
23 the individual. And there is nothing to actually say
24 that this individual -- because there is no actual --
25 even in my statement itself, it doesn't actually give

1 the person's age as to who the person was. I might
2 have been talking about somebody that might be
3 younger than that.

4 **THE COURT:** Right.

5 **MR. WILLIAMS:** And so, like I said, this is when
6 problems arise. And I just don't think that allowing
7 this person to testify concerning this should be
8 admissible, because this is only, only going to take
9 the credibility, my credibility away from me.

10 **THE COURT:** Well, and I would think right now
11 because of their due diligence I would allow it in,
12 you know, for that particular relevance, to explain
13 away potentially this person. But then that's going
14 to go to the weight of it. I mean, by the time
15 you're cross examining and attacking away at this
16 issue, then, just like with any evidence, the jury is
17 going to be given an instruction that as to
18 credibility of witnesses or weight of any evidence,
19 they can believe some of it, none of it, part of it,
20 you know, all through the same witness.

21 So it's up to them to attack away at the weight
22 they want to give to anything, including an expert
23 witness. Just because they're an expert witness
24 doesn't make it so. They get the same deliberation
25 with respect to how they weigh the credibility of an

1 expert witness as they would any other witness. And
2 they'll be told that. So it's up for them for you to
3 attack it away and give them less reason to believe
4 this is so. But I respect what you're saying. But
5 that would be the Court's ruling. Anything further?

6 **MS. GARFIELD:** No, ma'am.

7 **THE COURT:** Okay. Let's get Ms. Rish back on
8 the stand. We're ready. Thank you.

9 (Jury in at 11:57 a.m.)

10 **THE BAILIFF:** The jury is seated, Your Honor.

11 **THE COURT:** Okay. Thank you. You can proceed.

12 **MS. GARFIELD:** Thank you, Your Honor.

13 **THE COURT:** And I remind you, Ms. Rish, you're
14 still under oath.

15 **MS. GARFIELD:** Thank you.

16 **Q** (By Ms. Garfield) Officer Rish, I'm not sure where I
17 left off, so I'll just start again. What is your job
18 with the detention center?

19 **A** Custodian of records.

20 **Q** And as custodian of records you keep track of inmates
21 that are booked in at the jail?

22 **A** Yes, I do.

23 **Q** And specifically back in July of 2007, was there an
24 inmate booked at the jail by the name of --

25 **MR. WILLIAMS:** Objection, Your Honor, based on

1 our prior ruling.

2 **THE COURT:** Okay. Thank you. The record is
3 preserved but the ruling stands.

4 **MS. GARFIELD:** Thank you, Your Honor.

5 **Q** (By Ms. Garfield) Back in July of 2007, do you have
6 records of an inmate being booked at the Alvin S.
7 Glenn Detention Center by the name of Jimmy Bowman?

8 **A** I do.

9 **Q** And can you please tell the jury when Jimmy Bowman
10 was in custody at the detention center?

11 **A** From July 4th, 2007 until the date of July 20th,
12 2007.

13 **Q** And do you in your records have a physical
14 description of Mr. Bowman?

15 **A** I do.

16 **Q** And can you please share with the jury what that
17 description would be as far as race and height?

18 **A** His race is black. His height is five-eleven.

19 **Q** Thank you. Please answer any questions Mr. Williams
20 has for you.

21 CROSS EXAMINATION

22 **BY MR. WILLIAMS**

23 **Q** Yes, Ms. Rish. Good afternoon.

24 **A** Hi.

25 **Q** Do you know who Jimmy Bowman is?

1	A	Personally? No.
2	Q	Do you have any idea whether or not he is related to
3		this crime or not?
4	A	Personally, no.
5	Q	So basically you're just testifying to somebody that
6		you say you have in your records. There is no way to
7		actually say that the same Jimmy Bowman that we're
8		talking about in this case is the same Jimmy Bowman
9		that you have in your records?
10	A	I only have one Jimmy Bowman in my records.
11	Q	Well, what I'm asking you is, the same Jimmy Bowman
12		that you have in your records, there is no way for
13		you to accurately say that the same Jimmy Bowman you
14		have in your records is the same Jimmy Bowman that
15		we're talking about in this case here, is there?
16	A	No, sir.
17	Q	Thank you. No further more questions.
18		THE COURT: Okay.
19		MS. GARFIELD: Nothing further. May Ms. Rish be
20		excused, please?
21		THE COURT: You may be excused.
22		WITNESS: Thank you.
23		THE COURT: Thank you for coming. Okay.
24		MS. GARFIELD: Your Honor, at this time based on
25		prior stipulation from defense counsel, the State

1 would introduce into evidence State's Exhibit No. 27.
2 This would be an indictment for burglary in the first
3 degree, docket number 95-GS-34-0454 from the County
4 of Marlboro here in South Carolina where Mr. Williams
5 was charged and pled guilty to that offense; and a
6 second Exhibit, State's Exhibit No. 28, docket number
7 95-GS-34-463. This is also an indictment for
8 burglary in the first degree where Mr. Darrell
9 Williams was charged and pled guilty to this offense
10 as well. One of the offenses occurred on
11 December 13th, 1994, and the other offense occurred
12 December 1st, 1996. At this time the State would
13 like to introduce these indictments into evidence.

14 **THE COURT:** Okay.

15 **MR. WILLIAMS:** I have an objection based on our
16 prior rulings, Your Honor.

17 **THE COURT:** Okay. Thank you. And the Court
18 would remain with its prior rulings. But your
19 objection is noted.

20 **MS. GARFIELD:** Thank you.

21 (WHEREUPON, State's Exhibit No. 27 is admitted
22 into evidence.)

23 (WHEREUPON, State's Exhibit No. 28 is admitted
24 into evidence.)

25 **THE COURT:** Okay.

1 **MS. GARFIELD:** Beg the Court's indulgence. Your
2 Honor, at this time the State of South Carolina rests
3 its case.

4 **THE COURT:** Ladies and Gentlemen of the jury,
5 the State has concluded its case with respect to this
6 matter that we're here about today. So this is the
7 portion that I reminded you about earlier that I have
8 to take up a legal matter before we resume with the
9 defendant's case. So I'm going to ask you to step to
10 your jury room again and remind you not to discuss
11 the case.

12 (Jury out at 12:02 p.m.)

13 **THE COURT:** Okay. Are there any motions or
14 legal matters the Court needs to take up?

15 **MR. WILLIAMS:** Yes, Your Honor. First what I'd
16 like to do is, I know Your Honor says you have
17 charges that you would like for the jury that you
18 would like me to submit to the jury.

19 **THE COURT:** Right.

20 **MR. WILLIAMS:** But at this time I have some
21 prepared. I already gave the Solicitor's Office a
22 copy of it.

23 **THE COURT:** Okay.

24 **MR. WILLIAMS:** I'd like to hand a copy to the
25 Court. And on the back of here is also a particular

1 charge I would like for the judge to review.

2 **THE COURT:** Okay.

3 **MR. WILLIAMS:** I would like that charged to the
4 jury as well.

5 **THE COURT:** Okay.

6 **MR. WILLIAMS:** And if we can briefly just take
7 that up before we get into the other matters about
8 the charge?

9 **THE COURT:** Okay. And the jury charge is only
10 going to be necessary once we get past this
11 proceeding.

12 **MR. WILLIAMS:** Yes. Yes. I understand.

13 **THE COURT:** Okay.

14 **MR. WILLIAMS:** At this time, Your Honor, I want
15 to make a motion for a directed verdict based on the
16 fact that the State has failed to prove its case
17 beyond a reasonable doubt. One, the State in one of
18 the material elements of the first degree burglary
19 charge, that the State must prove beyond a reasonable
20 doubt that the crime took place at night, there is no
21 testimony in the record to establish that the crime
22 was happening in the hours of darkness.

23 Based on the testimony of the witnesses, of the
24 witness that testified, which is the victim himself,
25 he said -- he testified on the direct and the cross

1 examination that when he left his house it was still
2 light outside. That doesn't constitute as in the
3 hours of darkness. The hours of darkness has been
4 defined by the law as when there is darkness. We're
5 talking about when there is, as they say, when a
6 person cannot -- you have to use artificial light or
7 some other type of light in order for a person to see
8 himself or for another person to view him.

9 At the time when the victim left home, there was
10 still, as the victim's testimony points out, it was
11 still daylight outside. It was even though the sun
12 might have been declining behind the trees, the sun
13 was still out. So, therefore, that doesn't
14 constitute it as a nighttime element. The nighttime
15 element of burglary has not been established by the
16 State beyond a reasonable doubt. That's one.

17 Number two, the State itself has failed to prove
18 that the defendant at the time of the crime did not
19 have consent to enter the residence. While it may be
20 true that the individual living there or the
21 individual that might have been there might not have
22 had consent, but the State still must prove beyond a
23 reasonable doubt that the defendant had knowledge
24 that this individual which was here did not have the
25 legal authority to say that he could enter or not

1 enter the residence.

2 Based on this, which when we're dealing with
3 consent, we go -- there's a case of State v. Cauthen
4 which is cited at 502 SE2d 9398. Under State v.
5 Cauthen, what the circumstances was, the individual
6 at the time; when he was living in the residence he
7 had legal authority to live there. But when he was
8 taken off the lease he no longer had the authority to
9 do so.

10 There is no -- the State has failed to prove
11 that the individual who was talked about in the
12 course of the statement whether or not -- they failed
13 to prove whether or not this individual himself had
14 the legal authority to be there. All they have is
15 the officer testifying whether or not the boyfriend
16 or whatever the case could be, could give authority,
17 but there is no way to establish that this individual
18 here at the time was not living at the residence.
19 There is no testimony from the victim. There is no
20 evidence --

21 **THE COURT:** When you say this individual, you're
22 talking about Mr. Bowman?

23 **MR. WILLIAMS:** Yes, ma'am.

24 **THE COURT:** Whether or not he was living there?

25 **MR. WILLIAMS:** Right. There is no proof to

1 say -- there is no evidence that the State has
2 presented showing that he was not living there at the
3 residence at the time. All the State did was
4 establish with the victim was that I didn't have
5 consent to be there. What needed to be established
6 was whether or not this other individual had the
7 legal authority to give the defendant consent to
8 enter the residence.

9 If at the time that this individual, without the
10 defendant knowing more, was living there, then
11 apparently the defendant would be reasonable to
12 assume that, yes, he has the authority to do so.
13 Because even though it might be his girlfriend's or
14 whatever the case may be, we all know sometimes
15 boyfriends and girlfriends do live together.

16 So this could very well have been the case at
17 the time the defendant seen this. Therefore, it
18 would be legally possible for the defendant to
19 believe that he had consent based on this, because
20 the individual was there; he said, yeah, this is my
21 girlfriend's house. So if it's the girlfriend's
22 house, it would be reasonable for me to say, okay,
23 it's okay. Boyfriends and girlfriends do live
24 together and there is no harm in that. But the State
25 needed to establish themselves that this wasn't the

1 case. There is no evidence of that. That's the
2 element of consent.

3 Now, with intent, once the defendant reasonably
4 believed that he had consent to enter the residence,
5 once he enters the residence, once he consented the
6 individual, then by him merely being there only
7 establishes the element of trespassing, because he
8 was under the belief that he had consent to enter the
9 residence.

10 Touching a table that had knives on it when he
11 entered the residence based on the consent that he
12 thought he had legally does not constitute a crime,
13 based on the testimony of the State's own witness,
14 Investigator Mead, that once the individual enters
15 the residence, if he has reason to believe that he
16 has consent to enter the residence, touching
17 something inside the house does not establish he
18 committed a crime. Being there is only a mere
19 trespassing.

20 Now, we also have, in dealing with the same
21 subject, I believe the State has failed to prove the
22 elements of consent, nighttime and intent.
23 Therefore, I respectfully ask the Court to grant a
24 motion for a directed verdict.

25 Also, what also comes out now is that based on

1 the facts that have been presented before this court,
2 the defendant is not guilty of the burglary itself,
3 but the defendant is guilty as an accessory after the
4 fact.

5 According to the testimony that has been
6 presented to this court, the defendant came after the
7 apparent breaking had occurred. Because according to
8 the statement and according to the testimony that has
9 been presented, the defendant viewed --

10 **MR. PAULING:** Your Honor, if I may?

11 **THE COURT:** Yes.

12 (Pause).

13 **MR. WILLIAMS:** I'd also like to point out, too,
14 Your Honor, that the State has not only failed to
15 prove that there was any deception according to the
16 elements that must be proven, that the State must
17 show that there was deception, that the entry was
18 gained by deception, artifice, trick or
19 misrepresentation. None of that has been proved by
20 the State.

21 All the evidence shows is that the defendant
22 reasonably believed that he had consent to enter the
23 residence. And as long as the defendant reasonably
24 believed that his actions were legal, there is no --
25 there cannot be no finding of guilt based on the fact

1 that he thought he had legal consent.

2 The State still -- the burden of proof is on the
3 State to prove beyond a reasonable doubt that the
4 entry was done with deception, trick,
5 misrepresentation or artifice. None of that's been
6 proven. The State has failed to prove the element of
7 nighttime. The state has failed to prove the element
8 of intent. And I respectfully ask the Court to grant
9 the motion for a directed verdict. Thank you.

10 **THE COURT:** Okay. Is there anything with
11 respect to the charge of petit larceny?

12 **MR. WILLIAMS:** No, Your Honor.

13 **THE COURT:** Okay. All right. State, your
14 response.

15 **MS. WEISS:** Thank you, Your Honor. In a light
16 most favorable to the State, I think we can base most
17 of the arguments on the last witness to get past
18 directed verdict.

19 First of all, the State must prove one of two
20 elements in order to enhance this to a burglary
21 first; that is, that the incident either occurred or
22 the defendant remained inside during the nighttime or
23 there were two prior burglaries.

24 The defendant has stipulated, the State has
25 introduced the two prior convictions for burglaries.

1 I think that has been established. And also there is
2 enough evidence for the jury to infer that whether or
3 not the defendant entered in the nighttime; one,
4 sunset was at 8:37. We have the victim stating he
5 left at 8:30. So nighttime was shortly thereafter.
6 And whether or not the defendant entered and whether
7 or not he remained when that nighttime fell is a
8 question for the jury.

9 I think there is enough evidence for that to be
10 submitted to the jury. There is a possibility he was
11 still in the residence. But he either entered after
12 nighttime, the veil of nighttime, or that he was
13 still in the residence when nighttime fell,
14 considering the amount of stuff that he did while he
15 was in there and the short period of time from the
16 time the owner left until nighttime fell. So I think
17 there is enough circumstantial evidence there to go
18 to the jury for nighttime, but we also have the two
19 prior burglaries that have been admitted.

20 As far as consent, the owner of the house did
21 testify that he was living there alone that night
22 with his dog and his cat, that his daughter did come
23 back and forth periodically from Atlanta but that
24 night he was living there alone with his dog and his
25 cat and that he had lived there for 35 years.

1 He gave Darrell Williams no right to be in his
2 house. He is the homeowner. And Darrell Williams
3 nor Jimmy Bowman were living in his residence. I
4 think that was made very clear by the homeowner. So
5 there is no question of consent.

6 Also the fact that he was crawling in through a
7 back window I think is evidence clear and convincing,
8 I mean clear enough to go to the jury as far as
9 whether or not he had consent, whether or not Jimmy
10 Bowman, if Jimmy Bowman was even there, whether or
11 not he had consent, or Darrell Williams had consent.

12 There is no testimony that anybody came in and
13 out of any door. The only testimony is that Darrell
14 Williams crawled in through a back window. And I
15 think that is circumstantial as well as direct
16 evidence that there was not consent to enter that
17 house.

18 And his intent at the time, in Investigator
19 Mead's testimony, he put in Darrell Williams's
20 statement that he believed that he had a ring from
21 the residence in his property. That shows that there
22 was intent. I mean, one, there was property taken.
23 There were rings taken and money taken. Two, Darrell
24 Williams in his statement stated that he thought he
25 had rings in his property; therefore, indicating as

1 evidence for the jury that he had taken a ring.
2 Whether or not it was still in his property he wasn't
3 sure about, but that he had taken a ring which is a
4 crime.

5 The intent to commit a crime can be from the
6 time he crawled through that window through the time
7 he was inside and what he did while he was inside. I
8 think there is evidence that he stole the property
9 once he was inside that residence, whether or not
10 Jimmy Bowman even exists, existed at this crime
11 scene.

12 So, Your Honor, in a light most favorable to the
13 State, I believe we have met the burden of those
14 elements as well as every other element of this
15 crime, including this was a dwelling that was in
16 Richland County. And, therefore, there is sufficient
17 evidence for this to go to a jury.

18 **THE COURT:** Okay. Mr. Williams, any response?

19 **MR. WILLIAMS:** Yes, Your Honor. Despite what
20 the prosecution might be saying, that he said that
21 the victim -- yes, the victim did testify that he
22 lived there alone. But the State still must
23 establish based on the statement they submitted as
24 evidence, the statement does reflect that based on
25 the statement that was given by the defendant that

1 Mr. Bowman did take me into the door.

2 And if the State needs to establish anything,
3 the State needs to establish further that Mr. Bowman,
4 not me, didn't have legal consent to be there. If
5 the State intends to prove that I did not have
6 consent, then they can't establish consent based on
7 what the defendant says about me. But the State must
8 establish that consent was not given to Mr. Bowman.
9 There is no proof that he was never living there.
10 They still fail the main point.

11 **THE COURT:** Okay. But they're indicating he
12 stated that he lived there alone.

13 **MR. WILLIAMS:** Alone. But what I'm basically
14 saying, that there is no proof at all, that basically
15 the State has failed to prove that at no time was Mr.
16 Bowman living there. Basically the State conceded --

17 **THE COURT:** I know. But by virtue of Mr.
18 Sederberg's statement that he lived there alone.

19 **MR. WILLIAMS:** But I'm talking about previous,
20 prior to this, at any given time. Like I said, he
21 said he lived there alone. I don't believe there was
22 any indication as to an approximate date as to when
23 he actually started living there alone, by himself.
24 If I am -- this is basically based on the testimony
25 that I recall from yesterday from Mr. Sederberg. But

1 the State still must -- the main element, the key
2 element that must be proven here is the knowledge.
3 The State must prove that the defendant had knowledge
4 about all this. And if the State cannot prove
5 knowledge, then all the other elements or all the
6 other proof that they have really doesn't exist,
7 because if the defendant legally believed that he was
8 in the right, then --

9 **THE COURT:** But you're going by based on what
10 the defendant believed. You've got to go back to the
11 homeowner about what consent did he confer to
12 anybody.

13 **MR. WILLIAMS:** Okay. And taking that into
14 consideration, based upon what the homeowner said, as
15 again, he might have been living there then. But
16 when was he living there? When was Mr. Bowman living
17 there, whether he lived there or he didn't live
18 there? Because there is a hole. You understand?
19 There is a gap between there. Because at any given
20 time during time from when he said from the time of
21 the crime back or before that --

22 **THE COURT:** Regardless of whether Mr. Bowman
23 lived there or not, you've still got the issue about
24 his consent to be there that night or that day.

25 **MR. WILLIAMS:** Right. And, see, --

1 **THE COURT:** Because that's no different than if
2 you have somebody who is on a lease or potentially
3 not on a lease but then they pay the rent; you know,
4 then you have that question of fact as to whether or
5 not they have an authority to be there just because
6 they're assisting in the property damage and things
7 of that nature.

8 **MR. WILLIAMS:** And that's what the State needs
9 to prove.

10 **THE COURT:** Mm-hmm (affirmative).

11 **MR. WILLIAMS:** And based on the evidence as a
12 whole, they failed to prove that Mr. Bowman didn't
13 have a right to be there. Now, --

14 **THE COURT:** But even assume Mr. Bowman had
15 consent to be there, that doesn't necessarily mean
16 that Mr. Bowman had the consent to allow the next
17 person to be there. Just because you're there does
18 not mean -- that means that that might go to your own
19 consent, but it doesn't necessarily mean that you can
20 also have consent to allow others to be there,
21 unlimited consent for whoever else you want to
22 invite. It might be consent addressed directly only
23 to yourself.

24 **MR. WILLIAMS:** Right. And if the consent is
25 just directed to him, assuming that it is, assuming

1 that the consent was just directed to him, it still
2 follows a line where there is no proof that this
3 was -- the State has -- the bottom -- what I'm trying
4 to get at basically is the State has failed to prove
5 this.

6 **THE COURT:** Okay.

7 **MR. WILLIAMS:** And since they failed to prove
8 this, all I'm asking for is this Court to --

9 **THE COURT:** Okay. Well, let me tell you that
10 the standard for directed verdict is that the Court
11 is not concerned about -- I am only concerned about
12 whether there is an existence of evidence, not its
13 weight. In other words, we could go back and forth
14 and attack the credibility or attack believability
15 essentially of the evidence on either side. I just
16 have to be concerned about whether there is evidence
17 on the issue in the light most favorable to the party
18 bring the case. In this case it is the State.

19 If I go down about the issues in the order that
20 you've indicated, the darkness issue; yes, no doubt
21 that Mr. Sederberg indicated that it was still light
22 when he left which was around 8:30. If sunset is
23 occurring at 8:37 and the alleged crime is occurring
24 after that, then there is some inference that it
25 became dark at some point. He just was not

1 physically home at the time that it became dark.

2 So you've got that issue about in a light most
3 favorable to both of them about it depended upon when
4 the alleged crime actually took place. But it was
5 definitely -- unless we have something definitive to
6 say it was within that seven-minute period from
7 allegedly when he left and then sunset, then that's
8 still an open question for the jury, to determine
9 whether there was daytime, nighttime.

10 In terms of the consent, under the charge of
11 burglary first, aside from proving a prior conviction
12 or entering, remaining in the nighttime, then there's
13 other aggravating -- I mean there is other
14 conditions, entering into the dwelling and then
15 without consent; particularly that charge references
16 the entry into the dwelling must be without the
17 consent of the person in lawful possession.

18 And that's the part that they've indicated that
19 they've established, that no consent from the person
20 who is in lawful possession of the home was conferred
21 to you. And I don't know that they have to take the
22 leap to prove that Mr. Bowman didn't have the consent
23 to then give it to you, because it's inferred that if
24 he said he's living there alone and essentially he
25 didn't have any awareness of anybody who had the

1 right to be on his property that night, then that
2 would include all persons.

3 As to your intent, I mean, you've no doubt done
4 an effective job on cross examination in establishing
5 potentially a factual issue to the jurors about
6 whether you intended to commit a crime. And the
7 crime that's intended is before entering. It doesn't
8 matter that you changed your mind once you got
9 inside. And that's what the jury would be so
10 instructed.

11 But basically at the time that you were going to
12 enter the dwelling, whether or not there was an
13 intent to commit it or not. We've got a potential
14 open door. We've got a climbing through a window
15 portion; you know, that alone suggesting that if
16 there was consent to, that it would be going through
17 the door, not through a window.

18 You've got your statements of course, but then
19 those create issues of fact. But I'm looking at it
20 in a light most favorable to the State in terms of
21 what they have proved thus far. And, you know,
22 indicating that if someone had such consent that this
23 would not be the appropriate way in which they would
24 have gained their means of entry, so to speak.

25 And so at this time it would be the Court's

1 position that they have met their standard for
2 directed verdict and that it's just a matter of at
3 closing appropriately you being able to attack away
4 the credibility of the witnesses or believability in
5 terms of them believing some or parts of it. But
6 they just have to give me evidence. It's not for me
7 to weigh it. That isn't enough. But that there is
8 something there in a light most favorable to them.
9 So I would deny a directed verdict on burglary first.

10 You've indicated no position on the petit
11 larceny portion of the case. Okay. So then that now
12 brings it to you being able to present your case. I
13 would remind you that you don't have to present a
14 case at all, that with respect to your rights at this
15 time, I'm going to ask you to be sworn in by the
16 Clerk of Court, and I'm going to advise you of your
17 rights with respect to you actually testifying.

18 **MS. WEISS:** Your Honor, there is no clerk.

19 **THE BAILIFF:** The clerk is not here, Your Honor.

20 **THE COURT:** Oh, okay. Well, I'll swear you in.
21 Raise your right hand. And if someone would take the
22 Bible over to him. Okay. Do you swear or affirm to
23 tell the truth, the whole truth, and nothing but the
24 truth, so help you God?

25 **MR. WILLIAMS:** I do.

1 DARRELL O. WILLIAMS, being first duly sworn, is
2 given his rights as follows:

3 **THE COURT:** Okay. Mr. Williams, you've been
4 here throughout the proceedings. And we earlier on,
5 even throughout other proceedings, talked to you
6 about your right to do your own case. And that's
7 what you've done throughout this trial. Is that
8 correct?

9 **MR. WILLIAMS:** That's correct.

10 **THE COURT:** Now I'm going to speak with you
11 specifically about your right to testify. Under the
12 Fifth Amendment no person shall be compelled in any
13 criminal case to be a witness against himself. And
14 that means essentially that the State has the burden
15 of proof. And they can't require you to testify in
16 their case. They have to prove it by other means.

17 Just the same, because it's their burden of
18 proof and it remains with them throughout the trial,
19 you don't have to put up a defense. This is your
20 choice. And your defense can come by means of you
21 testifying or by you putting other evidence into the
22 record.

23 If you decide to testify, the Court has to make
24 sure that that right is intelligent and a knowing and
25 voluntary waiver of doing so. So, essentially, I

1 want to advise you that you don't have to put up a
2 defense because it's their burden of proof. But if
3 you should testify, then you need to know that you'll
4 be subject to the same types of cross examination as
5 any other witness. Which means that if there's a
6 prior record or if there is any way that they would
7 try to impeach you based on acts of dishonesty or any
8 prejudice they have at their leisure just the same as
9 any other witness in the case. So you would be
10 subject to those same issues.

11 In this particular case, over your objection
12 about the two prior burglary convictions which is an
13 element of the statute, they could go into any
14 additional prior record that fits within our rules of
15 evidence in terms of crimes of dishonesty. So they
16 could go more extensively into the other acts of
17 dishonesty.

18 Now, I will tell you just so that you can be
19 more advised about this decision, the crime of
20 burglary in and of itself, based on my research, that
21 is not a crime of dishonesty in and of itself that it
22 automatically comes in. Certain crimes like
23 shoplifting or grand larceny, because they have a
24 larcenous element indicating somebody actually took
25 something, then those are essentially crimes of

1 dishonesty, and that a person doesn't have to prove
2 that -- it comes in on its own just by virtue of it
3 being a crime of dishonesty. It doesn't matter the
4 length of punishment. Burglary in and of itself does
5 not. There has to be proven a larcenous aspect of
6 the crime.

7 The way they can do that is essentially looking
8 to the underlying arrest warrant and seeing if there
9 was something in there that indicated that you
10 actually took something; so that would be the
11 larcenous element of the crime, and then whether or
12 not you pled or were convicted at a trial of that
13 particular offense to indicate that you agree that
14 you took something that was a larcenous element of
15 the crime.

16 So that's the way it would come in. But just
17 the mere fact of it being a burglary conviction
18 without the State proving more to me that it was
19 actually larcenous, the burglary in and of itself
20 does not come in. And I don't know what those crimes
21 would be. I've only briefly shared what some of your
22 prior crime history is. I don't know any of the
23 individual specifics of it. But if you testified
24 you'd be subject to opening the door for all of that
25 to the extent that they can prove to me it's

1 relevant. And when I say all of that, beyond the two
2 that they used as necessary as an element of the
3 crime in this case. So that's something you need to
4 be aware of. So those jurors would have that as a
5 basis, you know, of judging your credibility just
6 like they would any other witness. Okay?

7 Now, do you understand the rights that I've
8 explained to you with respect to the State's burden
9 of proof?

10 **MR. WILLIAMS:** Yes, I do.

11 **THE COURT:** Do you understand also that you have
12 no burden of proof in the case?

13 **MR. WILLIAMS:** Yes. I understand that.

14 **THE COURT:** And do you understand that you don't
15 have to put up any defense because it's the State's
16 burden of proof?

17 **MR. WILLIAMS:** Yes. I understand.

18 **THE COURT:** And when I say any defense, that
19 means putting your testimony forth where you would
20 testify or any other evidence in the case even if you
21 decide not to testify.

22 **MR. WILLIAMS:** Yes. I understand that.

23 **THE COURT:** Okay. And so you don't have to
24 prove anything. It's still on the State.

25 **MR. WILLIAMS:** Yes. I understand.

1 **THE COURT:** But should you decide to testify,
2 you're subject to the same cross examination and
3 other rules of evidence with respect to impeaching
4 evidence as any other witness in the case?

5 **MR. WILLIAMS:** Yes.

6 **THE COURT:** And such evidence would include any
7 of your prior crimes that may be relevant for
8 purposes of impeaching you.

9 **MR. WILLIAMS:** Yes.

10 **THE COURT:** Okay. All right. Have you
11 understood all of my questions to you?

12 **MR. WILLIAMS:** Yes. I understand them.

13 **THE COURT:** Is there anything that you have to
14 ask the Court about?

15 **MR. WILLIAMS:** No. No.

16 **THE COURT:** Okay. Now, you're not represented
17 by counsel obviously because you're representing
18 yourself. But you do have for today's proceedings
19 Mr. Hans Pauling, and then prior to you've had Mr.
20 Josh Kendrick. Correct?

21 **MR. WILLIAMS:** That's correct.

22 **THE COURT:** And then for a brief moment this
23 morning we've even had Mr. Tivis Sutherland. Have
24 you had the opportunity from a procedural
25 standpoint -- because they only advise you for

1 procedural matters; they're not your lawyers -- to
2 even discuss that issue with them?

3 **MR. WILLIAMS:** Well, basically what I would like
4 to do, if I may?

5 **THE COURT:** Sure.

6 **MR. WILLIAMS:** If we can let the jury go to
7 lunch and then when we come back from the lunch hour
8 let the Court know what my decision is. We can go
9 from there. Because there are still some things I
10 want to make sure I understand everything fully. And
11 it might take a little time just to sit back and
12 maybe talk about it.

13 **THE COURT:** Okay. And I'll just let you know.
14 I ordered lunch for the jurors. So I'm happy to let
15 them dine inside, and then we'll just take a shorter
16 lunch break to do that. So you don't want to give
17 the Court your decision right now.

18 **MR. WILLIAMS:** No, ma'am.

19 **THE COURT:** That's okay. That's perfectly fine.
20 So I'll just let them convene for lunch. But in the
21 meantime, just to save time, if we could go ahead and
22 address any of your proposed jury instructions. But
23 what I'll do is call them out now and then let them
24 go ahead and know that they can go ahead and go to
25 lunch.

1 **MR. WILLIAMS:** Okay.

2 **THE COURT:** And then we can at least be working
3 so that we can proceed along with the case.

4 **MR. WILLIAMS:** All right. That's fine.

5 **THE COURT:** Okay.

6 **MR. PAULING:** Your Honor, do you need to bring
7 them out, or can you tell them to go to lunch?
8 Because when you bring them back, we may rest or he
9 may --

10 **THE COURT:** That's true.

11 **MR. PAULING:** Instead of having to come in and
12 go back.

13 **THE COURT:** Exactly. Tell them they're free to
14 dine and that we will resume the trial at 1:30. And
15 that means they can eat their lunch there, take it
16 with them or whatever, but we'll resume at 1:30. I
17 think that should be sufficient. Thank you.

18 Okay. So let's go ahead and take up proposed
19 jury charges, also noting that this is subject to
20 what you intend to do with respect to testifying or
21 putting up a defense.

22 Okay. All right. Let me hand to you, what I'd
23 like to do first is the Court's proposed charges
24 based on where we are now. Some of it in there, in
25 anticipation or not anticipation of what you intend

1 to do. So obviously some may not be relevant until
2 you make that decision. And I will make this, the
3 Court's proposed charges, as a Court's Exhibit.

4 (WHEREUPON, Court's Exhibit No. 5 is marked for
5 identification.)

6 **THE COURT:** And then that way we'll know what we
7 are referring to for purposes of the record. Okay.
8 So just take your moment to just look through all of
9 those and then we'll start discussing them one by
10 one.

11 **MR. PAULING:** Your Honor, you don't mind if I
12 step out for a minute?

13 **THE COURT:** No.

14 **MR. PAULING:** Thank you.

15 (Pause)

16 **THE COURT:** Okay. Let's go ahead and start with
17 the charges. All right. Let's go ahead and start
18 with the Court's proposed charges. We'll just take
19 them in order first so I can note if there are any
20 exceptions. Are we okay with the charge arrested,
21 indictment, not evidence charge?

22 **MS. WEISS:** I'm sorry?

23 **THE COURT:** Are we okay with the charge,
24 arrested, indictment, not evidence charge?

25 **MS. WEISS:** Arresting --

1 **THE COURT:** We're going through one of these at
2 a time. So the first charge, arrested, indictment,
3 not evidence charge, is that okay?

4 **MS. GARFIELD:** It's fine with the State.

5 **MR. PAULING:** Is that okay?

6 **MR. WILLIAMS:** Yes. I'm sorry.

7 **THE COURT:** And then the duties of jury and
8 judge, trial judge. Is that okay?

9 **MR. WILLIAMS:** Yes. That's fine.

10 **MS. GARFIELD:** Fine.

11 **THE COURT:** Okay. And then the burglary first
12 degree, again noting Mr. Williams's exceptions to the
13 elements of the crime, having to actually present the
14 two or more convictions, but the Court's prior ruling
15 was that that's an element of the crime by statute
16 and I have to abide by that.

17 **MS. GARFIELD:** That's fine with the State.

18 **MR. WILLIAMS:** Basically, Your Honor, I just
19 would like to on your charge, the first degree
20 burglary charge on page 6.

21 **THE COURT:** Okay.

22 **MR. WILLIAMS:** When you go into, when you start
23 talking about consent, I would respectfully ask that
24 you add the words deception, artifice, trick and
25 misrepresentation in there.

1 **THE COURT:** Okay. Are you talking about in
2 terms of the number two element without consent?

3 **MR. WILLIAMS:** Yes. Yes, ma'am.

4 **THE COURT:** So just how consent was obtained?

5 **MR. WILLIAMS:** Yes. Because --

6 **THE COURT:** How it was or was not obtained?

7 **MR. WILLIAMS:** Yes.

8 **THE COURT:** Okay.

9 **MR. WILLIAMS:** Because that seems to be a part
10 of, based on the case that I cited during the course
11 of the hearing earlier, The State vs. Cauthen.

12 **THE COURT:** Okay.

13 **MR. WILLIAMS:** That's what I wish for based on
14 that right there, Your Honor.

15 **THE COURT:** Okay. Any response by the State?

16 **MS. WEISS:** Yes, Your Honor. The State would be
17 opposed to that. There is no evidence in this case
18 that he used artifice, trick, intention to defraud,
19 any of that. That's a completely different set of
20 circumstances. The owner wasn't home. There was
21 nobody to deceive or to trick or to defraud. And I
22 think that would just be confusing to the jury to try
23 to include that. It has nothing to do with this case
24 because the owner was not there to be tricked or
25 defrauded at that point. I think that's just a

1 different set of circumstances that does not apply to
2 this case.

3 **THE COURT:** Okay.

4 **MR. WILLIAMS:** I would object to that, because
5 based on the testimony that was presented, according
6 to the evidence, there was somebody there at the time
7 that the defendant was there. So based on that, I
8 would like to have that particular section added in
9 there to cover that, because that basically goes to
10 whether or not, whether consent was legal and what
11 would be -- based on what they're talking about,
12 there is a different set of circumstances, deception,
13 artifice, trick and misrepresentation, all that would
14 coincide with whether or not -- that still leaves it
15 up to the jury to decide whether or not that was
16 done. If the Court was to add that in there, the
17 jury, it would still be left up to them to decide
18 whether or not that was actually part of it.

19 **THE COURT:** Okay. Let me hold that ruling in
20 abeyance. Let me go look up that case as well.

21 **MR. WILLIAMS:** Okay.

22 **MS. WEISS:** And, Your Honor, I can tell you in
23 that case is where the person who was charged with
24 the burglary actually paid rent and then tricked the
25 owner to be able to then commit a burglary. It

1 just --

2 **THE COURT:** Making a suggestion of whether or
3 not they had consent to be there in the first place?

4 **MS. WEISS:** Right. Yes, Your Honor.

5 **THE COURT:** Okay.

6 **MS. WEISS:** And whether that consent was tainted
7 by misrepresentation of fact or deception.

8 **THE COURT:** And I understand what you're saying,
9 Mr. Williams. But as I was indicating earlier, the
10 element of the consent is discussing it being without
11 the consent of the person in lawful possession as
12 opposed to essentially a transferred consent that you
13 allowed a person to live in your home, potentially
14 here Mr. Bowman and then Mr. Bowman then gave you
15 consent. So I just have to look at whether or not
16 there was -- is that the intent of the consent that
17 they're referring to here.

18 **MR. WILLIAMS:** So you're still going to look?

19 **THE COURT:** I'm still looking.

20 **MR. WILLIAMS:** Okay.

21 **THE COURT:** All right. So is that your only
22 exception to that charge?

23 **MR. WILLIAMS:** On page 7, what I was looking at
24 is where you -- coming down where it says intent,
25 when the intent exists at the time of entering.

1 **THE COURT:** Right.

2 **MR. WILLIAMS:** And it said, it goes on, there is
3 no defense that the intent was abandoned after the
4 entry.

5 **THE COURT:** Right.

6 **MR. WILLIAMS:** Basically, Your Honor, I think
7 that would basically be taking away -- in my view,
8 taking away from the State's burden of proof to show
9 that the intent of the individual was based on what
10 happened when he entered. And the reason why I'm
11 saying this is again in even my charge, my charge,
12 I'm basing this based on State vs. Pinckney which is
13 529 62d 526.

14 And in reading that, what I believe you recall
15 me saying that the intent is not -- true intent is
16 not based on what the individual's thought he had,
17 what he did before he got there but once he entered
18 the residence what he did, because I believe in that
19 case --

20 **THE COURT:** But the law -- this is the law. And
21 I understand what you're saying. But the law
22 indicates that the intent is at the time of entry as
23 opposed to what happens once you get in there and
24 when you abandon it.

25 **MR. WILLIAMS:** Okay.

1 **THE COURT:** Anything further from the State on
2 that issue?

3 **MS. WEISS:** No, Your Honor.

4 **THE COURT:** Okay. So that's burglary. And then
5 we move on to the petit larceny charge. Any
6 exceptions to that?

7 **MS. WEISS:** Not from the State, Your Honor.

8 **MR. WILLIAMS:** Oh, excuse me, Your Honor. I'm
9 sorry. I'm sorry. There was one thing.

10 **THE COURT:** Sure.

11 **MR. WILLIAMS:** I just -- maybe I just -- maybe
12 I'm reading it wrong. Excuse me. Maybe I'm reading
13 it wrong. But I would like basically a clarification
14 on something here. On page 9, when you are talking
15 about the burglary to be admitted for a person with a
16 prior record, on page 9, at the very end of it you
17 have written here: If you do not find beyond a
18 reasonable doubt that the defendant committed these
19 prior alleged offenses, then you cannot return a
20 verdict.

21 Now, what I'm getting from that, like I said --
22 please correct me if I'm wrong -- but what I'm
23 getting from that is you're basically saying that
24 this is something where this is almost telling a jury
25 that a defendant would have to prove or the defendant

1 would have to show that -- or the State would need to
2 show that these prior convictions did not take place
3 or the defendant would have to disprove them.

4 This is what I'm getting from it, because the
5 way it's written, it's almost like you're saying it's
6 up to the defendant to show that these prior
7 convictions did not take place.

8 **MS. WEISS:** Your Honor, we actually agree with
9 his argument on that one. We would ask that you
10 change the language to "was convicted", not "was
11 committed".

12 **THE COURT:** Okay.

13 **MS. WEISS:** Because the element is that he has a
14 record of two or more prior, whether he was convicted
15 of it, not whether he did it.

16 **THE COURT:** So if you find beyond a reasonable
17 doubt that the burglary -- wait a minute -- that
18 the --

19 **MS. WEISS:** That the defendant --

20 **MR. WILLIAMS:** Was convicted.

21 **MS. WEISS:** -- was convicted.

22 **THE COURT:** Convicted of these prior crimes.
23 Okay. That's a good idea. I appreciate that. I've
24 never caught that before. So it's convicted of the
25 crimes because that's what the element is. Okay. So

1 we'll change that. Okay. Thank you both. Okay.
2 Petit larceny okay? The State says yes. What about
3 defense?

4 **MR. WILLIAMS:** Yes. That fine.

5 **THE COURT:** Okay. And then presumption of
6 innocence, that's a standard charge.

7 **MR. WILLIAMS:** Respectfully, Your Honor, I would
8 like to -- with respect to the reasonable doubt
9 charge, I know you have already written it down as
10 the person who hesitates to act. I don't know.
11 Maybe the State might have an objection to it. But I
12 would like if possible to except to the charge that I
13 submitted.

14 **MS. WEISS:** Actually -- sorry, Mr. Williams. I
15 think she was talking about the presumption of
16 innocence, the one before that one.

17 **THE COURT:** So you're okay with that one?

18 **MS. GARFIELD:** Page 13.

19 **MS. WEISS:** Page 13.

20 **MR. WILLIAMS:** Page 17.

21 **MS. WEISS:** 13.

22 **MR. WILLIAMS:** I don't have page 13.

23 **THE COURT:** It should be presumption of
24 innocence, is the title of it.

25 **MR. WILLIAMS:** I've got --

1 **THE COURT:** We'll hand you another copy in case
2 yours got out of order or that was a mistake.

3 **MR. WILLIAMS:** Oh. There it is.

4 **MR. PAULING:** She's asking your opinion on that.

5 **MR. WILLIAMS:** Okay. I need to read it. All
6 right.

7 (Pause)

8 **MR. WILLIAMS:** That's fine, Your Honor.

9 **THE COURT:** Okay. Now reasonable doubt. So
10 that would be your page 15.

11 **MR. WILLIAMS:** Huh?

12 **THE COURT:** Your page 15, hopefully.

13 **MR. WILLIAMS:** Yes. Okay.

14 **THE COURT:** Okay.

15 **MR. WILLIAMS:** Basically what I would like, I
16 don't know if the State has any objection, but I
17 would like to -- I know you already have your charge
18 in here that you are going to charge the jury that
19 it's the kind of doubt that would make a reasonable
20 person hesitate to act.

21 I would respectfully ask that you add that
22 instead or somehow maybe within the body of your
23 charge if you could charge that the State must show
24 more than a fanciful doubt; it must be a reasonable
25 doubt in the minds of the jury to the exclusion of

1 all other doubt.

2 **THE COURT:** State?

3 **MS. WEISS:** Your Honor, we would ask that you
4 remain with the standard charge. We believe that to
5 the exclusion of all other doubt raises the bar above
6 a reasonable doubt, to the exclusion of any doubt.
7 And that is clearly not what the law states. It's a
8 reasonable doubt. We'd ask that you remain with the
9 standard charge.

10 **THE COURT:** Look to, Mr. Williams, the last
11 paragraph because it talks about it still has to
12 leave you firmly convinced of the defendant's guilt.
13 And so that should take care of the fanciful doubt,
14 because, you know, there is no absolute certainty in
15 life, but it still has to be a firm conviction of the
16 defendant's guilt; and if you have anything that
17 essentially makes you hesitate to act, then you have
18 to go in favor of the defendant.

19 **MR. WILLIAMS:** Okay.

20 **THE COURT:** Okay. All right. And then now
21 direct and circumstantial evidence which is a
22 standard charge. Is the State okay with that?

23 **MS. WEISS:** The State's fine, Your Honor.

24 **MR. WILLIAMS:** That's fine, Your Honor. I don't
25 have any problem with it.

1 **THE COURT:** Then the statement of the defendant,
2 that's the one where I talked to you about earlier
3 that my original consideration was just by a
4 preponderance of the evidence, but they have to
5 believe that your statement was made voluntarily
6 based on a reasonable doubt, proof beyond a
7 reasonable doubt.

8 **MR. WILLIAMS:** This is fine, Your Honor.

9 **THE COURT:** Okay. And then credibility of
10 witnesses is another standard charge. The same thing
11 with expert witnesses. Are you okay with that?

12 **MR. WILLIAMS:** Yes, I am.

13 **THE COURT:** And then testifying. Of course
14 we'll hold that out until you make the decision of
15 whether to. But as it indicates there, just as when
16 I was advising you of your rights, you have no burden
17 of proof of putting anything in. It's your
18 Constitutional right to actually not testify.

19 **MS. WEISS:** Your Honor, because this is somewhat
20 out of the ordinary to have a pro se defendant, we
21 would ask that you add something into your
22 instruction addressing the fact that he has been pro
23 se and that he has addressed questions in this case.
24 And it may go in the evidence part or in this part;
25 but that, you know, you cannot hold it against him

1 for not testifying. And in the same vein, any
2 questions asked by the defendant cannot be considered
3 testimony as well.

4 **THE COURT:** Well, I'm going to say that in the
5 closing argument. I summarily will tell them that
6 nothing said by counsel, including him representing
7 himself, is evidence in this case.

8 **MS. WEISS:** Okay. That's fine.

9 **THE COURT:** Okay.

10 **MR. WILLIAMS:** I'm fine, Your Honor.

11 **THE COURT:** Okay. And then we have the jury
12 verdict essentially, not based on sympathy or
13 prejudice. That should be the last charge.

14 **MR. WILLIAMS:** Yes.

15 **THE COURT:** All right. So the Court based on
16 these are going to look at the State v. Cauthen case
17 for the issue about consent. And then I changed on
18 page 9 about that you have to find by a reasonable
19 doubt that the defendant was convicted of the prior
20 crimes for purposes of the element of burglary. And
21 then we will hold out on whether or not he testifies
22 if that charge is irrelevant.

23 **MS. WEISS:** Your Honor, we would ask that you
24 charge the hand of one is the hand of all charge.

25 **THE COURT:** Okay.

1 **MR. WILLIAMS:** Excuse me, Your Honor.

2 **THE COURT:** Yes.

3 **MR. WILLIAMS:** Since they're asking for that
4 charge, I respectfully ask that you charge based on
5 the ones I have in mine to state the law of fact, the
6 accessory after the fact charge, if you can look at
7 those, because they're asking for the hand of one,
8 hand of all.

9 **THE COURT:** Okay. I'll look at the hand of one
10 is the hand of all and then we will go on to yours.

11 **MS. WEISS:** Your Honor, the defendant is not
12 charged with accessory after the fact. It is not a
13 lesser-included offense of the charges that he is
14 charged with. So clearly we would oppose any mention
15 of accessory after the fact. And --

16 **THE COURT:** Generally speaking, at the trial I
17 can charge a lesser-included offense if there is a
18 request by the defendant but then also there is some
19 evidence on that issue. And accessory after the fact
20 is not a lesser-included of burglary first.
21 Potentially burglary second, burglary third, you
22 know, other ones like that.

23 **MR. WILLIAMS:** Right. Okay.

24 **THE COURT:** But not accessory after the fact,
25 because you've never been charged with that. Of

1 course you could intimate any reasonable view of the
2 evidence in closing, but I wouldn't be required to
3 charge just the lesser-included offense.

4 **MR. WILLIAMS:** Okay. If that's the case, well,
5 just note my objection for the record concerning
6 that. I would like to respectfully have the Court
7 charge the statement of law of fact based on the
8 charge that I've written and my requests to the
9 Court. And that case is the disposition based on
10 State vs. Benjamin, and I would like to have that
11 charged. I would like to have that charged to the
12 jury.

13 **THE COURT:** Okay. State?

14 **MS. GARFIELD:** Judge, I am not familiar with
15 this particular charge. It's never been presented
16 before me before. I would just ask if we can respond
17 after lunch so I can have an opportunity to review
18 this case that he's citing.

19 **THE COURT:** Okay.

20 **MR. WILLIAMS:** That's fine.

21 **THE COURT:** Okay. Anything else? Okay.

22 **MR. WILLIAMS:** No. That's it, Your Honor.

23 **THE COURT:** Okay. So then hand of one, hand of
24 all; do you have any response to that being charged,
25 Mr. Williams?

1 **MR. WILLIAMS:** Excuse me a moment. Could I have
2 one second?

3 **MR. PAULING:** This will be a rather muddy area
4 that he's about to ask about.

5 **THE COURT:** Oh, okay.

6 **MR. PAULING:** Wouldn't you agree?

7 **MS. GARFIELD:** I couldn't hear you.

8 (Pause)

9 **MR. WILLIAMS:** Your Honor.

10 (Pause)

11 **THE COURT:** They've got a couple more we need to
12 look at. Go ahead and ask your question. But I was
13 going to say --

14 **MR. WILLIAMS:** Well, I can wait because I want
15 to go over it some more. So this may be better when
16 we come back from lunch.

17 **THE COURT:** I thought the same thing. Because
18 this is a rather lengthy charge anyway. That way you
19 can collect your thoughts. All right. You all get
20 some lunch and we'll be back 1:30'ish, quarter 'til.

21 **MS. GARFIELD:** Quarter 'til?

22 **THE COURT:** Right. You don't eat during trials,
23 right? Make sure Mr. Williams gets some lunch.

24 (Whereupon, a lunch break is taken)

25 **THE COURT:** All right. We are now back from

1 lunch. Let's take up some of these procedural
2 matters. Mr. Williams, have you decided whether or
3 not you wish to testify?

4 **MR. WILLIAMS:** Yes, I have, Your Honor.

5 **THE COURT:** And what is your decision?

6 **MR. WILLIAMS:** No, I don't. I won't be
7 testifying.

8 **THE COURT:** Okay. And then do you feel like the
9 Court has addressed any issues, concerns or questions
10 you may have had regarding that decision?

11 **MR. WILLIAMS:** Yes, ma'am.

12 **THE COURT:** And do you feel like it's an
13 informed decision?

14 **MR. WILLIAMS:** Yes, it is.

15 **THE COURT:** It's voluntary?

16 **MR. WILLIAMS:** Yes, it is.

17 **THE COURT:** And that you waive that as well?

18 **MR. WILLIAMS:** Yes, Your Honor.

19 **THE COURT:** Okay. All right. So if you will
20 not testify, then the procedure would be that the
21 jury would come back out and then you would rest and
22 then I would send them back out. So I'd like you to
23 officially rest on the record if that's your desire.

24 **MR. WILLIAMS:** Yes.

25 **THE COURT:** That's assuming that you're not

1 putting in any other evidence. You just said you're
2 not going to testify or put up any other evidence.

3 **MR. WILLIAMS:** No. I will not be putting up any
4 defense, Your Honor.

5 **THE COURT:** All right. So then are you resting?

6 **MR. WILLIAMS:** Yes. The defense rests.

7 **THE COURT:** Okay. All right. So he will still
8 do that when the jury comes in. But I'm just trying
9 to save us some time. So now that you've also
10 rested, then this is the time for appropriate
11 motions. And I assume that you are going to renew
12 the prior ones?

13 **MR. WILLIAMS:** Yes, ma'am.

14 **THE COURT:** Okay. And is there any additional
15 arguments you wish to make with the Court at this
16 time that we have not covered?

17 **MR. WILLIAMS:** Not at this time, Your Honor.

18 **THE COURT:** Okay. And again the Court would
19 remind you that the standard is I'm not concerned --
20 I'm only concerned with the existence of evidence on
21 an issue, not its weight, and that it is not for me
22 to examine any conflicting evidence or testimony.
23 That's just going to the weight of it that you all
24 deal with when you're doing closing arguments and get
25 your views and inferences on that.

1 So the Court, just in reviewing the issues
2 again, I do believe that there was sufficient
3 evidence on the issue of darkness, given the time
4 period. There is an issue with respect to consent
5 because it only requires that you entered the
6 building without the consent of the person in lawful
7 possession. I know the defense has an argument about
8 where whether somebody else who potentially lived
9 there gave consent, but the law requires the person
10 in lawful possession to be the one who did not give
11 consent. And that was stated to you on the record.

12 As to your other portion that you're talking
13 about, via deception, artifice, trick or
14 misrepresentation, the entering without consent
15 element does say to enter a building without the
16 consent of the person in lawful possession or to
17 enter a building by using deception, artifice, trick
18 or misrepresentation to gain consent to enter from
19 the person in lawful possession.

20 You indicated that you wanted a charge to that
21 effect. But if I'm hearing the State's case
22 correctly, they're not going by that second element,
23 because that's an or; they could prove one or the
24 other. And so they're not going by that second
25 element. You kind of utilized your cross examination

1 to kind of disprove that element anyway. Is there a
2 need to charge it from either party because it's an
3 or? It's not an and.

4 **MR. WILLIAMS:** Well, excuse me. Based on the
5 fact that I was -- that was based on part of my cross
6 examination. And that is evidence that is before the
7 jury. I would like that charged so the jury would be
8 able to make the determination. While the statute
9 may say or, but that was charged -- that was brought
10 out.

11 **THE COURT:** Presented. Okay.

12 **MR. WILLIAMS:** And I would like to have that
13 charged to the jury based on that.

14 **THE COURT:** Any comments by the State?

15 **MS. WEISS:** Yes, Your Honor. Anything that he
16 asked in cross examination, which was the only time
17 that was ever mentioned, is not evidence in this
18 case, it's not evidence that's been brought into this
19 case, and it would merely be to confuse the jury.
20 Whether or not we could prove another element is not
21 something that needs to be charged.

22 **THE COURT:** Well, it's or.

23 **MS. WEISS:** Right. Whether or not we could
24 prove an extra element is not what's been charged.
25 The fact is we have to prove what's been charged,

1 what's on the indictment. That's not in the
2 indictment, that's not been charged, and that's not
3 in evidence in this case. The only way that has been
4 brought in at all is on his cross examination which
5 is not evidence in this case.

6 **THE COURT:** Okay. Well, it just says without
7 consent. On the indictment it doesn't say how. Let
8 me just look at this again.

9 (Pause)

10 **THE COURT:** See, on the indictment you are being
11 noticed that it's without consent. So that's the
12 element that they're going under, because it also
13 says: Or by using a deception, artifice, trick. So
14 they would have had to place that on the indictment
15 in terms of that's the notice that they're giving you
16 as to which element they're going after.

17 Just like when we had the hours of darkness,
18 prior convictions, that's the notice that they have
19 to place on the indictment to let you know which
20 circumstances they're indicating is an element of
21 proof so that you would have been prepared to come to
22 trial.

23 **MR. WILLIAMS:** Okay.

24 **THE COURT:** So they're noticing you that the
25 without consent element is the one that they're

1 noticing you for. Just like they said hours of
2 darkness, they could have said with a deadly weapon
3 or, you know, those other elements. But they're
4 putting you on notice as to which ones they're
5 proceeding on.

6 **MR. WILLIAMS:** But in light of what they said,
7 the testimony now becomes evidence that the jury is
8 going to have to determine because they were -- since
9 they have earlier heard that.

10 **THE COURT:** Well, the thing is that it becomes
11 an element of what they have to prove. They're not
12 using that as one of their elements of proof because
13 it's an or. Do you understand what I'm saying?

14 **MR. WILLIAMS:** I understand what you're saying.
15 But in that regard, I would like to just renew my
16 objection for the record.

17 **THE COURT:** Okay. Because, you know, back to
18 your question; you might be disproving that element,
19 but they still get to go back to the first element.
20 You see what I'm saying? Because it's an or.

21 **MR. WILLIAMS:** Oh, okay. Okay. Okay. Okay.

22 **THE COURT:** You see what I'm saying? They don't
23 have to -- it's not an and. They don't have to prove
24 both. If it was an and, I would keep it in. But
25 it's one or the other. So that means even if you

1 disprove that element, they get to go back to the
2 without consent of the person in lawful possession
3 because it's an or; one or the other. So I would
4 agree with the State on that to not have to use that
5 portion of it.

6 Okay. Then we talked about hand of one, hand of
7 all. The Court is inclined to charge that. I think
8 the charge is not only relevant but it's also
9 balanced because it talks about the fact that the
10 defendant -- even if you have prior knowledge that
11 the crime is going to be committed, it's not
12 sufficient to make you guilty of the crime. It goes
13 into the issues about your intent as well. The fact
14 that you have a mere presence at the scene, you know,
15 none of that in and of itself makes you guilty as
16 well.

17 So I think it's a balanced charge as well as
18 relevant, because their theory is that based on the
19 statements, even with your saying Jimmy Bowman asked
20 me to go, the fact that you're entering not through a
21 door but potentially through a window, the fact that
22 you get some money after the fact, you know, they're
23 setting up a potential theory of the case that you
24 could have been in collusion with this person.

25 And so then the charge is that indicates that

1 two or more people acted together for purposes of
2 committing it, then it becomes the act of one, not
3 just the act of them individually.

4 But it also separates you, because to the extent
5 that there is ability to dissect this charge and it's
6 indicated that there was no collusion in that you
7 essentially have mere presence and that you weren't
8 joining or acting in concert, then it also indicates
9 that that alone does not make you, you know, the
10 person who should be charged with the crime.

11 **MR. WILLIAMS:** For that reason I would like to
12 quote my objection to the fact that you said that you
13 would not charge accessory after the fact, because,
14 as you indicated, that is not a lesser-included
15 offense of first degree burglary.

16 **THE COURT:** Right. And then I did some further
17 research on that issue. And the other reasons and
18 rationale for not charging it, one is because it's
19 not lesser included because you have to actually be
20 indicted for a charge for them to bring it to court
21 unless you've waived an indictment to the Grand Jury,
22 that whole process; or that I find that there is
23 evidence on an issue, but it has to be something
24 that's a lesser-included. Like you're not committing
25 the greater crime but there is potential that you're

1 committing a lesser included that has one or more
2 less elements than the greater crime.

3 **MR. WILLIAMS:** Okay.

4 **THE COURT:** But they're essentially rising out
5 of the same set of facts. This accessory after the
6 fact also talks about there needs to be an
7 exclusionary situation which would have eliminated
8 you from the crime. And so there needed to have been
9 evidence, while you're trying to draw that inference,
10 you still have the statement and then the admission
11 of being there and then there is an inference of why
12 you were to be there or not, whether you had intent
13 to do something or not. But it doesn't allow you to
14 kind of defer the jury's attention to something else
15 that you could have been charged with. Because then
16 in the end they're stuck with what they've put you on
17 trial for.

18 **MR. WILLIAMS:** Mm-hmm (affirmative).

19 **THE COURT:** So if it's burglary first, that's
20 what the jury has to find. If they don't meet the
21 elements of burglary first, they don't get another
22 shot at something else.

23 **MR. WILLIAMS:** Right.

24 **THE COURT:** You see what I'm saying?

25 **MR. WILLIAMS:** I understand.

1 **THE COURT:** So it's kind of to your benefit as
2 well.

3 **MR. WILLIAMS:** Okay. Well, at the same time
4 over lunch I was looking at the hands of one is the
5 hands of all charge.

6 **THE COURT:** Right.

7 **MR. WILLIAMS:** And I don't know if this should
8 be appropriate or not. But what I was looking at is
9 that the same -- basically it's almost like the hands
10 of one, hands of all has the same material factors
11 that need to be proven. In order to establish
12 accessory after the fact there are three things that
13 need to be established.

14 One is that the felony has to be completed. The
15 second one is that the accused must have knowledge
16 that the principal committed the felony. And the
17 three is that, the third one is that the individual
18 must have harbored or assisted the individual in the
19 commission of the crime.

20 Now, in your charge with the hands of one, hands
21 of all, basically on the first page there, on the
22 bottom half, it basically covers certain aspects of
23 accessory after the fact. And while the State is
24 objecting to you admitting it --

25 **THE COURT:** Okay. Wait a minute. There is a

1 distinction. Hand of one, hand of all, you're
2 looking at that as a substantive crime?

3 **MR. WILLIAMS:** No. I'm not looking at it as a
4 substantive crime. I'm looking at the language
5 that's in there in your charge that you have, and the
6 language that's inside what would constitute
7 accessory after the fact. And it's almost like the
8 the language is similar to each other but it varies
9 in different ways.

10 **THE COURT:** But when I'm charging a different
11 crime, it needs to be charging one crime; for
12 example, burglary first, or charging the
13 lesser-included burglary second crime.

14 **MR. WILLIAMS:** Okay.

15 **THE COURT:** Not a theory, which is what hands of
16 one, hands of all is essentially.

17 **MR. WILLIAMS:** Okay. Now, what I would like --
18 I thought about it also during the time. I believe
19 there is a charge that this Court could charge, mere
20 presence at the scene.

21 **THE COURT:** Okay.

22 **MR. WILLIAMS:** Since you are charging hands of
23 one, hands of all, I would also like to have since --
24 this is just noting my objection for the record for
25 not having accessory after the fact entered as a part

1 of the charge. But also on that note I would like to
2 have mere presence also charged along with the hands
3 of one, hands of all.

4 **THE COURT:** Okay. Let me look at that charge.

5 (Pause)

6 **THE COURT:** Okay. State's response to this?
7 I've reviewed it.

8 **MS. GARFIELD:** Your Honor, there has been no
9 evidence presented by the defense of a defense of
10 mere presence. There has been a statement submitted
11 where the defendant arrives to a scene. And on cross
12 examination he is trying to say when he gets there
13 the window was already broken, then admitting to
14 going on inside. That is what's been presented in
15 evidence. There is nothing from the defense offered
16 to suggest a mere presence. You can't have defenses
17 charged to a jury when they haven't been brought up.

18 **THE COURT:** You're trying to say that a
19 defendant has to put forth something to get a charge?

20 **MS. GARFIELD:** He has offered nothing to suggest
21 it was just mere presence.

22 **THE COURT:** Well, he's relying on the statement.

23 **MS. GARFIELD:** But in the statement he admits to
24 crawling through a window. He's not --

25 **THE COURT:** Well, then let me have the

1 statement.

2 **MS. GARFIELD:** -- saying that he walks up and a
3 burglary had just occurred, he just happened to be
4 there. In the statement he is -- and you can read it
5 for yourself -- he admits to going in.

6 **THE COURT:** All right. Okay. But I think he
7 starts out the statement with why he was going in in
8 the first place.

9 **MS. GARFIELD:** Yes, ma'am.

10 (Pause)

11 **THE COURT:** Okay. I've reviewed the statement.
12 Let me just look at it again against the mere
13 presence charge.

14 (Pause)

15 **THE COURT:** Okay. Here is my concern. And then
16 I'll allow the State to address it. While the
17 defendant has not intended to testify or has not put
18 up a case, once the defendant's statement has come in
19 through the officer, then this is now evidence as
20 well.

21 And so the way the statement is reading is the
22 defendant is indicating a friend invites him along to
23 clean up some glass essentially. And then when you
24 look at the questions, and the defendant's
25 handwritten portion of the statement never really

1 discusses the home. It's kind of a how I got to be
2 involved scenario.

3 Then when the investigator does the question and
4 answer in his handwriting; albeit, the defendant
5 signs the statement, he asked:

6 "Q Did you ever go inside the house?

7 "A Yes, he told me to go inside the house and help
8 him clean up the glass inside.

9 "Q How did you get inside?

10 "A He told me to climb through the window. Jimmy
11 told me he already had the door open.

12 And then he talks about what he touched inside,
13 what potentially he may have removed from the house.

14 "Q Did Jimmy go inside the house with you?

15 "A Yes.

16 And so I'm looking at it from the standpoint of,
17 if this is in through your officer, then he is
18 setting up in his mind what he believes, that I was
19 present there to clean up some glass.

20 **MS. GARFIELD:** If you go on to further read, he
21 also admits to possibly having in his possession
22 items taken from the home.

23 **THE COURT:** Right.

24 **MS. GARFIELD:** As well as receiving \$10 for his
25 assistance.

1 **THE COURT:** Right.

2 **MS. GARFIELD:** I believe all of that compounded
3 goes beyond just mere presence, especially when
4 you're admitting to having stolen property in your
5 possession.

6 **THE COURT:** Okay.

7 **MR. WILLIAMS:** Your Honor, the fact that that
8 statement shows that I was there at the crime and my
9 receiving this, the State again still has the burden
10 to prove that, yeah, I might have received money; and
11 as the statement says, I believe that I had property
12 that belonged to the victim at the Alvin S. Glenn
13 Detention Center; when the officer based on his own
14 testimony checked and realized, okay, yeah, he was
15 wrong about that, that basically negates anything
16 else that they can possibly talk about that the
17 defendant had in his property.

18 Now, when it talks about the \$10 that I
19 received, mere presence, as you see from the
20 statement, he said he would give me \$10 for helping
21 him clean up. Again, we go back to the crucial
22 element: Knowledge. Prove beyond a reasonable doubt
23 the defendant knew what was going on when he came to
24 the scene of the crime. This is what the State has
25 to -- just mere presence basically negates the

1 element and shows that the defendant did not have
2 knowledge. He was just there at the scene, not
3 knowing what was going on. If that's a correct
4 statement of the law, that's what mere presence
5 simply establishes.

6 And since the State has -- again, it's the
7 burden of the State, and they know that this is their
8 burden to prove that my presence has to be something
9 more than just being there. I would have to know
10 what was going on. I would have to knowingly
11 participate in this.

12 Being that the statement only suggests, yes, he
13 told me if I'd help him clean up the yard, he'd give
14 me \$10, that doesn't establish that I knew what he
15 was doing.

16 Now, based on that, I mean, like I said, if
17 that's a correct statement of the law concerning mere
18 presence, then I respectfully ask this Court to
19 charge the jury concerning this, based on the
20 statement.

21 They admitted the statement. If they felt that
22 statement could have been basically excluded, then
23 that would have been the end of it. But since they
24 admitted the statement, the statement is in evidence,
25 the jury is going to have that statement to review;

1 and now the jury is going to have to determine
2 whether or not was he just there or did he know what
3 was going on and he just happened to -- you know, the
4 guy went and got him and came back and brought him to
5 the scene of the crime. That statement is going to
6 establish that the individual was just mere presence
7 there, nothing more than that.

8 **THE COURT:** Go ahead.

9 **MS. GARFIELD:** I just -- the State believes that
10 if he wants a jury to consider it's mere presence,
11 then he needs to take the stand and tell them that.
12 There is nothing in evidence to suggest that he just
13 happened to be there. Usually mere presence is used
14 as an instruction when you are trying to convict
15 someone as an accomplice or someone that's charged
16 with drugs. And that is neither the case in this
17 situation.

18 **THE COURT:** Let me just look at that a little
19 further because I am hearing both sides of this.
20 Okay. Was there anything else that we left
21 unanswered?

22 **MR. WILLIAMS:** Yes, Your Honor.

23 **THE COURT:** I'm sorry.

24 **MR. WILLIAMS:** There was one thing I really also
25 wanted charged also, is the mistake of fact of law.

1 I would respectfully ask for the Court to charge
2 that. Now, what I would like is basically this is
3 based on a case that I recited earlier about State
4 vs. Benjamin. It's 254 SC2d, page 287. And
5 basically -- basically ...

6 **THE COURT:** Okay.

7 **MR. WILLIAMS:** Yes. Basically this is what the
8 court stated in Benjamin. They stated this. A good
9 faith belief in the legality of the actions,
10 appellants' desire to explain to the jury that at the
11 time they carried out the activity for which they
12 were indicted and tried, they believed they were
13 doing a lawful act. However implausible, such an
14 explanation may have appeared. We are of the view
15 appellants should have been permitted to present
16 their side of the story.

17 Based on that, when the State submits my
18 statement in evidence, that is my side of the story
19 that must be submitted to the jury because that's my
20 statement. This Court has already determined that
21 the statement was knowingly, voluntary and --
22 knowingly and voluntarily and intelligently made at
23 the time. So, therefore, and now the jury is going
24 to make that same determination.

25 If the jury makes that determination that the

1 statement based upon that is knowingly, voluntarily
2 and intelligently given, then that becomes my side of
3 the story concerning what happens. Now establishing
4 charging mistake of law and mere presence to the jury
5 establishes the defense that should be presented to
6 the jury. If this was denied, then that would take
7 away my defense to the jury about me being present at
8 the scene of the crime.

9 **THE COURT:** Okay. All right. State?

10 **MS. GARFIELD:** Your Honor, I find it amusing at
11 this point that Mr. Williams chooses to cite the
12 ruling of the court in the middle of the sentence.
13 What he leaves out is the full sentence, is the
14 appellants contend the trial judge erred by refusing
15 to allow them to testify regarding their good faith
16 belief in the legality of their actions.

17 If Mr. Williams wants to take the stand and tell
18 them that he thought everything he was doing was
19 legal, we're all for it. But this case does not
20 suggest there should be any kind of jury instruction
21 regarding the legality of any actions. This was
22 simply a case where in Horry County the trial judge
23 did not allow the defendants to testify that what
24 they thought they were doing was legal. They were
25 charged with assault and battery of a high and

1 aggravated nature and conspiracy. They were refused
2 the opportunity to testify.

3 **THE COURT:** Okay. What you're indicating -- and
4 I have to go back to the mere presence which I'll
5 look at -- that this one is a little more firm in the
6 sense that for anyone to believe that the defendant
7 had a mistake of fact he needs to put forth that
8 affirmative evidence.

9 **MS. GARFIELD:** That's what this case holds.

10 **THE COURT:** Not to have it speculated through
11 Investigator Mead. Even though he went along that
12 line of cross examination, ultimately no one is going
13 to know what's in the mind of a person but that
14 person.

15 **MS. GARFIELD:** That's correct. That's what this
16 case is. And I have a copy.

17 **THE COURT:** I do. And I've read that part that
18 it was an issue about the testimony, about the trial
19 judge refusing to allow them to testify about their
20 good faith belief. So not allowing them to put into
21 testimony or evidence what their actual intentions
22 were or what they believed at that time. Which I'm
23 not denying you that. Of course that's your
24 decision.

25 **MR. WILLIAMS:** Your Honor, the State had ample

1 opportunity during their direct examination to --
2 being that that is my statement and that is what I
3 explained to the officer what happened, the State had
4 the opportunity during direct examination to, if they
5 decided to, they could have possibly -- well,
6 obviously though -- let me rephrase that.

7 By submitting the statement, the State is
8 basically saying, okay, well, listen, this is what
9 you said what happened. Now we're going to prove
10 that this did not happen.

11 Okay. By them presenting evidence showing what
12 the officer, Officer Rish from the Alvin S. Glenn
13 Detention Center and everything else they put up; and
14 as they tried, as they so -- as they put it, that all
15 the elements have been established because the
16 person's testimony has been presented, that the
17 element of nighttime has been established, the
18 element of consent, the element of intent; I mean,
19 consent and intent has been established all based on
20 evidence; now the only thing that this defense here
21 basically fits all of the evidence that they
22 presented before you, before the court. Because if
23 that statement goes in --

24 **THE COURT:** But what they're saying is that how
25 do we know that there is a mistake of fact in terms

1 of what your intentions are without you testifying to
2 explain that?

3 Right now the jury just has to read the written
4 statements of both yourself and then Investigator
5 Mead and then make their interpretation about it.
6 You were asking the officer about, you know, was it
7 reasonable to believe this or reasonable to believe
8 that. You got him to admit to certain answers on
9 cross examination.

10 But ultimately, there was a lot of testimony by
11 him even that he can't know that or he can't answer
12 that because he is essentially not in the mind of
13 yourself, or Mr. Bowman for that matter; and that the
14 only way to confirm the real belief is the person who
15 had the belief telling us what that belief was and
16 then the jury deciding their credibility on that
17 issue.

18 **MR. WILLIAMS:** But then we have the questions
19 that were asked that the officer answered during the
20 time of interrogation that basically would cover just
21 what we're talking about now.

22 **THE COURT:** I know. But the officer can only
23 answer those questions to the best of his ability.
24 He doesn't ultimately know what's in your mind. So
25 if he had even answered oppositely by saying I know

1 the defendant did such-and-such, he can't answer
2 that. He does not know.

3 **MR. WILLIAMS:** I understand. I understand. But
4 I'm referring to the question asked during the
5 interrogation that he asked during that time.
6 Basically most of those questions cover -- I mean, it
7 basically answers the questions that we're at the
8 court here today, whether or not what was in the mind
9 of the defendant at the time when he committed the
10 crime because when he asked --

11 **THE COURT:** But the officer cannot answer that
12 question.

13 **MR. WILLIAMS:** But, no.

14 **THE COURT:** He can only put together his clues,
15 as you said at the beginning of the trial, and then
16 surmise that he has sufficient evidence to take to
17 the Solicitor's Office for the purpose of getting an
18 indictment, you know, decided by the Grand Jury. He
19 can only pull it all together, but he doesn't
20 ultimately know what your intention was in terms of
21 what you were going to do. He's just got to put
22 together the circumstances giving rise to it to see
23 if he has sufficient evidence to meet the elements of
24 the crime.

25 **MR. WILLIAMS:** Yes, Your Honor. I would just

1 basically like to request that you allow the mere
2 presence charge to be included within your charge
3 along with, if the Court deems it possible, the
4 mistake of fact law charge as well. And I have
5 nothing further on that matter.

6 **THE COURT:** Okay. On mistake of fact, I would
7 rule with the State just based on the reason that the
8 Court has already given, because it does say where a
9 person in ignorance or honest mistake as to a fact
10 commits an act which but for the mistake would be a
11 crime there is no criminal intent. And the only way
12 to derive that is to have I believe your own
13 testimony as to what your true intent was that day.

14 Although the officer admitted through his
15 testimony in your statement he can only guess as to
16 those things and you can only get him to surmise.
17 But it's fertile ground for closing to the jury. You
18 get to raise all inferences from the evidence of what
19 that potential intent was.

20 But to actually get it into evidence, that there
21 was a mistake of doing something, then that's going
22 to have to come from that person, because that would
23 be speculation one way or the other. I wouldn't let
24 the officer be definitive to say you must have
25 intended to do that; nor would I accept it the other

1 way, that because he couldn't say that, then it must
2 be that you did not intend to. So I would
3 respectfully decline that one. Okay.

4 **MR. WILLIAMS:** Excuse me.

5 **THE COURT:** Let me go back to my mere presence.

6 **MR. WILLIAMS:** Excuse me.

7 **THE COURT:** Go ahead.

8 **MR. WILLIAMS:** That's the mistake of fact law
9 that you're referring to?

10 **THE COURT:** Yes, sir. And let me go back to
11 your mere presence a little more because I'm just
12 looking at those being charged together.

13 (Pause)

14 **THE COURT:** Are you all set for cross; I mean
15 closing and all that?

16 **MS. WEISS:** Yes, sir.

17 **THE COURT:** Just give me a second. I just want
18 to be sure I'm fair and give due deference to both of
19 these cases.

20 (Pause)

21 **THE COURT:** Okay. I've thought about this. I'm
22 going to allow the mere presence charge. I think it
23 complements the hand of one charge. I also believe
24 that by the statement coming in as evidence by the
25 State, but it's also the defendant's statement, there

1 is sufficient evidence here to support a theory that
2 he was there to assist with some glass.

3 While we do have that part in there about what
4 property he received from the house, it's not nailed
5 down, you know, as to whether it was taken, because
6 it says also touching something on the table and
7 knives. That's what he remembers. The door was
8 open. Then he was told to come in. You know, just
9 all these things suggesting it. So I think it's a
10 fair charge based on the statement. Okay.

11 **MR. WILLIAMS:** Thank you, Your Honor.

12 **THE COURT:** Anything else?

13 **MS. GARFIELD:** Nothing from the State.

14 **THE COURT:** Okay.

15 **MR. WILLIAMS:** No, nothing.

16 **THE COURT:** All right. We are ready to proceed
17 then.

18 **MS. GARFIELD:** Your Honor, Ms. Weiss, she is
19 actually doing closing. She just actually ran to the
20 bathroom.

21 **THE COURT:** Oh, I'm sorry. I didn't notice she
22 was gone. Okay.

23 **MS. GARFIELD:** Your Honor, while we are just on
24 the record, if I can go ahead and put on there.

25 **THE COURT:** Yes.

1 **MS. GARFIELD:** As far as the certified
2 convictions that were introduced, the entire
3 indictment was actually introduced. But for purposes
4 of going back to the jury, I'd suggest that we just
5 send back the top page because the back page actually
6 shows the facts of the case, and that may be unduly
7 prejudicial to the defendant.

8 **THE COURT:** Okay. And I did want to avoid that.

9 **MR. WILLIAMS:** Excuse me, Your Honor.

10 **THE COURT:** Yes.

11 **MR. WILLIAMS:** Yesterday me and Ms. Weiss was
12 talking about one of the fingerprint cards that you
13 have. If you're going to submit that to the jury, it
14 had a listing on the back about convictions or where
15 they got the prints from.

16 **THE COURT:** Thank you. I thought you all had
17 redacted that.

18 **MR. WILLIAMS:** Yeah. I believe that's the one
19 right there that she was just referring to. I mean,
20 we could have the other one submitted. I would have
21 no problem with the other one being submitted, but if
22 we can leave that one out?

23 **COURT REPORTER:** Is that No. 14?

24 **MS. GARFIELD:** Yes, ma'am.

25 **COURT REPORTER:** It's not in evidence anyway.

1 It's just ID according to my record.

2 **MR. WILLIAMS:** All right.

3 **THE COURT:** Okay. Well, then you all need to be
4 sure of that. If it's only for I.D., it probably
5 does not need to be an exhibit on this table so you
6 don't mistakenly refer to it.

7 **MS. GARFIELD:** Ms. Weiss may use it though.

8 **THE COURT:** Yeah. You can't use something in
9 closing if it's not evidence.

10 **COURT REPORTER:** I was going to ask them that
11 before they took it back when I got a chance.

12 **MS. GARFIELD:** It's been used for I.D. purposes,
13 used for demonstrative.

14 **THE COURT:** Go ahead. Go ahead.

15 (Pause)

16 **THE COURT:** Okay. I'm going to set some ground
17 rules for the closing. As we've indicated, both
18 sides need to approach by the podium. So, Mr.
19 Williams, you're able to go just as far as the State
20 has with the podium, and the podium will serve as a
21 buffer between both the State and Mr. Williams and
22 the jury.

23 Additionally, after the conclusion of the
24 closing arguments, you all need to check the evidence
25 along with the court reporter for what actually got

1 admitted into evidence because only that goes back to
2 the jury.

3 Also just so you'll know for your instructions,
4 Mr. Williams, closing arguments must be based on
5 evidence actually heard in this courtroom, which is
6 testimony by the witness, not what either lawyer,
7 including yourself, has said to the witness. Any
8 statements out of the mouths of the parties trying
9 the case, that is not evidence. It's the testimony
10 by the witness. Because then if you say they said
11 such-and-such, it can't be from something from your
12 mouth. It has to be from their mouth, because that
13 is their testimony.

14 The same thing with the documents and evidence.
15 Only those things and the reasonable inferences
16 therefrom are what is allowed to be presented to the
17 jury. Nothing not contained in this courtroom, you
18 know, those types of things, but reasonable
19 inferences from what has been conducted during the
20 trial is fair game.

21 **MR. WILLIAMS:** Okay.

22 **THE COURT:** Okay. Any questions, concerns?

23 **MS. GARFIELD:** No, Your Honor.

24 **THE COURT:** Okay. Jurors, please. And I will
25 apologize to them profusely on behalf of the parties

1 as well, because somebody apparently didn't get the
2 word to them to not leave that room. And I did not
3 say that.

4 (Jury in at 2:37 p.m.)

5 **THE BAILIFF:** The jury is seated, Your Honor.

6 **THE COURT:** Okay. Ladies and gentlemen of the
7 jury, I apologize profusely on behalf of all the
8 parties. Apparently a message may not have gotten to
9 you all. But we ordered the lunch. It was with
10 grand intentions. We stayed in here and continued to
11 work. But once we, you know, gave them a brief break
12 to eat themselves, there were some other additional
13 arguments the Court had to take up.

14 I did not know that you all thought you could
15 not leave that room, because I would never do that.
16 I am very sensitive to the four walls in there and
17 how claustrophobic that can be and just generally.
18 So I apologize if that was the case. Because while
19 the lunch was there, unless you all are deliberating,
20 you all have to stay in the room; but otherwise
21 leave, get your freedom, talk, do whatever. So I
22 apologize to you that that message did not get to
23 you.

24 I did have some independent witnesses verify
25 that I said that. So I'm sorry for that. But

1 anyway, we are at the conclusion of the trial. The
2 State has rested. I dealt with their legal
3 arguments. And then now, Mr. Williams, you can
4 indicate your intentions on whether or not you intend
5 to present a case.

6 **MR. WILLIAMS:** Yes, Your Honor. The defense
7 would rest.

8 **THE COURT:** Okay. The defense rests. At this
9 point I would have been sending you back out, because
10 I told you at the end of the legal theories, in
11 anticipation of already knowing that, I have taken
12 care of that. So we've got a little bit of credit
13 that you don't have to go back out and come back in.

14 We are at the conclusion of the trial now. So
15 we are ready for the closing arguments of both
16 parties. I remind you that closing arguments are not
17 evidence. None of the statements by the counsel for
18 the State or Mr. Williams in representing himself are
19 evidence. You are to be reminded that the evidence
20 is the actual testimony of the witnesses in this case
21 and any documents that will be presented to you that
22 were actually admitted into evidence. Only those
23 things will go back to you in the jury room.

24 The parties do, however, have the ability to
25 recall the testimony and help assist you with

1 recalling the testimony and any reasonable inferences
2 that could be drawn from that testimony. But they've
3 been told that we are limited to what the proceedings
4 were within this courtroom, and that is their
5 limitation in terms of recalling it as well as
6 drawing inferences therefrom.

7 Thank you for your time and attention to the
8 matter. And now we'll proceed with closing arguments
9 by the State.

10 **MS. WEISS:** May it please the Court, Your Honor.
11 On July 12th, 2007, sometime right around 8:30, Dr.
12 Peter Sederberg decided to go see a movie with his
13 friends. He was living alone in his home with his
14 dog and his cat.

15 When he left that night it had not yet gotten
16 dark. It was just before sunset. He didn't leave on
17 any outside lights. He had a For Sale sign in his
18 front yard and no cars in his driveway. And he left
19 expecting to return just the way he had left his
20 home.

21 During the time he was gone, sometime between
22 when he left at 8:30 and when he returned home at
23 11:30, Darrell Williams went to his house, broke
24 through his daughter's bedroom window, climbed in,
25 took some gold jewelry that he could get quick cash

1 for, dumped out the dragon piggybank, grabbed up some
2 coins and left, hoping never to be heard from again.

3 Ladies and gentlemen, when Dr. Peter Sederberg
4 got home and found his daughter's room had been
5 violated, his life at that point was changed. And
6 that's why we're here today. This case is about
7 choices and consequences. Because of the choices
8 that Darrell Williams made on July 12th, 2007, lives
9 have been changed.

10 Good afternoon. My name is Heather Weiss. And
11 this is the first opportunity I've had to introduce
12 myself to you. I along with Dolly Garfield represent
13 the State of South Carolina. And before we go any
14 further, I want to thank you for being here. As the
15 judge said, you're going to hear that several times,
16 but we really do appreciate you being here. This
17 case has gone on for a couple of days, and I'm sure
18 there are plenty of other places that you would
19 rather be at this time. But it is of utmost
20 importance to the State as well as to the defendant
21 that you're here, because without you justice would
22 stop. So I want to thank you.

23 Now, when you came into this courtroom a lot of
24 things were left outside the doors. But the one
25 thing that we ask you to bring in here with you is

1 your common sense, that which you have gained from
2 your life experiences. That is the most important
3 thing we want each of you to bring with you to the
4 decision that you have to make in this case. Please,
5 use your common sense. Use what you know about
6 people, your ability to judge people, what they're
7 saying, why they're saying what they're saying. Use
8 all of those abilities that you've gained over your
9 lives when you judge the evidence in this case.

10 Now, you took an oath when we began this trial.
11 And in that oath you promised to judge this case
12 based on the evidence and the facts as they are
13 presented. The judge is going to instruct you and
14 has instructed you thus far and will instruct you
15 again, the only evidence in this case comes from that
16 jury box or these pieces of evidence that you'll be
17 able to take back with you in the jury room.

18 Nothing that I have said, nothing that Ms.
19 Garfield has said and nothing that Darrell Williams
20 has said can be considered evidence. The only
21 evidence comes from that witness stand and from these
22 pieces of evidence. And I ask you to consider that
23 as you're listening to the closing arguments and when
24 you go back to deliberate.

25 Now, there is a split. You are the judges of

1 the facts. You are the only judges of the facts.
2 And Judge Childs is the judge of the law. She is
3 going to instruct you on the law that you have to use
4 in deciding this case. At this point I am going to
5 go over some of the law just so that you have a frame
6 for what we will be discussing in the closing
7 arguments and also show you how the State sees the
8 facts.

9 I know that you are the ultimate judges of the
10 facts and that Judge Childs is the ultimate judge of
11 the law. If you disagree with something I say, you
12 are the judges. I'm going to just show you how the
13 State sees the facts. And if I say something that
14 differs from what Judge Childs says, please, by all
15 means, take what she says, because she is the
16 ultimate judge of the law.

17 There are a couple of terms of art, legal terms
18 that will be used when we are discussing the way that
19 you are to apply the laws to this case. First of
20 all, the State has the burden to prove to you beyond
21 a reasonable doubt the facts in this case. A
22 reasonable doubt is proof beyond a reasonable doubt
23 is that which leaves you firmly convinced that
24 something is true. So it's not beyond all doubt.
25 It's not beyond any doubt. It's not beyond a shadow

1 of a doubt. No one knows anything to an absolute
2 certainty unless they were absolutely there and part
3 of what was going on. We do not expect you to know
4 this to an absolute certainty.

5 We submit to you now that the facts are in and
6 when you review the facts that you will know, that
7 you will be firmly convinced that you will know
8 beyond a reasonable doubt that Darrell Williams is
9 guilty of these crimes.

10 There will be both direct -- there has been both
11 direct and circumstantial evidence. Direct evidence
12 is that which can be touched or tasted or felt or
13 heard or seen. That evidence has been submitted to
14 you by the witnesses in this case. There is also
15 circumstantial evidence, that which can be inferred
16 from the facts as they have been laid out. Both of
17 those are to be given equal weight.

18 If you believe something is a reasonable
19 inference from the facts that have been laid out,
20 that is circumstantial evidence and that is evidence
21 that you can consider and a conclusion that you can
22 come to. And direct evidence is that which has been
23 testified to directly from the stand.

24 Credibility is a big part of this case. You are
25 the ultimate judges of credibility. That comes back

1 to the common sense I was talking about just a minute
2 ago. Use your common sense. Decide who and what is
3 credible, who and what is not credible. Decide who
4 has something to lose and who has something to gain.
5 You are the ultimate judges of that. You decide the
6 credibility of each piece of evidence as well as the
7 witnesses who testified to that evidence.

8 There is a concept called the hand of one is the
9 hand of all. You heard Investigator Mead testify to
10 that. Basically that means if two people are acting
11 together, one person commits the actual crime, say
12 one person shoots another person but the other person
13 is there and helps drag away the body, those people
14 are acting in concert. Both people do not have to
15 pull the trigger to be guilty of that crime. That is
16 a concept the judge is going to explain to you.

17 There is something I want you to keep in mind,
18 especially when listening to the defense's version of
19 this case. If two people are present at the
20 commission of a crime, it matters not by whose
21 immediate hands or agency the crime is committed, all
22 are equally guilty.

23 And finally, the crime of burglary in the first
24 degree. This is the case that we are here about
25 today. These are the elements that we have been

1 discussing that we will continue discussing until the
2 conclusion of the trial, until the conclusion of the
3 case.

4 First of all, in order to be guilty of burglary
5 first, a person must enter a dwelling or a home. I
6 think it is undisputed in this case Dr. Peter
7 Sederberg lived in that home for approximately 35
8 years with his family. That was his home. There is
9 no doubt this was a dwelling.

10 Two, without consent. Not without general
11 somebody said, hey, go in that home. Without consent
12 of the person in lawful possession of that home. You
13 heard from Dr. Peter Sederberg he lived in that house
14 for 35 years. He didn't know Darrell Williams. He
15 never gave him consent. And he made it pretty clear
16 he didn't give anyone consent to break through the
17 back window of his house and crawl in through the
18 window without consent.

19 And with the intent to commit a crime. That
20 intent starts when the person crawls through the
21 window. And no matter whether or not he picks up
22 anything when he's inside, if he intended to commit a
23 crime when he got inside, then he's guilty of
24 intending to commit a crime and guilty of burglary
25 first.

1 But then, ladies and gentlemen, once he goes in
2 and takes pieces of jewelry and dumps out a dragon
3 bank and takes change, that's a petit larceny. If
4 the value of those goods were less than \$1,000, it's
5 a petit larceny. And that's actually a crime.
6 Intent to commit a crime can be inferred from the
7 fact that the crime was committed once they got
8 inside. And in this case I submit to you immediately
9 once they got inside, right inside the window,
10 immediately started taking goods from the home. That
11 intent to commit the crime was present through the
12 time he crawled through the window.

13 And then finally, in order to be a burglary
14 first, there are two elements here. One is that he
15 enters or remains during the hours of darkness; or,
16 and I made that very big because it's an either/or;
17 or he has two or more prior burglary convictions.

18 Something that's important about the hours of
19 darkness is he enters or remains during the hours of
20 darkness. Dr. Peter Sederberg left that house about
21 8:30. Sunset was 8:37. The question is: Did
22 Darrell Williams either enter or was he still inside
23 when that sun finally went away? We're talking about
24 a matter of minutes, ladies and gentlemen. I submit
25 to you the circumstantial evidence is, considering

1 the amount of things that were done once Darrell came
2 inside that house, that whether or not he actually
3 crawled through that window when it was dark; I
4 submit to you he probably did, it got dark before he
5 crawled back out. And he was still inside during the
6 hours of darkness.

7 But even if you don't believe that completely,
8 then, number two: The defendant has two prior
9 burglary convictions. And, ladies and gentlemen, I
10 have here two prior burglary convictions, two
11 different burglary first convictions that Darrell
12 Williams has been convicted of. It's been stipulated
13 to that these do exist and they are in evidence.

14 Now, those are the laws that we are going to be
15 talking about. I'm just going to go briefly through
16 the facts of this case. First of all, I want to get
17 something out of the way to begin with. Credibility.
18 You are the judges of the credibility.

19 We have all kind of gotten distracted by
20 something that was brought out in the defendant's
21 statement. You will have this back there with you to
22 look at. What I want to make perfectly clear, this
23 is the statement of Darrell Williams. On July 31st,
24 2007 he was arrested for burglary first. He was
25 given -- he was served with his warrant and he was

1 given notice that he was being charged with breaking
2 into this home on Edisto and that his fingerprints
3 were at the scene.

4 From July 31st to August 15th Darrell Williams
5 came up with his statement to explain how his
6 fingerprints got to the scene. I submit to you he
7 had to come up with something that had some truth to
8 it because he was there; his fingerprints were there.
9 Then he had to come up with some way of explaining
10 it. And how did he choose to do that?

11 Jimmy Bowman. We talked a lot about Jimmy
12 Bowman. However, I submit to you first and foremost
13 that, did Joli Rish know that the Jimmy Bowman that
14 was in jail was this Jimmy Bowman? No. Absolutely
15 not. But even more than that, I submit to you
16 Darrell Williams doesn't know if that Jimmy Bowman
17 was this Jimmy Bowman because this Jimmy Bowman never
18 existed at this crime scene.

19 This Jimmy Bowman was somebody that he knew;
20 it's not a made up name, that he knew from Columbia
21 and that he knew law enforcement may know something
22 about and was a good name to name. Unfortunately for
23 him, he didn't realize Jimmy Bowman happened to be
24 incarcerated when this crime was committed. Jimmy
25 Bowman wasn't at that scene.

1 That's not the case that the State is putting
2 before you. The State is putting before you what the
3 State can prove, and that's that Darrell Williams
4 broke into Peter Sederberg's house and stole goods.

5 As he stated, he gave his version of the
6 statement here when he was able to write out in nice
7 handwriting what he was being accused of or explain
8 what he was being accused of.

9 He says here: I asked whose house it was. He
10 said it belonged to his girlfriend. I thought he was
11 telling the truth. It doesn't matter if he was
12 telling the truth that it belonged to his girlfriend.
13 Even if this Jimmy Bowman did exist, I guarantee to
14 you, if his girlfriend had lived there, which he
15 didn't because Mr. Peter Sederberg lived there, that
16 his girlfriend didn't tell him to break in the back
17 window, shake out a piggybank and steal goods out of
18 her house.

19 So the standard is not just generally what might
20 have been going through Darrell Williams's mind. The
21 standard is what a reasonable person would believe.
22 You are reasonable people. There is a broken back
23 window but you believe that this belongs to his
24 girlfriend who he later does quote and say he said:
25 Fuck that bitch, let's go. Excuse my language.

1 That's what's right here in the statement. Let's go.

2 He says that this person said that, but he
3 believed he had a reason to go in? He asked if he
4 needed gloves to clean up glass? Clean up glass?
5 Glass that was still laying everywhere when Dr. Peter
6 Sederberg came home?

7 Ladies and gentlemen, this statement had to be
8 false. Jimmy Bowman was in jail. There was no
9 girlfriend. He knew that white people lived there
10 because he was inside the house and probably saw
11 pictures in the house. That's how he knew that this
12 belonged to a white person. He knew he had touched
13 glass because he had broken the windows and set the
14 glass down, not because he had cleaned anything up.
15 The glass was still there.

16 Then he says he got \$10 for helping him clean
17 up. This was a great statement. And he gave some
18 more about himself. Then we get to the part of the
19 statement. This is what he had come up with while he
20 was sitting in jail. And that Investigator Mead, a
21 career investigator with the City of Columbia Police
22 Department begins to ask him questions.

23 Did you ever go inside the house? Because right
24 here, this is talking about his consent. He knew the
25 elements of the burglary. He knew what he was being

1 charged with. He knew how burglary worked, and he
2 was trying to explain that away. But he didn't talk
3 about going inside the house. He talked about
4 getting money and touching the glass.

5 "Q Did you ever go inside the house?

6 "A Yes. He told me to go inside and help him
7 clean up.

8 Of course it wasn't cleaned up inside the house.
9 So now all of a sudden he's getting asked about
10 that.

11 "Q How did you get inside?

12 "A He told me to climb through the window.

13 His girlfriend? But then he said Jimmy told me
14 he already had the door open. Afterthought. Wait a
15 minute. But he already had the door open. I need to
16 put this back on Jimmy.

17 He told me to climb through the window. So I
18 climbed through the window even though he already had
19 the door open? I didn't ask to go around to the
20 door. He told me to climb through the window.

21 Ladies and gentlemen, Dr. Peter Sederberg didn't
22 notice about the back door. I submit to you perhaps
23 it was locked back. I think this, I submit to you
24 that this is what Darrell Williams was doing because
25 he might have realized that there was something on

1 the back door. So he went ahead and threw this in
2 there. This is Darrell Williams. He climbed through
3 the window.

4 "Q What else did you touch inside?

5 "A The table. One table had a bunch of knives on
6 it.

7 He had to have been in this house. Dr. Peter
8 Sederberg said: My daughter had a knife collection
9 and she had a table in her room. It's a very unusual
10 fact for Darrell Williams to have known. He was in
11 there and he was snooping around because he said it
12 was a cluttered table that just could have had some
13 of her knives on it. He was looking around, looking
14 for stuff to steal.

15 "Q What property do you have from this house?

16 "A I have a silver school graduation ring in my
17 property at the jail.

18 Not I might. I have. He knew he took a ring
19 from there. He knew he had a ring in his property,
20 and he thought it was from this house.
21 Unfortunately, for Dr. Sederberg, he was wrong. But
22 he took the ring because he is the one that knew a
23 ring was taken.

24 "Q Did Jimmy Bowman go inside the house?

25 "A Yes.

1. No sign of Jimmy Bowman anywhere in this house.

2. "Q Do you know what he took?

3. "A No. He had a small pouch in his hand, but I
4. don't know what was in it.

5. "Q And who broke the window?

6. "A Jimmy before I got there.

7. Jimmy's prints are nowhere in this house. They
8. are nowhere on that glass. There are lots of prints.
9. Buddy Rose told you there are lots of prints on that
10. glass, none belonging to Jimmy Bowman. They all
11. belonged to Darrell Williams.

12. Credibility, credibility of this statement, I
13. submit to you the most credible part of this
14. statement is not this. You can look at it. It's
15. what he answered when he started getting pinpointed
16. questions about this crime, things that only the
17. burglar could have known.

18. All of a sudden he didn't just get the \$10 that
19. he mentioned here. All of a sudden he also had a
20. ring. Things, there are inconsistencies. Because,
21. ladies and gentlemen, this is Darrell Williams's
22. story and within here you can find the truth.

23. Did he leave through the back door? Did he feed
24. the dog and the cat? That might explain some things,
25. but only the burglar would know that.

1 Now I'm going to talk to you about the facts
2 that were presented. One, you heard from Dr. Peter
3 Sederberg. He stated already he lived alone with his
4 dog. He left the perfect scene for a crime. This is
5 coming back with you into evidence. Here is the
6 house. You see all the woods and the greenery with a
7 For Sale sign. The house was dark and it would have
8 looked dark from the street at night. This is the
9 back of the house. There's lots of bushes, lots of
10 foliage to cover him up.

11 And once the sun set, and I submit to you,
12 ladies and gentlemen, if somebody is going to wait
13 until 8:30 to break into a house when it's going to
14 be dark by 9:00, I submit to you he waited 'til 9:00.
15 And perhaps, I submit to you, that explains why more
16 things maybe weren't gone through because perhaps he
17 waited closer to 11:30 and heard the car come up the
18 driveway, the driveway which would have come up right
19 about here to the carpet. And when he came in the
20 side door, Darrell Williams could have gone right
21 back out that window.

22 So he came to the perfect house when Dr.
23 Sederberg left with no lights on. And at night it
24 would be very difficult to see anybody right there,
25 would give him perfect time to work on getting in

1 that room.

2 And when Dr. Sederberg got home, saw that window
3 broken, saw his daughter's window broken, it looks
4 like a high window except that you can see it from
5 the back. Actually the top window would be easier
6 for somebody to climb in because the top window is
7 right here; when he saw the window broken he
8 immediately called the police. At 12:13 at night he
9 calls the police.

10 The police came out, and he showed them the
11 glass that was laying on bed, the glass that was in
12 the house, the glass that was outside laying out here
13 on the ground. No glass had been cleaned up. Glass
14 was still laying around.

15 And you can look at this. You can see somebody
16 rifled through the drawers and the jewelry only
17 taking what could be quickly melted down and sold,
18 gold. Notice in the property was left with silver.
19 The gold had been melted down. But he rifled
20 through.

21 The dragon that had been on the bed with a
22 couple of coins around it had been shaken out. And
23 the little box right inside the next room. This is
24 in the back. He broke in here, got into here, got
25 that, and then for whatever reason didn't keep going

1 in there and left, only taking what could be dumped
2 right out of that little box, the gold phi beta kappa
3 key and the gold college ring.

4 He called out Officer Calby. Officer Calby
5 looked around and said he saw the glass everywhere
6 and he wrote down what had been taken. Then Officer
7 Rose came out the next morning. When he came out he
8 explained to you in great detail the perfect print,
9 the perfect print taken off the giant piece of glass
10 where somebody using all of their fingers had
11 carefully placed that glass on the bed.

12 Those are the fingers that he was able to get a
13 match, able to run through the database and come up
14 with a match and get an inked print to make this.
15 And he explained to you how he went through. You
16 were able to watch him as he did it. He came up with
17 15 points that matched. Not three, not ten that are
18 required, but 15.

19 With one finger he had said he could have
20 declared this a positive patch. A positive match to
21 who? To Darrell Williams. He matched it. Not only
22 did he do this positive match, but he drew these
23 hands. And he showed you one, two, three, four, five
24 different fingers off the hands of Darrell Williams
25 positively matched to the numerous fingerprints, all

1 these fingerprints that were taken off of different
2 pieces of glass inside and outside, not cleaned up
3 and thrown in a bag, laying around inside and
4 outside. And you will have all of this with you, all
5 of these prints, all that belonged, all the ones that
6 could be identified belonging to Darrell Williams.

7 He had this card that he was able to match him
8 to and then came to the courthouse, met with Darrell
9 Williams and personally rolled this card just to be
10 absolutely certain that these prints matched these he
11 had matched to the crime scene. And he could tell
12 you for sure that these prints belonged to that
13 Darrell Williams, that that Darrell Williams matched
14 the prints that were found at the house.

15 And after Officer Rose testified you heard
16 from Investigator Mead. Investigator Mead did not --
17 he didn't know Darrell Williams, but he had a
18 fingerprint match. And he got a picture of who he
19 was because he had already been arrested on -- or he
20 hadn't been arrested actually. He had a fingerprint
21 match and he got a picture of Darrell Williams once
22 he got the information on Darrell, and he took that
23 to Dr. Sederberg and said: Do you know this man?
24 His daughter happened to be in town. Do you know
25 this man? Nobody knew Darrell Williams. He was not

1 given any consent to be in that house, had no reason
2 that his fingers would be on that glass.

3 At that point he issued a warrant for the arrest
4 of Darrell Williams. He brought Darrell up, and
5 Darrell waived all of his rights after having 15 days
6 to think about it and gave that confession we have
7 already gone through. He gave that statement that
8 let me write out my own statement. He gave that
9 statement.

10 But he didn't know what all Investigator Mead
11 knew. When Investigator Mead started asking him the
12 pointed questions, then he couldn't quite keep his
13 story straight. All of a sudden his story started to
14 differ. And at that point he was able get him to
15 confess that he had taken a ring from this residence.
16 Only the burglar would know that a class ring is what
17 had been taken.

18 He took the class ring. He got him to confess
19 he had crawled through the window although the door
20 was supposed to be open. And he got him to confess
21 that -- he confessed that he crawled through, that he
22 took the ring. And when he got him to talk about the
23 inconsistencies. He said he was paid to clean up
24 glass, although the glass was never cleaned up.
25 You've got the inconsistency with that and the ring

1 he had taken.

2 Oh, and by the way, he did touch a table in
3 there. Not sure where his fingerprints would be
4 found, a table that only somebody inside that house
5 would know even existed.

6 Ladies and gentlemen, Darrell Williams chose to
7 commit this burglary on July 12th. Darrell Williams
8 chose to represent himself in this case even though
9 he was offered an attorney and was given an
10 investigator. He was even given shadow counsel.

11 But the bottom line is, this is not a game.
12 This can't be solved. We can't sit down, look
13 through a couple of cards and decide that Professor
14 Plum committed the crime in the library with the
15 candlestick. Because this is real life. We don't
16 all finish the game and go back to life as usual.

17 Peter Sederberg's life was changed. This is
18 about choices. Memories are now lost. Items are
19 gone from the Sederberg household that they can never
20 get back.

21 Darrell Williams made a quick choice that night
22 to climb in and get the things that would give him
23 quick money. It's time for him to pay the
24 consequences for that choice. Ladies and gentlemen,
25 when you go back to deliberate, I ask that you come

1 back and find Darrell Williams guilty of burglary in
2 the first degree and petit larceny. Thank you.

3 **THE COURT:** Okay, Mr. Williams. You may
4 proceed.

5 **MR. WILLIAMS:** Yes. Thank you, Your Honor.
6 Good afternoon, ladies and gentlemen of the jury.
7 Once again, as the solicitor said, I want to thank
8 you for being here today and I want to thank you for
9 giving us your time and your attention to decide the
10 matter of State of South Carolina vs. Darrell
11 Williams.

12 Now, when I first began my opening arguments to
13 you yesterday, as the solicitor said, this is not a
14 game. And there is no doubt that this is not a game.
15 This is a real-life situation and real people are
16 involved in this situation.

17 The only question that becomes now is, just like
18 with anything else, as the judge is going to charge
19 you concerning this, has the State beyond a
20 reasonable doubt proved that I was there and that I
21 did not have consent?

22 What I'm asking the jury here to do today, when
23 you go back in that room and deliberate, consider,
24 one, the consent; two, whether or not intent. And
25 when I go on that, I'd basically like to cover this.

1 The State is required beyond a reasonable doubt to
2 prove that I committed this crime and that I did not
3 have consent to be in the house.

4 Now, the State has argued or they have presented
5 before you that all the whole time, yes, the witness
6 got on the stand and testified I did not have consent
7 to be there. My fingerprints show up at the scene of
8 the crime. Yes, they do. But when you go back and
9 review that statement, you will see in that statement
10 at no time have I ever denied being there at the
11 scene of the crime. At no time have I ever told the
12 officer that, no, I was never there.

13 Now, the State will have you believe that, oh,
14 he just made up a story after 15 days sitting in the
15 county jail waiting for this officer to come and get
16 me to give a statement. Now, what the State has
17 failed to prove with all the evidence or testimony as
18 to why this officer came and got me.

19 Now, there is no testimony at all that I knew
20 the officer was coming to get me in 15 days. So
21 while I'm sitting there in the county jail, the State
22 has failed to prove that this statement was all of a
23 sudden, well, I'm sitting back here in the county
24 jail and I've got to think about something to say
25 because I'm arrested for a crime, when there is no

1 proof from the testimony of the officer or presented
2 by the State to show that I knew he was coming to get
3 me to give a statement. The State must prove beyond
4 a reasonable doubt that I knew this man was coming to
5 get me, the officer, the investigator in this case --

6 **MS. WEISS:** Objection, Your Honor. The State
7 does not have a burden of proof of that at all. It's
8 misstating the law, Your Honor.

9 **THE COURT:** Okay. You'll just need to limit
10 yourself to what is at issue in this trial.

11 **MR. WILLIAMS:** Okay. Basically what's not
12 happened was the State has presented again no
13 evidence concerning this. They have told you that I
14 was sitting there in the county jail waiting 15 days.
15 There is no proof of that. You are in charge of the
16 facts. You have the opportunity to review the
17 evidence.

18 If need be, you can have the testimony read back
19 to you concerning this to determine for yourselves
20 whether or not there is any testimony concerning
21 that, yeah, as the State has said, that I was sitting
22 back there in the county jail waiting for him to come
23 so I can give a statement that I made up. There is
24 no proof of that. Credibility? Yeah, let's deal
25 with credibility.

1 Credibility is that after 15 days Investigator
2 Mead comes to get me from the Alvin S. Glenn
3 Detention Center without me even knowing what the
4 purpose of this was. Yes, the officer came and got
5 me, brought me down to the City of Columbia Police
6 Department and questioned me. He questioned me about
7 what happened on the day of July 12th, 2007. I told
8 him exactly what happened.

9 Now, the State has the burden to prove that what
10 happened was not done within the confines of the law.
11 And when we deal with the consent, the State must
12 prove that on this particular day, while the victim
13 has testified that he did not give me consent, but
14 the State has failed to establish one thing. You
15 will have the statement back there with you to read.
16 The statement is making reference to another person
17 that was there at the scene of the crime with me.

18 The State has got to prove that the victim, not
19 me, giving me consent; the State must prove beyond a
20 reasonable doubt that he didn't give him any consent
21 to be there. The victim has not presented no
22 evidence --

23 **MS. GARFIELD:** Objection, Your Honor. That's
24 not what the law states.

25 **THE COURT:** Okay.

1 **MS. WEISS:** That's misstating the law.

2 **THE COURT:** Thank you. And I'll sustain the
3 objection. Remember that any statements by counsel,
4 including him representing himself, are not evidence.
5 You will listen to the facts and testimony, but then
6 the law will be as I state it is.

7 **MR. WILLIAMS:** Now, being that the State, being
8 that this statement has been submitted and will be
9 submitted back there with you, now the State has to
10 present evidence concerning whether or not the
11 consent was legal.

12 Now, there is no question by the defense at all
13 that Mr. Sederberg had legal consent, because this
14 was his house. I am not making an accusation that,
15 no, Mr. Sederberg didn't own the house, because that
16 would be false. I am going along with the evidence
17 that's been presented. Mr. Sederberg had legal
18 custody of that house. That's what it is. I'm not
19 making no other objections to that.

20 What I'm asking you, the jurors, to look at is
21 when you go back there and you review the evidence,
22 consider, consider this. If Mr. Bowman and Mr.
23 Sederberg's daughter did have a relationship, now the
24 question becomes if they did, did Mr. Sederberg at
25 any time before --

1 **MS. GARFIELD:** Objection, Your Honor. He is
2 arguing facts that are not in evidence.

3 **THE COURT:** You need to contain yourself to the
4 facts in this case and the reasonable inferences
5 therefrom.

6 **MR. WILLIAMS:** Excuse me, Your Honor. May we
7 approach, please?

8 **THE COURT:** Yes, you may.

9 (Whereupon, a bench conference is had)

10 **MR. WILLIAMS:** Let's deal with some of the
11 elements that the State has proved and shown with
12 that little diagram out there that day. I believe
13 one of the things they had was concerning the hands
14 of one, hands of all. Is that document still over
15 there somewhere?

16 Now, the State has read this off to you. And it
17 says when two or more persons are acting with a
18 common design or intent. Where in the statement does
19 it establish based on the statement that there was a
20 common design or intent? That's the question. If
21 the State or the judge -- and the judge is going to
22 charge you concerning this. What this is, the law,
23 what it says is when two or more persons acting with
24 a common design or intent. Common design. That
25 means there must be some proof that this was all a

1 setup. There must be some proof that this was just
2 my intention to just come out that day, get with Mr.
3 Bowman and commit a crime.

4 Where is the proof that there was a crime that
5 was committed on my behalf? Where is the proof to
6 show that we acted with a common design or intent?
7 Where is the proof of this? There is nothing in the
8 record, nothing from any testimony by any of the
9 witnesses to show that there was a common design or
10 intent.

11 The statement clearly indicates that on this
12 particular day while coming from some place else he
13 met up with another individual by the name of Jimmy
14 Bowman. Now, let's stop right there for a minute
15 because the State made a lot of references to him.
16 The State says Mr. Bowman does not exist. That's
17 what they say. But where is the proof that he don't
18 exist?

19 They tell you you're not to believe my statement
20 and they're telling you to basically use -- that this
21 is an issue dealing with credibility. But if the
22 State is sitting back attacking my credibility in
23 that statement, then the State should be willing to
24 come forward with evidence to prove this. The State
25 has sat here and told you that, no, don't believe his

1 statement because it was made up. Where is the
2 proof, ladies and gentlemen of the jury, I ask you?
3 Where is the proof? The prosecution is expecting you
4 to just accept blindly that this is what they
5 presented as they presented it, this is the way it
6 should be? Consent.

7 During the time that the crime was committed,
8 the defendant, myself; whereas the State has informed
9 you and the judge is also going to also tell you
10 about, too, I represent myself. I'm not saying that
11 this is a game. I'm not playing like this is a game.
12 This is a very serious matter. But it was my choice.
13 Just like it's our choice, it is your choice, it is
14 your obligation as jurors to sit here and judge me
15 and the State's case fairly between everybody.

16 Now, in doing this, in making this judgment,
17 we're going to deal with one particular fact. When
18 you go back there, consider this. Was the
19 defendant's presence, did this merely either -- based
20 on the statement the defendant was actually asked to
21 go with another individual coming from some place
22 else to go to the scene of the crime?

23 Now, in defendant's judgment, based on the
24 statement, ask yourselves: Did he reasonably legally
25 believe in his -- excuse me. Did he believe based on

1 his statement that what he was doing was not unlawful
2 but was lawful?

3 Because if you, the jurors, determine that,
4 yeah, okay, he was there but there's nothing actually
5 showing that this was what him and Mr. Bowman put
6 together that day to go and say, okay, well, listen,
7 what we're going to do, we're going to put together
8 this whole common design or plan to go rob a house
9 that day, there is nothing to suggest that there was
10 a common design for me just to fabricate a statement
11 just to satisfy the case. Because the State is
12 making believe, okay, well, listen, yes.

13 Now, let me say this before I go any further. I
14 am making no issue about that I'm an angel. You will
15 have proof to show that I committed prior crimes.
16 But now, that is just a simple element of the
17 offense. Do not, I ask you respectfully, allow them
18 to have you believe, well, if he committed that crime
19 before, he had to do it again. That's not the case,
20 ladies and gentlemen of the jury.

21 What the facts are is just this; what happened
22 now, not what happened in the past but what's
23 happening now. Is there evidence presented by the
24 State to show that me, Darrell Williams, committed
25 the crime of burglary in the first degree? This is

1 what's before you. The past record is only there,
2 and the judge will instruct you, it's a limiting
3 instruction to determine a certain element of the
4 offense.

5 Now, if based on the evidence that was
6 presented, if Mr. Bowman informed me that this was
7 his girlfriend's house; now, the State also went into
8 detail concerning, said, okay, well, listen, he
9 referred to it, said, well, listen, let's go --
10 excuse my language -- fuck that bitch; the State acts
11 like this is something, something new.

12 Like sometimes, we've all heard it, sometimes
13 men themselves, we get to a point we get upset, we
14 curse. I ain't saying everybody. I'm not saying
15 everybody. But sometimes when people say words, they
16 refer to women in derogatory manners. I mean, some
17 of you might have heard people call you this.

18 But this is the same incident that still does
19 not prove that, yeah, okay, he said, let's go. If he
20 is telling me, the defendant, to go, what? Am I
21 supposed to stand there and continue doing what he
22 asked me to do? Clean it up? Yeah, we started
23 cleaning up. According to the statement, we started
24 cleaning up. But when he decided to stop, we
25 stopped.

1 Was the defendant in error by being present at
2 the scene of the crime or was the defendant wrong?
3 This is the question. By the evidence, the defendant
4 was correct. He -- based on the statement alone, the
5 defendant was going by the mere statement from Mr.
6 Bowman, saying, yeah, come on, this is my
7 girlfriend's house. Why am I supposed to deny that?

8 I never -- the State says apparently that I knew
9 this was a white person. They presented no evidence
10 that I knew this. They had no testimony to show
11 that, yeah, he knew this. Nobody testified that I
12 knew who owned the house. All I knew according to
13 the statement was Mr. Bowman saying that this was his
14 girlfriend's house. That's it, ladies and gentlemen
15 of the jury.

16 Now we deal with intent. Again, I never said I
17 was not at the house. What I said is based on my
18 statement that, yeah, I entered the residence. Now,
19 the State has you believe that, yeah, when he came
20 inside the residence he touched things and that he
21 was the only one if he had entered the place would
22 know that there were knives there.

23 Well, based on my statement which you're going
24 to have back there with you in the jury room, I never
25 said I wasn't in the house. But the mere fact that I

1 mentioned that, the State is taking that and
2 exaggerated this as to it being more than, okay,
3 yeah, he is the only one that could get in. I do
4 know this because I said I was there.

5 Now, if I would have said I wasn't there and I
6 told the police, yeah, well, he had this in the
7 house, he had that in the house, now, that would look
8 kind of strange. To say that you wasn't in there and
9 then all of a sudden describe everything down to the
10 details in certain areas, that would be strange.
11 That didn't happen in this statement. I told them I
12 was there, and I told them what was in the area where
13 I was at. I told them.

14 And just like the officer, the crime scene
15 expert testified, said, yeah, the individual picked
16 up the glass and carefully placed it on the table,
17 threw the glass on the floor. I mean, excuse me,
18 placed it on the bed. There was glass on the floor.
19 There was testimony there was glass on the floor.

20 So apparently, if Mr. Bowman is telling me to
21 come inside the house and clean up, then apparently
22 there is glass inside the house. But, however, what
23 the State has failed to tell you about is this.

24 Based on the testimony that's been presented,
25 that when I arrived at the scene the window was

1 already broken. Keep that in mind when you read that
2 statement. You get to the scene, the window is
3 already broken. The individual that's there is
4 already there. Based on the testimony from the
5 officer, yeah, and the statement, the defendant goes
6 inside the house.

7 Well, there is no evidence that the door was
8 kicked in. That's testimony. There is no evidence
9 of any type of forced entry any other place in the
10 house but through that window.

11 Now, the question that I must be asking, well,
12 since Mr. Bowman was in the house, how did he get
13 that door open? And the only way Mr. Bowman could
14 have got that door open, based on the statement that
15 the defendant presented, Mr. Bowman, not the
16 defendant, because who came later on, Mr. Bowman
17 broke the window, entered the house and unlocked the
18 door. That is the only way that door could have been
19 opened.

20 Again, it's their testimony. There is no forced
21 entry no other place in the house. You heard the
22 testimony. There was only one spot. That's the
23 window. The State is going to give an indication
24 that Mr. Bowman said the door was open. So if Mr.
25 Bowman came through the door, where else is the

1 forced entry if he was already there, he seen the
2 defendant who was me and telling me, well, listen,
3 come on in and help me clean up, I'm going to give
4 you \$10.

5 Now, quite frankly, yeah, you go into a house,
6 you clean up; the job may not be finished. But the
7 fact of the matter is the burden of proof is not on
8 me. In order to prove consent the State must prove,
9 and which they failed to establish, that there was
10 not legal consent to be in the house.

11 They failed to prove the intentions of the
12 defendant at the time that he entered the residence.
13 They failed to prove, guess what, that I committed
14 this crime. Guess what? The State has the
15 obligation that I'm asking you the jurors to hold
16 them to. Guess what? Mr. Bowman, as they say is
17 fictitious, but there is no testimony that the
18 officer, if they believe this, there is no
19 testimony -- now, keep this in mind, ladies and
20 gentlemen. There is no testimony from this officer
21 that says that -- the State says the statement is
22 false and that I made Mr. Bowman up.

23 Well, there is no testimony that this officer
24 after getting the statement goes back to the victim
25 and said, listen, this young man here is saying that

1 this individual here gave him consent. That's a
2 question. That's a doubt. Because there is no way
3 to establish that it wasn't given. As long as the
4 person reasonably believed that he could enter
5 lawfully there, there is no crime committed. As long
6 as -- and since the State has failed to prove that
7 the officer went back, told the man, said, listen,
8 this is what this other person we've got.

9 Now, she testified that she don't know who he
10 is. They don't know who the individual is. The
11 testimony is a general description of what the
12 individual looks like. Now, you can just say you
13 might have a loved one that is missing. When the
14 police come and ask you for a description of them,
15 they want a clear description so they have no
16 mistakes about the individual that they're going to
17 look for.

18 Telling a person, your husband, your friend or
19 your cousin or son, whatever the case may be, is
20 six-one, 275 pounds is just a general description.
21 It can fit anybody. It is not my place to prove
22 this.

23 The State and the officer had the obligation to
24 investigate this. They left this piece of evidence
25 out because they knew based on what they said, my

1 statement can't be credible, it has to be credible
2 because you failed to prove this. You don't show no
3 evidence otherwise. There is nothing at all to show
4 that I did not have legal consent to be at that
5 residence.

6 Now let's go to the nighttime element. Dr.
7 Sederberg testified that when he left home it was
8 about 8:30. He gave a rough estimate about the time
9 he left home. Now, the judge is going to instruct
10 you all concerning the nighttime element.

11 If he left home and it was still daylight
12 outside, Ladies and Gentlemen, I submit to you, that
13 is not darkness. The State says that if I entered,
14 that a person who enters a dwelling and remains
15 during the hours of darkness, the State has failed to
16 prove that it took that long.

17 There is no evidence that I been in there for no
18 45 minutes, been in there for 45 minutes, 30 minutes,
19 whatever the case may be, or until it became dark.
20 There is no proof of this. All they have is a
21 statement from the victim stating that when he came
22 home it was dark That's not in dispute. Nobody is
23 saying that the victim didn't come home at that time.

24 The State needs to prove if they're going to say
25 that is a true element of the offense, the State now

1 needs to prove that when the defendant and, as they
2 say, my accomplice who were acting with a common
3 design entered the residence, that we stayed there
4 until the nightfall, that we stayed there and
5 continuously looked for other merchandise to steal.

6 The State has said that we've taken jewelry out
7 of there, melted it down. There is no proof of that.
8 That's only speculation on their part. That is not
9 no testimony that's been presented. There is
10 nothing. Again, what we say is not evidence. It's
11 what's there and what's in the transcript.

12 What's there is that there is no proof of a
13 common design or intent. There is no proof that the
14 defendant did not have consent. The State has tried
15 to tear down the credibility, has tried to tear down
16 my statement saying that it was false. They are
17 using all of this with no proof. Ladies and
18 gentlemen, I ask you disregard the credibility factor
19 about the statement that they made without any proof.

20 Disregard the credibility factor about my
21 statement that they said that I made up in 15 days.
22 Because there is no proof that I knew the officer was
23 going to come and question me about this crime. When
24 I got arrested there is no proof to show that I knew
25 this was going to happen.

1 But in closing, Ladies and Gentlemen, I want to
2 say this. All the State really has is circumstantial
3 evidence. Circumstantial evidence still must be
4 proved beyond a reasonable doubt. Because of
5 circumstances that they used and the evidence that
6 they used, it don't add up to everything.

7 The nighttime doesn't exist because Dr.
8 Sederberg testified that when he left, as his
9 testimony reflects, it was still light outside. The
10 investigator testified he could not make a
11 determination as to the time the crime happened. So,
12 as he says, he was not going to split hairs on it, so
13 he left that out.

14 What was brought out during the testimony also
15 during that time is that the first degree burglary
16 charge was not the original charge that was taken.
17 It was a second degree burglary charge. When I asked
18 the officer concerning why he didn't do this, he
19 said, well, he -- it was his -- according to his
20 testimony, he could not make the determination. He
21 said, while there may be other factors, knowing there
22 were other factors, he still did not charge me with
23 the first degree burglary charge. This is a doubt
24 that must be resolved in my favor.

25 If he don't know the time, the victim don't know

1 the time, that's a reasonable doubt as to time to
2 establish that nighttime element. Establishing
3 intent and the consent, there is still reasonable
4 doubt concerning those two matters, ladies and
5 gentlemen of the jury, because there is no proof that
6 the defendant was not given legal consent and there
7 is no proof that the defendant's intentions upon
8 entering the dwelling was with an intent to commit a
9 crime. There is no proof whatsoever that I took
10 anything out of the house.

11 What I might have thought was property from the
12 house was wrong. Am I wrong about anything else
13 concerning what I said in my statement? No. This is
14 why -- the reason why I say no, because the State
15 hasn't proven anything about that.

16 Ladies and gentlemen of the jury, I ask you,
17 this is the evidence that has been presented, this is
18 the State's case. Taking it for what it's worth, it
19 is nothing. They want you to believe there were a
20 lot of things they just threw together. And it's
21 like sometimes you're in the kitchen and making a
22 quick meal; you just throw anything together. That's
23 what they did here.

24 Go back in the jury room, take your time,
25 deliberate on the facts of the case and come back

1 with a verdict of not guilty. Thank you.

2 **THE COURT:** I'm going to now -- thank you, Mr.
3 Williams. I'm going to now secure the courtroom. If
4 you do not intend to sit through the Court's
5 instruction to the jury, I need you to leave now.
6 This will take 15 to 20 minutes.

7 (Pause)

8 **THE COURT:** All right. Ladies and gentlemen of
9 the jury, now, Ms. Foreperson and members of the
10 jury, you have heard the evidence and the arguments
11 of both parties. I will now explain to you the law
12 which applies to this action.

13 Defendant Darrell Williams is charged with
14 burglary first degree and petit larceny. The
15 indictments charge the defendant with burglary first
16 degree and petit larceny. I remind you the fact that
17 the defendant was arrested, charged and indicted in
18 this case is not evidence in this case and cannot be
19 considered by you as evidence of guilt in this case,
20 nor does it create any presumption or inference of
21 guilt.

22 The document is simply the formal written
23 instrument which contains the charges made against
24 the defendant. It is the formal document by which
25 this case is brought into the court.

1 I remind you that during the trial you and I
2 have certain duties to perform. As the trial judge
3 it is my responsibility to preside over the trial of
4 this case, and I have the duty to rule on the
5 admissibility of the evidence offered during this
6 trial.

7 You are to consider only the competent evidence
8 before you. If there was any testimony ordered
9 stricken from the record in this case during the
10 trial, you must disregard that testimony. You are to
11 consider only the testimony which has been presented
12 from this witness stand, any exhibits which have been
13 made part of the record in this case and any
14 stipulations of counsel.

15 I have the additional duty to charge you with
16 the law applicable to this case. As the presiding
17 judge, I am the sole judge of the law of the case,
18 and it is your duty as jurors to accept and apply the
19 law as I now state it to you.

20 If you already have an idea as to what the law
21 is or what the law ought to be and it does not agree
22 with what I now tell you the law is, must abandon
23 this idea because you are sworn to accept and apply
24 the law exactly as I state it to you.

25 In every case tried in this court before a jury,

1 the jury becomes the sole and exclusive judge of the
2 facts in a case. The trial judge cannot intimate,
3 state, comment on or make any statement to a trial
4 jury about the facts in a case. Since you, the jury,
5 are the sole judge of the facts in this case, you are
6 not to infer from what I have said during the
7 progress of this trial in ruling upon the
8 admissibility of evidence or otherwise or anything
9 that I say now during the course of this instruction
10 to you that I have any opinion about the facts in
11 this case. The law does not allow me to have an
12 opinion about the facts in this case. This is a
13 matter solely for you, the jury, to determine. As
14 jurors it is your duty to determine the effect,
15 value, weight and truth of the evidence presented
16 during this trial.

17 The defendant is charged with burglary first
18 degree. Under South Carolina law, a person is guilty
19 of burglary first degree if he enters a dwelling
20 without consent and with intent to commit a crime in
21 the dwelling and either one of the following
22 aggravating circumstances is present: The burglary
23 is committed by a person with a prior record of two
24 or more convictions for burglary or housebreaking or
25 a combination of both or the entering or remaining

1 occurs in the nighttime.

2 Under the statute the State must prove the
3 following four elements in order to establish
4 burglary in the first degree. The State must prove
5 each element beyond a reasonable doubt. If the State
6 fails to prove any single element, you cannot find
7 the defendant guilty for burglary first degree.

8 The first element: Entry into a dwelling. The
9 State must show there was an entering; that is,
10 defendant actually went inside the dwelling or some
11 part of it. The slightest entry is sufficient. And
12 it may consist of the insertion of any part of the
13 body or any instrument under the defendant's control.
14 No force need be used to gain entry.

15 The place entered must be a dwelling. A
16 dwelling house is defined as a dwelling house or of
17 any other dwelling house, all houses, outhouses,
18 buildings, sheds and erections which are within
19 200 yards of it and are appurtenant to it or to the
20 same establishment of which it is an appurtenance
21 shall be deemed parcels. In addition, a dwelling
22 also means the living quarters of a building which is
23 used or normally used for sleeping, living or lodging
24 by a person.

25 A dwelling is any building or portion of a

1 building in which a person ordinarily sleeps. A
2 building constructed as a dwelling that has never
3 been occupied cannot be considered a dwelling for
4 purposes of burglary, but a building is a dwelling
5 even if the residents are temporarily absent from the
6 building.

7 The second element: Without consent. The entry
8 into the dwelling must be without the consent of the
9 person in lawful possession.

10 The third element: With intent to commit a
11 crime therein. There must have been an intent to
12 commit a crime, any crime, a felony or misdemeanor
13 whether or not that crime was actually committed.
14 The mere entry into a dwelling without consent is not
15 sufficient to constitute burglary first degree.
16 There must have been an intent to commit a crime once
17 inside.

18 Further, it is not sufficient that the intent to
19 commit a crime was formulated after entry. To
20 convict the defendant of burglary first degree, you
21 must find that at the time he entered the dwelling
22 the defendant intended to commit a crime once there
23 therein. The defendant's actions after he entered
24 the dwelling can be evidence used to determine if he
25 had the intent to commit a crime at the time of

1 entry.

2 It does not matter that the intended crime was
3 not completed. Where the intent exists at the time
4 of entering, it is no defense that the intent was
5 abandoned after the entry because the entering with
6 intent to commit a crime completes the offense of
7 burglary.

8 In order to establish criminal liability,
9 criminal intent is required. What is criminal
10 intent? Criminal intent is a mental state which
11 operates jointly with an act or omission in the
12 commission of a crime. Criminal intent must be
13 proven by the State beyond a reasonable doubt.

14 Criminal intent is always a matter that must be
15 determined by the jury from the circumstances
16 surrounding the situation. There is no way to prove
17 intent to a mathematical certainty. There is no way
18 medical science can dissect a person's brain and
19 determine what the person had in mind. So the law
20 says that criminal intent may be inferred from the
21 circumstances shown to have existed. This is how you
22 make a determination of whether or not the element
23 requiring intent was present.

24 It is not necessary to establish intent by
25 direct and positive evidence, but intent may be

1 established by inference in the same way as any other
2 fact, by taking into consideration the acts of the
3 parties and all the facts and circumstances of the
4 case.

5 Criminal intent is a mental state, a conscious
6 wrongdoing. It is up to you to determine what the
7 defendant intended to do based on the circumstances
8 shown to have existed. Criminal intent can arise
9 from action or a failure to act. It may arise from
10 negligence, recklessness or an indifference to duty
11 or to consequences that is considered by the law to
12 be the equivalent of criminal intent.

13 If you find the defendant entered a dwelling
14 without consent and with the intent to commit a crime
15 therein, you must then find at least one of the
16 following aggravating circumstances in order to
17 convict of burglary first degree. And the presence
18 of an aggravating circumstance is that fourth
19 element.

20 Only one of these circumstances need be present.
21 The aggravating circumstances are: Burglary is
22 committed by a person with a prior record of two or
23 more convictions for burglary or housebreaking or a
24 combination of both.

25 Evidence of prior convictions committed by the

1 defendant was not offered to prove that the defendant
2 has a bad character or to prove that the defendant
3 committed the burglary on this occasion. The prior
4 convictions may be considered by you only for the
5 purpose of determining whether or not it satisfies
6 that element of the offense that makes it burglary
7 first degree if you enter a dwelling without consent
8 to commit a crime and you have two prior convictions
9 for burglary and/or housebreaking.

10 Before you can even consider the evidence of the
11 defendant's prior burglary and/or housebreaking
12 convictions, you must first find that the State has
13 proved beyond a reasonable doubt that a burglary was
14 committed by the defendant. If you find beyond a
15 reasonable doubt that the burglary was committed,
16 then you may consider the evidence of the prior
17 convictions as evidence of one of the circumstances
18 which would make the burglary burglary first degree.

19 If you do not find beyond a reasonable doubt
20 that the defendant was convicted of these alleged
21 prior offenses, then you cannot return a verdict of
22 burglary first degree.

23 Or the entering occurs in the nighttime.
24 Nighttime for purposes of burglary means that period
25 between sunset and sunrise during which there is not

1 daylight enough to discern a person's face except by
2 artificial light or moonlight. Thus, the term
3 nighttime is not confined to the exact period between
4 sunrise and sunset.

5 The defendant has been charged with petit
6 larceny. South Carolina law provides that simple
7 larceny of any article or goods, bank bills, bills
8 receivable, chattels or other articles of personalty
9 of which by law larceny may be committed or of any
10 fixture, part or product of the soil severed from the
11 soil by an unlawful act or has a value of \$1,000 or
12 less is petit larceny.

13 Larceny is the taking and carrying away of goods
14 or personal things of another person with the intent
15 to permanently deprive the owner of the property and
16 to convert it to the taker's use.

17 In order to convict the defendant of petit
18 larceny, you must find that the State has proved
19 beyond a reasonable doubt that the defendant took and
20 carried away the property of another against the will
21 or without the consent of the other person.

22 The slightest removal of the property or the
23 complete possession of the property even for an
24 instant by the defendant is enough to show a taking
25 and carrying away of the property.

1 The State must also prove beyond a reasonable
2 doubt that the defendant intended to permanently
3 deprive the owner of the property. There must be
4 criminal intent. What is criminal intent? Criminal
5 intent is a state of mind which operates jointly with
6 an act or omission in the commission of a crime. It
7 is a mental state of conscious wrongdoing. Criminal
8 intent includes those consequences which represent
9 the very purpose for which an act is done or are
10 known to be substantially certain to result
11 regardless of one's desire. Intent may be shown by
12 acts and conduct of the defendant and other
13 circumstances from which you may naturally and
14 reasonably infer intent.

15 If a crime is committed by two or more people
16 who are acting together in committing a crime, the
17 act of one is the act of all. A person who joins
18 with another to commit an unlawful act is criminally
19 responsible for everything done by the other person
20 which happens as a probable or natural consequence of
21 the acts done in carrying out the common plan and
22 purpose.

23 For example, two people can be guilty of killing
24 another person when only one of the two had a gun,
25 there was only one bullet and only one of the two

1 fired the shot that caused the death. If two or more
2 people are together, acting together, assisting each
3 other in committing the offense, the act of one is
4 the act of all; or as it is sometimes said, the hand
5 of one is the hand of all.

6 Prior knowledge that a crime is going to be
7 committed without more is not sufficient to make a
8 person guilty of that crime. Mere knowledge that
9 another person is going to commit a crime, even if
10 the defendant is present when the crime is committed,
11 is not sufficient to convict the defendant as a
12 principal.

13 Guilt as a principal is shown by actual or
14 constructive presence at the scene as the result of
15 prior arrangement. Therefore, a finding of a prior
16 arranged plan or common scheme is necessary for a
17 finding of guilt as a principal.

18 The State must prove beyond a reasonable doubt
19 by competent evidence the theory of the hand of one
20 is the hand of all. A principal in a crime is one
21 who either actually commits the crime or who is
22 present, aiding, abetting or assisting in committing
23 the crime. When a person does an act in the presence
24 of and with the assistance of another, the act is
25 done by both. Where two or more acting with a common

1 plan or intent are present at the commission of a
2 crime, it does not matter who actually commits the
3 crime. All are guilty. The hand of one is the hand
4 of all.

5 Present at the commission of a crime means to be
6 sufficiently near to aid and abet and assist in the
7 commission of the crime. However, mere presence at
8 the scene of a crime is not sufficient to convict one
9 as a principal under the theory of aiding and
10 abetting. Intent is also a necessary element, for
11 there must have been a common design or intent to
12 commit the crime and the crime must have been
13 committed pursuant thereto with the person aiding and
14 abetting by some overt fact.

15 Intent means intending the result which actually
16 occurs, not accidentally or involuntarily. Intent
17 may be shown by acts and conduct of the defendant and
18 other circumstances from which you may naturally and
19 reasonably infer intent. The State must prove these
20 elements beyond a reasonable doubt.

21 Mere presence at the scene is not sufficient to
22 prove someone guilty of a crime. A defendant's
23 presence where a crime is being committed or mere
24 association with the person who commits a crime does
25 not make a defendant an accomplice or an aider and

1 abettor of the person committing the crime. The
2 burden is on the State to prove every element of the
3 crime charged.

4 If you find after reviewing all the evidence
5 that the State has proved that the defendant was only
6 present at the scene of a crime and that they have
7 not proved beyond a reasonable doubt any other
8 participation in the crime, then you must find the
9 defendant not guilty. The law is that proof of at
10 the scene of the crime is not sufficient to find
11 someone guilty.

12 The defendant has pled not guilty to these
13 indictments, and that plea puts the burden on the
14 State to prove the defendant guilty. A person
15 charged with committing a criminal offense in South
16 Carolina is never required to prove himself innocent.
17 The defendant is presumed to be innocent unless and
18 until the State has established guilt beyond a
19 reasonable doubt.

20 It is a vital, important rule of the law that
21 the defendant in a criminal trial no matter how grave
22 or serious may be the offense with which he is
23 charged must always be presumed innocent of the
24 charge for which the indictment was issued unless
25 guilt has been proven by the evidence satisfying you

1 beyond a reasonable doubt.

2 This presumption of innocence is legal proof of
3 innocence. This presumption of innocence does not
4 end when you begin your deliberations, but it
5 accompanies the defendant throughout the trial until
6 you reach a verdict of guilt based on evidence
7 satisfying you beyond a reasonable doubt.

8 This presumption of innocence is like a robe of
9 righteousness placed about the shoulders of the
10 defendant that remains with the defendant until it
11 has been stripped from the defendant by evidence
12 satisfying you of the defendant's guilt beyond a
13 reasonable doubt.

14 The presumption of innocence is not a mere legal
15 theory. It is not just a legal phrase. It is a
16 substantial right to which every defendant is
17 entitled unless you, the jury, are satisfied from the
18 evidence of the defendant's guilt beyond a reasonable
19 doubt.

20 The State has the burden of proving the
21 defendant guilty beyond a reasonable doubt. The
22 State is required to prove every element of the
23 charged offense by evidence which satisfies each of
24 you of the guilt of the defendant beyond a reasonable
25 doubt.

1 The defendant is not required to prove his
2 innocence. The burden of proof always remains upon
3 the State of South Carolina to prove guilt beyond a
4 reasonable doubt.

5 Some of you may have served as jurors in civil
6 cases where you were told that it is only necessary
7 to prove that a fact is more likely true than not
8 true, such as the greater weight or preponderance of
9 the evidence. In criminal cases the State's proof
10 must be more powerful than that. It must be beyond a
11 reasonable doubt.

12 What is a reasonable doubt in the law? A
13 reasonable doubt is the kind of doubt that would
14 cause a reasonable person to hesitate to act. The
15 term "reasonable doubt" should be given its plain and
16 ordinary meaning. Proof beyond a reasonable doubt is
17 proof that leaves you firmly convinced of the
18 defendant's guilt.

19 There are very few things in this world that we
20 know with absolute certainty, and in criminal cases
21 the law does not require proof that overcomes every
22 possible doubt. If based on your consideration of
23 the evidence you are firmly convinced that the
24 defendant is guilty of the crime charged, you must
25 find him guilty. If, on the other hand, you conclude

1 there is a real possibility that he is not guilty,
2 you must give the defendant the benefit of the doubt
3 and find the defendant not guilty.

4 There are two types of evidence generally
5 presented during a trial, direct evidence and
6 circumstantial evidence. Direct evidence is the
7 testimony of a person who asserts or claims to have
8 actual knowledge of a fact, such as an eye witness.
9 It is evidence that immediately establishes the main
10 fact to be proved.

11 Circumstantial evidence is proof of a chain of
12 facts and circumstances indicating the existence of a
13 fact. It is based on inference and not on personal
14 knowledge or observation.

15 The law makes absolutely no distinction between
16 the weight or value to be given to either direct or
17 circumstantial evidence, nor is a greater degree of
18 certainty required of circumstantial evidence than of
19 direct evidence.

20 You should weigh all the evidence in this case.
21 After weighing all the evidence if you are not
22 convinced of the guilt of the defendant beyond a
23 reasonable doubt, you must find the defendant not
24 guilty.

25 A statement alleged to have been made by the

1 defendant has been admitted into evidence in this
2 case. While the Court has determined that the
3 statement is admissible, I instruct you that you make
4 the ultimate decision of whether or not the defendant
5 made the statement.

6 If the defendant did make the statement, you
7 must determine whether the statement was made by the
8 defendant voluntarily and of his own free will. This
9 means that the statement was not caused by pressure,
10 force, fear, threats, coercion or intimidation or by
11 hope or a promise of leniency or a reward of any
12 kind.

13 In determining whether the statement was
14 voluntary you should consider both the
15 characteristics of the defendant and the details of
16 the questioning.

17 Some of the factors that you must consider are
18 the age of the defendant, the defendant's education
19 or lack of education, the defendant's mental ability
20 or capacity, the defendant's IQ or intelligence, the
21 defendant's background and environment, the place and
22 length of detention, the nature of the questioning,
23 and the advice or lack thereof to the defendant of
24 his Constitutional rights, including, but not limited
25 to, the right to remain silent, that any statement

1 could be used against him in a court of law, the
2 right to have a lawyer present, that if he could not
3 afford a lawyer, a lawyer would be appointed to
4 represent him without any cost, and that he could
5 stop making a statement at any time.

6 You must carefully consider all of the
7 surrounding circumstances before you give any weight
8 to an alleged statement. The State has the burden of
9 proving beyond a reasonable doubt that the alleged
10 statement was voluntary.

11 If you determine it was, you may give the
12 statement any further consideration that you deem
13 proper. You must decide what weight, if any, should
14 be given to the alleged statement. If you determine
15 the alleged statement was not the free and voluntary
16 statement of the defendant, you should not consider
17 the statement at all.

18 Necessarily, you must determine the credibility
19 of witnesses who have testified in this case.
20 Credibility simply means believability. It becomes
21 your duty as jurors to analyze and evaluate the
22 evidence and determine which evidence convinces you
23 of its truth.

24 In determining the credibility of witnesses who
25 have testified in this case, you may believe one

1 witness over several witnesses or several witnesses
2 over one witness. You may believe only a part of the
3 testimony of a witness and reject the remaining part
4 of the testimony of that same witness.

5 You may believe the testimony of a witness in
6 its entirety or reject the testimony of a witness in
7 its entirety. You may consider whether any witness
8 has exhibited to you any interest, bias, prejudice or
9 other motive in this case. You may also consider the
10 appearance and manner of a witness on the witness
11 stand.

12 Expert witnesses -- normally witnesses are
13 limited to testifying about facts within their
14 knowledge and are not allowed to give opinions. An
15 exception exists for certain witnesses who by their
16 training, education or experience are considered
17 experts in a particular field may give their opinions
18 in that field based upon the facts of the matter and
19 their conclusions.

20 These opinions constitute evidence to be
21 considered by you in connection with all of the other
22 testimony and evidence in the case. You may consider
23 the expert's opinion just as you do all other
24 evidence in this case. It is for the jury to give it
25 such weight as you in your experience or discretion

1 may determine. You must weigh such evidence and
2 accept or reject it in the same manner that you treat
3 all other evidence in the case.

4 If you decide that the opinion of an expert
5 witness is not based on sufficient education and
6 experience or if you conclude that the reasons given
7 in support of the opinion are not sound or that the
8 opinion is outweighed by other evidence, you may
9 disregard the opinion entirely.

10 An expert witness's testimony is to be given no
11 greater weight than that of other witnesses simply
12 because the witness is an expert. Further, you are
13 not required to accept an expert's opinion even
14 though it is not contradicted.

15 The defendant in this case has not testified.
16 This is his Constitutional right. It is not a
17 circumstance you can take into consideration or even
18 allow to enter into your discussion in the jury room.
19 Under the Constitution of South Carolina and the
20 United States Constitution, it is the defendant's
21 Constitutional right not to testify.

22 The burden of proof is upon the state of South
23 Carolina to establish his guilt by competent evidence
24 beyond a reasonable doubt. The fact the defendant
25 did not take the witness stand and testify in his own

1 behalf does not create any inference against him.

2 The jury must not permit that fact to weigh in
3 the slightest degree against the defendant, nor
4 should this fact enter into the discussions or
5 deliberations of the jury in any manner.

6 And finally, your verdict cannot be based on
7 sympathy, passion, prejudice, emotion or any other
8 consideration not evidence in this case.

9 Your verdict must be unanimous. Unanimity is
10 mandated. That means that every juror must agree on
11 the jury verdict. There cannot be any split or
12 divided vote in any form or fashion, such as eleven
13 to one, ten to two, or nine to three. Each of you
14 must agree. And please do not sign the verdict form
15 until every single juror agrees.

16 Now, Madam Foreperson, I have in my hand the
17 verdict form, and you will be responsible, as I
18 indicated, in guiding the deliberations, having no
19 greater vote than any other juror but just organizing
20 the deliberations and in charge of also filling out
21 the verdict form.

22 We have on here as to two questions, as to the
23 charge of burglary first degree: We, the jury,
24 unanimously find the defendant guilty or not guilty.
25 You would do that same thing with respect to the

1 second charge of petit larceny.

2 The order of the choices are not in any way to
3 suggest your finding. G just comes before N. That's
4 why they were placed that way. So you will sign it
5 and then date it and then indicate that you have
6 concluded your deliberations and then give the form
7 to the bailiff who will then present it to the Court
8 and have you all actually publish your verdict to the
9 jury.

10 The Court will allow the written jury charges
11 that I have just indicated to you to go into the jury
12 room. You are to recall the testimony and evidence
13 and present these as well, but you are not to
14 consider one jury charge over the other. The entire
15 packet is relevant to your deliberations.

16 I am not now going to instruct that you go to
17 the jury room. Do not begin to discuss the case in
18 any shape, form or fashion until you've received the
19 verdict form and all the evidence is also delivered
20 to you. So we will be with you shortly. Thank you.

21 (Jury out at 4:05 p.m.)

22 **THE COURT:** The Court will make as the next
23 Court's Exhibit defendant's motions that we discussed
24 earlier and then the charges as read.

25 **MR. WILLIAMS:** Excuse me, Your Honor.

1 **THE COURT:** One moment. Those are things that
2 would not be in conflict. But go ahead.

3 **MR. WILLIAMS:** Yes. I don't know if you
4 received it or not, but I didn't receive your charge
5 on mere presence.

6 **THE COURT:** Okay. I apologize. Okay. But they
7 were read as you heard. Are there any exceptions to
8 the charges that were read?

9 **MS. GARFIELD:** None other than already
10 previously made. And may we review the verdict form?

11 **THE COURT:** Yes. Thank you.

12 (WHEREUPON, Court's Exhibit No. 6 is marked for
13 identification.)

14 (WHEREUPON, Court's Exhibit No. 7 is marked for
15 identification.)

16 **THE COURT:** Okay. Other than as previously
17 indicated, are there any exceptions to the charges by
18 the parties?

19 **MS. GARFIELD:** None from the State.

20 **MR. WILLIAMS:** No, Your Honor.

21 **THE COURT:** Okay. Thank you all. Great job on
22 both sides. Very good, informative case. And good
23 job by you, Mr. Williams, in representing yourself as
24 well.

25 **MR. WILLIAMS:** Thank you.

1 **MR. PAULING:** Your Honor, I'll just hang out
2 here unless there's any questions or jury questions.

3 **THE COURT:** Sure. Okay. Thank you. And then
4 the rest of the docket, you can come in. Just give
5 them the chance to get the charges back. You can set
6 up. You can bring in anyone else from downstairs
7 that we need to deal with.

8 Oh, one other thing for the parties. Mr.
9 Williams, we had a discussion earlier about the
10 transcript of record for the PCR as well as the Order
11 of Dismissal. Is this in any way relevant before the
12 jury gets the verdict form as well as the evidence?

13 **MR. WILLIAMS:** As far as the actual trial goes?

14 **THE COURT:** Right.

15 **MR. WILLIAMS:** No. It is not relevant to the
16 guilt or innocence in the trial.

17 **THE COURT:** Okay. Thanks. I just wanted to
18 make sure we hadn't forgotten anything because I did
19 say we'd wait until now to deal with it. Okay.
20 Thank you. And I have not tendered it as an exhibit,
21 as exhibits for purposes of the record because you've
22 not deemed it relevant so far.

23 **MR. WILLIAMS:** Okay.

24 **THE COURT:** Okay. Just so you'll know.

25 **MS. GARFIELD:** Your Honor, can we go back on the

1 record?

2 **COURT REPORTER:** Quiet, please.

3 **MS. GARFIELD:** That the second page of the
4 indictment --

5 **THE BAILIFF:** Quiet, please.

6 **MS. GARFIELD:** -- of the certified convictions,
7 where I told you we didn't want to send that back
8 because it had the language concerning the facts,
9 that is actually the page where it has his guilty
10 plea entrance. So with consent from Mr. Williams,
11 what we can do is make a copy admitting the facts of
12 the burglary.

13 **THE COURT:** Well, he's already stipulated that
14 there were two prior convictions. So why do we need
15 the guilty plea part on there?

16 **MR. WILLIAMS:** Your Honor.

17 **THE COURT:** Yes.

18 **MR. WILLIAMS:** Can I make a suggestion?

19 **THE COURT:** Yes.

20 **MR. WILLIAMS:** We have the top half of the
21 indictment, don't we?

22 **MS. GARFIELD:** Yes, sir.

23 **MR. WILLIAMS:** Could we just submit that as
24 being proof? Would that be sufficient?

25 **THE COURT:** Because he stipulated to it.

1 **MS. WEISS:** I know. But you didn't explain the
2 stipulations in the actual charge. You said they
3 have to find that he was convicted of two burglaries.
4 And you sent that charge back. So --

5 **MS. GARFIELD:** It's the second page that has the
6 guilty plea entry.

7 **MS. WEISS:** -- you sent that back and said that
8 he was convicted.

9 **THE COURT:** Okay. But there is nothing on there
10 about sentencing?

11 **MS. GARFIELD:** Oh, no.

12 **MS. WEISS:** There's nothing about sentencing at
13 all.

14 **THE COURT:** Okay. Well, then you also said he
15 pled guilty during your closing.

16 **MS. GARFIELD:** Yeah. It just has the contents
17 of what he pled to as far as entering a dwelling
18 without consent during nighttime. I mean, mr.
19 Williams doesn't have any objection to sending it
20 back.

21 **THE COURT:** That's fine. That's fine. I was
22 just trying to make sure that I did let you finish
23 about whether it was a guilty plea and then there was
24 other stuff on there. But I'm fine with what it is.

25 **MR. WILLIAMS:** Because I was just wondering, if

1 we could just send the top half in, would that be
2 good enough without sending the other half in?

3 **MS. WEISS:** You mean just send the bottom half?

4 **MR. WILLIAMS:** No. The top cover page.

5 **MS. WEISS:** The top page doesn't have that you
6 actually were convicted. It's right here that you
7 pled guilty.

8 **MR. WILLIAMS:** Oh, on the second page?

9 **MS. WEISS:** Yes.

10 **MR. WILLIAMS:** All right. That's fine then.

11 **MS. WEISS:** The whole second page is fine?

12 **MR. WILLIAMS:** Yeah. The whole second page
13 right there is fine. Because, I mean, she did charge
14 the jury that if you find the defendant was convicted
15 of the offense, then --

16 **THE COURT:** Right. That's fair. I've ruled.

17 **MS. GARFIELD:** Okay.

18 **THE COURT:** I'm also going to make a Court's
19 Exhibit the defendant's proposed charge of mistake of
20 fact, and I'm going to attach it to your other
21 motions.

22 **MS. WEISS:** Mr. Williams, do you agree? We just
23 went through and counted 1 through 28. Everything is
24 there. But I just want to make sure --

25 **THE COURT:** Never mind. That was in my charge.

1 **COURT REPORTER:** With the exception of No. 14.
2 **MS. WEISS:** With the exception of No. 14.
3 **MS. GARFIELD:** Where is it?
4 **COURT REPORTER:** I've got it.
5 (Whereupon, the jury begins deliberating at
6 4:12 p.m.)
7 **THE COURT:** So the attorneys for the trial could
8 set up, let's receive the verdict. Jurors, please.
9 (Jury in at 5:08 p.m.)
10 **THE BAILIFF:** The jury is seated, Your Honor.
11 **THE COURT:** Okay. Madam Foreperson, I
12 understand that you and your fellow jurors have
13 reached a verdict.
14 **FORELADY:** Yes, we have.
15 **THE COURT:** Okay. If you will hand it to the
16 bailiff, please.
17 (Forelady complies)
18 **THE COURT:** Okay. Madam Clerk, if you would
19 publish the verdicts.
20 **THE CLERK:** Indictment number 2008-GS-40-6965,
21 it's an indictment for petit larceny. As to the
22 charge -- well, the State of South Carolina vs.
23 Darrell Williams. As to the charge of petit larceny,
24 we, the jury, unanimously find the defendant guilty.
25 And indictment number 2008-GS-40-13175, it is an

1 title for burglary first. The State of South
2 Carolina vs. Darrell Williams. As to the charge of
3 burglary first degree, we, the jury, unanimously find
4 the defendant guilty.

5 This is signed Foreperson, Shanett Cole,
6 September 24th, 2008.

7 Madam Foreperson, are these your verdicts and
8 the verdicts of the entire jury?

9 **FOREPERSON:** Yes.

10 **THE COURT:** Thank you, ladies and gentlemen of
11 the jury. As I indicated to you, I'm going to thank
12 you again for your jury service because it really
13 matters to us about you taking the role seriously.
14 You've done all that we asked you to do, which was to
15 give us your time and attention to a very serious
16 matter involving not actors but real people's lives.
17 So you've done that and no one can ask anything more
18 of you.

19 You will now be excused from the trial of this
20 case, but I will let you know that no one ever knows
21 what goes on in the minds of jurors. So sometimes
22 you might get a call just asking you how you arrived
23 to a decision, what was done good or bad or what have
24 you. It is totally up to you as to whether or not
25 you wish to respond to any such information.

1 If you don't, then just politely let the person
2 know you choose not to speak. If you do, you can do
3 so and then stop at some point. No one is going to
4 be harassing you, I don't suggest. But to the extent
5 they do, just report it to the Clerk of Court and we
6 will handle it appropriately. Thank you so much
7 again for your time and attention to the matter. And
8 I wish you all a good evening.

9 **MS. GARFIELD:** Your Honor, if you would just
10 before excusing the jury inquire of the defendant if
11 he would like the jury polled.

12 **THE COURT:** Okay.

13 **MR. WILLIAMS:** No, Your Honor.

14 **THE COURT:** Okay. Thank you though. Thank you.
15 All right. Thank you. You all may be excused.

16 (Whereupon, the jury is excused)

17 **THE COURT:** All right. We will allow the clerk
18 to get ready with the paperwork.

19 (Pause)

20 **THE COURT:** Okay. Are we ready to proceed with
21 sentencing?

22 **MS. WEISS:** The State's ready, Your Honor.

23 **THE COURT:** Okay. All right. The State.

24 **MS. WEISS:** Your Honor, on behalf of the State,
25 the defendant was served with the State's intent to

1 seek a sentence of life without parole. It was
2 served on September 10th, 2008 at 12 p.m. in front of
3 Your Honor. We used his sixth prior burglary first
4 and attached those to the notice of intent to seek
5 life without parole, giving him notice of which prior
6 burglaries we were going forward on. Based on the
7 fact obviously only one is necessary as a most
8 serious prior strike, with this conviction of
9 burglary first, we would ask Your Honor to impose the
10 mandatory sentence of life without parole.

11 **THE COURT:** Okay. Mr. Williams.

12 **MR. WILLIAMS:** Your Honor, basically as far as
13 the sentence of life without parole, I base it on my
14 previous objection concerning the position of life
15 without parole based upon my prior convictions and
16 also that the -- well, that's basically it for that
17 one on that issue there.

18 **THE COURT:** Okay. And then --

19 **MR. PAULING:** Your Honor, if I may?

20 **THE COURT:** Sure.

21 (Pause)

22 **MR. WILLIAMS:** Excuse me, Your Honor. At this
23 time I would like to put on the record that I would
24 like a direct appeal.

25 **THE COURT:** Okay.

1 **MR. WILLIAMS:** And also I have a motion for a
2 new trial before the Court.

3 **THE COURT:** Okay.

4 **MR. WILLIAMS:** My motion for a new trial is
5 based on my previous arguments as well, but I also
6 have some other arguments, some more things I would
7 like to add to this.

8 First I would like to begin with the argument
9 that I presented to the Court concerning the witness
10 testifying concerning whether or not the State's
11 witness, Joli Rish, and evidence that they presented
12 based on that.

13 Based on that, Your Honor, I would like to put
14 in an argument that I would consider it -- I would
15 like to place my objection on the record that the
16 State had actually admitted that evidence and then
17 during the time of their closing argument made
18 reference to my credibility as far as the statement
19 goes.

20 What they did in essence, Your Honor, based on
21 what I see is they basically pitted my statement
22 against their witnesses to basically build an issue
23 as far as credibility which was what they was basing
24 it on.

25 It's true the Court charged the jury concerning

1 the credibility, but it's based on the testimony that
2 is given here at trial. I don't believe this -- I
3 don't believe -- if I'm wrong, maybe the Court will
4 correct me -- but I don't believe there was any
5 charge to the jury concerning whether or not they
6 have to believe the statement as a whole, or I don't
7 believe there is no charge concerning that. If I'm
8 wrong, then --

9 **THE COURT:** You mean Ms. Rish's statement?

10 **MR. WILLIAMS:** No. In believing my statement,
11 in the defendant's statement.

12 **THE COURT:** Well, any witness's credibility is
13 at issue and they can believe all or none or they can
14 believe some part of the statement or not other
15 parts.

16 **MR. WILLIAMS:** But I would just -- basically,
17 Your Honor, I would like you to consider that by
18 pitting my statement against their witnesses in the
19 form of trying the issue of credibility of who was
20 more believable than others, because that was
21 illegal, I would consider that to be prosecutorial
22 misconduct.

23 This is no doubt a circumstantial evidence case.
24 And being that when you pit witnesses against each
25 other, that tends to in a way sway the jury to

1 believe one party over another one. And it's the
2 same issue that I raised concerning credibility.
3 Credibility was the main focal point about this case.
4 And the State even made mention of it numerous times
5 during their closing argument. And, well, basically,
6 that's about it. And considering the fact that, that
7 and my previous arguments, Your Honor.

8 **THE COURT:** Okay. State?

9 **MS. WEISS:** Your Honor, first and foremost, Ms.
10 Garfield and I take offense to the fact that he
11 accused us of prosecutorial misconduct. We did
12 nothing improper, nothing wrong. We presented our
13 case. We put forward the evidence that supported the
14 case and we complied with our burden which was to
15 prove this case beyond a reasonable doubt. We did
16 not pit any witnesses against any other witnesses.
17 But merely put forth the evidence and then picked
18 apart the evidence which is our duty, which is what
19 we are here to do. We presented the case the best we
20 knew how, and there was nothing improper. There is
21 no reason to change the jury's verdict.

22 **THE COURT:** Okay. One thing I would add on that
23 point. When, Mr. Williams, you were cross examining
24 the officer about the statement that then became
25 evidence, you kept cross examining him on Mr. Bowman.

1 So then you kind of forced the State to address that
2 issue, because otherwise, if they had not done
3 anything with it, it just kind of left open this
4 person who may or may not exist, you know, could be
5 fictitious or could be that person.

6 But then on cross examination of Ms. Rish who
7 then testified that they had such a gentleman by that
8 name, then you still had the ability to carve out
9 that they would know nothing more than she indicated;
10 all I know is this person is in our jail, she doesn't
11 even know who the person is, and she knew nothing
12 about the facts of this crime. So the jury could
13 have also taken that in consideration and just
14 believed that this is just any Jimmy Bowman as well.

15 So it was still coming down to them looking at
16 credibility and what they choose to believe or not
17 believe in that regard, because she had no further
18 information other than to give what's on a piece of
19 paper at her jail as a custodian of the records.

20 **MR. WILLIAMS:** Okay.

21 **THE COURT:** But you guided them to doing that
22 because there was so much testimony about Mr. Bowman
23 in your statement.

24 **MR. WILLIAMS:** And further, the reason why I had
25 to bring that up, Your Honor, is because they

1 referred -- they made the comment that this was a
2 statement that was made up. And that affects --
3 basically that affects the credibility --

4 **THE COURT:** Well, just like you get to indicate
5 that they are suggesting that you made it up, they
6 have to take the facts as they are but then put the
7 inferences to them. And then in doing so, they are
8 going to challenge, did you make up this story after
9 being in jail or incarcerated for 15 days? Did you
10 have time to think about it? Did you have time to
11 put together something?

12 So that's fair game as long as they're only
13 referring to facts and evidence in the case. Just
14 like you get to do the opposite, to say, hey, I've
15 admitted I was there, I've admitted that I picked up
16 some glass, I've admitted that a door was open. If I
17 was a criminal, so to speak, why would I admit to
18 these things or why would I have not taken more or
19 not done, you know, what people might perceive would
20 be in a criminal mind to do other things and that
21 eliminating you as a suspect for the crime that
22 you're charged for.

23 The same thing with me allowing in the mere
24 presence charge, that you were able to establish that
25 even if you were just present, that in and of itself

1. doesn't give the right to convict you. But again,
2. the jury has to then say, well, was he merely
3. present, or was he acting in concert potentially with
4. a person?

5. **MR. WILLIAMS:** I understand. I understand your
6. point, Your Honor. But I'd just like to point out
7. where they -- basically when they did come out and
8. say that the statement was made up, this was assuming
9. facts that wasn't in evidence. And by doing this, I
10. mean, them bringing it out, like this was something
11. that was actually testified to, that he sat back and
12. he thought about this for 15 days, this was something
13. that wasn't -- this was not evidence during the
14. course of the trial.

15. **THE COURT:** But you understand there's a
16. distinction between what's evidence that they can use
17. and then they can draw that inference from the
18. evidence, that the time period of when the arrest
19. came versus when you actually gave a statement. So
20. they can draw the leaps and conclusions that they'd
21. like the jury to reach; the same thing that you have
22. the opportunity to do.

23. But at the end of the day the Court's charge is
24. that facts, when in dispute, it's their province to
25. determine what's the truth. And facts or witnesses,

1 when in dispute, they get to pick apart the testimony
2 of the witness in terms of believability.

3 **MR. WILLIAMS:** Well, that is basically it.
4 That's all I have at this time, Your Honor.

5 **THE COURT:** Okay. Well, thank you then.

6 (Pause)

7 **MR. WILLIAMS:** I guess I'm ready, Your Honor.

8 **THE COURT:** You are?

9 **MR. WILLIAMS:** Yeah. I'm ready.

10 **THE COURT:** Okay. All right. Mr. Williams, as
11 Ms. Weiss has indicated, they were pursuing this case
12 by giving you notice of life without the possibility
13 of parole pursuant to Section 17-25-45 which is
14 entitled "Life sentence for a person convicted for
15 certain crimes".

16 And our statute indicates: Notwithstanding any
17 other provision of law, except in cases in which the
18 death penalty is imposed, upon a conviction for a
19 most serious offense as defined by this section, a
20 person must be sentenced to a term of imprisonment
21 for life without the possibility of parole if that
22 person has one or more prior convictions for a most
23 serious offense. And then certain other things.

24 We have noted your objections to whether or not
25 it was a most serious offense at the time that you

1 committed the crime because it was in '95, the ones
2 that they're relying on, and the statute was changed
3 in '96.

4 The Court has heard those objections, relying on
5 the Supreme Court case that indicates because common
6 law burglary and burglary first contain the same
7 elements that the court is apparently, meaning the
8 higher courts, have allowed the use of the prior
9 crime to serve as the basis for the enhancement of
10 the subsequent crime.

11 So while this may or may not have been the
12 decision of the Court if this was either a straight
13 up plea or if I was given the opportunity to be the
14 one who actually does the sentence, my hands are
15 tied. It does not matter what I think about the
16 ultimate case. This is a mandatory statute.

17 And so my sentence for burglary first can only
18 be to sentence you to the State Department of
19 Corrections for life without the possibility of
20 parole, of course giving you credit for any time that
21 you have served.

22 For the offense of petit larceny; and I will run
23 these concurrent, then you'd be sentenced to the
24 county detention center for the 30 days which you've
25 already served in that regard.

1 I believe that you did an outstanding job --

2 **MR. WILLIAMS:** Thank you, Your Honor.

3 **THE COURT:** -- with respect to how you
4 represented yourself. You really challenged on some
5 various legal issues that I thought were great in
6 terms of how any defense lawyer I would expect to
7 come into the court and represent themselves.

8 Unfortunately, your past has caught up with you,
9 essentially. And while you might have essentially
10 transformed yourself with respect to since the time
11 of this offense or even the ones inbetween in terms
12 of how you're conducting your life and being more
13 studious and intelligent and things of that nature,
14 it's the past crime that eventually has caught up
15 with you.

16 **MR. WILLIAMS:** I understand that.

17 **THE COURT:** So that's where we are today.

18 **MR. WILLIAMS:** I understand that. For the
19 record, Your Honor, could you just for the record
20 submit the transcript, the guilty plea transcript?
21 Because that's basically part of the argument.
22 Remember earlier? And the Order, if there is no
23 objection to that?

24 **MS. GARFIELD:** No objection.

25 **THE COURT:** Okay. So this would be a Court's